



Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

FINAL NOTICE

To: Lukhvir Thind
DOB: 31 January 1980
Date: 7 April 2017

1. ACTION

1.1. For the reasons given in this notice, the Authority hereby:

- (1) imposes on Mr Lukhvir Thind a financial penalty of £105,000 pursuant to section 123(1) of the Act for engaging in market abuse (dissemination); and
- (2) makes an order, pursuant to section 56 of the Act, prohibiting Mr Lukhvir Thind from performing any function in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm. This order takes effect from the date of this Notice.

1.2. Mr Thind agreed to settle at an early stage of the Authority's investigation. He therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £150,000 on Mr Thind.

2. SUMMARY OF REASONS

- 2.1. Mr Thind was a chartered accountant and Financial Controller at Worldspreads Limited ("WSL"), a financial spread-betting company whose holding company, Worldspreads Group plc ("WSG"), was quoted on AIM.
- 2.2. Between 25 June 2010 and 16 March 2012 ("the Relevant Period"), Mr Thind acted to falsify critical financial information concerning WSL's client liabilities (and so its cash position). He knew this false information would be passed to WSL's auditors for the purpose of WSL's Annual Accounts for 2010 and 2011 and, accordingly, that WSL's and, WSG's Annual Accounts for those years would be, and were, materially inaccurate. In doing so, Mr Thind helped to conceal from the market Client Money shortfalls in the 2010 and 2011 Annual Accounts of WSL and WSG. By 31 March 2011, WSL's Client Money shortfall was very significant, at £15.9 million and WSG as a whole did not have the funds to cover this shortfall.
- 2.3. Mr Thind thereby engaged in market abuse contrary to section 118(7) of the Act by disseminating information that gave a false and misleading impression of WSG's financial position, knowing that such information was false and misleading. His conduct was particularly serious in that the dissemination was deliberate and he was reckless as to whether he misled the market.
- 2.4. Mr Thind lacks fitness and propriety because, despite being a chartered accountant, he knowingly falsified accounting information at WSL and passed that false information to WSL's auditors. Also, between January 2008 and March 2012, knowing that it was improper to do so, Mr Thind effected transfers of Client Money from segregated Client Bank Accounts to House Accounts and accounted for shortfalls in Client Money at WSL using a fictitious balancing line item in internal daily Client Money reconciliations.
- 2.5. The Authority therefore imposed a financial penalty on Mr Thind in the amount of £105,000, pursuant to section 123(1) of the Act, for engaging in market abuse; and make a prohibition order, pursuant to section 56 of the Act, in the terms set out at paragraph 1.1(2) above.
- 2.6. Any facts or findings in this notice relating to "directors", "senior executives", "executives", "members of staff" or "professional advisers" should not be read

as relating to all such persons, or even necessarily any particular person in that group.

3. DEFINITIONS

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

“the Act” means the Financial Services and Markets Act 2000

“AIM” means the Alternative Investment Market

“Annual Accounts” means the Annual Accounts of either WSL or WSG prepared in accordance with International Financial Reporting Standards

“the Authority” means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority

“CASS” means the Authority’s Client Assets Sourcebook

“Client Bank Account” means a bank account of any WSG entity that held Client Money which was used for depositing money from its clients in relation to its MiFID or designated investment business. The monies in these bank accounts should not have been intermingled with those monies in “House Accounts” (see below). Moreover, the name of Client Bank Accounts must include an appropriate description to distinguish the money in them from House Cash

“Client Money” means money of any currency that a WSG entity receives or holds for, or on behalf of, a client in the course of its MiFID or designated investment business

“Client Money Resource” means the aggregate balance on the firm’s Client Bank Accounts

“Client Money Requirement” means the total amount of Client Money a firm is required to have segregated in Client Bank Accounts under the client money rules.

“Contract for Difference (CFD)” means a contract between two parties (a CFD provider and a client) to pay each other the change in the price of an underlying asset. At the expiry of the contract, the parties exchange the difference between the opening and closing prices of a specified financial instrument, such as shares, without owning the specified financial instrument

“FSCS” means the Financial Services Compensation Scheme

“(Financial) Spread Bet” means a contract between a provider, such as WSL, and a client which takes the form of a bet as to whether the price of an underlying asset (such as an equity) will rise or fall. A client who spread bets does not own, for example, the physical share, he simply bets on the direction he thinks the share price will move. Spread Bets are similar to CFDs except in relation to capital gains tax and expiration dates of the contracts

“House Account” means a WSG bank account (or bank account of any entity within WSG) holding the entity’s own monies.

“House Cash” means cash generated by WSG or any entity within WSG in the ordinary course of their business and to be used for their business activities

“MiFID” means the Markets in Financial Instruments Directive which came into force on 1 November 2007

“the Relevant Period” means the period between 25 June 2010 and 16 March 2012 inclusive

“Special Administration Regime” means a type of insolvency proceedings which has three objectives, one of which is especially concerned with the return of client property

“Subsidiary A” means a subsidiary of WSG

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber)

“Total Cash” means the aggregate of House Cash and Client Money at any particular date

“Trade Payables” means monies owed by WSL / WSG to, for example, its suppliers or contractual liabilities.

