Financial Conduct Authority

FINAL NOTICE

To:	**Horn Express Ltd (formerly Qaran Express Money Transfer Limited)**
Address:	**250 Kilburn High Road** **London, NW6 2BS** **United Kingdon**
Firm Reference Number:	**504585**
Date:	**30 April 2013**

1. ACTION

1.1. For the reasons given in this notice, the Authority hereby issues a public censure to Horn Express Ltd (formerly Qaran Express Money Transfer Limited) ("QEMTL") in the form of this notice set out below. The public censure is issued pursuant to regulation 84 of the Payment Services Regulations 2009 (the "PSRs") and in respect of contraventions of regulation 19 of the PSRs. This public censure takes effect from 30 April 2013.

1.2. The circumstances of this case merit a financial penalty. Were it not for QEMTL's current financial difficulties and verifiable evidence that the imposition of such a

penalty would result in serious financial hardship, the Authority would have imposed a financial penalty of £136,687 on QEMTL pursuant to regulation 85(1)(a) of the PSRs. The decision not to impose a financial penalty is notwithstanding that QEMTL agreed to settle at an early stage of the Authority's investigation and therefore would have qualified for a 30% (Stage 1) discount of that penalty under the Authority's executive settlement procedures.

2. SUMMARY OF REASONS

2.1 For part or the whole (as detailed below) of the period from 1 December 2009 to 16 November 2011 (both dates inclusive) (the "Relevant Period"), QEMTL breached regulations 19(4), 19(5), 19(6)(a), 19(6)(b), 19(7) and 19(14) of the PSRs by failing to:

1) keep Customer Funds segregated from other funds and to hold Customer Funds at the end of the business day following the day they were received in a separate bank account, where QEMTL also failed to ensure:

   a) that account was:

      i) designated to show it was used to safeguard Customer Funds; and

      ii) used only for holding Customer Funds;

   b) no one other than QEMTL had any interest in or right over the Customer Funds held in that account; and

2) maintain organisational arrangements sufficient to minimise the risk of the loss or diminution of relevant funds or relevant assets through fraud, misuse, negligence or poor administration, in that it failed to:

   a) properly record and reconcile Customer Funds; and

   b) oversee adequately its international and UK agents and branches.

2.2 The Authority considers QEMTL's failings to be serious because it:

1) received Customer Funds without properly safeguarding and segregating them, putting those customers' monies at risk in the event of (for example) the insolvency of QEMTL; and

2) failed to have in place proper organisational arrangements, which put

Customer Funds at risk.

3. DEFINITIONS

3.1. The definitions below are used in this Final Notice.

the "Act" means the Financial Services and Markets Act 2000 (as modified and applied by the PSRs);

the "Approach Document" means the guidance concerning the PSRs as in force from time to time (which includes the versions published in April 2009, May 2010, May 2011 and January 2012);

the "Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

the "Barclays Unsegregated Account" means a specific account in QEMTL's name at Barclays Bank;

a "Branch Passport" means the right conferred on a firm to conduct activities and services regulated under EU legislation in another EEA State through an establishment in the host state, on the basis of authorisation in its home member state;

"Converted Account" means QEMTL's segregated client account which was created by converting the Barclays Unsegregated Account, as set out in paragraph 4.7 below;

"Customer Funds" means "relevant funds" as defined pursuant to regulation 19(1) of the PSRs, that is sums received from, or for the benefit of, a payment service user for the execution of a payment transaction and sums received from a payment service provider for the execution of a payment transaction on behalf of a payment service user;

"DEPP" means the FCA's Decision Procedure and Penalties Manual;

"EEA States" means European Economic Area States;

the "PSRs" means the Payment Services Regulations 2009;

