
FINAL NOTICE

To: Mr Bertie Charles Hatcher (date of birth 17 July 1942)

Date: 13 May 2008

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.

1 THE PENALTY

- 1.1 The FSA gave you, Mr Bertie Charles Hatcher ("Mr Hatcher"), a Decision Notice dated 12 May 2008 which notified you that pursuant to section 123 (Power to impose penalties in cases of market abuse) of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty on you of £56,098.
- 1.2 Under the terms of the Settlement Agreement dated 24 April 2008 ("the Settlement Agreement") you agreed to waive and not to exercise your rights to refer the matter to the Financial Services and Markets Tribunal once a Decision Notice had been issued.

2. REASONS FOR THE ACTION

Summary

- 2.1 The FSA has decided to impose on Mr Hatcher the penalty of £56,098 as a result of the behaviour of Mr Hatcher in relation to the purchases by him of shares ("the purchases") in the following companies ("the named companies") which were at the

time the purchases were made ("the relevant period"), traded on the London Stock Exchange ("LSE"). The purchases are as follows:

- (i) Shares in HP Bulmer Holdings Plc purchased on 24 and 25 April 2003;
- (ii) Shares in Vernalis Group Plc purchased on 24 and 26 June 2003;
- (iii) Shares in MacDonald Hotels Plc purchased on 18 June, 15, 17, 18 and 21 July 2003.
- (iv) Shares in Johnston Group Plc purchased on 23 August 2004;
- (v) Shares in South Staffordshire Plc purchased on 18 October 2004;
- (vi) Shares in RAC Plc purchased on 8 March 2005;

2.2 On the basis of the facts and matters described below the FSA has decided that:

- (i) Mr Hatcher engaged in market abuse;
- (ii) In all the circumstances it is appropriate to impose a penalty on Mr Hatcher of £56,098.

Relevant Statutory Provisions¹

2.3 The FSA is authorised under section 123(1) of FSMA to exercise its power to impose a financial penalty where it is satisfied that a person has engaged in market abuse.

2.4 The legislation in force at the time of the dealing defined market abuse in section 118(1) of FSMA as behaviour (whether by one person alone or by two or more persons jointly or in concert) which:

- (a) Occurs in relation to qualifying investments traded on a prescribed market;
- (b) Satisfies any one or more of the conditions set out in subsection (2); and
- (c) Is likely to be regarded by a regular user of that market who is aware of the behaviour as a failure on the part of the person...concerned to observe the

standard of behaviour reasonably expected of a person in his or their position in relation to the market.

2.5 Of the three conditions referred to in section 118(2), the one that is relevant to the facts and circumstances of this case is that set out in subsection (2)(a) which reads as follows:

"the behaviour is based on information which is not generally available to those using the market but which, if available to a regular user of the market, would or would be likely to be regarded by him as relevant when deciding the terms on which transactions in investments of the kind in question should be effected."

2.6 Section 118(5) says where the behaviour must occur. For the purposes of this Final Notice it is sufficient to state that the behaviour must occur in the United Kingdom.

2.7 Prescribed market is defined in the FSMA 2000 (Prescribed Markets and Qualifying Investments) Order 2001 ("PMQI Order") paragraph 4 as, "all markets which are established under the rules of a United Kingdom recognised investment exchange."

2.8 Qualifying investments are defined by virtue of paragraph 5 of the PMQI Order, section 22 of FSMA and paragraph 76(1)(a) of the FSMA 2000 (Regulated Activities) Order 2001 ("RAO") as "shares or stock in the share capital of any body corporate."

2.9 The term "a regular user" in relation to a particular market is defined in section 118(10) as "a reasonable person who regularly deals on that market in investments of the kind in question".

Relevant FSA Guidance²

2.10 The FSA has issued the Code of Market Conduct ("MAR") pursuant to section 119 of FSMA. Under section 122 of FSMA the Code may be relied upon in so far as it

¹ The statutory provisions referred to are those in force at the relevant time.

² The FSA Guidance referred to is that published at the relevant time.

indicates whether or not particular behaviour should be taken to amount to market abuse. Two parts of the Code have particular relevance to this case:

- a. MAR 1.2 which deals with the regular user test to be applied under subsection 118(1)(c) of FSMA; and
- b. MAR 1.4 which deals with behaviour constituting misuse of information.

MAR 1.2

2.11 MAR 1.2.2E states that in determining whether behaviour amounts to market abuse it is necessary to consider objectively whether a hypothetical reasonable person, familiar with the market in question, would regard the behaviour as acceptable in the light of all the relevant circumstances. MAR 1.2.3E provides that, in determining whether behaviour falls below the standards expected, the regular user is likely to consider all the circumstances of the behaviour, including:

- (1) The position of the person in question and the standards reasonably to be expected of that person at the time of the behaviour in the light of that person's experience, level of skill and standard of knowledge; and
- (2) The need for market users to conduct their affairs in a manner that does not compromise the fair and efficient operation of the market as a whole or unfairly damage the interests of investors.

