
FINAL NOTICE

To: Mrs Valerie Ann Richards
D.O.B: 29 March 1948
Date: 27 April 2007

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

1. ACTION

- 1.1. The FSA gave you a Decision Notice on 26 April 2007 which notified you that for the reasons listed below, and pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to make a prohibition order in the terms set out below against you
- 1.2. The terms of the prohibition order are that you, Valerie Ann Richards, be prohibited from performing any controlled function involving the exercise of significant influence over any authorised person, exempt person or exempt professional person in relation to any regulated activity carried on by any such person (the "Prohibition Order").

- 1.3. You have confirmed that you will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.4. Accordingly, for the reasons set out below and having agreed the facts and matters relied on, the FSA makes the Prohibition Order against you. This order is effective from 1 May 2007.

2. REASONS FOR THE ACTION

- 2.1. The action by the FSA relates to your conduct between July 2004 and December 2004 whilst performing the controlled function of Partner (CF4) with Alexanders. This conduct, when considered by reference to the FSA's prescribed regulatory standards for individuals, is such that it appears to the FSA that you are not a fit and proper person to perform the controlled functions detailed in the Prohibition Order and that the FSA should make the Prohibition Order against you.
- 2.2. In particular, you have breached the FSA's Statements of Principle and Code of Practice for Approved Persons ("APER") by virtue of:
 - (1) your failure to act with due skill, care and diligence in the carrying out of your controlled function; and
 - (2) your failure to take reasonable steps to ensure that the business of Alexanders complied with the relevant requirements and standards of the regulatory system.
- 2.3. The FSA has concluded by virtue of the matters referred to above that:
 - (1) you are not a fit and proper person to perform any controlled function involving the exercise of significant influence over any authorised person, exempt person or exempt professional person in relation to any regulated activity carried on by any such person; and
 - (2) having regard to its regulatory objectives, including the severity of the risk that you pose to consumers and to confidence in the market generally, it is necessary and desirable for the FSA to exercise its power to make the Prohibition Order against you.

3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

Relevant statutory provisions

- 3.1. The FSA's statutory objectives as 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, exempt person or exempt professional person.
- 3.3. The effect of making a prohibition order is to prohibit an individual from performing functions within authorised or exempt firms and to prohibit authorised and exempt firms from employing the individual to perform specific functions. Such an order may relate to:
- (1) a specified function, a class of function or any function (section 56(2));
 - (2) a specified regulated activity, any regulated activity falling within a specified description or all regulated activities (section 56(3)(a)).
- 3.4. A prohibition order may be partial or total and may be imposed if it appears to the FSA that the individual concerned is not a fit and proper person to perform such functions.

The Enforcement manual

- 3.5. The FSA's policy in relation to prohibition orders is set out in Chapter 8 of the Enforcement Manual ("ENF"). ENF 8.4 summarises the FSA's policy on making prohibition orders and the circumstances under which Enforcement will consider recommending such action. In particular ENF 8.4.2 provides that:
- (1) *"The FSA will have 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."
(ENF 8.4.2G(1));

(2) *"Depending on the circumstances of each case, the FSA may seek to prohibit individuals from carrying out any class of relevant 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."* (ENF 8.4.2G(2));

(3) *"The scope of a prohibition order will depend on the range of functions which the individual concerned carries out 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."* (ENF 8.4.2G(3)).

3.6. ENF 8.5.1A provides that:

"The FSA will consider exercising its power to make a prohibition order against approved persons only in the more serious cases of lack of fitness and propriety where it considers that the other powers available to it are not sufficient to achieve the FSA's regulatory objectives."

3.7. ENF 8.5.2 states when it decides whether to exercise its power to make a prohibition order against an approved person the FSA will consider a number of factors including the criteria for assessing the fitness and propriety of approved persons contained in the Fit and Proper test for Approved Persons. These factors include the competence and capability of an approved person.

3.8. In accordance with ENF 8.5.2 the FSA will also consider whether and to what extent the approved person has:

(1) failed to comply with the Statements of Principle for Approved Persons;

(2) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the principles and other rules);

- (3) the relevance, materiality and length of time since the occurrence of any matters indicating unfitness;
- (4) the particular controlled function the approved person is performing, the nature and activities of the firm concerned and the markets in which he operates;
- (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and
- (6) the previous disciplinary record and general compliance history of the individual whether the FSA (or any previous regulator) has previously imposed a disciplinary sanction on the individual.

