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# FINAL NOTICE

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**To:** **Craig Stuart Cameron**

**IRN:** **CSC00003**

**Date:** **29 August 2014**

## **1. ACTION**

1.1 For the reasons given in this Notice, the Authority hereby:

- (a) imposes on Mr Cameron a financial penalty of £350,000; and
- (b) makes an order prohibiting Mr Cameron from performing any function in relation to any regulated activity carried on by an authorised or exempt person, or exempt professional firm. The order takes effect from 29 August 2014.

## **2. SUMMARY OF REASONS**

2.1. On the basis of the facts and matters described below, the Authority has concluded that, during the Relevant Period, Mr Cameron failed to act with honesty and integrity in performing the significant influence function CF1 (Director) at Burlington's principal, with responsibility for Burlington, in breach of Statement of Principle 1 of the Statements of Principle, in that he:

- (a) deliberately involved Burlington in promoting and arranging investments in the Three UCIS, without the knowledge of Burlington's principal and in breach of Burlington's agreement with its principal, which did not permit Burlington to conduct UCIS business; and
- (b) recklessly devised a structure and participated in a process for promoting and arranging investments in the Three UCIS that was likely to provide false assurance to customers, potential customers and others with whom he dealt that Burlington's involvement in the Three UCIS was authorised.

2.2. Mr Cameron stood to derive personal benefit from Burlington's role in promoting and arranging the Three UCIS, through commission and fees received from Burlington and from AdminCo as a director of that company which provided services to the Three UCIS (or to Burlington in relation to them).

2.3. Burlington's activities, together with the activities of another IFA (Leslie & Nuding) and two non-authorised companies (AdminCo and MarketingCo), resulted in:

- (a) unsolicited mailshots being sent by email to approximately 15,000 potential investors; and
- (b) prospectuses being sent to 2,900 retail consumers

in each case without adequate systems and processes being in place to assess or establish the potential eligibility of the recipients for investments in the Three UCIS in accordance with regulatory requirements, thereby exposing them to the risk of unsuitable sales and consequent loss.

2.4. Between April and December 2005, approximately 880 investors invested a total of approximately €38 million in the Three UCIS, mainly on a non-advised basis. The Three UCIS fell into financial difficulties from 2006 and the investors' original investments may now be virtually worthless.

- 2.5. As a consequence of these matters, the Authority considers that Mr Cameron has failed to meet the minimum regulatory standards in terms of performing a controlled function with integrity. The serious nature of his breaches leads the Authority to conclude that Mr Cameron is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm, and that he should be prohibited from doing so.
- 2.6. The Authority has therefore decided to impose a financial penalty on Mr Cameron in the amount of £350,000 pursuant to section 66 of the Act and make a prohibition order pursuant to section 56 of the Act.
- 2.7. The action supports the Authority's statutory objective of securing an appropriate degree of protection for consumers.

### **3. DEFINITIONS**

- 3.1. The definitions below are used in this Final Notice.
  - (a) the "Act" means the Financial Services and Markets Act 2000;
  - (b) "AdminCo" means the management services company, partly owned by Mr Cameron, which facilitated sales of the Three UCIS and which was neither authorised by the Authority nor exempt;
  - (c) "APER" or the "Statements of Principle" means the Authority's Statements of Principle and Code of Practice for Approved Persons in force during the Relevant Period;
  - (d) "AR" means appointed representative;
  - (e) the "Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;
  - (f) the "Authority's Handbook" means the Authority's Handbook of Rules and Guidance;
  - (g) "Burlington" means Burlington Associates Limited;

- (h) "COB" means the Conduct of Business Sourcebook set out in the Authority's Handbook in force between 1 December 2004 and 31 October 2007;
- (i) "EG" means the Authority's Enforcement Guide;
- (j) "ENF" means the Authority's Enforcement Manual which was in force between 1 December 2004 and 27 August 2007;
- (k) "exempt professional firm" means a person to whom, as a result of Part 20 of the Act, the general prohibition does not apply in relation to that activity;
- (l) "FIT" means the Authority's Fit and Proper Test for Approved Persons in force during the Relevant Period;
- (m) "FPO 2001" means the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (in force between 19 March 2001 and 30 June 2005);
- (n) "FPO 2005" means the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (in force 1 July 2005 to present);
- (o) "IFA" means independent financial adviser;
- (p) "JFSC" means the Jersey Financial Services Commission;
- (q) "Leslie & Nuding" means the independent financial adviser which took responsibility for certifying potential investors as eligible to receive UCIS promotions, and issuing prospectuses to them;
- (r) "MarketingCo" means the property marketing company which sent out mailshots and held seminars to market the Three UCIS, and which was neither authorised by the Authority nor exempt;
- (s) the "PCIS Order" means the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001;
- (t) the "Relevant Period" means the period from 1 January 2005 to 2 January 2006;
- (u) the "Three UCIS" means the three unregulated collective investment schemes, relating to investments in property developments in Croatia,

