
FINAL NOTICE

To: **Mr Michael Sheron**

Of: **30 Station Road,
Maghull,
Liverpool L31 3DB**

Date: **24 August 2007**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you, Mr Michael Sheron, final notice about an order prohibiting you from carrying out any controlled function involving the exercise of any significant influence over any authorised person in relation to any activity carried on by that authorised person.

1. ACTION

1.1. The FSA gave you a Decision Notice dated 24 August 2007 which notified you that, for the reasons set out below, and pursuant to sections 56 and 63 of the Financial Services and Markets Act 2000 (“the Act”), the FSA had decided to withdraw the individual approval of, and make a prohibition order against, you, Mr Michael Sheron, to prevent you from carrying out any controlled function involving the exercise of any

significant influence over any authorised person in relation to any activity carried on by that authorised person (“the Prohibition Order”).

- 1.2. Accordingly, for the reasons set out below, the FSA hereby makes an order pursuant to sections 56 and 63 of the Act. The order takes effect from 24 August 2007.

2. REASONS FOR THE ACTION

- 2.1. The FSA has concluded, on the basis of the facts and matters described in section 4 below, that you are not fit and proper by reference to the fact that you lack the competence and capability to carry out any controlled function involving the exercise of any significant influence over any authorised person in relation to any activity carried on by that authorised person.
- 2.2. The misconduct summarised below also represents a failure by you to comply with the following Statements of Principle for Approved Persons:
 - (1) Statement of Principle 4 under which an approved person must deal with the FSA and with other regulators in an open and cooperative way and must disclose appropriately information of which the FSA would reasonably expect notice; and
 - (2) Statement of Principle 7 under which an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.
- 2.3. As a result of your misconduct, the FSA has concluded that you have failed to satisfy the FSA that you are sufficiently competent and capable to comply with the requirements and standards of the regulatory system, and with professional obligations and ethical standards. These failures are so serious that, if you continued to carry out any controlled function involving the exercise of any significant influence over any authorised person in relation to any activity carried on by that authorised person, you would pose a risk to consumers and to confidence in the financial system.

3. RELEVANT STATUTORY PROVISIONS, RULES AND GUIDANCE

3.1. The FSA's statutory objectives, set out in section 2(2) of the Act, are: market confidence; public awareness; the protection of consumers; and the reduction of financial crime.

Withdrawal of Approval

3.2. Under section 63 of the Act, 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.

3.3. In exercising its power to withdraw an individual's approval the FSA must have regard to relevant guidance published in the FSA Handbook set out in Chapter 7 of the Enforcement Manual ("ENF").

3.4. ENF 7.5 sets out the FSA's policy on withdrawal of approval from approved persons. ENF 7.5.1G provides that the FSA may withdraw its approval only if it considers that the person in respect of whom the approval was given is not a fit and proper person to perform the function to which the approval relates.

Prohibition

3.5. Under section 56 of the Act, if it appears to the FSA that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, the FSA may make a prohibition order.

3.6. The effect of making a prohibition order is to prohibit an individual from performing functions within authorised firms and to prohibit authorised firms from employing the individual to perform specific functions. Such an order may relate to:

- (1) a specified function, any function falling within a specified description, or any function (s56(2)); and
- (2) a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities (s56(3)(a)).

- 3.7. In exercising its power to issue a prohibition order the FSA must have regard to relevant guidance published in the FSA Handbook set out in Chapter 8 of ENF.
- 3.8. ENF 8.5.2G provides that when it decides to exercise its power to make a prohibition order against an approved person the FSA will consider the following factors:
 - (1) whether the individual is fit and proper to perform functions in relation to regulated activities;
 - (2) whether and to what extent, the approved person has failed to comply with the Statements of Principle, or was knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act, including the Principles and other Rules (ENF 8.5.2G(2));
 - (3) the relevance, materiality and length of time since the occurrence of any matters indicating unfitness (ENF 8.5.2G(3));
 - (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system (ENF 8.5.2G(5)); and
 - (5) the previous disciplinary record and general compliance history of the individual including whether the FSA (or any previous regulators) has previously imposed a disciplinary sanction on the individual (ENF 8.5.2G(6)).
- 3.9. The relevant considerations in this case are whether, in terms of competence and capability, you are fit and proper to perform functions in relation to regulated activities and, if not, the severity of the risk posed by you. Having established these matters, it can be determined whether prohibition will be necessary to achieve the FSA's regulatory objectives and what scope of prohibition would best serve the achievement of those objectives in each case.

