
FINAL NOTICE

To: **Mr Christopher William Gower**

Date of Birth: **29/06/1976**

Individual Reference
Number: **CWG01015**

Date: 12 January 2011

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

1. THE PENALTY

- 1.1 The FSA gave Mr Christopher William Gower ("Mr Gower") a Decision Notice on 2 December 2010 which notified Mr Gower that pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty of £50,000 for failing to comply with Principle 3 of the FSA's Statements of Principle for Approved Persons.
- 1.2 Mr Gower confirmed on 30 December 2010 that he would not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber).
- 1.3 Accordingly, for the reasons set out below, the FSA imposes a financial penalty on Mr Gower in the amount of £50,000.

2. REASONS FOR THE ACTION

Background

- 2.1 On 7 May 2008 Mr Gower, a research analyst employed by MF Global Securities Limited and MF Global UK Limited (together “MF Global”) and FSA approved person (CF 30), attended a meeting with Mr A, the Chief Executive Officer of Punch Taverns plc (“Punch Taverns”). In the course of the meeting they discussed an application made by Enterprise Inns plc (“ETI”) to Her Majesty’s Revenue and Customs (“HMRC”) for approval to convert to Real Estate Investment Trust (“REIT”) status. This discussion concerned solely information which was in the public domain.
- 2.2 Following the meeting, Mr Gower sent a Bloomberg instant message to 14 clients of MF Global, a Bloomberg reporter and MF Global equity salesmen in the following terms: *“*** HOT OFF PRESS*** Just had meeting with CEO of PUNCH TAVERNS. They have heard from HM Revenue & Customs that it is highly likely Enterprise Inns has been granted REIT status and ETI are due to announce this on 13th May at interims. Expect ETI to bounce (was up 10% on previous HMRC news) BUT then fall back as mkt realises it will take time to implement.... MORE on my meeting to follow.... Chris”*
- 2.3 In further conversations that afternoon Mr Gower repeated Mr A’s alleged statement about receiving information from HMRC about ETI’s REIT status. Mr Gower also had subsequent conversations which were neither as definite as, nor entirely consistent with, the Bloomberg instant message.
- 2.4 Following Mr Gower’s Bloomberg instant message, this information was subsequently circulated widely in the market. At 16:04 ETI announced that it had received confirmation from HMRC that it was eligible to convert to REIT status subject to certain conditions. Between Mr Gower’s disclosures at 13:57 and ETI’s announcement at 16:04 ETI’s share price rose by 4.45% with approximately 6.4 million shares traded. This compared with a price rise between the opening of the market that day and 13:57 of 4.66% with approximately 1.5 million shares traded.
- 2.5 The FSA considers that:
 - (1) by suggesting that Punch Taverns had received information from HMRC about the status of ETI’s REIT application, Mr Gower gave the impression that inside information had been disclosed (there is no evidence that any inside information was in fact imparted to Mr Gower and he accepts that it was not); and
 - (2) Mr Gower’s disclosures were misleading as they did not accurately reflect the discussion between Mr Gower and Mr A earlier that day. Specifically the messages stated:
 - (a) that Punch had heard from HMRC that it was highly likely that ETI’s application for REIT status had been granted; and
 - (b) that ETI were due to announce the grant of REIT status on 13 May 2008.

- 2.6 The FSA considers that Mr Gower knew or ought to have known that he needed to ensure that his disclosures were not inaccurate or misleading. By appearing to disclose inside information (even when not intending to do so) the disclosures were inaccurate and misleading and were highly likely to have a significant impact on ETI's share price. In the circumstances the FSA regards his misconduct as careless and falling below the standard which would have been proper in all the circumstances.
- 2.7 The FSA considers that Mr Gower has breached Principle 3 of the FSA's Statements of Principle for Approved Persons in relation to which it is appropriate to impose a financial penalty on Mr Gower of £50,000.

3. RELEVANT STATUTORY PROVISIONS

- 3.1 Section 66 of the Act provides (in relevant part):

- “(1) The Authority may take action against a person under this section if –*
- (a) it appears to the Authority that he is guilty of misconduct; and*
 - (b) the Authority is satisfied that it is appropriate in all the circumstances to take action against him.*
- (2) A person is guilty of misconduct if, while an approved person –*
- (a) he has failed to comply with a statement of principle issued under section 64;*
- ...
- (3) If the Authority is entitled to take action under this section against a person, it may –*
- (a) impose a penalty on him of such amount as it considers appropriate; or*
 - (b) publish a statement of his misconduct.*
- ...
- (6) “Approved person” has the same meaning as in section 64”.*

4. RELEVANT HANDBOOK PROVISIONS

- 4.1 Statements of principle issued under section 64 of the Act are contained in the FSA's Statements of Principle and Code of Practice for Approved Persons (“APER”), which is part of the FSA's Handbook. The relevant Statement of Principle is set out at APER 2.1.2P which provides:

Statement of Principle 3:

“An approved person must observe proper standards of market conduct in carrying out his controlled function.”

