

SEE [FINAL NOTICE ISSUED ON 26 APRIL 2012](#)

DECISION NOTICE

To: **Derek Wright**
Individual Ref. No: **DXW01686**
Dated: **23 February 2011**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London, E14 5HS (“the FSA”) has decided to take the following action:

1. ACTION

- 1.1. For the reasons set out in this notice, the FSA has decided to make an order against Derek Wright, pursuant to section 56 of the Financial Services and Markets Act 2000 (“the Act”), prohibiting Derek Wright from performing any function in relation to any regulated activity carried on by any authorised person, exempt person, or exempt professional firm.

2. REASONS FOR THE ACTION

- 2.1. On the basis of the facts and matters summarised below, which are set out in more detail later in this notice, the FSA has concluded that Derek Wright lacks honesty and integrity whilst he also does not possess the requisite competence and capability.
- 2.2. Specifically, the FSA considers that Derek Wright has repeatedly demonstrated a lack of honesty and integrity through an unwillingness to comply with the requirements of the relevant regulatory regime in that he:
- (1) was disciplined by the Lloyd's Disciplinary Tribunal on 6 September 2001 and was found guilty of four charges of misconduct in relation to his former employment with an insurance broker;
 - (2) failed to obtain the requisite approval from the FSA to perform significant influence controlled functions in the role of a director at Moorgate Insurance Agencies Limited ("Moorgate"). Despite not having obtained such approval, Mr Wright performed these controlled functions as he took on senior management responsibilities. The consequence of taking on these senior management responsibilities was that, during his time working for Moorgate between July 2004 and June 2008, Mr Wright was, in effect, running Moorgate (although he failed to do so in a competent and capable manner);
 - (3) informed the FSA that Moorgate's capital resources deficit would be remedied by a further investment into the firm of £15,000 and an issue of shares, but then failed to inform the FSA that, in fact, no such investment or share issue had taken place; and
 - (4) failed properly and fully to disclose his employment status when specifically asked about it by the FSA in June 2009.
- 2.3. Further, the FSA considers that Mr Wright has shown a lack of competence and capability in that, having accepted the responsibilities which he says were delegated to him by the Director of Moorgate and while, in effect, acting as a director of Moorgate himself, Mr Wright:

- (1) failed to ensure that Moorgate complied with the relevant requirements and standards of the regulatory system, particularly in relation to the obligation to maintain adequate capital resources and submit accurate Retail Mediation Activities Returns (“RMARs”);
- (2) failed to take any or adequate notice of instructions given to him by the FSA regarding reconciliation of Moorgate’s client account and failed to provide all the documentary evidence requested by the FSA to show that Moorgate’s creditors had been paid and money had been collected from Moorgate’s debtors.

2.4. For these reasons, the FSA considers that Mr Wright is not a fit and proper person to perform any functions in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional person. Accordingly the FSA considers that it is appropriate and proportionate to make a prohibition order against Mr Wright, in support of the FSA’s objectives of maintaining confidence in the financial system and reducing financial crime.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS AND FSA GUIDANCE

3.1. The relevant statutory provisions, regulatory requirements and FSA guidance are set out at Annex 1.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. Derek Wright is not and never has been an approved person.
- 4.2. On 6 September 2001 Mr Wright was found guilty of misconduct before a Lloyd’s Disciplinary Tribunal in relation to four charges of conducting insurance business in a discreditable manner during his employment as a director of a firm of insurance

- (1) While Mr Wright was a director of Broker Firm A he arranged for certain premiums to be paid by cheques drawn to himself personally rather than to Broker Firm A. Mr Wright paid the cheques into his own account but caused Broker Firm A to issue cover notes and pay the premiums to insurers. Mr Wright dishonestly kept more than £66,000 for his own benefit. This was money which should have been accounted for to Broker Firm A.
 - (2) From 1994 to 1996 Mr Wright used Broker Firm A's client account to pay more than £15,000 of personal expenses without the knowledge or consent of his co-director or the company secretary.
 - (3) In August 1996 Mr Wright approached one of Broker Firm A's computer operators and dishonestly asked her to erase entries for monies owed by a third party to Broker Firm A. This amount totalled more than £8,000. In return for reducing this debt, Mr Wright arranged for his own debts to that third party to be reduced by the same amount.
- 4.3. As a result of these failings, Mr Wright was permanently suspended from the trading room of Lloyd's and all other parts of the premises of Lloyd's and from transacting or being concerned or interested in the transaction of the business of insurance at Lloyd's or any class or classes of such business.

