
FINAL NOTICE

To: **Mothahir Miah**

Individual
Reference
Number: **MXM01895**

Address: **38 Manton Drive, Luton LU2 7DJ**

Date: **17 November 2015**

1. ACTION

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

- (1) imposes on Mr Miah a financial penalty of £139,000; and
- (2) makes an order prohibiting Mr Miah from performing any function in relation to any regulated activity carried on by any authorised or exempt person, or exempt professional firm. This order takes effect from today's date, 17 November 2015.

1.2. Mr Miah agreed to settle at an early stage of the Authority's investigation and therefore qualified for a 30% (Stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £198,600 on Mr Miah.

- 1.3. The Prohibition Order takes effect from the date of this Final Notice. In the absence of new evidence that Mr Miah is not fit and proper, the Authority is minded to revoke the Prohibition Order, on Mr Miah's application, at any time after five years from the date of this Final Notice.

2. SUMMARY OF REASONS

- 2.1. The Authority expects those who trade on behalf of customers to act with integrity at all times and not put their own interests before those of their customers.
- 2.2. Mr Miah failed to do so. From 1 January 2010 to 31 October 2012 ("the Relevant Period"), Mr Miah was an Investment Analyst at Aviva Investors Global Services Limited ("Aviva Investors"). In this role, Mr Miah had authority to trade on behalf of hedge funds and long-only funds, but weaknesses in the trading systems and controls meant that he was able to delay when he booked and recorded the allocation of trades.
- 2.3. Mr Miah exploited these weaknesses on numerous occasions during the Relevant Period by deliberately delaying the booking and allocation of trades in order to assess their performance and then allocate trades that benefited from favourable intraday price movements to hedge funds that paid performance fees, and trades that did not to certain long-only funds that paid lower or no performance fees. This practice is commonly known as 'cherry picking'.
- 2.4. Mr Miah's actions contributed to Aviva Investors having to pay significant compensation to a number of long-only funds.
- 2.5. Mr Miah knew that cherry picking was dishonest, but did so anyway in an effort to gain recognition for his trading ability from his colleagues. As a consequence, during the Relevant Period, Mr Miah breached Principle 1 of the Statements of Principle and Code of Practice for Approved Persons by failing to act with integrity when carrying out his controlled function.
- 2.6. Details of the relevant Principles and Rules breached by Mr Miah (and other relevant regulatory provisions) are set out in Annex A to this Notice.
- 2.7. Mr Miah's misconduct is particularly serious because:
 - (1) he was an experienced industry professional;

- (2) his actions were deliberate and favoured his interests over those of customers; and
 - (3) his actions reflect a failure to act with integrity.
- 2.8. The Authority has also taken into consideration that Mr Miah admitted to both the Authority and Aviva Investors that he cherry picked and has expressed remorse for his actions.
- 2.9. The Authority therefore imposes a financial penalty on Mr Miah in the amount of £139,000 pursuant to section 66 of the Financial Services and Markets Act 2000.
- 2.10. Further, the Authority considers that Mr Miah lacks the honesty and integrity required to perform any function in relation to any regulated activity carried on by any authorised or exempt person, or exempt professional firm. The Authority therefore considers that Mr Miah should be prohibited from doing so because he is not a fit and proper person.
- 2.11. Mr Miah admitted his misconduct to Aviva Investors when he was first questioned and he has been open and contrite in his dealings with the Authority. The Authority is therefore minded to revoke the Prohibition Order after five years in the terms set out in paragraph 1.3 above.
- 2.12. The Authority issued a Final Notice to Aviva Investors in relation to its failings on 24 February 2015.

3. DEFINITIONS

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

'the Act' means the Financial Services and Markets Act 2000

'APER' means the Statements of Principle and Code of Practice for Approved Persons

'the Authority' means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority

'Aviva Group' means the group of entities owned by Aviva plc

'Aviva Investors' means Aviva Investors Global Services Limited

'Cherry Picking' refers to the practice of delaying the allocation of trades in order to assess their performance before allocating trades to particular funds

'DEPP' means the part of the Authority's Handbook entitled 'Decisions Procedure and Penalties Manual'

'Hedge Funds' means Aviva Investors' funds that employed trading strategies that took long and short positions with the aim of maximising returns

'Long-Only Funds' means funds managed with the strategy of only taking long, rather than short, positions

'Relevant Period' means 1 January 2010 to 31 October 2012

'Side-by-Side management' is the practice of having the same individuals manage funds with different strategies and investment structures

'Traders' means fund managers and other employees of Aviva Investors, who had authority to decide on trades, place orders, execute, book and allocate trades on behalf of funds managed by Aviva Investors

