
FINAL NOTICE

To: **Corrado Abbattista**

Reference
Number: **CXA01090**

Date: **15 December 2020**

1. ACTION

1.1. For the reasons given in this Notice, the Authority hereby:

- (1) imposes on Corrado Abbattista a financial penalty of £100,000, pursuant to section 123(1) of the Act, for engaging in market manipulation in contravention of Article 15 of the Market Abuse Regulation; and
- (2) makes an order, pursuant to section 56 of the Act, prohibiting Mr Abbattista from performing any function in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm.

1.2. By a Decision Notice dated 22 July 2020, the Authority notified Mr Abbattista that it had decided to impose on him a financial penalty of £100,000 for market manipulation and make a prohibition order in the terms set out at paragraph 1.1(2) above.

1.3. Mr Abbattista referred the matter to the Upper Tribunal (Tax and Chancery Chamber) ("the Tribunal") on 18 August 2020. On 10 November 2020, Mr Abbattista withdrew his reference with the Tribunal's consent.

2. SUMMARY OF REASONS

2.1. Between 20 January and 15 May 2017 (the "Relevant Period"), Mr Abbattista, an experienced trader and a portfolio manager, partner and Chief Investment Officer

at Fenician Capital Management LLP ("Fenician"), in the course of his role with Fenician, placed large orders (by reference to the average order size in those shares in the market at that time) for CFDs referenced to the shares of Marks and Spencer Group Plc ("M&S"), Diageo Plc ("Diageo"), Istock Plc ("Istock"), Thomas Cook Group Plc ("Thomas Cook") and Redrow Plc ("Redrow"), (together the "Companies") which he did not intend to execute (the "Misleading Orders"), on the opposite side of the order book to existing smaller orders which he intended to execute (the "Genuine Orders").

- 2.2. Through these large orders, Mr Abbattista falsely represented to the market an intention to buy/sell when his true intention was the opposite. These orders gave false and misleading signals as to demand/supply because Mr Abbattista did not place them with a genuine intention that they should be executed.
- 2.3. Given the Misleading Orders placed by Mr Abbattista were for volumes of shares far greater than the typical market size, they would likely have had a material impact on other market participants and would have created a false and misleading impression regarding the true supply of and demand for the shares in question.
- 2.4. A feature of Mr Abbattista's conduct was that he always placed the large Misleading Orders such that their full size was visible to other market participants. In contrast, when he placed the Genuine Orders he almost always placed them as "Iceberg Orders". An Iceberg Order is a permitted facility available to market participants whereby the total amount of an order to buy or sell a security is divided into a portion which is visible to other market participants, and a portion which is hidden. This reduces the risk that the order will impact the price of the security in question, whilst still allowing the market to see the direction in which that trader wishes to trade. That he did not use this facility when placing the Misleading Orders demonstrates that he wanted to maximise the impression created by these orders.
- 2.5. Where Mr Abbattista placed a large misleading buy order it would likely have created the impression that there was a material buyer in the market. Where he placed a large Misleading Sell Order it would likely have created the impression that there was a material seller in the market. The number of shares in the Misleading Orders were many multiples of both the part of the genuine Iceberg Orders visible to the market and the visible order book average at the time.
- 2.6. The identity of the person placing orders with the direct market access ("DMA") tools used by Mr Abbattista would be known only to the broker that was providing

the platforms and systems. Therefore, market participants would not have known that Mr Abbattista had both buy orders and sell orders in the market at the same time.

- 2.7. Other market participants would likely have altered their trading strategies as a result. Where he created the impression that there was a material buyer in the market, other buyers, anticipating that the market was likely promptly to move higher, would bid more for a security than in the absence of his misleading buy order (and vice-versa). Other market participants were thereby misled about the true state of supply and demand in the market.
- 2.8. Mr Abbattista was aware of the risk that his actions might constitute market manipulation, but recklessly went ahead with those actions anyway.
- 2.9. The Authority has decided to take this action because:
 - (a) during the Relevant Period Mr Abbattista engaged in market manipulation as defined by Article 12(1)(a) of the Market Abuse Regulation, by placing the Misleading Orders which gave, or were likely to have given, false or misleading signals as to the supply of, or demand for, shares in the Companies, in contravention of Article 15 of the Market Abuse Regulation; and
 - (b) as a result of his having recklessly engaged in market manipulation, he lacks integrity and is not a fit and proper person to perform any function in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm.
- 2.10. The Authority therefore:
 - (a) imposes on Mr Abbattista a financial penalty of £100,000, pursuant to section 123(1) of the Act, for engaging in market manipulation; and
 - (b) makes an order prohibiting Mr Abbattista from performing any function in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm, pursuant to section 56 of the Act. This order is effective from the date of this notice.

3. DEFINITIONS

- 3.1. The definitions below are used in this Notice:

“the Act” means the Financial Services and Markets Act 2000;

“the Authority” means the Financial Conduct Authority;

“Best Bid” means the highest price at which a person was willing to buy the security;

“Best Offer” means the lowest price at which a person was willing to sell the security;

“CFD” means contract for difference, an agreement between a customer and a financial institution, where the difference in the value of a specified asset at the beginning and end of the contract is exchanged. To trade in these products a customer need only deposit a small percentage of the value of the contract. In the case of equities, these products allow customers to speculate on share price movement without the need to buy the underlying shares;

“Colleague A” means the individual mentioned at paragraph 4.79, being a senior colleague of Mr Abbattista;

“Companies” means Diageo, Istock, M&S, Redrow and Thomas Cook together;

“Dark Pool” means a trading platform with no pre-trade transparency as all orders are hidden as to price and volume and are anonymous;

“DEPP” means the Decisions Procedures and Penalty Manual, part of the Handbook;

“Diageo” means Diageo Plc;

“DMA” means direct market access and is an electronic trading facility that enables investors in financial instruments to directly place orders and trade via the order books of major exchanges;

“Fenician” means Fenician Capital Management LLP a firm formerly authorised by the Authority (reference number 417507) which was dissolved on 26 March 2019;

“Funds” means two off shore hedge funds for which Fenician was appointed investment manager, which in practice operated on the same investment strategy;

“Genuine Orders” has the meaning set out at paragraph 2.1, and “Genuine Buy Order” and “Genuine Sell Order” are to be interpreted accordingly;

“Handbook” means the Authority’s Handbook of Rules and Guidance;

“Istock” means Istock Plc;

“Iceberg Order” means an order to buy or sell a security where the total amount of the order is divided into a visible portion, which is visible to other market participants, and a hidden portion which is not. When the visible part of the order is filled, a further part of the hidden portion of the same size becomes visible.

“Limit Order” means a type of order to purchase or sell a security at a specified price or better. For buy Limit Orders, the order will be executed only at the limit price or a lower one, while for sell Limit Orders, the order will be executed only at the limit price or a higher one.

the “LSE” means the London Stock Exchange;

“MAR” means the part of the Authority’s Handbook of rules and guidance entitled “Market Conduct”;

“the Market Abuse Regulation” means Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse;

“M&S” means Marks and Spencer Group Plc;

“MiFID II” means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments;

“Misleading Orders” has the meaning set out at paragraph 2.1 above, and “Misleading Buy Order” and “Misleading Sell Order” are to be interpreted accordingly;

“Multilateral Trading Facility” or “MTF” means a trading venue that facilitates the exchange of financial instruments between multiple parties;

“RDC” means the Regulatory Decisions Committee of the Authority (see further at paragraph 8.1 below);

“Redrow” means Redrow Plc;

“the Relevant Period” means the period from 20 January 2017 to 15 May 2017;

“SOR” means the Smart Order Router system operated by the DMA provider which processed Mr Abbattista’s DMA orders (see further paragraph 4.11 below);

“Thomas Cook” means Thomas Cook Group Plc;

“Touch” means the highest price to buy and the lowest price to sell; and

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

4. FACTS AND MATTERS

Fenician and Mr Abbattista

- 4.1. Mr Abbattista was the founding partner and Chief Investment Officer at Fenician which he founded in December 2004. During the Relevant Period, Fenician was an investment management firm authorised by the Authority. During the Relevant

Period, Mr Abbattista was approved to perform the CF4 (Partner) and CF30 (Customer) controlled functions; he was also personally invested in the Funds.

- 4.2. Mr Abbattista's primary role was to manage and oversee the portfolio to meet the investment goals and objectives of the Funds as well as to manage, with others, the trading books for the investment portfolios of the Funds. He also chaired the Investment Committee within Fenician which decided in which securities to invest, in what amount, and the direction (i.e. whether as a seller or a buyer) of the investment. As Chief Investment Officer, Mr Abbattista had the final say on such decisions.
- 4.3. During his time at Fenician, Mr Abbattista received compliance training from external specialists appointed by the firm. This included refresher training in May 2016 which covered, amongst other matters, the regulations relating to market abuse and gave examples of conduct that might constitute market manipulation, including 'orders removed before execution' and 'spoofing' under examples of transactions that might be false or misleading.

Fenician's approach to investing

- 4.4. The business of Fenician was managing the Funds, as long/short equity funds, trading mainly in highly liquid European equities. The Funds' investment decisions followed a structured and considered process. An analyst or portfolio manager would review a shortlist of stocks and conduct research, attend roadshows and collate information. They would then prepare a report which would be presented to the Investment Committee and a decision on whether to invest would be made.
- 4.5. That decision would set out the proportion of the portfolio which would be invested and the end target price. Usually those decisions were directional (i.e. one stock either sold or bought; not both), or paired (two stocks, one bought and the other sold, depending on their correlation). Once a decision to invest was made, the decision of when and how to buy would rest with the portfolio managers. Fenician did not consistently maintain Investment Committee minutes during the Relevant Period. Those minutes that it maintained during 2016 do not provide any meaningful record of its investment decisions in individual companies or investment strategy generally.
- 4.6. In general, 60% of the long/short investments were held for three to nine months, although some stocks could be held for shorter or longer terms. Whilst Fenician could engage in intra-day trading, it was not the Funds' objective as a value investor looking to achieve profits over several months. Opening a position with the objective of unwinding it later that day was extremely rare and would only

occur where the market was very volatile; such circumstances did not arise at the Funds during the Relevant Period.

Management and performance fees

- 4.7. Fenician had two sources of revenue. The first was the management fee for managing assets. The second was a performance fee if the Funds performed to a particular standard. In the financial year 2016 to 2017 the Funds did not achieve that standard and as a result Fenician received only its management fee. From this all costs had to be paid before an allocation could be made to its members, including Mr Abbattista. As a result, no allocation was made to Mr Abbattista for that financial year.

Direct Market Access by Mr Abbattista

- 4.8. Throughout the Relevant Period, Mr Abbattista placed the majority of his orders and executed the majority of his trades using a direct market access ("DMA") system which was facilitated by a display screen. The screen would identify the "Best Bid" (meaning the highest price at which a person was willing to buy the security) and the "Best Offer" (meaning the lowest price at which a person was willing to sell the security).
- 4.9. It did not, however, show the hidden portion of any orders which were "Iceberg Orders". An Iceberg Order is an order to buy or sell a security where the total amount of the order is divided into a portion which is visible to other market participants, and a portion which is hidden. When the visible portion of the order is filled, a further part of the hidden portion of the same size becomes visible. This reduces the risk that the order will impact the price of the security in question, whilst still allowing the market to see the direction in which that trader wishes to trade.
- 4.10. Through the display screen, Mr Abbattista could place an order to buy or sell a CFD in a listed security. The order would be replicated by the DMA provider as an order to buy or sell the security itself. In placing an order, he could manually specify:
- (a) the volume he wished to buy or sell;
 - (b) the price at which he wished to buy or sell; for example, he could specify a particular price, state that he would accept a price up to a particular limit, or accept whatever price was available in the market. The display screen would show Mr Abbattista the Best Bid and Best Offer at the time he was placing the trade. Generally, the further the price of an order is

away from the Best Bid or Best Offer, the less likely it is that such an order will execute on a timely basis, or at all;

- (c) the way in which his order would display to the market; for example, he could manually direct that his order should be entered as an Iceberg Order; and
- (d) the duration for which his order would remain available; for example, he could direct that it remain available until executed in full, he could direct that whatever part of his order was not immediately executed should be cancelled, or he could direct that any part of his order which had not been executed by the close of trading that day should be cancelled.

4.11. When Mr Abbattista placed an order the DMA system, in conjunction with an order routing system (the "Smart Order Router" ("SOR")) operated by the DMA provider, would process the order as follows:

- (a) the system would first assess whether there was sufficient liquidity within the Dark Pool associated with the system to execute all or part of the order. If any such liquidity was available, the system would execute whatever part of Mr Abbattista's order it could;
- (b) for any remaining unexecuted volume (and subject to any Iceberg Order placed by Mr Abbattista), the system would show that unexecuted volume as available across four trading venues, namely: Turquoise, LSE, BATS and Chi-x. The proportion of the order shown on each trading venue was determined by an internal algorithm within the DMA system, taking account of where the order was most likely to trade;
- (c) if the order was not an Iceberg Order, the full volume would be shown from the beginning, albeit spread across the four trading venues. As portions of the order executed, the volume visible to the market as available would reduce; and
- (d) if a portion of the order was not visible to the market, as it was an Iceberg Order, only the visible portion would be shown, again spread across the four trading venues. As portions of the order executed, any volume previously not visible to the market due to the Iceberg Order, would replace the executed portion, such that the amount visible to the market as available remained the same. This would continue until there was no remaining volume not visible to the market, at which point executions would reduce the volume visible to the market as still available.

- 4.12. In practice, the splitting of the orders across the four trading venues did not materially impact a typical market participant's understanding of available volume because many market participants view aggregated order books (albeit they could view volume by individual platform should they so wish) which consolidate the volume available on the four trading venues. This consolidated view is indicated by the graphs in Annex C.
- 4.13. During the Relevant Period, Fenician was only subscribed to DMA data feeds from the LSE and not to feeds from the three other trading venues to which Mr Abbattista's orders might be directed. As a result Mr Abbattista's DMA screen would only display that volume of his orders that was directed to and placed on the LSE (as indicated by the text below the graphs in Annex C). Market participants would not be able to see the identity of the person placing the order.
- 4.14. Any part of Mr Abbattista's order which executed resulted in Fenician entering into a CFD for the volume of shares in question, generally with the institution with which the DMA system was associated. The counterparty would not become aware of Mr Abbattista or Fenician's involvement, even on settlement of the trade.
- 4.15. On occasion Mr Abbattista, instead of using DMA, would use external brokers to place orders. He did so through Bloomberg messages and by telephone.
- 4.16. When market participants place orders into the market these can be placed at the Best Bid or Best Offer price, or a number of price steps or increments away from the Best Bid or Best Offer. These price increments are known as ticks. A tick size is the smallest increment permitted in quoting or trading a security. Whilst tick sizes vary between primary exchanges and trading venues the market typically follows the increments set by the primary exchange (in this Notice the LSE). During the Relevant Period, for each stock mentioned in this Notice, the LSE minimum tick sizes were as follows:
- (a) Thomas Cook – 0.05p
 - (b) M&S, Istock and Redrow – 0.1p
 - (c) Diageo – 0.5p

Mr Abbattista's trading in M&S on 20 January 2017

- 4.17. At the opening of the market on 20 January 2017, the Funds held a short position in M&S of 200,000 shares, a position which they had held since 3 January 2017.
- 4.18. While seeking to increase this short position through placing Genuine Sell Orders, Mr Abbattista entered three large Misleading Buy Orders. His trading and

graphical representations of the visible, consolidated market for M&S shares during this sequence of orders are set out in Annex C.

Fenician's investments in M&S

- 4.19. The Funds maintained a short position of between 336,000 and 400,000 M&S shares until 8 May 2017.

Mr Abbattista's abusive conduct in relation to M&S

- 4.20. In the case of the buy orders, the placing of the orders indicated to the market that a market participant wanted to buy between 150,000 to 250,000 M&S shares at prices between 340.30p to 340.90p.
- 4.21. In fact, Mr Abbattista did not want to buy this volume of M&S shares; furthermore, the orders directly conflicted with the sell orders.
- 4.22. That Mr Abbattista was not a genuine buyer is demonstrated by the fact that he reduced his chances of executing the order by:
- (a) pricing such orders at 0.2p away from the existing Best Bid with at least 9,600 shares ahead of him, and
 - (b) cancelling these orders after they had been available to execute for between six to 18 seconds, a much shorter duration than the sell orders had been available (between two minutes nine seconds and nine minutes seven seconds).
- 4.23. That Mr Abbattista was not a genuine buyer is further demonstrated by the fact that:
- (a) he did not re-enter the market to place any further buy orders in M&S during the days immediately following the trade, and
 - (b) the Funds did not substantially reduce their short position in M&S until 5 May 2017.
- 4.24. Placing the buy orders gave, or was likely to give, the impression that there was greater genuine demand for M&S shares than was the case. The signals about the volume of demand given by these orders were maximised because:
- (a) Mr Abbattista placed the orders for a volume of shares far greater than the typical market size, much larger than the prevailing volumes at and near the Touch, and significantly impacting the balance/imbalance between bid and offer; and
 - (b) he did not place them as Iceberg Orders; their full volume was therefore immediately visible to the market.

- 4.25. Mr Abbattista's actions in relation to the buy orders contrast with those in relation to the sell orders, genuine orders which he intended to and subsequently did execute:
- (a) he manually specified a price for the sell orders which was equal to the Best Offer, giving an improved chance of execution; and
 - (b) he manually entered the sell order at 10:56:43 as an Iceberg Order intending thereby to reduce the risk that the price of M&S shares would move against him as the market reacted to his order.

Mr Abbattista's trading in M&S on 8 May 2017

- 4.26. Mr Abbattista engaged in a similar pattern of abusive conduct in relation to the shares of M&S on 8 May 2017.
- 4.27. At the opening of the market on 8 May 2017, the Funds held a short position in M&S of 400,000 shares, a position which they had held since 14 April 2017. While seeking to reduce this short position through placing Genuine Buy Orders, Mr Abbattista entered several large Misleading Sell Orders. His trading and graphical representations of the visible, consolidated market for M&S shares during this sequence of orders are set out in Annex C.

Fenician's investments in M&S

- 4.28. Between 9 May and 11 May 2017, the Funds bought a further 200,000 M&S shares thereby closing their position in full.

Mr Abbattista's abusive conduct in relation to M&S

- 4.29. In the case of the sell orders, the placing of those orders indicated to the market that a market participant wanted to sell between 150,000 and 200,000 M&S shares at prices between 376.1p and 379.1p per share.
- 4.30. In fact, he did not want to sell this volume of M&S shares; each of the sell orders directly conflicted with one of the buy orders.
- 4.31. That he was not a genuine seller is demonstrated by the fact that he reduced his chances of executing these orders by:
- (a) pricing such orders between 0.3p and 0.4p away from the existing Best Offer with at least 15,000 shares ahead of him; and
 - (b) cancelling such orders after they had been available for between four and 95 seconds, much shorter durations than the buy orders were available for (between five minutes 32 seconds and four hours 12 minutes).
- 4.32. That he was not a genuine seller is further demonstrated by the fact that:

- (a) he did not re-enter the market to place any further sell orders in M&S that day, and
 - (b) between 9 May and 11 May 2017, the Funds bought a further 200,000 M&S shares thereby closing their position in full.
- 4.33. Placing sell orders gave, or was likely to give, the impression that there was greater genuine supply of M&S shares than was the case. The signals about the volume of supply given by the sell orders were maximised because:
- (a) Mr Abbattista placed the orders for a volume of shares far greater than the typical market size, much larger than the prevailing volumes at and near the Touch, and significantly impacting the balance/imbalance between bid and offer; and
 - (b) he did not place them as Iceberg Orders.
- 4.34. Mr Abbattista's actions in relation to the sell orders contrast with those in relation to the buy orders, genuine orders which he intended to and subsequently did execute:
- (a) he manually specified a price for each of the buy orders which was close to the Best Bid, giving an improved chance of execution; and
 - (b) he manually entered the buy orders as Iceberg Orders intending thereby to reduce the risk that the market would react to these orders by moving the price of M&S shares against him.

