
FINAL NOTICE

To: Perry John Bliss

Date of birth: 21 July 1974

Date: 13 December 2010

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the “FSA”) gives final notice that it has taken the following action:

ACTION

1. The FSA gave Perry John Bliss a Decision Notice on 1 September 2009 which notified him that it had decided to impose on him:
 - 1.1 a financial penalty, pursuant to section 123(1) of the Financial Services and Markets Act 2000 (“the Act”), for engaging in market abuse under section 118(3) (improper disclosure) and for encouraging other persons to engage in behaviour which, if engaged in by himself, would have amounted to market abuse under section 123(1)(b) of the Act; and
 - 1.2 a Prohibition Order, pursuant to 56 of the Act, prohibiting Mr Bliss from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm (“the Prohibition Order”) on the grounds that he is not a fit and proper person as his conduct described herein demonstrates a lack of honesty and integrity.

2. Mr Bliss referred the matter to the Upper Tribunal (Tax and Chancery Chamber) (“the Tribunal”), but has withdrawn that reference, with the Tribunal’s consent, and waived his right to refer a further Decision Notice to the Tribunal.
3. The FSA considers that Mr Bliss’ misconduct merits the imposition of a total penalty of £60,000 but due to Mr Bliss’ financial circumstances this penalty has been reduced to £30,000.
4. Accordingly, for the reasons set out below, the FSA imposes a financial penalty on Mr Bliss of £30,000 and imposes the Prohibition Order on him with effect from 13 December 2010 on the grounds that he is not a fit and proper person.

REASONS FOR THE ACTION

Summary

5. The FSA has decided to take this action as a result of Mr Bliss’ conduct as a broker employed by Pacific Continental Securities (UK) Limited (“PCS”). On or shortly before 29 March 2007 Mr Bliss obtained inside information that Provexis plc (“Provexis”), an Alternative Investment Market (AIM) traded company, had entered into a collaboration agreement with a major international company, Unilever, which would be announced shortly to the market. This information was not public and was price sensitive.
6. Recordings of telephone sales conversations on 29 March 2007 between Mr Bliss and various PCS clients confirm that, Mr Bliss:
 - 6.1 disclosed inside information to retail customers of PCS (otherwise than in the proper course of the exercise of his employment); and
 - 6.2 encouraged retail customers to purchase the shares in relation to which Mr Bliss had the inside information (if Mr Bliss had purchased the shares it would have amounted to market abuse).
7. Provexis announced the inside information to the market at 07:02 on 30 March 2007. Following the announcement the opening price for Provexis shares on 30 March 2007 was 19.81% higher than the closing price for its shares the day before.

Market abuse: Relevant Statutory and Regulatory Provisions

8. Section 118 of the Act defines market abuse. References in this Notice to provisions in this part of the Act are to those in force during the period of the behaviour referred to. In particular, section 118 of the Act provides as follows:

“(1) For the purposes of this Act, market abuse is behaviour (whether by one person alone or by two or more persons jointly or in concert) which –

(a) occurs in relation to –

(i) qualifying investments admitted to trading on a prescribed market,

(ii) ...

(iii) ...and

(b) *falls within any one or more of the types of behaviour set out in subsections (2) to (8).*

(2) *The first type of behaviour is where an insider deals, or attempts to deal, in a qualifying investment or related investment on the basis of information relating to the investment in question.*

(3) *The second is where an insider discloses inside information to another person otherwise than in the proper course of the exercise of his employment, profession or duties.”*

9. Section 118B of the Act provides (so far as relevant to this Notice) as follows:

“For the purposes of this Part an insider is any person who has inside information—

(a) ...

(b) ...

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

10. Section 118C of the Act (so far as relevant to this Notice) defines inside information as follows:

(2) *In relation to qualifying investments, or related investments which are not commodity derivatives, inside information is information of a precise nature which—*

(a) *is not generally available,*

(b) *relates, directly or indirectly, to one or more issuers of the qualifying investments or to one or more of the qualifying investments, and*

(c) *would, if generally available, be likely to have a significant effect on the price of the qualifying investments or on the price of related investments.*

...

(5) *Information is precise if it—*

(a) *indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur, and*

(b) *is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of qualifying investments or related investments.*

...

