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**FINAL NOTICE**

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**To:** Millburn Insurance Company Limited (in administration)

**FRN:** 202177

**Address:** C/o Begbies Traynor  
31<sup>st</sup> Floor  
40 Bank Street  
London  
E14 5NR

**Date:** 1 February 2016

**ACTION**

1. For the reasons given in this notice, the Authority hereby imposes on Millburn Insurance Company Limited (in administration) ("Millburn") a financial penalty of £1,137,500.
2. Millburn agreed to settle at an early stage of the Authority's investigation. Millburn therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £1,625,000 on Millburn.

**SUMMARY OF REASONS**

3. Millburn is a UK insurance company, which was placed into administration on 9 December 2013.
4. Millburn was required under Principle 11 of the Authority's Principles for Businesses ("the Principles") to deal with the Authority in an open and cooperative way, and to disclose to the Authority appropriately anything relating to Millburn of which the Authority would reasonably expect notice.
5. The Authority considers that, during the period from 3 January 2013 to 9 August 2013 ("the Relevant Period"), Millburn breached Principle 11 by not disclosing information which was plainly material to questions and matters raised by the Authority with Millburn and by providing an inaccurate and misleading response to a direct question asked by the Authority.
6. In late 2012, the Authority was provided with a signed copy of a reinsurance treaty ("the Reinsurance Treaty") between Millburn and Balva Insurance Company AAS ("Balva") by Balva's regulator, the FCMC. Under this treaty, Millburn would

have been liable to indemnify Balva for losses incurred under its UK portfolio, which included a significant amount of Solicitors' PII business. However, this reinsurance activity would have fallen within the "General Liabilities" class of insurance, which was outside of Millburn's permission.

7. The Authority asked Millburn to provide information about the Reinsurance Treaty, including whether it was in force and in respect of the communications between the parties to the Reinsurance Treaty. In its responses, Millburn:
  - (a) told the Authority that there were no written communications between the parties about the Reinsurance Treaty when in fact there had been a number of highly relevant written communications, including one on the morning the Authority requested the information from Millburn;
  - (b) did not disclose information which was clearly material to the questions and matters raised by the Authority. Notably it did not disclose information or material which would have revealed that Millburn - in negotiating, drafting and signing the Reinsurance Treaty - was extensively influenced by an unapproved person, Mr Shay Jacob Reches ("Mr Reches"); and
  - (c) deliberately and selectively disclosed only material which showed that the relevant parties did not consider the Reinsurance Treaty to be in force. It did not disclose information which showed that Balva and Mr Reches in fact had considered the Reinsurance Treaty to be in force.
8. These breaches are particularly serious as, by not being open and cooperative with the Authority about the circumstances of the signing of the Reinsurance Treaty, Millburn sought to avoid further regulatory scrutiny at that time. In particular, Millburn concealed significant failings in its systems and controls, particularly regarding the extent of the influence over the firm of Mr Reches. Millburn breached Principle 11 in a number of instances and these breaches were committed with the knowledge and active participation of Millburn's CEO, Mr Colin McIntosh ("Mr McIntosh"). The effect of Millburn's breaches was to hinder the Authority in taking timely action to protect consumers.
9. The imposition of a financial penalty on Millburn supports the Authority's objectives in terms of protecting consumers and the integrity of markets by emphasising the requirement for regulated entities to provide accurate information to the Authority and to deal with the Authority in an open and co-operative way.

## **DEFINITIONS**

10. The definitions below are used in this Final Notice:

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

"approved person" means an individual that was approved by the Authority under the Act to perform a controlled function.

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

"Administrators" means the administrators appointed (under Schedule B1 of the Insolvency Act 1986) on 9 December 2013 to administer the affairs of Millburn.

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

"CEO" means chief executive officer.

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

"dual regulated" means that a firm is regulated by the FCA and the PRA.

"the FCMC" means the Financial and Capital Market Commission of Latvia, the Latvian regulatory authority, also known as Finanšu un Kapitāla Tirgus Komisija (the FKTK).

