Financial Services Authority

FINAL NOTICE

To: Mr George McGregor ("Mr McGregor")

Individual Reference Number: GXN01326

Date of Birth: 21 January 1960

Date: 9 September 2011

1. ACTION

1.1. For the reasons given in this notice, the Financial Services Authority ("FSA") hereby:

(1) imposes on Mr McGregor a financial penalty of £109,000; and

(2) makes an order prohibiting Mr McGregor from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm ("the Prohibition Order").

1.2. The FSA considers that Mr McGregor's misconduct warrants a penalty of £1 million. However, the FSA is mindful that such a penalty would result in serious financial

hardship for Mr McGregor and so the FSA has reduced the level of penalty. In addition, McGregor agreed to settle at an early stage of the FSA's investigation. He therefore qualified for a 30% (stage 1) discount under the FSA's executive settlement procedures.

2. SUMMARY OF REASONS

2.1. The FSA has imposed the Prohibition Order and financial penalty on Mr McGregor as a result of his conduct as an approved person under section 59 of the Financial Services and Markets Act 2000 ("the Act"), for breaches of the FSA's Statements of Principle for Approved Persons ("APER") in relation to his conduct as Finance Director of Royal Liver Assurance Limited ("RLA").

2.2. From May 2009 until November 2009 ("the Relevant Period") Mr McGregor was the Finance Director and had Controlled Function 1 (Director) responsibilities. During the Relevant Period he failed to act with honesty and integrity in carrying out his controlled function, in breach of Statement of Principle 1, in that he:

(1) failed to follow RLA's internal procedures in relation to entering an investment services contract between RLA and "Company A" and a further such contract between RLA and "Company B" despite his knowledge of those procedures;

(2) failed to inform RLA's Capital Management Group of the two contracts in advance of entering into them despite knowing that he should have done;

(3) knowingly withheld the fact that he was making bonus payments to a former employee through the mechanism of these two contracts from others at RLA; and

(4) falsified the necessary authorising signature of RLA's CEO to facilitate two payments by RLA each of approximately £1.8 million (a total of approximately £3.6 million) under the two contracts.

2.3. As a result of the above breaches, Mr McGregor was dismissed from his employment with RLA on 25 March 2010. RLA reported the matter to the FSA on 26 November 2009.

2.4. These failings are particularly serious because:

(1) Mr McGregor was a senior Director of RLA and he was in a position of trust;

(2) Mr McGregor abused his position in RLA, circumventing systems and controls which he himself had been instrumental in implementing;

(3) Mr McGregor acted dishonestly in falsifying the signature of the CEO; and

(4) Mr McGregor's actions have caused RLA to make payments of at least £3.6 million and incur a total possible contractual liability of up to £18 million.

2.5. Having regard to the nature and seriousness of the breaches, the FSA has concluded that Mr McGregor fails to meet the minimum regulatory standards in terms of honesty and integrity and is not a fit and proper person to perform any functions in relation to regulated activities carried on by authorised persons, exempt persons and professional firms.

2.6. The FSA has also concluded that in the circumstances, Mr McGregor has breached Statement of Principle 1 of the Statements of Principle and Code of Practice for Approved Persons and it is appropriate to impose on him a financial penalty of £109,000.

3. FACTS AND MATTERS

RLA

3.1. During the Relevant Period RLA was an incorporated friendly society and carried on business as a life insurance company. It managed policies on behalf of its customers. These customers, as policyholders and accordingly, members of the friendly society,

owned RLA, and the main aim of RLA as a friendly society was to operate for the benefit of those members. RLA had approximately two million members in the UK and Republic of Ireland and over three million policies in force.

3.2. RLA was part of the Royal Liver Group. Its governing body was the Committee of Management ("the Board"), which operated with the support of a number of Board Committees. One of the committees that reported to the Board was the Capital Management Group. The purpose of the Capital Management Group was to ensure that RLA's working capital was most effectively deployed at all times and it was responsible for the selection, appointment and removal of investment managers.

Mr McGregor's role at RLA

3.3. Mr McGregor was a member of RLA's Board from 9 June 2003 to 25 March 2010, first as Corporate Services Director and subsequently as Finance Director. He was Chairman of the Capital Management Group and had overall responsibility for that committee. In his role as Finance Director he was responsible for drafting the procedures for tendering and executing contracts at RLA.

The two contracts with Company A and Company B

3.4. Companies A and B were both under the ultimate control and ownership of a third party who was a former employee of RLA. Mr McGregor was responsible for negotiating the bonus the former employee was due under the terms of his severance. Mr McGregor thought that the amount of bonus he had agreed with the former employee would not have been approved by other members of RLA's Board. Therefore, Mr McGregor sought to conceal the former employee's bonus from others at RLA by entering into two contracts with Company A and Company B which were ultimately controlled by the former employee. Pursuant to the terms of both contracts, RLA would pay substantial sums to Companies A and B.