Moorgate

- 4.4. Moorgate was a small insurance broker based in Romford, Essex. Moorgate's only director was Mr Wright's wife, Mrs Mary Dorothy Wright ("Mrs Wright"). From January 2005, she held Controlled Functions 1 (Director) and 8 (Apportionment and Oversight). In practice, however, Mr Wright was in control of the business and all negotiations with insurers and underwriters.
- 4.5. The FSA withdrew Moorgate's authorisation on 9 June 2008 following an application by Moorgate in response to the FSA's concerns that the firm had failed to satisfy

- 4.6. At Mr Wright's instigation, the business of Moorgate was transferred to another insurance broker, Broker Firm B, on 10 June 2008. The FSA was unaware of the transfer until some days after it had been effected. At the time of the transfer, Moorgate's turnover was approximately £200,000 per annum.
- 4.7. On 20 August 2008, following correspondence with the FSA, Moorgate voluntarily cancelled its Part IV Permission.

Unwillingness to comply with the regulatory regime

- 4.8. Mrs Wright did not perform any of the functions associated with a CF1 director. Instead, Mr Wright held overall control of Moorgate and influenced Mrs Wright, overseeing all operations and maintaining sole control of the company.
- 4.9. Derek Wright was not a director of Moorgate nor did he hold any controlled function. Nonetheless Mr Wright acted as if he was a director of Moorgate. Mr Wright also purported to perform the activities required of an individual holding a CF1 director role in relation to Moorgate without being approved to carry out that function.
- 4.10. The FSA considers this to be particularly serious since Derek Wright's previous disciplinary history within the regulated insurance market would have been highly relevant to the FSA's assessment of his honesty and integrity when considering his suitability for approved person status.
- 4.11. Derek Wright's conduct in carrying out a controlled function without being approved by the FSA, whilst Mrs Wright, notwithstanding her CF1 approved person status, performed none of the functions associated with a CF1 director, suggests an unwillingness by him to comply with the regulatory regime and is relevant to an assessment of his honesty and integrity, and hence his fitness and propriety.

Capital Resources Deficit and inaccurate Retail Mediation and Activities Returns

- 4.12. Between August 2005 and February 2008, Moorgate consistently reported in its RMARs that its capital resources were materially below the level required by the FSA for a firm holding client money in either a non-statutory or statutory trust (“the capital resources deficit”).
- 4.13. MIPRU 4.2.11R(2) states that a firm must have a minimum of the higher of £10,000 or 5% of its turnover of its own funds as regulatory capital, calculated in accordance with MIPRU 4.4.1R. This applies to firms which operate a statutory trust account.
- 4.14. CASS 5.4.4R(4) states that a firm, if handling client money for retail customers under the terms of a non-statutory trust account, must have and at all times maintain capital resources of not less than £50,000 calculated in accordance with MIPRU 4.4.1R.
- 4.15. Derek Wright accepted responsibility for submitting Moorgate’s RMARs to the FSA. On five occasions Mr Wright reported Moorgate’s capital resources to be materially below the level required by the FSA rules. On one of the RMARs, the difference between the capital resources required by the FSA and the capital resources Mr Wright reported is attributable to his incorrect submission that Moorgate operated a non-statutory trust account, when in fact Moorgate operated a statutory trust account. However, even if Mr Wright had correctly identified that Moorgate operated a statutory trust account, Moorgate’s capital resources during that period would still have been below the level required by the FSA’s rules.
- 4.16. Derek Wright contacted the FSA on 19 February 2007 by e-mail and stated that he would rectify the capital resources deficit of £14,909 through the issuing of 15,000 ordinary £1 shares and a further investment of £15,000. The FSA sought confirmation of this and wrote to his wife (as director of Moorgate) on 2 May 2007 and to Mr Wright on 31 May 2007 requesting, on each occasion, a copy of Companies House Form 88(2) (‘Return of Allotment of Shares’). The FSA obtained a copy of the form, which appeared to have been signed by Mrs Wright on 5 June 2007, purporting to show an allocation to Derek Wright of 15,000 ordinary £1 shares on or around 1 June 2007. The form appeared to have been received by Companies House on 9 June 2007. However, the annual returns submitted by Moorgate in October 2007 at Companies House did not show any new shareholdings. Contrary to Mr Wright’s e-

- 4.17. Further, Mr Wright submitted RMARs containing inaccuracies over matters such as whether he operated a non-statutory or statutory trust for his client account and whether he required professional indemnity insurance.
- 4.18. As the person to whom Mrs Wright delegated the duties of a director, Derek Wright took on the responsibility to check the data and ensure that information submitted to the FSA was correct.
- 4.19. Derek Wright failed to carry out the responsibilities delegated to him by Mrs Wright in a competent and capable manner: first by ensuring that RMARs submitted by Moorgate were accurate; and second, by ensuring that Moorgate's client account operated with adequate capital resources. Consequently, Mr Wright failed to ensure that Moorgate was complying with its regulatory obligations.

