FINAL NOTICE

To: **Pace Micro Technology plc**
Of: **Victoria Road**
Saltaire
Shipley
West Yorkshire
BD18 3LF

Date: **26 January 2005**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives notice about its decision to take the following action

ACTION

1. The FSA gave Pace Technology plc ("Pace") a Further Decision Notice dated 21 January 2005 which notified it that for the reasons set out below, the FSA has decided to impose on Pace a penalty of £450,000 pursuant to section 91 of the Financial Services and Markets Act 2000 ("the Act") for contraventions of the listing rules, made by the FSA under Part VI of the Act ("the Listing Rules"), during the period 8 January 2002 to 5 March 2002 ("the relevant period").

2. The FSA considers that the following contraventions arose:

   - Pace failed to take all reasonable care to ensure that its interim results announcement on 8 January 2002 ("the Interim Results Announcement") did not omit anything likely to affect the import of that announcement. The FSA considers that Pace thereby contravened Listing Rule 9.3A;

   - on 4 February 2002 Pace changed its expectation as to its revenue performance for the financial year ending 1 June 2002, although its earnings expectations remained the same. The FSA considers that change was price sensitive; that is, if it had been made public, it would in the FSA's opinion have been likely to lead to substantial movement in the price of Pace's listed

securities and therefore gave rise to an obligation on Pace to notify the Companies Announcement Office without delay of all relevant information which was not public knowledge concerning that change. Although its earnings expectations remained the same, by failing to make a notification regarding the change in Pace's expectations as to its revenue performance until 5 March 2002, the FSA considers that Pace contravened Listing Rule 9.2(c).

REASONS FOR ACTIONS

The facts

Background

3. Pace was founded in 1982 and was admitted to the Official List of the London Stock Exchange in June 1996.

4. Pace develops digital TV technology. Its principal activity is the development, manufacture and distribution of digital receivers and receiver decoders, which serve as a gateway for the reception and broadcasting of television and interactive services via satellite, cable, terrestrial and other transmission systems. These digital receivers and receiver decoders are known as "set top boxes".

5. In the relevant period, Pace's primary customer base was restricted to a small number of large companies principally in Europe and the United States. At that time the cable company NTL Group Limited ("NTL"), a UK subsidiary of NTL Inc, a US corporation listed on Nasdaq, was the largest customer in terms of revenue.

6. Pace's financial years 2000/2001 and 2001/2002 ended on Saturday, 2 June 2001 and Saturday, 1 June 2002 respectively.

7. Pace's annual report for the year ended 3 June 2000 included a statement in the Financial Review section relating to debtors that:

   "Debtors rose 37% to £68.3m, less than the underlying growth in the business. This was mainly due to a change in customer mix during the year. To offset the impact on Pace that would result if one of our major customers were to fail, the Company maintains a credit insurance programme over its customer portfolio."

8. Its annual report for the year ended 2 June 2001 contained similar wording, although such statements had never been included in any preliminary results announcement or interim results announcement.

Financial forecasting and budgets

9. Before the start of each financial year, Pace produced a budget. This budget was mainly for the benefit of the Board and was the basis of the guidance given by Pace to the investment market. In its budget of April 2001 Pace's budgeted profit before tax ("PBT") for the financial year ending 1 June 2002 was £54.9 million, on budgeted revenues of £650.1 million.

10. At least once a month during each financial year a reforecast of Pace's expectation of its revenue and profit performance for the rest of the financial year and for the next financial year was produced. These reforecasts were entitled "F1" for the reforecast produced in the first month of trading in the financial year (i.e. in June), "F2" in the second month and so on.

Announcement of 12 September 2001

11. On 12 September 2001, after its Annual General Meeting, Pace issued an RNS announcement which stated:

    "Currently we expect turnover to increase for the year as a whole by around 10%,…"

12. This announcement implied an expected increase, at that time, in turnover for the financial year ending 1 June 2002 of around 10% over the turnover of approximately £523.6 million in the previous financial year, to turnover of around £576 million. This forecast revenue figure was consistent with Pace's F4 forecast of 7 September 2001 which actually showed forecast revenue of £582 million, lower than the figure of £650.1 million in the April 2001 budget.

13. After this announcement, market analysts' consensus estimate of Pace's forecast revenue for the year ending 1 June 2002 reduced from approximately £650 million to approximately £576 million and their consensus estimate of earnings before interest and tax ("EBIT") reduced to approximately £52 million.

