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FINAL NOTICE

To: Christopher Niehaus

Date of Birth: 18 January 1968

FCA Reference Number: CXN01244

Date: 29 March 2017

1. ACTION

- 1.1. For the reasons given in this Notice, the Authority hereby imposes on Mr Niehaus a financial penalty of £37,198 for breaching Statement of Principle 2 (failure to act with due skill, care and diligence).
- 1.2. Mr Niehaus provided admissions of his misconduct to the Authority in an early interview under caution, and accordingly the Authority has reduced the financial penalty by 15% (under step 3 of the Authority's five step framework to determine the appropriate level of penalty).
- 1.3. Mr Niehaus also agreed to settle at an early stage of the Authority's investigation. He therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £53,140 on Mr Niehaus.

2. SUMMARY OF REASONS

2.1. On a number of occasions between 24 January 2016 and 16 May 2016, Mr Niehaus shared client confidential information which he had received during the course of his employment with both a personal acquaintance ("Friend A") and a client of the firm, who was also a friend ("Client A"). Some of the confidential information disclosed related to a client who was a competitor of Client A. The information was disclosed using an instant messaging application ("WhatsApp"), not for the purpose of it being used by the recipients, but because he wanted to impress them.

3. DEFINITIONS

3.1. The definitions below are used in this Notice.

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

"Statement of Principle" means Statements of Principle and Code of Practice for Approved Persons;

"the Authority" means the Financial Conduct Authority;

"DEPP" means the Authority's Decision Procedures and Penalties Manual;

"Jefferies" means Jefferies International Limited;

"Mr Niehaus" means Christopher Niehaus, the subject of this Notice; and

"Relevant Period" means 24 January 2016 and 16 May 2016;

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

4. FACTS AND MATTERS

4.1. Mr Niehaus was, at the time and during the relevant period, a managing director (CF30) at Jefferies. In this role, he was responsible for covering European Industrial groups in the firm's Investment Banking division. As a result of his position, Mr Niehaus had extensive access to client confidential information in relation to forthcoming corporate deals that Jefferies was working on. Mr Niehaus has worked in the banking sector for 12 years.

4.2. In a number of recorded instances, between 24 January 2016 and 16 May 2016, Mr Niehaus shared confidential information about two clients using the instant messaging application "WhatsApp" with either Friend A or Client A.

Client One

4.2.1. Between 24 and 25 January 2016, Mr Niehaus entered into a WhatsApp conversation with Client A. In that conversation, Mr Niehaus explained that he was working on a deal for a Client ("Client One"). He disclosed the identity of Client One and the fact that this client might be acquiring part of another company. Mr Niehaus and Client A discussed how Mr Niehaus might be able to pay off his mortgage (on the basis that he might receive a bonus from his employer) if the deal was successful.

4.2.2. On 16 May 2016, Mr Niehaus mentioned this deal in a WhatsApp conversation with Friend A. During the conversation, Mr Niehaus stated "*Wish I could go exercise but waiting for [Client One] – story of my life...size will increase significantly if I pull off my deal*".

Client Two

4.2.3. On 8 April 2016, Mr Niehaus disclosed in a WhatsApp conversation with Friend A that he and others at Jefferies had received a "*Massive mandate*" from a company, Client Two. Friend A asked what the deal was and Mr Niehaus explained that Client Two needed to raise finance to reduce its debt. He also disclosed the amount Client Two needed to raise and the fees Jefferies would receive for the mandate.

4.2.4. On 22 April 2016, during a social gathering, Mr Niehaus informed Client A that Client Two was to complete a rights issue. Mr Niehaus also referred to this deal in a WhatsApp conversation with Client A on 21 April 2016 and 23 April 2016. During these conversations, Mr Niehaus disclosed the name of Client Two to Client A. Client Two was, at the time, a competitor of Client A.

4.2.5. In May 2016, Client A messaged Mr Niehaus stating he had seen information on the news regarding Client Two. In response, Mr Niehaus stated that Client Two had "*c[o]me out with a profit warning*" and was "*in trouble*".

4.3. Neither Mr Niehaus, Friend A nor Client A dealt in any securities relating to these disclosures and it is accepted that this information was not shared by Mr Niehaus with that expectation.

Mr Niehaus' explanation of his conduct

4.4. Mr Niehaus admitted that the information disclosed was client confidential, that he should not have shared it and that he should have known better. Mr Niehaus also admitted that he would routinely share information relating to his work with Friend A.

4.5. Mr Niehaus claimed that he "*didn't know*" why he disclosed the information to Friend A and Client A other than he wanted to impress them.

5. FAILINGS

5.1. The statutory provisions, regulatory provisions and guidance relevant to this Final Notice are referred to in Annex A.

5.2. Contrary to Statement of Principle 2, Mr Niehaus demonstrated a lack of care in disclosing information, without the permission of his clients, in circumstances when there were no reasonable grounds for doing so. None of the recipients of the information needed this information and disclosure served no purpose.

5.3. Mr Niehaus acquired the information he disclosed by virtue of his CF30 status. In this role, he was obligated to maintain client confidentiality.

5.4. Mr Niehaus' conduct is particularly serious, given that some of the information disclosed related to a competitor of Client A. Mr Niehaus' disclosure of client confidential information to a competitor could have conferred an undue advantage to Client A and demonstrates a failure to pay due regard to the interests of his client.

6. SANCTION

Financial Penalty

6.1. 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 6.5B sets out

the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.