"EG" means the Authority's Enforcement Guide.

"FCMC" means the Financial and Capital Market Commission of Latvia, the home state regulator of Balva.

"the FSCS" means the Financial Services Compensation Scheme.

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

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

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

"the Millburn Acquisition Agreement" means an agreement and plan of acquisition signed between Millburn, its shareholders and a company controlled by Mr Reches on 1 November 2010 which provided for the purchase of Millburn.

"Mr McIntosh" means Mr Colin J McIntosh.

"Mr Reches" means Mr Shay Jacob Reches.

"Part 4A Permission" means the permission given by the Authority under Part 4A of the Act to carry on certain regulated activities.

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

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

"Relevant Period" means the period from 3 January 2013 to 9 August 2013.

"the Reinsurance Treaty" means a signed, dated document identified on its title page as an "*Excess of Loss Reinsurance Treaty*" containing draft terms for an Excess of Loss reinsurance agreement pursuant to which Millburn would offer reinsurance to Balva.

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

## **FACTS AND MATTERS**

### **Background**

11. Millburn is a dual-regulated UK insurance company based in London. During the Relevant Period, Millburn was authorised to effect and carry out contracts of insurance in certain insurance classes.
12. On 1 November 2010, Mr Reches entered into the Millburn Acquisition Agreement (on behalf of a company he controlled) to purchase 100% of Millburn's share capital in tranches, and subsequently purchased (through NMSIM Group Limited, another company that he controlled) 9.9% of Millburn on 31 December 2011. Mr Reches entered into a similar agreement on 18 August 2011 to purchase Balva, and by December 2012 became its majority shareholder (via NMSIM Group Limited).
13. On 18 September 2013, Millburn applied to vary its Part 4A permission on a voluntary basis. This variation meant that Millburn was no longer permitted to carry on the regulated activity of effecting contracts of insurance. Millburn was placed into administration on 9 December 2013.

### **Negotiation of the Reinsurance Treaty**

14. On 28 November 2011, Balva became a Passported Firm and was therefore able to carry out insurance business in the UK. Seeking to obtain reinsurance in respect of its expanding portfolio of risks in the UK and the European Economic Area, in 2012 Balva began negotiations with Millburn for the potential provision of this reinsurance. Mr Reches (who had an interest in both Millburn and Balva) played a significant role in the discussions, including conveying communications between Millburn and Balva.
15. While Mr McIntosh, on behalf of Aderia (Millburn's MGA), had delegated authority to Mr Reches on 26 January 2011 to effect contracts of insurance on Millburn's behalf, this did not give Mr Reches authority to bind Millburn to a reinsurance agreement with Balva, without prior approval from Millburn.
16. Between 19 July and 24 July 2012, three versions of a document, identified as an "*Excess of Loss Reinsurance Treaty*", were drafted. Drafts were exchanged between Balva and Millburn via emails from Mr Reches. Balva made amendments. Mr McIntosh, on behalf of Millburn, also made amendments to the drafts, at the request of Mr Reches. Mr McIntosh and Mr Reches discussed the arrangements via email, including Mr Reches's hopes to achieve an agreed draft which could be signed.
17. On 24 July 2012, Mr McIntosh sent a third draft of the Reinsurance Treaty to Mr Reches, by email. He asked whether his amendments were acceptable. Later on that day Balva sent an email to Mr McIntosh stating that a copy of the "*R/I Treaty*" was attached. It is unclear whether Mr McIntosh, on behalf of Millburn, saw the email and its attachment at that time.
18. On 28 December 2012, Balva sent an email to Mr Reches, attaching a signed version of the Reinsurance Treaty (which contained terms otherwise identical to the draft attached to Mr McIntosh's email of 24 July 2012). The email was later forwarded to Mr McIntosh at Millburn, on 7 January 2013. The email suggested that Balva believed the Reinsurance Treaty to be in force.