Project Pluto

14. In or about August 2001, discussions had started which might have led to Pace being taken over by a third party. Pace had appointed a leading international investment bank as its exclusive financial advisers ("special financial advisers") in relation, amongst other things, to any possible offers for the issued share capital of Pace including this third party offer. This third party offer was known to the Board and the limited number of senior managers involved within Pace as "Project Pluto".

15. The discussions stopped in early September 2001 but recommenced in December 2001 and continued through January and much of February 2002. However, they terminated on 26 February 2002. During this period Pace was therefore subject to the provisions of the City Code on Takeovers and Mergers (the "Code").

Pace's Relationship with NTL and NCM

16. In about 1992 Pace had taken out a trade credit insurance policy with NCM N.V. ("NCM") to insure its exposure to some of its trade debtors.

17. On 20 October 1998 Pace had signed a contract with NTL for the supply of set top boxes (the "NTL Contract"). The terms of the NTL Contract provided for payment to be made on the later of (1) the date of delivery of the goods and (2) within 30 days of receipt by NTL of the invoice for the goods.

18. During the financial year 2001/2002 Pace was the exclusive supplier of set top boxes to NTL. In the first half of 2001/2002 NTL accounted for 42% of Pace's turnover by volume and 48% of its revenue.

The NTL order

19. On 17 and 23 October 2001, NTL placed purchase orders with Pace for an aggregate of 450,000 set top boxes to be delivered in January, February and March 2002 (the "Purchase Orders"). Taken together, these Purchase Orders constituted, at that time, one of the largest orders for set top boxes that Pace had ever received.

20. On or about 12 December 2001, NTL told Pace it wished to cancel the February and March 2002 elements of the Purchase Orders and to take the January 2002 element of 150,000 set top boxes over the course of the whole of the 2002 calendar year.

21. At the time, it was public knowledge that NTL's parent company, NTL Inc, had built up a significant level of debt in building up its cable networks and was under pressure from its banks and bondholders to restructure its debts. NTL, however, had made public statements of reassurance, as well as private statements of reassurance to Pace, that it would pay its debts. The Board of Pace believed that NTL, which owned NTL Inc's main operating asset, being its cable network in the UK, and as a result was NTL Inc's principal cash generating asset, would be able to pay its debts as they fell due and was unlikely to enter into any form of insolvency arrangement.

22. Despite the fact that NTL's purported cancellation of the February and March 2002 elements of the Purchase Orders was out of time and not permitted by the NTL Contract, Pace decided to accept the cancellation of the March 2002 element of the Purchase Orders (150,000 boxes). Pace refused however, as it was entitled to do in accordance with the terms of the NTL Contract, to accept the cancellation of the February element of the Purchase Orders because it had a binding legal contract with NTL and was contractually committed to the suppliers of the components for, and sub-contract manufacturers of, the finished set top boxes.

23. NTL accepted that it was not, under the terms of the NTL Contract, able to cancel the January and February elements of the Purchase Orders and that it was contractually bound to take delivery of, and pay for, these boxes but sought Pace's agreement to defer delivery and payment for the balance of 300,000 boxes. Delivery of these 300,000 boxes remained important to the prospects of Pace achieving its revenue forecast for the year ending 1 June 2002. Negotiations in relation to delivery and payment for these 300,000 set top boxes then began.

24. Pace put forward a proposal that would have involved the January and February 2002 commitments being spread over a five month period ending May 2002. This would equate to delivery of 60,000 set top boxes per month. This proposal was effectively accepted by NTL but it continued to negotiate for extended payment terms in respect of these deliveries.

Withdrawal of NCM insurance cover

25. In October 2001, Pace and NTL started discussions about extending NTL's payment terms from 30 to 90 days. In November 2001, Pace and NTL discussed the possibility of extending the payment terms to 120 days, subject to NCM being willing to provide trade credit insurance cover for deliveries on these extended

payment terms and to an additional charge of £2 per box per month to cover financing, storage and credit insurance costs.

26. On 14 November 2001, NCM agreed a credit limit of £45 million in respect of Pace's exposure to NTL. This credit limit was conditional upon terms of payment not exceeding 60 days from the date of invoice, subject to a further 30 days grace period thereafter. Accordingly, Pace was prepared to allow NTL to have payment terms of up to 90 days, subject to the total outstanding debt not exceeding the credit limit of £45 million. Any shipments made over and above the £45 million credit limit would be uninsured.

