Financial Services Authority

FINAL NOTICE

To: **Darwin Lewis Clifton OBE**
Byron Holdings Limited

Of: **Byron House**
3 H Jones Road
Stanley
Falkland Islands

Date: **27 January 2009**

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

1. ACTION

1.1. The FSA gave you, Darwin Lewis Clifton ("Mr Clifton") and Byron Holdings Limited ("Byron"), a Decision Notice on 19 January 2009 that, for the reasons listed below and pursuant to section 123 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided:

(1) to impose a financial penalty of £59,500 on you, Mr Clifton, for requiring Byron to engage in behaviour which, if engaged in by Mr Clifton, would have amounted to market abuse between 19 November 2007 and 8 February 2008 ("the relevant period"); and

(2) to impose a financial penalty of £86,030 on you, Byron Holdings Limited, for engaging in market abuse in the relevant period in breach of section 118(2) of the Act.

1.2. Mr Clifton and Byron confirmed on 13 January 2009 that they will not be referring the matter to the Financial Services and Markets Tribunal.

1.3. Accordingly, for the reasons set out below and having agreed with Mr Clifton and Byron the facts and matters relied on, the FSA imposes a financial penalty on Mr Clifton in the amount of £59,500 and on Byron in the amount of £86,030.

1.4. Mr Clifton agreed to settle at an early stage of the FSA's investigation. He therefore qualifies for a 30% (stage 1) reduction in penalty, pursuant to the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £85,000 on Mr Clifton. Byron also agreed to an early settlement but its fine represents disgorgement of profit only and so a stage 1 reduction is not appropriate.

2. REASONS FOR THE ACTION

Summary

2.1. Desire Petroleum plc ("Desire") was founded in 1996 in order to explore for oil and gas in the Falkland Islands. It is a company incorporated in the UK whose shares are quoted on the Alternative Investment Market of the London Stock Exchange ("AIM"). Mr Clifton was a founding director of Desire in 1996 and has been a non-executive director since May 2005 (he was not a director at Desire between November 1999 and May 2005). He is also a director of and shareholder in Byron Holdings Limited ("Byron"), a Falkland Islands incorporated company.

2.2. Mr Clifton was aware, by 19 November 2007 at the latest, that Desire was in advanced discussions with another company in relation to an agreement for that company to "farm-in" to Desire's exploration prospects, i.e. enter into a joint venture drilling arrangement. This constituted inside information. Desire issued an announcement on 25 February 2008 that it had concluded the farm-in agreement (which was still at that stage subject to certain awards and approvals by the Falkland Islands Government). At close of trading on that day Desire shares were worth 46.5p, a rise of around 36% on the price at close of the previous trading day.

2.3. Mr Clifton directed Byron to purchase shares in Desire on four separate occasions during the relevant period. Byron had the inside information relating to the farm-in agreement as a result of Mr Clifton's knowledge of it (although the other directors of Byron were not aware of the inside information). Byron's purchases of the shares based on that inside information therefore constituted insider dealing in breach of section 118(2) of the Act. By directing Byron to purchase the shares, Mr Clifton took action to require Byron to engage in behaviour which, if engaged in by Mr Clifton, would have amounted to market abuse. The FSA may therefore impose a financial penalty upon Mr Clifton and Byron under section 123(1) of the Act.

2.4. The FSA views Mr Clifton's conduct as particularly serious because:

(1) He was in a position of trust as a director of Desire, an AIM-listed company.

(2) He directed Byron to purchase shares in Desire on four separate occasions, without at any point considering whether he was permitted to do so.

(3) The amount of profit made is substantial: if Byron had sold its shares at the price at close of business on 25 February 2008 (by which time the FSA

considers it likely that the share price had factored in the announced information) it would have made a profit of £86,030, or approximately 73% of the amount it paid for the shares. Mr Clifton's share of that profit would have been £28,676.