MAR 1.4

2.12 MAR 1.4.3E states that, "in all prescribed markets, market users rely on the timely dissemination of such relevant information as they may reasonably expect to receive. Those who possess relevant information ahead of general dissemination should, therefore, refrain from basing their behaviour on that information.....Otherwise the confidence of market users in the ability of the market to ensure access to such information will be undermined."

2.13 MAR 1.4.4E describes behaviour which amounts to market abuse. MAR 1.4.4E states that it will be a misuse of information where a person deals in any qualifying investment where all four of the following circumstances are present:

- (1) The dealing is based on information. The person must be in possession of information and the information must have a material influence on the decision to engage in the dealing;
- (2) The information must be information which is not generally available (see MAR 1.4.5E);
- (3) The information must be likely to be regarded by a regular user as relevant when deciding the terms on which transactions in the investments of the kind in question should be effected (see MAR 1.4.9E and 1.4.11E); and
- (4) The information must relate to matters which the regular user would reasonably expect to be disclosed to the users of the particular prescribed market. This includes both matters which give rise to such an expectation of disclosure or are likely to do so either at the time in question, or in the future (see MAR 1.4.12E).

2.14 MAR 1.4.5E states in essence that information is treated as generally available if it can be obtained by research or analysis, has been disclosed to the prescribed market through proper channels or in accordance with market rules, is contained in public records, has otherwise been made public or can be obtained by observation.

2.15 MAR 1.4.9E states that whether in a particular case a particular piece of information would, or would be likely to be regarded as relevant information by the regular user will depend on the circumstances of the case. In making such a determination the regular user is likely to consider the extent to which:

- (1) The information is specific and precise;
- (2) The information is material;
- (3) The information is current;
- (4) The information is reliable, including how near the person providing the information is, or appears to be, to the original source of that information and the reliability of that source;

- (5) There is other material information which is already generally available to inform users of the market; and
- (6) The information differs from information which is generally available and can therefore be said to be new or fresh information.

2.16 MAR 1.4.11 states that examples of relevant information include where the qualifying investment in question is issued by a company.....information concerning the business affairs or prospects of the company.

2.17 MAR 1.4.12E states that information will only fall within MAR 1.4.4E(4) if it is either:

- (1) Information which has to be disclosed in accordance with any legal or regulatory requirement (referred to as "disclosable information"); or
- (2) Information which is routinely the subject of a public announcement although not subject to any formal disclosure requirement (referred to as "announceable information").

Facts and Matters Relied On

2.18 Commencing in or about April 2003, Mr Hatcher and a Mr X engaged in behaviour jointly or in concert which amounted to market abuse.

2.19 Mr Hatcher is retired. Prior to his retirement he ran a provincial chain of betting shops and insurance brokers.

2.20 Mr Hatcher had known Mr X for some 20 years and was aware that Mr X was recently retired from a senior position as a stock-broker for a financial institution ("the institution") in the City of London where he had worked for a number of years.

2.21 In or about April 2003 Mr X informed Mr Hatcher that he had a good source of share tips. Mr X stated that because he was receiving a pension from the above mentioned institution, he was in an awkward position with regard to buying shares. Mr X

therefore asked Mr Hatcher if he was prepared to purchase shares on their joint behalf. Mr Hatcher agreed to this.

2.22 Mr X and Mr Hatcher agreed that Mr X would pass Mr Hatcher share tips on the basis that Mr Hatcher would retain one-third of the net profits made from trades that were made by Mr Hatcher on the basis of the information provided by Mr X, and that two-thirds of the net profits would be paid to Mr X.

2.23 Pursuant to this agreement, Mr Hatcher purchased shares in the named companies as set out at paragraph 2.1 above. Mr Hatcher made these purchases based solely upon information received from Mr X in respect of each of the named companies. In each case:

- (1) The share tips were given by Mr X to Mr Hatcher shortly before positive announcements were made to the market regarding the named companies;
- (2) The purchases were made by Mr Hatcher shortly before positive announcements were made to the market regarding the named companies;
- (3) Information regarding these forthcoming announcements was not known to the market nor in the public domain prior to the announcements being made;
- (4) The institution was acting as the adviser to the named company at the relevant time;
- (5) Profits were shared by Mr Hatcher and Mr X in accordance with the joint agreement described at paragraph 2.22 above; and
- (6) The proportion of the profits due under the agreement to Mr X was paid to him by Mr Hatcher in cash.

2.24 The facts and matters outlined at 2.20 to 2.23 above lead to the conclusion that Mr X, in respect of each named company at the relevant time, was in possession of relevant information not generally available within the meaning of section 118(2)(b) of FSMA and MAR.

