



Financial Services Authority

FINAL NOTICE

To: Simon Eagle

Date of Birth :16 August 1958

Date: 18 May 2010

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the “FSA”) has decided to take the following action:

ACTION

1. For the reasons listed below the FSA has decided to impose on Mr Simon Eagle (“Mr Eagle”):
 - 1.1 a financial penalty of £2.8 million, pursuant to section 123(3) of the Financial Services and Markets Act 2000 (the “Act”), for engaging in market abuse; and
 - 1.2 a prohibition order, pursuant to 56 of the Act, prohibiting Mr Eagle from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm on the grounds that he is not a fit and proper person.
2. The financial penalty consists of the following elements:

- 2.1 a disgorgement of financial benefit arising from the market abuse of £1.3 million (being the commission earned personally from the original shareholders, plus notional interest on that sum); and
 - 2.2 an additional penalty element of £1.5 million;
3. On 16 July 2008 Mr Eagle referred his Decision Notice to the Financial Services and Markets Tribunal (“the Tribunal”). Mr Eagle notified the Tribunal of the withdrawal of his reference on 30 April 2010. The Tribunal gave its consent to this withdrawal on 14 May 2010. Given the withdrawal this notice is drafted in the same terms as the Decision Notice.

REASONS FOR THE ACTION

Summary

4. The FSA has decided to take this action as a result of the behaviour of Mr Eagle, during the period July 2003 to July 2004 (the “relevant period”), in instigating and effecting a share ramping scheme which led to the suspension of trading in shares in Fundamental-E Investments Plc (“FEI”) by the Alternative Investment Market (“AIM”) of the London Stock Exchange (the “LSE”) on 15 July 2004. Shares in FEI were suspended on 15 July 2004 for a week and on further trading the share price fell dramatically and has never recovered. Mr Eagle’s conduct had the potential to, and did, cause serious loss to investors and damage to confidence in the AIM market.
5. SP Bell Ltd (“SP Bell”), a stock-broking company, was used as a vehicle by Mr Eagle, in his capacity as its controller and chief executive, for actively pursuing an abusive course of conduct. Mr Eagle owned and controlled SP Bell from 27 May 2003. Mr Eagle deliberately caused SP Bell to embark on a course of market abuse in relation to FEI through the use of rollovers, delayed rollovers and the manipulation of share prices.
6. Mr Eagle instructed others to:
 - 6.1 execute large numbers of rollovers and thereby avoid paying for FEI shares and thereby mislead the market;
 - 6.2 execute delayed rollovers and thereby mislead the market;
 - 6.3 position the share price of FEI at an artificially high level.
7. It appears to the FSA, on the basis of the facts and matters described in the Schedule to this Notice, that Mr Eagle’s behaviour amounted to market abuse (contrary to s118(2)(b) and 118(2)(c) of the Act, as in force at the relevant period) as follows:
 - 7.1 it occurred in relation to a qualifying investment traded on a prescribed market (i.e. FEI shares traded on AIM);
 - 7.2 it was:

- 7.2.1 likely to give a regular user of the market a false or misleading impression as to the supply of, demand for, price or value of, FEI shares; and
 - 7.2.2 such that a regular user of the market would, or would be likely to, regard the behaviour as that which would, or would be likely to, distort the market in FEI shares;
 - 7.3 it is likely to be regarded by a regular user of that market who is aware of the behaviour as a failure on the part of Mr Eagle to observe the standard of behaviour reasonably expected of a person in Mr Eagle's position in relation to the market; and
 - 7.4 it occurred in the United Kingdom.
8. Further, it appears to the FSA that, in all the circumstances, it would be proper to make a prohibition order against Mr Eagle. In particular it appears to the FSA that Mr Eagle intended the effects of his behaviour, that is:
- 8.1 a false and misleading impression was given to the market as to the demand for FEI shares;
 - 8.2 a false and misleading impression was given to the market as to the price or value of FEI shares; and
 - 8.3 the market in FEI shares was distorted.
9. The detailed reasons for the FSA's action as set out in the Decision Notice are in the attached schedule.

Sanction

- 10. Pursuant to section 123 of the Act, the FSA has taken all the relevant circumstances into account in deciding that Mr Eagle has engaged in market abuse and should have imposed on him a financial penalty of £2.8 million.
- 11. In addition, the FSA considers that Mr Eagle is not fit and proper and that a prohibition order should be made prohibiting him from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm.