(4) Confidence in the AIM market could be damaged or put at risk by a director of an AIM company with inside information arranging for another company to deal in the company's shares.

2.5. Mr Clifton's misconduct therefore merits a substantial financial penalty (this is on top of the disgorgement by Byron of the £86,030 profit). In assessing the appropriate level of penalty, the FSA recognises the following factors which tend to mitigate the seriousness of Mr Clifton's misconduct:

(1) The FSA accepts that Mr Clifton's conduct was not deliberate, in that he did not consider at the time whether the information he was given was inside information; he was however reckless in that he failed to consider what should have been a clear and obvious risk that purchasing the shares before the information was generally available would result in his requiring Byron to engage in market abuse.

(2) Byron was looking for investment opportunities in the oil and gas sector and had an existing shareholding in Desire. It wished to increase its shareholding over the long term and did not seek to realise any profit after the announcement on 25 February 2008 (which supports the FSA's conclusion that Mr Clifton's conduct was not deliberate). It held 360,000 shares in Desire before the relevant period, purchased a further 200,000 shares two days after the announcement on 25 February 2008 and continues to hold these shares. Nonetheless the FSA is satisfied that the inside information was a material influence on the timing of the four purchases made by Byron.

(3) Mr Clifton did not seek to conceal Byron's purchases, and he disclosed them to the chairman of Desire, without prompting, on 8 February 2008.

(4) Mr Clifton cooperated with the investigation, including by attending a voluntary interview and answering questions under caution.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

Statutory provisions

3.1. Section 118(1) of the Act defines "market abuse" as behaviour (whether by one person alone or by two or more persons jointly or in concert) which:

(a) occurs in relation to:

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

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

3.2. Section 130A of the Act provides that the Treasury may specify the markets and investments to which Part VIII (Penalties for Market Abuse) applies. AIM is a prescribed market by reason of the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001, being a market established under the rules of a UK recognised investment exchange.

3.3. Section 118(2) provides:

The first type of behaviour is where an insider deals, or attempts to deal, in a qualifying investment or related investment on the basis of inside information relating to the investment in question.

3.4. By section 118A(1)(b), behaviour is to be taken into account only if it occurs in relation to qualifying investments which are admitted to trading on a prescribed market situated in, or operating in, the United Kingdom.

3.5. Section 118B provides that an insider is any person who has inside information:

(a) as a result of his membership of an administrative, management or supervisory body of an issuer of qualifying investments, or…

(c) as a result of having access to the information through the exercise of his employment, profession or duties.

3.6. Section 118C defines inside information:

(2) In relation to qualifying investments, or related investments, which are not commodity derivatives, inside information is information of a precise nature which—

(a) is not generally available,

(b) relates, directly or indirectly, to one or more issuers of the qualifying investments or to one or more of the qualifying investments, and

(c) would, if generally available, be likely to have a significant effect on the price of the qualifying investments or on the price of related investments.

(5) Information is precise if it—

(a) indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur, and

(b) is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of qualifying investments or related investments.

(6) Information would be likely to have a significant effect on price if and only if it is information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions.

3.7. Pursuant to section 123(1) of the Act, the FSA may impose a financial penalty where it is satisfied that a person (A) has engaged in market abuse or 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. Statutory defences are set out at section 123(2) of the Act.

The Code of Market Conduct

3.8. The FSA has issued the Code of Market Conduct ("MAR"), pursuant to section 119 of the Act, which requires the FSA to prepare and issue a code containing such provisions as the Authority considers will give appropriate guidance to those determining whether or not behaviour amounts to market abuse.

3.9. MAR 1.2.3 G provides that there is no requirement for the person engaging in the behaviour in question to have intended to commit market abuse.

3.10. MAR 1.2.9 G provides that for the purposes of the categories of insider specified by section 118B(a) to (d), the person concerned does not need to know that the information concerned is inside information.

