Financial Services Authority

FINAL NOTICE

To: **Philippe Jabre**

And to: **GLG Partners LP**

Date: **1 August 2006**

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

1. ACTION

Philippe Jabre

1.1 On 28 February 2006 the FSA gave Mr Philippe Jabre ("Mr Jabre") a Decision Notice which notified him that pursuant to sections 66 and 123 of the Financial Services and Markets Act 2000 ("FSMA"), the FSA had decided to impose on him a financial penalty of £750,000 because:

(a) Mr Jabre had committed market abuse contrary to section 118 of FSMA; and

(b) Mr Jabre had breached Principles 2 (Due Skill, Care & Diligence) and 3 (Market Conduct) of the FSA's Statements of Principle for Approved Persons.

GLG Partners LP

1.2 On 28 February 2006 the FSA gave GLG Partners LP ("GLG") a Decision Notice which notified it that pursuant to sections 123 and 206 of FSMA, the FSA had decided to impose on it a financial penalty of £750,000 because:

(a) GLG had committed market abuse contrary to section 118 of FSMA; and

(b) GLG had breached Principle 5 (Market Conduct) of the FSA's Principles for Businesses.

1.3 Mr Jabre referred the matter to the Financial Services and Markets Tribunal on 27 March 2006. Mr Jabre withdrew that reference on 27 July 2006. GLG did not refer the matter to the Financial Services and Markets Tribunal.

1.4 Accordingly, for the reasons set out below, the FSA imposes a financial penalty on Mr Jabre in the amount of £750,000 and a financial penalty on GLG in the amount of £750,000.

2. RELEVANT STATUTORY PROVISIONS AND REGULATORY REQUIREMENTS

Relevant statutory provisions

2.1 The relevant parts of section 118 of FSMA applicable at the relevant time provide:

(1) For the purposes of this Act, market abuse is behaviour (whether by one person alone or by two or more persons jointly or in concert) –

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

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

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

(2) The conditions are that –

(a) the behaviour is based on information which is not generally available to those using the market but which, if available to a regular user of the market, would or would be likely to be regarded by him as relevant when deciding the

terms on which transactions in investments of the kind in question should be effected;

(b) …

(3) The Treasury may by order prescribe (whether by name or by description):

(a) the markets to which this section applies; and

(b) the investments which are qualifying investments in relation to those markets.

(4) The order may prescribe different investments or descriptions of investment in relation to different markets or descriptions of market.

(5) Behaviour is to be disregarded for the purposes of subsection (1) unless it occurs -

(a) in the United Kingdom; or

(b) in relation to qualifying investments traded on a market to which this section applies which is situated in the United Kingdom or which is accessible electronically in the United Kingdom.

(6) …

(7)…

(8)…

(9) Any reference in this Act to a person engaged in market abuse is a reference to a person engaged in market abuse whether alone or with one or more persons.

(10) In this section -

"behaviour" includes action or inaction;

"investment" is to be read with section 22 and Schedule 2;

"regular user" in relation to a particular market, means a reasonable person who regularly deals on that market in investments of the kind in question.

2.2 Section 123 of FSMA provides:

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

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

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

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

(2) But the Authority may not impose a penalty on a person if, having considered any representations made to it in response to a warning notice, there are reasonable grounds for it to be satisfied that:

(a) he believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of subsection (1), or

(b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of that subsection.

(3) If the Authority is entitled to impose a penalty on a person under this section it may, instead of imposing a penalty on him, publish a statement to the effect that he has engaged in market abuse.

2.3 Section 66 of FSMA provides:

(1) The Authority may take action against a person under this section if-

(a) it appears to the Authority that he is guilty of misconduct; and

(b) the Authority is satisfied that it is appropriate in all the circumstances to take action against him.

(2) A person is guilty of misconduct if, while an approved person –

(a) he has failed to comply with a statement of principle issued under section 64; or

(b) …

2.4 Section 206 of FSMA provides:

(1) If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.

(2)…

(3)…

FSA's Statements of Principle for Approved Persons

2.5 Principle 2 states:

An approved person must act with due skill, care and diligence in carrying out his controlled function.

2.6 Principle 3 states:

An approved person must observe proper standards of market conduct in carrying out his controlled function.

FSA's Principles for Businesses

2.7 Principle 5 states:

A firm must observe proper standards of market conduct.

The Code of Market Conduct ("MAR")

2.8 Section 119 of FSMA provides:

(1) The Authority must prepare and issue a code containing such provisions as the Authority considers will give appropriate guidance to those determining whether or not behaviour amounts to market abuse.

(2) The code may among other things specify –

(a) descriptions of behaviour that, in the opinion of the Authority, amount to market abuse;

(b) descriptions of behaviour that, in the opinion of the Authority, do not amount to market abuse;

(c) factors that, in the opinion of the Authority, are to be taken into account in determining whether or not behaviour amounts to market abuse.

(3) The code may make different provisions in relation to persons, cases or circumstances of different descriptions.

(4) …

2.9 Section 122 of FSMA provides:

(1) If a person behaves in a way which is described (in the code in force under section 119 at the time of the behaviour) as behaviour that, in the Authority's opinion, does not amount to market abuse that behaviour of his is to be taken, for the purposes of this Act, as not amounting to market abuse.

(2) Otherwise, the code in force under section 119 at the time when particular behaviour occurs may be relied on so far as it indicates whether or not that behaviour should be taken to amount to market abuse.

2.10 The code required by section 119 FSMA is found in MAR 1 as it was in force at the relevant time. Provisions of particular relevance to this case include MAR 1.1 (Application), MAR 1.2 (Regular user test), MAR 1.3 (Behaviour), MAR 1.4 (Misuse of information), MAR 1.11 (The scope of the market abuse regime).

MAR 1.4 deals with behaviour constituting misuse of information which is one of the types of behaviour constituting market abuse pursuant to section 118(2)(a) of FSMA. Where appropriate, the relevant provisions of MAR will be set out more fully below.

3. FACTS AND MATTERS RELIED ON

3.1 In summary, the FSA finds that between 12 and 14 February 2003 Mr Jabre, on behalf of the GLG Market Neutral Fund which he managed for GLG, improperly and in breach of section 118 of FSMA short-sold ordinary shares in Sumitomo Mitsui Financial Group Inc ("SMFG") to the value of $16 million ahead of an announcement of a new issue of convertible preference shares in SFMG though on February 11 2003 he had been "wall-crossed" and given advance confidential information on the prospective issue by Goldman Sachs International ("GSI") who were pre-marketing the issue.

Background

3.2 GLG, which is based in London, carries on the business of hedge fund management. GLG is an English limited partnership, with two corporations as its general and limited partners. Its general partner is GLG Partners Limited ("the General Partner"), an English company. Its limited partner is GLG Holdings Limited ("the Limited Partner") (a British Virgin Islands limited company) which holds a 99% partnership interest in GLG. The General Partner holds the remaining 1%.

3.3 Mr Jabre has over 20 years experience investing in international markets and is a specialist in the Japanese markets.

3.4 GLG is managed by its General Partner. The General Partner acts through its Board of Directors. At the material time, Mr Jabre was one of four directors on that Board of Directors with each director having one vote for the purposes of decision making. He was also a shareholder of the General Partner in which he holds a 20% interest. The Limited Partner does not participate in the management of GLG.

