

Mr Foley has referred this Decision Notice to the Upper Tribunal (the Tribunal) where he and the FCA will each present their cases. The Tribunal will determine what, if any, is the appropriate action for the FCA to take, and will remit the matter to the FCA with such directions as the Tribunal considers appropriate for giving effect to its determination. The Tribunal's decision will be made public on its website. Accordingly, the proposed action outlined in this Decision Notice will have no effect pending the determination of the case by the Tribunal.



12 Endeavour Square
London
E20 1JN

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

DECISION NOTICE

To: Conor Martin Foley

IRN: CMF01051 (inactive)

Date: 14 January 2020

1. ACTION

- 1.1. For the reasons given in this notice, the Authority has decided to:
- (1) impose on Mr Foley a financial penalty of £658,900 pursuant to section 123(1) of the Act for engaging in market abuse (dissemination, manipulating transactions and false or misleading impressions); and
 - (2) make an order, pursuant to section 56 of the Act, prohibiting Mr Foley from performing any function in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm.

2. SUMMARY OF REASONS

- 2.1. Mr Foley was the Chief Executive Officer (“CEO”) of WorldSpreads Limited (“WSL”), a financial spread-betting company, and WorldSpreads Group plc (“WSG”), WSL’s holding company, which was quoted on AIM. He held the significant influence functions of CF1 (Director) and CF3 (CEO) at WSL and was the majority shareholder of WSG.
- 2.2. In August 2007 WSG floated on AIM. Mr Foley was closely involved with drafting and approving the formal documentation that WSG was obliged to prepare for the purposes of its flotation (“Admission Documentation”) and he was aware of his and WSG’s obligations to provide accurate information to the market in these documents. However, despite this obligation, WSG’s Admission Documentation was materially misleading in that:
- (1) it did not disclose the fact that some WSG executives had made significant loans to WSG and its Subsidiaries (“the Internal Loans”); and
 - (2) it did not explain that certain of WSG’s Subsidiaries “hedged” considerable trading exposures internally with company executives (“the Internal Hedging”).
- 2.3. Mr Foley was aware of the failure to declare the Internal Loans and the failure to declare the Internal Hedging within WSG’s Admission Documentation. Mr Foley was also aware that WSG failed to declare the Internal Loans in its Annual Accounts throughout the Relevant Period, and that WSG failed to declare the Internal Hedging in its Annual Accounts until at least 2009. He knew that this gave, or was likely to give, a false or misleading impression to the market.
- 2.4. Mr Foley thereby engaged in market abuse contrary to section 118(7) of the Act by disseminating information that gave a false and misleading impression of WSG’s financial position, knowing that such information was false and misleading by failing to declare the Internal Loans and the Internal Hedging. By doing so he deliberately misled the market.

- 2.5. In addition, between January 2010 and March 2012 large Spread-Bets on WSG shares were placed on the trading accounts of five WSL clients. The nature of the hedging process meant that these spread-bets caused the purchase of a large number of WSG shares from the market. The Spread-Bets on the trading accounts of two of the five clients (Clients 1 and 3) were placed by Mr Foley without the knowledge of these clients.
- 2.6. As a director of WSG Mr Foley had a clear obligation to disclose his dealings to the market.
- 2.7. Therefore, in relation to the trading accounts of Clients 1 and 3 Mr Foley effected transactions which gave a false or misleading impression as to the demand for WSG shares contrary to section 118(5)(a) of the Act, and employed manipulating devices in order to deceive the market contrary to section 118(6) of the Act.
- 2.8. Mr Foley has denied using the trading accounts of these clients without their knowledge and has claimed that he entered into secret arrangements with them by which he would benefit from any profits made and underwrite any losses incurred through the spread-bets taken out on their accounts. The Authority does not accept this account.
- 2.9. The transactions (placed on all five of the client trading accounts referred to in paragraph 2.5 above) rendered statements as to WSG's credit policy contained in and disseminated through its Annual Accounts false and misleading. Mr Foley thereby contravened s118(7) of the Act.
- 2.10. Mr Foley also lacks fitness and propriety for the following reasons:
 - (1) he deliberately and dishonestly engaged in market abuse contrary to section 118(7) of the Act, by knowingly permitting false or incomplete information to be included in WSG's Admission Documentation, and by failing to declare the Internal Loans and the Internal Hedging and to accurately describe WSG and its Subsidiaries' credit policy in the Annual Accounts, despite having been, during the Relevant Period, an approved person;
 - (2) the Internal Hedging overseen by Mr Foley involved the use of fake client trading accounts and the unauthorised use of actual trading accounts;
 - (3) he deliberately and dishonestly engaged in market abuse contrary to sections 118(5) and 118(6) of the Act, despite having been, during the Relevant Period, an approved person;

(4) between April 2008 and February 2012, he procured for himself from WSL unauthorised loans, as found in a judgment of the High Court given in October 2014 and pursuant to which he was ordered to pay WSL £309,321.

2.11. The Authority has therefore decided to impose a financial penalty on Mr Foley in the amount of £658,900, pursuant to section 123(1) of the Act, for engaging in market abuse (dissemination, manipulating transactions and false or misleading impressions) and make a prohibition order, pursuant to section 56 of the Act, in the terms set out at paragraph 1.1(2) above.

2.12. Any facts or findings in this notice relating to "directors", "senior executives", "executives", "members of staff" or "professional advisers" should not be read as relating to all such persons, or even necessarily any particular person in that group.

3. DEFINITIONS

3.1. The definitions below are used in this Notice.

"the Act" means the Financial Services and Markets Act 2000;

"AIM" means the Alternative Investment Market;

"Annual Accounts" means the Annual Accounts of Subsidiary A, WSL or WSG prepared in accordance with International Financial Reporting Standards;

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

"Contract for Difference" or "CFD" means a contract between two parties (a CFD provider and a client) to pay each other the change in the price of an underlying asset. At the expiry of the contract, the parties exchange the difference between the opening and closing prices of a specified financial instrument, such as shares, without owning the specified financial instrument;

"FSCS" means the Financial Services Compensation Scheme;

"(Financial) Spread-Bet" means a contract between a provider, such as WSL, and a client which takes the form of a bet as to whether the price of an underlying asset (such as an equity) will rise or fall. A client who spread-bets does not own, for example, the physical share, he simply bets on the direction he thinks the share price will move. Spread-bets are similar to CFDs except in relation to capital gains tax and expiration dates of the contracts;

“Internal Hedging” means the practice by which some directors and members of staff at Subsidiaries A and B decided personally to act as a hedge for (and thereby stand behind) the financial exposure generated by selected client positions, thereby underwriting losses and accruing profits arising from those positions in their personal capacity. Such Internal Hedging was an alternative to (a) leaving the position unhedged, such that the financial exposure was retained by the provider of the position to the client, eg Subsidiary A or Subsidiary B, or (b) hedging the risk by taking out CFDs in the same asset with third party brokers, such that the financial exposure was transferred to a third party;

“Internal Loans” means the personal funds provided to WSG and its Subsidiaries by certain of its directors and senior executives in September 2006;

“Related Party Transaction” has the meaning given by Financial Reporting Standard Rule 8 as issued by the Accounting Standards Board during the Relevant Period;

“Relevant Period” means 25 July 2007 to 16 March 2012;

“Subsidiaries” means WSL, Subsidiary A and Subsidiary B only;

“Subsidiary A” means a subsidiary of WSG;

“Subsidiary B” means a subsidiary of WSG;

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

“Warning Notice” means the warning notice issued by the Authority to Mr Foley on 11 February 2019;

“WSG” means WorldSpreads Group Plc;

“WSG’s Admission Documentation” means the formal documentation that WSG was obliged to prepare for the purposes of its flotation on AIM in August 2007; and

“WSL” means WorldSpreads Limited.

4. FACTS AND MATTERS

Background

WorldSpreads Limited

- 4.1. WSL was incorporated in the UK on 15 September 2003 and regulated by the Authority from November 2004. Its principal activity was the provision of online trading facilities in financial markets through financial spread-betting and CFDs. Its clients were able to invest in, hedge, or speculatively bet on thousands of

global financial instruments. By 2011, WSL had approximately 15,000 clients (of whom typically 3,000 were active at any one time). Its clients came from across Europe, the Middle East, Asia and South Africa. WSL's clients were primarily retail clients.

WorldSpreads Group Plc

- 4.2. WSL was wholly-owned by WSG, a non-trading holding company incorporated in Ireland and quoted on AIM and the Irish Enterprise Securities Market from August 2007 and May 2008 respectively. Following the disposal of Subsidiary A in December 2009, WSL became the primary revenue generator of WSG.
- 4.3. WSG's Annual Accounts incorporated the results of WSL which, after Subsidiary A was sold, accounted for the majority of WSG's results. For example, based on the figures in both WSG and WSL's 2011 Annual Accounts, WSL's revenue accounted for, approximately, 94% of that of WSG.

