

**This decision notice has been referred to the Upper Tribunal to determine what (if any) the appropriate action is for the Authority to take, and remit the matter to the Authority with such directions as the Tribunal considers appropriate.**



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## **DECISION NOTICE**

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**To:** **Mr Carlos Ricardo Fuenmayor**

**Individual  
Reference  
Number:** **CRF01036**

**Date:** **16 April 2026**

### **1. ACTION**

1.1 For the reasons given in this Decision Notice, the Financial Conduct Authority ("the Authority") has decided to impose on Mr Carlos Ricardo Fuenmayor ("Mr Fuenmayor") a financial penalty of £99,600 pursuant to section 66 of the Act.

### **2. SUMMARY OF REASONS**

2.1 The Authority considers that Mr Fuenmayor failed to disclose three separate matters to the Authority, either in application forms, in a timely manner, or at all, about each of which the Authority would have expected to have been notified. In failing to make the required notifications, the Authority considers that Mr Fuenmayor was negligent in regard to his obligations to make the Authority aware of these matters.

- 2.2 During the period 28 December 2017 to 20 January 2023 (“the Relevant Period”), there were three events which Mr Fuenmayor should have disclosed to the Authority: (i) that he was the subject of an investigation by the United States (“US”) Financial Industry Regulatory Authority (“FINRA”); (ii) that FINRA imposed a sanction on him following that investigation; and (iii) that the Venezuelan National Financial Intelligence Unit (“UNIF”) had frozen his local currency bank accounts as well as those of his Venezuelan companies and of the directors of those companies. An overview of these events is set out below.
- 2.3 Compliance with the Authority’s rules is an ongoing obligation and high standards are expected of authorised firms and approved persons, in particular senior personnel. The Authority expects such firms and applicable individuals to promptly and voluntarily notify it of information about which it would reasonably expect notice. This is imperative to allow the Authority to supervise those it regulates and advance its strategic and operational objectives. Information of which the Authority would expect notification includes (but is not limited to) information relating to any actions taken, investigations and/or sanctions imposed by other regulators (including overseas regulators) as well as any information which could be materially important to the Authority’s assessment of an individual’s fitness and propriety. It is also important that individuals approved by the Authority give appropriate consideration to the fact that failing to disclose such information may also negatively impact their reputation and that of their firm.
- 2.4 Since 15 October 2012, including during the Relevant Period, Mr Fuenmayor has been approved by the Authority to hold a number of controlled functions (“CFs”) and senior management functions (“SMFs”) at BancTrust Investment Bank Ltd (“BancTrust”), an authorised firm.
- 2.5 In April 2017, Mr Fuenmayor was interviewed by FINRA as it was investigating potential violations of federal securities laws in relation to a company he was associated with in the US (“Firm A”). In December 2017, FINRA wrote to Mr Fuenmayor’s legal representative in the US to notify them that he was now subject to FINRA’s investigation and that they had made a preliminary determination to recommend disciplinary action against him. In June 2019, following an agreed settlement with Mr Fuenmayor, FINRA sanctioned Mr Fuenmayor by imposing a 15-month suspension and a \$20,000 financial penalty on him (“the FINRA sanction”).
- 2.6 In May 2018 and August 2018, BancTrust submitted two applications, both of which were reviewed by Mr Fuenmayor, to the Authority seeking approval for additional controlled functions for Mr Fuenmayor, and in October 2019 it submitted a further application seeking additional permissions for BancTrust (“the VOP Application”). The VOP Application was prepared with the assistance of third-party compliance consultants (“the Compliance Consultants”) and reviewed by Mr Fuenmayor before he forwarded it to the Authority. All three applications (together, “the Applications”) failed to disclose the FINRA investigation or, in the case of the VOP Application, the FINRA sanction to the Authority.

- 2.7 In November 2019, all of Mr Fuenmayor's companies in Venezuela were the subject of 'without notice' 'Special Inspection Visits' by UNIF, which is part of the Venezuelan securities regulator ("SUNAVAL"). Shortly before these visits, UNIF froze the local currency bank accounts of: Mr Fuenmayor; his companies in Venezuela; and the directors of his companies in Venezuela ("the UNIF action"). BancTrust failed to update the VOP Application to include details of the UNIF action before the Authority had determined the application.
- 2.8 The Authority considers that Mr Fuenmayor should have appreciated that the Authority would have reasonably expected to be notified of both the FINRA matters and the UNIF action, and that he had a regulatory obligation to ensure that the FINRA matters were disclosed to the Authority when the Applications were submitted and to update the VOP Application to include details of the UNIF action (additional to his general ongoing obligation of disclosure).
- 2.9 On 22 December 2021, Mr Fuenmayor, following discussions with a member of BancTrust's compliance staff ("Compliance Officer 1") and advice from the Head of Compliance at BancTrust ("Compliance Officer 2"), made a disclosure to the Authority on behalf of BancTrust by way of a Form D notification ("the Disclosure Notification"). However, whilst the Disclosure Notification disclosed the FINRA sanction (and by implication the FINRA investigation that had preceded it), it failed to make any reference to the UNIF action. Mr Fuenmayor decided not to disclose the UNIF action because he believed that UNIF had frozen the accounts as a result of his political opposition to the government in Venezuela at that time, and there had also been no formal communication from UNIF, and so he considered it was not relevant to BancTrust's regulatory status in the UK.
- 2.10 The Authority considers that Mr Fuenmayor had been made aware by Compliance Officer 2 that the Authority would have reasonably expected to be notified of the UNIF action, as well as the FINRA matters, and that, notwithstanding his reasons for not disclosing the UNIF action, he should have been aware that he had a regulatory obligation to ensure that it was also disclosed to the Authority when the Disclosure Notification was submitted.
- 2.11 The Authority first became aware of the UNIF action on 5 January 2023, through a website article in Spanish which suggested that UNIF had "blocked" Mr Fuenmayor's bank accounts as well as those of his Venezuelan companies and accounts belonging to the directors of those companies. The Authority wrote to BancTrust seeking clarification as to the accuracy of the contents of the article, including whether Mr Fuenmayor and/or his companies had been sanctioned by the Venezuelan regulator. On 20 January 2023, BancTrust replied to the Authority by way of a letter which Mr Fuenmayor helped to draft. The response failed to mention that the bank accounts had been "blocked", despite this being one of the central themes to the article that the Authority had invited BancTrust to comment on. It was not until 1 March 2023,

following further correspondence from the Authority, that BancTrust confirmed that the bank accounts had been “blocked” by UNIF.

2.12 The Authority considers that due to Mr Fuenmayor’s negligent failure to disclose the FINRA investigation and sanction and the UNIF action to the Authority, either in application forms, in a timely manner, or at all, he has breached APER Statement of Principle 4 (“APER 4”) and Senior Manager Conduct Rule 4 (“SMCR 4”). The Authority considers that it is both appropriate and proportionate to impose a financial penalty of **£99,600** on Mr Fuenmayor pursuant to section 66 of the Act.

### **3. DEFINITIONS**

3.1 The definitions below are used in this Notice:

“the Act” means the Financial Services and Markets Act 2000;

“APER” means the Authority’s Statements of Principle and Code of Practice for Approved Persons;

“APER 4” means APER Statement of Principle 4 in that *“An approved person must deal with the FCA...in an open and cooperative way and must disclose appropriately any information of which the FCA... would reasonably expect notice”*;

“the Applications” means the First CF Application, the Second CF Application and the VOP Application;

“Approved Person” means a person in relation to whom the Authority or the PRA has given its approval under section 59 of the Act (Approval for particular arrangements) for the performance of a controlled function;

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

“AWC” means Financial Industry Regulatory Authority Letter of Acceptance, Waiver and Consent sent to Mr Fuenmayor on 4 June 2019;

“BancTrust” means BancTrust Investment Bank Limited, the Authority authorised entity in respect of which Mr Fuenmayor has been approved to perform controlled functions since 15 October 2012;

“CEO” means Chief Executive Officer;

“CFs” means controlled functions;

“COCON” means the Code of Conduct, part of the Authority’s Handbook in High Level Standards, which includes rules for those performing senior management functions;

“the Compliance Consultants” means the third-party compliance consultancy firm instructed by Mr Fuenmayor;

“Compliance Officer 1” means the member of BancTrust’s compliance staff who was initially tasked with drafting the Disclosure Notification;

“Compliance Officer 2” means the Head of Compliance at BancTrust who drafted the Disclosure Notification;

“the Compliance Review” means the Compliance Assurance Review prepared by the Compliance Consultants for BancTrust on 10 December 2020;

“DEPP” means the Authority’s Decision Procedure and Penalties Manual, part of the Handbook;

