Financial Services Authority

FSA®

FINAL NOTICE

To: **Jason Robins**

Of: **c/o Winterflood Securities Limited**
The Atrium Building
Cannon Bridge
25 Dowgate Hill
London
EC4R 2GA

Date: **22 April 2010**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the "FSA") gives final notice that it has taken the following action:

THE ACTION

1. The FSA gave Jason Robins ("Mr Robins") a Decision Notice on 19 June 2008, imposing a financial penalty of £75,000 for engaging in market abuse, pursuant to section 123 of the Financial Services and Markets Act 2000 (the "Act"). The FSA decided to reduce the amount of the financial penalty required to be paid to £50,000 to take account of Mr Robins' financial circumstances.

2. The FSA decided to take action as a result of the behaviour of Mr Robins during his employment with Winterflood Securities Ltd ("Winterflood") for his part in the share ramping scheme which led to the suspension of trading in shares in Fundamental-E

Investments Plc ("FEI") by the Alternative Investment Market ("AIM") on 15 July 2004. During the relevant period (3 February 2004 to 14 July 2004), Mr Robins was the senior trader on the Winterflood market making desk responsible for making a market in the shares of FEI. As the senior trader, Mr Robins was responsible for managing the market making team and the market making activity of Winterflood in FEI shares. During the relevant period, Mr Robins was approved by the FSA to hold controlled function CF26 (Customer Trading) and continues to be approved in this capacity (now CF30). Mr Robins' conduct had the potential to, and did, cause serious loss to investors and damage to confidence in the AIM market.

3. Mr Robins, for his part, executed 215 rollovers and 21 delayed rollovers. Mr Robins also assisted in the scheme by identifying any available stock in the market which could be purchased to prevent any downward pressure on the share price.

4. Through his participation in the scheme, Mr Robins caused:

   4.1 a false and misleading impression to be given to the market as to the demand for FEI shares;

   4.2 a false and misleading impression to be given to the market as to the price or value of FEI shares; and

   4.3 the market in FEI shares to be distorted.

5. On 17 July 2008 Mr Robins referred the Decision Notice to the Financial Services and Markets Tribunal ("the Tribunal"). The substantive part of the Decision Notice is annexed to this Notice. On 22 January 2009 the Tribunal ordered, on the parties' agreement, that two issues be tried as preliminary issues and that the hearing of the preliminary issues should be treated as the hearing of the Reference. Mr Robins accepted the facts as they were stated in the FSA's Statement of Case for the purpose of the determination of the Reference. The FSA's Statement of Case can be found here.

6. On 11 March 2009 the Tribunal considered the preliminary issues and in particular the effect of the Code of Market Conduct and whether an actuating purpose was needed to commit market abuse. The Tribunal determined that an actuating purpose was not necessary, dismissed Mr Robins' reference and ordered that the FSA should take the action referred to in its Decision Notice. The Tribunal's written decision can be found on the Tribunal's website here.

7. Mr Robins appealed and the hearing took place on 9 March 2010. The Court of Appeal dismissed Mr Robins' appeal and handed down its Judgment on 22 April 2010. A copy of the Judgment can be found here.

8. Accordingly, the FSA hereby takes the action set out in the Decision Notice as directed by the Tribunal and imposes the financial penalty of £50,000.

IMPORTANT

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

Manner of and time for payment

10. The financial penalty of £50,000 must be paid in full by Mr Robins by no later than 6 May 2010, 14 days from the date of the Final Notice.

If the financial penalty is not paid

11. If all or any of the financial penalty is outstanding on 6 May 2010, the FSA may recover the outstanding amount as a debt owed by Mr Robins and due to the FSA.

Publicity

12. 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 a 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 Robins or prejudicial to the interests of consumers.

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

FSA contacts

14. For more information concerning this matter generally, you should contact Karen Lee or Beth Harris at the FSA (direct line: 020 7066 1316 / 020 7066 2508).

Tracey McDermott
Head of Department
FSA Enforcement & Financial Crime Division

EXTRACT FROM DECISION NOTICE GIVEN BY THE FSA'S REGULATORY DECISIONS COMMITTEE TO WINTERFLOOD ON 19 JUNE 2008

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REASONS FOR THE ACTION

Introduction

1. The FSA has decided to take this action as a result of the behaviour of Mr Robins during his employment with Winterflood during the period from 3 February 2004 to 14 July 2004 (the "relevant period") for his part in the share ramping scheme which led to the suspension of trading in shares in Fundamental-E Investments Plc ("FEI") by the Alternative Investment Market ("AIM") of the London Stock Exchange (the "LSE") on 15 July 2004. Shares in FEI were suspended for a week and on further trading the share price fell dramatically and has never recovered. Mr Robins' conduct had the potential to and did cause serious loss to investors and damage to confidence in the AIM market.

2. Simon Eagle ("Mr Eagle"), the controller of SP Bell Ltd ("SP Bell") and a director of FEI, embarked on a deliberate course of market abuse in relation to FEI through the use of rollovers, delayed rollovers and the manipulation of share prices.

3. Mr Eagle required the participation of Winterflood and Mr Robins in order to implement his scheme. He relied on their participation to:

   3.1 execute large numbers of rollovers and thereby avoid paying for FEI shares and mislead the market; and

   3.2 execute delayed rollovers and thereby mislead the market.

4. Mr Robins, for his part, executed 215 rollovers and 21 delayed. By his actions he also assisted Mr Eagle to identify any available stock in the market which SP Bell could purchase to prevent any downward pressure on the share price.

5. Through his participation in the scheme, Mr Robins caused:

   5.1 a false and misleading impression to be given to the market as to the demand for FEI shares;

   5.2 a false and misleading impression to be given to the market as to the price or value of FEI shares; and

   5.3 the market in FEI shares to be distorted.

6. On the basis of the facts and matters described below it appears to the FSA that Mr Robins' behaviour amounted to market abuse contrary to s118 (2)(b) and 118 (2)(c) of the Act (as in force at the relevant period) as follows:

6.1 it occurred in relation to a qualifying investment traded on a prescribed market (i.e. FEI shares traded on AIM);

6.2 it was:

6.2.1 likely to give a regular user of the market a false or misleading impression as to the supply of, demand for, price or value of, FEI shares; and/or

6.2.2 such that a regular user of the market would, or would be likely to, regard the behaviour as that which would, or would be likely to, distort the market in FEI shares; and

6.3 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 Mr Robins to observe the standard of behaviour reasonably expected of a person in his position in relation to the market; and

6.4 it occurred in the United Kingdom.

Market abuse: Relevant Statutory Provisions

7. Section 118 of the Act defines market abuse. References in this Notice to provisions in this part of the Act are to those in force during the period of the behaviour referred to. In particular, section 118(1) of the Act provides as follows:

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

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

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

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

8. Section 118(2) of the Act provides (so far as relevant to this Notice) as follows:

"*The conditions are that -*

(a) ...

(b) *the behaviour is likely to give a regular user of the market a false or misleading impression as to the supply of, or demand for, or as to the price or value of, investments of the kind in question;*

(c) *a regular user of the market would, or would be likely to, regard the behaviour as behaviour which would, or would be likely to, distort the market in investments of the kind in question.*"

9. Under The Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001 (made under section 118(3) of the Act):

9.1 all markets operated under the rules of a UK recognised investment exchange (which includes the AIM market operated by the London Stock Exchange) are prescribed markets; and

9.2 all investments specified for the purposes of defining a regulated activity (including shares traded on AIM) are qualifying investments.

The Code of Market Conduct

10. Section 119 of the Act provides as follows:

"*(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 provision in relation to persons, cases or circumstances of different descriptions. ..."

11. The FSA has issued the Code of Market Conduct ("The Code") under section 119 and it forms the first section of the Market Conduct Sourcebook (MAR 1) in the FSA's Handbook of rules and guidance. References in this Notice to provisions of The Code (or MAR 1) are to the provisions in force at the time of the behaviour described in this Notice.

12. Under section 122 of the Act:

"*(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."

