

---

**FINAL NOTICE**

---

To: NMC Health Plc (in Administration)  
Address: c/o Alvarez & Marsal Europe LLP  
Park House  
16-18 Finsbury Circus  
London, EC2M 7EB  
Date: 30 August 2023

**1. ACTION**

- 1.1. For the reasons given in this Final Notice, the Authority hereby publish a public censure pursuant to section 123(3) of the Act in respect of NMC Health Plc ("NMC" or the "Company") for committing market abuse (dissemination).
- 1.2. The Authority considers that NMC's market abuse merits a financial penalty. Had NMC not been placed into administration in April 2020, it being presently anticipated that no funds will be available after creditor claims have been met, the Authority would have imposed on it a substantial financial penalty.
- 1.3. NMC agreed to resolve this matter.

**2. SUMMARY OF REASONS**

- 2.1. NMC is one of the leading private healthcare operators in the Arab States of the Gulf. On 2 April 2012, its shares were admitted to trading on the Premium Segment of the London Stock Exchange and in 2017 entered the FTSE 100. In its 2018 Annual Accounts it assured the market that:

"it maintained proper accounting records, sufficient to show and explain its transactions and disclose with reasonable accuracy, at any time, its financial position."

- 2.2. In practice, between at least 7 March 2019 (the commencement date for the purposes of this notice) and 27 February 2020 (the date the Company's shares were suspended from trading) ("the Relevant Period") NMC had been materially under-reporting to the market its levels of debt.
- 2.3. On 7 March 2019, NMC published its financial report for the year ended 31 December 2018 (the "March Statement") which stated that the Group's total debt was USD 1.99 billion. Subsequent investigations later estimated that its true level of debt should have been stated as USD 5.91 billion, of which approximately USD 4 billion was guaranteed by NMC Health Plc.
- 2.4. On 20 May 2019, NMC published its 2018 Annual Report which affirmed its debt position as set out in its March Statement.
- 2.5. On 22 August 2019, NMC published its interim report for the six months ended 30 June 2019 (the "August Statement") which stated that the Group's total debt was USD 2.1 billion, when it is estimated that it should have been stated as USD 6.2 billion.

*Allegations, investigation and debt revelations*

- 2.6. On 17 December 2019, Muddy Waters Capital LLC ("Muddy Waters") published a report which set out a number of detailed allegations impugning the accuracy of NMC's financial reporting to the market ("the Allegations").
- 2.7. In announcements made on 18 and 19 December 2019, NMC denied the veracity of the Allegations but announced that it would be commencing an independent third-party review to investigate them ("the Review").
- 2.8. On 26 February 2020, NMC announced that the Review had identified potential discrepancies and inconsistencies in the Company's bank statements and ledger entries. The following day, the Authority agreed to NMC's request for a temporary suspension of its shares to ensure the smooth operation of the market.
- 2.9. On 10 March 2020, the Company announced that the Review had identified over USD 2.7 billion in debt facilities that had previously not been disclosed to or approved by the Board. On 24 March 2020, NMC announced that it currently estimated its debt position to be around USD 6.6 billion.

*The appointment of administrators and cancellation of listing*

- 2.10. On 6 April 2020, NMC announced that one of its principal creditors had filed an application with the High Court of Justice for the appointment of administrators. That application was successful and Joint Administrators ("the Administrators") were appointed on 9 April 2020.

- 2.11. On 27 April 2020, NMC requested that the listing of its ordinary shares be cancelled. They were delisted the next day.

*Accounting malpractice*

- 2.12. NMC had been operating with dual sets of partial accounting records throughout the Relevant Period. These records included the maintenance of internal spreadsheets, where borrowing recorded as “Non-Showing” was not included in the figures reported to the market, whereas borrowing recorded as “Showing” was reported.

*Unreported supply chain finance facilities*

- 2.13. Supply chain finance (“SCF”) facilities had been set up and heavily drawn upon by certain suppliers which were related parties to NMC Healthcare LLC, for which NMC Health Plc was the ultimate guarantor. These amounted to Related Party transactions which should have been included in the figures reported to the market but were not.

*Breach of Article 15 of EU MAR*

- 2.14. The Authority has found that NMC committed market abuse by publishing false or misleading information about its debt position within its March and August Statements and 2018 Annual Report and by failing to declare Related Party transactions therein, and by the false or misleading statements in its 18 and 19 December Announcements (“the Disseminated Information”), when it knew, or ought to have known, that the information was false or misleading, in breach of Article 15 of EU MAR.
- 2.15. In making this finding, the Authority does not specifically find that each and every member of NMC’s board knew, or ought to have known, that the Disseminated Information was false or misleading. However, the Authority is satisfied that there was knowledge within NMC at a sufficiently senior level that the Disseminated Information was false or misleading for that knowledge to constitute the knowledge of NMC, within the specific context of, and for the purposes of, market abuse.