Failure to co-operate with the FSA

- 4.20. During a meeting with the FSA on 13 June 2008 Derek Wright was asked to produce a client money calculation to establish whether any money was owed to Moorgate's clients. In addition, Mr Wright was informed that if Moorgate's client account contained sufficient funds to meet the sums due to its creditors, the FSA would allow Moorgate to pay out the funds due to its creditors, resulting in Moorgate's client account having a nil balance. The FSA also informed Mr Wright by email on 13 June 2008 that he was expected to provide a client money calculation and a schedule of transactions to the FSA no later than 17 June 2008.
- 4.21. Moorgate's accountants provided a client money calculation to the FSA on 27 June 2008. This was compiled from books and records supplied to them by Moorgate. However, the schedules of client account debtors and creditors were not provided. On

- 4.22. On 1 July 2008, the FSA specifically told Mr Wright that once it could be satisfied that Moorgate's client account had sufficient funds to meet its liabilities, it would authorise Moorgate to pay out the balance of this account.
- 4.23. Derek Wright failed to follow the FSA's directions. On 8 July 2008 Mr Wright informed the FSA by email that Broker Firm B had in fact paid off all but one of Moorgate's creditors. Mr Wright also requested permission to use the money left in Moorgate's client account to pay the one remaining creditor. The FSA replied by email on 9 July 2008 and reiterated that the FSA still required a breakdown of the amounts owed to and by Moorgate so that it could be satisfied that the client account had been properly administered. The FSA also stated that until this information had been provided, Moorgate was not permitted to make any payments from its client account.
- 4.24. On 10 July 2008, the FSA informed Derek Wright by email that Moorgate's arrangement for Broker Firm B to meet Moorgate's liabilities was unsatisfactory. The FSA also stated that it required documentary proof that Moorgate's creditors had been paid and that money had been collected from Moorgate's debtors. Mr Wright did not provide this. Instead Mr Wright wrote to the FSA on 18 July 2008 stating that Broker Firm B had taken over responsibility for the collection and payments of premiums for Moorgate and that he had no further knowledge regarding payments. Mr Wright also stated that he did not believe that there was any more that he could add to the information that he had already provided.
- 4.25. Derek Wright failed to cooperate with the FSA in two separate respects despite clear instructions from the FSA, in that he:
- (1) failed to follow the FSA's instructions in relation to addressing the client money deficit and instead arranged for Broker Firm B to pay off Moorgate's creditors; and

- (2) failed to provide all the documentary evidence requested to show that Moorgate's creditors had been paid and that money had been collected from Moorgate's debtors.

Your work with Broker Firm C

- 4.26. On 12 June 2009, the FSA received a phone call from Broker Firm B. A representative of Broker Firm B stated that Derek Wright was still working within the insurance sector and had been introducing business to another insurance broker.
- 4.27. The FSA telephoned Derek Wright on 12 June 2009 and asked where he was currently working. Mr Wright said that he was "not working as such". When asked to explain what he meant by this, Mr Wright said he was not working in insurance. When asked whether he was working for an insurance broker Mr Wright replied "not as such". When Mr Wright was asked to explain this statement he said that he was not working for anybody.
- 4.28. On 8 July 2009 the FSA received further information from Broker Firm B who stated that Derek Wright was working for an insurance broker, Broker Firm C. Broker Firm C had submitted a notification to the FSA on 16 April 2009 to add Mr Wright as an introducer appointed representative, the "commencement of agreement" date being 1 May 2009.
- 4.29. On 18 December 2009 the FSA rang Broker Firm C in order to speak to Derek Wright. A representative of Broker Firm C confirmed that he was working as an introducer with the firm and passed on Mr Wright's contact details.

