
FINAL NOTICE

To: Peter Charles Legerton

To: TailorMade Independent
Limited (in Liquidation)

Individual
Reference
Number: PCL00008

Firm
Reference
Number: 506611

Date of birth: 29 March 1969

Date: 20 March 2015

1 ACTION

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

- (1) publishes a statement of Mr Legerton's misconduct;
- (2) withdraws the approvals granted to Mr Legerton to perform the CF1 (Director), CF10 (Compliance oversight) and CF11 (Money Laundering Reporting) controlled functions at TMI; and
- (3) prohibits Mr Legerton from performing any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. This public statement and order take effect from 20 March 2015.

1.2 The Authority considers that Mr Legerton's misconduct merits the imposition of a financial penalty. Had Mr Legerton not provided verifiable evidence that the

imposition of a financial penalty of any amount would cause him serious financial hardship, the Authority would have imposed a financial penalty of £120,226 on Mr Legerton. In that event, Mr Legerton would have qualified for a 30% discount (Stage 1) in accordance with the Authority's executive settlement procedure, reducing the penalty to £84,100.

2 SUMMARY OF REASONS

- 2.1 Mr Legerton was a director at TMI, a firm that provided advice to customers seeking to transfer their existing pension funds to unregulated investments such as green oil, biofuel oil, farmland and overseas property via SIPPs.
- 2.2 During the period 22 January 2010 to 20 January 2013 inclusive, Mr Legerton failed to take reasonable steps to ensure that the business of TMI, for which he was responsible in his controlled functions, complied with the relevant requirements and standards of the regulatory system. Specifically, Mr Legerton failed to take reasonable steps to ensure that TMI assessed the suitability of the underlying product contained within the SIPP for the customer. Instead, TMI's business model focussed solely on providing advice on the most suitable SIPP wrapper for the underlying product.
- 2.3 Mr Legerton failed to understand fully how the business model implemented by TMI operated. He was therefore unable to provide any effective challenge to the advice model initially adopted by TMI. In addition, Mr Legerton also failed to understand fully the underlying products which TMI's customers were investing in via their SIPP. Mr Legerton believed that, in general, these products were medium risk investments. In reality, the products invested in by TMI's customers were typically high risk, esoteric investments.
- 2.4 As a direct result of Mr Legerton's failures, 1,661 of TMI's customers during the Relevant Period were at significant risk of having transferred a total of £112,420,985, mostly from pension funds including some final salary schemes, into SIPPs which were not suitable for them. 923 of those customers invested in overseas property developments operated by Harlequin.
- 2.5 The vast majority of TMI's customers were referred to it by the Unregulated Introducer. The role of the Unregulated Introducer was to facilitate the sale to customers of alternative investment products. For its role in the facilitation of the sale to the customer of the underlying product, the Unregulated Introducer received a commission payment from the underlying product providers. Mr

Legerton acted as an agent for the Unregulated Introducer and himself received commissions based on sales of underlying products made by him. In addition to his role with the Unregulated Introducer, Mr Legerton also made introductions in his personal capacity direct to TMI. Mr Legerton therefore benefitted financially from both the fees paid by customers for the advice given by TMI on the SIPP transfer and also from the commission he received (from the Unregulated Introducer) for his role in the ultimate sale of the underlying product to the customer in those cases where he had a personal role in the introduction.

- 2.6 The receipt of the commission payment created a conflict of interest with Mr Legerton's duty to TMI's customers in that TMI (the business at which Mr Legerton was a director and shareholder) was advising customers to transfer their pensions into a SIPP in order to purchase an underlying product where Mr Legerton would also benefit financially from the customer's purchase of that product through payments he received from the Unregulated Introducer in those cases where he had a personal role in the introduction.
- 2.7 In these circumstances, Mr Legerton was responsible for ensuring that he firstly identified, and then managed, mitigated and disclosed that conflict of interest. The conflict could have been mitigated had TMI provided full, impartial advice in respect of the suitability of the underlying products for the customer. However, as customers may not have been aware of the true nature of the products they were investing in, they could not have taken an informed decision in relation to waiving any conflict of interest surrounding commission payments and incentives without such advice.
- 2.8 In addition, in his role as a director at TMI, Mr Legerton was responsible for ensuring that TMI identified, managed, mitigated and disclosed any potential conflict of interest which affected TMI as an authorised firm, including but not limited to conflicts between a client of TMI and its staff. A number of other individuals at TMI were also owners of, or acted as agents of, the Unregulated Introducer and this created a conflict of interest at TMI in its duty to its customers, in that TMI was advising customers to transfer their pensions into SIPPs (without advising on the suitability of those underlying products) when certain individuals at TMI also had a financial interest in facilitating the sale of the underlying products to the customer.

