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This Decision Notice was superseded by a [Final Notice](#) dated 11 July 2017.

DECISION NOTICE

To: KWS Wealth Management Limited
Address: 500 Avebury Boulevard, Milton Keynes, MK9 2BE
FRN: 610789
Dated: 22 April 2016

ACTION

1. For the reasons set out below and pursuant to section 55J of the Act, the Authority has decided to cancel KWS's Part 4A permission.

REASONS FOR THE ACTION

2. KWS is failing to satisfy the suitability Threshold Condition due to its connection with Mr Smith, the sole director, sole shareholder (of shares with voting rights) and sole approved person at KWS.
3. Mr Smith was convicted on indictment on 21 October 2015 at Gloucester Crown Court of dishonestly failing to disclose information which he was under a legal duty to disclose, in order to make a gain for himself/another, or to cause loss to another or to expose another to risk of loss. On the same day he was sentenced to 12 months' imprisonment, suspended for 24 months, and was ordered to pay a £100 victim surcharge.
4. Having regard to the firm's connection with Mr Smith, the Authority considers that KWS is not a fit and proper person.

DEFINITIONS

5. The definitions below are used in this Decision Notice (and in the Annex):
- “the Act” means the Financial Services and Markets Act 2000;
 - “the Authority” means the Financial Conduct Authority;
 - “COND” means the Threshold Conditions part of the Handbook;
 - “EG” means the Authority’s Enforcement Guide;
 - “the Handbook” means the Authority’s Handbook of rules and guidance;
 - “KWS” means KWS Wealth Management Limited;
 - “KWS’s Part 4A permission” means the permission granted to KWS under Part 4A of the Act;
 - “Mr Smith” means Keith William Smith;
 - “the suitability Threshold Condition” means the threshold condition set out in paragraph 2E of Schedule 6 to the Act;
 - “the Threshold Conditions” means the threshold conditions set out in Schedule 6 to the Act;
 - “the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber); and
 - “the Warning Notice” means the warning notice dated 2 March 2016.

FACTS AND MATTERS RELIED ON

6. KWS was authorised by the Authority on 12 September 2014 and is permitted to conduct designated investment business.
7. Mr Smith is the sole director, sole shareholder (of shares with voting rights) and sole approved person at KWS.
8. Mr Smith is currently approved by the Authority to hold the following controlled functions at KWS: CF1 (director), CF10 (compliance oversight), CF11 (money laundering reporting) and CF30 (customer) and is the person responsible for insurance mediation.
9. On 21 October 2015, Mr Smith was convicted at Gloucester Crown Court of dishonestly failing to disclose information which he was under a legal duty to disclose, in order to make a gain for himself/another, or to cause loss to another or to expose another to risk of loss.
10. On the same day, Mr Smith was sentenced to 12 months’ imprisonment suspended for 24 months, and was ordered to pay £100 victim surcharge.
11. KWS has been asked by the Authority to apply to cancel its Part 4A permission as the Authority considers that KWS is failing to satisfy the suitability Threshold

Condition due to its connection with Mr Smith as the sole director, sole shareholder (of shares with voting rights) and sole approved person at KWS, but KWS has declined to do so.

FAILINGS

12. The statutory and regulatory provisions relevant to this Decision Notice are set out in Annex A.
13. Based on the facts and matters set out above, it appears to the Authority that KWS is failing to satisfy the suitability Threshold Condition due to its connection with Mr Smith.
14. As a result, the Authority is not satisfied that KWS is a fit and proper person and accordingly KWS's Part 4A permission should be cancelled.

REPRESENTATIONS

15. Annex B contains a brief summary of the key representations made by KWS and how they have been dealt with. In making the decision which gave rise to the obligation to give this Decision Notice, the Authority has taken into account all of the representations made by KWS, whether or not set out in Annex B.

PROCEDURAL MATTERS

16. This Decision Notice is given to KWS under section 55Z and in accordance with section 388 of the Act.
17. The following paragraphs are important.

Decision Maker

18. The decision which gave rise to the obligation to give this Decision Notice was made by the Chair of the Regulatory Decisions Committee.

The Tribunal

19. KWS has the right to refer the matter to which this Decision Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 to the Tribunal Procedure (Upper Tribunal) Rules 2008, KWS has 28 days from the date on which this Decision Notice is given to KWS to refer the matter to the Tribunal.
20. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Decision Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email: uttc@hmcts.gsi.gov.uk).
21. Further information on the Tribunal, including a link to 'Forms and leaflets' which include Form FTC3 and notes on that form, can be found on the HM Courts and Tribunals website:
<https://www.justice.gov.uk/tribunals/tax-and-chancery-upper-tribunal>

22. A copy of Form FTC3 must also be sent to Adam Doe at the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS at the same time as filing a reference with the Upper Tribunal.

Access to evidence

23. Section 394 of the Act applies to this Decision Notice. In accordance with section 394(1), KWS is entitled to have access to:
- (a) the material upon which the Authority has relied in deciding to give KWS this Decision Notice – a schedule and copy of such material was given with the Warning Notice; and
 - (b) any secondary material which, in the Authority’s opinion, might undermine that decision. There is no such secondary material.

Third party rights

24. A copy of this Decision Notice is given to Mr Smith as a third party identified in the facts and matters above and to whom in the opinion of the Authority the matter is prejudicial. Mr Smith has similar rights of referral to the Tribunal and access to material in relation to the matter which identifies him.

Confidentiality and publicity

25. KWS should note that this Decision Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). The effect of section 391 of the Act is that neither KWS nor a person to whom this Decision Notice is copied may publish it or any details concerning it unless the Authority has published those details. The Authority must publish such information about the matter to which a Decision Notice or Final Notice relates as it considers appropriate. KWS should be aware, therefore, that the facts and matters contained in this Decision Notice may be made public.

