

Bank House Investment Management Limited has referred this Decision Notice to the Upper Tribunal where the parties will present their respective cases. Any findings in this Decision Notice are therefore provisional and reflect the Authority's belief as to what occurred and how it considers the behaviour of Bank House Investment Management Limited should be characterised. The Tribunal will determine what (if any) is the appropriate action for the FCA to take, and will remit the matter to the FCA with such directions as the Tribunal considers appropriate to give effect to its determination. The Tribunal's decision will be made public on its website. No allegation of wrongdoing is made against Hennessy Jones Limited, Mark Stephen, James King or City Administration Limited in this Decision Notice.



12 Endeavour Square
London
E20 1JN

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

DECISION NOTICE

To: **Bank House Investment Management Limited**

Firm
Reference
Number: **451839**

Address: **Kings House
125 Promenade
Cheltenham
Gloucestershire
GL50 1NW**

Date: **6 December 2018**

1. ACTION

- 1.1. For the reasons given in this Notice, the Authority has decided to impose on Bank House Investment Management Limited ("BHIM") a financial penalty of £311,639 pursuant to section 206 of the Financial Services and Markets Act 2000 (the "Act") for contravening regulatory requirements between 9 September 2014 and 12 December 2016 (the "Relevant Period").

2. SUMMARY OF REASONS

- 2.1. The Authority has determined that, during the Relevant Period, BHIM breached Principle 1 (Integrity) of the Authority's Principles for Businesses by acting dishonestly and recklessly in relation to its pension advice business, and breached section 20 of the Act by carrying on the regulated activity of advising on Pension Transfers without the relevant permission.
- 2.2. Pensions are a traditional and tax-efficient way of saving money for retirement. The value of someone's pension can have a significant impact on their quality of life during retirement and, in some circumstances, may affect whether they can afford to retire at all. Customers who engage authorised firms to provide them with advice in relation to their pensions place significant trust in those providing the advice. Where a firm fails to act with integrity and puts its interests above those of its customers, it exposes its customers to a significant risk of harm.
- 2.3. Further, where elements of a pension advice process are outsourced to a third party service provider, the authorised firm remains responsible for the advice given and all decisions and actions in relation to regulated activities provided in its name. It is therefore essential that, in such circumstances, the authorised firm maintains control of the advice process and provides effective oversight of the activities carried out by the service provider on its behalf.
- 2.4. BHIM is a small firm that, during the Relevant Period, was authorised by the Authority with permission to conduct regulated activities, including advising on investments (excluding Pension Transfers) and arranging (bringing about) deals in investments. During the Relevant Period, the most senior individuals at BHIM were Tristan Freer and Robert Ward, who were the only individuals at BHIM with any meaningful involvement in the matters set out in this Notice.
- 2.5. During the Relevant Period BHIM adopted and used the Pension Review and Advice Process. This process was based on a pension switching advice model, the development of which was initiated and influenced by a third party, HJL. The Pension Review and Advice Process:
 - (1) involved HJL sourcing leads from lead generation companies and introducing customers to BHIM;

- (2) involved HJL and CAL (a third party service provider which was closely connected to HJL) being provided with BHIM's logo and Mr Freer's electronic signature so that they could perform functions (the Outsourced Functions) on BHIM's behalf. HJL was responsible for performing the Outsourced Functions prior to 13 October 2014, and from that date they were performed by CAL. The Outsourced Functions included:
 - (a) contacting customers that had been introduced to BHIM by HJL;
 - (b) conducting fact-finds with these customers;
 - (c) inputting the results of those fact-finds into the Software (an automated client management system designed to produce Suitability Reports);
 - (d) sending the Suitability Reports to the customers; and
 - (e) calling the customers to ask whether they wished to proceed in accordance with BHIM's advice;
- (3) was structured to result in customers who met certain pre-set criteria approved by Mr Freer being advised to switch their pensions to SIPPs investing in high risk, illiquid assets not regulated by the Authority (the Bonds). HJL had a material financial interest in a number of the Bonds, which was not disclosed to customers; and
- (4) involved little meaningful oversight by BHIM of HJL's activities as an introducer or of HJL and CAL's performance of the Outsourced Functions.

2.6. BHIM was aware of what the Pension Review and Advice Process involved and how it was structured. Nevertheless, it held itself out to customers as providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market. BHIM knew that this was misleading to customers as it did not reflect the reality of the service that it would provide using the Pension Review and Advice Process. In holding itself out in this way, BHIM acted dishonestly. The Authority considers this to be particularly serious because customers were not made aware of the true nature of the service being provided, including the fact that HJL's involvement in the process and financial interest in a number of the Bonds created a conflict of interest. Customers were therefore denied the opportunity to

make an informed decision on whether to use the Firm's services and on whether to invest in the products recommended to them.

- 2.7. BHIM's actions in relation to its adoption and use of the Pension Review and Advice Process, summarised in paragraphs 2.8 to 2.15 below, were reckless. The Pension Review and Advice Process put BHIM's customers at serious risk of receiving unsuitable advice and therefore at serious risk of investing in products that were not suitable for them, but BHIM closed its mind to these risks and unreasonably exposed its customers to them by adopting and using the Pension Review and Advice Process.
- 2.8. BHIM failed to carry out adequate due diligence on the Bonds to ensure that it had a proper understanding of them, including their risks and benefits, before deciding that they should be recommended to customers. BHIM relied solely on documents provided to it by HJL, despite knowing that HJL had a material financial interest in a number of the Bonds, and did not take any actions to address the risk that the information provided by HJL could be misleading or incomplete.
- 2.9. In any event, it should have been obvious to BHIM from the limited information that it considered that the Bonds were high risk investments that were unlikely to be suitable for BHIM's customers, except in very limited circumstances. However, BHIM failed to give due consideration to the risk that the Bonds were unsuitable.
- 2.10. BHIM knew of HJL's involvement in the Pension Review and Advice Process, that the process was structured to result in customers switching their pensions to SIPPs investing in the Bonds, and that HJL had a material financial interest in a number of the Bonds. Further, BHIM knew that two of the directors of HJL during the Relevant Period (Mark Stephen and James King) were directors of each of the companies issuing the Bonds. There was therefore an obvious risk that HJL might seek to influence inappropriately the advice provided to customers. However, BHIM took no steps to ensure that the common directorships and how HJL was remunerated were disclosed to customers.
- 2.11. BHIM was a firm with experienced and qualified financial advisors. It therefore should have been obvious to BHIM that it needed to give due consideration to the documents to be used in the Pension Review and Advice Process, and to how the process would operate in practice, before deciding to adopt the process. However, BHIM failed to do so, and therefore failed to identify significant obvious deficiencies

in the Pension Review and Advice Process, including that: the fact-find contained leading questions intended to steer customers towards the features of the products that would be recommended; the Suitability Reports did not include sufficient information to provide customers with a compliant personal recommendation; and information provided to customers about the Bonds did not adequately inform them of their costs, benefits and risks.

- 2.12. In any event, it should have been obvious to BHIM, from the information available to it, that the Pension Review and Advice Process did not comply with the Authority's rules. BHIM was aware that it would have no meaningful involvement in the advice to be given, and that the documents to be used in the process would mislead customers about the service that would be provided. However, BHIM failed to give any meaningful consideration to whether or not the Pension Review and Advice Process was compliant.
- 2.13. BHIM failed to maintain control of the Pension Review and Advice Process and allowed important parts of the process, such as the conduct of fact-finds, to be performed in a way that failed to obtain and/or take into account relevant information about BHIM's customers. Further, BHIM failed to review in a meaningful way the advice given through the Pension Review and Advice Process, for which it was responsible, whether before recommendations were sent to customers or at all.
- 2.14. BHIM failed to put in place appropriate systems and controls and compliance arrangements to oversee and monitor the Pension Review and Advice Process. As a result, BHIM did not have adequate management information on HJL's and CAL's activities, and there were no independent compliance reviews of the advice given through the Pension Review and Advice Process.
- 2.15. BHIM agreed to work with HJL and CAL without giving any proper consideration to whether they were suitable to perform services on its behalf. BHIM carried out no due diligence on HJL other than in connection with its role in relation to the companies issuing the Bonds, and the Firm's due diligence on CAL consisted simply of checking the company's details on the Companies House website and visiting CAL's office to satisfy itself that the company existed and was operating.
- 2.16. BHIM's reckless actions in relation to the adoption and use of the Pension Review and Advice Process, in particular the fact that it allowed HJL and CAL to perform

the Outsourced Functions on its behalf without adequate supervision, failed to review in a meaningful way advice given through the Pension Review and Advice Process, and failed to put in place and operate appropriate systems and controls in relation to the process, exposed it to the risk of breaching section 20 of the Act by carrying on a regulated activity without the relevant permission, as in fact happened. The Pension Review and Advice Process failed to distinguish properly between Pension Transfers (which include the transfer of deferred benefits from an occupational pension scheme into a SIPP) and Pension Switches (which involve the movement of funds from one personal pension scheme to another where no safeguarded benefits are involved). As a result, despite BHIM not having the necessary permission to provide advice on Pension Transfers, in at least five cases advice about Pension Transfers was given to customers in BHIM's name in breach of section 20 of the Act.

- 2.17. In addition to the clear deficiencies in the Pension Review and Advice Process, the Authority has identified that unsuitable advice was provided to BHIM's customers in all 20 BHIM customer files it has reviewed. Further, each of the 20 customer files failed to comply with applicable Handbook rules. As the same advice process was used for all customers who were advised to invest in the Bonds, the Authority considers it is likely that the advice provided to most, if not all, of BHIM's customers through the Pension Review and Advice Process was unsuitable.
- 2.18. During the Relevant Period, 265 customers switched or transferred pension funds totalling approximately £8.5 million to SIPPs investing in high risk, illiquid assets that were unlikely to be suitable for them, thereby exposing them to a significant risk of loss.
- 2.19. BHIM adopted the Pension Review and Advice Process in order to generate fees and to increase the number of customers that it could advise about other investments, and thereby generate further fees. In doing so, BHIM put its own interests before those of its customers.
- 2.20. BHIM also acted dishonestly or recklessly in several other ways during the Relevant Period, as described in paragraphs 2.21 to 2.24 below.
- 2.21. BHIM recklessly breached a term of a requirement which, on its application, had been imposed on it on 17 September 2015 (the Voluntary Requirement). The Voluntary Requirement included a term requiring BHIM not to carry on any activities

in relation to Pension Switches and/or Pension Transfers to any SIPP until independent verification was provided to the Authority confirming that a robust and compliant advisory process was in place for pension switching advice. However, in breach of this term, between 5 October 2015 and 10 November 2016, BHIM advised 77 customers to switch pension funds totalling £2.9 million to SIPPs. BHIM was aware of the risk that it might breach the terms of the Voluntary Requirement but, by closing its mind to that risk, recklessly failed to take reasonable steps to ensure that these transactions were permitted.

2.22. BHIM provided the Authority with false and misleading information about its business arrangements with HJL and CAL. The Firm did so to try to prevent the Authority from identifying misconduct by the Firm, Mr Ward and Mr Freer, and thereby acted dishonestly.

2.23. The Firm dishonestly told the Authority that it did not have minutes of board meetings when, in fact, the Firm kept formal minutes of meetings which Mr Ward and Mr Freer (and others) approved.

2.24. The Firm failed to be open and cooperative with the Authority, and provided it with incomplete and inaccurate information. BHIM closed its mind to the risk that the information it was providing to the Authority might be incomplete or inaccurate, and recklessly failed to take reasonable steps to ensure that it provided complete and accurate responses to requests by the Authority for information and documents relating to its business. In particular, BHIM:

- (1) failed to provide the Authority with certain emails which were obviously relevant to the Authority's investigation;
- (2) provided the Authority with a copy of the Firm's new business register which was materially incomplete; and
- (3) failed to provide the Authority with the full name of a company that the firm worked with and a copy of the Firm's agreement with that company.

2.25. The Authority considers BHIM's failings to be serious because:

- (1) they related to a large number of customers (including some who were vulnerable due to their age, their inability to replace capital, their medical conditions or other personal circumstances);

- (2) it should have been obvious to BHIM that the involvement in the Pension Review and Advice Process of HJL, which had a material financial interest in a number of the Bonds into which customers' funds were being invested, created a clear conflict of interest, yet BHIM took no steps to ensure that HJL's financial interest was disclosed to customers;
- (3) it should have been obvious to BHIM that the Bonds were unlikely to be suitable for retail customers, except in very limited circumstances; and
- (4) on 4 July 2014, the Authority wrote to BHIM and drew its attention to alerts released by the Authority relating to firms advising on Pension Switches or Pension Transfers into unregulated products through SIPPs, the risks of non-mainstream products being unsuitable and the need to protect customers. Despite this BHIM did not take steps to protect its customers.

