

## **FURTHER FINAL NOTICE**

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To: Lloyd Arnold Pope

Individual  
Reference  
Number: LXP00027

Date: 16 March 2020

### **1 ACTION**

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

- (1) imposes on Mr Pope a financial penalty of £23,400; and
- (2) makes an order prohibiting Mr Pope from performing any senior management function or any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. This order takes effect from 20 March 2015.

1.2 Mr Pope agreed to settle at an early stage of the Authority's investigation. Mr Pope therefore qualified for a 30% (Stage 1) discount under the Authority's executive settlement procedures. Originally, settlement was reached on 4 March 2015, which resulted in a Decision Notice and a Final Notice of 20 March 2015 including the imposition on Mr Pope of a financial penalty of £93,800. Were it not for this Stage 1 discount, the Authority would have imposed a financial penalty of £134,073 on Mr Pope.

1.3 On 12 October 2015 the Authority decided to suspend enforcement of Mr Pope's penalty, pending resolution of an issue which had arisen in the closely connected disciplinary case of Mr Alistair Rae Burns, another director of TMI. The issue

concerned the Authority's jurisdiction to impose Mr Burns' penalty under section 66 of the Financial Services and Markets Act 2000 ("the Act"). Evidence had emerged that the limitation period for doing so may have expired before the issue of the Warning Notices against Mr Burns and the other TMI directors, including Mr Pope.

- 1.4 Mr Burns' case was referred to the Upper Tribunal ("the Tribunal") on 7 September 2016 and on 5 July 2017 the Authority decided no longer to pursue a penalty against Mr Burns in respect of part of the misconduct case against him, on the basis that it was strongly arguable that its jurisdiction to do so had expired. On 31 July 2018 the Upper Tribunal decided that, partly in light of that concession, it would reduce the penalty imposed on Mr Burns to £60,000. This constituted a reduction of approximately 75% from his original penalty of £233,600. Accordingly, the Authority has decided to withdraw Mr Pope's Decision Notice and Final Notice of 20 March 2015 and to impose on Mr Pope by way of this Final Notice a revised penalty proportionate to that imposed on Mr Burns by the Upper Tribunal (while taking proper account of the fact that Mr Pope reached settlement with the Authority during Stage 1 of the Authority's investigation).
- 1.5 Accordingly, Mr Pope's penalty is £23,400. This amounts to 25% of the penalty of £165,900 imposed on him by his original Decision Notice. That penalty already incorporated a 30% reduction on the basis of Mr Pope's agreement to settle during Stage 1 negotiations. The Authority considers it appropriate to maintain the Stage 1 discount in proportion to the newly adjusted penalty.

## **2 SUMMARY OF REASONS**

- 2.1 Mr Pope was a Director at TMI, a firm that provided advice to customers seeking to transfer their existing pension funds to unregulated investments such as green oil biofuel oil, farmland and overseas property via SIPPs.
- 2.2 During the period 22 January 2010 to 20 January 2013 inclusive, Mr Pope failed to take reasonable steps to ensure that the business of TMI, for which he was responsible in his controlled functions, complied with the relevant requirements and standards of the regulatory system. Specifically, Mr Pope failed to take reasonable steps to ensure that TMI assessed the suitability of the underlying product contained within the SIPP for the customer. Instead, TMI's business model focussed solely on providing advice on the most suitable SIPP wrapper for the underlying product.
- 2.3 Mr Pope failed to understand fully the underlying products which TMI's customers were investing in via their SIPP. Mr Pope confirmed that TMI had not performed a risk assessment of the underlying products and therefore TMI would not have been

able to conclude whether the products were suitable for TMI's customers. The underlying products invested in by TMI's customers were typically high risk, esoteric investments.

