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## FINAL NOTICE

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**To:** **Mr Jonathan Edwards**

**Individual FSA reference:** **JXE00025**

**Date of birth:** **1 November 1955**

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

### **1. ACTION**

1.1 For the reasons given below, the FSA hereby:

- 1) makes an order pursuant to section 56 of the Financial Services and Markets Act (“the Act”) prohibiting Mr Jonathan Edwards (“Mr Edwards”) from performing the CF10 (Compliance Oversight) function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm (the “Prohibition Order”), because he lacks the competence and capability to perform that controlled function; and
- 2) makes an order pursuant to section 56 of the Act prohibiting Mr Edwards from performing any other 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 to retail customers (“UCIS”) (the “further Prohibition Order”).

- 1.2 The FSA would also have imposed a financial penalty of £20,000 on Mr Edwards in respect of his breach of APER Statement of Principle 6 pursuant to section 66 of the Act but for the fact that this would cause serious financial hardship to Mr Edwards.

## **2. SUMMARY OF REASONS**

- 2.1 On the basis of the facts and matters detailed below, the FSA concluded that Mr Edwards failed to comply with APER Statement of Principle 6 and that he lacks competence and capability to perform the controlled function of CF10 (Compliance oversight). The FSA also concluded that he 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 Edwards was formerly an approved person performing the controlled function of CF10 (Compliance oversight) at an authorised firm, namely Rockingham Independent Limited. Mr Edwards had no previous experience of performing such a function and in practice he spent most of his time between 17 May 2005 and 16 August 2010 providing pension and investment advice to Rockingham’s customers.

### **Breach of the Restriction on the Promotion of UCIS**

- 2.3 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

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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.

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.

- 2.4 The FSA identified that at least 39 of Rockingham's customers were recommended to invest in UCIS.
- 2.5 Mr Edwards had no knowledge or understanding of the statutory and regulatory restrictions on the promotion of UCIS to retail customers and therefore failed to ensure that Rockingham had regard to those restrictions when it promoted and recommended UCIS.
- 2.6 By failing adequately to perform the CF10 (Compliance oversight) function at Rockingham, he put 426 customers at risk of receiving unsuitable personal recommendations (ie pension and investment advice) between June 2008 and June 2010.

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

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

### **4. FACTS AND MATTERS RELIED ON**

- 4.1 Mr Edwards was a director of Rockingham.
- 4.2 Mr Edwards was approved to perform the controlled functions of CF1 (Director), CF8 (Apportionment and Oversight), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting), CF30 (Customer), and Responsibility for Insurance Mediation, in relation to regulated activities carried on by Rockingham.
- 4.3 Mr Edwards was approved to perform the CF10 (Compliance oversight) function from 17 May 2005. He admitted that in practice he spent most of his time providing pension and investment advice to Rockingham's customers.

4.4 By September 2008 Mr Edwards recognised, as did the Board of Rockingham, that he did not have sufficient time or focus to perform the CF10 (Compliance oversight) function. In March 2009, Mr Edwards reported to the Board that he had no time to perform the CF10 (Compliance oversight) function and that he did not have enough knowledge to perform the role. However, Mr Edwards did not ask for his approval to perform that function to be withdrawn. Mr Edwards continued nominally to perform the function at Rockingham until 16 August 2010 when he resigned from Rockingham. Mr Edwards did so only after the FSA had raised concerns about his competence and capability.

4.5 The consequences of Mr Edwards continuing to perform the CF10 (Compliance oversight) function were serious:

- (1) Rockingham promoted and recommended UCIS to retail customers without any knowledge of or regard for the statutory and regulatory restrictions on the promotion of UCIS to such customers. Rockingham also failed to gather sufficient financial and personal information about its customers to determine their eligibility for UCIS promotions or to assess the suitability of its recommendations to customers to invest in UCIS;
- (2) Rockingham promoted its Retirement Income Tri-Investment product as relatively low risk, despite the fact that capital invested in some of the underlying investments was not guaranteed to be returned;
- (3) Mr Edwards failed to identify the concentration risk associated with the practice of investing 100% of customers' pension transfers into one fund or scheme;
- (4) Mr Edwards failed to ensure that appropriate checking of client files was undertaken to help ensure the suitability of Rockingham's personal recommendations;
- (5) Mr Edwards also failed to identify that Gary Forster was performing the controlled function of CF3 (Chief Executive) without first seeking the approval of the FSA to perform that function, in contravention of section 59 of the Act.

