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INVESTIGATION REPORT

Portfolio Bond (Litigation)

Old Mutual PLC (Skandia International) and Viva PLC (Friends Provident International)

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28 February 2017

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1. EXECUTIVE SUMMARY

1.1 Coburn Corporate Intelligence concluded an investigation into Portfolio Bond products which were promoted by Skandia International (**Skandia**) and Friends Provident International (**FPI**) incorporated in the Isle of Man as insurance companies. These companies are part of the Old Mutual or Aviva Group, respectively listed on the London Stock Exchange.

1.2 The Portfolio Bond is a financial product but characterised as an "insurance" product as it provides 101% payout on the death of the policy holder. Linked to the Portfolio Bond product, was a platform of collective investment funds that were approved by both Skandia and FPI onto their respective platforms, only to be offered to investors who purchased the Portfolio Bond product. There was no distinction between professional or retail investors. The bond product and the funds were also advertised on their respective websites. Some products, such as LM/MPF were only supposed to be offered to professional investors but there were no warnings in the Skandia or FPI application forms.

1.3 Between 2006 and 2011, both Skandia and FPI had offices in South-East Asia and they marketed the Portfolio Bond product to Independent Financial Advisers (**IFAs**) in the region both orally and by slide presentations and represented to them that:

a. it was a "safe" and "low risk" product for expat retirees;
b. it would provide reasonable returns on lump sum investments;
c. due diligence was undertaken on the funds admitted to the Portfolio Bond platforms;
d. "the funds are valued on a daily basis and a statement and asset information is collected by FPI and a clear and concise statement which shows the Portfolio valuation and any transactions that were made is distributed to the client." (From FPI marketing material).

1.4 Skandia and FPI allowed the IFAs to enter into "Terms of Business" Agreements to promote, market and sell the Portfolio Bond products and that the IFAs became intermediaries for Skandia and FPI and arguably their agents as they received trailing commissions for referring clients to the insurers. Skandia and FPI did not:

a. provide disclosure documents about the products to IFAs in terms of risks or fees to pass on to their clients;
b. provide a transparent fee schedule that clients would have to pay for accessing the funds on the respective Portfolio Bond platforms;
c. care that the IFAs were not licensed to sell Portfolio Bond products in the South-East Asia or UAE regions.

1.5 Between 2006 and 2011, IFAs in South-East Asia and the UAE promoted, marketed and referred clients who signed the Portfolio Bond agreement and became "customers" of either Skandia or FPI. The IFAs represented to their investor clients that:

a. Skandia and FPI were established and reputable companies;
b. if they purchased a Portfolio Bond, it was a "safe" and "low risk" investment for retirement funds and provided them access to the linked funds on the Skandia and FPI Portfolio Bond platforms;
c. the funds linked to the Portfolio Bond underwent "due diligence" by Skandia and FPI prior to being approved on their Portfolio Bond platforms;
d. they would pay ongoing management fees and receive reports on their investment from Skandia and/or FPI;
e. the funds were valued on a daily or monthly basis and reviewed by Skandia or FPI.

1.6 An investor could only have access to and invest in funds on the Skandia or FPI Portfolio Bond platforms if they purchased a Portfolio Bond. For example, an investor could purchase a Portfolio Bond for £100,000 and after fees, this amount would be allocated to a fund approved on the Skandia or FPI Portfolio Bond platform.

1.7 There were no disclosure documents provided to investors by IFAs or Skandia or FPI prior to investors signing a Skandia or FPI application to become Portfolio Bond policy holders. At the time of signing the application, investors were to confirm what monies were to be invested in the various funds on the advice of IFAs on the Portfolio Bond platform and investors would provide "investment instructions" on the application form.

Pre-application

1.8 At no time, prior to entering into the application, which is an insurance contract, but characterised as a financial product, was there any disclosure that investors could lose all their money by investing in approved Skandia and/or FPI funds on the Portfolio Bond platform. Skandia and FPI had general disclaimer clauses that they accepted no liability for the investment. Skandia and FPI did not disclose their full management fees and continued to take fees even when investors lost their entire investments.

Post application

1.9 Once investors had been approved as a Portfolio Bond policy holder, they became "customers" and would receive a confirmation letter that they were either clients of Skandia or FPI. There was also no post contract disclosure or ongoing disclosure of the extent of the risks involved. For example, investors were never told that they could lose all their investments or that Skandia or FPI or the IFAs were not licensed to promote, market or sell the Portfolio Bond products in South-East Asia and the UAE.

1.10 Subsequently, in 2010/11, investors were informed that funds on the Skandia and/or FPI Portfolio Bond platforms, such as LM Managed Performance Fund (**LM/MPF**), Axiom Litigation Fund (**Axiom**) and New Earth Solutions Fund (**New Earth**), had gone into receivership and liquidation with no returns to investors.

1.11 In relation to LM/MPF and Axiom, there are circumstances that suggests a less than appropriate due diligence was undertaken on these funds.

Investigation conclusion

1.12 On the evidence of interviewing 30 investors and IFAs throughout South-East Asia and England, Skandia and FPI were involved in serious material non-disclosure in relation to an insurance contract, such as:

a. the unlicensed status of Skandia and FPI and IFAs;
b. the omission of the risks involving the facts that investors could lose their entire life savings;
c. limited "due diligence" of the funds on the Portfolio Bond platforms;
d. limited ongoing review or "due diligence" as to the valuation of funds on the Portfolio Bond platforms;
e. to the actual management fees and commissions that investors were charged on their investments;
f. charging investors questionable management fees for reviews or valuations;
g. to the false representations in valuation reports as to the true value of investments of LM/MPF, Axiom or New Earth on the Portfolio Bond platforms;
h. ongoing charges of management fees in circumstances where no review or "due diligence" was not carried out;
i. failing to warn investors that funds on the Portfolio Bond platform were for professional investors only.

Legal avenues to pursue

1.13 On the basis of this report, a Queen's Counsel should be obtained with the view to receiving advice as to prospects of taking an action in either the Isle of Man or London in relation to the following:

a. Breach of duty of utmost good faith or *uberrimae fidei* in insurance contracts.
b. Negligent misrepresentation by omission, gives rise to damages in the tort of negligence.
c. Negligent misrepresentation by omission, may allow an innocent party to claim damages under the *Misrepresentation Act* 1967 UK.
d. Breach of duty of care can give rise to damages in the tort of negligence.
e. Misleading and deceptive conduct in relation to non-disclosure can give rise to damages under UK legislation.

1.14 On the basis of the evidence collected, there is a reasonable and arguable case to pursue, on behalf of the investors. This should be pursued in haste so as to prevent investors from being statute barred in any proceedings.

1.15 There may be difficulties in pursuing the matter in London rather than the Isle of Man and we need to seek clarification from Counsel on this point.

2. BACKGROUND

2.1 Numerous investors accepted advice from financial advisers, between 2006 and 2011 in Indonesia, Thailand, Malaysia and the UAE to invest in a Portfolio Bond with Royal Skandia Life Assurance Ltd (**Skandia**) or Friends Provident International (**FPI**) who operated insurance companies in the Isle of Man. The financial advisers were informed by Skandia and FPI that the products were safe and low risk and had tax advantages for expat retirees. Additionally, it was also represented to financial advisers by Skandia and FPI representatives that their companies conducted "due diligence" on investment funds approved on their platforms linked to the Portfolio Bond.

2.2 There was no standard disclosure literature about the Portfolio Bond risk or any disclosure of risks associated with investing with the Portfolio Bond. However, there was literature on the respective websites of Skandia and FPI that was required to be downloaded. In some cases, investors received Terms and Conditions after they had already committed their funds to the Portfolio Bond product.

