



Financial Services Authority

FINAL NOTICE

To: **Anjam Saeed Ahmad**

Date of Birth: **3 February 1971**

Individual

Reference Number: **ASA01016**

Date: **22 June 2010**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives Mr Ahmad final notice of a requirement to pay a financial penalty:

1. THE PENALTY

- 1.1. The FSA gave Anjam Ahmad a Decision Notice on 21 June 2010 which notified him that the FSA had decided to impose a financial penalty representing a disgorgement of £131,000 equating to monies paid to Mr Ahmad in the course of the activities detailed below, pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act").
- 1.2. Mr Ahmad confirmed on 16 June 2010 that he will not be referring the matter to the Financial Services and Markets Tribunal. Accordingly, for the reasons set out below, the FSA imposes a financial penalty on him of £131,000.

2. REASONS FOR THE ACTION

Summary

- 2.1. This notice is issued to Mr Ahmad in the light of his conduct as an approved person carrying out a controlled function during the period February 2008 to August 2009 (the "Relevant Period"), during which Mr Ahmad was employed as an Options trader and Risk Manager by AKO Capital LLP ("AKO"). Mr Ahmad is no longer employed at AKO, having resigned on 24 August 2009. The FSA makes no criticism of AKO in this notice.
- 2.2. During this period, Mr Ahmad received payments, in cash, gift vouchers, gold and flights and hotel bookings, of approximately £131,000 from a cash equities broker ("Broker A"). The amount paid to Mr Ahmad was directly attributable to the amount of commission earned by Broker A for equities trading that Mr Ahmad placed with Broker A's firm. Mr Ahmad was paid 35 percent of Broker A's net commission income in 2008 and 50 percent in 2009.
- 2.3. During the relevant period, Mr Ahmad agreed "improvements" with Broker A to the commission rate charged by Broker A's firm for the execution trading. The ordinary commission rate was 5 basis points ("bps"). On 20 occasions during the relevant period, Mr Ahmad agreed to improvements that raised the effective commission rate from 5 bps to levels ordinarily between 40 and 50 bps. The net effect of these actions was additional commissions of \$739,000 being paid by AKO in the relevant period.
- 2.4. By allowing Broker A to charge much higher commissions on specific trades, Mr Ahmad increased the commission Broker A earned from the AKO business. This resulted in a corresponding increase in the amount of money payable by Broker A to Mr Ahmad.
- 2.5. By virtue of his deliberate misconduct, Mr Ahmad breached Statement of Principle 1 ("Principle 1") of the Statements of Principle for Approved Persons contained in the High Level Standards part of the FSA's Handbook and entitled "Statements of Principle and Code of Practice for Approved Persons" ("APER").

- 2.6. The FSA views Mr Ahmad's misconduct as particularly serious because he was an approved person carrying out a controlled function, and an experienced trader who disadvantaged his employer by his actions.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

Statutory provisions

- 3.1. The FSA's statutory objectives, set out in Section 2(2) of the Act, are market confidence, public awareness, the protection of consumers and the reduction of financial crime.

- 3.2. Section 66 of the Act provides that:

- (1) The FSA may impose a penalty on a person of such amount as it considers appropriate if:

- (a) it appears to the FSA that he is guilty of misconduct; and
- (b) the FSA is satisfied that it is appropriate in the circumstances to take action against him.

- (2) A person is guilty of misconduct if, while an approved person:

- (a) he has failed to comply with a statement of principle issued under section 64 of the Act; or
- (b) he has been knowingly concerned in a contravention by the authorised person on whose application he was approved of a requirement imposed on that authorised person by or under the Act.

Statements of Principle and Code of Practice for Approved Persons

- 3.3 The part of the FSA Handbook entitled Statements of Principle and Code of Practice for Approved Persons ("APER") is issued by the FSA under section 64 of the Act with respect to conduct expected of approved persons.

