

Robin Crispin Odey has referred this Decision Notice to the Upper Tribunal to determine: (a) in relation to the FCA's decision to impose a financial penalty, what (if any) is the appropriate action for the FCA to take, and remit the matter to the FCA with such directions as the Tribunal considers appropriate; and (b) in relation to the prohibition order, whether to dismiss the reference or remit it to the FCA with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal.

Therefore, the findings outlined in this Decision Notice reflect the FCA's belief as to what occurred and how it considers the behaviour of Mr Odey should be characterised. The proposed action outlined in the Decision Notice will have no effect pending the determination of the case by the Tribunal. The Tribunal's decision will be made public on its website.

DECISION NOTICE

To: **Robin Crispin William Odey**

Individual Reference Number: **RCO01013**

Date: **3 March 2025**

1. ACTION

- 1.1. For the reasons given in this Decision Notice, the Authority has decided to:
- (1) impose on Mr Odey a financial penalty of £1,835,200 pursuant to section 66 of the Act; and
 - (2) make an order pursuant to section 56 of the Act prohibiting Mr Odey from performing any function in relation to any regulated activities carried on by an authorised person, exempt person, or exempt professional firm.

2. SUMMARY OF REASONS

- 2.1 Mr Odey was the founder and majority owner of Odey Asset Management LLP ("OAM"), an investment management and advisory firm based in London. During the relevant period (24 December 2021 to 17 November 2022), Mr Odey was a certification employee at OAM and was therefore required to comply with the provisions of the Authority's Code of Conduct. He also at times held Senior Management Functions.

- 2.2 For the reasons set out in this Notice, Mr Odey breached the Authority's Individual Conduct Rule 1 ("ICR 1"): "You must act with integrity".
- 2.3 Mr Odey's conduct summarised below demonstrates a clear lack of integrity because Mr Odey's actions:
- (1) were deliberately designed to frustrate OAM's ongoing disciplinary process into his conduct, in order to protect his own interests; and
 - (2) showed a reckless disregard for OAM's governance and caused OAM to breach certain regulatory requirements.
- 2.4 Furthermore, Mr Odey's conduct was such that he does not meet the Fit and Proper test contained in the Authority's Handbook due to his lack of integrity.
- 2.5 Between September 2020 and January 2021, following allegations of sexual harassment by two employees, OAM's ExCo conducted an internal investigation which included an allegation of sexual assault by Mr Odey on a female member of staff in 2005, and identified numerous allegations of sexual harassment by Mr Odey of female members of staff between 2003 and 2020. ExCo concluded that Mr Odey had behaved inappropriately towards a number of female members of staff and judged this conduct to fall short of the standards to be expected with reference to OAM's own policies and procedures. Nevertheless, ExCo concluded that Mr Odey's proven behaviour had not amounted to a breach of the Authority's Conduct Rules and judged that he continued to be fit and proper to perform a regulated role within OAM. Mr Odey subsequently received a "Final Written Warning for Misconduct" dated 4 February 2021.
- 2.6 The Final Written Warning stipulated, amongst other things, particular conditions with which Mr Odey was required to comply. These conditions included that Mr Odey's interactions with all staff would be professional and in line with OAM's policies and procedures, including OAM's Equal Opportunities Policy and Anti-Harassment and Bullying Policy. The Final Written Warning stated that failure to comply with these conditions was likely to lead to his removal from the OAM limited liability partnership. Mr Odey signed the Final Written Warning on 5 February 2021 to indicate his agreement to its terms.
- 2.7 On 28 September 2021, the Authority commenced investigations into the alleged non-financial misconduct of Mr Odey and into OAM's handling of the allegations against him. In October 2021, following concerns that Mr Odey may have breached the terms of the Final Written Warning, OAM's ExCo initiated a second investigation of Mr Odey's actions. On 30 November 2021, OAM's ExCo notified Mr Odey of a disciplinary hearing scheduled for 14 December 2021. Mr Odey requested that the hearing be rescheduled for 6 January 2022, to give him time to take advice from a new team of lawyers. ExCo accommodated Mr Odey and rescheduled the hearing as requested.
- 2.8 During this postponement, ExCo sought to make contingency plans to account for the disciplinary hearing's various possible outcomes, which included Mr Odey's dismissal from membership of OAM. When ExCo sought to engage with Mr Odey in relation to these plans, Mr Odey threatened to close OAM down in the event that ExCo dismissed him.
- 2.9 On 24 December 2021, Mr Odey used his majority shareholding to remove the existing members of ExCo and appoint himself as its sole member, assuming the SMF27 function under the 12-week Rule which may permit a non-approved individual to provide cover where the absence is temporary or reasonably

unforeseen, and the appointment is for less than 12 consecutive weeks in a consecutive 12-month period.

- 2.10 During an ExCo meeting on 6 January 2022 at which he was the sole member, Mr Odey decided that the disciplinary hearing into his conduct would be indefinitely postponed since he said he was unable to conduct it with impartiality.
- 2.11 On 12 January 2022, Mr Odey appointed two new ExCo members and resigned from ExCo. Mr Odey repeatedly sought to persuade the new ExCo members not to proceed with the disciplinary hearing until the conclusion of the Authority's investigation into his alleged non-financial misconduct.
- 2.12 On 3 March 2022, a further allegation of non-financial misconduct against Mr Odey was brought to ExCo's attention. Subsequently, ExCo suggested that any further delay in determination of the disciplinary process should be mitigated – in the interim – by the imposition of additional safeguarding measures together with the conditions contained in the Final Written Warning: these included the suggestion that Mr Odey work remotely. Mr Odey resisted the suggestions and said he would consider winding down the firm.
- 2.13 On 31 March 2022, Mr Odey again used his majority shareholding to remove OAM's ExCo members. He appointed himself as the sole member of ExCo, a position which he retained until he appointed two new members on 4 July 2022 and again resigned from ExCo. A third new member, a Non-Executive Board member, was appointed on 5 October 2022.
- 2.14 Mr Odey's repeated threats and interventions in OAM's disciplinary proceedings against him were likely further to entrench the view which existed within OAM that OAM was not effectively able to scrutinise Mr Odey's conduct at work or hold him accountable for inappropriate conduct towards female members of staff. This view was reflected in the Final Written Warning, which identified that because "*of a desire not to "ruffle feathers" or because of concerns that nothing would be done... [some] employees would rather say nothing or even resign" instead of lodging a complaint*". A failure to deal effectively with inappropriate behaviours in the workplace can lead to a culture where people feel unable to report concerns and have confidence that they will be independently and fairly assessed, and creates a risk that issues are not raised and improper conduct is not challenged. This has the potential to put consumers and markets at risk.

Lack of Integrity (Individual Conduct Rule 1)

- 2.15 Mr Odey's conduct summarised above demonstrates a clear lack of integrity and as such, Mr Odey breached ICR 1 and is not a fit and proper person to perform any function in relation to regulated activities.

Mr Odey's actions were deliberately designed to frustrate OAM's disciplinary process into his conduct in order to protect his own interests

- 2.16 Mr Odey dismissed OAM's existing ExCo members and appointed himself as the sole ExCo member on two occasions, to frustrate OAM's ongoing disciplinary process into his conduct and protect his own interests by removing the risk that ExCo might terminate his position at OAM. Mr Odey removed the members of OAM's ExCo on the second occasion having previously been warned by the Authority of the regulatory and governance consequences following his first removal of ExCo members.

- 2.17 OAM's employee policies and procedures were an integral part of its business and governance which ensured the firm was able to operate with appropriate internal controls within the regulated sector and fulfil its responsibilities to its employees. Mr Odey's actions demonstrated that he considered OAM's policies and procedures less important than his own interests at OAM such that, when enforcement of those policies and procedures posed a real risk of his removal from OAM, he would use his position to eradicate that risk.
- 2.18 As a result, Mr Odey operated in a firm where he could not be held fully accountable for his conduct.
- 2.19 Mr Odey's behaviour towards both OAM and the Authority lacked candour. He used improper means to protect his own interests and achieve his objectives - the reasons he gave for his dismissal of ExCo, and his conduct in his dealings with the Authority - also support the finding that he lacks integrity.

Mr Odey's actions showed a reckless disregard for OAM's governance and caused OAM to breach certain regulatory requirements

- 2.20 ExCo was OAM's governing body, with overall responsibility for running the business. It was responsible for risk management and governance throughout the business and had full authority to bind OAM in relation to financial and business matters, compliance, risk control, human resources issues and the promotion and development of the business. ExCo's responsibilities included reviewing investment risk information and taking decisions and actions in respect of the investment funds. It also had the power to overrule individual fund managers and impose compulsory investment risk reduction.
- 2.21 On both occasions, Mr Odey's removal of OAM's ExCo members created a risk of lack of effective risk management and governance at OAM by removing the necessary checks, balances and scope for challenge created through the effective operation of a governing ExCo consisting of more than one individual. OAM's Risk Committee, Finance Committee and Prudential (operational risk and compliance review) Committee became liable to report to Mr Odey alone, rather than to a committee of individuals as had previously been the case. This risked undermining effective decision-making and challenge regarding matters that might be raised with him by those committees.
- 2.22 By removing OAM's ExCo members and appointing himself as its sole member on two occasions, Mr Odey also caused OAM to breach the following important regulatory requirements:
- (1) The management of an AIFM (such as OAM) must be undertaken by at least two persons of good repute in accordance with SYSC 4.2.1R and SYSC 4.2.2R;
 - (2) There must be functional and hierarchical separation between the risk management and operating units of an AIFM, including portfolio management, in accordance with FUND 3.7.2R; and
 - (3) OAM's ability to assess Mr Odey's fitness and propriety on an ongoing basis, in accordance with the requirements of the Authority's Certification Regime.
- 2.23 The above breaches also negatively impacted OAM's ability to meet the Authority's threshold conditions, in particular the threshold conditions of effective supervision, appropriate resources and suitability.

