
FINAL NOTICE

To: Neil Sedgwick Dwane

**Reference
Number: NPD01015**

Date: 13 October 2025

1. ACTION

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

- (1) imposes on Neil Sedgwick Dwane a financial penalty of £100,281 pursuant to section 123(1) of the Act;
- (2) makes an order prohibiting Neil Sedgwick Dwane from performing any function in relation to any regulated activities carried on by an authorised or exempt persons, or exempt professional firm pursuant to section 56 of the Act.

1.2. Neil Sedgwick Dwane agreed to resolve this matter and qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £126,575 (plus interest) on Neil Sedgwick Dwane.

2. SUMMARY OF REASONS

- 2.1. The Authority considers that Mr Dwane's actions amount to insider dealing as defined by Article 8 of UK MAR and in breach of Article 14 of UK MAR and that he therefore engaged in market abuse.
- 2.2. On 26 October 2022, Mr Dwane, while employed as a Capital Markets Adviser within the Investor Relations Team at ITM Power Plc ("ITM" or "the Company"), sold his own and a close family member's ("the Family Member") entire shareholding in ITM, totalling 125,000 shares worth £124,287 ("the Shareholding"), whilst in possession of, and using, inside information relating to warranty and manufacturing issues, referred to in drafts of a Trading Update issued by the Company on 27 October 2022 ("the Trading Update").
- 2.3. The Authority considers that Mr Dwane's conduct was serious because, whilst in a position of trust at the Company, he deliberately and dishonestly traded on the basis of inside information for his own financial gain, thereby undermining investor confidence in the integrity of financial markets.
- 2.4. As an experienced financial professional and as a former Approved Person Mr Dwane would have known that his conduct amounted to insider dealing, as defined by Article 8 of UK MAR. Furthermore, Mr Dwane knew that ITM's internal policies required him to obtain the Company's permission before dealing in its shares but he failed to request such permission. The Authority therefore considers that his conduct was deliberate and dishonest.
- 2.5. The Authority has decided to take this action because Mr Dwane:
 - (a) engaged in insider dealing in contravention of Article 14(a) of UK MAR; and
 - (b) as a result of his having deliberately and dishonestly engaged in insider dealing, 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.
- 2.6. The Authority hereby:
 - (a) imposes on Mr Dwane a financial penalty of £100,281 pursuant to section 123(1) of the Act, for engaging in insider dealing; and

(b) makes an order pursuant to section 56 of the Act, prohibiting Mr Neil Sedgwick Dwane from performing any function in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm.

2.7. For the avoidance of doubt, the Authority makes no criticism of the conduct of any party identified in this Notice other than Mr Dwane.

3. DEFINITIONS

3.1. The definitions below are used in this Notice:

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

“Approved Person” means a person in relation to whom the FCA has given its approval under section 59 of the Act for the performance of a controlled function;

“the Authority” means the Financial Conduct Authority;

“DEPP” means the Decision Procedure and Penalties Manual part of the Handbook;

“the Family Member” means a close member of Mr Dwane’s family;

“First Sales Tranche” means Mr Dwane’s sale of a total of 105,000 ITM shares from the Shareholding on 26 October 2022 between 09:00:15 and 09:04:15;

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

“IFRS” means International Financial Reporting Standards;

“ITM” or “the Company” means ITM Power Plc, a company admitted to the AIM market of the London Stock Exchange in 2004;

“Manufacturing Issues” means the issues referred to in the Trading Update, relating to the tooling and testing of the 2MW MEP 2.0 stacks at that time;

“MTF” means a multilateral trading facility;

“Prepared Statement” means a written statement prepared by Mr Dwane dated 1 August 2023, given to the Authority at the commencement of Mr Dwane’s voluntary interview under caution with FCA investigators that day;

“RNS” means the news service of the LSE. RNS is approved by the Authority to act as a Primary Information Provider in the United Kingdom;

“the Relevant Period” means the period from 13 September 2022 to 3 November 2022;

“Second Sales Tranche” means Mr Dwane’s sale of 20,000 ITM shares from the Shareholding on 26 October 2022 at 11:56:56s;

“Senior Manager A” means a senior member of ITM’s Investor Relations Team during the Relevant Period;

“Senior Manager B” means a board-level executive at ITM during the Relevant Period;

“the September Results” means RNS Number 4047Z released on 14 September 2022, in which ITM released its final results for the financial year ended 30 April 2022;

“the Shareholding” means Mr Dwane’s and the Family Member’s 125,000 ITM shares which were sold on 26 October 2022;

“the Trading Update” means ITM’s trading update released to the market on 27 October 2022 (RNS No: 2578E);

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

“UK MAR” means Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse as amended by the Market Abuse Exit Regulations 2019; and

“Warranty Issues” means the issues referred to in the Trading Update, namely, ITM’s need to materially increase its warranty provisions, partly as a consequence of limited field data on the durability of the 2MW MEP 2.0 stack at that time.

4. FACTS AND MATTERS

ITM

- 4.1. ITM was admitted to trading on AIM in 2004. It designs and manufactures large-scale electrolyzers based on Proton Exchange Membrane (PEM) technology to produce green hydrogen via electrolysis.

Stacks

- 4.2. ITM’s electrolyzers each feature a number of cells layered on top of one other, collectively referred to as a ‘stack’.
- 4.3. ITM produced various iterations of these stacks, operating at different pressures, as it sought to improve their performance and efficiency.

- 4.4. During the Relevant Period, ITM was developing a new generation of its 2-megawatt ("MW") stack platform, consisting of three 0.67MW stacks, termed "MEP 2.0"¹. This new stack platform offered improved efficiency by operating at a higher pressure, thereby reducing operating costs and capital expenditure. These new stacks represented an important technological development for the Company. However, during the Relevant Period, they had only been deployed within one project (see paragraph [4.33] below).
- 4.5. ITM's stacks were packaged into a variety of products, including autonomous 'plug and play units' and larger stack 'skids', which could be integrated into larger systems. ITM also manufactured 'cubes', comprising three stacks housed inside a larger container to create a single stack module.

Warranties

- 4.6. During the Relevant Period, ITM provided warranties to its customers which covered defects and damages experienced in the initial deployment of their electrolyzers.
- 4.7. When it deployed a new product, ITM would provide warranty cover for the product. However, as more field data was obtained around the effective operational performance of the product, ITM's auditors would anticipate decreasing the warranty cover significantly.
- 4.8. ITM's warranties were recorded as liabilities in the Company's accounts in accordance with IFRS standards. Limited operational data, besides indicating a potential problem with a product, could require ITM to maintain or increase its warranty provisions on its balance sheet.

RNS announcements

- 4.9. An RNS announcement is a method of getting key company news published to the market. The published contents of such announcements often contain information that is capable of increasing or decreasing the price of the said company's stock.

¹ The acronym "MEP" stands for Mega Electrolyser Platform.

- 4.10. Material information concerning development and delivery of ITM's stacks and/or associated warranties could potentially result in ITM having to publish an RNS announcement.

Mr Dwane

- 4.11. Before joining ITM, Mr Dwane had held numerous, often senior, roles in financial services. Between 1987 and 2001, Mr Dwane was a Portfolio Manager at three major financial services firms. Then, between 2001 and 2015, Mr Dwane was the European Chief Investment Officer (CIO) at a major international investment fund. Mr Dwane subsequently became a Global Strategist at the same firm between 2016 and 2020. Between 1 December 2001 and 8 December 2019, Mr Dwane was an Approved Person.

