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## FINAL NOTICE

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To: **Alan Garlick**

Date of Birth: **18 January 1947**

Dated: 28 March 2007

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about a decision to make a prohibition order against you.**

### **1 ACTION**

- 1.1 The FSA gave you, Alan Dennis Garlick, a Decision Notice on 1 March 2007 which notified you that for the reasons listed below, and pursuant to section 56 of the Financial Services and Markets Act 2000 (“the Act”), the FSA has decided to make a prohibition order in the terms set out below against you.
- 1.2 The terms of the prohibition order are that you, Mr Garlick, be prohibited from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional person (“the Prohibition Order”).
- 1.3 You agreed on 28 February 2007 that you will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.4 Accordingly, for the reasons set out below and having agreed the facts and matters relied on, the FSA makes a prohibition order against you. The order is effective from 11 April 2007.

## **2 REASONS FOR THE ACTION**

2.1 The action by the FSA relates to your conduct between January 2005 and February 2006 ("the Relevant Period") whilst performing the controlled functions of Director (CF1) and Apportionment and Oversight with responsibility for insurance mediation (CF8), on behalf of Chapel Finance Limited ("Chapel/the Firm"). This conduct, when considered by reference to the FSA's prescribed regulatory standards for individuals, is such that it appears to the FSA that you are not a fit and proper person and that the FSA should make a Prohibition Order against you.

2.2 In particular, you have demonstrated a serious lack of due skill, care and diligence and lack of compliance with regulatory standards in respect of the performance of your controlled functions with Chapel. In this respect you have failed to:

- (1) ensure that underwriting was in place for guaranteed asset protection ("GAP") and payment protection policies ("PPP") sold during the period 1 January 2005 to 20 April 2005;
- (2) ensure that the Firm complied with a requirement included within its Part IV permission not to hold client money, in that the Firm received and held client money during the Relevant Period in the form of premiums for PPP and GAP policies when it was not authorised to do so; and
- (3) ensure that the Firm complied with the FSA's requirements in relation to the receipt and holding of client money during the Relevant Period.

2.3 As a result of the above misconduct the FSA considers that you have:

- (1) failed to comply with Statements of Principle 2, 6 and 7 of the FSA's Statements of Principle and Code of Practice for Approved Persons ("APER")
- (2) failed to demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory system, and with professional obligations and ethical standards;
- (3) failed to demonstrate the competency and capability required to perform controlled functions in relation to regulated activities.

2.4 The FSA has concluded by virtue of the matters referred to above that:

- (1) You are not a fit and proper person to carry out any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional person; and
- (2) having regard to its regulatory objectives, including the severity of the risk that you pose to consumers and to confidence in the market generally, it is necessary and desirable for the FSA to exercise its power to make the Prohibition Order against you.

### **3 RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE**

- 3.1 The FSA's statutory objectives as set out in section 2(2) of the Financial Services and Markets Act 2000 ("the Act") are: market confidence, public awareness, the protection of consumers and the reduction of financial crime.
- 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, exempt person or exempt professional person.
- 3.3 The effect of making a prohibition order is to prohibit an individual from performing functions within authorised or exempt firms and to prohibit authorised and exempt firms from employing the individual to perform specific functions. Such an order may relate to:
- (1) a specified function, a class of function or any function (section 56(2));
  - (2) a specified regulated activity, any regulated activity falling within a specified description or all regulated activities (section 56(3)(a));
- 3.4 A prohibition order may be partial or total and may be imposed if it appears to the FSA that the individual concerned is not a fit and proper person to perform such functions.

### **4 THE ENFORCEMENT MANUAL**

- 4.1 The FSA's policy in relation to prohibition orders is set out in Chapter 8 of the Enforcement Manual ("ENF"). ENF 8.4 summarises the FSA's policy on making prohibition orders and the circumstances under which Enforcement will consider recommending such action. In particular ENF 8.4.2 provides that:
- (1) *"The FSA will have 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."* (ENF 8.4.2G(1));
  - (2) *"Depending on the circumstances of each case, the FSA may seek to prohibit individuals from carrying out any class of relevant 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."* (ENF 8.4.2G(2));
  - (3) *"The scope of a prohibition order will depend on the range of functions which the individual concerned carries out in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally"* (ENF 8.4.2G(3)).
- 4.2 ENF 8.5.1A provides that:

*"the FSA will consider making a prohibition order against approved persons only in the more serious cases of lack of fitness and propriety where it considers that the other powers available to it are not sufficient to achieve the FSA's regulatory objectives".*

- 4.3 ENF 8.5.2 states that when the FSA decides whether to exercise its power to make a prohibition order against an Approved Person, it will consider a number of factors including the criteria for assessing the fitness and propriety of Approved Persons contained in the Fit and Proper test for Approved Persons. These factors include the competence and capability of an approved person.
- 4.4 In accordance with ENF 8.5.2 the FSA will also consider whether and to what extent the approved person has:
- (1) failed to comply with the Statements of Principle for Approved Persons;
  - (2) 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); and
  - (3) the relevance, materiality and length of time since the occurrence of any matters indicating unfitness;
  - (4) the particular controlled function the approved person is performing, the nature and activities of the firm concerned and the markets in which he operates;
  - (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and
  - (6) the previous disciplinary record and general compliance history of the individual including whether the FSA (or any previous regulator) has previously imposed a disciplinary sanction on the individual.
- 4.5 In summary, the relevant considerations include 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 him. 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.

### **The Fit and Proper test**

- 4.6 The FSA has issued specific guidance on the fitness and propriety of individuals in the section of the FSA handbook entitled the FIT and Proper test for Approved Persons ("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 an approved person.
- 4.7 As detailed above in accordance with ENF 8.5 the criteria set out in FIT are relevant in considering whether the FSA may exercise its powers to make a prohibition order against an approved person.

- 4.8 FIT 1.3 provides that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person with the most important considerations being the person's honesty, integrity and reputation, competence and capability and financial soundness.
- 4.9 In determining a person's honesty, integrity and reputation FIT 2.1 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. The guidance referred to includes 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.
- 4.10 In determining a person's competence and capability FIT 2.2.1G provides that the FSA will have regard to matters including but not limited to whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function

*Statements of principle and code of practice for approved persons ("APER")*

- 4.11 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 Authority, comply with a Statement of Principle;
  - (2) descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle;
  - (3) factors which, in the opinion of the Authority, are to be taken into account in determining whether or not a person's conduct complies with a Statement of Principle.
- 4.12 APER sets out the Statements of Principle in respect of Approved Persons. It also sets out descriptions of conduct which, in the opinion of the FSA, do not comply with the Statement of Principles. 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.
- 4.13 The guidance set out in APER 3.1.3 stipulates 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 precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.
- 4.14 APER 3.1.4 states that an approved person will only be in breach of a Statement of Principle if he or she is personally culpable, that is in a situation where his or her conduct was deliberate or where his or her standard of conduct was below that which would be reasonable in all the circumstances.

**Statement of Principle 2 states that:**

- 4.15 *"An approved person must act with due skill, care and diligence in carrying out his controlled function."*
- 4.16 APER 4.2 lists types of conduct which do not comply with Statement of Principle 2. In particular, APER 4.2.11 states that failing to provide adequate control over a client's assets is conduct which breaches Statement of Principle 2.

**Statement of Principle 6 states that:**

- 4.17 *"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"*
- (1) A *"significant influence function"* is defined in the Glossary of the Handbook as meaning any of the controlled functions 1 to 20 listed in the table of controlled functions under Rule 10.4.5R of the Supervision Manual.
- (2) APER 4.6 lists types of conduct which do not comply with Statement of Principle 6. APER 4.6.3 provides that the failure of an individual performing a significant influence function to take reasonable steps to adequately inform himself about the affairs of the business for which he is responsible constitutes a breach of Statement of Principle 6.

**Statement of Principle 7 states that:**

- 4.18 *"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".*
- (1) Conduct which, in the opinion of the FSA, does not comply with Statement of Principle 7 includes:
- (i) failure to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of its regulated activities (APER 4.7.3);
- (ii) failure 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 (APER 4.7.4); and
- (2) The FSA expects an approved person performing a significant influence function to take reasonable steps both to ensure his firm's compliance with the relevant requirements and standards of the regulatory system and to ensure that all staff are aware of the need for compliance (APER 4.7.11).