"QEMTL" means Horn Express Ltd (formerly Qaran Express Money Transfer Limited);

the "Records and Reconciliations" means all reconciliations of money transfer funds in and out of QEMTL carried out by QEMTL from 1 December 2009 to 3 July 2011;

the "Relevant Period" means the period from 1 December 2009 to 16 November 2011 (inclusive);

the "Responsible Person(s)" means person(s) responsible for payment services as referred to in regulation 6(6)(b) of the PSRs;

the "Segregated Account" means the account in QEMTL's name at Barclays Bank established on 21 April 2011 as set out in paragraph 4.6 below;

a "Service Passport" means the right conferred on a firm to conduct activities and services regulated under EU legislation in another EEA State on a cross-border services basis without using an establishment in the host state;

the "Supervisors" means the QEMTL supervisors who undertook compliance supervisory visits to QEMTL branches/agents; and

"UK" means the United Kingdom of Great Britain and Northern Ireland.

4. FACTS AND MATTERS

BACKGROUND

4.1 QEMTL is a limited liability company which provided money remittance services to payment services users. It had seven registered Responsible Persons during the Relevant Period.

4.2 As at February 2012 (when QEMTL suspended its money transfer services), QEMTL had 21 branches based in the UK and 83 agents registered with the Authority. Seven of those agents were based in the Netherlands.

4.3 QEMTL also had Branch Passports to three EEA States (including the Netherlands) and Service Passports to 26 EEA States.

4.4 Many of QEMTL's UK customers have been drawn from the UK's East African migrant communities, especially the Somalian community. Commonly such customers would use QEMTL's services to transmit money from the UK to recipients in East African countries.

CONDUCT IN ISSUE

Failure to safeguard and segregate Customer Funds

4.5 From 1 December 2009 (the date of its authorisation by the Authority under the PSRs) until 26 August 2011, QEMTL failed to segregate Customer Funds and to

establish, maintain and use a separate bank account for Customer Funds that were held at the end of the business day following the day on which they were received. In particular:

1) Customer Funds that were held in the Barclays Unsegregated Account were not segregated (that is, QEMTL co-mingled its funds and Customer Funds in this account);

2) the Barclays Unsegregated Account was an ordinary bank account without any notation on it that it was a safeguarding account used to hold Customer Funds (for the purposes of regulation 19(5)(a) of the PSRs); and

3) the terms and conditions of the Barclays Unsegregated Account granted the bank a right of set off in respect of the funds held in the account. This meant that Customer Funds were exposed to the risk that they might be set off by the bank against QEMTL's own liabilities.

4.6 After the Authority notified QEMTL in March 2011 of the issue in paragraph 4.5(2) above, QEMTL provided the Authority with a letter from Barclays Bank dated 21 April 2011 which stated that a separate account had been established as a client account (the Segregated Account). However, during the Relevant Period QEMTL did not deposit any Customer Funds into the Segregated Account.

4.7 By email dated 26 August 2011 QEMTL forwarded to the Authority an email from Barclays Bank to QEMTL dated 26 August 2011 which stated that the Barclays Unsegregated Account had been changed to a segregated client account (the Converted Account). The Authority understands this to mean that the Converted Account was from 26 August 2011 designated by Barclays Bank as an account which was held for the purpose of safeguarding Customer Funds (as is reflected in statements for this account issued after that date) and, further, that its terms and conditions would have reflected this.

4.8 Notwithstanding the conversion of the Barclays Unsegregated Account to the Converted Account on 26 August 2011, Customer Funds were not segregated from QEMTL's funds (either in the Barclays Unsegregated Account or the Converted Account) at all times until 17 November 2011. Prior to this date, QEMTL continued to co-mingle Customer Funds and monies of its own in these accounts. By way of example, when the Authority was shown reconciliations of the Converted Account when it visited QEMTL's head office on 10 October 2011, they revealed that commissions paid to QEMTL by its customers (and which thus

became QEMTL's funds) were deposited into the Converted Account and those commissions were not withdrawn from that account by the end of the same business day. Indeed, commissions were left in either the Barclays Unsegregated Account or the Converted Account for a week or more at times.