5. REPRESENTATIONS, FINDINGS AND CONCLUSIONS

Representations

- 5.1. Mr Wright made clear that whilst he did not seek to resist the suggestion that he lacked competence and capability he refuted the suggestion that he lacked honesty and integrity. He submitted that some of the conduct which the FSA had relied upon to demonstrate that he lacked honesty and integrity was instead merely further

- 5.2. Mr Wright made clear that it was not his intention to attempt to go behind the findings of the Lloyd's Disciplinary Tribunal. Notwithstanding that submission he did seek to mitigate the seriousness of the conduct which was the subject of the findings by the Lloyds Disciplinary Tribunal. He explained that he had been endeavouring to resolve a commercial dispute that had arisen between himself and his erstwhile partner and it was for this reason that he had taken the monies which the tribunal concluded he had misappropriated. Having sought to explain the circumstances surrounding his misconduct and his motivation for behaving as he did Mr Wright then submitted that the FSA should not take the findings of the Lloyds Disciplinary Tribunal into account when assessing his fitness and propriety. Mr Wright submitted that whilst the FSA could not overlook these findings of misconduct it should be prepared to accept that he is a changed man having been rehabilitated by the chastening and lasting consequences of this incident. He noted that quite apart from being excluded from Lloyds and having endured financial difficulties as a result, he had also suffered irreparable damage to his reputation. Indeed, he explained that he had found that it had then been necessary to use his wife as a director of Moorgate in an effort to mask his involvement from others who would not wish to have dealings with him.
- 5.3. Mr Wright submitted that it would be wrong to infer that he lacked honesty and integrity from the fact that he had assumed all of the functions which should have been undertaken by his wife. He accepted that he should have had the appropriate approval before he undertook the various responsibilities which should have been his wife's. However Mr Wright asserted that he had not been attempting to evade the FSA's approvals process. Instead it was submitted that his admitted lack of competence and capability had meant that he had completely failed to understand the FSA's regulatory regime and that therefore he had not applied for and obtained the requisite approval. Mr Wright explained that he had put in an application to be a CF8 at Moorgate in 2005 and that he had then withdrawn this application because having spoken with the FSA he had assumed that his subsequent approach was permissible. He submitted that he had been open with the FSA when discussing his application and

- 5.4. Mr Wright then explained that he had not misled the FSA when he had suggested that it was his intention to address the capital deficit at Moorgate by issuing £15,000 worth of shares. He stated that whilst this had been the plan they had ultimately rectified the deficit by arranging for Broker Firm B to pay off Moorgate's creditors. Mr Wright agreed that the FSA and Companies House had subsequently received the wrong impression of what had been done to rectify the capital deficit in the firm. Indeed he noted that the FSA and Companies House both were labouring under the misapprehension that £15,000 of new share capital had been issued to him. He accepted that they would have gained this impression from the Form 88(2) which had been submitted to Companies House and forwarded to the FSA. However Mr Wright denied that he had intended for either Companies House or the FSA to be given this impression. Instead he speculated that his accountants may have completed the form incorrectly and without his authorisation before transmitting it.
- 5.5. Mr Wright denied that he had behaved evasively when questioned by the FSA about his employment during the telephone call on 12 June 2009. Whilst he could not recollect exactly what had been said during this phone call he did not accept that he had misled the FSA despite the fact that his inability to recollect the detail of the conversation meant that he was unable to challenge the FSA's record of it. Instead Mr Wright submitted that what he had said was accurate, as he had been self employed at the relevant time, and therefore it was not misleading. He added that in any event whatever may have been said in the course of the conversation it would be wrong to conclude that he had sought to mislead the FSA as he was aware at that time that the FSA had been informed of his role as an introducer appointed representative. Broker firm C had notified the FSA that Derek Wright had become one of its introducer appointed representatives from 1 May 2009 and this fact had been recorded

