

**NOTE: This prohibition order was revoked by the FCA on 16/10/2017**

Financial Services Authority



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**FINAL NOTICE**

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**To:** Mr Stephen Hunt

**Address:** 52 Forder Way  
Peterborough  
Cambridgeshire  
PE7 8JB

**Individual FSA reference:** SXH01552

**Date:** 15 August 2011

**1. ACTION**

- 1.1. For the reasons given below, the FSA hereby makes an order pursuant to section 56 of the Financial Services and Markets Act 2000 (“the Act”) prohibiting Mr Stephen Hunt (“Mr Hunt”), director of Rockingham Independent Limited (“Rockingham”), from performing any significant influence functions and the CF30 (Customer) function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm which promotes and or recommends unregulated collective investment schemes (“UCIS”) and/or structured capital at risk products to retail customers (the “Prohibition Order”).

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**2. SUMMARY OF REASONS**

- 2.1. On the basis of the facts and matters described below the FSA concluded that Mr Hunt lacks the competence and capability to perform any function in relation to the promotion and recommendation of UCIS or structured capital at risk products to retail customers by any authorised person, exempt person or exempt professional firm.
- 2.2. Mr Hunt had no knowledge or understanding of the statutory and regulatory restrictions on the promotion of UCIS to retail customers and therefore he failed to take reasonable steps to ensure that Rockingham had regard to those restrictions when it promoted and recommended UCIS. This failure put 426 customers at risk of receiving unsuitable personal recommendations (ie pension and investment advice) between January 2008 and September 2010 ( “the relevant period”).
- 2.3. Mr Hunt failed to take adequate steps to ensure that there was adequate monitoring of compliance with relevant requirements. In particular, he did not act quickly enough in response to concerns expressed by Rockingham’s own Compliance Director (“the Compliance Director”) about his ability to perform his job in the face of the growing compliance needs of the Firm. This resulted in a risk that investment advice was not being monitored effectively and therefore that customers would receive unsuitable advice.
- 2.4. By virtue of Mr Hunt’s lack of understanding of the requirements relating to the promotion and sales of UCIS and his continued use of a Compliance Director who he knew was not competent to undertake this role, the FSA has concluded that he has failed to meet minimum regulatory standards in terms of competence and capability and that he is not fit and proper to perform significant influence functions in relation to any regulated activity and controlled functions in relation to UCIS and structured capital at risk products. For the avoidance of doubt, the Prohibition Order in no way prevents Mr Hunt from continuing to perform any functions in respect of Rockingham’s direct offer annuity business related activities.
- 2.5. As the majority shareholder of Rockingham, Mr Hunt also is indirectly affected by the financial penalty imposed on the Rockingham.

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**Statutory provisions, regulatory guidance and policy**

- 2.6. Relevant statutory provisions, regulatory guidance and policy are set out as an Annex to this Notice.

**3. FACTS AND MATTERS RELIED UPON**

**Background to Rockingham**

- 3.1. Rockingham is based in Peterborough, Cambridgeshire. It was established by Mr Hunt as “Pensions4.com Limited” and traded as Annuity-advisor.co.uk. It became directly authorised by the FSA on 17 May 2005 to perform personal investment-related regulated activities (i.e. advising excluding pension transfers/opt outs).

- 3.2. Rockingham was authorised by the FSA to carry on the following regulated activities in relation to regulated investment advice:

- (1) advising on investments (except on pension transfers and pension opt outs);
- (2) agreeing to carry on a regulated activity;
- (3) arranging deals in investments;
- (4) arranging (bringing about) deals in investments; and
- (5) making arrangements with a view to transactions in investments.

- 3.3. From 8 May 2009 it was authorised to carry out additional regulated activities in respect of designated investment business:

- (1) advising on pension transfers and pension opt outs;
- (2) dealing in investments as principal; and
- (3) establishing/operating/winding up personal pensions.

- 3.4. The following individuals have performed the controlled function of CF1 (Director) at Rockingham:

- (1) Mr Hunt (continuously from 17 May 2005) and

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- (2) Mr Jonathan Edwards (“ the Compliance Director”) (from 17 May 2005 to 16 August 2010).