- 2.24 As a result of the governance risks created by Mr Odey's actions, OAM had to notify its investors of these operational risks and, in June 2022, OAM ceased marketing its funds to new investors.
- 2.25 At the time of Mr Odey's dismissals of OAM's ExCo members, OAM held around £2.555 billion and £2.836 billion of funds under management in December 2021 and March 2022 respectively. Mr Odey had considerable industry experience and would have been aware of the risks to the firm's governance, to its regulatory status and ultimately to its investors posed by his actions. It was reckless of him to have exposed OAM and investors to those risks.

The Authority's action

- 2.26 For the reasons summarised above and further detailed in this Notice, the Authority has decided to impose on Mr Odey a financial penalty in the sum of £1,835,200 in respect of the breach of ICR 1 and to prohibit him on the basis that he is not fit and proper due to his lack of integrity.

3. DEFINITIONS

The definitions below are used in this Decision Notice:

"the 12-week Rule" is the rule in SUP 10C.3.13R in the Supervision sourcebook of the Handbook, which allows an individual, without being approved by the Authority, to provide cover for a person who has approval under section 59 of the Act to perform a designated Senior Management Function, where the absence is temporary or reasonably unforeseen, and the appointment is for less than 12 consecutive weeks in a consecutive 12-month period.

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

"AIF" means Alternative Investment Fund.

"AIFM" means Alternative Investment Fund Manager.

"the Authority" means the Financial Conduct Authority.

"Certification Function" means a significant-harm function that has been specified under section 63E of the Act by the Authority and which consequently is a specified function as defined in section 63E(2) of the Act.

"Certification Regime" means the element of the Senior Managers and Certification Regime referenced in SYSC which is relevant to employees performing the Authority's Certification Functions.

"DEPP" means the Decision Procedure and Penalties Manual, part of the Handbook.

"EG" means the Authority's Enforcement Guide.

"ExCo" means the Executive Committee of OAM.

"the Final Written Warning" means the Final Written Warning issued by OAM to Mr Odey on 4 February 2021 and signed by Mr Odey on 5 February 2021.

"FIT" means the Fit and Proper Test for Approved Persons and specified significant-harm functions section of the Handbook.

“FUND” means the Investment Funds sourcebook, part of the Handbook.

“Handbook” means the Authority’s Handbook of rules and guidance.

“OAM” or “the firm” means Odey Asset Management LLP.

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

“relevant period” means the period from 24 December 2021 to 17 November 2022.

“SMF” means Senior Management Function.

“Senior Management Function” means a function defined in section 59ZA of the Act, which is, in summary, (in relation to the carrying on of a regulated activity by an authorised person), any function if (a) the function will require the person performing it to be responsible for managing one or more aspects of the firm’s affairs, so far as relating to the activity; and (b) those aspects involve, or might involve, a risk of serious consequences (i) for the firm; or (ii) for the business or other interests in the United Kingdom.

“SUP” means Supervision, part of the Handbook.

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

“threshold conditions” means the conditions set out in Schedule 6 to the Act (as amended by the Financial Services and Markets Act (Threshold Conditions Order) 2013).

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

“the Warning Notice” means the Warning Notice dated 18 September 2024 given to Mr Odey.

4. FACTS AND MATTERS

Overview of OAM

- 4.1. OAM was an investment management and advisory firm based in London and is a limited liability partnership. OAM was established by Mr Odey in 1991 and was authorised by the Authority on 21 November 2002. OAM ceased being authorised on 24 May 2024.
- 4.2. During the relevant period, OAM had permissions to carry on regulated activities including advising on investments, arranging deals in investments, arranging safeguarding and administration of assets, dealing in investments as agent, making arrangements with a view to transactions in investments and managing investments. OAM was authorised as a full-scope AIFM, enabling it to undertake investment management for its AIFs.
- 4.3. OAM’s investment management services for its clients included pooled investment vehicles as well as segregated managed accounts for banks, pension plans, trusts, estates, charitable organisations and corporations. During the relevant period, OAM managed 22, and latterly 20 funds, with an average value of assets under management of approximately £2.925 billion, ranging from £2.555 billion to £3.230 billion. During this period, Mr Odey personally was responsible for the management

of seven, and latterly six funds, with an average value of assets under management of £862 million, ranging from £565 million to £1.351 billion.

- 4.4. OAM is currently in wind down and has been rehousing funds and transferring certain fund management activities to other asset managers.

ExCo's role within OAM's Governance Structure

- 4.5. Under OAM's governance structure, OAM's partners delegated exclusive responsibility for the management and control of the business and the affairs of the partnership to its ExCo. OAM's ExCo had full power and authority to bind OAM in relation to financial and business matters, compliance, risk control, human resources issues, and the promotion and development of the business.
- 4.6. ExCo's role included meeting informally on a weekly basis to discuss material issues relating to OAM's operations, including investment risk. It also met formally on a monthly basis to review and discuss the latest management accounts and any matters relating to finance, compliance, risk, operations, research, trading and sales. ExCo regularly reviewed investment risk information and was responsible for decisions and actions in respect of the investment funds. Whilst individual fund managers were responsible for risk management, including market, liquidity and Foreign Direct Investment risk, ExCo was ultimately responsible for decisions and actions in respect of OAM's investment funds.
- 4.7. Accordingly, ExCo was able to decide to overrule an individual fund manager and impose compulsory investment risk reduction in respect of a fund. ExCo's monthly meetings also included its review and discussion of Prudential Committee meeting minutes, OAM's liquidity and risk reports, fund performance, subscriptions and redemptions, and broker commissions.
- 4.8. OAM's ExCo members prior to Mr Odey's dismissal of the same on 24 December 2021 comprised an individual who had been OAM's Chief Operating Officer and Chief Financial Officer since 2001; OAM's Head of Research since 2005; and an individual who had been a fund manager at OAM since 2009, all of whom also had varied experience in the financial services industry prior to their roles at OAM.

Mr Odey's roles and responsibilities

- 4.9. Mr Odey was an experienced financial services professional who had previously held senior roles at OAM, which meant he was familiar with the significance of the role played by ExCo within its governance structure. Prior to the relevant period, Mr Odey held the following roles at OAM:
- (1) SMF1 (Chief Executive) and SMF27 (Partner) (9 December 2019 to 3 November 2020);
 - (2) CF3 (Chief Executive) and CF4 (Partner) (21 November 2002 to 8 December 2019);
 - (3) CF8 (Apportionment and Oversight) and CF27 (Investment Management) (21 November 2002 to 31 October 2007); and
 - (4) CF30 (Customer) (1 November 2007 to 8 December 2019).
- 4.10. Mr Odey was OAM's ultimate majority shareholder during the relevant period. He was also a fund manager at OAM during the relevant period, holding the client dealing Certification Function.

- 4.11. As set out below, at particular times during the relevant period Mr Odey also served as the sole member of ExCo. This was a position which required the Authority's approval to carry out a Senior Management Function. Mr Odey appointed himself to this role on two separate occasions and proceeded to perform the role without first seeking prior approval from the Authority, through his use of the Authority's 12-week Rule.

Regulatory requirements applicable to Mr Odey and OAM

- 4.12. Senior individuals at firms regulated by the Authority occupy a special position of influence and are accountable for their conduct and competence. In particular, where an individual has significant influence in an authorised firm, functionally and culturally, they have a responsibility to demonstrate high standards of integrity, probity and leadership. Senior individuals can have a substantial impact on the businesses they lead, as well as upon confidence in the wider financial services industry.
- 4.13. Their influence can also impact a firm's ability to meet the Authority's threshold conditions for authorisation on an ongoing basis, and other regulatory requirements. The standards of conduct expected are therefore necessarily high and are important to assist the Authority in furthering its statutory objectives of protecting and enhancing the integrity of the UK financial system and securing an appropriate degree of protection for consumers.
- 4.14. As a full-scope UK AIFM, during the relevant period OAM was required to comply with certain requirements in SYSC 4.2 relating to the persons who effectively direct the business. In particular, SYSC 4.2.2R requires a full scope AIFM to ensure that its management is undertaken by at least two persons meeting the requirements laid down in SYSC 4.2.1R.
- 4.15. SYSC 4.2.1R requires that those persons must be of sufficiently good repute and sufficiently experienced so as to ensure the sound and prudent management of the firm. In broad terms and in the context of the UK AIFM regime, the purpose of this rule is to ensure that these individuals act with honesty, integrity and independence of mind and that they have the expertise to be able to effectively direct the business of the firm, including having sufficient experience in relation to the investment strategies pursued by the AIFM's funds.
- 4.16. During the relevant period, OAM was also required to comply with FUND 3.7.2R, which required a functional and hierarchical separation of the functions of the risk management and operating units, including from the functions of portfolio management. The separation of functions is intended to preserve the objectivity of those performing risk management functions and to avoid them performing conflicting tasks.
- 4.17. OAM was also required to meet its obligations under the Authority's Senior Managers and Certification Regime. Under this regime, firms are required to assess the fitness and propriety of those performing Certification Functions at least annually. The regime covers specific functions that are not SMF holders but which can have a significant impact on customers, the firm and/or market integrity. The most important considerations are the person's honesty, integrity and reputation; competence and capability; and financial soundness. As a fund manager holding the client dealing function between 3 November 2020 and 12 June 2023, Mr Odey was required to be certified in accordance with the Certification Regime. As set out below, OAM was unable to complete Mr Odey's certification during the relevant period, due to his unilateral postponement and frustration of the disciplinary process.

