
FINAL NOTICE

To: Robin Farrell Arch Financial Products LLP
Date of birth: 17 July 1967 Suite LP22733
Lower Ground Floor
145-157 St John Street
London
EC1V 4PW

Date: 27 March 2015

1. ACTION

1.1. For the reasons given in the notice, the Authority hereby:

- (1) imposes on Robin Farrell a financial penalty of £650,000 for breaches of Statements of Principle for Approved Persons ("Statements of Principle") 1 and 7;
- (2) withdraws, pursuant to section 63 of the Financial Services and Markets Act 2000 (the "Act"), the approval given to Mr Farrell under section 59 of the Act to carry out controlled functions; and
- (3) makes an order, pursuant to section 56 of the Act, prohibiting Mr Farrell from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm, on the grounds that he is not a fit and proper person. This order takes effect from 27 March 2015.

2. SUMMARY

2.1. On 14 September 2012 the Authority gave Mr Farrell a Decision Notice which notified him that it had decided in respect of breaches of Statements of Principle 1, 6 and 7:

- (1) to prohibit him, 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;
- (2) to withdraw, pursuant to section 63 of the Act, the approval given to Mr Farrell under section 59 of the Act to perform the CF3 (Chief Executive), CF4 (Partner) and CF30 (Customer) controlled functions in relation to Arch Financial Products LLP ("AFP" or the "Firm"); and
- (3) to impose on him, pursuant to section 66 of the Act, a financial penalty of £650,000.

2.2. On 12 October 2012 Mr Farrell referred this decision to the Tribunal. The Tribunal in a written decision dated 19 January 2015, <http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Arch-v-FCA.pdf>, determined that the Authority should:

- (1) impose a financial penalty of £650,000 on Mr Farrell for failure to comply with Statements of Principle 1 and 7, pursuant to section 66(3)(a) of the Act;
- (2) withdraw Mr Farrell's approval to carry out controlled functions, pursuant to section 63 of the Act;
- (3) make an order, pursuant to section 56 of the Act, prohibiting Mr Farrell from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm, on the grounds that he is not a fit and proper person.

2.3. The Tribunal's written decision sets out fully the Tribunal's reasons and should therefore be read in full. Those reasons are incorporated herein by reference.

2.4. Mr Farrell's misconduct occurred whilst he was the Chief Executive Officer of AFP and had overall responsibility for AFP's business.

Systems and controls in relation to management of conflicts

2.5. The Tribunal found that AFP had failed to meet the requirements of Principle 8 of the Authority's Principles for Business (the "Principles") and the associated SYSC and COB Rules, by failing to have in place appropriate policies and procedures to manage conflicts fairly and to record them.

2.6. At paragraph 134 of its decision, the Tribunal set out a number of general principles as to how to approach the management of conflicts – these relate to: identification of and understanding the conflict; mitigating factors; disclosure and consent; and record-keeping. The Tribunal found that:

“a record of the steps taken to manage a conflict establishes an audit trail and gives a “corporate memory” so that the firm can see how to handle conflicts in a particular situation...records do not have to be in any particular form and can be in a series of different documents, although their value will be much diminished if they are not easily accessible, coherent and comprehensible and made soon after the event. They also need to be accurate. If they are made much later they are less likely to be accurate.”

2.7. The Tribunal found at paragraph 194 that Mr Farrell:

- (1) had overall responsibility for AFP's systems and controls;
- (2) was fully aware of what processes were or were not in place;
- (3) was fully involved as issues were identified; and
- (4) did not take the lead in ensuring that processes were put in place to manage the conflicts that were inherent in the business model that he had responsibility for establishing.

2.8. The Tribunal therefore found that Mr Farrell failed to comply with the provisions of Statement of Principle 7 in the above regard.

Lack of integrity in approach to managing specific conflicts

2.9. The Tribunal upheld the Authority's findings that the firm failed in breach of Principle 1 to act with integrity in managing the conflicts arising in respect of the AGL Transaction, the Cru Transaction, the Lonscale Transaction and the Nice Transaction (“the Four Transactions”).

2.10. The Tribunal found in relation to each of the Four Transactions that:

- (1) there was an unacceptable risk that the conflicts arising in respect of the Four Transactions would not be managed fairly (paragraphs 262, 309, 336 and 371);

(2) Mr Farrell was a highly experienced investment professional. He was fully aware that each of the Four Transactions gave rise to conflicts that required appropriate management (paragraphs 263, 310, 337 and 373); and

(3) there was a failure to take necessary steps to manage the conflict by persons to whom the risks concerned would have been obvious (paragraphs 266, 311, 312, 313, 337, 338, 373 and 374).

