
FINAL NOTICE

To: John Leonard Butterfield

IRN: JLBO1172

Date: 12 October 2020

1. ACTION

- 1.1 For the reasons given in this Final Notice, the Authority has decided to make an order, pursuant to section 56 of the Act, prohibiting Mr Butterfield from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm.
- 1.2 Mr Butterfield has not referred the matter to the Tribunal within 28 days of the date of which the Decision Notice was issued to him.
- 1.3 Accordingly, the Authority hereby makes a prohibition order in respect of Mr Butterfield. The prohibition order is effective from the date of this Final Notice.

2. SUMMARY OF REASONS

- 2.1. From 6 March 2013 to 1 September 2014 Mr Butterfield knowingly and repeatedly submitted false and misleading declarations to James Hay (as SIPP Provider) concerning customers' High Net Worth Individual (HNWI) status.
- 2.2. Mr Butterfield admitted to the Authority during interviews that, as part of customers' applications to transfer pension funds into SIPPs and purchase unlisted shares, he submitted 48 HNWI Declarations to James Hay on which he declared

that he had “seen evidence” of customers’ net assets and HNWI status, despite not having seen this evidence.

- 2.3. During the Relevant Period, Vanguard Wealth Management Limited (Vanguard) was an authorised firm with two IFA directors: Mr Butterfield and Peter Howson. In relation to Vanguard, Mr Butterfield held the CF1 (Director) controlled function under the Act. A liquidator was appointed to wind up Vanguard on 23 June 2016.
- 2.4. Through Vanguard, Mr Butterfield arranged for Vanguard’s customers:
 - (1) in their own names, to purchase unlisted shares issued by Elysian Fuels PLCs, with the assistance of limited recourse loans;
 - (2) to transfer their existing pensions into SIPPs administered by James Hay, as SIPP Provider;
 - (3) to have their SIPPs with James Hay purchase for cash the Elysian Fuels PLC shares which they had bought. The bulk of these customers’ pension funds was thus extracted from their SIPPs and paid in cash to them.
- 2.5. James Hay considered the unlisted Elysian Fuels PLC shares which customers purchased through their SIPPs to be high risk, non-standard investments.
- 2.6. For customers purchasing such assets through SIPPs which it administered, James Hay required the completion of HNWI Declarations. James Hay’s policy was that its customers should not use SIPPs to purchase unlisted shares unless they were HNWIs and had signed an HNWI Declaration. From mid-February 2014 onwards, to reduce further the likelihood of non-HNWIs purchasing unlisted shares through their SIPPs, James Hay required customers either to supply evidence of their HNWI status or to have an authorised representative (generally an IFA) sign a declaration confirming that they had “seen evidence” of customers’ net assets and HNWI status.
- 2.7. Mr Butterfield had a financial incentive falsely to declare that he had “seen evidence” of clients’ HNWI status. Had he insisted on seeing evidence of clients’ assets and liabilities, then he would have found that at least some of his clients were not HNWIs. Had he excluded all non-HNWI clients from the Elysian Scheme, then the substantial fees and commissions received by Vanguard and HB Introductions when Vanguard’s customers purchased Elysian Fuels PLC shares would have been reduced. Mr Butterfield was a director and shareholder of both Vanguard and HB Introductions.
- 2.8. Mr Butterfield’s misconduct means that he poses an unacceptable risk to consumers and the integrity of the United Kingdom’s financial system.
- 2.9. His conduct led customers to suffer loss. Had Mr Butterfield not submitted false HNWI Declarations to James Hay, then those Vanguard customers who were not HNWIs would have been unable to participate in the Elysian Scheme and would not have paid a substantial part of their pension moneys (3-5%) as fees to Vanguard.

