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**FINAL NOTICE**

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To: **Janet Elizabeth Morgan**

FSA

Reference

Number: JEM00020

Date: 9 February 2012

**1. ACTION**

1.1. For the reasons given in this notice, the FSA hereby:

- (1) publishes a statement of the misconduct of Janet Elizabeth Morgan;
- (2) withdraws the approval granted to Mrs Morgan to perform controlled function CF4 (partner); and
- (3) makes an order prohibiting Mrs Morgan from performing any function in relation to any regulated activity carried on by any authorised person, exempt person, or exempt professional firm.

1.2 The circumstances of this case merit a financial penalty. Were it not for Mrs Morgan's current financial difficulties and verifiable evidence that the imposition of such a penalty would result in serious financial hardship, the FSA would have imposed a financial penalty of £20,000. Instead, taking into account all the circumstances, the FSA has published a statement of Mrs Morgan's misconduct.

## **2. SUMMARY OF REASONS**

2.1. Mrs Morgan held controlled function CF4, a significant influence function, at Donald Morgan Insurance Services ("DMIS") between 1 December 2001 and 4 August 2010 (the "relevant period"). During that period, she failed to take reasonable steps to:

- (1) inform herself about the affairs of DMIS; and
- (2) satisfy herself that the business of DMIS was being conducted in accordance with the relevant requirements and standards of the regulatory system.

2.2. The FSA considered that her conduct was particularly serious because her lack of engagement in the business of DMIS contributed to the ability of her husband, Donald Morgan, to misappropriate clients' premium payments between 2005 and 2010.

2.3. The FSA concluded that Mrs Morgan is not a fit and proper person, in that she lacks competence and capability. Mrs Morgan's conduct also constitutes a breach of Statement of Principle 6 as she failed in the performance of her significant influence function to exercise due skill, care and diligence in managing the business of DMIS for which she was responsible. The FSA therefore considered that Mrs Morgan's approval should be withdrawn and she should be prohibited from carrying out any controlled functions in relation to regulated activities carried on by any authorised person, exempt person or exempt professional firm.

## **3. DEFINITIONS**

3.1. The following definitions are used in this Final Notice:

"the Act" means the Financial Services and Markets Act 2000

"DMIS" means Donald Morgan Insurance Services

"the FSA" means the Financial Services Authority

"Statement of Principle" means one of the FSA's Statements of Principle for Approved Persons

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber)

"the FSA Handbook" means the FSA Handbook of rules and guidance

"EG" means the FSA's Enforcement Guide ("EG")

"DEPP" means the FSA's Decision Procedure and Penalties Manual.

## **4. FACTS AND MATTERS**

### **Background**

- 4.1. DMIS, a small firm based in Ayrshire, Scotland, was established by Mr Morgan in 1983. Mrs Morgan was a partner in the business. During the relevant period, the focus of DMIS's business was as an insurance intermediary.
- 4.2. DMIS was authorised by the FSA on 1 December 2001 and during the relevant period held the following permissions:
  - (1) advising on investments (except on Pension Transfers and Pension Opt Outs);
  - (2) agreeing to carry on a regulated activity;
  - (3) arranging (bringing about) deals in investments;
  - (4) assisting in the administration and performance of a contract of insurance;
  - (5) dealing in investments as agent; and
  - (6) making arrangements with a view to transactions in investments.
- 4.3. Mrs Morgan and Mr Morgan were each approved to perform controlled function 4 (Partner) from 1 December 2001. Mr Morgan was approved to perform a number of other controlled functions and was responsible for insurance mediation.
- 4.4. From approximately 2005 until 2010, Mr Morgan deliberately retained insurance premium payments from a number of DMIS's clients which should have been paid to insurers via a network of which DMIS was a member ("Network A"), and deliberately manipulated DMIS's computer systems and falsified monthly reports in order to conceal his conduct from Network A.
- 4.5. On 23 September 2010, DMIS submitted a voluntary application for variation of DMIS's Part IV permission to the FSA with the effect that DMIS ceased conducting all regulated activities on that date.