4. FACTS AND MATTERS

Background

- 4.1. During the Relevant Period, Mr Miah was employed by Aviva Investors as an Investment Analyst and held the CF30 (customer) function.
- 4.2. Aviva Investors is an asset management company and part of the Aviva Group. It has global assets under management of £234 billion in fixed income, real estate and multi-asset solutions. Of this, approximately 80% are managed for Aviva Group customers, which in turn provide investments, insurance and pensions to their retail customers.
- 4.3. Mr Miah started working for Aviva Investors as an Investment Analyst in 2001. This role involved analysing the performance of portfolios and the market. As Mr Miah became more experienced his role expanded to include trading. Initially, he executed trades on behalf of others under their supervision, but during the Relevant Period he had the authority to trade in his own right.

Side-by-Side fund management

- 4.4. During the Relevant Period, Aviva Investors employed a Side-by-Side management strategy on certain desks within its Fixed Income business whereby funds that paid differing levels of performance fees were managed on a Side-by-Side basis.
- 4.5. For example, a Hedge Fund which paid a 20% outperformance fee was managed alongside Long-Only Funds that paid lower or no performance fees. A significant proportion (50-60%) of these performance fees were paid to Side-by-Side Traders in Aviva Investors' Fixed Income area based on their role and contribution to the Hedge Funds' performance.
- 4.6. Mr Miah worked on one of these desks and had authority to trade on behalf of both Hedge and Long-only Funds.
- 4.7. Mr Miah received £372,500 from the Hedge Fund Incentive Scheme in the period January 2010 to October 2012. This made up 45% of his total remuneration during the Relevant Period.

Cherry Picking

- 4.8. Aviva Investors' various desks would decide on the overall trading strategy for the funds they managed, including Hedge Funds and Long-Only Funds. Traders then implemented these strategies, but had discretion to pick specific instruments within the strategy as long as those trades complied with the investment mandates of the specific fund for which they were trading.
- 4.9. Aviva Investors' policies required Mr Miah to book details of each trade, including the amounts to be allocated to specified funds, in an online system within 15 minutes of trading on behalf of the Long-only funds. For trades for the Hedge Funds, Mr Miah was required to book and allocate trades by emailing the details to the Middle Office within an hour. Although Aviva Investors' policies specified the time within which trades needed to be booked, the systems of both the Hedge and Long-only funds meant that Mr Miah was able to book and allocate trades hours after they had been executed.
- 4.10. Analysis of Mr Miah's trading activity shows that the booking and allocation of trades were regularly late by several hours. The Authority found that, during the Relevant Period, in respect of Hedge Funds:

- (1) approximately 88% of Mr Miah's intra-day profitable Hedge Fund trades were booked more than an hour after execution;
- (2) of these trades approximately:
 - a) 68% were booked more than three hours after the trade was executed; and
 - b) 6% were booked between seven and nine hours after the trade was executed.

4.11. In respect of Long-only Funds:

- (1) approximately 74% of Mr Miah's trades that had not benefited from favourable intraday price movements were booked more than an hour after execution;
- (2) of these trades approximately:
 - a) 83% were booked more than three hours after the trade was executed; and
 - b) 32% of the trades were booked between seven and ten hours after execution.

4.12. The Authority also found that Mr Miah misreported to the Middle Office the time he had executed the late booked profitable Hedge Fund trades. That is, not only did he book and allocate the trades late, but his emails to the Middle Office gave the impression that the trades had been booked in a timely manner. The Authority found that during the Relevant Period, where an execution time was recorded (which was not the case for about 24% of the trades), approximately:

- (1) 56% of Mr Miah's intra-day profitable Hedge Fund trades were misreported by over an hour;
- (2) 48% by over two hours; and
- (3) 30% by over four hours.

4.13. Mr Miah had administrative responsibilities as an Investment Analyst and, at times, there may have been technical issues which may explain some of the delays, but these do not account for the significant delays in the booking and allocation of trades by Mr Miah during the Relevant Period. In fact, Mr Miah has

admitted that, by delaying the booking of trades, he was able to assess the performance of a trade during the day and allocate trades that had benefitted from positive intraday movements to the Hedge Funds and trades that had not to certain Long-only Funds.

- 4.14. Mr Miah admitted Cherry Picking from 1 January 2010 to 31 October 2012. Mr Miah knew that Cherry Picking was wrong and dishonest, but was motivated by a desire to prove to his colleagues that he was able to pick profitable trades. The culture within the Fixed Income business was heavily focused on performance and promotions tended to be based on reported investment performance. Mr Miah had seen a number of people who joined Aviva Investors after him being promoted to Fund Manager. He had not been promoted despite being at Aviva Investors for a number of years and felt demoralised, stressed and under pressure to prove his trading ability in order to be promoted. By Cherry Picking intra-day profitable trades for the Hedge Fund he believed he would prove his trading ability to his colleagues.
- 4.15. While the Authority acknowledges Mr Miah's motivation and the pressure that he felt as a consequence of the culture in the business, this does not excuse or justify his Cherry Picking in any way.