3.11. MAR 1.2.12 E factors which the will take into account in determining whether or not information is generally available (and therefore not inside information) include:

(1) whether the information has been disclosed to a prescribed market;

(2) whether the information is contained in records open to the public; and

(3) whether the information is otherwise generally available or can be obtained from analysing or developing other information which is generally available.

3.12. MAR 1.3.4 E states that in the opinion of the FSA, if the inside information is the reason for, or a material influence on, the decision to deal or attempt to deal, that indicates that the person's behaviour is "on the basis of" inside information.

The Decision Procedure and Penalties manual

3.13. In deciding to take the action, the FSA has had regard to section 124 of the Act and to guidance published in the FSA Handbook.

3.14. 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 6 of the Decision Procedure and Penalties manual ("DEPP"). 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.

3.15. DEPP 6.2.1 and 6.2.2 set out a number of factors to be taken into account when the FSA decides to take action for behaviour appearing to be market abuse. They are not exhaustive, but include the nature and seriousness of the behaviour, the degree of sophistication of the users of the market in question, the size and liquidity of the market and the susceptibility of the market to market abuse. Other factors include

action taken by the FSA in similar cases and the impact that any financial penalty or public statement may have on the financial markets or on the interests of consumers.

3.16. DEPP 6.5 states that the FSA will consider all the relevant circumstances of a case when it determines the level of a financial penalty that is appropriate and in proportion to the breach concerned. DEPP 6.5 identifies a non-exhaustive list of factors which may be relevant including deterrence, the nature, seriousness and impact of the breach in question, the extent to which the breach was deliberate or reckless, whether the person on whom the penalty is to be imposed is an individual, the amount of benefit gained or loss avoided, the difficulty of detecting the breach and the conduct of the person concerned after the breach was identified.

The FSA's market abuse regime

3.17. In enforcing the market abuse regime, the FSA's priority is to protect prescribed markets from any damage to their fairness and efficiency caused by the misuse of information in relation to the market in question. Effective and appropriate use of the power to impose penalties for market abuse will help to maintain confidence in the UK financial system by demonstrating that high standards of market conduct are enforced in the UK financial markets. The public enforcement of these standards also furthers public awareness of the FSA's protection of consumers objective, as well as deterring potential future market abuse.

3.18. The FSA has made it clear that wrongdoers must not only realise that they face a real and tangible risk that they will be held to account but that they must also expect a significant penalty. The FSA has stated that it will seek to ensure that the sanctions it imposes, including financial penalties, are fixed at levels that are sufficient to deter potential wrongdoers and that, where necessary, the FSA will increase penalties to achieve this.

4. FACTS AND MATTERS RELIED ON

4.1. Mr Clifton is resident in the Falkland Islands. He is one of three directors of Byron and holds 33% of the shares in that company.

4.2. Desire was founded in 1996 and participated in the first round of drilling in the North Falkland Basin in 1998. Desire currently operates six licences in the area.

4.3. Byron and Mr Clifton are both long term shareholders in Desire, Byron having held 325,000 shares and Mr Clifton 612,500 shares since May 2005. Byron purchased a further 35,000 shares on 3 September 2007, following agreement amongst the Byron board on 16 August 2007 to make the purchase. The FSA accepts that that purchase was not based on inside information.

4.4. Discussions between Desire and Arcadia Petroleum Limited ("Arcadia") regarding a potential transaction to develop Desire's oil interests started during 2006. These led eventually to a meeting in October 2007 between representatives of Desire and Arcadia to discuss a possible deal structure. Arcadia sent a draft indicative proposal to Desire on 16 November 2007. Mr Clifton was aware of the advanced nature of the discussions with Arcadia at this stage.

4.5. On 19 November 2007 Byron purchased 140,000 shares in Desire, increasing its holding to 500,000 shares (approximately 0.2% of Desire's issued share capital). Mr Clifton suggested this and the later purchases to the other two directors of Byron. They agreed to the purchases, although they did not know that Mr Clifton had inside information and were therefore not party to the market abuse. In each case Mr Clifton gave the necessary instructions to Byron's stockbroker.

