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## FINAL NOTICE

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**To: Robert John Bygrave**

**Reference  
Number: RJB01352**

**Address: Global Ridgeway Holdings Ltd  
Unit B02 am  
Basepoint Business & Innovation Centre  
110 Butterfield  
Great Marlings  
Luton  
Bedford  
LU2 8DL**

**Date: 1 February 2016**

### **ACTION**

1. For the reasons given in this notice, the Authority hereby:
  - a) imposes on Robert Bygrave a financial penalty of £37,400; and
  - b) makes an order prohibiting Mr Bygrave from performing any significant influence function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm. This order takes effect from 1 February 2016.
2. Mr Bygrave agreed to settle at an early stage of the Authority's investigation. Mr Bygrave therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £53,400 on Mr Bygrave.

### **SUMMARY OF REASONS**

3. The Authority considers that Mr Bygrave breached Statement of Principle 6 while performing the significant influence function of CF1 (Director(AR)) at Coverall Worldwide Ltd ("Coverall") with responsibility for Aderia UK Limited ("Aderia") during the period from 4 July 2013 to 23 September 2013 ("the Relevant Period"). In summary, it is the Authority's view that Mr Bygrave breached Statement of Principle 6 because he failed to exercise due skill, care and diligence in managing the business of Aderia for which he was responsible as CF1(Director(AR)) by failing to take reasonable steps to adequately inform himself about:

- a) whether Aderia was required to treat insurance premiums it had received as client money, in accordance with the rules set out in the Authority's Client Assets Sourcebook ("CASS"); and
  - b) arrangements which were allegedly in place to allow these premiums to be paid to third parties rather than to the insurer. Instead Mr Bygrave relied upon the explanations and instructions of an unapproved individual, Shay Reches ("Mr Reches"), who exercised control over Aderia.
4. The Authority considers that Mr Bygrave's failings led to monies being channelled away from the insurer, Balva Insurance Company AAS ("Balva"), which was liable to meet claims of policyholders, thus exposing the policyholders to a significant risk of loss. The Financial Services Compensation Scheme has an estimated resulting liability of £13.8m.
  5. Mr Bygrave was the Head of Finance at a group of companies ("the Group"), owned and controlled by Mr Reches, which included Aderia, an appointed representative of Coverall. In July 2013 Mr Bygrave was appointed CF1 (Director(AR)) at Coverall with responsibility for Aderia, however he had performed the role of Head of Finance at the Group since June 2012.
  6. Aderia was a London based managing general agent ("MGA") for a number of UK based and European insurers. In particular, Aderia operated as an MGA for Balva arranging the issue of policies for solicitors' professional indemnity insurance ("Solicitors' PII") for the policy year 1 October 2012 to 30 September 2013. In this capacity Aderia received £13.3m of Solicitors' PII premiums.
  7. The Authority considers that Mr Bygrave failed to take reasonable steps to adequately inform himself whether the Solicitors' PII premiums received by Aderia were subject to a valid risk transfer agreement. If the premiums were subject to a risk transfer agreement, the premiums were not client money and therefore did not need to be segregated in accordance with CASS. Mr Bygrave had been told that there was a risk transfer agreement and was aware that the practice before he joined the Group was to treat the premiums as insurer's funds, rather than client money. He therefore did not segregate the premiums, when in fact there was no such risk transfer agreement. As a result, the Solicitors' PII premiums should have been treated as client money by Aderia and held in a segregated client bank account before being transferred to Balva which was providing the insurance to the policyholders. Without adequate protection, there was a risk that the policyholders' premiums could have become available to Aderia's creditors generally in the event of the financial failure of Aderia, and those policyholders might not have been covered.
  8. The Solicitors' PII premiums should have been paid to the insurer, Balva, but instead, between July 2012 and March 2013, Mr Bygrave (before he was approved to perform a controlled function) paid £9.8m of these premiums to third parties on the instructions of Mr Reches. Mr Reches informed Mr Bygrave that the insurance premiums were ultimately due to Sinclair Insurance Company Limited ("Sinclair"), an unrated insurance company registered in the Union of Comoros, Africa, which provided reinsurance to Balva. He also informed Mr Bygrave that Sinclair loaned these premiums back to Aderia to be used for investment purposes in the Group. Mr Reches was the owner of both Sinclair and the Group.
  9. At the time that Mr Bygrave was appointed to perform the CF1 (Director(AR)) controlled function, revised reinsurance arrangements with Balva had been put into place. Whilst the payments were made before Mr Bygrave was approved to perform the controlled function, the Authority considers that Mr Bygrave's lack of

understanding about the arrangements in place and his concerns about some of the payments he had made previously, remained when he was appointed CF1 (Director(AR)). However, rather than take steps to satisfy himself as to the financial position of Aderia and the transactions which had occurred, Mr Bygrave continued to rely on Mr Reches' explanations of the arrangements and on the fact that Aderia's and the Group's 2012 financial statements had been independently audited.