3.5 At the material time Mr Jabre was not a director of the Limited Partner. However, Mr Jabre was, together with his family, a beneficiary of the Limited Partner under a trust ("Mr Jabre's Trust") which received substantial profits at the material time.

3.6 Mr Jabre was an employee of GLG and held the title "Managing Director" as did the other directors of the General Partner. In common parlance, they continued to be referred to as "partners" even though they were not and are not in fact partners.

3.7 Mr Jabre was responsible for managing 6 of GLG's funds. In particular, Mr Jabre managed the GLG Market Neutral Fund, which had a net asset value around $4 billion. He was a senior investment manager with responsibility for the investment management of designated funds and individual portfolios. This included the investment decision-making and placing of orders in respect of the funds and portfolios managed. Mr Jabre also reviewed the investment activities of all funds and portfolios he managed to ensure compliance with investment guidelines. Mr Jabre was a member of the Investment Management Committee whose remit was the oversight and analysis of the investment strategy for the various GLG funds.

3.8 Mr Jabre was at the relevant time an approved person. He had approval to undertake the following four controlled functions on behalf of GLG:

(a) Director (CF1);

(b) Investment adviser (CF21);

(c) Customer trading (CF26); and

(d) Investment management (CF27).

3.9 The FSA considers Mr Jabre to be a highly experienced investor and investment manager. He was a managing director in one of the world's largest hedge fund managers and managed one of the world's largest and most successful convertible arbitrage funds. The FSA considers that Mr Jabre is a prominent figure in the hedge fund industry.

3.10 The FSA considers GLG to be one of the largest hedge fund managers in Europe. At the material time, GLG managed very substantial amounts of money (around $11.5 billion) on behalf of its clients.

Representations on the Warning Notice

3.11 The Warning Notice issued in April 2005 gave notice of intended findings of market abuse in contravention of section 118 of FSMA by Mr Jabre and GLG, and of breaches by Mr Jabre of Principles for Approved Persons, namely Principles 1 (Integrity) and 3 (Market Conduct), and by GLG of Principles 3 (Systems and Controls) and 5 (Market Conduct) of the Principles for Businesses.

3.12 *In written and oral representations on the Warning Notice, Mr Jabre argued that in the second of two conversations with him on 11 February 2003 GSI agreed that he could continue with a pre-existing pattern of trading in SMFG stock notwithstanding the information on the proposed convertible preference share issue that he had been given; he and GLG argued that his short-trades between that conversation and the public announcement of the issue were consistent with a pre-existing trading pattern or strategy ; and that neither his conduct nor GLG's met the statutory criteria for market abuse under section 118 of FSMA or the criteria for breaches of the market conduct Principles for Approved Persons and Businesses respectively. Mr Jabre further argued that his conduct did not meet the criteria for a breach of Principle 1(Integrity) for Approved Persons though he acknowledged that with the benefit of hindsight it would amount to a failure to*

take due care in the performance of his controlled functions and thus amount to a breach of Principle 2 (Due Skill, Care & Diligence) for Approved Persons. GLG further argued that it had not breached Principle 3 (Systems and Controls) for Businesses; that in law any market abuse committed by Mr Jabre could not be attributed to GLG and that GLG could not be held vicariously liable for it. Both GLG and Mr Jabre argued that the trades in question were not within the FSA's jurisdiction under section 118 of FSMA because they occurred on the Tokyo Stock Exchange which is not a "prescribed market" for the purposes of that section.

3.13 In addressing these issues, as set out below, the FSA has fully considered the material and submissions available to it (both written and oral) and has received independent legal advice. The submissions made include expert reports variously supporting or contesting points argued by Mr Jabre and GLG respectively. Where appropriate, the FSA has summarised some of the parties' principal submissions or contentions in this Decision Notice. This is not, however, intended to be an exhaustive and complete summary of the numerous submissions made by the parties which submissions have also changed from time to time.

3.14 The FSA is mindful that the allegations are very serious and has decided the issues accordingly.

3.15 In the light of these various submissions and of the findings and other material summarised in this Notice, the FSA makes no finding that Mr Jabre breached Principle 1 (Integrity) of the Principles for Approved Persons: and no finding that GLG breached Principle 3 (Systems and Controls) of the Principles for Businesses.

The SMFG convertible preference share issue

3.16 In early 2003 SMFG, together with the other major Japanese banks, was under pressure from the Bank of Japan to bring its Tier 1 capital ratios back up towards internationally required standards by end March 2003. This gave rise to an expectation in the market that the Japanese banks would have to raise fresh capital.

3.17 In mid-January 2003, SMFG raised JPY 150 billion (around $1.3 billion) of new equity via a private placement of convertible preference shares with GSI.

3.18 On 7 February 2003, GSI was mandated as the lead manager/underwriter for a proposed public issue by SMFG of convertible preference shares. On February 17 the structure of the issue was announced on the Tokyo Stock Exchange and on February 20 the issue was priced.

3.19 On February 11 Mr Jabre was wall-crossed by GSI and given advance confidential information on the issue and its intended structure. Between 12 and 14 February he executed short sales of SMFG's ordinary shares.

Mr Jabre's trading and borrowing in SMFG

3.20 As noted above, in early 2003 SMFG, together with the other major Japanese banks, was under pressure from the Bank of Japan to bring its Tier 1 capital ratios back up towards internationally required standards. Towards the end of January 2003, Mr Jabre asked his stock loan officer to try to borrow shares in the four major Japanese banks in the amounts $100 million in SMFG, $100 million in the Bank of Tokyo, and $30 million in each of UFJ and Mizuho. Mr Jabre has stated that he did so following the various reports in the press relating to the Japanese banking sector and his reading of Japan. By the second week of February, the GLG Market Neutral Fund had borrowed substantial amounts of stocks of all four of these banks.

3.21 Prior to February 2003, Mr Jabre had undertaken trading in SMFG stock but this was largely short term. During the course of the oral submissions, it was acknowledged on his behalf that the "relevant trading strategy was formed by Mr Jabre when he borrowed the shares, he borrowed 30,000 by 4 February and he had started to sell short…" and that the relevant trading strategy was "what he decided to do at the end of January / beginning of February when he borrowed the shares".

3.22 On 6 February 2003, Mr Jabre short-sold 620 ordinary shares in SMFG at a price of JPY 382,000. This short position had a total value of around $2 million.

3.23 Between 12 and 14 February 2003, Mr Jabre sold short 4,771 ordinary shares in SMFG. This short position ("the SMFG short sales"), which had a total value of around $16 million, was built up over the three days immediately following Mr Jabre's conversation with GSI. There were eight separate trades, on three successive days, with daily totals as follows:

(a) Short selling 1,671 shares on 12 February 2003;

(b) Short selling 2,500 shares on 13 February 2003; and

(c) Short selling 600 shares on 14 February 2003.

3.24 These sales were at prices ranging from JPY 379,000 to JPY406,000**.**

3.25 The convertible preference share issue was publicly announced by SMFG at 7.58am Tokyo time on 17 February 2003. On the day of the announcement the price of SMFG ordinary shares dropped by 7.2%. The price fell a further 8.2% on the next day of trading. The issue was priced on 20 February 2003. Between announcement and pricing there was very heavy selling of SMFG ordinary shares by hedge funds and other investors. SMFG's share price fell over this period by around 22% from JPY403,000 to JPY312,000.

