Financial Conduct Authority

FINAL NOTICE

To: **Alison Moran**

IRN: **AXM02363**

Address: **29 Thurlby Road**
London
SE27 0RN

Date: **30 September 2013**

1. ACTION

1.1. For the reasons given in this notice, the Authority hereby imposes on Alison Moran a financial penalty of £20,000 pursuant to section 66 of the Financial Services and Markets Act 2000 for breaches of Statement of Principle 6 (due skill, care and diligence).

2. SUMMARY OF REASONS

2.1. Ms Moran was Catalyst's compliance officer (CF 10) from 3 August 2006 to 7 October 2011.

2.2. Catalyst was the primary distributor of ARM bonds in the UK. ARM bonds are structured products issued by a Luxembourg entity, ARM, the underlying assets of which are senior life settlements purchased in the United States. ARM bonds were issued to the public in quarterly tranches from about October 2007 to October 2009. Catalyst promoted and distributed ARM bonds to investment intermediaries and independent financial advisers in the UK, who in turn promoted and sold them to retail investors.

2.3. On 27 July 2009, Ms Moran became aware that ARM had, earlier that month, applied for a licence from the Luxembourg financial regulator, the CSSF, to issue ARM bonds on a continuous basis.

2.4. On 20 November 2009, the CSSF requested ARM to cease issuing bonds pending a decision on the licence application. Ms Moran became aware of this on 10 December 2009. On 24 December 2009, Ms Moran became aware that the licence was mandatory and that one consequence of the refusal of a licence under Luxembourg law is that the issuer of the bonds must be liquidated.

2.5. On 29 August 2011, the CSSF, having indicated to ARM previously that it was minded to reject ARM's application for a licence, formally did so.

Statement of Principle 6

2.6. Ms Moran breached Statement of Principle 6 by failing to exercise due skill, care and diligence in managing Catalyst's business for which she was responsible in her controlled function in the following respects:

(1) Ms Moran failed to take reasonable steps to inform herself from 27 July 2009, when she became aware of ARM's application to the CSSF, of the reasons for that application i.e. that it was considered mandatory for ARM to have a licence in order to issue bonds on a continuous basis and that there were potential adverse consequences of failing to obtain a licence. As a result she did not seek to amend Catalyst's financial promotions or the December 2009 letter in the light of these matters, in her capacity as CF10, compliance officer for Catalyst.

(2) By 24 December 2009 Ms Moran had become aware:

(a) that the CSSF had requested ARM not to issue further bonds pending authorisation by it; and

(b) that ARM was required to have a licence from the CSSF in order to issue bonds on a continuous basis and that the potential consequences of failing to obtain one included the liquidation of ARM

but, despite that knowledge, she failed to seek to amend Catalyst's financial promotions.

(3) Despite being aware, by 24 December 2009, of the matters set out in paragraph (2) above, Ms Moran failed to advise Catalyst against continuing to promote bonds purportedly to be issued by ARM, and to arrange for the investment of investors' funds in the light of those matters, unless the circumstances were clearly disclosed to investors;

(4) Ms Moran failed to advise Catalyst against sending the March 2010 letter to investors which presented an unfair and misleading picture of ARM's regulatory position. The letter suggested that ARM's application for a licence was voluntary, and omitted to disclose the risk of liquidation of ARM if the licence was not obtained. In addition, it suggested that either obtaining the CSSF licence or relocating to Ireland would be quick to achieve.

2.7. As a result of the financial promotions and communications issued by Catalyst, investors in ARM bonds were exposed to risks of which they were not made aware, and may have suffered loss.

2.8. The Authority has concluded that the nature and seriousness of Ms Moran's misconduct warrant the action set out at section 1 above.

3. DEFINITIONS

3.1. The definitions below are used in this Final Notice:

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

"ARM" means ARM Asset Backed Securities SA;

"ARM bonds" mean the ARM Capital Growth Bond and the ARM Assured Income Plan;

"ARM plc" means Assured Risk Mitigation plc;

the "Authority" means the body corporate formerly known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

"Catalyst" means Catalyst Investment Group Limited, company number 04031316;

"CSSF" means the Commission de Surveillance du Secteur Financier, the Luxembourg financial regulator;

the "December 2009 letter" means the letter from Catalyst to IFAs of around 30 December 2009;

"DEPP" means the Authority's Decision Procedures and Penalties manual;

"EG" means the Authority's Enforcement Guide;

"Handbook" means the Authority's Handbook of Rules and Guidance;

"IFA" means independent financial adviser;

the "March 2010 letter" means the letter from Catalyst to investors of around 26 March 2010;

"Statement of Principle" means one of the Statements of Principle issued by the Authority under section 64(1) of the Act (Conduct: Statements and codes) with respect to the conduct of approved persons and set out in the part of the Handbook in High Level Standards which has the title Statements of Principle and Code of Practice for Approved Persons;

"SYSC" means the part of the Handbook in High Level Standards which has the title Senior Management Arrangements, Systems and Controls;

"TLPI" means traded life policy investments.

4. FACTS AND MATTERS

Background to Catalyst

4.1. Catalyst was incorporated in England and Wales on 11 July 2000. It has been authorised by the Authority since 1 December 2001 to undertake regulated activities.

4.2. At the relevant time, Catalyst engaged in a wide range of investment business activities, including distributing the ARM bonds into the UK market. The ARM bonds are bonds backed by TLPI; the underlying investment is in US life insurance policies.

4.3. ARM is a Luxembourg incorporated securitisation vehicle which at all material times has not been authorised or regulated by the Authority or any other national regulator. The ARM bonds were listed on the Irish Stock Exchange.

