
FINAL NOTICE

To: **Arnold Gary Eber**

Individual
Reference
Number: **AGE01012**

Date: 24 February 2014

1. ACTION

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

- (1) withdraws the approval given to Mr Eber under section 59 of the Act to perform the controlled functions CF1 (Director), CF3 (Chief Executive), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer) at CIB Partners Limited ("CIB"/"the Firm"); and
- (2) makes an order prohibiting Arnold Gary Eber ("Mr Eber") from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

1.2. The public censure will be issued on 24 February 2014 and will take the form of this Final Notice, which will be published on the Authority's website.

2. SUMMARY OF REASONS

2.1. The FCA takes this action as a result of Mr Eber's conduct as an approved person and as the Chief Executive Officer and sole director of CIB between 5 September 2007 and 15 September 2010 ("the Relevant Period").

- 2.2. References to the FCA in this Notice also include reference to the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority.
- 2.3. Between September 2007 and mid-2009, CIB was the adviser to SLS Capital S.A. ("SLS"). SLS was a special purpose vehicle that issued approximately US\$250 million of SLS bonds (the "SLS Bonds") in 2005. CIB was engaged by SLS to perform a number of advisory functions, the most important of which was the calculation of the Required Asset Cover ("RAC"), which indicated the level of assets held within a portfolio of investments ("the SLS Portfolio"), and the issue of a certificate ("the RAC Certificate") that set out the level of the RAC .
- 2.4. Mr Eber was in charge of the overall operation of CIB, and was personally responsible for the performance of CIB as the adviser to SLS. During the Relevant Period, Mr Eber's conduct fell short of the FCA's regulatory standards that require an approved person to demonstrate that they are a fit and proper person to hold controlled functions ("FIT").
- 2.5. Mr Eber demonstrated a lack of integrity in causing CIB to issue:
- (1) inaccurate and misleading (and in two instances, false) RAC Certificates covering dates between September 2007 and September 2008, that were misleading in showing that the RAC requirement had been met; and
 - (2) misleading (and in two instances, false) reports ("Adviser Reports") in or around January 2009 which appeared to support and add credence to the previously issued RAC Certificates by providing details of assets in the SLS Portfolio that purported to underpin the RAC Certificate calculations, and which were backdated.
- 2.6. Mr Eber also failed to be candid and truthful in all his dealings with the FCA, by failing to disclose:
- (1) his knowledge that the SLS Portfolio had severe liquidity issues that had led SLS to sell most of the assets that underpinned the SLS Bonds by August 2008; and
 - (2) CIB's provision of a false Adviser Report in January 2009 to a third party knowing that the document could be given to the FCA.
- 2.7. The FCA considers these failings to be particularly serious because the RAC Certificates were relied on by third parties as giving some assurance that sufficient asset cover was in place in respect of the SLS Bonds.
- 2.8. The FCA considers that as a result of his conduct, Mr Eber has demonstrated that he is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.
- 2.9. Having regard to its regulatory objectives, including securing an appropriate degree of protection for consumers and the need to protect and enhance the integrity of the UK financial system, it is necessary and desirable for the FCA to withdraw Mr Eber's approval to hold his controlled functions, to exercise its power to make a prohibition order against him.

3. FACTS AND MATTERS

CIB

- 3.1. CIB was a UK private company. The Firm carried on business as a corporate finance consultancy, specialising in strategic consultancy, and advising on mergers and acquisitions and raising capital. It had the following permissions:
- (1) *"Arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments, limited to dealings with eligible counterparties or professional customers only and limited to the following investment instruments: certificates representing certain security, debenture, rights to or interests in investments (security), share, unit and warrant";*
 - (2) *"Advising on investments (except pension transfers and pension opt-outs) limited to dealings with eligible counterparties or professional customers only, limited to corporate finance business only and limited to the following investment instruments: certificates representing certain security, debenture, rights to or interests in investments (security), share, and warrant"; and*
 - (3) *"Agreeing to carry on a regulated activity limited to carrying on the above regulated activities".*
- 3.2. On 10 April 2012, CIB was struck off the Register of Companies and dissolved by order of the Registrar of Companies.

Mr Eber

- 3.3. Mr Eber was the majority shareholder and sole director of CIB. He held the following controlled functions: CF1 (Director), CF3 (Chief Executive), CF10 (Compliance Oversight), and CF11 (Money Laundering Reporting) from 19 June 2003. He was also approved to hold the CF30 (Customer) controlled function from 1 November 2007.
- 3.4. Mr Eber was responsible for the overall operation of CIB. Throughout the Relevant Period, he was assisted by another employee of CIB ("Employee A"), who was not an approved person. Mr Eber gave directions and delegated certain tasks to Employee A in relation to CIB's role as Adviser to SLS, and accepted that Employee A had full authority to act on his and CIB's behalf.

SLS and Mr David Elias ("Mr Elias")

- 3.5. Mr Elias was the ultimate controller and beneficial owner of SLS through a series of holding companies based in Malaysia. SLS was a special purpose vehicle incorporated in Luxembourg for the purpose of issuing bonds that would then be sold on to investors (the SLS Bonds).

The SLS Bonds

- 3.6. The SLS Bonds were asset backed bonds. From around March 2005, the SLS Bonds invested in a portfolio that consisted of a number of US senior life settlement policies and cash (the SLS Portfolio). Life settlement policies are life insurance policies that have been sold to a third party. The purpose of the policies was to produce income and the investment return promised to investors at the

end of the term of the SLS Bonds, through the death of an insured life or the re-sale of the policy in the secondary markets (although the return was not guaranteed). The purpose of the cash was to fund the payment of fees, interest and insurance premiums during the lifetime of the SLS Bonds.

- 3.7. In 2005, SLS issued SLS Bonds in separate tranches worth approximately US\$250 million in total. Mr Eber was aware that a large proportion of the SLS Bonds were purchased on behalf of UK retail investors. Investors either invested directly in the SLS Bonds or held a beneficial interest in the relevant bond issued by SLS to underpin their investment in an SLS Product, together the "SLS Bondholders".

