
FINAL NOTICE

To: Simon Gowler

**Of: 9 Mirosa Drive
Maldon
Essex
CM9 5NB**

Date: 9 July 2008

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the FSA) gives you final notice about a requirement to pay a financial penalty:

1. THE PENALTY

- 1.1 The FSA gave you a Decision Notice on 4 July 2008, which notified you that, pursuant to section 66 of the Financial Services and Markets Act 2000 (the Act), the FSA had decided to impose a financial penalty of £5,000 on you, in respect of your failure to comply with Statement of Principle 7 of the FSA's Principles for Approved Persons, issued under section 64 of the Act. The financial penalty relates to your conduct as an approved person during the period 14 January 2005 to 26 January 2006 inclusive (the relevant period).
- 1.2 You have confirmed that you will 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 imposes a financial penalty on you in the amount of £5,000.
- 1.4 The FSA considers that your failings warrant a financial penalty of £15,000. This figure has been reduced to £5,000 as the FSA has taken into account your present financial circumstances in determining the appropriate level of penalty. This reduction is inclusive of the 30% reduction to which you would have been entitled under the FSA's executive settlement procedures, having agreed to settle at an early stage of the FSA's investigation. The financial penalty may be paid by you in equal instalments over the period of a year.

2. REASONS FOR THE ACTION

Background

- 2.1 You were an approved person exercising controlled functions of significant influence at Target Underwriting Limited (Target) and Professional Indemnity Select Limited (PISL) (together, the firms). The firms are now in administration.
- 2.2 Both firms had permission to hold client money in addition to their other FSA permissions, granted under Part IV of the Act, as part of their insurance intermediary business. From the commencement of FSA authorisation of both firms, on 14 January 2005, through to both firms varying their permissions on 26 January 2006, there was a continual and increasing deficit on the client money accounts. The direct cause of the deficit on these accounts was the misuse of the client money by the co-director and part-owner of both firms, David Marriott.
- 2.3 In summary, David Marriott used client money to finance the on-going trading of both firms and a share buy-back arrangement with two other shareholders, and also to finance the remuneration of himself, you and an absent co-director. Client money was used to finance these activities, as both firms were trading at a loss throughout the period of authorisation. In addition, the firms had already accrued a significant client money deficit prior to becoming authorised.
- 2.4 You have maintained and the FSA has accepted that you were not aware that client money was being used in the manner described above. Nevertheless, by October 2005 a significant client money deficit of £570,841 had accrued at the firms. The FSA considers that you would have been aware of the growing deficit in the client money accounts, at an early stage of the firms being authorised, had you taken reasonable steps, as detailed below, to ensure that the firms complied with FSA requirements.

Summary of misconduct

- 2.5 You were in a position of significant influence as a director of both firms and therefore held the responsibility as a senior manager to monitor the firms' compliance with FSA requirements. In particular, you performed a governing

controlled function at both firms, as a director (CF1). In addition, at Target, you performed an apportionment and oversight function (CF8). As a director, your responsibilities as an approved person, exercising a function of significant influence, included ensuring the firms were managed and controlled in such a way that they complied with the requirements and standards of the regulatory system (as set out in APER 4.7.11 G).