4.4. Catalyst was the primary distributor of ARM bonds in the UK, marketing them to retail investors via investment intermediaries and IFAs, who might give advice and/or facilitate sales to retail clients. Catalyst did not give advice or sell the ARM bonds directly to retail customers and was not authorised to do so.

4.5. Catalyst designed, approved and distributed to IFAs marketing materials and information about the ARM bonds, in the form of financial promotions. Many of these financial promotions were designed to be passed to prospective retail investors and used to inform the IFAs in order to provide advice to their customers.

4.6. Ms Moran was Catalyst's compliance officer (CF 10) from 3 August 2006 to 7 October 2011.

Traded life policy investments and the ARM bonds

4.7. TLPI are products whose underlying investment is in life insurance policies, of which the insureds are typically US citizens. The investor purchases a life insurance policy from the insured person for a lump sum. The investor pays the premiums on the policy for the remainder of the insured's lifetime, and benefits from the insurance payout on the death of the insured.

4.8. TLPI are complex and often high risk investments that the Authority considers to be unsuitable for the mass retail market. Certain of the risks were noted in the materials produced by Catalyst. For example, the ARM brochures stated "*Participation in the [ARM bond] may involve substantial risks and is suitable only for investors who have the knowledge and experience in financial and business matters necessary to enable them to evaluate the risks, tax implications and merits of such an investment*". The brochures listed, among the potential risks of the product: the limited resources of the issuer; limited liquidity and an illiquid market for life insurance policies; the fact that ARM was not regulated; the fact that there had been no independent investigation into the assets backing the ARM bonds; and foreign exchange risk.

4.9. Between 2007 and 2010, ARM offered two types of TLPI bonds, the ARM Capital Growth Bond and the ARM Assured Income Plan, the latter paying regular interest to investors. Funds raised by the bonds were used to purchase TLPI policies. ARM transferred funds raised by the bond issue to a US trust based in Delaware to purchase life insurance policies of insured persons over 65 years old with a life

expectancy of between three and 15 years. The policies are held and owned by the US trust.

4.10. The policy issuers (insurers) were required by contract to pay all maturity or sales proceeds of the policies held by the US trust to a "cash entitlement account" controlled by ARM on behalf of the bondholders.

4.11. ARM issued the bonds in tranches. A tranche would open for investment three months before bonds were issued. The tranche would close at the end of the three month period, and the bonds for that tranche would be issued to all those who had invested. The next tranche would then open for investment. ARM bonds were issued to the public in quarterly tranches (tranches 1 to 8) from about October 2007 to October 2009. Catalyst promoted tranches 9 to 11 to IFAs, and arranged for or effected the transfer of funds to the receiving agents pending the issue of tranches 9 to 11 from 1 October 2009 onwards, but the bonds for those tranches were never issued by ARM for the reasons set out below.

4.12. A total of £17.1 million was invested by UK retail consumers, and a further £1.2 million, US$1.3 million and €1.9 million was invested outside the UK, in tranches 9 to 11, even though no ARM bonds were issued for these tranches. The majority of these funds is still held in the accounts of receiving agents, though some of the tranche 9 funds were sent to ARM and subsequently dispersed (including by making interest payments to investors in tranches 9 to 11 of £2 million).

Interaction with the Luxembourg financial regulator

4.13. Luxembourg law provides that securitisation undertakings which issue securities to the public on a continuous basis must be licensed by the Luxembourg financial regulator, the CSSF. One consequence of the CSSF refusing a securitisation undertaking's application for a licence is the liquidation of that firm.

4.14. ARM formed the view by 19 November 2007 that it needed a licence from the CSSF to continue to issue bonds as it fell within the CSSF's interpretation of the definition of securitisation undertaking, inter alia because it issued bonds more than three times per year.

4.15. At around this time, ARM engaged lawyers to apply to the CSSF for a licence, but no progress appears to have been made. On 9 July 2009, the CSSF wrote to ARM requesting it provide information to enable the CSSF to assess whether ARM's activities required a licence. ARM responded on 16 July 2009 that it believed its activities did need a licence from the CSSF, as it issued bonds to the public on a continuous basis. On 23 July 2009, ARM belatedly submitted an application for a licence to the CSSF. Ms Moran became aware of the submission of this application on 27 July 2009.

4.16. From this date, the CSSF made several requests for information to ARM about its business model and particularly the risks to investors posed by the bonds and the asset class.

4.17. On 1 October 2009, ARM issued the bonds which underlay tranche 8. It then opened tranche 9 for investment. On 20 November 2009, ARM was requested by the CSSF not to issue any more bonds, pending a decision from the CSSF on ARM's application for a licence. Ms Moran became aware of this on 10 December 2009.

4.18. On 24 December 2009, Ms Moran became aware that ARM considered that it was required to have a licence from the CSSF in order to continue issuing bonds, and that one potential consequence of it failing to obtain one was ARM's liquidation.

4.19. Between 1 October 2009 (the date of issue of the last ARM bond) and 26 May 2010 (when the Authority issued a First Supervisory Notice requiring Catalyst to cease promoting and arranging investments into ARM bonds), Catalyst arranged or effected the remittance of £17.1 million of UK investors' funds for intended tranches 9 to 11 of the ARM bonds. A significant proportion of those funds has not been returned to investors.

4.20. On 9 June 2010, Catalyst notified the Authority that ARM had learned that the CSSF was minded to refuse its application for a licence but to allow ARM to transfer its operations to another jurisdiction, rather than issue a formal refusal.

