This decision notice has been referred to the Upper Tribunal which will determine whether to dismiss the reference or remit the matter to the Authority with a direction to reconsider and reach a decision in accordance with the findings of the Upper Tribunal.

DECISION NOTICE

Saranac Partners Limited
16 St James Street
London
SW1A 1ER

Thomas Llewellyn Kalaris

17 November 2022

ACTION

1. By an application dated 21 September 2020 ("the Application") Saranac Partners Limited ("Saranac") applied under section 60 of the Financial Services and Markets Act 2000 ("the Act") for approval of Thomas Llewellyn Kalaris ("Mr Kalaris") to perform the Senior Manager functions of SMF1 (Chief Executive function) and SMF3 (Executive Director function).

2. The Authority has decided to refuse the Application.

SUMMARY OF REASONS

3. On the basis of the facts and matters described below, the Authority is not satisfied that Mr Kalaris is a fit and proper person to perform the controlled functions to which the Application relates. This is because there are reasonable grounds for considering that in interviews with the Authority in relation to two different investigations Mr Kalaris failed to be open and cooperative and gave untrue and misleading evidence. The Authority is therefore not satisfied as to his honesty and integrity.

DEFINITIONS

4. The definitions below are used in this Decision Notice.

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

"the Application" means the application referred to in paragraph 1 above.

"the Authority" means the Financial Conduct Authority.

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

FACTS AND MATTERS

5. Mr Kalaris has over 40 years of experience in financial services. Between 1996 and 2014 he held various roles within the group of companies held by Barclays plc (Barclays), including as the Chief Executive, of Barclays' Wealth and Investment Management division in London between 2006 and 2013. He was an approved person, holding the CF29 (Significant Management) function at Barclays Bank plc (Barclays Bank) between 1 November 2007 and 1 May 2013.

Barclays' 2008 capital raising

6. In June and October 2008, Barclays undertook two capital raisings pursuant to which it intended to raise up to £4.5 billion and £7.3 billion respectively. The capital raisings took place against the background of the global financial crisis,

which increased dramatically in severity during this period culminating in the collapse of Lehman Brothers in September 2008 and the UK Government's £37 billion injection of capital into certain major UK banks in October 2008.

7. In each of Barclays' capital raisings, a small number of 'anchor investors' agreed to participate, including the Qatar Investment Authority, via its investment arm Qatar Holding LLC ("QH"), and a Qatari investment vehicle, Challenger Universal Limited ("Challenger") (together the "Qatari entities"). In each capital raising, the Qatari entities agreed to participate for up to £2.3 billion, representing over 50% of the total capital raised in June 2008 and over 31% of the capital raised in October 2008. The anchor investors were paid certain fees and commissions in connection with their participation in the capital raisings.

8. At the same time as each of the capital raisings:

   (1) in June 2008, Barclays plc; and

   (2) in October 2008, Barclays Bank

   entered into advisory agreements with QH (the "Agreements").

9. Pursuant to the Agreements, QH was to be paid fees amounting to a total of £322 million, of which £42 million was to be paid pursuant to the advisory agreement entered into in June 2008 (the "June Agreement") and £280 million was to be paid pursuant to the advisory agreement entered into in October 2008 (the "October Agreement"). In return, the June Agreement provided that QH was to provide various services to Barclays over a period of three years in connection with the development of Barclays' business in the Middle East. The services to be provided by QH were not specified or explained in the June Agreement, which stated that their type and scale would be refined as the relationship developed. The October Agreement provided that QH, possibly in association with Challenger, would provide various services in addition to those provided under the June Agreement over a period of five years, and listed six specific services that these would include. The Agreements formed part of the basis on which the Qatari entities agreed to participate in the capital raisings.

10. In its announcement and prospectus associated with the June capital raising, Barclays plc disclosed the existence of the June Agreement. In the prospectus, Barclays plc also disclosed the commission that the Qatari entities and the other anchor investors would receive in consideration for their participation in the June capital raising. Barclays plc did not disclose the fees to be paid to QH under the June Agreement, nor their connection to the Qatari entities' participation in the June capital raising.

11. The announcement by Barclays plc and, between them, the three prospectuses associated with the October capital raising (one of which was published by Barclays plc, with the other two published by Barclays Bank), and Barclays plc's circular to shareholders seeking approval of that capital raising, disclosed the commissions that the Qatari entities and the other anchor investor would receive in consideration for their participation in the October capital raising. They also disclosed that QH would receive an arrangement fee. The existence of the October Agreement was not disclosed in the announcement, the prospectuses or the circular. Thus, Barclays did not disclose the fees to be paid under the October Agreement or their connection to the Qatari entities' participation in the October capital raising.