5. RELEVANT POLICY AND GUIDANCE

- 5.1 Section 69(1) of the Act requires the FSA to issue a statement of its policy with respect to the imposition of penalties under section 66 and the amount of such penalties. The FSA's policy in this regard is contained in Chapter 6 of the Decision Procedure and Penalties Manual ("DEPP"). In deciding whether to exercise its power under section 66 in the case of any particular misconduct the FSA must have regard to this statement.
- 5.2 The FSA's published policy states that the principal purpose of imposing 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, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.
- 5.3 DEPP 6.2 sets out a number of factors to be taken into account when the FSA decides whether to take action in respect of misconduct. They are not exhaustive but include the nature, seriousness and impact of the breach, whether the breach was deliberate or reckless, the impact or potential impact of the breach on the orderliness of markets, including whether confidence in those markets has been damaged or put at risk, the conduct of the person after the breach, the previous disciplinary record and compliance history of the person and action taken by the FSA in previous similar cases.
- 5.4 DEPP 6.4 sets out a number of factors to be taken into account when the FSA decides whether to impose a financial penalty or issue a public censure. They are not exhaustive but include deterrent effect, whether a person has made a profit or loss by his misconduct, the seriousness of the breach and the FSA's approach in similar previous cases.
- 5.5 DEPP 6.5 sets out a number of factors to be taken into account when the FSA determines the level of a financial penalty that is appropriate and proportionate to the breach concerned. They are not exhaustive but include deterrence, the nature, seriousness and impact of the breach in question, the extent to which the breach was deliberate or reckless, whether the person on whom the penalty is to be imposed is an individual, his financial resources and other circumstances, the amount of any benefit gained or loss avoided, conduct following the breach, disciplinary record and compliance history and action that the FSA has taken in relation to similar breaches by other persons.

6. FACTS AND MATTERS RELIED ON

- 6.1 In May 2008 Mr Gower was employed as a senior equity research analyst at MF Global. He had been employed as an analyst for approximately seven years, at MF Global and a previous employer. He was an FSA approved person (CF30 Customer Function).
- 6.2 Mr Gower was responsible for MF Global's consumer retail equity research team. One of the areas he covered was the public house sector. MF Global initiated coverage of

the public house sector in February 2008 and this was therefore a new area for Mr Gower.

- 6.3 On 7 May 2008 at 11:00 Mr Gower and a colleague met with Mr A at the Punch Taverns office in London and amongst other matters discussed the possibility of certain public house companies converting to REIT status, a possibility which entails significant tax advantages. Mr Gower and Mr A discussed the application for REIT status made by ETI. The fact of the application was a matter of public knowledge and had been the subject of an announcement by ETI on 28 March 2008. This discussion concerned matters that were already in the public domain, i.e. that ETI had made an application and that HMRC was considering it. In the meeting Mr A expressed an opinion as to the likelihood of ETI soon being granted REIT status and also mentioned recent Punch Taverns contact with HMRC. However as at 11:00 on 7 May 2008 the status of ETI's application for REIT status was not known to Mr A or to Mr Gower and neither was in possession of any inside information as to the status of that application.
- 6.4 Following the meeting Mr Gower returned to the offices of MF Global. At 13:57 he sent the instant Bloomberg message the terms of which are set out at paragraph 2.2 above. Mr Gower sent this to 14 clients of MF Global, a Bloomberg reporter and to MF Global equity salesmen. At approximately 14:20 that same day, Mr Gower sent a similar message internally through the MF Global internal communication system, "MChat". This system was accessible to the worldwide MF Global equity sales desk, consisting of at least 60 individuals.
- 6.5 The FSA considers that Mr Gower's Bloomberg messages gave the impression that they contained inside information. The FSA does not allege that any inside information was in fact imparted or that Mr Gower intended to give the impression that inside information had been imparted. However, by stating that Punch Taverns "*have heard from HM Revenue & Customs*" information concerning ETI's REIT application, Mr Gower gave the impression that inside information had been disclosed.