Mr Abbattista's abusive trading in other shares

- 4.35. Mr Abbattista used a similar abusive strategy in the shares of the following companies.

Diageo

- 4.36. Mr Abbattista engaged in similar abusive conduct in relation to the shares of Diageo on 26 January 2017.
- 4.37. At the opening of the market on 26 January 2017, the Funds held a long position in Diageo of 88,000 shares, a position which they had held since 16 January 2017. While seeking to reduce his long position through placing a Genuine Sell Order, Mr Abbattista entered four large Misleading Buy Orders.
- 4.38. He placed the Genuine Sell Order by telephone or by Bloomberg through an external broker. He placed all the Misleading Buy Orders using his DMA system. His trading and graphical representations of the visible, consolidated market for Diageo shares during this sequence of orders are set out in Annex C.

Fenician's investments in Diageo

4.39. On 2 February 2017, the Funds sold their remaining Diageo shares.

Mr Abbattista's abusive conduct in relation to Diageo

4.40. In the case of the Diageo Misleading Orders, the placing of those orders indicated to the market that a market participant wanted to buy between 30,000 and 50,000 Diageo shares at a price between 2237.50p and 2238.50p per share.

4.41. In fact, he did not want to buy this number of Diageo shares; furthermore, each of the buy orders directly conflicted with the sell order.

4.42. That he was not a genuine buyer is demonstrated by the fact that he reduced his chances of executing these orders by:

(a) pricing them between 1p and 2p away from the existing Best Bid typically with at least 13,000 shares ahead of him; and

(b) cancelling these orders after they had been available to execute for between almost four and 84 seconds, a much shorter duration than the sell order had been available (nine minutes, 2 seconds).

4.43. That he was not a genuine buyer is further demonstrated by the fact that:

(a) he did not re-enter the market to place any further buy orders in Diageo that day, and

(b) on 2 February 2017, the Funds sold their remaining Diageo shares.

4.44. Placing the buy orders gave, or was likely to give, the impression that there was greater genuine demand for Diageo shares than was the case. The signals about the volume of demand given by the buy orders were maximised because:

(a) Mr Abbattista placed the orders for a volume of shares far greater than the typical market size, much larger than the prevailing volumes at and near the Touch, and significantly impacting the balance/imbalance between bid and offer; and

(b) he did not place them as Iceberg Orders.

4.45. Mr Abbattista's actions in relation to the buy orders contrast with those in relation to the sell order, a genuine order which he intended to and subsequently did execute:

(a) he changed the price of the sell order to bring it closer to the Best Offer thereby giving an improved chance of execution; and,

(b) the sell order was entered by the broker as an Iceberg Order.

Ibstock

- 4.46. Mr Abbattista engaged in a similar course of abusive conduct in relation to the shares of Ibstock on 28 April 2017.

On 27 April 2017, the Funds began building a position in Ibstock by purchasing 400,000 shares, prior to which they had not held any position in Ibstock. While seeking to increase this long position through placing a Genuine Buy Order, Mr Abbattista entered a large Misleading Sell Order.

- 4.47. The Genuine Buy Order was placed by telephone through a broker. The Misleading Sell Order was placed by DMA. His trading and graphical representations of the visible, consolidated market for Ibstock shares during this sequence of orders are set out in Annex C.

Fenician's investments in Ibstock

- 4.48. By 4 May 2017 the Funds had increased their position in Ibstock to 800,000 shares, a position which they held until the end of May 2017.

Mr Abbattista's abusive conduct in relation to Ibstock

- 4.49. In the case of the sell order, the placing of this order indicated to the market that a market participant wanted to sell 100,000 Ibstock shares at a price of 228.30p.
- 4.50. In fact, he did not want to sell this number of Ibstock shares; furthermore, the order directly conflicted with the purchase order. He did not inform the broker about the existence of the sell order.
- 4.51. That he was not a genuine seller is demonstrated by the fact that he reduced his chances of executing the order by:
- (a) pricing it 0.3p away from the existing Best Offer with at least 1,300 shares ahead of him; and
 - (b) cancelling it 36 seconds after he was informed that the buy order was being partially filled, and when it had been available for execution for 4 minutes 55 seconds. The buy order took one hour 50 minutes to execute in full.
- 4.52. That he was not a genuine seller is further demonstrated by the fact that:
- (a) he did not re-enter the market to place any further sell orders in Ibstock that day, and
 - (b) by 4 May 2017, the Funds had increased their position in Ibstock to 800,000 shares, a position which they held until the end of May 2017.
- 4.53. Placing the sell order gave, or was likely to give, the impression that there was greater genuine supply of Ibstock shares than was the case. In fact, he was only

able to fill half of his buy order at this point. The sell order was cancelled leaving the broker to execute the balance of the buy order in the market. The signal about the volume of supply given by the sell order was maximised because it was not placed as an Iceberg Order.

- 4.54. Mr Abbattista's actions in relation to the sell order contrast with those in relation to the buy order, a genuine order which he intended to and subsequently did execute:
- (a) he specified the price of the buy order at the Best Bid, giving an improved chance of execution; and
 - (b) he instructed that the buy order be processed within the current bid/offer spread leaving the balance to work in the market, intending thereby to reduce the risk that the market would react to his order by moving the price of Ibstock shares against him.

Thomas Cook

- 4.55. Mr Abbattista engaged in a similar course of abusive conduct in relation to the shares of Thomas Cook on 15 May 2017.
- 4.56. At the opening of the market on 15 May 2017, the Funds had a long position in Thomas Cook of 1,438,000 shares, a position which they had held since 30 December 2016. While seeking to reduce this long position through placing Genuine Sell Orders, Mr Abbattista entered seven large Misleading Buy Orders. His trading and graphical representations of the visible, consolidated market for Thomas Cook shares during this sequence of orders are set out in Annex C.

Fenician's investments in Thomas Cook

- 4.57. On 16 May 2017, the Funds sold their remaining Thomas Cook shares.

Mr Abbattista's abusive conduct in relation to Thomas Cook

- 4.58. In the case of the buy orders, the placing of those orders indicated to the market that a market participant wanted to buy 150,000 Thomas Cook shares at a price of between 92.50p and 93.35p.
- 4.59. In fact, he did not want to buy this number of Thomas Cook shares; furthermore, the orders directly conflicted with the sell orders.
- 4.60. That he was not a genuine buyer is demonstrated by the fact that he reduced his chances of executing these orders by:
- (a) pricing them between 0.1p and 0.15p away from the existing Best Bid with at least 11,000 shares ahead of him; and

- (b) cancelling such orders after they had been available for between four and 48 seconds.
- 4.61. That he was not a genuine buyer is further demonstrated by the fact that:
- (a) he did not re-enter the market to place any further buy orders in Thomas Cook that day, and
 - (b) on 16 May 2017, the Funds sold their remaining Thomas Cook shares.
- 4.62. Placing the buy orders gave, or was likely to give, the impression that there was greater genuine demand for Thomas Cook shares than was the case. The signals about the volume of demand given by the buy orders were maximised because:
- (a) Mr Abbattista placed the orders for a volume of shares far greater than the typical market size, much larger than the prevailing volumes at and near the Touch, and significantly impacting the balance/imbalance between bid and offer; and
 - (b) He did not place them as Iceberg Orders.
- 4.63. Mr Abbattista's actions in relation to the buy orders contrast with those in relation to the sell orders, genuine orders which he intended to and did partially execute:
- (a) he manually specified a price for each of the sell orders which was close to the Best Offer, giving an improved chance of execution; and
 - (b) he manually entered the sell orders as Iceberg Orders.

Redrow

- 4.64. Mr Abbattista engaged in a similar course of abusive conduct in relation to the shares of Redrow between 24 and 27 February 2017.
- 4.65. At the opening of the market on 24 February 2017, the Funds held a long position in Redrow of 100,000 shares, a position which they had held since 15 February 2017. While seeking to reduce this long position through placing Genuine Sell Orders, Mr Abbattista entered seven large Misleading Buy Orders.
- 4.66. Due to the number of orders that form part of this course of conduct they are described below in summary only and without the inclusion of charts at Annex C.
- 4.67. Between 24 and 27 February 2017, he entered a series of nine genuine orders ("the Redrow Genuine Orders") which indicated an intention to sell Redrow shares and seven Misleading Orders ("the Redrow Misleading Orders") which indicated an intention to buy Redrow shares. Six out of the nine Redrow Genuine Orders were placed as Iceberg Orders but none of the Redrow Misleading Orders were placed as Iceberg Orders.

- 4.68. On all but one occasion, at the time the Redrow Misleading Orders were placed, he manually specified a price for those Misleading Orders which was further from the relevant prevailing Best Bid than the distance of the Redrow Genuine Order price from its then relevant prevailing Best Offer. There was one occasion when the Misleading Order was placed closer to the Best Bid than the distance of the Redrow Genuine Order priced from the Best Offer. In this instance both the Misleading and Genuine Orders were subsequently cancelled without buying or selling any shares.

Fenician's investments in Redrow

- 4.69. On 28 February 2017, the Funds sold their remaining position in Redrow.

Mr Abbattista's abusive conduct in relation to Redrow

- 4.70. In the case of the Redrow Misleading Orders, the placing of those orders indicated to the market that a market participant wanted to buy between 20,000 and 25,000 Redrow shares at prices between 484.6p and 488.1p per share.

- 4.71. In fact, he did not want to buy this volume of Redrow shares; each of the Redrow Misleading Orders directly conflicted with one of the Redrow Genuine Orders.

- 4.72. That he was not a genuine buyer is demonstrated by the fact that he reduced his chances of executing these orders by cancelling them after they had been available to execute for between three and 18 seconds, much shorter durations than the Redrow Genuine Orders which had been available for between 37 seconds and two hours and 40 minutes.

- 4.73. That he was not a genuine buyer is further demonstrated by the fact that:

(a) he did not re-enter the market to place any further buy orders in Redrow that day, and

(b) on 28 February 2017, the Funds sold their remaining position in Redrow.

- 4.74. Placing the Redrow Misleading Orders gave, or was likely to give, the impression that there was greater genuine demand for Redrow shares than was the case. The signals about the volume of demand given by the Redrow Misleading Orders were maximised because:

(a) Mr Abbattista placed such orders for volumes of shares that were at least double the volumes of his Genuine Orders; and

(b) he did not place them as Iceberg Orders.

- 4.75. Mr Abbattista's actions in relation to the Redrow Misleading Orders contrast with those in relation to the Redrow Genuine Orders, genuine orders which he intended

to execute. He manually placed six of the nine Redrow Genuine Orders as Iceberg Orders.

Mr Abbattista's explanation for his conduct

- 4.76. Mr Abbattista has stated that the Misleading Orders were placed to give effect to a particular trading technique, the primary purpose of which was to identify "hidden liquidity" (i.e. liquidity that was not visible to him or the wider market simply by looking at the order book) in order to gain market intelligence.
- 4.77. Amongst a number of other features of the technique that he described was that with his Genuine Order in place, he would place his "trial bid" (or offer) becoming or matching the Best Bid price for the same equity, which was larger than the standard size of order in the market at that time for the equity in question (those orders described in this notice as Misleading Orders). He said he did so in order to find out if there was a hidden seller in the market who was inclined to trade on the Best Bid but who would only sell to a buyer of a sufficiently large size. He explained that each trial bid (or offer) was a genuine bid (or offer), on which he was prepared and able to trade at all times, at the Touch, in larger than standard market size.
- 4.78. In fact, as set out above and in Annex C, Mr Abbattista did not place any of his trial bids (or offers) such that they became or matched the Best Bid or Best Offer for the equity in question.

Mr Abbattista's discussions with a colleague

- 4.79. Mr Abbattista did not discuss the technique with colleagues before beginning to use it; for example, in meetings of Fenician's Investment Committee. However, on three occasions from early 2017 to May 2017, Mr Abbattista mentioned privately to Colleague A, a respected colleague of his, that he had placed bids in front of selling orders, saying that he had done this to test liquidity. On the first two occasions, Colleague A advised Mr Abbattista not to adopt that strategy; on the final occasion, he told Mr Abbattista more directly that he should not do so, as it might attract scrutiny from the exchange, the DMA provider or the regulator.
- 4.80. Mr Abbattista agreed not to adopt the strategy again. The last Misleading Order took place on 15 May 2017.

5. FAILINGS

- 5.1. The regulatory provisions relevant to this Notice are referred to in Annex A.

Article 2 of the Market Abuse Regulation (Scope)

- 5.2. By virtue of Article 2(1)(a) of the Market Abuse Regulation, its provisions apply to financial instruments, as defined by Article 4(1)(15) of MiFID II, admitted to trading on a regulated market, which defines a financial instrument as those instruments specified in Section C of Annex I. This includes, amongst other financial instruments, transferable securities. The definition of “regulated market” in the Market Abuse Regulation derives from Article 4(1)(21) of MiFID II and includes the LSE.
- 5.3. Accordingly, the provisions of the Market Abuse Regulation apply to the shares of the Companies.

Article 15 of the Market Abuse Regulation (Prohibition of market manipulation)

- 5.4. Article 15 of the Market Abuse Regulation, as a result of Article 12(1)(a), prohibits the placing of an order to trade which gives, or is likely to give a false or misleading signal as to the supply of or demand for a UK listed share.

Article 12 of the Market Abuse Regulation (Market manipulation)

- 5.5. Article 12(1)(a) of the Market Abuse Regulation states that market manipulation shall comprise the following activities (so far as relevant to this Notice):

“entering into a transaction, placing an order to trade or any other behaviour which:

gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, [...];

unless the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice as established in accordance with Article 13.”

- 5.6. Mr Abbattista’s Misleading Orders were not carried out for legitimate reasons, nor did they conform with an accepted market practice as established in accordance with Article 13.
- 5.7. Mr Abbattista engaged in market manipulation as defined by Article 12 and in contravention of Article 15 of the Market Abuse Regulation, as in placing the Misleading Orders he gave, or is likely to have given, false and misleading signals as to the supply or demand for the shares to which the Misleading Orders related. This was because in placing the Misleading Orders Mr Abbattista signalled that he

wanted to buy or sell a specified number of shares. In fact, he did not wish to trade in that manner.

- 5.8. The Authority considers that, as an experienced market professional, Mr Abbattista must have been aware of the risk that his actions might constitute market abuse, in that his Misleading Orders would give false or misleading signals to other market participants as to the supply of, or demand for, shares in the Companies, but recklessly went ahead with them anyway. He did not seek the views of colleagues before starting to use the technique. Further, he did not heed the misgivings expressed by Colleague A about the technique when he first mentioned it privately to Colleague A. The Authority considers that Mr Abbattista closed his mind to those misgivings, which should have caused him to consider whether his actions were acceptable. He only ceased using the technique when told by Colleague A directly that he should not use it.

Fitness and Propriety

- 5.9. Mr Abbattista is not a fit and proper person to perform any function in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm. This is because his conduct in recklessly engaging in market abuse lacked integrity.

6. SANCTION

Financial penalty

- 6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. The Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5C sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in market abuse cases.

Step 1: disgorgement

- 6.2. 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.
- 6.3. The Authority has not identified any financial benefit that Mr Abbattista derived directly from the market abuse. Step 1 is therefore £0.

Step 2: the seriousness of the breach

- 6.4. Pursuant to DEPP 6.5C.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the market abuse. That figure is dependent on whether

or not the market abuse was referable to the individual's employment. The market abuse committed by Mr Abbattista was referable to his employment. In cases where the market abuse was referable to the individual's employment, the Step 2 figure will be the greater of:

- (1) a figure based on the percentage of the individual's "relevant income";
- (2) 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
- (3) for market abuse cases which the Authority assesses to be seriousness level 4 or 5, £100,000.

6.5. The Authority has not identified any profit made or loss avoided for Mr Abbattista's own financial benefit from the market abuse.

6.6. An individual's relevant income is the gross amount of all benefits they received from the employment in connection with which the market abuse occurred for the period of the abuse.

6.7. The period of the market abuse committed by Mr Abbattista was from 20 January 2017 to 15 May 2017. Pursuant to DEPP 6.5C.2(5), where the market abuse lasted less than 12 months, the relevant income will be that earned by the individual in the last 12 months preceding the final market abuse. Therefore, the relevant period for calculating Mr Abbattista's relevant income is the 12-month period ending on 15 May 2017. Mr Abbattista's relevant income in the 12-month period ending on 15 May 2017 was £5249.14.

6.8. In cases where the market abuse was referable to the individual's employment:

- (1) the Authority determines the percentage of relevant income which applies by considering the seriousness of the market abuse and choosing a percentage between 0% and 40%; and the Authority determines the profit multiple which applies by considering the seriousness of the market abuse and choosing a multiple between 0% and 40%.

- (2) The percentage range and profit multiple range are 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 there are the following five levels:

Level 1 – 0%, profit multiple of 0

Level 2 – 10%; profit multiple of 1;

Level 3 – 20%; profit multiple of 2;

Level 4 – 30%; profit multiple of 3; and

Level 5 – 40%; profit multiple of 4.

- 6.9. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the market abuse, and whether it was committed deliberately or recklessly.
- 6.10. DEPP 6.5C.2G(14) states that factors tending to show the market abuse was committed recklessly include, amongst other factors, that the individual appreciated there was a risk that his actions would result in market abuse and failed adequately to mitigate that risk (DEPP 6.5C.2G(14)(a)); and the individual was aware there was a risk that his actions could result in market abuse but failed to check if he was acting in accordance with internal procedures (DEPP 6.5C.2G(14)(b)).
- 6.11. The Authority considers Mr Abbattista recklessly committed market abuse. It considers that he was aware of the risk that his actions would result in market abuse; i.e. that his Misleading Orders would give false or misleading signals to other market participants as to the supply of, or demand for, shares in the Companies but went ahead with those actions anyway.
- 6.12. Mr Abbattista's market abuse was repeated on multiple occasions during the Relevant Period.
- 6.13. The Authority has also taken into account the following factors relating to the nature of the market abuse:
- (1) Mr Abbattista is an experienced industry professional (DEPP 6.5C.2G (12)(e)); and
 - (2) Mr Abbattista held a senior position at Fenician where he was approved to perform the CF4 (Partner) significant influence controlled function, in addition to the CF30 (Customer) controlled function (DEPP 6.5C.2G (12)(f)). He was also Fenician's Chief Investment Officer.
- 6.14. DEPP 6.5C.2G(15) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:
- (1) The market abuse was committed on multiple occasions during the Relevant Period (DEPP 6.5C.2G(15)(c)); and
 - (2) The market abuse was committed deliberately or recklessly (DEPP 6.5C.2G(15)(f)).

6.15. DEPP 6.5C.2G(16) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers the following factors to be relevant:

(1) Little, or no, profits were made or losses avoided as a result of Mr Abbattista's market abuse, either directly or indirectly (DEPP 6.5C.2G(16)(a)).

6.16. Taking all of these factors into account, the Authority considers the seriousness of the market abuse to be level 4. This means the Step 2 figure is the higher of:

- (1) 30% of Mr Abbattista's relevant income of £5249.14, a sum of £1574.74;
- (2) A profit multiple of 3 applied to Mr Abbattista's financial benefit of £0, a sum of £0; and
- (3) £100,000.

6.17. Step 2 is therefore £100,000.

Step 3: mitigating and aggravating factors

6.18. Pursuant to DEPP 6.5C.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the market abuse. Having considered each of the factors listed in DEPP 6.5C.3G, the Authority has concluded that there are no aggravating or mitigating factors such as to justify an adjustment to the Step 2 figure.

6.19. Step 3 is therefore £100,000.

Step 4: adjustment for deterrence

6.20. 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.

6.21. The Authority considers that the Step 3 figure of £100,000 represents a sufficient deterrent to Mr Abbattista and others, and so has not increased the penalty at Step 4. Step 4 is therefore £100,000.