Bulgaria and Montenegro, with the promotion and/or arranging of which Burlington, MarketingCo, AdminCo and Leslie & Nuding were involved;

(v) the "Tribunal" means the Upper Tribunal (Tax and Chancery Chamber);  
and

(w) "UCIS" means unregulated collective investment scheme.

#### **4. FACTS AND MATTERS**

##### **Background**

- 4.1 During the Relevant Period Mr Cameron was a director of Burlington, a small, independent financial advisory firm based in London, which advised individuals and small to medium sized companies. Burlington was an AR of a network (and therefore held limited authority from its network principal) from 12 May 2003 until 2 January 2006, when it became directly authorised by the Authority.
- 4.2 During the Relevant Period Mr Cameron was approved to perform the CF1 (Director (AR)), with responsibility for Burlington, and CF21 (Investment adviser) controlled functions at Burlington's principal. As CF1 (Director (AR)), Mr Cameron was (together with his fellow directors of Burlington, who also held the CF1 controlled function at its principal) responsible for ensuring that Burlington acted in accordance with its AR agreement with its principal and complied with its wider regulatory obligations.
- 4.3 Burlington's AR agreement with its principal expressly prohibited Burlington from conducting UCIS business: for example, in relation to UCIS it stated that network members were "*not permitted to undertake work in this area*".
- 4.4 In late 2004 Mr Cameron was approached by MarketingCo, a property marketing company interested in raising money from retail consumers in the UK to invest in a number of unregulated overseas property developments in Croatia and Bulgaria (the scheme was later extended to Montenegro). MarketingCo was not authorised by the Authority to conduct regulated activities. In early 2005 Mr Cameron and MarketingCo decided to raise money using the Three UCIS. By March 2005 Mr Cameron had identified an opportunity for Burlington and AdminCo to become involved in seeking investors for the Three UCIS.

## **Establishing the UCIS sales process**

- 4.5 An application was made to the JFSC, by lawyers acting on behalf of a Jersey-based company which was to act as trustee to the Three UCIS, for approval for the establishment of the Three UCIS. The JFSC allowed the Three UCIS to be established in and operated from Jersey on the basis that Burlington (together with MarketingCo) acted as the "co-promoter" of the Three UCIS. Burlington was described in the application to the JFSC as a suitable co-promoter of the Three UCIS in light of the fact that it was "*registered to conduct investment advisory business with the UK Financial Services Authority*". Mr Cameron was aware that Burlington had been represented to the JFSC as a UK regulated entity.
- 4.6 Mr Cameron was aware that Burlington's principal expressly prohibited Burlington from advising on or otherwise selling or promoting UCIS.
- 4.7 In April 2005, Mr Cameron asked Burlington's principal to authorise three mailshots marketing the UCIS. When this request was refused by Burlington's principal, Mr Cameron asked another staff member at Burlington to discuss this issue with Burlington's principal directly. Mr Cameron saw the response to this request, which emphasised that Burlington's principal did not permit Burlington to conduct UCIS business, stating: "*Unregulated Collective Investment Schemes are outside the scope of activity for appointed representatives of [the principal]...As such, they cannot be sold, advised on, or advertised...*".
- 4.8 After Burlington's principal refused Burlington permission to conduct UCIS business, Mr Cameron sought legal advice from a UK firm of solicitors. The advice dealt with the regulatory restrictions that generally apply to promoting UCIS. Mr Cameron did not tell the solicitors that:
- (a) Burlington was expressly prevented from conducting UCIS business under its AR agreement;
  - (b) MarketingCo would be involved in promoting the Three UCIS; or
  - (c) the Three UCIS would be promoted directly to retail consumers.
- 4.9 Whilst the legal advice took Burlington's status as an AR into account, as a result of Mr Cameron's omissions it did not deal with how Burlington might remain

involved in the Three UCIS without breaching the restrictions in its AR agreement. There was therefore nothing in the advice which justified Mr Cameron in considering that Burlington's involvement in the Three UCIS was permitted under its AR agreement.

