
FINAL NOTICE

To: James Robert Short

Individual Ref. No: JRS01216

Date: 10 August 2011

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London, E14 5HS (“the FSA”) has taken the following action:

1. ACTION

1.1. For the reasons listed below, the FSA has taken the following action against Mr James Robert Short (‘James Short’):

- (1) published a statement of James Short’s misconduct pursuant to section 66 of the Financial Services and Markets Act 2000 (“the Act”) for failing to comply with Statement of Principle 1 of the FSA’s Statements of Principle and Code of Conduct for Approved Persons (“Statements of Principle”); and
- (2) made a prohibition order, pursuant to section 56 of the Act, to prevent James Short from carrying out any function in relation to any regulated activity carried on by any authorised person, exempt person, or exempt professional

firm (“the Prohibition Order”) because James Short is not a fit and proper person. The Prohibition Order takes effect immediately.

1.2 The FSA considered that the misconduct in such a case would normally warrant a financial penalty of £100,000. James Short provided verifiable evidence that the imposition of such a financial penalty would cause him serious financial hardship. The FSA would have been minded to impose such a financial penalty notwithstanding James Short’s financial position, if it were not for the actions of James Short’s fellow director, his father Martin Frederick Short (‘Martin Short’). On being made aware of James Short’s wrongdoing Martin Short took immediate and proactive steps at substantial cost to himself and his family to ensure that detriment to clients was minimised and matters outstanding with insurers were settled. To do so Martin Short used his life savings and also funds from other family members, including over £100,000 that would otherwise have formed an inheritance due to James Short. His actions went beyond any legal obligation enforceable against him, and cost substantially more than the amount of the fine considered. The FSA was of the view that, in light of the actions of Martin Short, it was not appropriate to impose any financial penalty on James Short that might fall on the family. The FSA therefore considered that this case is exceptional and that the actions it has taken are appropriate and proportionate in all the circumstances of the case.

2. REASONS FOR THE ACTION

2.1. The FSA concluded on the basis of the facts and matters described below:

- (a) that through the insurance intermediary business, Martin Short (Insurance Consultants) Limited (“MSIC”), following receipt of premium payments from four commercial clients, James Short deliberately and knowingly failed to insure those clients but instead retained the entire premium payment to be used by the firm without the knowledge or consent of the other director or any other employees at MSIC; and

- (b) James Short deliberately and knowingly falsified documentation in the names of Companies A and B in order to mislead those clients into believing that valid insurance cover was in place; and
- (c) James Short deliberately and actively misled his fellow director in relation to MSIC's business affairs and financial position and he deliberately and actively misled the FSA when it first interviewed him.

2.2. The FSA considered James Short's dishonest conduct to be extremely serious because he abused the trust and confidence that his clients placed in him, misrepresenting to them that valid insurance was in place when he knew that not to be the case. This is particularly concerning because it left a number of MSIC's clients, who ran fleets of passenger vehicles, exposed to substantial financial and legal risks of which they were unaware. James Short poses a risk both to consumers and to maintaining confidence in the UK financial system. Action has been taken against James Short in support of the FSA's regulatory objectives of the reduction of financial crime, market confidence and the protection of consumers.

2.3. For these reasons, the FSA considered that it was necessary and proportionate to publish a statement of James Short's misconduct and to make a Prohibition Order against him.

3. STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

3.1. The relevant statutory provisions, regulatory guidance and policy relied upon are set out at Annex A.

4. FACTS AND MATTERS RELIED ON

Background

4.1. MSIC is a small insurance broking business established by James Short's father, Martin Short, over 25 years ago. It was authorised by the FSA on 14 January 2005 to carry out insurance mediation business and served retail and small and medium commercial customers. James Short and Martin Short were the two shareholders and

directors of MSIC. In recent years James Short was also the firm's principal active broker for personal lines such as motor and household insurance and commercial insurance for businesses, including motor fleet cover and employers' and public liability cover. MSIC employed three other permanent employees who had clerical roles.