“the Disclosure Notification” means the disclosure dated 22 December 2021 submitted by Mr Fuenmayor to the Authority on behalf of BancTrust in relation to the FINRA sanction;

“FINRA” means the US Financial Industry Regulatory Authority;

“the FINRA Rule” means FINRA Rule 2010;

“the FINRA sanction” means FINRA’s sanction in suspending Mr Fuenmayor for 15 months from association with any FINRA member firm in any capacity and imposing a \$20,000 financial penalty against him;

“Firm A” means the FINRA authorised entity that was subject to investigation by FINRA;

“First CF Application” means the application seeking approval for CF10 (Compliance Oversight) and the removal of CF1 (Director) in relation to Mr Fuenmayor submitted by BancTrust to the Authority on 29 May 2018;

“Mr Fuenmayor” means Mr Carlos Ricardo Fuenmayor;

“the Handbook” means the collection of regulatory rules, manuals and guidance issued by the Authority in its Handbook as in force during the Relevant Period;

“the NASD Rules” means the National Association of Securities Dealers Rules 1021 and 1031;

“PRA” means the Prudential Regulation Authority;

“the Relevant Period” means 28 December 2017 to 20 January 2023;

“RDC” means the Regulatory Decisions Committee of the Authority (see further under Procedural Matters below);

“Second CF Application” means the application seeking approval for CF1 (Director), CF3 (Chief Executive) and CF11 (Money Laundering Reporting Officer) in respect of Mr Fuenmayor submitted by BancTrust to the Authority on 9 August 2018;

“SMCR 4” means Senior Manager Conduct Rule 4 in COCON in that *“You must disclose appropriately any information of which the FCA...would reasonably expect notice”*;

“SMFs” means senior management functions;

“SUNAVAL” means the National Superintendence of Securities, the securities regulator in Venezuela;

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

“UK” means the United Kingdom;

“UNIF” means the National Financial Intelligence Unit of Venezuela;

“the UNIF action” means the freezing by UNIF in November 2019 of the local currency bank accounts of: Mr Fuenmayor; his companies in Venezuela; and the directors of his companies in Venezuela;

“US” means the United States of America;

“VOP Application” means the variation of permissions application submitted by BancTrust to the Authority requesting additional permissions on 15 October 2019; and

“the Warning Notice” means the warning Notice given to Mr Fuenmayor dated 17 November 2025.

#### 4. FACTS & MATTERS

##### **Background**

- 4.1 The Authority expects all persons approved for senior management roles as well as their authorised firms to notify and disclose appropriately any information about which the Authority would reasonably expect to be notified. This is in order for the Authority to be satisfied that those individuals whom it has approved continue to remain fit and proper in their roles. The type of information that the Authority would expect notice of includes (but is not limited to) any investigations, sanctions or penalties from any other regulatory bodies, including those based overseas, affecting those that hold senior management roles. The Authority would then consider the disclosure in line with all available evidence to determine whether it was materially relevant to the Authority’s own ongoing assessment of the individual’s fitness and/or the firm’s reputation. If the Authority decides that the disclosure is materially relevant then the Authority may seek more information as to the circumstances of the matter to which the disclosure relates, or seek to take action against the individual and/or the firm to meet its statutory objectives of consumer protection and confidence in the UK financial markets. Alternatively, the Authority may decide the disclosure is not materially relevant and not seek to take action.
- 4.2 BancTrust was incorporated on 1 November 2011 and was subsequently authorised by the Authority on 15 October 2012. Mr Fuenmayor commenced his role as director of BancTrust on 1 November 2011 and became the CEO in the summer of 2018, when his predecessor left the firm.
- 4.3 Between 15 October 2012 and 8 December 2019, Mr Fuenmayor was approved by the Authority to perform the following CFs at BancTrust:

<b>CFs</b>	<b>Description</b>	<b>From</b>	<b>To</b>
CF2	Non-Executive Director	15 October 2012	20 May 2016
CF30	Customer	17 May 2016	8 December 2019
CF1	Director	17 May 2016	5 July 2018
CF10	Compliance Oversight	5 July 2018	8 December 2019
CF1	Director	30 August 2018	8 December 2019
CF3	Chief Executive	30 August 2018	8 December 2019
CF11	Money Laundering Reporting Officer (“MLRO”)	30 August 2018	8 December 2019

4.4 On 9 December 2019, the Authority vacated the CF30 Customer function and converted the remaining CFs into SMFs. Therefore, since 9 December 2019, Mr Fuenmayor has been approved by the Authority to perform the following SMFs at BancTrust:

<b>SMFs</b>	<b>Description</b>	<b>From</b>	<b>To</b>
SMF16	Compliance Oversight	9 December 2019	8 February 2022
SMF17	MLRO	9 December 2019	8 February 2022
SMF1	Chief Executive	9 December 2019	Present
SMF3	Executive Director	9 December 2019	Present

4.5 Mr Fuenmayor currently still holds the SMF1 and SMF3 roles at BancTrust.

4.6 After being approved for the CFs, Mr Fuenmayor was obligated to comply with APER 4, namely, *"An approved person must deal with the FCA...in an open and cooperative way and must disclose appropriately any information of which the FCA... would reasonably expect notice"*.

4.7 When the Authority converted the CFs to SMFs, Mr Fuenmayor was then obligated to comply with the Authority's Code of Conduct for individuals and Senior Manager Conduct Rules (collectively known as "COCON"). This included complying with SMCR 4, namely, *"You must disclose appropriately any information of which the FCA...would reasonably expect notice"*.

4.8 Complying with all of these rules and regulations is an ongoing obligation and high standards are expected of senior personnel, in particular those who are directors, CEOs and those holding CFs and SMFs.

## **FINRA**

### Failure to proactively disclose the FINRA investigation

4.9 In 2015, whilst Mr Fuenmayor was an Approved Person holding CF2 at BancTrust, FINRA began conducting an investigation in the US into whether any possible violations of the US federal securities laws, which included the FINRA Rule and the NASD Rules, had been committed by Firm A, an authorised FINRA firm with which Mr Fuenmayor was associated.

4.10 On 26 April 2017, FINRA interviewed Mr Fuenmayor as part of its investigation and on 1 December 2017, FINRA wrote to Mr Fuenmayor's legal adviser in the US seeking further information in relation to its enquiries which was duly supplied.

- 4.11 On 28 December 2017, FINRA again wrote to Mr Fuenmayor's legal adviser in the US advising that Mr Fuenmayor was now the subject of its investigation and that FINRA had made a preliminary determination to recommend disciplinary action against him for potential violations of the NASD Rules and the FINRA Rule for actively engaging in the management and conduct of the securities business of Firm A without being registered as a principal or as a general securities representative during the period September 2013 to February 2015. However, Mr Fuenmayor did not notify the Authority of this development.
- 4.12 During this time, Mr Fuenmayor was based in the US and not directly involved in the day-to-day activities of BancTrust, which had been left to the CEO of BancTrust at the time. During his interview with the Authority, when Mr Fuenmayor was asked whether he considered that the Authority should be notified that he was a subject of FINRA's investigation, he stated, "... *I was not aware of my disclosure... of the disclosure requirement in the FCA at the time since I had not been actively involved in BancTrust business in the UK, although I was registered with the firm*".

#### Failure to disclose – First CF Application

- 4.13 On 29 May 2018, BancTrust applied to the Authority for the CF10 (Compliance Oversight) role for Mr Fuenmayor and to remove Mr Fuenmayor's CF1 (Director) role ("the First CF Application"). The application was approved by the Authority on 5 July 2018. The application was signed and submitted on behalf of BancTrust by the CEO of BancTrust at the time (i.e. Mr Fuenmayor's predecessor). One of the questions that was asked within the "*Other Information*" section of the application form was, "*If there is anything else the applicant [BancTrust] would like to tell us about this application please give details below*". The only answer recorded was "*The candidate [Mr Fuenmayor] will supervise a team of Compliance experts*".
- 4.14 The application also stipulated that Mr Fuenmayor had "*extensive experience in the industry*" and was "*well versed on both the local and the international compliance regulatory requirements*". The application contained a declaration that the information provided was accurate and complete to the best of the firm's knowledge. The application also contained a declaration that Mr Fuenmayor, as the person who would be performing the roles applied for, had read and understood the declaration confirming that the information supplied was accurate, complete to the best of his knowledge and accurately reflected all information disclosed to the firm. However, the application made no mention of the FINRA investigation into Mr Fuenmayor nor its preliminary determination to recommend disciplinary action against him.
- 4.15 Mr Fuenmayor has informed the Authority that he was not based in the UK when the application was submitted by the CEO at the time and that he could not recall whether he actually reviewed the application prior to it being submitted to the Authority, nor whether he read the declaration, and that because he did not discuss the FINRA matter with the CEO at the time, the CEO was also unaware of it.

