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**FINAL NOTICE**

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To: **JJB Sports plc**

Of: Martland Park, Challenge Way, Wigan, WN5 OLD

Date: 25 January 2011

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about a requirement to pay a financial penalty.**

**THE PENALTY**

1. The FSA gave JJB Sports Plc ("JJB") a Decision Notice on 15 December 2010 which notified JJB that pursuant to section 91(1) of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty of £455,000 on JJB for:
  - (a) a breach of the Disclosure and Transparency Rules ("DTR") 2.2.1 and Listing Principle 4 in relation to the announcement on 18 December 2007 of the acquisition of the Original Shoe Company Limited ("OSC") by JJB; and
  - (b) a breach of DTR 2.2.1 and Listing Principle 4 in relation to the announcement on 22 May 2008 of the acquisition of Qubefootwear Limited ("Qube") by JJB.
2. JJB confirmed on 28 October 2010 that it will not be referring the matter to the Upper Tribunal.
3. JJB agreed to settle at an early stage of the FSA's investigation and therefore the penalty has been discounted by 30% pursuant to the Stage 1 early settlement discount scheme. Were it not for this discount, the FSA would have imposed a financial penalty of £650,000.
4. Accordingly, for the reasons set out below, the FSA imposes a financial penalty on JJB in the amount of £455,000.

## REASONS FOR THE ACTION

### Background

5. The FSA has decided to impose a penalty as a result of JJB's total delay of 9 months and 8 days, between 18 December 2007 and 26 September 2008, to disclose to the market inside information concerning the full amount paid in relation to the acquisitions of OSC and Qube, which gave a misleading impression as to the consideration for the acquisition of both OSC and Qube. The failure to disclose the complete position regarding the consideration for these acquisitions thereby led to the creation and continuation of a false market in JJB's shares.

#### *OSC*

6. Pursuant to a Sale and Purchase Agreement signed on 17 December 2007 ("OSC SPA"), JJB agreed to acquire the share capital of the shoe retail chain OSC from Sports Direct International plc ("SDI"), (the "OSC Acquisition"). The OSC SPA obliged JJB to pay £5 million ("the price") and in addition to the price, JJB were to pay the seller a further sum ("the Stock Amount") which was to be calculated by reference to the actual cost price to SDI of the in-store stock less 3% as at the close of business on 28 January 2008. The sum payable in respect of the Stock Amount was uncapped (there being no contractual maximum amount payable).
7. The liability to pay and the estimated cost of the Stock Amount, together with the price, constituted inside information within the meaning of section 118C of the Act.
8. The acquisition of OSC was announced on 18 December 2007. The announcement recorded that JJB had acquired OSC from SDI for a consideration of £5 million in cash (the "OSC Announcement").
9. In breach of DTR 2.2.1 the OSC Announcement did not include any reference to the liability to pay or, the estimated costs of the Stock Amount.

#### *Qube*

10. Pursuant to a Sale and Purchase Agreement signed on 15 April 2008 (the "Qube SPA"), JJB agreed to acquire the share capital of Qube from AJT Footwear Limited ("AJT"), (the "Qube Acquisition"). The Qube SPA provided that the consideration payable for the Qube Acquisition was £1 and that JJB was also obliged to settle Qube's overdraft to a third party bank on the day before completion of the acquisition. The sum payable in respect of Qube's overdraft was uncapped as there was no contractual maximum sum stated within the Qube SPA ("Qube's Overdraft").
11. The liability to settle and the estimated costs of settling Qube's Overdraft, together with the share purchase price of £1, constituted inside information within the meaning of section 118C of the Act.
12. The acquisition of Qube was announced on 22 May 2008. The announcement recorded that JJB had acquired Qube for £1 in cash (the "Qube Announcement").

13. In breach of DTR 2.2.1, the Qube Announcement did not disclose that JJB was liable to settle Qube's Overdraft or the estimated costs of this.