10. While Mr Bygrave held a significant influence function for a short period of time, his failings as CF1 (Director(AR)) are serious because of his previous knowledge of Aderia's business in his role as Head of Finance during the preceding year. He brought this knowledge and awareness to his role as CF1 (Director(AR)) when he was appointed.
11. The Authority considers that Mr Bygrave's actions led to a significant risk to policyholders and to Balva which had a duty to meet claims from the policyholders as they arose.
12. Sinclair failed to provide sufficient funds to cover its reinsurance liability which contributed to Balva being placed into liquidation and resulted in an estimated liability of £13.8m for the Financial Services Compensation Scheme.
13. As a consequence of these matters, the Authority considers that Mr Bygrave failed to exercise due skill, care and diligence in managing the business of Aderia for which he was responsible in his significant influence function of CF1 (Director(AR)) at Coverall with responsibility for Aderia.
14. By virtue of the breaches outlined above, the Authority also considers that Mr Bygrave has failed to meet minimum regulatory standards in terms of lack of competence and capability which leads the Authority to conclude that he is not a fit and proper person to perform significant influence functions in relation to regulated activities carried on by any authorised or exempt persons or exempt professional firm, and that he should be prohibited from doing so.
15. This action supports the Authority's regulatory objectives of securing an appropriate degree of protection for consumers, and protecting and enhancing the integrity of the UK financial system. It is consistent with the importance placed by the Authority on the accountability of senior management in the operation of their business.

## **DEFINITIONS**

16. The definitions below are used in this Final Notice.

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

"Aderia" means Aderia UK Limited, an AR of Coverall and Millburn, now known as II&B UK Limited and previously known as JCM Insurance Brokers Limited and JCM Brokers Ltd.

"AR" means appointed representative.

"the AR Agreement" means the Appointed Representative Appointment Agreement between Millburn, Coverall and Aderia, dated 1 December 2010.

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

"Balva" means Balva Insurance Company AAS, a Latvian insurer and a Passported Firm.

"CASS" means the Authority's Client Assets Sourcebook.

"Coverall" means Coverall Worldwide Ltd, a UK insurance intermediary.

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

"EG" means the Authority's Enforcement Guide.

"FIT" means the Authority's Fit and Proper test for Approved Persons.

"FSCS" means the Financial Services Compensation Scheme.

"the Group" means the group of companies with Global Ridgeway Holdings Limited as the parent entity.

"MGA" means a Managing General Agent, an insurance intermediary which has contractual authority from one or more insurers to provide underwriting services on their behalf.

"the MGA Agreement" means a contractual agreement giving an MGA contractual authority from one or more insurers to provide underwriting services, including negotiating and entering into agreements for the sale and fulfilment of policies, on behalf of the insurers. The MGA Agreement between Balva and Aderia was signed on and effective from 18 August 2011.

"Millburn" means Millburn Insurance Company Limited (in administration), a UK insurer.

"Mr McIntosh" means Colin J McIntosh.

"Mr Reches" or "Shay Reches" means Shay Jacob Reches.

"Passported Firm" means a European Economic Area firm exercising its right to conduct activities and services regulated under EU legislation in the UK on the basis of its authorisation in its European Economic Area home state.

"the PRA" means the Prudential Regulation Authority.

"Principal" means an authorised firm which permits its appointed representative(s) to carry on regulated activities under its Part 4A permission given by the Authority under Part 4A of the Act to carry on certain regulated activities.

"Relevant Period" means the period from 4 July 2013 to 23 September 2013.

"Sinclair" means Sinclair Insurance Company Limited, a Union of Comoros insurer, now known as Klapton Insurance Company Limited.

"Solicitors' PII" means professional indemnity insurance provided to solicitors.

“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).

## **FACTS AND MATTERS**

### **The Group**

17. The Group consists of a number of UK and overseas entities which include insurance companies and MGAs. The Group is owned and controlled by Mr Reches.

### **The role of Aderia**

18. Aderia was part of the Group. It operated as a London based MGA for a number of UK based and European insurers, which were Passported Firms.
19. Aderia was an AR of Coverall having entered into the AR Agreement on 1 December 2010 with joint Principals, Coverall and Millburn. The AR Agreement provided that Aderia could undertake the following activities on behalf of Coverall in respect of policies issued by an authorised insurer other than Millburn:
  - a) arranging (bringing about) contracts of insurance;
  - b) making arrangements with a view to transactions in contracts of insurance; and
  - c) assisting in the administration and performance of a contract of insurance.
20. The AR Agreement provided that Aderia could undertake the same activities on behalf of Millburn in respect of policies issued by Millburn.
21. Clause 5.1 of the AR Agreement provided that Aderia should not hold client money on behalf of Coverall or Millburn.

### *Aderia’s role in respect of Solicitors’ PII*

22. Aderia was involved in a number of general insurance schemes including, for three consecutive policy years, within the UK Solicitors’ PII market. The policy years were 2011/2012, 2012/2013 and 2013/2014.
23. Coverall was Aderia’s Principal for all three of the Solicitors’ PII policy years.

### **Solicitors’ PII for the 2012/2013 policy year**

24. Balva was the insurer for the Solicitors’ PII 2012/2013 policy year. On 18 August 2011, Aderia entered into the MGA Agreement with Balva which authorised Aderia:
  - a) to negotiate and enter into binding authority agreements on behalf of Balva with authorised insurance intermediaries for the sale and fulfilment of policies;
  - b) to accept and issue policies to individual customers; and

- c) to undertake financial accounting services.
25. Schedule 2 to the MGA Agreement required that Aderia would remit the balance due to Balva within 90 days of the end of each calendar month. The MGA Agreement was inconsistent with the terms of the AR Agreement which provided that Aderia should not hold client money.
26. In November 2011 Mr Reches, via a company within the Group, purchased a 9.99% shareholding in Balva. Balva became part of the Group at that point. The Group's shareholding increased over time, exceeding 95% by the end of 2012.
27. Sinclair provided reinsurance to Balva for the 2012/2013 policy year.

