

NOTE: This prohibition order was revoked by the FSA on 11/10/2005.

FINAL NOTICE

To: Robert Stevens

Formerly of: Credit Suisse First Boston International
One Cabot Square
London
E14 4QJ

Date: 10 November 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 further decision notice dated 30 October 2003 which notified you that, for the reasons set out in that notice and pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to make an order prohibiting you, Robert Stevens, from performing any function in relation to any regulated activity carried on by any authorised person.

You have agreed not to refer the matter to the Financial Services and Markets Tribunal within 28 days of the date on which the further decision notice was given to you.

Accordingly, for the reasons set out below and having taken into account your representations to the Regulatory Decisions Committee, the FSA hereby makes an order pursuant to section 56 of the Act prohibiting you, Robert Stevens ("Mr Stevens"), from performing any function in relation to any regulated activity carried on by any authorised person. This order has effect from 13 November 2003.

REASONS FOR THE ORDER

Introduction

1. It appears to the FSA that by his conduct, in 1996 and 1997, in his capacity as Head of Financial Control of Credit Suisse First Boston International (formerly Credit Suisse Financial Products) (“CSFP”), Mr Stevens was involved in conduct designed deliberately to mislead the Japanese tax authority as to the nature and scope of the activities being carried out on CSFP’s behalf in Japan.
2. Mr Stevens' conduct was of such a nature and so serious as to make him not fit and proper to perform any function in relation to any regulated activity carried on by any authorised person.

Relevant Statutory Provisions

3. The FSA is authorised to exercise the powers contained in section 56 of the Act, which includes the following terms:
 - “(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”.*
4. 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 Mr Stevens in the terms proposed meets the market confidence objective: that is, maintaining confidence in the financial system.
5. The principles underlying the FSA's approach to the exercise of its enforcement powers are set out in *ENF* 1.3.1 of the FSA's Enforcement manual. The FSA considers the proposed action to be a proportionate exercise of its enforcement powers and consistent with the FSA's publicly stated policies, which are set out below.

Relevant FSA Guidance

6. In deciding to take this action, the FSA has had regard to guidance published in the FSA Handbook and, in particular, to that set out in Chapter 8 of the FSA’s Enforcement manual (as amended).

Facts and Matters Relied On

Background

Mr Stevens' regulatory status

7. From 16 June 1994 and thereafter at all material times, Mr Stevens was registered with the Securities and Futures Authority as a Manager of CSFP.
8. Mr Stevens was not grandfathered into the FSA's regime on 1 December 2001 and he is not an approved person.

Mr Stevens' responsibilities

9. From May 1994 to March 2001, Mr Stevens was Head of Financial Control at CSFP. Between October 1996 and October 1998 he also had responsibility for CSFP's product control department.
10. As Head of Financial Control for CSFP, Mr Stevens had responsibility, *inter alia*, for internal financial and management reporting, preparation of CSFP's annual financial statements and for regulatory reporting to the Bank of England.
11. CSFP did not have its own tax department. As a consequence, the management of CSFP's tax affairs was undertaken on its behalf by the tax department of Credit Suisse First Boston ("CSFB") in London. In his capacity as CSFP's Head of Financial Control, Mr Stevens was also responsible for close liaison with and the provision of relevant information to CSFB's tax department.

CSFP

12. At all material times, CSFP was a company within the Credit Suisse Group with its headquarters and senior management located in London. It dealt in a range of derivative products with a wholesale and institutional client base including counterparties based in Japan.
13. Between 1990 and April 1997, CSFP was not licensed to conduct business directly in Japan. In or about July 1990, it appointed CS First Boston (Japan) Limited ("CSFB JL"), a company within the Credit Suisse Group based in Tokyo which held a Japanese securities licence, to act as its agent in Japan. CSFP delegated to CSFB JL the authority to agree to transactions with Japanese counterparties on its behalf.
14. Thereafter and until 14 April 1997, most of CSFP's activities in Japan were undertaken on its behalf by a division within CSFB JL known as the Structured Products Group ("SPG"). Although it was part of CSFB JL, the SPG was widely regarded within both CSFP and CSFB JL as CSFP's business unit in Japan and CSFP had direct responsibility for much of its management.
15. On 15 April 1997, following the approval by the Japanese Ministry of Finance of its application for a banking licence, CSFP opened Credit Suisse Financial Products Tokyo Branch ("CSFP TB"). At all material times thereafter, CSFP's activities in Japan were undertaken principally by CSFP TB.

