Financial Services Authority

FINAL NOTICE

To: Mr Jeffery Burley

Of: Woodside, Frilford Heath, Abingdon, Oxfordshire, OX13 5QG

Date: 19 July 2010

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

1. THE PENALTY

1.1. The FSA gave you a Decision Notice on 13 July 2010 which notified you that pursuant to section 123(1) of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose on you, a financial penalty of £35,000 for engaging in market abuse.

1.2. You agreed to settle at an early stage of the FSA's investigation. You therefore qualified for a 30% (Stage 1) reduction in the financial penalty under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £50,000 on you.

1.3. You confirmed on 9 July 2010 that you will not be referring 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 you in the amount of £35,000.

2. REASONS FOR THE ACTION

Summary

2.1. In 2009 your son, Jeremy Burley, was the Managing Director of BMS Minerals Limited (now known as Strategic Logistics Ltd) ("BMS Minerals"). BMS Minerals provided vehicles and equipment for oil and gas exploration companies in Uganda including Tower Resources Plc ("Tower Resources"). Tower Resources is a company incorporated in the UK with shares quoted on the Alternative Investment Market of the London Stock Exchange ("AIM").

2.2. As at June 2009, you held 790,000 shares in Tower Resources on behalf of Jeremy Burley.

2.3. On or around 11 June 2009, Jeremy Burley acquired inside information concerning the results of exploration of Tower Resources' first oil well in Uganda, namely that the drilling looked unlikely to produce oil and that the exploration of a second well was therefore unlikely to proceed.

2.4. Prior to a public announcement on 15 June 2009 by Tower Resources of this negative news Jeremy Burley passed that inside information onto you and instructed you to sell all of his shares in Tower Resources. Shortly thereafter you sold 790,000 shares in Tower Resources on Jeremy Burley's behalf and in doing so avoided a loss of £21,700.

2.5. Your behaviour constituted insider dealing (a form of market abuse) in breach of section 118(2) of the Act. The FSA may therefore impose a financial penalty on you under section 123(1) of the Act.

2.6. The FSA considers your conduct to be serious for the following reasons:

(1) at the time you sold the shares you knew that the information passed to you by your son regarding Tower Resources' drilling was not generally available and would, if generally available be likely to have a significant effect on Tower Resources' share price; and

(2) your conduct was deliberate and you took steps to disguise the market abuse by asking your broker to sell the shares in Tower Resources in "*two unequal bits*".

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

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

(a) occurs in relation to

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

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

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

3.3. Section 118(2) provides:

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

3.4. Section 118B provides in relation to insiders:

For the purposes of this Part an insider is any person who has inside information—

(e) which he has obtained by other means and which he knows, or could reasonably be expected to know, is inside information.

3.5. Section 118C defines inside information:

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

(a) is not generally available,

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

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

(5) Information is precise if it —

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

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

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

3.6. The FSA is authorised pursuant to section 123(1) of the Act to exercise its power to impose a financial penalty where it is satisfied that a person has engaged in market abuse. Statutory defences are set out at section 123(2) of the Act.

Code of Market Conduct

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

3.8. MAR 1.2.8 E – factors to be taken into account when determining whether or not a person could reasonably be expected to know that information in his possession is inside information and therefore whether he is an insider under section 118B(e) of the Act:

(1) if a normal and reasonable person in the position of the person who has inside information would know or should have known that the person from whom he received it is an insider; and

(2) if a normal and reasonable person in the position of the person who has inside information would or should have known that it is inside information.

3.9. MAR 1.2.12 E (inside information) - factors which the FSA regards as relevant in deciding whether information is generally available include:

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

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

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

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

Relevant Guidance

3.11. In deciding to take the action described above, the FSA has had regard to section 124 of the Act and to guidance published in the FSA Handbook. The FSA has also had regard to the relevant provisions in the Enforcement Guide.

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

3.13. DEPP 6.2.1 and 6.2.2 set out a number of factors to be taken into account when the FSA decides to take action for behaviour appearing to be market abuse. They are not exhaustive but include the nature and seriousness of the behaviour and the conduct of the person concerned after the behaviour was identified including the degree of co-operation the person showed during the investigation of the breach. Other factors include the degree of sophistication of the users of the market in question, the size and liquidity of the market and the susceptibility of the market to market abuse, action taken by the FSA in similar cases and the impact that any financial penalty or public statement may have on the financial markets or on the interests of consumers.

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

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

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

4. FACTS AND MATTERS RELIED ON

4.1. You are a retired seventy three year old forestry expert and have worked in many developed and developing countries.

