
FINAL NOTICE

To: **Martyn Powsney**

Date of Birth: **19 December 1953**

Individual
Reference
Number: **MP00083**

Date: **26 March 2010**

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

1. ACTION

- 1.1. The FSA gave you, Martyn Powsney, a Decision Notice on 26 March 2010 which notified you that the FSA had decided, pursuant to Section 56 of the Financial Services and Markets Act 2000 ("the Act"), to make an order prohibiting you from performing any significant influence function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm.
- 1.2. You confirmed on 15 March 2010 that you will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3. 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 significant influence function in relation to any regulated activity carried on by any authorised or exempt

person or exempt professional firm (the “Prohibition Order”). The Prohibition Order takes effect from 26 March 2010.

2. REASONS FOR THE ACTION

- 2.1. The FSA has concluded, on the basis of the facts and matters described below, that you are not fit and proper to carry out any significant influence function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm and that you should be prohibited from doing so.
- 2.2. Specifically, whilst the sole director at Powsney & Co. Limited (“PCL”) (in Liquidation), you failed when carrying out controlled functions in the period from 1 April 2007 to 4 August 2009 (the “relevant period”) to take reasonable steps to ensure that PCL complied with the relevant requirements and standards of the regulatory system. The FSA considers that your conduct does not demonstrate adequate levels of competence and capability.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

- 3.1. The relevant statutory and regulatory provisions are as attached at Annex A.

4. FACTS AND MATTERS RELIED ON

PCL

- 4.1. You are the sole director of PCL. You were approved by the FSA to perform the following controlled functions at PCL:
 - (1) from 1 December 2001, CF1 (Director), CF8 (Apportionment and Oversight) (until 31 March 2009), CF21 (Investment Adviser) and CF23 (Corporate Finance Adviser) (until 1 January 2002);
 - (2) from 1 November 2007, CF30 (Customer Function); and
 - (3) from 10 September 2008 you have been responsible for Insurance Mediation at PCL.

- 4.2. From 1 December 2001, you employed another individual who was approved to perform the controlled functions of CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and, until 31 October 2007, CF21 (Investment Adviser). You also employed another adviser and an office manager at various times during the relevant period.
- 4.3. PCL is a small independent advisory firm which specialised in the provision of pension advice. It became authorised by the FSA on 1 December 2001 to conduct designated investment business. From 31 October 2004 PCL has been permitted to advise on and arrange regulated mortgage contracts and from 15 September 2008 PCL has been permitted to assist in the administration of insurance. PCL's new business register shows that during the relevant period, PCL advised on a total of 313 transactions (an average of 11 per month).
- 4.4. On 26 August 2009, you applied on behalf of PCL to voluntarily vary its Part IV permission by adding a requirement that it cease conducting any of the regulated activities for which it has permission.
- 4.5. On 12 October 2009, you placed PCL into voluntary liquidation. The Liquidator applied to cancel PCL's Part IV permission on 2 March 2010.

Background to the investigation

- 4.6. The FSA visited PCL on 13 and 14 March 2007 (the "March 2007 visit") as part of a thematic project looking at selling practices in investment advisory firms. During the visit, the FSA identified a number of issues of concern relating to the advice and sales process at PCL. Those concerns included:
 - (1) insufficient evidence that adequate information was obtained from customers prior to advice being given;
 - (2) failure to retain copies of customer-specific illustrations;
 - (3) lack of evidence to demonstrate suitability of advice and inadequate suitability letters; and
 - (4) deficient training and competence arrangements.

