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## FINAL NOTICE

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**To:** Baljit Somal

**Date of Birth:** 30 January 1975

**Date:** 8 July 2008

**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 against you and a requirement to pay a financial penalty.**

### 1. ACTION

- 1.1. The FSA gave Mr Baljit Somal ("Mr Somal") a Decision Notice dated 3 July 2008 which notified Mr Somal that the FSA had decided to impose on Mr Somal :
  - (a) a prohibition order, pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act") in the terms set out below; and
  - (b) a financial penalty of £16,000, pursuant to section 66 of the Act.
- 1.2. The terms of the prohibition order are that Mr Somal be prohibited from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm. The prohibition order is effective from 9 July 2008.
- 1.3. Mr Somal agreed to settle this matter at an early stage of the proceedings. In particular, Mr Somal agreed that he will not be referring the matter to the Financial Services and Markets Tribunal. Mr Somal therefore qualified for a 20% (stage 2) reduction in the penalty pursuant to the FSA's executive settlement procedures. Were it not for the discount, the FSA would have sought to impose a financial penalty of £20,000 on Mr Somal.

## **2. REASONS FOR THE ACTION**

- 2.1. The FSA decided to take this action as a result of Mr Somal's conduct as an approved person, under section 59 of the Act, at Square Mile Securities Limited ("Square Mile") during the period from December 2005 to May 2006 ("the relevant period").
- 2.2. During the relevant period, Mr Somal was approved to perform the 'Investment Adviser' controlled function (CF21) (as it then was) at Square Mile and his role included recommending to customers the purchase of higher risk securities issued by smaller capitalised companies that had been, or were to be, admitted to trading on the Alternative Investment Market ("AIM") or PLUS market (previously known as OFEX).
- 2.3. During the relevant period, Mr Somal's conduct fell short of the FSA's prescribed regulatory standards for approved persons. In particular, Mr Somal breached the FSA's Statements of Principle and Code of Conduct for Approved Persons ("APER") in that:
  - (a) he failed to act with integrity by intentionally and dishonestly writing out Square Mile trade tickets to record the purchase of securities by Square Mile customers when the customer had not given their explicit agreement or consent to the transaction (in breach of Statement of Principle 1);
  - (b) he failed to act with due skill, care and diligence in carrying out his controlled function when making recommendations to Square Mile's customers to purchase higher risk securities issued by smaller capitalised companies (in breach of Statement of Principle 2). In particular, Mr Somal:
    - (i) did not provide customers with adequate risk warnings and failed to take reasonable steps to ensure that customers understood the particular and higher risks of the securities he recommended and/or otherwise made statements to customers that obscured and/or diminished those risks;
    - (ii) made factually inaccurate and potentially misleading statements to customers about the higher risk securities he recommended and the issuing companies;
    - (iii) made recommendations to customers to purchase higher risk securities without having obtained sufficient information about, or having sufficient regard to, the personal and financial circumstances and needs of customers to ensure the suitability of his recommendations; and
    - (iv) employed unacceptable methods and practices that resulted in high and undue pressure on customers to purchase the securities he recommended.
- 2.4. The FSA regards Mr Somal's misconduct as particularly serious in view of the following considerations:
  - (a) Square Mile's customers were entitled to rely on Mr Somal to take reasonable steps to ensure the suitability of the advice they received and to be treated fairly. Square Mile's customers should not have been subjected to inappropriate sales

- (b) Mr Somal's misconduct may have serious financial consequences for Square Mile's customers in that, following his recommendation, they purchased securities that were higher risk and/or illiquid and have decreased in value since they were purchased.
- 2.5. In mitigation, Mr Somal has accepted (in interview with the FSA) that his conduct was improper and has expressed regret about his actions. The FSA notes that Mr Somal worked in a highly pressurised sales environment created by Square Mile which placed pressure on its advisers to generate sales, further details of which are provided in paragraph 4.3 below. The FSA also takes into consideration the fact that Mr Somal has not previously been subject to any findings of misconduct by the FSA or any other regulatory body.
- 2.6. By virtue of the matters referred to above, the FSA has concluded that:
- (a) Mr Somal is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm;
  - (b) having regard to its regulatory objectives, including the risk that Mr Somal poses to consumers and maintaining confidence in the financial system, it is necessary and desirable for the FSA to exercise its power to make a prohibition order against him; and
  - (c) in all the circumstances, it is appropriate to impose a financial penalty on Mr Somal.

