

This Decision Notice was superseded by a Final Notice dated 22 November 2016:

<https://www.fca.org.uk/publication/final-notice/tariq-carrimjee-2016.pdf>



Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

FURTHER DECISION NOTICE

To: Tariq Carrimjee

**Individual
Reference
Number:** TXC01113

Address: 91-93 Baker Street
London
W1U 6QQ

Date: 26 November 2015

ACTION

1. For the reasons given in this Further Decision Notice, the Authority has decided to make an order pursuant to section 56 of the Financial Services and Markets Act 2000 (the "Act") prohibiting Mr Tariq Carrimjee ("Mr Carrimjee") from performing the compliance oversight (CF10) and money laundering reporting (CF11) significant

influence functions in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm.

REASONS FOR THE ACTION

2. On 26 March 2013 the Authority gave Mr Carrimjee a decision notice (the "Decision Notice") which notified him that it had decided to:
 - a) Withdraw Mr Carrimjee's individual approvals pursuant to section 63 of the Act;
 - b) Make an order pursuant to section 56 of the Act prohibiting Mr Carrimjee from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm; and
 - c) Impose on Mr Carrimjee a financial penalty of £89,004, pursuant to 66 of the Act for breaching Statement of Principle 1.
3. On 23 April 2013, Mr Carrimjee referred the Decision Notice to the Upper Tribunal (Tax and Chancery Chamber) ("the Tribunal"). The written decision (the "Decision") of the Tribunal in respect of Mr Carrimjee's reference was released on 4 March 2015 and can be found on the Tribunal's website:

<http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Tariq-Carrimjee-v-FCA.pdf>.
4. Mr Carrimjee's reference of the Authority's decision to impose a financial penalty was a "disciplinary reference" in respect of which the Tribunal had the power to determine, at its discretion, what (if any) was the appropriate action for the Authority to take. Mr Carrimjee's other references, of the decision to withdraw his approvals and to make a prohibition order, were "non-disciplinary references" in respect of which, unless the Tribunal considered the references to have no merit, the Tribunal had the power to remit the matter to the Authority in accordance with its findings. Mr Carrimjee ceased performing the compliance oversight (CF10) and money laundering reporting (CF11) significant influence functions on 16 August 2012 and therefore the non-disciplinary references were confined to the issue of prohibition. In relation to the non-disciplinary references the Tribunal determined that Mr Carrimjee demonstrated a lack of competence and capability for the reasons set out in the Decision. The Tribunal remitted the non-disciplinary references back to the Authority and directed it to reconsider and reach a decision,

in accordance with its findings, namely whether to impose a prohibition order in respect of the compliance oversight (CF10) and money laundering reporting (CF11) significant influence functions.

5. The Authority has considered, in light of the Tribunal's findings, whether it would be appropriate to impose a prohibition order. The Authority has decided that, in light of the Tribunal's findings in respect of Mr Carrimjee's failure to act with competence and capability, and having regard to the Tribunal's conclusions on the extent of such failure, a prohibition order in relation to the compliance oversight (CF10) and money laundering reporting (CF11) significant influence functions is appropriate in order to further the Authority's objectives of protecting consumers and the integrity of the UK financial system.
6. The Authority has therefore decided to take the action set out in this Further Decision Notice.

DEFINITIONS

The definitions below are used in this Further Decision Notice

"APER" means the part of the Handbook in High Level Standards which has the title Statements of Principle and Code of Practice for Approved Persons

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

"EG" means the Enforcement Guide

"Gazprom GDRs" means the product described in paragraph 145 of the Decision

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

"Mr Carrimjee" means Mr Tariq Carrimjee

"Reliance GDRs" means the product described at paragraph 146 of the Decision

"Statement of Principle" means one of the Statements of Principle issued by the Authority under section 64(1) of the Act with respect to the conduct of approved persons and set out in APER

