
FINAL NOTICE

To: **Mr Jean-Noël Yves Alba**

Reference
Number: **JYA01003**

Date: **22 July 2025**

1. ACTION

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

- a. Imposes on Mr Alba a financial penalty of £1,049,500 pursuant to section 66 of the Act;
and
- b. Makes an order prohibiting Mr Alba from performing any function in relation to any regulated activities carried on by any authorised or exempt persons or exempt professional firm pursuant to section 56 of the Act.

1.2. Mr Alba has 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 £1,499,426.57 on Mr Alba.

2. SUMMARY OF REASONS

2.1. Between 1 August 2019 and 22 July 2021 (the "Relevant Period") Mr Alba failed to:

- a. act with integrity, pursuant to Statement of Principle 1 and Individual Conduct Rule 1; and
 - b. be open and cooperative in his interactions with the Authority, pursuant to Statement of Principle 4 and Individual Conduct Rule 3.
- 2.2. In 2010, Mr Alba, in conjunction with others, co-founded the asset management company H2O AM LLP (“H2O”). Mr Alba initially assumed the title of COO and later Deputy CEO. Mr Alba was also the CCO and was ultimately responsible for overseeing H2O’s compliance and risk functions, amongst other functions, during the Relevant Period. In addition, Mr Alba was approved by the Authority to carry out a number of controlled functions as defined under the Statements of Principle and Code of Practice for Approved Persons (“APER”) and, subsequently, the Senior Managers and Certification Regime (“SMCR”) specifically:
- i. From 1 August 2019 to 8 December 2019, Mr Alba was an approved person performing CF4 (Partner) and CF10 (Compliance Oversight) under APER; and
 - ii. From 9 December 2019 to 22 July 2021, Mr Alba was a person performing the SMF27 (Partner) function under the SMCR.
- 2.3. During the Relevant Period, H2O’s business included acting as authorised fund manager (“AFM”) for a number of funds referred to in this Notice as “the H2O Funds”. Between 2015 and 2019 (the “Investment Period”), H2O made a series of investments through the funds it managed into 24 entities controlled or introduced by Lars Windhorst (the “Investments”). The estimated value of the Investments in August 2020 totalled €1.643 billion.
- 2.4. The Investments were generally private placement debt instruments and equity shares in entities which H2O recognised as early stage or turnaround businesses. Most of the Investments were therefore highly illiquid. The nature of the Investments differed significantly from the vast majority of traditional investments made by the H2O Funds which were open-ended, daily dealing funds (meaning that investors could withdraw their money on a daily basis).
- 2.5. On 18 June 2019, the Financial Times (“FT”) published an article focusing on the exposure of the H2O Funds to the Investments and the close relationship between H2O and Mr Windhorst (the “2019 FT Article”). This prompted significant investor redemptions across the funds managed by H2O. By mid-July 2019, €8 billion of the €34 billion assets under management at the start of June 2019 had been redeemed by investors.

- 2.6. On 2 August 2024, the Authority issued a Final Notice to H2O in respect of its misconduct in relation to the Investments. Mr Alba was referred to as Senior Manager A in that Final Notice.
- 2.7. Throughout the Relevant Period, Mr Alba failed on multiple occasions to act with integrity and to be open and cooperative with the Authority's investigation into the Investments. In particular, in response to information requirements issued by the Authority in August, October and November 2019, Mr Alba:
- a. Oversaw and directed the retrospective creation of multiple records and minutes of governance and oversight committee meetings, many of which had not taken place at all, and provided these false and misleading documents to the Authority;
 - b. Provided misleading due diligence reports relating to the Investments to the Authority which purported to evidence contemporaneous analysis of initial investment decisions but which had been prepared subsequently, often many months after the Investments had been made; and
 - c. Made multiple misleading statements in correspondence to the Authority regarding the nature and extent of due diligence H2O had conducted on the Investments during the Investment Period.
- 2.8. Further, Mr Alba failed to correct or amend the inaccurate and misleading statements and documents he had made and provided to the Authority for the remainder of his employment at H2O despite being aware that the timing and extent of due diligence was central to the Authority's investigation of H2O's decisions to enter into the Investments.
- 2.9. H2O notified the Authority on 23 July 2021 that it had suspended Mr Alba when these matters were identified by H2O and its external lawyers whilst conducting work to respond to a further information request by the Authority. Mr Alba retired from his role at H2O on 29 September 2021 and relinquished his shareholding in H2O as of 5 October 2021.
- 2.10. The Authority considers that Mr Alba acted intentionally to mislead the Authority, or, in the alternative, recklessly.
- 2.11. It appears to the Authority that Mr Alba's objective in the continued provision of misleading information to the Authority was to create the impression that H2O had held and adequately documented detailed discussions regarding the Investments prior to making them; and to hide the fact that he had knowingly made earlier inaccurate and misleading statements to the Authority.