*The delay in announcing/a false market*

14. The liability to pay the Stock Amount and the liability to settle Qube's Overdraft were not disclosed to the market by JJB until after 26 September 2008 following publication of JJB's Interim Results for the 26 weeks to 27 July 2008 ("JJB's 2008 Interim Results"). The true costs of the acquisition taking into account the Stock Amount and the liability to settle Qube's Overdraft were disclosed after JJB's auditors had voiced concerns that, during their earlier audit of JJB's 2008 financial statements, they had not been informed of the liability to pay the Stock Amount or the Qube Acquisition. The delay in disclosure amounted to continuing breaches of DTR 2.2.1 by JJB.
15. In breach of Listing Principle 4, the failure to disclose the liability to pay the Stock Amount and the liability to settle Qube's Overdraft until after JJB's 2008 Interim Results meant that JJB did not communicate information regarding liability to pay the Stock Amount and the liability to settle Qube's Overdraft to holders and potential holders of its listed equity shares in such a way as to avoid the creation or continuation of a false market. This failure gave a false impression of the costs of OSC and Qube and of the impact of those acquisitions on the true nature and costs of JJB's strategy for 2008 which led to the creation of a false market for a period of 9 months and 8 days in relation to the OSC Acquisition and 4 months and 4 days in relation to the Qube Acquisition.
16. In addition to disclosing the true acquisition costs of OSC and Qube, JJB's 2008 Interim Results contained other negative news relating to JJB, including an Emphasis of Matter regarding uncertainty over JJB's ability to continue as a going concern (which made a direct reference to uncertainty regarding the ongoing availability of the original banking facilities in light of the actual and projected covenant breaches). Following the release of JJB's 2008 Interim Results, JJB's share price fell by approximately 49.5% from approximately 104p to 52p.<sup>1</sup>
17. For the reasons set out above, the FSA has decided that in all the circumstances, it is appropriate to impose a financial penalty on JJB.

## **RELEVANT STATUTORY PROVISIONS**

18. Pursuant to Part VI of the Act, the FSA makes the Listing, Prospectus and Disclosure and Transparency Rules and is responsible for the official listing of securities in the UK. Disclosure rules under Part VI require an issuer to publish specified inside information (section 96 of the Act). Between 12 December 2007 and 26 September 2008 (the "material time"), these rules set out the requirements for the admission of securities to the Official List and the continuing obligations of companies whose securities are so admitted.
19. For the purpose of DTR, "inside information" is defined in section 118C of the Act as:

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<sup>1</sup> JJB's share price has subsequently been re-based.

“(2) ... 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, and
- (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. ...

(5) 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.

(6) 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.”

20. The FSA is authorised under section 91(1) of the Act to exercise its power to impose a financial penalty where it is satisfied that an issuer has contravened any provision of the Part VI rules.

#### **DTR 2.2.1**

21. The Disclosure and Transparency Rules for listed companies are set out in the FSA’s Handbook (“the Handbook”). DTR 2.2.1 states that: “An issuer must notify a RIS as soon as possible of any inside information which directly concerns the issuer unless DTR 2.5.1 applies.”<sup>2</sup>
22. At the material time, the FSA had, pursuant to section 157 of the Act, published guidance on DTR obligations in the Handbook which would have been available to JJB. In deciding to take the action set out in this Notice, the FSA has had regard to specific guidance on the identification of inside information set out in guidance DTR 2.2.3G to DTR 2.2.9G.

#### **Listing Principle 4**

23. Chapter 7 of the Listing Rules sets out the Listing Principles which apply to every listed company with a primary listing of equity securities. The purpose of the Listing Principles is to ensure that listed companies pay due regard to the fundamental role they play in maintaining market confidence and ensuring fair and orderly markets.

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<sup>2</sup> DR 2.5.1 did not apply in this case.

24. Listing Principle 4 provides that “*a listed company must communicate information to holders and potential holders of its listed equity securities in such a way as to avoid the creation or continuation of a false market in such listed equity securities.*”
25. The FSA regards the continuing obligation requirements of DTR and Listing Principles as a fundamental protection for shareholders. These requirements are designed to promote full disclosure to the market of all relevant information on a timely basis to ensure that all users of the market have simultaneous access to the same information. Observance of these continuing obligations is essential to the maintenance of an efficient, fair and orderly market in securities and to maintaining confidence in the financial system.

## **FACTS AND MATTERS RELIED ON**

### **Background**

26. JJB is a well known sportswear retailer with its headquarters in Wigan, Lancashire. JJB was founded in 1971 and became admitted to the London Stock Exchange’s Official List in 1998. JJB describes itself as one of the UK’s leading high street sports retailers.