## Failure to disclose – Second CF Application

- 4.16 In the summer of 2018, Mr Fuenmayor relocated to the UK from the US and took over as CEO of BancTrust. On 9 August 2018, BancTrust applied to the Authority for the CF1 (Director), CF3 (Chief Executive) and CF11 (MLRO) roles for Mr Fuenmayor (“the Second CF Application”). The application was approved by the Authority on 30 August 2018. During his interview with the Authority, Mr Fuenmayor stated that, although he had help from his BancTrust staff in completing this application, he submitted the application to the Authority on behalf of BancTrust. One of the questions that was asked within the “*Other Matters*” section of the application was, “*Are you aware of any other information relevant to this application/notification that we might reasonably expect you to give?*”. The answer recorded was “*No*”.
- 4.17 Within the “Regulatory Matters” section of the Second CF Application, BancTrust was asked whether in relation to any activities regulated by the Authority or any other regulatory body, the person applying for the roles (i.e. Mr Fuenmayor) had ever been fined, suspended, investigated, found to have carried on activities/investigated for the possible carrying on of activities for which authorisation or registration was required without the requisite authorisation, or found to have performed a controlled function/investigated for the possible performance of a controlled function (or an equivalent function requiring approval by any other regulator) without the requisite approval. However, the response recorded throughout was “*No*”. This was despite FINRA, just over seven months earlier, having written to Mr Fuenmayor’s legal adviser in the US confirming that he was the subject of an investigation involving potential violations of the NASD Rules and the FINRA Rule for actively engaging in the management and conduct of the securities business of Firm A without being registered as a principal or as a general securities representative and that FINRA had recommended disciplinary action against him which was pending.
- 4.18 In submitting this application, BancTrust also declared that the information provided was accurate and complete to the best of its knowledge and that it had read the notes to this application including the “Regulatory Matters” guidance notes. The application also declared that Mr Fuenmayor, as the person who would be performing the roles applied for, had confirmed that the information provided was accurate and complete to the best of his knowledge, that he had read the notes to the application and that he understood “*the regulatory responsibilities for the proposed role as set out in the rules of conduct in the FCA’s COCON*”, which included his understanding that he had a responsibility to disclose matters of which the Authority would reasonably expect to be notified. As per the guidance notes to the application, this included matters pertaining to overseas financial regulators. However, the application failed to mention the FINRA investigation nor its preliminary determination recommending disciplinary action against Mr Fuenmayor.
- 4.19 During his interview with the Authority, Mr Fuenmayor stated that he could not recall reading the declaration, despite the fact that he had “*most likely*” ticked the “Review and Submission” box

which confirmed that he had read and understood the declaration. Mr Fuenmayor also has stated to the Authority that the questions within this application were not clearly worded as to whether extra-territorial matters needed to be disclosed, despite the guidance notes referred to in the "Regulatory Matters" section making clear that such matters did need to be disclosed. Mr Fuenmayor stated that in essence, "[...] *it was an oversight in, in reading the accuracy of the information, and the form before submitting it. It's not that I read one section and did not read the next section. It's, I think, in general I should have read it more carefully*". When asked whether he submitted the Second CF Application without actually fully reading the form, he replied, "Yes" and that, "*I did not read it carefully enough*". Mr Fuenmayor also accepted that, "*in hindsight, I should have declared the investigation, FINRA, at the time*".

#### Failure to proactively disclose the FINRA sanction

4.20 On 4 June 2019, FINRA sent Mr Fuenmayor via his legal adviser in the US a letter which included a copy of a notice headed "Financial Industry Regulatory Authority Letter of Acceptance, Waiver and Consent" ("AWC") which had been signed by both a FINRA representative and Mr Fuenmayor. The AWC set out FINRA's finding that Mr Fuenmayor had committed violations of the NASD Rules and the FINRA Rule and that FINRA had imposed a sanction, namely, a 15-month suspension from association with any FINRA member firm in any capacity and a \$20,000 financial penalty. This was the FINRA sanction. However, despite being issued with the FINRA sanction, Mr Fuenmayor failed to disclose this to the Authority.

4.21 Mr Fuenmayor has stated to the Authority that he was not aware at the time that the FINRA sanction was imposed that he had an obligation to disclose it to the Authority, and that if he did have an obligation, the oversight was inadvertent and subsequently corrected when he made the Disclosure Notification (see paragraphs 4.36 to 4.42 below).

#### Failure to disclose – VOP Application

4.22 On 15 October 2019, BancTrust submitted an application to the Authority requesting additional permissions, which was approved by the Authority on 6 March 2020 ("the VOP Application"). This application was signed and submitted by Mr Fuenmayor on behalf of BancTrust. Despite the application being submitted relatively shortly after the AWC was signed (i.e. approximately 5 months), it made no mention of the FINRA investigation nor the FINRA sanction.

4.23 In submitting the VOP Application, BancTrust declared that the information provided was accurate and complete to the best of its knowledge and that Mr Fuenmayor in signing the application confirmed that the "*responsibility for the accuracy of information, as well as the disclosure of relevant information, on the form is ultimately the responsibility of those who sign the application*". Further, by ticking the review and submission box in the declaration section of the VOP Application, BancTrust confirmed that both itself and Mr Fuenmayor (as the person submitting the application),

were aware that, *"In addition to other regulatory responsibilities, firms and approved persons have a responsibility to disclose to the appropriate regulator matters of which it would reasonably expect to be notified"*. One of the questions asked within the VOP Application was, *"If there is anything else the applicant [BancTrust] would like to tell us about this application please give details below"*, however the response recorded was "NA".

- 4.24 Mr Fuenmayor stated to the Authority that he did not appreciate that there was any such obligation to disclose the FINRA sanction to the Authority, and that if he did have an obligation, the oversight was inadvertent and subsequently corrected when he later made the Disclosure Notification in December 2021.

#### Omitting to disclose the FINRA matters to the Compliance Consultants during the VOP Application

##### *The Compliance Consultants' preparation of the VOP Application*

- 4.25 During his interview with the Authority, Mr Fuenmayor confirmed that the Compliance Consultants who he had instructed in 2019 assisted with drafting the VOP Application and that they were not aware of the FINRA sanction during its drafting. Notwithstanding the involvement of the Compliance Consultants, Mr Fuenmayor confirmed that he had reviewed the VOP Application before submitting it to the Authority.
- 4.26 When asked whether he thought there was anything relevant which should have been disclosed within the VOP Application, Mr Fuenmayor stated, *"In hindsight, yes, I should have reported, disclosed the AWC"*, but *"... the consultants were helping us develop the VOP ... they were not aware of my dealings with FINRA, and it was overlooked in this process of disclosure at the time"*. However, Mr Fuenmayor confirmed that he had not discussed this with the Compliance Consultants but added that, *"in hindsight, I would have and should have"*.
- 4.27 Mr Fuenmayor has also stated to the Authority that he did not appreciate that there was any such obligation to disclose the FINRA sanction to the Compliance Consultants, and that if he did have an obligation, that the non-disclosure was inadvertent.

##### *The Compliance Review*

- 4.28 During his interview with the Authority, Mr Fuenmayor stated that (following the submission of the VOP Application) the Compliance Consultants started providing ongoing compliance support to BancTrust in 2020. On 10 December 2020, the Compliance Consultants produced a detailed Compliance Assurance Review ("the Compliance Review") for BancTrust following interviews with key/senior individuals and/or those individuals who held significant influence/functions at the firm. At this time, the only person who held senior management functions at BancTrust was Mr Fuenmayor. Within the Compliance Review, one of the questions that was considered by the

Compliance Consultants was, *"Has the firm/or its Senior management received warnings from regulatory bodies, professional bodies, or other government bodies/agencies?"*. The response recorded was, *"There have been no warnings from regulatory bodies, professional bodies, or other government bodies/agencies"*.

4.29 Mr Fuenmayor confirmed that it was *"most likely"* that he had been interviewed by the Compliance Consultants and that they would have also interviewed his compliance officer at the time as well as non-UK based staff. Mr Fuenmayor accepted that he would have been responsible for disclosing the FINRA sanction to the Compliance Consultants considering he was the only person who was privy to that information at BancTrust at the time, but failed to do so. However, Mr Fuenmayor has stated to the Authority that he did not appreciate that there was any such obligation to disclose the FINRA sanction to the Compliance Consultants during their Compliance Review, and that if he did have an obligation, that the non-disclosure was inadvertent.

