FINANCIAL CONDUCT AUTHORITY

FINAL NOTICE

To: Henderson Investment Funds Limited

Reference Number: 121859

Address: 201 Bishopsgate
London
EC2M 3AE

Date: 18 November 2019

1. ACTION

1.1. For the reasons given in this Notice, the Authority hereby imposes on Henderson Investment Funds Limited ("HIFL") a financial penalty of £1,867,900 pursuant to section 206 of the Act.

1.2 HIFL agreed to resolve this matter and qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £2,668,547.40 on HIFL.

2. SUMMARY OF REASONS

2.1. The Authority imposes this penalty on HIFL for serious failings in the management of the Henderson Japan Enhanced Equity Fund and the Henderson North American Enhanced Equity Fund ("the Japan and North American Funds"), two funds from its range of Global Enhanced Equity Funds. HIFL failed to ensure that the retail customers invested in those two funds were treated fairly. In doing so, HIFL breached Principle 3 (management and control) and Principle 6 (customers' interests).

2.2. Passively managed funds, sometimes known as index or tracker funds, seek to replicate the movement of an index (e.g. the FTSE 100 index). They do not aim to outperform the index: if the index's value rises, so does the fund's value and vice versa. As the involvement of fund managers is limited, passive funds typically charge lower management fees. In contrast, active funds typically charge significantly higher management fees because the fund manager of an actively managed fund actively buys, holds and sells stocks.

2.3. Enhanced index funds offer a hybrid approach by combining elements of passive management and active management. This type of fund follows an index like a passive fund, but the fund manager also uses elements of active management to "enhance" the performance of the funds in order to outperform the index. Since some active management is involved, enhanced index funds typically have higher management fees than passively managed index funds.

2.4. A fund is a "closet tracker" where it looks like and charges fees similar to an active or enhanced index fund, but is managed in a way that is similar to passive funds which traditionally charge a much lower fee. It is important therefore that investors have clear information and the best possible understanding of the funds they are looking to invest in or are invested in. Where fund managers make substantial changes to a fund's investment strategy, such as significantly reducing the level of active management, they must ensure that all existing investors in the funds are properly informed of the change and consider the impact on investors' fees.

2.5. HIFL breached Principle 6 between November 2011 and August 2016 by failing to ensure that it paid due regard to the interests of the retail investors in the Japan and North American Funds and treat them fairly. In November 2011, HIFL's appointed investment manager, Henderson Global Investors Limited ("HGIL"), which at all material times was acting as HIFL's agent, decided to significantly reduce the level of active management that was being applied to the Japan and North American Funds. The subsequent treatment of retail investors in these funds by HIFL (through the actions of its agent HGIL), was substantially different from its treatment of the institutional investors in these two funds, namely:

(1) HGIL informed nearly all of the institutional investors who were affected by this change and offered to manage these two funds for those investors without charge; and

(2) HGIL did not communicate its decision to change the investment strategy to any of the retail customers who were invested in these two funds, either by amending the funds' prospectus or otherwise, and continued to charge these investors the same level of fees as it had before the decision was made.

2.6. Over the course of 2012 and 2013, the level of active management in the Japan and North American Funds was significantly reduced. Although HGIL considered options to reinstate the level of enhancement, the Japan and North American Funds performed more like passively managed index funds, tracking rather than outperforming their relevant indices. In essence, so far as retail clients were concerned, the Japan and North American Funds became "closet trackers" as the fees charged to retail clients were inappropriate given the diminished level of active management.

2.7. 4,713 direct retail investors (approximately 5% of the total assets under management in the two funds), 75 intermediary companies with underlying non-retail investors and two institutional investors in the Japan and North American Funds were affected by HGIL's decision not to reduce their level of fees. Between November 2011 and August 2016, these investors were charged £1,784,465.32 more than if they had been invested in a passive fund (such as Henderson's UK Index Funds).

2.8. HIFL breached Principle 3 between November 2011 and March 2017 by failing to take reasonable care to organise and control the management of the Japan and North American Funds responsibly and effectively, with adequate risk management systems. In particular, HIFL failed to exercise adequate oversight over the decisions made by HGIL in November 2011 concerning how these funds would be managed. For example, there was no requirement that these issues be considered by any governing committee or that Henderson's Compliance function be consulted before the decisions were made.

2.9. HIFL also breached Principle 3 by failing adequately to oversee how the Japan and North American Funds were subsequently managed by HGIL because:

(1) there was no effective ongoing monitoring of the performance of the Japan and North American Funds to determine whether these two funds were continuing to meet their investment objectives and investors' expectations.

For example, there were no processes in place to monitor adequately the level of enhancements being applied to these funds or that would have identified the difference in treatment between the retail investors and most of the institutional investors; and

(2) there was no effective governance framework or other risk management system in place to assess the impact of changes in investment strategy for existing funds on relevant investors, such as the level of fees charged.

2.10. The matter is aggravated by the length of time (almost four and a half years) HIFL took to identify the harm being caused to the retail investors in the Japan and North American Funds and to rectify it. HGIL's rationale that the funds could continue to be called "enhanced" became increasingly unsustainable over time and should have been subject to greater challenge and scrutiny by the risk and governance committees that HIFL relied on to oversee HGIL's management of the funds:

(1) when the matter was eventually referred in September 2014 to the monthly Investment Performance and Risk Committee ("IPRC"), a subcommittee of Henderson Group plc's ("Henderson") Executive Committee ("ExCo"), the IPRC considered the matter for nine months but failed to take any decisive action. In particular, the IPRC failed to identify that retail investors continued to be charged the same management fee notwithstanding that the Japan and North American Funds were performing more like index tracker funds;

(2) for the remainder of 2015, a second subcommittee of ExCo, the Global Strategic Product Committee ("GSPC"), considered a plan to "re-enhance" the Japan and North American Funds but abandoned it when the plan was rejected by an institutional investor in those funds in December 2015. It took until March 2016 for the GSPC to conclude that the level of fees charged to retail investors should be reduced to the level that Henderson charged for passive equity funds to reflect the investment approach being taken in these two funds; and

(3) while these were the failings of risk, governance and oversight committees established by Henderson, HIFL had delegated its oversight responsibilities

to Henderson and relied on Henderson's risk, governance and oversight committees to oversee HGIL.

2.11. In imposing a financial penalty on HIFL, the Authority has taken into account that, when the matter was finally escalated to ExCo in March 2016, an investigation into what happened was immediately begun and the FCA was notified in April 2016.

2.12. ExCo's actions resulted in affected investors being notified and fully compensated by Henderson on HIFL's behalf. The Authority recognises that Henderson devoted significant resources to ensuring that appropriate compensation was paid. Henderson also proceeded to identify the root causes of the incident and improve its systems and controls. The Authority also acknowledges the level of cooperation shown by Henderson during the Authority's investigation.