27. On 6 December 2001, Pace and NTL signed a Variation Agreement which, for invoices issued after 1 September 2001, extended NTL's payment terms from 30 days to up to 120 days from the date of the invoice. In consideration of this extension the price per set top box was increased by £6, to reflect the additional costs of financing, storage and credit insurance, subject to a reduction of £2 if NTL paid within 90 days, £4 if it paid within 60 days and £6 if it paid within 30 days, of the date of the invoice. NTL and Pace agreed that the extension was conditional upon the total NTL debt due to Pace being kept within the £45 million credit limit which effectively gave NTL payment terms of up to 90 days. Pace continued to operate the NTL Contract within the £45 million credit limit and on the basis of 90 day payment terms.

28. NCM invoiced Pace for, and was paid, the additional premium on the basis of 90 day terms as operated by Pace.

29. By 13 December 2001, the £45 million credit limit had been reached and due to delays in payment by NTL concern was expressed from within Pace to its senior management about the possibility of NCM withdrawing its cover in the event that NTL failed to pay its debts as they fell due.

30. On 18 December 2001, a Board meeting was held. The Board minutes noted that:

    "Concerns about the future of NTL, a significant customer of Pace, might affect management's expectations for the second half of the year and whilst the full implications were still being considered, these would be factored into the Interim Statement"

31. On 19 December 2001, NCM telephoned Pace to advise that it was withdrawing the NTL credit limit, subject to conditions for reinstatement. NCM stated that it would remain withdrawn until such time as it could obtain further clarification from NTL and its parent company, NTL Inc, regarding its proposed new business plan and financial restructuring. For the trade credit insurance cover to be reinstated, NCM indicated it would need to meet with NTL to discuss these issues. Written notice of the withdrawal dated 20 December 2001 was received by Pace by fax on 21 December 2001 in accordance with the terms of the NCM trade credit insurance policy.

32. As at 19 December 2001, £45 million of Pace's £54 million (excluding VAT) credit exposure to NTL was covered by trade credit insurance. Following the withdrawal, NCM would not be liable to insure any future shipments made by Pace to NTL and, in accordance with Article 8 of the NCM policy, any payments made by NTL would be allocated in chronological order to the oldest debt

remaining covered by the policy until the cover was exhausted. The shipment of the 300,000 boxes, the subject of the Purchase Orders, to NTL would not therefore have been covered by trade credit insurance until such time as NCM agreed to reinstate cover for future shipments by Pace to NTL.

33. Negotiations for the reinstatement of trade credit insurance in respect of NTL continued throughout January and February 2002.

January 2002 Board meeting

34. On 4 January 2002, a Board meeting to consider and approve the Interim Results Announcement for the 26 weeks ending 1 December 2001 was held and the Board was told that Pace's insurers, NCM, had withdrawn the trade credit insurance in respect of future deliveries to NTL, until such time as NCM might be able to conduct a formal review with NTL. At that time it was noted that Pace had an uninsured exposure of £9 million in respect of 45,000 set top boxes which had been included in turnover in the interim results for the 26 weeks ending 1 December 2001.

35. The Board believed that the withdrawal of trade credit insurance in respect of future deliveries to NTL was not material or announceable as it believed that the trade credit insurance would soon be reinstated for new shipments and in any event that NTL were, and would continue to be, able to pay down the existing indebtedness and any indebtedness in respect of the forecast future deliveries.

36. Drafts of the Interim Results Announcement, were circulated for comment to Pace's Board members and to Pace's special financial advisers, its solicitors, auditors, and two corporate brokers, before the Board Meeting on 4 January 2002, two business days before the Interim Results Announcement was issued on 8 January 2002.

37. The withdrawal of trade credit insurance in respect of future deliveries to NTL, which had been previously brought to the attention of Pace's auditors, was then specifically discussed with Pace's auditors when they were presenting their review findings in respect of Pace's interim results to Pace's Audit Committee meeting on 4 January 2002. Pace's auditors concluded that the withdrawal would not affect their conclusions in their Key Issues Memorandum which had been prepared by the auditors in respect of Pace's interim results.

38. The FSA has concluded that the withdrawal was not specifically brought to the attention of Pace's corporate brokers prior to the announcement of the interim results.