### **3. RELEVANT STATUTORY PROVISIONS, RULES AND GUIDANCE**

#### **Relevant Statutory Provisions**

- 3.1. The FSA's statutory objectives, as set out in section 2(2) of the Act, include maintaining confidence in the financial system and the protection of consumers.
- 3.2. The FSA has the power pursuant to section 56 of the Act to make an order prohibiting an individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by any authorised person, exempt person or exempt professional person.
- 3.3. Section 66 of the Act provides:
- (1) *The Authority may take action against a person under this section if –*
    - (a) *it appears to the Authority that he is guilty of misconduct; and*

- (b) *the Authority 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...*
    - (3) *If the Authority is entitled to take action under this section against a person, it may –*
      - (a) *impose a penalty on him of such amount as it considers appropriate...*
- 3.4. The Statements of Principle for Approved Persons (APER) are issued under section 64 of the Act.

### **Relevant Regulatory Rules and Guidance**

- 3.5. In deciding to take the action described above, the FSA must have regard to the guidance published in the FSA Handbook. The relevant considerations in relation to the action are set out in the Annex to this Notice. Although the references in this notice are to the FSA's Enforcement Guide ("EG") and Decision Procedures and Penalties Manual ("DEPP"), the FSA has had regard to the appropriate provisions of the FSA's Enforcement Manual ("ENF") which applied during the relevant period in which Mr Somal's misconduct occurred.

## **4. FACTS AND MATTERS RELIED ON**

### **Background**

- 4.1. Square Mile is an agency stockbroking firm. It specialises in offering derivative products and advising and dealing in securities that have been, or intend to be, admitted to trading on AIM or PLUS. These markets specialise in providing primary and secondary trading services for smaller capitalised and/or emerging companies ("small cap securities").
- 4.2. Square Mile began advising and dealing in small cap securities in July 2003. Since that date, it has adopted a strategy of using focussed mail shots, financial promotions and other promotional materials to target customers and generate its customer base. The mail shots and financial promotions purported to offer free independent research reports. Once customers returned a consent form included with the mail shot a research report was sent and a trainee adviser telephoned the customer to open an account. The customer would then be referred to a "senior dealer" who would recommend that they purchase small cap securities. Contact with customers was conducted almost exclusively by telephone.

#### *FSA disciplinary action against Square Mile*

- 4.3. The FSA previously took disciplinary action against Square Mile and the FSA's findings are set out in a final notice dated 14 January 2008. The FSA's findings included the following:
- (a) Square Mile established a remuneration and rewards system that incentivised its investment advisers to put the interests of Square Mile first, to the detriment of its customers;
  - (b) Square Mile established a highly pressurised sales environment in which it used unacceptable sales practices that were not appropriate for recommending higher risk securities including actively discouraging its advisers from providing customers with information about the associated risks and/or negative aspects of investing in higher risk securities;
  - (c) It placed considerable pressure on its advisers to generate sales including requiring them to stay late to meet daily targets and threats that they would lose their jobs and/or their customer base if they did not achieve the required sales;
  - (d) Square Mile itself selected the small cap securities that its advisers were to recommend to customers but recklessly failed to conduct its own research and/or due diligence on the small cap securities that it selected. Rather, Square Mile prepared a 'stock information sheet' in respect of the securities it recommended which it circulated to Square Mile advisers but this was insufficient for the purposes of making a recommendation to a customer; and
  - (e) Square Mile failed to provide an adequate training and competence programme and the limited training it did provide focused mainly on sales practices and/or techniques and not on regulatory or compliance requirements.

#### *Mr Somal*

- 4.4. Mr Somal commenced employment with Square Mile during October 2002 and was approved to perform the CF21 Investment Adviser controlled function (as it then was) on 20 October 2002. Mr Somal left the employment of Square Mile on 3 September 2007.
- 4.5. Mr Somal's initial role at Square Mile was to open new customer accounts on the contracts for differences trade desk. After eight months, Mr Somal transferred to the business area of Square Mile selling higher risk small-cap securities where he continued in a role opening new customer accounts. He was later given the job title 'senior dealer' although there were no formal reporting lines to him.
- 4.6. As a senior dealer, Mr Somal was responsible for making recommendations to customers regarding higher risk small cap securities issued by new or emerging smaller capitalised companies that Square Mile was offering for sale.
- 4.7. Mr Somal received a basic salary of £15,000 per year. This was enhanced by commission that was based on the value of the securities that he sold to and which were

actually paid for by customers. This commission varied between 5% to 10% of the value of the securities he sold. Higher rates of commission were paid on sales of securities issued by less established companies and those traded on PLUS.