- 2.4 As a direct result of Mr Pope's failures, 1,661 of TMI's customers during the Relevant Period were at significant risk of having transferred a total of £112,420,985, mostly from pension funds including some final salary schemes, into SIPPs which were not suitable for them. 923 of those customers invested in overseas property developments operated by Harlequin.
- 2.5 In his role as director at TMI, Mr Pope was responsible for ensuring that TMI identified, managed, mitigated and disclosed any potential conflict of interest which affected TMI as an authorised firm, including but not limited to conflicts between a client of TMI and its staff. The vast majority of TMI's customers were referred to it by the Unregulated Introducer. The role of the Unregulated Introducer was to facilitate the sale to customers of alternative investment products. For its role in the facilitation of the sale to the customer of the investment product, the unregulated introducer received commission from the underlying product providers. A number of individuals at TMI were also owners of, or acted as agents of, the Unregulated Introducer and this created a conflict of interest at TMI in its duty to customers, in that TMI was advising customers to transfer their pensions into a SIPP in order to purchase an underlying investment when certain individuals at TMI also had a financial interest in facilitating the sale of that investment to the customer. Mr Pope himself was not subject to conflict of interest at TMI. However, during the Relevant Period, as director of TMI, Mr Pope failed to ensure that TMI identified, disclosed, managed and mitigated adequately this conflict of interest which affected TMI as an authorised firm. The conflict could have been mitigated had TMI provided full, impartial advice in respect of the suitability of the underlying products for the customer. However, as customers may have been unaware of the true nature of the products they were investing in, they could not have taken an informed decision in relation to waiving any conflict of interest surrounding commission payments and incentives without such advice. Mr Pope now recognises and accepts that TMI did not adequately identify, and therefore disclose, manage and mitigate, its conflict of interest.
- 2.6 Mr Pope was also responsible for ensuring compliance with the Authority's rules at TMI between 22 January 2010 and 6 August 2011. However, Mr Pope delegated all of his compliance oversight responsibilities to external compliance consultants and other staff at TMI, placing complete reliance on those individuals, without adequate

oversight of those individuals. Mr Pope therefore failed to take reasonable steps to discharge his CF10 (Compliance oversight) responsibilities.

2.7 Mr Pope therefore breached Statement of Principle 7 by failing to:

- (1) take reasonable steps to ensure that TMI assessed the suitability of the underlying product within the SIPP for the customer during the Relevant Period;
- (2) identify, disclose, manage and mitigate adequately the conflicts of interest that existed between individuals at TMI and the Unregulated Introducer during the Relevant Period; and
- (3) take reasonable steps to ensure sufficient oversight of the compliance function within TMI in order to discharge his CF10 (Compliance oversight) responsibilities during the Compliance Oversight Period.

2.8 As a consequence of his actions, Mr Pope failed to meet minimum regulatory standards in terms of performing significant influence controlled functions. He is therefore not fit and proper to perform any senior management function or any significant influence controlled functions at any authorised person, exempt person or exempt professional firm.

2.9 The Authority therefore imposes a financial penalty on Mr Pope in the amount of £23,400 pursuant to section 66(3) of the Act and makes a prohibition order pursuant to section 56 of the Act prohibiting Mr Pope from performing any senior management function or any significant influence controlled functions at any authorised person, exempt person or exempt professional firm.

2.10 As a direct result of an alert issued by the Authority on 18 January 2013, on 20 January 2013 TMI voluntarily suspended its business of providing advice to customers on SIPPs. This voluntary suspension of business was formalised on 13 March 2013 when TMI voluntarily varied its permissions such that with effect from that date, TMI was no longer permitted to carry on regulated activities.

2.11 On 15 October 2013, TMI entered into liquidation at which point Mr Pope was no longer a director. On 29 July 2014, the FSCS announced that it had declared TMI 'in default'. The FSCS is investigating claims made by TMI's customers.

### **3 DEFINITIONS**

3.1 The definitions below are used in this Final 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;

the "Authority's Handbook" means the Authority's Handbook of rules and guidance;

"COBS" means the Authority's Conduct of Business Sourcebook;

the "Compliance Oversight Period" means the period 22 January 2010 to 6 August 2011 inclusive when Mr Pope was approved as the CF10 (Compliance oversight) controlled function holder at TMI;

"DEPP" means the Authority's Decision Procedure and Penalties Manual;

"EG" means the Authority's Enforcement Guide;

"FSCS" means the Financial Services Compensation Scheme;

"Harlequin" means the Harlequin group of companies including, but not limited to, Harlequin Management Services (South East) Limited, an unregulated, limited company (in administration with effect from 3 May 2013 and in liquidation with effect from 20 October 2014);

"IFA" means independent financial adviser;

"Introducer" means an entity/individual that referred new SIPP business to TMI;

"Mr Pope" means Lloyd Arnold Pope;

the "Principles" means the Authority's Principles for Businesses;

the "Relevant Period" means 22 January 2010 to 20 January 2013 inclusive;

"SIF" means significant influencing function;

"SIPP" means self-invested personal pension;

"Statements of Principle" means the Authority's Statements of Principle and Code of Practice for Approved Persons;

“TMI” or the “Firm” means TailorMade Independent Limited (In Liquidation) a company authorised and regulated by the Authority (in liquidation with effect from 15 October 2013);

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

the “Unregulated Introducer” means an unregulated company whose purpose was to facilitate the sale of alternative investment products to customers. The Unregulated Introducer was an Introducer.