2.11. The Tribunal found that, given the serious nature of the conflicts in the Four Transactions and in light of the failings as found by the Tribunal to manage the conflicts of interest, in failing to decline to enter into the Four Transactions, Mr Farrell had failed to act with integrity in breach of Statement of Principle 1 (paragraphs 267, 313, 338 and 374).

2.12. Specifically, in relation to the Lonscale Transaction the Tribunal held at paragraph 336 to 338 that:

"The conflict arising in this case was as serious as could be imagined, involving the payment of a substantial fee to AFP where that fee would only be payable if the transaction completed and where AFP procured that the Guernsey Cells make the necessary investment to enable the transaction to proceed at a time when no other alternative sources were available... In these circumstances, and there being no serious attempt to manage the conflict, there was in our view an unacceptable risk that the Guernsey Cells and the UK Funds would be disadvantaged by the Lonscale Transaction and accordingly that the risk had not been managed fairly.

...In these circumstances in our view the only right course of action to take in the absence of any other meaningful steps to manage the conflict would be to decline to enter into the transaction."

Inadequate systems for segregating and controlling non-public information

2.13. The Tribunal found that AFP had failed from February 2007 to ensure that there were adequate systems for segregating and controlling access to non-public information about the Guernsey Cells and to recognise and manage fairly the conflicts of interest between the interests of the Guernsey Cells, their shareholders and the UK Funds resulting from the risk of use by AFP of such non-

public information (paragraph 404). Accordingly, AFP had failed to take reasonable care to organise its affairs responsibly and effectively.

- 2.14. At paragraph 404 the Tribunal found that Mr Farrell failed to take reasonable steps to ensure that such systems were in place and that such failure amounted to a breach by him of Statement of Principle 7.

Findings on the Authority's assertions as to liquidity risk management

- 2.15. The Tribunal did not uphold the Authority's findings in the Decision Notice against AFP and Mr Farrell in connection with AFP's management of the liquidity of the property of the UK Funds (paragraph 449).

3. DEFINITIONS

The definitions below are used in this Final 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

"AFP" (or the "Firm") means Arch Financial Products LLP

"AGL Transaction" means the transaction whereby in February and March 2007 certain Guernsey Cells invested in Arch Group (UK) Limited

"COB" that part of the Authority's Handbook in force prior to 1 November 2007 relating to the conduct of business by persons regulated by the Authority

"Cru Transaction" means the transaction whereby between February 2007 and March 2009 certain Guernsey Cells made investments in Cru Investment Management Ltd

"Diversified Funds" means CF Arch cru Diversified Funds, an OEIC in respect of which AFP was the investment manager

"Guernsey Cells" means the 22 cells incorporated by Arch Guernsey ICC Limited

"Investment Funds" means CF Arch cru Investment Funds, an OEIC in respect of which AFP was the investment manager

“Lonscale Transaction” means the loans made by certain Guernsey Cells in order to facilitate the acquisition of the Clubeasy group of companies by Lonscale Limited

“Nice Transaction” means the transaction in respect of which debt and equity investments were made by certain Guernsey Cells in Nice Group Limited and Nice Capital LLP

“Principles” means the Authority’s Principles for Businesses

“Relevant Period” means July 2006 to March 2009 inclusive

“Statements of Principle” means the Authority’s Statements of Principle for approved persons

“SYSC” means that part of the Authority’s Handbook setting out its rules relating to Senior Management Arrangements, Systems and Controls

“the Four Transactions” means the AGL Transaction, the Cru Transaction, the Lonscale Transaction and the Nice Transaction

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

“UK Funds” means the “Investment Funds” and the “Diversified Funds” together

4. PROCEDURAL MATTERS

Manner of and time for Payment

- 4.1. The financial penalty must be paid in full by Mr Farrell to the Authority by no later than 10 April 2015, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 4.2. If all or any of the financial penalty is outstanding on 11 April 2015, the Authority may recover the outstanding amount as a debt owed by Mr Farrell and due to the Authority.

Publicity

- 4.3. 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 Mr Farrell or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

- 4.5. For more information concerning this matter generally, contact Stephen Robinson (direct line: 020 7066 1338 / fax: 020 7066 1339) of the Enforcement and Market Oversight Division of the Authority.

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Anthony Monaghan

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division