
FINAL NOTICE

To: **Goldenway Global Investments (UK) Limited** **Gregory Rupert Nathan**
New Broad Street House
35 New Broad Street
London
EC2M 1NH

Reference Numbers: **FRN185223** **GRN01018**

Date of birth: **17.12.1960**

Dated: **21.08.2017**

ACTION

1. By an application dated 4 July 2016, Goldenway Global Investments (UK) Limited applied under section 60 of the Act for the Authority's approval, under section 59 of the Act, of Gregory Rupert Nathan to perform the CF1, CF10, CF11 and CF30 controlled functions (the Director, Compliance Oversight, Money Laundering Reporting Officer and Customer Function respectively).
2. For the reasons given in this Final Notice, the Authority has refused the Application in part. The Authority is not satisfied that Mr Nathan is a fit and proper person to perform the CF10 and CF11 controlled functions to which the Application relates.

SUMMARY OF REASONS

3. On the basis of the facts and matters described below, the Authority is not satisfied that Mr Nathan is competent to perform the Refused Controlled Functions and, therefore, it cannot be satisfied that Mr Nathan is a fit and proper person to perform the Refused Controlled Functions.
4. The Authority's conclusions are based on an assessment of:
 - a) the Application and additional documentation submitted by the Firm;
 - b) the Interviews;
 - c) Mr Nathan's written and oral representations (oral representations meeting held on 9 May 2017);
 - d) the response by the Authority's Authorisations Division further to Mr Nathan's representations; and
 - e) all supplemental statements and related documentation.
5. The Authority considers that Mr Nathan does not meet the necessary standard of competence to perform the Refused Controlled Functions for the reasons more fully set out in this Final Notice, which are summarised in paragraphs 6 and 7 below.
6. Mr Nathan failed to demonstrate a detailed knowledge and understanding of the implications of the Firm's operating model, the money laundering and financial crime risks faced by the Firm and the processes that need to be put in place at the Firm satisfactorily to address those risks. Specifically, it was Mr Nathan's failure to satisfy the Authority that he could proactively identify and manage the relevant risks in performing the Refused Controlled Functions which caused the Authority to have concerns about Mr Nathan's competence and capability to perform the Refused Controlled Functions.
7. Furthermore, Mr Nathan did not convey an adequate understanding of the difficulties in assessing the appropriateness of transactions for customers inherent in the Firm's business model, including a sufficient understanding of the risks arising from the Firm's ICAAP.

DEFINITIONS

The definitions below are used in this Final Notice:

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

"AML" means anti-money laundering;

"Application" means the application received from the Firm on 4 July 2016 for Mr Nathan to be approved to perform the CF1, CF10, CF11 and CF30 controlled functions, as referred to in paragraph 1 above;

"Authority" means the Financial Conduct Authority;

"CFDs" means contracts for differences;

"COBS" means the Conduct of Business Sourcebook in the Handbook;

“China” means the People’s Republic of China;

“the Handbook” means the Authority’s Handbook of Rules and Guidance;

“ICAAP” means Internal Capital Adequacy Assessment Process Report;

“Interviews” the interviews with Mr Nathan conducted by the Authority on 21 September 2016 and 22 November 2016, in respect of the Application;

“Refused Controlled Functions” means the CF10 and CF11 controlled functions at the Firm to which the Application relates;

“Firm” means Goldenway Global Investments (UK) Limited, Firm Reference Number 185223;

“MLRO” means money laundering reporting officer;

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

“Warning Notice” means the warning notice issued to Mr Nathan and the Firm on 3 February 2017.

RELEVANT REGULATORY PROVISIONS

8. Details of the regulatory provisions relevant to this Final Notice are set out in Annex A.

FACTS AND MATTERS

Background

9. On 4 July 2016 the Authority received an application from the Firm for Mr Nathan to be approved to perform the CF1, CF10, CF11 and CF30 controlled functions (the Director, Compliance Oversight, Money Laundering Reporting Officer and Customer Function respectively).
10. The Authority may only grant the Application if it is satisfied that the applicant is a fit and proper person to perform the specific controlled functions to which the Application relates. The Authority has assessed the Application by reference to the specific role and functions to which it relates. A person who is fit and proper to hold a particular controlled function in one firm may not be fit and proper to hold the same controlled function at another, as the relevant roles may be different.