Contacts

26. For more information concerning this matter generally, KWS should contact Adam Doe at the Authority (direct line: 020 7066 5522).

Tim Parkes
Chair, Regulatory Decisions Committee

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ANNEX A

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1B of the Act include securing an appropriate degree of protection for consumers.
2. The Authority is authorised by section 55J of the Act to, amongst other things, cancel a firm's Part 4A permission (section 55J(2)(b)) where it appears to the Authority that it is failing to satisfy the Threshold Conditions (section 55J(1)(a)) or it is desirable to do so to advance one or more of the Authority's operational objectives (section 55J(1)(c)(i)).
3. The suitability Threshold Condition provides, in relation to a person ("A") carrying on or seeking to carry on regulated activities which do not consist of or include a PRA-regulated activity, that:

"A must be a fit and proper person having regard to all the circumstances, including-
 - (a) A's connection with any person; [...]
 - (c) the need to ensure that A's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system; [...]
 - (e) whether those who manage A's affairs have adequate skills and experience and have acted and may be expected to act with probity; [...]"

RELEVANT HANDBOOK PROVISIONS

4. In exercising its power to cancel a Part 4A permission, the Authority must have regard to the regulatory requirements and guidance published in the Handbook. The main considerations relevant to the action stated in this Decision Notice are set out below.

Guidance concerning the relevant Threshold Condition

COND 2.5 – Suitability: Paragraph 2E of Schedule 6 to the Act

5. COND 2.5.2G states that the Authority will take into consideration anything that could influence a firm's continuing ability to satisfy the suitability Threshold Condition.
6. COND 2.5.4G states that examples of considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, the suitability Threshold Condition include whether the firm conducts or will conduct, its business with integrity and in compliance with proper standards (COND 2.5.4G(2)(a)).
7. COND 2.5.6G gives examples of the kind of particular considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy the suitability Threshold Condition, including but not limited to: whether the firm has been convicted, or is connected with a person who has been

convicted, of any criminal offence, and states that particular consideration will be given to offences of dishonesty, fraud or financial crime (COND 2.5.6G(2)).

OTHER RELEVANT REGULATORY PROVISIONS

8. The Authority's policy in relation to exercising its enforcement powers is set out in EG, certain provisions of which are summarised below.

Cancelling a firm's Part 4A permission on the Authority's own initiative

9. EG 8.1 reflects the provisions of section 55J of the Act that the Authority may use its own-initiative power to cancel a firm's Part 4A permission where the firm is failing or is likely to fail to satisfy the Threshold Conditions (EG 8.1(1)); or where it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives (EG 8.1(3)).
10. EG 8.13(1) states that the Authority will consider cancelling a firm's Part 4A permission using its own-initiative power contained in section 55J of the Act in circumstances where the Authority has very serious concerns about the firm.

ANNEX B

REPRESENTATIONS

1. KWS's representations (in italics), and the Authority's conclusions in respect of them, are set out below.
2. *Mr Smith's actions were the result of extreme, personal circumstances in which he found himself. His actions were completely out of character and in no way impacted upon members of the public. Mr Smith has previously always adhered to the standards of probity expected of an authorised person.*
3. *Mr Smith has earned his living as an Independent Financial Adviser for 25 years and has never received any complaints from his clients. He has no other means of earning his living and has the sole responsibility for his two children.*
4. The Authority has taken into account the mitigating factors surrounding Mr Smith's criminal offence and acknowledges that Mr Smith's actions took place against the background of very tragic circumstances. However, Mr Smith was convicted of a dishonesty offence and the Judge found that Mr Smith abused his position and his knowledge of the financial services industry by perpetrating the fraud.
5. In the circumstances and given Mr Smith's close connection to KWS (as the sole director, sole shareholder of shares with voting rights and sole approved person at the firm), KWS has not demonstrated that it conducts and will continue to conduct its business with integrity and in compliance with proper standards. It therefore appears to the Authority that KWS is failing to satisfy the suitability Threshold Condition. The Authority therefore considers it appropriate to cancel KWS's Part 4A Permission.
6. *The guidance in COND 2.5.6G [see paragraph 7 of Annex A] is plainly directed towards protecting investors against offences of dishonesty such as embezzlement and fraud. It is therefore necessary to look at the facts surrounding the offence to gauge the likelihood of further offending, particularly in relation to customers of KWS. In the case of Mr Smith there is no real likelihood of reoccurrence. This was recognised by the Judge in his sentencing remarks. The Judge observed that Mr Smith committed the offence in extremis. The Judge was also certain that this was an isolated offence and that there was no fear of reoccurrence. For that and other reasons, the Judge decided that the custodial sentence could be suspended.*
7. *Further, it may be possible to safeguard the public against the remote possibility of a further offence by placing appropriate conditions upon KWS's authorisation.*
8. COND 2.5.6G states that particular consideration will be given, *inter alia*, to offences of dishonesty and fraud. Mr Smith was convicted of fraud and the offence was categorised by the Judge as a "medium culpability" offence.
9. KWS has not provided any specific proposals as to requirements that could be added to its permission to secure an appropriate degree of protection for consumers, nor has it submitted an application for variation of permission.

10. In the circumstances, the Authority does not consider that KWS's failure to satisfy the Threshold Conditions could be resolved adequately by adding requirements to KWS's permission.
11. However, the Authority acknowledges the comments made by the Judge about the isolated nature of the offence and the extreme nature of the circumstances in which it was committed. It is for this reason that the Authority has decided not to take prohibition action against Mr Smith.