- 2.6 The FSA finds that you did not take reasonable steps, in your controlled function as a director, to ensure that the firms complied with the FSA's requirements and standards. This is a breach of Statement of Principle 7 of the FSA's Statements of Principle for Approved Persons (Principle 7), issued under section 64(1) of the Act. In particular, you failed to oversee the establishment of appropriate systems and controls at both firms to monitor the firms' financial resources.
- 2.7 As an approved person exercising the apportionment and oversight (CF8) function at Target, your responsibilities included overseeing the establishment of appropriate systems and controls under SYSC 3.1.1 R. In particular, neither firm had appropriate systems or controls in place to ensure that they complied with the FSA's rules in relation to client assets (CASS). You failed to take reasonable steps to ensure that the firms complied with SYSC rule 3.1.1 R and the rules in CASS at 5.5.16 R and 5.5.63 R, by ensuring that appropriate systems and controls were in place. This was also in breach of Principle 7.
- 2.8 Your misconduct contributed to the firms' failure to comply with the FSA's senior management arrangements, systems and controls (SYSC) rules and rules in relation to the handling of client assets (CASS). You also failed to ensure that adequate financial resources were maintained at both firms in accordance with threshold condition 4. These failings were, at least in part, attributable to your failure to acquaint yourself with the responsibilities relating to the CF1 and CF8 controlled functions and to take reasonable steps to ensure that the business of the firms operated in accordance with FSA requirements.
- 2.9 The same failings which caused you to breach Principle 7, particularly the failure to oversee the establishment of appropriate systems and controls, contributed to David Marriott being able to misuse client money over a prolonged period. Had you taken reasonable steps to ensure that the business of the firms was conducted compliantly, it is likely that client money could not have been misused to the extent that it was and that the non-compliant behaviour of both the firms and David Marriott would have been brought to the FSA's attention at a much earlier time.
- 2.10 Consequently, by virtue of the facts and matters detailed above, the FSA finds that you breached Principle 7 of the FSA's Statement of Principles for Approved Persons and that you are therefore guilty of misconduct. Having regard to the FSA's statutory objective of maintaining confidence in the financial system, it is considered necessary and proportionate for the FSA to exercise its power to impose a financial penalty on you.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

Statute

- 3.1 In relation to the conduct of approved persons, section 64 of the Act provides:

*“(1) The Authority may issue statements of principle with respect to the conduct expected of approved persons;
(2) If the Authority issues a statement of principle under subsection (1), it must also issue a code of practice for the purpose of helping to determine whether or not a person's conduct complies with the statement of principle; ...
(7) A code published under this section and in force at the time when any particular conduct takes place may be relied on so far as it tends to establish whether or not that conduct complies with a statement of principle.”*

- 3.2 In relation to the issuing of a statement of misconduct, section 66 of the Act provides:

*“(1) The Authority may take action against a person under this section if:
a) it appears to the Authority that he is guilty of misconduct; and
b) the Authority is satisfied that it is appropriate in all the circumstances to take action against him; and
(2) A person is guilty of misconduct if, while an approved person:
a) he has failed to comply with a statement of principle issued under section 64.”*

FSA Requirements in respect of Approved Persons – Principles and rules

- 3.3 The FSA's Statements of Principle for Approved Persons issued under section 64 of the Act are detailed in the part of the FSA Handbook entitled “*Statements of Principle and Code of Conduct of Practice for Approved Persons*” (APER). The seven Principles are detailed at APER 2.1.2P.

- 3.4 The Principle relevant to the findings of fact detailed in this notice is Principle 7 of the Statements of Principle for Approved Persons (Principle 7):

“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.”

- 3.5 The Code of Practice issued under section 64(2) is used by the FSA to assess whether or not an approved person's conduct is in breach of a particular Statement of Principle. APER 3.1.4 G provides that:

“An approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises where an approved person's conduct was deliberate or where the approved person's standard of conduct was below that which would be reasonable in all the circumstances.”

- 3.6 The Code of Practice for Approved Persons (the Code of Practice) sets out descriptions of conduct which, in the opinion of the FSA, do not comply with a Statement of Principle. In determining whether your conduct amounts to a breach of Principle 7, the FSA has had regard to the descriptions of conduct in APER 4.7.

FSA Requirements in respect of the firms' business – Principles and Rules

- 3.8 The FSA's rules as they relate to the business of the firms are relevant to the assessment of an approved person's conduct and whether he has breached any of the Statements of Principle for Approved Persons. A failure to take reasonable steps to ensure that the firms complied with the relevant rules may not comply with Principle 7, as detailed above.

- 3.9 The guidance in the FSA Handbook at APER 4.7.11 G provides 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.”