13. In accordance with section 122(2) of the Act, provisions of the Code identified by the letter 'E'… may be relied upon so far as they describe behaviour which, in the opinion of the FSA, amounts to market abuse or in accordance with section 119(2)(c) of the Act, describe factors that, in the opinion of the FSA, are to be taken into account in determining whether or not behaviour amounts to market abuse. (MAR 1.1.11G)

14. The Code is not an exhaustive list of the types of behaviour that may or may not be market abuse, nor does it contain an exhaustive list of the factors to be taken into account in determining whether behaviour is or is not market abuse. (MAR1.1.13G)

False or misleading impression (section 118(2)(b))

15. Behaviour which 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 the investments in question is market abuse (section 118(2)(b) of the Act). The relevant parts of the Code are contained in MAR 1.5. In particular, MAR 1.5.3E provides that:

> *"Prescribed markets provide a mechanism by which the price or value of investments may be determined according to the market forces of supply and demand. When market users trade on prescribed markets they expect the price or value of investments and volumes of trading to reflect the proper operation of market forces rather than the outcome of improper conduct by other market users. Improper conduct which gives market users a false or misleading impression results in market users no longer being able to rely on the prices formed in markets or volumes of trading as a basis for their investment decisions. This will undermine confidence in the integrity of the prescribed market and overall market activity may decrease and transaction costs may rise, or both, to the detriment of market users, including investors."*

16. The Code gives a number of examples of behaviour amounting to market abuse of this type, including artificial transactions. MAR 1.5.8E notes the characteristics of an artificial transaction amounting to market abuse, as follows:

    (a) the principal effect of the transaction is to, inter alia, inflate or maintain the apparent demand for or the apparent price or value of the share;

    (b) the person concerned knows or can reasonably be expected to know this principal effect;

    except when the principal rationale is a legitimate commercial rationale and the transaction is executed in a proper way.

17. A transaction which creates a false or misleading impression will not normally be considered to have a legitimate commercial rationale where the purpose behind the transaction was to induce others to trade in or to position or move the price of a security (MAR 1.5.9E).

18. A transaction will be executed in a proper way where it is executed in a way which takes into account the need for the market as a whole to operate fairly and efficiently (MAR 1.5.10E).

19. Factors that are to be taken into account in determining whether or not behaviour amounts to market abuse, include the following (MAR 1.5.11E):

    (a) whether the transaction causes or contributes to an increase in the demand for or the price or value of a security and the person responsible for the transaction has an interest in the level of demand for or the price or value of the security;

(b) whether the transaction involves the placing of buy and sell orders at prices higher or lower than the market price or the placing of buy and sell orders which increase the volume of trading.

20. A person has an interest in a security where he may directly or indirectly benefit from alterations in its market price (MAR 1.5.13E).

Distortion (section 118(2)(c))

21. Behaviour which would, or would be likely to, distort the market in the investment in question is market abuse (section 118(2)(c) of the Act). The Code deals with distortion at MAR 1.6. In particular, MAR 1.6.3E states:

> *"…A person may not engage in behaviour that interferes with the proper operation of market forces and so with the interplay of proper supply and demand and so has a distorting effect. Distortion undermines confidence in the prescribed markets and damages efficiency to the detriment of market users, including investors."*

22. The Code at MAR 1.6.4E sets out the FSA's opinion that behaviour will amount to market abuse if it interferes with the proper operation of market forces with the purpose of positioning prices at a distorted level.

23. MAR 1.6.7E notes that behaviour which falls within the descriptions of distortion in the Code may also fall within the scope of the prohibition of behaviour giving rise to a false or misleading impression.

24. The Code gives examples of behaviour amounting to distortion, including price positioning. MAR 1.6.9E states that behaviour will constitute market abuse where a person enters into a transaction, or a series of transactions with the purpose of positioning the price of a security at a distorted level.

25. Factors to be taken into account in determining whether behaviour amounts to market abuse, include the following (MAR 1.6.11E):

(a) the extent to which the person concerned had a direct or indirect interest in the price or value of the security;

(b) the volume or size of the person's transaction or transactions in relation to reasonable expectations as the depth and liquidity of the market at the time in question;

(c) whether a person has successfully and consistently increased the prices he had paid for a security.

Facts and Matters Relied On in the Warning Notice

(a) Background

26. SP Bell was an agency only stock broking firm which conducted business from nine branch offices located throughout the UK, including Manchester. On 27 May 2003 Mr Eagle acquired SP Bell using an investment vehicle. At all times thereafter Mr Eagle owned and controlled SP Bell.

27. On 19 November 2003 Mr Eagle became a director of FEI. On 5 January 2004 he became executive chairman of FEI. He was actively involved in the management of the company.

28. Winterflood is a London based market maker in over 2,600 UK equities and provides a trading service in North American and European markets. Winterflood has positioned itself as a specialist in AIM and smaller company securities. During the relevant period Winterflood provided a market making service in the shares of FEI and was authorised and continues to be authorised.

29. Mr Robins has been involved in the financial services industry since 1984. At all times during the relevant period, Mr Robins was the senior trader (the "number 1") on the Winterflood market making desk responsible for making a market in the shares of FEI. Mr Robins had been a number 1 since 2002. As the number 1, Mr Robins was responsible for managing the market making team and the market making activity of Winterflood in FEI shares. When Mr Robins took on this role, he knew that SP Bell were interested in FEI and that there had been large volumes of trading in FEI involving SP Bell. During the relevant period, Mr Robins was approved by the FSA to hold controlled function CF26 (Customer Trading) and continues to be approved in this capacity.

(b) The initial FEI transaction

Mr Eagle's activities

30. Mr Eagle had been actively seeking to secure control of an AIM shell company as an investment vehicle to acquire electronic technology companies and in May 2003 he agreed with the two majority shareholders of FEI (the "original shareholders") that he would arrange for their shares, 85% of the issued share capital (140 million shares), to be sold.

31. Mr Eagle proposed to buy a 10% stake in FEI himself: however, he had to find buyers for the remaining 75%. He proposed to do so, for the most part, by selling shares to clients of SP Bell.

32. There was little or no current market demand for FEI shares (it was a company specialising in electronic components but was increasingly out of step with current technology). During May 2003 a total of 109,019 shares were traded. Therefore Mr Eagle had to generate significant demand in order to achieve the share sale.

33. Mr Eagle and Mr Betton (another director and broker of SP Bell) orchestrated a sales campaign from August 2003 whereby SP Bell brokers arranged the sale of 35.9 million FEI shares to SP Bell clients. Mr Eagle himself took 16.5 million shares (through an investment vehicle) and marketed FEI shares to other brokers, whose clients purchased 20.3 million shares. Mr Betton caused 30 of his clients to take up 16.1 million shares between 13 August 2003 and 5 December 2003 and strongly encouraged other brokers to recommend FEI shares to their clients. In addition, Winterflood sold some shares as part of its normal market making business. However, there remained a significant rump of shares for which no purchasers had been found.

34. In order to procure purchasers for the outstanding rump of FEI shares, Mr Eagle himself introduced 50 new clients to SP Bell during the period 18 July 2003 to 13 May 2004. 27 of these clients bought 60.7 million FEI shares, thus completing the sale of shares by the end of December 2003 and giving Mr Eagle control of FEI.

35. Between 13 August and 31 December 2003 SP Bell purchased 113,045,675 FEI shares from Winterflood, ostensibly on behalf of its clients.

36. On 19 November 2003 Mr Eagle became a director of FEI. On 5 January 2004 he became executive chairman of FEI. He was actively involved in the management of the company.

Winterflood's involvement

37. Mr Eagle used Winterflood to intermediate the sale of the FEI shares. The original shareholders sold their shares, via third party brokers, to Winterflood. Winterflood sold them in turn to purchasers sourced by Mr Eagle and SP Bell. This process commenced in August 2003 and was completed in December 2003.

38. Winterflood's intermediation of the sale of these shares was highly remunerative. It received a total financial benefit from these transactions of £204,403 on proceeds of £3,053,155. Winterflood's participation was largely risk-free.

(c) The rollover scheme

39. In order to avoid certain SP Bell clients being required to pay for their FEI shares Mr Eagle instituted a scheme whereby FEI positions were rolled from one SP Bell client account to another. The effect of the rollover trades was to defer settlement, potentially indefinitely. The method used was for SP Bell:

41.1 to buy FEI shares for a client on a "T+10" settlement basis (in effect the client buys on credit); and

41.2 to sell those shares (via the market maker) to another client at or before the date of settlement.

