
FINAL NOTICE

**A38 Motor Company Ltd
Unit B
Camp Farm
Knowle Hill
Hurley
Atherstone
Warwickshire
CV9 2JF
UNITED KINGDOM**

ACTION

1. By an application dated 11/09/2020 A38 Motor Company Ltd applied under section 60 of the Act for approval of Mr Charles Breeden to perform the controlled function of SMF29 Limited scope function.
2. The Application is incomplete.
3. The Authority has refused the Application as it is not satisfied that Mr Charles Breeden is fit and proper for the function applied for, as A38 Motor Company Ltd has not provided the additional information requested.

SUMMARY OF REASONS

4. On the basis of the facts and matters described below, the Authority is not satisfied that A38 Motor Company Ltd has failed to respond, substantively or at all, to numerous requests for the provision of information considered by the Authority to be necessary to enable it to determine the Application. The requests were made over 10 week period, and the last request included a statement to the effect that the A38 Motor Company Ltd should contact the Authority, or the Authority would give A38 Motor Company Ltd a warning notice.

5. The Authority must therefore determine the Application based upon the information received to date, in circumstances where its requests for information have not been met. Having reviewed that information, the Authority cannot be satisfied that the Candidate Mr Charles Breeden is a fit and proper person to perform the SMF29 Limited Scope Function.

DEFINITIONS

6. The definitions below are used in this Final Notice.

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

“the Application” means the application referred to in paragraph 1 above.

“the Authority” means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority.

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

FACTS AND MATTERS

7. The Application was received by the Authority on 11/09/2020.
8. Further information was requested from A38 Motor Company Ltd under section 55U(5) of the Act. Details of all relevant communications between the Authority and A38 Motor Company Ltd are set out below.
9. Between 27 November 2020 and 26 May 2021, the Authority sent A38 Motor Company Ltd five emails, two recorded delivery letters and made three telephone calls in an attempt to obtain information from A38 Motor Company Ltd that was reasonably considered by the Authority to be necessary to enable the Authority to determine the Application. These requests were made over a 6 month period.
10. On 27 November 2020, the Authority sent an email to A38 Motor Company Ltd requesting that the firm provide the following information in support of the Application by 10 December 2020 (“the outstanding information”):
 - i. Obtain an up to date Standard DBS check for the candidate Mr Charles Breeden with confirmation of the date of completion and whether any adverse information was returned.
 - ii. A copy of the Candidate’s current CV and Organisational Chart.
 - iii. Explanation regarding the Effective date being in the past as it was stated as 11/02/2020 in the Form A however the application was submitted on 11/09/2020.
11. On 24 December 2020, the Authority sent an email to A38 Motor Company Ltd requesting for the outstanding information by 05/01/2021.
12. On 5 January 2021, the Authority sent a further email to A38 Motor Company Ltd requesting for the outstanding information by 20 January 2021.
13. On 20 January 2021, the Authority sent a further email to A38 Motor Company Ltd requesting for the outstanding information or an update as to the progression of the requested information.

14. On 9 February 2021, the Authority attempted to call A38 Motor Company Ltd to discuss the Application, the Candidate Mr Charles Breeden stated that he was busy and requested to be called another time. However, they did not provide a best time or day to call back. The Authority provided a telephone number and requested a call back from A38 Motor Company Ltd. The Authority also highlighted the previous communications via e-mail contain the contact numbers if required.
15. On 23 March 2021, the Authority again attempted to call A38 Motor Company Ltd to discuss the Application however there was no answer. The Authority therefore sent an e-mail requesting for the outstanding information or an update as to the progression of the requested information. The Authorisation further wrote if required then the matter of the application can be discussed.
16. On 25 May 2021, the Authority again attempted to call A38 Motor Company Ltd to discuss the Application. However, there was no answer.
17. On 26 May 2021, the Authority sent a copy of the final letter to both A38 Motor Company Ltd by recorded delivery. The letter and email informed A38 Motor Company Ltd that failure to provide the information would result in the Application being determined based upon the information received to date; and that this would result in A38 Motor Company Ltd receiving a Warning Notice proposing to refuse the Application. The letter provided A38 Motor Company Ltd with a period of 10 business days within which to provide the outstanding information. A38 Motor Company Ltd failed to provide the outstanding information by the required deadline, or to date.

IMPACT ON FITNESS AND PROPRIETY

18. A38 Motor Company Ltd have failed to respond to 5 separate requests for the provision of information considered by the Authority to be necessary to allow the Application to be determined. The final request gave A38 Motor Company Ltd 10 business days to respond and included a statement to the effect that A38 Motor Company Ltd must contact the Authority, or the Authority would issue A38 Motor Company Ltd a Warning Notice.
19. The Authority must therefore determine the Application based upon the information received to date, in circumstances where its requests for information have not been met. Having reviewed that information, the Authority is not satisfied that the Candidate in respect of whom the application is made is a fit and proper person to perform the function to which the Application relates.
20. Authorised firms (and those seeking authorisation) are expected to engage with the Authority in an open and cooperative way. The failure to provide the requested information raises concerns that the Candidate lacks the competence and capability to carry out the senior management function to which the Application relates.
21. The failure to provide the information raises concerns as to whether the Candidate:
 - i. Can satisfy the FIT criteria in relation to FIT 2.2 Competence and Capability; and
 - ii. Will conduct the senior management function to which the Application relates to with due skill and care and in compliance with proper standards as required by FIT.