Appointment of CIB as Adviser in respect of the SLS Bonds

- 3.8. CIB was appointed as Adviser to SLS on 5 September 2007 under an engagement letter dated 5 September 2007 as amended by a further letter dated 7 March 2008 (together the "Engagement Terms"). The Engagement Terms stated that *"Arnold Eber will be the director responsible for the Assignment and will have day to day responsibility."*
- 3.9. Under the Engagement Terms, CIB agreed to perform certain functions. This involved:
- (1) reviewing the contractual and administration obligations of SLS;
 - (2) stakeholder management, including signing off SLS documentation;
 - (3) obtaining the spreadsheet template for the RAC Formula and the RAC Certificates from the previous adviser;
 - (4) obtaining data as to the value of the SLS Portfolio, and to use that data to calculate the RAC and issue the RAC Certificates;
 - (5) co-ordinating the sale of SLS Assets; and
 - (6) liaison with the "SLS Bondholders".
- 3.10. CIB also agreed in the Engagement Terms to advise on eligible assets and the mix of assets, and the balancing of the portfolio, to identify suitable senior life policies for purchase and advise on the financial stability of the transaction.
- 3.11. An amendment to the Engagement Terms on 7 March 2008 recorded that as CIB had been performing an investment adviser role since December 2007, and would continue to perform the overall management of the SLS Portfolio, CIB's role would include:
- (1) advising on any sale of policies and managing the transaction process;
 - (2) advising on the purchase of new policies to comply with required asset coverage;
 - (3) reconciling and confirming payments to suppliers/agents; and
 - (4) verifying quarterly bond interest payments.
- 3.12. The fees to be paid to CIB under the Engagement Terms were a one-off retainer of £130,000 payable on accepting the adviser role for handover and familiarisation, and thereafter a fee paid half yearly in advance of £125,000. By

means of the amendment to the Engagement Terms on 7 March 2008, the half yearly fees were to be calculated on the basis of 2.5% of the value of the portfolio (including cash and any other marketable securities as well as the face value of all policies) paid semi-annually in advance.

RAC and the RAC certificates

3.13. Under the SLS Bonds' terms and conditions:

- (1) the eligible assets were defined as any combination of life insurance policies or beneficial interests in policies and the proceeds of these policies, cash and marketable investment grade debt instruments with a rating of 'A' or better by Standard and Poor's (the SLS Assets);
- (2) the obligations owing to SLS Bondholders pursuant to the SLS Bonds could only be satisfied by the SLS Assets; and
- (3) the RAC must be met at all times.

3.14. CIB's obligation under the Engagement Terms was to calculate the RAC and produce an RAC Certificate for the relevant period. The SLS Bonds' terms and conditions provided that the bond issuer would procure that the Adviser provided the custodian and bond registrar with a certificate, certifying that the RAC:

- (1) had been met over the preceding period; and that
- (2) SLS was not in default of its obligations to the SLS Bondholders.

CIB produced the RAC Certificate on a quarterly basis.

3.15. Under the SLS Bonds' terms and conditions, the RAC ratio was calculated by the following formula (the "RAC Formula"):

Face value of policies within the SLS Portfolio

Principal outstanding on SLS Bonds minus cash

3.16. For example, if the face value of the SLS Portfolio was £20 million and the principal amount outstanding under the SLS Bonds was £5 million with a cash surplus of £1 million, the RAC calculation using that formula would be $20 \div (5 - 1) = 5$. The RAC ratio was required to be at least 2.

3.17. The purpose of the RAC Certificate was to provide some assurance to the SLS Bondholders that sufficient underlying assets, in the form of the policies, were held to cover the amount of subscription monies invested in the SLS Bonds (the outstanding principal) that would need to be paid out on the maturity of the SLS Bonds. Corporate guarantees received by SLS were not assets which could be included in the RAC calculation.

CIB's initial assessment of the SLS Bonds and SLS Assets

3.18. Shortly after CIB's appointment as Adviser to SLS, Mr Eber carried out an analysis of the SLS Bonds. His conclusions included opinions that:

- (1) from at the latest, September 2007 SLS was, as Mr Eber expressed it, "*bankrupt*" because of the amount of interest outstanding versus the premium required, and would have been "*under water*" in just over a year;

- (2) the maturity dates of the policies (i.e. the life expectancies of the insureds) were not aligned to the maturity dates of the SLS Bonds, at which time the SLS Bondholders were anticipating the full return of their capital investment. This meant the expected pay-outs on the policies in the SLS Portfolio would not be able to cover the capital repayment of the SLS Bonds; and
 - (3) there was insufficient cash held within the SLS Portfolio to meet the ongoing premiums for the underlying policies. This meant that there was a risk that policies would lapse at which point the policies would have no value as an asset.
- 3.19. As a result, Mr Eber concluded that unless a continuous cash stream was received into the SLS Portfolio, there would be insufficient cash to make interest payments to SLS Bondholders and to pay fees owing and interest, as the maturity dates of the policies were outside the maturity dates of the SLS Bonds.
- 3.20. Mr Eber stated that after his review of the SLS Bonds, he wrote to SLS and Mr Elias and advised them that "*there was a problem*". No notification of this issue was made to the FCA by Mr Eber at this time.

Sales of the SLS Portfolio

- 3.21. The SLS Portfolio consisted of two main groups of policies:
- (1) policies for which SLS held the legal title held within a custodian account of a bank ("the Custodian" and the "Custodian Policies"); and
 - (2) policies for which SLS held the beneficial interest purchased from Life Settlements Capital ("LSC") (another company controlled by Mr Elias) between September 2007 and March 2008 (the "LSC policies") and a US\$21 million US "double life" policy.
- 3.22. At times during the Relevant Period, the SLS Portfolio contained:
- (1) up to 144 Custodian Policies with a face value of over US\$383 million (as at 19 October 2007); and
 - (2) up to 23 policies (the LSC Policies) with a face value of over \$US140 million (as at 17 March 2008).
- 3.23. In or around October 2007, Mr Elias informed Mr Eber that he wanted to liquidate the SLS Portfolio by selling some or all of the policies contained in the SLS Portfolio.