2.25 The companies in which Mr Hatcher purchased shares acting jointly or in concert with Mr X in the manner described above are:

- (1) HP Bulmer Holdings Plc: on 24 and 25 April 2003 Mr Hatcher purchased a total of 110,000 shares at prices between 220p and 222p at the instigation of Mr X. On 28 April 2003 the boards of Scottish and Newcastle Plc and HP Bulmer Holdings Plc announced a recommended cash offer of 310p per ordinary share of HP Bulmer Holdings Plc. On 28 April 2003 Mr Hatcher sold these shares at a price of 305p making a profit before tax of £89, 835³;
- (2) Vernalis Group Plc: on 24 and 26 June 2003 Mr Hatcher purchased a total of 70,000 shares at a price of 41p at the instigation of Mr X. On 3 July 2003 the boards of British Biotech Plc and Vernalis Group Plc announced a recommended merger of the two companies. Between 23 July and 1 September 2003 Mr Hatcher sold these shares at prices between 50p and 54p making a profit before tax of £7,588;
- (3) MacDonald Hotels Plc: between 18 June and 21 July 2003 Mr Hatcher purchased a total of 125,000 shares at a price of 238p at the instigation of Mr X. On 31 July 2003 the board of Skye Leisure Ventures Plc and the Independent Director of MacDonald Hotels Plc announced a recommended cash offer of 260p per ordinary share of MacDonald Hotels Plc. On 5 August 2003 Mr Hatcher sold these shares at a price of 257p making a profit before tax of £20,709;
- (4) Johnston Group Plc: on 23 August 2004 Mr Hatcher purchased 50,000 shares at a price of 409p at the instigation of Mr X. On 24 August 2004 the board of Anglo American Plc announced its intention to make a bid for the share capital of Johnston Group. On 31 August 2004 Mr Hatcher sold these shares at a price of 477p making a profit before tax of £31,868;
- (5) South Staffordshire Plc: on 18 October 2004 Mr Hatcher purchased 3000 shares at a price of 865p and later that day a further 27,500 at a price of 870p at the instigation of Mr X. On 19 October 2004 the board of South Staffordshire Plc announced that it was in advanced discussions with a private

³ All figures have been rounded down to the nearest £1.

equity buyer. On 27 October 2004 Mr Hatcher sold these shares at a price of 1090p making a profit before tax of £64,426;

- (6) RAC Plc: on 8 March 2005 Mr Hatcher purchased 40,000 shares at a price of 778p at the instigation of Mr X. On 9 March 2005 the boards of Aviva Plc and RAC announced a recommended cash offer of approximately 925p per ordinary share of RAC Plc. Mr Hatcher retained these shares but made a nominal profit based on the price of 949p at the close of that day's trading of £66,065.

Conclusions

2.31 The facts and matters described above lead the FSA to the conclusion that the behaviour of Mr Hatcher and Mr X acting jointly or in concert amounts to market abuse because:

- (1) The behaviour occurred in relation to qualifying investments traded on a prescribed market;
- (2) The behaviour was based on information within the meaning of MAR 1.4.4E(1) in that Mr Hatcher's trading was based on tips given to him by Mr X as a result of information acquired by Mr X regarding forthcoming positive announcements by the named companies;
- (3) The information was not generally available within the meaning of MAR 1.4.4E(2) and MAR 1.4.5E;
- (4) The information about the forthcoming announcements was likely to be regarded by a regular user as relevant when deciding the terms on which transactions in the investments of the kind in question should be effected. (MAR 1.4.4E(3), MAR 1.4.9E and MAR 1.4.11E);
- (5) The information related to matters which the regular user would reasonably expect to be disclosed to the market within the meaning of MAR 1.4.4E(4) and MAR 1.4.12E;
- (6) The behaviour occurred in the United Kingdom.

2.32 In all the circumstances Mr Hatcher's behaviour fell below the standard reasonably to be expected within the meaning of MAR 1.2.3E in that:

- (1) Mr Hatcher is not a regular trader but is acquainted with the stock market and has bought and sold stocks over the last thirty years. The FSA considers that the terms of the arrangement, the circumstances known to Mr Hatcher at the time and the operation of the scheme constituted behaviour that fell below that to be reasonably expected of Mr Hatcher;
- (2) The FSA considers that a reasonable person who regularly deals in the shares of companies traded on the London Stock Exchange would regard Mr Hatcher's behaviour as unacceptable in the light of all the relevant circumstances.

3. POWERS TO IMPOSE PENALTIES IN CASES OF MARKET ABUSE

3.1 Section 123(1) of FSMA states that if the FSA is satisfied that a person has engaged in market abuse, it may impose on him a penalty of such amount as it considers appropriate. The FSA has considered the disciplinary and other options available to it and has concluded that a financial penalty is the appropriate sanction in the circumstances of this particular case.