*Sanction*

- 2.16. The Authority considers that NMC’s conduct was serious because such market abuse undermines investor confidence in the integrity of the financial markets.
- 2.17. Given that NMC was placed into administration in April 2020, it being presently anticipated that no funds will be available after creditor claims have been met, the Authority is satisfied that it is preferable for NMC to meet these claims, rather

than to impose a financial penalty which would reduce the funds available to creditors.

- 2.18. The Authority therefore proposes to publish the censure set out in this notice pursuant to section 123(3) of the Act.

### **3. DEFINITIONS**

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

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

“the Administrators” means the Joint Administrators appointed in respect of the Company by order of the High Court of Justice on 9 April 2020;

“the Allegations” means the report published by Muddy Waters on 17 December 2019 which set out a number of detailed allegations impugning the accuracy of NMC’s financial reporting to the market;

“the 2018 Annual Report” means NMC’s Annual Report and Accounts made up to 31 December 2018, authorised for issue by the Board on 6 March 2019 and published on 20 May 2019;

“the August Statement” means NMC’s interim financial report for the six months ended 30 June 2019 announced by NMC on 22 August 2019;

“the Authority” means the Financial Conduct Authority;

“the 18 December Announcement” means NMC’s announcement on 18 December 2019 purporting to rebut the Allegations;

“the 19 December Announcement” means NMC’s announcement on 19 December 2019 purporting to rebut the Allegations;

“DEPP” means the Decision Procedure and Penalties manual, part of the Authority’s Handbook of Rules and Guidance;

“the Disseminated Information” means the false or misleading information as to the Company’s debt position within its March and August Statements and 2018 Annual Report and its failure to declare Related Party transactions therein, and the false or misleading statements in its 18 and 19 December Announcements;

“EU MAR” means Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse;

“Handbook” means the Authority’s Handbook of Rules and Guidance;

“the March Statement” means NMC’s financial report for the year ended 31 December 2018 announced by NMC on 7 March 2019;

“Muddy Waters” means Muddy Waters Capital LLC;

“NMC”, “the Company” means NMC Health Plc (In Administration)

“the Group” means NMC Healthcare Ltd (In Administration, Previously NMC Healthcare LLC) and the operating entities that constituted the NMC group in the Relevant Period;

“NMC shares” means NMC’s shares traded on the Premium Segment of the London Stock Exchange;

“RDC” means the Regulatory Decisions Committee of the Authority;

“Related Party” means a party related to the Company, including substantial shareholders and senior management of the group companies, their associates and entities controlled, jointly controlled or significantly influenced by such parties, or where such parties are members of the key management personnel of the entities, without reference to every, or any particular, member of such a group;

“the Relevant Period” means the period from 7 March 2019 to 26 February 2020;

“RNS” means the Regulatory News Service operated by the London Stock Exchange;

“the Spreadsheets” means NMC’s internal accounts categorising borrowings into Showing and Non-Showing, only those classified as Showing were disclosed to the market;

“Sukuk” refers to financial products whose terms and structures comply with sharia law, with the intention of creating returns similar to those of conventional fixed-income instruments like bonds;

“SCF” means supply chain finance, an arrangement whereby a borrower can obtain finance to bridge the gap between the time when it pays its supplier and the time when it receives payment from its customer. A borrower can receive an earlier payment of its invoice at a discount from the lender which is usually a financial institution. The lender then obtains a full payment of the invoice plus financial costs from the borrower later when the borrower receives payment from its customers;

“the Treasury Department” means NMC’s Treasury, Banking & Trade Operations Department, and

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

#### **4. FACTS AND MATTERS**

## **Background**

### NMC

- 4.1. NMC is a company which was incorporated in England and Wales on 20 July 2011. On 2 April 2012 its shares were admitted to trading on the Premium Segment of the London Stock Exchange and entered the FTSE 100 in 2017.
- 4.2. NMC is the holding company of the largest private healthcare operator in the United Arab Emirates with international services across 19 countries. In its 2018 Annual Report it reported revenues of USD 2.1 billion.

### NMC's financial statements announced during the Relevant Period

- 4.3. On 7 March 2019, NMC published its financial report for the year ended 31 December 2018 (the "March 2019 Statement") which stated that the Group's total debt was USD 1.99 billion. In fact, its debt was USD 5.91 billion.
- 4.4. On 20 May 2019, NMC published its 2018 Annual Report which affirmed its debt position as set out in its March Statement.
- 4.5. On 22 August 2019, NMC published its interim report for the half year ended 30 June 2019 (the "August 2019 Statement") which stated that the Group's total debt was USD 2.1 billion, but by that time it was in fact USD 6.2 billion.