2.3 There is evidence that Skandia and FPI were not licensed to promote, market or sell the Portfolio Bond in Indonesia, Thailand, Malaysia or the UAE. Skandia and FPI also were aware that their appointed intermediary financial advisers did not have any licence status to promote, market or sell their bond products in those jurisdictions. Subsequently, funds linked to the Portfolio Bond went into liquidation in 2011 and as a result, many elderly expat investors lost their life savings. There were no warnings or disclosures in Skandia or FPI literature or on their websites about their non-licensed status or that of their IFA intermediaries.

2.4 Investors now seek to determine there are grounds to issue legal proceedings against Skandia and FPI to recoup their lost investments.

2.5 Some investors, on the advice of financial advisers, invested directly into the LM/MPF Collective Investment Scheme operated by LM Investments on the Gold Coast, Australia. This fund went into liquidation in 2011 and issues arise whether there are any legal avenues for compensation.

2.6 Coburn Corporate Intelligence (**CCI**) was engaged to conduct an investigation and obtain witness statements and evidence in relation to the following issues:

2.6.1 Whether investors who purchased a Portfolio Bond products between 2006 and 2011 through Skandia or FPI and subsequently lost their funds have a cause of action against Skandia or FPI for damages in the Isle of Man or the UK.

2.6.2 Whether Skandia and FPI were negligent in failing to conduct a proper due diligence by allowing LM Managed Performance Fund (**LM/MPF**), Axiom Litigation Fund (**Axiom**) or the New Earth Solutions Fund (**New Earth**) to be accepted onto the Skandia and FPI Portfolio Bond platforms promoted and marketed to Independent Financial Advisers who then sold these products to investors.

2.6.3 Whether Skandia or FPI act negligently or recklessly by promoting and marketing products in Indonesia, Thailand, Malaysia and the United Emirates when they were not licensed to do so by any of the securities or insurance regulators in the region.

2.6.4 Whether Skandia and FPI had an ongoing obligation to review the funds on their Portfolio Bond Platforms because they were receiving ongoing management fees from investors.

2.6.5 Whether there was material non-disclosure of risks and licence status by Skandia and FPI.

2.6.6 Whether Old Mutual PLC (**Old Mutual**) who acquired Skandia in 2006, is liable for its subsidiary company's actions in the Isle of Man and can be sued in London.

2.6.7 Whether Aviva PLC (**Aviva**) who acquired FPI in 2014, is liable for FPI's subsidiary company's actions in the Isle of Man and can be sued in London.

2.6.8 Whether there are there reasonable prospects in succeeding in the Isle of Man against the subsidiaries or in the High Court of Justice London against Old Mutual and Aviva?

2.6.9 Whether there are legal options for investors in terms of bringing an action to recoup losses from Skandia or FPI?

2.6.10 Whether investors who invested directly into LM/MPF, have any legal avenue of compensation since the fund has gone into liquidation?

Focus of Investigation

2.7 The investigation focuses on the liability of the Insurance Portfolio Bond Providers (**Bond Providers**) and does not focus on the Independent Financial Advisers (**IFAs**). The reason for this avenue is because there is more chance of mounting a class action case in the UK against the "deep pockets" of the Bond Providers. It goes without saying that there is no point in pursuing the various IFAs who are "men of straw" and would be unlikely to be able to perform an order of a Court in terms of compensation or be pursued in Courts in the South East-Asian jurisdiction with its uncertainties and complexities.

Categories of Investors

2.8 The main categories of investors that this report concerns are the following:

2.8.1 Investors' funds received, for the purpose of investing through an FPI or Skandia Portfolio Bond via their Portfolio Bond platforms.

2.8.2 Investors who invested funds via a trustee for the purpose of investing through an FPI or Skandia Portfolio Bond via their Portfolio Bond platforms.

2.8.3 Investors who invested directly into a managed investment fund such as LM/MPF on the advice of their financial adviser.

Evidence Obtained

2.9 The CCI team took 30 statements between 4 January 2017 and 25 January 2017 from the following categories of investors and IFAs:

a. **Indonesia**:

i. One witness statement from an investor via a trustee into the Portfolio Bond with either Skandia or FPI purchased units in LM/MPF or Axiom or New Earth.

ii. Four witness statements of investors who entered into a Portfolio Bond with either Skandia or FPI and purchased units in LM/MPF, Axiom and New Earth.
iii. One witness statement of an investor who purchased funds directly from LM/MPF.
iv. One witness statement from an independent financial adviser who advised four of the investors.

b. **Thailand**:
i. One witness statement from an investor via a trustee into the Portfolio Bond with either Skandia or FPI purchased units in LM/MPF or Axiom or New Earth.
ii. Six witness statements of investors who entered into a Portfolio Bond with either Skandia or FPI and purchased units in LM/MPF, Axiom and New Earth.
iii. Six witness statements of an investor who purchased funds directly from LM/MPF.
iv. Two witness statements from an independent financial adviser who advised four of the investors.
v. One witness statement from the Regional Manager for LM/MPF in Thailand.

c. **Malaysia**:
i. One witness statement from an independent financial adviser who advised four of the investors.

d. **United Kingdom**:
i. One witness statement from an investor via a trustee into the Portfolio Bond with either Skandia or FPI purchased units in LM/MPF or Axiom or New Earth.
ii. Three witness statement of investors who entered into a Portfolio Bond with either Skandia or FPI and purchased units in LM/MPF or Axiom or New Earth.
iii. Two witness statements of an investor who purchased funds directly from LM/MPF.
iv. Two witness statement from an independent financial adviser who advised four of the investors.

3. THE FACTS

3.1 In 2006, Old Mutual PLC (**Old Mutual**) acquired Skandia who had operated from the Isle of Man since 1984. Skandia was part of the Skandia Group of Companies, acquired by Old Mutual, an international financial services group with headquarters in London. It is one of 100 largest companies listed on the London Stock Exchange. In 2015, Skandia changed its name to Old Mutual. Old Mutual manages approximately £1 billion of investments and savings products.

3.2 Friends Provident International (**FPI**) is an insurance company based in the Isle of Man since 1984 and was acquired by Aviva PLC (**Aviva**) in 2015. Aviva has £319 billion under management and is an international insurance company with offices worldwide.

3.3 Skandia and FPI developed various forms of Portfolio Bond products which are known as different names such as, Executive Investment Bond (**EIB**), Reserve Portfolio Bond

(**RPB**) and Executive Redemption Bond (**ERB**). The Portfolio Bond is a Single Premium Insurance "Wrapper" that is basically a financial instrument. The information about these Portfolio Bonds was promoted by Skandia and FPI to independent financial intermediaries such as the IFAs in Indonesia, Malaysia, Thailand and the UAE. These were characterised as insurance products as there was some element of cover such as a death benefit of 101%. In reality, it was a financial investment product. It may have been designed by Skandia and FPI to get around regulatory requirements in the sale of financial products which are much stricter in terms of disclosure.

IFAs would contact Skandia or FPI

3.4 In the first instance, the IFAs would contact Skandia or FPI in the Isle of Man. IFAs entered a "Terms of Business" agreement with either Skandia or FPI. This was referred to as an "Agency Agreement". I refer to the witness statement of Eric Jack Jordan who is an IFA and produces copies of the Terms of Business between PPi and Skandia and also PPi and FPI. **Exhibit EJ1, Annexure 1.**

3.5 The terms of business documents that IFAs entered into with Skandia and FPI allowed IFAs to promote, market and advise and sell on a range of "unit linked" and open architecture Portfolio Bond products (funds) in Thailand, Malaysia, Indonesia and throughout the South-East Asia region for either Skandia or FPI. The terms of business for Skandia and FPI were updated in 2008. The terms of business were historically referred to by the IFAs as an "Agency Agreement".

