

ENFORCEMENT OUTCOME

Disqualification – Mr Xavier Rault

Ref: ENF/18A2021/E3

1. Background

- 1.1. Capricorn Finance (the “Company”), incorporated as a private company limited by shares on 26 May 2014, was granted a Category 1 Global Business Licence, as well as, an Investment Adviser (Restricted) Licence by the Financial Services Commission (the “FSC”) on 28 May 2014.
- 1.2. Mr Xavier Rault (“Mr Rault”), held the position of Chief Executive Officer of the Company from 12 December 2014 to 30 June 2017. He was also part of the Investment Advisory Team.

2. Wilfully concealing information from the FSC

- 2.1. Mr Rault submitted a Personal Questionnaire (“PQ”) Form dated 23 January 2015 wherein he undertook to advise the FSC of any material change occurring at any time subsequent to the submission of the PQ Form.
- 2.2. As per the judgment of the Angers Regional Court (Tribunal de Grande Instance) 30 June 2017, he has been sentenced to:
 - 2.2.1. an imprisonment of 4 years;
 - 2.2.2. a definitive prohibition from exercising a professional or social activity in connection with the offence, namely activities related to asset/wealth management or insurance brokerage;

Financial Services Commission

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- 2.2.3. a definitive prohibition from exercising a commercial or industrial profession, from directing, administering, managing, controlling directly or indirectly on his behalf or on behalf of others a commercial or industrial company; and
- 2.2.4. pay an additional EUR 601,695.22 to fifteen (15) civil parties.
- 2.3. However, he wilfully concealed this information from the FSC and merely resigned from the position of Chief Executive Officer with effect from 30 June 2017.
- 2.4. By not disclosing the judgment to the FSC, he failed to comply with the undertaking in the PQ Form, thereby acting in breach of section 19(1) of the Financial Services Act 2007 (the “FSA”)
- 2.5. This matter has thus been referred by the Chief Executive of the FSC, in accordance with section 53(1) of the FSA, to the EC for such action, as it deems appropriate.
- 3. Proceedings of the EC**
- 3.1. The EC observed that Mr Rault has intentionally withheld information from the FSC relating to his sentence as per the judgment of the Angers Regional Court (Tribunal de Grande Instance) dated 30 June 2017.
- 3.2. In this respect, the EC formed the opinion that he no longer meets the fit and proper person requirements under section 20 of the FSA to hold position as officer in any licensee of the FSC.
- 3.3. The EC thus issued a notice dated 01 September 2020 to him pursuant to section 53(2) of the FSA. The purpose of the notice was to inform him that:
- 3.3.1. The EC was contemplating to disqualify him from holding position as officer in any licensee of the FSC for a period not exceeding five (5) years pursuant to sections 7(1) (c) (iv) and 52(3) of the FSA; and

- 3.3.2. He is entitled, as of right, to make written representations to the EC within a period of 21 days from the notice as to why he should not be subject to the abovementioned sanction.
- 3.4. All the referral materials provided by the FSC were communicated to him along with the notice dated 11 November 2020.
- 4. Substituted Service**
- 4.1. Service of the notice dated 01 September 2020 by registered post at Mr Rault's last known residential address was not successful. Consequently, the EC effected substituted service of the notice by causing a summary version to be published on the website of the FSC on 16 October 2020.
- 4.2. He was provided with a period of 21 days from the publication of the notice on the FSC website, to make written representations to the EC regarding its intention to disqualify him from holding position as officer in any licensee of the FSC for a period not exceeding five (5) years.
- 4.3. He failed to make written representations to the EC.
- 4.4. Consequently, the EC has inferred that he did not dispute the fact that he has deliberately withheld information from the FSC, as detailed in the notice dated 01 September 2020, thereby breaching section 19 of the FSA.
- 5. Decision of the EC**
- 5.1. Hence, the EC has concluded that Mr Rault no longer meets the fit and proper person requirements under section 20(1)(a)(iii) of the FSA to hold position as officer in any licensee of the FSC inasmuch as he did not apprise the FSC that that he was sentenced by the Angers Regional Court (Tribunal de Grande Instance). By wilfully dissimulating this information from the FSC, he has failed to act with honesty.

- 5.2. The EC has consequently disqualified him from holding position as officer in any licensee of the FSC for a period of five (5) years pursuant to sections 7(1) (c) (iv) and 52(3) of the FSA, on 23 December 2020.
- 5.3. The decision takes effect immediately after a period of 21 days from the date of the decision notice.
6. **Application to the Financial Services Review Panel (the “FSRP”)**
Mr Rault may make an application to the FSRP for a review of the above decision of the EC within 21 days from the issue of the Decision Notice. Such an application must be made by registered post, specifying the reasons for the review, in accordance with section 53(4) of the FSA. A copy of the application must be sent, by registered post, to the FSC.

18 January 2021

This published version of the Decision Notice has been edited for formatting purposes and to remove certain confidential, sensitive or personal information.

The person to whom the decision in this Notice relates may exercise the right to seek a review by the FSRP. Any amendment, cancellation or further update pertaining to the exercise of the aforementioned right in relation to the decision in this Notice will be communicated at the appropriate time.

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