
FINAL NOTICE

To: Norman Mark McCance

Of: Penn Financial Services Unlimited

111-113 High Street
Evesham
Worcestershire
WR11 4XP

FSA reference number: NMM00002

Date: 6 April 2009

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 withdraw your individual approval and about an order prohibiting you from performing any controlled functions in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm

1. THE ORDER

1.1 The FSA gave you, Norman Mark McCance, a Decision Notice on 11 March 2009 ("the Decision Notice") which notified you that pursuant to section 63 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to withdraw your individual approval and to make an order prohibiting you from performing any controlled functions in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm ("the Prohibition Order") pursuant to section 56 of the Act.

1.2 You agreed that you would not be referring the matter to the Financial Services and Markets Tribunal.

1.3 Accordingly, for the reasons set out below and having agreed with you the facts and matters relied on, the FSA withdraws your individual approval and makes an order prohibiting you from performing any controlled functions in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

2 REASONS FOR THE ACTION

Summary

2.1 The FSA has exercised its statutory powers to withdraw your individual approval and to make the Prohibition Order against you as it considers that your conduct, while acting in your capacity as director and adviser at Penn Financial Services Unlimited (“Penn”), fell short of the standards required by the Statements of Principle and Code of Practice for Approved Persons.

2.2 Specifically, you failed to demonstrate adequate levels of competence and capability when carrying out controlled functions in connection with Penn’s investment business in the period from April 2006 to November 2007 (“the relevant period”) by virtue of your failure to:

- (1) act with due skill, care and diligence in ensuring the quality of your advice to customers, in breach of Statement of Principle 2; and
- (2) take reasonable steps to ensure that Penn complied with relevant requirements and standards under the regulatory system, in breach of Statement of Principle 7.

2.3 The FSA has concluded that you are not fit and proper to carry out any controlled functions in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm and that you should be prohibited from doing so. The FSA considers that it is proportionate to prohibit you because of the nature and range of your failings and the potential impact on customers.

3. RELEVANT STATUTORY PROVISIONS

3.1 The relevant statutory provisions and regulatory requirements are attached at Annex A.

4. FACTS AND MATTERS RELIED ON

Mr McCance and Penn

4.1 You were approved by the FSA on 10 April 2006 to perform the following controlled functions at Penn: CF1 (Director), CF8 (Apportionment and Oversight), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting), CF21 (Investment Adviser) and you were also responsible for insurance mediation. From 1 November 2007, you were also approved to

perform controlled function CF30 (Customer Function). Apart from yourself, there are no other persons approved to perform controlled functions in relation to the regulated activities for which Penn has permission.

4.2 Penn is a small independent financial advisory firm; its main business being investment bonds. With effect from 10 April 2006, Penn became authorised and regulated by the FSA to carry on the following regulated activities:

- (1) advising on investments (except on pension transfers and pension opt outs);
- (2) advising on regulated mortgage contracts;
- (3) agreeing to carry on a regulated activity;
- (4) arranging (bringing about) deals in investments;
- (5) arranging (bringing about) regulated mortgage contracts;
- (6) making arrangements with a view to regulated mortgage contracts;
- (7) making arrangements with a view to transactions in investments; and
- (8) providing basic advice on stakeholder products.

Failing to act with due skill, care and diligence in providing advice

4.3 You are Penn's only financial adviser. The FSA has identified a number of concerns relating to the quality of your advice and recommendations made to Penn's customers during the relevant period. Specifically, in connection with your role as adviser at Penn, you:

- (1) failed to record sufficient and accurate information about customers' personal and financial circumstances for assessing the suitability of recommendations. In particular, you used standard generic phrases to describe customers' needs and preferences and risk profiles in fact finds and suitability reports, which failed to clarify adequately the customers' position or explain how recommendations met their requirements;
- (2) completed mortgage applications with inaccurate information. In particular, you entered inaccurate information on mortgage applications relating to the purpose of the loan and source of repayment. As a result, lenders may have provided mortgages which were not based on an informed assessment of the applications;
- (3) failed to explain in suitability reports why your recommendations were suitable, provide adequate risk warnings about your

recommendations or confirm that re-mortgaging to raise funds to invest in investment bonds was part of the investment strategy;