#### *FSA Investigation*

- 4.8. As part of its investigation, and having identified evidence suggesting misconduct, the FSA carried out a detailed review of 11 transactions, including a number of recordings of telephone calls between December 2005 and May 2006, which involved Mr Somal recommending the purchase of higher risk small cap securities to Square Mile customers (the "transactions reviewed"). On the basis of the transactions reviewed, the FSA has concluded that Mr Somal's conduct was in breach of Statement of Principle 1 and Statement of Principle 2 of APER.

#### **Breach of Statement of Principle 1**

- 4.9. The FSA's investigation revealed that Mr Somal conducted himself dishonestly in four of the transactions reviewed in that he knowingly recorded a purchase of securities by a customer of Square Mile without having obtained the instruction (written or verbal), agreement or consent from the customer.
- 4.10. The FSA identified that, in those four transactions, Mr Somal completed a trade ticket recording a purchase of securities by the customer when, in fact, the customer had not given their agreement, consent or instruction to purchase the securities in question. The effect of Mr Somal's actions was that unauthorised trades were recorded against customers' accounts. This established in Square Mile's financial records a liability for the customer to pay for the securities detailed in the trade ticket and caused contract notes requiring payment to be sent to customers.
- 4.11. The four transactions related to securities from different issuing small cap companies. The four transactions concerned two customers who were, at the time of the transactions, over 80 years old. In total, the four unauthorised transactions established liabilities of approximately £59,000.
- 4.12. Given that Mr Somal received commission on the securities he sold, he would have received remuneration in respect of the four unauthorised transactions if the customers paid for them.
- 4.13. Square Mile did not have any permission that would have allowed Mr Somal to trade on a discretionary basis for the customer accounts. Accordingly, the purchases of the securities in question were booked to the customers' accounts without appropriate agreement, consent or instruction by the customer and without the customer being aware of their potential liability until they received the demand for payment in the form of the contract note.
- 4.14. In interview with the FSA, Mr Somal accepted writing out the trade tickets without the customers' agreement, consent or instruction in respect of the transaction but claimed this was to relieve the "*immense pressure*" on him to sell securities to meet daily sales targets set by Square Mile.

- 4.15. Mr Somal asserted, in interview with the FSA, that if a trade ticket had been written out without a customer's agreement, consent or instruction and that customer subsequently objected to the trade (having discovered it had been booked to their account without their agreement, consent or instruction) then he would reallocate the trade to another customer and cancel the original unauthorised trade. However, the FSA found no evidence to support Mr Somal's assertion.
- 4.16. The FSA considers that this conduct by Mr Somal was dishonest and deliberately misleading and falls within that covered by APER 4.1.8E and 4.1.9E. Accordingly, the FSA considers Mr Somal's conduct demonstrates a lack of integrity and therefore a failure to comply with Statement of Principle 1.
- 4.17. Such misconduct is particularly serious as Mr Somal exposed customers to the risk of being sold, charged and paying for the purchase of securities they did not want. The FSA considers that such misconduct by Mr Somal undermined the protection and fair treatment of consumers and confidence in the financial services industry.

### **Breach of Statement of Principle 2**

- 4.18. The transactions reviewed revealed that Mr Somal has failed to act with the due skill, care and diligence reasonably to be expected of an approved person during the relevant period in that:
- (a) he failed to provide customers with adequate risk warnings and take reasonable steps to ensure that customers understood the particular and higher risks of the securities he recommended and/or otherwise made statements that obscured and/or diminished those risks;
  - (b) he made factually inaccurate and potentially misleading statements to customers about the higher risk securities and the issuing companies;
  - (c) he made recommendations to customers to purchase higher risk securities without having obtained sufficient information about, or having sufficient regard to, the personal and financial needs of customers to ensure the suitability of the recommendations; and
  - (d) employed unacceptable methods and practices that resulted in high and undue pressure on customers to purchase the securities he recommended.

### *Inadequate explanation of risks*

- 4.19. During the relevant period and in respect of the particular securities he was recommending, Mr Somal was required to provide Square Mile's customers with a specific risk warning ("the required risk warning"). This risk warning should have made it clear to customers that there may be a restricted market for the securities in that it may be difficult to deal in the securities or obtain reliable information about their value and/or there is an extra risk of losing money when shares are bought in some smaller companies including penny shares; there is a big difference between the buying price and the selling price of these shares; if the shares have to be sold immediately, the

customer may get back much less than they paid for them and the price may change quickly and it may go down as well as up.

