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## **FINAL NOTICE**

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**To:** **Brian Hamilton**

**Address:** **64 Belfield Park  
Stillorgan Road  
County Dublin  
A94 YH34  
Republic of Ireland**

**FRN:** **436182**

**Dated:** **16 August 2023**

### **ACTION**

1. For the reasons set out in this Final Notice, the Authority hereby takes the following action.
2. The Authority issued to Brian Hamilton the Decision Notice, which notified him that for the reasons given below and pursuant to section 55J of the Act and Regulation 8(5)(a) of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018, the Authority had decided to cancel Brian Hamilton's Part 4A permission.
3. Brian Hamilton has not referred the matter to the Tribunal within 28 days of the date on which the Decision Notice was given to him.
4. Accordingly, the Authority has today cancelled Brian Hamilton's Part 4A permission.

## **SUMMARY OF REASONS**

5. Brian Hamilton has failed to respond to the Authority's request for the provision of information, namely the information set out in the TPR Attestation Survey made under section 165 of the Act.
6. Brian Hamilton has also refused to pay the Authority's fees in relation to his permission.
7. Authorised firms (and those seeking authorisation) are expected to engage with the Authority in an open and cooperative way. The Authority has concluded, on the basis of the facts and matters set out below, that Brian Hamilton is failing to satisfy the suitability and effective supervision Threshold Conditions.
8. In particular, the Authority is not satisfied that Brian Hamilton is fit and proper having regard to all the circumstances or that he can be effectively supervised. Specifically, Brian Hamilton has failed to be open and co-operative in all his dealings with the Authority in breach of Principle 11 (Relations with regulators) and as a result, the Authority is not satisfied that Brian Hamilton's business is being, or will be, managed in such a way as to ensure that his affairs will be conducted in a sound and prudent manner or that he is ready, willing and organised to comply with the requirements and standards under the regulatory system.

## **DEFINITIONS**

9. 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;
  - "Brian Hamilton's Part 4A permission" means the deemed permission granted by the Authority to Brian Hamilton under Part 4A of the Act;
  - "COND" means the Threshold Conditions part of the Handbook;
  - "the Decision Notice" means the decision notice given to Brian Hamilton dated 4 July 2023;
  - "the effective supervision Threshold Condition" means the threshold condition set out in paragraph 2C of Schedule 6 of the Act;
  - "EG" means the Authority's Enforcement Guide;
  - "the Handbook" means the Authority's Handbook of rules and guidance;
  - "the Principles" means the Authority's Principles for Businesses
  - "the suitability Threshold Condition" means the threshold condition set out in paragraph 2E of Schedule 6 of the Act;
  - "the Threshold Conditions" means the threshold conditions set out in Schedule 6 to the Act;
  - "the TPR" means the Temporary Permissions Regime for EEA-based firms that were formerly carrying on regulated business in the UK through passporting arrangements;

“the TPR Attestation Survey” means the firm attestation sent by the Authority to Brian Hamilton requesting information under section 165 of the Act from Brian Hamilton regarding whether, having obtained a Part 4A permission under the TPR, Brian Hamilton understands his regulatory obligations and asking him to provide to the Authority contact details for individuals with specific responsibilities;

“the TPR Notification Form” means the form submitted by Brian Hamilton notifying the Authority of his intention to enter the TPR; and

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

“the Warning Notice” means the warning notice given to Brian Hamilton dated 18 May 2023.