#### **Mr Bygrave's role and responsibilities**

28. Mr Bygrave is a chartered accountant and has since June 2012 been the Head of Finance of the Group. Mr Bygrave's role was to establish the finance function for the companies in the Group, which included Aderia.

#### **Mr Bygrave's role in respect of Aderia**

29. In June 2012 Mr Bygrave assumed responsibility for managing Aderia's finances from Mr McIntosh. Mr McIntosh held the CF1 (Director(AR)) controlled function at Coverall with responsibility for Aderia and the CF3 (Chief Executive(AR)) controlled function at both Coverall and Millburn with responsibility for Aderia. This handover occurred in June 2012 and from this date Mr Bygrave effected most of Aderia's financial transactions. He estimated that on average 10% of his time was spent on Aderia.
30. Other controlled function holders at Aderia relied on Mr Bygrave to manage Aderia's finances, including implementing systems and controls. Mr Bygrave provided financial information to these individuals, but ultimately reported to Mr Reches who did not hold an official position at Aderia.
31. Mr Bygrave's position at Aderia progressed over time, and he was appointed a Director of Aderia in November 2012. On 4 July 2013, he was approved to perform the CF1 (Director(AR)) controlled function at Coverall with responsibility for Aderia, and on 11 July 2013 he was approved to perform the CF1 (Director(AR)) controlled function at Millburn with responsibility for Aderia. Despite the changes made to his position, Mr Bygrave's role and responsibilities at Aderia remained the same.

#### **Receipt by Aderia of insurance premiums for the 2012/2013 policy year**

32. Aderia received approximately £13.3m of insurance premiums in respect of Solicitors' PII policies written under the MGA Agreement in the 2012/2013 policy year. Mr Bygrave confirmed in interview that he was aware that Aderia was receiving these premiums and understood that they would constitute client money. However he had not seen the AR Agreement until late 2013 and therefore did not know at the time that the receipt of client money by Aderia was inconsistent with the terms of the AR Agreement.
33. As it received client money, Aderia had a responsibility to comply with CASS. The rules in CASS are designed to protect clients if a firm fails while it is holding client money or if it is unable to transfer premiums to insurers. Under CASS, client money should be segregated into a client bank account. However, money which is

received and held under a risk transfer agreement is not client money under CASS and therefore does not need to be segregated into a client bank account.

34. Mr Bygrave stated at interview that he believed Mr McIntosh informed him that there was a risk transfer agreement in place for the Solicitors' PII premiums received in respect of premiums due to Balva. He understood this to mean that these premiums would be regarded as insurer's funds when received by Aderia, rather than client money. As such, the Solicitors' PII premiums were deposited into Aderia's current bank account.
35. Mr Bygrave did not ask to see a copy of the risk transfer agreement which was allegedly in place for the Solicitors' PII premiums. He relied upon Mr McIntosh's explanation as Mr McIntosh had been responsible for Aderia's finances when the MGA Agreement had been signed and when Aderia first received Solicitors' PII premiums.
36. Mr Bygrave said that these premiums were always paid into Aderia's current bank account, and had been before he joined the Group. Mr Bygrave had concerns about these arrangements, but nevertheless the Solicitors' PII premiums continued to be paid into Aderia's current bank account.
37. Mr Bygrave assumed that the risk transfer agreement was in place for all of the insurance schemes in which Aderia was involved. However, the non-Solicitors' PII premiums which Aderia received were segregated into a client bank account.
38. In January 2013 Aderia's auditor queried whether Aderia held client money. Mr Bygrave directed the query to Mr McIntosh who confirmed that Aderia had a risk transfer agreement from the insurers and therefore the insurance premiums Aderia received did not constitute client money. Mr McIntosh, however, suggested that Mr Bygrave should check Aderia's contracts with the insurers. Mr Bygrave did not do so, but simply repeated to the auditor what he had been told by Mr McIntosh. The auditor stated that the situation appeared correct in principle, but made it clear that the relevant agreements had not been reviewed. The auditor recommended that Mr Bygrave check certain provisions of CASS and referred him to the relevant sections.
39. Subsequently in March 2014, when the Authority requested Mr Bygrave to produce copies of any risk transfer agreements between Balva, Coverall and/or Aderia, Mr Bygrave said that he could not locate any risk transfer agreement. The Authority would have expected Mr Bygrave, in carrying out his CF1 (Director(AR)) controlled function, to have obtained a copy of the risk transfer agreement and to have reviewed it to understand how Aderia should comply with its terms, rather than relying solely on previous practice and an explanation from Mr McIntosh.
40. No valid risk transfer agreement has been identified by the Authority. Without this agreement, Aderia was required to segregate the Solicitors' PII premiums it received by keeping them separately identifiable from any other money in accordance with CASS 5.5.19R. There should also have been performed regularly a client money calculation and reconciliation of the amount paid into Aderia's client bank account in accordance with CASS 5.5.23R and CASS 5.5.63R.

