

Aiden Henderson is referring 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 Henderson Carter Associates 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 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: **Henderson Carter Associates Limited (in liquidation)**

Firm
Reference
Number: **512016**

Address: **13 The Cross
Neston
Merseyside
CH64 9UB**

Date: **6 December 2018**

1. ACTION

- 1.1. For the reasons given in this Notice, the Authority has decided to publish a statement pursuant to section 205 of the Financial Services and Markets Act 2000 (the "Act") to the effect that Henderson Carter Associates Limited ("HCA") contravened regulatory requirements in the period from 30 October 2013 to 8 July 2015 (the "Relevant Period").

- 1.2. The Authority considers that the serious failings in this case warrant a substantial penalty. HCA is in liquidation. Had it not been for its reduced financial circumstances the Authority would have imposed a financial penalty of £239,900.

2. SUMMARY OF REASONS

- 2.1. The Authority has determined that during the Relevant Period HCA breached Principle 1 (Integrity) of the FCA's Principles for Businesses by acting dishonestly and recklessly in relation to its pension 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. HCA 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, Aiden Henderson was the sole person at HCA approved by the Authority to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting), and he was also one of three persons at HCA approved to perform the CF30 (Customer) controlled function.
- 2.5. Between 30 October 2013 and around August 2014 HCA used the Execution-only Process, which involved HCA receiving customer introductions from a third party (HJL) to facilitate customers moving their pensions to SIPPs investing in high risk,

illiquid assets not regulated by the Authority (the Loan Notes) in which HJL had a material financial interest, which was not disclosed to customers.

2.6. HCA was aware of HJL's involvement in the Execution-only Process and of HJL's financial interest in the Loan Notes, but acted recklessly by closing its mind to the conflict of interest this created and taking no steps to manage it or to ensure that HJL's financial interest in the Loan Notes was disclosed to customers.

2.7. From around January 2014 HCA started to use the Pension Review and Advice Process, which was based on a pension switching advice model, the development of which was initiated and influenced by HJL. The Pension Review and Advice Process:

- (1) involved HJL sourcing leads from lead generation companies and introducing customers to HCA;
- (2) involved HJL and other third party service providers being provided with HCA's logo and letterhead and the electronic signature of Mr Henderson (a qualified financial adviser) so that the Service Providers could perform functions (the Outsourced Functions) on HCA's behalf, including:
 - (a) contacting customers that had been introduced to HCA 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 HCA's advice;
- (3) was structured to result in customers who met certain pre-set criteria approved by Mr Henderson being advised to switch their pensions to SIPP's investing in the Loan Notes (in which HJL had a material financial interest, which was not disclosed to customers); and
- (4) involved little meaningful oversight by HCA of HJL's activities as an introducer and of the Service Providers' performance of the Outsourced Functions.

- 2.8. HCA 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. HCA knew 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, HCA 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 the Loan Notes 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 by the Firm.
- 2.9. HCA's actions in relation to its adoption and use of the Pension Review and Advice Process, summarised in paragraphs 2.10 to 2.18 below, were reckless. The Pension Review and Advice Process put HCA'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 HCA closed its mind to these risks and unreasonably exposed its customers to them by adopting and using the Pension Review and Advice Process.
- 2.10. HCA failed to carry out adequate due diligence on the Loan Notes to ensure that it had a proper understanding of them, including their risks and benefits, before agreeing that they should be recommended to customers. HCA relied solely on documents provided to it by HJL, despite knowing that HJL had a material financial interest in the Loan Notes, and did not take any actions to address the risk that the information provided by HJL could be misleading or incomplete.
- 2.11. In any event, it should have been obvious to HCA from the limited information that it considered that the Loan Notes were high risk investments that were unlikely to be suitable for its customers, except in very limited circumstances. However, HCA failed to give due consideration to the risk that the Loan Notes were unsuitable.
- 2.12. HCA 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 cold calling. The Authority has evidence suggesting that one of the firms used by HJL generated introductions through cold calling.
- 2.13. HCA 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 SIPP

investing in assets (the Loan Notes) in which HJL had a material financial interest. Further, HCA knew that HJL and the issuer of the Loan Notes shared a common director, Mark Stephen. However, HCA took no steps to manage these conflicts of interest or to ensure that Mr Stephen's common directorship and how HJL was remunerated were disclosed to customers.

- 2.14. It should have been obvious to HCA (given that Mr Henderson was an experienced and qualified financial adviser) 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, it 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 Loan Notes did not adequately inform them of their costs, benefits and risks.
- 2.15. In any event, it should have been obvious to HCA from the information available to it that the Pension Review and Advice Process did not comply with the Authority's rules. HCA 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, HCA failed to give any meaningful consideration to whether or not the Pension Review and Advice Process was compliant.
- 2.16. HCA 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 its customers. Further, HCA failed to review in a meaningful way advice given through the Pension Review and Advice Process, for which it was responsible, whether before recommendations were sent to customers or at all.
- 2.17. HCA failed to put in place appropriate systems and controls and compliance arrangements to oversee and monitor the Pension Review and Advice Process.
- 2.18. HCA agreed to work with HJL and CAL (another of the Service Providers, which was closely connected to HJL) without giving any proper consideration to whether they were suitable to perform services on its behalf. HCA carried out no meaningful due diligence on HJL and did not conduct any due diligence on CAL.