Potential transfer of ARM's operations to Ireland

4.21. In early 2010, ARM decided to explore transferring its operations to Ireland, in parallel with continuing to seek a licence in Luxembourg. In January 2010, lawyers were instructed in Ireland to set up a "section 110 company" (that is, a company falling within the definition of section 110 of the Irish Taxes and Consolidation Act 1997) for this purpose. A section 110 company would normally be exempt from any requirement to be authorised by the financial regulator in order to issue bonds. However, the section 110 company would still require approval from the Irish financial regulator for its prospectus and other aspects of its operation.

4.22. ARM plc was incorporated in Ireland and was intended to take over ARM's contracts with its various counterparties. The plan was for ARM's existing bondholders to exchange their ARM bonds for identical bonds to be issued by ARM plc.

4.23. By the end of the relevant period, ARM's operations had not been transferred to Ireland and this has not since been achieved. Trading in ARM securities was suspended and, on 29 August 2011, the CSSF issued its decision refusing ARM a licence. ARM has appealed that decision.

4.24. The position of investors is unclear: the pending investors in tranches 9 to 11 risk losing some or all of their investment, pending a decision on legal ownership of the funds. The position of the investors in tranches 1 to 8 is also unclear. They may lose some or all of their investment. None of the investors is currently receiving interest.

Financial promotions

4.25. At all material times since November 2007, the marketing brochures for ARM bonds issued by ARM and approved by Catalyst included the following statement:

> *"ARM is not regulated by the Financial Services Authority or any other regulator. This means that compensation will not be available from the Financial Services Compensation Scheme ("FSCS") if ARM is unable to meet its liabilities on the [bond] and you will not be able to refer a complaint against ARM to the Financial Ombudsman Service."*

4.26. This statement was correct but it was incomplete. At all times the brochures omitted to mention the full regulatory position: that ARM did not have a licence from the CSSF, but considered that it required one. The financial promotions

issued after 20 November 2009 also did not state that ARM would not issue further bonds until its licence application had been successfully determined (which Ms Moran was aware of by 24 December 2009). Further, the financial promotions issued after 24 December 2009 did not disclose that one potential consequence for ARM (and investors) of ARM failing to obtain a licence was that ARM would be liquidated. In the circumstances the financial promotions were not clear, fair and not misleading, and gave an inaccurate picture of ARM's regulatory position.

Letters from Catalyst to IFAs and investors

4.27. On or about 30 December 2009, Catalyst wrote a letter to all IFAs who had sold the ARM bonds to customers. The December 2009 letter stated that:

> "*We are pleased to advise you that in order to offer investors further reassurance in this current climate, ARM… has made the decision to apply for authorisation from the…CSSF... Luxembourg's equivalent to the FSA in the UK* …
>
> *This process is in its final stages…The next issue date will be sometime before the 31st March 2010 although it is expected to be 1st February 2010*."

4.28. The December 2009 letter did not state that ARM was required to have a licence from the CSSF, nor the potential consequences should it fail to obtain one, which included the liquidation of ARM. It gave a latest date for the next issue of ARM bonds although ARM and Catalyst could not be certain whether or when further bonds could be issued.

4.29. On 26 March 2010, Catalyst wrote to investors in tranches 9 to 11 of the ARM bonds. The March 2010 letter informed investors of the interest on the ARM bond which would be paid into their account for the preceding quarter. It went on to state:

> "*ARM is in the process of making some changes to its corporate structure which ARM believes will be in the best interests of the bondholders. As you are aware, the ARM Programme is listed on the Irish Stock Exchange and we are instructed that the ARM Board believes that it is advantageous for ARM to be either regulated in Luxembourg or have the issuer domiciled in Ireland, under the same organisation. ARM will initiate its next issue once these changes have been completed. We have been advised by ARM that it anticipates that this will take place shortly.*"

4.30. The March 2010 letter suggested that obtaining authorisation in Luxembourg was voluntary and did not state, as was Catalyst's view, that ARM required a licence from the CSSF in order to issue bonds in Luxembourg, nor the potential consequences for ARM should it fail to obtain one. It also suggested that the possible alternative of domicile in Ireland would be merely "advantageous", when in fact it would be essential in order to avoid the risk of ARM being liquidated in the event that the CSSF was not prepared to grant a licence in Luxembourg. It suggested that either alternative could be achieved quickly.

Ms Moran's role

4.31. Ms Moran joined Catalyst in 2005 and in June 2006 took over the role of compliance officer (CF10) and remained in this role until she left Catalyst in October 2011. It was Ms Moran's responsibility to monitor and, on a regular basis,

to assess the adequacy and effectiveness of Catalyst's compliance procedures and to advise and assist Catalyst's directors to comply with the firm's obligations under the regulatory system (consistent with SYSC 6.1.3R).

4.32. In practice, Ms Moran's compliance role included improving the firm's systems for financial promotions, trying to change the compliance culture within the firm and introducing changes to the firm's compliance manuals and processes. Financial promotions were a key part of her role, and she was responsible, in general terms, for making sure that the process for financial promotions relating to, inter alia, the ARM bonds was working and that Catalyst was implementing the process. Ms Moran was responsible for carrying out a compliance check on financial promotions, giving the financial promotion a validity date and signing the "compliance sign off" box. The financial promotions would then be sent for approval by a director. Without her compliance approval, a financial promotion would not be issued.

4.33. Ms Moran had been aware of ARM's intention to apply for a licence before it did so in July 2009 and she said this was talked about as something ARM wanted to do. She was informed at a Catalyst management meeting on 27 July 2009 that ARM had applied to the CSSF for a licence. Ms Moran stated that she did not find out until 24 December 2009 that the licence was considered to be mandatory in order for ARM to continue issuing bonds; she had believed it was voluntary. Ms Moran stated that she also found out on 24 December 2009 that ARM could be placed into liquidation if the licence was not granted. She failed to take reasonable steps to inform herself properly, in her role as compliance officer, of the reasons for the application and the potential consequences for ARM of failing to obtain a licence. Ms Moran instead relied on her mistaken belief that the licence application was voluntary, without having questioned ARM or Catalyst's directors on the matter or seen any legal, or other, advice to that effect.

