FSA

FINAL NOTICE

To: Mr Robert Edward James

Ref: REJ01026

Date of birth: 28 June 1961

Dated: 2 September 2008

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 Mr James, from performing any controlled functions in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm

1. THE ORDER

1.1. The FSA gave Mr James a Decision Notice dated 2 September 2008 (the "Decision Notice") which notified him that the FSA had decided to withdraw the approval given to him to perform controlled functions and, pursuant to section 56 of the Financial Services and Markets Act 2000 (the "Act"), to make a prohibition order against Mr James to prevent him from carrying out any controlled functions in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm ("the Prohibition Order").

1.2. Mr James agreed that he would not be referring the matter to the Financial Services and Markets Tribunal.

1.3. Accordingly, for the reasons set out below, the FSA hereby withdraws the approval given to Mr James to perform controlled functions, and makes an order pursuant to section 56 of the Act prohibiting him from performing any controlled functions in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm. The Prohibition Order takes effect from 2 September 2008.

2. REASONS FOR THE ORDER

2.1. The FSA has concluded that Mr James is not a fit and proper to perform any controlled functions in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm because of his conduct while acting as chief executive of, and (from 14 January 2005) an approved person at, BPS Insure Limited (in administration) ("BPS"), a general insurance intermediary.

2.2. The FSA considers that Mr James failed to act with integrity and breached Principle 1 of the FSA's Rules and the Statements of Principle and the Code of Conduct for Approved Persons. In summary, the FSA finds that:

(1) Mr James was aware, and failed to inform the FSA that, as at the date of BPS's application for authorisation in June 2004, and furthermore, in the period between authorisation on 14 January 2005 and the FSA's visit to BPS in April 2005, there was a significant deficit in BPS's client accounts, in breach of the FSA's client asset rules ("CASS"), in particular CASS 5. As a consequence of this significant deficit there was a clear and substantial risk that BPS would not comply with its obligations under CASS 5 after it became authorised by the FSA on 14 January 2005 and, in particular, that BPS would use client money improperly to finance its operations and it would be unable to cover any shortfall in its client money account about which he knowingly disregarded. In relation to those matters, Mr James acted recklessly and

without integrity; and

(2) Mr James was aware, and failed to inform the FSA that, in January 2005 and February 2005, BPS used client money improperly to pay BPS's general expenses, in breach of CASS and which increased the deficit further. By being aware of, or acquiescing in, the misuse of the client money on two occasions Mr James acted without integrity.

2.3. The FSA has concluded, by virtue of the matters referred to above, that Mr James is not a fit and proper person and that his conduct demonstrated such a serious lack of integrity, it is necessary and proportionate to make a prohibition order against him in the terms proposed in order to achieve the FSA's regulatory objectives, in particular maintaining confidence in the financial system and securing the appropriate degree of protection for consumers.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

3.1. 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.".

3.2. When exercising its powers, the FSA seeks to act in a way it considers most

appropriate for the purpose of meeting its regulatory objectives (section 2(1) of the Act), which include the following:

(1) the market confidence objective: that is, maintaining confidence in the financial system; and

(2) the protection of consumers objective: that is, securing the appropriate degree of protection for consumers.

Relevant policy

3.3. The FSA's Enforcement Guide ("EG"), which is a Regulatory Guide and does not form part of the FSA's Handbook, contains general guidance on the FSA's approach to exercising its main enforcement powers. Chapter 9 of EG sets out the FSA's policy on prohibition orders against individuals. Under EG 9.1, the FSA may exercise its power to make a prohibition order where it is appropriate to help the FSA achieve its regulatory objectives, which are referred to in paragraph 2.1 and 2.2 above.

3.4. EG 9.3 states that, in deciding whether to make a prohibition order, the FSA will consider all the relevant circumstances, including whether enforcement action has been taken against the individual by other enforcement agencies or designated professional bodies.

3.5. In considering making a prohibition order against an individual such as Mr James, who is, and was at the material time, an approved person, the FSA will consider the severity of the risk posed by Mr James and may prohibit him where it considers this is appropriate to achieve one or more of its regulatory objectives (EG 9.17). Under EG 9.9 as applied by EG 9.18, the FSA may consider the following factors, amongst others:

" *(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.*

…

(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*".

3.6. According to EG 9.5, the scope of a prohibition order will depend on (amongst other things) the reasons why he is not fit and proper and the severity of the risk he poses to consumers or the market generally.