- 2.19. HCA's reckless actions in relation to its adoption and use of the Pension Review and Advice Process, in particular the fact that it allowed the Service Providers 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 HCA not having the necessary permission to provide advice on Pension Transfers, in at least 45 cases advice about Pension Transfers was given to customers by HCA in breach of section 20 of the Act.
- 2.20. In addition to the clear deficiencies in the Pension Review and Advice Process, the Authority has identified that unsuitable advice was provided to HCA's customers in all 20 HCA 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 Loan Notes, the Authority considers it is likely that the advice provided to most, if not all, of HCA's 717 advised customers was unsuitable.
- 2.21. In total, 879 HCA customers switched or transferred their pensions through the Execution-only Process or the Pension Review and Advice Process during the Relevant Period. This resulted in over £35 million being switched or transferred from customers' pensions 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.
- 2.22. HCA adopted the Pension Review and Advice Process for financial gain from the fees it generated and in order to increase the number of customers that it could advise about other products, such as life assurance or other investments, and thereby generate further fees. HCA adopted the Execution-only Process on the understanding that it could contact the customers about other products and services in the future. In adopting these processes, HCA put its own interests before those of its customers.

2.23. HCA also deliberately provided false and misleading information to the Authority about the compliance checks that Mr Henderson had undertaken. This false and misleading information was provided in order to try to prevent the Authority from identifying misconduct by the Firm and by Mr Henderson. HCA thereby acted dishonestly.

2.24. The Authority considers HCA'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 HCA that the involvement in both the Execution-only Process and the Pension Review and Advice Process of HJL, which had a material financial interest in the Loan Notes into which customers' funds were being invested, created a clear conflict of interest, yet it took no steps to manage the conflict or to ensure that HJL's financial interest was disclosed to customers;
- (3) it should have been obvious to HCA (given that Mr Henderson was an experienced and qualified financial adviser) that the Loan Notes were unlikely to be suitable for retail customers, except in very limited circumstances; and
- (4) on 3 September 2014, the Authority wrote to the Firm 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 HCA did not take steps to protect its customers.

2.25. HCA's provision of pension advice was subject to examination by the Authority in June 2015. The Authority had serious concerns about the suitability of HCA's pension advice and, on 8 July 2015, at the request of the Authority, HCA applied to have requirements imposed on it. The requirements imposed by the Authority included a restriction on the type of investments that HCA could offer customers.

2.26. On 15 February 2017 HCA entered liquidation. The FSCS declared HCA in default on 22 March 2017 and is investigating claims made by HCA's customers. As at 17 May 2018, the FSCS had paid over £1 million to 137 of HCA's customers in

compensation for loss suffered upon transferring or switching their pensions to SIPPs investing in the Loan Notes.

- 2.27. The Authority considers that HCA's breach of Principle 1 and section 20 of the Act warrants a substantial penalty. Had HCA not been in liquidation, the Authority would have imposed a financial penalty on it of £239,900. However, on account of HCA's reduced financial circumstances, the Authority has instead decided to publish a statement of HCA's misconduct, as described at paragraph 1.1 of this Notice.

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

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

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

"Company A" means the third party service provider that performed the Outsourced Functions on behalf of HCA between January 2014 and May 2014

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

"EG" means the Authority's Enforcement Guide

"Execution-only Process" means the execution-only pension switching process that HCA used between 30 October 2013 and around August 2014, which involved HCA receiving customer introductions from HJL to facilitate customers moving their pensions to SIPPs investing in the Loan Notes

"File Review Sheets" means the three documents purporting to be records of file reviews conducted by Mr Henderson which were provided to the Authority on 16 February 2015

"FOS" means the Financial Ombudsman Service

"FSCS" means the Financial Services Compensation Scheme

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

"HCA" or "the Firm" means Henderson Carter Associates Limited

"HJL" means Hennessy Jones Limited, now known as Reditum Capital Limited. HCA signed a contract with HJL on 30 October 2013 for HJL to become an IAR of HCA, and HJL was registered with the Authority as such between 18 December 2013 and 20 March 2015. HJL introduced customers to HCA between October 2013 and March 2015. HJL also performed the Outsourced Functions on behalf of HCA between May 2014 and October 2014

"IAR" means Introducer Appointed Representative

"Loan Notes" means the assets, which consisted of 10-year loans to funds incorporated in Mauritius and managed by a Mauritian company, into which HCA's customers' pensions were invested

"Outsourced Functions" means the functions outsourced by HCA to the Service Providers under the Pension Review and Advice Process, including the functions described at paragraph 2.7(2) of this Notice (but not including the functions carried out by HJL in its role as an introducer)

"Pension Review and Advice Process" means the process described in paragraph 2.7 of this Notice that HCA used between around January 2014 and 8 July 2015

"Pension Summary Report" means the report given to HCA's customers indicating whether and by how much the customer could potentially benefit from a Pension Switch

"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)

"Person A" means the individual who had an influential role at HJL, referred to in paragraph 4.36 of this Notice

"PRIN" means the Authority's Principles for Businesses

"Relevant Period" means 30 October 2013 to 8 July 2015 inclusive

“Service Providers” means collectively HJL, CAL and Company A

“SIPP” means self-invested personal pension

“SIPP Provider” means the firm providing the SIPP account

“Software” means the automated client management system that was used by the Service Providers 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 Warning Notice” means the warning notice given to HCA dated 7 February 2018