- 3.4 The Statement of Principle which is most relevant to Mr Ahmad's conduct is Principle 1.
- 3.5 APER 3.1.4.G states that an approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises where an approved person's conduct was deliberate, or where the approved person's standard of conduct was below that which would be reasonable in all the circumstances.
- 3.6 Principle 1 provides that, "An approved person must act with integrity in carrying out his controlled function." (APER 2.1.2 P)
- 3.7 APER 4.1.2E sets out examples of conduct that, in the opinion of the FSA, do not comply with Principle 1. The types of conduct referred to in APER 4.1.2E includes deliberately misleading (or attempting to mislead) his firm (APER 4.1.3(2)E) and deliberately misusing the assets or confidential information of a client or his firm (APER 4.1.10E).
- 3.8 During the relevant period Mr Ahmad held the controlled functions CF4 (partner) and CF30 (customer function) and the conduct in question occurred whilst he was carrying out those controlled functions.

Enforcement Policy

- 3.9 The FSA's policy in relation to the imposition of financial penalties is set out in Chapter 6 of the part of the FSA Handbook entitled Decision Procedure and Penalties Manual ("DEPP"). Extracts from DEPP are set out in Annex A.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. AKO is an investment management organisation authorised by the FSA whose headquarters are in London. It is a specialist manager of primarily European equities. During the Relevant Period, Mr Ahmad was an FSA approved person (CF 30) employed by AKO as an options trader and Risk Manager. As part of his duties, Mr

Ahmad was also utilised as a cash equities trader. The trading which generated the commissions to Broker A for which Mr Ahmad received undisclosed payments was on behalf of AKO's clients, and therefore related to Mr Ahmad carrying out his controlled function.

- 4.2. At the beginning of the relevant period, Mr Ahmad secured the agreement of AKO to utilise Broker A's firm to carry out cash equity trades on an execution only basis. The commission rate was agreed at 5 bps.
- 4.3. During the relevant period, Mr Ahmad utilised Broker A's firm regularly for cash equity trading. The total commissions paid by AKO to Broker A's firm were \$2.122 million, being 33 percent of the total commissions paid by AKO on the whole of Mr Ahmad's trading in the relevant period. \$1.293 million of this commission was appropriately calculated in line with trading undertaken and disclosed to AKO. \$829,000 however reflected improvements agreed by Mr Ahmad and Broker A. The amount which should have been charged on the underlying trading was \$90,000. AKO was therefore overcharged by \$739,000. AKO was not informed of this.
- 4.4. Mr Ahmad has been interviewed by the FSA on three occasions in relation to this matter – 17 February 2010, 22 February 2010 and 2 March 2010. During the interviews Mr Ahmad has been open and cooperative.

Improvements

- 4.5. Mr Ahmad agreed with Broker A to improvements in the rate of commission paid to Broker A's firm on 20 occasions in the relevant period. The agreed rate of commission varied from 16 to 72 bps. On 17 of the 20 occasions, the agreed commission rate was between 40 and 56 basis points. The weighted average commission for the 20 occasions was 46 basis points.
- 4.6. The improved commissions were unknown to AKO, as confirmation notes sent by Broker A's firm showed the transactions as principal transactions between AKO and Broker A's firm, with no commission charged. In fact, commissions of \$829,000 had been charged on these transactions, representing an overcharge to the agreed 5 bps rate of \$739,000.

Payments from Broker A

- 4.7. Mr Ahmad agreed with Broker A that he would receive 35 percent of Broker A's net commissions from AKO, that is after the deduction of costs, tax and National insurance contributions. In 2009, Mr Ahmad's agreement with Broker A was altered, and he was to receive 50 percent of the net commissions.
- 4.8. Broker A was paid his commission income quarterly in arrears. This would ordinarily occur approximately two months after the end of the quarter in question. So, for example, commission income that was due to Broker A for quarter two in 2009 would be paid to him in late August or early September 2009. Mr Ahmad would then be paid by Broker A over a two to three week period after Broker received his quarterly commission income.
- 4.9. Broker A received £317,000 of net commission as a result of AKO trading during the relevant period. Pursuant to their agreement, Mr Ahmad received payments to a value of £131,000 from Broker A in numerous forms. These included payments for flights and travel, gift vouchers, gold bullion and cash. The majority of the payments from Broker A were in the form of cash.