Overview of the Firm

11. The Firm is part of a group of companies, with the controlling interest in the Firm held by Goldenway Precious Metals Limited, a Hong Kong registered entity.
12. The Firm provides financial trading services and manages an online trading system, offering the exchange of a variety of over-the-counter financial securities. The Authority understands that the majority of the Firm’s clients are Chinese nationals, based in China. Many of the Firm’s activities are undertaken in Hong Kong by related entities. These activities include customer verification AML checks, back office functions, and maintenance of the web platform through which the Firm’s customers trade.

13. The core of the Firm's business is the sale to retail clients, by means of an internet platform, of CFDs, primarily in the form of foreign exchange and commodity products.
14. The Authority has formed the view that the key aspects of the Firm's business relevant to the Refused Controlled Functions include:
 - a) Financial crime risk: customers trading in CFDs may have a significant cash flow to and from firms such as the Firm. Such institutions are vulnerable to being used for money laundering, making customer verification and monitoring particularly important. With most of the client base being resident in China, there are significant practical difficulties for the Firm in ensuring that customer verification and monitoring is adequate, as there is no face-to-face interaction (dealings with customers being conducted at a distance, to a large extent over the internet).
 - b) Appropriateness assessment: CFDs are complex products which most retail customers will find hard to understand fully, and they carry significant risk of loss. It is particularly challenging to assess customer understanding and therefore the appropriateness of selling to them where the business model is a web-based platform involving limited customer interaction. The systems and controls for dealing with this, including mechanisms to handle cases where appropriateness has not been sufficiently established, need to be particularly robust.
 - c) Operations of the Firm: with so many vital compliance tasks being undertaken in Asia there are inevitable challenges for the Firm in supervising and monitoring performance. The Firm appeared from the Application to be reliant on related entities or third parties to carry out certain functions, which adds an additional level of complexity and, therefore, demands on the holder of the Refused Controlled Functions to manage the particular systems and controls required to mitigate the risk of performance falling below the standard required.

Career History

15. Mr Nathan began his career in Australia at a stockbroking firm and relocated to London in 1999. Mr Nathan's CV states that he then "*held senior management and compliance roles in internet-based financial services*" with various firms.
16. From January 2010 to July 2013, Mr Nathan was Chief Operating Officer and Head of Compliance at a wealth management firm and, at various times during his employment, he performed the CF10, CF11, CF29 and CF30 controlled functions.
17. In his last role before the Firm, Mr Nathan was the Head of Compliance at a firm operating in the CFD market and, at various times during this employment, performed the CF1, CF10, CF11 and CF30 controlled functions.
18. At the time the Application was made, Mr Nathan was employed by the Firm, pending his potential approval by the Authority for the controlled functions which were the subject of the Application. Following the issue of the Warning Notice, Mr Nathan is no longer employed by the Firm and it has withdrawn its support for the Application.

Outcome of the Interviews

19. In order to assess Mr Nathan's fitness and propriety to perform the controlled functions to which the Application relates, the Authority invited Mr Nathan to interview, at which the primary focus was Mr Nathan's competence.
20. Mr Nathan attended two interviews conducted by the Authority on 21 September 2016 and 22 November 2016, in respect of the Application. The two interview panels, both comprising the relevant specialists required to assess the Application and Mr Nathan's competence, unanimously considered that Mr Nathan had not met the Authority's competence requirements expected of an individual performing the CF10 and CF11 functions at the Firm. Each interview panel was comprised of different individuals.
21. The interview panels' overarching criticism was that Mr Nathan failed to provide sufficiently detailed responses to the Authority's questions in relation to the compliance and AML responsibilities that he wished to assume within the Firm.
22. In considering whether the criticisms made by the interview panels remain valid or have been addressed by Mr Nathan, the Authority has considered all the information provided subsequent to the interviews (see paragraph 4 above) and, to the extent relevant, this is reflected in the facts and matters set out below.

