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**FINAL NOTICE**

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To: **Anthony Lee Rodgers**

Of: 3 Grove Street  
Saddleworth  
Oldham  
OL3 7DG

Date: 23 January 2006

**TAKE NOTICE:** The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("FSA") gives you final notice of the following order:

**THE ORDER**

1. For the reasons set out below the FSA makes an order pursuant to section 56 of the Financial Services and Markets Act 2000 (the "Act") prohibiting you, Mr Anthony Lee Rodgers, 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"). This Prohibition Order is effective from 25 January 2006.

**REASONS FOR THE ORDER**

2. It appears to the FSA that Mr Anthony Lee Rodgers ("Mr Rodgers") is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm, because:
  - 2.1. In 2004, whilst he was a director of a general insurance firm ("the firm") which specialised in advising on private medical insurance ("PMI") policies, Mr Rodgers misappropriated client money which was meant to be used to pay insurance premiums.

- 2.2. FSA regulation of general insurance firms commenced on 14 January 2005. On that date the firm became an FSA authorised firm and Mr Rodgers became an approved person. Mr Rodgers was aware that after that date the firm was subject to a requirement not to hold or control client money. Without the firm's knowledge, Mr Rodgers circumvented this requirement by holding client money in a bank account he controlled.
- 2.3. Over the course of 2004 and 2005 Mr Rodgers systematically misappropriated at least £70,000 of client money in over 20 transactions. The final total of the amount of client money he misappropriated has not yet been ascertained.
- 2.4. Mr Rodgers used the majority of the misappropriated client money to fund personal expenditure.
3. In the FSA's view the matters referred to above demonstrate a serious lack of honesty and integrity, and the FSA has concluded, having regard to its regulatory objectives which include the protection of consumers, that the interests of consumers would be adversely affected if Mr Rodgers were permitted to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm and that it is necessary and desirable in the interests of consumers or potential consumers for the Prohibition Order to be made.

## **RELEVANT STATUTORY PROVISIONS AND REGULATORY RULES**

4. The relevant statutory provisions and regulatory rules are set out in Annex 1.

## **FACTS AND MATTERS RELIED ON**

### **Background**

5. Anthony Lee Rodgers has specialised in providing advice to corporate clients and individuals on PMI policies since about 1990. From 2001 he was a director and shareholder of an established firm which specialised in providing advice on PMI policies. In addition to his duties as a director, Mr Rodgers was personally responsible for advising in excess of 400 of the firm's clients.
6. Approximately 80% of the firm's clients were corporate clients seeking to provide the option of PMI cover to their directors, and employees.<sup>1</sup> Members of a group scheme or corporate scheme could obtain PMI cover at a significantly cheaper rate than the rate charged for individual policies.
7. The business of the firm consisted primarily of advising on and arranging PMI. This entailed making recommendations to clients as to which insurance provider was most

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<sup>1</sup> The remaining 20% of clients were individuals who were not members of any group or corporate scheme.

suitable for that client and then acting as an intermediary carrying out the administrative and other arrangements necessary for the insurance contracts to be concluded between the policy-holder and the insurance provider.