A rise in share price which had occurred in the intervening period covered the cost of purchase and left a profit on the first account which could then be used to purchase

further FEI shares. The rollover scheme thus required a rising share price in order to succeed in deferring settlement.

40. The rollover scheme not only allowed Mr Eagle to complete the sale of the 140 million shares by the two majority shareholders, it also allowed him to continue to buy shares in the market as required in order to position the price of FEI shares at an artificial level, as set out in more detail below. Between January and July 2004, SP Bell bought 42,115,450 shares in the market. It bought 25,703,550 of those shares from Winterflood. These shares were not paid for but were simply added into the rollover scheme.

41. Winterflood executed rollover trades for SP Bell from 24 September 2003 to 31 December 2003:

41.1 in September 2003, SP Bell rolled over 4,572,000 FEI shares in two rollover trades (total volume 9,144,000 FEI shares);

41.2 in October 2003, SP Bell rolled over 1,788,000 FEI shares in one rollover trade (total volume 3,576,000 FEI shares);

41.3 in November 2003, SP Bell rolled over 11,370,000 FEI shares in 13 rollover trades (total volume 22,740,000 FEI shares); and

41.4 in December 2003, SP Bell rolled over 17,262,000 FEI shares in 14 rollover trades (total volume 34,524,000 FEI shares).

42. As a result of these trades, Winterflood knew that, from September 2003, a number of SP Bell clients had rolled their positions in FEI. The FSA does not allege that Winterflood or Mr Robins actually knew that Mr Eagle's purpose in starting the rollover trades was to defer settlement.

43. SP Bell continued to buy shares from, and roll shares with, Winterflood in the period January to July 2004. The vast majority of the rollover trades were executed by Winterflood. The volume of FEI shares that were rolled over by Winterflood amounted to around 84% of the volume of FEI share trades reported by all firms in this period. Between January and July 2004 the volume of FEI shares that were rolled over by Winterflood totalled 1.6 billion shares. Details are given below:

Month	Number of shares bought	Number of shares rolled
January	3,015,000	68,059,000
February	4,655,000	81,809,000
March	2,688,300	87,300,000
April	785,000	130,684,000
May	4,360,250	130,365,000
June	8,700,000	235,851,018
1-14 July	1,300,000	87,599,786

44. Rule 3050 of the LSE Rules provides that a member firm may carry out a rollover trade in respect of any position in a relevant security on one occasion only. For this

purpose a "rollover trade" is defined as a set of on-exchange transactions, the effect of which is to postpone the final settlement of a position in a security by closing an existing unsettled transaction and entering into a transaction in the same security which creates a new position for settlement at a later date. The purpose of the rule is to ensure that all trades are settled promptly, thus protecting the proper operation and integrity of the market.

45. SP Bell breached LSE Rule 3050 in that individual positions were rolled over more than once (on the instructions of Mr Eagle). Mr Robins knew that before he became the number 1 for FEI shares, SP Bell clients had made substantial trades in FEI shares. The FSA accepts that it was reasonable for Mr Robins to assume that the initial rollovers during the period from 24 September 2003 to 31 December 2003 were proper and genuine rollovers in compliance with LSE Rule 3050.

46. However, any rollovers associated with the initial disposal of the shares would have ended once the T+10 settlement period for trades executed on 30 December 2003 had elapsed. Thus, by 28 January 2004, it would not be reasonable to assume that any further rollovers were associated with the initial purchase of the shares.

47. Between 3 February 2004 and 14 July 2004, Mr Robins (or junior traders reporting to him) actively assisted Mr Eagle in relation to the rollover scheme by executing 215 rollovers (not including delayed rollovers) and 21 delayed rollovers (see below) on the instructions of SP Bell.

48. These trades were consistently undertaken with a mismatch in settlement dates: shares were predominantly sold on a T+2 basis and bought on a T+10 basis. Such a consistent trading pattern is a clear indicator that the trades are rollovers within the terms of LSE Rule 3050.

49. The volume of shares being rolled over dwarfs the number of shares being bought throughout this period. Rollovers of this volume and frequency are highly unusual. Mr Robins, who took over responsibility for the FEI book at the beginning of February 2004, knew that the volume of rollovers was massive and dominated the market in FEI shares.

50. The rollover trades took place in the context of the following matters each of which was known to Mr Robins:

    52.1 27 delayed rollover trades executed by Winterflood for SP Bell between January and March 2004;

    52.2 an apparently limitless appetite by SP Bell customers for FEI shares offered to the market, regardless of market conditions; and

    52.3 a series of requests from Mr Eagle/SP Bell to increase the FEI share price.

51. In these circumstances, a market maker acting in accordance with the standards reasonably expected of him should have concluded that:

51.1 these trades were rollover trades within the terms of LSE Rule 3050 rather than put-through trades; and

51.2 there was a clear and substantial risk that the rollovers executed on or after 28 January 2004 (including all of those referred to in paragraph 48 above) were not proper and genuine trades.

52. Having been alerted to the risks associated with this pattern of trading, a market maker acting in accordance with the standards reasonably expected of him should have asked questions of SP Bell in order to satisfy himself that the trades were proper and genuine and should have discontinued executing such trades if he was not so satisfied.

53. At no stage did Mr Robins question the purpose of the rollover trades. Another firm of market makers did question SP Bell about the purpose of the rollover trades conducted with it, in the context of a much lower volume of rollovers (just under 80 million shares). SP Bell assured that market maker that the rollovers were genuine and for different customers.

54. The rollover trades were not proper and genuine trades but were reported to the market as ordinary trades. As such they concealed from the market that a significant amount of FEI shares had not been paid for and gave a false and misleading impression as to the level of demand for FEI shares.. The rollover trades were an essential element of the share ramping scheme.

55. By executing the rollover trades, SP Bell, with the participation of Winterflood and Mr Robins, deliberately deferred settlement of the trades and deliberately concealed from the market that a significant amount of FEI shares had not been paid for. Had this been known to the market, it is highly likely that it would have caused a significant fall in the FEI share price.

56. By executing the rollover trades Mr Robins caused the market to be given the impression that there was substantial and continuous demand for FEI shares. This was not in fact the case.

57. Winterflood took a turn on each rollover trade and received substantial financial benefits of £777,652. Mr Robins knew this.

(d) Constant source of buyers

58. As noted above, between January and July 2004, SP Bell bought 42,115,450 shares in the market. It bought 25,703,550 of those shares from Winterflood. This trading did not represent genuine market demand for the shares. It was artificial. These trades were undertaken by SP Bell in the knowledge that there was no means of paying for them. These shares were not paid for but were simply added into the rollover scheme. In many cases the trade was unauthorised by the underlying client.

59. SP Bell bought these shares in order to facilitate the positioning of the price at an artificial level.

60. Mr Robins must have known that the trading by SP Bell clients was highly unusual:

62.1. If there was FEI stock available, whether being offered to the market or a long position accumulated by Winterflood which it wished to sell down, SP Bell could be relied upon to buy stock. This was the case in most circumstances: regardless of the current share price, any negative market information or a preponderance of sellers. This consistent buying interest from clients of a single broker at increasing prices regardless of market conditions is highly unusual.

62.2. Private clients are typically independently minded and deal at a time which suits them or when prompted by developments in a stock. Clients making their own dealing decisions can be expected to react to market movement, comment or announcements. Yet on days where FEI stock had been tipped in the press (e.g. 5 January 2004, 5 April 2004, 10 May 2004 and 31 May 2004) or where there had been significant moves in the share price (e.g. 5 May 2004) there was very little if any trading by SP Bell clients.

62.3. SP Bell did not take time to obtain instructions from their clients prior to trading when approached by Winterflood to buy stock nor when they were asked to make significant changes to the scope of an order.

61. Further Mr Robins knew that Mr Eagle was in a position of a conflict of interest in that he knew that:

61.1 Mr Eagle was a director of and substantial shareholder in FEI and as such had an interest in increasing the FEI share price;

61.2 Mr Eagle was the controller of SP Bell and was obliged to act in the best interests of SP Bell clients.

62. In these circumstances, a market maker acting in accordance with the standards reasonably expected of him would have concluded, at the least, that there was a clear and substantial risk that the trading on behalf of SP Bell clients was not proper or genuine.