## **Aderia's use of insurance premiums for the 2012/2013 policy year**

### **Amounts due to Sinclair**

41. In accordance with the MGA Agreement, Aderia had to remit the balance due to Balva within 90 days of the end of each month. Of the £13.3m of Solicitors' PII premiums received by Aderia, £1m was due to HMRC as Insurance Premium Tax, £11.1m was due to Balva, with the remaining £1.2m to be retained by Aderia as its commission.
42. Mr Bygrave was instructed by Mr Reches that these premiums were due to and should be paid by Aderia directly to the reinsurer, Sinclair, rather than to the insurer, Balva.
43. The MGA Agreement did not give Aderia authority to pay Sinclair directly. In particular, Clause 2.2 of the MGA Agreement provided '*Nothing in this Agreement shall grant The MGA authority beyond that specifically granted by this Agreement nor shall The MGA act as or hold itself out as having authority on behalf of the Insurer where such authority does not arise or no longer arises under the terms of this Agreement.*'
44. Mr Bygrave had seen the MGA Agreement and was not aware of any other agreement between Aderia and Balva regarding what insurance premiums could be used for and if Aderia could pay reinsurers directly. However Mr Bygrave said he understood that Aderia generally had an implicit authority to arrange reinsurance or to remit payments of these premiums on behalf of Balva. He did not discuss the reinsurance arrangements with anyone else but relied on the discussions he had with Mr Reches, who was the owner of Sinclair and in the process of becoming the ultimate owner of Balva.
45. Of the £11.1m of 2012/2013 insurance premiums due to Balva, it received £2.1m from Aderia, of which only £212,454 was identified as being specifically Solicitors' PII premiums.

### **Balva's knowledge of the arrangement to pay Sinclair directly**

46. In March 2013, Mr Bygrave received email correspondence from Balva suggesting it might not be aware of the agreement to pay Sinclair directly. An employee at Balva asked Mr Bygrave and a colleague to '*raise the issue of not receive [sic] an insurance premium payment (so we are missing the assets covering the technical provisions)*'.
47. Mr Bygrave forwarded this email correspondence to Mr Reches saying that he needed to start paying over Solicitors' PII premiums to Balva.
48. The correspondence with Mr Bygrave, Balva and Mr Reches continued throughout March to July 2013, directly before Mr Bygrave became a controlled function holder, as Balva received requests for information from its home state regulator.
49. In May 2013 Balva's auditor requested confirmation of certain balances from various entities in the Solicitors' PII contractual chain. On 21 May 2013 Mr Bygrave provided a letter to the auditor confirming a balance of £10.2m '*Held by Aderia for Balva net of IPT & commission of 31 December 2012*'. £9.7m of this balance related to Solicitors' PII premiums which Aderia owed to Balva.



50. Mr Bygrave provided this letter in the knowledge that these premiums were not held by Aderia for Balva, but had been paid away under instructions from Mr Reches. In light of this, at the time Mr Bygrave was approved to perform a controlled function, he should have realised that he should not have simply accepted Mr Reches' explanations with regard to Aderia's financial arrangements and why premiums were being paid other than in accordance with the terms of the agreements he had seen.
51. In interview Mr Bygrave explained that throughout the communications with Balva and its auditor in the period May to July 2013, he had focused on trying to establish the amount of premiums received and the amount outstanding, rather than with which entity those premiums were currently held. Mr Bygrave also thought there had been a number of discussions about the Solicitors' PII premiums being paid away by Aderia and therefore believed that Balva was aware that Aderia no longer held this amount of premiums. Moreover, Mr Bygrave believed that Balva may also have been aware of the arrangements to pay Sinclair directly as it was satisfied with changes to the reinsurance arrangements which had been put in place shortly before, or at the time Mr Bygrave was approved to perform a controlled function.

#### **Loaning of insurance premiums to the Group**

52. As a result of the reinsurance arrangements made by Mr Reches, the liability for the Solicitors' PII policies for the 2012/2013 policy year rested ultimately with Sinclair. However, the premiums should not have been paid to Sinclair, but to Balva.
53. Mr Reches, who was the owner of Sinclair, told Mr Bygrave that Sinclair had given him authority to disperse the insurance premiums which were ultimately due it (as the reinsurer of Balva). Mr Reches stated that these funds would be loaned by Sinclair to the Group, via Aderia, to be used for investment and other purposes and that he would instruct Mr Bygrave how to make those payments from Aderia.
54. In a letter dated 30 July 2012 from Sinclair to the parent entity of the Group and signed by Mr Reches, Sinclair confirmed 'its agreement to lend [the Group] its collected funds due via Aderia UK, up to £20,000,000. Terms of lending will be set in a separate loan agreement.' The Authority has not identified a separate loan agreement and, in particular, has not identified any repayment terms for this loan. Given Mr Reches was the owner of both Sinclair and the Group, Mr Bygrave did not believe it was unreasonable for Mr Reches to permit such a loan without a fixed repayment term. Mr Bygrave also placed reliance on Aderia's and the Group's 2012 audited financial statements.
55. Under this arrangement no payments were made by Aderia to Sinclair, which was ultimately responsible for paying claims arising under the Solicitors' PII policies. Without other sources of funds to meet such claims, the policyholders and Balva would be put at risk.
56. Mr Reches provided Mr Bygrave with assurances that Sinclair had sufficient reserves to meet its claims liabilities and with Sinclair's financial statements, which Mr Bygrave reviewed.
57. For the 2012/2013 policy year, in relation to which Mr Bygrave made most of the payments, £9.8m of insurance premiums received by Aderia were used to pay third parties, in accordance with the arrangements explained to Mr Bygrave by Mr

Reches. Some of these payments were made with Aderia's commission, but the majority were made with the insurance premiums due to Balva.

