
FINAL NOTICE

To: **Mr David Isaacs (dob 08/11/1949)**

Of:

Date: **28 February 2005**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice of its decision to take the following action

ACTION

1. The FSA gave you, Mr David Isaacs ("Mr Isaacs"), a Decision Notice dated 24 February 2005 which notified you that, pursuant to section 123 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty of £15,000 on you in respect of market abuse.
2. You have waived your right to refer the matter to the Financial Services and Markets Tribunal. Accordingly, for the reasons set out below and pursuant to section 123 of the Act, the FSA imposes a financial penalty on you in the amount of £15,000.

REASONS FOR THE ACTION

Summary

3. During September 2003 Mr Isaacs engaged in market abuse in that on 3 September, 10 September, 12 September and 18 September 2003 he made disclosures on the bulletin board website ADVFN ("ADVFN") of certain information obtained from Trafficmaster plc ("Trafficmaster") which was not generally available.

4. The conduct described in paragraph 3 above constituted behaviour in relation to the shares of Trafficmaster which was based on information which was not generally available to those using the market but which, if it had been available to a regular user of the market in Trafficmaster shares, would have been or would have been likely to have been, regarded by that regular user as relevant when deciding the terms on which transactions in Trafficmaster shares should be effected.
5. Further, this behaviour was likely to have been regarded by a regular user of the market in Trafficmaster shares who was aware of it as a failure on the part of Mr Isaacs to observe the standard of behaviour reasonably expected of a person in his position in relation to the market in Trafficmaster shares.

Relevant statutory provisions and guidance

Provisions of the Act

6. Section 123(1) of the Act provides that:

"If the Authority is satisfied that a person ("A")

(a) is or has engaged in market abuse, or

(b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by A, would amount to market abuse,

it may impose on him a penalty of such amount as it considers appropriate."

7. Section 118(1) of the Act defines market abuse as "*behaviour ...*

(a) which occurs in relation to qualifying investments traded on a market to which this section applies;

(b) which satisfies any one or more of the conditions set out in subsection (2); and

(c) which is likely to be regarded by a regular user of that market who is aware of the behaviour as a failure on the part of the person or persons concerned to observe the standard of behaviour reasonably expected of a person in his or their position in relation to the market."

8. Section 118(2) of the Act sets out the three conditions referred to in section 118(1)(b). The condition that is relevant to this case is that:

"(a) the behaviour is based on information which is not generally available to those using the market but which, if available to a regular user of the

market, would or would be likely to be regarded by him as relevant when deciding the terms on which transactions in investments of the kind in question should be effected".

9. "Regular user", in relation to a particular market, means "*a reasonable person who regularly deals on that market in investments of the kind in question*" (Section 118(10) of the Act).

The Code of Market Conduct

10. Pursuant to section 119 of the Act the FSA has issued the Code of Market Conduct ("the Code"), which contains guidance as to whether or not behaviour amounts to market abuse. Under section 122(2) of the Act, the Code may be relied on so far as it indicates whether or not particular behaviour should be taken to amount to market abuse.
11. Paragraph 1.3.1 of the Code provides that the types of behaviour which come within the scope of the market abuse regime include (inter alia) making statements or representations or otherwise disseminating information which is likely to be regarded by the regular user as relevant to determining the terms on which transactions in qualifying investments should be effected.

Facts

12. Trafficmaster is a technology company in the area of satellite navigation and digital traffic information. Its ordinary share capital is and was at the relevant time traded on the London Stock Exchange ("the LSE").
13. Mr Isaacs is an experienced company executive and private investor with no connection to Trafficmaster. Between 18 July 2003 and 8 August 2003 he purchased 28,387 shares in Trafficmaster in three tranches for a total consideration of £11,499.48.

The 4 August minutes

14. On 4 August 2003 Trafficmaster held an internal management meeting. Minutes of the meeting were produced and distributed internally ("the 4 August minutes"). The 4 August minutes included details of certain transactions entered into or to be entered into by Trafficmaster involving its flagship product, Smartnav, a satellite navigation system for installation in cars, including the following:

"4. *New distribution of Smartnav is as follows:*

- *Lex vehicle leasing*
- *Subaru*
- *Citroen*
- *Mazda*
- *Rover*

- *Mercedes Benz*
- *Halfords*".