RELEVANT STATUTORY AND REGULATORY PROVISIONS

7. The main statutory and regulatory provisions relevant to this Further Decision Notice are contained in Annex A.

SANCTION

Prohibition

8. Under section 56 of the Act, 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 an authorised person, a person who is an exempt person in relation to that activity or a person to whom, as a result of Part 20 of the Act, the general prohibition does not apply in relation to that activity. The criteria for assessing fitness and propriety are set out in the Fit and Proper Test for Approved Persons contained in the Handbook ("FIT"). The criteria include the person's competence and capability.
9. In considering whether to impose a prohibition order, the Authority has had regard to the Tribunal's findings set out in the Decision and to EG. The Authority has also had regard to the relevant provisions of its Handbook in force during the relevant period.
10. The Authority has decided that in breaching Statement of Principle 2, Mr Carrimjee has demonstrated a serious lack of competence in relation to the performance of the compliance oversight function (CF10) while also holding the money laundering reporting function (CF11). Having regard to FIT, the Authority concludes that Mr Carrimjee is not a fit and proper person to hold the compliance oversight (CF10) and money laundering reporting (CF11) significant influence functions in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm.
11. Having regard to its consumer protection and integrity objectives, the Authority considers that it is appropriate to impose an order prohibiting Mr Carrimjee from performing the compliance oversight (CF10) and money laundering reporting (CF11) significant influence functions in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm.
12. The Authority's decision to prohibit Mr Carrimjee is based on its assessment of whether a prohibition order is appropriate on the basis of the Tribunal's findings as

set out in the Decision. The reasons for the Authority's decision are set out below and are, where appropriate, more fully developed in Annex B which contains the conclusions that the Authority has reached in respect of Mr Carrimjee's detailed representations on the proper application of the Tribunal's decision. The Authority's reasons are as follows:

- (a) Mr Carrimjee is not a fit and proper person by reason of lacking competence and capability. More particularly, as set out in the Decision, Mr Carrimjee either failed to appropriately identify the risk of market abuse or did nothing to allay his concerns about potential market abuse other than to seek inadequate reassurances from Mrs Parikh. This was a serious failure and it is compounded by the fact that the Authority relies on those who hold the compliance oversight (CF10) function to provide it with market intelligence in order to identify and prevent market abuse. The Authority's reasoning in relation to this issue is more fully developed in paragraphs 2.2 to 2.3 of Annex B;
- (b) While Mr Carrimjee submitted that he had learnt his lessons, and that he would not repeat his mistake, the Authority does not agree. Although the Authority is satisfied that he would not repeat the mistakes of April 2010 – were the same facts to arise - the Authority considers that Mr Carrimjee lacks the fundamental skills and judgment to discharge the compliance oversight (CF10) function effectively were he to be faced with novel and unfamiliar circumstances. The Authority's reasoning on this point is more fully developed in paragraph 3.3 of Annex B;
- (c) Notwithstanding the fact that Mr Carrimjee has relinquished the compliance oversight (CF10) and money laundering reporting (CF11) functions a prohibition order would still serve a lawful purpose. More particularly prohibition orders act as an important deterrent promoting the Authority's consumer protection and integrity objectives. Further, the fact that Mr Carrimjee has employed a compliance officer is to his credit but it is not a basis for the Authority to conclude that he has, or has gained, the capability and competence that is necessary for him to properly discharge the compliance oversight (CF10) and money-laundering reporting (CF11) functions without posing a risk to consumers or to integrity in the market were he to continue to perform those functions. The Authority's reasoning on this point is more fully developed in paragraph 4.3 of Annex B;

- (d) The Authority does not consider that by prohibiting Mr Carrimjee it would be acting inconsistently with its treatment of Mrs Parikh and Mr Davis. Insofar as Mrs Parikh is concerned, Mr Carrimjee (unlike Mrs Parikh) held the compliance oversight (CF10) function and had the client relationship with Mr Goenka. Insofar as Mr Davis is concerned, he was not as intimately involved as Mr Carrimjee in the material events nor did he have the client relationship with Mr Goenka. Notwithstanding these differences Mr Davis was still prohibited. The Authority's reasoning on this point is more fully developed in paragraph 5 of Annex B;
- (e) The Authority is satisfied that – although a separate issue to the compliance oversight (CF10) function – a prohibition order in respect of the money laundering reporting (CF11) function is also appropriate and proportionate. The Authority considers that there are close parallels between the skills, judgments and capabilities required for the money laundering reporting (CF11) and compliance oversight (CF10) functions. Both functions require the identification, monitoring, evaluation and, where appropriate, reporting of suspicious activity in the market. These are the very skills, judgements and capabilities that Mr Carrimjee failed to exhibit. The Authority's reasoning on this point is more fully developed in paragraphs 6.3 and 6.4 of Annex B.