- 5.6. Mr Wright submitted that in stark contrast to the allegation he faced, it was possible to discern that he possessed both honesty and integrity from his conduct at the relevant time. He explained that he had not sought to disguise from the FSA the fact that he had undertaken functions for which he should have received prior approval. Mr Wright asserted that in a conversation with the FSA on 9 May 2008 he had been entirely open and honest with the FSA about his wife's lack of involvement with Moorgate and his role at the firm. He added that a month later, on 9 June 2008, he had co-operated with the FSA by applying for he also highlighted his efforts to ensure that, despite the financial difficulties that Moorgate had encountered, there had been no consumer detriment.
- 5.7. It was also submitted on behalf of Mr Wright that the FSA should have regard to section 66 of the Act when determining whether to take action against him under section 56 of the Act. He submitted that the FSA should have considered itself to be time barred from taking action against him because it would be unfair to impose a sanction upon him when the FSA would have been prevented from imposing a penalty under section 66. Notwithstanding the foregoing arguments he did concede that the time bar in section 66 only applied to the imposition of penalties against approved persons and had no application to section 56. As such, and having conceded that his submission was a very novel one, Mr Wright did not make vigorous representations on this point.
- 5.8. In addition to the foregoing representations Mr Wright also criticised the conduct of the Enforcement investigation of this matter. He asserted that he had been misled by the FSA whilst he also complained about the time it had taken for this investigation to progress. He complained, amongst other things, that he had been misled by the FSA into thinking that he would be unlikely to face the possibility of having a full prohibition order made against him. Mr Wright observed that because he had not understood the seriousness of his predicament it was only when he was required to respond to the preliminary investigation report that he realised that it was imperative

- 5.9. In the light of all of the foregoing representations Mr Wright submitted that it would be wrong for the FSA to prohibit him from performing any function in relation to any regulated activity carried on by any authorised person, exempt person, or exempt professional firm on the basis that he lacks honesty and integrity. Instead he submitted that the proportionate order in this case would be to prohibit him from holding any significant influence function because of his admitted lack of competence and capability. Mr Wright submitted that whilst he had demonstrated a lack of competence and capability whilst in de facto control of Moorgate he claimed that there had been nothing in his conduct at Moorgate to merit a ‘full’ prohibition order. He submitted that in his approximately 40 years of work in financial services he had never caused any consumer detriment whilst he submitted that the incidents which were the subject of the Lloyds Disciplinary Tribunal related to a commercial dispute with his erstwhile business partner. Therefore he contended that any risk that the FSA might perceive him to pose was extremely negligible. Furthermore, whilst not accepting that he posed any risk to consumers, Mr Wright argued that as an Introducer Appointed Representative he could not cause any harm to consumers.
- 5.10. Mr Wright submitted that in deciding upon the extent of any prohibition order that might be imposed upon him the FSA should have regard to the impact that an order would have on both he and his family. Having explained the straitened financial circumstances of his family Mr Wright stated that without his income he was likely to lose his house and he would no longer be able to provide support to his children. He also asserted that a finding that he lacks honesty and integrity would have a

Findings

- 5.11. The FSA finds that Mr Wright lacks honesty and integrity in addition to his admitted lack of competence and capability. The FSA finds that his representations about his honesty and integrity are not sustainable on the evidence and thus the FSA rejects his submissions. The FSA rejects Mr Wright's submission that only a partial prohibition should be imposed upon him. The FSA also finds that the appropriate and proportionate order in this case is a prohibition order preventing Mr Wright from undertaking any function in relation to any regulated activity carried on by any authorised person, exempt person, or exempt professional firm.
- 5.12. The FSA finds that Mr Wright's previous misconduct, which had been the subject of a finding by the Lloyds Disciplinary Tribunal, remained highly relevant to an assessment of his fitness and propriety. The findings of this tribunal demonstrate that at the relevant time he did not comply with the applicable legal, regulatory and professional requirements and standards. The FSA accepts that it is possible for people who have previously engaged in misconduct, even where it impugns their honesty and integrity, to be rehabilitated. However the FSA rejects the submission that Mr Wright has acquired honesty and integrity in the period since the events that led to the Lloyds Disciplinary Tribunal. The FSA also rejects the suggestion that the matters which were the subject of the findings by the Lloyds Disciplinary Tribunal were not serious. Instead the FSA finds that the Lloyd's Disciplinary Tribunal's findings of dishonesty and multiple counts of misconduct were so grave that he would have had to provide substantial and verifiable evidence of rehabilitation for the FSA to have accepted that he did not currently lack honesty and integrity. However, far from offering him the opportunity to highlight his honesty and integrity, the FSA

