Financial Conduct Authority

PURSUANT TO THE DECISION OF THE UPPER TRIBUNAL ON 6 AUGUST 2015, SEE THE FINAL NOTICE ISSUED ON 8 APRIL 2016

DECISION NOTICE

To:	**Timothy Alan Roberts**	**To:**	**Catalyst Investment Group Limited**
IRN:	**TAR01042**	**FRN:**	**197230**

Address: **68 Lombard Street**
London EC3V 9LJ

Date: **14 August 2013**

1. ACTION

1.1. For the reasons given in this Notice, the Authority has decided to:

(1) withdraw Mr Roberts' approval to perform controlled functions at Catalyst pursuant to section 63 of the Financial Services and Markets Act 2000;

(2) make an order, pursuant to section 56 of the Act, prohibiting Mr Roberts from performing any function in relation to any regulated activities carried on by an authorised person, exempt person or exempt professional firm; and

(3) impose on Mr Roberts a financial penalty of £450,000 pursuant to section 66 of the Act for breaches of Statements of Principle 1 (integrity) and 6 (due skill, care and diligence).

2. SUMMARY OF REASONS

2.1. Mr Roberts was the majority shareholder, director (CF 1) and controlling mind of Catalyst during the relevant period. He was also a director of a Luxembourg entity, ARM.

2.2. Catalyst was the primary distributor of ARM bonds in the UK. ARM bonds are structured products issued by ARM, the underlying assets of which are senior life settlements purchased in the United States. ARM bonds were issued to the public in quarterly tranches from about October 2007 to October 2009. Catalyst promoted and distributed ARM bonds to investment intermediaries and independent financial advisers in the UK, who in turn promoted and sold them to retail investors.

2.3. By 19 November 2007, Mr Roberts had formed the view as a director of ARM that, under Luxembourg law, ARM needed a licence from the Luxembourg financial regulator, the CSSF, to continue to issue the ARM bonds as, inter alia, it fell within the CSSF's interpretation of issuing on a "continuous basis". ARM applied to the CSSF for a licence in July 2009.

2.4. Between July 2009 and June 2010, the CSSF made a series of requests to ARM for further information relating to its application for a licence. On 20 November 2009, the CSSF requested that ARM cease issuing bonds pending a decision on the licence application. On 29 August 2011 (after the relevant period), the CSSF, having indicated to ARM previously that it was minded to reject ARM's application, formally did so. One consequence of the refusal of a licence under Luxembourg law is that the issuer of the bonds must be liquidated.

Statement of Principle 1

2.5. Between 20 November 2009 and 26 May 2010, Mr Roberts failed to act with integrity, in breach of Principle 1, in the following respects:

(1) between 20 November 2009 and 26 May 2010 (when the Authority issued a First Supervisory Notice requiring Catalyst to cease promoting and arranging investments into ARM bonds), Mr Roberts permitted Catalyst to continue to promote bonds purportedly to be issued by ARM, and to arrange for the acceptance of funds from investors without ARM's regulatory position being clearly disclosed to investors, after he had become aware on about 20 November 2009 that the CSSF had told ARM not to issue any further bonds, pending a decision on its application for a licence; and

(2) Mr Roberts approved letters which Catalyst sent to IFAs in December 2009 and to investors in March 2010 which presented an unfair and misleading picture of ARM's regulatory position. The letters suggested that ARM's application for a licence was voluntary, and omitted to disclose the risk of liquidation of ARM if the licence was not obtained. In addition, the March 2010 letter suggested that either obtaining the ARM licence or relocating to Ireland would be quick to achieve. These letters were sent after Mr Roberts became aware in November 2009 that ARM would not be issuing bonds unless and until its licence application was approved.

2.6. Mr Roberts' conduct in this regard demonstrates a reckless disregard for the interests of investors.

Statement of Principle 6

2.7. Mr Roberts also breached Statement of Principle 6 by failing to exercise due skill, care and diligence in managing Catalyst's business over the relevant period in the following respects:

(1) Mr Roberts failed to take reasonable steps to ensure that Catalyst's financial promotions presented a clear, fair and not misleading picture of ARM's regulatory position and of the regulatory risk associated with ARM and the ARM bonds. In particular, he failed to take reasonable steps to ensure the financial promotions disclosed appropriately:

(a) (from 19 November 2007) Catalyst's view that ARM required a licence from the CSSF to issue bonds;

(b) (from 20 November 2009) that ARM would not issue bonds pending authorisation; and

(c) (from 24 December 2009) that one potential consequence for ARM of failing to obtain a licence was liquidation.

These were significant issues giving rise to risks about which investors should have been warned to put them in a position to make an informed decision about whether or not to invest in the ARM bonds; and

(2) Mr Roberts failed to take reasonable steps (until 24 December 2009) to inform Catalyst's compliance officer that ARM took the view it was required to have a licence.

2.8. As a result of Mr Roberts' breaches outlined above, investors in ARM bonds were exposed to risks of which they were not made aware, and may have suffered loss.

2.9. UK retail investors have invested £17.1 million in tranches 9 to 11 of the intended ARM bonds to be distributed by Catalyst. As no further bonds were issued by ARM after October 2009, and the legal ownership of the funds held by third party receiving agents is unclear, these investors are at risk of losing a significant part of their investment. The extent of any loss is currently unknown.

2.10. Mr Roberts' conduct demonstrates that he is not fit and proper in terms of his integrity to be an approved person.

2.11. The Authority considers that the nature and seriousness of Mr Roberts' misconduct warrant the action set out at section 1 above.

3. DEFINITIONS

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

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

"ARM" means ARM Asset Backed Securities SA;

"ARM bonds" mean the ARM Capital Growth Bond and the ARM Assured Income Plan;

"ARM plc" means Assured Risk Mitigation plc;

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

"Catalyst" means Catalyst Investment Group Limited, company number 04031316;

"CSSF" means the Commission de Surveillance du Secteur Financier, the Luxembourg financial regulator;

the "December 2009 letter" means the letter from Catalyst to IFAs of around 30 December 2009;

"DEPP" means the Authority's Decision Procedures and Penalties manual;

"EG" means the Authority's Enforcement Guide;

"Handbook" means the Authority's Handbook of Rules and Guidance;

"IFA" means independent financial adviser;

the "March 2010 letter" means the letter from Catalyst to investors of around 26 March 2010;

"relevant period" means the period from 19 November 2007 to 26 May 2010;

"Statement of Principle" means one of the Statements of Principle issued by the Authority under section 64(1) of the Act (Conduct: Statements and codes) with respect to the conduct of approved persons and set out in the part of the Handbook in High Level Standards which has the title Statements of Principle and Code of Practice for Approved Persons;

"TLPI" means traded life policy investments; and

"Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

4. FACTS AND MATTERS

Background to Catalyst

4.1. Catalyst was incorporated in England and Wales on 11 July 2000. It has been authorised by the Authority since 1 December 2001 to undertake regulated activities.

4.2. Over the relevant period, Catalyst engaged in a wide range of investment business activities, including distributing the ARM bonds into the UK market. The ARM bonds are bonds backed by TLPI; the underlying investment is in US life insurance policies.

4.3. ARM is a Luxembourg incorporated securitisation vehicle which at all material times has not been authorised or regulated by the Authority or any other national regulator. The ARM bonds were listed on the Irish Stock Exchange.