- 4.20. In all of the transactions reviewed, Mr Somal failed to provide Square Mile's customers with the required risk warning.
- 4.21. In addition, Mr Somal provided inadequate and/or unclear information to customers which distorted the overall balance and content of the recommendation. In particular, when making recommendations to customers, Mr Somal failed to explain the particular and higher risks associated with the small cap securities he was recommending. Instead, Mr Somal made statements that emphasised the potential benefits of the securities he was recommending which undermined and/or diminished the higher risks of the securities.
- 4.22. The FSA expects investment advisers to provide a balanced description of the products that they recommend including any required risk warning as well as a warning and explanation of any particular and higher risks involved. The FSA considers these to be risks that a customer would consider important and need to know about in order to make an informed investment decision. By not providing a warning and explaining the risks, Mr Somal deprived customers of key information that may have affected their investment decision about whether the products were suitable for them.
- 4.23. In summary, the FSA considers that the above conduct demonstrates that Mr Somal failed to take reasonable steps to ensure that customers understood the particular and higher risks associated with the securities he was recommending.
- 4.24. The FSA considers Mr Somal's conduct in this regard falls within that covered by APER 4.2.3E and 4.2.4E and therefore demonstrates a failure to comply with Statement of Principle 2.

#### *Misleading information*

- 4.25. The transactions reviewed revealed that Mr Somal made factually inaccurate and potentially misleading statements about the history, commercial activities and financial results of the issuing companies of the securities he was recommending.
- 4.26. As stated in paragraph 4.3(d) above, Square Mile prepared a 'stock information sheet' in respect of the securities it recommended. However, these stock information sheets were insufficient for the purposes of making a recommendation to a customer. They contained only basic summary information about the securities and a short summary of the history of the issuing company. They did not adequately explain the business and history of the issuing company and/or the specifics of the particular securities. Further, the information was at times outdated, inaccurate and incorrect.
- 4.27. Mr Somal supplemented this limited information with his own opinion but failed to take reasonable steps to verify the accuracy of the information he provided to customers. Mr Somal's explanation of the securities he was recommending often went beyond the limited information provided by Square Mile and was inconsistent with publicly available information.



- 4.28. Mr Somal failed to pay due regard to the information needs of Square Mile's customers and communicate information in a way that was clear, fair and not misleading by providing inaccurate and incomplete information in conjunction with personal and speculative opinion.
- 4.29. When making recommendations to customers, Mr Somal made a number of factually inaccurate and potentially misleading statements. For example, in two transactions, Mr Somal made statements in respect of one issuing company which created the impression that it was an established and profitable company:
- (a) On 14 December 2005, when recommending the securities of Company A to a customer, Mr Somal told the customer that the company had "*...generated four and half million pounds revenue this year alone*" and it was "*...company in its first year of trading making profits in excess of 150K, with a four and a half million pound turnover*". At no point during the call did Mr Somal explain that the financial results to which he had referred related to the performance of another company in which Company A had invested and purchased a minority interest. Company A had only been incorporated since October 2005 as a 'shell' company and had made only one investment. When Company A published financial results in July 2006 it stated that it had made no revenue in the period since incorporation. Accordingly, the information Mr Somal provided to the customer was misleading. In this instance, the customer agreed to purchase securities costing £8,000.
  - (b) On 23 January 2006, after normal working hours, Mr Somal made a further telephone call to the same customer to sell him additional securities of Company A. Mr Somal again provided misleading information stating that "*...it's a company looking at a seven million pound turnover with profits. And they've numerous contracts in the pipeline...we can't get too much of the stock.*" Mr Somal again failed to explain that the predicted financial results to which he referred did not relate to Company A but to the company in which Company A had invested and purchased the minority interest.
- 4.30. Therefore, Mr Somal gave the impression that he was recommending the purchase of securities in an operational trading company with significant profitability, rather than a new investment company which had a minority interest in another company and which was formed to pursue other investments. Mr Somal did not make clear that the financial information did not relate to Company A which did not have an established business.
- 4.31. Mr Somal also made unfair and misleading claims about significant increases in the price of securities that he had previously recommended to customers. Not only is past performance of any security no indicator of future performance but, in this case, references were made to securities that had no direct business, financial or commercial factors in common with the securities being recommended and, in any event, sometimes Mr Somal's statements were untrue. For example:
- (a) On 14 December 2005 and in relation to the same customer referred to in paragraph 4.29(a), when recommending the purchase of securities of Company A, a 'cash shell', Mr Somal told the customer about the performance of the

securities issued by an unrelated mining company, stating "...one of the last OFEX stocks I looked at was a company called... now that stock, when it, you know, when it made the grand move, obviously, the AIM market, my clients saw a 400% leap." Mr Somal did not explain to the customer that Square Mile had sold the securities of the mining company to customers in June 2003 and that such returns might not be achieved in respect of the securities issued by Company A or that previous recommendations made by him or Square Mile had not performed as predicted.