- 4.2. On 14 January 2005 James Short gained approval to hold controlled functions CF1 (Director) and CF8 (Apportionment and Oversight) (he ceased to perform the CF8 role on 31 March 2009) and to be responsible for insurance mediation at MSIC. Martin Short also held the CF1 (Director) controlled function but in recent years did not have an active broking or claims handling role within the running of the firm. Martin Short received reports from James Short and reviewed management information provided to him by James Short regarding the firm's business, including information relating to new business and the firm's financial status, all of which appeared to be satisfactory.
- 4.3. The FSA received information from two clients of MSIC, Company A and Company B, that they had paid premiums to MSIC for motor fleet insurance and subsequently discovered, after asking MSIC to handle claims following road traffic accidents, that James Short had failed to place insurance. On the basis of this information the FSA commenced an investigation on 11 November 2010.
- 4.4. Early discussions between the FSA and Companies A and B suggested that James Short had failed to provide either company with policy documentation but that he had written to each to confirm that insurance cover was in place. He had also sent further misleading correspondence regarding premium adjustments and claims to each company during the period when cover was supposed to be in place, with the result that each company believed that valid insurance was in place.
- 4.5. The FSA interviewed James Short three times. The first interview was conducted during an unannounced visit to the firm's offices on 16 November 2010. During that interview James Short denied any misconduct, insisting that cover had been properly placed for Companies A and B. He also indicated that Martin Short (who was not in the office) was on holiday and could not be contacted.

4.6. The FSA was not satisfied with the answers provided by James Short during the first interview and was concerned that the problem might not be confined to Companies A and B. Immediately following that visit the FSA made direct contact with Martin Short and following discussions with him MSIC submitted a voluntary application for variation of the firm's Part IV permission to the FSA on 24 November 2010 which provided that:

- (i) MSIC was to engage an independent third party to complete to the FSA's satisfaction a review of all the firm's insurance business submitted since 1 January 2007 to include, where appropriate, a customer contact exercise to ensure that customers were properly insured and, where this was not the case, to recommend any appropriate redress;
- (ii) James Short was to cease immediately to perform his CF1 director function and to cease to be responsible for insurance mediation, as well as submitting a 'Form C' to the FSA notifying it that he would be ceasing to perform his controlled functions;
- (iii) James Short was not to engage in any activity in relation to the firm except under the direct supervision of Martin Short or a representative of the independent third party.

4.7. MSIC submitted a 'Form C' to the FSA on 3 December 2010 notifying the FSA that James Short had ceased to perform the controlled function of CF1 director as well as ceasing to be responsible for insurance mediation.

The independent third party's findings

4.8. The independent third party review required by the voluntary variation of permission dated 24 November 2010 determined that MSIC had not been performing to the level that James Short had led Martin Short to believe and that the firm was in financial difficulties.

4.9. James Short failed to inform Martin Short that two insurers cancelled their agency arrangements with MSIC. He misled Martin Short by providing plausible explanations

about MSIC's performance and by inputting fictitious clients into MSIC's electronic records systems to persuade Martin Short that the business was still growing.

- 4.10. James Short withheld calls from MSIC's solicitors to Martin Short. He also intercepted calls and e-mails from the independent third party to Martin Short and responded to some of these e-mails pretending to be Martin Short. During the review by the independent third party, James Short made a number of admissions, as detailed below.

Interviews with James Short

- 4.11. In his second and third interviews with the FSA James Short made admissions that he had:

- (i) accepted substantial premiums from Companies A and B but did not place insurance for them;
- (ii) deliberately misled Companies A and B into believing that they had valid insurance in place;
- (iii) lied to Company C in order to obtain £30,000 from it which it believed was a premium payment in advance of the following year's insurance policy to secure a discount on the cost of that policy;
- (iv) accepted a premium of £5,000 from Company D and arranged insurance cover but failed to pass the premium on to the insurer who subsequently cancelled the insurance policy for non-payment of the premium; and
- (v) exploited the relationship of trust that exists between insurance brokers and their clients in order to dishonestly obtain money from these clients, deliberately misleading them and leaving three of them (Companies A, B and D) uninsured.

