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**FINAL NOTICE**

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To: **Barrie Duncan Aspden**  
Of: **Orion Direct Limited ('Orion') and Peppercom Plc ('Peppercom')**  
Date of Birth: **24 October 1960**  
Dated: **1 April 2009**

**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, Barrie Duncan Aspden, from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.**

**1. THE ACTION**

- 1.1. The FSA gave you a Decision Notice on 1 April 2009 which notified you that the FSA had decided, pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), to make an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm ("the Prohibition Order").
- 1.2. You confirmed that you will 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 you the facts and matters relied on, 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 out by an authorised person, exempt person or exempt professional firm. The Prohibition Order takes effect from 1 April 2009.

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

- 2.1. The FSA considers that you are not fit and proper to carry out any functions in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm and that you should be prohibited from doing so.
- 2.2. On the basis of the facts and matters summarised below, and set out in more detail at section 4 of this notice, the FSA has concluded that you have failed to act with honesty and integrity in the course of your position at Orion and Peppercom.
- 2.3. Whilst a “shadow” director of Orion and Peppercom, you used the Orion client fund account to finance the creation of a new company, “Click the Pepper” which traded as Peppercom.
- 2.4. You did not hold any controlled function as you believed that your financial status prevented you from doing so (Discharged Bankrupt). Therefore, you put in place three directors, (Mrs Aspden (wife), Mrs Clayton (sister-in-law) and Mr Willment (family friend) (“the Directors”)), to hold the requisite significant influence controlled functions in relation to Orion and Peppercom so that regulated insurance business could be conducted. Despite the appointment of the Directors you retained overall control of Orion and Peppercom and influenced the Directors, in effect overseeing all operations and maintaining sole control of both companies’ finances. In practice you prevented the Directors from fulfilling their controlled functions and their regulatory obligations. Your conduct in seeking to subvert the FSA’s rules represents a fundamental disregard for regulation and an unwillingness to comply with the regulatory regime.

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

#### **Statutory Provisions**

- 3.1. The FSA's statutory objectives as set out in section 2(2) of the Act include the reduction of financial crime, protection of consumers and maintenance of market confidence.

#### **Prohibition**

- 3.2. The FSA has the power pursuant to section 56 of the Act to make an order prohibiting you from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that you are 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 or any regulated activity falling within a specified description or all regulated activities.

#### **Regulatory Requirements and Guidance**

- 3.3. In deciding on the action, the FSA has had regard to the relevant rules and guidance published in the FSA Handbook and accompanying regulatory guides, in particular in the Enforcement Guide (“EG”) and the Fit and Proper Test for Approved Persons (“FIT”). The relevant rules and guidance that apply to this case are set out in the Annex.

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

#### ***Background***

- 4.1. Orion became authorised on 14 January 2005, and Peppercom became authorised on 24 April 2007. Both firms were authorised to conduct the following activities with regard to general insurance:

- (a) advising on non-investment insurance contracts (except pension transfers/opt outs);
- (b) agreeing to carry on a regulated activity;
- (c) arranging (bringing about) deals in non-investment insurance contracts;

- (d) assisting in the administration of non-investment insurance contracts;
  - (e) dealing in non-investment insurance contracts as an agent; and
  - (f) making arrangements for non-investment insurance contracts.
- 4.2. Orion and Peppercom are general insurance intermediary firms which have the same directors. Orion specialises in providing commercial insurance to taxi drivers, driving instructors, social clubs and restaurants. Peppercom specialises in providing insurance to learner drivers.
- 4.3. In February 2008 the FSA became aware that customers of Orion had paid premiums to the firm but these premiums had not been received by the brokers providing agency facilities or the insurers. This potentially left several hundred customers uninsured.
- 4.4. In March 2008 both firms went into administration and their books of business were sold by the administrators. On 21 May 2008, at the request of the FSA, the administrators signed a Voluntary Variation of Permission to the effect that both Orion and Peppercom would cease conducting all regulated activities for which they had Part IV permission. The administrators applied to cancel Orion and Peppercom's authorisation on 3 October 2008. Both firms' Part IV permission was cancelled on 15 December 2008.

*Client money deficit*

- 4.5. You admitted that you transferred client money from the Orion account to fund the development of Peppercom. This occurred from September 2007 to November 2007 during which time you stated that you had sole responsibility of, and access to, both firms' accounts.
- 4.6. You explained that between September 2007 and November 2007 you spent considerable sums of money on Peppercom. You estimate that it amounted to approximately £500,000. The FSA identified £300,000 of that figure came from the Orion client account. You acknowledge that your actions potentially left customers uninsured because their premiums had not been paid to the insurers.

### ***Performance of controlled functions***

- 4.7. Due to your financial status (discharged bankrupt) you assumed that you were unable to hold the relevant significant influence controlled functions. Therefore, the Directors obtained approval to carry out the controlled functions for Peppercom and Orion. The Directors stated that you exerted a significant degree of influence over their controlled function activities and, in fact, were effectively running both firms.

## **5. ANALYSIS OF MISCONDUCT**

- 5.1. The FSA considers that you acted dishonestly and without integrity by knowingly using Orion client money to fund the large capital resources that were required to set up Peppercom. Given the serious nature of the misconduct the FSA is of the view that you pose a risk to consumers and to confidence in the financial system.
- 5.2. It is apparent that all three directors that you selected for Orion and Peppercom lacked the requisite competence, skill and diligence to perform the controlled functions to which their approvals related. This enabled you to control the business and exercise a significant degree of influence on the overall day to day running of Orion and Peppercom. This meant that you, in effect, performed controlled functions without FSA approval which demonstrates an inability and an unwillingness to comply with regulatory requirements.
- 5.3. You also acted recklessly in relation to monitoring and using the finances of Orion and Peppercom. You gave no apparent consideration as to the effect of using money from Orion to fund Peppercom which resulted in several hundred customers of Orion being potentially uninsured because their premiums were misused. You also gave no consideration to the cash flow requirements of either firm which contributed to their eventual administration

## **6. ANALYSIS OF THE SANCTION**

- 6.1. The FSA concludes that the conduct summarised above demonstrates a failure to meet minimum regulatory standards of honesty and integrity and therefore

considers that you are not fit and proper to carry out any functions in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

- 6.2. The FSA considers that you pose a risk to customers and to confidence in the financial system, and also that action should be taken in support of the FSA's regulatory statutory objective of reducing financial crime.
- 6.3. You exercised significant influence functions at Orion and Peppercom without FSA approval for a period of three years. Consequently, you pose a risk to the FSA's regulatory statutory objectives of maintaining confidence in the financial system and protecting consumers.
- 6.4. You are not, and never have been, an approved person and a prohibition order is the only sufficient way for the FSA to ensure it achieves its regulatory objectives.
- 6.5. The FSA therefore considers that it is necessary to prohibit you from performing any functions in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm.

## **7. DECISION MAKERS**

- 7.1. 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

## **8. IMPORTANT**

- 8.1. This Final Notice is given to you in accordance with section 390 of the Act.

### **Publicity**

- 8.2. 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 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 you or prejudicial to the interests of consumers.

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

**FSA Contacts**

- 8.4 For more information concerning this matter generally, you should contact Paul Howick of the Enforcement Division of the FSA (direct line: 020 7066 7954).

Signed:

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Jonathan Phelan

**Project Sponsor**

**FSA Enforcement Division**