63. Having been so alerted, a market maker acting in accordance with the standards reasonably expected of him should have asked questions of SP Bell in order to satisfy himself that the trades were proper and genuine and to discontinue executing such trades if it was not so satisfied. Mr Robins did not question the purpose of this trading and continued to trade in essentially the same way with SP Bell until July 2004.

(e) Delayed rollovers

64. Between 5 January and 18 March 2004 Winterflood executed 27 delayed rollovers for SP Bell (acting at the instigation of Mr Eagle), whereby the two legs of the transaction were executed at different times of the day, although the size and price of the second leg of the transaction were agreed at the outset.

65. Such delayed rollovers are highly unusual. Further, they are highly misleading to the market. The time lapse between the execution of the two legs of the trade makes it impossible for market participants to identify the trades as rollovers. Such trades will appear to be genuine and unrelated trades driven by the economic forces of supply and demand.

66. The delayed rollovers involved high volumes of shares: 190.4 million in total, more than the entire issued share capital of the company. Such high volume trading, which represented 40.5% of the market within this short period of time, gave a significantly misleading impression to the market.

67. In addition the delayed rollovers were often transacted at the top end of the touch price, thus giving the impression to market participants that there was sustained buying interest at higher prices.

68. The delayed rollovers were not proper and genuine trades. In many cases they were not authorised by the underlying customers. They were an essential element of the share ramping scheme.

69. The rollover trades took place in the context of the following matters each of which was known to Mr Robins:

    69.1 the massive and increasing volume of rollover trades executed by Winterflood for SP Bell between January and July 2004;

    69.2 an apparently limitless appetite by SP Bell customers for FEI shares offered to the market, regardless of market conditions; and

    69.3 a series of requests from Mr Eagle/SP Bell to Winterflood to increase the FEI share price.

70. In these circumstances a market maker, acting in accordance with the standards reasonably expected of him, would have concluded, at the least, that there was a clear and substantial risk that the 27 delayed rollovers executed between 5 January and 18 March 2004 were not proper or genuine trades. Therefore Mr Robins, if acting in accordance with the standards reasonably expected of a market maker, should have asked questions of SP Bell in order to satisfy himself that the trades were proper and genuine and should have discontinued executing such trades if he was not so satisfied.

71. Mr Robins did not ask any questions of SP Bell about any of the delayed rollovers. Between 3 February and 18 March 2004 Mr Robins (or junior traders reporting to him) continued to execute delayed rollovers for SP Bell, and executed 21 such transactions. The frequency with which Winterflood was requested to execute delayed rollovers increased significantly after the book was transferred to Mr Robins. The delayed rollovers for which Mr Robins was responsible were as follows:

Date	Number of trades	Delayed rollover trade volume
04.02.04	3	12,320,000
05.02.04	2	18,320,000
06.02.04	2	15,750,000
09.02.04	1	4,050,000
19.02.04	1	6,400,000
20.02.04	1	9,000,000
23.02.04	1	8,000,000
24.02.04	1	7,470,000
25.02.04	1	4,580,000
26.02.04	1	8,000,000
27.02.04	1	4,000,000
01.03.04	1	4,000,000
02.03.04	1	6,400,000
03.03.04	2	10,500,000
05.03.04	1	10,000,000
18.03.04	1	11,000,000
Total	**21**	**139,790,000**

72. On or shortly before 18 March 2004 and as a result of concerns as to the propriety of the trades, Winterflood decided not to execute further delayed rollovers.

73. By executing the delayed rollovers Mr Robins caused the market to be given the false and misleading impression that there was substantial and continuous demand for FEI shares.

(f) Manipulation of the share price

74. By January 2004, in order for the rollover scheme to continue, Mr Eagle needed to achieve increases in the share price.

75. Mr Eagle also needed to achieve an increase in the share price for the following reasons:

    75.1 to generate “profits” on the rollover accounts which could be used to fund further purchases of shares, thereby helping to ensure that any selling into the market would not depress the price;

    75.2 to enable FEI to fund acquisitions of other companies using inflated stock as consideration;

    75.3 to enable FEI to raise capital in the market to fund further acquisitions;

    75.4 to attract genuine and institutional investors to FEI.

76. Accordingly, in January 2004 Mr Eagle embarked on a deliberate programme of share price manipulation whereby he sought to position the price of FEI shares at an artificially high level. Mr Eagle's aims were:

    76.1 to attract media and investor attention to FEI through a combination of price rises and increased volume; and

    76.2 to secure an increasing share price in order that the rollover scheme might continue, that corporate acquisitions be funded, and that retail and institutional investors be attracted to the stock.

77. There are, broadly speaking, three phases of the share price manipulation scheme that can be identified:

    77.1 during January to March 2004:

    - FEI undertook two corporate acquisitions, the consideration for which was shares in FEI;

    - Winterflood raised its bid/offer quote 12 times;

    - Winterflood executed 54 rollovers (not including delayed rollovers) with a total volume of 285.1 million shares and 27 delayed rollovers with a total volume of 190.4 million shares for SP Bell; and

    - an article in the Daily Mail on 13 January 2004 reported that a "hefty" 11.7 million shares had been traded and that FEI could be one to watch;

    77.2 during April 2004:

    - the share price manipulation scheme was beginning to have the desired effect:

        - there were a number of favourable articles in the press; and

        - the level of investor interest was growing;

    - Winterflood raised its bid/offer quote 13 times; and

    - Winterflood executed 34 rollovers with a total volume of 261.4 million shares for SP Bell; and

    77.3 during May to July 2004:

    - the level of media and investor interest in FEI had tailed off – it was made more difficult to attract media and investor attention to FEI and to secure an increasing share price because of the lack of investor interest in the stock at the higher prices then prevailing;

    - the volumes of trading were significantly lower;

- FEI undertook a placing to raise £2,520,000 and two corporate acquisitions during this period; the consideration for one acquisition was shares in FEI;
- Winterflood raised its bid/offer quote 10 times; and
- Winterflood executed 149 rollovers with a total volume of 908 million shares for SP Bell.

78. There was an unusually close relationship between Mr Eagle and Winterflood. This is demonstrated by the following:

    78.1 a high degree of information sharing – in particular Winterflood traders freely discussed their book positions with Mr Eagle and SP Bell;

    78.2 SP Bell brokers were instructed by Mr Eagle to deal only with Winterflood when trading FEI shares; and

    78.3 obvious pre-arranging of trades – there were frequent instances where Winterflood traders spoke first to Mr Eagle on an untaped line and then conducted the trade with SP Bell on a taped line.

79. Furthermore, there was an unusually high level of communication between Mr Eagle and Winterflood on untaped lines during the period 1 January 2004 to July 2004 as demonstrated by the numerous conversations on mobile telephones between Winterflood employees and Mr Eagle. The FSA has concluded that at least some of the calls were undertaken on mobile telephones in order to avoid those conversations being taped.

80. Mr Robins co-operated in the share price manipulation scheme as follows:

    80.1 the willing execution of rollovers and delayed rollover trades (described above); and

    80.2 consistent co-operation in increasing bid/offer quotes including in response to requests instigated by Mr Eagle (described below).

81. Mr Robins from time to time failed to use his independent judgment as to the appropriate pricing for FEI stock (which is the standard reasonably to be expected of a market maker) including by consistently acceding to requests instigated by Mr Eagle to increase its bid/offer quote.

    81.1 Between 2 January 2004 and 14 July 2004 the share price of FEI increased from 4.13p to a high of 11.75p. There were 43 upward moves in the quote to establish a new offer price during this period. The share price continued to rise even when demand for the shares (other than that attributable to Mr Eagle's instructions) was falling. In the period 3 February to 14 July 2004, Mr Robins (or junior traders reporting to him) were responsible for setting Winterflood's bid/offer quotes.

81.2 Of these upward movements, 35 were led by Winterflood, which was at all times the dominant market maker in FEI shares. On at least 15 occasions the increases, all of which were made by Robins or at his direction, are not obviously referable to the level of genuine supply and demand, by reference to orders placed by SP Bell, nor referable to anticipated further demand by SP Bell and Mr Robins was responsible for 12 of them.