3.6 The unit linked products offered by Skandia and FPI had a specific menu of funds offered on their Portfolio Bond platforms such as LM/MPF, Axiom and New Earth, to choose from and were always promoted to investors through the IFA intermediaries and details of the funds available were on their websites. The managers of these funds could also promote their funds directly to investors in the region. For example, LM had an office in Thailand and would hold information sessions for IFAs to promote its fund products. These products, such as LM/MPF, were on the Skandia and FPI Portfolio Bond platforms.

Skandia and FPI made false representations to IFAs

3.7 Between 2006 and 2011, both Skandia and FPI had offices in South-East Asia and they marketed the Portfolio Bond product to Independent Financial Advisers (**IFAs**) in the region both orally and by slide presentations.

3.8 The IFAs received sales aids, product literature and fund and technical information from FPI and Skandia about Portfolio Bond products and the linked funds. In the witness statement of David Mills, **Exhibit DM4** shows an Introduction and Product Briefing in 2011, about the Reserve Portfolio Bond including slides. Copy of **Exhibit DM4** attached to David Andrew Mills witness statement. **Annexure 2.**

3.9 The main representations to the IFAs were that:

a. it was a "safe" and "low risk" product for expat retirees;
b. it would provide reasonable returns on lump sum investments;

c. due diligence was undertaken on the funds admitted to the Portfolio Bond platforms;
d. "the funds are valued on a daily basis and a statement and asset information is collected by FPI and a clear and concise statement which shows the Portfolio valuation and any transactions that were made is distributed to the client." (From FPI marketing material).

3.10 Skandia and FPI allowed the IFAs to enter into "Terms of Business" Agreements to promote, market and sell the Portfolio Bond products and that the IFAs became intermediaries for Skandia and FPI and arguably their agents as they received trailing commissions for referring clients to the insurers. Skandia and FPI did not:

a. provide disclosure documents about the products to IFAs in terms of risks or fees to pass on to their clients;
b. provide a transparent fee schedule that clients would have to pay for accessing the funds on the respective Portfolio Bond platforms;
c. care that the IFAs were not licensed to sell Portfolio Bond products in the South-East Asia or UAE regions.

3.11 Between 2006 and 2011, IFAs in South-East Asia and the UAE promoted, marketed and referred clients who signed the Portfolio Bond agreement and became "customers" of either Skandia or FPI. The IFAs represented to their investor clients that:

a. Skandia and FPI were established and reputable companies;
b. if they purchased a Portfolio Bond, it was a "safe" and "low risk" investment for retirement funds and provided them access to the linked funds on the Skandia and FPI Portfolio Bond platforms;
c. the funds linked to the Portfolio Bond underwent "due diligence" by Skandia and FPI prior to being approved on their Portfolio Bond platforms;
d. they would pay ongoing management fees and receive reports on their investment from Skandia and/or FPI;
e. the funds were valued on a daily or monthly basis and reviewed by Skandia or FPI.

3.12 There are warnings on the current FPI website that their products are not to be sold to US, UK, Hong Kong, Singapore and UAE residents. There are also warnings in the Skandia International Brochure dated 2008, "Key features of your Executive Investment Bond" that the Portfolio Bond is not for use "in the UK, Hong Kong and Singapore". From a compliance and regulatory view, when warnings appear on a financial product document, it usually means that they are not licensed to sell the product in that jurisdiction because the disclosures do not comply with the relevant regulatory laws. Copy of the EIB Bond product brochure is annexed. **Annexure 3.**

3.13 The evidence from the investors interviewed is that "Terms and Conditions" brochures or fees were never provided to investors prior to entering into the Bond by Skandia or FPI. Investors usually received an application form. Investors were not provided with the Terms and Conditions of the Portfolio Bond at the time of entering into the agreement and signing the application. Some investors received the Terms and Conditions after they had paid for the Bond and in many instances, Terms and Conditions were never sent to the investors. However, the Terms and Conditions did

not disclose the true risks of the Portfolio Bond or the linked funds, for example, that investors could lose all their money by investing in the linked funds. There appeared to be a lack of compliance in providing disclosure documents to investors at the time of entering into the Portfolio Bond. In one circumstance, a client was sold a product illegally in England and in other circumstances, two clients' signatures were forged to direct their investments into a linked fund product.

3.14 If an investor entered into a Portfolio Bond, for example £200,000, they would then receive advice and assurances from the IFAs and choose, on the advice of the IFAs, what funds to invest in on the platforms. Investors would then be required to complete a Skandia "Dealing Instruction Form", or in the case of FPI, "Investment Instructions", where they allocated their money to a particular fund in respect of either a Skandia or FPI platform. For example, if an investor invested £200,000, this amount would then be divided up into four investments in different funds on the platform of say £50,000 each. The IFAs and/or the client would receive information directly from the managers of the fund about their performance. In respect of a Skandia Bond, see copy of "Dealing Instruction Form" provided by investor witness, Randall Dale Dodge. **Exhibit RD2, Annexure 4**. In respect of an FPI Bond, see witness statement, Thomas Reilly, **Exhibit SR2, Annexure 5**.

3.15 The Portfolio Bond gave investors access to a wide variety of investments which are funds that either Skandia or FPI approve on their established fund or investment platforms. The funds platform was known as "Unit Linked Funds" or "Mirror Funds" and are offered by life assurance companies as a way of making a range of investment opportunities available to their customers within their products. There were also external funds which provided investors with a wider choice such as collective investment schemes and unit trusts.

3.16 In the witness statement of Gary Mainhood, he states that FPI wrote to him after he had already entered into the Bond and paid £310,000 on 3 October 2011. On 10 October 2011, FPI wrote to him and stated, *"Thank you for choosing to place your Portfolio Bond investment with Friends Provident International. We are delighted to welcome you as a new customer. I have the pleasure in enclosing your policy document together with a copy of the Reserve Portfolio Bond Terms and Conditions. Please check the policy document carefully and let us know as soon as possible if there are any errors or omissions."* **Exhibit GM4, Annexure 6.**

3.17 The clear point is that investors like Gary Mainhood were not told about the risks of entering into the Bond until after they had paid their funds. There was no disclosure to this investor and others about the risks of the Bond investment.

3.18 In the witness statement of Kenneth William Monet, he states that he signed an application for a Royal Skandia Collective Bond for £50,000 on 22 November 2010. Mr Monet paid £50,000 into Skandia's bank account on 22 November 2010 but did not receive any information from Skandia until 12 January 2011. On 12 January 2011, Skandia sent Mr Monet only a Schedule of his Collective Bond policy numbers with no Terms and Conditions. He was not provided with any disclosure or risk information whatsoever. There is a small Clause 10 in the application which states: *"I confirm that I have received a copy of the Key Features of your Collective Investment Bond or Kay Features of your Collective Redemption Bond and the Guidance Notes for starting or*

adding to your Royal Skandia Collective Bond for the individual investor and I have had the opportunity to read them and completing this application form." However, there is no disclosure as to risks of the Royal Skandia Collective Bond. **Exhibit KM1** (application) and **Exhibit KM2** (schedule). **Annexure 7.**

3.19 Additionally, in relation to FPI, this is supported in the witness statement of Thomas Scott Reilly who states at **Paragraph 7**, *"On 17 June 2006, I completed a FPI Application Form for entry into the Reserve Bond. Upon signing the application and committing £200,000, to enter into the Bond, I was not provided with any disclosure information about the FPI Bond product or the management fees or the risks to me to enter into the Reserve Bond product about redemptions if any of the funds failed. There were no disclosures about the Bond funds platform and no disclosure concerning the commissions or management fees paid to either FPI or Alan Hall or any trailing commissions relevant to my investment."* **Annexure 5.**