### Allegations made by Muddy Waters against NMC

- 4.6. On 17 December 2019, Muddy Waters published a report which set out its Allegations. These were summarised in the report's opening paragraph:

"We are short NMC Health plc. We have serious doubts about the company's financial statements, including its asset values, cash balance, reported profits, and reported debt levels. At the worst of times, the company has invested in large assets at costs that we find too high to be plausible – including from parties we believe are de facto under common control. This behaviour gives rise to concerns about fraudulent asset values and theft of company assets. At somewhat better times, the company seems to "only" materially mislead, such as by trying to give investors the (false) impression it does not engage in reverse factoring, and by understating (we believe intentionally) lease debt."

### Announcements by NMC leading to its suspension from trading

- 4.7. On 18 December 2019, NMC announced that it noted the publication of the Allegations and the resultant share price reaction. It said that it would review the assertions, insinuations and accusations made in the report, "which appear

principally unfounded, baseless and misleading, containing many errors of fact”, and said that it would respond in detail in due course. It also stated that:

“NMC reaffirms its broader trading and operational guidance for the business for both 2019 and 2020 as disclosed at its recent Capital Markets Day held on 21 October 2019.”

4.8. On 19 December 2019, NMC announced that it had considered the Allegations, and concluded they were false and misleading. Within the announcement the company purported to outline factual inaccuracies and to provide important additional information.

4.9. On 23 December 2019, NMC announced that it would be commencing the Review. It also used this announcement to state that despite having issued a detailed rebuttal of the Allegations, it was “disappointed with the very material and, we believe, unwarranted share price reaction”, adding:

“We are confident that this review, when complete, will be entirely confirmatory of the disclosures provided by the Company to date. We will also be progressing relevant legal and regulatory options following the actions taken by third parties to mislead the market and manipulate the share price.”

“The Company believes that the current share price is not a fair reflection of the value of the Company which has a consistent track record of strong growth and cash generation.”

4.10. On 26 February 2020, NMC announced that the Review was ongoing but that it had updated the Board in relation to certain material findings to date. It said that the Review had identified and was examining certain supply chain financing arrangements that had been entered into by the Company.

4.11. The announcement, alongside announcing some changes to NMC’s personnel, also informed the market that:

“In the course of their work to reconcile NMC’s cash balances and net debt as at 15 December 2019, the Review Advisers have identified potential discrepancies and inconsistencies in the Company’s bank statements and ledger entries. The Committee and the Review Advisers are investigating these matters and seeking to determine the materiality of the discrepancies.”

4.12. On 27 February 2020, the Authority agreed to NMC’s request for a temporary suspension of its shares to ensure the smooth operation of the market.

#### Announcements by NMC after its suspension from trading

- 4.13. On 10 March 2020, NMC announced that its debt position was materially above the last reported number as at 30 June 2019, and was currently estimated to be around USD 5 billion though work on verifying this figure was ongoing. The announcement also informed the market that:
- “In addition to \$2.1bn [USD] Group debt reported at 30 June 2019, the Company has identified over \$2.7bn [USD] in facilities that had previously not been disclosed to or approved by the Board.”
- 4.14. Underlining the precariousness of NMC’s finances, the announcement confirmed that the Company was fully focused on “safeguarding its operational liquidity” and had “successfully completed the payment of its February payroll”.
- 4.15. On 24 March 2020, NMC announced that its debt position was currently estimated to be around USD 6.6 billion, including USD 360 million convertible bond and USD 400 million Sukuk.
- 4.16. It further particularised these debts by saying that, since 10 March 2020, the Company had verified that a further USD 0.3 billion was currently outstanding which related to facilities which were known to the Board as at June 2019; USD 0.8 billion of newly identified facilities undisclosed as at June 2019 and unapproved by the Board; and an additional USD 0.4 billion of facilities were entered into post June 2019 and unidentified as at 10 March 2020.
- 4.17. NMC confirmed that it was continuing to work with its advisers to understand the exact nature and quantum of the undisclosed facilities, including the circumstances in which they were obtained.
- 4.18. On 6 April 2020, NMC announced that one of its principal creditors had filed an application with the High Court of Justice for the appointment of administrators. That application was successful and the Administrators were appointed on 9 April 2020.
- 4.19. On 27 April 2020, NMC requested that the listing of its ordinary shares be cancelled. They were delisted the following day.