4.10 Mr Cameron then devised an arrangement that appeared to distance Burlington from key parts of the sales process for the Three UCIS.

4.11 By May 2005 or thereabouts, Mr Cameron had arranged for:

- (a) Leslie & Nuding, another small IFA, to take on some responsibility for assessing whether retail consumers were eligible to receive a prospectus for the Three UCIS and sending out the prospectus and related documents. Leslie & Nuding used the trading style "Burlington Funds", as did AdminCo, when communicating with consumers about the Three UCIS. AdminCo also used "Burlington Funds" email addresses which were very similar to that used by Burlington when communicating with consumers;
- (b) AdminCo (which was controlled by Mr Cameron and shared an office building with Burlington) to carry out the administration in relation to Leslie & Nuding's responsibility referred to in (a), including handling communications with consumers, receiving prospectus requests and eligibility certificates, and sending out prospectuses on Leslie & Nuding's behalf. Although Leslie & Nuding had agreed to ensure that prospectuses were only sent to eligible consumers, it was AdminCo that in fact carried out this role;
- (c) AdminCo to be paid by Burlington for its work with Leslie & Nuding and Burlington in the promotion and arranging of the Three UCIS; and
- (d) Burlington to receive a fee of at least 3% of any amount invested by investors in the Three UCIS (and Leslie & Nuding to receive 0.5% of such amounts) per sale.

4.12 In practice:

- (a) Leslie & Nuding played little or no part at any stage of the sales process. Burlington and AdminCo employees acting under Mr Cameron's direction

carried out the tasks for which Leslie & Nuding had taken on responsibility, with only occasional, minimal supervision by Leslie & Nuding;

(b) Burlington and AdminCo assessed eligibility, and AdminCo distributed prospectuses and kept a record to ensure that prospectuses were only sent to eligible investors. MarketingCo was unaware of the specific nature of AdminCo's involvement; and

(c) AdminCo acted as a sub-contractor to Burlington in carrying out its work in relation to the promotion and arranging of the Three UCIS.

4.13 Mr Cameron understood the stringent statutory restrictions around promoting UCIS and that the Three UCIS were high risk investments. Accordingly, he knew that firms (whether authorised or unauthorised) may only promote UCIS to consumers in certain limited circumstances, such as where the consumer is certified as a high net worth individual or sophisticated investor.

#### **Promoting and arranging investments in the UCIS**

4.14 Mr Cameron arranged to involve himself, Burlington and/or AdminCo at every stage in the sales process relating to the investments in the Three UCIS. He caused Burlington to promote and arrange investments in the Three UCIS in a way that he knew was not permitted by its AR agreement with its principal, and put ordinary retail customers at risk.

#### Promotion of the Three UCIS

4.15 The Three UCIS were promoted to an unrestricted audience of thousands of retail consumers, by e-brochures on MarketingCo's website, unsolicited email mailshots (which were sent to 15,000 consumers on MarketingCo's database) and in person at sales seminars and workshops. Mr Cameron commented on some of the marketing materials and on the slides that MarketingCo used at the seminars. Along with other staff from Burlington and AdminCo, Mr Cameron also attended MarketingCo's sales seminars. At these seminars he was presented to the audience as being there on behalf of Burlington (and sometimes AdminCo).



- 4.16 Burlington agreed with MarketingCo and the Jersey-based trustee of the Three UCIS that it would act as the co-promoter of the Three UCIS and was described in the prospectuses for the Three UCIS, and in marketing brochures sent to consumers, as "co-promoter".
- 4.17 The content of, and the language used at, the seminars was intended to induce consumers to invest in the Three UCIS. After MarketingCo had explained the benefits of the Three UCIS to the audience, Mr Cameron gave a presentation explaining the structure and nature of the UCIS and the certification process. Consumers were told at some seminars by MarketingCo that the UCIS were promoted in a way that was within the Authority's guidelines, and Mr Cameron was aware of and condoned this. Mr Cameron answered the audience's questions at the seminars, and afterwards via email and by telephone.

