
FINAL NOTICE

To: Mark John Bates

Individual ref: MJB00071

Date: 20 September 2010

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you, Mark John Bates, final notice about an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person, or any exempt professional firm and a requirement to pay a financial penalty.

1. ACTION

1.1. The FSA gave you a Decision Notice on 11 August 2010 ("the Decision Notice") which notified you that it had decided to:

- (1) make a prohibition order, pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), to prohibit you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm ("the Prohibition Order").
- (2) impose a financial penalty of £264,683 on you, pursuant to section 66 of the Act, for failing to comply with Statements of Principle 1 of the FSA's Statements of Principles and Code of Conduct for Approved Persons

(“APER”) between 31 July 2003 and 28 December 2007 (“the relevant period”).

- 1.2 The financial penalty includes an element of disgorgement of £74,683 which, as a matter of principle should be disgorged, because it is the commission that you dishonestly diverted from the firm you were a partner of during the relevant period (“the Firm”).
- 1.3 You have not referred the matter to the Upper Tribunal within 28 days of the date on which the Decision Notice was given to you.
- 1.4 Accordingly, for the reasons set out below, the FSA has today imposed a financial penalty of £264,683 on you and hereby makes an order, pursuant to section 56 of the Act, prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. This order has effect from 20 September 2010.

2. REASONS FOR THE ACTION

- 2.1. The FSA has concluded that you are not fit and proper to carry out any functions in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm and that you should be prohibited from doing so.
- 2.2. On the basis of the facts and matters summarised below, and set out in more detail in paragraph 4 of this notice, the FSA has concluded that you failed to act with honesty and integrity in breach of APER 1. In particular, you:
 - (1) were knowingly involved in the submission of at least one fraudulent mortgage application for a customer at the Firm (“Customer A”);
 - (2) acted as a mortgage adviser for Customer A when not qualified to do so;
 - (3) dishonestly diverted commission from the Firm in breach of the partnership agreement;
 - (4) wilfully failed to monitor and disregarded the work carried out by the advisers at the Firm, whom you were responsible for supervising appropriately;

- (5) wilfully failed to ensure that the Firm's recruitment process was adequate and complied with regulatory standards by recruiting Adviser B and allowing him to carry on working as a mortgage adviser at the Firm without due regard to the fact that there were serious concerns about his honesty and integrity.

2.3. For these reasons the FSA considers that it is necessary and proportionate to impose on you a financial penalty of £264,683 which includes an element of disgorgement of profit of £74,683.

2.4. The FSA has further concluded that you have also failed to act with honesty and integrity by:

- (1) obtaining a mortgage in your own name using false information regarding your income, including false payslips and P60s; and
- (2) setting up a limited company in your wife's name and using false information on her income and employment, which included false payslips and credit reports.

2.5. As a result of the seriousness, nature and extent of your misconduct, the FSA has also concluded that you are failing to meet the minimum regulatory standards required in terms of honesty and integrity and are not fit and proper to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. Accordingly the FSA has decided to make the Prohibition Order against you.

2.6. You pose a risk both to consumers and lenders and to confidence in the financial system. Action should be taken against you to help prevent you from committing acts of financial crime.

3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

3.1. The relevant statutory provisions, regulatory guidance and policy are attached at Annexes A and B to this Final Notice.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. You were one of four partners at the Firm, which is an authorised firm of independent financial advisers based in Sheffield. It provides financial advice on mortgages, general insurance and investments. You held CF4 (Partner) and CF 30 (Customer) controlled functions at the Firm and were responsible for the day-to-day activities and running of the Firm. You ceased to be a partner at the firm on 28 December 2007.
- 4.2. Following a criminal investigation by South Yorkshire Police, Adviser A was arrested in November 2007. Adviser A was a financial adviser at the Firm who reported to you. You were arrested in March 2008 as part of this police investigation and have been charged with six counts, which include conspiracy to defraud, money laundering, conspiracy to launder criminal property, money transfer by deceit, conspiracy to obtain a money transfer by deceit and conspiracy to commit fraud. Although you pleaded not guilty to all of these offences you were convicted of a number of offences as set out in paragraph 4.26 below.
- 4.3. The FSA received information from the police and the Firm in relation to concerns about your conduct and started an investigation on 27 June 2008. This information included information about the fraudulent mortgages submitted by you or on your behalf, fraudulent commission sharing by you with Adviser A and your regulatory failings as a partner at the Firm.

