
FINAL NOTICE

To: Peter Anthony Howson

IRN: PAH00031

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 Howson from performing any function in relation to any regulated activities carried on by an authorised or exempt person or exempt professional firm.
- 1.2. Mr Howson 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 Howson. The prohibition order is effective from the date of this Final Notice.

2. SUMMARY OF REASONS

- 2.1. The Authority considers that Mr Howson lacks fitness and propriety. From 8 July 2013 to 21 November 2014 Mr Howson demonstrated a lack of honesty and integrity.

- 2.2. During the Relevant Period, Vanguard was an authorised firm with two IFA directors: Mr Howson and Mr Butterfield. In relation to Vanguard, Mr Howson held various controlled functions including CF1 (Director).
- 2.3. Through Vanguard, Mr Howson 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; and
 - (3) to sell the Elysian Fuels PLCs shares to their SIPPs with James Hay. Part of these customers' pension funds was thus extracted from their SIPPs, and paid to them.
- 2.4. James Hay considered the unlisted Elysian Fuels PLC shares which customers purchased through their SIPPs to be high risk, non-standard investments. For customers purchasing such assets through SIPPs which it administered, James Hay required the completion of HNWI Declarations. Its 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 the customers' net assets and HNWI status.
- 2.5. Mr Howson dishonestly deceived James Hay as to customers' HNWI status. He did so for personal gain. He inputted financial information which he knew to be false in respect of 6 customers, and submitted false HNWI Declarations to James Hay in relation to those and other customers. He dishonestly circumvented James Hay's policy that only HNWIs should purchase unlisted shares through SIPPs. He did this in order to increase the number of Vanguard customers who could purchase unlisted Elysian Fuels PLC shares through their James Hay SIPPs and participate in the Elysian Scheme. He thereby increased the substantial fees and commissions received by Vanguard and HB Introductions when Vanguard's customers purchased Elysian Fuels PLC shares.
- 2.6. Further, Mr Howson deceived James Hay about his own HNWI status so that, despite not being an HNWI, he could use the Elysian Scheme to extract money from his own pension. Again, he did this for personal gain.
- 2.7. Mr Howson admitted to the Authority that during the Relevant Period he:
- (1) inputted figures which he knew to be fabricated as to the net assets of 6 customers into HNWI Declarations;

- (2) caused those HNWI Declarations to be submitted in applications to James Hay, representing to James Hay that these customers were HNWIs, when he knew that they were not;
 - (3) caused 27 HNWI Declarations to be submitted to James Hay on which he declared that he had seen evidence of customers' net assets and HNWI status, when he knew that he had not; and
 - (4) wrote fabricated figures as to his own net assets and HNWI status on HNWI Declarations which were submitted to James Hay, representing to James Hay that he was an HNWI, when he knew that he was not.
- 2.8. Mr Howson's conduct led customers to suffer loss. Had he 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.
- 2.9. The Authority considers that Mr Howson acted in a way that lacked honesty and integrity when he:
 - (1) inputted financial information into applications for customers to a SIPP Provider, and caused those applications to be submitted, knowing that information to be false;
 - (2) signed declarations representing to a SIPP Provider that he had seen evidence to confirm customers' HNWI status, when he had not; and
 - (3) inputted false information relating to his own financial circumstances in personal applications to a SIPP Provider, and submitted those applications.
- 2.10. The Authority considers that Mr Howson is not fit and proper to perform any function in relation to any regulated activities carried on by an authorised person, exempt person or exempt professional firm, by reason of his dishonesty and lack of integrity. The Authority has therefore made a prohibition order pursuant to section 56 of the Act.
- 2.11. 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. The ability of financial firms, such as SIPP Providers, to trust, and rely upon, signed declarations received from other market participants is fundamental to the operation and integrity of the UK's financial system. An individual who, for personal financial gain, consciously sets out repeatedly to deceive other market participants over an extended period of time, using false signed declarations and fabricated financial information about

customers and himself, poses a serious risk to consumers and to the UK financial system.

