Financial Services Authority

FINAL NOTICE

To: **Asif Habib Malik**

D.O.B: **25 January 1970**

Date: **12 November 2007**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the "FSA") gives you final notice about a decision to make a prohibition order against you

1. ACTION

1.1. The FSA gave you a Decision Notice on 11 October 2007 which notified you that pursuant to section 56 of the Financial Services and Markets Act 2000 (the "Act"), the FSA has decided to make a prohibition order against you, Asif Habib Malik, to prevent you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm (the "Prohibition Order").

1.2. You confirmed in an agreement dated 24 October 2007 that you will not be referring the matter to the Financial Services & Markets Tribunal.

1.3. Accordingly, for the reasons set out below, and having agreed with you the facts and matters relied on, the FSA hereby makes the Prohibition Order against you.

2. REASONS FOR THE ACTION

2.1. On the basis of the facts and matters and conclusions set out below (described in the Warning Notice issued to you on 23 August 2007 and in the Decision Notice) the FSA has concluded:

(1) that you are not a fit and proper person on the basis that certain elements of your conduct demonstrate a very serious lack of competence and capability, whilst other elements demonstrate a lack of integrity; and

(2) having regard to its regulatory objectives, including the severity of the risk that you pose to consumers and to confidence in the market generally, it is necessary for the FSA to exercise its power to make the Prohibition Order against you.

3. RELEVANT STATUTORY PROVISIONS AND REGULATORY RULES

Relevant 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. The FSA's power to make a prohibition order is set out at Section 56 of the Act, which provides that the FSA may prohibit an individual from performing functions in relation to a regulated activity carried on by an authorised person. Such an order may be made:

(1) In relation to a specified function, a class of function or any function; and

(2) In relation to authorised persons generally or a class of authorised persons.

3.3. Section 56(1) of the Act provides that the FSA may make a prohibition order if it appears to the FSA that the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.

Relevant guidance and rules

3.4. The FSA's policy in relation to prohibition orders is set out in Chapter 8 of the Enforcement Manual of the FSA Handbook ("ENF"). ENF 8.4 summarises the FSA's policy on making prohibition orders and the circumstances under which Enforcement will consider recommending such action. In particular ENF 8.4.2G provides that:

(1) The FSA will have power to make a range of prohibition orders depending on the circumstances of the case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant (ENF 8.4.2G(1));

(2) Depending on the circumstances of the case, the FSA may seek to prohibit individuals from carrying out any class of relevant function in relation to any regulated activity, or it may limit the prohibition order to specific functions in relation to specific regulated activities. The FSA may also make an order prohibiting an individual from being employed by a particular firm, type of firm or any firm. (ENF 8.4.2G(2)); and

(3) The scope of a prohibition order will depend on the range of functions which the individual concerned carries out in relation to regulated activities, the reasons why he is not fit and proper and the severity of the risk which he poses to consumers or the market generally (ENF 8.4.2G(3)).

3.5. ENF 8.6.1AG provides that where the individual concerned is not an approved person the FSA will not have the option of withdrawing approval, that the FSA will consider the severity of the risk posed by the individual and that it may prohibit the individual where it considers it necessary to achieve the FSA's regulatory objectives.

3.6. Pursuant to ENF 8.6.2G and ENF 8.5.2G, the factors that the FSA will consider when deciding whether to exercise its power to make a prohibition order against an individual who is no longer an approved person (as detailed below you previously held a number of controlled functions at MYLA). The relevant factors to this matter include:

(1) Whether the individual is fit and proper to perform functions in relation to regulated activities (criteria for assessing which are contained in the FIT

provisions of the FSA's Handbook). This includes an individual's openness and honesty in dealing with consumers, market participants and regulators and ability and willingness to comply with the requirements placed on him by or under the Act as well as with other legal and professional obligations and ethical standards (ENF 8.5.2G(1)(a));

(2) Whether and to what extent the previously approved person has (a) failed to comply with the Statements of Principle ("APER"); 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) (ENF 8.5.2G(2));

(3) the relevance, materiality and length of time since the occurrence of any matters indicating unfitness (ENF 8.5.2G(3)); and

(4) The severity of the risk which the individual poses to consumers and to confidence in the financial system (ENF 8.5.2G(5)).