Mr Gower's subsequent communications

- 6.6 Following his Bloomberg message Mr Gower received responses from five institutional clients via the Bloomberg system.
- 6.7 At approximately 14:19 on 7 May 2008, Mr Gower had the first telephone conversation in which he continued to recount Mr A's alleged statements about receiving information from HMRC in relation to the ETI REIT application. He stated to Mr X of Company A:

GOWER: He said [Mr A], well I spoke to the Revenue. But, he said, yesterday or the day before yesterday and – or last week. He said basically that they are telling them at Punch that the final hurdle for Enterprise Inns is more or less over. And they are highly likely to announce something on the 13th of May.

MR X: Okay. So it's coming from the Revenue

GOWER: Correct. It's coming from the Revenue. And so Punch said to me – you know, we'll wait and see what the details are.

6.8 At about 14:32 on 7 May 2008, Mr Gower had a telephone conversation with Mr Y of Company B that included the following exchange:

GOWER: [Mr A] said that they're indicating to me that Enterprise Inns have been granted REIT status. So he said...

MR Y: So that's – he actually said they indicated to me that Enterprise Inns had been granted ...?

GOWER: Correct, correct, correct. And he said they'd likely therefore - [the ETI CEO] is going to likely announce it on the 13th of May alongside the [ETI interim results]

The Call from Mr A

6.9 At 14.39 on 7 May 2008 Mr Gower was called by Mr A. Mr A had received communications from a number of analysts indicating that Mr Gower said that he had had a conversation with Mr A in which Mr A had confirmed that REIT status had been granted to ETI. Mr A also confirmed that there was a rumour in the market that ETI's application had been granted. Following this call Mr Gower complained to his Compliance Department about the dissemination of his message by others.

Effect on the market

6.10 Following Mr Gower's disclosures, the information in his message was circulated widely in the market. MF Global salesmen who received the message directly from Mr Gower as well as some MF Global salesmen who received it second-hand forwarded the message without any changes to the text. Both the volume of ETI shares traded and the ETI share price rose after Mr Gower's disclosures. The Bloomberg reporter who received Mr Gower's message published an article on Bloomberg at 15:27 on 7 May 2008 (i.e. before the ETI announcement) which quoted Mr Gower's message and referred to the rise in the ETI share price following the dissemination of his message.

6.11 ETI became aware of rumours in the market regarding their possible conversion to REIT status (and the accuracy of those rumours, though there were inconsistencies in the disclosure by Mr Gower) and also the sharp increase in the ETI share price. ETI concluded that an immediate announcement was required.

6.12 At 16:04 ETI announced that it had received confirmation from HMRC that it was eligible to convert to REIT status subject to certain conditions. Between Mr Gower's disclosures at 13:57 and the ETI announcement at 16:04, ETI's share price rose by 4.45% with approximately 6.4 million shares traded. This compared with a price rise between the opening of the market and 13:57 of 4.66% and approximately 1.5 million

ETI shares traded. A chart showing the movement in the ETI share price and the daily number of shares traded on 7 May 2008 is attached as Annex 1. A chart showing the volume of ETI shares traded between 1 May 2008 and 12 May 2008 (with intra day movements) is attached as Annex 2.

7. REPRESENTATIONS

- 7.1 Mr Gower challenged the entirety of the FSA's case against him arguing that a proper understanding of the facts of the case demonstrated that he was not in breach of Principle 3 as alleged. In part Mr Gower made this assertion as he submitted that his conduct fell outside of his controlled function. Furthermore Mr Gower made clear that he disputed that the material disseminated was materially misleading and inaccurate and he stressed that he was neither lacking in integrity nor had he been reckless.
- 7.2 As a preliminary matter Mr Gower represented that the composition and distribution of the message was not advice but rather a communication to his sales force and some of his wholesale clients to give them information about the commercial affairs of ETI. The communication did not indicate the merits or otherwise of any transaction in any investment. This was, Mr Gower stated, entirely consistent with his role as an analyst.
- 7.3 Mr Gower noted that the FSA does not seek to criticise him for disseminating his conversation but rather, it is alleged, that the information he disseminated was misleading and inaccurate. The informality of the MF Global "Chat" system was such that the recipient would understand that the information was simply "broker banter".
- 7.4 It was represented that the extent to which the information was in the public domain was also relevant to establish the context in which the information was disseminated. ETI's application for REIT status had already been announced on 28 March 2008 by regulatory announcement. An update on that application was therefore at that time likely and anticipated.
- 7.5 Mr Gower emphasised throughout his representations that his message was, in context, a substantially accurate dissemination of the information communicated to him by Mr A. The message was neither misleading nor inaccurate and should be considered in the context in which it was sent. If one word in the message had been written differently (changing a 'that' to an 'and') then the FSA's criticisms would fall away. If it had been an analyst's note then it would not have been sent in the informal manner and style in which it was disseminated and the recipients of the information would have recognised it as such.
- 7.6 Mr Gower challenged the FSA's approach in attributing to him, the actions of others, in further disseminating the information. He argued that their behaviour should not aggravate the FSA's case against him as he had no control over their actions and had not encouraged or incited them to pass on any information.
- 7.7 In any event, Mr Gower argued that the FSA had not produced any evidence in support of its assertion that the message composed and distributed by Mr Gower had a material or any effect upon the trading in shares of ETI on 7 May 2008. The FSA had not shown that Mr Gower's actions had impacted on trading volumes or that anyone had traded on Mr Gower's information.