12. The disclosure of the fees to be paid under the Agreements and their connection to the Qatari entities' participation in the capital raisings would have had a material impact on the terms of the capital raisings as disclosed. The disclosure of the fees under the Agreements as payments associated with the capital raisings would have:

    (1) more than doubled the disclosed level of payments due to the Qatari entities in connection with their participation in the June capital raising; and

    (2) more than tripled the disclosed level of payments due to the Qatari entities in connection with their participation in the October capital raising.

    This would have been highly relevant information to shareholders, investors and the wider market, especially in October 2008 when Barclays' capital raising required approval by shareholders, the disclosed costs were already perceived to be very expensive and there was financing available from the UK Government.

13. Accordingly, Barclays' failure to mention these matters in the announcements and prospectuses associated with the capital raisings rendered the information in them misleading, false and/or deceptive and meant that it omitted matters likely to affect its import.

Mr Kalaris's involvement in the negotiations that led to the June Agreement

14. Mr Kalaris was closely involved in the negotiations the led to the June Agreement and the Authority considers that he would have fully understood its connection to the capital raising. For example:

(1) On 3 June 2008 Mr Kalaris and others from Barclays met with a representative for QH who made clear the Qataris were not happy with the proposed underwriting fee of 1.5% and instead demanded a fee of 3.75% for their potential investment in the capital raising;

(2) On 4 June 2008 Mr Kalaris made clear when discussing the additional fees demanded by the Qataris with a colleague that the additional fees would not be given to other investors and would *"have to be on the side".*

(3) On 5 June 2008, Mr Kalaris had a follow-up call with the same colleague during which they discussed, amongst other things, the question of the Qataris' fee demand. The colleague asked *"How are we going to get it* [the 3.5% fee being demanded by that stage] *to [the Qataris]?"*, to which Mr Kalaris responded *"We'll have to figure it out…"*.

(4) Between 11-13 June 2008 Mr Kalaris was involved in discussions within Barclays which identified an advisory agreement as a means of meeting the Qatari's fee demands (for participation in the capital raising):

i. On 11 June 2008 Mr Kalaris was involved in a phone call in which the following exchange took place:

Mr Kalaris: *…what we're paying for is we're paying for the advice and other things like that, right, so we can make that clear and separate...I mean I guess the question when we actually go down*

this path, you know…we need to make sure that [another colleague] *is comfortable*

Colleague: …*he might say it's okay, right, because whatever we do, right, you know, will not be related to this subscription agreement, but frankly we all know that whatever we enter into we are entering into in exchange for the subscription agreement. So, you know, he's got to get his head round it.*

Mr Kalaris: *Yeah. Yeah that's right. None of us wants to go to jail here…the food sucks and the sex is worse.*

ii. Shortly afterwards on the same day Mr Kalaris had a further telephone exchange with the same colleague:

Mr Kalaris: *I told* [the other colleague] *I expected him to review all these documents…*[and that] *I don't want to go to jail so* [he needs to make sure he is comfortable]…*I'm incredibly sensitive…The worst case scenario is someone says well it's not economic. … I say, bullshit … we're paying this amount of money, in this relationship, with these guys, we're delighted to do it*."

Colleague: *Yeah, I mean obviously the jeopardy is you know we're rumbled and people say well that was bullshit, you know this is just a fee through the backdoor…*

Mr Kalaris: *Yeah…*

iii. By 12 June 2008 Mr Kalaris was aware that an advisory agreement was being discussed within Barclays as a means of meeting the Qatari's fee demands, and on that date he was informed by a colleague that the latter had drafted a "*short letter…*[for] *these advisory services*;

iv. On 13 June 2008 Mr Kalaris was involved in a conversation in which it was relayed to him that a senior colleague's view was that the

subscription agreement (i.e. the capital raising) and any *"relationship document of some description"* (i.e. the June Agreement) needed to be "*disassociated*" from each other, and that the commercial value in the *"whatever we want to call it document"* (i.e. the June Agreement) was "*equivalent to the payment however it's made*". When a concern about setting this out in email was raised, Mr Kalaris agreed that "*We don't want that"*.

15. The June Agreement was signed on 25 June 2008. It comprised a one-page letter from Barclays to QH which provided that QH would provide "*various services…in connection with the development of* [Barclays'] *business in the Middle East"* for three years in return for the payment of £42 million in four equal instalments during the first nine months of the agreement. The figure of £42 million was written in manuscript (and had been calculated by reference to 1.75% of the maximum potential amount of the Qatari entities' participation in the capital raising, plus interest). The services to be provided by QH were not further specified or explained in the letter, which stated that the "*type and scale of services*" would be defined as the relationship developed. In the early hours of 25 June 2008, the Qatari entities agreed to exchange the subscription letters in return for receipt of the signed June Agreement.