Interim Results Announcement

39. On 8 January 2002, Pace issued the Interim Results Announcement which covered the period for the 26 weeks ended 1 December 2001. The "Outlook" section included the statement that:

"…The lower pricing environment, where Pace has been reducing its average prices by between 10% and 20%, will impact revenues for the full year, which should be broadly similar to last year…"

40. The effect of the Interim Results Announcement was to announce expected turnover for the financial year ending 1 June 2002 "broadly similar" to the audited turnover of £523.6 million in the financial year ended 2 June 2001, a reduction of approximately £52 million (around 9%) from the figure implied by the AGM announcement on 12 September 2001 of around £576 million. Delivery of the 300,000 boxes to NTL remained important to the achievement of this forecast turnover for the year ending 1 June 2002, of "broadly similar to" £523.6 million.

41. Pace took advice on the Interim Results Announcement from its special financial advisers, solicitors, auditors and two corporate brokers. Pace's special financial advisers assumed responsibility for collating comments from Pace's two corporate brokers on the draft Interim Results Announcement. It convened a meeting with Pace's corporate brokers for this purpose and then communicated their comments to Pace in the form of a combined mark up. All these comments were accepted and incorporated in the amended draft Interim Results Announcement which was circulated to the Board members and tabled at the Board meeting on 4 January 2002 for approval.

42. The draft Interim Results Announcement was presented to the Board for discussion, amendment and approval at the Board meeting on 4 January 2002. At the meeting the Board was updated about Pace's trading with NTL and the fact that the company's trade credit insurer, NCM, had withdrawn trade credit insurance in respect of future deliveries to NTL until such time as they might be able to conduct a formal review with NTL. It was reported that the situation had been reviewed with the auditors in the context of their review of the interim results and it was the subject of further discussion with the auditors at the Audit Committee meeting held later that day.

43. An earlier draft of the Interim Results Announcement had stated: *"Debtors have risen as a result of Pace providing additional credit, covered by our insurers, to certain customers"*. On verification of the draft Interim Results Announcement, the reference to insurance cover was removed as it was no longer correct as £9 million of NTL debt was then uninsured. Accordingly, in the Interim Results Announcement as issued, this sentence was changed to *"Debtors have risen as a result of Pace providing additional credit to certain customers."* Both drafts were circulated to Pace's special financial advisers, corporate brokers, solicitors and auditors for comment.

44. The Interim Results Announcement as issued made no mention of the fact that trade credit insurance in respect of future deliveries to NTL had been withdrawn by NCM on 21 December 2001.

45. At the date of the Interim Results Announcement £45 million of the £54 million due from NTL was insured and £9 million was uninsured out of total debts, including NTL, of £134 million.

<u>January 2002 presentation to market analysts</u>

46. On 8 January 2002, Pace gave a presentation to market analysts in relation to the Interim Results Announcement. Some analysts asked about the level of uninsured debt faced by Pace. In reply, Pace indicated that all but £5 million to £10 million of Pace's debts were insured. Pace was not asked specifically about the status of insurance cover in respect of future deliveries to NTL.

Forecast F9

47. When the F9 forecast was produced on 4 February 2002, less than a month after the Interim Results Announcement, it showed Pace's revenue forecast to be £455 million, 12.5% less than the market consensus of £520 million. The F9 forecast showed lower forecast customer sales but revenue expectations in relation to NTL remained steady since the prospective element of these relied largely on the delivery of the 300,000 boxes the subject of the Purchase Orders. Pace's senior management broadly accepted the revenue forecast in the F9 but considered that EBIT would still reach £52 million, which was in line with market consensus, as a consequence of cost savings and other trading matters which had not been reflected in the F9 forecast.

Events leading to 5 March 2002 Trading Statement

48. Throughout January and February 2002, Pace had continued to negotiate with NTL about the terms of delivery and payment in respect of the balance of the 300,000 boxes under the Purchase Orders and about payment of NTL's outstanding debts owed to Pace. During this period, Pace also continued to negotiate with NCM about reinstatement of the trade credit insurance policy in respect of future deliveries to NTL and about a schedule of payments to be made by NTL to Pace in order to pay off the outstanding NTL debt and thereby eliminate NCM's exposure to Pace in respect of NTL.

49. Between January 2002 and 4 March 2002, NTL had continued to make substantial payments to Pace, though they were sometimes up to a week or two late, aggregating approximately £34 million (excluding VAT). As a result NCM's exposure to Pace in respect of NTL's debts was reduced from £45 million to £11.6 million by 5 March 2002 and the insured debt was fully repaid by 28 March 2002.