4. FACTS AND MATTERS

Background

- 4.1. HCA is a small firm based in Neston, Merseyside. It was authorised by the Authority on 15 February 2010 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, Mr Henderson was the only person at HCA approved to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting), was one of three persons approved to perform the CF30 (Customer) controlled function, and was the sole individual responsible for running the aspects of HCA’s business addressed in this Notice. Mr Henderson was an experienced and qualified financial adviser and the only adviser at HCA involved in the switching or transferring of customers' pensions to SIPPs investing in the Loan Notes.
- 4.3. Between 30 October 2013 and around August 2014, the Firm used the Execution-only Process, which involved it receiving customer introductions from HJL to

facilitate customers moving their pensions to a SIPP investing in high risk, illiquid assets not regulated by the Authority (the Loan Notes) in which HJL had a material financial interest, a fact which Mr Henderson knew was not disclosed to customers.

- 4.4. From around January 2014 until 8 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) the Service Providers performing the Outsourced Functions on behalf of HCA, as follows:
 - (a) between January 2014 and May 2014, the Outsourced Functions were performed by Company A;
 - (b) between May 2014 and October 2014, the Outsourced Functions were performed by HJL; and
 - (c) between October 2014 and July 2015, the Outsourced Functions were performed by CAL, a third party service provider closely connected to HJL; and
 - (3) little meaningful oversight by HCA of HJL's activities as an introducer and of the Service Providers' performance of the Outsourced Functions.
- 4.5. The Pension Review and Advice Process was structured to result in customers who met certain pre-set criteria approved by Mr Henderson being advised to switch their pensions to SIPPs investing in the Loan Notes. As with the Execution-only Process, Mr Henderson was aware that HJL's financial interest in the Loan Notes was not disclosed to customers.

Loan Notes

- 4.6. Both the Execution-only Process and the Pension Review and Advice Process resulted in customers' pensions being switched or transferred to SIPPs with a portfolio of underlying assets which consisted of 10-year loans to funds incorporated in Mauritius and managed by a Mauritian company (the Loan Notes).
- 4.7. 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 Loan Notes 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.

4.8. Customers were told that the portfolios offered fixed returns and a capital guarantee. In fact, the Loan Notes 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 company issuing the Loan Notes, 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 company, which is 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.

4.9. A "capital guarantee" was meant to be provided by way of insurance, but this insurance was not (and, as far as the Authority is aware, is still not) in place for all the funds. None of the insurance policies have been provided to the Authority and it has therefore not been possible to confirm the extent of cover provided by the policies which have been put in place or even whether the insurance is valid. Where insurance is in place it may be of limited value to customers in that it is not directly for the benefit of the customers investing in the Loan Notes. Further, the insurance company is based in Saint Kitts and Nevis and is subject to significantly less stringent regulatory requirements than insurance companies within, for example, the UK. Customers were not told about any of the above important risk factors.

4.10. Although customers may request the repayment of their funds, this is subject to a minimum 12 months' notice period and the board of directors of each fund has the discretion to refuse to repay the funds in certain circumstances. Further, the Loan Notes are not regulated by the Authority and are not covered by FOS or FSCS protection, and in the event of insolvency customers will be unsecured creditors, a fact that customers were not told about either before or after they agreed to switch or transfer their pensions.

Failures in the Firm's due diligence on the Loan Notes

- 4.11. 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.
- 4.12. Although Mr Henderson was aware of the need to undertake adequate due diligence, he failed to carry out any meaningful due diligence in relation to the Loan Notes before HCA adopted the Pension Review and Advice Process. Mr Henderson relied solely on documents provided to HCA by HJL and conducted no independent due diligence on the Loan Notes. Despite the fact that HJL had a material financial interest in the Loan Notes, which was obvious from the information provided to HCA, Mr Henderson, and therefore HCA, did not take any actions to address the risk that the information provided by HJL could be misleading or incomplete.
- 4.13. Even on the limited information considered by Mr Henderson it should have been obvious to him, as an experienced and qualified financial adviser, that the Loan Notes were high risk investments which were unlikely to be suitable for HCA's 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 Henderson, and therefore HCA, failed to give due consideration to the risk that the Loan Notes were unsuitable.

Failures in the Firm's due diligence on the lead generation process

- 4.14. HJL was an IAR of HCA between no later than 18 December 2013 and 20 March 2015 and as such HCA had responsibility for HJL's conduct as its introducer. HJL introduced customers to HCA from the date of HJL's IAR contract with HCA, dated 30 October 2013. At no point, either before appointing HJL to be its IAR or afterwards, did HCA take any steps to establish that the lead generators used by HJL generated their customer introductions in an appropriate manner and, in particular, to ensure that they did not use unlawful cold calling. In fact, the Authority has evidence suggesting that one of the firms used by HJL used cold calling to generate customer introductions in breach of relevant legislation.

The Execution-only Process

- 4.15. On 30 October 2013 HCA adopted the Execution-only Process, which moved customers' pensions from existing pension arrangements to SIPPs investing in the Loan Notes. Between October 2013 and approximately August 2014, 162 customers of HCA moved their pensions in this way. This amounted to approximately £7 million of customer funds.
- 4.16. Under the Execution-only Process, HJL provided pre-packaged customer files which HCA then put its name to as the authorised firm. HCA did not charge customers a fee for the execution-only pension switching service on the understanding that it would be able to contact the customers about other products and services in the future.

