
FINAL NOTICE

To: Clifford Felstead

Address: 9 Queens Court
20 Queens Avenue
Leigh-On-Sea
Essex
SS9 1QT

Date: 2 July 2010

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice that it has taken the following action:

1. ACTION

- 1.1. The FSA gave you, Clifford Felstead, a Decision Notice on 26 February 2010 which notified you that the FSA had decided to make a prohibition order pursuant to section 56 of the Financial Services and Markets Act 2000 (the "Act"), to prevent you from performing any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm.
- 1.2. You did not refer the matter to the Upper Tribunal within 28 days of the date on which the Decision Notice was given to you.
- 1.3. Accordingly, for the reasons set out below, the FSA hereby makes an order pursuant to section 56 of the Act prohibiting you from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm (the “Prohibition Order”).
- 1.4. The prohibition order takes effect from 2 July 2010.

2. REASONS FOR THE ORDER

- 2.1. The FSA has concluded that you are not fit and proper to carry out any functions in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm and that you should be prohibited from doing so.
- 2.2. On the basis of the facts and matters summarised in this Notice, the FSA has concluded that you acted dishonestly in the course of your employment at Surety Guarantee Consultants Limited (“SGC”), in that between 1 January 2005 and 21 August 2006 (“the relevant period”) you:
 - (1) conspired together with Timothy Higgins and Ralph Brunswick to defraud QBE Insurance (Europe) Limited (“QBE”), Amalfi Underwriting Limited (“Amalfi”) and Markel International Insurance Company Limited (“Markel”) in order to obtain secret profits;
 - (2) deliberately issued bonds on behalf of Markel and QBE/Amalfi in excess of SGC’s authority;
 - (3) deliberately failed to account fully to Markel and QBE/Amalfi in respect of the premiums due on the bonds written in their names, using General Commercial Limited (“GCL”) as a vehicle for receiving secret profits made from the perpetration of the fraud you committed;
 - (4) were involved in the creation of bordereaux which deliberately misstated the details of bonds written by SGC on behalf of Markel and QBE/Amalfi;
 - (5) deliberately lied to QBE and Amalfi by denying that you had been convicted when so asked by Amalfi’s Director of Underwriting; and
 - (6) continued to be involved in the operation of the Underwriting Management Agreement (“UMA”) with QBE and Amalfi notwithstanding your removal from the schedule of persons authorised to operate the UMA.
- 2.3. The FSA regards this conduct as serious because it involved the deliberate deception of SGC’s clients, exposing them to substantial potential losses.
- 2.4. Having regard to the FSA’s regulatory objectives, including the severity of the risk that you pose to the confidence in the financial system and the reduction of financial crime, the FSA considers that it is necessary and proportionate to exercise its power to make a Prohibition Order against you.

3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FSA GUIDANCE

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.

Prohibition

- 3.2. The FSA has the power pursuant to section 56 of the Act to make an order prohibiting you from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that you are 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. The FSA may exercise these powers where it considers that to achieve any of its statutory objectives it is necessary to prevent an individual from carrying out any function in relation to regulated activities.

Regulatory Requirements and Guidance

- 3.3. In deciding on the action proposed, the FSA has had regard to relevant guidance published in the FSA Handbook and set out in the Regulatory Guides, in particular in the Enforcement Guide ("EG") and The Fit and Proper Test for Approved Persons ("FIT"). The relevant parts of this guidance are set out in Annex A.

4. FACTS AND MATTERS RELIED ON

- 4.1. On 23 May 1997 you were convicted of two counts of conspiracy to defraud at Middlesex Guildhall Crown Court as a result of which you were sentenced to 3 years imprisonment and were disqualified from being company director for a period of 5 years.
- 4.2. SGC was an underwriting agent engaged in the surety bond business that was incorporated on 6 February 2004. From 14 January 2005, it was authorised to hold and control client money only in respect of non-investment insurance contracts. SGC ceased trading on 11 January 2007 when it varied its part IV permissions to remove all regulated activities. It has since been placed into liquidation.
- 4.3. You were not approved to perform controlled functions but you were an employee of SGC in a management or administrative role.
- 4.4. The following individuals were also involved in SGC's surety bond business:
 - (1) Timothy Patrick Higgins, a director of SGC;
 - (2) Barry Williams, a director of SGC;
 - (3) Ralph Stephen Brunswick, who had a beneficial interest in SGC and was a director of Templeton Insurance Company Limited ("Templeton"), an insurance company incorporated in the Isle of Man, from June 1994 until June 2006.