## **4 FACTS AND MATTERS**

### **Background**

#### *The Firm*

- 4.1 TMI (in liquidation) was a limited company, authorised by the Authority on 22 January 2010. It voluntarily varied its permissions on 13 March 2013 and was dissolved on 9 July 2016.
- 4.2 Throughout the Relevant Period, TMI had permission to carry on the following regulated activities:
  - (1) agreeing to carry on a regulated activity;
  - (2) advising on investments, including advising on Pension Transfers and Pension Opt Outs;
  - (3) arranging (bringing about) deals in investments; and
  - (4) making arrangements with a view to transactions in investments.
- 4.3 In addition to the above permissions, TMI was authorised with effect from 4 January 2013 to perform certain activities in relation to regulated mortgage contracts and in relation to certain insurance mediation activities.
- 4.4 As a result of entering into a voluntary variation of permission on 13 March 2013, TMI was no longer permitted to carry on any regulated activities in relation to any new regulated pension contracts. In addition to the variation of permissions.
- 4.5 On 29 July 2014, the FSCS announced that it had declared TMI ‘in default’. The FSCS is investigating claims made by TMI’s customers. So far, the FSCS has upheld 1,245 such claims against TMI.

### *Mr Pope*

- 4.6 Mr Pope was approved to hold the controlled function CF1 (Director) and CF30 (Customer) from 22 January 2010 until 8 April 2013 inclusive. He was also approved to hold the CF10 (Compliance oversight) and CF11 (Money laundering reporting) controlled functions during the Compliance Oversight Period, from 22 January 2010 to 6 August 2011 inclusive.
- 4.7 During the Relevant Period, the Authority considers that, as a CF1 Director, Mr Pope had active management and day to day responsibility for the business of TMI. As CF10 (Compliance oversight) controlled function holder between 22 January 2010 and 6 August 2011, Mr Pope had sole responsibility for compliance at TMI during that period.

### *Unregulated Introducer*

- 4.8 TMI was one of a number of businesses operating under the 'TailorMade' name. The other businesses included, but were not limited to the Unregulated Introducer. The role of the Unregulated Introducer was to facilitate the sale of alternative investment products to customers. The alternative investment products promoted by the Unregulated Introducer were often unregulated products and included overseas property investments such as those operated by, amongst others, Harlequin.
- 4.9 In the event that the customer invested in one of its products, the product provider would pay commission to the Unregulated Introducer. Where those customers were not, for example, using cash to purchase those alternative investment products and instead wanted advice on using their pension to make the investment, the customer would be introduced by the Unregulated Introducer to TMI in order that the customer could receive regulated advice on the most suitable SIPP wrapper for the underlying product promoted by the Unregulated Introducer. In excess of 95% of TMI's customers were introduced to TMI by the Unregulated Introducer.

### *SIPPs*

- 4.10 From the commencement of its authorisation, TMI has focussed its business model solely on providing advice to customers in relation to SIPPs.
- 4.11 A SIPP is a trust-based wrapper for an individual's pension investment. It gives tax relief on an individual's contributions and tax-free growth and offers a wider range of investments and options for extracting benefits than are ordinarily available in a life policy type investment. In addition, a SIPP offers a greater degree of control over where and when funds are invested or moved than is permitted by traditional pension arrangements run by life assurance companies.

4.12 For TMI's customers, a SIPP was a way of investing their pension into esoteric, unregulated investments such as overseas property which were typically not permitted by their existing pension schemes. These investments often offered the potential for higher returns than customers' existing pension schemes, but carried a far higher risk, including the risk that unregulated products are not covered by the FSCS.

4.13 The typical investments purchased by the SIPPs taken out by TMI's customers also held additional risks for those customers because:

- (1) under certain scenarios they may be liable to tax by HM Revenue & Customs and therefore incur significant additional tax charges; and
- (2) they may have been an inappropriate investment for the customer to hold in their SIPPs on the basis that they were not readily realisable in the event of the customer's death, or if the customer required that they be sold at short notice.

4.14 In total, TMI advised 1,661 customers to invest into underlying products amounts ranging from £5,000 to £440,000 each in, or via, a SIPP. Those customers transferred £112,420,985 in total into SIPPs. The vast majority of this money came from the customers' existing pensions. During the Relevant Period, TMI generated £3,081,740 in revenue from its SIPP business. The total amount of benefit paid to Mr Pope directly or via a company controlled by him was £446,912.40 from TMI's business.

4.15 As a result of the risks posed by the alternative investments within the SIPPs, it was especially important that TMI ensured - and Mr Pope as a Director of TMI took reasonable steps to ensure - that TMI assessed both the suitability of the SIPP wrapper and the proposed underlying product for the customer, to ensure that customers only invested their pension funds into investments which were suitable for them and that customers fully understood the increased risks associated with the underlying products held within their SIPP.