- 4.12. Mr Dwane joined ITM in May 2021 as a Capital Markets Adviser, working nominally for two days a week. As noted above, he had been employed as the CIO at a major international investment fund. This fund had, for a time, been one of ITM's largest shareholders and Mr Dwane had therefore been involved in a number of ITM's funding rounds and results roadshows, where he had met senior members of ITM's management. This had enabled Mr Dwane to become familiar with ITM's business, its products and its senior management. It was due to this experience and knowledge that he was appointed as an advisor at ITM.

- 4.13. Part of Mr Dwane's role was to provide *ad hoc* support to members of ITM's Investor Relations Team, for example, by reviewing draft RNS announcements in the days immediately preceding their release or probing investor presentations prior to their delivery. According to a senior member of this team ("Senior Manager A"), Mr Dwane's involvement:

"... would tend to be towards the end of a process, you wouldn't get him, you wouldn't get him at a drafting stage, you'd have it, a more formed document and the purpose would be going, 'Neil if you were a fund manager what would you make of this?'"

- 4.14. Senior Manager A said that Mr Dwane knew capital markets "exceptionally well".
- 4.15. Mr Dwane worked almost entirely at home. Although nominally employed for two days a week, Mr Dwane might not be required to work for weeks at a time. If Mr

Dwane's assistance was required, someone from ITM would call him to inform him of what input was needed.

4.16. Mr Dwane was issued with a laptop by ITM. He also had a personal iPad, on which he had his Outlook email.

4.17. Mr Dwane's employment with ITM ended in March 2023.

Mr Dwane's awareness of ITM's share-dealing policies

4.18. Throughout his career, not least during his time as a CIO, Mr Dwane would have become familiar with industry requirements to obtain clearance before dealing in publicly traded shares where he may have had privileged access to confidential or potentially price-sensitive information.

4.19. A board-level executive at ITM during the relevant period ("Senior Manager B") observed that:

"[Mr Dwane] told me he held shares as part of his on-boarding and asked me whether he needed to divest them all before joining. I told him that wasn't the case. So it occurred to me from his previous role and from on-boarding conversations that he was well aware of obligations around trading."

4.20. In May 2021, Mr Dwane signed a copy of the ITM Power PLC Group-Wide Share Dealing Policy and the ITM Power PLC Dealing Code, whereby he confirmed that he had read, understood and would comply with the policy and code, the material part of which stated:

"... You must not deal in any shares of the Group if you are in possession of inside information about the Group. ..."

4.21. In February 2022, Mr Dwane received a Company-wide email from an ITM board-member, attaching a recently amended and board-approved Company dealing policy and dealing code, which emphasised in bold the following obligations:

*"I would like to remind you that **all employees of ITM Power are subject to both the Dealing Policy and the Dealing Code.** Among other things, this*

*means that **all employees are required to seek clearance to deal in ITM Power shares before doing so.***

4.22. It set out a procedure whereby all employees were required to complete a clearance form and send it to a named individual. This individual would then arrange for it to be considered by the relevant authorised officers, who would confirm whether or not it was granted.

4.23. The following day, Mr Dwane responded to the email by questioning whether, as a member of ITM's Investor Relations team, he should have sought permission to join the Company's "BAYE" scheme before having done so. The board-member replied that "strictly" he should have done so, but also advised him that it was not necessary for him to seek clearance retrospectively, adding:

*"FYI, if you want to do any other dealing in ITM Shares, you should complete a clearance form and send it to [****]@itm-power.com. I (or [named individual] in my absence) will then arrange for it to be considered by the relevant authorised officers and will confirm if it is granted or not."*

4.24. Mr Dwane replied by email, the same day, stating:

"I am very familiar with share dealing compliance ! and will ensure that I indeed seek any necessary permissions.

"I manage some savings for [certain named family members] and thus will treat them all as being part of my responsibility.

"If I am honest, since I started with ITM, I have taken the view that I am almost always an insider on something, order, contract, development etc, so I am stuck and happy to be so!

"I may get an itchy finger when we are over £10 as my early purchases in 2006/7 were for less than 50p !"

4.25. At the time that Mr Dwane sold the Shareholding, the Company's share dealing code, which applied to all its employees, stated:

*"You must not **Deal** for yourself or for anyone else, directly or indirectly, in **Company Securities** without obtaining clearance from the **Company** in advance."*

- 4.26. In addition to the relevant policies, between May 2021 and September 2022, Mr Dwane received eleven further emails in which he was informed that he was in possession of information that was deemed either potentially price sensitive or price sensitive. These emails noted restrictions on share trading and made clear that permission should be sought before any trading in ITM shares could occur.

Mr Dwane's disregard for ITM's share-dealing policies during 2022

- 4.27. Despite stating that he would obtain clearance from the Company before dealing in ITM's shares, Mr Dwane did not do so, or attempt to do so, in advance of selling the Shareholding on 26 October 2022, or indeed in advance of re-purchasing 180,000 ITM shares, immediately after the Trading Update, on behalf of himself and the Family Member on 27 October 2022.
- 4.28. Moreover, despite the email exchanges described above, Mr Dwane's dealing in the Shareholding was not the first time that he had failed to observe ITM's share-dealing policy in relation to obtaining prior clearance.
- On 22 March 2022, Mr Dwane bought 14,000 ITM shares, on behalf of himself and the Family Member, for a total consideration of £48,145, without requesting clearance.
 - On 7 and 8 June 2022, Mr Dwane sold 89,000 ITM shares, on behalf of himself and the Family Member, for a total consideration of £258,906 (an average of 290.9p per share) ahead of a pre-scheduled Company Trading and Corporate Update released through RNS on 9 June 2022 following which he purchased 90,000 ITM shares, for a total consideration of £224,360 (an average of 249.2p per share) later that day. He did not request clearance for any of these transactions.
 - On 13 June 2022, Mr Dwane bought 30,000 ITM shares, on behalf of himself and the Family Member, for a total consideration of £64,774, without requesting clearance.

- On 19 August 2022, Mr Dwane bought 70,000 ITM shares, on behalf of himself and the Family Member, for a total consideration of £146,544, without requesting clearance, and
- On 14 and 15 September 2022, Mr Dwane bought 40,000 ITM shares, on his account alone, for a total consideration of £46,047, without requesting clearance (see paragraph [4.38] below).

4.29. When Senior Manager A was asked in his FCA interview whether he had been aware of Mr Dwane's trading activity in ITM shares on 26 and 27 October 2022, he said that he had not been, observing that if Mr Dwane had mentioned it to him it would have been:

"a massive red, red flashing light. [...] Somebody selling shares regardless of any position in ITM, you have to go through the Co Sec, you have to, particularly in the position where I am or [name of an investment relations colleague] is or Neil is, you're so privy to insider information that you have to mark it months in advance nearly".

4.30. When Senior Manager A was asked about ITM's corporate culture in relation to compliance with its share dealing code, he observed:

"... that was never in doubt, ... [the CEO] particularly [the CEO], he was a stickler for process. ... he would never kind of give you a nod or a wink and kind of go 'oh, it'll be Okay'. Not a chance. Not a chance".