2.26. BHIM's provision of pension advice was subject to examination by the Authority in July 2015. The Authority had serious concerns about the suitability of BHIM's pension advice and, at the request of the Authority, BHIM applied to have requirements imposed on it. Accordingly, the Voluntary Requirement was imposed on BHIM by the Authority on 17 September 2015.

2.27. Following BHIM's contravention of a term of the Voluntary Requirement, the Authority exercised its own-initiative powers to impose requirements on the Firm including that, with effect from 12 December 2016, it was not permitted to carry on any regulated activity.

2.28. The FSCS declared BHIM in default on 27 April 2017 and is investigating claims made by BHIM's customers. As at 25 June 2018, the FSCS had determined that compensation in excess of £500,000 should be paid to BHIMs customers.

2.29. The Authority considers that BHIM's breach of Principle 1 and section 20 of the Act, warrants a substantial penalty. Accordingly, the Authority has decided to impose a financial penalty on BHIM in the amount of £311,639.

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

"BHIM" or the "Firm" means Bank House Investment Management Limited

the "Bonds" means bonds, each of 10 years, issued by four unquoted UK companies incorporated between July and November 2014, into which BHIM's customers' pensions were invested

"CAL" means City Administration Limited, the third party service provider that performed the Outsourced Functions on behalf of BHIM between 13 October 2014 and 27 July 2015

"COBS" means the Conduct of Business Sourcebook, part of the Handbook

"Company X" means the third party to which BHIM sold customer data that the Firm had obtained as a result of its relationship with HJL, and that also introduced customers to BHIM during the Relevant Period

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

"EG" means the Authority's Enforcement Guide

"FOS" means the Financial Ombudsman Service

"FSCS" means the Financial Services Compensation Scheme

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

"HJL" means Hennessy Jones Limited, now known as Reditum Capital Limited. HJL introduced customers to BHIM under the Pension Review and Advice Process and also performed certain of the Outsourced Functions on behalf of BHIM prior to 13 October 2014

"IFA" means independent financial adviser

"Mr Freer" means Tristan Freer

"Mr Ward" means Robert Ward

“Outsourced Functions” means the functions outsourced by BHIM, initially to HJL, and from 13 October 2014, to CAL, under the Pension Review and Advice Process, including the functions described in paragraph 2.5(2) of this Notice (but not including the functions carried out by HJL in its role as introducer)

“Pension Review and Advice Process” means the process described in paragraph 2.5 of this Notice that BHIM adopted on 11 September 2014 and used until 27 July 2015

“Pension Switch” means the movement of funds from one personal pension scheme to another where no safeguarded benefits are involved

“Pension Transfer” has the meaning given in the Handbook and includes the movement of funds from an occupational pension scheme to a personal pension scheme (in this case a SIPP)

“PRIN” means the Authority’s Principles for Businesses

“Relevant Period” means 9 September 2014 to 12 December 2016 inclusive

“SIPP” means self-invested personal pension

“SIPP Providers” means the firms providing the SIPP accounts to BHIM’s customers under the Pension Review and Advice Process

“Software” means the automated client management system that was used by CAL during the Pension Review and Advice Process to manage customer information and generate Suitability Reports for customers

“Suitability Report” means the report which a firm must provide to its client under COBS 9.4 which, among other things, explains why the firm has concluded that a recommended transaction is suitable for the client

“SYSC” means the Senior Management Arrangements, Systems and Controls Sourcebook, part of the Handbook

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

the “Voluntary Requirement” means the requirement imposed on BHIM on 17 September 2015

the "Warning Notice" means the warning notice given to BHIM dated 5 March 2018

4. FACTS AND MATTERS

Background

- 4.1. BHIM is a small firm based in Cheltenham, Gloucestershire which, since 29 June 2006, has been authorised by the Authority with permission to conduct regulated activities, including advising on investments (excluding Pension Transfers) and arranging (bringing about) deals in investments.
- 4.2. During the Relevant Period, Tristan Freer, an experienced and qualified financial adviser, performed the CF1 (Director), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer) controlled functions at BHIM. Between 16 October 2014 and 12 December 2016, Robert Ward performed the CF1 (Director) and CF3 (Chief Executive) controlled functions at BHIM, although Mr Ward had active management and day-to-day responsibility for the business of the Firm from around the summer of 2014. Mr Freer and Mr Ward were the most senior individuals at BHIM and were the only individuals at BHIM with any meaningful involvement in the matters set out in this Notice.
- 4.3. From around 11 September 2014 until 27 July 2015, the Firm used the Pension Review and Advice Process, which involved:
 - (1) HJL sourcing leads from lead generation companies and introducing customers to the Firm;
 - (2) certain of the Outsourced Functions being performed on behalf of BHIM by HJL prior to 13 October 2014;
 - (3) the Outsourced Functions being performed on behalf of BHIM by CAL, a third party service provider closely connected to HJL, from 13 October 2014; and
 - (4) little meaningful oversight by BHIM of HJL's activities as an introducer or of HJL and CAL's performance of the Outsourced Functions.
- 4.4. The Pension Review and Advice Process was structured to result in customers who met certain pre-set criteria approved by Mr Freer being advised to switch their pensions to SIPPs investing in high risk, illiquid assets not regulated by the

Authority (the Bonds). Mr Ward was aware that HJL had a material financial interest in a number of the Bonds, and that HJL's financial interest was not disclosed to customers.

The business proposition

- 4.5. On 9 September 2014, Mr Ward was introduced to a representative from HJL. Mr Ward described the meeting in an email sent to Mr Freer later the same day. According to the email, Mr Ward understood that:
- (1) HJL had '*large numbers of people wanting to invest in [its] normal bond type of funds*';
 - (2) HJL was not authorised by the Authority and did not wish to become so because it would have a conflict of interest;
 - (3) HJL had a pension switching advice model which involved '*a suite of compliant documents*' and the outsourcing of functions in the pension advice process to HJL's staff '*who see the clients and complete the paperwork*', and which was intended to result in customers being advised to switch their pensions to SIPPs investing in HJL's '*bond type of funds*'; and
 - (4) HJL was seeking an authorised IFA to put its name to the advice given to customers through this process.
- 4.6. Mr Ward understood that HJL would '*actually do everything including the reports and suitability paperwork in [BHIM's] name*' in return for compliance sign-off and the signature of a qualified financial adviser to append to the documents used in the process. BHIM would also be required to do regular compliance visits to HJL to check the customer files.
- 4.7. Mr Ward understood from the initial meeting that the pension switching advice model had the potential to generate '*significant earnings*' because it was low paying but high volume work. He was told to expect 100 cases per month moving quickly to 100 cases per week.
- 4.8. At the initial meeting, the representative from HJL provided Mr Ward with fact sheets for a number of the Bonds and specimen documents which it proposed to use in the Pension Review and Advice Process. Mr Ward understood that other IFAs

had already adopted the same pension switching advice model. Mr Ward gave Mr Freer the fact sheets and specimen documents to review.

Decision to work with HJL and adopt the Pension Review and Advice Process

- 4.9. Within 24 hours of receiving Mr Ward's email referred to above, Mr Freer confirmed to Mr Ward that he was willing for the Firm to adopt the Pension Review and Advice Process and approved the specimen documents to be used by HJL, on behalf of BHIM. Mr Ward confirmed Mr Freer's consent in an email to HJL.
- 4.10. Later on 10 September 2014, the Firm provided HJL with a copy of its company logo and team biographies to enable the specimen documents to be finalised.
- 4.11. On 11 September 2014, two days after the initial meeting with the HJL representative, Mr Ward provided HJL with an electronic copy of Mr Freer's signature to use as the qualified signatory in the reports and paperwork to be produced by HJL on behalf of the Firm.
- 4.12. At 11:40 on 12 September 2014, HJL provided Mr Ward and Mr Freer with a number of the finalised documents to be used in the Pension Review and Advice Process. Mr Freer approved the documents within four hours. He told HJL that he was '*happy with all of the documentation*' although he thought some of the wording in the brochure for the Firm '*could be better [...] but this is not a compliance issue*'. In fact, the Firm's brochure held out the Firm as providing customers with independent advice from qualified financial advisers and stated that "*Independent advice means taking advice from an expert who is not tied to offering the products of one particular pension provider and does not receive payments in the form of commission for recommending that you move your pension. This means they can act entirely in your best interests to advise a pension portfolio that best matches your needs.*" As Mr Freer, and therefore BHIM, was aware, these statements were highly misleading and did not reflect the reality of the service that the Firm would provide using the Pension Review and Advice Process. Mr Freer told the HJL representative that no amendments were necessary to any of the documentation he had reviewed because he understood that other IFAs were already using the same documents and '*if it aint broke don't fix it!*'.

4.13. Also on 12 September 2014, the HJL representative sent Mr Ward and Mr Freer an email attaching a service agreement to sign. The services which were intended to be performed by HJL on behalf of the Firm included:

- (1) sourcing leads from lead generation companies;
- (2) gathering information from the customers' current pension providers;
- (3) visiting and/or contacting customers to conduct the fact-find in the name of the Firm; and
- (4) producing reports in the name of the Firm, including Suitability Reports.

4.14. The Firm did not sign this agreement, but HJL began contacting customers on behalf of the Firm at the latest from 25 September 2014 and, throughout the period that BHIM used the Pension Review and Advice Process, HJL was responsible for sourcing leads and acting as an introducer for the Firm in connection with the process.

Work with CAL

4.15. On 13 October 2014, the Firm entered into an agreement with CAL, for CAL to provide substantively the same services as those detailed in the unsigned agreement with HJL, with the exception of sourcing leads and introducing customers to the Firm (which HJL continued to do).

4.16. CAL was closely connected to HJL. The two firms initially shared the same address. HJL's representative at the 9 September 2014 meeting with Mr Ward moved to CAL but continued to email the Firm from an HJL email address until 13 November 2014 at the earliest. BHIM was copied into an email sent by HJL to one of the SIPP Providers in January 2015 in which HJL referred to CAL as '*our outsourcing company*'.

4.17. CAL performed the Outsourced Functions on behalf of the Firm until 27 July 2015, when the Firm ceased using the Pension Review and Advice Process and terminated its business relationship with CAL as a result of intervention by the Authority. BHIM also took over the employment of a number of staff previously employed by CAL. By this time, BHIM had begun working with another firm, Company X, which had close links to HJL.

The Bonds

- 4.18. The Pension Review and Advice Process resulted in customers' pensions being switched or transferred to SIPPs with a portfolio of underlying assets which took the form of bonds, each of 10 years, issued by four unquoted UK companies incorporated between July and November 2014 by HJL.
- 4.19. Customers' SIPPs were invested in three portfolios which were misleadingly described as being 'cautious', 'moderate' and 'adventurous', and which were made up of differing proportions of the Bonds and, in some cases, a small percentage of cash. The portfolios were meant to align to a customer's attitude to risk, but in practice there was little difference between the risks and returns of the 'cautious' portfolio when compared to the 'adventurous' portfolio. As such, the terms used to describe the three portfolios failed to reflect the reality that a customer would be exposed to high levels of risk whichever portfolio their SIPP was invested in.
- 4.20. Customers were told that the portfolios offered fixed returns and capital protection. In fact, the Bonds within the portfolios are high risk, illiquid and unlikely to be suitable for retail investors except in very limited circumstances due to:
- (1) the investment strategies of the issuing companies, which include investing in distressed residential and commercial property and other speculative investments, including unlisted equities; and
 - (2) the limited regulatory oversight of the issuing companies, which are not subject to the Authority's rules governing, for instance, investment and borrowing powers, disclosure of fees and charges, management of conflicts of interest, a prudent spread of risk and other investor safeguards.
- 4.21. The information memorandums for the Bonds state that capital protection is meant to be provided by way of floating charges on the assets of the issuing companies and by way of a cash amount, to be held in a separate segregated account and invested in cash instruments. For the Bonds issued by three of the four issuing companies, the cash amount is limited to a maximum of 20% of the aggregate principal amount of the Bonds plus accrued interest (no limit is specified for the Bonds issued by the fourth issuing company).

4.22. The Bonds are listed on an overseas exchange and the value of the Bonds is dependent on whether there is a market for them. As such, customers may realise less than their original investments if they sell them prior to the redemption date. Repayment of the principal sum and interest is also dependent upon the four issuing companies generating sufficient income and returns. Further, the Bonds are not regulated by the Authority and are not covered by FOS or FSCS protection.

Failures in the Firm's due diligence on the Bonds

4.23. A firm is required to take reasonable steps to ensure that the investments that are recommended to its customers are suitable for those customers (COBS 9.2.1R). In order to determine whether an investment is suitable for a customer, a firm needs to undertake due diligence on the investment to understand how it works. This is the process a firm carries out to assess, among other things, the nature of the investment and its risks and benefits.