4.4. Catalyst was the primary distributor of ARM bonds in the UK, marketing them to retail investors via investment intermediaries and IFAs, who might give advice

and/or facilitate sales to retail clients. Catalyst did not give advice or sell the ARM bonds directly to retail customers and was not authorised to do so.

4.5. Catalyst designed, approved and distributed to IFAs marketing materials and information about the ARM bonds, in the form of financial promotions. Many of these financial promotions were designed to be passed to prospective retail investors and used to inform the IFAs in order to provide advice to their customers.

4.6. Mr Roberts was Chief Executive, a director and the principal shareholder of Catalyst during the relevant period. Mr Roberts was also a director of ARM from 12 March 2007.

Traded life policy investments and the ARM bonds

4.7. TLPI are products whose underlying investment is in life insurance policies, of which the insureds are typically US citizens. The investor purchases a life insurance policy from the insured person for a lump sum. The investor pays the premiums on the policy for the remainder of the insured's lifetime, and benefits from the insurance payout on the death of the insured.

4.8. TLPI are complex and often high risk investments that the Authority considers to be unsuitable for the mass retail market. Certain of the risks were noted in the materials produced by Catalyst. For example, the ARM brochures stated "*Participation in the [ARM bond] may involve substantial risks and is suitable only for investors who have the knowledge and experience in financial and business matters necessary to enable them to evaluate the risks, tax implications and merits of such an investment*". The brochures listed, among the potential risks of the product: the limited resources of the issuer; limited liquidity and an illiquid market for life insurance policies; the fact that ARM was not regulated; the fact that there had been no independent investigation into the assets backing the ARM bonds; and foreign exchange risk.

4.9. Between 2007 and 2010, ARM offered two types of TLPI bonds, the ARM Capital Growth Bond and the ARM Assured Income Plan, the latter paying regular interest to investors. Funds raised by the bonds were used to purchase TLPI policies. ARM transferred funds raised by the bond issue to a US trust based in Delaware to purchase life insurance policies of insured persons over 65 years old with a life expectancy of between three and 15 years. The policies are held and owned by the US trust.

4.10. The policy issuers (insurers) were required by contract to pay all maturity or sales proceeds of the policies held by the US trust to a "cash entitlement account" controlled by ARM on behalf of the bondholders.

4.11. ARM issued the bonds in tranches. A tranche would open for investment three months before bonds were issued. The tranche would close at the end of the three month period, and the bonds for that tranche would be issued to all those who had invested. The next tranche would then open for investment. ARM bonds were issued to the public in quarterly tranches (tranches 1 to 8) from about October 2007 to October 2009. Catalyst promoted tranches 9 to 11 to IFAs, and arranged for or effected the transfer of funds to the receiving agents pending the issue of tranches 9 to 11 from 1 October 2009 onwards, but the bonds for those tranches were never issued by ARM for the reasons set out below.

4.12. A total of £17.1 million was invested by UK retail consumers, and a further £1.2 million, US$1.3 million and €1.9 million was invested outside the UK, in tranches

9 to 11, even though no ARM bonds were issued for these tranches. The majority of these funds is still held in the accounts of the receiving agents, though some of the tranche 9 funds were sent to ARM and subsequently dispersed (including by making interest payments to investors in tranches 9 to 11 of £2 million).

Interaction with the Luxembourg financial regulator

4.13. Luxembourg law provides that securitisation undertakings which issue securities to the public on a continuous basis must be licensed by the Luxembourg financial regulator, the CSSF. One consequence of the CSSF refusing a securitisation undertaking's application for a licence is the liquidation of that firm.

4.14. Mr Roberts had formed the view by 19 November 2007, as a director of ARM, that ARM needed a licence from the CSSF to continue to issue bonds as it fell within the CSSF's interpretation of the definition of securitisation undertaking, inter alia because it issued bonds more than three times per year.

4.15. On that date, ARM engaged lawyers to apply to the CSSF for a licence, but no progress appears to have been made. On 9 July 2009, the CSSF wrote to ARM requesting it to provide information to enable the CSSF to assess whether ARM's activities required a licence. ARM responded on 16 July 2009 that it believed its activities did need a licence from the CSSF, as it issued bonds to the public on a continuous basis. On 23 July 2009, ARM belatedly submitted an application for a licence to the CSSF.

4.16. From this date, the CSSF made several requests for information to ARM about its business model and particularly the risks to investors posed by the bonds and the asset class.

4.17. On 1 October 2009, ARM issued the bonds which underlay tranche 8. It then opened tranche 9 for investment. On 20 November 2009, ARM was requested by the CSSF not to issue any more bonds, pending a decision from the CSSF on ARM's application for a licence.

4.18. Between 1 October 2009 (the date of issue of the last tranche of ARM bonds) and 26 May 2010 (when the Authority issued a First Supervisory Notice requiring Catalyst to cease promoting and arranging investments into ARM bonds), Catalyst arranged or effected the remittance of £17.1 million of UK investors' funds for intended tranches 9 to 11 of the ARM bonds. A significant proportion of those funds has not been returned to investors.

4.19. By 24 December 2009, Mr Roberts became aware that one potential consequence of ARM failing to obtain a licence was ARM's liquidation. Also on that date Catalyst's compliance officer became aware of the view that ARM required a licence.

4.20. On 9 June 2010, Catalyst notified the Authority that ARM had learned that the CSSF was minded to refuse its application for a licence but to allow ARM to transfer its operations to another jurisdiction, rather than issue a formal refusal.

Potential transfer of ARM's operations to Ireland

4.21. In early 2010, ARM decided to explore transferring its operations to Ireland, in parallel with continuing to seek a licence in Luxembourg. In January 2010, lawyers were instructed in Ireland to set up a "section 110 company" (that is, a company falling within the definition of section 110 of the Irish Taxes and Consolidation Act 1997) for this purpose. A section 110 company would normally

be exempt from any requirement to be authorised by the Irish financial regulator in order to issue bonds. However, the section 110 company would still require approval from the Irish financial regulator for its prospectus and other aspects of its operation.

4.22. ARM plc was incorporated in Ireland and was intended to take over ARM's contracts with its various counterparties. The plan was for ARM's existing bondholders to exchange their ARM bonds for identical bonds to be issued by ARM plc.

4.23. By the end of the relevant period, ARM's operations had not been transferred to Ireland and this has not since been achieved. Trading in ARM securities was suspended and, on 29 August 2011, the CSSF issued its decision refusing ARM a licence. ARM has appealed that decision.

4.24. The position of investors is unclear: the pending investors in tranches 9 to 11 risk losing some or all of their investment, pending a decision on legal ownership of the funds. The position of the investors in tranches 1 to 8 is also unclear. They may lose some or all of their investment. None of the investors is currently receiving interest.

Financial promotions

4.25. At all material times since November 2007, the marketing brochures for ARM bonds issued by ARM and approved by Catalyst included the following statement:

> *"ARM is not regulated by the Financial Services Authority or any other regulator. This means that compensation will not be available from the Financial Services Compensation Scheme ("FSCS") if ARM is unable to meet its liabilities on the [bond] and you will not be able to refer a complaint against ARM to the Financial Ombudsman Service."*

4.26. This statement was correct but it was incomplete. At all times the brochures omitted to mention the full regulatory position: that ARM did not have a licence from the CSSF, but considered that it required one. The financial promotions issued after 20 November 2009 also did not state that ARM would not issue further bonds until its licence application had been successfully determined. Further, the financial promotions issued after 24 December 2009 did not disclose that one potential consequence for ARM (and investors) of ARM failing to obtain a licence was that ARM would be liquidated. In the circumstances the financial promotions were not clear, fair and not misleading, and gave an inaccurate picture of ARM's regulatory position.