Step 5: settlement discount

6.22. The Authority and Mr Abbattista have not reached agreement to settle so no discount applies to the Step 4 figure.

6.23. The total financial penalty is therefore £100,000.

Prohibition

- 6.24. The Authority has had regard to the guidance in Chapter 9 of EG in considering whether to impose a prohibition order on Mr Abbattista. The Authority has the power to prohibit individuals under section 56 of the Act.
- 6.25. The Authority considers that, due to his having recklessly engaged in market abuse, Mr Abbattista lacks integrity and 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. It considers that a prohibition order should be imposed on him under section 56 of the Act.

7. REPRESENTATIONS

- 7.1. Annex D contains a brief summary of the key representations made by Mr Abbattista, 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 Abbattista, whether or not set out in Annex D.

8. PROCEDURAL MATTERS

Decision-maker

- 8.1. The decision which gave rise to the obligation to give this Notice was made by the RDC. The RDC is a committee of the Authority which takes certain decisions on behalf of the Authority. The members of the RDC are separate to the Authority staff involved in conducting investigations and recommending action against firms and individuals. Further information about the RDC can be found on the Authority's website here: <https://www.fca.org.uk/about/committees/regulatory-decisions-committee-rdc>

- 8.2. This Final Notice is given under, and in accordance with, section 390 of the Act.

Manner of and time for payment

- 8.3. The financial penalty of £100,000 must be paid in full by Mr Abbattista by no later than 29 December 2020, 14 days from the Final Notice.

Publicity

- 8.4. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Final Notice relates as the Authority considers appropriate. The information

may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to Mr Abbattista or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Contact

- 8.5. For more information concerning this matter generally, contact Kerri Scott at the Authority (direct line: 020 7066 4620 /email: kerri.scott@fca.org.uk).

Sadaf Hussain
Head of Department, Enforcement and Market Oversight Division
Financial Conduct Authority

ANNEX A

RELEVANT LEGISLATIVE AND REGULATORY PROVISIONS

1. RELEVANT LEGISLATIVE PROVISIONS

The Financial Services and Markets Act 2000 (“the Act”)

The Authority’s statutory objectives

The Authority’s statutory objectives, set out in section 1B(3) of the Act, include the integrity objective, which is protecting and enhancing the integrity of the UK financial system and includes (amongst other matters) its not being affected by contraventions by persons of Article 15 (prohibition of market manipulation) of the Market Abuse Regulation.

Section 123 of the Act

123.— Power to impose penalties or issue censure

(1) The Authority may exercise its power under subsection (2) if it is satisfied that—

(a) a person has contravened [...] Article 15 (prohibition of market manipulation) of the market abuse regulation; [...]

(2) The Authority's power under this subsection is a power to impose a penalty of such amount as it considers appropriate on the person.

Section 56 of the Act

Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

Regulation (EU) No 596/2014 (“the Market Abuse Regulation”)

Article 2: Scope

1. This Regulation applies to the following:

(a) financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made; ...

Article 12: Market manipulation

1. For the purposes of this Regulation, market manipulation shall comprise the following activities:

(a) entering into a transaction, placing an order to trade or any other behaviour which:

(i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, [...];

unless the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice as established in accordance with Article 13.

2. The following behaviour shall, inter alia, be considered as market manipulation:

[...]

(c) the placing of orders to a trading venue, including any cancellation or modification thereof, by any available means of trading, including by electronic means, [...], and which has one of the effects referred to in paragraph 1(a) above or [...] by:

[...]

(iii) creating or being likely to create a false or misleading signal about the supply of, or demand for, or price of, a financial instrument, in particular by entering orders to initiate or exacerbate a trend;

[...]

Article 13: Accepted market practices

1. The prohibition in Article 15 shall not apply to the activities referred to in Article 12(1)(a), provided that the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice as established in accordance with this Article.

Article 15: Prohibition of market manipulation

A person shall not engage in or attempt to engage in market manipulation.

Annex I

A. Indicators of manipulative behaviour relating to false or misleading signals and to price securing

For the purposes of applying point (a) of Article 12(1) of this Regulation, and without prejudice to the forms of behaviour set out in paragraph 2 of that Article, the following non-exhaustive indicators, which shall not necessarily be deemed, in themselves, to constitute market manipulation, shall be taken into account when transactions or orders to trade are examined by market participants and competent authorities:

- (f) the extent to which orders to trade given change the representation of the best bid or offer prices in a financial instrument, [...] or more generally the representation of the order book available to market participants, and are removed before they are executed; ...

Commission Delegated Regulation (EU) 2016/522

Article 1: Subject matter and scope

This Regulation lays down detailed rules with regard to:

[...]

- (2) the indicators of market manipulation laid down in Annex I to Regulation (EU) No 596/2014; ...

Article 4: Indicators of manipulative behaviour

1. In relation to indicators of manipulative behaviour relating to false or misleading signals and to price securing referred to in Section A of Annex I to Regulation (EU) No 596/2014, the practices set out in Indicators A(a) to A(g) of Annex I to Regulation (EU) No 596/2014 are laid down in Section I of Annex II to this Regulation.

Section I of Annex II of Regulation (EU) 2016/522

6. Practices specifying Indicator A(f) of Annex I to Regulation (EU) No 596/2014:

- (a) Entering of orders which are withdrawn before execution, thus having the effect, or which are likely to have the effect, of giving a misleading impression that there is demand for or supply of a financial instrument, [...] – usually known as ‘placing orders with no intention of executing them’. ...

2. THE AUTHORITY'S HANDBOOK OF RULES AND GUIDANCE

Market Conduct

- 2.1. The part of the Authority's Handbook of rules and guidance entitled "Market Conduct" ("MAR") provides guidance on the Market Abuse Regulation (EU) No 596/2014 (see MAR 1.1.2G).
- 2.2. Chapter 1.6 of MAR is headed "Manipulating transactions".
- 2.3. MAR 1.6.5G states that the following factors are to be taken into account when considering whether behaviour is for legitimate reasons in relation to article 12(1)(a) of the Market Abuse Regulation, and are indications that it is not:
 - (1) if the person has an actuating purpose behind the transaction to induce others to trade in, bid for or to position or move the price of, a financial instrument;
 - (2) if the person has another, illegitimate, reason behind the transactions, bid or order to trade; and
 - (3) if the transaction was executed in a particular way with the purpose of creating a false or misleading impression.
- 2.4. MAR 1.6.6G states that the following factors are to be taken into account when considering whether behaviour is for legitimate reasons in relation to article 12(1)(a) of the Market Abuse Regulation, and are indications that it is:
 - (1) if the transaction is pursuant to a prior legal or regulatory obligation owed to a third party;
 - (2) if the transaction is executed in a way which takes into account the need for the market or auction platform as a whole to operate fairly and efficiently;
 - (3) the extent to which the transaction generally opens a new position, so creating an exposure to market risk, rather than closes out a position and so removes market risk; and
 - (4) if the transaction complied with the rules of the relevant trading venue about how transactions are to be executed in a proper way (for example, rules on reporting and executing cross-transactions).
- 2.5. MAR 1 Annex 2 "Accepted Market Practices" records that there are no accepted market practices as established by the Authority in accordance with Article 13 of the Market Abuse Regulation.
- 2.6. MAR can be accessed here: <https://www.handbook.fca.org.uk/handbook/MAR/>

The Fit and Proper Test for Approved Persons ("FIT")

- 2.7. The part of the Authority's Handbook entitled "The Fit and Proper Test for Approved Persons" ("FIT") sets out the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person. FIT can be accessed here:

<https://www.handbook.fca.org.uk/handbook/FIT/1/3.html>

- 2.8. 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. The most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.

Prohibition orders

- 2.9. The Authority's policy in relation to prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG").
- 2.10. EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its statutory objectives, it is appropriate either to prevent an individual from performing any function in relation to regulated activities or to restrict the functions which he may perform.

Decisions Procedures and penalties manual ("DEPP")

- 2.11. Chapter 6 of DEPP sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act and can be accessed here:

<https://www.handbook.fca.org.uk/handbook/DEPP/6/?view=chapter>

The Enforcement Guide ("EG")

- 2.12. The Authority's approach to financial penalties and public censures is set out in Chapter 7 of EG and can be accessed here:

<https://www.handbook.fca.org.uk/handbook/EG/7/?view=chapter>

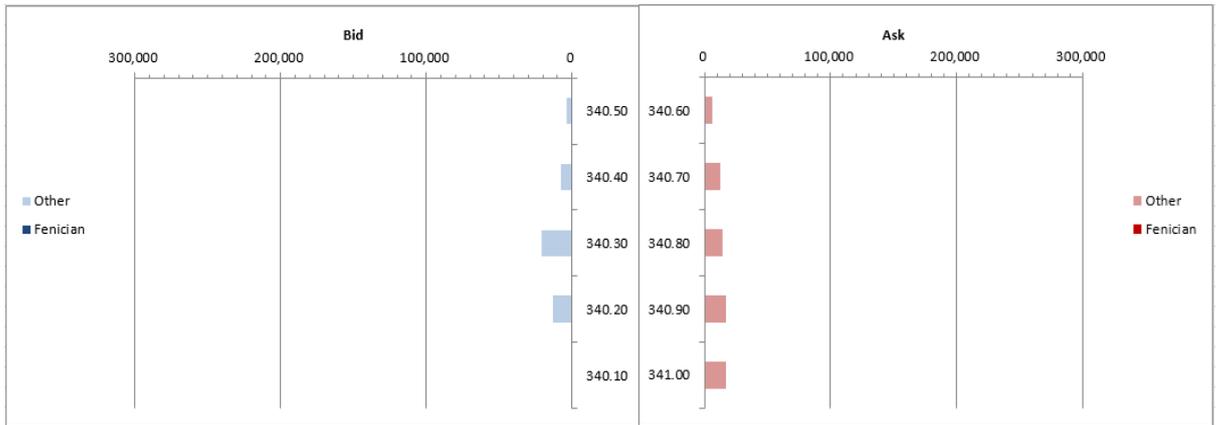
ANNEX B

EXPLANATION OF TRADING TABLES

1. The trading tables contained within this Notice at Annex C are based on consolidated information from the four trading venues namely: LSE, Turquoise, BATS and Chi-X. The orders submitted to and visible to the market at any point in time to the 1000th of a second. By way of example, Table A is shown below and can be interpreted in accordance with the following paragraphs.
2. The left-hand side of the table (the "Bid" side) shows the visible order book in relation to the purchase of shares.
3. The top horizontal axis on the left-hand side is a measure of volume.
4. The vertical axis on the left-hand side are the price points at which orders to buy existed. For ease of use the tables show between top four and top five 'Best Bids' i.e. the highest four or five prices which buyers were prepared to pay for the shares in question at that point in time.
5. The bars on the chart show, for each of the price points, the volume of the consolidated buy orders visible to the market. In order to demonstrate the position taken by Mr Abbattista, the tables also identify what portion of the visible order was attributable to him. This would not have been identifiable by any market participants.
6. The volume of the orders directed by the SOR to the LSE trading platform and therefore visible to Mr Abbattista on his display screen as a result of Fenician's subscription to the LSE's data feed (see paragraph 4.13 of this Notice) is recorded below each graph.
7. The right-hand side of the table (the "Offer"¹ side) shows the equivalent information in relation to the sale of shares.
8. The Best Bid in the example below is 340.40p and the Best Offer is 340.60p.

¹ Labelled "Ask" in the table.

Table A



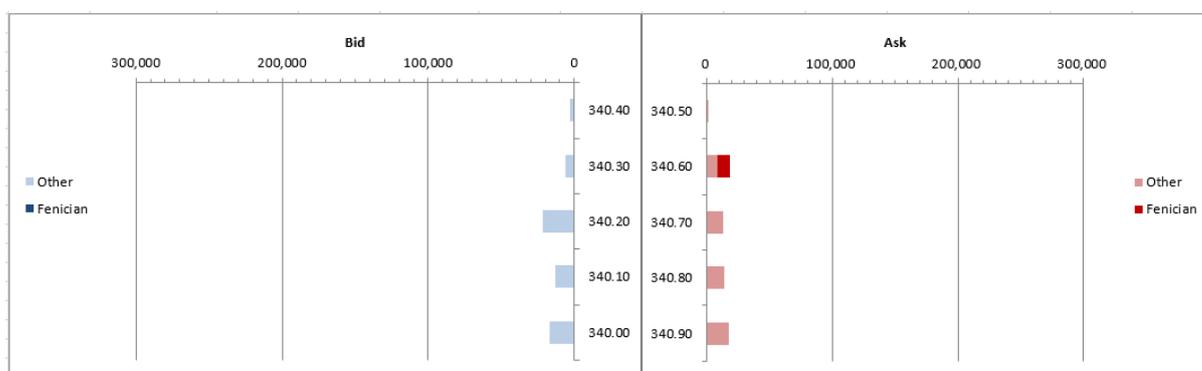
ANNEX C

MR ABBATTISTA'S DETAILED TRADING AND MARKET VIEW TABLES

M&S 20 January 2017

1. At 10:56:43 Mr Abbattista placed a Genuine Sell Order for 28,000 shares. It was a Limit Order for 340.60p when the Best Bid / Best Offer was 340.40p – 340.60p. It was an Iceberg Order such that only 10,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer became 340.40p – 340.50p, and it was 0.10p away from the Best Offer (Table 1A). 9,381 shares of the order were sold over the next 17 seconds.

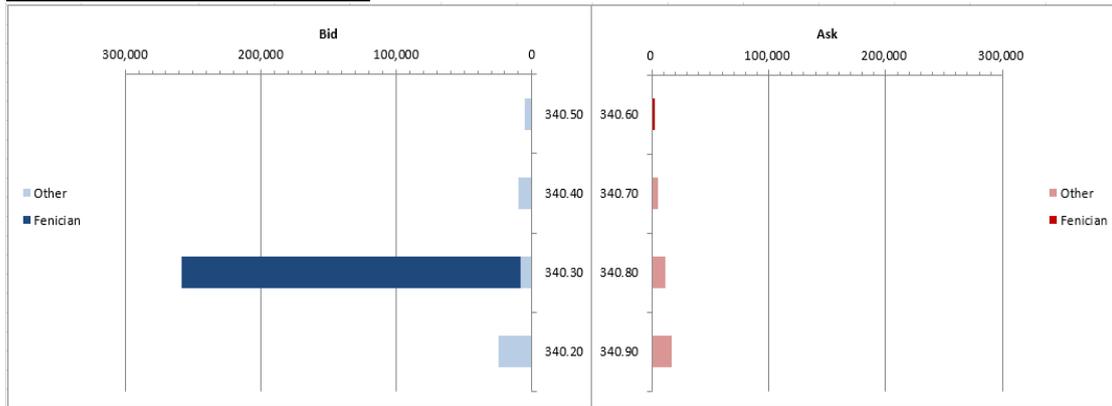
Table 1A at 10:56:43.784²



2. At 10:57:01 Mr Abbattista placed a Misleading Buy Order for 250,000 shares. It was a Limit Order for 340.30p when the Best Bid / Best Offer in the market was 340.40p – 340.50p. It was not an Iceberg Order and all 250,000 shares were visible to the market. This Misleading Buy Order was 25 times larger than that part of his Genuine Sell Order visible to the market, and at least 10 times larger than the average size of orders visible at that time. When the order entered the market, the Best Bid / Best Offer became 340.50p – 340.60p, and it was 0.20p away from the Best Bid (Table 1B).

² Where the term 'Ask' is used in the charts in Annex C it has the same meaning as the term 'Offer' used in the narrative.

Table 1B at 10:57:01.193

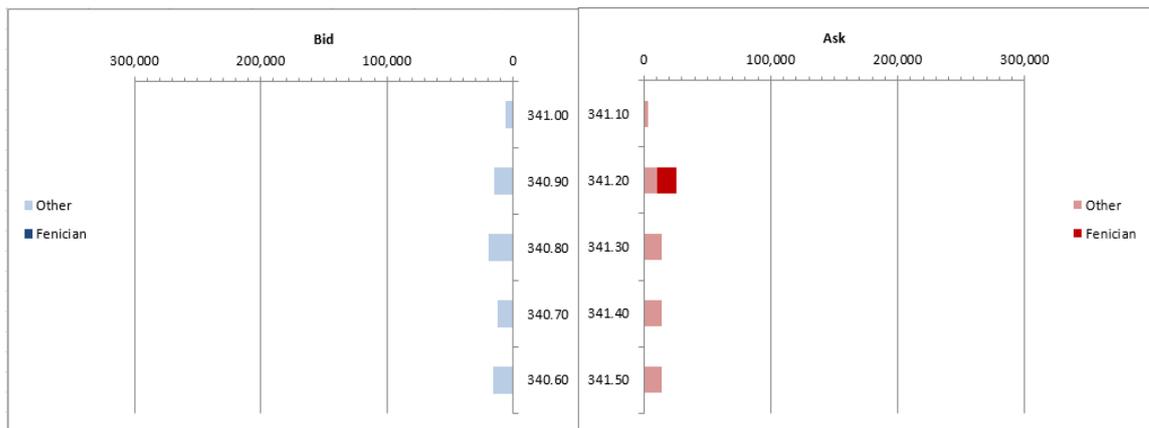


NB: Of the Misleading Buy Order at 340.30p, 76,425 shares were visible to the LSE. Mr Abbattista's screen would have displayed, as a result of his data feed from the LSE, that this part of his order had been placed on the LSE out of a total of 81,719 shares at 340.30p. Of the Genuine Sell Order at 340.60p, no shares were visible to the LSE. The total number of shares on offer on the LSE at 340.60p was zero.

3. Over the next nine seconds a further 18,109 shares were sold from the Genuine Sell Order. The Misleading Buy Order was cancelled one second later without any of the order being filled. At the time the Misleading Buy Order was cancelled, the Best Bid / Best Offer in the market had ticked lower to 340.40p – 340.60p.³
4. At 11:13:50 a second Genuine Sell Order for 15,000 shares was entered into the market. It was a Limit Order for 341.20p when the Best Bid / Best Offer in the market was 341.10p – 341.20p. It was not an Iceberg Order and all 15,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer became 341.00p – 341.10p, and it was 0.10p away from the Best Offer (Table 1C).

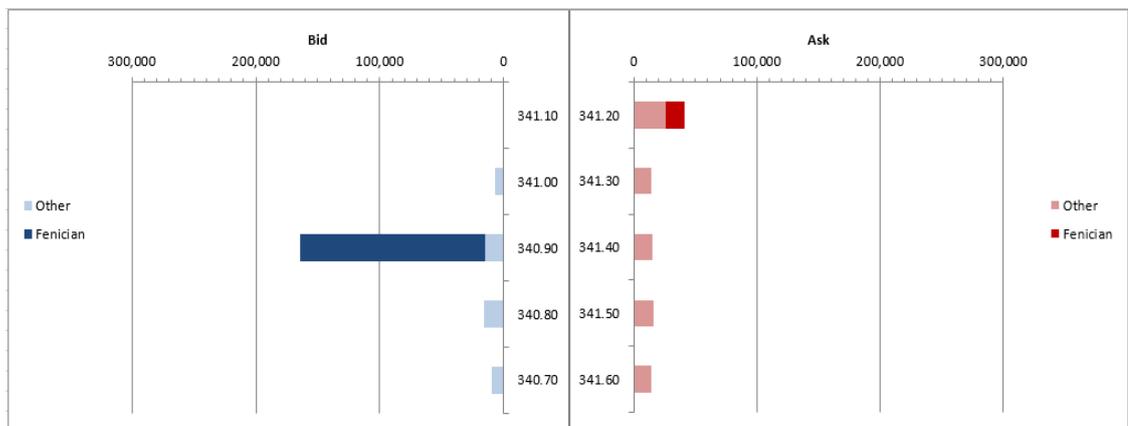
³ Here and subsequently in this Notice "ticked lower" (or higher) means with reference to the spread at the time the Misleading Buy (Sell) Order was entered.