WorldSpreads' Expansion and Positive Growth Story

- 4.4. WSG's expansion out of Ireland, where it was founded, started in the UK through the establishment of WSL and a network of partnerships. Throughout 2010 and 2011, WSG continued to expand rapidly into international markets, establishing offices, and subsidiaries, across Europe, South Africa, Asia and the Middle East. By 2011 WSL had become a mid-size spread-betting company within the UK market partly due to business from these international offices being booked in London.
- 4.5. From 2008, WSG's Annual Accounts showed strong revenue growth and, particularly from 2010, a cash-rich balance sheet. Several industry analysts published positive research, including buy recommendations, in respect of WSG after the publication of its 2010 and 2011 Annual Accounts.
- 4.6. On 1 August 2007 WSG floated on AIM at a price of 47p; its price reached a peak of 113.5p in May 2008. The average share price during 2010 and 2011 was 66p. WSG's lowest share price, of 37p, was in the last month of trading in February / March 2012.

Financial Spread-Betting

- 4.7. WSL and Subsidiary A's clients were able to trade through financial spread-bets or CFDs. Spread-betting enables clients to speculate, or bet, on the movement, up or down, of a particular asset (such as a share). Trading through a Spread-Bet means that clients do not have to pay the full value of the underlying financial instrument - instead, clients will deposit margin in cash to fund their trades. The

cash received by WSL in relation to their trading belonged to WSL's clients. It should have been received and held as client money in accordance with the rules set out in the Authority's Client Assets sourcebook, and therefore kept separately from the company's own cash as client money, subject to strict regulation and internal policies.

- 4.8. When a client of WSL or Subsidiary A took out a Spread-Bet, the risk of the Spread-Bet would lie with the companies. To minimise the risk to themselves, and depending on their risk management policy, WSL or Subsidiary A could have hedged their risk, either fully or partially, by taking out CFDs in the same asset with third party brokers. The companies used numerous third party brokers to hedge their clients' positions. In order to hedge with third party brokers, WSL and Subsidiary A had to fund their broker accounts, known as margin accounts. Third party brokers monitored these accounts and hedged only when sufficient funds were in the account. If there were insufficient funds in these accounts, WSL or Subsidiary A themselves would be on "margin call" meaning that WSL would have to increase funding of these accounts.

Mr Foley

- 4.9. Mr Foley was the co-founder of WSG and CEO of both WSG and WSL. Mr Foley became an approved person at WSL on 25 November 2004 as CF1 (Director) and CF26 (Customer Trading), as CF3 (CEO) and CF8 (Apportionment and Oversight) on 24 January 2006, and as CF30 (Customer) on 1 November 2007. As CEO, Mr Foley signed off WSG's Annual Accounts.
- 4.10. Mr Foley resigned from WSG and WSL on 14 March 2012.

Collapse of WSL and WSG

- 4.11. By 2012, due to a number of factors, albeit not apparent from their Annual Accounts, WSL and WSG were in severe financial difficulties and not able to continue as going concerns.
- 4.12. The formal insolvencies of WSL and WSG were triggered on 16 March 2012, when the financial controller of WSL informed WSG's board of longstanding wrongful treatment of client money at WSL. The CFO confirmed this to the board shortly afterwards and also that there had been misstatements in the Annual Accounts of WSL and WSG over several years. Initial investigations by WSL and WSG concluded that client money had been commingled with WSL's own cash leaving a shortfall in the funds owed to clients of approximately £13 million.

- 4.13. The Authority was informed, on 16 March 2012, of the irregularities in WSL's accounts, specifically that client money reconciliations had been deliberately falsified and that there had been inappropriate treatment of client money for a number of years. As a result, WSG's shares were suspended. On 19 March 2012, WSL was placed into the Special Administration Regime. As of January 2017, the Financial Services Compensation Scheme had paid out £17.9 million in respect of 3,833 claims for client money losses.

Key features of WSG's operations at flotation

Undisclosed loans by directors and executives to Subsidiaries of WSG

- 4.14. Mr Foley took part in an internal loan arrangement which involved the secret provision of funds, by certain directors to WSG and its Subsidiaries in order to alleviate financial difficulties. These Internal Loans, which were outstanding for several years, were never declared as such either in WSG's Admission Documentation or subsequent Annual Accounts despite specific requirements that such loans be disclosed. As a result, investors were ignorant of the financial difficulties of WSG and the subsequent obligations owed, by WSG, to its directors.
- 4.15. From at least the first quarter of 2006 some of WSG's Subsidiaries were experiencing difficulties with both their cash flows and balance sheets. These difficulties specifically related to a lack of funds for hedging with brokers but also included meeting the expectations of WSG's lenders.
- 4.16. In order to resolve these issues, some directors of Subsidiary A, including Mr Foley, provided personal funds to WSG and its Subsidiaries in September 2006. Altogether, €1,625,000 was provided by directors and senior executives, €500,000 by Mr Foley himself. The majority of these funds were held in WSG's bank accounts but, incorrectly, were not accounted for as loans.
- 4.17. Outstanding loans should be treated as liabilities in Annual Accounts and disclosed in the tables of loans and borrowings in the notes thereto. Moreover, any loans by directors should also be appropriately disclosed as Related Party Transactions in the notes of Annual Accounts.
- 4.18. Despite this, the Internal Loans were not disclosed in the Annual Accounts provided as part of WSG's Admission Documentation or otherwise, nor were they disclosed in any subsequent Annual Accounts during the Relevant Period.

Internal Hedging accounts

- 4.19. From before WSG's flotation on AIM and until at least 2009 Subsidiary A and Subsidiary B engaged in a practice described within those companies as "Internal

Hedging” by which some directors and members of staff at those companies (“the Participants”) decided personally to act as a hedge for (and thereby stand behind) the financial exposure generated by selected client positions, thereby underwriting losses and accruing profits arising from those positions in their personal capacity. Such Internal Hedging was an alternative to (a) leaving the position unhedged, such that the financial exposure was retained by the provider of the position to the client, e.g. Subsidiary A or Subsidiary B, or (b) hedging the risk by taking out CFDs in the same asset with third party brokers, such that the financial exposure was transferred to a third party. The Participants did not use accounts in their own names for their hedging activities. Instead, they used client trading accounts (without the clients’ knowledge), fictitious client trading accounts and later, accounts that they specifically opened for the purpose of Internal Hedging (known as the ‘Gamma’ accounts). In this way, the strategy was concealed from the companies’ auditors.

- 4.20. One objective of the Internal Hedging strategy was to reduce external hedging costs which absorbed a significant proportion of the companies’ available cash in margin charges; a further objective was to enable the Participants, including Mr Foley, to make personal profits or receive repayment of personal loans including the Internal Loans.
- 4.21. The reality of Internal Hedging was acknowledged by Mr Foley who wrote in an email, dated 11 January 2008: “*Lets [sic] not fool ourselves – Gamma [an Internal Hedging account] strips out a considerable amount of volatility on a cosmetic basis only [...] there will never be any money coming in from Gamma losses (at least until there is an exit)*” Mr Foley engaged in, and controlled, Internal Hedging despite recognising that there were serious associated risks for WSG.
- 4.22. Transactions entered into by WSG’s directors as part of the Internal Hedging were Related Party Transactions and should have been declared as such in WSG’s Annual Accounts.
- 4.23. Despite this, these transactions were not disclosed in the Annual Accounts provided as part of WSG’s Admission Documentation or otherwise, nor were they disclosed in any subsequent Annual Accounts during the whole of the period when Internal Hedging was carried out.

Non-disclosure of material information in WSG’s Admission Documentation

4.24. WSG was admitted to trading on the LSE's AIM on 1 August 2007 raising £5.77 million. Mr Foley knew that material information was either omitted from, or falsified within, WSG's Admission Documentation. Potential investors have a right to accurate disclosure and the Authority considers that had there been accurate disclosure within WSG's Admission Documentation, this may have influenced investors' decision as to whether or not to purchase WSG shares.

The verification process

4.25. WSG was assisted in its flotation by professional advisors. This assistance included due diligence on the company, providing guidance to WSG on both the flotation process and its obligations under key AIM rules, and helping to prepare both the pathfinder prospectus and final Admission Documentation. The content of these documents was the subject of a detailed verification process. In his capacity as a director, Mr Foley signed the verification notes, the pathfinder prospectus and the final version of the Admission Documentation. Mr Foley also signed an individual responsibility statement in respect of the pathfinder prospectus and the final Admission Documentation.

4.26. The Authority in this Notice does not criticise the conduct of any of the professional advisers involved in WSG's admission to AIM or in the preparation of WSG's Annual Accounts or those of its Subsidiaries.