- 2.12. Mr Alba's misconduct included overseeing an extensive effort to create documents and provide misleading information to the Authority to hide the severity of H2O's due diligence and systems and controls failings. Mr Alba directed several more junior employees from H2O's Risk and Compliance functions to prepare documentation and records in circumstances where Mr Alba knew, or ought to have known that the information he was supplying to the Authority was misleading.
- 2.13. The Authority therefore views Mr Alba's misconduct as serious. Due to the severity of Mr Alba's misconduct as described above, the Authority also considers that Mr Alba is not a fit and proper person because he lacks integrity and has failed to demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory system.
- 2.14. Having assessed Mr Alba's numerous serious failings, the Authority hereby by way of sanction makes a prohibition order against Mr Alba pursuant to section 56 of the Act.
- 2.15. In addition, in the circumstances, the Authority considers it appropriate to impose a financial penalty of £1,049,500.

3. DEFINITIONS

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

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

"AFM" means an Authorised Fund Manager

"the Authority" means the Financial Conduct Authority

"CCO" means Chief Compliance Officer

"CEO" means Chief Executive Officer

"COO" means Chief Operating Officer

"H2O" means H2O AM LLP

"Investments" means the investments made by H2O via the H2O Funds into 24 instruments or entities either controlled or introduced by Mr Windhorst during the Investment Period

“Investment Period” means the period between 2015 and 2019 during which H2O made the Investments

“Notice” means this Warning Notice together with its Appendices

“Relevant Period” means the period between 1 August 2019 and 22 July 2021

“UCITS” means Undertakings for the Collective Investment in Transferable Securities

4. FACTS AND MATTERS

Background to H2O

- 4.1. H2O is an investment management company which was founded as a limited liability partnership in 2010. H2O primarily specialises in global macro investment strategies serving institutional, corporate and (indirectly) individual investors through a range of absolute and total return UCITS, actively managed across global debt, currency and equity markets. At its peak in 2019, H2O’s assets under management exceeded €34 billion.

Mr Alba’s role at H2O

- 4.2. Mr Alba was a co-founder of H2O, initially assuming the title of COO and later Deputy CEO. Mr Alba was also the CCO and was ultimately responsible for overseeing H2O’s compliance and risk functions, amongst other functions, during the Relevant Period. In performing these roles, Mr Alba held a number of controlled functions and then senior management functions:
- i. From 17 December 2010 to 8 December 2019, Mr Alba was an approved person performing CF4 (Partner) and CF10 (Compliance Oversight); and
 - ii. From 9 December 2019 to 22 July 2021, Mr Alba was a person performing SMF27 (Partner).
- 4.3. As a founding partner, Mr Alba was a member of H2O’s Executive Committee. During the Investment Period, Mr Alba was also the Chairman of H2O’s Risk and Compliance Committee, which in 2019 became the Legal, Risk and Compliance Committee (the “Risk and Compliance Committee”), and of H2O’s Valuation Committee.

H2O's investment strategy

- 4.4. H2O's core investment strategies (which typically accounted for 90-95% of the risk taken by H2O-managed funds) generally comprised of highly liquid, mainstream investments (for example sovereign debt).
- 4.5. H2O always invested a small proportion of the H2O Funds' assets in what it described as a "Deep Value Overlay" of investments which differed from its core investments in terms of sector, type, cashflow and maturity. Such "Deep Value" investments fell into categories including government bonds and corporate debt in emerging markets, distressed sovereign debt, and private debt.

The Investments

- 4.6. Mr Windhorst is the founder and ultimate beneficial owner of Tennor Holding BV ("Tennor"). Tennor is a global investment holding company; its portfolio is described as being diversified across technology, industrials, natural resources, media, entertainment, sports, retail and real estate (the "Tennor Group").
- 4.7. During the Investment Period, H2O made investments into 24 private debt / equity offerings which were either issued by the Tennor Group of companies or were introduced to H2O by Mr Windhorst and for which Mr Windhorst acted as intermediary. Collectively these investments are the "Investments" for the purposes of this Notice. The Investments formed part of H2O's Deep Value Overlay.

