
FINAL NOTICE

To: Gerald Classey

Of: 19 Myrtle Rd
Sutton
Surrey
SM1 4BX

Date: 27 September 2010

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about a prohibition from performing any controlled function in relation to regulated activities carried on by any authorised person, exempt person or exempt professional firm.

1. THE PENALTY

- 1.1. The FSA gave you, Gerald Classey, a Decision Notice on 27 September 2010 which notified you that pursuant to 56 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to prohibit you from performing any controlled function in relation to regulated activities carried on by any authorised person, exempt person or exempt professional firm.
- 1.2. You confirmed on 21 July 2010 that you will not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber).
- 1.3. Accordingly, for the reasons set out below, the FSA prohibits you from performing any controlled function in relation to regulated activities carried on by any authorised person, exempt person or exempt professional firm.

2. REASONS FOR THE ACTION

Background

- 2.1. The FSA took this action as a result of:
 - (1) your conduct in the performance of the CF 4 (Partner) Controlled Function at First Colonial Investments LLP (“FCI”/“the Firm”) between 6 June 2008 and 28 April 2009 (“the Relevant Period”); and
 - (2) your non-disclosure of material information on your applications to the FSA for approval to hold controlled functions, including your application to hold the controlled functions of CF 4 (Partner) and CF 30 (Investment Adviser) at FCI.
- 2.2. During the Relevant Period, your conduct fell short of the FSA’s prescribed regulatory standards and demonstrated a serious lack of integrity and competence and capability.
- 2.3. You were approved to hold the controlled functions of CF 4 (Partner) and CF 30 (Investment Adviser) at FCI on 6 June 2008. You were the only holder of a significant influence controlled function at FCI from 9 June 2008.
- 2.4. The controlled function of CF4 (Partner) is a governing and significant influence function that carries substantial responsibility for ensuring that firms meet their regulatory responsibilities. You failed to discharge that responsibility.
- 2.5. During the Relevant Period, you demonstrated a serious lack of competence and capability in carrying out your controlled function of partner whilst working at FCI. You did not understand or take reasonable steps to understand your responsibilities as an approved person or to carry out your CF 4 (Partner) controlled function adequately. Those duties were carried out by an unapproved person who ran the day to day business of FCI.
- 2.6. In your role as a holder of a significant influence function you failed to recognise or take any steps to deal with this important governance issue. As a result, you did not take any adequate steps to satisfy yourself that FCI’s business was being conducted in accordance with regulatory requirements.
- 2.7. You failed to disclose on your application form in relation to FCI matters of a material nature to the FSA dating from 1992. You also failed to disclose this information on two subsequent applications to the FSA for approval to hold a controlled function (later withdrawn). Accordingly, you have demonstrated that you lack integrity in the fact that you did not disclose these matters on your applications to the FSA.
- 2.8. In view of the nature and seriousness of the breaches, the FSA has concluded that you fail to meet the minimum regulatory standards in terms of integrity, competence and capability and are not a fit and proper person to perform any controlled functions in relation to regulated activities.

- 2.9. The failings in respect of governance had an impact on the practical operation of FCI's business and ultimately resulted in consumer detriment. The Firm used unsuitable sales practices, failed to deliver shares to clients, used client money for business purposes, issued unclear, unfair and potentially misleading financial promotions and carried out trades after it ceased to be authorised or exempt as an appointed representative after 1 April 2009.
- 2.10. As points of mitigation, the FSA recognises that you were not directly involved in most of the stockbroking operations of FCI which exhibited this misconduct and that you received only limited indications of possible misconduct in this part of the Firm's activities. You have also stated that you were unaware that you were the only holder of a significant influence function at the Firm for much of the Relevant Period.
- 2.11. Accordingly, the FSA proposes to make an order pursuant to section 56 of the Act prohibiting you from performing any controlled function in relation to regulated activities carried on by any authorised person, exempt person, or exempt professional firm ("the Prohibition Order").

3. RELEVANT STATUTORY PROVISION AND GUIDANCE

- 3.1. The FSA's statutory objectives, set out in section 2(2) of the Act, include the protection of consumers and the maintenance of market confidence. The FSA is authorised by the Act to exercise the following powers.
- 3.2. Section 56 of the Act states that the FSA may make an order prohibiting an individual from performing a specified function, any function falling within a specified function or any function where 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.

