
FINAL NOTICE

To: Ms Lata Gaur

Of: c/o The Grant Smith Law Practice
7 Waverley Place
Aberdeen
AB10 1XH

Date: 6 March 2003

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 30 January 2003 which notified you that, for the reasons set out in that notice and having taken into account your written representations by letter dated 2 December 2002, pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act") the FSA had decided to make an order prohibiting you, Ms Lata Gaur, 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, Ms Lata Gaur ("Ms Gaur"), from performing any function in relation to any regulated activity carried on by any authorised person. This order has effect from 10 March 2003.

REASONS FOR THE ORDER

Introduction

1. It appears to the FSA that Ms Gaur is not fit and proper to perform any function in relation to any regulated activity carried on by any authorised person because of her conduct, in January and February 2001 in particular, when an employee of Barum House Securities Limited (“BH Securities”). In relation to BH Securities, Ms Gaur was registered with the Securities and Futures Authority ("SFA") at all material times as a Securities Representative and, from 31 January 2001, also as Finance Officer. In particular, Ms Gaur:
 - (a) knowingly took and used £30,000 belonging to a client of BH Securities to finance the purchase of shares in the name of herself and her husband, without that client’s knowledge or permission;
 - (b) carried out unauthorised loss-making share transactions on clients' accounts; and
 - (c) misled or attempted to mislead SFA (a previous regulator) and, at a hearing in February 2001, a SFA Tribunal Chairman.

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 Ms Gaur in the terms indicated meets the following regulatory objectives:
 - (a) the market confidence objective: that is, maintaining confidence in the financial system;

- (b) the protection of consumers objective: that is, securing the appropriate degree of protection for consumers; and
- (c) the reduction of financial crime objective.

Relevant Guidance

4. In deciding to take this action, the FSA has had regard to guidance published in the FSA Handbook.
5. In particular, pursuant to *ENF 8.4.4* and *ENF 8.8* of the FSA's Enforcement manual, the FSA will consider making a prohibition order only in the most serious cases of lack of fitness and propriety and may make such orders against individuals who are not approved persons where they have shown themselves to be unfit to carry out functions in relation to regulated activities. The FSA considers that Ms Gaur's conduct demonstrates a most serious lack of fitness and propriety, such that a prohibition order in the terms indicated is necessary to maintain market confidence, protect consumers and reduce financial crime.
6. The FSA's Enforcement manual contains guidance as to the criteria for assessing the fitness and propriety of an individual at *ENF 8.8.2* and *ENF 8.5.2(1), (3) and (5)*. The criteria include:
 - at *ENF 8.8.2(3)*:

the individual "appears likely to pose a serious risk to consumers or confidence in the financial system in the future";
 - and at *ENF 8.5.2(1)*:

"(a) honesty, integrity and reputation. This includes an individual's openness and honesty in dealing with consumers, market participants and regulators and ability and willingness to comply with requirements placed on him by or under the Act as well as with other legal and professional obligations and ethical standards".
7. By reason of the conduct of Ms Gaur described in this Notice, the FSA considers that she has acted disreputedly and demonstrated a lack of honesty and integrity and that she is likely to pose a serious risk to consumers and to confidence in the financial system in the future.
8. The FSA's Handbook provides further guidance as to the criteria for determining a person's honesty, integrity and reputation at *FIT 2.1*. In particular, *FIT 2.1.3* states that the matters to which the FSA will have regard include:
 - "(7) whether the person has been involved with a company, partnership or other organisation that has been refused registration, authorisation, membership or a licence to carry out a trade, business or profession, or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory or government body;*

...

(13) *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.*"

9. The FSA is of the view that these matters are all relevant to its assessment of Ms Gaur's conduct and that they support the FSA's conclusion that Ms Gaur has acted disreputably and demonstrated a lack of honesty and integrity.

Facts and Matters Relied On

(a) *Background*

10. At all material times, Ms Gaur was registered with SFA as a Securities Representative of BH Securities. From 31 January 2001, she was also registered with SFA as BH Securities' Finance Officer.

11. Prior to 1 December 2001, SFA registered persons were obliged not to commit any act or omission which placed their firm in breach of SFA's Rules. The FSA's former Principles ("Former Principles") applied directly to them (Rules 2-24(2) and (3) of SFA's Rules).

12. Former Principle 1 was in the following terms:

"A firm should observe high standards of integrity and fair dealing".

13. The terms of Former Principle 10 were:

"A firm should deal with its regulator in an open and co-operative manner and keep the regulator promptly informed of anything concerning the firm which might reasonably be expected to be disclosed to it".

14. Rule 5-34(1) of SFA's Rules stated:

"(1) A firm which effects a sale or purchase of an investment ... with or for a customer must ensure that he is sent with due despatch a note containing the essential details of the transaction".