Letters from Catalyst to IFAs and investors

4.27. On or about 30 December 2009, Catalyst wrote a letter to all IFAs who had sold the ARM bonds to customers. The December 2009 letter stated that:

> "*We are pleased to advise you that in order to offer investors further reassurance in this current climate, ARM… has made the decision to apply for authorisation from the…CSSF... Luxembourg's equivalent to the FSA in the UK* …
>
> *This process is in its final stages…The next issue date will be sometime before the 31st March 2010 although it is expected to be 1st February 2010*."

4.28. The December 2009 letter did not state that ARM was required to have a licence from the CSSF, nor the potential consequences should it fail to obtain one, which included the liquidation of ARM. It gave a latest date for the next issue of ARM bonds although ARM and Catalyst could not be certain whether or when further bonds could be issued.

4.29. On 26 March 2010, Catalyst wrote to investors in tranches 9 to 11 of the ARM bonds. The March 2010 letter informed investors of the interest which would be paid into their account for the preceding quarter. It went on to state:

> "*ARM is in the process of making some changes to its corporate structure which ARM believes will be in the best interests of the bondholders. As you are aware, the ARM Programme is listed on the Irish Stock Exchange and we are instructed that the ARM Board believes that it is advantageous for ARM to be either regulated in Luxembourg or have the issuer domiciled in Ireland, under the same organisation. ARM will initiate its next issue once these changes have been completed. We have been advised by ARM that it anticipates that this will take place shortly.*"

4.30. The March 2010 letter suggested that obtaining authorisation in Luxembourg was voluntary and did not state Catalyst's view that ARM required a licence from the CSSF in order to issue bonds in Luxembourg, nor the potential consequences for ARM should it fail to obtain one. It also suggested that the possible alternative of domicile in Ireland would be merely "advantageous", when in fact it would be essential in order to avoid the risk of ARM being liquidated in the event that the CSSF was not prepared to grant a licence in Luxembourg. It suggested that either alternative could be achieved quickly.

Mr Roberts' role

4.31. Mr Roberts was Chief Executive at Catalyst and he held controlled function 1 (director) throughout the relevant period. He was also one of the three directors of ARM and he formed the view by 19 November 2007, as a director of ARM, that ARM was required to be licensed by the CSSF. Mr Roberts took a close interest in the management of Catalyst and was involved in all major decisions. He approved documents and correspondence sent out by Catalyst, and exercised close oversight over compliance issues. The other directors deferred to him on significant issues and were careful not to exceed the limits of their authority. As the principal shareholder of Catalyst, Mr Roberts also stood to benefit from the income it derived from distributing and administering the ARM bonds.

4.32. Mr Roberts was the primary source of information available to Catalyst about the need for ARM to be licensed, the likelihood of a licence being granted and the potential consequences if it were not. The other officers and staff relied on Mr Roberts' statements and assurances in this regard.

4.33. Mr Roberts appears to have believed that ARM would definitely obtain a licence or, failing that, transfer the business to Ireland, and that the licence would be granted or the transfer achieved within a short period. He communicated this belief to other directors and managers at Catalyst. Mr Roberts also gave assurances to the Catalyst management team in February 2010 that there was no longer any risk of ARM being liquidated if its licence application was refused. There was no reasonable basis for this assurance.

4.34. It was not reasonable for Mr Roberts to consider that the licensing or transfer would definitely be achieved. There were many indications that the CSSF and Irish regulators had concerns about ARM such that it was not clear that the

licence (or transfer) would be achieved. Notwithstanding Mr Roberts' apparent belief that a licence would be granted or that a transfer to Ireland would be effected, this did not justify him in withholding from investors Catalyst's view that ARM required a licence from the CSSF to issue bonds in Luxembourg, which it did not have. Investors were therefore not fully informed about the risks associated with investing in ARM bonds before the regulatory position had been resolved or the transfer to Ireland completed. Mr Roberts should have recognised that Catalyst's financial promotions and communications with investors needed to reflect ARM's regulatory position so that investors were aware of the potential risks.

4.35. Mr Roberts was responsible, as director and Chief Executive of Catalyst, for taking reasonable steps to ensure that Catalyst's financial promotions were clear, fair and not misleading. In practice, Mr Roberts was responsible for providing final approval for Catalyst's financial promotions.

4.36. Mr Roberts failed to consider, at any time from 19 November 2007, by when he had formed the view that ARM required a licence from the CSSF, whether it was appropriate for the financial promotions, such as brochures Catalyst had approved on behalf of ARM, to remain in use by IFAs or whether they should be amended to reflect ARM's regulatory position. In particular, he did not reassess or amend the financial promotions after 20 November 2009, following the CSSF's request to ARM to cease issuing bonds, or after 24 December 2009, by which date he had become aware that one potential consequence, if ARM did not obtain a CSSF licence, was the liquidation of ARM.

4.37. Mr Roberts also approved letters sent to IFAs and investors which were not clear, fair and not misleading. Mr Roberts was the signatory to the December 2009 letter. The letter was misleading as it suggested that ARM did not have to obtain a licence and that this was optional rather than required by the CSSF. Mr Roberts also approved the March 2010 letter although he did not sign it. He should have taken reasonable steps to ensure that letters sent from Catalyst to IFAs and investors were accurate and not misleading.

4.38. When, on 20 November 2009, the CSSF requested ARM to cease issuing bonds pending approval of its licence application, Mr Roberts should have ensured Catalyst stopped promoting ARM bonds and arranging for the acceptance of funds for tranches 9 to 11, when investors had not been made fully aware of the risks. His conduct in not doing so demonstrates a reckless disregard for the interests of investors.

5. FAILINGS

5.1. The statutory and regulatory provisions and policy relevant to this Decision Notice are referred to in Annex A.

Statement of Principle 1

5.2. Mr Roberts failed to act with integrity in carrying out his controlled function at Catalyst.

5.3. As the Chief Executive and major shareholder of Catalyst, Mr Roberts was personally involved in and bears primary responsibility for Catalyst's continuing to promote ARM bonds, and arrange for ARM to receive investor funds, from 20 November 2009 until 26 May 2010 without ARM's regulatory position being clearly disclosed to investors. He was aware that sales were continuing on this basis and it appears he ignored questions raised by other members of Catalyst's

management as to the appropriateness of continuing to sell ARM bonds after November 2009. In doing so, Mr Roberts demonstrated a reckless disregard for the interests of investors.

5.4. Mr Roberts approved and signed the December 2009 letter. This letter was misleading as it implied that authorisation from the CSSF was voluntary rather than mandatory. It also omitted to disclose the risk of liquidation of ARM if the licence was not obtained. In approving this letter, which did not give a clear, fair and not misleading picture of ARM's regulatory position and the risks of investing, after the CSSF had requested ARM in November 2009 not to issue bonds unless and until its licence application was approved, Mr Roberts demonstrated a reckless disregard for the interests of investors.

5.5. Mr Roberts also approved the March 2010 letter. Like the December 2009 letter, this letter did not state that ARM was required under Luxembourg law to be authorised in order to issue bonds, nor did it refer to the potential consequences of its application for authorisation being unsuccessful. It also gave the incorrect impression that the alternative of a transfer to Ireland was bound to succeed and that the changes (either CSSF authorisation or a transfer to Ireland) would be quick to achieve. The March 2010 letter did not give a clear, fair and not misleading picture of ARM's regulatory position and the risks of investing. This again evidences a reckless disregard by Mr Roberts for the interests of investors.