- (b) On 23 January 2006 and in relation to the same customer referred to in the example above, Mr Somal recommended the securities of Company A and told his customer, incorrectly, that the directors of Company A had previously worked for a company whose securities had increased in price "...from 19 pence to 62 pence for our clients." Mr Somal did not explain that the company whose securities he claimed had increased in value had no direct business, financial or commercial factors in common with Company A. Nor did he inform the customer that past performance of securities is no indicator of future performance and that his other recommendations had not made such returns.

- 4.32. It is important that customers are provided with information that is clear, fair, and not misleading. The transactions reviewed identified that during recommendations Mr Somal did not always provide such information to Square Mile's customers. Mr Somal only provided customers with examples of small cap securities that had performed well and failed to provide balanced information about securities that had not performed well. This conduct may have unduly influenced the investment decisions of customers as their confidence and trust was built on misrepresentations and inaccurate information.
- 4.33. As a result of Mr Somal's conduct, there was a serious risk that Square Mile customers may have invested in securities based on information that was inaccurate, incomplete and potentially left them with a misleading impression of the issuing company and a flawed view of the potential performance prospects of their investments.
- 4.34. The FSA considers Mr Somal's conduct falls within that covered by APER 4.2.3E and 4.2.4E and therefore demonstrates a failure to comply with Statement of Principle 2.

*Know your customer information and unacceptable sales practices*

- 4.35. The transactions reviewed revealed that Mr Somal made personal recommendations without having obtained, and without having regard to, sufficient personal and financial information about customers. By failing to take reasonable steps to obtain such information, and failing to have regard to it, Mr Somal could not ensure the recommendations he made were suitable for the needs, objectives and financial circumstances of Square Mile's customers and appropriate for their risk appetite.
- 4.36. In all of the transactions reviewed, Mr Somal failed to seek information from his customers about their current investment objectives, or their personal or financial circumstances, including whether they could afford the securities he recommended.

4.37. Further, the transactions reviewed revealed that Mr Somal also failed to have sufficient regard to the preferences of customers and disregarded the concerns expressed by customers about their ability to afford the securities he was recommending. For example:

- (a) During a telephone call on 14 December 2005 and in relation to the same customer referred to in paragraph 4.29(a), a customer clearly indicated his reluctance to enter into a transaction to buy securities which Mr Somal was recommending. Despite this, Mr Somal insisted "*I need you to do this...*" and asked "*Is there anything you can do right now?*". Although Mr Somal acknowledged the customer's reluctance to purchase the securities "*...I can hear what you're saying, yeah...in terms of, obviously, cash, yeah*" and his financial limitations, "*I would never ask any client to overstretch, especially the time of Christmas*", he persisted with the recommendation that the customer invest. The customer informed Mr Somal that he would have to decline the opportunity to purchase the securities but Mr Somal continued with the recommendation. Although Mr Somal again acknowledged the customer's limitations "*...obviously this time of year I would never ask anyone to overstretch*" he continued to press the customer and secured his agreement to invest £5,000. Immediately after doing so, however, Mr Somal asked the customer to "*stretch*" and invest £10,000. In this instance, the customer eventually agreed to purchase securities costing £8,000 as a result of pressure from Mr Somal.
- (b) During a telephone call on 13 March 2006, a customer told Mr Somal that he could not be sure if he could afford to invest £25,000 to purchase the securities Mr Somal was recommending. Although the customer stated he would assess his portfolio and revert, Mr Somal pressed the customer for a decision. The customer, however, refused and asked Mr Somal to call back in a few days. Although the customer told Mr Somal explicitly that the following day would be too soon to call back, Mr Somal disregarded this and called the customer on 14 March 2006 and again pressed him to purchase the recommended securities. During the call, the customer told Mr Somal five times that he did not wish to purchase the securities. Despite this, Mr Somal persisted with his recommendation until the customer terminated the call by hanging up. Mr Somal, however, again called the customer two weeks later on 5 April 2006 and recommended the same securities. Again the customer stated he could not afford the investment and hung up almost immediately.

4.38. The FSA considers that, in the examples in paragraph 4.37 above, Mr Somal used unacceptable sales practices that applied high and undue pressure on the customers to make immediate investment decisions. The customers' reluctance to purchase the securities and clear protestations in the face of Mr Somal's continued pressure to purchase the securities should have led Mr Somal to conclude that the recommendations might not be suitable for the customers. Despite this, Mr Somal persisted with his recommendations. Mr Somal placed undue pressure on customers to make higher risk investment decisions without time to consider the risks of the securities. Mr Somal therefore failed to treat customers fairly and subjected them to poor and inappropriate sales practices and exposed them to unnecessary risks.