- 2.9 However, during the Relevant Period, Mr Legerton failed to identify, manage, mitigate and disclose adequately both his own personal conflict of interest and those of TMI as an authorised firm.
- 2.10 Mr Legerton was also responsible for ensuring compliance with the Authority's rules at TMI during the Compliance Oversight Period. However, Mr Legerton delegated all of his compliance oversight responsibilities to external compliance consultants, inappropriately placing complete reliance on those consultants, without adequate oversight of those consultants. He also failed to respond adequately to issues identified by those compliance consultants. Mr Legerton therefore failed to take reasonable steps to discharge his CF10 (Compliance oversight) responsibilities.
- 2.11 Mr Legerton has admitted that, with hindsight, he did not appreciate the enormity of, and responsibility attached to, the roles of a CF1 and CF10 controlled function holder.
- 2.12 Mr Legerton therefore breached Statement of Principle 7 by failing to:
- (1) take reasonable steps to ensure that TMI assessed the suitability of the underlying product within the SIPP for the customer during the Relevant Period;
 - (2) identify, disclose, manage and mitigate adequately his own personal conflicts of interest as well as the conflicts of interest that existed between individuals at TMI and the Unregulated Introducer during the Relevant Period; and
 - (3) take reasonable steps to ensure sufficient oversight of the compliance function within TMI in order to discharge his CF10 (Compliance oversight) responsibilities during the Compliance Oversight Period.
- 2.13 As a consequence of his actions, Mr Legerton failed to meet minimum regulatory standards in terms of performing significant influence controlled functions. He is therefore not fit and proper to perform significant influence controlled functions at any authorised person, exempt person or exempt professional firm.
- 2.14 The Authority therefore issues a statement of misconduct pursuant to section 66 of the Act for Mr Legerton's failure to comply with Statement of Principle 7; pursuant to section 63 of the Act withdraws the approvals given to Mr Legerton under section 61 of the Act to perform the CF1, CF10 and CF11 controlled functions at TMI; and makes a prohibition order pursuant to section 56 of the Act prohibiting

Mr Legerton from performing significant influence controlled functions at any authorised person, exempt person or exempt professional firm.

- 2.15 As a direct result of an alert issued by the Authority on 18 January 2013, on 20 January 2013 TMI voluntarily suspended its business of providing advice to customers on SIPPs. This voluntary suspension of business was formalised on 13 March 2013, when TMI voluntarily varied its permissions such that with effect from that date, TMI was no longer permitted to carry on regulated activities.
- 2.16 On 15 October 2013, TMI entered into liquidation. On 29 July 2014, the FSCS announced that it had declared TMI 'in default'. The FSCS are investigating claims made by TMI's customers.

3 DEFINITIONS

- 3.1 The definitions below are used in this Final Notice.

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

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

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

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

the "Compliance Oversight Period" means the period 4 August 2011 to 20 January 2013 inclusive. Mr Legerton was approved as the CF10 (Compliance oversight) controlled function holder at TMI throughout this period;

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

"Direct Introduction" means the introduction to TMI by Mr Legerton personally of a number of customers from his existing customer bank;

"EG" means the Authority's Enforcement Guide;

"FSCS" means the Financial Services Compensation Scheme;

"Harlequin" means the Harlequin group of companies including, but not limited to, Harlequin Management Services (South East) Limited, an unregulated, limited

company (in administration with effect from 3 May 2013 and in liquidation with effect from 20 October 2014);

"IFA" means independent financial adviser;

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

"Mr Legerton" means Peter Charles Legerton;

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

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

"SIF" means significant influence functions;

"SIPP" means self-invested personal pension;

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

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

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

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

4 FACTS AND MATTERS

Background

The Firm

- 4.1 TMI is a limited company (in liquidation) that has been authorised by the Authority since 22 January 2010.
- 4.2 Throughout the Relevant Period, TMI had permission to carry on the following regulated activities:
 - (1) agreeing to carry on a regulated activity;

- (2) advising on investments, including advising on Pension Transfers and Pension Opt Outs;
- (3) arranging (bringing about) deals in investments; and
- (4) making arrangements with a view to transactions in investments.