### **The OSC Acquisition**

27. On 12 December 2007, the then Commercial Director of JJB, David Madeley (“Mr Madeley”) emailed JJB’s board of directors, including the then Chief Executive, Chris Ronnie (“Mr Ronnie”), and certain other directors with a draft proposal for JJB to acquire OSC from SDI for £5 million. The proposal informed the recipients that “*stock in stores currently valued at £8.4 million, is to be purchased on completion at value less 3% from SDI. Stock in warehouse currently valued at £2 million is to be purchased simultaneously at a commercial value to be agreed*”.
28. On 17 December 2007 JJB and SDI signed the OSC SPA for the purchase of the entire issued share capital of OSC. The OSC SPA was signed by Mr Ronnie on behalf of JJB. The material terms of the OSC SPA were as follows:
  - (a) “*The price for the shares shall be £5,000,000 (the Price). ...In addition to the Price, the Purchaser shall pay the Seller the Stock Amount*”.
  - (b) The Stock Amount was to be “*calculated by reference to the actual cost price to the Seller of the In-store Stock, less 3%*”. In-store stock meant the “*unsold stock held at the Properties at the close of business on 28 January 2008*”.
  - (c) The sum payable for the Price and the Stock Amount was to be remitted to SDI on 28 March 2008. The liability to pay the Stock Amount was uncapped and not subject to any maximum.
29. On the same day that the OSC SPA was signed, JJB’s corporate broker, (being an experienced broker on the FSA’s panel of approved sponsors) was contacted by JJB’s financial public relations firm in relation to the OSC Acquisition. Whilst JJB’s corporate broker had been informed that the £5 million price was exclusive of stock, they

understood that no stock was being purchased from the vendor and that the total price payable was only £5 million.

30. At 7 am on 18 December 2007 JJB issued the OSC Announcement in the following terms:

*“JJB Sports (“JJB”) today announces that it has acquired the Original Shoe Company (“Original Shoe Company”) from Sports Direct International PLC for a consideration of £5m in cash”.*

31. On 20 December 2007 a JJB board meeting was held. The minutes of that meeting record that JJB’s board was informed that the acquisition of OSC would entail *“a purchase price of £5 million which will be payable at the end of March 2008”* and that *“the value of inventories at the acquisition date will be approximately £8 million and will also be payable at the end of March”*. The minutes of another JJB board meeting held on 22 January 2008 record that approximately £8 million for stock would be payable by JJB at the end of March 2008 in connection with the OSC Acquisition.
32. On 27 January 2008, Sports World International Ltd (a company within the SDI group) (“Sports World”) issued invoices to JJB in respect of the Stock Amount for a total of approximately £10.04 million inclusive of VAT to the extent applicable.
33. JJB paid Sports World a total of approximately £15.069 million between 31 March and 23 April 2008 comprising £5 million for the share purchase price, £10.038 million (inclusive of applicable VAT) in respect of the Stock Amount and approximately £31,000 in respect of cash in tills held at OSC stores.

### **The Qube Acquisition**

34. The minutes of the JJB board meeting of 22 January 2008 record that JJB’s board was informed of a proposal to acquire Qube for £1 plus stock at cost.
35. On 14 March 2008, Mr Madeley had a telephone conversation with representatives of West Coast Capital, the parent undertaking of AJT, during which the details of the Qube Acquisition were discussed. JJB’s note of the conversation records that JJB *“would inherit £2.3M of creditors and the £5.7M overdraft...”* The *“£5.7M overdraft”* is understood to be a reference to Qube’s Overdraft.
36. The minutes of a JJB board meeting of 9 April 2008 record that *“ CR [Mr Ronnie] advised that himself and DM [Mr Madeley] were currently in negotiations with [Vendor] to acquire the Qube and [another] businesses”* (in the event the other business was not acquired). The board minute does not record there having been any discussion in respect of the likely cost of Qube.
37. On 15 April 2008, the Qube SPA was signed by Mr Ronnie and by Mr Madeley on behalf of JJB. The Qube SPA provided that, in order to acquire Qube, JJB would be required to pay a consideration for the entire share capital of Qube of £1 and in addition, JJB would be liable to settle Qube’s Overdraft to a third party bank as it stood on the day before completion. The relevant clause (clause 4.4) appeared in the SPA as follows:

#### *“4.4 Purchaser’s obligations*

*At Completion the Purchaser shall, subject to compliance by the Vendor with the obligations incumbent on it under Clauses 4.2 and 4.3:*

*(a) deliver to the Vendor the Consideration by cheque; and*

*(b) repay or procure the repayment by the Company of all sums due to [the third party bank] by the Company in account number [account number redacted] at 5pm on the date before the Completion Date”.*

38. Following speculation in the press about JJB having potentially acquired Qube, JJB’s corporate broker was alerted to the existence of the draft Qube Announcement in the late afternoon of 9 May 2008 by JJB’s PR advisors. JJB’s corporate brokers then contacted JJB to seek further information. Mr Ronnie and Mr Madeley on behalf of JJB spoke to JJB’s corporate broker, on 9 and 10 May 2008 respectively and informed them of the Qube Acquisition. This first contact with JJB’s corporate brokers occurred over three weeks after the Qube SPA had been signed.
39. JJB’s corporate brokers were not provided with a copy of the Qube SPA. However, on 13 May 2008, JJB sent an email to its corporate brokers entitled, "FW: Project Square - bank debt". The email contained no text from the sender but included a chain of 5 emails. The two most recent emails in the chain were between JJB and its solicitor and related to a request by JJB to their solicitor to contact JJB’s corporate brokers. The other three emails in the chain referred to the fact that JJB was intending to pay off Qube's overdraft with a third party bank. The emails referring to the overdraft payment were between JJB, its solicitor and the solicitors of Qube. JJB’s corporate brokers responded to the email entitled "FW: Project Square - bank debt" and further email exchanges occurred (between JJB, its solicitor and its corporate broker) with the entire chain attached. None of the subsequent correspondence mentioned the payment of the overdraft. JJB’s corporate brokers have stated that they did not read the three emails in the email chain that referred to the payment of the Qube overdraft, focusing instead on the most recent part of the email chain. They therefore understood that the total price payable for the acquisition of Qube was only £1.
40. JJB’s corporate broker had a number of communications with the UK Listing Authority (“UKLA”) concerning the Qube Acquisition. With the assistance of JJB’s solicitors, JJB consented to its corporate brokers sending the UKLA a letter on 20 May 2008 which stated that JJB had signed the Qube SPA on 15 April 2008 and that the consideration payable for Qube was £1. JJB both commented on and approved the letter before transmission. The letter did not disclose JJB’s liability to settle Qube’s Overdraft.
41. On 20 May 2008 JJB’s corporate brokers were specifically asked by a representative of the UKLA whether JJB was discharging any third party liabilities as part of the Qube Acquisition. JJB’s corporate brokers stated that there were no such liabilities.
42. On 22 May 2008, one month after the Qube SPA was signed, with the assistance of its corporate brokers JJB issued the Qube Announcement in the following terms:

*“JJB SPORTS PLC (“JJB”) ACQUIRES PRIVATELY HELD QUBE FOOTWEAR JJB Sports Plc (“JJB”) announces it has acquired the fashion footwear business, Qube Footwear Ltd (“Qube”) from private equity partnership, West Coast Capital (“WCC”) for £1 in cash... The agreement to acquire Qube was signed on 15 April 2008”.*

43. There was no reference in the Qube Announcement to the liability arising out of the Qube SPA for JJB to settle Qube’s Overdraft.
44. On 22 May 2008, as a payment on account of JJB’s liability under the Qube SPA to settle Qube’s Overdraft, JJB transferred the sum of £6,200,000 to Qube’s account at the third party bank. A further sum of £273,321.95 was subsequently transferred by JJB on 27 May 2008 to settle the balance. The total paid by JJB in respect of Qube’s Overdraft was therefore £6,473,321.95.
45. On 29 May 2008, a board meeting was held at which the minutes record that the following information was relayed to the board:

*“A brief summary of the deal completed on 28 May 2008 encompassed JJB acquiring the business from 12 April, purchasing its shares for £1.00, inheriting its balance sheet with net current liabilities of a maximum of £2 million together with an indemnity of £1 million in respect of stock resale below £2 million margin”.*