16. On 25 June 2008 Barclays announced the capital raising and published an associated prospectus. The prospectus disclosed that the Qatari entities and the other anchor investors would receive a commission of 1.5% in consideration for their participation in the capital raising. The announcement and prospectus referred to the June Agreement, stating "*Barclays is also pleased to have entered into an agreement for the provision of advisory services by Qatar Investment Authority to Barclays in the Middle East*", but did not disclose the fees paid under it nor their connection to the Qatari entities' participation in the capital raising, rendering the information in them misleading, false and/or deceptive and meant that it omitted matters likely to affect its import.

17. In the recent case of *PCP v Barclays* [2021] EWHC 307 (Comm) it was held that "*as is manifestly the case,* [the June Agreement] *was adopted as a way to conceal from other investors that Qatar was in effect receiving a higher fee and that* [the

June Agreement] *was clearly part of the package deal for Qatar"* (see paragraph 367 of judgment).

Mr Kalaris's involvement in the negotiations that led to the October Agreement

18. Mr Kalaris had some involvement in the negotiations that led to the October Agreement (albeit in that his involvement appears to have been much more limited than in relation to the June Agreement).

19. The October Agreement was signed on 31 October 2008. It comprised a two-page letter from Barclays to QH, which stated that QH would provide Barclays with *"various services … in addition to"* those provided under the June Agreement. The services were to be provided over a period of five years, in return for which Barclays Bank would pay 20 equal quarterly instalments of £14 million, a total of £280 million.

20. The judge in the *PCP* case held *"…in truth* [the October Agreement] *was part of the price required by Qatar – even if genuine on its own terms – and yet not disclosed as such…Any realistic appraisal of the events leading up to 31 October must conclude that the making of* [the October Agreement] *was a real and absolute condition of Qatar entering into the subscription agreements for* [the October capital raising]*. If* [the October Agreement] *had not been made and there was no other mechanism to pay the £280m, the Qataris would not have invested, as Barclays well knew."*

21. On 31 October 2008, Barclays announced the October capital raising. On 7 November 2008, Barclays issued a shareholder circular seeking the approval of Barclays' shareholders for the October capital raising.

22. The above announcement, shareholder circular and prospectus published by Barclays all failed to disclose the October Agreement (and thus did not disclose the fees paid under it, nor their connection to the Qatari entities' participation in the capital raising), rendering the information in them misleading, false and/or deceptive and meant that it omitted matters likely to affect its import.

Mr Kalaris's misleading answers in 2013 interview during Authority's investigation

23. On 15 March 2013 Mr Kalaris was interviewed by the Authority in connection with its investigation into events surrounding Barclays' 2008 capital raisings under compelled powers contained within the Act. As such, Mr Kalaris was required pursuant to s171 of the Act to answer the questions and warned that failure to do so, without reasonable excuse, could result in him being dealt with as if he was in contempt of Court. Mr Kalaris was also at the time approved as CF29 (Significant Management) holder, and therefore required under Statement of Principle 4 to deal with the Authority in an open and cooperative way. Prior to the interview Mr Kalaris's lawyers had been informed in writing that the Authority was investigating whether fees paid under the June and October Agreements related to the capital raising.

24. When asked specifically about his understanding as to the genesis of the June Agreement, Mr Kalaris stated *"I don't believe I have any understanding or knowledge of what the genesis [of the June Agreement] was, nothing"* before re-phrasing his answer by reference to a strategic relationship with the Qataris. Mr Kalaris was asked about the purpose of the June Agreement and separately the purpose of the fees paid under it. In each instance, Mr Kalaris again framed his response by reference to developing a strategic relationship with the Qataris without mentioning any link to the Qataris' demand for additional fees in the capital raising.

25. When asked directly whether there was *"any connection between either* [the June Agreement] *or the fees paid under it and the Qataris' participation in the capital raising so far as you were aware at the time?"*, Mr Kalaris responded *"No. Not in my view"*.

26. In light of Mr Kalaris's involvement in the negotiations that led to the June Agreement there are reasonable grounds for considering that these answers were not open and cooperative and were untrue and misleading (and that Mr Kalaris knew this) because he was well aware of the connection between the June Agreement, the fees paid under it and the Qatari's participation in the capital raising.

FCA Decision Notices dated 23 September 2022

27. On 23 September 2022 the Authority issued Decision Notices to Barclays and Barclays Bank setting out that the Authority had decided to fine them a total of £50 million for market disclosure failings in relation to the June and October Agreements. The Authority's decision to refuse the Application is not based on holding Mr Kalaris responsible for those market disclosure failings.