58. Mr Bygrave made the payments between July 2012 and March 2013 on instructions from Mr Reches. He had concerns about the payments and raised these with Mr Reches. Mr Bygrave wanted Mr Reches to explain the arrangements. However, Mr Bygrave stated at interview that he made the payments because Mr Reches explained the arrangements to him and he accepted that explanation without any further investigation. Mr Reches convinced Mr Bygrave that Sinclair, of which he was the owner, was entitled to the money and that Mr Reches had authority to disperse the money on its behalf.
59. Mr Bygrave was approved to perform a controlled function, but he did not take sufficient further steps to investigate Aderia's financial position and indebtedness, even though he knew that Balva had raised questions about the lack of premium payments (which he knew had been paid to other parties) and he had seen no agreement which provided for the premiums to be paid to Sinclair directly, nor had he seen the loan agreement which Mr Reches had informed him entitled the premiums to be paid to Sinclair.

#### **Acting on instructions and explanations from Mr Reches**

60. In August 2013, Mr Bygrave prepared a response to queries raised by the Authority concerning Aderia's conduct and, in particular, the payments of Solicitors' PII premiums from Aderia. Mr Bygrave sent his draft response to Mr Reches for his review, setting out his understanding of the contractual arrangements in place and the flow of funds for these premiums.
61. On 2 September 2013 Mr Reches responded making changes to Mr Bygrave's understanding of the contractual arrangements. Mr Bygrave accepted these changes and updated the document based on Mr Reches' response, without confirming the position himself.
62. The Authority would have expected Mr Bygrave to have considered whether he should be taking explanations from a person who was not approved by the Authority, especially given that the explanations differed from Mr Bygrave's previous understanding and he was the Group Head of Finance. The Authority would have expected Mr Bygrave to have challenged further the arrangements and payments explained to him by Mr Reches.
63. The payments away of Solicitors' PII premiums by Mr Bygrave posed a significant risk to the policyholders and Balva. Sinclair has subsequently failed to provide sufficient funds to cover its liability as reinsurer.
64. Balva's licence to underwrite new UK insurance business was suspended by its regulator in April 2013, and was withdrawn in June 2013. Balva is now in liquidation.
65. The FSCS has declared Balva in default and as a result has already paid £3.8m to cover Solicitors' PII claims. The FSCS has estimated liabilities of £13.8m because of the failure of Balva to meet the claims of Solicitors' PII policyholders.

#### **Early intervention by the Authority and the PRA**

66. During July and August 2013 the Authority and the PRA took early intervention action in relation to the Solicitors' PII arrangements for the 2012/2013 policy

year. As a result of this and other early intervention action, on 23 September 2013 Coverall agreed at the Authority's request to voluntarily vary its Part 4A Permission to cease acting as Aderia's Principal and to cease conducting all insurance business.

67. As a result, on 23 September 2013 Aderia ceased operating as an AR and MGA and Mr Bygrave ceased holding a controlled function.

### **FAILINGS**

68. The regulatory provisions relevant to this Final Notice are referred to in Annex A.
69. Statement of Principle 6 states that an approved person must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his significant influence function.
70. Mr Bygrave was responsible for implementing the finance function at Aderia and was relied upon by other controlled function holders at Aderia to manage Aderia's finances. He was therefore responsible for ensuring Aderia held insurance premiums correctly.
71. Mr Bygrave was led by Mr McIntosh to believe that there was a risk transfer agreement in place for the Solicitors' PII premiums, when there was not. He should have undertaken more detailed scrutiny and established that a risk transfer agreement was not in place. He did not even ask for a copy of the risk transfer agreement, which he believed to be in place, to enable him to establish that it was valid and to understand how Aderia should comply with its terms. Instead, he took comfort from the fact that the premiums were treated in this manner before he joined the Group.
72. Even taking into account his incorrect assumption that a risk transfer agreement was in place for all insurance schemes, Mr Bygrave did not:
- a) address the inconsistency between Solicitors' PII premiums being received in Aderia's current bank account and non-Solicitors' PII premiums being segregated into a client bank account;
  - b) act on Mr McIntosh's and Aderia's auditor's recommendations of checking Aderia's contracts with the insurers and CASS to confirm the risk transfer; and
  - c) obtain a copy of the AR Agreement and therefore did not identify that Aderia was holding client money which was contrary to the terms of the AR Agreement.
73. While the absence of a risk transfer agreement and the failure to segregate arose before Mr Bygrave was approved to perform a controlled function, the arrangements under which Aderia held insurance premiums continued to apply when he was approved to perform the CF1 (Director(AR)) controlled function in July 2013. From this date Mr Bygrave had a regulatory responsibility to ensure that there was a valid risk transfer agreement for the Solicitors' PII premiums in place and therefore he should have exercised due skill, care and diligence by requesting the agreement and ensuring Aderia was, and had been, operating under its terms. As CF1 (Director(AR)) the Authority considers that Mr Bygrave failed to adequately inform himself about the risk transfer agreement and therefore failed to identify that one did not exist.