REPRESENTATIONS

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

PROCEDURAL MATTERS

14. This Further Decision Notice is given to Mr Carrimjee under sections 57 and 390(2A) and in accordance with section 388 of the Act.

Decision Maker

15. The decision which gave rise to the obligation to give this Further Decision Notice was made by the Regulatory Decisions Committee.

The Tribunal

16. Mr Carrimjee has the right to refer the matter to which this Further Decision Notice relates to the Tribunal. The Tribunal, amongst other things, hears references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 to the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Carrimjee has 28 days from the date on which this Further Decision Notice is given to him to refer the matter to the Tribunal.
17. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) and filed with a copy of this Notice. The Tribunal's address is: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone 020 7612 9700 / email: financeandtaxappeals@hmcts.gsi.gov.uk).
18. Further information on the Tribunal can be found on the HM Courts and Tribunal Service website (including guidance and a link to 'Forms and leaflets' which contains Form FTC3 and notes on that form):

<https://www.justice.gov.uk/tribunals/tax-and-chancery-upper-tribunal>

19. Mr Carrimjee should note that a copy of Form FTC3 must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference should be sent to Ross Murdoch, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Access to evidence

20. Section 394 of the Act applies to this Further Decision Notice. In accordance with section 394(1), Mr Carrimjee is entitled to have access to the following:
 - (1) The material on which the Authority has relied in deciding to give Mr Carrimjee this Further Decision Notice; and
 - (2) Any secondary material which, in the opinion of the Authority, might undermine that decision. There is no such secondary material.

Confidentiality and publicity

21. This Further 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 Mr Carrimjee nor a person to whom this Further Decision Notice is copied may publish it or any details concerning it unless the Authority has published the Further Decision Notice or those details. However, the Authority must publish such information about the matter to which a Further Decision Notice or Final Notice relates as it considers appropriate. Mr Carrimjee should be aware, therefore, that the facts and matters contained in this Further Decision Notice may be made public.

Authority contacts

22. For more information concerning this matter generally, Mr Carrimjee should contact Ross Murdoch at the Authority (direct line: 020 7066 5396).

Peter Hinchliffe

Acting Chairman, Regulatory Decisions Committee

ANNEX A: RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. Statutory Provisions

- 1.1. The Authority's regulatory objectives were set out in section 2(2) of the Act and included the protection of consumers and the reduction of financial crime.
- 1.2. However, from 1 April 2013, the Authority's operational objectives are set out in sections 1B to 1E of the Act and include the consumer protection objective and the integrity objective.
- 1.3. Section 56 of the Act provides that the Authority may make a prohibition order if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specific regulated activity, an activity falling within a specified description or all regulated activities.
- 1.4. Section 57 of the Act provides that if the Authority decides to make a prohibition order it must give the individual concerned a decision notice which sets out the terms of the order. A person against whom a decision to make a prohibition order is made may refer the matter to the Tribunal.
- 1.5. Section 390 of the Act provides that if the individual provided with a decision notice does not refer the matter to the Tribunal within 28 days, or in accordance with a direction of the Tribunal following a reference, or a court on an appeal against the decision of the Tribunal, the Authority must, on taking the action to which the decision notice relates, give the person concerned and any person to whom the decision notice was copied a final notice setting out the terms of the order and the date from which it has effect.

2. Relevant aspects of APER

- 2.1. The APER in force at the time of the misconduct set out the fundamental obligations of approved persons and examples of conduct which, in the opinion of the Authority, do not comply with the Statements of Principle. It further described factors which, in the opinion of the Authority, were to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle.
- 2.2. APER 3.1.3 G states that when establishing compliance with, or a breach of a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.
- 2.3. APER 3.1.4 G states that an approved person will only be in breach of a Statement of Principle if they are personally culpable. Personal culpability arises where an approved person's conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.
- 2.4. In this case, the Authority considers the most relevant of the Statement of Principles to be Statement of Principle 2.
- 2.5. Statement of Principle 2 requires that an approved person must act with due skill, care and diligence in carrying out his controlled function.