2.13. The Authority hereby imposes on HIFL a financial penalty of £1,867,000 pursuant to section 206 of the Act. This action supports the Authority's statutory objective to secure an appropriate degree of protection for consumers.

3. DEFINITIONS

3.1. The definitions below are used in this Notice:

"ACD" means the Authorised Corporate Director, which in this instance was HIFL.

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

"the Asia Pacific (ex-Japan) Enhanced Equity Fund" means, between 19 October 2005 and 4 October 2012, the Henderson Asia Pacific ex Japan Enhanced Equity Fund and, between 4 October 2012 and 2 November 2016, the Henderson Institutional Asia Pacific ex Japan Enhanced Equity Fund.

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

"AUM" means assets under management.

“COLL Rules” means the Rules in the part of the Authority’s Handbook entitled “Collective Investment Schemes Sourcebook”.

“the Europe Enhanced Equity Fund” means, between 18 April 2005 and 4 October 2012, the Henderson European Enhanced Equity Fund and, between 4 October 2012 and 2 November 2016, the Henderson Institutional European Enhanced Equity Fund.

“ExCo” means Henderson’s Executive Committee.

“the Exempt North American Enhanced Equity Fund” means the Henderson Institutional Exempt North American Index Opportunities Fund.

“the Global Enhanced Equity Funds” means the UK Enhanced Equity Fund, the European Enhanced Equity Fund, the North American Enhanced Equity Fund, the Exempt North American Enhanced Equity Fund, the Japan Enhanced Equity Fund and the Asia Pacific (ex-Japan) Enhanced Equity Fund.

“GSPC” means Henderson’s Global Strategic Product Committee, known as the Global Strategic Product Group until June 2013.

“Henderson” means Henderson Group plc, which became Janus Henderson Group Plc following a merger between Henderson Group plc and Janus Group Inc. on 30 May 2017.

“HIFL” means Henderson Investment Funds Limited.

“HGIL” means Henderson Global Investors Limited.

“IPRC” means Henderson’s Investment Performance and Risk Committee.

“the Japan and North American Funds” means the Japan Enhanced Equity Fund and the North American Enhanced Equity Fund.

“the Japan Enhanced Equity Fund” means, between 19 October 2005 and 4 October 2012, the Henderson Japan Enhanced Equity Fund and, between 4 October 2012 and 2 November 2016, the Henderson Institutional Japan Enhanced Equity Fund.

“the North American Enhanced Equity Fund” means, between 18 April 2005 and 4 October 2012, the Henderson North American Enhanced Equity Fund and, between 4 October 2012 and 2 November 2016, the Henderson Institutional North American Enhanced Equity Fund.

“PDC” means Henderson’s Product Development Committee.

“PIC” means Henderson’s Product Implementation Committee.

“the Prospectus” means the Prospectus of the UCITS scheme dated 17 March 2011.

“the relevant period” means November 2011 to March 2017.

“TCF” means Treating Customers Fairly.

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

“UCITS” means Undertakings for Collective Investments in Transferable Securities.

”the UCITS scheme” means the UCITS scheme within the Henderson Group which was structured as an umbrella company comprised of several funds including the Japan and North American Funds.

“the UK Enhanced Equity Fund” means, between 20 October 2004 and 23 September 2012, the Henderson UK Enhanced Equity Trust and, between 24 September 2012 and 2 November 2016, the Henderson Institutional UK Enhanced Equity Trust.

4. FACTS AND MATTERS

4.1. A chronological timeline of key facts and events is at Annex B to this Notice.

Entities involved

4.2. HIFL and HGIL are investment management companies authorised by the Authority. During the relevant period, they were both subsidiaries of Henderson.

The Japan and North American Funds

4.3. During the relevant period, HIFL was the ACD of the Japan and North American Funds, two of the six Global Enhanced Equity Funds.

4.4. During the relevant period over 95% of the AUM in the Global Enhanced Equity Funds was owned by institutional investors, who typically invested in all six funds. Indeed, the word "Institutional" was added to the names of the funds in 2012 because the funds were targeted towards and mainly held by institutional investors.

4.5. During the relevant period, there were retail clients invested in the Japan and North American Funds (there were no retail clients in the other four funds). The aggregate retail AUM in these two funds was just over £37.8 million as at 31 March 2016, approximately 5% of the total AUM in the two funds.

4.6. As enhanced index funds, the Global Enhanced Equity Funds were to be managed through a combination of passive and active management strategies. Given the involvement of active management, enhanced index funds typically have higher management fees than comparable passively managed index funds. The retail investors in the Japan and North American Funds were charged 150bps or 75bps, depending on which share class they were invested in, between November 2011 and August 2016.

Relationship between HIFL and HGIL

4.7. As ACD for the Japan and North American Funds, HIFL was responsible for managing and administering the funds in compliance with COLL. As ACD, HIFL was permitted by COLL to delegate its management and administration functions to third parties. Under two Investment Management and Administration Agreements dated 1 July 2005 and 11 July 2011, HIFL delegated the management and administration of the Japan and North American Funds to HGIL. In other words, HGIL was HIFL's appointed investment manager of the funds and was required to act as agent of HIFL. HGIL had discretion to take day-to-day investment decisions without prior reference to HIFL. However, HGIL's activities were subject to the overall policies, directions and control of HIFL, all relevant law and regulation, and the Prospectus.

Governance and Oversight

Governance structure

4.8. During the relevant period, HIFL oversaw the activities of its investment manager, HGIL, through a governance structure which Henderson established and applied to all its subsidiaries.

4.9. The governance structure included Operating and Management Committees. The Operating Committees were appointed by ExCo to manage specific aspects of the Henderson business and reported to ExCo on a monthly basis. Each Operating Committee appointed in turn a Management Committee, which was made up of senior managers who had responsibility for specific areas and provided a forum for resolving and managing significant risks and regulatory issues. The relevant Operating and Management Committees that HIFL relied on to oversee HGIL's activities are described in paragraphs 4.15 to 4.26 below.

4.10. Matters reserved to HIFL's Board included ensuring HIFL had an effective system of internal controls in place and implementing Henderson's group policies and procedures. HIFL's Board also received information regarding the investment performance of funds for which HIFL acted as ACD and product developments, including changes to funds. It was the HIFL Board's responsibility to oversee that the determination of any classification of any proposed change to a fund for the purposes of COLL was appropriate.

4.11. The document setting out the matters reserved for the HIFL Board did not adequately define HIFL's specific responsibilities as ACD, including how HIFL delegated certain responsibilities and matters, such as decision making on products, to certain Henderson committees and to HGIL as its investment manager.

Risk management

4.12. As HIFL's appointed investment manager, HGIL was responsible for taking day-to-day investment decisions in relation to managing the Japan and North American Funds in accordance with their investment objectives and policies and was primarily responsible for managing the risks in these funds.