3.26 The GLG Market Neutral Fund increased its short position substantially on the announcement of the convertible issue, by short-selling a further 11,000 SMFG shares. The GLG Market Neutral Fund, together with another fund managed by Mr Jabre, the GLG Convertibles Fund, acquired around $205 million of the SMFG convertible preference share issue.

The conversations on 11 February 2003 between GSI and Mr Jabre

3.27 On 11 February 2003, as part of a pre-marketing exercise ahead of the prospective SMFG convertible preference share issue, Mr Jabre was telephoned by a senior salesman at GSI in London at around 7.00 pm ("the first conversation"). GSI wanted to explore Mr Jabre's / GLG's appetite for the issue (code-named within GSI "Project Shoot").

3.28 GSI had provided all its sales-people involved in the pre-marketing exercise with a script for use when approaching potential purchasers of the prospective new issue. The script began by telling the person approached that GSI would like to discuss some information which was not yet public in relation to securities and that if that information was conveyed the recipient would have to keep it confidential and may not disclose it to anyone within their firm or outside their firm. Importantly, the script stated that the recipient of the information would not be able to trade in the securities of that entity or base any other behaviour in relation to the securities on the confidential information. The restrictions were to continue until the information was made generally available or was no longer

relevant. Such a restriction is often referred to as a "wall-crossing". The script expressly asked the person approached "Do you agree to receive the information on that basis?" The script itself did not contain the details of the prospective issue.

3.29 Mr Jabre disputes that the GSI salesman read the GSI script to him in its entirety. However, he does not contest that in this first conversation he had agreed to be wall-crossed and restricted from "trading the name" before being given the name of the issuing company and details (summarised in 3.42 below) of the issue's size and terms. There are, however, three matters contested by Mr Jabre:

(1) That he was told that GSI definitely had the mandate to underwrite and market the issue;

(2) That he was told the issue would definitely be launched, and given any indication of timescale; and

(3) What passed between him and the GSI salesman on the implications of the wall-crossing for his activities vis-à-vis SMFG stock.

On the last point, it is common ground that Mr Jabre informed the salesman that he had been borrowing stock; Mr Jabre contends that he also said he had been trading the stock and asked whether he could maintain his "existing trading pattern" .

3.30 Further, during the conversation, the GSI salesman discussed with Mr Jabre the technical details of the proposed issue. They also discussed pricing levels. Mr Jabre said that the issue was too large for the hedge fund community to absorb by itself and that the issue would therefore have to be priced cheaply in order to attract demand from more traditional long only investors.

3.31 Mr Jabre also contends that during the short second conversation in which the GSI salesman responded to his question about the implications of the wall-crossing he was told that he could continue with his "existing trading pattern" which in his view included the short sale he had made on 6 February.

3.32 There are no tape recordings of either conversation between Mr Jabre and the GSI salesman on 11 February 2003. The FSA has considered all the available material including contemporaneous internal GSI e-mails, transcripts of interviews with Mr Jabre and the GSI salesman as well as later interviews with other employees of GSI at the relevant time and other contemporaneous documents.

3.33 After the first conversation, the GSI salesman sent an email to his Compliance Department in the following terms:

"… Spoke to Philippe Jabre at GLG on Shoot. He has already borrowed Shoot stock along with the stocks of the other 3 big Japanese banks and has orders out with multiple brokers to borrow more if available of all four stocks. Does his wall crossing preclude him from putting out any new orders to borrow Shoot stock or does he have any problem having any preexisting orders getting filled?
I told him I would get back to him".

3.34 GSI Compliance Department's email in reply timed ten minutes later states:

"Pre-existing orders can be left in place – in fact changing them now could be an issue

He cannot put out any new orders or trade the name at all".

3.35 The GSI salesman emailed his Compliance Department (email timed four minutes later) stating "I spoke to him just now and he understands". In submissions and at the oral hearing Mr Jabre has consistently denied that he was told at this juncture that he could not "put out any new orders or trade the name at all". He contends that he was told he could "maintain his existing trading pattern".

3.36 The FSA has also considered material reflecting another perspective from inside GSI which became available several months after the Warning Notice was issued. It included a statement from 'A', a GSI senior employee at the time, to the effect that around 13 February 2003 he had been informed by 'B' the GSI salesman's superior that notwithstanding the wall-crossing GSI had apparently informed Mr Jabre that he could continue with his existing trading pattern. This claim received limited corroboration in an investigative interview with 'B' though none of the material provides any solid evidence that either 'A' or 'B' knew that Mr Jabre had undertaken a short-sale in SMFG stock and was thus interpreting "existing trading pattern" as justifying short sales in the stock after the wall-crossing. 'A', who was a friend of Mr Jabre, left GSI during 2005, and in September 2005 went to work for GLG. His statement was personal and not made on behalf of GSI.

3.37 Mr Jabre was re-interviewed following 'A's statement and 'A' and 'B' were both interviewed. The GSI salesman who had wall-crossed Mr Jabre was not re-interviewed. The FSA has noted a comment submitted in October 2005 on behalf of GSI about the conversation between their salesman and Mr Jabre on 11 February:

"As [the salesman] said at interview and as his handwritten notes indicated the conversations 'jumped around' with Mr Jabre 'throwing out' various comments about his strategies in a way which meant that [the salesman] could not be certain about what Mr Jabre was talking in each case about what he had already done or about what he would do once the deal was launched".

Findings of Fact

3.38 The FSA finds that, during the early part of the first conversation, Mr Jabre agreed to discuss a prospective financing that would involve the issuance of convertible preference shares. Further, when asked by the GSI salesman if he would like to discuss this on the basis that if he was given the name of the issuer he would be restricted from "dealing in the name", Mr Jabre replied in the affirmative. Mr Jabre therefore agreed to be restricted and accepted the wall-crossing in full knowledge of what it entailed.

3.39 The GSI salesman then told Mr Jabre that the issuer was SMFG.

3.40 The GSI salesman also told Mr Jabre that he (and anyone else within his firm to whom he disclosed this information with GSI's permission) must keep the information confidential. Similarly, this meant that Mr Jabre would not be able to trade in the securities of that entity or base any other behaviour in relation to the securities on the confidential information. Mr Jabre admits to recognizing that this part of the conversation was the "more critical" part.

3.41 The FSA finds that Mr Jabre clearly understood what the effect and consequences of "accepting the restriction" (or being wall-crossed) were, namely that he could not deal / transact or borrow shares in that entity during the length of the restriction. The restriction would continue until the information ceased to be confidential.

3.42 The FSA finds that during the course of this conversation, the GSI salesman gave Mr Jabre the following details about the proposed issue:

(a) SMFG's name as the issuer.

(b) SMFG was proposing to launch an issue of convertible preference shares.

(c) The issue was to be a mandatory convertible issue.

(d) The size of the proposed issue was to be $2.5-3billion.

(e) The maturity of the issue was proposed to be 3 years.

(f) GSI was proposing to include a re-set option. This is a mechanism by which the conversion price could be altered if SMFG's share price at maturity of the issue was below the level at the time the conversion price was initially set. A range of price reset levels of between 30% and 60% was discussed with Mr Jabre.

(g) The dividend yield on the convertible preference shares would be greater than the yield on SMFG's ordinary shares.

