
FINAL NOTICE

To: **Mr Anthony John Fitt**
Of: **25 Beach Crescent**
Littlehampton
West Sussex
BN17 5NT

Dated: **8 February 2005**

TAKE NOTICE: The Financial Services Authority ("the FSA") of 25 The North Colonnade, Canary Wharf, London E14 5HS gives you final notice about an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person

THE ORDER

The FSA gave you a Decision Notice dated 7 January 2005 which notified you that, for the reasons set out in that Notice, pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act") the FSA had decided to make an order prohibiting you, Anthony John Fitt, from performing any function in relation to any regulated activity carried on by any authorised person.

You have not referred the matter to the Financial Services and Markets Tribunal within 28 days of the date on which the Decision Notice was given to you.

Accordingly, for the reasons set out below, the FSA hereby makes an order pursuant to section 56 of the Act prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person. This order has effect from 8 February 2005.

REASONS FOR THE ORDER

Introduction

1. It appears to the FSA that you are not fit and proper to perform any function in relation to any regulated activity carried on by any authorised person because of your conduct, over a period of at least 11 years from 1993 while acting as a financial adviser and as principal of Financial Matters, in particular:
 - your failure to act with integrity by, among other things, deceiving your customers regarding their supposed investments and by continuing to manage their funds after your permission to do so had been withdrawn; and
 - your failure to deal with the FSA in an open and cooperative way and to disclose appropriately any information of which the FSA would reasonably expect notice, to the detriment of your clients.

Relevant Statutory Provisions

2. The FSA is authorised by the Act to exercise the powers contained in section 56 of the Act, which include the following:
 - “(1) *Sub-section (2) applies if it appears to the [Financial Services] Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.*
 - (2) *The Authority may make an order ('a prohibition order') prohibiting the individual from performing a specified function, any function falling within a specified description or any function.*
 - (3) *A prohibition order may relate to-*
 - (a) *a specified regulated activity, any regulated activity falling within a specified description or all regulated activities;*
 - (b) *authorised persons generally or any person within a specified class of authorised person.”*
3. When exercising its powers, the FSA seeks to act in a way it considers most appropriate for the purpose of meeting its regulatory objectives, which are set out in section 2(2) of the Act. The FSA considers that making a prohibition order against you in the terms indicated meets the following regulatory objectives:
 - (a) the market confidence objective: that is, maintaining confidence in the financial system, and
 - (b) the protection of consumers objective: that is, securing the appropriate degree of protection for consumers.

Relevant Guidance

4. In deciding to take this action, the FSA has had regard to guidance published in the FSA Handbook, in particular the Enforcement Manual, as follows:
- ENF 8.1.2 explains the purpose of prohibition orders in relation to the FSA's regulatory objectives;
 - ENF 8.4.2 concerns the scope of the FSA's power to make prohibition orders: they may be unlimited or they may be limited to specific functions in relation to specific regulated activities, depending on the reasons why the individual is not fit and proper and the severity of risk he poses to consumers or the market generally;
 - ENF 8.4.3 states that the FSA will consider all relevant circumstances, including whether other enforcement action has been taken;
 - ENF 8.8 states that the FSA will consider exercising its power to make prohibition orders against individuals who are neither approved persons nor employed by authorised persons where such individuals have shown themselves to be unfit to carry out functions in relation to regulated activities.
 - ENF 8.8.2A recognises that, where it is considering whether to exercise its powers to make a prohibition order against such an individual, the FSA will not have the option of considering the adequacy of other enforcement action and provides that it will consider the severity of the risk posed by the individual and may prohibit him where it considers that it is necessary to achieve the FSA's regulatory objectives;
 - ENF 8.8.3 states that, when determining the fitness and propriety of such an individual, the FSA will consider a number of factors including the criteria for assessing the fitness and propriety of approved persons set out in the Fit and Proper Test for Approved Persons.

The Fit and Proper Test for Approved Persons

5. Paragraph 1.3.1 of the Fit and Proper Test for Approved Persons ("FIT"), states that one of the three key criteria relevant to assessing the fitness and propriety of an approved person is an individual's honesty, integrity and reputation. In determining a person's honesty, integrity and reputation, the matters to which the FSA will have regard include whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation by the FSA.
6. Honesty, integrity and reputation relates to the individual's openness and honesty in dealing with regulators and consumers, and his ability to comply with the requirements and standards of the regulatory system. One factor to be taken into account by the FSA includes whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)).

The Statements of Principle and Code of Conduct for Approved Persons

7. The Statements of Principle and Code of Conduct for Approved Persons ("APER") set out the Statements of Principle in respect of approved persons and descriptions of

conduct which, in the opinion of the FSA, do not comply with a Statement of Principle. It further describes factors which, in the opinion of the FSA, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle.

8. The guidance provided in APER 3.1.3G stipulates that, when establishing compliance with, or a breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, the circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function. APER 3.1.4G provides guidance that an approved person will only be in breach of a Statement of Principle if he is personally culpable, that is in a situation where his conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.