4.2. Jeremy Burley is a chartered engineer who has lived in Uganda for approximately 20 years. At the relevant time he was the managing director and 50% shareholder of BMS Minerals.

4.3. Tower Resources is an independent oil and gas exploration company based in London, with operations in Uganda. Tower Resources holds an exploration licence in Uganda through its operating subsidiary, Neptune Petroleum (Uganda) Ltd ("Neptune"). At the relevant time, BMS Minerals provided Tower Resources with vehicles and equipment for oil exploration of the company's first oil well, "Iti-1".

4.4. Between 6 August 2007 and 2 June 2009, you built up a holding of 790,000 shares in Tower Resources on behalf of Jeremy Burley.

Tower Resources announcements prior to June 2009

4.5. On 21 January 2009 Tower Resources issued a press release stating that the National Environment Management Authority of the Government of Uganda had approved Iti-1 to be drilled in Exploration Area 5 in Uganda.

4.6. Between April and May 2009 Tower Resources announced that:

(1) "*much now depends on the outcome of Iti-1 … the first well of a two well programme*";

(2) Sambia-1 – the second well of the two-well programme – would be drilled "*when the results of Iti-1 have been interpreted*";

(3) the same land drilling rig would be used to drill Iti-1 first and then (possibly) Sambia-1; and

(4) drilling at Iti-1 was expected to commence (or spud) "*on or shortly after 25th May* [and that a] *further announcement will be made once drilling begins*."

4.7. On 29 May 2009, Tower Resources announced that drilling of the Iti-1 onshore Uganda exploration had commenced. The announcement stated that:

"Tower Resources is pleased to confirm that the Iti-1 exploration well spud at 17:30 hours East Africa time …yesterday, 28th May.

The well is being drilled to an estimated depth of 650 meters. Operations should take two to three weeks and a further announcement will be made once results of the well have been determined."

Communications between Jeremy Burley and yourself in the run up to 15 June 2009 announcement

4.8. In late May and early June 2009 Jeremy Burley sent you a number of emails updating you on the drilling at Iti-1 and indicating that he expected to learn imminently "*if the well is a goer or not*".

4.9. At approximately 14:07 on 10 June 2009, you telephoned your broker and said:

"... just a warning if I may ... can you be prepared to sell our Tower shares? ... What time do you start at tomorrow morning? ... If I call you at 8 sharp, would you be able to sell them promptly? ... Don't do a thing until I call you ... it's just possible we'll want to get rid of all the Tower shares tomorrow…"

4.10. In an email timed at 15:05 on 10 June 2009, Jeremy Burley informed you: "*IF, and only if we unload tomorrow, I think break this down into three unequal sized sells so it doesn't stick out like the whatsits on a bulldog. A big sell tomorrow will upset the market plus I don't want any unwelcome attention from regulators or the like*."

4.11. At approximately 07:09 on 11 June 2009, Jeremy Burley sent an email to Mr X, telling him that further analysis was being carried out but at that stage the drilling at Iti-1 had not produced oil and that the exploration of the second well (Sambia-1) was unlikely to proceed. This was inside information for the reasons set out at paragraph 5.1 below. The email went on to state:

"Sand is a biggie and I believe they went through sand which is why the word duster crops up again.

However, my man on site has rung again, they have drilled through basement and still nothing visual which he is questioning again. Logging will be done today, and provisional results may be out today … This is a difficult one but the bottom line is as things stand RIGHT NOW, there is no oil. Word of course is going to get out. By tonight, there could be a different view. The second well though now looks unlikely to be drilled as the formations are exactly the same, it being so close …

I am still going to unload in two unequal chunks this am. Nothing stopping me buying back in when I hear about change, and I will be amongst the first to hear again I guess."

4.12. In an email timed at 07:14 on 11 June 2009, Jeremy Burley forwarded the email at paragraph 4.11 above to you and said: "*Note as sent to someone else with some shares. If you agree I believe we sell this am … but if news gets out its dry and that the second well not happening, there will be a mass sell I am sure and prices must plummet.*"

4.13. In two telephone calls timed at 07:56 and 08:01 on 11 June 2009, you instructed your broker:

"*... we think we want to sell all the Tower, can you do it in two unequal bits? ... Well, rather than unload 750K straight on to the market, to do a 500 and a 200, whatever it is ... I think that would be better ... Well ... if the market sees ... You know, if the market sees a big dump ... maybe it'll bring the price down ... I think it may well go down further, there's an announcement …*"

4.14. Your broker went on to sell all 790,000 Tower Resources shares in one lot at 08:09 on 11 June 2009.

4.15. At 11:33 on 11 June 2009, in response to significant intra-day selling and price falls, Tower Resources issued an RNS announcement stating that the outcome of the Iti-1 well had not been determined and that an announcement would be made as soon as clear results were obtained. On 11 June 2009 the Tower Resources share price closed 26% down.

