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## **FINAL NOTICE**

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**To: Mr James William Edward Lewis**

**Reference  
Number: JWL 01032**

**Date: 22 April 2024**

### **1. ACTION**

1.1. For the reasons given in this Final Notice, the Authority hereby:

- (1) imposes on Mr James William Edward Lewis ("Mr Lewis") a financial penalty of £120,300 pursuant to section 66 of the Act; and
- (2) makes an order prohibiting Mr Lewis from performing any function in relation to any regulated activity carried on by an authorised person, exempt person, or exempt professional firm, pursuant to section 56 of the Act as of the date of this notice.

1.2. Mr Lewis has agreed to resolve this matter and qualified for a 30% (Stage 1) discount on part of the penalty under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £171,900 on Mr Lewis.

## **2. SUMMARY OF REASONS**

- 2.1. Between 30 June 2015 and 3 May 2017, Mr Lewis was the CEO and Managing Partner of Shard Capital Partners LLP ("Shard") and held regulatory approvals: CF3 (Chief Executive), CF4 (Partner) and CF30 (Customer). From 9 December 2019 to 31 January 2022, Mr Lewis held SMF27 (Partner). Mr Lewis has not held a senior management function at Shard since 31 January 2022.
- 2.2. For the reasons set out below, between June 2015 to May 2016 Mr Lewis breached APER 2: "*An approved person must act with due skill and care in carrying out his accountable functions*"; separately, between June and July 2021 Mr Lewis breached COCON 1: "*You must act with integrity.*" Furthermore, Mr Lewis' conduct in relation to his breach of COCON 1 demonstrates that he does not meet the Fit and Proper test contained in the Authority's Handbook due to a lack of integrity.

### **APER 2 breach: Information provided by Mr Lewis to the Auditors of Connected Company A**

- 2.3. A key client which generated significant revenue for Shard was a corporate group ("the Group"), which included two connected companies: Connected Company A and Connected Company B.
- 2.4. Shard operated a netting arrangement for the Group whereby the assets and liabilities of each individual company within the Group were netted off against each other. Pursuant to this arrangement, if one group company owed another group company a sum of money, the overall financial position would remain neutral from Shard's perspective because the debt was netted off against the liability. The netting arrangement for cash operated through an omnibus cash account, for which Shard acted as custodian, which collectively held any money belonging to the Group companies.
- 2.5. In 2014 and 2015, Connected Company A issued tranches of bonds, most of which were issued to Connected Company B. Shard initially held the bonds for Connected Company A and then, upon sale to Connected Company B, Shard transferred the ownership of the bonds to Connected Company B. No cash was involved in this transaction and the omnibus account at Shard for the Group remained neutral because the debt and liability were netted off against each other. As a result, Shard

did not hold any cash for Connected Company A resulting from the sale of the bonds to Connected Company B.

- 2.6. In 2015 and 2016, the Auditors of Connected Company A requested information from Shard regarding the assets it held for Connected Company A, as at 31 December 2014 and 2015 respectively, for the purpose of auditing Connected Company A's year end accounts. The information requested included the cash balances of Connected Company A's accounts held by Shard. Mr Lewis responded on behalf of Shard to these requests from the Auditors by signing off and sending letters to the Auditors which attached a statement produced by Shard "*showing the cash and securities position*" of Connected Company A as at the requested dates.
- 2.7. Mr Lewis provided statements produced by Shard and separately confirmed to the Auditors that Connected Company A held significant cash amounts as follows:
- Mr Lewis confirmed to the Auditors that Connected Company A held cash of EUR 501,602,547 as at 31 December 2014; and
  - Mr Lewis confirmed to the Auditors that Connected Company A held cash of EUR 763,075,855 as at 31 December 2015.
- 2.8. However, the information provided by Mr Lewis risked misleading the Auditors because Connected Company A did not hold those sums of cash in the accounts controlled by Shard. Cash was only held in the omnibus account for all of the Group collectively and the sum held in the omnibus account was far less than the sum shown to be held by Connected Company A. Thus, Mr Lewis represented that Connected Company A held a significant cash balance when in fact the balance was a receivable. In the information he provided to the Auditors Mr Lewis did not refer to the omnibus account or make reference to the netting arrangements.
- 2.9. Mr Lewis provided this information understanding that it was for audit purposes and would be relied upon by the Auditors. However, Mr Lewis did not check that the Auditors were aware of the netting arrangement and did not mitigate the risk that the Auditors could be misled as to Connected Company A's cash position.
- 2.10. When the Auditors requested Shard provide confirmation from the custodian banks of Connected Company A's cash, such confirmation could not be given. In May 2017, Mr Lewis met the Auditors and confirmed that, due to the netting arrangement, no cash was held in the custodian bank account for Connected

Company A. Following this meeting, the Auditors considered that Connected Company A's accounts for year ends 2014 and 2015 were misstated. The accounts subsequently had to be re-stated and the Auditors resigned.