#### Assurances in NMC’s 2018 Annual Report

- 4.20. NMC’s 2018 Annual Report provided assurances in relation to its governance, stating that it had strengthened its internal controls and kept its approach to risk under review during a period of sustained growth and integration.



- 4.21. It stated that it had in place a governance and control environment which was both appropriate for the Group and consistent with the standards which would be expected of a FTSE 100 Company traded on the Premium Segment of the London Stock Exchange. It also stated that it took proper steps to ensure that Related Party transactions were reported in the Group's financial statements.
- 4.22. NMC's 2018 Annual Report provided assurances that it maintained proper accounting records, sufficient to show and explain its transactions and disclose with reasonable accuracy, at any time, its financial position.
- 4.23. NMC's 2018 Annual Report also confirmed that, to the best of the Company's knowledge, its financial statements, gave a true and fair view of the assets, liabilities, financial position and profit or loss of the Company and the undertakings included in the consolidation taken as a whole.

#### **Irregularities in NMC's financial affairs**

##### "Showing" and "Non-Showing" accounts

- 4.24. During the Relevant Period, NMC operated with two parallel sets of partial financial records. These financial records included spreadsheets maintained by the Group's Treasury, Banking & Trade Operations Department ("the Treasury Department") that categorised debts into "Showing" and "Non-Showing" in its internal accounts ("the Spreadsheets").
- 4.25. The Non-Showing debts recorded in the Spreadsheets, representing approximately 200% of the reported debts, had been granted by creditors during the years 2015 to 2019 but were not disclosed in any of NMC's financial statements published during the Relevant Period. Only those borrowings classified as Showing had been disclosed to the market. As a result, by 30 June 2019 the Group's level of unreported debt totalled USD 4.1 billion.

##### Supply Chain Financing

- 4.26. Prior to and throughout the Relevant Period, the Group had entered into supply chain finance ("SCF") agreements, as the ultimate guarantor, with financial institutions which in turn provided SCF facilities to its subsidiary NMC Healthcare LLC. NMC Healthcare LLC paid suppliers who were Related Parties using those SCF facilities. NMC did not report these balances at 31 December 2018 or 30 June 2019.
- 4.27. Purported suppliers of NMC Healthcare LLC could thereby be paid earlier than the invoice due dates, utilising the SCF facilities ultimately guaranteed by NMC. NMC bore the financial liabilities until NMC Healthcare LLC fully repaid the invoice

amount with the related finance costs to the financial institutions. Such an arrangement carried clear credit risks and liquidity risks to NMC.

**NMC's dissemination of misleading information**

- 4.28. During the Relevant Period NMC issued a number of announcements regarding its financial position. None of them properly accounted for the Group's true level of debt. Its debts were, however, recorded on the Group's Non-Showing Spreadsheets.

Financial Report published on 7 March 2019

- 4.29. On 7 March 2019, NMC published its financial report for the year ended 31 December 2018 (the "March Statement").
- 4.30. The March Statement recorded that the Group's total debt, as of 31 December 2018, was USD 1.99 billion, whereas it should have been recorded as approximately USD 5.91 billion. The total undisclosed debt was therefore 3.91 billion, of which USD 227 million related to SCF facilities where NMC Healthcare LLC was the obligor and NMC Health Plc the guarantor. A summary of reported debt positions shown in the March Statement is set out in Table A, below, alongside those debt positions which went unreported:

Table A:

<b>Debts in USD'000 (a)</b>	<b>Reported Amount (b)</b>	<b>Identified Amount (c)</b>	<b>Unreported Amount (d)</b>	<b>(d) as % of (b)</b>
Term Loans	1,040,754	3,709,382	2,668,628	256%
Short-term borrowings	168,950	1,414,342	1,245,392	737%
Convertible bond & Sukuk	783,009	783,009	-	0%
<b>Total Debts</b>	<b>1,992,713</b>	<b>5,906,733</b>	<b>3,914,020</b>	<b>196%</b>

- 4.31. Emails dated 31 December 2018, 2 January 2019 and 7 March 2019 circulated within the Treasury Department included the Spreadsheets which categorised Showing and Non-Showing debts due to various lenders as at 31 December 2018. The Spreadsheets demonstrated that NMC were servicing debts and interest repayments for both reported and unreported debts.

- 4.32. On 13 February 2019, the Group provided its statutory auditors with a spreadsheet containing a detailed breakdown of the consolidated financial statements as at 31 December 2018. This contained the reported debts set out in Table A, above, but not the debts categorised as Non-Showing in the Spreadsheets.
- 4.33. Loan documents and details of the unreported Term Loans (see Table A above) aligned with the debts categorised as Non-Showing in the Spreadsheets.
- 4.34. Short-Term borrowings (see Table A) included trust receipts to finance purchases and invoice discounting facilities. The Spreadsheets contained a list of Non-Showing lenders for trust receipts, the total outstanding Non-Showing trust receipts debts amounted to USD 735,949,019, out of total Short-Term borrowings of USD 1,414,341,581.
- 4.35. The debts due to the SCF facilities, as part of the above Short-Term borrowings, were not disclosed in the March Statement. In the Spreadsheets they were recorded as Non-showing debts and amounted to USD 226,969,862 as at 31 December 2018.