Table 1C: 11:13:50.998



5. No shares in the second Genuine Sell Order were sold when a second Misleading Buy Order for 150,000 shares was entered into the market at 11:14:00. It was a Limit Order for 340.90p when the Best Bid / Best Offer in the market was 341.10p – 341.10p. It was not an Iceberg Order and all 150,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer became 341.10p – 341.20p, and it was 0.20p away from the Best Bid (Table 1D).

Table 1D at 11:14:00:792

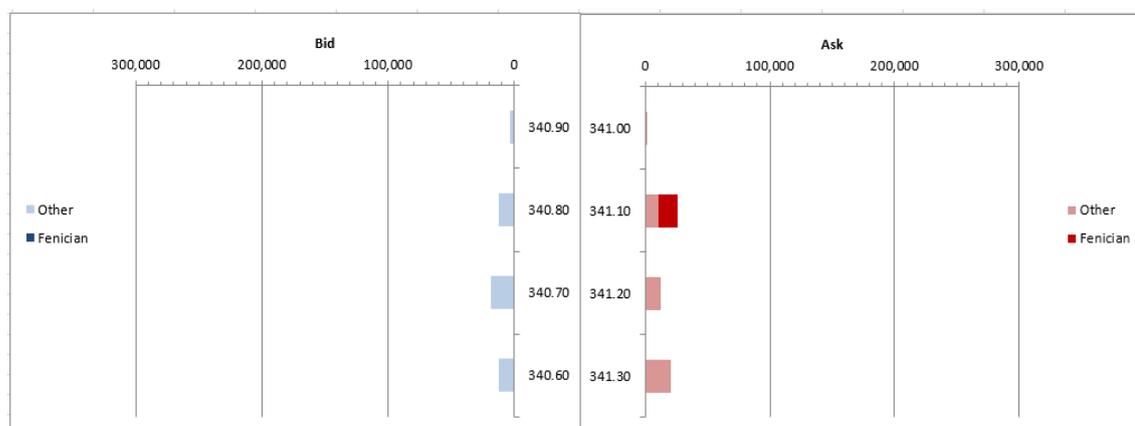


NB: Of the Misleading Buy Order at 340.90p, 45,855 shares were visible to the LSE. Mr Abbattista’s screen would have displayed, as a result of his data feed from the LSE, that this part of his order had been placed on the LSE out of a total of 53,174 shares at 340.90p. Of the Genuine Sell Order at 341.20p, 4,586 shares were visible to the LSE. The total number of shares offered at 341.20p on the LSE was 8,957.

6. The Misleading Buy Order was cancelled 18 seconds later without any of either it or the Genuine Order being filled. At the time the Misleading Buy Order was cancelled the Best Bid / Best Offer in the market had ticked lower to 341.00p – 341.10p.

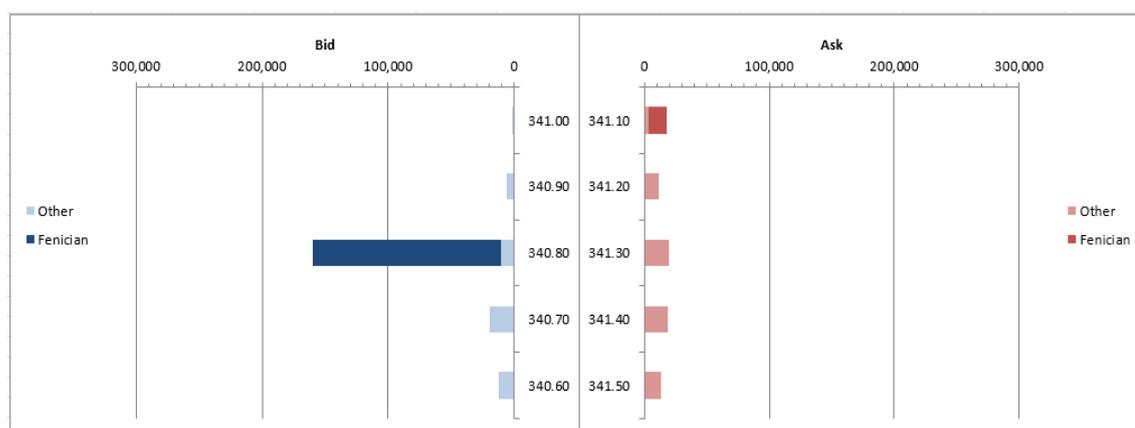
7. No shares in the second Genuine Sell Order (at 341.20p) were sold. At 11:23:08 it was cancelled and re-entered with a limit of 341.10p (Table 1E).

Table 1E: 11:23:08.561



8. Eight seconds later at 11:23:17 a third Misleading Buy Order for 150,000 shares was entered into the market. It was a Limit Order for 340.80p when the Best Bid / Best Offer in the market was 341.00p – 341.00p. It was not an Iceberg Order and all 150,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer became 341.00p – 341.10p, and it was 0.20p away from the Best Bid (Table 1F). This Misleading Buy Order was 10 times larger than Mr Abbattista’s Genuine Sell Order, and at least 10 times larger than the average size of orders visible at that time.

Table 1F at 11:23:17.078



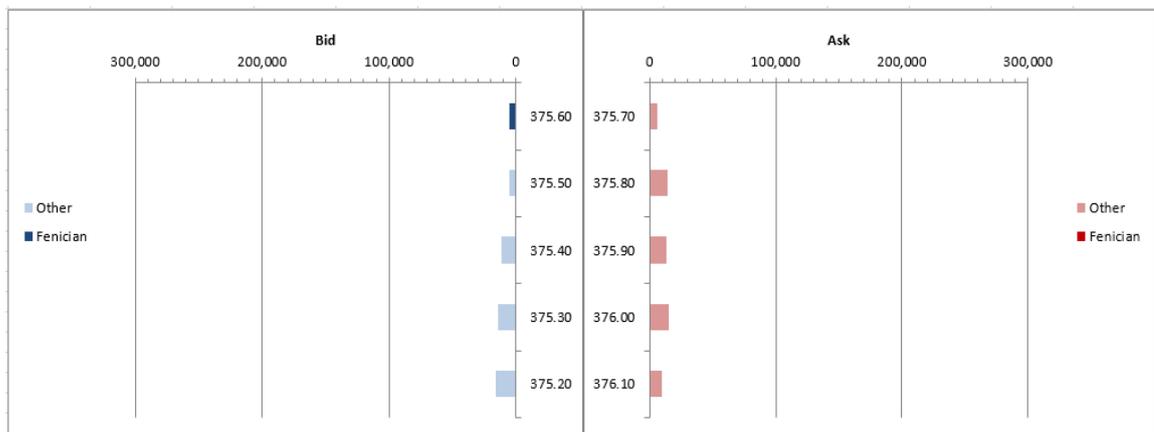
NB: Of the Misleading Buy Order at 340.80p, 45,855 shares were visible to the LSE. Mr Abbattista’s screen would have displayed, as a result of his data feed from the LSE, that this part of his order had been placed on the LSE out of a total of 50,351 shares at 340.80p. Of the Genuine Sell Order at 341.10p, 4,586 shares were visible to the LSE. The total number of shares offered on the LSE at 341.10p was 6,023.

9. Four seconds later, at 11:23:20, all 15,000 shares of the Genuine Sell Order at 341.10p were sold and the order completed. Three seconds later the Misleading Buy Order for 150,000 shares was cancelled without any of the order being filled. At this time the Best Bid / Best Offer had ticked higher to 341.10p – 341.30p.

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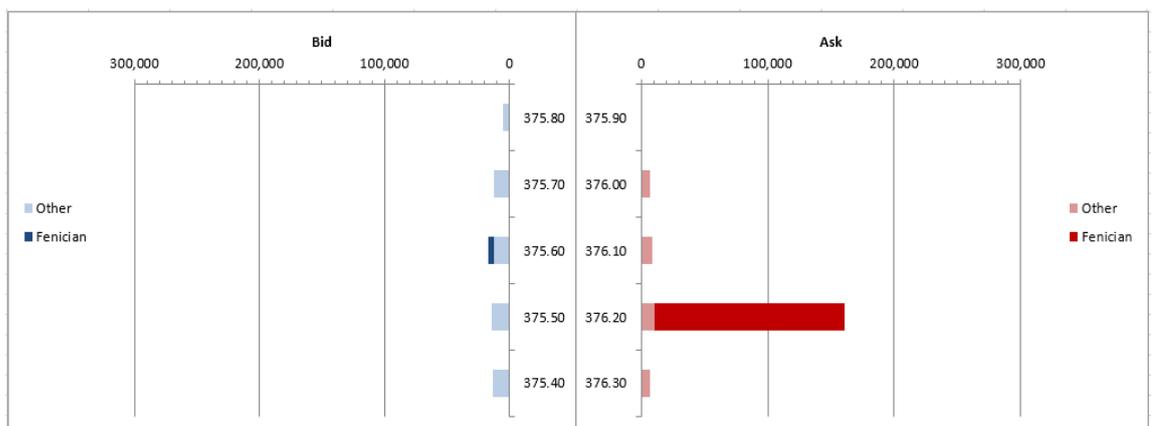
10. At 09:10:15 Mr Abbattista entered a Genuine Buy Order for 100,000 shares. It was a Limit Order for 375.60p when the Best Bid / Best Offer was 375.50p – 375.70p. It was an Iceberg Order, with only 5,000 shares visible to the market. When the order entered the market, the Best Bid / Best Offer became 375.60p – 375.70p, and it was the Best Bid (Table 2A). Over the next 40 seconds, no shares of the Genuine Buy Order were bought.

Table 2A: 09:10:15.431



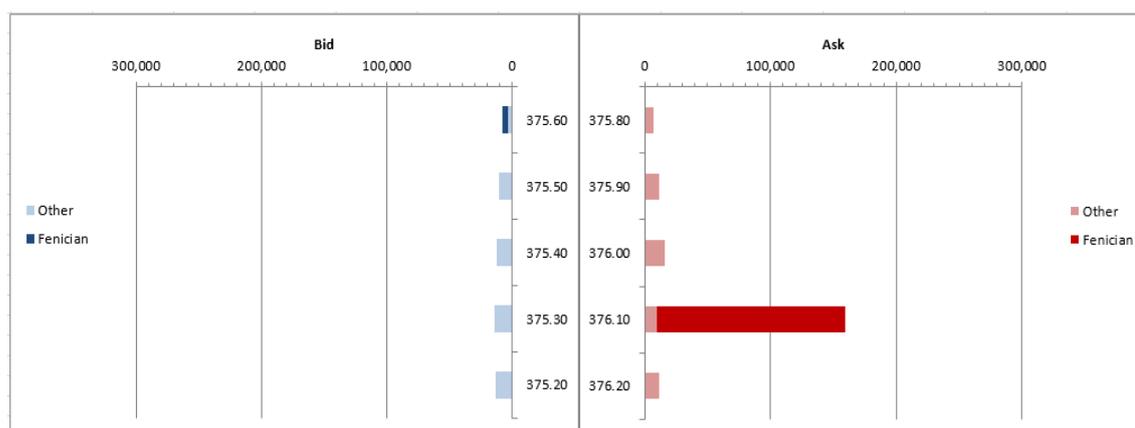
11. At 09:10:55 he entered a Misleading Sell Order for 150,000 shares. It was a Limit Order for 376.20p when the Best Bid / Best Offer was 375.80p – 376.00p.90p. It was not an Iceberg Order and all 150,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer became 375.80p – 375.90p, and it was 0.30p away from the Best Offer (Table 2B).

Table 2B: 09:10:55.966



12. Over the next five seconds 200 shares of the Genuine Buy Order were bought. Over the same period and in the presence of the Misleading Sell Order, the Best Bid / Best Offer ticked lower to 375.60p – 375.70p.⁴
13. At 09:11:37, the Misleading Sell Order was cancelled and re-entered with a lower offer price of 376.10p when the Best Bid / Best Offer was 375.60 – 375.80p. When the order entered the market the Best Bid / Best Offer remained 375.60p – 375.80p, and it was 0.30p away from the Best Offer (Table 2C).

Table 2C: 09:11:37.581



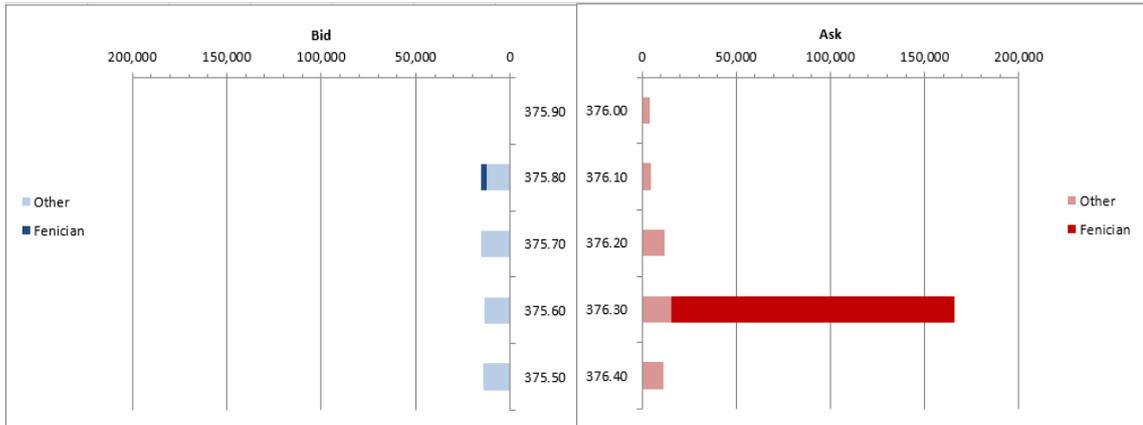
NB: Of the Genuine Buy Order at 375.60p, 2,644 shares were visible to the LSE. Mr Abbattista's screen would have displayed, as a result of his data-feed from the LSE, that this part of his order had been placed on the LSE out of a total of 3,644 shares on the buy side at 375.60p. Of the Misleading Sell Order at 376.10p, 42,210 shares were visible to the LSE. The total number of shares offered on the LSE at 376.10p was 47,859.

14. At 09:12:30 the Misleading Sell Order was cancelled without any of the order being filled. At the time the Misleading Sell Order was cancelled, the Best Bid / Best Offer in the market had remained 375.60p – 375.80p.
15. At 09:12:50, the Genuine Buy Order was cancelled and re-entered with a new bid price of 375.80p, when the Best Bid / Best Offer was 375.70p – 375.90p.
16. The Genuine Buy Order continued to be filled, with a further 22,449 shares being bought by 09:13:19. At this time, Mr Abbattista entered a second Misleading Sell Order for 150,000 shares. It was a Limit Order for 376.30p when the Best Bid / Best Offer was 375.90p – 376.00p. It was not an Iceberg Order and all 150,000 shares were visible to the market. When the order entered the market, the Best Bid / Best

⁴ Where the Best Offer / Best Bid is described as 'ticking higher or lower in the presence of the Misleading Buy (Sell) Order' this is with reference to the period between the time it was placed and the time it was cancelled.

Offer remained 375.90p – 376.00p, and it was 0.30p away from the Best Offer (Table 2D).

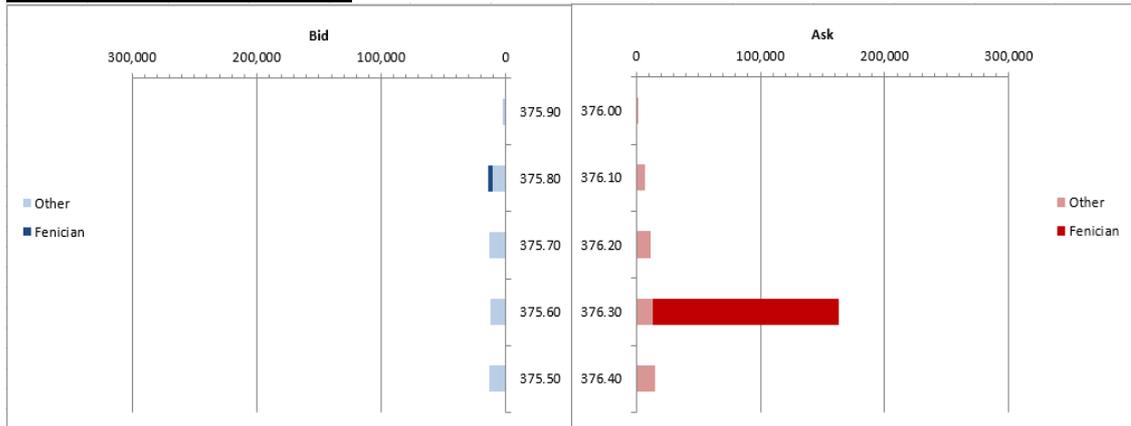
Table 2D: at 09:13:19.491



NB: Of the Genuine Buy Order at 375.80p, 2,844 shares were visible to the LSE. Mr Abbattista’s screen would have displayed, as a result of his data-feed from the LSE, that this part of his order had been placed on the LSE out of a total of 10,569 shares on the buy side at 375.60p. Of the Misleading Sell Order at 376.30p, 42,210 shares were visible to the LSE. The total number of shares offered on the LSE at 376.10p was 45,766.

17. A further 9,558 shares of the Genuine Buy Order were bought over the next 26 seconds. The Misleading Sell Order was cancelled at 09:13:52 without any of the order being filled. At the time the Misleading Sell Order was cancelled, the Best Bid / Best Offer in the market had remained 375.90p – 376.00p.
18. No further shares of the Genuine Buy Order were bought over the next 3 minutes and 2 seconds.
19. At 09:16:54, Mr Abbattista entered a third Misleading Sell Order for 150,000 shares. It was a Limit Order which was again for 376.30p when the Best Bid / Best Offer was 375.90p – 376.00p. It was not an Iceberg Order and all 150,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer remained 375.90p – 376.00p, and it was 0.30p away from the Best Offer (Table 2E).

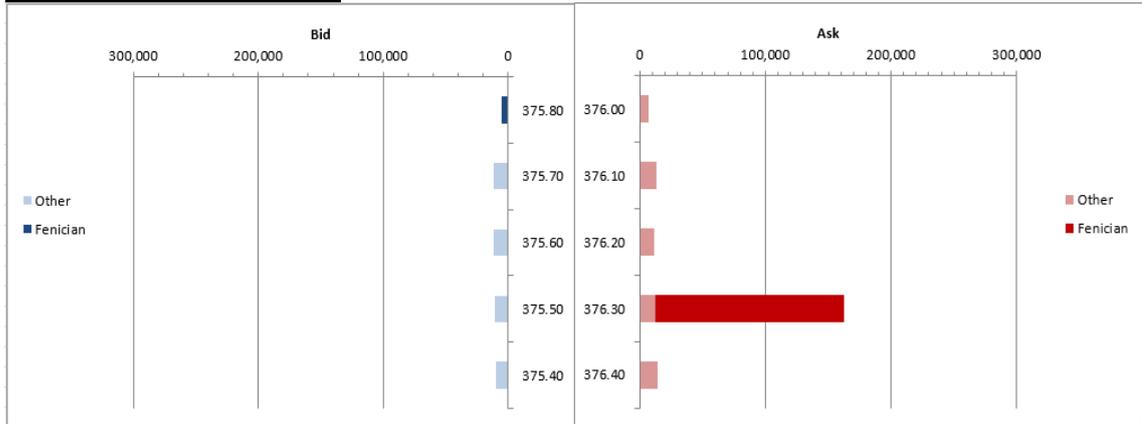
Table 2E: 09:16:54.902



NB: Of the Genuine Buy Order at 375.80p, 2,844 shares were visible to the LSE. Mr Abbattista's screen would have displayed, as a result of his data-feed from the LSE, that this part of his order had been placed on the LSE out of a total of 10,838 shares on the buy side at 375.80p. Of the Misleading Sell Order at 376.30p, 42,210 shares were visible to the LSE. The total number of shares offered on the LSE at 376.30p was 51,964.