IMPORTANT

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

Manner of and time for payment

- 13. The financial penalty of £2.8 million must be paid in full by Mr Eagle by no later than 1 June 2010, 14 days from the date of the Final Notice.

If the financial penalty is not paid

14. If all or any of the financial penalty is outstanding on 1 June 2010, the FSA may recover the outstanding amount as a debt owed by Mr Eagle and due to the FSA.

Publicity

15. 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 a 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 Eagle or prejudicial to the interests of consumers.
16. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

17. For more information concerning this matter generally, you should contact Karen Lee or Beth Harris at the FSA (direct line: 020 7066 1316 / 020 7066 2508).

Tracey McDermott
Head of Department
FSA Enforcement & Financial Crime Division

SCHEDULE – EXTRACT FROM WARNING NOTICE DATED 18 OCTOBER 2007

(The FSA has also proposed to take action against Mr Betton in respect of this matter. Mr Betton referred the FSA’s decision to the Tribunal. He does not accept the findings as set out in this annex)

Market abuse: Relevant Statutory 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(1) of the Act provides as follows:

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

- (a) which occurs in relation to qualifying investments traded on a market to which this section applies;*
- (b) which satisfies any one or more of the conditions set out in subsection (2); and*
- (c) which is likely to be regarded by a regular user of that market who is aware of the behaviour as a failure on the part of the person or persons concerned to observe the standard of behaviour reasonably expected of a person in his or their position in relation to the market.”*

9. Section 118(2) of the Act provides (so far as relevant to this Notice) as follows:

“The conditions are that -

- (a) ...*
- (b) the behaviour is likely to give a regular user of the market a false or misleading impression as to the supply of, or demand for, or as to the price or value of, investments of the kind in question;*
- (c) a regular user of the market would, or would be likely to, regard the behaviour as behaviour which would, or would be likely to, distort the market in investments of the kind in question.”*

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

- 10.1 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
- 10.2 all investments specified for the purposes of defining a regulated activity (including shares traded on AIM) are qualifying investments.

The Code of Market Conduct

11. 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.

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

12. 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.

13. 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.”

14. In accordance with section 122(2) of the Act, provisions of the Code identified by the letter ‘E’ may be relied upon so far as they describe behaviour which, in the opinion of the FSA, amounts to market abuse or in accordance with section 119(2)(c) of the Act, describe factors that, in the opinion of the FSA, are to be taken into account in determining whether or not behaviour amounts to market abuse. (MAR 1.1.11G)

False or misleading impression (section 118(2)(b))

15. Behaviour which is likely to give a regular user of the market a false or misleading impression as to the supply of, demand for or price or value of the investments in

question is market abuse (section 118(2)(b) of the Act). The relevant parts of the Code are contained in MAR 1.5. In particular, MAR 1.5.3E provides that:

“Prescribed markets provide a mechanism by which the price or value of investments may be determined according to the market forces of supply and demand. When market users trade on prescribed markets they expect the price or value of investments and volumes of trading to reflect the proper operation of market forces rather than the outcome of improper conduct by other market users. Improper conduct which gives market users a false or misleading impression results in market users no longer being able to rely on the prices formed in markets or volumes of trading as a basis for their investment decisions. This will undermine confidence in the integrity of the prescribed market and overall market activity may decrease and transaction costs may rise, or both, to the detriment of market users, including investors.”

16. The Code gives a number of examples of behaviour amounting to market abuse of this type, including artificial transactions. MAR 1.5.8E notes the characteristics of an artificial transaction amounting to market abuse, as follows:

- (a) the principal effect of the transaction is to, inter alia, inflate or maintain the apparent demand for or the apparent price or value of the share;
- (b) the person concerned knows or can reasonably be expected to know this principal effect;

except when the principal rationale is a legitimate commercial rationale and the transaction is executed in a proper way.

17. A transaction which creates a false or misleading impression will not normally be considered to have a legitimate commercial rationale where the purpose behind the transaction was to induce others to trade in or to position or move the price of a security (MAR 1.5.9E).

18. A transaction will be executed in a proper way where it is executed in a way which takes into account the need for the market as a whole to operate fairly and efficiently (MAR 1.5.10E).

19. Factors that are to be taken into account in determining whether or not behaviour amounts to market abuse, include the following (MAR 1.5.11E):

- (a) whether the transaction causes or contributes to an increase in the demand for or the price or value of a security and the person responsible for the transaction has an interest in the level of demand for or the price or value of the security;
- (b) whether the transaction involves the placing of buy and sell orders at prices higher or lower than the market price or the placing of buy and sell orders which increase the volume of trading.