4.34. At no point did Ms Moran seek to amend Catalyst's financial promotions to disclose the fact that ARM did not have a licence from the CSSF and that a licence was considered to be required, or the potential consequences for ARM if a licence was not granted.

4.35. Ms Moran did not advise Catalyst against continuing to arrange for the acceptance by ARM of investors' funds from 10 December 2009 when she became aware that the CSSF had requested ARM not to issue further bonds, or from 24 December 2009 when she became aware that the licence was mandatory and that there were potential adverse consequences if a licence was not obtained. In around January 2010, a director of Catalyst asked Ms Moran for advice in relation to the appropriateness of Catalyst's continuing to arrange for the acceptance by ARM of investor applications (and investors' monies) for ARM bonds. Ms Moran was aware by that time that ARM was not able to issue bonds and that there was, at the very least, a risk that - unless it obtained a licence from the CSSF - ARM would not be able to issue future bonds. There is no evidence, however, that she advised against Catalyst's decision to continue to arrange for the acceptance of investors' funds.

4.36. Ms Moran was sent a draft of the December 2009 letter and had an opportunity to propose amendments. The December 2009 letter was misleading in that it suggested that ARM did not have to obtain a licence as this was optional rather than required by the CSSF. It also failed to mention the potential consequences should ARM fail to obtain a licence, which included the liquidation of ARM. Had Ms Moran made further enquiries to follow up the matters of which she was aware, namely that ARM had applied for a licence and that CSSF had instructed ARM not to issue any further bonds, she could have identified that the letter was

misleading in the above respects. As a consequence of failing to make enquiries, she did not advise Catalyst's directors that the letter was misleading.

4.37. Ms Moran also received a draft of the March 2010 letter and had an opportunity to propose amendments. The March 2010 letter also failed to disclose to investors, as was Catalyst's view, that ARM required a licence to issue bonds in Luxembourg or that there were potential consequences for ARM should it fail to obtain one, including the liquidation of ARM. The letter again gave the impression that a licence was optional rather than required, and suggested that the possible alternative of domicile in Ireland would be merely "advantageous" rather than essential to avoid liquidation if the CSSF did not grant a licence to ARM. It suggested that either option was achievable quickly. The March 2010 letter misrepresented the risks to investors of investing in ARM bonds. Particularly given the additional information that Ms Moran had become aware of by 24 December 2009, Ms Moran should have advised Catalyst's directors that the letter was misleading and that, as a minimum, the letter should disclose the fact that a licence (or change of domicile) was mandatory and had not been granted, and that there was no clear timetable for resolving the issue, so that investors were aware of the risks of continuing to invest in ARM bonds.

5. FAILINGS

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

Statement of Principle 6

5.2. As the compliance officer at a common platform firm, as that term is used in the Authority's Handbook, Ms Moran was responsible for Catalyst's compliance function and therefore for providing advice and assistance as to the firm's compliance with its obligations under the regulatory system, including in relation to financial promotions and the marketing of the ARM bonds. As a result of Catalyst's arrangement with ARM to market and distribute ARM bonds to UK investors, Ms Moran's compliance responsibilities included exercising due skill, care and diligence over Catalyst's distribution of ARM investment bonds, including in relation to financial promotions.

5.3. Ms Moran failed to take reasonable steps to inform herself, from 27 July 2009 when she became aware that ARM's application to the CSSF had been made, of the reasons for that application i.e. that it was mandatory for ARM to have a licence in order to issue bonds on a continuous basis and that there were potential adverse consequences of failing to obtain a licence. As a result she did not seek to amend Catalyst's financial promotions in the light of these matters, or to advise against the sending of the December 2009 letter (which she reviewed on a date between 10 and 18 December 2009) in a form which was, in fact, misleading.

5.4. By 24 December 2009 Ms Moran had become aware of the following matters:

(a) that the CSSF had requested ARM not to issue further bonds pending authorisation by it; and

(b) that ARM considered it was required to have a licence from the CSSF and that the potential consequences of failing to obtain one included the liquidation of ARM

but, despite this knowledge, failed to seek to amend Catalyst's financial promotions.

5.5. Despite being aware of the matters set out in paragraph 5.4 above by 24 December 2009, Ms Moran failed to advise Catalyst's directors, in the light of those matters, that, in order to have due regard to the interests of investors, Catalyst should not continue to market ARM bonds or arrange for the acceptance of investors' funds pending successful resolution of its application to the CSSF for a licence unless the circumstances were clearly disclosed to investors.

5.6. Ms Moran failed to advise that the March 2010 letter was misleading as to ARM's regulatory position and the associated risks, despite the consequences for ARM and the risk to investors if a licence (or change of domicile) was not obtained. By failing to advise Catalyst's directors that the letter was misleading, Ms Moran failed to exercise due skill, care and diligence in discharging her responsibilities as compliance officer (CF10).

6. SANCTION

Financial Penalty

6.1. The Authority's policy in relation to the imposition of a financial penalty is set out in Chapter 6 of DEPP which forms part of the Authority's Handbook. The regulatory provisions governing the determination of financial penalties changed on 6 March 2010, and the Authority has had regard to the fact that part of Ms Moran's misconduct occurred after the new provisions came into force. However, as the majority of Ms Moran's misconduct occurred before that change, the Authority has applied the penalty regime as set out in DEPP that was in place up to 5 March 2010. All references to DEPP in this section are references to the version that was in force up to and including 5 March 2010. The relevant provisions are set out in detail in Annex A.