5.6. As a result of these matters, Mr Roberts has demonstrated a lack of integrity.

Statement of Principle 6

5.7. Mr Roberts breached Statement of Principle 6 by failing to exercise due skill, care and diligence in managing Catalyst's business over the relevant period, as follows.

Financial promotions

5.8. Mr Roberts failed to take reasonable steps over the relevant period when considering and approving the financial promotions distributed by Catalyst in relation to ARM bonds to ensure that these presented a clear, fair and not misleading picture of ARM's regulatory position and of the regulatory risk associated with ARM and the ARM bonds. In particular, he failed to take reasonable steps to ensure the financial promotions disclosed appropriately:

(1) (from 19 November 2007) Catalyst's view that ARM required a licence from the CSSF to issue bonds;

(2) (from 20 November 2009) that ARM would not issue bonds pending authorisation; and

(3) (from 24 December 2009) that one potential consequence for ARM of failing to obtain a licence was liquidation.

These were significant risks about which investors should have been warned to put them in a position to make an informed decision about whether or not to invest in the ARM bonds.

Dealings with Catalyst's compliance officer

5.9. Mr Roberts failed to take reasonable steps during the relevant period until 24 December 2009 to inform Catalyst's compliance officer that ARM took the view it was required to have a licence under Luxembourg law.

5.10. By failing to exercise due skill, care and diligence in regard to these matters, Mr Roberts breached Statement of Principle 6.

Fitness and propriety

5.11. By reason of these matters, the Authority considers that Mr Roberts is not a fit and proper person because he lacks integrity.

6. SANCTION

Financial penalty

6.1. The Authority's policy in relation to the imposition of a financial penalty is set out in Chapter 6 of DEPP which forms part of the Authority's Handbook. The regulatory provisions governing the determination of financial penalties changed on 6 March 2010, and the Authority has had regard to the fact that part of Mr Roberts' misconduct occurred after the new provisions came into force. However, as the majority of Mr Roberts' misconduct occurred before that change, the Authority has applied the penalty regime as set out in DEPP that was in place up to 5 March 2010. All references to DEPP in this section are references to the version that was in force up to and including 5 March 2010. The relevant provisions are set out in detail in Annex A.

6.2. The Authority has also had regard to the provisions of Chapter 7 of EG.

6.3. In determining whether a financial penalty is appropriate, the Authority is required to consider all the relevant circumstances of the case. DEPP 6.5.2G sets out a non-exhaustive list of factors which may be relevant to determining the appropriate level of financial penalty. The Authority considers that the following factors are particularly relevant in this case.

Deterrence: DEPP 6.5.2G(1)

6.4. When determining the level of penalty, the Authority has regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

The nature, seriousness and impact of the breach in question: DEPP 6.5.2G(2)

6.5. The Authority has had regard to the seriousness of the breaches, the duration of the breaches and the risk of loss to consumers. The Authority considers Mr Roberts' breaches to be serious particularly in light of the risk of consumer loss as a result of the breaches and the length of time over which the breaches occurred.

The extent to which the breach was deliberate or reckless: DEPP 6.5.2G(3)

6.6. The Authority considers that Mr Roberts was reckless in allowing Catalyst to continue promoting the ARM bonds and arranging for the acceptance of investors'

funds without due disclosure of ARM's regulatory position after ARM had been told by the CSSF to cease issuing bonds, and in approving misleading letters to IFAs in December 2009 and to investors in March 2010 (and in the case of the former letter, signing it off).

Whether the person on whom the penalty is to be imposed is an individual: DEPP 6.5.2G(4)

6.7. Notwithstanding that he is an individual, in the light of Mr Roberts' seniority and his central role at Catalyst, including having responsibility for approving its communications with IFAs and investors, and his knowledge as a director of ARM, the Authority regards his breaches as serious.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2G(5)

6.8. Mr Roberts appears to have significant financial resources and the Authority does not consider that the proposed financial penalty would cause him serious financial hardship.

The amount of benefit gained or loss avoided: DEPP 6.5.2G(6)

6.9. As the main shareholder of Catalyst, Mr Roberts benefitted directly from the profit Catalyst made. Catalyst received significant benefits as a result of continuing to promote ARM bonds whilst ARM applied for its licence. Catalyst earned approximately £4.68 million gross profit in the year ending 31 December 2009, and £3.75 million gross profit in the year ending 31 December 2010, through commission on the ARM bonds and a monthly service charge received from ARM.

6.10. Mr Roberts appears to have received very substantial benefits from Catalyst, either directly or indirectly via other companies he owned, in the relevant period.

Conduct following the breach DEPP: 6.5.2G(8)

6.11. Mr Roberts did not take steps to mitigate the risks posed to customers, once he became aware of the Authority's concerns about the continuing promotion of ARM bonds. On 9 April 2010 the Authority requested Catalyst voluntarily to vary its Part IV permission to cease promoting ARM bonds to customers, pending the CSSF's decision on whether to grant ARM a licence. Catalyst refused to do so and continued to promote the ARM bonds until the Authority used its own initiative powers to prevent this. As Catalyst's controlling mind, Mr Roberts was responsible for this decision.

Other action taken by the Authority: DEPP 6.5.2G(10)

6.12. In determining the level of financial penalty, the Authority has taken into account penalties imposed on other approved persons for similar breaches.

6.13. Having considered all the circumstances set out above, the Authority considers that £450,000 is the appropriate financial penalty to impose on Mr Roberts.

Withdrawal of approval and prohibition

6.14. Given the nature and seriousness of the failures outlined above, the Authority considers that Mr Roberts' conduct demonstrated a lack of integrity, such that he is not fit and proper to perform functions in relation to any regulated activities carried on by an authorised person, exempt person or exempt professional firm.

In particular, Mr Roberts showed a reckless disregard for the interests of investors.

6.15. The Authority considers it appropriate and proportionate in all the circumstances to withdraw the approval given to Mr Roberts to perform the controlled function CF1 at Catalyst because he is not fit and proper to perform that function. The Authority also considers Mr Roberts should be prohibited from performing any function in relation to any regulated activities carried on by an authorised person, exempt person or exempt professional firm because he is not a fit and proper person in terms of his integrity.

6.16. The Authority has had regard to the guidance in Chapter 9 of EG in proposing that Mr Roberts' approval be withdrawn and that he be prohibited from performing any function in relation to regulated activities. The relevant provisions of EG are set out in Annex A.

7. REPRESENTATIONS

7.1. Annex B contains a brief summary of the key representations made by:

(1) Mr Roberts; and

(2) ARM, a third party identified in the reasons set out in this Notice, and to whom in the opinion of the Authority the matter is prejudicial

and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by Mr Roberts and ARM, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

Decision maker

8.1. The decision which gave rise to the obligation to give this Decision Notice was made by the Regulatory Decisions Committee.

8.2. This Decision Notice is given to Mr Roberts under sections 57, 63 and 67 and in accordance with section 388 of the Act. It is given to Catalyst pursuant to section 63 of the Act and in accordance with section 388 of the Act. The following statutory rights are important.