The Pension Review and Advice Process

- 4.17. HCA decided to move away from the Execution-only Process and instead use the Pension Review and Advice Process in around January 2014 (although it continued to deal with existing customers in the Execution-only Process until around August 2014). HCA made the change in order to generate fees by providing advice to customers and also because it was aware of publications by the Authority which raised concerns about execution-only Pension Switches to SIPPs. The Pension Review and Advice Process was based on a pension switching advice model, the development of which was initiated and influenced by HJL. HJL had been seeking an efficient process, to be adopted by an authorised financial adviser, for advising customers who met certain criteria to switch their pensions to SIPPs investing in the Loan Notes. HCA was responsible for the advice given to customers through the Pension Review and Advice Process. However, HJL continued to source leads from lead generation companies and introduce customers to HCA, and significant parts of the process (the Outsourced Functions) were outsourced to the Service Providers.
- 4.18. 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 a Service Provider, which would obtain information about the customer's existing pension arrangements. The Service Provider would 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 save costs if they changed their pension arrangements. The Service Provider would attend a

face-to-face meeting with the customer to present the Pension Summary Report and promote HCA's advice service.

- 4.19. If the customer signed a service proposition confirming that they wished to receive advice from HCA, the Service Provider would collect relevant documents from the customer and conduct a scripted fact-finding exercise. The Service Provider would input the results of the fact-find into the Software, which would determine, based on pre-set criteria approved by Mr Henderson, whether the customer should be advised to invest in the Loan Notes and produce a Suitability Report containing a personal recommendation. The Service Provider 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 that they were being contacted by a third party, so some customers may have been under the impression that they were dealing with staff from HCA itself.
- 4.20. HCA allowed the Service Providers to perform the Outsourced Functions with little or no oversight. Although the Suitability Reports were issued in HCA's name, HCA had no involvement in the assessment of suitability for individual customers or in the production of the Suitability Reports. Mr Henderson's electronic signature and the Firm's letterhead and logo were simply added to documents provided by the Service Providers to customers, including the Suitability Report. As such, HCA did not have control over the advice given in its name.
- 4.21. Between January 2014 and July 2015, HCA advised 717 customers to switch or transfer their pensions to a SIPP investing in the Loan Notes through the Pension Review and Advice Process. This amounted to approximately £27 million of customer funds.
- 4.22. HCA 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, HCA 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 May 2014 and June 2015, HCA received £947,443 in advice or ongoing servicing fees. HCA paid over £224,000 of its fees to HJL and over £427,000 to CAL for their roles in the Pension Review and Advice Process.

Conflicts of interest

- 4.23. A firm must take reasonable steps to identify whether a conflict of interest exists between itself and its appointed representatives (and certain other people

connected with the firm) on the one hand and clients of the firm on the other (SYSC 10.1.3R). When considering if a conflict of interest exists firms should take into account whether, among other things, the firm or its appointed representative has an interest in the outcome of a service provided to a client or a transaction carried out on behalf of the client which is distinct from the client's interest in that outcome (SYSC 10.1.4R(2) and SYSC 10.1.4AG). This is to ensure that the firm is aware of any undue influence which could impede it from acting in the interests of its customers. Where a conflict of interest is identified a firm must manage the conflict appropriately (SYSC 10.1.7R). Where a firm cannot ensure that the interests of a client will not be damaged as a result of a conflict, the firm must disclose the nature or sources of the conflict and the steps taken to mitigate it (SYSC 10.1.8R).

- 4.24. HJL's involvement in both the Execution-only Process and the Pension Review and Advice Process created an obvious conflict of interest because both processes were structured to result in customers switching their pensions to SIPPs investing in the Loan Notes, in which HJL had a material financial interest.
- 4.25. Mr Henderson, and therefore HCA, knew that HJL's motive for introducing customers to HCA was that it wanted customers to invest in the Loan Notes and knew that HJL received 5% of the sums invested in the Loan Notes. Further, Mr Henderson knew that HJL and the issuer of the Loan Notes shared a common director, Mark Stephen. However, HCA took no steps to manage these conflicts of interest and its customers were not made aware of the common directorship or of how HJL was remunerated.

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

- 4.26. Mr Henderson, on behalf of HCA, was involved in preparing, reviewing and approving templates of various documents used in the Pension Review and Advice Process, including fact-find scripts and template Suitability Reports, and 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 Loan Notes.
- 4.27. HCA 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 Henderson prepared, reviewed and approved included the service proposition which customers had to sign to confirm that they wished to receive advice from HCA 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”.

- 4.28. HCA 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 were intended to be recommended to customers through the Pension Review and Advice Process were the Loan Notes. Further, HCA was aware, from May 2014, that the Outsourced Functions would be performed on its behalf by HJL, which had a material financial interest in the Loan Notes, and from October 2014, that they would be performed by CAL, which was closely connected to HJL.
- 4.29. There were other significant obvious deficiencies in the Pension Review and Advice Process which HCA should have identified had it 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 Loan Notes 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 Loan Notes. The customers' stated preferences for fixed returns and/or a capital guarantee were used to justify recommending the Loan Notes, which customers were told offered fixed returns and a capital guarantee. Customers were not asked any other questions about their investment objectives.