4.13. Henderson's Risk function was responsible for working with HGIL to identify key risks and to ensure that the business had the controls in place to mitigate risks to an appropriate level. It reported to ExCo and the Board Risk Committee and was divided into a number of teams, including Investment Risk.

4.14. Investment Risk was responsible for independently monitoring and reporting on the investment risks in the funds managed by HIFL and HGIL. Its role included ensuring that funds were managed in line with the funds' objectives and investors' expectations. Staff from Investment Risk met with HGIL both on an ad hoc basis and through formal Investment Risk meetings, which normally occurred quarterly. At these meetings, attendees would review packs prepared by Investment Risk which included fund data and thematic issues for discussion.

4.15. Investment Risk reported monthly to the IPRC, which was one of ExCo's Operating Committees. The IPRC oversaw and monitored the investment performance and risks of the funds managed by HIFL and HGIL, including whether the funds were run in line with investors' expectations. Its objective was to ensure that current and emerging risks arising from the investment management business were identified, assessed, monitored and acted upon appropriately.

4.16. However, the terms of reference for the IPRC did not include any formal communication or escalation mechanisms for raising relevant matters with either the GSPC, PIC or the Customer Interests and Treating Customers Fairly Committee (more details of which are set out in the following paragraphs).

Product Governance

4.17. The PDC, which existed until March 2012, was responsible for evaluating all significant product development proposals including fund launches and closures, and changes with significant impact. Although not expressly stated in its Terms of Reference, the PDC may have been expected to evaluate changes to the fees charged to investors in the context of its consideration of product development proposals or changes with significant impact.

4.18. The PDC was replaced in March 2012 by the GSPC and the PIC. The GSPC, another of ExCo's Operating Committees which reported to ExCo on a monthly basis, was responsible for agreeing and reviewing the global product strategy for

Henderson's investment management business, including the assessment of the reasonableness of fees charged to investors. It focussed on evaluating significant product development proposals and was responsible for reviewing and making recommendations which could affect the strategic direction of a fund. As part of its remit, the GSPC performed some product oversight activities, including reviewing the output of the product lifecycle process.

4.19. The product lifecycle process was a product management and monitoring tool used regularly to review the performance of existing funds against their objectives, including monitoring the reasonableness of charges, throughout the relevant period. The product lifecycle process was enhanced in 2013 to include a broader range of customer metrics with the aim of further embedding customer interests into the existing process. However, the Japan and North American Funds were excluded from this process due to a lack of appropriate metrics to measure and assess the performance of these specific funds. HIFL did not put in place an alternative process to regularly review and assess these funds.

4.20. Whereas the GSPC focused on high-level product prioritisation and approval, its Management Committee, the PIC, was responsible for supporting and directing the delivery and implementation of products and changes to products. It reviewed the progress of ongoing product developments, including the progress of new and existing funds and their continuing suitability for their target markets and clients. It was also responsible for implementing changes arising from the product lifecycle review process. The PIC reported to the GSPC on a monthly basis.

4.21. A framework for managing the oversight of existing products was not part of the PIC's remit. In fact, during the relevant period, Henderson did not have a product governance committee or forum in place which had the remit and purpose of providing comprehensive oversight of existing products, which included the assessment of fund changes and oversight of the implementation of those changes. This meant that institutional investors were treated more favourably than retail clients without this being noticed for several years.

4.22. Furthermore, throughout the relevant period, HIFL did not have any documented policies or procedures in place to assess whether any changes to funds required the amendment of fund documentation or communication to investors as it did not consider these were required because relevant procedures were prescribed in the COLL Rules. Further, there were no procedural requirements for HGIL to seek

or obtain approval from any committee or senior management level in respect of these matters.

Escalation framework for TCF issues

4.23. The Treating Customers Fairly Forum had existed since 2010. Its remit included reviewing modifications to new and existing funds to ensure that due consideration had been taken of the end client needs and that the actions being proposed were appropriate.

4.24. In April 2014, the Treating Customers Fairly Forum became the Management Committee of the Customer Interests and Treating Customers Fairly Committee. It was renamed the Customer Forum in November 2014.

4.25. The Customer Interests and Treating Customers Fairly Committee, an ExCo Operating Committee, was responsible for the review and challenge of customer and TCF initiatives across Henderson's business to ensure that fair treatment of customers was embedded into Henderson's business model. Its role included providing senior management oversight and decision making on customer and TCF issues, and reviewing the reporting and management information compiled by the Customer Forum.

4.26. Although the terms of reference for the IPRC, GSPC and PIC contained statements that these committees, for example, needed to ensure that due regard was paid to the interests of clients/investors, they did not contain a sufficiently clear process to refer potential TCF issues identified through their oversight to either the Customer Forum or the Customer Interests and Treating Customers Fairly Committee.

Change to the investment strategies of the Japan and North American Funds

4.27. The investment objectives and policies of the Japan and North American Funds were set out in the Prospectus. These objectives were to be achieved through a combination of passive and active management strategies. The passive management strategy sought to track the performance of a specific index (e.g. the Japan and North American Funds tracked the FTSE World Japan Index and the FTSE World North America Index respectively) while HGIL sought to "enhance"

that performance through active management strategies (known as "enhancements"). The generation of these enhanced returns through active management is known by fund managers as an "alpha overlay" and represents the return achieved over and above tracking the index.

4.28. During 2011, several of HGIL's fund managers were made redundant as part of a firm-wide redundancy programme. The redundancies led to a review of the investment strategy for the Global Enhanced Equity Funds as HGIL no longer had sufficient resources to apply the alpha overlay to all six Global Enhanced Equity Funds. Consequently, HGIL decided in November 2011 that the alpha overlay would be removed from four of the six Global Enhanced Equity Funds, including the Japan and North American Funds, over a period of time. However, HGIL continued to apply what it referred as "beta enhancements" to the four affected funds. These beta enhancements aimed to produce small incremental enhancements through efficiency and cost reduction practices, such as stock lending, which involved earning a fee for actively lending stock to third parties.

4.29. Notwithstanding the potentially significant impact on investors, HGIL's decision to remove the alpha overlay was not subject to any oversight by HIFL and was not formally documented. HGIL did not discuss the proposed change with Henderson Compliance ahead of making its decision, nor was the change reviewed at the time by any internal governance committee, such as the PDC or the Treating Customers Fairly Forum.

Communications with investors and consideration of fees

4.30. HGIL then considered whether and, if so, how to communicate these changes to investors. In particular, HGIL considered whether an investor vote was required.

4.31. HGIL decided that, as the Prospectus was silent on the extent of any enhancement, it did not require amending provided that HGIL could demonstrate that the affected funds had a residual level of enhancement. HGIL reasoned that a fund that delivers enhanced returns over time does not need to maintain the same level of enhancement over that time and that the beta enhancements were sufficient to continue to call the affected funds "enhanced". In addition, HGIL concluded that if the planned change was not suitable for clients, then it retained a range of options to reintroduce enhancements in the future.

