
FINAL NOTICE

To: Andrew James Porter

Of: Fold Cottage
Off Dingle Lane
Rushton James
Nr Rushton Spencer
Macclesfield, Cheshire
SK11 0QY

Individual Ref. No: AJP01279

Date: 22 June 2011

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London, E14 5HS (“the FSA”) gives Andrew James Porter, final notice about an order prohibiting him from performing any function in relation to any regulated activity carried out by any authorised person, exempt person, or any exempt professional firm.

1. ACTION

- 1.1. The FSA gave Andrew James Porter a Decision Notice on 23 May 2011 (“the Decision Notice”) which notified Mr Porter that the FSA had decided to make a prohibition order against him, pursuant to section 56 of the Financial Services and Markets Act 2000 (“the Act”), to prevent him from carrying out any function in relation to any regulated activity carried on by any authorised person, exempt person, or exempt professional firm (“the Prohibition Order”) because he is not a fit and proper person.
- 1.2. Mr Porter has not referred the matter to the Upper Tribunal within 28 days of the date which the Decision Notice was given to him.
- 1.3. Accordingly, for the reasons set out below, the FSA has today made an order, pursuant to section 56 of the Act, prohibiting him from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. This order has effect from 22 June 2011

2. REASONS FOR THE ACTION

- 2.1. By its Decision Notice, the FSA gave notice that it had decided to take the action described above.
- 2.2. The FSA has concluded on the basis of the facts and matters described below that:
 - (1) Mr Porter, through Porter Insurance Brokers Limited (“Porter Insurance”) following receipt of payment from Companies A, B and C (clients of Porter Insurance), deliberately and knowingly underinsured these three clients of Porter Insurance, retaining the surplus money for his benefit;
 - (2) Mr Porter, through Porter Insurance, deliberately and knowingly exposed Companies A, B and C to the risk of significant financial loss by misleading them into paying for cover, which, unknown to them, was neither suitable nor appropriate for their business needs, leading them to be underinsured; and

(3) Mr Porter deliberately and knowingly falsified documentation in the names of Companies A, B and C to mislead those clients and recipient insurance companies.

2.3. The FSA considers Mr Porter's dishonest conduct to be serious because he abused the trust and confidence his clients and recipient insurance companies placed upon him, exposing the clients to significant financial losses. Mr Porter poses a risk both to consumers and to insurance companies, and to confidence in the financial system. Action should be taken against him in support of the FSA's reduction of financial crime, market confidence and consumer protection objectives.

2.4. The FSA considers that it is necessary and proportionate to exercise its power to make the Prohibition Order against Mr Porter for his conduct in relation to Companies A, B and C.

3. STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND POLICY

3.1. The relevant statutory provisions, regulatory requirements and policy referred to or relied upon are set out at Annex A.

4. FACTS AND MATTERS RELIED ON

A. Background

4.1. Porter Insurance was an insurance brokerage company established by Mr Porter in October 1991. He was the 100% shareholder of Porter Insurance and was its only general insurance broker for contracts covering personal business, motor and household insurance and placed commercial insurance for businesses. Porter Insurance employed four other permanent employees who had purely administrative roles and responsibilities within the business, but Mr Porter was responsible for and controlled all commercial business. All decisions of substance were made by him.

4.2. Porter Insurance dealt mainly with wholesale brokers rather than dealing directly with a particular insurer because of the size of the firms for which it was seeking to place insurance. Porter Insurance charged its clients a mixture of fees and commissions, but was remunerated mainly through commission.

- 4.3. On 14 January 2005, Mr Porter gained approval to hold controlled functions CF1 (Director) and CF8 (Apportionment and Oversight) and were responsible for insurance mediation at Porter Insurance. He held other controlled functions which were subsequently abolished on 1 November 2007 but gained approval to hold CF28 (Systems and controls) and CF29 (Significant management) functions. Mr Porter was, at all material times, the only approved person at Porter Insurance.
- 4.4. On the application of Porter Insurance, its permission granted to it pursuant to Part IV of the Act (“Part IV Permission”) was cancelled with effect from 4 December 2007.

