Financial Conduct Authority

PURSUANT TO THE DECISION OF THE UPPER TRIBUNAL ON 6 AUGUST 2015, SEE THE FINAL NOTICE ISSUED ON 22 OCTOBER 2015

DECISION NOTICE

To: **Andrew Peter Wilkins**

Address: **12 Red Lion Square**
London WC1R 4QD

Date of birth: 26 March 1976

IRN: **APW01136**

Date: **14 August 2013**

1. ACTION

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

(1) make an order, pursuant to section 56 of the Financial Services and Markets Act 2000, prohibiting Mr Wilkins from performing any significant influence function in relation to any regulated activities carried on by an authorised or exempt person or exempt professional firm; and

(2) impose on Mr Wilkins a financial penalty of £100,000 pursuant to section 66 of the Act for breaches of Statement of Principle 6 (due skill, care and diligence).

2. SUMMARY OF REASONS

2.1. Mr Wilkins was a director (CF1) of Catalyst Investment Group Limited ("Catalyst") between 18 October 2007 and 23 March 2010, having been appointed to the board on 1 August 2007. He was also an approved adviser (CF23/CF30) at Catalyst between 11 June 2007 and 16 April 2010.

2.2. Catalyst was the primary distributor of ARM bonds in the UK. ARM bonds are structured products issued by a Luxembourg entity, 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 28 November 2007, Mr Wilkins became aware that ARM considered that, under Luxembourg law, it 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. From July 2009 until after the end of the relevant period, 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 6

2.5. Mr Wilkins breached Statement of Principle 6 by failing to exercise due skill, care and diligence in managing Catalyst's business, in the following respects:

(1) Mr Wilkins permitted Catalyst to continue to promote bonds purportedly to be issued by ARM, and arrange for the acceptance of funds from investors, after he had become aware on about 20 November 2009 that the CSSF had requested that ARM not issue any further bonds, pending a decision on its application for a licence.

(2) Mr Wilkins approved the December 2009 letter sent to IFAs which presented an unfair and misleading picture of ARM's regulatory position. The letter 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. The December 2009 letter was sent after Mr Wilkins became aware that ARM would not be issuing bonds unless and until its licence application was approved and that there was a risk that ARM would be liquidated if no licence was obtained.

(3) Mr Wilkins failed to take reasonable steps during the relevant period (until 24 December 2009) to inform Catalyst's compliance officer that ARM considered it was required to have a licence.

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

2.7. 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.

Additional fitness and propriety issues

2.8. In addition to the matters set out above, Mr Wilkins' conduct as one of the directors responsible for approving Catalyst's financial promotions is relevant to his fitness and propriety. During the relevant period he did not amend Catalyst's financial promotions to give 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 28 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.

2.9. Mr Wilkins' conduct as set out in paragraphs 2.5 to 2.8 above demonstrates that he is not fit and proper in terms of his competence and capability to perform a significant influence function.

2.10. The Authority considers that the nature and seriousness of Mr Wilkins' 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;

"relevant period" means the period from 28 November 2007 to 23 March 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 Wilkins was a director of Catalyst from 18 October 2007 to 23 March 2010.

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.

4.12. ARM bonds were issued to the public in quarterly tranches (tranches 1 to 8) from about October 2007 to October 2009.

4.13. Catalyst promoted tranches 9 to 11 to IFAs. It also 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.

4.14. 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

4.15. 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.

4.16. Mr Wilkins became aware by 28 November 2007 that ARM considered that it needed a licence from the CSSF to continue to issue bonds as it fell within the CSSF's interpretation of the definition of a securitisation undertaking, inter alia because it issued bonds more than three times per year.

4.17. At around this time, 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.

4.18. 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.

4.19. 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.

4.20. 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 to receiving agents. These funds were intended for tranches 9 to 11 of the ARM bonds.

4.21. On 24 December 2009, Mr Wilkins 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.

4.22. 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

4.23. 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.

4.24. 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.

4.25. 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.

4.26. 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

4.27. 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."*

4.28. 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.

Letter from Catalyst to IFAs

4.29. 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*."

4.30. The December 2009 letter did not state Catalyst's view that ARM considered it 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 even though ARM and Catalyst could not be certain whether or when further bonds could be issued.

