Financial Services Authority

FINAL NOTICE

To: Henry Ogilvy Cameron

Date of Birth: 9 December 1939

Date: 6 July 2010

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

1. THE PENALTY

1.1. The FSA gave Henry Ogilvy Cameron a Decision Notice on 24 June 2010 which notified him that pursuant to section 123 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty of £350,000 on him for engaging in market abuse.

1.2. Mr Cameron has confirmed that he will not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber).

1.3. Accordingly, for the reasons set out below, the FSA imposes a financial penalty on Mr Cameron in the amount of £350,000.

1.4. Mr Cameron agreed to settle at an early stage of the FSA's investigation and has therefore qualified for a 30% (stage 1) discount under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £500,000 on Mr Cameron.

2. SUMMARY REASONS FOR THE ACTION

2.1. Mr Cameron was, at all material times described below, Chief Executive Officer of Sibir Energy plc ("Sibir"). Sibir was incorporated on 28 May 1996 and admitted to trading on the Alternative Investment Market ("AIM") on 8 April 1997. Mr Cameron was appointed a director of Sibir on 10 June 1996.

2.2. Mr Cameron engaged in market abuse contrary to section 118(7) of the Act in that he:

(1) caused Sibir to make two related party transaction announcements, under the AIM Rules for Companies ("AIM Rules"), on 3 December 2008 and 11 February 2009, concerning transactions with Chalva Tchigirinski, a major Sibir shareholder, each of which gave or was likely to give a false or misleading impression as to the price or value of shares in Sibir; and

(2) knew that those announcements were false or misleading or could reasonably have been expected to have known as much.

2.3. Mr Cameron had engaged in additional and separate market abuse contrary to section 118(8) of the Act in the period from 16 October 2008 to 3 December 2008 in that, before the two announcements made as described above, he failed to ensure that the market was told of five additional payments amounting to US$198 million that Sibir made to or for the benefit of Mr Tchigirinski.

2.4. As a result of this conduct, Mr Cameron gave or was likely to give the market a false or misleading impression as to the price or value of shares in Sibir and/or distorted or was likely to distort the market in those shares. Such conduct was a failure to observe the standard of market behaviour reasonably expected of Mr Cameron.

2.5. The announcement on 3 December 2008, published via the Regulatory News Service ("RNS") of London Stock Exchange plc ("LSE"), stated that Sibir had advanced a total of US$115.4 million to or for the benefit of Mr Tchigirinski, by way of advance payments in respect of various Russian real estate purchases by Sibir from Mr Tchigirinski. The announcement stated that this was a related party transaction under the AIM Rules. At that time Mr Cameron had, in fact, authorised the advance by Sibir of US$313.5 million to or for the benefit of Mr Tchigirinski, a difference of US$198.1 million.

2.6. This difference was material in the circumstances. Sibir's unaudited first six month 2008 net profit after interest and taxation and net current assets at 30 June 2008 were US$238.5 million and US$564.2 million respectively. Its audited full year 2007 net profit after interest and taxation and net current assets at 31 December 2007 had been US$282.4 million and US$291.0 million respectively. The market capitalisation of Sibir as at 30 June 2008 and 31 December 2007 was £3.1 billion and £2.2 billion respectively.

2.7. The announcement on 11 February 2009, again published via RNS, again stated that Sibir had advanced a total of US$115.4 million to or for the benefit of Mr Tchigirinski in respect of the relevant real estate purchases. Again the announcement stated that this was a related party transaction under the AIM Rules. By that date Mr Cameron had, in fact, authorised the advance by Sibir of a total of US$328.5 million to or for the benefit of Mr Tchigirinski.

2.8. On 18 February 2009, Mr Cameron stated, in an email to Richard Fenhalls of Strand Partners Limited, Sibir's nominated adviser, that combined sums advanced to or for the benefit of and owed by Mr Tchigirinski amounted to US$324.4 million and not US$115.4 million (in fact the true amount was US$328.5 million, as set out above). This statement prompted an announcement by Sibir to the same effect the next day

and the suspension of trading on AIM in its shares, the share price at suspension being 174.75p.