3.20 In relation to Skandia, this is supported by the witness statement of David John Parry at **Paragraph 17**, who states, *"I signed the application papers for both the Bonds, but neither case was the contract signed. I was merely notified that it had been incepted. The contract Terms and Conditions arrived with the inception Confirmation Letter and that was the first time I had seen them. In other words, I signed the application first (for the Bond) and I did not receive the Terms and Conditions until much later. I did not receive any disclosure of risks about the ERB or the EIB from Old Mutual."* **Annexure 8.**

3.21 It is not clear what brochures would have been applicable or should have been provided to clients between 2006 and 2011 as the brochures are not dated and many clients never received any full information. As mentioned, the evidence from the investors is that they did **not** receive any disclosure material. If investors have had received disclosure material in terms of the brochure, it is manifestly inadequate. The EIB only provides some general risk disclosures. In **Annexure 3**, at Page 7, the EIB does state what risks are as follows: *"All types of investments involve some risk. The Executive Investment Bond gives you access to a wide variety of investments, the value of which may fall as well as rise. You accept this investment risk by taking out this Bond. This means that we cannot guarantee the amount you get back when you cash in your Bond. It may be less than you expect, or less than you invested ....."*

3.22 From a compliance perspective, there appears to be no procedures in place from Skandia or FPI that investors were provided Terms and Conditions or any warnings of risks in respect of the Portfolio Bond. Once the IFA referred an investor to Skandia or FPI, they then became their clients which is evidenced in some investors witness statements.

3.23 There are also further lapses in compliance concerning the fact that Thomas Scott Reilly never signed any documents to direct £80,000 that he had in the FPI Reserve Bond to LM. He subsequently asked FPI for client confirmation documents concerning his investments in LM, only to find that his signature was forged. He produced evidence that he was not in Thailand at the time the documents were supposedly signed. **Annexure 5.**

3.24 Additionally, Thomas Scott Reilly's mother, Mary Anderson Reilly, was sold, illegally, an FPI Reserve Bond for £93,000 when she was living in Fife, United Kingdom. The FPI Bond was never supposed to have been sold to residents in the UK. **Exhibit MR1. Annexure 9.**

3.25 These issues indicate that there was a complete lack of disclosure of risk and compliance on the part of Skandia and FPI in dealing with expats in South-East Asia and the UAE. Skandia and FPI were selling Portfolio Bond products to UK expats in South-East Asia and the UAE that they clearly were not legally allowed to sell to residents in the UK, US, Singapore, Hong Kong or the UAE. However, this depended upon the different features of the Portfolio Bond products. Consequently, a lower standard applied to residents in South-East Asia.

Due diligence

3.26 Skandia and FPI would independently conduct **due diligence on each fund** before placing a fund on its platform and would approve collective investment schemes such as LM/MPF, Axiom and New Earth to be approved onto their funds platform. If Skandia or FPI did conduct due diligence, why were they not able to see red flags about issues surrounding LM and Axiom. LM previously had a fund that failed in 2008 with no returns to investors and was revealed as a Ponzi scheme with one asset that could not generate income for investors. Axiom was a litigation fund, operated by a solicitor, Timothy Schools, in the Cayman Islands. Schools had numerous legal regulatory issues going back to the 1990s. Both these funds lost all the investors' monies. The issue is whether Skandia and FPI failed in their "due diligence" in approving LM and Axiom onto their fund platforms. Additionally, these funds were only supposed to have been offered to professional investors not retail investors.

3.27 The evidence from FPI that it conducts due diligence on funds offered to clients is contained in a brochure in the witness statement of Gary Mainhood at Exhibit GM16, Annexure 6. FPI states that it selects more than 100 fund managers and that they go through each due diligence process for its fund manager, including their risk and compliance model and how they operate outsourcing arrangements. The brochure from FPI, issued in approximately 2011, titled "Investing in Asia – an insight into our business" Colin Tipping, Investment Proposition Director at FPI, states *"Across the Group, we have more than 100 managers at our disposal and within the international business more than 40. After initiating a search, we produce a shortlist. Our team does a lot of desk-based research: crunching numbers, doing attribution, understanding how a manager delivers. Then we go through due diligence. For a new manager, we will do the initial due diligence, understanding how that manager is organised. We use a thematic, risk-based approach, looking at the manager's process from end to end, including their risk and compliance model, how they operate and outsourcing arrangements."* **Exhibit GM 16, Annexure 6.**

3.28 Further evidence in relation to "due diligence" is in the statements from IFAs. In the witness statement of Colin Bloodworth, Financial Adviser and Director of PPi Indonesia, states at **Paragraph 13**, *"I was informed by Skandia and FPI that they conducted a due diligence on any new funds proposed to them to join their platform. These representations were made by the broker representatives of Skandia and FPI who were responsible for a region. In particular, David McDonald and John Robertson*

who were based in Singapore. These brokers, on various occasions, informed me that due diligence was conducted on the fund products that were offered by Skandia." **Annexure 10.**

3.29 This evidence is also supported in the IFAs' witness statements of David Mills, Graham Howat, Eric Jordan, Simon Lister and Neil Robbirt. Each IFA states that they relied on the representations of both the regional representatives of Skandia and FPI that they represented that "they" conducted due diligence on their funds before they went onto the platform". This evidence is consistent from all the IFAs that I have spoken to in each of the jurisdictions.

3.30 In the witness statement of David Andrew Mills, he produces FPI marketing material from a presentation provided to him and his colleagues in Thailand about the Reserve Portfolio Bond. In one slide headed "Why choose the Reserve? (ERB). *"We value assets on a daily basis. Statements and asset information is collected by FPI and a clear and concise statement which shows the Portfolio Valuation and any transactions that were made is distributed to the client".* It is not clear how they "value assets" on a daily basis or this is a false statement as some type of due diligence would have to be conducted to determine the value of the asset or in fact, ongoing due diligence to track the value of the asset each day. **Exhibit DM 4, Annexure 2.**

3.31 All the IFAs relied upon the representations of Skandia and FPI in South-East Asia and the UAE. In the witness statement of Eric Jack Jordan, **Paragraph 16**, he states, *"When I spoke to Skandia and FPI representatives about their Portfolio Bond products, it was explained to me, and I believe it to be true, that funds needed to go through an approval process by Skandia and FPI to be accepted onto their Portfolio Bond platform."* At **Paragraph 26**, Mr Jordan states, *"I am hugely disappointed that in every case concerning the LM/MPF, Axiom and New Earth funds there was misinformation provided by the fund managers to investors and the failure by Skandia and FPI in the degree of due diligence, they undertook seemingly without period reviews. Skandia and FPI failed to pick up material issues that they could have identified before accepting these funds onto their Portfolio Bond platforms and after subsequent reviews. In my view, these funds were too easily approved by Skandia and FPI onto their platforms. As an adviser, I feel let down by Skandia and FPI's approval process in relation to the funds."* **Annexure 1.**

3.32 The "due diligence" was important for the IFAs and their decision to refer products such as LM and Axiom to their investor clients. The evidence is clearly that the IFAs received representations from Skandia and FPI that "due diligence" had occurred on the funds and that they were safe investments to recommend to their clients. There is evidence that Axiom and LM were not appropriately scrutinised by Skandia or FPI.