3. The relevant aspects of FIT

- 3.1. FIT sets out the Fit and Proper Test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 3.2. FIT 1.3.1 G provides that the Authority will have regard to a number of factors when assessing a person's fitness and propriety. One of the considerations is the person's competence and capability.

3.3. As set out in FIT 2.2, in determining a person's competence and capability, the Authority will have regard to matters including, but not limited to:

- (1) Whether the person satisfies the relevant Authority training and competence requirements in relation to the controlled function the person performs or is intended to perform;
- (2) Whether the person has demonstrated by experience and training that the person is suitable, or will be suitable if approved, to perform the controlled function;
- (3) Whether the person has adequate time to perform the controlled function and meet the responsibilities associated with that function.

4. Authority's Policy for exercising its power to make a prohibition order

4.1. The Authority's approach to exercising its powers to make prohibition orders is set out at Chapter 9 of EG.

4.2. EG 9.1 provides that the Authority's power to make prohibition orders under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out controlled functions in relation to regulated activities, helps it work towards achieving its regulatory objectives. The Authority may exercise this power where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any function in relation to regulated activities, or to restrict the functions which he may perform.

4.3. EG 9.4 sets out the general scope of the Authority's powers in this respect, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.

4.4. EG 9.5 provides that the scope of a prohibition order will vary according to the range of functions which the individual concerned performs in relation to

regulated activities, the reasons why he is not fit and proper, and the severity of risk which he poses to consumers or the market generally.

4.5. EG 9.9 states that, when deciding whether to make a prohibition order against an approved person, the Authority will consider all the relevant circumstances. Such circumstances may include, but are not limited to, the following factors:

- (1) Whether the individual is fit and proper to perform functions in relation to regulated activities, including in relation to the criteria for assessing the fitness and propriety of an approved person in terms of competence and capability as set out in FIT 2.2;
- (2) Whether, and to what extent the approved person has failed to comply with the Statements of Principle;
- (3) The relevance and materiality of any matters indicating unfitness;
- (4) The particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates;
- (5) The severity of the risk which the individual poses to consumers and to confidence in the financial system.

4.6. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the Authority deciding to issue a prohibition order. The examples include a serious lack of competence.

ANNEX B: REPRESENTATIONS

1. Introduction

1.1. A summary of Mr Carrimjee's representations, and the Authority's conclusions in respect of them, are set out in the paragraphs that follow. The Authority has considered all of the representations made to it whether or not addressed below. A reference in parenthesis to a paragraph number is a reference to the corresponding paragraph in the Decision. For example, the reference [309] is a reference to paragraph 309 of the Decision.

1.2. By way of overview Mr Carrimjee's submissions consisted of five principal points as to why he should not be prohibited from performing either the compliance oversight (CF10) or money laundering reporting (CF11) functions namely that:

- (1) He is a fit and proper person by reference to the relevant provisions set out in Annex A;
- (2) There are no grounds for considering that he would repeat his mistake;
- (3) A prohibition order would therefore not serve any lawful purpose;
- (4) Prohibiting him would be a breach of the Authority's duty to act consistently;
- (5) In any event, his failings were not relevant to the money laundering reporting (CF11) function.

2. Is Mr Carrimjee a fit and proper person?

2.1. In assessing whether Mr Carrimjee is a fit and proper person it was not in dispute that the only relevant aspect of FIT was 2.2.1G that addresses the issue of "*competence and capability*". With respect to this issue Mr Carrimjee:

- (1) Acknowledged that "*his failure to suspect and report the risk of market abuse was serious*" – as demonstrated by the substantial penalty he received – but that his failure was a "*one off*" occurrence that involved a

single breach (namely a failure to escalate a risk that he had identified with respect to the legitimacy of Mr Goenka's intentions);

- (2) Disputed that that his failings demonstrated a fundamental lack of competence that would justify a finding that he was not fit and proper and ought to be prohibited particularly given that they involved a single breach spanning a 20 year career.

