
FINAL NOTICE

To: Kenneth George Carver
Date of Birth: 4 May 1949
Date: 30 March 2015

1. ACTION

- 1.1. For the reasons given in this notice, the Authority hereby imposes on Mr Kenneth George Carver ("Mr Carver") a financial penalty of £35,212.
- 1.2. Mr Carver provided verifiable evidence of serious financial hardship. Had it not been for his reduced financial circumstances, the Authority would have imposed a financial penalty of £122,212 (before discount).
- 1.3. Mr Carver provided significant co-operation and a detailed account of his actions to the Authority in his first interview under caution at an early stage of its investigation, and accordingly the Authority has reduced the financial penalty by 30% (under step 3 of the Authority's five-step framework to determine the appropriate level of penalty).
- 1.4. Mr Carver also agreed to settle at an early stage of the Authority's investigation. Mr Carver therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures.

2. SUMMARY OF REASONS

- 2.1. On 29 May 2012 Mr Carver purchased 62,000 shares in Logica for £42,522.70. Mr Carver's trade was made on the basis of inside information which he had obtained from an insider employed at Logica, Ryan Willmott ("Mr Willmott"). Of

the 62,000 shares that Mr Carver purchased, approximately three quarters were purchased on his own behalf. Mr Carver also used his own funds to purchase £10,000 of Logica shares for Mr Willmott.

- 2.2. On 31 May 2012, CGI publicly announced its intention to make a cash acquisition of Logica at a significant premium. This caused the share price of Logica to increase by 59.8%. Shortly after the announcement Mr Carver sold all shares in Logica for £66,729.40, making a total profit of £24,206.70. Mr Carver accounted to Mr Willmott for £6,000 which represented Mr Willmott's share of the profit. The balance, of £18,206.70 was retained by Mr Carver as his share of the profit.
- 2.3. The Authority considers that Mr Carver's behaviour amounts to market abuse in breach of section 118(2) of the Act. The Authority therefore imposes a financial penalty on Mr Carver of £35,212 pursuant to section 123(1) of the Act.

3. DEFINITIONS

- 3.1. The definitions below are used in this Final Notice.

"the Act"	the Financial Services and Markets Act 2000
"the Authority"	the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority
"CGI"	CGI Group Inc
"DEPP"	the Authority's Decision Procedures and Penalties Manual
"Logica"	Logica Plc
"MAR"	the Code of Market Conduct issued pursuant to section 119 of the Act
"Project Cargo"	the code name for CGI's proposed takeover of Logica
"Project Cargo team"	the Logica team working on Project Cargo
"the Tribunal"	the Upper Tribunal (Tax and Chancery Chamber)

4. FACTS AND MATTERS

The Takeover Proposal

- 4.1. At the relevant time, Logica was a multinational IT and management consultancy company with its headquarters in Reading, UK. CGI is a Canadian multinational

IT and IT consultancy company with its headquarters in Montreal, Canada. Prior to CGI's takeover of Logica, Logica was listed on the London Stock Exchange and was a constituent of the FTSE 250 Index.

- 4.2. On 16 April 2012, CGI made an offer to acquire Logica. Mr Willmott, an employee of Logica, was added to Logica's official Insider List in order to work on the takeover proposal, code-named Project Cargo.
- 4.3. On 15 May 2012, the Logica team working on Project Cargo (the "Project Cargo team") was informed that CGI had withdrawn its offer. On 17 May 2012, an email was sent to the Project Cargo team informing them that the Insider Code restrictions specifically in respect of Project Cargo had been lifted but also stating that they were still bound by the general provisions of the Logica Insider Code, in that the matter remained extremely sensitive and confidential and they should continue to keep the information confidential.
- 4.4. By 23 May 2012, Mr Willmott was made aware that the takeover proposal had been reinstated.

