
FINAL NOTICE

JB Drax Honore (UK) Limited
21 Great Winchester St
London
EC2N 2JA

Mr Rogerio Pinto
Date of Birth: 28 June 1982

10 February 2015

ACTION

1. By an application dated 11 June 2014 ("the Application") JB Drax Honore (UK) Limited ("JB Drax Honore") applied under section 60 of the Financial Services and Markets Act 2000 ("the Act") for approval of Rogerio Pinto ("Mr Pinto") to perform the controlled function(s) of CF30.
2. For the reasons listed below, the Authority has refused the Application.

SUMMARY OF REASONS

3. On 19 September 2014 JB Drax Honore discontinued its support of the Application and is no longer prepared to offer the candidate an "arrangement" as defined in section 59(10) of the Act.
4. In order for the Application to be formally withdrawn within the provisions of section 61(5) of the Act, the candidate's consent is necessary. The candidate has not consented to the withdrawal of the application and has asked the Authority to determine the Application even though JB Drax Honore is no longer offering an arrangement to which the Application relates.
5. By its Warning Notice dated 29 October 2014 ("the Warning Notice") the Authority gave notice that it proposed to refuse the Application and that JB Drax Honore and Mr Pinto were entitled to make representations to the Authority about that proposed action.

6. As no representations have been received by the Authority from JB Drax Honore or Mr Pinto within the time allowed by the Warning Notice, the default procedures in paragraph 2.3.2 of the Authority's Decision Procedure and Penalties Manual apply, permitting the Authority to treat the matters referred to in its Warning Notice as undisputed and, accordingly, to give a Decision Notice.
7. By its Decision Notice dated 12 December 2014 ("the Decision Notice"), the Authority gave JB Drax Honore and Mr Pinto notice that it had decided to take the action described above.
8. JB Drax Honore and Mr Pinto had 28 days from the date the Decision Notice was given to refer the matter to the Upper Tribunal (formerly known as the Financial Services and Markets Tribunal). No referral was made to the Upper Tribunal within this period of time or to date.
9. Under section 390(1) of the Act, the Authority, having decided to refuse the Application and there having been no reference of that decision to the Tribunal, must give JB Drax Honore and Mr Pinto Final Notice of its refusal.
10. For the reasons set out below, the Authority is not satisfied that the candidate is a fit and proper person to perform the controlled function to which the Application relates, in particular that the candidate lacks integrity and competence and capability.
11. On 23 October 2013, Mr Pinto intentionally breached Section 3.4.5 of the LIFFE ("London International Financial Futures and Options Exchange") Trading Procedures ("Section 3.4.5"). The Authority has concluded that the reason for the breach was two-fold; to maintain good client relationships and generate personal commission. To deliberately breach rules to achieve these ends suggests that Mr Pinto lacks honesty and integrity.
12. A lack of competence and capability: When questioned in interview, Mr Pinto failed to demonstrate even a basic understanding of the regulatory regime in which he would be operating following approval. As such the Authority considers that Mr Pinto failed to demonstrate that he was capable or competent for his proposed role.

DEFINITIONS

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

"the Act" means the Financial Services and Markets Act 2000

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

FACTS AND MATTERS

Honesty and integrity:

14. Mr Pinto breached Section 3.4.5 on 23 October 2013. In October 2013 Mr Pinto was employed by Firm X. Mr Pinto acted as a broker for both buyers and sellers in the Option on the Robusta Coffee Futures Contract ("Robusta Coffee Option") market.