Firm's operations

Business model

23. During the second of the Interviews, Mr Nathan had characterised the Firm's business model as "*very, very simple*", which the Authority considers demonstrates that Mr Nathan failed to recognise the complex nature of the CFD products offered by the Firm to retail clients and the complexities arising from the composition of the Firm's client base, the reliance on other parties, the concern over managing the risk of offering inappropriate products to clients and the implications of the Firm's being authorised in a different jurisdiction to the majority of its client base.

Client verification

24. Mr Nathan did not show sufficient in-depth knowledge and understanding regarding the third party provider which operated the database tasked with confirming the authenticity of Chinese National Identity Cards, which was a key step in the client on-boarding process; nor was he sufficiently familiar with how the confirmation process worked. This meant that Mr Nathan was unable to appreciate the limitations of the system and he appeared not to have anticipated the concerns about the consequence of this lack of knowledge and the other issues and risks that need to be addressed in verifying clients based in China.

Risks specific to the Firm

Financial crime risks

25. An understanding of the financial crime risks specific to the jurisdiction in which a firm operates is required to allow an MLRO to address the financial crime risks effectively.
26. The Authority considers that Mr Nathan was only able to articulate generic financial crime risks and did not sufficiently specify the particular financial crime

risks faced by the Firm, due to the specific challenges posed by its predominantly Chinese client base and its internet business model.

27. Further, Mr Nathan did not demonstrate an adequate appreciation of how CFDs could be used to launder money.

Processes to mitigate risk and AML framework

28. The Authority does not consider that Mr Nathan has a detailed understanding of the compliance and AML framework required at the Firm. The Authority notes that Mr Nathan made or contributed to various recommendations while employed by the Firm; by way of example, Mr Nathan recommended improvements to the verification on-boarding process and suitability assessment, and additional parameters for monitoring accounts and transactions.
29. However, taking the evidence in its entirety, the Authority considers that Mr Nathan failed to demonstrate an ability to deploy a systematic approach to his CF10 and CF11 roles and to adopt a proactive approach. Mr Nathan made only high level reference to key elements of the AML and compliance function and was unable to articulate further granular detail on these points. He lacked the depth of understanding and technical knowledge required of a candidate for these functions at the Firm.
30. During the second of Mr Nathan's Interviews, he explained that the key elements to having an effective compliance function involved *"having the systems in place, having a clearly articulated policy, having people, senior management, who have clearly defined tasks and responsibilities, there's no question about the accountability"*. The Authority considers that this response provides an example of the high level nature of Mr Nathan's responses, which together fail to demonstrate the in-depth understanding the Authority expects of an individual seeking to perform the compliance and MLRO functions at the Firm.
31. Mr Nathan's compliance 'gap analysis' which was discussed during Mr Nathan's oral representations lacked the specificity and detail expected of somebody seeking to perform the CF10 and CF11 controlled functions at the Firm.

Prudential risk and ICAAP

32. During the second of Mr Nathan's Interviews, Mr Nathan was asked for his observations on the Firm's ICAAP, which he said he had looked at. The Authority considers as concerning Mr Nathan's inability to demonstrate an ability critically to analyse the Firm's ICAAP, particularly given the ICAAP's importance as a key compliance document which deals with issues as fundamental as capital adequacy and prudential risks. Mr Nathan had not carried out an assessment of the prudential risks which the Firm faced and was unable to articulate prudential risks when asked about the same in the context of the ICAAP. In addition, Mr Nathan in his written representations said that the Firm, to his knowledge, did not have a wind-down plan, yet Mr Nathan did not make any criticism about the potential lack of a key compliance document. Mr Nathan's responses since the second of the Interviews did not reassure the Authority that Mr Nathan had a strong grasp of the prudential risk to the Firm or its customers.

Appropriateness

33. The Firm's web-based business model which offers CFD products to retail customers predominantly based in China, and which relies upon appropriateness assessments being performed by staff in Hong Kong, should raise particular

concerns for the holder of the CF10 and CF11 controlled functions at the Firm. Mr Nathan and the Firm should be in a position to ensure that the Firm's assessment of appropriateness is adequate. COBS 10.2.1R stipulates that a firm (seeking to undertake non-advised sales of derivatives, such as CFDs) must determine whether the client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or services offered or demanded.