ITM's September 2022 final results and guidance RNS

4.31. On 14 September 2022, ITM released its final results for the financial year ended 30 April 2022, RNS Number 4047Z ("the September Results"). In the September Results, the Company provided the following summarised guidance for FY23:

- Product revenue in the range of £23-28 million;
- MW [Megawatts] delivered in the range of 48-65 MW;
- Adjusted EBITDA loss of £45-50 million;
- Capital expenditure of £30-40 million, with a focus on development costs;
- Working capital of £40-60 million;
- Cash burn of £110-135 million.

- 4.32. ITM's September Results continued to report an overall loss, which was consistent with that stage of the Company's development. As a result, there were a range of variables which were seen by the equity market as being material. These included the Company's cash position, cash consumption and product development and delivery.
- 4.33. As to product development and delivery, the CEO's Review within the September Results noted the importance of ITM's deployment of a 24MW system, utilising the new 2MW MEP 2.0 stacks (see paragraph [4.4] above).
- 4.34. The performance of these new MEP 2.0 stacks was of considerable significance to ITM.
- 4.35. Under the heading "*Financial position: positioned for the future*", the Company noted that provisions increased in the year to £21.8 million. With regard to warranty provisions it noted:

"Additions to warranty provisions in the year of £2.2 million (2021: £0.2m) reflect both contract progress in the year and recognition that first-of-a-kind plant requires additional support in the field. We retain our long-term expectation that warranty costs will reduce below 3% of sales price for standard product, repeat sales."

- 4.36. The notes to the September Results gave a further explanation concerning the nature of warranty provisions:

"The warranty provision represents management's best estimate of the Group's liability under warranties granted on products, based on historical knowledge of the products and their components. As with any product warranty, there is an inherent uncertainty around the likelihood and timing of a fault occurring that would trigger further work or part replacement. Warranties are usually granted for a period of one year, although two-year warranties are the standard within some jurisdictions."

- 4.37. At the same time as releasing the September Results, ITM also announced that its CEO had decided to step aside after 13 years and that the Company had commenced a process to select a new CEO.

- 4.38. Immediately after the release of the September Results, on 14 and 15 September, Mr Dwane bought a total of 40,000 ITM shares at an average price per share of 115.1p, thereby bringing his and the Family Member's total holdings in ITM to 125,000 shares.
- 4.39. These purchases were the last transactions made by Mr Dwane in ITM shares, either on his own behalf or that of the Family Member, until 26 October 2022, when he decided to sell both their positions down to zero.

ITM's manufacturing and warranty issues in October 2022

- 4.40. On 7 October 2022, ITM created an insiders list regarding "manufacturing delays and guidance revision". Mr Dwane was not included on that list at that stage as, according to Senior Manager B:

"[Mr Dwane] would only be brought in at a point where we were 'red' and about to announce so this wasn't close enough".

- 4.41. ITM used a colour coding system for its internal information, whereby green meant it was not inside information, amber meant it potentially could be inside information, and red meant that it was inside information.
- 4.42. Senior Manager B said that, although he could not recall its actual categorisation at the time, he would now view the information concerning the manufacturing delays and guidance revision, as of 7 October 2022, as amber "*depending on some more work on the guidance*".
- 4.43. Separately, in early October 2022, ITM completed an aftersales review of the product lifetimes of its new and existing products. As a result, there was a risk that the Company could incur additional costs under its warranties.
- 4.44. On 11 October 2022, ITM senior managers met to discuss warranty risk and costs. Following this meeting, the Company created an insider list to cover 'warranty uncertainty'.
- 4.45. On 14 October 2022, members of ITM's Audit Committee were informed of a potential warranty risk.

4.46. A presentation prepared for the meeting explained that ITM had a significant volume of "in-field", under contract and in final negotiation products. The presentation observed that there was therefore:

"a material risk resulting from the contracted warranty positions when viewed through the lens of a product with limited proven lifetime..."

4.47. The presentation set out a range of outcomes around possible financial risk to the Company.

4.48. On 20 October 2022, a further meeting of ITM's Audit Committee was held to discuss options to mitigate the Company's warranty risk, particularly around the Company's largest MW contracts.

4.49. On 24 October 2022, ITM's investor relations team had a pre-scheduled call with its Nominated Advisors, principally to discuss investor feedback following the September Results. Nominated Advisers, or "Nomads", are corporate finance advisers approved by the London Stock Exchange to act in this capacity.

4.50. On 25 October 2022 at 13:30, Senior Manager B and other ITM executives attended a call with ITM's Nomad. During the call, Senior Manager B updated the Nomad on the current status of deliveries.

4.51. Senior Manager B also raised the potential issue with product warranties. It was noted that there was still a wide range of outcomes on warranty which had the potential to be material. ITM's Nomad would be invited to the Board meeting.

4.52. The meeting concluded with the Nomad advising that ITM's board should be informed that an RNS announcement may potentially be necessary.

ITM Board meeting on 25 October 2022 and preparation of a draft RNS

4.53. On 25 October 2022 at 17:00, ITM held a board meeting, attended by their Nomads.

4.54. Some members of ITM's audit committee provided their perspectives with respect to the warranty issue. It was discussed that there could be a wide range of outcomes depending on views on various assumptions. Due to the potentially

material nature of these factors, the Nomad advised that the Company would need to update the market with an unscheduled announcement once a more definitive position was agreed.

- 4.55. There was discussion on the call regarding the importance for any announcement to have a sufficient level of certainty so as not to be misleading in its content. It was agreed that the ITM executive would work as rapidly as possible to have a more definitive range of outcomes as quickly as possible. A draft announcement was to be progressed without delay so that the Company could be in a position to release an announcement once it had the facts to do so.
- 4.56. ITM started drafting an RNS announcement immediately after the conclusion of the meeting, with a view to sending a draft to the Board that night.
- 4.57. On 25 October 2022 at 20:10, Senior Manager B sent an email to a colleague attaching a document described as the Warranty RNS (this draft and subsequent iterations "the Draft RNS").
- 4.58. The Draft RNS underwent many iterations throughout the evening of 25 October 2022, with input from ITM's board members and senior executives and its Nomad.

Mr Dwane's communications with ITM during the morning of 26 October 2022

- 4.59. In his Prepared Statement, Mr Dwane told the Authority that he had IT difficulties on the morning of 26 October 2022 and was "*not able to access his ITM emails*".
- 4.60. This Notice therefore sets out in detail communications between Mr Dwane and ITM that were sent that day using both his personal email account (i.e. outside of the ITM email system) and his ITM email account, as well as messages sent using WhatsApp.
- 4.61. Mr Dwane's first communication with ITM on 26 October 2022, was an email that he sent from his personal email account at 07:57, using his iPad, to Senior Manager A and to a senior executive member of ITM's Board during the Relevant Period ("Senior Manager C"), concerning some general market news that he thought might have been of interest.

4.62. At 08:55:21s, Senior Manager A emailed a Teams meeting invitation with the subject "Warranty RNS call" to Senior Manager B, Senior Manager C, Mr Dwane (using his ITM email as well as copying his personal email), a member of ITM's Investor Relations team and an external adviser. An invitation had been sent to Mr Dwane 6 seconds earlier which had not been copied to his personal email.

4.63. Senior Manager B explained that ITM had sought Mr Dwane's assistance in relation to the prospective RNS announcement because:

"... our thought was he has a unique perspective of having been a fund manager, how would a fund manager read this RNS and how would they react to it? So he was well placed to support us in the drafting."

4.64. Prior to this email being sent, Mr Dwane had not been involved in any discussions within ITM relating to the manufacturing delays, guidance revision and increased warranty provisions that had prompted the ITM board's decision, the previous evening, to issue an RNS announcement without delay.

