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**FINAL NOTICE**

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To: **Mr Nigel Roy Thomas Layton**

Of: Primavera  
Lyonshall  
Kington  
Herefordshire  
HR5 3HX

Date: 15 May 2007

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about a decision to make a prohibition order against you.**

**1. ACTION**

1.1. The FSA gave you, Mr Nigel Roy Thomas Layton (“Mr Layton”), a Decision Notice on 15 May 2007 which notified you that pursuant to section 56 of the Financial Services and Markets Act 2000 (“the Act”), the FSA had decided to make a prohibition order against you to prevent you from carrying out any function in relation to regulated activities (“the Prohibition Order”).

- 1.2. You agreed that you will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3. You agreed to settle at an early stage of the FSA's investigation on the basis of the Prohibition Order.
- 1.4. Accordingly, for the reasons set out below and having agreed with you the facts and matters relied on, the FSA hereby makes the Prohibition Order against you.

## **2. REASONS FOR THE PROPOSED ACTION**

- 2.1. While acting in your capacity as director of an authorised firm called Powell Price & Company Limited ("the Firm"), you knowingly and deliberately:
  - (1) accepted client insurance premiums which you failed to pass over to the relevant insurers and intermediaries, leaving at least 16 clients uninsured, and
  - (2) used client money to cover the Firm's running costs and other business expenses, over a period of at least 12 months from December 2005, when you knew that the financial position of the Firm was deteriorating.
- 2.2. You stopped managing the Firm's client account ("the Client Account") and you failed to carry out any reconciliations of the Client Account.
- 2.3. You have accepted that you were solely responsible for this misconduct.
- 2.4. The misconduct summarised in this Notice represents a failure by you to comply with the following Statements of Principle:
  - (1) Statement of Principle 1, under which an approved person must act with integrity in carrying out his controlled function;
  - (2) Statement of Principle 2, under which an approved person must act with due skill, care and diligence in carrying out his controlled function; and
  - (3) 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.

2.5. The misconduct also represents a failure by you to comply with the FSA's requirements on holding client assets and money contained in the part of the FSA Handbook of rules and guidance entitled Client Assets (CASS).

2.6. As a result of the misconduct, we consider that you failed:

(1) to act with integrity by not demonstrating that you were able and willing to comply with the requirements and standards of the regulatory system, or with professional obligations and ethical standards; and

(2) to satisfy the FSA that you are sufficiently competent and capable to perform controlled functions in relation to regulated activities.

2.7. The FSA has considered, on the basis of the facts and matters described in this Notice, that you have failed to comply with the Statements of Principles for Approved Persons and that you are not fit and proper to carry out functions in relation to regulated activities carried on by authorised persons, and that you should be prohibited from doing so.

2.8. These failures are particularly serious because you knowingly acted in a way which caused detriment to the Firm's customers and the adverse consequences if any of them needed to make claims would have been very serious.

### **3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE**

#### **Statutory provisions**

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.

3.2. The FSA has the power pursuant to section 56 of the Act to make an order prohibiting a person from performing a specified function, any function falling within a specified description or any function, if it appears to the FSA that they are not a fit and proper

person to perform functions in relation to a regulated activity carried on by an authorised person.

- 3.3. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities.

#### **FSA's policy for exercising its power to make a prohibition order**

- 3.4. The FSA will consider making a prohibition order where it appears that an individual is not fit and proper to carry out functions in relation to regulated activities carried on by authorised firms. The FSA may exercise these powers where it considers that to achieve any of its statutory objectives it is necessary to prevent an individual from carrying out any function in relation to regulated activities. The FSA policy in relation to the decision to make a prohibition order is set out in Chapter 8 of the Enforcement section of the FSA Handbook ("ENF").
- 3.5. In particular, ENF 8.4.2 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. The scope of the prohibition order will depend on the range of activities the individual carries out. The FSA recognises that its decision to make a prohibition order will have a substantial impact on the individual concerned.
- 3.6. ENF 8.5 provides guidance in circumstances where the FSA has concerns about the fitness and propriety of an approved person. The FSA may consider whether it should exercise its powers to withdraw the person's approval or prohibition him from conducting regulated activities.
- 3.7. The FSA will usually consider making a prohibition order against an approved person only in the more serious cases of lack of fitness and propriety where it considers that the other powers available to it are not sufficient to achieve the FSA's regulatory objectives.
- 3.8. ENF 8.5.2 provides that when deciding whether to make a prohibition order against an approved person, the FSA will consider factors which include:

- (1) **honesty, integrity and reputation:** this includes an individual's openness and honesty in dealing with consumers, market participants and regulators and ability and willingness to comply with requirements placed on him by or under the Act as well as with other legal and professional obligations and ethical standards; and
- (2) **competence and capability;** this includes an assessment of the individual's skills to carry out the controlled function that he is performing.

3.9. The FSA will also consider whether and to what extent the approved person has:

- (1) failed to comply with the Statements of Principle for Approved Persons;
- (2) been 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);
- (3) the relevance, materiality and length of time since the occurrence of any matters indicating unfitness;
- (4) the particular controlled function the approved person is 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 including whether the FSA (or any previous regulator) has previously imposed a disciplinary sanction on the individual.

### **Regulatory requirements**

3.10. 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.

- 3.11. In this instance the criteria set out in FIT are relevant in considering whether the FSA may exercise its powers to make a prohibition order against an approved person in accordance with ENF 8.5.
- 3.12. FIT 1.3 provides that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person and the most important considerations will be the person's honesty integrity and reputation, competence and capability and financial soundness.
- 3.13. In determining a person's honesty, integrity and reputation FIT 2.1 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. The guidance referred to includes 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.
- 3.14. 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 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 or is intended to perform, and whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function.

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

##### **Background**

- 4.1. You have been an approved person performing the controlled function of Director ("CF1") at the Firm since 1 January 2002. You are also an approved investment adviser ("CF21").
- 4.2. The Firm was a small independent financial adviser although its business was primarily that of an insurance broker.
- 4.3. On 14 January 2005, the FSA became responsible for the regulation of insurance mediation activities. With effect from that date, the Firm's permission was varied to

permit it to carry on insurance mediation activities, and you became responsible for insurance mediation at the Firm.

4.4. The Firm was authorised to hold and control client money but only in respect of non-investment insurance contracts in a statutory client money account trust in accordance with the rules in CASS. Premiums received and payable to insurers were held in the Client Account.

4.5. The Firm agreed to cease carrying on regulated activities with effect from 2 October 2006, and was placed in Administration on 30 October 2006.

4.6. According to the Administrator's Statement of Affairs for the Firm, at the time of the administration there was an estimated deficiency of:

(1) £82,889 in respect of insurance creditors, being monies owed to various insurers and intermediaries in respect of insurance premiums that had been collected from clients but not paid over to them; and

(2) £22,055 in respect of clients as creditors, being monies owed to clients who, as a result of your misappropriation of their premiums, had to duplicate payment of their premiums to remain on risk.

4.7. The FSA has established the following facts and matters.

(1) You were solely responsible for the running of the Firm and for ensuring that it complied with regulatory requirements.

(2) You became aware that the Firm had financial problems in late 2004 in that its overheads were exceeding its income. You decided to attempt to sell the business.

(3) In the meantime you used client monies to protect the Firm's asset base. It was your decision to misappropriate client money. Funds in the Client Account were used to cover the Firm's running costs and business expenses, which included utility bills, staff salaries, your own salary, and other liabilities as they fell due.