- (2) The fact-find also 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 staff of the relevant Service Provider, 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, Mr Henderson did not supervise the conduct of fact-finds, and did not have 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 Loan Notes 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 Loan Notes did not fully inform customers of their costs, benefits and risks. In particular:
 - (a) important information about the risks of the Loan Notes 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 Loan Notes provided a fixed return and a capital guarantee. 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 issuer of the Loan Notes performed poorly, it might not be able to make interest payments to customers and/or repay capital. Further, any request for early repayment of capital was at the discretion of the issuer. It was particularly important that customers were made aware of these risks given the issuer had no track record and the underlying assets were illiquid and high risk; and

(d) whilst the advice provided would be covered by FOS and the FSCS, customers were not told that if the Loan Notes failed, they would be unable to make a complaint or claim to the FOS and/or the FSCS, as the issuer and the Loan Notes were not regulated by the Authority.

(5) The conflicts of interest continued for the duration of the Relevant Period, throughout which HJL maintained a material financial interest in the Loan Notes and Mr Stephen remained a common director of HJL and of the issuer of the Loan Notes. However, Mr Henderson, and therefore HCA, took no steps to manage these conflicts of interest, and customers were not made aware of how HJL was remunerated or of Mr Stephen's common directorships.

4.30. 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 Henderson 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 Loan Notes and, as detailed below, two of the Service Providers), HCA adopted and used a non-compliant process without giving any meaningful consideration to the interests of customers.

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

4.31. HCA had negligible involvement in the Pension Review and Advice Process. For example:

(1) HCA had no involvement in contacting the customer's existing pension provider.

- (2) HCA had no involvement in conducting the fact-find with the customer and reviewed only some of the fact-finds before advice was provided to the customer.
- (3) HCA had no involvement in preparing the Suitability Report for the customer. HCA did not review any of the Suitability Reports for suitability before they were provided to customers, and on those occasions when it did check a report, it only checked whether there had been numerical or spelling errors. HCA did not give any meaningful consideration to whether the personal recommendation was suitable for the customer.
- (4) HCA had no involvement in any further work done for a customer once the Suitability Report 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 customers chose to invest in the Loan Notes. As a result, HCA did not know which customers completed Pension Switches or Pension Transfers.
- (5) HCA had no contact with the customers during the Pension Review and Advice Process unless specifically requested.

4.32. HCA's compliance procedure, which was produced by HCA's external compliance consultant, required it to check 30% of high risk pension cases after the Suitability Report was provided to the customer. The advice relating to the Loan Notes would have fallen within HCA's classification of high risk advice. Despite this, HCA did not check the suitability of the advice provided to any customers after the Suitability Report had been issued.

Failures in the Firm's due diligence on HJL and CAL

4.33. Principle 3 of the FCA'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 HCA, 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 of functions 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).

4.34. HCA agreed to HJL acting as introducer and to HJL and CAL performing the Outsourced Functions on its behalf without giving any proper consideration to whether they were suitable to perform those activities.

4.35. HCA carried out no meaningful due diligence on HJL. Mr Henderson also told the Authority that he believed that the fact that Company A, which was registered with the Authority as an appointed representative of an authorised firm, had a business relationship with HJL constituted independent due diligence on HJL.

4.36. Despite the limited due diligence carried out, HCA, through Mr Henderson, became aware at an early stage of implementing HCA's business relationship with HJL that Person A, an individual who had an influential role at HJL, had been convicted for blackmail and offences under the Insolvency Act 1986 and remained an undischarged bankrupt due to having hidden assets from his creditors. Mr Henderson did not consider whether it was appropriate to outsource important operational functions to HJL in those circumstances.

4.37. When CAL took over the responsibilities of HJL in performing the Outsourced Functions, Mr Henderson, and therefore HCA, carried out no due diligence on CAL and was even unaware of who all the directors of CAL were.

The Authority's review of 20 customer files

4.38. Given that all of HCA's advised 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 the Loan Notes which was undisclosed to customers, the Pension Review and Advice Process

clearly put HCA's customers at serious risk of receiving unsuitable advice and therefore at serious risk of investing in products that were not suitable for them.

4.39. Nevertheless, the Authority has reviewed the advice given to 20 of HCA's customers during the period from 6 January 2014 to 24 April 2015 using recordings of calls and meetings, where they were available, and copies of the customer files maintained by the Service Providers.

4.40. The advice given to the customer was clearly unsuitable in all 20 files. As the same process was used for all advice relating to the Loan Notes, the Authority considers it is likely that the advice provided to most, if not all, of HCA's 717 advised customers was unsuitable.

4.41. 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 Loan Notes were not suitable due to the illiquid nature and high risk of the investments made by the company issuing the Loan Notes and the limited regulatory oversight of the issuing company (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 Loan Notes were suitable for a customer's demands and needs and also 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 Loan Notes did not adequately explain the risks and possible disadvantages of investing in the Loan Notes

and did not disclose to customers that HJL would receive an initial fee of up to 5% of the funds raised for the Loan Notes (COBS 2.1.1R and 9.2.1R).