20. A person has an interest in a security where he may directly or indirectly benefit from alterations in its market price (MAR 1.5.13E).

Distortion (section 118(2)(c))

21. Behaviour which would, or would be likely to, distort the market in the investment in question is market abuse (section 118(2)(c) of the Act). The Code deals with distortion at MAR 1.6. In particular, MAR 1.6.3E states:

“...A person may not engage in behaviour that interferes with the proper operation of market forces and so with the interplay of proper supply and demand and so has a distorting effect. Distortion undermines confidence in the prescribed markets and damages efficiency to the detriment of market users, including investors.”

22. The Code at MAR 1.6.4E sets out the FSA’s opinion that behaviour will amount to market abuse if it interferes with the proper operation of market forces with the purpose of positioning prices at a distorted level.
23. MAR 1.6.7E notes that behaviour which falls within the descriptions of distortion in the Code may also fall within the scope of the prohibition of behaviour giving rise to a false or misleading impression.
24. The Code gives examples of behaviour amounting to distortion, including price positioning. MAR 1.6.9E states that behaviour will constitute market abuse where a person enters into a transaction, or a series of transactions with the purpose of positioning the price of a security at a distorted level.
25. Factors to be taken into account in determining whether behaviour amounts to market abuse, include the following (MAR 1.6.11E):
- (a) the extent to which the person concerned had a direct or indirect interest in the price or value of the security;
 - (b) the volume or size of the person’s transaction or transactions in relation to reasonable expectations as the depth and liquidity of the market at the time in question;
 - (c) whether a person has successfully and consistently increased the prices he had paid for a security.

Facts and Matters Relied On

(a) SP Bell

26. SP Bell was an agency only stock broking firm which conducted business from nine branch offices located throughout the UK, including Manchester and Bristol. SP Bell was authorised by the FSA to conduct investment business, and was a member of the LSE.

27. SP Bell (known as Seymour Pierce Bell Limited until 18 December 2003) had been loss making for a number of years. On 27 May 2003 Mr Eagle acquired SP Bell using his investment vehicle Forum Finance Group Ltd. At all times thereafter Mr Eagle owned and controlled SP Bell.
28. SP Bell had two directors, Mr Eagle and Mr Betton. Mr Betton was based in the Manchester Office of SP Bell. Mr Eagle was approved by the FSA to hold controlled functions CF1 (director), CF3 (chief executive) and CF8 (apportionment and oversight). He does not hold any other controlled functions with any other authorised firm. Mr Eagle has been involved in the financial services industry since 1978.
29. At the relevant time SP Bell had 3,136 clients of which 90% were classified as private customers. Services were provided to clients on an “execution only” (that is trading only on instruction from the client), “advisory” (that is providing advice about potential trades) or “discretionary” (that is the firm acting on behalf of the client in deciding about and executing trades) basis.

(b) The Eagle Accounts and unauthorised trading

30. Mr Eagle himself introduced 50 new clients to SP Bell during the period 18 July 2003 to 13 May 2004. Of these, 38 made up a core group of client accounts which traded regularly under Mr Eagle’s control and direction (the “Eagle Accounts”). In relation to the Eagle Accounts:
 - 30.1 36 were opened on “execution only” terms (as were the 12 accounts for clients introduced by Mr Eagle which were not Eagle Accounts);
 - 30.2 Mr Eagle has admitted that he opened more than 20 Eagle Accounts in the knowledge that the underlying clients did not have the necessary funds to finance trading. Ultimately, only 2 of the Eagle Account holders ever paid any money into their accounts; and
 - 30.3 all were registered, in SP Bell’s records, to Mr Betton as nominated account manager in the Manchester Office.
31. The trades in FEI shares set out below were executed upon instructions from Mr Eagle to SP Bell brokers. The brokers had no direct instructions from the actual clients. Mr Eagle was not approved to perform any controlled functions relating to customers – including advising, dealing, arranging deals or managing investments.
32. Mr Eagle deliberately acted without the authority of the underlying client in order to further his share ramping scheme. Of the Eagle Account clients:
 - 32.1 at least four had not heard of FEI;
 - 32.2 at least 25 have identified transactions on their accounts for which they did not give instructions;
 - 32.3 at least five, having opened an account with SP Bell and received contract notes, were assured by Mr Eagle that there was nothing to worry about; and

32.4 at least nine, based on their understanding of the transactions on their account, considered their accounts to be in credit when SP Bell ceased trading.