7.8 In all the circumstances, Mr Gower argued that the penalty proposed by the FSA is disproportionate. Representations were made as to the impact of this matter on Mr Gower, personally, professionally and financially and that the FSA should take account of such matters in reaching its decision.

8. CONCLUSION

8.1 On the basis of the facts and matters described above, having taken account of Mr Gower's representations, the FSA is satisfied that he breached Principle 3 of the Statements of Principle for Approved Persons. The FSA is satisfied that Mr Gower was acting within his controlled functions. The FSA accepts that Mr Gower was not lacking in integrity nor was he reckless. However the FSA finds that, in all the circumstances, Mr Gower was careless.

8.2 Statement of Principle 3 provides that "*An approved person must observe proper standards of market conduct in carrying out his controlled function*". The FSA considers that Mr Gower failed to observe proper standards of market conduct by disclosing misleading and inaccurate information to clients of MF Global, a Bloomberg reporter and MF Global salesmen which Mr Gower ought to have known conveyed the impression of being inside information and therefore was highly likely to have a significant impact on ETI's share price.

8.3 The FSA accepts that Mr Gower had not intended to give the impression that this was inside information. In making this finding the FSA notes Mr Gower's action in going to his compliance department to complain about the way in which the message was being disseminated, the inconsistencies in what he conveyed to others and also the content of some of these conversations.

8.4 The FSA considers that Mr Gower's:

- (1) actions on 7 May 2008 had a substantial impact on the market; and
- (2) conduct on 7 May 2008 was careless, such that it fell below that which would have been reasonable in all the circumstances and that he therefore failed to observe proper standards of market conduct in carrying out his controlled function.

9. PENALTY

9.1 In determining the appropriate level of financial penalty the FSA has had regard, in particular, to the following circumstances of this case:

- (1) At the relevant time Mr Gower was employed as a senior equity research analyst at MF Global, a firm of notable size that claims to have more than 300,000 clients. Mr Gower was in a privileged position in that he could affect or influence the market and therefore it was critical that he ensure that any information he disseminated was accurate and not misleading. This is particularly true in this situation as ETI was, at the time, a FTSE 100 stock. The FSA expects the highest standards of market conduct from persons in such a position.

- (2) Mr Gower's conduct had a substantial effect on trading volumes in ETI and on its share price and ETI issued an announcement later the same day. Accordingly, his breach had an impact on the orderliness of the market in ETI shares.
- (3) The FSA considers that Mr Gower ought to have known that his disclosures gave the impression of containing inside information and were inaccurate. But Mr Gower gave no apparent consideration to the consequences to the market of those disclosures, including whether there may be an impact on the orderliness of the market in ETI shares. In the circumstances, the FSA regards his misconduct as careless and falling below the standard which would have been proper in all the circumstances.
- (4) The FSA recognises that Mr Gower has a previously unblemished disciplinary record.

9.2 When exercising its powers, the FSA seeks to act in a way it considers most appropriate for the purpose of meeting its regulatory objectives, which are set out in section 2(2) of the Act. The FSA considers that imposing a financial penalty of £50,000 on Mr Gower meets the regulatory objective of market confidence, that is, maintaining confidence in the financial system.

10. DECISION MAKERS

10.1 The decision which gave rise to the obligation to give this Final Notice was taken by the Regulatory Decisions Committee.

11. IMPORTANT

11.1 This Final Notice is given to Mr Gower in accordance with section 390 of the Act.

Manner of and time for Payment

11.2 The financial penalty must be paid in full by Mr Gower to the FSA by no later than 27 January 2011.

If the financial penalty is not paid

11.3 If all or any of the financial penalty is outstanding the day after due date for payment has passed the FSA may recover the outstanding amount as a debt owed by Mr Gower and due to the FSA.

