
FINAL NOTICE

To: **Simon Richard Brignall**

Date of Birth: **16 October 1970**

Date: **16 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 an order prohibiting you, Mr Simon Richard Brignall, from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm on the grounds that you are not a fit and proper person.

1. THE ORDER

1.1. The FSA gave Mr Simon Richard Brignall a decision notice dated 12 November 2007 which notified him that, for the reasons listed below and pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to make an order prohibiting him from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm on the grounds that he is not a fit and proper person.

1.2. As Mr Brignall has confirmed that he will not be referring this matter to the Financial Services and Markets Tribunal, the FSA hereby makes an order prohibiting Mr Brignall from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm on the grounds that he is not a fit and proper person.

2. REASONS FOR THE ORDER

2.1. This Order is imposed on Mr Brignall as a result of his conduct from early 2005 to 9 March 2007, when he was employed as a senior fixed income trader at Toronto Dominion Bank (London Branch) ("TD Bank"/"the Firm"). During this period, Mr Brignall mismarked positions on his trading book and entered fictitious trades. This conduct, when considered by reference to the FSA's prescribed regulatory standards for individuals, is such that it appears to the FSA that he 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.

3. RELEVANT STATUTORY PROVISIONS

3.1. The FSA's statutory objectives, as set out in section 2(2) of the Act, include market confidence.

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. 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. FIT 2.1 provides that a person's "*honesty propriety and reputation*" is one of the "*main assessment criteria*" (FIT 2) applied by the FSA in determining whether a person is fit and proper.

Relevant guidance

3.4. The FSA's policy in relation to prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG").

3.5. 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."

3.6. 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".

3.7. 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 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."

3.8. 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 FIT 2 (above). One criterion is the honesty, integrity and reputation of the individual (FIT 2.1);

- b) the relevance and materiality of any matters indicating unfitness; and
- c) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

3.9. EG 9.11 provides that due to the diverse nature of the activities and functions which the FSA regulates, it is not possible to produce a definitive list of matters which the FSA might take into account when considering whether an individual is not a fit and proper person to perform a particular, or any, function in relation to a particular, or any, firm. However, EG 9.12(3) gives 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, severe acts of dishonesty, e.g. which may have resulted in financial crime.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. On 9 March 2007, Mr Brignall resigned from his position as a senior fixed income trader at TD Bank.
- 4.2. On this date, Mr Brignall revealed to the Firm that he had been hiding losses in his trading book for a period of almost two years. During the period between early 2005 and February 2007, he had mis-priced positions, and from 26 February 2007, as well as mis-pricing positions, he had entered fictitious trades.
- 4.3. TD Bank notified the FSA of these matters on 12 March 2007 and commissioned an internal audit investigation into the matter. The internal audit investigation confirmed the account which Mr Brignall had given to the Firm of his misconduct, as set out below.
 - a) During the period 31 January 2005 until 31 December 2006, pricing differences ranged between CAD \$0.027 MM and CAD \$1.075 MM.

- b) By 31 January 2007, pricing differences increased to CAD \$3.7MM and reached CAD \$4.4MM at 27 February 2007.
- c) At this point, Mr Brignall became aware that the Firm was intending to standardise its independent price verification system for the business he traded across all the jurisdictions in which the Firm operated. This made Mr Brignall concerned that enquiries would be made into his book which would reveal his losses. He therefore began to enter both a greater number of trades and trades of a greater size. He delayed entering some of these trades into the Firm's systems where they were above risk limits. During this period, the Firm's back office identified a greater number of discrepancies between the trade data for Mr Brignall's book and the data being received from the counterparty. These were escalated to Mr Brignall, and, in an attempt to escape detection, he cancelled some of the trades to create the impression that he had addressed the discrepancies. He then re-entered these same trades the following day.
- d) The loss hidden by these practices reached a peak of CAD \$11MM on 7 March 2007.
- e) When Mr Brignall closed his positions on 9 March 2007, the total loss decreased to CAD \$8.8MM (approximately £3.8MM).

4.4. Mr Brignall was able to hide these losses because he was responsible for valuing his own positions, which he should have done by inputting the London closing prices into Bloomberg which then fed the back office book of record system, MIS. Instead, he deliberately mispriced his positions and, from 26 February 2007, entered fictitious trades.

4.5. This conduct went undetected by the Firm until he confessed to his actions on 9 March 2007. The failings in the Firm's systems and controls are the subject of separate action by the FSA.

4.6. The FSA recognises that, since his resignation and confession of 9 March 2007, Mr Brignall has been candid and truthful in his dealings with both the Firm and the FSA. The FSA also acknowledges that, at the time of his misconduct, Mr Brignall was under significant pressure in his personal life.

4.7. Notwithstanding these factors, the FSA considers the misconduct summarised above to be serious because Mr Brignall deliberately and persistently pursued a course of conduct, over a period of two years, which he knew to be dishonest, contrary to his Firm's policies and contrary to regulatory standards, and which disguised substantial losses from his employer.

Conclusion

4.8. The facts and matters described above lead the FSA to conclude that:

- a) Mr Brignall has failed to act with integrity and has acted dishonestly by deliberately mispricing the positions in his book and entering fictitious trades over a two year period;
- b) by this conduct, Mr Brignall disguised a loss of CAD \$8.8MM from his employer;
- c) this deliberate course of conduct, which extended over a period of two years, goes directly to impugn Mr Brignall's honesty, integrity and reputation and therefore to demonstrate that he 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;
- d) this conduct can properly be described as a severe act of dishonesty;
- e) this conduct demonstrates that Mr Brignall presents a risk to the FSA's statutory objectives of market confidence; and
- f) the severity of the risk Mr Brignall poses to market confidence, as demonstrated by the extended period of time for which he deliberately pursued this dishonest course of conduct, is such that it is necessary in order to achieve its regulatory objectives, for the FSA to make a prohibition order in the terms set out above.

5. DECISION MAKER

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

6. IMPORTANT

6.1. This Final Notice is given to you in accordance with section 390 of the Act. The following statutory rights and obligations are important.

Publicity

6.2. 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 these 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.

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

FSA contacts

6.4. For more information concerning this matter generally, you should contact Ken O'Donnell (direct line: 020 7066 1374/fax: 020 7066 1375) or Anna Hynes (direct line: 020 7066 9464/fax: 020 7066 9465).

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James Symington
Head of Department
FSA Enforcement Division