## **5 FSA's Client Asset and Money Requirements**

### **Client Asset Sourcebook ("CASS")**

- 5.1 Under Principle 10 (Clients' assets) of the FSA's Principles for Business, a firm is required to arrange adequate protection for clients' assets when the firm is responsible for them. The FSA's rules are designed to protect clients if a firm fails while it is holding client money or if it is unable to transfer premiums to insurers or claim money or refunds to clients. This is the case whether the amounts held are small or client money is held temporarily.
- 5.2 An essential part of that protection is the proper accounting and handling of client money and Chapter 5 of CASS contains detailed rules and guidance relating to the handling of client money. These rules are applicable to firms which carry on insurance mediation activities (CASS 5.1.1R).
- 5.3 The meaning of "client money" for the purpose of CASS 5 (subject to the client money rules) is *"money of any currency which, in the course of carrying on insurance mediation activity, a firm holds on behalf of a client or which a firm treats as client money in accordance with the client money rules"*.
- 5.4 There are 2 main approaches which firms can take to ensure adequate protection for client money:
- (1) The first is to transfer the risk from the firm to the insurer(s) (CASS 5.2)
  - (2) The second is to segregate client money into trust accounts that cannot be used to reimburse other creditors if a firm fails. The client trust accounts may be statutory (CASS 5.3) or non-statutory (CASS 5.4).
- 5.5 CASS 5.5 sets out the rules and guidance applicable to the segregation and the operation of client money accounts and provides that unless otherwise permitted, client money is kept separate from the firm's own money (CASS 5.5.2G).
- 5.6 CASS 5.5.3 R requires a firm to hold client money separate from the firm's money and CASS 5.5.5(1) R requires that a firm must segregate client money by paying it as soon as practicable into a client bank account. Guidance on a firm's obligations to periodically calculate and reconcile the money in its client bank account is given at CASS 5.5.62.

## **6 FACTS AND MATTERS RELIED ON**

### **Background**

- 6.1 You held the Director (CF1) and Apportionment and Oversight controlled functions with responsibility for insurance mediation (CF8), on behalf of Chapel throughout the Relevant Period.
- 6.2 According to Companies House records, Chapel was established in 1990. Chapel's primary business was the sale of car finance to a predominantly low income client base. In conjunction with car finance, Chapel sold various motor related insurance products, such as GAP, PPP, key insurance and emergency recovery insurance.

- 6.3 The FSA became responsible for the regulation of general insurance firms on 14 January 2005 on which date Chapel became an FSA authorised firm. The Firm currently holds permission to undertake the following categories of regulated activities in relation to non-investment insurance contracts:
- (1) advising on non investment insurance contracts (except on Pension Transfers and Pension Opt Outs);
  - (2) arranging deals in non-investment insurance contracts;
  - (3) dealing in non-investment insurance contracts as agent; and
  - (4) making arrangements with a view to transactions in non-investment contracts of insurance.
- 6.4 Section 43 of the Act provides that a Part IV permission may include such requirements as the FSA considers appropriate. In accordance with section 43(2) of the Act a requirement may be imposed to require a person to refrain from taking specified action. Chapel's Part IV permission included a requirement not to hold client money.

#### **Background to the investigation**

- 6.5 Chapel was placed in administration by one of its creditors on 8 February 2006.
- 6.6 On 22 February 2006, one of Chapel's creditors notified the FSA of its concern that some of Chapel's insurance business was not on risk.
- 6.7 The FSA appointed investigators to investigate Mr Garlick's conduct on 16 May 2006. On 25 May 2006 a consumer alert was issued.
- 6.8 On 6 June 2006 the administrators made an application to vary Chapel's Part IV permission so that Chapel may not carry on any of its permitted regulated activities.

#### **The Enforcement Investigation**

- 6.9 Between April 2002 and December 2004, Chapel had an agreement with an underwriter ("A") under which A underwrote PPP and GAP policies sold by Chapel. Following a disagreement between the two parties, this agreement was terminated as of the end of December 2004.
- 6.10 In the latter part of 2005, A commenced legal proceeding to recover monies said to be owed to it. Chapel agreed by consent order to pay A the sum of £47,293.37.
- 6.11 Following the termination of the agreement with A at the end of December 2004, during February or March of 2005, Chapel entered into negotiations with a broker ("B") for the provision of PPP and GAP to be underwritten by a new insurance underwriter.
- 6.12 From 21 April 2005 onward, Chapel sent bordereaux for PPP and GAP in relation to business written since 1 January 2005 to B by email on a regular basis. Chapel continued to write new PPP and GAP business and receive premiums in respect of such business until it was placed into administration in February 2006.