Surety bonds

- 4.5. Surety bonds are undertakings given at the request of a client by the surety (usually an insurance company or a bank) to pay the beneficiary a sum of money (up to a stated limit) in certain events, usually the failure by the client to discharge his contractual obligations to his customer, the beneficiary. A premium is paid by the clients to the surety as the surety's fee for bearing the risk implicit in issuing the surety bonds.

Binding authorities

- 4.6. A binding authority is established when one party (usually an agent) has been given the right and commensurate authority to represent another party (usually an insurer) in effecting or creating an insurance contract. The terms of the binding authority will set limits on the authority granted to the agent.
- 4.7. During the relevant period, binding authorities were granted to SGC by Markel authorising the writing of surety bonds on their behalf. QBE also granted a binding authority to Amalfi authorising the writing of surety bonds, and Amalfi entered into an underwriting management agreement with SGC to provide surety bonds in accordance with its binding authority with QBE.

The High Court Proceedings

- 4.8. QBE, Amalfi and Markel issued proceedings against you and others in the High Court of Justice, Commercial Court, in which the trial took place between 11 February 2008 and 13 March 2008. In the judgment handed down on 3 June 2008 Mr Justice Teare found that you conspired to defraud Markel, QBE/Amalfi, and that in so doing you breached your fiduciary duty towards them, you procured the breach of SGC's contracts with them, and you dishonestly assisted SGC in breaching its fiduciary duty towards them.
- 4.9. Mr Justice Teare found the following facts proved in relation to SGC's business with Markel:
- (1) *"In December 2004 Markel decided to grant a Binding Authority to SGC subject to limits of £1M any one bond and £2.5M any one contractor." Another document was subsequently agreed which "provided for reporting arrangements by means of monthly bordereaux to be provided by SGC to Markel and for ordered files to be kept by SGC."*
 - (2) *"SGC commenced to write bonds pursuant to the Binding Authority. Some were not within the financial limits of the Binding Authority... 33 bonds were written with values in excess of the agreed financial limits between 11 February and 14 November 2005."*
 - (3) *"The bordereaux produced over the period ... did not show that the Markel exposure on any bond was in excess of the agreed financial limits (save for two which were shown as being slightly over...)"*

- (4) *“The Markel Binding Authority was terminated by letter dated 1 November 2005 which gave 30 days notice. On 7 November 2005 Markel requested that no bonds be written during the notice period. However, on 14 November 2005 a bond was written ...in the sum of Euros 4.7m signed by Mr Williams and Mr Felstead. It did not feature in the bordereaux. On 29 November Mr Williams ... confirmed that no bonds had been written since 31 October.”*
- (5) *“In December 2005 Markel requested an audit of the risks which had been bound and arranged for this to be done on 15 December 2005. In the same month Mr Brunswick of Templeton signed documents (“the Templeton Bonds”) that purported to be bonds in favour of beneficiaries of many of the Markel bonds for a sum equal to the difference between the value of the Markel bonds and the agreed limit of Markel’s liability in the Binding Authority.”*
- (6) *“At about the same time copies of the Markel bonds in the bond files of SGC were replaced with copies of documents (“the Markel dummy bonds”) that purported to be bonds written in Markel’s name but for a sum which did not exceed the agreed limit of Markel’s liability in the Binding Authority. The debit notes referring solely to Markel were also replaced by debit notes making reference to Templeton also. Premium advice notes addressed to Templeton were also placed on the file.”*
- (7) *“Neither the Templeton bonds nor the Markel dummy bonds were delivered to the beneficiaries.”*
- (8) *“The Markel audit took place. The bonds which had been issued for sums in breach of the limits were not discovered. They were not in the file. In their place were the Markel dummy bonds and the Templeton bonds.”*
- (9) *“In May 2006 Markel conducted a further audit of SGC’s Markel files. As in December 2005, the bonds which had been issued for sums in breach of the limits were not discovered because they were not in the file. In their place were the Markel dummy bonds and the Templeton bonds.”*
- (10) *“SGC failed to account fully to Markel for the premium that was due to them. The extent of such failure has been assessed as being £963,304, \$285,406 and Euros 73,281.”*

4.10. Mr Justice Teare found the following facts proved in relation to SGC’s business with QBE and Amalfi:

- (1) *“On 22 and 23 September 2005 respectively, an Underwriting Management Agreement (“UMA”) was entered into between Amalfi and SGC and a Binding Authority was entered into between QBE and Amalfi. The commencement date of each was 1 October 2005”.*
- (2) *Prior to this, “QBE required a New Proposal Questionnaire to be completed by SGC. One of the sections asked whether any of the “principle personnel (sic)*

have any criminal convictions for dishonesty or breach of trust.” The reply which was returned ... said “none”.