4.42. In addition, the Authority identified:

- (1) one case where investment advice had been given about a Pension Transfer outside of HCA's permission;
- (2) one case where the recommendation was not suitable as the customer lost existing benefits (life assurance) (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, a customer stated that he wished to have variable rather than fixed returns but the recommendation was justified on the basis that his capital should be guaranteed. After the recommendation was issued, the customer made the Service Provider aware that he had developed a serious medical condition but the suitability of the recommendation was not reconsidered;
- (4) six 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 Loan Notes even though this would be £5,400 more expensive at the medium return level than remaining in their existing pension, and the customer lost £15,000 on the transfer value of the pension compared to the fund value;
- (5) 14 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 independent financial adviser 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 Loan Notes were

the only product that was 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 Mauritian funds (and the assets they purchased) did not perform adequately, and that any request for early repayment of capital was at the issuer's discretion; and
 - (d) the advice was covered by FSCS, without making it clear that any losses incurred by the failure of the Loan Notes 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

- 4.43. HCA was not authorised to advise on Pension Transfers. However, in allowing the Service Providers to perform the Outsourced Functions on HCA's behalf without adequate supervision, 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.
- 4.44. This in fact happened. On 16 February 2015, Mr Henderson informed the Authority that 19 Pension Transfers had been conducted outside of HCA's permission. The Authority has obtained additional information which shows that in fact HCA advised at least 45 customers to transfer their pensions from an occupational pension scheme to a SIPP. Not all of these customers transferred their pensions, but at least 26 customers transferred total funds of approximately £549,000.

Misleading the Authority

- 4.45. Mr Henderson, on behalf of HCA, deliberately provided false and misleading information to the Authority.

- 4.46. On 27 January 2015 the Authority selected three customers from HCA's new business register, and asked Mr Henderson to provide it with copies of the three files. On 16 February 2015 Mr Henderson provided the three files. Each customer file contained a file review sheet that purported to show a file review had been completed by Mr Henderson. The File Review Sheets stated that Mr Henderson had reviewed each of the files, in March, April and August 2014 respectively. When providing the files to the Authority on 16 February 2015, Mr Henderson also told the Authority that he reviewed around 30% of high risk customer files, which would include Pension Switches, to confirm they were compliant.
- 4.47. In fact, Mr Henderson had conducted no reviews of the advice provided to customers through the Pension Review and Advice Process. Instead he specifically created the File Review Sheets for provision to the Authority to give a false impression that compliance checks were being conducted.

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) HCA acted recklessly by closing its mind to the conflict of interest inherent in the Execution-only Process. HCA was aware of HJL's involvement in this process and of HJL's financial interest in the Loan Notes, but took no steps to manage it or to ensure that HJL's financial interest in the Loan Notes was disclosed to customers.
 - (2) HCA 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 HCA 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.

- (3) HCA'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 HCA'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 HCA 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) HCA failed to carry out adequate due diligence on the Loan Notes before agreeing that they should be recommended to customers. HCA relied solely on documents provided to it by HJL despite knowing that HJL had a material financial interest in the Loan Notes, and did not take any actions to address the risk that the information provided by HJL could be misleading or incomplete. In any event, it should have been obvious to HCA from the limited information that it considered that the Loan Notes were high risk investments that were unlikely to be suitable for its customers, except in very limited circumstances. However, HCA failed to give due consideration to the risk that the Loan Notes were unsuitable.
 - (b) HCA 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 cold calling.
 - (c) HCA 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 SIPP's investing in assets in which HJL had a material financial interest. Further, HCA knew that HJL and the issuer of the Loan Notes shared a common director, Mr Stephen. However, HCA took no steps to manage these conflicts of interest or to ensure that Mr Stephen's common directorship and how HJL was remunerated were disclosed to customers.
 - (d) HCA failed to give due considerations 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 HCA from the information available to it that the Pension Review

and Advice Process did not comply with the Authority's rules. However, HCA failed to give any meaningful consideration to whether or not it was compliant.

- (e) HCA 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 its customers. Further, HCA failed to review in a meaningful way advice given through the Pension Review and Advice Process, whether before recommendations were sent to customers or at all.
 - (f) HCA failed to put in place and operate appropriate systems and controls and compliance arrangements to oversee and monitor the Pension Review and Advice Process.
 - (g) HCA agreed to work with HJL and CAL without giving any proper consideration to whether they were suitable to perform services on its behalf. HCA failed to carry out adequate due diligence on HJL and CAL before agreeing to work with them.
- (4) HCA, through Mr Henderson, deliberately provided false and misleading information to the Authority about the compliance checks that it was undertaking. The Authority considers this was done intentionally to try to prevent the Authority from identifying misconduct by the Firm and Mr Henderson, and that HCA thereby acted dishonestly.

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 45 Pension Transfers during the Relevant Period.

6. SANCTION

Financial penalty

- 6.1. The Authority considers that, were it not for the fact that the Firm is in liquidation (see paragraph 6.31 below), it would be appropriate to impose a financial penalty on HCA 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. It is not practicable to quantify the benefit that the Firm derived from its breaches of Principle 1 and section 20 of the Act.
- 6.5. Step 1 is therefore £0.

