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## FINAL NOTICE

**NOTE: This prohibition order was revoked by the FCA on 15/08/2016**

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**To:** Darrell Mark Eaden

**Date of birth:** 7 July 1967

**Individual reference:** DME 00011

**Dated:** 20 August 2008

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the "FSA") gives you, Darrell Mark Eaden ("Mr Eaden") final notice about the decision to make an order prohibiting Mr Eaden from carrying out any controlled function involving the exercise of significant influence over any person in relation to any regulated activity carried on by any other authorised person, exempt person or exempt professional firm.**

### 1. THE ORDER

- 1.1. The FSA gave Mr Eaden a Decision Notice dated 20 August 2008 ("the Decision Notice") which notified Mr Eaden that pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to make an order prohibiting Mr Eaden from carrying out any controlled function involving the exercise of significant influence over any person in relation to any regulated activity carried on by any other authorised person, exempt person, or exempt professional firm.
- 1.2 Mr Eaden agreed that he would not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3 Accordingly, for the reasons set out below and having agreed with Mr Eaden the facts and matters relied on, the FSA makes an order prohibiting Mr Eaden from carrying out any controlled function involving the exercise of significant influence over any person in relation to any regulated activity carried on by any other authorised person, exempt person or exempt professional firm. The Prohibition Order takes effect from 20 August 2008.

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

- 2.1. The FSA has imposed a prohibition order against Mr Eaden as it considers that his conduct, whilst a sole trader (CF7) trading as Liberty Financial Consultants ("Liberty"), with responsibility, amongst other things, for apportionment and oversight (CF8), compliance oversight (CF10) and money laundering reporting (CF11) controlled functions, fell short of the standards set by the FSA's Statements of Principle and Code of Practice for Approved Persons ("APER").
- 2.2. Specifically, Mr Eaden failed to ensure that appropriate systems and controls were in place to monitor the firm's pension transfer specialist ("the CF24"), during the period between 5 May 2004 and 31 March 2005 ("the relevant period") in breach of:
- (1) Statement of Principle 5 by failing to take reasonable steps to ensure that the business of Liberty, for which he was responsible by virtue of his controlled functions, was organised so that it could be controlled effectively;
  - (2) Statement of Principle 6 by failing to exercise due skill, care and diligence in managing the business of Liberty for which he was responsible by virtue of his controlled functions; and
  - (3) Statement of Principle 7 by failing to take reasonable steps to ensure that the business of Liberty, for which he was responsible by virtue of his controlled functions, complied with the relevant requirements and standards of the regulatory system.
- 2.3. The FSA views Mr Eaden's conduct as serious because it exposed customers to the risk of being recommended pension transfers that may not be suitable. Due to his conduct, the FSA is not satisfied that Mr Eaden is a fit and proper person in terms of his competence and capability to perform any controlled function involving the exercise of significant influence over any person in relation to any regulated activity carried on by any other authorised person or exempt person.

## **3. RELEVANT STATUTORY AND REGULATORY PROVISIONS**

- 3.1. The FSA's regulatory objectives set out in section 2(2) of the Act include market confidence and the protection of consumers.
- 3.2. Section 56 of the Act provides that the FSA may prohibit an individual from performing a specified function, any function falling within a specified description or any function 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, exempt person or exempt professional person.
- 3.3. A prohibition may therefore be partial or total and may be imposed if it appears to the FSA that the individual is not a fit and proper person to perform such function or functions.

- 3.4. The FSA's policy in relation to making a prohibition order is set out at Chapter 9 of the Enforcement Guide ("EG"). The relevant guidance in EG is set out at Annex A.
- 3.5. The FSA's guidance on the fitness and propriety of individuals is set out in the section of the FSA Handbook entitled the Fit and Proper Test for Approved Persons ("FIT"). The relevant sections of FIT are set out at Annex A.
- 3.6. The Statements of Principle with respect to the conduct expected of Approved Persons ("APER") are issued under section 64 of the Act. The Statements of Principle relevant to this matter are set out below.
- 3.7. Statement of Principle 5 provides 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 is organised so that it can be controlled effectively."*
- 3.8. Statement of Principle 6 provides that:
- "An approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function."*
- 3.9. Statement of Principle 7 provides 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."*
- 3.10. The FSA has issued a code of practice for the purpose of helping to determine whether or not a person's conduct complies with the Statements of Principle. The relevant provisions from this code of practice are set out at Annex A.