Mortgage Fraud

Mortgage application of Customer A

- 4.4. You submitted a mortgage application dated 5 January 2005 on behalf of Customer A containing false information on his income and employment. The mortgage application stated that Customer A was employed by a telecommunications company as a store manager with a basic salary of £22,500, which you admitted was false.
- 4.5. You were recorded as the mortgage adviser in the application itself and signed various documents accompanying the application.

- 4.6. You have known Customer A since early 2005 and you knew that Customer A had recently started out in a business, and his work included “*some cutting hedges and tree surgeon type of work*” for the local council. However you verified the documents submitted in support of the mortgage application, which contained the payslips fraudulently showing Customer A’s employer as a telecommunications company.
- 4.7. You stated that all you did was to complete the paperwork for this application. You also said that you were unable to provide mortgage advice since you did not have a CeMAP qualification.
- 4.8. The FSA considers you were knowingly involved in the submission of this mortgage application which contained false information on the client’s employment and income. You also acted as a mortgage adviser in this case when you were not qualified to do so. This demonstrates a lack of honesty and integrity.

Fraudulent mortgage application in your own and Adviser A’s name

- 4.9. You obtained a mortgage in your own name jointly with Adviser A for a property in Spain. The mortgage application was supported by false payslips and P60s which stated that you were employed as a partner at the Firm earning a salary of £82,500. The income shown on those payslips was false and you never received payslips or P60s from the Firm as you were self-employed.
- 4.10. The FSA considers that, despite the fact that you denied any involvement in the fraudulent aspect of your own mortgage application, in view of the relevant correspondence between Adviser A and yourself and the fact that this mortgage was in your joint names, you were knowingly involved in this mortgage fraud.

Commission Sharing

- 4.11. Through a secret arrangement with Adviser A, you dishonestly diverted commission from the Firm. This arrangement was endorsed in a written agreement between you and Adviser A and the payments were made further to fraudulent invoices being generated and sent to Adviser A by you.

- 4.12. You received payments from Adviser A on a monthly basis from 12 January 2004 until 14 July 2007 totalling £74,683.16. These payments were based on invoices that you created at the request of Adviser A. This is evidenced by a series of emails between you and Adviser A over the period and also a written agreement between you and Adviser A. You said that initially these payments were made by way of gift but then became payments for introductions made by you to Adviser A. You denied sending or receiving the emails relating to these payments despite them all being sent from and to your email account. You also denied creating the invoices, except for those in your wife's name which you stated were created for reasons of tax efficiency. The FSA does not accept your explanations on these points.
- 4.13. Further under the partnership agreement, no partner of the Firm should receive money direct from an employee of the partnership as this is money that should go to the partnership profits. The evidence suggests that you would increase the commission received by Adviser A from the Firm by dishonestly claiming that the client was his rather than yours. This allowed you to receive part of this commission to which you were not entitled.
- 4.14. The other partners at the Firm were not aware of this arrangement between you and Adviser A and you did not account to the partnership for these payments either, despite the partnership agreement of the Firm stating that any receipt of commission by a partner from any office employment or position held as a partner must be brought to the general account.
- 4.15. Accordingly, the FSA considers that you have acted without honesty and integrity by entering into an arrangement with Adviser A under which you dishonestly shared commission payments made to Adviser A by the Firm and did not account for them correctly to the partnership.

Setting up a limited company using false documents

- 4.16. You exchanged several emails with Adviser A regarding setting up a limited company in your wife's name. You forwarded false information on your wife's employment and income to Adviser A by email. In one email dated 20 January 2007 you stated that your wife was then earning £36,680.40 per year, whereas in fact your wife worked in

a cash and carry earning around £12,000-£13,000 per year and she had left this job in 2006. You also created false payslips to reflect the wages set out in your email to Adviser A and a credit report in your wife's name that showed false credit.

- 4.17. Despite the fact that you denied (a) sending any of these emails from your email account or creating any false documents on behalf of your wife and (b) asking Adviser A to set up this company, in view of the relevant correspondence between you and Adviser A and also the close relationship that you shared with him, the FSA has concluded that you were knowingly involved in this fraudulent activity.

