
FINAL NOTICE

To: Daniel William Hassell
D.O.B: 30 March 1965
Reference Number: DWH01048 (inactive)
Dated: 7 February 2011

TAKE NOTICE: the Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice of its decision to prohibit you from performing any function in relation to any regulated activity carried on by any authorised, exempt person or exempt professional firm.

1. **ACTION**

- 1.1. The FSA gave Mr Hassell a Decision Notice on 7 February 2011 which notified Mr Hassell that pursuant to section 56 of the Financial Services and Markets Act 2000 (the “Act”), the FSA had decided to impose on Mr Hassell a prohibition order, prohibiting him from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm on the grounds that he is not a fit and proper person.
- 1.2. The prohibition order will take effect two days after the date of the Final Notice.
- 1.3. Mr Hassell confirmed on 31 January 2011 that he will not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber).

2. REASONS FOR THE ACTION

- 2.1. On 17 June 2010 the FSA issued a [Final Notice](#) in relation to Vantage Capital Markets LLP (“VCM”) imposing a financial penalty of £1 million (£700,000 after early settlement discount) on VCM for contravening section 59 of the Act and breaching Principle 3 of the FSA’s Principles for Business. The matters giving rise to these breaches were that, from 29 July 2005 to 31 December 2009 (“the relevant period”), Mr Hassell performed the Partner Function (CF4) at VCM and had a significant influence over the affairs of VCM despite not being approved to do so by the FSA. VCM failed to take reasonable care to ensure that Mr Hassell did not do so, and did not have adequate systems and controls to limit his influence and control.
- 2.2. Throughout the relevant period, Mr Hassell knowingly performed the Partner Function at VCM when he was not approved to do so despite being aware that the FSA did not consider him to be fit and proper to perform that role. This demonstrates a lack of integrity. The effect was that he was able to exercise a significant influence over the activities of VCM without any oversight by the FSA.
- 2.3. Accordingly, for the reasons set out below and having agreed the facts and matters relied on, the FSA imposes a prohibition order on Mr Hassell.

3. RELEVANT STATUTORY PROVISIONS, RULES AND GUIDANCE

Relevant Statutory Provisions

- 3.1. The FSA’s regulatory objectives, set out in section 2(2) of the Act, are: market confidence, public awareness, the protection of customers and the reduction of financial crime.

Partner Function (CF4)

- 3.2. The Partner Function is a governing function and is described at SUP 10.6.17R to SUP 10.6.23R.
- 3.3. SUP 10.6.1G sets out the Introduction to the Governing Functions. SUP 10.6.1G states:

‘Every firm will have one or more persons responsible for directing its affairs. These persons will be performing the governing functions and will be required to be approved persons unless the application provisions in SUP 10.1, or the particular description of a controlled function, provide otherwise. For example, each director of a company incorporated under the Companies Acts will perform the governing function in relation to that company.’

- 3.4. SUP 10.6.17R defines the Partner Function:

- (1) If a firm is a partnership, the partner function is the function of acting in the capacity of a partner in that firm.*
- (2) If the principal purpose of the firm is to carry on one or more regulated activities, each partner performs the partner function.*

(3) *If the principal purpose of the firm is other than to carry on regulated activities:*

(a) *a partner performs the partner function to the extent only that he has responsibility for a regulated activity; and*

(b) *a partner in a firm will be taken to have responsibility for each regulated activity except where the partnership has apportioned responsibility to another partner or group of partners.'*

3.5. By virtue of SUP 10.6.21R and 10.6.22G the Partner Function applies to LLPs. SUP 10.6.21R states:

'If a firm is a limited liability partnership, the partner function extends to the firm as if the firm were a partnership and a member of the firm was a partner.'

3.6. A 'partner' is defined by the FSA handbook glossary as:

'(in relation to a firm which is a partnership) any person appointed to direct its affairs including:

(a) *a person occupying the position of a partner (by whatever name called); and*

(b) *a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the partners are accustomed to act.'*

Prohibition

Fit and Proper Test for Approved Persons

3.7. The part of the FSA Handbook entitled "The Fit and Proper Test for Approved Persons" ("FIT") sets out guidance on how the FSA will assess the fitness and propriety of a person to perform a particular controlled function.

3.8. 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.

3.9. 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 and that one of the most important considerations will be the person's honesty, integrity and reputation.

3.10. FIT 2.1.1G provides that, in determining a person's honesty, integrity and reputation, the FSA will have regard to factors including, but not limited to, those set out in FIT 2.1.3G.

3.11. The FSA's policy in relation to prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG").

3.12. 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 its regulatory 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.