Mr Wilkins' role

4.31. Mr Wilkins held Controlled Function 1 (director) at Catalyst from 18 October 2007 to 23 March 2010. He helped to develop the ARM bond. He became aware by 28 November 2007 that ARM considered that it was required to be licensed by the CSSF. Mr Wilkins had significant involvement in ensuring that ARM obtained a licence and dealt with ARM's lawyers to obtain information and documentation necessary to support the licence application during 2008 and 2009.

4.32. Mr Wilkins believed that ARM would definitely obtain a licence. In the circumstances, this was not a reasonable belief and Mr Wilkins fell below the required regulatory standards by acting on the basis of it. There were many indications known to him that the CSSF had concerns about ARM such that it was not certain that the licence would be achieved. In particular he was involved in preparing ARM's responses to lengthy and detailed requests for information from the CSSF about ARM's business model and the risks to consumers of investing in ARM bonds and knew that Catalyst's CEO, who was also a director of ARM, had expressed doubts that a licence would be granted. Even if Mr Wilkins continued to believe throughout the relevant period that a licence would be granted, he became increasingly aware over time that there was a risk that a licence might not be granted. Investors were not told that a licence from the CSSF was considered to be required to issue bonds in Luxembourg and that ARM did not have one, and were therefore not fully informed about the risks associated with investing in ARM bonds before the regulatory position had been resolved. Mr Wilkins should have recognised that Catalyst's communications with investors needed to reflect ARM's regulatory position so that investors were aware of the potential risks.

4.33. Mr Wilkins was responsible, as a director of Catalyst, for taking reasonable steps to ensure that Catalyst's financial promotions were clear, fair and not misleading and for providing approval for financial promotions. In practice, Mr Wilkins was usually responsible for providing approval for Catalyst's financial promotions.

4.34. From 28 November 2007, when Mr Wilkins became aware that ARM considered that it was required to obtain a licence from the CSSF, his conduct fell below the required regulatory standards in that he demonstrated a lack of competence and

capability in his capacity as a director of Catalyst. Mr Wilkins proceeded on the basis that it was appropriate for the financial promotions, such as brochures Catalyst had approved on behalf of ARM, to remain in use by IFAs and not be amended to reflect ARM's regulatory position. This failing of competence and capability became increasingly serious over time, in particular from 20 November 2009, following the CSSF's request to ARM to cease issuing bonds, and from 24 December 2009, when Mr Wilkins became aware of the potential risk of liquidation.

4.35. When he became aware, on 20 November 2009, that the CSSF had requested that ARM cease issuing bonds pending approval of its licence application, Mr Wilkins should have realised that it was not appropriate or in the interests of investors to continue arranging for the acceptance of funds for tranches 9 to 11, when investors had not been made fully aware of the risks. He should have taken steps to prevent further sales. Although he raised concerns about whether Catalyst should continue to sell ARM bonds once ARM stopped issuing bonds, he took no action to prevent such sales.

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 6

5.2. Mr Wilkins breached Statement of Principle 6 by failing to exercise due skill, care and diligence in managing Catalyst's business.

5.3. As a director of Catalyst, Mr Wilkins was jointly responsible for Catalyst's decision to continue to promote ARM bonds, and to arrange for ARM to receive funds from investors, from 20 November 2009 until he ceased to be a director on 23 March 2010, without ARM's regulatory position being clearly disclosed to investors. He was aware that sales were continuing on this basis and took insufficient steps to prevent funds from being collected from investors although ARM had ceased, at the CSSF's request, issuing further bonds in November 2009, instead allowing IFAs' sales activities to continue on the basis that the matter would be resolved shortly. In the circumstances, Mr Wilkins demonstrated a serious lack of competence and capability.

5.4. Mr Wilkins approved the December 2009 letter sent to IFAs which presented an unfair and misleading picture of ARM's regulatory position, by implying that ARM's

application for a licence was voluntary, and by omitting to disclose the risk of liquidation of ARM if the licence was not obtained. The December 2009 letter was sent after Mr Wilkins became aware on about 20 November 2009 that ARM would not be issuing bonds unless and until its licence application was approved and after he was aware of the risk of liquidation. 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, Mr Wilkins demonstrated a serious lack of competence and capability.

5.5. Further, Mr Wilkins failed to take reasonable steps during the relevant period (until 24 December 2009) to inform Catalyst's compliance officer that ARM were required to have a licence.