4.9 Further, monies were paid out of the Barclays Unsegregated Account to meet QEMTL's own expenses, which illustrated that QEMTL considered that account to contain its own funds and meant that there was a risk of Customer Funds being applied for QEMTL's (and not its customers) purposes. For instance, six direct debits were paid from the Barclays Unsegregated Account to a variety of payees (including publishing, magazine and hobby businesses) between 29 October 2010 and 14 December 2010.

Failure to record properly and to reconcile Customer Funds

4.10 From 1 December 2009 to 3 July 2011 QEMTL failed to undertake at all times proper reconciliations of Customer Funds held, received and paid out to determine what Customer Funds should be segregated and safeguarded.

4.11 A payment institution's records should enable it, at any time and without delay, to distinguish Customer Funds held for one payment service user from those held for any other payment service user and from its own money. They should be sufficient to show and explain its transactions concerning Customer Funds. Records and accounts should be maintained in a way that ensures their accuracy and correspondence to the amounts held for payment service users.

4.12 Further, a payment institution should carry out internal reconciliations of records and accounts of the entitlement of payment service users to Customer Funds with the records and accounts of amounts safeguarded.

4.13 However, the Records and Reconciliations undertaken by QEMTL during the period from 1 December 2009 to 3 July 2011 were a simple record of:

1) the opening balances of QEMTL's payment services transactional accounts;

2) the deposits into those accounts that day;

3) the transfers out of the accounts to QEMTL's clearinghouse;

4) transfers between QEMTL's payment services transactional accounts;

5) incoming cash collections from branches and agents; and

6) payments made to UK money transfer recipients.

4.14 As such, the Records and Reconciliations failed to record the amount of Customer Funds that should be segregated. To have adequate records for this purpose QEMTL would need, for instance, to have detailed the amount of Customer Funds received by QEMTL but which had not been paid out to payees (as opposed to recording when funds were simply transferred to QEMTL's clearinghouse for subsequent payment to the payee).

4.15 This meant that QEMTL failed to accurately distinguish between Customer Funds and monies belonging to QEMTL. Given this failure (and in light of the matters in paragraph 4.8 above), this meant that there was a risk that insufficient Customer Funds were segregated by QEMTL. Further, QEMTL thereby failed to properly reconcile Customer Funds' records and the records of amounts segregated in the Barclays Unsegregated Account.

Failure to adequately monitor branches and agents

4.16 QEMTL failed to maintain organisational arrangements to supervise its branches and agents sufficiently to minimise the risk of the loss or diminution of Customer Funds as follows.

4.17 A review of 83 compliance supervisory visit forms for QEMTL branches/agents produced by QEMTL to the Authority for the period 1 December 2009 to 3 October 2011 (which forms covered, amongst other things, whether the agent was competent in using the computer software which was used to input deposits of Customer Funds) identified the following issues.

1) The forms failed to provide any assessment as to whether UK agents/branches had:

   a) complied with Customer Funds safeguarding requirements, such as whether they had segregated Customer Funds at all times from other funds that they held; and

   b) made adequate arrangements to ensure that Customer Funds were held safely on agent/branch premises.

2) Twenty-six forms were written in the branch staff member's or agent's first person (that is, as if each of them had been completed by the relevant agent themselves) – in interview, one of QEMTL's directors stated that the

Supervisors wrote down on the form what the branch staff member/agent said to them in answer to their questions. However, the evidence does not demonstrate that the Supervisors sought adequately during these visits to verify the matters covered by the visit form (which the Authority considers that QEMTL ought properly have done to meet the requirements of regulation 19(14) of the PSRs).

3) Thirty-four forms bore a high degree of similarity in the findings and wording, as follows:

a) 20 forms that were almost word-for-word identical; and

b) 14 forms that shared similar wording and findings to each other.