Mr Eagle's actions were contrary to the standards reasonably expected of a person in his position, in particular as the chief executive of a stockbroking firm.

(c) The initial FEI transaction

33. Mr Eagle had been actively seeking to secure control of an AIM shell company as an investment vehicle to acquire electronic technology companies. In May 2003 he agreed with the two majority shareholders of FEI (the "original shareholders") that he would arrange for their shares, 85% of the issued share capital (140 million shares), to be sold.
34. Mr Eagle proposed to buy a 10% stake in FEI himself: however, he had to find buyers for the remaining 75%. He proposed to do so, for the most part, by selling shares to clients of SP Bell. Mr Eagle used the market makers Winterflood Securities Limited ("Winterflood") to intermediate the sale of these shares. The original shareholders sold their shares, via third party brokers, to Winterflood. Winterflood sold them in turn to purchasers sourced by Mr Eagle and SP Bell.
35. There was little or no current market demand for FEI shares (it was a company specialising in electronic components but was increasingly out of step with current technology). During May 2003 a total of 109,019 shares were traded. Therefore Mr Eagle had to generate significant demand in order to achieve the share sale.
36. Mr Eagle and Mr Betton orchestrated a sales campaign from August 2003 whereby SP Bell brokers arranged the sale of 35.9 million FEI shares to SP Bell clients. Mr Eagle himself took 16.5 million shares (through an investment vehicle) and marketed FEI shares to other brokers, whose clients purchased 20.3 million shares. Mr Betton caused 30 of his clients to take up 16.1 million shares between 13 August 2003 and 5 December 2003 and strongly encouraged other brokers to recommend FEI shares to their clients. In addition, Winterflood sold some shares as part of its normal market making business. However, there remained a significant rump of shares for which no purchasers had been found.
37. In order to procure purchasers for the outstanding rump of FEI shares, Mr Eagle himself introduced 50 new clients to SP Bell during the period 18 July 2003 and 13 May 2004 (see paragraph 30). 27 of these clients bought 60.7 million FEI shares, thus completing the sale of shares by the end of December 2003 and giving Mr Eagle control of FEI. On 19 November 2003 Mr Eagle became a director of FEI. On 5 January 2004 he became executive chairman of FEI. He was actively involved in the management of the company.
38. By using third party brokers and Winterflood as an intermediary, Mr Eagle was able to obscure the full extent of his financial interest and involvement in the FEI share sale from the employees of SP Bell, the clients of SP Bell (to whom a purchase of FEI shares was recommended) and from the market generally. In particular he was able to

conceal the fact that he stood to earn a significant commission from the original shareholders.

39. Mr Eagle benefited significantly from the initial FEI transaction in that:
- 39.1 he was paid a commission of £1,221,878 by the original shareholders;
 - 39.2 he personally acquired a stake of 16,500,000 shares in FEI, equivalent to 10% of the issued share capital;
 - 39.3 he effectively secured control of FEI and its shareholders;
 - 39.4 he secured an appointment to the board of FEI, becoming a director on 19 November 2003 and executive chairman on 5 January 2004.

(d) The rollover scheme

40. In order to avoid the Eagle Accounts being required to pay for their FEI shares, Mr Eagle instituted a scheme whereby FEI positions were rolled from one SP Bell client account to another. The effect of the rollover trades was to defer settlement, potentially indefinitely. The method used was for SP Bell:
- (a) to buy FEI shares for a client on a “T+10” settlement basis (in effect the client buys on credit); and
 - (b) to sell those shares (via the market maker) to another client at or before the date of settlement.

A rise in share price which had occurred in the intervening period covered the cost of purchase and left a profit on the first account which could then be used to purchase further FEI shares. The rollover scheme thus required a rising share price in order to succeed in deferring settlement.

41. The rollover scheme not only allowed Mr Eagle to complete the sale of the 140 million shares by the original shareholders, it also allowed him to continue to buy shares in the market. Between January and July 2004, SP Bell bought 42,115,450 shares in the market (as described in section (e) below). These shares were not paid for but were simply added into the rollover scheme.
42. SP Bell charged commission to its clients on the rollover trades (which were executed for the account of its customers, although in many cases they were not authorised by the underlying customers) and earned at least £1.1 million. This was of benefit to Mr Eagle who owned and controlled SP Bell.
43. Mr Eagle caused SP Bell to undertake the first rollover trade in FEI shares on 24 September 2003, and caused SP Bell to continue to execute rollovers until 14 July 2004. The volume rolled over between September 2003 and July 2004 was 1.8 billion FEI shares. This represented 80% of the total volume of FEI trades in this period.