The Fit and Proper Test for Approved Persons

3.10. You are a partner and an approved person at Sheron & Company Financial Advisers ("the Partnership") and have been since 1 December 2001. As such, you are under a continuing obligation to satisfy the FSA that you remain a fit and proper person to retain your approval.

3.11. In this regard, it is relevant to consider the Fit and Proper Test for Approved Persons ("FIT") which (as far as is relevant to your position) involves a consideration of your:

- (1) "honesty, integrity and reputation" (FIT 2.1). This includes your openness and honesty in dealing with consumers, market participants and regulators, and your ability and willingness to comply with requirements placed on you by the Act, as well as other legal and professional obligations and ethical standards; and
- (2) "competence and capability" (FIT 2.2). This includes an assessment of your skills in carrying out any controlled functions you were performing.

3.12. FIT 2.2.1G In determining a person's competence and capability, the FSA will have regard to matters including but not limited to:

- (1) whether the person satisfies the relevant requirements of the FSA's Training and Competence sourcebook (TC) in relation to the controlled function the person performs; (FIT 2.2.1G (1)); and
- (2) whether the person has demonstrated by experience and training that the person is able...to perform the controlled functions (FIT 2.2.1G(2)).

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

3.13. You are an approved person and you perform the following controlled functions: Partner (CF4), Apportionment and Oversight (CF8), Compliance Oversight (CF10), Money Laundering Reporting (CF11) and Investment Adviser (CF21).

3.14. These functions (excluding CF21) are specified in the FSA's Supervision Manual as being "significant influence functions". Each significant influence function is one which is likely to result in the person responsible for its performance exercising a significant influence on the conduct of a firm's affairs so far as relating to its regulated activities.

- 3.15. In considering whether you are competent and capable, it is necessary to have regard to APER issued by the FSA pursuant to section 64 of the Act which addresses the conduct required of approved persons.
- 3.16. An approved person will only be considered to be in breach of a Statement of Principle where he is personally culpable, that is where the conduct in issue was deliberate, or the standard of conduct was below that which would be reasonable in all the circumstances.
- 3.17. In determining whether or not your conduct as an approved person complied with these Statements of Principle, APER 3.2.1E provides that the FSA should take into account the following general considerations:
 - (1) whether that conduct relates to activities that are subject to other provisions of the FSA Handbook; and
 - (2) whether that conduct is consistent with the requirements and standards of the regulatory system relevant to the authorised person.
- 3.18. APER 4.4.3E lists the types of conduct which in the opinion of the FSA does not comply with Statement of Principle 4. This list includes conduct of the type described in APER 4.4.4E and APER 4.4.9E.
- 3.19. APER 4.4.4E indicates that failing to report promptly in accordance with his firm's internal procedures (or if none exist direct to the FSA), information which it would be reasonable to assume would be of material significance to the FSA, whether in response to questions or otherwise, is conduct which would not comply with Statement of Principle 4.
- 3.20. APER 4.4.6E states that, in determining whether or not an approved person's conduct under APER 4.4.4E complies with Statement of Principle 4, the following are factors which, in the opinion of the FSA, are to be taken into account:
 - (1) the likely significance to the FSA of the information which it was reasonable for the individual to assume (APER 4.4.6E(1)); and

(2) whether the information related to the individual himself or to his firm (APER 4.4.6E(2)).

3.21. APER 4.7.2E lists the types of conduct which do not comply with Statement of Principle 7.

3.22. APER 4.7.3E states that failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of its regulated activities falls within APER 4.7.2 E.

3.23. APER 4.7.4E states that failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulatory system in respect of its regulated activities falls within APER 4.7.2 E.

3.24. APER 4.7.5E states that failing to take reasonable steps adequately to inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system in respect of its regulated activities may have arisen (taking account of the systems and procedures in place) falls within APER 4.7.2 E.

3.25. APER 4.7.7E states that failing to take reasonable steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved, following the identification of significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system relating to its regulated activities, falls within APER 4.7.2 E.