74. As a result of Mr Bygrave's failings, Aderia did not hold the insurance premiums it received in accordance with CASS, in particular CASS 5.5.19R, CASS 5.5.23R and CASS 5.5.63R. By holding these premiums in Aderia's current bank account, the monies were not segregated as required. The Authority considers that Mr Bygrave's actions posed a significant risk to the policyholders. Had Aderia failed at that point in time, these insurance premiums would have been used to settle Aderia's wider debts, rather than be used exclusively to refund policyholders. Those policyholders may have been exposed to a significant risk that their claims may not have been met, which could have resulted in loss for them. The FSCS has an estimated resulting liability of £13.8m.
75. Mr Bygrave was also responsible for making most, if not all, of the £9.8m of payments from Aderia to third parties. These funds were primarily insurance premiums due to Balva. Mr Bygrave made these payments on behalf of Aderia at the direction of and based upon explanations from Mr Reches.
76. While, due to the timing of the 2012/2013 policy year, the payments from Aderia were made before Mr Bygrave became a controlled function holder, from 4 July 2013 he had a regulatory responsibility to exercise due skill, care and diligence. However, the Authority considers that Mr Bygrave failed to:
- a) address fully, whether Balva was aware of Aderia paying the Solicitors' PII premiums directly to Sinclair, having previously accepted explanations from Mr Reches. These concerns made Mr Reches' explanations implausible and Mr Bygrave failed to test their veracity; and
  - b) inform himself adequately about the arrangements in place between Aderia, Sinclair, Mr Reches and the Group regarding the loan of insurance premiums. Mr Bygrave continued to rely on Mr Reches, in particular when drafting responses to the Authority in August and September 2013 concerning Aderia's conduct and in particular the payments of Solicitors' PII premiums from Aderia. Mr Bygrave set out his understanding of the contractual arrangements, on which basis he had made £9.8m of payments. However, Mr Reches made amendments to this, which Mr Bygrave accepted without taking any steps to understand or test the veracity of the amendments.
77. While he was a significant influence function holder for a short period of time, the Authority considers that Mr Bygrave's failings as CF1 (Director(AR)) are made more serious as a result of his previous knowledge of Aderia's business in his role as Head of Finance during the preceding year. He brought this knowledge and awareness to his role as CF1 (Director(AR)) when he was appointed.

## **SANCTION**

### **Financial penalty**

78. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.
79. The application of the Authority's penalty policy is set out in Annex B to this Notice in relation to Mr Bygrave's breach of Statement of Principle 6.

80. In determining the financial penalty to be attributed to Mr Bygrave's misconduct, the Authority had particular regard to the following matters as applicable:
- a) the need for credible deterrence;
  - b) the nature, seriousness and impact of the breach;
  - c) the risk of consumer detriment as a result of Mr Bygrave's failings; and
  - d) any applicable settlement discount for agreeing to settle at an early stage of the Authority's investigation.
81. The Authority has therefore imposed a financial penalty of £37,400.

### **Prohibition**

82. The Authority has had regard to the guidance in Chapter 9 of EG in considering whether to impose a prohibition order on Mr Bygrave. The Authority has power to prohibit individuals under section 56 of the Act.
83. The Authority considers that Mr Bygrave is not a fit and proper person to perform any significant influence function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm, and that a prohibition order should be imposed on him under section 56 of the Act. This follows from the Authority's findings that Mr Bygrave was in breach of Statement of Principle 6 and that the nature and seriousness of the failures outlined above, demonstrate a serious lack of competence.

### **PROCEDURAL MATTERS**

#### **Decision maker**

84. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.
85. This Final Notice is given under, and in accordance with, section 390 of the Act.

#### **Manner of and time for Payment**

86. The financial penalty must be paid in full by Mr Bygrave to the Authority by no later than 1 February 2018, 24 months from the date of the Final Notice.
87. The financial penalty is to be paid by eight equal instalments of £4,675 per quarter on or by the following dates:
- a) 1 May 2016;
  - b) 1 August 2016;
  - c) 1 November 2016;
  - d) 1 February 2017;
  - e) 1 May 2017;
  - f) 1 August 2017;

g) 1 November 2017;

h) 1 February 2018.

**If the financial penalty is not paid**

88. If all or any of the financial penalty is outstanding on 1 February 2018, the Authority may recover the outstanding amount as a debt owed by Mr Bygrave and due to the Authority.

**Publicity**

89. 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.
90. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

**Authority contacts**

91. For more information concerning this matter generally, contact Paul Howick (direct line: 020 7066 7954 or email [paul.howick@fca.org.uk](mailto:paul.howick@fca.org.uk)) of the Enforcement and Market Oversight Division of the Authority.

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**Bill Sillett**

**Financial Conduct Authority, Enforcement and Market Oversight Division**

## **ANNEX A**

### **RELEVANT STATUTORY AND REGULATORY PROVISIONS**

#### **RELEVANT STATUTORY PROVISIONS**

1. The Authority's statutory objectives, set out in section 1B(3) of the Act, includes the protection of consumers objective.
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.
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 of 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 REGULATORY PROVISIONS**

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

4. The Authority's Statements of Principle and Code of Practice for Approved Persons (APER) have been issued under section 64 of the Act.
5. Statement of Principle 6 states that:  
  
"An approved person performing an accountable significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his accountable function."
6. The Code of Practice for Approved Persons sets out descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle. It also sets out factors which, in the Authority's opinion, are to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.

