
FINAL NOTICE

To: **Simon Treacher**
Date of Birth: **15 January 1964**
Individual
Reference Number: **SXT01276**
Date: **1 February 2010**

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

1. THE PENALTY

1.1. The FSA gave Simon Treacher a Decision Notice on 1 February 2010 which notified him that the FSA had decided to take the following action:

- (1) a prohibition order pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), prohibiting Mr Treacher from performing any function in relation to any regulated activity carried on by any authorised or

exempt person or exempt professional firm on the grounds that Mr Treacher is not a fit and proper person; and

(2) A financial penalty of £140,000 pursuant to section 66 of the Act.

1.2. Mr Treacher agreed to settle at an early stage of the FSA's investigation. He therefore qualified for a 30% (stage 1) reduction in the financial penalty, pursuant to the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £200,000 on him.

1.3. Mr Treacher confirmed on 22 January 2010 that he will not be referring the matter to the Financial Services and Markets Tribunal. Accordingly, for the reasons set out below, the FSA prohibits him from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm and imposes a financial penalty on him of £140,000.

2. REASONS FOR THE ACTION

Summary

2.1. This notice is issued to Mr Treacher in the light of his conduct as an approved person carrying out a controlled function during the period August to October 2008 (the "Relevant Period"), during which Mr Treacher was employed as a portfolio manager by Bluebay Asset Management ("Bluebay") in its Emerging Markets team. Mr Treacher is no longer employed at Bluebay. The FSA makes no criticism of Bluebay in this notice.

2.2. During this period, Mr Treacher deliberately altered seven documents and provided them as support for mis-marked positions in portfolios managed by him. The total impact of these actions was approximately \$27 million for the month end valuations in July, August and September 2008. The greatest impact was in August 2008, when the misconduct led to the relevant portfolios being overvalued by \$11.8 million. Bluebay has made payments in compensation to investors in the funds affected as a result of the misconduct totalling approximately \$650,000.

- 2.3. After the initial discovery of the altered documents, Mr Treacher was interviewed during an internal investigation by Bluebay on 14 November 2008. The matter was subsequently referred to the Enforcement Division of the FSA for investigation in April 2009.
- 2.4. As part of the FSA investigation, Mr Treacher was interviewed on two occasions, 7 July 2009 and 9 November 2009. During these interviews, Mr Treacher gave misleading answers in respect of his methodology and the processes by which documents were provided as support of month end prices.
- 2.5. The conduct detailed above demonstrates that Mr Treacher is therefore not a fit and proper person to perform functions in relation to regulated activities. He deliberately altered documents to support mis-marked positions in his funds. By virtue of his deliberate misconduct, Mr Treacher breached Statement of Principle 1 (“Principle 1”) of the Statements of Principle for Approved Persons contained in the High Level Standards part of the FSA’s Handbook and entitled “Statements of Principle and Code of Practice for Approved Persons” (“APER”).
- 2.6. Mr Treacher gave misleading answers to the FSA during their investigations. By virtue of this deliberate conduct, again, Mr Treacher breached Principle 1.
- 2.7. The FSA views Mr Treacher’s misconduct as particularly serious because he was an approved person carrying out a controlled function, and a senior and experienced portfolio manager who was fully aware of his responsibilities to mark his positions in line with the market and in compliance with Bluebay’s internal policies.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

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 an individual from performing a specified function, any function falling within a

specified description, or any function, if it appears to the FSA that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

3.3. Section 66 of the Act provides that:

(1) The FSA may impose a penalty on a person of such amount as it considers appropriate if:

(a) it appears to the FSA that he is guilty of misconduct; and

(b) the FSA is satisfied that it is appropriate in the circumstances to take action against him.

(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 of the Act; or

(b) he has been knowingly concerned in a contravention by the authorised person on whose application he was approved of a requirement imposed on that authorised person by or under the Act.

Fit and Proper Test for Approved Persons

3.4. The purpose of the part of the FSA Handbook entitled Fit and Proper Test for Approved Persons ("FIT") is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. In this instance the criteria set out in FIT are relevant in considering whether the FSA will exercise its powers to make a prohibition order in respect of an individual in accordance with the Enforcement Guide ("EG") paragraph 9.9.

3.5. FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person, including the person's honesty and integrity. FIT 2.1.1G provides that, in determining a person's honesty and integrity,

the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G.

- 3.6. FIT 2.1.3G refers to various matters, including: whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)); whether the person has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar (FIT 2.1.3G(11)); or 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 (FIT 2.1.3G(13)).