Background to Mr Odey's dismissal of OAM's ExCo members

OAM's internal investigation

- 4.18. In August and September 2020, two OAM employees alleged that Mr Odey had sexually harassed them. These allegations included Mr Odey:
- (1) making a range of different types of improper physical contact on a number of occasions;
 - (2) making sexualised or otherwise inappropriate comments to employees, including commenting on their appearance and clothing; and
 - (3) exhibiting other behaviour which made people feel uncomfortable, including issuing invitations to lunches and to go on shopping trips.
- 4.19. In response to these allegations, between September 2020 and January 2021, OAM's ExCo conducted an internal investigation into Mr Odey. This investigation included previous allegations against Mr Odey by other staff members. Numerous allegations of sexual harassment by Mr Odey of female members of staff between 2003 and 2020 were identified by the internal investigation and these included an allegation of sexual assault by Mr Odey on a female member of staff in 2005.
- 4.20. Mr Odey admitted some of the allegations relating to physical contact but denied or did not recall most of the allegations. Similarly, he admitted some of the alleged comments, but denied or did not recall others, or stated that his remarks might have been misinterpreted. He admitted some of the behaviour which had been reported as making people feel uncomfortable, including issuing invitations to lunches or to go on shopping trips, but denied other allegations.

The Final Written Warning

- 4.21. As a result of OAM's investigation, ExCo scheduled a disciplinary hearing to take place on 21 January 2021 which Mr Odey attended.
- 4.22. The ExCo minutes of the meeting indicate that Mr Odey told the panel that he was embarrassed by the allegations and admitted that there were certain things he had done wrong. He acknowledged that aspects of his behaviour needed to change. While ExCo noted that some parts of the allegations were denied by Mr Odey, and were uncorroborated, in light of all the evidence before it (which included certain specific admissions of fact by Mr Odey), ExCo concluded that Mr Odey had behaved inappropriately towards a number of OAM's female staff members. The findings of misconduct, as recorded in the Final Written Warning issued on 4 February 2021, included that:
- (1) Mr Odey had made inappropriate physical contact with female members of staff;
 - (2) Mr Odey had made inappropriate and/or unprofessional comments to female members of staff; and
 - (3) Mr Odey – whether intentionally or not – had by his behaviour made some members of staff feel uncomfortable.

- 4.23. By reason of Mr Odey exhibiting the above behaviours fairly consistently over a long period of time, inappropriate behaviour by him towards female members of OAM staff had become normalised within the firm.
- 4.24. The Final Written Warning noted it was likely that some employees were reluctant to raise concerns about Mr Odey's behaviour, because of a desire not to "ruffle feathers" or because of concerns that nothing would be done, and that some employees would rather say nothing or resign instead of lodging a complaint. The Final Written Warning recorded that ExCo considered this finding to be "very concerning" and noted that the reluctance to raise concerns about Mr Odey's behaviour was potentially illustrated by the fact that not everyone felt comfortable participating in OAM's internal investigation into Mr Odey, which limited the breadth of evidence available to ExCo in reaching its decision. The Authority considers that a workplace culture where people feel unable to report concerns and have confidence that they will be independently and fairly assessed creates a risk that issues are not raised and improper conduct is not challenged. This has the potential to put consumers and markets at risk.
- 4.25. ExCo considered whether Mr Odey's proven misconduct involved any breach of the Authority's Conduct Rules; it considered that Mr Odey remained fit and proper to perform functions in relation to OAM's regulated activities. Nevertheless, ExCo judged Mr Odey's proven conduct to fall short of the "leadership standard of behaviour and adherence to [OAM's] policies and values which could reasonably be expected" of him, given his "role and seniority" within the business. It determined not to dismiss Mr Odey, but to issue him with a Final Written Warning. One factor in this decision was that Mr Odey had demonstrated an acceptance that he needed to change and had shown signs of contrition.
- 4.26. The Final Written Warning included a number of conditions with which Mr Odey was required to comply if he wished to continue his membership of the OAM limited liability partnership. These conditions were that:
- (1) Mr Odey's interactions with all staff (whether face to face or otherwise), including temporary staff, would be professional and in line with OAM's policies and procedures, including without limitation OAM's Equal Opportunities Policy, Anti-Harassment and Bullying Policy and its Disciplinary Rules; and
 - (2) Mr Odey undertake a "working with respect" course and that he repeat such training at intervals notified by OAM from time to time.
- 4.27. The Final Written Warning also:
- (1) Set out that any further inappropriate behaviour by Mr Odey and any failure by him to comply with the measures in the Final Written Warning would be likely to lead to Mr Odey's removal from OAM; and
 - (2) Gave examples of the behaviours and conduct which OAM would not consider to be professional and/or in accordance with its policies and procedures. These examples included touching staff (other than in the context of a professional handshake), taking unaccompanied female members of staff to lunch unless approved by HR or the Chief Executive, or on shopping trips, and exchanging messages with female members of staff otherwise than in the course of business using the firm's communication systems. The examples either broadly mirrored the types of behaviour previously exhibited by Mr Odey towards female members of staff which ExCo had, at the disciplinary hearing, found to be inappropriate and to form the basis of his misconduct,

or reflected the immediate contexts in which such conduct, on some occasions, had occurred.

- 4.28. On 5 February 2021, Mr Odey signed the Final Written Warning beneath a declaration which expressly confirmed his understanding of, and agreement to comply with, its terms.
- 4.29. On 4 October 2021, the Authority notified Mr Odey and OAM that it had appointed investigators on 28 September 2021 to investigate the alleged non-financial misconduct of Mr Odey and OAM's handling of the allegations against him.

Alleged breach of the Final Written Warning resulting in a second disciplinary process

- 4.30. On 11 October 2021, OAM was made aware by an agency which supplied temporary staff that it was withdrawing its services to OAM. It said that this was a result of information that had come to its attention regarding Mr Odey's alleged behaviour towards a temporary staff member, that the agency had supplied to OAM in August 2021. These allegations included exchanging text messages with the temporary staff member, and making inappropriate comments and attempting physical contact during a lunch with her after she had left her position at OAM.
- 4.31. OAM conducted an internal investigation into these allegations to establish whether the alleged behaviour breached the Final Written Warning that Mr Odey had signed on 5 February 2021. The investigatory steps taken included an Investigation Meeting with Mr Odey on 12 November 2021, during which Mr Odey was asked to give his recollection of events. At this meeting, Mr Odey admitted aspects of the alleged behaviour, including flirtatious behaviour during the lunch he had with the temporary staff member after she had left her position at OAM, but denied others.
- 4.32. On 30 November 2021, OAM notified Mr Odey that he was required to attend a disciplinary hearing on 14 December 2021, which was to be conducted by OAM's ExCo. The notification of the disciplinary hearing set out that the purpose of the hearing was to discuss the allegations relating to Mr Odey's conduct towards the temporary staff member and whether or not such conduct was appropriate, particularly in light of the terms of the Final Written Warning. It warned Mr Odey that, if proven, the alleged misconduct may amount to Gross Misconduct as defined in OAM's Staff Handbook and/or a breach of the Authority's Individual Conduct Rules. The notification also set out that Mr Odey's alleged conduct, if proven, may impact OAM's assessment of Mr Odey's fitness and propriety in accordance with FIT 1.3 of the Authority's Handbook. The notification enclosed a summary report of the evidence gathered, which ExCo would consider, and informed Mr Odey that he would be given a full opportunity to state his case.

Mr Odey's first dismissal of OAM's ExCo members

- 4.33. On 13 December 2021, Mr Odey requested a postponement of the disciplinary hearing, due to changing his legal team. OAM accommodated Mr Odey and postponed the date of the disciplinary hearing from 14 December 2021 to 6 January 2022.
- 4.34. OAM's ExCo members and other senior managers held a number of contingency discussions to plan for the various possible outcomes from the disciplinary hearing. OAM was also in communication with the Authority in this regard.
- 4.35. When ExCo members tried to discuss this issue with Mr Odey, he refused to engage and instead exerted pressure on them to discontinue the disciplinary hearing. When

one ExCo member told Mr Odey he would not do so, Mr Odey told him he was "fired". The ExCo member told Mr Odey that ExCo would still have to progress the disciplinary hearing even if Mr Odey fired him, and that Mr Odey would need to remove ExCo to stop the disciplinary hearing from proceeding. Mr Odey responded by saying "Okay, well that's what I'll do".