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

7. 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.

8. 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.

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

9. The Authority's policy in relation to prohibition orders is set out in Chapter 9 of EG.
10. 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.
11. EG 9.4 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. Depending on the circumstances of each case, the Authority may seek to prohibit individuals from performing any class of function in relation to any class of regulated activity, or it may limit the prohibition order to specific functions in relation to specific regulated activities. The Authority may also make an order prohibiting an individual from being employed by a particular firm, type of firm or any firm.
12. EG 9.17 states where the Authority is considering making a prohibition order against an individual other than an individual referred to in EG 9.8 to 9.14, the Authority will consider the severity of the risk posed by the individual, and may prohibit the individual where it considers this is appropriate to achieve one or more of its statutory objectives.
13. EG 9.18 states when considering whether to exercise its power to make a prohibition order against such an individual, the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to, where appropriate, the factors set out in EG 9.9.
14. The relevant factors set out in EG 9.9 are:
  - (1) the matters set out in section 61(2) of the Act.
  - (2) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness).
  - (3) whether, and to what extent, the approved person has:
    - (a) failed to comply with the Statements of Principle issued by the Authority with respect to the conduct of approved persons; or
  - (5) the relevance and materiality of any matters indicating unfitness.
  - (6) the length of time since the occurrence of any matters indicating unfitness.



- (7) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates.
  - (8) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
  - (9) the previous disciplinary record and general compliance history of the individual including whether the Authority, any previous regulator, designated professional body or other domestic or international regulator has previously imposed a disciplinary sanction on the individual.
15. EG 9.12 provides examples of types of behaviour which have previously resulted in the Authority deciding to issue a prohibition order or withdraw the approval of an approved person. The relevant factors set out in EG 9.12 are:
- (4) serious lack of competence.
  - (5) Serious breaches of the Statements of Principle for approved persons, such as failing to make terms of business regarding fees clear or actively misleading clients about fees; acting without regard to instructions; providing misleading information to clients, consumers or third parties; giving clients poor or inaccurate advice; using intimidating or threatening behaviour towards clients and former clients; failing to remedy breaches of the general prohibition or to ensure that a firm acted within the scope of its permissions.

## **DEPP**

16. 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 (please see Annex B).

## **Client Money Rules**

17. The Client Assets section of the Authority's Handbook (CASS) sets out the requirements relating to holding or controlling client assets.
18. CASS 5.1.1R(1) provides:
- "CASS 5.1 to CASS 5.6 apply, subject to (2), (3) and CASS 5.1.3R to CASS 5.1.6R, to a firm that receives or holds money in the course of or in connection with its insurance mediation activity."
19. CASS 5.1.5R provides:
- "Subject to CASS 5.1.5AR money is not client money when:
- (1) it becomes properly due and payable to the firm:
    - (a) for its own account; or
    - (b) in its capacity as agent of an insurance undertaking where the firm acts in accordance with CASS 5.2; or
  - (2) it is otherwise received by the firm pursuant to an arrangement made between an insurance undertaking and another person (other than a firm) by

which that other person has authority to underwrite risks, settle claims or handle refunds of premiums on behalf of that insurance undertaking outside the United Kingdom and where the money relates to that business.”

20. CASS 5.5.5R provides:

“A firm must segregate client money by either:

- (1) paying it as soon as is practicable into a client bank account; or
- (2) paying it out in accordance with CASS 5.5.80R.”

21. CASS 5.5.19R provides:

“A firm must establish and maintain procedures to ensure that client money received by its appointed representatives, field representatives, or other agents of the firm is:

- (1) paid into a client bank account of the firm in accordance with CASS 5.5.5R; or
- (2) forwarded to the firm, or in the case of a field representative forwarded to a specified business address of the firm, so as to ensure that the money arrives at the specified business address by the close of the third business day.”

22. CASS 5.5.23R provides:

“(1) A firm must, on a regular basis, and at reasonable intervals, ensure that it holds in its client bank account an amount which (in addition to any other amount which it is required by these rules to hold) is not less than the amount which it reasonably estimates to be the aggregate of the amounts held at any time by its appointed representatives, field representatives, and other agents.

(2) A firm must, not later than ten business days following the expiry of each period in (1):

- (a) carry out, in relation to each such representative or agent, a reconciliation of the amount paid by the firm into its client bank account with the amount of client money actually received and held by the representative or other agent; and
- (b) make a corresponding payment into, or withdrawal from, the account.”

