Pursuant to the decision of the Upper Tribunal on 27 May 2014, see the Final Notice issued on 17 July 2014

DECISION NOTICE

To: **Ian Charles Hannam**

Address: **J. P. Morgan Cazenove Limited**
20 Moorgate
London
EC2R 6DA

Date: **27 February 2012**

1. ACTION

1.1. For the reasons given in this Notice, and pursuant to section 123(1) of the Financial Services and Markets Act 2000 ("the Act"), the FSA has decided to impose on Mr Ian Charles Hannam a financial penalty of £450,000.

2. SUMMARY OF REASONS

2.1. The FSA has decided to impose the financial penalty in relation to two instances of market abuse (improper disclosure) contrary to section 118(3) of the Act. Mr Hannam disclosed inside information to third parties on 9 September 2008 and 8 October 2008. On both occasions Mr Hannam received inside information from a client and on both occasions he disclosed the information to a third party or third parties by email.

2.2. The FSA considers that Mr Hannam's failings were serious in view of his experience and his senior position within J.P. Morgan. He was a role model for the people that worked for him and for others at J.P. Morgan.

2.3. DEFINITIONS

2.4. The following definitions are used in this Notice:

"the Act"	means the Financial Services and Markets Act 2000.
"the FSA"	means the Financial Services Authority.
"Mr Hannam"	means Ian Charles Hannam (FSA IRN ICH01012).
"Heritage"	means Heritage Oil Plc.
"J.P. Morgan"	means collectively: J.P. Morgan Cazenove Limited, J.P. Morgan Securities Ltd and J.P. Morgan Chase Bank, N.A.
"LSE"	means the London Stock Exchange.
"relevant time"	means from 9 September until 8 October 2008, inclusively.
"Upper Tribunal"	means the Upper Tribunal (Tax and Chancery Chamber).

2.5. The following email references are used in this Notice:

"the September email"	means an email dated 9 September 2008 sent at 16.01 from Mr Hannam to Mr A (a representative of Organisation C).
"the October email"	means an email dated 8 October 2008 sent at 11.11 on behalf of Mr Hannam to Mr A (a representative of Organisation C), and blind copied to Mr B.

3. FACTS AND MATTERS

3.1. Mr Hannam is a senior banker at J.P. Morgan and an approved person. At the relevant time Mr Hannam was J.P. Morgan's Global Co-Head of UK Capital Markets. He is and was at the relevant time approved to perform the CF30

(Customer) controlled function on behalf of J.P. Morgan. He has been approved to perform equivalent customer controlled functions since 1 December 2001 and was previously registered with the Securities and Futures Authority.

3.2. Heritage is an oil and gas exploration and production company whose shares are listed on the Official List and admitted to trading on the Main Market of the LSE. Heritage has core operations in Africa, the Middle East and Russia. During September and October 2008, Heritage had exploration projects in Uganda and the Kurdistan Region of Iraq.

3.3. Heritage is a client of J.P. Morgan. At the relevant time Mr Hannam was a key adviser to Heritage and its Chief Executive Officer, Mr Tony Buckingham. Mr Hannam had acted as lead corporate adviser to Heritage since January 2007, and he was part of the J.P. Morgan team that advised Heritage on its listing on the Main Market of the LSE on 31 March 2008. Mr Hannam had maintained a close professional relationship with Mr Buckingham since 2006.

3.4. In addition to Heritage, Mr Hannam had other clients and contacts with interests in Kurdistan at the relevant time. These included:

1) Mr A, a representative of an organisation with interests in Kurdistan (Organisation C); and

2) Mr B, a businessman with interests in Kurdistan.

3.5. The inside information disclosed by Mr Hannam on 9 September 2008 and 8 October 2008 related to Heritage.

3.6. The emails sent by Mr Hannam disclosed the following information.

Email dated 9 September 2008 (the September email)

3.7. On 9 September 2008 Mr Hannam sent an email to Mr A which read:

> "I thought I would update you on discussions that have been going on with a potential acquirer of Tony Buckingham's business. Tony, advised by myself, has deferred engaging with the client until Thursday of next week although we know they are very excited about the recent drilling results of Heritage Oil … I believe that the offer will come in in the current difficult market conditions at £3.50-£4.00 per share. I am not trying to force your hand, just wanted to make you aware of what is happening".

3.8. The September email disclosed that:

a) Heritage's corporate advisers (J.P Morgan) were engaged in ongoing discussions with a potential acquirer of Heritage; and

b) the CEO of Heritage, on advice from Mr Hannam, had decided to engage in those discussions.

3.9. Mr Hannam made these disclosures at a time when he knew that the recipient of his email might recommend that the organisation he represented (Organisation C) should enter into a corporate transaction with Heritage, whereby Organisation C would purchase a stake in Heritage.

