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## FINAL NOTICE

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**To:** **Kathryn Joy Clark** **HD Administrators LLP**

**IRN/FRN:** **KJC00020** **465359**

**Dated:** **25 October 2016**

### ACTION

1. For the reasons set out in this Final Notice, the Authority hereby takes the following action against Ms Clark.
2. The Authority gave Ms Clark the Decision Notice, which notified Ms Clark that, for the reasons given below, the Authority had decided to:
  - a. withdraw the approval granted to Ms Clark to perform the CF4 (Partner), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting) controlled functions in relation to HDA, pursuant to section 63 of the Act; and
  - b. make an order, pursuant to section 56 of the Act, prohibiting her from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.
3. Ms Clark has not referred the matter to the Tribunal within 28 days of the date on which the Decision Notice was given to her.
4. Accordingly, for the reasons set out below, the Authority hereby withdraws, pursuant to section 63 of the Act, Ms Clark's approval to perform the controlled functions referred to in paragraph 2.a. above in respect of HDA, and makes an

order, pursuant to section 56 of the Act, prohibiting Ms Clark from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. The Prohibition Order takes effect from 25 October 2016.

## **DEFINITIONS**

5. The definitions below are used in this Final Notice (and in the Annex):

“the Act” means the Financial Services and Markets Act 2000;

“the Authority” means the Financial Conduct Authority;

“the Decision Notice” means the Decision Notice given to Ms Clark dated 7 September 2016;

“EG” means the Enforcement Guide;

“FIT” means the Fit and Proper Test for Approved Persons sourcebook;

“the Handbook” means the Authority’s Handbook of rules and guidance;

“HDA” means HD Administrators LLP (In Liquidation);

“Ms Clark” means Kathryn Joy Clark;

“the Prohibition Order” means the order prohibiting Ms Clark, pursuant to section 56 of the Act, from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm;

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber); and

“the Warning Notice” means the Warning Notice given to Ms Clark dated 8 August 2016.

## **RELEVANT STATUTORY PROVISIONS**

6. The statutory and regulatory provisions relevant to this Final Notice are set out in the Annex.

## **SUMMARY OF REASONS**

7. The Authority has concluded, on the basis of the facts and matters and conclusions described in the Warning Notice and in the Decision Notice, that Ms Clark is not a fit and proper person to perform any functions as her conduct demonstrates a serious lack of honesty, integrity and reputation. Specifically, on 4 July 2014 and 3 October 2014, Ms Clark was, upon her own confession, convicted of five counts of fraud/dishonesty offences. On 9 October 2015, Ms Clark was sentenced to a total of two years’ imprisonment for those offences, which was suspended for 24 months, required to carry out 300 hours of unpaid work, and disqualified from being a company director for two years.

## **FACTS AND MATTERS RELIED ON**

8. Since 26 April 2007, Ms Clark has been approved by the Authority to perform the CF4 (Partner), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting) controlled functions at HDA.
9. Ms Clark was, upon her own confession, convicted at Southwark Crown Court:
  - a. on 4 July 2014 of two counts of making false instrument with the intention that it should be accepted as genuine by another, to their own or another's prejudice, in breach of section 1 of the Forgery and Counterfeiting Act 1981; and
  - b. on 3 October 2014 of three counts of dishonestly making a false representation to make a gain for herself/another or cause loss to another or expose another to a risk of loss, in breach of section 2 of the Fraud Act 2006.
10. These offences were committed between 16 January 2007 and 31 March 2012. Ms Clark was an approved person at HDA at the time the offences were committed (except for the period 1 January 2007 to 26 April 2007). The offences for which Ms Clark was convicted were committed in relation to unregulated investment schemes.
11. On 9 October 2015, Ms Clark was sentenced at Southwark Crown Court to a total of two years' imprisonment for the offences summarised in paragraph 9 above, suspended for 24 months. The sentences in respect of the convictions are as follows:
  - a. in respect of the two offences summarised in paragraph 9.a. above, Ms Clark was sentenced to 15 months' and 18 months' imprisonment respectively (to run concurrently); and
  - b. in respect of the three offences summarised in paragraph 9.b. above, Ms Clark was sentenced to two years' imprisonment for the first offence and 18 months' imprisonment for each of the second and third offences (to run concurrently with the sentences specified in paragraph 11.a. above)
12. Ms Clark was also required to carry out 300 hours of unpaid work and was disqualified from being a company director for two years under section 2 of the Company Directors Disqualification Act 1986.
13. Ms Clark's offences were committed over a prolonged period of time (over five years) and impacted a large number of individuals, many of whom were near retirement age. The total loss to consumers has been estimated to be approximately £33 million.