B. Relationships between Porter Insurance and its product providers and intermediaries

Wholesale Broker D

- 4.5. Wholesale Broker D is an insurance broker providing smaller brokerage firms like Porter Insurance with direct and wholesale brokerage deals.
- 4.6. Porter Insurance had a business relationship with Wholesale Broker D since 1 September 2003. Mr Porter was the only person at Porter Insurance registered to have access to the Wholesale Broker D online service and he was provided with the online password. Between September 2003 and June 2006, Porter Insurance submitted 177 requests for quotes culminating in policies via the online system.
- 4.7. Wholesale Broker D’s online system does not allow a broker to obtain a quote for roofers or scaffolders. Wholesale Broker D’s main policy providers do not provide cover for people in either trade; a broker seeking cover for these clients would not be able to use the online system and would need to contact Wholesale Broker D’s sales team. The reason for this is that these two trades are considered to be too high a risk for the automated online system to cover without further investigation by Wholesale Broker D’s staff.
- 4.8. Proposed renewal terms from Wholesale Broker D were sent to Porter Insurance based on the same information Porter Insurance provided to Wholesale Broker D in the previous year for a client. Acceptance of those terms could not be done by telephone and, for commercial insurance, there was no automatic renewal. Because of the use of

the online system, none of the renewals with Wholesale Broker D involved direct contact with Wholesale Broker D's staff.

Insurer E: Tradesman's Scheme

- 4.9. Porter Insurance held a number of agency agreements with Insurer E and appeared to meet the acceptance criteria for an agency agreement. Insurer E's 'Self Employed Package' "SEP" product is designed for the self employed with up to five employees and who do not operate from business premises.
- 4.10. Insurer E set up a tradesman's scheme in 2003 with Wholesale Broker D and under the terms of the scheme a sub broker would obtain a quotation via Wholesale Broker D.
- 4.11. Insurer E arranged an underwriting guide for Wholesale Broker D. Wholesale Broker D would have to adhere strictly to the contents of the Rating and Underwriting Guide ("the Guide") and Wholesale Broker D was granted authority to quote and cover and it would be responsible for issuing policy documentation and complete policy records. If the particular trade was not listed, a full risk presentation would have been required. The Guide specifically referred to the current policy wording for the full definition of "Builder".
- 4.12. 'Industrial roofing and cladding' does not fit into any of the trade descriptions given in the Guide and falls outside the acceptance criteria. This risk could not have been written under the Guide. Full details regarding these risk proposals would need to be obtained from Wholesale Broker D.

C. Misrepresentation of insurance cover

Company A

Premiums

- 4.13. Company A is a small company which specialises in industrial roofing and cladding refurbishment. It was founded by Mr A who is the company's only director. Mr A's clients are mainly industrial businesses.

- 4.14. Mr A placed Company A's Combined Liability and Contract Works policies through Porter Insurance from 2004 to 2007. Prior to taking out the Combined Liability and Contracts Work policy with Porter Insurance, Mr Porter sent a detailed questionnaire to Mr A. In the questionnaire, Mr A outlined the work that Company A undertook and what cover it required. Mr A also described Company A as roofing and cladding contractors and gave details of the turnover and labour charges. The full description of the business was "*roofing and cladding contractor*" and the types of work it was engaged in were described as "*all types of industrial roofing and cladding*".
- 4.15. Mr A sent Porter Insurance the questionnaire by fax on Company A's letterhead which read "*[Company A] - Specialists in Roofing and Cladding Refurbishment*". Mr A also informed Mr Porter over the telephone as to the nature of Company A's work/business. The questionnaire was dated 7 January 2004 and covered the 2004/2005 period of insurance.
- 4.16. From 2004 to 2007, Mr Porter obtained quotes and purchased cover for Company A via Wholesale Broker D. During this period Mr A received documents from Porter Insurance and the documents stated what the overall premium price or renewal price of the Combined Liability and Contracts Works would be.
- 4.17. On 1 February 2004, Mr Porter submitted an application form via Wholesale Broker D describing Company A as "*Builder*". The information provided by Mr A to Porter Insurance in the questionnaire of 7 January 2004 was different to the information provided by Porter Insurance to Wholesale Broker D on 1 February 2004. This information allowed Wholesale Broker D to place cover for Company A for the lower risk trade described as "*Builder*" rather than the higher risk trade of "*Roofing and Cladding*" which Company A required.
- 4.18. Mr A informed the investigation team that he thought that the premiums charged by Mr Porter was similar to the prices quoted by other brokers offering cover for industrial roofers and cladders. Mr A also thought the prices Mr Porter had quoted were market competitive.
- 4.19. This was the first application form Mr Porter submitted to Wholesale Broker D after which all policies followed the renewal procedure. In subsequent years he placed the

same cover for Company A using the same insurance provider, business description, business name and business address as in the original 2004 application to Wholesale Broker D.