- 4.12. James Short actively misled Martin Short, informing him that the business was doing well and was gaining significant new commercial clients. As the principal active broker and the person who had greatest contact with commercial clients, as well as control over the firm's records, James Short concealed his misconduct from Martin

Short and from other staff at the firm for a significant period of time. Martin Short only became aware of the misconduct following the FSA's intervention and he worked with the FSA to determine the extent of the problem and ensure that MSIC's affected customers suffered no further detriment. Martin Short made a number of payments from his own personal funds to MSIC's affected customers and to other creditors of MSIC.

James Short's misconduct

Company A

- 4.13. James Short's misconduct started with Company A which is a commercial and private hire company operating a fleet of coaches, minibuses and private cars.
- 4.14. MSIC had a binding authority arrangement with Insurer A whereby, as long as the client met Insurer A's criteria, MSIC had authority to issue a cover note thereby putting the client on risk before the risk had been formally presented to, and accepted by, Insurer A. In July 2009 under this arrangement James Short set up a motor fleet policy with Insurer A for Company A. The premium for this insurance policy was £32,986.30 which Company A paid in full to MSIC. James Short subsequently sent the proposal form signed by Company A to Insurer A but he did not forward the premium to the insurer.
- 4.15. Two weeks after the policy commenced Insurer A declined to provide insurance on the basis that Company A's vehicle mix and claims history did not meet Insurer A's criteria. Insurer A cancelled the policy from inception and Company A was left uninsured.
- 4.16. James Short did not inform Company A that its vehicles were uninsured and he retained within MSIC the premium Company A had already paid. He tried to obtain insurance for Company A elsewhere but no other insurer would accept the risk because of Company A's vehicle mix and claims history. James Short stated that he 'gambled' that Company A's vehicles would not be involved in any accidents.

- 4.17. As there was no valid insurance cover in place, MSIC was unable to issue any policy documentation to Company A. James Short lied to Company A about this, informing it that the delays were attributable to Insurer A.
- 4.18. To further his deception, James Short sent quarterly declaration forms to Company A purportedly giving it the opportunity to make mid-term adjustments to the policy. He received payments for two adjustments from Company A in the amounts of £2,176.98 (October 2009) and £1,527.36 (February 2010) and paid them into MSIC's client account.
- 4.19. During the period from July 2009 to July 2010 when Company A believed that it had valid motor fleet cover in place a number of its vehicles were involved in accidents. Company A submitted the ensuing claims to MSIC and James Short dealt with a number of the claims by making payments to Company A using the premium of £32,000 that it had paid to MSIC in July 2009. For other, smaller claims James Short advised Company A to settle these claims privately on the basis that they fell within the excess amount on Company A's motor fleet insurance. Company A therefore remained unaware that there was no valid insurance in place.
- 4.20. Shortly after the supposed commencement of Company A's insurance with Insurer A, Company A made a claim following an accident. Company A had hired the vehicle concerned from a third party and the damage to the vehicle was such that it was taken to a recovery yard. The vehicle remained in the recovery yard for about nine months as James Short had not arranged insurance for Company A and therefore no insurer inspected the vehicle to determine the value of the insurance claim. Company A was unaware of this and continued to be liable for the hire charges for the vehicle while it was in the recovery yard. James Short lied to Company A by telling it that its insurance policy would cover the hire charges. He also informed Company A that Insurer A was to blame for the delay in processing Company A's claim. In total, Company A's claim in relation to this vehicle was approximately £36,000, including hire charges.
- 4.21. Company A's solicitors informed the FSA that on 12 July 2010 MSIC told Company A that it had received just over £36,000 from Insurer A in settlement of Company A's claim and would pay this to Company A within three days. The amount was not paid

to Company A despite further promises and assurances from James Short. On 28 July 2010 MSIC gave Company A a client account cheque for £36,000; this was returned unpaid by MSIC's bank due to lack of funds. James Short stated that he deliberately issued this cheque on behalf of MSIC to Company A in the amount of £36,000, even though he knew that there were insufficient funds in MSIC's account, as a delaying tactic.