- 4.36. On 24 December 2021, Mr Odey used his ultimate majority shareholding in OAM to unilaterally propose and pass a series of resolutions to remove OAM's ExCo members and appoint himself as the sole member of ExCo.
- 4.37. Notwithstanding the justifications Mr Odey sought to provide at the time and subsequently, as outlined below, it is clear that Mr Odey's motive for the removal of existing ExCo members in December 2021 was to frustrate the disciplinary process and protect his own interests by avoiding the risk of his removal from OAM.
- 4.38. In a letter to OAM's members dated 24 December 2021, Mr Odey explained that he took these steps because "*I believe that there exists a singular threat to the business and that is the overreaching action of the Financial Conduct Authority into matters which are unrelated to the financial conduct of the Partnership... I consider that the Executive Committee of OAM LLP has been subject to undue pressure from the FCA in their deliberations on a number of matters, unrelated to the financial conduct of the partnership, and in the absence of clear and reliable guidance from the FCA they will be compelled into certain actions which would likely precipitate the winding down of the business unless I take a number of important and necessary action [sic], which I am able to do in my capacity as the 74.9% majority owner of the Odey Group... In taking these actions I am then able to launch a judicial review against the FCA which I believe is in the best interests of the Odey Group and its wider stakeholders.*" Mr Odey's references to the Authority in this letter related to the Authority's role in relation to non-financial misconduct and the Authority's enforcement investigation into him concerning non-financial misconduct and OAM which had been opened in September 2021.
- 4.39. However, Mr Odey's explanations in the letter to OAM's members for dismissing OAM's ExCo members on 24 December 2021 lacked candour:
 - (1) It was Mr Odey who wanted ExCo to prejudge the outcome of the hearing in his favour. In advance of the planned disciplinary hearing, he frequently contacted ExCo members to try to persuade them that that the hearing should not result in his removal from membership of OAM. ExCo members did not prejudge the matter; they merely told Mr Odey that they could not rule out the exercise of their power to dismiss him;
 - (2) The Authority had placed no "*undue pressure*" on OAM to take any particular view in respect of either the first or the second disciplinary hearing to which Mr Odey was subject. Neither had the Authority given any indication that it might "*compel*" ExCo into "*certain actions which would likely precipitate the winding down of the business*". Mr Odey had no reasonable grounds to believe these statements to be true. As Mr Odey knew, at the end of the first disciplinary hearing conducted in January 2021, ExCo had formed the view – independent of the Authority – that Mr Odey's proven misconduct involved no breach of the Authority's Conduct Rules, and did not render Mr Odey unfit or improper to perform functions in relation to regulated activities. As regards the second disciplinary hearing then scheduled for 6 January 2022, it was not the Authority's role to direct OAM as to the outcome; nor did it try to. Indeed, throughout OAM's internal disciplinary process, the only person to threaten OAM with wind down in the event that it reached a decision he did not like, was Mr Odey himself;

- (3) Although, on 14 December 2021, Mr Odey's lawyers had sent the Authority a letter before claim in respect of potential judicial review proceedings, this related to the Authority's decision to open a statutory investigation of Mr Odey for possible breaches of its Statement of Principles and Conduct Rules. As Mr Odey knew, OAM had its own Staff Handbook and its own policies and procedures; it had its own responsibilities towards its employees and its own reputation to protect. OAM's obligations and interests in reaching a decision with respect to Mr Odey's alleged breach of the Final Written Warning were distinct from – and wider than – the Authority's statutory obligations in respect of Mr Odey. Had Mr Odey made an application for judicial review of the Authority's decision to open an investigation into his conduct, this would not have prevented ExCo from proceeding with its own internal process. It was certainly not necessary for Mr Odey to dismiss all members of ExCo in order to commence such proceedings against the Authority, as his letter to members on 24 December 2021 claimed;
- (4) In any event, following Mr Odey's self-appointment to ExCo, neither he nor OAM issued any judicial review proceedings against the Authority;
- (5) Shortly after Mr Odey dismissed the members of ExCo, it emerged that he intended to prevent OAM from removing him from membership unless and until he was judged to be not fit and proper to perform functions in relation to OAM's regulated activities. In fact, were ExCo to conclude that it would be in the best interests of OAM to do so, it had the right to remove Mr Odey on far wider grounds than the Authority's fitness and propriety test. Dismissing all members of ExCo in December 2021 was part of a concerted effort by Mr Odey to frustrate ExCo's ability to exercise this power in respect of him;
- (6) Mr Odey had previously stated to a senior OAM manager that he would remove ExCo in order to discontinue the disciplinary hearing in respect of the alleged breach of the Final Written Warning. He also told the senior manager that if the disciplinary hearing proceeded, or in the event of his dismissal, he would shut the business, everyone at OAM would lose their jobs and investors would have their funds returned; and
- (7) A number of OAM executives considered that Mr Odey removed ExCo to postpone the disciplinary hearing to achieve protection from scrutiny of his actions.

4.40. Mr Odey has stated in interview with the Authority that part of his motivation for dismissing ExCo was because:

- (1) He believed that the existing ExCo would not have been able to conduct a fair disciplinary process because they were seeking to enforce the Final Written Warning, which contained findings and terms which Mr Odey considered to be unfair;
- (2) He thought that one of the ExCo members had predetermined views regarding the alleged breach of the conditions contained in the Final Written Warning such that the outcome of the disciplinary hearing would be prejudiced; and
- (3) If he had breached the Final Written Warning, he thought that the breach was technical in nature, and he felt that a particular ExCo member had not considered his arguments as to what he considered to be the insignificance of the alleged breach.

4.41. However, Mr Odey's explanations to the Authority were not credible:

- (1) ExCo had issued the Final Written Warning following a disciplinary process in which it had invited Mr Odey to participate, and in which he had participated. The Final Written Warning itself advised Mr Odey of his right to appeal against its terms, which right he had declined to exercise. On 5 February 2021, Mr Odey had signed the Final Written Warning, indicating he agreed with its terms. He raised no objection to the findings or terms it contained;
- (2) Mr Odey had been through one internal disciplinary process before. At the investigation meeting which OAM had conducted with him on 12 November 2021, Mr Odey had stated that "*the process is very good and it is right to go through this*". On 13 December 2021, ExCo had postponed the disciplinary hearing for three weeks, to accommodate his request for time to consult a new team of lawyers. In addition, Mr Odey did not raise a concern that the outcome of the hearing had been prejudged by one member of ExCo nor request that that member should play no part in the decision making process;
- (3) Likewise, to the extent that Mr Odey had an argument that any breach of the Final Written Warning had been technical or insignificant, then the proper and natural course was for him to make that point at the disciplinary hearing itself, and to urge that no action be taken against him; and
- (4) As noted in paragraph 4.39(1) above, it was Mr Odey who wanted ExCo to prejudge the outcome of the hearing in his favour. In advance of the planned disciplinary hearing, he frequently contacted ExCo members to try to persuade them that that the hearing should not result in his removal from membership of OAM. ExCo members did not prejudge the matter; they merely told Mr Odey that they could not rule out the exercise of their power to dismiss him.

4.42. Mr Odey has also stated in interview that by delaying the disciplinary process he was acting in the interests of OAM's investors because of his strong financial performance at the time, which would result in high returns for investors. However:

- (1) This was not among the reasons Mr Odey gave to members for dismissing ExCo in his letter dated 24 December 2021;
- (2) As set out above, instead of co-operating with OAM's attempts to make contingency plans, Mr Odey had threatened to respond to the event of his dismissal by closing the business and returning investors' funds. It was this threat (and not the disciplinary process) that was the immediate source of risk that investors' interests might be harmed by the outcome of the disciplinary process; and
- (3) Even if true, the prospect of high returns for investors could not have justified Mr Odey's actions in dismissing ExCo. It was ExCo, and not Mr Odey personally, who bore ultimate responsibility for safeguarding OAM's customers' interests. Moreover, ExCo had kept in mind Mr Odey's status as a renowned fund manager and the impact of any action against him upon OAM's customers "*at all times*" when deciding to issue Mr Odey's Final Written Warning. To the extent that it might reasonably have been said to be in the interests of OAM's customers to retain Mr Odey despite any proven breach of the Final Written Warning, it was incumbent upon Mr Odey to draw those interests to the attention of ExCo and to argue that no action be taken

against him, not to dismiss the persons responsible for making that very decision.