3.26. APER 4.7.11G states that the FSA expects an approved person performing a significant influence function to take reasonable steps both to ensure his firm's compliance with the relevant requirements and standards of the regulatory system and to ensure that all staff are aware of the need for compliance.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. The Partnership is a small independent financial adviser based in Liverpool. You are the only partner involved in, and you are solely responsible for, the management and the day to day running of the Partnership.
- 4.2. The Partnership was authorised with effect from 1 December 2001 by the FSA to carry on the following regulated activities:
 - (1) advising on investments (except pension transfers and pension opt-outs);
 - (2) agreeing to carry on a regulated activity;
 - (3) arranging deals in investments; and
 - (4) making arrangements with a view to transactions in investments.
- 4.3. On 14 January 2005, the Partnership was granted permission to carry on the following additional regulated activities in relation to non-investment insurance contracts:
 - (1) assisting in administration of insurance; and
 - (2) dealing in investments as agent.
- 4.4. The Partnership is not permitted to hold or control client money.
- 4.5. There are currently two CF21 approved advisers at the Partnership. Previously there were three other CF21 advisers at the Partnership, including "Adviser A" referred to below.
- 4.6. The business conducted by Adviser A on behalf of the Partnership comprised mainly term assurance/pure protection contracts.
- 4.7. Adviser A was made bankrupt in 2000 and remains undischarged. The bankruptcy related to commission clawback at a previous firm, of which Adviser A was a director.

Summary of the conduct in issue

- 4.8. You failed to exercise adequate management and oversight of the regulated activities carried on by the Partnership. You failed to adequately supervise the activities of Adviser A, or to take appropriate action once you became aware of misconduct by Adviser A. You are also responsible for the Partnership's failure to complete its Pensions Review and to comply with two Awards made by the Financial Ombudsman Service ("FOS"), and for the Partnership's failure to draw material information about the business of the Partnership to the attention of the FSA.
- 4.9. Adviser A made recommendations to customers to purchase term assurance policies, without necessarily being able to justify the suitability of these recommendations. Adviser A appears to have done this for the purpose of securing business and obtaining the associated commissions. As a result, a high proportion of policies sold by Adviser A through the Partnership have either lapsed or been cancelled by customers, causing high levels of recovery of overpaid commissions by product providers.
- 4.10. You were aware of the problems with the business arising from Adviser A's actions from at least April 2005 and of the increasing risks to the Partnership but you failed to take appropriate action or to notify the FSA of the matter, despite an insurance provider specifically warning you on two occasions in July and August 2005 of the Partnership's obligation under FSA rules to report the matter.
- 4.11. You were responsible for the Partnership's failure to notify the FSA that Adviser A was the subject of a bankruptcy order in 2000.
- 4.12. You were also responsible for the Partnership's failure to notify the FSA that Adviser B had been the subject of complaints at a previous employer, a significant proportion of which had been upheld.
- 4.13. In January 2006, the FSA obtained information which showed that the Partnership had debts totalling £163,789 owing to insurance providers by way of commission clawbacks. The largest creditor was owed £89,193.
- 4.14. By May 2006, the total sum owing to product providers by way of commission clawbacks was £240,965.

FSA investigation

4.15. Information provided by the Partnership showed that, in the 12 months to May 2006, 159 items of new business were conducted, of which 152 related to pure protection policies; and 114 of these policies were written by Adviser A.

4.16. In 2006, the FSA visited the Partnership and interviewed you and Adviser A. The following concerns were identified:

- (1) a large amount of the pure protection business written by the Partnership had either lapsed, or been cancelled, resulting in high levels of commission clawback as evidenced by the amount owed to insurance providers;
- (2) a large proportion of the Partnership's pure protection business had been written by Adviser A. The Partnership had already paid Adviser A his share of commissions due. You told the FSA that the contract between the Partnership and Adviser A made provision for recovery of overpaid commissions (although, as stated above, Adviser A is an undischarged bankrupt);
- (3) it appeared that the Partnership had no systems in place for monitoring and controlling the activities of its staff and, specifically, Adviser A;
- (4) you took no steps to address the problems caused to the Partnership by the clawback of commissions and failed to gain an appropriate understanding of the issue at the appropriate time. You did not stop Adviser A from writing business on behalf of the Partnership until May 2006 despite being aware of the commission clawback problem since April 2005; and
- (5) you also failed to assess whether the Partnership's approved persons were fit and proper, and failed to disclose to the FSA that:
 - (a) Adviser A had been made bankrupt in 2000 and that his bankruptcy had not been discharged; and
 - (b) Adviser B had resigned from a previous employer ahead of disciplinary proceedings relating to complaints.