20. Over the next six seconds, a further 10,825 shares of the Genuine Buy Order were bought.
21. At 09:17:29, 35 seconds after being entered, the third Misleading Sell Order was cancelled without any of the order being filled. At the time the Misleading Sell Order was cancelled, the Best Bid / Best Offer in the market had ticked lower to 375.80p – 375.90p. No further shares of the Genuine Buy Order were bought.
22. At 09:17:42, Mr Abbattista entered a fourth Misleading Sell Order for 150,000 shares. It was a Limit Order again for 376.30p when the Best Bid / Best Offer was 375.80p – 376.00p. It was not an Iceberg Order and all 150,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer remained 375.80p – 376.00, and it was 0.30p away from the Best Bid (Table 2F).

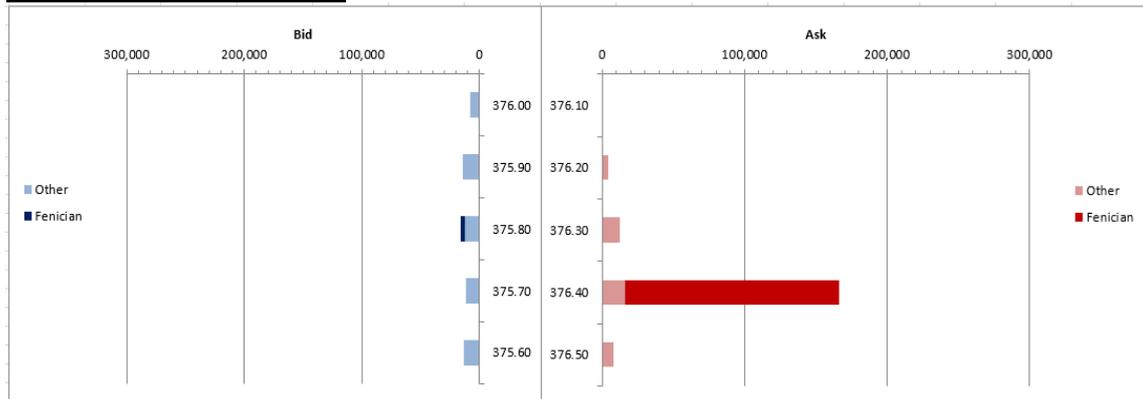
Table 2F: 09:17:42.032



NB: Of the Genuine Buy Order at 375.80p, 2,844 shares were visible to the LSE. Mr Abbattista's screen would have displayed, as a result of his data-feed from the LSE, that this part of his order was the only order on the LSE on the buy side at 375.80p. Of the Misleading Sell Order at 376.30p, 42,210 shares were visible to the LSE. The total number of shares offered on the LSE at 376.30p was 52,039.

23. Over the next four seconds, a further 18,880 shares of the Genuine Buy Order were bought.
24. At 09:17:52, 11 seconds after being entered, the fourth Misleading Sell Order was cancelled without any of this order being filled. At the time the Misleading Sell Order was cancelled, the Best Bid / Best Offer in the market had remained 375.80p – 376.00p.
25. Over the next 2 minutes 51 seconds, a further 32,460 shares of the Genuine Buy Order were bought. At this point in time the Best Bid / Best Offer had ticked higher to 375.80p – 376.00p.
26. At 09:22:36 Mr Abbattista entered a fifth Misleading Sell Order for 150,000 shares. It was a Limit Order for 376.40p when the Best Bid / Best Offer was 376.00p – 376.20p. It was not an Iceberg Order and all 150,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer became 376.00p – 376.10p, and it was 0.30p away from the Best Offer (Table 2G).

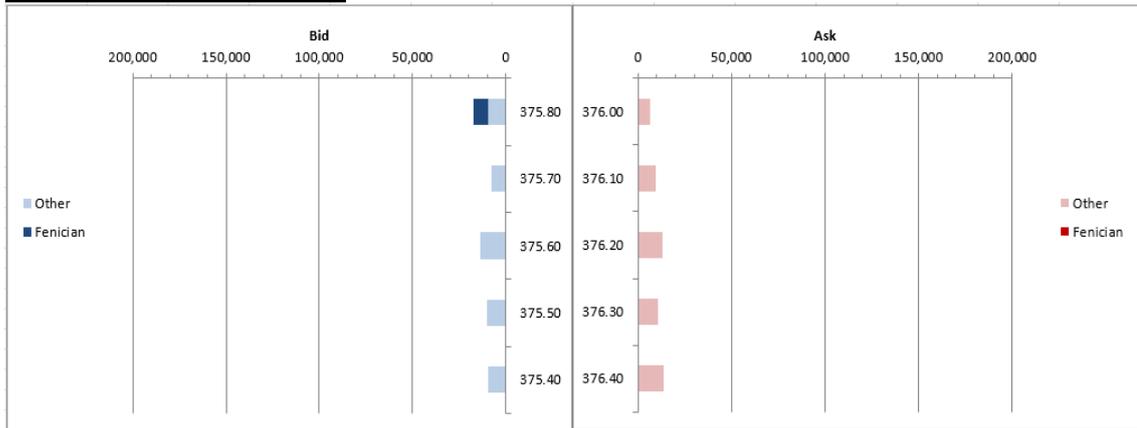
Table 2G: 09:22:36.637



NB: Of the Genuine Buy Order at 375.80p, 2,073 shares were visible to the LSE. Mr Abbattista's screen would have displayed, as a result of his data-feed from the LSE, that this part of his order had been placed on the LSE out of a total of 11,924 shares on the buy side at 375.80p. Of the Misleading Sell Order at 376.40p, 42,210 shares were visible to the LSE. The total number of shares offered on the LSE at 376.40p was 52,276.

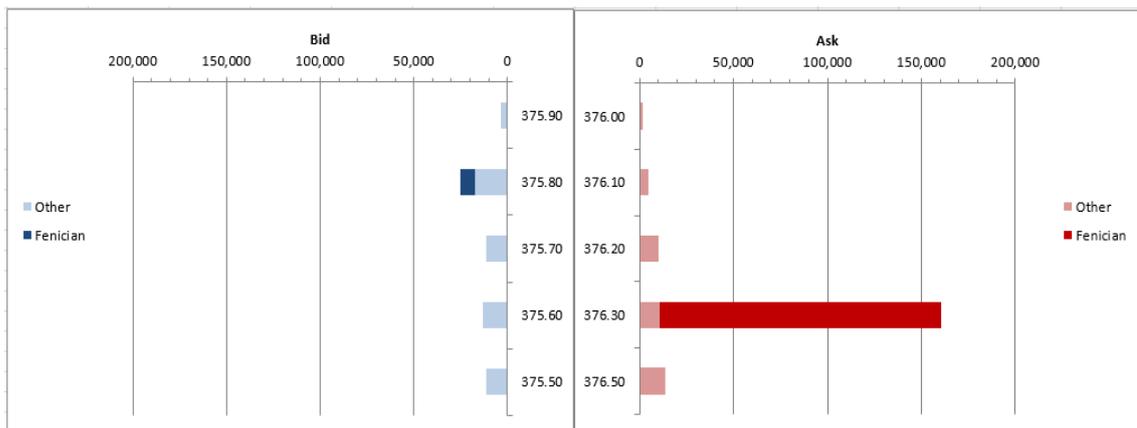
27. 23 seconds later, at 09:22:59, the remaining 5,628 shares of the Genuine Buy Order at 375.80p completed. At this point and in the presence of the fifth Misleading Sell Order, the Best Bid / Best Offer had ticked lower to 375.80p – 375.90p.
28. Three seconds later, at 09:23:02, the fifth Misleading Sell Order was cancelled without any of the order being filled. At the time the Misleading Sell Order was cancelled, the Best Bid / Best Offer in the market had ticked lower to 375.70p – 375.90p.
29. In summary, Mr Abbattista entered five Misleading Sell Orders against the first Genuine Buy Order. In two of the five instances, the Best Bid / Best Offer ticked lower after they were entered, in the remaining three instances the Best Bid / Best Offer remained the same.
30. At 09:23:24 he entered a second Genuine Buy Order for 100,000 shares. It was a Limit Order for 375.80p when the Best Bid / Best Offer was 375.80p – 376.00p. It was an Iceberg Order, with only 7,854 shares visible to the market (Table 2H).

Table 2H: 09:23:24.692



31. At 09:23:42 he entered a Misleading Sell Order for 150,000 shares. It was a Limit Order for 376.30p when the Best Bid / Best Offer was 375.90p – 376.00p. It was not an Iceberg Order and all 150,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer remained 375.90p – 376.00p, and it was 0.30p away from the Best Offer (Table 2I).

Table 2I: 09:23:42.182



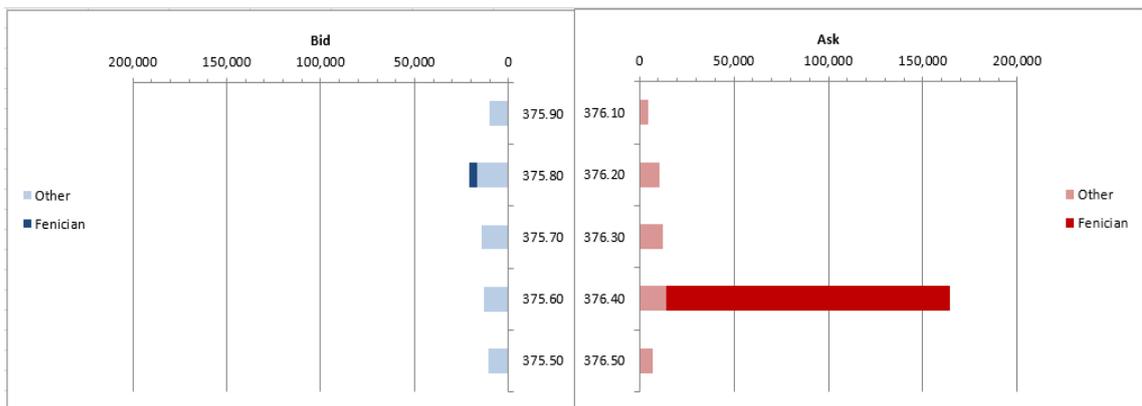
NB: Of the Genuine Buy Order at 375.80p, 3,646 shares were visible to the LSE. Mr Abbattista’s screen would have displayed, as a result of his data-feed from the LSE, that this part of his order had been placed on the LSE out of a total of 10,559 shares on the buy side at 375.80p. Of the Misleading Sell Order at 376.30p, 42,210 shares were visible to the LSE. The total number of offered on the LSE at 376.30p was 49,824.

32. Over the next 25 seconds, 17,203 shares of the Genuine Buy Order were bought. At this point in time, and in the presence of the Misleading Sell Order the Best Bid / Best Offer had ticked lower to 375.80p – 375.90p. At 09:24:48 the Misleading Sell Order was cancelled without any of the order being filled. At the time the Misleading

Sell Order was cancelled the Best Bid / Best Offer in the market had ticked lower to 375.80p – 375.90p.

33. At 09:25:11 Mr Abbattista entered a second Misleading Sell Order for 150,000 shares. It was a Limit Order for 376.40p when the Best Bid / Best Offer was 375.90p – 376.10p. It was not an Iceberg Order and all 150,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer remained 375.90p – 376.10p, and it was 0.30p away from the Best Offer (Table 2J).

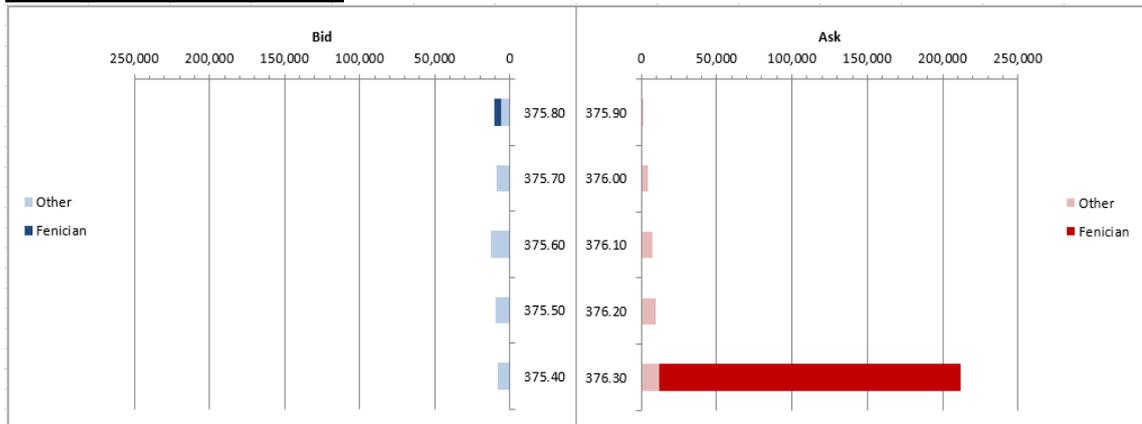
Table 2J: 09:25:11.722



NB: Of the Genuine Buy Order at 375.80p, 3,646 shares were visible to the LSE. Mr Abbattista’s screen would have displayed, as a result of his data-feed from the LSE, that this part of his order had been placed on the LSE out of a total of 12,641 shares on the buy side at 375.80p. Of the Misleading Sell Order at 376.40p, 42,210 shares were visible to the LSE. The total number of shares offered on the LSE at 376.40p was 50,027.

34. The Misleading Sell Order was cancelled six seconds later without any of either the buy or sell order being filled. At the time the Misleading Sell Order was cancelled, the Best Bid / Best Offer in the market had remained 375.90p – 376.10p.
35. At 09:25:46 Mr Abbattista entered a third Misleading Sell Order, this time for 200,000 shares. It was a Limit Order for 376.30p when the Best Bid / Best Offer was 375.90p – 376.00p. It was not an Iceberg Order and all 200,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer became 375.80p – 375.90p, and it was 0.40p away from the Best Offer (Table 2K).

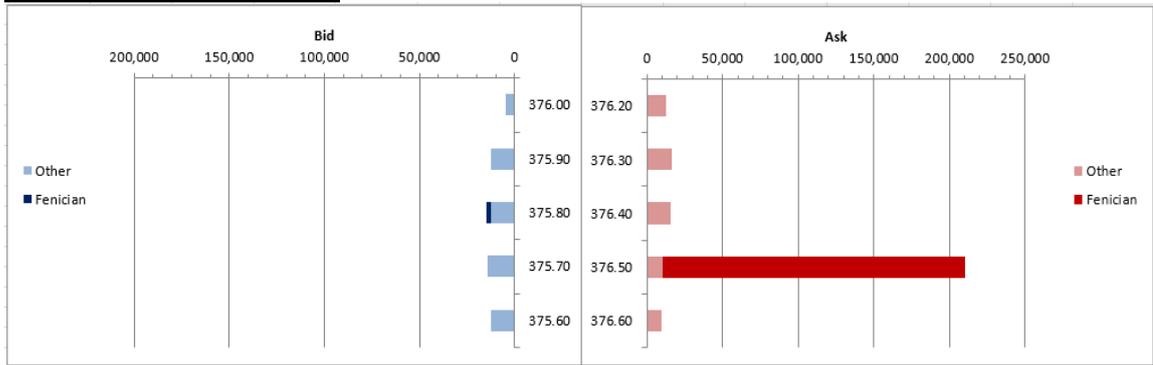
Table 2K: 09:25:46.750



NB: Of the Genuine Buy Order at 375.80p, 3,646 shares were visible to the LSE. Mr Abbattista's screen would have displayed, as a result of his data-feed from the LSE, that this part of his order had been placed on the LSE out of a total of 6,879 shares on the buy side at 375.80p. Of the Misleading Sell Order at 376.30p, 56,280 shares were visible to the LSE. The total number of shares offered on the LSE at 376.30p was 64,335.

36. Over the next 42 seconds, a further 30,139 shares of the Genuine Buy Order were bought. The third Misleading Sell Order was cancelled at 09:26:29 without any of the order being filled. At the time the Misleading Sell Order was cancelled, the Best Bid / Best Offer in the market had ticked lower to 375.80p – 375.90p.
37. At 09:27:40 the Genuine Buy Order for the remaining 52,658 was reduced by 50,000 shares to become a buy order for 2,658 shares.
38. At 09:28:02 Mr Abbattista entered a fourth Misleading Sell Order for 200,000 shares. It was a Limit Order for 376.50p when the Best Bid / Best Offer was 376.00p – 376.20p. It was not an Iceberg Order and all 200,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer remained 376.00p – 376.20p, and it was 0.30p away from the Best Offer (Table 2L). At 09:28:06 the Misleading Sell Order was cancelled without any of the order being filled. At the time the Misleading Sell Order was cancelled, the Best Bid / Best Offer in the market had remained 376.00p – 376.20p.
39. At 09:28:20, Mr Abbattista adjusted the bid price of the Genuine Buy Order to 376.10p.

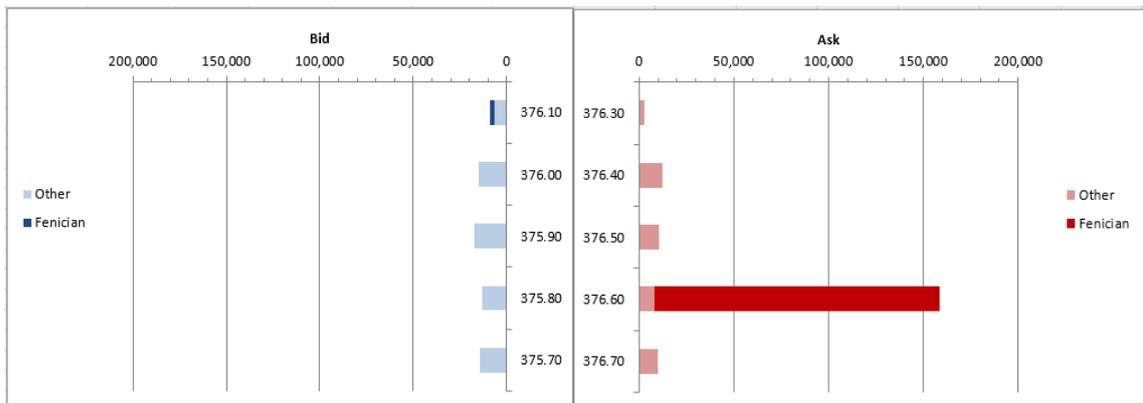
Table 2L: 09:28:02.805



NB: Of the Genuine Buy Order at 375.80p, zero shares were visible to the LSE. Mr Abbattista’s screen would have displayed, as a result of his data-feed from the LSE, a total of 9,269 shares on the buy side at 375.80p. Of the Misleading Sell Order at 376.50p, 56,280 shares were visible to the LSE. The total number of shares offered on the LSE at 376.50p was 62,710.

40. At 09:28:35 Mr Abbattista entered a fifth Misleading Sell Order, this time for 150,000 shares. It was a Limit Order for 376.60p when the Best Bid / Best Offer was 376.10p – 376.30p. It was not an Iceberg Order and all 150,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer remained 376.10p – 376.30p, and it was 0.30p away from the Best Offer (Table 2M). The fifth Misleading Sell Order was cancelled five seconds later at 09:28:40 without any of the order being filled. At the time the Misleading Sell Order was cancelled, the Best Bid / Best Offer in the market remained 376.10p – 376.30p.

