INSURANCE ACT 1978 APPEALS TRIBUNAL

BETWEEN:

SWIFT INTERMEDIARIES LTD.

First Appellant

-and-

DAVID KING

Second Appellant

-v-

BERMUDA MONETARY AUTHORITY

Respondent

Ruling

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1. The matter has a long history. The Appellants each filed an Amended Notice of Appeal on 18 February 2022. This appeal arises from the Authority's decision to:
    a. cancel the registration of Swift Intermediaries Ltd. ("Swift") pursuant to section 42 of the Insurance Act; and
    b. issue a prohibition order to Mr David King ("Mr King" and collectively with Swift, the "Appellants") pursuant to section 32H of the Insurance Act for a period of three years, (collectively, the "Enforcement Measures").
2. The First Appellants three grounds of appeal originally were as follows:
    a. That the Respondent, in reaching its decision, unreasonably failed to have regard to documents submitted by or on behalf of the Appellant;
    b. That the Respondent unreasonably extended its investigation into matters complained of pertaining to activities performed by Expedite Re S.A. and Comp Capital Ltd. to the Appellant; and
    c. That the Respondent unreasonably extorted funds from the Appellant to support its investigation into matters complained of pertaining to activities performed by Expedite Re S.A. and Comp Capital Ltd. to the Appellant.

3. The Second Appellant's two original grounds of appeal were as follows:
    a. That the Respondent, in reaching its decision, unreasonably failed to have regard to documents submitted by or on behalf of the Appellant; and
    b. That the Respondent unreasonably extended its investigation into matters complained of pertaining to activities performed by Expedite Re S.A. and Comp Capital Ltd. to the Appellant.
4. Late in the day and in the middle of a preliminary application, the First Appellant abandoned its second and third grounds of appeal, leaving only the first ground. The Second Appellant equally withdrew his second ground of appeal, leaving only the first ground.
5. In the premises, the key issue for the Tribunal was whether the Authority's decision to take the Enforcement Measures was either unlawful or not justified on the evidence on which it was based. The grounds for the appeal was effectively that the Authority failed to have regard to documents or representations submitted by or on behalf of the Appellants.

The Parties

6. The First Appellant, Swift, was incorporated under the laws of Bermuda on 6 December 2000 as an exempted company. On 14 December 2000, it was registered by the Authority as an insurance broker under the Insurance Act. Its business model was to provide London market participants access to the Bermuda (re)insurance market. However, during the material periods Swift was not acting as a "primary" broker. Instead, it characterized itself as a "3rd party" or "correspondent" broker, which earned introduction or consulting fees from primary brokers.
7. During the material times, Swift's directors were:
    a. David King ("Mr King"), who is the Second Appellant; and
    b. Mark Cooke ("Mr Cooke").
8. The Authority, separately, proceeded with enforcement proceedings against Mr Cooke by issuance of a Warning Notice dated 30 September 2021, noting its intention to prohibit Mr Cooke from acting as a "director", "controller", "chief executive", "officer", "senior executive" and "associate" in relation to any business that requires registration by the Authority under the Insurance Act (the "Cooke Prohibition"). The Authority issued a

Decision Notice on 12 December 2021 confirming the Cooke Prohibition. Mr Cooke did not appeal this decision. Details of the Cooke Prohibition were also published on the Authority's website. Accordingly, Mr Cooke was prohibited by the Authority from acting as a director of Swift with effect from 12 December 2021. Thereafter, Mr King became its sole director.

9. The Respondent is the Bermuda Monetary Authority (the "Authority"). It derives its powers from several statutory enactments, one of which is the Bermuda Monetary Authority Act 1969 (the "BMA Act"). Section 3 of the BMA Act grants the Authority broad powers to, *inter alia*:
    a. supervise, regulate, and inspect any financial institution which operates in or from within Bermuda;
    b. assist with the detection and prevention of financial crime; and
    c. perform such functions as may be necessary to fulfil such principal objects.
10. The Insurance Act 1978 further grants the Authority sweeping powers to enable it to carry out its supervisory and enforcement functions.