- 4.6 The FSA found some significant matters of concern on a small sample of client files relating to Mr Edwards' personal recommendations to customers, which compounded its concern that he could not be relied upon to help ensure that the recommendations made by other advisers were suitable.
- 4.7 Mr Edwards therefore failed to act with due skill, care and diligence in performing the CF10 (Compliance oversight) function at Rockingham, in breach of Statement of Principle 6. He also failed to act with competence and capability in the performance of this function at Rockingham.

### **Analysis of sanctions**

- 4.8 The FSA's policy on the imposition of financial penalties that applied from 17 May 2005 to 5 March 2010, (the majority of the relevant period), was set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which forms part of the FSA Handbook. The relevant sections of DEPP are set out in more detail in Annex A. In addition, the FSA has had regard to the corresponding provisions of Chapter 13 of the Enforcement Manual which were in force during part of the relevant period up to 27 August 2007.
- 4.9 The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour. A financial penalty is a tool that the FSA may employ to help it achieve its regulatory objectives.
- 4.10 In determining whether or not it is appropriate in principle to impose a financial penalty on Edwards, the FSA has taken into account DEPP 6.2.4G and has determined that his conduct fell well below that which is reasonable in all the circumstances and that he is personally culpable.
- 4.11 In determining the level of financial penalty that it would have imposed the FSA considered those factors set out at paragraph 6.5 of DEPP.
- 4.12 Mr Edwards agreeing to perform the CF10 (Compliance oversight) function at Rockingham, and his subsequent failure to dedicate time and to focus on actually

performing the function in any meaningful sense is serious misconduct and had serious consequences (DEPP 6.4.2G(3) and 6.5.2G(2)) in that it exposed Rockingham's customers to the risk of receiving unsuitable pension and investment advice. By way of mitigation Mr Edwards drew the matter to the attention of the Board of Rockingham (DEPP 6.2.1G(1)(a) and 6.5.2G(3)(d)). Even so no competent approved person was performing the CF10 (Compliance oversight) function at Rockingham between 17 May 2005 and 16 August 2010 (DEPP 6.2.1G(1)(b) and 6.5.2G(2)(a)).

4.13 Mr Edwards failed to take reasonable steps to ensure that customers were treated fairly (DEPP 6.2.1G(1)(f)).

4.14 Mr Edwards agreed to be registered as the person performing the CF10 (Compliance oversight) function at Rockingham even though he had no previous experience of performing such a function and he recognised that he did not have sufficient knowledge to continue performing the function. In doing so, his conduct fell well below that which is reasonable in all the circumstances (DEPP 6.2.4G, 6.2.6(G)(1) and (3), 6.2.7(G) and 6.5.2G(1)).

4.15 Mr Edwards received income from the business (DEPP 6.5.2G(6)).

## **5. CONCLUSION**

5.1 The FSA therefore concluded that Mr Edwards breached APER Statement of Principle 6 by failing to perform his controlled function with due skill, care and diligence from the date on which he became an approved person. In practice Mr Edwards failed to perform the CF10 (Compliance oversight) function at Rockingham in any meaningful sense, and therefore he is responsible to a large degree for its compliance failures. But for the fact that the imposition of a financial penalty on Mr Edwards would cause him financial hardship, the FSA would have imposed a financial penalty of £20,000 before any discount on Mr Edwards

5.2 The FSA is of the view that Mr Edwards is not a fit and proper person as he lacks the competence and capability to perform controlled functions in relation to regulated activities. Given his failure to have regard to the statutory and regulatory restrictions relating to UCIS before promoting and recommending UCIS, we consider that, as a

further consumer protection measure, he should be prevented from performing any significant influence and customer functions at any authorised firm whose activities include promoting and/or recommending UCIS. For these reasons, the Prohibition Order and the further Prohibition Order are considered to be necessary and proportionate sanctions.