Table 2M: 09:28:35.477

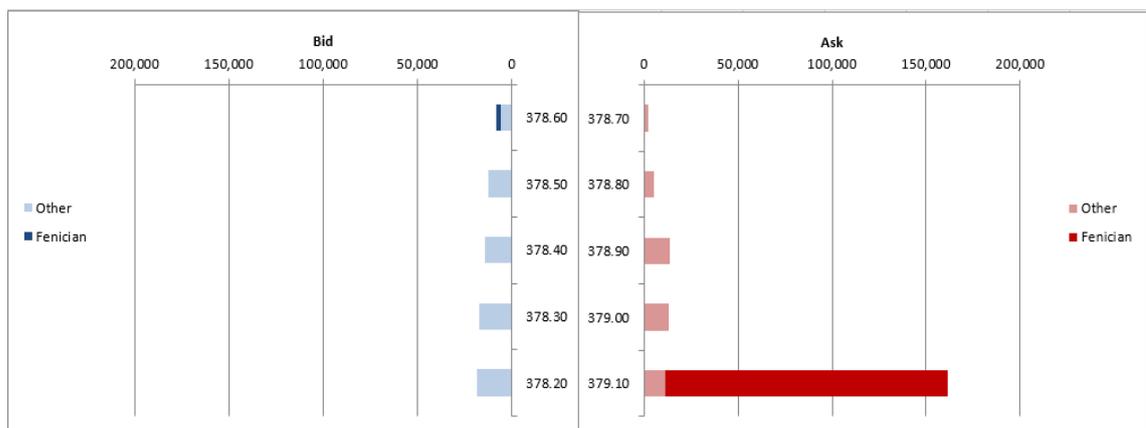


NB: Of the Genuine Buy Order at 376.10p, zero shares were visible to the LSE. Mr Abbattista’s screen would have displayed, as a result of his data-feed from the LSE, a total of 3,398 shares on the buy side at 376.10p. Of the Misleading Sell Order at

376.60p, 42,210 shares were visible to the LSE. The total number of shares offered on the LSE at 376.60p was 48,475.

41. At 09:28:56 Mr Abbattista adjusted the bid price of the Genuine Buy Order to 376.30p which then executed in full.
42. At 09:29:29 Mr Abbattista entered a new Genuine Buy Order for 50,000 shares into the market. This was a Limit Order for 375.80p when the Best Bid / Best Offer was 376.10p – 376.20p. None of this order was filled when at 10:11:20 it was joined by an additional Genuine Buy Order for another 50,000 at a bid price of 378.60p when the Best Bid / Best Offer was now 378.50p – 378.60p. It was an Iceberg Order, with only 6,969 shares visible to the market. The order started to be filled, with 27,499 shares being bought by 10:14:35.
43. At the same time, 10:14:35, Mr Abbattista entered a sixth Misleading Sell Order for 150,000 shares. It was a Limit Order for 379.10p when the Best Bid / Best Offer was 378.70p – 378.80p. It was not an Iceberg Order and all 150,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer became 378.60p – 378.70p, and it was 0.40p away from the Best Offer (Table 2N).

Table 2N: 10:14:35.286



NB: Of the Genuine Buy Order at 378.60p, 131 shares were visible to the LSE. Mr Abbattista's screen would have displayed, as a result of his data-feed from the LSE, that this part of his order had been placed on the LSE out of a total of 4,256 shares on the buy side at 378.60p. Of the Misleading Sell Order at 379.10p, 42,210 shares were visible to the LSE. The total number of shares offered on the LSE at 379.10p was 50,856.

44. At 10:14:58 Mr Abbattista cancelled the Misleading Sell Order without any of the order being filled. At the time the Misleading Sell Order was cancelled, the Best Bid

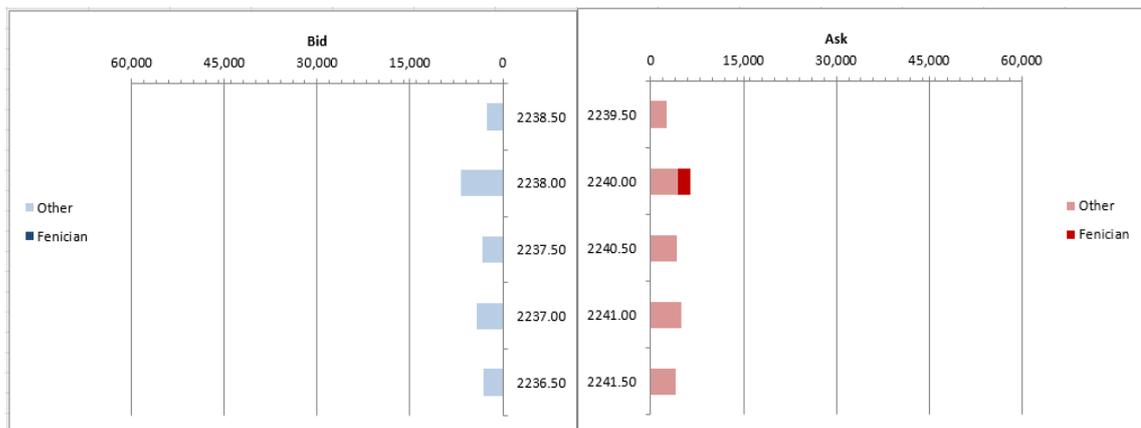
/ Best Offer in the market had ticked lower to 378.60p – 378.70p. At 10:18:47 the remaining 22,501 shares of the Genuine Buy Order were bought at 378.60p.

- 45. Finally, at 13:41:05 the Genuine Buy Order for 50,000 shares at 375.80p was cancelled without any of the order being filled.
- 46. In summary, Mr Abbattista entered six Misleading Sell Orders. In three instances, the Best Bid / Best Offer ticked lower after they were entered. In three instances, it remained unchanged.

Diageo 26 January 2017

- 47. At the opening of the market on 26 January 2017, the Funds held a long position in Diageo of 88,000 shares, a position which they had held since 16 January 2017. While seeking to reduce his long position through placing a Genuine Sell Order, Mr Abbattista entered four large Misleading Buy Orders.
- 48. He placed the Genuine Sell Order by telephone or by Bloomberg through an external broker. He placed all the Misleading Buy Orders using his DMA system.
- 49. At 09:51:20 the broker entered a Genuine Sell Order for 20,000 shares. The price of the order was amended to 2240.00p at 09:55:11 when the Best Bid / Best Offer was 2238.50p – 2239.50p (Table 3A). It was an Iceberg Order, with only 2,000 shares visible to the market.

Table 3A: at 09:55:11.078



- 50. At 09:55:39 Mr Abbattista entered a Misleading Buy Order for 50,000 shares. It was a Limit Order for 2237.50p when the Best Bid / Best Offer was 2239.50p – 2240.00p. It was not an Iceberg Order and all 50,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer remained 2239.50p – 2240.00p, and it was 2.0p away from the Best Bid (Table 3B).

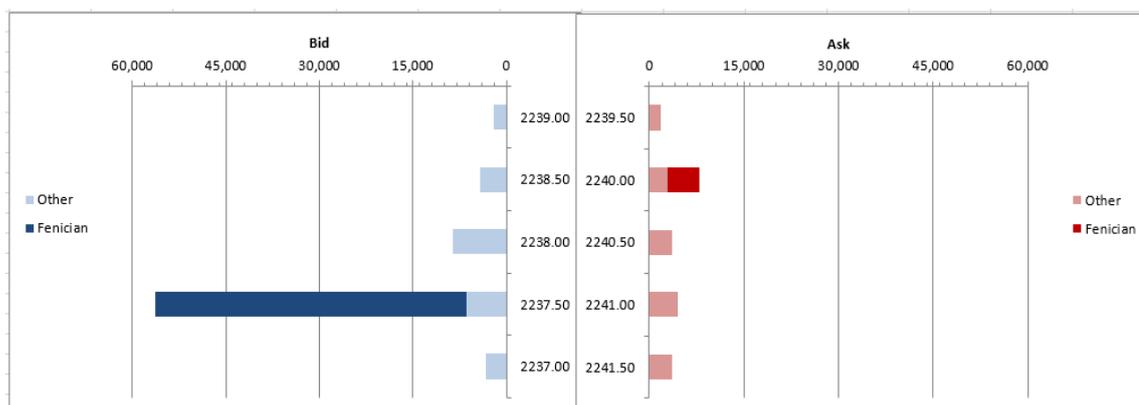
Table 3B: at 09:55:39.946



NB: Of the Misleading Buy Order at 2237.50p, 16,090 shares were visible to the LSE. Mr Abbattista’s screen would have displayed, as a result of his data-feed from the LSE, that this part of his order had been placed on the LSE out of a total of 18,057 shares on the buy side at 2237.50p. Of the Genuine Sell Order at 2240.00p, 2,000 shares were visible to the LSE. The total number of shares offered on the LSE at 2240.00p was 2,000.

51. By 09:55:45, 4,000 shares of the Genuine Sell Order had been sold. At 09:56:11 the Misleading Buy Order was cancelled without any of the order being filled. At the time the Misleading Buy Order was cancelled, the Best Bid / Best Offer in the market had ticked lower to 2238.50p – 2239.00p.
52. At 09:57:32 Mr Abbattista entered a second Misleading Buy Order for 50,000 shares. It was a Limit Order for 2237.50p when the Best Bid / Best Offer was 2238.50p – 2239.00p. It was not an Iceberg Order and all 50,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer became 2239.00p – 2239.50p, and it was 1.5p away from the Best Bid (Table 3C).

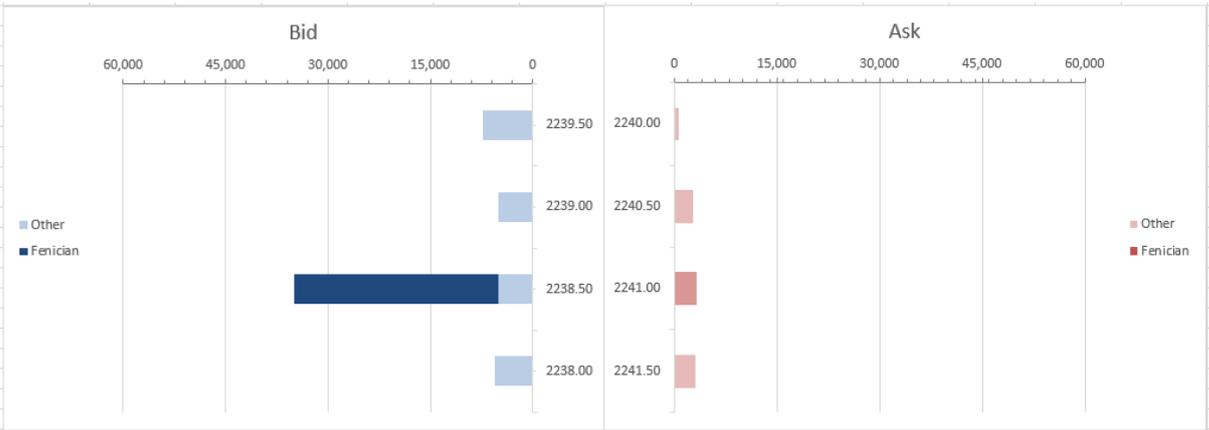
Table 3C: at 09:57:32.993



NB: Of the Misleading Buy Order at 2237.50p, 16,090 shares were visible to the LSE. Mr Abbattista’s screen would have displayed, as a result of his data-feed from the LSE, that this part of his order had been placed on the LSE out of a total of 18,956 shares on the buy side at 2237.50p. Of the Genuine Sell Order at 2240.00p, zero shares were visible to the LSE. The total number of shares offered on the LSE at 2240.00p was 1,135.

- 53. This order was cancelled and re-entered 16 seconds later at 09:57:48. It was a Limit Order for 2238.00p when the Best Bid / Best Offer was 2239.50p – 2240.00p. It was not an Iceberg Order and all 50,000 shares were visible. When the order entered the market the Best Bid / Best Offer remained 2239.50p – 2240.00p.
- 54. Three seconds later, a further 5,232 shares of the Genuine Sell Order were sold. At 09:58:56 the second Misleading Buy Order was cancelled without any of the order being filled. At the time the Misleading Buy Order was cancelled, the Best Bid / Best Offer in the market had ticked lower to 2239.00p – 2240.00p.
- 55. At 09:59:25 Mr Abbattista entered a third Misleading Buy Order for 30,000 shares. It was a Limit Order for 2238.50p when the Best Bid / Best Offer was 2239.50p – 2240.00p. It was not an Iceberg Order and all 30,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer remained 2239.50p – 2240.00p, and it was priced 1.0p away from the Best Bid (Table 3D).

Table 3D: at 09:59:25.099

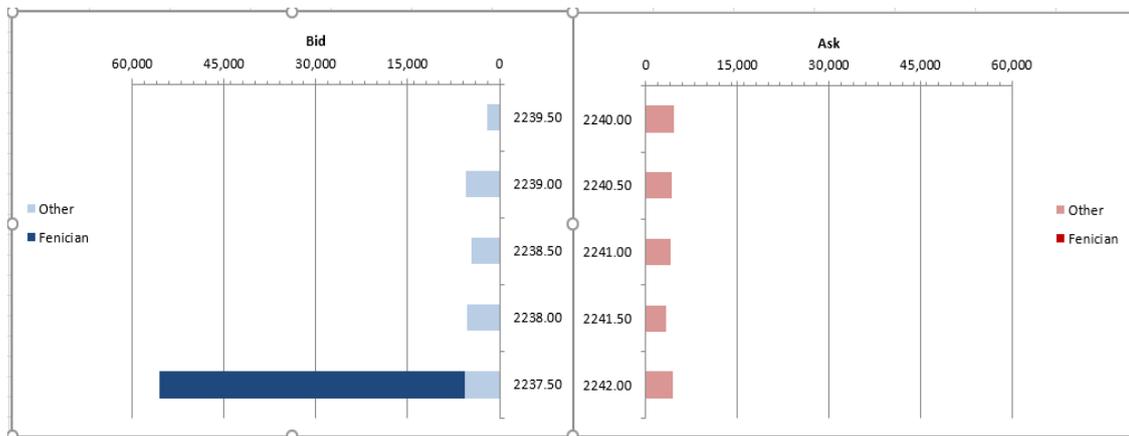


NB: Of the Misleading Buy Order at 2238.50p, 9,654 shares were visible to the LSE. Mr Abbattista’s screen would have displayed, as a result of his data-feed from the LSE, that this part of his order had been placed on the LSE out of a total of 11,411 shares on the buy side at 2238.50p. Of the Genuine Sell Order at 2240.00p, zero shares were visible to the LSE.

shares were visible to the LSE. The total number of shares offered on the LSE at 2240.00p was 500.

56. Immediately the third Misleading Buy Order was entered, a further 3,570 shares of the Genuine Sell Order were sold. At 09:59:43 the third Misleading Buy Order was cancelled without any of the order being filled. At the time the Misleading Buy Order was cancelled, the Best Bid / Best Offer in the market remained 2239.50p – 2240.00p.
57. At 09:59:58, Mr Abbattista entered a fourth Misleading Buy Order for 50,000 shares. It was a Limit Order for 2237.50p when the Best Bid / Best Offer was 2239.00p – 2240.00p. It was not an Iceberg Order and all 50,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer became 2239.50p – 2240.00p, and it was 2.00p away from the Best Bid (Table 3E).

Table 3E: at 09:59:58.464



NB: Of the Misleading Buy Order at 2237.50p, 16,090 shares were visible to the LSE. Mr Abbattista’s screen would have displayed, as a result of his data-feed from the LSE, that this part of his order had been placed on the LSE out of a total of 18,875 shares on the buy side at 2237.50p. Of the Genuine Sell Order at 2240.00p, zero shares were visible to the LSE. The total number of shares offered on the LSE at 2240.00p was 500.

58. One second later, the remaining 191 shares of the Genuine Sell Order was filled. At 10:00:02 the fourth Misleading Buy Order was cancelled without any of the order being filled. At the time the Misleading Buy Order was cancelled, the Best Bid / Best Offer in the market had ticked higher to 2240.50p – 2241.00p.

59. In summary, Mr Abbattista entered four Misleading Buy Orders. In two instances, the Best Bid / Best Offer ticked lower, in one case it ticked higher, and in one case it remained unchanged.

Ibstock 28 April 2017

60. On 27 April 2017, the Funds began building a position in Ibstock by purchasing 400,000 shares, prior to which they had not held any position in Ibstock. While seeking to increase this long position through placing a Genuine Buy Order, Mr Abbattista entered a large Misleading Sell Order.

61. The Genuine Buy Order was placed by telephone through a broker. The Misleading Sell Order was placed by DMA.

62. At 09:03:40 Mr Abbattista entered a Misleading Sell Order for 100,000 shares. It was a Limit Order for 228.30p when the Best Bid / Best Offer was 227.90p – 228.00p. It was not an Iceberg Order and all 100,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer remained 227.90p – 228.00p, and it was 0.30p away from the Best Offer (Table 4A).

Table 4A: at 09:03:40.276



NB: Of the Misleading Sell Order at 228.30p, 64,510 shares were visible to the LSE. Mr Abbattista’s screen would have displayed, as a result of his data-feed from the LSE, that this part of his order had been placed on the LSE out of a total of 64,609 shares on the sell side at 228.30p.

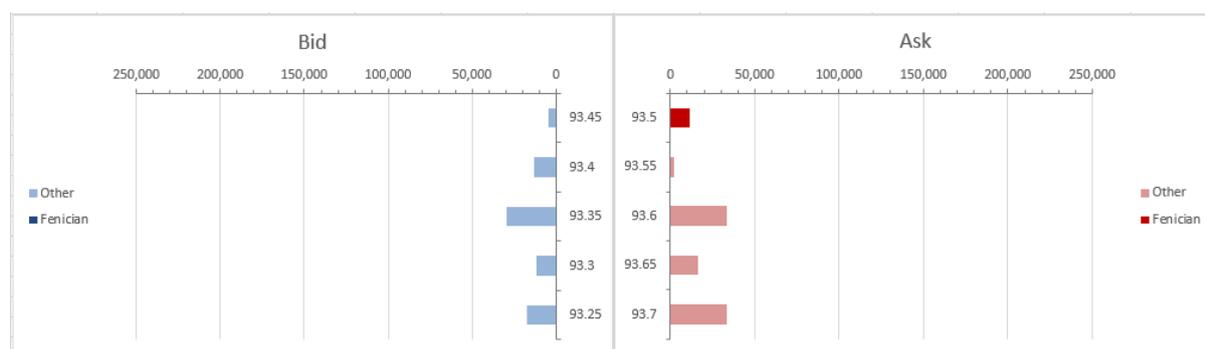
63. At 09:03:49 on a shared Bloomberg IB chat between the broker and Mr Abbattista, the broker confirmed that he had a client who was a seller of Ibstock. Mr Abbattista placed a Genuine Buy Order with the broker for 200,000 Ibstock shares at 227.90p. He instructed the broker to approach the client directly rather than place the order on the order book.

64. At 09:07:59 the broker informed Mr Abbattista that 100,000 shares of the Genuine Buy Order had been filled at 227.70p. At 09:08:35 Mr Abbattista cancelled the Misleading Sell Order. At the time the Misleading Sell Order was cancelled, the Best Bid / Best Offer in the market had ticked lower to 227.80p – 228.00p. No shares had been sold. The broker then continued to execute the remaining balance of 100,000 shares of the Genuine Buy Order in the market, filling it in full at 10:59:19.

Thomas Cook 15 May 2017

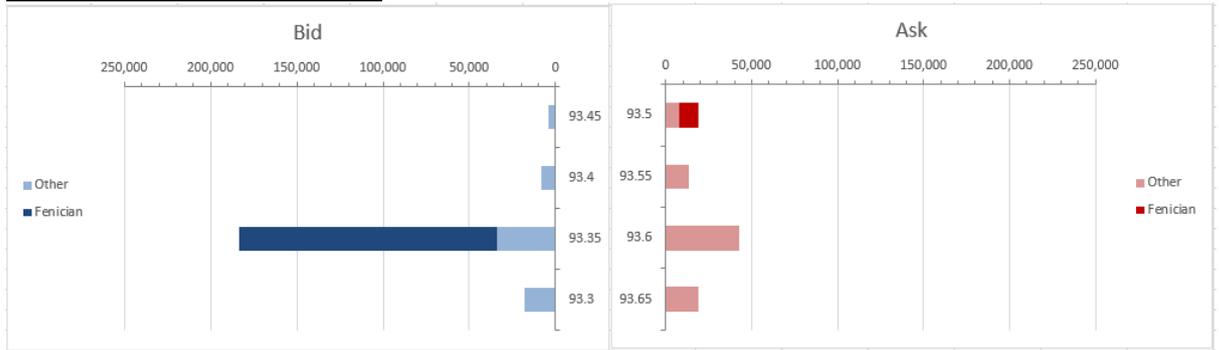
65. At the opening of the market on 15 May 2017, the Funds had a long position in Thomas Cook of 1,438,000 shares, a position which they had held since 30 December 2016. While seeking to reduce this long position through placing Genuine Sell Orders, Mr Abbattista entered seven large Misleading Buy Orders.
66. At 11:52:39 he entered a Genuine Sell Order for 250,000 shares. It was a Limit Order for 93.50p when the Best Bid / Best Offer was 93.45p – 93.50p. It was an Iceberg Order, with only 15,000 shares visible to the market (Table 5A). 55,727 shares were traded immediately and the order remained live.