2018 Annual Report published on 20 May 2019

- 4.36. On 20 May 2019, NMC published its 2018 Annual Report which affirmed its debt position as set out in its March Statement.

Financial Report published on 22 August 2019

- 4.37. On 22 August 2019, NMC published its interim financial report for the half year ended 30 June 2019 (the "August Statement").
- 4.38. The August Statement recorded that the Group's total debt, as of 30 June 2019 was USD 2.1 billion, whereas it should have been recorded as approximately USD 6.2 billion. The total undisclosed debt was therefore USD 4.1 billion, of which USD 332 million related to SCF facilities where NMC was the ultimate guarantor.
- 4.39. A summary of reported debt positions shown in the August Statement is set out in Table B, below, alongside those debt positions which went unreported:

Table B:

<b>Debts in USD'000 (a)</b>	<b>Reported Amount (b)</b>	<b>Identified Amount (c)</b>	<b>Unreported Amount (d)</b>	<b>(d) as % of (b)</b>
Term Loans	1,114,661	3,997,277	2,882,616	259%
Short-term borrowings	190,351	1,414,885	1,224,534	643%
Convertible bond & Sukuk	790,193	790,193	-	0%
<b>Total Debts</b>	<b>2,095,205</b>	<b>6,202,355</b>	<b>4,107,150</b>	<b>196%</b>

- 4.40. As with the March Statement, the Treasury Department operated with two parallel sets of financial records for the interim period ended 30 June 2019. Emails dated 28 June 2019, 1 July 2019 and 2 July 2019, circulated within the Treasury Department included the Spreadsheets which categorised Showing and Non-Showing debts due to various lenders as at 30 June 2019.
- 4.41. On 7 August 2019, the Group provided its statutory auditors a spreadsheet containing a detailed breakdown of the consolidated financial statements as at 30 June 2019. This contained the reported debts set out in Table B, above, but not the debts categorised as Non-Showing in the Spreadsheets.
- 4.42. As with the March Statement, loan documents and details of the unreported Term Loans (see Table B) aligned with the debts categorised as Non-Showing in the Spreadsheets.
- 4.43. Short-Term borrowings (see Table B) included trust receipts to finance purchases and invoice discounting facilities. Again the Spreadsheets contained a list of Non-Showing lenders for trust receipts and invoice discounting facilities.
- 4.44. The debts due to the SCF facilities, as part of the above Short-Term borrowings, were not disclosed in the August Statement. In the Spreadsheets they were recorded as Non-showing debts and amounted to USD 332 million, as at 30 June 2019.

NMC's announcements in response to the Allegations

- 4.45. On the morning of 17 December 2019, the Allegations were published by Muddy Waters. During trading that day the price of NMC shares fell from £25.85 at the close the previous day to £17.475, a fall of 32%. NMC made a series of public announcements in response to this fall and to the Allegations.

- 4.46. On 18 December 2019, NMC made an announcement entitled 'Response to Share Price Movement' ("the 18 December Announcement"). This response noted the Allegations and stated that NMC had "nothing to add to disclosures already made". It characterised the Allegations as "unfounded, baseless and misleading" and said that the Company would "respond in due course". It also stated that NMC had:
- "a track record of significant, open and increasingly detailed disclosure to the market, as monitored and reviewed by its entirely independent disclosure committee".
- 4.47. In fact, the disclosure committee did not exist at the time of this announcement, let alone prior to the publication of the impugned financial statements. It could not therefore have had any role in monitoring or reviewing them.
- 4.48. After the market closed on 19 December 2019, NMC issued another announcement ("the 19 December Announcement") purporting to re-confirm accurate disclosure of its financial position and to rebut three specific accusations made in the Allegations, relating to the following: its SCF arrangements; a USD 105 million loan from Lender A to NMC; and a USD 80 million loan from Lender B to NMC.