The Fit and Proper Test

3.7. In determining whether to issue this Prohibition Notice and its extent, the FSA has had regard to the guidance in the FSA's Handbook in the part entitled "FIT – The Fit and Proper test for Approved Persons" in the High Level Standards Sourcebook. This guidance provides that whether a person is fit and proper to perform a particular controlled function is judged by reference to a number of factors. Among the most important of these are a person's honesty, integrity and reputation in FIT 2.1.

Honesty and Integrity

3.8. The assessment of a person's honesty and integrity can be made, in part, by reference to a list of non-exhaustive matters detailed in FIT 2.1.3 G. Among those matters which are relevant to the conduct at issue in this notice are**:**

"(5) *whether the person has contravened any of the requirements and standards of the regulatory system ...*

...

(9) *whether the person has been a director, partner, or concerned in the management, of a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation or within one year of that connection;*

...

(13) *... 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".*

FSA's Statements of Principle for Approved Persons

3.9. The FSA's statements of Principle for Approved Persons are set out in the High Level Standards part of the FSA's Handbook and are entitled "Statements of Principle and Code of Practice for Approved Persons" ("APER").

3.10. The Statements of Principle are set out in APER 2.1.2 P and are issued by the FSA under section 64 of the Act. APER 1.2.9 G makes it clear that the Statements of Principle apply only to the extent that a person is performing a controlled function for which approval has been sought and granted. A "controlled function" is a function of a description specified in FSA rules (section 59(3) of the Act). The FSA may only grant such approval if it is satisfied that the person in respect of whom approval is sought is a fit and proper person to perform the controlled function to which the application relates (section 61(1) of the Act). An "approved person" is a person in relation to whom the FSA has given such approval (section 64(13) of the Act).

3.11. Section 64(2) of the Act states that if the FSA issues a Statement of Principle it must also issue a code of practice. The Code of Practice contains guidance and specific examples of conduct which the FSA considers contravene each of the Statements of Principles, which are contained in APER 3 and APER 4.

3.12. The guidance set out in APER 3.1.3 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.

3.13. APER 3.1.4 states that an approved person will only be in breach of a Statement of Principle if he is personally culpable, that is in a situation where his conduct was deliberate or where his standard of conduct was below that which would be reasonable in all circumstances.

3.14. APER 3.2.1 provides that in determining whether or not the particular conduct of an approved person with his controlled function complied with the Statements of Principle, the FSA should take into account the following general considerations:

(1) whether that conduct relates to activities that are subject to other provisions of the Handbook;

(2) whether that conduct is consistent with the requirements and standards of the regulatory system relevant to his firm.

3.15. Statement of Principle 1 is considered to be relevant to Mr James's conduct.

Statement of Principle 1

3.16. Statement of Principle 1 provides that:

"*An approved person must act with integrity in carrying out his function*".

3.17. There is clear overlap between this Principle, which requires approved persons to act with "integrity", and the criterion of "integrity" in FIT 2.1 used in assessing a person's fitness and propriety. The FSA consider that the examples given on the application of Statement of Principle 1 assist in determining whether a person has acted with integrity for the purposes of EG 9.9(2) and FIT 2.1.

3.18. In particular, APER 4.1. lists types of conduct, which do not comply with Statement of Principle 1 and these include the following:

(1) *"Deliberately misusing the assets…of a client…" (APER 4.1.10).*

(2) *"…deliberately:..."*

(3) misappropriating a client's assets;…

(4) wrongly using one client's funds to…… cover trading losses on... firm accounts;…

(5) using a client's funds for purposes other than those for which they were provided (APER 4.1.11 E)."

Rules on protection of client money

3.19. From 14 January 2005, all firms wishing to conduct insurance mediation activities became regulated by the FSA. They were obliged to comply with the FSA's Rules, in particular those set out in CASS 5, entitled "Client money and mandates: insurance mediation activity". Guidance in CASS 5.5.2 G states that:

"One purpose of CASS 5.5 is to ensure that, unless otherwise permitted, client money is kept separate from the firm's own money. Segregation, in the event of a firm's failure, is important for the effective operation of the trust that is created to protect client money. The aim is to clarify the difference between client money and general creditors' entitlements in the event of the failure of the firm".

3.20. CASS 5.5.3 R states*:*

"A firm must ... hold client money separate from the firm's money".