- 3.13. EG 9.4 sets out the general scope of the FSA's powers in relation to prohibition orders, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. Depending on the circumstances of each case, the FSA may seek to prohibit individuals from performing any class of function in relation to any class of regulated activity, or it may limit the prohibition order to specific functions in relation to specific regulated activities. The FSA may also make an order prohibiting an individual from being employed by a particular firm, type of firm or any firm.
- 3.14. EG 9.5 provides that the scope of a prohibition order will depend 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 posed by him to consumers or the market generally.
- 3.15. EG 9.8 provides that when the FSA has concerns about the fitness and propriety of an approved person, it may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw its approval, or both. In deciding whether to withdraw its approval and/or make a prohibition order, the FSA will consider in each case whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions, for example public censures or financial penalties, or by issuing a private warning.
- 3.16. EG 9.9 states that, when it decides to exercise its power to make a prohibition order against an approved person and/or withdraw its approval, the FSA will consider all the relevant circumstances of the case. These may include, but are not limited to, the following factors:
 - (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 in terms of honesty, integrity and reputation are set out in FIT 2.1);
 - (2) the relevance and materiality of any matters indicating unfitness;
 - (3) the length of time since the occurrence of any matters indicating unfitness;
 - (4) 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;
 - (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.
- 3.17. EG 9.10 provides that the FSA may have regard to the cumulative effect of a number of factors.

4. **FACTS AND MATTERS RELIED ON**

Background

- 4.1. During the relevant period, VCM was an authorised person and it carried on business as an inter-dealer broker with approximately 80 brokers who used its facilities.
- 4.2. VCM was formed in 2004 and during the relevant period had three capital partners. Mr Hassell, whilst not being a capital partner, was involved in its formation. Mr Hassell performed a senior management role at VCM (referred to in this Notice as a “Partner” role).
- 4.3. A significant level of VCM’s business was attributable to those desks which joined VCM from Mr Hassell’s former business in its merger with VCM’s predecessor company in 2002.
- 4.4. VCM applied for authorisation on 1 November 2004 and at the same time applied for FSA approval for Mr Hassell to perform the Partner Function. VCM’s Regulatory Business Plan, submitted with its application for authorisation, stated that VCM’s brokerage division would be under the direct supervision of Mr Hassell as Head of Brokerage.
- 4.5. At the time of VCM’s application for authorisation, Mr Hassell was the subject of an FSA investigation. In light of that investigation, the FSA communicated its concerns to VCM about approving Mr Hassell to perform a controlled function and VCM subsequently withdrew its application in relation to Mr Hassell on 5 May 2005. VCM became authorised on 29 July 2005.
- 4.6. On 14 February 2007, the FSA notified Mr Hassell that it had discontinued its investigation into his conduct. On 15 February 2007, VCM applied for a second time for Mr Hassell to hold approved person status. On 17 May 2007, the FSA informed VCM and Mr Hassell that, due to issues arising during its investigation, it was not satisfied that Mr Hassell was a fit and proper person to hold the Partner Function. VCM subsequently withdrew its application for Mr Hassell to be an approved person.

Mr Hassell’s role and influence at VCM

- 4.7. Mr Hassell has worked in the financial services industry since 1983. Throughout the relevant period Mr Hassell was not an approved person.
- 4.8. Mr Hassell did not have an official title or job description at VCM other than “consultant”. However, in practice, despite not being approved to perform a controlled function, Mr Hassell acted as a Partner of VCM and his contribution to, and influence over, VCM was significant. In particular, during the relevant period:

- (1) Mr Hassell's historical financial and business contribution to the business of VCM was significant because:
 - (a) approximately half of the level of VCM revenue was attributable to that part of the business previously owned by Mr Hassell; and
 - (b) a significant number of VCM staff were accustomed to considering Mr Hassell as a senior manager of the business having come with him to VCM or having been recruited by Mr Hassell to VCM;
 - (2) Mr Hassell received approximately a third of the profits, the remaining two-thirds being split between the capital partners;
 - (3) there was an expectation that Mr Hassell would receive a third of the proceeds of a sale or float of VCM;
 - (4) Some VCM employees viewed Mr Hassell as a Partner;
 - (5) Mr Hassell was, on occasion, held out to be a Partner and/or owner of VCM in correspondence with third parties;
 - (6) Mr Hassell was often included, together with VCM management, in the circulation of management information including accounts and financial information;
 - (7) Mr Hassell attended a number of management and board meetings and had significant involvement in strategic planning at VCM;
 - (8) Mr Hassell had an intrinsic and indispensable part in the broker recruitment process; and
 - (9) Mr Hassell was involved in resolving desk disputes, some contract negotiations and shared an office with one of the capital partners.
- 4.9. These factors amounted to Mr Hassell having a significant influence on the regulated affairs of VCM and performing the Partner Function.