- (4) You instructed the transfer of money from the Client Account as and when it was needed to cover the Firm's business expenses.
  - (5) You ceased carrying out the monthly reconciliations of the Client Account in or about August 2005 as you knew that the Client Account was in deficit and could not be balanced.
  - (6) You knew that by using client money to fund the business some clients would be left without insurance cover.
  - (7) You understood that as a consequence of using client money to support the business some customers would have to pay insurance premiums twice to get insurance cover.
  - (8) You accepted that given what had taken place you failed to act with integrity. You said, however, that it was never your intention to deceive anyone. In late 2005, you injected monies into the Firm by re-mortgaging your home with a view to clearing the deficit in the Client Account.
- 4.8. In summary, the evidence obtained by the FSA shows that you accepted insurance premiums from clients but failed to pass the monies over to the relevant insurers and intermediaries, leaving some clients uninsured. You misappropriated and used client money to support the Firm from the end of 2004. By early October 2006, when the Firm ceased trading, the extent of the Client Account deficit amounted to approximately £105,000.
- 4.9. The period of the breach is from 30 December 2005 when, as we understand it, you first started to misappropriate premiums, to 2 October 2006 when the Firm ceased trading.
- 4.10. These issues together impact on your integrity in your dealings with the Firm's clients and the FSA's confidence in your ability and willingness to comply with the requirements and standards of the regulatory system, and with professional obligations and ethical standards. They also reveal a failure in terms of your competence and capability to manage an authorised firm.



## **5. ANALYSIS OF CONDUCT IN ISSUE**

5.1. The misconduct summarised in section 4 above is considered to be serious because:

- (1) you failed to treat customers fairly by accepting from customers payment for insurance premiums and misusing the client funds, leaving some clients uninsured;
- (2) you knowingly and deliberately used client money to cover the Firm's business expenses over an extended period of time, for at least 12 months, at a time when, as the Director of the Firm, you were fully aware of the Firm's deteriorating financial position;
- (3) you failed to have in place any system to segregate the Client Account and you concealed improper use of funds in the Client Account by not carrying out client account reconciliations for a period of at least 12 months; and
- (4) you knowingly caused the Firm to fail to comply with regulatory requirements.

## **6. ANALYSIS OF THE PROPOSED SANCTION**

6.1. You failed:

- (1) to demonstrate integrity by your failure to demonstrate that you are able and willing in all circumstances to comply with the requirements and standards of the regulatory system and with professional obligations and ethical standards; and
- (2) to satisfy the FSA that you are sufficiently competent and capable to perform controlled functions in relation to regulated activities.

6.2. You also caused the Firm to fail to comply with FSA requirements in relation to holding client assets and money contained in CASS. In particular, under CASS 5.5, there are rules and guidance on the segregation and operation of client money accounts, which provide that, unless otherwise permitted, client money should be kept separate from the firm's money (CASS 5.5.3R). Under CASS 5.5.63R, client account records should be kept accurate as often as necessary and not more than every 25

business days and any shortfall should be paid into the client bank account by close of business on the day it is identified. Under CASS 5.5.77R the FSA should be notified immediately if the shortfall in the client account cannot be made good.

- 6.3. The FSA has considered whether you are a fit and proper person in accordance with the regulatory requirements and with regard to the relevant guidance. It had regard to your conduct in relation to accepting payments for insurance premiums from clients and the fact that you then allowed the Firm to subsequently misuse those client funds, which left some clients uninsured. You misappropriated a significant amount of client money over an extended period of time, of at least twelve months, to cover the Firm's business expenses and you were fully aware that your conduct was wrong and in breach of the FSA's requirements on holding client assets and money. The FSA considers that these issues and your conduct within the Firm as set out above are relevant in assessing your honesty, integrity and reputation. It is not satisfied that you are ready, willing and organised to comply with the standards and requirements of the regulatory system and ethical and professional standards.
- 6.4. The FSA does not consider that you are competent and capable to carry out functions in relation to regulated activities based on its findings set out above.
- 6.5. The FSA considers that you have acted in breach of Statements of Principle for Approved Persons through your failure to act with integrity (Statement of Principle 1), in your failure to ensure that the Firm was organised so that its client account could be controlled effectively and in accordance with the rules contained in CASS and through your failure to exercise due skill care and diligence (Statement of Principle 2) in carrying out your management functions at the Firm (Statements of Principle 7).
- 6.6. In view of the FSA's findings, it therefore considers that you fail to satisfy two of the assessment criteria for fitness and propriety (integrity and competence & capability) and therefore it has concluded that you are not fit and proper to carry on senior management functions in relation to regulated activities. The FSA considers it necessary to make a Prohibition Order.

## **7. DECISION MAKERS**

- 7.1. 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.

### **IMPORTANT**

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

#### **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  
FSA Enforcement Division