

---

## **FINAL NOTICE**

---

**To: Sir Christopher Gent**

**Date: 5 August 2022**

### **1. ACTION**

1.1. For the reasons given in this Final Notice, the Authority hereby imposes on Sir Christopher Gent a financial penalty of £80,000 pursuant to section 123 of the Act.

### **2. SUMMARY OF REASONS**

2.1. Sir Christopher Gent was appointed as the non-executive Chairman of ConvaTec Group Plc, a company admitted to the premium listing segment of the Official List and trading on the LSE's main market, in October 2016. In his role as Chairman of ConvaTec, Sir Christopher was responsible for governance over, and closely involved in the preparation of, the Company's issuance of RNS announcements to the LSE.

2.2. On 10 October 2018, Sir Christopher, in his capacity as Chairman, disclosed inside information, concerning an expected RNS announcement relating to the revision of ConvaTec's financial guidance and the retirement of ConvaTec's CEO, otherwise than in the normal exercise of his employment, profession or duties. The disclosures were made to a senior individual at one of ConvaTec's major shareholders, and then shortly afterwards to a senior individual at another of

ConvaTec's major shareholders. The Authority considers that Sir Christopher's actions amount to unlawful disclosure of inside information under Article 10 and in breach of Article 14(c) of EU MAR and that he therefore committed market abuse.

- 2.3. The Authority considers that Sir Christopher acted negligently in disclosing the information. Having received relevant training on EU MAR, and based on his own considerable experience and position, Sir Christopher should have realised that the information he disclosed constituted, or may have constituted, inside information and that it was not in the normal exercise of his employment, profession or duties selectively to disclose it. Sir Christopher failed properly to apply his mind to the specific question of what information, if any, he might properly disclose, as well as when, in what manner and to whom, and he failed to obtain clear, formal advice regarding this question, before making the disclosures.
- 2.4. The Authority considers that Sir Christopher acted negligently notwithstanding the following matters. At the time of the disclosures, ConvaTec had not yet formally classified the information regarding the expected revision to the financial guidance and the expected retirement of the CEO as inside information, and Sir Christopher had been informed that the view of ConvaTec's brokers was that ConvaTec needed to obtain more information in relation to the guidance revision and should not make an announcement until it had sufficiently precise information. In addition, a board-level ConvaTec executive and one of ConvaTec's brokers were informed by Sir Christopher that he was intending to call, and/or had called, the major shareholders. Further, ConvaTec had a relationship agreement with one of the major shareholders which imposed confidentiality and no-dealing obligations on the major shareholder, and Sir Christopher imposed such obligations himself on the senior individuals to whom he made the disclosures.
- 2.5. The Authority considers that Sir Christopher's conduct was serious because the unlawful disclosure of inside information undermines investor confidence in the integrity of financial markets.
- 2.6. The Authority therefore imposes on Sir Christopher a financial penalty of £80,000, pursuant to section 123 of the Act, for unlawfully disclosing inside information in breach of Article 14(c) of EU MAR.

### **3. DEFINITIONS**

3.1. The definitions below are used in this Notice:

"the Act" means the Financial Services and Markets Act 2000;

"the Authority" means the Financial Conduct Authority;

"AWC" means advanced wound care;

"the Board" means ConvaTec's board of directors;

"Broker A" means a broker employed by Corporate broker A;

"Broker B" means a broker employed by Corporate broker B;

"CCC" means continence and critical care;

"CEO" means Chief Executive Officer;

"Company A" means a major shareholder in ConvaTec;

"Company B" means a major shareholder in ConvaTec;

"Company C" means a major shareholder in ConvaTec;

"ConvaTec" or "the Company" or "the Group" means ConvaTec Group Plc, a company listed on the premium listing segment of the Official List and trading on the LSE's main market;

"ConvaTec's brokers" or the "Company's brokers" means, together, Corporate broker A and Corporate broker B;

"Corporate broker A" means a firm which provided corporate broking advice to ConvaTec at the relevant time. Where this term is used it does not refer to all individuals, or any particular individual, employed as an adviser by this firm;

"Corporate broker B" means a firm which provided corporate broking advice to ConvaTec at the relevant time. Where this term is used it does not refer to all individuals, or any particular individual, employed as an adviser by this firm;

"DEPP" means the Decision Procedure and Penalties Manual, part of the Handbook;

"DTR" means the Disclosure Guidance and Transparency Rules sourcebook, part of the Handbook

"EBIT" means earnings before interest and taxes;

"ECJ" means European Court of Justice;

"ESMA" means the European Securities and Markets Authority;

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

"Executive A" means a board-level ConvaTec executive;

"Handbook" means the Authority's Handbook of Rules and Guidance;

"ID" means infusion devices;

"ID Customer" means a major US-based customer for ConvaTec's infusion devices products;

"Individual A" means a senior executive at Company A;

"Individual B" means a senior executive at Company B;

"the Interim Results" means ConvaTec's first half results for the six months ended 30 June 2018;

"the Interview" means Sir Christopher's interview with investigators appointed by the Authority;

"LSE" means the London Stock Exchange;

"MiFID II" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments;

"OC" means ostomy care;

"RDC" means the Regulatory Decisions Committee of the Authority (see further under Procedural Matters below);

"Revenue Growth" means ConvaTec's organic revenue growth (meaning year on year growth at constant exchange rates, excluding M&A) for the 2018 full year;

"RNS" means the news service of the LSE. RNS is approved by the Authority to act as a Primary Information Provider in the United Kingdom;

"RNS 9692D" means the RNS announcement with RNS Number: 9692D released by ConvaTec on 15 October 2018 at 7.00am;

"RNS 9693D" means the RNS announcement with RNS Number: 9693D released by ConvaTec on 15 October 2018 at 7.00am;

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber);

"USD" means United States Dollar; and

"the Warning Notice" means the warning notice given to Sir Christopher Gent dated 16 September 2021.

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

##### **ConvaTec**

- 4.1. ConvaTec is a global medical products and technologies company focused on therapies for the management of chronic conditions, with market positions in advanced wound care (AWC), ostomy care (OC), continence and critical care (CCC) and infusion devices (ID).

##### **Sir Christopher Gent**

- 4.2. Prior to joining ConvaTec, Sir Christopher was an experienced, successful and prominent businessman. Amongst his roles, he was the CEO of Vodafone Group plc between January 1997 and July 2003, having been a director since January 1985, and the non-executive Chairman of GlaxoSmithKline plc between January 2005 and May 2015. Sir Christopher was appointed as non-executive Chairman of the Board of ConvaTec on 31 October 2016 and held this role until his retirement from the Board and as a director of ConvaTec in May 2019.
- 4.3. In his role as Chairman of ConvaTec, Sir Christopher was responsible for governance over, and closely involved in the preparation of, the Company's issuance of RNS announcements to the LSE.

## **Provision by ConvaTec of training and its policies on EU MAR**

4.4. In October 2016, in preparation for ConvaTec's listing on the LSE, a partner from ConvaTec's external legal advisers delivered training to Sir Christopher and other non-executive members of the Board, which covered their responsibilities as directors of a publicly listed company and their obligations under EU MAR, including how to recognise inside information.

4.5. In October 2018, ConvaTec's Market Disclosure Policy, applicable to all its directors and employees, as part of a section headed "Identifying inside information", and setting out all its elements under EU MAR (see Annex A), including that it must be "precise", stated:

**"Precise:** Information is precise if it:

- indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur; and
- is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the Company's share price (or the price of other financial instruments or related derivative financial instruments).

**Significant effect on price:** The information must be likely to have a significant effect on the price of the relevant investment. [EU MAR] defines information that would be likely to have a significant effect on price as being information a reasonable investor would be likely to use as part of the basis for his or her investment decision. Information which may have a 'non-trivial' effect on price should be considered 'significant' for these purposes. Information should be considered to be 'likely' to have a significant effect on price if there is a more than fanciful prospect of the information having such an effect. It is not necessary for a potential future event to be more likely than not to happen to meet this test. [Emphasis added].

If there is doubt about whether information constitutes inside information, the Company is expected to take advice from its broker or other advisers."

4.6. The policy also set out various procedures that applied when dealing with inside information.

## **RNS announcements**

- 4.7. An RNS announcement is a method of getting key company news published to the market. The published contents of such announcements often contain information that is capable of increasing or decreasing the price of the said company's stock.

## **Events leading up to the disclosures**

### ConvaTec's financial guidance to investors in 2018

- 4.8. On 15 February 2018, ConvaTec released an RNS announcement which reported its audited Annual Results for the 12 months ended 31 December 2017 and gave guidance for 2018 with Revenue Growth of 2.5% to 3.0% and adjusted EBIT margin of 24% to 25%.
- 4.9. On 2 May 2018, ConvaTec released an RNS announcement which reported that trading was in line with management expectations in the first quarter of 2018, with financial guidance re-affirmed, with Revenue Growth of 2.5% to 3.0% and adjusted EBIT margin of 24% to 25%.
- 4.10. On 2 August 2018, ConvaTec released an RNS announcement which reported that first half results for the six months ended 30 June 2018 (the Interim Results) were in line with expectations, with guidance for the full year confirmed, with Revenue Growth of 2.5% to 3.0% and adjusted EBIT margin of 24% to 25%. The Interim Results included ConvaTec's forward financial calendar which stated that the Q3 trading update was to be published on 31 October 2018.

### Internal ConvaTec discussions of Q3 performance

- 4.11. The Board met on 25 September 2018. Following its usual practice, the Board was provided with the latest information for the financial quarter that was about to close and provided with a forecast for the year and the Company's performance against consensus data. That information forecast Revenue Growth of 2.5%, which was at the lowest end of ConvaTec's guidance. The Board expressed its concerns regarding this and directed that there should be a further interrogation of the financial data in order that the Board could satisfy itself that the 2.5% to 3.0% guidance range remained achievable.
- 4.12. During the Board meeting, the situation concerning a major US-based customer for ConvaTec's ID products (the ID Customer) was discussed, as there had been "surprises in the numbers". For various reasons, the ID Customer now held excess

stock, and they would need less supply from ConvaTec. A note of the meeting stated that this issue had only arisen in the last couple of weeks and would weaken the performance of ConvaTec's ID franchise by USD 4.2 million for Q3, but that it was already included in the Revenue Growth forecast given to the Board.