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

Additional fitness and propriety issues

5.7. In addition to the matters set out above, Mr Wilkins' conduct as one of the directors responsible for approving Catalyst's financial promotions is relevant to his fitness and propriety. During the relevant period he did not amend Catalyst's financial promotions to give 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 28 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.

5.8. By reason of the failings set out in this Notice, the Authority considers that Mr Wilkins is not a fit and proper person to perform significant influence functions because he lacks the competence and capability to do so.

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 Wilkins' misconduct occurred after the new provisions came into force. However, as the majority of Mr Wilkins' 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

Wilkins' breaches to be serious particularly in light of the risk of consumer loss occasioned by the breaches and the length of time over which the breaches occurred.

6.6. Mr Wilkins took some steps to seek to clarify the position for investors and expressed some concern for investors. He recommended obtaining legal advice in January 2010 on whether investors should be allowed to continue to invest new funds and suggested that a letter sent by Catalyst to investors in late March 2010 should disclose that ARM was awaiting the outcome of its application to the CSSF for authorisation, although this wording was not included in the final version of the letter sent out after he had ceased to be a director. However, these steps were not sufficient in the circumstances.

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 Wilkins' seniority and his director role at Catalyst, including having joint responsibility for approving its communications with IFAs and investors, and his knowledge of ARM's affairs, the Authority regards his breaches as serious.

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

6.8. The Authority understands that Mr Wilkins received benefits worth over £250,000 from Catalyst in the period from 1 January 2009 until 23 March 2010 (when he left the firm).

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

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

6.10. Having considered all the circumstances set out above, the Authority considers that £100,000 is the appropriate financial penalty to impose on Mr Wilkins.

Prohibition

6.11. Given the nature and seriousness of the failures outlined above, the Authority considers that Mr Wilkins' conduct demonstrated a lack of competence and capability, such that he is not fit and proper to perform significant influence functions in relation to regulated activities carried on by an authorised person,

exempt person or exempt professional firm. The Authority therefore considers Mr Wilkins should be prohibited from doing so.

6.12. The Authority has had regard to the guidance in Chapter 9 of EG in deciding that Mr Wilkins be prohibited from performing any significant influence function in relation to regulated activities. The relevant provisions of EG are set out in the Annex of this Notice.

7. REPRESENTATIONS

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

(1) Mr Wilkins; 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 Wilkins 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 Notice was made by the Regulatory Decisions Committee.

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

The Tribunal

8.3. Mr Wilkins has 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 Wilkins has 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 Wilkins 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 Wilkins has 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 a person to whom this Notice is given or copied may not 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 Wilkins 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 Anne Pike at the Financial Conduct Authority (direct line: 020 7066 8856 or by email Anne.Pike@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 a 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 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.

2. The Statements of Principle and APER

2.1. APER (the part of the FSA Handbook which has the title "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 Statement of Principle relevant to this matter is 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 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.

2.7. 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.

2.8. 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's 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 competence and capability.

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.

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

4.8. 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)

4.9. 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.

4.10. 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)

4.11. 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)

4.12. 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)

4.13. 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.

5.2. The Authority's approach to exercising its powers to make prohibition orders and withdraw approvals is set out at Chapter 9 of EG.

5.3. 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.

5.4. 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.

5.5. 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.

5.6. 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.

5.7. 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.

5.8. 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.

5.9. 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 Wilkins' representations

Legal Professional Privilege

1.1. Mr Wilkins made the following representations: much of the relevant flow of information about the application was conducted through lawyers, and Mr Wilkins did not have the authority to waive privilege in their communications. Substantial parts of the case against Mr Wilkins were capable of being affected by such privileged material. His alleged failure to inform the compliance officer may be affected by documents to and from lawyers. The accusation of over-optimism of ARM obtaining a licence may be met by demonstrating the advice received. It would not be appropriate for the Authority to proceed on the basis that it can only decide the matter on the basis of the material before it – it was not permissible to discount the possibility of supportive material on the basis that the Authority had not seen it. The Authority had to give Mr Wilkins the benefit of the doubt where there was any reasonable uncertainty - any other approach would violate his right to a fair hearing under Article 6(1) of the European Convention on Human Rights. If Mr Wilkins could establish that it was credible that he might have derived reassurance from privileged communications as to, for example, the risk of the CSSF not approving the licence application, the Authority should find that that part of the case was not made out. The approach should be the same as that which applies where an advocate faces a wasted costs order where privilege is not waived, in which circumstances judges make full allowance for the inability of a respondent lawyer to tell the whole story by giving them the benefit of the doubt where there is room for doubt.