Non-disclosure of risks

3.33 In the witness statement of Gary Mainhood, who invested £310,000 in a Bond with FPI, he states he was not provided with any disclosure documents about the Bond or the risks involved prior to his investment. He signed FPI "Client Confirmation" documents to invest with LM, New Earth Solutions and Coral Student Portfolio on 3 October 2011, yet only received the full Terms and Conditions on 10 October 2011 from FPI. Gary

Mainhood lost £242,000. This is the general fact for all the investors who were interviewed. **Annexure 6.**

3.34 The IFAs were not provided with any disclosure documents about the risks associated with entering into a Portfolio Bond agreement and investing with linked funds by Skandia or FPI. Much more importantly, there was absolutely no disclosure by Skandia, FPI or IFAs that their clients could lose all their money if they invested in funds on the Portfolio Bond platform. Eric Jordan, an IFA in Thailand states in his witness statement at **Paragraph 17**, *"Skandia and FPI, at no time, provided myself or PPi any disclosure documents about the risks associated with entering into a Portfolio Bond agreement. Skandia and FPI also did not provide an Information Memorandum about the risks included in the Portfolio Bond agreement for me to provide to my clients in Thailand or other locations in South-East Asia."* **Annexure 1.**

3.35 In the witness statement of David Andrew Mills, an IFA from Thailand, who was a financial adviser with Abbey International Solutions (Abbey) he states at **Paragraph 21** that, *"I did not receive any disclosure documents about the risks from FPI concerning the Portfolio Bonds or the risks that customers might have if they invested in funds on the FPI Portfolio Bond platform. I recall, to the best of my ability that there was investor disclaimer provided by FPI to Abbey or myself. However, when things did start to go wrong in about 2013 or 2014, FPI did increase its disclaimer liability clauses. Irrespective of this, clients were still not provided with a full disclosure of risks statement prior to investing in a Portfolio Bond product."*

In relation to why a disclaimer statement was important, Mr Mills explains in **Paragraph 22**, the following:

"I think the disclosure statement was especially important, because many of the clients were retail and were not professional investors. For example, clients did not know, or realise until LM/MPF failed that a fund could be suspended and they would not receive their redemptions. Simple disclosure risks such as these were never included in any FPI marketing material and certainly not in any information from FPI that was provided to me to give to my clients." **Annexure 2.**

Valuation reports

3.36 Skandia and FPI would send "Valuation Reports" directly to clients about the performance of their fund(s) and charge administration fees and/or commissions and exit fees for investors entering or leaving the funds platform. Even though Mr Mainhood lost three quarters of his investment, he is still required to pay management fees to FPI. At the time of Mr Mainhood entering into the Bond, there was no disclosure of fees. See witness statement of Thomas Reilly, **Exhibit SR8**, **Annexure 5** and Gary Mainhood, **Exhibit GM7**, **Annexure 6.**

3.37 In the FPI slide pack provided to David Andrew Mills, it states that "We value assets on a daily basis. Statements and asset information is collected by FPI and a clear and concise statement which shows the Portfolio valuation and any transactions that were made is distributed to the client." In order to value assets, some "due diligence" would have to be undertaken and it is not clear how FPI would value their assets every day or this is, indeed, a misrepresentation. Clients obviously pay management fees for their

assets to be valued and by inference, any "red flags" to be disclosed. This raises the issue whether Skandia or FPI took management fees for not providing a proper service or valuation review in the circumstances.

Assessing a retail or professional investor

3.38 All the investors who invested in the Portfolio Bond products were not professional and were retirees. The funds, such as LM and Axiom, on Skandia and FPI Bond platforms were only to be marketed to professional or sophisticated investors. However, when an investor entered into a Bond, neither Skandia, FPI or the IFAs warned the clients that the products were not for retail investors. In allowing their clients to enter into the Bonds and invest in products such as LM/MPF and Axiom, Skandia and FPI failed to conduct any "Know Your Client" due diligence on elderly investors or retirees.

3.39 Customer profiling requirement is a basic compliance tool to address and guide products appropriately to clients, depending upon their appetite for risk. Although the products are described as insurance products, they are really financial products that requires additional disclosure and explanation to clients. There was no discernment between retail and professional investors purchasing a Portfolio Bond and linked investments by Skandia or FPI.

Skandia and FPI not licensed to sell products in South-East Asia or the UAE

3.40 Skandia and FPI were not licensed to promote, market or sell products in Indonesia, Thailand, Malaysia or the UAE. Additionally, Skandia and FPI knew that the IFAs were also not licensed to sell Skandia or FPI products in South-East Asia and the UAE. This evidence is supported in the statements of Colin Bloodworth, an IFA from Indonesia, Graham Howat, an IFA from Malaysia and Eric Jordan, an IFA from Thailand. In particular, Eric Jordan states that when he applied to enter into the terms of business, one of the questions on the form concerned the regulatory status of his company PPi. He was not required to provide any regulatory licensing approval to either Skandia or FPI and they did not ask for any documentary evidence in this respect.

3.41 We have obtained evidence from the Securities Exchange Commission (**SEC**) in Thailand and the Office of Insurance Commission, Thailand that Skandia or FPI were not licensed to conduct securities or insurance business in Thailand. There is evidence from the UAE Insurance Regulator that Skandia or FPI were not licensed to distribute Bond Produces in the UAE. In this light, it is interesting that on the Skandia advertisement for the EIB (**Annexure 3**), it states "Not for use in UK, Hong Kong or Singapore". This usually means that the information is not regarded as proper disclosure by regulatory agencies in those jurisdictions and they have consumer protection issues with the product.

3.42 Skandia and FPI were not licensed to promote, market or sell Portfolio Bond products in South-East Asia or the UAE but they will assert that they operated from the Isle of Man through IFA intermediaries who they believed to be licensed. However, this will not hold water as the evidence from the IFAs is that they had senior executives on the ground in South-East Asia, promoting and marketing products to the IFAs and providing briefings in Asia and advice about the products. When the IFAs applied to be an intermediary, the evidence is clearly that they never asked the IFAs for their

regulatory status which is an unusual position. There is evidence that they knew, or ought to have known, that the IFAs were not licensed to promote, market or sell their products and that they had no indemnity insurance if there were any claims against the IFAs for negligence.

3.43 Skandia and FPI representatives, usually from Hong Kong, visited IFA offices in the South-East Asia region frequently promoting the Portfolio Bonds and the Portfolio Bond platform that contained numerous collective funds. See the witness statements of the IFAs, Colin Bloodworth, **Annexure 10,** Graham Howat, **Annexure 11** and Eric Jordan, **Annexure 1**.

Skandia and FPI not licensed in Thailand and Indonesia

3.44 The Skandia and FPI representatives were not licensed in Indonesia, Thailand, Malaysia or the UAE. I refer to the witness statement of Eric Jordan at **Paragraphs 13 and 14** who states:

Paragraph 13: *"To my knowledge, Skandia and FPI were not licensed or registered to promote, market or sell products in Indonesia and Thailand."*

Paragraph 14: *"Skandia and FPI representatives visited PPi offices in the region on a quite frequent basis promoting their product range, including Portfolio Bonds. The representatives knew that PPi was not licensed to promote, market or sell the Portfolio Bonds in Indonesia or Thailand. I believe this to be true because when terms of business applications were made to Skandia and FPI, one of the questions asked on the form concerned the regulatory status of the company where it had a presence. These terms of business agreements were established when PPi was only based in Thailand. I was not required to provide any regulatory approval information to either Skandia or FPI and they also did not ask for any documentary evidence in this respect."*
Annexure 1.