Sanctions

- 2.10. Mr Butterfield knowingly signed false and misleading declarations representing to a SIPP Provider that he had seen evidence to confirm customers' HNWI status.
- 2.11. The ability of financial firms such as SIPP Providers to rely upon and trust signed declarations received from other market participants is fundamental to the operation and integrity of the UK's financial system.
- 2.12. Mr Butterfield has demonstrated that he lacks the integrity required to meet minimum regulatory standards. He is not fit and proper to perform any function at any authorised person, exempt person or exempt professional firm. The Authority therefore has made a prohibition order pursuant to section 56 of the Act.
- 2.13. The action supports the Authority's operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

3. DEFINITIONS

The definitions below are used in this Notice:

"the Act"	means the Financial Services and Markets Act 2000;
"the Authority"	means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;
"Mr Butterfield"	means John Leonard Butterfield;
"EG"	means the Authority's Enforcement Guide part of the Handbook;
"Elysian Fuels LLP"	means the limited liability partnerships styled as "Elysian Fuels No [XX] LLP";
"Elysian Fuels PLCs"	means the Elysian Fuels entities styled as "Elysian Fuels No [XX] PLC" in which investors purchased preference shares;
"Elysian Scheme"	means the scheme involving the purchase of shares in the Elysian Fuels PLCs and the release of money from individuals' pension funds;

“FCP”	means Future Capital Partners Limited, the promoters of the Elysian Scheme;
“FIT”	means the part of the Authority’s Handbook entitled “Fit and Proper Test for Employees and Senior Personnel”;
“FSCS”	means Financial Services Compensation Scheme;
“Handbook”	means the Authority’s Handbook of rules and guidance;
“HB Introductions”	means HB Introductions Limited (now dissolved), company number 08015923, of which Mr Howson and Mr Butterfield were directors and shareholders;
“HNWI”	means a High Net Worth Individual, being an individual who in the previous financial year had an annual income of £100,000 or more or held net assets to the value of £250,000 or more (but excluding the individual’s primary residence and pension);
“HNWI Declaration”	means a declaration as to an individual’s HNWI status requested by James Hay and to be signed by the individual investor and (from mid-February 2014, unless the individual supplied supporting evidence) also by authorised representative (generally an IFA) who had seen evidence to support the value of the individual’s declared assets and liabilities;
“HMRC”	means Her Majesty’s Revenue and Customs;
“Mr Howson”	means Peter Anthony Howson
“IFA”	means independent financial adviser;
“Introducer”	means any authorised or unauthorised entity/individual that referred customers to Vanguard;
“James Hay”	means the James Hay Partnership, the SIPP Provider selected by Vanguard for customers participating in the Elysian Scheme;

“the Relevant Period”	means the period from 6 March 2013 to 1 September 2014;
“SIPP”	means an arrangement which forms all or part of a personal pension scheme, which gives the member the power to direct how some or all of the member's contributions are invested and which allows investment of an individual's pension funds in (for example) unlisted shares, among a range of other assets;
“SIPP Provider”	means a legal entity authorised by the Authority with permission to operate SIPPs;
“the Statements of Principle”	means the Authority's Statements of Principle and Code of Practice for Approved Persons;
“the Tribunal”	means the Upper Tribunal (Tax and Chancery Chamber);
“Vanguard”	means Vanguard Wealth Management Limited, company number 07827172, (now in liquidation).

4. FACTS AND MATTERS

Firm background

- 4.1. Vanguard was a firm of independent financial advisers based in Leeds. It was incorporated on 28 October 2011. Mr Butterfield and Mr Howson were equal shareholders and together had a controlling share of the company.
- 4.2. From 7 February 2012, Vanguard had permission to carry on the following regulated activities:
- (1) Advise on investments (except on Pension Transfers and Pension Opt Outs);
 - (2) Advising on P2P agreements;
 - (3) Advising on Pension Transfers and Pension Opt Outs;
 - (4) Agreeing to carry on a regulated activity;
 - (5) Arranging (bringing about) deals in investments; and
 - (6) Making arrangements with a view to transactions in investments.
- 4.3. Vanguard was not permitted to hold client money.
- 4.4. Following a request by the Authority, on 4 May 2016 Vanguard signed a document applying for certain requirements to be included in its permissions under Part IVA of the Act. Following imposition of the requirements, under section 55L of the Act,

Vanguard was required immediately to cease the regulated activities of advising on investments, arranging deals in investments and making arrangements with a view to transactions in investments until certain conditions were met.

- 4.5. Vanguard was placed into liquidation on 23 June 2016.