9. Statement of Principle 1 provides that:

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

10. APER 4.1 lists types of conduct which do not comply with Statement of Principle 1. In particular, APER 4.1.3E states that deliberately misleading (or attempting to mislead) a client or the FSA is conduct which breaches Statement of Principle 1. APER 4.1.4E provides that this behaviour could include:

- *misleading a client about the risks of an investment;*
- *providing false or inaccurate information to the FSA;*
- *destroying, or causing the destruction of documents...relevant to misleading (or attempting to mislead) a client...or the FSA.*

11. APER 4.1.8E further states that deliberately preparing inaccurate records...in connection with a controlled function is conduct which breaches Statement of Principle 1. APER 4.1.9 E provides that this behaviour could include:

- *preparing performance reports for transmission to customers which are inaccurate or inappropriate.*

12. Statement of Principle 4 states that:

"An approved person must deal with the FSA and with other regulators in an open and cooperative way and must disclose appropriately any information of which the FSA would reasonably expect notice."

13. APER 4.4.9E gives examples of conduct which would not comply with Principle 4, and includes failing without good reason to:

- *inform a regulator of information of which the approved person was aware in response to questions from that regulator;*

- *attend an interview or answer questions put by the regulator, despite a request or demand having been made;*
 - *supply a regulator with appropriate documents or information when requested or required to do so or within the time limits attaching to that request or requirements.*
14. The FSA is of the view that these matters are all relevant to its assessment of your conduct and that they support the FSA's conclusion that you are not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person.

Facts and Matters Relied On

15. You have been the principal of a firm which traded under various names and which since September 1998 traded under the name of Financial Matters.
16. In the mid 1990s, you devised a scheme referred to as a Guaranteed Income Plan ("GIP") into which a number of your clients invested. The GIP was described to investors as a portfolio of cash and units trusts. However, the GIP offered a guaranteed interest rate and guaranteed a return of the capital invested. Interest could be "rolled over" with the investment or withdrawn as monthly income. Clients were not provided with documents of title showing where the GIP was invested.
17. The GIP was for an initial 5 year term but some clients extended their investments, on the same terms, to 31 December 2003.
18. Throughout the investment term up to and including 31 December 2003, you provided clients with annual valuation statements, produced on Financial Matters' letterhead, which showed the capital invested to be intact and, in appropriate cases, the interest "reinvested".
19. Following "maturity" of the GIP in December 2003, you failed to account to clients for monies due from their investments.
20. In March 2004, following complaints received from clients, the FSA commenced an investigation into your activities and those of Financial Matters and its associated companies, given concerns that client monies may have been handled when Financial Matters had no permission to do so.
21. You initially failed to cooperate in the investigation, stating that you were seriously ill. The investigation was further hampered by a lack of available client records, which you had destroyed in February 2004.
22. In a letter to the FSA dated 12 July 2004, and as subsequently confirmed in a taped interview with FSA investigators on 16 August 2004, you acknowledged that:
- you continued to act for clients in circumstances beyond the scope of Financial Matters' authorisation;

- you misled clients by failing to disclose the risks associated with the GIP and providing them with false information;
 - you deliberately destroyed your business records.
23. Many of your clients are elderly and retired. The FSA has been notified of 22 clients with unsatisfied claims totalling £823,758.

Conclusions

24. The facts and matters described above lead the FSA to the following conclusions:
- you have misled clients by failing to disclose the risks associated with the GIP and by providing false and inaccurate information about the performance of the GIP since at least December 2000;
 - you have misled clients by offering terms for dealing with the GIPs on "maturity" at 31 December 2003, knowing that these could not be fulfilled and by giving false information about your state of health and false accounts of your supposed meetings with the FSA;
 - you caused the destruction of all Financial Matters' records relating to the GIP;
 - you have misled the FSA by stating that you were terminally ill, by agreeing to be interviewed at your home on a date which you knew to be after that date of completion of the sale of that property and by failing subsequently to notify the FSA of your whereabouts;
 - you have failed to deal with the FSA in an open and cooperative way by failing to notify it of the destruction of your business records and by failing to comply with statutory notices of investigation and requirements to provide documents and information and to attend for interview to answer questions;
 - you have caused Financial Matters to exceed its scope of authorisation by operating a client money bank account and controlling client assets, when not permitted by the regulator to do so.
25. The severity of the risk you pose to consumers and to confidence in the market generally is such that it is necessary in order to achieve its regulatory objectives for the FSA to exercise its power to make a prohibition order against you in the terms proposed.

IMPORTANT

This Final Notice is given to you in accordance with section 390 of the Act.

Publicity

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 you or prejudicial to the interests of consumers.

The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA Contact

For more information concerning this matter generally, you should contact John Kirby at the FSA (direct line: 020 7066 1458/fax: 020 7066 1459).

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John Kirby
Manager - FSA Enforcement Division