#### **Other Announcements**

46. During the material time, JJB issued the following communications to the market concerning its financial position, all of which provided an opportunity to disclose to the market the liability to pay the Stock Amount and the liability to settle Qube’s Overdraft:
  - (a) On 16 April 2008 JJB released its Preliminary Results for the 52 weeks to 27 January 2008 (“JJB’s 2008 Preliminary Results”). JJB informed the market that its net debt for 27 January 2008 was £42.2 million which was an increase from £9.2m as at 28 January 2007. JJB’s 2008 Preliminary Results made no reference to the liability to pay the Stock Amount or to JJB having signed the Qube SPA on 15 April 2008 (thereby exposing itself to the liability to settle Qube’s Overdraft).
  - (b) On 20 May 2008 JJB released an Interim Management Statement which referred to the “*challenging retail environment*” within which the company was said to be operating but did not refer to the OSC Acquisition or the Qube Acquisition.
  - (c) On 23 May 2008, JJB published its Annual Report and Financial Statements for the 52 weeks to 27 January 2008 (“JJB’s 2008 Annual Report and Financial Statements”) in which it stated that JJB’s net profit before tax and exceptional operating items had decreased by 28.5% from £47.2 million to £33.8 million. The document also repeated that OSC had been purchased for £5 million and did not refer to the Qube Acquisition notwithstanding that the Qube SPA had been signed on 15 April 2008. Neither the liability to pay the Stock Amount nor the liability to settle Qube’s Overdraft was disclosed.

- (d) On 24 July 2008, JJB issued its AGM statement which did not refer to the OSC or Qube Acquisitions.

## 2008 Interim Results

47. During an independent review of JJB's 2008 Interim Results, on 22 September 2008 JJB's auditors wrote to JJB's Audit Committee to record concern about the fact that, whilst auditing JJB's 2008 Annual Report and Financial Statements, JJB's auditors had not been informed of the liability to pay the Stock Amount and had not been informed at all of the Qube Acquisition. The auditors also expressed concern that the market did not appear to have been informed of the liability to pay the Stock Amount or the liability to settle Qube's Overdraft.
48. Following the auditor's independent review, JJB published its 2008 Interim Results which disclosed the true costs of the OSC and Qube Acquisitions, including the resulting cash flows and post acquisition losses. This information was disclosed on 26 September 2008 in Note 9 to JJB's 2008 Interim Results. The note recorded that:
- (a) The "*Total consideration*" for OSC was £15.063 million and the "*net cash outflow arising on acquisition*" was also £15.063 million<sup>3</sup>.
- (b) The "*Total consideration*" for Qube was £7.142 million. The "*Cash considerations*" for Qube were disclosed as £7.142 million. "*Cash and cash equivalents acquired*" were disclosed as £250,000 resulting in a "*Net cash outflow arising on acquisition*" of £6.892 million.<sup>4</sup>
49. JJB's 2008 Interim Results also included details of JJB's net debt and cash positions as at 27 July 2008. JJB explained that its net debt was £57.6m (having increased from £42.2 million at 27 January 2008).
50. On the day JJB's 2008 Interim Results were published (those Interim Results including other negative news, as referred to at paragraph 16 above), JJB's share price fell by approximately 49.5% from 104p to 52p and there were a series of readjustments in the views of analysts.

## THE BREACHES

51. For the reasons set out below:
- (a) in relation to OSC Announcement, JJB breached DTR 2.2.1 and Listing Principle 4 and continued to be in breach until 26 September 2008;
- (b) in relation to the Qube Announcement, JJB breached DTR 2.2.1 and Listing Principle 4 and continued to be in breach until 26 September 2008.

## OSC

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<sup>3</sup> As set out at paragraph 48 (a) above, it appears that the amount JJB actually paid was £15.069 million.

<sup>4</sup> As set out at paragraph 48 (b) above, it appears that the amount JJB actually paid was £6.473 million.