(6) *Information would be likely to have a significant effect on price if and only if it is information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions.*”

11. Section 123 provides that the FSA may impose a financial penalty on a person who has engaged in market abuse or encouraged others to do so.

“(1) If the Authority is satisfied that a person ("A")—

(a) is or has engaged in market abuse, or

(b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by A, would amount to market abuse,

it may impose on him a penalty of such amount as it considers appropriate.”

12. Under The Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001 (made under section 118(3) of the Act):

12.1 all markets operated under the rules of a UK recognised investment exchange (which includes the AIM market operated by the London Stock Exchange) are prescribed markets; and

12.2 all investments specified for the purposes of defining a regulated activity (including shares traded on AIM) are qualifying investments.

The Code of Market Conduct

13. Section 119 of the Act provides as follows:

“(1) The Authority must prepare and issue a code containing such provisions as the Authority considers will give appropriate guidance to those determining whether or not behaviour amounts to market abuse.

(2) The code may among other things specify-

(a) descriptions of behaviour that, in the opinion of the Authority, amount to market abuse;

(b) descriptions of behaviour that, in the opinion of the Authority, do not amount to market abuse;

(c) factors that, in the opinion of the Authority, are to be taken into account in determining whether or not behaviour amounts to market abuse.

(d) ...

(e) ...

(2A) ...

(3) *The code may make different provision in relation to persons, cases or circumstances of different descriptions. ...”*

14. The FSA has issued the Code of Market Conduct (“The Code”) under section 119 and it forms the first section of the Market Conduct Sourcebook (MAR 1) in the FSA’s Handbook of rules and guidance. References in this Notice to provisions of The Code (or MAR 1) are to the provisions in force at the time of the behaviour described in this Notice.

15. Under section 122 of the Act:

“(1) *If a person behaves in a way which is described (in the code in force under section 119 at the time of the behaviour) as behaviour that, in the Authority’s opinion, does not amount to market abuse that behaviour of his is to be taken, for the purposes of this Act, as not amounting to market abuse.*

(2) *Otherwise, the code in force under section 119 at the time when particular behaviour occurs may be relied on so far as it indicates whether or not that behaviour should be taken to amount to market abuse.”*

16. MAR 1 considers the general concepts relevant to market abuse, then each type of behaviour in turn and then describes exceptions to market abuse which are of general application. In doing so, it sets out the relevant provisions of the Code, that is:

(1) *descriptions of behaviour that, in the opinion of the FSA, do or do not amount to market abuse (see section 119(2)(a) and (b) and section 122 of the Act);*

(2) *descriptions of behaviour that are or are not accepted market practices in relation to one or more identified markets (see section 119(2)(d) and (e) and section 122(1) of the Act (subject to the behaviour being for legitimate reasons)); and*

(3) *factors that, in the opinion of the FSA, are to be taken into account in determining whether or not behaviour amounts to market abuse (see section 119(2)(c) and section 122(2) of the Act) (MAR1.1.5G).*

17. Section 118(1)(a) of the Act does not require the person engaging in the behaviour in question to have intended to commit market abuse. (MAR1.2.3 G)

18. For the purposes of the category of insider specified by section 118B(c), the person concerned does not need to know that the information concerned is inside information (MAR1.2.9G)

MAR on improper disclosure (section 118(3))

19. In the opinion of the FSA, the following factors are to be taken into account in determining whether or not the disclosure was made by a person in the proper course of the exercise of his employment, profession or duties and are indications that it was:
1. *whether the disclosure is permitted by the rules of a prescribed market, of the FSA or the Takeover Code; or*
 2. *whether the disclosure is accompanied by the imposition of confidentiality requirements upon the person to whom the disclosure is made and is:*
 - a *reasonable and is to enable a person to perform the proper functions of his employment, profession or duties; or*
 - b *reasonable and is (for example, to a professional adviser) for the purposes of facilitating or seeking or giving advice about a transaction or takeover bid; or*
 - c *reasonable and is for the purpose of facilitating any commercial, financial or investment transaction (including prospective underwriters or placees of securities); or*
 - d *reasonable and is for the purpose of obtaining a commitment or expression of support in relation to an offer which is subject to the Takeover Code; or*
 - e *in fulfilment of a legal obligation, including to employee representatives or trade unions acting on their behalf.” (MAR 1.4.5 E)*
20. Behaviour where an insider discloses inside information to another person otherwise than in the proper course of the exercise of his employment, profession or duties is market abuse (section 118(3) of the Act). The Code gives a number of examples of behaviour amounting to market abuse of this type. The relevant parts of the Code are contained in MAR 1.4. In particular, MAR 1.4.6G provides that:

“The following is an example of market abuse (improper disclosure):

X, a director at B plc has lunch with a friend, Y who has no connection with B plc or its advisers. X tells Y that his company has received a takeover offer that is at a premium to the current share price at which it is trading.”

MAR on requiring or encouraging as defined by section 123(1)(b) of the Act

21. As per MAR1.2.23G, the following are examples of behaviour that might fall within the scope of section 123(1)(b):
- (1) *a director of a company, while in possession of inside information, instructs an employee of that company to deal in qualifying investments or related investments in respect of which the information is inside information;*

- (2) *a person recommends or advises a friend to engage in behaviour which, if he himself engaged in it, would amount to market abuse.*

Financial Penalty: Statutory and Regulatory Provisions and Guidance

22. Section 123(1) of the Act authorises the FSA to impose financial penalties in cases of market abuse. Section 124 of the Act requires the FSA to issue a statement of its policy with respect to the imposition of penalties for market abuse and the amount of such penalties. The FSA's policy in this regard is contained in Chapter 6 of the Decision Procedure and Penalties manual ("DEPP"). In deciding whether to exercise its power under section 123 in the case of any particular behaviour, the FSA must have regard to this statement of policy. DEPP guidance of particular relevance is referred to in more detail in the Analysis of Sanctions section below at paragraphs 58 to 64.
23. The FSA has also had regard to the guidance published in the Enforcement Manual (ENF), and in particular Chapters 11 and 13 which set out the relevant guidance in force when the breaches were committed. In this case, there are no material differences between the guidance and factors to be taken into account when determining whether to take disciplinary action and the factors relevant to determining.

Prohibition: Relevant Statutory and Regulatory Provisions and Guidance

24. Section 56 of the Act provides that the FSA may prohibit an individual, if it appears that he is not a fit and proper person to perform functions in relation to a specified regulated activity or all regulatory activities.
25. In deciding whether to issue a Prohibition Order in relation to Mr Bliss under section 56 of the Act, the FSA has regard to its policies published in Chapter 9 of the Enforcement Guide ("EG 9").
26. The FSA's effective use of the power to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities helps the FSA to work towards its regulatory objectives of protecting consumers, promoting public awareness, maintaining confidence in the financial system and reducing financial crime (EG 9.1).
27. The relevant matters set out in EG 9.9 for the FSA to consider in this case are as follows:
- 27.1 The criteria for assessing the fitness and propriety of an individual to perform functions in relation to regulated activities (EG 9.9(2), particularly those relating to honesty, integrity and reputation).
- 27.2 Whether the individual has engaged in market abuse (EG 9.9(4)).
- 27.3 The relevance and materiality of any matters indicating unfitness (EG 9.9(5)).

- 27.4 The length of time since the occurrence of any matters indicating unfitness (EG 9.9(6)).
- 27.5 The severity of the risk that the individual poses to consumers and to confidence in the financial system (EG 9.9(8)).
28. The FSA has issued guidance on this issue in the Fit and Proper Test for Approved Persons (“FIT”). FIT 1.3.1 identifies three criteria as being the most important considerations when assessing the fitness and propriety of a candidate for a Controlled Function. The first of these (honesty, integrity and reputation) is relevant in this case. FIT states that this includes (but is not limited to) considering whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3(5)G). Also relevant is whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT 2.1.3(13)G).