4.3 In addition to the above permissions, TMI was authorised with effect from 4 January 2013 to perform certain activities in relation to regulated mortgage contracts and in relation to certain insurance mediation activities.

4.4 As a result of entering into a voluntary variation of permission on 13 March 2013, TMI was no longer permitted to carry on any regulated activities in relation to any new regulated pension contracts. TMI has been in liquidation since 15 October 2013.

4.5 On 29 July 2014, the FSCS announced that it had declared TMI 'in default'. The FSCS are investigating claims made by TMI's customers.

Mr Legerton

4.6 Mr Legerton has been approved to hold the controlled function CF1 (Director) at TMI from 22 January 2010 to date. He has also been approved to hold the CF10 (Compliance oversight) and CF11 (Money laundering reporting) controlled functions at TMI from 4 August 2011 to date.

4.7 During the Relevant Period, as a director Mr Legerton had active management and day to day responsibility for the business of TMI. As the CF10 (Compliance oversight) controlled function holder during the Compliance Oversight Period, Mr Legerton sole responsibility for compliance at TMI during that period.

Unregulated Introducer

4.8 TMI was one of a number of businesses operating under the 'TailorMade' name. The other businesses included, but were not limited to, the Unregulated Introducer. The role of the Unregulated Introducer was to facilitate the sale of alternative investment products to customers. The alternative investment products promoted by the Unregulated Introducer were often unregulated products and included overseas property investments such as those operated by, amongst others, Harlequin.

- 4.9 Mr Legerton acted as an agent for the Unregulated Introducer. In this role, Mr Legerton introduced customers to the concept of investing in alternative investment products and provided information to those customers on which to base their decision on whether or not to invest. In the event that the customer invested in one of its products, the product provider would pay commission to the Unregulated Introducer who would, in turn, pass a proportion of that commission to Mr Legerton in those cases where he had a role in the introduction.
- 4.10 Where those customers wanted advice on using their pension to make the investment, the customer would be introduced by the Unregulated Introducer to TMI in order that the customer could receive regulated advice on the most suitable SIPP wrapper for the underlying product promoted by the Unregulated Introducer. In excess of 95% of TMI's customers were introduced to TMI by the Unregulated Introducer.
- 4.11 Separately, in his role working for another 'TailorMade' entity, Mr Legerton also introduced to TMI a number of customers from his existing customer bank at that entity (a "Direct Introduction"). As a result of his Direct Introductions, Mr Legerton also received a proportion of the commission for his part in the facilitation of the sale of that investment to the customer.

SIPPs

- 4.12 From the commencement of its authorisation, TMI has focussed its business model solely on providing advice to customers in relation to SIPPs.
- 4.13 A SIPP is a trust-based wrapper for an individual's pension investment. It gives tax relief on an individual's contributions and tax-free growth and offers a wider range of investments and options for extracting benefits than are ordinarily available in a life policy type investment. In addition, a SIPP offers a greater degree of control over where and when funds are invested or moved than is permitted by traditional pension arrangements run by life assurance companies.
- 4.14 For TMI's customers, a SIPP was a way of investing their pension into esoteric, unregulated, investments such as overseas property which were typically not permitted by their existing pension schemes. These investments often offered the potential for higher returns than customers' existing pension schemes, but carried a far higher risk, including the risk that unregulated products are not covered by the FSCS.

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

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

4.16 In total, TMI advised 1,661 customers to invest into underlying products, amounts ranging from £5,000 to £440,000 each in, or via, a SIPP. Those customers transferred £112,420,985 in total into SIPPs. The vast majority of this money came from the customers' existing pensions. During the Relevant Period, TMI generated £3,081,740 in revenue from its SIPP business. Mr Legerton's total income received from TMI's business was £300,566.61.