- 2.11. The Authority considers that, in providing information to the Auditors which gave the potentially misleading impression that Connected Company A held substantial amounts of cash at the accounts controlled by Shard, without providing any explanation regarding the omnibus account and the netting arrangement in operation for the Group, Mr Lewis acted without due skill, care and diligence in breach of Statement of Principle 2 ("APER 2").

**COCON 1 breach: Information provided by Mr Lewis to Connected Company C for the purpose of its accounts**

- 2.12. In December 2019, the holding company of the Group instructed Shard to transfer the cash balance Shard held for another one of the Group's connected companies ("Connected Company C") to its own account with Shard. This transfer in the sum of USD 18 million was made.
- 2.13. Subsequently, a senior manager of Connected Company C ("Individual A") informed Mr Lewis that this transfer had been made without Connected Company C's knowledge or approval. Although Mr Lewis was under the impression that Individual A had been aware of the netting arrangement between the holding company of the Group and its connected entities, including Connected Company C, on examination of the mandate Shard held, Mr Lewis found that the holding company of the Group did not in fact have the authority to authorise the transfer that Shard had made at its request.
- 2.14. While the holding company of the Group had made some repayments to Connected Company C by June 2021, the bulk of the USD 18 million was still owing to Connected Company C. Individual A then threatened to escalate the matter. To avoid such escalation, Individual A demanded that Mr Lewis provide the following documents which were needed to finalise Connected Company C's accounts:
- A statement from Shard confirming that Connected Company C held cash of c. USD 16.1 million at 10 June 2021; and
  - A letter from Shard addressed to the accountants of Connected Company C confirming that it held USD 18 million at 31 December 2019, c. USD 17.5 million at 31 December 2020 and USD 14 million at 20 July 2021.

- 2.15. Mr Lewis acceded to Individual A's demand. In doing so he knew that the letter and statement contained incorrect and misleading information; he knew that Connected Company C's cash balance had previously been transferred out of its account at Shard. Thus, Mr Lewis represented that Connected Company C held substantial cash balances in its accounts with Shard when it did not.
- 2.16. Connected Company C subsequently incorporated the balances set out in the letter and statement into its accounts for the years ending 2019, 2020 and 2021. Its accounts incorrectly stated that it held substantial cash balances when it did not.
- 2.17. By providing the information described above to Connected Company C for the purpose of producing its accounts, Mr Lewis acted without integrity in breach of COCON 1.
- 2.18. Furthermore, these actions demonstrate that Mr Lewis does not meet the Fit and Proper test contained in the Authority's Handbook due to his lack of integrity.

### **Penalty**

- 2.19. The Authority hereby:
- 2.19.1. imposes on Mr Lewis a financial penalty of £120,300 pursuant to section 66 of the Act for breaching APER 2 and COCON 1.
- 2.19.2. makes an order prohibiting Mr Lewis from performing any function in relation to any regulated activity carried on by an authorised person, exempt person, or exempt professional firm pursuant to section 56 of the Act because he lacks fitness and propriety.

## **3. DEFINITIONS**

- 3.1. The definitions below are used in this Notice:

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

"APER 2" means Statement of Principle 2 of the Authority's Statements of Principle for Approved Persons;

"the Auditors" means the auditors of Connected Company A;

"the Authority" means the Financial Conduct Authority;

"the Board" means Shard's executive board of directors;

"DEPP" means the Decision Procedure and Penalties Manual, part of the Handbook;

"the Group" means a corporate client of Shard;

"the Handbook" means the Authority's Handbook of rules and guidance;

"Individual A" means a senior officer at Connected Company C;

"2021 Letter" means the letter dated 20 July 2021 that was signed and provided by Mr Lewis to Individual A at Connected Company C;

"Mr Lewis" means James William Edward Lewis;

"the RDC" means the Regulatory Decisions Committee of the Authority (see further under Procedural Matters below);

"Shard" means Shard Capital Partners LLP;

"2021 Statement" means the statement dated 20 June 2021 that was provided by Mr Lewis to Individual A at Connected Company C;

"Connected Company A", "Connected Company B" and "Connected Company C" means three companies connected to the Group which were all clients of Shard;

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber);

"2015 Audit Request" means a request for information from the Auditors dated 30 June 2015;

"2015 Audit Response" means the response from Mr Lewis dated 11 August 2015 to the 2015 Audit Request;

"2015 Portfolio Positions Document" means the statement attached to the 2015 Audit Response;

“2016 Audit Request” means a request for information from the Auditors dated 2 May 2016;

“2016 Audit Response” means the response from Mr Lewis dated 25 May 2016 to the 2016 Audit Request; and

“2016 Portfolio Positions Document” means the statement that was meant to be attached to the 2016 Audit Response but was provided to the Auditors separately by email on 25 May 2016.

#### **4. FACTS AND MATTERS**

##### **Shard**

- 4.1. Shard is a UK domiciled entity regulated by the Authority. It provides various services to its clients, including wealth management, broking and custodian services.