2.2. The Authority does not agree that Mr Carrimjee's failure was not sufficiently serious so as to justify a finding that he is not fit and proper. In reaching this decision the Authority has had regard to the following factors:

- (1) Those with compliance oversight (CF10) functions work at what the Decision described as the "*coal face*" [309] and are an important source of intelligence for the Authority when it seeks to prevent market abuse in order to protect consumers. This makes it particularly important that suspicions are reported appropriately;
- (2) At [283] the Tribunal held that Mr Carrimjee had concerns about Mr Goenka's intentions in relation to market abuse. However, despite having concerns Mr Carrimjee did nothing to allay them other than to seek reassurance from Mrs Parikh. Indeed having sought reassurance from Mrs Parikh Mr Carrimjee [283] "*proceeded on the basis that he had undertaken his responsibility and was leaving the strategy for the execution of the trades entirely in the hands of Mrs Parikh and Mr Goenka*";
- (3) In accepting Mrs Parikh's reassurances Mr Carrimjee failed to discharge his compliance responsibilities. As the Decision found [315] Mrs Parikh's reassurances formed an "*insufficient*" basis from which to satisfy himself that Mr Goenka's trading intentions were legitimate. Further, the Decision stated [318] that Mr Carrimjee "*unreasonably*" relied on Mrs Parikh's reassurances;
- (4) Mr Carrimjee's failings are made more serious by the fact that he (and not Mrs Parikh) had responsibility for the compliance oversight (CF10) function and there can be no justifying Mr Carrimjee taking advice from Mrs Parikh

in this respect. Further, there was no reason for Mr Carrimjee to believe that Mrs Parikh was better placed than he was to judge Mr Goenka's objectives particularly as Mr Goenka was Mr Carrimjee's client and not Mrs Parikh's. The Authority notes, by way of example, that it does not appear from the Decision, or from Mr Carrimjee's representations to the Authority, that Mr Carrimjee had ensured that Mrs Parikh had all of the relevant information that was in his possession, i.e. Mr Goenka's financial circumstances or net worth, before electing to rely on her reassurances;

- (5) As the Tribunal held at [316 – 317], what Mr Carrimjee should have done was to raise his concerns with Mr Goenka in order to obtain more information and, if necessary, taken external advice. Yet Mr Carrimjee failed to do so and as a result no enquires were made of Mr Goenka. Had it not been for the events described in [222] of the Decision (that led to the trade in the Gazprom GDRs being aborted) market abuse may well have occurred;
- (6) While Mr Carrimjee's failure could be described as a "one off" occurrence he had ample opportunity during the latter part of April 2010 to reflect on his concerns about Mr Goenka's intentions and escalate them. Accordingly this situation cannot be described as a momentary failure. Rather Mr Carrimjee had adequate time to take a step back and reflect on his concerns and what he ought to do about them.

2.3. As noted above it is important that those with compliance oversight (CF10) functions identify, monitor, evaluate and, where appropriate, adequately report concerns about market abuse. Here Mr Carrimjee had concerns about market abuse in the context of a large and significant trade. He failed to act on those concerns save for seeking inadequate reassurances from Mrs Parikh. What Mr Carrimjee should have done, as someone holding the compliance oversight (CF10) function, was to use his judgment, not rely upon Mrs Parikh's reassurances and raise his concerns with Mr Goenka (he had ample opportunity to do so). Mr Carrimjee could also have sought external advice. However, Mr Carrimjee failed to do any of these things thereby demonstrating a serious failure of judgment and understanding in relation to his compliance oversight (CF10) function. Mr Carrimjee's failure to act in a competent and capable manner arose either from an inability to identify a regulatory concern in the market or from a failure or inability

to understand the actions that were required of him once he had identified such a concern. These failures (whether taken together or separately) are serious for the holder of the compliance oversight (CF10) function as they are central to the capability and judgement that is required to exercise the responsibility that goes with that function.