19. Mr Reches had signed the Reinsurance Treaty, purportedly on behalf of Millburn on 2 January 2012. Balva had signed and stamped the document, purportedly on 4 January 2012. The Reinsurance Treaty covered the period from 1 January to 31 December 2012 and the agreement was said to be subject to renewal from 1 January 2013.
20. The terms of the Reinsurance Treaty were such that any cover provided by Millburn to Balva would have been within the regulated activity of effecting and carrying out contracts of insurance in the "General Liability" class, which was outside of the regulated activities for which Millburn was authorised to write pursuant to its Part 4A Permission.

### **The Authority's first request for information**

21. On 3 January 2013, the Authority contacted Millburn following receipt of a copy of the Reinsurance Treaty from the FCMC. The Authority requested that Millburn explain how the activities envisaged by the Reinsurance Treaty fell within the regulated activities for which it had Part 4A Permission. A reply was requested by 9 January 2013.
22. The Authority would have expected Millburn to have taken reasonable steps to ensure that its responses to this, and subsequent, enquiries were factually accurate and contained anything of which the Authority would reasonably expect notice.
23. Throughout the Relevant Period, Millburn's CEO, Mr McIntosh, was responsible for liaising with the Authority and responding to any requests for information relating to the Reinsurance Treaty on its behalf.

### **Millburn's Correspondence with Balva and Mr Reches**

24. The Authority's request was forwarded to a number of senior individuals at Millburn including Mr McIntosh. Mr McIntosh and Mr Reches exchanged e-mails, and correspondence was sent to Balva, in an attempt to understand the situation. Balva's responses were communicated, via email, to Mr McIntosh on 7 January 2013.
25. Also on 7 January 2013, Mr McIntosh met an individual representing Balva and stated that Mr Reches did not have the authority to enter into the Reinsurance Treaty on behalf of Millburn and that he had not given such permission to Mr Reches. Mr McIntosh wrote to Balva on 7 January 2013, stating that Millburn was not authorised to provide the cover and that he believed the previous discussions between the parties had not been finalised. Mr McIntosh informed Mr Reches that his understanding was that the Reinsurance Treaty had not been concluded and also of his intention to communicate this to the Authority.
26. Mr Reches objected to this approach on the basis that it would be damaging to Balva if it was to inform the FCMC that the reinsurance arrangements for its UK and European Economic Area portfolio were not in force. Mr Reches referred to having to choose between his interests in Millburn and Balva (both of which he had agreed to purchase through a company he controlled).
27. Mr McIntosh and Mr Reches debated the situation in email correspondence on 8 January and 9 January 2013. Mr McIntosh re-drafted his response to the Authority to try to take account of Mr Reches's concerns but Mr Reches prevented him from sending a response to the Authority at that time and told him to instead

seek an extension of time from the Authority. This was so that Mr Reches and Mr McIntosh could work on a response.

28. On 9 January 2013, instead of providing an open and factually accurate response, or honestly explaining the situation that had arisen, as the Authority would have expected, Mr McIntosh followed the instructions of Mr Reches and requested an extension of time to respond primarily on the basis that his colleagues, with whom he wished to consult, were on holiday. The Authority granted an extension, to 16 January 2013.
29. Mr McIntosh drafted a number of further responses over the following days during which time the matter was discussed further. On 15 January 2013, a Millburn management meeting was held at which Mr Reches was present. Mr McIntosh put to Millburn's board his view that the Reinsurance Treaty was not in force.

#### **Millburn's response to the Authority's first information request**

30. On 16 January 2013, Millburn, through Mr McIntosh, responded to the Authority. The Authority would have expected to have been informed of the full extent of what had occurred and, in particular, that Mr Reches had negotiated and signed the Reinsurance Treaty on Millburn's behalf. Further, the Authority would have expected to have been informed that Balva had subsequently believed the Reinsurance Treaty to be in force. However, the response made no mention of these matters, asserting simply that the Reinsurance Treaty was a draft document produced during negotiations, signed in error and which should not have been filed by Balva as no contract had been concluded. Mr Reches was not mentioned at all.