4.65. At 08:55:47s, Senior Manager A attempted to call Mr Dwane. This call was redirected to Mr Dwane's voicemail.

4.66. At 08:56:45s, Mr Dwane returned Senior Manager A's call. The call lasted for one minute and ten seconds. During the call, Senior Manager A notified Mr Dwane that there was to be a call at 10:00 to discuss an RNS about warranty provisions.

4.67. When asked about the call by the Authority, Senior Manager A was unable to recall the full details of that conversation, but said:

"... So it's 8:56 and I said, 'listen, Neil, we have a... I've sent you the invite to a call. It's about, well, you'll see the invite, the warranty RNS call, so you just need to be there for 10.00am.' It's just giving him the heads up, because he's not sitting in front of a computer so I need to call him and go 'you need to be on the 10.00am call'."

4.68. Senior Manager A said that he didn't "*necessarily remember*" but that was "*the process*" that he would have taken, observing that Mr Dwane was not "*glued to*" his emails, adding:

"I probably would have given him more because if it's, if it's titled warranty RNS call I'm going to go, you know, it's an RNS about warranty provisions."

"... you've got somebody who normally works one day a week so you have to call him to kind of go, 'listen, Neil, any chance you can join this call, it's about warranty provisions'".

- 4.69. At 08:58:09s, Senior Manager A sent an email to Mr Dwane at his ITM email address (but not to Mr Dwane's personal email) attaching a Draft RNS described as "Draft RNS SH".
- 4.70. The Draft RNS concluded by stating that ITM would provide further guidance as to the current year's revenue and production as well as expected warranty provisions in its Trading Update in December 2022.
- 4.71. In his Prepared Statement, Mr Dwane stated that he did not remember seeing the 08:58 email on 26 October 2022 from Senior Manager A, due to his having IT difficulties that morning and therefore being unable to access his ITM emails.

Mr Dwane's first tranche of ITM share sales on 26 October 2022

- 4.72. Between 09:00 and 09:04, Mr Dwane sold a total of 105,000 ITM shares on behalf of himself and the Family Member, for a total consideration of £104,637, made up of the following transactions ("the First Sales Tranche"):
- 09:00:15s: 25,000 shares sold at 100.09p for a total of £25,007.63²
 - 09:00:38s: 25,000 shares sold at 100.18p for a total of £25,029.83
 - 09:01:16s: 20,000 shares sold at 99.11p for a total of £19,807.46
 - 09:03:00s: 15,000 shares sold at 99.57p for a total of £14,893.64
 - 09:04:15s: 20,000 shares sold at 98.33p for a total of £19,898.88
- 4.73. The first of these transactions took place precisely 2 minutes and 20 seconds after Mr Dwane had ended his telephone conversation with Senior Manager A.
- 4.74. The Authority has not identified any other intervening event after the call, such as a release of publicly available information concerning ITM, or market news

² Total cost calculations throughout this Notice reflect commission deductions.

more generally, that might have prompted Mr Dwane to enter into these transactions immediately thereafter.

- 4.75. Following the completion of these transactions, Mr Dwane's portfolio of ITM shares fell to 20,000 shares and those of the Family Member's fell to zero. This was the first occasion that the Family Member's position in ITM had fallen to zero since its inception in September 2018.

Further communications between Mr Dwane and ITM on 26 October 2022

- 4.76. At 09:36, Mr Dwane sent a WhatsApp message to Senior Manager A which read:

"hi my itm laptop not connecting saying i have it issues maybe i have been fired can you please send an invite to my own email? thnx".

- 4.77. At 09:37, Mr Dwane sent an image of an Outlook error message which related to his ITM email address, to Senior Manager A via WhatsApp. At 09:44, ITM's senior executives circulated amendments to the Draft RNS. Mr Dwane was not privy to these amendments. At 09:55, Mr Dwane sent a WhatsApp message to Senior Manager A which read *"sorry i have not had an invite yet?"*

- 4.78. At 09:56:50s, Senior Manager A forwarded the Teams meeting appointment to Mr Dwane's personal Outlook email address. At 09:57, Mr Dwane sent a WhatsApp message to Senior Manager A which simply read *"thnx"*.

- 4.79. At 09:58, the meeting titled *"Warranty RNS call"* started. A screenshot of the "Chat" function provided by Senior Manager B records that *"Neil (Guest)"* was *"invited to the meeting"*. Mr Dwane, is the only "Neil" named in any communications relating to drafts of the Trading Update.

- 4.80. The purpose of the Teams meeting was to finalise the Draft RNS and the Investor Presentation by assimilating the various edits that had been proposed. Those present, other than Mr Dwane, were Senior Manager A, Senior Manager B, and an external advisor.

- 4.81. At 10:02, Senior Manager A sent an email titled *"FW: Warranties"* to Mr Dwane at his personal Outlook email address. This email attached the latest version of the Draft RNS.

- 4.82. Between 10:06 and 11:38, various iterations and amendments to the Draft RNS were circulated amongst the meeting's attendees. Mr Dwane was not privy to these updates.
- 4.83. At 11:51, whilst both were still in the "Warranty RNS call" meeting, Senior Manager B emailed Mr Dwane at his ITM email address attaching a draft PowerPoint presentation titled 'ITM Update'. The presentation summarised its key messages, which were expanded upon in subsequent slides, as:
- Announcement this morning
 - Revenue recognition | weighted towards 2nd half of year | inherent risk
 - Warranty costs uncertain | Limited field data
 - Potential deferral of projects in negotiation
- 4.84. Also, at 11:51, Mr Dwane sent a WhatsApp message to Senior Manager A which read *"pls send any mails on to my other email so i [sic.] can work on it"*.
- 4.85. At 11:54:07s, Senior Manager B sent a Teams meeting invite to Mr Dwane's personal Outlook email address for an ITM *"Presentation prep & rehearsal"*.
- 4.86. At 11:55, Senior Manager A sent Mr Dwane a WhatsApp message containing the telephone number for ITM's external IT provider.
- 4.87. At 11:56, 'Neil (Guest)' left the chat. At 11:57, the 'Warranty RNS call' ended.
- 4.88. In his Prepared Statement, Mr Dwane stated that he does not recall attending the Warranty RNS Teams meeting, and that he does not remember Senior Manager A passing him any inside information prior to the meeting.
- 4.89. When Senior Manager A was asked by the Authority whether he recalled Mr Dwane being present at the Warranty RNS meeting, he responded:

"I'm pretty sure he did, yeah. Bizarrely, the reason why I think I remember, because ... he had a football jersey on the back of his, of his chair, it was, like, a Spanish, Madrid, Real Madrid jersey, like, on the back, remember, like, a white jersey."

- 4.90. Senior Manager A also recalled that Mr Dwane had been involved in discussions during the meeting.
- 4.91. Senior Manager B was also asked by the Authority whether he recalled Mr Dwane being present at, and contributing to, the Warranty RNS meeting, but he was unable to remember. A third board-level executive at ITM also attended the meeting but was unable to recall whether Mr Dwane had been present.
- 4.92. Senior Manager B, when he was asked by the Authority whether Mr Dwane would have been aware, at this stage, of the price sensitivity of the matters discussed at the Warranty RNS Meeting, replied:

"there's no other way of looking that [...] that is warning the market" -

Mr Dwane's second tranche of ITM share sales on 26 October 2022

- 4.93. At 11:56:56s, Mr Dwane sold a further 20,000 ITM shares at 98.33p, on his own behalf, for a total of £19,650 (the "Second Sales Tranche"). This was less than a minute after "Neil (Guest)" is recorded as having left the Warranty RNS Call Chat (see paragraph **[4.87]** above).
- 4.94. Following this transaction the number of ITM shares in Mr Dwane's portfolio fell to zero. This was the first occasion that Mr Dwane's position in ITM had fallen to zero since its inception in July 2018.