The Decision Notices

11. The Authority, faced with serious concerns about the operations of the Appellants (following a complaint from a foreign regulator and the Authority's preliminary investigation), gave the Appellants Notice on 17 December 2020 of the appointment of KPMG as inspectors. Their instructions included the following broad language: "… an investigation regarding Swift Intermediaries Ltd… the nature and conduct of (their) business…; ownership and control…; if it is involved in reinsurance arrangements between ExpediteRe AS and [redacted] Insurance Company Limited; review of the insurance broking operations and confirm if the insurance brokerage operations are being conducted in a manner consistent with Minimum Criteria for Registration. Further particulars followed, and it is clear that the scope of the investigation was broad.
12. This investigation led to the KPMG Report which formed part of the basis for the Authority issuing Warning Notices on 30 September 2021. Following an opportunity given to the Appellants to respond to those Notices, there followed the Decision Notices on16

December 2021. These set out in great detail the bases upon which the Authority took the Enforcement Measures.

13. Specifically, the Authority stated the following in respect of its decision to cancel Swift's registration:
    a. pursuant to section 42(1)(b)(iv), the Authority could cancel Swift's registration for failing to pay fees due under section 14 of the Insurance Act (this remains an ongoing issue);
    b. pursuant to section 42(1)(b)(v), the Authority could cancel Swift's registration for failing to comply with the conditions and requirements attached to its registration;
    c. pursuant to section 42(1)(b)(viii), the Authority could cancel Swift's registration for failing to carry on business in accordance with sound insurance principles; and
    d. pursuant to section 42(1)(b)(ix), the Authority could cancel Swift's registration for failing to satisfy the minimum requirements for registration.
14. With respect to the decision to issue a three-year prohibition order against Mr King for his failings as a director of Swift, the King Decision Notice highlighted the following breaches of the Insurance Act and Companies Act:
    a. failing to file accurate and timely changes to Swift's beneficial ownership structure as required by section 98H of the Companies Act (this remains an ongoing issue);
    b. failing to properly submit beneficial ownership information about Swift as required by section 98I of the Companies Act;
    c. failing to notify the Authority of all changes to Swift's controllers and officers as required by section 30J of the Insurance Act;
    d. failing to implement appropriate corporate governance policies and procedures given the size, nature, and complexity of Swift as contemplated by Paragraph 1A of the First Schedule of the Insurance Act;
    e. failing to comply with the Code of Conduct as contemplated by Paragraph 4(2)(c) of the First Schedule of the Insurance Act; and
    f. failing to maintain adequate accounting and control measures for its accounting and business records as contemplated by other records of its business as contemplated by Paragraph 4(3) of the First Schedule of the Insurance Act.

The Legal Test

15. The Authority rely on the Witness Statement of Susan Davis, which itself specifies that they rely on the Swift and King Warning Notices of 30 September 2021, the two Decision Notices of 16 November 2021, and the KPMG Report, inclusive of the data collected and the KPMG Summary of Findings.

16. The Appellant argues that in addition to this, the Tribunal should also take into account all information before the Authority at the time of its decision, including correspondence and information submitted to the Authority in the course of the investigation and responding to the Warning Notices. The Tribunal agrees and has taken all of the material submitted by the parties, which was said to be before the Tribunal at the time of its decision, into account.

17. The parties disagree as to the legal test to be applied by the Tribunal in the determination of the issues before it. The Respondent maintains that the question to be determined on appeals brought under the Insurance Act is set out in section 44C(2), which reads:

> *On an appeal under section 44A the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the decision was [either] unlawful or not justified by the evidence on which it was based.* [Respondent's emphasis added].

