
FINAL NOTICE

To: **Adrian Shillaker**
Date of birth **18 November 1944**
Individual reference: **APS00025**
Date **21 May 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 decision to withdraw your approval and to make a prohibition order.

1. ACTION

1.1. The FSA gave you a Decision Notice on 20 May 2010 which notified you that it had decided to:

- (1) withdraw, pursuant to section 63 of the Financial Services and Markets Act 2000 (“the Act”), the approval granted to you under section 59 of the Act to perform controlled functions in relation to Griffiths McAlister Insurance Brokers Limited (“Griffiths McAlister”); and
- (2) make 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 person, exempt person or exempt professional firm (“the Prohibition Order”).

- 1.2. You confirmed on 3 March 2010 that you will not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber).
- 1.3. Accordingly, for reasons set out below, the FSA has today withdrawn your approval and made a prohibition order against you, which has effect from today.
- 1.4. The FSA had sought to impose a financial penalty of £70,000 on you, pursuant to section 66 of the Act for failing to comply with Statement of Principles 1, 4 and 7 of the FSA’s Statements of Principle and Code of Practice for Approved Persons (“the Statements of Principle”), issued under section 64 of the Act.
- 1.5. However, you have provided verifiable evidence that imposing such a financial penalty would cause you serious financial hardship. Consequently, the FSA has decided not to impose a financial penalty on you.
- 1.6. You agreed to settle this matter at an early stage of the proceedings.

2. REASONS FOR ACTION

- 2.1. By its Decision Notice dated 20 May 2010 the FSA gave notice that it has decided to take the action referred to above.
- 2.2. The FSA has taken this action as a result of your conduct, as an approved person, at Griffiths McAlister. From 14 January 2005, you were approved to perform the following controlled functions:
 - (1) Controlled Function 1 (Director) (“CF1”);
 - (2) Controlled Function 3 (Chief Executive) (“CF3”);
 - (3) Controlled Function 11 (Money Laundering Reporting) (“CF11”);
 - (4) Controlled Function 28 (Systems and controls) (“CF28”); and
 - (5) Controlled Function 29 (Significant management) (“CF29”).

You were also responsible for insurance mediation at Griffiths McAlister. You were also approved to perform Controlled Function 8 (Apportionment and Oversight) (“CF8”) at Griffiths McAlister from 14 January 2005 until 31 March 2009.

2.3. Whilst an approved person, your conduct fell short of the FSA’s prescribed regulatory standards for approved persons. In particular, you:

- (1) failed, in your capacity as an approved person performing CF1, CF3 and CF8 to act with integrity. Specifically, you knowingly transferred, over a period of approximately two years, money to Griffiths McAlister to which it was not entitled. You transferred money from Griffiths McAlister’s client money account to Griffiths McAlister’s business accounts, resulting in a deficit in the client money account of at least £79,000. As a result, you have breached Statement of Principle 1;
- (2) failed, in your capacity as an approved person performing CF1, CF3 and CF8 to take reasonable steps to ensure that Griffiths McAlister complied with the relevant requirements of the regulatory system. Specifically, you failed to ensure that Griffiths McAlister organised and maintained client money in accordance with the Client Assets sourcebook (“CASS”) which forms part of the FSA Handbook. As a result, you have breached Statement of Principle 7; and
- (3) failed, in your capacity as an approved person, to deal with the FSA in an open and cooperative way. In particular, you:
 - (a) provided Retail Mediation Activity Returns (“RMARs”) for Griffiths McAlister containing inaccurate information to the FSA; and
 - (b) failed to inform the FSA about matters of which the FSA would reasonably have expected notice, specifically an HMRC winding up petition and two county court judgments issued against Griffiths McAlister and a director’s disqualification order made against you.

As a result, you have breached Statement of Principle 4.