Facts and Matters Relied On

Background to PCS and Mr Bliss

29. In 2007 the principal businesses of PCS were the sale to the public of AIM traded shares issued by SmallCap companies, and corporate finance services to issuers on the AIM market.¹ PCS went into administration in June 2007.
30. Sales scripts for selling shares to the public were used by sales staff. The sales scripts were intended as an aid to help achieve sales of a particular stock but certain highlighted passages containing regulatory information such as risk warnings were obligatory. Scripts and their content had to be approved by compliance and senior management before use. It was the practice of PCS for legal and compliance reasons to record conversations on external telephone lines.
31. Mr Bliss had been approved to perform investment adviser controlled functions with a number of different authorised firms since 1 December 2001 and joined PCS in April 2006 as a trainee investment advisor (Controlled Function 22). From 27 October 2006 to 20 June 2006 he carried out Controlled Function 21 (investment adviser).² Mr Bliss’ role at PCS was to sell shares in AIM traded companies to PCS clients.
32. In addition to his basic salary of £18,000 per annum, Mr Bliss was paid 6.5% commission on the value of his sales. In the 2006/7 tax year Mr Bliss earned commission of £62,711, making a total annual income of £80,711 in March 2007.

Sale of Provexis shares

33. Provexis one penny ordinary shares are traded on AIM and form part of the FTSE AIM All Share index.

¹ SmallCap refers to stocks with relatively small market capitalisation.

² CF21 and CF22 have since been superseded by an amalgamated customer facing controlled function CF30

34. In early 2007 Provexis was negotiating a long-term collaboration agreement to develop a new format of certain patented technology for application in a household name's food product portfolio. This was an important step for Provexis in its developing relationship with an important and substantial client..
35. In February 2007 PCS participated in a share placement by Provexis to raise approximately £2.15 million of working capital by way of a conditional placing at a price of 1.5 pence per share. This represented a discount on the market price. As a consequence certain individuals in the PCS corporate finance department were made insiders in respect of the negotiations for the collaboration agreement. Provexis announced the intended share placement to the market on 16 March 2007.
36. An agreement on the terms of the collaboration agreement was concluded on or about 27 March 2007 although the formalities may not have been completed until 29 March 2007. The identity of the household name as the collaboration partner, the fact that an agreement had been reached with a major international business and its imminent announcement were not yet public. If this information had been generally available it would have been likely to have had a significant effect on the Provexis share price, and in fact when it was announced the share price rose by nearly 20%.
37. On 27 March 2007 at 19:15, Mr Bliss received an email from a colleague with the subject "Provexis". The text read: "*Gentlemen, This script does not exist*" and a sales script for Provexis shares was attached ("the Unofficial Sales Script"). The text of the Unofficial Sales Script contained inside information stating that Provexis had signed an agreement with an unnamed major food company, the announcement of the deal was imminent and that it was predicted the share price could rise as high as 5 or 6 pence, a 100% increase.
38. Two minutes later at 19:17 Mr Bliss received a second email (not sent with "High" importance) from the same colleague with subject "*Compliance Approved Provexis Script and Stock report*". In contrast the text read as follows: "*This script does exist*". This email attached the original Provexis sales script and PCS stock report ("the Official Sales Script"). Neither of these documents contained inside information about the anticipated collaboration agreement.
39. The following day, on 28 March 2007 at 14:00, a presentation was given by Provexis to PCS staff including Mr Bliss. The presentation concerned Provexis' business and its prospects. Different accounts have been given regarding whether and to what extent, if at all, inside information about the collaboration agreement was expressly or impliedly disclosed to PCS staff at the presentation.

The Sales Calls

40. Following the 28 March 2007 presentation Mr Bliss and other sales staff were authorised by PCS management to begin sales calls to PCS clients for Provexis shares. The FSA has reviewed the recordings made of Mr Bliss' telephone extension for 28 to 30 March 2007. The FSA has identified five instances where market abuse was committed by virtue of improper disclosure.

Sales Call 1: 29 March 2007, 09:46

41. An extract of Mr Bliss' call to a client regarding Provexis is set out below (Mr Bliss speaking):

"This is a company called Provexis ...

"This announcement is now due tomorrow. Now, they are starting to work with one of the very largest food distributors in the whole world... Right, I cannot tell you exactly who these guys are, purely and simply because the announcement's not until tomorrow, and obviously I can't pre-empt the market knowing this fact. But what I can tell you is this is one of the largest in the world. Multi billion pound company, and at the end of the day, if that doesn't move share prices, I don't know what's going to...