18. The Appellants' invites the Tribunal to consider the Respondent' Decisions on two bases:
    a. Were the Decisions, on the Tribunal's own assessment, justified on the basis of the evidence before the Respondent at the time thereof, as placed before the Tribunal; and
    b. Were the Decisions, in the circumstances, of such a character that they were so unreasonable that a reasonable person, possessed of the same facts as the Respondent at the time thereof, could have made them.

19. Appellants maintain that the Tribunal's determination of the instant appeals rests on an assessment of the evidence before the Respondent, and of the *reasonableness and*

justifiability of the Decisions. So it seems that the Appellants have taken the language in s. 44A ("unlawful or not justified") and read "unreasonable and not justified". They then go on to set out and rely on the traditional cases and arguments dealing with "judicial review", including *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 K.B. 223.

20. The Respondent replies to say that the Authority acted reasonably in all matters, but that this is not a judicial review case that that is not the test here in any event. The Respondent focusses on the words in s. 44A "unlawful or not justified". They refer to *Shah v Governor & Company of the Bank of England* [1995] C.L.C. 11 (1994), where the Court interpreted "*justified*" in a similarly worded provision in the English Banking Act 1987 as follows:

> *"The word 'justify' is a Protean word, the meaning and scope of which can only be ascertained from the context in which it is used. In the full Oxford English Dictionary, one of the meanings given to it is 'to furnish adequate grounds for'. In that sense, a judgment may be said to be justifiable if the maker of it has adequate grounds for his judgment. So also, it may be said of a prediction that it was justified even though it may in the event turn out to be wrong (as for instance, weather forecasts frequently are). It seems to me that that is the sense in which the phrase 'not justified' is used in the context of the question which the tribunal has to answer, namely whether a decision of the Bank was 'not justified by the evidence on which it was based'. The question to be decided by the tribunal is, I think, whether on a review of all the evidence in the possession of the Bank, it can be said that the Bank's decision went beyond the range of what could be said to have been justified by the evidence."*

21. That interpretation was accepted by this Tribunal in *AA v. the Bermuda Monetary Authority* (Insurance Appeal Tribunal 2015 No. 1 at para. 8). Whilst an earlier decision of this Tribunal is not a binding authority, it can be seen as persuasive. In that case the Tribunal accepted the following submissions:

"(1) The appeal as to the decision by the Authority to impose a civil penalty under section 32D has been made pursuant to section 44A(1)(ba) on grounds that, for the reasons adduced by the Appellant, the Decision Notice was not justified by the evidence on which it was based.

(2) An appeal on this ground falls short of a full judicial review on the merits of the Decision Notice.

(3) In *Shah v Governor and Company of the Bank of England* the Chancery Division considered the scope of an appeal tribunal's jurisdiction when the statutory right to appeal pursuant to which the appeal tribunal was constituted provided: *"(1) On appeal under section 27(1)… the question for the determination of the tribunal shall be whether, for reasons adduced by the appellant, the decision was unlawful or not justified by the evidence on which it was based."*

(4) The Chancery Division confirmed the tribunal's rejection of the appellant's contention that the appeal was analogous to an application for judicial review. The court held in this regard that *"it cannot have been intended that the scope of an appeal under s.27 should be co-extensive with the power of the High Court to review a decision of the Bank on Wednesbury principles."*

(5) With respect to the jurisdiction of the appeal tribunal in considering whether the decision was unlawful or not justified upon the evidence it was based, the Chancery Division held:

> *"… The Tribunal must make its own evaluation of the evidence and of the inferences to be drawn from the primary facts found. However, the Bank* [being the regulator making the decision in that instance] *is charged with the duty of regulating the conduct of banking business and, as I see it, it is not the function of the tribunal to substitute its own decision as to the steps which needed to be taken in the discharge of that duty for that of the Bank.* It is for the tribunal having reviewed the evidence in the possession of the Bank and having made its own evaluation of that evidence to say whether the evidence afforded adequate ground for the Bank's decision – whether,

as it put it in the Bank's cross-notice of appeal, that Bank's decision was within the range of what the tribunal consider to have been justified.**"**

(6) Accordingly, under section 44A (1) the scope of the Insurance Appeal Tribunal's (Tribunal) jurisdiction for purposes of the Appeal is not analogous to an application for judicial review. Rather, the Tribunal's jurisdiction extends to consideration of the evidence that was before the Authority at the time of the Decision Notice, to decide whether that evidence constituted adequate grounds for the Decision Notice."