#### **The Authority's second request for information**

31. On 17 January 2013, the Authority responded with a request for information:

*"Given that [the Reinsurance Treaty] appears to have been signed and dated by both parties, we require further evidence to demonstrate that both parties consider that no contract has been concluded. Please provide copies of any communications between Millburn and Balva which demonstrate this, and communications showing that Balva understands no reinsurance contract is/was in-force". A response was requested by 22 January 2013.*

#### **Millburn's response to the Authority's second information request**

32. On 17 January 2013, Mr McIntosh discussed the Authority's request for further information with Mr Reches. He suggested that a communication could be drafted for Balva which could then be provided to the Authority to demonstrate that Balva considered that no contract had been concluded. This was done although Mr McIntosh was advised to examine what was produced to ensure it did not present a "contradictory" message.
33. On 21 January 2013, Balva contacted Mr McIntosh via email, stating that Balva was "disappointed" that the reinsurance facility could not be provided and that it had "entered in good faith into what it thought was a valid contract". It noted that Millburn had raised no "alerts" about the contract since it was signed - although Balva accepted that no premiums had been paid.
34. On the same day, Mr McIntosh forwarded Balva's email to Mr Reches, stating again that he believed it had been agreed that the Reinsurance Treaty had not

been finalised. Mr McIntosh noted that *"This will not satisfy [the Authority]"*. Mr Reches responded later on 21 January 2013 and disagreed with Mr McIntosh. He stated that any mistake in the signing of the Reinsurance Treaty had been Millburn's and that Balva had signed the document *"in good faith"*.

35. On 22 January 2013, in an email sent to recipients including Mr McIntosh, it was stated that what had been received from Balva was a draft response and that a compromise was being sought. Millburn responded to the Authority later on the same day through Mr McIntosh by email: *"Millburn's discussions with Balva in this matter were verbal such there are no written communications between Balva and Millburn"*. This was false and misleading.
36. Mr McIntosh's response attached correspondence dated 22 January 2013, in which both Millburn and Balva confirmed that the Reinsurance Treaty was not, and had never been, in force. This was the reverse of Balva's position the previous day (as described at paragraph 33 above). Contrary to what the Authority would have expected, no mention was made of the role of Mr Reches or the circumstances surrounding how the present situation had arisen.
37. On the basis of the information provided, the Authority did not investigate the matter further. However, on 29 January 2013, the Authority wrote to Millburn expressing concern about what the Authority had been told and about Millburn's lack of oversight in allowing a draft Reinsurance Treaty to be signed. The Authority also communicated the results of its investigations to the FCMC, which suspended Balva's licence to write new business in the UK on 16 April 2013.

#### **The Authority's section 165 requirement to provide specific information**

38. Further information came to the Authority's attention, and on 25 July 2013 the Authority issued an information requirement to Millburn, pursuant to section 165 of the Act, which included a requirement to provide:

*"Full details of the circumstances in which it was decided to enter into the reinsurance treaty with Balva and the reasons for the decision (including any documents recording those decisions), details of the signatories to the treaty and the identity and roles of the individuals responsible for drafting the treaty. To the extent that the treaty is no longer considered operative, please explain the reasons for this."*

#### **Millburn's response to the Authority's section 165 requirement**

39. On 1 August 2013, Mr McIntosh responded to the requirement via email. He referred the Authority to his letter dated 16 January 2013 and stated that Millburn believed Mr Reches was not an authorised signatory and that the Reinsurance Treaty had never been in force. He also stated that:
  - (a) as a result of *"no decision"* having been taken to enter into the Reinsurance Treaty, there were *"no documents recording decisions"*; and
  - (b) he believed that the *"original wording"* of the document came from an insurance broker. Whilst this was correct, Mr McIntosh made no mention of his own role in creating any further drafts. Mr McIntosh stated that he had not seen the document before January 2013.
40. Mr McIntosh sent a further e-mail to the Authority on 9 August 2013 stating that he had reviewed a *"dormant"* e-mail account and discovered that he had in fact

received an email from Balva on 24 July 2012 (see paragraph 17 above) attaching "a PDF of the document which I advised in my earlier email I was not aware had come into existence". Attached to this email was a copy of the Reinsurance Treaty. Mr McIntosh apologised for failing to recall this previously. Again, he made no mention of his own role in drafting the terms of the Reinsurance Treaty.