2.9. The FSA views Mr Cameron's conduct as serious, having regard to those provisions of its Decision Procedure and Penalties Manual ("DEPP"), as it was worded at the time of the events in question, set out in the Annex to this Notice, in particular because:

(1) he occupied a very senior position with the company, namely Chief Executive Officer;

(2) while it may not have been his purpose to create a false market in Sibir's shares, he should have known the serious impact on the market his actions were likely to have;

(3) his conduct was repeated and endured over a sustained period;

(4) the effect of his conduct was to significantly misrepresent the nature and value of Sibir's assets and the risks it faced and, in particular, its exposure of US$213.1 million to Mr Tchigirinski; and

(5) the consequences of the abuse were so serious as to lead to the suspension of trading on AIM in Sibir's shares, thereby disrupting the proper operation of the market and denying shareholders the ability to trade on the market.

2.10. The FSA has concluded that the nature and seriousness of the abuse warrant the imposition of a financial penalty on Mr Cameron. In assessing the appropriate level of penalty, the FSA has taken account of the following factors which tend to mitigate the seriousness of Mr Cameron's conduct, again having regard to the contemporaneous provisions of DEPP set out in the Annex to this Notice:

(1) his primary motive was not one of personal profit, but rather the preservation of Mr Tchigirinski's supportive shareholding in Sibir and to avoid the consequences for all shareholders of a forced sale of Mr Tchigirinski's shareholding;

(2) he was responsible for bringing the conduct to light by informing Sibir's nominated adviser;

(3) Mr Cameron is an individual and, subsequent to the AIM suspension of Sibir's shares, he was himself suspended and then, on 7 April 2009, dismissed as Chief Executive Officer and director of Sibir; and

(4) since being dismissed, Mr Cameron has assisted Sibir in recovering funds advanced to Mr Tchigirinski.

2.11. The FSA also takes into account that, while Mr Cameron created a false market in Sibir's shares and caused trading in the company's shares to be suspended on AIM, Sibir was subsequently (before Sibir's AIM trading suspension was lifted) taken over by the Russian energy company JSC Gazprom Neft' ("Gazprom"), at a price of 500p

per share, with the result that holders of Sibir's shares as at the date of the suspension did not suffer loss.

2.12. In the light of the seriousness of Mr Cameron's conduct balanced against these mitigating facts, the FSA has decided to impose a financial penalty of £350,000 on Mr Cameron, taking into account:

(1) as already noted, the relevant contemporaneous provisions of DEPP set out in the Annex to this Notice;

(2) FSA decisions in other market abuse and analogous cases; and

(3) the FSA's regulatory objectives, as set out in section 2(2) of the Act, in particular the objectives of:

(a) maintaining confidence in the financial system; and

(b) securing the appropriate degree of protection for consumers, including direct or indirect investors in shares traded on AIM.

3. LEGISLATION, RULES AND GUIDANCE

Relevant legislative provisions

3.1. The FSA has the power, pursuant to section 123(1) of the Act, to impose a financial penalty where it is satisfied that a person ("A") has engaged in market abuse.

3.2. 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:

> "*occurs in relation to ... qualifying investments admitted to trading on a prescribed market; … and … falls within any one or more of the types of behaviour set out in subsections (2) to (8).*"

3.3. Section 118A(1) of the Act provides that:

> "*[b]ehaviour is to be taken into account for the purposes of … [sections 118 to 131A of the Act] … only if it occurs in the United Kingdom or … in relation to qualifying investments which are admitted to trading on a prescribed market situated in, or operating in, the United Kingdom.*"

3.4. Section 130A of the Act provides that the Treasury may by order specify markets and investments which are "*prescribed markets*" and "*qualifying investments*" for the purposes of any or all of sections 118 to 131A of the Act.