The LSC Policies

- 3.24. SLS obtained policies from LSC on three occasions:
- (1) 8 policies with a face value of US\$56,125,000 were transferred on 28 September 2007, under a Capital Contribution and Call Option Agreement ("the Call Option"). The Call Option meant that LSC could recall those policies for payment of US\$1 as long as SLS had an RAC ratio of over 2;
 - (2) 22 policies with a face value of US\$119,250,000 sold to SLS for US\$17,006,261 on 21 December 2007, through a sale agreement (the

"December 2007 Agreement"). These included the 8 policies transferred under the Call Option; and

- (3) one "double life" policy with a high face value of US\$21,000,000 sold to SLS for US\$3,500,000 through another sale agreement on 17 March 2008.

- 3.25. In or around September 2008, Mr Elias started negotiations for the sale of the LSC Policies. Mr Eber was aware that this proposed sale was because Mr Elias wanted to sell the LSC Policies to free up short term liquidity for SLS. Accordingly, CIB provided the potential purchaser details of the policies, their face value and acquisition costs between mid-September 2008 and early October 2008. On or around 7 November 2008 the LSC policies were sold with the exception of the US\$21 million US "double life" policy. This policy was later sold, in January 2009.

The Custodian Policies

- 3.26. Over a six month period between 15 February 2008 to 22 July 2008, 139 Custodian Policies were sold off for a total of US\$39,694,050. These policies had a total face value of US\$369,508,487 and had been purchased by SLS for a total of US\$121,725,606.

CIB's First Sale Report

- 3.27. In February 2008, SLS proposed to sell a number of the Custodian Policies to a proposed purchaser ("the Third Party Purchaser"). Mr Eber was aware that the Third Party Purchaser wanted sight of SLS board minutes authorising the sale.
- 3.28. On 11 February 2008 CIB advised SLS in a report ("the First Sale Report") that considering all the options available to SLS, the sale was the best option for SLS. The First Sale Report attached an RAC calculation prepared on that date and confirmed that the RAC was 2.21, taking into account the reduction in the total face value of policies in the SLS Portfolio because of the sale.
- 3.29. On 14 February 2008, a representative of SLS sent to the Third Party Purchaser the First Sale Report; Mr Eber was copied into that email. On 15 February 2008 the Third Party Purchaser bought policies with a face value of US\$45,524,782 for US\$7 million from SLS.
- 3.30. Mr Eber knew that the Third Party Purchaser was relying on the First Sale Report and RAC Certificate as confirmation that the RAC would be met notwithstanding its decision to purchase the policies. He became aware after that date that the RAC calculation was inaccurate (see paragraphs 3.42 - 3.44 below) but took no steps to correct the First Sale Report or otherwise notify the Third Party Purchaser.

CIB's Second Sale Report

- 3.31. In or around March 2008, SLS proposed to sell further policies to the Third Party Purchaser, who again required sight of a resolution of the SLS board in favour of the sale. On 6 March 2008, CIB advised SLS in a report ("the Second Sale Report") that noted that as a result of the sale, SLS would be under the RAC of 2, but that this could be rectified before the next RAC Certificate needed to be issued, and confirmed that "At this present point in time our view remains SLS is fully compliant with the terms and conditions of the SLS Bonds".
- 3.32. On 14 March 2008, CIB sent the Second Sale Report to the Third Party Purchaser. Mr Eber knew that the confirmation that SLS was fully compliant with the SLS

Bonds' terms and conditions was inaccurate because of the requirement that the RAC was in place at all times for the reasons set out in paragraphs 3.42 - 3.44 below.

CIB's Third Sale Report

- 3.33. In or around April 2008, SLS proposed to sell a further tranche of the Custodian Policies to the Third Party Purchaser.
- 3.34. On 21 April 2008, CIB advised SLS in a report ("the Third Sale Report") that recommended the sale and provided that report to the Third Party Purchaser. Mr Eber was copied in on that email. The Third Sale Report recorded the RAC at 31 March 2008 as 2.21 and stated that SLS was fully compliant with the SLS Bonds' terms and conditions.
- 3.35. Mr Eber knew that the CIB's confirmation of the RAC in the Third Sale Report was misleading because (as set out in paragraphs 3.45-3.48 below) the RAC Certificate for the period ending 31 March 2008 was inaccurate, as the RAC had not been in place at all times, and it was reliant on the inclusion of a later executed corporate guarantee that was not an eligible asset according to the SLS Bonds' terms and conditions and so should not have been included in the RAC calculation. In addition, on or around 21 April 2008, SLS had entered into an agreement with LSC to transfer all its assets to LSC in return for an unlimited corporate guarantee (see paragraphs 3.49-3.50 below). Accordingly, there was no proper basis on which CIB could issue an RAC Certificate stating that the RAC was 2.21 in accordance with the SLS Bonds' terms and conditions.

RAC Certificates and Adviser Reports issued by CIB

- 3.36. During the Relevant Period, the task of calculating the RAC was primarily carried out by Employee A. Information as to the outstanding principal was provided to CIB by the Bond Registrar, the face value of the policies and cash balance from the Custodian of the SLS Portfolio, and account balances from the broker for the purchase and sale of the policies. This information was then put into a spreadsheet that automatically calculated the RAC.
- 3.37. CIB issued an RAC Certificate for each quarter that was then sent to SLS for onward transmission to the Custodian and Bond Registrar. Copies of the RAC Certificate were not routinely sent to SLS Bondholders by CIB. The RAC Certificates all bore Mr Eber's signature. CIB also performed RAC calculations from time to time during the Relevant Period. The calculations were carried out for a variety of reasons:
 - (1) to assess what further assets or guarantees needed to be obtained to increase the SLS Portfolio so that the RAC was met;
 - (2) to satisfy counterparties (i.e. the Third Party Purchaser) on the sale of policies; and
 - (3) for the actual issue of the RAC Certificates.
- 3.38. As set out below, throughout the Relevant Period, either the RAC was not met at all times in breach of the SLS Bonds' terms and conditions, or was dependent on the inclusion of assets that should not have been included in the RAC calculation. Frequently the RAC Certificates were not issued on or shortly after the period they covered, but were only formally issued later once action had been taken to

increase the SLS Portfolio so that the RAC was at or in excess of the requirement of 2.