Wilful disregard for the activities of Adviser A

- 4.18. You were responsible for the supervision of Adviser A at the Firm. In May 2004 Adviser A charged a customer a fee for the mortgage advice even though it was agreed that such fee would not be imposed as the payment would be by way of commission. You sent a letter stating that because the customer cancelled the health insurance policy linked to the mortgage that he was taking out through the Firm he would now be charged a fee for the mortgage advice. You stated that you signed the letter without reading it on Adviser A's request as you trusted him.
- 4.19. In addition you and Adviser A dealt with a couple who made a formal complaint to the Firm and later to the Financial Ombudsman Service relating to non-disclosure of a commission payment to the Firm on their pension transfer. The clients complained that they dealt with both of you on almost a 50/50 percent basis regarding their pension transfer and at no point did either of you mention how much commission you were earning.
- 4.20. You denied being involved in this case and claimed that this was a complaint against Adviser A and not you. However the draft response to the clients' complaint which was sent by Adviser A but approved by you stated that you and Adviser A *"systematically worked together on many of the items of work for which the client has now subsequently complained."* You could not explain why you had approved this wording if you were not involved in the case. You wilfully disregarded the misconduct of Adviser A and did not supervise him adequately due to your close relationship with him.

Recruitment of Adviser B

- 4.21. You were actively involved in the recruitment of Adviser B, who was dismissed twice by his previous employers for gross misconduct, which included imposing unauthorised charges on clients on their mortgage applications and misappropriating the administrative fee which was due to his employer. You failed to act with integrity by employing Adviser B despite the fact that any reasonable person in your position would have had serious concerns about his honesty and integrity.
- 4.22. Further the Firm made an application to the FSA for Adviser B's approval, which was later withdrawn when the FSA raised concerns about Adviser B's fitness and propriety in relation to his previous dismissals. The Firm in its reply to the FSA specifically stated that they would follow up the FSA's concerns. However despite the fact that you had been closely dealing with Adviser B's recruitment and his FSA application, you failed to follow this up and acted with wilful disregard to regulatory requirements by allowing Adviser B to carry on working as a mortgage adviser in the Firm even though there were serious concerns about his honesty and integrity.

Wilful disregard for the activities of Adviser B

- 4.23. You were responsible for the supervision of Adviser B. A customer of the Firm complained that he was given advice on pensions by Adviser B on several occasions despite Adviser B not being authorised to provide such advice. The customer stated that you were present at meetings where Adviser B gave advice.
- 4.24. You denied that you were present at that meeting and said that Adviser B was not advising the customer on pensions but only dealt with the client's mortgage application. You further stated that all Adviser B did was to introduce the client to you so that you could deal with the client's pension. However the customer received a letter from Adviser B which set out that Adviser B would be doing a complete assessment of the client's pension. You could not explain why this letter was sent out.
- 4.25. You denied any involvement or knowledge of the failings discussed in paragraphs 4.18-4.20 and 4.23-4.25 above. You said that despite being a supervisor you never queried the type and quality of work that these advisers were putting through as you thought that they were dealt with by other people at the Firm. The FSA considers that

this raises serious questions as to your integrity in that you knowingly ignored regulatory requirements.

Criminal Convictions

- 4.26. On 18 February 2010, you were convicted of, amongst other offences, Conspiracy to Defraud under Common Law. The Particulars of the Offence are that between 31 June 2002 and 1 May 2007 you conspired with Adviser A to defraud the Firm by providing false information, namely false invoices and commission sheets, that misled and deceived the Firm into paying a higher rate of commission to Adviser A than he was due thereby depriving the Firm of revenue. You were sentenced to 4 years in prison.
- 4.27. Taking into consideration the matters referred to above the FSA considers that, in your role as a partner in the Firm and an approved person, you have failed to act with integrity and honesty.

5. REPRESENTATIONS

- 5.1. You challenged the FSA's case against you and sought to update the information previously provided to the FSA.
- 5.2. You stated that the information provided by the Firm to the FSA had not been truthful or honest. In particular, they lied when they claimed they had not sought legal advice when they suspected you and Adviser A were sharing commissions. Once they became aware of the commission sharing they should have reported the matter to the FSA.
- 5.3. In addition you stated that the Firm failed to keep complete customer records and shredded original customer files. Your former employers installed a new customer document management system but failed to ensure that the customer information was properly scanned before destroying the original files. You provided details of five customers where little or no information was held and where the original files had been shredded.

- 5.4. You raised allegations against your former employer as to inconsistencies found in client files which you argued the FSA should investigate.
- 5.5. In relation to your wife's remortgage application, you argued that another adviser at the Firm used incorrect or falsified information which would explain the discrepancy in the employment details for Mrs Bates. You represented that in completing the application, the adviser and the Firm were aware that Mrs Bates was unemployed when the application was submitted.
- 5.6. You also stated that because of the conviction by the Crown Court, a confiscation order will also be sought against you. As a result, you argued you would not have the assets to enable you to pay any financial penalty to the FSA.