6.2. The Authority has also had regard to the provisions of Chapter 7 of EG.

6.3. In determining whether a financial penalty is appropriate, the Authority is required to consider all the relevant circumstances of the case. DEPP 6.5.2G sets out a non-exhaustive list of factors which may be relevant to determining the appropriate level of financial penalty. The Authority considers that the following factors are particularly relevant in this case.

Deterrence: DEPP 6.5.2G(1)

6.4. When determining the level of penalty, the Authority has regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

The nature, seriousness and impact of the breach in question: DEPP 6.5.2G(2)

6.5 The Authority has had regard to the seriousness of the breaches, the duration of the breaches and the risk of loss to consumers.

The extent to which the breach was deliberate or reckless: DEPP 6.5.2G(3)

6.6. The Authority does not consider that Ms Moran's failure to discharge her responsibilities as compliance officer was deliberate or reckless.

Whether the person on whom the penalty is to be imposed is an individual: DEPP 6.5.2G(4)

6.7. The Authority recognises that the financial penalty imposed on Ms Moran is likely to have a significant impact on her as an individual, but it is considered to be proportionate in relation to the seriousness of the misconduct.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2G(5)

6.8. The Authority does not consider that the proposed financial penalty would cause Ms Moran serious financial hardship or financial difficulties.

Conduct following the breach DEPP: 6.5.2G(8)

6.9. Ms Moran has cooperated fully with the Authority's investigation. When interviewed she accepted that, with hindsight, the December 2009 letter to IFAs and the March 2010 letter to investors did not give the full picture.

Other action taken by the Authority: DEPP 6.5.2G(10)

6.10. In determining the level of financial penalty, the Authority has taken into account penalties imposed on other approved persons for similar breaches.

6.11. Having considered all the circumstances set out above, the Authority considers that £20,000 is the appropriate financial penalty to impose on Ms Moran.

7. REPRESENTATIONS

7.1. Annex B contains a brief summary of the key representations made by:

(1) Ms Moran; and

(2) ARM, a third party identified in the reasons set out in this Notice, and to whom in the opinion of the Authority the matter is prejudicial;

and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by Ms Moran and ARM, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

Decision maker

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

8.2. This Final Notice is given under in accordance with section 390 of the Act.

Manner of and time for Payment

8.3. The financial penalty must be paid in full by Alison Moran to the Authority by no later than 14 October 2013, 14 days from the date of the Final Notice.

If the financial penalty is not paid

8.4. If all or any of the financial penalty is outstanding on 15 October 2013, the Authority may recover the outstanding amount as a debt owed by Alison Moran and due to the Authority.

Publicity

8.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such a 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 you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

8.6. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Contacts

8.7. For more information concerning this matter generally, contact Anne Pike at the Financial Conduct Authority (direct line: 020 7066 8856 or by e-mail anne.pike@fca.org.uk).

Bill Sillett

Head of Department, Enforcement and Financial Crime Division

Annex A

Relevant regulatory provisions

1. The Act

1.1. The Authority's operational objectives are set out in section 1B of the Act and include securing an appropriate degree of protection for consumers.

1.2. Section 66 of the Act provides that the Authority may take action against a person if he is guilty of misconduct. If the Authority takes action under this section, it may impose a penalty on the person in such amount as it considers appropriate. The Authority may not take action under this section after the end of the period of three years beginning with the first day on which the Authority knew of the misconduct, unless proceedings in respect of it against the person concerned were begun before the end of that period.

2. The Statements of Principle and APER

2.1. APER, the part of the Authority's Handbook entitled "Statements of Principle and Code of Practice for Approved Persons", sets out the Statements of Principle as they relate to approved persons and descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle. It further describes factors which, in the opinion of the Authority, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle. All references to APER in this section are references to the version that was in force during the relevant period.

2.2. APER 3.1.3G states that when establishing compliance with or a breach of a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.

2.3. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle where he is personally culpable, that is in a situation where his conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.

2.4. APER 3.1.6G provides that APER (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not exhaustive of the kind of conduct that may contravene the Statements of Principle. The Statement of Principle relevant to this matter is Statement of Principle 6, which provides that an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function.

2.5. APER 3.1.8G provides, in relation to applying Statements of Principle 5 to 7, that the nature, scale and complexity of the business under management and the role and responsibility of the individual performing a significant influence function within the firm will be relevant in assessing whether an approved person's conduct was reasonable.

2.6. APER 3.3.1E states that in determining whether or not the conduct of an approved person performing a significant influence function complies with Statements of

Principle 5 to 7, the following are factors which, in the opinion of the Authority, are to be taken into account:

(1) whether he exercised reasonable care when considering the information available to him;

(2) whether he reached a reasonable conclusion which he acted on;

(3) the nature, scale and complexity of the firm's business;

(4) his role and responsibility as an approved person performing a significant influence function; and

(5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.

2.7. APER 4.6 lists types of conduct which, in the opinion of the Authority, do not comply with Statement of Principle 6. These include:

(1) failing to take reasonable steps to adequately inform himself about the affairs of the business for which he is responsible (APER 4.6.3E);

(2) failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that he has delegated to an individual or individuals (whether in-house or outside contractors) (APER 4.6.6E);

(3) an approved person performing a significant influence function will not always manage the business on a day-to-day basis himself. The extent to which he does so will depend on a number of factors, including the nature, scale and complexity of the business and his position within it. The larger and more complex the business, the greater the need for clear and effective delegation and reporting lines. The Authority will look to the approved person performing a significant influence function to take reasonable steps to ensure that systems are in place which result in issues being addressed at the appropriate level. When issues come to his attention, he should deal with them in an appropriate way (APER 4.6.11G); and

(4) an approved person performing a significant influence function should understand the business for which he is responsible. An approved person performing a significant influence function is unlikely to be an expert in all aspects of a complex financial services business. However, he should understand and inform himself about the business sufficiently to understand the risks of its trading, credit or other business activities (APER 4.6.12G).