### **Conduct in issue**

- 4.6. As partner and CF4 (which is a significant influence function) at DMIS, Mrs Morgan was responsible for ensuring its compliance with regulatory requirements and standards, and for ensuring that it was not used for the purpose of financial crime.
- 4.7. However, Mrs Morgan confirmed that:
  - (1) she played no active role at DMIS other than carrying out administrative and book-keeping tasks;
  - (2) Mr Morgan ran DMIS and made all the business decisions and she trusted him to do so without interfering or questioning what he was doing;
  - (3) she was completely unaware of Mr Morgan's misconduct;

(4) she believed that Mr Morgan would have dealt with the application for her to become an approved person, she did not know whether she had signed a form for that purpose and she was not familiar with the term 'significant influence function'; and

(5) she did not have the background or experience to be a CF4 at DMIS.

4.8 Mr Morgan confirmed that he assumed sole responsibility for running DMIS and that Mrs Morgan carried out only administrative duties and was not involved in business decisions.

## **5. FAILINGS**

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

5.2. Mrs Morgan knew that she was a partner in DMIS. Although she was not specifically aware of it, she held controlled function 4 (Partner), having signed the application form to carry out this function. As such, she was responsible for ensuring DMIS complied with the relevant regulatory standards and requirements. However, she had no involvement in the running of DMIS's business. She had little or no awareness of the FSA's approved persons regime or the requirements that apply to approved persons and failed to take steps to inform herself about these matters or to ensure that the business of DMIS was being conducted in accordance with regulatory requirements.

5.3. The FSA therefore concluded that Mrs Morgan breached Statement of Principle 6 and that she lacks competence and capability and is therefore not a fit and proper person.

## **6. SANCTION**

### **Public censure**

6.1. The FSA's policy in relation to the imposition of a public censure is set out in Chapter 6 of DEPP. On 6 March 2010 the FSA adopted a new penalty-setting regime. As Mrs Morgan became an approved person in 2001, well before the adoption of the new regime, and ceased to be involved with DMIS in mid-2010, the FSA considered this case under the regime which applied before 6 March 2010.

6.2. The FSA also had regard to the corresponding provisions of Chapter 7 of 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 behaviour.

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 the relevant circumstances of the case when deciding whether to

impose a penalty or issue a public censure. The FSA considered that the factors below were particularly relevant in this case.

Deterrence (DEPP 6.4.2G(1))

- 6.5. In determining whether to publish a statement of Mrs Morgan's misconduct the FSA had regard to the need to ensure that those who are approved persons are fit and proper and fully engage with their regulatory responsibilities. The FSA considered that a public censure should be imposed to demonstrate to Mrs Morgan and others the seriousness with which the FSA regards her behaviour.

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

- 6.6. Despite being an approved person and holding a significant influence function, Mrs Morgan did not engage with the running of DMIS at any time. While Mrs Morgan was unaware of Mr Morgan's misconduct, her failure to engage with the business of DMIS contributed to Mr Morgan's ability to engage in the misconduct and to do so over a prolonged period of time.

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

- 6.7. Mrs Morgan admitted that she did not engage with the business of DMIS and she provided full and immediate co-operation to the FSA.

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

- 6.8. 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))

- 6.9. The FSA viewed Mrs Morgan's misconduct as very serious and would have imposed a financial penalty of £20,000. However, the FSA took into account in determining the amount of penalty it would be appropriate to impose that Mrs Morgan is an individual and that enforcement action may have a greater impact on her than it would on a firm. The FSA also took into account the fact that Mrs Morgan is bankrupt and that her estate is subject to a sequestration order. In all of these circumstances, the FSA considered it appropriate in this case to issue a public censure rather than impose a financial penalty.

**Prohibition order and withdrawal of approval**

- 6.10. Mrs Morgan lacks competence and capability and is therefore not a fit and proper person to carry out any functions in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm or to hold approval to carry out controlled functions. The FSA therefore made an order prohibiting Mrs Morgan from carrying out any such functions pursuant to section 56 of the Act, and withdrawing her approval to perform controlled function CF4 pursuant to section 63 of the Act.

**7. PROCEDURAL MATTERS**

**Decision maker**

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

**Publicity**

- 7.3. 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 you or prejudicial to the interests of consumers.
- 7.4. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

**FSA contacts**

- 7.5. For more information concerning this matter generally, contact Paul Howick at the FSA (direct line: 020 7066 7954/ email: paul.howick@fsa.gov.uk).