Mr Carver and Mr Willmott's relationship and meeting

- 4.5. Mr Carver is a qualified accountant who has held accounting and financial roles throughout his career. Mr Carver briefly worked for a stockbroking firm in the early part of his career, in the late 1960s. Before retiring in around 2012, Mr Carver had been working as an accountant on a self-employed basis.
- 4.6. After retirement, Mr Carver supplemented his income by regularly trading shares using an online dealing account, dealing mainly in large, well-known, UK listed companies. Mr Willmott was aware that Mr Carver had an online dealing account.
- 4.7. On the evening of 28 May 2012, Mr Willmott visited Mr Carver at his house. It was unusual for Mr Willmott to make a visit of this nature. Mr Willmott informed Mr Carver of the impending takeover of Logica and suggested that it was an opportunity for Mr Carver to make a profit. Mr Willmott told Mr Carver the likely target share price and the likely timing of the takeover announcement.
- 4.8. Mr Carver was aware that Mr Willmott was an insider on the proposed takeover. In light of what Mr Willmott had told him, Mr Carver was certain that the takeover would go ahead and that the announcement of the takeover would result in an increase to the share price of Logica. Mr Carver was aware at the time that the information provided to him by Mr Willmott was not publicly available.

- 4.9. Mr Carver immediately identified that there was a risk of insider trading. Despite identifying this risk, Mr Carver did not take reasonable steps to ascertain whether the information provided by Mr Willmott was inside information and whether he could legitimately trade on the basis of that information. For example, he did not seek advice from any third party as to whether it would be legitimate for him to trade.
- 4.10. On the basis that Mr Willmott had provided the inside information to Mr Carver, Mr Carver agreed to use his own money to purchase shares in Logica to the value of £10,000 on behalf of Mr Willmott and to give Mr Willmott any profit made on those Logica shares. Mr Carver and Mr Willmott did not discuss the possibility of the price of Logica shares falling. From the information Mr Willmott disclosed to Mr Carver, Mr Carver understood that this trade was a “*no risk*” trade or a “*racing certainty*”.

The Trade

- 4.11. On 29 May 2012, Mr Carver liquidated all of his other trading positions so that he could use the funds to purchase Logica shares. On 29 May 2012 at 8.10am, Mr Carver purchased 62,000 Logica shares at a price of 68.5 pence per share (a total of £42,522.70), using his online trading account. This was ten minutes after the London Stock Exchange had opened and it was Mr Carver’s first opportunity to trade on the information provided to him by Mr Willmott. This purchase was the largest amount paid by Mr Carver in respect of a single share purchase and it represented an investment of all (or substantially all) of Mr Carver’s savings. Shortly after the trade, Mr Carver confirmed to Mr Willmott that he had purchased the shares.
- 4.12. On 31 May 2012 at 7.00am, CGI publicly announced the agreement of a recommended cash acquisition of the entire issued and to be issued share capital of Logica by CGI. It announced that the acquisition price would be 105 pence which represented a premium of 39.3 pence over the 65.7 pence closing price of Logica on 30 May 2012. The price of Logica shares rose from 65.7 pence¹ to 105 pence², a percentage increase of 59.8%.
- 4.13. On 31 May 2012, at 8.06am and 8.07am respectively Mr Carver sold 32,000 Logica shares at a price of £1.0727 and 30,000 Logica shares at a price of

¹ The last traded price before the announcement

² The opening price after the announcement. The shares traded at a premium to this price on the day of the announcement.

£1.0801. Mr Carver sold all the Logica shares for a total of £66,729.40 making a total profit of £24,206.70. This trade was the largest profit made by Mr Carver in any single tranche of trading. Mr Carver telephoned Mr Willmott immediately upon completing the sale of the Logica shares.

- 4.14. On 11 June 2012, Mr Carver paid £8,000 to his current account from his online trading account. On the same day, Mr Carver transferred £6,000 of this amount to the bank account of a third party for the benefit of Mr Willmott. This £6,000 payment represented an approximation of the profit on the £10,000 of Logica shares which Mr Carver had purchased and sold on Mr Willmott's behalf. Mr Carver retained the remaining profits of £18,206.70.