3. DEFINITIONS

3.1. 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;
“Elysian Fuels LLPs”	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;
“FIT”	means the part of the Handbook entitled “Fit and Proper Test for Employees and Senior Personnel”;
“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 an 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;
"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 8 July 2013 to 21 November 2014;
"RDC"	means the Regulatory Decisions Committee of the Authority (see further at paragraph 7.3 below);
"SIPP"	means self-invested personal pension - 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 Tribunal"	means the Upper Tribunal (Tax and Chancery Chamber);

“Vanguard” means Vanguard Wealth Management Limited, company number 07827172 (now in liquidation);

“Warning Notice” means the warning notice given to Mr Howson dated 6 August 2020.

4. FACTS AND MATTERS

Background

- 4.1. Vanguard was a firm of independent financial advisers based in Leeds. It was incorporated on 28 October 2011. Mr Howson and Mr Butterfield 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) Advising 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. 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 4A of the Act. On the 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.
- 4.4. Vanguard was placed into liquidation on 23 June 2016.

Roles and responsibilities at Vanguard

- 4.5. During the Relevant Period, Mr Howson was approved by the Authority to hold the CF1 (Director), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting Officer) and CF30 (Customer) controlled functions in relation to Vanguard.
- 4.6. 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 being more “the sales advisor”.

The Elysian Scheme

- 4.7. The Elysian Fuels PLC shares were promoted using offer documents which were aimed at certified HNWI and self-certified sophisticated investors.
- 4.8. The offer documents described the Elysian Fuels PLCs and Elysian Fuels LLPs as an opportunity to invest in a partnership which originated and developed renewable energy projects and technologies in conjunction with an energy developer. Numerous Elysian Fuels LLPs and Elysian Fuels PLCs were established.
- 4.9. 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 has been able to determine, the only such company which listed shares was Elysian Fuels No 20 PLC, and its shares were later delisted. The offer documents identified a wide range of risks connected with investment in Elysian Fuels PLCs and LLPs.
- 4.10. 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 HNWIs and had signed an 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 an HNWI.
- 4.11. During the Relevant Period, through Vanguard, Mr Howson arranged for customers to take the following steps:
 - (1) The 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, whose terms, according to Mr Howson, meant that customers would not have to repay it. The balance of 16.6p per share was funded by customers.
 - (3) The customers transferred their existing pensions into SIPPs. Vanguard charged customers a fee of 3 - 5% of the value of the amount transferred.
 - (4) The customers sold the Elysian Fuels PLC shares to their own SIPPs for £1 per share.
- 4.12. As a result, the 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 Fuels 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 Fuels PLC shares with a nominal value of £100,000.
- 4.15. The Authority is not aware of any attempts to recover any part of the 83.4p per share limited recourse loans.

Elysian Fuels PLC shares became worthless

- 4.16. The final tranche of shares in Elysian Fuels PLCs was 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 of 55 years of age or more 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 might result in a 55% tax liability for the member.
- 4.19. HMRC are pursuing unauthorised payment charges against all investors. Such tax charges would be between 40% and 55% of the unauthorised pension withdrawal, depending on the circumstances. Some customers have submitted compensation claims to the Financial Services Compensation Scheme arising from the Elysian Scheme.

Vanguard's customer "fact find" process

- 4.20. During the period in which it carried on regulated activities, 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. During 2013 and 2014, of that pension transfer business, a little less than 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. 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 an HNWI Declaration.
- 4.25. James Hay changed its HNWI Declarations in mid-February 2014. Its HNWI Declarations before 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;

..."

- 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 additionally required either that customers enclose evidence of the net assets which they claimed to have or that customers' authorised representatives provided a signed declaration that they had 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 an HNWI Declaration. James Hay's policy was that customers should not be permitted to purchase unlisted shares through SIPPs unless an HNWI Declaration had been received.

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 Howson knew that if a customer was not an HNWI, they should not have purchased Elysian Fuels PLC shares. Further, Mr Howson understood that James Hay did not think it was appropriate for individuals who were not HNWIs to participate in the Elysian Scheme.

4.31. Between 26 February 2014 and 21 November 2014, Mr Howson signed 27 HNWI Declarations which Vanguard submitted to James Hay and on which he declared that he, as his customers' authorised representative, had seen evidence of their listed net assets. However, Mr Howson admitted to the Authority that he did not see evidence of the net assets for any of these customers.