50. Pace held a Board meeting on 26 February 2002, the minutes for which record the belief of Pace's senior management at the time that the trade credit insurance, in respect of NTL, would be reinstated.

51. During February 2002, Pace agreed an amended payment schedule with NCM and NTL in respect of NTL's outstanding debt and sought to enhance its security by agreeing improved retention of title rights. By 1 March 2002, Pace and NTL had not been able to reach agreement in respect of the deferral of the delivery and payment terms in respect of the 300,000 boxes. NCM became concerned about delays in documenting these arrangements and increased the pressure for the documentation to be signed, at which point Pace decided it should reconsider its view that delivery of these boxes to NTL would be made in that financial year and await clarification of NTL's financial position.

52. On 4 March 2002, Pace commenced a review of its performance and an analysis of its expectations for the remainder of the financial year by reference to the latest forecast, F10. The F10 forecast showed a deterioration in the trading of Pace's business resulting from reductions to a number of customer sales forecasts, including those relating to the deferral of the 300,000 boxes the subject of the Purchase Orders. Following the review, a Board meeting was immediately arranged and commenced at 4.00pm that afternoon. The Board decided that a Trading Statement should be issued.

5 March 2002 Trading Statement

53. A Trading Statement was sent to the Company Announcements Office and released at 7.01am on Tuesday, 5 March 2002. It stated:

"The Board of Pace Micro Technology plc announces that trading conditions in the first months of 2002 have been difficult and has concluded that sales for the year ending 31 May 2002 are expected to be around £350m. This represents a significant shortfall on the Board's previous expectations.

This has been caused by a number of factors during a time when the TV markets within which Pace operates have seen significant turbulence. In particular, the UK cable market has seen a recent substantial reduction in capital expenditure. The difficult trading environment has been exacerbated by a reluctance on the part of Pace's trade credit insurers to increase their exposure at this time. In the US, deployment has been slower than expected.

The decline in revenues will have a substantial impact on 2002 second half earnings but the Board expects that the company will achieve a profit for this period.

In the next financial year, turnover is expected to grow significantly from a mixture of deployment to existing overseas customers and new contract wins. Pace remains confident that it is well placed within its markets and the longer-term outlook for the industry remains positive."

54. The effect of the Trading Statement was therefore to announce an expected reduction in Pace's turnover for the year ending 1 June 2002 from a figure "broadly similar" to £523.6 million, stated in the Interim Results Announcement on 8 January 2002, to around £350 million, together with a consequential substantial reduction in Pace's earnings expectation. The loss of revenue for the financial year ending 1 June 2002 from the deferral of the 300,000 boxes under the Purchase Orders amounted to approximately £50 million.

55. Following the Trading Statement, Pace's share price dropped throughout the trading day, falling almost 67% from approximately £3 per share prior to opening to approximately £1 per share at closing.

Relevant Statutory Provisions and Rules

The Listing Rules regime

56. Pursuant to Part VI of the Act, the FSA is responsible for the official listing of securities in the UK. The Listing Rules set out the requirements for the admission of securities to the Official List and the continuing obligations of companies whose securities are so admitted.

57. Section 91(1) of the Act provides that the FSA may impose a penalty of such amount as it considers appropriate where it considers that an issuer of listed securities has contravened any provision of the Listing Rules.

58. These provisions came into force on 1 December 2001 and apply to breaches of the Listing Rules from that date.

59. The relevant Listing Rules applicable to this case are Rules 9.2 and 9.3A and the relevant versions applicable during the relevant period are set out below.

60. Listing Rule 9.2 stated:

A company must notify the Company Announcements Office without delay of all relevant information which is not public knowledge concerning a change:

(a) in the company's financial condition;

(b) in the performance of its business; or

(c) in the company's expectation as to its performance;

which, if made public, would be likely to lead to substantial movement in the price of its listed securities.

61. Listing Rule 9.3A stated:

A company must take all reasonable care to ensure that any statement or forecast or any other information it notifies to the Company Announcements Office or makes available through the UK Listing Authority is not misleading, false or deceptive and does not omit anything likely to affect the import of such statement, forecast or other information.