34. The Authority considers that Mr Nathan remained unable adequately to identify the risks in the Firm's assessment of appropriateness and the steps that would be required to mitigate or resolve these, which the Authority considers is unacceptable given its critical importance as the key means to protect customers of the Firm.

IMPACT ON FITNESS AND PROPRIETY

35. The Authority has considered whether, in the circumstances, it is satisfied that Mr Nathan is competent and capable to perform the functions applied for.
36. For the reasons given above, Mr Nathan was not able to demonstrate a sufficiently detailed understanding of the Firm's operations, the risks that are specific to the Firm, nor the means by which the appropriateness of the transactions into which the Firm's customers were going to enter could be assessed, which the Authority considers are required of a candidate seeking to perform the CF10 and CF11 controlled functions at the Firm.
37. The Authority is not satisfied that Mr Nathan has the competence and capability required to perform the CF10 (Compliance Oversight) controlled function, for the reasons given in paragraphs 20-24 and 28-34 above.
38. The Authority is not satisfied that Mr Nathan has the competence and capability required to perform the CF11 (MLRO) controlled function, for the reasons given in paragraphs 20-22 and 24-31 above.

REPRESENTATIONS

39. Annex B contains a brief summary of the key representations made by Mr Nathan and how they have been dealt with. In making the decision which gave rise to the obligation to give this Final Notice, the Authority has taken into account all of the representations made by Mr Nathan, whether or not set out in Annex B. The Firm made no representations.

IMPORTANT NOTICES

40. This Notice is given under section 390(1) of the Act.

Publication

41. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Final Notice relates as it 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 the Firm or Mr Nathan or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

43. For more information concerning this matter generally, contact Patricia Knox, Senior Manager, Approved Persons, Passporting and Mutuals Department at the Authority (direct line: 020 7066 4868 / email: Pat.Knox@fca.org.uk).

**Tim Parkes, Chair of the Regulatory Decisions Committee on behalf of
Peter Hinchliffe
Deputy Chair, Regulatory Decisions Committee**

ANNEX A

REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE

Relevant Statutory Provisions

1. The following provisions apply where an application for approval is made to the Authority under section 60 of the Act.
2. Section 59(1) of the Act provides that an authorised person (“A”) must take reasonable care to ensure that no person performs a controlled function under an arrangement entered into by A in relation to the carrying on by A of a regulated activity, unless the appropriate regulator approves the performance by that person of the controlled function to which the arrangement relates.
3. Section 60(1) of the Act provides that an application for the appropriate regulator’s approval under section 59 may be made by the authorised person concerned.
4. Section 61(1) of the Act states that the regulator to which an application is made under section 60 of the Act may grant the application only if it is satisfied that the person in respect of whom the application is made is fit and proper to perform the function to which the application relates.
5. Section 61(2) of the Act provides for the matters that the regulator may have regard in deciding the question in section 61(1) of the Act.
6. Section 61(2A) of the Act states that sections 60(1) and (2) of the Act apply in relation to the giving by the Authority of any required consent as they apply in relation to the grant of the application.
7. Section 390(1) of the Act requires the Authority, if the matter was not referred to the Tribunal within the time required by the Tribunal Procedure Rules, to issue a Final Notice.

Relevant provisions of the Authority’s Handbook

8. The section of the Authority’s Handbook entitled “Assessing fitness and propriety” (or ‘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.
9. The most important considerations to which the Authority will have regard include the person’s honesty, integrity and reputation, competence and capability, and financial soundness (FIT 1.3.1B).
10. In assessing fitness and propriety, the Authority will also take account of the activities of the firm for which the controlled function is or is to be performed, the permission held by the firm and the markets within which it operates (FIT 1.3.2G).
11. If a matter comes to the Authority’s attention which suggests that the person might not be fit and proper, the Authority will take account of how relevant and how important it is (FIT 1.3.4G).