The Tribunal

8.3. Mr Roberts and Catalyst have the right to refer the matter to which this Decision Notice relates to the Upper Tribunal (the "Tribunal"). Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Roberts and Catalyst have 28 days from the date on which this Decision Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's address is: The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (tel: 020 7612 9700; email financeandtaxappeals@tribunals.gsi.gov.uk). Further details are contained in "Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)" which is available from the Upper Tribunal website:

http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm

8.4. Mr Roberts and Catalyst should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Rebecca Irving at the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Access to evidence

8.5. Section 394 of the Act applies to this Decision Notice. Mr Roberts and Catalyst have the right to access:

(1) the material upon which the Authority has relied in deciding to give this Notice; and

(2) the secondary material which, in the opinion of the Authority, might undermine that decision. There is no such material.

Confidentiality and publicity

8.6. This Decision Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). Section 391 of the Act provides that neither Mr Roberts nor Catalyst may publish the Notice or any details concerning it unless the Authority has published the Notice or those details.

8.7. However, the Authority must publish such information about the matter to which a Decision Notice or Final Notice relates as it considers appropriate. Mr Roberts and Catalyst should be aware, therefore, that the facts and matters contained in this Notice may be made public.

Third party rights

8.8. A copy of this Notice is being given to ARM as a third party identified in the reasons above and to whom in the opinion of the Authority the matter is prejudicial. That party has similar rights of representation and access to material in relation to the matter which identifies it.

Contacts

8.9. For more information concerning this matter generally, contact Rebecca Irving at the Financial Conduct Authority (direct line: 020 7066 2334 or by email rebecca.irving@fca.org.uk).

Andrew Long

Acting Chairman, Regulatory Decisions Committee

Annex A

Relevant regulatory provisions

1. The Act

1.1. The Authority's operational objectives are set out in section 1B of the Act and include securing an appropriate degree of protection for consumers.

1.2. Section 56 of the Act provides that the Authority may make a Prohibition Order if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to any regulated activity carried on by an authorised person. Such an order may relate to a specific regulated activity, an activity falling within a specified description or all regulated activities.

1.3. Section 63 of the Act provides that the Authority may withdraw its approval to carry out a controlled function if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.

1.4. Section 66 of the Act provides that the Authority may take action against a person if he is guilty of misconduct. If the Authority takes action under this section, it may impose a penalty on the person in such amount as it considers appropriate. The Authority may not take action under this section after the end of the period of three years beginning with the first day on which the Authority knew of the misconduct, unless proceedings in respect of it against the person concerned were begun before the end of that period.

2. The Statements of Principle and APER

2.1. APER, the part of the Authority's Handbook entitled "Statements of Principle and Code of Practice for Approved Persons", sets out the Statements of Principle as they relate to approved persons and descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle. It further describes factors which, in the opinion of the Authority, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle. All references to APER in this section are references to the version that was in force during the relevant period.

2.2. APER 3.1.3G states that when establishing compliance with or a breach of a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.

2.3. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle where he is personally culpable, that is in a situation where his conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.

2.4. APER 3.1.6G provides that APER (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not exhaustive of the kind of conduct that may contravene the Statements of Principle.

2.5. The Statements of Principle relevant to this matter are:

(1) Statement of Principle 1, which provides that an approved person must act with integrity in carrying out his controlled function; and

(2) Statement of Principle 6, which provides that an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function.

2.6. APER 4.1 sets out examples of conduct which does not comply with Statement of Principle 1.

2.7. APER 4.1.3E provides that deliberately misleading (or attempting to mislead) a client, by act or omission, does not comply with Statement of Principle 1. This behaviour includes, but is not limited to:

(1) misleading a client about the risks of an investment (APER 4.1.4E(2)); and

(2) deliberately failing to inform, without reasonable cause, a customer of the fact that their understanding of a material issue is incorrect, despite being aware of their misunderstanding (APER 4.1.6E).

2.8. APER 3.1.8G provides, in relation to applying Statements of Principle 5 to 7, that the nature, scale and complexity of the business under management and the role and responsibility of the individual performing a significant influence function within the firm will be relevant in assessing whether an approved person's conduct was reasonable.

2.9. APER 3.3.1E states that in determining whether or not the conduct of an approved person performing a significant influence function complies with Statements of Principle 5 to 7, the following are factors which, in the opinion of the Authority, are to be taken into account:

(1) whether he exercised reasonable care when considering the information available to him;

(2) whether he reached a reasonable conclusion which he acted on;

(3) the nature, scale and complexity of the firm's business;

(4) his role and responsibility as an approved person performing a significant influence function; and

(5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.

2.10. APER 4.6 lists types of conduct which, in the opinion of the Authority, do not comply with Statement of Principle 6. APER 4.6.11G states that an approved person performing a significant influence function will not always manage the business on a day to day basis himself. The extent to which he does so will depend on a number of factors, including the nature, scale and complexity of the business and his position within it. When issues come to his attention, he should deal with them in an appropriate way.

3. FIT

3.1. The part of the Authority Handbook entitled "FIT" sets out the Fit and Proper Test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. These criteria are also relevant in assessing the continuing fitness and propriety of an approved person.

3.2. FIT 1.3.1G provides that the Authority will have regard to a number of factors when assessing a person's fitness and propriety. One of the considerations will be the person's honesty, integrity and reputation.

3.3. As set out in FIT 2.1, in determining a person's honesty, integrity and reputation, the Authority will have regard to matters including but not limited to:

(1) whether the person's reputation might have an adverse impact on the firm for which the controlled function is to be performed and the person's responsibilities (FIT 2.1.2G);

(2) whether the person has been the subject of , or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by the Authority or other regulatory bodies (FIT 2.1.3G(3));

(3) whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or of any investigation which might lead to those proceedings (FIT 2.1.3G(4));

(4) whether the person has contravened any of the requirements or standards of the regulatory system (FIT 2.1.3G(5)); and

(5) whether the person, or any business with which the person has been involved, has been investigated, disciplined, censured or suspended or criticised by a regulatory or professional body, a court or Tribunal, whether publicly or privately (FIT 2.1.3G(10)).

4. DEPP

4.1. Guidance on the Authority's approach to penalties is set out in DEPP. DEPP came into effect on 28 August 2007.

4.2. The Authority's policy on the imposition and amount of penalties that applied for misconduct is set out in Chapter 6 of DEPP. DEPP is being applied as it stood prior to 6 March 2010 for the reasons set out in the body of this Notice. All references to DEPP in this section are references to the version that was in force up to and including 5 March 2010.

4.3. DEPP 6.1.2G provides that the principal purpose of imposing a financial penalty or public censure is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour. Financial penalties are therefore tools that the Authority may employ to help it to achieve its regulatory objectives.

Financial penalty

4.4. DEPP 6.5.1G(1) provides that the Authority will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned.

4.5. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act. The following factors are relevant to this case:

Deterrence: DEPP 6.5.2G(1)

4.6. When determining the appropriate level of financial penalty, the Authority will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

The nature, seriousness and impact of the breach in question: DEPP 6.5.2G(2)

4.7. The Authority will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached, which can include considerations such as the duration and frequency of the breach, whether the breach revealed serious or systemic weaknesses in the person's procedures or of the management systems or internal controls relating to all or part of a person's business and the loss or risk of loss caused to consumers, investors or other market users.

The extent to which the breach was deliberate or reckless: DEPP 6.5.2G(3)

4.8. The Authority will regard as more serious a breach which is deliberately or recklessly committed, giving consideration to factors such as whether the person has given no apparent consideration to the consequences of the behaviour that constitutes the breach. If the Authority decides that the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case.