Governance risks and regulatory breaches arising from Mr Odey's first dismissal of OAM's ExCo members

- 4.43. Mr Odey's dismissal of OAM's ExCo members caused OAM to breach various regulatory requirements. One of the consequences of Mr Odey's dismissal of OAM's ExCo members was that each of their responsibilities (other than prescribed responsibilities) passed to him. In a meeting with the Authority on 29 December 2021, OAM reported that from 24 December 2021, Mr Odey would be covering the SMF27 (Partner) function. He therefore took on areas of responsibility previously held separately by individual ExCo members, including those of the Chief Executive, who held functions across a wide range of business areas including Trading, Treasury, HR, Legal, Compliance, Operations and Marketing. Mr Odey's dismissal of the existing ExCo members also contributed to the departure of several senior members of staff.
- 4.44. Mr Odey failed to consult with anyone else at OAM before dismissing ExCo's existing members and there was no 'handover' process to familiarise Mr Odey with any of the areas of expertise of the ExCo members, including the regulatory requirements on the firm. In updates OAM provided to the Authority, it confirmed that Mr Odey's actions resulted in OAM breaching the requirement in SYSC 4.2.2R, by virtue of having only one decision-maker on ExCo.
- 4.45. The concentration of ExCo's members' functions in Mr Odey alone undermined OAM's effective governance, risk management and senior management oversight. By removing the existing members of OAM's ExCo, Mr Odey removed the checks and balances in OAM's central governance body. OAM's ExCo was designed to have a breadth of membership with separate areas of responsibility in relation to which members brought their specific knowledge and experience and therefore were able to provide challenge and engage in discussion on business matters. ExCo's constitution was intended to be a safeguard against the risks of ultimate authority being vested in a sole individual, by ensuring there was sufficient personnel at board level to be able to provide appropriate challenge and expertise. Mr Odey's actions wholly undermined this approach.
- 4.46. In his capacity as the sole member of ExCo, Mr Odey became responsible for investment risk decisions for all funds under OAM's management, whilst simultaneously continuing to operate as a fund manager. He therefore created a risk of lack of objectivity and challenge regarding investment risk decisions in respect of funds he personally managed, which had a value of £565 million. As such, Mr Odey's actions led to a governance system which failed to maintain the functional and hierarchical separation of risk management and portfolio management required by FUND 3.7.2R. ExCo also had ultimate responsibility for OAM's whistleblowing policy, which now fell within Mr Odey's remit as ExCo's sole member.
- 4.47. Mr Odey's actions negatively impacted OAM's ability to meet the Authority's threshold conditions, in particular the threshold conditions of effective supervision, appropriate resources and suitability.
- 4.48. Mr Odey's conduct also risked entrenching concerns identified in the Final Written Warning about the ability of OAM effectively to scrutinise Mr Odey's behaviour or hold him accountable for inappropriate conduct and the consequent impact on employees' willingness to raise issues with Mr Odey's behaviour. Notably, the findings of ExCo were set out in the Final Written Warning. This noted that it was

likely that some employees did not raise concerns about Mr Odey's behaviour or preferred to resign instead of lodging a complaint because of a desire not to "ruffle feathers" or because of concerns that nothing would be done.

- 4.49. Following Mr Odey's removal of ExCo on 24 December 2021, the Authority wrote to, and held meetings with, OAM in respect of OAM's governance and the postponed disciplinary hearing. In particular, the Authority expressed concern that, "*in [sic] absence of concrete proposals we are left with a firm that does not meet [its] obligations and does not meet [its] non financial resource requirements.*" OAM's non-compliance with SYSC 4.2 was also discussed.
- 4.50. Due to the regulatory risks Mr Odey's actions presented, OAM also informed investors of the events which had precipitated those risks, and updated the fund boards and the authorised corporate directors.

Mr Odey unilaterally postponed his own disciplinary hearing

- 4.51. On 6 January 2022, as sole member of ExCo, Mr Odey decided to indefinitely postpone the disciplinary process in relation to his alleged breaches of the Final Written Warning. The minutes of the ExCo meeting state that Mr Odey clarified following the meeting that the disciplinary process "*will be indefinitely postponed since he is unable to conduct it with impartiality.*" This created the impression that he was acting in good faith to prevent a conflict of interest. However, ExCo was only unable to conduct the disciplinary hearing with impartiality because Mr Odey had appointed himself as the sole ExCo member.
- 4.52. OAM reported to the Authority on 5 January 2022 that Mr Odey sought to perform SMF1 and SMF27 functions on a permanent basis.
- 4.53. Immediately following Mr Odey's indefinite postponement of the disciplinary process on 6 January 2022, OAM informed the Authority that the inability to hold the disciplinary hearing meant that it had been unable to assess Mr Odey's fitness and propriety. OAM therefore informed the Authority that it could not comply with its obligations under the Authority's Certification Regime. Mr Odey's actions therefore resulted in him continuing to work at OAM without OAM being able to evidence an assessment of his fitness and propriety to do so.

Mr Odey's appointment of new ExCo members

- 4.54. On 11 January 2022, OAM notified the Authority that two individuals were to be proposed as new members of ExCo. Both were internal appointments. These individuals were appointed in an ExCo meeting, constituted of Mr Odey alone, on 12 January 2022. Mr Odey then resigned from ExCo at the end of the meeting.
- 4.55. An ExCo meeting constituted of the new members was held later the same day. The minutes of that meeting recorded: "*It had been agreed in the revised proposed FCA Governance Framework that the new ExCo would look to address the status of the hearing having familiarised themselves with the matter and taken due advice.*"

Mr Odey's attempts to postpone OAM's disciplinary process until after the conclusion of the Authority's own investigation

- 4.56. On 10 January 2022, the Authority attempted to conduct a telephone conference between Mr Odey (who was then the sole member of OAM's ExCo) and three of its employees, including the then Head of Asset Management and Pensions Policy within its Supervision, Policy and Competition Division. Mr Odey commenced the meeting by objecting to there being more than one Authority employee present;

he said that he would terminate the conversation if the Authority *"insisted on a team call"*. The Authority met this request and the call continued with only the Head of Asset Management and Pensions Policy. The Authority's note of the call records that Mr Odey proceeded to require the Authority to *"indemnify prospective candidates"* for appointment to ExCo that *"they would not need to consider the disciplinary until and unless there was an FCA Enforcement outcome"*. Mr Odey said that *"unless the FCA would agree to this, he would 'go public' with a letter setting out his view about the lack of transparency at the FCA, and would do so today"*. Despite the pressure Mr Odey sought to exert during this telephone call, the Head of Asset Management and Pensions Policy declined to give this indication and confirmed to Mr Odey that the new ExCo would need to be able to form a view of Mr Odey's conduct, independent of the Authority. Her note of this call expressly recorded that *"Whether or not CO would choose to publicise his views was not a relevant factor in our decisions"* and stated that she could arrange a call with prospective candidates to clarify that being put forward by OAM would not in itself prejudice them. In addition, the note also recorded that *"CO explained that in his view a call was pointless if the FCA was unable to agree to the point re the disciplinary. [The Head of Asset Management and Pensions Policy] re-iterated her offer."*

- 4.57. On 11 February 2022, a telephone conversation took place between Mr Odey and a different and less senior individual at the Authority. In the course of this call, Mr Odey falsely represented that he had reached a *"verbal agreement"* concerning the postponement of OAM's disciplinary process in a *"conversation"* with the Head of Asset Management and Pensions Policy *"one month ago"*. Mr Odey falsely claimed that the Authority was in breach of this alleged agreement. He said he would *"go to the fucking press"* and continued: *"You will not get away with this – I have an agreement then you little guys, trying to do your work in the shadows. You are about to create a crisis... I will walk and leave you to clean up the mess."*
- 4.58. In the call of 11 February 2022, and consistently thereafter, Mr Odey continued to press the position that, unless the Authority's Enforcement investigation resulted in a finding that he was not a fit and proper person, he should not be *"fired"* by OAM. On the other hand, it was clear that Mr Odey's substantive position in relation to the Authority's own investigation was that the type of *"non-financial misconduct"* in respect of which he was under scrutiny was incapable of making him not fit and proper to carry out controlled functions.
- 4.59. Had Mr Odey prevailed both in making the outcome of OAM's internal disciplinary process dependent on a finding by the Authority that he was not fit and proper, and in his substantive position upon the nature of the fitness and propriety test, then he would have succeeded in significantly curtailing the power of OAM's ExCo to apply the firm's policies and procedures and to sanction him for inappropriate behaviour towards female members of staff, and to protect itself and its employees from that form of misconduct in future. The result would be that Mr Odey's allegedly inappropriate behaviour towards female members of OAM's staff of the sort which was at that time under consideration by both OAM and the Authority would be left without scrutiny.

Mr Odey's second dismissal of OAM's ExCo members

- 4.60. A further allegation of non-financial misconduct was brought to the attention of OAM's ExCo on 3 March 2022. This related to an alleged breach of the Final Written Warning requirements that Mr Odey should not touch another member of staff (unless shaking hands in a professional context) and should not talk about members of staff or others in a manner which is inappropriate. It dated back to 17 March 2021 only a few weeks after Mr Odey had signed the Final Written Warning.