Relevant Guidance

- 3.3. In deciding to take the action proposed, the FSA has had regard to guidance published in the FSA Handbook and in the Enforcement Guide ("EG"). The FSA's policy for exercising its power to make a prohibition order is set out in Chapter 9 of EG.
- 3.4. EG 9.9 and 9.18 state that 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. The FSA will also take into account all the relevant considerations when deciding to make a prohibition order. These considerations include:
 - (1) whether the individual is fit and proper to perform functions in relation to regulated activities, assessed against the criteria in the fit and proper test for approved persons ("FIT");
 - (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; and
 - (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
- 3.5. EG 9.12 provides examples of behaviour which have previously resulted in the FSA deciding to issue a prohibition order. These examples include a failure to disclose material considerations on application forms, such as criminal convictions, and a serious lack of competence.

Fit and proper criteria

- 3.6. The FSA Handbook sets out the fit and proper test for approved persons. The purpose of FIT is to set out the main criteria for assessing the fitness and propriety of a candidate for a controlled function, and to assess the continuing fitness and propriety of an approved person.
- 3.7. FIT 1.3.1G provides that the FSA will have regard to certain factors when assessing fitness and propriety. Two of the most important factors will be the person's honesty and integrity, and their competence and capability.
- 3.8. In determining a person's honesty and integrity, FIT 2.1.3G provides that the FSA will have regard to all relevant matters including, but not limited to, whether the person has:
- (1) been convicted of any criminal offence (particular consideration will be given to offences of dishonesty);
 - (2) 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; and
 - (3) demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system.
- 3.9. In determining a person's competence and capability, FIT 2.2.1G provides that the FSA will have regard to all relevant matters including, but not limited to, 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 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.

4. FACTS AND MATTERS RELIED ON

- 4.1. FCI was retail stockbroking firm in central London. It was set up in 2006 to conduct stockbroking activities, specialising in offerings of a company's shares to raise capital privately prior to its initial public offering ("pre-IPO") and smaller companies listed

on the AIM and PLUS markets. Shares from a pre-IPO are likely to be very difficult to sell until a public offering is completed. PLUS is a recognised investment exchange and AIM is the London Stock Exchange's Alternative Investment Market; both AIM and PLUS specialise in smaller growing companies.

- 4.2. FCI operated as an appointed representative of Direct Sharedeal Limited ("DSL") from 7 September 2007 to 31 March 2009. FCI is now in liquidation. The Official Receiver was appointed on 4 November 2009. The FSA published a Final Notice in respect of DSL on 18 February 2010.
- 4.3. FCI's sales advisers made telephone sales promoting high risk securities to retail clients. You joined FCI in 2008. Your role was described as "Wealth Management Partner" in FCI organograms and your job description stated that your chief responsibility was the promotion and management of FCI's wealth management programme, which included liaising and developing business relationships with high net worth individuals.

Application and approval to hold CF 4 (Partner) and CF 30 (Investment Adviser) controlled functions

- 4.4. On 9 May 2008, you signed a Form A application seeking approval from the FSA to hold the following controlled functions: CF 4 (Partner) and CF 30 (Investment Adviser). The Approved Persons regime enables the FSA to hold individuals to account for the carrying out of their responsibilities in relation to the firm for which they have been approved to perform Controlled Functions. Approved Persons should ensure that they are performing the Controlled Functions that they are approved to hold.
- 4.5. The significant influence functions, including governing functions such as CF4 (Partner), are those that are likely to result in the person responsible for their performance exercising a significant influence on the conduct of a firm's affairs.
- 4.6. The Form A application requires that any conviction involving fraud, theft, tax offences or other dishonesty must be disclosed, whether spent or not and whether or not in the United Kingdom. Any current criminal proceedings must also be disclosed. The declaration of the applicant includes confirmation that the information in the Form is accurate and complete to the best of the applicant's knowledge and belief.
- 4.7. The Form A application states that it should not be assumed that information is known to the FSA merely because it is in the public domain or has previously been disclosed to the FSA or another regulatory body and that if there is any doubt about the relevance of information, it should be included.
- 4.8. In 1992 you were convicted in the USA for two minor offences which required disclosure in your Form A application. You have never disclosed this in any application to the FSA for approval to hold any controlled functions. You did not disclose it in your application to hold controlled functions in respect of FCI and you did not disclose it in two subsequent applications to the FSA to become an approved person dated 21 May 2009 and 1 November 2009.