#### Arranging deals in UCIS

- 4.18 Mr Cameron caused Burlington and/or AdminCo to be instrumental in bringing about investment in the Three UCIS. He was personally involved at every stage of the sales process.
- 4.19 Mr Cameron arranged for Burlington and/or AdminCo to carry out a range of administrative tasks assigned to it under the sales process that Mr Cameron had established.
- 4.20 Mr Cameron also involved Burlington and/or AdminCo in administrative tasks that appeared to consumers or other third parties to be carried out by Leslie & Nuding. In particular, Mr Cameron involved Burlington and/or AdminCo in assessing potential investors' eligibility to invest, a process for which Leslie & Nuding should have been responsible, with only very limited input from Leslie & Nuding. Burlington employees under Mr Cameron's direction dealt with consumers at seminars and attended workshops at which consumers could be provided with all of the paperwork necessary to invest in the Three UCIS, including certificates indicating that the consumer was a high net worth individual or sophisticated investor, as appropriate.
- 4.21 Mr Cameron also dealt with queries raised by potential consumers (including queries related to eligibility) at seminars, over the telephone and by email.

### Risk questionnaires

- 4.22 At the outset, Mr Cameron and Leslie & Nuding agreed a process to deal with potential investors who could not certify themselves as eligible, either as sophisticated investors or high net worth individuals. In these cases, Burlington was to provide a risk questionnaire to the potential investor, and then pass that questionnaire to Leslie & Nuding to use as the basis for an advised sale. In order for Burlington to do this, AdminCo prepared the risk questionnaire on Leslie & Nuding's letterhead, using a Burlington document as a template. Mr Cameron approved this document.
- 4.23 However, under Mr Cameron's direction, Burlington routinely misused the questionnaires. When investors informed Burlington and AdminCo that they felt they could not be certified as sophisticated or high net worth, Burlington and AdminCo simply used the risk questionnaire themselves to assess whether the Three UCIS were suitable for these investors. Hundreds of risk questionnaires were used in this way. However, the questionnaire had never been intended to be used for this purpose. Mr Cameron gave instructions to his employees at Burlington about how to use the risk questionnaires.
- 4.24 These steps were all, cumulatively, necessary in order to arrange the investments. Mr Cameron was responsible for establishing the various significant roles that Burlington played. In effect, Mr Cameron arranged for Burlington and AdminCo to perform the role that Leslie & Nuding were engaged to do, with only very limited input from Leslie & Nuding, so that he could retain control of the sales process.
- 4.25 Burlington received substantial fees for its role in selling the Three UCIS. Mr Cameron received personal benefit from these arrangements as a shareholder in Burlington and through his position as a director of AdminCo.

## **5. FAILINGS**

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

## **Statement of Principle 1**

- 5.2 Mr Cameron failed to act with honesty and integrity in carrying out the CF1 (Director) controlled function at Burlington.
- 5.3 As a CF1 (Director) on behalf of Burlington's principal with responsibility for Burlington, Mr Cameron was responsible for ensuring that Burlington complied with its AR agreement and the wider regulatory regime. Burlington's principal expressly prohibited Burlington from conducting UCIS business. Mr Cameron knew that Burlington's principal did not allow Burlington to conduct UCIS business. He deliberately involved Burlington in promoting and arranging investments in the Three UCIS without the knowledge of Burlington's principal.
- 5.4 Mr Cameron recklessly developed a process for selling the Three UCIS which was likely to cause the true nature of Burlington's role to be misunderstood, and to provide false assurance to customers, potential customers and others with whom he dealt that Burlington's involvement in the Three UCIS was authorised. Mr Cameron:
- (a) asked Leslie & Nuding to become involved, which meant that responsibility might be attributed to Leslie & Nuding;
  - (b) agreed with Leslie & Nuding that it would use the trading name "Burlington Funds", which meant that:
    - i. it would appear consistent with information contained in the prospectuses that a "Burlington" entity was a co-promoter; and
    - ii. it would appear that a "Burlington" entity was in control of the entire process; and
  - (c) arranged for AdminCo substantially to perform the role that Leslie & Nuding was engaged to do, which meant that Mr Cameron retained involvement in and oversight over the entire process. This meant that, in practice, an unauthorised firm handed out prospectuses and consumers sometimes believed they were dealing with Burlington when in fact they were not.
- 5.5 This process was likely to mislead consumers and others.