- 4.61. The allegation related to Mr Odey holding the hand of a future OAM employee during an office tour, and an inappropriate conversation which took place during a subsequent lunch. On 21 March 2022, OAM confirmed to the Authority that this further allegation would be included in the existing internal investigation relating to other alleged breaches of the Final Written Warning.
- 4.62. As part of this internal investigation, Mr Odey stated that he did not recall the meeting with the future employee or any physical contact with her. In relation to the allegations concerning the lunch conversation topics, Mr Odey stated that he did not recall the lunch or the conversation specifically. However, Mr Odey told those conducting the internal investigation that it "*sounded like the kind of conversation one could be having*". Mr Odey stated, at a meeting with ExCo on 23 March 2022, that if ExCo made an adverse finding against him, he would close the firm, litigate personally against members of ExCo and remove insurance cover so that ExCo members could not use this to finance their defence. As a result of this additional allegation, the new ExCo members and OAM's Compliance Officer discussed safeguarding measures that could be put in place to protect staff pending the outcome of the investigation.
- 4.63. The potential safeguarding measures included proposals that Mr Odey work remotely, or that he be separated from staff within OAM's offices. When these proposed measures were communicated to Mr Odey, he expressed his disapproval and stated he thought that ExCo had been unduly influenced by the Authority. He refused to work remotely or to be separated from staff. On 28 March 2022, at a meeting with ExCo in which the proposed safeguarding measures were discussed, Mr Odey demonstrated disregard for OAM's policies and procedures, and for ExCo's own responsibilities to uphold standards of conduct amongst its senior figures towards its female members of staff: he stated that "*HR law did not matter here*" and that he would only accept a finding by the Authority. At this meeting Mr Odey called an ExCo member, who had explained to him that the safeguarding steps were important, "*fucking spineless*". Following these exchanges with Mr Odey, the safeguarding measures were not implemented.
- 4.64. On 31 March 2022, Mr Odey again removed OAM's ExCo members and appointed himself as the sole member of ExCo. Mr Odey's ultimate aim was not only to control the timing of the second disciplinary hearing, but to control ExCo's substantive decision making with regard to both the final outcome of the disciplinary process and the implementation of interim safeguarding measures. Mr Odey would not tolerate the risk of his own removal from membership of OAM. He was prepared to use threats, and dismiss ExCo, in order to avoid this risk.
- 4.65. Mr Odey's removal of OAM's ExCo members for a second time, which was preceded by his attempts to postpone OAM's disciplinary process until after the conclusion of the Authority's investigation, risked entrenching the view identified in the Final Written Warning that some members of staff were reluctant to raise concerns about Mr Odey's conduct, because of a desire not to "*ruffle feathers*" or because of concerns that nothing would be done. As set out above, the Authority considers that a workplace culture where people feel unable to report concerns and have confidence that they will be independently and fairly assessed creates a risk that issues are not raised and improper conduct is not challenged.
- 4.66. On 13 April 2022, Mr Odey informed the Authority that he had taken this step because ExCo did not know how to progress the internal disciplinary investigation into his conduct, stating that they were taking too long and that he wanted decisions to be made, and because he considered the proceedings would have been unfair as they were based on the terms of the Final Written Warning, with which he disagreed.

4.67. Mr Odey's stated rationale as set out above is undermined by the following events that preceded Mr Odey's second dismissal of the members of OAM's ExCo:

- (1) Mr Odey did not raise any objections concerning the fairness of the first disciplinary procedure at the time that he received and signed the Final Written Warning on 5 February 2021. Further, Mr Odey did not contest the terms at the time or bring an appeal, as was his right under the disciplinary process;
- (2) The new ExCo members were internal appointments made by Mr Odey himself. Mr Odey was aware of their level of experience at the time he appointed them. Moreover, contemporaneous internal communications and communications between OAM and the Authority expressed positive assessments of the second ExCo's work;
- (3) In direct contradiction of his assertion that the dismissal of ExCo was necessary because the internal disciplinary process was taking too long, on several occasions, Mr Odey had expressed his view to ExCo and the Authority that the internal disciplinary proceedings should not progress until the outcome of the Authority's investigation was known. Contemporaneous ExCo meeting notes recorded that Mr Odey told ExCo that if the disciplinary hearing was heard before the Authority's investigation had concluded, he would "*frustrate ExCo's ability to act*"; and
- (4) Mr Odey had repeatedly tried to influence the second ExCo's conduct of the disciplinary proceedings. This included the threat on 23 March 2022 that "*if ExCo made an adverse finding against him, he would close the firm down, litigate against the ExCo on a personal basis and remove the D&O cover in place at the firm so that ExCo would not have access to it to defend themselves*". In addition, an ExCo meeting note dated 28 March 2022 records: "*If ExCo continued to consider implementing safeguarding measures, CO would consider winding down the firm. CO said that if ExCo would not move on this matter then he would have to take over the running of the firm.*"

Ongoing regulatory and governance concerns at OAM

4.68. The Authority had expressed concerns after Mr Odey's first dismissal of OAM's ExCo members. Despite being aware of those concerns, Mr Odey demonstrated a reckless disregard for regulatory requirements by again unilaterally dismissing the members of OAM's ExCo on 31 March 2022 and appointing himself as its sole member. He did so without having planned who would be appointed to replace them, or how to achieve a compliant and functional governance structure at OAM. Mr Odey's actions gave rise to the same breaches of regulatory requirements as were brought about by Mr Odey's first removal of OAM's ExCo members on 24 December 2021 and similarly undermined OAM's effective governance, risk management and senior management oversight with the same risks and consequences as set out above in paragraphs 4.44-4.47.

4.69. Consequently, additional risk warnings were added to OAM's prospectus for new and existing clients and details of conflicts within OAM's governance structures were added to OAM's due diligence questionnaire in order to inform customers of the attendant risks.

4.70. The Authority also had significant engagement with OAM during this period due to the risks to which Mr Odey had exposed OAM by twice dismissing all members of its ExCo, including the following exchanges:

- (1) In discussions between OAM and the Authority during the course of April 2022, Mr Odey discussed the plan for putting in place an appropriate governance structure at OAM, and the Authority expressed its ongoing concerns in respect of OAM's governance arrangements and questioned the measures in place to protect clients against the associated risks;
- (2) On 24 and 27 May 2022, the Authority again expressed its concerns around both the lack of progress in respect of OAM's governance arrangements, and OAM's compliance with the threshold conditions. At this time OAM issued statements and letters to its customers, informing them of the further changes which had been made to the management structure at OAM. OAM also ceased actively marketing funds to new investors, although it continued to receive new subscriptions from existing customers as well as from customers who approached OAM; and
- (3) On 8 August 2022, the Authority expressed its concerns about the impact of a series of resignations on the unresolved governance issues at OAM, including that OAM was not meeting the Authority's threshold conditions.

Outcome of OAM's Second Disciplinary Hearing

- 4.71. Following the appointment of two new ExCo members on 4 July 2022 and a third, a Non-Executive Board member, on 5 October 2022, Mr Odey's reconvened disciplinary hearing took place on 29 November 2022, nearly one year after it had originally been scheduled. On 13 December 2022, OAM issued an outcome letter to Mr Odey which set out its findings that, whilst Mr Odey had technically breached the Final Written Warning in two instances, namely, that Mr Odey invited the temporary staff member to lunch without approval from OAM; and Mr Odey exchanged non-work phone messages with the temporary staff member while she was still working at OAM; those breaches did not constitute substantive breaches or inappropriate conduct which could reasonably be considered harassment. ExCo required Mr Odey to undertake further compulsory training and subjected him to a 1-year management embargo. The terms of the original Final Written Warning were continued although without prescriptive examples of behaviour and with a time limit of 12 months (subject to review).
- 4.72. Even though Mr Odey eventually allowed ExCo to proceed with the second disciplinary hearing, his actions from December 2021 onwards meant that the credibility and effectiveness of OAM's governance structures was significantly weakened because Mr Odey had shown he was prepared to override them at will if he did not agree with the decision.

The Authority's investigations

- 4.73. The Authority closed its investigation into OAM on 11 December 2023, and changed the scope of its investigation into Mr Odey on 23 February 2023. This change of scope revised the investigation into Mr Odey's alleged misconduct contained within this Notice from the alleged misconduct referenced at paragraph 4.29.