3.5. The first contract, signed by Mr McGregor on behalf of RLA, with Company A was dated 30 June 2009 (the "First Contract"). It was effective for a period of three months and was superseded by a second contract, which was signed by Mr McGregor on behalf of RLA with Company B and dated 24 July 2009 (the "Second Contract").

3.6. Mr McGregor thought that, in addition to discharging the bonus he had agreed with the former employee, investment advice would be provided by Companies A and B under the two contracts. In return, RLA would pay Companies A and B substantial fees.

3.7. Mr McGregor instructed RLA's Legal team to assist with drafting the two contracts. This it did, entering into correspondence with the former employee regarding them. However, Mr McGregor did not inform the Legal team of the quantum of any fees payable under the contracts. Under the First Contract the fees were 0.06% of the value of the portfolio to be invoiced on 1 July 2009. The portfolio was defined in the contract and consisted of a large proportion of RLA's life fund. Invoices subsequently received from Companies A and B valued the portfolio in excess of £2.5 billion. The fees payable under the Second Contract were 0.06% of the value of the portfolio to be calculated and invoiced quarterly from October 2009 to October 2010. Thereafter the fees were 0.05% of the value of the portfolio, to be calculated and invoiced quarterly from January 2011 to April 2012.

3.8. Mr McGregor states that, due to a miscalculation on his part, the fees payable by RLA under the two contracts were ten times higher than he intended. Mr McGregor agreed to fees of 0.06% (and later 0.05%) of the portfolio. However, he had intended, and thought at the time, that he was agreeing to pay amounts which would in fact have equated to 0.006% (and later 0.005%) of the portfolio.

Negotiation and execution of the contracts without following internal procedures

3.9. As set out above, Mr McGregor intended Companies A and B to provide investment advice services. Contracts for such services were subject to the terms of RLA's "Procedures for Tenders and Contracts". Mr McGregor was involved in drafting these procedures and was well aware of their contents. Irrespective of the mistake made by Mr McGregor when calculating the fees, the value of the contracts was such that he was required to follow a tender process and obtain:

(1) financial reference checks and business reference checks;

(2) a declaration that the contracting party is not connected to any senior employee of RLA; and

(3) a review by RLA's tax department of the contract terms to be agreed, prior to agreement of a contract.

He did not obtain or carry out fully any of the above.

3.10. The Capital Management Group (a sub-committee of RLA's board) was responsible for ensuring that RLA's working capital was effectively deployed. Mr McGregor was Chairman of the Capital Management Group and would have known that the contracts should have been brought to the attention of the Capital Management Group. However, neither of the contracts were brought to the attention of the Capital Management Group.

3.11. RLA's Board Control Manual required Mr McGregor to seek Board approval before entering into the contracts, although Mr McGregor did not believe this to be the case, based upon what he believed was payable under the contract (as a result of his miscalculation). Mr McGregor did not inform the Board that he was entering into the contracts and as such did not seek Board approval.

3.12. Mr McGregor's failure to follow internal procedures and consult the relevant internal committee led to a significant increase in the risk that his mistake in calculating the fees would go unnoticed until after the contracts had been entered into.

Falsification of invoice approval forms

3.13. Pursuant to the terms of the contracts entered into with Companies A and B, RLA received invoices dated 3 July 2009 for £1,814,686 (including VAT) (from Company A) and 1 October 2009 for £1,826,868 (including VAT) (from Company B). Upon receiving the first invoice in July 2009, Mr McGregor realised for the first time that he had miscalculated what he had anticipated would be paid under the contracts. Mr McGregor was aware that both invoices, being for substantially higher amounts than he had previously calculated, required approval by RLA's CEO because they exceeded his authorisation limit of £500,000 per payment.

3.14. Mr McGregor falsified the signature of RLA's Chief Executive Officer on internal invoice approval forms to facilitate payment of the invoices to each of Company A and Company B. He falsified the signature because he knew that if the invoices had

been brought to the CEO's attention for approval, they would not have been approved and his miscalculation of the fees would have come to light.

3.15. The invoices appeared to have been approved within RLA's payment authorisation systems and as a consequence £1,814,686 (including VAT) was paid to Company A on 4 August 2009 and £1,826,868 (including VAT) was paid to Company B on 19 October 2009.