Mr Kalaris misleading answers in 2014 interview during another investigation

28. On 26 September 2014 Mr Kalaris was interviewed by Authority, again under compelled powers, in relation a separate investigation. That investigation was into the behaviour of Andrew Tinney in 2012 whilst the Chief Operating Officer ('COO') of Barclays' Wealth and Investment Management division ('Wealth'). Mr Kalaris was the CEO of Wealth at the relevant time. By this stage Mr Kalaris was no longer an approved person subject to Statement of Principle 4, but his lack of willingness to be open and cooperative is nevertheless relevant to assessing the Application.

29. The Authority was investigating whether Mr Tinney had made false or misleading statements about a certain document ('the GenVen Document'), which concerned the culture of Barclays Wealth Americas (BWA), a branch of Wealth. One of the Authority's concerns was that Mr Tinney, in drafting a note (in late September/early October 2012) for Mr Kalaris to send to Barclays' senior management in relation to an anonymous email in September 2012 that had alleged that "*a Wealth culture audit report*" had been suppressed, had omitted to mention the existence of the GenVen Document. Another concern was that Mr Tinney had made false and misleading statements to Mr Kalaris during a meeting on 10 December 2012 to discuss a request by the New York Fed for a document relating to the "*BWA culture audit".* It was therefore important for the Authority to establish when Mr Kalaris himself first became aware of the GenVen Document.

30. In this regard Mr Kalaris was questioned at the interview about the 10 December 2012 meeting and events shortly thereafter. The following extracts are particularly relevant here:

    (1) Interviewer: *"And what do you remember about the discussion at the meeting itself?"*

Mr Kalaris: *"I remember at the meeting* [Mr Tinney] *reconfirmed that there was no report to give and we were clear about our desire to be, to give the Fed everything…that we could…and it included, as I said earlier, "Get on a plane and get in, you know, and get in front of them."*

(2) Interviewer: *"How did Mr Tinney described Genesis Ventures' output…at this meeting?"*

Mr Kalaris: *"The only thing I do recall is that he was clear that there was not a report. I don't recall…how he described or if he described anything other than that detail."*

Interviewer: *"Okay. Did you get the impression that there were some sort of notes or any sort of physical document in existence?"*

Mr Kalaris: *"I did not, no."*

Interviewer: *"You didn't get that impression?"*

Mr Kalaris: *"No. No."*

(3) Interviewer: *"Do you have any recollection of Mr Tinney saying…"I have a document from Genesis Ventures. I think that might be what the Fed wants?"*

Mr Kalaris: *"I don't recall that, no."*

(4) Interviewer: *"So there was nothing shared with you at the meeting on 10 December which would've made you think "Oh, hang on, yes, Genesis produced something similar" in terms of summary findings being written up?"*

Mr Kalaris: *"No, not that I recall at all."*

(5) Mr Kalaris: "*I did not know of the Genesis report until I came, until it was shown to me by* Antony and Mark Harding *two weeks later… whenever it kind of came by, 17th, 20th,* [of December 2012] *one of those days."*

Interviewer: "*Okay. So if I can use this expression, when were you brought over the wall on this issue?"*

Mr Kalaris: *"So if I have the date right…I think its 17th…of December…*[it was a] *nine o'clock meeting...They showed me the…I think it was a blue deck and said "Have you seen this before?" and I said "No"…And that was the first time I was aware of…that there was a Genesis report"*

(6) Interviewer: "*Could I take you to…an email…dated 15 December…*[which] *raised a red flag that the…Fed are not getting what they want…You have forwarded it to Andrew Tinney. Did you discuss this issue at the time?"*

…

Mr Kalaris: "*I had a conversation with* [Mr Tinney] *…where he said to me that he had what he called, received working papers or he had working papers and he said that he'd received them. And that was the only conversation I had with him about this…that was the first time I was aware that there were even working papers, that he had something."*

31. However, in direct contradiction of this evidence, on 13 May 2019 the Tribunal held (in a judgment in relation to a reference filed by Mr Tinney - *Tinney v FCA [2018] UKUT 0435 (TCC)*) that Mr Kalaris "*already knew all about the existence of the GenVen Document"* by the time of the meeting with Mr Tinney on 10 December 2012 (see paragraph 170 of judgment). In making this finding the Tribunal held that it was clear from a contemporaneous note that at the 10 December 2012 meeting Mr Kalaris would have recalled an earlier meeting at which he was briefed by having extracts from the GenVen Document read to him. The Tribunal ruled (at paragraphs 167 and 168 of the judgment) that Mr Tinney did not deliberately make false or misleading statements about the GenVen Document at the meeting on 10 December 2012 on the basis that "*we find that there was a full and informed discussion about the GenVen Document between Mr Kalaris and Mr Tinney at the*

meeting, especially towards the end" having set out that the final section of contemporaneous note recorded the following in relation to the discussion between Mr Kalaris and Mr Tinney:

"Culture Re-set
Would Tom say there is anything missing?
…
Why not sent electronically
I don't want a litigation trail
Did you get to a complete picture
Was there any disadvantage in not having a hard copy?"