4.27. At the material time, the AIM rules specified the information that had to be included in an AIM admission document. The overriding requirement was that the document had to contain all information that the company reasonably considered necessary to enable investors to form a full understanding of, amongst other matters, the assets and liabilities, financial position, profits and losses and prospects of the company and its shares for which admission is being sought (see Annex B for the relevant AIM Rules).

4.28. Such issues were dealt with in detail during various WSG board meetings in July 2007 attended by Mr Foley and WSG's professional advisors. During these meetings, Mr Foley signed various documents and was made aware of a number of responsibilities and obligations. For example:

- (1) Mr Foley confirmed that he had received a memorandum on directors' liabilities which contained, amongst others, a paragraph explaining the potential liabilities to which directors could be exposed if the Admission Documentation was inaccurate, incomplete or misleading. Those potential liabilities included actions under section 118 of the Act for market abuse and section 397 of the Act for misleading statements;

- (2) Mr Foley signed a letter entitled 'Director's letter of authority, responsibility statement and declaration of interest' in respect of the pathfinder prospectus document. In this responsibility statement Mr Foley approved the document and the verification notes relating to it; and
- (3) Mr Foley was reminded that the verification notes had been prepared to help verify the contents of the pathfinder prospectus, to ensure that all the facts stated in it were true and accurate and that all opinions and statements in it were reasonable and honestly held and that there was no omission of material facts which would otherwise make any statements in the pathfinder prospectus misleading.

4.29. Acting under powers of attorney, Mr Foley signed the verification notes dated 25 July 2007 on behalf of all directors which asked the directors to:

- (1) *"Please confirm and verify with evidence (where possible) that as at 25 July 2007 (being the most recent practicable date before the publication of the Admission Document) there were no outstanding loans granted ... by any Director to any member of the Group ..."*.
- (2) *"Please confirm and verify with evidence (where possible) that the Directors believe that the Company's key strengths include having a successful risk management model"*.

4.30. On 25 July 2007, WSG submitted its application for admission to AIM to the LSE. The application form contained the following declaration:

"the admission document complies with the AIM Rules for Companies and includes all such information as investors would reasonably expect to find and reasonably require for the purpose of making an informed assessment of the assets, liabilities, financial position, profits, losses, and as to the prospects of the issuer and the rights attaching to its securities".

4.31. The application form was signed by Mr Foley.

Omissions in WSG's Admission Documentation

4.32. Despite the clear obligations which bound Mr Foley and which he understood, WSG's Admission Documentation omitted material information.

4.33. First, WSG's Admission Documentation did not mention the Internal Loans which, as at 1 August 2007, were still outstanding in the sum of at least €1.6 million. As Related Party Transactions the loans should have been so identified in the AIM admission (and pathfinder prospectus) document and, in any event, should have been listed as a liability in WSG's consolidated balance sheet and by inclusion in

the table of "Interest bearing Loans and Borrowings". Instead, WSG's AIM admission (and pathfinder prospectus) document stated that there were *"no outstanding loans granted [...] by any Director to any member of the Group."*

- 4.34. Second, WSG's Admission Documentation did not mention the Internal Hedging strategy because, the Authority considers, it was acknowledged amongst the Participants as being an inappropriate and unethical practice. Mr Foley described Internal Hedging, in an email sent fifteen days after WSG's admission to AIM, as being *"contrary to all trading standards and ethics for a trading desk. I guarantee you there is [not] a single trading desk in the world where traders take part of the book themselves without shareholder approval and proper procedure"*. Instead, when describing how it hedged risk, it was stated that WSG took a *"conservative approach to risk management"* which utilised the wholesale markets.
- 4.35. These issues were highly material to the flotation of WSG. In addition to the explicit requirements for accurate disclosure in the Admission Documentation, potential investors would have needed to receive accurate information on these matters in order to decide whether or not to invest in WSG shares. In addition to the basic requirement for accurate financial information the Internal Hedging should have been declared to investors because:
- (1) it created inherent conflicts of interest whereby the Participants sought to make personal profits against selected trades made by Subsidiary A and Subsidiary B's clients, potentially at the expense of Subsidiary A and Subsidiary B;
 - (2) the Internal Hedging comprised Related Party Transactions which should have been disclosed in the Annual Accounts;
 - (3) the ability for directors to make personal profits by participating in the Internal Hedging should have been accounted for as part of directors' benefits and remuneration; and
 - (4) prospective investors would have wanted to know about the Internal Hedging because it may well have been viewed by them as incompatible with WSG's declared approach of adopting a conservative approach to risk management.

Failure to declare the Internal Loans after WSG's admission to AIM

- 4.36. Following WSG's admission to AIM and throughout the Relevant Period the Internal Loans were not declared as either loans or Related Party Transactions in WSG's

Annual Accounts. While it appears that certain directors may have been repaid, in-part or in-whole, during the Relevant Period, some Internal Loans remained outstanding at the time of WSG's collapse. Mr Foley was aware of these failures.

Failure to declare the Internal Hedging after WSG's admission to AIM

- 4.37. Following WSG's admission to AIM and until at least 2009 the Internal Hedging was not declared as a Related Party Transaction in WSG's Annual Accounts. Mr Foley was aware of the failure to do so.

S118(5), (6) and (7) conduct – unauthorised placing of Spread-Bets to effect share purchases

- 4.38. On several occasions between December 2009 and October 2011, Mr Foley became aware of certain investors' desire to sell large blocks of WSG shares. There being no natural purchasers for these shares, and concerned about the effect that these potentially large, unfulfilled sell orders would have on WSG's share price, Mr Foley used the trading accounts of two WSL clients without their knowledge to place large Spread-Bets on WSG shares. The nature of the hedging process meant that these Spread-Bets caused the purchase of a large number of WSG shares from the market.
- 4.39. Mr Foley's conduct came to light in March 2012, following the collapse of WSG, when he stated during a formal meeting with two members of the WSG board and later the Authority that, upon learning in December 2009, May 2010 and September 2011 that certain existing shareholders wished to sell large stakes in WSG, he had approached four clients (Clients 2-5 below) of WSL's CFD trading desk and asked them to open large, long Spread-Bets on WSG shares on his behalf.
- 4.40. Mr Foley further stated that he made an oral agreement with these four clients that, in the event of losses arising from these Spread-Bets, they would not have to cover those losses and he agreed that he would cover any losses (and take any profits) himself.
- 4.41. In addition to the four clients identified by Mr Foley, he also opened an account in a family member's name in December 2009 (Client 1) telling that individual it was for "testing" the IT system. Instead, that account was only ever used for the WSG Spread-Bet described below. A profit of £175,000 was made from this Spread-Bet, unbeknown to the family member. This profit, rather than being provided to Client 1, was written off on 14 April 2011 at Mr Foley's direction.

- 4.42. These WSG Spread-Bets (i.e. those in the name of Clients 1 -5) were calculated to effect the purchase of the exact number of WSG shares in the market that the sellers wished to dispose of. This is because the Spread-Bets were fully hedged through the actual purchase of the underlying WSG shares by third party brokers. The Authority has identified seven such Spread-Bets, between January 2010 and October 2011, using the accounts of four actual clients (Clients 2 – 5) and one set up by Mr Foley in a family member’s name (Client 1).
- 4.43. Unless otherwise stated, the Spread-Bets described below were hedged by WSL using CFDs (with a margin rate of 100%) purchased from third party brokers who, in turn, hedged the CFDs by purchasing WSG shares in the market.
- 4.44. On the basis of an analysis of all the available evidence, and notwithstanding Mr Foley’s account, the Authority considers that Mr Foley used the trading accounts of two clients (Clients 1 & 3) without their knowledge. Mr Foley’s conduct with respect to these accounts amounted to market abuse contrary to sections 118(5)(a) and 118(6) of the Act.
- 4.45. Further, Mr Foley, despite his position as a director of WSG, did not disclose these dealings to WSG, thereby preventing WSG’s compliance with AIM Rule 17 (notification of directors’ dealings) and concealing Mr Foley’s involvement in the purchase of, and demand for, these shares.
- 4.46. Despite being margined at 100% (due to broker concerns over the lack of liquidity in WSG shares) the clients were not called for additional margin in relation to their WSG Spread-Bets as the share price started to decline and as a consequence, after WSG collapsed, these spread-bets left the clients with debts to WSL of approximately £1.6 million between them. This was despite the relevant years’ accounts stating that:

“The Group has a formal credit policy which determines the financial and experience criteria which a client must satisfy before being given an account which exposes the Group to credit risk and the account limits which are allocated.... The Group monitors credit risk carefully and it is Group Policy that all customers who wish to trade on credit terms are subject to credit verification procedures” [Emphasis added].