June 2007 RAC Certificate

- 3.39. CIB carried out an RAC calculation on 26 September 2007 that showed that the RAC was 1.8. On 28 September 2007 SLS entered into the Call Option agreement referred to in paragraph 3.24(1) above. This was executed to enable SLS to meet the RAC at 30 September 2007, curing the US\$45,329,572, deficiency identified in the RAC level by the RAC Calculation on 26 September 2007, and allowing CIB to issue an RAC Certificate and covering letter on 30 September 2007 for the period ending 30 June 2007, which as well as providing the position as at 30 June, also stated that the RAC was 2.03 on 30 September 2007.
- 3.40. The June 2007 RAC certificate did not disclose that the RAC by 30 September 2007 was underpinned by the Call Option. It was therefore misleading as it suggested that SLS had unencumbered ownership of all the SLS Portfolio, when this was not the case.

December 2007 RAC Certificate

- 3.41. On 27 November 2007, CIB carried out the RAC calculation that showed the cover as 1.89. On 30 November 2007, another calculation demonstrated an RAC of 1.92. On 21 December 2007 SLS entered into the December 2007 Agreement set out in paragraph 3.24(2) above. The effect of that sale agreement increased the assets in the SLS Portfolio so that on 31 December 2007, CIB could issue a RAC Certificate to SLS stating that the RAC level was 2.38 for the period ending on 31 December 2007.
- 3.42. Those RAC calculations, repeated on 11 February 2008 for the first sale of the Custodian Policies and showing the RAC as at 31 December 2007 to be 2.38 and 2.21 (post first sale) were inaccurate. This was because a number of LSC Policies had been double counted in the calculations for the First Sale Report.
- 3.43. Once Employee A became aware of the error, Mr Eber was asked if the error should be disclosed to the Third Party Purchaser; on being told that the RAC was above 2 at that time, Mr Eber directed that the error should not be disclosed to the Third Party Purchaser, even though he knew that the Third Party Purchaser had relied on the necessary RAC cover being met in making the decision to purchase the policies from SLS and that in certifying that the RAC was above 2, the RAC Certificate was misleading.
- 3.44. However, this RAC calculation was still inaccurate. The face value of the policies in the incorrect RAC calculations was shown as approximately US\$516 million. The correct figure was approximately US\$451 million. CIB performed a further calculation on 18 February 2008, recording the correct figure after the first sale, which put the RAC at 1.99. Accordingly, this uncorrected error meant that the Third Party Purchaser could have been misled into believing that the first sale would not result in the RAC ratio being below 2, when in fact the sale did have that result.

March 2008 RAC Certificate

- 3.45. On 6 March 2008, CIB carried out an RAC calculation that showed the RAC cover as 1.8. The Second Sale Report noted this but stated that this could be rectified before the next RAC Certificate needed to be issued. After the second sale of the Custodian Policies, a further calculation carried out by CIB on 31 March 2008

showed the RAC cover as 1.85. No certificate appears to have been issued on or near that date.

- 3.46. On 16 April 2008, LSC gave a corporate guarantee for a maximum sum of £24,209,000 ("the April Guarantee") to SLS. The effective date of the April Guarantee was stated as being 31 March 2008. On 17 April 2008, CIB issued an RAC Certificate dated 17 April 2008 for the period ending 31 March 2008 showing the RAC as 2.21. The calculation recorded a "*Cash equivalent Guarantee – Tranche C, Series 1 [US\$] (48,095,051.94)*".
- 3.47. Therefore, in calculating the RAC as at 31 March 2008, CIB included a corporate guarantee and treated it as cash for the purposes of the RAC calculation, as a way of improving the RAC ratio. The SLS Bonds' terms and conditions did not allow for the inclusion of such a corporate guarantee and it was materially different in nature to the cash or investment grade debt investments which could be held as an asset. The existence of, and reliance on, this corporate guarantee was not disclosed in the RAC certificate. The RAC Certificate was also misleading in stating that as at 31 March 2008 the RAC was 2.21, as the corporate guarantee did not exist at that date. If the April Guarantee is taken out of the RAC calculation, the RAC falls from 2.21 to 1.77.
- 3.48. Mr Eber has accepted that there was no basis for including the April Guarantee as an asset in the SLS Portfolio, that none of the terms of his and CIB's obligations to issue the RAC were met and that the RAC was "not accurate".

The LSC Transfer Agreement

- 3.49. On or around 21 April 2008, SLS entered into a transfer agreement with LSC (the "LSC Transfer Agreement"). In return for LSC guaranteeing all of SLS's liabilities (save those relating to any claims or proceedings in relation to the sales of the policies by SLS), SLS transferred all of its title and interest in the policies and any other assets whatsoever owned by SLS. SLS also agreed forthwith to pay to LSC any monies received or the sales proceeds from the sale of any policies to third parties. The recitals in the LSC Transfer Agreement also stated that "*for the avoidance of doubt, LSC shall require SLS to continue to be the registered owner and thus appear to be the legal owner of both the Life Insurance Contracts and the Conveyed Assets...*"
- 3.50. The effect of the LSC Transfer Agreement was that from the date of the transfer, the SLS Portfolio had no assets save for the corporate guarantee from LSC, but retained liability for any claims relating to any sales of the policies to third parties. Mr Eber was aware of the existence of the LSC Transfer Agreement as a copy was sent by email to Mr Eber on 21 April 2008.