15. One of the individuals who received a copy of the 4 August minutes was Mr X, an employee of Trafficmaster. Mr X was an acquaintance of Mr Isaacs.
16. On or before 3 September 2003, while visiting his acquaintance (Mr X)'s house, Mr Isaacs saw and read a copy of the 4 August minutes while Mr X was out of the room. Mr Isaacs committed to memory as best he could the contents of the 4 August minutes.

Posting on ADVFN

17. On 3 September 2003 Mr Isaacs, under the pseudonym "DIRAS", made the following posting on ADVFN at 08:26:

"Just watch what happens when they announce Mercedes, Rover and Halfords!"

This information was obtained by Mr Isaacs from the 4 August minutes.

Purchases of Trafficmaster shares

18. On 5 September 2003 Mr Isaacs purchased 9,337 shares in Trafficmaster for a consideration of £4,099.91.
19. On 8 September 2003 Mr Isaacs purchased a further 4,523 shares in Trafficmaster for a consideration of £1,999.89.

The 8 September minutes

20. On 8 September 2003 Trafficmaster held an internal management meeting. Minutes of the meeting were produced and distributed internally ("the 8 September minutes"). The 8 September minutes included details of certain transactions entered into or to be entered into by Trafficmaster involving Smartnav, including the following:

"3. Citroen and MG Rover should be announcing Smartnav as an after market accessory later this week.

5. Mitsubishi will be fitting Smartnav as standard on a limited edition of the Shogun from the 1st October 2003, initially 600 units".

21. The 8 September minutes also stated:

"6. Interim results are announced on Thursday 11th September 2003. Figures will be slightly better than expected".

22. One of the individuals who received a copy of the 8 September minutes was Mr Isaacs' acquaintance, Mr X.
23. On or before 10 September 2003 either Mr Isaacs had sight of the 8 September minutes or the information contained in them otherwise became known to him from Mr X.

Further postings on ADVFN

24. On 10 September 2003 Mr Isaacs, under the pseudonym "DIRAS", made the following posting on ADVFN at 07:28:

"Not sure how much effect the following will have. MG Rover will announce later this week 'smartnav will be an after market accessory'. Also Mitsubishi will be fitting smartnav as STANDARD on a limited edition of the Shogun in October c. 500 units."

The wording of this posting was strikingly similar to that of the 8 September minutes. This information was obtained by Mr Isaacs either from the 8 September minutes themselves or from Mr X.

25. Also on 10 September 2003 Mr Isaacs, under the pseudonym "DIRAS", made the following posting on ADVFN at 07:33:

"Not so sure! Results will beat city expectations, but not by much. Co will post a profit, not sure at what level eg EBIT, EBITDA etc. Current trading strong. Q. How much of this is in the current price?"

This information was obtained by Mr Isaacs either from the 8 September minutes themselves or from Mr X.

26. In addition, on 10 September 2003, in response to the following question addressed to "DIRAS" and posted on ADVFN at 07:43:

"Diras: is the Mitsubishi info fact? If so as far as I am aware this will be the manufacturer to fit smartnav as standard albeit in only a few models. This could be the thin edge of the wedge."

Mr Isaacs, under the pseudonym "DIRAS", made the following posting on ADVFN at 07:46:

"Fact DIRAS"

Mr Isaacs provided this confirmation based on information obtained either from the 8 September minutes themselves or from Mr X.

27. On 12 September 2003 Mr Isaacs, under the pseudonym "DIRAS", made the following posting on ADVFN at 08:14:

"Watch for these announcements: MG Rover, MERCEDES and interestingly Halfords – I'm told Smartnav is easy to fit be interesting to see what price they sell at compared to the dealers!"

This information was obtained by Mr Isaacs from the 4 August minutes and either from the 8 September minutes themselves or from Mr X.

28. Also on 12 September 2003 Mr Isaacs, under the pseudonym "DIRAS", made the following posting on ADVFN at 08:27:

"MG Rover, if not today next week, others I am reliably informed are agreed. I guess timing depends on how TFC want to release the deals, from past experience drip drip not big bang."

This information was obtained by Mr Isaacs either from the 8 September minutes themselves or from Mr X.

29. On 18 September 2003, Mr Isaacs, under the pseudonym "DIRAS", made the following postings on ADVFN at 07:17 and 07:48 respectively:

"Re Shogun. Just as I predicted!"

"Mercedes & Halfords announcements can't be far away. Merc, as with the majority standard fit."