3. There are no grounds for considering that he would repeat his mistake

- 3.1. Mr Carrimjee submitted that he has learnt from his failures such that he would not make the same mistake again and therefore could be presently regarded as fit and proper. In this regard he relied on the decision (among others) of the Tribunal in *Bayliss & Co v Financial Conduct Authority* [2015] UKUT 265 (TCC) where it stated at paragraph 286 that it would not be appropriate to prohibit an individual in circumstances where *"he had learned lessons from his failures and would not make the same mistakes were he to continue in such a role."*
- 3.2. In support of his submission that he had learnt from his mistakes Mr Carrimjee relied on the fact that he had now relinquished both the compliance oversight (CF10) and money laundering reporting (CF11) functions. He has also employed an experienced compliance officer (albeit that his firm is no longer authorised). Further, Mr Carrimjee gave an example (as part of his oral representations) of a recent situation in which he had had some concerns about a particular piece of business. Although his compliance officer was comfortable with the situation Mr Carrimjee asked a number of questions and probed extensively before he became comfortable with the situation. He also noted that going through the regulatory process of the present case had taught him a great deal and meant that he would know what to do if similar circumstances arose in the future.
- 3.3. While the Authority notes the fact that Mr Carrimjee has relinquished the compliance oversight (CF10) and money laundering reporting (CF11) functions, and employed a compliance officer, that is not enough in its view to be satisfied that Mr Carrimjee would not make serious compliance mistakes in the future and be fit and proper to hold the compliance oversight (CF10) and money laundering reporting (CF11) functions for the reasons that follow:
- (1) The fact that Mr Carrimjee has employed a compliance officer is to his credit but it is not a basis for the Authority to conclude that he has, or has gained, the capability and competence that is necessary for him to

properly discharge the compliance oversight (CF10) and money-laundering reporting (CF11) functions himself without posing a risk to consumers or to integrity in the market;

- (2) Although Mr Carrimjee provided an example of how he now handles compliance issues that does not satisfy the Authority that the serious failings of April 2010 would not be repeated. In this regard the Authority notes that Mr Carrimjee, despite having ample time, has not undergone any further compliance training, acquired or refreshed his expertise or otherwise taken steps to establish that he now has the judgement to identify and properly respond to compliance risks;
- (3) While Mr Carrimjee might not repeat the errors of April 2010, were the same facts to arise, the Authority considers that Mr Carrimjee lacks the fundamental skills and judgment to discharge the compliance oversight (CF10) function effectively were he to be faced with novel and unfamiliar circumstances.

4. A prohibition order would not serve any lawful purpose

- 4.1. Mr Carrimjee submitted that he had not demonstrated such a fundamental lack of competence that he represented a real risk to consumers such that a prohibition order was necessary. Further, since he no longer performs either the compliance oversight (CF10) function or the money laundering reporting (CF11) function there can be no question of him being a risk to the public such that a prohibition order is not appropriate.
- 4.2. On a related point Mr Carrimjee also noted, correctly, that in the event that he wishes to perform the compliance oversight (CF10) function or the money laundering reporting (CF11) function in the future he would be subject to the approvals regime. Finally he submitted that he has already been punished for his actions with a £89,000 penalty so that a prohibition order would only stigmatise and punish him further.
- 4.3. Notwithstanding the fact that Mr Carrimjee has relinquished the compliance oversight (CF10) and money laundering reporting (CF11) functions the Authority is of the view that a prohibition order is appropriate for the following reasons (having regard to the matters set out in Annex A and in particular EG 9.9):

- (1) As noted above compliance oversight (CF10), together with money laundering reporting (CF11), plays an important part in how the Authority fulfils its consumer protection objective. Prohibition orders send an important message to the financial services industry namely that those that are not fit and proper will be prevented from performing certain (or all) functions in relation to regulated activities. This deterrent helps to maintain high standards within the industry for the benefit of consumers;
- (2) Prohibiting those that are not fit and proper also gives consumers the confidence that those operating in the financial services industry will provide them with appropriate levels of care;
- (3) While it is correct that – having relinquished the compliance oversight (CF10) and money laundering reporting (CF11) roles – Mr Carrimjee is now subject to the approvals regime, that regime does not achieve the deterrent effect of (1) & (2) above;
- (4) The Authority, for the reasons set out more fully in paragraph 2 above, considers Mr Carrimjee's lack of competence and capability to be so manifest (albeit in relation to a single incident) that he ought to be prohibited for the overall protection of consumers and the integrity of the market;
- (5) The fact that Mr Carrimjee has been fined is not by itself sufficient protection for consumers or the integrity of the market. For the reasons set out above only a prohibition order will secure the appropriate degree of protection for consumers and the integrity of the market.