1.2. The Authority has reached the following conclusions: it recognises that privilege has not been waived by the relevant parties over communications with legal advisers which may be relevant to Mr Wilkins' case. However, while it is appropriate to draw reasonable inferences from the material available, the appropriate test in an administrative decision making process is whether, on the basis of the material available and any such reasonable inferences, the breaches alleged were more likely than not to have occurred. The position is not the same as a court considering a wasted costs order. Mr Wilkins has not shown on the material available that it was more likely than not that advice, in which privilege

was maintained, had been given which materially altered his responsibility for the breaches alleged.

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

1.3. Mr Wilkins made the following representations:

a. he accepted that he had failed to exercise due skill, care and diligence (in breach of Statement of Principle 6) in not taking what steps he could as a director of Catalyst to prevent or advise against the continued promotion and sale of bonds from 20 November 2009 in circumstances where IFAs had not been sent updated financial promotions clearly setting out ARM's position in relation to CSSF authorisation.

b. He noted however that the CSSF's letter did not ask ARM to stop marketing or accepting funds. Catalyst (and Mr Wilkins) had thought that ARM was permitted to continue issuing bonds pending authorisation and that the CSSF was aware of and content with this position – he therefore considered that the CSSF's letter was addressing this misunderstanding and preventing ARM issuing bonds 'continuously' in breach of the law prior to being authorised, but not going further, to prevent marketing or the acceptance of funds. Further, following the letter it was clear that the CSSF was aware that Catalyst was continuing to promote ARM bonds and that investors' funds continued to be accepted by ARM, and raised no objections. Catalyst's legal advisers gave advice that whether to continue promoting the bonds was a commercial decision for Catalyst.

c. Catalyst had been given advice that ARM would be licensed by the CSSF within a relatively short period of time. Even if not, it was developing alternative strategies (transfer of operations to Ireland and/or reduction in bond issues to no more than 3 per year so as to avoid the need for a licence) which would within a reasonably short period allow bonds to be issued in accordance with investors' expectations. In the meantime investors' funds were not at significant risk (even taking into account commission payments which would be made), and until ARM was licensed promotion of bonds would not be actively encouraged, but only permitted to continue on a residual basis. Learning about the possible risk of liquidation did not change Mr Wilkins' view that approval would be obtained shortly, though he did take steps to assess the impact of the

liquidation risk. ARM paid interest at the bond rate to all investors from the moment their money was received by the receiving agents, regardless of whether their bond was in fact issued, so the prospect of a slightly delayed issue was not unduly concerning. Finally, oral and email updates were being provided to IFAs regarding the status of the application in and after November 2009.

d. Mr Wilkins tendered his resignation on 9 February 2010 and thereafter played a much diminished role within Catalyst until his resignation took effect on 23 March 2010.

1.4. The Authority has reached the following conclusions:

a. It notes Mr Wilkins' acceptance that his behaviour breached Statement of Principle 6.

b. Although the CSSF's letter did not request that ARM stop marketing bonds or accepting funds, in the circumstances it was not reasonable for Mr Wilkins to allow Catalyst to continue promoting the bonds or effecting the acceptance of funds. Irrespective of whether the CSSF was aware that Catalyst was continuing to promote ARM bonds and investors' funds were being collected, it was not appropriate for Catalyst to do so. Further no documentary evidence has been produced of the legal advice given, and in any event it is not clear that the legal advisers were aware of the full facts when giving advice. Although the Authority accepts that Mr Wilkins honestly believed that the licence would be granted, there were also indications that it would not, and in any event this was not a certainty.

c. The Authority has not been provided with the legal advice referred to. In any event, it accepts that Mr Wilkins believed that ARM's regulatory position would be resolved within a relatively short period of time, and believed that the risk to investors was minimal. However, in the circumstances, it was not reasonable for Mr Wilkins to allow the continued promotion of bonds and the acceptance of funds. Notwithstanding that there may have been other communications with IFAs regarding the status of the application, Catalyst continued to promote the bonds in circumstances in which ARM's regulatory position had not been clearly disclosed to investors.

d. It is accepted that Mr Wilkins tendered his resignation on 9 February 2010. However, until that resignation took effect, he was still subject to the Statements of Principle in his capacity as a director of Catalyst.