Fit and Proper test for approved persons

3.7. The FSA has issued specific guidance on the fitness and propriety of individuals in the Fit and Proper test for Approved Persons ("FIT").

3.8. FIT identifies three criteria as being the most important considerations (FIT 1.3.1G), including:

(1) Honesty, integrity and reputation (FIT 2.1); and

(2) Competence and capability (FIT 2.2.);

3.9. In determining the first of these criteria (an individual's honesty, integrity and reputation) the guidance at FIT 2.1.1G provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G which may have arisen either in the United Kingdom or elsewhere.

3.10. FIT 2.1.3G provides the matters that the FSA will have regard to include but are not limited to:

(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, clearing houses and exchanges, professional bodies, or government bodies or agencies (FIT 2.1.3G(5)); and,

(2) whether, in the past, the person has been candid and truthful in all of 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 2.1.3G(13)).

APER

3.11. As set out in ENF 8.6.2G and 8.5.2G(2), as you were previously an approved person, the Statements of Principle in respect of approved persons ("APER") are relevant. APER also sets out descriptions of conduct which, in the opinion of the FSA, do not comply with the Statements 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.

3.12. The guidance set out 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 the course of conduct was undertaken, the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.

3.13. APER 3.1.4G states that an approved person will only be in breach of a Statement of Principle if he or she is personally culpable, that is in a situation where his or her conduct was deliberate or where his or her standard of conduct was below that which would be reasonable in all the circumstances.

Statement of Principle 1

3.14. Statement of Principle 1 states that:

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

3.15. APER 4.1 lists examples of the type of conduct which does not comply with Statement of Principle 1. Deliberately misleading (or attempting to mislead) by act or omission the FSA, or a client, is conduct which, in the opinion of the FSA, does not comply with Statement of Principle 1 (APER 4.1.3E).

Statement of Principle 2

3.16. Statement of Principle 2 states that:

"An approved person must act with due skill, care and diligence in carrying out his controlled function."

3.17. APER 4.2.2E lists types of conduct which do not comply with Statement of Principle 2. Failing to provide adequate control over a client's assets falls within APER 4.2.2E, which includes, but is not limited to, failing to segregate client assets and failing to process client payments in a timely manner (4.2.11E and 4.2.12E).

Statement of Principle 4

3.18. 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."

3.19. APER 4.4 lists types of conduct which do not comply with Statement of Principle 4. Failing to report promptly in accordance with the firm's internal procedures (or if none exist direct to the FSA), information which it would be reasonable to assume would be of material significance to the FSA, whether in response to questions or otherwise is conduct, which in the opinion of the FSA, does not comply with Statement of Principle 4 (APER 4.4.4E). There is no duty on an approved person to report such information directly to the FSA unless he is one of the approved persons responsible within the firm for reporting matters to the FSA (APER 4.4.5G).

Statement of Principle 7

3.20. Statement of Principle 7 states that:

"An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system."

3.21. A *"significant influence function"* is defined in the Glossary of the Handbook as meaning any of the controlled functions 1 to 20 listed in the table of controlled functions under Rule 10.4.5R of the Supervision Manual.

3.22. Each significant influence function is one which is likely to result in the person responsible for its performance exercising a significant influence on the conduct of the firm's affairs so far as relating to its regulated activities.

3.23. APER 4.7 states the conduct which, in the opinion of the FSA does not comply with Statement of Principle 7. These include:

(1) Failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of its regulated activities. In the case of an approved person who is responsible under SYSC 2.1.3R(2), with overseeing the firm's obligation under SYSC 3.11R, failing to take reasonable care to oversee the establishment and maintenance of appropriate systems and controls.

(2) Failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulatory system in respect of its regulated activities.

(3) Failing to take reasonable steps adequately to inform himself about the reason for significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system in respect of its regulated activities may have arisen (taking account of the systems and procedures in place).

3.24. The guidance at APER 4.7.11G states that the FSA expects an approved person performing a significant influence function to take reasonable steps both to ensure the firm's compliance with the relevant requirements and standards of the regulatory system and to ensure that all staff are aware of the need for compliance.

