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## FINAL NOTICE

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**To:** Mark Lockwood

**Individual  
Reference  
Number:** MXL01331

**Date of birth:** 18 January 1981

**Date:** 1 September 2009

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

### 1. ACTION

- 1.1 The FSA gave you a Decision Notice on 23 July 2009 which notified you that the FSA had decided to impose a financial penalty of £20,000 on you, pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act"), because it considers that, on 23 May 2007, you breached Principle 3 of the FSA's Statements of Principle for Approved Persons by failing to observe proper standards of market conduct.

- 1.2 You confirmed on 24 August 2009 that you will not be referring the matter to the Financial Services and Markets Tribunal.

## **2. REASONS FOR THE ACTION**

### **Summary of the conduct in issue**

- 2.1 On 23 May 2007 ("the relevant date"), you were approved to perform the Investment Adviser controlled function at a retail stockbroking firm. This role permitted you to advise and execute orders on behalf of customers in relation to the sale and purchase of securities. You were required to report any suspicious transactions, including transactions which may be based on inside information to the Compliance Department to facilitate the retail stockbroking firm's filing of Suspicious Transaction Reports ("STR") to the FSA.
- 2.2 On the relevant date, you breached Principle 3 of the FSA's Statements of Principle and Code of Practice for Approved Persons ("APER") in that you failed to observe proper standards of market conduct; specifically, you:
- 2.2.1 failed to identify that a transaction was being conducted on the basis of inside information, despite being in receipt of clear warning signals; and, as a consequence;
  - 2.2.2 failed to prevent the trade or alert the retail stockbroking firm to the possibility that the trade was being conducted on the basis of inside information; and
  - 2.2.3 sought to limit the extent to which the customer explained the basis for his trade.
- 2.3 The impact of your failings was that the retail stockbroking firm was used to facilitate a transaction made on the basis of inside information and was prevented from considering whether to report the trade to the FSA through a STR.
- 2.4 The FSA regards your misconduct as particularly serious in view of the following factors:
- 2.4.1 At the relevant date, you were in a position of responsibility at the retail stockbroking firm, managing a trading desk responsible for the conduct of 5 other brokers including ensuring that they appropriately reported suspicious trades;
  - 2.4.2 you failed to pay proper regard to clear alerting factors that suggested there was a significant risk that a trade was being made on the basis of inside information despite having generated an insiders' log in relation to the same company earlier the same day; and
  - 2.4.3 you sought to limit the extent to which the customer explained the basis for the trade in order to avoid your obligation to report the trade to Compliance.

- 2.5 In mitigation, the FSA notes that you had previously reported suspicious trades.

## **Relevant Statutory and Regulatory Provisions, Rules and Guidance**

### **Relevant law and guidance**

- 2.6 The FSA's statutory objectives, as set out in section 2(2) of the Act, include maintaining confidence in the financial system and the reduction of financial crime.

- 2.7 *Section 66 of the Act provides that:*

*"(1) The Authority may take action against a person under this section if –*

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

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

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

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

*...*

*(3) If the Authority is entitled to take action under this section against a person, it may –*

*(b) impose a penalty on him of such amount as it considers appropriate"*

- 2.8 The Statements of Principle issued under section 64 of the Act are set out in APER, which is in the High Level Standards part of the FSA's Handbook.

- 2.9 Statement of Principle 3 as set out in APER 2.1.2 states:

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

### **The Suspicious Transaction Reporting regime**

- 2.10 Firms are required to report transactions where there are reasonable grounds for suspecting that the transaction involves market abuse. Suspicious Transaction Reports are one of the FSA's primary intelligence assets which allow the FSA to benefit from market participants' proximity to the market and assist the FSA in identifying possible market abuse.