5. FAILINGS

- 5.1. The statutory provisions, regulatory provisions and guidance relevant to this Final Notice are referred to in Annex A.
- 5.2. The dealing in Logica shares by Mr Carver over the period of 29 to 31 May 2012 amounts to market abuse (insider dealing) in breach of section 118(2) of the Act for the following reasons.

The shares were qualifying investments traded on a prescribed market

- 5.3. Logica was a FTSE 250 company and its shares were, at the material time, traded on the London Stock Exchange. They are therefore "*qualifying investments*" admitted to trading on a "*prescribed market*" for the purposes of section 130A(3) of the Act. Accordingly, Mr Carver's behaviour fell within section 118(1)(a)(i) of the Act. Moreover, Mr Carver's trading in Logica shares occurred in the UK fulfilling the jurisdictional criteria set out in section 118A(1)(a) and section 118A(1)(b)(i).

Mr Carver's status as an "insider"

- 5.4. Mr Carver was "*an insider*" as defined in section 118B(e) of the Act. Mr Carver became an insider as a result of acquiring inside information from Mr Willmott. Mr Carver knew or could reasonably be expected to have known that the information he received from Mr Willmott was inside information because:

- (1) Mr Carver knew that Mr Willmott was an employee of Logica;

- (2) Mr Willmott paid an unusual visit to Mr Carver's house specifically to inform Mr Carver that there was going to be a takeover of Logica and that he could make a profit by buying Logica shares;
- (3) Mr Willmott asked Mr Carver to trade on Mr Willmott's behalf and did not provide funds for Mr Carver to do so;
- (4) Mr Carver immediately identified the risk of insider dealing but did not take independent steps to confirm whether the information provided by Mr Willmott was inside information and whether he could legitimately trade on the basis of that information; and
- (5) Mr Carver knew that the information related to a prospective and imminent takeover and he was "*absolutely certain*" that the announcement would cause an increase in the share price of Logica. Mr Carver felt that the trade involved "*no risk*" and described it as a "*racing certainty*" because of what Mr Willmott had told him.

The information disclosed by Mr Willmott to Mr Carver was inside information

5.5. The information disclosed by Mr Willmott to Mr Carver satisfies the test for inside information under section 118C of the Act for the following reasons.

(a) Precise

5.6. The information disclosed by Mr Willmott to Mr Carver was precise for the purpose of section 118C(5) of the Act on the basis that:

- (1) Mr Willmott informed Mr Carver that there was going to be a takeover of Logica;
- (2) Mr Carver was provided with precise information about the likely target share price of the takeover and likely timing of the announcement such that he was "*absolutely certain*" that the announcement would cause an increase in the share price of Logica; and
- (3) the information indicated an event that may reasonably be expected to occur in that the information contained details of the target share price of the takeover and the timing of the announcement.

(b) Generally available

- 5.7. The fact of the discussions between CGI and Logica was not generally available information for the purposes of section 118C(2)(a) of the Act prior to the announcement by CGI on 31 May 2012. Moreover, Mr Carver understood that the fact of the discussions was not public or generally available.

(c) Significant effect on price

- 5.8. It was likely that, if generally available, the information provided by Mr Willmott to Mr Carver would have had a significant effect on the share price of Logica for the purposes of section 118C(2)(c) and section 118C(6) of the Act in that it was information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions. There was a real prospect of that information having a significant effect on the price of Logica shares and it is notable that the share price of Logica rose from 65.7p to 105p, an increase of 59.8%, after the announcement by CGI on 31 May 2012.

Conclusion on market abuse (insider dealing)

- 5.9. Mr Carver's decision to trade was taken on the basis of the information provided by Mr Willmott and the information related directly to Logica. In the circumstances described above, the Authority finds that Mr Carver engaged in market abuse (insider dealing) contrary to section 118(2) of the Act.
- 5.10. Pursuant to section 123(1) of the Act, the Authority may therefore impose a penalty of such amount as it considers appropriate on Mr Carver.
- 5.11. Section 123(2) of the Act states that the Authority may not impose a penalty for market abuse in certain circumstances. The Authority is satisfied that these circumstances do not apply to Mr Carver's conduct as described in this notice.