The 2019 FT Article and suspension of the H2O Funds

- 4.8. On 18 June 2019, the FT published an article, which was the first in a series of subsequent articles by the FT, examining the Investments (the "2019 FT Article"). The 2019 FT Article focused on the concentration of the H2O Funds in the Investments and their "*highly illiquid*" nature. The FT included a number of adverse allegations against Mr Windhorst. Following the 2019 FT Article, H2O experienced substantial investor redemptions across the funds it managed.

The Authority's investigation into H2O, subsequent findings and settlement

- 4.9. H2O was subsequently investigated by the Authority in relation to the Investments. The Authority's investigation ultimately found that in making the Investments, H2O often failed to conduct sufficient, and sometimes basic, due diligence to enable it to evaluate adequately the merits, risks and valuations of the Investments. The Authority also found that H2O failed to

comply with its own policies and procedures in relation to due diligence and conducted inadequate initial due diligence to support its decisions to enter into the Investments as well as inadequate on-going due diligence.

- 4.10. Furthermore, the Authority found that H2O failed to have in place appropriate written policies, procedures, systems and controls regarding investment decision-making in relation to the Investments: what and how due diligence should be performed; the rationale for investment decisions; or the basis for their valuations. H2O failed to institute and maintain appropriate governance arrangements to review and scrutinise investment decisions in relation to the Investments and failed to ensure adequate oversight, challenge or monitoring by the Risk and Compliance functions of the investment decision-making process which led to the Investments being made.
- 4.11. On 2 August 2024 the Authority issued a Final Notice to H2O which included the findings that between April 2015 and November 2019 H2O had failed:
- a. to conduct its business with due skill, care and diligence, in contravention of Principle 2 of the Authority's Principles for Businesses ("Principle 2") and to ensure a high level of diligence in the selection of scheme property and to act in the best interests of the scheme and its unitholders as required by the rules set out in the Authority's Handbook relating to Collective Investment Schemes ("COLL"); and
 - b. to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, in contravention of Principle 3 of the Authority's Principles for Businesses ("Principle 3").

Provision of false and misleading information to the Authority and Mr Alba's involvement

- 4.12. A third element of H2O's failings which the Authority's investigation identified was that H2O also failed to deal with the Authority in an open and cooperative manner, in contravention of Principle 11 of the Authority's Principles for Businesses ("Principle 11"). This aspect of misconduct centred on H2O's responses to several information requirements the Authority issued to H2O regarding (amongst other things) the extent, nature and timing of due diligence it had conducted on the Investments (the "2019 Requests"). Mr Alba was referred to as Senior Manager A in that Final Notice.
- 4.13. Mr Alba was responsible for providing H2O's responses to the 2019 Requests and was therefore instrumental in the Principle 11 breach by H2O as he repeatedly provided false and misleading statements and documents to the Authority, as detailed below.

Mr Alba's provision of misleading committee minutes to the Authority

- 4.14. On 26 July 2019, the Authority requested H2O to provide information relating to the Investments including internal correspondence which led to the valuation of the Investments. In response on 1 August 2019, Mr Alba provided the Authority with minutes of meetings of H2O's Valuation Committee and Risk and Compliance Committee. In doing so, Mr Alba provided misleading documentation and made misleading statements to the Authority. In particular, Mr Alba:
- a. provided 23 documents purporting to be contemporaneous minutes of meetings of H2O's Valuation Committee between January and July 2019 although, no formal meetings of the Valuation Committee had taken place;
 - b. provided four documents purporting to be minutes of H2O's Risk and Compliance Committee when no formal meetings had taken place;
 - c. provided four minutes of Risk and Compliance Committee meetings which had taken place but were not recorded at the time and were retrospectively created; and
 - d. provided four further minutes of Risk and Compliance Committee meetings which had been created contemporaneously, but which were retrospectively amended to include additional evidence of due diligence copied from the minutes for the Valuation Committee (which had not taken place).
- 4.15. In providing these minutes to the Authority, Mr Alba represented that they constituted contemporaneous evidence of H2O's internal discussions which led to the valuation of the Investments, as stipulated in the 26 July 2019 information requirement issued by the Authority. On the basis of various inaccuracies and inconsistencies within the minutes provided by Mr Alba, contradictory email correspondence between Mr Alba and colleagues and subsequent admissions by H2O, these representations were misleading and the Authority was therefore misled as to the contents of these minutes.
- 4.16. Mr Alba was aware or ought to have been aware that all of these documents were not contemporaneous as he had been extensively copied in and participated in internal correspondence amongst H2O's Risk and Compliance functions in which he led and oversaw the minutes' retrospective creation and preparation to respond to the Authority's request. In this correspondence:

- a. Mr Alba instructed staff to “better document” the work undertaken and thereby directed the creation of misleading records including telling them:

“What we need to do is show [...] that the documents we sent are part of the risk and compliance committee and are reviewed with some discussion during the committee. This can be done by [three H2O employees] and me”.