4.32. Throughout its internal discussions, HGIL was aware that retail investors were invested in the Japan and North American Funds. However, its internal discussions almost entirely focussed on the impact that this change in investment strategy would have on its institutional investors. It identified that the change would affect some of its institutional investors who had been promised specific outperformance targets, as the change would mean that those targets could no longer be met. HGIL proposed reducing its fees for those institutional investors who made-up 95% of the funds' AUM.

4.33. HGIL began to contact specific institutional investors in the Global Enhanced Equity Funds on 24 November 2011. The communication HGIL sent to those investors clearly explained that the funds would become passively managed: "*Within global Enhanced Index mandates, where most clients have a UK biased benchmark, the North American and Asian regions will move to being managed on a passive basis, subject to regulatory and client approvals being obtained, with the UK and Europe-ex UK regions continuing to be run on an Enhanced Index basis.*" In anticipation of a question from institutional investors about fees, the accompanying Q&A stated: "*We propose to manage the passive portion of the portfolio for free – not at passive fees, for free*."

4.34. Some within HGIL questioned whether, if the funds became passive, HGIL could continue to justify the retail investors incurring the same level of management fees (150bps or 75bps depending on which share class they were invested in): "*I can't see how we could continue to charge this if we are telling everyone this is a tracker product*". However, as the Prospectus was silent on the extent of any enhancement and in the absence of any commitments having been made to retail investors relating to levels of enhancement, as at April 2012 HGIL decided that its change in investment strategy would not need to be communicated to retail investors.

4.35. Consequently, while institutional investors were informed that four of the six Global Enhanced Equity Funds would be managed on a passive basis and that HGIL was prepared to manage these funds for free, HGIL decided not to tell the retail investors invested in the Japan and North American Funds about the change in the investment strategy. Further, HGIL did not reduce the level of fees paid by retail investors from their existing management fees.

4.36. Similarly, two of the institutional investors were not contacted. As a result, the fees of these two institutional clients were also not renegotiated and reduced to compensate for the reduction of enhancements.

4.37. HGIL's decisions in relation to the amendment of the Prospectus, investor communications and fees were not subject to any oversight by HIFL and were not formally documented. HGIL did not consult with Henderson's Compliance ahead of making these decisions, nor were its decisions subject to any scrutiny at the time by an internal governance committee.

4.38. Additionally, there was no ongoing monitoring of the level of enhancements actually applied to the four affected funds to ensure that HGIL's rationale for continuing to call these funds "enhanced" remained valid. For example, no management information was generated that could have highlighted a potential issue because they were excluded from the product lifecycle review process (as mentioned at paragraph 4.19 above, the product lifecycle review process did not have appropriate performance metrics in place to be able to assess the performance of the Japan and North American Funds). Consequently, there was no ongoing opportunity to identify whether retail investors were being treated fairly and whether the fees they were paying remained appropriate.

Run-off of the alpha overlay and research into alternative strategies

4.39. As stated above, the change of investment strategy involved removing the alpha overlay from four of the six Global Enhanced Equity Funds, including the Japan and North American Funds. The alpha overlay was not turned off immediately but discontinued gradually over a period of time. This meant that some positions were closed immediately but others were placed into a run-off, whereby they were actively managed but progressively removed from the portfolio. For the Japan and North American Funds, the run-off was essentially complete by the end of 2012 and 2013 respectively. Thus, the extent to which the funds were actively managed was significantly reduced during this period.

4.40. HGIL had begun in 2012 researching alternative investment strategies that could be applied to the Japan and North American Funds as a substitute for the alpha overlay. However, by the time the run-offs of the alpha overlay were complete, HGIL's research into potential new enhancements had not resulted in any new enhancements being applied to these funds. While its research subsequently

identified two potential solutions, known as smart beta and synthetic replication, these were abandoned in October 2014 and December 2015 respectively as unsuitable.

4.41. After the run-offs were complete, notwithstanding that HGIL continued applying the beta enhancements to the funds, the Japan and North American Funds were performing more in line with tracker index funds. Retail investors, however, continued to be charged the same level of fees during and after the run-off periods, despite the Japan and North American Funds being managed with a reduced active strategy during the run-off and with a close to passive strategy thereafter.

4.42. The retail investors would likely have considered that the level of enhancements applied to the Japan and North American Funds were insufficient for the fees being charged. However, HIFL did not at this stage review the rationale for HGIL's decision in 2011 to continue to call the two funds "enhanced" and it failed to assess at this point whether the fees charged to clients remained appropriate for the level of enhancements in the Japan and North American Funds.

Oversight by risk and governance committees

4.43. The first occasion on which a governance committee appears to have been told about HGIL's decision to change the investment strategy for the Japan and North American Funds was 14 months later when the PIC met on 8 March 2013. At this meeting, attended by Investment Risk, HGIL staff informed the PIC that the Japan and North American Funds were *"mainly index trackers with a small active part. A meeting in 2011 with compliance said that it was ok to continue calling them 'enhanced'"*. The evidence does not indicate that Compliance were in fact consulted.

4.44. At the next PIC meeting on 29 July 2013, in which Investment Risk were once again present, HGIL staff expressed the desire to "re-enhance" the North American Fund in the future but said that they did not have enough resources to do that at this stage. Even at this stage, it appears HGIL considered that its initial rationale that the Japan and North American Funds could continue to be called "enhanced" was unsustainable.

4.45. In early 2014, as part of its regular review of the Japan and North American Funds, Investment Risk identified an inconsistency between the funds' names/objectives and their performance. It also identified that no material enhancements had been applied to the funds since 2011. However, on the understanding that HGIL was continuing to research alternative enhancement strategies to replace the alpha overlay, Investment Risk set up a six-month review period.

4.46. As no new potential enhancement opportunities had been identified by the end of that six-month period, Investment Risk referred the inconsistency between the funds' names/objectives and performance to the IPRC.

4.47. During the relevant period, all operational risk incidents (including those which affected clients) once identified by the responsible area were required to be recorded centrally on Henderson's operational risk database system in accordance with Henderson's Incident Management Policy. The inconsistencies between the Japan and North American Funds' names/objectives and their performance were not recorded as an incident within its operational risk database system when they were identified by Investment Risk. Indeed, the matter was not raised as an incident until 18 March 2016.

4.48. At the following IPRC meeting on 29 September 2014, Investment Risk informed the committee that the Japan and North American Funds "*have performed more like trackers*" since 2011. The IPRC considered whether it was proper to continue to call these funds "enhanced" and required that Investment Risk discuss with HGIL staff "*the wording around the funds which do not appear to be 'enhanced'*" and report back. The treatment of the retail investors in the Japan and North American Funds was not discussed at the meeting.