81.3 SP Bell, at the instigation of Mr Eagle, specifically requested Winterflood to increase the bid/offer quote. Mr Robins, and therefore Winterflood, consistently co-operated with these requests none of which is obviously referable to the trading and market conditions prior to the quote increase. For example:

- On 2 March 2004 Winterflood increased its quote at 12:27 from 5.00p/6.00p to 5.25p/6.25p. Trading was light, with only a sale on the bid side which maintained Winterflood's long position. SP Bell asked Winterflood to increase the quote at 12:24; and

- On 15 March 2004 Winterflood increased its quote at 11:00 from 6.00p/7.00p to 6.25p/7.25p. There were a number of untaped calls between Mr Eagle and Winterflood traders prior to the quote increase. In a conversation at 11:03 Winterflood advised SP Bell that it had increased its quote as it understood that SP Bell/Mr Eagle wished to see an improvement in the share price. FEI had issued a negative announcement that morning of a significant fall in pre-tax profits and a dividend cut.

82. Mr Robins' increases to Winterflood's bid/offer quote at the instigation of Mr Eagle caused the price of FEI shares to be positioned at an artificially high level. This had the effect of misleading the market as to the price or value of FEI shares and of distorting the market in FEI shares. The market was also misled by the apparent volume of trading, share price and trading pattern.

83. The quote increases and the trading at the higher share prices gave the market a false and misleading impression as to the price or value of FEI shares and caused the price to be positioned at an artificially high level. Such price positioning at an artificial level also amounts to market distortion.

84. Winterflood received benefits from SP Bell, which it did not question, in the form of:

84.1 unusually high remuneration on transactions;

84.2 a supply of buyers for Winterflood's long positions; and

84.3 occasional assistance from SP Bell in minimising Winterflood's overnight exposure to long positions in FEI, for example on 12 February Mr Robins told Mr Betton that he had a position that he wanted to sell and Mr Betton responded by confirming that SP Bell clients would take the shares.

85. The unusually close relationship, the significant and unusual amount of communication on untaped lines, the uncritical co-operative actions and the benefits received by Winterflood, all taken together, created a pattern of behaviour which had the effect of Winterflood allowing Mr Eagle (directly or through SP Bell) from time to time during the period January 2004 to July 2004 to control Winterflood's pricing of FEI shares. Mr Robins was responsible for Winterflood's pricing of FEI shares from 3 February 2004.

86. Accordingly, with the co-operation of Mr Robins (from 3 February 2004), Mr Eagle achieved a series of increases in the bid/offer quote which had the effect of positioning the price of FEI at an artificially high level.

87. Mr Robins' overall behaviour amounted to a failure to act in accordance with the standards reasonably expected of a market maker. In particular Mr Robins, in the context of Winterflood's unusually close relationship with SP Bell, the significant amount of communication on untaped lines and the pattern and volume of co-operative trading between the two in FEI shares, should have been alert to the consistently increasing price quotations for FEI resulting from that combination and should have ceased to co-operate unquestioningly with SP Bell. Mr Robins failed to review the relationship with SP Bell and continued to co-operate in the share price manipulation scheme.

(g) Other matters

88. In relation to the period that Mr Robins was the Winterflood number 1, the volume of trading for which Winterflood was responsible entirely dominated the market.

89. The trading in FEI was profitable for Winterflood. The overall financial benefits received by Winterflood from its trading in FEI shares was approximately £1.2 million, which exceeded the benefits received in relation to any other single security. Of this sum, the benefits largely resulted from trading with SP Bell: £191,000 in relation to the shares sold to SP Bell that were purchased from the two principal shareholders and £780,000 in relation to the rollover trades. This had a direct impact on the level of bonus awarded to Mr Robins. This factor supplies a motivation for Mr Robins to act as he did.

90. The suspension of trading in the shares on 15 July 2004 caused the unsettled positions in FEI shares at SP Bell to crystallise. Neither the clients of SP Bell nor SP Bell itself had sufficient funds to settle the resulting debt, which was over £9 million. SP Bell ceased trading and was placed into administration on 23 July 2004 and its business and assets were sold to another FSA authorised firm.

Summary of Representations

91. Mr Robins made written representations on 30 January 2008 and oral representations on 2 and 3 April 2008. Further written representations dated 18 April 2008 were also considered by the RDC. Winterflood also provided an opportunity for the decision-maker to view trading activity as it is now conducted by Winterflood's traders.

Winterflood provided reports from individuals with experience relevant to that of Mr Robins.

92. Mr Robins disputed the findings set out in the Warning Notice and any suggestion that he should be implicated in the deliberate scheme conducted by Mr Eagle through SP Bell. He said he did not act recklessly or without integrity and did not fail to meet the standards of behaviour reasonably to be expected by a regular user of a market maker in AIM stocks. He represented that the Warning Notice does not have regard to certain important characteristics of the AIM market, of the role of the market maker, of its traders or its quotes, or of relevant internal controls and procedures at Winterflood.

93. Mr Robins challenged the FSA's reliance on the "unusual circumstances" alleged in the Warning Notice and the inferences drawn from them, particularly as they relate to him. He maintained that, with the benefit of hindsight he would have been put on enquiry as to some of the issues raised by the FSA but with the knowledge he had at that time, it was not reasonable to have expected him to have been alerted to the potential issues raised by those matters.

(a) Legal interpretation of the market abuse regime

94. Mr Robins adopted the legal approach put forward by Winterflood, namely that the FSA would have to show an actuating purpose before it could justify a finding of market abuse. He argued that to establish market abuse involving price positioning and execution of artificial transactions, the FSA would need to establish that Mr Robins personally had the purpose of carrying out an artificial transaction or positioning the price and also to establish that he had acted with impropriety and not merely that he failed to take due care to appreciate risks.

95. Mr Robins accepted that intention to abuse the market did not need to be shown to establish market abuse. However, Mr Robins argued that the Code of Market Conduct, given the statutory provisions giving rise to it, effectively incorporated a requirement for an actuating purpose for the kind of market abuse alleged against him in the Warning Notice. The provisions in the Code of Market Conduct stating that it is not and not intended to be exhaustive are to be read in the light of the relevant statutory provisions, and proper legitimate expectation, as covering wholly different types of behaviour amounting to market abuse. The Code should not be read as allowing the FSA to take action against Mr Robins which did not have any actuating purpose.

96. Mr Robins argued in similar fashion in relation to assessing standards of behaviour – that the FSA must establish that he engaged in improper conduct. It is not sufficient simply to establish that he failed to take reasonable steps to check the propriety of the trades, or failed to act with due skill care and diligence.

(b) Characteristics of AIM and market making

97. Mr Robins adopts the representations made by Winterflood summarised in Schedule A attached.

(c) The role of a trader

98. Mr Robins adopts the representations made by Winterflood summarised in Schedule A attached.

(d) Knowledge of FEI stock and relationship with Simon Eagle

99. Mr Robins represented that the criticisms made against him in the Warning Notice failed to take account of his limited knowledge and involvement in the matters in issue. He said that he did not take over responsibility for FEI shares until 3 February 2004 as responsibility until then was with Mr Sotiriou. He cannot remember any particular handover discussions. Mr Robins said that he took over an existing trading relationship, already involving rollovers and delayed rollovers and without any of the circumstances of what are now seen as suspicious transactions being explained to him. He did not consider there to be anything suspicious about the transactions or the setting of prices.

100. Mr Robins had no prior relationship with Mr Eagle and his business contact with him was always on a taped line, never on a mobile phone. Mr Robins said he would speak with Mr Betton to take orders but they had no particular relationship. The direct contact with Mr Eagle was also extremely limited as they only spoke on two occasions. Importantly, Mr Robins said he did not have knowledge of Mr Eagle's involvement in FEI.

101. The Warning Notice makes numerous references to the unusually high level of communication between Mr Eagle and Winterflood on untaped lines. However, as this level of communication does not relate to him, Mr Robins states that the Warning Notice should make clear that the allegation and the inferences drawn are not relevant to him. The clear implication that these calls should have made him alert to the suspicious nature of the transactions is wrong and misleading.

102. Mr Robins also said that he had no reason to believe that settlement was not occurring in the normal way. He had no reason to suspect any of the delayed settlement issues occurring between Pershings and SP Bell.

