
FINAL NOTICE

To: Mr Roger Edward Muse

DOB: 19 June 1948

Date: 17 November 2008

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

1. ORDER

1.1. The FSA hereby makes an order pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act") prohibiting you, Mr Roger Edward Muse (“Roger Muse”), from performing:

- (1) any functions falling within the definition in the FSA’s Handbook of significant influence functions in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm; and
- (2) regulated activities as an appointed representative of an authorised firm or as a sole trader.

(the “Prohibition Order”).

1.2. The Prohibition Order has effect from 19 November 2008. The FSA is minded to revoke the Prohibition Order at any time after 18 November 2011 on your application, in the absence of new evidence that you are not fit and proper, and conditional upon you having undertaken appropriate training in relation to the obligations and responsibilities of an approved person exercising significant influence functions.

1.3. The Prohibition Order does not prohibit you from performing functions falling within the definition in the FSA’s Handbook of customer functions.

2. REASONS FOR THE ACTION

Summary

- 2.1. The action by the FSA relates to Roger Muse's conduct between January 2005 and May 2006 (the "Relevant Period") whilst performing the controlled function of Director (CF1) on behalf of FHI (Northern) Limited ("FHIN") (now known as Rangestage Limited).
- 2.2. Roger Muse was not aware of (and did not take adequate steps to find out about) his responsibilities as an approved person, in particular his responsibilities for ensuring that FHIN took reasonable care to establish and maintain systems and controls for complying with the applicable requirements and standards under the regulatory system relating to the handling of client money.
- 2.3. The FSA also considers that Roger Muse has breached the FSA's Statements of Principle and Code of Practice for Approved Persons by virtue of:
 - (1) his failure to act with due skill, care and diligence in carrying out his controlled function; and
 - (2) his failure to take reasonable steps to ensure that the business of FHIN complied with the relevant requirements and standards of the regulatory system.
- 2.4. In the FSA's view, these matters demonstrate a serious lack of competence and capability on the part of Roger Muse and give rise to serious concerns about his readiness and willingness to comply generally with the regulatory obligations and responsibilities which attach to persons performing significant influence functions.
- 2.5. As a result, it appears to the FSA that Roger Muse is not fit and proper to perform any significant influence function in relation to any regulated activity and is not fit and proper to perform any regulated activities as a sole trader or as an appointed representative of an authorised firm and that, having regard to its regulatory objectives, including the nature of the risk that he poses to consumers and the market generally, it is appropriate in all the circumstances to make a Prohibition Order against him in the terms proposed.
- 2.6. The FSA gave Roger Muse a Decision Notice on 14 November 2008 which notified him that pursuant to section 56 of the Act, the FSA had decided to make the Prohibition Order. Roger Muse confirmed that he will not be referring the matter to the Financial Services and Markets Tribunal.
- 2.7. Accordingly, for the reasons set out and having agreed the facts and matters relied on, the FSA hereby makes the Prohibition Order.

Relevant statutory provisions and regulatory requirements

- 2.8. Relevant statutory provisions and regulatory requirements are set out in the Annex to this Final Notice.

Facts and matters relied on

Background

- 2.9. Roger Muse held the Director (CF1) controlled function on behalf of FHIN throughout the Relevant Period. This was a significant influence function.
- 2.10. FHIN was a small general insurance intermediary business with mainly commercial clients and some retail clients. It did not specialise in any particular line of insurance. Its commercial clients included football clubs and taxi firms. It was authorised on 15 January 2005. It ceased trading on 1 May 2006.
- 2.11. FHIN had terms of business agreements with insurance companies which specified that it would write business on a risk transfer basis. This meant that FHIN held premiums paid by customers for policies as agent for the insurance companies. Moreover, the business agreements specified that such premiums could be treated as “client money”. FHIN held client money on a non-statutory trust and thus had to comply with FSA requirements contained in CASS 5 and referred to at paragraphs 25 to 26 of the Annex to this Final Notice.

Systems and controls at FHIN relating to client money

- 2.12. Roger Muse was a Director of FHIN and was responsible for managing and operating the firm’s business which included the handling of client money.
- 2.13. Roger Muse was not aware and did not take steps to make himself aware of his regulatory obligations or those of FHIN insofar as the handling of client money was concerned.
- 2.14. Roger Muse failed to take reasonable steps to ensure that, during the Relevant Period, FHIN had adequate systems and controls to ensure that it was able to monitor and manage its client money transactions and any credit risk arising from the operation of the non-statutory trust. In particular, he:
- (1) failed to ensure that proper records were kept relating to the firm’s transactions and commitments in respect of client money;
 - (2) failed to ensure that client money calculations were performed at the firm and that the firm kept a record of how it performed the calculations;
 - (3) failed to ensure that the firm dealt with any shortfall or surplus in client money in accordance with the FSA’s rules relating to client money;
 - (4) failed to ensure that written notice was provided to the firm’s bank that monies in its client bank account were held by the firm as trustee; and

- (5) being aware that no client money calculations were being performed, failed to ensure that the firm notified the FSA that it was not performing the client money calculations.