- 2.4. The failings outlined in paragraph 2.3 are viewed by the FSA as being particularly serious because Griffiths McAlister's customers were exposed to a serious risk of the loss or diminution of their money. However, the FSA notes that Griffiths McAlister appointed an appropriate third party who reported that there were sufficient funds in Griffiths McAlister to pay its creditors, including customers. You have also taken steps to ensure that monies due to customers have been repaid.
- 2.5. The FSA proposed to impose a financial penalty on you in connection with the breaches of Statements of Principle 1, 4 and 7. However, you have provided verifiable evidence that imposing such a financial penalty would cause you serious financial hardship. Consequently, the FSA has decided not to impose a financial penalty on you.
- 2.6. In addition, as a result of the nature and seriousness of the breaches outlined at paragraphs 2.3 above, the FSA has concluded that you have failed to meet minimum regulatory standards in terms of honesty and integrity, and competence and capability, and are not fit and proper to perform any functions in relation to regulated activities carried on by authorised persons, exempt persons and exempt professional firms. The director's disqualification order made against you on 28 April 2009 also provides further evidence that you do not possess the fitness and propriety to operate in the regulated industry. Accordingly the FSA has decided to withdraw your approval and to prohibit you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.
- 2.7. This action supports the FSA's furtherance of its market confidence and consumer protection objectives.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

- 3.1. Annex 1 below sets out the relevant statutory powers, regulatory provisions and policy relied upon.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. Griffiths McAlister was a general insurance broker based in West Sussex and was authorised by the FSA to arrange regulated general insurance contracts on 14 January 2005.
- 4.2. Griffiths McAlister had approximately 2,500 to 3,000 customers for whom it arranged general insurance contracts including motor, travel and home insurance. Griffiths McAlister placed business with approximately 100 insurance providers.

Misuse of money from the Client Money Account

- 4.3. Customers paid their insurance premiums to Griffiths McAlister. The premiums were placed into a client money bank account held in the name of Griffiths McAlister (“the client money account”). Griffiths McAlister would then pass the premiums from the client money account to the insurer. Some insurers would not request the premium from Griffiths McAlister for two or three months after it had been paid by the customer.
- 4.4. Over a period of two years, you withdrew money from the client money account that was due to be paid to insurers. You used this money to fund Griffiths McAlister’s business expenses. Your misappropriation of funds resulted in the client money account running at a deficit, in that it contained insufficient money to pay the premiums due to insurers. By 31 January 2009 this deficit had grown to £79,174.
- 4.5. As a result of the deficit in the client money account and in order to continue to pay the premiums due to insurers, you used the premiums Griffiths McAlister received from other customers.
- 4.6. The FSA’s investigation established that:
 - (1) you misappropriated funds out of the client money account to which Griffiths McAlister was not entitled over a two year period; and
 - (2) initially, you did not understand that the money you took from the client money account was money to which Griffiths McAlister was not entitled. However, once you became aware that you were using funds from the client money account to which Griffiths McAlister was not entitled, to fund Griffiths McAlister’s business expenses, you continued to do so because you

believed that Griffiths McAlister's financial position was sufficient to make good any deficit in the client money account.

- 4.7. The FSA considers your conduct demonstrates a lack of integrity, and in turn, you have breached Statement of Principle 1. This is because, for approximately two years, you knowingly used money given to Griffiths McAlister in good faith by its customers for purposes other than those for which the payments were intended.

Failure to ensure Griffiths McAlister complied with CASS

The way in which client money was held by Griffiths McAlister

- 4.8. In accordance with CASS 5, depending on the type of contract Griffiths McAlister had with an insurer, it was required to either treat the insurance premium it received from a customer as "client money" or "non-client money".
- 4.9. Griffiths McAlister had contracts with a large number of insurers. Some of these contracts required Griffiths McAlister to treat insurance premiums from customers as client money and others as non-client money.
- 4.10. Griffiths McAlister was required, pursuant to CASS 5.5.3R, to hold client money in a designated bank account, separate from non-client money. However, you failed to ensure that Griffiths McAlister had distinct accounts for client money and non-client money and placed all the insurance premiums Griffiths McAlister received from customers into a single account. You therefore failed to ensure that Griffiths McAlister properly segregated client money from non-client money in accordance with CASS 5.5.3R.
- 4.11. Client money accounts can be set up as statutory trusts. One benefit of conferring trust status on a client money account is that client money is protected and returned to its rightful owner in the event of the failure of a firm. Griffiths McAlister's client money account was set up as a statutory trust. However, by allowing Griffiths McAlister to place non-client money into the client money account, you compromised the trust status of that account. This meant that, in the event of Griffiths McAlister's liquidation or administration, customers may not be afforded the protection normally conferred by a trust and may not be entitled to the return of their money.

