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## FINAL NOTICE

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To: **Mr Daniel Christopher Conway**

Individual  
Reference

Number: **DCC01079**

Date of

Birth: **17/11/1976**

Date: **16 December 2013**

### **ACTION**

1. For the reasons given in this Notice, the Authority hereby makes an order prohibiting Mr Conway from performing any controlled function in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm. This order takes effect from 16 December 2013.

## **SUMMARY OF REASONS**

2. Mr Conway was an investment advisor and director of Staverton. In his role as investment advisor he provided advice to the corporate trustee of the Pension Scheme, CBWT.
  
3. During the relevant period, between 1 January 2007 and 21 April 2011, Mr Conway showed a lack of competence and capability and is therefore not fit and proper to perform any controlled function in relation to any activities carried on by any authorised or exempt persons, or exempt professional firm. Specifically Mr Conway:
  - (a) failed to ensure his investment advice in relation to the Pension Scheme was independent and suitable;
  
  - (b) failed to ensure that the investment met the criteria he knew were required by the SOIP in that, by investing 30% of the Pension Scheme's assets in Fund M, the Pension Scheme's investment portfolio was not sufficiently diversified and amounted to an excessive holding of an illiquid asset;
  
  - (c) had no prior experience of advising occupational pension schemes and was not in a position, and failed to take steps to put himself in a position, to give adequately informed advice or challenge the investment proposals appropriately;
  
  - (d) failed to understand the nature of the underlying property investments in Fund M or the risks attached thereto;
  
  - (e) failed to understand and thereby failed to disclose the significance and implications of the investment fee, annual management charge or quarterly administration fee levied by Fund M;
  
  - (f) failed to disclose that the investment was not protected by the Financial Services Compensation Scheme; and
  
  - (g) failed to act with due skill, care and diligence in carrying out his controlled function in that he did not adequately understand, or take reasonable steps to

understand, his role and responsibilities as a director and CF1 holder at a regulated firm and failed to inform himself adequately about Staverton's financial arrangements.

4. Accordingly, the Authority has decided to make an order prohibiting him from performing any controlled function in relation to any activities carried on by any authorised or exempt persons, or exempt professional firm.
5. As a result of Daniel Conway's conduct, the Pension Scheme had 30% of its assets placed in an investment that was high risk and illiquid. This may impact the amount members are able to draw down from the Pension Scheme when they reach retirement age.
6. This action supports the Authority's statutory objectives of maintaining market confidence in the UK financial system and securing the appropriate degree of protection for consumers.

## **DEFINITIONS**

7. The definitions below are used in this Warning Notice:

The "Act" means the Financial Services and Markets Act 2000;

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

"CBWT" means CBW Trustees Limited;

"CF1" means the Authority controlled function of Director;

"CF30" means the Authority controlled function of Customer;

"DEPP" means the Decision Procedures and Penalties Manual in the Authority Handbook;

"Fund M" means the property investment fund into which the assets of four Pension Schemes were invested following the advice given by G&G on 6 April 2010;

"IFA" means independent financial advisor;

The "Investment Regulations" means the Occupational Pension Schemes (Investment) Regulations 2005;

The "Pensions Act" means the Pensions Act 1995;

The "Pension Scheme" means the distressed occupational pension scheme to which CBWT was appointed corporate trustee and which Daniel Conway advised upon;

The "relevant period" means 1 January 2007 to 21 April 2011;

"SOIP" means the Statement of Investment Principles of the Pension Scheme;

"Staverton" means Staverton Wealth Management Limited;

"TPR" means The Pensions Regulator; and

The "Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

## **FACTS AND MATTERS**

### **Staverton**

8. Staverton was a small family run IFA based in Birmingham, which was incorporated on 12 May 1999.
9. Daniel Conway was a director (CF1) and money laundering officer (CF11) at Staverton between 1 November 2004 and 21 April 2011. He also held the customer function (CF30) between 1 November 2007 and 21 April 2011 and the Compliance Oversight function (CF10) between 3 November 2008 and 21 April 2011. There were two other directors of the firm.
10. Staverton has ceased trading and its permission to carry on regulated activities under Part IV of the Act was cancelled on 9 May 2012.