23. CASS 5.5.63R provides:

“(1) A firm must, as often as is necessary to ensure the accuracy of its records and at least at intervals of not more than 25 business days:

- (a) check whether its client money resource, as determined by CASS 5.5.65R on the previous business day, was at least equal to the client money requirement, as determined by CASS 5.5.66R or CASS 5.5.68R, as at the close of business on that day; and

(b) ensure that:

- (i) any shortfall is paid into a client bank account by the close of business on the day the calculation is performed; or
  - (ii) any excess is withdrawn within the same time period unless CASS 5.5.9R or CASS 5.5.10R applies to the extent that the firm is satisfied on reasonable grounds that it is prudent to maintain a positive margin to ensure the calculation in (a) is satisfied having regard to any unreconciled items in its business ledgers as at the date on which the calculations are performed; and
  - (c) include in any calculation of its client money requirement (whether calculated in accordance with CASS 5.5.66R or CASS 5.5.68R) any amounts attributable to client money received by its appointed representatives, field representatives or other agents and which, as at the date of calculation, it is required to segregate in accordance with CASS 5.5.19R.
- (2) A firm must within ten business days of the calculation in (a) reconcile the balance on each client bank account as recorded by the firm with the balance on that account as set out in the statement or other form of confirmation used by the bank with which that account is held.
  - (3) When any discrepancy arises as a result of the reconciliation carried out in (2), the firm must identify the reason for the discrepancy and correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting systems of the party providing the statement or confirmation and those of the firm.
  - (4) While a firm is unable to resolve a difference arising from a reconciliation, and one record or a set of records examined by the firm during its reconciliation indicates that there is a need to have a greater amount of client money than is in fact the case, the firm must assume, until the matter is finally resolved, that the record or set of records is accurate and either pay its own money into a relevant account or make a withdrawal of any excess."

24. CASS 5.5.80R provides:

"Money ceases to be client money if it is paid:

- (1) to the client, or a duly authorised representative of the client; or
- (2) to a third party on the instruction of or with the specific consent of the client, but not if it is transferred to a third party in the course of effecting a transaction, in accordance with CASS 5.5.34R; or
- (3) into a bank account of the client (not being an account which is also in the name of the firm); or
- (4) to the firm itself, when it is due and payable to the firm in accordance with CASS 5.1.5R (1); or
- (5) to the firm itself, when it is an excess in the client bank account as set out in CASS 5.5.63R (1)(b)(ii)."

## **ANNEX B**

### **PENALTY ANALYSIS**

1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.
2. The application of the Authority's penalty policy is set out below in relation to Mr Bygrave's breach of Statement of Principle 6.

#### **Step 1: disgorgement**

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

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

6. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.
7. The period of Mr Bygrave's breach was from 4 July 2013 to 23 September 2013. As the breach lasted less than a year, Mr Bygrave's relevant income will be the gross amount received during the 12 months preceding the end of the breach; that is, during the period 24 September 2012 to 23 September 2013 (DEPP 6.5B.2G(2)). The Authority considers Mr Bygrave's relevant income for this period to be £198,145.
8. 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%

9. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'.

10. The Authority considers the following factors to be relevant:
  - (a) *The breach caused a significant loss or risk of loss to individual consumers, investors or other market users (DEPP 6.5B.2(G)(12)(a))*: By paying the Solicitors' PII premiums to third parties at the direction of Mr Reches, Mr Bygrave channelled monies away from Balva which was liable to meet claims of policyholders, thus exposing the policyholders to a significant risk of loss. The FSCS has an estimated resulting liability of £13.8m. Whilst the payments were made before he was approved to perform a controlled function, following approval to perform the CF1 (Director(AR)) controlled function, Mr Bygrave continued to rely on explanations provided by Mr Reches and did not take any steps to address differences arising in his understanding of the arrangements in place. He also did not identify the absence of repayment terms for the loan of insurance premiums from Sinclair to the Group, via Aderia.
11. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. The Authority does not consider any of the factors listed in DEPP 6.5B.2G(13) to be relevant.
12. The Authority also considers that the following factors are relevant:
  - (a) whilst Mr Bygrave was only a significant influence function holder for approximately two and a half months, when appointed CF1 (Director(AR)) he had been responsible for managing Aderia's finances for over a year. He therefore already had experience of the operations of Aderia at the date he became a controlled function holder.
  - (b) Mr Bygrave has been a chartered accountant since June 1996 and has since worked in financial accounting or finance roles at a number of entities. At the start of the Relevant Period he had over 17 years of experience as a chartered accountant and therefore the Authority considers him to be an experienced industry professional (DEPP 6.5B.2.G(9)(j)). Mr Bygrave, however, had not worked in the insurance industry since 1998.
13. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 4 and so the Step 2 figure is 30% of £198,145.
14. Step 2 is therefore £59,443.

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

15. 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 to take into account factors which aggravate or mitigate the breach.
16. The Authority does not consider there to be any factors that aggravate the breach.
17. The Authority has considered the nature and extent of the co-operation provided by Mr Bygrave during the course of its investigation. Mr Bygrave has provided proactive, substantive co-operation and taken significant steps to assist the Authority both in respect of his own investigation and in relation to the Authority's

investigations into other related parties. Accordingly, the Authority considers that the Step 2 figure should be reduced by 10%.

18. Step 3 is therefore £53,498.

**Step 4: adjustment for deterrence**

19. 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.
20. The Authority considers that the Step 3 figure of £53,498 represents a sufficient deterrent to Mr Bygrave and others, and so has not increased the penalty at Step 4.
21. Step 4 is therefore £53,498.

**Step 5: settlement discount**

22. 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 Authority and Mr Bygrave reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.
23. Step 5 is therefore £37,400.

**Penalty**

24. The Authority has therefore imposed a total financial penalty of £37,400 (rounded down to the nearest £100) on Mr Bygrave for breaching Statement of Principle 6.