4.17. You made several admissions during your interview with the FSA as to deficiencies in the Partnership's systems and controls and your management of the Partnership. In particular, you accepted that:

- (1) you were responsible for the way business was conducted and that there was no delegation of your management and oversight responsibilities to anyone else within the Partnership;
- (2) you exercised little or no control over Adviser A's activities, particularly the on-line business he was conducting directly with product providers despite becoming aware of increasing commission clawbacks on the business he had done;
- (3) at least 85% of the term assurance business written by Adviser A had "come off the books" but you took no steps to establish why this was the case;
- (4) you were aware of the commission clawback problem from at least April 2005, and of the increasing financial problems it was causing the Partnership, but you failed to take appropriate action to address this issue;
- (5) you failed to communicate with the insurance providers about the commission clawback problem and, even as late as September 2006, were relying on an individual employed by Adviser A, who was not an employee of the Partnership, to communicate with the insurance providers about the problem;
- (6) you did not notify the FSA of this matter, despite being advised on two occasions by an insurance provider that the Partnership was under an obligation under FSA rules to report the matter; and
- (7) you failed to notify the FSA about matters relating to Adviser A and Adviser B of which the FSA would reasonably expect notice.

4.18. The FSA also considered relevant your responsibility for the Partnership's failure without reasonable excuse:

- (1) to complete its Pensions Review by 12 January 2007 (the original target date for completion was 30 June 2002); and
- (2) to satisfy two outstanding Awards made by the FOS where in one case the Award was made in September 2005 and in the other case the Award was made in October 2006.

5. CONCLUSIONS

- 5.1. The FSA has concluded that you are not fit and proper in accordance with the regulatory requirements and with regard to the relevant guidance. In reaching this conclusion, the FSA had regard to your conduct in:
 - (1) your lack of control over Adviser A's activities;
 - (2) failing to communicate with the insurance providers about the commission clawback problem;
 - (3) failing to notify the FSA of the commission clawback position;
 - (4) failing to notify the FSA about matters relating to Adviser A and Adviser B of which the FSA would reasonably expect notice;
 - (5) failing to ensure the completion of the Partnership's pension review; and
 - (6) failing to pay two FOS awards.
- 5.2. Your conduct shows a lack of competence and capability, and you have failed to demonstrate that you are ready, willing and able to comply with the regulatory requirements and standards, legal and professional obligations and ethical standards. The FSA considers that you have not complied with the standards set out in FIT 2.2 had have acted in breach of the Statements of Principle for approved persons, and more specifically Statement of Principle 4 and Statement of Principle 7.
- 5.3. You failed without good reason to notify the FSA of:
 - (1) the Partnership's deteriorating financial position and the debt recovery action being taken by several insurance providers;

- (2) material information about employees of the Partnership; and
- (3) the fact that it had failed to comply with two outstanding FOS Awards.

5.4. You failed:

- (1) to implement procedures such as should have enabled you to identify, and address, inadequacies in the Partnership's systems and procedures to ensure that the business was run in compliance with the relevant requirements and standards of the regulatory system;
- (2) to ensure that the Partnership completed its Pensions Review by the extended deadline; and
- (3) to ensure that the Partnership complied with outstanding FOS Awards.

- 5.5. In coming to the view that you failed to comply with Statements of Principle 4 and 7, the FSA decided that you were personally responsible for the failures summarised in this Final Notice, and that your conduct falls well below the standards expected of approved persons performing significant influence functions.
- 5.6. Accordingly, the FSA has concluded that it is necessary to withdraw your approval and prohibit you from performing significant influence functions.

6. DECISION MAKER

- 6.1. The decision which gave rise to the obligation to give this Final Notice was made by the executive decision makers on behalf of the FSA.

7. IMPORTANT

- 7.1. This Final Notice is given to you under section 57 and in accordance with section 390 of the Act. The following statutory rights are important.

Third party rights

7.2. There are no third party rights as defined by section 393 of the Act in relation to this Final Notice.

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, you should contact Chris Walmsley (direct line: 020 7066 5894) of the Enforcement Division of the FSA.

Jonathan Phelan
Head of Department
Enforcement Division