Analysis of proposed sanction

- 2.15. Paragraphs 4 to 6 of the Annex to this Final Notice explain the FSA's policy in relation to prohibition orders as set out in Chapter 9 of the Enforcement Guide ("EG"). EG 9.9 (as applied by EG 9.18) provides that the FSA will consider a number of factors and criteria for when assessing fitness and propriety.
- 2.16. The FSA has considered whether Roger Muse is a fit and proper person in accordance with the regulatory requirements and with regard to the relevant guidance. In this respect the FSA considers that he has failed to demonstrate the competency and capability required to perform controlled functions in relation to regulated activities. The FSA also considers that by virtue of the matters referred to above, Roger Muse has breached Principles 2 and 7 of the Statements of Principle for Approved Persons. In this respect, the FSA considers that he failed to exercise due skill, care and diligence in respect of the management of FHIN's business, whilst carrying out his controlled function within that firm, and that he failed to take reasonable steps to ensure that the business of FHIN was conducted in a manner that complied with regulatory requirements and standards.
- 2.17. In the FSA's view, the matters referred to above demonstrate a serious lack of competence and capability on the part of Roger Muse insofar as his regulatory obligations relating to the handling of client money are concerned. These matters also give rise to serious concerns about his readiness and willingness to comply generally with the regulatory obligations and responsibilities which attach to persons performing significant influence functions.
- 2.18. It is recognised that Roger Muse, from the outset of the investigation, including in interviews, has made open admissions in relation to misconduct set out in this Notice. Roger Muse has not previously been the subject of any Enforcement action.

Conclusion

- 2.19. By virtue of the circumstances outlined above, the FSA considers that Roger Muse is not fit and proper to perform controlled functions involving the exercise of any significant influence in relation to any regulated activity or to perform any regulated activities as a sole trader or as an appointed representative of an authorised firm.
- 2.20. Having regard to its regulatory objectives, in particular the protection of consumers and market confidence, the FSA considers that there is a significant risk that the protection of consumers and market confidence would be adversely affected if Roger Muse were permitted to exercise any significant influence function in relation to any regulated activity or to perform any regulated activities as a sole trader or as an appointed representative of an authorised firm.

3. **DECISION MAKERS**

- 3.1. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers on behalf of the FSA.

4. **IMPORTANT**

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

Publicity

- 4.2. 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.
- 4.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 4.4. For more information concerning this matter generally, contact should be made with Dermot Lynch at the FSA (direct line: 020 7066 1206 / fax: 020 7066 1207).

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William Amos

FSA Enforcement Division

ANNEX

Relevant statutory provisions and regulatory requirements

Statutory provisions

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.
2. The FSA has the power pursuant to section 56 of the Act to make an order prohibiting a person from performing a specified function, any function falling within a specified description or any function, if it appears to the FSA that they are not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.
3. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities.

Relevant policy

4. Chapter 9 of the Enforcement Guide, which is a Regulatory Guide and does not form part of the FSA's Handbook, sets out the FSA's policy on prohibition orders against individuals. Under EG 9.1, the FSA may exercise its power to make a prohibition order where it is appropriate to help the FSA achieve its regulatory objectives, which are referred to in paragraph 1 of this Annex.
5. In considering making a prohibition order against an individual such as Roger Muse, who was, during the Relevant Period, an approved person, the FSA will consider the severity of the risk posed by him and may prohibit him where it considers this is appropriate to achieve one or more of its regulatory objectives (EG 9.17). Under EG 9.9 (as applied by EG 9.18), the FSA may consider the following factors, amongst others:
 - “(2) *Whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness).*
 - (3) *Whether, and to what extent, the approved person has:*
 - (a) *failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons; ...*
 - ...
 - (5) *The relevance and materiality of any matters indicating unfitness.*
 - (6) *The length of time since the occurrence of any matters indicating unfitness.*
 - (7) *The particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in*

which he operates.

- (8) *The severity of the risk which the individual poses to consumers and to confidence in the financial system.*
- (9) *The previous disciplinary record and general compliance history of the individual including whether the FSA, any previous regulator, designated professional body or other domestic or international regulator has previously imposed a disciplinary sanction on the individual.”*

- 6. According to EG 9.5, the scope of a prohibition order will depend on (amongst other matters) the reasons why the individual is not fit and proper and the severity of the risk he poses to consumers or the market generally.