Roles and responsibilities at Vanguard

- 4.6. During the Relevant Period, Mr Butterfield was approved to hold CF1 (Director) and CF30 (Customer) controlled functions in relation to Vanguard.
- 4.7. Mr Butterfield described his role as Managing Director and Mr Howson as CEO. Mr Howson said that he and Mr Butterfield were “both in charge” of Vanguard and that indirectly they both did the same job. Mr Howson referred to himself as “more the sales advisor” as he came into Vanguard with a client bank.

The Elysian Scheme

- 4.8. FCP was the promoter of the Elysian Fuels PLC shares. FCP produced offer documents which were not approved by an authorised person under the Act and which were aimed at certified high net worth individuals and self-certified sophisticated investors.
- 4.9. The offer documents described the Elysian Fuels PLCs and Elysian Fuels LLPs as an opportunity to invest in a partnership which originates and develops renewable energy projects and technologies in conjunction with an energy developer. Numerous Elysian Fuels LLPs and Elysian Fuels PLCs were established.
- 4.10. Investors were invited to purchase unlisted shares in an Elysian Fuels PLC and an interest in an Elysian Fuels LLP. The offer documents stated that there was a plan to list the Elysian Fuels PLC shares but as far as the Authority can determine the only such company which listed shares was Elysian Fuels No 20 PLC, and its shares were delisted. The offer documents identified a wide range of risks connected with investment in Elysian Fuels PLCs and LLPs.
- 4.11. James Hay was the main SIPP Provider whom Vanguard chose to use for the Elysian Scheme. James Hay considered investments in such unlisted shares to be high-risk non-standard investments. It required investors purchasing them through SIPPs to sign risk warnings. James Hay’s policy was that its customers should not use SIPPs to purchase unlisted shares unless they were HNWI and had signed a HNWI Declaration. HNWI status was part of James Hay’s acceptance requirement for certain types of non-standard investments where the adviser had appropriately assessed their customers as a HNWI.

- 4.12. During the Relevant Period, through Vanguard, Mr Butterfield arranged for his customers to take the following steps:
- (1) customers purchased shares in Elysian Fuels PLCs for £1 per share.
 - (2) the £1 per share price was partly funded by an 83.4p per share limited recourse loan. The balance of 16.6p per share was funded by customers.
 - (3) customers transferred their existing pensions into SIPPs. Vanguard charged customers a fee of 3-5% of the value of the amount transferred.
 - (4) customers sold the Elysian Fuels PLC shares to their own SIPPs for £1 per share.
 - (5) customers received the purchase price of £1 per share paid by their SIPPs less 3-5% in fees charged by Vanguard and less 16.6p per share.
- 4.13. A SIPP is an arrangement which forms all or part of a personal pension scheme and which gives the customer the power to direct how some or all of their pension contributions are invested. Unlisted shares can be purchased through some SIPPs.
- 4.14. The Elysian Scheme allowed customers, for example, to purchase 100,000 Elysian Fuel PLC shares with a nominal value of £1 per share for an outlay of £16,600 and then sell those shares at the full nominal value to their SIPPs and receive £100,000 from the SIPPs. The net outcome for the customer was the receipt of £83,400 from their pension funds in the SIPP (less Vanguard's 3-5% fees), whilst their SIPP held 100,000 Elysian Fuel PLC shares with a nominal value of £100,000.
- 4.15. The limited recourse loans were arranged by Future Capital Project Finance Limited. The Authority is not aware of any attempts by Future Capital Project Finance Limited to recover any part of the 83.4p per share loan.

Elysian Fuels PLC shares became worthless

- 4.16. The final tranche of shares in Elysian Fuels PLCs were sold in December 2014. According to minutes of an "Elysian LLPs Meeting", on 20 January 2016 it was announced that "the shares held by investors in the limited companies or the PLCs are likely to be worthless".
- 4.17. Most of the Elysian Fuels LLPs and Elysian Fuels PLCs are now in liquidation or dissolved.
- 4.18. Pension law during the Relevant Period allowed those over 55 years old to withdraw up to 25% of their pensions on a tax-free basis. However, using the Elysian Scheme, customers (including those below the required age) sought to withdraw more than 25% of their pension funds without incurring a tax liability. However, an unauthorised pension withdrawal may result in a 55% tax liability for the member.
- 4.19. HMRC are pursuing unauthorised payment charges against all investors. The tax charge will be between 40% and 55% of the unauthorised pension withdrawal depending on the circumstances. Some customers have submitted compensation claims to FSCS arising from the Elysian Scheme.