- (3) *“The Binding Authority between QBE and Amalfi authorised Amalfi to “bind surety bonds” for QBE. The limits were the same as in the Binding Authority between Markel and SGC” save as to timing. “The Management Agreement between Amalfi and SGC authorised SGC “to submit for approval Surety Bonds”. Such bonds were subject to the same limits as those between QBE and Amalfi.”*
- (4) *“In late October 2005, QBE received information that an employee of SGC had a conviction for fraud...An email dated 27 October 2005 from Amalfi’s underwriter states that he asked [Mr Higgins and Mr Felstead] “have you ever been convicted of insurance fraud”? Both replied “no, never”.*
- (5) *SGC subsequently informed Amalfi that Mr Felstead would “leave SGC with immediate effect” and have “no further involvement with the issuance of bonds and/or the administration of our bond account.” “Nevertheless Mr Felstead not only remained physically in the office ... but continued to be involved in SGC’s surety bond business.”*
- (6) *“Bonds were written in the name of QBE/Amalfi which exceeded the financial limits.” There were 30 such bonds, as set out in Annex 2 to Mr Justice Teare’s judgment.*
- (7) *In late December 2005/January 2006 Templeton bonds were signed by Mr Brunswick in favour of certain of the beneficiaries of the QBE/Amalfi bonds (for a sum equal to the difference between the QBE/Amalfi bond and the agreed limit of QBE/Amalfi’s liability under the Management Agreement) but were not delivered to the beneficiaries.”*
- (8) *“Throughout the life of the agreement between SGC and Amalfi monthly bordereaux were prepared for and presented. ...there was not shown on any bordereaux a bond issued in the name of QBE/Amalfi which exposed QBE/Amalfi to liability for a sum in excess of the limits set out in the Management Agreement.”*
- (9) *“In June 2006 Amalfi began an audit of SGC. This did not reveal any bonds which had been written in excess of the agreed limits because the files contained copies of documents that purported to be bonds written within the limits (“the QBE Dummy Bonds”). However the audit was unsatisfactory because of the poor state of SGC’s records. The Management Agreement between Amalfi and SGC was terminated by Amalfi by letter dated 21 August 2006”.*
- (10) *“SGC failed to account fully to QBE/Amalfi for the premium that was due to them. The extent of such failure has been assessed as being £864,170.53.”*

4.11. Mr Justice Teare found that *“General Commercial Limited (“GCL”) is a company registered in the British Virgin Islands”,* and that *“two sums [of 200,000 and £288,000]*

paid to GCL represented premium income in respect of which there had been no accounting to Markel or QBE/Amalfi”.

5. REPRESENTATIONS

5.1. Your written representations alluded to references that you had been denied your rights under Article 6 of the European Convention of Human Rights (ECHR), the right to a fair trial and that material facts had not been placed before the RDC. You did not provide any further details of your allegations.

6. CONCLUSION

6.1. The FSA finds that you are not fit and proper to carry out any functions in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm. In reaching this decision the FSA has noted your representations and concludes that it has taken account of all relevant material facts and information.

6.2. The FSA’s decision is based on the judgement of the High Court as upheld by the Court of Appeal. Mr Justice Teare made the following findings against you:

- (1) That you were “*aware of the limits in the Binding Authority with Markel and in the Management Agreement with QBE/Amalfi*”;
- (2) That you were “*involved in the writing of bonds in the name of Markel and QBE/Amalfi which were in breach of those limits*”;
- (3) That you were “*involved in the creation of the bordereaux which misstated the details of the bonds written by SGC*”;
- (4) That “*when asked by Mr Smith whether [you] had been convicted [you] lied to him by denying that [you] had been so convicted*”;
- (5) That, “*notwithstanding the discovery of [your] conviction for fraud and [your] removal from the schedule of persons authorised to operate the Management Agreement with QBE/Amalfi (of which [you] must have known because [you] signed no further bonds thereafter) [you] continued to be involved in the operation of the Management Agreement*”;
- (6) That you “*had an interest in the monies improperly received by GCL*”; and
- (7) That you “*were involved in the failure to account fully to Markel and QBE/Amalfi in respect of premium, that [you] conspired with others to injure Markel and QBE/Amalfi by obtaining a secret profit and that [you] could not honestly have believed that [your] actions were justified*”.