4.49. At the IPRC's next meeting on 10 November 2014, HGIL staff explained to the committee that the Japan and North American Funds were "*close to passive*" and that, although "*the team would like to be in a position where all funds are enhanced … a deadline has not been set for this yet*". The IPRC became aware at this meeting that there were retail investors in these two funds. It was told by HGIL staff that institutional investors were aware that these funds were passively managed, but that "*communication to the retail investors hasn't been as effective*", whereas in fact, retail investors remained completely unaware of the significantly reduced enhancements. The IPRC agreed to HGIL's suggestion of a further six month period during which either the Japan and North American Funds

were to become enhanced again or the names of the funds were to be changed to remove the word "enhanced".

4.50. At the next IPRC meeting on 27 March 2015, HGIL staff informed the IPRC that it did not have the capacity to enhance the Japan and North American Funds and "*they were looking for a sensible time to implement the name change*". HGIL staff also reminded the IPRC that the funds had been run as passive or close to passive since 2012. The IPRC felt *"this is a long time for the funds to be labelled as 'enhanced' and said this should be changed."*

4.51. The IPRC did enquire about the retail investors at the March 2015 meeting. However, despite having been asked at the November 2014 IPRC meeting, the HGIL staff present at the meeting were still unable to confirm whether retail investors had been informed about the lack of enhancement in the Japan and North American Funds. HGIL staff were also unable to confirm whether the fees for retail clients had been reduced to reflect the fact the funds were not enhanced. Instead, HGIL incorrectly informed the committee that *"clients were paying around 50bps which is similar to fees of other passive funds"*. Retail customers were in fact paying 150bps or 75bps, depending on which share class they were invested in.

4.52. The IPRC created an action item to *"confirm whether there has been communication to retail clients for the funds which are no longer enhanced and whether there was a reduction in fees*." However, although a few of the committee members made some queries following this meeting to attempt to answer these questions, there is no evidence that they obtained satisfactory answers.

4.53. By the following meeting on 3 June 2015, the IPRC's six-month deadline had passed but the committee decided to close the action item on the basis that a plan to re-enhance the Japan and North American Funds had been considered by the GSPC (see below). At the time the item was closed, the IPRC had failed to resolve the question of whether retail investors were aware of the change in the management of the Japan and North American Funds and it had failed to confirm the level of fees being paid by those retail investors.

4.54. During the nine months that it considered these matters in its monthly meetings, the IPRC failed to take any decisive action and failed properly to challenge HGIL relating to the treatment of retail investors. Given that three and a half years had

passed since HGIL took the decision to remove the alpha overlay, and having established that the Japan and North American Funds could no longer realistically be called "enhanced" given that only limited enhancements were being applied, the IPRC ought to have escalated the matter to ExCo. The IPRC also failed to refer any TCF concerns it may have had regarding the matter to either the Customer Forum or the Customer Interests and Treating Customers Fairly Committee. While these were the failings of a governance committee established by Henderson, HIFL had delegated its oversight responsibilities to Henderson and relied on Henderson's risk, governance and oversight committees to oversee HGIL.

Plan to re-enhance the Japan and North American Funds

4.55. On 28 May 2015, the GSPC met to discuss a multi-phased approach to re-enhance the Japan and North American Funds. HGIL staff explained to the GSPC that the latest review of the Global Enhanced Equity Funds *"had identified that there is some retail client money remaining in two of the funds".* They also told the GSPC that although conversations had taken place with institutional investors, communications had not been sent to retail investors who remained invested in those two funds. The committee also queried what the fees were and was informed (correctly) that retail investors were paying 150bps compared to between 5 and 20bps for institutional investors.

4.56. In the first phase, retail investors would be asked to vote on a transfer of their funds from the Japan and North American Funds into an alternative actively managed fund in the Henderson range. HGIL staff went on to explain that the alternate funds would be "*more likely to meet these retail investors expectations*". The GSPC queried whether this meant that the Japan and North American Funds were not meeting investor expectations. Although HGIL staff had told the IPRC two months previously that these funds "*were passive or close to passive"*, they explained to the GSPC that the Japan and North American Funds were still enhanced albeit under a different approach.

4.57. Following the transfer of retail investors out of the Japan and North American Funds, HGIL then intended in the second phase to update the Japan and North American Funds' investment objectives *"so that the funds [could] better achieve what was discussed in 2011, set out in a more clear and transparent way*."

4.58. The GSPC approved the proposals subject to further review. The same proposal was subsequently reviewed and approved in principle by PIC on 9 June 2015. However, the second phase of the proposal was rejected by one of the largest institutional investors in the Global Enhanced Equity Funds on 14 December 2015. HGIL decided not to proceed with the first phase, because it considered that the rationale for both phases were linked. No further actions were taken by either GSPC or PIC to resolve this matter.

Escalation and remediation

4.59. Following the failure of HGIL's plan to re-enhance the Japan and North American Funds, the inconsistency between how these funds were described as "enhanced" in the Prospectus and the way they were managed remained unresolved, as was the position of the retail investors in these funds.

4.60. However, it was only in February 2016 that Investment Risk raised the potential TCF implications concerning the retail investors at the Customer Forum. This was the first time that a Henderson committee with a TCF remit considered the matter.

4.61. When the matter was raised again at the GSPC on 8 March 2016, the committee concluded that, given the limited prospect of being able to reintroduce material enhancements into the Japan and North American Funds, the level of fees on retail investors should be reduced to the level that Henderson charged for passive equity funds (i.e. 50bps) "*to more closely align the fees with the current investment approach*".

4.62. Following the agreement at the GSPC to reduce fees going forward, an investigation into the historical position on these funds was initiated and conducted by Henderson's Operational Risk. As mentioned in paragraph 4.47 above, the incident concerning the treatment of retail investors following HGIL's decision in 2011 to change the investment strategy for the Japan and North American Funds was formally raised by Operational Risk on Henderson's operational risk database system on 18 March 2016.

4.63. On 8 April 2016, the Authority contacted Henderson to provide feedback on some findings it had identified as part of its routine monitoring of the Japan Enhanced Equity Fund. Henderson used this opportunity to inform the Authority on 13 April 2016 that it was investigating the extent of the enhancements which had been

applied to the Japan and North American Funds since 2011 and the treatment of retail investors in these funds.

4.64. On 4 May 2016, Henderson's Operational Risk team circulated a report setting out the interim findings of its investigation to key stakeholders at Henderson. This report was reviewed by ExCo. Henderson submitted this report to the Authority on 6 May 2016.

4.65. The report's interim findings were open and frank in concluding that retail customers in the Japan and North American Funds had not been treated fairly as they had not been informed of the change in investment strategy in 2011 and had not received a commensurate fee reduction. The report concluded that compensation to these retail investors was appropriate and set out a proposed approach to calculation of this compensation.

