



Financial Services Authority

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**FINAL NOTICE**

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**To:** Jonathan Stephen Bunn  
**Of:** Flat 24, The Villiers, Gower Road, Weybridge, Surrey,  
KT13 OEA  
**Individual**  
**Reference Number:** JSB01108  
**Date:** 25 March 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. THE ACTION**

- 1.1. The FSA gave Mr Jonathan Stephen Bunn ("Mr Bunn") a Decision Notice dated 21 March 2010 which notified Mr Bunn that the FSA had decided to impose on him a prohibition order pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), prohibiting Mr Bunn 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 Mr Bunn is not a fit and proper person. This order is effective from 25 March 2010.

1.2. Mr Bunn has confirmed that he will not be referring the matter to the Financial Services and Markets Tribunal.

1.3. Mr Bunn agreed to settle at an early stage of the FSA's investigation.

## **2. REASONS FOR THE ACTION**

### **Summary**

2.1. Between 5 March 2009 and 9 August 2009, Mr Bunn was employed as a broker at Lewis Charles Securities Limited ("LCS") on the Inter-Dealer Broker ("IDB") desk.

2.2. Mr Bunn was permitted to trade on behalf of IDB clients on a 'matched basis' (i.e. where a sale or a purchase of shares is mirrored by an equivalent trade in the opposite direction) and to earn income on a spread basis. Mr Bunn's role was not one in which he was authorised to take proprietary positions on behalf of LCS.

2.3. This notice is issued to Mr Bunn in the light of the following deliberate conduct:

(1) between 22 July 2009 and 23 July 2009, Mr Bunn entered into a number of unmatched sales<sup>1</sup> ("the sales") which resulted in LCS holding a short position of 4,350,000 HSBC Plc ("HSBC") shares without authorisation from LCS;

(2) between 22 July 2009 and 23 July 2009, Mr Bunn wrote four deal-slips which purported to record purchases which totalled 4,350,000 HSBC shares. Mr Bunn submitted these deal-slips to the back-office at LCS with the intention of misleading the firm into believing that the sales were matched and that LCS did not have a position in HSBC shares;

(3) between 29 July 2009 and 30 July 2009, Mr Bunn entered into further unmatched sales which increased the short position held by LCS from 4,350,000 to 6,950,000 HSBC shares without authorisation from LCS; and

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<sup>1</sup> All references in this Notice to sales or purchases by Mr Bunn were made by him on behalf of LCS.

- (4) between 24 July 2009 and 30 July 2009, despite requests from the back-office at LCS for further details to enable them to verify the purchases of HSBC shares recorded by the four deal-slips, Mr Bunn continued to assert that the deal-slips represented genuine purchases of HSBC shares

which demonstrates a lack of honesty and integrity such that he is therefore not a fit and proper person to perform functions in relation to regulated activities.

- 2.4. On 31 July 2009 LCS closed its short position in HSBC shares through a purchase of 6,950,000 shares. Thereby LCS realised a loss, due to movements in the price of HSBC shares, of £2.67 million.
- 2.5. The FSA views Mr Bunn's behaviour as particularly serious because it amounted to a deliberate and dishonest attempt to circumvent LCS's risk management function and exposed the firm to significant market risk.
- 2.6. It is a reflection of the seriousness with which the FSA views Mr Bunn's conduct that the FSA has referred the matter to the City of London Police to investigate whether he may have committed criminal offences.
- 2.7. Despite the strength of the evidence against Mr Bunn, the FSA views his frank admissions (see paragraphs 4.17 and 4.19 below) and full co-operation with the investigation by the FSA as important mitigation.

### **3. RELEVANT STATUTORY AND REGULATORY PROVISIONS**

#### **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.
- 3.2. The FSA has the power pursuant to section 56 of the Act to make an order prohibiting an individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that that individual is 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, any regulated activity falling within a specified description, or all regulated activities.