5. FAILINGS

- 5.1. Based on the facts and matters described above, the Authority considers that Mr Miah failed to act with integrity in carrying out his controlled function, in breach of Statement of Principle 1, because he:
- (1) deliberately delayed the booking and allocation of trades after execution so that he could assess their performance prior to allocation;
 - (2) deliberately Cherry Picked trades that benefitted from favourable intraday price movements for the Hedge Funds, in an attempt to gain recognition for his trading ability by showing he could pick profitable trades;
 - (3) deliberately booked and allocated trades that had not benefitted from favourable intra-day price movements to certain Long-only funds;
 - (4) knew that Cherry Picking in this way was dishonest, but did it anyway.
- 5.2. The regulatory provisions relevant to this Notice are referred to in Annex A.

Fitness and Propriety

- 5.3. In assessing Mr Miah's honesty and integrity, the Authority considers that Mr Miah's conduct falls below the standards expected of those working in the financial services industry. By reason of the facts and matters set out above, Mr Miah has failed to demonstrate the degree of honesty and integrity required by the regulatory system because, on numerous occasions, he deliberately Cherry Picked trades for the benefit of Hedge Funds and to the detriment of Long-only Funds. He put his interests before customers in an attempt to gain recognition for his trading ability, despite knowing at the time that Cherry Picking was dishonest.
- 5.4. The Authority has therefore concluded that Mr Miah is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised or exempt person, or exempt professional firm.

6. SANCTION

- 6.1. The Authority has considered the disciplinary and other options available to it and has concluded that a financial penalty and a Prohibition Order are the appropriate sanctions in the circumstances of this particular case.
- 6.2. On 6 March 2010, the Authority's new penalty framework came into force.
- 6.3. Mr Miah's misconduct covers a period straddling 6 March 2010. However, since the majority of the misconduct occurred after 6 March 2010, the Authority has assessed the financial penalty under the regime in force after 6 March 2010.
- 6.4. For this period, as set out in DEPP 6.5B, the Authority applies a five-step framework to determine the appropriate level of financial penalty imposed on individuals in non-market abuse cases.

Step 1: disgorgement

- 6.5. 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.
- 6.6. While Mr Miah's misconduct had the potential to result in higher incentive payments, the Authority has not identified any financial benefit derived directly from his breaches because of the way his incentives were structured.
- 6.7. Step 1 is therefore £0.

Step 2: the seriousness of the breach

6.8. 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.

6.9. The period of Mr Miah's breaches was from 1 January 2010 to 31 October 2012. The Authority considers Mr Miah's relevant income for this period to be £827,684.

6.10. 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%

6.11. A non-exhaustive list of factors which are likely to be considered level 4 factors or level 5 factors are set out at DEPP 6.5B.2G (12). In the circumstances of this case, the Authority considers the following factors to be relevant:

- (1) Mr Miah was an experienced industry professional;
- (2) Mr Miah was in a position of trust, which he abused by putting his interests ahead of those of his customers;
- (3) Mr Miah's actions demonstrate a lack of integrity; and
- (4) Mr Miah's misconduct was deliberate.

6.12. Taking all of these factors into account, the Authority considers the seriousness of the breach to be Level 4. As such, the Step 2 figure is 30% of £827,684.

6.13. Step 2 is therefore £248,305.

Step 3: mitigating and aggravating factors

6.14. 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.

6.15. The Authority considers that there are no aggravating factors.

6.16. The Authority considers that Mr Miah's cooperation mitigates the breaches. Mr Miah admitted to Cherry Picking when he was first questioned by Aviva Investors and again in interview with the Authority. Mr Miah did not deny his misconduct. Instead, he made admissions that significantly advanced the Authority's investigation, saving the Authority significant time and resource.

6.17. Having taken account of the mitigating factor, the Authority considers that the Step 2 figure should be decreased by 20%.

6.18. Step 3 is therefore £198,644.

Step 4: adjustment for deterrence

6.19. 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.

6.20. The Authority considers that the Step 3 figure of £198,644 represents a sufficient deterrent to Mr Miah and others, and so has not increased the penalty at Step 4.

6.21. Step 4 is therefore £198,644.

Step 5: settlement discount

6.22. 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.

6.23. The Authority and Mr Miah reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.

6.24. Step 5 is therefore £139,000.

Penalty

6.25. The Authority therefore imposes a total financial penalty of £139,000 on Mr Miah for breaching Statement of Principle 1.