44. Rule 3050 of the LSE Rules provides that a member firm may carry out a rollover trade in respect of any position in a relevant security on one occasion only. For this purpose a “rollover trade” is defined as a set of on-exchange transactions, the effect of which is to postpone the final settlement of a position in a security by closing an existing unsettled transaction and entering into a transaction in the same security which creates a new position for settlement at a later date. The purpose of the rule is to ensure that all trades are settled promptly, thus protecting the proper operation and integrity of the market.
45. Mr Eagle caused SP Bell to breach LSE Rule 3050 in that, on his instructions, individual positions were rolled over more than once.
46. The rollover trades were not genuine trades but were reported to the market as ordinary trades. As such they concealed from the market that a significant amount of FEI shares had not been paid for and gave a false and misleading impression as to the level of demand for FEI shares. The rollover trades were an essential element of the share ramping scheme.
47. As a result of causing SP Bell to execute the rollover trades, Mr Eagle deliberately deferred settlement of the trades and deliberately concealed from the market that a significant amount of FEI shares had not been paid for. Had this been known to the market, it is highly likely that it would have caused a significant fall in the FEI share price. Mr Eagle understood and intended the consequences of his actions.
48. By causing the execution of the rollover trades Mr Eagle caused the market to be given the impression that there was substantial and continuous demand for FEI shares. This was not in fact the case. Mr Eagle knew and intended that this false and misleading impression was given to the market.

(e) Constant source of buyers

49. Mr Eagle ensured that there appeared to be a constant source of buyers in order to support the FEI share price. He did so by instructing SP Bell brokers that they should always advise him of any SP Bell client seeking to sell FEI shares and that no FEI shares were to be sold into the market without first advising him. This was to prevent any selling activity exerting downward pressure on the share price.
50. SP Bell brokers were also instructed by Mr Eagle that they should actively purchase FEI stock being offered to the market by the market makers. Again, such selling activity would exert downward pressure on the share price, putting the rollover scheme at risk.
51. SP Bell brokers acted on these instructions in the following ways:
 - 51.1 If SP Bell clients gave instructions to sell FEI stock it was sold predominantly to the Eagle Accounts, and then entered the rollover scheme.
 - 51.2 The SP Bell brokers bought FEI stock offered by the market makers without first ascertaining whether there were any customers who wished to buy the stock.

52. Between January and July 2004, SP Bell bought 42,115,450 shares in the market, and included them in the rollover scheme. It bought 25,703,550 of those shares from Winterflood. This trading did not represent genuine market demand for the shares. It was artificial. These trades were undertaken by SP Bell, on the instructions of Mr Eagle, in the knowledge that there was no means of paying for them. These shares were not paid for but were simply added into the rollover scheme. In many cases the trade was unauthorised by the underlying client.
53. Mr Eagle caused SP Bell to buy these shares in order to facilitate the positioning of the price at an artificial level. Mr Eagle knew that the apparently unlimited demand for FEI shares from clients of SP Bell was not genuine.

(f) Delayed rollovers

54. Between 5 January and 18 March 2004 Winterflood executed on SP Bell's instructions, derived from Mr Eagle, 27 delayed rollovers for SP Bell, whereby the two legs of the transaction were executed at different times of the day although the size and price of the second leg of the transaction were agreed at the outset.
55. Such delayed rollovers are highly unusual. Further, they are highly misleading to the market. The time lapse between the execution of the two legs of the trade makes it impossible for market participants to identify the trades as rollovers. Such trades will appear to be genuine and unrelated trades driven by the economic forces of supply and demand.
56. The delayed rollovers involved high volumes of shares: 190.4 million in total, more than the entire issued share capital of the company. Such high volume trading, which represented 40.5% of the market within this short period of time, gave a significantly misleading impression to the market.
57. In addition the delayed rollovers were often transacted at the top end of the touch price, thus giving the impression to market participants that there was sustained buying interest at higher prices.
58. The delayed rollovers were not proper and genuine trades. In many cases they were not authorised by the underlying customers. They were an essential element of the share ramping scheme.
59. Mr Eagle intended that the market be given a false and misleading impression by the delayed rollovers as to the level of genuine interest in the stock. Mr Eagle intended that retail and media interest would be attracted to FEI as a result, causing increases to the share price.
60. By causing SP Bell to execute delayed rollovers, Mr Eagle caused the market to be given the impression that there was substantial and continuous demand for FEI shares. This was not the case. Mr Eagle knew and intended that this false and misleading impression was being given to the market.