3.5. AIM is such a prescribed market for the purposes of section 118(7) and (8) of the Act 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 the LSE, a UK recognised investment exchange. Shares are, by reason of the same Order and relevant European legislation, qualifying investments.

3.6. Section 118(7) defines as a form of market abuse behaviour which:

"*…consists of the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to a qualifying investment by a person who knew or could reasonably be expected to have known that the information was false or misleading.*"

3.7. Section 118(8) additionally defines as a form of market abuse behaviour which:

> *"(a) is likely to give a regular user of the market a false or misleading impression as to the supply of, demand for or price or value of, qualifying investments, or*
>
> *(b) would be, or would be likely to be, regarded by a regular user of the market as behaviour that would distort, or would be likely to distort, the market in such an investment,*
>
> *and the behaviour is likely to be regarded by a regular user of the market as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the market.*"

3.8. By section 130A(3), "*behaviour*" includes action or inaction and "*regular user*" means, "*in relation to a particular market, … a reasonable person who regularly deals on that market in investments of the kind in question.*"

3.9. All of these legislative provisions were in force as quoted above at the time of all of the relevant events, acts and omissions described above and below.

FSA Rules

3.10. By Appendix 3.1.1R to the FSA's Listing Rules, RNS is approved by the FSA as a Regulatory Information Service ("RIS").

4. FACTS AND MATTERS RELIED ON

Background

4.1. Sibir was, at the relevant time, an energy company with oil exploration and production operations in Western Siberia and refining and marketing interests in the Moscow region.

4.2. For most of 2006, 2007 and 2008 Sibir was the largest company on AIM with a market capitalisation, at its peak, of over £3,416 million.

4.3. From 2007, the controlling shareholders (holding 65% in total) of Sibir were:

(1) Mr Tchigirinski – 23.5%;

(2) Igor Kesaev – 23.5%; and

(3) The City of Moscow – 18%.

4.4. As at the point of suspension, approximately 25% of the issued share capital was held by financial institutions, the largest two of which held 6% and 5% respectively.

4.5. Mr Tchigirinski was also a Non-Executive Director of Sibir from 12 June 2000 to 18 December 2008.

4.6. On 19 February 2009 Sibir announced a temporary suspension of its shares as the company had discovered that two separate circulars (issued on 2 December 2008 and 11 February 2009) "*were not correct*" in that Mr Tchigirinski was "*indebted to Sibir in an amount of approximately US$325 million and not US$115 million as set out in*" the circulars. The announcement stated:

> *"The Board of Sibir will now assess the effect of this increase in the indebtedness on Sibir's ability to recover the indebtedness and the consequent impact on Sibir's financial position."*

Events leading to the announcement on 19 February 2009

4.7. On 16 October 2008 Sibir issued a related party transaction announcement in respect of transactions entered into with Mr Tchigirinski. The announcement stated that Sibir had, as at 9 October 2008, advanced US$115.4 million against the purchase of two companies connected to Mr Tchigirinski. Sibir had agreed to acquire:

(1) the entire issued share capital of Sovetskaya Limited, which owned the Sovetskaya Hotel in Moscow; and

(2) the entire issued share capital of OOO Firma Intime, which owned a development property in the Northern Administrative District of Moscow.

4.8. The acquisitions were subject to shareholder approval and the announcement stated that Sibir intended to convene a General Meeting as soon as possible.