- b. Mr Alba provided H2O staff with one set of minutes which he stated that he had himself “revised”;
- c. Mr Alba told H2O staff to “*put some substance in the minutes of the weekly risk and compliance committees ...*”
- d. Mr Alba discussed with more junior Risk and Compliance employees what needed to be retrospectively added to the minutes, the manner in which the minutes should be amended, the time period for which minutes should be retrospectively created or updated, and how to allocate the work amongst H2O staff;
- e. Mr Alba provided instructions to more junior H2O staff on how best to respond to the Authority’s information requests given contemporaneous documentation was not available which they discussed in correspondence. In discussions relating to the instructions, one H2O employee stated:

“Jean-Noel just called:...

...We need to take the risk and compliance minutes (not the valuation committee extracts, and add evidence of discussions for every second meeting)....

Let’s do this from the beginning of 2019 (this is roughly when we stopped having the risk and compliance committees, so [two H2O staff] will create the agendas/minutes)”

- f. Finally, Mr Alba was emailed by a member of H2O’s Compliance function as work on the amendments to the minutes were nearing completion updating him on the work. This email included the statement that:

“When we are done with the review, we will integrate the corresponding parts of the table in each minutes (which have been created and checked for consistency).

Once these minutes are gone to the FCA, we cannot modify them ever again.

[Emphasis original]”

- 4.17. In addition, Mr Alba was recorded as being the Chairman of the Risk and Compliance Committee (as reflected on each of the 12 sets of minutes for that committee provided to the Authority). The Valuation Committee was a sub-committee which did not sit separately. Accordingly, as the chair of the Risk and Compliance Committee meetings, Mr Alba was aware or ought to have been aware that minutes provided to the Authority reflected records of formal meetings of certain Committees which it appears had never actually taken place although informal discussions may have occurred.

Mr Alba's provision of misleading due diligence materials to the Authority

- 4.18. Further, as part of the 2019 Responses, Mr Alba provided due diligence materials to the Authority on the basis that they had been prepared at the time of the initial Investments as part of H2O's due diligence process. Mr Alba did so when he knew or ought to have known this was not the case. In providing these documents to the Authority and then subsequently maintaining their genuine nature, Mr Alba made misleading statements to the Authority.

- 4.19. In particular, Mr Alba provided to the Authority:

- a. Due Diligence Reports, which were also referred to as "Investment Summaries", on 1 and 8 August 2019. In response to a direct request by the Authority that H2O confirm when the due diligence reports were written, Mr Alba responded on 2 August 2019 stating:

"To confirm:

- The due diligence reports are written at the time of the investments and they are updated afterwards by the portfolio managers in charge of the related investments. This is a permanent process and is on going... "*

- b. Investment Decision Notes on 31 October 2019. When providing these documents to the Authority Mr Alba stated:

"What we can add is the final investment decision made by our CIO for each bond bought... All documents were elaborated at the time of the investments, as all investments need to be documented."

In subsequent dialogue with the Authority on 6 November Mr Alba further stated:

"The investment notes are documents which were put together by [Partner A], at the time of the investments."