## **UNIF**

### Failure to proactively disclose the UNIF action

4.30 Mr Fuenmayor is also the director, controller and CEO of a number of companies in Venezuela and these companies together with BancTrust form part of the BancTrust Group. On 14 November 2019, whilst Mr Fuenmayor and BancTrust were approved by the Authority, all of Mr Fuenmayor's companies in Venezuela were the subject of without notice Special Inspection Visits by UNIF in order to assess these companies' compliance with specific laws including those designed to combat money laundering and the financing of terrorism.

4.31 Shortly before these Special Inspection Visits, UNIF froze the local currency bank accounts of Mr Fuenmayor, his companies in Venezuela and the directors of his companies in Venezuela.

4.32 During his interview with the Authority, Mr Fuenmayor stated that shortly before the UNIF Special Inspection Visits took place, BancTrust had sponsored an event in London about human rights in Venezuela and that this triggered a social media smear campaign against him and his companies, which then led to the 'without notice' UNIF Special Inspection Visits and UNIF's freezing of the accounts. Mr Fuenmayor stated that he did not disclose the UNIF action to the Authority at the time because, *"the reason of the freezing of the accounts, we believe, was politically motivated by someone at UNIF because there has been no formal communication, or notice, or any rationale specifying any reasons for the blockade of the accounts"*.

4.33 The Authority considers that prior to the Disclosure Notification being submitted to the Authority (see paragraphs 4.36 to 4.42 below), BancTrust's compliance officers knew that the Authority had not been made aware of the UNIF action and that a decision about notification was needed. This is supported by a handover note given by Compliance Officer 1, one of BancTrust's compliance

officers, who was due to leave BancTrust, to Compliance Officer 2, BancTrust's newly appointed Head of Compliance, seven days before the Disclosure Notification was submitted on 22 December 2021, which stated "*The FCA has not been made aware of FINRA suspension as well as investigation related to AML breaches by Venezuelan regulator...Relevant Notification to be sent asap*". Further, Compliance Officer 2 then included the UNIF action in the draft Disclosure Notification which was sent to Mr Fuenmayor to review. However, after discussing the matter with Compliance Officer 2, who advised that they considered disclosure was required but it was Mr Fuenmayor's decision, Mr Fuenmayor decided that the UNIF action should not be disclosed to the Authority.

#### Failure to clarify the UNIF action when asked by the Authority

- 4.34 On 5 January 2023, the Authority became aware of a newspaper article in Spanish through routine open-source checks on BancTrust. This article stated that UNIF and the Superintendency of Banks of Venezuela ("Sudeban") had "blocked" Mr Fuenmayor's bank accounts as well as those of his Venezuelan companies and the directors of those companies. Subsequently, on 18 January 2023, the Authority contacted BancTrust requesting clarification as to the accuracy of the contents of this article.
- 4.35 On 20 January 2023, BancTrust duly responded to the Authority via a letter, which Mr Fuenmayor confirmed he had helped draft, "*detailing the events*". In this letter BancTrust stated that the article that the Authority was referring to was not accurate, but part of a smear campaign against BancTrust for sponsoring the human rights event in London. Further, the letter stated that a week after the event in London, one of Mr Fuenmayor's firms in Venezuela was subject to a surprise audit from UNIF and SUNAVAL (the Venezuelan securities regulator) but that there was no issuance of any suspension, fine or penalty of any kind to any BancTrust entity, board member or member of management and that Mr Fuenmayor had not been sanctioned. Notably, the response did not mention that the bank accounts had been "blocked", despite this being one of the central themes to the article that the Authority had invited BancTrust to comment on. It was not until 1 March 2023 that BancTrust confirmed to the Authority that the bank accounts had been "blocked", after the Authority had specifically asked about this in an email dated 14 February 2023.

#### **Form D – the Disclosure Notification**

- 4.36 In August 2021, BancTrust started receiving requests for information from counterparties who had independently become aware of the FINRA sanction. During his interview with the Authority, Mr Fuenmayor stated that this then led to him discussing this with Compliance Officer 1.
- 4.37 Mr Fuenmayor stated that he then tasked Compliance Officer 1 to draft the Disclosure Notification disclosing the FINRA sanction to the Authority. Mr Fuenmayor stated that Compliance Officer 1 did not draft the Form D and that it was instead drafted by Compliance Officer 2.

- 4.38 Therefore, Compliance Officer 2 drafted the Disclosure Notification and sent it to Mr Fuenmayor to review shortly before it was submitted to the Authority. Compliance Officer 2 separately informed the Authority that the draft Disclosure Notification that had been sent to Mr Fuenmayor for review disclosed both the FINRA sanction and the UNIF action.
- 4.39 On 22 December 2021, Mr Fuenmayor submitted the Disclosure Notification to the Authority on behalf of BancTrust but only disclosed the FINRA sanction (and by implication the FINRA investigation). In submitting the Disclosure Notification, both Mr Fuenmayor and BancTrust declared that the "information in this form is accurate and complete to the best of their knowledge and belief" and Mr Fuenmayor agreed as the person signing and submitting the form that he had "read and understood the notes to this form", which included a "Disclosure Note" in the "Fitness and Propriety" section stating, "We require firms to disclose all relevant information relating to a candidate's fitness and propriety. If there is any doubt about the relevance of the information, the information should be disclosed. The FCA takes non-disclosure very seriously and may consider it to be evidence of dishonesty and/or lack of integrity. In all circumstances, disclosures should be full, frank and unambiguous; **if in doubt, disclose**". (Emphasis in original.)
- 4.40 During the interview with the Authority, an audio recording was played aloud of a telephone conversation between Mr Fuenmayor and Compliance Officer 2 which took place after the draft Disclosure Notification had been sent to Mr Fuenmayor to review, but before it had been submitted to the Authority. In the audio recording, Mr Fuenmayor can be heard telling Compliance Officer 2, *"I don't have any issues disclosing the FINRA deal. But I don't think it's pertinent to give fuel to the smear job [the UNIF action], because it's not actually relevant then for the regulator"* to which Compliance Officer 2 replies, *"But it's the action. So the FIU [UNIF] took action, didn't they? And bank accounts have been frozen"*. Mr Fuenmayor can then be heard saying, *"there is no official notification about our accounts. I'm telling you about the accounts, because they were effectively frozen. But there was no, there's no document, there is no cause... it's political"*. Compliance Officer 2 then responds, *"when you look at Form D, and the questions they ask, I think some of those questions would mean that you should advise them. Because where it talks about the UK ... regulatory body or any other"*. Mr Fuenmayor can then be heard saying, *"I've not been suspended"... "It's an operational blockage of our accounts, but that doesn't mean that behind that there's an order from a court or tribunal, because there's nothing there"* to which Compliance Officer 2 responds, *"No, I understand that, its really what your comfortable disclosing"*. Mr Fuenmayor then responds, *"I don't feel comfortable [disclosing the UNIF action], because it's adding more fuel to a freaking political issue, which is not pertinent to our regulatory status"*.
- 4.41 When Mr Fuenmayor was asked by the Authority to clarify his rationale for not disclosing the UNIF action in the Disclosure Notification he stated that there was no formal action by UNIF because *"we hadn't received any notice"*. Mr Fuenmayor also stated that there was no supporting document regarding UNIF's freezing of the accounts nor was there (in his view) any reason or legal action

for it. Further, he stated that he "*discussed*" whether the UNIF action should be disclosed with Compliance Officer 2 during the telephone conversation that had been played aloud and whilst there were "*different views*", his understanding was that Compliance Officer 2 and his Head of Legal in Venezuela had ultimately agreed with him that it did not need to be disclosed.

4.42 Mr Fuenmayor also stated that he did not believe he had an obligation to make any disclosure in respect of the UNIF action to the Authority as no penalty of any kind had ever been imposed on any BancTrust entity, board member or members of management by UNIF nor had they been informed of any formal action against them. Mr Fuenmayor also stated that the monies held in these local currency accounts were "*de minimis*" (i.e. too small or meaningful to be taken into consideration).