4.9. Mr Cameron included a comment in the announcement as follows:

> *"The potential acquisition of the Real Estate Assets marks a departure from our mainstream business and an opportunity which we believe for a number of reasons we are right to seize. The rationale behind this departure will be laid out in detail in a circular to be issued to shareholders early next week. In short Sibir sees significant opportunity to extend its business by acquiring high-quality real estate properties at attractive prices in what is one of the most dynamic real-estate markets in the world. At the same time in common with the world wide reaction to the current global calamitous financial crisis Sibir has acted decisively, in return for full value and without prejudice to itself or its shareholders, to protect its most seminal and vital asset namely its shareholder structure. As I have repeatedly stated our majority Russian ownership has been and will continue to be instrumental in our success."*

4.10. The circular to shareholders referred to in this announcement was not in fact issued until 2 December 2008.

4.11. On 20 October 2008, Sibir issued a related party transaction update in response to press reports that suggested that both Mr Tchigirinski and Mr Kesaev were subject to margin call pressure in respect of loans secured against Sibir shares. The announcement stated that Mr Kesaev was under no such pressure and that, as announced previously, Mr Tchigirinski had disposed of property to Sibir, the proceeds of which enabled him to prepay the facility secured on his shares in Sibir and avoid margin calls.

4.12. On 3 December 2008, Sibir announced ("the December Announcement") that it had, on 2 December 2008, issued a circular to shareholders convening a General Meeting, to be held on 18 December 2008.

4.13. The December Announcement set out, in detail, Sibir's proposed move into real estate. It stated that, as had been announced on 16 October 2008, Sibir was to acquire the entire issued share capital of Sovetskaya Limited and OOO Firma Intime and that an advance of US$115.4 million had been made against this transaction. The total consideration had been agreed as US$156.7 million and the balance of US$41.3 million would be paid after the General Meeting.

4.14. The December Announcement went on to describe proposed further real estate transactions as follows:

> "*After the Board took the initial urgent steps to preserve Sibir's shareholder structure, the global financial crisis and consequential drop in share values have had a domino effect on Mr Tchigirinski's financial position. Since our announcement of the related party transactions in October all of his commercial financial facilities effectively fell due for repayment or were subject to material reduction. As the preservation of the Company's shareholder structure was paramount, the board of Sibir has concluded that the Company must take over the bulk of Mr Tchigirinski's remaining real estate business.*
>
> *Sibir proposes to acquire additional real estate from Mr Tchigirinski, as set out below, for a total consideration of $340.0 million, of which $127.0 million will be paid in cash and the remaining $213.0 million (approximately) by the assumption of certain of Mr Tchigirinski's existing loans, subject to agreement with his lenders. Sibir is requesting shareholder approval at the General Meeting of the Company for these proposed acquisitions.*"

4.15. In summary, the December Announcement stated that Sibir was seeking shareholder approval to acquire the bulk of Mr Tchigirinski's real estate assets for a total consideration of US$496.7 million (US$156.7 million plus US$340 million) of which US$115.4 million had already been advanced.

4.16. On 18 December 2008, Sibir issued an announcement of the results of its General Meeting which stated that all resolutions in relation to real estate were adjourned, as the major Russian shareholders in Sibir wished to further evaluate whether to proceed with the resolutions or not. The announcement also stated that Mr Tchigirinski did not stand for re-election as a Non-Executive Director and as a result stepped down from Sibir's Board.

4.17. On 30 January 2009, Sibir issued an update on the acquisition of real estate which stated that the company would no longer be acquiring any real estate assets from Mr Tchigirinski and that any contracts entered into would be unwound.

4.18. On 11 February 2009, Sibir announced that it had issued a second circular to shareholders ("the February Announcement") expanding on the 30 January 2009 announcement. The February Announcement again stated that the company had advanced a total of US$115.4 million to Mr Tchigirinski, which it defined as "the Sibir debt" and further stated that Mr Tchigirinski had been able to arrange alternative financing to replace the loans that brought about the threat of margin calls. The financing was arranged in November 2008 through Orton Oil, a company wholly owned by Mr Kesaev. Orton Oil had borrowed US$192 million and had advanced the funds to a company wholly owned by Mr Tchigirinski. The loan to Mr Tchigirinski was secured on his shareholding in Sibir. This was defined as the "Orton Oil debt".