52. In relation to the OSC Acquisition:

(c) The true and proper cost of the OSC Acquisition, including the costs (or, prior to payment the estimated costs) of paying the Stock Amount, was inside information as defined under section 118C of the Act:

- (1) The information was precise. The fact of the liability to pay the Stock Amount was known to JJB as a result of signing the OSC SPA. The cost that JJB was obliged to pay under the OSC SPA in respect of OSC's stock was also capable of estimation. A close approximation of the total cost was known to JJB from at least 12 December 2007, being around £8 million. The information was therefore certain. The impact of the expenditure on JJB's financial position was also capable of calculation.
- (2) The information was not generally available. The market was not aware of the liability to pay the Stock Amount or of the impact on JJB's finances.
- (3) The information related directly to JJB.
- (4) The information was information of a kind which a reasonable investor would be likely to use as part of the basis of his or her investment decisions, and pursuant to section 118C(6) of the Act was therefore information that would, if generally available, be likely to have a significant effect on the price of JJB shares. The information would have likely affected whether the reasonable investor would buy, sell or hold, and the terms on which he or she would be willing to buy or sell, JJB's shares.

53. JJB were therefore obliged, under DTR 2.2.1, to notify a RIS as soon as possible of the OSC Acquisition and the true cost of that acquisition which included that, as part of the acquisition, that stock would be paid for separately.

54. In breach of DTR 2.2.1, the OSC Announcement did not include details of the liability on JJB to pay the Stock Amount as part of the OSC Acquisition. JJB engaged in continuing breaches of DTR 2.2.1 after the OSC Announcement in that it failed to disclose the liability until publication of JJB's 2008 Interim Results.

55. In breach of Listing Principle 4, the failure to advise the RIS of the liability to pay the Stock Amount created, in breach of Listing Principle 4, a false market for the period 18 December 2007 to 26 September 2008.

### *Qube*

56. In relation to the Qube Acquisition:

(d) The true and proper cost of the Qube Acquisition, including the costs (or, prior to payment, the estimated costs) of settling Qube's Overdraft was inside information as defined under section 118C of the Act:

- (1) The information was precise. The fact of the liability to settle Qube's Overdraft was known to JJB as a result of the signing of the OSC SPA. The costs of Qube's Overdraft that JJB was obliged to pay under the Qube SPA were also capable of estimation. JJB reasonably expected that, from at least 14 March 2008, Qube's Overdraft would be significantly higher than the £1 purchase price announced on 22 May 2008.
  - (2) The information was not generally available. There is no evidence that the market was aware of the liability to settle Qube's Overdraft or of the impact on JJB's finances.
  - (3) The information related directly to JJB.
  - (4) The information was information of a kind which a reasonable investor would be likely to use as part of the basis of his or her investment decisions, and pursuant to section 118C(6) of the Act was therefore information that would, if generally available, be likely to have a significant effect on the price of JJB shares. The information would have likely affected whether the reasonable investor would buy, sell or hold, and the terms on which he or she would be willing to buy or sell, JJB's shares.
57. JJB were therefore obliged, under DTR 2.2.1, to notify a RIS as soon as possible of the Qube Acquisition and the true cost of that acquisition which included that, as part of the acquisition, JJB would settle Qube's Overdraft.
58. In breach of DTR 2.2.1, the Qube Announcement did not include details of the liability on JJB to settle Qube's Overdraft as part of the Qube Acquisition. JJB engaged in continuing breaches of DTR 2.2.1 after the Qube Announcement in that it failed to disclose the obligation until publication of JJB's 2008 Interim Results.
59. In breach of Listing Principle 4, the failure to advise the RIS of the liability to settle Qube's Overdraft created, in breach of Listing Principle 4, a false market for the period 22 May 2008 to 26 September 2008.

## **SANCTION**

60. The FSA's policy on the imposition of financial penalties and public censures is set out in Chapter 6 of the Decision Procedure and Penalties Manual ("DEPP"). The principal purpose of financial penalties is to promote high standards of market conduct by deterring those who have committed breaches from committing further breaches, helping to deter others from committing similar breaches and demonstrating generally the benefits of compliant behaviour. The FSA considers that the seriousness of JJB's breaches of DTR and Listing Principle 4 merits a financial penalty.

## **Mitigating Factors**

61. The mitigating factors which have been taken into account in determining the financial penalty to be imposed on JJB include the following:

- (a) No previous disciplinary action has been taken against JJB.
- (b) At the time of the Qube acquisition, JJB's corporate brokers were included in an email chain, the latter part of which stated that JJB was immediately discharging Qube's overdraft with a third party bank, and which requested JJB's corporate brokers to contact JJB's solicitors.
- (c) Although JJB's solicitors were not advising on the announcements, they were aware of the terms of the transactions having negotiated the SPAs.
- (d) Subsequent to the events described in this Warning Notice the entire Executive Board and nearly all of JJB's non-executive directors have been replaced.
- (e) The current board of JJB has received training in respect of Listing Rules and DTR compliance and obligations.
- (f) JJB has substantially improved its systems and controls for the approval of regulatory announcements in relation to Listing Rules and DTR compliance.