3.9. In summary, the relevant considerations are whether, in terms of competence and capability, the relevant individual is fit and proper to perform functions in relation to regulated activities and, if not, the severity of the risk posed by him. Having established these matters, it can be determined whether prohibition will be necessary to achieve the FSA's regulatory objectives and what degree of prohibition would best serve the achievement of those objectives in each case.

The Fit and Proper Test

- 3.10. The FSA has issued specific guidance on the fitness and propriety of individuals in the section of the FSA Handbook entitled the Fit and Proper test for Approved Persons ("FIT"). The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function and FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 3.11. As detailed above in accordance with ENF 8.5 the criteria set out in FIT are relevant in considering whether the FSA may exercise its powers to make a prohibition order against an approved person.
- 3.12. FIT 1.3 provides that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person with the most important considerations being the person's honesty, integrity and reputation, competence and capability and financial soundness.

- 3.13. In determining a person's honesty, integrity and reputation FIT 2.1 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. The guidance referred to includes whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards.
- 3.14. In determining a person's competence and capability FIT 2.2.1G provides that 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.

The Statements of Principle and Code of Practice for Approved Persons

- 3.15. Section 64 of the Act authorises the FSA to issue Statements of Principle with respect to the conduct expected of Approved Persons. If it does so 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. Such a code may specify:
- (1) descriptions of conduct which, in the opinion of the Authority, comply with a Statement of Principle;
 - (2) descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle;
 - (3) factors which, in the opinion of the Authority, are to be taken into account in determining whether or not a person's conduct complies with a Statement of Principle.
- 3.16. APER sets out the Statements of Principle in respect of Approved Persons. It also sets out descriptions of conduct which, in the opinion of the FSA, do not comply with the Statement of Principles. 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.
- 3.17. The guidance set out in APER 3.1.3 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 precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.

- 3.18. APER 3.1.4 states that an approved person will only be in breach of a Statement of Principle if he or she is personally culpable, that is in a situation where his or her conduct was deliberate or where his or her standard of conduct was below that which would be reasonable in all the circumstances.

Statement of Principle 2 states that:

"An approved person must act with due skill, care and diligence in carrying out his controlled function."

- 3.19. Conduct which, in the opinion of the FSA, does not comply with Statement of Principle 2 includes:

- (1) failure to apprise herself of the relevant FSA regulations and her obligations as an approved person;
- (2) failure to take reasonable steps to ensure that Alexanders complied with the requirements of the Act at all times; and
- (3) similarly failing in particular to take reasonable steps to ensure that she was sufficiently aware of the pension transfer business conducted by Alexanders and to ensure these activities being carried on by the partnership of which she was a partner were conducted in a compliant manner.

Statement of Principle 7 states 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".

- 3.20. Conduct which, in the opinion of the FSA, does not comply with Statement of Principle 7 includes:

- (1) failure 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 (APER 4.7.3); and
- (2) failure to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulatory system in respect of its regulated activities (APER 4.7.4).

3.21. 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 (APER 4.7.11).

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. You were a Partner of Alexanders from the commencement of the firm's trading in January 1979. Alexanders was a small firm primarily dealing with corporate business matters including the setting up of pension schemes and provision of personal financial advice
- 4.2. From 1 December 2001, following Alexanders' authorisation by the FSA, you became an approved person able to perform the significant influence controlled function of Partner (CF4).
- 4.3. The FSA appointed investigators on 1 November 2006. The Memorandum of Appointment of Investigators notified you that the investigation was directed to considering your fitness and propriety in the context of the transfer of approximately 650 individuals from deferred membership of the Final Salary Occupational scheme of a company, identified for the purposes of this Notice as "A", into a Group Personal Pension Scheme, administered by Alexanders on behalf of a manufacturing company, identified for the purposes of this Notice as "B", following the acquisition of the manufacturing division of company A by company B.

4.4. Prior to advising on the transfer referred to above, Alexanders had previously provided advice to company A's former employees regarding their joining of the GPP scheme operated by company B following the closure of company A's final salary scheme to them.