6. CONCLUSION AND SANCTIONS

- 6.1. Having considered your representations, the FSA is not satisfied that you are a fit and proper person. Your representations as related to the behaviour of the Firm or the other Advisers at the Firm do not absolve you of your responsibilities as an approved person.
- 6.2. In assessing your honesty, integrity and reputation for the purpose of considering whether you are a fit and proper person, the FSA considers that the following behaviour (which also breaches APER 1) demonstrates a lack of honesty and integrity:
- (1) You were knowingly involved in the submission of at least one fraudulent mortgage application, which was for Customer A, and acted as a mortgage adviser in this case when not qualified to do so;
 - (2) You dishonestly diverted commission from the Firm in breach of the partnership agreement;
 - (3) You failed to monitor and wilfully disregarded the work carried out by the advisers at the Firm, for whom you were responsible for supervising appropriately;

- (4) You failed to ensure that the Firm's recruitment process was adequate and complied with regulatory standards by recruiting Adviser B and allowing him to carry on working as a mortgage adviser at the Firm without due regard to the fact that there were serious concerns about his honesty and integrity.
- 6.3. The FSA further considers that the following behaviour also demonstrates a lack of honesty and integrity:
- (1) You obtained a mortgage in your own name using false information regarding your income, including false payslips and P60s; and
- (2) You attempted to set up a limited company in your wife's name using false information on her income and employment, which included false payslips and credit reports;
- 6.4. In light of your conduct as set out above including having regard to the guilty verdict of the Crown Court, the FSA concludes that you lack honesty and integrity.

Prohibition

- 6.5. The FSA considers that you pose a serious risk to lenders, to consumers, and to confidence in the financial system, and also that action should be taken to prevent you from committing acts of financial crime. The FSA considers that you lack fitness and propriety and as such it is the view of the FSA that you should be prohibited from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm.

Financial Penalty

- 6.6. Further, the FSA considers it appropriate to impose a financial penalty under section 66(1) of the Act. In determining an appropriate financial penalty the FSA has had regard to the need to punish you as well as deter others from engaging in this type of activity.
- 6.7. The FSA concludes that your misconduct is particularly serious due to its breadth and significance and warrants a severe financial penalty, in particular your;

- (1) knowing involvement in the submission of fraudulent mortgage documents;
 - (2) actions in dishonestly diverting commission from the Firm;
 - (3) wilful disregard of serious concerns raised during the recruitment of an adviser; and
 - (4) wilful disregard of misconduct carried out by advisers at the Firm.
- 6.8. The FSA's policy on whether to issue a financial penalty is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which forms part of the FSA's Handbook. In determining the appropriate level of financial penalty the FSA has also had regard to Chapter 13 of the Enforcement Manual ("ENF"), the part of the FSA's Handbook setting out the FSA's policy on the imposition of financial penalties in force until 27 August 2007, and therefore part of the relevant period. The relevant sections of DEPP and ENF are set out in Annex B.
- 6.9. The FSA considers the following factors to be particularly relevant in this case:

Deterrence

- 6.10. 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.

The nature, seriousness and impact of the breach in question

- 6.11. In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the duration and frequency of the breaches over the relevant period and the fact that the breaches revealed a serious lack of integrity.

The nature and extent of any financial crime attributable to the breach

- 6.12. The FSA has had regard to the fact that significant financial crime was actually committed through the Firm over a lengthy period. A financial penalty would deter you and others from any further breaches of regulatory Principles which lead to financial crime.

The FSA's approach in similar previous cases

- 6.13. In determining that a financial penalty is appropriate, the FSA has taken account of sanctions against other authorised persons for similar conduct. In the circumstances, the FSA considers that the imposition of a financial penalty is proportionate and appropriate.
- 6.14. In the event that any Confiscation proceedings commenced against you results in an Order requiring you to make payment under the terms of that Order, the FSA would not seek to enforce its financial penalty under this Notice, before the claims of any legitimate creditors.
- 6.15. Having considered all the circumstances above, the FSA has determined that £190,000 is the appropriate financial penalty to impose on you with a further £74,683 added as a disgorgement of commission that you dishonestly diverted from the Firm to make a total of £264,683.

7. DECISION MAKER

- 7.1. The decision that gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

8. IMPORTANT

- 8.1. This Final Notice is given to you in accordance with section 390 of the Act.

