
FINAL NOTICE

To: **Lee Raymond Goddard**

D.O.B: **26 March 1962**

Date: 19 September 2007

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about a decision to make a prohibition order against you.

1. ACTION

- 1.1. The FSA gave you, Mr Lee Raymond Goddard ("Mr Goddard"), a Decision Notice on 19 September 2007 which notified you that pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to make a prohibition order against you in the terms set out below.
- 1.2. The terms of the prohibition order are that you, Mr Goddard, be prohibited from performing any controlled function involving the exercise of significant influence over any Authorised Person in relation to any regulated activity carried on by it (the "Prohibition Order").
- 1.3. You agreed to settle at an early stage of the FSA's investigation on the basis of the Prohibition Order. In particular, you agreed that you will not be referring the matter to the Financial Services and Markets Tribunal.

1.4. Accordingly, for the reasons set out below and having agreed with you the facts and matters relied on, the FSA hereby makes the Prohibition Order against you. The Prohibition Order has effect from 21 September 2007.

2. REASONS FOR THE ACTION

2.1. The action taken by the FSA relates to your conduct from at least December 2004 until September 2005 whilst an employee of Fabien Risk Services Limited ("FRS"). This conduct, when considered by reference to the FSA's prescribed regulatory standards for individuals, is such that it appears to the FSA that you are not a fit and proper person and that the FSA should take this action.

2.2. In particular, you have not demonstrated that you meet the FSA's criteria for assessing fitness and propriety by your failure to act with honesty and integrity by knowingly complying with requests to misappropriate and use client money to run FRS's business and by knowingly concealing the improper use of client money through the preparation of incomplete and therefore misleading financial information.

2.3. The FSA has concluded by virtue of the matters referred to above that:

- (1) you are not a fit and proper person; and
- (2) having regard to its regulatory objectives, including the severity of the risk that you pose to consumers and to confidence in the market generally, it is necessary and desirable for the FSA to exercise its power to make the Prohibition Order against you.

3. RELEVANT STATUTORY PROVISIONS AND REGULATORY RULES

Relevant statutory provisions

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

3.2. The FSA's power to make a prohibition order is set out at section 56 of the Act, which provides, inter alia:

"(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."*

Relevant regulatory rules

- 3.3. In exercising its powers in relation to the making of a prohibition order the FSA must have regard to the guidance published in the FSA Handbook. The relevant considerations in relation to the action specified above are set out below.

The Enforcement manual

- 3.4. The FSA's policy in relation to prohibition orders is set out in Chapter 8 of the Enforcement Manual ("ENF"). ENF 8.4 summarises the FSA's policy on making prohibition orders and the circumstances under which Enforcement will consider recommending such action. In particular ENF 8.4.2 provides that:

"(1) the FSA will have 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.

(2) depending on the circumstances of each case, the FSA may seek to prohibit individuals from carrying out any class of relevant function in relation to any class of regulated activity, or it may limit the prohibition order to specific functions in relation to specific regulated activities. The FSA may also make an order prohibiting an individual from being employed by a particular firm, type or firm or any firm. (ENF 8.4.2G(2));

(3) the scope of a prohibition order will depend on the range of functions which the individual concerned carries out in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally (ENF 8.4.2G(3))."

- 3.5. ENF 8.6.1 states that where the FSA considers making a prohibition order against an individual employed or formerly employed by a firm who is not an approved person, it may make an order only on the grounds that the individual is not fit and proper to carry out functions in relation to regulated activities carried on by an authorised person;
- 3.6. ENF 8.6.1A states that where the individual concerned is not an approved person, the FSA will not have the option of withdrawing approval, nor will it generally have the option of exercising its disciplinary powers in relation to the individual concerned and therefore a prohibition order may be the only appropriate action available. In these cases, the FSA will consider the severity of the risk posed by the individual. It may prohibit the individual where it considers it necessary to achieve the FSA's regulatory objectives of maintaining market confidence in the financial system, promoting public awareness, protecting consumers and preventing financial crime;
- 3.7. ENF 8.6.2 provides that, when considering whether to make a prohibition order against an individual employed or formerly employed by a firm who is not an approved person, the FSA will consider the following factors:

- (1) whether the individual is fit and proper to perform functions in relation to regulated activities having regard to the criteria for assessing fitness and propriety contained in the Fit and Proper Test (FIT): FIT 2.1 (honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
- (2) the relevance, materiality and length of time since the occurrence of any matters indicating unfitness; and
- (3) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

In summary, the relevant considerations are whether, in terms of honesty, integrity, competence and capability, the relevant individual is fit and proper to carry out functions in relation to regulated activities carried on by an authorised person and, if not, the severity of the risk posed by him. Having established these matters, it can be determined whether prohibition will be necessary to achieve the FSA's regulatory objectives.