Email dated 8 October 2008 (the October email)

3.10. On 8 October 2008 at 11.11am, an email drafted by Mr Hannam was sent on his behalf to Mr A. A blind copy was also sent to Mr B. In addition, a copy of this email was forwarded to certain members of Mr Hannam's team. The email reported on certain developments relating to Kurdistan, including the arrangements for Mr Hannam's planned visit to Kurdistan the following week, and stated that Mr Hannam would be meeting Mr Buckingham for lunch. The email is signed off "Ian" and immediately beneath that states:

> "PS – Tony has just found oil and it is looking good".

3.11. The October email disclosed that Heritage had just made an oil discovery which was "looking good". It would have been clear from publicly available information that this discovery related to Heritage's Warthog-1 well in Uganda.

3.12. Mr Hannam made this disclosure at a time when he knew that one of the recipients of his email (Mr A) represented an organisation (Organisation C) that was interested in investing in the shares of companies with interests in Kurdistan.

Chronology of events relevant to the disclosures in the September and October emails.

3.13. In May 2007, J.P. Morgan was mandated by Heritage to secure a "substantial" corporate transaction (such as a merger, take-over, consolidation or joint venture) for Heritage involving a third party. Mr Hannam acted as an adviser to Heritage in relation to that mandate.

3.14. In June 2008, Heritage received an unsolicited approach from a third party interested in potentially acquiring either licences granted to Heritage by the Ugandan government to drill for oil, or Heritage itself. J.P. Morgan advised

Heritage in relation to that approach and discussions took place between Heritage and the third party in June and July 2008. Mr Hannam was an insider in relation to that approach, which was taken seriously by Heritage.

3.15. Separately, Mr Hannam was also involved as adviser to Heritage in discussions that took place in July and August 2008 between Mr Buckingham and Mr A about a possible corporate transaction between Heritage and Organisation C, whereby Organisation C would purchase a stake in Heritage. These were general, strategic discussions. Mr Buckingham informed Mr A on at least one occasion in August and/or September 2008, in Mr Hannam's presence, that Heritage had received approaches from interested third parties. Mr Buckingham did so in terms that did not disclose inside information.

3.16. On 3 September 2008, Heritage announced successful test-drilling at its Kingfisher-2 well in Block 2 in Uganda. The announcement also stated that, as a result of the successful test-drilling, exploration risks in relation to another drilling programme in the adjacent Block 1 in Uganda had been significantly reduced. Block 1 contained an oil prospect called "Warthog".

3.17. On 9 September 2008, Mr Hannam sent the September email to Mr A.

3.18. Between 9 and 16 September 2008, the lowest price at the close of trading was 193.5p and the highest was 209p. On 17 September 2008, the price of Heritage shares at the close of trading was 204p.

3.19. On 18 September 2008, Heritage announced that it was in highly preliminary discussions with a third party regarding a possible disposal of certain of its assets, which "may or may not ultimately lead to an offer for Heritage". The Takeover Panel had asked Heritage to make an announcement following share price movements. The third party concerned, who was not identified, had made the unsolicited approach to Heritage in June 2008. That unidentified third party was also the potential acquirer referred to by Mr Hannam in the September email.

3.20. This announcement of 18 September 2008 followed a meeting on Wednesday 17 September 2008 between Mr Buckingham and the principal of the third party. The price of Heritage shares at the close of trading on 18 September 2008 was 240p.

3.21. On 30 September 2008, Heritage announced that the third party discussions had been terminated. It also announced that its wells at Warthog-1 and Kingfisher-3 had been "spudded", a term meaning that drilling had commenced. The announcement repeated Heritage's belief that recent discoveries in wells in Block 2 had substantially lowered the exploration risk of Warthog-1. Warthog-1 was estimated to take less than a month to complete, while Kingfisher-3, a much deeper

well, was estimated to take four to five months.

3.22. On 1 October 2008, Mr Hannam discussed with Mr A the possibility of Organisation C making certain investments through J.P. Morgan in companies with interests in Kurdistan and the possibility of setting up a fund to be managed by J.P. Morgan. Further discussions took place on 3 October 2008.

3.23. On 5 October 2008 the Heritage Chief Financial Officer emailed relevant Heritage employees stating that the company had entered a "blackout" period, thereby prohibiting Heritage employees from dealing in Heritage shares. The blackout was imposed because the drilling at Warthog-1 would soon be approaching the potential reservoir zone. It remained in place until 27 October 2008.

3.24. On 7 October 2008 at 8.34am, Mr Buckingham and others at Heritage received an email which summarised and attached the daily drilling report from Warthog-1 (reporting on the previous day's drilling). The email gave an "Operations Summary" which recorded various positive technical indicators relating to the presence of oil. Mr Buckingham stated in interview that this information indicated to him that drilling had entered the top of the oil reservoir and that his interpretation of the technical information was that oil had been found and that this was "good news".