June 2008 RAC Certificate

- 3.51. On 1 July 2008, Employee A sent Mr Eber an email regarding the RAC and the corporate guarantee in place which noted that "*SLS is clearly in trouble*" and then explained that, instead of relying solely on the LSC Transfer Agreement to guarantee all of SLS's liabilities to bondholders, which were estimated to be US\$250 million, guarantees for each of the tranches of bonds issued by SLS should be obtained. It was suggested that this was because "*down the line it could work in our favour proving LSC etc could reasonably cover the liabilities of a couple of tranches rather than the whole \$250m.*"
- 3.52. It was also suggested that "*it won't raise queries by bondholders because they will receive their usual notification with a specific RAC*" It appears that this is a

reference to including 'tranche by tranche' corporate guarantees in the RAC calculation, to calculate a specific ratio.

- 3.53. CIB proposed replicating the documentation used for the April Guarantee guaranteeing a further £9,074,000. Mr Elias agreed with and accepted this suggestion, hence the July Guarantee was for a total of £33,283,000.
- 3.54. On or around 28 April 2008, Mr Eber also informed an SLS Bondholder that SLS had obtained an unlimited corporate guarantee. Mr Eber was aware that the SLS Bondholder believed that this guarantee was an additional layer of financial security for the SLS Bondholders rather than a substitution for SLS' assets, but took no steps to correct that misunderstanding.
- 3.55. On 8 July 2008, an email was sent to the SLS Bondholder's independent financial adviser confirming that the RAC submitted was above 2. It was not explained that the reason the RAC was above 2 was because a corporate guarantee had been taken into account in calculating the RAC. This should not have occurred; a corporate guarantee was not an eligible asset under the SLS Bonds' terms and conditions.
- 3.56. Accordingly, after the third sale on 22 April 2008, CIB issued on 9 July 2008 an RAC Certificate for the period ending 30 June 2008 by letter dated 3 July 2008 that stated that the RAC cover was 2.02. The 3 July 2008 RAC calculation recorded:

<i>"Cash equivalent Guarantee – Tranche C, Series 1</i>	<i>-\$48,249,989.54</i>
<i>Cash equivalent Guarantee – Tranche C, Series 2</i>	<i>-\$18,085,026.44"</i>

These lines are derived from a corporate guarantee executed on 9 July 2008 ("the July Guarantee") by LSC to SLS. The effective date was stated to be 30 June 2008. It operated as a substitute for the April Guarantee and extended the amount of the corporate guarantee to a maximum sum of £33,283,000. It made no reference to, and did not purport to replace the LSC Transfer Agreement. Again, the existence of the corporate guarantee and its inclusion in the calculation was not disclosed in the RAC Certificate. It was impermissible under the terms and conditions of the SLS Bonds to include the July Guarantee in the RAC calculation and to use it as the basis for the issue of RAC Certificate, and this was accepted by Mr Eber. The effect of reliance on the July Guarantee (which again was not disclosed in the RAC Certificate) was that the RAC level increased from 1.48 to 2.02.

- 3.57. Both the statement to the bondholder's adviser that the RAC was above 2 on 8 July 2008, and the statement accompanying the June 2008 RAC Certificate that:

"CIB on this day July 03, 2008 hereby delivers the Required Asset Coverage Certificate for June 30, 2008 stating that the net in-force death benefits of the policies held by SLS Capital S.S ("SLS Capital") equalled 2.21.."

were false, as the July Guarantee on which CIB relied in making those statements did not exist on those dates, nor was it an eligible asset for the purpose of the RAC calculation, and at this time, there were no policies held by SLS for the benefit of SLS Bondholders because of the LSC Transfer Agreement. Accordingly, there was no proper basis on which CIB could issue an RAC Certificate that misleadingly certified that the RAC was above 2 and also stated, falsely, that SLS held any policies that could then be included in any RAC calculation.

September 2008 RAC Certificate and Adviser Reports

- 3.58. By August 2008 all of the Custodian Policies had been sold or had lapsed. On 14 August 2008, Employee A emailed Mr Eber and stated:

"CIB will not be in a position to issue the 30th Sept RAC. SLS holds U\$140m face value of contestable policies [i.e. the LSC Policies], to reach the 2x cover CIB would need to be satisfied with the equivalent of 360m of eligible assets, cash or cash equivalent".

CIB did not issue an RAC certificate for the quarter ending September 2008 on or soon after 30 September 2008.

- 3.59. On and around 6 November 2008, CIB was receiving complaints from SLS Bondholders because interest due under the SLS Bonds was late and unpaid. Employee A acknowledged in an email on 7 November 2008 to Mr Eber that CIB was *"telling half truths every time one of these bondholders call."*
- 3.60. On 15 December 2008 Mr Eber emailed Mr Elias and reported that CIB was coming under huge amounts of pressure to issue the RAC Certificate by SLS Bondholders.
- 3.61. Mr Eber asked Mr Elias if it were possible that a further guarantee could be put in place, and noted that if that were possible, CIB could issue the RAC Certificate for the period ending 30 September 2008. On 18 December 2008, a new corporate guarantee was given by an associated company (the "December Guarantee").
- 3.62. The December Guarantee purported to replace the April and July Guarantees and to guarantee *"any payment of the SLS liabilities"*. It made no reference to, and did not purport to replace the LSC Transfer Agreement. It was stated to be effective from 30 September 2008 and to be irrevocable and continuing. Again, such a guarantee should not have been included in any RAC calculation (see paragraph 3.56 above).
- 3.63. As a result of the LSC Transfer Agreement, there were no policies held by SLS for the benefit of SLS Bondholders as the legal and beneficial interest in the policies had been transferred to LSC. Further, the Custodian Policies had been sold by September 2008, even though the Custodian Policies were needed to maintain the RAC cover. Accordingly, there was no proper basis on which CIB could issue a RAC Certificate certifying that the RAC had been met according to the SLS Bonds' terms and conditions.
- 3.64. On 14 January 2009, CIB sent an email to a third party and attached a number of letters titled "Event of Default Notification", that recorded, for each tranche of the SLS Bonds, the responsibilities of CIB and the event of default that had occurred as a result of SLS' failure to make interest payments. In addition, the letters recorded that *"the RAC has not been satisfied for the period ending 30 Sept 2008"* for the SLS Bonds. Those letters were drafted on the instruction of Mr Eber.
- 3.65. However, on 21 January 2009 Mr Eber sent an RAC Certificate for the period ending 30 September 2008 to this third party. This certificate was dated 17 December 2008 and stated that the RAC had been *"satisfied"* for the period ending 30 September 2008 but did not state the level of cover. Although the RAC Certificate was dated 17 December 2008, on 18 December 2008 Mr Eber agreed not to issue the 30 September RAC Certificate until further instructed by SLS's representative. The RAC Certificate made no reference to the December