In interview, one of QEMTL's directors explained that Supervisors wrote down on the form a standardised wording as English was not their first language and because many of the branches/agents shared similarities. However, the Authority considers that the evidence does not demonstrate that QEMTL undertook assessments of the particular individual risks arising out of its use of each of these agents/branches by verifying the matters covered by the visit form (which the Authority considers that QEMTL ought properly have done to meet the requirements of regulation 19(14) of the PSRs).

4.18 Further, six of the seven compliance supervisory visit forms for QEMTL's Dutch agents covering the period 1 January 2011 to 3 October 2011 (which forms covered, amongst other things, whether the agent was competent in using the computer software which was used to input deposits of Customer Funds) that QEMTL produced to the Authority are:

1) undated (although the printed forms used by QEMTL bear the date "2010-2011"); and

2) written in the agent's first person.

In interview, one of QEMTL's directors stated that the forms simply recorded what each agent said in answer to questions during the supervisory visit. However, the evidence does not demonstrate that the Supervisors sought during these visits to verify the matters covered by the visit form (which the Authority considers that QEMTL ought properly have done to meet the requirements of regulation 19(14) of the PSRs).

5. FAILINGS

5.1. The regulatory provisions relevant to this Final Notice are referred to in Annex A.

5.2 By reason of the facts and matters set out in paragraphs 4.5 to 4.18 above, the Authority considers that QEMTL breached the following PSR regulations as set out below.

1) During the period 1 December 2009 until 16 November 2011 QEMTL failed to keep Customer Funds segregated from any other funds that it held, contrary to regulation 19(4) of the PSRs. As explained in paragraphs 4.5 to 4.9 above, QEMTL co-mingled Customer Funds and monies of its own during that period.

2) During the period 1 December 2009 until 21 April 2011, QEMTL failed to have a separate bank account in which to hold Customer Funds at the end of the business day following the day they were received, contrary to regulation 19(5) of the PSRs. As set out in paragraphs 4.5 to 4.9 above, QEMTL did not have a bank account properly set up to hold Customer Funds until 21 April 2011.

3) During the period 1 December 2009 until 26 August 2011 QEMTL failed to ensure that the Barclays Unsegregated Account (being an account into which QEMTL deposited Customer Funds falling within the scope of regulation 19(5) of the PSRs) was designated in such a way as to show that it was an account which was held for the purpose of safeguarding Customer Funds, contrary to regulation 19(6)(a) of the PSRs. As set out in paragraphs 4.5 to 4.8 above, the Barclays Unsegregated Account was not converted into the Converted Account until 26 August 2011.

4) During the period 1 December 2009 until 16 November 2011, QEMTL failed to have a separate bank account into which it deposited Customer Funds for the purposes of regulation 19(5)(a) of the PSRs that was used only to hold Customer Funds, contrary to regulation 19(6)(b) of the PSRs. As set out in paragraphs 4.5 to 4.9 above, QEMTL co-mingled Customer Funds and monies of its own in the Barclays Unsegregated Account and the Converted Account during that period.

5) During the period 1 December 2009 until 26 August 2011, QEMTL permitted Barclays Bank to have a right over the Customer Funds held in

the Barclays Unsegregated Account, contrary to regulation 19(7) of the PSRs. As set out in paragraphs 4.5 to 4.7, the terms and conditions of the Barclays Unsegregated Account granted the bank a right of set off in respect of the monies held in that account during that period.