3.25. On 8 October 2008 at 06.54am, Mr Buckingham and others at Heritage received a further email summarising and attaching the daily drilling report from Warthog-1 for the previous day's drilling. Once again, it recorded positive technical indicators relating to the presence of oil.

3.26. On 8 October 2008 at 11.11am, the October email was sent on Mr Hannam's behalf to Mr A, blind copied to Mr B. At some time prior to the October email being sent Mr Hannam had been told by Mr Buckingham about the positive test results.

3.27. On 8 October 2008 at 3.30pm, Mr Hannam attended an internal Commitments Committee meeting at J.P. Morgan where he sought the committee's approval to take on Mr A and Organisation C as clients, and in due course proceed with the fund expected to be set up by Organisation C. That approval was obtained.

3.28. On 20 October 2008, the price of Heritage shares at the close of trading was 172.75p.

3.29. On 21 October 2008 at 7.00am, Heritage released an announcement concerning the oil find at Warthog-1 which it referred to as a "significant new discovery" and "the first exploration well the company has drilled in Block 1, Uganda". The

announcement was made after the drilling tests at Warthog-1 had been completed and included information additional to that contained in the emails and attached reports sent on 7 October and 8 October 2008. For example, the announcement disclosed an approximation of the size of the discovery.

3.30. On 21 October 2008, the price of Heritage shares closed at 198p, representing an increase of 14.62% on the day.

3.31. It is not suggested that any trades were conducted on the basis of the information disclosed by Mr Hannam.

4. FAILINGS

4.1. The statutory provisions, regulatory guidance and policy relied upon are set out in the Annex.

4.2. For the purposes of section 118(3) of the Act, a person engages in behaviour amounting to market abuse (improper disclosure) where they:

a) are an insider; and

b) disclose inside information to another person; and

c) the disclosure is made other than in the proper course of the exercise of their employment, profession or duties.

4.3. Pursuant to section 118C of the Act a person has "inside information" if:

a) the information is of a precise nature; and

b) the information is not generally available; and

c) the information relates, directly or indirectly, to one or more issuers of the qualifying investments or to one or more of the qualifying investments; and

d) the information would, if generally available, be likely to have a significant effect on the price of the qualifying investments or on the price of related investments.

4.4. For the purposes of section 118C(5) of the Act information is "precise" if it:

a) indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur, and

b) is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of qualifying investments or related investments.

4.5. Section 118C(6) states that information would be likely to have a significant effect on price if and only if it is information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions.

4.6. The disclosure by Mr Hannam of the information contained within the September email and the October email amounts to market abuse (improper disclosure) in breach of section 118(3) of the Act for the following reasons.

The shares were qualifying investments traded on a prescribed market

4.7. The disclosures of information in the September email and the October email both relate to the shares of Heritage. At the relevant time Heritage shares were traded on the Main Market of the LSE. Accordingly, the shares were "qualifying investments" admitted to trading on a "prescribed market".

4.8. Since the shares of Heritage were "qualifying investments" admitted to trading on a "prescribed market" the jurisdictional criteria set out in section 118A(1)(b)(i) of the Act are satisfied.

Mr Hannam's status as an "insider"

4.9. Mr Hannam was "an insider" as defined by section 118B(c) of the Act because he had the inside information (which he disclosed in the September email and the October email) as a result of having access to the information through the exercise of his employment.

The information disclosed in the September email was inside information

4.10. The information disclosed in the September email satisfies the test for inside information under section 118C of the Act as follows:

(a) Precise:

4.11. The September email was sufficiently precise for the purposes of section 118C(5) of the Act.

4.12. The email indicated that:

a) Heritage's corporate advisers (J.P. Morgan) were engaged in ongoing discussions with a potential acquirer of Heritage; and

b) the CEO of Heritage had decided to engage in those discussions in nine days' time.

4.13. This information, which went further than Mr Buckingham's previous reference to the existence of third party interest in Heritage, was specific enough to enable a conclusion to be drawn that these circumstances would be likely to have a positive effect on the Heritage share price.

(b) Generally available:

4.14. There is no evidence that the existence of the preliminary discussions between Heritage and a third party was generally available information for the purposes of section 118C(2)(a) of the Act prior to the announcement by Heritage on 18 September 2008.

(c) Significant effect on price:

4.15. It was likely that, if generally available, the information provided in the September email would have had a significant effect on price for the purposes of section 118C(2)(c) and section 118C(6) in that it was information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions. It is notable that the Heritage share price rose from 204p to 240p after the announcement by Heritage about the existence of third party discussions on 18 September 2008.