4.32. Further, Mr Howson admitted to the Authority that in the case of 6 customers who he knew were not HNWIs, he inputted fabricated figures for their net assets on their HNWI Declarations, representing to James Hay that these customers had sufficient assets to qualify as HNWIs when he knew that they did not.

4.33. Mr Howson was asked about those 6 customers in interview.

- (1) In relation to Customer A, Mr Howson admitted that when he submitted the HNWI Declaration to James Hay he knew that Customer A was not an HNWI.
- (2) In relation to Customer B, again Mr Howson admitted knowing that the customer was not an HNWI and that the HNWI Declaration was completed "incorrectly".
- (3) When asked about Customer C, Mr Howson agreed that he knew the customer was not an HNWI and had entered false figures on their HNWI Declaration to "make the sums add up".
- (4) Regarding Customer D, Mr Howson told the Authority that when writing figures for asset values on the HNWI Declarations, in order to represent

the customer as an HNWI when he knew the customer was not, “we just basically made them up”.

- (5) In relation to Customer E, Mr Howson told the Authority that he had made up figures for assets to include two investment properties, knowing that Customer E rented his home and owned no properties at all and, along with the fictitious properties, Mr Howson made up figures for fictitious mortgages.
- (6) In relation to Customer F, Mr Howson admitted to knowing the customer was not an HNWI and stated that the figures on the HNWI Declaration were “just made up”.

4.34. For those 6 customers, the details about their income, assets and liabilities were declared by Mr Howson to be true when he knew that in reality they had been deliberately inflated and/or fabricated in order falsely to enter the customer into the Elysian Scheme, for which they were not in fact eligible.

False HNWI Declarations on Mr Howson’s own applications to James Hay

- 4.35. Mr Howson himself had a SIPP with James Hay. In July 2013 and April 2014, he submitted HNWI Declarations to James Hay containing false information about himself in order to sell two tranches of Elysian Fuels PLC shares to his own SIPP. In so doing, Mr Howson caused money to be released from his own pension through the Elysian Scheme.
- 4.36. His first HNWI Declaration is undated. The covering letter accompanying the declaration is dated 8 July 2013. It was for the purchase of 11,000 Elysian Fuels No 24 PLC shares.
- 4.37. The second HNWI Declaration, dated 14 April 2014, was for the purchase of 20,000 shares in Elysian Fuels No 32 PLC.
- 4.38. On each of these two signed HNWI Declarations, Mr Howson stated that he had total net assets, excluding his residential home and pension, of £295,000 with no liabilities. Those supposed assets included an investment property valued at £130,000 and shares valued at £75,000.
- 4.39. Mr Howson admitted to the Authority that he was not an HNWI and that he had entered false values for assets on the HNWI Declarations submitted to James Hay. Mr Howson admitted that he had never owned a property, had never owned the shares referred to and was not an HNWI when he signed and submitted the HNWI Declarations.
- 4.40. Mr Howson’s second HNWI Declaration followed the introduction of the new format introduced by James Hay in mid-February 2014 and so required the submission of evidence of HNWI status or certification by an authorised representative that they had seen evidence of the net assets declared. Mr Howson, knowing that the figures

he had written on the form were false, also certified that he had seen evidence of his own assets, purporting to provide this certification as his own authorised representative.

