
FINAL NOTICE

To: **Michael Tomlinson**

Of: **HMP Featherstone
New Road
Wolverhampton
WV10 7PU**

FSA Reference Number: **MXT01267**

Date: **9 January 2009**

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

1. THE ORDER

- 1.1 The FSA gave you a Decision Notice on 5 December 2008 (the "Decision Notice") which notified you that, for the reasons listed below and pursuant to section 56 of the Financial Services and Markets Act 2000 (the "Act"), the FSA had decided to make an order prohibiting you, Michael Tomlinson, from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm (the "Prohibition Order").
- 1.2 You have not referred the matter to the Financial Services and Markets Tribunal within 28 days of the date on which the Decision Notice was given to you.
- 1.3 Accordingly, for the reasons set out below, the FSA 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 or exempt person or exempt professional firm. The Prohibition Order takes effect from 9 January 2009.

2. REASONS FOR THE ORDER

Introduction

- 2.1 The FSA has concluded, on the basis of the facts and matters and conclusions described in its Warning Notice dated 29 October 2008 (an extract from which is attached to and forms part of this Final Notice), and in the Decision Notice, that you are not a fit and proper person to perform any functions as your conduct demonstrated a lack of honesty and integrity. Specifically, on 30 June 2008, you were convicted of 22 counts of financial crime offences.

Relevant Statutory Provisions

- 2.2 The FSA's statutory objectives are set out in section 2(2) of the Act and include the protection of consumers and the reduction of financial crime.
- 2.3 The FSA's power to make a prohibition order is set out in section 56 of the Act and the procedure to be followed is set out in section 58 of the Act.

Relevant Guidance

The Enforcement Guide ("EG")

- 2.4 The FSA's policy in relation to exercising its power to issue a prohibition order is set out in EG.
- 2.5 EG 9.1 explains the purpose of prohibition orders in relation to the FSA's regulatory objectives.
- 2.6 EG 9.3 to 9.5 set out the FSA's policy on making prohibition orders. In particular:
- (a) EG 9.3 states that the FSA will consider all relevant circumstances, including whether enforcement action has been taken against the individual by other enforcement agencies, in deciding whether to make a prohibition order;
 - (b) EG 9.4 states that the FSA has power to make a range of prohibition orders: they may be unlimited or they may be limited to specific functions in relation to specific regulated activities, depending on the reasons why the individual is not fit and proper and the severity of risk he poses to consumers or the market generally, and
 - (c) EG 9.5 states that the scope of a prohibition order will depend on the reasons why the individual is not fit and proper and the severity of risk he poses to consumers or the market generally.
- 2.7 EG 9.17 sets out that where the FSA is considering whether to make a prohibition order against someone who is not an approved person, the FSA will consider the severity of the risk posed by the individual and may prohibit him where it considers that it is necessary to achieve the FSA's regulatory objectives.

- 2.8 EG 9.18 states that, when determining the fitness and propriety of such an individual, the FSA will consider a number of factors, including those set out in EG 9.9. These factors include: the criteria for assessing the fitness and propriety of approved persons set out in the Fit and Proper Test for Approved Persons (“FIT”) section of the FSA Handbook; the Statements of Principles and Code of Practice for Approved Persons (“APER”), the relevance and materiality of any matters indicating unfitness, and the severity of the risk which the individual poses to consumers and to confidence in the financial system.

Statements of Principles and Code of Practice for Approved Persons

- 2.9 Statement of Principle 1 states that an approved person must act with integrity in carrying out his controlled function.
- 2.10 APER 4.1 sets out the conduct which does not comply with Statement of Principle 1. In particular, this includes providing false or inaccurate documentation or information (APER 4.1.4E(9)), misappropriating a client’s assets, including wrongly transferring to personal accounts cash belonging to clients (APER 4.1.11E(3)) and using a client’s funds for purposes other than those for which they were provided (APER 4.1.11E(5)).

Fit and Proper Test for Approved Persons

- 2.11 The FSA has issued guidance on the fitness and propriety of individuals in FIT.
- 2.12 FIT 1.1.2G states that the purpose of FIT is to set out and describe the criteria that the FSA will consider when assessing the fitness and propriety of a candidate for a controlled function. The criteria are also relevant in assessing the continuing fitness and propriety of approved persons.
- 2.13 FIT 1.3.1G(1) states that the most important consideration includes a person’s honesty, integrity and reputation.
- 2.14 FIT 2.1 gives specific guidance in determining a person’s honesty, integrity and reputation. In particular:
- (a) FIT 2.1.3G(1) states that the FSA will have regard to whether a person has been convicted of any criminal offence, and goes on to say that particular consideration will be given to offences of dishonesty, fraud, financial crime or other offences under legislation relating to companies, banking and financial services, insolvency and consumer protection; and
 - (b) FIT 2.1.3G(12) states the FSA will have regard to whether the person has ever been disqualified from acting as a director or disqualified from acting in any managerial capacity.

3. DECISION MAKER

3.1 The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

4. IMPORTANT

4.1 This Final Notice is given to you in accordance with section 390(1) of the Act.

Publicity

4.2 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the FSA must publish such information about the matter to which this Final 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.

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

FSA contact

4.4 For more information concerning this matter generally, you should contact Pauline Cheng (direct line: 020 7066 5228 / fax: 020 7066 5229) of the Enforcement Division of the FSA.

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John Kirby
FSA Enforcement Division

EXTRACT FROM THE WARNING NOTICE DATED 29 OCTOBER 2008 ISSUED TO MICHAEL TOMLINSON

“2. REASONS FOR PROPOSED ACTION

Facts and matters relied on

- 2.16. You were a director of Acorn Holdings Limited (“Acorn”). Acorn was authorised by the FSA on 4 April 2002 and you became an FSA approved person on 9 April 2002. Acorn’s authorisation was cancelled on 22 December 2005. On the same date you ceased to be an approved person.
- 2.17. On 26 September 2007, under section 1A of the Company Directors Disqualification Act 1986, you were disqualified from acting as a director for a period of 11 years. You were disqualified for unfitness to act as a company director.
- 2.18. On 30 June 2008, you were convicted at Shrewsbury Crown Court of one count of trading with intent to defraud creditors and 21 counts of obtaining a money transfer by deception. You committed these offences whilst you were employed in various positions within the financial services industry, including throughout the period that you were an approved person with Acorn.
- 2.19. On 28 July 2008, you were sentenced to six years and eight months imprisonment at Shrewsbury Crown Court. Under section 79(2)(a) of the Powers of Criminal Court (Sentencing) Act 2000, the Court may only pass a custodial sentence where the offence is so serious that such a sentence can be justified by the offence.

Conclusions

- 2.20. The facts and matters described above lead the FSA, having regard to its regulatory objectives which include the protection of consumers and the prevention of financial crime, to the following conclusions:
- you have acted dishonestly and without integrity by misappropriating client money whilst acting as an approved person of an authorised firm in breach of Statement of Principle 1;
 - you have been convicted of the criminal offences of trading with intent to defraud creditors and obtaining money transfers by deception, offences of such seriousness as to justify a custodial sentence;
 - the convictions, and the conduct which gave rise to them, go directly to impugn your honesty, integrity and reputation and therefore demonstrate that you are not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm;

- you present a risk to consumers as well as to the FSA’s statutory objective of the reduction of financial crime as you have failed to demonstrate that you conduct your business in compliance with proper standards; and
- the severity of the risk that you pose to consumers and to confidence in the market generally is such that it is necessary in order to achieve its regulatory objectives for the FSA to make a prohibition order against you in the terms proposed.”

END OF EXTRACT