3.43 In the light of all the foregoing, the FSA concludes that:

(1) In the first conversation on 11 February, Mr Jabre clearly and unequivocally accepted the restriction before he was given information on the prospective issue, and knew the usual and proper restraints on his investment activities which flowed from the restriction, - that he could not trade the name at all. Even had he not been formally wall-crossed, he should have known that the information given him rendered him unable to trade without impropriety.

(2) There may have been confusion or misunderstanding about the advice he sought at the end of the first conversation on February 11 and was given in the second conversation on that date about the nature of the restriction under which he was placed vis-à-vis SMFG. There may in particular have been confusion or uncertainty as to whether (a) the advice he sought and the guidance he subsequently received covered solely the maintenance of his stock borrowing or alternatively that he sought and was given a wider licence to continue an "existing trading pattern" and (b) whether the GSI salesman understood that Mr Jabre would include short-selling ahead of the convertible preference issue announcement within such an "existing trading pattern".

(3) However, nothing in either conversation overrides that fact that, as he has acknowledged, he accepted before agreeing to be wall-crossed that, once he had been given the information that followed the wall-crossing, he would be unable to "trade the name"; and whatever confusion or misunderstanding may have occurred, nothing in either conversation or in both taken together gave ground for Mr Jabre to consider that he had carte blanche to get ahead and pre-hedge the new issue in advance of its announcement, through trades that were not part of any pre-existing pattern or strategy.

(4) Nothing in the second conversation justifies his failure to consult GLG's Compliance Department, bearing in mind one or more of the following: (a) his acknowledgement in interview that to be allowed to trade a stock after wall-crossing was an "unprecedented situation"; (b) that GLG's compliance procedures required consultation with the Compliance Department "in cases of doubt", and (c) his acknowledgement with hindsight in submissions and at the oral hearing that he should have done so.

(5) Because there may have been some confusion or misunderstanding in the advice he sought and received on trading restraints, it may be the case that the account of his behaviour he gave during the FSA investigation, though wrong in contending that it was justified, was not deliberately misleading.

MARKET ABUSE BY MR JABRE IN CONTRAVENTION OF SECTION 118 OF FSMA

3.44 The FSA is satisfied that Mr Jabre has engaged in market abuse within the meaning of that expression in section 118 of FSMA.

3.45 The behaviour of Mr Jabre considered by the FSA to amount to market abuse is the short selling of 4,771 ordinary shares in SMFG between 12 and 14 February 2003. This short position ("the SMFG short sales"), which had a total value of around $16 million, was built up over the three days immediately following Mr Jabre's conversation with GSI. There were eight separate trades, on three successive days, with daily totals as follows:

(a) Short selling 1,671 shares on 12 February 2003;

(b) Short selling 2,500 shares on 13 February 2003; and

(c) Short selling 600 shares on 14 February 2003.

3.46 For the reasons more fully set out below, the FSA is satisfied that the behaviour of Mr Jabre amounted to market abuse by reference to the three required elements under section 118(1) of FSMA in that the behaviour:

(a) occurred in relation to SMFG shares, which are qualifying investments;

(b) was based on information which was not generally available to those using the market but which, if available to a regular user of the market, would have been or would have been likely to be regarded by him as relevant when

deciding the terms on which transactions in such investments should be effected; and

(c) is likely to be regarded by a regular user of the market as a failure on the part of Mr Jabre to observe the standards of behaviour reasonably to be expected of a person in his position in relation to the market.

Behaviour in relation to a qualifying investment traded on a prescribed market

3.47 Section 118(1)(a) of FSMA requires the "behaviour" to "occur in relation to qualifying investments traded on a market to which this section applies". Both Mr Jabre and GLG dispute that the requirements of section 118(1)(a) are met in this case.

3.48 *In his written representations Mr Jabre disputed that his alleged conduct could, as a matter of law, constitute market abuse contrary to section 118 of FSMA. In summary, it was submitted on his behalf that the trades in the SMFG shares occurred on the Tokyo market and therefore could not fall within the provisions of section 118. In its written representations, GLG adopted Mr Jabre's submissions that his trading did not occur on a prescribed market for the purpose of section 118 of FSMA.*

3.49 The FSA finds that, on a proper interpretation of the provisions of section 118(1)(a) of FSMA, the behaviour of Mr Jabre did occur "in relation" to "qualifying investments" (SMFG shares) traded on a "prescribed market". The "prescribed market" in question is the OINT segment of the London Stock Exchange's ("LSE") SEAQ International System. SEAQ International has since been closed and SMFG's shares are now traded on the ITBU segment of the LSE's International Bulletin Board which is itself a "prescribed market".

3.50 Whilst the trades in question occurred on the Tokyo exchange, the FSA finds that the requirements of section 118(1)(a) are met because in February 2003 SMFG's ordinary shares were traded on the OINT segment of the LSE which was a "prescribed market".

Misuse of information

3.51 As noted above, under section 118(2)(a) of FSMA, behaviour may amount to market abuse where it is based on information which is not generally available to

those using the market but which, if available to a regular user of the market, would or would be likely to be regarded by him as relevant when deciding the terms on which transactions in investments of the kind in question should be effected.

3.52 MAR 1.4.4E provides:

Behaviour will amount to market abuse (unless MAR 1.4.20C - MAR 1.4.31-C apply) in that it will be a misuse of information where a person deals or arranges deals in any qualifying investments or relevant product where all four of the following circumstances are present:

(1) the dealing or arranging is based on information. The person must be in possession of information and the information must have a material influence on the decision to engage in the dealing or arranging. The information must be one of the reasons for the dealing or arranging, but need not be the only reason;

(2) the information must be information which is not generally available. Criteria for determining whether information is generally available are set out in MAR 1.4.5E;

(3) the information must be likely to be regarded by a regular user as relevant when deciding the terms on which transactions in the investments in the kind in question should be effected. Such information is referred to in this Code as "relevant information". Factors which are to be taken into account when determining whether information is relevant information are set out in MAR 1.4.9E to 1.4.11E;

(4) the information must relate to matters which the regular user would reasonably expect to be disclosed to users of the particular prescribed market. As explained further below at MAR 1.4.12E and MAR 1.4.13E, this includes both matters which give rise to such an expectation of disclosure or are likely to do so either at the time in question, or in the future.

Information not generally available to those using the market

3.53 The information must be information which is not generally available to the market.

3.54 On 7 February 2003, GSI had been given the mandate to underwrite the proposed issue. The conversations between Mr Jabre and the GSI salesman on 11 February 2003 occurred as part of the pre-marketing by GSI of that proposed issue. During

the course of that first conversation, the GSI salesman provided specific information relating to the proposed issue and the proposed terms and structure. This information is set out above at paragraph 3.42.

3.55 The FSA finds that this information was not generally available to the market. Whilst there was a general expectation in the market in February 2003 that all the major Japanese banks would have to raise equity type capital before their financial year end of 31 March 2003, the form, size and structure which these capital raisings would take was not known.

3.56 Whilst there were rumours that SMFG might need to raise further capital over and above that raised via its private placement with GSI, these had been denied by SMFG. Moreover, the rumours were of a capital raising of only around JPY 100 billion ($830 million). In sharp contrast, GSI gave Mr Jabre information relating to the specific features or proposed specific features of the proposed issue which was not generally available in the market. In particular, the market was unaware of the following information which was disclosed to Mr Jabre by GSI:

(a) The SMFG issue was going to be one of convertible preference shares;

(b) The issue would be a mandatory convertible issue;

(c) The size of the proposed issue ($2.5-3billion) was going to be substantially larger than the issue of JPY 100 billion ($830million) that had been rumoured; and

(d) The issue would contain a price reset option of between 30% and 60%.