- 4.20. The discrepancies between the cost of the product purchased/cover obtained by Mr Porter and the price paid/cover required by Company A for those policies were substantial.
- 4.21. The premium Mr Porter charged Company A was significantly higher than the premium charged by Wholesale Broker D for cover as “*Builder*” and the cover he placed was wholly inadequate for Company A’s needs, leaving it severely underinsured for a firm of roofers and cladders.
- 4.22. Insurer E had confirmed that industrial roofing and cladding does not fit into any of the trade descriptions given in the Guide Insurer E had arranged for Wholesale Broker D and falls outside the acceptance criteria. This risk could not therefore have been written under the Guide.

Falsified documents and non-disclosure of policy documentation

- 4.23. The FSA considered three insurance schedules issued for Company A for each of the 2005/2006 and 2006/2007 periods. The cover/limits from renewal were unchanged from the previous year. These three insurance schedules, namely, the insurance schedule found in Mr Porter’s file, the insurance schedule provided to Mr A by Mr Porter, through Porter Insurance, and the insurance schedule sent to Porter Insurance by Wholesale Broker D were not, as they should have been, identical. Mr A had not seen the inaccurate description of his business.
- 4.24. Mr A had requested cover for ten manual operatives. The Renewal Notice and Statement of Fact both referred to four manual workers. The insurance schedules listed the number of workers as “*four*”.
- 4.25. Mr A informed the FSA that he trusted that Mr Porter was placing the correct cover on his behalf.

Company B

Premiums

- 4.26. Company B is a small industrial roofing and steel frame specialist company that carries out building and roofing refurbishment work. It also does new building work. It was founded by Mr B and his wife. They are Company B's only directors. Company B's clients are major building contractors or the owners of the buildings where the work is to be undertaken.
- 4.27. Mr B placed Company B's Combined Liability and Contract Works policies through Porter Insurance from 2003 to 2006. Mr B contacted Porter Insurance in or around April 2003 and asked Mr Porter to provide a quote. Prior to taking out the Combined Liability and Contracts Work policy with Porter Insurance, Mr Porter sent a detailed questionnaire to him.
- 4.28. Mr B informed Mr Porter over the telephone of the work that Company B did and, at Mr Porter's request, Mr B completed a proposal form. The proposal form was dated 25 April 2003 and covered the 2003/2004 period of insurance. Mr B described his trade or business as "industrial building company steel frame and cladding" on the proposal form. Mr B stated that Mr Porter would have had to rely on the details contained in this proposal form in order to obtain quotes/cover for Company B during the 2003 to 2006 period.
- 4.29. From 2003 to 2007, Mr Porter obtained quotes and purchased cover for Company B via Wholesale Broker D. During this period Mr B received documents from Porter Insurance, and the documents stated what the overall premium price of the Combined Liability and Contracts Work policies would be.
- 4.30. Regarding policy renewals, Mr Porter's practice was to contact Mr B and ask if all the details remained the same. Alternatively, Mr B would contact him and update details if any change had taken place. Otherwise, Mr Porter relied on the information provided to him by Mr B in the application form. In subsequent years he placed the same cover for Company B using the same insurance provider, business description, business name and business address as in the original application to Wholesale Broker D.
- 4.31. On 29 April 2004, Mr Porter submitted an application form via Wholesale Broker D describing Company B as "*Builder*". The information provided by Porter Insurance to

Wholesale Broker D on 29 April 2004 should have been identical to the information provided by Mr B to Porter Insurance in the application form of 25 April 2003 unless Mr Porter had been notified by Mr B that information had changed. Mr Porter was not notified of any changes to the application form. The information Mr Porter provided to Wholesale Broker D on 21 April 2004 allowed him to place cover for Company B for the lower risk trade described as “*Builder*” rather than the higher risk trade of “*Industrial Roofing, Building and Steel Frame Specialist*”, which Company B required.