- 4.7. The FSA outlined the corrective action it required PCL to take, and set out deadlines for doing so. PCL accepted the FSA's findings, and later informed the FSA that the required remedial action had been completed because you failed to appreciate the full extent of what was required and were under the false impression that you had satisfactorily addressed the concerns.
- 4.8. On 3 June 2008, the FSA conducted an initial assessment of PCL's implementation of the FSA's Treating Customers Fairly ("TCF") initiative. The FSA concluded that PCL could not demonstrate that the fair treatment of customers was central to its culture. The concerns identified by the FSA included that:
- (1) you were unable to provide any detail to the FSA of the TCF 'Gap Analysis' identifying risks and shortcomings in relation to TCF, which had been conducted by PCL, suggesting that you were insufficiently aware of TCF, and that TCF was not being embedded in PCL by you;
 - (2) there was no evidence of file checks being carried out to assess the quality of advice being provided to customers; and
 - (3) there were no processes in place to gather and analyse management information (other than a new business register).
- 4.9. The FSA wrote to PCL on 11 June 2008 setting out the findings of the assessment and requesting that you undertake immediate remedial action to rectify the concerns identified. The FSA did not require PCL to report to the FSA with progress of the remedial action.
- 4.10. As a result of the findings of the initial TCF assessment, the FSA conducted a follow-up TCF assessment of PCL on 19 August 2008, including a review of six customer files. Following that assessment, the FSA again concluded that it was not satisfied that PCL was embedding TCF into its procedures and that it had serious concerns about PCL's ability to conduct its business in accordance with regulatory requirements. Specifically, the FSA identified concerns regarding PCL's sales processes, including a failure to demonstrate that sufficient customer information had been obtained prior to giving advice, inadequate suitability letters, lack of evidence of product research on file and deficient training and competence arrangements. The

FSA noted that many of the concerns identified had previously been raised with PCL following the March 2007 visit, and outlined the remedial action which it required PCL to take, along with deadlines for that action to be completed. The FSA highlighted your personal responsibility, as the sole director of PCL, for ensuring that PCL complied with the requirements of TCF and regulatory requirements more generally. PCL accepted the FSA's findings and confirmed that the remedial action would be undertaken.

- 4.11. To assist with the required remedial action, PCL appointed an external compliance consultant to review all business written by PCL since June 2007, including the six cases reviewed by the FSA during the 19 August assessment. The review by the compliance consultants concluded that, in the case of the six files reviewed by the FSA, there was insufficient information recorded on file to demonstrate that the advice given was suitable, and advised PCL to obtain the missing information for all business transacted since June 2007 prior to further review. The compliance consultant subsequently reviewed the files following remedial action by PCL and concluded that many of the same issues still had not been adequately addressed on those files.

Failing to ensure compliance with regulatory requirements and standards

- 4.12. You are, and were throughout the relevant period, the sole director of PCL. As such, you were responsible for day-to-day management and ensuring compliance with relevant regulatory requirements and standards. Subsequent to the final review by the compliance consultant, you personally reviewed the advice given in all transactions during the relevant period. However, you failed to establish adequate and appropriate systems and controls in relation to investment business during the relevant period. Specifically, you failed to:
- (1) ensure that PCL had in place appropriate systems and controls to ensure that advice given to customers was suitable. In particular, you failed to implement adequate sales procedures, compliance or training procedures to ensure that PCL conducted its affairs in compliance with proper standards. During the relevant period, you engaged the services of two compliance consultants in turn, one of which provided you with compliance manuals and other

compliance documents. You did not use the fact finds, questionnaires or checklists provided by the compliance consultant. You did not assess the relevance of the compliance manuals or tailor them to your business except for inserting the name of your firm;

- (2) ensure appropriate monitoring and/or reviewing of PCL's business by undertaking or ensuring adequate compliance checks. All files were checked for completeness in the first instance by the office manager, to confirm the presence of documents. However, you delegated that responsibility to him with insufficient guidance or monitoring to ensure that the compliance checking was adequate. Any further monitoring to assess the suitability of the advice or compliance with regulatory standards was informal in nature and conducted on an ad-hoc basis. Records of completeness checks were retained but there was no evidence of any assessment of suitability on the customer files;
- (3) properly resource the compliance function. Whilst PCL's policies stated that you retained overall responsibility for compliance as the designated compliance and training and competence officer, you delegated day-to-day responsibility for compliance to another adviser at PCL, without making an adequate assessment of their competence and capability.. In particular, you did not formally assess that adviser's competence and failed to adequately monitor the role. You relied too heavily on that adviser to carry out compliance responsibilities. That adviser was, for a period of time, unable to properly fulfil those compliance responsibilities you had delegated to him due to ill health and you failed to take appropriate action when it should have been clear to you that the compliance resource was inadequate because no-one was performing the role; and
- (4) address fully concerns regarding PCL's sales processes and ability to demonstrate that it was treating its customers fairly, raised by the FSA following visits in March 2007 and again in August 2008. In particular, whilst the transactions reviewed by the investigation team contained, in most cases, much improved suitability letters following the remedial action undertaken, the amended suitability letters issued by PCL were still not adequately tailored

to the individual customers' circumstances. You relied almost entirely on another adviser and another employee at PCL, and subsequently on an external compliance consultant, to address the concerns raised by the FSA. You failed to monitor adequately that advisor and other employee with regards to the remedial action they were taking, and failed to ensure that the FSA's concerns were adequately addressed.