**Senior management oversight**

- 3.5. Throughout the relevant period Mr Hunt was the managing director of Rockingham and Rockingham’s board of directors consisted of Mr Hunt and the Compliance Director.
- 3.6. As the 50 per cent shareholder and the person approved to perform the controlled function of CF1, Mr Hunt was responsible for the day to day running of Rockingham. Mr Hunt performed significant influence functions at Rockingham and was responsible for the conduct of the whole of the business and for dealing with apportionment of significant responsibilities including compliance among Rockingham’s senior management in such a way that the business and affairs of the business could be adequately controlled and monitored.
- 3.7. Rockingham experienced a period of rapid expansion between 2005 and 2010. In 2005 Rockingham employed two advisers and, by 2009, this increased to seven. However, during this period, the level of compliance support remained the same. Mr Hunt failed to increase the number of compliance support staff commensurate with the increase in the number of advisers and scale and complexity of its advisory business.
- 3.8. Mr Hunt failed to discharge his responsibilities appropriately in respect of setting robust corporate governance arrangements and apportioning compliance resources to maintain effective control over the business.

**Failure to engage with Compliance Director**

- 3.9. Mr Hunt appointed a Compliance Director and delegated all responsibility for ensuring that Rockingham complied with regulatory requirements to the Compliance Director, who did not have any previous compliance experience.
- 3.10. It was the Compliance Director’s responsibility to ensure that Rockingham had in place robust compliance monitoring arrangements to mitigate against the risk of

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customers receiving unsuitable advice. However, in July 2008 the Compliance Director informed Mr Hunt that he was only devoting 25 per cent of his time to compliance and that he was not able to cope with the growing compliance needs of Rockingham.

- 3.11. Despite being aware of the Compliance Director's concerns Mr Hunt failed to supervise or monitor the Compliance Director's work and/or failed to provide additional support in terms of training and development. While it is acknowledged that proactive steps were taken with the aim of enhancing compliance support, Mr Hunt continued to place reliance on someone who was not suitable and competent to undertake the role.
- 3.12. Mr Hunt's failure to address the Compliance Director's concerns resulted in investment advice not being effectively monitored which exposed customers to the risk of receiving potentially unsuitable advice. Mr Hunt should have ensured that sales did not continue while the compliance function was being performed by someone who was not suitable for the role.
- 3.13. By way of further mitigation, Mr Hunt was able to demonstrate to the FSA that he attempted to recruit a new compliance director in 2007, 2008 and 2009 but was unsuccessful. He also distributed compliance tasks amongst other members of staff and external compliance consultants to reduce the burden on the Compliance Director.

**Breach of the restriction on the promotion of UCIS**

- 3.14. UCIS is defined in the glossary to the FSA Handbook of Rules and Guidance as "*a collective investment scheme which is not a regulated collective investment scheme*". Unless a collective investment scheme ("CIS") falls within the narrow definition of a regulated CIS<sup>1</sup>, it will be a UCIS. A UCIS does not carry the same level of regulatory oversight as a CIS in relation to matters such as the clarification of fees charged or

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<sup>1</sup> A CIS is defined in the Handbook Glossary as follows:

(a) An investment company with variable capital; or

(b) An authorised unit trust scheme; or

(c) A recognised scheme, (ie a CIS constituted overseas and formally recognised under sections 264, 270 or 272 of the Financial services and Markets Act 2000);

Whether or not the units are held within an ISA or personal pension scheme.

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diversification, but it is still subject to regulation, notably around the extent to which and persons to whom it can be marketed. Section 238 of the Act precludes the promotion of a UCIS by an authorised person except in certain specified circumstances, broadly these include promotions to investment professionals, existing customers of an authorised person, and certain high net worth individuals or sophisticated investors.

- 3.15. The FSA identified that at least 39 of Rockingham's customers were recommend to invest in UCIS.
- 3.16. While performing his significant influence function Mr Hunt failed to take reasonable steps to ensure that there was a sufficient understanding within the business of the regulatory requirements and restrictions relating to the promotion of UCIS. As a result of the deficiencies in knowledge regarding the promotion of UCIS, deficiencies which appear to the FSA to be reflected in a similar lack of knowledge on the part of advisers at Rockingham, there was a risk that unsuitable recommendations to invest in UCIS would be made to customers.