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

##### **Mr Eaden and Liberty**

- 4.1. During the relevant period Mr Eaden was a sole trader (CF7) trading as Liberty with responsibility, amongst other things, for apportionment and oversight (CF8), compliance oversight (CF10) and money laundering reporting (CF11) controlled functions and a number of directly retained employees, including the pension transfer specialist (CF24), 41 investment advisers (CF21) and 5 trainee advisers (CF22)
- 4.2. Liberty ceased trading on 3 March 2006 and Mr Eaden subsequently applied to the FSA for a change of legal entity to set up Liberty Financial Consultants Ltd ("Liberty Ltd"). Liberty Ltd signed an undertaking to take over all the rights and obligations of

the regulated activities carried on by Liberty and all business was transferred to Liberty Ltd. However, on 9 July 2007, Liberty Ltd went into administration and subsequently went into liquidation on 10 February 2008.

### **Background to the Investigation**

- 4.3. Following concerns arising from a desk based review of client files, particularly in respect of its pension transfer business, the FSA visited Liberty in October 2005. Serious concerns arose during the visit, which led to the FSA imposing a requirement under section 166 of Act to appoint a skilled person (the "Skilled Person"). The Skilled Person review involved an assessment of the adequacy of Liberty's systems, controls and procedures in respect of pension transfer business carried on during the relevant period. The Skilled Person reviewed a sample of 12 client files and assessed the CF24's competence in his advisory role.
- 4.4. The Skilled Person's final report was received in July 2006. As a result of the findings in the Skilled Person's report the FSA opened an investigation into Mr Eaden's conduct on 23 January 2007.
- 4.5. As a result of its investigation, the FSA has found evidence of the following breaches:

### **Systems and Controls**

- 4.6. Mr Eaden was responsible for ensuring that Liberty had in place appropriate and effective procedures for monitoring and controlling its advisers.

### *Apportionment of responsibility*

- 4.7. As the holder of the compliance oversight (CF10) and apportionment and oversight (CF8) controlled functions, Mr Eaden was responsible for ensuring that as a firm, Liberty gave advice to customers in respect of pension transfers in a compliant manner and that any delegated responsibilities were apportioned clearly. However, Mr Eaden did not take responsibility, or appeared to be confused about who was responsible, for compliance of the pension transfer business.

### *Suitability of individuals responsible for aspects of the business*

- 4.8. Mr Eaden appointed an individual to carry out pension transfer business, a new and higher risk business, without properly testing his competence, knowledge or skills on recruitment or monitoring his performance on an ongoing basis.

### *Reporting and other procedures*

- 4.9. Mr Eaden could not identify any set procedures in respect of the reporting and/or escalation of compliance issues in respect of the performance of his firm's advisers and confirmed that he relied on his staff to keep him informed and alert him to any problems as and when they arose. Specifically, there were no formal procedures for transacting pension transfer business and, despite generic procedures for the monitoring of advice; these do not appear to have been followed in the case of the

CF24. Further, there were no formal procedures for other advisers to follow for referring pension transfer cases to the CF24.

#### *Security procedures*

- 4.10. Mr Eaden confirmed that no controls procedures were in place at any time to check whether files had been taken out or were missing and could not explain what action had been taken to improve the security of client information.
- 4.11. As a result of the failing to apportion responsibility for compliance clearly, or put in place effective systems and controls to monitor the CF24, Mr Eaden failed to take reasonable steps to ensure that the pension transfer business of Liberty was organised so that it could be controlled effectively, in breach of Statement of Principle 5.

#### **Management of the business of Liberty**

##### *Understanding of the business delegated*

- 4.12. Mr Eaden stated that there was 'no other suitably qualified person' to monitor the performance of the CF24 and explained in interview that his supervision of the CF24 was informal and ad hoc because 'he [the CF24] was the expert'. Mr Eaden did not understand this new area of business sufficiently, either to assess the CF24's competence or monitor his performance.