Prohibition Order

6.26. For the reasons set out in paragraphs 5.3 to 5.4 above, the Authority has concluded that it is both necessary and appropriate to prohibit Mr Miah from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm, to secure an appropriate degree of protection for consumers and to protect and enhance the integrity of the UK financial system.

6.27. The Authority has had regard to the guidance in Chapter 9 of EG in deciding that it is appropriate to make a Prohibition Order in this case.

6.28. The Authority therefore makes a Prohibition Order pursuant to section 56 of the Act prohibiting Mr Miah from performing any function in relation to any regulated activity carried on by any authorised or exempt person, or exempt professional firm. This order takes effect from the date of this Final Notice.

6.29. Mr Miah admitted his misconduct to Aviva Investors when he was first questioned and he has been open and contrite in his dealings with the Authority. The Authority is therefore minded to revoke the Prohibition Order after five years in the terms set out in paragraph 1.3 above.

7. PROCEDURAL MATTERS

Decision maker

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

7.2. This Final Notice is given under, and in accordance, with section 390 of the Act.

Manner of and time for Payment

- 7.3. The financial penalty must be paid in three instalments as follows:
- a) £13,000 by 1 December 2015;
 - b) £63,000 by 17 May 2016; and
 - c) £63,000 by 17 November 2016.
- 7.4. The financial penalty must be paid in full by Mr Miah to the Authority by no later than 17 November 2016.

If the financial penalty is not paid

- 7.5. If all or any of the instalments of the financial penalty is outstanding on its due date for payment, the full amount outstanding of the financial penalty shall then become immediately due and payable, including all future instalments, and the Authority may recover the outstanding amount as a debt owed by Mr Miah 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 Laura Dawes (direct line: 020 7066 1994) of the Enforcement and Market Oversight Division of the Authority.

Guy Wilkes

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT STATUTORY PROVISIONS

- 1.1. The Authority's operational objectives, set out in section 1B (3) of the Act, include the consumer protection objective that is:

"securing an appropriate degree of protection for consumers."

- 1.2. 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. A person is guilty of misconduct if, while an approved person, he has failed to comply with a Statement of Principle issued under section 64 of the Act, or has been knowingly concerned in a contravention by a relevant authorised person of a relevant requirement imposed on that authorised person.
- 1.3. 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.

2. RELEVANT REGULATORY PROVISIONS¹

Statements of Principle and Code of Practice for Approved Persons

- 2.1. The Authority's Statements of Principle and Code of Practice for approved persons ("APER") are a general statement of the fundamental obligations of individuals and are set out in the Authority's Handbook. They derive their authority from the Authority's rule-making powers set out at section 64 of the Act.
- 2.2. Statement of Principle 1 provides that:

"An approved person must act with integrity in carrying out his controlled function".

¹ As in force during the Relevant Period (1 January 2010 - 31 October 2012).

The Fit and Proper Test for Approved Persons

- 2.3. 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.

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.

EG

- 2.4. Chapter 9 of EG, which forms part of the Authority's Handbook, sets out the Authority's statement of policy in relation to the use of its power to impose Prohibition Orders on individuals.

3. Authority's policy for exercising its power to make a Prohibition Order

- 3.1. The Authority's approach to exercising its powers to make Prohibition Orders is set out in the Enforcement Guide ("EG").
- 3.2. EG 9.1 provides that the Authority's power, under section 56 of the Act, to prohibit individuals who are not fit and proper from carrying out controlled functions in relation to regulated activities helps the Authority to work towards achieving its statutory objectives. The Authority may exercise this power to make a Prohibition Order where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any function in relation to regulated activities, or to restrict the functions which he may perform.
- 3.3. EG 9.4 sets out the general scope of the Authority's powers in respect of Prohibition Orders, which include the power to make a range of Prohibition Orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.
- 3.4. EG 9.9 states that, when deciding whether to make a Prohibition Order against an approved person and/or withdraw his approval, the Authority will consider all the relevant circumstances of the case which may include, but are not limited to, the following factors:

- (a) the relevance and materiality of any matters indicating unfitness (EG 9.9(5));
- (b) the length of time since the occurrence of any matters indicating unfitness (EG 9.9(6));
- (c) the severity of the risk which the individual poses to consumers and to confidence in the financial system (EG 9.9(8)); and
- (d) the previous disciplinary record and general compliance history of the individual, including whether the Authority, any previous regulator, designated professional body or other domestic or international regulator has previously imposed a disciplinary sanction on the individual (EG 9.9(9)).

DEPP

- 3.5. Chapter 6 of DEPP, which forms part of the Authority's Handbook, sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.