Client Asset Rules ("CASS")

3.25. CASS 5.2.3R provides that a firm must not agree to:

(1) deal in investments as agent for an insurance undertaking in connection with insurance mediation activity; or

(2) act as agent for an insurance undertaking for the purpose of settling claims or handling premium refunds; or

(3) otherwise receive money as agent of an insurance undertaking unless:

(4) it has entered into a written agreement with the insurance undertaking to that effect.

3.26. Even if MYLA had had permission to hold client money after authorisation (which it did not), it would have had to ensure that client money was kept separate from the firm's own money (as required by CASS 5.3 to 5.6R).

4. FACTS AND MATTERS RELIED ON

Background

4.1. MYLA is a general insurance intermediary business (founded in February 1999 by Mr Michael Young and incorporated as MYLA in April 2000). It is based in Manchester and provides legal expenses insurance policies.

4.2. The legal expenses insurance includes after-the-event insurance policies. An after-the-event ("ATE") insurance policy is taken out by a claimant or potential claimant after a loss, such as a personal injury, has been suffered and a decision has been made to make a claim for damages for that loss from a defendant. The policy will cover the legal costs of the claimant should the claim be unsuccessful.

4.3. MYLA has two different types of underwriting scheme for which it is intermediary. Firstly, a bespoke scheme under which MYLA assesses the individual risks of a client's circumstances and takes a view as to whether those risks should be recommended for cover by an underwriter. Secondly, a fast track delegated scheme where a panel of solicitors, who were given delegated authority by MYLA, bound business on behalf of MYLA and the associated underwriter. These solicitors were selected by MYLA and were restricted to binding fast track actions with claims valued at less than £15,000. Both types of scheme require submission of regular bordereaux (i.e. policy information) to the underwriters.

4.4. MYLA was authorised from 14 January 2005 when the FSA became responsible for regulating general insurance intermediaries. MYLA is authorised to conduct the following regulated activities:

(1) Agreeing to carry on a regulated activity; and

(2) Dealing in investments as agent,

in the category of insurance mediation.

MYLA has a requirement imposed on it not to hold client money.

4.5. You joined MYLA in 2001 and were appointed as Director and Company Secretary on 1 April 2002 (pursuant to the Companies Act 1985). You were one of two directors until your resignation effective March 2006, the other being Michael Young ("Mr Young"). Therefore, you had a duty to act in the best interests of the company and had collective responsibility at director level for the company's business.

4.6. You were an approved person and held the following controlled functions between 14 January 2005 and 17 February 2006:

(1) CF1 Director

(2) CF8 Apportionment and Oversight

(3) CF13 Finance

(4) CF14 Risk Assessment

(5) CF15 Internal Audit

(6) CF17 Significant Management (Other Business Operations)

(7) CF19 Significant Management (Financial Resources);

and Responsible for Insurance Mediation.

4.7. By virtue of you being allocated the responsibility for insurance mediation you were, from 14 January 2005 at the latest, responsible for the production and submission of bordereaux (schedules of issued policies giving details such as the level of premium and the amount of insurance premium tax due) even if you did not compile them yourself.

4.8. Your role at MYLA covered "*the whole spectrum of financial activity*" and included liaising with MYLA's underwriters in respect of financial matters.

4.9. You voluntarily applied to have your approved status withdrawn in March 2006 following your resignation from MYLA. The FSA granted your application with an effective date of 17 February 2006.

Background

4.10. In October and November 2004, the FSA received information from two sources stating that MYLA was failing to place business on risk with an underwriter and raising concerns over MYLA's systems and controls; claiming that MYLA was deliberately issuing policy certificates in the names of underwriters after the binding agreement with those underwriters had expired. Further information received in February 2005 related to concerns that MYLA was still purporting to have an agreement with an underwriter when it had expired.

4.11. As a result, the FSA arranged to visit MYLA in March 2005 at which it was indicated that a binding agreement was in place with an underwriter based in New Zealand, Contractors Bonding Limited ("CBL"), and an unsigned copy of an agreement was presented to the FSA at that meeting. The FSA was informed that the Managing Director of MYLA, Mr Young, was in New Zealand meeting with CBL on 11 March 2005.

4.12. Subsequent to the visit, the FSA wrote to MYLA in March and April 2005 asking for a signed copy of the agreement with CBL. On 9 May 2005, MYLA provided a claim care Legal Expenses Insurance Schedule for CBL but no signed binding agreement.