22. The Tribunal in *AA v. BMA* went on to rule:

"10. The Tribunal accepts the *Shah* approach highlighted above, subject only to one caveat. The Appellant submitted that, in comparison to an ordinary court appeal, the jurisdiction of the Tribunal may be seen as more broad, given that unlike an ordinary appeal, the Tribunal is allowed to hear oral evidence, which necessarily would imply, hearing evidence which was not before the Authority (at least not in the same form) when it issued its Decision Notice (see the Insurance Appeal Regulations (the "Regulations") at Regulation 14(a)). The Tribunal accepts that it has an expanded ability to hear fresh evidence, although this opportunity was not exercised by the parties. In any event, even assuming that the Tribunal has a broader ambit "to show the justice or rightness" of the case (as submitted by the Appellant), the Tribunal would conclude that on the facts of the present case, the decision of the Authority was correct. Further, that in any event, the decision was within the range of what the Tribunal considered justified on the evidence before the Authority.

23. The Tribunal now adopts the same approach (as the Tribunal in *AA v. BMA*), as set out above. It follows that so long as the administrative decision maker makes a decision that can be seen by the Tribunal to be supported by the evidence upon which it relied, as articulated in the Decision Notices, the decision ought to be confirmed as being justified.

Unlawfulness

24. The Appellants referred to the decision in C*ouncil of Civil Service Unions and Ors v Minister for the Civil Service* [1985] A.C. 374, where Lord Diplock linked irrationality and illegality of decisions in the context of judicial review:

> *By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.*
>
> *By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury unreasonableness" (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223). It applies to a decision which is so outrageous in his defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in Edwards v. Bairstow [1956] A.C. 14of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. "Irrationality" by now can stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review.*

25. It is noted of course that case now before the Tribunal is not a judicial review case and that different principles apply. However even adopting the definition of unlawful, as that of illegal, as suggested by the Appellants, the Authority, on the evidence, did not act illegally (or unlawfully). In terms of judging the reasonableness of the actual decisions of the authority (putting aside for a moment that this is not a judicial review case), the actions of the Authority met the requirement of reasonableness, for the reasons set out below.

26. In terms of the definition of unlawfulness, the Respondent, in noting that the Appellant merely equated unlawfulness to Wednesbury unreasonableness, referred the Tribunal to the Oxford English Dictionary definition of the word, as *"contrary to or prohibited by law; not conforming to, permitted by or recognized by law; illegal; unjust; wrongful*". They then submit that a decision is illegal or unlawful where the decision maker:

    (a) makes a legal error in the construction of a legislative provision;

    (b) fails to comply with its statutory duties;

    (c) fails to act in accordance with the purpose for which statutory powers were conferred on it; or

    (d) unlawfully delegates its statutory powers.

27. The Respondent submits that none of the allegations made by the Appellants rise to this level, nor do they suggest that the Authority acted *ultra vires* or made a legal error of construction or interpretation.

28. The Respondent's definition of "unlawful" is the more helpful and relevant one for present purposes, although whichever of the two definitions put forward were to be adopted would not affect the outcome, for the reasons stated above. The Tribunal finds that the Authority did not act unlawfully, for the reasons set out herein.

Fit and Proper Person

29. Notwithstanding the significant number of breaches identified in the Decision Notices, the Appellants' contest the Authority's determination that Mr King is not a fit and proper person.

30. The Schedule to the Insurance Act contains the Minimum Criteria for Registration. Section 1(1) requires controllers and offers of registrants to be fit and proper persons. Section 1(2) goes on to state:

> *(2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of*

judgement for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfil those responsibilities and to whether the interests of clients or potential clients of the registered person are, or are likely to be, in any way threated by his holding that position.