Manner of and time for Payment

- 8.2. The financial penalty of £264,683 must be paid in full by you to the FSA by no later than 5 October 2010, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 8.3. If all or any of the financial penalty is outstanding on 5 October 2010, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Confidentiality and publicity

- 8.4. 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.
- 8.5. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 8.6. For more information concerning this matter generally, you should contact Paul Howick at the FSA (direct line: 020 7066 7954).

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Tom Spender
Head of Department
FSA Enforcement and Financial Crime Division

ANNEX A

RELEVANT STATUTORY PROVISIONS, RULES AND GUIDANCE

1. Statutory provisions

- 1.1. The FSA's statutory objectives, set out in section 2(2) of the Act, include the protection of consumers, the reduction of financial crime and the maintenance of market confidence.

Prohibition

- 1.2. The FSA has the power, by virtue of section 56 of the Act, to make an order prohibiting an individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that he is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities.
- 1.3. Under section 66(1) of the Act, the FSA may impose a financial penalty on an approved person if they are guilty of misconduct and the FSA is satisfied that it is appropriate in all the circumstances to take action against them.
- 1.4. Section 66(2) of the Act states that a person is guilty of misconduct if, while an approved person, they have failed to comply with a statement of principle for approved persons (section 66(2)(a)) or they have been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on the authorised person by or under the Act (section 66(2)(b)).

2. Regulatory Requirements and Guidance

- 2.1. In deciding on this action, the FSA has had regard to relevant guidance published in the FSA and set out in the Regulatory Guides, in particular in the Enforcement Guide ("EG"), The Fit and Proper Test for Approved Persons ("FIT"), the Statements of Principle and Code of Practice for Approved Persons ("APER") and Decision Procedure and Penalties manual ("DEPP"). The relevant parts of this guidance are set out below.

The Enforcement Guide (“EG”)

- 2.2. 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”).
- 2.3. 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 function 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 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 activities that the individual performs in relation to regulated activities, the reasons why he is not fit or proper and the severity of the risk posed by him to the consumers or the market generally.
- 2.5. EG 9.8 to 9.14 provide additional guidance on the FSA’s approach to making prohibition orders against approved persons and/or withdrawing such persons’ approvals. 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.
- 2.6. 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. The criteria for assessing the fitness and propriety of approved persons are set out 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:
 - (a) failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons; or
 - (b) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act.
- (3) the relevance and materiality of any matters indicating unfitness.
- (4) the length of time since the occurrence of any matters indicating unfitness.
- (5) 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.
- (6) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

2.7. EG 9.10 provides that the FSA may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the individual is fit and proper to continue to perform a controlled function or other function in relation to regulated activities. The FSA may also take account of the particular controlled function which an approved person is performing for a firm, the nature and activities of the firm concerned and the markets within which it operates.

2.8. 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:

- (1) severe acts of dishonesty, e.g. which may have resulted in financial crime.
- (2) serious breaches of the Statements of Principle for approved persons, such as providing misleading information to clients, consumers or third parties.

3. Fit and Proper Test for Approved Persons (“FIT”)

- 3.1. 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 and FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 3.2. FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing a person’s fitness and propriety. Among the most important considerations will be the person’s honesty, integrity and reputation.
- 3.3. In determining a person’s honesty, integrity and reputation, FIT 2.1.1G states that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. This guidance includes:
 - (1) whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)); and
 - (2) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person 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 (FIT 2.1.3G(13)).

4. The Statements of Principle and Code of Practice for Approved Persons

- 4.1. The part of the FSA Handbook entitled the Statements of Principle and Code of Conduct for Approved Persons ("APER") sets out the Statements of Principle in respect of approved persons and provides examples of conduct which, in the opinion of the FSA, do not comply with a Statement of Principle. It further describes 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.
- 4.2. 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, including the precise circumstances of the individual case,

the characteristics of the particular controlled function and the behaviour to be expected in that function.

- 4.3. APER 3.1.4G(1) provides that an approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises where an approved person's conduct was deliberate or where the approved person's standard of conduct was below that which would be reasonable in all the circumstances.
- 4.4. In this case, the FSA considers the most relevant Statements of Principle to be Statements of Principle 1, 6 and 7.