4.19. The February Announcement stated that a Deed of Arrangement between Sibir, Orton Oil and Mr Tchigirinski had been entered into on 23 December 2008 and was released from escrow on 10 February 2009. The Deed of Arrangement related to both the Sibir Debt and the Orton Oil Debt. Its purpose was to set out the process by which the two Debts would be repaid, as well as provide security and prescribe deadlines for the repayment.

4.20. On 12 February 2009, Sibir's Company Secretary was shown a schedule by a Sibir accountant, John Arthur, listing the payments made to Mr Tchigirinski between 16 October and 4 December 2008. He asked Mr Cameron to explain the payments. Mr Cameron replied to say that he would draft an announcement to the market. On 18 February 2009 Mr Cameron sent an email to Sibir's nominated advisers, in which he stated:

> *"I very much regret having to send the attached draft note in the form of a draft announcement and I do so with a very heavy heart. You have no inkling of the new matters and I have deliberately not advised you of the matters in the note so that the responsibility firmly rests with me. The same goes for [other members of the Sibir Board]."*

4.21. The *"attached draft note"* was in the form of a draft announcement to the market and stated:

> *"Although issued in the name of Sibir this announcement is in the form of a personal statement from the Chief Executive Henry Cameron as much of the information announced has not until now been in the knowledge of the Company's nominated advisors, brokers, officers of the Company or other key executives."*

4.22. The draft announcement further stated that the payments advanced to Mr Tchigirinski against the real estate transactions were not sufficient to stop the margin call pressure and Mr Cameron wrote further:

> "*I authorised a further payment to Chalva Tchigirinski bringing the total paid in respect of this deal to $154.4 million. This differed from the sum paid*

disclosed in the original Circular by $39.4 million and I have no explanation for the failure to disclose the true amount."

and

"In the belief that the resolutions when finally composed and presented would be approved I authorised the release of $170 million USD in favour of his represenatives [sic] *who discharged the debt in case.*

The decision not to proceed with real estate does mean that my plan that the sums advanced to Chalva Tchigirinski being offset against the expanded real estate deals cannot be completed and that Sibir must recover the outstanding sums by other means. It was for this reason that Deed of Arrangement referred to in the last Circular [the February Circular] *was entered into for all sums due by him to Sibir.*"

4.23. The US$170 million payment (along with the US$39.4 million) had not been disclosed to the market.

4.24. At 07:55 on 19 February 2009 an announcement to the market was made by AIM itself which stated that, at the request of the company, trading on AIM for Sibir shares had been suspended from 07:55 pending an announcement.

4.25. At 08:11 Sibir announced as follows:

"*The quotation of Sibir's ordinary shares on the London Stock Exchange has been suspended today at the request of Sibir. Sibir's Nominated Adviser, Strand Partners Limited, was informed late on 18 February 2009 that the two circulars recently published by Sibir on 2 December 2008 and 11 February 2009 were not correct in that various Tchigirinski interests are currently indebted to Sibir in an amount of approximately $325 million and not approximately $115 million as set out in the latest circular. The Board of Sibir will now assess the effect of this increase in the indebtedness on Sibir's ability to recover the indebtedness and the consequent impact on Sibir's financial position. The Board of Sibir will in conjunction with the major Russian shareholders who control approximately 67% of the share capital of Sibir conduct an enquiry as to how this has happened. A full statement detailing all the facts and circumstances (including the recoverability of this indebtedness) will be made as soon as possible. The General Meeting of Sibir scheduled for 27 February 2009 will be postponed until further notice.*"

4.26. On 24 February 2009, Mr Cameron was suspended from Sibir pending the result of an investigation by Sibir's solicitors. On 7 April 2009 Mr Cameron was dismissed.