- 2.11 The requirement to report suspicious trades is set out in SUP15.10.2 R:

*"A firm which arranges or executes a transaction with or for a client in a qualifying investment admitted to trading on a prescribed market and which has reasonable grounds to suspect that the transaction might constitute market abuse must notify the FSA without delay".*

## **Facts and Matters Relied on**

### **Background**

- 2.12 You are 29 years old and were employed at a retail stockbroking firm between July 2001 and February 2008. At the relevant date, you were a trading desk manager. You were responsible for a team of five brokers who handled client share dealings. You are approved by the FSA and held controlled function CF21 Investment Advisor from February 2002 until November 2007 when it was replaced by controlled function CF30 Customer which you continue to hold. Since 21 July 2008 you have also held controlled functions CF1 Director, CF10 Compliance Oversight and CF11 Money Laundering Reporting.
- 2.13 The retail stockbroking firm is a stock broking firm which provides share dealing services for both retail clients and companies.
- 2.14 Amerisur Resources Plc (“Amerisur”) is an oil and gas exploration company with projects in South America. The Company's shares are quoted on the Alternative Investment Market ("AIM") operated by the London Stock Exchange. AIM specialises in providing primary and secondary trading services for smaller capitalised and/or emerging companies.

### **Client Y**

- 2.15 This Notice concerns your conduct in relation to your dealings with Client Y in the shares of Amerisur on 23 May 2007 ahead of an announcement by Amerisur of a placing on the following day.
- 2.16 Client Y has been subject to separate FSA Enforcement action in relation to his dealings with Amerisur. Specifically, Client Y was found by the FSA to have committed market abuse by dealing on the basis of inside information in relation to Amerisur shares.

### **Relevant context to the events of 23 May 2007**

- 2.17 At the relevant date, the majority of your clients were advisory (that is to say they relied on you for advice in relation to the acquisition and disposal of shares). You had only three clients who traded without advice (“execution only clients”); two of whom were Client Y and Client X.
- 2.18 You were aware that Client Y and Client X knew each other well. It would be common for one to telephone you and place an order and then for the other to do so shortly afterwards. Both dealt in Amerisur shares and your knowledge of Amerisur stock was primarily limited to dealing on behalf of these two clients.
- 2.19 On the morning of the relevant date, a broker acting on behalf of Amerisur contacted a number of existing Amerisur shareholders, including Client Y and Client X, to invite them to participate in a placing of 250 million new Amerisur shares (“the placing”). The

placing was due to be announced to the market on 24 May 2007. The effect of the placing would be to increase the number of Amerisur shares in issue by 45% at a discount of 30% to the current trading price which was 9 pence during the morning of the relevant date. The new shares had a subscription value of 6 pence against a closing price of 8.5 pence on 23 May 2007.

***Conversation with Client X at 9.31am***

2.20 You first became aware of the imminent placing of new Amerisur shares as a result of a telephone call from Client X at 9.31am. During the course of the telephone conversation, Client X explained that he had received a telephone call from Amerisur's broker who had told him that:

2.20.1 Amerisur were undertaking a placing;

2.20.2 The placing would be announced on 24 May 2008; and

2.20.3 Amerisur's broker had made Client X an insider in the course of providing him with the information set out above.

2.21 You reported the details of this conversation to others in the retail stockbroking firm. As a result, an insider's log was generated recording the fact that Amerisur was undertaking a placing. You subsequently signed and dated this document later that day to signify that you had been made party to non-public information regarding Amerisur's share placing.

***Telephone call with Client Y at 9.53am***

2.22 Twenty minutes after your conversation with Client X, you received a telephone call from Client Y. Client Y asked you to source a price for the sale of 100,000 Amerisur shares.

***Telephone call with Client Y at 10.19am***

2.23 At 10.19am you received a further telephone call from Client Y, who asked you to source a price for the sale of a further 350,000 Amerisur shares. You undertook to source a price and to contact Client Y thereafter.

***Telephone call with Client Y at 10.39am***

2.24 You contacted Client Y and provided him with a price for the proposed sale of his Amerisur shares. Client Y immediately explained that he was in a quandary and suggested that the cause of his quandary was the fact that he had received a call similar to the one received by Client X (i.e. the telephone call from Amerisur's broker to Client X reported to you at 9.31am) "*I'm in a bit of a quandary now though ..because I've had the same phone call that probably you, you've dealt with with [Client X]*". In response, you told Client Y that it was "*best to say nothing on that one*".

2.25 Client Y went on to explain that he intended to sell his Amerisur shares on the basis that he would then purchase them back at a later date. You sought to clarify if Client Y was referring to being offered shares in a placing. Client Y confirmed that he was. You

explained that he could take up shares in the placing, saying: *“that’s up to you, yes. That’s separate”*.

