
FINAL NOTICE

To: **Fabio Massimo De Biase**
Of: **Upper Floor, 28 Racton Road, Fulham,
London SW6 1LP**

Date of Birth: **31 July 1971**
Individual Reference No.: **FMD01026**
Date: **27 September 2010**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice that it has taken the following action:

1. THE PENALTY

1.1. The FSA gave Fabio De Biase a Decision Notice on 10 September 2010 which notified him that the FSA had decided to impose on him:

- (1) A prohibition order pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), prohibiting Mr De Biase 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 Mr De Biase is not a fit and proper person;

- (2) A financial penalty of £252,239 pursuant to section 66 of the Act, representing a disgorgement of £198,000 equating to the income of Mr De Biase in relation to the activities detailed below, and an additional penalty element of £54,239.

1.2. The level of the additional penalty reflects:

- (1) Mr De Biase's serious personal financial hardship; and
- (2) Mr De Biase's agreement to settle at an early stage of the FSA's investigation. He therefore qualifies for a 30% (Stage 1) reduction in penalty, pursuant to the FSA's executive settlement procedures.

But for these matters, the FSA would have imposed an additional penalty element of £500,000 on him.

2. REASONS FOR THE ACTION

Summary

- 2.1. This notice is issued to Mr De Biase as a result of his conduct as an approved person carrying out a controlled function during the period February 2008 to August 2009 (the "relevant period"), during which Mr De Biase was employed as a cash equities broker by TFS Derivatives Limited ("TFS"). Mr De Biase is no longer employed at TFS, having resigned on 21 May 2010.
- 2.2. During the relevant period, Mr De Biase made payments of approximately £131,000 to Anjam Ahmad, a hedge fund trader. The amount paid to Mr Ahmad was directly attributable to the amount of commission earned by Mr De Biase from revenue generated from Mr Ahmad's employer, AKO Capital LLP ("AKO"), for equities trading that Mr Ahmad directed to TFS. Mr Ahmad was paid 35 percent of Mr De Biase's net commission income in 2008, and 50 percent in 2009.
- 2.3. During the relevant period, Mr De Biase agreed "improvements" with Mr Ahmad to the commission rate charged by TFS for the execution trading. The ordinary commission rate was 5 basis points ("bps"), or 0.05 percent. On 20 occasions during

the relevant period, Mr Ahmad agreed with Mr De Biase to increase the effective commission rate from 5 bps to levels ordinarily between 40 and 50 bps. The net effect of these 20 occasions was additional commissions of \$739,000 being paid by AKO in the relevant period.

- 2.4. By obtaining agreement from Mr Ahmad to charge much higher commissions on these 20 specific occasions, Mr De Biase directly increased the commission income he received from AKO's business. This also resulted in a corresponding increase in the amount of money payable by Mr De Biase to Mr Ahmad.
- 2.5. By virtue of his deliberate misconduct, Mr De Biase breached Statement of Principle 1 ("Principle 1") of the Statements of Principle for Approved Persons contained in the High Level Standards part of the FSA's Handbook and entitled "Statements of Principle and Code of Practice for Approved Persons" ("APER").
- 2.6. The FSA views Mr De Biase's misconduct as particularly serious because he was an approved person carrying out a controlled function, and an experienced broker who disadvantaged his client by his actions.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

Statutory provisions

- 3.1. The FSA's statutory objectives, set out in Section 2(2) of the Act, are market confidence, public awareness, the protection of consumers, the reduction of financial crime and contributing to the protection and enhancement of the stability of the UK financial system.
- 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 an authorised person. Such an order may relate to a specified regulated

activity, any regulated activity falling within a specified description, or all regulated activities.

3.3. Section 66 of the Act provides that:

- (1) The FSA may impose a penalty on a person of such amount as it considers appropriate if:
 - (a) it appears to the FSA that he is guilty of misconduct; and
 - (b) the FSA 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 of the Act; or
 - (b) he has been knowingly concerned in a contravention by the authorised person on whose application he was approved of a requirement imposed on that authorised person by or under the Act.