- 4.22. In July 2010 Company A contacted James Short in order to renew its motor fleet insurance for 2010-2011. James Short was unable to obtain any quotations from the insurance market as Company A did not have a claims history for the preceding year as there had been no valid insurance in place.
- 4.23. James Short again lied to Company A, informing it that insurance for its commercial vehicles was available with Insurer B and he calculated a premium himself which he put to Company A and it accepted. He informed Company A that it need not pay the premium quoted as the amount due from settlement of the outstanding claims by Insurer A (referred to above) would cover the amount of the premium.
- 4.24. James Short told Company A that its private car fleet would be insured for 2010-2011 through Insurer E and it appears that this insurance was actually placed, although Company A later cancelled it.
- 4.25. In 2010 Company A asked James Short to provide it with a copy of its claims history for 2009-2010. As there had been no valid insurance cover in place for this period, James Short was unable to provide the document requested so he prepared one himself detailing claims between July 2009 and May 2010. Company A queried the document as, unlike claims histories it had received previously, this one did not have the Insurer's name or logo on it. James Short lied to Company A, stating that not every insurer's claims history document included the insurer's name or logo.
- 4.26. Company A informed James Short in September 2010 that it wished to cancel the insurance policies and it took its business elsewhere.
- 4.27. On 17 September 2010 Company A's solicitors wrote to MSIC demanding payment of the claim for £36,000 referred to above and repayment of the premiums Company A had paid to MSIC. James Short gave further assurances that he would make payments

and concealed the letter from Martin Short. James Short spoke to Company A's solicitors but did not have the funds to satisfy Company A's claim. On 8 October 2010 Company A filed a winding-up petition against MSIC which James Short also concealed from Martin Short.

Company B

- 4.28. Company B is a commercial and private hire company operating a fleet of coaches, minibuses and private cars. It sought motor fleet insurance and employers' and public liability ('EPL') insurance through MSIC in mid-2009.
- 4.29. James Short issued a cover note to Company B through MSIC's arrangement with Insurer A (referred to at paragraph 4.13 above) and informed Company B that he had placed motor fleet and EPL insurance for it for one year beginning in July 2009 with Insurer A at a combined total premium of £10,698.75. Company B entered a premium credit agreement whereby a third party credit provider paid the total premium in full to MSIC with Company B reimbursing the credit provider in monthly instalments, including additional charges for the credit arrangement, in the total amount of £11,818.
- 4.30. James Short sent the proposal form and a copy of the cover note to Insurer A but it declined the risk because Company B's claims history did not meet Insurer A's criteria. Despite several attempts he failed to place the cover elsewhere and he did not tell Company B that it did not have valid insurance in place. Instead he wrote to Company B and purported to provide details of insurance cover and subsequently provided a policy number which he admitted he had created himself. James Short stated that the premium paid by the third party credit provider on behalf of Company B was paid into MSIC's client bank account and it was used to cover the ongoing costs of running MSIC.
- 4.31. During the 2009/2010 period a number of Company B's vehicles were involved in accidents and Company B contacted James Short to deal with several claims on its fleet policy on its behalf. James Short did not inform Company B that no such fleet cover existed; instead he made payments to Company B from the premium it had paid

to MSIC and from MSIC's funds while telling Company B that the payments were from Insurer A in settlement of the claims.