## **CBWT**

11. CBWT was incorporated on 15 July 2009 and from 6 July 2010 onwards was the corporate trustee for a number of pension schemes, including the Pension Scheme.
12. CBWT was not authorised to provide investment advice to the Pension Scheme or conduct any Authority regulated activities. Therefore, on 10 August 2010, it appointed Staverton, and specifically Daniel Conway, to provide independent investment advice to the Pension Scheme.
13. CBWT was dissolved on 8 November 2011.

## **Daniel Conway's performance of his CF1 function**

14. Daniel Conway stated in interview that although he was made a director of Staverton, he was not given any additional responsibilities. He described the directorship as "*a congratulations on getting qualified*" and stated in interview that he did not understand what that meant saying "*...I didn't understand what that was going to mean for me*". He did not have access to, and never looked at, Staverton's accounts and was not able to bind the company, unlike the other directors. Daniel Conway was remunerated by Staverton by way of a fixed salary and bonus; he did not receive any equity in Staverton on becoming director and stated that "*there was no additional benefit to being a director*". He regarded himself as a paid employee of Staverton and appears to have been treated as one.

## **Daniel Conway's investment advice to CBWT**

15. The SOIP governed decisions about the Pension Scheme's investments. As corporate trustee to the Pension Scheme, CBWT was required to exercise its powers of investment with a view to giving effect to the SOIP. The Pension Scheme's SOIP set out the following relevant principles:

"...the Trustees aim to ensure the assets allocation policy in place results in an adequately diversified, investment exposure is [sic] obtained via pooled vehicles".

"...investments should be broadly diversified to ensure there is not a concentration of investment with any one user."

"Investment in illiquid investments, such as property or pooled property funds, may be held as long as the total amount of the plan's assets invested in such asset classes is not excessive."

16. As investment advisor to CBWT, Daniel Conway was aware of, and should have had regard to the relevant SOIP when considering the suitability of any investment for the Pension Scheme.
17. In July 2010, Daniel Conway was approached by CBWT and asked to provide financial advice in relation to the Pension Scheme. Daniel Conway had, at this point, no experience of advising occupational pension schemes on their investments. He was formally appointed as advisor to the Pension Scheme on 10 August 2010.
18. In August 2010, CBWT explained to Daniel Conway that the Pension Scheme had £11 million to invest. At that time, this £11 million was invested in medium to long term investment funds.
19. On 10 August 2010, Daniel Conway met with CBWT to discuss the investment. A note of that meeting, apparently prepared by Daniel Conway, records that CBWT "instructed" Daniel Conway to recommend an investment in Fund M. It was a comparatively new venture, and according to Daniel Conway "*there was nothing on the market [...] to match it against*" and it was therefore not possible to compare its past returns with those of other types of investment. Its stated investment aim was to deliver a net annualised return in excess of 8% over the life of the fund. The Pension Scheme already had an investment of just over £3 million in Fund M.
20. Daniel Conway had met with the directors of Fund M after his initial instruction from CBWT in July 2010. As such, he was aware of the investment products Fund M offered, although he had not recommended any clients to invest in Fund M before and he did not have a good understanding of Fund M's underlying property investments.