Mr Stevens' understanding of the tax risk posed by the SPG

16. In July 1995, Mr Stevens was part of a team (“the Tokyo Task Force”) which carried out a review of, *inter alia*, the tax risks posed by the activities being conducted by the SPG on CSFP’s behalf. As a result of his involvement in the Tokyo Task Force and otherwise, by August 1995 at the latest Mr Stevens had a detailed knowledge of those activities and of the nature of the relationship between CSFP and the SPG. In particular he understood that:
 - 1) CSFP had delegated authority to the SPG orally to commit CSFP to transactions with Japanese counterparties and that the SPG routinely did so. In this regard, Mr Stevens understood that commitment was made by agreement over the telephone between the SPG trader in Tokyo and the Japanese counterparty;
 - (2) CSFP’s Yen and Nikkei books were hedged by the SPG traders in Tokyo and the pricing of transactions being arranged by the SPG on CSFP’s behalf was carried out by them;
 - (3) the SPG marketers, on CSFP’s behalf, routinely marketed products to Japanese clients (both orally and in writing) and negotiated and finalised the terms of transactions with those clients;
 - (4) the SPG’s activities were conducted almost exclusively on behalf of CSFP and the entire cost of the SPG was reimbursed to CSFB JL by CSFP on a cost plus 5% basis; and
 - (5) SPG managers in Tokyo reported functionally to CSFP managers based in London and in particular that a senior member of the SPG’s management reported to CSFP’s Chief Executive Officer.
17. Mr Stevens also believed that:
 - (a) if the nature of the SPG’s activities on CSFP’s behalf became known to the Japanese National Tax Authority (“the NTA”) there was a significant risk that the SPG would be deemed to be a permanent establishment of CSFP in Japan;
 - (b) if so, CSFP would probably have to pay Japanese tax calculated by reference to the profits generated from activities undertaken by the SPG on its behalf; and
 - (c) in any event, there was a significant risk that the SPG’s activities would be regarded as exceeding the liaison type functions for which the cost plus 5% arrangement for reimbursing CSFB JL was acceptable to the NTA.
18. At the end of 1995 Mr Stevens calculated that, if the SPG was deemed to be a permanent establishment, CSFP could incur an additional tax liability of up to \$24 million for the calendar year 1994 and the first 10 months of 1995. To reflect this, CSFP had set up an internal tax buffer, which at the end of 1995 stood at \$10 million, based on Mr Stevens’ risk weighted assessment of the potential liability. By the end of 1996, CSFP assessed the maximum potential liability in respect of years 1994,

1995 and 1996 to be in the region of \$76 million and the tax buffer had been increased to \$38.2 million.