The Fit and Proper Test

- 7. In determining whether to issue a Prohibition Order and its extent, the FSA will have regard to the guidance in the Handbook in the part entitled “FIT – The Fit and Proper test for Approved Persons”.
- 8. FIT 1.3 provides that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person. Among the most important of these are a person’s competence and capability.
- 9. In determining a person’s competence and capability, FIT 2.2.1G provides that the FSA will have regard to matters including but not limited to whether the person satisfies the relevant FSA training and competence requirements in relation to the controlled function the person performs or is intended to perform and whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function.
- 10. The FSA has also had regard to the following additional matters which it considers to be relevant:
 - (1) whether the person has contravened any of the requirements and standards of the regulatory system; and
 - (2) whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system.

Statements of Principle and code of practice for approved persons (“APER”)

- 11. Section 64 of the Act authorises the FSA to issue Statements of Principle with respect to the conduct expected of approved persons. If it does so, it must also issue a code of practice for the purpose of helping to determine whether or not a person’s conduct complies with the Statements of Principle.
- 12. APER in the Handbook sets out the Statements of Principle in respect of approved persons. It also sets out descriptions of conduct which, in the opinion of the FSA, do not comply with the Statements of Principle. It further describes factors which, in the

opinion of the FSA, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle.

13. The guidance set out in APER 3.1.3 stipulates that, when establishing compliance with, or a breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.
14. APER 3.1.4 states that an approved person will only be in breach of a Statement of Principle if he is personally culpable, that is, where his conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.
15. Statements of Principle 2 and 7 are considered to be relevant to Roger Muse's conduct.

Statement of Principle 2

16. Statement of Principle 2 provides that:

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

17. APER 4.2 lists types of conduct which do not comply with Statement of Principle 2. In particular, APER 4.2.11 states that failing to provide adequate control over a client's assets is conduct which breaches Statement of Principle 2.

Statement of Principle 7

18. Statement of Principle 7 provides that:

"An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory systems."

19. Conduct which, in the opinion of the FSA, does not comply with Statement of Principle 7 includes:

- (1) failure to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of its regulated activities (APER 4.7.3); and
- (2) failure to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulatory system in respect of its regulated activities (APER 4.7.4).

20. The FSA expects an approved person performing a significant influence function to take reasonable steps both to ensure his firm's compliance with the relevant requirements and standards of the regulatory system and to ensure that all staff are aware of the need for compliance (APER 4.7.11).

Rules on protection of client money

21. Under Principle 10 (Clients' assets) of the FSA's Principles for Businesses, a firm is required to arrange adequate protection for clients' assets when the firm is responsible for them. The FSA's rules are designed to protect clients if a firm fails while it is holding client money or if it is unable to transfer premiums to insurers or claim money or refunds to clients.
22. An essential part of that protection is the proper accounting and handling of client money and Chapter 5 of CASS in the Handbook contains detailed rules and guidance relating to the handling of client money. These rules are applicable to firms which carry on insurance mediation activities (CASS 5.1.1R).
23. According to the Glossary in the Handbook, the meaning of "client money" for the purpose of CASS 5 (subject to the client money rules) is *"money of any currency which, in the course of carrying on insurance mediation activity, a firm holds on behalf of a client or which a firm treats as client money in accordance with the client money rules."*
24. There are two main approaches which firms can adopt to ensure adequate protection for client money:
- (1) the first is to transfer the risk from the firm to the insurer(s) (CASS 5.2);
 - (2) the second is to segregate client money into trust accounts that cannot be used to reimburse other creditors if a firm fails. The client trust accounts may be statutory (CASS 5.3) or non-statutory (CASS 5.4).
25. CASS 5.4.4R sets out the conditions for using a non-statutory client money trust, including:
- "(1) the firm must have and maintain systems and controls which are adequate to ensure that the firm is able to monitor and manage its client money transactions and any credit risk arising from the operation of the trust arrangement..."*
26. CASS 5.5 sets out the rules and guidance applicable to the segregation and the operation of client money accounts. These rules and guidance include the following:-
- (1) that when a firm opens a client bank account, the firm must give or have given written notice to the bank requesting the bank to acknowledge to it in writing that (among other matters) all money standing to the credit of the account is held by the firm as trustee (CASS 5.5.49R);
 - (2) that a firm must, as often as is necessary to ensure the accuracy of its records, and at least at intervals of not more than 25 business days, check whether its

client money resource is at least equal to its client money requirement (this calculation is referred to as the client money calculation) (CASS 5.5.63R(1)(a));

- (3) that any shortfall is paid into the client bank account by close of business on the day any shortfall is identified (CASS 5.5.63R(1)(b));
- (4) that a firm must keep a record of whether it calculates its client money requirement in accordance with CASS 5.5.66R or CASS 5.5.68R (which set out two methods which may be used to perform the client money calculations) (CASS 5.5.64R);
- (5) that a firm must notify the FSA immediately if it is unable to, or does not, perform the client money calculation (CASS 5.5.76R); and
- (6) that a firm must ensure that proper records, sufficient to show and explain the firm's transactions and commitments in respect of its client money, are made and retained for a period of three years after they were made (CASS 5.5.84R).