Monitoring of client money

- 4.12. Pursuant to CASS 5.5.63R, Griffiths McAlister was required to carry out client money calculations every 25 business days. A further reconciliation was required to be carried out within ten business days of the calculation. You were the person at Griffiths McAlister responsible for ensuring that these client money procedures were properly carried out. When, on occasion, you did carry out these procedures you failed to use the results of your calculations to ensure that client money held in the client money account was properly segregated from non-client money and/or to determine the extent of the deficit in the client money account.
- 4.13. Pursuant to Rules 3.10.4 and 3.10.6 of the Supervision Manual (“SUP”), which forms part of the FSA Handbook, you were also required to ensure that Griffiths McAlister appointed an independent auditor to carry out an annual client money audit at Griffiths McAlister. However, you failed to appoint a third party to carry out a client money audit at Griffiths McAlister.
- 4.14. The FSA concludes that, by failing to ensure that Griffiths McAlister’s client money account was properly reconciled and audited, you failed to take reasonable steps to ensure that Griffiths McAlister complied with the relevant requirements of the regulatory system. The FSA also concludes that your actions demonstrated that you did not have sufficient regard for the responsibility you held for safeguarding customers’ money and rendered them vulnerable to its loss. Accordingly, you have breached Statement of Principle 7.

Failure to deal with the FSA in an open and cooperative manner

Submitting inaccurate information to the FSA

- 4.15. The FSA expects approved persons to deal with the FSA in an open and cooperative way. You failed to do so. In particular, you failed to provide accurate information to the FSA about Griffiths McAlister’s finances. You submitted Retail Mediation Activities Returns (“RMARs”) to the FSA in relation to the business of

Griffiths McAlister over a period of two years which contained information inconsistent with Griffiths McAlister's annual accounts.

Failure to disclose relevant information to the FSA

- 4.16. The FSA expects approved persons to disclose appropriately any information of which the FSA would reasonably expect notice. You failed to inform the FSA about:
- (1) a winding up petition issued against Griffiths McAlister;
 - (2) two county court judgements issued against Griffiths McAlister; and
 - (3) a director's disqualification made against you.
- 4.17. The conduct referred to in paragraphs 4.15 and 4.16 are all matters which were relevant to Griffiths McAlister's financial situation and governance, and therefore information that had the potential to have a significant impact on Griffiths McAlister's ability to meet the FSA's Threshold Conditions. However, you failed to consider the likely significance of the information to the FSA and did not disclose it.
- 4.18. The FSA's supervisory regime relies on firms providing accurate information. In particular, the FSA relies on firms submitting accurate RMARs to enable it properly to monitor a firm's financial position. Your failure to provide accurate information to the FSA in Griffiths McAlister's RMARs, and to inform the FSA of the winding up petition, county court judgments and the director's disqualification order made against you, effectively disguised from the FSA the true nature of the risks that Griffiths McAlister posed to consumers and market counterparties. The FSA considers your failures in this regard to be serious, because it is likely to have prevented the FSA from discovering the failures in relation to client money at an earlier stage. Accordingly, the FSA considers that by failing to disclose important information promptly and accurately, and by failing to deal with the FSA in an open and cooperative way, you have breached Statement of Principle 4.

Disqualification as a director

- 4.19. The FSA discovered that on 28 April 2009 a director's disqualification order was made against you as a result of section 5 (general misconduct) of the Company Directors Disqualification Act 1986. You failed to disclose this to the FSA.
- 4.20. The FSA also concludes that the director's disqualification order made against you provides further evidence that you lack the competence and capability required by individuals operating in the regulated financial services industry. Your failure to disclose that order also provides further evidence that you have failed to disclose appropriately any information of which the FSA would reasonably expect notice, in breach of Statement of Principle 4.

5. ANALYSIS OF MISCONDUCT AND SANCTIONS

- 5.1. By reason of the facts and matters referred to in paragraphs 4.3 to 4.7 above, the FSA considers that, in your capacity as director performing significant influence functions CF1, CF3 and CF8, you lack honesty and integrity, in breach of Statement of Principle 1. Specifically, you knowingly used client money, to which Griffiths McAlister was not entitled, for purposes other than those for which the money was intended.
- 5.2. By reason of the facts and matters referred to in paragraphs 4.8 to 4.14 above, the FSA considers that you lack competence and capability as you have failed, in your capacity as director performing significant influence functions CF1, CF3 and CF8, to take reasonable steps to ensure that the business of the firm for which you are responsible in your controlled functions complied with the relevant requirements and standards of the regulatory system, in breach of Statement of Principle 7. Specifically, you failed to take reasonable steps to ensure that Griffiths McAlister had adequate systems and controls to maintain and preserve the trust status of its client money account and to reconcile and audit this account appropriately.
- 5.3. By reason of the facts and matters referred to in paragraphs 4.15 to 4.18, the FSA concludes that you lack competence and capability as you have failed, in your capacity as an approved person to deal with the FSA in an open and cooperative way, in breach of Statement of Principle 4. Specifically, you failed to demonstrate transparency and openness in dealing with and disclosing information to the FSA of which it would have expected notice.