Vanguard's customer fact find process

- 4.20. Approximately 80% of Vanguard's customers were introduced through authorised and unauthorised Introducers and the remaining 20% of customers came to Vanguard directly. Of those customers that came through Introducers, approximately 70% of customers were introduced through unauthorised Introducers. Approximately 80% of Vanguard's business related to pension transfers into SIPPs. Of that pension transfer business, approximately 90% related to the Elysian Scheme.
- 4.21. At Vanguard, a "fact find" process was undertaken with new customers. An Introducer or Vanguard would establish a customer's financial circumstances, but it varied as to who carried this out; some customers completed a fact find with the Introducer and others with Vanguard. In interview, Mr Butterfield stated that Introducers may have completed a basic fact find but that he personally dealt with clients. The Vanguard fact find questionnaire had sections specifically to seek details from customers of their income and assets.
- 4.22. Vanguard did not seek evidence to test the information supplied by its customers concerning their assets and income.

HNWI Declarations required by James Hay

- 4.23. Vanguard submitted various documents to James Hay so that Elysian Fuels PLC shares could be purchased by customers' SIPPs following transfer of their pensions into those SIPPS.
- 4.24. James Hay's policy was that it would not allow its customers to purchase unlisted shares through SIPPs unless they had completed a HNWI Declaration.
- 4.25. James Hay changed its HNWI Declarations in mid-February 2014. James Hay's HNWI Declarations predating mid-February 2014 required customers to sign declarations in the following terms:

I am a certified high net worth individual because at least one of the following applies:

(a) I had, during the financial year immediately preceding the date below, an annual income to the value of £100,000 or more;

(b) I held, throughout the financial year immediately preceding the date below, net assets to the value of £250,000 or more. Net assets for these purposes do not include:

- the property which is my primary residence or any loan secured on that residence;*
- pensions*

- 4.26. In addition, the HNWI Declarations pre-dating mid-February 2014 included a page on which the customer's assets and liabilities were to be listed and the customer's "net worth" was to be shown.
- 4.27. From mid-February 2014 onwards, James Hay's HNWI Declarations remained materially identical to their previous format but an additional requirement was added. James Hay now required either that customers "enclose evidence" of the net assets which they claimed to have or that customers' authorised representatives provide a signed declaration that they have "seen evidence" of these assets.
- 4.28. James Hay told the Authority that it expected a customer's authorised representative to have undertaken appropriate customer due diligence and a "Know Your Customer" exercise before signing a HNWI Declaration. James Hay's policy was that customers should not be permitted to purchase unlisted shares through SIPPs unless a HNWI Declaration had been received. James Hay saw this as an addition to the regulatory standards expected of an authorised financial adviser, involving appropriate 'know your customer' and investment suitability assessments in respect of a customers.
- 4.29. The full text of the additional declaration required after mid-February 2014 was as follows:

I confirm that I act as an Authorised representative for the above named Client and confirm I have seen evidence to support the value of the Client's personal assets & liabilities listed above.

OR

I enclose evidence to support the value of the personal assets & liabilities listed above.

Signature *Print Name*

False HNWI Declarations for customers submitted to James Hay

- 4.30. Mr Butterfield knew that if a customer was not a HNWI, they should not have purchased Elysian Fuels shares. Further, Mr Butterfield understood that James Hay had changed its documentation so as to add additional "checks" concerning customers' HNWI status.
- 4.31. Between 6 March 2013 and 1 September 2014, Mr Butterfield signed 48 HNWI Declarations, which Vanguard submitted to James Hay and on which he declared that he, as his customers' "authorised representative", had "seen evidence" of clients' listed net assets. However, Mr Butterfield admitted to the Authority that he did not see evidence of these customers' net assets despite signing the 48 declarations certifying that he did see such evidence.