This information was obtained by Mr Isaacs from the 4 August minutes and either from the 8 September minutes themselves or from Mr X.

Announcements

30. Trafficmaster announced its interim results on 11 September 2003. Trafficmaster made announcements to the market concerning an agreement with Mitsubishi on 18 September 2003, an agreement with MG and with Rover on 15 October 2003 and an agreement with Mercedes Benz on 9 January 2004.

Mr Isaacs engaged in market abuse

31. The FSA considers that Mr Isaacs' behaviour described in paragraphs 12 – 29 above amounted to market abuse for the purposes of Section 123 of the Act in that Mr Isaacs' actions in disseminating information through his postings on ADVFN amounted to misuse of information.

Behaviour in relation to qualifying investments

32. Mr Isaacs' behaviour occurred in relation to Trafficmaster shares. Trafficmaster's shares are traded on the LSE and are therefore qualifying investments within the meaning of section 118(1)(a) of the Act.

Behaviour based on relevant information not generally available

33. Paragraph 1.3.1(5) of the Code provides that behaviour which comes within the scope of market abuse includes making statements or representations or otherwise disseminating information which is likely to be regarded by the regular user as relevant to determining the terms on which transactions in qualifying investments should be effected. Such information must not itself already be generally available.
34. Paragraph 1.4.9 of the Code provides that whether information is or is likely to be regarded as relevant depends on the circumstances of the case. In making such a determination, the regular user is likely to consider the extent to which the information is specific and precise, material, current and reliable (including how near the person providing the information is, or appears to be, to the original source of that information and the reliability of that source) and the extent to which there is other material information which is already generally available to inform users of the market and the information differs from information which is generally available and can therefore be said to be new or fresh information¹.
35. On 3, 10, 12 and 18 September 2003 Mr Isaacs disseminated information obtained from the 4 August minutes, the 8 September minutes, Mr X or any combination of these by way of his postings on ADVFN as set out above.
36. That information was not generally available to other users of the LSE since it was derived from confidential internal Trafficmaster documents and had not been made public.
37. The information was relevant in that it concerned material agreements to be entered into by Trafficmaster in relation to sales and/or distribution of its flagship product, Smartnav. It was specific and precise in that it named the companies with which Trafficmaster would be entering into those agreements. It was also current in that the agreements in question had not yet been announced. The information was reliable since it was obtained by Mr Isaacs from Trafficmaster's own internal documents.
38. If the information had been available to a regular user of the LSE, therefore, that regular user would have, or would have been likely to have, regarded the information as relevant when deciding the terms on which transactions in Trafficmaster shares should be effected.
39. Mr Isaacs' behaviour in terms of his dissemination of information concerning Trafficmaster therefore fell within the scope of Sections 118(1)(b) and 118(2)(a) of the Act.

¹ Paragraph 1.4.11(1) of the Code cites information concerning the business affairs or prospects of a company as an example of relevant information where the qualifying investment in question is issued by a company.

Behaviour falling below the standard reasonably to be expected

40. Paragraph 1.2.2 of the Code provides that in determining whether behaviour amounts to market abuse, it is necessary to consider objectively whether a hypothetical reasonable person, familiar with the market in question, would regard the behaviour as acceptable in the light of all the relevant circumstances.
41. Paragraph 1.2.3 of the Code provides that in determining whether behaviour falls below the standards expected, the regular user is likely to consider all the circumstances of the behaviour, including (inter alia):
 - (a) the position of the person in question and the standards reasonably to be expected of that person at the time of the behaviour in the light of that person's experience, level of skill and standard of knowledge; and
 - (b) the need for market users to conduct their affairs in a manner that does not compromise the fair and efficient operation of the market as a whole or unfairly damage the interests of investors.
42. Mr Isaacs is an experienced company executive and private investor.
43. Mr Isaacs obtained the information by dishonest and surreptitious means, eliciting it either from internal Trafficmaster documents which he had no business reading or from an unwitting employee of Trafficmaster.
44. Mr Isaacs then deliberately and inappropriately disseminated the information by way of his postings on ADVFN.
45. Mr Isaacs' behaviour was prompted by a desire to "ramp up" the price of Trafficmaster shares. He believed that by posting the information on ADVFN he would encourage people to buy Trafficmaster shares and the price of those shares, including those already held by him prior to 3 September 2003 and those purchased by him on 5 and 8 September 2003, would therefore increase.
46. The FSA considers that a reasonable person familiar with the LSE would regard Mr Isaacs' behaviour as unacceptable in the light of all the relevant circumstances. Mr Isaacs obtained relevant information concerning Trafficmaster in a dishonest and surreptitious manner and disclosed the information to others in a bid to increase the share price. A regular user of the LSE would therefore be likely to regard Mr Isaacs' behaviour as a failure on his part to observe the standard of behaviour reasonably expected of a person in his position in relation to the market within the meaning of Section 118(1)(c) of the Act.