Relevant Guidance on Listing Rules

62. Under section 157 of the Act, the FSA is entitled to publish guidance on any matters relating to its functions. The relevant guidance on Listing Rule disclosure obligations is contained in the December 2001 version of the UKLA Guidance Manual ('the Guidance Manual') which was available to Pace at all material times during the relevant period. The following parts of the Guidance Manual are relevant to this case:

- *Appendix 2 –* '*The PSI Guide, The UKLA's guidance on the dissemination of price sensitive information'*: in particular, paragraph 3.6; and

- *Appendix 3 – 'The Continuing Obligations Guide, The UKLA's guide to the continuing obligations regime' (Disclosure of Price Sensitive Information ("PSI"))* : in particular, paragraph 2.12.

The July 1996 version of '*Guidance on dissemination of price sensitive information'* (in particular, paragraph 11) was also relevant.

CONTRAVENTIONS

63. The FSA has concluded that Pace contravened the Listing Rules as set out below.

Omission from the Interim Results Announcement of 8 January 2002, contrary to Rule 9.3A

64. For the purposes of Listing Rule 9.3A, an omission is only *"likely to affect the import of a statement, forecast or other information"* if it is material. The materiality of an omission will depend on the context in which the announcement

is made. In the FSA's opinion, an omission does not need to be price sensitive to be likely to affect the import of the relevant statement.

65. The FSA accepts that the withdrawal by NCM of Pace's trade credit insurance in respect of future deliveries to NTL, was not of itself price sensitive and therefore was not announceable information pursuant to Listing Rule 9.2.

66. In the Interim Results Announcement, it was stated in the "Trading and Financial Review" section that: *"debtors had risen as a result of Pace's provision of additional credit to certain customers"*.

67. In the "Outlook" section of the Interim Results Announcement, which provided a forecast of revenues for the rest of the financial year ending 1 June 2002 being broadly similar to last year, Pace made no mention of the withdrawal by NCM of the trade credit insurance in respect of future deliveries to NTL.

68. Because of the statements previously included in the paragraph on debtors in the Financial Review section of the Annual Reports for the financial years 1999/2000 and 2000/2001, which stated that: "*To offset the impact on Pace that would result if one of our major customers were to fail, the company maintains a credit insurance programme over its customer portfolio*", the FSA considers that, in the absence of any express wording to the contrary in the Interim Results Announcement, it was reasonable to infer that the customers referred to in the "Trading and Financial Review" section of the Interim Results Announcement to whom additional credit had been provided were fully covered by trade credit insurance.

69. At the date of the Interim results Announcement £45 million of the £54 million due from NTL was insured and £9 million was uninsured out of total debts, including NTL of £134 million.

70. The FSA accepts that as a result of the analysts' briefings on 8 January 2002 and the analysts' notes issued thereafter, the market was aware that not all the debts included in the balance sheet in the Interim Results Announcement were covered by trade credit insurance. However, the market was not aware of the lack of trade credit insurance in respect of future deliveries to, and receivables from, NTL, Pace's largest customer.

71. The FSA considers however that despite the fact that the statements in Pace's previous Annual Reports only related to the historic debtor position, Pace should have been aware that the continued existence of trade credit insurance was something which investors would, because of these statements, regard as material to Pace's financial outlook. In view of this and the significance of NTL's business to Pace and the public concerns as to NTL's parent company, NTL Inc's financial position, the FSA considers that the withdrawal of trade credit insurance was material and therefore likely to affect the import of the Interim Results Announcement because if the market had known about the withdrawal of trade credit insurance in respect of future deliveries to NTL it would have been aware of an increase in risk relating to Pace's ability to achieve an element of the forecast revenues included within the "Outlook" section of the Interim Results Announcement. This risk was that NTL's parent, NTL Inc, would, in the short term, fail and that NTL would therefore, be unable to take or alternatively pay for the relevant set top boxes. The FSA therefore considers that the information in

respect of the withdrawal of the trade credit insurance in respect of future deliveries to NTL was material.

72. Pace was aware of its obligations under Listing Rule 9.3A to take all reasonable care when it drafted its Interim Results Announcement. Pace's Board was aware of the financial problems facing NTL's parent company, NTL Inc, which had recently suffered a credit rating downgrade. Further, NTL had not been making payments to Pace within the specified contractual period, but was sometimes a week or two late, and had recently sought an extension of its credit terms with Pace. The FSA acknowledges however that NTL itself had made statements of reassurance to Pace and the markets regarding its ability and intention to pay its trade debts and continued to make substantial weekly payments to Pace in respect of its debts.