3. SUP

3.1. SUP 10A.7.8R provides that the compliance oversight function (CF10) is the function of acting in the capacity of a director or senior manager who is allocated the function set out in SYSC 6.1.4 R (2) (for a firm which is not a common platform firm).

4. SYSC

4.1. SYSC 6.1.3R provides that a common platform firm must maintain a permanent and effective compliance function which operates independently and has the following responsibilities:

(1) to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with SYSC 6.1.2 R, and the actions taken to address any deficiencies in the firm's compliance with its obligations; and

(2) to advise and assist the relevant persons responsible for carrying out regulated activities to comply with the firm's obligations under the regulatory system.

4.2. SYSC 6.1.4R provides that a common platform firm must ensure that the following conditions are satisfied:

(1) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;

(2) a compliance officer must be appointed and must be responsible for the compliance function and for any reporting as to compliance required by SYSC 4.3.2 R;

(3) the relevant persons involved in the compliance functions must not be involved in the performance of services or activities they monitor;

(4) the method of determining the remuneration of the relevant persons involved in the compliance function must not compromise their objectivity and must not be likely to do so.

5. DEPP

5.1. Guidance on the Authority's approach to penalties is set out in DEPP. DEPP came into effect on 28 August 2007.

The Authority's policy on the imposition and amount of penalties that applied for misconduct is set out in Chapter 6 of DEPP. DEPP is being applied as it stood prior to 6 March 2010 for the reasons set out in the body of this Notice. All references to DEPP in this section are references to the version that was in force up to and including 5 March 2010.

5.2. DEPP 6.1.2G provides that the principal purpose of imposing a financial penalty or public censure is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour. Financial penalties are therefore tools that the Authority may employ to help it to achieve its regulatory objectives.

Financial penalty

5.3. DEPP 6.5.1G(1) provides that the Authority will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned.

5.4. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act. The following factors are relevant to this case:

Deterrence: DEPP 6.5.2G(1)

5.5. When determining the appropriate level of financial penalty, the Authority will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

The nature, seriousness and impact of the breach in question: DEPP 6.5.2G(2)

5.6. The Authority will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached, which can include considerations such as the duration and frequency of the breach, whether the breach revealed serious or systemic weaknesses in the person's procedures or of the management systems or internal controls relating to all or part of a person's business and the loss or risk of loss caused to consumers, investors or other market users.

Whether the person on whom the penalty is to be imposed is an individual: DEPP 6.5.2G(4)

5.7. The Authority will take into account that individuals will not always have the resources of a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than a body corporate. The Authority will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2G(5)

5.8. The degree of seriousness of a breach may be linked to the size of the firm. For example, a systemic failure in a large firm could damage or threaten to damage a much larger number of consumers or investors than would be the case with a small firm: breaches in firms with a high volume of business over a protracted period may be serious than breaches over similar periods in firms with a smaller volume of business.

Conduct following the breach: DEPP 6.5.2G(8)

5.9. The Authority may take into account the conduct of the person in bringing (or failing to bring) quickly, effectively and completely the breach to the Authority's attention, the degree of co-operation the person showed during the investigation and any remedial steps taken since the breach was identified.

Other action taken by the Authority: DEPP 6.5.2G(10)

5.10. The Authority seeks to apply a consistent approach to determining the appropriate level of penalty. The Authority may take into account previous decisions made in relation to similar misconduct.

6. Enforcement Guide

6.1. The Authority's policy on exercising its enforcement power for financial penalties and public censures is set out in Chapter 7 of EG, which came into effect on 28 August 2007.

Annex B

Representations

1. Ms Moran's representations

Ms Moran's position in relation to ARM, as Catalyst's compliance officer

1.1. Ms Moran made representations that she acted reasonably in not becoming closely involved with the regulatory position of ARM in Luxembourg prior to 2010 because:

(1) within Catalyst, she was responsible only for UK compliance matters;

(2) she was discouraged by others within Catalyst's management team from becoming involved in the affairs of ARM;

(3) she considered that Catalyst and ARM were supported by competent professional advisers; and

(4) she felt that ARM was being run properly and the ARM bonds were performing in line with expectations.

1.2. The Authority has concluded that the regulatory position of ARM in Luxembourg was of great relevance to Catalyst's own compliance position, especially as the principal activity of Catalyst was the distribution of ARM bonds and Catalyst was a major service provider to ARM. Indeed, Ms Moran admitted that she had to take account of ARM's compliance arrangements to the extent they impacted on Catalyst's regulatory position. It should therefore have been of key concern to Ms Moran, as Catalyst's compliance officer, however well-run and well-advised ARM appeared to be, and whether or not others discouraged her from becoming involved. Whether the performance of the ARM bonds was satisfactory was not relevant to a consideration of ARM's regulatory position.

Time bar

1.3. Ms Moran made representations in relation to the time limit for taking action against a person under section 66 of the Act. Section 66(4) provides that the Authority may not take action against a person under that section in respect of misconduct more than three years after the first day on which it knew of the misconduct, unless proceedings had been begun before the end of that period. Ms Moran argued that, by 1 July 2009, the Authority knew that ARM required a licence from the CSSF to issue bonds on a continuous basis and had reviewed Catalyst's financial promotions as part of its supervisory work, and therefore had knowledge of the facts from which the alleged misconduct could be inferred. She argued that the Warning Notice, issued to her on 11 July 2012, was issued more than three years after the Authority acquired the relevant knowledge and accordingly was out of time.