- 4.32. James Short had insufficient funds available to enable him to satisfy all of Company B's accident claims and there was protracted correspondence between Company B and James Short during 2009/2010 regarding non-payment of claims. In or around September 2009, and as a result of his dissatisfaction with James Short's handling of the outstanding claims, a director of Company B attended MSIC's offices to speak to James Short. James Short informed him that the problem lay with Insurer A as it was notorious for poor administration and processing claims and gave Company B's director assurances that he would ensure that the outstanding claims were dealt with.
- 4.33. In July 2010, although the correspondence regarding non-payment of certain claims was ongoing, Company B sought to renew its fleet and EPL cover through MSIC. James Short informed Company B that its fleet cover for the year from July 2010 would be provided by a different insurer, Insurer B, at a cost of £8,975.00 (a figure that James Short admitted he had made up) while the EPL cover would be placed through Insurer C at a cost of £551.25. Company B paid both premiums in full to MSIC in July 2010.
- 4.34. James Short was unable to obtain fleet cover for Company B for the period from July 2010 as he was unable to produce a claims history for the preceding year as there had been no valid insurance in place.
- 4.35. James Short placed Company B's EPL cover for 2010-2011 on July 16 2010 through Insurer C's online system, describing Company B as an "Accountancy" business. James Short stated that, due to technical difficulties with Insurer C's website, Insurer C had advised him to choose the first option on a list menu when describing Company B's business. James Short accepted that the fact that Company B appeared on the insurer's system as an 'accountancy' business meant that Company B was unlikely to have adequate cover in place. Subsequently MSIC refunded the premium paid by Company B for its EPL cover and Company B obtained cover through another insurance broker.

- 4.36. On 31 August 2010 the owner of Company B attended at MSIC's offices with a friend who worked in the insurance industry. Company B's owner demanded to speak to James Short and refused to leave MSIC's office until he had done so. In order to get Company B's owner and his friend out of MSIC's offices, James Short issued a cover note from a cover note book provided to MSIC by Insurer B and told Company B's owner that he would chase Insurer B to provide the policy documents. Company B had never received a policy number or documents from MSIC which had instead issued monthly cover notes to Company B. Company B's owner asked James Short for the policy number for the previous year's insurance (2009/2010) and James Short provided one. When Company B contacted the insurer to check the policy number, it was informed that the number related to a very old policy unrelated to Company B.
- 4.37. The owner of Company B informed the FSA that one of the company's mini-buses was involved in an accident in February 2010 and James Short informed Company B that the insurer had accepted the claim and had authorised collection and repair of the mini-bus as well as the use of a courtesy car. Seven or eight months later, when nothing had happened, Company B confronted James Short and he admitted that there was no valid insurance in place. He then refunded to Company B all the monies it had paid to MSIC and the credit charges that Company B had paid to the third party credit provider. Company B had no further dealings with James Short or MSIC.

Company C

- 4.38. Company C is a large commercial food supplier which had several insurance policies placed through MSIC, including a product recall policy.
- 4.39. James Short admitted that in 2010 he lied to Company C, telling it that it would receive a discount on the cost of the following year's product recall policy if it paid £30,000 in advance. He informed Company C that the insurer involved wanted to fill its book of business for the following year and therefore was offering the discount as an inducement. James Short admitted that he had lied to obtain a large cash injection for MSIC.
- 4.40. Company C duly made three payments of £10,000 in anticipation of the future discount and James Short paid this money into MSIC's client account.

Company D

- 4.41. Company D is a courier company which sought to place its motor vehicle fleet insurance through MSIC for 2010-2011. James Short informed Company D that he had placed its fleet cover through Insurer F at a premium of approximately £5,000 which was paid in full by company D.
- 4.42. James Short admitted to the FSA that he had received the premium payment from Company D and had paid it into MSIC's client account, instead of passing it on to Insurer F. He admitted misleading company D into believing that it had valid insurance in place.
- 4.43. In September 2010 Insurer F wrote directly to Company D to notify it that its policy had been cancelled due to non-payment of the premium. Company D then contacted James Short and he admitted to the FSA that he told Company D that there must have been an error at Insurer F and that he would try to have it corrected. James Short admitted to the FSA that there was no policy in place and that he never attempted to correct the situation.
- 4.44. This matter came to light in November 2010 after the FSA's intervention when Company D called MSIC to make a change to its insurance policy and spoke to a member of staff who contacted the insurer which said that the policy had been cancelled in September 2010. MSIC through Martin Short immediately took action to address the problem and placed emergency insurance cover with Insurer C for Company D at its own cost. Martin Short informed the FSA that company D has since cancelled this emergency insurance with Insurer C and has obtained insurance through another broker.