5. FAILINGS

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

Breach of Individual Conduct Rule 1

- 5.2. During the relevant period, Mr Odey was a certification employee at OAM and at times held Senior Management Functions. Individual Conduct Rule 1 required Mr Odey to act with integrity.
- 5.3. Mr Odey failed to act with integrity during the relevant period due to his unilateral removal of ExCo on two occasions, both times for the same improper purpose. That purpose was to frustrate the disciplinary process against him and to protect himself from any risk of removal from OAM.
- 5.4. The removal of ExCo risked having extremely serious consequences. ExCo was OAM's governing body, with overall responsibility for running the business. It held a number of important functions and had historically consisted of a number of long-serving industry professionals with a range of skills and experience. Without notice and without any arrangements being put in place, Mr Odey assumed sole responsibility for key regulatory roles that had previously been performed by the ExCo members. This gave rise to significant governance risks, which posed a risk to investors (as detailed at paragraphs 4.43-4.50 and 4.68-4.70 above).
- 5.5. Furthermore, Mr Odey's actions in removing ExCo caused OAM to be in breach of regulatory rules (namely SYSC 4.2.1R, SYSC 4.2.2R and FUND 3.7.2R), created risk around the firm meeting threshold conditions and prevented its compliance with the requirements of the Authority's Certification Regime.
- 5.6. Mr Odey had considerable industry experience and would have been aware of the risks to the firm's governance, to its regulatory status and ultimately to its investors posed by his actions when he first removed ExCo. Furthermore, Mr Odey was fully aware of the Authority's considerable concerns and the regulatory breaches and risks caused by his first removal of ExCo and despite this, he unilaterally proceeded to remove ExCo without notice a second time.
- 5.7. Mr Odey's actions in removing ExCo demonstrate the lengths to which he was willing to go to control the outcome of the disciplinary process, and to protect his own interests above the interests of the firm. OAM's policies and procedures were central to the firm functioning within the regulated sector, yet Mr Odey repeatedly frustrated their timely application to him; he was not prepared to tolerate the risk of ExCo deciding to impose interim measures on him, nor the risk that he would ultimately be dismissed from the partnership.
- 5.8. Mr Odey was aware that there existed within OAM the view (which was reflected in the Final Written Warning) that OAM was not effectively able to scrutinise his conduct at work or hold him accountable for inappropriate conduct towards female members of staff. The Final Written Warning identified that some members of staff may have been reluctant to raise concerns about Mr Odey's behaviour, because "*of a desire not to "ruffle feathers" or because of concerns that nothing would be done... [some] employees would rather say nothing or even resign" instead of lodging a complaint*". Mr Odey's repeated threats and interventions in OAM's disciplinary proceedings risked entrenching these concerns. The Authority considers that an organisation which appears unable to effectively deal with allegations of sexual harassment or other non-financial misconduct, risks cultivating a workplace culture where people feel unable to report concerns and have confidence that they will be independently and fairly assessed, creating a risk that issues are not raised and improper conduct is not challenged. These potential consequences, in turn, risk broader harm to consumers and the market.
- 5.9. Thus, Mr Odey's actions showed (i) a reckless disregard for OAM's governance and compliance with regulatory rules and requirements and (ii) a deliberate intention to limit his own accountability in accordance with the firm's policies and procedures,

putting his own personal interests above OAM's interests. As such, he clearly failed to act with integrity.

- 5.10. Mr Odey's behaviour towards both OAM and the Authority lacked candour. He used improper means to protect his own interests and achieve his objectives - the reasons he gave for his dismissal of ExCo, and his conduct in his dealings with the Authority - also support the finding that he lacks integrity.

Lack of Fitness and propriety

- 5.11. In considering whether a person is fit and proper, one of the most important considerations is a person's honesty, integrity and reputation. Mr Odey's lack of integrity is such that he is not a fit and proper person.
- 5.12. A person who demonstrates a repeated elevation of their own self-interest above that of a regulated firm by taking the extreme action of removing ExCo in the knowledge that this results in risks and detrimental consequences to the firm, does not possess the required fitness and propriety to carry out controlled functions.
- 5.13. The reasons why the Authority considers Mr Odey should be prohibited because he is not fit and proper due to his lack of integrity are further detailed in section 6 below.

6. SANCTION

Financial Penalty

- 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 Odey derived directly from the breach.
- 6.4. Step 1 is therefore £0.

Step 2: The 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. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.
- 6.6. The period of Mr Odey's breach of Individual Conduct Rule 1 was from 24 December 2021 (the first removal of the members of OAM's ExCo) to 17 November 2022 (the date ExCo invited Mr Odey to the reinstated disciplinary hearing). Where the breach lasted less than 12 months, or was a one-off event, the relevant income will be that earned by the individual in the 12 months preceding the end of the breach

(DEPP 6.5B.2G(2)). The Authority considers Mr Odey's relevant income for this period to be £2,548,957.

- 6.7. 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%

- 6.8. 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 or recklessly.

Impact of the Breach

- 6.9. DEPP 6.5B.2G(8)(b) concerns the loss or risk of loss, as a whole, caused to consumers, investors or other market users in general. As a result of Mr Odey's removal of the members of OAM's ExCo on 2 occasions, as set out above, Mr Odey created failings in OAM's governance and control structure, which lasted for a total of 112 days. The absence of checks and balances in OAM's central governance and Mr Odey's conflicted position of assuming ultimate responsibility for investment risk whilst continuing to operate as a fund manager led to OAM self-reporting breaches of regulatory requirements designed to guard against risks to customers (in particular SYSC 4.2.1R and 4.2.2R, and FUND 3.7.2R, which also impacted OAM's ability to meet the Authority's threshold conditions).

Nature of the breach

- 6.10. DEPP 6.5B.2G(9) lists factors relating to the nature of a breach committed by an individual. The Authority has found Mr Odey to have committed a breach of Individual Conduct Rule 1, the requirement for an individual to act with integrity (DEPP 6.5B.2G(9)(a) and (e)).
- 6.11. The primary breaches of Individual Conduct Rule 1 occurred when Mr Odey removed the existing ExCo members on both 24 December 2021 and 31 March 2022 and appointed himself as ExCo's sole member (DEPP 6.5B.2.G(9)(b)) in order to frustrate a disciplinary process into his alleged misconduct. These primary breaches were echoed in threats made by Mr Odey, at various times between December 2021 and March 2022, to differently constituted ExCos, to close OAM's business in the event that the disciplinary process resulted in his removal from OAM. It was also echoed in Mr Odey's misconduct towards the Authority in January and February 2022, which included false representations of events as well as threats.
- 6.12. During the relevant period Mr Odey held a prominent position within the industry (DEPP 6.5B.2G(9)(i)). Mr Odey has continuously worked in the financial services

industry since 1983 and is therefore also an experienced industry professional (DEPP 6.5B.2.G(9)(j)).

- 6.13. DEPP 6.5B.2G(9)(k) concerns the individual's level of seniority within the firm and DEPP 6.5B.2G(9)(l) concerns the extent of the responsibility of the individual for the product or business areas affected by the breach, and for the particular matter that was the subject of the breach. Mr Odey misused his position as OAM's majority shareholder and appointed himself as the sole member of its ExCo on two occasions during the relevant period. As the sole person at OAM able to dismiss ExCo and then assume its authority as sole member, Mr Odey was wholly responsible for the business areas affected by the breach. He had an unmatched authority within OAM as its owner and founder and by virtue of holding the SMF27 (Partner) approved function during the relevant period under the 12-week Rule.
- 6.14. DEPP 6.5B.2G(9)(n) concerns the question of whether any steps were taken to comply with the Authority's rules and the adequacy of those steps. Mr Odey put in place a second ExCo on 12 January 2022 following his first removal of OAM's ExCo members on 24 December 2021, and although several senior members of OAM's staff resigned during the relevant period, replacements were found for their positions. However, he subsequently removed the replacement ExCo members on 31 March 2022. He took this action without having arranged replacements for those members, or having formulated a plan to ensure a compliant and functional governance structure at OAM. A third set of ExCo members was then appointed, two members on 4 July 2022 and the third on 5 October 2022, and Mr Odey attended his postponed disciplinary hearing on 29 November 2022, approximately one year after it was first scheduled.
- 6.15. DEPP 6.5B.2G(10) and (11) list factors tending to show that the breach was deliberate or reckless. The Authority considers that the following factors are present in this case and support its conclusion that the breach of Individual Conduct Rule 1 with regard to the removal of the members of OAM's ExCo on two occasions was deliberate:
- (1) The breach was intentional (DEPP 6.5B.2G(10)(a)). Mr Odey acted to deliberately remove the existing members of OAM's ExCo on two occasions and frustrated the progress of the disciplinary hearing in order to further his own interests; and
 - (2) Mr Odey's actions were repeated (DEPP 6.5B.2G(10)(h)). In particular, Mr Odey removed the members of OAM's ExCo for a second time.
- 6.16. The Authority considers that due to his seniority, considerable experience and prior knowledge of OAM, Mr Odey must have appreciated there was a risk that his actions could result in a breach of regulatory requirements and failed adequately to mitigate that risk (DEPP 6.5B.2G(11)(a)).

Level of seriousness

- 6.17. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:
- (1) Mr Odey caused failings in OAM's governance and control structure, which lasted a total of 112 days, that caused a significant risk of loss to investors (DEPP 6.5B.2G(12)(a));
 - (2) Mr Odey failed to act with integrity (DEPP 6.5B.2G(12)(d));

- (3) Mr Odey held a prominent position within the industry (DEPP 6.5B.2G(12)(f)); and
 - (4) The breach of Individual Conduct Rule 1 was committed deliberately. Mr Odey was reckless as to the consequences of that breach, including the failings in OAM's governance and control structure and the attendant risks arising (DEPP 6.5B.2(12)(g)).
- 6.18. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers the following factor to be relevant: little, or no, profits were made or losses avoided as a result of Mr Odey's breaches, either directly or indirectly (DEPP 6.5B.2G(13)(a)).
- 6.19. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 4 and so the Step 2 figure is 30% of £2,548,957.
- 6.20. Step 2 is therefore £764,687.