8. In a typical example of this process, the firm acted as an intermediary between insurance providers who provide PMI cover and policy-holders who pay the premiums to the insurance provider. In such transactions the corporate clients normally take responsibility for collecting the individual contributions from its employees/members. Once the contributions are gathered in, and all the necessary paperwork has been completed, it is normal practice for the corporate client to make a single payment directly to the insurance provider for the amount of the total premium. Thus, in the normal course of events, client funds would be paid directly from the policy holder to the insurance provider, by-passing the intermediary firm completely. Typically, such firms do not charge a fee directly to clients, but receive commission payments from the insurance companies in relation to the amount of business introduced by the firm.
9. The mechanism described above is the one which should have operated in relation to the PMI policies which were advised on and arranged by Mr Rodgers from 14 January 2005 onwards. As a director of the firm Mr Rodgers was aware of this because he knew that from 14 January 2005 the firm was subject to a specific requirement not to hold or control client money. This was a statutory requirement, imposed under section 43 of the Act, which attached to the firm's FSA authorisation.
10. Around early 2004 Mr Rodgers became aware that a number of his corporate clients (the "Group Schemes") were no longer willing or able to gather individual premiums from their employees/members for onward payment to the insurance provider. In some instances this was because the employer did not wish to incur the time and costs involved in gathering the individual contributions, chasing late payers, processing and administering the funds. In other cases, the corporate entity had closed and was no longer able to gather in contributions, but the individual members wanted to retain the advantage of the cheaper rates available to group or corporate schemes.
11. At this point, Mr Rodgers decided that he would take on the role of gathering the individual contributions from members of some of the Group Schemes. He established a new bank account for the purpose of pooling the individual contributions together so that a single payment could be made to the insurance provider.
12. On or about 14 April 2004, Mr Rodgers opened a new business bank account (the "Account"). The name of the account was very similar to, although not identical to, the name of the firm. Mr Rodgers was the only signatory on the Account. On the account opening form Mr Rodgers stated the nature of the business as "property letting". In fact Mr Rodgers intended to use the account to collect individual PMI premium contributions from members of Group Schemes.

### **Conduct before 14 January 2005**

13. In the nine months prior to FSA regulation of general insurance business Mr Rodgers collected insurance premiums into the Account and during that period systematically misappropriated client money. It appears from preliminary analysis of the Account that in excess of £24,000 of client money was misappropriated over that period; of which

£16,000 appears to have been used to fund personal expenditure and £8,000 appears to have been used to pay expenses relating to the firm. For example, on 19 October 2004 Mr Rodgers drew £5000 from the Account as a personal loan. In addition, during September 2004 Mr Rodgers made two withdrawals from the Account totalling £8,266.37 to pay for accountancy services used by the firm prior to its purchase by its current owners.

### **FSA becomes regulator**

14. From 14 January 2005 the firm has been regulated by the FSA. The firm was permitted to carry on the following activities:
  - a) Advising on investments (except Pension transfers and Pension opt-outs);
  - b) Advising on regulated mortgage contracts;
  - c) Arranging (bringing about) regulated mortgage contracts;
  - d) Making arrangements with a view to regulated mortgage contracts; and
  - e) Making arrangements with a view to transactions in investments.
15. The firm was subject to an FSA requirement not to hold or control client money.
16. From 14 January 2005 Mr Rodgers was an FSA approved person within the meaning of Part V of the Act. He was approved in respect of the following controlled functions at the firm:
  - a) CF 1 (Director);
  - b) CF8 (Apportionment and Oversight);
  - c) CF13 (Finance);
  - d) CF17 (Significant Management (Other Business Operations)); and
  - e) CF19 (Significant Management (Financial Resources)).
17. Mr Rodgers accepts that he knew that from 14 January 2005 the firm was subject to a requirement not to hold or control client money.

### **Conduct after 14 January 2005**

18. Following the introduction of FSA regulation on 14 January 2005, Mr Rodgers continued to collect individual contributions from members of the Group Schemes, and continued to misappropriate client money, until the misconduct was discovered by his firm in August 2005. From a preliminary analysis of the Account it appears that Mr Rodgers collected in excess of £175,000 in premiums, and misappropriated in excess of £48,000 in the period from 14 January 2005. The majority of this money appears to have been used to fund personal expenditure. For example, between 21 March 2005 and 4 July 2005 Mr Rodgers made seven payments totalling £3,397 from the Account to a motor vehicle leasing company for the lease of his personal car and payments totalling in excess of £3,658 to a compliance consultant to assist him to establish a new PMI business for himself.