### **The Authority's investigation**

41. The Authority's investigation into Millburn commenced on 16 December 2013. The full extent of the communications between Balva, Mr Reches and Millburn in relation to the draft and signed versions of the Reinsurance Treaty was brought to light by the examination of email communications provided by the Administrators in response to a request for information by the Authority in January 2014, pursuant to its investigation.

### **FAILINGS**

42. The regulatory provisions relevant to this Final Notice are referred to in Annex A.
43. Principle 11 states that a firm must deal with its regulators in an open and cooperative way, and must disclose to the Authority anything relating to the firm of which the Authority would reasonably expect notice.
44. By reason of the facts and matters referred to above, the Authority considers that, during the Relevant Period, Millburn failed to deal with the Authority in an open and co-operative way and disclose to the Authority information of which it would reasonably expect notice, in breach of Principle 11.
45. Millburn's responses to the Authority's requests and specific information requirements gave a materially misleading account of what had taken place between the parties and, in particular, how the Reinsurance Treaty came into being. In particular:
  - (a) on 22 January 2013 Millburn provided an inaccurate and misleading response to a question posed by the Authority regarding the existence of written communications between Millburn and Balva in respect of the Reinsurance Treaty. Millburn stated that there had been no written communications when, in fact, there had been a number of highly relevant written communications, the most recent of which had been discussed within Millburn that morning; and
  - (b) Millburn did not disclose information that was plainly material to the questions and issues raised by the Authority. For example:
    - (i) Millburn did not disclose material tending to reveal the role and extensive influence of Mr Reches (to whom Millburn had delegated limited authority), particularly regarding the negotiation, drafting and signing of the Reinsurance Treaty; and
    - (ii) by not being open and co-operative with the Authority, Millburn did not disclose material which suggested that Balva, and Mr Reches, believed the Reinsurance Treaty to be in force. Millburn selectively and deliberately disclosed only material which suggested that Balva did not believe the Reinsurance Treaty was in force.



46. Millburn's responses breached Principle 11 and the Authority considers the breaches to be particularly serious because they:
- (a) concealed serious failings in Millburn's systems and controls, particularly regarding the influence and activities of Mr Reches who signed the Reinsurance Treaty purportedly acting on behalf of Millburn;
  - (b) avoided further scrutiny, which may have resulted in further regulatory action at that time, into the circumstances surrounding the Reinsurance Treaty and the insurance arrangements of Millburn and Balva. Both firms have now been declared to be in default by the FSCS;
  - (c) prevented the Authority from having all relevant information in order to respond fully to a request from the FCMC, which was investigating the validity of the Reinsurance Treaty; and
  - (d) were committed with the knowledge and active participation of Millburn's CEO, Mr McIntosh.
47. The effect of Millburn's breaches was to hinder the Authority in taking timely action to protect consumers.
48. This action supports the Authority's objectives in terms of protecting consumers and the integrity of markets by emphasising the requirement for regulated entities to provide accurate information to the Authority and to deal with the Authority in an open and co-operative way.

#### **SANCTION**

49. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.
50. The application of the Authority's penalty policy, in relation to Millburn's breach of Principle 11, is set out in Annex B to this notice.
51. In determining the financial penalty to be attributed to Millburn's misconduct, the Authority had particular regard to the following matters:
- (a) the need for credible deterrence;
  - (b) the nature, seriousness and impact of the breaches;
  - (c) the potential impact of Millburn's misconduct upon the Authority's efforts to protect consumers;
  - (d) the extent to which the breaches were deliberate or reckless;
  - (e) the role of senior management; and
  - (f) any applicable settlement discount for agreeing to settle at an early stage of the Authority's investigation.
52. The Authority therefore imposes a financial penalty of £1,137,500 on Millburn.