Whether the person on whom the penalty is to be imposed is an individual: DEPP 6.5.2G(4)

4.9. The Authority will take into account that individuals will not always have the resources of a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than a body corporate. The Authority will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2G(5)

4.10. The degree of seriousness of a breach may be linked to the size of the firm. For example, a systemic failure in a large firm could damage or threaten to damage a much larger number of consumers or investors than would be the case with a small firm: breaches in firms with a high volume of business over a protracted

period may be more serious than breaches over similar periods in firms with a smaller volume of business.

4.11. In addition, the size and resources of a person may be relevant in relation to mitigation, in particular what steps the person took after the breach had been identified; the Authority will take into account what it is reasonable to expect from a person in relation to its size and resources, and factors such as what proportion of a person's resources were used to resolve a problem.

The amount of benefit gained or loss avoided: DEPP 6.5.2G(6)

4.12. The Authority may have regard to the amount of benefit gained or loss avoided as a result of the breach, for example:

(1) The Authority will propose a penalty which is consistent with the principle that a person should not benefit from the breach; and

(2) The penalty should also act as an incentive to the person (and others) to comply with regulatory standards and required standards of market conduct.

Conduct following the breach: DEPP 6.5.2G(8)

4.13. The Authority may take into account the conduct of the person in bringing (or failing to bring) quickly, effectively and completely the breach to the Authority's attention, the degree of cooperation the person showed during the investigation and any remedial steps taken since the breach was identified, including whether these were taken on the person's own initiative or that of the Authority.

Other action taken by the Authority (or a previous regulator): DEPP 6.5.2G(10)

4.14. The Authority seeks to apply a consistent approach to determining the appropriate level of penalty. The Authority may take into account previous decisions made in relation to similar misconduct.

5. Enforcement Guide

5.1. The Authority's policy on exercising its enforcement power is set out in EG, which came into effect on 28 August 2007. The Authority's approach to exercising its powers to make prohibition orders and withdraw approvals is set out at Chapter 9 of EG.

5.2. EG 9.1 states that the Authority's power to make prohibition orders under section 56 of the Act helps it work towards achieving its regulatory objectives. The Authority may exercise this power where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any function in relation to regulated activities or to restrict the functions which he may perform.

5.3. EG 9.2 states that the Authority's effective use of the power under section 63 of the Act to withdraw approval from an approved person will also help to ensure high standards of regulatory conduct by preventing an approved person from continuing to perform the controlled function to which the approval relates if he is not a fit and proper person to perform that function. Where it considers this is appropriate, the Authority may prohibit an approved person, in addition to withdrawing their approval. EG 9.3 states that the Authority will consider all

relevant circumstances in deciding whether to make a prohibition order and/or to withdraw approval.

5.4. EG 9.4 sets out the general scope of the Authority's powers in this respect, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. EG 9.5 provides that the scope of a prohibition order will vary according to the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk posed by him to consumers or the market generally.

5.5. In circumstances where the Authority has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provides guidance. In particular, EG 9.8 states that the Authority may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw that person's approval or both. In deciding whether to withdraw approval and/or make a prohibition order, the Authority will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.

5.6. EG 9.9 states that the Authority will consider all the relevant circumstances when deciding whether to make a prohibition order against an approved person and/or to withdraw that person's approval. Such circumstances may include, but are not limited to, the following factors:

(1) whether the individual is fit and proper to perform functions in relation to regulated activities, including in relation to the criteria set out in FIT;

(2) the relevance and materiality of any matters indicating unfitness;

(3) the length of time since the occurrence of any matters indicating unfitness;

(4) 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;

(5) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and

(6) the previous disciplinary record and general compliance history of the individual.

5.7. EG 9.12 provides a number of 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.

5.8. EG 9.23 provides that in appropriate cases the Authority may take other action against an individual in addition to making a prohibition order and/or withdrawing its approval, including the use of its power to impose a financial penalty.

Annex B

Representations

1. Mr Roberts' representations

Health

1.1. Mr Roberts made the following representations:

(1) It would be unfair to issue a Decision Notice against him because he was in such poor health that it was not possible for him properly to participate in the process; for example, he was not well enough to be interviewed by the Authority during the course of its investigation, to respond to the Authority's Investigation Report before the issue to him of the Warning Notice or to give detailed instructions to his representatives as to factual matters. For that reason, his representations were largely based on his broad instructions and his legal representatives' review of the documentary evidence. (In this Decision Notice, references to Mr Roberts' representations are to those made on that basis.)

(2) His health during the relevant period prevented him from taking as full a part in the affairs of Catalyst as he might otherwise have done.

1.2. The Authority has reached the following conclusions:

(1) Mr Roberts has a number of serious health issues, and the Authority previously delayed the hearing of oral representations at his request on health grounds. However, the evidence produced by Mr Roberts does not indicate that his condition is sufficiently serious to warrant either a discontinuance or a further stay of the Authority's process against him, and his legal representatives have had the opportunity fairly to represent his position.

(2) While it accepts that Mr Roberts suffered from ill health throughout the relevant period, there is no evidence that Mr Roberts was not fully engaged with the affairs of Catalyst.

Time bar

1.3. Mr Roberts made representations in relation to the time limit for taking action against a person under section 66 of the Act. Section 66(4) provides that the Authority may not take action against a person under that section in respect of misconduct more than three years after the first day on which it knew of the misconduct, unless proceedings had been begun before the end of that period. Mr Roberts made representations that, by 1 July 2009, the Authority knew that ARM required a licence from the CSSF to issue bonds on a continuous basis and had reviewed Catalyst's financial promotions as part of its supervisory work, and therefore had knowledge of the facts from which the alleged misconduct could be inferred. He argued that the Warning Notice, issued to him on 11 July 2012, was issued more than three years after the Authority acquired the relevant knowledge and accordingly was out of time.

1.4. The Authority has reached the conclusion that, in fact, the earliest that it could have been aware of ARM's requirement for a licence (and therefore could have inferred certain of the misconduct) was on 16 July 2009 (when ARM confirmed to

the CSSF that it required a licence). Accordingly, the Warning Notice was issued within the three year limit.

Scope of investigation

1.5. Mr Roberts made representations that the original scope of the Authority's investigation into his conduct was for the period from June 2009 onwards; and the Authority did not allege a lack of integrity on his part before the issue of its Preliminary Investigation Report in March 2012. It was unfair to rely on misconduct occurring before June 2009, or to allege a lack of integrity.

1.6. The Authority has reached the conclusion that the period to which the investigation originally related was not restricted to matters occurring in and after June 2009, and that this, together with the issue of integrity (as to which the Authority's understanding developed over time), was adequately set out in the Memorandum of Appointment of Investigators and the subsequent Notice of Change of Scope of Investigation.

Continuing to promote ARM bonds and arrange for ARM to receive investor funds

1.7. Mr Roberts made the following representations:

(1) He relied on the following matters in considering that it was appropriate for Catalyst to continue promoting ARM bonds and arranging for ARM to receive investor funds while knowing that ARM did not have a licence from the CSSF and had been requested by the CSSF not to issue any bonds until the position was resolved:

(a) the CSSF was aware that ARM was continuing to accept funds, and did not instruct it to stop;

(b) Catalyst was acting in accordance with legal advice, obtained in January 2010 by others within Catalyst, to the effect that it was a commercial decision for Catalyst whether to continue to promote ARM funds, rather than a regulatory issue; and

(c) none of the other directors of ARM or Catalyst's Head of Legal objected to this course of action.