4.24. Mr Freer knew that the only products available for recommendation to BHIM's customers through the Pension Review and Advice Process were the Bonds. As a financial adviser, director and compliance officer of the Firm, he had a responsibility to take reasonable steps to ensure that the Firm undertook adequate due diligence on the Bonds to ensure that they were suitable for the Firm's customers. However, Mr Freer, and therefore BHIM, failed to carry out adequate due diligence on them. For example:

(1) Mr Freer, and therefore BHIM, relied solely on documents provided to it by HJL. Despite the fact that he knew that HJL had a material financial interest in the Bonds (issued by three of the four issuing companies), Mr Freer did not take any actions to address the risk that the information provided by HJL could be misleading or incomplete.

(2) Mr Freer, and therefore BHIM, failed to obtain information about the assets that the issuing companies intended to invest in, which would be relevant to assessing the risk of investing in the Bonds. For example, one of the Bonds was issued by a company intending to invest in commercial property. The Firm took no steps to find out in which types of commercial property investments would be made, where the property would be based and what industries it would support. It should have been obvious to Mr Freer, as an

experienced and qualified financial adviser, that this information was needed in order to assess properly the suitability of the Bonds for customers.

- 4.25. Had BHIM carried out adequate due diligence on the Bonds, it could have assessed on an informed basis whether the composition of the portfolios of Bonds (which had been designed by HJL) were suitable for customers with particular risk profiles (for example, whether the 'cautious' portfolio was suitable for customers with a cautious attitude to risk). Mr Freer said his assessment was based on his 'experience' and was limited to reading through the fact sheets for each portfolio. In January 2015, Mr Ward instructed CAL to change the weightings in two of the portfolios. However, he did so after reading only a few pages of information prepared by HJL. If BHIM had carried out a proper assessment, it should have concluded that the various portfolios of Bonds would not be suitable for the majority of retail customers except in very limited circumstances.
- 4.26. BHIM also failed to assess properly the information of which it was aware. For example, it was apparent from the information memorandums for the Bonds (which Mr Freer claimed he reviewed) that:
- (1) the companies issuing the Bonds were all recently incorporated with no track record, all operated from the same registered address and had two common directors; and
 - (2) the Bonds were unregulated and, at the time that the Firm began advising customers to invest in them, unlisted (the fact the Bonds might not achieve a listing was noted as a risk factor).
- 4.27. As Mr Freer was an experienced and qualified financial adviser, it should have been obvious to him, and therefore BHIM, on the basis of this information that the Bonds were high risk investments which were unlikely to be suitable for retail customers except in very limited circumstances (for example, in some circumstances they may be suitable for high net worth investors or sophisticated investors looking for some exposure to less traditional investments). However, Mr Freer, and therefore BHIM, failed to give due consideration to the risk that the Bonds were unsuitable.
- 4.28. Under the Pension Review and Advice Process, advice was given in BHIM's name to customers to use one of two SIPP Providers that had been suggested to the Firm by HJL. BHIM's main reason for using one of these SIPP Providers was that they

were willing to accept the Bonds for retail customers. In April 2015, the Firm approached other SIPP providers, but those SIPP providers were not prepared to accept the Bonds in SIPPs for retail customers. For example, one SIPP provider told BHIM that the Bonds were “*not for retail use*”. This should have been a red flag to the Firm about the high risk nature of the Bonds. However, BHIM took no steps at this time to ensure the Bonds were suitable for its customers and continued to recommend the Bonds to customers until the Authority intervened in July 2015.

The Pension Review and Advice Process

- 4.29. The Pension Review and Advice Process was based on a pension switching advice model that had previously been adopted by other IFAs. HJL had initiated and influenced the development of this model, as it had been seeking an efficient process, to be adopted by an authorised IFA, for advising customers who met certain criteria to switch their pensions to SIPPs investing in underlying assets in which HJL had a material financial interest. When BHIM adopted the Pension Review and Advice Process in September 2014, the underlying assets in which customers’ SIPPs were to be invested were the Bonds (issued by three of the four issuing companies).
- 4.30. BHIM was responsible for the advice given to customers through the Pension Review and Advice Process. However, a number of important functions were outsourced to third parties. At the outset, it was intended that these functions would be outsourced to HJL, and initially certain of the functions (in particular those in the early stages of the process, such as obtaining information about the customer’s existing pension arrangements) were performed by HJL. However, from 13 October 2014, these functions, with the exception of lead generation, were performed by CAL. The decision that the Outsourced Functions should be performed by CAL rather than HJL appears to have been agreed between them without the involvement of, or any consultation with, BHIM.
- 4.31. The description of the Pension Review and Advice Process in the following paragraphs describes the process that was in place from 13 October 2014.
- 4.32. Under the Pension Review and Advice Process, leads were sourced by HJL from a number of lead generation companies. Customers were invited to request a free pension review. If a customer made such a request, they would be contacted by CAL, which would obtain information about the customer’s existing pension

arrangements. CAL would then input the information into the Software, which would generate a Pension Summary Report. The Pension Summary Report would give the customer an indication of whether they might be better off if they changed their pension arrangements. CAL would call or attend a face-to-face meeting with the customer to present the Pension Summary Report and promote BHIM's advice service.

- 4.33. If the customer signed a service proposition confirming that they wished to receive advice from BHIM, CAL would collect relevant documents from the customer and conduct a scripted fact-finding exercise. CAL would input the results of the fact-find into the Software, which would determine, based on pre-set criteria approved by BHIM, whether the customer should be advised to invest in the Bonds and produce a Suitability Report containing a personal recommendation. CAL would send the Suitability Report to the customer and call the customer to ask them whether they wished to proceed in accordance with the advice they had received. Customers were not always told they were being contacted by a third party, so some customers may have been given the impression that they were dealing with staff from BHIM itself.
- 4.34. BHIM allowed CAL (and initially HJL) to perform the Outsourced Functions with little or no oversight. Although the Suitability Reports were issued on behalf of BHIM and in Mr Freer's name as the qualified financial adviser, Mr Freer had no involvement in the assessment of suitability for individual customers or in the production of the Suitability Reports. Mr Freer's electronic signature and the Firm's logo were simply added to documents provided by CAL to customers, including the Suitability Reports. As such, BHIM did not have control over the advice given in its name.
- 4.35. Between 3 November 2014 and 15 July 2015, BHIM advised 265 customers to switch or transfer their pensions to a SIPP investing in the Bonds through the Pension Review and Advice Process. This amounted to customer funds totalling approximately £8.5 million.
- 4.36. BHIM received an advice fee of 3% of a customer's pension assets when a Pension Switch or Pension Transfer to the SIPP was completed. For any customer who opted to have ongoing servicing, BHIM would also receive an annual fee of 0.5% of the customer's pension assets paid by the SIPP Provider from the customer's pension assets. Between 2 January 2015 and 16 June 2016, BHIM received

£350,425 in advice or ongoing servicing fees. BHIM paid over £163,240 to CAL for its role in the Pension Review and Advice Process.

Failures relating to BHIM's adoption and use of the Pension Review and Advice Process

- 4.37. BHIM adopted the Pension Review and Advice Process despite knowing that customers would be given misleading information about the service they would receive. For example, the template documents that Mr Freer reviewed and approved included the service proposition which customers had to sign to confirm they wished to receive advice from BHIM and that they agreed with the terms of the service offered. The service proposition stated, *"...we offer an Independent advice service. We will recommend investments based on a comprehensive and fair analysis of the market. We will place no restrictions on the Investment Markets we will consider before providing investment recommendations, unless you instruct us otherwise. We will however only make a recommendation when we know it is suitable for you...We operate independently and therefore provide investment services from the whole market"*.
- 4.38. BHIM knew these statements were untrue. It knew that advice would be given through an automated process without any meaningful assessment of individual customers' needs and that the only products that would be recommended to customers through the Pension Review and Advice Process were the Bonds. Further, BHIM was aware when it decided to adopt the Pension Review and Advice Process that the Outsourced Functions were intended to be performed on its behalf by HJL, which had a material financial interest in the Bonds issued by three of the issuing companies, and it was later aware that, from 13 October 2014, they would be performed by CAL, which was closely connected to HJL.
- 4.39. Mr Freer reviewed and approved various documents to be used in the Pension Review and Advice Process, including fact-find scripts and template Suitability Reports. He also approved the pre-set criteria which would be the basis for the Software's determination of whether a customer should be advised to invest in the Bonds. However, he spent very little time scrutinising the documents to be used in the Pension Review and Advice Process before agreeing that BHIM should adopt the process only two days after Mr Ward's initial meeting with the HJL representative. Mr Ward told the Authority that he relied on Mr Freer to satisfy himself that the

Pension Review and Advice Process complied with regulatory requirements. However, other than asking Mr Freer if he was happy with his own review of the process and asking Mr Freer to let him know if he had any concerns, Mr Ward did nothing to ensure that Mr Freer's review of the Pension Review and Advice Process, and the documents to be used in the process, was adequate.

4.40. There were other significant obvious deficiencies in the Pension Review and Advice Process which BHIM would have identified if it had given due consideration to the documents to be used in the Pension Review and Advice Process, and to how the process would operate in practice, including:

- (1) The fact-find script contained leading questions which were intended to steer the customer towards the features of the Bonds that would be recommended.

For example, customers were read a statement which included the following: *'Pension money can be held in a range of different investments offering different features. Some will experience highs and lows while others may perform in a much less volatile manner.'* They were then asked if they would prefer their pension fund to *'Grow at a fixed and known rate each year?'* or to *'Go up and down in value depending on the underlying investments' performance?'*

Customers were also asked *'If it could be guaranteed that the value of your pension fund at the end of an agreed term could not fall below the amount invested – would you want to incorporate this feature?'* and given the option of answering 'yes' or 'no'.

These questions were likely to lead customers to say they would prefer fixed returns and a capital guarantee. Where customers stated either or both of these preferences, they were advised to invest in the Bonds. The customers' stated preferences for fixed returns and/or a capital guarantee were used to justify recommending the Bonds, which customers were told offered fixed returns and *'an element of capital protection'* (see paragraph 4.20 above). Customers were not asked any other questions about their investment objectives.

- (2) The fact-find only allowed for certain specified information to be gathered from the customer, which was insufficient to establish the suitability of recommendations. The fact-find was conducted by CAL staff, working from a script, who were not permitted to depart from the script and probe for further information. Even when a customer did disclose additional relevant information, it was not taken into account as a result of the way in which the Suitability Reports were prepared. Further, a suitably qualified financial adviser should oversee the fact-find process. However, neither Mr Freer nor any other qualified financial adviser at BHIM supervised the conduct of fact-finds, or routinely had any meaningful involvement in the individual assessment of customers' circumstances.
- (3) Customers were not given a compliant personal recommendation as the Suitability Report did not explain why the Bonds were suitable for a customer's demands and needs. The Suitability Report also did not include an analysis of the advantages and disadvantages of the recommended products compared to the customer's existing pension.
- (4) The information provided to customers about the Bonds did not fully inform customers of their costs, benefits and risks. In particular:
 - (a) important information about the risks of the Bonds was either not disclosed to the customer or, where it was disclosed, was contradictory or unclear;
 - (b) the three portfolios that customers invested in were described as 'cautious', 'moderate', and 'adventurous'. However, these terms failed to reflect the reality that customers would be exposed to high levels of risk whichever portfolio their SIPP was invested in;
 - (c) customers were told that the Bonds provided a fixed return and capital protection. However it was never explained or disclosed to the customers that there was a risk that they would not get all their capital investment back. If the bond issuers performed poorly, they might not be able to make interest payments to customers and/or repay capital. It was particularly important that customers were made aware of this risk given the bond issuers had no track record

and the bond issuers' assets included both illiquid and high risk assets; and

- (d) whilst the advice provided would be covered by FOS and the FSCS, customers were not told that, if the Bonds failed, they would be unable to make a complaint or claim to the FOS and/or the FSCS, as the bond issuers and the Bonds were not regulated by the Authority.
- (5) HJL's involvement in the Pension Review and Advice Process created an obvious conflict of interest because the process was structured to result in customers being recommended to invest in the Bonds, in a number of which HJL had a material financial interest. In addition, as BHIM knew, two of the directors of HJL during the Relevant Period (Mark Stephen and James King) were directors of each of the companies issuing the Bonds. However, customers were not made aware of these common directorships or of how HJL was remunerated. When questioned by the Authority, Mr Ward and Mr Freer accepted that this conflict of interest could have influenced the advice process and created a risk of customers receiving unsuitable recommendations to invest in the Bonds. Mr Ward and Mr Freer also accepted that HJL's financial interest should have been disclosed to customers and was not.