(g) Manipulation of the share price

61. By January 2004, in order for the rollover scheme to continue (i.e. to avoid the Eagle Accounts needing to fund purchases of FEI shares), Mr Eagle needed continued increases in the share price of FEI.
62. Mr Eagle also needed to achieve an increase in the share price for the following reasons:
 - 62.1 to generate “profits” on the rollover accounts which could be used to fund further purchases of shares, thereby helping to ensure that any selling into the market would not depress the price;
 - 62.2 to enable FEI to fund acquisitions of other companies using stock as consideration;
 - 62.3 to enable FEI to raise capital in the market to fund further acquisitions;
 - 62.4 to attract genuine retail and institutional investors to FEI.
63. Accordingly, in January 2004 Mr Eagle embarked on a deliberate programme of share price manipulation whereby he sought to position the price of FEI shares at an artificially high level. Mr Eagle’s aims were:
 - 63.1 to attract media and investor attention to FEI through a combination of price rises and increased volume; and
 - 63.2 to secure an increasing share price in order that the rollover scheme might continue, that corporate acquisitions be funded, and that retail and institutional investors be attracted to the stock.
64. There are, broadly speaking, three phases of the share price manipulation scheme that can be identified:
 - 64.1 during January to March 2004:
 - FEI undertook two corporate acquisitions, the consideration for which was shares in FEI;
 - Winterflood raised its bid/offer quote 12 times;
 - Winterflood executed 54 rollovers (not including delayed rollovers) with a total volume of 285.1 million shares and 27 delayed rollovers with a total volume of 190.4 million shares for SP Bell; and
 - an article in the Daily Mail on 13 January 2004 reported that a “hefty” 11.7 million shares had been traded and that FEI could be one to watch;

64.2 during April 2004:

- the share price manipulation scheme was beginning to have the desired effect:
 - there were a number of favourable articles in the press; and
 - the level of investor interest was growing;
- Winterflood raised its bid/offer quote 13 times; and
- Winterflood executed 34 rollovers with a total volume of 261.4 million shares for SP Bell; and

64.3 during May to July 2004:

- the level of media and investor interest in FEI had tailed off – it was more difficult to attract media and investor attention to FEI and to secure an increasing share price because of the lack of investor interest in the stock at the higher prices then prevailing;
- the volumes of trading were significantly lower;
- FEI undertook a placing to raise £2,520,000 and two corporate acquisitions during this period; the consideration for one acquisition was shares in FEI;
- Winterflood raised its bid/offer quote 10 times; and
- Winterflood executed 149 rollovers with a total volume of 908 million shares for SP Bell.

65. Mr Eagle wished to see increases in the share price and was actively seeking to position the share price at an artificial level. Through Winterflood, Mr Eagle achieved a series of increases in the bid/offer quote which had the effect of positioning the price of FEI at an artificially high level.

66. There was an unusually close relationship between Mr Eagle and Winterflood. This is demonstrated by the following:

66.1 a high degree of information sharing – in particular Winterflood traders freely discussed their book positions with Mr Eagle and SP Bell;

66.2 SP Bell brokers were instructed by Mr Eagle to deal only with Winterflood when trading FEI shares; and

66.3 obvious pre-arranging of trades – there were frequent instances where Winterflood traders spoke first to Mr Eagle on an untaped line and then conducted the trade with SP Bell on a taped line.