3.21. CASS 5.3 imposes a statutory trust on client money held by insurance mediation firms; and CASS 5.4 permits a firm to declare a non-statutory client money trust on terms expressly authorising it to make advances of credit to the firm's clients. As guidance in CASS 5.4.1 G made clear, however:

"CASS 5.4 does not permit a firm to make advances of credit to itself out of the client money trust. Accordingly, CASS 5.4 does not permit a firm to withdraw commission from the client money trust before it has received the premium from the client in relation to the non-investment insurance contract which generated the

commission".

3.22. CASS 5.5.5R provides that a firm must segregate client money by either (i) paying it as soon as practicable into a client account or (ii) paying it out in accordance with CASS 5.5.80R.

3.23. CASS 5.5.49R provides that when a firm opens a client bank account, the firm must give or have given written notice to the bank requesting the bank to acknowledge to it in writing that:

"(1) all money standing to the credit of the account is held by the firm as trustee (or if relevant in Scotland, as agent) and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any sum owed to it on any other account of the firm; and

(2) the title of the account sufficiently distinguishes that account from any account containing money that belongs to the firm, and is in the form requested by the firm".

3.24. CASS 5.5.63R provides that 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, check whether its client money resource is equal to its client money requirement (CASS 5.5.63(1)(a) and that any shortfall is paid into the client bank account by close of business on the day any shortfall is identified (CASS 5.5.63(1)(b)).

3.25. CASS 5.5.65R (1) provides that the client money resource for the purposes of CASS 5.5.63R (1)(a) is:

"the aggregate of the balances on the firm's client money bank accounts, as at the close of business on the previous business day and, if held in accordance with CASS 5.4, designated investments (valued on a prudent and consistent basis) together with client money held by a third party in accordance with CASS 5.5.34R"

3.26. CASS 5.5.77R provides that a firm must notify the FSA immediately it becomes aware that it may not be able to make good any shortfall in its client account by close of

business on the day the shortfall is identified.

3.27. CASS 5.5.80(5) provides that money ceases to be client money if it is paid to the firm itself, when it is an excess in the client bank account as set out in CASS 5.5.63R(1)(b)(ii).

3.28. The CASS Rules make it clear that from 14 January 2005:

(1) BPS was obliged to hold client money separately from its own money;

(2) money could only be transferred from a client account to an office account when and insofar as it was not client money because it represented commission received into the client account and cleared and, therefore, that commission belonged to BPS and not to the client;

(3) BPS's use of client money to finance its operations was at all material times improper, it did not comply with BPS's obligation to segregate client money and BPS was not permitted to transfer client money to its office account;

(4) BPS had to make payment into its client account sufficient to cover any shortfall identified when carrying out the client money calculations pursuant to section 5.5.63 of CASS.

4. FACTS AND MATTERS RELIED ON

BPS's History and Activities

4.1. BPS was a small general insurance intermediary business specialising in non-investment insurance contracts for both commercial and retail customers. It was incorporated on 18 December 2000 and ceased trading on 27 May 2005 when BPS was placed in administration.

4.2. BPS's head office and principal place of business was Regus Tower 42, International Finance Centre, London EC2N 1HN. It also had a number of other branches in various locations in the UK.

4.3. BPS had terms of business agreements which specified it would write business on a risk transfer basis with the majority of its customers (approximately 67%). This meant that BPS held the premiums paid by customers for policies in its client account as an agent for the insurers. The remaining 33% of BPS's customers were supplied policies on a non-risk transfer basis.

4.4. Mr James joined Belvedere Insurance Services ("BIS"), a predecessor firm of BPS in January 2001 and became the Chief Executive of BPS in February 2004 when BPS acquired the whole business of BIS as part of a management buy-out ("MBO"), which completed on 31 March 2004. BPS was a wholly owned subsidiary of a Guernsey registered holding company of which Mr James owned 60%.

4.5. As CEO of BPS, Mr James was responsible for overseeing the company, including its finance function and its general management. As a director of BPS, Mr James had a duty to act in the best interests of the company and had collective responsibility at director level for BPS's business.

4.6. Mr James remained a director of BPS until it went into administration on 27 May 2005. Mr James is currently working in the general insurance industry but he is not, at present, an approved person.

4.7. BPS was authorised by the FSA on 14 January 2005. BPS had permission to carry on the following regulated activities:

(1) Advising and arranging deals in non-investment products;

(2) Agreeing to carry on a regulated activity;

(3) Dealing as an agent in non-investment insurance products;

(4) Assisting in the administration and performance of a non-investment insurance contract; and,

(5) Dealing with the segregation of client money and assets.