Further communications between Mr Dwane and ITM on 26 October 2022

- 4.95. At 11:57, Mr Dwane was added to the insider list for 'Manufacturing delays & guidance revision'.
- 4.96. At 11:58, Mr Dwane replied to Senior Manager A's WhatsApp message sent at 11:55 with a question mark "?". At 12:04, Senior Manager A replied to Mr Dwane's 11:58 WhatsApp message with "Number for [ITM's external IT provider]". He sent a further WhatsApp at 12:05 which read: "The IT company we use". At 12:07, Mr Dwane replied to Senior Manager A's WhatsApp message, stating: "aha ! thnx".
- 4.97. At 13:46, Senior Manager A sent an invite to an "ITM Power Analyst call" to both Mr Dwane's ITM email address and personal Outlook email address.

- 4.98. At 14:23, Mr Dwane called the IT support company for ITM. The call lasted for 7 minutes and 41 seconds. At 14:31, Mr Dwane sent a WhatsApp message to Senior Manager A which said: "*sorted!*".
- 4.99. At 14:34, Mr Dwane sent an email from his ITM email address to a senior ITM executive. This was the first email that day that Mr Dwane had sent from his ITM email address. At 14:45, Mr Dwane sent an email from his personal Outlook address to his ITM Power email address, forwarding Senior Manager B's email of 11:54. Mr Dwane's email at 14:45 was footed "*sent from my iPad*".
- 4.100. At 19:19, Mr Dwane sent an email from his personal Outlook address to senior ITM colleagues, offering an amendment to the latest draft of the RNS.
- 4.101. At 19:30 on 26 October 2022, Senior Manager B arranged a call to update ITM's Nomad and a number of ITM Board members. The update entailed a debrief on additional work which had been undertaken since the board meeting the previous day. It resulted in a detailed discussion by those on the call regarding the warranty position as well as the impact of the manufacturing issues on the ability to deliver the product by April 2023.
- 4.102. The later point of the discussion on product delivery resulted in a considerable discussion regarding the guidance being provided to the market. The Company continued to believe there was the potential to deliver in line with guidance albeit this required the arrival of the new tool in December. There was also considerable discussion regarding the current cash position of the Company and the expected cash position by the year end (April 2023) due to the focus of the equity markets on this part of the Company.
- 4.103. In light of the update from Senior Manager B, the Draft RNS was reviewed in detail by the attendees on the call. A number of drafting changes were made during the course of this review in real time. The announcement was in agreed form by the conclusion of the call, which had lasted for just over an hour.

The Trading Update and Mr Dwane's purchase of ITM shares on 27 October 2022

- 4.104. On 27 October 2022, at 07:00, ITM released the Trading Update by RNS, which informed the market, inter alia, that:

"Due to manufacturing issues including delays in finalising the tooling and testing of these stacks, the Company now expects that full year output and revenue is likely to be towards the bottom of the current guidance range. The timing of this revenue will be weighted towards the final quarter of the current financial year, and will be dependent on success of the current work to resolve these issues. The previously announced range is 48MW-65MW of delivered product and revenue of £23m-£28m.

"These production issues have resulted in limited deliveries of new, first of kind product which in turn has meant only limited field data for performance to assess the level of warranty provisions. As a consequence of the limited field data, the warranty provision for these next generation contracted products will need to materially increase from the current level of £3m at FY22 year end and may result in a revision to EBITDA loss guidance. The accuracy of the product warranty provision will improve as more field data is acquired. This is evolving technology and by its nature that creates inherent uncertainty applicable to any company introducing new technology into a rapidly developing industry.

"The Board is aware of the potential risk associated with the growing and uncertain levels of warranty provisions and is seeking to mitigate this portfolio risk. As a result, the Company expects there may be delays in finalising contracts in the final stages of negotiation which could place large scale projects at risk of deferred financial close. ..."

- 4.105. The Trading Update was not a scheduled announcement; i.e. it was not an announcement that the market would have been anticipating for release on a particular date, such as, for example, a quarterly trading update.
- 4.106. Following the publication of the Trading Update, ITM's share price fell from 104.45 pence per share (closing price on 26 October 2022) to a low of 66.02 pence per share (a decrease of approximately 37%). At market close on 27 October 2022, the share-price was 83.70 pence per share.
- 4.107. At 08:00, ITM held an investor call. The call lasted for around 20 minutes. Mr Dwane attended this call.

- 4.108. Minutes after the conclusion of the investor call, analysts began publishing their research reports to the wider market. The following extract from one such report reflects the market's reaction to the Trading Update:

"[...] Commentary on the potential impact on finalising contracts and large-sale projects is also concerning. This is a disappointing update which appears to confirm ongoing concerns about delivery of the products, and leaves scope for further guidance downgrades if delays push revenue out past Q4, in our view. We reiterate our Sell rating. ...

Manufacturing issues put output and revenue guidance at risk: [...]
Warranty provisions also likely to increase: [...] *Although accuracy of warranty estimates will increase with more field data, the current uncertainty is unhelpful and has been a key area of concern for us in terms of ITM.*

Highlighting contracting and project risks: *The company indicates that the current warranty uncertainty means it expects delays in finalising some contracts as well as the potential deferral of large-scale projects which are nearing financial close. This is clearly a concern in terms of the pace of backlog conversion and future revenue growth. ..."*

- 4.109. Between 09:00 and 14:36, Mr Dwane became a buyer of ITM shares purchasing a total of 180,000 ITM shares for a total consideration of £140,700.31 at an average price of 78.17p.

- 4.110. Later that afternoon, one analyst provided the following feedback in an email to Senior Manager A:

"I normally try to pull out positive themes to highlight, but I'm afraid the investors we've spoken with have found little positive in this morning's announcement. The key themes are around lack of new orders and provision increase together making it look like there are issues with getting the technology to work."

- 4.111. The analyst provided the following feedback specific to investors' views on the warranty increase:

"The warranty provision was apparently nothing to worry about and now its [sic] getting increased. ... This proves my point their tech doesn't work. They won't win a single new contract is my prediction. They can't even install

correctly for [Customer 1] hence the higher warranty provision. I had noticed warranty provision in accounts was half of cumulative sales. ..."

Publicly Available Information

- 4.112. In the weeks prior to the Trading Update, a number of publications had reported on difficulties with ITM's business. Several analysts also cut their ratings, albeit other commentators reported a more positive outlook for the Company due to a supportive political environment and energy security concerns.
- 4.113. However, prior to the Trading Update, there was no publicly available information relating to the Manufacturing and Warranty Issues that ITM was experiencing. The market first became aware of these issues when the Trading Update was published.