## **5. FAILINGS**

### **Breach of APER 4 and SMCR4**

5.1 By reason of the facts and matters above, during the Relevant Period, whilst approved by the Authority to perform CFs and SMFs at BancTrust, Mr Fuenmayor breached APER 4 and SMCR 4:

- a) from 28 December 2017 until 22 December 2021, he negligently failed to disclose the FINRA investigation to the Authority despite being notified by FINRA that he was the subject of an investigation for potential violations of the NASD Rules and the FINRA Rule, and that FINRA had made a preliminary determination to recommend disciplinary action against him;
- b) he negligently failed to disclose the FINRA investigation to the Authority in the First CF Application submitted on 29 May 2018;
- c) he negligently failed to disclose the FINRA investigation to the Authority in the Second CF Application submitted on 9 August 2018;
- d) from 4 June 2019 until 22 December 2021, he negligently failed to disclose the FINRA sanction to the Authority for violating the NASD Rules and FINRA Rule;
- e) he negligently failed to disclose the FINRA investigation and FINRA sanction to the Authority in the VOP Application submitted on 15 October 2019 or to update the VOP Application to disclose details of the UNIF action; and
- f) from 14 November 2019 until 20 January 2023, he negligently failed to disclose the UNIF action and details of it to the Authority.

- 5.2 The Authority acknowledges that Mr Fuenmayor was initially based in the US when these breaches first occurred and that he may not have been completely aware of his disclosure obligations to the Authority at the time, but considers that he should have at the very least sought advice as to whether the FINRA investigation was information that the Authority would have reasonably expected to be notified of.
- 5.3 The Authority also considers that when Mr Fuenmayor relocated to the UK, having recently been approved as BancTrust's CF10, he reviewed both the Second CF Application and the VOP Application, but failed to read these applications nor their guidance notes with the level of care that would have been expected. As a result, Mr Fuenmayor failed to disclose the FINRA investigation nor the FINRA sanction to the Authority, which he later accepted in his interview with the Authority, should in fact have been disclosed.
- 5.4 Finally, the Authority considers that Mr Fuenmayor should have given more weight to the concerns of Compliance Officer 2, whom he relied on for compliance advice in relation to whether or not the UNIF action required disclosing to the Authority. However, instead of following their advice or consulting the Authority on this, he rejected their concerns and removed the UNIF action from the draft Disclosure Notification which Compliance Officer 2 had prepared for him, and in doing so prevented the Authority from assessing its relevance. The Authority considers that Mr Fuenmayor should have disclosed the UNIF action to the Authority, given the difference of opinion between himself and Compliance Officer 2. The freezing of the accounts by UNIF represented steps that had been taken by an overseas government body against Mr Fuenmayor and companies of which he is also a controller and so, regardless of Mr Fuenmayor's view of the political motivation that lay behind the steps taken, it was a matter about which the Authority would have expected to have been made aware. It is for the Authority to determine the materiality and weight to attach to matters which fall to be disclosed to it.
- 5.5 The Authority considers that, in failing to disclose the FINRA investigation and sanction and the UNIF action, either in application forms, in a timely manner, or at all, Mr Fuenmayor failed to meet the standards expected of an individual in his position and was negligent. The Authority also considers that the action it has decided to take as set out in this Notice is proportionate and will advance its operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

## **6. SANCTION**

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

## **Step 1: Disgorgement**

- 6.2 Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.3 The Authority has not identified any financial benefit that Mr Fuenmayor derived directly from his breach.
- 6.4 Step 1 is therefore £0.

## **Step 2: Seriousness of the breach**

- 6.5 Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. The Authority has determined a figure based on a percentage of Mr Fuenmayor's relevant income. Mr Fuenmayor's relevant income is the gross amount of all benefits received by Mr Fuenmayor from his relevant employment during the Relevant Period. The Authority considers Mr Fuenmayor's relevant income for this period to be £996,715.
- 6.6 In deciding on the percentage of the relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach. The more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:
- Level 1 – 0%
- Level 2 – 10%
- Level 3 – 20%
- Level 4 – 30%
- Level 5 – 40%
- 6.7 The Authority considers that Mr Fuenmayor's misconduct has impacted the reputation of BancTrust and that BancTrust's employees and consumers are entitled to expect that their CEO engages with regulators appropriately. Mr Fuenmayor's failure to disclose the FINRA matters and UNIF action in application forms, in a timely manner, or at all, has led to him breaching APER 4 and SMCR 4.
- 6.8 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, recklessly or negligently. Of these, the Authority considers the following factors to be relevant.

6.9 DEPP 6.5B.2G(8) lists factors relating to the impact of the breach. Of these, the Authority considers the following factors are relevant:

- 1) Mr Fuenmayor, in failing to disclose the FINRA investigation and FINRA's sanction against him for potential violations of the NASD Rules and the FINRA Rule within the First CF Application and Second CF Application, prevented the Authority from giving any consideration to these matters when assessing his application for CF1, CF3, CF10 and CF11 (DEPP 6.5B.2G(8)(a));
- 2) Mr Fuenmayor, in failing to disclose the FINRA investigation, as well as the FINRA sanction, on an ongoing basis prior to 22 December 2021, prevented the Authority from giving any consideration to whether he should continue to be approved for his CFs and SMFs in the light of these matters (DEPP 6.5B.2G(8)(a)); and
- 3) Mr Fuenmayor, in failing to disclose the freezing of the accounts by UNIF in the Disclosure Notification, prevented the Authority from giving any consideration to this matter in assessing whether he should continue to be approved for his CFs and SMFs (DEPP 6.5B.2G(8)(a));

6.10 DEPP 6.5B.2G(9) lists factors relating to the nature of the breach. Of these, the Authority considers the following factors are relevant:

- 1) Mr Fuenmayor has breached APER 4 and SMCR 4 (DEPP 6.5B.2G(9)(a));
- 2) Mr Fuenmayor failed to disclose the FINRA investigation, the FINRA sanction and the UNIF action, despite having an ongoing duty to do so, having opportunities to do so, and over a significant period of time (DEPP 6.5B.2G(9)(b));
- 3) The Authority does not consider that Mr Fuenmayor failed to act with integrity. Although the Authority considers that Mr Fuenmayor acted negligently, in considering the seriousness of Mr Fuenmayor's failure to disclose the UNIF action, it has also had regard to the fact that it was Mr Fuenmayor's belief that the freezing of the accounts by UNIF was politically motivated and did not constitute formal action and in addition was action taken on behalf of a political regime which did not have the status of an internationally recognised government body (DEPP 6.5B.2G(9)(e));
- 4) Mr Fuenmayor is an experienced industry professional having held senior positions in firms in the UK, US, Venezuela and Argentina for a number of years (DEPP 6.5B.2G(9)(j));
- 5) Mr Fuenmayor has held senior positions within BancTrust since 15 October 2012, where he has held a number of CFs and SMFs. Further, in the summer of 2018, Mr Fuenmayor also took over as CEO of BancTrust and is currently still the CEO (DEPP 6.5B.2G(9)(k));

6) Mr Fuenmayor is the 100% shareholder of BancTrust, as well as the sole controller, the CEO (from the summer of 2018), and the only person who had full knowledge throughout the Relevant Period of the FINRA investigation, the FINRA sanction and the UNIF action, and was responsible for disclosing these matters to the Authority (DEPP 6.5B.2G(9)(I)).

6.11 DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. The Authority does not consider any of these factors to be relevant.

6.12 DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these the Authority considers the following factors to be relevant:

- 1) No profits were made or losses avoided as a result of the breach (DEPP 6.5B.2(13)(a));
- 2) There was no risk to consumers, investors or other market users (DEPP 6.5B.2(13)(b));
- 3) There was no actual or potential effect on the orderliness of, or confidence in, markets as a result of the breach (DEPP 6.5B.2(13)(c)); and
- 4) The breach was committed negligently (DEPP 6.5B.2(13)(d)).

6.13 Taking all of these factors into account, the Authority considers the seriousness of Mr Fuenmayor's breach to be level 2 and so the Step 2 figure is 10% of £996,715.

6.14 Step 2 is therefore **£99,671**.

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

6.15 Pursuant to DEPP 6.5B.3G(2), at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2 to take into account factors which aggravate or mitigate the breach.

6.16 The Authority considers there to be no mitigating or aggravating factors in relation to the breach.

6.17 Step 3 is therefore **£99,671**.

### **Step 4: Adjustment for deterrence**

6.18 Pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.19 The Authority considers that the Step 3 figure of £99,671 represents a sufficient deterrent to Mr Fuenmayor and others and so has not increased the penalty at Step 4.

6.20 Step 4 is therefore **£99,671**.

### **Step 5: Settlement discount**

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

6.22 The Authority and Mr Fuenmayor failed to reach agreement at Stage 1 and so no discount applies to the Step 4 figure.