### **Fit and Proper Test for Approved Persons**

- 3.3. The purpose of the part of the FSA Handbook entitled Fit and Proper Test for Approved Persons ("FIT") is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. In this instance the criteria set out in FIT are relevant in considering whether the FSA will exercise its powers to make a prohibition order in respect of an individual in accordance with the Enforcement Guide ("EG") paragraph 9.9.
- 3.4. FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person, including the person's honesty and integrity. FIT 2.1.1G provides that, in determining a person's honesty and integrity, the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G.
- 3.5. FIT 2.1.3G refers to various matters, including: whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or of any investigation which might lead to those proceedings (FIT 2.1.3G(4)); whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)); whether the person has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar (FIT 2.1.3G(11)) and 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)).

### **Enforcement Policy**

- 3.6. The FSA's policy in relation to the decision to make a prohibition order is set out in Chapter 9 of EG. Extracts from Chapter 9 of EG are set out in Annex A.

#### **4. FACTS AND MATTERS RELIED ON**

##### **Background**

- 4.1. On 5 March 2009 Mr Bunn commenced employment at LCS as a broker on the IDB desk. Mr Bunn was approved by the FSA to hold controlled function CF30 (Customer).
- 4.2. LCS is a stockbroking company based in London and authorised by the FSA. The IDB desk is part of the broking arm of the firm. The IDB desk trades on behalf of counterparties on a matched basis. It is no part of the IDB desk's function to take proprietary positions and brokers employed by LCS on the IDB desk are not authorised to do so.

##### **Chronology of events**

- 4.3. The trades which are the basis of this notice were all conducted by Mr Bunn between 22 July 2009 and 30 July 2009 in HSBC shares.
- 4.4. On 22 July 2009 Mr Bunn conducted three sales of HSBC shares; a sale of 100,000 shares ("Trade 1"), a sale of 150,000 shares ("Trade 2") and a sale of 350,000 shares ("Trade 3"). In respect of these trades Mr Bunn completed deal-slips which he passed to the back-office at LCS for processing.
- 4.5. On 22 July 2009 Mr Bunn completed a further deal-slip which purported to record a purchase of 600,000 HSBC shares ("Trade 4") which he also passed to the back-office at LCS for processing. In fact, this recorded a trade with a counterparty which was entirely fictitious; there had been no purchase by Mr Bunn of these shares.
- 4.6. On 23 July 2009 Mr Bunn completed 10 sales of HSBC shares: a sale of 1,500,000 shares ("Trade 5"); a sale of 250,000 shares ("Trade 6"); a sale of 250,000 shares ("Trade 7"); a sale of 250,000 shares ("Trade 8"); a sale of 500,000 shares ("Trade 9"); a sale of 400,000 shares ("Trade 10"); a sale of 100,000 shares ("Trade 11"); a sale of 150,000 shares ("Trade 12"); a sale of 100,000 shares ("Trade 13") and a sale of 250,000 shares ("Trade 14"). In respect of these trades Mr Bunn completed deal-slips which he passed to the back-office at LCS for processing.