3.45 In the witness statement of Peter Kells, he produces a letter from the SEC Thailand, dated 4 January 2017, stating that it is an offence to conduct a securities business without a licence. It mentions that LM and other investment providers were not licensed to be marketed in Thailand. **Exhibit PK8**, **Annexure 12.**

3.46 Mr Kells also produces an email from the Office of the Insurance Commission (**OIC**), Thailand that Skandia and FPI never appeared on OIC's List of Insurance Companies in Thailand to provide products to investors in Thailand. **Exhibit PK9**, **Annexure 12.**

Skandia and FPI not licensed in the UAE

3.47 In the witness statement of David Parry, he states that it was never disclosed to him that Skandia was not licensed in the UAE to provide insurance or financial products to either himself or IFAs. This witness obtained evidence from the regulatory authorities in the UAE. **Annexure 8.**

3.48 In October 2014, the UAE Insurance Authority published, for the first time, the Authority's list of Registered Insurance Companies and Related Professions. Old Mutual's (Skandia) name was not on the list. I refer to the witness statement of David

Parry, **Exhibit DP6** the UAE Insurance Authority's list of registered Companies and related Professions made available by the International Adviser. **Annexure 8.**

3.49 I refer to **Exhibit DP7** of **Annexure 8**, a copy of and extract from UAE Federal Law No 6 of 2007 which states:

a. Under Article (4), 'funds accumulation operations' and 'Life liability insurance'. These terms are translated from the origin Arabic text and translations vary slightly but the inference is always the same: 'funds accumulation operations' clearly relates to a collective investment scheme – the ERB - and 'life liability insurance is clearly life insurance – the EIB.
b. Under Article (24) (1), a foreign insurance company must be licensed and registered to conduct insurance operations. OMI, as a foreign insurance company, was neither registered nor held a licence.
c. Under Article (24) (4) any contract concluded by a company not duly registered according to the law shall be deemed invalid. This relates directly to both the ERB and EIB.

3.50 The lack of a licence by Old Mutual or Skandia was not disclosed to David Parry. Mr Parry states that if he had known that Old Mutual or Skandia lacked the appropriate licence to provide an insurance product like an ERB or EIB in the UAE, he would not have invested in any of the products.

3.51 In a letter dated 28 November 2014, Old Mutual acknowledged that "*Royal OMI is not a licensed insurer in the UAE*". The letter states, *"Royal Skandia is not a licensed insurer in the UAE. As an Isle of Man licensed insurer, we accept business through financial intermediaries who are appropriately licensed in the UAE."* **Exhibit DP9**, **Annexure 8.**

3.52 The interesting fact is that the clear evidence of the IFAs is that Skandia and FPI marketed products in South-East Asia and they also knew that their intermediaries were not licensed. Despite the letter, there were no warnings to any investors that they were not licensed to sell products outside the Isle of Man.

Skandia and FPI not licensed in Malaysia

3.53 Graham Howat, an IFA in Malaysia gave evidence in his witness statement that Skandia and FPI were not licensed to sell financial products in Malaysia. We will have to obtain a statement from the relevant Malaysian regulatory authorities as we have done in Thailand and the UAE. At **Paragraph 12**, of the witness statement of Graham Charles Howat, states, *"Neither FPI, Skandia, LM/MPF, New Earth or Axiom were licensed to promote, market or sell any insurance or financial products in Indonesia or Malaysia. As an adviser, it was never disclosed to me until much later in 2015."* **Annexure 11.**

3.54 The IFAs relied on the representations and presentations by Skandia and FPI. At no time, did Skandia or FPI disclose that they were not licensed to provide Bond products in the UAE, Thailand, Malaysia or Indonesia to investors. Additionally, the serious risks associated for investors entering into the Portfolio Bond agreement with linked products were never disclosed. It also meant that when things went wrong, investors were not insured as the IFAs were not licensed and had no indemnity insurance as a

result of their unlicensed status. Skandia and FPI did not provide any disclosure information about their lack of regulatory status. The investors we obtained statements from confirmed that they would not have purchased products that were unlicensed.

Portfolio fund linked products that failed

3.55 LM/MPF, Axiom and New Earth funds were all approved on the Skandia and FPI Portfolio Bond platforms and all these funds went into liquidation in between 2011 and 2012, generating disastrous losses for the investors who entered into these investments via the Skandia and FPI Portfolio Bond products. These funds were not registered in Thailand, Indonesia or the UAE but they were promoted, marketed and sold without being licensed and were promoted on the various Skandia and FPI platforms. There is evidence from the IFAs that establishes Skandia and FPI knew that these funds were not licensed in the region and knew they were being promoted.

LM/MPF

3.56 LM Managed Investments Pty Ltd (**LM**) operated a number of funds on the Gold Coast, Australia. One of its funds was the LM First Mortgage Investment Fund (**LM/FMIF**) that suspended redemptions in 2008. This fund went into liquidation in 2011 with no returns to investors. The Australian Securities and Investments Commission (**ASIC**) allowed LM to promote and market the LM/MPF scheme to expats internationally that raised approximately AU$800 million from 12,000 international investors. This fund was placed on the Skandia and FPI platform after a due diligence procedure.

3.57 At one point, the LM/MPF was suspended from the platform for a period during 2010. The LM/MPF concerned the development of one asset "Madison Estate" on the Gold Coast that was undeveloped parcel of land. It was initially purchased by the CEO of LM, Peter Drake for AU$46 million and then revalued to over AU$200 million.

3.58 The investment was in its character, a Ponzi scheme, because it depended upon income being generated from investors and that this income would be paid to other investors who wished to withdraw their funds. Some of the investor funds were invested by LM in currency hedging portfolios and Drake borrowed over AU$100 million from the LM/MPF fund. The fund went into liquidation in 2011 with no returns to investors. ASIC investigated the circumstances and banned the directors. It recently lost a civil proceedings case against Drake and other directors for approving Drake's loans from the fund. ASIC lost this case because the Expert witness failed to establish what an ordinary investment manager was required to do.

3.59 There were a number of other funds, such as the LM Currency Protection Income Fund and the LM Mortgage Income Fund were placed in receivership. It appears that there were numerous red flags about LM and its performance given that one of its main funds had already been suspended in 2008. Additionally, any person looking at the LM/MPF would have realised that it concerned the development of one asset without any other income. Any redemptions requested would have had to come from other investors. The matter is still under investigation with ASIC.

Axiom

3.60 Skandia and FPI placed the Axiom Legal Financing Fund (**Axiom**) on their platform which was set up by a solicitor, Timothy Schools, who operated out of Cumbria, England. The fund was registered in the Cayman Islands and the Isle of Man. In or about July 2012, it was revealed that Timothy Schools had been involved in fraud and that Axiom was an alleged fraudulent fund that had not provided any returns to investors. It was revealed that there were a number of disciplinary actions taken by the legal profession in England against Schools since 1999. It was also revealed that Schools' management company in the Isle of Man, known as Tangerine Investment Management Ltd was investigated by the Solicitors Regulatory Authority (**SRA**) in the UK. Proceedings were issued against Schools in 2013 by a number of investors. No funds were returned to investors.

New Earth

3.61 New Earth Solutions was another fund placed on the Skandia and FPI platform that went into liquidation in 2016. There is approximately £9 million owed to investors and was placed into liquidation by the High Court of Justice of the Isle of Man on 8 June 2016. The current administrators report does not go into any detail as to how the company went into liquidation or what happened to investor funds. However, what is clear from the liquidation is that the financial information provided to investors was false and leads into question the due diligence conducted by Skandia or FPI.

Fund disclaimers

3.62 Towards the end of 2011, FPI introduced more specific fund disclaimers for investors to sign in relation to liability concerning the type of alternative funds that they accepted on their Portfolio Bond platforms. FPI had previously issued a generic fund disclaimer in the latter part of 2009. See the witness statement of Eric Jordan, an IFA in Thailand. **Annexure 1.**

3.63 Skandia did have a generic fund disclaimer which was issued in 2006 but not specific to individual funds. Skandia subsequently incorporated a wide ranging disclaimer onto the Portfolio Bond dealing sheet in 2013 that clients were required to sign.

