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**FINAL NOTICE**

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**To:** **Mr Gary Forster**

**Address:** **52 Forder Way  
Peterborough  
Cambridgeshire  
PE7 8JB**

**Individual FSA reference:** **GWF00006**

**Dated:** **15 August 2011**

**1. ACTION**

- 1.1. For the reasons given in this Notice, the FSA hereby makes an order pursuant to section 56 of the Financial Services and Markets Act 2000 (the “Act”) prohibiting Mr Gary Forster (“Mr Forster”) from performing any significant influence functions and the CF30 (Customer) function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm which promotes and or recommends unregulated collective investment schemes (“UCIS”) to retail customers (the “Prohibition Order”). For the avoidance of doubt, the Prohibition Order in no

way prevents Mr Forster from continuing to perform any functions in respect of Rockingham Independent Limited's ("Rockingham") direct offer annuity business related activities.

## **2. SUMMARY OF REASONS**

- 2.1 On the basis of the facts and matters described below, the FSA concluded that Mr Forster lacks the competence and capability to perform any function in relation to the promotion and recommendation of UCIS to retail customers by any authorised person, exempt person or exempt professional firm.
- 2.2 Mr Forster had no knowledge or understanding of the statutory and regulatory restrictions on the promotion of UCIS to retail customers and therefore failed to take reasonable steps to ensure that Rockingham had regard to those restrictions when it promoted and recommended UCIS. This failure put 39 customers at risk of receiving unsuitable personal recommendations (ie pension and investment advice) between January 2008 and September 2010 (" the relevant period")
- 2.3 As the 50 per cent shareholder of Rockingham, Mr Forster also is indirectly affected by the financial penalty imposed on Rockingham.

### **Statutory provisions, regulatory guidance and policy**

- 2.4 Relevant statutory provisions, regulatory guidance and policy are set out as an Annex to this Notice.

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

- 2.5 Mr Forster was and continues to be an adviser at Rockingham.
- 2.6 From 20 November 2006 Mr Forster was approved to perform the controlled function of CF21 (Investment Adviser) in relation to regulated activities carried on by Rockingham, which was converted to the CF30 (Customer) function on 1 November 2007. Mr Forster also performed the role of chief executive at Rockingham without Rockingham first obtaining approval from the FSA for him to perform the controlled function of CF3 (Chief Executive) and he attended Rockingham's Board meetings. Mr Forster held himself out to be the CEO of Rockingham in correspondence with

third parties and to the employees of Rockingham when in fact he was the CEO of Rockingham Plc the parent company of Rockingham.

### **Breach of the restriction on the promotion of UCIS**

- 2.7. UCIS is defined in the glossary to the FSA Handbook of Rules and Guidance as “*a collective investment scheme which is not a regulated collective investment scheme*”. Unless a collective investment scheme (“CIS”) falls within the narrow definition of a regulated CIS<sup>1</sup>, it will be a UCIS. A UCIS does not carry the same level of regulatory oversight as a CIS in relation to matters such as the clarification of fees charged or diversification, but it is still subject to regulation, notably around the extent to which and persons to whom it can be marketed. Section 238 of the Act precludes the promotion of a UCIS by an authorised person except in certain specified circumstances, broadly these include promotions to investment professionals, existing customers of an authorised person, and certain high net worth individuals or sophisticated investors.
- 2.8 The FSA identified that at least 39 of Rockingham’s customers were recommended investing in UCIS.
- 2.9 Mr Forster failed to take reasonable steps to have a sufficient understanding of the regulatory requirements and restrictions relating to the promotion of UCIS. As a result of the deficiencies in his knowledge regarding the promotion of UCIS, there was a risk that unsuitable recommendations to invest in UCIS would be made to customers.