- 5.4. By reason of the facts and matters referred to in paragraphs 4.19 to 4.20, the FSA concludes that you have failed to demonstrate competence and capability to the standard required by the FSA. Specifically, an order was made against you disqualifying you from acting as a company director. In addition, you failed to disclose to the FSA that such an order had been made and the FSA concludes that this constitutes a breach of Statement of Principle 4.
- 5.5. The FSA concludes that, as you lack honesty and integrity and competence and capability, you are not fit and proper to perform any functions in relation to regulated activities carried on by authorised persons, exempt persons and exempt professional firms.

Financial penalty

- 5.6. The FSA considered whether to impose a financial penalty on you but, as set out at paragraph 2.5 above, decided not to as to do so would cause you serious financial hardship.
- 5.7. The FSA's policy on the imposition of financial penalties during the relevant period is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which forms part of the FSA Handbook. DEPP sets out the factors that may be of particular relevance in determining whether it is appropriate to impose a financial penalty. The criteria are not exhaustive and all relevant circumstances of the case will be taken into consideration. In addition, the FSA has had regard to the corresponding provisions of Chapter 13 of the Enforcement Manual ("ENF") in force during the relevant period until 27 August 2007 and Chapter 7 of the Enforcement Guide ("EG"), in force thereafter.
- 5.8. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.
- 5.9. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.5.2G sets out guidance on a non-exhaustive list of factors that may be of relevance in

determining the level of financial penalty. The FSA considers that the following factors are particularly relevant in this case.

The extent to which the breach was deliberate or reckless

- 5.10. The FSA has concluded that you deliberately continued to misappropriate funds from the client money account, even after you discovered that Griffiths McAlister was not entitled to the funds.
- 5.11. Where the FSA decides the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed

- 5.12. The FSA, having regard to all the circumstances, considered the appropriate level of financial penalty for your breaches of the Statements of Principle to be £70,000. However, you provided verifiable evidence that imposing such a financial penalty would cause you serious financial hardship and therefore, in this case, the FSA has decided not to impose the financial penalty.

Previous action taken in relation to similar findings

- 5.13. In determining the appropriate sanction, the FSA has taken into account sanctions imposed by the FSA on other approved persons for similar behaviour.

Conduct following the breach

- 5.14. The FSA considers that you failed to notify it of a director's disqualification order made against you in April 2009.
- 5.15. In determining the appropriate sanction, the FSA considers your lack of co-operation and openness with the FSA during the investigation outlined at paragraphs 5.14 to be an aggravating factor.
- 5.16. The FSA considers that at an early stage of the investigation you admitted to the FSA that:

- (1) you misappropriated funds from the client money account to which Griffiths McAlister was not entitled; and
- (2) your actions resulted in a deficit in the client money account.

5.17. In determining the appropriate sanction, the FSA has viewed your conduct outlined at paragraphs 5.16 above to be mitigating factors.

The nature, seriousness and impact of the breach

5.18. The FSA has considered the nature and seriousness of the breaches and the risk they posed to the FSA's statutory objectives of maintaining confidence in the financial system and the protection of consumers.

Withdrawal of approval and prohibition

5.19. The FSA has concluded that your conduct fell short of the standards required by the FSA's Fit and Proper Test for Approved Persons in terms of honesty and integrity and competence and capability. The FSA therefore concludes that you are not fit and proper to carry out any functions in relation to any regulated activities carried on by any authorised persons.

5.20. It is, therefore, necessary and proportionate, in order to achieve its regulatory objectives, for the FSA to exercise its powers to withdraw your approval and make a Prohibition Order against you.

6. DECISION MAKER

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 Mario Theodosiou (direct line: 020 7066 5914 /fax: 020 7066 5915) 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 1

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

1. Statutory provisions

- 1.1. 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.

Withdrawal of approval

- 1.2. The FSA has the power pursuant to section 63 of the Act to withdraw an approval given under section 59, if the FSA considers that the approved person is not a fit and proper person to perform the function to which the approval relates.