6) During the period 1 December 2009 until 16 November 2011 QEMTL failed to maintain organisational arrangements sufficient to minimise the risk of the loss or diminution of Customer Funds through fraud, misuse, negligence or poor administration, contrary to regulation 19(14) of the PSRs. In particular, QEMTL failed, as set out in:

a) paragraphs 4.5 to 4.9 above, to put in place the measures required under regulation 19 of the PSRs to segregate and safeguard Customer Funds;

b) paragraphs 4.10 to 4.15 above, during the period 1 December 2009 until 3 July 2011, to keep an accurate record of, and reconcile, what, if any, Customer Funds it should have:

i) held in the Barclays Unsegregated Account; and/or

ii) segregated from any other funds that it held;

c) paragraphs 4.16 and 4.17 above, to monitor and supervise its UK branches and agents sufficient during the period 1 December 2009 to 3 October 2011; and

d) paragraphs 4.16 to 4.18 above, to monitor and supervise its overseas agents sufficiently during the period 1 January 2011 to 3 October 2011.

6. SANCTION

Public censure

6.1 The Authority's policy in relation to the imposition of a public censure is set out in Chapter 6 of DEPP. On 6 March 2010 the Authority adopted a new penalty-setting regime. The gravamen of QEMTL's misconduct took place after 6 March 2010, in terms of the impact of the harm caused and the aggravating features of the misconduct. Therefore, the Authority's new penalty regime applies.

6.2 The Authority also had regard to the corresponding provisions of Chapter 7 of EG.

6.3 The principal purpose of issuing a public censure is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant behaviour.

6.4 DEPP 6.4.2G sets out the factors that may be of particular relevance in determining whether it is appropriate to issue a public censure rather than impose a financial penalty. The criteria are not exhaustive and DEPP 6.4.1G(1) provides that the Authority will consider all the relevant circumstances of the case when deciding whether to impose a penalty or issue a public censure. The Authority considered that the factors below were particularly relevant in this case.

Deterrence (DEPP 6.4.2G(1))

6.5 In determining whether to publish a statement of QEMTL's misconduct the Authority had regard to the need to ensure that PSR firms take their PSR regulation 19 obligations seriously. The Authority considered that a public censure should be imposed to demonstrate to QEMTL and others the seriousness with which the Authority regards its behaviour.

The financial impact on the person concerned (DEPP 6.4.2G(8))

6.6 The Authority viewed QEMTL's misconduct as very serious and would have imposed a financial penalty of £136,687 (£95,400 after early settlement discount and rounding). However, the Authority took into account that QEMTL has no realisable assets of any substance and has minimal cash at bank. In all of these circumstances, the Authority considered it appropriate in this case to issue a public censure rather than impose a financial penalty.

The financial penalty that the Authority would have imposed but for QEMTL's evidence that any financial penalty would cause it serious financial hardship

6.7 But for QEMTL's evidence that any financial penalty would cause it serious financial penalty, the Authority would have imposed a financial penalty on QEMTL pursuant to regulation 85(1)(a) of the PSRs for its breaches of regulations 19(4), (5), (6)(a), (6)(b), (7) and (14) of the PSRs.

6.8 The majority of this misconduct took place after 6 March 2010, in terms of the

impact of the harm caused and the aggravating features of the misconduct. Therefore, the Authority's new penalty regime applies.

6.9 The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.

Step 1: disgorgement

6.10 Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.

6.11 The Authority has not identified any financial benefit that QEMTL derived directly from the breaches. Step 1 would have therefore been £0.

Step 2: the seriousness of the breach

6.12 Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of QEMTL's relevant revenue. QEMTL's relevant revenue is the revenue derived by QEMTL during the period of the breach, from products or business to which the breach relates.

6.13 QEMTL's misconduct being sanctioned concerns its money transfer business. Accordingly, revenue from other business activity should be excluded from any penalty calculation. In this regard, QEMTL's revenue was predominantly sourced from its money transfer business although it did also provide foreign exchange services, telephony and internet services and also made gains/losses on currency conversion on its money transfer business. Having considered profit forecasts for the period 2009 to 2011 provided by QEMTL as part of its application for authorisation (which appear to be reasonable forecasts when considered against the actual revenue for 2010 and 2011), the Authority considers that, on a conservative approach, QEMTL derived 75% of its revenue from its money transfer business. The Authority has therefore calculated QEMTL's relevant revenue using the actual revenue figures for the Relevant Period of £1,818,498 minus 25% (being total relevant revenue of £1,363,873).