- 4.32. Mr Butterfield stated to the Authority that he simply took the customer's word that they had the net assets listed on their HNWI Declaration.
- 4.33. Failure to verify information about customers' net assets and liabilities and therefore whether they were, in fact, HNWIs meant that customers were exposed to the risk of entering into an investment scheme that they were not eligible for.
- 4.34. Three clients for whom Mr Butterfield signed HNWI Declarations have provided the Authority with witness statements in which they state that they were not HNWIs.
- 4.35. The Authority considers that Mr Butterfield clearly acted without integrity in signing 48 false and misleading HNWI Declarations and submitting them to James Hay between 6 March 2014 to 1 September 2014, having in each declaration certified that he had "seen evidence" of clients' personal assets and liabilities when in fact he had not seen this evidence.

Financial gain from false and misleading HNWI Declarations

- 4.36. Mr Butterfield had a financial incentive to deceive James Hay as to whether he had seen evidence of customers' HNWI status because this allowed more customers to purchase unlisted Elysian Fuels PLC shares and participate in the Elysian Scheme, generating higher fees for Vanguard and HB Introductions.
- 4.37. An advice fee of 3-5% of the total pension transfer amount was paid by customers to Vanguard upon transfer of their pension funds from their prior pension schemes into SIPPs with James Hay. There was thus a personal benefit for Mr Butterfield as a shareholder and director of Vanguard, if the number of customers participating in the Elysian Scheme increased. Vanguard received pension transfer fees of around £317,700 from customers participating in the Elysian Scheme from mid-February 2014 to the end of the Relevant Period.
- 4.38. Mr Butterfield and Mr Howson were also directors and shareholders of HB Introductions during the Relevant Period. HB Introductions was set up by them to receive commission payments from FCP for introductions of customers who purchased shares in Elysian Fuels PLCs. Between April 2012 and March 2015, FCP paid a commission of 2% of the share price to HB Introductions for each Elysian Fuels PLC share purchased by Vanguard's customers. The total commission paid to HB Introductions from mid-February 2014 to the end of the Relevant Period was around £132,700. These commissions were not disclosed to Vanguard's customers.
- 4.39. Vanguard and HB Introductions shared a proportion of their fees with Introducers who had referred customers to Vanguard.
- 4.40. From mid-February 2014 to the end of the Relevant Period, the advice fees and commission received by Vanguard and HB Introductions totalled around £450,400. Had Mr Butterfield insisted on seeing evidence of all customers' HNWI status before certifying on HNWI Declarations that he had "seen evidence" of their net assets, he may have found that there were customers who did not qualify as HNWIs and who could not participate in the Elysian Scheme. The fees and commissions received by Vanguard and HB Introductions would then have been lower.

Conclusion

- 4.41. From March 2013 to December 2014, Vanguard arranged customers' participation in the Elysian Scheme.
- 4.42. James Hay's policy was that only HNWI's should be able to purchase the unlisted Elysian Fuels PLC shares through SIPPs. To prevent non-HNWI's from purchasing unlisted shares through its SIPPs, James Hay required them to submit HNWI Declarations. From mid-February 2014 onwards, it also required them to submit evidence of their declared net assets or to have an authorised representative certify that he or she had "seen evidence" of customers' assets.
- 4.43. Mr Butterfield did not request or see evidence of 48 customers' HNWI status. Yet he knowingly signed 48 false and misleading HNWI Declarations, falsely stating he had seen evidence of those customers' net assets. These repeated false declarations demonstrate Mr Butterfield's lack of integrity.
- 4.44. Mr Butterfield had a financial incentive to deceive James Hay as to whether he had seen evidence of customers' HNWI status, because this allowed more customers to participate in the Elysian Scheme, generating higher fees and commissions for Vanguard and HB Introductions. Mr Butterfield was a shareholder and director of both Vanguard and HB Introductions.
- 4.45. In addition, had Mr Butterfield not knowingly made false and misleading misrepresentations to James Hay on customers' HNWI Declarations, then his non-HNWI customers could not have participated in the Elysian Scheme. They would then have avoided significant financial loss arising from Vanguard's 3-5% pension transfer fees.

5. FAILINGS

- 5.1. The statutory and regulatory provisions relevant to this Notice are referred to in Annex A.
- 5.2. By reason of the facts and matters set out above, the Authority considers that Mr Butterfield has failed to meet the minimum regulatory standards in terms of integrity as set out in FIT 2.1 in that, over an extended period and for personal gain, he knowingly signed false and misleading declarations representing to a SIPP Provider that he had seen evidence to confirm customers' HNWI status.