103. Mr Robins feels the Warning Notice did not sufficiently take account of his limited knowledge of the background of the trades or his limited involvement.

104. As to the environment in which he worked at that time at Winterflood, Mr Robins stated that his actions in not investigating or questioning the transactions before execution were the norm. His colleagues at that time would not have considered that that there was a problem with the trades and the market abuse training that he had received did not cover the types of alerting circumstances relevant to this matter.

105. Mr Robins explained that he has always understood that he should not manipulate a stock price or give a false impression of trading and did not behave in that way in relation to FEI. Mr Robins believes that even if the FSA considers that he deserves blame for his conduct it cannot fairly characterise it as reckless. He believed the

transactions were genuine and proper. Accordingly, he challenges the FSA's assertions that he participated in or assisted Mr Eagle's scheme.

(e) Taking over the FEI book

106. Mr Robins argued that the Warning Notice wrongly sought to rely on background information including the initial FEI transaction and the origins of the rollovers even though it is not alleged that he was aware of it. He believes the assumption that it was not reasonable to believe that rollovers after 3 February 2004 were associated with the initial purchase of FEI shares rests on the fact that he knew about the initial purchase and level of trading by SP Bell clients, which he did not.

107. Given his ignorance of the previous FEI history, Mr Robins states he was entitled to proceed on the basis that the system he had taken over was "in order". He simply continued with a pre-existing pattern of trading. This he argues should weigh heavily in considering if he was reckless as he was not likely to anticipate that such risks existed let alone deliberately ignoring risks. Mr Robins also states that he became involved in FEI shares half way through a delayed rollover.

(f) Rollovers and delayed rollovers

108. Mr Robins' understanding of LSE Rule 3050 has always been that this rule applied to one client rolling a position. He never contemplated that it could apply to stock passing between different clients. Therefore, he could not be alert to anything improper taking place. Mr Robins also adopts Winterflood's representations on this point.

109. Mr Robins stated that he would not have known that the delayed rollovers totalled more than the issued share capital of FEI. Market makers know little about the companies that they trade in as is demonstrated by the fact that books are divided alphabetically and not by industry. He would not have checked the volume of shares traded by different clients of the same broker over a period of time.

110. Mr Robins accepted that over time he would have become aware that the quantities traded through SP Bell were very large and he acknowledged that there should have come a point where he checked why SP Bell were trading so much in this way. While Mr Robins argued that there was nothing in the volume traded which would have led him to suspect any regulatory risk, he did accept that at some point he should have been prompted to attempt to verify that SP Bell's reasons for trading in this way were appropriate. However, he believed that if he had he would have received the same reassurance as Evolution Securities Ltd.

111. In May 2004 Mr Robins did discuss SP Bell's trading with his superiors but was expressly told to carry on trading. He did not recall the precise details of the concerns which were raised but stated that it is highly relevant to whether he can be blamed for continuing to trade recklessly when he was specifically told to continue trading. Mr Robins argued that the Warning Notice does not acknowledge this point as it relates to him and it is a material factor in assessing his actions in this matter.

112. Mr Robins did not accept that delayed rollovers are suspicious or impermissible as such. He has always believed that there are proper reasons for structuring transactions in this way and the Warning Notice along with the market expert appear to accept this. Mr Robins explained that there are a number of examples where SP Bell state that they are dealing for different clients. He thought it would have been reasonable to have considered that the delayed rollovers were being conducted to work out the allocation between clients although he cannot actively recall this being the reason.

113. Mr Robins believed that if delayed rollovers are in principle acceptable transactions then the case that they are highly misleading to the market is fatally flawed because:

113.1 market users are likely to be able to identify the two legs as matched business;

113.2 a transaction cannot be misleading to the market unless the market is entitled to view one leg of a delayed rollover as a self standing trade and if a delayed rollover is in principle a legitimate transaction the market has no proper basis to assume this;

113.3 it may be that a single trade is more likely to be self standing but the market could not assume this so cannot be misled if it turns out not to be.

(g) Alleged manipulation of share price

114. Mr Robins said that there was no question of him deferring to SP Bell on price rises and that none was dictated to him. He explained that the only way it would make sense for him to have co-operated in the way suggested would be if he was a party to Mr Eagle's scheme and that if he had been in on Mr Eagle's scheme he would have been at liberty to build up a long position. However that was not the case as he tried to keep his book relatively flat.

115. Mr Robins explained that it was not unusual for a market maker to be asked to call the price up. He stated that of the 12 occasions where price increases were criticised, in only 3 or 4 instances was there any evidence that a request was made for an increase.

116. Mr Robins acknowledged that momentum strategies can be implemented by market makers calling the price of stocks either up or down. He pointed out that a market marker always seeks to make money not only from the turn on new business but also on his existing position. It follows that the choice of the direction of any momentum strategy is dominated by the book position of the market maker.

117. Mr Robins further explained that because he was generally long on FEI stock it was natural for him to want to develop momentum which profited his book position and therefore to call the price of the stock up. Furthermore, because SP Bell was his regular broker and one which bought stock from him regularly, it was natural for SP Bell to be his first port of call when he wanted to find buyers and to raise the price of the stock to levels at which SP Bell thought it would be able to transact business. His strategy was neither unusual nor improper.

(h) Penalty

118. A central issue in this case relates to the particular contention that if market abuse is established, the appropriate sanction would be withdrawal of approval as Mr Robins would be found not to be fit and proper. There is a separate question as to whether market abuse has been committed at all. Mr Robins submits not. Even if, contrary to Winterfloods' submissions the FSA finds that market abuse can be committed by negligence, there is still the issue of whether Mr Robins is fit and proper and whether withdrawal of approval is the appropriate sanction.

119. It is common ground that a lack of integrity is established if a person is found to be reckless. Mr Robins challenged the FSA's test of recklessness. He argued that to be reckless a person must either have acted with knowledge or have deliberately closed his mind, that is, committed "Nelsonian blindness". The difference is fundamental.

120. Mr Robins proceeded to say that the Warning Notice does not allege these situations, referring instead to the fact that Mr Robins "ought" to behaved in a certain way but failed to do so. Accordingly, he argued that the FSA's case on recklessness is not made out. If there was any failure, it was at best at the lower end of the spectrum, that is carelessness and the penalty, if any is considered appropriate, should reflect that.

121. Mr Robins acknowledges that he could have made more enquiries about the trades and that, with hindsight, he deeply regrets not doing so. However, he struggles to understand how it can properly or fairly give rise to a finding that he is not fit and proper.

122. Also, it should be noted that a significant number of the unusual circumstances relied upon by the FSA to infer impropriety in the trading are not applicable to Mr Robins. For example, Mr Robins did not have a personal relationship with Mr Eagle, did not speak to him often on the mobile and did not know the history of the trading when he took it over.

123. Mr Robins was moved to a less high profile book although he was not demoted as a result of these matters nor did he suffer a reduction of his bonus that year. He has never been subject to discipline or criticism by his employer and continues to be supported by them.

124. Mr Robins was concerned not to lose his job as he knows no other way to make a living. If similar circumstances presented themselves he believes he is more attuned to approaching senior management at an earlier stage. Mr Robins adopts Winterflood's legal submissions both generally and specifically in relation to market abuse. It was submitted on behalf of Mr Robins that it would be wholly disproportionate to withdraw his approval.

125. It was also submitted that this is a case of failure to respond to warning signals on the part of Mr Robins. The FSA has recognised that this is not normally enough to lead to a charge of lack of integrity. It was submitted that Mr Robins' conduct does not

meet the level of recklessness as would amount to a lack of integrity. The case is no different from one of negligence or gross negligence.

126. It is contended by the FSA that Mr Robins ought to have considered the transactions were improper and he failed to do so, similarly he failed to exercise his independent judgement in relation to pricing. As such, even on the FSA's case, it is not proper and appropriate to make a finding of a lack of integrity.

127. In the light of the above Mr Robins argues that he did not commit market abuse in relation to the transactions or act recklessly.

Conclusions

(a) Summary

128. The FSA is satisfied that Mr Robins' behaviour in executing trades, in particular the rollover and delayed rollover trades amounted to market abuse. However, the FSA is not satisfied that his involvement in Mr Eagle's price positioning scheme amounts to market abuse by him.