4.13. In June 2005, the FSA again wrote to MYLA requesting a signed copy of the binding agreement with CBL.

4.14. On 13 June 2005, Mr Young stated that there was "*bound business*" between MYLA and CBL on a "*mutual understanding*" while parties agreed the distribution of premium, the commission structure and other details of the scheme. Mr Young stated that he envisaged "*that the agreement shall now be finalised soon"*. This was the first occasion that MYLA had confirmed to the FSA that there was no concluded agreement in place with CBL. On 14 July 2005, SFD wrote to MYLA expressing concern that the agreement was not concluded and provided a deadline of 31 July 2006, after which the FSA would contact CBL directly.

4.15. In early August 2005, the agreement between MYLA and CBL was still not signed. Mr Young requested more time and stated that CBL had agreed to provide cover in the interim period. The FSA requested written evidence of the interim cover. In view of the concerns arising out of MYLA's purported indemnity cover with CBL, an investigation was commenced by the FSA into MYLA in September 2005.

Chronology of Key Events

Underwriting Cover and Premiums

4.16. The FSA found that MYLA had issued insurance policies to customers in the following substantial periods of time when no underwriting cover was in place:

(1) July 2003 – March 2004; and

(2) September 2004 – November 2005.

NIG

4.17. MYLA initially had a binding agreement with National Insurance and Guarantee Corporation Limited ("NIG") between 13 January 2000 and 30 June 2003. The agreement was terminated by NIG by written notice given to MYLA on 3 June 2003

and, again, on 26 September 2003 with an effective date of 30 June 2003. The notice of termination was provided in accordance with the termination clause in the original agreement. The reason provided by NIG for the termination was due to strategic review of the ATE Legal Expenses insurance business.

4.18. MYLA continued to place business in the name of NIG as underwriter until February 2004 despite the termination. However, MYLA did not pass on any further premiums or bordereaux in relation to new policies to NIG after 30 June 2003. You have admitted you knew that client premiums were not being passed on to NIG after June 2003, stating that you relied on Mr Young's assurances that monies were being offset with NIG's agreement and knowledge. The bordereaux were not revealed to NIG until NIG was given the opportunity to review and inspect the records which were the subject of an injunction granted in October 2004. NIG has stated that, of the 9201 policies issued by MYLA in the name of NIG, approximately 2300 were written after the date of termination.

4.19. On 1 April 2004 a representative of NIG (who was unaware of NIG's termination in June 2003) attended the offices of MYLA to discuss routine operational issues. At this meeting you told the representative of NIG that MYLA had authority to place business with NIG until 31 December 2003, and had an arrangement in place to use the excess policy allocation.

4.20. NIG sought an injunction against MYLA in the High Court which was granted on 18 October 2004, The reasons for the injunction against MYLA were, in summary and inter alia, for MYLA (following the termination by NIG): purporting to grant delegated authority to panel solicitors in breach of the agreed terms (i.e. using non-standard wording and for matters other than fast track disputes); purporting to incept policies and continuing to delegate authority to panel solicitors following termination; and, holding itself out to a panel solicitor as agent for NIG.

4.21. On 9 November 2004, the solicitors acting for NIG wrote to one of the panel solicitors stating that MYLA could no longer act as agent for NIG, and was followed by a further letter on 15 November 2004 confirming that MYLA could no longer act as funding intermediary for NIG.

4.22. On 23 November 2004, solicitors instructed by MYLA wrote a letter to the panel solicitors stating that it was MYLA's position that MYLA was fully and properly authorised by NIG for the period in which the policies were issued. The letter also indicated that, at the date of the letter, MYLA was still authorised to act as agent in issuing non-NIG policies. However, as stated below, as at November 2004, the underwriting agreement between MYLA and another underwriter, IGI Insurance Company Limited ("IGI"), had been terminated by IGI in September 2004 and, therefore, MYLA had no underwriting cover in place at that time despite representing that it did.

4.23. You informed the FSA that the agreement with NIG ran until March 2004. However you failed to inform the FSA that NIG was disputing this and had brought injunction proceedings in October 2004 on the basis that the agreement was terminated on 30 June 2003 (in your compelled interview you made reference to the October 2004 action but failed to reveal the basis for the action).