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

TMI's SIPP advisory process

4.18 A TMI customer seeking advice on moving their pension would typically be looking to invest their pension into an underlying product such as an overseas property investment. Such customers would typically have been introduced to the underlying product by an Introducer, who would, on behalf of the product provider, present marketing materials and/or provide presentations to the customer upon which the customer based their decision to invest. The customer would then be introduced by the Introducer to TMI in order to obtain advice on using their pension to facilitate the investment via a SIPP. During the Relevant Period, around 99% of customers were referred to TMI by an Introducer. Almost all of those customers introduced through an Introducer to TMI, would have been introduced by the Unregulated Introducer.

4.19 Upon referral to TMI, the customer would:

- (1) be contacted by an administrator at TMI whereby a 'fact find' would be completed in order to establish the customer's investment needs and objectives. This would also include the completion of an 'attitude to risk' questionnaire and knowledge and experience of financial products. The customer would also receive TMI's client agreement, that set out, amongst other things, TMI's advice fees;
- (2) provide to TMI details about their existing pension providers so that TMI could gather information on those existing pensions;
- (3) have an appointment with a TMI pension transfer specialist (who was not Mr Legerton) whereby the TMI 'suitability report' and the SIPP provider's 'key features' document would be discussed with the customer. This would include an explanation to the customer of TMI's recommendation for the most suitable SIPP for the customer. Typically, when selecting the most suitable SIPP for the customer, TMI assessed, amongst other things, whether the SIPP was able to invest in the underlying product (if this was known to TMI), as well as the set-up and ongoing fees charged by the SIPP provider. The appointment would also be an opportunity for TMI to answer any questions that the customer might have; and
- (4) complete a SIPP application which TMI would submit to the SIPP provider on the customer's behalf. TMI would then confirm to the customer when the SIPP had been established.

4.20 For the initial advice service provided by TMI as described at paragraph 4.19, a customer would pay a fee – typically of £1,000 per personal pension being transferred, or if a final salary pension was being transferred, the amount would be 3% of the total transfer value or £1,500 (whichever was the greater) - which was usually taken out of the funds being transferred into the SIPP.

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

Conduct in Issue

Advising on the underlying investment

- 4.22 Throughout the Relevant Period, Mr Legerton held the position of CF1 director at TMI. As a director, Mr Legerton had responsibility for the business model implemented by TMI described at paragraph 4.19 above.
- 4.23 If an IFA, such as TMI, is advising on an investment wrapper product, such as a SIPP, that IFA will generally have to consider the suitability of the overall proposition i.e. the suitability of both the SIPP wrapper and the underlying product, in order to be able to provide suitable advice to the customer. In circumstances where the customer is selling existing investments (including transferring their existing pension) in order to invest in another investment via a SIPP, the IFA must assess the suitability of that underlying product for the customer prior to recommending a SIPP. The regulatory provisions relevant to these requirements are referred to in the Annex.
- 4.24 However, the business model established at TMI did not take into account any consideration of the suitability for the customer of the underlying product within the SIPP. As a result of this deficient business model, all 1,661 of TMI's customers were at risk of investing a total of £112,420,985 into an investment which may not have been suitable for them.
- 4.25 In January 2013, the Authority published an alert confirming its expectations of IFAs advising on overseas property investments, including those sold by Harlequin, through a SIPP. The Authority's alert noted that IFAs have to ensure that they give careful consideration to the particular features of the investment in question and that, if recommending a SIPP knowing that the customer will sell current investments to invest in an overseas property, the suitability of the overseas property investment must form part of the advice to the customer.
- 4.26 Of the 1,661 SIPP customers advised by TMI during the Relevant Period, 923 invested into overseas property investments operated by Harlequin. None of those customers received any advice from TMI on the suitability of that overseas property investment when TMI advised on and recommended their SIPP.
- 4.27 Mr Legerton stated that each of TMI's directors had distinct responsibilities within the business. Mr Legerton's primary role was to liaise with and recruit SIPP providers and (up until August 2011) to oversee and monitor the administration of the advice process. Mr Legerton therefore stated that he had no involvement in

setting up the advice model adopted by TMI, which he regarded as the responsibility of a fellow director.