- 5.13. The FSA does not accept that Mr Wright only acted as the director of Moorgate, without approval, because he had failed to understand the regulatory regime. The FSA notes that in Mr Wright's representations he had explained that he had found it necessary to mask his involvement with Moorgate from those with whom he wanted to do business. The FSA finds that in the same way that he had hidden his involvement in Moorgate from others with whom he hoped to do business; Mr Wright had masked from the FSA the fact that he undertook the senior management responsibilities at Moorgate. Having spoken with the FSA Mr Wright had realised that his application for approval would encounter difficulties and therefore only his wife was put forward for approval even though it was he who undertook the responsibilities for which approval was required. The FSA finds that he, having encountered a problem, sought to evade the proper regulatory process and instead carried on acting as the director of Moorgate regardless of the regulatory regime. Furthermore the FSA rejects the suggestion that he was open with the FSA about the management arrangements at the firm. The FSA finds that his conversation with the FSA on 9 May 2008 does not demonstrate honesty and integrity but rather he was obliged to make the admissions that he did as he was unable to continue to hide his involvement with the firm.
- 5.14. In finding that Mr Wright lacks honesty and integrity the FSA has also taken into account his conduct in giving the FSA and Companies House the impression that £15,000 was to be raised by issuing new shares to him. The FSA rejects his explanation for how the completed Form 88(2) came to be transmitted to both the FSA and Companies House. Instead the FSA finds that this document was transmitted to both the FSA and Companies House in an attempt to allay the concerns that the FSA held about the capital deficit at Moorgate.
- 5.15. The FSA also finds that Mr Wright lacks honesty and integrity having considered his conduct in the telephone call with the FSA on 12 June 2009. The FSA considers that, notwithstanding his representations, Mr Wright was evasive and misleading about his

- 5.16. The FSA notes that Mr Wright accepts that he lacks competence and capability. Mr Wright agrees that he failed to ensure that Moorgate complied with the relevant requirements and standards of the regulatory system. Mr Wright failed to submit accurate RMAR's on behalf of Moorgate whilst he also failed to ensure that Moorgate's client account reported adequate capital resources over five years. The FSA also finds that Mr Wright implicitly accepts that he had not co-operated with the FSA as he does not dispute that he had failed to follow the FSA instructions as to how he should rectify the client account deficit and nor does he deny that he had not provided the FSA with documentary evidence concerning the client account. The FSA finds that this lack of co-operation is further evidence of a lack of competence and capability.
- 5.17. Notwithstanding the lack of competence and capability which he demonstrated when running the firm, Mr Wright has sought to make a virtue of his conduct when he acted as the de facto director of Moorgate. However the FSA rejects Mr Wright's submission that his efforts to ensure that the difficulties at Moorgate did not result in consumer detriment provide a positive example of his honesty and integrity. Instead the FSA finds that the lack of consumer detriment resulting from the resolution of Moorgate is a factor which has neither a positive or negative impact upon the FSA's assessment of his honesty and integrity.

- 5.18. The FSA rejects the submission that no action can be taken against Mr Wright as over 2 years have passed since the FSA first became aware of his misconduct. The FSA finds that this submission is entirely misconceived. Quite apart from the fact that a prohibition order under section 56 of the Act is not subject to a time bar it is in any event incorrect to draw parallels between the FSA's power to make a prohibition order and the FSA's power to impose penalties on approved persons. The power to make a prohibition order is a protective measure and not a penalty and therefore the principles applicable to penalties imposed under section 66 have no relevance to orders made under section 56.
- 5.19. The FSA considers that Mr Wright's criticisms of the conduct of the Enforcement team are not relevant to the issues to be decided in this matter. Having decided that his complaints have no bearing on the fairness of the proceedings or the reliability of any of the evidence which was under consideration, the FSA finds that these criticisms do not therefore need any determination as to their validity as part of this process. That being said the FSA observes that these complaints seem to be of little substance. In particular the FSA considers that the criticism of the Enforcement team for having failed to convey to the RDC the substance of representations made within 'without prejudice' correspondence is entirely misconceived.
- 5.20. As a result of the foregoing findings the FSA finds that a prohibition order, preventing Mr Wright from performing any function in relation to any regulated activity carried on by any authorised person or exempt person or exempt professional firm, is the proportionate order to be made in this matter as the FSA finds that he lacks honesty and integrity. Notwithstanding the significant personal mitigation put forward by Mr Wright the FSA does not consider it appropriate to curtail the ambit of this prohibition order. The FSA considers that the seriousness of Mr his misconduct means that the prohibition order should be as described above.