3.57 The above information was not generally available to the market, either at the time it was disclosed to Mr Jabre on 11 February 2003 or at the time of Mr Jabre's short selling on 12, 13 and 14 February.

3.58 *In his written representations of 17 June 2005, Mr Jabre contends, amongst other matters, that both the market and himself knew that SMFG had a need to raise further equity capital in the near future and that the market was aware that SMFG was "obligated" to do so through a Tier 1 equity offering by 31 March 2003. Hence, Mr Jabre was "not surprised to be told that SMFG was considering a convertible issue". Mr Jabre refers to the "rumours" that were extensive and well-known. The point is made that the market may have correctly assumed that SMFG would raise capital through a convertible issue.*

3.59 The FSA finds that the fact that there may have been "rumours that were extensive and well known" is of no relevance. As the Financial Services and Markets Tribunal stated in **Arif Mohammed v Financial Services Authority,** there is a clear distinction between mere "rumours" and "information": *"the term "information" in this context requires something which is precise in nature…"* [at paragraph 67].

3.60 The FSA has detailed in paragraph 3.42 the specific information that it finds Mr Jabre to have been given by the GSI salesman after he had agreed to be wall-crossed. It is beyond question that in its level of detail this information went further than any information that was generally available to those using the market.

Whether the wall-crossing and the subsequent transmission of information to Mr Jabre was part of a definite pre-marketing approach or, as is contended on Mr Jabre's behalf, a "sounding out" with no definite prospect of a subsequent issue is irrelevant, though for the reasons given in paragraph 3.69 below, it was unrealistic to treat the GSI approach as a mere sounding out with no likely prospect of delivery.

3.61 Further, the information provided by the GSI salesman could not have been obtained by research or analysis conducted by or on behalf of users of the market: nor was it obtainable through any of the other processes in MAR 1.4.5E setting out the criteria under which information is to be regarded as "generally available". It was information that became available to Mr Jabre on the basis that he had agreed at the outset of the first conversation to be restricted if he were given the name of the proposed issuer.

Relevant information

3.62 Under section 118 of FSMA, the information in question must be such that, if available to a regular user of the market, it would or would be likely to be regarded by him as relevant when deciding the terms on which transactions in investments of the kind in question should be effected (also see MAR 1.4.4(3)E).

3.63 The meaning of "relevant information" is expanded upon in MAR 1.4.9E as follows:

Whether in a particular case, a particular piece of information would, or would be likely to, be regarded as relevant information by the regular user will depend

on the circumstances of the case. In making such a determination, the regular user is likely to consider the extent to which:

(1) the information is specific and precise;

(2) the information is material;

(3) the information is current;

(4) the information is reliable, including how near the person providing the information is, or appears to be, to the original source of that information and the reliability of that source;

(5) there is other material information which is already generally available to inform users of the market; and

(6) the information differs from information which is generally available and can therefore be said to be new or fresh information.

3.64 The information received by Mr Jabre from GSI was relevant for the following reasons:

(a) It was specific and precise, referring to SMFG by name rather than to the banking sector generally;

(b) It was current and reliable, coming from the investment bank which had been retained by SMFG on 7 February 2003 to lead manage the issue;

(c) It was specific and precise in that it included the following information about the issue:

i. The issue would be one of convertible preference shares;

ii. It would be a mandatory convertible issue (not just a convertible);

iii. The size of the issue would be $2.5 billion to $3 billion;

iv. The issue would contain a price reset option of between 30% and 60%.

(d) The information was also material, as it related to a substantial capital raising exercise, which was likely to have a material impact on the price of SMFG's ordinary shares

(e) The details listed above were genuinely new and fresh. They differed from the rumours which were circulating in the market about a possible capital raising exercise by SMFG.

3.65 *In his submissions, Mr Jabre contends that the discussion "was affected by underlying uncertainty as to whether there would be an issue managed by GSI and, if so, when".*

3.66 *During the course of the oral submissions, it was argued on behalf of Mr Jabre that the regular user test for relevant information is not satisfied because Mr Jabre was not told that GSI had the mandate, and was not told whether or when the issue would be launched, nor that it was imminent. Reference was made to MAR 1.4.10 which deals with information relating to possible future developments.*

3.67 The information provided to Mr Jabre by GSI was relevant to a regular market user's decision as to the terms upon which to deal in SMFG's ordinary shares. This was because the information (as found in paragraph 3.42 above) was sufficient in detail and precision to enable a regular market user experienced in the Japanese markets (such as Mr Jabre himself) to deduce that the convertible issue was likely to depress the price of SMFG's underlying ordinary shares. Mr Jabre contends that the FSA's assumption that dilution of shares necessarily leads to a fall in the stock price is wrong and was not the market view at the time. There was no certainty that the ordinary share price would fall after announcement of the new issue but since the terms of the new issue provided a higher yield than the ordinary shares and included a price reset option which limited investors' risks it was likely that the ordinary share price would fall, as in fact it did substantially between the announcement of the new issue on 17 February and its pricing on 20 February.

3.68 Insofar as Mr Jabre understood the information to relate to a potential issue, MAR 1.4.10 states that the following additional factors are to be taken into account when determining the relevance of that information:

"(1) whether the information provides, with reasonable certainty, grounds to conclude that the possible future developments will, in fact, occur; and

(2) the significance those developments would assume for market users given their occurrence".

3.69 The FSA finds that even though Mr Jabre may not have been told in terms that GSI had the mandate and may not have been told that the issue would definitely be launched, or told when it would be launched, the information he was given did provide, "with reasonable certainty, grounds to conclude" that "possible future developments" would "occur". The fact that GSI considered it necessary to wall-cross Mr Jabre, along with the other potential investors who were approached, and that Mr Jabre accepted the wall-crossing, provides no support for the idea that the GSI approach was merely a "sounding out" approach. As to the likely timing of the prospective issue, the knowledge, widespread in the market and certainly shared by Mr Jabre (as he has acknowledged), that the Japanese central bank had set a deadline of end March 2003 for the improvement of the Tier 1 capital ratios of the four major Japanese banks, including SMFG, would have led any market participant to conclude that an issue of fresh capital of the kind canvassed by GSI with Mr Jabre could not be long delayed.

Disclosable information

3.70 The information must relate to matters which the regular user would reasonably expect to be disclosed to users of the particular prescribed market. This includes both matters which give rise to such an expectation of disclosure or are likely to do so either at the time in question or in the future: MAR 1.4.4(4)E.

3.71 The information which influenced Mr Jabre related to an issue of convertible preference shares by SMFG. Regular users of the LSE expect companies whose shares are traded on the LSE to comply with applicable listing rules. In the case of companies whose shares are traded on the overseas segment of SEAQ International, regular users would expect companies to comply with the rules of the home market where they have their primary listing. This is evidenced by the LSE's rules, which required member firms making applications for a company's shares to be quoted on SEAQ International to certify that the company had in place effective arrangements for the timely disclosure of relevant information to its home market.

3.72 SMFG's home market is in Tokyo. The rules of the Tokyo Stock Exchange required SMFG to announce details of its convertible preference share issue to the market, which it duly did on 17 February 2003.