- 4.39. The transactions reviewed also revealed that Mr Somal failed on at least seven occasions during the relevant period to have sufficient regard to customers' agreed risk capital level or seek confirmation from the customers that they would be willing to purchase securities in excess of their agreed risk capital level. The agreed risk capital level of a customer was considered by Square Mile to be the amount of money that the customer could afford to invest and lose in the market in higher risk small-cap securities without any significant lifestyle change. Each customer of Square Mile was required to agree their risk capital level.
- 4.40. Mr Somal understood a customer's agreed risk capital level represented "*...money they, basically, are able to afford to put into the high risk sector of the market and understanding the high risks that are involved that, you know, this could go up as well as right down.*"
- 4.41. The transactions reviewed revealed that Mr Somal made recommendations to customers to purchase securities without apparently considering or adhering to the customers' agreed risk capital level and failed to discuss this with them at the time of the trade. For example:
- (a) The customer referred to in paragraph 4.29(a) above had an agreed risk capital level of £5,000. As at 14 December 2005, when Mr Somal recommended that the customer purchase securities costing £8,000, securities costing £19,500 had already been booked to the customer. Again, on 23 January 2006, when Mr Somal recommended that the same customer should purchase securities costing £15,000, securities costing £59,100 had already been booked to the customer.
  - (b) Another customer had an agreed risk capital of £10,000. As at 28 March 2006, when Mr Somal recommended that the customer purchase securities costing £10,000, securities costing £167,100 had already been booked to the customer. The following day, Mr Somal contacted the customer again and recommended he purchase securities costing a further £9,000.
- 4.42. In both examples, Mr Somal failed to obtain the customers' consent to exceed their agreed risk capital levels or explain the consequences of doing so.
- 4.43. Mr Somal's actions exposed customers to the risk of financial loss as Mr Somal failed to ensure his recommendations were affordable and/or within the customer's agreed exposure to risk. Mr Somal's misconduct in this regard is serious as Mr Somal made recommendations which might not have been suitable for customers, especially those that could not afford to invest.
- 4.44. The FSA considers that this conduct falls within that covered by APER 4.2.5E and therefore demonstrates a failure to comply with Statement of Principle 2.

## **5. CONCLUSION**

### **Prohibition order**

- 5.1. The FSA considers that the facts and matters described above together demonstrate that Mr Somal's conduct fell short of the relevant regulatory requirements in that he failed

to act with integrity and due skill, care and diligence in carrying out his controlled function.

- 5.2. The FSA further considers that, through his misconduct, Mr Somal has failed to demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory system.
- 5.3. The FSA concludes, therefore, that Mr Somal has breached the fit and proper criteria and is not a fit and proper person.
- 5.4. Having regard to its regulatory objectives, including the need to maintain confidence in the financial system and to secure the appropriate degree of protection for consumers, the FSA considers it necessary to impose a Prohibition Order prohibiting Mr Somal from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

### **Financial Penalty**

- 5.5. The FSA's general approach in deciding whether to take action and the imposition and amount of penalties is set out in Chapter 6 of the Decision Procedure and Penalties Guide ("DEPP"), which is part of the Handbook of Rules and Guidance. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring firms and approved persons who have breached regulatory requirements from committing further contraventions, helping to deter other firms and approved persons from committing contraventions and demonstrating, generally, to firms and approved persons, the benefit of compliant behaviour (DEPP 6.1.2G).
- 5.6. In determining whether a financial penalty is appropriate and proportionate, the FSA will consider all the relevant circumstances of the case. DEPP 6.5.2G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining the amount of a financial penalty.
- 5.7. In deciding to take the action, the FSA considers the factors outlined in paragraphs 5.8 to 5.16 to be particularly relevant.

#### *Deterrence: DEPP 6.5.2G (1)*

- 5.8. In determining the appropriate level of penalty, the FSA has had regard to the need to promote high standards of regulatory conduct by deterring those who have committed breaches from committing further breaches and to help to deter others from committing similar breaches.

#### *The nature, seriousness and impact of the breach: DEPP 6.5.2G (2)*

- 5.9. The FSA has considered the nature and seriousness of the contraventions and considers the following to be relevant in this regard:
  - (a) The breaches occurred over a protracted period of six months; and
  - (b) Mr Somal's conduct caused significant risk of loss to consumers or investors, many of whom were elderly.