Fit and Proper Test for Approved Persons

- 3.4. The purpose of the part of the FSA Handbook entitled Fit and Proper Test for Approved Persons ("FIT") is to outline the main criteria for assessing the fitness and propriety of a candidate to perform a controlled function. The criteria set out in FIT are also relevant in considering whether the FSA will exercise its powers to make a prohibition order in respect of an individual in accordance with the Enforcement Guide ("EG") paragraph 9.9.
- 3.5. FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person, including the person's honesty and integrity. FIT 2.1.1G provides that, in determining a person's honesty and integrity, the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G.

- 3.6. FIT 2.1.3G refers to various matters, including: whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)); whether the person has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar (FIT 2.1.3G(11)); or 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 (FIT 2.1.3G(13)).

Statements of Principle and Code of Practice for Approved Persons

- 3.7 The part of the FSA Handbook entitled Statements of Principle and Code of Practice for Approved Persons (“APER”) is issued by the FSA under section 64 of the Act with respect to conduct expected of approved persons.
- 3.8 The Statement of Principle which is most relevant to Mr De Biase’s conduct is Principle 1.
- 3.9 APER 3.1.4.G states that 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.
- 3.10 Principle 1 provides that, “An approved person must act with integrity in carrying out his controlled function.” (APER 2.1.2 P)
- 3.11 APER 4.1.2E sets out examples of conduct that, in the opinion of the FSA, do not comply with Principle 1. The types of conduct referred to in APER 4.1.2E include deliberately misleading (or attempting to mislead) his client. (APER 4.1.3E)
- 3.12 During the relevant period Mr De Biase held the controlled function CF 30 (customer function) and the conduct in question occurred whilst he was carrying out his controlled function.

Enforcement Policy

- 3.13 The FSA's policy in relation to the decision to make a prohibition order is set out in Chapter 9 of EG. Extracts from chapter 9 of EG are set out in Annex A.
- 3.14 The FSA's policy in relation to the imposition of financial penalties is set out in Chapter 6 of the part of the FSA Handbook entitled Decision Procedure and Penalties Manual ("DEPP"). Extracts from DEPP as in force at the time of the misconduct are set out in Annex A.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. TFS is an execution only stockbroking firm authorised by the FSA. During the relevant period, Mr De Biase was an FSA approved person (CF 30) employed by TFS as a broker. One of the TFS clients which Mr De Biase managed was AKO. The execution of the relevant orders by Mr De Biase, which generated his excess commissions and the payments to Mr Ahmad, was therefore carried out by Mr De Biase in performance of his controlled function.
- 4.2. At the beginning of the relevant period, Mr De Biase and Mr Ahmad secured the agreement of their respective employers that AKO would utilise TFS to carry out cash equity trades on an execution only basis. The commission rate was agreed at 5 bps.
- 4.3. During the relevant period, Mr Ahmad utilised TFS regularly for cash equity trading. The total commissions paid by AKO to TFS were \$2.122 million. \$1.293 million of this commission was appropriately calculated in line with trading undertaken and disclosed to AKO. \$829,000, however, reflected improvements agreed between Mr De Biase and Mr Ahmad. The amount which should have been charged on this trading was \$90,000. AKO was therefore overcharged by \$739,000, and was not informed of the higher commissions being charged.

Improvements

- 4.4. Mr De Biase and Mr Ahmad agreed to increases in the rate of commission paid to TFS on 20 occasions in the relevant period. The agreed rate of commission varied from 16 to 72 bps. On 17 of the 20 occasions, the agreed commission rate was between 40 and 56 bps. The weighted average commission for the 20 occasions was 46 bps.
- 4.5. The improved commissions were not known to AKO, as confirmation notes generated by TFS and forwarded by Mr De Biase showed the transactions as principal transactions between AKO and TFS, with no commission charged. In fact, commissions of \$829,000 had been charged on these transactions, representing an overcharge to the agreed 5 bps rate of \$739,000.