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has—

…

(c) engaged in any business practices appearing to the Authority to be deceitful or oppressive or otherwise improper (whether lawful or not) or which otherwise reflect discredit on his method of conducting business;

(d) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

The Code of Conduct

31. Sections 8 – 10 of the 2019 Insurance Brokers and Insurance Agents Code of Conduct (the "**Code of Conduct**") further outline the principles underlying the fit and proper test applicable to insurance intermediaries. They read:

> *8. Every person who is, or is to be, a controller or officer of an Insurance Broker or Insurance Agent must meet the fit and proper person criteria as set out in the Act. Additionally, the Insurance Broker or Insurance Agent must advise the Authority of remediation actions, either planned or taken; following an issue notified involving a controller or officer.*

32. The Authority issued the Code of Conduct pursuant to section 2BA of the Insurance Act. The Code of Conduct establishes the "*duties, requirements and standards to be complied with by registered Insurance Brokers and Insurance Agents including the procedures and*

practices to be observed by such persons". Section 2BA further provides that every registered entity "*shall in the conduct of its business comply with the provisions of any code of conduct applicable to it*." A failure on the part of a registered entity to comply with the provisions of such a code "*shall be taken into account by the Authority in determining whether the business is being conducted in a prudent manner as required by paragraph 4 of the minimum criteria*." The Code of Conduct was developed in accordance with international standards set by the International Association of Insurance Supervisors.

33. Under the Code of Conduct, it is clear that registrants have a duty to, among other things:
    a. develop and implement corporate governance and control policies;
    b. make the necessary regulatory filings in an accurate and timely manner;
    c. advise the Authority of allegations of wrongdoing against their directors;
    d. ensure that the information provided to the Authority is accurate and free from false and/or misleading statements; and
    e. ensure their third-party service provides properly carried out their corporate services obligations.

34. If companies (or their directors) fail to take these steps, and those failures go unaddressed, Bermuda's reputation would be at risk—an outcome the Code of Conduct clearly states will be treated with the "utmost gravity".

Prohibition Orders

35. The Authority's discretion to make prohibition orders arise under section 32H of the Insurance Act. Where someone demonstrates a pattern of incompetence, failure to act, apathy, and/or avoidance that calls the reputation of Bermuda's financial market into question, a prohibition order may follow.

Cancellation of Licences

36. The Authority's power to cancel an insurance broker's registration is derived from section 42 of the Insurance Act. The discretion to do this is broad with detailed grounds for doing so laid out in the Act. There exists a related Enforcement Guideline, which the Authority set out in detail in their written submissions. In summary, if there is a pattern of non-compliance with applicable laws and regulations, and where the representatives of the registrant broker in issue provide the Authority with false or misleading information, the broker's license may be cancelled.

The Evidence

37. The Authority's position is that the Appellants' failures to comply with applicable laws and regulations were egregious and can be broken down into five main categories. These were set out more broadly in the Decision Notice which led to the Enforcement Measures:

    a. Lack of proper corporate record keeping:

       Eg changes to controllers and officers were not reported to the Authority as required; failure to provide records of historical ownership changes; failure to provide evidence of Exchange Control Regulations permissions; failure to provide timely annual reports.

        i. The Authority rejected the Appellants' responses to these issues, including the suggestion that it was the fault of their corporate services provider. The latter excuse ignore the fact that Swift had taken their corporate admin in-house almost 10 years earlier and that in any event, that would not have provided a defence.

        ii. The Decision notices provided, in detail, the precise section of the legislation or code of conduct which was breached and how it was breached, addressing the Appellants submissions in response to the Warning Notice, before taking the Enforcement Measures set out in the Decision Notice.