## **PROCEDURAL MATTERS**

### **Decision maker**

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

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

55. The financial penalty must be admitted in the administration of Millburn by no later than 14 days from the date of the Final Notice.

### **Publicity**

56. 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.
57. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

### **Authority contacts**

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

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**Bill Sillett**

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

## **ANNEX A**

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

#### **RELEVANT STATUTORY PROVISIONS**

1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include the consumer protection and market integrity objectives.
2. Section 206(1) of the Act provides:

*"If the [Authority] considers that an authorised person has contravened a relevant requirement imposed on that person, it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate."*

#### **REGULATORY PROVISIONS**

##### **Principles for Businesses**

3. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook. They derive their authority from the Authority's rule-making powers set out in the Act.
4. Principle 11 provides:

*"A firm must deal with its regulators in an open and cooperative way, and must disclose to the appropriate regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice".*

#### **RELEVANT HANDBOOK RULES AND GUIDANCE**

##### **DEPP**

5. Chapter 6 of DEPP, which forms part of the Authority's Handbook, sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.
6. DEPP 6.5D.4G states that:
  - (a) The FCA will consider reducing the amount of a penalty if a firm will suffer serious financial hardship as a result of having to pay the entire penalty. In deciding whether it is appropriate to reduce the penalty, the FCA will take into consideration the firm's financial circumstances, including whether the penalty would render the firm insolvent or threaten the firm's solvency. The FCA will also take into account its statutory objectives, for example in situations where consumers would be harmed or market confidence would suffer, the FCA may consider it appropriate to reduce a penalty in order to allow a firm to continue in business and/or pay redress.
  - (b) There may be cases where, even though the firm has satisfied the FCA that payment of the financial penalty would cause it serious financial

hardship, the FCA considers the breach to be so serious that it is not appropriate to reduce the penalty. The FCA will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether:

- (i) The firm directly derived a financial benefit from the breach and, if so, the extent of that financial benefit;
- (ii) the firm acted fraudulently or dishonestly in order to benefit financially;
- (iii) previous FCA action in respect of similar breaches has failed to improve industry standards; or
- (iv) the firm has spent money or dissipated assets in anticipation of FCA or other enforcement action with a view to frustrating or limiting the impact of action taken by the FCA or other authorities.

### **The Enforcement Guide (EG)**

- 7. The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act.
- 8. Chapter 7 of EG sets out the Authority's approach to exercising its power to impose a financial penalty.

## ANNEX B

### PENALTY ANALYSIS

#### IMPOSITION OF A FINANCIAL PENALTY

1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms. The Relevant Period in this case is from 3 January to 9 August 2013 and therefore the five-step penalty framework applies.

#### Step 1: Disgorgement

2. Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.
3. The Authority has not identified any financial benefit that Millburn derived directly from its breach.
4. Step 1 is therefore £nil.

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

5. Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area. However, the Authority recognises that there may be cases where revenue is not an appropriate indicator of the harm or potential harm that a firm's breach may cause, and in those cases the Authority will use an appropriate alternative.
6. Millburn did not receive any reinsurance premiums from Balva. Accordingly, the Authority considers that relevant revenue is not an appropriate indicator of the harm or potential harm caused by Millburn's breach of Principle 11 and there is no alternative indicator of harm or potential harm.
7. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach and whether it was committed deliberately or recklessly.
8. As noted above, DEPP 6.5A.2G (11) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factor to be relevant: *The breach was committed deliberately* (DEPP 6.5A.2G (11) (f)). In particular:
  - (a) the breach of Principle 11 was intentional in that Mr McIntosh (acting on behalf of Millburn as its CEO) intended or foresaw that the likely or actual consequences of his failure to be open and co-operative with the Authority would lead to a breach (DEPP 6.5A.2 G (8)(a));