## **DECISION MAKER**

14. The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

**IMPORTANT**

15. This Final Notice is given to Ms Clark in accordance with section 390(1) of the Act.

**Publicity**

16. The Authority must publish such information about the matter to which this Final Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to Ms Clark or prejudicial to the interest of consumers.

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

**Authority contact**

18. For more information concerning this matter generally, please contact Dilip Vekariya at the Authority (direct line: 020 7066 5520).

**John Kirby**  
**Enforcement and Market Oversight Division**

## **ANNEX**

### **RELEVANT STATUTORY PROVISIONS**

1. The Authority's operational objectives include securing an appropriate degree of protection for consumers (section 1C of the Act) and protecting and enhancing the integrity of the UK financial system (section 1D of the Act).
2. Section 56(1) of the Act provides:  
  
"The [Authority] may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by:
  - (a) an authorised person,
  - (b) a person who is an exempt person in relation to that activity, or
  - (c) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity."
3. Section 63(1) of the Act provides:  
  
"The [Authority] may withdraw an approval under section 59 given by the [Authority] or the [Prudential Regulation Authority] in relation to the performance by a person of a function if the [Authority] considers that the person is not a fit and proper to perform that function."

### **RELEVANT REGULATORY PROVISIONS**

4. In exercising its power to withdraw the approval of an approved person and to make a prohibition order, the Authority must have regard to guidance published in the Handbook and in Regulatory Guides, such as EG. The relevant main considerations in relation to the action specified above are set out below.

#### **The Enforcement Guide**

5. The Authority's policy in relation to exercising its power to withdraw the approval of an approved person and to issue a prohibition order is set out in EG.
6. EG 9.1.1 and EG 9.1.2 explain the purpose of prohibition orders and the withdrawal of approval from an approved person in relation to the Authority's regulatory objectives. EG 9.1.2 also provides that, where it considers the withdrawal of approval to be appropriate, the Authority may prohibit an approved person, in addition to withdrawing their approval.
7. EG 9.2 sets out the Authority's general policy on making prohibition orders and the withdrawal of approval of an approved person. In particular:
  - (a) EG 9.2.1 states that the Authority will consider all relevant circumstances, including whether enforcement action has been taken against the individual by other enforcement agencies, in deciding whether to make a prohibition order and/or to withdraw approvals;

- (b) EG 9.2.2 states that the Authority has power to make a range of prohibition orders depending on the circumstances of each case; and
  - (c) EG 9.2.3 states that the scope of a prohibition order will depend on the reasons why the individual is not fit and proper and the severity of risk he poses to consumers or the market generally.
- 8. EG 9.3.1 states that when the Authority has concerns about the fitness and propriety of an approved person, it may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw its approval or both. In deciding whether to withdraw its approval and/or make a prohibition order, the Authority will consider in each case whether its statutory objectives can be achieved adequately by imposing disciplinary sanctions, for example, public censures or financial penalties, or by issuing a private warning.
- 9. EG 9.3.2 provides that, when deciding whether to make a prohibition order against an approved person and/or withdraw their approval, the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to: whether the individual is fit and proper to perform functions in relation to regulated activities (noting that criteria are set out in FIT 2.1, 2.2. and 2.3); the relevance and materiality of any matters indicating unfitness; the length of time since the occurrence of any matters indicating unfitness; and the severity of the risk which the individual poses to consumers and to confidence in the financial system.

### **Fit and Proper Test for Approved Persons**

- 9. The Authority has issued guidance on the fitness and propriety of individuals in FIT.
- 10. FIT 1.3.1BG(1) states that the most important considerations when assessing the fitness and propriety of a person include that person's honesty, integrity and reputation.
- 11. FIT 2.1.1G states that in determining a person's honesty, integrity and reputation, the Authority will have regard to all relevant matters. It notes, amongst other things and by way of example, that:

"... conviction for a criminal offence will not automatically mean an application will be rejected. The [Authority] treats each candidate's application on a case-by-case basis, taking into account the seriousness of, and circumstances surrounding, the offence, the explanation offered by the convicted person, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation."
- 12. FIT 2.1.3G(1) states that the matters referred to in FIT 2.1.1G include, but are not limited to, whether a person has been convicted of any criminal offence, noting that particular consideration will be given to certain offences including those of dishonesty, fraud and financial crime or an offence under legislation relating to financial services (amongst other things).