Prohibition

- 1.3. Under section 56 of the Act, if it appears to the FSA that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or exempt professional firm, the FSA may make a prohibition order.
- 1.4. The effect of making a prohibition order is to prohibit an individual from performing functions within authorised firms and to prohibit authorised firms from employing the individual to perform specific functions. Such an order may relate to:
- (1) a specified function, any function falling within a specified description, or any function (section 56(2)); and
 - (2) a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities (section 56(3)(a)).

Financial penalty

- 1.5. Section 66 of the Act provides that the FSA may take action against a person if it appears to the FSA that the person is guilty of misconduct and the FSA is satisfied that it is appropriate in all the circumstances to take action against him. Misconduct includes failure by an approved person to comply with a statement of

principle. The action that may be taken by the FSA includes the imposition of a penalty on the approved person of such amount as it considers appropriate.

2. Regulatory Guidance

FSA's policy for exercising its power to withdraw its approval and/or make a prohibition order

- 2.1. The FSA's effective use of the power under section 63 of the Act to withdraw approval from an approved person helps ensure high standards of regulatory conduct by preventing an approved person from continuing to perform the controlled function to which the approval relates if he is not a fit and proper person to perform that function. Where it considers this is appropriate, the FSA may prohibit an approved person, in addition to withdrawing their approval.
- 2.2. The FSA will 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 necessary to prevent an individual from carrying out any function in relation to regulated activities. The FSA policy in relation to the decision to withdraw its approval and/or make a prohibition order is set out in Chapter 9 of the Enforcement Guide ("EG").
- 2.3. EG took effect from 28 August 2007, replacing the FSA's previous policy in relation to the prohibition of individuals (which was contained in Chapter 8 of the Enforcement Manual ("ENF")). Although the references in this notice are to EG, as the conduct described in this Warning Notice spans both sets of policy the FSA has also had regard to the relevant sections of ENF.
- 2.4. EG 9.4 sets out the general scope of the FSA's powers in this respect, 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. 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 9.9 provides that when deciding whether 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, 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 the fitness and propriety are set out in FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
- (2) whether, and to what extent, the approved person has failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons;
- (3) the relevance and materiality of any matters indicating unfitness;
- (4) the length of time since the occurrence of any matters indicating unfitness; and
- (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

2.6. EG provides at paragraph 9.23 that the FSA may impose a financial penalty in addition to imposing a prohibition order where it is appropriate to do so.

The FSA's policy on the imposition of financial penalties

2.7. The FSA's policy in relation to the imposition of financial penalties is set out in Chapter 6 of the Decision Procedure and Penalties Manual (DEPP) which forms part of the FSA Handbook. It was previously set out in Chapter 13 of the Enforcement Manual (ENF), to which the FSA has had regard. DEPP 6.1.2G provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

2.8. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.2.1G sets out

guidance on a non-exhaustive list of factors that may be of relevance in determining whether to take action for a financial penalty, which include the following:

- (1) DEPP 6.2.1G(1): The nature, seriousness and impact of the suspected breach.
- (2) DEPP 6.2.1G(2): The conduct of the person after the breach.
- (3) DEPP 6.2.1G(4): FSA guidance and other published materials.
- (4) DEPP 6.2.1G(5): Action taken by the FSA in previous similar cases.

Determining the level of the financial penalty

2.9. The FSA has applied the policy set out in DEPP in relation determining the level of financial penalty in force at the time of the misconduct.

2.10. The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP 6.5.2G sets out guidance on a non exhaustive list of factors that may be of relevance when determining the amount of a financial penalty, which include:

- (1) the loss or risk of loss caused to consumers, investors or other market users; (DEPP 6.5.2 G (2) (d)); and
- (2) whether the person has given no apparent consideration to the consequences of the behaviour that constitutes the breach. (DEPP 6.5.2 (3) (d)).

3. Regulatory Requirements

(i) APER

3.1. APER sets out the Statements of Principle in respect of approved persons and conduct which, in the opinion of the FSA, does not comply with the relevant Statements of Principle. It further describes factors to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.