Step 2: the seriousness of the breach

- 6.6. 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.
- 6.7. 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 generated by the Firm during the Relevant Period. The Authority considers the Firm's relevant revenue for this period to be £959,943.
- 6.8. 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%

- 6.9. 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

- 6.10. The Firm adopted the Pension Review and Advice Process motivated by the prospect of making significant financial gain for doing very little. HCA adopted the Execution-only Process on the understanding that it could contact the execution-only customers about other products and services in the future and thereby generate revenue for the Firm (DEPP 6.5A.2G(6)(a)).
- 6.11. 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 Loan Notes (DEPP 6.5A.2G(6)(c)).
- 6.12. A large number of customers were given advice by HCA 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

- 6.13. The Firm breached both Principle 1 and section 20 of the Act over an extended period of time (DEPP 6.5A.2G(7)(a) and (b)).
- 6.14. The breaches of both 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)).
- 6.15. Mr Henderson, the only person approved to perform the CF1 (Director) controlled function at the Firm, was responsible for the breaches of both Principle 1 and section 20 of the Act (DEPP 6.5A.2G(7)(d)).
- 6.16. The Firm failed to conduct its business with integrity because it acted dishonestly and/or recklessly throughout the Relevant Period (DEPP 6.5A.2G(7)(g)).

Reckless misconduct

- 6.17. The Firm acted recklessly in respect of the Execution-only Process and the Pension Review and Advice Process, as described in paragraphs 5.3(1) and (3) of this Notice (DEPP 6.5A.2G(9)(a)).

Deliberate misconduct

- 6.18. 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)).
- 6.19. The Firm deliberately provided false and misleading information to the Authority about the compliance checks being undertaken by Mr Henderson (DEPP 6.5A.2G(8)(c)).

Level of seriousness

- 6.20. 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.2(11)(f)). The Firm's breach of section 20 of the Act was committed recklessly (DEPP 6.5A.2G(11)(f)).
- 6.21. 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.

6.22. Taking all of these factors into account, the Authority considers the seriousness of HCA's breaches to be level 5 and so the Step 2 figure is 20% of £959,943.

6.23. Step 2 is therefore £191,988.

Step 3: mitigating and aggravating factors

6.24. 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.

6.25. 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 in March 2014, on the application by the Firm, the Authority imposed a restriction on the type of investments that it could offer customers. HCA was therefore aware of the Authority's concerns with customers investing their pensions in high risk unregulated investments (DEPP 6.5A.3G2(i));
- (2) on 18 January 2013, 28 April 2014 and 26 August 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) the Authority in September 2014 specifically sent copies of the alerts referred to above to Mr Henderson and highlighted the Authority's concerns. Mr Henderson failed to bring the Pension Review and Advice Process to the attention of the Authority or to implement changes to the process (DEPP 6.5A.3G(2)(a)).

6.26. The Authority considers that there are no factors that mitigate the breaches.

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

6.28. Step 3 is therefore £239,985.

Step 4: adjustment for deterrence

- 6.29. 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.
- 6.30. The Authority considers that the Step 3 figure of £239,985 represents a sufficient deterrent, and so has not increased the penalty at Step 4.

Serious financial hardship

- 6.31. Pursuant to DEPP 6.5D.4G, the Authority will consider reducing the amount of a penalty if a firm will suffer serious financial hardship as a result of having to pay the entire penalty. The Firm is currently in liquidation. The Authority would, in the interests of creditors, want any assets to be made available to its creditors. The Authority has not imposed penalties in cases involving insolvent firms where the imposition of a penalty would impact adversely on creditors. On that basis, the Authority has decided not to impose a financial penalty on the Firm.
- 6.32. Step 4 is therefore £0.

Step 5: settlement discount

- 6.33. 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.
- 6.34. No settlement discount applies.
- 6.35. Step 5 is therefore £0.

Penalty

- 6.36. The Authority would have imposed a financial penalty of £239,900 (rounded down to the nearest £100) on the Firm for breaching Principle 1 and section 20 of the Act. However, taking into account the financial circumstances of the Firm, the Authority has decided not to impose a financial penalty.

Statement of Misconduct

- 6.37. The Authority's position in relation to the imposition of a public censure is set out in Chapter 6 of DEPP. DEPP sets out non-exhaustive factors that may be of particular relevance in determining whether it is appropriate to issue a financial censure rather than a financial penalty. DEPP 6.4.2G(1) indicates that it may be a factor whether or not deterrence may be effectively achieved by issuing a public censure. Further DEPP 6.4.2G(7) indicates that a relevant factor is the Authority's approach in previous similar cases to ensure a consistent approach to its decisions.
- 6.38. As is explained in paragraph 6.31 above, the Authority has had regard to the need to balance deterrence against the need to act in the wider interests of creditors and has decided not to impose a financial penalty on the Firm on the basis that a financial penalty would impact adversely on creditors. Instead, the Authority has decided to issue a statement of the Firm's misconduct under section 205 of the Act.

7. REPRESENTATIONS

- 7.1. HCA did not make any representations on the Warning Notice. However, Annex B contains a brief summary of the key representations made by HJL, Mark Stephen and Person A as persons 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 HJL, Mr Stephen and Person A, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

- 8.1. This Notice is given to HCA under section 208 of the Act and in accordance with section 388 of the Act.

Decision maker

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

The Tribunal

- 8.3. HCA 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, HCA 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) any secondary material which, in the opinion of the Authority, might undermine that decision.
- 8.9. There is no such secondary material.

Third party rights

- 8.10. A copy of this Notice is being given to HJL, CAL and Mark Stephen 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

- 8.11. 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.

- 8.12. 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

- 8.13. 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 205 of the Act, if the Authority considers that an authorised person has contravened a relevant requirement imposed on the person, it may publish a statement to that effect.
- 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), 8.1.11AG, 10.1.3R, 10.1.4R(2), 10.1.4AG, 10.1.7R and 10.1.8R.