4.24. Mr Young has also stated that the agreement with NIG ran until March 2004, and further confirmed this in an affidavit to the High Court dated 24 November 2005 and in written correspondence with the FSA (dated 24 November 2005 and 9 February 2006). Mr Young stated that the contract with NIG ended in March 2004 since it had been granted a renewal by NIG in March 2003. Mr Young claimed that the renewal had included a monthly policy allocation which allowed MYLA to extend the agency beyond March 2004.

4.25. Both the information provided by you and Mr Young conflicts with the written notice of termination sent to MYLA by NIG terminating the agreement from 30 June 2003. Notwithstanding MYLA's response that the agreement did not terminate at that date, this still does not explain why MYLA did not provide NIG with premiums and bordereaux in the period after June 2003 and why MYLA failed to alert NIG to the fact that MYLA was still placing business in NIG's name.

IGI

4.26. IGI entered into a Delegated Underwriting Agreement ("DUA") with MYLA in July 2004. MYLA failed to comply with the terms of the DUA, by failing to submit

regular and accurate monthly bordereaux and timely (60 days) payment of premiums to IGI. In certain instances, MYLA disclosed some bordereaux information to IGI but this reflected only a very small proportion of the business placed in IGI's name. As a result, in September 2004, IGI cancelled its agreement with MYLA.

4.27. MYLA continued to place business in the name of IGI until at least September 2005 and, during that time, MYLA failed to notify IGI of at least 863 cases placed in its name.

4.28. In addition, when MYLA had an agreement in place with IGI in 2004, MYLA entered into contracts of insurance using NIG terms then notified the insured that the underwriter was IGI contrary to the agreement with IGI (and the cancellation with NIG).

4.29. MYLA has asserted that the agreement with IGI was for the period from March 2004 until November 2005 and sought to rely on a second agreement, the IGI Group Terms of Business Agreement for Intermediaries that was effective 14 January 2005. However, IGI advised that those Terms of Business were sent to all of its agents and brokers via an external mailing house in December 2004 and MYLA was still erroneously listed as an agent when IGI sent its list of agents to the mailing house. An additional class of business, Legal Expenses Insurance, was handwritten on the Terms of Business. IGI has informed the FSA that it would not have handwritten an additional class of business onto such an agreement, suggesting that the document had been falsified by MYLA. This document was sent to the FSA on 27 April 2006 by Mr Young in an attempt to support the extended underwriting period.

CBL

4.30. As noted above, it was due to concerns that the FSA had arising out of MYLA's purported underwriting cover with one underwriter, Contractors Bonding Limited ("CBL"), that an investigation was commenced by the FSA into MYLA. Significantly, this related to the period following FSA authorisation of MYLA in January 2005.

4.31. MYLA and CBL had been party to various discussions and negotiations regarding potential underwriting cover since January 2005, some of which involved CBL's broker in the UK, ESR Insurance Services Limited ("ESR").

4.32. Mr Young visited CBL in March 2005 since no formal agreement had been signed and left the meeting on the understanding that, if MYLA could provide satisfactory audited accounts, then CBL would consider providing underwriting cover.

4.33. Notwithstanding this condition that CBL placed on MYLA, MYLA informed ESR in April 2005 that it had placed approximately 900 cases with CBL immediately pending the agreement with CBL being signed.

4.34. In July 2005, CBL advised ESR that it would not give the matter with MYLA further consideration until it had seen the audited accounts of MYLA. It was not until 10 August 2005 that MYLA forwarded accounts to CBL. However, the accounts related to 2003 and were heavily qualified and, therefore, CBL advised that it required MYLA's most recent account information.

4.35. On 18 August 2005, CBL confirmed to the FSA that CBL had no arrangement with MYLA, interim or otherwise (as stated a paragraph 4.13 above, on 13 June 2005 MYLA indicated for the first time to the FSA that there was no concluded agreement in place with CBL). CBL told the FSA that MYLA had approached CBL, but CBL required further information before it would consider the matter further.

4.36. You admitted to the FSA that as at 19 September 2005 the agreement with IGI was no longer in place and the agreement with CBL was under discussion, thereby acknowledging that MYLA had no underwriting agreement in place.