#### *TMI's SIPP advisory process*

4.16 A TMI customer seeking advice on moving their pension would typically be looking to invest their pension into an underlying product such as an overseas property investment. Such customers would typically have been introduced to the underlying product by an Introducer, for example the Unregulated Introducer, who would, on behalf of the product provider, present marketing materials and/or provide presentations to the customer on which the customer based their decision to invest.



The customer would then be introduced by the Introducer to TMI in order to obtain advice on using their pension to facilitate the investment via a SIPP. During the Relevant Period, around 99% of customers were referred to TMI by an Introducer. Almost all of those customers introduced through an Introducer to TMI, would have been introduced by the Unregulated Introducer.

4.17 Upon referral to TMI, the customer would:

- (1) be contacted by an administrator at TMI whereby a 'fact find' would be completed in order to establish the customer's investment needs and objectives. This would also include the completion of an 'attitude to risk' questionnaire and knowledge and experience of financial products. The customer would also receive TMI's client agreement, that set out, amongst other things, TMI's advice fees;
- (2) provide to TMI details about their existing pension providers so that TMI could gather information on those existing pensions;
- (3) have an appointment with a TMI pension transfer specialist whereby the TMI 'suitability report' and the SIPP provider's 'key features' document would be discussed with the customer. This would include an explanation to the customer of TMI's recommendation for the most suitable SIPP for the customer. Typically, when selecting the most suitable SIPP for the customer, TMI assessed, amongst other things, whether the SIPP was able to invest in the underlying product (if this was known to TMI), as well as the set-up and ongoing fees charged by the SIPP provider. The appointment would also be an opportunity for TMI to answer any questions that the customer might have; and
- (4) complete a SIPP application which TMI would submit to the SIPP provider on the customer's behalf. TMI would then confirm to the customer when the SIPP had been established.

4.18 For the initial advice service provided by TMI as described at paragraph 4.17, a customer would pay a fee - typically £1,000 per personal pension being transferred, or if a final salary pension was being transferred, the amount would be 3% of the total transfer value or £1,500 (whichever was the greater) - which was usually taken out of the funds being transferred into the SIPP.

4.19 TMI would also charge customers an annual management charge if the customer wished to have an annual review. The annual review service provided by TMI for that

fee included consolidating bank statements from the SIPP provider and providing an up to date statement of the customer's investments. Over 90% of TMI's customers opted to receive this annual review service and were charged between 1% and 1.25% of their net asset fund value for that service. For example, a customer with a net asset fund value of £100,000 would typically pay between £1,000 and £1,250 per annum for this annual review service.

4.20 Mr Pope was responsible for conduct and oversight of this advisory process at TMI.

### **Conduct in Issue**

#### ***Advising on the underlying investment***

4.21 Throughout the Relevant Period, Mr Pope held the position of CF1 at TMI. As a director, Mr Pope had responsibility for the business model implemented by TMI described at paragraph 4.17 above.

4.22 If an IFA, such as TMI, is advising on an investment wrapper product, such as a SIPP, that IFA will generally have to consider the suitability of the overall proposition i.e. the suitability of both the SIPP wrapper and the underlying product, in order to be able to provide suitable advice to the customer. In circumstances where the customer is selling existing investments (including transferring their existing pension) in order to invest in another investment via a SIPP, the IFA must assess the suitability of that underlying product for the customer prior to recommending a SIPP. The regulatory provisions relevant to these requirements are referred to in Annex A.

4.23 However, the business model established at TMI did not take into account any consideration of the suitability for the customer of the underlying product within the SIPP. As a result of this deficient business model, all 1,661 of TMI's customers were at risk of investing a total of £112,420,985 into an investment which may not have been suitable for them.

4.24 In January 2013, the Authority published an alert confirming its expectations of IFAs advising on overseas property investments, including those sold by Harlequin, through a SIPP. The Authority's alert noted that IFAs have to ensure that they give careful consideration to the particular features of the investment in question and that, if recommending a SIPP knowing that the customer will sell current investments to invest in an overseas property, the suitability of the overseas property investment must form part of the advice to the customer.

