
FINAL NOTICE

**AR Capital LP
Commercial House,
High Street
Hadlow
Kent
TN11 0EE**

**Mr Ashley Ryan Rudland
(Date of birth 02/06/1987)**

2 November 2015

ACTION

1. By an application dated 17 October 2014 ("the Application") AR Capital LP ("AR Capital") applied under section 60 of the Financial Services and Markets Act 2000 ("the Act") for approval of Mr Ashley Ryan Rudland ("Mr Rudland") to perform the controlled functions of CF1 (director function), CF3 (Chief Executive), CF28 (systems and controls function), CF29 (significant management function) and CF30 (customer function).
2. The Application is incomplete.
3. For the reasons listed below, the Authority has refused the Application.

SUMMARY OF REASONS

4. By its Warning Notice dated 26 June 2015 ("the Warning Notice") the Authority gave notice that it proposed to refuse the Application and that AR Capital and Mr Rudland were entitled to make representations to the Authority about that proposed action.
5. As no representations have been received by the Authority from AR Capital or Mr Rudland within the time allowed by the Warning Notice, the default procedures in paragraph 2.3.2 of the Authority's Decision Procedure and Penalties Manual apply, permitting the Authority to treat the matters referred to in its Warning Notice as undisputed and, accordingly, to give a Decision Notice.

6. By its Decision Notice dated 17 August 2015 ("the Decision Notice"), the Authority gave AR Capital and Mr Rudland notice that it had decided to take the action described above.
7. AR Capital and Mr Rudland had 28 days from the date the Decision Notice was given to refer the matter to the Upper Tribunal (formerly known as the Financial Services and Markets Tribunal). No referral was made to the Upper Tribunal within this period of time or to date.
8. Under section 390(1) of the Act, the Authority, having decided to refuse the Application and there having been no reference of that decision to the Tribunal, must give AR Capital and Mr Rudland Final Notice of its refusal.
9. On the basis of the facts and matters described below, the Authority is not satisfied that Mr Rudland is a fit and proper person to perform the controlled functions to which the Application relates. In particular the Authority is not satisfied that Mr Rudland has the required competence and capability, because he has no financial services experience and has not obtained any of the investment management industry qualifications set out in the Authority's Training and Competence Sourcebook.

DEFINITIONS

10. The definitions below are used in this Final Notice.

"AIFMD" means the Alternative Investment Fund Managers Directive

"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

"MiFID" means the Markets in Financial Instruments Directive

FACTS AND MATTERS

11. The Authority understands Mr Rudland to have personally completed the Part 4A application on behalf of his firm and the Application in respect of his own candidacy.
12. In addition to the controlled functions set out in his Application, the following controlled functions are mentioned in the firm's application though not explicitly applied for: CF10 (compliance function), CF10a (Client Assets Oversight), CF11 (Money Laundering Reporting) and CF4 (partner function). For the purpose of this Application, the Authority has only assessed Mr Rudland's fitness and propriety in respect of the relevant controlled functions: CF1, CF3, CF10, CF11, CF28 and CF30.

Lack of financial service industry experience and relevant qualification

13. At section 6 of the Application entitled "Supplementary Information" the applicant firm was required to provide full details of the following for candidates seeking significant influence controlled functions:

"why the candidate is competent and capable to carry out the controlled function(s) applied for"

"why the appointment complements the firm's business strategy, activity and market in which it operates."

14. No such information was set out in the Application. However, in the applicant firm's Application for Authorisation it states:

"Over the past 2 years I have been investing my personal savings in US equities. At this point family and friends asked me to manage capital for them. My long-term strategy is to manage capital for family, friends and third party individuals unknown [sic] to be...My background is in Software Architecture; I've been building software for over 13 years."

15. Individuals providing investment management services to retail clients are required to hold an appropriate qualification as set out in the Training and Competence sourcebook of the Authority's handbook (TC Appendix 4.1.1E). Mr Rudland has not provided any information that suggests that he possesses the correct qualifications. Mr Rudland was invited to provide further information as to his experience in emails dated 16 January 2015 and a letter dated 8 April 2015. No further information was provided.