Step 1: Disgorgement

- 6.2. Pursuant to DEPP 6.5B.1G, at Step 1, the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.3. The Authority has not identified any financial benefit that Mr Niehaus derived directly from the breach.
- 6.4. Step 1 is therefore £0.

Step 2: the Seriousness of the Breach

- 6.5. Pursuant to DEPP 6.5B.1G, at Step 2, the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.
- 6.6. The period of Mr Niehaus' breach was from January 2016 to May 2016. DEPP 6.5B.2G(2) states that where the breach lasted less than 12 months, the relevant income will be that earned by the individual in the 12 months preceding the end of the breach. The Authority considers Mr Niehaus' relevant income for this period to be £312,589.60.
- 6.7. In deciding on the percentage of the relevant income that forms the basis of the step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. 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. For penalties imposed on individuals in non-market abuse cases, there are the following five levels:
 - Level 1 – 0%
 - Level 2 – 10%
 - Level 3 – 20%
 - Level 4 – 30%
 - Level 5 – 40%
- 6.8. 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. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:

6.8.1. Mr Niehaus was an approved person and held a controlled function CF30 at the time at which he committed the misconduct. Mr Niehaus also breached a position of trust in committing the misconduct namely that he shared client confidential information with both a personal acquaintance and another client of the firm, where both clients were competitors; and

6.8.2. Mr Niehaus acted deliberately.

6.9. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considered the following factors to be relevant:

6.9.1. There was little risk of loss to consumers, investors or other market users individually and in general;

6.9.2. There was limited potential effect on the orderliness of, or confidence in, markets as a result of Mr Niehaus' conduct; and

6.9.3. Mr Niehaus and his friends made no profit, and avoided no loss, as a result of the breach.

6.10. The Authority also considers that the following factors are relevant:

6.10.1. although Mr Niehaus' conduct occurred over a short period of time, it did not consist of an isolated breach; and

6.10.2. Mr Niehaus is an experienced industry professional.

6.11. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 3 and so the Step 2 figure is 20% of £312,589.60.

6.12. Step 2 is therefore £62,518.

Step 3: Mitigating and aggravating factors

6.13. Pursuant to DEPP 6.5B.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 as set out in Step 1, to take into account factors which aggravate or mitigate the breach.

6.14. The Authority considers that Mr Niehaus' co-operation mitigates the breach. Mr Niehaus has showed a level of cooperation during the investigation including giving early and full admissions during the investigation. In his interview under caution, Mr Niehaus provided a prompt and detailed account of the events relating to the breach, in circumstances where he was under no obligation to answer questions.

6.15. Having taken into account the above, the Authority considers that the Step 2 figure should be decreased by 15%.

6.16. Step 3 is therefore £53,140.

Step 4: Adjustment for Deterrence

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

6.18. The Authority considers that the Step 3 figure of £53,140 represents a sufficient deterrent to Mr Niehaus and others, and so has decided not to increase the penalty at Step 4.

6.19. Step 4 is therefore £53,140.

Step 5: Settlement Discount

6.20. Pursuant to DEPP 6.5B.5G, if the Authority and the individual on whom 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 individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.21. The Authority and Mr Niehaus reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.

6.22. Step 5 is therefore £37,198.

Penalty

6.23. The Authority therefore imposes a total financial penalty of £37,198 on Mr Niehaus for breaching Statement of Principle 2.

7. PROCEDURAL MATTERS

Decision maker

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

7.2. This Final Notice is given under section 67 and in accordance with section 390 of the Act.

Manner of and time for Payment

7.3. The financial penalty must be paid in full by Mr Niehaus to the Authority by no later than 30 April 2017, one month from the date of this Final Notice.

7.4. If all or any of the financial penalty is outstanding on 1 May 2017, the Authority may recover the outstanding amount as a debt owed by Mr Niehaus and due to the Authority.

Publicity

7.5. 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 a 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 you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

7.7. For more information concerning this matter generally, contact Meg Gardiner (direct line: 020 7066 3118) of the Enforcement and Market Oversight Division at the Authority.

Mark Francis
Enforcement and Market Oversight Division
Financial Conduct Authority

ANNEX A: RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. STATUTORY PROVISIONS

- 1.1. The Authority's operational objectives, set out in section 1B(3) of the Act, include the consumer protection objective and include the market integrity and the consumer protection objective.
- 1.2. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. A person is guilty of misconduct if, whilst an approved person, he has failed to comply with a statement of principle issued under section 64 or section 64A of the Act.

2. RELEVANT REGULATORY PROVISIONS

- 2.1. Unless otherwise stated, the regulatory provisions set out were in force on 16 May 2016 (i.e. the last day of the Relevant Period).

Statements of Principle and Code of Practice for Approved Persons

- 2.2. The Authority's Statements of Principle ("APER") have been issued under section 64 of the Act. APER sets out descriptions of conduct which, in the opinion of the Authority, does not comply with a Statement of Principle:
- 2.3. APER 3.1.4 provides that:

"(1) An approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises where an approved person's conduct was deliberate or where the approved person's standard of conduct was below that which would be reasonable in all the circumstances.

(2) For the avoidance of doubt, the Statements of Principle do not extend the duties of approved persons beyond those which the firm owes in its dealings with customer or others."

- 2.4. Statement of Principle 2 states:

"An approved person must act with due skill, care and diligence in carrying out his accountable functions"

2.5. APER 4.2.14G states that “Failing to pay due regard to the interests of a customer, without good reason” does not comply with Statement of Principle 2.