- 4.25 Of the 1,661 SIPP customers advised by TMI during the Relevant Period, 923 invested into overseas property investments operated by Harlequin. None of those customers received any advice from TMI on the suitability of that overseas property investment when TMI advised on and recommended their SIPP.
- 4.26 As a CF1 Director at TMI, Mr Pope's primary role was to establish, implement and then oversee the TMI sales process as described at paragraph 4.17 above. This role included overseeing the preparation of TMI's customer reports. His role also included responsibility for the recruitment, training and supervisory oversight of CF30 advisers at TMI. Prior to the establishment of TMI, Mr Pope had worked as a pensions adviser for a number of years and his role at TMI also included providing training on pensions to Introducers, as well as providing training on SIPPs. For over two years of the Relevant Period (until March 2012) Mr Pope was the sole CF30 approved adviser at TMI, providing advice to TMI's customers personally.
- 4.27 As a result of the risks posed by the non-standard investments within the SIPPs, it was especially important that TMI ensured – and Mr Pope took reasonable steps to ensure – that TMI assessed both the suitability of the SIPP wrapper and the proposed underlying product for the customer, to ensure that customers only invested in investments which were suitable for them.
- 4.28 As noted at paragraph 4.17 above, the TMI advisory process included an assessment of the customer's attitude to risk. Some of TMI's customers were 'cautious' in their attitude to risk, meaning that, according to TMI's suitability reports, they ordinarily would be advised to invest their portfolio "*primarily in defensive areas i.e. cash and fixed interest securities with only a modest exposure to equities (shares)*". It was therefore particularly important that Mr Pope took reasonable steps to ensure that TMI highlighted any potential inconsistency between the customers' attitudes to risk and their proposed investment portfolio in order to be able to provide suitable advice. However, Mr Pope confirmed that TMI's approach to this assessment comprised noting that, although the customer might have been assessed as 'cautious', they preferred to take a self-select approach to investment and the customer was advised to "*seek advice*" as to whether or not the underlying product was suitable for them. Mr Pope considered that Introducers would provide customers with this advice. This was not the case – Mr Pope acknowledged that the underlying products had not been risk assessed therefore it was not possible for anyone – including TMI or an Introducer – to provide advice to customers to ensure that the products the customer wanted to invest in matched their attitude to risk. Further, Mr Pope considered that with hindsight, the products that TMI's customers were investing in were in fact high risk. There was therefore a

significant risk that TMI's customers – some of whom were 'cautious' investors – ended up investing in products that were not suitable for them. Mr Pope did not therefore take reasonable steps to ensure that TMI understood fully the level of risks associated with the underlying products to enable TMI to advise on a suitable SIPP product (including both the SIPP wrapper and the underlying product) for the customer.

- 4.29 In addition, Mr Pope failed to take reasonable steps to ensure that TMI was aware of the underlying product its customers proposed to invest in via their SIPP. As TMI provided no advice on the underlying product, it did not in every case feel that it needed to know what that underlying product was. Mr Pope acknowledged that, while TMI would typically know that customers were seeking to invest in alternative products (hence they were seeking advice on using a SIPP in order to do so), they would not always be aware of exactly what products the customer wanted to invest in, nor the percentage split of the customer's proposed portfolio. As a result, in a large number of cases, TMI had not ensured that it was in a position to be able to assess adequately the suitability of the investment for the customer - or to ensure suitability of that particular SIPP for the customer - as it was not even aware of what the customer ultimately planned to invest in using the pension monies in their SIPP.
- 4.30 As a result of the above, the Authority considers that in his role as a CF1 Director at TMI, Mr Pope failed to take reasonable steps to ensure that the business model at TMI complied with the relevant requirements and standards of the regulatory system. Specifically, Mr Pope failed to take reasonable steps to ensure that TMI assessed the suitability of the underlying product for the customer. Instead, TMI's business model focussed solely on providing advice on the most suitable SIPP wrapper for the underlying product. The failings of TMI's business model in not providing advice on the underlying products were exacerbated by the fact that individuals at TMI (other than Mr Pope) were receiving commission payments in respect of sales of the underlying products, leading to a significant conflict of interest at the heart of the business. Had suitable advice been given, it is likely that those individuals would have received far fewer commission payments related to the sale of the underlying products.

### ***Conflicts of Interest***

- 4.31 In his role as a CF1 at TMI, throughout the Relevant Period Mr Pope was responsible for ensuring that TMI identified, managed, mitigated and disclosed any potential conflicts of interest which affected TMI as an authorised firm. This included, but was not limited to, ensuring that TMI identified, managed, mitigated and disclosed adequately any conflicts of interest between a client of TMI and – amongst others

- its staff (including its directors), and any entities linked to them by common ownership or control.

