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## FINAL NOTICE

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To: **Mr Christopher Edward Whiteley**  
**Date of birth 9 November 1942**

Dated: **2 November 2006**

**TAKE NOTICE: The Financial Services Authority ("the FSA") of 25 The North Colonnade, Canary Wharf, London E14 5HS gives you, Christopher Edward Whiteley, final notice about the making of a prohibition order against you.**

### **1. ORDER**

- 1.1 The FSA issued a Decision Notice on 19 September 2006 (the "Decision Notice") which notified you that the FSA has decided to make an order prohibiting you, Mr Christopher Edward Whiteley ("Mr Whiteley"), from performing any function in relation to any regulated activity carried on by an authorised or exempt person or exempt professional firm under section 56 of the Financial Services and Markets Act 2000 ("the Act").
- 1.2 You were informed of your statutory right to make a reference to the Financial Services and Markets Tribunal, but you have not referred the Decision Notice to the Tribunal within 28 days of the date on which the Decision Notice was given to you.
- 1.3 Accordingly, for the reasons set out below, the FSA hereby makes an order pursuant to section 56 of the Act prohibiting you from performing any function in relation to any regulated activity carried on by an authorised or exempt person or exempt professional firm. This order has effect from 3 November 2006.

### **2. REASONS FOR THE ORDER**

- 2.1 On the basis of the facts and matters and conclusions described in the Warning Notice issued to you on 1 August 2006 (the "Warning Notice") and in the Decision Notice,

the FSA has concluded, on the basis of the facts and matters described below, that you have demonstrated; a lack of integrity and a failure to act with due, skill, care and diligence in carrying out your controlled function(s); a failure to be open and co-operative with the Regulator; and failing to comply with the relevant requirements and standards of the regulatory system.

- 2.3 A copy of the relevant extract of the Warning Notice (which was attached to the Decision Notice) is attached to and forms part of this Notice.

### **3. IMPORTANT**

- 3.1 This Final Notice is given to you in accordance with section 390(1) of the Act.

#### **Publicity**

- 3.2 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the FSA must publish such information about the matter to which this Final 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.

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

#### **FSA contact**

- 3.4 For more information concerning this matter generally, you should contact either Angela Stephens (direct line: 020 7066 4714/fax: 020 7066 4715) or Peter Wright (direct line: 020 7066 2866/fax: 020 7066 2867).

**Jonathan Phelan**  
**Head of Department - Retail**  
**Enforcement Division**

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### **EXTRACT FROM DECISION NOTICE DATED 19 SEPTEMBER 2006**

## **2. REASONS FOR PROPOSED ACTION**

### **Summary**

- 2.1 The FSA proposes to exercise its power to make a prohibition order against Mr Whiteley as it considers his conduct, as set out below, demonstrates, a lack of integrity and a failure to act with due, skill, care and diligence in carrying out his controlled function, failure to be open and co-operative with the Regulator and failing to comply with the relevant requirements and standards of the regulatory system.
- 2.2 The FSA's proposed action refers to the conduct of Mr Whiteley between November 2000 and April 2005. In particular Mr Whiteley caused Whiteley Insurance Consultants ("WIC") to engage in insurance activities in breach of the general prohibition of FSMA (and its equivalent under the Insurance Companies Act 1982) from at least November 2000 until 13 January 2005 in that he allowed WIC to:-
- i. Issue travel insurance policies (prior to 14 January 2005) in respect of 42,346 passengers which were purportedly underwritten by an underwriter properly authorised by the FSA when they were not underwritten by any such underwriter; and
  - ii. Otherwise effect and/or carry out contracts of insurance with consumers as principal prior to 14 January 2005.
- 2.3 Further, from 14 January 2005 to 26 April 2006 (when provisional liquidators were appointed over WIC) Mr Whiteley caused WIC to engage in activities in breach of its Part IV permissions contrary to Section 20 of FSMA by otherwise effecting and/or carrying out contracts of insurance with consumers as principal.

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#### **Facts and matters relied on**

##### **Firm A**

- 4.1 Firm A was an insurance underwriter and acted also acted as an agent for other insurance underwriters for non-investment contracts. From around 27 February 2002 Firm A underwrote a number of travel insurance schemes marketed by WIC to its customers. However, in December 2004, Firm A made the FSA aware that, as of May 2004, having concluded its usual contractual period of business with WIC and having further decided not to renew the contract, it was no longer on risk for WIC policies. Firm A suspected that Mr Whiteley had not found a replacement insurer but was continuing to issue policies naming Firm A as insurer.
- 4.2 In January 2005, Firm A succeeded in an application to the High Court to restrain Mr Whiteley, trading as WIC, from holding WIC out as being underwritten by Firm A, and/or its principals. Mr Whiteley consented to the High Court order which declared the expiry dates of five of the travel insurance schemes relating to Firm A marketed by WIC.
- 4.3 In April 2005 Mr Whiteley confirmed he had no alternative cover in place for two of the insurance schemes referred to above but claimed that Firm B, an insurer based in Luxembourg, may have been on risk for the other three insurance schemes.