- 4.13. The Investor Relations Board Report prepared for that meeting reported that the Interim Results had been seen by investors as in line with market consensus at both a revenue and EBIT level and observed that "it did not go unnoticed that results were the 3<sup>rd</sup> quarter of steady overall delivery against guidance, helping to rebuild confidence."
- 4.14. The report noted that "Ten of thirteen analysts who cover ConvaTec have revised their estimates following the Interim Results. The average target price is now 229p, with 40% having a BUY rating, 40% a HOLD rating, and the remaining 20% a SELL rating." The report summarised the consensus from these ten analysts, observing "For the current year, consensus is now at 2.6% for revenue growth, at the lower end of our 2.5% - 3.0% organic growth guidance range, with estimates for adjusted EBIT margin at 24.5%, in the middle of our 24% - 25% guidance range".
- 4.15. The report also commented on the activities of ConvaTec's "Top Buyers in July & August", and noted that a major shareholder, Company B, had confirmed to ConvaTec in July 2018 that it had started to build a position, and that although Company B had not increased its stake during August 2018, "We understand their plan is to purchase a block of shares in the coming weeks ...", potentially purchasing a further 2.9% of ConvaTec's share capital.
- 4.16. Sir Christopher had been in meetings with Company B's management, around April 2018, from which he was aware that their intention was to buy a block trade if they could negotiate one with other shareholders, and that they were likely to do so in September or October 2018.
- 4.17. The minutes of the Board meeting held on 25 September 2018, which was chaired by Sir Christopher, record that the Investor Relations Board Report had been received and reviewed by the meeting.
- 4.18. On 28 September 2018, a paper was circulated to the Board with the latest Q3 forecast with an estimate of 2.5% for Revenue Growth.

### Events leading to the RNS announcements

- 4.19. On Wednesday, 3 October 2018, at around 8pm<sup>1</sup>, during a meeting between some of ConvaTec's senior US-based executives and a senior director and a senior manager from the ID Customer, the ID Customer indicated its plans for an inventory depletion which would be affirmed the following week. Although the ID Customer was "just outlining the concept", ConvaTec nevertheless noted that "inventory depletion would have a major impact in Q4 so Company needed better information".
- 4.20. On Thursday, 4 October 2018, at around 2pm, senior ConvaTec executives, including two at board-level, held a call with executives on ConvaTec's US team to discuss Q3 results, during which the US team stated that they saw up to a USD 7 million risk to AWC performance against the numbers currently in the September 2018 forecast. If this materialised, it would cause a 0.4 percentage points impact on Revenue Growth (taking full year estimate from 2.5% to 2.1%). The US team was asked to reassess the numbers as a matter of urgency.
- 4.21. At 5.56pm, a board-level ConvaTec executive sent an email to Sir Christopher and others, including non-executive directors, which stated:
- "Dear Board,
- Please find attached the Q3 and Sept YTD Flash report. The overall Organic growth number for the Quarter came in at 1.1% which was somewhat lighter than expected [...]. We saw good performance in Ostomy, decent performance in Wound and low single digit growth in CCC driven by the packaging issue. ID as expected was negative after a high single digit 1st half.
- For the YTD numbers this means we are now at 2.1% for the Group [...].
- We are working through the analytics and will come back with more context once that is done."
- 4.22. At 6.18pm, a non-executive director replied to the originator of the email and those copied, observing:
- "The really critical information now is what does the full year organic revenue growth rate look like, given that Q3 lighter than anticipated (altho [sic] I note your comment re order timing in France) and your and [the CEO]'s level of confidence in the Q4 forecast?

---

<sup>1</sup> All times are UK-time (BST) unless stated otherwise

Have you taken the brokers thro [sic] the Q3 revenue growth rate? If so, what has been their reaction?"

- 4.23. At 6.28pm, the originator responded to the non-executive director and those copied, by saying that they had not yet taken ConvaTec's brokers through the figures, adding that they were:

"... working with the regions over the next 10 days on the Q3 analytics, the latest Q4 views with risks and action plans (and 2019). As part of our process to get ready for the trading update we will meet with the brokers of course".

- 4.24. The non-executive replied to the originator of the email and those copied, thanking the originator, and explaining:

"I'm just concerned about share price implications of Q3 results but I am sure you are more than aware and sensitive to this".

- 4.25. At 6:30pm, Sir Christopher, the CEO and another board-level ConvaTec executive discussed the Q3 results. The CEO and the other executive were to work on the full year estimate and to provide a fresh projection. The CEO said that he did not expect full year to be affected but that there were issues in the US which needed to be interrogated further.

- 4.26. At 6:57pm, Sir Christopher sent an email to several of ConvaTec's non-executive directors in response to the email sent at 5.56pm above, which stated:

"You will have all seen the results sent by [executive's name] today. Once the final figures have been provided following the analysis with the regions, it may be worthwhile scheduling a NED only call".

- 4.27. Sir Christopher acknowledged during the Interview that his reference to a "NED only call" was an indirect indication that if guidance needed to be revised and reported through an RNS announcement, then he considered that this called into question the CEO's future with ConvaTec.

- 4.28. At 7.57pm, a board-level ConvaTec executive replied to Sir Christopher, copying other non-executive directors, stating:

"Chris, Yes, indeed a difficult situation – and as the numbers probably won't change, a meeting may be worthwhile soon. The work with the Regions will hopefully add to the validity of the explanations, but not really change the facts".

- 4.29. Over the days that followed a number of telephone calls were held, and emails sent, between senior ConvaTec executives and the Company's brokers as they sought to clarify the position regarding the ID Customer's plans for a depleted inventory and its potential impact on full year guidance, and whether the guidance for the full year previously given to the market, with Revenue Growth of 2.5% to 3.0% and EBIT of 24% to 25%, remained valid or would need to be revised.
- 4.30. On Friday, 5 October 2018, at around 4.30pm, during a meeting between an executive at the ID Customer, who was also ConvaTec's senior contact in the relevant part of the business, and a senior ConvaTec executive, the ID Customer stated that as part of a change in inventory policy, the ID Customer would be ordering a materially lower level of inventory in Q4 2018. The senior ConvaTec executive subsequently arranged a discussion with other senior ConvaTec executives for Monday, 8 October 2018, to relay this information.
- 4.31. On Friday, 5 October 2018, at 5:35pm, several of ConvaTec's executives involved in compiling the figures required for the forecasting received an internal reminder, under the subject line "Circle of Confidentiality – Q3 results", which emphasised that the Q3 results and forecasted performance of the Group for the financial year 2018 and all related information was highly confidential, and that all information relating to the Q3 results and forecasted Group performance for 2018 must be restricted solely to persons who required it for the exercise of their functions. Sir Christopher was not copied to this email.
- 4.32. On Sunday, 7 October 2018, Sir Christopher left the UK to go on holiday overseas. He returned to the UK on the morning of Friday, 12 October 2018.
- 4.33. On Monday, 8 October 2018, at around 8:30am, Company B asked its stockbrokers to make enquiries (i.e. it did not place an order) with potential block sellers, in order to facilitate a purchase on its behalf of a minimum of 20 million ConvaTec shares. Company B's stockbrokers were the same firm as Corporate broker A. The previous day, Broker A, who had been a member of the team at Corporate broker A advising Company B, had been informed by Company B of its intentions, but had referred Company B to a colleague due to sensitivities around the proximity of ConvaTec's results.
- 4.34. On Monday, 8 October 2018, at 11:00am, the senior executive from ConvaTec's ID division who had attended the call with the ID Customer the previous Friday, informed two senior ConvaTec executives, that as part of a change in inventory policy, the ID Customer would be ordering a materially lower level of inventory in Q4, possibly being revised downwards by as much as USD 14 million.

- 4.35. On Monday, 8 October 2018, at 1.30pm, a "Presidents' call" took place attended by the CEO and other senior executives. It was noted that the trading update cycle was being compressed to gather and review the reasons for Q3 underperformance and an updated Q4 forecast (with best, worst and likely scenarios). A Board call was scheduled for Friday, 12 October 2018, to determine whether the Company was within the guidance range in light of the outputs of this work. An early RNS announcement was considered to be a possibility, although the CEO felt that meeting Revenue Growth guidance was "doable".
- 4.36. At around 9:30pm on Monday, 8 October 2018, the latest estimates from market analysts were circulated by email by ConvaTec's Investor Relations department, which showed that, externally, the consensus for Revenue Growth remained at 2.6%.
- 4.37. At 1.10pm on Tuesday, 9 October 2018, ConvaTec's CEO and other senior ConvaTec executives attended a meeting where an update was provided on the ID Customer's verbal indication; i.e. that purchase orders in Q4 could be reduced by as much as USD 14 million. It was calculated that a USD 8 million or USD 10 million reduction in the ID Customer's orders in Q4 would have a 50bps impact on ConvaTec's Revenue Growth, which would automatically bring them below 2.5% Revenue Growth.
- 4.38. At 3pm on Tuesday, 9 October 2018, ConvaTec's CEO and other senior ConvaTec executives held a conference call with the Company's brokers to discuss the ID Customer's plans for a depleted inventory and its impact on its purchase orders in Q4. It was noted that the indication now provided by the ID Customer was USD 12 million lower than ConvaTec's September estimate of the ID Customer's annual orders for 2018. It was noted that this would have a 60bps impact on Revenue Growth if realised and would thereby take ConvaTec "outside of guidance". ConvaTec's executives stated that work was still ongoing with the "franchises and regions" to put forward best, worst and most likely case, and that they would be reporting back on Thursday, 11 October 2018.
- 4.39. As to the potential for an RNS announcement not taking place until the following Monday, Broker B observed during the conference call that "I think it's unhelpful that we're on Tuesday and we know that we are not going to hit the two-and-a-half ... it's a bit uncomfortable having six days knowing we are not going to hit our guidance" and raised the possibility of an announcement that week, adding that "if we are genuinely having lots of moving parts and we don't know where we are then you know, continue to work over the weekend."

- 4.40. However, according to the, now former, CEO in interview with the Authority, it was also noted that ConvaTec had only received verbal direction from the ID Customer and that no purchase orders had yet been changed. He stated: “we came away with clear advice from our brokers that we needed to get more information. And that the information that we had was not precise enough to trigger an announcement to the markets.”
- 4.41. At the end of the call, it was agreed that each of the regions would be asked to accelerate the provision of their revised estimates from Thursday to the end of Wednesday. The Company’s brokers advised that ConvaTec should prepare a couple of draft RNS announcements with “various possible outcomes” so that if the position was clear by the end of Thursday an RNS could be released immediately.
- 4.42. At 6pm on Tuesday, 9 October 2018, Sir Christopher attended a call with the CEO and other senior ConvaTec executives. The situation with the ID Customer was outlined along with the outputs of the call with ConvaTec’s brokers. It was noted that the process to update Revenue Growth guidance with data from the franchises was ongoing. Notes of the meeting recorded that “the USD 10-15 million issue with [the ID Customer] was a clear material risk but there wasn’t precise information at this time”. ConvaTec’s finance department was working on compressing the timetable for the input from “the regions” to Wednesday evening after which the data would be consolidated during Thursday.
- 4.43. Sir Christopher was informed that, as a rough calculation, the impact of a USD 14 million purchase order reduction by the ID Customer would be to reduce Revenue Growth from 2.5% to 1.7%.
- 4.44. A Board call was to be scheduled for Thursday, 11 October 2018, and work was to begin on drafting an RNS announcement potentially for release on Friday morning.
- 4.45. Around the time of the 6pm telephone call on Tuesday, 9 October 2018, Sir Christopher also spoke with ConvaTec’s CEO, who updated him on the position regarding the ID Customer. Sir Christopher noted that if a market announcement appeared likely, the CEO may wish to consider his position as CEO.
- 4.46. During the Interview, Sir Christopher expressed his view of the likelihood, at that stage, that ConvaTec would need to make a market announcement revising its forward guidance as “it wasn’t absolutely certain ... but it was a possibility and moving towards being slightly more probable than not”, adding that ConvaTec did not at that time have precise data to advise the market.