##### **Mr Lewis**

- 4.2. Shard was founded by Mr Lewis in 2010. At the time of founding Shard, Mr Lewis had 21 years of experience working in the investment sector, largely in brokering and securities firms.
- 4.3. Mr Lewis held various regulatory approvals at Shard: CF3 Chief Executive (from 18 October 2011 to 19 November 2019), CF4 Partner (from 18 October 2011 to 8 December 2019), CF30 Customer (from 21 October 2011 to 8 December 2019) and SMF 27 Partner (from 9 December 2019 to 31 January 2022).
- 4.4. Since January 2022, Mr Lewis has not been involved in the day-to-day management of Shard and he is not a member of Shard’s executive board of directors (“the Board”).

##### **The Group and Connected Company A**

- 4.5. One of Shard’s key clients which provided significant revenue streams was a corporate group (“the Group”) which comprised various entities within its corporate structure. The Group and a senior individual connected with the Group were very important clients to Shard and Mr Lewis, and prior to 2021 generated significant

revenues for the firm. The Group's holding company was incorporated in the Netherlands and the Group had offices in Amsterdam, Berlin and London.

- 4.6. One of the companies connected to the Group, which was also a client of Shard, was Connected Company A - a company registered overseas. It was subject to annual audits and, as part of the audit process, Shard was asked to provide information about Connected Company A's assets to the Auditors. As with other clients, Shard routinely provided statements to auditors upon request.

#### **The Group's netting arrangement and the omnibus cash account**

- 4.7. Shard provided services to entities within the Group as if the individual companies were collectively a single client. To do this, Shard operated a netting arrangement whereby the assets and liabilities of each individual group entity were netted off against the assets and liabilities of other group entities. This arrangement meant that if one group entity owed another group entity a sum of money, for example £1 million, then the Group's overall financial position (from Shard's perspective) would remain neutral – Shard recording the fact that one group entity was due to receive £1 million whilst the other group entity was due to pay £1 million.
- 4.8. Mr Lewis was aware of the netting arrangement operated by Shard for the Group and was involved in establishing the netting arrangement for the Group.
- 4.9. Shard operated the netting arrangement through an omnibus cash account which held all the client monies belonging to the various of the Group companies in one account. Shard held the Group's non-cash assets in a separate account.

#### **Connected Company A's bond issue**

- 4.10. During 2014 and 2015, Connected Company A issued five tranches of bonds. The vast majority of those bonds were issued to another company connected to the Group, Connected Company B. Whilst Connected Company B purported to buy the bonds from Connected Company A, no cash was transferred to Connected Company A. This was possible because Connected Company B was also a client of Shard and part of the Group. Therefore, both entities were treated by Shard as party to the netting arrangement. The transaction was executed as follows:



- 4.10.1. Connected Company A issued the bonds and instructed its paying agent to deliver them to Shard free of payment.
  - 4.10.2. Shard then held the bonds for Connected Company A.
  - 4.10.3. Connected Company B purported to purchase the bonds from Connected Company A. Shard reflected this sale in its records by transferring ownership of the bonds to Connected Company B whilst, at the same time, recording that Connected Company B owed Connected Company A an amount of cash representing the sale price of the bonds. However, no actual cash was transferred and the balance of the omnibus cash account did not change.
- 4.11. Shard therefore did not hold cash in the client cash account in the amount that Connected Company A had sold the bonds to Connected Company B. Accordingly, Connected Company A did not have the cash nor have access to cash in the amount that it had sold its bonds to Connected Company B.

#### **The 2015 Audit Request and Mr Lewis' response**

- 4.12. On 30 June 2015, the Auditors sent the 2015 Audit Request to Shard for information about the assets it held on behalf of Connected Company A as at 31 December 2014. The 2015 Audit Request was issued in the name of Connected Company A and it requested that certain information be sent by Shard directly to the Auditors including, amongst other things:
- 4.12.1. Query 1: Confirmation of the *"balances of the various accounts existing in [Connected Company A's] name, specifying if these balances include any interest accrued and, if so, up to what date, and the rate applied"*;
  - 4.12.2. Query 2: Information on *"[c]ollateral, security and other forms of guarantee given by [Connected Company A] for bank loans and/or overdrafts"*;
  - 4.12.3. Query 3: Information on any *"[g]uarantees given by third parties in [Connected Company A's] favour"*.
- 4.13. The Auditors explained to Shard that it should contact them if it had any questions.