*The extent to which the breach was deliberate or reckless: DEPP 6.5.2G (3)*

- 5.10. The FSA considers that Mr Somal dishonestly completed trade tickets in the knowledge that customers had not agreed to purchase the securities in question. This was deliberate conduct because Mr Somal must have intended and foreseen that the consequence of him completing trade tickets in this way was that customers would be charged for, and might mistakenly pay for, the trade.

*Whether the person on whom the penalty is to be imposed is an individual DEPP 6.5.2G (4)*

- 5.11. The FSA recognises that the financial penalty imposed on Mr Somal is likely to have a significant impact on him as an individual.

*The size, financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2G (5)*

- 5.12. The FSA has taken into account the financial resources and other circumstances of Mr Somal. There is no evidence to suggest that Mr Somal is unable to pay the financial penalty.

*The amount of benefit gained or loss avoided: DEPP 6.5.2G (6)*

- 5.13. The FSA has had regard to the fact that Mr Somal created for himself the opportunity to earn commission in the region of £4,425 on the unauthorised trades in addition to his annual salary of £15,000.

*Conduct following the breach: DEPP 6.5.2G (8)*

- 5.14. Although Mr Somal did not bring the failings to the FSA's attention, he has accepted (in interview with the FSA) writing out trade tickets without customers' agreement, consent or instruction and that his conduct was improper. Mr Somal has expressed regret about his actions.

*Disciplinary record and compliance history: DEPP 6.5.2G (9)*

- 5.15. The FSA has not previously taken any disciplinary action against Mr Somal.

*Previous action taken by the FSA: DEPP 6.5.2G (10)*

- 5.16. The FSA seeks to ensure consistency when it determines the appropriate level of penalty. The FSA has in the past taken action against persons for similar failings and these have been taken into consideration in setting the level of penalty against Mr Somal.

## **6. DECISION MAKER**

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

## **7. IMPORTANT**

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

### **Manner and time for payment**

7.2. The financial penalty must be paid in full by Mr Somal to the FSA by no later than 1 July 2009 and by way of two instalments as follows:

- (1) £5,000 on or before 1 January 2009; and
- (2) £11,000 on or before 1 July 2009.

### **If the financial penalty is not paid**

7.3. If all or any of the financial penalty is outstanding on 2 July 2009, or if all or any of any instalment is outstanding on the day after the instalment is due, the FSA may recover the outstanding amount as a debt owed by Mr Somal and due to the FSA.

### **Publicity**

7.4. 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 Somal or prejudicial to the interests of consumers.

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

### **FSA contacts**

7.6. For more information concerning this matter generally, please contact Stephen Robinson (direct line: 020 7066 1338) of the Enforcement Division of the FSA.

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Georgina Philippou  
Head of Department  
FSA Enforcement Division

## **ANNEX - Relevant Regulatory Rules and Guidance**

### **The Fit and Proper Test**

- 1.1. The criteria by which the FSA assesses whether a person is fit and proper are contained in the Fit and Proper test for Approved Persons ("FIT") which is found in the FSA's Handbook. The most important considerations include the person's "*honesty, integrity and reputation*" (FIT 1.3.1G).
- 1.2. In determining a person's honesty, integrity and reputation, the FSA will have regard to the criteria listed in FIT 2.1.3G which includes, but is not limited to, the following matters:
  - (a) FIT 2.1.3G (5): 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;
  - (b) FIT 2.1.3G (13): 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.

### **The Enforcement Guide**

#### *Prohibition orders*

- 1.3. The FSA's policy in relation to prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG").
- 1.4. EG 9.4 summarises the FSA's policy on making prohibition orders and the circumstances under which Enforcement will consider recommending such action. In particular:

*"The FSA has 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. Depending on the circumstances of each case, the FSA may seek to prohibit individuals from performing any class of function in relation to any class of 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."*

- 1.5. EG 9.5 continues that:

*"the scope of a prohibition order will depend on 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 of the market generally."*



1.6. EG 9.8 provides:

*"When the FSA has concerns about the fitness and propriety of an approved person, it may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw its approval, or both. In deciding whether to withdraw its approval and/or to make a prohibition order, the FSA will consider in each case whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions, for example, public censures or financial penalties, or by issuing a private warning."*

1.7. EG 9.9 explains that when it decides to make a prohibition order and/or withdraw its approval, the FSA will consider all the relevant circumstances of the case. The relevant circumstances may include, but are not limited to, the following:

- a) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in Chapter 2 of FIT;
- b) whether, and to what extent the approved person has failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons; and
- c) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

1.8. EG 9.12(5) points to serious breaches of the Statements of Principle for approved persons as an example of a type of behaviour which has previously resulted in the FSA deciding to issue a prohibition order or to withdraw the approval of an approved person. This includes such things as failing to make terms of business regarding fees clear, or actively misleading customers about fees; acting without regard to instructions; providing misleading information to customers, consumers or third parties; giving customers poor or inaccurate advice, or using intimidating or threatening behaviour towards customers and former customers.