## **6. PROCEDURAL MATTERS**

6.1 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. The effective date of the Prohibition Order and the further Prohibition Order is 15 August 2011.

6.2 This Final Notice is given to Mr Edwards in accordance with section 390 of the Act.

### **Publicity**

6.3 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 detrimental to the interests of consumers.

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

### **FSA contacts**

6.5 For more information concerning this matter generally, Chris Walmsley (direct line: 020 7066 5894/ fax: 020 7066 5895) of the Enforcement and Financial Crime Division of the FSA. .

Tom Spender  
Head of Department  
FSA Enforcement and Financial Crime Division



## **Annex**

### **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 66 of the Act, to impose a penalty on Mr Edwards of such amount as it considers appropriate where it appears to the FSA that he is guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action against him.
- 1.3 You are guilty of misconduct if, while an approved person, you fail to comply with a statement of principle issued under section 64 or have been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.
- 1.4 The FSA has the power, by virtue of section 56 of the Act, to make an order prohibiting you from performing a specified function, any function falling within a specified description or any function, if it appears to the FSA that you are 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. The power to withdraw approval arises from section 63 of the Act.

#### **Statements of Principle for approved persons**

- 1.5 A part of the FSA's Handbook has the title Statements of Principle and Code of Practice for Approved Persons ("APER"). It sets out the Statements of Principle in respect of approved persons and conduct which, in the opinion of the FSA, constitutes a failure to comply with them. It also describes factors the FSA will take into account in determining whether an approved person's conduct complies with a particular Statement of Principle.
- 1.6 APER 3.1.3G states that, when establishing compliance with, or breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, the circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.
- 1.7 APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle where he is personally culpable, that is, in a situation where his conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.
- 1.8 In this case, the FSA considers the most relevant Statement of Principle to be Statement of Principle 6.

## **APER Statement of Principle 6**

- 1.9 Statement of Principle 6 requires 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.
- 1.10 APER 4.6 sets out a number of examples of behaviour which the FSA considers constitute a failure to comply with Statement of Principle 6. Of particular relevance is APER 4.6.11G which states:

“An approved person performing a significant influence function will not always manage the business on a day-to-day basis himself. The extent to which he does so will depend on a number of factors, including the nature, scale and complexity of the business and his position within it. The larger and more complex the business, the greater the need for clear and effective delegation and reporting lines. The FSA will look to the approved person performing a significant influence function to take reasonable steps to ensure that systems are in place which result in issues being addressed at the appropriate level. When issues come to his attention, he should deal with them in an appropriate way.”

- 1.11 Also relevant is APER 4.6.12G(1) which states:

“It is important for the approved person performing a significant influence function to understand the business for which he is responsible (APER 4.6.4E). An approved person performing a significant influence function is unlikely to be an expert in all aspects of a complex financial services business. However, he should understand and inform himself about the business sufficiently to understand the risks of its trading, credit or other business activities.”

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

- 1.12 A part of the FSA’s Handbook has the title “The Fit and Proper test for Approved Persons” (“FIT”). The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 1.13 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.
- 1.14 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 suitable , or will be suitable if approved, to perform the controlled function.

## **FSA's policy on exercising its power to impose a financial penalty**

1.15 Guidance on the imposition of penalties is provided in Chapter 6 of the FSA's Decision Procedure and Penalties Manual ("DEPP"), entitled "Penalties". DEPP 6 states that the FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty and sets out a non-exhaustive list of factors that may be relevant for this purpose.

1.16 DEPP 6.2.1G states that:

"The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty or public censure. Set out below is a list of factors that may be relevant for this purpose. The list is not exhaustive: not all of these factors may be applicable in a particular case, and there may be other factors, not listed, that are relevant.

- (1) The nature, seriousness and impact of the suspected breach, including:
  - (a) whether the breach was deliberate or reckless;
  - (b) the duration and frequency of the breach; ...
  - (f) the loss or risk of loss caused to consumers or other market users;
- (2) The conduct of the person after the breach, including the following:
  - (b) the degree of co-operation the person showed during the investigation of the breach; ...
- (5) Action taken by the FSA in previous similar cases."