(b) Legal interpretation and the standard of behaviour expected

129. The FSA does not accept that the Code of Market Conduct should be read in the way contended for by Mr Robins. The FSA's view is that it is required to apply the statutory test required by section 118 of the Act in each individual case. The Act specifies that the Code "may be relied on so far as it indicates whether or not that behaviour should be taken to amount to market abuse" (section 122(2) of the Act). The FSA considers that this makes plain that the Code cannot have effect beyond this so as to supplant the statutory test in any way. The Code (except to the extent that it identifies behaviours that the FSA considers not to be market abuse) is properly considered as no more than an aid to interpreting the statutory provisions. This is reflected in the provisions of the Code that emphasise that it is not (and could not be) exhaustive as to what is and is not properly to be considered market abuse.

132. Accordingly, the FSA does not accept Mr Robins' representations as to the interpretation of the market abuse regime. The FSA notes that the training on the introduction of the market abuse regime provided to Winterflood employees (including Mr Robins) acknowledges that the proper approach is to apply the statutory tests in each case, and also that the Code of Market Conduct is not exhaustive.

133. The FSA notes that the relevant Code of Market Conduct states that a "mistake is unlikely to fall below the objective standards expected where the *person* in question has taken reasonable care to prevent and detect the occurrence of such mistakes" (MAR 1.2.6E). The FSA considers that this makes clear that mistakes or other failures to take care can amount to market abuse if the person concerned has not taken reasonable care to prevent and detect such mistakes or failures to take care. The FSA accordingly does not accept that impropriety is required before concluding that behaviour amounts to market abuse. The only relevant test is that specified in section

118 of the Act of whether the relevant behaviour amounts to a "failure … to observe the standard of behaviour reasonably expected of a person in [Mr Robins'] position in relation to the market".

134. The Code of Market Conduct identifies the extent of compliance with relevant rules and regulations of the market in question as a factor in determining whether or not behaviour falls below the standards expected. The FSA therefore considers that the key aspects of the behaviour to be expected of a market maker in Mr Robins' position are to be derived from the relevant rules of the London Stock Exchange (LSE) (of which both Winterflood and SP Bell were, at the relevant times, members) that were discussed during the making of representations, and, in particular, from rule 3300:

"*3300 A member firm shall not, in respect of its on Exchange business:*

3300.1 do any act or engage in any course of conduct which creates or is likely to create a false or misleading impression as to the market in, or the price or value of, any security;

3300.2 cause or enter into any artificial transaction;

…

3300.6 do any act or engage in any course of conduct which causes, or contributes to, a breach of the Exchange's rules by another member firm."

135. Accordingly, the FSA considers that a regular user of the AIM market expects a market maker to comply with LSE rules, so that if it works closely with brokers (particularly when illiquid stock is involved), it will take reasonable care in doing so. In particular, a regular user would expect that a market maker will not contribute to a broker creating or being likely to create a false or misleading impression as to the market in, or the price or value of, any security, or to a broker causing or entering into any artificial transaction. The FSA further considers that a regular user would expect a market maker and its traders to take reasonable care in its relationship with brokers in order to maintain an appropriate that standard of behaviour.

(c) The context for the trades

136. The FSA accepts Mr Robins' representations that he was not aware of Mr Eagle's desire to speak only on mobile telephones. The FSA further notes that Mr Robins did not in fact participate in mobile telephone conversations with Mr Eagle.

137. The FSA is satisfied that when he took over responsibility for Winterflood's trading of FEI shares on 3 February 2004, Mr Robins knew or ought reasonably to have concluded that:

137.1 Mr Eagle was in the very unusual position of having effective control of and being senior executive of both an AIM quoted company and a stockbroking firm;

137.2 Mr Eagle was, apparently, able to commit SP Bell clients to transactions without seeking their specific instructions and;

137.3 SP Bell had already conducted a very significant volume of trading in FEI shares, including very large rollover trades (see, in particular paragraphs 42 and 43);

137.4 Mr Eagle's unusual position would inevitably present him with a conflict between his personal interest in seeing an increasing FEI share price and his responsibility to act in his clients' best interests by advising his clients at some point to realise profits by selling shares (which would potentially depress the FEI share price);

137.5 Mr Eagle's apparent authority to commit SP Bell clients to trades gave rise to the risk that he would use rollover transactions between client accounts to breach rule 3050 or to undermine its purpose;

137.6 There was a risk that the high volume of rollover transactions, representing an unusually high turnover of the issued share capital, of one stock were not genuine and proper;

137.7 In the light of that risk, high volumes of rollover transactions were capable of giving a false impression to the market as to the supply of, or demand for, the shares concerned;

137.8 Repeated delayed rollovers/put-throughs are highly unusual and, though individual delayed rollovers/put-throughs are capable of innocent explanation, had a strong potential to give misleading impressions to the market as a result of the differences in timing between the legs of the transaction;

137.9 As a consequence, delayed rollovers involved risks beyond the immediate one of whether the second leg of the transaction would actually be executed by the counterparty; and

137.10 Settlement of transactions of itself is not conclusive as to propriety of those transactions.

138. It is not necessary for each or any of these matters, individually, to justify giving rise to suspicion. However, the cumulative effect of these matters was the context within which Mr Robins acted as he did. The FSA is satisfied that Mr Robins was aware of these matters, even if he was unable to recall the precise details of the prior trading with SP Bell in FEI shares. The FSA notes that the key aspects of the representations made are consistent with this, including Mr Robins' acknowledgement that he has

always understood that he should not give a false impression of trading and the FSA is satisfied that Mr Robins was aware of prior trading and matters giving rise to trading interest in companies traded on "his" book.

(d) Mr Robins' behaviour

139. The FSA accepts that the available evidence does not provide sufficient basis to conclude that Mr Robins positioned the share price of FEI at an artificially high level as suggested in the Warning Notice.

140. However, the FSA is satisfied that a regular user would regard Mr Robins' behaviour as a failure to observe the standard of behaviour reasonably expected (being the duty described above), in executing large numbers and volumes of rollover trades after he took over responsibility for trading in FEI shares on 3 February 2004, and in executing delayed rollovers between that date and 18 March 2004.

141. The FSA is satisfied that a regular user would be likely to form that view given that Mr Robins executed these transactions in the context known to him (described above) without considering whether to review Winterflood's relationship with SP Bell and using available lines of enquiry to seek to check the propriety of the trading, including failing to ask questions of SP Bell.

142. The FSA considers that Mr Robins' behaviour resulted in a serious case of market abuse, as a result of Winterflood's continuing failure to identify the need to assess its relationship with SP Bell, involving complete reliance on effectiveness of settlement and (in relation to the delayed rollover trades) identifying only the risk that the second leg of the trade would not be executed. Although, Mr Robins' awareness of alerting factors was more limited because he took over trading in FEI after key matters took place, his behaviour took place over a period of several months.

143. Mr Robins ought to have recognised his responsibilities to the market and the particular risks to Winterflood's responsibilities arising in a close relationship with the dominant broker in FEI shares. He did not do so, but he also did not receive the support that he should have because Winterflood did not adequately organise itself to be able to do so. Whether or not Mr Robins acted recklessly, his behaviour should be regarded as serious, particularly because of the period over which it took place.

144. The FSA has decided that it should not withdraw Mr Robins' approval. The FSA is satisfied that in the light of his representations, the passage of time since the events in question and his experiences in the course of the investigation process, that Mr Robins has learned much. The FSA, as noted above, also accepts that Mr Robins was not supported to the degree that he should have been by Winterflood, to assist him in maintaining the standards of behaviour reasonably expected of a trader in Mr Robins' position. However, this was a serious case of market abuse and Mr Robins should be subject to a penalty which appropriately reflects that.

Relevant guidance

(a) Financial Penalty

145. Section 123(1) of the Act authorises the FSA to impose financial penalties in cases of market abuse. Section 124 of the Act requires the FSA to issue a statement of its policy with respect to the imposition of penalties for market abuse and the amount of such penalties. The FSA's policy in this regard is contained in Chapter 6 of the Decision procedure and penalties manual ("DEPP"). In deciding whether to exercise its power under section 123 in the case of any particular behaviour, the FSA must have regard to this statement.