6.3. The FSA has also considered whether there has been a breach of Article 6 in relation to regulatory proceedings and concludes that to the extent that it is even relevant, there has not been any breach of your right to a fair trial.

- 6.4. The FSA therefore concludes that you were party to a deliberate fraud on the customers of your then employer, SGC, which at the relevant period was conducting regulated activities.
- 6.5. The FSA considers this misconduct very serious because you abused the trust and confidence QBE, Amalfi and Markel placed upon you to secure a profit for yourself and your co-conspirators. You participated in the perpetration of a fraud over an extended period of time, exposing them to significant losses. You continued to play a role in the business of SGC even after your convictions had been exposed.

7. SANCTION

- 7.1. The FSA has considered whether you are a fit and proper person to perform any functions in relation to regulated activities. In doing so, the FSA has had regard to its regulatory requirements and relevant guidance. In assessing your honesty, integrity and reputation for the purpose of considering whether you are a fit and proper person, the FSA has had regard to your part in the conspiracy to defraud Markel and QBE/Amalfi and the breaches of the fiduciary duty owed to them by SGC and by you personally.
- 7.2. The FSA considers that you are not a fit and proper person to perform any functions in relation to regulated activities. The seriousness of your misconduct means that if you continued to perform any functions you would pose a substantial serious risk to the FSA's statutory objectives of maintaining confidence in the financial system and reducing financial crime.
- 7.3. The FSA therefore considers it necessary to make the Prohibition Order, pursuant to section 56 of the Act, to prevent you from performing any function in relation to any activity carried out by any authorised person, exempt person or exempt professional firm.

8. DECISION MAKERS

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

9. IMPORTANT

- 9.1. This Final Notice is given to you in accordance with section 390(1) of the Act.

Publicity

- 9.2. 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.

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

FSA contacts

9.4. For more information concerning this matter generally, you should contact Paul Howick (direct line: 020 7066 7954) of the Enforcement and Financial Crime Division of the FSA.

Signed:

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Tom Spender
Head of Department
FSA Enforcement and Financial Crime Division

Annex A

RELEVANT REGULATORY REQUIREMENTS AND GUIDANCE

1. The Enforcement Guide (“EG”)

- 1.1 EG 9.1 states that the FSA’s power to make prohibition orders under section 56 of the Act helps it work towards achieving its regulatory objectives. The FSA may exercise this power where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.
- 1.2 EG 9.4 sets out the general scope of the FSA’s power in this respect, 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.
- 1.3 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.
- 1.4 EG 9.17 and 9.18 provide guidance on the FSA’s exercise of its power to make a prohibition order against an individual who is not an approved person. The FSA will consider the severity of the risk posed by the individual and may prohibit the individual where it considers this is appropriate to achieve one or more of its regulatory objectives.
- 1.5 EG 9.18 provides that considering whether to exercise its power to make a prohibition order and/or to withdraw that person’s approval against an approved person the FSA will consider all the relevant circumstances of the case. These may include, but are not limited to, the factors set out at EG 9.9, including the following:
 - (1) whether the individual is fit and proper to perform functions in relation to regulated activities, where the main criteria for assessing the fitness and propriety of approved persons are set out in the module of the FSA Handbook entitled "The Fit and Proper Test for Approved Persons" ("FIT"), in particular FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness) (EG 9.9(2));
 - (2) the relevance and materiality of any matters indicating unfitness (EG 9.9(5));
 - (3) the length of time since the occurrence of any matters indicating unfitness (EG 9.9(6));
 - (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system (EG 9.9(8)).

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

- 2.1 The purpose of FIT is to outline the 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.
- 2.2 In this instance the criteria set out in FIT are relevant in considering whether the FSA may exercise its powers to make a prohibition order against an individual in accordance with EG 9.9.
- 2.3 FIT 1.3 provides that the FSA will have regard to a number of factors when assessing a person’s fitness and propriety. One of the most important considerations will be the person’s honesty, integrity and reputation.
- 2.4 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 2.1.3 G. The guidance includes:
 - (1) whether the person has been the subject of any adverse finding or any settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a body corporate (FIT 2.1.3 G (2));
 - (2) whether the person has contravened any of the requirements and standards of the regulatory system or the equivalent standards or requirements of other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies; (FIT 2.1.3 G (5));
 - (3) whether the person has been the subject of any justified complaint relating to regulated activities (FIT 2.1.3 G (6));
 - (4) whether the person has been a director, partner, or concerned in the management of a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation or within one year of that connection (FIT 2.1.3 G (9));
 - (5) 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 2.1.3 G (10)).