- 4.47. Each of the transactions with Clients 1 – 5 set out below therefore rendered statements as to WSG’s credit policy contained in and disseminated through its Annual Accounts false and misleading. Mr Foley thereby contravened s118(7) of the Act.

The Spread-Bets

20 January 2010

4.48. In December 2009 Mr Foley was made aware that two institutional shareholders were preparing to sell large stakes in WSG (approximately 3.4 million shares or 8.5% of WSG's issued share capital). Also in December 2009, Mr Foley approached a family member to set up a "test" account in their name (Client 1). In January 2010, Mr Foley identified a buyer for 1.8 million of the shares leaving a potential "overhang" (excess supply of shares on the market) of 1.6 million WSG shares. However, instead, on 20 January 2010 two, long Spread-Bets were booked, clearing the potential overhang:

- (1) One to the account of Client 1 the value of which equated to 1 million shares or 2.5% of WSG's issued share capital; and
- (2) A second, to the account of Client 2 the value of which equated to 800,000 shares or 2% of WSG's issued share capital.

4.49. Ultimately, this January 2010 Spread-Bet of Client 2 resulted in a loss of £230,320 when WSL went into Administration in March 2012. The Spread-Bet of Client 1 was closed on 20 April 2010 and the stake taken up in Client 3's account.

20 April 2010

4.50. Client 1's WSG Spread-Bet was closed at 15:44 on 20 April 2010. At 15:45 a long WSG Spread-Bet equating to the exact number of shares as that of Client 1, that is, 1 million or 2.5% of WSG's issued share capital, was opened in Client 3's account thus removing a potential overhang of WSG shares that would have been the result of the closure of Client 1's Spread-Bet. Ultimately, the Spread-Bet in Client 3's account led to a loss of £790,700 when WSL went into Administration in March 2012.

31 August 2010

4.51. In May 2010, Mr Foley became aware of another potential seller, this time of 250,000 shares in WSG. On 31 August 2010, Client 4 opened a long WSG Spread-Bet equating to 250,000 shares or 0.63% of WSG's issued share capital. Ultimately, Client 4's Spread-Bet led to a loss of £190,025 when WSL went into Administration in March 2012.

9 August 2011

4.52. While there does not appear to have been a seller in August 2011, on 5 August 2011, Mr Foley wrote to brokers stating that he had found a potential investor. A few days later, Client 2 took out another two Spread-Bets on WSG shares equivalent to 200,000 WSG shares or 0.5% of WSG's issued share capital. Client

2's Spread-Bets in January 2010 and August 2011 led to a total loss of £574,640 when WSL went into Administration in March 2012.

14 October 2011

- 4.53. In September 2011 Mr Foley was made aware of a potential seller wishing to dispose of 140,000 WSG shares or 0.35% of WSG's issued share capital. On 14 October 2011, a Spread-Bet on WSG shares equivalent to this amount was opened in Client 5's account. Ultimately, the Spread-Bet in Client 5's account led to a loss of £56,336 when WSL went into Administration in March 2012.

Mr Foley's motives

- 4.54. The Authority considers that Mr Foley's objective through the Spread-Bets of Clients 1 and 3 was to create artificial demand for WSG shares at a time when there were large potential sell orders in the market.

Additional considerations in assessing fitness and propriety

Civil finding against Mr Foley regarding payments from WSL

- 4.55. On 10 June 2013 WSL (in Special Administration) lodged a claim, against Mr Foley, in the High Court (Queen's Bench Division). It was claimed that Mr Foley, while holding the position of CEO and Director of WSL, between April 2008 and February 2012, procured payments from WSL totalling £546,166 for his personal use or benefit and that these payments were to be treated as loans made by WSL to Mr Foley personally. Mr Foley had made repayments of a total value of only £231,087 leaving an outstanding debt of £315,079 which he had failed and refused to repay.
- 4.56. WSL (in Special Administration) also claimed that WSL had been prohibited from making payments to Mr Foley under section 197(2) of the Companies Act 2006 unless these payments were approved by a resolution of the members of WSL. However, no such resolutions were passed. WSL (in Special Administration) claimed that these payments were quasi-loans which required approval of the members of WSL under section 198(3) of the Companies Act 2006. Similarly, no such resolutions were passed.
- 4.57. On 14 October 2014 HHJ Richard Seymour QC ruled that the sum outstanding was £309,321 and determined that the amounts owed by Mr Foley to WSL (in Special Administration) were, in effect, loans.

5. FAILINGS

- 5.1. The regulatory and legislative provisions relevant to this Notice are referred to in Annex B.

Market abuse

- 5.2. Throughout the Relevant Period shares in WSG were qualifying investments admitted to trading on AIM, a prescribed market for the purposes of section 118 of the Act, or were qualifying investments for which a request for admission to trading on AIM had been made.
- 5.3. For the reasons set out below, by his behaviour described in this Notice, Mr Foley engaged in market abuse contrary to sections 118(7), 118(5) and 118(6) of the Act.

Section 118(7) of the Act

- 5.4. Pursuant to section 118(7) of the Act, market abuse includes behaviour which consists of the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to a qualifying investment by a person who knew or could reasonably be expected to have known that the information was false or misleading.

Dissemination of information by any means

- 5.5. Mr Foley disseminated information by providing the misleading information as part of WSG's Admission Documentation and by its subsequent failure during the Relevant Period to declare the Internal Loans and the Internal Hedging, and to accurately describe WSG and its Subsidiaries' credit policy in its Annual Accounts. Mr Foley was the CEO of WSG (and WSL) and was an approved person. He bore responsibility for the accuracy of WSG's AIM Admission Documentation and the Annual Accounts.

Gives or is likely to give a false or misleading impression

- 5.6. The omission from WSG's Admission Documentation of the Internal Loans and the Internal Hedging, the failure to declare the Internal Loans and the Internal Hedging in the Annual Accounts, and the failure to accurately describe WSG and its Subsidiaries' credit policy in its Annual Accounts during the Relevant Period gave, or were likely to give, a false or misleading impression of WSG's financial position and risk management practices.

Person who knew or could reasonably be expected to have known that the information was false or misleading

5.7. Mr Foley was the CEO of WSG and WSL. In respect of WSG's Admission Documentation, Mr Foley was aware of the existence of the Internal Loans and the Internal Hedging and he was also aware of the failure during the Relevant Period to declare the Internal Loans and the Internal Hedging, and to accurately describe WSG and its Subsidiaries' credit policy, in its Annual Accounts. Mr Foley knew, or could reasonably be expected to have known, that because it contained no, or inaccurate, information about these issues, WSG's Admission Documentation and its Annual Accounts were false or misleading.

Sections 118(5) and (6) of the Act

Effecting transactions or orders to trade

5.8. Both sections 118(5) and 118(6) of the Act apply to behaviour which consists of effecting transactions or orders to trade. By using the client accounts of Clients 1 and 3 in the manner described, Mr Foley effected transactions or orders to trade in WSG shares. Mr Foley knew that placing these Spread-Bets would, through the hedging of those bets in the market, cause the purchase of WSG shares.

5.9. Section 118(5)(a) of the Act describes transactions which:

give, or are likely to give, a false or misleading impression as to the [...] demand for, [...] one or more qualifying investments

5.10. Section 118(6) of the Act describes transactions which:

employ fictitious devices or any form of deception or contrivance

5.11. The Authority considers that Mr Foley engaged in market abuse contrary to sections 118(5)(a) and (6) of the Act because:

- (1) there was an actuating purpose to the Spread-Bets, namely to create artificial liquidity in WSG shares that would not otherwise have existed;
- (2) the transactions purported to be effected by clients trading independently and at arm's-length from WSG when in fact they were effected by its CEO.
- (3) under the AIM rules, WSG was required to make a notification when a director (or significant shareholder) dealt in its shares. By using the client accounts to effect the transactions, Mr Foley sought to circumvent his obligations to disclose his dealings to WSG, thereby preventing WSG's compliance with its notification requirements. Investors (or potential investors) who would reasonably have expected to have proper and full information about such trading were left uninformed.

- 5.12. The Authority has had regard to MAR 1.7.2 (Descriptions of behaviour that amount to market abuse (manipulating devices) and in particular to MAR 1.7.2(2) which describes transactions designed to conceal the ownership of a qualifying investment so that disclosure requirements are circumvented by the holding of the qualifying investment in the name of a colluding party, such that disclosures are misleading in respect of the true underlying holding.

Conclusion on market abuse

- 5.13. For the reasons set out above and having regard to the provisions of MAR (set out in Annex B to this notice) the Authority considers that Mr Foley deliberately engaged in market abuse contrary to sections 118(7), (5)(a) and (6) of the Act.
- 5.14. Pursuant to section 123(1) of the Act, the Authority may therefore impose a penalty of such amount as it considers appropriate on Mr Foley.
- 5.15. Section 123(2) of the Act states that the Authority may not impose a penalty for market abuse in certain circumstances. The Authority is satisfied that these circumstances do not apply to Mr Foley's conduct as described in this notice.