"...and that's really what's put this deal to bed that's occurring tomorrow. Now I can't be any plainer than that. This is a company that's a small cap company, around about seven mill, which is about to go into collaboration with one of the largest players in the world. I have been working on the AIM market for many, many years now, about five years, specifically looking at the AIM market for the last five years. It's these sorts of announcements which move share prices significantly...

"You're going to see that this share price has moved on the back of some...some announcements, etc., over the course of the last couple of weeks, but why we're buying this is for tomorrow's announcements, which you're obviously not going to see, because they're not out yet."

Sales Call 2: 29 March 2007, 10:20

42. An extract of Mr Bliss' call to a second client regarding Provexis is set out below (Mr Bliss speaking):

"...these guys have got a major announcement taking place first thing tomorrow...

"Now I'll tell you about the company. Real straightforward stuff. Back in 2005, a company was floated onto the AIM market called Provexis ...

"[I was told yesterday that] this deal was now done. They're now working with one of the huge multinationals - multi billion pound market capitalisation - in collaboration to produce this product and distribute it across the globe. I can't tell you who they are. But that announcement is made tomorrow morning. First thing tomorrow morning...

"So I've been involved specifically in the AIM market for the last four and a half years or so now. I don't know anything else that moves share prices quicker and further than announcements of this type. So very simply, we want to get you involved...

Sales Call 3: 29 March 2007, 10:59

43. An extract of Mr Bliss' call to a third client regarding Provexis is set out below (Mr Bliss speaking):

"...this announcement is tomorrow morning as the market opens. Now, I'll run it through for you from start to finish. It's a real straightforward play at the end of the day, and this is all about tomorrow's announcement. These guys are called Provexis

"Now, they've been in discussion with all the major players. We're talking the largest companies in the world –[a household name], etc - as I mentioned to you yesterday. Tomorrow morning they're announcing a collaboration deal which has already been done. At two o'clock yesterday [I was told that] this is a done deal, this has already been done...announcing... tomorrow morning. Can't tell you who it is, obviously, until it's public information. This deal will then see this company's products be put into something along the lines of Actimel and distributed globally and that's going to move this share price significantly tomorrow...

"As I said this deal is being put to bed tomorrow with a multi billion pound market capitalised...the likes of [a household name]. It's a global household name, you'll know it without a doubt...

"The fact that [it was] confirmed to me in a meeting yesterday that [the company] has tied up a deal, which is without a doubt the biggest deal that's ever going to happen to this company and it's occurring tomorrow..."

"We're talking about a stock that is moving tomorrow on the back of an announcement. It's that straight forward..."

44. At 11:45 on 29 March 2007, PCS Compliance hand delivered to all sales staff a warning headed *"Provexis Cautionary Note from Compliance."* The Note said:

"[Provexis] told us yesterday that they had been negotiating.

The Stock Note and Script mention the importance of a deal:

- *Positive if it happens*
- *Negative if it does not.*

Do not say anything that suggests that such a deal has been concluded and be extra careful not to name any international major in that context.

Ask me if in the slightest doubt."

45. Notwithstanding the receipt of this notice, Mr Bliss made further sales calls at 17:44 and 18:28 on 29 March 2007 respectively:

Sales Call 4: 29 March 2007, 17:44

46. An extract of Mr Bliss' call to a further client regarding Provexis is set out below:

"Right, this company – Provexis is the name of it ...

"[I was told yesterday that] they have just put to bed a deal with one of the largest companies in the world, to collaborate with them, to start this distribution chain..."

"I look at AIM shares all the time. I look for opportunities like this. This is the sort of thing that moves share prices significantly..."

"[I was told] yesterday that they have just signed a collaboration deal with one of the major food and drink distributors in the world – one of the triple 'A' blue chip clients, one of the over ten billion market cap..."

"I can't tell you who it is but it is one of those top five distributors around the globe. You'll definitely know who they are... Food and drink, yep...Now, that narrows it down obviously, but I can't..."

Sales Call 5: 29 March 2007, 18:28

47. An extract of Mr Bliss' call to a further client regarding Provexis is set out below:

"The company's called Provexis ...