6.13 Chapel collected monies from customers during the Relevant Period, an element of which included payment for insurance in respect of PPP and GAP policies. Chapel's accounts indicate that a total of £60,000 was owed in respect of insurance premium to Broker B. Chapel never received an invoice in respect of the 240 PPP and 490 GAP policies written during the Relevant Period and, therefore, no monies were passed to Broker B.

6.14 The investigation by Enforcement has established that you failed:

- (1) to take reasonable steps to ensure that there was underwriting in place for PPP and GAP policies sold by Chapel during the period 1 January 2005 and 20 April 2005. During this period Chapel sold circa 91 PPP and 134 GAP policies without ensuring that appropriate underwriting had been effected for these policies;
- (2) to ensure that Chapel complied with the requirement not to hold client money which was included within the Firm's Part IV permission, in that Chapel held client money in the form of premiums for PPP and GAP policies sold during the Relevant Period;
- (3) to ensure that client money received by Chapel was held by the Firm in a manner which complied with the FSA's requirements in respect of client money. In particular, you failed to ensure that Chapel effected appropriate risk transfer agreements in respect of the client money received by the Firm, nor did you ensure that the Firm held client money in a separate client trust account thereby ensuring its segregation from the Firm's other funds. You failed therefore to ensure that client money held by Chapel (in the form of insurance premiums received by Chapel) was adequately protected as required by Principle 10 of the FSA's Statements of Principle for Businesses and CASS 5.5. This failure led to such monies being used to meet costs and liabilities of the Firm's business and not being passed on to the relevant underwriter.

6.15 The misconduct summarised above is considered to be serious because:

- (1) your failure to ensure that insurance policies sold by Chapel were underwritten exposed customers to the risk that required insurance cover would not be available;
- (2) your failure to ensure that Chapel complied with a requirement not to hold client money that formed part of its Part IV permission led to the firm holding client money in the form of insurance premiums when it was not authorised to hold such monies;
- (3) your failure to ensure that client money held by Chapel was adequately protected led to such monies being used to meet the costs of the business and not being passed onto the relevant underwriter.

## **7 ANALYSIS OF PROPOSED SANCTION**

7.1 Paragraphs 4.1 to 4.5 above explain the FSA's policy in relation to Prohibition Orders as set out in Chapter 8 of the Enforcement Manual. ENF 8.5.2 provides that the FSA will consider a number of factors and criteria for assessing the fitness and propriety of approved persons.

- 7.2 The FSA considers that by virtue of the failings detailed at paragraphs 6.14 and 6.15 above, you have breached Principles 2, 6 and 7 of the Statements of Principle for Approved Persons. In this respect FSA considers that the misconduct identified shows that whilst carrying out your controlled functions with Chapel you failed to exercise due skill care and diligence in respect of the management of Chapel's business and that you failed to take reasonable steps to ensure that the business of Chapel was conducted in a manner that complied with regulatory requirements and standards.
- 7.3 The FSA has considered whether you are a fit and proper person in accordance with the regulatory requirements and with regard to the relevant guidance. In this respect the FSA considers that the misconduct identified shows that you have:
- (1) failed to demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory system, and with professional obligations and ethical standards; and
  - (2) failed to demonstrate the competency and capability required to perform controlled functions in relation to regulated activities.
- 7.4 It is the FSA's view that the seriousness of your failings means that you are unable to satisfy the FSA as to your ability to comply with regulatory requirements, professional obligations and ethical standards, and that if you continued to perform any function in relation to regulated activities you would pose a risk to consumers and to confidence in the financial system.

## **8 CONCLUSION**

- 8.1 In light of the facts and matters described above, the FSA has concluded that you are not a fit and proper person to perform controlled functions in relation to any regulated activity.
- 8.2 Having regard to its regulatory objectives including the need to maintain confidence in the financial system, and the severity of risks posed to consumers, the FSA considers it necessary to impose a Prohibition Order which prohibits you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional person.

## **9 DECISION MAKERS**

- 9.1 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.

## **10 IMPORTANT**

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

### **Publicity**

- 10.2 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.

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

**FSA contacts**

- 10.4 For more information concerning this matter generally, you should contact Boura Tomlinson of the Enforcement Division of the FSA (direct line: 020 7066 5528 /fax: 020 7066 5529).

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Jonathan Phelan

Head of Department  
FSA Enforcement Division