- 4.47. On Wednesday, 10 October 2018, at 12:00pm, ConvaTec briefed its external investor communications advisors on "the issues around revenue", and asked them to attend ConvaTec's offices on Friday, 12 October 2018, to assist with a potential presentation script and Q&A.
- 4.48. At 1:14pm on Wednesday, 10 October 2018, ConvaTec's CEO indicated to Sir Christopher that he wished to explore retirement, subject to reaching an agreement with the Company on remuneration and exit arrangements. Sir Christopher noted that if suitable arrangements could be made this would be considered by the Board. During the Interview, Sir Christopher expressed his view of the likelihood, at that stage, that ConvaTec's CEO would retire as not certain but "distinctly likely".
- 4.49. ConvaTec's, now former, CEO recalled when interviewed by the Authority, that when he informed Sir Christopher that he wished to explore retirement, Sir Christopher responded by observing that he felt that it was the right decision to make and that he understood the decision. The CEO described his retirement following this conversation as "highly likely".
- 4.50. At 1.47pm on Wednesday, 10 October 2018, Sir Christopher, following discussions with ConvaTec's CEO, informed Executive A (whose responsibilities included giving legal advice to ConvaTec and overseeing its compliance with EU MAR) that the CEO had indicated to him that he would leave immediately subject to settlement of his arrangements. Sir Christopher observed that he needed to obtain clarity as to whether this meant immediately upon arrangements being settled, or the end of the month. Sir Christopher asked Executive A to inform ConvaTec's brokers.
- 4.51. During this conversation, Sir Christopher mentioned his intention to call a named contact at each of Companies A, B and C. Executive A informed the Authority in interview that they did not understand from their conversation that it was Sir Christopher's intention to do so that afternoon and did not question it. Executive A made a handwritten note of the discussion which records "Chris speak to major shareholders", listing Companies A, B and C and the respective contacts within each company. Sir Christopher did not keep any record of the discussion.
- 4.52. Sir Christopher told the Authority in the Interview that he did not consider whether "information that ConvaTec was accelerating its Q3 update, would be likely to be confidential information, which may become inside information". He also did not request any formal advice, either from within ConvaTec or from its external advisers, regarding what information he might properly disclose to Companies A,

B or C in advance of the RNS announcements, if any, as well as when, in what manner and to whom.

- 4.53. In the Interview, Sir Christopher said that he did not at that time, or subsequently, consider the CEO's indication that he was considering retirement to be inside information, because at that stage he "wasn't quite sure how [the indication of retirement] was going to work out".

### **The disclosures**

#### The first disclosure by Sir Christopher

- 4.54. At 2.01pm, on Wednesday, 10 October 2018, Sir Christopher called Individual A, a senior executive at Company A, and disclosed the following information:
- that ConvaTec expected to make an RNS announcement on Monday 15 October 2018, depending on the Board's analysis. ConvaTec was expected to say that it would be revising guidance and that the CEO was retiring.
- 4.55. No audio recording nor any contemporaneous written record was made of this conversation by Sir Christopher, or on his behalf. He conducted the conversation without any other ConvaTec executives, or other Company representatives, in attendance. Company A was one of ConvaTec's largest shareholders. Company A also had a relationship agreement with ConvaTec (which imposed confidentiality and no-dealing obligations on Company A), under which it was entitled to, and did, appoint a non-executive director to ConvaTec's Board. The relationship agreement also named another individual at Company A as being its shareholder representative in respect of aspects of the operation of the relationship agreement. Individual A was neither Company A's appointee to the Board nor its shareholder representative; the shareholder representative was recorded as Company A's contact in Executive A's handwritten note of their discussion with Sir Christopher at 1.47pm (see paragraph 4.50 above).

#### Calls with Brokers A and B

- 4.56. At 2.17pm on Wednesday, 10 October 2018, following their conversation with Sir Christopher at 1.47pm, Executive A telephoned Broker B regarding the CEO's retirement and was advised that this would require an immediate RNS announcement once the CEO's arrangements were settled and he had actually resigned.
- 4.57. At 2.41pm on Wednesday, 10 October 2018, Executive A telephoned Broker A, and told them that they were calling to let them know that they had been

"informed by the Chairman that [the CEO] has indicated an intention to retire when the Q3 results go out."

- 4.58. Later during this telephone call, Broker A asked when the RNS announcement reporting the CEO's resignation and the revised guidance was being released. Executive A replied that ConvaTec had been gathering, and verifying, all the information from the "regions and franchises" to be included in the RNS. Executive A stated that "The actual hard numbers are due to come in at the end of the day then [name of executive] and [their] team will run the EBIT and modelling of what's been issued so that we can then have, tomorrow, a better picture because obviously at some point we have to agree what the new guidance looks like and understand whether, where the EBIT comes out."
- 4.59. Broker A then asked whether a ConvaTec Board call would be held "tomorrow night". Executive A replied "Yes, Board call at 6 o'clock tomorrow. It's a - whether we go out Friday morning or not will depend really on how ready we are and whether ... [the] Board start to challenge on how some of the narrative is in the RNS because the problem is we are doing this fast and everybody will get the draft at once ...".
- 4.60. At 2.53pm on Wednesday, 10 October 2018, Broker A called Sir Christopher. Their discussions included the possibility that the RNS announcement reporting revised Q3 guidance might be released as soon as Friday, 12 October, or Monday, 15 October 2018. Sir Christopher told Broker A that he was in the process of calling the ConvaTec Board, including Company A.
- 4.61. They also discussed whether Sir Christopher should contact Company B and Company C, to inform them of the impending RNS announcements reporting the revised guidance and the CEO's resignation, agreeing that he should do so.

The second disclosure by Sir Christopher

- 4.62. At 3.32pm on Wednesday, 10 October 2018, Sir Christopher attempted to call Individual B, a director at Company B, and left a message with their colleague. Individual B called Sir Christopher back at 4.00pm, and Sir Christopher disclosed information identical to that which he had disclosed previously to Individual A (see paragraph 4.54 above).
- 4.63. No audio recording nor any contemporaneous written record was made of this conversation.

- 4.64. In the event, Sir Christopher was not able to speak to the relevant person at Company C until after the RNS announcements had been made on 15 October 2018.
- 4.65. In the Interview, Sir Christopher said that he imposed an obligation of confidentiality, and no-dealing, on Individuals A and B. Sir Christopher explained that the main purpose of the conversations, so far as he was concerned, was to say, following the CEO indicating that he was minded to retire, “that the person that they had invested in, in leading the business, was most likely not going to be leading it in the future”. In addition, he did not want to “surprise shareholders of scale with announcements” given the intention of Company B (to build a more significant shareholding in ConvaTec) and the actual size of the investment with Companies A and C. He said he believed that he was acting as Chairman in the best interests of ConvaTec and that it would be in the interests of the Company that these investors:

“received the information about the departure of [the CEO] and didn’t get it from a press release on the day.”

- 4.66. Sir Christopher also observed that neither Executive A, nor ConvaTec’s brokers<sup>2</sup>, had cautioned him that the indication of the CEO’s retirement or the potential revision to ConvaTec’s guidance, may be inside information, or advised him against making the calls to Companies A, B or C. He emphasised that had they done so he would not have made the disclosures.

#### **Events following the disclosures**

- 4.67. At 4:12pm on Wednesday 10 October 2018, Sir Christopher called Executive A to confirm that he had spoken to Companies A and B. A short handwritten note of this discussion was made by Executive A, which states “[Company B acknowledged] sensitivity - see buying [opportunity]”.
- 4.68. At 6:50pm on Wednesday, 10 October 2018, an employee at Company B (not Individual B) rang its stockbrokers and, in relation to their enquiries to source a minimum order of 20 million ConvaTec shares (see paragraph 4.33 above), instructed them to “pause” and “wait for [ConvaTec’s] earnings announcement” on the basis that there would be more volume, as they had already discussed,

---

<sup>2</sup> Although Sir Christopher referred to ConvaTec’s brokers, the Authority notes that the evidence indicates that Sir Christopher discussed calling Companies A, B and C with only Broker A.

and "We are sort of at a risk off moment and it may last for a while and so I think we might be able to get a bigger block, cheaper, if we just wait".

4.69. At 3.30pm on Thursday, 11 October 2018, senior ConvaTec executives held a call with the Company's brokers during which a draft RNS guidance announcement was reviewed. The expected reduction in orders from indications given by the ID Customer was now between USD 18 million and USD 23 million. This was said to be the biggest factor necessitating the revision of ConvaTec's full year organic growth guidance for 2018, but there were also contributory factors from emerging risks in the AWC and CCC franchises. The ID Customer had been asked to provide firm commitments on its Q4 orders and whether this would be all in Q4 or phased. Broker B observed that "overall the story is sensitive", whilst Broker A noted that once this information was received, ConvaTec was "on a short fuse" for releasing the RNS. The target date for the RNS announcement was the following Monday, 15 October 2018.

4.70. At 6pm on Thursday, 11 October 2018, the Board held a meeting which was attended by ConvaTec's brokers, during which they reviewed a draft guidance RNS announcement and confirmed that it would be released at 7.00am on Monday. The draft RNS announcement stated that:

"[ConvaTec] is today providing an update on trading in the third quarter and revising guidance for full year expectations for organic revenue growth, mainly due to changes to customer inventory and ordering patterns in Infusion Devices. [...] the Group now expects full year organic revenue growth to be between [0.5% - 1.5%], from 2.5% to 3.0% previously, ..."

4.71. During the Board meeting it was stated that the key driver of the change in ConvaTec's performance was the ID franchise and the change in inventory from the ID Customer. A Vice-President from "Sourcing" in the ID Customer had just confirmed that the change in its inventory would take place in one hit in Q4. It was reported that the ID Customer's inventory reduction programme was being led by its CEO, and that they were taking an aggressive approach to pushing this through in Q4. The impact for ConvaTec would be a reduction of up to USD 20 million to its September estimate of orders from the ID Customer for 2018.

4.72. Sir Christopher thanked ConvaTec's CEO for his service to the Company in advance of his standing down the following evening, although this was "predicated" on receiving a retirement letter, and asked him to leave the meeting while management arrangements following his departure were discussed.