4.37. On 22 September 2005, CBL sent an email to MYLA explicitly stating that CBL had never agreed to provide cover to MYLA. On the same day, CBL informed the FSA that it was concerned to hear that MYLA had been using CBL's name without its permission.

4.38. In order to address the problem that policies had been issued in its name (and notwithstanding that this had been done without its knowledge or agreement), CBL entered into a binding agreement with MYLA on 1 November 2005 in respect of

retrospective deferred premium policies only, for the period March 2004 to November 2005. As it remained wary of MYLA, CBL insisted that the agreement would only relate to the backlog of cases and would not cover ongoing business.

4.39. The bordereaux for those policies which CBL agreed to cover retrospectively amounted to £1,548,794 in premium.

4.40. Later in November 2005, CBL indicated to the FSA that MYLA wished to amend the agreement in place between the parties to represent that the agreement had always been in place. CBL would not agree to this amendment since it was not an accurate reflection of events.

4.41. In early 2006, MYLA indicated to ESR and CBL that an agreement had been reached with IGI and that, following litigation, IGI would take the risk for some of the matters where CBL had been previously offered to take the risk. As a result of this reason and others, CBL withdrew from the agreement with MYLA on 1 March 2006.

Client Money

4.42. Following authorisation in January 2005, MYLA had a requirement imposed upon it by the FSA under which it was not permitted to hold client money. Therefore, the only means by which MYLA could have lawfully held client money was be as agent under a written risk transfer agreement with the underwriter.

4.43. Since there was no written agreement in place between MYLA and CBL until 1 November 2005, from March until November 2005 MYLA was holding client money. Mr Young admitted that MYLA was holding client money and provided a schedule showing policies issued by MYLA on or after 1 March 2005 for which it had received premiums. The schedule identified some £93,236 in premium had been received by MYLA up until 7 September 2005.

4.44. MYLA has not disputed the fact that it was holding client money and also paid claims out of those funds; however, MYLA has attempted to prove to the FSA that it was appropriately segregating the money by placing it in a Premium and Funding Account. The substantial activity on that account indicates that it was not solely used for client money, as MYLA claims to have been the case. By way of example, on 10

August 2005 two cheques were drawn on the account to defray obligations of MYLA itself (one for £25,000 and one for £2,450).

4.45. On 17 January 2006, you provided the FSA with the account details of funds that MYLA purportedly held with Bank of Scotland. The FSA attempted to conduct further enquiries and obtain bank statements for that account. However, Bank of Scotland informed the FSA that the account was not held by MYLA and was a reconciliation account held by Bank of Scotland and not a customer. Therefore, you had provided false information to the FSA.

Falsely Charging Clients Interest

4.46. Prior to authorisation in January 2005, MYLA had a funding arrangement in place with a bank. Under this arrangement, a client entering into an insurance policy arranged by MYLA could enter into a loan contract that would enable the draw down of funds to pay the premium and disbursement costs.

4.47. Following cancellation in December 2003 by the bank of its funding arrangement with MYLA, MYLA advised panel solicitors that there was a new loan arrangement in place with a company controlled by Mr Young.

4.48. An analysis of 14 client files, of clients who had entered into a loan contract through MYLA to fund their policy premium, showed that interest had been calculated for these clients on a total loan amount which included the insurance premium. However, in each case no insurance premium has been passed on to the underwriters.

CONCLUSIONS

4.49. As outlined above, in the relevant period you were MYLA's finance director and were involved in the whole spectrum of MYLA's financial activities. You liaised with underwriters on financial matters and from 14 January 2005 at the latest you were responsible for insurance mediation, which included providing underwriters with bordereaux to update them on existing business and new business written. On this basis the FSA is of the view that at the very least:

(1) As you have admitted you knew that client premiums were not being passed on to NIG after June 2003, at best you failed to adequately satisfy yourself that

there were good reasons why premiums were being received but not being passed to the underwriter from this date (i.e. after the termination of the binder by NIG). You were one of two directors and were in charge of MYLA's financial activities. As a director you had a fiduciary duty to act with reasonable care and attention and by simply relying on a statement by Mr Young that monies were being offset with the agreement of NIG without making any further enquiries you did not fulfil this duty. Therefore with due skill and care you should have known that there was no underwriting in place between July 2003 and March 2004, and that the policies entered into during this period were not on risk;