15. The role Mr Pinto performed entailed seeking buyers and sellers in the Robusta Coffee Option market. As a broker Mr Pinto then placed client orders and executed the relevant transactions.
16. Mr Pinto completed trades on behalf of clients using the LIFFE trading electronic platform by transacting with either an unknown market participant or crossing with himself on behalf of two clients. If Mr Pinto had both a buyer and a seller willing to trade at the same price (pre-negotiated or "matching" business), Mr Pinto could execute such a cross transaction using the LIFFE platform, subject to the LIFFE Trading Procedures at Sections 3.4.5 and 3.4.6.
17. Section 3.4.5 states:

"Where no bid and/or offer exist in the Central Order Book for the relevant contract month or strategy, a Request for Quote ("RFQ") must first be entered for such contract month or strategy. The matching business may only be entered to the Trading Host where a period offifteen seconds in the case of Commodity Options Contracts... ("the RFQ Period") has elapsed. If the matching business is to be submitted, the applicable buy and sell orders must be submitted as soon as practicable and in any event no later than thirty seconds following the RFQ Period".
18. Section 3.4.5 requires a market participant who has matching business to submit a RFQ to the LIFFE market platform. This has the effect of opening up proposed deals to the whole of the market, giving other market participants an opportunity to compete. For Commodity Options Contracts (the contracts traded by Mr Pinto), the market participant who submitted the RFQ must wait 15 seconds before submitting buy or sell orders. During this 15 second period other market participants can place orders. After the RFQ Period (15 seconds) the party submitting the RFQ can then submit buy and sell orders within the next 30 seconds. If a transaction is not completed within this timeframe the RFQ lapses. If a RFQ has lapsed, a market participant seeking to transact must submit another RFQ.
19. LIFFE operates on time priority which means that the market participant who places an order to buy or sell first is automatically prioritised ahead of any other market participants that subsequently place orders at the same price.
20. On 23 October 2013, Mr Pinto received instructions from a client to buy 250 lots of a product at the price of 28. Mr Pinto received instructions from another client to place an order to sell 250 lots of the same product at 28. Mr Pinto therefore had pre-negotiated business and there was a possibility that he could complete a cross transaction using the LIFFE platform.
21. Mr Pinto's initial RFQ attracted a market participant who placed an order to buy. Instead of trading with that market participant, Mr Pinto waited until the market participant pulled its bid. By the time this bid was pulled, the RFQ had lapsed. To complete the cross transaction in compliance with section 3.4.5, Mr Pinto was required to:
 - withdraw his buy order
 - submit a further RFQ
 - wait 15 seconds
 - place any buy or sell orders

22. Mr Pinto did not withdraw the buy order that he had placed although the RFQ had lapsed. Instead, Mr Pinto submitted a RFQ and then placed a sell order. The cross transaction was therefore executed in breach of Section 3.4.5.
23. The Authority is of the view that Mr Pinto's breach was deliberate due to his knowledge and motivation as well as the training he had received.

Knowledge

24. Mr Pinto indicated during the course of an interview with the Authority that he understood Section 3.4.5 and was aware at that time that he had breached this trading procedure.
25. Mr Pinto commenced the cross transaction on 23 October 2013 by submitting a RFQ as Section 3.4.5 requires. This suggests Mr Pinto was aware of the correct procedure but deliberately avoided following it. As there was interest from another market participant, to gain time priority over any offers placed by market participants, Mr Pinto did not withdraw his buy order. When Mr Pinto submitted the second RFQ, this had the effect of giving Mr Pinto's buy order (placed before the second RFQ), time priority. This ensured that Mr Pinto's buy order had priority over any buy orders subsequently placed by market participants at the same price.
26. At some points during interview with the Authority, Mr Pinto disputed that he fully understood Section 3.4.5. Mr Pinto alleged that he was told by compliance on a chat that when completing a cross transaction it was possible to place the buy or sell order first, then submit the RFQ and then to place the matching business. However, Mr Pinto has not provided any evidence to support this assertion. This is contradicted by the fact that Mr Pinto accepted during interview that prior to executing the cross transaction on 23 October 2013 he understood Section 3.4.5.

Motivation

27. During the interview with the Authority, Mr Pinto explained his motivation to breach Section 3.4.5 was because he felt under pressure from his client to fulfil the order. Mr Pinto also acknowledged that completing the buy order would generate a commission payment to him.
28. Executing the cross transaction was of direct benefit to Mr Pinto as this entitled him to a commission payment. There was also an indirect benefit to Mr Pinto of successfully completing an order on behalf of a client.