        iii. It is a well known fact in the Bermuda insurance industry that the Authority replaced its Corporate Registration Portal with a system referred

to as Integra in 2018. This required, inter alia, that all registrants update their beneficial ownership information on this new system. However prior to them learning about Integra during the course of the KPMG investigation, the Appellants appear to have had no knowledge of this very basic requirement. That the Appellants were ignorant of even this elementary obligation, is telling and that lack of appreciation of their regulatory obligations flows through most of the Authority's charges against them.

iv. The Tribunal considered the Authority's decision to be lawful and justified on the evidence.

b. Lack of appropriate corporate governance mechanisms:
Eg they had no policies and procedures to prevent and detect fraud and criminal activity, no Business Risk Assessment, no conflicts of interests policy, no current assessment of management being fit and proper person. Although belatedly some policies were put in place, the Authority thought this was too little too late and/or ineffectual.

i. The evidence of these breaches was plain. The Tribunal considered the Authority's decision to be lawful and justified on the evidence.

c. Failing to ensure true and accurate information was provided to KPMG (and therefore the Authority);

i. As part of their response to the KPMG investigation, Swift permitted Mr Cooke, as one of its two directors, to provide responses to KPMG (and thus to the Authority), on behalf of Swift. Certain of that information was false and fraudulent. Whilst the Appellants have sought to distance themselves from the wrongful actions of their director, it is not possible to do so, as the material provided to the Authority by Mr Cooke, assisted Swift and was clearly done on its behalf. But even if Mr Cooke was on a frolic of his own, the fact that they had ever appointed Mr Cooke and appear to have no assessment of his fitness or propriety, is in and of itself a serious failure.

ii. The Tribunal considered the Authority's decision to be lawful and justified

on the evidence.

iii. Even ignoring the breach described in this sub-paragraph b. making the assumption for the purpose this is sub-paragraph, that the Appellants cannot be held to be liable for Mr Cooke's fraud, the Tribunal would have come to the same conclusion in this matter.

d. Failing to appoint fit and proper directors and officers.
Swift was dismissive of this and their failure to have a policy in place to assess its directors and officers. Mr King says even now, that they would only associate with individuals of high character, entirely ignoring the fact that his co-director Mr Cooke made fraudulent representations on the company's behalf (alternatively, even if it was accepted that the representation were not made on the company's behalf, but on his own, the representations were still fraudulent); and therefore Mr Cooke was clearly not a fit and proper person.

i. The Tribunal considered the Authority's decision to be lawful and justified on the evidence.

e. Failing to rectify the breaches in a timely manner.
The Decision Notices specify in detail the breaches, the delays in rectification and that some remain unrectified. For example the 2019 filing was late and only made after the Authority made contact for it. The Authority point out that Swift's failure to pay registration fees, failure to submit beneficial ownership info on Integra and failure to implement corporate governance policies "remains an ongoing issue".

38. The Authority says that taken together these points reflect a serious and systemic issue with both the Appellants' conduct. This is particularly so when considered in light of the Appellants' collective lack of knowledge that their obligation to comply with applicable laws and regulations is unassignable.

39. The Appellants have an over-riding complaint that that the Authority did not have regard to their submissions made in response to the Warning Notice and earlier concerns of the Authority. However in truth the problem appears to be not that they did not have regard to

it, but that they did. Further that in some instances they thought the replies inadequate.

40. A good example of this relates to the complaint about the KPMG investigation into certain underlying reinsurance transactions. In particular there was a dispute between two entities [redacted] and Expedite which led to [redacted] Regulator raising certain concerns with the Authority. Whilst an ordinary contractual dispute ought not ordinarily be a concern to the Authority at all (particularly as the contractual dispute was not in relation to two Bermuda companies), this matter raised or disclosed certain fundamental problems. This led to the Prohibition Order being made against Mark Cooke, who in addition to owning Expedite was also a director of Swift (and they ostensibly shared office space).