21. On 11 August 2010, Daniel Conway issued an investment report to CBWT recommending the Pension Scheme invest £11 million in Fund M. A particular property investment was a significant aspect of that fund. Page three of that report acknowledged CBWT's instructions that any investment recommendations be in line with the SOIP. This investment meant that approximately 30% of the Pension Scheme's assets would be invested in Fund M. The Authority considers this to have contravened the relevant SOIP that stated, "*investments should be broadly diversified to ensure there is not a concentration of investment with any one user*" and "*investments in illiquid investments such as property or pooled property investment funds may be held as long as the total amount of the plan's assets invested in such asset classes is not excessive*".
22. The Authority refers in this regard to the findings set out in the Final Notice of TPR of 18 April 2011 in relation to CBWT. That Final Notice determined whether to appoint an independent trustee to the Pension Scheme (as well as to other pension schemes) in place of CBWT. TPR found that Fund M (albeit in relation to investments by other pension schemes in which Daniel Conway was not involved) was high risk and illiquid. TPR also found that the investment by another scheme of 19% of its overall portfolio in a single fund constituted an excessive reliance on that asset.
23. There is no evidence in the investment report prepared by Daniel Conway or on the client file that Daniel Conway considered any alternatives to Fund M or compared it to other types of investment.
24. Daniel Conway's investment report described the Pension Scheme's attitude to risk as "*progressive*". He did not explain what was meant by "*progressive*", or how this had been assessed. He did not set out how and why Fund M, which was illiquid and subject to various risks including adverse local market conditions, changes in interest rates, tenant default and increased operating expenses, was compatible with the Pension Scheme's attitude to risk. Daniel Conway recommended that the Pension Scheme disinvest £11 million from a balanced risk fund and a cautious risk fund in order to invest in Fund M. He described this transfer as "*not exposing the scheme to a risk profile change*" despite acknowledging that "[*t*]his investment is expected to have a relatively significant risk of loss to capital value".

25. The investment report issued by Daniel Conway stated that “[Fund M] *does not levy any on-going fees – there is no active management charge*”. This was described as a “*huge advantage*”. Daniel Conway failed to disclose in his investment report that the charges for investing in Fund M were up to 5% as an initial fee and a 0.25% quarterly administration charge. This was in addition to the annual management charge of 2%, mentioned later in his investment report. His investment report also failed to disclose that Fund M was not covered by the Financial Services Compensation Scheme; in fact, his investment report gave the contrary impression.
26. When questioned about his investment report, Daniel Conway conceded that CBWT seemed keen to invest the Pension Scheme's assets in Fund M and therefore there was “*no reason not to*” advise CBWT to invest in the fund. Such an approach indicates a lack of understanding of the terms of the relevant SOIP of which he confirmed he was aware. He also confirmed that he did not think that the placement of 30% of the Pension Scheme's assets into Fund M was “*over excessive*” but that the investment “*didn't sit fully within*” the relevant SOIP.
27. On 1 October 2010, Daniel Conway produced a further investment report to the Pension Scheme recommending an additional £2 million be placed in an investment fund associated with Fund M. As was the case with his earlier investment report, Daniel Conway failed to consider alternative investments options or past fund performance.

## **FAILINGS**

28. The regulatory provisions relevant to this Final Notice are referred to in the Annex to this Notice.
29. Daniel Conway showed a lack of competence and capability and is therefore not fit and proper to perform any controlled function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm in that he:



- 1) failed to ensure his investment advice in relation to the Pension Scheme was independent and suitable;
- 2) failed to ensure that the investment met the criteria he knew were required by the SOIP in that, by investing 30% of the Pension Scheme's assets in Fund M, the Pension Scheme's investment portfolio was not sufficiently diversified and amounted to an excessive holding of an illiquid asset;
- 3) had no prior experience of advising occupational pension schemes and was not in a position, and failed to take steps to put himself in a position, to give adequately informed advice or challenge the investment proposals appropriately;
- 4) failed to understand the nature of the underlying property investments in Fund M or the risks attached thereto;
- 5) failed to understand and thereby failed to disclose the significance and implications of the investment fee, annual management charge or quarterly administration fee levied by Fund M;
- 6) failed to disclose that the investment was not protected by the Financial Services Compensation Scheme; and
- 7) failed to act with due skill, care and diligence in carrying out his controlled function in that he did not adequately understand, or take reasonable steps to understand, his role and responsibilities as a director and CF1 holder at a regulated firm and failed to inform himself adequately about Staverton's financial arrangements.

## **SANCTION**

### **Prohibition Order**

30. The Authority has had regard to the guidance in Chapter 9 of EG and has decided that it is appropriate and proportionate in all the circumstances to prohibit Mr Conway from performing any controlled function in relation to any regulated

activity carried out by an authorised person, exempt person or exempt professional firm because his conduct demonstrates a lack of competence and capability. The relevant provisions of EG are set out in the Annex to this Notice.