(2) He expected ARM's regulatory issues to be resolved shortly, in one of the following ways:

(a) the CSSF would shortly grant ARM's licence application. He based this expectation on, inter alia, encouraging indications from the CSSF; or

(b) it would be possible for ARM to relocate to Ireland without any undue hurdle. He based this expectation, inter alia, on legal advice received in Ireland to the effect that there was no requirement for authorisation. He argued that the Authority later revised its First Supervisory Notice to try to facilitate this, which demonstrated that the Authority must have considered this to be possible.

(3) He should not be considered culpable for any loss suffered by investors who had not taken up the offer, made to pending investors in tranches 9 to 11 in September 2010, to withdraw their funds and receive a full refund.

1.8. The Authority has reached the following conclusions:

(1) In relation to the matters on which Mr Roberts stated he relied:

(a) whether or not the CSSF was aware or content that ARM was continuing to receive funds, that would not have absolved Mr Roberts of his personal responsibilities as a director of Catalyst;

(b) there is no clear documentary evidence of the instructions given to the lawyers who advised on this issue, and no documentary evidence of the advice itself or how it was reported to Mr Roberts. Accordingly it is unclear on what premises the advice was sought, given, or presented to Mr Roberts and little weight can be attached to the fact that advice was obtained; and

(c) as a director of both ARM and Catalyst, and the Chief Executive and controlling mind of Catalyst, Mr Roberts was in the best position of anyone on the staff of Catalyst to assess the situation and act accordingly; he should not have relied on the acquiescence of others, least of all directors of ARM rather than of Catalyst itself, in relation to what was appropriate for Catalyst to do.

(2) In relation to Mr Roberts' expectation that the regulatory issues would be resolved shortly:

(a) It is not accepted that the CSSF's communications were encouraging, particularly as time went on without the application being granted. In any event the risk of failure was always present, with its attendant potential consequences (including the risk of liquidation of ARM, of which Mr Roberts was aware by 24 December 2009); and

(b) there was a risk that the relocation of ARM to Ireland would not succeed, for reasons other than questions of authorisation. On that issue, no contemporaneous legal advice has been disclosed and it therefore does not form part of the material on the basis of which the Authority's decision is made.

The Authority accepts that Mr Roberts believed one or other option was likely to happen shortly, but has reached the conclusion that he was nevertheless aware of the risk that they would not, and reckless in closing his mind to that risk. The later attempt to achieve relocation did not prove possible within the timescale that Catalyst had indicated to the Authority, and in any event is not relevant to Mr Roberts' conduct at the relevant time.

(3) It is the risk of loss at the relevant time which is important, not the extent to which losses have crystallised, or are expected to do so.

The December 2009 and March 2010 letters

1.9. Mr Roberts made the following representations:

(1) It was the responsibility of Catalyst's compliance officer to advise him on whether the letters were clear, fair and not misleading and he therefore cannot be criticised if they failed to reach that standard.

(2) In the case of the December 2009 letter to IFAs, the Authority's criticisms were misplaced because:

(a) the main purpose of the letter was to explain to IFAs why the tranche 9 bonds were not going to be issued on 1 January 2010, which was accurately and fairly addressed by referring to ARM's application to, and dealings with, the CSSF;

(b) the letter was factually correct and it was not necessary to mention whether the CSSF authorisation was required or the consequences of failing to obtain it;

(c) CSSF authorisation was not, in fact, compulsory on the proper interpretation of the relevant Luxembourg law and it was also optional in the sense that there were alternatives that could be pursued by ARM, namely relocating to Ireland, reducing the number of issues per year or moving ARM's registered office out of Luxembourg; and

(d) the letter had been reviewed by Catalyst's solicitors, and Mr Roberts relied on that review.

(3) In the case of the March 2010 letter to investors, the Authority's criticisms were misplaced because:

(a) the purpose of the letter was not a comprehensive update, but to notify investors in tranche 9 of the bonds of the interest payment they would be receiving. It was based on routine letters in relation to quarterly interest payments, amended to reflect that the bonds had not yet been issued;

(b) the letter was in fact intended for IFAs, with whom the investors had the client relationship, and the IFAs were free to seek further information if they needed further information to advise their clients;

(c) CSSF authorisation was not, in fact, compulsory on the proper interpretation of the relevant Luxembourg law because it was not, issuing securities on a continuous basis, and it was also optional in the sense that there were alternatives that could be pursued by ARM, namely relocating to Ireland, reducing the number of issues per year or moving ARM's registered office out of Luxembourg; and

(d) there was no lawful possibility or meaningful risk of liquidation and it would have been reckless to have mentioned it, as this might have caused a "run" on the bonds.

1.10. The Authority has reached the following conclusions:

(1) As a director of Catalyst who approved the letters (and in the case of the December 2009 letter, signed it), Mr Roberts had his own responsibility for ensuring the letters were clear, fair and not misleading, whatever responsibilities other Catalyst staff members may have had, and he recklessly failed to fulfil that responsibility.

(2) In relation to the December 2009 letter:

(a) the purpose of the letter did not prevent it being misleading in the respects set out in paragraph 4.28 of the body of this Notice;

(b) whether the proper interpretation of the relevant Luxembourg law is that a company in ARM's position would be considered to be issuing securities to the public on a continuous basis is an issue which Mr Roberts has raised with hindsight: whatever the correct interpretation, his understanding at the time was that a licence from the CSSF was compulsory for ARM, and the letter did not fairly reflect that understanding;

(c) the alternative options were not bound to succeed and the risks of ARM's regulatory position were, accordingly, not fairly or accurately presented; and

(d) no legal advice from Catalyst's solicitors on the letter having been disclosed, it does not form part of the material on the basis of which the Authority's decision is made.

(3) In relation to the March 2010 letter:

(a) the purpose of the letter did not prevent its being misleading in the respects set out in paragraph 4.30 of the body of this Notice;

(b) whether the proper interpretation of the relevant Luxembourg law is that a company in ARM's position would be considered to be issuing securities to the public on a continuous basis is an issue which Mr Roberts has raised with hindsight: whatever the correct interpretation, his understanding at the time was that a licence from the CSSF was compulsory for ARM, and the letter did not fairly reflect that understanding;

(c) the alternative options were neither bound to succeed nor certain to be achievable quickly and the risks of ARM's regulatory position were, accordingly, not fairly or accurately presented; and

(d) there was in fact a real risk of liquidation if the application was refused and, whether or not Mr Roberts feared a run on the bonds, that would not have justified issuing the letter in a misleading form.

Recklessness

1.11. Mr Roberts made representations that he at no time acted recklessly, as he acted in what he honestly and reasonably considered to be the best interests of investors.

1.12. The Authority has reached the conclusion that Mr Roberts was in a position of knowledge and influence in relation to both ARM and Catalyst and was aware during the relevant period of the regulatory position in relation to ARM and the risks this posed to investors. In dealing with the December 2009 and March 2010 letters as he did, and in continuing to allow the promotion of ARM bonds and the collection of funds from investors without disclosure of the risks to those investors after the CSSF had requested ARM not to issue any further bonds pending authorisation, he understood, but closed his mind to, those risks and accordingly acted recklessly in not disclosing them to investors.

Financial promotions

1.13. Mr Roberts made the following representations:

(1) It was an abuse of process for the Authority to take action against him for failure to amend Catalyst's financial promotions to ensure that these presented a clear, fair and not misleading picture of ARM's regulatory position and of the regulatory risk associated with ARM and the ARM bonds, when it had itself reviewed Catalyst's financial promotions during a supervision visit in July 2009 and not raised any issues regarding the failure of the financial promotions to deal with those matters, while finding them to be " broadly compliant".