4.66. The report outlined that the investigation had identified several control weaknesses and proposed certain actions including:

(1) the completion of an investigation of the control breakdowns throughout the incident and any potential TCF issues that had resulted;

(2) the completion of a review of distribution governance to identify how certain committees oversaw risks associated with distribution;

(3) the implementation of a regular process by the IPRC for the review of fund tracking errors and fees; and

(4) a request for a planned Internal Audit review of the product governance structure to be brought forward.

4.67. From June 2016, a Steering Committee known as the Enhanced Index Steering Group was established by Henderson to deliver a remediation programme in respect of the incident concerning the Japan and North American Funds. The Enhanced Index Steering Group decided how to compensate affected investors and what to communicate to investors regarding the incident. It also approved the reinstatement of a sub-set of the alpha overlay strategies on the Japan and North American Funds, which had been proposed by HGIL staff following further analysis.

4.68. On 24 June 2016, a draft version of the final report of the investigation by the Operational Risk team was presented to Henderson's FCA Sub-Committee for review and comment before being submitted to the Authority. The FCA Sub-Committee's remit included the consideration and approval of any significant engagement with the Authority. During this meeting, the FCA Sub-Committee noted the substantial period of time over which the incident took place before it was formally identified and that it had not been escalated despite being considered at a governance level by a number of committees.

4.69. On 1 July 2016, Henderson's Operational Risk team issued the final findings of its investigation into the incident regarding the Japan and North American Funds. The report was submitted to the Authority on the same date. The report identified root causes of the incident and proposed remedial actions.

4.70. Among the root causes, the report identified the following:

(1) a communication failure, including at various oversight committees, to ensure that when material changes relating to fee changes were made to institutional investors, similar changes were applied to retail investors;

(2) a failure of product review processes to adequately monitor all relevant funds and identify divergence of risk within funds against individual share class free profiles;

(3) a lack of a product governance forum with the remit to assess fund changes and provide oversight of the implementation of those changes; and

(4) a lack of robust procedures for identifying, escalating and reporting TCF issues.

4.71. Among the proposed actions, the report identified the following:

(1) the establishment of a Steering Group to independently assess the calculation and method of compensating affected investors;

(2) the completion of a review of distribution governance to identify how certain committees oversee risks associated with distribution;

(3) the completion of an investigation of the control breakdowns throughout the incident and any potential TCF issues that had resulted;

(4) the development and implementation of a regular process for the review of fund tracking errors and fees to be reviewed by the IPRC;

(5) the reconciliation of existing UK funds against the funds captured within the product lifecycle process to ensure all relevant funds are covered;

(6) the update of the Prospectus, Key Investor Information Document (KIID) and other fund documentation for the Japan and North American Funds to ensure they accurately reflect the objective and aims of the funds;

(7) the notification to retail investors of the changes made to the fees, changes to the fund documentation and communication of the compensation due; and

(8) the completion of the Internal Audit review of Henderson's product governance structure.

4.72. On 1 September 2016, Henderson wrote to affected investors in the Japan and North American Funds informing them that they should have been notified in late 2011 of the change concerning the strategies applied to the funds and that the management fees should have been reduced at that time. Henderson informed investors that they were therefore entitled to full repayment of overcharged management fees and reduced management fees would apply automatically from 1 September 2016 onwards. At the same time, Henderson also notified investors that, with effect from 1 November 2016, it would be renaming the funds, revising their investment objectives and clarifying the Prospectus and KIID.

4.73. On 16 September 2016, Henderson's Internal Audit function set out the results of its audit of the product governance and oversight processes at Henderson in its Internal Audit Product Governance and Management Final Report. The management and implementation of the actions set out in this report was overseen by a Steering Group at Henderson. The key findings and themes of the report included:

(1) identification of gaps and weaknesses in the existing first and second line of defence product oversight processes for ensuring:

   (a) consistency between how funds were managed and the fund literature;

   (b) the completeness and consistency of product literature;

   (c) that management fees were commensurate with fund risks; and

   (d) the ongoing review and oversight of existing products including those not identified by the product lifecycle process;

(2) identification of weaknesses in governance arrangements which indicated insufficient clarity of accountability, roles and responsibilities between the first and second lines of defence for product oversight processes, including a weakness of the first line of defence's oversight of existing products;

(3) inadequate level of communication and information sharing between key teams and governance committees resulting in a breakdown of product oversight controls in some instances;

(4) escalation processes were not formalised and reliance was placed on the judgment of staff; and

(5) in many areas, reliance was placed on the knowledge of key staff and procedures were not formalised.

Impact on investors and redress

4.74. 4,713 direct retail investors (approximately 5% of the total AUM in the two funds) and 75 intermediary companies with underlying non-retail investors as well as two institutional investors within the Japan and North American Funds were affected by the decision in 2011 not to reduce the level of fees paid by certain investors in these funds.

4.75. The methodology for assessing the compensation due to investors and the amount to be paid was reviewed and recommended by Henderson's Enhanced Index Steering Group. The methodology resulted in compensation being paid to any

investors in the Japan and North American Funds who were paying above the respective annual management charge of Henderson's UK Index Funds from 1 December 2011 until 1 September 2016, when the proposed reduced fees were effective on the funds. Henderson's UK Index Funds were chosen as a basis for comparison when carrying out the compensation calculations as they "*reflected the objective of aligning the Enhanced Equity fees with those offered on pure passive products.*" The compensation paid by Henderson on behalf of HIFL totalled £1,784,465.32.

5. FAILINGS

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

5.2 Based on the facts and matters described above, the Authority concludes that HIFL has breached Principles 3 and 6.

Principle 3

5.3 Principle 3 requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

5.4 On the basis of the facts and matters set out above, the Authority considers that HIFL breached Principle 3 between November 2011 and March 2017 in that:

(1) HIFL failed to exercise adequate oversight over the decisions made by HGIL in November 2011 concerning how the Japan and North American Funds would be managed. In particular:

(a) there was a lack of clarity regarding the accountability and responsibilities of HIFL (as the appointed ACD) and HGIL (as the appointed investment manager) regarding decision making on products. The delegation and escalation processes between HIFL and HGIL were not clear, in particular concerning matters that HIFL had delegated to HGIL and decisions that should be referred to HIFL;

(b) there was no documented requirement that these issues be escalated to, or considered by, any governing committee before HGIL made these decisions; and

(c) there was no documented process in place that required HGIL to consult with Henderson Compliance before making these decisions.