Behaviour "based on" information

3.73 The dealing must be based on information. The relevant provisions in MAR 1.4.4E state:

> *(1) The dealing or arranging is based on information. The person must be in possession of information and the information must have a material influence on the decision to engage in the dealing or arranging. The information must be one of the reasons for the dealing or arranging, but need not be the only reason.*

3.74 *In his various submissions, Mr Jabre contends that the short-sales he executed between 12 and 14 February were consistent with a prior trading pattern or strategy and were not therefore based on information he acquired in his conversation with the GSI salesman on 11 February. Expert reports submitted on his behalf included support for this contention, though other expert reports obtained by the FSA argued to the contrary that there was no definite trading pattern or strategy established before 11 February and that the trades on 12 to 14 February were clearly based on or at any rate materially influenced by the information given him on 11 February. During the course of the oral submissions, counsel for Mr Jabre conceded that the word "pattern" was "certainly not precise and maybe it is not particularly apt." It was also submitted that the relevant trading strategy was formed by Mr Jabre when he borrowed the SMFG shares, some 30,000 by 4 February and when he started to sell short. It was said that the "relevant trading strategy was what he decided to do at the end of January / beginning of February when he borrowed the shares…".*

3.75 Having considered all the material, including the expert reports, the FSA finds that the short sale on 6 February of 600 SMFG shares, whether taken on its own or with the other trading and stock- borrowing of SMFG shares prior to that date, did not amount to a pattern of which the trades between 12 and 14 February were a part or with which they were consistent, and that the information Mr Jabre received on 11 February was a material influence on the trades which immediately followed on 12, 13 and 14 February. The FSA notes in particular the scale and repetitive pattern of the trades – 8 trades in three days totalling 4771 shares with a value of $16 million, and the fact that on 17 February immediately after the public announcement of the new issue the Market Neutral Fund executed further short sales of 11,000 SMFG shares.

3.76 *During the course of the oral submissions, counsel for Mr Jabre submitted that the FSA should focus on Mr Jabre's explanation that he had in mind to sell SMFG shares at a price between 380 and 400 and that SMFG was at a resistance level,*

or on more fundamental grounds overvalued, at 400 and that this was the trading strategy or trading pattern Mr Jabre had referred to in interview. The FSA is aware that prior to the conversations between Mr Jabre and GSI on 11 February Mr Jabre had made arrangements to borrow SMFG ordinary stock, that on February 11 he had unfilled borrowing requests still outstanding, and that on 6 February he had short-sold $2 million of SMFG shares. It is also aware that in oral submissions and in interview, it was contended on Mr Jabre's behalf that he had a continuing strategy based on an assumption that SMFG shares were over-valued at JPY400 and should therefore be sold at any significantly higher price.

3.77 The FSA considers stock borrowing of the kind that Mr Jabre had set in train at the end of January to be a preparation for a possible selling pattern, but not of itself evidence that such selling had necessarily been decided on or would necessarily occur. It does not consider such stock-borrowing to be evidence of a "trading pattern", or that a single short trade convincingly provides a basis for a "trading pattern". Nor, in the absence of any definite orders to execute sales or trades at pre-determined market price levels, does the FSA consider that the post facto assertion of an intention to sell or trade at a particular price level is in these circumstances sufficient evidence of a "pre-existing trading pattern" to justify the short-selling which occurred in this case between Mr Jabre's wall-crossing by GSI and the public announcement of the new issue of stock by SMFG of whose intentions he had been given confidential and privileged advance information.

Failure to observe reasonably expected standard of behaviour

3.78 Section 118(1)(c) of FSMA lays down the further requirement that the "behaviour" is such that it "is likely to be regarded by a regular user of that market who is aware of the behaviour as a failure on the part of the person or persons concerned to observe the standard of behaviour reasonably expected of a person in his or their position in relation to the market".

3.79 Section 118(10) defines "regular user" as follows "in relation to a particular market, means a reasonable person who regularly deals on that market in investments of the kind in question". MAR 1.2 sets out the regular user test. The following provisions in MAR 1.2 are of relevance in this case.

3.80 MAR 1.2.2E provides:

In determining whether behaviour amounts to market abuse, it is necessary to consider objectively whether a hypothetical reasonable person, familiar with the

market in question, would regard the behaviour as acceptable in the light of all the relevant circumstances.

3.81 MAR 1.2.3E provides that the regular user is likely to consider all the circumstances of the behaviour, including**:**

(4)The position of the person in question and the standards reasonably to be expected of that person at the time of the behaviour in the light of that person's experience, level of skill and standard of knowledge; and

(5) The need for market users to conduct their affairs in a manner that does not compromise the fair and efficient operation of the market as a whole or unfairly damage the interests of investors.

3.82 It is also worth noting that MAR 1.2.5E provides:

The statutory definition of market abuse does not require the person engaging in the behaviour to have intended to abuse the market. Accordingly it is not essential for such an intention or purpose to be present in order for behaviour to fall below the objective standards expected. However, in some circumstances the determination of whether behaviour falls short of those standards will depend on the purpose of the person in question (for example, MAR 1.6.4E). In those circumstances, the regular user is likely to consider the purpose of the person in question in addition to the other relevant considerations listed at MAR 1.2.3E. This need not be the sole purpose but should be an actuating purpose.

3.83 The standard of Mr Jabre's professional conduct falls to be judged by the regular user according to the above matters.

3.84 In relation to Mr Jabre's experience, level of skill and standard of knowledge (MAR 1.2.3(4)E), the FSA finds that Mr Jabre is a highly experienced investor and a prominent figure in the hedge fund industry. At the material time he was a managing director in one of Europe's largest hedge fund managers and was managing one of the world's largest and most successful convertible arbitrage funds. He has over 20 years of experience in investing in international markets and is a specialist in the Japanese markets.

3.85 The FSA finds that the standard of behaviour reasonably to be expected would have required Mr Jabre to seek the advice of his own compliance department (regardless of whether GLG's own compliance procedures required him to seek

such advice only in case of doubt) and to refrain from trading at all in SMFG shares until he had done so.

3.86 The FSA rejects the submission that Mr Jabre's failure to seek guidance from GLG compliance in checking his understanding of the effect of his conversation with the GSI salesman was merely an "error of judgment". MAR 1.2.6 states that a mistake is unlikely to fall below the objective standards set by the "regular market user" test where the person in question has taken reasonable care to prevent and detect the occurrence of such mistakes. For the reasons set out above, the FSA finds that Mr Jabre did not take reasonable care to prevent and detect the occurrence of such a mistake on his part.

3.87 Further and as stated in paragraph 3.43 above, whatever the misunderstanding or lack of clarity in the conversations between GSI and Mr Jabre on 11 February, Mr Jabre had no ground to consider that he had carte blanche to get ahead and pre-hedge the new issue in advance of its announcement.

3.88 The FSA considers that a reasonable person who regularly deals in the shares of companies traded on the LSE would regard Mr Jabre's behaviour as a failure to observe the standard of behaviour reasonably to be expected of someone in his position in relation to the market.

3.89 The FSA also has regard to the need for market users to conduct their affairs in a manner that does not compromise the fair and efficient operation of the market as a whole.