Statements of Principle and Code of Practice for Approved Persons

- 3.7 The part of the FSA Handbook entitled Statements of Principle and Code of Practice for Approved Persons (“APER”) is issued by the FSA under section 64 of the Act with respect to conduct expected of approved persons.
- 3.8 The Statement of Principle which is most relevant to Mr Treacher’s conduct is Principle 1.
- 3.9 APER 3.1.4.G states 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.
- 3.10 Principle 1 provides that, “An approved person must act with integrity in carrying out his controlled function.” (APER 2.1.2 P)
- 3.11 APER 4.1.2E sets out examples of conduct that, in the opinion of the FSA, do not comply with Principle 1. The types of conduct referred to in APER 4.1.2E includes deliberately misleading (or attempting to mislead) a client by act or omission (APER 4.1.3E), including deliberately mismarking the value of investments or trading positions (APER 4.1.4(6) E).

3.12 During the relevant period Mr Treacher held the controlled function CF30 (customer function) and the conduct in question occurred whilst he was carrying out that controlled function.

Enforcement Policy

3.13 The FSA's policy in relation to the decision to make a prohibition order is set out in Chapter 9 of EG. Extracts from chapter 9 of EG are set out in Annex A.

3.14 The FSA's policy in relation to the imposition of financial penalties is set out in Chapter 6 of the part of the FSA Handbook entitled Decision Procedure and Penalties Manual ("DEPP"). Extracts from DEPP are set out in Annex A.

4. FACTS AND MATTERS RELIED ON

Background

4.1. Bluebay is a company authorised by the FSA whose headquarters are in London. It is a specialist manager of fixed income credit. During the Relevant Period, Mr Treacher was an FSA approved person (CF 30) employed by Bluebay as a senior portfolio manager in the Emerging Markets team, where he managed a number of investment funds, including the Emerging Markets Total Return Fund ("EMTRF") and part of the Multi-Strategy Fund ("MSF"). Both EMTRF and MSF were long/short funds. The mis-marked positions which are the subject-matter of this Notice were all held in the funds, and therefore relate to Mr Treacher carrying out his controlled function.

4.2. The third party administrators of the funds managed by Bluebay, including EMTRF and MSF, price the funds for month end valuation. Bluebay would assist with this process, particularly for hard to value securities and these valuations were ordinarily supported by third party evidence, such as broker quotes via email or Bloomberg messages and screenprints.

4.3. As a result of a perceived discrepancy with third party evidence provided for the September 2008 month end, Bluebay began an internal investigation in November 2008.

- 4.4. Bluebay's internal investigation papers and report were forwarded to the FSA, and the matter was referred to the Enforcement Division for investigation in April 2009.

Mr Treacher's mismarking

- 4.5. Mr Treacher mis-marked positions in EMTRF and MSF by altering seven documents used in support of the month end valuation for specific assets. He altered the documents by printing legitimate broker quotes valuing the assets, carefully cutting out and pasting different figures onto the relevant valuation line, copying the altered document, and then submitting the altered copied version as the original quote. All the alterations justified a more advantageous price for the assets i.e. higher where the funds were long, and lower where the funds were short.

Concealment of mis-marking from the FSA

- 4.6. As a result of the discovery of an altered document provided in support of the September 2008 month end valuation, Bluebay launched an internal investigation in November 2008. As part of this investigation, Mr Treacher was interviewed on 14 November 2008.
- 4.7. As noted above, Mr Treacher's conduct was referred to the FSA's Enforcement Division for investigation in April 2009. As part of this investigation, Mr Treacher was interviewed on 7 July 2009 and again on 9 November 2009. During these interviews, Mr Treacher provided misleading information to the FSA regarding the method used to alter documents and the process by which they were included in the month end valuation.

5. ANALYSIS OF BREACHES

- 5.1. Mr Treacher's conduct, in deliberately altering documents to support the mis-marking of positions in EMTRF and MSF, and deliberately taking steps to avoid detection by the provision of misleading answers to the FSA, demonstrates that he is not a fit and proper person to carry out regulated activities.
- 5.2. In addition, by virtue of his deliberate misconduct, Mr Treacher was in breach of Principle 1:

- (1) Mr Treacher altered documents used to support month end valuations which justified a more advantageous valuation of specific assets in EMTRF and MSF. His actions are contrary to acceptable market conduct and to Bluebay's internal policies. The methods used to alter the documents and conceal his actions demonstrate that he was aware that his conduct was wrong. He therefore failed to act with integrity in carrying out his controlled function in this regard (APER 4.1.4E(1) & APER 4.1.4E(6));
- (2) Mr Treacher failed when asked to provide information to the FSA about:
 - (a) the methodology used to alter documents; and
 - (b) the process by which documents were provided to support valuations in the month end process.

As a result of the failings described at (a) and (b) above, Mr Treacher failed to act with integrity in carrying out his controlled function in this regard (APER 4.1.4E(10) & APER 4.1.4E(11)).