Direct investors into LM

3.64 There were a number of investors who made direct investments into LM/MPF on the advice of the IFA. As the fund is in liquidation under the *Corporations Act* Australia, only the liquidator can take a representative action on behalf of the creditors/investors. However, CCI is prepared to commission an advice as to whether ASIC can be sued given the regulator was on notice that the LM/FMIF had suspended redemptions since 2008. The regulator was on notice that any other funds marketed by LM should have been subject to red flags. The regulator also failed to review the LM/MPF, yet allowed LM to market the fund internationally using the fact that it was registered with ASIC. There are questions whether ASIC conducted any compliance reviews of the fund.

3.65 LM/MPF went into voluntary administration in Australia in 2013 and receivership and liquidation in 2014 returning nothing to investors. LM Investment Management Pty Ltd (**LM**) managed LM/MPF. In 2009, LM managed an income fund that also went into receivership which was not disclosed to investors. This fund was allowed on the platform. LM/MPF is being investigated by the Australian Securities and Investments Commission (**ASIC**) and has turned out to be a major fraud. Investors who invested by the FPI/Skandia platform have lost all their investments. LM/MPF had 12,000 expat investors with a total loss of AU$800 million. There are clear red flags about LM and its operations that appeared to be ignored by Skandia and FPI.

3.66 Recently, ASIC lost a civil proceedings case against Peter Drake and other directors in relation to Drake personally borrowing over AU$100 million from the LM/MPF fund. The case involved breach of director's duties and conflict of interest. See *ASIC v Drake (No2) [2016] FCA 1552.*

In dismissing ASIC's case, Justice James Edelman said he had rejected the entirety of the evidence given by the principal expert called by ASIC, Hugh Woolley.

"My concerns with Mr Woolley's (the expert) evidence were so serious that I do not accept his evidence on any contested matter, even if it was not the subject of any substantial cross-examination," Justice Edelman said in his Judgment.

His Honour also stated, "Mr Woolley's evidence did not merely cause a substantial impairment of ASIC's case in relation to the 2011 variation. It created substantial gaps in the whole of ASIC's case," Justice Edelman said.

"Unfortunately, he had paid scant attention to the key documents. And when confronted by matters which were inconsistent with ASIC's case, many of his answers were preposterous," Justice Edelman said.

Justice Edelman said Mr Woolley "displayed the worst characteristics of partisanship and could not, in any respect, be described as an independent expert" and described his evidence has "neither credible nor reliable".

ASIC is reviewing the court's decision. When ASIC was criticised about the decision, it said that it had briefed appropriate senior and junior counsel. In Australia, only a liquidator can pursue funds on behalf of investor/creditors. Peter Drake has gone into bankruptcy and it is not clear if ASIC has pursued Drake's funds offshore. In the circumstances that there is no entity to sue, it is unlikely that the investors will recoup their money if they invested in LM/MPF.

4. INVESTIGATION FINDINGS

4.1 There is evidence to support the following main issues that Skandia and FPI:

4.1.1 Breached their Utmost Good Faith duty to investors.
4.1.2 Failed to conduct in-depth or proper due diligence in relation to funds approved on the insurer's platform of products promoted, marketed and sold to investors.
4.1.3 Failed to disclose by literature or on their website, any risks of the Portfolio Bond or the funds to independent financial advisers and/or investors.

4.1.4 Failed to disclose that they were not licensed to promote, market or sell products in Indonesia, Thailand, Malaysia or the UAE.

4.1.5 Failed to appropriately ensure that their intermediaries who promoted, marketed and sold Skandia or FPI Bond products, were licensed in Indonesia, Thailand, Malaysia or the UAE.

4.1.6 Failed to properly review Axiom, LM, LM/MPF or New Earth funds on their platform.

4.1.7 Failed to properly review the pricing of units of the funds periodically and advise investors of red flags concerning Axiom, LM, LM/MPF and New Earth when the funds were approved onto the platform.

4.1.8 Failed to provide any appropriate risk disclosure literature to the independent financial advisers and/or the investors prior to or after they entered into a Bond product.

4.1.9 Made misrepresentations to independent financial advisers that the fund products on the Portfolio Bond platforms were "safe" or low risk or that appropriate due diligence had been carried out.

4.1.10 Acted unconscionably in failing to disclose material matters of risk to the investors and their unlicensed status in South-East Asia and the UAE given that they were elderly and knew that their life savings were being invested.

4.1.11 Failed to carry out any proper "Know Your Client" review in order to clarify whether investors were a "retail investor" or a "sophisticated investor" prior to entering into the Portfolio Bond application.

4.1.12 Failed to provide basic disclosure information that a reasonable insurer would provide in the circumstances.

4.2 That Aviva and Old Mutual are vicariously liable for the acts of Skandia and FPI in that they failed to act in utmost good faith in overseeing insurance contracts internationally and breached basic rules of disclosure and consumer protection laws and that they failed to:

4.2.1 ensure that their subsidiaries provide investors with appropriate written disclosure information of risks of the Bond products;

4.2.2 ensure that their subsidiaries appropriately warned investors of their lack of licence status in South-East Asia and the UAE;

4.2.3 ensure that their subsidiaries implemented appropriate due diligence in accepting Axiom, LM/MPF and New Earth onto their respective platforms;

4.2.4 ensure that their subsidiaries had appropriate "Know Your Client" procedures to distinguish between retail and sophisticated investors;

4.2.5 ensure that their subsidiaries had appropriate compliant procedures in the sale of products;

4.2.6 ensure that their subsidiaries provide investors with clear information of fees, charges and commissions;

4.2.7 allow their subsidiaries to charge management fees without properly valuing or reviewing the linked funds to the Portfolio Bond;

4.2.8 provide proper regulatory oversight in their subsidiaries in the Isle of Man concerning the international sale of products to elderly expats.

5. LEGAL ISSUES FOR CONSIDERATION

5.1 Do the Bond Providers owe a duty of care to investors in circumstances where investors entered into a complex Portfolio Bond product that directed investors to fund products on their Portfolio Bond platforms in circumstances where they were receiving commissions or placing investors into funds on their Bond provider platforms?

5.2 Do the Bond Providers owe any legal duties to provide risk disclosure statements about the products or their licence status to investors in circumstances when they were unlicensed in Indonesia, Thailand, Malaysia and UAE?

5.3 Did the Bond Providers misrepresent to IFAs and investors that they provided appropriate due diligence of funds approved onto their Portfolio Bond platforms?

5.4 Are insurers liable for the actions and representations of IFAs who promoted, market and sold the insurers Portfolio Bond products while unlicensed, to investors in Indonesia, Thailand, Malaysia and UAE?

5.5 Are the insurers able to deny liability for false and misleading statements made to IFAs and investors about the safety of the funds on their Portfolio Bond platforms?

5.6 Were the IFAs "agents" of the insurers in the promoting, marketing and selling of a licensed product in the jurisdictions without a licence in circumstances where they signed "Terms of Businesses" contracts with the IFAs to promote, market and sell their Portfolio Bond products?

5.7 Did the Bond Providers fail to carry out proper "customer due diligence" requirements in that they failed to distinguish between professional and retail investors, for example, the insurers never determined whether the investor entering into the Bond product linked funds with LM/MPF, was a retail investor or a professional investor.

5.8 Is there a conflict of interest in circumstances where the fund managers provided financial incentives/commissions and paid fees to the insurance Bond providers for approval onto their platforms in circumstances where there was no disclosure to IFAs or investors about the arrangement?

5.9 Should the Bond Providers have disclosed all management fees and arrangements with fund providers to investors?

5.10 Should the Bond Providers have disclosed to IFAs and investors that should funds on their platform may be suspended or lost?