Step 3: Mitigating and Aggravating Factors

- 6.21. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2 to take into account factors which aggravate or mitigate the breach.
- 6.22. The Authority has considered whether any of the mitigating or aggravating factors listed in DEPP 6.5B.3G, or any other such factors, apply in this case. DEPP 6.5B.3G(2)(f) requires consideration of whether the individual had previously been told about the Authority's concerns in relation to the issue, either by means of a private warning or in supervisory correspondence. As detailed in paragraphs 4.49 and 4.56 above, the Authority communicated its concerns regarding the regulatory consequences for OAM of Mr Odey's first removal of OAM's ExCo members on 24 December 2021. However, although the Authority had raised these concerns, Mr Odey still proceeded with the second removal of OAM's ExCo members on 31 March 2022.
- 6.23. The Authority has therefore increased the penalty by 20%.
- 6.24. Step 3 is therefore £917,624.

Step 4: Adjustment for Deterrence

- 6.25. 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.
- 6.26. The Authority considers that the figure of £917,624 does not meet the objective of credible deterrence because it is too small in relation to the breach. In considering the breach, all the circumstances, including the average assets under management at OAM during the period of the breach (£2.925 billion), and the need to deter Mr Odey and others, have been taken into account.
- 6.27. The Authority has therefore increased the Step 3 figure by a multiple of 2 at Step 4 for the purposes of credible deterrence.
- 6.28. Step 4 is therefore £1,835,248.

Step 5: Settlement Discount

- 6.29. Pursuant to DEPP 6.5B.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1 (in this case there is no disgorgement).
- 6.30. The Authority and Mr Odey did not reach agreement at Stage 1 and so no discount applies to the Step 4 figure.
- 6.31. Step 5 is therefore £1,835,200 (rounded down to the nearest £100).

Financial Penalty

- 6.32. The Authority therefore has decided to impose a total financial penalty of £1,835,200 (rounded down to the nearest £100) on Mr Odey for breaching Individual Conduct Rule 1.

Prohibition Order

- 6.33. The Authority has the power to prohibit individuals under section 56 of the Act if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or exempt professional firm. An individual who lacks integrity to perform the relevant functions is not fit and proper. The Authority has had regard to the guidance in Chapter 9 of EG in considering whether to impose a prohibition order on Mr Odey.
- 6.34. As a result of the facts and matters described above, the Authority considers that Mr Odey is not fit and proper because he lacks the requisite integrity. Any person carrying out functions in relation to regulated activities, irrespective of position, should be a person of integrity that consumers, the market and the Authority are able to trust will conduct themselves in accordance with the requirements and standards of the regulatory system above all other considerations. This includes abiding by internal policies and procedures within an entity regulated by the Authority that are designed to ensure that the entity is able to operate with appropriate internal controls within the regulated sector. Mr Odey's conduct during the relevant period repeatedly failed in this regard.
- 6.35. During the relevant period, Mr Odey demonstrated a repeated disregard for standards and requirements that he was expected to meet, including by deliberately frustrating a disciplinary process designed to scrutinise his conduct and uphold OAM's internal policies and procedures relevant to the performance of regulated activities. Mr Odey's behaviour towards both OAM and the Authority lacked candour. He used improper means to protect his own interests and achieve his objectives; the reasons he gave for his dismissal of ExCo, and his conduct in his dealings with the Authority also support the finding that he lacks integrity. Mr Odey's conduct exposed investors to the risk of harm and risked undermining the integrity of the UK financial system.
- 6.36. The Authority does not consider that the risks Mr Odey poses have been remediated. When asked at interview by the Authority whether on reflection he would act differently, Mr Odey did not identify any different actions he would have taken, and instead sought to justify his actions. The Authority considers that Mr Odey has given no serious thought as to what he would need to do to address his

failings. Mr Odey has consistently and repeatedly prioritised his own interests at the expense of risk of detriment to an authorised person, its staff and investors. The Authority has seen no evidence that this pattern of behaviour has changed and considers that there remains a risk that, if Mr Odey were able to carry out any function in relation to regulated activities, he would not abide by internal policies and procedures relevant to the performance of those functions if this did not suit his interests.

- 6.37. The Authority therefore considers that to advance its integrity and consumer protection objectives, and given the risk posed to those objectives by Mr Odey, it is appropriate and proportionate in all the circumstances to prohibit Mr Odey from performing any function in relation to any regulated activities carried on by an authorised person, an exempt person, or exempt professional firm pursuant to section 56 of the Act.

7. REPRESENTATIONS AND EXPEDITED REFERENCE

- 7.1 Through the Warning Notice, the Authority gave notice that it proposed to take the action described above and Mr Odey was given the opportunity to make representations to the Authority about that proposed action.
- 7.2 However, following receipt of the Warning Notice, and pursuant to DEPP 5.1.8I G (1), Mr Odey notified the Authority that, in relation to the substance of the Warning Notice, he wished to use the expedited reference procedure; this procedure enables a person subject to enforcement action to challenge the action proposed in a warning notice before the Tribunal without engaging with the Authority's internal decision-making process. In accordance with DEPP 5.1.8G G(2), Mr Odey also gave notice that he waived and would not exercise any rights under section 387(2) of the Act in respect of the Warning Notice. Representations were not made by the third party referred to in paragraph 8.10 of this Notice.
- 7.3 The Authority has therefore decided to take the action set out above.

8. PROCEDURAL MATTERS

- 8.1. This Notice is given to Mr Odey under sections 57(1) and 67(1) and in accordance with section 388 of the Act.
- 8.2. The following paragraphs 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/committee/regulatory-decisions-committee-rdc>

The Tribunal

- 8.4. Mr Odey 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 Odey 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: 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).

- 8.5. 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>

- 8.6. 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 Adil Rana at the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.
- 8.7. 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

- 8.8. Section 394 of the Act applies to this Notice.
- 8.9. 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.

Third party rights

- 8.10. A copy of this Notice is being given to OAM 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 8.9 above in relation to the matter which identifies 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 Adil Rana at the Authority (direct line: 020 7066 5800/email: Adil.Rana@fca.org.uk).

Edward Sparrow
Deputy Chair, Regulatory Decisions Committee

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

The Financial Services and Markets Act 2000 (“the Act”)

The Authority’s operational objectives

1. The Authority’s operational objectives are set out in section 1B(3) of the Act and include securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

Section 56 of the Act

2. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, a person who is an exempt person in relation to that activity or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

Section 66 of the Act

3. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him.

Section 66A of the Act

4. Section 66A of the Act provides that, for the purposes of action by the Authority under section 66, a person is guilty of misconduct if any of conditions A to C is met in relation to that person. Section 66A sets out Condition A, which states that:

‘(a) the person has at any time failed to comply with rules made by the [Authority] under section 64A, and

(b) at that time the person was –

- (i) an approved person,*
- (ii) an employee of a relevant authorised person, or*
- (iii) a director of an authorised person.’*

RELEVANT REGULATORY PROVISIONS

The Authority’s Handbook of Rules and Guidance

5. In exercising its powers to prohibit an individual or impose a financial penalty, the Authority must have regard to the relevant regulatory provisions in the Authority’s Handbook of rules and guidance (the “Handbook”). The main provisions that the Authority considers relevant are set out below.

Code of Conduct (“COCON”)

6. The part of the Handbook known as COCON sets out rules made by the Authority under section 64A of the Act about the conduct of certain persons working at relevant firms

regulated by the Authority. This includes certification employees and board directors (or, if there is no such board, the equivalent body responsible for the management of the firm) at those firms.

7. The individual conduct rules within COCON include Individual Conduct Rule 1 ("ICR 1"), which states that:

"You must act with integrity."

8. COCON 4.1.1G provides guidance on the application of ICR 1 by listing non-exhaustive examples of conduct that would breach ICR 1. The examples listed in COCON 4.1.1G include (i) misleading (or attempting to mislead) by act or omission a client, or the firm for whom the person works or the Authority (COCON 4.1.1G(1)); (ii) not paying due regard to the interests of a customer (COCON 4.1.1G(18)); and (iii) acts, omissions or business practices that could be reasonably expected to cause customer detriment (COCON 4.1.1G(19)).

Fit and Proper test for Employees and Senior Personnel ("FIT")

9. Guidance on the question of whether an individual is a fit and proper person is given in the part of the Handbook called FIT. FIT is relevant when assessing the fitness and propriety of a candidate for a controlled or certification function as well as the continuing fitness and propriety of such a function holder.
10. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function. The most important considerations will be the person's honesty, integrity and reputation, competence and capability; and financial soundness.

Investment Funds Sourcebook ("FUND")

11. The Authority's rules and guidance for investment funds are set out in FUND. The rule in FUND relevant to this Notice is FUND 3.7.2R.

Senior Management Arrangements, Systems and Controls Sourcebook ("SYSC")

12. The Authority's rules and guidance for senior management arrangements, systems and controls are set out in SYSC. The rules in SYSC relevant to this Notice are SYSC 4.2.1R and SYSC 4.2.2R.

Supervision ("SUP")

13. The Authority's rules and guidance for Supervision are set out in SUP. The rule in SUP relevant to this Notice is SUP 10C.3.13R.

Enforcement Guide ("EG")

14. The Authority's policy in relation to prohibition orders is set out in the Handbook at Chapter 9 of the EG.
15. EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.

Decision Procedures and Penalties Manual ("DEPP")

16. Chapter 6 of DEPP, which forms part of the Handbook, sets out the Authority's policy for imposing a financial penalty.