6.14 QEMTL's revenue derived from its money transfer business was positively

correlated with the Customer Funds it transmitted, as its revenue was sourced from the fees/commission charged on each transaction, which were levied as a percentage of the money transmitted. The percentage levied was normally 2-5% of the amount transmitted, which varied according to the amount and destination, unless there was a special deal reached for certain transactions. As such, the revenue derived from QEMTL's money transfer business would be an appropriate metric to be used in determining a financial penalty in this case (were it not for the verifiable evidence that any financial penalty would cause it serious financial hardship), as it is a relevant indicator of Customer Funds at risk.

6.15 In deciding on the percentage of relevant revenue that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level.

6.16 For penalties imposed on firms there are the following five levels:

Level 1 – 0%

Level 2 – 5%

Level 3 – 10%

Level 4 – 15%

Level 5 – 20%

6.17 In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly.

6.18 The Authority has determined the seriousness of QEMTL's breaches to be Level 3 for the purposes of Step 2, having taken into account the following.

DEPP 6.5A.2G(6) – factors relating to the impact of the breaches.

a) QEMTL exposed customers to the real risk of loss by failing to safeguard and segregate their funds where required during the period 1 December 2009 until 16 November 2011. In particular, Customer Funds may have been claimed by:

i) a liquidator or administrator as firm funds in the event of its insolvency; and/or

ii) Barclays Bank (until 26 August 2011), under the terms and conditions of the Barclays Unsegregated Account, which granted the bank a right of set off in respect of the funds held in the account.

b) the failure to properly safeguard customer monies exposed vulnerable individuals, whether in the UK or recipients of funds in Somalia or elsewhere, to the risk of financial loss.

DEPP 6.5A.2G(7) – factors relating to the nature of the breach.

a) the breaches of the PSRs are directly relevant to the fundamental operation of QEMTL's business;

b) QEMTL's breaches continued for up to two years, for example:

i) QEMTL's failure to safeguard and segregate Customer Funds where required continued for two years (1 December 2009 until 16 November 2011); and

ii) the failure to adequately monitor branches and agents continued for almost two years (1 December 2009 until 3 October 2011); and

c) the breaches reveal serious or systemic weaknesses in QEMTL's procedures, in organisational arrangements relating to much of QEMTL's business.

DEPP 6.5A.2G(12) – factors which are likely to be considered to render the breaches overall a level 3: the misconduct persisted from QEMTL's authorisation on 1 December 2009 until 16 November 2011.

6.19 A Level 3 breach equates to 10% of QEMTL's relevant revenue. The penalty figure after Step 2 would therefore have been £136,387.

Step 3: mitigating and aggravating factors

6.20 Pursuant to DEPP 6.5A.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2 (but not including any amount to be disgorged in accordance with Step 1) to take into account factors which aggravate or mitigate the breach.

6.21 The Authority considers the following to be aggravating factors:

1) Authority guidance was published in May 2010 in the Approach Document which detailed the Authority's expectations in respect of compliance with, amongst other things, regulation 19 of the PSRs; and

2) QEMTL did not bring the breaches to the Authority's attention, but rather the Authority identified the breaches on its own initiative.

6.22 The Authority considers that the degree of cooperation that QEMTL showed during the investigation of the breaches by the Authority is a mitigating factor, as is its lack of a previous adverse disciplinary record.

6.23 As such, the Authority considers that the aggravating and mitigating factors are effectively balanced and that no Step 3 uplift would have been applied. Therefore the Step 3 figure would have been £136,387.

Step 4: adjustment for deterrence

6.24 Pursuant to DEPP 6.5A.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter QEMTL which committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.25 The Authority considers that the figure arrived at after Step 3 would have been sufficient to deter QEMTL and others from effecting similar conduct in the payment services industry in the future. The Step 4 figure would have therefore been £136,387.