6. SANCTION

Financial Penalty

- 6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In determining the penalty to be imposed on Mr Carver, the Authority has had regard to Chapter 6 of DEPP as it applied in May 2012. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5C sets out the details of the five step framework that applies in respect of financial penalties imposed on individuals in market abuse cases.

Step 1: Disgorgement

- 6.2. Pursuant to DEPP 6.5C.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the market abuse where it is practicable to quantify this.
- 6.3. Mr Carver did derive a direct financial benefit from the market abuse in the form of the profit he made on the trade in the Logica shares. This profit amounts to £18,206.70³. In accordance with DEPP 6.5C.1G, the Authority will charge interest on Mr Carver's benefit at 8% per year from receipt, amounting to £4,005.47.
- 6.4. The Step 1 figure is therefore £22,212.

Step 2: the seriousness of the breach

- 6.5. Pursuant to DEPP 6.5C.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the market abuse. That figure is dependent on whether or not the market abuse was referable to the individual's employment. The market abuse committed by Mr Carver was not referable to his employment. In cases where the market abuse was not referable to the individual's employment, the Step 2 figure will be the greater of:
- (a) a multiple of the profit made or loss avoided by the individual for their own benefit, or for the benefit of other individuals where the individual has been instrumental in achieving that benefit, as a direct result of the market abuse (the "profit multiple"); and
 - (b) for market abuse cases which the Authority assesses to be seriousness level 4 or 5, £100,000.
- 6.6. In cases where the market abuse was not referable to the individual's employment the Authority determines the profit multiple which applies by considering the seriousness of the market abuse and choosing a multiple between 0 and 4.
- 6.7. The profit multiple range is divided into five fixed levels which reflect, on a sliding scale, the seriousness of the market abuse; the more serious the market abuse, the higher level. For penalties imposed on individuals for market abuse there are the following five levels:

³ £24,206.70 less £6,000 transferred to Mr Willmott = £18,206.70.

- Level 1 – profit multiple of 0
- Level 2 - profit multiple of 1
- Level 3 - profit multiple of 2
- Level 4 – profit multiple of 3
- Level 5 – profit multiple of 4

- 6.8. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the market abuse, and whether it was committed deliberately or recklessly.
- 6.9. DEPP 6.5C.2 (14) states that the factors tending to show that market abuse was reckless include the situation where an individual appreciated there was a risk that his actions could result in market abuse and failed adequately to mitigate that risk.
- 6.10. On Mr Carver’s own account, and as a qualified and experienced accountant, he appreciated that there was a risk that his actions could result in market abuse and he failed adequately to mitigate that risk:
- (1) Mr Carver knew that Mr Willmott was an employee of Logica; he used his own funds to place a trade on Mr Willmott’s behalf and Mr Willmott therefore had a financial incentive to persuade Mr Carver to trade; accordingly, there was an increased risk that the trade might amount to market abuse;
 - (2) Mr Carver did not seek legal or other professional advice;
 - (3) Mr Carver did not seek advice from Logica as to the legitimacy of the trading. Such a course of action was readily available to him; for example, it would have been easy for him request the contact details of Mr Willmott’s line manager at Logica in order to make further enquiries.
- 6.11. On this basis, the Authority considers that the market abuse committed by Mr Carver was committed recklessly.
- 6.12. DEPP 6.5C.2G(15) lists factors likely to be considered ‘level 4 or 5 factors’. Of these, the Authority considers the following factors to be relevant:
- (1) Mr Carver intended directly to benefit financially from the market abuse and did gain a significant benefit for himself. The amount of the benefit gained by Mr Carver from the market abuse was £18,206; and

(2) Mr Carver was reckless.

6.13. DEPP 6.5C.2G(16) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers the following factors to be relevant:

(1) Mr Carver was not in a position of trust and he did not have a prominent position in the market;

(2) There is no evidence to indicate that Mr Carver caused or encouraged others to commit market abuse, although he agreed to deal on behalf of Mr Willmott;

(3) The market abuse was committed on only one occasion; and

(4) There was no, or limited, effect on the orderliness of or confidence in the markets as a result of Mr Carver's market abuse.