The Fit and Proper Test (FIT)

3.8. FIT 1.1.2 states:

"The purpose of FIT is to set out and describe the criteria that the FSA will consider when assessing the fitness and propriety of a candidate for a controlled function The criteria are also relevant in assessing the continuing fitness and propriety of approved persons. .

3.9. FIT 1.2.4 explains:

"The Act does not prescribe the matters which the FSA should take into account when determining fitness and propriety. However, section 61(2) states that the FSA may have regard (among other things) to whether the candidate or approved person is competent to carry out a controlled function".

3.10. FIT 1.3.1 states:

"The FSA will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function. The most important considerations will be the person's:

- (1) honesty, integrity and reputation;*
- (2) competence and capability; and*
- (3) financial soundness".*

3.11. FIT 1.3.3 states:

"The criteria listed in FIT 2.1 to FIT 2.3 are guidance and will be applied in general terms when the FSA is determining a person's fitness and propriety. It would be

impossible to produce a definitive list of all the matters which would be relevant to a particular determination."

3.12. FIT 2.1.1 provides:

"In determining a person's honesty, integrity and reputation, the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3 G which may have arisen either in the United Kingdom or elsewhere. The FSA should be informed of these matters (see SUP 10.13.16 R), but will consider the circumstances only where relevant to the requirements and standards of the *regulatory system*."

3.13. FIT 2.1.3 states:

"The matters referred to in FIT 2.1.1 G to which the FSA will have regard include, but are not limited to:

(5) *whether the person has contravened any of the requirements and standards of the regulatory system or the equivalent standards or requirements of other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies;*

(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."*

Client assets manual (CASS)

3.14. CASS 5.4 permits a firm which has adequate resources, systems and controls, to hold money in a non-statutory client money trust.

3.15. CASS 5.4.1(2) sets out that a firm is not permitted to make advances to itself out of the client money 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.

3.16. CASS 5.5 sets out the rules and guidance applicable to the segregation and the operation of client money accounts and provides that unless otherwise permitted, client money is kept separate from the firm's own money (CASS 5.5.2G).

3.17. CASS Rule 5.5.3 requires a firm to hold client money separate from the firm's money and CASS Rule 5.5.5(1) requires that a firm must segregate client money by.....paying it as soon as practicable into a client bank account. Guidance on a firm's obligations to periodically calculate and reconcile the money in its client bank account is given at CASS 5.5.62.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. You were employed at FRS, an insurance intermediary specialising in Professional Indemnity and Directors and Officers Liability insurance, as general manager from September 2002 and from approximately May 2004, as FRS's accounts manager but you had no qualifications for the role and were not given any formal training. You were also a shareholder of FRS having invested approximately £40,000.
- 4.2. The FSA became responsible for the regulation of general insurance firms on 14 January 2005 on which date FRS became an FSA authorised firm, permitted to hold and control client money but only in respect of non-investment insurance contracts, and to carry on certain insurance mediation activities.
- 4.3. FRS was authorised to hold and control client money in a non-statutory client money trust in accordance with the FSA Rules on Client Assets (CASS). Premiums received and payable to insurers were held in this separate client account (the "IBA").
- 4.4. You were not an approved person at FRS.
- 4.5. On 19 October 2005, FRS went into creditors voluntary liquidation. According to the Statement of Affairs prepared by the Liquidators, there was an estimated deficiency of £701,128 in respect of unsecured creditors. Of this figure, the sum owed to various insurers/brokers/underwriters was £469,741. Of this group, the largest creditor was owed £212,797. The Liquidators have indicated that unsecured creditors cannot expect to receive any dividend.
- 4.6. According to a report from the Liquidators' dated 10 April 2006, creditors' claims in the sum of £230,000 have been agreed representing client funds wrongfully misappropriated by the company, and further trust money claims in the region of £204,742 are expected to be made.
- 4.7. As at 26 April 2006, FSCS have confirmed that compensation claims of £27,000 have been received (but not yet paid), and further claims are anticipated based on the potential claims identified by the Liquidators.
- 4.8. The FSA appointed investigators on 18 November 2005. The Memorandum of Appointment of Investigators notified you that the investigation was directed to consider your fitness and propriety given circumstances concerning your conduct in the context of the events that led to the deficiency in the IBA.
- 4.9. The FSA investigation has established that:
 - (1) in interview you admitted you knew that the IBA was being used to run FRS's business from as early as September 2004;
 - (2) in interview you admitted you knew from at least December 2004 that there was a deficit in the IBA of approximately £142,000 and that by May 2005, FRS's financial position had continued to deteriorate;
 - (3) in interview you stated you knowingly complied with instructions authorising you to make wrongful withdrawals of client money from the IBA and to use that money to keep FRS trading, including payment of Directors' and staff salaries and other expenses relating to FRS's business;