Step 5: settlement discount

6.26 Pursuant to DEPP 6.5A.5G, if the Authority and QEMTL on which a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the firm reached agreement.

6.27 The Authority and QEMTL reached agreement at Stage 1 and so a 30% discount would have applied to the Step 4 figure.

6.28 The penalty figure after Step 5 would therefore have been £95,470 rounded to £95,400.

Penalty

6.29 The Authority therefore would have sought to impose a total financial penalty of £95,400 on QEMTL in respect of its breaches of regulations 19(4), (5), (6)(a), (6)(b), (7) and (14) of the PSRs, were it not that QEMTL has provided verifiable evidence to establish that imposing any financial penalty would cause QEMTL serious financial hardship. The penalty is therefore reduced to nil.

7. PROCEDURAL MATTERS

Decision maker

7.1. The decision which gave rise to the obligation to give this Notice was made by Settlement Decision Makers.

7.2. This Final Notice is given to QEMTL pursuant to regulation 84 of the PSRs and under, and in accordance with, section 390 of the Act.

Publicity

7.3. 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 Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to QEMTL or prejudicial to the interests of consumers.

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

Authority contacts

7.5. For more information concerning this matter generally, contact Kate Tuckley (direct line: 020 7066 7086 /fax: 020 7066 7087) of the Enforcement and Financial Crime Division of the Authority.

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Bill Sillett

Financial Conduct Authority, Enforcement and Financial Crime Division

ANNEX

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

1. Payment Services Regulations 2009

1.1 Regulation 80 of the PSRs provides that the Authority is to have the functions conferred on it be the PSRs. These functions include determining applications for authorisation/registration under the PSRs (Part 2 of the PSRs) and exercising its supervisory and enforcement functions under the PSRs (Part 7 of the PSRs).

Regulation 19: safeguarding and segregation requirements

1.2 Regulation 19 contains the safeguarding and segregation requirements to which authorised payment institutions are subject in respect of "relevant funds".

1.3 Regulation 19(1) provides that, for the purposes of regulation 19, "relevant funds" comprise the following—

(a) sums received from, or for the benefit of, a payment service user for the execution of a payment transaction; and

(b) sums received from a payment service provider for the execution of a payment transaction on behalf of a payment service user.

1.4 Regulation 19(3) provides that where the relevant funds in respect of a payment transaction exceed £50, an authorised payment institution must safeguard such funds in accordance with either (a) paragraphs (4) to (8) or (b) paragraphs (9) and (10).

1.5 Regulation 19(4) provides that an authorised payment institution must keep relevant funds segregated from any other funds that it holds.

1.6 Regulation 19(5) provides that where the authorised payment institution continues to hold the relevant funds at the end of the business day following the day on which they were received it must—

(a) place them in a separate account that it holds with an authorised credit institution; or

(b) invest the relevant funds in such secure, liquid assets as the Authority may approve ("relevant assets") and place those assets in a separate account with an authorised custodian.

1.7 Regulation 19(6) provides that an account in which relevant funds or relevant assets are placed under paragraph 19(5) must—

(a) be designated in such a way as to show that it is an account which is held for the purpose of safeguarding relevant funds or relevant assets in accordance with this regulation; and

(b) be used only for holding those funds or assets.

1.8 Regulation 19(7) provides that no person other than the authorised payment institution may have any interest in or right over the relevant funds or relevant assets placed in an account in accordance with paragraph (5)(a) or (b) except as provided by this regulation.

1.9 Regulation 19(8) provides that the authorised payment institution must keep a record of-

(a) any relevant funds segregated in accordance with paragraph (4);

(b) any relevant funds placed in an account in accordance with paragraph 5(a); and

(c) any relevant funds placed in an account in accordance with paragraph 5(b).