- 2.26 Client Y then asked you for five minutes to think about the transaction because he did not want *“want to break any rules”*. You told him that *“you’re not breaking any rules by that. That’s fine basically”*.

***Telephone call with Client Y at 10.47am***

- 2.27 Client Y contacted you to confirm that he wanted to sell 549,000 Amerisur shares at 8.5 pence. You asked Client Y how many shares he wanted to subscribe for in the placing, cautioning him that he may not get all the shares that he subscribed for. Initially Client Y said 650,000 shares but then increased his order to 750,000 shares. Client Y asked you whether or not the share price would go below 6 pence as a result of the placing but did not receive an answer.
- 2.28 You stated that Client Y would have to pay for any shares that he took up in the placing before they were made available to the market. Client Y explained that he intended to use the capital raised by selling his Amerisur shares to fund his participation in the placing.

***Participation in the Placing***

- 2.29 At 10.52am, you contacted Amerisur’s broker to arrange both Client Y and Client X’s participation in the placing. At 10.57am the retail stockbroking firm sold 549,000 shares for Client Y in Amerisur at 8.625 pence. At 11.08am, you sent an e-mail to Amerisur’s broker confirming that both Client Y and Client X wanted to participate in the placing by purchasing 750,000 and one million shares respectively.
- 2.30 At 3.21pm, you subsequently received confirmation that Client Y had been allocated 750,000 shares.

***Conversation with Client X at 4.23pm***

- 2.31 Later that day, at 4.23pm, you spoke to Client X. During the course of this conversation, Client X asked you to predict how the market would react to the placing when it is announced. You replied *“I would have thought they’ll be down on the news to be honest”*.

***Telephone conversation with Client Y at 4.42pm***

- 2.32 At 4.42pm, Client Y returned your call and indicated that he was aware of your conversation with Client X at 4.23pm. During the call, Client Y asked you whether the Amerisur share price was likely to *“drop a bit”* on 24 May. You explained that *“when you’ve got a placing on a discount like that you nearly always get a dip...I’d expect it to go down, maybe not to 6p but close to it”*.
- 2.33 You stated that you thought that the price of Amerisur shares might go to seven and a half pence, thereby recognising the fact the placing was likely to have a significant effect on the share price. Client Y speculated that there might be an increase in Amerisur’s

share price as a result of rumours of a placing, but was told by you that “*It would have gone the other way*” indicating that you thought the information was not generally available.

### **3 REPRESENTATIONS**

- 3.1 You acknowledged that, as an approved person you bore a greater responsibility for your actions than a non approved person. You accepted that your approved status meant you had significant duties and responsibilities to the FSA and you realised the importance of complying with these. However, you also accepted that, with hindsight, you made a number of mistakes in your capacity as an approved person in your dealings with your clients and the retail stock broking firm’s Compliance Department on 23 May 2007. If presented with the same situation again, you represented that you had learned your lesson and would behave differently.
- 3.2 While not seeking to minimise the seriousness of the issues, you argued that you had not sought to act deliberately or recklessly to commit market abuse. To the extent that the FSA considers you are culpable, you argued, at most, you should be regarded as having made a mistake. You stated that at no time did you consider that your actions merited an action for market abuse of this type.
- 3.3 Furthermore, you represented that the events under consideration in this matter are not of a type which would have a serious impact on the market. Market abuse has the possibility of undermining the market whereas the events in this matter do not constitute or have the potential to constitute large scale market abuse and your personal involvement put you in the middle range if not the lower end of the scale of culpability.
- 3.4 As regards the telephone conversations and other events on 23 May 2007, you said that there was nothing to mark out your dealings with Client X and Client Y as in any way memorable. The calls were routine and the conversations did not at the time alert you to any impropriety.
- 3.5 You represented that you did not know anything was wrong until you were contacted by Client Y many months after the events in issue and that was only after Client Y had been contacted by the FSA. At the relevant time you had not thought there was any impropriety and his dealings did not appear to be suspicious. In your mind there was therefore no need to report them. However, you did acknowledge that, with hindsight, you should have spoken to the Compliance Department earlier. You informed the FSA that you had in the past regularly reported suspicious transactions to the FSA and that you were therefore alert to the necessity to do so.
- 3.6 You made extensive representations on your financial circumstances, informing the FSA of your personal as well as professional financial situation, in particular the impact a significant financial penalty would have on you given that you had recently set up in business for yourself in the financial services sector. You represented that the demands of a new business were such that you would suffer severe financial hardship if required to pay the sum proposed in the Warning Notice.