- 4.20. The Authority's investigation identified that all of these documents had, in fact, been prepared retrospectively from June 2019 onwards – either directly in response to the Authority's requests or as part of a general 're-papering' exercise within H2O to create and document due diligence materials on the Investments following the 2019 FT Article.
- 4.21. Mr Alba was aware or ought to have been aware that the Due Diligence Reports he provided to the Authority on 1 and 8 August 2019 had not been created contemporaneously to the investments as:
- a. Mr Alba was informed by colleagues on 31 July 2019 that the Investments were '*little documented*' and that a Portfolio Manager at H2O had prepared a portfolio of due diligence documents relating to the Investments that was '*ex-post*' and '*very recent*';
 - b. Mr Alba was told separately on 31 July 2019 by colleagues that an H2O employee was compiling '*summary notes*' on two of the Investments which would be '*ready tomorrow morning*';
 - c. Mr Alba himself received an email on 1 August 2019 from one of the entities into which H2O had invested in which underlying due diligence material was being requested and collated by H2O for the first time (despite the Investment having been made some months earlier);
 - d. On 2 August 2019, Mr Alba instructed colleagues to provide extra information and '*missing documents*' evidencing due diligence on the Investments;
 - e. On 5 August 2019, Mr Alba was notified by another H2O partner in a WhatsApp chat between H2O's Executive Committee that his statement to the Authority on 2 August 2019 that the Due Diligence Reports had been written at the time of the investments and updated periodically was inaccurate;
 - f. Mr Alba was informed by colleagues on 6 August 2019, that the folder used to store due diligence materials for the Investments was only at that point being populated with '*investment notes*' being compiled by H2O employees.
- 4.22. H2O subsequently confirmed to the Authority that the Due Diligence Reports provided by Mr Alba had only been compiled after the 2019 FT article had been published. Partner A confirmed that the Due Diligence Reports had been created in July 2019 at his request in order to answer questions from some clients. Portfolio Manager A also confirmed in interview that the Due Diligence Reports had been written after June 2019.

4.23. Similarly, Mr Alba was aware or ought to have been aware that the Investment Decision Notes he provided to the Authority on 31 October 2019 had not been created contemporaneously to the Investments as:

- a. On 15 October 2019, Mr Alba received an email from Partner A attaching an Investment Decision Note for one of the Investments. In this, Mr Alba was told that this was the '*First exec summary*' and that two more would be written the following day with the remainder written by the weekend.
- b. On 23 October 2019, Mr Alba was in a WhatsApp group chat for H2O's Executive Committee members in which Partner A stated that he had had "*fallen a bit behind on the summary notes*" but that two more had been completed. Mr Alba thanked his colleague. Later that day Partner A told Mr Alba that a further two Investment Decision Notes were '*in your box JN*' to which Mr Alba again expressed thanks. Partner A then named three other investments for which Investment Decision Notes would be completed the following day, which Mr Alba acknowledged.
- c. On 25 October 2019, Mr Alba received two further Investment Decision Notes for two other of the Investments from Partner A who remarked that:

"If urgent, you can send as is. Otherwise, I can add another 2 or 3 items...send if urgent, if not, more complete version will come by this evening."

- d. On 25 October 2019, in the aforementioned WhatsApp group chat for H2O's Executive Committee members, Mr Alba twice thanked Partner A for providing him with information about the compilation of the Investment Decision Notes including replying "*it's brilliant*" to the following message from Partner A:

"In theory, you have all the notes, JN. Revised by [Portfolio Manager A]. I will add just a few P&L figures and cost prices on [two of the Investments] if you give me until tonight. Otherwise send!"

4.24. H2O subsequently confirmed to the Authority that the Investment Decision Notes had been created by Partner A between 15 and 28 October 2019 to evidence the investment decisions taken in respect of certain of the Investments.

4.25. Partner A stated in interview with the Authority that he had written these reports around September and October 2019 in an attempt to explain the history of the investments and therefore that Mr Alba's statements to the Authority about their contemporaneous nature were incorrect.

- 4.26. The Authority also requested Mr Alba to provide original native versions of the due diligence material. Mr Alba denied having these. Partner A further stated in interview with the Authority that the native versions of the documents were available to Mr Alba as Partner A had placed them on the Firm's network. The Authority considers that these documents would therefore have been available to Mr Alba. This was significant because the native, original versions of the due diligence materials would have contained metadata indicating that they had been prepared from mid-2019 onwards, rather than at the time of the Investments.
- 4.27. In May 2021, Mr Alba was interviewed by the Authority as a witness in relation to the Authority's investigation into H2O, prior to subsequently becoming a subject of investigation himself. During that interview, Mr Alba acknowledged that his statement to the Authority on 2 August 2019 regarding the contemporaneous nature of the Due Diligence Reports was incorrect. Mr Alba stated that he thought this was a mistake made in good faith based in part on his misunderstanding of what work the Firm had completed and assumptions he had made about what information had been available at the time of the original investments.
- 4.28. Having subsequently reviewed internal communications within H2O, the Authority considers that Mr Alba did not make a mistake in good faith. In particular, the correspondence described at paragraphs 4.16, 4.21 and 4.22 above would, at a minimum, have put any reasonable individual on notice that the due diligence materials and committee minutes had clearly not been prepared contemporaneously and that there was no basis for making such statements to the Authority.
- 4.29. Further, during his witness interview Mr Alba failed to correct the inaccurate and misleading statements he had made regarding other information provided in response to the 2019 Requests. This was because Mr Alba claimed in the interview that, save for the Due Diligence Reports, the other information he had provided to the Authority in response to the 2019 Requests was "*pretty much all right*". This was despite the fact that Mr Alba knew or ought to have known he had provided other misleading and inaccurate due diligence materials and committee minutes, including having provided 23 sets of misleading minutes for the Valuation Committee on 1 August 2019.
- 4.30. H2O also undertook its own internal investigation into these matters. H2O notified the Authority on 23 July 2021 that it had suspended Mr Alba when these matters were identified. On 7 October 2021 H2O notified the Authority that Mr Alba had retired from his role on 29 September 2021 and had relinquished his shareholding in H2O as of 5 October 2021.