Payments made to Mr Tchigirinski

4.27. In the period from 12 September 2008 to 4 December 2008, the following payments were made by Sibir to or for the benefit of Mr Tchigirinski:

Date	***Payment USD***	***Cumulative total USD***

16 September 2008	21,000,000	21,000,000
17 September 2008	20,754,000	41,754,000
3 October 2008	20,700,000	62,454,000
9 October 2008	53,000,000	115,454,000
16 October 2008	39,000,000	154,454,000
17 October 2008	18,000,000	172,454,000
21 October 2008	106,000,000	278,454,000
22 October 2008	20,000,000	298,454,000
28 October 2008	15,000,000	313,454,000
4 December 2008	15,000,000	328,454,000

4.28. By the end of 16 October 2008, a total of US$154,454,000 had been paid to Mr Tchigirinski. The related party transaction announcement on 16 October 2008 stated that Sibir had deposited US$115.4 million "*by 9 October 2008*", which was correct. A further payment of US$39 million was however made on 16 October 2008, after the release of the announcement. This is the payment Mr Cameron refers to in his email of 18 February 2008, in which he stated:

> *"I authorised a further payment to Chalva Tchigirinski bringing the total paid in respect of this deal to $154.4 million. This differed from the sum paid disclosed in the original Circular by $39.4 million and I have no explanation for the failure to disclose the true amount."*

4.29. From 17 October 2008 to 4 December 2008 a series of further payments were made by Sibir to Mr Tchigirinski. These payments totalled US$174 million and were the payments referred to by Mr Cameron in his email of 18 February 2008, in which he wrote:

> *"In the belief that the resolutions when finally composed and presented would be approved I authorised the release of $170 million USD in favour of his represenatives* [sic] *who discharged the debt in case."*

4.30. These payments were not supported by a written agreement or other documentation and amounted to unsecured loans by Sibir to Mr Tchigirinski.

4.31. Therefore the December Announcement and February Announcement were misstated as follows:

	Stated amount USD	***Actual amount USD***	***Difference USD***
December Announcement	115,400,000	313,454,000	198,054,000
February Announcement	115,400,000	328,454,000	213,054,000

Events after suspension of shares on 19 February 2009

4.32. At the close of trading on 18 February 2009 Sibir shares were trading at 174.75p per share. On 26 May 2009 Sibir announced that it had reached agreement with Gazprom for the sale of the entire issued share capital in Sibir (other than shares already held by

Gazprom and shareholders associated with Mr Tchigirinski and the City of Moscow) at a price of 500p per share. Gazprom subsequently acquired a majority interest in Sibir and on 20 August 2009 the shares were de-listed from AIM.

5. ANALYSIS OF THE MARKET ABUSE

5.1. At all material times, Mr Cameron was the Chief Executive Officer of Sibir and shares in Sibir were qualifying investments admitted to trading on AIM, a prescribed market, for the purposes of section 118 of the Act, situated in the United Kingdom.

5.2. Announcements made by Sibir through RNS on 3 December 2008 and 11 February 2009 failed to disclose payments made to Mr Tchigirinski, in the sums of US$198.1 million and US$213.1 million respectively, despite disclosing that the sum of US$115.4 million had been paid and thereby giving the impression that this was the true figure.

5.3. These undisclosed sums were material in relation to Sibir's financial position, as described above. The effect of these misstatements was therefore to materially misrepresent the nature and value of Sibir's assets, and the risks it faced.

5.4. Having regard to the provisions of the FSA's Code of Market Conduct ("MAR") set out in the Annex to this Notice, the announcements therefore gave, or were likely to give, a false or misleading impression as to Sibir's shares, for the purposes of section 118(7) and Mr Cameron could reasonably have been expected to know as much.

5.5. Between 16 October 2008 and 19 February 2009, Mr Cameron authorised payments to or for the benefit of Mr Tchigirinski, in the sum of US$213.1 million, yet failed to ensure their accurate and timely disclosure to the market.

5.6. In particular, Mr Cameron failed to ensure that the market was informed of the size of the payments to Mr Tchigirinski and that they were not supported by a written agreement or other documentation and amounted to unsecured loans. This resulted in the market being misled as to the nature and value of Sibir's assets, and the risks it faced.