Fitness and Propriety

- 5.16. The relevant sections of FIT are set out in Annex B. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function, as more particularly described in FIT 2 (Main assessment criteria). FIT 1.3.1BG states that in the Authority's view, the most important considerations will include, among other matters, a person's honesty, integrity and reputation when assessing a person's fitness and propriety.
- 5.17. As described above, for a period of almost five years, Mr Foley permitted material omissions from WSG's financial information, including documentation supporting WSG's admission to trading on AIM, knowing that the incomplete information would be reflected in WSL's and WSG's published Annual Accounts. Mr Foley also managed an Internal Hedging strategy which involved the use of fake client trading accounts or real client trading accounts without their knowledge. Mr Foley deliberately engaged in market abuse contrary to section 118(7) of the Act, despite having been, during the Relevant Period, an approved person, and having held a senior position at WSL, a regulated firm, and at WSG.
- 5.18. Further, between January 2010 and March 2012, Mr Foley effected transactions which gave, or were likely to give, a false or misleading impression as to the demand for WSG shares and employed manipulating devices in relation to WSG

shares. Mr Foley thereby deliberately engaged in market abuse contrary to sections 118(5)(a) and (6) of the Act.

5.19. Furthermore, for the purposes of FIT 2.1.3G(2), as described at paragraphs 4.55 to 4.57 above, Mr Foley has been subject to an adverse finding in civil proceedings in connection with financial business and the management of a company.

5.20. In light of these considerations, the Authority considers that Mr Foley's actions were dishonest. Consequently, Mr Foley is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

6. SANCTION

Financial Penalty

6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. The detailed provisions of DEPP are set out at Annex A. In determining the appropriate financial penalty, the Authority has had regard to Chapter 6 of DEPP. The current penalty guidance ("New DEPP") is relevant to breaches that took place on or after 6 March 2010. Before that date, a previous version of DEPP ("Old DEPP") was in force.

6.2. Mr Foley's abusive behaviour took place over the period from 25 July 2007 to 16 March 2012. As this abuse took place over a period when Old DEPP and then New DEPP were in force the Authority has split its penalty calculation to produce, first, a penalty covering abuse in the period from 25 July 2007 to 5 March 2010 applying Old DEPP and, second, a penalty covering abuse in the period from 6 March 2010 to 16 March 2012 applying New DEPP in force over that later period. The Authority has added the two penalties together to produce the total penalty.

6.3. The total financial penalty which the Authority has decided to impose on Mr Foley is £658,900. A full calculation and explanation of how DEPP has been applied is set out at Annex A. In summary this penalty is calculated as follows:

(1) For Mr Foley's abusive behaviour contrary to section 118(7) of the Act, from 25 July 2007 to 5 March 2010, under Old DEPP, the Authority has decided to impose a financial penalty of £300,000.

(2) For Mr Foley's abusive behaviour contrary to section 118(7) of the Act, from 6 March 2010 to 16 March 2012, under New DEPP, the Authority has decided to impose a financial penalty of £174,314, calculated as follows:

- a) At Step 1, there is no amount subject to disgorgement.
 - b) At Step 2, Mr Foley's relevant income is £435,786 and a seriousness level of 5 has been applied (40% of relevant income), giving a Step 2 figure of £174,314 (applying DEPP 6.5C.2 (2))
 - c) At Step 3, there are no mitigating or aggravating factors.
 - d) At Step 4 there is no adjustment for deterrence.
 - e) At Step 5, there is no settlement discount.
- (3) For Mr Foley's abusive behaviour in relation to sections 118(5) and 118(6) of the Act, between 20 January 2010 and 18 March 2012, under New DEPP, the Authority has decided to impose a financial penalty of £184,591, calculated as follows:
- a) At Step 1, there is no amount subject to disgorgement.
 - b) At Step 2, Mr Foley's relevant income is £461,479 and a seriousness level of 5 has been applied (40% of relevant income), giving a Step 2 figure of £184,591.
 - c) At Step 3, there are no mitigating or aggravating factors.
 - d) At Step 4, there is no adjustment for deterrence.
 - e) At Step 5, there is no settlement discount.
- (4) Accordingly, the combined financial penalty that the Authority has decided to impose on Mr Foley under Old DEPP and New DEPP – rounded down to the nearest £100 – is £658,900 (£300,000 plus £174,314 plus £184,591).

Prohibition

- 6.4. The Authority has had regard to the guidance in Chapter 9 of EG in considering whether to impose a prohibition on Mr Foley. The Authority has the power to prohibit individuals under section 56 of the Act.
- 6.5. The Authority considers that because Mr Foley:
- a) engaged in market abuse contrary to section 118(7) of the Act, by knowingly permitting false or incomplete information to be included in WSG's Admission Documentation, and by failing during the Relevant Period to declare the Internal Loans and the Internal Hedging, and to accurately describe WSG and its Subsidiaries' credit policy, in WSG's Annual Accounts, despite having been, during the Relevant Period, an approved person;

- b) managed the Internal Hedging which involved the use of fake client trading accounts and the unauthorised use of actual trading accounts;
- c) engaged in market abuse contrary to sections 118(5) and (6) of the Act, namely false and misleading impressions and employing manipulating devices, despite having been, during the Relevant Period, an approved person, and
- d) between April 2008 and February 2012 procured for himself from WSL unauthorised loans, as found in a judgment of the High Court given in October 2014 and pursuant to which he was ordered to pay WSL £309,321

he lacks honesty and therefore is not a fit and proper person to perform any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm, and that a prohibition should be imposed on him under section 56 of the Act.

7. REPRESENTATIONS

- 7.1. Annex C contains a brief summary of the key representations made by Mr Foley, and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by Mr Foley, whether or not set out in Annex C.

8. PROCEDURAL MATTERS

- 8.1. The following paragraphs are important.

Decision maker

- 8.2. This Notice is given under sections 57 and 127, and in accordance with section 388, of the Act.
- 8.3. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.

The Tribunal

- 8.4. Mr Foley has the right to refer the matter to which this Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Foley has 28 days from the date on which this Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email fs@hmcts.gsi.gov.uk). Further information on the Tribunal,

including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website:

<http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>

- 8.5. A copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Elaine Stapleton at the Financial Conduct Authority, 12 Endeavour Square London E20 1JN.
- 8.6. Once any referral is determined by the Tribunal and subject to that determination, or if the matter has not been referred to the Tribunal, the Authority will issue a final notice about the implementation of that decision.
- 8.7. If the person to whom the decision notice is given refers the matter to the Tribunal, they may be eligible for legal assistance under section 134 of the Act.

Access to evidence

- 8.8. Section 394 of the Act applies to this Notice. In accordance with section 394(1), Mr Foley has the right to access:
 - a) the material upon which the Authority has relied in deciding to give this Notice; and
 - b) the secondary material which, in the opinion of the Authority, might undermine that decision.

Confidentiality and publicity

- 8.9. This Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). Section 391(1) of the Act provides that a person to whom this Notice is given or copied may not publish the Notice or any details concerning it unless the Authority has published the Notice or those details. However, the Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. Mr Foley should be aware, therefore, that the facts and matters contained in this Notice may be made public.

Authority contacts

8.10. For more information concerning this matter generally, contact Elaine Stapleton at the Authority (direct line: 020 7066 0760 or email: elaine.stapleton@fca.org.uk).

Tim Parkes, RDC Chair, on behalf of

Elizabeth France

Deputy Chair, Regulatory Decisions Committee

Annex A: Calculation of Financial Penalty

Financial penalty under Old DEPP

- 1.1. References to DEPP in paragraphs 1.2 to 1.8 are to Old DEPP and relate solely to the breaches by Mr Foley of section 118(7) of the Act. The Authority considers the following DEPP factors to be particularly important in assessing the financial penalty payable for his market abuse prior to 6 March 2010.

Deterrence – DEPP 6.5.2(1)

- 1.2. The principal purpose of a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliance to individuals. The Authority considers that the need for deterrence means that a substantial fine on Mr Foley is appropriate.

Nature, seriousness and impact of the breach – DEPP 6.5.2(2)

- 1.3. Mr Foley's breaches were extremely serious. The period of the market abuse here was particularly long: from 25 July 2007 until 5 March 2010.
- 1.4. Mr Foley's abusive behaviour had a serious impact on the financial markets. For instance, WSG raised £5.77 million on its AIM flotation. Investors and prospective investors, both of which had a right to expect that WSG's Admission Documentation would be accurate and full, were seriously misled.