12. In determining a person's competence and capability, the Authority will have regard to all relevant matters including, but not limited to, those set out in FIT 2.2.1G:
- 1) whether the person satisfies the relevant training and competence requirements in relation to the controlled function the person performs or is intended to perform (FIT 2.2.1G (1)); 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 (FIT 2.2.1G (2)).
 - 3) Whether the person has adequate time to perform the controlled function to meet the responsibilities associated with that function (FIT 2.2.1G (3)).

ANNEX B

REPRESENTATIONS

1. Mr Nathan's representations (in italics), and the Authority's conclusions in respect of them, are set out below.

Remedial steps taken by Mr Nathan

2. *Since the Interviews, Mr Nathan had undertaken two hours of training with a specialist financial services regulatory consultancy and completed four professional refresher courses with the Chartered Institute for Securities & Investment.*
3. The Authority considers that the remedial steps taken by Mr Nathan show a willingness to improve his knowledge and the Authority notes that Mr Nathan's explanation of the issues that he had to address and his awareness of the compliance and AML requirements that he would need to address in the role was better at the oral representations meeting than during the Interviews. However, the limited work undertaken by Mr Nathan was not sufficient to allay the Authority's concerns about Mr Nathan's competence and capability to perform the Refused Controlled Functions at the Firm in a proactive and systematic manner.

Significance of refusing the Application

4. *The Authority should not make any finding against Mr Nathan lightly, without a full and fair assessment of his fitness and propriety.*
5. The Authority appreciates the significance of refusing an application (in whole or in part) by an individual to perform controlled functions and does not reach any decision without extensive deliberation. The Authority has determined that it cannot be satisfied that Mr Nathan's current level of expertise and capability is sufficient to perform the particular CF10 and CF11 controlled functions required at the Firm. However, it is possible that Mr Nathan might be assessed as fit and proper to perform the same controlled functions at other firms now or in the future. The Authority's determination of the Application relates only to the specific controlled functions which Mr Nathan was seeking to perform at the particular firm. The Authority has also found that Mr Nathan is fit and proper to perform other controlled functions at the Firm at this time.

Business model

6. *Mr Nathan set out the Firm's business model clearly and concisely.*
7. The Authority set out its concerns about Mr Nathan's grasp and knowledge of the Firm's business and operational model in the Warning Notice. Since then the Authority has noted that Mr Nathan has explained that his initially superficial responses did not convey the full extent of his knowledge of the business and has demonstrated an improved understanding and knowledge of the Firm's activities. The Authority accepts that Mr Nathan's knowledge of the key elements of the Firm's business and operational model has improved over the period of the Authority's consideration of the Application. However, the Authority needs to be satisfied that Mr Nathan also understands the compliance and AML issues to which the Firm's business and operational model give rise without the need for input, questioning or guidance from the Authority or other third parties. Mr Nathan has not satisfied the Authority on this aspect of his capability.

Client verification

8. *Mr Nathan went into some detail about the client verification process at multiple points in the second of the Interviews. The only fact that Mr Nathan was unable to provide was the name of the company which operated the database confirming the authenticity of the Chinese National Identity Card.*
9. The Authority acknowledges that Mr Nathan was aware of certain aspects of the client verification process although it has concluded that his lack of knowledge and understanding was not limited to the name of the provider; however, the Authority considered Mr Nathan's lack of knowledge of a key step in the verification process, namely the company confirming authenticity, to be a serious failing. The Authority accepts that Mr Nathan's knowledge of the client verification process has improved over the period of consideration of the Application. The Authority's initial concern was exacerbated by Mr Nathan's apparent inability to appreciate the consequence of this lack of knowledge and the Authority retains concerns about Mr Nathan's capability proactively to identify the issues of concern in the client verification process and to design and implement systemic solutions to the compliance and AML issues that arise.

Financial crime risk

10. *It is not correct that Mr Nathan was unable to articulate key financial crime risks. Mr Nathan referred at various points during his Interviews to the risk of money-laundering, impersonation fraud, credit card fraud and the threat of terrorist funding.*
11. The Authority considers that it is unsatisfactory for Mr Nathan only to have referred to generalised financial crime risks. The Authority was particularly concerned that he did not identify the risks arising out of the particular jurisdiction in which the majority of the Firm's clients are based, the particular product type provided by the Firm and the nature of dealings with customers over the internet. The Authority made its concerns clear to Mr Nathan during the course of the Application process and considers that he failed to address these in a way that demonstrated his competence proactively and systematically to address the financial crime risk over time.