Guarantee, although this is what CIB relied upon when certifying that the RAC had been satisfied on 17 December 2008.

- 3.66. Also on 21 January 2009, CIB received a request for a report from CIB from the third party setting out certain details of SLS's policies (an "Adviser Report"). The function of the Adviser Reports appeared to be to complement the relevant RAC Certificate by providing additional information about the policies within the SLS Portfolio on which the RAC had been calculated. No such Adviser Reports had previously been created and provided by CIB. Mr Eber had said that he had understood that the Adviser Reports, and the RAC, were required for the purposes of this third party's "internal compliance". However, he was also aware that the Adviser Report could be given to the FCA.
- 3.67. On 22 January 2009, Employee A sent an Adviser Report for the period ending 30 September 2007 and dated 5 October 2007 to the third party and confirmed that CIB would replicate the sample report for the SLS Portfolio adjusting the data for the periods ending 31 December 2007, 31 March 2008 and 30 June 2008. On 22 January 2009, Employee A then sent Adviser Reports for those periods, but they were dated 7 January 2008, 17 April 2008 and 3 July 2008 respectively.
- 3.68. The Adviser Report for the period ending 30 June 2008 and dated 3 July 2008 stated that:
- (1) the aggregate face value of the portfolio of policies that SLS had acquired as at 30 June 2008 was US\$369,459,513;
 - (2) the SLS Portfolio of life settlement contracts currently maintained an average insurance carrier rating of A or better, diversified amongst 37 different U.S. based insurance carriers; and
 - (3) it attached a portfolio summary as at 30 June 2008 which stated that the SLS Portfolio contained 85 policies. These policies appear to relate to the LSC Policies plus the Custodian Policies held in SLS's name by the third party Custodian. As a result of the LSC Transfer, SLS no longer had any legal or beneficial title to the policies within the SLS Portfolio (or any assets other than corporate guarantees).
- 3.69. Accordingly, at the time CIB issued the 30 June 2008 Adviser Report, Mr Eber knew that it was false and misleading in that:
- (1) it was actually issued on 22 January 2009, despite appearing to be dated 3 July 2008; and
 - (2) by virtue of the LSC Transfer Agreement, SLS did not have legal and beneficial title to the assets purportedly set out in the 30 June 2008 Adviser Report.
- 3.70. On 4 February 2009 Employee A sent an Adviser Report for the period ending 30 September 2008 and dated 30 September 2008 and attached the RAC Certificate for the same period to the third party. That 30 September 2008 Adviser Report stated that:
- (1) the aggregate face value of the portfolio of policies that SLS had acquired as at 30 September 2008 was US\$363,459,513;

- (2) the SLS Portfolio of life settlement contracts currently maintained an average insurance carrier rating of A or better, diversified amongst 36 different U.S. based insurance carriers; and
 - (3) it attached a portfolio summary as at 30 September 2008 which stated that the SLS Portfolio contained 84 policies.
- 3.71. CIB had produced the 30 September 2008 Adviser Report by using the figures from the 30 June 2008 Adviser Report. The only difference in the figures is that CIB removed one policy that had lapsed that had been included in the 30 June 2008 figures.
- 3.72. However, since 30 June 2008 all of the Custodian Policies had been sold to third parties. Mr Eber was involved in, or aware of those sales. Furthermore, any remaining policies would be subject to the LSC Transfer Agreement, where their legal and beneficial interest had been transferred to LSC. Accordingly, as at 30 September 2008 it was false to suggest that the SLS Portfolio contained policies of a face value of US\$363,459,513.
- 3.73. On 5 February 2009, Employee A sent (copying in Mr Eber) details of the breakdown of the insurance company carriers to the third party, and stated that CIB could add this information to the 30 September 2008 Adviser Report if it had not already been provided to the FCA.
- 3.74. Therefore, at the time CIB issued the 30 September 2008 RAC Certificate and Adviser Report, Mr Eber knew that:
- (1) SLS had transferred all its assets to LSC under the LSC Transfer Agreement and had sold most of the SLS Portfolio to third parties; and
 - (2) the September 2008 RAC Certificate relied on the December Guarantee, but there were no grounds to justify reliance on a corporate guarantee as an asset because of the SLS Bonds' terms and conditions.
- 3.75. As a result, the figures and assertions set out in the 30 September 2008 RAC Certificate and Adviser Report were false and misleading in that:
- (1) the Adviser Report was based largely on figures taken from the 30 June 2008 RAC Certificate, and the RAC Certificate stated that the RAC has been met as at 30 September 2008, when by that date, the majority of the SLS Portfolio had been sold, or transferred to LSC under the LSC Transfer Agreement; and
 - (2) the RAC Certificate was actually issued on 21 January 2009, and the Adviser Report was issued on 4 February 2009, despite both documents appearing to be dated 30 September 2008.
- 3.76. Mr Eber believed that the Adviser Reports were going to be relied on for the third party's 'internal compliance'. Mr Eber knew that the false 30 September 2008 Adviser Report could be provided to the FCA, but failed to inform the FCA of this issue.