- 3.10 The regulatory requirements applicable to the firms are set out in the parts of the FSA's Handbook entitled “*Senior Management Arrangements, Systems and Controls*” (SYSC) in the High Level Standards sourcebook, and “*Client Assets*” (CASS), in the Business Standards sourcebook. The rules which are of particular relevance to this case are SYSC 3.1.1 R, CASS 5.5.16 R and CASS 5.5.63 R. Further, the part of the FSA Handbook entitled “*Threshold Conditions*” (COND) provides guidance at 2.4.2 G as to how the statutory requirement in the Act regarding adequate resources (threshold condition 4) should be interpreted.

Guidance on disciplinary action

- 3.11 The FSA's policy with respect to the imposition and amount of financial penalties is set out in chapter 6 of the part of the Handbook entitled *Decision Procedure and Penalties Manual* (“DEPP”). It was previously set out in chapter 13 of the Enforcement Manual, to which the FSA has also had regard.
- 3.12 Having regard to the facts and matters detailed below, the FSA's conclusion that your misconduct was negligent, rather than deliberate or reckless and all the relevant circumstances of the case, it is considered that a financial penalty in the sum of £15,000 is both necessary and proportionate.

4. FACTS AND MATTERS RELIED UPON

Chronology prior to FSA authorisation

- 4.1 You became a Director of Target and PISL in November 2003. These firms were effectively run as one business, from the same premises, with the same directors, personnel and management structure. There were two other directors of the firm, namely David Marriott and Tina Copp. Tina Copp was absent from the firms due to ill health throughout the relevant period. The affairs of both firms were therefore managed and controlled solely by you and David Marriott. David Marriott, as the owner of PISL and part owner of Target, took the lead in running both firms and organised them as he saw fit. David Marriott had sole control over the firms' accounts and the making of payments from the accounts.
- 4.2 As at October 2003, the last date for which audited accounts were available (completed in December 2004, immediately prior to you becoming an approved person), Target had a client money deficit of £177,000 and PISL of £4,000. The accounts also showed that the firms were making a combined loss of £43,000.
- 4.3 Client money statutory trust accounts were set up by David Marriott at both firms. These accounts held monies from clients which were due to the insurance underwriters. The only money which should have been taken from these accounts by the firms was the commission due in respect of their business written. You had no control over the operation of these accounts and were not a signatory to them.
- 4.4 An agreement had been made between David Marriott and the other two shareholders in Target for David Marriott to purchase their shares. This agreement was over a period of five years, for £825,000. You were unaware of this agreement. You were unaware that money from the client money accounts, over and above the commission due to the firms, was being used to finance the purchase of these shares for David Marriott's personal benefit. Further, director's loan accounts had been created for the benefit of the other two directors. By October 2003, the PISL director's loan account had accrued a total sum of £206,884 and the Target director's loan account had accrued a sum of £79,728. These loans were made to David Marriott and Tina Copp.
- 4.5 No changes were made to the firms' management structure or senior management responsibilities or the systems and controls in place in the immediate period leading up to FSA authorised status.

Chronology subsequent to FSA authorisation

- 4.6 You became an approved person on 14 January 2005, when the firms attained FSA authorised status. Your controlled functions of significant influence were principally as a CF1 director at both firms and as a CF8 at Target, responsible for apportionment and oversight. The deficit in the client money accounts at this time was approximately £400,000. The firms' permissions extended to

holding client money and were therefore subject to the detailed requirements set out in CASS, regarding the oversight and control by the firms of any bank accounts holding client money.