Payments to Mr Ahmad

- 4.6. As part of his remuneration in 2008, Mr De Biase received 45 percent of the gross commissions paid by AKO to TFS. Mr De Biase agreed to pay Mr Ahmad 35 percent of Mr De Biase's net commissions from AKO, that is after the deduction of costs, income tax and National Insurance contributions. In 2009, Mr De Biase's agreement with Mr Ahmad was altered, and Mr Ahmad was to receive 50 percent of the net commissions.
- 4.7. Mr De Biase received approximately £329,000 of net commission as a result of AKO trading during the relevant period. Pursuant to their agreement, Mr Ahmad received payments to a value of £131,000 from Mr De Biase in numerous forms. The majority of the payments from Mr De Biase to Mr Ahmad were in the form of cash.
- 4.8. The effect attributable to the improved commissions on Mr De Biase's net income was £63,000 in 2008 and £28,000 in 2009, totalling £91,000. This represents 46 percent of the £198,000 of his net income attributable to AKO.

5. ANALYSIS OF BREACHES

- 5.1. Mr De Biase's conduct, in:

- (1) Agreeing with Mr Ahmad to pay him amounts directly linked with the amount of revenue generated from Mr Ahmad's employer and Mr De Biase's client, AKO, in order to encourage Mr Ahmad to use his discretion to place trades with Mr De Biase's employer, TFS;
- (2) Agreeing with Mr Ahmad to increase the level of commission charged by TFS to AKO for their mutual personal gain;
- (3) Making payments to Mr Ahmad over an extended period of time; and
- (4) Providing inaccurate trade confirmations indicating that zero commission had been charged on 20 occasions;

demonstrates that he is a not a fit and proper person to carry out regulated activities.

- 5.2. By virtue of his deliberate misconduct as set out in 5.1, Mr De Biase was in breach of Principle 1. Mr De Biase therefore failed to act with integrity in carrying out his controlled function.

6. ANALYSIS OF THE PROPOSED SANCTION

General

- 6.1. In deciding to take action, the FSA has considered the seriousness and nature of Mr De Biase's misconduct, the number and duration of his breaches, and the likely effect of the proposed action on him.
- 6.2. The FSA considers the following to be aggravating factors:
 - (1) Mr De Biase was an authorised person and an experienced broker in a position of trust;
 - (2) He has benefited considerably from his misconduct to the detriment of his client; and
 - (3) His misconduct was deliberate and occurred over a period of 19 months.

6.3. The FSA considers the following to be mitigating factors:

- (1) Mr De Biase has been co-operative with the FSA throughout the investigation;
- (2) No previous regulatory action has been taken against Mr De Biase by the FSA.

Prohibition

6.4. The FSA's effective use of the power to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities helps the FSA to work towards its regulatory objectives of protecting consumers, promoting public awareness, maintaining confidence in the financial system and reducing financial crime.

6.5. The FSA is satisfied that Mr De Biase 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 as he lacks honesty and integrity. The FSA has had regard to the guidance in EG 9 in deciding that a prohibition order is appropriate in this case.

Financial Penalty

6.6. The principal purpose for which the FSA imposes sanctions is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant behaviour.

6.7. In determining the proposed financial penalty, the FSA has considered the need to deter well-remunerated individuals such as Mr De Biase from engaging in this type of activity.

6.8. The FSA has taken all the circumstances of this case into account in deciding that the imposition of a financial penalty in this case is appropriate, and the level of the penalty imposed is proportionate. The FSA has had particular regard to the guidance set out in DEPP 6.

7. CONCLUSION

7.1. The FSA considers that the nature and seriousness of Mr De Biase's misconduct demonstrates that he is not fit and proper to perform any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm, and it is, therefore, appropriate for the FSA to exercise its powers to make the prohibition order against Mr De Biase.