The extent to which the breach was deliberate or reckless DEPP 6.5.2(3)

- 1.5. The Authority considers that Mr Foley's actions were deliberate. As CEO of WSG he was ultimately responsible for the accuracy of the verification notes and WSG's Admission Documentation. However, he deliberately allowed WSG to apply for admission to trading based on serious misrepresentations and permitted WSG's Annual Accounts thereafter to contain false and misleading information.
- 1.6. In light of these factors and considering previous financial penalties levied on other individuals for market abuse under section 118(7) of the Act, the Authority considers that Mr Foley's conduct merits a significant financial penalty of

£300,000 for his abusive behaviour between 25 July 2007 and 5 March 2010. No settlement discount applies.

- 1.7. The financial penalty for Mr Foley's breach of section 118(7) of the Act in the period prior to 6 March 2010 is £300,000.
- 1.8. Mr Foley's breaches of sections 118(5) and (6) of the Act occurred both before and after 6 March 2010. But as most of his breaches of sections 118(5) and (6) occurred after 6 March 2010, the Authority has assessed the financial penalty solely under New DEPP, the regime in force from 6 March 2010 (see paragraphs 1.9 to 1.29 below).

Financial penalty under New DEPP

- 1.9. In respect of any breach occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5.C sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals who have committed market abuse.
- 1.10. The Authority has applied this framework to the breaches by Mr Foley of section 118(7) of the Act that occurred on or after 6 March 2010, and to the breaches by Mr Foley of sections 118(5) and (6).

Step 1: Disgorgement

- 1.11. Pursuant to DEPP 6.5C.1G at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the market abuse where it is practicable to quantify this. Mr Foley did not derive a direct financial benefit from the market abuse. The Step 1 figure therefore is nil.

Step 2: The Seriousness of the breach

- 1.12. The market abuse (with respect to sections 118(5), (6) and (7) of the Act) was undertaken by Mr Foley in the course of his employment. On this basis, DEPP 6.5C.2(2) provides that the Step 2 figure will be the greater of: (a) a figure based on a percentage of Mr Foley's relevant income; (b) a multiple of the profit made or loss avoided by the individual for their own benefit, or for the benefit of other individuals where the individual has been instrumental in achieving that benefit, as a direct result of the market abuse (the "profit multiple"); and (c) where the seriousness level of the abuse is considered to be level 4 or 5, £100,000.

1.13. The Authority has not identified any profit made or loss avoided for Mr Foley's own financial benefit from the market abuse. Therefore, the Authority will use the greater of a figure based on a percentage of Mr Foley's relevant income or £100,000 for Step 2.

Relevant Income

1.14. Pursuant to DEPP 6.5C.2(4) and (5), because the market abuse in each case took place over a period of greater than 12 months, Mr Foley's relevant income will be the gross amount of all benefits he received in connection with his employment during the periods of the market abuse. The period of the market abuse, for the purposes of the calculation of relevant income, for section 118(7) was from 6 March 2010 to 16 March 2012. The period of the market abuse for section 118(6) was from 20 January 2010 to 16 March 2012. Mr Foley's relevant income is:

- (1) for the purposes of breaches of section 118(7), £435,786; and
- (2) for the purposes of breaches of sections 118(5) and (6), £461,479.

1.15. DEPP 6.5C.2(6)(a) provides that in cases where the market abuse was referable to the individual's employment, the Authority will determine the percentage of relevant income which will apply by considering the seriousness of the market abuse and choosing a percentage between 0% and 40%.

1.16. DEPP 6.5C.2(8) provides that where the market abuse was referable to the individual's employment the percentage range is divided into five fixed levels which reflect, on a sliding scale, the seriousness of the market abuse. The more serious the market abuse, the higher the level. For penalties imposed on individuals for market abuse the following five levels and percentages apply:

- (a) level 1 – 0%
- (b) level 2 – 10%
- (c) level 3 – 20%
- (d) level 4 – 30%
- (e) level 5 – 40%

1.17. DEPP 6.5C.2(10) provides that, in assessing the seriousness level, the Authority will take into account various factors which reflect the impact and nature of the market abuse, and whether it was deliberate or reckless. DEPP 6.5C.2 (15) lists

factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant to Mr Foley's breaches of sections 118(5), (6) and (7):

- (1) Mr Foley committed the market abuse for a sustained period of time, for just over two years (for the purposes of the penalty calculation under New DEPP) and on multiple occasions (DEPP 6.5C.2(15)(c)).
- (2) Mr Foley breached a position of trust, as CEO, within WSL and WSG (DEPP 6.5C.2(15)(d)).
- (3) Mr Foley had a prominent position within the market (DEPP 6.5C.2(15)(e)).
- (4) Mr Foley acted deliberately (DEPP 6.5C.2(15)(f)).

Level of seriousness

1.18. The Authority considers the seriousness of Mr Foley's market abuse in relation to:

- (1) section 118(7) to be level 5; and
- (2) sections 118(5) and (6) to be level 5.

1.19. The Step 2 figure is the higher of 40% of Mr Foley's relevant income; and £100,000. The calculations are set out in the table below.

	Seriousness Level and relevant %	Relevant Income	Step 2 figure
Sections 118(5) & (6)	5 (40%)	£461,479	£184,591
Section 118(7)	5 (40%)	£435,786	£174,314

1.20. The Step 2 figures are therefore £184,591 for the section 118(5) and (6) breaches and £174,314 for the section 118(7) breaches.

Step 3: Mitigating and aggravating factors

- 1.21. DEPP 6.5C.3G provides that the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2 to take into account factors which aggravate or mitigate the market abuse.
- 1.22. The Authority does not consider that there are any such aggravating or mitigating factors. At Step 3 the figures are therefore £184,591 for the section 118(5) and (6) breaches and £174,314 for the section 118(7) breaches.

Step 4: Adjustment for deterrence

- 1.23. Pursuant to DEPP 6.5C.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the market abuse, or others, from committing further or similar market abuse, then the Authority may increase the penalty.
- 1.24. The Authority does not consider it necessary to apply an uplift to achieve credible deterrence.
- 1.25. The Step 4 figure is therefore £358,905.

Step 5: Settlement discount

- 1.26. Pursuant to DEPP 6.5C.5G, if the Authority and an individual, on whom a penalty is to be imposed, agree the amount of the financial penalty and other terms, DEPP 6.7.3 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and an individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.
- 1.27. The Authority and Mr Foley did not reach a settlement and therefore no settlement discount applies to the Step 4 figures.
- 1.28. The figure at Step 5 is therefore £184,591 for the section 118(5) and (6) breaches, and £174,314 for the section 118(7) breaches, making a total penalty of £358,900 (rounded down to the nearest £100).

Conclusion

- 1.29. The Authority has therefore decided to impose on Mr Foley a total financial penalty of £658,900 (rounded down to the nearest £100) comprising:

- (1) A penalty of £300,000 for Mr Foley's breaches of section 118(7) of the Act under Old DEPP for the period prior to 6 March 2010; and
- (2) A penalty of £358,905 for Mr Foley's breaches of sections 118(7), (5) and (6) of the Act under New DEPP for the period on and after 6 March 2010.

Annex B: Relevant Statutory and Regulatory Provisions

1. RELEVANT STATUTORY PROVISIONS

The Authority has the power under section 56(1) of the Act to prohibit an individual from performing a specified function, any function falling within a specified description or any function.

Under section 56(1) of the Act the Authority may prohibit that individual if the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.

The Authority has the power under section 123(1) of the Act to impose a financial penalty where it is satisfied that a person has engaged in market abuse.

Section 123(2) of the Act sets out certain circumstances in which the Authority may not impose a penalty on a person:

"But the Authority may not impose a penalty on a person if, having considered representations made to it in response to a warning notice, 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 [subsection 123(1)]."

Section 118(1) (a) of the Act defines 'market abuse' as "*behaviour (whether by one person alone or by two more persons jointly or in concert) which -*

(a) occurs in relation to:

(i) qualifying investments admitted to trading on a prescribed market;

(ii) qualifying investments in respect of which a request for admission to trading on such a market has been made

...and

(b) falls within any one or more of the types of behaviour set out in subsections (2) to (8)."

The behaviour relevant to this case is set out in sections 118(5), (6) and (7) which state that:

"The fourth is where the behaviour consists of effecting transactions or orders to trade (otherwise than for legitimate reasons and in conformity with [accepted market practices] on the relevant market) which – (a) give, or are likely to give a false or misleading impression as to the supply of, or demand for, or as to the price of one or more [qualifying investments] or ...

"The fifth is where the behaviour consists of effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance."