1.4. The Authority has reached the conclusion that, in fact, the earliest that it could have been aware of ARM's requirement for a licence (and therefore could have inferred certain of the misconduct) was on 16 July 2009 (when ARM confirmed to the CSSF that it required a licence). Accordingly, the Warning Notice was issued within the three year limit.

Failure to take reasonable steps to inform herself of the reasons for the CSSF application

1.5. Ms Moran made the following representations:

(1) She had no reason to appreciate the significance of the application after learning, on 27 July 2009, of its having been made, in particular because:

(a) in 2006 and 2007, both she and a compliance consultant had made enquiries within Catalyst and been told that authorisation was not needed by ARM, and she had no reason to think that the CSSF's position on this issue had changed; and

(b) she had earlier understood that ARM intended to make an application to the CSSF for a licence on a voluntary basis, and had believed that such an application had already been made, so the making of the application was not unexpected and did not raise concerns.

(2) Even if she had made enquiries about the reasons for the application, she would not have learned the true position because the directors of Catalyst were either unaware of the true position or were confident it did not present a problem, such that they would not have represented it accurately.

(3) In the period following the Authority's supervision visit to Catalyst in July 2009, she had been busy addressing the specific issues raised by the Authority and therefore it was not surprising that she did not focus on examining the reasons for ARM's application to the CSSF.

1.6. The Authority has reached the following conclusions:

(1) Ms Moran was aware by 27 July 2009 that the application was being treated by Catalyst as a matter of urgency, and thereafter was involved in assisting with the application on an urgent basis, and this should have caused her to make enquiries about the reasons for the application.

(2) There is no evidence that enquiries of the directors would not have enabled Ms Moran to ascertain the position. In addition, there were other potential sources of information besides the directors of Catalyst. In any event, she should have made reasonable enquiries, whether or not as a matter of fact they would have been successful.

(3) Whatever Ms Moran's other responsibilities at the relevant time, they did not excuse her failure to make reasonable enquiries about the reasons for the application.

Financial promotions

1.7. Ms Moran made the following representations:

(1) She did not recall learning on 10 December 2009 about the CSSF having requested ARM not to issue further bonds pending authorisation, despite the fact being recorded in the corporate finance section of a management report tabled at a Board meeting of Catalyst on that date, the minutes of which record that she was present and that the Board was taken through the corporate finance report. She did not recall either receiving or considering the report before the meeting, or any discussion of it at the meeting. Her

recollection was that she learned of this development in a different meeting at a slightly later date, on or before 18 December.

(2) Although, from 24 December 2009 onwards, she understood that the CSSF licensing requirement was mandatory, she received assurances from others at Catalyst that they were confident that:

(a) the CSSF licence would be granted; but in any event

(b) the CSSF would not liquidate ARM if a licence was not granted; and

(c) there was a realistic alternative option of re-domicile to Ireland

and accordingly it was reasonable not to amend the financial promotions to reflect the licence position.

(3) In January 2010, Catalyst had adequately addressed the situation by implementing a policy of "passive marketing" whereby, for instance, no attempts were made to establish new relationships with IFAs and no further hard copies of existing financial promotions were distributed. From January 2010 onwards, IFAs were informed about the licence situation in telephone calls, emails and meetings.

1.8. The Authority has reached the following conclusions:

(1) On the basis of the documentary evidence referred to in paragraph 1.7(1), Ms Moran did learn of the CSSF's request on 10 December 2009, but in any event the Authority notes her admission that she learned of the request at the latest by 18 December.

(2) Whatever the degree of confidence within Catalyst on the matters set out at paragraph 1.7(2), there remained a real possibility that the relevant risks would materialise and, accordingly, Ms Moran should have sought to ensure these matters were reflected in Catalyst's financial promotions.

(3) The passive marketing policy did not address the need for Ms Moran to seek to ensure that financial promotions, still in circulation, were updated so as to reflect the accurate regulatory position of ARM (whatever the content of the updates to IFAs).

The failure to advise against promoting the ARM bonds and continuing to arrange for the acceptance of investors' money

1.9. Ms Moran made the following representations:

(1) She did not think investors' funds were put at risk by the continued promotion of the ARM bonds and acceptance of investors' money by ARM, because:

(a) she relied on assurances from others in Catalyst's senior management team that there was no realistic prospect of ARM being liquidated; and

(b) she believed that investors' funds were secure because they were held by receiving agents rather than ARM, and she understood that investors would be able to withdraw funds if they no longer wished to proceed.

(2) She was confident that IFAs with an existing relationship with Catalyst were aware that ARM would not issue bonds unless and until ARM's regulatory position was resolved favourably, and were therefore able to advise their clients accordingly. The policy of passive marketing meant that only those IFAs could submit investments.

(3) It was she who had proposed the policy of passive marketing which had adequately addressed the situation.

(4) The policy of passive marketing was adopted because Catalyst was concerned that, if the bonds were withdrawn completely, this could have precipitated a "run" on the bonds that would have been to the detriment of existing investors. She argued that the Authority was concerned, when it issued a First Supervisory Notice issued against Catalyst in May 2010 prohibiting any further distribution of the ARM bonds, not to precipitate a run on the bonds, with the result that it deferred publication of the Notice, and that this demonstrated the reasonableness of Catalyst's earlier approach.