7.2. In addition, the FSA considers that because of the nature and seriousness of his misconduct, and in order to promote high standards of regulatory conduct by helping to deter other persons from committing similar breaches, it is appropriate to impose a financial penalty of £252,239, consisting of disgorgement of £198,000 and an additional penalty element of £54,239 on Mr De Biase. As stated above, but for Mr De Biase's serious personal financial hardship, this additional penalty element would have been £500,000.

8. DECISION MAKERS

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

9. IMPORTANT

9.1. This Final Notice is given to Mr De Biase under section 390 of the Act.

10. MANNER OF AND TIME FOR PAYMENT

10.1. The financial penalty of £252,239 is payable in three instalments as follows:

- (1) The first instalment of £19,916 is payable on Tuesday 12 October 2010;

- (2) The second instalment of £16,309 is payable on Thursday 28 October 2010; and
- (3) The final instalment of £216,014 is payable on Monday 28 March 2011.

11. IF THE FINANCIAL PENALTY IS NOT PAID

- 11.1. If all or any of the financial penalty is outstanding on 28 March 2011, the FSA may recover the outstanding amount as a debt owed by Mr De Biase and due to the FSA.

12. PUBLICITY

- 12.1. 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 De Biase or prejudicial to the interests of consumers.
- 12.2. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

13. FSA CONTACTS

- 13.1. For more information concerning this matter generally, you should contact Russell Clifton (direct line: 020 7066 5304) of the Enforcement and Financial Crime Division of the FSA.

Tracey McDermott

Head of Department

Enforcement and Financial Crime Division

ANNEX

Relevant Rules, Guidance and Other Regulatory Provisions

1. Enforcement Guide

- 1.1. EG 9.3-9.7 sets out the FSA's general policy in deciding whether to make a prohibition order and/or withdraw an individual's approval. The FSA will consider all the relevant circumstances including whether other enforcement action should be taken or has been taken already against that individual by the FSA. In some cases the FSA may take other enforcement action against the individual in addition to seeking a prohibition order.
- 1.2. EG 9.4 provides 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. 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.
- 1.3. EG 9.5 provides 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 to the market generally.
- 1.4. EG 9.8-9.14 sets out additional guidance on the FSA's approach to making prohibition orders against approved persons and/or withdrawing such persons' approvals.
- 1.5. EG 9.8 provides that when the FSA has concerns about the fitness and propriety of an approved person, it may consider whether it should prohibit the person from performing functions in relation to regulated activities, withdraw its approval, or both. In deciding whether to withdraw its approval and/or make a prohibition order, the

FSA will consider in each case whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions or by issuing a private warning.

1.6. EG 9.9 provides that when it decides whether to make a prohibition order against an approved person and/or withdraw its approval, the FSA will consider all the relevant circumstances of the case. These may include, but are not limited to:

- (1) The matters set out in section 61(2) of the Act.
- (2) 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 2.1(Honesty, integrity and reputation); FIT 2.2 (Competence and capability); and FIT 2.3 (Financial soundness).
- (3) Whether, and to what extent, the approved person has:
 - (a) failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons; or
 - (b) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules);
- (4) Whether the approved person has engaged in market abuse.
- (5) The relevance and materiality of any matters indicating unfitness.
- (6) The length of time since the occurrence of any matters indicating unfitness.
- (7) 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.
- (8) The severity of the risk which the individual poses to consumers and to confidence in the financial system.
- (9) The previous disciplinary record and general compliance history of the individual including whether the FSA, any previous regulator, designated

professional body or other domestic or international regulator has previously imposed a disciplinary sanction on the individual.