5.7. As a result, having regard to the provisions of MAR set out in the Annex to this Notice or above, for the purposes of section 118(8):

(1) Mr Cameron's conduct was likely to give a regular user of the market a false or misleading impression as to the price or value of Sibir shares.

(2) Mr Cameron's conduct would have been, or would have been likely to be, regarded by a regular user of the market as behaviour that would distort or would be likely to distort, the market in Sibir shares.

(3) Mr Cameron's conduct was likely to be regarded by a regular user of the market as a failure on his part to observe the standard of behaviour reasonably expected of a person in his position in relation to the market.

6. ANALYSIS OF SANCTION

The FSA considers Mr Cameron's conduct to be serious, for the reasons given in paragraph 2.9. The FSA has taken account of the factors referred to in paragraph 2.10 which tend to mitigate the seriousness of Mr Cameron's conduct. The FSA has also had regard to the contemporaneous provisions of DEPP set out in the Annex to this Notice, its regulatory objectives, as described above, and the penalties imposed in other market abuse and analogous cases.

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 you in accordance with section 390 of the Act.

Manner of and time for payment

8.2. The financial penalty must be paid in full by you to the FSA by no later than 20 July 2010, 14 days from the date of the Final Notice.

If the financial penalty is not paid

8.3. If all or any of the financial penalty is outstanding on 21 July 2010, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

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

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

FSA contacts

8.6. For more information concerning this matter generally, you should contact Celyn Armstrong (direct line: 020 7066 2818) or Samantha Lake (direct line: 020 7066 5998) at the FSA.

……

Tracey McDermott
FSA Enforcement and Financial Crime Division

ANNEX

Relevant Regulatory Guidance

Code of Market Conduct

1. The FSA issued MAR pursuant to section 119 of the Act, which requires the FSA to "*prepare and issue a code containing such provisions as the … [FSA] … considers will give appropriate guidance to those determining whether or not behaviour amounts to market abuse.*" Under section 122 of the Act, MAR may be relied on "*so far as it indicates whether or not particular behaviour should be taken to amount to market abuse*."

2. MAR 1.8.3E provides examples of conduct which amount, in the opinion of the FSA, to behaviour falling within section 118(7) of the Act. Those examples include:

> "*knowingly or recklessly spreading false or misleading information about a qualifying investment through the media, including in particular through an RIS or similar information channel."*

3. MAR 1.8.4E adds as follows:

> "*… if a normal and reasonable person would have known or should have known in all the circumstances that the information was false or misleading, that indicates that the person disseminating the information knew or could reasonably be expected to have known it was false or misleading.*"

4. MAR 1.8.6E states further that, in the FSA's opinion, the following is an example of market abuse falling within the terms of section 118(7) of the Act:

> "*a person responsible for the content of information submitted to … [an RIS] … submits information which is false or misleading as to qualifying investments and that person is reckless as to whether the information is false or misleading.*"

5. In respect of section 118(8) of the Act, MAR 1.9.4E sets out factors to be taken into account, in the FSA's opinion, in determining whether or not behaviour is likely to give a regular user a false or misleading impression as to the supply of or the demand for or as to the price or value of one or more qualifying investments. Those factors include:

> *"(2) the structure of the market, including its reporting, notification and transparency requirements;*
>
> *…*
>
> *(4) the identity and position of the person responsible for the behaviour which has been observed …;*
>
> *(5) the extent and nature of the visibility or disclosure of the person's activity.*"

6. MAR 1.9.5E sets out factors to be taken into account, in the FSA's opinion, for the purposes of section 118(8), in determining whether or not behaviour that creates a false or misleading impression as to, or distorts the market for, a qualifying investment, has also failed to meet the standard expected by a regular user. Those factors include:

> "*(3) the characteristics of the market in question, including the users and applicable rules and codes of conduct …;*
>
> *(4) the position of the person in question and the standards reasonably to be expected of him in light of his experience, skill and knowledge;*
>
> *(5) if the transaction complied with the rules of the relevant prescribed markets about how transactions are to be executed in a proper way (for example, rules on reporting …).*"

7. The provisions of MAR as quoted above were in force at the time of all the material events, acts and omissions described above.