(b) Decision Procedure and Penalties Manual

146. DEPP 6.2 sets outs a number of factors to be taken into account when the FSA decides to take action for behaviour appearing to be market abuse. They are not exhaustive, but include the nature and seriousness of the suspected behaviour, the conduct of the person concerned after the behaviour was identified, the degree of sophistication of the users of the market in question, the size and liquidity of the market and susceptibility of the market to market abuse. Other factors also include action taken by the FSA in similar cases, the impact that any financial penalty or public statement may have on the financial markets or on the interests of consumers, and the disciplinary record and general compliance history of the person.

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

148. In accordance with the FSA's published policy in determining whether to take action in respect of market abuse and in determining the level of 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, the person's conduct following the abuse (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.

149. The FSA has taken all the circumstances of this case into account in deciding that it is appropriate to take action for behaviour amounting to 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 DEPP 6. In particular the FSA considers the following aggravating and mitigating factors to be relevant:

Aggravating features

150. The level knowledge, skill and experience to be expected of the person concerned: Mr Robins was a senior trader who should have had an understanding of the trading standards required.

151. Impact of the behaviour on prescribed markets: the suspension of the FEI shares could and did cause confidence in the AIM market to be undermined. The Eagle clients' unsettled positions crystallised at debts of more than £9 million.

152. The duration and frequency of the breach: Mr Robins' trading continued for an extensive period of time.

Mitigating features

153. Mr Robins did not receive sufficient training or compliance support from Winterflood to assist him in dealing with issues of the type raised in this Notice.

154. Mr Robins was told to continue trading by a colleague who had spoken to one of the Winterflood Directors about concerns the colleague had in relation to aspects of the trading in FEI shares.

155. There have been no previous findings of market misconduct against Mr Robins.

156. In determining the proposed financial penalty, the FSA has considered the seriousness of the issues, Mr Robin's seniority and the need to deter Mr Robins and others from engaging in this type of activity. The FSA has also had regard to penalties imposed in other market abuse cases.

157. As a consequence of its conclusions, the FSA has decided to impose a financial penalty of £75,000 but has decided not to withdraw Mr Robins' approval. The FSA has also decided to reduce the financial penalty to £50,000 to take account of Mr Robins' financial circumstances.

<u>Schedule A – Extract from Warning Notice of Winterflood Securities Limited Dated June 2008</u>

Characteristics of AIM and market making

132. AIM is a quote-driven market and a market maker is required to publish two-way prices for all stocks in which it makes a market, and to deal at those quoted prices in transactions up to its published "screen size" (the market maker's quoted maximum size – which must be no smaller than the normal market size for the stock). The market maker is not obliged to deal in sizes larger than the screen size. A broker who wishes to do so will need to agree a price with the market maker for that trade. Because of the market maker's obligation to deal at his quoted prices the market can never be misled by its quotes. In addition other market makers are entitled to challenge a market maker to buy or sell at its quoted price. This and market reaction act as a check on the market maker's freedom to quote prices.

133. A market maker's published prices are not an indication of any objective value or price of the stock. They are merely the prices at which the market maker is prepared to buy or sell that stock in sizes up to the market maker's screen size, and the prices at which the market maker's traders subjectively believe will make money in the market. (The market maker is entitled to deal outside its quote for larger trades, particularly if it is taking risk.) The published prices may reflect matters known to the market maker but not in the public domain – for example a large purchase or sale which has yet to be effective. Different market makers may take different views or have different strategies and therefore publish different prices. Accordingly the published prices cannot be relied on as an accurate reflection of interest in the market or of supply and demand. The appropriate reflection is in the "touch price" (the spread between the best bid and best offer prices across all the market makers in the stock).

134. Although trade reports to the LSE include information about settlement dates this does not appear on the trade reporting screens. Therefore the reports seen by the market cannot mislead as to whether trades have settled or will settle, nor whether shares have been or will be paid for. Trade reporting screens do not provide any immediate or complete report of trades. They do not show whether trades are buys or sells, settlement dates, or disclose the counterparty; and there are legitimate trading reasons why the market is given incomplete information. The trade reporting screens are therefore not a reliable source of information and market users rely on experience to interpret the information shown.

135. Stocks on the AIM market tend to be more volatile than those on the main market – less information is required to be published and there is less publicly available information about issuers. Price movements can be very dramatic, particularly in "penny stocks", and can be the result of different reasons. A stock's price can increase by multiples very quickly. It is not uncommon for market participants to buy a stock because its price is rising.

136. Between July 2003 and July 2004 the AIM market rose on average by about 40%. Since a number of share prices did not move significantly, many rose by more than this proportion.

137. Reasonable market makers and participants in the AIM market, between July 2003 and July 2004, would not have been surprised that the price of an AIM stock such as FEI rose gradually over the period – even if the corporate activity (actual and prospective) of FEI and the press reporting of that activity did not provide apparent rational reasons for this. The rise of a share price from 2.5p to 11.5p over a year would not be regarded as out of the ordinary or requiring investigation by those responsible in a market maker for supervising trading.

The role of a trader

138. At Winterflood a "number one" trader is responsible for trading a "book" of about 200 AIM companies. Although there will not be active trading in all of those companies every day, a very substantial number of trades will be conducted on the "book". (Winterflood provided examples of the number of bargains per trading day.)

139. An AIM trader does not have time to analyse each trade that he undertakes, will not remember the details of individual trades undertaken more than a few days previously (unless there is a particular reason for doing so), and will not be able from memory to conduct the kind of analysis that the Warning Notice suggests would have been conducted by a reasonable market maker.

140. Winterflood's traders do not research the companies on their "book" or seek to understand the fundamentals of their businesses or their prospects. They do not seek to make money from taking positions in the stocks, and accordingly do not have an interest in the price of a stock. A market maker looks to provide liquidity to the market by offering to sell or buy at quoted prices. He looks to make money by making a "turn" on those trades. This is irrespective of the fundamental strength or weakness of the stock. Traders will not usually know the size of the issued capital and, therefore, not usually know what proportion of the issued share capital they are trading.

141. A trader has to judge the current and future supply and demand for a stock. The ideal conditions are where there are both buyers and sellers – to him an "orderly market" is a market in which the orders of both buyers and sellers can be satisfied. The trader will adjust his prices and spread to seek to achieve this. In doing so he will have regard to a number of things including what he knows but others do not about current and future demand, what he assesses to be the position of other market makers, the impact of reported trades, public statements by the company, press comment or rumour. A trader faced with an inactive market may move his quote to stimulate activity. Setting the market maker's quote is not scientific and is very subjective to individual traders.

142. If asked to price a trade that is larger than the screen size, a trader will assess the risk of not being able to sell or buy those shares at a profit and the total financial exposure in respect of his total holding of those shares. If the risk is none/small or will not give an unacceptable financial exposure (e.g. he has a matching buyer or seller identified) he is likely to price within the touch and accept a smaller turn. If the risk is large he will typically look to price outside the touch to give himself the chance to make a bigger turn or smaller loss.

143. Discussions between market makers and brokers about demand and price are constant. Without them a trader would not have the information to enable him to exercise his judgment as to the prices to quote, and he would be risking capital "blind". It is not uncommon for a trader to be contacted by a broker, with whom he deals regularly and who is interested in a stock, with a suggestion that the trader move his price. A suggestion from a broker, who is known to be close to a company or to deal regularly in its stock, is more likely to be taken seriously. When a broker, with whom the trader deals regularly and has a relationship, suggests that a trader increases his quote, the express or implicit message to the trader is that the broker has buyers, that he wishes to attract sellers and that he will buy to the suggested price. If he does not, then the trader's trust will have been misplaced and there may be an impact on the relationship.

144. A trader cannot know the identity or intentions of the clients of brokers with whom he trades. He is not entitled to know the identity of the broker's client. He will never ask a broker who is dealing in a stock or why. The trader has to rely on the broker, which is always an FSA regulated entity, to satisfy itself about the identity, resources and intention of the broker's clients and the reasons for, or appropriateness of, their trades. Absent specific concerns a trader does not address his mind to these issues. He does not concern himself with settlement, and if no settlement issues arise with trades conducted through a regulated broker, there is no reason to question whether the trades are genuine.