3.90 Mr Jabre has sought to argue that he reasonably relied on the advice given by GSI. However, Mr Jabre acknowledged in interview that the situation was an "unprecedented" one. The FSA finds that the responsibility for proper trading lies with the firm and the individuals executing the trades. In a situation which Mr Jabre himself acknowledges was "unprecedented", the only proper course of conduct was to consult GLG's Compliance Officer. He has with hindsight acknowledged that he should have done so.

3.91 For the above reasons, the FSA finds that there are no reasonable grounds for it to be satisfied that Mr Jabre believed on reasonable grounds that his behaviour did not amount to market abuse or that he took all reasonable precautions and exercised all due diligence to avoid committing market abuse (within the meaning of section 123 (2) of FSMA).

4. MISCONDUCT BY MR JABRE

Relevant Statutory Provisions

4.1 Section 66 of FSMA provides that the FSA may impose a penalty on an individual if it appears to it that the individual has been guilty of misconduct and the FSA is satisfied that it is appropriate in all the circumstances to take action against him. Pursuant to section 66(2)(a) of FSMA, misconduct, for the purposes of section 66, includes failure by an approved person to comply with a statement of principle issued under section 64 of FSMA.

Relevant FSA Guidance

4.2 Under section 64 of FSMA the FSA has issued a number of Statements of Principle for Approved Persons ("APER"). APER provides approved persons with guidance as to how they should carry out their controlled functions.

4.3 APER sets out the Statements of Principle in respect of approved persons and it also sets out descriptions of conduct (the Code of Practice) which, in the opinion of the FSA, do not comply with a Statement of Principle. It further describes factors which, in the opinion of the FSA, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle.

Breach by Mr Jabre of the FSA's Principles for Approved Persons

Statement of Principle 2

4.4 Principle 2 provides that

"An approved person must act with due skill, care and diligence in carrying out his controlled function"

APER 4.2.3E provides that, in the opinion of the FSA, an approved person's failure to inform his firm of material information in circumstances where he was

aware, or ought to have been aware, of such information, and of the fact that he should provide it, amounts to conduct which does not comply with Principle 2.

4.5 For the reasons set out above, the FSA considers that Mr Jabre's failure to consult his own compliance department constitutes a breach of this Principle 2.

4.6 *During the oral submissions, counsel for Mr Jabre accepted that it was open to the FSA to make a finding on Principle 2 notwithstanding that this Principle was not included in the Warning Notice. In both oral and written representations, Mr Jabre accepted that (with the benefit of hindsight) he had made an error of judgment in not seeking guidance from GLG compliance and that would constitute a failure to take due care in the performance of his controlled functions (Principle 2).*

Statement of Principle 3

4.7 Principle 3 provides that:

"An approved person must observe proper standards of market conduct in carrying out his controlled function"

4.8 A factor to be taken into account in determining whether or not an approved person's conduct complies with Statement of Principle 3 is whether the person has complied with the Code of Market Conduct (APER 4.3.3). As set out above, the FSA believes that the short sales undertaken on 12, 13 and 14 February 2003 represent a clear breach of the Code of Market Conduct.

4.9 Mr Jabre's behaviour also had an impact on Japanese markets. Such an impact is within the scope of Principle 3. As a consequence of the impact of his behaviour on both the Japanese and the UK markets, the FSA considers that Mr Jabre's conduct also represents a breach of Principle 3 of the Statements of Principle for Approved Persons. This is an act of misconduct for the purposes of section 66 of FSMA.

5. SANCTIONS AGAINST MR JABRE

Financial penalty

5.1 Section 69 of FSMA requires the FSA to issue a statement of its policy with respect to the imposition of penalties on approved persons. The FSA's policy in this regard is contained in Chapter 13 of the Enforcement Manual ("ENF 13"). In deciding whether to exercise its power under section 66 in the case of any particular act of misconduct, the FSA must have regard to this statement.

5.2 Section 124 of FSMA requires the FSA to issue a statement of its policy with respect to the imposition of penalties for market abuse and the amount of such penalties. The FSA's policy in this regard is contained in Chapter 14 of the Enforcement Manual ("ENF 14"). In deciding whether to exercise its power under section 123 in the case of any particular behaviour, the FSA must have regard to this statement.

5.3 The FSA's published policy ("ENF 13") states that the principal purpose of financial penalties is to promote high standards of regulatory conduct by deterring firms and approved persons who have breached regulatory requirements from committing further contraventions, helping to deter other firms and approved persons from committing contraventions, and demonstrating generally to firms and approved persons the benefits of compliant behaviour.

5.4 In enforcing the market abuse regime, the FSA's priority is to protect prescribed markets from any damage to their fairness and efficiency caused by the misuse of information in relation to the market in question. Exercising the effective and appropriate use of the power to impose penalties for market abuse will help to maintain confidence in the UK financial system by demonstrating that high standards of market conduct are enforced in the UK financial markets. The public enforcement of these standards also furthers public awareness of the FSA's protection of consumers objective, as well as deterring potential future market abuse (ENF 14.1.3).

5.5 In accordance with the FSA's published policy in determining whether to take action in respect of market abuse or other disciplinary breaches, and in determining the level of financial penalty imposed, the FSA will take into account all the circumstances of a particular case. These include the nature and seriousness of the abuse and/or misconduct, the person's conduct following the abuse and/or misconduct (including their co-operation with the FSA's investigation), the nature of the market that has been abused, the likelihood of

behaviour of the same type being repeated and the need to deter such behaviour, and the previous history of the person concerned.

5.6 The FSA has taken all of the relevant circumstances into account in deciding that it is appropriate to take action for behaviour amounting to both misconduct and market abuse, that the imposition of a financial penalty in this case is appropriate, and the level of the penalty imposed is proportionate. The FSA has had particular regard to the guidance set out in ENF 13.3, 14.4, 14.6 and 14.7, and to the following considerations.

The seriousness of the regulatory breaches

5.7 The FSA considers that Mr Jabre's misconduct was very serious. Mr Jabre was entrusted with relevant and price sensitive information by GSI. Wall-crossing is regarded as an important principle underlying the fair and efficient operation of the capital markets. Behaviour such as Mr Jabre's on this occasion undermines public confidence in the effectiveness and reliability of the wall-crossing process by which investment banks and investors share restricted information.

5.8 The GLG Market Neutral Fund made a substantial profit from Mr Jabre's short sales of SMFG shares. The profit to the GLG Market Neutral Fund of the improper short trades depends on the assumptions made about the timing and pricing of the close-outs, but is likely to have been in the region of $500,000 of which GLG's share would have been $92,000.

5.9 Mr Jabre trades on all the major markets in the world. It is essential that investors in any companies whose shares are traded on the LSE, including SEAQ International, have confidence in the integrity of the processes by which shares are traded on this market. Behaviour such as Mr Jabre's on this occasion tends to undermine investor confidence. It is therefore desirable to deter any future such behaviour. ENF 14.4.2(6) states, amongst other things, that a financial penalty may protect the interests of consumers by deterring future market abuse and improving standards of conduct in a market.

5.10 The seriousness of this case is aggravated by the fact that at the material time Mr Jabre occupied a senior position within GLG and a high profile within the hedge fund industry generally. He managed six of GLG's 14 funds and oversaw the management of another. He was also at the relevant time an approved person, approved to undertake four separate controlled functions on behalf of GLG.