6. ANALYSIS OF THE SANCTION

General

- 6.1. In deciding to take the action, the FSA has considered, amongst other things, the seriousness and nature of Mr Treacher's misconduct, the number and duration of his breaches, and the likely effect of the action on him.
- 6.2. The FSA considers the following to be aggravating factors:
 - (1) Mr Treacher was a senior and experienced portfolio manager in a position of trust who was fully aware of his responsibilities to value positions within his funds in line with accepted market conduct and Bluebay internal policies;
 - (2) his misconduct was deliberate, occurring on seven occasions over a two and a half month period; and
 - (3) Mr Treacher has not been open and cooperative with the FSA in that he has provided misleading information.

6.3. The FSA considers the following to be mitigating factors:

- (1) Mr Treacher now accepts that his conduct was improper;
- (2) No previous regulatory action has been taken against Mr Treacher by the FSA;
and
- (3) At the time of his misconduct, Mr Treacher was under significant pressure in his personal life.

Prohibition

6.4. The FSA's effective use of the power to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities helps the FSA to work towards its regulatory objectives of protecting consumers, promoting public awareness, maintaining confidence in the financial system and reducing financial crime.

6.5. The FSA is satisfied that Mr Treacher is not a fit and proper person to perform regulated activities and should therefore be prohibited from performing any controlled function under section 56 of the Act. The FSA has had regard to the guidance in EG 9 in deciding that a prohibition order is appropriate in this case.

Financial penalty

6.6. The principal purpose for which the FSA imposes sanctions is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant behaviour.

6.7. In determining the financial penalty, the FSA has considered the need to deter well-remunerated individuals such as Mr Treacher from engaging in this type of activity.

6.8. The FSA has taken all the circumstances of this case into account in deciding that the imposition of a financial penalty in this case is appropriate, and the level of the

penalty imposed is proportionate. The FSA has had particular regard to the guidance set out in DEPP 6.

7. CONCLUSION

7.1. The FSA considers that because of the nature and seriousness of Mr Treacher's misconduct it is appropriate for the FSA to exercise its powers to make the prohibition order against Mr Treacher.

7.2. In addition, the FSA considers that because of the nature and seriousness of his misconduct, and in order to promote high standards of regulatory conduct by helping to deter other persons from committing similar breaches, it is appropriate to impose a financial penalty of £140,000 on Mr Treacher.

8. DECISION MAKERS

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 Mr Treacher in accordance with section 390 of the Act.

Manner and time for payment

9.2. The financial penalty must be paid in full by Mr Treacher to the FSA by no later than 15 February 2010, 14 days from the date of the Final Notice.

If the financial penalty is not paid

9.3. If all or any of the financial penalty is outstanding on 16 February 2010, the FSA may recover the outstanding amount as a debt owed by Mr Treacher 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 Mr Treacher 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

- 9.6. For more information concerning this matter generally, you should contact Russell Clifton (direct line: 020 7066 5304), David Malone (direct line: 020 7066 0870) or Aidan O’Conaill (direct line: 020 7066 4248) at the FSA.

Tracey McDermott

Head of Department

FSA Enforcement and Financial Crime Division

Annex A

Relevant Rules, Guidance and Other Regulatory Provisions

1. Enforcement Guide

- 1.1. EG 9.3-9.7 sets out the FSA's general policy in deciding whether to make a prohibition order and/or withdraw an individual's approval. The FSA will consider all the relevant circumstances including whether other enforcement action should be taken or has been taken already against that individual by the FSA. In some cases the FSA may take other enforcement action against the individual in addition to seeking a prohibition order.
- 1.2. EG 9.4 provides that 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. Depending on the circumstances of each case, the FSA may seek to prohibit individuals from performing any class of function in relation to any class of regulated activity, or it may limit the prohibition order to specific functions in relation to specific regulated activities. The FSA may also make an order prohibiting an individual from being employed by a particular firm, type of firm, or any firm.
- 1.3. 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 the risk which he poses to consumers or to the market generally.
- 1.4. EG 9.8-9.14 sets out additional guidance on the FSA's approach to making prohibition orders against approved persons and/or withdrawing such persons' approvals.
- 1.5. EG 9.8 provides that when the FSA has concerns about the fitness and propriety of an approved person, it may consider whether it should prohibit the person from performing functions in relation to regulated activities, withdraw its approval, or both. In deciding whether to withdraw its approval and/or make a prohibition order, the FSA will consider in each case whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions or by issuing a private warning.
- 1.6. EG 9.9 provides that when it decides whether to make a prohibition order against an approved person and/or withdraw its approval, the FSA will consider all the relevant circumstances of the case. These may include, but are not limited to:
 - (1) The matters set out in section 61(2) of the Act.
 - (2) Whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the 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).