- (4) in interview you admitted you knowingly colluded and participated in the deliberate concealment and misrepresentation of FRS's true financial position through the preparation of incomplete and therefore misleading accounting records;
- (5) in interview you admitted you were fully aware that your conduct was wrong, unlawful, and in breach of the FSA's requirements relating to holding client assets and client money but that at all times you were acting on instructions given to you and in following those instructions, you were motivated partly by your wish to preserve both your job and your investment in FRS and you genuinely believed that FRS would address and resolve its financial situation and repay any monies owed to the IBA.

5. RELEVANT GUIDANCE ON SANCTION

- 5.1. Paragraphs 3.4-3.7 above explain the FSA's policy in relation to prohibition orders as set out in Chapter 8 of the Enforcement Manual. ENF 8.6.2 provides, when considering whether to make a prohibition order against an individual employed or formerly employed by a firm who is not an approved person, the FSA will consider a number of factors. The FSA considers that the conduct described at 4.9 above was in breach of the fit and proper criteria and in particular FIT 2.1 (Honesty, integrity and reputation).
- 5.2. The FSA considers that by participating in the misappropriation of a significant amount of client money over an extended period of time (at least 10 months) you have demonstrated a serious lack of honesty and integrity. This is compounded by the fact that not only did you know that it was wrong to improperly use client monies but that you knowingly colluded in concealing its improper use by failing to fully implement accounting systems available to FRS which, if used appropriately, would have highlighted the deficit on the IBA.
- 5.3. Additionally, the FSA considers that by seeking to safeguard your own personal and financial interests and failing to inform the FSA of FRS's financial difficulties, to the detriment of consumers and confidence in the market generally, you have demonstrated that you do not have the requisite honesty and integrity and as such, are not fit and proper to carry out any controlled function involving the exercise of significant influence over any Authorised Person in relation to regulated activities carried on by an authorised person.

6. CONDUCT FOLLOWING THE CONTRAVENTION

- 6.1. When confronted with the evidence, you admitted participating in the misappropriation of client money from the IBA and made open admissions in relation to your misconduct set out in this Final Notice. Your explanation that you took steps to raise funds to invest in FRS to address the shortfall in the IBA has been taken into account and you have received full credit for agreeing to the Prohibition Order by consent at the earliest possible stage.

7. CONCLUSION

- 7.1. In the light of the facts and matters described above, the FSA considers that you failed to act with honesty and integrity and as such you failed to satisfy the FSA's fit and proper criteria and to demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and ethical standards.
- 7.2. Having regard to its regulatory objectives including the need to maintain confidence in the financial system, and the severity of risk posed to consumers, the FSA considers it necessary to impose the Prohibition Order prohibiting you from performing any controlled function involving exercise of significant influence over any Authorised Person in relation to any regulated activity carried on by it.

8. DECISION MAKER

- 8.1. The decision which gave rise to the obligation to give this Final Notice was made by the executive settlement decision makers on behalf of the FSA.

9. IMPORTANT

- 9.1. This Final Notice is given to you in accordance with section 390 of the Act.

Publicity

- 9.2. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the FSA must publish such information about the matter to which this Final 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.
- 9.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 9.4. For more information concerning this matter generally, you should contact Paul McGowan of the FSA's Enforcement Division on 020 7066 2824.

Jonathan Phelan
Head of Department
FSA Enforcement Division