- 4.7. On 23 July 2009 Mr Bunn completed three further deal-slips which purported to record three purchases of HSBC shares: a purchase of 250,000 shares ("Trade 15"); a purchase of 1,500,000 shares ("Trade 16") and a purchase of 2,000,000 shares ("Trade 17"). Mr Bunn passed these deal-slips to the back-office at LCS for processing. As before, these recorded trades with counterparties which were entirely fictitious; there had been no purchases by Mr Bunn of these shares.
- 4.8. During trading on 23 July 2009 Mr Bunn had increased LCS's short position by a further 3,750,000 HSBC shares. LCS's total short position at this stage was 4,350,000 HSBC shares.
- 4.9. On 24 July 2009, a Friday, Mr Bunn did not attend at work. By mid-afternoon the counterparties recorded on the deal-slips in respect of Trades 4, 15, 16 and 17 had reported that they did not recognise themselves as parties to these trades. The Head of the IDB Desk at LCS sent Mr Bunn a number of emails asking him to provide the names of the traders with whom he had dealt at the relevant counterparties to enable LCS to establish the validity of these trades.
- 4.10. On 27 July 2009, the following Monday, Mr Bunn did not attend at work. LCS staff sent Mr Bunn further emails asking him to provide them with additional details for Trades 4, 15, 16 and 17 as a matter of urgency. Their concerns were escalated to senior management within LCS.
- 4.11. On 28 July 2009 Mr Bunn did not attend at work. LCS staff sent him further emails urgently requesting additional details for the disputed trades. At 12.06pm Mr Bunn responded by email stating "*OK. Can you please send me a list of the exact trades that are not settling. I will ensure they settle today*". At 4.48pm Mr Bunn sent an email to LCS suggesting revised details for Trades 4, 15, 16 and 17. At no point did Mr Bunn indicate that these trades were anything other than genuine.
- 4.12. On 29 July 2009 Mr Bunn did not attend at work. Despite this he made four further sales of HSBC shares using a remote terminal: a sale of 200,000 shares ("Trade 18"); a sale of 300,000 shares ("Trade 19"); a sale of 500,000 shares ("Trade 20") and a sale of 100,000 shares ("Trade 21").

- 4.13. On 30 July 2009 Mr Bunn did not attend at work. He made two further sales of HSBC shares using a remote terminal: a sale of 500,000 shares ("Trade 22") and a sale of 1,000,000 shares ("Trade 23"). The overall short position held by LCS in HSBC as a result of Mr Bunn's trading was now 6,950,000 shares.
- 4.14. Later that day, in order to resolve the unmatched trades the Head of the IDB Desk at LCS visited Mr Bunn's home address. Mr Bunn was not there, but later that day contacted the Head of the IDB Desk and gave him the name of a broker and the fund at which he worked, whom Mr Bunn claimed had instructed the counterparties to the disputed trades.
- 4.15. On 31 July 2009 LCS was able to confirm that the fund did not employ a broker with the name provided by Mr Bunn. Almost simultaneously, Mr Bunn sent a text message to senior management at LCS confirming that Trades 4, 15, 16 and 17 were fictitious. Mr Bunn added: *"It's a position. I'm sorry and realise how serious this is"*.
- 4.16. Later that day, LCS closed its short position in HSBC shares through a purchase of 6,950,000 HSBC shares. Due to an increase in the price of HSBC shares whilst the firm had held the short position, this realised a loss of £2.67 million.
- 4.17. On 3 August 2009 Mr Bunn attended a meeting at LCS at which he admitted that he had entered into the sales of HSBC shares using recognised counterparties but that these trades were unmatched. He admitted that the deal-slips for Trades 4, 15, 16 and 17 were fictitious and made to *"offset"* his sales. He admitted that the details he had given of the broker involved in the disputed trades were a fabrication and made to hide the situation.
- 4.18. On 4 August 2009 LCS wrote to Mr Bunn to notify him of the firm's decision to suspend his employment. On 9 August 2009 Mr Bunn tendered his resignation.
- 4.19. On 15 December 2009 Mr Bunn attended a meeting with FSA investigators at which he confirmed that he stood by the admissions which he had made and indicated that he wished to settle the FSA's investigation at an early stage.

## **5. ANALYSIS**

- 5.1. Mr Bunn's conduct, in undertaking unauthorised trades which exposed LCS to significant market risk and by deliberately and dishonestly concealing that exposure through the creation of false deal-slips, demonstrates a lack of honesty and integrity such that he is not a fit and proper person to carry out regulated activities.

## **6. ANALYSIS OF THE SANCTION**

### **General**

- 6.1. In taking the action, the FSA has considered, amongst other things, the seriousness and nature of Mr Bunn's conduct and the likely effect of the action on him.