Conclusions

- 5.21. By reason of the facts and matters referred to above, the FSA considers that Mr Wright is not a fit and proper person and that therefore it has decided to make a prohibition order preventing him from performing any function in relation to any

5.22. An analysis of this sanction is provided below.

6. SANCTION

Prohibition

6.1. The FSA has considered whether Derek Wright is a fit and proper person. In doing so, the FSA has had regard to its regulatory requirements and relevant guidance. The FSA has assessed Mr Wright's honesty, integrity and reputation as well as his competence and capability for the purpose of considering whether he is a fit and proper person. In doing so, the FSA has taken into account;

- (1) the Lloyd's Disciplinary Tribunal's findings against Mr Wright;
- (2) Mr Wright's unwillingness to comply with the regulatory regime
- (3) Mr Wright's failure to ensure that Moorgate's capital resources were sufficient;
- (4) Mr Wright's provision of inaccurate RMARs; and
- (5) Mr Wright's failure to co-operate with the FSA, which encompassed;
 - (a) his provision of misleading information in relation to the proposed means of rectifying Moorgate's capital resources deficit;
 - (b) and his misleading answers to the FSA's questions with respect to his recent work in the insurance industry.

6.2. The FSA has concluded that even after the Lloyd's Disciplinary Tribunal had found Derek Wright guilty of four charges of misconduct in 2001, his subsequent conduct has continued to fall short of the minimum regulatory standards. Mr Wright's conduct has demonstrated that he has not met the required standards in relation to honesty and

- 6.3. The seriousness of Mr Wright's misconduct means that if he were to perform any functions he would pose a substantial and serious risk to the FSA's statutory objectives of maintaining confidence in the financial system and reducing financial crime.
- 6.4. The FSA therefore considers that it is necessary to make an order pursuant to section 56 of the Act prohibiting Derek Wright from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

7. DECISION MAKER

- 7.1. The decision which gave rise to the obligation to give this Decision Notice was made by the Regulatory Decisions Committee.

8. IMPORTANT

- 8.1. This Decision Notice is given to Mr Wright under section 57 of the Act and in accordance with section 388 of the Act. The following statutory rights are important.

The Tribunal

- 8.2. Mr Wright has the right to refer the matter to which this Decision Notice relates to the Upper Tribunal (the "Tribunal"). Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Wright has 28 days from the date on which this Decision Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a reference notice (Form FTC3) signed by Mr Wright (or on his behalf) and filed with a copy of this Notice. The Tribunal's

<http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>

- 8.3. Mr Wright should note that a copy of the reference notice (Form FTC3) must also be sent to the FSA at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Paul Howick at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Access to evidence

- 8.4. Section 394 of the Act applies to this Decision Notice. In accordance with section 394, Mr Wright is entitled to have access to:

- (1) the material upon which the FSA has relied in deciding to give him this notice; and
- (2) any secondary material which, in the opinion of the FSA, might undermine that decision.

- 8.5. A schedule of the material upon which the FSA has relied in deciding to give Mr Wright this Decision Notice was sent to him with the Warning Notice. There is no secondary material to which he must be allowed access.

Third party rights

- 8.6. There are no third party rights.

Confidentiality and publicity

- 8.7. Mr Wright should note that this Decision Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). The effect of section 391 of the Act is that neither Mr Wright

nor a person to whom this notice is copied may publish it or any details concerning it unless the FSA has published the notice or those details. The FSA may publish such information about the matter to which a Decision Notice or Final Notice relates as it considers appropriate. Mr Wright should be aware, therefore, that any final notice in this matter may contain reference to the facts and matters contained in this notice.

FSA contacts

- 8.8. For more information concerning this matter generally, Mr Wright should contact Paul Howick (direct line: 020 7066 7954) of the Enforcement Division of the FSA.

Signed:

Tim Herrington

Chairman, Regulatory Decisions Committee

ANNEX 1

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

1. Statutory Provisions

- 1.1. The FSA's statutory objectives, set out in section 2(2) of the Financial Services and Markets Act 2000 ("the Act"), are: market confidence; promoting public awareness; the protection of consumers; and the reduction of financial crime.

Prohibition

- 1.2. The FSA has the power, under 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 the 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 or any regulated activity falling within a specified description or all regulated activities.

2. Regulatory guidance and policy

- 2.1. In considering the appropriate sanction, the FSA has had regard to its published guidance. The relevant considerations in relation to the proposed action are set out below. Although the references in this notice are to the Enforcement Guide ("EG"), the FSA has had regard to the appropriate provisions of the FSA Enforcement Manual ("ENF") which applied during some of the relevant period in which your misconduct occurred.