41. There were very serious problems with Mr Cooke and the Appellants wished to put distance between Cooke and themselves, but the BMA clearly (and reasonably) did not accept the Appellants protestations. Swift maintained that they were not the broker of record in the [redacted]/Expedite transaction. Another company was the broker of record. However Swift ignores or minimizes the fact that in relation to that transaction they were actually paid a fee of 0.475% of the premium of $12,000,000. Furthermore, that Expedite additionally asked Swift to prepare "an actuarial type projection" of their ultimate loss under all treaties with [redacted]. Whether one calls this (both the work they did to earn the fee and the proposal to do further work) a broker-type services, or one dresses these up as some other type of insurance service, there is no question that Swift was providing services to Expedite. Further that the two appeared to be very close given the above and given their shared directors and shared office space. Yet despite all of this, Swift maintained throughout that they were "not involved" in the [redacted]/Expedite transaction. The Authority, reasonably on the evidence, found this to be unbelievable.

42. Another example of the Authority rejecting the evidence of the Appellants, rather than not having regard to it relates to the position of Mr Cooke in the company and whether or not Mr Cooke was performing any work or functions for Swift. The Appellants say (see the letter from their attorneys Chancery Legal dated 17 May 2021) that "Mr Cooke does not undertake, nor has he undertaken, management activities for the company…". However, when during the course of the investigation into Swift by the Authority, Swift was required

to provide financial statements of Expedite, for whom Swift was clearly providing some broker-type insurance services, Swift permitted Mr Cooke to respond directly to the Authority and KPMG on behalf of Swift, without the need to exercise any oversight over Mr Cooke. As things came to pass, Mr Cooke, in responding to the demand made to Swift, and therefore on behalf of Swift, provided what was clearly false information. He clearly knowingly lied to the Authority. In particular he provided fraudulent financials statements of Expedite. And whilst those accounts related to his company Expedite, this was provided by him on behalf of Swift, in the context of the investigation into Swift. In the premises, Swift's late attempts to disavow any responsibility for the actions taken by one of its two directors on its behalf, was rejected, reasonably, by the Authority.

43. Any company that had Mr Cooke as a director and close associate, is bound to be suspect. The Appellants appeared to have done no KYC in relation to Mr Cooke.

44. The Appellants were faced with a litany of examples of serious breaches. The Appellants provided some explanations for these but in relation to those explanations, they were found to be insufficient by the Authority, on reasonable grounds.

45. As to the specific position of the Second Appellant Mr King, given the evidence before the Tribunal, highlighted above, it is difficult to give much credence to the suggestion that Mr King met the legislative fit and proper person test. He clearly does not.

46. Appellants also complained that KPMG expanded their investigation illegitimately. The Tribunal disagrees. The ambit of the instruction to KPMG was sufficiently wide to cover the work done by KPMG. In any event, their investigation into the [redacted]-Expedite relationship (and to see what if any involvement Swift had with them) was clearly a necessary part of their investigation into Swift.

Conclusion

47. The Warning Notice and Decision Notices were comprehensive and sufficiently enabled any reader to understand why the matter was decided as it was. These clearly set out the Authority's reasons and these were justified on the evidence before the Authority and the

Tribunal. Each of the statutory breaches and code of conduct breaches are clearly made out on the evidence before the Tribunal.

48. The Tribunal finds, for the reasons give above, that the Authority's decision was both lawful and justified on the evidence on which it was based.

49. Given the conclusion, one would normally expect a costs order to be made against the Appellants. If no application is made in relation to costs, within 14 days of the Ruling, such a costs order shall stand.

Rod S. Attride-Stirling
President

Ben Adamson

Mark Smith

25 February 2025

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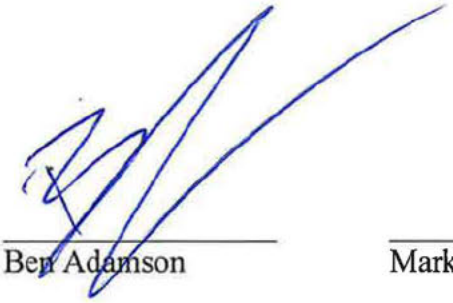

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