- 4.32 A number of individuals at TMI (not including Mr Pope) received commission payments (through the Unregulated Introducer) from the underlying product providers when the underlying products were sold to customers. This created a conflict of interest with TMI's duty to its customers, in that TMI was advising customers to transfer their pensions into a SIPP in order to purchase the underlying product (through TMI) when individuals at TMI had a financial interest in facilitating the sale of underlying products to the customer (through the Unregulated Introducer). This conflict could have been mitigated had TMI provided full, impartial advice in respect of the suitability of the underlying products for the customer. As customers may have been unaware of the true nature of the products they were investing in, they could not have taken an informed decision in relation to waiving any conflict of interest surrounding commission payments and incentives without such advice. However, Mr Pope confirmed that as a director of TMI, he did not identify, and therefore consider the conflicts of interest relating to TMI and what he as a director needed to do about them.
- 4.33 During the majority of the Relevant Period, TMI did not have in place a formal conflicts of interest register identifying potential conflicts of interest within the firm. The conflicts of interest that existed at TMI were therefore not identified and consequently were not managed, mitigated and disclosed adequately by TMI. Even when a conflicts of interest register was put in place at TMI towards the end of the Relevant Period, TMI still did not use the information recorded on that register to ensure that it adequately managed, mitigated and disclosed those conflicts.
- 4.34 Throughout the Relevant Period, TMI's client agreement contained an express provision that conflicts of interest would be disclosed to customers and prior permission to carry out instructions would be sought before commencing work for the customer. However, despite the wording of the client agreement, TMI did not inform customers about commissions that would have been payable to individuals at TMI for their part in the facilitation of the sale of the underlying product to the customer.
- 4.35 As a director of TMI, Mr Pope failed therefore to ensure that the Firm identified conflicts of interest and, as a result, also failed to manage, mitigate and disclose adequately those conflicts of interest to customers. He also failed to ensure that TMI complied with its own client agreement concerning the handling of conflicts of interest.

- 4.36 Mr Pope's failings are compounded by the fact that, during the Relevant Period, TMI's external compliance officer warned TMI of the need to disclose conflicts of interest within TMI. For example, in April 2012 a compliance report recommended that all TMI staff should be made aware of potential conflicts of interest issues, that these be discussed at regular board and compliance meetings and that TMI should ensure that an annual conflicts of interest questionnaire be completed. Despite not being subject to a conflict of interest himself, as a CF1, Mr Pope should have recognised and acted upon this warning. However, action only appears to have occurred in relation to this warning towards the end of October 2012 when conflicts of interest are first noted on a register as having been identified at that date. Mr Pope therefore failed to take reasonable steps to ensure that TMI identified, managed, mitigated and disclosed adequately conflicts of interest that existed at TMI.
- 4.37 The Authority therefore considers that, throughout the Relevant Period, including between 22 January 2010 and 6 August 2011 when Mr Pope held the CF10 (Compliance Oversight) role, Mr Pope failed to ensure that TMI, for which he was responsible in his controlled function, identified, managed, mitigated and disclosed adequately conflicts of interest that existed for TMI as an authorised firm.

### ***Compliance***

- 4.38 During the Compliance Oversight period, Mr Pope was approved as the CF10 (Compliance oversight) controlled function at TMI. Mr Pope ceased to be the CF10 at TMI on 6 August 2011 where after the responsibility was passed on to a fellow TMI director.
- 4.39 TMI employed the services of external compliance consultants throughout the Compliance Oversight Period to assist with compliance at TMI. However, the ultimate responsibility for ensuring that TMI complied with regulatory requirements, including but not limited to those identified above in relation to suitability of SIPP advice given, rested with Mr Pope during the Compliance Oversight Period.
- 4.40 Mr Pope delegated his responsibilities as compliance officer to those external compliance consultants – as well as to other staff at the Firm - placing complete reliance on those individuals, without providing sufficient oversight of their activities. For example, Mr Pope confirmed that, as the only CF30 holder at TMI for the majority of the Relevant Period, he was focused on providing advice to customers and therefore he did not have much time for compliance issues. Instead, compliance issues arising out of the advisory process at TMI during the Compliance Oversight Period were dealt with by other staff at TMI, and the external compliance consultant.

For example, Mr Pope confirmed that he considered that the person at TMI with responsibility for producing its customer documentation would have been the compliance consultant; when asked about certain inaccuracies in customer documentation, Mr Pope noted that he personally would not have been responsible for the documentation, and that when changes were suggested to the customer documentation by the compliance consultant, Mr Pope would have gone with what the compliance consultant suggested; Mr Pope noted that the compliance consultant *"...had more experience than anybody in relation to how compliance works. A lot more experience than say, than I had."*

4.41 Mr Pope did however acknowledge that despite delegating the compliance role to someone else, he was still responsible as the CF10 for ensuring that the compliance function at TMI was being properly performed, which he failed to do. Mr Pope confirmed that he was reliant on the external compliance consultant to make sure that the compliance function was carried out at TMI. As a result of the above, the Authority considers that throughout the Compliance Oversight Period, Mr Pope failed to take reasonable steps to ensure sufficient oversight of the compliance function within TMI. He therefore did not adequately discharge his responsibilities as CF10 (compliance oversight) controlled function holder during the Compliance Oversight Period.