5. ANALYSIS OF BREACHES

- 5.1. By reason of the facts and matters referred to in section 4 above the FSA concluded that James Short is in breach of Statement of Principle 1 in that:
 - (1) He deliberately failed to put in place insurance cover for Companies A, B and D despite receiving premiums into MSIC from those clients for that purpose;

- (2) He used the premiums received from Companies A, B, C and D to contribute to MSIC's running costs;
- (3) He provided false information to Companies A, B and D with the deliberate intention of misleading them into believing that they had valid insurance in place;
- (4) He knowingly obtained funds from Company C on a false basis by leading Company C to believe that an advance payment would secure a discount on a future insurance policy and he did this solely to obtain further funds for the use of MSIC; and
- (5) All of this was done of his own accord and without the knowledge or consent of the other director or employees. He deliberately and actively misled his fellow director, Martin Short, in relation to the business affairs and financial position of MSIC and he deliberately and actively misled the FSA when it first interviewed him.

6. ANALYSIS OF SANCTIONS

Public censure

- 6.1 The FSA's policy in relation to the imposition of a public censure is set out in Chapter 6 of the Decision Procedure and Penalties Manual ("DEPP"), which forms part of the FSA Handbook. On 6 March 2010 the FSA adopted a new penalty-setting regime. As James Short's misconduct began in July 2009, well before the adoption of the new regime, and he continued the same course of misconduct after March 2010, the FSA considered this case under the regime which applied before 6 March 2010.
- 6.2 In addition, the FSA had regard to the corresponding provisions of Chapter 7 of the Enforcement Guide ("EG").
- 6.3 The principal purpose of issuing a public censure is to promote high standards of regulatory 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.

- 6.4 DEPP 6.4.2G sets out the factors that may be of particular relevance in determining whether it is appropriate to issue a public censure rather than impose a financial penalty. The criteria are not exhaustive and DEPP 6.4.1G(1) provides that the FSA will consider all relevant circumstances of the case when deciding whether to impose a penalty or issue a public censure. The FSA considers that the following factors are particularly relevant in this case:

Deterrence (DEPP 6.4.2G(1))

- 6.5 In determining whether to publish a statement of James Short's misconduct the FSA had regard to the need to ensure that those who are approved persons act with integrity and do not abuse their positions in the financial services industry. The FSA considers that a public censure should be imposed to demonstrate to James Short and others the seriousness with which the FSA regards his behaviour.

- 6.6 The FSA also had regard to the FSA's objective of reducing financial crime and ensuring that behaviour by individuals which undermines confidence in the financial system is not tolerated.

The seriousness of the breach in question (DEPP 6.4.2G(3))

- 6.7 The FSA had regard to the seriousness of the breaches, including the nature of the requirements breached, the duration and frequency of the breaches and the number of customers who were affected and/or placed at risk of loss.

- 6.8 James Short's conduct in his significant influence function at MSIC fell short of the FSA's prescribed regulatory standards for approved persons. In particular, from July 2009 until late 2010 James Short demonstrated a lack of integrity. In addition to deliberately misappropriating clients' monies and misleading those clients, James Short actively misled his fellow director to conceal his misconduct.

6.9 As a result of his serious misconduct, the FSA considers that James Short poses a serious risk to consumers and to confidence in the financial system.

Conduct following the breach (DEPP 6.4.2G(5))

6.10 Pursuant to the voluntary variation of permission submitted to the FSA by MSIC on 24 November 2010, James Short ceased to perform his controlled function and to be responsible for insurance mediation. He thereby allayed the FSA's concerns that he might pose an ongoing risk to MSIC's clients.

6.11 Although he did not do so at the first opportunity, James Short made full admissions to the FSA at his second and third interviews at a comparatively early stage of the investigation thereby significantly reducing the length of the FSA's investigation.