- 4.32. The discrepancies between the cost of the product purchased/cover obtained by Mr Porter and the price paid/cover required by Company B for those policies was substantial. The premium Mr Porter charged Company B was significantly higher than the premium charged by Wholesale Broker D for cover as “*Builder*” and the cover he placed was wholly inadequate for Company B’s needs leaving it severely underinsured for a firm of Industrial Roofers, Builders and Steel Frame Specialists.

Falsified documents and non-disclosure of policy documentation

- 4.33. The FSA considered three insurance schedules issued for Company B for each of the 2005/2006 and 2006/2007 periods. The cover/limits from renewal were unchanged from the previous year. These three insurance schedules, namely, the insurance schedule found in Mr Porter’s file, the insurance schedule provided to Mr B by Porter Insurance and the insurance schedule sent to Porter Insurance by Wholesale Broker D were not, as they should have been, identical. Mr B had not seen the inaccurate description of his business.
- 4.34. The premiums Mr Porter charged Company B were significantly higher than the premium charged by Insurer E for cover as “*Builder*” and the cover he placed was wholly inadequate for Company B’s needs, leaving it severely underinsured.

Company C

- 4.35. Company C is a company which handles domestic and industrial oil equipment including installing, maintaining and decommissioning domestic and industrial oil tanks and works. Mr C is Company C’s co-owner, with his wife, and the only director.

- 4.36. Mr C placed Company C's Combined Liability and Contract Works policies through Porter Insurance from 2002 to 2007. Prior to taking out the insurance policies through Porter Insurance, Mr C informed Mr Porter that Company C was a company that worked on domestic and industrial installation and decommissioning of oil tanks and oil works such as petrol stations. Mr C told Mr Porter that Company C needed cover that included work on the railways. He completed an application form relating to Company C's business/work and faxed it to Porter Insurance. The application form was dated 8 May 2003 and covered the 2003/2004 period of insurance.
- 4.37. Porter Insurance held a number of agency arrangements with Insurer E and Mr Porter placed Company C's cover directly with Insurer E through an agency arrangement.
- 4.38. Regarding policy renewals, Mr Porter's practice was to ask Mr C what Company C's turnover was for the previous year and if there were any changes to the details. He informed Mr C that Porter Insurance did not require any additional information to obtain a quote. Mr C received his documents from Porter Insurance, never direct from Insurer E.
- 4.39. Insurer E provided the FSA with a copy of the application form sent to it by Mr Porter. The application form related to Company C's insurance requirements, was signed by Mr Porter on behalf of Company C and dated 16 June 2003. Its format appeared identical to the application form completed by Mr C on 8 May 2003. It also covered the same period of insurance as detailed in the questionnaire completed by Mr C.
- 4.40. The information provided by Mr C to Porter Insurance in the application form dated 8 May 2003 (a number of activities to do with pollution such as removal and cleaning of oil tanks) was different to the information provided by Porter Insurance to Insurer E on 16 June 2003 ("*Landscape Gardeners*"). This information allowed him to place cover for Company C as "*Landscape Gardeners*".
- 4.41. From 2003 to 2007 Mr Porter placed Company C's cover as Landscape Gardeners under a 'Self Employed Package' ("SEP") policy provided by Insurer E. The SEP is designed for the self employed with up to five employees and who do not operate from business premises. Insurer E placed cover for Company C as Landscape Gardeners under the SEP following submission of the new application form on 16 June 2003.

Insurer E stated that this type of risk could not be written under a SEP policy and could not say whether the underwriters would have been prepared to take the risk at all.

- 4.42. In subsequent years Mr Porter placed the same cover for Company C with the same insurance provider and used the same business description, business name and business address as in detailed in the original application form to Insurer E dated 16 June 2003. In September 2005, Porter Insurance arranged for an endorsement to be made to the Company C's insurance policy. The premium price was £51.90 and the premium charged to Company C was £1050.00.
- 4.43. The premiums Mr Porter charged Company C were significantly higher than the premium charged by Insurer E for cover and the cover he placed was wholly inadequate for Company C's needs, leaving it severely underinsured.
- 4.44. Mr C informed the investigation team that the premiums charged by Mr Porter for the policies which he thought met his business needs were substantially cheaper than the prices quoted by other brokers. However, the premiums Mr Porter charged Company C were significantly higher than the premiums charged by Insurer E for cover as Landscape Gardeners and the cover he placed was wholly inadequate for Company C's needs leaving it severely underinsured.

