
FINAL NOTICE

To: **Damian Frank Clarke**

Address: **15 Jackson Way
Stamford
PE9 1FG**

**Individual
Reference
Number:** **DFC01043**

Dated: **1 June 2017**

ACTION

1. For the reasons set out in this Final Notice, the Authority hereby takes the following action against Mr Clarke.
2. The Authority gave Mr Clarke the Decision Notice, which notified Mr Clarke that, for the reasons given below and pursuant to section 56 of the Act, the Authority had decided to make an order prohibiting him from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.
3. Mr Clarke 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, for the reasons set out below, the Authority hereby makes an order pursuant to section 56 of the Act prohibiting Mr Clarke from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. The Prohibition Order takes effect from 1 June 2017.

DEFINITIONS

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

"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 Mr Clarke dated 26 April 2017;

"EG" means the Authority's Enforcement Guide;

"FIT" means the Fit and Proper Test for Approved Persons and specified significant-harm functions sourcebook;

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

"the Prohibition Order" means the order prohibiting Mr Clarke, pursuant to section 56 of the Act, from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm;

"Schroder" means Schroder Investment Management Limited;

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber); and

"the Warning Notice" means the Warning Notice given to Mr Clarke dated 4 April 2017.

RELEVANT STATUTORY PROVISIONS

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

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 Mr Clarke is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm, as his conduct demonstrates a clear and serious lack of honesty, integrity and reputation. Specifically, Mr Clarke:
 - (a) was convicted, upon his own confession, on 15 March 2016, of nine offences of insider dealing to dispose of price affected securities on a regulated market contrary to section 52(1) of the Criminal Justice Act 1993; and
 - (b) was sentenced on 13 June 2016 to two years' imprisonment.

FACTS AND MATTERS RELIED ON

8. Mr Clarke was previously approved by the Authority to perform the following controlled functions:
 - (between 17 March 2003 and 12 December 2003) CF26 (Customer Trading) in relation to Beaumont Capital LLP;
 - (between 24 December 2003 and 31 October 2007) CF26 (Customer Trading) in relation to Schroder; and
 - (between 1 November 2007 and 22 January 2013) CF30 (Customer) in relation to Schroder.
9. Mr Clarke is not currently approved to perform any controlled functions in relation to any firm authorised by the Authority, and he has not been approved to perform any controlled function since 22 January 2013.
10. On 15 March 2016, Mr Clarke was convicted at Southwark Crown Court of nine offences of insider dealing to dispose of price affected securities on a regulated market.
11. On 13 June 2016, Mr Clarke was sentenced at Southwark Crown Court to two years' imprisonment for those offences.
12. Further, the offences were committed when Mr Clarke was approved by the Authority to perform controlled functions as summarised in Annex B.
13. In her sentencing remarks on 13 June 2016, Judge Kroner set out the aggravating factors in Mr Clarke's case, which included: the lengthy period of time over which Mr Clarke committed the offences; his deliberate and dishonest misuse of the position of trust in which he was placed throughout the period for which he worked for Schroder; the damage caused to Schroder's institutional reputation by his activities; and Mr Clarke's use of accounts opened in the name of his family members.

DECISION MAKER

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

IMPORTANT

14. This Final Notice is given to Mr Clarke in accordance with section 390(1) of the Act.

Publicity

15. 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 Mr Clarke or prejudicial to the interest of consumers.
16. 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

17. 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 A

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."

RELEVANT REGULATORY PROVISIONS

3. In exercising its power 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

4. The Authority's policy in relation to exercising its power to issue a prohibition order is set out in EG.
5. EG 9.1 explains the purpose of prohibition orders in relation to the Authority's statutory objectives.
6. EG 9.2 sets out the Authority's general policy on making prohibition orders. 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;
 - (b) EG 9.2.2 states that the Authority has the 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, amongst other things, the reasons why the individual is not fit and proper and the severity of risk he poses to consumers or the market generally.
7. EG 9.5.1 states that where the Authority is considering whether to make a prohibition order against someone who is not an approved person, the Authority will consider the severity of the risk posed by the individual and may prohibit him where it considers that it is appropriate to achieve one or more of the Authority's statutory objectives.

8. EG 9.5.2 provides that, when considering whether to exercise its power to make a prohibition order against someone who is not an approved person, the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to, the factors set out in EG 9.3.2. Those factors include: whether the individual is fit and proper to perform functions in relation to regulated activities (noting the criteria 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 to perform a controlled function 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 including, but not limited to, those set out in FIT 2.1.3G. 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 the 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 (amongst other things).

ANNEX B

MR CLARKE – SUMMARY OF DATES OF APPROVAL FOR CONTROLLED FUNCTIONS AND DATES OF HIS CRIMINAL OFFENCES

Controlled Functions:	2003-2004	2005-2006	2007-2008	2009-2010	2011-2012	2013
CF26 (Customer Trading) for Beaumont Capital LLP	17/03/2003 - 12/12/2003					
CF26 (Customer Trading) for Schroder	24/12/2003		31/10/2007			
CF30 (Customer) for Schroder			01/11/2007			22/01/2013
Offences:						
Count 1	30/10/2003 - 11/11/2003					
Count 2		06/01/2005 - 07/03/2005				
Count 3		18/03/2005 - 21/03/2005				
Count 4		06/06/2006				
Count 5		28/09/2006 and 29/09/2006				
Count 6				13/02/2009 - 17/02/2009		
Count 7				24/05/2010 - 26/05/2010		
Count 8					18/08/2011	
Count 9					28/11/2012	