4.6. On 6 December 2007, a board meeting of Desire was held in the UK in order to try to reach an agreement with Arcadia. Later that day, the managements of Desire and Arcadia met to discuss key points of the agreement, following which meeting Arcadia agreed to produce draft heads of agreement.

4.7. Mr Clifton did not attend these meetings or receive copies of the papers circulated at them, but he was informed of the terms of the proposed offer by telephone during the afternoon of 6 December.

4.8. During January 2008, discussions with Arcadia about the proposed farm-in agreement continued. Draft heads of agreement were reviewed by Desire and Arcadia and Mr Clifton was kept informed of developments. A draft of a proposed announcement was also worked up and discussed internally by both Desire and Arcadia during January and early February, which Mr Clifton was aware of.

4.9. On 22 January 2008 Mr Clifton arranged for Byron to purchase a further 100,000 shares at a price of 24.5p per share. On 5 and 8 February he arranged for Byron to make two further purchases, each of 100,000 shares, at 29.5p per share and 28.87p per share respectively. The following table summarises Byron's trading in the relevant period:

Date	**Number of shares in Desire purchase**	**Price per share (p)**	**Total Price paid (£)**	**Value at close of 25/2/2008 (£)**	**Profit at 25/2/2008 (£)**
19/11/2007	140,000	25.50	35,700	65,100	29,400
22/01/2008	100,000	24.50	24,500	46,500	22,000
05/02/2008	100,000	29.50	29,500	46,500	17,000
08/02/2008	100,000	28.87	28,870	46,500	17,630
Total	**440,000**	**-**	**118,570**	**204,600**	**86,030**

4.10. The FSA accepts that he did not realise, at any point during the relevant period, that he had inside information about Desire. However, Mr Clifton ought to have realised that the information he was given constituted inside information and this should have restricted his subsequent behaviour. In this regard he fell short of the standard to be expected of a director of an AIM-listed company. He should have been aware of his responsibilities under the insider dealing regime, especially as Desire had supplied

him with a Code of Conduct detailing these responsibilities in August 2007. However, Mr Clifton did not read this Code of Conduct until later in February 2008 (see paragraph 4.13 below).

4.11. Mr Clifton directed Byron to make the purchases of Desire shares during the relevant period without notifying any other member of the board of Desire or seeking approval under Desire's dealing policy.

4.12. On 8 February 2008 the Chairman of Desire telephoned Mr Clifton to tell him that an announcement in relation to the farm-in agreement was imminent. Mr Clifton then disclosed that he had caused Byron to purchase shares in Desire. The Chairman told him that he should not have done this, referring to the Code of Conduct, and the matter was referred to Desire's nominated adviser and by them to the London Stock Exchange.

4.13. On 25 February 2008 Desire released an announcement that it had accepted the terms of an offer from a significant party to farm in to three exploration prospects identified by Desire in the North Falkland Basin, although the farm-in remained subject to certain awards and approvals by the Falkland Islands Government. Desire's share price rose from 34.25p at close on the previous day of trading to 46.5p at close on 25 February 2008, a rise of around 36%.

4.14. By this time if not before, Byron's board had decided to increase its shareholding in Desire to 1,000,000 shares. Mr Clifton asked Desire's Chairman when he could purchase a further 200,000 shares and was told he could after the announcement. As a result Byron bought 200,000 shares on 27 February 2008.

4.15. In August 2008 Desire announced that the approval of the Falkland Islands government had been received, and that Desire and Arcadia had signed the farm-in agreement.

5. ANALYSIS OF THE MARKET ABUSE

5.1. Shares in Desire are qualifying investments admitted to trading on AIM, a prescribed market for the purposes of section 118 of the Act which is situated in the United Kingdom.