4.8. From 14 January 2005, Mr James was approved by the FSA and held the following controlled functions:

(1) CF1 (Director);

(2) CF3 (Chief Executive Officer); and

(3) CF8 (Apportionment and Oversight).

4.9. In anticipation of the FSA taking on responsibility for general insurance regulation, BPS submitted an online application for authorisation in June 2004, which Mr James reviewed and approved before it was submitted to the FSA. On the form, BPS confirmed that its client money account had been audited within the last 12 months and that BPS would be compliant with the capital resources requirement from the start of authorisation. BPS also ticked the box to say that it had read and understood the declaration on the form that states *"By signing this application form…I/we will notify the FSA immediately if there is a significant change to the information given in the application pack. If I/we fail to do so, this may result in a delay in the application process or enforcement action"*.

4.10. On the application form, in answer to Question 53, regarding the segregation of client money and assets, BPS stated that its client money was held as a mixture of risk transfer (i.e. intermediary holds funds as agent for the insurer), statutory trust (i.e. intermediary hold funds on trust for the customer) and non-statutory trust

4.11. The application form stated the following:

"The firm must provide details of any significant events that have occurred in the past that may be relevant to our assessment. We will consider each event in relation to the regulated activities for which the firm will have permission bearing in mind our regulatory objectives in the Act. If the firm is unsure as to whether an event needs to be disclosed we advise that it discloses it and we can then consider its importance"

4.12. At no time between the date of application and date of authorisation did BPS notify the FSA that there was a deficit in the client money account or that it was unlikely that BPS could meet the client money requirements from 14 January 2005, the date of authorisation.

4.13. At question 40 of the application form BPS was asked and responded "no" to the

following question:

"Are there any other significant events regarding the firms or any companies within the firm's group that might adversely affect the application?"

5. THE FSA'S DISCOVERY OF CLIENT ASSET ISSUES AT BPS

5.1. On 28 April 2005, the FSA conducted a routine visit to BPS, at which Mr James was present, while carrying out thematic work on client assets.

5.2. At the meeting, BPS informed the FSA, among other matters, that:

(1) as at 31 March 2005, there was a deficit of £1,023,000 on its client money account;

(2) this deficit had been identified as part of the preparation of accounts for the year ending 31 July 2004;

(3) the deficit had been in existence, although unquantified, since August 2004; and

(4) the bulk of funds available to clients was being held in an account, the status of which was not determined, and which BPS could not demonstrate was a trust.

5.3. Consequently, on 29 April 2005 the FSA imposed a Notice of Imposition of Assets Requirement on BPS preventing BPS from conducting new business and effectively freezing BPS's assets and preventing the risk of the deficit in the client money account increasing further by ensuring there was no unauthorised removal of funds from BPS.

5.4. The FSA found that BPS had inadequate resources and that it had breached several of the FSA's rules and principles (including the capital resources requirement and CASS Rules) and the disciplinary proceedings against BPS concluded with the removal on 5 May 2005 of all of BPS's permissions except "*Assisting in the administration and performance of a non-investment insurance contract*".

5.5. Following unsuccessful negotiations for the sale of BPS, the directors of BPS were advised to place the company into administration. BPS was, therefore, placed into administration on 27 May 2005 and administrators were appointed (the "Administrators").

5.6. As at 27 May 2005 the Administrators estimate the deficiency on BPS' client account to be approximately £3.5 million. Immediately after the Administrators were appointed, the business and assets of BPS were sold.

5.7. The FSA commenced an investigation into Mr James as, in the course of its thematic work involving BPS's client assets, there were circumstances suggesting that Mr James may have failed to comply with the FSA's Rules and Principles.

6. DEFICIT IN BPS'S CLIENT MONEY ACCOUNT

6.1. The FSA established that there was deficit in BPS's client money accounts for certain periods:

(1) prior to FSA authorisation of BPS in January 2005; and

(2) following authorisation in January 2005 until April 2005, when the FSA intervened.

Background to the deficit

6.2. As part of the MBO in February 2004, BPS "inherited" a significant deficit of approximately £1.3 million, which existed in BIS pre MBO. An agreement was entered into at the time of the MBO in relation to the future financing of the deficit, in which it was agreed that additional funding of approximately £1.3 million would be obtained either from a bank or, if that was not possible, from certain parties to the agreement who would contribute debt financing of approximately £1.3 million in the proportions set out in the agreement (the "Funding Agreement"). The obligation to provide funding had to be exercised on or before 31 December 2004, failing which the parties to the Funding Agreement would be released from their obligations. As it transpired, funding was not obtained pursuant to the terms of the Funding Agreement on/by 31 December 2004 despite assurances in early December 2004 from parties to

the agreement that deficit funding was forthcoming.