Processes to mitigate risk and AML framework

12. *Mr Nathan required a longer period of time working at the Firm in order properly to assess the improvements to processes which would be required. Further, in the short time Mr Nathan had been at the Firm he made a series of recommendations.*
13. As set out at paragraph 28 of this Notice, the Authority acknowledges that Mr Nathan, through a number of recommendations, made or contributed towards the advancement of processes at the Firm to mitigate risk and strengthen the AML framework. Mr Nathan also had an awareness of the 'Dear CEO' letter and the Authority's recent consultation paper in relation to the CFD retail market. However, Mr Nathan's approach to understanding and improving the relevant processes was not systematic and did not display an in-depth appreciation of the issues that needed to be addressed. The Authority also notes that the genesis for several of the recommendations came from the compliance consultant used by the Firm. While this is not of itself problematic (to the extent that Mr Nathan is able appropriately to identify the need for, and gain access to, external advice), but Mr Nathan's inability to articulate a detailed understanding of the processes and improvements is concerning.

Prudential risk and ICAAP

14. *Mr Nathan was able to provide granular figures for Pillar 1 and 2 of the ICAAP. Mr Nathan also addressed the Authority's follow-up questions.*
15. *Mr Nathan was originally only able to recall two figures (in approximate terms) from the ICAAP. The Authority considers this does not sufficiently counter his inability to articulate a meaningful critique of the positive and any negative aspects of the ICAAP, which demonstrated a lack of detailed understanding. In addition, Mr Nathan's response to the Authority's follow-up question during the second Interview on add-ons was incorrect. After reviewing his written representations and considering Mr Nathan's oral representations the Authority remains of the view that Mr Nathan does not have a sufficiently strong grasp of how the analysis required to produce the ICAAP should lead to a review of any compliance issues that the Firm needs to address in order to provide adequate protection for its customers and to ensure that it complies with its regulatory responsibilities.*

Appropriateness

16. *During the Interviews Mr Nathan had explained how the Firm assessed appropriateness (use of a questionnaire and demo account) and had indicated that improvements were being made to the appropriateness assessment.*
17. *The Authority considers that Mr Nathan did not have a sufficiently detailed understanding of the Firm's processes for the assessment of appropriateness, or generally of the systems and controls that may be used for that purpose. Further, the Authority pointed out an issue, in relation to the assessment process, of which Mr Nathan had not demonstrated an understanding. Thereafter, Mr Nathan should have demonstrated a sound understanding of the compliance implications of this issue, but in the Authority's view he did not do so.*

Mr Nathan was hampered by a lack of information

18. *As Mr Nathan had not taken up the Refused Controlled Functions within the Firm while employed there, he did not have the degree of information about the Firm that he would have had on doing so. He did not undergo any detailed induction process or handover from his predecessor when he joined the Firm. This affected the detail he was able to provide in his answers to the Authority.*
19. *In reaching its conclusions as set out in this Notice, the Authority has taken into account the degree of information available to Mr Nathan throughout the Application process.*

Mr Nathan was being unfairly targeted

20. *Mr Nathan was being unfairly targeted as part of the FCA's new focus on CFDs. Whilst the Authority was entitled to scrutinise applications for regulatory approval in this industry more closely than others, Mr Nathan should not be prejudiced by these industry-wide concerns. Nor should he be held to a higher standard than that required by the regime currently in place, rather than any proposed future changes such as those set out in the Authority's December 2016 Consultation Paper on "Enhancing conduct of business rules for firms providing contract for difference products to retail clients", to which the Authority appeared to have had regard in considering the Application.*

21. The Authority has applied the current regulatory standards to this application and not any proposed enhanced standards. Any applicant for CF10 and CF11 roles has to have the capability to assess and address the particular risk in a firm's business model; the Authority's assessment of Mr Nathan's fitness and propriety for the Refused Controlled Functions reflects appropriately its view of the risks inherent in the Firm's business model.