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## FINAL NOTICE

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To: **John Edward Rourke**

Of: **c/o HM Prison Lindholme  
Lindholme  
Doncaster  
South Yorkshire  
DN7 6EE**

Date: **18 November 2004**

**TAKE NOTICE: The Financial Services Authority ("the FSA") of 25 The North Colonnade, Canary Wharf, London E14 5HS gives you final notice about an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person**

### **THE ORDER**

The FSA gave you a Decision Notice dated 18 October 2004 which notified you that, for the reasons set out in that notice, the FSA had decided to make an order pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), prohibiting you, John Edward Rourke, from performing any function in relation to any regulated activity carried on by any authorised person.

You have not referred the matter to the Financial Services and Markets Tribunal within 28 days of the date on which the Decision Notice was given to you.

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 person. This order has effect from 18 November 2004.

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## REASONS FOR THE ORDER

### Introduction

1. It appears to the FSA that you are not fit and proper to perform any function in relation to any regulated activity carried on by any authorised person because of your conduct, over a period between 1994 and 2001 which involved various acts of illegal deposit taking whilst operating a book-keeping and accountancy practice called J E Rourke & Co, and which culminated in your being convicted on 9 March 2004, of twelve counts of making a fraudulent inducement to make a deposit, ten counts of unlawfully accepting a deposit, two counts of making a false instrument and three counts of doing an act tending or intended to pervert the course of public justice.

### Relevant Statutory Provisions

2. The FSA is authorised by the Act to exercise the powers contained in section 56 of the Act, which includes the following:
  - “(1) Sub-section (2) applies if it appears to the [Financial Services] Authority 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.*
  - (2) The Authority may make an order ('a prohibition order') prohibiting the individual from performing a specified function, any function falling within a specified description or any function.*
  - (3) A prohibition order may relate to-*
    - (a) a specified regulated activity, any regulated activity falling within a specified description or all regulated activities;*
    - (b) authorised persons generally or any person within a specified class of authorised person”.*
3. When exercising its powers, the FSA seeks to act in a way it considers most appropriate for the purpose of meeting its regulatory objectives, which are set out in section 2(2) of the Act. The FSA considers that making a prohibition order against you in the terms indicated meets the following regulatory objectives:
  - (a) the market confidence objective: that is, maintaining confidence in the financial system, and
  - (b) the protection of consumers objective: that is, securing the appropriate degree of protection for consumers.

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## Relevant Guidance

4. In deciding to take this action, the FSA has had regard to guidance published in the FSA Handbook, in particular the Enforcement Manual, as follows:
  - ENF 8.1.2 explains that the purpose of prohibiting individuals who are not fit and proper is to help the FSA to work towards its regulatory objectives;
  - ENF 8.4.2 concerns the scope of the FSA's power to make prohibition orders explaining that such orders may be unlimited or they may be limited to specific functions in relation to specific regulated activities, depending on the reasons why the individual is not fit and proper and the severity of risk he poses to consumers or the market generally;
  - ENF 8.4.3 states that the FSA will consider all relevant circumstances, including whether other enforcement action has been taken;
  - ENF 8.8 states that the FSA will consider exercising its power to make prohibition orders against individuals who are neither approved persons nor employed by authorised persons where such individuals have shown themselves to be unfit to carry out functions in relation to regulated activities;
  - ENF 8.8.2A recognises that, where it is considering whether to exercise its powers to make a prohibition order against such an individual, the FSA will not have the option of considering the adequacy of other enforcement action and provides that it will consider the severity of the risk posed by the individual and may prohibit him where it considers that it is necessary to achieve the FSA's regulatory objectives;
  - ENF 8.8.3 states that, when determining the fitness and propriety of such an individual, the FSA will consider a number of factors including the criteria for assessing the fitness and propriety of approved persons set out in the Fit and Proper test for Approved Persons ("FIT");
  - FIT 1.3.1 states that the most important considerations include a person's honesty, integrity and reputation. In determining a person's honesty, integrity and reputation, the matters to which the FSA will have regard include whether the person has been convicted of any criminal offence, with particular consideration to be given to offences of dishonesty or fraud (FIT 2.13.(1)).
5. The FSA is of the view that these matters are all relevant to its assessment of your conduct and that they support the FSA's conclusion that you are not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person.

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### **Facts and Matters Relied On**

6. The twenty seven offences for which you were convicted upon indictment, were set out in the Certificate of Conviction produced by Bradford Crown Court, dated 21 July 2004.
7. Those offences, for each of which you received a custodial sentence of two years and six months, all to run concurrently, involved both dishonesty and fraud upon clients whilst running a book-keeping and accountancy service and for the purpose of your own financial advantage. Your misconduct continued over a long period of time. Under section 79 of the Powers of the Criminal Court (Sentencing) Act 2000 the Court may only pass a custodial sentence where the offence is so serious that such a sentence can be justified by the offence.

### **Conclusions**

8. By reason of the facts and matters described above, it appears to the FSA that you are not fit and proper to perform any function in relation to any regulated activity carried on by any authorised person.
9. You have been convicted of criminal offences, involving both dishonesty and fraud, of such seriousness as to justify lengthy custodial sentences. Those convictions, and the admitted conduct which gave rise to them, go directly to impugn your honesty, integrity and reputation and therefore to demonstrate that you are not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person;
10. The severity of the risk you pose to consumers and to confidence in the market generally is such that it is necessary in order to achieve its regulatory objectives for the FSA to exercise its power to make a prohibition order against you in the terms proposed.
11. Consequently, the FSA has decided that a prohibition order should be made in the terms indicated.

### **IMPORTANT**

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

### **Publicity**

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.

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

**FSA Contact**

For more information concerning this matter generally, you should contact Stephen Oakes (direct line: 020 7066 5530/fax: 020 7066 9720) of the Enforcement Division of the FSA.

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**John Kirby**  
**Manager - FSA Enforcement Division**