- 4.14. The 2015 Audit Request was sent to Mr Lewis on the same day that it was received by Shard and Mr Lewis authorised a colleague to deal with it in the first instance, subject to him reviewing the response before it was sent to the Auditors.
- 4.15. On 5 August 2015, the Auditors chased Shard for a response to the 2015 Audit Request, requesting a response as soon as possible. This chaser was passed to Mr Lewis and he forwarded it to his senior contacts connected to the Group. Mr Lewis told the Authority that this was because he was awaiting information from one of the senior contacts that he considered was necessary in order to respond to the request. A senior contact connected to the Group responded to Mr Lewis saying that the request *"should be quick and easy to do"*.
- 4.16. On 10 August 2015, the Auditors emailed Shard to explain that they needed to finalise Connected Company A's audit as soon as possible but they could not do so until they had a response to the 2015 Audit Request. On the same day, the Auditors forwarded the email to Connected Company A and asked for assistance in securing a response from Shard. Connected Company A forwarded the request to, amongst others, Mr Lewis, making it clear that the information was needed so that the Auditors could finalise their audit (*"... we need to finalise the audit ASAP and cannot sign the accounts without any answer from Shard"*).
- 4.17. On 11 August 2015, Mr Lewis signed the 2015 Audit Response in response to the 2015 Audit Request which he sent by email to the Auditors. His responses stated, in response to the queries at paragraph 4.12 above:
- 4.17.1. Query 1: *"I attach a statement showing the cash and securities position as at 31 December 2014"*.
- 4.17.2. Query 2: *"None"*.
- 4.17.3. Query 3: *"None"*.
- 4.18. Attached to the 2015 Audit Response was the 2015 Portfolio Positions Document entitled *"Views by portfolio"* purporting to contain details of the *"Bonds"*, *"Cash"* and *"Equity"* positions of Connected Company A. This document recorded that Connected Company A held around EUR 502 million of *"Cash"* in a *"client acc"* at a third-party bank (described as a *"Cash account"*), as well as having a negative

balance of around USD 8.5 million in a different "*Cash account*" held at a different third-party bank.

- 4.19. Neither the 2015 Portfolio Positions Document nor the 2015 Audit Response referred to the netting arrangement or the omnibus account. Nor did Mr Lewis clarify to the Auditors that Connected Company A did not have available cash in the sum of around EUR 502 million and that, instead, Connected Company A was owed such sums by Connected Company B (sums which Shard did not hold on behalf of Connected Company B). Mr Lewis' response did not refer to the netting arrangement that was in place or clarify that the cash showing as held by Connected Company A was in fact a receivable. Therefore, the information he provided was potentially misleading for their auditing purposes.
- 4.20. Mr Lewis did not check that the Auditors were aware of the netting arrangement when providing them with the 2015 Audit Response. From his own experience, Mr Lewis knew the meaning, in accounting terms, of "*cash*", "*at bank*" and "*receivables*", but did not check that the Auditors were aware of the netting arrangement and did not appreciate the potential risk that the Auditors could be misled as to Connected Company A's true cash position.
- 4.21. On 25 April 2016, an individual from Connected Company A emailed Mr Lewis to ask him, amongst other things, to carry out a transaction that he said would have the effect of reducing the "*cash held at Shard*" by Connected Company A by EUR 200 million. Mr Lewis responded to the request by querying how the transaction would "*reduce the cash balance figure*".

#### **The 2016 Audit Request and Mr Lewis' response**

- 4.22. On 27 April 2016, an individual from Connected Company A emailed Mr Lewis following a meeting between Connected Company A and the Auditors. The individual explained that Connected Company A was aiming to have its audit completed within 3 weeks.
- 4.23. On 2 May 2016, Mr Lewis received the 2016 Audit Request to provide information to the Auditors. The request was similar to the 2015 Audit Request, albeit requesting information about the holdings Shard controlled on behalf of Connected Company A, as at 31 December 2015. The 2016 Audit Request contained the same queries referred to at paragraph 4.12 above.

- 4.24. On 19 and 23 May 2016, Connected Company A chased Mr Lewis for a response to the 2016 Audit Request. Mr Lewis was told that the Auditors needed Shard's response "*otherwise [Connected Company A] will not pass [its] audit*" and that unless the audit was finalised by 31 May 2016 Connected Company A's scheduled AGM would need to be cancelled. Mr Lewis forwarded the email chasing a response to one of the senior contacts connected to the Group to whom he had sent the 2015 Audit Request (see paragraph 4.15 above).
- 4.25. On 25 May 2016, Mr Lewis signed the 2016 Audit Response in response to the 2016 Audit Request and he sent it by email to, amongst others, the Auditors. The 2016 Audit Response stated:
- 4.25.1. Query 1: "*I attach a statement showing the cash and securities position as at 31 December 2015*".
- 4.25.2. Query 2: "*None*".
- 4.25.3. Query 3: "*None*".
- 4.26. In fact, Mr Lewis' email sending the 2016 Audit Response did not attach the statement showing the cash and securities position as at 31 December 2015. The Auditors therefore asked Mr Lewis to send the document. A colleague of Mr Lewis at Shard did so on Mr Lewis' instructions by email later on 25 May 2016. The 2016 Portfolio Positions Document was entitled "*Views by portfolio*" and it purported to contain details of the "*Bonds*", "*Cash*" and "*Equity*" positions of Connected Company A. The document stated that Connected Company A's "*Cash*" position in a "*Client Acc*" (described as a "*Cash account*") at a third-party bank included around EUR 763 million.
- 4.27. As with the information provided in 2015, neither the 2016 Portfolio Positions Document nor the 2016 Audit Response referred to the netting arrangement or the omnibus account. Nor did Mr Lewis clarify to the Auditors that Connected Company A did not have available cash in the sum of around EUR 763 million and that, instead, Connected Company A was owed such sums by Connected Company B (sums which Shard did not hold on behalf of Connected Company B). Mr Lewis' response did not refer to the netting arrangement that was in place or clarify that the cash showing as held by Connected Company A was in fact a receivable.