Penalty

Enforcement Guide

- 2.2. In considering the level of the financial penalty (where appropriate) and the other action to be taken, the FSA has had regard to its guidance published in the FSA Handbook and its relevant published policies.
- 2.3. The FSA may consider making a prohibition order where it appears that an individual is not fit and proper to carry out functions in relation to regulated activities carried on by firms. The FSA may exercise these powers where it considers that to achieve any of its statutory objectives it is appropriate either to prevent an individual from carrying out any function in relation to regulated activities or to restrict the functions which he may perform. The FSA's policy in relation to the exercise of its powers to make a prohibition order is set out in Chapter 9 of EG.
- 2.4. EG 9.4 sets out the general scope of the FSA's powers in this respect, including 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. EG 9.5 provides that the scope of a prohibition order will vary according to the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally.
- 2.5. EG 9.8 to 9.14 provide guidance on the FSA's exercise of its power to make a prohibition order against an approved person.
- 2.6. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person the FSA will consider all the relevant circumstances of the case, which may include (but are not limited to):
 - (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing an individual's fitness and propriety are set out in the section of the FSA's Handbook entitled "FIT". FIT

- (2) the relevance and materiality of any matters indicating unfitness (EG 9.9(5));
- (3) 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 (EG 9.9(7)); and
- (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system (EG 9.9(8)).

2.7. EG 9.18 states that when considering whether to exercise its power to make a prohibition order against a non-approved individual, the FSA will consider all the relevant circumstances of the case, which may include, but are not limited to, where appropriate, the factors set out in paragraph 9.9 of the Enforcement Guide.

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- 2.8. The FSA's previous policy in relation to the decision to make a prohibition order is set out in Chapter 8 of the Enforcement section of the FSA Handbook ("ENF").
- 2.9. ENF 8.4.2 sets out the general scope of the FSA's powers, which includes 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. The scope of the prohibition order will depend on the range of activities the individual carries out.
- 2.10. ENF 8.8 provides guidance on the FSA's exercise of its power to make a prohibition order against an individual who is not an approved person, employee or former employee who is not an approved person, an exempt person, or a member of a professional firm, which are provided for elsewhere in the guidance. The FSA will consider making a prohibition order against such an individual where they have shown themselves to be unfit to carry out functions in relation to regulated activities.
- 2.11. The FSA will consider the individual's fitness and propriety, for example, where it appears that the individual has been involved in misconduct or offences under the Act

- 2.12. ENF 8.8.2A provides that in cases where the FSA is considering whether to exercise its power to make a prohibition order against individuals in accordance with ENF 8.8 it will not have the option of considering whether other enforcement action may adequately deal with the misconduct in question. In these cases the FSA will consider the severity of the risk posed by the individual. It may prohibit the individual where it considers this is necessary to achieve the FSA's regulatory objectives.
- 2.13. ENF 8.8.3 provides (by reference to ENF 8.5.2G(1), (3) and (5)) that when considering whether to exercise its powers to make a prohibition order against such an individual it will consider the following criteria:
- (1) 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 contained in FIT 2.1 (honesty, integrity and reputation); FIT 2.2 (competence and capability); and FIT 2.3 (financial soundness) are specifically referred to in this context. The criteria include:
 - (a) 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 and professional obligations and ethical standards;
 - ...
 - (2) the relevance, materiality and length of time since the occurrence of any matters indicating unfitness; and
 - (3) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

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

- 2.14. FIT sets out the ‘Fit and Proper’ test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 2.15. In this case, the criteria set out in FIT are relevant in considering whether the FSA should exercise its powers to make a prohibition order against you in accordance with the guidance set out in EG 9.8 to 9.14.
- 2.16. FIT 1.3.1G states that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function. This includes the person’s honesty, integrity and reputation, and competence and capability.
- 2.17. FIT 2.1.1G states that in determining a person’s honesty, integrity and reputation, the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. This guidance includes:
- (1) whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5));
 - (2) whether the person, or any business with which the person has been involved, has been investigated, disciplined, censured or suspended or criticised by a regulatory or professional body, a court or Tribunal, whether publicly or privately (FIT 2.1.3G(10)); and
 - (3) 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)).
- 2.18. FIT 2.2.1G states that in determining a person’s competence and capability, the FSA will have regard to all relevant matters including but not limited to:

- (1) whether the person satisfies the relevant FSA training and competence requirements in relation to the controlled function the person performs or is intended to perform; and
- (2) whether the person has demonstrated by experience and training that the person is suitable, or will be suitable if approved, to perform the controlled function.