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FINAL NOTICE

To: **Daniel Peter Terrence Forsyth**

Address: **13 Kingsleigh Walk
Bromley
Kent
BR2 0YE**

**Individual
Reference
Number:** **DPF01055**

Dated: **1 November 2016**

ACTION

1. For the reasons set out in this Final Notice, the Authority hereby takes the following action against Mr Forsyth.
2. The Authority gave Mr Forsyth the Decision Notice, which notified Mr Forsyth 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 Forsyth 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 Forsyth 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 November 2016.

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DEFINITIONS

5. 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;

“the Decision Notice” means the Decision Notice given to Mr Forsyth dated 7 September 2016;

“EG” means the Authority’s Enforcement Guide;

“FIT” means the Fit and Proper Test for Approved Persons sourcebook, part of the Handbook;

“the Handbook” means the Authority’s Handbook of rules and guidance;

“the Prohibition Order” means the order prohibiting Mr Forsyth, 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;

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

“the Warning Notice” means the Warning Notice given to Mr Forsyth dated 16 August 2016.

RELEVANT STATUTORY PROVISIONS

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

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 Forsyth 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 Forsyth:

(a) was convicted on 18 November 2014 of one count of providing false or misleading information to the Authority;

(b) was convicted on 8 April 2015 of one count of carrying on or purporting to carry on a regulated activity in the UK without authorisation or exemption;

(c) was sentenced on 8 and 27 April 2015 to 15 months’ imprisonment and nine months’ imprisonment respectively for those offences (to be served consecutively); and

(d) was disqualified from being a company director under section 2 of the Company Directors Disqualification Act 1986 for five years, for the offences.

FACTS AND MATTERS RELIED ON

8. On 9 March 2011, Mr Forsyth was subject to a compelled interview by the Authority. During the interview, in purported compliance with a requirement imposed on Mr Forsyth under Part XI of the Act, Mr Forsyth provided information to the Authority that he knew to be false or misleading.
9. On 18 November 2014 and 8 April 2015 respectively, Mr Forsyth was convicted at Southwark Crown Court of:
 - a. one count of providing information knowing it to be false or misleading in a material particular (namely in a compelled interview with the Authority) in purported compliance with a requirement imposed under Part XI of the Act (in breach of section 177(4)(a) of the Act); and
 - b. one count of carrying on or purporting to carry on a regulated activity in the UK without authorisation or exemption (in breach of sections 19 and 23(1) of the Act).
10. On 8 and 27 April 2015, Mr Forsyth was sentenced at Southwark Crown Court to 15 months' imprisonment and nine months' imprisonment respectively for the offences summarised at paragraph 9 above, to be served consecutively. Mr Forsyth was also disqualified from being a company director under section 2 of the Company Directors Disqualification Act 1986 for five years, for the offences.
11. Mr Forsyth's offence of carrying on or purporting to carry on a regulated activity in the UK without authorisation or exemption was committed over a prolonged period of time (more than three years) and the scheme to which this offence related involved total losses of just under £4.3 million by more than 100 investors.
12. In sentencing Mr Forsyth, the Judge stated that had Mr Forsyth told the truth in the compelled interview, the Authority's investigation into the fraudulent scheme could have been dealt with more expeditiously and the fraud could have been stopped in its tracks. The misleading statements Mr Forsyth made during the compelled interview enabled the fraudulent scheme to continue for longer.

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 Forsyth 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 Forsyth 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 Roger Hylton at the Authority (direct line: 020 7066 8168).

John Kirby
Enforcement and Market Oversight Division

ANNEX

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 such an individual, 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. 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, financial crime or an offence under legislation relating to financial services (amongst other things).