#### Supply Chain Finance

- 4.49. In respect of its SCF arrangements, in the 19 December Announcement NMC stated that "no actual borrowing" by the Group from the financier was necessary to pay suppliers early, and readers of the financial statements should expect to see this recorded as "accounts payable rather than short-term borrowings".
- 4.50. According to NMC, contrary to the Allegations, these arrangements were no more than a way of NMC paying invoices from its suppliers: NMC had "simply provided an undertaking in the form of a guarantee to settle the accepted trade payables against each invoice." The announcement also said that NMC "is not assuming any recourse on such supply finance facilities."
- 4.51. This was false because NMC Healthcare LLC was in fact the obligor on these facilities but had not reported the balances as short-term borrowings. It was misleading for the announcement to characterise liabilities as accounts payable, because NMC knew that it was the obligor for those facilities and therefore liable for the resultant balances.
- 4.52. Those liabilities were in practice being recorded on the Spreadsheets maintained within the Treasury Department as Non-Showing debts, not as accounts payable.

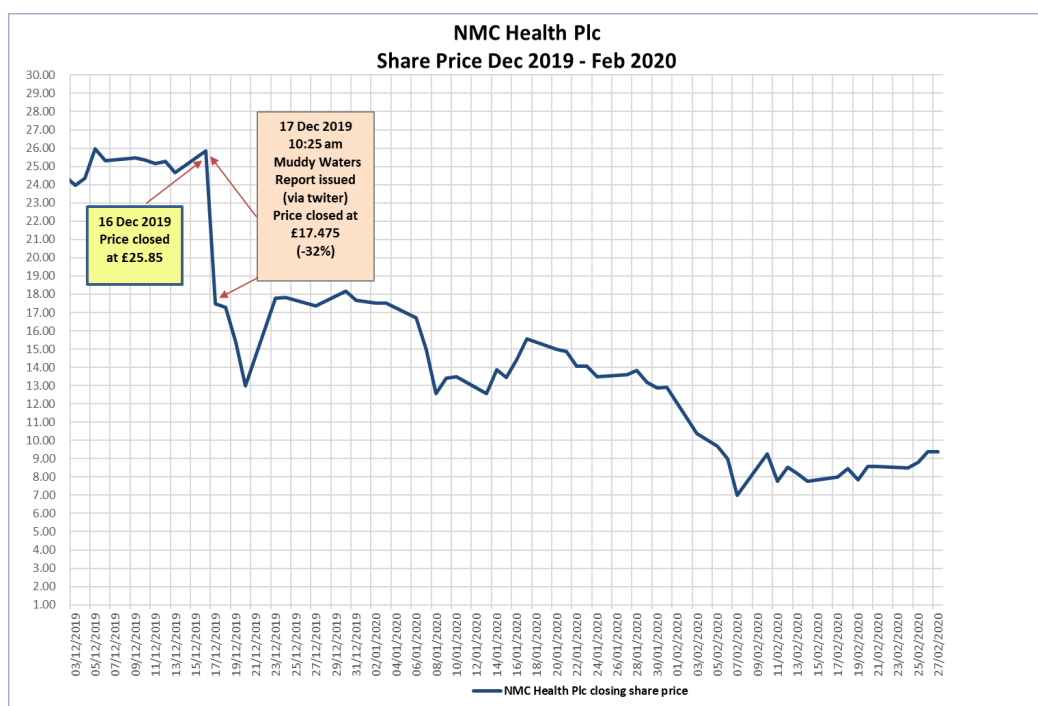
#### NMC's announcement concerning a USD105 million facility from Lender A

- 4.53. In respect of the USD 105 million facilities from Lender A, in the 19 December Announcement, NMC described the Lender A facility as a “back stop for an acquisition which did not materialize”. Thereby implying that the facility, although agreed, was not utilised. This was false and misleading as the facility was in fact utilised and the resulting outstanding debt to Lender A was recorded on the Spreadsheets by the Group as at 31 December 2018 and 30 June 2019. Those liabilities had not been disclosed in the March 2019 Statement, the 2018 Annual Report or the August 2019 Statement.
- 4.54. In practice, therefore, the evidence available to NMC supported this aspect of the Allegations that the Group had entered into a loan arrangement with Lender A for USD 105 million in December 2018 and had an outstanding liability exposure of USD 105 million as at 31 December 2018 and 30 June 2019.

*NMC’s announcement concerning a USD 80 million facility from Lender B*

- 4.55. In respect of the USD 80 million short-term facilities from Lender B, in the 19 December Announcement NMC acknowledged the existence of facilities from Lender B. It also stated that it was bound by regulatory requirements to make adequate disclosures in NMC’s financial statements. Thereby implying that there had been adequate disclosure of debts due to Lender B. This response was misleading because the outstanding liabilities due to Lender B existed as at 30 June 2019 but had not been disclosed in the August 2019 Statement.
- 4.56. The Group had entered into a loan arrangement with Lender B for USD 80 million in on 7 May 2019 and as at 30 June 2019, the outstanding term loan exposure due to Lender B was USD 80 million. However, when NMC provided its auditors with a Consolidated Financial Statement for the interim period on 7 August 2019, it did not contain the loan from Lender B in the relevant figures.