- 4.7 In April 2005 a company car was purchased for you valued at £27,500 and cars were also purchased for the other directors. You and David Marriott also received pay rises; yours was a £12,000 p.a. pay rise. These additional outgoings were made at a time when the firm was losing business and had a weaker trading position. David Marriott was using client money to ensure the firms could continue trading and to meet their debt repayments as they fell due and also to fund the benefits that you and the other directors received.
- 4.8 You failed to oversee the establishment of systems and controls regarding the operation of the client money accounts in accordance with the CASS rules. In particular, there was no system in place for client money calculations to be performed at least every 25 business days, as required by CASS 5.5.63 R.
- 4.9 The only significant change following authorisation, regarding compliance with FSA requirements, was the setting up of statutory trust accounts for the client money. This change was made in response to the FSA's July 2005 "Dear CEO" letter to insurance intermediaries handling client monies and was effected by David Marriott.
- 4.10 In the last year of trading, to 31 October 2005, David Marriott withdrew £190,000 in excess of the commission the firms were due. Since no systems and controls had been implemented for you to oversee the operation of the client money accounts, you were unaware that excess commission was being taken from these accounts or that they had already accrued a significant deficit. These withdrawals from the client money accounts increased the client money deficit to £570,841 by the end of October 2005.
- 4.11 The FSA finds that by October 2005, if not sooner, the firms were failing to satisfy threshold condition 4, by failing to maintain adequate resources, as a consequence of the significant deficit in the client money accounts.

5. BREACHES OF THE STATEMENTS OF PRINCIPLE

As a holder of controlled function CF1 – controlling the affairs of the firms

- 5.1 The controlled function of a director in any regulated firm is of particular significance in ensuring that appropriate systems and controls are in place to meet the requirements and standards of the regulatory system.
- 5.2 The FSA has found, and you have accepted, that you did not take adequate steps to acquaint yourself with FSA requirements regarding your senior management responsibilities, prior to obtaining approved person status or during the relevant period. This was a serious omission on your part. The FSA expects that all approved persons will acquaint themselves with the functions they will be expected to perform once they become an approved

person. This failure directly contributed to your failure to comply with Principle 7, as you did not appreciate that it was your responsibility to take reasonable steps to ensure that the business of both firms complied with FSA requirements.

- 5.3 In particular, you failed to take reasonable steps to oversee the establishment and maintenance of appropriate systems and controls regarding significant FSA requirements to which the firms were subject during the relevant period. Further, you failed to take reasonable steps to monitor the firms' compliance with FSA requirements at any time during the relevant period.
- 5.4 As a director, you were jointly responsible for directing the affairs of the firms. However, you failed to engage with the other director as to how the affairs of the firms were being conducted and, in particular, to monitor the financial resources of the firms. You were unaware of most of the activities that David Marriott was engaged in, particularly regarding the movement of money from the client money accounts to the general office accounts. You also failed to monitor the cash position of the firms, their overall trading position and you did not take any steps to inform yourself of the firms' ability to meet their liabilities as they fell due. In summary, you failed to exercise any oversight of the firms' finances which, as a director, fell within your area of responsibility.

As a holder of controlled function CF8 – responsible for apportionment and oversight

- 5.6 In addition to your high-level duties as a director, you had specific responsibility for apportionment and oversight at Target. This controlled function was shared with David Marriott.
- 5.7 The primary purpose of a CF8 controlled function is set out at SYSC 2.1.3 R:
- “A firm must appropriately allocate to one or more individuals, in accordance with SYSC 2.1.4 R, the functions of:*
- (1) dealing with the apportionment of responsibilities under SYSC 2.1.1 R; and*
- (2) overseeing the establishment and maintenance of systems and controls under SYSC 3.1.1R.”*
- 5.8 There was no attempt by you to oversee the establishment and maintenance of appropriate systems and controls at Target, in accordance with SYSC 3.1.1 R, with particular regard to the operation of the client money accounts in accordance with FSA requirements and in particular the CASS rules; specifically the requirements to perform a client money calculation at least every 25 business days and to make good any deficit in the accounts. The size of the deficit in those accounts demonstrates the significance of this failing. You did prepare a spreadsheet to assist in commission calculations, but that spreadsheet was not used for calculations in accordance with the CASS rules. There was no system in place for you to monitor monies going into and being paid from the client money accounts.