5. ANALYSIS OF BREACHES

- 5.1. By reason of the facts and matters set out in section 4C (Misrepresentation of insurance cover), the FSA has concluded that Mr Porter is not fit and proper to perform any functions in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm in that, through his insurance intermediary Porter Insurance, he:
 - (1) provided false and inaccurate information to Companies A, B and C with the purpose of misleading them into believing that he had arranged adequate insurance cover on their behalf;

- (2) deliberately and knowingly provided false and inaccurate information to Wholesale Broker D with the purpose of misleading it into providing inadequate insurance cover for Companies A, B and C; and
- (3) deliberately and knowingly provided false and inaccurate information to Insurer E with the purpose of misleading it into providing inadequate insurance cover for Companies A, B and C.

5.2. The FSA considers this misconduct to be extremely serious because Mr Porter abused the trust and confidence his clients and recipient insurance companies placed upon him exposing them to significant financial losses.

6. MR PORTER'S REPRESENTATIONS

6.1. In Mr Porter's written representations received by the FSA on 18 March 2011, he said that he accepted the factual allegations in relation to Companies A, B and C and accepted that an order restricting his activities was inevitable.

The mitigating factors relating to Companies A, B and C

- 6.2. Mr Porter said that compulsory regulation of insurance brokers only began after some of the facts alleged occurred; in relation to Company B, it was relevant to see what was covered by 'builders any other work'; and for the purposes of these proceedings he did not seek to put a 'positive case' in relation to Companies A, B and C.
- 6.3. On the basis of the passages in EG 9.1 and 9.4 relating to the power of the FSA to restrict functions (rather than prevent the performance of any function) and the power to make a range of prohibition orders, and on general principle, Mr Porter said that a complete prohibition would be disproportionate. He referred to other cases resulting in a complete prohibition which he said were 'not in the same category'.
- 6.4. Mr Porter said that an order prohibiting him from carrying out management functions of acting as a principal would be sufficient. The FSA should consider whether it was minded to revoke the order on Mr Porter's application in the future in the absence of new evidence that he was not fit and proper (as EG 9.6 indicated that the FSA may do). Mr Porter relied on a number of factors personal to him, including that he had 'learned his lesson'.

- 6.5. In his oral representations made on 11 May, Mr Porter repeated that his acceptance of the facts alleged in this matter was for the purposes of these proceedings only.
- 6.6. Both his written representations and his oral representations referred to matters no longer relevant to this notice on which the FSA makes no findings.

7. FINDINGS

- 7.1. In the light of Mr Porter's admissions, the question for the FSA was whether it should prohibit him, without restriction, from performing any function in the future in relation to regulated activities. The FSA acknowledges that Mr Porter admits the conduct for the purposes of these proceedings only and accepts that an order restricting his activities is inevitable. Mr Porter invited it to permit him to continue activity in the financial services sector prohibiting him only from carrying out management functions or acting as a principal. And Mr Porter invited it to consider indicating whether it would consider revoking the order in the future in the absence of new evidence as to his lack of fitness and propriety.
- 7.2. The FSA is satisfied that Mr Porter is not a fit and proper person to perform functions, any functions, in relation to a regulated activity now, and that there is no evidence to suggest that he will be regarded as fit and proper to perform a function in relation to a regulated activity in the foreseeable future.

The importance of the role of the insurance broker

- 7.3. Business in the insurance sector depends on trust: trust in the insured disclosing material matters, trust in the brokers honestly discharging their functions and trust in the insurers providing effective cover. If individuals or companies believe they are insured when they are not, the matter is serious. Offences may be committed and if the risk crystallises the liability may be very high. The central figure is the broker. If the broker dishonestly arranges cover for the wrong risk, omits to arrange cover for a risk, falsifies documents or otherwise distorts the basis on which business is conducted, all directly involved are put at risk and confidence in the market reduced. The FSA views the function of the broker as critical to all concerned.