6.12 The FSA had regard to all the circumstances of this case and to the fact that the detriment suffered by clients of MSIC was minimised due to the efforts of Martin Short who acted immediately and proactively and:

- (i) did not put MSIC into liquidation, instead paying in excess of £370,000 to clients and insurers and to cover costs associated with James Short's misconduct. Martin Short used his own funds (including his life savings) and funds from family members, including over £100,000 that James Short was due to inherit;
- (ii) would be likely to attempt to pay any financial penalty imposed on James Short.

Previous action taken by the FSA (DEPP 6.4.2G(7))

6.13 In determining the appropriate sanction, the FSA took into account sanctions imposed by the FSA on other approved persons for similar behaviour. This was considered alongside the deterrent purpose for which the FSA imposes sanctions.

The financial impact on the person concerned (DEPP 6.4.2G(8))

6.14 The FSA viewed James Short's breach of Statement of Principle 1 as very serious and would have imposed a financial penalty of £100,000. James Short provided verifiable evidence that imposing such a financial penalty would cause him serious financial hardship. Despite this, the FSA would have been minded to impose a financial penalty of £100,000 in this case given the nature and seriousness of James Short's misconduct. However, the FSA considered that the immediate and proactive steps taken by James Short's fellow director to compensate from his personal and family funds those who had suffered detriment constituted exceptional circumstances such that it was appropriate in this particular case to issue a public censure rather than impose a financial penalty.

Prohibition Order

6.15 The FSA considered whether James Short is a fit and proper person. In doing so, the FSA had regard to its regulatory requirements and relevant guidance. In assessing James Short's honesty, integrity and reputation for the purpose of considering whether he is a fit and proper person, the FSA had regard to his conduct as detailed above.

6.16 The FSA considered that James Short demonstrated a lack of honesty and integrity. He is not a fit and proper person to perform regulated activities and the FSA has therefore made the Prohibition Order against him pursuant to section 56 of the Act.

7. CONCLUSIONS

7.1 On the basis of the facts and matters described above, the FSA concluded that James Short's conduct fell short of the minimum regulatory standards required of an approved person and that he breached Statement of Principle 1.

7.2 The FSA, having regard to all the circumstances, therefore considered that it was appropriate and proportionate to issue a public censure of James Short's misconduct and to make the Prohibition Order against him.

PROCEDURAL MATTERS

Decision maker

- 8.1. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.
- 8.2 This Final Notice is given in accordance with section 390 of the Act.

Publicity

- 8.3 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 James Short or prejudicial to the interests of consumers.
- 8.4 The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 8.5 For more information concerning this matter generally, contact Paul Howick (direct line: 020 7066 7954) of the Enforcement and Financial Crime Division of the FSA.

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Tom Spender
FSA Enforcement and Financial Crime Division

ANNEX A

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

1. Statements of Principle and Code of Practice for Approved Persons

1.1. The FSA's Statements of Principle and Code of Practice for Approved Persons ("Statements of Principle") are issued under section 64 of the Act.

1.2. The relevant Statement of Principle in this case is:

Statement of Principle 1: *"An approved person must act with integrity in carrying out his controlled function."*

1.3. The Code of Practice for Approved Persons sets out descriptions of conduct which, in the opinion of the FSA, does not comply with a Statement of Principle. It also sets out, in certain cases, 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. The specific examples given are not intended to be exhaustive.

1.4. 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 expected in that function (APER 3.1.3G).

1.5. An approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, in a situation where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances (APER 3.1.4G).

- 1.6. In determining whether an approved person's conduct was in breach of a Statement of Principle, the FSA will take into account the extent to which the approved person acted in a way that is stated to be in breach of a Statement of Principle (APER 3.1.5G).
- 1.7. The Code of Practice for Approved Persons (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not an exhaustive list of types of conduct that may contravene the Statements of Principle (APER 3.1.6G).