## **Discovery of misconduct**

19. Mr Rodgers took advantage of the fact that insurance providers often do not insist on receiving payment of the premium due on group schemes until 90 days after the insurance cover has started. For example, if insurance cover was due to start in May for Group Scheme A, Mr Rodgers would collect the contributions from members of Group Scheme A, complete the necessary administration so that the cover commenced in May, but not forward the premium to the insurance provider immediately. Over the next 90 days, the client money would be depleted through misappropriation by Mr Rodgers, creating a shortfall. On the expiry of the 90 day period, Mr Rodgers would pay to the insurance provider the premium for Group Scheme A, making up the shortfall by using some of the client money now paid in by the members of Group Scheme B. He continued to use client money to fund business and personal expenditure so that when time came to pay the premium for Group Scheme B, the shortfall was larger still. He made up the shortfall in the premium for Group Scheme B by taking from the contributions paid in by Group Scheme C, and so on until his misconduct was discovered.
20. In early August 2005 the firm discovered that Mr Rodgers was collecting premiums from members of the Group Schemes. Mr Rodgers disclosed the existence of the Account and admitted that he had misappropriated client funds. By that stage, a premium of over £75,000 was due to an insurance provider for PMI cover which had commenced in May 2005, but the balance in the Account was only £2,000, leaving a total shortfall in excess of £70,000
21. Following the discovery of this shortfall, the firm immediately paid the premium due to the insurance provider. The firm dismissed Mr Rodgers, terminating his directorship and his controlled functions on about 8 August 2005. From that date Mr Rodgers ceased to be an approved person with the firm.

## **Conduct following the contravention**

22. When confronted with the evidence, Mr Rodgers admitted misappropriating client money. Over the course of the next few months Mr Rodgers repaid to the firm the majority of the money which the firm had paid to the insurance provider to make up the shortfall in the PMI premium and he agreed terms with the firm for repayment of the small balance.
23. From the outset of the FSA investigation in interview under caution, Mr Rodgers made open admissions in relation to the misconduct set out in this Final Notice. He has received full credit for agreeing to a Prohibition Order by consent at the earliest possible stage.

## **CONCLUSION**

24. The FSA considers that by misappropriating a significant amount of client money systematically over an extended period of time Mr Rodgers has demonstrated a serious lack of honesty and integrity. This is compounded by the fact that from 14 January 2005 until 9 August 2005 that Mr Rodgers continued to collect client money despite knowing that the firm was subject to an FSA requirement not to do so.
25. The FSA has also taken account of the fact that this misconduct only ceased following discovery by the firm that Mr Rodgers was collecting client money and that the shortfall,

and the risk to which policy holders were exposed, was mitigated by the firm's payment of the overdue premium. Mr Rodger's actions exposed clients to a very serious risk by failing to pay their PMI premiums to the insurance provider in good time. This could have left clients without any or any adequate medical insurance. However in the event the FSA is not aware of any clients who suffered actual loss as a result of Mr Rodgers' conduct.

26. In light of this misconduct the FSA considers that the grounds on which Mr Rodgers is not fit and proper, the need to maintain confidence in the financial system and the severity of risks posed to consumers, make it necessary to impose a Prohibition Order prohibiting Mr Rodgers from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

## **IMPORTANT**

27. This Final Notice is given to you, Mr Rodgers, in accordance with section 390 of the Act.

### **Decision makers**

28. The decision to give this notice was made by the FSA Executive as Settlement Decision Makers on behalf of the FSA.

### **Publicity**

29. 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.

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

### **FSA Contact**

31. For more information concerning this matter generally, you should contact the FSA's Enforcement Division on 020 7066 1000.

Julia M R Dunn  
Head of Department, Retail 1  
FSA Enforcement Division

## Annex 1

### Relevant statutory provisions

The FSA's power to make a prohibition order is set out at section 56 of the Act, which provides, *inter alia*:

*"(1) Sub-section (2) applies if it appears to the [Financial Services] Authority 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.*

*(2) The Authority may make an order ('a prohibition order') prohibiting the individual from performing a specified function, any function falling within a specified description or any function.*

*(3) A prohibition order may relate to:*

*(a) a specified regulated activity, any regulated activity falling within a specified description or all regulated activities;*

*(b) authorised persons generally or any person within a specified class of authorised person."*