3.2 In arriving at this conclusion, the FSA is mindful of the provisions of section 123(2) of FSMA which states that the FSA may not impose a penalty on a person if, having considered any 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 amount to market abuse; or
- (b) He took all reasonable precautions and exercised all due diligence to avoid behaving in a way which amounted to market abuse.

3.3 Under the terms of the Settlement Agreement Mr Hatcher agreed the contents of the warning notice and to waive and not to exercise his rights to make representations to the Regulatory Decisions Committee in respect of the warning notice.

3.4 Given the facts and matters set out at paragraphs 2.18 to 2.32 above, the FSA is not satisfied that there are reasonable grounds upon which Mr Hatcher believed that his behaviour did not amount to market abuse and further, the FSA is not satisfied that Mr Hatcher took all reasonable precautions or exercised all due diligence to avoid behaving in a way which amounted to market abuse.

4. THE LEVEL OF PENALTY IMPOSED

4.1 The principal purpose of a financial penalty is to promote high standards of market conduct. It seeks to do this by deterring persons who have committed breaches from committing further contraventions, helping to deter other persons from committing similar contraventions and demonstrating generally to persons the benefit of compliant behaviour.

4.2 In determining the financial penalty imposed, the FSA has had regard to guidance contained in the Decisions Procedure and Penalties manual ("DEPP") which became part of the FSA's Handbook of Rules and Guidance (the "FSA Handbook") with effect from 28 August 2007, as well as the guidance contained in the Enforcement Manual ("ENF") which formed part of the FSA Handbook during the Relevant Period.

4.3 DEPP 6.5 sets out some of the factors that may be of particular relevance in determining the appropriate level of a financial penalty, and Chapter 14 of ENF contains the equivalent guidance that was in effect during the relevant period.

4.4 DEPP 6.5.1G and ENF 14.7.5G both state that the criteria listed in DEPP6.5 and ENF 14.7.4G respectively are not exhaustive and all relevant circumstances of the case will be taken into consideration. In determining whether a financial penalty is appropriate and its level, the FSA is required therefore to consider all the relevant circumstances of the case.

The nature, seriousness and impact of the breach in question

4.5 The FSA has had regard to the seriousness of Mr Hatcher's contraventions, including the duration and frequency of the breaches by him and the impact on the market.

The extent to which the behaviour was deliberate or reckless

4.6 The FSA considers that Mr Hatcher's behaviour was reckless.

Whether the person on whom the penalty is to be imposed is an individual and the size, financial resources and other circumstances of the person on whom the penalty is to be imposed

4.7 The FSA has taken into account Mr Hatcher's personal circumstances and financial situation in assessing the appropriate level of the penalty.

The amount of benefit gained

4.8 The FSA has taken account of the fact that the total of the profits retained by Mr Hatcher after deductions for taxation paid by him was £56,098.

Conduct following the breach

4.9 The FSA has taken account of the following facts:

(i) Mr Hatcher has provided valuable evidence that has assisted the FSA's investigation into the behaviour of others connected to the trading undertaken by Mr Hatcher;

(ii) Mr Hatcher has undertaken to provide ongoing assistance to the investigation and if required to give evidence at any subsequent criminal or regulatory proceedings.

Other relevant factors

4.10 The FSA is mindful of the need to encourage others to provide the FSA with information that may assist in the investigation and prosecution of suspected cases of insider dealing and market abuse, especially where it is suspected that the misconduct has occurred as a result of two or more persons acting in concert to commit market abuse.

4.11 The FSA has had regard to Mr Hatcher's level of culpability and the value of the evidence that he has provided and considers that the penalty imposed is appropriate in all the circumstances.

4.12 The level of the financial penalty equates to full disgorgement of the profits retained by Mr Hatcher as a result of his behaviour. The FSA considers that the imposition of a

financial penalty limited to the disgorgement of Mr Hatcher's profits is appropriate in all the circumstances.

5. DECISION MAKER

The decision which gave rise to the obligation to give this Final Notice was made on behalf of the FSA by Margaret Cole and Sally Dewar, as Settlement Decision Makers.

6. IMPORTANT

6.1 This Final Notice is given to you in accordance with section 390 of the Act. The following statutory rights are important.

Manner and time for payment

6.2 The financial penalty shall be paid in monthly instalments each of 1/12 of the penalty. The first payment to be received by the FSA no later than 28 days from the date of this notice and to be followed by 11 further payments to be received no later than the same date of each subsequent month.

If the penalty is not paid

6.4 If all or any of the instalments remain outstanding beyond the date payment is due, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

6.5 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 a 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.

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

FSA contacts

6.7 For more information concerning this matter generally, you should contact Ken O'Donnell (direct line: 020 7066 1374/fax: 020 7066 1375).

Jamie Symington
Head of Wholesale
Enforcement Division