**Price impact**



4.57. In the period between the publication of the Allegations on 17 December 2019 and 26 February 2020, the Company's share price fell by nearly 64% from approximately £26 (market capitalisation at £5.4 billion) to approximately £9 (market capitalisation at £1.9 billion).

## 5. FAILINGS

5.1. The statutory and regulatory provisions relevant to this Notice are referred to in Annex A.

### Market abuse

5.2. Throughout the Relevant Period shares in NMC were financial instruments admitted to trading on a regulated market.

5.3. For the reasons set out below NMC committed market abuse (market manipulation) in breach of Article 15 of EU MAR.

### Article 12(1)(c)

5.4. Pursuant to Article 12(1)(c) of EU MAR market manipulation includes disseminating information by any means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, [...] or secures, or is likely to secure, the price of one or several financial instruments, [...] at an abnormal or artificial level, including the dissemination of rumours, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading.

*Dissemination of information by any means*

- 5.5. NMC disseminated information by publishing false or misleading information as to the Company's debt position within its March and August Statements and 2018 Annual Accounts and by its failure to declare Related Party transactions therein, and by publishing false or misleading information in its 18 and 19 December Announcements ("the Disseminated Information"), when it knew, or ought to have known, that the information was false or misleading.

*Gives or likely to give false or misleading signals*

- 5.6. The Disseminated Information gave, or was likely to give, false or misleading signals as to the price of its shares.

*Knew or ought to have known that the information was false or misleading*

- 5.7. Whilst the Authority does not specifically find that each and every member of NMC's board knew, or ought to have known, that the Disseminated Information was false or misleading, the Authority is satisfied that there was knowledge within NMC at a sufficiently senior level that the Disseminated Information was false or misleading for that knowledge to constitute the knowledge of NMC, within the specific context of, and for the purposes of, market abuse.

*The Disseminated Information*

- 5.8. The false and misleading information, and the Company's publications in which it was contained, are as follows:
- (1) The March Statement, which was published on the 7 March 2019, giving the Group's full year financial results for 2018, which stated that the Group's total debt as of 31 December 2018 was USD 1.99 billion, when it was in fact USD 5.91 billion, of which USD 227 million related to SCF facilities where NMC Healthcare LLC was the obligor and NMC Health Plc the guarantor.
  - (2) The 2018 Annual Report, which was published on 20 May 2019, and stated that the Company's financial statements gave a true and fair view of the assets, liabilities and financial position of the Company, when they did not.
  - (3) The August Statement, which was published on 22 August 2019, giving the Company's interim half-year financial results for 2019, which stated that the Group's total debt as of June 2019 was USD 2.1 billion, when it was in fact USD 6.2 billion, including USD 332 million related to SCF facilities where NMC Healthcare LLC was the obligor and NMC Health Plc was the guarantor.
  - (4) The 18 December Announcement, in which the Company, in seeking to defend its financial disclosures, cited the purported fact that its financial disclosures



were overseen by an independent disclosure committee, when in fact no such committee had yet met.

- (5) The 19 December Announcement, in which the Company (a) denied that it was assuming recourse on any supply chain finance facilities, when in fact it was, (b) implied that the loan facility from Lender A had not been utilised when in fact it had, and (c) implied that there had been adequate disclosure of debts due to Lender B when in fact there had not.

### **Conclusion**

- 5.9. For the reasons set out above and having regard to the provisions of EU MAR the Authority considers that NMC committed market abuse contrary to Article 15 of EU MAR.
- 5.10. Pursuant to section 123(1)(a) of the Act, the Authority may therefore impose a penalty of such amount on NMC as it considers appropriate.
- 5.11. Section 123(3) of the Act states that if the Authority is entitled to impose a penalty on a person it may, instead of imposing a penalty on him, publish a statement to the effect that he has committed market abuse.

## **6. SANCTION**

### **Financial Penalty**

- 6.1. The Authority has had regard to the provisions of DEPP 6 regarding penalty, and Chapter 7 of the Enforcement Guide. The Authority's policy for imposing a financial penalty or publishing a statement of misconduct is set out in Chapter 6 of DEPP. DEPP 6.4.1G states that the Authority will consider all the relevant circumstances of the case when deciding whether to impose a penalty or issue a public censure.
- 6.2. In the particular circumstances of this case, the Authority does not consider it would be appropriate to impose a penalty. Nor does the Authority consider that it would be appropriate to indicate the level of the penalty which it would have imposed, but for those circumstances.
- 6.3. The Authority believes that its objectives may appropriately be achieved by means of a public censure.
- 6.4. In reaching this conclusion, the Authority has had regard to the following matters:
- (1) NMC's conduct was serious and a very significant financial penalty would ordinarily be justified.