15. BH Securities was authorised by SFA on 10 August 1999 and commenced trading on about 18 August 1999. It was an ISD (Category C) firm and, as such, was not authorised to hold client monies. It provided investment management and advice to private clients and arranged deals in equities through Pershing Securities Limited ("Pershing") who executed, cleared and settled trades in accordance with BH Securities' instructions. After trades had been executed by Pershing and before settlement, BH Securities was responsible for allocating them to clients by entering them on the "G2" settlement system. BH Securities' clients' monies were held by Pershing who transferred them in accordance with BH Securities' instructions. In February 2001, BH Securities had about 537 client accounts (relating to

approximately 100 clients), of which 25% were discretionary, 7% advisory and 68% execution-only, with a total investment value of approximately £17.2m.

16. BH Securities' office was in Dunfermline, until a second office was opened (in Aberdeen) in March 2000. Shortly thereafter, the Dunfermline office was closed. BH Securities opened an Edinburgh office in about August 2000 but this was closed in late December 2000.
17. On about 1 March 2000, Ms Lata Gaur commenced employment at BH Securities and worked exclusively in the Aberdeen office. On 31 January 2001, she was registered with SFA as BH Securities' Finance Officer. She departed BH Securities' offices on 22 February 2001 and was made redundant with effect from 31 March 2001.
18. At all material times, BH Securities was a wholly-owned subsidiary of Barum House Group Limited ("BH Group"). All share issues in BH Group were mirrored by a corresponding issue of shares in BH Securities (all the shares of which were owned by BH Group). By this means, monies invested in BH Group were transferred to BH Securities.
19. At all times during BH Securities' period of trading, Mr Scott was a director of BH Securities and BH Group and he owned at least 50% of BH Group's shares. His holding in BH Group's share capital peaked at 95.35% in the period from 30 July 2000 to 29 August 2000. At all material times, as CEO and director of BH Securities and majority shareholder of BH Group (BH Securities' parent company), Mr Scott controlled the business and affairs of BH Securities and was accordingly a Controller within the meaning of SFA's Rules.
20. From 31 January 2001, Ms Gaur was also a Controller of BH Securities, subject to SFA's approval, by reason of the acquisition of 30,000 £1 shares in BH Securities in the name of her and her husband. On about 24 January 2001, she was appointed BH Securities' Company Secretary.

(b) *Compliance history*

21. Ms Gaur was first registered with SFA on 4 April 2000, shortly after she began working for BH Securities. Ms Gaur had experience of stockbroking from working on the Bombay Stock Exchange for a year.
22. Ms Gaur was not grandfathered into the FSA's regime on 1 December 2001 and she is not an approved person. Consequently, it is the guidance contained in *ENF 8.8* of the FSA's Enforcement manual which is applicable to the FSA's consideration whether to make a prohibition order against Ms Gaur.
23. On 18 August 2000, SFA issued a Notice of Investigation, notifying BH Securities and Mr Scott that an investigation would be carried out into the following matters:

"The share capital and financial resources position of Barum House Securities Limited between the period August 1999 and August 2000 and the conduct, roles and responsibilities of relevant registered persons and any matters arising therefrom".

24. Four days later, on 22 August 2000, the SFA issued a Direction requiring BH Securities (*inter alia*) to "put in place, by 5 p.m. on Thursday 31 August 2000, sufficient regulatory capital in an appropriate amount and form to ensure that the firm has and will maintain financial resources in excess of the financial resources requirement". It appears that Ms Gaur was not at the time aware of the SFA investigation but she was aware of the Direction.
25. On 13 February 2001, SFA issued an Intervention Order against BH Securities, which was an order by SFA prohibiting BH Securities from continuing to carry on investment business. It was issued because of BH Securities' deficiencies in Financial Resources. The Intervention Order was upheld by a SFA Tribunal Chairman on 19 February 2001 after hearing an application by BH Securities for a stay, at which Ms Gaur was present. The Intervention Order therefore came into force on 19 February 2001.
26. During the two-month period after the Intervention Order took effect, BH Securities' positions were closed out by Pershing, crystallising losses of approximately £490,000.
27. On about 22 March 2001, a Provisional Liquidator was appointed to BH Securities by the Court of Session in Scotland and an Interim Liquidator was appointed on about 4 October 2001. SFA issued disciplinary proceedings to expel BH Securities from authorisation on about 2 October 2001 on the ground that it was no longer fit and proper to carry on investment business because it was not financially sound. The Interim Liquidator did not seek to defend the proceedings and, accordingly, on about 1 November 2001, BH Securities was expelled from SFA's authorisation.
28. On 14 December 2001, the FSA issued a Notice of Appointment of Investigators, which was served on Ms Gaur. The reasons for the appointment of the investigators were stated as follows:

"It appears to the FSA that there are circumstances arising from Ms Gaur's activities in relation to Barum House Securities Limited (now in liquidation) which suggest that Ms Gaur may have committed an act of misconduct within the meaning of rule 7-23A(3) of the SFA Rules and may not be a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised or exempt person".