"Now, yesterday, [I was told] that they have now closed a deal. They have now done a deal to collaborate with what is one of the world's biggest companies. That company, I can't tell you what it's called, because they've not announced this to the market yet..."

"That is being announced to the market in the very near future, Harry. Now this is exactly what moves AIM shares."

48. The FSA understands that these sales calls by Mr Bliss resulted in agreements or potential agreements by PCS clients to buy shares in Provexis as follows:

| Sales Call | No of shares | Price / share | Total cost quoted to client £ |
|-------------------|---------------------|----------------------|--------------------------------------|
| 1 | 100,000 | 2.75 pence | 2,750 |
| 2 | 200,000 | 2.75 pence | 5,000 |
| 3 | 700,000 | 2.88 pence | 20,400 |
| 4 | Not known | 3.00 pence | Not Known |
| 5 | Not Known | 3.00 pence | Not Known |

49. The closing Provexis share price on 29 March 2007 was 3.13 pence. The following day on 30 March 2007, at 07:02, Provexis announced to the market that it had entered into a long-term collaboration agreement with Unilever to develop a new format of the relevant patented technology. The opening price of Provexis shares was 3.75 pence. This represented a 19.81% increase on the closing price the previous day.

Representations

50. Mr Bliss made written representations on his financial circumstances arguing that he is unable to pay the financial penalty proposed by the FSA. The FSA has taken account of Mr Bliss' representations in reaching its decision in this Notice.
51. No representations were received from Mr Bliss in relation to the substantive matters referred to in this Decision Notice.
52. Representations were also received from Provexis and have been taken into account in this matter.

Conclusion

53. As no representations were received by the FSA on the substantive matters which are the subject of this Decision Notice, the FSA is permitted to treat the facts and matters described in the Warning Notice as undisputed. The substantive requirements of market abuse as relevant to Mr Bliss are set out further below.
54. The FSA is satisfied that in relation to Sales Calls 1 to 5 Mr Bliss, as an insider, disclosed inside information to others otherwise than in the proper course of the exercise of his employment profession or duties in breach of section 118(3) of the Act because:
 - 54.1 Mr Bliss had access to the information through the exercise of his employment and was therefore an insider;
 - 54.2 Mr Bliss disclosed inside information to each of the clients in Sales Calls 1 to 5 by revealing that:
 - (a) Provexis had entered into an agreement. This was substantially accurate. An agreement had been reached and the household name's press office briefed three days before these calls. The terms of the agreement were at an advanced stage if not completed by 27 March 2007.
 - (b) The agreement had been signed (Mr Bliss used a variety of terms such as saying the deal had been signed, put to bed, done and closed). This was accurate. The agreement was formally signed the same day as the telephone calls were made by Mr Bliss.
 - (c) The agreement was with a very significant counterparty, variously described as "*one of the largest food distributors*", "*with one of the huge multinationals - multi-billion pound market capitalisation*", "*the largest companies in the world – [a household name]*" , "*the likes of [the household name]*" and a "*global household name*". This was accurate.
 - (d) The announcement would be made to the market the next day or imminently. This was accurate. The announcement was made the next day.
 - (e) The effect of the announcement was expected to increase the share price significantly. This was accurate. The share price rose 19.81% after the announcement.