4.41. The Firm also failed to identify obvious inaccuracies in the documents used in the Pension Review and Advice Process. For example:

- (1) Mr Freer approved the specimen Suitability Report which stated that, should customers wish to disinvest, it could take up to 12 months to access the funds, despite the fact this statement related to an entirely different product to those that the Firm agreed should be recommended to customers.
- (2) Mr Freer also approved fact sheets about the Bonds to be provided to customers which stated that the Bonds were listed, when this was not yet the case (the issuers of the Bonds had applied for them to be listed).

4.42. The Authority considers that the Pension Review and Advice Process was wholly and, to an experienced and qualified financial adviser, obviously inadequate and exposed customers to a significant risk of loss from investments that were unlikely to be suitable for them. It should have been obvious to Mr Freer from the

information available to him, that the Pension Review and Advice Process was not compliant with the Authority's rules. However, as a result of his inadequate consideration of the documents to be used in the Pension Review and Advice Process, and of how the process would operate in practice (as well as his inadequate due diligence on the Bonds and, as detailed below, HJL and CAL), BHIM adopted and used a non-compliant process without giving any meaningful consideration to the interests of customers.

- 4.43. Mr Freer told the Authority that the Pension Review and Advice Process was fit for purpose largely on the basis that it was structured to result in only the Bonds being recommended to customers wishing to invest in a fixed return product and that *'If ever at any point they said no to any of the particular questions then they [would] be thrown out the side'*. However, it should have been obvious to Mr Freer, as an experienced and qualified financial adviser, that suitability cannot be assessed simply by reference to whether a customer wishes to invest in a fixed return product or not. In addition, the Authority considers the Bonds to be high risk investments which would be unlikely to be suitable for retail investors except in very limited circumstances (see paragraph 4.27 above) and this should have been obvious to Mr Freer.

BHIM's limited role in the Pension Review and Advice Process

- 4.44. BHIM had negligible involvement in the Pension Review and Advice Process. For example:
- (1) BHIM had no involvement in conducting the fact-find with the customer and had no oversight of that process.
 - (2) BHIM had no involvement in preparing the Suitability Report for the customer. Mr Freer told the Authority that he reviewed each Suitability Report before it was sent to the customer, but this claim is not supported by the evidence provided to the Authority. To the extent he did review Suitability Reports, on the account Mr Freer gave to the Authority, his review was limited to checking that the details recorded in the fact-find had been correctly included in the report. He did not give any meaningful consideration to whether the recommendation was suitable for the customer. There was also no mechanism for Mr Freer to confirm that he had

reviewed and approved a Suitability Report before it was sent to the customer.

- (3) BHIM had no involvement in any further work done for customers once the Suitability Reports had been sent to them, including follow up calls or meetings with the customer and completing the paperwork to process the Pension Switch or Pension Transfer if the customer chose to invest in the Bonds. As a result he did not know which customers completed Pension Switches or Pension Transfers.
- (4) BHIM had no contact with customers during the Pension Review and Advice Process unless specifically requested.

4.45. There were obvious risks associated with the Pension Review and Advice Process. However, the Firm failed to put in place appropriate systems and controls to address those risks. For example:

- (1) the Firm made no attempt to monitor HJL and did not know if leads were obtained by unlawful cold calling;
- (2) the Firm failed to ensure that its agreement with CAL required CAL to provide it with management information. While using the Pension Review and Advice Process, the Firm had no access to management information about the work undertaken on its behalf and, as a result, it had no idea of the number of leads generated, the number of customers at each stage of the process or the number of customers who did not switch or transfer to the Bonds and their reasons for exiting the process; and
- (3) the only method the Firm used to monitor CAL's performance of the Outsourced Functions was through the compliance file checks that the Firm conducted (see paragraph 4.46(2) below), which were perfunctory and did not include listening to calls conducted with customers. When the Authority showed Mr Ward customer files which included calls made by CAL to customers, he described some of them as '*horrific*'.

4.46. The Firm's compliance arrangements for this business were wholly inadequate.

- (1) Mr Freer was responsible for both the advice provided to customers through the Pension Review and Advice Process and compliance checks on the same

files. There was a clear risk of errors going undetected and of customers receiving unsuitable advice as a result. The Firm did not consider this risk and did not take steps to mitigate it, for instance by engaging the services of an independent compliance firm. Instead the Firm relied on the internal compliance checks conducted by CAL, despite having no oversight of its work.

- (2) To the extent that Mr Freer conducted compliance checks on customer files, the process consisted of checking a sample of customer files for accuracy and completeness rather than checking the suitability of the advice.
- (3) The Pension Review and Advice Process had been operating for over four months before Mr Freer conducted his first compliance check. By then, 112 customers had already switched or transferred their pension to SIPPs with the underlying investment in the Bonds.

Failures in BHIM's due diligence on HJL and CAL

4.47. Principle 3 of the Authority's Principles for Businesses provides that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. Further detailed guidance is set out in SYSC. In particular, firms such as BHIM, which are not common platform firms (as defined in the Handbook):

- (1) should take reasonable steps to identify risks relating to the firm's activities, processes and systems (SYSC 7.1.2R and SYSC 7.1.2AG);
- (2) when relying on a third party for the performance of operational functions which are critical for the performance of regulated activities, should ensure they take reasonable steps to avoid additional operational risk (SYSC 8.1.1R and SYSC 8.1.1AG);
- (3) should exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions or of any relevant services and activities (SYSC 8.1.7R and SYSC 8.1.11AG); and
- (4) should take the necessary steps to ensure that any service providers have the ability, capacity and any authorisation required by law to perform the

outsourced functions, services or activities reliably and professionally (SYSC 8.1.8R(1) and SYSC 8.1.11AG).

- 4.48. BHIM agreed to HJL acting as introducer and to HJL and CAL performing the Outsourced Functions on BHIM's behalf without giving any proper consideration to whether they were suitable to perform those activities.
- 4.49. BHIM agreed to work with HJL two days after Mr Ward's initial meeting with a representative of the company, having carried out no due diligence on HJL (other than in connection with its role in relation to the companies issuing the Bonds).
- 4.50. BHIM's due diligence on CAL comprised checking the company's details on the Companies House website. Mr Ward and Mr Freer also attended meetings at CAL's offices, but this was to satisfy themselves that the company actually existed and was operating rather than to assess whether it was fit to perform the Outsourced Functions.

Motivation

- 4.51. In deciding to adopt the Pension Review and Advice Process, Mr Ward and Mr Freer (and therefore BHIM) focused on the potential for the Firm to earn fees and the opportunity to generate customer referrals for the Firm. They put the Firm's interests before those of its customers and put customers at a significant risk of harm.
- 4.52. Mr Ward told Mr Freer at the outset that '*We actually do nothing but get paid plus trail*' and that he expected the Pension Review and Advice Process to generate fees of £10,000 or more a week.
- 4.53. Mr Ward and Mr Freer (and therefore BHIM) were also motivated by the expectation that customers who did not wish to invest in the Bonds would be referred by HJL and/or CAL to the Firm for '*bespoke*' advice. Mr Freer told the Authority that this did not happen in practice which meant that the Firm was not getting its '*part of the bargain*' that it had agreed with HJL and CAL.

The Authority's review of 20 customer files

- 4.54. Given that all of BHIM's customers were told they were receiving a personal recommendation based on a comprehensive and fair analysis of the whole market

when in fact they were not, and given HJL's material financial interest in a number of the Bonds which was undisclosed to customers, the process clearly put BHIM's customers at serious risk of receiving unsuitable advice and therefore at serious risk of investing in products that were not suitable for them.

- 4.55. Nevertheless, the Authority has reviewed the advice given to 20 of BHIM's customers during the period from 2 December 2014 to 5 June 2015 using recordings of calls and meetings, where they were available, and copies of the customer files maintained by CAL.
- 4.56. The advice given to the customer was unsuitable in all 20 files. As the same process was used for all advice relating to the Bonds, the Authority considers it likely that the advice provided to most, if not all, of BHIM's 265 customers was unsuitable.
- 4.57. In all 20 files the Authority considers that the gathering of information from the customer, the product recommendation, the Suitability Report and the disclosure of information about the product breached the Authority's requirements, including because:
 - (1) insufficient information was gathered from customers in order to ensure a suitable recommendation was given to customers. For example, the fact-finding script was limited and key information was not requested from customers, including about their investment objectives (other than with respect to fixed returns and a capital guarantee) and their knowledge, experience, understanding and ability to accept the risks of speculative investments (COBS 2.1.1R, 9.2.1R and 9.2.6R);
 - (2) the Bonds were not suitable due to the illiquid and high risk nature of the investments made by the companies issuing the Bonds, and the limited regulatory oversight of those companies (COBS 2.1.1R, 9.2.1R and 9.3.1G);
 - (3) the Suitability Reports failed to give customers a compliant personal recommendation as they did not explain why the SIPP and the Bonds were both suitable for a customer's demands and needs, and did not adequately explain the possible disadvantages of the recommendation to customers (COBS 2.1.1R and 9.2.1R); and

- (4) fact sheets provided to customers about the Bonds did not adequately explain the risks and possible disadvantages of investing in the Bonds and did not disclose to customers that HJL would receive an initial fee of up to 5% of the funds raised for a number of the Bonds (COBS 2.1.1R and 9.2.1R).

4.58. In addition, the Authority identified:

- (1) two cases where investment advice had been given about a Pension Transfer outside of BHIM's permission;
- (2) one case where the recommendation was not suitable as the customer lost existing benefits (a guaranteed interest rate) (COBS 2.1.1R and 9.2.1R(1));
- (3) five cases where the recommendation was unsuitable for the customer's personal circumstances, financial circumstances and/or investment objectives (COBS 2.1.1R and 9.2.1R(1)). For example, one customer confirmed he was disabled and 'retired' on medical grounds and his only source of income was disability welfare benefits. Despite this, he was recommended to transfer all of his existing pension to the SIPP and to invest in the 'moderate' portfolio of Bonds;
- (4) four cases where the recommendation was unsuitable as the SIPP was more expensive than one or more of the customer's existing pensions and there was no justification for the additional cost (COBS 2.1.1R and 9.2.1R(1)). For example, a customer was recommended to switch to a SIPP and invest in the Bonds even though this would be £2,000 more expensive at the medium return level than remaining in the existing pension scheme;
- (5) 17 cases, where audio recordings of the advice process were available for review by the Authority, where oral statements were made to the customer during the advice process that were factually inaccurate, unclear, unfair or misleading (COBS 4.2.1R). Those statements included that:
 - (a) after the fact-find an IFA would spend two days reviewing the customer's circumstances to make a recommendation, when in fact the advice process was automated with typically no involvement from a qualified financial adviser;

- (b) an adviser would search the market for a recommendation tailored to the customer's circumstances, when in fact the Bonds were the only products that were available for recommendation to the customer;
 - (c) the customer's capital would be guaranteed and the returns were fixed, without explaining that income and/or capital might be lost if the investments made by the issuing companies did not perform adequately; and
 - (d) the advice was covered by FSCS, without making it clear that any losses incurred through the failure of the Bonds would not be covered by the FSCS; and
- (6) 18 cases where the information suggests customers waived their right to cancel within 30 days (COBS 4.2.1R). There is no evidence that customers were informed of the implications of waiving their rights and they may not have been given sufficient time to reflect on the suitability of the investment.

Acting outside the Firm's permission and breaches of the Voluntary Requirement

Advising on Pension Transfers

- 4.59. The Firm was not authorised to advise on Pension Transfers. However, in allowing HJL and CAL to perform the Outsourced Functions on its behalf, failing to review in a meaningful way advice given through the Pension Review and Advice Process, and failing to put in place and operate appropriate systems and controls in relation to the Pension Review and Advice Process, the Firm exposed itself to the risk of breaching section 20 of the Act by carrying on a regulated activity without the relevant permission. This in fact happened when, between 24 November 2014 and 27 July 2015, the Firm gave advice in relation to five Pension Transfers and at least four customers transferred as a result.
- 4.60. On 9 February 2015, CAL emailed Mr Freer an internet link to a publication by the Authority which made clear that pension funds moved from any type of occupational pension scheme (including defined benefit schemes) to a SIPP fall within the Handbook definition of a Pension Transfer. Mr Freer noted that he had not

understood this before and confirmed to CAL that the Firm did not have permission to perform Pension Transfers. Mr Freer took steps to identify if advice had been given to customers about Pension Transfers, but failed to identify that advice had been given in BHIM's name on at least four Pension Transfers through the Pension Review and Advice Process prior to 9 February 2015 (when he received the email) and did not prevent the completion of two Pension Transfers after this date.