73. The FSA considers that if Pace had taken all reasonable care when making the Interim Results Announcement it would have taken into account these factors and recognised the materiality of the withdrawal of trade credit insurance in relation to future deliveries to NTL.

74. In order for Pace to have taken all reasonable care the FSA considers that it should have consulted its corporate brokers on the specific issue of the withdrawal of trade credit insurance in respect of future deliveries to NTL.

75. The FSA has concluded that Pace therefore contravened Listing Rule 9.3A when it omitted to mention the withdrawal of trade credit insurance, in respect of future deliveries to NTL, in the Interim Results Announcement.

Pace was in breach of Listing Rule 9.2(c) on 4 February 2002

76. The FSA considers that on 4 February 2002, Pace changed its expectation as to its revenue performance for the financial year ending 1 June 2002 from that announced to the market on 8 January 2002. This change was evidenced by the broad acceptance by Pace of the revenue forecast in the F9 forecast. The FSA accepts that Pace's expectation as to forecast profit before tax remained broadly in line with market expectations.

77. The change amounted to a reduction in Pace's revenue expectations from revenues broadly similar to £523.6 million (as implied by the Interim Results Announcement) to approximately £455 million, a change of around 13%.

78. Considerable significance is rightly attached to a listed company's earnings as an indicator of its performance. However, as the Guidance Manual's PSI Guide makes clear, this is only one of a range of possible determinants of a company's share price. Information concerning actual or expected revenue alone is also in the FSA's opinion capable of being of great significance.

79. The FSA considers that, had the market been informed without delay of the change which occurred on 4 February 2002 in Pace's expectation as to its forecast revenue performance for the year ending 1 June 2002, regardless of there being no change in its expectation as to forecast profit before tax for the year ending 1 June 2002, then that would in the FSA's opinion have been likely at that time then to lead to a substantial movement in the price of Pace's shares.

80. Consequently, by failing to make any announcement about a change in Pace's expectation as to its forecast revenue performance until 5 March 2002, despite there being no material change at 4 February 2002 in expected forecast profits before tax, the FSA considers that Pace contravened Listing Rule 9.2(c).

SANCTIONS

81. The FSA's policy on the imposition of financial penalties and public censures is set out in Chapter 8 of the UKLA Guidance Manual. The principal purpose of financial penalties is to promote high standards of regulatory conduct by deterring those who have breached regulatory requirements from committing further contraventions and by demonstrating generally the benefits of compliant behaviour. The criteria for determining whether it is appropriate to issue a public censure are similar to those for financial penalties.

82. The FSA further considers that Pace's contraventions on 8 January 2002 and from 4 February until 5 March 2002 should be sanctioned by one penalty.

Seriousness of the Breach

83. The continuing obligations of a listed company set out in the Listing Rules are designed to promote full disclosure to the market of all relevant information on a timely basis. The FSA regards the continuing obligation requirements of Chapter 9 of the Listing Rules as a fundamental protection for shareholders. Observance of those continuing obligations is essential to the maintenance of an orderly market in securities and of confidence in the financial system. The FSA therefore takes the most serious view of listed companies and their board members who fail to comply with these requirements. In particular, the board of a listed company, on the advice of its executive directors, must carefully and continuously consider whether changes in its financial condition, in the performance of its business or in its expectation as to its performance may be price sensitive such that, if made public, they would be likely to lead to a substantial movement in the price of its listed securities, and so require disclosure under the Listing Rules. When such changes are under consideration, a listed company should also consult its relevant financial advisers at the earliest possible time.

84. The FSA considers that the conduct of Pace on 8 January 2002 was a contravention of Listing Rule 9.3A and from 4 February 2002 to 5 March 2002 was a contravention of Listing Rule 9.2(c). The FSA has also considered the length of time over which these contraventions continued. Their seriousness is also demonstrated by the movement in the price of Pace's shares after the Trading Statement was made on 5 March 2002. That fell by 67% from the close of business on 4 March 2002 to the close of business on 5 March 2002, following the announcement of a reduction of approximately £170 million (33%) in revenue expectations (of which approximately £50 million was due to the decision of the Board of Pace on 4 March 2002 to defer the sale to NTL of the 300,000 set top boxes the subject of the Purchase Orders until after the financial year ending 1 June 2002) as referred to above and a 52% fall in analysts' profit expectations. It is not possible to evaluate what proportion of the share price fall on 5 March 2002 was due to the decline in Pace's forecast revenue expectations on 4 February 2002 or to the other factors referred to in the Trading Statement of 5 March 2002 and the consequent reduction in profit expectation referred to above.