The recognition of wrongdoing

- 7.4. For an individual to abuse the position of trust to the extent that Mr Porter has and then to be permitted to continue to work in insurance would require a considerable degree of remorse on the part of the individual. In Mr Porter the FSA finds very little. In his written representations, Mr Porter said that he had ‘learned the lesson’. However, there was nothing in his conduct during the investigation that demonstrated that this was the case. And there was nothing during Mr Porter’s oral representations that could give the FSA any degree of comfort that he understood that what he had done was wrong. There was nothing that could give the FSA any degree of satisfaction that he is or would be in the foreseeable future a fit and proper person to discharge the trust that would be placed in him.

Conclusion

- 7.5. Taking into account the importance of the role of the insurance broker, the significance of his misconduct, Mr Porter’s failure to demonstrate any appreciation of the misconduct and the risk to the FSA’s statutory objectives, the FSA is satisfied that it should exercise its power, without qualification, to prohibit him from performing any function in relation to a regulated activity.

8. CONCLUSION

- 8.1. Having regard to the seriousness of the breaches and the risk posed to customers the FSA considers it to be appropriate to make the prohibition order.

9. DECISION MAKER

- 9.1. The decision which gave rise to the obligation to give this notice was made by the Regulatory Decisions Committee.

10. IMPORTANT

- 10.1. This Final Notice is given to Mr Porter under section 390 of the Act.

Publicity

- 10.2. 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 Porter or prejudicial to the interests of consumers.

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

FSA Contact

- 10.4. For more information concerning this matter generally, please contact Paul Howick of the Enforcement and Financial Crime Division at the FSA (direct line: 020 7066 7954, or e-mail: paul.howick@fsa.gov.uk).

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Tom Spender

Head of Department

FSA Enforcement and Financial Crime Division

ANNEX A

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

1. FSA's policy for exercising its power to make a prohibition order

- 1.1. The FSA's approach to exercising its powers to make prohibition orders is set out at Chapter 9 of EG. EG 9.1 states that the FSA's power under sections 56 of the Act helps it work towards achieving its regulatory objectives. The FSA may exercise this power where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform. EG 9.2 states that the FSA may prohibit an approved person where it considers this is appropriate.
- 1.2. EG 9.4 sets out the general scope of the FSA's powers in this respect, 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. EG 9.5 provides that the scope of a prohibition order will vary according to the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally.
- 1.3. In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provides guidance. In particular, EG 9.8 states that the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw that person's approval or both. In deciding whether to withdraw approval and/or make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.
- 1.4. EG 9.9 states that the FSA will consider all the relevant circumstances when deciding whether to make a prohibition order against an approved person. Such circumstances include, but are not limited to, the following:
 - (1) the matters set out in section 61(2) of the Act;
 - (2) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety are set out in the section of the FSA Handbook entitled "The Fit and Proper Test for Approved Persons" ("FIT"), in particular in FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
 - (3) whether, and to what extent, the approved person has:
 - (a) failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons; or
 - (b) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules);
 - (4) the relevance and materiality of any matters indicating unfitness;
 - (5) the length of time since the occurrence of any matters indicating unfitness;

- (6) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates; and
- (7) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

1.5. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order. The examples include:

- (1) severe acts of dishonesty, for example those which may have resulted in financial crime; and
- (2) serious breaches of the Statements of Principle and Code of Practice for Approved Persons, such as providing misleading information to clients, consumers or third parties.

2. The Fit and Proper Test for Approved Persons

2.1. The purpose of FIT is to outline the criteria for 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.

2.2. In this instance the criteria set out in FIT are relevant in considering whether the FSA may exercise its powers to make a prohibition order against an individual, in accordance with EG 9.9.

2.3. FIT 1.3 provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. One of the most important considerations will be the person's honesty, integrity and reputation.

2.4. In determining a person's honesty, integrity and reputation, FIT 2.1 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G, which include:

- (1) whether the person has contravened any of the requirements and standards of the regulatory system or the equivalent standards or requirements of other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies; (FIT 2.1.3 G (5)); and
 - (2) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT 2.1.3 G (13)).
-