Therefore, the information he provided was potentially misleading for their auditing purposes. Mr Lewis admitted to the Authority that, as with the 2015 Audit Response, he did not pay attention at the time to how the Auditors would construe the information he was giving them, as Shard considered it was operating "*what we thought was totally (sic) valid, netting arrangement.*"

- 4.28. As before (see paragraph 4.20 above) Mr Lewis did not check that the Auditors were aware of the netting arrangement when providing them with the 2016 Audit Response and did not appreciate the potential risk that the Auditors could be misled as to Connected Company A's true cash position.

#### **Subsequent requests from, and interactions with, the Auditors**

- 4.29. On 29 November 2016, Connected Company A asked Shard, on behalf of the Auditors, to request its custodian banks to confirm the information Mr Lewis had given to the Auditors in the 2016 Audit Response. Upon receipt of the letter, Mr Lewis realised that the request was impossible to fulfil because Connected Company A did not have its own account at Shard holding cash and because Shard did not hold cash on behalf of Connected Company A in the amount referred to in the 2016 Audit Response. In interview, Mr Lewis stated that he recalled having a conversation about this letter with a senior contact at the Group in which he stated that it was not possible for him to provide this to the Auditors due to the netting arrangement. Mr Lewis did not respond to the Auditors.
- 4.30. On 28 March 2017, and in the absence of a response from Shard, the Auditors remade their request for confirmation as one to be given by Shard's custodian banks. This time, the request was contained in a letter sent to Shard directly. The Auditors requested that Shard "*take a position in relation to the validity and sincerity of the original confirmations which you have sent us directly...*".
- 4.31. On 3 May 2017, Mr Lewis attended a meeting with the Auditors and Connected Company A. The Auditors' note of the meeting records Mr Lewis as confirming that "*there was no cash available on the account*" and as having also said that his responses to the various information requests from the Auditors were issued "*ahead of reality*" because he understood that Connected Company B was expected to be able to sell the bonds it had bought from Connected Company A to a third party in return for cash. Shard is also recorded as having had this understanding in a report it commissioned to be produced following the incidents described above. On 31 May 2017, the Auditors resigned as auditors to Connected Company A on the basis that

they considered they had been misled by the 2015 Audit Response and 2016 Audit Response.

- 4.32. Connected Company A's accounts of the years ending 2014 and 2015 included the sums for "cash at bank, cash in postal cheque accounts, cheques and cash in hand" of EUR 501,746,222 and EUR 830,920,814 respectively. Following the recording by the Auditors of the true cash position, the 2015 accounts were re-stated in June 2017 with cash being reduced by around EUR 700 million (and a corresponding amount being added to the company's receivables).

### **The 2021 Statement and 2021 Letter**

- 4.33. In 2019, the Authority raised concerns with Shard about the Group's netting arrangement. To resolve these concerns, Shard informed the holding company of the Group that any of the Group's subsidiaries and/or connected entities whose accounts at Shard had a negative cash balance would need to be put in funds to restore positive cash balances.
- 4.34. On 24 December 2019, the holding company of the Group instructed Shard to transfer the positive cash balances from various Group entity accounts to its own account at Shard. Accordingly, a cash balance of USD 18 million held at Shard by a company connected to the Group ("Connected Company C") was transferred to the holding company's account with Shard ("the December 2019 Transfer").
- 4.35. Subsequently, a senior manager of Connected Company C ("Individual A"), informed Mr Lewis that the December 2019 Transfer had been carried out without Connected Company C's knowledge or consent. Mr Lewis' understanding had been that Individual A was aware of the netting arrangement within the Group. However, as a matter of fact, the instruction for Shard to make the December 2019 Transfer had come from the holding company of the Group rather than Connected Company C.
- 4.36. The holding company of the Group had made part repayments to Connected Company C of some the December 2019 Transfer by June 2021, but the majority of the sum transferred was not repaid. Individual A then threatened to escalate the matter. To avoid such escalation, in respect of the December 2019 Transfer, Individual A demanded that Mr Lewis produce documents which stated that Connected Company C still held substantial cash balances with Shard. Individual A specifically informed Mr Lewis that these documents were needed to finalise Connected Company C's annual accounts.

4.37. To avoid Individual A escalating the matter, Mr Lewis acceded to Individual A's demand. In doing so Mr Lewis produced the following documents:

4.37.1. a statement of account from Shard dated 10 June 2021, which recorded that Connected Company C had "*HOLDINGS*" comprising a cash balance of c. USD 16.1 million at Shard ("the 2021 Statement"); and

4.37.2. a letter from Shard dated 20 July 2021 signed by Mr Lewis addressed to Connected Company C's accountants which recorded that Connected Company C "*has been and remains the sole beneficiary of, and solely entitled to the funds in the Company's client account with [Shard]*" and that Connected Company C held the following "*cash positions*" at Shard:

4.37.2.1. USD 18 million on 31 December 2019;

4.37.2.2. c. USD 17.5 million on 31 December 2020; and

4.37.2.3. USD 14 million on 20 July 2021

("the 2021 Letter").