## 4. CONCLUSIONS

### Analysis of Breaches

#### *Failure to pay due regard to warning signals*

- 4.1 The FSA expects market participants to be alert to indications that customers are seeking to use regulated firms to facilitate financial crime, including insider dealing. Where there is a clear risk that a trade is in breach of relevant legal or regulatory requirements a market participant should refuse to execute the trade. Where it is not apparent to a broker whether or not the trade is in breach or the suspicion only becomes apparent once a trade has been executed, the trader should report the trade internally in order to facilitate the appropriate filing of a STR.
- 4.2 The FSA considers that Client Y provided you with sufficient information to enable you to understand that the proposed transaction was suspicious. In particular, that the basis on which Client Y intended to sell his existing Amerisur shareholding on 23 May was his knowledge of the placing due to be announced on 24 May 2007. You knew that information relating to the placing was inside information and therefore should have known or suspected that the basis for Client Y's trade was inside information.
- 4.3 In particular, the FSA considers that you failed to pay proper regard to the following clear alerting factors that Client Y's trade was based on inside information:
- 4.3.1 At 10.39am, Client Y made it clear to you that he had had a comparable phone call to that received by Client X. You had a telephone call with Client X at 9.31am during which Client X had made it clear to you that he had been telephoned by Amerisur's broker and been given inside information regarding the placing. As a consequence of that call you generated and signed an insiders' log, demonstrating your understanding that information relating to the placing was inside information. Despite this you failed to consider whether this meant that Client Y had also been made an insider.
- 4.3.2 During his conversations with you, Client Y specifically referred to the Amerisur placing, the placing price and his intention to sell his existing shares and use the proceeds to purchase an equivalent amount in the placing. You failed to recognise that Client Y's intention to sell Amerisur shares to finance their re-purchase in the placing was a clear indicator that Client Y was in possession of and was trading on the basis of inside information.
- 4.4 You have said, and the FSA accepts, that you did not recognise these clear warning signs. You also admit that you were aware of the STR regime. However you failed to prevent Client Y's trade or alert the retail stockbroking firm's Compliance Department. This conduct represents a significant failure on your part to observe proper standards of market conduct.



- 4.5 The FSA considers that your failure to have regard to these clear alerting factors is particularly serious in light of the following circumstances:
- 4.5.1 Client Y had clearly signalled to you that he was in possession of inside information;
  - 4.5.2 You sought to limit the extent of client Y's explanation of the basis for the trade; and
  - 4.5.3 You understood that the information as to the placing was inside information.

***Seeking to prevent a customer setting out the basis for the trade***

- 4.6 The FSA does not expect brokers to challenge or probe the details of a client's basis for trading in every case. In the event that a client begins to set out their basis for trading, however, the FSA does not consider it appropriate for brokers to seek to prevent them from doing so in order to avoid the obligation to report the trade via a STR.
- 4.7 You sought to limit the extent to which Client Y shared the basis for the trade with you by telling him "*it was best to say nothing on that one*". By doing so, you failed to observe proper standards of market conduct.
- 4.8 Your explanation for your conduct is that you had grown accustomed to clients discussing the basis for their trades with you and that this had, on occasion, required you to complete STRs as you had been concerned that the basis may be inside information. You explained that these concerns had often proved to be unfounded and that this had led you to seek to avoid the need to report a trade by explaining to customers that you did not want them to disclose their basis for their trade.
- 4.9 Your explanation demonstrates a fundamental misunderstanding of the responsibilities of those within financial services firms. The FSA relies on firms making appropriate STRs to help it detect potential market abuse. In turn, firms rely on staff such as you to bring suspicious transactions to their attention. Your actions increased the risk that market abuse, in this case a transaction based on inside information, would proceed and remain undetected. The trading in Amerisur on the relevant day came to light as a result of a STR filed by another broker.
- 4.10 The FSA notes your admissions of the mistakes made with regard to the abusive behaviour albeit that the FSA finds the behaviour demonstrated acts of omission rather than behaviour calculated to be deliberate or reckless.
- 4.11 The FSA is satisfied that your representations confirm that you will not repeat the same mistakes in your future dealings in your new business and that you do not present a risk to the consumer by your continued practice in financial services.
- 4.12 Nevertheless, the FSA finds that your behaviour did amount to a significant failure on your part to observe proper standards of market conduct and was at the time a risk to consumers and the wider market. In particular, you failed to report or complete a STR following the call at 10.39am on 23 May 2007 and you did not take any active steps to prevent market abuse being committed. One of the burdens on an approved person is the