Breaches of the Voluntary Requirement

4.61. On 17 September 2015, at the request of the Authority, the Firm applied for the imposition of requirements on it. Accordingly, the Voluntary Requirement was imposed on the Firm. As a result, BHIM was required:

- (1) to terminate any and all business relationships with HJL and CAL and another third party such that they could not perform any activities on behalf of the Firm;
- (2) not to carry on any activities in relation to Pension Switches and/or Pension Transfers to any SIPP, including completing any business then being processed which had not been completed, until independent verification was provided to the Authority confirming that a robust and compliant advisory process was in place for pension switching advice. The person appointed to provide independent advice had to be a person appointed with prior agreement from the Authority; and
- (3) to implement a process of ongoing independent checks on all new pension SIPP switching advice until such time as the Authority was satisfied the new advisory process referred to above was embedded into the Firm's processes.

4.62. Between July and December 2015, Mr Ward corresponded with the Authority regarding the terms of the Voluntary Requirement and what activities the Firm would be/was permitted to conduct with regard to certain customers. Between March and 7 September 2016, Mr Ward sought permission from the Authority to allow the Firm to provide advice to certain customers to switch their pensions to a SIPP. Each time, on at least six separate occasions, the Authority reiterated that the Firm could not provide such advice until it had satisfied the terms of the Voluntary Requirement.

- 4.63. Despite this, between 5 October 2015 and 10 November 2016, the Firm advised 77 customers to switch their pension to a SIPP, including 72 customers who had been introduced to the Firm by Company X.
- 4.64. Mr Ward told the Authority that he relied on assurances from Mr Freer that the account in which the 72 customers introduced by Company X were advised to invest was a personal pension (as distinct from a SIPP), but did not take any steps to verify those assurances or otherwise ensure that switches to the account did not contravene the Voluntary Requirement. In fact, the account in which customers were advised to invest was a SIPP account. Mr Freer thought that this account was a type of personal pension not subject to the restrictions in the Voluntary Requirement. Had he taken reasonable steps to check the type of pension account, Mr Freer would have discovered that it was in fact a SIPP and that it did fall within the terms of the Voluntary Requirement. Mr Freer also told the Authority he relied on information from Mr Ward that the Firm had permission from the Authority to advise customers to switch their pensions to certain SIPP accounts. Despite knowing that this contradicted the written terms of the Voluntary Requirement, Mr Freer took no other steps to confirm this, such as contacting the Authority himself or asking to see written confirmation from the Authority.
- 4.65. The Firm thereby recklessly contravened the terms of the Voluntary Requirement. In total approximately £2.9 million of customer funds was switched to SIPP accounts despite the Voluntary Requirement.
- 4.66. When the Authority became aware of this, it used its own-initiative powers to impose further requirements on the Firm such that, with effect from 12 December 2016, it was not permitted to carry on any regulated activity.

Misleading the Authority

Information provided about the Pension Review and Advice Process and HJL and CAL

- 4.67. BHIM repeatedly provided the Authority with information about the Firm's business which was false, incomplete or misleading. The information was provided by Mr Ward and Mr Freer, each of whom claimed that they had not intended to mislead the Authority. However, they each provided information which they must have known at the time was not true. The Authority considers that Mr Ward and Mr Freer

did so to try to prevent the Authority from identifying misconduct by the Firm and themselves in relation to the Pension Review and Advice Process and the Firm's business arrangements with HJL and CAL.

4.68. BHIM provided various false and misleading accounts to the Authority about the Firm's business and its business arrangements with HJL and CAL. In particular:

(1) Both Mr Freer and Mr Ward repeatedly told the Authority they had no idea that HJL had any involvement in the Pension Review and Advice Process despite approving documents which clearly showed HJL's involvement and both receiving an agreement for HJL to perform the Pension Review and Advice Process, including introductions, on behalf of the Firm (see paragraphs 4.9 to 4.14 above).

(2) Mr Ward and Mr Freer also both gave accounts to the Authority that the Firm started working with CAL in December 2014, that they quickly identified concerns with CAL and the Pension Review and Advice Process, and that the Firm took steps to terminate its agreement with CAL in February or March 2015 as a result. This was not true because the Firm started working with CAL in October 2014 and continued to work with it until 27 July 2015 (see paragraphs 4.15 and 4.17 above) and Mr Ward and Mr Freer must have known this because they continued to communicate with CAL during this time.

4.69. The Authority considers that BHIM deliberately sought to mislead the Authority on these points. Mr Ward emailed Mr Freer on 4 August 2015, following receipt of a letter from the Authority explaining its concerns about the Pension Review and Advice Process and the Firm's relationships with HJL and CAL. Mr Ward wrote that the Authority had, among other things, *'restricted the whole thing to the work we were doing with [CAL]'* and *'said that we were being put into a process led by [HJL]'*. In his email Mr Ward suggested that the Firm could counter those concerns by telling the Authority that the Firm had identified concerns with the Pension Review and Advice Process *'in the preceding feb and stopped the work process'* and that it had *'no connection legally or actually'* with HJL. These statements are not supported by the contemporaneous documentary evidence with which the Authority has been provided and which would have been available to the Firm at the time.

- 4.70. BHIM told the Authority that it did not have minutes of board meetings when, in fact, it kept formal minutes of meetings from 14 July 2014 at the latest. The minutes were approved by the board at the beginning of the following board meeting. Mr Ward and Mr Freer must have known this, but both told the Authority that BHIM did not have minutes of board meetings. The minutes contained important information about BHIM's arrangements with CAL. For example, when copies of the minutes were finally provided to the Authority they included minutes of a meeting in February 2015 which stated that *'work with [CAL] has come to fruition and is to be continued'*. None of the minutes provided to the Authority contained any evidence that the Firm terminated its agreement with CAL prior to July 2015.
- 4.71. BHIM failed to comply with a requirement imposed on the Firm by the Authority for the Firm to provide certain of Mr Ward's emails. BHIM provided the Authority with some of Mr Ward's emails but omitted to provide a large number of highly relevant emails, including an email dated 9 September 2014 sent by Mr Ward to Mr Freer which detailed Mr Ward's meeting with HJL and an email from HJL to Mr Ward and Mr Freer attaching the agreement between HJL and the Firm (referred to in paragraphs 4.5 and 4.13 above). The Firm subsequently provided these emails to the Authority in response to a further requirement imposed by the Authority. If Mr Ward had taken reasonable steps to check the Firm's initial response he would have identified that it was obviously incomplete and omitted relevant material.

Information provided about Pension Switches to SIPPs and Company X

- 4.72. BHIM provided the Authority with incomplete and misleading information about the Pension Switches that it had conducted in contravention of the terms of the Voluntary Requirement. On 21 September 2016 the Firm provided the Authority with a copy of its new business register which was materially incomplete. The Firm's new business register recorded a total of 30 transactions involving pensions after the date of the Voluntary Requirement. It did not indicate that any of those transactions involved customers switching to a SIPP account. However, the Authority obtained information which showed that, in the period covered by the new business register, the Firm had in fact advised customers on 76 transactions involving Pension Switches to a SIPP account with a single SIPP provider. The new business register provided to the Authority recorded only 29% of those transactions. Both Mr Ward and Mr Freer failed to check the new business register

before it was provided to the Authority. If they had checked it, it would have been obvious to them that it was incomplete and omitted relevant material.

- 4.73. BHIM also failed to be open and cooperative with the Authority, and provided the Authority with incomplete and misleading information, in relation to its relationship with Company X. The Authority became aware in December 2015 that the Firm had a business arrangement with Company X. The Authority asked the Firm to provide details about Company X and its relationship with the Firm. When the Firm responded in January 2016 it did not provide the full company name but rather indicated that Mr Ward knew Company X by a trading title. However, Mr Ward could have easily obtained Company X's name and provided it to the Authority. This meant the Authority did not identify full details about Company X until around August 2016. The Authority then established that Company X had close links to HJL.
- 4.74. When questioned by the Authority in February 2016, Mr Ward said that the Firm had trialled a business arrangement with Company X in November 2015 but that it had received no leads from Company X since January 2016. In fact:
- (1) Company X started conducting appointments with customers for the Firm from around the beginning of September 2015.
 - (2) As at 11 December 2015, Company X had submitted 225 leads to the Firm and the Firm had accepted 180 of those leads. The leads included 142 customers referred for pension advice. The Authority has seen nine Suitability Reports and draft Suitability Reports for customers who were referred to the Firm for pension advice by Company X. In each case the customer was advised by the Firm to invest in a SIPP account.
- 4.75. In August 2015, the Firm entered into an agreement with Company X to sell customer data to it which the Firm had obtained as a result of its relationships with HJL. The Firm received a payment of approximately £163,000 for this sale.
- 4.76. The Firm did not disclose this to the Authority when asked about its relationship with Company X. It also did not provide a copy of the agreement relating to the sale when asked to provide any agreements with Company X. This agreement, which Mr Ward signed on behalf of the Firm, referred to HJL's role in the Pension Review and Advice Process in providing leads. Mr Ward said he did not think he

needed to provide the Authority with this agreement because it did not relate to services being provided to the Firm by Company X. This was not a reasonable explanation because the Authority had asked for any agreements with Company X.

5. FAILINGS

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

Principle 1

5.2. Principle 1 required the Firm to conduct its business with integrity. A firm may lack integrity where it acts dishonestly or recklessly.

5.3. During the Relevant Period, the Firm breached this requirement in that:

(1) BHIM acted dishonestly by holding out the Pension Review and Advice Process to customers as the Firm providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market. This was dishonest because BHIM knew that this was misleading to customers as it did not reflect the reality of the service that it would provide using the Pension Review and Advice Process.

(2) BHIM's actions in relation to its adoption and use of the Pension Review and Advice Process to provide advice to its customers were reckless. The Pension Review and Advice Process put BHIM's customers at serious risk of receiving unsuitable advice and therefore at serious risk of investing in products that were not suitable for them (which in fact happened), but BHIM closed its mind to these risks and unreasonably exposed its customers to them by adopting and using the Pension Review and Advice Process. In particular:

(a) BHIM failed to carry out adequate due diligence on the Bonds before agreeing that they should be recommended to customers. The Firm relied solely on documents provided to it by HJL, despite knowing that HJL had a material financial interest in a number of the Bonds, and did not take any actions to address the risk that the information provided by HJL could therefore be misleading or incomplete. In any event, it should have been obvious to BHIM from the limited

information that it considered that the Bonds were high risk investments that were unlikely to be suitable for its customers, except in very limited circumstances. However, BHIM failed to give due consideration to the risk that the Bonds were unsuitable.

- (b) BHIM knew of HJL's involvement in the Pension Review and Advice Process and that the process was structured to result in customers switching their pensions to SIPPs investing in assets in a number of which HJL had a material financial interest. It also knew that two of HJL's directors were directors of each of the companies issuing the Bonds. However, BHIM took no steps to ensure that the common directorships and how HJL was remunerated were disclosed to customers.
- (c) BHIM failed to give due consideration to the documents to be used in the Pension Review and Advice Process, and to how the process would operate in practice, and therefore failed to identify significant obvious deficiencies in the process. In any event, it should have been obvious to BHIM from the information available to it that the Pension Review and Advice Process did not comply with the Authority's rules. However, BHIM failed to give any meaningful consideration to whether or not it was compliant.
- (d) BHIM failed to maintain control of the Pension Review and Advice Process and allowed important parts of the process (for example, the conduct of fact-finds) to be performed in a way that failed to obtain and/or take into account relevant information about BHIM's customers. Further, BHIM failed to review in a meaningful way the advice given through the Pension Review and Advice Process, whether before recommendations were sent to customers or at all.
- (e) BHIM failed to put in place and operate appropriate systems and controls and compliance arrangements to oversee and monitor the Pension Review and Advice Process.
- (f) BHIM agreed to work with HJL and CAL without giving any proper consideration to whether they were suitable to perform services on

its behalf. BHIM failed to carry out adequate due diligence on HJL and CAL before agreeing to work with them.

- (3) The Firm recklessly breached a term of the Voluntary Requirement by advising 77 customers to switch their pension to a SIPP after the Voluntary Requirement had been imposed. BHIM was aware of the risk that it might breach the terms of the Voluntary Requirement but, by closing its mind to that risk, recklessly failed to take reasonable steps to ensure that these transactions were permitted.
- (4) BHIM told the Authority that:
 - (a) HJL had no involvement in the Pension Review and Advice Process, when the Firm knew that it did, in particular by introducing customers to the Firm; and
 - (b) it started working with CAL in December 2014 and sought to terminate its agreement with CAL in February 2015, when the Firm knew that it in fact started working with CAL in October 2014 and did not seek to terminate its agreement until July 2015.