4.38. The 2021 Statement and 2021 Letter were produced by Mr Lewis and the information they contained was incorrect as since the December 2019 Transfer Connected Company C did not hold any cash at Shard. The required information which was provided in the 2021 Statement and 2021 Letter had been sent by Individual A to Mr Lewis over WhatsApp. Mr Lewis cut and pasted the information onto the Shard headed documents and returned these documents to Individual A using WhatsApp.

4.39. Mr Lewis did not discuss his provision of the 2021 Statement and 2021 Letter with anyone else at Shard and Shard had no record of these documents on its own firm systems because Mr Lewis had provided these documents on his own personal mobile device.

#### **Connected Company C's annual accounts**

4.40. Connected Company C's annual accounts for the years ending 2019, 2020 and 2021 show that the incorrect cash balances as set out in the 2021 Letter were included

as purported "*Investment Deposits*" under "*Cash and cash equivalents*". The other cash amounts set out in the accounts were minimal.

- 4.41. The cash amounts taken from the 2021 Letter therefore constituted the majority of Connected Company C's purported cash positions in these accounts, and thus the accounts showed significantly inflated cash positions.
- 4.42. Mr Lewis knew that the 2021 Letter and 2021 Statement were being used by Individual A to incorrectly represent the cash position of Connected Company C, a listed company, to its auditors and, ultimately, to its shareholders, over an extended period.

#### **Mr Lewis' WhatsApp messages**

- 4.43. Shard discovered the existence of the 2021 Statement and 2021 Letter as a result of evidence disclosed by another party in Court proceedings during August 2023. Shard promptly notified the Authority of the issue and cooperated fully with the Authority's subsequent investigation. Mr Lewis also reported the matter to the Authority in September 2023 and provided a detailed statement to the Authority in October 2023.
- 4.44. At a later stage, as a result of disclosures Mr Lewis made to Shard, some of his WhatsApp messages with the Group's holding company were provided to the Authority and they showed that Mr Lewis had been well aware of the seriousness of his misconduct in providing the 2021 Letter and 2021 Statement to Individual A.
- 4.45. Mr Lewis set out in the WhatsApp messages that he expected to face serious consequences for providing the documents to Individual A, including the Authority imposing a significant penalty and prohibition on him.
- 4.46. Furthermore, the WhatsApp messages showed that Mr Lewis knew that his provision of the 2021 Letter and 2021 Statement to Individual A were matters which he should have disclosed to the Authority in the context of the Authority's initial investigation into him in respect of the potentially misleading information he had provided to the Auditors of Connected Company A. He did not do so and instead disclosed this information at a later date.



## **5. FAILINGS**

- 5.1. The regulatory provisions relevant to this Notice are referred to in Annex A.
- 5.2. Mr Lewis failed to act with due skill and care in breach of APER 2 (for the period before 8 December 2019) and failed to act with integrity in breach of COCON 1 (for the period after 9 December 2019) for the reasons set out below.

### **Reasons for APER 2 breach**

- (a) The information provided by Mr Lewis to the Auditors in response to the 2015 Audit Request and the 2016 Audit Request was potentially misleading as it represented that Connected Company A held a significant cash balance when it did not. Connected Company A did not hold the stated sums of cash at the accounts controlled by Shard. Cash was only held in the omnibus account for all of Group A collectively and the sum held in the omnibus account was far less than the sum shown to be held by Connected Company A. Mr Lewis made no reference to the netting arrangements when he provided the information to the Auditors and did not clarify that the cash showing as held by Connected Company A was in fact a receivable.
- (b) Mr Lewis provided this information understanding that it was for audit purposes and would be relied upon by the Auditors. However, Mr Lewis did not check whether the Auditors were aware of the netting arrangement.
- (c) In failing to provide explanations and caveats in respect of the information he provided to the Auditors, and in failing to appreciate the risk that the Auditors could be misled without being provided with such explanations and caveats, Mr Lewis acted negligently and without due skill, care and diligence.

### **Reasons for COCON 1 breach**

- (d) Mr Lewis provided information to Connected Company C confirming cash was held by Shard when no such cash was held. He did so knowing that his confirmations were to be used in relation to Connected Company C's accounts and, therefore, that there was at least a clear risk that Connected Company C's accounts would contain incorrect cash positions. As a result, even though Individual A placed significant pressure on Mr Lewis

to avoid escalating the matter by providing the 2021 Letter and 2021 Statement, he should not have provided these.

- (e) In respect of the 2021 Letter and 2021 Statement, no one else at Shard knew that Mr Lewis was providing these to Individual A because he sent these documents on WhatsApp messages rather than on Shard's own systems.
- (f) Mr Lewis knew that he should disclose the provision of the 2021 Letter and 2021 Statement to the Authority in the course of its investigation, but decided not to do so.