And

"The sixth is where the behaviour consists of the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to a qualifying investment by a person who knew or could reasonably be expected to have known that the information was false or misleading"

2. RELEVANT HANDBOOK PROVISIONS

Code of Market Conduct

The Authority has issued the Code of Market Conduct ("MAR") pursuant to section 119 of the Act.¹

Under section 122(2) of the Act, the version of MAR in force at the time when particular behaviour occurs may be relied upon insofar as it indicates whether or not that behaviour should be taken to amount to market abuse. The following references are to the version of MAR as at March 2012.

MAR 1.2.3G states that it is not a requirement of the Act that the person who engaged in the behaviour amounting to market abuse intended to commit market abuse.

MAR 1.6 Market abuse (manipulating transactions)

MAR 1.6.5 describes factors which are to be taken into account when considering whether behaviour is for "legitimate reasons" (as referred to in section 118(5) of the Act), and are indications that it is not.

- (1) states that it is such a factor if a person has an actuating purpose behind the transaction to induce other to trade in, or to position or move the price of, a qualifying investment.

MAR 1.7 Market abuse (manipulating devices)

MAR 1.7.2 describes behaviour that amounts to market abuse (manipulating devices).

- (2) describes "a transaction or series of transactions that are designed to conceal the ownership of a qualifying investment, so that disclosure requirements are circumvented by the holding of the qualifying investment in the name of a colluding party, such that disclosures are misleading in respect of the true underlying holding. ...".

MAR 1.7.3 sets out the factors that the Authority can take into account in determining whether or not a fictitious device or other form of deception or contrivance has been used.

- (1) if orders to trade given or transactions undertaken in qualifying investments by persons are preceded or followed by dissemination of false or misleading information by the same persons or persons linked to them.

MAR 1.8.3G Descriptions of behaviour that amount to market abuse (dissemination)

The following behaviours are, in the opinion of the Authority, market abuse (dissemination):

- (1) knowingly or recklessly spreading false or misleading information about a qualifying investment through the media, including in particular through an RIS or similar information channel;
- (2) undertaking a course of conduct in order to give a false or misleading impression about a qualifying investment.

MAR 1.8.4E Factors to be taken into account in determining whether or not behaviour amounts to market abuse (dissemination)

In the opinion of the Authority, if a normal and reasonable person would know or should have known in all the circumstances that the information was false or misleading, that indicates that the person disseminating the information knew or could reasonably be expected to have known that it was false or misleading.

3. DECISION PROCEDURE AND PENALTIES MANUAL ("DEPP")

In determining the level of financial penalty to be paid for abusive behaviour occurring after 6 March 2010 the Authority has had regard to the provisions of DEPP, particularly DEPP 6.3G, DEPP 6.5CG, DEPP 6.5DG and DEPP 6.7G. For abusive behaviour occurring

before that date the Authority has had regard to the provisions of DEPP that were in force at the time.

4. ENFORCEMENT GUIDE ("EG")

Section 7 of EG deals provides guidance regarding financial penalties and public censures and can be accessed at this link:

<https://www.handbook.fca.org.uk/handbook/EG/7/1.html>

Section 9 of EG provides guidance regarding prohibition orders and can be accessed here:

<https://www.handbook.fca.org.uk/handbook/EG/9/?view=chapter>

5. FIT AND PROPER TEST FOR APPROVED PERSONS ("FIT")

Paragraph 1.3.1G of FIT states:

The Authority will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function, as more particularly described in FIT 2. FIT 1.3.1BG states that in the Authority's view the most important considerations will be the person's:

- (1) honesty, integrity and reputation;
- (2) competence and capability; and
- (3) financial soundness.

FIT 1.3.3G states:

The criteria listed in FIT 2.1 to FIT 2.3 are guidance and will be applied in general terms when the Authority is determining a person's fitness and propriety. It would be impossible to produce a definitive list of all the matters which would be relevant to a particular determination.

FIT 1.3.4 states:

If a matter comes to the Authority's attention which suggests that the person might not be fit and proper, the Authority will take into account how relevant and how important it is. In this same way, if a matter comes to the attention of a relevant authorised person which suggests that any staff being assessed under FIT might not be fit and proper, the firm should take into account how relevant and how important that matter is.

The relevant criteria in this case are honesty, integrity and reputation.

In assessing the fitness and propriety of an approved person under the criteria of honesty, integrity and reputation, the Authority will have regard to the matters including, but not limited to, those set out in FIT 2.1.3G.

6. AIM RULES

The LSE's AIM Rules for Companies in force from February 2007 set out the following relevant rules². These rules were also in place from February 2010³ when the secret Spread-Bet scheme was established:

Rule 17 – Disclosure of miscellaneous information

"An AIM company must issue notification without delay of:

- any deals by directors disclosing, insofar as it has such information, the information specified by Schedule Five;*
- any relevant changes to any significant shareholders, disclosing, insofar as it has such information, the information specified by Schedule Five;"*

Rule 31 – AIM company and directors' responsibility for compliance

"An AIM company must: [...]

- ensure that each of its directors accepts full responsibility, collectively and individually, for its compliance with these rules; and*
- ensure that each director discloses to the AIM company without delay all information which the AIM company needs in order to comply with rule 17 insofar as that information is known to the director or could with reasonable diligence be ascertained by the director."*

Schedule 2 of the AIM rules in force from February 2007

"A company which is required to produce an admission document must ensure that document discloses the following:

"(k) any other information which it reasonably considers necessary to enable investors to form a full understanding of:

(i) the assets and liabilities, financial position, profits and losses, and prospects of the applicant and its securities for which admission is being sought;

(ii) the rights attaching to those securities; and

(iii) any other matter contained in the admission document.”

7. ACCOUNTING STANDARDS

Relevant definitions within Rule 8 “Related party transactions” as issued by the Accounting Standards Board during the Relevant Period include:

Paragraph 2.5 Related parties:

2.5(b) For the avoidance of doubt, the following are related parties of the reporting entity:

(i) its ultimate and intermediate parent undertakings, subsidiary undertakings, and fellow subsidiary undertakings;

[...]

(iv) directors of the reporting entity and the directors of its ultimate and intermediate parent undertakings; ...

Paragraph 2.6 Related party transaction:

The transfer of assets or liabilities or the performance of services by, to or for a related party irrespective of whether a price is charged.

Paragraph 19 Disclosure of transactions

Disclosure is required of all material related party transactions. [...] The following are examples of related party transactions that require disclosure by a reporting entity in the period in which they occur: ... provision of finance (including loans and equity contributions in cash or in kind); ...

Paragraph 20 Materiality

Transactions are material when their disclosure might reasonably be expected to influence decisions made by the users of general purpose financial statements. The materiality of related party transactions is to be judged, not only in terms of their significance to the reporting entity, but also in relation to the other related party when that party is: (a) a director, key manager or other individual in a position to influence, or accountable for stewardship of, the reporting entity; ...

¹ All references to MAR in this Annex refer to the version of MAR in force at the time of the misconduct and market abuse.

² See AIM Rules for Companies, February 2007.

³ See AIM Rules for Companies, February 2010.

Annex C: Representations

1. Mr Foley's representations (in italics), and the Authority's conclusions in respect of them, are set out below.

The civil claim by WSL

2. *The civil finding described at paragraphs 4.55 to 4.57 of this Notice is not a regulatory issue.*
3. *Further, Mr Foley was not at fault. While he owed approximately £309,000 to WSL, he was owed approximately £330,000 by WSG. This was part of a legitimate process by which WSL would pay his salary and then recharge it to WSG. WSL had failed to do so, so the money was not recovered from WSG, leaving Mr Foley with the debt to WSL.*
4. The Authority relies on the finding in the judgment of HHJ Richard Seymour QC that Mr Foley procured for himself unauthorised loans from WSL. As an adverse finding in civil proceedings in connection with financial business and the management of a company, the judgment is relevant to whether Mr Foley is fit and proper. As such, it provides information relevant to consideration of a regulatory issue.