- 4.28 As a result of this, Mr Legerton lacked a full understanding of how the advice model operated. He was therefore unable to provide any effective challenge to the advice model initially adopted by TMI. Instead, Mr Legerton assumed that TMI's model of not providing advice on the underlying product was the correct one. Mr Legerton also assumed that TMI's customers would be able to seek advice from other entities as to the suitability of the underlying product for them. However, he was not able to identify any such entities of which he was aware from which customers could obtain such advice.
- 4.29 As well as failing to understand TMI's business model, Mr Legerton also failed to fully understand the underlying products which TMI's customers were investing in via their SIPP. Mr Legerton believed at the time that, in general, these products were medium risk investments, despite the fact that many of TMI's customers' investments were based abroad and were unregulated and therefore not typically covered by the FSCS. In fact, the products invested in by TMI's customers were typically high risk, esoteric investments.
- 4.30 In any event however, Mr Legerton failed to take reasonable steps to ensure that TMI was aware of the underlying product its customers proposed to invest in via their SIPP. As TMI provided no advice on the underlying product, it did not in every case feel that it needed to know what that underlying product was. In addition, at the time of giving advice, according to Mr Legerton, approximately 40% of TMI's customers would not have had a clear idea of where they intended to invest the funds to be contained within their SIPP when they were receiving advice from TMI on the SIPP wrapper.
- 4.31 In these cases, TMI recommended a SIPP provider which accepted the widest variety of investments into their SIPP. As a result, in a large number of cases, TMI had not ensured that it was in a position to be able to assess adequately the suitability of the investment for the customer - or to ensure suitability of that particular SIPP for the customer, as it was not aware of what the customer ultimately planned to invest in using the pension monies in their SIPP.
- 4.32 As a result of the above, the Authority considers that, in his role as CF1 at TMI, Mr Legerton failed to take reasonable steps to ensure that the business model at TMI complied with the relevant requirements and standards of the regulatory system. Specifically, Mr Legerton failed to take reasonable steps to ensure that TMI

assessed the suitability of the underlying product for the customer. Instead, TMI's business model focussed solely on providing advice on the most suitable SIPP wrapper for the underlying product.

4.33 The failings of TMI's business model in not providing advice on the underlying products were exacerbated by the fact that individuals at TMI, including Mr Legerton in respect of his own personal introductions, were receiving commission payments in respect of sales of the underlying products, leading to a significant conflict of interest at the heart of the business. Had suitable advice been given, it is likely that those individuals would have received far fewer commission payments from the sale of the underlying products.

Conflicts of Interest

Personal

4.34 Throughout the Relevant Period, and in addition to his roles as a CF1, CF10 and CF11 at TMI, Mr Legerton acted as an agent for the Unregulated Introducer whereby he introduced customers to the concept of investing in alternative investments and provided information to those customers on which to base their decision on whether or not to invest. In addition, Mr Legerton undertook a number of Direct Introductions to TMI. In both circumstances, in the event that the customer went ahead and invested in alternative investments, the product provider would pay commission to the Unregulated Introducer who would, in turn, pass a proportion of that commission to Mr Legerton.

4.35 Therefore, during the Relevant Period, Mr Legerton benefitted financially from both the fees paid by customers for the advice given by TMI on the SIPP transfer and also from the commission he received from the Unregulated Introducer (from the underlying product provider), or directly, for his role in the sale of that product to the customer. The receipt of this benefit created a conflict of interest with Mr Legerton's duty to TMI's customers, in that TMI (the business at which Mr Legerton was a director and shareholder) was advising customers to transfer their pensions into a SIPP in order to purchase an underlying product where Mr Legerton would also benefit financially from the customer's purchase of that product through payments he received from the Unregulated Introducer (for those cases in which he had a personal role in the introduction).