Failure to report issues to the FCA

- 3.77. By August 2008, when all the Custodian Policies had been sold, Mr Eber knew that:

- (1) from his initial review in November 2007, the construction of the SLS Portfolio was flawed because the forecast pay-out dates for the policies were not aligned with the SLS Bonds and their maturity dates. As the premium payments for the underlying policies were high, in Mr Eber's view SLS would soon run out of cash to service the premium payments and to keep up to date with the interest payments owing under the SLS Bonds;
 - (2) from April 2008, he knew that if SLS kept to the strategy of waiting for the policies within the SLS Portfolio to mature, the portfolio would require every single insured to pass away in the next three years, whereas since inception [2005] there had only been nine deaths for which the policies paid out US\$7m of revenue;
 - (3) complaints from SLS Bondholders as to late payment of interest and the timing of the issue of RAC Certificates had increased;
 - (4) SLS did not have enough assets to pay the interest payments due to the SLS Bondholders or redeem the SLS Bonds on maturity; and
 - (5) CIB had issued misleading, and in one instance false, RAC Certificates that gave a false impression that the SLS Portfolio continued to fulfil the SLS Bonds' terms and conditions.
- 3.78. By January 2009, Mr Eber was further aware that misleading Adviser Reports had been issued, and was aware that the June 2008 and September 2008 RAC Certificates were false and the September 2008 Adviser Report was false. However, Mr Eber did not inform the FCA of these matters.
- 3.79. Mr Eber accepted that he thought about informing the FCA of the above concerns, but did not because "*technically*" the SLS Portfolio had not failed, other parties were aware of the problems with SLS, and he expected them to take action if necessary, so that there was no need to inform the FCA of these issues.
- 3.80. Mr Eber further explained that he did not inform the FCA of these issues as he feared the consequences of calling an event of default. However, Mr Eber believed that the backdated and misleading Adviser Reports would be relied on for the third party's 'internal compliance', and knew that the false 30 September 2008 Adviser Report could be provided to the FCA. He should have also considered whether the other Adviser Reports would be provided to the FCA. Notwithstanding this, he failed to inform the FCA of this issue.
- 3.81. On 1 July 2009 an FCA investigator telephoned Mr Eber expressly to discuss SLS's strategy to liquidate the SLS Portfolio. During that conversation, Mr Eber did not explain or volunteer any information about his concerns about SLS's liquidity, SLS's capacity to repay bondholders or the fact that the RAC Certificates issued by CIB as a confirmation that no event of default by SLS had occurred according to the SLS Bonds' terms and conditions were misleading.
- 3.82. Mr Eber knew that neither he, nor anyone else at CIB informed the FCA of any of the matters set out in paragraph 3.77 above.

4. FAILINGS

- 4.1. The relevant statutory provisions, regulatory guidance and policy are set out at Annex A to this Notice.

- 4.2. Mr Eber was the controlling mind, CEO and sole director of CIB during the Relevant Period. He was responsible for the overall operation of CIB, and was directly responsible for ensuring that CIB carried out the role of Adviser to SLS as set out in the Engagement Terms, whether through his own conduct or by providing direction and delegating certain duties to Employee A.

Issue of misleading and inaccurate or false RAC Certificates and Adviser Reports

- 4.3. The calculation and issue of the RAC Certificates was CIB's main role in connection with the SLS Bonds. Mr Eber delegated the calculation of the RAC Certificates to Employee A, but was sent the RAC Certificates and calculations before they were formally issued to SLS.
- 4.4. Mr Eber knew that the issue of the RAC Certificates were necessary to avoid an event of default, and that the purpose of the RAC Certificates was to give assurance that there was a set level of asset cover in place.
- 4.5. Mr Eber was aware of the misleading (and in two instances, false) nature of the RAC Certificates. In particular he was aware that:
- (1) the 30 June 2007 RAC Certificate did not disclose that the RAC was only met on 30 September 2007 because of the Call Option;
 - (2) the RAC Certificate for the period ending 31 December 2007 only met the RAC because some policies had been double-counted and that:
 - (a) a Third Party Purchaser may have relied on that certificate in making the decision to proceed to purchase some policies from SLS; and
 - (b) the error was not corrected before the sale was completed.
 - (3) both the RAC Certificates for the period ending 31 March 2008 and 30 June 2008 were reliant on backdated corporate guarantees which were not disclosed in the RAC Certificates and should not have formed part of the calculation as the corporate guarantees were not eligible assets for the purposes of the RAC;
 - (4) without the corporate guarantees, the RAC could not be met;
 - (5) the RAC Certificate for the period ending 30 June 2008 and 30 September 2008 had no asset cover as SLS had transferred its legal and beneficial interest in the policies held within the SLS Portfolio by virtue of the LSC Transfer Agreement; and
 - (6) the majority of the policies within the SLS Portfolio and used to underpin the RAC had been sold by the date of the 30 September 2008 RAC Certificate.
- 4.6. In respect of the Adviser Reports, Mr Eber:
- (1) knew that CIB issued Adviser Reports that were misleading as they were purportedly issued on a certain date, when in fact they were created later and backdated;
 - (2) knew that CIB issued the 30 June 2008 Adviser Report and the 30 September 2008 Adviser Report which contained false information and