The Authority considers the Firm made these false and misleading statements deliberately in order to try to prevent the Authority identifying misconduct by the Firm, Mr Ward and Mr Freer, and thereby acted dishonestly.

- (5) BHIM acted dishonestly by deliberately telling the Authority that it did not have minutes of board meetings when, in fact, the Firm kept formal minutes of meetings which were approved by Mr Ward and Mr Freer (and others).
- (6) BHIM recklessly failed to be open and cooperative, and provided the Authority with incomplete and inaccurate information, in response to requests made by the Authority to BHIM. BHIM closed its mind to the risk that the information it was providing to the Authority might be incomplete or inaccurate, and failed to take reasonable steps to ensure that the information it provided to the Authority was complete and accurate. As a result, BHIM:

- (a) failed to comply with a requirement imposed by the Authority to provide certain of Mr Ward's emails;
- (b) provided the Authority with a copy of its new business register on 21 September 2016 which was materially incomplete; and
- (c) failed to comply with the Authority's request to provide it with the full name of Company X and a copy of the Firm's agreement with Company X.

Section 20 of the Act

- 5.4. The Firm breached section 20 of the Act by carrying on a regulated activity without the relevant permission by advising on five Pension Transfers between 24 November 2014 and 27 July 2015.

6. SANCTION

Financial penalty

- 6.1. The Authority considers it is appropriate to impose a financial penalty on BHIM under section 206 of the Act in respect of its breaches of Principle 1 and section 20 of the Act.
- 6.2. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.

Step 1: disgorgement

- 6.3. Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.4. The Firm derived direct financial benefit from the sale to Company X of customer data obtained as a result of the Firm's business arrangements with HJL. The amount received totalled £162,557. It is not practicable to quantify any other benefit that the Firm derived from its breaches of Principle 1 and section 20 of the Act.

6.5. In accordance with DEPP 6.5A.1G, the Authority has charged interest on the Firm's benefit at 8% per year from receipt, amounting to £41,482.

6.6. Step 1 is therefore £204,039.

Step 2: the seriousness of the breach

6.7. Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area.

6.8. The Authority considers that the revenue generated by the Firm is indicative of the harm or potential harm caused by its breaches of Principle 1 and section 20 of the Act. The Authority has therefore determined a figure based on a percentage of the Firm's relevant revenue. The Firm's relevant revenue is the revenue derived by the Firm from the Pension Switches and Pension Transfers conducted as a result of the Pension Review and Advice Process and from the Pension Switches conducted in contravention of the Voluntary Requirement during the Relevant Period. The Authority considers the Firm's relevant revenue to be £430,743.

6.9. In deciding on the percentage of the relevant revenue that forms the basis of the step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 20%. 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 firms there are the following five levels:

Level 1 – 0%

Level 2 – 5%

Level 3 – 10%

Level 4 – 15%

Level 5 – 20%

6.10. 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

- 6.11. The Firm adopted the Pension Review and Advice Process motivated by the prospect of making significant financial gain for doing very little (DEPP 6.5A.2G(6)(a)).
- 6.12. The Firm's breach of Principle 1 caused a significant risk of loss to a large number of customers who switched or transferred their pensions to SIPPS investing in the Bonds (DEPP 6.5A.2G(6)(c)).
- 6.13. A large number of customers were given advice through the Pension Review and Advice Process, including some who were vulnerable due to their age, their inability to replace capital, their medical conditions or other personal circumstances (DEPP 6.5A.2G(6)(d)).

Nature of the breach

- 6.14. The Firm breached Principle 1 and section 20 of the Act over an extended period of time (DEPP 6.5A.2G(7)(a) and (b)).
- 6.15. The breaches of Principle 1 and section 20 of the Act revealed serious systemic weaknesses in the Firm's systems and controls (DEPP 6.5A.2G(7)(c)).
- 6.16. Mr Ward, as the chief executive and a director of BHIM, and Mr Freer, as a director and the compliance officer of BHIM, held senior positions at the Firm and were responsible for the Firm's breaches of Principle 1 and section 20 of the Act (DEPP 6.5A.2G(7)(d)).
- 6.17. The Firm failed to conduct its business with integrity because it acted dishonestly and/or recklessly throughout the Relevant Period (6.5A.2G(7)(g)).

Reckless misconduct

- 6.18. The Firm acted recklessly in respect of the Pension Review and Advice Process, as described in paragraph 5.3(2) of this Notice (DEPP 6.5A.2G(9)(a)).
- 6.19. The Firm failed to be open and cooperative and recklessly provided incomplete and

misleading information to the Authority, as described in paragraph 5.3(6) of this Notice (DEPP 6.5A.2G(9)(a)).

- 6.20. The Firm recklessly advised customers to switch their pensions to a SIPP in contravention of the Voluntary Requirement (DEPP 6.5A.2G(9)(a)).

Deliberate misconduct

- 6.21. The Firm deliberately misled customers by holding itself out to customers as providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market when, as it knew, this did not reflect the reality of the service that it would provide using the Pension Review and Advice Process (DEPP 6.5A.2G(8)(b)).

- 6.22. The Firm deliberately provided false and misleading information to the Authority about its business arrangements with HJL and CAL in order to conceal its misconduct. The Firm also deliberately told the Authority that it did not have minutes of board meetings when, in fact, the Firm kept formal minutes of meetings which Mr Freer and Mr Ward (and others) approved (DEPP 6.5A.2G(8)(c)).

Level of seriousness

- 6.23. DEPP 6.5A.2G(11) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:

- (1) the Firm's breach of Principle 1 caused a significant risk of loss to a large number of customers (DEPP 6.5A.2G(11)(a));
- (2) the Firm's breaches of Principle 1 and section 20 of the Act revealed serious and systemic weaknesses in its procedures, its management systems and its internal controls relating to its pension advice business (DEPP 6.5A.2G(11)(b));
- (3) the Firm failed to conduct its business with integrity (DEPP 6.5A.2G(11)(e));
and
- (4) the Firm's breach of Principle 1 was committed deliberately and recklessly (DEPP 6.5A.2G(11)(f)). The Firm's breach of section 20 of the Act was committed recklessly (DEPP 6.5A.2G(11)(f)).

6.24. DEPP 6.5A.2G(12) lists factors likely to be considered 'level 1, 2 and 3 factors'. The Authority considers that none of these factors apply.

6.25. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 5 and so the Step 2 figure is 20% of £430,743.

6.26. Step 2 is therefore £86,148.

Step 3: mitigating and aggravating factors

6.27. Pursuant to DEPP 6.5A.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.

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

(1) the Firm previously acted for customers who invested their pensions in carbon credits (another high risk unregulated investment). The Authority had concerns with this business and on 16 June 2014, on the application by the Firm, the Authority imposed a restriction on the type of investments that it could offer customers. BHIM was therefore aware of the Authority's concerns with customers investing their pensions in high risk unregulated investments (DEPP 6.5A.3G(2)(i));

(2) on 18 January 2013 and 28 April 2014 the Authority issued alerts to firms advising on Pension Transfers with a view to investing pension monies into unregulated products through SIPPs (DEPP 6.5A.3G(2)(k)); and

(3) in June 2014 the Authority specifically sent copies of the alerts referred to above to BHIM and highlighted the Authority's concerns. Despite this correspondence with the Authority, about three months later the Firm adopted the Pension Review and Advice Process (DEPP 6.5A.3G(2)(f)).

6.29. The Authority considers that there are no factors that mitigate the breach.

6.30. Having taken into account these aggravating factors, the Authority considers that the Step 2 figure should be increased by 25%.

6.31. Step 3 is therefore £107,685.

Step 4: adjustment for deterrence

- 6.32. Pursuant to DEPP 6.5A.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm that committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.
- 6.33. The Authority considers that the Step 3 figure of £107,685 is a sufficient deterrent to the Firm and others.
- 6.34. Step 4 is therefore £107,685.

Step 5: settlement discount

- 6.35. Pursuant to DEPP 6.5A.5G, if the Authority and the firm 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 firm reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.
- 6.36. No settlement discount applies.
- 6.37. The Step 5 figure is therefore £107,600 (rounded down to the nearest £100).

Penalty

- 6.38. The Authority therefore has decided to impose a total financial penalty of £311,639 (including the Step 1 disgorgement figure of £204,039) on the Firm for breaching Principle 1 and section 20 of the Act.

7. REPRESENTATIONS

- 7.1. Annex B contains a brief summary of the key representations made by BHIM, and by HJL as a person given third party rights in respect of the Warning Notice under section 393 of the Act, and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by BHIM and HJL, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

- 8.1. This Notice is given to BHIM under section 208 of the Act and in accordance with section 388 of the Act. The following statutory rights are important.

Decision maker

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

The Tribunal

- 8.3. BHIM has the right to refer the matter to which this Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, BHIM has 28 days from the date on which this Notice is given to it to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email: fs@hmcts.gsi.gov.uk).
- 8.4. Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website:
<http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>
- 8.5. A copy of Form FTC3 must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy should be sent to Helen Tibbetts at the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.
- 8.6. Once any such referral is determined by the Tribunal and subject to that determination, or if the matter has not been referred to the Tribunal, the Authority will issue a final notice about the implementation of that decision.

Access to evidence

- 8.7. Section 394 of the Act applies to this Notice.
- 8.8. The person to whom this Notice is given has the right to access:

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

Third party rights

8.9. A copy of this Notice is being given to each of HJL, CAL, Mark Stephen and James King as third parties identified in the reasons above and to whom in the opinion of the Authority the matter is prejudicial. Each of those parties has similar rights to those mentioned in paragraphs 8.3 and 8.8 above, in relation to the matters which identify him/it.

Confidentiality and publicity

8.10. This Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). In accordance with section 391 of the Act, a person to whom this Notice is given or copied may not publish the Notice or any details concerning it unless the Authority has published the Notice or those details.

8.11. However, the Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. The persons to whom this Notice is given or copied should therefore be aware that the facts and matters contained in this Notice may be made public.

Authority contacts

8.12. For more information concerning this matter generally, contact Helen Tibbetts (direct line: 020 7066 0656) at the Authority.

Tim Parkes
Chair, Regulatory Decisions Committee

ANNEX A

1. RELEVANT STATUTORY PROVISIONS

- 1.1. The Authority's objectives are set out in Part 1A of the Act, and include the operational objective of securing an appropriate degree of protection for consumers (section 1C).
- 1.2. Under section 206 of the Act, if the Authority considers that an authorised person has contravened a relevant requirement imposed on the person it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.
- 1.3. Under section 20(1) of the Act, if an authorised person, other than a PRA authorised person, carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission— (a) given to that person under Part 4A, or (b) resulting from any other provision of this Act, he is to be taken to have contravened a requirement imposed on him by the Authority under the Act.

2. RELEVANT REGULATORY PROVISIONS

Principles for Businesses

- 2.1. PRIN 1.1.2G states that the Principles are a general statement of the fundamental obligations of firms under the regulatory system. During the Relevant Period PRIN included Principle 1: "A firm must conduct its business with integrity" and Principle 3: "A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems."

Enforcement Guide

- 2.2. EG sets out the Authority's approach to exercising its main enforcement powers under the Act.
- 2.3. Chapter 7 of EG sets out the Authority's approach to exercising its power to impose financial penalties and other disciplinary sanctions.

Decision Procedure and Penalties Manual

- 2.4. The Authority's policy for imposing penalties is set out in Chapter 6 of DEPP.

Conduct of Business Sourcebook

- 2.5. The Authority's rules and guidance for Conduct of Business are set out in COBS. The rules and guidance in COBS relevant to this Notice are 2.1.1R, 4.2.1R, 9.2.1R, 9.2.6R, 9.3.1G and the rules in 9.4.

Senior Management Arrangements, Systems and Controls Sourcebook

- 2.6. The Authority's rules and guidance for senior management arrangements, systems and controls are set out in SYSC. The rules and guidance in SYSC relevant to this Notice are 7.1.2R, 7.1.2AG, 8.1.1R, 8.1.1AG, 8.1.7R, 8.1.8R(1) and 8.1.11AG.