5.6 Mr Cameron understood that UCIS were high risk investments. He knew that the manner in which he and Burlington (together with MarketingCo) promoted and arranged investments in the Three UCIS put ordinary retail consumers at risk of investing in high risk, unsuitable products.

5.7 As a result of these matters, Mr Cameron has demonstrated a lack of integrity.

### **Impact of Mr Cameron's misconduct**

5.8 MarketingCo believed that Burlington's activities in relation to the Three UCIS were regulated by the Authority. MarketingCo suggested to potential investors in emails and at seminars that Burlington's involvement with the Three UCIS would provide investors with extra protection. This was not the case. The Three UCIS were high risk investments that did not afford the statutory protections that would apply to regulated investments. Mr Cameron's deliberate attempts to circumvent the restrictions under Burlington's AR agreement and the regulatory regime exacerbated the loss caused.

5.9 In total, approximately 880 investors invested a total of approximately €38 million in the Three UCIS, mainly on a non-advised basis. The Three UCIS fell into financial difficulties from 2006 and the investors' original investments may now be virtually worthless.

### **Not Fit and Proper**

5.10 Mr Cameron deliberately caused Burlington to play a significant role in promoting and arranging the Three UCIS in breach of its AR agreement and to the detriment of customers, who were left without the benefit of statutory protection. He recklessly devised a structure and participated in a process which was likely to provide false assurance that Burlington's involvement was authorised.

5.11 Mr Cameron involved Burlington in promoting and arranging the Three UCIS in a way which he knew created a risk of exposing ordinary retail customers to high risk investments that might not be suitable for them. In particular, Mr Cameron:

- (a) promoted the Three UCIS at sales seminars that he knew had been advertised to an unrestricted audience of thousands;
- (b) was responsible for Burlington's misuse of risk questionnaires to assess eligibility, a purpose for which they were not intended; and

(c) was aware that the overall effect of the promotional activities was to encourage consumers to invest when there were doubts about whether they were eligible.

5.12 By reason of these matters, the Authority considers that Mr Cameron lacks honesty and integrity and therefore is not fit and proper to perform any function in relation to any regulated activity carried on by an authorised or exempt person or exempt professional firm.

## **6. REPRESENTATIONS**

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

## **7. SANCTION**

### **Financial penalty**

7.1. The Authority has decided to impose a financial penalty on Mr Cameron for his breach of Statement of Principle 1.

7.2. The Authority's policy on imposing financial penalties for the misconduct in this case is set out in Chapter 13 of ENF, which was in force between 1 December 2004 and 27 August 2007 and formed part of the Authority's Handbook.

7.3. The principal purpose of imposing a financial penalty is to promote high standards of regulatory 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.

7.4. In determining whether a financial penalty is appropriate the Authority is required to consider all the relevant circumstances of a case. Applying the criteria set out in Chapter 13 of ENF, the Authority considers that a financial penalty is an appropriate sanction in this case, given the serious nature of the breach and the need to send out a strong message of deterrence to others.

7.5. ENF 13.3.3G set 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.

The seriousness of the misconduct or contravention – ENF13.3.3G (1)

- 7.6. In determining the appropriate sanction, the Authority has had regard to the seriousness of the contravention in question, including the duration of the contravention, the number of retail consumers affected, the risks to which those investors were exposed and the significant sums they have lost. Mr Cameron acted in breach of Burlington's AR agreement and in a manner which risked breaching the Act and with no regard for customer protection. As a result, approximately 880 investors invested a total of approximately €38 million in the Three UCIS, mainly on a non-advised basis. The investors have lost significant sums and the underlying investments may now be virtually worthless.

The extent to which the breach was deliberate or reckless – ENF13.3.3G (2)

- 7.7. Mr Cameron's misconduct was in part deliberate and in part reckless. Mr Cameron knowingly caused Burlington's breach of its AR agreement for his own personal benefit. He recklessly devised a structure and participated in a process for doing so that was likely to provide false assurance about Burlington's regulatory status in relation to its involvement in the Three UCIS.