ANNEX B

REPRESENTATIONS

Representations received from HJL, Mr Stephen and Person A (the “third parties”)

1. The third parties’ representations (in italics), and the Authority’s conclusions in respect of them, are set out below:

The development of the Software and the pension switching advice model

2. *HJL did not develop the Software or the pension switching advice model. They were instead designed by two individuals at Company A.*
3. 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.
4. 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

5. *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.

6. The Authority has not found that HJL cold called customers. Instead, the Authority has found that HCA 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 cold calling. As such, HCA did not know whether leads were generated by 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

7. *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.*
8. This Notice relates to the conduct of HCA and the steps it took to manage, disclose and mitigate the potential conflicts of interest 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 HCA's misconduct.

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

9. *HJL's qualification to operate the Software was its having staffing and organisational capacity to do so, when its predecessor in the role (Company A) did not. Moreover, the Authority has failed to explain on what basis it implicitly contends that HJL was unsuitable.*
10. When outsourcing functions to a third party, authorised firms which are not common platform firms (such as HCA) must comply with Principle 3 of the FCA's Principles for Business, and should also have regard to applicable rules and guidance in SYSC. The relevant rules and guidance are set out in paragraph 4.33 of this Notice. In light of these rules and guidance, HCA 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.
11. HCA 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). The Authority considers that such due diligence should go beyond merely ensuring that HJL had the staffing and organisational capacity to carry out the Outsourced Functions or its lead generation activities. In addition, as part of HCA's due diligence it could have considered, for example, the suitability of HJL's management and the quality of its staff.

Reference to Person A's criminal record and bankruptcy

12. *Person A was at all material times a consultant to HJL, and he played a limited role as regards the Pension Review and Advice Process. There is no need to refer to Person A's criminal record and bankruptcy since these matters were not relevant to any risk assessment that the Firm needed, on the facts of this case, to have carried out. It is also denied, to the extent that it is alleged, that it would not have been appropriate for the Firm to enter into a business relationship with HJL because of these matters.*

13. In the Authority's view, the evidence supports its conclusion that Person A played a significant part in the Pension Review and Advice Process and had an influential role at HJL. For example, his job title in HJL's organisation chart was "Senior Investment Manager", he was one of three representatives from HJL at meetings with the SIPP Provider (along with Mr Stephen and another HJL director) and he was described by an individual at Company A as being an important part of HJL. The Authority considers that it is appropriate to refer to Person A's background, which demonstrates a serious failure to act with integrity. When considering whether to outsource important functions to a third party, especially where the third party will be responsible for most of the customer contact, the extent to which customers could be exposed to persons who have demonstrated a lack of integrity should be a fundamental consideration. HCA's failure to consider this illustrates its failure to give proper consideration to whether HJL and CAL were suitable to perform services on its behalf.

Other entities were involved with the use of the Software during the Relevant Period but have not been addressed in the Warning Notice to the same extent as HJL

14. *HJL discharged its limited processing functions for the period May to October 2014. At other times in the Relevant Period these functions were discharged by Company A and CAL, and particularly in relation to the former, the Warning Notice is practically silent. However, HJL is named frequently throughout the Notice.*

15. Each of the relevant entities that were involved in the Pension Review and Advice Process are mentioned to the extent necessary to describe the facts and matters relied on in reaching the decision to take the action set out in paragraph 1.1 of the Notice. The fact that HJL is mentioned more often than other third parties is a reflection of its greater role in the Pension Review and Advice Process, in particular, its role in the development of the model on which the process is based, its lead generation activities, its role in relation to the products recommended through the process, and its financial interest in those products.

Reference to "Company A" requires explanation

16. *The rationale for anonymising Company A is not clear. As a matter of fairness, the identity of Company A should be provided to the third parties.*
17. The Authority has not named Company A as it considers there is no need to do so in order to explain its role in the matters described in the Notice, and its anonymisation means it is not identifiable. The Authority considers the anonymisation of Company A does not cause prejudice to any of the third parties as the definition in the Warning Notice gives sufficient explanation of the entity and its relevance to the findings. In any event, the third parties can easily find out the identity of Company A from the investigation report, a copy of which has been provided to them.

Anonymisation of HJL and Mr Stephen

18. *If other companies can be anonymised (for example, Company A) without undermining the purpose of the Notice, there is an unreasonable difference in treatment between those parties that are named (in particular, HJL and Mr Stephen), and those that are not. If the FCA insists on anonymisation for Company A 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 and Mr Stephen are not identified by name. Further, HJL's commercial interests will be significantly harmed if it is named in the Notice.*
19. The Authority does not agree that there is an unreasonable difference in treatment between HJL and Company A. This is for two reasons: first, because of HJL's central role in the Pension Review and Advice Process, compared to that of Company A. In particular, HJL initiated and influenced the development of the pension switching advice model, brought the model to the attention of the Firm, performed the Outsourced Functions and had a material financial interest in the Loan Notes. 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 Authority's Financial Services Register names HJL as an IAR of HCA between 18 December 2013 and 20 March 2015, and the Authority considers it is necessary to include detail in the Notice about HJL, including that it was an IAR and the time period that it was registered as an IAR, in order to explain the relationship between HJL and HCA. 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.

20. The Authority has decided to name Mr Stephen for similar reasons. Companies House records show he was one of only two directors of HJL during the Relevant Period. Further, as a director, he was responsible for the day-to-day operation of HJL during the Relevant Period.