ANNEX B

REPRESENTATIONS

Representations received from BHIM

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

The Authority's investigation was inadequate

2. *The Authority's investigation into BHIM was inadequate and biased. The Authority has not interviewed or obtained statements from any individual at CAL. Further, the Authority decided the case before it was put to BHIM.*
3. The Authority is satisfied that a thorough investigation was carried out. The Authority's investigation was into the conduct of BHIM, Mr Freer and Mr Ward. It has therefore focussed predominately on the accounts and documents provided by those parties. In addition, the Authority obtained material from other parties where it reasonably considered that the material would be relevant to the purpose of its investigation.
4. The Authority has determined this matter in accordance with its usual procedures set out in DEPP. In particular, the decision to give the Notice was taken by members of the Regulatory Decisions Committee (the "RDC"), a committee of the Authority which is independent of the case team in the Authority's Enforcement and Market Oversight Division that carried out the investigation, and none of these RDC members was directly involved in establishing the evidence on which the decision was based. Prior to the RDC reaching the decision that gave rise to the obligation to give this Notice, BHIM was given the opportunity to make both written and oral representations to the RDC, which it did. The Authority is therefore satisfied that the decision to give this Notice was not made until after BHIM commented on the Authority's proposed action.

BHIM's relationship with HJL

5. *HJL performed no function for BHIM other than as provider of the Bonds. When the HJL representative met Mr Ward for the first time on 9 September 2014, he did so as a representative from CAL, not HJL. Mr Ward did not notice that the HJL representative used an HJL email address.*

6. *Leads and administration services were provided by CAL. BHIM had a services agreement with CAL; it did not have a signed agreement with HJL. BHIM provided CAL, not HJL, with the Firm's logo and Mr Freer's electronic signature.*
7. BHIM's representation regarding BHIM's relationship with HJL is not consistent with the documentary evidence. The documentary evidence obtained by the Authority (including Mr Ward's email to Mr Freer on 9 September 2014, summarising his meeting with the HJL representative) shows that:
 - a. On 9 September 2014, Mr Ward met with the HJL representative, who presented Mr Ward with a business proposition that involved BHIM engaging HJL to generate leads and conduct the Outsourced Functions on the Firm's behalf;
 - b. Mr Ward was presented with the fact sheets for three of the Bonds at the meeting on 9 September 2014. On 10 September 2014, Mr Ward emailed the HJL representative saying: *"I have had all of your doc's scanned and sent to our Compliance director for sign off or query"*. Shortly prior to this, Mr Freer had been provided with copies of various documents relating to the Pension Review and Advice Process, including the fact sheets for three of the companies issuing the Bonds;
 - c. In the days following this initial meeting, BHIM agreed to work with HJL, approved various specimen documents for this purpose, and provided HJL with Mr Freer's electronic signature and the Firm's logo. This was done via emails to the HJL representative at an HJL email account;
 - d. HJL provided lead generation services to BHIM until 27 July 2015. During the Relevant Period, Mr Ward received an email from James King, an HJL director, attaching a *"list of all the marketing companies we are working with from a lead generation front"* and saying *"I am aware that you have had a few calls from clients to check whether or not companies who had contacted you are legitimately working on your behalf"*; and
 - e. HJL performed certain of the Outsourced Functions prior to 13 October 2014. The HJL representative sent to BHIM (from an HJL email account) a services agreement for HJL to carry out lead generation and the Outsourced Functions. The Authority considers that, while this agreement was not

signed, it reflects the arrangements that were in place prior to BHIM entering into an agreement with CAL on 13 October 2014. The agreement with CAL was broadly the same as the unsigned agreement with HJL. However, lead generation was not included in the agreement with CAL, as this service continued to be provided by HJL.

Due diligence on the Bonds

8. *BHIM's due diligence could only be based on the information provided to it, and as much further information as was available at the time. The information considered by BHIM included legal advice from a London law firm. This law firm informed BHIM that the Bonds were not illiquid. There was no risk that the Bonds would not be listed, as the SIPP Provider would not be able to buy the Bonds until they were listed. In any event, Mr Freer believed that, at the time the Bonds were recommended to customers, there was a market-maker in place for them.*
9. *The issuing companies were simply property bond vehicles delivering a fixed return to the customers which, from the outside, appeared to be low risk and appropriate for the investors involved.*
10. The Authority accepts that BHIM had sight of advice from a London law firm. However, the law firm was HJL's legal adviser and the advice was given to HJL, which later gave a copy of the advice to BHIM. As such, the advice was not independent of HJL, nor was it independently corroborated. As the advice was obtained for HJL's purposes, there was a risk that it may have been based on incomplete or inaccurate instructions, or given without proper consideration of BHIM's circumstances. In any event, the legal opinion did not consider or address the risk profile of the Bonds, or their suitability for BHIM's customers.
11. BHIM has not provided, and the Authority has not identified, any evidence that a market maker was in place for the Bonds. The Authority notes that BHIM's customers' pension funds do not appear to have been invested in the Bonds until 5 February 2015 (the day before the Bonds were admitted to trading), which might support BHIM's assertion that the SIPP Providers would not purchase the Bonds unless they were listed. However, it does not follow that, at the time BHIM started advising customers through the Pension Review and Advice Process (and customers started acting on that advice), the Bonds would be listed. Therefore, this remained a risk that customers were not made aware of. Further, listing the Bonds did not guarantee that there would

be a market for them, and in practice, it appears that the Bonds have not been traded through an exchange.

12. Not only did BHIM fail to obtain adequate information to conduct due diligence on the Bonds, but Mr Freer (who was responsible for BHIM's due diligence on the Bonds) failed to adequately assess the information that was available to him. Had he done so, he would have realised that the Bonds were high risk (due to the factors described in paragraph 4.20 of the Notice).

The service proposition

13. *The advice process was not intended to have 100% of customers invested in the Bonds. It was designed to filter out those customers that BHIM felt would be appropriate for the Bonds. BHIM's intention was that all other customers, which should have been approximately 70%, would be referred to BHIM's Cheltenham offices to receive holistic advice. At no time did Mr Ward or Mr Freer believe the Pension Review and Advice Process was a 'one size fits all' approach.*
14. The Authority accepts that the Pension Review and Advice process was designed to filter out certain customers. However, in practice, there was no assessment of customers' options; the process simply led to the Bonds being recommended on the basis of whether the client expressed a preference for fixed returns or capital protection. If a customer answered 'yes' to either of those triggers, the Bonds were recommended. These filters were too high level to effectively identify those customers for whom the Bonds would be suitable.
15. The Bonds were the only products available for recommendation through the Pension Review and Advice Process. HJL had a material financial interest in a number of the Bonds and two of its directors were directors of the companies issuing the Bonds. Further, HJL influenced the design of the pension switching advice model on which the Pension Review and Advice Process was based, acted as an introducer in that process, and performed certain of the Outsourced Functions.
16. In the circumstances described in paragraphs 14 and 156 above, it was clearly misleading for BHIM to describe its services as independent and based on a comprehensive analysis of the whole market.

The Pension Review and Advice Process

17. *The Pension Review and Advice Process was in fact an administration process designed by CAL involving the collection of information and production of documents. The process excluded customers that did not fit the profile. Those customers were then referred to BHIM for holistic advice.*
18. As set out in the Notice, HJL initiated and influenced the development of the pension switching advice model on which the Pension Review and Advice Process was based. Further, this model was presented to Mr Ward by an HJL representative who, according to Mr Ward, claimed that HJL had "large numbers of people wanting to invest in his normal bond type of funds". The Authority therefore considers that the model was presented to Mr Ward with a view to BHIM adopting it and advising customers to invest in the Bonds. It was not, therefore, an administration process designed by CAL.
19. While the Software may have excluded people for whom BHIM considered the Bonds would not be suitable, under the Pension Review and Advice Process, all other customers were advised to invest in the Bonds. In fact, the Bonds were the only product available for recommendation through the Pension Review and Advice Process. Further, the fact-find contained questions designed to steer customers towards the features of the Bonds: customers were asked only two questions regarding their investment objectives, one of which related to fixed returns and the other to capital guarantees. The Authority is therefore satisfied that the Pension Review and Advice Process was a process structured to result in the Bonds being recommended to BHIM's customers.

The adoption and use of the Pension Review and Advice Process

20. *The Pension Review and Advice Process was no different to a robo-advice model or the use of decision trees. The questions in the fact-find were not designed to lead, but rather elicit a yes or no answer on the basis of which people would be kicked out of the process. The Suitability Reports stated why the Bonds were suitable. The reports also provided an in-depth analysis of the customers' existing arrangements as compared to the new arrangements. The fact sheets and the brochures provided customers with all the information required to make an informed decision.*
21. *In relation to conflicts of interest, BHIM was unaware that HJL was involved other than as a provider of the Bonds. It did not know that HJL provided leads.*

22. *There were systems and controls in place to prevent misconduct, although with hindsight these could have been more stringent. At all times, an authorised individual oversaw the actions of CAL and the suitability of advice was checked by Mr Freer.*
23. BHIM did not hold itself out as providing robo-advice, so it is not an appropriate comparison. If a firm adopts a robo-advice model, they should clearly explain to customers that a level of automation is being used, so that the customer is able to understand the nature and risks of the service being offered and take investment decisions on an informed basis. BHIM gave customers the opposite impression. The Authority has found a number of examples where customers were told that:
- a. after the fact-find, an independent financial adviser would take a number of days to review the customer's circumstances and make a recommendation; and
 - b. an adviser would search the market so that the recommendation was tailored to the customer's circumstances.
24. In relation to the questions in the fact-find, the Authority does not agree that the questions were not designed to lead. Given that retail customers are likely to be cautious and less sophisticated than more experienced investors, the manner in which the questions were framed (as set out in paragraph 4.40(1) of the Notice), was clearly designed to lead customers to express a preference for fixed returns and capital protection.
25. The Suitability Reports provided to customers through the Pension Review and Advice Process gave only generic reasons to explain why the Bonds were suitable. There was no reference to the customer's individual circumstances or an explanation as to why the Bonds were suitable given those individual circumstances. All 20 customers files considered by the Authority in its review were inadequate in this regard. While the Suitability Reports contain a comparison of costs between a customer's existing scheme(s) and the new scheme, there is no other analysis of the comparative advantages and disadvantages.
26. The fact sheets for the Bonds provided customers with very limited information. Most importantly, the fact sheets did not explain the risks and possible disadvantages of investing in the Bonds and, in relation to three of the Bonds, did not disclose to customers that HJL would receive an initial fee of up to 5% of the funds raised.

27. For the reasons set out in the Notice and in paragraph 7 of this Annex, HJL initiated and influenced the development of the pension switching advice model on which the Pension Review and Advice Process was based, generated leads under that process, performed certain of the Outsourced Functions and had a material financial interest in a number of the products that were recommended to customers. This must have been known by BHIM, which also should have been aware of the obvious conflict of interest this created. Nevertheless, BHIM adopted the process and took no steps to make customers aware of HJL's financial interest in a number of the Bonds.
28. In relation to the oversight of the Pension Review and Advice Process, BHIM did not conduct any file reviews until approximately four months after CAL had begun to perform the Outsourced Functions. During that period, 112 of BHIM's customers had already switched or transferred their pensions to SIPPs with the underlying investment in the Bonds. The Authority considers that it was inappropriate to allow a third party to conduct important operational functions on behalf of BHIM for such a lengthy period without appropriate oversight.
29. When BHIM did conduct file reviews, they were superficial and did not consider the suitability of advice given to BHIM's customers. In particular, the file review sheets obtained by the Authority focus on the accuracy and completeness of the data in the customer files rather than the suitability of advice. Further, it appears that BHIM did not review every Suitability Report. In January 2015 Mr Freer, who was responsible for reviewing the Suitability Reports, was surprised by the large payment BHIM received from one of the SIPP Providers. If he had reviewed every file, he should have been aware of the likely number of cases referred to the SIPP Provider, and therefore should have had a better understanding of the payment that would be received.

Due diligence on HJL and CAL

30. *HJL did not perform any services for BHIM, other than as provider of the Bonds. As such, there was no need to carry out due diligence on HJL in connection with its role in the Pension Review and Advice Process. CAL was only engaged to provide leads and administration services. Given this role, the due diligence on CAL was adequate. BHIM attended CAL's offices to assess CAL's ability to do its job and its suitability for that job. Compliance meetings were held during these visits.*
31. As set out in paragraph 7 of this Annex, HJL generated leads, was intended to perform the Outsourced Functions, and did perform certain of those functions. As such, BHIM

should have carried out adequate due diligence on HJL to assess its suitability to perform those functions. However, it undertook no such due diligence.

32. BHIM's agreement with CAL provided that, among other things, CAL would correspond with customers on behalf of the Firm, and would perform functions that were both necessary and important for the giving of advice (such as the conduct of fact-finds). In those circumstances, the Authority considers that BHIM should have carried out, for example, an assessment of the suitability of CAL's management and the quality of its staff. BHIM did not do so.
33. The due diligence that BHIM did carry out on CAL, as described to the Authority by Mr Ward and Mr Freer in interview, would not have assisted BHIM in understanding whether CAL was suitable to perform all of the Outsourced Functions. For example, in interview with the Authority on 17 February 2016, Mr Ward said that the visit to CAL's office was to make sure that the company existed.