(d) In the proper course of the exercise of his employment, profession or duties:

4.16. Although Mr Hannam had implicit authority to make the disclosure of the information contained in the September email to Mr A, and was acting in his client's interests, he did not consider whether he was disclosing inside information, or whether it was necessary to disclose the information in order properly to discharge his responsibilities to his client.

4.17. Mr Hannam's disclosure of the information contained in the September email was not reasonable, nor was it in fulfilment of a legal obligation. The disclosure was therefore not in the proper course of the exercise of his employment, profession or duties for the purposes of section 118(3) of the Act.

The information disclosed in the October email was inside information

4.18. The information disclosed in the October email satisfies the test for inside information under section 118C of the Act as follows:

(a) Precise:

4.19. The October email stated "Tony has just found oil and it is looking good". "Tony" was identified earlier in the email as Tony Buckingham of Heritage and this statement conveyed the information that Heritage had just found oil. As it had announced on 30 September 2008, Heritage was drilling two wells at the time, Warthog-1 and Kingfisher-3. Kingfisher-3 was estimated to take at least four months to complete, so it was clear that the information related to Warthog-1.

4.20. Mr Hannam did not provide details in the October email of the quantity or quality of the oil find, which were not available at that stage, but his comment "it is looking good" indicated that Mr Buckingham was optimistic about the news from Warthog-1. The information in the October email indicated that the drilling tests at Warthog-1 were positive.

4.21. Mr Hannam accepts that he had been told by Mr Buckingham about the positive test results when he sent the October email to Mr A. Mr Buckingham learned of the oil find from the daily drilling reports sent from Warthog-1. This information indicated to him that drilling had entered the top of the oil reservoir and his interpretation of the technical information was that oil had been found.

4.22. The information in the October email was specific enough to enable a conclusion to be drawn that the news regarding the oil find at Warthog-1 would be likely to have a positive effect on the Heritage share price, as a company whose principal interests are oil and gas exploration and production.

(b) Generally available:

4.23. There is no evidence that the news regarding the oil find at Warthog-1 was generally available for the purposes of section 118C(2)(a) of the Act prior to the announcement by Heritage on 21 October 2008. Heritage sought to strictly control the information flowing from the rig relating to the tests prior to that announcement.

(c) Significant effect on price:

4.24. It was likely that, if generally available, the information provided in the October email would have had a significant effect on price for the purposes of section 118C(2)(c) and section 118C(6) of the Act in that it was information of a kind

which a reasonable investor would be likely to use as part of the basis of his investment decisions.

(d) In the proper course of the exercise of his employment, profession or duties:

4.25. As with the September email, although Mr Hannam had implicit authority from Heritage to make the disclosure of the information contained in the October email to Mr A, and was acting in his client's interests, he did not consider whether he was disclosing inside information, or whether it was necessary to disclose the information in order properly to discharge his responsibilities to his client.

4.26. Mr Hannam did not have authority to disclose the information contained in the post script of the October email to Mr B.

4.27. Also as with the September email, Mr Hannam's disclosure of the information contained in the October email was not reasonable, nor in fulfilment of a legal obligation. The disclosure was therefore not in the proper course of the exercise of his employment, profession or duties for the purposes of section 118(3) of the Act.

Conclusion on market abuse for the September and October emails

4.28. In the circumstances described above the FSA finds that Mr Hannam engaged in market abuse on two occasions contrary to section 118(3) of the Act.

4.29. Pursuant to section 123(1) of the Act the FSA may therefore impose a penalty of such amount as it considers appropriate on Mr Hannam.

4.30. Section 123(2) of the Act states that the FSA may not impose a penalty for market abuse in certain circumstances. The FSA is satisfied that these circumstances do not apply to Mr Hannam's conduct as described in this notice.

5. SANCTION

5.1. The FSA has decided to impose a financial penalty on Mr Hannam of £450,000 for the following reasons.

5.2. In deciding to take this action, the FSA has had regard to guidance published in the FSA Handbook.

5.3. The FSA's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. As the misconduct in this case occurred prior to 6 March 2010 (the implementation date for the FSA's new penalty regime), the previous penalty regime applies to this matter.

5.4. The FSA has taken into account the aggravating and mitigating factors set out below.

5.5. The aggravating factors are as follows:

(a) Mr Hannam, an approved person, was very experienced. He held a very senior position at J.P. Morgan and led a team. He was a role model for the people that worked for him and for others at J.P. Morgan;

(b) Mr Hannam disclosed inside information on two occasions to Mr A and (in the case of the October email) to Mr B;

(c) Mr Hannam disclosed inside information to Mr A at a time when he was aware that Mr A had expressed interest in Organisation C investing in Heritage or more generally in the shares of companies with interests in Kurdistan; and

(d) Mr Hannam regularly received inside information by virtue of his position at J.P. Morgan and should have been aware that the information he disclosed in the September email and the October email was inside information, and that it was not in the proper course of the exercise of his employment, profession or duties to disclose it.