- 4.13. Further, your failure to implement adequate systems and controls at PCL resulted in PCL being unable to demonstrate that it was treating its customers fairly, including that the advice given by PCL's advisers, including you, was suitable. The FSA reviewed 17 customer transactions and found, as a result of those inadequate systems and controls, a number of instances where there was insufficient evidence on file to support the suitability of the advice given.

5. CONCLUSION

- 5.1. On the basis of the facts and matters described above the FSA concludes that your conduct fell short of the minimum regulatory standards required of an approved person performing a significant influence function in relation to any regulated activity carried on by any authorised or exempt person, or exempt professional firm. As such, you are not fit and proper in terms of your competence and capability to perform such functions.
- 5.2. In particular, you failed in your significant influence roles to take reasonable steps to ensure that the business of PCL for which you were responsible complied with the relevant requirements and standards of the regulatory system. You failed to ensure that PCL had in place adequate and appropriate systems and controls to ensure that the advice given by PCL was suitable, and that it was able to evidence that it was treating its customers fairly. Further, you failed to adequately address concerns raised by the FSA and external compliance consultants, despite stating to the FSA that you had done so because you failed to appreciate the full extent of what was required and were under the false impression that you had satisfactorily addressed the concerns.

5.3. The FSA considers that, to achieve its regulatory objectives, which include the protection of consumers, market confidence and public awareness, it should exercise its powers to make a prohibition order in the terms set out above.

6. DECISION MAKERS

6.1. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers on behalf of the FSA for the purposes of the FSA's Decision Procedure and Penalties Manual..

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 at the FSA (direct line: 020 7066 5914 / fax: 020 7066 5915).

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Tom Spender
Head of Department
Financial Services Authority

Annex A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

The FSA's statutory objectives as set out in section 2(2) of the Act are: market confidence, public awareness, the protection of consumers and the reduction of financial crime.

Section 56 of the Act provides that the FSA may prohibit an individual from performing functions in relation to a regulated activity carried on by an authorised person.

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 be made in relation to:

- (1) a specified regulated activity, any regulated activity falling within a specified description or all regulated activities; and
- (2) authorised persons generally or any person within a specified class of authorised person.

Section 56(1) provides that the FSA may make a prohibition order if it appears to the FSA that the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.

Enforcement Guide (“EG”)

The FSA’s policy on exercising its powers to withdraw approval and make prohibition orders is set out in Chapter 9 of the Enforcement Guide.

EG 9.1 states that the FSA’s power under section 56 of the Act to make prohibition orders helps it work towards achieving its regulatory objectives. The FSA may exercise this power where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities, or to restrict the functions which he may perform.

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 that the individual performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of the risk posed by him to consumers or the market generally.

In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provide guidance. In particular, EG 9.8 states that in deciding whether to withdraw approval and/or make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.

EG 9.9 provides that, when the FSA decides whether to make a prohibition order against an approved person, the FSA will consider all the relevant circumstances of the case, including, but not limited to, the following:

- (1) whether an individual is fit and proper to perform functions in relation to regulated activities in accordance with the criteria contained in FIT;
- (2) whether, and to what extent, the approved person has:
 - (a) failed to comply with a Statement of Principle; or
 - (b) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles for Businesses and other rules);
- (3) the relevance and materiality of any matters indicating unfitness;
- (4) the length of time since the occurrence of any matters indicating unfitness;
- (5) 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; and
- (6) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

EG 9.10 provides that the FSA may have regard to the cumulative effect of a number of factors and may take into account 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.

Fit and Proper Test for Approved Persons ("FIT")

The part of the FSA Handbook entitled "FIT" sets out the Fit and Proper test for assessing the continuing fitness and propriety of approved persons and for assessing candidates for becoming approved persons. In accordance with EG 9.9 FIT is also a relevant consideration for the FSA in deciding whether to make a prohibition order against an individual.

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 competence and capability.

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 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)).