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**Tom Spender**  
**FSA Enforcement and Financial Crime Division**

## **Annex**

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

#### **1. Relevant statutory provisions**

- 1.1. The FSA's regulatory objectives, as set out in Section 2(2) of the Act, include the protection of consumers, maintaining confidence in the UK financial system and the reduction of financial crime.
- 1.2. The FSA has the power, pursuant to Section 56 of the Act, to make a prohibition order against an individual prohibiting that individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.
- 1.3. Section 63 of the Act provides that the FSA may withdraw an approval given under section 59 of the Act if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.
- 1.4. Section 66 of the Act provides that the FSA may take action against a person if it appears to the FSA that he is guilty of misconduct and the FSA is satisfied that it is appropriate in all the circumstances to take action against him. Misconduct includes failure, while an approved person, to comply with a statement of principle issued under section 64 of the Act. The action that may be taken by the FSA pursuant to section 66 of the Act includes the imposition of a penalty on the approved person of such amount as it considers appropriate.

#### **2. Relevant Handbook provisions**

##### **Fit and Proper Test for Approved Persons**

- 2.1 The section of the FSA Handbook entitled "FIT" sets out the Fit and Proper test for Approved Persons. 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.
- 2.2 FIT 1.3 provides that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability, and financial soundness.
- 2.3 In determining a person's competence and capability, FIT 2.2 provides that the FSA will have regard to all relevant matters including, but not limited to, those set out in FIT 2.2.1G which include:
  - (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 (FIT 2.2.1G (1)); and

- (2) whether, the person has demonstrated by experience and training that the person is suitable to perform the controlled function (FIT 2.2.1G(2)).

### **Statements of Principle and Code of Practice for Approved Persons (“APER”)**

- 2.4 APER sets out the fundamental obligations of approved persons and sets out examples of conduct, which, in the opinion of the FSA, does not comply with the relevant Statements of Principle. It also sets out, in certain cases, factors to be taken into account in determining whether an approved person’s conduct complies with a Statement of Principle.
- 2.5 APER 3.1.3G provides 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, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.
- 2.6 APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.
- 2.6 In this case, the FSA considers the most relevant of the Statements of Principle to be Statement of Principle 6 which states that 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 (Statement of Principle 6).
- 2.7 APER 3.3.1E states that in determining whether or not the conduct of an approved person performing a significant influence function complies with Statements of Principle 5 to 7, the following are some of the factors which are to be taken into account:
  - (1) his role and responsibility as an approved person performing a significant influence function (APER 3.3.1E(4)); and
  - (2) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control (APER 3.3.1E(5)).
- 2.7 APER 4.6 sets out examples of behaviour which the FSA considers does not comply with Statement of Principle 6. These include failing to take reasonable steps to adequately inform oneself about the affairs of the business for which one is responsible (APER 4.6.3E).



## **FSA policy for exercising its power to make a prohibition order and/or withdraw approval**

- 3.7 The FSA's approach to exercising its powers to make prohibition orders and/or withdraw approval is set out in EG.
- 3.8 EG 9.1 provides 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.
- 3.9 EG 9.2 states that the FSA's effective use of the power under section 63 of the Act 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.
- 3.10 EG 9.4 sets out the general scope of the FSA's powers in respect of prohibition orders, 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 depend on the range of activities that the individual 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.
- 3.11 EG 9.8 to 9.14 provide guidance on the FSA's approach to making prohibition orders against approved persons and/or withdrawing such persons' approvals.
- 3.12 EG 9.8 states that, when it has concerns about the fitness and propriety of an approved person, the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw its approval, or both. The FSA will, in each case, consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions, for example, public censures or financial penalties, or by issuing a private warning.
- 3.13 EG 9.9 states that, when deciding whether to make a prohibition order against an approved person and/or withdraw his approval, the FSA will consider all the relevant circumstances of the case which may include, but are not limited to, the following factors (among others):
- (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of an approved person are contained in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability); and FIT 2.3 (Financial soundness);

- (2) whether, and to what extent the approved person has failed to comply with the Statements of Principle;
  - (3) the relevance and materiality of any matters indicating unfitness;
  - (4) the length of time since the occurrence of any matters indicating unfitness; and
  - (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
- 3.14 EG 9.12 provides 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 and serious breaches of the Statements of Principle.
- 3.15 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.