6.14. In addition to the above, the Authority also takes into account the fact that Mr Carver was an accountant and, although he had experience of working for a stockbroking firm at an early stage of his career and had experience of share dealing, he was not an experienced industry professional.

6.15. Taking all of these factors into account, the Authority considers the seriousness of the market abuse to be level 4. This means the Step 2 figure is the higher of:

(1) $3 \times \text{£}18,206 = \text{£}54,618$; and

(2) $\text{£}100,000$.

6.16. The Step 2 figure is therefore $\text{£}100,000$.

Step 3: Mitigating and aggravating factors

6.17. Pursuant to DEPP 6.5C.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the market abuse.

6.18. The Authority considers that the co-operation given by Mr Carver during its investigation is a significant factor that mitigates the breach. In his first interview under caution in accordance with the Police and Criminal Evidence Act 1984 which took place at an early stage in the Authority's insider dealing investigation, Mr Carver provided a prompt and detailed account of the events relating to the trade and co-operated with the Authority in that he gave detailed

answers to questions about his dealing and the surrounding circumstances. That detailed account, which he provided voluntarily and unconditionally despite the risk of self-incrimination, has been relied on by the Authority and has significantly expedited its investigation. Accordingly, the Authority considers that the Step 2 figure should be reduced by 30%.

6.19. The Step 3 figure is therefore £70,000.

Step 4: Adjustment for deterrence

6.20. Pursuant to DEPP 6.5C.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the market abuse, or others, from committing further or similar market abuse, then the Authority may increase the penalty.

6.21. The Authority considers that the Step 3 figure of £70,000 represents a sufficient deterrent to Mr Carver and others, and so has not increased the penalty at Step 4.

6.22. The Step 4 figure is therefore £70,000.

Serious financial hardship

6.23. Pursuant to DEPP 6.5D.2G, the Authority will consider reducing the amount of a penalty if an individual will suffer serious financial hardship as a result of having to pay the entire penalty. The Authority accepts that the payment of a penalty of £70,000 plus disgorgement of £22,212 would cause Mr Carver serious financial hardship. The Authority has therefore reduced the penalty to £18,572, together with disgorgement of £22,212, in total £40,784.

Step 5: Settlement Discount

6.24. Pursuant to DEPP 6.5C.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.25. The Authority and Mr Carver reached agreement at Stage 1 and so a 30% discount applies to the financial penalty element of £18,572 at Step 4.

6.26. The Step 5 figure is therefore £13,000.

Proposed penalty

- 6.27. The Authority therefore imposes a total financial penalty of £35,212 (representing the Step 1 figure of £22,212 together with the Step 5 figure of £13,000) on Mr Carver for market abuse.

7. PROCEDURAL MATTERS

Decision maker

- 7.1. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.
- 7.2. This Final Notice is given under, and in accordance with, section 390 of the Act.

Manner of and time for Payment

- 7.3. The financial penalty must be paid by Mr Kenneth Carver to the Authority in two instalments as follows:
- (1) Instalment one, totalling £17,606, must be paid to the Authority by no later than 13 April 2015, 14 days from the date of the Final Notice; and
- (2) Instalment two, totalling £17,606, must be paid to the Authority by no later than 30 March 2016, one year from the date of the Final Notice.

If the financial penalty is not paid

- 7.4. If any, or any part of, an instalment of the financial penalty is outstanding on the day after it is due to be paid to the Authority (in accordance with paragraph 7.3 above), the Authority may recover any unpaid part of the financial penalty of £35,212 in full as a debt owed by Mr Kenneth Carver and due to the Authority.

Publicity

- 7.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the

Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

- 7.6. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

- 7.7. For more information concerning this matter generally, contact Evan Benge (direct line: 020 7066 1660 / fax: 020 7066 1661) or Fiona Paddon (direct line: 0207 066 1116 / fax: 0207 066 1117) of the Enforcement & Market Oversight Division of the Authority.