(c) *Lack of fitness and propriety*

(i) *Unauthorised share transactions*

29. In January and February 2001, Ms Gaur carried out loss-making unauthorised share transactions on execution-only clients' accounts. None of those clients at the time either knew of or had authorised the share transactions. In doing so, Ms Gaur exposed both BH Securities and its clients to significant risk. In addition, those transactions contributed to the losses of BH Securities of about £490,000 which were crystallised after SFA's Intervention Order against BH Securities took effect.
30. In the course of carrying out those unauthorised share transactions, Ms Gaur failed to:
 - (a) generate or retain adequate and accurate records;

- (b) notify clients with due despatch of trades carried out on their accounts contrary to her obligations under Rule 5-34(1) of SFA's Rules;
- (c) allocate trades promptly to clients;
- (d) generate and send contract notes to clients;

and she

- (e) booked trades to an error account without explanation;
- (f) re-allocated trades to clients other than those in whose name the initial purchase had been booked; and
- (g) amended customer account details on dealing slips.

31. In addition, in the period August-November 2000, Ms Gaur carried out unauthorised share transactions for an individual who had not authorised her to carry out any trades on his behalf.

32. The FSA considers that, by reason of the facts and matters described above, Ms Gaur has acted disreputably and demonstrated a lack of honesty and integrity in that, having regard to the guidance set out in the FSA's Handbook, she:

- (i) failed to deal openly and honestly with consumers (*ENF 8.5.2(1)(a)*);
- (ii) failed to demonstrate an ability or willingness to comply with legal and professional obligations and ethical standards (*ENF 8.5.2(1)*);
- (iii) appears likely to pose a serious risk to consumers in the future (*ENF 8.8.2(3)*).

The FSA also considers that Ms Gaur has demonstrated a lack of honesty and integrity in falling short of the standards required of her by Former Principle 1.

(ii) £30,000 on 31 January 2001

33. On 31 January 2001, 30,000 £1 shares in BH Group were issued in the name of Ms Gaur and her husband and there was a corresponding increase in the share capital of BH Securities. At the time, Ms Gaur believed that BH Securities needed to increase its Financial Resources and that SFA was insisting that BH Securities did so. Ms Gaur and her husband did not have sufficient funds available at that time to pay for the 30,000 £1 shares. Instead, this increase in share capital was financed by monies belonging to a client of BH Securities. As Ms Gaur knew, the client had not authorised BH Securities to invest her monies in BH Group and had not given permission for her monies to be used to pay for shares issued to Ms Gaur and her husband.

34. Furthermore, in response to a query from Ms Gaur's bank on 26 January 2001 concerning a sum of £30,000 which had been received by the bank on terms that it was payable to the client but which was nevertheless to be paid into Ms Gaur's personal bank account, Ms Gaur confirmed to the bank that the transfer should be made into her account.

35. Further, on 29 January 2001, Ms Gaur and her husband applied jointly to a bank for a personal loan of £30,000. When she was told in February 2001 that they could borrow only £15,000, or alternatively £20,000 with a term assurance, Ms Gaur then asked Mr Scott if she could have the 30,000 shares at a discount, thereby indicating that only part of the client's £30,000 would be repaid.
36. During a telephone conversation between SFA, Ms Gaur and Mr Scott on 30 January 2001, Ms Gaur confirmed to SFA that she had paid £30,000 into the company the previous day (in respect of the forthcoming issue of shares), thereby misleading SFA as to the actual source of the funds.
37. Ms Gaur was present at BH Securities' application for a stay of SFA's Intervention Order on 19 February 2001 as a Controller of BH Securities (subject to SFA's approval) and as its SFA-registered Finance Officer. The continued existence of BH Securities as a stockbroking company was at stake. During that hearing, SFA referred to the investment of £30,000 in January 2001 as having been made by Ms Gaur. By failing to correct this statement and by reason of her presence in support of BH Securities' application, Ms Gaur helped to mislead the SFA Tribunal Chairman as to the actual source of the £30,000 investment, although it was clearly relevant to the financial soundness of BH Securities and to the integrity of Mr Scott, which were issues at that hearing. Ms Gaur has admitted that one of the reasons why she wished to prevent the Intervention Order taking effect was because she had been carrying out unauthorised share transactions which, at that time, remained undetected.
38. Ms Gaur did not inform SFA of her unauthorised share transactions. Instead, on 22 February 2001, Mr Scott informed SFA of them. In response to SFA's questions, Ms Gaur then confirmed that she had traded without authority.
39. The FSA considers that the facts and matters set out in paragraphs 33 to 35 demonstrate that Ms Gaur has acted disreputably and without honesty and integrity in that, having regard to the guidance set out in the FSA's Handbook, she:
- (i) failed to deal openly and honestly with consumers (*ENF 8.5.2(1)(a)*);
 - (ii) failed to demonstrate an ability or willingness to comply with legal and professional obligations and ethical standards (*ENF 8.5.2(1)*);
 - (iii) appears likely to pose a serious risk to consumers in the future (*ENF 8.8.2(3)*).