- 4.73. At 09.30am on Friday, 12 October 2018, ConvaTec's external accountants were briefed on its Q3 results and the drivers behind the revised guidance for Revenue Growth. They were also informed about the CEO's potential retirement.
- 4.74. At 10am on Friday, 12 October 2018, ConvaTec's external investor communications advisers attended ConvaTec's offices to assist with the preparation of a script for a post RNS announcement Q&A session. They were told that "should the CEO's retirement arise", Sir Christopher and another board-level executive would present the Q3 update.
- 4.75. At 2.48pm on Friday, 12 October 2018, draft RNS announcements relating to the Q3 results and revised guidance for Revenue Growth, and to the CEO's retirement, were circulated to the Board.
- 4.76. On Friday, 12 October 2018, during a Board meeting which had commenced at 3pm, the position regarding the ID Customer's purchase orders was confirmed, as was the updated performance of ConvaTec's other franchises, such that its impact on ConvaTec's guidance for Revenue Growth could be determined with certainty. It was reported to the Board that the change in inventory level by the ID Customer gave rise to a revision downwards of USD 18 to 23 million on the full year revenue, against the estimate given to the Board on 25 September 2018 (see paragraph 4.11 above).
- 4.77. As a result of the ID Customer's revision to its orders, and also due to expected weaknesses in the performance of AWC and OC in Q4, the Board agreed that the proposed revised guidance range for Revenue Growth would be 0.5% to 1.5%. The Board determined that the RNS announcement should focus on the issues with ID and AWC as the material items.
- 4.78. The Board resolved at 4pm that the information regarding the revised guidance to Revenue Growth and, on receipt of a resignation letter, the CEO's retirement was now "sufficiently precise" to be classified as inside information.
- 4.79. ConvaTec's CEO provided his resignation letter at 4.25pm.
- 4.80. The Board directed that the RNS announcements of both matters would be made at 7.00am the following Monday, 15 October 2018.
- 4.81. On Sunday evening, 14 October 2018, during a Board meeting, the Board further reduced the guidance range for Revenue Growth to 0% to 1%, as a consequence

of accounting information, unrelated to the ID Customer's revised orders, which had been identified since the previous Board meeting.

#### The RNS announcements

- 4.82. On 15 October 2018 at 7.00am, ConvaTec released an RNS announcement, RNS 9692D, which reported that ConvaTec was providing an update on trading in the third quarter and revising guidance for Revenue Growth.
- 4.83. RNS 9692D reported that the revised guidance was driven primarily by a change in inventory policy by the biggest customer in ConvaTec's ID franchise [the ID Customer], which was expected to have a material negative impact on revenue in the fourth quarter of USD 18 to 23 million, and to a lesser extent, challenging market dynamics in specific markets in AWC. It stated that, therefore, ConvaTec now expected Revenue Growth to be flat to 1.0%, from 2.5% to 3.0% previously. RNS 9692D also referred to ConvaTec's CEO's retirement and cessation as a director with immediate effect, as set out in the Company's separate RNS announcement (RNS 9693D).
- 4.84. At 7.00am, ConvaTec also released a separate RNS announcement, RNS 9693D, which reported that its CEO had informed the Board of ConvaTec that he wished to retire and would step down as CEO and cease to be a director with immediate effect.
- 4.85. At 8.00am, ConvaTec provided a presentation on its Q3 Trading Update and Guidance Change, as announced by RNS 9692D, as part of which it stated that this adjustment was primarily because ConvaTec had recently been made aware of a material change in inventory policy by the ID Customer effective immediately, which would have a significant negative impact on orders in Q4 and was expected to lead to a fall in revenue in the fourth quarter of USD 18 to 23 million. ConvaTec stated that it had also seen challenging dynamics in some wound care markets, evidenced by a weaker than anticipated Q3 performance, and that, as a result, it was lowering its guidance for Revenue Growth to 0% to 1%.
- 4.86. Following the simultaneous release of the RNS announcements at 7.00am on Monday, 15 October 2018, ConvaTec's share price fell from 224.2 pence (closing price on Friday, 12 October 2018) to 175 pence (a fall of approximately 22%) when the markets opened on Monday, 15 October 2018. By market close, the share price had fallen by 33.1%, to 150 pence, having recovered from a low during that day of 140 pence.

- 4.87. That evening, Sir Christopher reported to Broker A a conversation that he had had with Company B previously, where they had referred to the existence of “a buying opportunity”. Sir Christopher observed to the broker: *“if it was a buying opportunity last week it’s certainly one now”*.
- 4.88. For the avoidance of doubt, the Authority does not consider that, by its conduct set out in this Notice, Company B breached EU MAR.

## **5. FAILINGS**

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

### **Article 14(c) of EU MAR**

- 5.2. Article 14(c) of EU MAR prohibits the unlawful disclosure of inside information.

### **Article 10(1) of EU MAR**

- 5.3. Article 10(1) of EU MAR provides that:

“For the purposes of this Regulation, unlawful disclosure of inside information arises where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties.”

### **Article 7 of EU MAR**

- 5.4. Article 7(1)(a) of EU MAR provides that for the purposes of EU MAR inside information will comprise of:

“information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments”

- 5.5. Article 7(2) of EU MAR provides that information shall be deemed to be of a precise nature if:

“it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable

a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments...”

5.6. Article 7(4) of EU MAR provides that for the purposes of Article 7(1) of EU MAR:

“information, which, if it were made public, would be likely to have a significant effect on the prices of financial instruments ... shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decisions.”

5.7. Sir Christopher’s conduct amounts to unlawful disclosure of inside information under Article 10 and in breach of Article 14(c) of EU MAR for the reasons set out below.

*Financial instruments admitted to trading on a regulated market*

5.8. EU MAR applies to ConvaTec shares by virtue of Article 2(1)(a) of EU MAR as they constitute financial instruments admitted to trading on a regulated market. The definition of “regulated market” in EU MAR derives from Article 4(1)(21) of MiFID II and includes the LSE.

*Insider*

5.9. Article 10 of EU MAR applies to Sir Christopher as he had access to the information through the exercise of his employment.

*Inside Information*

5.10. The inside information that Sir Christopher possessed in relation to ConvaTec and disclosed to Individuals A and B was that:

- depending on the Board’s analysis, ConvaTec expected to make an RNS announcement to the market on 15 October 2018 (i.e. within five days), which was expected to announce:

(a) that ConvaTec was revising its financial guidance (“the Guidance Disclosure”);  
and

(b) the retirement of its CEO (“the Retirement Disclosure”).

5.11. Sir Christopher was in possession of the inside information described at 5.10(a) above by the end of the day on 9 October 2018, and the inside information described at 5.10(b) above by 13.47 on 10 October 2018, at the latest.

- 5.12. The information contained in the Guidance Disclosure satisfies the requirement that inside information indicates, "*a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur*", because it indicated:
- (a) that he, as Chairman of ConvaTec's Board, believed and/or expected that ConvaTec would revise its financial guidance for Revenue Growth for the 2018 full year in the near future; and/or
  - (b) that he, as Chairman of ConvaTec's Board, believed and/or expected that ConvaTec would issue an RNS announcement revising its financial guidance ("the Guidance Announcement") in the near future; and/or
  - (c) that ConvaTec's Board would meet in the next few days, to decide, dependent on their analysis, whether or not to issue the Guidance Announcement; and/or
  - (d) that the Guidance Announcement would be made in the near future; and/or
  - (e) that ConvaTec would revise its financial guidance for Revenue Growth for the 2018 full year in the near future.
- 5.13. The information contained in the Retirement Disclosure satisfies the requirement because it indicated:
- (a) that he, as Chairman of ConvaTec's Board, believed and/or expected that ConvaTec's CEO would be retiring in the near future; and/or
  - (b) that he, as Chairman of ConvaTec's Board, believed and/or expected that ConvaTec would make an RNS announcement that its CEO had retired, or would be retiring, in the near future ("the Retirement Announcement"); and/or
  - (c) that ConvaTec would make the Retirement Announcement in the near future; and/or
  - (d) that ConvaTec's CEO would retire in the near future.
- 5.14. The Authority considers that the Guidance Disclosure and the Retirement Disclosure, taken separately or together, constituted inside information for the following reasons.
- (a) Precise nature*
- 5.15. With regard to the Guidance Disclosure, this information was of a precise nature pursuant to Article 7(2) of EU MAR because it concerned a set of circumstances which existed (as set out in paragraph 5.12(a) and (b)) and/or an event which was reasonably expected to occur (as set out in paragraph 5.12(c), (d) and (e))

and was specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances and/or event on the price of ConvaTec shares.

- 5.16. With regard to the Retirement Disclosure, this information was of a precise nature pursuant to Article 7(2) of EU MAR because it concerned a set of circumstances which existed (as set out in paragraph 5.13(a) and (b)) and/or an event that was reasonably expected to occur (as set out in paragraph 5.13(c) and (d)), and was specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances and/or event on the price of ConvaTec shares.

*(b) Not been made public*

- 5.17. The information contained in the Guidance Disclosure and the Retirement Disclosure was confidential and had not been made public as per Article 7(1)(a) of EU MAR.

*(c) Likely to have a significant effect on price*

- 5.18. It was likely that, if publicly available, the information disclosed by Sir Christopher in the Guidance Disclosure and the Retirement Disclosure would have had a significant effect on the price of ConvaTec shares for the purposes of Article 7(1)(a) of EU MAR. It was information which a reasonable investor would be likely to use as part of the basis of his or her investment decisions as per Article 7(4) of EU MAR.

- 5.19. Whilst RNS 9692D and RNS 9693D contained additional information to that disclosed by Sir Christopher, it is notable that following their simultaneous release at 7.00am on Monday, 15 October, ConvaTec's share price fell from 224.2 pence (closing price on Friday, 12 October) to 175 pence (a fall of approximately 22%) when the markets opened on Monday, 15 October. By the time the markets closed on Monday, 15 October, the price had fallen to 150 pence (a fall of 33.1%), having recovered from a low during that day of 140 pence.

*Disclosed information*

- 5.20. Sir Christopher disclosed the information to Individuals A and B on 10 October 2018, as set out at paragraphs 4.54 and 4.62 above.