- 4.4 An analysis of the policy bordereaux of WIC, indicated that, between 26 June 2004 and 25 December 2004, after the underwriting authority of Firm A had expired and no alternative underwriter was in place, WIC issued:
- a. Scheme 1: Single Trip policies relating to 3,224 passengers; and
  - b. Scheme 2: Annual Multi Trip policies relating to 9,939 passengers.
- 4.5 Mr Whiteley acknowledged in the court proceedings commenced by Firm A that Mr Whiteley's underwriting authority had expired at this time.
- 4.6 The FSA has not identified any underwriter who was insuring either of schemes 1 and 2 above. Furthermore, an analysis of WIC's documents indicate that WIC continued to issue travel insurance policies on schemes no longer covered by Firm A and there was no evidence of cover being provided by any other authorised insurer.

### **Firm B**

- 4.7 Firm B was a Luxembourg based insurer contacted by WIC to put in place back-dated cover for WIC's clients. In March 2005 Mr Whiteley informed the FSA that he was in negotiation with Firm B in relation to the back dated cover. Mr Whiteley has admitted that policies had been issued by WIC without an authorised insurer underwriting them at the time they were issued.
- 4.8 Bordereaux and policy documents reviewed by the FSA indicate that WIC was operating three schemes which were issued as being purportedly underwritten by Firm B. The Commissariat Aux Assurances ("the CAA"), the Luxembourg Insurance Regulator informed the FSA that Firm B was not on risk and there was no prospect of Firm B being on risk for any WIC business. Mr Whiteley was aware of this fact.
- 4.9 Bordereaux relating to business purportedly placed with Firm B indicates that 37,721 passengers took cover between 26 April 2004 and 25 February 2005 (there is an error in calculation of WIC's own bordereaux summary figure of 41,847, a difference of 4,126). Mr Whiteley has admitted that with regard to Firm B, WIC conducted insurance business as principal received premiums and settled claims without an underwriter being in place.

### **Firm C**

- 4.10 Firm C is an insurance Broker authorised by the FSA. Firm C sold travel insurance policies arranged by WIC to the public from its internet website as well as by telephone sales. Between January and February 2005 Firm C arranged for a number of their customers to take out policies which were arranged with WIC, including policies on which some of their customers travelled. Firm C undertook this business as it had been led to believe that WIC had underwriting cover.
- 4.11 However, on 25 February 2005, Mr Whiteley informed Firm C that he could not issue policy documents and admitted to Firm C that this was because no cover was in place on the annual policies effected from 1 January 2005. Firm C was therefore required to arrange, at short notice, alternative insurance for clients who would otherwise have been without cover.

## **Insolvency Proceedings**

- 4.12 On 26 April 2005, the FSA issued a petition to the High Court for the winding up of WIC and the appointment of Joint Provisional Liquidators. The court ordered the Joint Provisional Liquidators to take charge of the affairs of WIC until the conclusion of the Petition or further Order.
- 4.13 The FSA's petition to wind up WIC was granted on 15 June 2005. Mr Whiteley did not appear at the hearing and did not file any evidence in opposition to the petition. Included in the Joint Provisional Liquidators report to the court was confirmation that WIC had effected and carried out contracts of insurance as principal without authorisation prior to 14 January 2005; and after 14 January 2005 WIC had undertaken similar regulated activities beyond WIC's permissions to act as an insurance intermediary. The Court order records an express finding that WIC had carried on a regulated activity in contravention of the general prohibition within the meaning of FSMA.
- 4.14 The Secretary of State subsequently appointed the Joint Provisional Liquidators as Joint Liquidators of WIC with effect from 15 June 2005.

## **Particulars**

- 4.15 In considering the facts and matters referred to above, Mr Whiteley has breached Principles, 1, 2, 4 and 7 and has failed to comply with the Code of Conduct For Approved Persons (APER) as more particularly set out below.