32. In light of the Tribunal's findings there are reasonable grounds for considering that Mr Kalaris's interview evidence that the first time he knew of the GenVen Document was when he was shown it by Antony Jenkins and Mark Harding on 17 December 2012 was not open and cooperative and was untrue and misleading (and that he knew this).

33. The Tribunal further found (at paragraph 174) that "*On 17 December* [2012]*, there was a meeting of Mr Jenkins, Mr Harding and Mr Kalaris. Mr Jenkins and Mr Harding asked Mr Kalaris if he had seen the GenVen Document. Mr Kalaris said that he had not seen the GenVen Document before that day which may have been literally true but undoubtedly gave a false impression of his awareness of the document."* This lends weight to the Authority's view that it cannot be satisfied that Mr Kalaris's evidence in interview on the point was full and frank.

IMPACT ON FITNESS AND PROPRIETY

34. The regulatory provisions relevant to this Decision Notice are referred to in Annex B.

35. In light of the facts and matters set out above and for the reasons set out below, the Authority is not satisfied that Thomas Kalaris is a fit and proper person to perform the Senior Manager Functions to which the Application relates.

36. Thomas Kalaris has engaged in behaviour that gives rise to serious concerns as to his honesty, integrity and reputation. In particular, there are reasonable grounds for considering that:

(1) In relation to the answers he gave at interview on 15 March 2013 regarding the June Agreement, Mr Kalaris failed to be open and cooperative and knowingly gave untrue and misleading evidence. That is because, in light of the evidence set out above, there are reasonable grounds for considering that:

i. Mr Kalaris understood that the Qatari entities would not have participated in the June capital raising if QH did not receive the fees paid under the June Agreement;

ii. The purpose of the June Agreement was to conceal that Qatar was in effect receiving a higher fee for its participation in the capital raising, and that Mr Kalaris was aware of this and sensitive to the potential for the June Agreement to be viewed as "*a fee through the backdoor*";

iii. Mr Kalaris would have been aware in advance of the interview that the Authority was interested in whether, and the extent to which, the fee paid to the QH under the June Agreement related to the capital raising;

iv. Rather than adopting an open and cooperative approach in interview and properly and fully describing the connection between the June Agreement, the fee paid under it and the capital raising, Mr Kalaris knowingly sought to give the misleading impression that the purpose of the June Agreement was simply to develop a strategic relationship with the Qataris (including by denying any connection between the June Agreement or the fees paid under it and the Qatar's participation in the capital raising).

(2) In relation to the answers he gave at interview on 26 September 2014, Mr Kalaris failed to be open and cooperative and knowingly gave untrue and

misleading evidence. That is because, in light of the evidence set out above there are reasonable grounds for considering that in the interview Mr Kalaris sought to give the impression that he was unaware of the GenVen Document until his meeting with Antony Jenkins and Mark Harding (around 17 December 2012) when in fact he knew all about the existence of it by 10 December 2012. In coming to that view the Authority has taken into account that alongside denying that he knew of the GenVen Document until around 17 December 2012 Mr Kalaris also stated in the interview that:

i. At the 10 December 2012 meeting he was given the impression that in relation to the Genesis Venture's output there were no notes or any sort of physical document in existence – this is contradicted by the Tribunal's view that a contemporaneous note records a full and informed discussion about the GenVen Document on 10 December 2012, with Mr Kalaris and Mr Tinney discussing why it had not been sent electronically and whether there was a disadvantage in not having a hard copy;

ii. The was nothing shared with him at the 10 December 2012 meeting that caused him to think Genesis had written up summary findings – again this is contradicted by the Tribunal's view of what the contemporaneous note shows;

iii. That the first time he was aware that there were "*even working papers, that* [Mr Tinney] *had something"* was around 15/16 December 2012 - again this is contradicted by the Tribunal's view of what the contemporaneous note shows.

37. The Senior Manager Regime is designed around the spirit of accountability with a focus on unambiguous responsibility, candour with regulators and, fitness and propriety on the part of individual. Mr Kalaris has not satisfied the Authority that he is fit and proper in relation to his ability to openly and candidly provide unambiguous information in a fully accountable manner. Mr Kalaris' conduct described above indicates that he does not fully understand the Authority's expectations of him as an approved person. The Authority does not believe that Mr

Kalaris has demonstrated a readiness and willingness to comply with the requirements and standards of the regulatory system.

REPRESENTATIONS

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

PROCEDURAL MATTERS

Decision maker

39. The decision which gave rise to the obligation to give this Decision Notice was made by the Executive Decision Maker.

40. This Decision Notice is given under section 62(3) and in accordance with section 388 of the Act. The following statutory rights are important.