“Trading System Reports” means the reports produced from the various trading systems of WSL and WSG. The reports showed individual client cash balances and the value of their open positions at the end of each business day. For the purposes of Trade Payables in the Annual Accounts of WSL and WSG, the client cash balances from the Trading System Reports were used

“WSG” means WorldSpreads Group Plc

“WSL” means WorldSpreads Limited

4. FACTS AND MATTERS

Background

WorldSpreads Limited

- 4.1. WSL was incorporated in the UK on 15 September 2003 and regulated by the Authority from November 2004. Its principal activity was the provision of online trading facilities in financial markets through financial spread betting and CFDs. Its clients were able to invest in, hedge, or speculatively bet on thousands of global financial instruments. By 2011, WSL had approximately 15,000 clients (of whom typically 3,000 were active at any one time). Its clients came from across Europe, the Middle East, Asia and South Africa. WSL’s clients were primarily retail clients.

WorldSpreads Group Plc

- 4.2. WSL was wholly-owned by WSG, a non-trading holding company incorporated in Ireland and quoted on AIM and the Irish Enterprise Securities Market in August 2007 and May 2008 respectively. Following the disposal of Subsidiary A, in 2009, WSL became the primary revenue generator of WSG.
- 4.3. WSG’s Annual Accounts incorporated the results of WSL which, after Subsidiary A was sold, accounted for the majority of WSG’s results. For example, based on

the figures in both WSG and WSL's 2011 Annual Accounts, WSL's revenue accounted for, approximately, 94%¹ of that of WSG's.

Worldspreads' Expansion and Positive Growth Story

- 4.4. WSG's expansion out of Ireland, where it was founded, started in the UK through the establishment of WSL and a network of partnerships. Throughout 2010 and 2011, WSG continued to expand rapidly into international markets, establishing offices, and subsidiaries, across Europe, South Africa and the Middle East. By 2011 WSL had become a mid-size spread-betting company within the UK market partly due to business from these international offices being booked in London.
- 4.5. WSG's 2010 and 2011 Annual Accounts consistently showed strong revenue growth and a cash-rich balance sheet. Several industry analysts published positive research, including buy recommendations, in respect of WSG after the publication of its 2010 and 2011 Annual Accounts. Partly on the basis of this positive research, one large institutional investor purchased 2 million shares in July 2011 which amounted to 7.43% of WSG's issued share capital.
- 4.6. On 1 August 2007 WSG floated on AIM at a price of 51.25p; its price reached a peak of 113.5p in May 2008. The average share price during 2010 and 2011 was 66p. WSG's lowest share price, of 37p, was in the last month of trading in February / March 2012.
- 4.7. However, as described further below, WSL's and WSG's 2010 and 2011 Annual Accounts were materially inaccurate. Mr Thind was aware of this, particularly with respect to cash because he knew that the balance sheets of WSG and WSL were falsified in order to conceal WSG's financial difficulties including a large Client Money shortfall at WSL.

Financial Spread-Betting

- 4.8. WSL's clients were able to trade through financial spread bets or CFDs. Spread betting enables clients to speculate, or bet, on the movement, up or down, of a

¹ Using an exchange rate of €1 / £0.88 as at 31 March 2011 (source: xe.com)

particular asset (such as a share). Trading through a spread bet means that clients do not have to pay the full value of the underlying financial instrument, instead, clients will deposit margin in cash to fund their trades. The cash received by WSL in relation to their trading belonged to WSL's clients. It should have been received and held as Client Money in accordance with the CASS rules and therefore kept separately from the company's own cash as Client Money, subject to strict regulation and internal policies, some of which are described below.

- 4.9. When a client of WSL took out a spread bet, the risk of the spread bet would lie with WSL. To minimise the risk to itself, and depending on its risk management policy, WSL would hedge its risk, either fully or partially, by taking out CFDs in the same asset with third party brokers. WSL used numerous third party brokers to hedge its clients' positions. In order to hedge with third party brokers, WSL had to fund its broker accounts, known as margin accounts. Third party brokers monitored these accounts and hedged only when sufficient funds were in the account. If there were insufficient funds in these accounts, WSL itself would be on "margin call" meaning that WSL would have to increase funding of these accounts.

Mr Thind

- 4.10. Mr Thind was employed as the Financial Controller of WSL from November 2007 to March 2012, when WSL and WSG went into administration. He qualified as a member of the Association of Chartered Certified Accountants ("ACCA") in 2006. Mr Thind's position at WSL was his first in a regulated financial services firm but he was not an approved person. Mr Thind's responsibilities at WSL included: the day to day handling of client payments and receipts in accordance with WSL's own internal policies and procedures (see paragraph 4.11 below); the creation of management accounts; and submitting regulatory returns for the approval of WSL's Chief Financial Officer, Niall O'Kelly ("Mr O'Kelly"). Mr O'Kelly was ultimately responsible for producing the Annual Accounts of WSL but Mr Thind would produce the trial balances which formed the basis of the Annual Accounts.