*Otherwise than in the normal exercise of employment, profession or duties*

5.21. The Authority considers that Sir Christopher's disclosures to Individual A and Individual B were made otherwise than in the normal exercise of his employment, profession or duties in his role as Chairman of ConvaTec for the following reasons:

- (a) the disclosures were not reasonable and it was not necessary for them to be made in order for Sir Christopher to perform his proper functions, nor was it a proportionate way for him to discharge his duties as Chairman. In these circumstances, the imposition of confidentiality and no-dealing requirements could not make the disclosures part of Sir Christopher's normal exercise of his employment, profession or duties;
- (b) Sir Christopher's explanation that he did not want to "surprise shareholders of scale with announcements" was not a good reason for making the disclosures. Although the Authority accepts that engagement and the fostering of good relations with shareholders formed part of Sir Christopher's duties as Chairman, the Authority considers that disclosing inside information for this reason is not consistent with the objectives of EU MAR, which seeks to prevent "unfair advantage being obtained from inside information to the detriment of third parties who are unaware of such information and, consequently, the undermining of the integrity of financial markets and investor confidence";
- (c) although Recital 19 to EU MAR provides that discussions of a general nature regarding the business and market developments are permissible between shareholders and management concerning an issuer, Sir Christopher's disclosures of inside information were outside the scope of that type of discussion;
- (d) there is no evidence that it was necessary for Sir Christopher to consult with Individuals A and B. Further, in respect of the disclosure to Individual A, it was not reasonable, and it was not necessary in order to perform his proper functions, for Sir Christopher to consult Individual A, in circumstances where ConvaTec's Board included a non-executive director of Company A (being someone other than Individual A) to whom Sir Christopher could have disclosed the information and consulted if necessary. In any event, Sir Christopher's objective, or primary objective, was not to consult Individuals A and B, but rather to forewarn them of events that he believed would soon take place;

- (e) in respect of his disclosure to Individual B, Company B was a materially smaller shareholder in ConvaTec than Companies A and C, yet Sir Christopher did not seek to make similar disclosures to several larger shareholders, notwithstanding his explanation that he did not want to “surprise shareholders of scale”. Sir Christopher’s disclosure to Individual B was particularly inappropriate in circumstances where Sir Christopher was aware of Company B’s active intention to build a more significant shareholding in ConvaTec;
- (f) there were more appropriate means by which Sir Christopher could have acknowledged, and ensured, the ongoing support of Companies A, B and C. For example, other major shareholders were given access to the Company’s senior management team in calls held immediately after the RNS announcements; and
- (g) there was no good reason for the timing of the disclosures, which took place at least two working days before Sir Christopher believed any announcement would be released. Making the disclosures at that time was also contrary to the procedures followed by ConvaTec where discussions with shareholders were proposed prior to the release of an RNS announcement, which was to hold such discussions after the RNS announcement had been approved, the evening before the announcement, after the markets had closed. ConvaTec informed the Authority that shareholders are told that it is proposed that inside information be shared with them, which will be released the next morning, and that it believes this process has only ever been followed with shareholders with whom it has had relationship agreements in place.

## **6. SANCTION**

### **Financial penalty**

#### *Power to impose a financial penalty in respect of Sir Christopher’s conduct*

- 6.1. Section 123(2) of the Act provides that if the Authority is satisfied that a person has contravened Article 14 of EU MAR it may impose a penalty of such amount as it considers appropriate on the person.
- 6.2. Sir Christopher possessed inside information that related to ConvaTec and disclosed that information, otherwise than in the normal exercise of his employment, profession or duties, to Individuals A and B. Article 14(c) of EU MAR

prohibits the unlawful disclosure of inside information and the Authority is therefore satisfied that Sir Christopher has contravened Article 14 of EU MAR.

*The Authority's penalty policy*

- 6.3. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. 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.
- 6.4. In determining whether a financial penalty is appropriate the Authority is required to consider all the relevant circumstances of a case. Applying the criteria set out in DEPP 6.2.1G (regarding whether or not to take action for a financial penalty or public censure), DEPP 6.2.2G (regarding whether to take action for market abuse) and DEPP 6.4.2G (regarding whether to impose a financial penalty or public censure), the Authority considers that Sir Christopher's conduct was sufficiently serious that the imposition of a financial penalty is an appropriate sanction.
- 6.5. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5C sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in market abuse cases.

**Step 1: disgorgement**

- 6.6. Pursuant to DEPP 6.5C.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the market abuse where it is practicable to quantify this.
- 6.7. Sir Christopher did not derive any direct financial benefit from the market abuse that he committed.
- 6.8. The Step 1 figure is therefore £0.

**Step 2: the seriousness of the breach**

- 6.9. Pursuant to DEPP 6.5C.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the market abuse. That figure is dependent on whether or not the market abuse was referable to the individual's employment.

- 6.10. The market abuse committed by Sir Christopher was referable to his employment. In cases where the market abuse was referable to the individual's employment, the Step 2 figure will be the greater of:
- (a) a figure based on the percentage of the individual's relevant income;
  - (b) a multiple of the profit made or loss avoided by the individual for their own benefit, or for the benefit of other individuals where the individual has been instrumental in achieving that benefit, as a direct result of the market abuse (the "profit multiple"); and
  - (c) for market abuse cases which the Authority assesses to be seriousness level 4 or 5, £100,000. The Authority usually expects to assess market abuse committed deliberately as seriousness level 4 or 5.
- 6.11. An individual's relevant income is the gross amount of all benefits they received from the employment in connection with which the market abuse occurred for the period of the market abuse.
- 6.12. The market abuse committed by Sir Christopher occurred on 10 October 2018. Pursuant to DEPP 6.5C.2G(5), in cases where the market abuse was a one-off event, the relevant income will be that earned by the individual in the 12 months preceding the final market abuse. The Authority considers Sir Christopher's relevant income for this period to be £400,000.
- 6.13. In cases where the market abuse was referable to the individual's employment:
- (a) the Authority determines the percentage of relevant income which applies by considering the seriousness of the market abuse and choosing a percentage between 0% and 40%; and
  - (b) the Authority determines the profit multiple which applies by considering the seriousness of the market abuse and choosing a multiple between 0 and 4.
- 6.14. The percentage range and profit multiple range are divided into five fixed levels which reflect, on a sliding scale, the seriousness of the market abuse; the more serious the market abuse, the higher the level. For penalties imposed on individuals for market abuse there are the following five levels:
- Level 1 – 0% of relevant income; profit multiple of 0
- Level 2 – 10% of relevant income; profit multiple of 1

Level 3 – 20% of relevant income; profit multiple of 2

Level 4 – 30% of relevant income; profit multiple of 3

Level 5 – 40% of relevant income; profit multiple of 4

- 6.15. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the market abuse, and whether it was committed deliberately or recklessly.
- 6.16. DEPP 6.5C.2G(11) lists factors relating to the impact of the market abuse, which include:
- (a) the level of benefit gained or loss avoided, or intended to be gained or avoided, by the individual from the market abuse, either directly or indirectly;
  - (b) whether the market abuse had an adverse effect on markets and, if so, how serious that effect was. This may include having regard to whether the orderliness of, or confidence in, the markets in question has been damaged or put at risk; and
  - (c) whether the market abuse had a significant impact on the price of shares or other investments.
- 6.17. The Authority considers that Sir Christopher did not gain any benefit or avoid any loss, or intend to do so, from the market abuse, either directly or indirectly. The market abuse did not have an adverse effect on the markets or have a significant impact on the price of ConvaTec's shares.
- 6.18. DEPP 6.5C.2G(12) lists factors relating to the nature of the market abuse; those relevant are that Sir Christopher has a prominent position in the market (DEPP 6.5C.2G(12)(d)), is an experienced industry professional (DEPP 6.5C.2G(12)(e)) and held a senior position with the firm (DEPP 6.5C.2G(12)(e)).
- 6.19. DEPP 6.5C.2G(15) lists factors likely to be considered 'level 4 or 5 factors'. These include, among others, that the individual has a prominent position in the market.
- 6.20. DEPP 6.5C.2G(16) lists factors likely to be considered 'level 1, 2 or 3 factors'. These include:

- (a) little, or no, profits were made or losses avoided as a result of the market abuse, either directly or indirectly;
  - (b) there was no, or limited, actual or potential effect on the orderliness of, or confidence in, markets as a result of the market abuse; and
  - (c) the market abuse was committed negligently or inadvertently.
- 6.21. Sir Christopher did not make any profit or avoid any losses as a result of his market abuse, or intend to do so, either directly or indirectly. There was no effect on the orderliness of, or confidence in, markets as a result of his market abuse.
- 6.22. The Authority considers that Sir Christopher's market abuse was committed negligently. Having received relevant training on EU MAR from ConvaTec's external legal advisers in October 2016, and based on his own considerable experience and position, Sir Christopher should have realised that the information he disclosed amounted, or may have amounted, to inside information and that it was not in the normal exercise of his employment, profession or duties selectively to disclose it. Sir Christopher failed properly to apply his mind to the specific question of what information, if any, he might properly disclose, as well as when, in what manner and to whom, and he failed to obtain clear, formal advice regarding this question, before making the disclosures.
- 6.23. The potential for the information to be abused, or for suspicions of abuse to arise, was all the greater in circumstances where one of the recipients of that information (Company B) had indicated to Sir Christopher its intention to build a more significant shareholding in ConvaTec around that time. Although the Authority considers that no abusive behaviour occurred as a result of the disclosure to Individual B, Sir Christopher's knowledge of Company B's active intention to build a more significant shareholding in ConvaTec was an important additional factor that should have made him question the appropriateness of making that disclosure and should have alerted him to the importance of obtaining clear, formal advice.
- 6.24. In concluding that Sir Christopher acted negligently, the Authority has taken into account that:
- (a) At 3pm on Tuesday, 9 October 2018, the day before Sir Christopher made the disclosures, in a call with ConvaTec's CEO and other senior ConvaTec executives, ConvaTec's brokers advised that the Company needed to obtain more clarity regarding the ID customer's plans and should not make an

announcement until it had sufficiently precise information. While Sir Christopher was not on that call, he was updated on the outputs of the call at 6pm that day. Further, ConvaTec did not formally classify the information regarding the revised guidance and the CEO's retirement as inside information until two days after the disclosures were made. Nevertheless, the Authority considers that Sir Christopher should have realised that the information he disclosed amounted, or may have amounted, to inside information.

(b) Prior to making the disclosures, Sir Christopher mentioned to Executive A that he intended to call a named contact at each of Companies A, B and C. Prior to making the second disclosure, Sir Christopher also informed Broker A that he was in the process of calling the ConvaTec Board, including Company A, and he discussed with Broker A whether he should inform Companies B and C of the impending RNS announcements reporting the revised guidance and the CEO's resignation, which Broker A agreed he should do. However, neither Executive A nor Broker A understood that Sir Christopher would call, or had called, Individual A at Company A. In all the circumstances, it was not sufficient for Sir Christopher to rely on the fact that neither Executive A nor Broker A advised him against making the calls.

(c) ConvaTec had a relationship agreement with Company A which imposed confidentiality obligations on Company A, and Sir Christopher imposed such obligations himself on Individuals A and B. The Authority does not consider that the imposition of such obligations justified the disclosures.

6.25. The Authority accepts Sir Christopher's explanation that he believed that he was acting in the best interests of ConvaTec in his role as its Chairman by making the disclosures, albeit this cannot excuse his actions.

6.26. Taking all of these factors into account, the Authority considers the seriousness of the market abuse to be Level 3. This means the Step 2 figure is the greater of a figure based on 20% of relevant income (20% of £400,000 = £80,000) and a profit multiple of 2 (2 x £0 = £0). The Step 2 figure is therefore £80,000.

### **Step 3: Mitigating and aggravating factors**

6.27. Pursuant to DEPP 6.5C.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2 (not including any amount to be disgorged as set out in Step 1) to take into account factors that aggravate or mitigate the market abuse.

- 6.28. Having considered the guidance at DEPP 6.5C.3G, the Authority concludes that there are no aggravating factors that are applicable in this case. As to mitigating factors, Sir Christopher has no history of disciplinary action taken against him by the Authority or by any other domestic or international regulatory body, and he cooperated with the Authority in its investigation of this matter. However, in the circumstances of this case, the Authority considers that these mitigating factors do not merit a reduction of the penalty.
- 6.29. The Step 3 figure is therefore £80,000.