The 15 June 2009 announcement

4.16. At approximately 7:00 on 15 June 2009 Tower Resources announced to the market that the Iti-1 exploration well in Uganda had not encountered any producible reservoir sands and that the "*lack of reservoir at this location could not justify further testing or the immediate move to drill a second well*" ("the 15 June 2009 announcement").

4.17. Following the 15 June 2009 announcement Tower Resources' share price closed 40% down. Recognising that you might not have sold any shares, but if you had sold the Tower Resources shares shortly after the 15 June 2009 announcement the trade would have resulted in a loss of £5,500 instead of the £16,200 profit actually made by selling the Tower Resources shares on 11 June 2009. As such, a loss of £21,700 was avoided.

5. ANALYSIS OF MARKET ABUSE

Section 118 (2) – insider dealing

5.1. The information that the drilling of the first oil well looked unlikely to produce oil and that the exploration of a second well was therefore unlikely to proceed was inside information because it:

(1) was of a precise nature in that it indicated circumstances that may reasonably be expected to come into existence;

(2) was not generally available (it was only announced on 15 June 2009);

(3) related directly to Tower Resources, shares in which are qualifying investments traded on AIM, a prescribed market for the purposes of the Act; and

(4) would, if generally available, have been likely to have had a significant effect on the price of Tower Resources shares, as demonstrated by the effect of the 15 June 2009 announcement.

5.2. On the morning of 11 June 2009 you received the inside information from Jeremy Burley. Shortly thereafter on the same day, you sold the Tower Resources shares on the basis of the inside information in breach of section 118(2) of the Act.

5.3. The FSA is satisfied that you were an insider for the purposes of section 118(e) of the Act and that a normal and reasonable person in your position would or should have known that:

(1) Jeremy Burley was an insider; and

(2) the information you received from Jeremy Burley on 11 June 2009 contained inside information. In particular the FSA is satisfied that you were fully aware that the information was not generally available and would, if generally available be likely to have a significant effect on Tower Resources' share price.

5.4. The FSA considers that there are no reasonable grounds for not imposing a penalty for market abuse (section 123(2) of the Act). The FSA may therefore impose a financial penalty on you pursuant to section 123(1)(a) of the Act.

6. SANCTION

6.1. The FSA considers your conduct to be serious for the reasons given at paragraph 2.6 above.

6.2. The FSA has had regard to the need to impose a penalty on you to deter you and others from engaging in market abuse. The FSA has also had regard to the penalties imposed in other market abuse cases.

6.3. The FSA has taken into account your conduct after your dealing in the shares of Tower Resources including attending a voluntary interview under caution, answering the investigator's questions and allowing the FSA to image your computers. In addition, the FSA accepts that the above dealing was instigated by Jeremy Burley and for his benefit.

6.4. In all the circumstances, the FSA considers that a total financial penalty of £35,000 is appropriate. The financial penalty was reduced from £50,000 for early settlement. The FSA has not sought to impose any penalty to reflect loss avoided as it accepts that you did not benefit personally from the trading.

6.5. In deciding whether or not to prosecute this matter the FSA has applied the two-stage test set out in The Code for Crown Prosecutors. In the light of all the circumstances the FSA has concluded it is not appropriate to prosecute. In particular, the FSA has had regard to your age and previous good character, your current state of health and the adverse effect which a prosecution would be likely to have on your physical and mental health. We have also taken into account the relatively small economic benefit, the fact that you were not the instigator of, and did not benefit personally from, the misconduct, and the availability to the FSA of an alternative sanction, i.e. market abuse proceedings, which will adequately address the seriousness of your behaviour. This decision was taken in all the circumstances of this case.

DECISION MAKERS

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

IMPORTANT

6.7. This Final Notice is given to you in accordance with section 390 of the Act.

MANNER OF AND TIME FOR PAYMENT

6.8. The financial penalty must be paid in full by you to the FSA by no later than 31 August 2010.

IF THE FINANCIAL PENALTY IS NOT PAID

6.9. If all or any of the financial penalty is outstanding on 1 September 2010, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

PUBLICITY

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

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

FSA CONTACTS

6.12. For more information concerning this matter generally, you should contact Karen Lee (direct line: 020 7066 1316) or Anna Turnbull (direct line: 020 7066 3126) of the Enforcement and Financial Crime Division of the FSA.

Tracey McDermott

FSA Enforcement and Financial Crime Division