## **5 FAILINGS**

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

5.2 Throughout the Relevant Period, Statement of Principle 7 stated that:

*An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.*

5.3 By reason of the facts and matters referred to above, during the Relevant Period, Mr Pope breached Statement of Principle 7 by failing to:

- (1) take reasonable steps to ensure that TMI assessed the suitability of the underlying product within the SIPP for the customer during the Relevant Period;
- (2) identify, disclose, manage and mitigate adequately the conflicts of interest that existed at TMI during the Relevant Period; and

- (3) ensure sufficient oversight of the compliance function within TMI in order to discharge adequately his CF10 (Compliance oversight) responsibilities during the Compliance Oversight Period.

## **6 SANCTION**

### ***Financial penalty***

- 6.1 In determining the financial penalty, the Authority has had regard to its policy on the imposition of financial penalties which is set out in Chapter 6 of DEPP and forms part of the Authority's Handbook.
- 6.2 On 6 March 2010, the Authority's new penalty framework came into force.
- 6.3 Mr Pope's misconduct straddling 6 March 2010. However, the Authority considers that the core of the misconduct occurred after 6 March 2010. The Authority has therefore assessed the financial penalty under the regime in force after 6 March 2010.
- 6.4 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***

- 6.5 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.
- 6.6 The Authority has not identified any financial benefit that Mr Pope derived directly from the breach.
- 6.7 Step 1 is therefore £0.

### ***Step 2: the seriousness of the breach***

- 6.8 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. For Mr Pope, the Authority considers that his relevant income is the gross amount of all benefits paid to Mr Pope directly or via a company controlled by him, from his role at TMI in connection with which the breach occurred, and for the period of the breach.
- 6.9 The period of Mr Pope's breach was from 22 January 2010 to 20 January 2013 inclusive. The Authority considers that the benefits paid to Mr Pope directly or via a



company controlled by him from his role at TMI in connection with which the breach occurred for this period to be £446,912.40. This figure includes both the benefit of monies Mr Pope received through TMI for his role at TMI (some of which were paid by TMI to a separate company under Mr Pope's control), as well as monies he received through a remuneration trust, whether or not those monies are considered income for taxation purposes. The Authority has assessed that on the facts of this case, the monies that Mr Pope received through the remuneration trust mechanism should be included in the monies that the Authority considers to be 'relevant income' for the purposes of assessing any financial penalty to be imposed on him (those monies being a benefit received by him from the employment in connection with which the breaches occurred).

6.10 In deciding on the percentage of the relevant 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%

6.11 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. The Authority considers the following factors to be relevant.

*Impact of the breach*

6.12 Mr Pope's failings meant that all of TMI's customers investing in a SIPP were at risk of having invested a total of £112,420,985 into SIPPs which were not suitable for them. The majority of TMI's customers invested into high risk investments that are unregulated and therefore not typically covered by the FSCS. Customers investing in unregulated investments are therefore at risk of losing all of their investments. There is therefore significant risk of loss associated with Mr Pope's failings.

6.13 Mr Pope's failings did not have an adverse effect on markets.

*Nature of the breach*

6.14 Mr Pope's failings occurred over a sustained period of time (over three years) during which TMI advised 1,661 customers to invest via a SIPP, putting at risk £112,420,985 of those customers monies.

*Whether the breaches were deliberate and/or reckless*

6.15 The Authority has not found that the breaches by Mr Pope were deliberate or reckless. Mr Pope relied on the advice of an external compliance consultant (although he failed to oversee adequately the work of that compliance consultant).

6.16 The breaches were negligent rather than intentional and there was no attempt by Mr Pope to conceal the breaches.

6.17 Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 3 and so the Step 2 figure is 20% of £446,912.40.

6.18 Step 2 is therefore £89,382.

***Step 3: mitigating and aggravating factors***

6.19 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 breach.