- 3.2. APER 3.1.3G stipulates that when establishing compliance with, or a breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.
- 3.3. APER 3.1.4G states that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.
- 3.4. In this case, the FSA considers the most relevant Statements of Principle to be:
- (1) Statement of Principle 1 under which an approved person must act with integrity in carrying out his controlled function;
 - (2) Statement of Principle 4 under which an approved person must deal with the FSA and other regulators in an open and cooperative way and must disclose appropriately any information of which the FSA would reasonably expect notice; and
 - (3) Statement of Principle 7 under which an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.
- 3.5. APER 4.1 sets out examples of behaviour which do not comply with Statement of Principle 1. In particular, APER 4.1.10E states that deliberately misusing the assets or confidential information of a client or the firm falls within Statement of Principle 1.
- 3.6. APER 4.6 sets out examples of behaviour which do not comply with Statement of Principle 4. In particular, APER 4.4.7E states that where the approved person is responsible within the firm for reporting matters to the FSA, failing to promptly inform the FSA of information of which he is aware and which it would be

reasonable to assume would be of material significance to the FSA, whether in response to questions or otherwise, falls within Statement of Principle 4.

3.7. APER 4.7 gives examples of conduct which does not comply with Statement of Principle 7. This includes:

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

(ii) Handbook Provisions

3.8. The sections of the FSA handbook entitled “SUP” and “CASS” set out the supervisory provisions and the requirements relating to holding client money respectively.

3.9. SUP 3.10.4R states that an auditor of a firm must submit a report addressed to the FSA, signed in his capacity as auditor, which:

- (1) states the matters set out in SUP 3.10.5 R; or
- (2) if the firm claims not to hold client money or custody assets, states whether anything has come to the auditor's attention that causes him to believe that the firm held client money or custody assets during the period covered by the report.

3.10. SUP 3.10.6 states that the period covered by a report under SUP 3.10.4 R must end not more than 53 weeks after the period covered by the previous report on such matters, or, if none, after the firm is authorised or becomes a firm to which SUP 3.10 applies.

- 3.11. CASS 5.5.3R requires that a firm must, except to the extent permitted by CASS 5.5, hold client money separate from the firm's money.
- 3.12. CASS 5.5.5R requires that a firm must segregate client money by either:
- (1) paying it as soon as is practicable into a client bank account; or
 - (2) paying it out in accordance with CASS 5.5.80R.
- 3.13. CASS 5.5.63R requires that:
- (1) A firm must, as often as is necessary to ensure the accuracy of its records and at least at intervals of not more than 25 business days:
 - (a) check whether its client money resource, as determined by CASS 5.5.65R on the previous business day, was at least equal to the client money requirement, as determined by CASS 5.5.66R or CASS 5.5.68R, as at the close of business on that day; and
 - (b) ensure that:
 - (i) any shortfall is paid into a client bank account by the close of business on the day the calculation is performed; or
 - (ii) any excess is withdrawn within the same time period unless CASS 5.5.9R or CASS 5.5.10R applies to the extent that the firm is satisfied on reasonable grounds that it is prudent to maintain a positive margin to ensure the calculation in (a) is satisfied having regard to any unreconciled items in its business ledgers as at the date on which the calculations are performed; and
 - (c) include in any calculation of its client money requirement (whether calculated in accordance with CASS 5.5.66R or CASS 5.5.68R) any amounts attributable to client money received by its appointed representatives, field representatives or other agents and which, as at the date of calculation, it is required to segregate in accordance with CASS 5.5.19R.

- (2) A firm must within ten business days of the calculation in (a) reconcile the balance on each client bank account as recorded by the firm with the balance on that account as set out in the statement or other form of confirmation used by the bank with which that account is held.

(iii) Fit and Proper Test for Approved Persons

- 3.14. The section of the FSA handbook entitled “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 and FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 3.15. In this instance the criteria set out in FIT are relevant in considering whether the FSA may exercise its powers to prohibit and/or withdraw approval of an individual in accordance with EG 9.8.
- 3.16. FIT 1.3 provides that the FSA will have regard to a number of factors when assessing a person’s fitness and propriety. The most important considerations include the person’s honesty, integrity and reputation, and the person’s competence and capability.
- 3.17. In determining a person’s honesty, integrity and reputation FIT 2.1 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. These include:
 - (1) 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 2.1.3G(5));
 - (2) whether the person has ever been disqualified from acting as a director or disqualified from acting in any managerial capacity (FIT 2.1.3G(12)); 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)).

3.18. In determining a person's competence and capability FIT 2.2 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.2.1G. These include:

- (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 (FIT 2.2.1G(1)); and
- (2) whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function (FIT 2.2.1G(2)).