4.36 Mr Legerton told the Authority that he had verbally disclosed the fact that he would receive commission from the underlying product providers to the customers whom

he introduced to TMI. However, the Authority has not been provided with evidence that Mr Legerton disclosed to customers the fact that he benefitted financially from both the TMI SIPP advice fees paid by customers as well as from the commission he received via the Unregulated Introducer from the sale of the underlying product to the customer. In any event, such a disclosure would not have mitigated the conflict of interest. The conflict could have been mitigated had TMI provided full impartial advice in respect of the suitability of investing in the underlying products. As customers were unaware of the true nature of the products they were investing in, they could not take an informed decision in relation to waiving any conflict of interest surrounding commission payments and incentives without such advice.

4.37 In addition, Mr Legerton also recognised in hindsight the potential for confusion among customers as a result of his numerous roles within the various TailorMade entities. He stated that customers viewed him as "*Pete from TailorMade*" and might therefore have not appreciated which role he was acting in, or what services he was or was not offering in those roles, and what financial benefit he was receiving as a result.

Director

4.38 In his role as a CF1 at TMI, throughout the Relevant Period Mr Legerton was responsible for ensuring that TMI identified, managed, mitigated and disclosed any potential conflicts of interest which affected TMI as an authorised firm. This included, but was not limited to, ensuring that TMI identified, managed, mitigated and disclosed any conflicts of interest between a client of TMI and – amongst others – its staff (including its directors), and any entities linked to them by common ownership or control.

4.39 A number of other individuals at TMI were subject to a conflict of interest which resulted in them benefitting financially from introductions made to TMI in order for customers to receive SIPP advice, as well as benefitting financially from the advice given by TMI on the most suitable SIPP wrapper only.

4.40 During the majority of the Relevant Period, TMI did not have in place a formal conflicts of interests register identifying potential conflicts of interest within the firm. The conflicts of interest that existed at TMI were therefore not identified and consequently were not managed, mitigated and disclosed adequately by TMI. Even when a conflicts of interest register was put in place at TMI towards the end of the Relevant Period, TMI still did not use the information recorded on that register to ensure that it adequately managed, mitigated and disclosed those conflicts.

- 4.41 Throughout the Relevant Period, TMI's client agreement contained an express provision that conflicts of interest would be disclosed to customers and prior permission to carry out instructions would be sought before commencing work for the customer. However, despite the wording of the client agreement, Mr Legerton accepted that TMI did not inform customers about commissions that would have been payable to individuals at TMI for their part in the facilitation of the sale of the underlying product to the customer.
- 4.42 As a director of TMI, Mr Legerton failed therefore to ensure that the Firm identified conflicts of interest and, as a result, also failed to manage, mitigate and disclose adequately those conflicts of interest to customers. He also failed to ensure that TMI complied with its own client agreement concerning the handling of conflicts of interest.
- 4.43 Mr Legerton's failings are compounded by the fact that, during the Relevant Period, TMI's external compliance officer warned of the need to disclose conflicts of interest within TMI. For example, in April 2012 a compliance report recommended that all TMI staff should be made aware of potential conflicts of interest issues, that these be discussed at regular board and compliance meetings and that TMI should ensure that an annual conflicts of interest questionnaire be completed. As both a CF1 and CF10, Mr Legerton should have recognised and acted upon this warning. However, action only appears to have occurred in relation to this warning towards the end of October 2012 when conflicts of interest are first noted on a register as having been identified at that date. Mr Legerton therefore failed to take reasonable steps to ensure that TMI identified, managed, mitigated and disclosed adequately conflicts of interest that existed at TMI.
- 4.44 The Authority therefore considers that, throughout the Relevant Period, Mr Legerton failed to identify, disclose, manage and mitigate adequately both his own personal conflicts of interest and those of TMI as an authorised firm.

Compliance

- 4.45 Throughout the Compliance Oversight Period Mr Legerton was approved as and had responsibility for, the CF10 (Compliance oversight) controlled function at TMI.
- 4.46 TMI employed the services of external compliance consultants throughout the Compliance Oversight Period to assist with compliance at TMI. However, the ultimate responsibility for ensuring that TMI complied with regulatory requirements, including but not limited to those identified above in relation to the

suitability of SIPP advice given, rested with Mr Legerton during the Compliance Oversight Period.