Amount of the deficit

6.3. There is a conflict of evidence as to the amount of the deficit prior to and post authorisation on 14 January 2005. The FSA estimates, based on its own calculations (applying the same basis of calculation to the monthly trial balance as was performed by BPS following authorisation) that the deficit was, at the time of the MBO (in February/March 2004) approximately £3.2 million (and not approximately £1.3 million, as set out in the Funding Agreement), that it reduced to approximately £3.1 million at the time of BPS's application for authorisation in July 2004 and that it was approximately £2.6 million in December 2005, a few weeks before BPS was authorised on 14 January 2005.

6.4. The FSA also believes that the deficit was, in January 2005 (the month in which BPS became authorised) approximately £2.7 million and that it had increased to approximately £2.8 million by April 2005, when the FSA visited BPS. The Administrators estimated that, as at 27 May 2005, the deficit was approximately £3.5 million.

7. MR JAMES' AWARENESS OF THE DEFICIT

Pre – Authorisation

7.1. The following facts illustrate Mr James' awareness of the client money deficit before authorisation:

(1) Mr James admitted in interview that, at the time of the MBO in February 2004, he was aware that there was a financial deficit of approximately £1.3 million in BPS's client money position and that subsequently, it turned out to be much higher;

(2) Mr James admitted in interview that he was aware of the continued existence of the deficit in the client money position in the run up to FSA authorisation (and subsequent to authorisation);

(3) Mr James received management accounts packs (which included financial

analyses of BPS's balance sheet and cash flow) in advance of monthly board meetings held from the time of the MBO on 26 February 2004 until May 2005. From early 2004 until March 2005, the analyses separated out the insurance and non-insurance positions and the deficit was clearly identifiable from this;

(4) Mr James attended board meetings held in February, March, April, May, July, August, October and November 2004 and all of the minutes of those meetings identify a deficit in BPS's client account, discuss the anticipated funding of the deficit and the amounts required (and from whom) to remove the deficit; and

(5) Mr James also received numerous emails from his colleagues, in which the specific issue of the deficit (and FSA authorisation) were raised.

Post - Authorisation

7.2. Following authorisation in January 2005, Mr James received a client money calculation within the management pack (referred to above) on a monthly basis, which clearly show a deficit in BPS's client account.

7.3. In interview, Mr James admitted that he was aware of the deficit from the time of the MBO until the time the company ceased trading. Mr James also admitted in interview that he knew that by failing to inform the FSA immediately of the existence of the deficit after authorisation, BPS was in breach of FSA rules.

7.4. Despite this knowledge, the deficit was not disclosed to the FSA until the FSA's visit in April 2005.

8. MISUSE OF CLIENT MONEY

8.1. Following FSA authorisation in January 2005 and in February 2005, £140,000 and £175,000, respectively, was improperly transferred from BPS's client money account to the office account of BPS in excess of commission due (i.e. before the premium had been received from customers or before the funds had cleared). These transfers were made by in line with existing practice at BPS, of which Mr James was aware.

8.2. Mr James admitted in interview that he had seen the January 2005 and February 2005 client money calculations that showed the excess withdrawals from the client money bank account in the corresponding monthly board packs and that he was aware that money was being drawn down from the client account to meet the cost and expenses of running BPS and to pay BPS's general expenses, including directors' and other loans and employees' salaries.

8.3. Mr James has also admitted that he knew that by withdrawing excess sums form BPS's client account, BPS was in breach of CASS.

9. MR JAMES' KNOWLEDGE OF FSA'S PRINCIPLES AND RULES

9.1. As part of BPS's preparation for authorisation, Mr James received an email on on 7 February 2004, which detailed the responsibilities and implications of being an approved person. Mr James also received a memorandum on 8 December 2004 entitled "Approved Persons".

9.2. Mr James was sent a series of three emails on 22 December 2004, which detailed the FSA rules and requirements on:

(1) business standards such as capital resource requirements and solvency requirements;

(2) client assets: specifically, the rules on segregation of client money and on paying such money out of the client account; and

(3) client money calculations: stating that it is the role of Mr James as CEO to ensure that the client money calculations are accurate and that appropriate action has been taken. It was also highlighted that any shortfall identified by the calculation needed to be made good or that the FSA should be identified immediately.