## **6. SANCTION**

### **Financial Penalty**

- 6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.

#### *Step 1: disgorgement*

- 6.2. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.3. The Authority has not identified any financial benefit that Mr Lewis derived directly from the breaches.
- 6.4. Step 1 is therefore £0.

#### *Step 2: the seriousness of the breach*

- 6.5. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the

individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.

6.6. The initial period of Mr Lewis' breach under APER 2 was from June 2015 to May 2016, being the months in which Mr Lewis provided the 2015 and 2016 Audit Responses containing potentially misleading information. The Authority considers Mr Lewis' relevant income in respect of this part of the breach to be £782,944.

6.7. The second period of Mr Lewis' breach under COCON 1 was from August 2020 to July 2021, being the months in which Mr Lewis provided the 2021 Statement and Letter respectively to Individual A of Connected Company C containing misleading information. The Authority considers Mr Lewis' relevant income in respect of this part of the breach to be £312,210.

6.8. In deciding on the percentage of the relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:

Level 1 – 0%

Level 2 – 10%

Level 3 – 20%

Level 4 – 30%

Level 5 – 40%

6.9. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly.

*Seriousness of APER 2 breach:*

6.10. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers the following factors to be relevant:

- 6.10.1. No profits were made or losses avoided by Mr Lewis or Shard as a result of the breach; and
  - 6.10.2. The breach was committed negligently.
- 6.11. The Authority also considers that the following factors are relevant:
- 6.11.1. Mr Lewis was involved in approving and providing potentially misleading information to the Auditors in respect of two separate financial years and failed to correct the potentially misleading information he had provided to the Auditors for a prolonged period until May 2017 (DEPP 6.5B.2G(9)(b)).
  - 6.11.2. Mr Lewis was an experienced professional in the broker industry (DEPP 6.5B.2G(9)(j)) and held the position of CEO and Managing Partner of Shard at the relevant time (DEPP 6.5B.2G(9)(k)).
  - 6.11.3. Mr Lewis, in failing to appreciate the risk that the Auditors could be misled in respect of its cash position, caused a potential risk of loss to investors.
- 6.12. Mr Lewis was not an accountant or an auditor and stated to the Authority that if he had been asked for further information *"I'd have provided it honestly and truthfully."*
- 6.13. Taking all of these factors into account, the Authority considers the seriousness of the APER 2 breach to be level 2 and so the Step 2 figure is 10% of £782,944.16 in the amount of £78,294.

*Seriousness of COCON 1 breach:*

- 6.14. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:
- 6.14.1. Mr Lewis' breach caused a risk of loss to individual consumers, investors or other market users (DEPP 6.5B.2G(12)(a));
  - 6.14.2. Mr Lewis failed to act with integrity for the reasons set out above (DEPP 6.5B.2G(12)(d)); and

- 6.14.3. Mr Lewis committed certain aspects of the breach deliberately (DEPP 6.5B.2G(12)(g)).
- 6.15. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers that none of these apply.
- 6.16. The Authority also considers that the following factors are relevant:
- 6.16.1. Mr Lewis' misconduct was not an isolated incident as he provided misleading information to Connected Company C on two separate occasions, and he did not proactively raise it with the Authority despite knowing he should do so (DEPP 6.5B.2G(9)(b)). The fact that Mr Lewis was pressured by Individual A into providing the documents while explaining why Mr Lewis felt it necessary to commit the misconduct alleged does not provide any justification for it.
- 6.16.2. The factors set out in paragraph 6.11.2 above.
- 6.17. Taking all of these factors into account, the Authority considers the seriousness of the COCON 1 breach to be level 4 and so the Step 2 figure is 30% of £312,210 in the amount of £93,663.

*Total step 2 figure for APER 2 and COCON 1 breaches:*

- 6.18. Step 2 is therefore £171,957.

*Step 3: mitigating and aggravating factors*

- 6.19. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.
- 6.20. Since notifying the Authority of his misconduct in detail in October 2023, Mr Lewis has assisted the Authority by providing relevant information. However, having considered the aggravating and mitigating factors mentioned at DEPP 6.5B.3G, the Authority concludes that there are no aggravating or mitigating factors that

are applicable in this case to warrant any further increase or decrease in the Step 2 figure.

6.21. The Step 3 figure is therefore £171,957.

*Step 4: adjustment for deterrence*

6.22. Pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.23. The Authority considers that the Step 3 figure of £171,957 represents a sufficient deterrent to Mr Lewis and others and there is no need to increase the penalty any further.

6.24. The Step 4 figure is therefore £171,957.

*Step 5: settlement discount*

6.25. Pursuant to DEPP 6.5B.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.26. The Authority and Mr Lewis reached agreement and so a 30% discount applied to the Step 4 figure.

6.27. Step 5 is therefore £120,370.

*Proposed financial penalty*

6.28. The Authority hereby imposes a total financial penalty of £120,300 (rounded down to the nearest £100 in line with the Authority's usual approach) on Mr Lewis for breaching APER 2 and COCON 1.