### Relevant regulatory rules

In exercising its powers in relation to the making of a prohibition order the FSA has had regard to the guidance published in the FSA Handbook, in particular at:

#### Enforcement handbook

**ENF 8.1.2** explains the purpose of prohibition orders in relation to the FSA's regulatory objectives;

**ENF 8.4.2** concerns the scope of the FSA's power to make 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;

**ENF 8.6.1** states that where the FSA considers making a prohibition order against an individual employed or formerly employed by a firm who is not an approved person, it may make an order only on the grounds that the individual is not fit and proper to carry out functions in relation to regulated activities carried on by an authorised person;

**ENF 8.6.1A** states that where the individual concerned is not an approved person, the FSA will not have the option of withdrawing approval, nor will it generally have the option of exercising its disciplinary powers in relation to the individual concerned and therefore a prohibition order may be the only appropriate action available. In these cases, the FSA will consider the severity of the risk posed by the individual. It may prohibit the individual where it considers it necessary to achieve the FSA's regulatory objectives of maintaining market confidence in the financial system, promoting public awareness, protecting consumers and preventing financial crime;

**ENF 8.6.2** states that, when considering to exercise to make a prohibition order against an individual employed or formerly employed by a firm who is not an approved person, the FSA will consider, *inter alia*, the following factors:

- whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria includes (see FIT 2.1) 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 professional obligations and ethical standards;
- in relation to conduct when the individual was an approved person, whether and to what extent, the approved person has:
  - failed to comply with the Statements of Principle; or
  - 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);
  - the relevance, materiality and length of time since the occurrence of any matters indicating unfitness;
  - the severity of the risk which the individual poses to consumers and to confidence in the financial system; and
  - 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.

### **The Fit and Proper Test**

**FIT 1.1.2** states that the purpose of FIT is to set out and describe the criteria that the FSA will consider when assessing fitness and propriety in relation to a regulated activity.



**FIT 1.2.4** explains that the Act does not prescribe the matters that the FSA should take into account when determining fitness and propriety.

**FIT 1.3.1** requires that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations being the person's honesty, integrity and reputation; competence and capability; and financial soundness.

**FIT 1.3.3** explains that the criteria listed in FIT 2.1 to FIT 2.3 are guidance and will apply in general terms when the FSA is determining a person's fitness and propriety. There is no exhaustive list of all the matters that would be relevant to a particular determination.

**FIT 1.3.4** states that if a matter comes to the FSA's attention which suggests that a person might not be fit and proper, the FSA will assess its relevance and importance.

**FIT 2.1.1** requires the FSA in determining a person's honesty, integrity and reputation to have regard to matters including, but not limited, to those set out below at FIT 2.1.3 which may have arisen either in the United Kingdom or elsewhere. Further that the FSA should be informed of these matters but will consider the circumstances only where relevant to the requirements and standards of the regulatory system.

**FIT 2.1.3** states that when determining a person's honesty, integrity and reputation, the FSA will have regard, but is not limited to:

(3) whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by the FSA, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies;

(4) whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or of any investigation which might lead to those proceedings;

(11) whether the person has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar;

(13) 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.

### **The Statements of Principle and Code of Conduct for Approved Persons**

The Statements of Principle and Code of Conduct for Approved Persons ("APER") set out the Statements of Principle in respect of 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.

The guidance provided in APER 3.1.3G stipulates 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 to be expected in that function. APER 3.1.4G provides guidance 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.

Statement of Principle 1 provides that:

*"An approved person must act with integrity in carrying out his controlled function."*

APER 4.1 lists types of conduct which do not comply with Statement of Principle 1. In particular, APER 4.1.11 states that the following types of conduct do not comply with Statement of Principle 1:

*Misappropriating a client's assets, including wrongly transferring to personal accounts cash or securities belonging to clients;*

*Using a client's funds for purposes other than those for which they were provided; and*

*Retaining a client's funds wrongly.*

**End of Annex 1**