WSL's internal policies and agreements with respect to client money

- 4.11. WSL was subject to the Authority's Client Money regulations (specifically, the CASS rules). WSL also had its own Client Money policies, procedures and

agreements which Mr Thind understood and was bound by. These stated the following:

- (1) all Client Money belonging to clients of the spread betting desk was to be held in segregated bank accounts and none of it was to be passed to intermediate brokers;
- (2) on a daily basis, the Finance Director (i.e. Mr O'Kelly) was to review the daily Client Money resource against Client Money Requirement to ensure that there were no discrepancies. To reconcile any discrepancies, he was to authorise payments as required to equalise the Client Money resource and the Client Money requirement;
- (3) where it was not possible to perform this daily internal Client Money reconciliation, the Finance Director was: *"[...] required by Regulations to notify the FSA forthwith by telephone and confirm in writing.*

Collapse of WSL and WSG

- 4.12. By 2012, due to a number of factors, albeit not apparent from their Annual Accounts, WSL and WSG were in severe financial difficulties and not able to continue as going concerns. WSL suffered from unpredictable, and often poor, trading results and revenue was further impacted by a client recruitment campaign which eliminated the revenue generated from spreads charged to clients. WSG also invested heavily in overseas expansion and IT. This all resulted in a significant net cash outflow from the business.
- 4.13. The formal insolvencies of WSL and WSG were triggered on 16 March 2012, when Mr Thind informed WSG's board of longstanding wrongful treatment of Client Money at WSL. Mr O'Kelly confirmed this to the board shortly afterwards and also that there had been misstatements in the Annual Accounts of WSL and WSG over several years. Initial investigations by WSL and WSG concluded that Client Money had been comingled with WSL's House Cash leaving a shortfall in the funds owed to clients of approximately £13 million.
- 4.14. The Authority was informed, on 16 March 2012, of the irregularities in WSL's accounts, specifically that Client Money reconciliations had been deliberately falsified and that there had been inappropriate treatment of Client Money for a number of years. As a result, WSG's shares were suspended. On 18 March 2012, WSL was placed into the Special Administration Regime. As at January

2017, the FSCS had paid out £17.9 million in respect of 3,833 claims for Client Money losses.

Client money shortfall

- 4.15. Throughout Mr Thind's employment at WSL, the company often experienced financial difficulties resulting in a lack of House Cash. As a result, as Mr Thind was aware, WSL often struggled to meet its margin calls, business operations and the company's investment in its expansion.
- 4.16. In fact, from December 2009 until entering into the Special Administration Regime, the amounts of client money WSL should have been holding for its clients exceeded the total Client Money held, plus the cash held not just by WSL, but by WSG as a whole (including cash held in broker accounts). That is to say, had all of WSL's clients chosen to close their trading positions and request the return of their funds simultaneously, WSG would have been unable to cover these. Any shortfall in Client Money should have been made good immediately by WSL.

Financial troubles at WSL and the resultant misuse of Client Money

- 4.17. As a result of WSL's cash problems referred to above, Mr O'Kelly and Mr Thind improperly, and secretly, transferred Client Money from WSL's Client Bank Accounts to House Accounts in order to fund margin calls from brokers and for company operations from January 2008 to March 2012. Mr Thind understood that Client Money required special protections and so there should have been segregation of Client Money from House Accounts. He understood that it was not appropriate to use Client Money for business purposes.
- 4.18. For example, on 14 February 2011, Mr Thind processed seven payments of £200,000 each (totalling £1.4 million) from a segregated Client Account to a House Account. These funds were then transferred on to a broker account to meet margin calls required by WSL's brokers.

Concealment of Client Money shortfall

- 4.19. Mr Thind, acting under Mr O'Kelly's instruction, hid the existence of the Client Money shortfall by using a fictitious line item in internal Client Money

reconciliations which equated to the shortfall. This balancing figure aided Mr Thind and Mr O'Kelly during the audit period when they falsified underlying Trading System Reports in order to conceal the Client Money shortfall from the auditors of WSL. As a result, audited financial statements of WSL, which were consolidated into those of WSG (and which were published to the market), did not, purposefully, reveal the existence of the Client Money shortfall which, for example, was over £15 million on 31 March 2011. As WSL was required to top up Client Money shortfalls with its own funds, the financial statements of WSL and WSG were therefore also misstated with respect to own cash.

4.20. WSL prepared internal Client Money reconciliations on a daily basis. These were known within the company as "Seg Reports". "Seg" referred to "segregated" as Client Money was to be held in segregated Client Bank Accounts, separate from WSL's House Accounts. The Seg Reports calculated the following at the close of each business day:

- (1) total amount owed by WSL to its clients as recorded in WSL's various trading systems ("Client Money Requirement"); and
- (2) cash which WSL held on behalf of its clients in WSL's Client Bank Accounts ("Client Money Resource").