5.6. The mitigating factors are as follows:

(a) whilst Mr Hannam deliberately disclosed the information in the September email and the October email, he did not do so with the intention or expectation that the information would be abused and did not apply his mind to the question of whether it was inside information or whether it was in the proper course of his employment, profession or duties to disclose it;

(b) there is no evidence that anyone dealt in shares as a result of Mr Hannam's disclosures or that Mr Hannam made any personal gain as a result;

(c) Mr Hannam did not act without honesty or integrity in making the disclosures;

(d) Mr Hannam has undergone further training at his firm;

(e) Mr Hannam has not previously been the subject of an adverse finding from the FSA; and

(f) Mr Hannam has co-operated with the investigation in that he has attended voluntary interviews and has answered questions put to him in interview.

5.7. Whilst the FSA accepts that Mr Hannam did not set out to commit market abuse, and that he was acting in Heritage's interests when making the disclosures to Mr A, his disclosures on 9 September 2008 and 8 October 2008 were serious failures to

comply with the legal restrictions on the disclosure of inside information. Full consideration must always be given to whether information intended to be disclosed is inside information and, if so, whether it is reasonable to disclose it. Simply obtaining client consent before selectively disclosing inside information is insufficient for compliance.

5.8. In determining the appropriate level of the financial penalty, the FSA has considered Mr Hannam's experience, seniority and level of influence at J.P. Morgan and in the wider market, and the need to punish him and to deter him and others in possession of inside information from committing market abuse. The FSA has also had regard to penalties imposed in other market abuse cases.

5.9. The FSA considers that taking the action described above helps it achieve its regulatory objectives, as set out in section 2(2) of the Act, in particular the objective of maintaining market confidence in the financial system.

5.10. The FSA has therefore decided to impose a financial penalty of £450,000 on Mr Hannam for engaging in market abuse (improper disclosure) in breach of section 118(3) of the Act.

6. REPRESENTATIONS AND FINDINGS

6.1. Below is a brief summary of the key written and oral representations made by Mr Hannam and how they have been dealt with. In making the decision which gave rise to the obligation to give this notice, the FSA has taken into account all of Mr Hannam's representations, whether or not explicitly set out below.

Standard of proof

6.2. Mr Hannam made representations that the appropriate standard of proof for the FSA to apply in cases of market abuse such as this case is the criminal standard i.e. "beyond reasonable doubt".

6.3. The FSA has found that the case is not subject to the criminal standard of proof. In relation to this case the FSA has made its decision having regard to the following:

(a) the FSA, in accordance with section 123(1)(a) of the Act, may impose a penalty if it is satisfied that Mr Hannam has engaged in market abuse; and

(b) the Upper Tribunal, in market abuse cases, applies the civil standard of proof i.e. the balance of probabilities (is it 'more likely than not' that what is alleged actually occurred?).

Inside information in the September email

6.4. Mr Hannam made representations that:

(a) the contents of the September email were neither sufficiently precise nor price-sensitive to constitute inside information. They were far too general and abstract, containing no information about the nature of the discussions or any proposed terms, to either enable a conclusion to be drawn as to the possible effect of the discussions on the price of Heritage's shares, or to be likely to have a significant effect on that price; and

(b) the information contained in the September email had already been disclosed to Mr A by Mr Buckingham. Therefore Mr Hannam could not have disclosed that information to Mr A in the September email, as it is not possible to disclose information to a person who is already aware of that information.

6.5. The FSA has found that:

(a) the September email informed Mr Hannam that Heritage's advisers were engaged in ongoing discussions with a potential acquirer of Heritage, and that the CEO of Heritage had decided to engage in those discussions personally. This indicated that the discussions were being taken seriously by Heritage. The FSA considers that this satisfied the statutory definition of inside information, in particular in that it indicated circumstances that existed, was specific enough to enable the conclusion to be drawn that the possible effect of those circumstances on the price of Heritage's shares would be to cause it to rise, and that a reasonable investor would be likely to use the information as part of the basis of his investment decisions; and

(b) information can be disclosed to an individual to whom that information has already been revealed. Even if the information is the same, the mere fact that another person has stated it may lend credence to its veracity. Further, it may carry more weight depending on by whom it is disclosed. In any event, as set out in this notice, Mr Hannam disclosed more specific information to Mr A than Mr Buckingham had disclosed, such that the information disclosed by Mr Hannam was inside information, whereas the information disclosed by Mr Buckingham was not.