No irregularities in the accounts of WSG at flotation

5. *There were no irregularities in the accounts of WSG at flotation, as demonstrated by the following factors:*
 - a. *Mr Foley did not sell his shares in the company at flotation, even though the offer was oversubscribed. If he had thought anything wrong, he would have sold his shares (which, furthermore, he did not do at any point).*
 - b. *Close family and friends of Mr Foley purchased shares in WSG, on his recommendation. He would not have allowed them to do so if he had thought there was anything wrong with the company accounts, especially as it was over-subscribed.*
 - c. *A major company had made an unsolicited approach to buy WSG for a substantial sum close to the company's valuation at flotation 12 months later. No issues were raised by it arising from due diligence. The deal aborted due to a change in gambling law in the United States.*

- d. *A second major company later made a further approach, and binding heads of agreement were signed. Again, nothing was raised during due diligence enquiries. Had there been anything wrong, WSG could not have proceeded with the transaction because the prospective purchaser would have discovered it the day after completion.*
 - e. *There was a management buy-out of the Irish division of WSG in 2008 following an approach shortly after flotation. This division accounted for most of the company's value after flotation. Had there been any problems with the company, the purchasers would not have paid the substantial purchase price.*
 - f. *Mr Foley always took his annual bonus in WSG share options rather than cash. Had he thought there was anything wrong with the company accounts, he would have taken cash.*
 - g. *WSG attempted to recruit a new Chief Financial Officer and recruited an internal auditor, which they would not have done if they had been aware of any issues.*
 - h. *WSG recruited a new group CEO, to join in 2009. He had full access to the accounts and could not have been hired, had there been anything wrong with them.*
6. *In any event, the affairs of WSG had nothing to do with the UK regulated company, WSL. If it was appropriate to investigate them at all, this should have been done by the Irish regulator, not the Authority.*
7. The matters listed at paragraph 5 are circumstantial, and do not outweigh the factual evidence, summarised in the Facts and Matters, on which the Authority relies in reaching the conclusions set out in this Notice.
8. As WSG was floated and listed on AIM, its affairs are of direct interest to the Authority in its role as the UK Listing Authority.

No attempt to mislead the market

9. *Mr Foley did not attempt to mislead what was, in effect, a private market when using the accounts of WSL clients to place Spread-Bets on WSG shares, and nor did the Spread-Bets have that effect. He held 18% of the shares in WSG, 40% were held by just 5 shareholders and the shares did not trade every day. Share*

price movements were of no interest to the company's owners. The buyers were experienced investors and their purchases were done properly. He was just acting as a responsible CEO in trying to help the sellers exit their positions. Although he had a CEO's passing interest in the share price of his company, he had no motive to try to mislead the market.

10. The Authority finds that there is evidence in the contemporaneous documents of Mr Foley following the share price of WSG and that (as set out at paragraph 4.54 of this Notice) Mr Foley acted with the objective of creating artificial demand for WSG shares when there were large potential sell orders in the market, in placing the Spread-Bets through the accounts of Clients 1 and 3. He knew that this would, through the hedging of those bets in the market, cause the purchase of WSG shares. The Authority further considers that, by using the accounts of Clients 1 and 3, Mr Foley sought to circumvent his obligation to disclose his dealings to WSG, thereby preventing WSG's compliance with its notification requirements. This gave, or was likely to give, a false or misleading impression as to the demand for WSG shares.

Due process - no fair hearing, contrary to article 6 of the European Convention on Human Rights

11. *Mr Foley has not been given access to his work laptop, which would have provided him with all his emails and files in relation to the matters at issue in these proceedings. Without them, it has been impossible for him to prepare a proper defence to the allegations against him. In seeking access to his laptop data, he is simply asking for access to the same information as has been available to the Authority.*

12. Mr Foley's right of access to Authority material in connection with these proceedings is provided for in section 394 of the Act. This requires the Authority to allow him access to the material it relied on in taking the decision which gave rise to the obligation to give him the Warning Notice, as well as any other material which might, in the Authority's opinion, undermine that decision. The Authority is satisfied that it provided all such material to Mr Foley at the time of issuing the Warning Notice.

13. *The Authority conducted an incomplete investigation, relying on the evidence of one former employee of WSG in particular, and failing to interview one key person who would have supported Mr Foley's position.*

14. In this case, although the Authority has interviewed a number of individuals and considered witness evidence, much of the evidence on which it relies is in the form of contemporaneous documentation. It notes that Mr Foley has not identified any respect in which he says the underlying material is inaccurate or misleading.
15. *The Authority has taken an excessive time over its investigation of this matter, since opening its investigation in 2012.*
16. Mr Foley has not pointed to any respect in which he has been prejudiced by the time taken in investigating this matter, and the Authority is not aware of any such prejudice.
17. *The Authority pre-judged his case – at a meeting at its offices in 2016, its staff ambushed him with pre-conceived penalties, contrary to the presumption of innocence.*
18. In accordance with its standard procedure set out in the guidance in DEPP, the Authority's Enforcement team offered Mr Foley the opportunity to settle these proceedings, and in so doing outlined the sanctions it considered appropriate. As he was entitled to do, Mr Foley declined to settle the proceedings, as a result of which this matter was referred to the Authority's Regulatory Decisions Committee. The Committee operates independently of the Enforcement Division and has approached this matter fairly and without any preconceptions regarding Mr Foley's alleged misconduct or any appropriate sanctions. Mr Foley is entitled to refer this Notice to the Tribunal, part of HM Courts and Tribunals Service. If he does so, the Tribunal will consider the findings and sanctions set out in this Notice by way of a re-hearing.
19. *Mr Foley was not allowed to make written representations in these proceedings. After he indicated a wish to do so, he was told that he had missed the deadline.*
20. Mr Foley made oral representations to the Authority. The Authority considers that he was given ample opportunity to make written representations: in particular, it agreed to his request for a 3-month extension of time in which to do so. At the end of that period, Mr Foley declined to make written representations on the basis that he had not been given access to his laptop containing his emails and files. As set out at paragraph 12 above, Mr Foley has had full disclosure of material relied on by the Authority, and material that might

undermine the case against him, in compliance with section 394 of the Act, and this was explained to him in detail in correspondence.

21. Mr Foley renewed his request to make written representations after the Authority had given him a final opportunity to request oral representations (not having responded to any earlier invitation to do so). His renewed request to make written representations was still on the basis that he first required access to his emails and files. Accordingly, the Authority considers that it has afforded Mr Foley every reasonable opportunity to participate in the process.

Mr Foley's life before and since the Relevant Period

22. *Prior to joining WSL and WSG, Mr Foley worked for 10 years as a trader in a major French bank, with no blemish on his career.*

23. *He is now ruined. Since the end of the Relevant Period, he has lived with his parents and refocused his career. He now works as an academic, and has no plans to live or work in the UK again.*

24. Given the seriousness of the breaches committed by Mr Foley as set out in this Notice, the Authority does not consider that his previous disciplinary record prior to joining WSL and WSG merits any reduction in sanction in this case.

25. The Authority deals below with Mr Foley's financial position. In the light of its finding that he lacks honesty and is not fit and proper, and the risk he therefore poses to consumers and to the integrity of the UK financial system, the Authority does not consider Mr Foley's current stated career intentions or aspirations to provide justification for not prohibiting him from performing any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm. Nor do these matters justify not imposing the financial penalty set out in this Notice; the Authority refers to Annex A to this Notice which sets out the reasons for the penalty which it has decided to impose.

Mr Foley's financial position

26. *Payment of a financial penalty would cause Mr Foley serious financial hardship and, accordingly, the Authority should not impose one.*

27. Mr Foley provided a Statement of Means and accompanying information in June 2018, prior to the issue of the Warning Notice in these proceedings. In October 2019, shortly before his meeting with the Authority's Regulatory Decisions

Committee (which has made the decision to issue this Notice) to hear his oral representations, at the invitation of the Committee Mr Foley provided an updated Statement of Means. The updated Statement suggested, on its face, that payment of a financial penalty of the amount imposed in this Notice might cause him serious financial hardship.

28. Authority guidance at DEPP 6.5D.1(2) provides that, where an individual claims that payment of the penalty proposed by the Authority will cause them serious financial hardship, the Authority will consider whether to reduce the proposed penalty only if the individual provides (a) verifiable evidence of this; and (b) full, frank and timely disclosure of the verifiable evidence, and cooperates fully in answering any questions asked by the Authority about his financial position. DEPP 6.5D.1(3) provides that the onus is on the individual to satisfy the Authority that payment of the penalty will cause him serious financial hardship.
29. The updated Statement of Means provided by Mr Foley was not accompanied by any supporting information and Mr Foley was invited to provide verifiable evidence following the meeting. Mr Foley then provided a certain amount of supporting information. Following comments from the Authority's Enforcement case team on the information provided, the Authority gave Mr Foley an opportunity to supplement this, which he did. Following comments from the case team on the further information provided, Mr Foley was given a final opportunity to make any concluding remarks, at which time Mr Foley provided some further information. However, despite the multiple opportunities he was afforded to provide verifiable evidence, in accordance with DEPP 6.5D.1, that the penalty proposed would cause him serious financial hardship, the information provided by Mr Foley falls short of being full or, in significant respects, verifiable. For example, instead of up to date bank statements relating to the accounts previously disclosed by him, Mr Foley provided a spreadsheet, compiled by him, of banking transactions for the period 30 April 2019 to 25 November 2019. It was impossible for the Authority to verify that this was either complete or accurate.
30. The Authority does not consider that the criteria set out in DEPP 6.5D.1(2) have been met, and therefore the Authority has not considered whether to reduce the proposed penalty on the basis of serious financial hardship.