5. FAILINGS

- 5.1. The regulatory provisions relevant to this Notice are referred to in Annex A.
- 5.2. By reason of the facts and matters set out above, Mr Alba breached Statement of Principles 1 and 4 and Individual Conduct Rules 1 and 3 (insofar as the breaches were committed and / or continued after 9 December 2019 when the Senior Managers and Certification regime came into force).
- 5.3. These breaches also lead the Authority to conclude that Mr Alba 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 because he lacks integrity.

Statement of Principle 1 and Individual Conduct Rule 1

- 5.4. Statement of Principle 1 and, subsequently, Individual Conduct Rule 1 require a person who performs a controlled function or a senior management function to act with integrity in performing those functions.
- 5.5. The Authority considers that, throughout the Relevant Period, Mr Alba breached Statement of Principle 1, later Individual Conduct Rule 1. In particular, Mr Alba:
- a. Made multiple false or misleading statements to the Authority in response to the 2019 Requests regarding the contemporaneous nature of due diligence materials that he provided to the Authority in respect of the Investments. Mr Alba had no reasonable basis for suggesting the documents were contemporaneous and knew or ought to have known that they had been created from mid-2019 onwards;
 - b. Coordinated an exercise to retrospectively create and amend minutes of meetings of H2O's Valuation and Risk and Compliance Committees. This was despite the fact that Mr Alba knew or ought to have known that these meetings had either: (i) not been recorded in such detail at the time; (ii) had not been recorded at the time at all; or (iii) in a majority of cases, such formal meetings had never even taken place; and
 - c. Failed, for the remainder of his employment at H2O, to correct the misleading impression he had made to the Authority through his provision of falsified documents and inaccurate information in response to the Authority's information requests and instead maintained their genuine nature in subsequent statements in correspondence and interview.

- 5.6. In providing the 2019 Responses to the Authority, Mr Alba was aware that he was misleading the Authority by deliberately providing information and documents which were not contemporaneous and concealed the true extent of H2O's due diligence failings or, in the alternative, behaved recklessly in unreasonably ignoring the obvious risks that the documents he provided had not been prepared at the time of the Investments and, therefore, that the Authority would be misled by the 2019 Responses.

Statement of Principle 4 and Individual Conduct Rule 3

- 5.7. Statement of Principle 4 and Individual Conduct Rule 3 require a person who performs a controlled function or a senior management function to deal with the Authority in an open and cooperative way and to disclose to the Authority appropriately anything of which the Authority would reasonably expect notice.
- 5.8. The Authority considers that, throughout the Relevant Period, Mr Alba failed on multiple occasions to comply with his duties under Statement of Principle 4 and Individual Conduct Rule 3. The Authority has reached this conclusion having regard to the matters set out at paragraphs 5.5 and 5.6 above, and to the fact that Mr Alba failed to inform the Authority about H2O's failings in respect of the Investments when the 2019 Requests were made by the Authority. Instead, Mr Alba oversaw an extensive effort to retrospectively create due diligence documentation and committee minutes which disguised the extent of H2O's failings from the Authority.
- 5.9. Mr Alba's actions misled the Authority regarding the way in which H2O had conducted its due diligence and valuation processes in respect of the Investments.
- 5.10. Mr Alba's misconduct was serious for the following reasons:
- a. Mr Alba was H2O's Deputy CEO performing the CF10 (Compliance Oversight) role. Instead of ensuring compliance with regulatory requirements, he utilised his senior position to cause or encourage more junior colleagues at H2O to retrospectively create and amend documents and minutes which he provided to the Authority.
 - b. Mr Alba deliberately and knowingly made false or misleading statements and provided misleading documents to the Authority. Alternatively, he did so recklessly.
 - c. Mr Alba's misconduct took place in response to three separate information requests from the Authority and he failed to correct his misleading statements and provide accurate account in subsequent communications and interview.