4.47 Mr Legerton delegated all of his responsibilities as compliance officer to external compliance consultants, and placed complete reliance on those consultants, without providing sufficient oversight of the consultants' activities and recommendations and failed to respond adequately to issues identified by the compliance consultants. For example, Mr Legerton ignored clear red flag warnings raised by the compliance consultants to him; an April 2012 compliance report warned Mr Legerton of the 'red flag' regulatory risk to TMI of Introducers potentially providing advice to clients in relation to SIPPs, for which those Introducers may not have held the necessary permissions and/or authorisation required by the Authority. Mr Legerton should have recognised and taken reasonable steps to address key red flag warnings such as this. However, almost seven months later in November 2012, this same issue was highlighted again by a successor TMI compliance consultant – this time at a director's meeting - as being a key compliance issue for the Firm. Mr Legerton therefore failed to take reasonable steps to ensure that this 'red flag' compliance issue was addressed in a timely fashion.

4.48 As a result of the above, the Authority considers that throughout the Compliance Oversight Period, Mr Legerton failed to take reasonable steps to ensure sufficient oversight of the compliance function at TMI. He therefore did not adequately discharge his responsibilities as CF10 (compliance oversight) controlled function holder during the Compliance Oversight Period. Indeed, Mr Legerton confirmed to the Authority that he did not understand fully what the CF10 function entailed, or understand the enormity of the role and that in hindsight, he should not have taken on the role without significant further knowledge and/or training.

5 FAILINGS

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

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

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

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

- (1) take reasonable steps to ensure that TMI assessed the suitability of the underlying product within the SIPP for the customer during the Relevant Period;
- (2) identify, disclose, manage and mitigate adequately the conflicts of interest that existed as a result of Mr Legerton's ownership of and role at TMI and his role as an introducer during the Relevant Period; and
- (3) ensure sufficient oversight of the compliance function within TMI in order to discharge adequately his CF10 (Compliance oversight) responsibilities during the Compliance Oversight Period.

6 SANCTION

Financial penalty

6.1 In determining the financial penalty, the Authority has had regard to its policy on the imposition of financial penalties which is set out in Chapter 6 of DEPP and forms part of the Authority's Handbook.

6.2 On 6 March 2010, the Authority's new penalty framework came into force.

6.3 Mr Legerton's misconduct covers a period straddling 6 March 2010. However, the Authority considers that the core of the misconduct occurred after 6 March 2010. The Authority has therefore assessed the financial penalty under the regime in force after 6 March 2010.

6.4 DEPP 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.

Step 1: disgorgement

6.5 Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.

6.6 The Authority has not identified any financial benefit that Mr Legerton derived directly from the breach.

6.7 Step 1 is therefore £0.

Step 2: the seriousness of the breach

- 6.8 Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. 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.
- 6.9 The period of Mr Legerton's breach was from 22 January 2010 to 20 January 2013 inclusive. The Authority considers Mr Legerton's relevant income for this period to be £300,566.61. This figure includes both monies Mr Legerton earned directly from TMI, as well as monies he received through a remuneration trust. The Authority has assessed that on the facts of this case, the monies that Mr Legerton received through the remuneration trust mechanism should be included in the monies that the Authority considers to be 'relevant income' for the purposes of assessing any financial penalty to be imposed on him (those monies being a benefit received by him from the employment in connection with which the breaches occurred).
- 6.10 In deciding on the percentage of the relevant income that forms the basis of the step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:
- Level 1 – 0%
 - Level 2 – 10%
 - Level 3 – 20%
 - Level 4 – 30%
 - Level 5 – 40%
- 6.11 In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. The Authority considers the following factors to be relevant.

Impact of the breach

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

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

Nature of the breach

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

Whether the breaches were deliberate and/or reckless

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

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

6.17 Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 3 and so the Step 2 figure is 20% of £300,566.61.

6.18 Step 2 is therefore £60,113.

Step 3: mitigating and aggravating factors

6.19 Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.

