

Warning Notice Statement 23/5

The Financial Conduct Authority (the FCA) gave three individuals warning notices on 17 February 2023 proposing to take action in respect of the conduct summarised in this statement.

IMPORTANT: A warning notice is not the final decision of the FCA. The firm has the right to make representations to the Regulatory Decisions Committee (RDC) which, in the light of those representations, will decide on the appropriate action and whether to issue a decision notice. The RDC is a committee of the FCA board which decides whether the FCA should give certain statutory notices described as within its scope by the FCA's Handbook.

If a decision notice is issued, the firm has the right to refer the matter to the Upper Tribunal which would reach an independent decision on the appropriate action for the FCA to take, if any.

If either the RDC or the Upper Tribunal decides that no further action should be taken, the FCA will publish a notice of discontinuance provided it has the firm's consent.

1. The following is a summary of the reasons why the FCA gave the individuals warning notices.
2. The individuals were senior managers at a discretionary fund manager ("the firm"). The FCA considers that the individuals breached Principle 1 (integrity) and Principle 6 (due skill care and diligence) of the FCA's Statements of Principle for Approved Persons (APER) when carrying out their controlled functions.
3. The FCA considers that the individuals were involved in a coordinated arrangement that was in place at the firm that led to customers suffering financially, whilst the firm benefited. A business model was set up that was intended to maximise the flow of retail customer funds for onward investment into high-risk illiquid bonds operated by connected persons and business associates. This model was driven by the financial benefit that the firm derived from commissions.

Individual A

4. The FCA considers that Individual A (holding the director, systems and controls, and customer controlled functions), in the period January 2016 to August 2019:
 - Failed to act with integrity by:
 - entering the firm into agreements with bond providers by which the firm committed to invest customer funds in return for commission payments seriously compromising the firm's independence and its ability to act in the best interests of its customers;
 - entering the firm into commission-driven agreements with unauthorised introducers to maximise the flow of retail customer funds into these products;

- leading a decision to apply a mark-down to the customer's valuation when they disinvested from fixed income assets in order to generate more income for the firm at their expense; and
- failing to disclose personal conflicts of interest.
- Failed to act with due skill, care and diligence by:
 - failing to ensure that conflicts of interest were identified and managed appropriately; and
 - not addressing the FCA's concerns about concentration risk in a particular bond provider.

Individual B

5. The FCA considers that Individual B (holding the compliance oversight and money laundering reporting controlled functions), in the period January 2016 to August 2019:

- Failed to act with integrity by:
 - supporting the decision to introduce a mark-down to the valuation of fixed income disinvestments in order to generate more income for the firm at its customers' expense;
 - failing to ensure that the FCA's concerns about the due diligence conducted on high-risk fixed income bond investments were properly addressed or mitigated; and
 - failing to prevent the firm's routine investment of retail customer funds into unsuitable high-risk products.
- Failed to act with due skill, care and diligence by:
 - failing to ensure that conflicts of interest were identified and managed appropriately;
 - not addressing the FCA's concerns about concentration risk in a particular bond provider;
 - failing to ensure the timely provision of accurate customer statements and disclosure of commission charges; and
 - failing to ensure the firm's compliance with the FCA's rules in relation to inducements.

Individual C

6. The FCA considers that Individual C (holding director and chief executive controlled functions), in the period January 2017 to August 2019:

- Failed to act with integrity by approving the disinvestment mark-down, even though it was intended to raise income for the firm and concerns were raised that it was unfair to its customers.
- Failed to act with due skill, care and diligence by:
 - failing to ensure that conflicts of interest were identified and managed appropriately;
 - not addressing the FCA's concerns about due diligence conducted on high-risk fixed income bond investments;

- not addressing the FCA's concerns about concentration risk in a particular bond provider; and
- failing to ensure the firm's compliance with the FCA's rules in relation to inducements.