The December 2009 letter

1.5. Mr Wilkins made the following representations:

a. He accepted that he had failed to exercise due skill, care and diligence (in breach of Statement of Principle 6) in approving the December 2009 letter, since the letter did not make the position clear. He accepted that it should have included a clearer and fuller explanation of the position in relation to the licensing application, the ability to issue, and the liquidation risk.

b. He had wrongly thought that it was unnecessary to apprise investors of the stage which the licence application process had reached, and therefore had believed the December 2009 letter was not misleading, because that process would very shortly be resolved and in the meantime investors' interests were protected. The letter was sent urgently to update investors whereas he had needed time to reflect and consult after learning of the liquidation risk (in which respect there was a meeting on 7 January 2010). The primary purpose of the letter was to inform investors in Tranche 9 about a delay to the issue of the bonds, in circumstances in which Mr Wilkins reasonably believed that the CSSF would grant ARM a licence, within a relatively short period. He believed the risk of rejection or of liquidation was extremely slight. Further he took comfort in the fact that the letter was reviewed by other members of the management of Catalyst, such as its more experienced CEO, and he relied on the compliance officer to ensure that the letter complied with Catalyst's obligations.

1.6. The Authority has reached the following conclusions:

a. It notes Mr Wilkins' acceptance that his behaviour breached Statement of Principle 6.

b. The circumstances in which the letter was sent, and its primary purpose, are noted. However, in the circumstances, as Mr Wilkins accepts, he should not have approved the letter as it was not true, fair and not misleading. In this regard the Authority considers that Mr Wilkins demonstrated a serious failure to exercise due skill, care and attention.

Failure to inform the compliance officer of the mandatory nature of the licence

1.7. Mr Wilkins made the following representations: he reasonably believed that the compliance officer was aware from the beginning that ARM and Catalyst understood that the licence was mandatory. As a general rule the compliance officer knew what was going on. Catalyst was a small company with an open and collegiate environment, and there were regular management meetings, which the compliance officer attended, at which the application was discussed at some length.

1.8. The Authority has reached the following conclusions: Mr Wilkins should have ensured that the compliance officer was aware of the view that ARM was required to have a licence. This was a critical piece of information and it was not reasonable for Mr Wilkins simply to assume that the compliance officer was aware of it. He should have ensured that the compliance officer had sufficient information about ARM's licence to carry out that role properly.

Financial promotions

1.9. Mr Wilkins made the following representations:

a. he accepted that he had failed to exercise due skill, care and diligence from November 2009 in not seeking to ensure that Catalyst's financial promotions were updated, in circumstances where the promotion and sale of bonds was continuing. However, he did not accept that this impacted on his fitness and propriety to perform a significant influence function in future.

b. Though he accepted that he, along with others, bore responsibility for failing to update the financial promotions, and he regretted this, he noted that he had still believed that the application would be granted shortly and in good time before the need for any further bond issues, and therefore that investors' interests would not be prejudiced. He also took some comfort from the Authority's review during a Supervision visit in July 2009 of Catalyst's financial promotions – that they were 'broadly compliant' with the Authority's rules (and further the Authority made no criticisms in respect of the matters raised in this Notice). He also thought that new material would be issued shortly – no new material was produced from around September 2009, though he accepted that he had failed to amend

or revoke the existing materials (having not been advised to do so by Catalyst's compliance officer). Further Catalyst did not 'actively' market the bonds from January 2010. Finally, oral and email updates were being provided to IFAs regarding the status of the application in and after November 2009.

c. he did not accept that he had failed to exercise due skill, care and diligence prior to November 2009. At that stage it was not necessary for the financial promotions to refer to CSSF authorisation and ARM's application. He accepted that any application process has a risk of failure, but stated that this was risk not considered material. There was no obligation to bring these matters to investors' attention – he reasonably believed there was no real or appreciable risk that a licence would not be granted within a reasonably short period, that in the meantime ARM was entitled to continue issuing bonds, and that investors' interests were fully protected. In any event he felt confident that the involvement of a number of experienced professionals meant that the application would succeed and that any concerns about risk of failure of the application would be communicated appropriately. No such concerns were ever articulated to him during the relevant period.