(2) HIFL failed to put in place adequate processes and controls to monitor and oversee the subsequent management of the Japan and North American Funds during the relevant period. In particular:

(a) following the decisions made in late 2011, the Japan and North American Funds were not effectively monitored over the remainder of the relevant period:

a. the Japan and North American Funds were excluded from the product lifecycle process due to the absence of appropriate metrics to measure and assess the performance of these specific funds, but HIFL did not put in place an alternative process to regularly review and assess these funds;

b. there were no procedures in place adequately to monitor the level of enhancements being applied to the Japan and North American Funds and the outputs of HGIL's research into opportunities to reintroduce enhancement strategies to these funds were not overseen by any governance committee; and

c. there were no other processes in place to produce management information that would have identified the difference in treatment between the retail investors and most of the institutional investors; and

(b) the governance committees that HIFL relied on to oversee HGIL's management of its funds failed adequately to identify and address in a timely manner the treatment of retail investors in the Japan and North American Funds:

a. there was no governance forum with the dedicated remit to assess the ongoing impact of changes in investment strategy for existing funds on relevant investors, such as the level of fees charged;

b. although the matter was considered by the IPRC in 2014 and 2015, the IPRC failed to identify whether retail investors in the Japan and North American Funds had been informed of the change in investment strategy and failed to confirm the level of fees being paid by those retail investors; and

c. there were no formal communication or escalation mechanisms in place for governance committees, such as the IPRC or the GSPC, to raise the relevant issues concerning the Japan and North American Funds to other committees such as the Customer Interests and Treating Customers Fairly Committee.

Principle 6

5.5 Principle 6 requires a firm to pay due regard to the interests of its customers and treat them fairly.

5.6 On the basis of the facts and matters set out above, the Authority considers that HIFL breached Principle 6 by failing to treat all investors in the Japan and North American Funds fairly.

5.7 In November 2011, HGIL, acting as HIFL's agent, decided to significantly reduce the level of active management that was being applied to the Japan and North American Funds. Subsequently HIFL, either through its own actions or through the actions of its agent HGIL:

(1) failed to notify any of the retail investors and some of the institutional investors in the Japan and North American Funds of this change until 1 September 2016; and

(2) failed to reduce the fees charged to retail investors (and some institutional investors) in the Japan and North American Funds until 1 September 2016 notwithstanding that it had reduced the fees for other institutional investors in those funds.

6 SANCTION

6.1 For the reasons set out in this Notice, the Authority has found that HIFL breached Principles 3 and 6. The Authority has considered the disciplinary and other options

available to it and has concluded that a financial penalty is the appropriate sanction in the circumstances of this case.

6.2 The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.

Step 1: disgorgement

6.3 Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach, where it is practicable to quantify this.

6.4 DEPP 6.5A.1G(2) states that where a firm carries out a redress programme to compensate those who have suffered loss as a result of the breach, or where the Authority decides to impose a redress programme, the Authority will take this into consideration. In such cases the final penalty might not include a disgorgement element or the disgorgement element might be reduced.

6.5 As set out in section 4 of this Notice, Henderson has carried out a remediation exercise and has compensated, or offered to compensate, the investors in the Japan and North American Funds who were affected by the decision made in 2011 not to reduce the level of fees paid by certain investors in these funds. The total compensation paid to investors was £1,784,465.32. In these circumstances, the Authority has decided there should be no disgorgement.

6.6 Step 1 is therefore £0.

Step 2: the seriousness of the breach

6.7 Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area.

6.8 The Authority considers that the revenue generated by HIFL is indicative of the harm or potential harm caused by its breach. The Authority has therefore determined a figure based on a percentage of HIFL's relevant revenue. HIFL's relevant revenue is the revenue derived by HIFL from the Japan and North American Enhanced Equity Funds during the relevant period. The Authority considers HIFL's relevant revenue for this period to be £5,801,190.

6.9 In deciding on the percentage of the relevant revenue that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on firms there are the following five levels:

Level 1 – 0%

Level 2 – 5%

Level 3 – 10%

Level 4 – 15%

Level 5 – 20%

6.10 In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly.

6.11 DEPP 6.5A.2G(11) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:

(1) the breach revealed serious weaknesses in HIFL's systems and controls in relation to the management, oversight and governance of an area of its business which included the Japan and North American Funds. These weaknesses resulted in the issue concerning the treatment of certain investors in the relevant funds not being identified and resolved for a considerable amount of time.

6.12 DEPP 6.5A.2G(12) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers the following factors to be relevant:

(1) there was no, or limited, actual or potential effect on the orderliness of, or confidence in, markets as a result of the breach.

6.13 The Authority also considers that the following factors are relevant under DEPP 6.5A.2G:

Factors relating to the impact of the breach

(1) the level of benefit gained by HIFL and the level of loss caused to investors, in the form of overcharged fees between November 2011 and August 2016, amounted to £1,784,465.32.

Factors relating to the nature of the breach

(1) HIFL's senior management became aware of the matters underlying the Principle 3 and Principle 6 breaches following the escalation to the IRPC in 2014 but they did not take adequate steps to address these breaches until August 2016; and

(2) HIFL took certain steps to identify and resolve the breach between 2014 and 2016, however, these steps were not adequate to address the breach until it was formally resolved in August 2016.

6.14 Taking all of these factors into account, the Authority considers the seriousness of the breaches to be level 3 and so the Step 2 figure is 10% of £5,801,190.

6.15 Step 2 is therefore £580,119.

Step 3: mitigating and aggravating factors

6.16 Pursuant to DEPP 6.5A.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2 to take into account factors which aggravate or mitigate the breach.

6.17 The Authority considers that the following factors aggravate the breach:

(1) HIFL took too long to remediate the failures to treat customers fairly and pay due regard to their information needs. The actions which led to these

breaches took place in late 2011, but appropriate action only began to take place in April 2016, over four years later. Despite HIFL's senior management becoming aware of a potential TCF breach through the IPRC in 2014, HIFL failed to take adequate steps to address and resolve the breach during the relevant period.

6.18 The Authority considers that the following factors mitigate the breach:

(1) the report resulting from Henderson's Operational Risk investigation concluded, amongst other matters, that there were TCF and control failings in respect of the Japan and North American Funds during the relevant period; and

(2) those investors who were affected by the breaches have been fully compensated by Henderson.

6.19 Having taken into account the aggravating and mitigating factors above, the Authority considers that the Step 2 figure should be increased by 15%.

6.20 Step 3 is therefore £667,136.85.

Step 4: adjustment for deterrence

6.21 Pursuant to DEPP 6.5A.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.22 The Authority considers that DEPP 6.5A.4G(1)(a) is relevant in this instance and has therefore determined that this is an appropriate case where an adjustment for deterrence is necessary.

6.23 Without an adjustment for deterrence, the financial penalty would be £667,136.85. The Authority considers that a penalty of this size would not serve as a real credible deterrent as it is substantially less than the amount of fees HIFL refunded to compensate affected investors in the Japan and North American Enhanced Equity Funds. Given the size of HIFL, and the nature of the misconduct,

it is necessary for the Authority to increase the penalty to achieve credible deterrence.

6.24 Having taken into account the factors outlined at DEPP 6.5A.4G the Authority considers that a multiplier of four should be applied at Step 4.