6.20 The Authority does not consider there to be any factors that aggravate the breach.

6.21 As a result, the Authority considers that the Step 2 figure should remain.

6.22 Step 3 is therefore £89,382.

***Step 4: adjustment for deterrence***

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

6.24 The Authority considers that the Step 3 figure of £89,382 does not represent a sufficient deterrent to Mr Pope and others, and so has increased the penalty at Step 4. This is on the basis that the figure reached after Step 3 is insufficient to deter Mr Pope, or others, from committing further breaches in setting up and

implementing advice models at firms which do not adequately meet the relevant regulatory requirements, and therefore give rise to the risk of significant consumer loss. The Authority therefore has increased the Step 3 figure by a multiple of 1.5.

6.25 Step 4 is therefore £134,073.

#### ***Step 5: settlement discount***

6.26 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.

6.27 The Authority and Mr Pope reached agreement at Stage 1 and so a 30% discount was applied to the Step 4 figure.

6.28 Step 5 is therefore £93,851 (rounded down to £93,800).

#### ***Penalty***

6.29 Having applied the five-step framework set out in DEPP, the Authority had determined on 4 March 2015 that the appropriate level of financial penalty to be imposed on Mr Pope would be £93,800 for breaching Statement of Principle 7.

6.30 As explained earlier in this Notice, on 12 October 2015, the Authority informed Mr Pope that it would not seek to enforce that penalty against him until the limitation issue which had arisen in the context of Mr Burns' case was resolved. On 5 July 2017, the Authority decided in the course of Tribunal proceedings against Mr Burns to concede that limitation issue.

6.31 On 31 July 2018, the Tribunal decided to reduce the penalty which the Authority had decided should be imposed on Mr Burns, partly in light of the Authority's concession, by approximately 75%. The Authority considers that a proportionate deduction should also be applied in Mr Pope's case.

6.32 Accordingly, Mr Pope's penalty is £23,400 (rounded down from £23,450).

#### ***Prohibition***

6.33 The Authority has had regard to the guidance in Chapter 9 of EG and considers it is appropriate and proportionate in all the circumstances to prohibit Mr Pope from performing any senior management function or any significant influence function in

relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm because he is not a fit and proper person in terms of competence and capability.

## **7 PROCEDURAL MATTERS**

### **Decision maker**

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

7.2 This Final Notice is given under, and in accordance with, section 390 of the Act.

### **Manner of and time for payment**

7.3 The financial penalty must be paid in full by Mr Pope to the Authority within 14 days of the issue of this Final Notice.

### **If the financial penalty is not paid**

7.4 If all or any of the financial penalty is outstanding on the day after due dates for payment, the Authority may recover the financial penalty in full (or the outstanding amount) as a debt owed by Mr Pope and due to the Authority.

### **Publicity**

7.5 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

**Authority contacts**

7.7 For more information concerning this matter generally, contact Richard Topham at the Authority (direct line: 020 7066 1180 / email: [richard.topham@fca.org.uk](mailto:richard.topham@fca.org.uk)).

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**Anthony Monaghan**  
**Head of Department, Enforcement and Market Oversight Division**  
**For and on behalf of the Financial Conduct Authority**

## **ANNEX A**

### **Relevant statutory and regulatory provisions**

#### **1 Relevant statutory provisions**

- 1.1 The Authority's operational objectives, set out in section 1B(3) of the Act, include the consumer protection objective.
- 1.2 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.
- 1.3 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 exempt professional person. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

#### **2 Relevant regulatory provisions**

##### **Principles for Businesses**

- 2.1 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.
- 2.2 Principle 9 states:

*"A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment."*

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

- 2.3 The Authority's Statements of Principle have been issued under section 64 of the Act.
- 2.4 Statement of Principle 7 states:

*"An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system."*

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

- 2.5 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 a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 2.6 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.

### **Conduct of Business**

- 2.7 The following rules in COBS are relevant regarding suitability of advice given to customers:

#### COBS 9.2.1R

- (1) A firm must take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client.
- (2) When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's:
- (a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;
  - (b) financial situation; and
  - (c) investment objectives;

so as to enable the firm to make the recommendation, or take the decision, which is suitable for him.

#### COBS 9.2.2R

- (1) A firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for

believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:

- (a) meets his investment objectives;
  - (b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and
  - (c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.
- (2) The information regarding the investment objectives of a client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.
- (3) The information regarding the financial situation of a client must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

#### COBS 9.2.3R

The information regarding a client's knowledge and experience in the investment field includes, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:

- (1) the types of service, transaction and designated investment with which the client is familiar;
- (2) the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;
- (3) the level of education, profession or relevant former profession of the client.

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

2.8 The Authority's policy in relation to prohibition orders is set out in Chapter 9 of EG.



2.9 EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its regulatory 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.

**The Authority's policy for imposing financial penalties**

2.10 Chapter 6 of DEPP sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.