6. SANCTIONS

Prohibition

- 6.1. Mr Butterfield's knowing misrepresentations to another market participant over a prolonged period, for personal gain, meant that his conduct fell far below the

standard expected of those working in the financial services industry. The ability of SIPP Providers and other financial firms to trust and rely upon signed declarations made by other market participants is of fundamental importance to the integrity of the UK's financial system. For the reasons set out herein above, Mr Butterfield has demonstrated that he lacks the integrity expected under the regulatory system.

- 6.2. In the light of the serious nature of his misconduct, the Authority considers that Mr Butterfield poses a serious risk to consumers and the integrity of the UK financial system and is not a fit and proper person to perform any function in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm.
- 6.3. The Authority considers that it is appropriate and proportionate in all the circumstances (including the nature and seriousness of Mr Butterfield's failings) to impose an order prohibiting him from performing any function in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm, because he is not fit and proper.
- 6.4. The Authority has had regard to the guidance set out at Chapter 9 of EG in deciding upon this prohibition. The relevant provisions of EG are set out in the Annex to this notice.
- 6.5. These sanctions support the Authority's operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

7. PROCEDURAL MATTERS

- 7.1. This Final Notice is given to Mr Butterfield under, and in accordance with, section 390 of the Act.
- 7.2. The following paragraphs 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.

Publicity

- 7.4. Section 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates.
- 7.5. Under those provisions, the Authority must publish such information about the matter to which this Final Notice relates as the Authority considers appropriate. The information maybe published in such manner as the Authority considers appropriate. However, the Authority may not publish information in respect of this matter if, in the opinion of the Authority, such publication would be unfair to Mr

Butterfield, or prejudicial to the interest of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

- 7.7. For more information concerning this matter generally, contact Andrew Baum at the Authority (direct line: 020 7066 8898/email: Andrew.Baum@fca.org.uk).

Bill Sillett

Head of Department, Enforcement and Market Oversight Division

Financial Conduct Authority

ANNEX A

RELEVANT STATUTORY PROVISIONS

1. The Act

- 1.1. The Authority's operational objectives, set out in section 1B(3) of the Act, include securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.
- 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.

RELEVANT HANDBOOK PROVISIONS

2. Fit and Proper Test for Approved Persons

- 2.1. FIT sets out the Fit and Proper Test for approved Persons. The purpose of FIT is to outline the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 2.2. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.
- 2.3. FIT 2.1.1G provides that in determining a person's honesty, integrity and reputation, the Authority will have regard to all relevant matters including but not limited to those set out in FIT 2.1.3G, which includes whether the person has contravened any of the requirements or standards of the regulatory system (FIT 2.1.3G(5)), whether, in the past the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT2.1.3G(13)).

POLICY

3. The Authority's policy for exercising its powers to make prohibition orders

- 3.1. The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act. The Authority's policy in relation to prohibition orders is set out in Chapter 9 of the Enforcement Guide.
- 3.2. EG 9.1.1 states that the Authority may exercise the power, under section 56 of the Act, to make a prohibition order where it considers that, to achieve any of its statutory objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.
- 3.3. EG 9.2.2 sets out the general scope of the Authority's powers in respect of prohibition orders, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.
- 3.4. EG 9.2.3 provides that the scope of the prohibition order will depend on the range of functions that the individual performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally.
- 3.5. EG 9.3.2 states that when deciding whether to make a prohibition order the Authority will consider all the relevant circumstances of the case, which may include (but are not limited to)
 - (1) EG 9.3.2(2): whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing fitness and propriety are set out in FIT 2.1 (honesty, integrity and reputation), FIT 2.2. (competence and capability) and FIT 2.3 (financial soundness); and
 - (2) EG 9.3.2(5): the relevance and materiality of any matters indicating lack of fitness;
 - (3) EG 9.3.2(8): the severity of the risk which the individual poses to consumers and to confidence in the financial system
- 3.6. EG 9.3.5 provides examples of the types of behaviour which have previously resulted in the Authority deciding to impose prohibition orders. The examples include providing false or misleading information to the Authority and serious breaches of Statements of Principle, such as providing misleading information to third parties.