**Conclusion**

- 3.17. The FSA has concluded that Mr Hunt, as the person authorised to carry out the controlled function of CF1 and as the controlling mind of Rockingham, was responsible for the misconduct referred to above.
- 3.18. Mr Hunt failed to take adequate and timely steps in response to the concerns expressed by the Compliance Director and continued to place reliance on him despite being aware that he was not competent to undertake the role of a Compliance Director. Furthermore he failed to inform himself and failed to ensure that Rockingham's advisers were informed about the statutory and regulatory restrictions relating to UCIS and therefore we consider that Mr Hunt is not fit and proper in terms of a lack of competence and capability in this regard and, as a consumer protection measure, it is necessary and proportionate that he should be prevented from performing any significant influence and customer functions at any authorised firm whose activities include promoting and/or recommending UCIS or structured capital at risk products.

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**4. DECISION MAKER**

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

**5. PROCEDURAL MATTERS**

- 5.1. This Final Notice is given to Mr Hunt in accordance with section 390 of the Act. The effective date of the prohibition order is 15 August 2011.

**Publicity**

- 5.2. 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.
- 5.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

**FSA contacts**

- 5.4 For more information concerning this matter generally, contact Chris Walmsley at the FSA (direct line: 020 7066 5894) of the Enforcement and Financial Crime Division of the FSA.

Tom Spender  
Head of Department  
FSA Enforcement and Financial Crime Division

**Annex (paragraph 2.6)**

**1. STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY**

**Statutory provisions**

- 1.1 The FSA's statutory objectives, set out in section 2(2) of the Act, include the protection of consumers, maintaining market confidence and the reduction of financial crime.
- 1.2 The FSA has the power, by virtue of section 56 of the Act, to make an order prohibiting Mr Hunt from performing a specified function, any function falling within a specified description or any function, if it appears to the FSA that he is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specific regulated activity, an activity falling within a specified description or all regulated activities.

**Fit and proper test for approved persons**

- 1.3 A part of the FSA's Handbook has the title "The Fit and Proper test for Approved Persons" ("FIT"). The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 1.4 FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. One of the considerations will be the person's competence and capability.
- 1.5 In determining a person's competence and capability, FIT 2.2 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.2.1G:
- (1) 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;
  - (2) whether the person has demonstrated by experience and training that the person is suitable, or will be suitable if approved, to perform the controlled function.

**FSA's policy for exercising its power to make a prohibition order and withdraw a person's approval**

- 1.6 The FSA's approach to exercising its powers to make prohibition orders and withdraw approvals is set out at Chapter 9 of the Enforcement Guide ("EG"). The FSA has had regard to the appropriate provisions of EG that applied during the relevant period.
- 1.7 EG 9.1 states that the FSA's power to make prohibition orders under section 56 of the Act helps it work towards achieving its regulatory objectives. The FSA may exercise this power where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.

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- 1.8 EG 9.2 states that the FSA's effective use of the power under section 63 of FSMA to withdraw approval from an approved person will also help to ensure high standards of regulatory conduct by preventing an approved person from continuing to perform the controlled function to which the approval relates if he is not a fit and proper person to perform that function. Where it considers this is appropriate, the FSA may prohibit an approved person, in addition to withdrawing their approval.
- 1.9 EG 9.4 sets out the general scope of the FSA's powers in this respect, which include 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. EG 9.5 provides that the scope of a prohibition order will vary according to the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk posed by him to consumers or the market generally.
- 1.10 In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provides guidance. In particular, EG 9.8 states that the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw that person's approval or both. In deciding whether to withdraw approval and/or make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.
- 1.11 EG 9.9 states that the FSA will consider all the relevant circumstances when deciding whether to make a prohibition order against an approved person and/or to withdraw that person's approval. Such circumstances may include, but are not limited to, the following factors:
- (1) whether the individual is fit and proper to perform functions in relation to regulated activities, including in relation to the criteria for assessing the fitness and propriety of an approved person in terms of competence and capability as set out in FIT 2.2;
  - (2) the relevance and materiality of any matters indicating unfitness;
  - (3) the length of time since the occurrence of any matters indicating unfitness;
  - (4) 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;
  - (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and
  - (6) the previous disciplinary record and general compliance history of the individual.
- 1.12 EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person. The examples include serious lack of competence.