- 54.3 This information was inside information because it was of a precise nature, not generally available, in relation to qualifying investments and the information would, if generally available, be likely to have had a significant effect on the price of Provexis shares. This is supported by statements to this effect by Mr Bliss in the course of Sales Calls 1 to 5, and the 19.81% increase in the Provexis share price following the announcement on 29 March 2007 versus the closing price of the previous day.
- 54.4 Mr Bliss disclosed the inside information to PCS retail clients, otherwise than in the proper course of the exercise of his employment during telephone sales calls to encourage clients to purchase Provexis shares. For the reasons set out below Mr Bliss must have been aware that disclosing the information was not in the proper course of the exercise of his employment:
- (a) Mr Bliss received the inside information in the Unofficial Sales Script under cover of an email that read "*This script does not exist*".
 - (b) The inside information was not included in the Official Sales Script which was sent to Mr Bliss on 27 March under the subject: "*Compliance Approved Provexis Script and Stock Report*" two minutes after Unofficial Sales Script. It must have been apparent to Mr Bliss that he should follow the Compliance approved Official Sales Script but he did not.
 - (c) Whether or not the whole, or any part, of the inside information was also revealed at the Provexis presentation on 28 March 2007, it would also have been apparent to Mr Bliss from the circumstances in which he first obtained the information (under cover of the "*this does not exist*" email) that disclosure was improper. This would have been reinforced by the Compliance "Cautionary Note".
 - (d) It is quite clear from the telephone transcripts that Mr Bliss knew the information was not in the public domain and it would have been obvious to Mr Bliss as an experienced member of the Sales staff and an Approved Person that this was inside information that he should not have disclosed to his clients.
55. In addition the FSA is satisfied that in relation to Sales Calls 1 to 5 Mr Bliss' actions encouraged his clients to buy Provexis shares and that if Mr Bliss had bought or attempted to buy Provexis shares on 29 March 2007 this would have amounted to market abuse under section 118(2) (insider dealing) because the inside information would either have been the reason for, or a material influence on, the decision or attempt to deal. Mr Bliss therefore breached section 123(1)(b) of the Act.

Fitness and Propriety

56. The FSA considers that Mr Bliss' conduct in the matters described in this Decision Notice demonstrates that he has acted without honesty and integrity. It must have been abundantly clear to Mr Bliss on receipt of the two emails from a colleague on 27 March 2007 that the intention of having two scripts - one said "*not to exist*" - was

improper. Mr Bliss' failure to query this and on the contrary to use the information in the Unofficial Sales Script is serious and goes to his fitness and propriety. Such conduct demonstrates a lack of honesty and integrity on his part.

57. Mr Bliss' conduct was deliberate. He understood and intended the consequences of his actions. In particular:
- 57.1 Mr Bliss used material information about Provexis in all of Sales Calls 1 to 5 which was not contained within the Official Sales Script;
 - 57.2 the content of the telephone sales recordings imply an awareness of the nature of the information passed to clients, in particular, that it was not generally known to the market and that the share price would increase significantly on announcement; and
 - 57.3 as is shown by Sales Calls 4 and 5, Mr Bliss chose to ignore warnings in the Compliance "Cautionary Note"
58. Mr Bliss' conduct meant that AIM market participants were disadvantaged and his actions had the potential to cause damage in the AIM market. In this regard it is notable that a colleague of Mr Bliss sent an email at 21.23 on 29 March setting out the sales made by each broker and stating "...*This is a record day in the history of Pacific! Congratulations*".
59. In order to sustain confidence in the UK's financial system, it is essential that confidence is maintained in the honesty and integrity of persons occupying positions of responsibility within UK authorised financial institutions. Mr Bliss was an Approved Person and benefited from commission payable on his sales.
60. This conduct amounts to serious failings to satisfy the criteria of honesty and integrity such that Mr Bliss is not fit and proper to perform any Controlled Functions and such that it is appropriate that the Prohibition Order be made against him.

Analysis of Sanctions

Financial Penalty

61. The FSA's published policy states that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.
62. In enforcing the market abuse regime, the FSA's priority is to protect prescribed markets from any damage to their fairness and efficiency caused by the misuse of information in relation to the market in question. Effective and appropriate use of the power to impose penalties for market abuse will help to maintain confidence in the UK financial system by demonstrating that high standards of market conduct are enforced in the UK financial markets. The public enforcement of these standards also furthers public awareness of the FSA's protection of consumers objective, as well as deterring potential future market abuse.