67. ...
68. Furthermore, there was an unusually high level of communication between Mr Eagle and Winterflood on untaped lines during the period 1 January 2004 to July 2004, as demonstrated by the numerous conversations on mobile telephones between Winterflood employees and Mr Eagle – in particular the Winterflood market maker Mr Sotiriou made 41 calls on his mobile to Mr Eagle and sent one text; and Mr Eagle made 71 calls to Mr Sotiriou’s mobile. Mr Sotiriou’s mobile telephone records do not show a similar level of communication with other brokers. The FSA has concluded that at least some of the calls were undertaken on mobile telephones in order to avoid those conversations being taped.
69. ...
70.
71.
72. Winterflood’s increases to its bid/offer quote including at the instigation of Mr Eagle caused the price of FEI shares to be positioned at an artificially high level. This had the effect of misleading the market as to the price or value of FEI shares and of distorting the market in FEI shares. The market was also misled by the apparent volume of trading, share price and trading pattern.
73. The quote increases and the trading at the higher share prices gave the market a false and misleading impression as to the price or value of FEI shares and caused the price to be positioned at an artificially high level. Such price positioning at an artificial level also amounts to market distortion.
74. As Mr Eagle knew, the apparently unlimited demand for FEI shares from clients of SP Bell was not genuine. Mr Eagle was actively seeking to mislead the market as to the genuine level of demand for FEI shares through the means of rollovers and delayed rollovers.
75. The deliberate conduct of Mr Eagle gave rise to a false or misleading impression as to the price or value of FEI shares. Such price positioning at an artificial level also amounts to market distortion. Mr Eagle understood that this was the case and intended that this should occur.
76. Accordingly, ... Mr Eagle achieved a series of increases in the bid/offer quote which had the effect of positioning the price of FEI at an artificially high level. This had the effect of misleading the market as to the price or value of FEI shares and of distorting the market in FEI shares. Mr Eagle understood that this was the case and intended that this should occur.

(h) The suspension of the shares

77. Trading in FEI shares was suspended on 15 July 2004. This caused the unsettled positions in FEI shares at SP Bell to crystallise. Neither the clients of SP Bell nor SP Bell itself had sufficient funds to settle the resulting debt which was over £9 million.

SP Bell ceased trading and was placed into administration on 23 July 2004 and its business and assets were sold to another FSA authorised firm.

Conclusions: Market abuse

78. The FSA is therefore satisfied that:
- 78.1 Mr Eagle entered into numerous unauthorised transactions in FEI shares using the Eagle Accounts;
 - 78.2 Mr Eagle caused SP Bell to enter into a rollover scheme, in breach of LSE Rule 3050, which gave rise to a false or misleading impression as to the demand for FEI shares;
 - 78.3 Mr Eagle caused SP Bell to enter into 27 delayed rollovers which gave rise to a false or misleading impression as to the demand for FEI shares; and
 - 78.4 Mr Eagle entered into a share price manipulation scheme whereby he sought to position the price of FEI shares at an artificially high level.
79. The actions of Mr Eagle were deliberate. They caused:
- 79.1 a false and misleading impression to be given to the market as to the demand for FEI shares;
 - 79.2 a false and misleading impression to be given to the market as to the price or value of FEI shares; and
 - 79.3 the market in FEI shares to be distorted.
80. The trading for SP Bell was the overwhelming majority of the overall market volume in FEI. The volume of FEI shares that were rolled over by SP Bell between September 2003 and July 2004 totalled 1.8 billion shares. This represented 80% of the volume of FEI trades reported by all firms in this period (2.25 billion shares).
81. In these actions, Mr Eagle has failed to satisfy the standards reasonably to be expected of a chief executive and director of a stock broking firm dealing in AIM shares. His behaviour is likely to be regarded by a regular user of that market as a failure on the part of the person or persons concerned to observe the standard of behaviour reasonably expected of a person in his or their position in relation to the market.
82. Mr Eagle has therefore engaged in market abuse as defined by sections 118(2)(b) and (c) of the Act.

Prohibition Order Against Mr Eagle

Statutory Provisions

83. 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.

Relevant FSA Policy

84. In deciding whether to issue a prohibition order in relation to Mr Eagle under section 56 of the Act, the FSA has regard to its policies published in Chapter 9 of the Enforcement Guide (“EG 9”).
85. 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).
86. The relevant matters set out in EG 9.9 for the FSA to consider in this case are as follows:
 - 86.1 The criteria for assessing the fitness and propriety of an individual to perform functions in related to regulated activities (EG 9.9(2), particularly that relating to honesty, integrity and reputation).
 - 86.2 Whether the individual has engaged in market abuse (EG 9.9(4)).
 - 86.3 The relevance and materiality of any matters indicating unfitness (EG 9.9(5)).
 - 86.4 The length of time since the occurrence of any matters indicating unfitness (EG 9.9(6)).
 - 86.5 The severity of the risk that the individual poses to consumers and to confidence in the financial system (EG 9.9(8)).