## **FACTS AND MATTERS**

10. On 15 January 2019, Brian Hamilton submitted the TPR Notification Form notifying the Authority that he wished to enter the TPR in order to obtain a temporary Part 4A permission to carry on a regulated activity in the UK under the passporting arrangements set out in Schedule 3 or 4 of the Act.
11. On 21 January 2021, the Authority informed Brian Hamilton that he had been granted a deemed Part 4A permission and was now regulated by the Authority for his UK business.
12. On 25 January 2021, the Authority sent to Brian Hamilton, using the ‘key contact’ email address details in the TPR Notification Form, an email requiring Brian Hamilton, in accordance with section 165 of the Act, to complete the TPR Attestation Survey and return it by 29 January 2021.
13. On 28 January 2021 and 4 February 2021, using the same ‘key contact’ email address the Authority sent reminders to Brian Hamilton to complete and return the required information within the TPR Attestation Survey.
14. To date, the Authority has not received the completed TPR Attestation Survey.
15. Further, Brian Hamilton has failed to pay regulatory fees and levies owed to the Authority, for the periods 1 April 2021 to 31 March 2022 and 1 April 2022 to 31 March 2023 which were due for payment by 28 December 2021 and 8 September 2022 respectively.

## **FAILINGS**

16. The statutory and regulatory provisions relevant to this Final Notice are set out in the Annex.
17. From the facts and matters described above the Authority, having regard to its regulatory objectives, considers that Brian Hamilton:
  - a) has failed to respond appropriately to the Authority’s requests that he complete and return the TPR attestation survey and has failed to pay the fees owed to the Authority, therefore failing to comply with Principle 11 (Relations with regulators) in that he has not been open and cooperative in all his dealings with the Authority;
  - b) has failed to satisfy the Authority that he is ready, willing and organised to comply with the requirements and standards of the regulatory system, namely the requirement to respond adequately to information requirements from the Authority and to pay the regulatory fees owed to the Authority, and that Brian Hamilton is

therefore failing to satisfy the effective supervision Threshold Condition;

- c) is not a fit and proper person, having regard to all the circumstances, because the Authority is not satisfied that Brian Hamilton's business is being, or will be, managed in such a way as to ensure that his affairs will be conducted in a sound and prudent manner, and that Brian Hamilton is therefore failing to satisfy the suitability Threshold Condition.

18. Accordingly, the Authority has cancelled Brian Hamilton's Part 4A permission.

#### **DECISION MAKER**

19. The decision which gave rise to the obligation to give this Final Notice was made by an Authority staff member under executive procedures.

#### **IMPORTANT**

20. The Final Notice is given to Brian Hamilton in accordance with section 390(1) of the Act.

##### **Publicity**

21. The Authority must publish such information about 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 information would, in the opinion of the Authority, be unfair to Brian Hamilton or prejudicial to the interests of consumers.

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

##### **Authority Contact**

For more information concerning this matter generally, Brian Hamilton should contact Zishan Siddique at the Authority (direct line: 020 7066 3747).

**Anna Couzens**

**Enforcement and Market Oversight Division**

## **ANNEX**

### **RELEVANT STATUTORY PROVISIONS**

1. Section 55J of the Act provides that where it appears to the Authority that an authorised person with a Part 4A permission is failing, or is likely to fail, to satisfy the Threshold Conditions for which the Authority is responsible it may exercise its power under this section to cancel the person's Part 4A permission.
2. Regulation 8(1) of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 provides that a person to whom a temporary Part 4A permission is granted has permission to carry on a regulated activity in the UK under Part 4A of the Act. Regulation 8(4) provides that a power of a regulator under the Act is exercisable in respect of such a person as it is in respect of a person with permission under Part 4A of the Act. Regulation 8(5)(a) provides that such a power is exercisable in relation to a variation or cancellation of a permission to carry on a regulated activity.
3. Paragraph 2E of Schedule 6 to the Act provides, in relation to a person ("A") carrying on, or seeking to carry on, regulated activities which do not include a PRA-regulated activity, that:

"A must be a fit and proper person having regard to all the circumstances, including:

[...]

(d) whether A has complied and is complying with requirements imposed by the FCA in the exercise of its functions, or requests made by the FCA, relating to the provision of information to the FCA and, where A has so complied or is so complying, the manner of that compliance;

[...]

