



Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

FINAL NOTICE

To: **Richard Aston Clay**

**Individual
Reference
Number:** **RAC00078**

Dated: **25 October 2016**

ACTION

1. For the reasons set out in this Final Notice, the Authority hereby takes the following action against Mr Clay.
2. The Authority gave Mr Clay the Decision Notice, which notified Mr Clay 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 Clay 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 Clay 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 25 October 2016.

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 Clay dated 16 March 2016;
- “EG” means the Enforcement Guide;
- “FIT” means the Fit and Proper Test for Approved Persons sourcebook;
- “the Handbook” means the Authority’s Handbook of rules and guidance;
- “Mr Clay” means Richard Aston Clay;
- “the Prohibition Order” means the order prohibiting Mr Clay, 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;
- “SCPO” means a Serious Crime Prevention Order;
- “the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber); and
- “the Warning Notice” means the Warning Notice given to Mr Clay dated 25 February 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 Clay is not a fit and proper person to perform any functions as his conduct demonstrates a serious lack of honesty, integrity and reputation. Specifically, on 19 December 2014, Mr Clay was, upon his own confession, convicted of three counts of dishonestly making false representations to make a gain for himself/another or cause loss to another/expose another to risk of loss, for which he was sentenced on 9 October 2015 to a total of 10 years and 10 months’ imprisonment. In addition, an SCPO was imposed on Mr Clay on 9 October 2015 for a period of five years from the date of his release from prison.

FACTS AND MATTERS RELIED ON

8. Between 1 December 2001 and 26 April 2005, Mr Clay was approved by the Authority to perform a controlled function in relation to a firm authorised by the Authority. Since 26 April 2005, Mr Clay has not been approved to perform any controlled functions in relation to any firm authorised by the Authority.

9. On 19 December 2014, Mr Clay was, upon his own confession, convicted at Southwark Crown Court of three counts of dishonestly making false representations to make a gain for himself/another or cause loss to another/expose another to a risk of loss, in breach of section 2 of the Fraud Act 2006.
10. These offences were committed between 16 January 2007 and 31 March 2012. Although Mr Clay was not an approved person at the time the offences were committed, he was connected to a firm authorised by the Authority, and was directly involved in unregulated investment schemes. Two of the three offences committed by Mr Clay were in relation to those connections/involvements.
11. On 9 October 2015, Mr Clay was sentenced at Southwark Crown Court to 10 years and 10 months' imprisonment for the offences summarised at paragraph 9 above. Also on 9 October 2015, an SCPO was imposed on Mr Clay at Southwark Crown Court, for a period of five years from the date of his release from prison. An SCPO is a court order that is used to protect the public by preventing, restricting or disrupting a person's involvement in serious crime.
12. Mr Clay's offences were committed over a prolonged period of time (over five years) and impacted a large number of individuals, many of whom were near retirement age. The total loss to consumers has been estimated to be approximately £33 million.

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 Clay 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 Clay 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

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 regulatory 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 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 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 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 that criteria are 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 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 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 or an offence under legislation relating to financial services (amongst other things).