4. FAILINGS

4.1. The regulatory provisions relevant to this Final Notice are referred to in Annex A.

Breach of Statement of Principle 1

4.2. Mr McGregor was RLA's Finance Director, a member of the Board and he chaired the Capital Management Group. He held a responsible and senior position at RLA and exercised a significant influence over RLA's business. It was his responsibility to ensure that he adhered to the procurement and authorisation of contracts requirements, and the Board was entitled to expect and assume that he would follow its policies and procedures. Mr McGregor used his position deliberately to subvert and bypass RLA's governance and authorisation procedures in the following material respects:

(1) Mr McGregor failed to follow RLA's internal procedures in relation to entering investment services contracts between RLA and Companies A and B notwithstanding his knowledge of those procedures;

(2) Mr McGregor failed to inform RLA's Capital Management Group of the two contracts in advance of entering into them despite knowing that he should have done;

(3) Mr McGregor knowingly withheld the fact that he was making bonus payments to a former employee through the mechanism of these two contracts from others at RLA; and

(4) Mr McGregor falsified the necessary authorising signature of RLA's CEO to facilitate two payments by RLA each of approximately £1.8 million under the two contracts.

4.3. In respect of the above matters Mr McGregor acted without integrity in breach of Statement of Principle 1 and dishonestly in falsifying the necessary authorising signature of RLA's CEO.

Fit and Proper

4.4. Mr McGregor's conduct fell short of the standards required by the FSA's Fit and Proper Test for Approved Persons. For the reasons set out above, Mr McGregor failed to act with honesty and integrity. As such, he is not a fit and proper to perform any functions in relation to regulated activities.

5. SANCTION

Prohibition order

5.1. In considering whether to impose a prohibition order, the FSA has had regard to the provisions of the FSA's Enforcement Guide ("EG") and in particular the provisions of EG 9.9.

5.2. Mr McGregor's conduct is so serious that he has failed to act with integrity which is necessary to be considered fit and proper to perform any functions in relation to regulated activities.

5.3. Having regard to its regulatory objectives, including the need to maintain confidence in the financial system and to secure the appropriate degree of protection for consumers, the FSA considers it necessary to impose a Prohibition Order on Mr McGregor.

Financial Penalty

5.4. The FSA's policy on the imposition of financial penalties is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP") part of the FSA Handbook. This sets out a non-exhaustive list of criteria that may be of particular relevance in determining the appropriate level of financial penalty for an approved person.

5.5. In determining that a financial penalty is appropriate and proportionate in this case, the FSA has considered the facts and matters involved in the breach of Statement of Principle 1 set out above and all the relevant circumstances of the case. The FSA considers the following factors to be particularly important:

Deterrence

(1) In determining the appropriate level of penalty, the FSA has had regard to the need to promote high standards of regulatory conduct by deterring those who have committed breaches from committing further breaches and to help to deter others from committing similar breaches.

The nature, seriousness and impact of the breach

(2) Mr McGregor's conduct was particularly serious given his senior role as Financial Director, and his abuse of that responsibility and position to enable him to enter into contracts on behalf of RLA and procure payment to Company A and Company B without the necessary authorisation. The impact of the breach is also serious as it has resulted in making payments to the companies of at least £3.6 million and incurring a possible contractual liability for RLA of up to £18 million.

The extent to which the breach was deliberate or reckless

(3) The authorisation of payments under the two contracts was as a result of a deliberate course of conduct on Mr McGregor's part.

Whether the person on whom the penalty is to be imposed is an individual

(4) The FSA recognises that the financial penalty imposed on Mr McGregor is likely to have a significant impact on him as an individual.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed

(5) There is evidence to suggest that Mr McGregor would be unable to pay the proposed penalty of £1 million. Accordingly the penalty has been reduced to £155,771 (and further reduced by 30% in accordance with the FSA's early settlement scheme).

The amount of benefit gained or loss avoided

(6) The FSA has no evidence to suggest that Mr McGregor made any financial gain from his course of conduct.

Conduct following the breach

(7) Mr McGregor has co-operated fully with the FSA in its investigation and admitted to his misconduct from the outset.

Disciplinary record and compliance history

(8) The FSA has not previously taken any disciplinary action against Mr McGregor.

Mitigating Factors

(9) The events relayed above took place during a particularly stressful period for Mr McGregor at RLA.

5.6. In light of these factors the FSA considers that a financial penalty of £109,000 is appropriate in this case.

6. PROCEDURAL MATTERS

Decision Maker

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

6.2. This Final Notice is given under sections 57 and 67 and in accordance with section 390 of the Act.

Manner of and time for payment

6.3. The FSA is in possession of evidence that it would cause Mr McGregor serious financial hardship or financial difficulties if he was required to pay the full payment in a single instalment. Accordingly, the financial penalty of £109,000 must be paid in full in instalments as follows:

(1) Monthly payments of £564.25 for the 12 calendar months from the date of this Notice. The first payment will be due on 9 October 2011 and each subsequent payment will be due one calendar month after the proceeding payment, with the final such payment due on 9 September 2012.