requirement to take positive steps to prevent a breach of the Act and regulatory provisions. It is unacceptable and insufficient to simply ignore the situation or fail to take steps to understand the full picture. The resources of the Compliance Department were available to assist you in this regard but you failed to bring the issues to their attention.

## **Analysis of the Sanction**

### ***Determining the level of the financial penalty***

- 4.13 Guidance on the imposition of penalties is provided in Chapter 6 of the Decision Procedure and Penalties Manual (“DEPP”). DEPP 6.2.1G states that the FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty, and sets out a non-exhaustive list of factors that may be relevant for this purpose.
- 4.14 In determining the appropriate level of financial penalty the FSA has also had regard to Chapter 13 of the Enforcement Manual (“ENF”), the part of the FSA’s Handbook setting out the FSA’s policy on the imposition of financial penalties in force until 27 August 2007 and therefore on the relevant date.
- 4.15 The following factors are relevant to this case:

#### ***Deterrence***

- 4.16 The principal purpose of the imposition of this penalty is to promote high standards of regulatory conduct by deterring approved persons from acting in this way.
- 4.17 In determining the appropriate level of penalty, the FSA has had regard to the need to ensure those who are approved persons observe proper standards of market conduct.

#### ***The nature, seriousness and impact of the breach***

- 4.18 In deciding to take the action, the FSA has considered the seriousness of the misconduct, the nature of the requirements breached and the number and duration of the breaches.
- 4.19 The FSA considers that your conduct was not deliberate or reckless. However, you should have had regard to the clear warning signs that the trade was being conducted on the basis of inside information.
- 4.20 The FSA has had regard to the fact that your conduct did not result in any personal profit for you.

#### ***Whether the person on whom the penalty is to be imposed is an individual***

- 4.21 The FSA recognises that the financial penalty imposed on you is likely to have a significant impact on you as an individual.

#### ***The size, financial resources and other circumstances of the person on whom the penalty is to be imposed***

- 4.22 The FSA has taken into account your financial resources and your representations that you would suffer severe financial hardship if a penalty of the amount proposed in the Warning Notice was imposed. The FSA is not satisfied that you provided adequate verifiable evidence of severe financial hardship and accordingly no reduction in the size of the penalty has been made on that basis.

*Conduct following the breach*

- 4.23 You co-operated with the FSA throughout this investigation.

*Disciplinary record and compliance history*

- 4.24 The FSA has not previously taken any disciplinary action against you.
- 4.25 The penalty is intended to have a deterrent effect on those who may consider acting in this way. In determining the financial penalty the FSA has considered the need to ensure you and others observe proper standards of market conduct. Having regard to the seriousness of the breaches, the FSA has decided to impose a financial penalty of £20,000 on you.
- 4.26 In reaching this decision, the FSA has had regard to penalties imposed in other comparable cases and for this reason have reduced the penalty proposed in the Warning Notice.

**5. DECISION MAKER**

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

**6. IMPORTANT**

- 6.1 This Final Notice is given to you in accordance with Section 390 of the Act.

**Manner and time of payment**

- 6.2 The financial penalty must be paid in full by you to the FSA by no later than 15 September 2009, being 14 days from the date of the Final Notice.

**If the financial penalty is not paid**

- 6.3 If all or any of the financial penalty is outstanding after 15 September 2009, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

**Publicity**

- 6.4 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.

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

**Contacts**

- 6.8 For more information concerning this matter generally, you should contact Mary O'Connor of the Enforcement Division at the FSA (direct line: 020 7066 7956).

**Tracey McDermott**  
**Head of Department**  
**FSA Enforcement Division**