4.21. In practice, it was Mr Thind's responsibility to reconcile, on a daily basis, the Client Money Requirement against Client Money Resource. If the Client Money Resource was less than the Client Money Requirement, a reconciling transfer should have been made out of WSL's House Accounts and into the Client Bank Accounts and vice versa. These daily reconciliations were not circulated outside WSL's finance department.

4.22. Over the period covered by WSG's 2010 and 2011 Annual Accounts, WSL's daily Client Money Requirement exceeded its Client Money Resource frequently and significantly. However, instead of reconciling this shortfall properly, Mr Thind (and Mr O'Kelly) took steps to conceal it from WSG's auditors by sending the auditors falsified Client Money reconciliations and, in an attempt to conceal this falsification on WSL's computer systems, falsified the data which underlay the Client Money reconciliations. The first time this occurred was on 25 June 2010 when Mr O'Kelly emailed, copying Mr Thind, a falsified Client Money reconciliation to WSL's and WSG's auditors.

- 4.23. Set out below is a description of how this process affected WSL's and WSG's 2011 Accounts. For the 2011 Accounts, the process began with a false line item in WSL's internal Client Money reconciliations called "Seg Ireland" which, in the manner described below, carried through to WSG's 2011 Annual Accounts rendering them materially inaccurate. The Authority has not been able to identify a corresponding line entry in WSL's internal Client Money reconciliations for the period covered by WSL's and WSG's 2010 Annual Accounts. However, the Authority considers that Mr Thind and Mr O'Kelly followed the same process of falsification for WSG's 2010 Annual Accounts which have also been found to be misstated.

WSG's 2011 Accounts – Seg Ireland

- 4.24. In the period covered by WSG's 2011 Annual Accounts Mr Thind produced a number of Seg Reports containing an entry named "Seg Ireland". This entry purported to represent cash WSL held in a Client Bank Account, titled Seg Ireland, and was notionally included as part of the Client Money Resource. However, in fact, WSL held no cash corresponding to the Seg Ireland entries, which were entirely fictitious.
- 4.25. Mr Thind and Mr O'Kelly designed the Seg Ireland entries as balancing figures for management accounting purposes so they could understand the size of WSL's Client Money shortfall and how it changed over time. However, as described below, in 2011, they used the Seg Ireland entries as the basis for further falsification of management information which was, with Mr Thind's knowledge, passed to WSL's and WSG's auditors for the purpose of preparing published Annual Accounts.
- 4.26. Table 1 shows the substantial shortfall in Client Money Resource, and the corresponding Seg Ireland figure included in Seg Reports, on various days over the period covered by WSG's 2011 Accounts.

Table 1: Examples of Client Money reconciliations including "Seg Ireland"

	26/10/2010	8/11/2010	02/02/2011	31/03/2011
Actual Client Money Requirement (£)	19,592,023	22,104,520	24,223,240	23,584,931
Actual Client Money Resource (£)	9,173,632	9,145,548	7,504,893	8,037,432
"Seg Ireland" figure including in Client Money Resource equating to approximate Client Money shortfall (£)	10,473,032	12,756,662	16,500,000	15,500,000

Concealment of Client Money shortfall in WSG's 2011 Annual Accounts – falsification of Client Money Requirement

- 4.27. WSL's auditors reviewed Seg Reports as part of the company's annual audit. It is standard auditing practice to verify reported Client Money against third party bank statements. Therefore, had they received Seg Reports with Seg Ireland entries, WSL's auditors would likely have quickly identified that the Seg Ireland entries were fictitious. Therefore, Mr Thind and Mr O'Kelly further falsified the Seg Reports that were sent to the auditors by deleting the Seg Ireland entries and, instead, to support the fiction that there was no Client Money shortfall, falsely reduced the Client Money Requirement to match the Client Money Resource.
- 4.28. For example, on 1 April 2011, as part of the Client Money reconciliation process Mr Thind sent Mr O'Kelly a Seg Report for 31 March 2011. As shown at Table 1, this report included a fictitious Seg Ireland entry of £15,500,000. By including the Seg Ireland figure, Client Money Resource was increased to £23,536,832, roughly equivalent to the Client Money Requirement of £23,584,931².

² Please note that all numbers in this notice have been rounded to the nearest pound.