- (3) Whether, and to what extent, the approved person has:
 - (a) failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons; or
 - (b) 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);
 - (5) The relevance and materiality of any matters indicating unfitness.
 - (6) The length of time since the occurrence of any matters indicating unfitness.
 - (7) 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.
 - (8) The severity of the risk which the individual poses to consumers and to confidence in the financial system.
 - (9) The previous disciplinary record and general compliance history of the individual including whether the FSA, any previous regulator, designated professional body or other domestic or international regulator has previously imposed a disciplinary sanction on the individual.
- 1.7. EG 9.10 provides that the FSA may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the individual is fit and proper to continue to perform a controlled function or other function in relation to regulated activities. It may also take account of the particular controlled function which an approved person is performing for a firm, the nature and activities of the firm concerned and the markets within which it operates.
- 1.8. EG 9.11 states that it is not possible to produce a definitive list of matters which the FSA may take into account when considering whether an individual is not a fit and proper person to perform a particular, or any, function in relation to a particular, or any, firm. EG 9.12 sets out a list 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, including:
- (1) Providing false or misleading information to the FSA: including information relating to identity, ability to work in the United Kingdom, and business arrangements;
 - (2) Failure to disclose material considerations on application forms;
 - (3) Severe acts of dishonesty, e.g. which may have resulted in financial crime;
 - (4) Serious lack of competence; and
 - (5) Serious breaches of the Statements of Principle for approved persons, such as failing to make terms of business regarding fees clear or actively misleading

clients about fees; acting without regard to instructions; providing misleading information to clients, consumers or third parties; giving clients poor or inaccurate advice; using intimidating or threatening behaviour towards clients and former clients; failing to remedy breaches of the general prohibition or to ensure that a firm acted within the scope of its permissions.

- 1.9. EG 9.13 provides that certain matters which do not fit squarely, or at all, within the matters referred to above may also fall to be considered and that in these circumstances the FSA will consider whether the conduct or matter in question is relevant to the individual's fitness and propriety.

2. Decision Procedure and Penalties Manual

- 2.1. DEPP 6.1.2 G provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour. Financial penalties and public censures are therefore tools that the FSA may employ to help it to achieve its regulatory objectives.

DEPP 6.2 Deciding whether to take action

- 2.2. DEPP 6.2.4 G provides that the FSA may take disciplinary action against an approved person where there is evidence of personal culpability on the part of that approved person. Personal culpability arises where the behaviour was deliberate or where the approved person's standard of behaviour was below that which would be reasonable in all the circumstances at the time of the conduct concerned.
- 2.3. DEPP 6.2.6 G lists some additional considerations that may be relevant when deciding whether to take action against an approved person pursuant to section 66 of the Act, including:
 - (1) The approved person's position and responsibilities. The FSA may take into account the responsibility of those exercising significant influence functions in the firm for the conduct of the firm. The more senior the approved person responsible for the misconduct, the more seriously the FSA is likely to view the misconduct, and therefore the more likely it is to take action against the approved person.
 - (2) Whether disciplinary action would be a proportionate response to the nature and seriousness of the breach by the approved person.

DEPP 6.5 Determining the appropriate level of financial penalty

- 2.4. DEPP 6.5.2 G lists a number of factors which may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act. The relevant factors are set out below.
- 2.5. When determining the appropriate level of penalty, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of

regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business (DEPP 6.5.2 G (1)).

- 2.6. The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached. Among the relevant considerations are the duration and frequency of the breach and the loss or risk of loss caused to consumers, investors or other market users (DEPP 6.5.2 G (2)).
- 2.7. The FSA will have regard to the extent to which the breach was deliberate or reckless. The FSA will regard as more serious a breach which is deliberately or recklessly committed. If the FSA decides that the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case (DEPP 6.5.2 G (3)).
- 2.8. The matters to which the FSA may have regard in determining whether a breach was deliberate or reckless include, but are not limited to, the following:
 - (a) whether the breach was intentional, in that the person intended or foresaw the potential or actual consequences of its actions; and
 - (b) whether the person has given no apparent consideration to the consequences of the behaviour that constitutes the breach.
- 2.9. When determining the amount of a penalty to be imposed on an individual, the FSA will take into account that individuals will not always have the resources of a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level (DEPP 6.5.2 G (4)).
- 2.10. A person's incentive to commit a breach may be greater where the breach is, by its nature, harder to detect. The FSA may, therefore, impose a higher penalty where it considers that a person committed a breach in such a way as to avoid or reduce the risk that the breach would be discovered, or that the difficulty of detection (whether actual or perceived) may have affected the behaviour in question (DEPP 6.5.2 G (7)).
- 2.11. The FSA may take the previous disciplinary record and general compliance history of the person into account. This will include whether the FSA has taken any previous disciplinary action against the person, and the general compliance history of the person (DEPP 6.5.2 G (9)).
- 2.12. The FSA and the person on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, DEPP 6.7 provides that the amount of the penalty which might otherwise have been payable will be reduced to reflect the stage at which the FSA and the person concerned reach an agreement (DEPP 6.5.2 G (13)).