5.11 Should the Bond Providers have disclosed to investors and/or IFAs that investors lost their funds on the platform, they would be subject to ongoing management fees although their principle investment was completely eroded as a result of the failure of the fund on the Portfolio Bond platform?

5.12 In the circumstances were the insurers involved in misleading and deceptive conduct to investors to sell the Bond products?

5.13 In the circumstances, did the insurers engage in material non-disclosure to investors?

5.14 In the circumstances, did the insurers act unconscionably?

5.15 What is the impact the IFAs supporting investors against Skandia and FPI?

6. APPLICABLE LEGAL CASES

6.1 In answer to the above questions set out in Paragraph 5 above, the answers are that there is a reasonable prospect of succeeding in relation to the above issues. You may recall, at the very beginning of this report that I emphasised the Portfolio Bond is an insurance contract. Although, it can be characterised as a financial product but the fact that it is an insurance product becomes very significant in relation to non-disclosure.

6.2 The main case that supports our claim is a landmark English law case which established the duty of "Utmost Good Faith" or *uberrimae fidei* in insurance contracts. The case is *Carter v Boehm* (1766) 3 Burr 1905 where Mr Carter was the Governor of Fort Marlborough (now Bengkulu), which was built by the British East India Company in the island of Sumatra. He took out an insurance policy with Mr Boehm against the fort being taken by a foreign enemy. A witness called Captain Tryon testified that Mr Carter knew the fort was built to resist attacks from natives but not European enemies and the French were likely to attack. The French attacked and Mr Boehm refused to fulfil the insurance claim. Mr Carter sued. In this case, Mr Carter was successful against the insurer. Mr Carter owed a duty of "Utmost Good Faith" to the insurer and was required to disclose all material to the risk.

6.3 Lord Mansfield held that the duty of "Utmost Good Faith" is a reciprocal and that if an insurer withheld material facts, the policy holder could declare the policy void and recover the premium.

6.4 Lord Mansfield states, "Good faith forbids either party, by concealing what he privately knows, to draw the other into a bargain, from his ignorance of the fact and his believing the contrary."

6.5 Lord Mansfield proceeded to qualify the duty of disclosure:

"either party may be innocently silent, as to grounds open to both, to exercise their judgment upon... An under-writer cannot insist that the policy is void, because the insured did not tell him what he actually knew... The insured need not mention what the under-writer ought to know; what he takes upon himself the knowledge of; or what he waives being informed of. The under-writer needs not be told what lessens the risqué agreed and understood to be run by the express terms of the policy. He needs not to be told general topics of speculation."

6.6 Lord Mansfield found in favour of the policy holder on the grounds that the insurer knew or ought to have known that the risk existed as the political situation was public knowledge:

"There was not a word said to him, of the affairs of India, or the state of the war there, or the condition of Fort Marlborough. If he thought that omission an objection at the

time, he ought not to have signed the policy with a secret reserve in his own mind to make it void."

6.7 The principle of Utmost Good Faith and has applied and taken root in relation to insurance contracts and is applied in a number of modern cases such as *Gordon v Gordon* (1821) 3 Swan 400, Lord Eldon, family contracts are another *uberrimae fidei* category.

6.8 The principle of Utmost Good Faith has been applied in modern courts. It was established by the Court of Appeal in *Banque Keyser Ullman SA v Skandia (UK) Insurance Co Ltd* [1990] QB 665 that the duty of Utmost Good Faith, in the same way as common law misrepresentation exists independently of contract and its breach does not confer contractual remedies upon the innocent party. The House of Lords in Pan Atlantic endorsed that view. Accordingly, where there is non-disclosure by the assured, the only remedy open to the insurers is avoidance of the policy or in the case of investors in the current circumstances for them to obtain the return of their investment funds.

6.9 If a misrepresentation is established, by omission, both the common law and statute have fashioned alternative remedies.

6.10 These remedies may be summarised in terms of the following legal principles:

a. a fraudulent misrepresentation can give rise to liability for damages in the tort of deceit;
b. a negligent misrepresentation can give rise to damages in the tort of negligence; and
c. a negligent misrepresentation may allow the innocent party to claim damages under the UK *Misrepresentation Act* 1967, s2(1). However, matters become more complex where the breach of duty is by the assured's brokers and not by the assured personally, for the question then arises whether the brokers can be liable in damages and, if so, whether the assured faces joint liability.

Jurisdiction

6.11 It is likely that proceedings would have to commenced in the Isle of Man against Skandia and FPI, but there is an appeal process to the Privy Council in the UK. There is also provisions for us to request an independent Judge. The reason for proceedings in the Isle of Man is that in the circumstances there is no real link between the investors and the parent companies Old Mutual and Aviva. There is no evidence that can be relied upon of collusion between the Isle of Man subsidiaries and the parent companies in London.

6.12 In order to avert a strikeout action in the UK and be liable for costs, it is more sensible to commence an action in the Isle of Man where the subsidiaries of Skandia and FPI are incorporated because investors actually entered into applications with these entities. Our approach, at the moment, subject to legal advice, would be to commence a representative action for 15 investors who lost US$1.8 million and claim for US$5 million. I think this would be a cheaper way to initiate action with a view to commencing a class action internationally at the same time. These are issues that we can obtain comments from Queen's Counsel as to the appropriate direction.

7. SUMMARY OF LEGAL CLAIMS

It is our view that the following legal avenues can be pursued:

a. Breach of duty of utmost good faith or *uberrimae fidei* in insurance contracts, for example, the non-disclosure of the unlicensed status of Skandia, FPI and IFAs and the non-disclosure risks and the non-disclosure that little due diligence was undertaken for the linked funds;
b. Negligent misrepresentation by omission, gives rise to damages in the tort of negligence.
c. Negligent misrepresentation by omission, may allow an innocent party to claim damages under the *Misrepresentation Act* 1967 UK.
d. Breach of duty of care can give rise to damages in the tort of negligence.
e. Misleading and deceptive conduct in relation to non-disclosure can give rise to damages under UK legislation.

8. INVESTIGATION CONCLUSION

8.1 On the basis of the information obtained and the witnesses interviewed, there is sufficient evidence to issue a Statement of Claim in relation to the issues outlined in this Report. This case raises serious consumer protection issues, especially the non-disclosure of risk and the non-disclosure of the unlicensed status of Skandia and FPI.

8.2 It is suggested that we obtain a Queen's Counsel (**QC**) Advice on the basis of the evidence that we have obtained with haste given the fact that we may be close to being statute barred. The good point is that many losses, in terms of LM/MPF, Axiom and New Earth were only revealed since 2013. It is suggested that after the QC's Advice that we write to Old Mutual and Aviva requesting a mediation, but at the same time, prepare a Statement of Claim.

DATED ON 28 FEBRUARY 2017

Niall Coburn
Managing Director
Coburn Corporate Intelligence Pty Ltd

SCHEDULE OF ANNEXURES

Annexure	Document Name
1.	Witness statement of [redacted] Exhibit EJ1
2.	Witness statement of [redacted] Exhibit DM4
3.	Executive Investment Bond brochure
4.	Witness statement of [redacted] Exhibit RD1
5.	Witness statement of [redacted] Exhibits SR2 and SR8
6.	Witness statement of [redacted] Exhibits GM4, GM7 and GM16
7.	Witness statement of [redacted] Exhibits KM1 and KM2
8.	Witness statement of [redacted] Exhibits DP6, DP7 and DP9
9.	Witness statement of [redacted] Exhibit MR1
10.	Witness statement of [redacted]
11.	Witness statement of [redacted]
12.	Witness statement of [redacted] Exhibits PK8 and PK9