31. Given the nature and seriousness of the failures outlined above, the Authority has decided that Mr Conway's conduct demonstrates that he is not fit and proper to perform any controlled function in relation to regulated activities carried on at any authorised person, exempt person or exempt professional firm.
32. In the interests of consumer protection, the Authority has decided that it is appropriate and proportionate in all the circumstances to impose a Prohibition Order on Mr Conway in the terms set out above, prohibiting him from performing any controlled function.

## **PROCEDURAL MATTERS**

### **Decision maker**

33. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

This Final Notice is given to Mr Conway under, and in accordance with, section 390 of the Act.

### **Publicity**

34. 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.

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

**Authority contacts**

36. For more information concerning this matter generally, contact Paul Howick (direct line: 020 7066 7954/ email: [paul.howick@fca.org.uk](mailto:paul.howick@fca.org.uk)) of the Enforcement and Financial Crime Division of the Authority.

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Bill Sillett

Head of Department

Financial Conduct Authority, Enforcement and Financial Crime Division

## **Annex**

### **STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY**

#### **Statutory Provisions under the Act**

1. The Authority's regulatory objectives are set out in section 2(2) of the Act and include the protection of consumers.
2. The 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.

#### **Fit and Proper Test for Approved Persons ("FIT")**

3. The section of the Authority handbook entitled "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 and FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
4. FIT 1.3.1G provides that the Authority will have regard to a number of factors when assessing a person's fitness and propriety. The most important considerations include the person's competence and capability.
5. In determining a person's competence and capability FIT 2.2.1 provides that 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; and

- (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.

**EG**

6. The Authority's approach to exercising its powers to make a Prohibition Order under section 56 of the Act is set out in Chapter 9 of EG.
7. EG 9.1 states that the Authority's power 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 the Authority to work towards achieving its regulatory objectives. The Authority may exercise this power to make a prohibition order where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities, or to restrict the functions which he may perform.
8. 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.
9. 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.
10. In circumstances where the Authority has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provides guidance. In particular, EG 9.8 states that the Authority may consider whether it should prohibit that person from performing functions in relation to regulated activities, and that the Authority will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.
11. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person, the Authority will consider all the relevant circumstances of the case, which may include (but are not limited to):

- (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety are set out in FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
  - (2) the relevance and materiality of any matters indicating unfitness;
  - (3) the length of time since the occurrence 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; and
  - (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
12. EG 9.12 gives examples of types of behaviour which have previously resulted in the Authority deciding to issue a prohibition order, including severe acts of dishonesty and serious breaches of the Statements of Principle and Code of Conduct for Approved Persons.

### **Requirements under the Pensions Act 1995**

13. Section 36(1) of the Pensions Act 1995 and Regulation 4(2) of the Occupational Pensions Schemes (Investment) Regulations 2005 ("the Regulations") impose requirements on trustees of pension schemes to act in the best interest of scheme members.
14. Section 36(1) requires that the trustees of a trust scheme must exercise their powers of investment in accordance with subsections (3) and (4) of the Regulations.
15. Subsections (3) and (4) of the Regulations are detailed provisions, but in summary they provide that trustees of a scheme must, *inter alia*:

- (1) invest assets in the best interests of members and beneficiaries;
  - (2) in the case of a potential conflict of interest invest the assets in the sole interest of members and beneficiaries;
  - (3) exercise the powers of investment in a manner calculated to ensure the security, quality, liquidity and profitability of the portfolio as a whole; and
  - (4) ensure that the assets of the scheme are properly diversified in such a way to avoid excessive reliance on any particular asset, issuer or group of undertakings and so as to avoid accumulations of risk in the portfolio as a whole.
16. Section 36(3) of the Pensions Act 1995 states that "before investing [pension scheme assets] in any manner...the trustees must obtain and consider proper advice on the question whether the investment is satisfactory having regard to the ... [SOIP]."