(2) Catalyst's financial promotions:

(a) contained a list of risks, including that ARM was not regulated by the Financial Services Authority or any other regulator and that compensation could therefore not be sought from the Financial Services Compensation Scheme;

(b) stated that this list was not exhaustive;

(c) referred to the possibility of ARM's performance being affected by regulatory requirements; and

(d) thereby provided sufficient disclosure of the regulatory position relating to ARM.

(3) There was, in fact, no need for CSSF authorisation, or alternatively such need could be obviated by taking minor steps or relocating to Ireland.

(4) He reasonably and honestly believed there was no need to disclose ARM's regulatory position in the financial promotions, because he expected these to be resolved shortly, either because the CSSF would shortly grant ARM's licence application or because it would be possible for ARM to relocate to Ireland without any undue hurdle.

(5) He relied on other senior personnel within Catalyst and ARM, and external advisers to the two companies, to advise on what disclosures were necessary in financial promotions in relation to ARM's regulatory position.

(6) If the financial promotions had given a full account of ARM's regulatory position, this could have precipitated a "run" on the bonds that would have been to the detriment of existing investors. He argued that the Authority was concerned, when it issued a First Supervisory Notice issued against Catalyst in May 2010 prohibiting any further distribution of the ARM bonds, not to precipitate a run on the bonds, with the result that it deferred publication of the Notice; this demonstrated the reasonableness of Catalyst's earlier approach.

1.14. The Authority has reached the following conclusions:

(1) It is the responsibility of approved persons to identify and comply with their responsibilities under the Authority's rules and that they are not entitled to rely on the Authority to identify what needs to be done. Accordingly, the fact that the Authority's supervisors did not raise matters pertaining to the licence at, or in the follow-up to, the visit in July 2009 (which in any event did not focus on ARM's licence position) does not absolve Mr Roberts of responsibility for carrying out his duties to the required standard and, accordingly, it is not an abuse of process to take action against him for failing to do so.

(2) The risk wording in the financial promotions was not adequate to convey to IFAs or investors the specific regulatory risks that existed in relation to ARM.

(3) In relation to the matters set out at paragraph 1.13(3), the position is as set out at paragraph 1.10(3) (b) and (c) above.

(4) In relation to the matters set out at paragraph 1.13(4), the position is as set out at paragraph 1.8(2) above.

(5) Mr Roberts was well placed to make his own judgment on these matters, and should have ensured that the financial promotions were amended accordingly. As no external legal advice on this issue has been disclosed, it therefore does not form part of the material on the basis of which the Authority's decision is made.

(6) Any fear of precipitating a run on the bonds did not justify putting the interests of new investors at risk. The First Supervisory Notice was issued outside the relevant period in respect of regulatory action in a specific set of circumstances and based on specific reasons, which in the circumstances (including that, as a direct result of that Notice, there were no longer any potential future investors at risk) it was not considered appropriate to publicise. The approach taken by the Authority to publication of that Notice is not analogous or relevant to the question of whether Catalyst was reckless in sending misleading communications, which for the reasons set out in this Notice the Authority has concluded that it was.

Dealings with Catalyst's compliance officer

1.15. Mr Roberts made representations that it was wrong to say he was at fault for a lack of awareness on the part of Catalyst's compliance officer, who was either aware of the relevant matters or had the opportunity to acquire the relevant knowledge.

1.16. The Authority has concluded that, given his position as the Chief Executive and controlling mind of Catalyst and a director of both Catalyst and ARM, Mr Roberts' state of knowledge was better than that of the compliance officer and he should have made sure the compliance officer shared his knowledge of the situation, but failed to do so.

Sanction

1.17. Mr Roberts made the following representations:

(1) The penalty set out in this Notice was inappropriately high in respect of the misconduct alleged, because:

(a) the seriousness of any breach was substantially reduced by the Authority's and the CSSF's knowledge of the same facts and matters as were known to him at the relevant time: the CSSF knew of ARM's continuing to receive investor funds and the Authority knew the contents of Catalyst's financial promotions;

(b) the losses of customers in relation to tranches 9 to 11 of the ARM bonds were caused by their own failure to accept the terms of the offer referred to at paragraph 1.7(3) above;

(c) the Authority had overstated the financial benefits received by him in the relevant period;

(d) the losses of customers in relation to tranches 1 to 8 of the ARM bonds were caused by concerted steps by the Authority, the CSSF and the Irish financial regulator to shut down the businesses of ARM and Catalyst despite their underlying business models being valid, as a response to concerns about other firms involved in the TLPI market;

(e) it failed to take account of his previously unblemished disciplinary record and compliance history;

(f) in considering his conduct following the breach, it wrongly took into account the fact that he did not, on behalf of Catalyst, agree to Catalyst's voluntarily taking the action which was the subject of the Authority's First Supervisory Notice in April 2010; he rightly considered it inappropriate to cease arranging for the acceptance of investors' funds by ARM, for the reasons set out above in relation to that issue; and

(g) the proposed financial penalty was not consistent with previous Authority cases, which suggested that the penalty should be lower.

(2) His poor state of health made it unnecessary to impose sanctions in the interests of deterrence, since it meant he was unlikely to be involved in any other regulated venture in the future.

1.18. The Authority has reached the following conclusions:

(1) As to the financial penalty:

(a) any knowledge on the part of the CSSF or the Authority in relation to the matters known to Mr Roberts does not provide a basis for a reduction in penalty, as it does not reduce the seriousness of Mr Roberts' misconduct;

(b) in relation to the losses of customers in tranches 9 to 11 of the ARM bonds, the position is as set out at paragraph 1.8(3) above;

(c) Mr Roberts received very substantial financial benefits from his position at Catalyst over the relevant period. No case was advanced or made out by Mr Roberts that the level of the fine proposed would cause him serious financial hardship, and the level of his benefits does not merit a reduction in the financial penalty;

(d) the Authority's actions in relation to Catalyst were appropriate in the light of its serious concerns in relation to that company, and were not influenced by the position of other firms in the TLPI market. It has taken no action in relation to ARM, over which it has no jurisdiction;

(e) Mr Roberts' previous satisfactory compliance history has been given adequate weight in assessing the appropriate penalty;

(f) the position as to why it does not accept his submissions in relation to continuing to arrange for the acceptance of investors' funds is set

out above and, in not later agreeing that Catalyst would take steps to mitigate the risks to investors, he does not merit credit for his actions following the breach; and

(g) on the basis of the facts as set out in this Notice, the level of the penalty is appropriate in comparison with those imposed in other cases.

(2) Mr Roberts has, in fact, continued to be involved in Catalyst (for example, he made representations that he was seeking to broker a solution to Catalyst's problems in the interest of investors). In any event, one purpose of the sanction imposed by this Notice is deterrence of others as well as of Mr Roberts himself.

2. Third party representations

2.1. ARM made representations that CSSF authorisation was not compulsory for ARM on the proper interpretation of the relevant Luxembourg law because it was not, in fact, issuing securities to the public on a continuous basis.

2.2. The Authority has reached the conclusion that whether the proper interpretation of the relevant Luxembourg law is that a company in ARM's position would be considered to be issuing securities to the public on a continuous basis is not relevant to a consideration of Mr Roberts' conduct during the relevant period.