## **Breaches of Principle 1 – Failing to act with Integrity**

Mr Whiteley has breached Statement of Principle 1 in that as an Approved Person he failed to act with integrity by:-

- i. deliberately causing WIC to sell insurance policies without having an underwriter in place in breach of a permission (s 20 FSMA) post 14 January 2005;
- ii. misleading consumers and other third parties by holding out that various schemes of insurance were being underwritten by a properly authorised underwriter and that he further held out in interview to FSA investigators that a properly authorised underwriter would cover travel insurance contracts which he had arranged when he knew that this was not the case;
- iii. permitting WIC to continue such activities, despite having received a notice from one of its underwriters dated 30 September 2004 (Firm A, see paragraphs 4.1-4.6 above) to stop handling and settling claims on behalf of that underwriter by 31 December 2004, and claiming that he had never agreed to that condition;
- iv. claiming to the FSA when questioned that he 'continually' advised agents not to issue policies. Beyond Mr Whiteley's statement in interview no evidence of

this has been identified or provided, and he has not identified the manner in which he purportedly advised the agents;

- v. causing WIC to continue to issue policies with an underwriter (Firm B, see paragraphs 4.7-4.9 above) where that underwriter was shown as the underwriter of the policy despite the fact it was not the underlying underwriter; and,
- vi. issuing a letter to WIC's agents, dated 18 March 2005, confirming that WIC was suffering difficulties in replacing underwriters on some schemes, only after an underwriter had contacted those agents directly. Despite issuing this letter WIC failed to clearly instruct those agents to cease issuing travel policies and did not specify which schemes were not covered. Mr Whiteley had previously led his agents (Firm C, see paragraph 4.10 to 4.11 above) to believe that the problem was a purely administrative matter.

### **Breach of Principle 2 – Failing to act with due skill, care and diligence**

Mr Whiteley has breached Statement of Principle 2 in that as an Approved Person he failed to act with due skill, care and diligence by:-

- i. failing to take steps to ensure that WIC did not engage in regulated activities in breach of its permissions post 14 January 2005;
- ii. failing to take steps to remedy WIC's breaches of the general prohibition and its permissions, thereby causing a risk of potential loss to consumers;
- iii. failing to take steps to remedy WIC's breaches of its permission in relation to the effecting of contracts of insurance which were not properly underwritten by an authorised insurer, thereby causing a risk of potential loss to consumers;
- iv. failing to take steps to ensure that all travel insurance policies were properly underwritten by an authorised insurer, thereby causing consumers to travel without proper insurance cover which they believed they had purchased;
- v. permitting WIC to hold out that Firm A insurance schemes were underwritten by an authorised insurer (when they were not) and allowing documentation misleading agents and consumers to be circulated;
- vi. improperly delegating authority to travel agents to issue policies on behalf of WIC;
- vii. failing to take steps to ensure that WIC has any form of control over policies so issued;
- viii. failing to issue instructions to agents to stop issuing policies when he knew that no underwriters were in place;
- ix. offering an insurance scheme, via a third party's website after June 2004, when there was no written agreement with any authorised underwriter to underwrite that scheme. Mr Whiteley claimed a verbal agreement of an undertaking,

which was not identified or supported by any record of WIC or the third party;

- x. expounding the view, when questioned by one of his agents (Firm C, see paragraphs 4.10 to 4.11 above) about lack of cover for travellers, that if some people had already travelled and there was no claim, that those travellers were “lucky”;
- xi. by undertaking a class of regulated business, where Mr Whiteley indicated he could not comply with the regulations; and
- xii. allowing WIC to effect contracts of insurance as principal in breach of the prudential standards imposed upon firms permitted to conduct such regulated activities.

#### **Breach of Principle 4 – Failing to be open and co-operative with the Regulator**

Mr Whiteley has breached Statement of Principle 4 in that as an Approved Person he failed to be open and co-operative with the Regulator by:-

- i. acknowledging but failing to comply fully with a notice issued pursuant to sections 171(1)(b), 171(2), 172(1) and 172(2)(b) of FSMA, dated 3 February 2005; and
- ii. providing misleading information regarding the state of legal affairs between WIC and an authorised underwriter that Mr Whiteley claimed had provided a written undertaking to WIC to underwrite WIC insurance business.

#### **Breach of Principle 7 - Failing to ensure that the business of the firm complied with the relevant requirements and standards of the regulatory system.**

Mr Whiteley has breached Statement of Principle 7 in that as an Approved Person he failed to ensure that the business of the firm complied with the relevant requirements and standards of the regulatory system by:-

- i. Failing to take reasonable steps to ensure that WIC did not engage in regulated activities in breach of its permissions.

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#### **Conclusions**

- 6.1 Pursuant to Principles 1, 2, 4 and 7 and FIT 2.1, 2.2 and 2.3 the FSA has had regard to the facts and matters referred to above. The FSA has concluded that Mr Whiteley does not appear to be a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person or exempt person or exempt professional firm.
- 6.2 The FSA has further concluded that the severity of the ongoing risk posed by Mr Whiteley to consumers and to the market generally is such that it is necessary, in the light of its regulatory objectives, for the FSA to exercise its power to make a prohibition order against Mr Whiteley in the terms proposed.