Hong Kong Arrangements

19. In order to reduce the risk that the SPG would be deemed to be a permanent establishment, a system was introduced in about August 1995, as a consequence of a recommendation made by the Tokyo Task Force, under which, prior to committing CSFP orally to a transaction, the SPG traders in Tokyo were required to obtain approval from one of CSFP's traders in Hong Kong ("the Hong Kong Arrangements").
20. The FSA finds that Mr Stevens understood that, in order for the Hong Kong Arrangements to be effective in mitigating the risk of the SPG being deemed a permanent establishment of CSFP, trading decisions would need to be taken in substance by the traders in Hong Kong. The FSA does not accept Mr Stevens' claim that he believed that the NTA would focus on the form rather than the substance when assessing the efficacy of the Hong Kong Arrangements. The FSA considers that Mr Stevens believed at the time that the NTA would be more likely to conclude that a permanent establishment of CSFP existed in Japan if it viewed the Hong Kong Arrangements as a mere procedural formality which left the trading decisions in substance in Tokyo.
21. Mr Stevens was aware that the Hong Kong Arrangements had been introduced but, in the FSA's view, he believed that:
 - (1) approval by the CSFP traders in Hong Kong was a formality. The Hong Kong traders had no substantive involvement in determining either the pricing of the transactions or whether CSFP should enter into them;
 - (2) those key decisions continued to be taken in substance by the SPG traders in Tokyo;
 - (3) in practice the traders in Hong Kong did not reject transactions which the SPG proposed to commit to on CSFP's behalf; and
 - (4) as a consequence, there was a significant risk that, if the NTA appreciated the actual nature of the Hong Kong Arrangements, it would not regard them as effective to take into commitment to transactions offshore for the purposes of assessing whether a permanent establishment existed.

The NTA audit

22. In September 1996, Mr Stevens was informed that the NTA proposed to conduct a tax audit of CSFB JL's activities for the period April 1994 to March 1996. Mr Stevens became one of those responsible for CSFP's management in London of the NTA audit as it related to the activities of the SPG.

Lack of fitness and propriety

Conduct during the NTA audit

23. Both prior to and during the course of the NTA audit, in and from October 1996, Mr Stevens was involved in steps designed deliberately to provide a misleading impression to the NTA of the nature of the business carried out by the SPG on CSFP's behalf and of the relationship between the SPG and CSFP. The purpose of these steps was to minimise the risk that the NTA audit would result in a finding that a permanent establishment existed in Japan. In particular, Mr Stevens:
- (1) was involved in the preparation of responses and other representations which he understood would be given to the NTA and which, as he knew, falsely or otherwise misleadingly indicated that:
 - (a) the SPG had no power to commit to any transaction on behalf of CSFP and never did so. By this Mr Stevens meant oral commitment;
 - (b) the SPG acted on CSFP's behalf in an administrative or liaison capacity only;
 - (c) the position of a member of the SPG's senior management on CSFP's Executive Board was in the capacity merely as one of its "advisers in the Asia Pacific region";
 - (d) bonuses for SPG staff were determined by "senior executives from CSFB Group", omitting reference to the involvement of CSFP managers in the process;
 - (e) CSFP had never monitored the SPG's profitability;
 - (f) he was not aware of a senior member of the SPG's management having been given any power or decision making authority on CSFP's behalf;
 - (2) was involved in the preparation of briefing papers for SPG staff who were due to be interviewed by the NTA. As Mr Stevens knew, the briefing papers provided incomplete or otherwise misleading descriptions of SPG departmental roles which were to be given by staff to the NTA. Various of the notes indicated in particular that:
 - (a) the NTA should be informed that transactions for CSFP were undertaken by the SPG's traders only after consideration and approval by CSFP traders in Hong Kong. In fact, as Mr Stevens knew, the audit related to the period from April 1994 to March 1996, whereas the Hong Kong Arrangements had only been introduced in August 1995. In any event, as Mr Stevens believed that even after introduction of the Hong Kong Arrangements, the traders in Hong Kong had no substantive involvement in the pricing of transactions being arranged for CSFP by the SPG or in determining whether CSFP should enter into them;