- 1.7. EG 9.10 provides that the FSA may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the individual is fit and proper to continue to perform a controlled function or other function in relation to regulated activities. It may also take account of the particular controlled function which an approved person is performing for a firm, the nature and activities of the firm concerned and the markets within which it operates.
- 1.8. EG 9.11 states that it is not possible to produce a definitive list of matters which the FSA may 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. EG 9.12 sets out a list of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person, including:
 - (1) Providing false or misleading information to the FSA: including information relating to identity, ability to work in the United Kingdom, and business arrangements;
 - (2) Failure to disclose material considerations on application forms;
 - (3) Severe acts of dishonesty, e.g. which may have resulted in financial crime;
 - (4) Serious lack of competence; and
 - (5) Serious breaches of the Statements of Principle for approved persons, such as failing to make terms of business regarding fees clear or actively misleading clients about fees; acting without regard to instructions; providing misleading information to clients, consumers or third parties; giving clients poor or inaccurate advice; using intimidating or threatening behaviour towards clients and former clients; failing to remedy breaches of the general prohibition or to ensure that a firm acted within the scope of its permissions.

- 1.9. EG 9.13 provides that certain matters which do not fit squarely, or at all, within the matters referred to above may also fall to be considered and that in these circumstances the FSA will consider whether the conduct or matter in question is relevant to the individual's fitness and propriety.

2. Decision Procedure and Penalties Manual

- 2.1. DEPP 6.1.2 G provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour. Financial penalties and public censures are therefore tools that the FSA may employ to help it to achieve its regulatory objectives.

DEPP 6.2 Deciding whether to take action

- 2.2. DEPP 6.2.4 G provides that the FSA may take disciplinary action against an approved person where there is evidence of personal culpability on the part of that approved person. Personal culpability arises where the behaviour was deliberate or where the approved person's standard of behaviour was below that which would be reasonable in all the circumstances at the time of the conduct concerned.
- 2.3. DEPP 6.2.6 G lists some additional considerations that may be relevant when deciding whether to take action against an approved person pursuant to section 66 of the Act, including:
- (1) The approved person's position and responsibilities. The FSA may take into account the responsibility of those exercising significant influence functions in the firm for the conduct of the firm. The more senior the approved person responsible for the misconduct, the more seriously the FSA is likely to view the misconduct, and therefore the more likely it is to take action against the approved person.

- (2) Whether disciplinary action would be a proportionate response to the nature and seriousness of the breach by the approved person.

DEPP 6.5 Determining the appropriate level of financial penalty

- 2.4. DEPP 6.5.2 G lists a number of factors which may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act. The relevant factors are set out below.
- 2.5. When determining the appropriate level of penalty, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business (DEPP 6.5.2 G (1)).
- 2.6. The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached. Among the relevant considerations are the duration and frequency of the breach and the loss or risk of loss caused to consumers, investors or other market users (DEPP 6.5.2 G (2)).
- 2.7. The FSA will have regard to the extent to which the breach was deliberate or reckless. The FSA will regard as more serious a breach which is deliberately or recklessly committed. If the FSA decides that the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case (DEPP 6.5.2 G (3)).
- 2.8. The matters to which the FSA may have regard in determining whether a breach was deliberate or reckless include, but are not limited to, the following:
- (a) whether the breach was intentional, in that the person intended or foresaw the potential or actual consequences of its actions; and
 - (b) whether the person has given no apparent consideration to the consequences of the behaviour that constitutes the breach.

- 2.9. When determining the amount of a penalty to be imposed on an individual, the FSA will take into account that individuals will not always have the resources of a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level (DEPP 6.5.2 G (4)).
- 2.10. A person's incentive to commit a breach may be greater where the breach is, by its nature, harder to detect. The FSA may, therefore, impose a higher penalty where it considers that a person committed a breach in such a way as to avoid or reduce the risk that the breach would be discovered, or that the difficulty of detection (whether actual or perceived) may have affected the behaviour in question (DEPP 6.5.2 G (7)).
- 2.11. The FSA may take the previous disciplinary record and general compliance history of the person into account. This will include whether the FSA has taken any previous disciplinary action against the person, and the general compliance history of the person (DEPP 6.5.2 G (9)).
- 2.12. The FSA and the person on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, DEPP 6.7 provides that the amount of the penalty which might otherwise have been payable will be reduced to reflect the stage at which the FSA and the person concerned reach an agreement (DEPP 6.5.2 G (13)).