5.2. Mr Clifton, as a director of Desire, was an insider for the purposes of section 118B(a) and (c) of the Act.

5.3. At all times during the relevant period, he was aware that Desire was in advanced discussions with Arcadia regarding a farm-in agreement, that it was likely that the agreement would be concluded and that if it was this would significantly benefit Desire's business.

5.4. This constituted inside information for the purposes of section 118C of the Act:

(1) the information was precise, in that it might reasonably be expected that Desire would accept the farm-in proposals from Arcadia, and it was specific enough to enable a conclusion to be drawn as to the possible effect of that acceptance on the price of Desire's shares;

(2) the information was not generally available, in that only senior individuals in Desire and Arcadia and their advisers were aware of it;

(3) the information related directly to Desire, as it concerned a proposed agreement between another party and Desire;

(4) the information would, if generally available, have been likely to have had a significant effect on the price of Desire's shares. It was information of a kind that a reasonable investor would be likely to use as part of the basis of his investment decisions. A farm-in agreement would be very significant to a company of Desire's size, as it would materially improve its ability to conduct drilling in the areas to which the agreement related.

5.5. If Mr Clifton had dealt personally in Desire's shares he would have engaged in market abuse as defined in section 118(2) of the Act. As Byron had the knowledge possessed by Mr Clifton, it did engage in such market abuse. By directing Byron to purchase the shares, Mr Clifton took action to require Byron to engage in behaviour which, if engaged in by Mr Clifton, would have amounted to market abuse.

5.6. The FSA may therefore impose a financial penalty upon Mr Clifton under section 123(1)(b) of the Act and on Byron under section 123(1)(a) of the Act (for its breach of section 118(2).

6. ANALYSIS OF SANCTION

6.1. The FSA considers Mr Clifton's conduct to be serious, for the reasons given in paragraph 2.4. The FSA has taken account of the factors referred to in paragraph 2.5 which tend to mitigate the seriousness of Mr Clifton's misconduct. The FSA has also had regard to the penalties imposed in other market abuse cases.

6.2. The FSA considers that Mr Clifton's conduct warrants a substantial financial penalty. In determining the penalty, the FSA has considered the profit Mr Clifton would have made as a result of his 33% shareholding in Byron if the shares had been sold at close of business on 25 February 2008. If Mr Clifton had wished to increase Byron's shareholding, he should have waited until after the announcement. By causing Byron to purchase the shares from sellers who had no knowledge of the proposed farm-in agreement, Byron paid £86,030 less for the shares than it would otherwise have paid, at the expense of those sellers. Mr Clifton's share of that benefit was approximately £28,676.

6.3. In all the circumstances, the FSA considers that a total financial penalty of £59,500 on Mr Clifton is appropriate. As stated above, but for the discount for early settlement the appropriate penalty would have been £85,000. In the circumstances, the FSA does not consider it necessary to impose a punitive fine on Byron in addition and therefore its fine is simply a disgorgement of profit.

7. DECISION MAKERS

7.1. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers on behalf of the FSA.

8. IMPORTANT

8.1. This Final Notice is given to Mr Clifton and Mr Byron in accordance with section 390 of the Act.

Manner of and time for payment

8.2. Mr Clifton and Byron must pay their respective financial penalties in full to the FSA by no later than 10 February 2009, 14 days from the date of the Final Notice.

If the financial penalty is not paid

8.3. If all or any of Mr Clifton's financial penalty is outstanding on 10 February 2009, the FSA may recover the outstanding amount as a debt owed by Mr Clifton and due to the FSA.

8.4. If all or any of Byron's financial penalty is outstanding on 10 February 2009, the FSA may recover the outstanding amount as a debt owed by Byron and due to the FSA.

Publicity

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

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

FSA contacts

8.7. For more information concerning this matter generally, you should contact Celyn Armstrong (direct line: 020 7066 2818 /fax: 020 7066 2819) or Dan Enraght-Moony at the FSA (direct line: 020 7066 0166/fax: 020 7066 0167).

Jamie Symington
Head of Department
FSA Enforcement Division