##### *Supervision and monitoring of the business delegated*

- 4.13. Mr Eaden stated that Liberty did carry out checks/quality control/advice and training needs for its other advisers, but not for the pension transfer business. The CF24 had informal ad hoc discussions with an external compliance consultant, but received no formal assistance in developing pension transfer advice procedures.
- 4.14. By failing to maintain an appropriate level of understanding about the pension transfer business delegated to the CF24 and failing to adequately supervise and monitor him, Mr Eaden failed to exercise due skill, care and diligence in managing the business of Liberty, in breach of Statement of Principle 6.

#### **Compliance with regulatory requirements and standards**

- 4.15. Mr Eaden did not ask his Head of Compliance to carry out compliance checks on the CF24 and, apart from informal discussions, left the CF24 unsupervised. As the holder of the compliance oversight (CF10) and apportionment and oversight (CF8) controlled functions, it was Mr Eaden's responsibility to oversee the compliance and ensure that there were compliance procedures in place.
- 4.16. Due to the failure to monitor the compliance of the CF24 with the relevant regulatory requirements, Mr Eaden failed to take reasonable steps to ensure the business of Liberty complied with the relevant requirements and standards of the regulatory system, in breach of Statement of Principle 7.

## **5. CONCLUSIONS**

5.1. The facts and the matters described above lead the FSA to the conclusion that Mr Eaden's conduct amounts to a breach of standards prescribed by APER, and that the breach is so serious that it demonstrates that Mr Eaden is not fit and proper in terms of his competence and capability to perform any controlled function involving the exercise of significant influence function over any person in relation to any regulated activity carried on by any authorised or exempt person. In particular his conduct constituted breaches of the following Statements of Principle:

- (1) Statement of Principle 5 by reason of the facts and matters referred to in paragraphs 4.6 to 4.11 above, he failed to take reasonable steps to ensure that the pension transfer business of Liberty was organised so that it could be controlled effectively. In particular, he failed to ensure that Liberty had in place adequate and appropriate systems and controls.
- (2) Statement of Principle 6 by reason of the facts and matters referred to in paragraphs 4.12 to 4.14 above, he failed to exercise due skill, care and diligence in managing the business of Liberty. In particular, he failed to adequately supervise and monitor the CF24 to whom responsibility for dealing with the pension transfer business had been delegated.
- (3) Statement of Principle 7 by reason of the facts and matters referred to in paragraphs 4.15 to 4.16 above, he failed to take reasonable steps to ensure the business of Liberty for which he was responsible for complied with the relevant requirements and standards of the regulatory system. In particular, he failed to monitor compliance of the CF24 with the relevant requirements and standards of the regulatory system.

5.2. The FSA considers that, to achieve its regulatory objectives which include the protection of consumers, it should exercise its powers to make a prohibition order in the terms proposed.

## **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 Mr Eaden in accordance with Section 390 of the Act.

### **Confidentiality and 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 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 Mr Eaden 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, please contact Russell Clifton at the FSA (direct line: 020 7066 5304/fax: 0207 066 5305)

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Jonathan Phelan  
Head of Department  
FSA Enforcement Division

## **Annex A**

### **1. Enforcement Guide**

- 1.1. The Enforcement Guide ("EG") is a regulatory guide and does not form part of the FSA's Handbook. It contains general guidance on the FSA's approach to exercising its main enforcement powers.
- 1.2. The FSA's policy in relation to prohibition orders is set out in Chapter 9 of EG. This summarises the powers to make prohibition orders set out in the Act and the circumstances under which such action would be recommended.
- 1.3. EG 9.4 states that 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.
- 1.4. EG 9.5 states 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 the risk which he poses to consumers or the market generally.
- 1.5. EG 9.9 provides that, when the FSA decides whether to make a prohibition order against an approved person, the FSA will consider all the relevant circumstances of the case, including, but are not limited to, the following:
  - (1) whether an individual is fit and proper to perform functions in relation to regulated activities in accordance with the criteria contained in FIT;
  - (2) whether, and to what extent, the approved person has failed to comply with Statements of Principle or 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 for Businesses and other rules);
  - (3) the relevance and materiality of any matters indicating unfitness;
  - (4) the length of time since the occurrence of any matters indicating unfitness;
  - (5) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates; and
  - (6) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
- 1.6. In summary, the relevant considerations are whether, in terms of competence and capability, the relevant individual is fit and proper to perform functions in relation to regulated activities and, if not, the severity of the risk posed by them. Having established these matters, it can be determined whether prohibition will be necessary to achieve the FSA's regulatory objectives and what degree of prohibition would best serve the achievement of those objectives in each case.