### **Aggravating Factors**

62. The aggravating factors which have been taken into account in determining the financial penalty to be imposed on JJB include the following:
- (a) This action concerns two separate instances in which, in both cases, inside information was not disclosed to the market. This is not therefore an isolated incident or set of circumstances. It also appears that JJB's internal procedures concerning the provision of information to the market were not widely understood or adhered to.
  - (b) At the material time JJB's shares formed part of the FTSE 250 Index and latterly (from first quarter 2008) part of the FTSE Small Cap index.
  - (c) The delay was extensive, from 18 December 2007 to 26 September 2008, a period of 9 months and 8 days in total, during which time JJB failed to disclose the liability to pay the Stock Amount and from 22 May 2008 to 26 September 2008, a period of 4 months and 4 days, during which time JJB failed to disclose the liability to settle Qube's Overdraft. During both periods there was a false market in JJB's shares.
  - (d) Although JJB took advice from its corporate brokers in connection with JJB's disclosure obligations, JJB provided incomplete information to its corporate brokers. In respect of OSC, JJB did not disclose that it was liable to pay the Stock Amount. In respect of Qube, JJB did not provide its corporate brokers with a copy of the Qube SPA, and did not expressly draw to the attention of its corporate brokers that JJB had a liability under the Qube SPA to settle Qube's overdraft. Whilst the FSA recognises that, had JJB's corporate brokers reviewed the earlier emails in the chain

forwarded to it, the reference to the overdraft may well have been identified and the matter addressed, JJB did not clearly seek advice on whether any disclosure obligations arose from the overdraft liability or draw it to its corporate brokers' attention and did not challenge its corporate brokers regarding the omission of this information in the letter to UKLA dated 20 May 2008.

- (e) Throughout the period 18 December 2007 to 26 September 2008, JJB issued a number of market communications concerning its financial position which variously provided ample opportunities to disclose the liability to pay the Stock Amount and the liability to settle Qube's Overdraft.
- (f) The liability to pay the Stock Amount and the liability to settle Qube's Overdraft were only disclosed to the market after JJB's auditors raised concerns regarding the accuracy of the Qube and OSC Announcements.
- (g) When the true costs of the acquisitions (which took account of the liability to pay the Stock Amount and the liability to settle Qube's Overdraft) were released to the market on 26 September 2008, JJB did not state that this was a correction to the information contained in the OSC and Qube Announcements.
- (h) At the material time, JJB failed to show proper regard to the UKLA by failing to ensure that JJB's corporate broker advised the UKLA of the obligation to discharge Qube's overdraft.

### **Penalty Amount**

- 63. In determining the financial penalty, the FSA has considered the need to deter JJB and others from engaging in this type of activity now or in the future. The FSA has also had regard to penalties in other similar cases. The FSA considers that a financial penalty of £455,000 (reduced from £650,000) is appropriate.

### **DECISION MAKERS**

- 64. The decision which gave rise to the obligation to give this notice was made on behalf of the FSA by the Settlement Decision Makers, being Settlement Decision Makers for the purposes of the FSA's DEPP.

### **IMPORTANT**

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

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

- 66. The financial penalty is to be paid in six monthly instalments. The first instalment of £80,000 must be paid by JJB to the FSA by no later than 8 February 2011, 14 days from

the date of the Final Notice. The following five equal instalments of £75,000 each must then be paid no later than 8 March 2011, 5 April 2011, 3 May 2011, 31 May 2011 and 28 June 2011.

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

67. If any instalment is not paid by the date due for that instalment then the financial penalty becomes payable immediately in full. The FSA may recover the outstanding amount as a debt owed by JJB and due to the FSA.

### **Publicity**

68. 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.
69. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

### **FSA contacts**

70. For more information concerning this matter generally, you should contact Andrew Speake on 020 7066 5564 or Kevin Thorpe on 0207 066 4450 of the Enforcement and Financial Crime Division of the FSA.

**Tracey McDermott**

**FSA Enforcement and Financial Crime Division**