- 4.29. In June 2011, the Seg Report for the same day (31 March 2011) was sent by Mr Thind to WSL's auditors for the purpose of WSL's annual audit. However, a different version of the report was sent which did not include the Seg Ireland fictitious balance, reducing the Client Money Resource to, the more accurate, £8,037,432. Instead, however, to conceal the significant Client Money shortfall, in the Seg Report sent to the auditors in June 2011, Mr Thind and Mr O'Kelly falsely reduced the Client Money Requirement to match, approximately, the Client Resource figure. The June version shows a Client Money Requirement balance of £7,985,532, falsely reduced by £15,500,000. This reduction matched the Seg Ireland figure in the original version of the Seg Report which Mr Thind sent to Mr O'Kelly on 1 April 2011.
- 4.30. In order to conceal from WSL's auditors this false reduction in the Client Money Requirement balance, Mr Thind and Mr O'Kelly falsified the underlying data which supported it. The Client Money Requirement figure was derived from reports generated from the various trading systems used at WSL ("Trading System Reports"). These Trading System Reports, some of which were reviewed by WSL's auditors, showed individual client cash balances at the end of the business day i.e. the amount of cash WSL owed its individual clients at the end of any business day which, when aggregated, equated to the Client Money Requirement.
- 4.31. For the purposes of presentation in WSG and WSL's 2010 and 2011 Annual Accounts, Mr Thind, under Mr O'Kelly's instruction, amended and deleted individual client cash balances in these Trading System Reports in order to reduce WSL and WSG's liability to its clients and ensure its reported liability matched the amount of Client Money actually held in WSL's Bank Client Accounts and did this in response to auditors' requests to check the calculations.
- 4.32. As stated above, the Authority has not been able to identify internal Client Money reconciliations with the fictitious Seg Ireland figure for the period covered by WSL's and WSG's 2010 Annual Accounts. However, the Authority has confirmed that, for the purposes of the 2010 audit, Mr O'Kelly, copying Mr Thind, sent the auditors Trading System Reports in which individual client cash balances had been materially falsified by Mr Thind. The first time this occurred was on 25 June 2010, as stated at paragraph 4.22 above.

Representation on the Balance Sheets of WSL and WSG

- 4.33. WSL and WSG's liability to its clients made up the majority of WSL and WSG's 'Trade and Other Payables' figure on the Balance Sheet in their Annual Accounts. The liability to their clients was, principally, the Client Money Requirement.
- 4.34. The Authority has compared what it considers to be original, unamended Trading System Reports for 31 March 2010 and 31 March 2011 to those provided to the auditors of WSL for the same day, as described below.
- 4.35. Unamended Trading Systems Reports state that, as at 31 March 2010, WSL's total liability to its clients was £23,819,196. However, the Trading System Report submitted by Mr O'Kelly (with Mr Thind copied into the email) to the auditors of WSL for the same date, showed this liability to be only £19,997,684. Mr Thind's deletions of, and amendments to, Client Bank Account balances, account for this reduction of £3,821,513.
- 4.36. Unamended Trading Systems Reports state that, as at 31 March 2011, WSL's total liability to its clients was £39,501,152. However, the Trading System Report submitted by, this time, Mr Thind to the auditors of WSL for the same date, was £23,561,757. Mr Thind's deletions of, and amendments to, client account balances, account for this reduction of £15,939,396.
- 4.37. As a result of these falsifications the Trade Payables figures in the WSL Annual Accounts for 2010 and 2011 were understated as follows:

Table 2: Effect of the falsification of the Trade Payables balance in 2010 and 2011

	2010	2011
Client liability in reports as provided to auditors	19,997,684	23,561,757
Less Adjustments made by WSL³	(5,790,411)	(2,973,327)
Trade Payables figures reported in WSL's Annual Accounts (£)	14,207,273	20,588,430
Trade Payables figures per FCA calculation (£)	18,028,786	36,527,826
Value of Trade Payables misstatement (£)	3,821,513	15,939,396

- 4.38. The assets and liabilities in WSL's Balance Sheet made up the majority of those in WSG's. Therefore, these misstatements were carried through, almost identically, into WSG's consolidated Balance Sheets for 2010 and 2011. Although he was not responsible for approving the Annual Accounts of either WSL or WSG, Mr Thind understood that the falsified Trade Payables figures described above were included in WSL's Annual Accounts and were therefore incorporated into the Annual Accounts of WSG and, in fact, accounted for the majority of the results of WSG.
- 4.39. The published Annual Accounts of WSG were considered by market analysts in their recommendations to buy WSG shares. WSG's Annual Accounts, and the market analyst recommendation notes were, in turn, considered by investors in their decision to purchase WSG shares.
- 4.40. Mr Thind's dissemination of information, from 25 June 2010 when he was copied into an email to WSL's auditors containing information that he knew was falsified, as set out above, until his admissions to the WSG board on 16 March 2016, was deliberate; and he was reckless as to whether he misled the market.

³ The Authority has not been able to determine the rationale for these adjustments.

5. FAILINGS

- 5.1. The regulatory and legislative provisions relevant to this notice are referred to in Annex B.

Market abuse

- 5.2. Throughout the Relevant Period shares in WSG were qualifying investments admitted to trading on AIM, a prescribed market for the purposes of section 118 of the Act.

- 5.3. For the purposes of section 118 of the Act, market abuse includes behaviour by one person alone, or by two or more persons acting jointly or in concert.

Dissemination of information

- 5.4. Pursuant to section 118(7) of the Act, market abuse includes behaviour which consists of the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to a qualifying investment by a person who knew or could reasonably be expected to have known that the information was false or misleading.

- 5.5. Mr Thind disseminated information when, knowing that it would have a material impact on the presentation of WSG's financial position in its Annual Accounts, he created falsified Trading System Reports and participated in the provision of these reports to WSL's auditors as part of their verification work of WSL's Annual Accounts for the financial years ending in March 2010 and March 2011. Mr Thind's first act of dissemination for the purposes of this notice took place on 25 June 2010, as described at paragraph 4.22 above.