The Tribunal

41. Both Saranac and Mr Kalaris have the right to refer the matter to which this Decision Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Saranac and Mr Kalaris have 28 days from the date on which this Decision Notice is given to each of them to make a reference to the Tribunal. A reference to the Tribunal is made by way of a signed reference form (Form FTC3) filed with a copy of this Decision Notice. The Tribunal's contact details are: The Upper Tribunal (Tax and Chancery Chamber), Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email: uttc@justice.gov.uk).

42. Further information on the Tribunal, including guidance and a link to 'Forms and further guidance' which includes Form FTC3 and notes on that form, can be found on the HM Courts and Tribunal Service website: https://www.gov.uk/courts-tribunals/upper-tribunal-tax-and-chancery-chamber.

43. A copy of Form FTC3 must also be emailed to Dan Enraght-Moony (dan.enraght-moony@fca.org.uk) at the Financial Conduct Authority at the same time as filing a reference with the Tribunal.

44. 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

45. Section 394 of the Act does not apply to this Decision Notice.

Confidentiality and publicity

46. This Decision Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). Section 391(1A) of the Act provides that a person to whom a Decision Notice is given may not publish the notice or any details concerning it unless the Authority has published the notice or those details.

47. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Decision Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Decision Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to Saranac and Mr Kalaris.

48. However, the Authority must, under section 391(4) of the Act, publish such information about the matter to which a Decision Notice or Final Notice relates as it considers appropriate. A Decision Notice or Final Notice may contain reference to the facts and matters contained in this Notice.

Authority contacts

49. For more information concerning this matter generally, contact Reece Brent, Lead Associate, Authorisations Division at the Authority (direct line: 0207 066 0089 / email: Reece.Brent@fca.org.uk).

Emily Shepperd
Executive Decision Maker

ANNEX A – SARANAC'S REPRESENTATIONS

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

The correct legal test

2. Saranac raises arguments in relation to the "*test for finding that a person is not fit and proper"* and the circumstances in which the Authority may "*reach the conclusion that* [Mr Kalaris] *is not a fit and proper person*."

3. Saranac also relies on the Tribunal observation in *Hoodless and Blackwell v FSA (2003)* that "*Where there are genuinely grey areas, a finding of lack of integrity would not be appropriate"* and argues that "*there is an insufficient factual basis to support the FCA's conclusion of lack of integrity."*

4. **In this Notice the Authority is not making any finding or expressing any conclusion that Mr Kalaris is not fit and proper, nor that he lacks integrity. As the Tribunal ruled in the case of *David Thomas v FSA (2004)* the Authority in refusing an approval application "*does not have to prove that the Applicant is not fit and proper but rather that it is not satisfied that the Applicant is fit and proper."* For the reasons set out in this Notice the Authority is not satisfied Mr Kalaris is fit and proper.**

The 2013 interview

5. Saranac argues that in the 2013 interview Mr Kalaris did not state that the June Agreement was unconnected in commercial or temporal terms to the capital raising and that "*when he said there was "no connection" between the* [June Agreement] *and the participation of the Qataris in the capital raising he meant "in law so as to amount to breach of the terms of the subscription agreements.""* Saranac argues that this distinction would have been understood by the interviewer on the basis that (a) the market was informed that Barclays had entered into the June Agreement in conjunction with the capital raising (and that both Mr Kalaris and the interviewer knew this), with Barclays having taken legal advice on this approach and (b) that it necessarily follows that neither Mr Kalaris nor the interviewer thought Mr Kalaris was asserting that the June Agreement was somehow purely coincidental to the capital raising.

6. Saranac argues that because certain evidence was put to Mr Kalaris in interview demonstrating that he knew around 4 June 2008 that the Qatari entities were asking for more than 1.5% commission, that demonstrates he could not have been

suggesting in interview that the Qatari entities had entered into the capital raising for only 1.5% commission without the June Agreement.

7. In relation to Mr Kalaris's answers in interview about the genesis of the June Agreement, Saranac argues the word "*genesis*" used by the interviewer might have meant (a) the genesis of the concept of entering into a strategic relationship with Qatar (b) the genesis of the need to pay Qatar more than 1.5% commission and/or (c) the genesis of the actual June Agreement signed on 25 June 2008 and that the interviewers use of this "*vague*" word makes for an unreliable basis on which to make a finding that Mr Kalaris lacks integrity.