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

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

6.22 Step 3 is therefore £60,113.

Step 4: adjustment for deterrence

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

6.24 The Authority considers that the Step 3 figure of £60,113 does not represent a sufficient deterrent to Mr Legerton and others, and so has increased the penalty at Step 4. This is on the basis that the figure reached after Step 3 is insufficient to deter Mr Legerton or others, from committing further breaches in light of the further monies received by Mr Legerton from activities relating to his conflicts of interest, as set out at paragraphs 4.34 to 4.37, in addition to his relevant income from TMI. These monies cannot be taken into account in Mr Legerton's relevant income. The Authority therefore has increased the Step 3 figure by a multiple of 2.

6.25 Step 4 is therefore £120,226.

Serious financial hardship

6.26 Pursuant to DEPP 6.5D.2G, the Authority may reduce the penalty if appropriate, if an individual will suffer serious financial hardship as a result of having to pay the penalty.

6.27 Mr Legerton has provided verifiable evidence to satisfy the Authority that payment of a penalty of any level would cause him serious financial hardship. The Authority considers it appropriate to take Mr Legerton's financial position into account and the financial penalty of £120,226 is reduced by 100%.

6.28 As a result of serious financial hardship, the penalty figure at Step 4 is therefore nil.

Step 5: settlement discount

6.29 Pursuant to DEPP 6.5B.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the

individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.30 In the event that a penalty had been imposed on Mr Legerton, step 5 would have been £84,158 (rounded down to £84,100).

6.31 However, in light of Mr Legerton's serious financial hardship, Step 5 is nil.

Penalty

6.32 The Authority therefore does not impose a financial penalty on Mr Legerton for breaching Statement of Principle 7. Pursuant to DEPP 6.4.2G, the Authority issues a statement of misconduct to Mr Legerton in the form of this notice.

Withdrawal of approvals and Prohibition

6.33 The Authority has had regard to the guidance in Chapter 9 of EG and considers it is appropriate and proportionate in all the circumstances to withdraw Mr Legerton's CF1 (director), CF10 (Compliance oversight) and CF11 (Money Laundering Reporting) controlled functions at TMI and to prohibit Mr Legerton from performing any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm because he is not a fit and proper person in terms of competence and capability.

7 PROCEDURAL MATTERS

Decision maker

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

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

Publicity

7.3 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the

Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

- 7.5 For more information concerning this matter generally, contact Kate Tuckley at the Authority (direct line: 020 7066 7086 / fax: 020 7066 7087).

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Bill Sillett

Project Sponsor

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1 Relevant Statutory Provisions

- 1.1 The Authority's operational objectives, set out in section 1B(3) of the Act, include the consumer protection objective.
- 1.2 Section 63 of the Act provides that the Authority may withdraw an approval issued under section 59 of the Act in relation to the performance by a person of a function if the Authority considers that the person is not a fit and proper person to perform the function. If the Authority proposes to withdraw an approval, it must give each of the interested parties a Notice. Each interested party may refer the matter to the Tribunal.
- 1.3 Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. A person is guilty of misconduct if, while an approved person, he has failed to comply with a statement of principle issued under section 64 of the Act, or has been knowingly concerned in a contravention by a relevant authorised person of a relevant requirement imposed on that authorised person.
- 1.4 Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or exempt professional person. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

Relevant Regulatory provisions

Principles for Businesses

- 1.5 The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook. They derive their authority from the Authority's rule making powers set out in the Act.
- 1.6 Principle 9 states:

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

Statements of Principle and Code of Practice for Approved Persons

1.7 The Authority's Statements of Principle have been issued under section 64 of the Act.

1.8 Statement of Principle 7 states:

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

The Fit and Proper Test for Approved Persons

1.9 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.

1.10 FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.

Conduct of Business

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

COBS 9.2.1R

(1) A firm must take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client.

(2) When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's:

(a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;

(b) financial situation; and

(c) investment objectives;

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

COBS 9.2.2R

(1) A firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:

(a) meets his investment objectives;

(b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and

(c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

(2) The information regarding the investment objectives of a client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

(3) The information regarding the financial situation of a client must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

COBS 9.2.3R

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

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

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

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

1.13 EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.

The Authority's policy for imposing financial penalties

1.14 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, and the Authority's policy on when it will be appropriate to issue a public censure.