Whether the person on whom the penalty is to be imposed is an individual, and the financial resources and other circumstances of the individual – ENF13.3.3G (3)

- 7.8. The Authority recognises that the financial penalty imposed on Mr Cameron is likely to have a significant impact on him as an individual, but considers it to be proportionate in relation to the seriousness of the misconduct and to Mr Cameron's previous position as an approved person performing significant influence functions at Burlington.
- 7.9. A financial penalty of the level imposed under this Notice is appropriate, taking account of all relevant factors, including the impact such a penalty might have on Mr Cameron's financial resources and the need for credible deterrence.

Disciplinary record and compliance history – ENF13.3.3G (6)

- 7.10. There has been no previous disciplinary action against Mr Cameron.

Previous action taken by the Authority – ENF13.3.3G (7)

- 7.11. In determining the level of financial penalty, the Authority has taken into account penalties imposed by the Authority on other approved persons for similar misconduct.
- 7.12. Having considered all the circumstances set out above, the Authority has determined that £350,000 is an appropriate financial penalty to impose on Mr Cameron for the breach of Statement of Principle 1.

**Prohibition**

- 7.13. Given the nature and seriousness of the failures outlined above, the Authority considers that it is appropriate and proportionate in all the circumstances to prohibit Mr Cameron from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm, because he is not a fit and proper person in terms of his honesty and integrity.
- 7.14. The Authority has had regard to the guidance in Chapter 9 of EG in deciding that Mr Cameron should be prohibited in the terms set out above. The relevant provisions of EG are set out in Annex A to this Notice.
- 7.15. Mr Cameron's conduct demonstrates a lack of honesty and integrity. Mr Cameron knowingly exposed ordinary retail consumers to the risk of investing in high risk products that may not have been suitable for them. In the interests of consumer protection, it is appropriate and proportionate in all the circumstances to impose a prohibition order on Mr Cameron in the terms set out above, pursuant to section 56 of the Act.

**Conclusion**

- 7.16. Mr Cameron's conduct as a CF1 (Director) with responsibility for Burlington fell short of the minimum regulatory standards required of an approved person. He has breached Statement of Principle 1 and he is not fit and proper to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.
- 7.17. The Authority has therefore decided to impose a financial penalty of £350,000 on Mr Cameron and to make an order against him, pursuant to section 56 of the Act, prohibiting Mr Cameron from performing any function in relation to any regulated

activity carried on by an authorised or exempt person, or exempt professional firm.

## **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, and 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 Mr Cameron to the Authority by no later than 12 September 2014, 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 12 September 2014, the Authority may recover the outstanding amount as a debt owed by Mr Cameron 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 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 Mr Cameron 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.



**Authority contact**

- 8.7. For more information concerning this matter generally, contact Rachel West at the Authority (direct line: 020 7066 0142 / fax: 020 7066 0143).

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**Bill Sillett**

**Financial Conduct Authority, Enforcement and Financial Crime Division**

## **ANNEX A**

### **RELEVANT STATUTORY AND REGULATORY PROVISIONS**

#### **1. RELEVANT STATUTORY PROVISIONS**

##### **The Act**

- 1.1 The Authority's operational objectives, set out in section 1B(3) of the Act, include the consumer protection objective.
- 1.2 Section 19 of the Act provides that only an authorised or exempt person may carry on a regulated activity in the United Kingdom.
- 1.3 Section 39 of the Act provides that a person other than an authorised person can carry on a regulated activity in the United Kingdom if:
  - (a) he is party to a contract with a principal which permits him to carry on business of a prescribed description; and
  - (b) his principal accepts responsibility in writing for his activities carrying out the whole or part of that business.

In these circumstances the person is exempt from the general prohibition in relation to any regulated activity comprised in carrying on the business for which his principal has accepted responsibility.

- 1.4 Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. A person is guilty of misconduct if, while an approved person, he has failed to comply with a statement of principle issued under section 64 of the Act, or has been knowingly concerned in a contravention by the relevant authorised person of a relevant requirement imposed on that authorised person.
- 1.5 Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation

to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

- 1.6 Section 238 of the Act states that an authorised person must not communicate an invitation or inducement to participate in collective investment schemes.