- 5.6. Mr Thind was the Financial Controller of WSL. Although he was subject to the oversight of Mr O'Kelly, he nonetheless held a senior position at WSL and was responsible for WSL's day-to-day financial management and reporting. He had responsibility for the content of WSL's Annual Accounts and knew that they would have a material impact on the content of WSG's Annual Accounts.

- 5.7. Mr Thind's failure, from 25 June 2010 until the date of his admissions to the boards of WSL and WSG, to inform WSL's auditors (or the WSL board) that

WSL's and WSG's published Annual Accounts for 2010 and 2011 were materially inaccurate was a continuing act of dissemination for the purposes of section 118(7) of the Act.

Gives or is likely to give a false or misleading impression

- 5.8. The falsely amended Trading System Reports which Mr Thind created, and provided, to WSL's auditors were materially inaccurate, grossly reducing WSL's liabilities to its clients and hiding the existence of a Client Money shortfall. As set out at paragraphs 4.33 and 4.37, in its 2010 Annual Accounts, WSL's Trade Payables were misstated by almost £4 million and in its 2011 Annual Accounts WSL's Trade Payables were misstated by almost £16 million. WSL's financial results, such as revenue, made up over 90% of WSG's reported revenue. Therefore, the materiality of these misstatements was mirrored in the published Annual Accounts of WSG. It was the revelation of the Client Money shortfall that led to the collapse of WSL, and so WSG, in March 2012.

Person who knew or could reasonably be expected to have known that the information was false or misleading

- 5.9. Mr Thind was WSL's Financial Controller. He was also a chartered accountant. As described above, it was Mr Thind who produced, or assisted in producing, the falsely amended Trading System Reports and provided them to WSL's auditors. He also knew that WSL's Annual Accounts would have a material impact on WSG's Annual Accounts. In these circumstances, Mr Thind knew that the information was false or misleading.

Conclusion on market abuse (dissemination)

- 5.10. For the reasons set out above and having regard to the provisions of MAR (set out in Annex B to this notice) the Authority finds that Mr Thind engaged in market abuse contrary to section 118(7) of the Act. Further, his behaviour was deliberate and he was reckless as to whether he misled the market.
- 5.11. Pursuant to section 123(1) of the Act, the Authority may therefore impose a penalty of such amount as it considers appropriate on Mr Thind.

5.12. 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 Thind's conduct as described in this notice.

Fitness and Propriety

5.13. The relevant sections of FIT are set out in Annex B. FIT 1.3.1 G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function, as more particularly described in FIT 2 (Main assessment criteria). FIT 1.3.1B G states that in the Authority's view, the most important considerations will include, among other matters, a person's honesty, integrity and reputation when assessing a person's fitness and propriety.

5.14. As described above, for a period of almost two years, Mr Thind deliberately falsified the presentation of WSL's financial information, knowing that the falsified information would be reflected in, and have a material impact on, WSL's and WSG's published Annual Accounts. He did this despite being a chartered accountant, subject to the standards of that profession and holding a senior position at WSL, a regulated firm.

5.15. Furthermore, Mr Thind:

- a) effected transfers of Client Money to WSL's House Account although he knew this was a breach of WSL's own internal procedures for the treatment of Client Money;
- b) knowingly provided false information to auditors; and
- c) maintained a fictitious line item in daily Client Money reconciliations in order to hide the increasing Client Money shortfall.

5.16. In these circumstances, the Authority considers that Mr Thind has acted dishonestly. Because he lacks honesty, Mr Thind is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

6. SANCTION

Financial Penalty

- 6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. The detailed provisions of DEPP are set out at Annex A. In determining the appropriate financial penalty, the Authority has had regard to Chapter 6 of DEPP as it applied during the Relevant Period. The Authority applies a five-step framework to determine the appropriate level of penalty.
- 6.2. The total financial penalty which the Authority imposes on Mr Thind is £105,000, reduced from £150,000 before Stage 1 settlement discount. A full calculation and explanation of how DEPP has been applied is set out at Annex A. In summary this penalty is calculated as follows:
- (1) For Mr Thind's abusive behaviour during the Relevant Period, the Authority imposes a financial penalty of £105,000, calculated as follows:
- (a) At Step 1, there is no amount subject to disgorgement.
 - (b) At Step 2, a seriousness level of 5 has been applied resulting in a figure of £100,000 (the Step 2 figure being the greater of 40% of Mr Thind's relevant income of £135,500 or £100,000).
 - (c) At Step 3, a 25% discount has been applied to the Step 2 figure in mitigation due to Mr Thind's co-operation with the Authority's investigation, giving a Step 3 figure of £75,000.
 - (d) At Step 4, the Authority has doubled the penalty to achieve credible deterrence, giving a Step 4 figure of £150,000.
 - (e) At Step 5, the Authority has applied a Stage 1 settlement discount of 30%, giving a Step 5 figure of £105,000 (rounded down to the nearest £100).