8. **Saranac's characterisation that the market was informed that Barclays had entered into the June Agreement "*in conjunction with*" the capital raising is not accepted other than that the mere existence of an "*agreement for the provision of advisory services*" was disclosed to the market in the relevant announcement and prospectus. The market was not informed when the June Agreement had been entered into, nor was it told about the nature of the commercial connection between the June Agreement and the Qatari entities' participation in the capital raising. Even if the interviewer did understand that the June Agreement was not "*purely coincidental*" to the capital raising that does not explain why, on a number of occasions, Mr Kalaris gave the impression that the purpose of the June Agreement was simply to develop a strategic relationship with the Qataris, without making any effort to provide an explanation as to what he understood about the nature of the commercial connection with the capital raising (for example by explaining that the Qatari entities would not have participated in the June capital raising if QH did not receive the fees paid under the June Agreement). Regardless of whether Barclays' lawyers had approved of the approach adopted by Barclays in the limited market disclosures in relation to the June Agreement, that does not explain why Mr Kalaris did not provide fuller context in his interview in which he was required to be open and cooperative.**

9. **The Authority is not satisfied that the fact Mr Kalaris acknowledged in interview that email evidence from around 4 June 2008 showed that he was aware the Qataris were demanding up to 3.75% commission means**

that he was full and frank about his knowledge of the commercial basis on which the Qataris did ultimately participate after a further three weeks of negotiation.

10. **In relation to the points made about Mr Kalaris being asked about the genesis of the June Agreement the Authority is not satisfied that Mr Kalaris's failure to mention the commercial connection between the Agreement and the Qataris entities' participation in the capital raising was down to any misunderstanding over what the interviewer meant by "genesis" or because he believed the interviewer was assuming that Mr Kalaris accepted the Agreement was "*bridging the gap*" in relation to the Qataris' fee demands. Mr Kalaris was also asked about the purpose of the June Agreement and the fees thereunder and replied by reference to reinforcing "*a friends and family relationship…extending the relationship"* and stating it was "*for a combination of advice, sponsorship, commitment to work closely together on joint projects, all of what was going to be an enhanced lead relationship"* without referring to the purpose including to secure the Qatari entities' participation in the capital raising.**

11. **In light of all the evidence the Authority is not satisfied that Mr Kalaris's answers at interview were intended to draw a distinction between a commercial and legal connection. Even if he had such a distinction in mind at the time the Authority is not satisfied that he would not have understood that, by failing to articulate and explain the distinction, his answers were not open and cooperative and were misleading (or at the very least the Authority is not satisfied that he would not have been aware of that obvious risk). There are reasonable grounds for considering that Mr Kalaris was sensitive for to the potential for the June Agreement to be viewed as "*a fee through the backdoor"* and for considering that it is likely that it was this sensitivity that led him to adopt a less than open and cooperative approach, including by denying any connection between the June Agreement and the capital raising.**

The 2014 interview

12. Saranac points to the fact that Mr Kalaris provided no witness statement in the Tribunal case *Tinney v FCA* and asserts that the Tribunal's "*findings in so far as they make observations in relation to Mr Kalaris are thus not judicial findings in his case but are relevant only to the case against Mr Tinney. In fact, on proper analysis the Tribunal did NOT find that Mr Kalaris had received, seen, or read the GenVen Document, only that he knew of its existence".*

13. Saranac also relies on the fact the Tribunal, in correspondence, stated that "*it is not correct to say that the Upper Tribunal criticised Mr Kalaris. There is nothing in the decision that indicates any finding by the Upper Tribunal that Mr Kalaris had engaged in any dishonest conduct…any adverse comments about Mr Kalaris that are recorded in the decision do not constitute a serious attack on his reputation."* Saranac therefore argues that the Tribunal's findings in relation to Mr Kalaris should not be relied upon by the Authority in weighing up whether it can be satisfied as to his fitness and propriety.

14. Saranac argues that Mr Kalaris did not give misleading evidence in the 2014 interview because he "*was right when he said that he had not seen or read the Genven Document. Knowing of its existence and of its broad conclusions is very different from having seen it or knowing that it possessed the status of a 'report' (if it did)"*. Saranac places considerable emphasis on an argument that Mr Kalaris was unaware that Genesis Ventures had produced something that could properly be characterised as a 'report'. Saranac points to the fact that Mr Kalaris told the interviewer that he had been made aware that the conclusions of Genesis Ventures were "*ugly"* and that they had "*made a no-holds barred set of recommendations".* Saranac seeks to characterise Mr Kalaris's interview answers as simply telling the interviewer that he did not receive anything in writing and that "*he was not sent and did not see a copy of the GenVen Document and certainly did not understand that they had issued a 'report'*.

15. In relation to the Tribunal's finding that when on 17 December 2012 Mr Kalarais told senior Barclays personnel that "*he had not seen the GenVen Document before that day which may have been literally true but undoubtedly gave a false impression of his awareness of the document"* Saranac asserts that there was "*no evidence at all*" before the Tribunal of what was said at the meeting and that the Tribunal's "*observation"* in this regard was otiose and is therefore without

evidential value. Saranac relies on the fact that the Tribunal found Mr Kalaris was aware of the GenVen Document's existence, but did not find that he had seen it; that the Tribunal did not find that Mr Kalarais knew the GenVen Document was a 'report' (only that he knew it was a document); and that the Tribunal did not conclude the GenVen Document was in fact responsive to the New York Fed's request.