Statement of Principle 1

- 4.5. Statement of Principle 1 provides that an approved person must act with integrity in carrying out his controlled function.
- 4.6. APER 4.1 lists the types of conduct which do not comply with Statement of Principle 1.
- 4.7. APER 4.1.3E states that deliberately misleading (or attempting to mislead), by act or omission, a client or his firm, does not comply with Statement of Principle 1. Specific examples of such conduct are set out in APER 4.1.4E, which includes deliberately falsifying documents.
- 4.8. APER 4.1.12E provides that deliberately designing transactions so as to disguise breaches of requirements and standards of the regulatory system is conduct which breaches Statement of Principle 1.

ANNEX B

1. The Decision, Procedure and Penalties Manual (“DEPP”)

- 1.1. The FSA’s policy on imposing financial penalties is set out in Chapter 6 of the Decision Procedure and Penalties Manual (“DEPP”). In considering the financial penalty, the FSA has also had regard to the provisions of the FSA’s Enforcement Manual (“ENF”) which applied during part of the period in which your misconduct occurred.
- 1.2. Examples of relevant factors when considering whether to take disciplinary action, including the imposition of a financial penalty, in terms of the nature, seriousness and impact of the suspected breach, are set out in DEPP6.2.1(1)G. Relevant factors in this case include:
 - (1) whether the breach was deliberate (DEPP 6.2.1(1)(a));
 - (2) the amount of any benefit gained as a result of the breach (DEPP 6.2.1(1)(c));
 - (3) the loss or risk of loss to market users (DEPP 6.2.1(1)(f)); and
 - (4) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach (DEPP 6.2.1(1)(g)).
- 1.3. Under DEPP 6.2.1(5), the FSA will consider previous action that it has taken in similar cases, but that does not prevent the FSA from imposing a tougher sanction or a different sanction if merited in all the circumstances.
- 1.4. The FSA’s policy on taking disciplinary action against approved persons is set out in DEPP6.2.4 to 6.2.13G. Some of the most relevant considerations in this case are summarised below.
- 1.5. The FSA may take disciplinary action against an approved person where there is evidence of personal culpability on the part of the approved person (DEPP 6.2.4G).
- 1.6. The FSA will consider whether disciplinary action against the authorised firm would be a more appropriate regulatory response (DEPP 6.2.6(2)G). The FSA will consider whether disciplinary action would be a proportionate response to the nature and

seriousness of the breach by the approved person (DEPP 6.2.6(3)G). The onus is on the FSA to show that the approved person has been guilty of misconduct (DEPP 6.2.9G).

1.7. The FSA's policy on determining whether to impose a penalty or issue a public censure is set out in DEPP 6.4. Relevant criteria from paragraph 6.4.2G of DEPP are summarised below:

- (1) whether or not deterrence may be effectively achieved by issuing a public censure (DEPP 6.4.2(1)G);
- (2) if the person has made a profit, this may be a factor in favour of a financial penalty (DEPP 6.4.2(2)G);
- (3) if the breach is more serious in nature or degree, this may be a factor in favour of a financial penalty (DEPP 6.4.2(3)G);
- (4) the FSA's approach in similar cases (DEPP 6.4.2(7)G); and
- (5) the impact on the person concerned and their ability to pay the level of penalty (DEPP 6.4.2(8), where verifiable hardship caused by imposing a financial penalty is something the FSA will consider (DEPP 6.4.2(8)(a)G).

1.8. Factors determining the appropriate level of a penalty are covered in paragraph 6.5.2 of DEPP. They include:

- (1) deterring persons from committing further breaches and helping to deter other persons from committing similar breaches (DEPP 6.5.2(1)G);
- (2) the nature, seriousness and impact of the breach in question, including the loss or risk of loss caused to market users, and the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach (DEPP 6.5.2(2)G);
- (3) the extent to which the breach was deliberate, including where the person foresaw the potential or actual consequences of their actions (DEPP 6.5.2(3)G);

- (4) when deciding to impose a financial penalty on an individual it will consider the greater impact on them than on a body corporate (DEPP 6.5.2(4)G);
- (5) the size, financial resources and other circumstances of the person on whom the penalty is to be imposed, including evidence of serious financial hardship if the level of penalty were to be paid, whether the penalty would render the person insolvent, and what is reasonable to expect from a person in relation to their resources (DEPP 6.5.2(5)G);
- (6) the amount of benefit gained, where the FSA will impose a penalty which is consistent with the principle that a person should not benefit from the breach and that the penalty should act as an incentive to comply with regulatory standards (DEPP 6.5.2(6)G);
- (7) the person's conduct following the breach, including whether they co-operated with the FSA and took remedial steps (DEPP 6.5.2(8)G); and
- (8) other action taken by the FSA for similar breaches (DEPP 6.5.2(10)G).