Training

29. Mr Pinto received training on the LIFFE rules, and specifically Section 3.4.5 at various stages:

During an interview with the Authority, Mr Pinto stated he received training on the LIFFE rules when he commenced trading on the LIFFE platform. Mr Pinto stated that this included training on Section 3.4.5.

Mr Pinto received further training following breaches of Section 3.4.5 in August 2013.

LIFFE notified Firm X of two additional suspected breaches of Section 3.4.5 committed by Mr Pinto on 16 October 2013. In response to these breaches, on 17

October 2013, Mr Pinto received further training on LIFFE, which covered Section 3.4.5.

30. The Authority therefore considers that Mr Pinto intentionally breached Section 3.4.5 on 23 October 2013 and, as a result of this, Mr Pinto lacks honesty and integrity. The Authority takes the view that the deliberate breach of a rule is incompatible with acting with integrity and that, further, a person breaking a rule for reasons of personal financial gain and/or pressure from external sources raises concerns as to that person's integrity.

Competence and capability

31. During interview with the Authority, Mr Pinto was unable to state any of the standards expected of approved persons.

IMPACT ON FITNESS AND PROPRIETY

32. The regulatory provisions relevant to this Final Notice are referred to in Annex A.
33. The Authority is of the view that Mr Pinto lacks honesty and integrity. The Authority considers that Mr Pinto intentionally breached Section 3.4.5 on 23 October 2013 and, as a result of this, Mr Pinto lacks honesty and integrity. The Authority takes the view that the deliberate breach of a rule is incompatible with acting with integrity and that, further, a person breaking a rule for reasons of personal financial gain and/or pressure from external sources raises concerns as to that person's integrity.
34. The Authority is also of the view that Mr Pinto lacks competence and capability as he was unable to state any of the standards expected of approved persons during interview.
35. As a result of these concerns in relation to Mr Pinto's honesty and integrity, and competence and capability, the Authority considers that Mr Pinto is not fit and proper to perform the function to which the application relates.

IMPORTANT NOTICES

36. This Final Notice is given under section 390 (1) of the Act

Publication

37. 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 Authority must publish such information about the matter to which this Final 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 [name of firm] or [name of candidate] or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
38. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

39. For more information concerning this matter generally, contact Pat Knox, Senior Manager, Approved Persons, Passporting and Mutuals Department at the Authority (direct line: 020 7066 4868 / email: pat.knox@fca.org.uk).

Susan de Mont
Chair of the Regulatory Transactions Committee

ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE

Relevant Statutory Provisions

1. The Authority may grant an application for approval under section 60 of the Act only if it is satisfied that the person in respect of whom the application is made is a fit and proper person to perform the controlled function to which the application relates (section 61(1) of the Act).
2. Section 61(5) of the Act allows a person who makes an application under section 60 of the Act to withdraw the application, but only with the consent of the candidate.
3. Section 62(5) of the Act defined 'interested parties' as including the applicant, and the person in respect of whom the application is made.
4. Section.390 (1) of the Act requires the Authority, if the matter was not referred to the Tribunal within the time required by the Tribunal Procedure Rules, to issue a Final Notice.

Relevant provisions of the Authority's Handbook

5. The Fit and Proper test for Approved Persons ("FIT") sets out the criteria that the Authority will consider when assessing the fitness and propriety of a person to perform a particular controlled function.
6. The most important considerations to which the Authority will have regard include the person's honesty and integrity and competence and capability (FIT 1.3.1G).
7. If a matter comes to the Authority's attention which suggests that the person might not be fit and proper, the Authority will take into account how relevant and important that matter is (FIT 1.3.4G).
8. In determining a person's honesty, integrity and reputation, the matters to which the Authority will have regard include:
 - (1) 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 (FIT 2.1.3G (5));
9. In determining a person's competence and capability, the matters to which the Authority will have regard include:
 - (1) whether the person satisfies the relevant Authority training and competence requirements in relation to the controlled function the person performs or is intended to perform (FIT 2.2.1G (1)).