- (4) arranged transactions the suitability of which could not be justified. Specifically, it is unclear why you advised customers to re-mortgage to raise funds for investment when the strategy was likely to fail to generate sufficient income or capital for them (particularly in situations where they were relying on the growth of the investment bonds to repay their mortgages). You accepted that, where monthly income withdrawals were made, the growth potential of the investment bonds could not be sustained so the transaction could not be justified. Yet such transactions were still arranged for customers. Based on this one finding, it appears that you have acted recklessly in assessing the suitability of such transactions for your customers;
- (5) provided written guarantees to individuals who complained about the performance of their investment bonds to cover potential losses. You did not keep copies of the guarantees on the customer files or at all. It is unclear why some customers received guarantees and others did not and whether you could meet the guarantees. It is also unclear why you would offer any guarantees if you had given sufficient risk warnings to your customers relating to investment returns at the initial advice stage. It appears from this finding that you have acted recklessly as by offering guarantees, you prevented customers from pursuing complaints about their investments; and
- (6) conducted three pension transfers outside the scope of Penn's Part IV permission, causing it to breach section 20(1)(a) of the Act, as you misunderstood the rules relating to execution only insistent customers.

- 4.4 The FSA's findings demonstrate that you have acted without due skill, care and diligence whilst acting in your capacity as Penn's adviser by failing to take reasonable steps to ensure the suitability of your recommendations. Therefore, you have failed to comply with Statement of Principle 2.

Failing to ensure compliance with regulatory requirements and standards

- 4.5 You are the sole director of Penn. As Penn's senior manager, you were responsible for its day-to-day management and ensuring its compliance with relevant regulatory requirements and standards. However, the FSA found that you failed to establish adequate and appropriate systems and controls in relation to Penn's investment business during the relevant period. Specifically, in your role as senior manager at Penn, you failed to:
- (1) put in place adequate and effective compliance arrangements over Penn's business. Specifically, you failed to establish and implement any written sales, compliance or training procedures for guiding Penn to conduct its affairs in compliance with proper standards;

- (2) monitor and/or review Penn's business by undertaking compliance checks or using management information to assess the risks within its business. You did not undertake this task nor did you engage Penn's external compliance consultant to carry out any compliance visits or review of Penn's business. As a result, deficiencies in connection with Penn's investment business were not identified during the relevant period; and
 - (3) improve Penn's compliance resources. You recognised that Penn's compliance arrangements were inadequate and that you had insufficient time and experience to act as an effective compliance officer. However, you failed to increase Penn's compliance resources, and did not utilise the services of Penn's external compliance consultants, who were retained to provide additional compliance support.
- 4.6 Based on the findings above, you have failed to take reasonable steps to ensure that Penn complied with relevant regulatory requirements and standards by not implementing adequate and appropriate compliance arrangements and risk management systems. Therefore, you have failed to comply with Statement of Principle 7.

Conclusions

- 4.7 The facts and matters described above lead the FSA to the conclusion that your conduct fell short of the minimum regulatory standards required of approved persons performing controlled functions. As such, you are not fit and proper in terms of your competence and capability to perform controlled functions.
- 4.8 In particular, your conduct constituted breaches of the following Statements of Principle:
 - (1) Statement of Principle 2 as you failed in your role as adviser to act with due skill, care and diligence when providing advice to customers. Specifically, you failed to take reasonable steps to ensure the suitability of your recommendations; and
 - (2) Statement of Principle 7 as you failed in your role as senior manager to take reasonable steps to ensure the business of Penn for which you were responsible complied with relevant requirements and standards of the regulatory system. Specifically, you failed to ensure that Penn had in place adequate and appropriate compliance arrangements and risk management systems.
- 4.9 The FSA considers that you pose a serious risk to consumers and to confidence in the financial system if you act as an adviser or are involved in the running of, or hold a senior management role with, another authorised firm in the future.

- 4.10 The FSA therefore considers that it is necessary to withdraw your individual approval and to prohibit you from performing any controlled functions in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm.

5 DECISION MAKER

- 5.1 The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers on behalf of the FSA.

6 IMPORTANT

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

Publicity

- 6.2 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 Mr McCance or prejudicial to the interests of consumers.
- 6.3 The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 6.4 For more information concerning this matter generally, you should contact John Tutt of the Enforcement Division at the FSA (direct line: 020 7066 1240).