- d. Mr Alba's actions meant that significant additional investigative resources and time had to be used by the Authority to establish the true level of due diligence and analysis that H2O conducted on the Investments and that, for a significant period of time, the Authority was unable to determine fully whether H2O was complying with the requirements and standards of the regulatory system.

Lack of Fitness and Propriety

- 5.11. By reason of the facts and matters set out above, the Authority also considers that Mr Alba is not fit and proper, because he lacks integrity and has failed to demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory system.

6. SANCTION

Financial penalty

- 6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. DEPP 6.4.1G states that the Authority will consider all the relevant circumstances of the case when deciding whether to impose a penalty. In the particular circumstances of this case, the Authority considers it appropriate to impose a penalty under section 66 of the Act for his breaches of Statements of Principle 1 and 4 and Individual Conduct Rules 1 and 3.
- 6.2. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.

Step 1: Disgorgement

- 6.3. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.4. The Authority has not identified any financial benefit that Mr Alba derived directly from the breach.
- 6.5. Step 1 is therefore £0.

Step 2: the seriousness of the breach

6.6. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.

6.7. The Relevant Period of Mr Alba's breach was from August 2019 and July 2021. The Authority considers Alba's relevant income for this period to be £4,543,719.86.

6.8. In deciding on the percentage of the income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:

Level 1 – 0%

Level 2 – 10%

Level 3 – 20%

Level 4 – 30%

Level 5 – 40%

6.9. 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. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors' and at (13) those factors likely to be considered level 1, 2 or 3 factors. Of these, the Authority considers the following factors to be relevant for the reasons set out in section 5 above:

a. Mr Alba failed to act with integrity (DEPP 6.5B.2G(12)(d)); and

b. The breaches were committed deliberately or, in the alternative, recklessly (DEPP 6.5B.2G(12)(e)).

6.10. In particular, the Authority considers that the following factors are relevant:

a. The nature of Mr Alba's breaches were serious for the following reasons:

i. Mr Alba made multiple false or misleading statements to the Authority in response to three separate information requests (DEPP 6.5B.2G(9)(b)).

- ii. Mr Alba acted without integrity as he knew or ought to have known that the information he was providing to the Authority was false and misleading ((DEPP 6.5B.2G(9)(e)).
- iii. Mr Alba utilised his senior position to cause or encourage more junior colleagues at H2O to retrospectively create and amend documents and minutes which he provided to the Authority (DEPP 6.5B.2G(9)(h)).
- iv. Mr Alba was an experienced professional in the asset management industry ((DEPP 6.5B.2G(9)(j)) and held the position of H2O's Deputy CEO performing the CF10 (Compliance Oversight) role at the relevant times (DEPP 6.5B.2G(9)(k)). His level of seniority and especially his compliance function, it makes the breaches even more serious.

b. The following factors show that Mr Alba's breaches were deliberate:

- i. Mr Alba sought to conceal his misconduct by failing to correct the misleading information he had provided Authority (DEPP 6.5B.2G(10)(d)).
- ii. Mr Alba repeatedly provided misleading information to the Authority over an extensive period (DEPP 6.5B.2G(10)(d)).

6.11. Taking all of these factors into account, the Authority considers the seriousness of the breach to be Level 4 and so the Step 2 figure is 30% of £4,543,716.86.

6.12. Step 2 is therefore £1,363,115.06.

Step 3: mitigating and aggravating factors

6.13. Pursuant to DEPP 6.5B.3G, at Step 3, the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breaches. Of these, the Authority considers that the following factors aggravate the breaches:

- a. Mr Alba through his misconduct failed to:
 - i. bring the breaches quickly, effectively or completely to the Authority's attention (DEPP 6.5B.3G(2)(a));

- ii. cooperate during the investigation of the breaches by the Authority (DEPP 6.5B.3G(2)(b)); or
 - iii. take any remedial steps to stop the breaches (DEPP 6.5B.3G(2)(c)).
- 6.14. Having taken into account these aggravating factors, the Authority considers that the Step 2 figure should be increased by 10%.
- 6.15. Step 3 is therefore £1,499,426.57.

Step 4: adjustment for deterrence

- 6.16. 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.
- 6.17. The Authority considers that the Step 3 figure of £1,499,426.57 represents a sufficient deterrent to Mr Alba and others, and so has not increased the penalty at Step 4.
- 6.18. Step 4 is therefore £1,499,426.57.