5. ANALYSIS OF BREACHES

- 5.1. By virtue of his deliberate misconduct, Mr Ahmad was in breach of Principle 1:
 - (1) Mr Ahmad directed trading on behalf of AKO to Broker A. He received an agreed percentage of all commissions paid by AKO to Broker A's firm. In addition, Mr Ahmad agreed, on 20 occasions, that AKO would (without the knowledge of anyone else at AKO) pay increased commissions to Broker A's firm in order to increase the net commissions payable to Broker A, and indirectly to himself. He therefore failed to act with integrity in carrying out his controlled function. (APER 4.1.11E(2))
 - (2) Mr Ahmad's lack of disclosure to AKO regarding his trading that was directed to Broker A's firm, or the higher rates of commission he was allowing to be

paid to Broker A's firm, demonstrate that he was aware that his conduct was wrong. Mr Ahmad did not disclose to AKO the fact that he was receiving payments from Broker A related to the amount of commission paid by AKO to Broker A's firm. He therefore failed to act with integrity in carrying out his controlled function in this regard (APER 4.1.4E(10)).

6. ANALYSIS OF THE PROPOSED SANCTION

General

- 6.1. In deciding to take action, the FSA has considered, amongst other things, the seriousness and nature of Mr Ahmad's misconduct, the number and duration of his breaches, and the likely effect of the proposed action on him. It has also taken into consideration the co-operation Mr Ahmad has offered in relation to an investigation into insider dealing and in respect of others involved in this regulatory investigation.
- 6.2. Investigators were appointed to investigate possible insider dealing and/or market abuse by Mr Ahmad and another ("Dealer X"). Broker A was subsequently added to that investigation.
- 6.3. Mr Ahmad's solicitor approached the FSA indicating he wanted to give a full account of events. Information provided by Mr Ahmad in interviews regarding Broker A enabled the FSA to determine that the criminal investigation against Broker A should be pursued as a regulatory investigation. This led to savings of time and resource for the FSA. The specific information provided by Mr Ahmad has enabled the FSA to focus its investigation into that regulatory misconduct and to identify other potential instances of misconduct.
- 6.4. During his interviews, Mr Ahmad was open and frank about his regulatory misconduct. Mr Ahmad entered into a plea agreement with the FSA in relation to the insider dealing allegations against him, and a co-operating offender agreement in relation to providing evidence against Dealer X. Mr Ahmad has now pleaded guilty to conspiracy to insider deal in relation to 22 stocks, and was sentenced to ten months

imprisonment suspended for two years, 300 hours unpaid community service and a £50,000 fine at Southwark Crown Court on 22 June 2010.

6.5. Mr Ahmad explained in some detail the arrangement between him and Broker A, and has acknowledged the amount received and agreed to repay it, and agreed to provide evidence against Broker A and any other firm or individual in that investigation.

6.6. The FSA considers the following to be aggravating factors:

- (1) Mr Ahmad was an authorised person and an experienced trader in a position of trust;
- (2) he was fully aware of his responsibilities to execute trades on behalf of AKO at the best possible price, in line with accepted market conduct; and
- (3) His misconduct was deliberate, and occurred over a period of one and a half years.

6.7. The FSA considers the following to be mitigating factors:

- (1) Mr Ahmad accepts that his conduct was improper;
- (2) Mr Ahmad has been cooperative with the FSA throughout the investigation, and he gave full answers during his interviews;
- (3) Mr Ahmad has indicated the amount of money he obtained owing to his regulatory misconduct, and expressed his willingness to pay this money to the FSA as part of his settlement; and
- (4) No previous regulatory action has been taken against Mr Ahmad by the FSA.

Other relevant factors

6.9 The FSA is mindful of the additional factor whereby Mr Ahmad has assisted and continues to assist the FSA in action taken by the FSA against other individuals in criminal proceedings.

6.10 In fixing the penalty in this matter the FSA has taken into account the cooperation provided by Mr Ahmad in this matter and in related investigations. The FSA has also, in particular, taken into account the separate criminal action taken against Mr Ahmad as referred to in paragraph 6.4. In light of these factors the FSA has determined that, in this case, it is appropriate to limit the financial penalty to disgorgement of the benefit derived from his regulatory misconduct.

7. CONCLUSION

7.1. The FSA considers that because of the factors described above, it is appropriate to impose a financial penalty of £131,000 on Mr Ahmad.