### **The Financial Promotion Orders**

- 1.7 The FPO 2005 allows non-authorised persons to carry out financial promotions if the communication or the audience fall within certain exempt categories.

- 1.8 Article 48 of the FPO 2005 allows non-authorised persons to make a non-real time or solicited real-time financial promotion (including UCIS promotion) to a person who has signed a statement in the prescribed form confirming that they are a high net worth individual, provided that:

- (a) the individual signs the statement within the period of twelve months ending with the day on which the communication is made;
- (b) the investment is of a prescribed type. One of the prescribed types of investment are collective investment schemes which are invested wholly or predominantly in the shares or debentures of one or more unlisted companies; and
- (c) the promotion is accompanied by a warning that the content of the promotion has not been approved by an authorised person and relying on the promotion may expose individuals to a significant risk of losing all of their investment.

- 1.9 Article 50A of the FPO 2005 allows non-authorised persons to make a financial promotion to an individual who has signed a statement in the prescribed form confirming that they are a self-certified sophisticated investor, provided that the same conditions as those attaching to statements by high net worth individuals are met.

- 1.10 With effect from 3 March 2005, the FPO 2001 (in force until 30 June 2005) contained provisions in identical form to those in the FPO 2005, as set out above.

### **The PCIS Order**

- 1.11 The PCIS Order provides for authorised firms to promote UCIS to individuals if they fall within a particular category of exemption set out in the order. The

exemptions tend to be narrow in scope and subject to specific requirements including reasonable checks, disclosure of appropriate warnings, the structure of the underlying fund and the certification of the investor's status.

1.12 Article 21 of the PCIS Order provides that in certain circumstances the restriction on promoting UCIS does not apply if the relevant communication is made to an individual whom the person making the communication believes on reasonable grounds to be a certified high net worth individual.

1.13 Article 23A of the PCIS Order provides that in certain circumstances the restriction on promoting UCIS does not apply if the relevant communication is made to an individual whom the person making the communication believes on reasonable grounds to be a self-certified sophisticated investor.

## **2. RELEVANT REGULATORY PROVISIONS**

### **Statements of Principle and Code of Practice for Approved Persons**

2.1 The Statements of Principle have been issued under section 64 of the Act.

2.2 Statement of Principle 1 states that an approved person must act with integrity in carrying out his controlled function.

2.3 The Code of Practice for Approved Persons sets out descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle. It also sets out factors which, in the Authority's opinion, are to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.

2.4 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.

2.5 APER 3.1.4G states 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.

2.6 APER 3.1.6G states 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.

- 2.7 APER 4.1.12E states that deliberately designing transactions so as to disguise breaches of requirements and standards of the regulatory system is an example of behaviour showing a lack of integrity.

### **Conduct of Business Rules**

- 2.8 COB 3.11.2 provides that an authorised firm may communicate an invitation or inducement to participate in a UCIS if the communication falls within the exceptions set out in COB 3 Annex 5R.
- 2.9 COB 3 Annex 5R provides that an authorised firm may communicate an invitation or inducement to participate in a UCIS if the communication is made to a person for whom the firm has taken reasonable steps to ensure that investment in the collective investment scheme is suitable and who is an established or newly accepted customer of the firm or of a person in the same group as the firm.

### **The Fit and Proper Test for Approved Persons**

- 2.10 FIT sets out the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 2.11 FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.
- 2.12 FIT 2.1 states that in determining a person's honesty, integrity and reputation, the Authority will have regard to a number of factors, including whether the person has contravened any of the requirements and standards of the regulatory system.

### **The Authority's policy for exercising its power to make a prohibition order**

- 2.13 The Authority's policy in relation to prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG").
- 2.14 EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its statutory objectives, it is appropriate either to prevent an

individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.

### **3. RELEVANT HANDBOOK PROVISIONS**

- 3.1 In exercising its power to impose a financial penalty, the Authority must have regard to relevant provisions in the Authority Handbook of rules and guidance. The main provisions relevant to the action specified above are set out below.
- 3.2 SUP 12.3.1 states that the principal of an AR is responsible for anything the AR does or omits to do in carrying on the business for which the firm has accepted responsibility. This only applies to activities which fall within the scope of the authority which the principal gives to the AR.
- 3.3 SUP 12.6.8 and 10.1.16 states that the directors and senior managers of an AR (or their equivalents) must hold the appropriate controlled function. These controlled functions apply to the AR as they do to a directly authorised firm.
- 3.4 SUP 12.6.7 states that the senior management of a firm should be aware that the activities of ARs are an integral part of the business that they manage. The responsibility for the control and monitoring of the activities rests with the senior management of the firm.