Mr Dwane and the Family Member's trading histories

- 4.114. Mr Dwane has held a Self-Invested Personal Pension (SIPP) with Firm A since 25 April 2018. He is a regular trader. Between 2018 and 2022, he traded in 85 different issuers in his personal account and frequently executed trades throughout the year. ITM was his largest equity position and most frequently traded name. In 2022, he traded in 29 issuers in his personal account, selling 12 of those and often closing the position in full.
- 4.115. The Family Member has held a SIPP with Firm A since 2 February 2018. Between 2018 and 2022, the Family Member traded in 57 different issuers in their personal account and frequently executed trades throughout the year. ITM was their largest equity position and most frequently traded name. In 2022, they traded in 27 issuers in their personal account, selling 10 of those and often closing the position in full.
- 4.116. The Authority has also identified trading by Mr Dwane or the Family Member in ITM shares on a joint account through Schroder & Co Limited during the period between 2018 and 2020.
- 4.117. Between 5 and 8 December 2022, the ITM shares held by Mr Dwane and the Family Member were sold for a profit of £33,953. No further trading in ITM has been identified.

Mr Dwane's explanation for the timing of his disposal of the Shareholding

- 4.118. In his Prepared Statement, Mr Dwane accepted sole responsibility for selling the Shareholding and provided this explanation:

"[The Family Member] was abroad between 22 and 27 October 2022. [The Family Member] was, however, aware of my general dissatisfaction and frustration about the running of ITM around this time. Prior to 26 October we had agreed, perhaps with slight reluctance on my part, that I would sell both of our shareholdings in ITM, which is what I did the day before [the Family Member's] return to the UK. I changed my mind about the shares on 27 October after the market's reaction to the RNS (which I believed would only be short term) and bought back shares in ITM."

- 4.119. Mr Dwane told the Authority in his Prepared Statement that he does not remember Senior Manager A passing him any inside information, and that he does not believe that he was in possession of inside information at the time he disposed of the Shareholding.
- 4.120. Mr Dwane exercised his right not to answer any questions put to him by FCA investigators during his interview on 1 August 2023.
- 4.121. The Family Member said that they had been aware that Mr Dwane's SIPP probably included some ITM shares, due to his association with the Company, but they did not know how many, when or how often they were bought or sold, or that any ITM shares were held in [the Family Member's] SIPP specifically. The Family Member also stated that they had not been aware that any ITM shares had been sold in October 2022. The Family Member confirmed that they had been abroad between 22 and 27 October 2022. This Notice makes no criticism of the Family Member's conduct.
- 4.122. The Family Member did not confirm Mr Dwane's statement that prior to 26 October *"we had agreed, [...] that I would sell both of our shareholdings in ITM"*.

5. FAILINGS

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

Article 2 of UK MAR (Scope)

Financial instruments trading on a multilateral trading facility ("MTF")

5.2. Article 2(1) of UK MAR provides that UK MAR applies, inter alia, to:

- (b) financial instruments traded on a UK MTF, Gibraltar MTF or an EU MTF, admitted to trading on a UK MTF, Gibraltar MTF or an EU MTF or for which a request for admission to trading on a UK MTF, Gibraltar MTF or an EU MTF has been made;

5.3. UK MAR applies to ITM shares which are and were (at the relevant time) financial instruments admitted to trading on AIM. AIM is an MTF as defined by Article 2(1)(17) of Commission Delegated Regulation (EU) 2017/565.

Article 7 of UK MAR (Inside Information)

5.4. Article 7(1) of UK MAR provides that for the purposes of UK MAR inside information shall comprise the following types of information:

- (a) information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments; ..."

5.5. Article 7(2) of UK MAR provides that information shall be deemed to be of a precise nature if:

"it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments..."

5.6. Article 7(4) of UK MAR provides that for the purposes of Article 7(1) of UK MAR:

"information, which, if it were made public, would be likely to have a significant effect on the prices of financial instruments ... shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decisions."

- 5.7. The Authority considers that, at the time that Mr Dwane disposed of the First Sales Tranche, he knew, at the very least, that a "Warranty RNS" call was about to be held, that would potentially lead to an announcement to the market in the near future, concerning warranty provisions, thereby enabling him to conclude that such an announcement would be likely to have a significant effect on the price of ITM's shares.
- 5.8. The Authority further considers that, at the time that Mr Dwane disposed of the Second Sales Tranche, he had attended the "Warranty RNS" call and therefore knew, at the very least, that a Draft RNS had been prepared that would potentially lead to an announcement to the market in the near future, concerning Warranty Issues and/or Manufacturing Issues, thereby enabling him to conclude that such an announcement would be likely to have a significant effect on the price of ITM's shares.
- 5.9. The Authority is satisfied that at the time that Mr Dwane disposed of the First Sales Tranche, as well as at the time he disposed of the Second Sales Tranche, he was in possession of information which was of a precise nature, within the meaning of Article 7(1) of UK MAR, which had not been made public, relating directly to ITM's shares, and which, if it had been made public, would have been likely to have had a significant effect on the prices of ITM's shares, in that it was information a reasonable investor would have been likely to use as part of the basis of his or her investment decisions.
- 5.10. The Authority has reached the conclusion that Mr Dwane was in possession of, and used, the Information when he executed both the First and the Second Sales Tranches, on the basis of all the facts and matters set out in section 4 of this Notice, in particular:
- (a) the contemporaneous digital and telephone communications evidence between Mr Dwane, Senior Manager A and/or other ITM employees on 26 October 2022;
 - (b) the recollections of Senior Manager A as to the contents of their 70 second conversation with Mr Dwane commencing at 08:56 on 26 October 2022;
 - (c) the nature of Mr Dwane's role as an adviser to the ITM Investor Relations team, and the fact that he would typically be consulted

towards the end of the process of preparing an RNS announcement to the market;

- (d) the execution of the first transaction of First Sales Tranche precisely 2 minutes and 20 seconds after Mr Dwane had ended his 70 second telephone conversation with Senior Manager A;
- (e) the recollections of Senior Manager A and the contemporaneous digital evidence relating to the attendance of Mr Dwane at the Warranty RNS call;
- (f) the execution of the Second Sales Tranche less than a minute after Mr Dwane, "Neil (Guest)", is recorded as having left the Warranty RNS Call Chat;
- (g) the nature, size and timeliness of the executions of the First Sales Tranche and the Second Sales Tranche, all of which indicate that Mr Dwane anticipated that a negative announcement was imminent, an inference which is not reasonably undermined by Mr Dwane's evidence regarding his discussions with, and the short period abroad of, the Family Member, and
- (h) Mr Dwane's record of disregarding ITM's share dealing policies, despite being well aware of their importance and having only recently given his personal assurance to those at ITM with responsibility for monitoring them, that he would comply with them.

Article 8 of UK MAR (Insider dealing)

5.11. Article 8 of UK MAR provides that:-

1. For the purposes of this Regulation, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates."

[...]

4. This Article applies to any person who possesses inside information as a result of: [...]

- (i) having access to the information through the exercise of an employment, profession or duties; or [...]"

5.12. Mr Dwane had access to the Information as a result of his having been employed as a Capital Markets Adviser within the Investor Relations Team at ITM. Article 8 of UK MAR therefore applies to him pursuant to Article 8(4)(b) of UK MAR.

Article 14 of UK MAR (Prohibition of insider dealing)

5.13. Article 14 of UK MAR provides that a person shall not:

- (a) engage or attempt to engage in insider dealing; [...]

5.14. Mr Dwane's conduct amounts to a breach of Article 14 of UK MAR, in that, on 26 October 2022, he engaged in insider dealing in breach of Article 14(a) of UK MAR.