6.25 Step 4 is therefore £2,668,547.40.

Step 5: settlement discount

6.26 Pursuant to DEPP 6.5A.5G, if the Authority and the firm on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the firm reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.27 The Authority and HIFL reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.

6.28 Step 5 is therefore £1,867,983.18.

Penalty

6.29 The Authority hereby imposes a total financial penalty of £1,867,900 (rounded down to the nearest £100) on HIFL for breaching Principles 3 and 6.

7 PROCEDURAL MATTERS

7.1 This Notice is given to HIFL under and in accordance with section 390 of the Act.

7.2 The following statutory rights are important.

Decision maker

7.3 The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

Manner and time for payment

7.4 The financial penalty must be paid in full by HIFL to the Authority no later than 2 December 2019.

If the financial penalty is not paid

7.5 If all or any of the financial penalty is outstanding on 3 December 2019, the Authority may recover the outstanding amount as a debt owed by HIFL and due to the Authority.

Publicity

7.6 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 you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

7.8 For more information concerning this matter generally, contact Mark Lewis at the Authority (direct line: 020 7066 8442/email:Mark.Lewis2@fca.org.uk).

Laura Dawes

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY PROVISIONS

1.1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include the consumer protection objective and the integrity objective.

1.2. Section 206(1) of the Act provides:

"If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act… it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate."

RELEVANT REGULATORY PROVISIONS

Principles for Businesses

1.3. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook. They derive their authority from the Authority's rule-making powers set out in the Act. The relevant Principles are as follows.

1.4. Principle 3 (Management and control) provides:

"A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems."

1.5. Principle 6 (Customers' interests) provides:

"A firm must pay due regard to the interests of its customers and treat them fairly."

DEPP

1.6. Chapter 6 of DEPP, which forms part of the Authority's Handbook, sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.

The Enforcement Guide

1.7. The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act.

1.8. Chapter 7 of the Enforcement Guide sets out the Authority's approach to exercising its power to impose a financial a penalty.

ANNEX B

CHRONOLOGY

1 July 2005 and 11 July 2011	HIFL delegated to HGIL the management and administration of the Global Enhanced Equity Funds under two Investment Management and Administration Agreements.
mid 2011	Several of HGIL's fund managers were made redundant as part of a firm-wide redundancy programme. The redundancies led to a review of the investment strategy for the Global Enhanced Equity Funds.
November 2011	HGIL decided to preserve the alpha overlay strategy within the UK Enhanced Equity Fund and the Europe Enhanced Equity Fund but decrease it over a period of time within the Japan Enhanced Equity Fund, the North American Enhanced Equity Fund, the Exempt North American Enhanced Equity Fund and the Asia Pacific ex Japan Enhanced Equity Fund.
November 2011	HGIL began to contact specific institutional investors in the Global Enhanced Equity Funds.
Early 2012	HGIL began to research opportunities to reintroduce enhancement strategies into the Japan Enhanced Equity Fund, the North American Enhanced Equity Fund, the Exempt North American Enhanced Equity Fund and the Asia Pacific ex Japan Enhanced Equity Fund.
December 2012	The run-off of the alpha overlay in the Japan Enhanced Equity Fund was complete.
29 August 2012	HGIL sent letters to clients and their advisers explaining that the names of the Global Enhanced Equity Funds had been changed to include the word "Institutional".

December 2013	The run-off of the alpha overlay in the North American Enhanced Equity Fund was essentially complete
Q2 2014	Investment Risk set up a six month review period during which, if the inconsistency between the Japan and North American Funds' names/objectives and their performance had not been resolved, it would refer the matter to the IPRC.
29 September 2014	IPRC considered this issue for the first time. It raised an action item that members of the committee discuss "*the wording around the funds which do not appear to be 'enhanced'*" and report back.
10 November 2014	The IPRC set a further six month deadline by which time the Japan Enhanced Equity Fund, the North American Enhanced Equity Fund, the Exempt North American Enhanced Equity Fund and the Asia Pacific ex Japan Enhanced Equity Fund were to become enhanced again.
27 March 2015	The IPRC created an action item meeting to "*Confirm whether there has been communication to retail clients for the funds which are no longer enhanced and whether there was a reduction in fees*."
28 May 2015	The GSPC approved a multi-phased approach to change the Japan Enhanced Equity Fund, the North American Enhanced Equity Fund, the Exempt North American Enhanced Equity Fund and the Asia Pacific ex Japan Enhanced Equity Fund.
3 June 2015	The IPRC decided to close the action item on the basis that a plan to re-enhance the Japan Enhanced Equity Fund, the North American Enhanced Equity Fund, the Exempt North American Enhanced Equity Fund and the Asia Pacific ex Japan Enhanced Equity Fund had been considered by the GSPC.
9 June 2015	The multi-phased approach was reviewed and approved in principle by PIC.

14 December 2015	The second phase of the proposed multi-phased approach was rejected by one of Henderson's largest institutional investors. Henderson subsequently decided not to proceed with the first phase.
February 2016	Investment Risk raised at the Customer Forum the potential TCF implications concerning the retail investors and the fees charged since 2011.
8 March 2016	The GSPC concluded that, given the limited prospect of being able to reintroduce material enhancements into the Japan Enhanced Equity Fund, the North American Enhanced Equity Fund, the Exempt North American Enhanced Equity Fund and the Asia Pacific ex Japan Enhanced Equity Fund, the level of fees on the retail share class should be reduced to the level that Henderson charges for passive equity funds.
18 March 2016	The incident was raised by the Operational Risk within Henderson's operational risk database system.
13 April 2016	Henderson reported to the Authority that it was investigating the matter of the extent of the enhancements which had been applied to the North American and Japan Enhanced Equity Funds since 2011 and the treatment of retail investors in these funds.
6 May 2016	Henderson submitted its Operational Risk Enhanced Index Funds Incident Interim Report to the Authority.
14 June 2016	The Enhanced Index Steering Group approved a proposal to re-instating a sub-set of the alpha overlay strategies to the Japan Enhanced Equity Fund, the North American Enhanced Equity Fund, the Exempt North American Enhanced Equity Fund and the Asia Pacific ex Japan Enhanced Equity Fund.
1 July 2016	Operational Risk issued the findings of its investigation in the Enhanced Equity Funds Incident Final Report.

1 September 2016	Henderson wrote to affected investors in the Japan and North American Funds informing them that they should have been notified in late 2011 of the change concerning the strategies applied to the funds and that the management fees should have been reduced at that time. Henderson informed investors that they were therefore entitled to full repayment of overcharged management fees and reduced management fees would apply automatically from 1 September 2016 onwards. At the same time, Henderson also notified investors that, with effect from 1 November 2016, it would be renaming the funds, revising their investment objectives and clarifying the Prospectus and KIID.
16 September 2016	Henderson's Internal Audit function set out the results of its audit of the product governance and oversight processes in its Internal Audit Product Governance and Management Final Report.