SANCTION

47. Market users rely on the timely dissemination of such relevant information as they may reasonably expect to receive. Those who possess relevant information ahead of general dissemination should, therefore, refrain from basing their behaviour on

that information. Otherwise the confidence of market users in the ability of the market to ensure access to such information will be undermined.

48. In enforcing the market abuse regime the FSA's priority is to protect prescribed markets from any damage to their efficiency caused by the misuse of information in relation to the market. The effective and appropriate use of the power to impose penalties for market abuse helps to maintain confidence in the UK financial system by demonstrating that high standards of market conduct are appropriately enforced in the UK financial markets. The public enforcement of these standards also furthers the statutory objectives of public awareness, the protection of consumers and the reduction of crime (ENF 14.1.3).
49. Section 124 of the Act requires the FSA to issue a statement of its policy with respect to the imposition of penalties for market abuse and the amount of such penalties. The FSA's policy in this regard is contained in Chapter 14 of the Enforcement Manual ("ENF 14"). In deciding whether to exercise its power under section 123 in the case of any particular behaviour, the FSA must have regard to this statement.
50. In accordance with the FSA's published policy in determining whether to take action in respect of market abuse, and in determining the level of any penalty imposed, the FSA has regard to all the circumstances, including the nature and seriousness of the abuse, the person's conduct following the abuse (including their co-operation with the FSA's investigation), the nature of the market in question, the likelihood of behaviour of the same type being repeated and the need to deter such abuse, and the previous history of the person concerned.
51. The FSA has taken all of the relevant circumstances into account in deciding that it is appropriate to take action for behaviour appearing to the FSA to amount to market abuse in this case, that the imposition of a financial penalty in this case is appropriate and that the level of the penalty imposed is proportionate. The FSA has regard to the guidance contained in ENF 14.4, 14.6 and 14.7 and to the following considerations:
 - (a) Mr Isaacs' behaviour was deliberate. He foresaw the consequences of his actions;
 - (b) Mr Isaacs intended to affect the price of Trafficmaster shares by his behaviour;
 - (c) Mr Isaacs obtained the information in question in a dishonest and surreptitious manner;
 - (d) Mr Isaacs obtained information on at least two separate occasions and disseminated information on at least four separate occasions; and
 - (e) Investors in Trafficmaster, as with any investors in shares traded on the LSE, need to have confidence in the integrity of the processes by which

shares are traded on the market. Behaviour such as Mr Isaacs' comprising the misuse of information tends to undermine investor confidence and it is therefore desirable to deter future such behaviour.

52. In deciding the level of financial penalty, the FSA has also had regard to the following mitigating factors:
- (a) Mr Isaacs has not previously been the subject of enforcement action by the FSA nor is he an approved person. The imposition of a penalty for market abuse is a very serious measure and the FSA recognises that, as an individual, the impact on Mr Isaacs is likely to be significant. Nevertheless, the seriousness of the abuse in this case is such that the imposition of a penalty is appropriate; and
 - (b) Mr Isaacs has co-operated fully with the FSA's investigation into this matter and admitted the matters in question.

IMPORTANT NOTICES

This Final Notice is given to you in accordance with section 390 of the Act.

Manner of payment

The penalty of £15,000 must be paid to the FSA in full.

Time for payment

You must pay to the FSA the full amount of the penalty specified above in 12 equal monthly payments of £1,250. The monthly payments are to commence on or before 1 March 2005 and are to conclude on or before 1 February 2006.

If the penalty is not paid

If all or any part of the penalty is outstanding after the required date of payment, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

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 FSA must publish such information about the matter to which this Notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such information would, in the opinion of the FSA, be unfair to Mr Isaacs or prejudicial to the interests of consumers.

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

FSA contacts

For more information concerning this matter generally, please contact Anila Bedi at the FSA (direct line: 020 7066 1304).

Carlos Conceicao
Head of Market Integrity
FSA Enforcement Division