- (2) NMC entered administration in April 2020. Such value as exists within the Company is being utilised by the Administrators for the benefit of creditors who, if the Authority imposed a financial penalty, would not be paid, or would be paid a lower proportion of what they are owed. It is presently anticipated that no funds will be available after creditor claims have been met.
- (3) In addition to the facts and matters set out in this Notice relating to misconduct during the Relevant Period, the Authority is aware of allegations of similar and related misconduct by NMC in the preceding years 2012 to 2017. The Authority does not consider it proportionate to devote significant additional investigative resource and time to investigation of that alleged misconduct, given that NMC has already entered administration and has effectively ceased as a going concern save for the efforts of the administrators to recoup value for creditors.
- (4) In some circumstances, the Authority may decide to identify a specific sum which it would otherwise have imposed as a financial penalty. In this case, the Authority considers that such an indication would not be appropriate, as it would of necessity only indicate a penalty imposed on the basis of the Relevant Period, rather than the full period for which there are allegations of misconduct.

## **7. PROCEDURAL MATTERS**

- 7.1. This Notice is given under section 390 of the Act. The following paragraphs are important.

### **Decision maker**

- 7.2. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

### **Publicity**

- 7.3. 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.

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

**Authority contacts**

- 7.5. For more information concerning this matter generally, contact Giles Harry (direct line: 020 7066 8072) or Denise Ip (direct line: 020 7066 0237) of the Enforcement and Market Oversight Division of the Authority.

---

**Mario Theodosiou**  
**Head of Department**  
**Financial Conduct Authority**  
**Enforcement and Market Oversight Division**

## **ANNEX A**

### **RELEVANT STATUTORY AND REGULATORY PROVISIONS**

#### **The Financial Services and Markets Act 2000 ("the Act")**

##### The Authority's statutory objectives

1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include the integrity objective, which is protecting and enhancing the integrity of the UK financial system and includes (amongst other matters) its not being affected by contraventions by persons of Article 15 (prohibition of market manipulation) of EU MAR.

##### Section 123 of the Act

2. The Authority has the power under section 123(1)(a) and 123(2) of the Act to impose a penalty of such amount as it considers appropriate on a person if it is satisfied that the person has contravened Article 15 (prohibition of market manipulation) of EU MAR. Under section 123(3) of the Act the Authority may, instead of imposing a penalty on a person, publish a statement censuring the person.

#### **Regulation (EU) No 596/2014 ("EU MAR")**

3. Article 1 of EU MAR provides that:

This Regulation establishes a common regulatory framework on insider dealing, the unlawful disclosure of inside information and market manipulation (market abuse) as well as measures to prevent market abuse to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets.
4. Article 2(1)(a) of EU MAR provides that EU MAR applies to financial instruments admitted to trading on a regulated market.
5. Article 12(1) of EU MAR provides that for the purposes of this Regulation, market manipulation shall comprise the following activities:

[...]

  - (c) disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, [...] or secures, or is likely to secure, the price of one or several financial instruments, [...] at an abnormal or artificial level, including the dissemination of rumours, where the person who made the dissemination

knew, or ought to have known, that the information was false or misleading.”

6. Article 15 of EU MAR (Prohibition of market manipulation) provides that a person shall not engage in or attempt to engage in market manipulation.

### **The Authority’s Handbook of Rules and Guidance**

#### Market Conduct (MAR)

7. The part of the Authority’s Handbook of rules and guidance entitled “Market Conduct” (“MAR”) provides guidance on EU MAR (see MAR 1.1.2G).
8. Chapter 1.8 of MAR is headed Dissemination. MAR 1.8.4G (Factors to be taken into account in determining whether or not behaviour amounts to dissemination) states that:

“If a normal and reasonable person would know or ought to have known in all the circumstances that the information was false or misleading, that indicates that the person disseminating the information knew or ought to have known that it was false or misleading.”

#### Decisions Procedures and penalties manual (DEPP)

9. Chapter 6 of DEPP sets out the Authority’s statement of policy with respect to the imposition and amount of financial penalties under the Act and can be accessed here:

<https://www.handbook.fca.org.uk/handbook/DEPP/6/?view=chapter>

#### The Enforcement Guide (EG)

10. The Authority’s approach to financial penalties and public censures is set out in Chapter 7 of EG and can be accessed here:

<https://www.handbook.fca.org.uk/handbook/EG/7/?view=chapter>