Inside information in the October email

6.6. Mr Hannam made representations that:

(a) At the time of the October email on 8 October 2008, Heritage and Mr Hannam were not in possession of the inside information alleged to have been disclosed

in the October email. Oil shows contained in the daily drilling reports of 7 and 8 October 2008 did not indicate oil-bearing reservoirs. At this stage Heritage was drilling through a gas column – it did not penetrate the oil reservoir until 11 October 2008. At the time of the October email a combination of hydrocarbon gas and liquid had been found with no quantification of quality or potential volumes. There was insufficient information available at that time to determine the nature of the oil, which might be condensate, a very volatile oil, or black oil. This gave an indication that there could be an oil reservoir, but did not prove it; and

(b) the information contained in the post script of the October email was not sufficiently precise or price-sensitive to constitute inside information. The market was well aware that oil was almost certain to be found at Warthog-1. The material issue was not whether oil would be found there but whether, cumulatively, the quality and quantity of recoverable oil discovered in the various Ugandan oilfields which were being explored at the time would be sufficient to justify the construction of a pipeline to export it. If not, the oil would be all but worthless. In these circumstances, the preliminary, and as yet unanalysed, oil traces found by Heritage at Warthog-1 as at the date of the October email, would have been of no value to a reasonable investor in making investment decisions. It did not constitute the discovery of an oil reservoir, still less a commercially impactful one; it was a favourable indication but no more.

6.7. The FSA has found that:

(a) The plain wording of the post script was accurate – Heritage had found oil (albeit not an oil reservoir), and it was 'looking good'; and

(b) the information contained in the post script of the October email was capable of constituting, and did constitute, inside information. The information was positive news which, in the opinion of the FSA, satisfied the statutory definition of inside information, in particular in that it indicated circumstances that existed, was specific enough to enable the conclusion to be drawn that the possible effect of those circumstances on the price of Heritage's shares would be to cause it to rise, and that a reasonable investor would be likely to use the information as part of the basis of his investment decisions. It was not necessary for there to be certainty as to the existence or commercial viability of an oil reservoir for the information to be of significance to a reasonable investor.

Requirement to announce inside information

6.8. Mr Hannam made representations that, if Heritage had been in possession of inside information, it would have been required by the Disclosure and Transparency Rules to announce that information without delay. The fact that it did not do so at the time of the emails indicates that the information in Heritage's possession was not

inside information, and therefore any disclosure of that information could not have constituted market abuse.

6.9. The FSA has found that, as the Disclosure and Transparency Rules contain provisions regarding the legitimate delay of disclosure, it does not follow that Heritage did not have (or consider that it had) inside information simply because it did not disclose that information. The FSA makes no criticism of Heritage for the timing of its disclosures of information in relation to the facts set out in this notice. However, even if Heritage had failed to disclose inside information when it was required to do so, this would not affect the FSA's view that Mr Hannam improperly disclosed inside information.

Proper course of the exercise of employment, profession or duties

6.10. Mr Hannam made representations that:

(a) he understood why the FSA had brought its investigation – he accepted that out of context the emails raised a 'red flag'. However, the context was critical. Mr Buckingham was pursuing a transaction with Organisation C. Mr Hannam's professional duty, and his specific mandate, as strategic and financial adviser to Heritage, was to proactively advance Heritage's negotiations with Organisation C – the September and October emails were intended to facilitate such negotiations. The emails were therefore sent in the proper course of the exercise of his employment, profession and duties. In accordance with section 118(3) of the Act, his behaviour could not therefore constitute market abuse; and

(b) if the FSA found that Mr Hannam had not acted in the proper course of his employment, profession or duties, Mr Hannam had a defence under section 123(2) of the Act. He had acted in accordance with the mandate given to him by Heritage, believing this to be in the proper course of the exercise of his employment, profession and duties, and therefore believed on reasonable grounds that he had not committed market abuse.

6.11. The FSA has found that:

(a) Mr Hannam's behaviour was not in the proper course of his employment, profession or duties. He disclosed inside information where this was unnecessary, unwarranted and purely in furtherance of his client's commercial interests. Doing so was not reasonable, nor was it in fulfilment of a legal obligation; and

(b) in the circumstances set out above, Mr Hannam had no reasonable grounds to believe that he had not committed market abuse.

Sanction

6.12. Mr Hannam made representations that:

(a) he had made no personal gain from his disclosures, and there was no evidence that anyone had dealt in shares as a result of the information that he had disclosed. Even on the FSA's case a financial penalty was therefore not appropriate;

(b) the October email had been sent at a time of extreme turbulence in the financial markets, when he was under extreme pressure at work – he had been in meetings almost continuously on the day that the October email was sent. He had had the email reviewed by a member of his team before it was sent, and it was copied to a number of his colleagues, none of whom had or raised any concerns regarding the post script;

(c) the fact that the post script of the October email had been sent to Mr B was a mistake which should not have happened and for which he was sorry; and

(d) if the FSA considered that Mr Hannam had committed market abuse then he had done so as a result of an honest error or errors of judgement; he had acted in good faith and in his client's interests. In these circumstances, and taking into account the mitigating circumstances noted by the FSA and the relevant comparator cases, the amount of the penalty was much too high.