## **ANNEX B**

### **REPRESENTATIONS**

1. Mr Cameron made the following representations:
  - 1.1. He accepted that he was at fault in a number of respects for the issues that had arisen in relation to the sale and promotion of the Three UCIS. He took issue with some of the detailed allegations as set out in a Warning Notice issued to him on 24 March 2014 (which are also set out in this Final Notice in substantially the same terms), and offered a number of comments by way of explanation and/or mitigation.
  - 1.2. He had not set out deliberately to devise a scheme to deceive customers, potential customers and others. Initially, he had expected Burlington to have a limited role in the sale and promotion of the funds, but Burlington's involvement had been greater than planned. The scale and number of the funds had been much greater than he had expected at that time, and the project much more complicated than he had anticipated.
  - 1.3. He had misunderstood the communications from Burlington's principal, and the legal advice taken by Burlington, as meaning that Burlington could be involved in the promotion and arranging of UCIS, provided that it did not advise customers in relation to investing in UCIS. He agreed that, in retrospect, the meaning of the communications from the principal was completely clear. However, other individuals within Burlington had been involved in the decision to proceed.
  - 1.4. He had not been responsible for the introduction of Leslie & Nuding to Burlington, which had been made by another member of staff.
  - 1.5. He regretted that investors had lost money in the Three UCIS. The Authority had not given him due credit for the work he had done in the interests of investors over a number of years from 2006 onwards. During this period, instead of simply walking away from the Three UCIS after they fell into financial difficulties, he had spent a considerable amount of time, largely at his own expense, in an effort both to restructure the funds and to bring the underlying property developments to fruition. This included: numerous meetings with the JFSC and other parties involved in the management and administration of the Three UCIS; seeking to intervene in court proceedings on behalf of investors; and adopting day-to-day management of the developments. Both he and Burlington had contributed

substantial sums of money to finance the restructuring efforts. His efforts had had the support of some significant investors in the Three UCIS.

2. The Authority has reached the following conclusions:
  - 2.1. As set out above, while the Authority has concluded he acted deliberately in certain other respects, the Authority does not consider that Mr Cameron deliberately set out to deceive investors, potential investors and others, but it considers that he acted recklessly in devising the structure and participating in the process for promoting and arranging investments in the Three UCIS, which was likely to provide false assurance to those parties that Burlington's involvement was authorised. To the extent the project was complicated, that does not excuse this conduct. The Authority notes that Mr Cameron did not, at any stage, seek to withdraw Burlington from involvement with the project notwithstanding his representations as to its unexpected scale and complexity.
  - 2.2. The terms of the communications from Burlington's principal (of which the Authority is satisfied Mr Cameron was aware) were clear, and the legal advice did not justify him in considering that Burlington was permitted to take part in the sale and promotion of UCIS. The Authority does not accept that Mr Cameron did not understand that Burlington was not authorised to take part in the sale and promotion of the Three UCIS. He was closely involved with the Three UCIS and primarily responsible for Burlington's involvement with them.
  - 2.3. Whether or not Mr Cameron was responsible for initially bringing together Burlington and Leslie & Nuding, it is satisfied that it was he who arranged for Leslie & Nuding to be involved (as set out above) with the Three UCIS.
  - 2.4. It notes that Mr Cameron continued to be involved with the Three UCIS for a number of years after they fell into financial difficulties in an effort to secure their restructuring, and has worked with the underlying developments in an effort to bring these to completion. However, Mr Cameron did not provide any material to evidence the extent of his commitment in this regard, or his personal financial expenditure on these activities (nor that of Burlington); nor did he provide evidence to demonstrate that this was done without expectation of any personal benefit on his part. Accordingly, the Authority does not consider these matters sufficient to justify any reduction in financial penalty. Nor do they alter the Authority's view as to his lack of fitness and propriety to perform functions in relation to regulated activities.