- (b) the staff should not inform the NTA that they reported to CSFP managers in London. In fact, as Mr Stevens knew, SPG staff did report functionally and directly to CSFP managers in London, and in particular one of the SPG's departmental managers reported directly to Mr Stevens himself;
 - (3) was informed, during a telephone conversation with a member of the SPG's staff, that she had been instructed to provide the NTA with an incomplete and misleading description of the activities of her department and that she was uncomfortable with doing so because she regarded the description as untruthful. In response, Mr Stevens told her that she should do as she had been told;
 - (4) was party to a decision to delay supplying the NTA with a copy of CSFP's Annual Review and knew that arrangements had been made to provide the NTA with a "suitably cleaned up version" of the Review which would be less likely to alert the NTA to the actual nature of the SPG's relationship with CSFP;
 - (5) was party to a decision falsely to inform the NTA that no record existed of the transactions which the SPG had arranged on CSFP's behalf. He also knew that, if necessary, it was intended to provide the NTA with a version of the SPG's weekly transaction log which omitted details of transactions which would have indicated the nature and extent of the SPG's activities on CSFP's behalf.
24. Mr Stevens was also aware that similar steps had been taken by other CSFP employees and members of the SPG acting on CSFP's behalf, again with the intention of avoiding the actual nature of the SPG's activities or its relationship with CSFP being discovered by or revealed to the NTA. In particular, Mr Stevens knew that:
- (1) SPG staff had been instructed to remove from their desks any material which would be likely to reveal to the NTA the nature of that relationship;
 - (2) in interview with the NTA, SPG staff had provided deliberately incomplete and misleading descriptions of the SPG's activities;
 - (3) in response to a request from the NTA for copies of e-mail correspondence between the SPG and CSFP in London, it was intended to provide e-mail correspondence from which had been removed any e-mails containing information which might have indicated to the NTA the nature of that actual relationship;
 - (4) a deliberately incomplete and misleading explanation had been given to the NTA about the reason for the high level of remuneration of SPG staff and about CSFP's role in the determination of that remuneration, in order to support the impression that the SPG provided only liaison type services;
 - (5) SPG staff had removed copies of daily transaction logs and profit and loss ("P&L") reports which had been attached to documents that were to be inspected by the NTA;

- (6) SPG staff had removed documents from CSFB JL's offices for all or part of the duration of the NTA inspection in order that those documents would not be discovered by the NTA;
 - (7) it had been intended to inform the NTA misleadingly that the SPG had no clients of its own and did not "sell swaps";
 - (8) it had been suggested to SPG staff that they could send to CSFP London any documentation which they did not wish to be seen by the NTA auditors;
 - (9) a misleading explanation had been prepared for the size of the profit which had been generated by CSFP in Japan, which Mr Stevens knew was a reference to the profit generated by the SPG's activities.
25. Despite being aware of the matters described in paragraph 24 and notwithstanding that he was one of those responsible for CSFP's management in London of the NTA audit as it related to the SPG's activities, Mr Stevens took no adequate action to give instructions or cause instructions to be given to ensure that the NTA was given a truthful and accurate account of the SPG's activities or to ensure that other inappropriate conduct was properly addressed once it came to his attention.

Conclusion

26. The FSA considers that Mr Stevens' conduct as described in paragraphs 23 to 25 to be of such a nature and so serious as to make him not fit and proper to perform any function in relation to any regulated activity carried on by any authorised person. The FSA is of the view that the circumstances of this case fully merit a prohibition in the terms decided. The FSA has concluded that Mr Stevens was involved in conduct deliberately designed to mislead an overseas authority over a significant period of time. Furthermore, although he was Head of Financial Control and registered with SFA as a Manager, with management responsibility for a number of staff, he failed to prevent or stop the deliberate attempts by staff to mislead the NTA and, on occasion, actively encouraged such attempts.

IMPORTANT

This final notice is given to you in accordance with section 390 of the Act.

Publicity

Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers. 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 further decision notice to Credit Suisse Financial Products and Credit Suisse First Boston (Japan) Limited (now known as Credit Suisse First Boston Securities (Japan) Limited). 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 Ian Brown (direct line: 020 7066 1366/fax: 020 7066 1367) or Pam Cross (direct line: 020 7066 1216/fax: 020 7066 1217) of the Enforcement Division of the FSA.

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Martyn Hopper
Head of Market Integrity
FSA Enforcement Division