9.3. Mr James has admitted that he was aware of these rules and requirements.

10. OTHER MATTERS

10.1. It appears that there has been no significant direct consumer detriment as a result of Mr

James' misconduct. However, Mr James' misconduct could have left clients without the insurance cover for which they had paid and the misconduct also meant that insurance companies did not receive the premiums which had been paid to BPS by its customers. As at 27 May 2005, the Administrators estimated that the deficiency on BPS's client account was approximately £3.5 million, of which approximately only £20,000 was due to policyholders, the remaining policyholders being covered on a risk transfer basis by their insurers. One creditor (an underwriter) was owed £2.14 million. However, this business had been written on a non risk transfer basis and the creditor has voluntarily agreed to honour all policies.

11. MITIGATION

11.1. It is recognised that Mr James, from the outset of the investigation, including in interviews, has made open admissions in relation to the misconduct set out in this Decision Notice.

11.2. It is also recognised that during the run up to, and following authorisation, Mr James took some steps in an attempt to rectify the deficit position in the client money accounts, in addition to Funding Agreement, by:

(1) seeking additional funding from two banks

(2) attempting to sell part of the business in order to raise capital; and

(3) seeking to sell the shares in BPS to various interested insurance brokers,

all of which were unsuccessful.

11.3. Mr James has not previously been the subject of any Enforcement action.

12. CONCLUSION

12.1. Mr James was aware of the deficit in BPS's client account from February 2004 until the time the company ceased trading in May 2005. Despite this knowledge, he failed to inform the FSA of the deficit in the period before authorisation either, at the time of BPS's application for authorisation in July 2004 or, in any event on/after 31 December 2004, when it became apparent that funding for the deficit would not be provided in

accordance with the terms of the Funding Agreement or otherwise. Mr James admitted that he knew that by failing to inform the FSA immediately of the existence of the deficit after authorisation, BPS was in breach of CASS. Despite this knowledge, the deficit was not disclosed to the FSA until April 2005. In knowing of the deficit and failing to inform the FSA, Mr James acted without integrity.

12.2. As a consequence of this significant deficit there was a clear and substantial risk that BPS would not comply with its obligations under CASS 5 after it became authorised by the FSA on 14 January 2005 and, in particular, that BPS would use client money improperly to finance its operation sand it would be unable to cover any shortfall in its client money account about which Mr James knowingly disregarded. In relation to those matters, Mr James acted recklessly and without integrity.

12.3. Mr James was aware that:

(1) BPS was obliged to hold client money separately from its own money;

(2) money could only be transferred from a client account to an office account when and insofar as it was not client money because it represented commission received into the client account and cleared and, therefore, that commission belonged to BPS and not to the client;

(3) BPS's use of client money to finance its operations was at all material times improper, it did not comply with BPS's obligation to segregate client money and BPS was not permitted to transfer client money to its office account;

(4) BPS had to make payment into its client account sufficient to cover any shortfall identified when carrying out the client money calculations pursuant to section 5.5.63 of CASS.

12.4. Despite this knowledge, Mr James failed to inform the FSA that, in January 2005 and in February 2005, £140,000 and £175,000, respectively, was improperly transferred from BPS's client money account to the office account of BPS in excess of commission due and in breach of CASS. By being aware of, or acquiescing in, the misuse of the client money on two occasions Mr James acted without integrity.

12.5. The FSA has also had regard to the fact that Mr James' failure to comply with the FSA requirements in the management of BPS has, at least in part, led to BPS being placed in administration.

12.6. By virtue of the circumstances outlined above, the FSA considers that Mr James has failed to act with integrity and therefore is not fit and proper to perform any controlled functions in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. Given this lack of integrity, it is necessary and proportionate to make a prohibition order against him in the terms proposed in order to achieve the FSA's regulatory objectives, in particular maintaining confidence in the financial system and securing the appropriate degree of protection for consumers.

13. DECISION MAKERS

13.1. The decision which gave rise to the obligation to give this Final Notice was made by Settlement Decision Makers on behalf of the FSA.

14. IMPORTANT

14.1. This Final Notice is given to you under section 390 of the Act.

Publicity

14.2. 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.

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

FSA Contacts

14.4. For more information concerning this matter generally, you should contact Andrea Bowe of the Enforcement Division of the FSA (direct line: 020 7066 5886 / fax: 020 7066 5887).

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Jonathan Phelan

Head of Department

FSA Enforcement Division