16. **The Authority does not accept that it is inappropriate to place reliance on the Tribunal's findings for the purposes of assessing this Application for approval. No candidate for approval has a right or entitlement to approval unless the Authority has been satisfied that he/she is a fit and proper person. Conversely the Authority is under a statutory duty not to approve anyone unless he/she meets the threshold. In the circumstances, it would be remiss of the Authority not to take the Tribunal's findings into account. The Authority notes that whilst Mr Kalaris did not appear as a witness before the Tribunal, his 2014 interview transcript was part of the trial bundle and to that extent the Tribunal did have evidence from him.**

17. **In relation to the Tribunal's statement that "*any adverse comments about Mr Kalaris that are recorded in the decision do not constitute a serious attack on his reputation*", the Authority notes that the Tribunal's judgment did not address the question of whether Mr Kalaris's 2014 interview evidence was open and cooperative. In this Notice the Authority is not making findings or drawing conclusions about Mr Kalaris's fitness and propriety, it has to decide whether it is satisfied that he is fit and proper. The Authority considers that the Tribunal's findings in the *Tinney v FCA* carry sufficient weight such that they amount to reasonable grounds not to be satisfied that Mr Kalaris was open and cooperative in his 2014 interview.**

18. **The Authority does not accept Saranac's characterisation of Mr Kalaris's evidence in the 2014 interview that he was simply saying he had not seen the GenVen Document. Whether or not Mr Kalaris considered it to be a 'report', there are reasonable grounds to consider that in the interview Mr Kalaris knowingly sought to give the misleading impression that he was entirely unaware of the GenVen Document until 17 December 2012,**

including by stating that (a) on 10 December 2012 he was not made aware in relation to Genesis Venture's output that there were any notes or was a physical document (b) nothing shared with him at the 10 December 2012 meeting caused him to think Genesis had written up summary findings and (c) the first time he was aware that there were "*even working papers, that* [Mr Tinney] *had something"* was around 15/16 December 2012. In light of the Tribunal's findings set out above, culminating in the finding that Mr Kalarais "*knew all about the existence of the GenVen Document"* by 10 December 2012, and having taken into account Saranac's representations, the Authority is not satisfied that Mr Kalaris adopted an open and cooperative approach in the 2014 interview.

19. **Even if Mr Kalaris's answers in interview were based on an unspoken distinction relating to whether or not the GenVen Document could properly be described as a 'report', the Authority is not satisfied that he would not have understood that, by failing to articulate and explain that distinction, his answers were not open and cooperative and were misleading (or at the very least the Authority is not satisfied that he would not have been aware of that obvious risk).**

20. **In relation to Saranac's assertion that there was "*no evidence at all*" before the Tribunal of what was said at the 17 December 2012 meeting, as noted above Mr Kalaris's 2014 interview transcript was before the Tribunal from which Mr Kalaris's own evidence is that at the meeting he was asked whether he had seen the GenVen Document before and that he replied "*no*".**

ANNEX B – REGULATORY PROVISIONS RELEVANT TO THIS DECISION NOTICE

Relevant Statutory Provisions

1. The Authority may grant an application for approval under section 60 of the Act only if it is satisfied that the person in respect of whom the application is made is a fit and proper person to perform the controlled function to which the application relates (section 61(1) of the Act).

2. Section 62(2) of the Act requires the Authority, if it proposes to refuse the application, to issue a Warning Notice.

Relevant provisions of the Authority's Handbook

3. The Fit and Proper test for Approved Persons ("FIT") sets out the criteria that the Authority will consider when assessing the fitness and propriety of a person to perform a particular controlled function.

4. The most important considerations to which the Authority will have regard include the person's honesty, integrity and reputation (FIT 1.3.1B G).

5. If a matter comes to the Authority's attention which suggests that the person might not be fit and proper, the Authority will take into account how relevant and important that matter is (FIT 1.3.4G).

6. In determining a person's honesty, integrity and reputation, the matters to which the Authority will have regard include:

   (1) whether the person has been the subject of any adverse finding or any settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a body corporate (FIT 2.1.3G (2));

   (2) whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by the Authority, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies (FIT 2.1.3G (3));

   (3) whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or of any investigation which might lead to those proceedings (FIT 2.1.3G (4));

   (4) whether the person, or any business with which the person has been involved, has been investigated, disciplined, censured or suspended or criticised by a regulatory or professional body, a court or Tribunal, whether publicly or privately (FIT 2.1.3G (10));

   (5) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT 2.1.3G (13)).