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## FINAL NOTICE

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**To:** **James Sharp and Company**

**5 Bank Street, Bury,  
Lancashire BL9 0DN**

**Firm**

**Reference Number:** **140828**

**Date:** **20 August 2012**

### **1. ACTION**

1.1. For the reasons given in this Notice, the FSA hereby imposes on James Sharp and Company (“the Firm”) a financial penalty of £49,000 in respect of breaches of SUP 17 of the FSA Handbook and Principle 3 of the FSA’s Principles for Business (“the Principles”).

1.2. The Firm agreed to settle at an early stage of the FSA’s investigation and therefore qualified for a 30% (Stage 1) reduction of the financial penalty under the FSA’s executive settlement procedures. Were it not for this discount, the FSA would have imposed a penalty of £70,000.

### **2. SUMMARY OF REASONS**

2.1. The FSA has decided to take this action because the Firm failed to report any of the approximately 71,000 transactions that it executed between 5 November 2007 and 08 February 2011 (the “Relevant Period”). The Firm’s systems and controls were

inadequate because the Firm did not have any documented procedures in place in relation to transaction reporting and failed to provide any relevant training to staff. It therefore breached SUP 17.1.4R and Principle 3.

- 2.2. Accurate and complete transaction reporting is essential to enable the FSA to meet its statutory objectives of maintaining market confidence and reducing financial crime. The primary function for which the FSA uses transaction reports is to detect and investigate suspected market abuse, insider trading and market manipulation.
- 2.3. A transaction report is a data set submitted to the FSA that relates to an individual financial market transaction which includes (but is not limited to) details of the product traded, the firm that undertook the trade, the trade counterparty and the trade characteristics such as buy/sell identifier, price and quantity.
- 2.4. The FSA considers the complete failure by the Firm to report as particularly serious, given that the FSA provided a significant quantity of guidance to firms on how to report, and check those reports, in the run up to and during the Relevant Period.
- 2.5. Although the Firm is small relative to others in the industry, the FSA does not consider this in any way lessened the Firm's obligation to report its transactions fully and accurately.

### **3. DEFINITIONS**

- 3.1. The definitions below are used in this Notice:

“the Act” means the Financial Services and Markets Act 2000;

“SUP” means the FSA Supervision Manual;

“the FSA” means the Financial Services Authority; and

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

### **4. FACTS AND MATTERS**

- 4.1. The implementation of the Markets in Financial Instruments Directive ("MiFID") across all European Economic Area (EEA) member states on 1 November 2007

(effective 5 November 2007 for transaction reporting) introduced changes to the list of products in which transactions have to be reported and standardised the list of fields which need to be included in the reports .

- 4.2. Both prior to and during the Relevant Period the FSA has provided significant guidance on transaction reporting issues. This guidance has included presentations to industry groups and trade associations, the Transaction Reporting User Pack, numerous Market Watch articles, a transaction reporting helpline and a transaction reporting library on the FSA website. The FSA has also made available to all firms a tool to enable them to regularly review their transaction data by requesting a sample of data they have submitted to the FSA. The FSA have encouraged firms to use this tool by raising awareness of it at our Transaction Monitoring Forums and publishing reminders in our Market Watch newsletters.
- 4.3. Firms are required to submit transaction reports to the FSA through an Approved Reporting Mechanism (“ARM”). Firms conducting cash equity transactions on the UK London Stock Exchange (‘LSE’) use a settlement system called CREST. As well as being the recognised body for UK settlements, CREST is approved by the FSA as an ARM. Therefore, provided they notify CREST appropriately, Firms can use it to report their transactions to the FSA. However SUP 17 is clear that the obligation to ensure transactions are being fully and accurately reported remains with the Firm.
- 4.4. The Firm’s failure to report transactions occurred as a result of their mistaken belief that CREST automatically reported their transactions to the FSA.
- 4.5. The Firm is a MiFID investment firm. It has confirmed that throughout the Relevant Period it had failed to:
  - (1) report any of the approximately 71,000 transactions it executed (all of which should have been reported in accordance with SUP 17.1.4R) ; and
  - (2) have any documented procedures and staff training in place to ensure complete and accurate transaction reporting.

## **5. FAILINGS**

- 5.1. The FSA considers that the Firm has breached SUP 17.1.4R and Principle 3. SUP 17.1.4R states:

*“A firm which executes a transaction:*

*(1) in any financial instrument admitted to trading on a regulated market or a prescribed market (whether or not the transaction was carried out on such a market);  
or*

*(2) in any OTC derivative the value of which is derived from, or which is otherwise dependent upon, an equity or debt-related financial instrument which is admitted to trading on a regulated market or on a prescribed market;*

*must report the details of the transaction to the FSA.*

- 5.2. All of the transactions that the Firm executed in the Relevant Period were reportable and, by failing to report any of them, the Firm breached its obligations under SUP 17.1.4R.