- (b) Mr McIntosh (the responsible individual at Millburn) committed the breach in such a way as to avoid or reduce the risk that the breach would be discovered (DEPP 6.5A.2 G (8)(d)); and
  - (c) the breach was repeated during the Relevant Period (DEPP 6.5A.2G(8)(f)).
9. The Authority also considers that the following factors are relevant:
- (a) the impact of the breach was such that, based on the incomplete and misleading information provided to the Authority, Millburn (and Mr McIntosh) avoided further scrutiny regarding the circumstances surrounding the Reinsurance Treaty and the role, influence and actions of Mr Reches. This might have resulted in further regulatory action at that time in order to protect consumers, including those who had taken out UK Solicitors' PII via Balva (DEPP 6.5A.2 G (6)(c));
  - (b) the failure to engage with the Authority in an open and cooperative manner and to disclose properly matters of which the Authority would expect notice undermines the Authority's ability to effectively supervise markets (DEPP 6.5A.2G(6)(f));
  - (c) Principle 11 requires a firm to act in an open and co-operative way towards the Authority which includes providing information which is complete, in that it should include anything of which the Authority would reasonably expect notice. Principle 11 requires that a firm should answer truthfully, fully and promptly all questions which are reasonably put to it by the Authority. It is a fundamental component of the regulatory system. (DEPP 6.5A.2 G (7)(a)); and
  - (d) Mr McIntosh, Millburn's CEO, was aware of the breach (DEPP 6.5A.2 G (7)(d)).
10. Taking all of these factors into account, the Authority considers the seriousness of Millburn's Principle 11 breach to be level 4. The Authority considers that, in order to reflect the seriousness of the breach, Step 2 is £1,250,000.

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

11. Pursuant to DEPP 6.5A.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.
12. The Authority considers that the following factors aggravate the breach:
- (a) Millburn failed to bring the breach to the Authority's attention (DEPP 6.5A.3 G (2)(a)); and
  - (b) Mr McIntosh, Millburn's CEO, was aware of the breach and took no steps to rectify the breach (DEPP 6.5A.3G (2)(c)).
13. Having taken into account these aggravating factors, the Authority considers that the Step 2 figure should be increased by 30%.
14. Step 3 is therefore £1,625,000.

#### **Step 4: adjustment for deterrence**

15. Pursuant to DEPP 6.5A.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.
16. The Authority considers that the Step 3 figure of £1,625,000 represents a sufficient deterrent to Millburn and others, and so has not increased the penalty at Step 4.
17. Step 4 is therefore £1,625,000.

#### **Serious financial hardship**

18. Pursuant to DEPP 6.5D.4G, the Authority will consider reducing the amount of a penalty if a firm will suffer serious financial hardship as a result of having to pay the entire penalty. In deciding whether it is appropriate to reduce the penalty, the Authority will take into consideration the firm's financial circumstances, including whether the penalty would render the firm insolvent or threaten the firm's solvency.
19. Although the Administrators acknowledge there is some uncertainty surrounding the position of Millburn's administration, they are currently of the view that there remains a prospect that there will be sufficient funds to enable a distribution to unsecured creditors, albeit the quantum of any dividend is currently unknown and is dependent on future recoveries from a company controlled by Mr Reches and the final level of creditors' claims.
20. Mr Reches has estimated that the debt will be repaid in full only after a period of three to five years. Therefore, whilst the imposition of a financial penalty may cause Millburn serious financial hardship, the Authority has not reduced the financial penalty to £nil in this case. Instead, the Authority imposes a financial penalty (which will be debt provable in Millburn's administration) and will keep under review whether to subordinate the Authority's claim in the administration in order that insurance creditors (including policyholders and the FSCS) are satisfied prior to any funds realised in the administration being used to pay some, or all, of the financial penalty (DEPP 6.5D.1 G(2)).

#### **Step 5: settlement discount**

21. Pursuant to DEPP 6.5A.5G, if the Authority and the firm on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the firm reached agreement.
22. The Authority and Millburn reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.
23. Step 5 is therefore £1,137,500.