Impact on the Market

85. In order to assess the impact of the contraventions on investors, the FSA has considered Pace's market capitalization before and after the Trading Statement and the fall in its share price.

86. On 5 March 2002, immediately prior to the release of the Trading Statement, the price of Pace shares was £3.04. They had a closing price that day of £1.00– a decrease of 67%. Pace's capitalisation on 4 March 2002 was approximately £686 million. After the Trading Statement was issued on 5 March 2002 it had fallen to approximately £226 million, a reduction in market value of approximately £462 million reflecting a fall in revenue and profit expectations in which the deferral of the sale of the 300,000 set top boxes to NTL was only one factor.

87. Consequently, while it is not possible to evaluate precisely whether and if so how the market was affected by the particular contraventions or other factors, including the subsequent reduction in profit expectation, the FSA considers that the market may have been prejudiced by Pace's contraventions of the Listing Rules.

Nature of Conduct

88. In relation to the contravention of Listing Rule 9.3A on 8 January 2002, the FSA accepts that Pace had regard to its Listing Rule obligations and did not act deliberately or recklessly in respect of the Interim Results Announcement but concludes, for the reasons set out in paragraphs 64 to 74, that Pace therefore came to the wrong conclusion about the materiality of the information regarding the withdrawal of trade credit insurance in respect of future deliveries to NTL.

89. In relation to the contravention of Listing Rule 9.2(c) on 4 February 2002, the FSA has concluded that Pace did not act deliberately or recklessly.

Conduct before breach

90. The FSA has had regard to whether Pace took professional advice before the contraventions occurred. While the FSA accepts that Pace's auditors and solicitors were aware of the withdrawal of the trade credit insurance in respect of future deliveries to NTL, Pace did not take specific advice from its corporate brokers on this matter. In addition Pace did not take advice from its corporate brokers about any of the issues giving rise to the changes in its revenue expectations at any time during the period from 4 February 2002 until the morning of 4 March 2002.

91. When Pace did finally seek advice, it followed it promptly. However, the FSA considers that such specific advice was sought too late.

Conduct after breach

92. Pace did not bring either contravention to the attention of the FSA. It has, however, cooperated fully with the FSA's investigation.

Disciplinary history

93. Pace has not been subject to any relevant previous disciplinary action by the FSA.

Previous action by the FSA

94. The FSA has disciplined an issuer or a director of an issuer for contraventions of the Listing Rules involving conduct after 30 November 2001 ("N2") on three previous occasions. It is the FSA's policy to decide all such cases on a consistent basis. In respect of cases involving contraventions prior to N2, the FSA has taken a very serious view of the conduct in question but, not having the power to impose a penalty, has instead published statements of censure. This is the first case since N2 to involve a penalty for a breach of Listing Rule 9.3A.

CONCLUSIONS AS TO SANCTIONS/FINANCIAL PENALTIES

95. In all the circumstances, and having had particular regard to the factors set out in paragraphs 81 to 94, the FSA has concluded that the imposition of a financial penalty on Pace is the appropriate sanction and that the amount imposed is proportionate.

96. In concluding that the imposition on Pace of a penalty of £450,000 is appropriate and proportionate, the FSA took into account Pace's market capitalization, which at the time of consideration, amounted to £120 million; its net assets, which at the time of consideration, were recorded as £45 million and its cash reserves, which at the time of consideration, were recorded as £14 million.

DECISION MAKER

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

IMPORTANT NOTICES

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

Manner of payment

The penalty must be paid to the FSA in full.

Time for payment

Pace must pay to the FSA by no later than 9 February 2005 the full amount of the penalty specified above.

If the penalty is not paid

If all or any part of the penalty is outstanding after the required date of payment, the FSA may recover the outstanding amount as a debt due to the FSA.

Publicity

Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the FSA must publish such information about the matter to which this Final 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 Pace or prejudicial to the interests of consumers.

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

FSA contacts

For more information concerning this matter generally, you should contact Kevin Quinlan at the FSA (direct line: 020 7066 1334).

Carlos Conceicao
Head of Market Integrity
FSA Enforcement Division