Identification of concerns

- 4.10. Between 19 February and 3 March 2009, the FSA conducted an ARROW visit to VCM. On 16 April 2009, FSA Supervision requested that VCM write to the FSA setting out Mr Hassell's role and responsibilities, who he engaged with in the course of his work, to confirm that Mr Hassell had no economic interest in VCM and that he was not undertaking any approved person role.
- 4.11. As a result of issues arising out of the ARROW visit, in early July 2009, the FSA notified VCM that an investigation had been commenced into its conduct regarding Mr Hassell's role at VCM. In August 2009, as a result of the ARROW review, the FSA required VCM to obtain an independent report pursuant to Section 166 of the Act which reviewed and commented upon governance and control arrangements within VCM.

- 4.12. In October 2009, VCM voluntarily instructed regulatory compliance consultants to specifically review the activities performed (or perceived to have been performed) by Mr Hassell in relation to controlled functions. In November 2009, the regulatory compliance consultants prepared a report using a 'traffic light' system to set out its findings, with 'Red' representing 'High risk conduct or perception' ("the Compliance Report"). In relation to Mr Hassell performing the Partner Function at VCM, the Compliance Report identified six high (red) risks, seven medium (amber) risks and six low (and which would not normally constitute activity warranting a Controlled Function) (green) risks. The following sets out the six red risks:

Red risks

- (1) *'Possible perception of the junior or more recently recruited staff is that Mr Hassell is a Capital Partner. This could lead to Mr Hassell receiving e-mails[...] and increase the risk that Mr Hassell makes a decision'*.
 - (2) *'By attending the Board meetings there is an increased risk that Mr Hassell starts to direct the affairs of the business (Decision making, directing, instructing).'*
 - (3) *'Mr Hassell would possibly be on the Board if the circumstances were different...Although Mr Hassell's comments indicate that he has been restrained it also shows that there is a desire and, therefore, a risk that he acts in the capacity of the Board'*.
 - (4) *'Mr Hassell is copied in on various confidential documents (Revenues, Accounts, Pay)...This could highlight that Mr Hassell is perceived as having access to the same level of information as the Capital Partners'*.
 - (5) *'Last year Mr Hassell was paid a draw and relatively large discretionary bonus...There may be a risk that Mr Hassell is seen as a Capital Partner in all but name, i.e. is Mr Hassell paid a relatively significant bonus to compensate for a lack of equity stake?'*
 - (6) *'When providing a personal reference for a Head of Broking Desk, Mr Hassell described himself as 'Partner and Consultant to VCM LLP'...To externally be communicating that the position is one of 'Partner' is open to misinterpretation'*.
- 4.13. Whilst the risks highlighted areas where Mr Hassell could be performing or could be perceived to be performing the Partner Function, the Compliance Report did not express a view on whether Mr Hassell was performing the Partner Function. The risks highlighted are consistent with the findings of the FSA that Mr Hassell acted as a Partner of VCM.

The FSA's findings

- 4.14. Mr Hassell knowingly performed the Partner Function at VCM when he was not approved to do so. He acted as a Partner of VCM, was content to be held out to be a Partner of VCM and expected to be treated as a Partner.

- 4.15. Mr Hassell performed this role despite his actual knowledge of the FSA's concerns about his fitness and propriety as set out to VCM by the FSA in May 2005 and to him personally in May 2007. His actions demonstrate a lack of integrity such that he is not a fit and proper person.

5. ANALYSIS OF BREACHES

- 5.1. Taken as a whole, it is clear that Mr Hassell had an important role at VCM throughout the relevant period and that he performed the Partner Function.
- 5.2. By reason of the facts and matters set out above, Mr Hassell's actions demonstrate that he is not a fit and proper person. He acted as a Partner of VCM over a protracted period of time in the knowledge that he was not approved to do so and despite being aware that the reason the FSA had not approved him was as a result of concerns regarding his fitness and propriety. He did not take any steps to limit the remit of his role and influence at VCM. The effect was that he was able to exercise a significant influence over the activities of VCM without any oversight by the FSA.

6. ANALYSIS OF SANCTIONS

- 6.1. The FSA's effective use of its power to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities helps the FSA to work towards its regulatory objectives of protecting consumers, promoting public awareness, maintaining confidence in the financial system and reducing financial crime.
- 6.2. The FSA is satisfied that you are not a fit and proper person to perform regulated activities and should therefore be prohibited from performing any function under section 56 of the Act. The FSA has had regard to the guidance in Chapter 9 of the FSA's Enforcement Guide ("EG") in deciding that a prohibition order is appropriate in this case. The relevant sections of EG are set out in section 3 of this Notice.

7. DECISION MAKER

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

8. IMPORTANT

- 8.1. This Final Notice is given to Mr Hassell 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, please contact Helena Varney (direct line: 020 7066 1294) or Philip Annett (direct line: 020 7066 0534).

**Tracey McDermott
Head of Department
FSA Enforcement and Financial Crime Division**