1.17 DEPP 6.2.4G states that:

"the primary responsibility for ensuring compliance with a firm's regulatory obligations rests with the firm itself. However, the FSA may take disciplinary action against an approved person where there is evidence of personal culpability on the part of that approved person. Personal culpability arises where the behaviour was deliberate or where the approved person's standard of behaviour was below that which would be reasonable in all the circumstances at the time of the conduct concerned."

1.18 DEPP 6.2.6G states that:

"In addition to the general factors outlined in DEPP 6.2.1G, there are some additional considerations that may be relevant when deciding whether to take action against an approved person pursuant to section 66 of the Act. This list of those considerations is non-exhaustive. Not all considerations below may be relevant in every case, and there may be other considerations, not listed, that are relevant.

- (1) The approved person's position and responsibilities. The FSA may take into account the responsibility of those exercising significant influence

functions in the firm for the conduct of the firm. The more senior the approved person responsible for the misconduct, the more seriously the FSA is likely to view the misconduct, and therefore the more likely it is to take action against the approved person. ...

- (3) Whether disciplinary action would be a proportionate response to the nature and seriousness of the breach by the approved person.”

1.19 DEPP 6.2.7G states that the FSA will not discipline approved persons on the basis of vicarious liability (that is, holding them responsible for the acts of others), provided appropriate delegation and supervision has taken place (see APER 4.6.13G and APER 4.6.14G). In particular, disciplinary action will not be taken against an approved person performing a significant influence function simply because a regulatory failure has occurred in an area of business for which he is responsible. The FSA will consider that an approved person performing a significant influence function may have breached Statements of Principle 5 to 7 only if his conduct was below the standard which would be reasonable in all the circumstances at the time of the conduct concerned (see also APER 3.1.8G).

1.20 DEPP 6.4.2G states that:

“The criteria for determining whether it is appropriate to issue a public censure rather than impose a financial penalty are similar to those for determining the amount of penalty set out in DEPP 6.5. Some particular considerations that may be relevant when the FSA determines whether to issue a public censure rather than impose a financial penalty are: ...

- (3) if the breach is more serious in nature or degree, this may be a factor in favour of a financial penalty, on the basis that the sanction should reflect the seriousness of the breach; other things being equal, the more serious the breach, the more likely the FSA is to impose a financial penalty;”

1.21 DEPP 6.5.2G states that:

“The following factors may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act:

- (1) Deterrence

When determining the appropriate level of penalty, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market 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.

- (2) The nature, seriousness and impact of the breach in question

The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached. The following considerations are among those that may be relevant:

- (a) the duration and frequency of the breach; ...
  - (d) the loss or risk of loss caused to consumers, investors or other market users;...
- (3) The extent to which the breach was deliberate or reckless.

The FSA will regard as more serious a breach which is deliberately or recklessly committed. The matters to which the FSA may have regard in determining whether a breach was deliberate or reckless include, but are not limited to, the following: ...

- (d) whether the person has given no apparent consideration to the consequences of the behaviour that constitutes the breach; ...

If the FSA decides that the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case. ...

- (5) The size, financial resources and other circumstances of the person on whom the penalty is to be imposed.

The FSA may have regard to whether the imposition of a financial penalty will cause financial hardship.

- (6) The amount of benefit gained or loss avoided

The FSA may have regard to the amount of benefit gained or loss avoided as a result of the breach, for example:

- (a) the FSA will propose a penalty which is consistent with the principle that a person should not benefit from the breach; and
- (b) the penalty should also act as an incentive to the person (and others) to comply with regulatory standards and required standards of market conduct.  
...

- (8) Conduct following the breach

The FSA may take the following factors into account: ...

- (c) any remedial steps taken since the breach was identified, including whether these were taken on the person's own initiative or that of the FSA or another regulatory authority; for example, identifying whether consumers or investors or other market users suffered loss and compensating them where they have; correcting any misleading statement or impression; taking disciplinary action against staff involved (if appropriate); and taking steps to ensure that similar problems cannot arise in the future..."

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

- 1.22 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.
- 1.23 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.
- 1.24 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.
- 1.25 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.
- 1.26 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.
- 1.27 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.

1.28 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.