(f) whether A's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner."
4. Paragraph 2C of Schedule 6 to the Act provides, in relation to the person concerned ("A") that A must be capable of being effectively supervised by the Authority having regard to all the circumstances, including-

[...]

(a) the way in which A's business is organised".

### **RELEVANT HANDBOOK PROVISIONS**

5. In exercising its power to cancel a firm's Part 4A permission, the Authority must have regard to the regulatory requirements and 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.

## **Relevant Principle**

6. Principle 11 requires a firm to deal with its regulators in an open and co-operative way, and must disclose to the Authority appropriately anything relating to the firm of which the Authority would reasonably expect notice.

## **Guidance concerning the Threshold Conditions**

7. Guidance on the Threshold Conditions is set out in COND.

### COND 2.3 - Effective supervision: Paragraph 2C of Schedule 6 to the Act

8. COND 2.3.1A(1) states that a firm must be capable of being effectively supervised by the Authority having regard to all the circumstances including the way in which the firm's business is organised.
9. COND 2.3.3G states that, in assessing the Threshold Condition set out in paragraph 2C of Schedule 6 to the Act, factors which the Authority will take into consideration include, among other things, whether it is likely that the Authority will receive adequate information from the firm, and those persons with whom the firm has close links, to enable it to determine whether the firm is complying with the requirements and standards under the regulatory system for which the Authority is responsible and to identify and assess the impact on its statutory objectives; this will include consideration of whether the firm is ready, willing and organised to comply with Principle 11 (Relations with regulators) and the rules in the Supervision manual in the Handbook on the provision of information to the Authority.

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

10. COND 2.5.1AUK reproduces the relevant statutory provision that a person concerned must be a fit and proper person having regard to all the circumstances, including, amongst other things, whether its business has complied or is complying with requirements imposed by the Authority in the exercise of its functions, or requests made by the Authority, relating to the provision of information to the Authority or is being managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner.
11. COND 2.5.1BG confirms that Paragraph 2E of Schedule 6 to the Act sets out the suitability Threshold Condition for firms carrying on, or seeking to carry on, regulated activities which do not consist of or include a PRA-regulated activity.
12. COND 2.5.2G states that the Authority will take into consideration anything that could influence a firm's continuing ability to satisfy the Threshold Conditions.
13. COND 2.5.4G(2)(a) states that examples of the kind of general considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, the suitability Threshold Condition include, but are not limited to, whether the firm can demonstrate that it conducts, or will conduct its business with integrity and in compliance with proper standards.
14. COND 2.5.6G provides that 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, this Threshold Condition include, but are not limited to, whether:

- the firm has been open and co-operative in all its dealings with the Authority and any other regulatory body (see Principle 11 (Relations with regulators))) and is ready, willing and organised to comply with the requirements and standards under the regulatory system (COND 2.5.6G(1)); or
- the firm has contravened, amongst other things, any provision of the regulatory system, which includes the Principles and other rules (COND 2.5.6G(4)).

#### **OTHER RELEVANT REGULATORY PROVISIONS**

15. The Authority's policy in relation to its enforcement powers is set out in EG, the relevant provisions of which are summarised below.

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

16. EG 8.1.1(1) provides that the Authority may use its own initiative power to vary or cancel the Part 4A permission of an authorised person under section 55J of the Act where the person is failing or is likely to fail to satisfy the Threshold Conditions for which the Authority is responsible.
17. EG 8.5.1(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, or the way its business is or has been conducted.
18. EG 8.5.2 provides examples of the types of circumstances in which the Authority may cancel a firm's Part 4A permission. These include non-payment of fees (EG 8.5.2(5)), failure to provide the FCA with valid contact details or failure to maintain the details provided, such that the FCA is unable to communicate with the firm (EG 8.5.2(6)), repeated failures to comply with rules and requirements (EG 8.5.2(7)) and provide material information or take remedial action reasonably required by the FCA (EG 8.5.2(8)(b)).