Table 5A: 11:52:39.701



67. At 11:53:33 he entered a Misleading Buy Order for 150,000 shares. It was a Limit Order for 93.35p when the Best Bid / Best Offer was 93.45p – 93.50p. It was not an Iceberg Order and all 150,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer remained 93.45p – 93.50p, and it was 0.10p away from the Best Bid (Table 5B).

Table 5B: at 11:53:33.534



NB: Of the Misleading Buy Order at 93.35p, 58,590 shares were visible to the LSE. Mr Abbattista’s screen would have displayed, as a result of his data-feed from the LSE, that this part of his order had been placed on the LSE out of a total of 81,033 shares on the buy side at 93.35p. Of the Genuine Sell Order at 93.50p, 7,460 shares were visible to the LSE. The total number of shares offered on the LSE at 93.50p was 10,707.

68. Over the next five seconds, a further 105,190 shares of the Genuine Sell Order were sold. At this point in time, and in the presence of the Misleading Buy Order, the Best Bid / Best Offer remained 93.45p – 93.50p.
69. At 11:53:49 the Misleading Buy Order was cancelled without any of the order being filled. At the time the Misleading Buy Order was cancelled, the Best Bid / Best Offer in the market remained 93.45p – 93.50p. The Genuine Sell Order had 89,083 shares left to fill and the order remained live.
70. A further 13,530 shares were sold when at 11:54:44 a second Misleading Buy Order for 150,000 shares was entered into the market. It was a Limit Order for 93.30p when the Best Bid / Best Offer was 93.40p – 93.45p. It was not an Iceberg Order and all 150,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer remained 93.40p – 93.45p, and it was 0.10p away from the Best Bid (Table 5C).

Table 5C: 11:54:44.922



NB: Of the Misleading Buy Order at 93.30p, 58,590 shares were visible to the LSE. Mr Abbattista’s screen would have displayed, as a result of his data-feed from the LSE, that this part of his order had been placed on the LSE out of a total of 74,907 shares on the buy side at 93.30p. Of the Genuine Sell Order at 93.50p, 495 shares were visible to the LSE. The total number of shares offered on the LSE at 93.50p was 4,043.

71. Four seconds later the second Misleading Buy Order was cancelled without any of it or the Genuine Sell Order being filled. At the time the Misleading Buy Order was cancelled, the Best Bid / Best Offer in the market had ticked higher to 93.40p – 93.50p.
72. A further 10,739 shares had been sold when at 11:58:37 Mr Abbattista entered a third Misleading Buy Order for 150,000 shares. It was a Limit Order for 93.30p when the Best Bid / Best Offer was 93.45p – 93.50p. It was not an Iceberg Order and all 150,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer remained 93.45p – 93.50p, and it was 0.15p away from the Best Bid (Table 5D). At 11:58:59 the Misleading Buy Order was cancelled without any of it or the Genuine Sell Order being filled. At the time the Misleading Buy Order was cancelled, the Best Bid / Best Offer in the market had remained 93.45p – 93.50p.

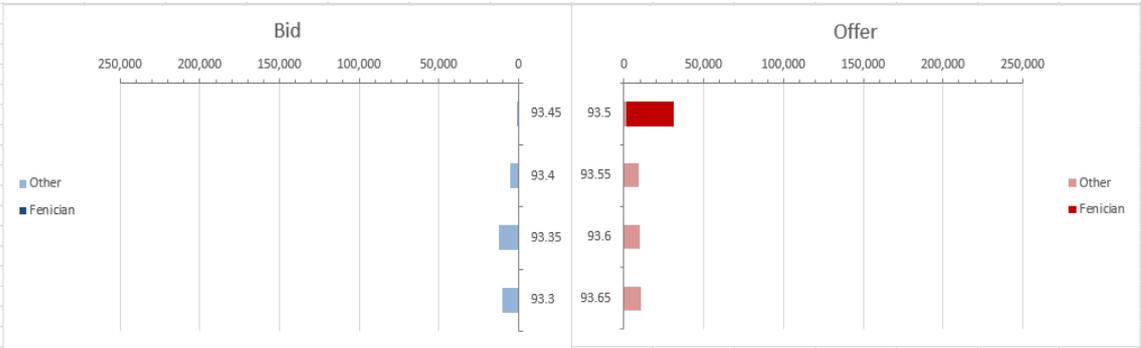
Table 5D: 11:58:37.724



NB: Of the Misleading Buy Order at 93.30p, 58,590 shares were visible to the LSE. Mr Abbattista’s screen would have displayed, as a result of his data-feed from the LSE, that this part of his order had been placed on the LSE out of a total of 73,819 shares on the buy side at 93.30p. Of the Genuine Sell Order at 93.50p, 10,395 shares were visible to the LSE. The total number of shares offered on the LSE at 93.50p was 14,908.

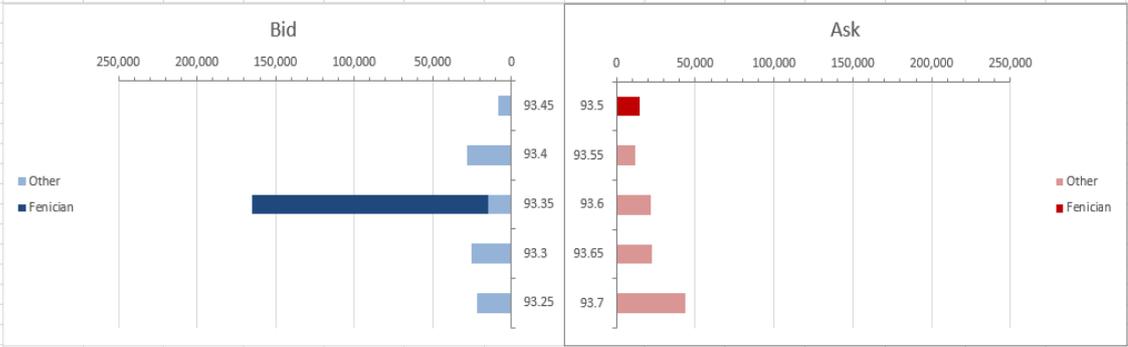
73. A further 40,771 shares had been sold when at 12:01:15 a second Genuine Sell Order for 250,000 shares was entered into the market. It was a Limit Order for 93.50p which matched the Best Offer at the time (Table 5E). It was an Iceberg Order, with only 15,000 shares visible to the market. The balance of the first Genuine Sell Order, 24,043 shares, remained in the market and was filled by 12.22.22.

Table 5E: 12:01:15.143



74. A total of 173,938 shares of the second Genuine Sell Order were sold when at 12:26:16 Mr Abbattista entered a fourth Misleading Buy Order for 150,000 shares. It was a Limit Order for 93.35p when the Best Bid / Best Offer was 93.45p – 93.50p. It was not an Iceberg Order and all 150,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer remained 93.45p – 93.50p, and it was 0.10p away from the Best Bid (Table 5F).

Table 5F: 12:26:16.829



NB: Of the Misleading Buy Order at 93.35p, 63,464 shares were visible to the LSE. Mr Abbattista’s screen would have displayed, as a result of his data-feed from the LSE, that this part of his order had been placed on the LSE out of a total of 82,511 shares on the buy side at 93.35p. Of the Genuine Sell Order at 93.50p, 14,923 shares were visible to the LSE. The total number of shares offered on the LSE at 93.50p was 14,923.

- 75. Six seconds later the fourth Misleading Buy Order was cancelled without any of it being filled. At the time the Misleading Buy Order was cancelled, the Best Bid / Best Offer in the market had remained 93.45p – 93.50p. The Genuine Sell Order had one fill of 66 shares over the period the fourth Misleading Buy Order was live.
- 76. A further 60,557 shares of the second Genuine Sell Order were sold when at 13:51:05 the price of the remaining 15,505 shares was amended from 93.50p to 92.75p. The Best Bid at the time was 92.75p and the order was filled immediately.
- 77. At 14:22:53 Mr Abbattista entered a third Genuine Sell Order for 250,000 shares. It was a Limit Order for 92.95p. It was an Iceberg Order, with only 15,000 shares visible to the market (Table 5G). No shares were sold when at 14:54:08 the price of the sell order was amended to 92.80p when the Best Bid / Best Offer was 92.75p – 92.85p. 34,517 shares of the order traded and the order remained live.

Table 5G: 14:22:53.699



- 78. At 15:21:02 Mr Abbattista entered a fifth Misleading Buy Order for 150,000 shares. It was a Limit Order was for 92.60p when the Best Bid / Best Offer was 92.70p – 92.80p. It was not an Iceberg Order and all 150,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer remained 92.70p – 92.80p, and it was 0.10p away from the Best Bid (Table 5H).

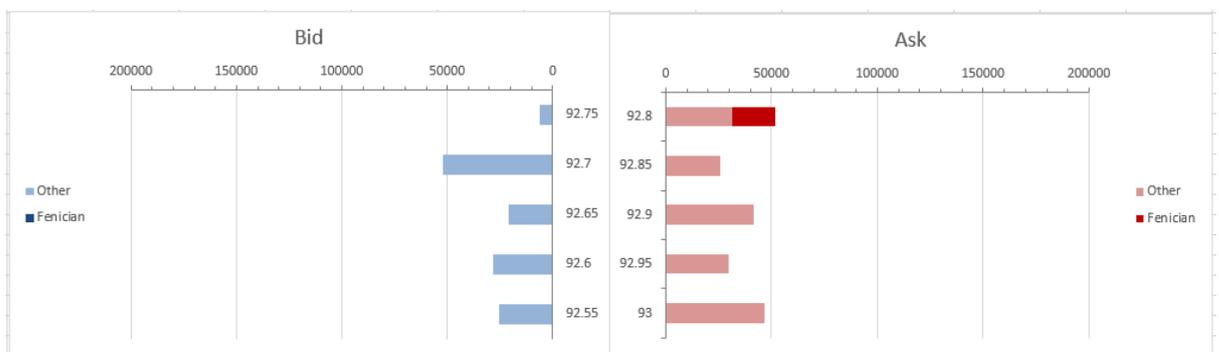
Table 5H: 15:21:02.821



NB: Of the Misleading Buy Order at 92.60p, 58,590 shares were visible to the LSE. Mr Abbattista’s screen would have displayed, as a result of his data-feed from the LSE, that this part of his order had been placed on the LSE out of a total of 73,726 shares on the buy side at 92.60p. Of the Genuine Sell Order at 92.80p, 10,733 shares were visible to the LSE. The total number of shares offered on the LSE at 92.60p was 15,479.

79. Over the next 28 seconds, a further 44,843 shares of the Genuine Sell Order were sold. At this time, and in the presence of the buy order, the Best Bid / Best Offer had ticked higher to 92.75p – 92.80p. At 15:21:50 the fifth Misleading Buy Order was cancelled without any of the order being filled. At the time the Misleading Buy Order was cancelled, the Best Bid / Best Offer in the market had ticked higher to 92.75p – 92.80p. At 16:02:33 the third Genuine Sell Order completed.
80. At 16:04:10 Mr Abbattista entered a fourth Genuine Sell Order for 288,000 shares. It was a Limit Order for 92.80p when the Best Bid / Best Offer was 92.75p – 92.80p (Table 5I). It was an Iceberg Order, with only 20,000 shares visible to the market. 101,756 shares of the order traded and the order remained live.

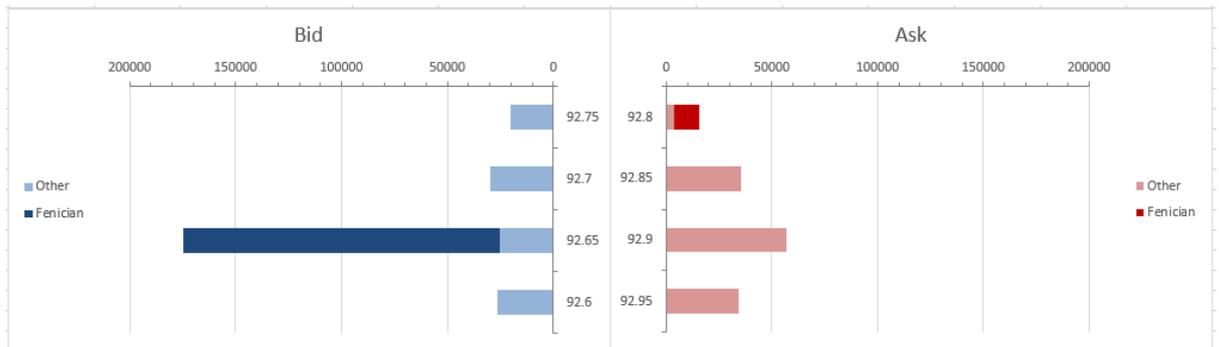
Table 5I: 16:04:10.784



81. At 16:15:40 Mr Abbattista entered a sixth Misleading Buy Order for 150,000 shares. It was a Limit Order for 92.65p when the Best Bid / Best Offer was 92.75p – 92.80p.

It was not an Iceberg Order and all 150,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer remained 92.75p – 92.80p, and it was 0.10p away from the Best Bid (Table 5J).

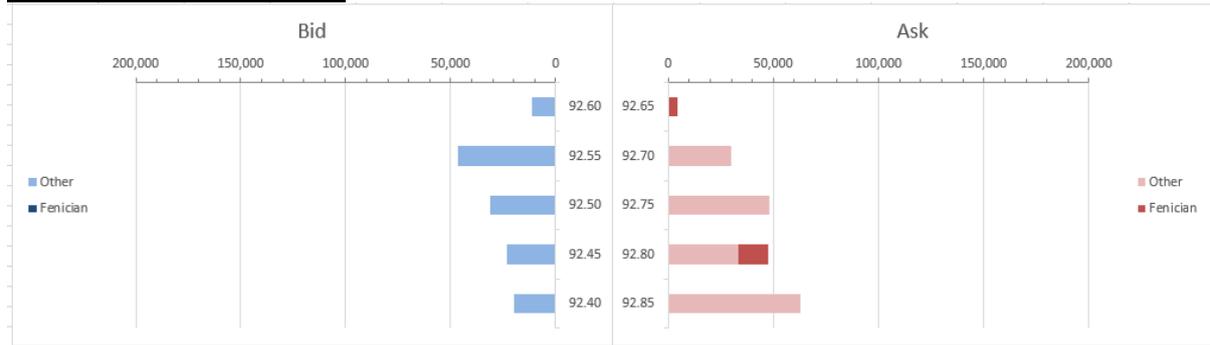
Table 5J: 16:15:40.598



NB: Of the Misleading Buy Order at 92.65p, 58,590 shares were visible to the LSE. Mr Abbattista’s screen would have displayed, as a result of his data-feed from the LSE, that this part of his order had been placed on the LSE out of a total of 73,711 shares on the buy side at 92.65p. Of the Genuine Sell Order at 92.80p, 8,156 shares were visible to the LSE. The total number of shares offered on the LSE at 92.80p was 8,797.

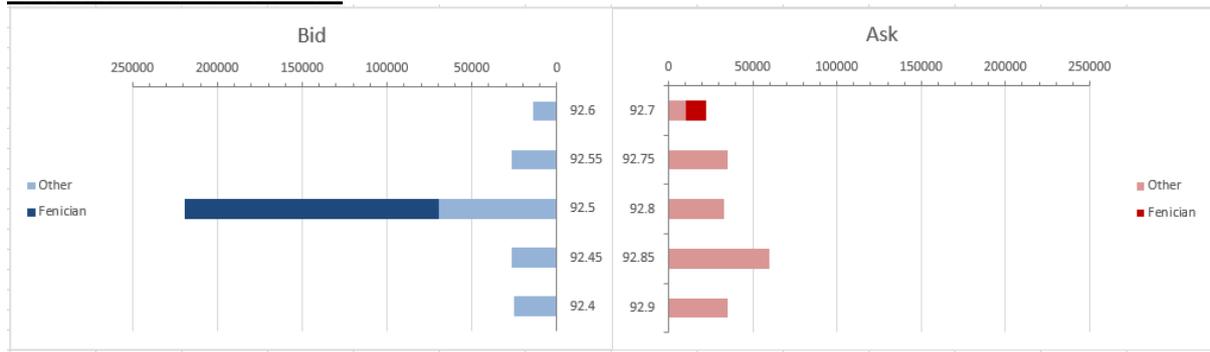
82. Over the next nine seconds, a further 21,783 shares of the Genuine Sell Order were sold. At this time, and in the presence of the Misleading Buy Order, the Best Bid / Best Offer remained 92.75p – 92.80p. At 16:16:02 the sixth Misleading Buy Order was cancelled without any of the order being filled. At the time the Misleading Buy Order was cancelled, the Best Bid / Best Offer in the market had remained 92.75p – 92.80p. The fourth Genuine Sell Order had 164,461 shares to sell and the order remained live.
83. At 16:21:53 Mr Abbattista entered a fifth Genuine Sell Order for 4,461 shares. It was a Limit Order for 92.65p when the Best Bid / Best Offer was 92.60p – 92.65p (Table 5K). It was not an Iceberg Order and all 4,461 shares were visible to the market.

Table 5K: 16:21:53.760



84. At 16:22:02 the fourth Genuine Sell Order was amended and the balance of 164,461 shares was reduced by 4,461 shares to 160,000 shares. The Limit Order remained at 92.80p. The Best Bid /Best Offer was 92.60p - 92.65p. It was an Iceberg Order, with only a maximum of 20,000 shares visible to the market. At this time 19,064 shares were visible to the market. At 16:22:43 the fifth sell order of 4,461 shares at 92.60p completed.
85. At 16:25:40 the amended fourth Genuine Sell Order of 160,000 shares at 92.80p was amended again to a new limit of 92.70p. The Best Bid/Best Offer was 92.65p - 92.70p. It was an Iceberg Order, with only 20,000 shares visible to the market. 7,662 shares of the order trade and the order remained live.
86. At 16:27:38 Mr Abbattista entered a seventh Misleading Buy Order for 150,000 shares. It was a Limit Order for 92.50p when the Best Bid / Best Offer at the time was 92.60p - 92.70p. It was not an Iceberg Order and all 150,000 shares were visible to the market. When the order entered the market, the Best Bid / Best Offer remained 92.60p - 92.70p, and it was 0.10p away from the Best Bid (Table 5L). The Misleading Buy Order was cancelled six seconds later without any of it or the genuine sell order being filled. At the time the Misleading Buy Order was cancelled, the Best Bid / Best Offer in the market remained 92.60p - 92.70p. Mr Abbattista did not enter any further buy orders that afternoon.

Table 5L: 16:27:38.730



NB: Of the Misleading Buy Order at 92.50p, 58,590 shares were visible to the LSE. Mr Abbattista’s screen would have displayed, as a result of his data-feed from the LSE, that this part of his order had been placed on the LSE out of a total of 116,658 shares on the buy side at 92.50p. Of the Genuine Sell Order at 92.70p, 6,025 shares were visible to the LSE. The total number of shares offered on the LSE at 92.70p was 18,311.

87. In summary, Mr Abbattista entered seven Misleading Buy Orders. In two instances, the Best Bid / Best Offer ticked higher and in the other five it remained unchanged.