Prohibition

- 6.3. The Authority has had regard to the guidance in Chapter 9 of EG in considering whether to impose a prohibition order on Mr Thind. The Authority has the power to prohibit individuals under section 56 of the Act.
- 6.4. The Authority considers that, due to his dishonesty, that he has engaged in deliberate market abuse and the circumstances surrounding his treatment of Client Money, Mr Thind is not a fit and proper person to perform any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm, and that a prohibition order should be imposed on him under section 56 of the Act.

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 in full by Mr Thind to the Authority as follows: £70,000 by no later than, 14 days from the date of the Final Notice, £17,500 six months after the date of this Final Notice and a further £17,500 12 months after the date of this Final Notice.

If the financial penalty is not paid

- 7.4. If all or any of the financial penalty is outstanding after any of the due dates for payment, the Authority may recover the entire amount of the financial penalty not previously paid as a debt owed by Mr Thind 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 Joanna Simon or Kathryn Davies at the Authority (direct line: 020 7066 7418 or 020 7066 4956, email joanna.simon@fca.org.uk or kathryn.davies@fca.org.uk).

Mario Theodosiou
Project Sponsor
Financial Conduct Authority, Enforcement and Market Oversight Division

Annex A: Calculation of financial penalty

- 1.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of any breach 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 who have committed market abuse.

Step 1: Disgorgement

- 1.2. 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. Mr Thind did not derive a direct financial benefit from the market abuse. The Step 1 figure therefore is nil.

Step 2: The Seriousness of the Breach

- 1.3. The market abuse was undertaken by Mr Thind in the course of his employment. On this basis, DEPP 6.5C.2(2) provides that the Step 2 figure will be the greater of: (a) a figure based on a percentage of Mr Thind's relevant income; (b) 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 (c) where the seriousness level of the abuse is considered to be level 4 or 5, £100,000.
- 1.4. The Authority has not identified any profit made or loss avoided for Mr Thind's own financial benefit from the market abuse. Therefore, the Authority will use the greater of a figure based on a percentage of Mr Thind's relevant income or £100,000 for Step 2.

Relevant Income

- 1.5. Pursuant to DEPP 6.5C.2(4) and (5) because the market abuse took place over a longer period than 12 months Mr Thind's relevant income will be the gross amount of all benefits he received in connection with his employment during the period of the market abuse. Mr Thind's annual compensation package was calculated on a calendar basis. The relevant misconduct took place from 25 June 2010 to 16 March 2012 and relevant income has been calculated for this period.
- 1.6. The total benefit including bonuses Mr Thind received from his employment with WSL during this period was £135,500.
- 1.7. DEPP 6.5C.2(6)(a) provides that in cases where the market abuse was referable to the individual's employment, the Authority will determine the percentage of relevant income which will apply by considering the seriousness of the market abuse and choosing a percentage between 0% and 40%.
- 1.8. DEPP 6.5C.2(8) provides that where the market abuse was referable to the individual's employment the percentage 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 the level. For penalties imposed on individuals for market abuse the following five levels and percentages apply:
 - (a) level 1 – 0%
 - (b) level 2 – 10%
 - (c) level 3 – 20%
 - (d) level 4 – 30%
 - (e) level 5 – 40%
- 1.9. DEPP 6.5C.2(10) provides that the Authority will take into account factors which relate to the following four categories in determining the seriousness of the abuse: (a) factors relating to the impact of the market abuse; (b) factors relating to the nature of the market abuse; (c) factors tending to show whether the market abuse was deliberate; and (d) factors tending to show whether the market abuse was reckless.
- 1.10. 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 deliberate or reckless. DEPP 6.5C.2 (15) lists factors likely to be considered

'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:

- (1) by misrepresenting Trade Payables in WSG's accounts, Mr Thind ultimately misled WSG's investors which had a serious adverse effect on confidence in the markets (DEPP 6.5C.2(15)(b));
- (2) the market abuse was sustained over a period of almost two years (DEPP 6.5C.2(15)(c));
- (3) Mr Thind was in a position of trust as an accountant working closely with the CFO, Mr O'Kelly (DEPP 6.5C.2(15)(d)); and
- (4) Mr Thind acted deliberately in disseminating false information and was reckless as to whether he misled the market (DEPP 6.5C.2(15)(f)).

1.11. The Authority usually expects to assess deliberate market abuse as seriousness level 4 or 5, DEPP 6.5C.2 G(3)(c).

Level of seriousness

1.12. The Authority considers the seriousness of Mr Thind's market abuse to be level 5. The step 2 figure is the higher of 40% of Mr Thind's relevant income of £135,500, a sum of £54,200; and £100,000.

1.13. The figure at Step 2 is therefore £100,000.

Step 3: Mitigating and Aggravating factors

1.14. DEPP 6.5C.3 provides that the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2 to take into account factors which aggravate or mitigate the market abuse.

1.15. The Authority does not consider there to be any aggravating factors to Mr Thind's market abuse. However the Authority considers the co-operation given by Mr Thind during its investigation is a factor that mitigates the abuse.