63. DEPP 6.2 sets out a number of factors to be taken into account when the FSA decides whether to take action in respect of market abuse. They are not exhaustive but include the nature and seriousness of the behaviour, the degree of sophistication of the users of the market in question, the size and liquidity of the market and the susceptibility of the market to market abuse. Other factors include action taken by the FSA in similar cases, the impact that any financial penalty or public statement may have on the financial markets or on the interests of consumers and the disciplinary record and general compliance history of the person concerned.
64. DEPP 6.4 sets out a number of factors to be taken into account when the FSA decides whether to impose a financial penalty or issue a public censure. They are not exhaustive but include deterrent effect, whether a person has made a profit or loss by his misconduct, the seriousness of the behaviour and the FSA's approach in similar previous cases.
65. DEPP 6.5 sets out a number of factors to be taken into account when the FSA determines the level of a financial penalty that is appropriate and proportionate to the misconduct. They are not exhaustive but include deterrence, the nature, seriousness and impact of the misconduct, the extent to which the breach was deliberate or reckless, whether the person on whom the penalty is to be imposed is an individual, his financial resources and other circumstances, the amount of any benefit gained or loss avoided, disciplinary record and compliance history and action that the FSA has taken in relation to similar misconduct by other persons.
66. The FSA has taken all of the circumstances of this case into account and considered the guidance in DEPP 6 in deciding that it is appropriate in this case to take action in respect of behaviour amounting to market abuse, that the imposition of a financial penalty is appropriate and that the level of financial penalty is appropriate and proportionate.
67. The FSA has had regard in particular to the following circumstances of this case:

Aggravating features

- (1) Mr Bliss' impropriety in the manner in which he conducted his primary role, that is, to sell shares. He was an experienced member of the sales team, although he did not have responsibility for or oversight of others
- (2) Mr Bliss' conduct was deliberate and motivated by personal gain through PCS's bonus scheme.
- (3) The market abuse occurred during a series of calls made in the course of a day.
- (4) These calls continued despite the Cautionary Note distributed by Compliance warning about conduct during sales calls as per Mr Coppin.
- (5) Other AIM market participants were disadvantaged and Mr Bliss's actions had the potential to cause damage in the AIM market. Sales Calls 1 to 5 represented approximately £30,000 in sales of Provexis stock and Mr Bliss' total sales of Provexis stock on 29 March 2007 were £102,000.

Mitigating features

- (6) Mr Bliss voluntarily attended for interview and answered the investigators' questions. He did make a number of admissions and accepted in hindsight that 'the rules' had been broken and that he should have known better.
- (7) There have been no previous findings of market misconduct against Mr Bliss.
- (8) The FSA recognises that there was a poor regulatory and compliance culture at PCS and that Mr Bliss was not the only person engaging in market abuse.

Conclusions on Sanction

Financial penalty

- 68. In determining the financial penalty, the FSA has considered Mr Bliss' financial resources (so far as known to the FSA) and the need to deter Mr Bliss and others from engaging in this type of activity. The FSA has also had regard to penalties imposed in other market abuse cases.
- 69. The FSA considers that a total financial penalty of £60,000 is appropriate, but that this should be reduced to £30,000 in light of Mr Bliss' financial circumstances.

Prohibition Order

- 70. In light of Mr Bliss' conduct the FSA is of the view that he lacks honesty and integrity and that this is therefore a serious case of a lack of fitness and propriety such that the Prohibition Order is necessary in order to meet the FSA's regulatory objectives.

DECISION MAKER

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

IMPORTANT

- 72. This Decision Notice is given to Mr Bliss in accordance with section 390 of the Act.
- 73. The following statutory rights are important.

Manner of and time for Payment

- 74. The FSA is in possession of evidence that it would cause Mr Bliss serious financial hardship or financial difficulties if he were required to pay the full payment in a single instalment. Accordingly, the financial penalty of £30,000 must be paid in instalments as follows:

- 74.1 £6,000 by 31 January 2011; and

74.2 A further four instalments of £6,000 to be paid every six months on 31 July 2011, 31 January 2012, 31 July 2012 and 31 January 2013.

75. The financial penalty must be paid in full by Mr Bliss to the FSA by no later than 31 January 2013.

If the financial penalty is not paid

76. If Mr Bliss defaults in the payment of any instalments the entire penalty shall become immediately due and the FSA may recover the amount due as a debt owed by him and due to the FSA. Similarly, if any of the financial penalty is outstanding following 31 January 2013, the FSA may recover the outstanding amount as a debt owed by Mr Bliss and due to the FSA.

Publicity

77. 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 Mr Bliss or prejudicial to the interests of consumers.
78. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate

FSA contacts

79. For more information concerning this matter generally, contact Matthew Nunan at the FSA (direct line: 020 7066 2672 /fax: 020 7066 2673).

Tracey McDermott
FSA Enforcement and Financial Crime Division