Step 5: settlement discount

- 6.19. Pursuant to DEPP 6.5B.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.
- 6.20. The Authority and Mr Alba reached agreement at Stage 1 and so 30% discount applies to the Step 4 figure.
- 6.21. Step 5 is therefore £1,049,568.60.

Financial penalty

- 6.22. The Authority therefore hereby imposes a total financial penalty of £1,049,500 (being the Step 4 figure rounded down to the nearest £100 in line with the Authority's usual approach) on Mr Alba for breaching Statements of Principle 1 and 4 and Individual Conduct Rules 1 and 3.

Prohibition order

- 6.23. Having regard to the guidance in Chapter 9 of EG and for the reasons set out in this section, the Authority considers it is appropriate and proportionate in all the circumstances to prohibit Mr Alba from carrying out any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. This is because by virtue of the failings set out above Mr Alba lacks integrity and is not a fit and proper person to carry out such functions.
- 6.24. Accordingly, pursuant to section 56 of the Act, the Authority hereby makes an order which prohibits Mr Alba from performing any function in relation to regulated activities.

7. PROCEDURAL MATTERS

- 7.1. This Notice is given to Mr Alba under 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 by Mr Alba to the Authority in the following instalments:
- a. £700,000 by Thursday, 17th July 2025; and
 - b. £349,500 by Wednesday, 30th July 2025.

If the financial penalty is not paid

- 7.5. If any, or any part of, an instalment is outstanding on the day after it is due to be paid to the Authority (in accordance with paragraph 7.4 above), the Authority may recover the full outstanding amount of the financial penalty as a debt owed by Mr Alba 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 Simon Furlong at the Authority (direct line: 020 7066 4995 /email: Simon.Furlong@fca.org.uk).

Allegra Bell

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT STATUTORY PROVISIONS

Financial Services and Markets Act 2000 (“FSMA”)

- 1.1. The Authority’s statutory objectives, set out in section 1B(3) of the Act, include the consumer protection objective (section 1C FSMA) and the integrity objective (section 1D FSMA).
- 1.2. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, 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.
- 1.3. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. 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 a relevant authorised person of a relevant requirement imposed on that authorised person.

2. RELEVANT STATUTORY PROVISIONS

Statements of Principle and Code of Practice for Approved Persons

- 2.1. The Authority’s Statements of Principle and Code of Practice for Approved Persons (“APER”) have been issued under section 64 of the Act.
- 2.2. 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.
- 2.3. During the Relevant Period, Statement of Principle 1 stated:

“An approved person must act with integrity in carrying out his accountable functions.”

- 2.4. During the Relevant Period, Statement of Principle 4 stated:

“An approved person must deal with the FCA, the PRA and other regulators in an open and cooperative way and must disclose appropriately any information of which the FCA or the PRA would reasonably expect notice.”

Code of Conduct

- 2.5. From 9 December 2019, the rules of the Handbook’s Code of Conduct (“COCON”) were applicable to Mr Alba’s conduct.

- 2.6. Rule 1 set out in COCON 2.1.1 R stated:

“You must act with integrity.”

- 2.7. Rule 3 set out in COCON 2.1.1 R stated:

“You must be open and cooperative with the FCA, the PRA and other regulators.”

The Fit and Proper Test for Approved Persons

- 2.8. The part of the Authority’s Handbook entitled “The Fit and Proper Test for Approved Persons” (“FIT”) sets out the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for performing a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

- 2.9. Pursuant to FIT, the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. FIT 1.3.1G states that one of the most important considerations will be the person’s *“honesty, integrity and reputation”*.

The Enforcement Guide

- 2.10. The Enforcement Guide (“EG”) sets out the Authority’s approach to exercising its main enforcement powers under the Act.
- 2.11. Chapter 7 of EG sets out the Authority’s approach to exercising its power to impose financial penalties and other disciplinary sanctions.

- 2.12. Chapter 9 of EG sets out the Authority's approach to making prohibition orders.
- 2.13. EG 9.1 states that the Authority may exercise its power to make a prohibition order where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any function in relation to regulated activities, or to restrict the functions which he may perform.

Decision Procedure and Penalties Manual

- 2.14. The Decision Procedure and Penalties Manual ("DEPP") sets out the Authority's approach to publishing statements of procedure or policy, and imposing penalties.
- 2.15. Chapter 6 of DEPP sets out the Authority's statement of policy with respect to the imposition and amount of penalties under the Act.