REPRESENTATIONS

22. Annex A contains a summary of the of the key representations made by A38 Motor Company Ltd 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 A38 Motor Company Ltd.

IMPORTANT NOTICES

23. This Final Notice is given under section 390 of the Act.

Publication

24. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Notice relates. Under those provisions, the Authority must publish such information about the matter to which this 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 you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
25. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate

Authority contacts

26. For more information concerning this matter generally, contact Ana Marulanda, Team Leader, Approved Persons and Mutuals Department at the Authority (direct line: 020 7066 4724 email: ana.marulanda@fca.org.uk).

Ana Marulanda
Executive Decision Maker

ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE

Relevant Statutory Provisions

1. The Authority may grant an application for approval under section 60 of the Act only if it is satisfied that the person in respect of whom the application is made is a fit and proper person to perform the controlled function to which the application relates (section 61(1) of the Act).
2. Section 62(2) of the Act requires the Authority, if it refuses the application, to issue a Final Notice.

Relevant provisions of the Authority’s Handbook

3. The Fit and Proper test for Approved Persons (“FIT”) sets out the criteria that the Authority will consider when assessing the fitness and propriety of a person to perform a particular controlled function.
4. The most important considerations to which the Authority will have regard include the person’s [honesty/integrity and reputation/competence and capability/financial soundness (FIT 1.3.1G).
5. If a matter comes to the Authority’s attention which suggests that the person might not be fit and proper, the Authority will take into account how relevant and important that matter is (FIT 1.3.4G).
6. In determining a person’s honesty, integrity and reputation, the matters to which the Authority will have regard include:
 - (1) whether the person has been convicted of any criminal offence; particular consideration will be given to offences of dishonesty, fraud, financial crime or other offences under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking and or other financial services, insolvency, consumer credit companies, insurance, and consumer protection, money laundering, market manipulation or insider dealing (FIT 2.1.3G (1));
 - (2) whether the person has been the subject of any adverse finding or any settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a body corporate (FIT 2.1.3G (2));
 - (3) whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by the Authority, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies (FIT 2.1.3G (3));
 - (4) whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or of any investigation which might lead to those proceedings (FIT 2.1.3G (4));
 - (5) whether the person has contravened any of the requirements and standards of the regulatory system or the equivalent standards or requirements of other regulatory authorities (including a previous regulator), clearing houses and

- exchanges, professional bodies, or government bodies or agencies (FIT 2.1.3G (5));
- (6) whether the person has been the subject of any justified complaint relating to regulated activities (FIT 2.1.3G (6));
 - (7) whether the person has been involved with a company, partnership or other organisation that has been refused registration, authorisation, membership or a licence to carry out a trade, business or profession, or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory or government body (FIT 2.1.3G (7));
 - (8) whether, as a result of the removal of the relevant licence, registration or other authority, the person has been refused the right to carry on a trade, business or profession requiring a licence, registration or other authority (FIT 2.1.3G (8));
 - (9) whether the person has been a director, partner, or concerned in the management, of a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation or within one year of that connection (FIT 2.1.3G (9));
 - (10) whether the person, or any business with which the person has been involved, has been investigated, disciplined, censured or suspended or criticised by a regulatory or professional body, a court or Tribunal, whether publicly or privately (FIT 2.1.3G (10));
 - (11) whether the person has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar (FIT 2.1.3G (11));
 - (12) whether the person has ever been disqualified from acting as a director or disqualified from acting in any managerial capacity (FIT 2.1.3G (12));
 - (13) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT 2.1.3G (13)).
7. In determining a person's competence and capability, the matters to which the Authority will have regard include:
- (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 (FIT 2.2.1G (1));
 - (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 (FIT 2.2.1G (2));
 - (3) whether the person has adequate time to perform the controlled function and meet the responsibilities associated with that function (FIT 2.2.1G (3)).

8. In determining a person's financial soundness, the matters to which the Authority will have regard include:
- (1) whether the person has been the subject of any judgment debt or award, in the United Kingdom or elsewhere, that remains outstanding or was not satisfied within a reasonable period (FIT 2.3.1G (1));
 - (2) whether, in the United Kingdom or elsewhere, the person has made any arrangements with his creditors, filed for bankruptcy, had a bankruptcy petition served on him, been adjudged bankrupt, been the subject of a bankruptcy restrictions order (including an interim bankruptcy restrictions order), offered a bankruptcy restrictions undertaking, had assets sequestrated, or been involved in proceedings relating to any of these (FIT 2.3.1G (2)).