1.10 Regulation 19(14) provides that an authorised payment institution must maintain organisational arrangements sufficient to minimise the risk of the loss or diminution of relevant funds or relevant assets through fraud, misuse, negligence or poor administration.

Public censures

1.11 Regulation 84 provides that if the Authority considers that a payment service provider has contravened a requirement imposed by or under them under the PSRs the Authority may publish a statement to that effect.

Financial penalties

1.12 Regulation 85(1) provides that the Authority may impose a penalty of such amount as it considers appropriate on a payment service provider who has contravened a requirement imposed on them by or under the PSRs.

2. The Authority's guidance relevant to the PSRs

The Authority's PSR Approach Document

2.1 The document entitled "*The FCA's*[1] *role under the Payment Services Regulations 2009: Our approach*" (the "PSR Approach Document") constitutes guidance given under regulation 93 of the PSRs. The PSR Approach Document describes the Authority's approach to implementing the PSRs and (as set out in Section 1 of that document as in force at 27 October 2009 and thereafter) a small number of payment services-related rules in the Authority's Handbook of Rules and Guidance (the "Handbook"). In exercising its power to impose a public censure or financial penalty, the Authority will have regard to relevant aspects of that guidance. The main provisions relevant to the action specified above are set out below.

2.2 Paragraph 10.24 of the PSR Approach Document as in force as at 27 October 2009 (and which provision appears in substantively identical form in all subsequent versions) provides the following.

(1) A Payment Institution's (a "PI") (of which QEMTL is one) records should enable it, at any time and without delay, to distinguish relevant funds and assets held for one payment service user from those held for any other payment service user and from its own money. They should be sufficient to show and explain its transactions concerning relevant funds and assets. Records and accounts should be maintained in a way that ensures their accuracy and correspondence to the amounts held for payment service users.

(2) A PI should carry out internal reconciliations of records and accounts of the entitlement of payment service users to relevant funds and assets with the records and accounts of amounts safeguarded. This should be done as often as necessary, and as soon as reasonably practicable after the date to which the reconciliation relates, to ensure the accuracy of the PI's records and accounts. Records should be maintained that are sufficient to show

[1] "FCA" means Financial Conduct Authority. See "Authority" in paragraph 3.1 of the substantive Final Notice.

and explain the method of internal reconciliation and its adequacy.

(3) A PI should regularly carry out reconciliations between its internal accounts and records and those of any third parties safeguarding relevant funds or assets. These should be performed as regularly as is necessary and as soon as reasonably practicable after the date to which the reconciliation relates to ensure the accuracy of its internal accounts and records against those of the third parties. In determining whether the frequency is adequate, the PI should consider the risks to which the business is exposed, such as the nature, volume and complexity of the business, and where and with whom the relevant funds and assets are held. A method of reconciliation that we believe is adequate is when a PI compares and identifies any discrepancies between:

(a) the balance on each safeguarding account as recorded by the PI with the balance on that account as set out on the statement or other form of confirmation issued by the firm that holds those accounts; and

(b) the balance, currency by currency, on each payment service user transaction account as recorded by the PI, with the balance on that account as set out in the statement or other form of confirmation issued by the firm that holds the account.

Enforcement Guide ("EG")

3.1 The Authority's policy on exercising its enforcement power is set out in EG, which came into effect on 28 August 2007. Section 1 of the PSR Approach Document confirms that EG applies in the context of the PSRs.

3.2 The Authority's policy on imposing financial penalties and public censures is set out in Chapter 7 of EG.

Decision Procedure and Penalties Manual ("DEPP")

4.1 Guidance on the imposition and amount of penalties is set out in Chapter 6 of DEPP, which forms part of the Authority's Handbook and came into force on 28 August 2007. Section 1 of the PSR Approach Document confirms that DEPP applies in the context of the PSRs.

4.2 Section 6 in the substantive section of this Final Notice refers to the relevant provisions of DEPP for the purposes of this notice.