6.13. The FSA has found that:

(a) Mr Hannam made no personal gain from his disclosures, and there is no evidence that anyone dealt in shares as a result of the information that he disclosed. However, in all the circumstances a financial penalty is appropriate and necessary;

(b) Mr Hannam was under extreme pressure when the October email was sent, and it was sensible that he had requested that a member of his team check the email before it was sent. However, Mr Hannam was ultimately responsible for the content of the email;

(c) the fact that Mr B was sent inside information in error highlights the importance of treating inside information with the utmost care;

(d) Mr Hannam's honesty and integrity is not in question. In committing market abuse he acted neither deliberately nor recklessly. However, his behaviour constituted a serious error of judgement in relation to each of the September and October emails. In all of the circumstances, including Mr Hannam's

experience, seniority and level of influence, and the need for the credible deterrence of such behaviour, the penalty is appropriate.

7. PROCEDURAL MATTERS

Decision Maker

7.1. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.

7.2. This Decision Notice is given under section 127 and in accordance with section 388 of the Act. The following statutory rights are important.

The Tribunal

7.3. Mr Hannam has the right to refer the matter to which this Decision Notice relates to the Upper Tribunal (the "Tribunal"). Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Hannam has 28 days from the date on which this Decision Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a reference notice (Form FTC3) signed by Mr Hannam and filed with a copy of this Notice. The Tribunal's address is: The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (tel: 020 7612 9700; email financeandtaxappeals@tribunals.gsi.gov.uk). Further details are contained in "Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)" which is available from the Upper Tribunal website:

http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm

7.4. Mr Hannam should note that a copy of the reference notice (Form FTC3) must also be sent to the FSA at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Clare Hitchcock at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Access to evidence

7.5. Section 394 of the Act applies to this Decision Notice. The person to whom this Notice is given is entitled to have access to:

(a) the material upon which the FSA has relied in deciding to give him this Notice; and

(b) the secondary material which, in the opinion of the FSA, might undermine that decision.

Confidentiality and publicity

7.6. Mr Hannam should note that this Decision Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). The effect of section 391 of the Act is that Mr Hannam may not publish the Notice or any details concerning it unless the FSA has published the Notice or those details. The FSA may publish such information about the matter to which a Decision Notice or Final Notice relates as it considers appropriate. Mr Hannam should be aware, therefore, that the facts and matters contained in this Notice may be made public.

FSA contacts

7.7. For more information concerning this matter generally, Mr Hannam should contact Clare Hitchcock of the Enforcement and Financial Crime Division of the FSA (direct line: 020 7066 1490).

Andrew Long
Acting Chairman, Regulatory Decisions Committee

ANNEX: Relevant Statutory and Regulatory Provisions

1.1. Section 123(1) of the Act states:

If the Authority is satisfied that a person ("A")—

(a) is or has engaged in market abuse, or
(b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by A, would amount to market abuse,

it may impose on him a penalty of such amount as it considers appropriate.

1.2. Section 123(2) of the Act states that the Authority may not impose a penalty for market abuse in certain circumstances:

But the Authority may not impose a penalty on a person if … there are reasonable grounds for it to be satisfied that –
(a) he believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of subsection (1), or
(b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of that subsection.

1.3. Under section 118(1) of the Act market abuse is behaviour which occurs in relation to qualifying investments admitted to trading on a prescribed market, and which falls within any one or more of the types of behaviour set out in subsections (2) to (8).

1.4. Section 118(3) of the Act describes behaviour where an insider discloses inside information to another person otherwise than in the proper course of the exercise of his employment, profession or duties.

1.5. Section 118B of the Act defines "an insider" as any person who has inside information, inter alia, as a result of having access to the information through the exercise of his employment, profession or duties.

1.6. Section 118C(2) of the Act defines "inside information" as information of a precise nature which: (a) is not generally available, (b) relates, directly or indirectly, to one or more issuers of the qualifying investments or to one or more of the qualifying investments, (c) would, if generally available, be likely to have a significant effect on the price of the qualifying investments or on the price of related investments.

1.7. Section 118C(5) of the Act states that information is "precise" if it:

(a) indicates circumstances that exist or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to occur, and

(b) is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of qualifying investments or related investments.

1.8. Section 118C(6) of the Act states that information would be likely to have a "significant effect" on price if and only if it is information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions.

1.9. Section 118C(8) of the Act states that information which can be obtained by research or analysis conducted by, or on behalf of, users of a market is to be regarded as being "generally available" to them.

1.10. Section 118A(1) of the Act defines the jurisdictional limits of section 118. Section 118A(1)(b)(i) of the Act includes behaviour in relation to qualifying investments which are admitted to trading on a prescribed market situated in, or operating in, the United Kingdom.