6.23 Step 5 is therefore **£99,600** (rounded down to the nearest £100).

### **Penalty**

6.24 The Authority therefore has decided to impose on Mr Fuenmayor a financial penalty of **£99,600**.

## **7. REPRESENTATIONS**

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

## **8. PROCEDURAL MATTERS**

8.1 This Decision Notice is given to Mr Fuenmayor under section 57 and 67 and in accordance with section 388 of the Act.

8.2 The following statutory rights are important.

### **Decision Maker**

8.3 The decision which gave rise to the obligation to give this Notice was made by the RDC. The RDC is a committee of the Authority which takes certain decisions on behalf of the Authority. The members of the RDC are separate to the Authority staff involved in conducting investigations and

recommending action against firms and individuals. Further information about the RDC can be found on the Authority's website:

<https://www.fca.org.uk/about/committees/regulatory-decisions-committee-rdc>

### **The Tribunal**

- 8.4 Mr Fuenmayor has the right to refer the matter to which this Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Fuenmayor has 28 days from the date on which this Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email fs@hmcts.gsi.gov.uk). 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 the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Zishan Siddique 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. A person to whom this Notice is given has the right to access:
- (a) the material upon which the Authority has relied in deciding to give this Notice; and
  - (b) the secondary material which, in the opinion of the Authority, might undermine that decision.

### **Third party rights**

- 8.8 A copy of this Notice is being given to BancTrust as a third party identified in the reasons above and to whom in the opinion of the Authority the matter to which those reasons relate is prejudicial. That party has similar rights to those mentioned in paragraphs 8.4 and 8.7 above in relation to the matter which identifies it.

### **Confidentiality and publicity**

8.9 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.

8.10 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 contact**

8.11 For more information concerning this matter generally, contact Zishan Siddique (direct line: 020 7066 3747/email: [zishan.siddique@fca.org.uk](mailto:zishan.siddique@fca.org.uk)).

**Edward Sparrow**  
**Deputy Chair, Regulatory Decisions Committee**

## Annex A

### RELEVANT STATUTORY AND REGULATORY PROVISIONS

#### 1. Relevant Statutory Provisions

- 1.1. The Authority's operational objectives, set out in section 1B(3) of the Act, include the consumer protection objective of securing an appropriate degree of protection for consumers and the integrity objective of protecting and enhancing the integrity of the UK financial system (set out in sections 1C and 1D of the Act).
- 1.2. Section 206(1) of the Act provides: *"If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act... it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate"*.
- 1.3. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that the person is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him/her. Misconduct includes failure, while an approved person, to comply with a Statement of Principle issued under section 64 of the Act. The action that may be taken by the Authority pursuant to section 66 of the Act includes the imposition of a penalty on the approved person of such amount as it considers appropriate.

#### 2. Relevant Regulatory Provisions

##### Statement of Principle and Code of Practice for Approved Persons in Appointed Representatives ("APER") and Senior Manager Conduct Rules for Approval Persons ("COCON")

- 2.1 APER and COCON are the fundamental obligations for senior manager approved persons under the regulatory system and are set out in the Authority's Handbook. The relevant APER and COCON rules are as follows:
- 2.2 During the Relevant Period APER Statement of Principle 4 stated – *"An approved person must deal with the FCA, the PRA and other regulators in an open and cooperative way and must disclose appropriately any information of which the FCA or the PRA would reasonably expect notice."*
- 2.3 During the Relevant Period Senior Manager Conduct Rule 4 as set out at COCON 2.2.4R stated – *"You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice"*.

##### Decision Procedures and Penalties Manual ("DEPP")

- 2.4 Chapter 6 of DEPP, which forms part of the Handbook, sets out the Authority's policy for imposing a financial penalty. The Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5B sets out the details of the five-step framework that applies to financial penalties imposed on individuals in non-market abuse cases.

## ANNEX B

### REPRESENTATIONS

1. A summary of the key representations made by Mr Fuenmayor, and of the Authority's conclusions in respect of them (in **bold**), is set out below.

#### The non-disclosure of the FINRA Investigation and Sanction

##### *Nature of the FINRA Investigation and Sanction*

2. The FINRA investigation concerned a technical violation relating to registration requirements in the US securities industry. Mr Fuenmayor was required to retake exams and register as a Principal after a period of absence from US broker-dealer employment.
3. Mr Fuenmayor was not living or working in the UK when FINRA notified him of the investigation and its preliminary determination to recommend disciplinary action against him. The violation was considered low-level and did not restrict Fuenmayor's ability to work in the US securities industry after the suspension.
4. **The Authority considers that regardless of where Mr Fuenmayor was living or working at the time of the FINRA investigation, he should have been aware that, as a person approved by the Authority, he was obliged to comply with the Authority's rules and to disclose any information which the Authority would reasonably expect to be notified about. The Authority does not accept Mr Fuenmayor's argument that his living outside of the UK mitigates his failure to comply with the Authority's disclosure requirements.**
5. **The fact that Mr Fuenmayor was under investigation by FINRA, and the fact that FINRA found that he committed a breach and decided to sanction him, were matters which ought to have been disclosed to the Authority. Both an investigation and disciplinary action by a regulatory body are examples of matters contained within the Authority's fit and proper test for Employees and Senior Personnel (FIT) that the Authority would take into account when assessing an individual's honesty, integrity and reputation. Whilst the Authority accepts that once Mr Fuenmayor had completed his 15-month suspension there were no further restrictions placed on his ability to continue working in the securities industry in the US, the fact that FINRA determined that the breach was serious enough to warrant the imposition of a \$20,000 penalty and a 15-month suspension from association with any FINRA member firm in any capacity indicates that FINRA did not consider Mr Fuenmayor's breach was negligible.**

##### *Disclosure Process and Timing*

6. Disclosure to the Authority was simply late, due to a misunderstanding of the extra-territorial application of the Authority's disclosure requirements. However, late disclosure does not necessarily amount to a negligent breach of APER 4 and SMCR 4.
7. The Authority's online form was poorly designed, lacking clear guidance on overseas regulatory matters, which contributed to the misunderstanding. Once the error was realised, Mr Fuenmayor made a full and unprompted disclosure to the Authority, including a link to the FINRA sanction details. Further, the information about his settlement with FINRA was already publicly available via FINRA's Central Registration Depository (CRD) and any person would have been able to locate his disciplinary record. Therefore, it was not unreasonable for Mr Fuenmayor to assume that he had no disclosure obligation to the Authority.
8. Mr Fuenmayor's conduct in relation to the FINRA matters has been presented by the Authority as five separate failings. It is more appropriately characterised as a continuing misunderstanding as to extra-territorial application. Mr Fuenmayor did not appreciate that matters in relation to overseas regulators were potentially disclosable. There was nothing in the wording of the Application Forms to trigger a realisation that this error had been made. This was not, therefore, a breach comprising multiple failings. Rather it was a single error which continued temporarily until it was rectified through the submission of the Form D.

9. **The Authority considers that due to Mr Fuenmayer's experience of international compliance regulatory requirements (as set out in the First CF Application) and the fact that the 'Regulatory Matters' section in the Second CF application referred to guidance notes (which Mr Fuenmayer stated in interview that he had read) which stated that the questions within that section were of extra-territorial application, he should have known that he had a disclosure obligation in respect of the FINRA investigation and FINRA sanction. The Authority considers that Mr Fuenmayer's confirmation that he had read the guidance cannot be reconciled with his failure to disclose the FINRA investigation and FINRA sanction. Further, Mr Fuenmayer did not take any other steps, for example checking with his compliance team or contacting the Authority, to check whether disclosure was required. In these circumstances, the Authority concludes that Mr Fuenmayer acted negligently in failing to disclose the FINRA matters.**
10. **Further, whilst the Authority acknowledges that Mr Fuenmayer did eventually disclose the FINRA investigation and sanction to the Authority by way of the Disclosure Notification in December 2021, it does not agree that the disclosure was 'simply late', given that it took almost four years to be made. There were several opportunities in this period for Mr Fuenmayer to realise that he was required to disclose these matters, yet he failed to do so.**
11. **The Authority does not accept Mr Fuenmayer's view that, because he had made a disclosure of his FINRA settlement via the CRD in the US, this absolved him partly or totally from his obligation to disclose this matter to the Authority. The CRD database is overseen by FINRA and the Authority does not routinely carry out checks for adverse findings at overseas regulators nor is it realistic or appropriate to suggest that it should do so. The Authority has always placed the duty of disclosure upon individuals and firms and expects them to make voluntary disclosures in line with their regulatory obligations. In this case, it is likely that the Authority would not have found out about the FINRA investigation or sanctions if Mr Fuenmayer had not very belatedly notified the Authority of this by way of the Form D Disclosure Notification. Further, the declaration in the VOP Application signed by Mr Fuenmayer on 15 October 2019 (which was completed after the AWC was agreed between Mr Fuenmayer and FINRA) states "*Even if you believe or know that information...is in the public domain, you must nonetheless disclose it clearly and fully in this form and as part of this application – you should not assume that the appropriate regulator will itself identify such information during the assessment of this application. If there is any doubt about the relevance of information, it should be included.*"**