Fitness and Propriety

5.15. Mr Dwane is not a fit and proper person to perform a function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm. This is because his conduct in deliberately engaging in insider dealing was dishonest. He therefore does not meet the standard of integrity required, as a result of his having engaged in insider dealing in contravention of Article 14 of UK MAR.

6. SANCTION

Financial penalty

Power to impose a financial penalty in respect of Mr Dwane's conduct

6.1. Section 123(1) of the Act provides that if the Authority is satisfied that a person has contravened Article 14 of UK MAR it may impose a penalty of such amount as it considers appropriate on the person.

6.2. Article 14(a) of UK MAR prohibits insider dealing. The Authority is therefore satisfied that Mr Dwane has contravened Article 14 of UK MAR.

The Authority's penalty policy

6.3. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. The principal purpose of imposing a financial penalty is to promote high

standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

- 6.4. In determining whether a financial penalty is appropriate the Authority is required to consider all the relevant circumstances of a case. Applying the criteria set out in DEPP 6.2.1G (regarding whether or not to take action for a financial penalty or public censure), DEPP 6.2.2G (regarding whether to take action for market abuse) and DEPP 6.4.2G (regarding whether to impose a financial penalty or public censure), the Authority considers that Mr Dwane's conduct was sufficiently serious that the imposition of a financial penalty is an appropriate sanction.
- 6.5. 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

- 6.6. 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.
- 6.7. Mr Dwane derived a direct financial benefit of £26,575 from the market abuse that he committed, calculated as the difference between the average price per share for which he sold his and the Family Member's shareholding and that at which he bought back into the stock the following day.
- 6.8. The Step 1 figure is therefore £26,575.

Step 2: the seriousness of the breach

- 6.9. 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.
- 6.10. The market abuse committed by Mr Dwane 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:
- (a) a figure based on the percentage of the individual's relevant income;

- (b) 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
 - (c) for market abuse cases which the Authority assesses to be seriousness level 4 or 5, £100,000. The Authority usually expects to assess market abuse committed deliberately as seriousness level 4 or 5.
- 6.11. 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 market abuse.
- 6.12. The market abuse committed by Mr Dwane occurred on 26 October 2022. Pursuant to DEPP 6.5C.2G(5), in cases where the market abuse was a one-off event, the relevant income will be that earned by the individual in the 12 months preceding the final market abuse. The Authority considers Mr Dwane’s relevant income for this period to be £98,492.13.
- 6.13. In cases where the market abuse was referable to the individual’s employment:
 - (a) 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
 - (b) the Authority determines the profit multiple which applies by considering the seriousness of the market abuse and choosing a multiple between 0 and 4.
- 6.14. 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% of relevant income; profit multiple of 0
 - Level 2 – 10% of relevant income; profit multiple of 1
 - Level 3 – 20% of relevant income; profit multiple of 2
 - Level 4 – 30% of relevant income; profit multiple of 3
 - Level 5 – 40% of relevant income; profit multiple of 4

- 6.15. 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.
- 6.16. DEPP 6.5C.2G(11) lists factors relating to the impact of the market abuse, which include:
- (a) the level of benefit gained or loss avoided, or intended to be gained or avoided, by the individual from the market abuse, either directly or indirectly;
 - (b) whether the market abuse had an adverse effect on markets and, if so, how serious that effect was. This may include having regard to whether the orderliness of, or confidence in, the markets in question has been damaged or put at risk; and
 - (c) whether the market abuse had a significant impact on the price of shares or other investments.
- 6.17. The Authority considers that Mr Dwane directly avoided a loss as result of his market abuse, as represented by the disgorgement figure at Step 1 above. The Authority considers that where persons employed by issuers, abuse their position to engage in insider dealing, this has a particularly adverse effect on investor confidence in the markets in question. The Authority does not consider, however, that Mr Dwane's abusive trading had a significant impact on the price of ITM's shares.
- 6.18. DEPP 6.5C.2G(12) lists factors relating to the nature of the market abuse; of these, relevant factors are: that as a senior member of the Capital Markets Team, within Investor Relations, whose role was specifically to become engaged when potentially price sensitive information was under consideration for inclusion in RNS announcements, Mr Dwane abused a position of trust (DEPP 6.5C.2G(12)(b)); that Mr Dwane was an experienced industry professional (DEPP 6.5C.2G(12)(e)), and that, at the material time, Mr Dwane held a senior position with the firm (DEPP 6.5C.2G(12)(f)).
- 6.19. DEPP 6.5C.2G(13) lists factors tending to show the market abuse was deliberate, including relevantly:
- (a) the market abuse was intentional, in that Mr Dwane intended or foresaw that the likely or actual consequences of his actions would result in market abuse;

- (b) Mr Dwane intended to directly benefit financially from the market abuse;
- (c) Mr Dwane knew that his actions were not in accordance with the firm's internal procedures, which required prior approval to be given;
- (d) Mr Dwane sought to conceal his misconduct by not requesting prior approval from the Company;
- (e) Mr Dwane's actions were repeated; and
- (f) Mr Dwane knew or recognised that the information on which the dealing was based was inside information.

6.20. DEPP 6.5C.2G(15) lists factors likely to be considered 'level 4 or 5 factors'. Of these the Authority considers that the factors relevant to Mr Dwane's conduct are that he breached a position of trust (DEPP 6.5C.2G(15)(d)) and that his market abuse was committed deliberately (DEPP 6.5C.2G(15)(f)).

6.21. DEPP 6.5C.2G(16) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these the Authority considers that the factors relevant to Mr Dwane's conduct include:

- (a) there was no, or limited, actual or potential effect on the orderliness of, or confidence in, markets as a result of the market abuse.

6.22. The Authority is satisfied that Mr Dwane's market abuse was committed deliberately and therefore takes this into consideration.

6.23. There was no effect on the orderliness of, or confidence in, markets as a result of his market abuse.

6.24. 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:

- a. 30% of relevant income (30% of £98,492.13 = £29,547.64)
- b. a profit multiple of 3 (3 x £26,575 = £79,725); and
- c. £100,000

The step 2 figure is therefore £100,000.

Step 3: Mitigating and aggravating factors

- 6.25. 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 (not including any amount to be disgorged as set out in Step 1) to take into account factors that aggravate or mitigate the market abuse.
- 6.26. Having considered the aggravating and mitigating factors mentioned at DEPP 6.5C.3G, the Authority concludes that there are no aggravating factors that are applicable in this case. As to mitigating factors, Mr Dwane has no history of disciplinary action taken against him by the Authority or by any other domestic or international regulatory body. However, in the circumstances of this case, the Authority considers that these mitigating factors do not merit a reduction of the penalty.
- 6.27. The Step 3 figure is therefore £100,000.

Step 4: Adjustment for deterrence

- 6.28. 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.
- 6.29. The Authority considers that the Step 3 figure of £100,000 represents a sufficient deterrent to Mr Dwane and others, and so has not increased the penalty at Step 4.
- 6.30. The Step 4 figure is therefore £100,000.

Step 5: Settlement discount

- 6.31. Pursuant to DEPP 6.5C.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.
- 6.32. The Authority and Mr Dwane reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.
- 6.33. Step 5 is therefore £70,000 plus disgorgement of £26,575 (with interest on the disgorgement amount).

Penalty

- 6.34. The Authority hereby imposes a total financial penalty of £100,281 on Mr Dwane for market abuse.