4.5. The FSA investigation has established that:

- (1) There were failures in the process undertaken in relation to the transfer referred to above including a failure to ensure that sufficient personal and financial information was collected to make suitable recommendations by the use of a shortened fact find that only included basic personal and financial details. This streamlined process was not the normal procedure used by Alexanders but was adopted because of the large volume of clients requiring specific transfer advice over a very short period time period since there was no guarantee subsequent transfer values would be on similar terms.
- (2) An unconventional methodology was used to assess a client's attitude to risk involving the use of a number of "yes/no" questions. This assessment was fundamentally flawed in that it required the client to confirm their attitude to risk by reference to their belief as to whether a critical yield was achievable. No guidance or adequate explanation was provided by the firm as to the nature of the investment risks that the client would need to accept in order for it to be possible to achieve the projected return.
- (3) The content of the suitability letters issued to Alexanders' clients were driven by the client's responses to the adviser's questions with the emphasis throughout the whole process being on the client making decisions rather than the adviser clearly recommending the transfer as being suitable for the client. The brief summary section contained within suitability letters which outlined the clients' answers on the risk issues detailed above, as well as their attitude to risk regarding the investment fund choice and choice of fund represented the only individually tailored content within the letters. Otherwise suitability letters were generic in nature and failed to adequately explain why the recommendation to transfer was suitable given a client's individual circumstances and objectives.

- (4) The processes and procedures established by Alexanders in order to provide oversight of the advice process were not sufficient given the large volume of cases. There was no adequate means of monitoring whether advisers were following the procedures during their meetings with clients and whether the information gathered about customers was complete and adequate.
 - (5) A substantial number of clients were exposed to the risk of significant loss if the transfer was unsuitable for them.
 - (6) You were unclear as to your responsibilities as an approved person. You stated during interview that your involvement in the running of Alexanders was largely limited to recording and paying the salesmen's commission and to paying the office bills. You had never been involved in a customer facing role and had no qualifications relevant to the business conducted by Alexanders.
 - (7) In relation to the pension transfers detailed above, you confirmed in interview that you had been aware that the pension transfers were taking place because of the commission payments you were processing and the periodic visits of external compliance consultancy staff to your office. However you were not involved with advising upon or monitoring the conduct of the pension transfer transactions because of your lack of direct expertise in this area of Alexanders' business.
 - (8) You failed to adequately inform yourself about the pension transfer transactions detailed in paragraph 4.3 above and failed to take any or sufficient steps to ensure that these transactions complied with relevant regulatory requirements.
- 4.6. The misconduct summarised above is considered to be serious because your failure to adequately inform yourself about pension transfer business conducted by Alexanders and take any or sufficient steps to ensure that such business was conducted in a compliant manner exposed clients to the risk of significant loss if the transfer was unsuitable.

5. RELEVANT GUIDANCE ON SANCTION

- 5.1. Paragraphs 3.5 to 3.9 above explain the FSA's policy in relation to prohibition orders as set out in Chapter 8 of the Enforcement Manual. ENF 8.5.2 provides that FSA will consider a number of factors and criteria for assessing the fitness and propriety of approved persons.
- 5.2. The FSA considers that by virtue of the failings detailed at paragraph 4.9 above you have breached Principles 2 and 7 of the Statements of Principle for Approved Persons. In this respect FSA considers that the misconduct identified shows that whilst carrying out your controlled function with Alexanders you failed to exercise due skill, care and diligence in respect of the management of Alexanders' business and that you failed to take reasonable steps to ensure that the business of Alexanders was conducted in a manner that complied with regulatory requirements and standards.
- 5.3. The FSA has considered whether you are a fit and proper person in accordance with the regulatory requirements and with regard to the relevant guidance. In this respect FSA considers that the misconduct identified show that you have:
- (1) failed to demonstrate the competency and capability required to perform controlled functions in relation to regulated activities.
- 5.4. It is the FSA's view that the seriousness of your failings means that you are unable to satisfy the FSA as to your ability to comply with regulatory requirements and that if you continued to perform any functions in relation to regulated activities you would pose a risk to consumers and to confidence in the financial system.

6. CONCLUSION

- 6.1. In the light of the facts and matters described above, the FSA has concluded that you are not a fit and proper person to perform controlled functions involving the exercise of significant influence in relation to any regulated activity.
- 6.2. Having regard to its regulatory objectives including the need to maintain confidence in the financial system, and the severity of risks posed to consumers, the FSA considers it necessary to impose a Prohibition Order prohibiting you from performing

any controlled function involving the exercise of significant influence over any authorised person, or exempt person or exempt professional person in relation to any regulated activity carried on by any such person.

7. DECISION MAKERS

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

8. IMPORTANT

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

Publicity

8.2. 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.

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

FSA contacts

8.4. For more information concerning this matter generally, you should contact Boura Tomlinson of the FSA's Enforcement Division on 020 7066 5528.

.....
Jonathan Phelan

**Head of Department
FSA Enforcement Division**