purported to include assets that had in fact been transferred and/or sold;
and

- (3) believed that the Adviser Reports would be used by a third party for its internal compliance purposes and knew that, the 30 September 2008 Adviser Report could be provided to the FCA.
- 4.7. FIT 1.3.1G provides that the FCA will have regard to a number of factors when assessing a person's fitness and propriety. One of the main assessment criteria goes to a person's honesty, integrity and reputation. In determining a person's honesty, integrity and reputation, FIT 2.1.1 provides that the FCA will have regard to matters including, but not limited to:
- (1) whether the person has contravened any of the requirements and standards of the regulatory system...(FIT 2.1.3 (5) G); and
 - (2) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT 2.1.3 (13) G).
- 4.8. The production of the RAC Certificate by CIB was not a regulated activity falling under the RAO, as the calculation and issue of an RAC Certificate involved gathering data from various sources as to the policy values within the SLS Portfolio, and making a simple calculation to determine that the RAC was twice the value of the SLS Bonds in issue. The Adviser Reports were also not supplied with the intent or objective of giving specific advice at the time sales or purchases of policies took place, but simply recorded the composition of the SLS Portfolio in more detail by way of support and explanation of the RAC Certificates, and were produced after the event and backdated. As an unregulated activity, the production of the RAC Certificates and Adviser Reports would not fall within Mr Eber's role as an approved person as this unregulated business does not fall within Mr Eber's controlled functions.
- 4.9. However, in causing the issue of the misleading and/or false RAC Certificates and Adviser Reports by CIB, Mr Eber has demonstrated a serious lack of integrity and that he is not a fit and proper person.
- Failure to advise FCA of concerns with the SLS Bonds and CIB's involvement in providing inaccurate and/or false RAC Certificates and Adviser Reports*
- 4.10. Mr Eber was aware of the serious issues with the viability of the SLS Bonds as a successful investment. He accepted that, as part of his original analysis of the SLS Bonds when first engaged by SLS, his opinion was that the scheme could not succeed as then constituted, as the quality and nature of the policies meant that the SLS Portfolio would be unlikely to generate payments at the necessary level and frequency to meet future cash requirements and pay out to SLS Bondholders at the end of the SLS Bond's terms.
- 4.11. Mr Eber was also aware:
- (1) of SLS's liquidity issues and its difficulty in meeting the interest payments due to SLS Bondholders on time, as well as the fact that SLS had transferred all its assets to LSC on or around 21 April 2008 in return for a guarantee of all its liabilities (save for those relating to claims or

proceedings in respect of any matter arising out of sales of policies transferred under the LSC Transfer Agreement);

- (2) that although SLS's strategy to sell the policies had been largely completed by August 2008, the SLS Portfolio had not been replaced and there was no other method of enabling the SLS Bonds to be redeemed in place; and
 - (3) that the backdated and misleading Adviser Reports could be used by a third party for 'internal compliance', and knew the false Adviser Report for the period ending 30 September 2008 could be provided to the FCA.
- 4.12. As the sole director during the Relevant Period and also being responsible for compliance oversight, Mr Eber was responsible for ensuring such matters were disclosed to the FCA. He failed to do so.
- 4.13. Mr Eber knew, or ought to have known, that these were material matters and was information of which the FCA would reasonably expect notice. Mr Eber was aware that he alone was responsible for raising these concerns with the FCA and that no-one else at CIB had done so. In failing to be candid and truthful in his dealings with the FCA, Mr Eber has further demonstrated a lack of integrity.

5. SANCTION

- 5.1. In assessing Mr Eber's honesty, integrity and reputation for the purpose of determining whether or not he is a fit and proper person, the FCA has had regard to the lack of integrity he demonstrated by issuing the misleading RAC Certificates and Adviser Reports, as well as his failure to be candid and truthful in all his dealings with any regulatory body.
- 5.2. Mr Eber's conduct fell well below the standard expected of those working in the financial services industry. For the reasons set out above, he failed to demonstrate the degree of honesty, integrity and reputation expected under the regulatory system in carrying out his controlled functions and has failed to demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory system.
- 5.3. Such failings seriously undermine confidence in the financial services industry and demonstrate that Mr Eber's failure to be conscious of his regulatory responsibilities means that he poses a risk to consumers. Accordingly, the FCA considers that it is both necessary and appropriate to withdraw his approval and prohibit him from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm to secure an appropriate degree of protection for consumers and to protect and enhance the integrity of the UK financial system.
- 5.4. The FCA has had regard to the guidance in Chapter 9 of the Enforcement Guide in deciding that it is appropriate to make a prohibition order in this case. It follows from the FCA's conclusion that Mr Eber is not a fit and proper person to perform the function to which his approvals relate, that the FCA considers it appropriate to exercise its powers under section 63 of the Act to withdraw the approvals granted to Mr Eber under section 59 of the Act.

6. PROCEDURAL MATTERS

Decision maker

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

Publicity

- 6.3. 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.
- 6.4. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate on 27 February 2014.

Authority contacts

- 6.5. For more information concerning this matter generally, contact Stephen Robinson (direct line: 020 7066 1338 /fax: 020 7066 1339) of the Enforcement and Financial Crime Division of the Authority.

Megan Forbes

Project Sponsor

Financial Conduct Authority, Enforcement and Financial Crime Division

ANNEX A

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

Statutory provisions

Prohibition Orders

1. The FCA has the power, pursuant to section 56 of the Act, to 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 FCA that the 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 firm. Such an order may relate to a specific regulated activity, any regulated activity falling within a specified description, or all regulated activities.

Withdrawal of approval

2. The FCA also has the power, pursuant to section 63 of the Act, to make an order to withdraw the approvals granted to persons under section 59 of the Act, if it appears that such a person is not a fit and proper person to perform the function to which the approval relates.

FCA Handbook

Fit and Proper Test for Approved Persons

3. The part of the FCA 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. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
4. FIT 1.3.1G provides that the FCA will have regard to a number of factors when assessing a person's fitness and propriety. One of the main assessment criteria go to a person's honesty, integrity and reputation.
5. In determining a person's honesty, integrity and reputation, FIT 2.1.1 provides that the FCA will have regard to matters including, but not limited to:
 - (1) whether the person has contravened any of the requirements and standards of the regulatory system...(FIT 2.1.3 (5) G); and
 - (2) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT 2.1.3 (13) G).

FCA's policy for exercising its powers to make a prohibition order

6. The FCA's approach to exercising its powers to make prohibition orders is set out at Chapter 9 of the Enforcement Guide ("EG").