Failure to deal with the Authority in the manner expected of a candidate

16. At section 1 of the "Checklist and declaration" section of AR Capital's application, the applicant firm was informed that the application fee was not refundable, even if the applicant firm decides to withdraw the application. This section was signed by Mr Rudland. The Authority would have expected that, before submitting an application, steps were taken to ensure that the correct permissions are applied for, and that the firm was ready, willing and organised to submit valid applications.
17. The applications made in regard to Mr Rudland and AR Capital indicates a lack of knowledge of the investment services industry and the regulatory framework. Sections of the applications which were deficient include:
- i. selecting the "Professional" client option in the "Scope of Permission" section of the firm's application, despite indicating that the firm's potential investors are likely to be retail clients, namely *"Friends, family, private investors and other third party..."*;
 - ii. providing a document setting out the firm's compliance monitoring programme which consists of one page and contains no details about the customer classification checks to ensure customers are appropriately classified under the Authority's Conduct of Business rules (COBS 3.5);
 - iii. failing to apply for permission for the regulated activity of dealing in investments as an agent, which is necessary to effect an investment management decision, and applying to establish and manage discretionary individual client portfolios when it appears it in fact intends to establish and manage a collective investment scheme; and
 - iv. relying on the article 3 MiFID exemption to MiFID when it was not applicable, as the type of investment management business AR Capital wishes to conduct falls either under MiFID or the AIFMD and its business would not be exempt.
18. On 16 December 2014, the Authority notified Mr Rudland of the deficiencies in the applications. Mr Rudland replied on 31 December 2014 stating that he wished to withdraw the applications and seeking a refund. The Authority drew Mr Rudland's attention to the guidance on fees and informed him that the fee would not be

refunded. On 14 January 2015, Mr Rudland informed the Authority that he felt the best option was to continue with the applications seeing as a refund was not possible. He stated that he would revert the next day with regard to the deficiencies in the applications.

19. The Authority sent emails to Mr Rudland on 26 January 2015 and 10 February 2015 seeking the outstanding information. No response was received. On 8 April 2015 the Authority wrote to Mr Rudland highlighting the deficiencies in the applications and inviting him to address these deficiencies. To date, the Authority has received no response from Mr Rudland.

IMPACT ON FITNESS AND PROPRIETY

20. The regulatory provisions relevant to this Final Notice are referred to in Annex A.
21. The Authority considers that the facts and matters described above give rise to sufficiently serious concerns that Mr Rudland is not a fit and proper person. The concerns the Authority has in relation to Mr Rudland include:
- a. Mr Rudland's lack of any financial services industry experience;
 - b. Mr Rudland's lack of the required investment management industry qualifications, which given that the proposed client base will comprise of retail clients, rather than professional clients, requires him to possess one of the relevant qualifications set out in the Authority's Training and Competence Sourcebook; and
 - c. the general lack of understanding on the part of Mr Rudland of the Authority rules and the regulatory framework shown through the very poor quality of the completed application forms and the lack of engagement with the Authority.
22. Therefore in accordance with section 61(1) of the Act, the Authority has decided to refuse the application for approval in respect of Mr Rudland.

IMPORTANT NOTICES

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

Publication

24. 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 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 AR Capital or Mr Rudland or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
25. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

26. For more information concerning this matter generally, contact Karen Avis, Manager, Permissions Department at the Authority (direct line: 020 7066 3380 email: karen.avis@fca.org.uk).

Graeme McLean
Chair of the Regulatory Transactions Committee

ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE

Relevant Statutory Provisions

1. The Authority may grant an application for approval under section 60 of the Act only if it is satisfied that the person in respect of whom the application is made is a fit and proper person to perform the controlled function to which the application relates (section 61(1) of the Act).
2. Section 62(5) of the Act defined 'interested parties' as including the applicant, and the person in respect of whom the application is made.
3. 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

4. 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 person to perform a particular controlled function.
5. The most important considerations to which the Authority will have regard to include the person's honesty, integrity and reputation and competence and capability (FIT 1.3.1G).
6. If a matter comes to the Authority's attention which suggests that the person might not be fit and proper, the Authority will take into account how relevant and important that matter is (FIT 1.3.4G).
7. In determining a person's competence and capability, the matters to which the Authority will have regard include:
 - (1) 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)).