The FSA also considers that Ms Gaur has demonstrated a lack of honesty and integrity in falling short of the standards required of her by Former Principle 1.

40. The FSA considers that the facts and matters set out in paragraphs 36 to 38 demonstrate that Ms Gaur has acted disreputably and without honesty and integrity in that, having regard to the guidance set out in the FSA's Handbook, she has failed to be candid and truthful in all her dealings with SFA (a previous regulator) (*FIT 2.1(13)*) and also that Ms Gaur demonstrated a lack of honesty and integrity in falling short of the standards required of her by Former Principle 10.

(iii) Post-Intervention Order trading

41. After the SFA's Intervention Order took effect (and on 20 February 2001), Ms Gaur re-booked two share transactions to different accounts in an attempt to conceal her unauthorised share transactions, although she knew that BH Securities was no longer permitted to trade by SFA.
42. In doing so, the FSA considers that Ms Gaur demonstrated a lack of honesty and integrity in that, having regard to the guidance set out in the FSA's Handbook, Ms Gaur failed to demonstrate an ability or willingness to comply with legal and professional obligations and ethical standards (*ENF 8.5.2(1)*).

(iv) 22 February 2001

43. In the evening of 22 February 2001 and after SFA had arrived at BH Securities' offices to facilitate and supervise the orderly winding down of BH Securities' business after SFA's Intervention Order had taken effect, Ms Gaur had a meeting with three clients of BH Securities at one of those clients' homes, having telephoned each of them earlier that day. At that meeting, Ms Gaur informed them that she had undertaken share transactions on their behalf without prior discussion or authorisation. Ms Gaur asked them to provide backdated authorisations in respect of the unauthorised share dealings, if she covered the losses on the trades. She also asked them to provide her with a good character reference to help her retain her SFA registration. In doing so, Ms Gaur sought to persuade three others (who were clients) to assist her in misleading SFA. The clients declined to agree.
44. The FSA considers that in her dealings with these clients Ms Gaur not only fell far short of the standards required of her by Former Principle 10 but also acted thoroughly disreputably and demonstrated a fundamental lack of honesty and integrity. Further, having regard to the guidance set out in the FSA's Handbook, the FSA is of the view that Ms Gaur appears likely to pose a serious risk to confidence in the financial system in the future (*ENF 8.8.2(3)*) and that she has failed to be candid and truthful in all her dealings with SFA (a previous regulator) (*FIT 2.1(13)*).

(v) Expulsion of BH Securities

45. Ms Gaur was involved with a company (BH Securities) which was expelled by SFA (a previous regulator) from SFA's authorisation on 1 November 2000 on the ground that it was no longer fit and proper to carry on investment business because it was not financially sound. Its lack of financial soundness was caused at least in part by Ms Gaur's unauthorised trading activity. After the SFA's Intervention Order took effect, BH Securities' losses were then crystallised and totalled approximately £490,000. These losses were due at least in part to Ms Gaur's unauthorised trading activity.
46. Taking into account the guidance set out in the FSA's manual entitled *The Fit and Proper test for Approved Persons (FIT)* and, in particular, *FIT 2.1.3(7)*, the FSA considers that the facts and matters set out in paragraph 45 further demonstrate that Ms Gaur's conduct has been disreputable and lacking in honesty and integrity.

(d) Conclusion

47. By reason of the facts and matters described above, it appears to the FSA that Ms Gaur is not fit and proper to perform any function in relation to any regulated activity carried on by any authorised person. The FSA considers that these matters demonstrate such a serious lack of fitness and propriety that Ms Gaur poses a risk to the FSA's regulatory objectives of market confidence, protection of consumers and the reduction of financial crime. Consequently, the FSA has decided that a prohibition order should be made in the terms indicated.

IMPORTANT

This Decision 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 notices 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.

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

Third Party Rights

The FSA gave a copy of the decision notice to BH Securities, BH Group and Mr Scott. Accordingly, the FSA must also give a copy of this final notice to them.

FSA Contacts

For more information concerning this matter generally, you should contact Jeremy La Niece (direct line: 020 7676 1346/fax: 020 7676 1347) or Pam Cross (direct line: 020 7676 1216/fax: 020 7676 1217) of the Enforcement Division of the FSA.

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Helen J Marshall
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