1.11. Section 130A of the Act provides that the Treasury may specify the markets and investments to which Part VIII (Penalties for Market Abuse) applies. The London Stock Exchange is a prescribed market by reason of the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001, being a market established under the rules of a UK recognised investment exchange.

The Code of Market Conduct

1.12. The Code of Market Conduct ("MAR") issued by the FSA pursuant to section 119 of the Act provides assistance in determining whether or not behaviour amounts to market abuse.

1.13. MAR 1.2.3 G states that section 118(1)(a) of the Act does not require the person engaging in the behaviour in question to have intended to commit market abuse.

1.14. MAR 1.2.9 G (insiders) states that there is no need for the person concerned to know that the information concerned is inside information.

1.15. MAR 1.2.12 E sets out factors that are to be taken into account in determining whether or not information is "generally available", each of which indicate that the information is generally available (and therefore that it is not inside information). These include:

(1) whether the information has been disclosed to a prescribed market through a regulatory information service or RIS or otherwise in accordance with the rules of that market;

(2) whether the information is contained in records which are open to inspection by the public;

(3) whether the information is otherwise generally available, including through the Internet, or some other publication (including if it is only available on payment of a fee), or is derived from information which has been made public;

(4) whether the information can be obtained by observation by members of the public without infringing rights or obligations of privacy, property or confidentiality; and

(5) the extent to which the information can be obtained by analysing or developing other information which is generally available.

1.16. MAR 1.4.5 E sets out the factors to be taken into account in determining whether or not a disclosure was made by a person in the proper course of the exercise of his employment, profession or duties, and are indications that it was:

(1) whether the disclosure is permitted by the rules of a prescribed market, of the FSA or the Takeover Code; or

(2) whether the disclosure is accompanied by the imposition of confidentiality requirements upon the person to whom the disclosure is made and is:

(a) reasonable and is to enable a person to perform the proper functions of his employment, profession or duties; or

(b) reasonable and is (for example, to a professional adviser) for the purposes of facilitating or seeking or giving advice about a transaction or takeover bid; or

(c) reasonable and is for the purpose of facilitating any commercial,

financial or investment transaction (including prospective underwriters or placees of securities); or

(d) reasonable and is for the purpose of obtaining a commitment or expression of support in relation to an offer which is subject to the Takeover Code; or

(e) in fulfilment of a legal obligation, including to employee representatives or trade unions acting on their behalf.

1.17. MAR 1.4.6 G gives an example of market abuse (improper disclosure):

> "the director at B PLC has lunch with a friend, Y, who has no connection with B PLC or its advisers. X tells Y that his company has received a takeover offer that is at a premium to the current share price at which it is trading."

Relevant Guidance

1.18. Section 124 of the Act requires the FSA to issue a statement of its policy with respect to the imposition of penalties for market abuse and the amount of such penalties. The FSA's policy in this regard is contained in Chapter 6 of the Decision Procedure and Penalties Manual (DEPP) as applicable from 28 August 2007. In deciding whether to exercise its power under section 123 of the Act, the FSA must have regard to this statement.

1.19. DEPP 6.2 sets out a number of factors to be taken into account when the FSA decides to take action for a financial penalty. They are not exhaustive, but include the nature and seriousness of the suspected behaviour, and the conduct of the person concerned after the behaviour was identified.

1.20. In enforcing the market abuse regime, the FSA's priority is to protect prescribed markets from any damage to their fairness and efficiency caused by the misuse of information in relation to the market in question. The effective and appropriate use of the power to impose penalties for market abuse shows that the FSA is upholding regulatory standards and will help to maintain confidence in the UK financial system by demonstrating that high standards of market conduct are enforced in the UK financial markets. The public enforcement of these standards also furthers public awareness of the FSA's protection of consumers objective, as well as deterring potential future market abuse and financial crime.

1.21. DEPP 6.3 sets out an inexhaustive list of factors which the FSA may take into account when deciding whether either of the two conditions in section 123(2) of the Act is met. These include:

(1) whether the behaviour was analogous to behaviour described MAR;

(2) whether the FSA has published any guidance on the behaviour;

(3) the level of knowledge, skill and experience to be expected of the person concerned;

(3) whether, and if so to what extent, the person can demonstrate that the behaviour was engaged in for a legitimate purpose and in a proper way;

(4) whether, and if so to what extent, the person followed internal procedures in relation to the behaviour (for example, did the person discuss the behaviour with internal line management and/or internal legal or compliance departments), and

(5) whether the person sought any appropriate advice and followed that advice.

1.22. DEPP 6.4 and 6.5 state that the FSA will consider all the relevant circumstances of a case when deciding whether to impose a penalty or issue a public censure and when it determines the level of a financial penalty that is appropriate.