- 5.9 By failing to oversee the establishment and maintenance of appropriate systems or controls with regard to the client money account at Target, to assist in compliance with the CASS rules, you failed to take reasonable steps to ensure that Target could comply with relevant requirements and standards of the regulatory system, in breach of Principle 7.

The Code of Practice – APER 4.7

- 5.10 The Code of Practice is issued under section 64 of the Act for the purpose of assisting in the determination of whether an approved person's conduct complies with a statement of Principle. APER 4.7.2 E provides that the examples given in that section are the types of conduct which, in the opinion of the FSA, do not comply with Principle 7. APER 4.7.3 E provides 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. In the case of an approved person who is responsible, under SYSC 2.1.3 R (2), with overseeing the firm's obligation under SYSC 3.1.1 R, failing to take reasonable care to oversee the establishment and maintenance of appropriate systems and controls falls within APER 4.7.2 E.”

- 5.11 The guidance at APER 4.7.12 G provides that:

“[an approved person should]..... take reasonable steps to ensure that the business for which he is responsible has operating procedures and systems which include well-defined steps for complying with the detail of relevant requirements and standards of the regulatory system and for ensuring that the business is run prudently.”

- 5.12 By reference to these standards, as defined by the examples and guidance in APER, the FSA considers that you failed to comply with Principle 7 of the FSA's Statements of Principle for Approved Persons and that you are therefore guilty of misconduct.

6. MITIGATION

- 6.1 When prompted by creditors' demands for payment of late premiums, in David Marriott's absence, you identified the client money deficit in late October 2005 and notified David Marriott of your findings upon his return from holiday. You insisted that the firms' auditors be brought in to review the accounts and ascertain the precise extent of the deficit. The FSA is satisfied that you have fully cooperated with the investigation which has resulted in the issuing of this notice. Further, the FSA notes that you have not previously been the subject of any disciplinary action.

7. CONCLUSION

- 7.1 As a consequence of the facts and matters described above, the FSA considers that you failed to comply with a statement of principle issued under section 64 of the Act, namely Principle 7. Accordingly, the FSA finds that you are guilty of misconduct under section 66(2)(a) of the Act.
- 7.2 Your misconduct had serious consequences in that it directly contributed to both firms failing to comply with the FSA's requirements and in particular the requirements relating to client money. Your failings as an approved person, in particular by failing to take reasonable steps to oversee the establishment and maintenance of appropriate systems and controls at the firms, contributed to a co-director being able to misuse the client money held by the firms and ultimately to both firms having to be placed in administration.
- 7.3 Having regard to the nature and extent of the misconduct, to the seriousness of the consequences and also having regard to the FSA statutory objective of maintaining confidence in the financial system, the FSA has decided that a financial penalty of £15,000 would be appropriate. Such a penalty reflects the serious consequences of your negligent misconduct, as detailed above, and also reflects the FSA's statutory objective of maintaining confidence in the financial system. This penalty has been reduced to £5,000 as a consequence of your agreement to settle the case at an early stage of the investigation and after taking account of your personal financial circumstances.

8 DECISION MAKER

- 8.1 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.

9. IMPORTANT

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

Manner of and time for Payment

- 9.2 The financial penalty must be paid by you to the FSA by 12 monthly payments, the first payment of £418.50 to be made within 14 days of the issue of the Final Notice and each following monthly payment of £416.50 to be made monthly thereafter (the "due date").

If the penalty is not paid

- 9.3 Each instalment must be paid on the due date as specified above and in any event, no later than 14 days after each due date ("the payment period"). If any instalment is not paid within the payment period, and remains outstanding on the 15th day after the due date, the whole of the outstanding amount of the penalty will become due and the FSA may recover the same as a debt owed by you and due to the FSA.

Publicity

- 9.4 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.
- 9.5 The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA Contacts

- 9.2 For more information concerning this matter generally, you should contact Bill Sillett at the FSA (direct line: 020 7066 5880).

William Amos
Head of Retail 1
FSA Enforcement Division