ANNEX D

REPRESENTATIONS

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

The orders in question were a legitimate trading technique

2. *In placing the relevant orders (referred to by the Authority in this Notice as "Misleading Orders") Mr Abbattista was using a legitimate trading technique of liquidity testing. They were trial orders to help him assess the true state of liquidity in a market environment where visible liquidity had dramatically declined. He used them to determine whether there were hidden block traders who wanted to trade in large size only but whose presence could not be seen by looking at the visible order book. He would do this when he had an existing ("resting") order on the other side of the book, which was not being filled as quickly as he expected given the normal liquidity of the stock in question.*
3. *In order to detect traders trading in larger than usual size, Mr Abbattista placed his trial orders in larger than usual size. He chose not to apply the Iceberg Order feature to them, because it would have made them appear smaller than they were. But he thought (mistakenly) that the SOR which he used was automatically applying the Iceberg Order feature, because the orders showed in smaller size than he was expecting to see: they usually showed as a quarter to a third of what he expected. He only had access to data showing the position on LSE and he now understands that the orders were in fact routed to three other trading venues as well, so the orders were split across all four. The size of the trial orders took account of the Iceberg Order he thought was automatically being applied.*
4. *Mr Abbattista placed his trial orders close to the Touch. In deciding where the Touch was, he might discount small orders at the front of the order book because, from his experience, these were likely to be ephemeral orders placed by high-frequency algorithmic traders that were not representative of meaningful buying or selling interest. He regarded these as "noise" in the market rather than representing where the Touch really was. This view is supported by the view of an expert instructed by him, who said that most professional traders recognise them as weak place-*

holders that most likely will be cancelled quickly if one tries to hit or lift more than one of them.

5. *Also, it is likely there would have been some variation between where the Touch appeared to Mr Abbattista to be on the basis of orders placed on the LSE only (which is all that he could see), and where it was on the basis of all four of the trading venues to which Mr Abbattista's orders could have been routed.*
6. *Mr Abbattista expected that hidden block traders would be likely to be using trading algorithms that would have executed against his trial order almost immediately. As a result, he often cancelled his trial order if it had not been executed after a few seconds, having obtained the knowledge he was seeking, namely that there was no hidden block liquidity in the market. Conversely, if it had been traded, this would also have been valuable intelligence that would have informed his approach to trading the stock in question. As his resting order would typically have been partially executed prior to his placing the trial order, he would generally have made a small profit if his trial order had been executed, which would effectively have been day trading in that stock. In some cases, this was a secondary motivation for the trial order, in which case he might have let it rest for longer before cancelling it. He may also have had in mind that by letting the trial order rest for longer, he would be able to detect hidden block traders who were trading manually rather than via an algorithm and may have taken longer to trade.*
7. *Expert evidence obtained by Mr Abbattista showed that the practice of seeking information about market liquidity by placing orders in this way is a common and widely accepted practice.*
8. *The trial orders were genuine. Mr Abbattista intended them to be executed by hidden block traders if they were present in the market. It was only by being executed that a trial order could reveal the presence of a hidden block trader. Equally, the absence of execution within a certain period of time would provide information about the likely absence of such hidden traders. The orders were open to execution in whole or part from the moment they were placed, and were placed at price levels and for lengths of time that meant they were at genuine risk of execution. They were within the limits within which Mr Abbattista was permitted to trade. He believed they could have been executed in the Dark Pool operated by the DMA Provider, as well as in the "lit" (visible) market. In any event, there is no legal distinction between "intending to trade" and being "prepared to trade". This*

is supported by the judgment in Sarao v Government of the United States of America [2016] EWHC 2737 (Admin) which held that trades placed with the intention that they be "open to acceptance" do not constitute "spoofing".

9. The Authority does not accept a number of Mr Abbattista's representations about the Misleading Orders. It considers it unlikely that a trader of Mr Abbattista's considerable experience would not have understood how the SOR worked, including that it routed orders to more than one market. Further, the Authority notes that Mr Abbattista told the Authority that his SOR screen had been configured on a bespoke basis at his request, and that he had trialled the DMA system of another provider on one occasion, as he wished to try out the service it offered. In the Authority's view, both these facts are inconsistent with a lack of interest in, or understanding of, how the system worked. Had he misunderstood how the SOR worked, the Authority also considers it implausible that Mr Abbattista would have thought the reason only a portion of the Misleading Orders showed on his LSE feed was that the SOR was automatically applying the Iceberg Order feature to them. Were this the case, his Genuine Orders would also have shown in much smaller than expected size after applying the Iceberg Order feature to them, and he could be expected to have realised that the feature could not be the explanation for this. Nor has Mr Abbattista offered any explanation for why, if he thought the Iceberg Order feature was being applied automatically, he nevertheless manually selected it for his Genuine Orders (as he has not suggested that he thought it would be applied only to the Misleading Orders; nor is there any obvious logical basis for such a belief). He has stated that he understood that, unless he manually applied the feature by entering the size to be displayed, the size of the portion shown would be determined by the SOR. He has not offered an explanation for why he did not therefore seek to manually adjust the size displayed in relation to the Misleading Orders. Nor has he explained why he did not seek to validate his surmise that the feature was being applied automatically, or investigate whether the supposed automatic feature could be disabled. Taking all these matters into account, the Authority considers Mr Abbattista was aware that the Misleading Orders would show in very large size to many market users.
10. Nor does the Authority accept Mr Abbattista's explanation for where the Misleading Orders were placed in relation to the Touch. It notes that he first stated to the Authority that they were at the Touch, whereas in fact none of them were. The Authority's examination of data showing on the LSE-only feed suggests that this did not give a different impression of where the Touch was than the feed showing

data from all four exchanges. The Authority notes that it did not prevent Mr Abbattista from either placing the Genuine Orders in almost all cases at the Touch or improving it. Nor, in most cases, were the Misleading Orders in fact close to the Touch, as Mr Abbattista now says was the case: most were more than one tick away from the Touch, and many were several ticks away. Further, the Authority does not accept that Mr Abbattista would in fact discount small orders at the front of the order book to decide where the Touch really was, as he suggested might have been the case; it notes that this approach does not appear to have informed Mr Abbattista's actions in relation to the Genuine Orders.

11. The Authority also notes that, on occasion, Mr Abbattista maintained his Misleading Orders three or four ticks away from the Touch when it moved towards them: see paragraphs 10 to 46 of Annex C. The Authority considers that Mr Abbattista deliberately placed the Misleading Orders away from the Touch.
12. The Authority notes that, while the experts' reports provided by Mr Abbattista to the Authority generally supported the view that seeking information about market liquidity through the placement of orders is a common and widely accepted practice (which the Authority does not dispute), they were not asked to express an opinion on specifically whether what Mr Abbattista was doing when placing the Misleading Orders was either common or widely accepted. One of the experts did, however, express the view that it was a "usual" practice to use an order on the opposite side of the book to the intended trade to test liquidity. But the Authority notes that Mr Abbattista presented the technique as one he had developed; that Colleague A did not support the technique's use; and that the Authority's own expert did not consider the technique to be "usual". The Authority does not accept that Mr Abbattista's technique conforms to any usual practice.
13. The Authority considers that the large size of the Misleading Orders was inconsistent with an intent on Mr Abbattista's part that they should be filled, in circumstances where he had a smaller open order (a Genuine Order) on the other side of the order book, with which he was seeking to increase or reduce a position in the relevant stock in accordance with a pre-determined investment strategy. Had they been filled, that strategy would have been undermined by a substantial change in the holding of that stock in the opposite direction to that intended. Day trading was not part of Fenician's overall strategy, and there is no evidence to suggest that day trading was ever done by Mr Abbattista during the Relevant Period;

accordingly, the Authority does not accept it was a secondary aim of his in placing the Misleading Orders.

14. The Authority accepts that the Misleading Orders were at risk of execution, in the sense that they were on the order book and could, theoretically at least, have been filled. But the Authority considers that risk was small given their distance from the Touch and the relatively short periods of time for which they remained open (much shorter, in general, than the Genuine Orders). As noted above, the Authority considers Mr Abbattista deliberately placed the Misleading Orders away from the Touch. It also considers that he cancelled them relatively quickly to reduce the chance of them being filled.
15. The fact that the Misleading Orders were within Mr Abbattista's permitted trading limits is not an indication that he intended them to be filled.
16. In conclusion, the Authority considers that Mr Abbattista did not intend the Misleading Orders to be fulfilled, although he took the small risk that they might be. This conclusion is supported by the fact that none of the orders was in fact filled. Contrary to Mr Abbattista's representation, there is a significant distinction between being prepared to trade, in the sense of accepting a risk of trading, and intending to trade. The *Sarao* case, cited by Mr Abbattista, in fact distinguished between "(1) ... placing an offer which at the time it is placed is intended by the offeror to be open for acceptance, though it might subsequently be cancelled prior to acceptance; and (2) ... placing an offer which, at the time it is placed, the offeror does not genuinely intend should be accepted". It is not authority for the proposition that an order which is available for acceptance, even if not intended to be accepted, is not abusive.
17. In the light of the Authority's view that Mr Abbattista did not intend them to be fulfilled, it considers the Misleading Orders constituted market abuse.

No reason to think the technique was abusive

18. *Mr Abbattista had no reason to believe that the trial order technique was not permissible under the market abuse regime. At the time, there were no published Authority cases or guidance indicating that placing live, at-risk orders in larger than standard size (compared to the surrounding visible orders but small in comparison to daily trading volume or large institutional orders) with a view to obtaining*

information about hidden liquidity constituted market manipulation. Mr Abbattista clearly recalls that the compliance training he had received in relation to market manipulation focused on cases involving complex layering of the order book using algorithms, such as the Authority's previous decision in the Michael Coscia case, rather than the liquidity probing technique he deployed.

19. *The Authority implicitly conceded it was not clear to the market, at the time Mr Abbattista placed his trial orders, that it would consider such behaviour to be abusive, when proposing to publish a Warning Notice Statement: it argued this would be beneficial to enable market users to understand that the type of market abuse engaged in by Mr Abbattista was unacceptable, and would encourage more compliant behaviour.*
20. *In the circumstances, it would be manifestly unfair to conclude that the trading technique was prohibited, as this would amount to the retrospective issue of market guidance.*
21. The Authority has set out above its views on the relative size of the Misleading Orders, and the extent to which they were "at-risk", and it comments on the appropriate size comparators below. The Authority also notes the indicator of manipulative behaviour set out at paragraph 6 of Section I of Annex II of Regulation (EU) 2016/522: see Annex A to this Notice. It does not consider that it was necessary for there to have been Authority published cases or guidance specifically addressing the trading technique employed by Mr Abbattista for it to have been clear to market users that the placing of orders with no intention of executing them was unacceptable behaviour. Accordingly, the decision set out in this Notice does not constitute retrospective "market guidance". (The Authority further explains its conclusions on Mr Abbattista's state of mind below.)
22. Enabling understanding by market users of unacceptable behaviour is expressly stated (in Authority guidance in EG 6.2.5) to be a benefit of warning notice statements. The fact that it was cited by the Authority in this case does not equate to an implicit concession that it was not previously clear that the behaviour in question was market abuse.

No false or misleading signals as to supply or demand for the relevant shares

23. *The trial orders did not give any signals to the market beyond the information they conveyed on their face, namely that for as long as they remained open, if they were hit or lifted (as applicable), a market participant would buy or sell (as applicable) the relevant shares at the specified price in the visible volume; this was the case. They did not convey any information about the strength of Mr Abbattista's desire to execute the orders. The proposition that an order does not give any further representation is supported by expert evidence produced by Mr Abbattista.*
24. *To the extent it is possible for an order to give signals to the market beyond the information conveyed on its face, the trial orders did not do so. In particular, they were not placed in sufficient size or with sufficient frequency (e.g. by the use of computer algorithms to effect deep, fast, agile and consistent "layering" of the order book) for other market participants to draw any other inferences about the state of supply or demand for the shares in question.*
25. *The Authority has used an inappropriate measure in evaluating whether the size of the trial orders was large enough to create an impression on the market, namely the size of other orders visible in the market at that time. It is widely understood that the visible order book does not accurately represent the true state of supply and demand in the market at any point in time (because of the use of Iceberg Orders and other hidden order types). The trial orders were small in comparison to the daily trading volumes of the relevant stocks and to large institutional orders.*
26. *Insofar as the trial orders gave any signals to the market as to supply and demand for the relevant shares, those were not false or misleading, because they were genuine orders.*
27. *The Authority has not adduced any evidence that market participants were in fact misled, which suggests that they were not.*
28. *As a result, Mr Abbattista has not committed market abuse.*
29. *Mr Abbattista has not offered any justification for the proposition that daily trading volume or large institutional orders are more appropriate comparators than the surrounding orders on the order book when considering the relative size and effect of the Misleading Orders. In the Authority's view, it is clear that the effect of an*

order is to be considered in relation to the changes to the representation of the order book at the time it is placed. Indeed, this is specifically stated in Annex I A(f) to the Regulation to be one of the indicators of manipulative behaviour relating to false or misleading signals and price securing: see Annex A to this Notice. Daily trading volume and large institutional orders (not present on the book at the relevant time) are irrelevant. The Authority notes that the expert evidence relied upon by Mr Abbattista expressed the view that medium-to-large size orders would move the market and alter the behaviour of other market participants.

30. The Authority has explained above why it does not consider the Misleading Orders to have been “genuine”, in the sense that Mr Abbattista did not intend them to be executed.
31. It is not necessary to adduce evidence as to how specific market participants were in fact misled by the Misleading Orders. The Authority considers that it is clear that market participants were, or were likely, to have been, misled by them, so as to satisfy the definition of market manipulation in Article 12 of the Market Abuse Regulation.

If Mr Abbattista did commit market abuse, he can only have done so negligently

32. *The Authority cites, as a basis for its case against Mr Abbattista, the concerns expressed by Colleague A to Mr Abbattista when they discussed the latter’s trading technique. In fact, as appears from the transcript of the Authority’s interview with Colleague A, the latter did not consider that there was anything wrong with the technique. He appeared anxious (as he was prone to be) and so Mr Abbattista stopped using the technique out of respect for Colleague A’s feelings. Also, the technique was not proving to be of any particular value, so he accepted that markets had changed forever and there was no point in continuing.*
33. *This is to be contrasted with the previous case of Paul Axel Walter. As appears from the Authority’s Final Notice in that case, Mr Walter was held to have committed market abuse negligently, not recklessly, notwithstanding that he had received a telephone call querying the trades in question. The Authority must act consistently: if Mr Walter was negligent in not taking the broker’s concerns seriously, Mr Abbattista can at worst have been negligent in not taking his own colleague’s concerns more seriously.*

34. The Authority considers that, as an experienced market professional, Mr Abbattista must have been aware of the risk that placing orders which he did not intend to be fulfilled would be market abuse, but recklessly placed them anyway. Further, in these circumstances, it considers that Colleague A's expressions of concern about Mr Abbattista's technique early in the Relevant Period were a warning that the technique might be unacceptable. In failing to heed this warning, the Authority considers that he was closing his mind to the risk that the technique was abusive.
35. The Authority has reached its view as to Mr Abbattista's state of mind after consideration of all the available evidence in this case, and the fact that a different decision was reached in the *Walter* case, on different facts, does not undermine its conclusion in this case. It notes that a relevant factual distinction between the facts in the *Walter* case and the facts of this case (apparent from the Notice in that case) is that the call in which concerns were expressed to Mr Walter was from a third party unknown to him, and Mr Walter's position was that he believed it to be a hoax. In contrast, the concerns expressed to Mr Abbattista were from a senior colleague for whom he has professed respect.

A prohibition is not appropriate

36. *Even if, contrary to his position, Mr Abbattista's actions are found to have contravened Article 15 of the Market Abuse Regulation, based on the precedent cases and relevant Authority guidance it is not appropriate to impose a prohibition.*
37. *The case law on the use of prohibition orders has established that, in cases where there has been no dishonesty or lack of integrity (including recklessness) their use should be confined to the most serious cases of lack of competence, in which the individual poses a risk to the public in future: see Timothy Alan Roberts, Andrew Wilkins v The Financial Conduct Authority [2015] UKUT 0408. To the extent he is found to have lacked competence in using the trading technique, Mr Abbattista poses no such risk. The Authority's enforcement action against him has affected him very deeply, having had a profound impact on his life over a period of years, and he has resolved never to use the trial order technique (or any similar technique) again.*
38. This is not a case of lack of competence. The Authority has found that Mr Abbattista acted recklessly, and therefore with a lack of integrity. For the reasons set out

above, it considers the imposition of a prohibition order in this case to be appropriate, and in line with Authority guidance.

Financial penalty

39. *If, contrary to his position, the Authority considers that Mr Abbattista committed market abuse, the Authority should consider the following. Although the technique was used on multiple occasions, this was in circumstances where Mr Abbattista had no reason to believe that it was not legitimate. None of the other "Level 4 and 5" factors set out in DEPP 6.5C apply; accordingly, this cannot be a Level 4 or Level 5 case.*
40. *The "Level 1 – Level 3" factors in DEPP 6.5C are as follows:*
- (a) little, or no, profits were made or losses avoided as a result of the market abuse, either directly or indirectly;*
 - (b) there was no, or limited, actual or potential effect on the orderliness of, or confidence in, markets as a result of the market abuse; and*
 - (c) the market abuse was committed negligently or inadvertently.*
- All those factors are present in this case; accordingly, this must be a Level 1 – Level 3 case.*
41. *The following mitigating factors should be taken into account, in accordance with DEPP 6.5C.3(b), (f) and (h):*
- Mr Abbattista has co-operated with the Authority's investigation from the very beginning, including by volunteering a clear, detailed and thorough explanation of his trading technique;*
 - he has no regulatory disciplinary findings against him; and*
 - there was no relevant Authority guidance or case law from which he could reasonably have inferred that the trading technique was not permissible.*

42. *The Authority should also take into account the profound impact the long investigative process has had on the life of Mr Abbattista and his family. Mr Abbattista has endured the significant personal pressures of being subject to an Authority enforcement investigation, and has been unable to work during this period, resulting in a significant loss of income.*
43. The Authority considers that Mr Abbattista committed the market abuse recklessly, which is a further Level 4 or Level 5 factor. It follows that factor (c) in paragraph 40 above is not present in this case. The Authority does not agree that factor (b) is present.
44. The Authority considers the degree of cooperation shown by Mr Abbattista during the investigations was unexceptional and, to the extent set out in this Notice, it does not accept the explanations he provided. Accordingly, the cooperation he provided should neither increase nor decrease the financial penalty to be imposed. The Authority notes the lack of previous regulatory disciplinary findings against Mr Abbattista but does not consider this merits a reduction in penalty. As noted at paragraph 21 above, the Authority does not consider it necessary for there to have been Authority guidance or case law addressing the particular technique used by Mr Abbattista for him to have understood that it was not permissible to place orders without intending to fulfil them.
45. The Authority notes the effect of the investigation on Mr Abbattista and his family but it does not justify a reduction in the financial penalty.

Procedural unfairness

46. *Mr Abbattista has suffered a considerable procedural unfairness in not having been invited to attend a further interview with the Authority at a later stage in the investigation. Had he been, he would have been able to address the Authority directly in relation to its flawed case theory. It is not enough to say that Mr Abbattista can be confident of a fair hearing before the RDC. In the interests of natural justice, the Authority ought to have sought input from him on the central issue of his purpose in placing the trial orders before issuing a Warning Notice. Its failure to do so has led to his incurring defence costs unnecessarily, as well as causing distress to him and his family. Certain information relied on was not shown to him prior to either of his interviews and some has come to light only very*

recently. These are matters that ought to be taken into account in addition to the mitigating factors set out above.

47. The Authority's decision-maker in this case, the RDC (see paragraph 8.3 of this Notice), has reached the decision set out in this Notice after careful consideration of all the evidence available to it, including Mr Abbattista's representations. Mr Abbattista has been provided with all the information seen by the RDC and has had the opportunity to comment on all that information. The Authority does not consider that Mr Abbattista's complaint about the lack of a further interview undermines the evidence relied upon by it in reaching its decision. Any complaints about the conduct of the Authority may be pursued by Mr Abbattista using the Complaints Scheme established under the Financial Services Act 2012.