Mr Eagle’s lack of fitness and propriety

87. 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.
88. The FSA considers that Mr Eagle’s conduct in the matters described in this Warning Notice demonstrates that he has acted without honesty and integrity. Mr Eagle instigated a scheme which broke LSE rules, misled and distorted the market and ultimately caused a substantial loss to consumers. His conduct was deliberate. He understood and intended the consequences of his actions. Such conduct demonstrates a lack of honesty and integrity on his part.
89. Mr Eagle’s conduct was deliberate. Mr Eagle understood and intended the consequences of his actions. In particular:
 - 89.1 Mr Eagle actively concealed from the market, from SP Bell clients and from his own clients that he was acting on both sides of the disposal of the FEI

shares by the original owners. In particular he used intermediaries to conceal the true nature of his involvement and he concealed the substantial commission he received from the original owners.

- 89.2 Mr Eagle acted without authority in relation to the Eagle Accounts. He entered into unauthorised transactions in relation to these accounts as a means of effecting and continuing his scheme. The underlying clients were left with personal liabilities in excess of £9 million when the stock was suspended.
- 89.3 The share ramping scheme was devised by Mr Eagle. He engaged in market abuse for almost a year and was only stopped by the intervention of the LSE in suspending trading in FEI. He was at the centre of the entire scheme and caused it to happen.
- 89.4 Mr Eagle engaged in market abuse over a substantial period of time.
90. Mr Eagle's conduct meant that AIM market participants were misled and his actions had the potential to and did cause damage in the AIM market.
91. 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 senior positions within the management of UK authorised financial institutions. Mr Eagle was the chief executive of SP Bell. He used SP Bell as a vehicle for his share ramping scheme. Unauthorised trading on behalf of clients took place on his instructions resulting in debts for clients of over £9 million that they did not have the means to settle.
92. This conduct amounts to serious and sustained failings to satisfy the criteria of honesty, integrity and reputation such that Mr Eagle is not fit and proper to perform any controlled functions and such that it is appropriate that a prohibition order be made against him.

Financial Penalty

93. 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.

Decision Procedure and Penalties Manual

94. DEPP 6.2 sets out a number of factors to be taken into account when the FSA decides to take action for behaviour appearing to be market abuse. They are not exhaustive, but include the nature and seriousness of the suspected behaviour, the conduct of the person concerned after the behaviour was identified, the degree of sophistication of the users of the market in question, the size and liquidity of the market and susceptibility of the market to market abuse. Other factors also 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.

95. 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.
96. In accordance with the FSA's published policy in determining whether to take action in respect of market abuse and in determining the level of financial penalty imposed, the FSA will take into account all the circumstances of a particular case. These include the nature and seriousness of the abuse, the person's conduct following the abuse (including their co-operation with the FSA's investigation), the nature of the market that has been abused, the likelihood of behaviour of the same type being repeated and the need to deter such behaviour, and the previous history of the person concerned.
97. The FSA has taken all the circumstances of this case into account in deciding that it is appropriate to take action for behaviour amounting to market abuse, that the imposition of a financial penalty in this case is appropriate, and the level of the penalty imposed is proportionate. The FSA has had particular regard to the guidance set out in DEPP 6. In particular the FSA considers the following aggravating and mitigating factors to be relevant:

Aggravating features

- (1) The gravity of the offence: Mr Eagle was the controller of an authorised firm which he exploited to carry out his share ramping scheme over a long period of time.
- (2) Whether the offence was deliberate or was committed through inadvertence: Mr Eagle's conduct was deliberate at all times.
- (3) Impact of the behaviour on prescribed markets: the suspension of the FEI shares could and did cause confidence in the AIM market to be undermined. The Eagle clients' unsettled positions crystallised at debts of more than £9 million.
- (4) Mr Eagle made approximately £1.2 million personally in profit; and SP Bell made £1.1 million commission although it has subsequently gone into insolvent liquidation.
- (5) Mr Eagle has made no admissions nor has he disgorged his profit voluntarily.

Mitigating features

- (6) There have been no previous findings of market misconduct against Mr Eagle.
98. In determining the proposed financial penalty, the FSA has considered the profit made by Mr Eagle and the need to punish Mr Eagle and deter Mr Eagle and others from engaging in this type of activity. The FSA has also had regard to penalties imposed in other market abuse cases. As a matter of principle, Mr Eagle's profit should be disgorged.
99. The FSA considers that a total financial penalty of £2.8 million is appropriate. The financial penalty consists of the following elements:
- (1) A disgorgement of profit arising from the market abuse of £1.3 million (including an amount of notional interest earned on the actual profit of approximately £1.2 million, being the commission earned personally from the original shareholders); and
 - (2) An additional penalty of £1.5 million.