Publicity

11.4 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

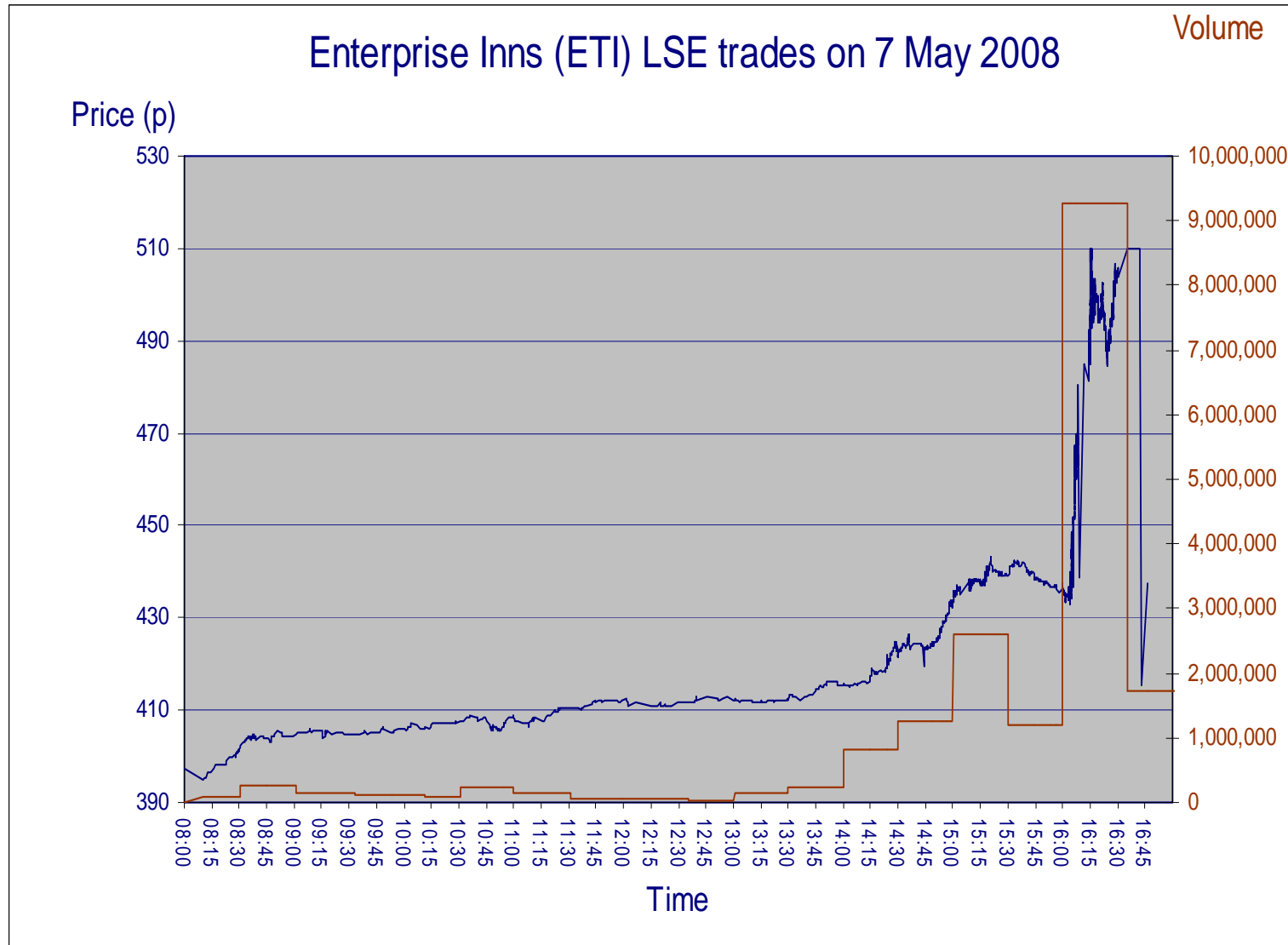
11.5 The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

11.6 For more information concerning this matter generally, you should contact Roddy Cook (Tel: 020 7066 2496) of the Enforcement and Financial Crime Division of the FSA.

Tracey McDermott
FSA Enforcement and Financial Crime Division

Annex 1



On Book Trade Size of ETI 01/05/2008 to 12/05/2008

— Trade Size