1.9. EG 9.23 provides that, in appropriate cases, the FSA may take other action against an individual in addition to making a prohibition order and/or withdrawing its approval, including the use of its powers to impose a financial penalty.

## **Decision Procedures and Penalties Manual**

### *Financial Penalties*

1.10. EG 7 provides guidance as to the FSA's power to impose a financial penalty and, as set out in EG 7.4, the FSA's statement of policy in relation to the imposition of financial penalties is set out in the Decision Procedures and Penalties Manual ("DEPP") in the FSA's Handbook at DEPP 6.2 (Deciding whether to take action), DEPP 6.4 (Financial penalty or public censure) and DEPP 6.5 (Determining the appropriate level of financial penalty).

## **The Statements of Principle and Code of Conduct for Approved Persons**

1.11. The Statements of Principle and Code of Conduct for Approved Persons ("APER") sets out the Statements of Principle in respect of approved persons and provides examples of conduct which, in the opinion of the FSA, does 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.

1.12. The guidance provided in APER 3.1.3G provides that:

*"The significance of conduct identified in the Code of Practice for Approved Persons as tending to establish compliance with or a breach of a Statement of Principle will be assessed only after all the circumstances of a particular case have been considered. Account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function."*

1.13. APER 3.1.4G provides that:

*"(1) 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 (see DEPP 6.2.4G (Action against approved persons under section 66 of the Act)).*

*(2) For the avoidance of doubt, the Statements of Principle do not extend the duties of approved persons beyond those which the firm owes in its dealings with customers or others."*

1.14. APER 3.1.5G provides that:

*"In particular, in determining whether or not an approved person's conduct complies with a Statement of Principle, the FSA will take into account the extent to which an approved person has acted in a way that is stated to be in breach of a Statement of Principle.*

1.15. APER 3.2.1G provides that:

*"In determining whether or not the particular conduct of an approved person within his controlled function complies with the Statements of Principle, the following are factors which, in the opinion of the FSA, are to be taken into account:*

*(1) whether that conduct relates to activities that are subject to other provisions of the Handbook;*

*(2) whether that conduct is consistent with the requirements and standards of the regulatory system relevant to his firm."*

1.16. The FSA considers Statement of Principle 1 and Statement of Principle 2 to be relevant to Mr Somal's conduct. APER 4 identifies, for each Statement of Principle, specific types of conduct which, in the opinion of the FSA, does not comply with the statement.

As set out below, APER 4 sets out descriptions of conduct which does not comply with Statement of Principle 1 and Statement of Principle 2.

### **Statement of Principle 1**

1.17. Statement of Principle 1 provides that:

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

1.18. APER 4.1.2E identifies different types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 1. This includes conduct that is described in APER 4.1.8E.

1.19. APER 4.1.8E states that the following conduct does not comply with Statement of Principle 1:

*"Deliberately preparing inaccurate or inappropriate records or returns in connection with a controlled function, falls within APER 4.1.2E."*

1.20. Examples of the behaviour referred to in APER 4.1.8E are set out in APER 4.1.9E and includes deliberately:

*"(3) preparing inaccurate trading confirmations, contract notes or other records of transactions or holdings of securities for a customer, whether or not the customer is aware of these inaccuracies or has requested such records."*

### **Statement of Principle 2**

1.21. Statement of Principle 2 provides that:

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

1.22. APER 4.2.2E identifies different types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 2. This includes conduct that is described in APER 4.2.3E and APER 4.2.5E.

1.23. APER 4.2.3E states that the following conduct does not comply with Statement of Principle 2:

*"Failing to inform:*

*(1) a customer;*

*of material information in circumstances where he was aware, or ought to have been aware, of such information, and of the fact that he should provide it..."*

1.24. Examples of the behaviour referred to in APER 4.2.3E are set out in APER 4.2.4E and include:

*"(1) failing to explain the risks of an investment to a customer"*

- 1.25. APER 4.2.5E states that the following conduct falls within APER 4.2.2E and therefore, does not comply with Statement of Principle 2:

*"Recommending an investment to a customer, or carrying out a discretionary transaction for a customer, where he does not have reasonable grounds to believe that it is suitable for that customer ..."*