## **Prohibition**

- 6.29. The Authority has the power to prohibit an individual under section 56 of the Act if it appears to the Authority that the individual is not a fit and proper person. In light of the serious nature of Mr Lewis' misconduct in breach of COCON 1, demonstrating his lack of integrity, the Authority considers that Mr Lewis is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. The Authority considers that it is therefore appropriate and proportionate in all the circumstances to impose a prohibition order on Mr Lewis.
- 6.30. In prohibiting Mr Lewis, the Authority has had regard to the guidance in Chapter 9 of the Enforcement Guide and considers that this action is proportionate in all the circumstances in order to advance the Authority's operational objectives.

## **7. PROCEDURAL MATTERS**

- 7.1 This Notice is given to Mr Lewis in accordance with section 390 of the Act.
- 7.2 The following statutory rights are important.

### **Decision maker**

- 7.3 The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

### **Manner and time for payment**

- 7.4 The financial penalty must be paid in 6 instalments by Mr Lewis to the Authority, as follows:
- 7.4.1 £20,300 to be paid by no later than 30 April 2024; and
- 7.4.2 £20,000 to be paid on each of 30 May 2024, 30 June 2024, 30 July 2024, 30 August 2024 and 30 September 2024.

### **If the financial penalty is not paid**

- 7.5 If any, or any part of, an instalment is outstanding on the day after it is due to be paid to the Authority (in accordance with paragraph 7.4 above), the Authority may recover the full outstanding amount of the financial penalty as a debt owed by Mr Lewis and due to the Authority.

### **Publicity**

- 7.6 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 you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- 7.7 The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

### **Authority contacts**

- 7.8 For more information concerning this matter generally, contact Egon Penzhorn at the Authority (direct line: 020 7066 2025 / email: [egon.penzhorn@fca.org.uk](mailto:egon.penzhorn@fca.org.uk)).

**Allegra Bell**

**Interim Head of Department**

**Financial Conduct Authority, Enforcement and Market Oversight Division**



## **ANNEX A**

### **RELEVANT STATUTORY AND REGULATORY PROVISIONS**

#### **RELEVANT STATUTORY PROVISIONS**

- 1.1. The Authority's statutory objectives are set out in Part 1A of the Act, and include the operational objectives of securing an appropriate degree of protection for consumers and of protecting and enhancing the integrity of the UK financial system (set out in sections 1C and 1D of the Act).
- 1.2. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.
- 1.3. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him.
- 1.4. Section 66A of the Act provides that for the purposes of action by the Authority under section 66, a person is guilty of misconduct if any of conditions A to C is met in relation to the person. Section 66A(2) sets out Condition A, which during the relevant times stated that:

*"(a) the person has at any time failed to comply with rules made by the FCA under section 64A, and*

*(b) at that time the person was –*

*(i) an approved person,*

*(ii) an employee of a relevant authorised person, or*

*(iii) a director of an authorised person."*

- 1.5. Section 66(3)(a) and (b) of the Act provides that if the Authority is entitled to take action against a person under section 66, it may impose a penalty on him of such amount as it considers appropriate, or publish a statement of his misconduct.

## **REGULATORY PROVISIONS**

### **The Authority's Statements of Principle for Approved Persons**

- 1.6. At the relevant times of Mr Lewis' breach of APER 2 (before 8 December 2019), the Statements of Principle issued by the Authority under section 64(1) of the Act with respect to the conduct of approved persons were set out in the part of the Handbook entitled "Statements of Principle and Code of Practice for Approved Persons" ("APER").

- 1.6 APER 2.1A.3 set out the Statements of Principle. These include:

Statement of Principle 2: *"An approved person must act with due skill, care and diligence in carrying out his accountable functions."*

- 1.7 'Accountable functions' include controlled functions and any other functions performed by an approved person in relation the carrying on of a regulated activity by the authorised person to which the approval relates.

### **The Authority's Code of Conduct (COCON)**

- 1.8 At the relevant times of Mr Lewis breach of COCON 1 (after 9 December 2019), the rules of the Handbook's Code of Conduct were applicable to Mr Lewis' conduct.

- 1.9 Rule 1 set out in COCON 2.1.1 R stated:

*"You must act with integrity."*

### **The Fit and Proper Test for Approved Persons**

- 1.10 The part of the Authority's Handbook entitled *"The Fit and Proper Test for Approved Persons"* ("FIT") sets out the criteria that the Authority will consider

when assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

- 1.11 FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.

### **The Authority's policy for exercising its power to make a prohibition order**

- 1.12 The Authority's policy in relation to prohibition orders is set out in Chapter 9.
- 1.13 EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.

### **Decision Procedure and Penalties Manual (DEPP)**

- 1.14 Chapter 6 of DEPP, which forms part of the Handbook, sets out the Authority's statement of policy on the imposition of a financial penalty or public censure. In particular, DEPP 6.5B sets out the five steps for penalties imposed on individuals in a non-market abuse case in respect of conduct taking place on or after 6 March 2010.