The Authority's review of 20 files

34. *BHIM disputes the findings in the Authority's file review. In particular:*
 - a. *BHIM did not advise two customers in relation to Pension Transfers (contrary to paragraph 4.58(1) of the Notice)*
 - b. *In the case where the customer lost existing benefits, the customer was advised of the loss of benefits, but wished to proceed;*
 - c. *The 'retired' customer referred to at paragraph 4.58(3) of the Notice was aware of the timescales involved, and had taken a drawdown from his fund; and*
 - d. *The customer in paragraph 4.58(4) of the Notice was aware of the additional cost as it was set out in the Suitability Report.*
35. BHIM has not provided any explanation as to why the advice given in the files referred to in paragraph 34(a) above did not relate to Pension Transfers. Both cases appear to involve the transfer of benefits within the definition of Pension Transfer.
36. The representations in paragraph 34(b), (c) and (d) relate to customers' decisions, rather than the suitability of advice given to those customers. Accordingly, they do

not address the Authority's concerns that the advice was unsuitable. In any event, the Authority considers that the explanations given to customers in the Suitability Reports and in any subsequent meetings and calls were inadequate. As a result, customers were not in a position to make an informed decision as to whether to act on the advice given to them by BHIM.

Advising on Pension Transfers

37. *Mr Freer identified some cases where he believed Pension Transfers may have taken place, and took steps to ensure this was not the case.*
38. It is not clear what steps Mr Freer (or Mr Ward) took to ensure that BHIM did not conduct Pension Transfers. The Software had been developed to allow advice on both Pension Switches and Pension Transfers. As a result, information about occupational pension schemes (with the exception of final salary pension schemes) could be added to the system without generating a warning that advice should not be given because BHIM did not have the relevant permission.

Advising in breach of the Voluntary Requirement

39. *BHIM was led to believe, in a meeting with the Authority, that the Voluntary Requirement permitted the Firm to advise customers to switch their pensions to discretionary managed platforms (in a SIPP wrapper). The 77 pension switches transacted after that meeting did not breach the Voluntary Requirement as they were within the scope of the terms agreed with the Authority.*
40. There is no evidence that the Authority agreed that the 77 transactions identified by the Authority could proceed or would fall outside the terms of the Voluntary Requirement. The SIPP provider for each of those transactions has confirmed to the Authority that the customer transferred their pension to a SIPP. The correspondence between the Authority and Mr Ward and BHIM's legal representative consistently emphasised that BHIM was not permitted to conduct new pension switching business to SIPPs.
41. The note of the meeting that BHIM refers to in its representation records that there was a discussion in relation to a proposed requirement to be imposed on BHIM in order to prevent "*SIPP pension switching advice*" rather than "*all pension switching advice*".

However, there is no mention of switches to managed platforms or of the Authority agreeing that switches to platform would be permitted.

Misleading the Authority

42. *BHIM has not provided any information that is knowingly misleading or false. All information has been provided with the best intentions. In particular:*

- a. *Mr Freer and Mr Ward were not aware of HJL's role in the Pension Review and Advice Process;*
- b. *CAL did not begin work until December 2014 and the relationship was terminated in March 2015, giving the required three months' notice period;*
- c. *Board minutes were not formal and contained almost no reference to HJL or CAL;*
- d. *Mr Ward and Mr Freer are not IT experts and so did not realise that BHIM had not provided all of the emails that the Authority had required it to produce. As soon as BHIM was aware of the issue, it provided the Authority with the outstanding emails;*
- e. *the failure to provide an accurate new business register was an error on the part of the Firm. However, the Firm has attempted to rectify this, and asked the Authority to specify the dates that the new business register should cover. The Authority has not responded; and*
- f. *Mr Ward made the Authority aware of BHIM's relationship with Company X. When the Authority asked him for information about Company X, the business venture with that company was just an idea.*

43. The Authority responds to BHIM's representations that it did not mislead the Authority in turn below:

- a. as set out in the Notice, and in paragraph 7 of this Annex, the Authority considers that HJL was involved in the Pension Review and Advice Process, and that Mr Ward and Mr Freer were aware of its involvement;
- b. contemporaneous evidence shows that CAL began performing the Outsourced Functions from at least the middle of October 2014 onwards.

For example, the service agreement between BHIM and CAL is dated 13 October 2014, and on 27 October 2014, CAL explained in an email to Mr Freer that there were already seven cases for BHIM. BHIM has not provided the Authority with any evidence to support its claim that it terminated its agreement with CAL in March 2015. The Authority has not identified any reference to such notice being provided in correspondence or in any of BHIM's board minutes;

- c. BHIM ultimately provided the Authority with minutes of its board meetings, so its statement to the Authority that it did not produce minutes of board meetings was clearly incorrect;
- d. the scope of the requirement to provide emails to the Authority was broad. Mr Ward confirmed in interview that the emails were collated on his instructions, but that he did not check what was provided. The Authority considers that he (and therefore BHIM) acted recklessly by not doing so. Had he done so, it would have been obvious that the response to the Authority was incomplete. Not only did the response contain a small number of emails (given the scope of the requirement), but it omitted obviously relevant communications;
- e. the Authority's case against BHIM is that it failed to take reasonable steps to ensure that the new business register was accurate before it was provided to the Authority. Given Mr Ward and Mr Freer's failure to check the register before it was provided to the Authority, and given the obvious inaccuracies in the register, the Authority's view is that BHIM was reckless in this regard. While Mr Freer later offered to correct the new business register, this does not remedy the failure to provide an accurate register when requested to do so; and
- f. the Authority accepts that Mr Ward made it aware of BHIM's relationship with Company X. However, the Authority's finding is that, when asked to provide further information, Mr Ward provided incomplete and misleading information. BHIM's representation does not, therefore, address the Authority's finding.

Representations received from HJL

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

There is no reason to mention HJL, Mr King or Mr Stephen

45. *HJL did not provide any administrative or equivalent services to BHIM. Such services were provided exclusively by CAL. There is therefore no reason to mention HJL, James King or Mark Stephen in the Notice.*
46. The Authority considers that when BHIM adopted the Pension Review and Advice Process, it was intended that, initially at least, HJL would perform the Outsourced Functions. Accordingly, a draft service agreement between HJL and BHIM was sent to Mr Ward on 12 September 2014. It appears that HJL and CAL later agreed that CAL would perform the Outsourced Functions, and on 13 October 2014, CAL entered into an agreement with BHIM to do so. There is documentary evidence prior to 13 October 2014 showing that certain of the Outsourced Functions were being performed at that time. For example, letters were sent seeking authority from customers to contact their existing pension provider. Given that the agreement with CAL was not in place until 13 October 2014, it appears that HJL were carrying out these functions before that agreement was in place. As such, the Authority considers that it is appropriate to refer to HJL performing certain of the Outsourced Functions prior to 13 October 2014.
47. The Authority also considers it appropriate to refer to HJL as it generated leads for BHIM under the Pension Review and Advice Process and it had a material financial interest in the products recommended through that process.
48. For the reasons in paragraphs 55 and 60 below, the Authority considers it appropriate to mention Mr Stephen and Mr King, and their common directorships.

The development of the Software and the pension switching advice model

49. *HJL did not develop the Software or the pension switching advice model. They were instead designed by two individuals at another company independent of HJL ("Company A").*
50. The Authority accepts that HJL did not create the Software, and that it was instead created by two individuals at Company A. However, the Software was developed at

the request of HJL. HJL initially sought an efficient way to provide customers with a pension comparison, to see whether the customer's existing pension charges were reasonable. A system was developed by Company A in around 2011/2012 in line with this request. This system was an early version of the Software.

51. In 2013, HJL asked Company A whether an advice model could be 'bolted on'. HJL staff assisted Company A to understand the products that would be recommended through the Software so that Company A could develop the triggers for the advice. HJL also led the creation of the templates of the documents which were used in the Pension Review and Advice Process and which enabled a complete, fully advised pension switch. The Authority therefore considers that HJL initiated and influenced the development of both the Software and the pension switching advice model.

HJL did not process leads obtained through unlawful cold calling

52. *HJL was at no time involved in cold calling activities itself. All clients introduced to the Firm were obtained by lead generation businesses through a generic financial promotion process, which did not involve the lead generator in identifying any specific investment or a specific provider of investment services. To the extent the activities of the lead generators involved unsolicited real-time financial promotions, those promotions were exempt from the financial promotion restriction in section 21(1) of the Act by virtue of Article 17 of the Financial Service and Markets Act 2000 (Financial Promotion) Order 2005.*
53. The Authority has not found that HJL cold called customers. Instead, the Authority has found that Mr Ward and BHIM failed to take any steps to establish that the lead generators used by HJL generated their customer introductions in an appropriate manner and did not use unlawful cold calling. As such, BHIM did not know whether leads were generated by unlawful cold calling. In fact, the Authority was contacted by three customers complaining that they had been cold called by one of the lead generation companies used by HJL.

Mr Stephen properly managed any conflict of interest

54. *Mr Stephen took careful steps to manage any potential conflicts of interest, including taking legal advice on issues surrounding potential conflicts. From his and HJL's position, relevant potential conflicts were properly managed.*

55. This Notice relates to the conduct of BHIM and the steps it took to mitigate the risks posed by Mr Stephen's common directorships. The Authority has made no finding as to whether Mr Stephen adequately managed any actual or potential conflicts that he had. However, it is necessary to describe Mr Stephen's common directorships in the Notice in order to explain the Firm's misconduct.

HJL was not inherently unsuitable for the purposes for which it was retained by BHIM

56. *HJL's qualification to operate the Software was its having staffing and organisational capacity to do so. Moreover, the Authority has failed to explain on what basis it implicitly contends that HJL was unsuitable.*

57. When outsourcing functions to a third party, authorised firms must comply with Principle 3 of the FCA's Principles for Business. They should also have regard to applicable rules and guidance in SYSC. In relation to BHIM, the relevant guidance is set out in paragraph 4.47 of the Notice. In light of Principle 3 and this guidance, BHIM should have taken reasonable steps, such as conducting adequate due diligence, to ensure that HJL was suitable to perform the functions that were outsourced to it.

58. BHIM did not take reasonable steps, or conduct adequate due diligence, even though it was intended that HJL would correspond with customers on behalf of the Firm, and would perform functions that were both necessary and important for the giving of advice (such as the conduct of fact-finds).

Reference to Mr King's common directorship

59. *Mr King was director of HJL for part of the Relevant Period and was also a director of the entities that issued the Bonds. However, the corporate governance of those entities was structured in such a way that he was able to recuse himself from directors' decisions in case of conflict. The nature of the investments of the companies issuing the Bonds was such that there were few, if any, circumstances in which Mr King needed to recuse himself.*

60. For the reasons set out in paragraph 55 in relation to Mr Stephen, it is necessary to describe Mr King's common directorships in the Notice in order to explain the Firm's misconduct and the Authority has made no finding as to whether Mr King adequately managed any actual or potential conflicts that he had.

Anonymisation of HJL, Mr Stephen and Mr King

61. *If other companies can be anonymised (for example, Company X) without undermining the purpose of the Notice, there is an unreasonable difference in treatment between those parties that are named (in particular HJL, Mr Stephen and Mr James), and those that are not. If the Authority insists on anonymisation for Company X then there is no reason why HJL should not be treated in a similar way. The Notice would achieve what it is intended to achieve even if HJL, Mr Stephen and Mr King are not identified by name. Further, HJL's commercial interests will be significantly harmed if it is named in the Notice.*
62. The Authority does not agree that there is an unreasonable difference in treatment between HJL and Company X. This is for two reasons: First, because of HJL's central role in the Pension Review and Advice Process, compared to that of Company X. In particular, HJL initiated and influenced the development of the pension switching advice model, brought the model to the attention of the Firm, performed certain of the Outsourced Functions and had a material financial interest in a number of the Bonds. In these circumstances, the Authority considers it appropriate to mention HJL by name so that its findings, and the factual background (including the key parties involved), can be easily ascertained by the recipient of the Notice, as well as by any other reader of the Notice. Secondly, the Authority considers it possible that HJL could be identified from the description of the matters contained in the Notice even if anonymised, as the Voluntary Requirement is published on the Authority's Financial Services Register and names HJL as one of three companies that BHIM must cease business relationships with. As such, the Authority considers it unlikely that HJL will be materially prejudiced as a result of being referred to by its name in the Notice.
63. The Authority has decided to name Mr Stephen and Mr King for similar reasons. As Companies House records show they were the only two directors of HJL during the period that BHIM was using the Pension Review and Advice Process, the Authority considers they could be identified even if anonymised. Further, as directors, they were responsible for the day-to-day operation of HJL during the Relevant Period.