(2) £102,229.00 payable within 12 calendar months of the date of this Notice, i.e. by 9 September 2012.

If the financial penalty is not paid

6.4. If any or all of the instalments of the financial penalty is outstanding after its due date for payment, the FSA may recover the outstanding amount as a debt owed by Mr McGregor and due to the FSA.

Publicity

6.5. 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.

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

FSA contacts

6.7. For more information concerning this matter generally, contact Greg Sachrajda (direct line: 020 7066 3746 /fax: 0207 066 3747) of the Enforcement and Financial Crime Division of the FSA.

Head of Department
FSA Enforcement and Financial Crime Division

ANNEX A

1. Relevant Statutory Provisions and Guidance

Statutory Provisions

1.1. The FSA's statutory objectives, as set out in section 2(2) of the Act, include maintaining market confidence in the financial system and the protection of consumers.

1.2. 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 any authorised person, exempt person or exempt professional person.

1.3. Section 66 of the Act provides:

> *(1) "The Authority may take action against a person under this section if it appears to the Authority that he is guilty of misconduct; and the Authority is satisfied that it is appropriate in all the circumstances to take action against him.*
>
> *(2) A person is guilty of misconduct if, while an approved person – he has failed to comply with a statement of principle issued under section 64;*
>
> *(3) If the Authority is entitled to take action under this section against a person, it may…impose a penalty on him of such amount as it considers appropriate;"*

1.4. The Statements of Principles and Code of Conduct for Approved Persons are issued under section 64 of the Act. Statement of Principle 1 states *"An approved person must act with integrity in carrying out his controlled function."*

Guidance

1.5. The FSA's general approach to determining whether to impose a financial penalty and the appropriate level of any such penalty is set out in the Decision Procedures and Penalties Guide ("DEPP"), which is part of the Handbook of Rules and Guidance. The applicable penalty regime in this instance is that which was in force prior to 6 March 2010. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by approved persons who have breached regulatory

requirements from committing further contraventions, helping to deter other approved persons from committing contraventions and demonstrating, generally, to approved persons, the benefit of compliant behaviour (DEPP 6.1.2G).

1.6. DEPP 6.5.2 G sets out a non-exhaustive list of thirteen factors that may be relevant to determining the appropriate level of financial penalty. In considering whether to impose a financial penalty and the amount of the penalty to impose, the FSA has also had regard to the provisions of the Enforcement Guide ("EG") which were in force during the Relevant Period.

1.7. Guidance relating to prohibition orders is also contained in the EG. This states that the FSA may exercise its power to prohibit individuals where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any function in relation to regulated activities or to restrict the activities which he may perform (EG 9.1).

(1) *"In deciding whether to make a prohibition order the FSA will consider all the relevant circumstances including whether other enforcement action should be taken" (EG 9.3). A non-exhaustive list of nine relevant circumstances is given, including:*

"*(2)* *whether the individual is fit and proper to perform functions in relation to regulated activities."* The criteria for assessing this are set out in FIT 2.1, 2.2 and 2.3;

"*(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;"

"*(5)* *The relevance and materiality of any matters indicating unfitness;"*

"*(7)* *The particular controlled functions the approved person is performing, the nature and activities of the firm concerned and the markets in which he operates"; and*

"*(8)* *The severity of the risk which the individual poses to consumers and to confidence in the financial system."*

(2) "*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 risk which he poses to consumers of the market generally" (EG 9.5).*

1.8. The FSA Handbook also sets out rules and guidance relating to the Fit and Proper Test for Approved Persons ("FIT"). FIT 1.1.3 G and 1.3.2 G provide as follows:

"The FSA will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function. The most important considerations will be the person's:

honesty, integrity and reputation;

competence and capability; and

financial soundness". (FIT 1.1.3 G)

"In assessing fitness and propriety, the FSA will also take account of the activities of the firm for which the controlled function is or is to be performed, the permission held by that firm and the markets within which it operates." (FIT 1.3.2 G)

1.9. FIT 2.1.1 G provides that in determining a person's honesty, integrity and reputation, the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3 G. FIT 2.1.3 G provides that relevant factors are:

(1) *"(5) whether the person has contravened any of the requirements and standards of the regulatory system…";* and

(2) *(11) whether the person has been dismissed.....from employment or from a position of trust, fiduciary appointment or similar*".