Prohibition

- 6.35. The Authority has had regard to the guidance in Chapter 9 of EG in considering whether to impose a prohibition order on Mr Dwane. The Authority has the power to prohibit individuals under section 56 of the Act.
- 6.36. The Authority considers that, due to his having deliberately engaged in market abuse, Mr Dwane 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. The Authority hereby prohibits Mr Dwane under section 56 of the Act.

7. PROCEDURAL MATTERS

- 7.1. This Notice is given to Neil Sedgwick Dwane under and in accordance with section 390 of the Act. The following statutory rights are important.

Decision maker

- 7.2. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

Manner and time for payment

- 7.3. The financial penalty must be paid in full by Neil Sedgwick Dwane to the Authority no later than 27 October 2025.

If the financial penalty is not paid

- 7.4. If all or any of the financial penalty is outstanding on 28 October 2025, the Authority may recover the outstanding amount as a debt owed by Neil Sedgwick Dwane and due to the Authority.

Publicity

- 7.5. 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 Authority must publish such information about the matter to which this 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 Neil Sedgwick Dwane or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- 7.6. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

- 7.7. For more information concerning this matter generally, contact Sam Carruthers at the Authority (direct line: 020 7066 3574 / email: Samantha.Carruthers@fca.org.uk).

Signed:

Allegra Bell

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

The Financial Services and Markets Act 2000 ("the Act")

The Authority's statutory objectives

1. 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 14 (prohibition of insider dealing and of unlawful disclosure of inside information) of UK MAR.

Section 123 of the Act

2. The Authority has the power under section 123(1)(a) and 123(2) of the Act to impose a penalty of such amount as it considers appropriate on a person if it is satisfied that the person has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) [...] of UK MAR.

Section 56 of the Act

3. 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 ("UK MAR")

4. Article 1 of UK MAR provides that:

This Regulation establishes a regulatory framework on insider dealing, the unlawful disclosure of inside information and market manipulation (market abuse) as well as measures to prevent market abuse to ensure the integrity of financial markets in the United Kingdom and to enhance investor protection and confidence in those markets.

5. Article 2(1)(b) of UK MAR provides that UK MAR applies to:

financial instruments traded on a UK MTF, Gibraltar MTF or an EU MTF, admitted to trading on a UK MTF, Gibraltar MTF or an EU MTF or for which a request for admission to trading on a UK MTF, Gibraltar MTF or an EU MTF has been made;

6. Article 7(1)(a) of UK MAR provides that for the purposes of MAR inside information will comprise of:

information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments

7. Article 7(2) of UK MAR provides that information shall be deemed to be of a precise nature if:

it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments [...]

8. Article 7(4) of UK MAR provides that for the purposes of Article 7(1) of UK MAR:

information, which, if it were made public, would be likely to have a significant effect on the prices of financial instruments ... shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decisions.

9. Article 8(4) of UK MAR provides that:

This Article applies to any person who possesses inside information as a result of:

- (a) being a member of the administrative, management or supervisory bodies of the issuer or emission allowance market participant;
- (b) having a holding in the capital of the issuer or emission allowance market participant;
- (c) having access to the information through the exercise of an employment, profession or duties; or
- (d) being involved in criminal activities.

This Article also applies to any person who possesses inside information under circumstances other than those referred to in the first subparagraph where that person knows or ought to know that it is inside information."

10. Article 14 of UK MAR provides that:

A person shall not:

- (a) engage or attempt to engage in insider dealing; [...]

11. Recital 14 to UK MAR states, as to the behaviour of reasonable investors, that:

Reasonable investors base their investment decisions on information already available to them, that is to say, on *ex ante* available information. Therefore, the question whether, in making an investment decision, a reasonable investor would be likely to take into account a particular piece of information should be appraised on the basis of the *ex ante* available information. Such an assessment has to take into consideration the anticipated impact of the information in light of the totality of the related issuer's activity, the reliability of the source of information and any other market variables likely to affect the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances in the given circumstances.

12. Recital 15 to UK MAR states that:

Ex post information can be used to check the presumption that the *ex ante* information was price sensitive, but should not be used to take action

against persons who drew reasonable conclusions from *ex ante* information available to them.

13. Recital 16 to UK MAR states that:

Where inside information concerns a process which occurs in stages, each stage of the process as well as the overall process could constitute inside information. An intermediate step in a protracted process may in itself constitute a set of circumstances or an event which exists or where there is a realistic prospect that they will come into existence or occur, on the basis of an overall assessment of the factors existing at the relevant time. [...]

14. Recital 23 to UK MAR states that:

The essential characteristic of insider dealing consists in an unfair advantage being obtained from inside information to the detriment of third parties who are unaware of such information and, consequently, the undermining of the integrity of financial markets and investor confidence. Consequently, the prohibition against insider dealing should apply where a person who is in possession of inside information takes unfair advantage of the benefit gained from that information by entering into market transactions in accordance with that information by acquiring or disposing of, by attempting to acquire or dispose of, by cancelling or amending, or by attempting to cancel or amend, an order to acquire or dispose of, for his own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. Use of inside information can also consist of trading in emission allowances and derivatives thereof and of bidding in the auctions of emission allowances or other auctioned products based thereon that are held pursuant to Commission Regulation (EU) No 1031/2010 (1).

15. Recital 24 to UK MAR states that:

[... The question whether a person has infringed the prohibition on insider dealing or has attempted to commit insider dealing should be analysed in the light of the purpose of this Regulation, which is to protect the integrity of the financial market and to enhance investor confidence, which is based, in turn, on the assurance that investors will be placed on an equal footing and protected from the misuse of inside information.

The Authority's Handbook of Rules and Guidance

Market Conduct

16. Following the coming into force of UK MAR, section 124 of the Act required the Authority to issue a statement of policy with respect to the type and level of administrative sanctions it may impose on a person who had contravened Article 14 of UK MAR.
17. The part of the Authority's Handbook of rules and guidance entitled "Market Conduct" ("MAR") provides guidance on UK MAR (see MAR 1.1.2G).
18. Chapter 1.2 of MAR is headed "Market Abuse: general".
19. MAR 1.2.3G states that [UK MAR] does not require the person engaging in the behaviour in question to have intended to commit market abuse.

20. MAR 1.2.9G states that for the purposes of being categorised as an insider in article 8(4) of [UK MAR], the person concerned does not need to know that the information concerned is inside information.
21. MAR 1.2.12G states that the following factors may be taken into account in determining whether or not information has been made public, and are indications that it has (and therefore is not inside information):
- (1) whether the information has been disclosed to a prescribed market or a prescribed auction platform through a regulatory information service or RIS or otherwise in accordance with the rules of that market;
 - (2) whether the information is contained in records which are open to inspection by the public;
 - (3) whether the information is otherwise generally available, including through the Internet, or some other publication (including if it is only available on payment of a fee), or is derived from information which has been made public; and
 - (4) whether the information can be obtained by observation by members of the public without infringing rights or obligations of privacy, property or confidentiality.
22. MAR can be accessed here: <https://www.handbook.fca.org.uk/handbook/MAR/>
- The Fit and Proper Test for Approved Persons ("FIT")
23. 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>
24. 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
25. The Authority's policy in relation to prohibition orders is set out in Chapter 5 of the Enforcement Guide ("ENFG").
26. ENFG 5.1 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")
27. 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 ("ENFG")

28. The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act and can be accessed here:

<https://www.handbook.fca.org.uk/handbook/ENFG/1/?view=chapter>