### **Conclusion**

- 2.10 Given Mr Forster’s failure to ensure that he had the necessary approval before he performed the de facto role of chief executive at Rockingham, and his failure to ensure that Rockingham had regard to the statutory and regulatory restrictions relating to UCIS before he and Rockingham’s other advisers promoted and recommended

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<sup>1</sup> A CIS is defined in the Handbook Glossary as follows:

(a) An investment company with variable capital; or

(b) An authorised unit trust scheme; or

(c) A recognised scheme, (ie a CIS constituted overseas and formally recognised under sections 264, 270 or 272 of the Financial services and Markets Act 2000);

Whether or not the units are held within an ISA or personal pension scheme.

UCIS, we consider that Mr Forster is not fit and proper in terms of a lack of competence and capability in this regard and, as a consumer protection measure, it is necessary and proportionate that he should be prevented from performing any significant influence and customer functions at any authorised firm whose activities include promoting and/or recommending UCIS.

### **3. DECISION MAKER**

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

### **4. IMPORTANT**

4.1 This Final Notice is given in accordance with section 390 of the Act. The effective date of the Prohibition Order is 15 August 2011.

#### **Publicity**

4.2 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.

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

**FSA contacts**

- 4.4 For more information concerning this matter generally, contact Chris Walmsley at the FSA (direct line: 020 7066 5894) of the Enforcement and Financial Crime Division of the FSA.

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Tom Spender  
Head of Department  
FSA Enforcement and Financial Crime Division

## **Annex (paragraph 2.4)**

### **1. STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY**

#### **Statutory provisions**

- 1.1 The FSA's statutory objectives, set out in section 2(2) of the Act, include the protection of consumers, maintaining market confidence and the reduction of financial crime.
- 1.2 The FSA has the power, by virtue of section 56 of the Act, to make an order prohibiting Mr Forster from performing a specified function, any function falling within a specified description or any function, if it appears to the FSA that he 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 specific regulated activity, an activity falling within a specified description or all regulated activities.

#### **Fit and proper test for approved persons**

- 1.3 A part of the FSA's Handbook has the title 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. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 1.4 FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. One of the considerations will be the person's competence and capability.
- 1.5 In determining a person's competence and capability, FIT 2.2 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.2.1G:
  - (1) whether the person satisfies the relevant FSA training and competence requirements in relation to the controlled function the person performs or is intended to perform;
  - (2) 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.

#### **FSA's policy for exercising its power to make a prohibition order and withdraw a person's approval**

- 1.6 The FSA's approach to exercising its powers to make prohibition orders and withdraw approvals is set out at Chapter 9 of the Enforcement Guide ("EG"). The FSA has had regard to the appropriate provisions of EG that applied during the relevant period.
- 1.7 EG 9.1 states that the FSA's power to make prohibition orders under section 56 of the Act helps it work towards achieving its regulatory objectives. The FSA may exercise this power where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.

- 1.8 EG 9.2 states that the FSA's effective use of the power under section 63 of FSMA to withdraw approval from an approved person will also help to ensure high standards of regulatory conduct by preventing an approved person from continuing to perform the controlled function to which the approval relates if he is not a fit and proper person to perform that function. Where it considers this is appropriate, the FSA may prohibit an approved person, in addition to withdrawing their approval.
- 1.9 EG 9.4 sets out the general scope of the FSA's powers in this respect, which include 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. EG 9.5 provides that the scope of a prohibition order will vary according to 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 risk posed by him to consumers or the market generally.
- 1.10 In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provides guidance. In particular, EG 9.8 states that the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw that person's approval or both. In deciding whether to withdraw approval and/or make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.
- 1.11 EG 9.9 states that the FSA will consider all the relevant circumstances when deciding whether to make a prohibition order against an approved person and/or to withdraw that person's approval. Such circumstances may include, but are not limited to, the following factors:
- (1) whether the individual is fit and proper to perform functions in relation to regulated activities, including in relation to the criteria for assessing the fitness and propriety of an approved person in terms of competence and capability as set out in FIT 2.2;
  - (2) the relevance and materiality of any matters indicating unfitness;
  - (3) the length of time since the occurrence of any matters indicating unfitness;
  - (4) 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;
  - (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.
- 1.12 EG 9.12 provides a number 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. The examples include serious lack of competence.