Jonathan Phelan
Head of Department
FSA Enforcement Division

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

STATUTORY PROVISIONS

- 1.1 The FSA's statutory objectives as set out in section 2(2) of the Act include market confidence, public awareness, the protection of consumers and the reduction of financial crime.
- 1.2 Section 20 of the Act relates to authorised persons acting without permission. Section 20(1) states that:

“If an authorised person carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission

(a) given to him by the Authority under Part IV; or

(b) resulting from any other provision of this Act

he is to be taken to have contravened a requirement imposed on him by the Authority under this Act”.

OTHER RELEVANT REGULATORY PROVISIONS

- 2.1 In exercising its power to withdraw approval and make a prohibition order, the FSA must have regard to guidance published in the FSA Handbook. The guidance that the FSA considers relevant to this case is set out below.

Enforcement Guide (“EG”)

- 2.2 The FSA's policy on exercising its powers to withdraw approval and make prohibition orders is set out in Chapter 9 of EG.
- 2.3 EG 9.1 states that the FSA's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out controlled functions in relation to regulated activities helps the FSA to work towards achieving its regulatory objectives. The FSA may exercise this power to make a prohibition order where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities, or to restrict the functions which he may perform.
- 2.4 EG 9.2 states that the FSA's effective use of the power under section 63 of the Act to withdraw approval from an approved person will also help to ensure high standards of regulatory conduct by preventing an approved person from continuing to perform the controlled function to which the approval relates if he is not a fit and proper person to perform that function. Where it considers

that this is appropriate, the FSA may prohibit an approved person, in addition to withdrawing their approval.

- 2.5 EG 9.3 states that, in deciding whether to make a prohibition order and/or, in the case of an approved person, to withdraw its approval, the FSA will consider all the relevant circumstances.
- 2.6 EG 9.4 sets out the general scope of the FSA's power in this respect. The FSA has 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.
- 2.7 EG 9.5 provides that the scope of a prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally.
- 2.8 EG 9.9 provides that when deciding whether to make a prohibition order against an approved person and/or to withdraw that person's approval, the FSA will consider all the relevant circumstances of the case. This may include, but are not limited to, the following:
 - (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing 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:
 - (i) failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons; or
 - (ii) 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 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; and
 - (6) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

2.9 E.G 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person. The examples include:

- (1) serious lack of competence; and
- (2) serious breaches of the Statements of Principle for approved persons, such as giving clients poor or inaccurate advice and failing to ensure that a firm acted within the scope of its permission.

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

2.10 The FSA has issued specific guidance on the fitness and propriety of individuals in FIT. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for controlled function and FIT is also relevant in assessing the continuing fitness and propriety of approved persons.

2.11 FIT identifies three criteria as being the most important consideration, namely:

- (1) FIT 2.1 (honesty, integrity and reputation): This includes an individual’s openness and honesty in dealing with consumers, market participants and regulators 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;
- (2) FIT 2.2 (competence and capability): This includes an assessment of the individual’s skills in carrying out the controlled function that he is performing; and
- (3) FIT 2.3 (financial soundness).

2.12 FIT 2.2.1G(2) provides that in determining a person’s competence and capability, the FSA will have regard to matters including but not limited to 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.

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

2.13 APER sets out the Statements of Principle as they relate to approved persons and descriptions 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.

2.14 The Statements of Principle relevant to this matter are:

- (1) Statement of Principle 2 which provides that an approved person must act with due skill, care and diligence in carrying out his controlled function; and
 - (2) Statement of Principle 7 which provides that 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.
- 2.15 APER 3.1.3G states that when establishing compliance with or a breach of a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, the circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.
- 2.16 APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle if he is personally culpable, that is in a situation where his conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.
- 2.17 APER 4.2 lists types of conduct which do not comply with Statement of Principle 2.
- 2.18 APER 4.2.3E(1) states that failing to inform a customer of material information in circumstances where he was aware, or ought to have been aware, of such information, and of the fact that he should provide it is conduct that breaches Statement of Principle 2. APER 4.2.4E(1) considers that such conduct includes but is not limited to failing to explain the risks of an investment to a customer.
- 2.19 APER 4.7 lists types of conduct which do not comply with Statement of Principle 7.
- 2.20 APER 4.7.3E states that failing to take reasonable steps to implement (either personally or through a compliance department or other department) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of its regulated activities is conduct that breaches Statement of Principle 7.
- 2.21 APER 4.7.4E states that failing to take reasonable steps to monitor (either personally or through a compliance department or other department) compliance with the relevant requirements and standards of the regulatory system in respect of its regulated activities is also conduct that breaches Statement of Principle 7.