#### *Legal Arguments Against Negligence*

12. **The late disclosure does not amount to negligence under English law; the standard is what a reasonable person would have done in the circumstances. The Authority must prove that a reasonable person in Mr Fuenmayer's position would have acted differently. The misunderstanding was a single error, not multiple failings, and was corrected voluntarily.**
13. **Mr Fuenmayer has been approved by the Authority to perform significant controlled and senior management functions, including the Compliance Oversight function (CF10 and SMF 16) and currently holds the Executive Director and Chief Executive Director senior management functions at BancTrust. In the First CF Application, Mr Fuenmayer stipulated that he was well versed on both local and international compliance regulatory requirements. Consequently, the Authority considers that a reasonable person with Mr Fuenmayer's background and position would have both read and understood the extra-territorial application of the Authority's disclosure requirements. In circumstances where there were five occasions, including the Applications (two CF applications and one Variation of Permission application), on which Mr Fuenmayer should have and could have disclosed the FINRA investigation and sanction to the Authority but failed to do so, despite having confirmed on each of the forms that he had read and understood the requirements for the Applications, the Authority considers that these were multiple failings arising as a result of Mr Fuenmayer's negligence.**

#### *Materiality and Regulatory Significance*

14. **The Authority's guidance (COCON 4.2.29G(1)) states that in determining whether an individual has breached SMCR4, the Authority must have regard to whether it would be reasonable for that**

individual to assume that the information would be of material significance to the regulator concerned. Only information of material significance to the regulator must be disclosed.

15. The low-level, public nature of the FINRA sanction, and the fact that it was initiated while Mr Fuenmayor was outside the UK, meant it was reasonable for Mr Fuenmayor to assume that no disclosure obligation existed. In addition, the Authority's application forms at the time did not clearly prompt consideration of extra-territorial matters.
16. **As has already been set out above, the Authority considers that it was not reasonable for a person in Mr Fuenmayor's position to assume that the fact of the FINRA investigation and the subsequent sanction were so insignificant that they did not need to be disclosed to the Authority. In his interview with the Authority, Mr Fuenmayor accepted that in hindsight he should have reported and disclosed the FINRA investigation and sanction to the Authority. He also acknowledged that he had not discussed it with the colleagues or compliance consultants who were assisting him with preparing the Applications. Mr Fuenmayor's acknowledgement that the FINRA investigation and sanction should have been disclosed but were overlooked, adds further weight to the Authority's conclusion that Mr Fuenmayor was negligent in not disclosing these matters to the Authority.**
17. **In addition, the wording at the end of the application forms explicitly asks the applicant to confirm (amongst other things) that they have read the guidance notes to the form. These guidance notes include wording which indicates that, for the purposes of disclosure of investigations by a regulatory body, a regulatory body includes "a current or former statutory body, including the Financial Conduct Authority (FCA)... or the equivalent of any of these regulatory bodies overseas."**

#### *No Adverse Supervisory Consequences*

18. The Authority does not allege that Mr Fuenmayor lacks fitness and propriety. The late disclosure had no adverse supervisory consequences, and Mr Fuenmayor has an otherwise unblemished regulatory history.
19. **The Authority acknowledges that Mr Fuenmayor's disclosure failings do not demonstrate that he lacks fitness and propriety. As explained above, the Authority considers that an individual holding Mr Fuenmayor's approvals and with his level of seniority and experience should have been aware of his disclosure obligations to the Authority in respect of the FINRA investigation and sanction. His failure to do so in the circumstances set out above and in this Notice was unreasonable and negligent and the Authority considers that the imposition of a financial penalty is an appropriate sanction in respect of this. The Authority has taken into account the nature and impact of Mr Fuenmayor's breach in assessing its seriousness and the appropriate level of financial penalty to impose. The Authority does not agree that Mr Fuenmayor has an otherwise unblemished regulatory history, given the FINRA investigation and sanction.**

#### The freezing of the accounts by UNIF and the disclosure obligation

20. Mr Fuenmayor challenges the Authority's premise that the regime in Venezuela led by Nicolas Maduro ("the Maduro regime"), which was in power during the Relevant Period, was an "overseas government body". UK Government policy (the "One Voice" doctrine) did not recognise the Maduro regime as the legitimate government of Venezuela. Mr Fuenmayor has never had any obligation to make any disclosure to the Authority in respect of reprisals suffered as a result of his sponsorship of pro-democracy and human rights activities against the Maduro regime. The Authority is bound to observe the policy set by the government under the One Voice constitutional principle and is not at liberty to depart from it<sup>1</sup>.
21. Mr Fuenmayor does not consider that he was under any obligation to assume that the information pertaining to the UNIF matter would be of material significance to the Authority (COCON 4.2.29G(1)). Disclosure is only required if the information meets a materiality threshold—i.e., it must be of material significance to the regulator. The Authority cannot require disclosure of information it cannot

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<sup>1</sup> Maduro Board of the Central Bank of Venezuela v Guaido Board of the Central Bank of Venezuela [2021] UKSC 57 at para 110(3).

lawfully consider in its decision-making. Actions of a regime upon which the Authority could not place reliance in its decision-making could not meet the materiality threshold. A reasonable person would not assume that a UK regulator would place reliance upon decisions taken by the Maduro regime. Nor would a reasonable person expect the Authority to act inconsistently with its obligations under section 6 of the Human Rights Act 1998. At no point did Mr Fuenmayor act unreasonably in relation to his disclosure obligation to the Authority regarding the UNIF matter.

22. The correct test is what information the Authority is reasonably entitled to expect notice of, not what it would simply like to know. This is an objective test and does not allow the Authority unfettered discretion to determine whether a matter should be disclosed.
23. Regulated persons must be able to know what is and is not disclosable, with legitimate expectation that the Authority will act consistently with UK Government policy and published guidance.
24. In the present case the Authority places reliance on the statement of a senior member of staff at the Authority who stated that the Authority would expect to be notified of events such as those which happened to Mr Fuenmayor in Venezuela, even though the Maduro regime was not recognised by the UK government. Further, the senior member of staff confirmed that the Authority's supervision team would not envisage that the One Voice Principle would act to override the obligations of disclosure to which authorised firms and individuals are subject.
25. However, as set out above the correct legal test is what information the Authority would reasonably expect notice of.
26. **The Authority considers that the UK Government's stance on the legitimacy of the Maduro regime and that of its government institutions did not negate Mr Fuenmayor's disclosure obligations to the Authority. As an individual approved by the Authority to perform Senior Management Functions, Mr Fuenmayor is under an obligation to abide by the Authority's rules and regulations, which include notifying the Authority of any information of which it would reasonably expect to be notified. The Authority considers that the freezing of the accounts belonging to Mr Fuenmayor and other companies of which he was a controller met this threshold for disclosure and that it was not reasonable for Mr Fuenmayor to decide that the UNIF matter did not need to be disclosed. When making the disclosure, Mr Fuenmayor could have provided the Authority with an explanation as to why he believed the freezing of the accounts had taken place (i.e. that it was politically motivated), which the Authority would have considered when making its assessment of the information.**
27. **The Authority does not seek to express a view on the legitimacy or otherwise of events concerning Mr Fuenmayor in Venezuela. The case is solely concerned with the non-disclosure of matters by Mr Fuenmayor about which the Authority reasonably expected to receive notice and which it did not. However, the Authority is lawfully entitled to expect disclosure of information from an approved person who is required to comply with APER 4 and SMCR 4, and which it needs in order to make ongoing assessments as to the individual's fitness and propriety. It is for the Authority to determine the significance and materiality of the information when appraised of all the facts – including any explanation given by the individual.**
28. **Whilst the Authority understands Mr Fuenmayor's view of events in Venezuela in so far as they affected him personally, it considers that it was wrong and unreasonable for him to have concluded (against the advice from Compliance Officer 2) that he did not need to disclose the freezing of the accounts to the Authority.**

#### *Materiality and Impact*

29. It is not open to the Authority to determine the materiality and weight of acts taken by an unrecognised regime, as this would offend against the "One Voice" principle. The Authority is bound by the stated policy of the UK Government towards the illegitimacy of the Maduro regime and all its institutions. This means that the Authority cannot accord or attribute any materiality or weight to the acts of the Maduro regime against Mr Fuenmayor as a matter of public policy.
30. The Authority must prove that UNIF took action against Mr Fuenmayor and BancTrust. No formal notification or reliable evidence exists that UNIF was responsible for freezing the bank accounts. Information provided by others to the Authority on behalf of Mr Fuenmayor confirm no legally valid

notification, resolution, or order was received from UNIF or other authorities in respect of the freezing of the accounts. In addition, it is not accepted that Mr Fuenmayor's personal accounts were blocked. Mr Fuenmayor has no means of knowing whether he has any accounts which are blocked as he has not lived in Venezuela for 18 years and Venezuelan bank accounts are not accessible from either the United States or the United Kingdom.