5.11 There have been no previous findings of market misconduct against Mr Jabre.

5.12 In determining the proposed financial penalty for Mr Jabre, the FSA has not had access to details of his financial circumstances which may be relevant to his ability to pay the proposed financial penalty.

6. GLG'S CONDUCT

6.1 Mr Jabre's position and status within GLG is set out in paragraphs 3.4 to 3.8 above. At the relevant time, he was an employee of GLG and held the title "Managing Director". Mr Jabre was also at the relevant time a member of GLG's Management Committee albeit that this is an informal committee. He was also one of three individuals on GLG's Investment Management Committee. Mr Jabre was responsible for managing 6 of GLG's funds including the GLG Market Neutral Fund.

6.2 *In its written and oral submissions, GLG disputed that it could, as a matter of law, be liable for market abuse if Mr Jabre were found liable for market abuse. In summary, it was submitted that GLG could not be held responsible for market abuse on the basis of vicarious liability or the principles of "attribution".*

6.3 The FSA has considered the submissions of GLG and is satisfied that on the particular facts in this case and having regard to the language and purpose of the market abuse provisions in FSMA, GLG can be liable for market abuse on the basis that Mr Jabre's acts amount to market abuse and are attributable to GLG. The FSA has reached this conclusion having regard to, amongst other matters, the following: Mr Jabre's seniority and status within GLG; the fact that he clearly had authority to enter into the transactions in relation to the SMFG shares on 12 through to 14 February; the fact that within an agreed overall strategy his dealings were largely unsupervised and he exercised a large degree of autonomy. For the purposes of the wrongful dealings, Mr Jabre's acts count as the acts of GLG.

6.4 Accordingly, misconduct on the part of Mr Jabre during the course of his normal duties as manager of the GLG Market Neutral Fund also constitutes misconduct attributable to GLG. The SMFG short sales therefore represent behaviour on the part of both Mr Jabre and GLG, and both parties are culpable of misconduct in relation to these sales.

6.5 GLG occupies a position of great privilege as a firm which is regularly wall-crossed ahead of capital raisings and other market events. Wall-crossing provides the insider with a significant advantage over the market as a whole, as it enables him to devise an appropriate trading strategy in advance of a public announcement. This strategy can be put into effect as soon as the relevant announcement is made (at a time when the rest of the market is still assimilating its implications).

Market abuse

6.6 For the above reasons and for the reasons detailed in paragraphs 2.1 to 3.91 above, the FSA considers that GLG has also committed market abuse.

6.7 *In its written and oral submissions, GLG contends that no penalty ought to be imposed upon it, alternatively, that the penalty proposed in the Warning Notice ought to be reduced significantly on the basis that there are reasonable grounds for the FSA to be satisfied that GLG "… (b) took all reasonable precautions and exercised all due diligence to avoid…" market abuse by Mr Jabre or itself within the meaning of section 123(2)(b) of FSMA. .*

6.8 Having considered all the representations, the FSA finds no reasonable grounds to be satisfied that GLG took all reasonable precautions and exercised all due diligence to avoid the market abuse that occurred in this case. GLG's compliance procedures required employees to consult the Compliance Officer if they were in any doubt whether a particular transaction would be prohibited. The procedures may have been sufficient, by the standards prevailing and expected in 2003, to protect GLG from a general finding that its systems and controls were in breach of Principle 3 for Businesses ("A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems"). However, in a context where market abuse has occurred FSMA requires a higher standard namely that the firm should take "all reasonable precautions and exercise all due diligence to avoid…" engaging in market abuse. The FSA notes that GLG did not require its employees to report to or consult with its Compliance Department whenever they were wall-crossed or made insiders and did not have a system of "stop-lists", that is a list of investment instruments which no-one in the firm may trade, for example after any member of the firm has been made an insider to a prospective announcement. Precautions of this kind were in place in some major firms at the material time. The FSA finds that, if either or both precautions had been in place in GLG, the risk of the market abuse which occurred in this case would have been significantly less. It follows that GLG did not meet the statutory criterion of taking "all reasonable precautions"

and exercising "all due diligence" to avoid the market abuse which occurred in February 2003.

Breach of the FSA's Principles for Business

Statutory Provisions relevant to GLG

6.9 GLG is an authorised person. Section 206 of FSMA provides that, if the FSA considers that an authorised person has contravened a requirement imposed by or under FSMA, it may impose a penalty on the authorised person of such amount that the FSA considers appropriate.

Relevant FSA Rules and Guidance

6.10 The FSA has published its Principles for Businesses as a general statement of the fundamental obligations of all regulated firms.

Breach of Principle 5 of the FSA's Principles

6.11 Principle 5 of the FSA's Principles for Businesses provides that:

"A firm must observe proper standards of market conduct"

6.12 The FSA considers that, in committing market abuse, GLG has also failed to observe proper standards of market conduct and, as a consequence, is in breach of Principle 5 of the FSA's Principles for Businesses.

7. SANCTION AGAINST GLG

Financial penalty

7.1 In deciding whether it is appropriate to take disciplinary action against GLG for market abuse and for breaches of the FSA's Principles for Businesses, the FSA has had regard to ENF 13 and 14.

7.2 In particular, the FSA's published policy (ENF 13) states that the principal purpose of financial penalties is to promote high standards of regulatory conduct by deterring firms and approved persons who have breached regulatory

requirements from committing further contraventions, helping to deter other firms and approved persons from committing contraventions, and demonstrating generally to firms and approved persons the benefits of compliant behaviour.

7.3 Further, the FSA has considered all of the issues set out in paragraphs 5.1 to 5.12 above in so far as they relate to GLG.

7.4 The FSA has taken all of the relevant circumstances into account in deciding that it is appropriate to take action against GLG for behaviour amounting to both market abuse and breach of the FSA's Principles, that the imposition of a financial penalty in this case is appropriate, and that the level of the penalty imposed is proportionate. The FSA has had particular regard to the guidance set out in ENF 13.3, 14.4, 14.6 and 14.7, and to the following considerations:

7.5 The seriousness of the contravention. The FSA regards market abuse as a serious matter.

7.6 The GLG Market Neutral Fund made a substantial profit as a result of Mr Jabre's market abusive behaviour and misconduct in the region of $500,000., of which a part accrued to GLG.

7.7 GLG is one of the largest hedge fund managers in Europe. It manages very substantial amounts of money (around $11.5 billion) on behalf of its clients and is an extremely active participant in financial markets, including the LSE. Moreover, it regularly receives restricted information from investment banks (many of whom act as GLG's prime brokers). Maintaining public confidence in the integrity and fair operation of the financial markets is one of the FSA's regulatory objectives.

8. DECISION MAKER

The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

9. IMPORTANT

9.1 This Final Notice is given to you in accordance with section 390 of FSMA.

Manner of and time for payment

9.2 The financial penalty must be paid in full to the FSA by no later than 15 August 2006, 14 days from the date of the Final Notice.

If the financial penalty is not paid

9.3 If all or any of the respective financial penalties is outstanding on 16 August 2006, the FSA may recover the outstanding amount as a debt owed by Mr Jabre and/or GLG (as the case may be) and due to the FSA.

Publicity

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

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

10. FSA CONTACTS

10.1 For more information concerning this matter generally, you should contact Charles Olver at the FSA (direct line: 020 7066 9254/ fax: 020 7066 9255).

Jamie Symington
Head of Department
Enforcement Division