## **2. Fit and Proper Test for Approved Persons ("FIT")**

- 2.1. The FSA had issued specific guidance on the fitness and propriety of individuals in FIT. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function and FIT is also relevant in assessing the continuing fitness and propriety of approved persons.
- 2.2. FIT identifies three criteria as being the most important considerations in assessing fitness and propriety, namely:
  - (1) honesty, integrity and reputation (FIT 2.1): This includes an individual's openness and honesty in dealing with consumers, market participants and regulators and willingness to comply with requirements placed on him by or under the Act as well as with other legal and professional obligations and ethical standards;
  - (2) competence and capability (FIT 2.2): This includes an assessment of the individual's skills in carrying out the controlled function that he is performing; and
  - (3) financial soundness (FIT 2.3).

## **3 APER**

- 3.1. Section 64 of the Act authorises the FSA to issue statements of principle with respect to the conduct expected of approved persons. If it does so it must also issue a code of practice for the purpose of helping to determine whether or not a person's conduct complies with the statement of principle. Such a code may specify:
  - (1) descriptions of conduct which, in the opinion of the FSA, comply with a statement of principle;
  - (2) descriptions of conduct which, in the opinion of the FSA, do not comply with a statement of principle; and
  - (3) factors which, in the opinion of the FSA, are to be taken into account in determining whether or not a person's conduct complies with a statement of principle.
- 3.2. APER sets out the Statements of Principle in respect of approved persons and descriptions of conduct which, in the opinion of the FSA, do 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.
- 3.3. APER 3.1.3G states that when establishing compliance with or a breach of a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, the circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.

- 3.4. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle if he is personally culpable, that is in a situation where his conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.
- 3.5. APER 4.5 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 5, including the following:
- (1) APER 4.5.4E states that failing to take reasonable steps to apportion responsibilities clearly amongst those to whom responsibilities have been delegated is evidence of conduct which breaches Statement of Principle 5. APER 4.5.5E states that such conduct includes, but is not limited to, implementing confusing or uncertain reporting lines (this aspect is discussed in more detail in APER 4.5.12G);
  - (2) APER 4.5.8E states that failing to take reasonable steps to ensure that suitable individuals are responsible for those aspects of the business under the control of the individual performing a significant influence function is evidence of conduct which breaches Statement of Principle 5. APER 4.5.9E considers such conduct includes, but is not limited to, failing to review the competence, knowledge, skills and performance of staff to assess their suitability to fulfil their duties; and
  - (3) APER 4.5.12G augments APER4.5.5E and states, amongst other things, that the organisation of the business and the responsibilities of those within it should be clearly defined. Reporting lines should be clear to staff.
- 3.6. APER 4.6 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 6, including the following:
- (1) APER 4.6.3E states that failing to take reasonable steps to adequately inform himself about the affairs of the business for which he is responsible is evidence of conduct which breaches Statement of Principle 6. APER 4.6.4E considers such conduct includes, but is not limited to, permitting transactions without a sufficient understanding of the risks involved;
  - (2) APER 4.6.6E states that failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that he has delegated to an individual or individuals (whether in-house or outside contractors) is evidence of conduct which breaches Statement of Principle 6.
  - (3) APER 4.6.7E considers such behaviour includes, but is not limited to, failing to require adequate reports once the resolution of an issue or management of part of the business has been delegated; and
  - (4) APER 4.6.8E states that failing to supervise and monitor adequately the individual or individuals (whether in-house or outside contractors) to whom responsibility for dealing with an issue or authority for dealing with a part of the business has been delegated is evidence of conduct which breaches Statement of Principle 6.

3.7. APER 4.7 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 7, including the following:

- (1) APER 4.7.4E states that 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 is evidence of conduct which breaches Statement of Principle 7; and
- (2) APER 4.7.10E states that in the case of an approved person performing a significant influence function responsible for compliance under SYSC 3.2.8R, failing to take reasonable steps to ensure that appropriate compliance systems and procedures are in place is evidence of conduct which breaches Statement of Principle 7.