Statement of Principle 1 (APER 2.1.2P)

- 1.8. APER 4.1.1G reiterates Statement of Principle 1 that: "An approved person must act with integrity in carrying out his controlled function."
- 1.9. APER 4.1.2E states that, in the opinion of the FSA, conduct of the type described in paragraphs 4.1.3E, 4.1.5E, 4.1.6E, 4.1.8E, 4.1.10E, 4.1.12E or 4.1.13E of APER does not comply with Statement of Principle 1.
- 1.10. APER 4.1.3E explains that deliberately misleading (or attempting to mislead) by act or omission (1) a client; or (3) the FSA falls within APER 4.1.2E.
- 1.11. APER 4.1.4E states that behaviour of the type referred to in APER 4.1.3E, and therefore falling within APER 4.1.2E, includes, *inter alia*, deliberately: (1) falsifying documents; and (9) providing false or inaccurate documentation or information, including details of training, qualifications, past employment record or experience.
- 1.12. APER 4.1.6E states that deliberately failing to inform without reasonable cause: (1) a customer; or (3) the FSA; of the fact that their understanding of a material issue is incorrect, despite being aware of their misunderstanding, falls within APER 4.1.2E.
- 1.13. APER 4.1.7E states that behaviour of the type referred to in APER 4.1.6E, and therefore falling within APER 4.1.2E, includes, but is not limited to, deliberately failing to disclose the existence of falsified documents.

2. Guidance on exercise of disciplinary powers

- 2.1. When exercising its powers, the FSA seeks to act in a way it considers most appropriate for the purpose of meeting its regulatory objectives, which are set out in section 2(2) of the Act.

Enforcement Guide

- 2.2 The FSA's policy on exercising its enforcement power is set out in the Enforcement Guide ("EG"), which came into effect on 28 August 2007. EG 2.2(2) states that the FSA will seek to exercise its enforcement power in a manner that is transparent, proportionate and consistent with its publicly stated policies.

Exercising the power to make a prohibition order under section 56 of the Act – EG 9

- 2.3 EG 9.1 states that the FSA's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out controlled functions in relation to regulated activities helps the FSA to work towards achieving its regulatory objectives. The FSA may exercise this power to make a prohibition order 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.
- 2.4 EG 9.4 sets out the general scope of the FSA's power in this respect. 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, it 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.
- 2.5 EG 9.5 provides that the scope of the 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 or the market generally.

2.6 EG 9.9 provides that when deciding whether to make a prohibition order, the FSA will consider all the relevant circumstances of the case. These may include, but are not limited to, the following:

- (1) whether the individual is fit and proper to perform the functions in relation to regulated activities. The criteria for assessing fitness and propriety are set out in the Fit and Proper Test for Approved Persons (“FIT”);
- (2) the relevance and materiality of any matters including unfitness;
- (3) the length of time since the occurrence of any matters indicating unfitness; and
- (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

2.7 EG 9.11 provides that due to the diverse nature of the activities and functions which the FSA regulates, it is not possible to produce a definitive list of matters which the FSA might 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. However, EG 9.12 gives examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order, and one such example is a serious lack of competence.

2.8 EG 9.23 provides that in appropriate cases the FSA may take other action against an individual in addition to making a prohibition order and/or withdrawing its approval, including the use of its power to impose a financial penalty.

FIT

2.9 The FSA has issued specific guidance on the fitness and propriety of individuals in 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 approved persons.

2.10 FIT identifies three criteria as being the most important considerations, namely:

- (1) FIT 2.1 (honesty, integrity and reputation): This includes an individual’s openness and honesty in dealing with customers, market participants and

regulators and willingness to comply with requirements placed on him by or under the Act as well as other legal and professional obligations and ethical standards;

(2) FIT 2.2 (competence and capability): This includes an assessment of the individual's skills in carrying out the controlled function that he is performing; and

(3) FIT 2.3 (financial soundness): This includes an assessment of the individual's financial soundness.

2.11 FIT 2.1.1G(1) provides that in determining a person's honesty, integrity and reputation, the FSA will have regard to all relevant matters including, but not limited to, whether the person has contravened any of the requirements and standards of the regulatory system, whether the person has been the subject of any justified complaint relating to regulated activities and whether, in the past, the person has been candid and truthful in all his dealings with regulatory bodies and 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.