- 5.3. Principle 3 of the Principles states that:

*“A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.”*

- 5.4. In the Relevant Period the Firm breached Principle 3 by failing to have any documented procedures in place in relation to transaction reporting and failing to provide any relevant training to staff.

## **6. SANCTION**

### **Financial penalty**

- 6.1. Effective 6 March 2010, Chapter 6 of the FSA’s Decision Procedures and Penalties Manual was amended to introduce a new penalty regime. The misconduct in this case straddles the old penalty regime and the new penalty regime.

- 6.2. It is the FSA's view that the gravamen of the breaches occurred prior to 6 March 2010 and therefore the old penalty regime should be applied. In assessing the level of penalty to impose the FSA has considered the factors set out below.

*Deterrence (DEPP 6.5.2G (1))*

- 6.3. The principal purpose of imposing a sanction is to promote high standards of regulatory and market conduct. In view of the Firm's size, we consider that a penalty of the amount proposed would deter them and similar sized firms from committing breaches.
- 6.4. We consider that the penalty will demonstrate generally to other small firms the importance and benefits of compliant business, and reinforce the importance of accurate transaction reporting to the orderly conduct of markets in the UK and wider Europe.

*Seriousness and impact (DEPP 6.5.2G (2))*

- 6.5. The transaction reporting and systems failures in respect of the Firm were pervasive and continued over an extended period.
- 6.6. The Firms' failure to submit any transaction reports had the potential to hinder the FSA's ability to detect and investigate suspected market abuse, insider trading and market manipulation.
- 6.7. However it is acknowledged that whilst the Firm failed to submit the highest possible proportion (100%) of their transactions, the overall impact on the FSA's objectives is lower than other recent cases. This is because the volume of trades executed (71,000) is significantly smaller than the comparison cases.

*Deliberate or reckless (DEPP 6.5.2G (3))*

- 6.8. We do not consider that the Firm's conduct was deliberate or reckless.

*Financial Resources (DEPP 6.5.2G (5))*

- 6.9. Although a relatively small firm, having examined their Income Statement, the FSA considers that the Firm has sufficient financial resources available to pay a penalty of

the level proposed. Although the proposed fine is considerably lower than past cases involving much bigger firms with significantly greater resources, it is in our view sufficient to achieve credible deterrence.

*Benefit gained/loss avoided (DEPP 6.5.2.G(6))*

- 6.10. The Firm did not profit from the breaches. The Firm has incurred significant cost in fixing its systems to comply with regulatory requirements of SUP 17. These costs would presumably have been incurred in any case if the Firm had implemented transaction reporting properly, but it seems clear that its failure to do so was an oversight rather than a calculated policy.

*Conduct following the breach (DEPP 6.5.2.G(8))*

- 6.11. The Firm has provided sufficient cooperation in the course of the FSA investigation.
- 6.12. The Firm committed resources to an internal review which identified breaches of SUP 17 as well as instructing an independent compliance firm to advise on putting processes in place to fix the issues going forward.

*Disciplinary Record (DEPP 6.5.2.G(9))*

- 6.13. The Firm has not previously been subject to disciplinary action by the FSA.

*Past action by the FSA (DEPP 6.5.2.G(10))*

- 6.14. During the relevant period the FSA have published Final Notices that set out action taken against firms for breaches of SUP 17.

*FSA Guidance (DEPP 6.5.2.G(12))*

- 6.15. Prior to and during the relevant period the FSA published guidance on transaction reporting in the 17 September 2006 edition of Market Watch at page 3, the 19 March 2007 edition at page 5; and in 28 June 2008 edition at page 10.
- 6.16. The Firm commenced transaction reporting on 8 February 2011.

## **7. PENALTY**

- 7.1. The FSA therefore decided to impose a financial penalty of £49,000 on the Firm for breaching SUP 17.1.4.R and Principle 3.

## **8. PROCEDURAL MATTERS**

### **Decision maker**

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

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

## **9. Manner of and time for Payment**

- 9.1. The financial penalty must be paid in full by the Firm to the FSA by no later than 3 September 2012, 14 days from the date of the Final Notice.

## **10. If the financial penalty is not paid**

- 10.1. If all or any of the financial penalty is outstanding on 4 September 2012, the FSA may recover the outstanding amount as a debt owed by the Firm and due to the FSA.

## **11. Publicity**

- 11.1. 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.

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

**12. FSA contacts**

12.1. For more information concerning this matter generally, contact Neil Gamble of the Enforcement and Financial Crime Division of the FSA (direct line: 020 7066 1884).

Matthew Nunan

Head of Department

FSA Enforcement and Financial Crime Division