1.16. At an early stage of the Authority's investigation Mr Thind provided a prompt and detailed account of his, and others', actions at WSL and WSG. He also co-operated significantly with the administrators of WSL, particularly in respect of Client Money which, in turn, assisted the Authority's investigation. DEPP 6.5C.3

G(2)(b) provides that the Authority will consider the degree of cooperation the individual showed during the course of the investigation of the market abuse by the Authority or any other regulatory authority allowed to share information with the Authority.

- 1.17. Accordingly the Authority considers that a 25% discount for mitigation should be applied. The Step 3 figure, after a 25% discount is applied to the Step 2 figure, is £75,000.

Step 4: Adjustment for deterrence

- 1.18. 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.
- 1.19. The Authority considers that the Step 3 figure of £75,000 is too small in relation to the breach to meet its objective of credible deterrence, taking into account the importance of the provision of accurate financial statements by listed companies to maintaining the integrity of the market. Accordingly the Authority has applied a deterrence multiplier of 2 at this stage.
- 1.20. The Step 4 figure is therefore £150,000.

Step 5: Settlement Discount

- 1.21. Pursuant to DEPP 6.5C.5G, if the Authority and an 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.
- 1.22. The Authority and Mr Thind reached an agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.
- 1.23. The figure at Step 5 is therefore **£105,000**.

Conclusion

- 1.24. The Authority therefore imposes a financial penalty of **£105,000** on Mr Thind.

Annex B: Relevant Statutory and Regulatory Provisions

1. RELEVANT STATUTORY PROVISIONS

The Authority has the power under section 56(1) of the Act to prohibit an individual from performing a specified function, any function falling within a specified description or any function.

Under section 56(1) of the Act the Authority may prohibit that individual if the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.

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.

Section 123(2) sets out certain circumstances in which the Authority may not impose a penalty on a person:

"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)]."

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)."

The behaviour relevant to this case is set out in subsection 118(7) which states that:

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

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..."

2. RELEVANT HANDBOOK PROVISIONS

Code of Market Conduct

The Authority has issued the Code of Market Conduct ("MAR") pursuant to section 119 of the Act.⁴

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 March 2012.

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.

MAR 1.8.3 G Descriptions of behaviour that amount to market abuse (dissemination)

The following behaviours are, in the opinion of the Authority, market abuse (dissemination):

(1) knowingly or recklessly spreading false or misleading information about a qualifying investment through the media, including in particular through an RIS or similar information channel;

⁴ All references to MAR in this Annex refer to the version of MAR in force at the time of the misconduct.

(2) undertaking a course of conduct in order to give a false or misleading impression about a qualifying investment.

MAR 1.8.4 E Factors to be taken into account in determining whether or not behaviour amounts to market abuse (dissemination)

In the opinion of the Authority, if a normal and reasonable person would know or should have known in all the circumstances that the information was false or misleading, that indicates that the person disseminating the information knew or could reasonably be expected to have known that it was false or misleading.

3. DECISION PROCEDURES AND PENALTIES MANUAL

In determining the level of financial penalty to be paid for abusive behaviour occurring after 6 March 2010 the Authority has had regard to the provisions of DEPP, particularly DEPP 6.3, DEPP 6.5C, DEPP 6.5D and DEPP 6.7.

4. ENFORCEMENT GUIDE ("EG")

Section 7 of EG provides guidance regarding financial penalties and public censures and can be accessed at this link:

<https://www.handbook.fca.org.uk/handbook/EG/7/1.html>

Section 9 of EG provides guidance regarding prohibition orders and can be accessed here:

<https://www.handbook.fca.org.uk/handbook/EG/9/?view=chapter>

5. FIT AND PROPER TEST FOR APPROVED PERSONS ("FIT")

Paragraph 1.3.1 G of FIT states:

The Authority will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function, as more particularly described in FIT 2. FIT 1.3.1B G states that in the Authority's view the most important considerations will be the person's:

- (1) honesty, integrity and reputation;
- (2) competence and capability; and
- (3) financial soundness.

FIT 1.3.3 G states:

The criteria listed in FIT 2.1 to FIT 2.3 are guidance and will be applied in general terms when the Authority is determining a person's fitness and propriety. It would be impossible to produce a definitive list of all the matters which would be relevant to a particular determination. A relevant authorised person assessing the fitness and propriety of staff being assessed under FIT should be guided by substantially the same criteria in FIT 2.1 to FIT 2.3 (to the extent applicable to the firm) recognising that this is not intended to be a definitive list of matters to be considered.

FIT 1.3.4 states:

If a matter comes to the Authority's attention which suggests that the person might not be fit and proper, the Authority will take into account how relevant and how important it is. In this same way, if a matter comes to the attention of a relevant authorised person which suggests that any staff being assessed under FIT might not be fit and proper, the firm should take into account how relevant and how important that matter is.

The relevant criteria in this case are honesty, integrity and reputation.

In assessing the fitness and propriety of an approved person under the criterion of honesty, integrity and reputation, the Authority will have regard to the matters including, but not limited to, those set out in FIT 2.1.3 G.