8. DECISION MAKERS

8.1. The decision which gave rise to the obligation to give this Final notice was made by the Settlement Decision Makers on behalf of the FSA.

9. IMPORTANT

9.1. This Final Notice is given to Mr Ahmad under section 390 of the Act.

Manner and time for payment

9.2. The financial penalty must be paid in full by Mr Ahmad to the FSA by no later than 6 July 2010, 14 days from the date of this Final Notice.

If the financial penalty is not paid

9.3. If all or any of the financial penalty is outstanding on 7 July 2010, the FSA may recover the outstanding amount owed as a debt by Mr Ahmad to the FSA.

Publicity

- 9.4. 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 FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to Mr Ahmad or prejudicial to the interests of consumers.
- 9.5. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 9.6. For more information concerning this matter generally, you should contact David Malone (direct line: 020 7066 0870) or Fleur Eysenck (direct line: 020 7066 1956) at the FSA.

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Tracey McDermott

Head of Department

FSA Enforcement and Financial Crime Division

Annex A

Relevant Rules, Guidance and Other Regulatory Provisions

1. Decision Procedure and Penalties Manual

- 1.1. DEPP 6.1.2 G provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour. Financial penalties and public censures are therefore tools that the FSA may employ to help it to achieve its regulatory objectives.

DEPP 6.2 Deciding whether to take action

- 1.2. DEPP 6.2.4 G provides that the FSA may take disciplinary action against an approved person where there is evidence of personal culpability on the part of that approved person. Personal culpability arises where the behaviour was deliberate or where the approved person's standard of behaviour was below that which would be reasonable in all the circumstances at the time of the conduct concerned.
- 1.3. DEPP 6.2.6 G lists some additional considerations that may be relevant when deciding whether to take action against an approved person pursuant to section 66 of the Act, including:
- (1) The approved person's position and responsibilities. The FSA may take into account the responsibility of those exercising significant influence functions in the firm for the conduct of the firm. The more senior the approved person responsible for the misconduct, the more seriously the FSA is likely to view the misconduct, and therefore the more likely it is to take action against the approved person.
 - (2) Whether disciplinary action would be a proportionate response to the nature and seriousness of the breach by the approved person.

DEPP 6.5 Determining the appropriate level of financial penalty

- 1.4. DEPP 6.5.2 G lists a number of factors which may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act. The relevant factors are set out below.
- 1.5. When determining the appropriate level of penalty, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing

similar breaches, as well as demonstrating generally the benefits of compliant business (DEPP 6.5.2 G (1)).

- 1.6. The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached. Among the relevant considerations are the duration and frequency of the breach and the loss or risk of loss caused to consumers, investors or other market users (DEPP 6.5.2 G (2)).
- 1.7. The FSA will have regard to the extent to which the breach was deliberate or reckless. The FSA will regard as more serious a breach which is deliberately or recklessly committed. If the FSA decides that the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case (DEPP 6.5.2 G (3)).
- 1.8. The matters to which the FSA may have regard in determining whether a breach was deliberate or reckless include, but are not limited to, the following:
 - (a) whether the breach was intentional, in that the person intended or foresaw the potential or actual consequences of its actions; and
 - (b) whether the person has given no apparent consideration to the consequences of the behaviour that constitutes the breach.
- 1.9. When determining the amount of a penalty to be imposed on an individual, the FSA will take into account that individuals will not always have the resources of a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level (DEPP 6.5.2 G (4)).
- 1.10. A person's incentive to commit a breach may be greater where the breach is, by its nature, harder to detect. The FSA may, therefore, impose a higher penalty where it considers that a person committed a breach in such a way as to avoid or reduce the risk that the breach would be discovered, or that the difficulty of detection (whether actual or perceived) may have affected the behaviour in question (DEPP 6.5.2 G (7)).
- 1.11. The FSA may take the previous disciplinary record and general compliance history of the person into account. This will include whether the FSA has taken any previous disciplinary action against the person, and the general compliance history of the person (DEPP 6.5.2 G (9)).
- 1.12. The FSA and the person on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, DEPP 6.7 provides that the amount of the penalty which might otherwise have been payable will be reduced to reflect the stage at which the FSA and the person concerned reach an agreement (DEPP 6.5.2 G (13)).