#### **Step 4: Adjustment for deterrence**

- 6.30. Pursuant to DEPP 6.5C.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the market abuse, or others, from committing further or similar market abuse then the Authority may increase the penalty.
- 6.31. The Authority considers that the Step 3 figure of £80,000 represents a sufficient deterrent to Sir Christopher and others, and so has not increased the penalty at Step 4.
- 6.32. The Step 4 figure is therefore £80,000.

#### **Step 5: Settlement discount**

- 6.33. The Authority and Sir Christopher did not reach agreement to settle so no discount applies to the Step 4 figure. Step 5 is therefore £80,000.

#### **Penalty**

- 6.34. The Authority hereby imposes a financial penalty of £80,000.

### **7. REPRESENTATIONS**

- 7.1. Sir Christopher made representations in response to the Warning Notice, certain of which were accepted by the Authority. Annex B contains a brief summary of the key representations made by Sir Christopher which have not been accepted by the Authority and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made, including those made by Corporate broker B, whether or not set out in Annex B.

## **8. PROCEDURAL MATTERS**

8.1. This Notice is given to Sir Christopher in accordance with section 390 of the Act.

### **Decision maker**

8.2. The decision which gave rise to the obligation to give this Notice was made by the RDC. The RDC is a committee of the Authority which takes certain decisions on behalf of the Authority. The members of the RDC are separate to the Authority staff involved in conducting investigations and recommending action against firms and individuals. Further information about the RDC can be found on the Authority's website:

<https://www.fca.org.uk/about/committees/regulatory-decisions-committee-rdc>

### **Manner and time for payment**

8.3. The financial penalty must be paid in full by Sir Christopher no later than 19 August 2022.

### **If the financial penalty is not paid**

8.4. If all or any of the financial penalty is outstanding on 19 August 2022 the Authority may recover the outstanding amount as a debt owed by Sir Christopher and due to the Authority.

### **Publicity**

8.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

**Authority contact**

- 8.7. For more information concerning this matter generally, contact Martin Watts at the Authority (direct line: 020 7066 7140/ email: [martin.watts2@fca.org.uk](mailto:martin.watts2@fca.org.uk)).

**Sadaf Hussein**

**Head of Department**

**Financial Conduct Authority, Enforcement and Market Oversight Division**

## **ANNEX A**

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

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

##### The Authority’s statutory objectives

1. The Authority’s statutory objectives, set out in section 1B(3) of the Act, include the integrity objective, which is protecting and enhancing the integrity of the UK financial system and includes (amongst other matters) its not being affected by contraventions by persons of Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) of EU MAR.

##### Section 123 of the Act

2. The Authority has the power under section 123(1)(a) and 123(2) of the Act to impose a penalty of such amount as it considers appropriate on a person if it is satisfied that the person has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) [...] of EU MAR.

#### **Regulation (EU) No 596/2014 (“EU MAR”)**

3. Article 1 of EU MAR provides that:

This Regulation establishes a common regulatory framework on insider dealing, the unlawful disclosure of inside information and market manipulation (market abuse) as well as measures to prevent market abuse to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets.”

4. Article 2(1)(a) of EU MAR provides that EU MAR applies to financial instruments admitted to trading on a regulated market.
5. Article 7(1)(a) of EU MAR provides that for the purposes of MAR inside information will comprise of:

information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments

6. Article 7(2) of EU MAR provides that information shall be deemed to be of a precise nature if:

it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments ... In this respect in the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are

connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information.

7. Article 7(3) of EU MAR provides that an intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfied the criteria of inside information as referred to in Article 7.

8. Article 7(4) of EU MAR provides that for the purposes of Article 7(1) of EU MAR:

information, which, if it were made public, would be likely to have a significant effect on the prices of financial instruments ... shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decisions.

9. Article 8(4) of EU MAR provides that:

This Article applies to any person who possesses inside information as a result of:

- (a) being a member of the administrative, management or supervisory bodies of the issuer or emission allowance market participant;
- (b) having a holding in the capital of the issuer or emission allowance market participant;
- (c) having access to the information through the exercise of an employment, profession or duties; or
- (d) being involved in criminal activities.

This Article also applies to any person who possesses inside information under circumstances other than those referred to in the first subparagraph where that person knows or ought to know that it is inside information.”

10. Article 10(1) of EU MAR provides that:

For the purposes of this Regulation, unlawful disclosure of inside information arises where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties.

11. Article 14 of EU MAR provides that:

A person shall not:

[...]

(c) unlawfully disclose inside information.

12. Article 17(1) of EU MAR provides that an issuer shall inform the public as soon as possible of inside information which directly concerns that issuer, and that the issuer shall ensure that the inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public.

13. Article 17(4) of EU MAR provides that an issuer may delay disclosure to the public of inside information provided that all of the following conditions are met:

- (a) immediate disclosure is likely to prejudice the legitimate interests of the issuer;
- (b) delay of disclosure is not likely to mislead the public;
- (c) the issuer is able to ensure the confidentiality of that information.

14. Recital 14 to EU Mar states, as to the behaviour of reasonable investors, that:

Reasonable investors base their investment decisions on information already available to them, that is to say, on *ex ante* available information. Therefore, the question whether, in making an investment decision, a reasonable investor would be likely to take into account a particular piece of information should be appraised on the basis of the *ex ante* available information. Such an assessment has to take into consideration the anticipated impact of the information in light of the totality of the related issuer's activity, the reliability of the source of information and any other market variables likely to affect the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances in the given circumstances.

15. Recital 15 to EU MAR states that:

Ex post information can be used to check the presumption that the *ex ante* information was price sensitive, but should not be used to take action against persons who drew reasonable conclusions from *ex ante* information available to them.

16. Recital 16 to EU MAR states that:

Where inside information concerns a process which occurs in stages, each stage of the process as well as the overall process could constitute inside information. An intermediate step in a protracted process may in itself constitute a set of circumstances or an event which exists or where there is a realistic prospect that they will come into existence or occur, on the basis of an overall assessment of the factors existing at the relevant time. ...

17. Recital 19 to EU MAR states that:

This Regulation is not intended to prohibit discussions of a general nature regarding the business and market developments between shareholders and management concerning an issuer. Such relationships are essential for the efficient functioning of markets and should not be prohibited by this Regulation.

18. Recital 23 to EU MAR states that:

The essential characteristic of insider dealing consists in an unfair advantage being obtained from inside information to the detriment of third parties who are unaware of such information and, consequently, the undermining of the integrity of financial markets and investor confidence. Consequently, the prohibition against insider dealing should apply where a person who is in possession of inside information takes unfair advantage of the benefit gained from that information by entering into market transactions in accordance with that information by acquiring or disposing of, by attempting to acquire or dispose of, by cancelling or amending, or by attempting to cancel or amend, an order to acquire or dispose of, for his own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. Use of inside information can also consist of trading in

emission allowances and derivatives thereof and of bidding in the auctions of emission allowances or other auctioned products based thereon that are held pursuant to Commission Regulation (EU) No 1031/2010 (1).

19. Recital 24 to EU MAR states that:

... The question whether a person has infringed the prohibition on insider dealing or has attempted to commit insider dealing should be analysed in the light of the purpose of this Regulation, which is to protect the integrity of the financial market and to enhance investor confidence, which is based, in turn, on the assurance that investors will be placed on an equal footing and protected from the misuse of inside information.

20. Recital 35 to EU MAR states that:

Inside information should be deemed as being disclosed legitimately if it is disclosed in the normal course of the exercise of a person's employment, profession or duties. ...

21. Recital 49 to EU MAR states that:

The public disclosure of inside information by an issuer is essential to avoid insider dealing and ensure that investors are not misled. Issuers should therefore be required to inform the public as soon as possible of inside information. However that obligation may, under special circumstances, prejudice the legitimate interests of the issuer. In such circumstances, delayed disclosure should be permitted provided that the delay would not be likely to mislead the public and the issuer is able to ensure the confidentiality of the information. The issuer is only under an obligation to disclose inside information if it has requested or approved admission of the financial instrument to trading.

### **ESMA's MAR Guidelines: Delay in the disclosure of inside information**

22. Paragraph 8 of ESMA's MAR Guidelines provides a non-exhaustive list of circumstances where, for the purposes of point (a) of Article 17(4) of EU MAR, the immediate disclosure of the inside information is likely to prejudice the issuers' legitimate interests.
23. Paragraph 9 of ESMA's MAR Guidelines provides that, for the purposes of point (b) of Article 17(4) of EU MAR, the situations in which delay of disclosure of inside information is likely to mislead the public includes at least the following circumstances:

[...]

(b) the inside information whose disclosure the issuer intends to delay regards the fact that the issuer's financial objectives are not likely to be met, where such objectives were previously publicly announced. ...

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

#### Market Conduct

24. Following the coming into force of EU MAR, section 124 of the Act required the Authority to issue a statement of policy with respect to the type and level of administrative sanctions it may impose on a person who had contravened Article 14 of EU MAR.

25. The part of the Authority's Handbook of rules and guidance entitled "Market Conduct" ("MAR") provides guidance on EU MAR (see MAR 1.1.2G).
26. Chapter 1.4 of MAR is headed "Unlawful disclosure".
27. MAR 1.4.5G, which is headed "Factors to be taken into account in determining whether or not behaviour amounts to unlawful disclosure", states:

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 trading venue a prescribed auction platform, of the FCA 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 places 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.

28. MAR can be accessed here: <https://www.handbook.fca.org.uk/handbook/MAR/>

#### Disclosure guidance

29. Chapters 1 to 3 of the Disclosure Guidance and Transparency Rules sourcebook ("DTR") provide guidance on aspects of the disclosure requirements contained in Articles 17 to 19 of EU MAR and can be accessed here:

<https://www.handbook.fca.org.uk/handbook/DTR/>

30. DTR 2.2.7G states: *"An issuer and its advisers are best placed to make an initial assessment of whether particular information amounts to inside information. The decision as to whether a piece of information is inside information may be finely balanced and the issuer (with the help of its advisers) will need to exercise its judgement."*
31. DTR 2.2.9G(2) states: *"If an issuer is faced with an unexpected and significant event, a short delay may be acceptable if it is necessary to clarify the situation. In such situations a holding announcement should be used where an issuer believes*

*that there is a danger of inside information leaking before the facts and their impact can be confirmed. The holding announcement should:*

- (a) *detail as much of the subject matter as possible;*
- (b) *set out the reasons why a fuller announcement cannot be made; and*
- (c) *include an undertaking to announce further details as soon as possible."*

Decisions Procedures and penalties manual ("DEPP")

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

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

The Enforcement Guide ("EG")

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

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

## **ANNEX B**

### **REPRESENTATIONS**

1. A summary of the key representations made by Sir Christopher which have not been accepted by the Authority, and the Authority's conclusions in respect of them (in bold), is set out below.