1.10. The Authority has reached the following conclusions:

a. It notes Mr Wilkins' acceptance that he failed to exercise due skill, care and diligence from November 2009. However, as set out in this Notice (and covered further below) the Authority considers that Mr Wilkins also failed to exercise due skill, care and diligence during the rest of the relevant period (i.e. from 28 November 2007, by which date he considered that ARM required a licence from the CSSF). In the circumstances, the Authority considers that his conduct fell well below the required standard and that he would present a serious and ongoing risk if he were permitted to perform significant influence functions.

b. It notes Mr Wilkins' submissions but considers that, in all the circumstances, he demonstrated a serious lack of competence and capability. 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 Wilkins of responsibility for carrying out his duties to the

required standard. Further, irrespective of whether Catalyst 'actively' marketed the bonds from January 2010, this did not discourage the IFAs who were existing distributors of the ARM bonds and familiar with the product from promoting it to new or existing customers. Significant sums continued to be received from investors from January 2010.

c. The Authority considers that Mr Wilkins failed to exercise due skill, care and diligence throughout the relevant period i.e. from 28 November 2007, by which date he considered that ARM required a licence from the CSSF. Even if it may have appeared likely that the licence application would succeed, the risk of failure carried with it potential adverse consequences for ARM. In the circumstances, Mr Wilkins should have ensured that Catalyst's financial promotions were amended to reflect the position, so that they were clear, fair and not misleading. The Authority considers that his conduct in failing to do so fell well below the required standard in terms of competence and capability and as a result he is not fit and proper to perform any significant influence function.

Sanction

1.11. Mr Wilkins made the following representations:

a. A prohibition order was not an appropriate sanction in the circumstances, and in particular considering that his skill and care failings had been strongly mitigated. A prohibition order would be life-changing for him - since leaving Catalyst he has been involved with a new business but this would be ended by a prohibition.

b. He noted the following points in mitigation of his failings:

i. he had accepted that he had made mistakes, and recognised that in the period from November 2009 to March 2010 his conduct or inaction fell below the standards required by Statement of Principle 6, in that he failed to exercise due skill and care in some ways.

ii. His failings were competence failings, rather than reckless or deliberate.

iii. At the relevant time he was young and relatively inexperienced. Catalyst and ARM were closely controlled by their CEO, on whose judgment, and that of others in Catalyst and their advisers, Mr Wilkins relied.

iv. He had repeatedly raised the issue of investors' interests – whether they should be given more information or treated differently – with others in Catalyst, and taken steps personally to try and protect their interests.

c. He accepted that a relatively modest fine would be appropriate. A large penalty on the other hand was not warranted and would force the sale of the family home.

1.12. The Authority has reached the following conclusions:

a. A significant influence function prohibition order is appropriate in the circumstances. Mr Wilkins demonstrated serious competence failings in his capacity as a director of Catalyst. Although he raised some issues and took some positive steps, he failed to recognise the clear risks to investors and failed to take decisive steps to remedy the issues that he did identify. In so doing he exposed a substantial number of consumers to risk. As such his conduct fell substantially below what the Authority would expect in the circumstances from someone in his position with responsibility as an approved person performing a significant influence function. Mr Wilkins demonstrated a serious lack of due skill and care, and the Authority has ongoing concerns about his fitness and propriety in terms of his competence and capability to hold a significant influence function, notwithstanding the admissions that he has made.

b. The Authority notes the points raised by Mr Wilkins in mitigation, and has taken into account of all the relevant circumstances. In assessing the appropriate level of penalty the Authority has given Mr Wilkins credit for his admissions of failings, and recognises that his failings related to his competence and not his integrity. Notwithstanding that Mr Wilkins was not the most senior director at Catalyst, and put some reliance on others, and that he made efforts to raise and protect the interests of investors, he was a director and as such was required to meet the appropriate standards. In terms of his competence he failed to do so, particularly from November

2009 when he was not new to the role, and his failings in this regard were serious, with the result that investors were put at serious risk of loss.

c. The Authority notes that Mr Wilkins has not claimed that the imposition of a penalty of the level proposed would cause him serious financial hardship (as defined in DEPP). As set out in this Notice the Authority has taken into account all relevant factors in assessing the appropriate level of penalty. Given the seriousness of Mr Wilkins' competence failings, but taking into account all of the circumstances, including his admissions, the Authority has determined the appropriate level of penalty to be £100,000.

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 concluded 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 Wilkins' conduct during the relevant period.