(2) In April 2004 you provided to a representative of NIG an incorrect termination date of the binding agreement between MYLA and NIG of December 2003, information which, given 4.49(1) above with due skill and care you should have known was inaccurate;

(3) In your compelled interview you misled the FSA as to the date of termination of the binding agreement between NIG and MYLA. With due skill and care you should have known that NIG were disputing the date of termination (at the very least you knew there was a dispute with NIG). These failings meant that you misled the FSA as to whether there was underwriting in place in 2003 and 2004;

(4) With due skill and care, given your responsibilities for insurance mediation from at least January 2005, you should have known about MYLA's failure to disclose policies and remit premium to IGI between July 2004 and September 2005 and, therefore, you ought to have known that MYLA was not correctly placing the policies on risk;

(5) With due skill and care you should have known that MYLA accepted premiums on the basis that CBL was the underwriter even though:

(a) no signed written agreement had been entered with CBL (which in fact you knew); and,

(b) premiums were not being passed to CBL (which you should have known given your insurance mediation responsibilities).

Therefore, with due skill and care you should have known that these clients were not being placed on risk;

(6) You provided false information to the FSA in the form of bank account details. Given your role as finance director, you knew or were wilfully blind that the information was false. This finding demonstrates a lack of integrity;

(7) Given your role as finance director with responsibility for insurance mediation you knew or were wilfully blind that MYLA held client money despite a requirement imposed on it by the FSA not to do so, demonstrating a lack of integrity;

(8) Given your role as finance director, with due skill and care you should have known that (notwithstanding that MYLA was not permitted to hold client money after authorisation) when there was no underwriting agreement in place the Firm failed to arrange adequate protection of client assets by failing to ensure that client money was kept separate from the firm's own money (as would have been required by CASS 5.2.3R had the Firm had permission to hold client monies);

(9) With due skill and care, as finance director you should have known that MYLA was charging clients interest on credit agreements for premiums that were never passed to underwriters.

4.50. Having regard to its statutory objectives including the need to maintain confidence in the financial system, and the severity of risks posed to consumers, the FSA considers it necessary to impose a Prohibition Order prohibiting you, Mr Malik, from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

5. GUIDANCE ON SANCTION

5.1. In light of your conduct detailed above, the FSA is of the view that this is a serious case of a lack of fitness and propriety such that the Prohibition Order is necessary and

that other powers available are not sufficient to meet the FSA's regulatory objectives. Given the serious actual and potential consequences of your conduct (including you providing false information and misleading the FSA and the potential consumer detriment of (i) MYLA purporting to write insurance without underwriting and (ii) failing to adequately protect client assets) which occurred over a considerable period, the FSA's view is that the Prohibition Order is the appropriate sanction as some of your misconduct amounts to a lack of integrity and the rest to a very serious lack of competence and capability.

5.2. The FSA considers that your conduct demonstrates that you are incapable of performing any controlled function (see ENF 8.5.2G(1)(b) and FIT 2.2.1G(2)) and that you lack the required openness and integrity in dealing with consumers, market participants and regulators and ability and willingness to comply with the requirements placed on you by or under the Act as well as with other legal and professional obligations and ethical standards (ENF 8.5.2G(1)(a), see also FIT 2.1.3G(5) and (13)).

5.3. In addition, as per the guidance in ENF 8.5.2G(2), in deciding whether to make the Prohibition Order, the FSA has taken into account that, for the reasons given above, it considers your conduct also demonstrates that you failed to act with integrity in carrying out your controlled functions (APER 1), failed to act with due skill and care (APER 2), failed to deal with the FSA in an open and cooperative way (APER 4) and failed to take reasonable steps to ensure that MYLA complied with the relevant requirements and standards of the regulatory system (APER 7).

6. DECISION MAKERS

6.1. 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.

7. IMPORTANT

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

Publicity

7.2. 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 you or prejudicial to the interests of consumers.

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

FSA contacts

7.4. For more information concerning this matter generally, you should contact Dan Enraght-Moony at the FSA (direct line: 020 7066 0166/fax: 020 7066 0167).

Jonathan Phelan
Head of Department
FSA Enforcement Division