#### Whether the information disclosed by Sir Christopher was inside information

*It was not inside information and that was the view of the Company and its brokers*

2. The information which Sir Christopher possessed and disclosed on 10 October 2018 was fundamentally unsuitable for announcement and did not constitute inside information within the meaning of Article 7 of EU MAR.
3. Assessing if and when inside information has arisen is often a complex judgement, particularly in the context of an evolving situation, which was the position in this case. The Company was in close consultation with its brokers from around 5 October 2018 and was following its policies and procedures in performing a continuous assessment of whether it possessed inside information in respect of its anticipated financial performance and the connected issue of the CEO's potential retirement. The Company concluded, after obtaining advice from the brokers, who were highly experienced and aware of all pertinent facts and matters, that inside information arose on the afternoon of 12 October 2018, and not before. DTR 2.2.7G indicates the importance of broker advice, as it states, "*An issuer and its advisers are best placed to make an initial assessment of whether particular information amounts to inside information*".
4. The disclosures contained limited and inherently uncertain information, as the matters under discussion were "*depending on the Board's analysis*", which had not yet occurred.
5. As of 10 October 2018, the position with the ID Customer had been the subject of a verbal indication only and was subject to further inquiries by ConvaTec's executives. Between the time of the disclosures and the Company's assessment that inside information had arisen, there were a number of significant developments: the ID Customer confirmed the substantial negative revision to its Q4 orders which until then had been uncertain; the performance of the Company's other franchises and their likely contribution to the Company's 2018 revenue growth was analysed and confirmed; the CEO and the Board reached agreement that the CEO should retire; and the financial terms of the CEO's retirement were discussed and agreed. Each of these developments meant that the situation radically changed between 10 and 12 October 2018.
6. Broker B sent an email on the morning of 12 October 2018, two days after the disclosures, in which they stated that they did not think that the information held by ConvaTec at that time was sufficiently precise to be announced to the market.
7. **In the Authority's view, for the reasons set out in section 5 of this Notice, Sir Christopher disclosed inside information in both the Guidance Disclosure and the Retirement Disclosure. The fact that, as at 10 October 2018, the information was not in a state to be announced to the market does not prevent it from being inside information; the test for whether information is inside information is set out in Article 7 of EU MAR and does not include whether the information is currently suitable for announcement.**
8. **The Authority acknowledges that ConvaTec did not conclude that it had inside information in respect of the revised guidance to Revenue Growth and the CEO's retirement until 12 October 2018, two days after the disclosures. The Authority also acknowledges that, prior to the disclosures, ConvaTec discussed the need for an RNS announcement with its brokers and understood the brokers' view to be that at that point the Company did not have information which was precise enough to trigger an announcement. Further,**

the Authority recognises that this also appears to have been Broker B's view on the morning of 12 October 2018. The Authority considers that these matters are all relevant in assessing the seriousness of Sir Christopher's conduct, but does not consider they are relevant to an assessment of whether Sir Christopher did disclose inside information, which requires an objective analysis of the test set out in Article 7 of EU MAR. The Authority's analysis is set out in section 5 of this Notice and, for the reasons therein, the Authority considers that Sir Christopher did disclose inside information to Individuals A and B.

9. Although Sir Christopher's reference to the fact that the revision to ConvaTec's financial guidance and the retirement of its CEO were "*depending on the Board's analysis*" made it clear that these events were not certain, they did not have to be certain in order for the information disclosed to be sufficiently precise to constitute inside information. Instead, pursuant to Article 7(2) of EU MAR, they needed to be reasonably expected to occur. In *Hannam*<sup>3</sup>, the Tribunal held that this meant that there needed to be a realistic prospect of them occurring. In the Authority's view, at the time of the disclosures this test was met because there was a realistic prospect both that the financial guidance would be revised and that the CEO would retire, notwithstanding that ConvaTec needed to clarify the financial position and that the CEO had not yet confirmed they would be retiring. The fact that there were further developments following the disclosures does not alter the fact that, at the time of the disclosures, these events were reasonably expected to occur. Further, Sir Christopher's beliefs and/or expectations as to the likelihood of revision of the financial guidance, the CEO's retirement and RNS announcements about the same were a set of circumstances that existed at the time the disclosures were made, which were specific enough to enable a conclusion to be drawn as to their possible effect on the price of ConvaTec shares, and therefore also satisfy the requirement of Article 7(2) of EU MAR.

*The information possessed by Sir Christopher*

10. In the call at 3pm on 9 October 2018, ConvaTec's brokers advised the Company, including the CEO and Executive A, that the information the Company had regarding the ID customer's intentions and the potential impact on ConvaTec's financial guidance was not precise enough to trigger an announcement to the markets, and that more work needed to be done to confirm the position. Sir Christopher was given an update on this call by the CEO and Executive A, among others, at 6pm that day. Sir Christopher's understanding was therefore that ConvaTec and its brokers did not consider that inside information had crystallised or that there was any announcement obligation.
11. Sir Christopher's understanding, following his call with the CEO at 1.14pm on 10 October 2018, was that the CEO wished to explore retirement, but this was subject to coming to an agreement as to terms and was conditional on there needing to be a revision to guidance.
12. Therefore, as at 10 October 2018, it was unclear whether there would be a material revision to the 2018 guidance at all, or any retirement by the CEO.
13. **The Authority considers that the evidence objectively shows that, although it could not be said to be certain that there would be a revision to the financial guidance or that the CEO would retire, there was a realistic prospect of both these events happening. This also appears to have been Sir Christopher's belief and/or expectation at the time, as he informed the Authority in**

---

<sup>3</sup> *Hannam v FCA* [2014] UKUT 0233 (TCC)

interview that he considered the prospect of ConvaTec making an announcement revising guidance was *“moving towards being slightly more probable than not”* following the 6pm call on 9 October 2018, and that by 10 October 2018 *“there was an indication of a probable development”*, and he also told the Authority that he thought it was *“distinctly likely”* after his conversation with the CEO at 1.14pm on 10 October 2018 that the CEO would be resigning. Further, the Authority considers, given the sensitivity of the matters he disclosed, that it is very unlikely that Sir Christopher would have made the calls to Companies A and B had he not believed and/or expected that there would be an announcement in the near future.

14. The Authority acknowledges that, following the 6pm call on 9 October 2018, it is possible that Sir Christopher understood that the view of ConvaTec and its brokers was that ConvaTec did not have inside information. However, as mentioned above, that is relevant to the assessment of the seriousness of his conduct, and not relevant to the objective analysis of whether he did in fact possess, and disclose, inside information.

*Article 17(1) of EU MAR*

15. If the Company had inside information, then pursuant to Article 17(1) of EU MAR it was obliged to inform the public as soon as possible. The only derogation from the Article 17(1) obligation is found in Article 17(4) of EU MAR, but having regard to paragraph 9 of ESMA’s *“MAR Guidelines: Delay in the disclosure of inside information”*, that could not have applied to this case as a delay in disclosure would have been likely to mislead the public as the information concerned the fact that the Company’s financial objectives were not likely to be met. The ESMA MAR guidelines also show, at paragraph 8, that the circumstances where Article 17(4) might legitimately be deployed all concern information with greater qualities of certainty and price sensitivity than the disclosures made by Sir Christopher.
16. If Article 17(4) does not apply, then EU MAR does not provide any other grounds for delaying an announcement to the market. Although the Authority’s guidance in DTR 2.2.9G(2) provides that *“If an issuer is faced with an unexpected and significant event, a short delay may be acceptable if it is necessary to clarify the situation. In such situations a holding announcement should be used where an issuer believes that there is a danger of inside information leaking before the facts and their impact can be confirmed”*, this was not a situation where that provision could have applied. There had not been an unexpected and significant event, and it was not realistic for the Company to have issued a holding announcement on 10 October 2018. Further, the Company’s brokers did not advise that a holding announcement was appropriate.
17. **Article 17(1) of EU MAR requires an issuer to inform the public of inside information “as soon as possible”; it does not require the issuer to inform the public immediately. It also requires the inside information to be made public “in a manner which enables fast access and complete, correct and timely assessment of the information by the public”. In the Authority’s view, Article 17(1) permits a short period of time between inside information coming into existence and a public announcement having to be made, in order for preparations for the announcement to be made and to avoid disclosing information which would lead to the public making incorrect or incomplete assessments of the information disclosed. The test as to whether information is inside information is not whether it is sufficiently precise to be announced immediately; if it was, it would mean that generalised but unquestionably price-sensitive confidential information could be disclosed to selected market participants with impunity whilst the information was being checked and clarified, which would undermine the objectives of EU MAR.**
18. In addition, if information regarding the expected change to ConvaTec’s financial guidance and the CEO’s expected retirement was not inside

information because, as of 10 October 2018, it was not in a state to be announced, that would have meant that anyone with knowledge of this information could have traded on the basis of it, to the detriment of any counterparty unaware of that information, until ConvaTec was in the position to make an announcement. The Authority considers that is not the intention of the EU MAR regime and that it must be the case that information can be inside information and still require clarification or further investigation before the issuer is in a position to make an announcement to the public.

19. **The Authority does not agree that Article 17(4) of EU MAR demonstrates that information can only be inside information if it is sufficiently precise to be announced. Whilst Article 17(4) sets out circumstances in which an issuer may delay the disclosure required under Article 17(1), as set out above, in the Authority's view, the use of the words "as soon as possible" in Article 17(1) expressly allows for a short period of time between information being inside information and an announcement having to be made.**
20. **The Authority considers that DTR 2.2.9G(2) supports its view that there may be a short delay in making an announcement after inside information comes into existence if it is necessary to clarify the situation before an announcement is made. In the Authority's view, the likely revision to ConvaTec's financial guidance as a result of the ID Customer deciding to materially reduce the level of its orders and the CEO's potential retirement were both unexpected and significant events. Under DTR 2.2.9G(2), a holding announcement is only required where the issuer believes that there is a danger of inside information leaking; if it is considered that there is no such danger, the issuer is permitted to confirm the relevant facts and their impact prior to making an announcement. The Authority also considers that the ECJ's decision in *Geltl v Daimler AG*<sup>4</sup> and Recital 16 of EU MAR support its analysis of this issue.**

#### *The Guidance Disclosure*

21. Sir Christopher did not have or disclose information that was sufficient to make his belief about a potential guidance announcement inside information. The fact that executives of the Company were gathering and analysing information and that the Board would be meeting to consider, depending on its analysis, whether to make a guidance announcement falls short of being inside information. In addition, no detail was provided as to the extent or likely range of the potential guidance revision. In the circumstances, the information was not specific enough to enable a conclusion to be drawn as to the effect of Sir Christopher's belief on the price of the Company's shares, was not likely to have a significant effect on the share price, and/or was not information which a reasonable investor would be likely to use as the basis for their investment decisions.
22. The indication that the Board "*would meet in the next few days, to decide, dependent on their analysis, whether or not to issue*" an announcement revising the Company's guidance cannot constitute inside information as it is neither sufficiently precise nor likely to have a significant effect on price. It is normal for a company's ability to meet its projected growth to be under review by its board throughout the year. That this is not inside information is apparent from the fact that the Company was not required to issue an RNS announcement on 10 October 2018 stating that the Board would be meeting that week to consider whether to issue an RNS announcement.
23. The allegations that the Guidance Disclosure constituted inside information because it indicated that the Guidance Announcement would be made in the near future, and/or

---

<sup>4</sup> *Geltl v Daimler AG* Case C-19/11 [2012] 3 CMLR 762

that ConvaTec would revise its financial guidance for revenue growth in the near future, should be rejected because they fail to acknowledge that any revision to the guidance was “*depending on the Board’s analysis*” and fail to reflect the evidence as to the uncertainty that existed on 10 October 2018.