(5) She had acted in accordance with legal advice, which she obtained in January 2010, as to whether it was appropriate for Catalyst to continue to promote ARM funds, to the effect that this was a commercial decision for Catalyst, rather than a regulatory issue.

(6) She had believed the Authority to be aware of the position in relation to the continued promotion of the bonds and acceptance of funds, and in any event, the Authority had never enquired about the position before 10 March 2010, but could have done so.

1.10. The Authority has reached the following conclusions:

(1) As set out above at paragraph 1.8(2), whatever the confidence of Catalyst's management on the liquidation issue, there remained a risk of liquidation of which Ms Moran was aware and she should have acted to mitigate the consequences of that risk by advising against continuing to promote the bonds and arranging for funds to be accepted unless ARM's position in relation to the CSSF licence was fully disclosed to investors. The key factor was that funds were being collected for ARM bonds when the regulatory position of ARM had not been disclosed, whether or not the funds were secure in the hands of the receiving agents.

(2) It was not appropriate for Ms Moran to rely on IFAs to advise their clients in circumstances where financial promotions and other communications (including the misleading letter to IFAs of December 2009) with investors did not clearly explain the position;

(3) The passive marketing policy was not acceptable, putting as it did the interests of new investors at risk. It did not discourage IFAs who were existing distributors of the ARM bonds and familiar with the product from promoting it to new or existing customers. Significant sums continued to be received from investors during the period this policy was in operation; and

(4) Any fear of precipitating a run on the bonds did not justify putting the interests of new investors at risk. The First Supervisory Notice was issued outside the relevant period in respect of regulatory action in a specific set of circumstances and based on specific reasons, which in the circumstances (including that, as a direct result of that Notice, there were no longer any potential future investors at risk) it was not considered appropriate to

publicise. The approach taken by the Authority to publication of that Notice is not analogous or relevant to the question of whether Catalyst was reckless in sending misleading communications, which for the reasons set out in this Notice the Authority has concluded that it was.

(5) There is no clear documentary evidence of the instructions given to the lawyers who advised on this issue, and no documentary evidence of the advice itself. Accordingly it is unclear on what premises the advice was sought or given, and little weight can be attached to the fact that advice was obtained.

(6) Ms Moran should not have relied on the Authority's knowledge of the relevant matters, irrespective of whether or not her belief was correct. It is the responsibility of approved persons to identify and comply with their responsibilities under the Authority's rules and they are not entitled to rely on the Authority to identify what needs to be done.

The failure to advise against sending the March 2010 letter in a form which was misleading

1.11. Ms Moran made the following representations:

(1) The purpose of the letter was not a comprehensive update, but to notify investors in tranche 9 of the bonds of the interest payment they would be receiving. It was based on routine letters in relation to quarterly interest payments, amended to reflect that the bonds had not yet been issued.

(2) The letter was made clearer as a result of comments that she made on it.

(3) At the relevant time:

(a) she had believed the investors' funds were safe;

(b) she had believed that ARM would obtain a licence from the CSSF and did not face a risk of liquidation; and

(c) the IFAs with whom Catalyst dealt were aware of the regulatory position of ARM.

1.12. The Authority has reached the following conclusions:

(1) Regardless of the purpose of the letter, or of any changes instigated by Ms Moran, it was misleading in the respects set out in paragraph 4.30 of the body of this Notice, and she should have advised Catalyst's directors accordingly.

(2) Any changes Ms Moran made to the letter in draft were inadequate.

(3) In relation to the matters set out at paragraph 1.11(3), the position is as set out at paragraphs 1.8(2) and 1.10(1) and (2).

Financial penalty

1.13. Ms Moran made the following representations:

(1) She should not be considered culpable for any loss suffered by investors who had not taken up the offer made to pending investors in tranches 9 to 11 of

the bonds in September 2010, to withdraw their funds and receive a full refund. This went to the seriousness of the breach.

(2) A substantial penalty would not be appropriate in respect of the misconduct alleged, as she was, generally, a diligent employee who was well regarded within Catalyst. It did not adequately take into account the extent to which Ms Moran was provided with limited information and inappropriate reassurances by Catalyst's management.

(3) In proposing to impose a substantial penalty, the Authority had not taken due account of the fact that she was an individual, the financial and professional effect that the penalty would have on her, or her conduct following the relevant period, which was creditable in that she had remained at Catalyst and attempted to resolve its problems with ARM.

(4) The proposal to impose a substantial financial penalty was not consistent with previous Authority cases, which suggested that the penalty should be lower.

1.14. The Authority has reached the following conclusions:

(1) It is the risk of loss at the relevant time which is important, not the extent to which losses have crystallised, or are expected to do so.

(2) The factors set out in paragraph 1.13(2) do not alter the fact that Ms Moran's conduct did not meet the required standard in the respects set out in this Notice. The penalty set out in this Notice is appropriate in all the circumstances, particularly in the light of the need to provide a deterrent to both Ms Moran and others in relation to similar misconduct.

(3) The penalty set out in this Notice reflects appropriately the matters set out in paragraph 1.13(3). In particular, no case of serious financial hardship was put forward by Ms Moran or made out.

(4) On the basis of the facts as set out in this Notice, the level of the penalty is appropriate in comparison with those imposed in other cases.

2. Third party representations

2.1. ARM made representations that CSSF authorisation was not compulsory for ARM on the proper interpretation of the relevant Luxembourg law because it was not, in fact, issuing securities to the public on a continuous basis.

2.2. The Authority has concluded that whether the proper interpretation of the relevant Luxembourg law is that a company in ARM's position would be considered to be issuing securities to the public on a continuous basis is not relevant to a consideration of Ms Moran's conduct during the relevant period.