31. The impact of the alleged account suspension was negligible; business operations continued, and any inconvenience was minor and swiftly overcome.
32. **As stated above, the Authority considers that the UNIF action fell for disclosure notwithstanding the international status afforded to the Venezuelan government at that time or the 'One Voice' principle. The Authority understands that the freezing of Mr Fuenmayor's bank accounts in Venezuela (and the accounts of entities connected to and controlled by him) restricted Mr Fuenmayor's business operations until he could open new bank accounts in another country. In addition, BancTrust was not able to clear trades transacted on the domestic stock exchange until the portfolio was transferred to another entity. The Authority considers that there was therefore an impact on Mr Fuenmayor and his businesses sufficient to trigger a disclosure obligation.**
33. **The Authority considers that there is sufficient evidence provided by way of contemporaneous email correspondence, a letter from BancTrust to the Authority and from Mr Fuenmayor's own statements in interview to conclude that UNIF was responsible for the freezing of the accounts. This includes an email sent to Compliance Officer 2, copied to Mr Fuenmayor, by a senior member of Mr Fuenmayor's staff based in Venezuela which stated that UNIF had ordered the freezing of all bank accounts in Venezuela. This email was sent in response to a request for information by Compliance Officer 2, who had been directed to send the request by Mr Fuenmayor when they were trying to understand the events that led to the freezing of the accounts.**
34. **Further, in a letter sent by BancTrust to the Authority on 1 March 2023, BancTrust stated that the bank accounts of BancTrust Venezuela and its directors "were blocked by the UNIF when the financial audit commenced in 2019...and has submitted several requests to UNIF to lift the restriction imposed by the agency." The letter also said that no official communication or order had been issued by UNIF. However, regardless of whether UNIF provided BancTrust with an official communication or an order, the language in this letter to the Authority is clear and unambiguous and suggests that there was no doubt within BancTrust at the time that the bank account was blocked by UNIF.**
35. **During Mr Fuenmayor's interview with the Authority, he made a number of statements which indicated that the bank accounts had been blocked by UNIF. These are summarised at paragraph 4.32 of this Notice. In the interview exchange, Mr Fuenmayor referred to having received no explanation from UNIF as to why the accounts had been frozen, and that unsuccessful attempts had been made to request that UNIF unblock the accounts.**
36. **Mr Fuenmayor has also provided statements from other individuals connected to another company controlled by Mr Fuenmayor at the time of the freezing of the accounts (which included the accounts of that company). The statements confirm Mr Fuenmayor's account that no official or legal communications were received about the freezing of the accounts. However, the Authority considers that these statements do not provide sufficient weight of evidence to undermine its conclusion that, on the balance of probabilities, the company's bank accounts, and those of Mr Fuenmayor, had been frozen by UNIF.**

#### *Consultation with Compliance Officers*

37. Mr Fuenmayor did not dismiss the views of his compliance officers. Compliance officers advise, directors decide. Mr Fuenmayor was correct to determine that he was not under an obligation to make a disclosure to the Authority in respect of the freezing of the accounts, and knew that as the Authority could not lawfully take into account acts of reprisal against him and persons and entities connected with him, it could not reasonably require information relating to it.
38. Compliance Officer 1 did not express any particular view on the freezing of the accounts by UNIF. Their handover note was an informal, internal prompt for Compliance Officer 2 to revisit the matter once they had joined the firm. It should not be treated as determinative of Compliance Officer 1's

opinion on the alleged freezing of the accounts by UNIF. From the transcript of Mr Fuenmayor's discussion with Compliance Officer 2, it is apparent that he did not dismiss their concerns. It is also clear that Compliance Officer 2 did not know whether or not the UNIF matter fell to be disclosed. In their interview with the Authority, Compliance Officer 2 stated that they "...understood more of the FINRA sanction because I understand FINRA better than I understand Venezuela" and "On the Venezuela matter which I was less clear on because I don't know Venezuelan politics or government [...]". The Authority's guidance in respect of SMCR 4 states only that individuals should consider whether the information would be of material significance to the regulator concerned. There is nothing which requires individual deference to compliance officers' views.

39. **The Authority considers that Compliance Officer 1 was also of the view that the UNIF action should be disclosed to the Authority. This view was communicated to Compliance Officer 2 in the handover note. The Authority considers that the handover note was more than just an informal and internal prompt for Compliance Officer 2 to revisit the matter when they joined BancTrust. The Authority notes the wording "Relevant Notification to be sent asap" conveys a sense of urgency that a notification should be sent to the Authority.**
40. **The Authority also considers that Mr Fuenmayor did reject the concerns of Compliance Officer 2 when he discussed the draft Disclosure Notification with them. Compliance Officer 2 clearly advised Mr Fuenmayor that in their opinion "when you look at Form D, and the questions they ask, I think that some of those questions would mean that you should advise them." However, Mr Fuenmayor chose not to follow this advice and removed all reference to the UNIF action from the Disclosure Notification. Further, Compliance Officer 2's comments regarding their advice being less clear due to their level of knowledge of Venezuelan politics or government must be considered in their context. These comments were made during their interview (by Mr Fuenmayor) for the Head of Compliance role at BancTrust, in which they were first notified of the freezing of the accounts by UNIF. When Compliance Officer 2 started their role at BancTrust shortly afterwards and wanted to obtain a better understanding of the issues relating to UNIF, they were advised by Mr Fuenmayor to contact a senior member of BancTrust in Venezuela as to what happened in respect of the freezing of the accounts by UNIF. After contacting the senior member in Venezuela, and having received a written explanation as to what had occurred, Compliance Officer 2 drafted the Disclosure Notification and included the UNIF action as well as the FINRA notification. It is therefore clear that, after considering the matter and discussing it with the senior staff member in Venezuela, Compliance Officer 2 considered that the freezing of the accounts by UNIF was disclosable to the Authority. However, the UNIF action was removed from the Disclosure Notification by Mr Fuenmayor before it was submitted to the Authority.**

#### *Clarification Requests and Responses*

41. BancTrust initially responded to the Authority's requests for clarification of the contents of the article through which the Authority had become aware that UNIF had blocked the accounts of connected BancTrust companies in a straightforward manner by bringing the salient facts to the Authority's attention. The response confirmed that no BancTrust entity, board member or member of management had been issued with a suspension, fine, or penalty by Venezuelan regulators. BancTrust's response also offered background information on the human rights event which Mr Fuenmayor believes to have been the motivation for the UNIF actions against him and his companies and also provided evidence of one of his company's good standing with SUNAVAL.
42. Subsequently, on 14 February 2023, the Authority asked BancTrust to clarify whether any accounts had been blocked, to which BancTrust responded on 1 March 2023, confirming that this had happened.
43. **The Authority asked BancTrust to clarify the contents of the article as well as whether Mr Fuenmayor or his BancTrust companies had been sanctioned by Venezuelan regulators. Therefore, the request was not limited to confirmation of whether a sanction had been imposed. Although the response, which Mr Fuenmayor helped to draft, did confirm that neither Mr Fuenmayor nor his BancTrust companies in Venezuela had been sanctioned by Venezuelan regulators, the response failed to clarify other important aspects of the article, such as the fact that Mr Fuenmayor's local currency bank accounts, as well as those of his**

**Venezuelan companies, had been frozen and had remained frozen for over three years. The Authority does not consider that the response covered the salient facts as asserted by Mr Fuenmayor, as it failed to give details of a key event that had occurred.**

*Additional representations*

44. Mr Fuenmayor's legal representative, when making oral representations, presented their opinion that in the circumstances, insofar as they relate to the actions of the Venezuelan government against Mr Fuenmayor, this is one of the least attractive matters the Authority has ever sought to bring. In addition, they stated that the Authority's legal analysis is not only wrong, but also devoid of moral compass.
45. **The Authority strongly rejects this characterisation of the case against Mr Fuenmayor. As has been stated above, this case relates solely to Mr Fuenmayor's failure to disclose information to the Authority of which it would reasonably expect notice in line with his obligations as a senior approved person. The decision in this Notice was taken by a panel of the RDC which is independent of the Authority's Enforcement team investigating the matter, and which reached its own conclusions on the case based on the evidence and arguments put before it both by the Authority's Enforcement team and by Mr Fuenmayor.**