Mario Theodosiou

Project Sponsor

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A: Relevant Statutory and Regulatory Provisions

1. RELEVANT STATUTORY PROVISIONS

1.1 The Authority's statutory objectives are set out in section 1B(3) of the Financial Services and Markets Act 2000 as amended by the Financial Services Act 2012 and include the integrity objective.

1.2 The Authority has the power under section 123(1) of the Act to impose a financial penalty where it is satisfied that a person has engaged in market abuse.

1.3 Section 118(1) (a) of the Act defines 'market abuse' as "*behaviour (whether by one person alone or by two 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)."

1.4 The behaviour relevant to this case is set out in subsection 118(2) which states that:

"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."

1.5 By section 118A(1), behaviour is taken into account if it occurs:

"(a) in the United Kingdom, or

(b) in relation to—

(i) qualifying investments which are admitted to trading on a prescribed market situated in, or operating in, the United Kingdom ...".

1.6 By section 118B(c) and (e), an insider is any person who has inside information:

"(c) as a result of having access to the information through the exercise of his employment, profession or duties," [or]

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

1.7 By section 118C (2), inside information is defined, as follows:

"(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."

1.8 By section 118C (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 the qualifying investments or related investments."

1.9 By section 118C (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.

1.10 Section 123 (2) of the Act states that the Authority may not impose a penalty for market abuse in certain circumstances:

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

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

(b) *he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of [subsection 123(1)].*”

2. RELEVANT HANDBOOK PROVISIONS

Code of Market Conduct

2.1 The Authority has issued the Code of Market Conduct (“MAR”) pursuant to section 119 of the Act.

2.2 Under section 122(2) of the Act, the version of MAR in force at the time when particular behaviour occurs may be relied upon insofar as it indicates whether or not that behaviour should be taken to amount to market abuse. The following references are to the version of MAR as at May 2012.

2.3 MAR 1.2.3G states that it is not a requirement of the Act that the person who engaged in the behaviour amounting to market abuse intended to commit market abuse.

2.4 MAR 1.2.8 E provides that:

“In the opinion of the FSA, the following factors are to be taken into account in 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, and indicate that the person is an insider:

(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 know or should have known that it is inside information.”*

2.5 MAR 1.2.12 E sets out factors that are to be taken into account in determining whether or not information is generally available, each of which indicate that the information is generally available (and therefore that it is not inside information):

- (1) *"Whether the information has been disclosed to a prescribed market through a regulatory information service or RIS or otherwise in accordance with the rules of that market;*
- (2) *"Whether the information is contained in records which are open to inspection by the public;*
- (3) *"Whether the information is otherwise generally available, including through the Internet, or some other publication (including if it is only available on payment of a fee), or is derived from information which has been made public;*
- (4) *"Whether the information can be obtained by observation by members of the public without infringing rights or obligations of privacy, property or confidentiality; and*
- (5) *"The extent to which the information can be obtained by analysing or developing other information which is generally available."*

2.6 MAR 1.3.2E provides that the following behaviour is, in the opinion of the FCA market abuse (insider dealing):

"(1) dealing on the basis of inside information which is not trading information;"

2.7 MAR 1.3.20G (1) provides an example of insider dealing which is factually similar to the behaviour which is the subject of this notice:

"X, a director at B PLC has lunch with a friend, Y. X tells Y that his company has received a takeover offer that is at a premium to the current share price at which it is trading. Y enters into a spread bet priced or valued by reference to the share price of B PLC based on his expectation that the price in B PLC will increase once the take over offer is announced."

3. Decision Procedures and Penalties manual ("DEPP")

3.1 Section 124 of the Act requires the Authority to issue a statement of its policy with respect to the imposition of penalties for market abuse and the amount of such penalties. The Authority's policy in this regard is contained in Chapter 6 of DEPP.

3.2 In deciding whether to exercise its power under section 123 in the case of any particular behaviour, the Authority must have regard to this statement of policy.