Failure to carry out your regulatory responsibilities

- 4.9. You held yourself out as a partner in promoting FCI's business, and in particular in promoting and carrying out the wealth management business at FCI. You stated in interview that you were not aware that you held FSA approval to carry out the CF 4 (Partner) function. You stated that the Form A application had been completed by FCI's compliance officer and that you believed that it was in relation to an application for approval as an investment adviser. However, you accepted that you signed the application form after it had been completed.
- 4.10. Furthermore, you held yourself out as a partner of FCI. You signed as a partner on the limited liability partnership mandate on 14 August 2008 for FCI's business bank account, and you were described as a CF 4 in FCI's marketing material. Therefore, you should have been aware that you had, or should have, applied for approval for a significant influence function.
- 4.11. You assumed that others at FCI would ensure that FCI complied with the relevant regulatory requirements, despite being the only approved significant influence holder at FCI. You have stated that you were not aware you were the only significant influence function holder for much of the Relevant Period. You did not take any steps to satisfy yourself that FCI sales practices were compliant and that it had effective compliance monitoring. As a result, you failed to appreciate that FCI's sales practices and systems and controls were seriously deficient in a number of respects. Furthermore, you did not ensure that bank accounts, to which you were an authorised signatory, were used to hold client monies in accordance with the FSA's Client Asset rules.
- 4.12. During the Relevant Period, FCI:
- (1) held client monies in FCI's ordinary business bank account, and in a bank account in the name of another related company in breach of the FSA's rules relating to clients' assets;
 - (2) did not segregate client money from FCI's own money with the result that client money was used to pay ordinary business expenses;
 - (3) used unsuitable sales practices in recommending and selling small cap shares to its clients;
 - (4) failed on several occasions to deliver shares it had sold to its clients;
 - (5) invited clients to invest in a related company, First Colonial Wealth Management Limited ("FCWM"), on the basis of unfair, unclear and potentially misleading statements and financial promotions regarding the flotation of FCWM and a buy-back guarantee from FCI. Clients may have invested in FCWM in reliance on those representations by FCI; and
 - (6) carried out regulated activities after FCI's status as an appointed representative had been terminated.
- 4.13. The FSA recognises that you were not directly involved in most of the stockbroking activities of the Firm, and that you received only limited indications of possible misconduct in this part of the Firm's activities. The FSA also notes that by late April

2009 you did bring to the attention of some of FCI's investors details of some of FCI's misconduct. However, you did not bring this to the attention of the FSA.

- 4.14. FCI stopped trading in or around April 2009 and is now in liquidation. FCWM has now been dissolved.

5. ANALYSIS OF BREACHES AND SANCTION

- 5.1. In considering whether to impose a prohibition order, the FSA has had regard to the provisions of the Enforcement Guide ("EG"), and in particular the provisions of EG 9.9.
- 5.2. By reason of the facts and matters set out above, you have shown a lack of integrity by virtue of your failure to disclose your past convictions to the FSA on three occasions.
- 5.3. In order to obtain individual approval, applicants must satisfy the FSA of their fitness and propriety. The FSA considers several factors when assessing the fitness and propriety of an applicant, the most important including their honesty and integrity. In assessing this, the FSA will consider any criminal convictions or previous criminal record.
- 5.4. Non-disclosure of adverse information to the FSA undermines its ability to perform a sufficient assessment of an applicant's fitness and propriety. The offences in question took place 18 years ago, but non-disclosure suggests that you do not understand the duty to be open and co-operative in your relationship with the FSA and shows a lack of integrity in your dealings with the FSA.
- 5.5. You have also shown a lack of competence and capability by failing to carry out adequately the significant influence controlled function of partner at FCI. The FSA expects senior management to understand their responsibilities in relation to assuming significant influence controlled functions and their obligations as a person approved to perform such functions.
- 5.6. You failed to give sufficient thought to the consequences that would follow from submitting an application to the FSA for approval for a CF 4 position, and in holding yourself out as a partner at FCI. You failed to understand that you were making such an application and you failed to appreciate that you were the only approved significant influence function at FCI from 9 June 2008.
- 5.7. Accordingly, you pose a risk to consumers and to maintaining confidence in the financial system by your assumption of such responsibilities without appreciation of your obligations that followed from your approval as CF 4 (Partner).
- 5.8. As a result, having regard to the regulatory objectives to maintain confidence in the financial system and to secure the appropriate degree of protection for consumers, the FSA considers it appropriate to make an order prohibiting you from performing any controlled function in relation to regulated activities carried out by any authorised person, exempt person or exempt professional firm.

6. DECISION MAKERS

- 6.1. 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.

7. IMPORTANT

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

Publicity

- 7.2. 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.
- 7.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 7.4. For more information concerning this matter generally, you should contact Stephen Robinson (Tel: 020 7066 1338) of the Enforcement and Financial Crime Division of the FSA.

Georgina Philippou
Head of Department
FSA Enforcement and Financial Crime Division