5. Prohibiting Mr Carrimjee would be a breach of the Authority's duty to act consistently

- 5.1. Mr Carrimjee stated that it would not be consistent (and would therefore be unlawful) for the Authority to prohibit Mr Carrimjee when the Authority had not prohibited Mrs Parikh. He also submitted that it was a relevant factor that he, like Mrs Parikh, does not perform a compliance function.
- 5.2. Mr Carrimjee also submitted that his case was distinguishable from Mr Davis who was prohibited. On this point Mr Carrimjee submitted that, unlike Mr Davis, detecting market abuse was not a key part of his role and that he no longer

performs the compliance oversight function whereas Mr Davis would have continued to do so if it were not for the fact that he was prohibited by the Authority.

5.3. While the Authority has considered the position of both Mrs Parikh and Mr Davis it has approached the issue of prohibition on the basis of the particular facts that apply to Mr Carrimjee. This is consistent with:

- (1) EG 9.9 that (as noted above) provides that all relevant circumstances must be considered in each case;
- (2) The direction of the Tribunal that stated at [341] of its judgment that it was for the Authority to consider whether "Mr Carrimjee's failings indicate a failure to act with competence and capability to such an extent that a prohibition order would be justified" (underline added).

5.4. As set out in the paragraphs above the Authority is satisfied that Mr Carrimjee's failings justify a prohibition order. To the extent that the position of Mrs Parikh and Mr Davis are relevant the Authority has found as follows:

- (1) Mrs Parikh was in a different position to that of Mr Carrimjee given that Mr Carrimjee held a compliance oversight (CF10) function whereas Mrs Parikh did not. Mr Carrimjee's failure must therefore be judged differently given that compliance was his responsibility in contrast to Mrs Parikh (who, unlike Mr Carrimjee, showed some judgment and reported her concerns to Mr Davis who held the compliance function at her firm). The fact that Mr Carrimjee has relinquished his compliance role, so that like Mrs Parikh he has no compliance oversight (CF10) function, is not material to the assessment of prohibition. When assessing whether a prohibition order is warranted now on the basis of a past breach, it is the facts at the time of the breach that are relevant to assessing its seriousness (notwithstanding the fact that the Authority can take subsequent events into account);
- (2) Further as the Tribunal held at [331] it was Mr Carrimjee who had the client relationship with Mr Goenka and therefore had the prime, but not sole, responsibility for carrying out due diligence with respect to Mr Goenka's trades;

(3) Like Mr Carrimjee, Mr Davis also held a compliance oversight (CF10) function. While Mr Davis' was involved in both the Gazprom GDRs and the Reliance GDRs he did not have the client relationship with Mr Goenka. Nor was he as intimately involved in the material events as Mr Carrimjee was. Notwithstanding these distinctions with Mr Carrimjee's position Mr Davis' compliance failures were sufficiently serious to warrant prohibition. In any event the Authority is satisfied for the reasons set out above that Mr Carrimjee's failings mean that a prohibition order is appropriate.

5.5. By reason of all of the matters set out above, and having regard to the matters set out in Annex A, the Authority considers that Mr Carrimjee is not a fit and proper person to perform the compliance oversight (CF10) function by reason of lacking competence and capability.

6. CF11

6.1. The Authority considers that a prohibition order in respect of the compliance oversight (CF10) function is appropriate and proportionate by reason of Mr Carrimjee's failings as set out in this Further Decision Notice.

6.2. The question of prohibiting Mr Carrimjee in respect of the money laundering reporting (CF11) function is a separate issue and Mr Carrimjee has correctly identified the fact that his failure did not involve money laundering reporting.

6.3. Notwithstanding the fact that Mr Carrimjee's failure did not involve money laundering reporting there are close parallels between the skills, judgements and capabilities required to discharge this function and the compliance oversight (CF10) function. Like the compliance oversight (CF10) function the money laundering reporting (CF11) function requires the identification, monitoring, evaluation and, where appropriate, reporting of suspicious activity in the market. These are the very skills, judgements and capabilities that Mr Carrimjee failed to exhibit.

6.4. On this basis, and by reason of the findings it has made above, the Authority considers that a prohibition order is also appropriate in respect of the money laundering reporting (CF11) function.