- 6.2. The FSA considers the following to be aggravating factors:

- (1) Mr Bunn's conduct amounted to a deliberate and dishonest attempt to circumvent LCS's risk management function thereby exposing the firm to significant market risk which directly resulted in LCS realising losses of £2.67 million; and
- (2) Mr Bunn persisted in his deceit over several days in response to attempts by LCS to reconcile the disputed trades.

- 6.3. The FSA considers the following to be mitigating factors:

- (1) Mr Bunn made full and frank admissions to LCS on 3 August 2009;
- (2) Mr Bunn has co-operated fully with the investigation by the FSA and has accepted throughout that his conduct was improper; and
- (3) no previous regulatory action has been taken against Mr Bunn by the FSA.

### **Prohibition**

- 6.4. The FSA's effective use of the 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.

- 6.5. The FSA is satisfied that Mr Bunn is not a fit and proper person to perform regulated activities and should therefore be prohibited from performing any controlled function under section 56 of the Act. The FSA has had regard to the guidance in EG 9 in deciding that a prohibition order is appropriate in this case.

## **7. CONCLUSION**

- 7.1. The FSA considers that because of the nature and seriousness of Mr Bunn's misconduct, and the risk he poses to confidence in the market generally, it is appropriate for the FSA to exercise its powers to make the prohibition order against Mr Bunn.

## **8. DECISION MAKERS**

- 8.1. 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.

## **9. IMPORTANT**

- 9.1. This Final Notice is given to Mr Bunn in accordance with section 390 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 Mr Bunn 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 Ken O'Donnell (direct line: 020 7066 1374) or Martin Watts (direct line: 020 7066 5324) at the FSA.

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**Tracey McDermott**

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

## Annex A

### Relevant Rules, Guidance and Other Regulatory Provisions

#### 1. Enforcement Guide

- 1.1. EG 9.3-9.7 sets out the FSA's general policy in deciding whether to make a prohibition order and/or withdraw an individual's approval. The FSA will consider all the relevant circumstances including whether other enforcement action should be taken or has been taken already against that individual by the FSA. In some cases the FSA may take other enforcement action against the individual in addition to seeking a prohibition order.
- 1.2. EG 9.4 provides that the FSA has 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.
- 1.3. EG 9.5 provides that the scope of a prohibition order will depend on 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 the risk which he poses to consumers or to the market generally.
- 1.4. EG 9.8-9.14 sets out additional guidance on the FSA's approach to making prohibition orders against approved persons and/or withdrawing such persons' approvals.
- 1.5. 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 the 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 or by issuing a private warning.
- 1.6. EG 9.9 provides that when it decides 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. The paragraphs of EG 9.9 relevant to this Notice include:
  - (2) 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 are set out in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability); and FIT 2.3 (Financial soundness).
  - (3) Whether, and to what extent, the approved person has: (a) failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons.

- (5) The relevance and materiality of any matters indicating unfitness.
  - (6) The length of time since the occurrence of any matters indicating unfitness.
  - (7) 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.
  - (8) The severity of the risk which the individual poses to consumers and to confidence in the financial system.
  - (9) The previous disciplinary record and general compliance history of the individual including whether the FSA, any previous regulator, designated professional body or other domestic or international regulator has previously imposed a disciplinary sanction on the individual.
- 1.7. EG 9.10 provides that the FSA may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the individual is fit and proper to continue to perform a controlled function or other function in relation to regulated activities. It may also take account of the particular controlled function which an approved person is performing for a firm, the nature and activities of the firm concerned and the markets within which it operates.
- 1.8. EG 9.11 states that it is not possible to produce a definitive list of matters which the FSA may take into account when considering whether an individual is not a fit and proper person to perform a particular, or any, function in relation to a particular, or any, firm. EG 9.12 sets out a list of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person. This includes at EG 9.12(3) severe acts of dishonesty which may have resulted in financial crime.
- 1.9. EG 9.13 provides that certain matters which do not fit squarely, or at all, within the matters referred to above may also fall to be considered and that in these circumstances the FSA will consider whether the conduct or matter in question is relevant to the individual's fitness and propriety.