Financial gain from the dishonest HNWI Declarations

- 4.41. Mr Howson had a financial incentive to represent customers as HNWIs when they were not because this allowed more customers to participate in the Elysian Scheme, generating more fees and commissions for Vanguard and HB Introductions.
- 4.42. Customers paid an advice fee of 3-5% of the total pension transfer amount 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 Howson, 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.
- 4.43. Mr Howson and Mr Butterfield were also directors and shareholders of HB Introductions throughout the Relevant Period. HB Introductions was set up by Mr Howson and Mr Butterfield to receive, among other sums, commission payments from another party for introductions of customers who purchased shares in Elysian Fuels PLCs. Between April 2012 and March 2015, HB Introductions received a commission of 2% of the share price 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.
- 4.44. Vanguard and HB Introductions shared a proportion of their fees with Introducers who had referred customers to Vanguard.
- 4.45. From mid-February 2014 to the end of the Relevant Period, the advice fees and commissions received by Vanguard and HB Introductions totalled approximately £450,400. Had Mr Howson not submitted false HNWI Declarations to James Hay, then this income would have been reduced. Mr Howson admitted that 6 customers were not HNWIs. Further, had he insisted on seeing evidence of the HNWI status of the 27 other customers referred to in paragraph 4.31 before certifying on HNWI Declarations that he had seen evidence of their net assets, he may have found that some of those customers did not qualify as HNWIs and were not eligible to participate in the Elysian Scheme. The fees and commissions received by Vanguard and HB Introductions would then have been less.
- 4.46. Further, by deceiving James Hay about his own HNWI status, Mr Howson was able to participate in the Elysian Scheme himself and had the majority of the moneys in his pension released to him. Since he was not an HNWI, he could not have obtained this financial benefit without misrepresenting his net assets to James Hay.

Customer loss from the dishonest HNWI Declarations

- 4.47. Mr Howson's conduct led customers to suffer loss. Had he 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.

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 Howson is not fit and proper because he lacks honesty and integrity. In particular, over an extended period and for personal gain, he dishonestly:
- (1) inputted financial information into applications for customers to a SIPP Provider, and caused those applications to be submitted, knowing that information to be false;
 - (2) signed declarations falsely representing to a SIPP Provider that he had seen evidence to confirm customers' HNWI status; and
 - (3) inputted false information relating to his own financial circumstances into personal applications to a SIPP Provider, and submitted those applications.

6. SANCTIONS

- 6.1. Mr Howson's deliberate misrepresentations to another market participant over a prolonged period, for personal gain and to circumvent safeguards for non-HNWIs, meant that his conduct fell 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.
- 6.2. In the light of the serious nature of his dishonest misconduct, the Authority considers that Mr Howson 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 an authorised person, exempt person or exempt professional firm.
- 6.3. The Authority considers that Mr Howson is not fit and proper and that it is appropriate and proportionate in all the circumstances (including the nature and seriousness of Mr Howson's failings) to impose an order prohibiting him from performing any function in relation to any regulated activities carried on by an authorised person, exempt person or exempt professional firm.

- 6.4. The Authority has had regard to the guidance set out at Chapter 9 of EG in deciding to impose these sanctions. The relevant provisions of EG are set out in Annex A.
- 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. REPRESENTATIONS

- 7.1. Through the Warning Notice, the Authority gave notice that it proposed to take the action described above and Mr Howson was given the opportunity to make representations to the Authority about that proposed action.
- 7.2. Following receipt of the Warning Notice, Mr Howson wrote to the Authority and stated that he did not accept the Authority's findings (as set out above), but that he did not wish to make any representations on the Warning Notice.
- 7.3. The Authority has therefore taken the action for the reasons set out above.

8. PROCEDURAL MATTERS

- 8.1. This Final Notice is given to Mr Howson under, and in accordance with, section 390 of the Act.
- 8.2. The following paragraphs are important.

Decision maker

- 8.3. The decision which gave rise to the obligation to give this Notice was made by the RDC. The RDC is a committee of the Authority which takes certain decisions on behalf of the Authority. The members of the RDC are separate to the Authority staff involved in conducting investigations and recommending action against firms and individuals. Further information about the RDC can be found on the Authority's website here:

<https://www.fca.org.uk/about/committees/regulatory-decisions-committee-rdc>

Publicity

- 8.4. 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.
- 8.5. 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 may be 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 Howson, or prejudicial to the interest of consumers or detrimental to the stability of the UK financial system.

- 8.6. 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

- 8.7. 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 AND REGULATORY 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 a prohibition order 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.

2. The Fit and Proper Test for Employees and Senior Personnel

- 2.1. 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 and may consider when 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 to perform a particular controlled function. 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 include: 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)).

3. The Enforcement Guide

- 3.1. EG 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 states that the Authority has 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);
 - (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 the Authority's Statements of Principle and Code of Practice for Approved Persons, such as providing misleading information to third parties.