Relevant guidance as to appropriate action

8. In deciding to take the action described above, the FSA has had regard to the guidance it has published, in Chapter 6 of DEPP, under section 124 of the Act, which requires the FSA to "*issue a statement of its policy with respect to the imposition of penalties under section 123 and the amount of*" such penalties.

9. DEPP 6.2.1G sets out a number of factors to be taken into account when the FSA decides whether or not to impose a financial penalty. They are not exhaustive but include:

> "*(1) the nature, seriousness and impact of the suspected breach, including:*
>
> *(a) whether the breach was deliberate or reckless;*
>
> *(b) the duration and frequency of the breach;*
>
> …
>
> *(e) the impact or potential impact of the breach on the orderliness of markets including whether confidence in those markets has been damaged or put at risk;*
>
> *(f) the loss or risk of loss caused to consumers or other market users;*
>
> …
>
> *(2) The conduct of the person after the breach, including the following:*
>
> *(a) how quickly, effectively and completely the person brought the breach to the attention of the FSA or another relevant regulatory authority;*
>
> …

(c) any remedial steps the person has taken in respect of the breach;

(d) the likelihood that the same type of breach (whether on the part of the person under investigation or others) will recur if no action is taken."

10. DEPP 6.2.2G sets out additional factors specific to the decision whether to take action for market abuse or for requiring or encouraging it. These include:

> "*The impact, having regard to the nature of the behaviour, that any financial penalty or public censure may have on the financial markets or on the interests of consumers:*
>
> *(a) a penalty may show that high standards of market conduct are being enforced in the financial markets, and may bolster market confidence;*
>
> *(b) a penalty may protect the interests of consumers by deterring future market abuse and improving standards of conduct in a market.*"

11. DEPP 6.4.1G states, more generally, that the "*FSA will consider all the relevant circumstances of a case when deciding whether to impose a penalty or issue a public censure.*"

Relevant guidance as to level of penalty

12. DEPP 6.5.1G has been amended since but, at all material times, stated that the "FSA will consider all the relevant circumstances of a case when it determines the level of a financial penalty (if any) that is appropriate and in proportion to the breach concerned."

13. DEPP 6.5.2G has also been amended since but, at all material times, set out a non-exhaustive list of factors which might be relevant to the level of financial penalty imposed by the FSA, as follows:

> "*(1) Deterrence*
>
> *When determining the appropriate level of penalty, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.*
>
> *(2) The nature, seriousness and impact of the breach in question*
>
> *The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached. The following considerations are among those that may be relevant:*
>
> *(a) the duration and frequency of the breach;*
>
> …

(c) in market abuse cases, the FSA will consider whether the breach had an adverse effect on markets and, if it did, how serious that effect was, which may include having regard to whether the orderliness of, or confidence in, the markets in question has been damaged or put at risk …;

(d) the loss or risk of loss caused to consumers, investors or other market users;

…

(3) The extent to which the breach was deliberate or reckless

The FSA will regard as more serious a breach which is deliberately or recklessly committed. The matters to which the FSA may have regard in determining whether a breach was deliberate or reckless include, but are not limited to, the following:

(a) whether the breach was intentional, in that the person intended or foresaw the potential or actual consequences of its actions;

…

If the FSA decides that the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case.

(4) Whether the person on whom the penalty is to be imposed is an individual

When determining the amount of a penalty to be imposed on an individual, the FSA will take into account that individuals will not always have the resources of a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

(8) Conduct following the breach

The FSA may take the following factors into account:

(a) the conduct of the person in bringing (or failing to bring) quickly, effectively and completely the breach to the FSA's attention (or the attention of other regulatory authorities, where relevant);

…

(c) any remedial steps taken since the breach was identified, ...”