24. **The Authority considers that the information disclosed in the Guidance Disclosure constituted inside information. For the reasons given in paragraph 5.12 of this Notice, the information disclosed was precise because it satisfied the requirement in Article 7(2) of EU MAR that it indicated “a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur”. It was also specific enough to enable a conclusion to be drawn as to its possible effect on the price of ConvaTec’s shares. Although it was the case that the disclosures did not provide detail as to the extent or likely range of the expected guidance revision, the Tribunal in *Hannam* concluded, in interpreting this test, that there is no need to know the extent to which the price would be affected, whilst the ECJ<sup>5</sup> has concluded that there is no need even to conclude that the effect on price will be in a particular direction. Having regard to Articles 7(1)(a) and 7(4) of EU MAR, the Authority considers that information indicating that there was a realistic prospect that ConvaTec would revise its financial guidance for Revenue Growth for the 2018 full year in the near future, and Sir Christopher’s belief and/or expectation about the same, is clearly information that, if made public, would be likely to have a significant effect on the price of ConvaTec’s shares and was information that a reasonable investor would have been likely to use as part of the basis for their investment decisions.**
25. **The Authority considers this is also the case in respect of the Guidance Disclosure’s indication that the Board would soon meet to decide, depending on its analysis, whether or not to issue an announcement revising guidance. The Authority does not accept that, in order to be inside information, the information has to be in a form that can be announced.**
26. **As mentioned above, the Authority accepts that the information disclosed indicated there was some uncertainty as to whether there would be an announcement that ConvaTec was revising its financial guidance. However, the Authority considers that a reasonable investor would take into account the fact that the disclosure was being made by the Chairman of the Board and would likely conclude that he, as Chairman of the Board, believed and/or expected that ConvaTec would revise its financial guidance in the near future. The Authority therefore concludes that the uncertainty neither prevents the information from being precise, nor from being information which, if made public, would be likely to have a significant effect on the prices of financial instruments.**

#### *The Retirement Disclosure*

27. Sir Christopher’s belief that the CEO would retire in the near future did not amount to inside information. The CEO’s retirement was inherently bound up with the issue of the Company’s financial performance, which remained uncertain on the afternoon of 10 October 2018. It was also subject to the exploration and conclusion of appropriate terms. The judgement on both of these issues ultimately lay with the Board and not with Sir Christopher. It cannot be said that a company is obliged to make an immediate announcement to the market as soon as there is a prospect of one of its senior

---

<sup>5</sup> *Jean-Bernard Lafonta v AMF* Case C: 628 [2015]

executives retiring, particularly where that potential retirement is subject to a number of material contingencies.

28. The allegation that the Retirement Disclosure constituted inside information because it indicated that the CEO would retire in the near future should be rejected because it does not take account of the fact that any retirement of the CEO would be “*depending on the Board’s analysis*”, fails to reflect the uncertainty that existed at the time of the disclosures and is inconsistent with Sir Christopher’s evidence that one of the key reasons for speaking to Companies A and B was to give them the opportunity to comment on the potential retirement of the CEO before it had been agreed.
29. **The Authority considers that there was a realistic prospect of the CEO retiring in the near future. This view is supported by the connection between the retirement of the CEO and the issue of ConvaTec’s financial performance because, as explained above, the Authority considers there was a realistic prospect of the Guidance Announcement being made. The fact that the CEO still had to agree terms of his exit did not mean his retirement was not a realistic prospect. This is supported by the fact that the CEO informed the Authority in interview that, following his conversation with Sir Christopher at 1.14pm on 10 October 2018, he considered his retirement to be “*highly likely*”, whilst Sir Christopher told the Authority that he thought it was “*distinctly likely*”. Sir Christopher’s belief and/or expectation that ConvaTec’s CEO would be retiring in the near future, and/or that ConvaTec would make an RNS announcement that its CEO had retired, or would be retiring, in the near future, was itself a set of circumstances which existed for the purposes of Article 7(2) of EU MAR.**
30. **The Authority agrees that ConvaTec was not required to make an immediate announcement to the market once there was a prospect of the CEO retiring. However, as explained above, EU MAR does not necessarily require the immediate publication of inside information.**
31. **As mentioned above, in order to be inside information, there just needed to be a realistic prospect of the CEO’s retirement and it did not need to be a certainty. Although Sir Christopher states that he spoke to Companies A and B in order to give them the opportunity to comment before the CEO’s retirement had been confirmed, in the Authority’s view, he would not have made these calls, as the Chairman of ConvaTec, unless he believed and/or expected the CEO would retire in the near future. The Authority therefore concludes that this was information that was precise in nature and which, if made public, would be likely to have a significant effect on the prices of financial instruments.**

Whether the disclosures were made in the normal exercise of Sir Christopher’s employment, profession or duties

*The disclosures were lawful*

32. Whether or not the information disclosed was inside information, the disclosures were lawful because they were made in the normal exercise of Sir Christopher’s employment, profession or duties for the purpose of Article 10(1) of EU MAR.
33. **For the reasons given in paragraph 5.21 of this Notice, the Authority considers that Sir Christopher’s disclosures were made otherwise than in the normal exercise of his employment, profession or duties in his role as Chairman of ConvaTec.**

*Confidentiality and no-dealing obligations*

34. The recipients of the disclosures were subject to obligations of confidentiality and no-dealing, and Sir Christopher therefore reasonably understood that there was no risk that the recipients would use the information to deal or act improperly. With those

protections in place, it was reasonable and necessary for Sir Christopher to make the disclosures given the potential departure of ConvaTec's CEO and the need to raise this with certain strategic shareholders.

35. Company A had a relationship agreement with ConvaTec, pursuant to which it was under a contractual obligation to keep the information disclosed confidential. Under the terms of that agreement, Company A would not have been able to deal in ConvaTec's shares without prior consultation with Sir Christopher personally, which therefore provided protection against any possibility of improper dealing. These obligations applied to Company A as a whole, irrespective of whether information was provided to the individual sitting on ConvaTec's Board or to another individual at Company A.
36. The director at Company B to whom Sir Christopher made the disclosure acknowledged the need to keep the information confidential and was clear in interview that they would not act on information disclosed to them in such circumstances.
37. The Authority has accepted that neither recipient acted contrary to the obligations of confidentiality and no-dealing imposed on them and that the disclosures caused no market harm and did not affect the orderliness of, or confidence in, markets. This illustrates that it was reasonable for Sir Christopher to proceed on the basis that the recipients would respect the obligations imposed on them.
38. **The Authority acknowledges that Article 10(1) of EU MAR permits an exception to the rule against non-disclosure of inside information. The Authority notes, in that context, that Sir Christopher imposed obligations of confidentiality and no-dealing on Individuals A and B, and that Company A had a relationship agreement with ConvaTec which imposed such obligations on Company A. Pursuant to MAR 1.4.5G, the imposition of confidentiality requirements is a relevant factor to be taken into account in determining whether or not the disclosure was made in the proper course of the exercise of the individual's employment, profession or duties. However, it is not sufficient to justify disclosure of inside information. Under MAR 1.4.5G(2), even where confidentiality obligations are imposed, the disclosure must nonetheless be reasonable and must be to enable the person to perform the proper functions of their employment, profession or duties. The ECJ<sup>6</sup> has interpreted the exception to the rule against non-disclosure of inside information to be one that must be interpreted strictly, such that the disclosure of such information is justified only if it is "*strictly necessary for the exercise of an employment, profession or duties and complies with the principle of proportionality*". The Authority agrees that this limited exception to the rule against non-disclosure of inside information should be interpreted strictly. In the Authority's view, as explained further below, the disclosures were not reasonable, necessary or proportionate.**
39. **The Authority has had regard to the terms of Company A's relationship agreement with ConvaTec, but does not consider that they demonstrate that Sir Christopher's disclosure to Individual A, who was not Company A's appointed representative on the Board, was reasonable and necessary. Similarly, the Authority does not consider that Individual B's comments about recognising the confidentiality of the disclosed information mean that Sir Christopher's disclosure to him was reasonable and necessary.**
40. **The Authority considers the fact that the disclosures did not lead to insider dealing is of limited relevance given that is a separate offence under EU MAR**

---

<sup>6</sup> *Grónsgaard and Bang* Case C-384/02 [2005] ECR I-9939

**to the improper disclosure of inside information. However, Sir Christopher's conduct did give rise to a risk of insider dealing.**

*Reasons for the disclosures*

41. The disclosures were reasonable and necessary for Sir Christopher to perform his duties as Chairman because it was important for the Company to ascertain the views of long-term strategic shareholders who knew the CEO well. Whether the shareholders' response was positive or negative, or whether they just indicated that it was a matter for the Board to decide, was useful information for Sir Christopher to receive and to communicate to the Board. In order to elicit such feedback, it was obviously necessary for Sir Christopher to explain the circumstances of the CEO's potential departure.
42. Sir Christopher was also conscious of the desirability for the Company that these investors were not surprised with the news of the CEO's resignation from a press release, but this was not the dominant purpose of the disclosures.
43. ConvaTec's Market Disclosure Policy, having regard to DTR 2.5.7G(2), lists "*major shareholders of the Company*" as a potential recipient of permitted selective disclosures. The disclosures were also consistent with the expectations of strategic shareholders such as Company B.
44. The Authority has failed to give sufficient weight to the special status of Company A, who was a major shareholder with a seat appointment on the Board. Broker A agreed that Company A was in a special position and supported disclosing this information to Company A. Given its position, it was not unfair, as against other market participants, for Company A to have received this information at this stage.
45. There was a good reason why Sir Christopher called Individual A rather than Company A's appointee to the Board or its shareholder representative. Individual A had previously been Company A's appointee to the Board and was well known to Sir Christopher. He was also the person responsible for the investment and the potential departure of the CEO as a result of a possible revision to guidance was an investment issue. In any case, the relationship agreement imposed obligations of confidentiality and no-dealing on all persons at Company A who received information of this nature from Sir Christopher.
46. The Authority has failed to give sufficient weight to Company B's position which, although it had a smaller shareholding than Company A, was significant for similar reasons. It was a long-term strategic investor which was looking to replicate Company A's relationship with ConvaTec and build a significant stake in ConvaTec with a seat on the Board. Sir Christopher managed the relationship with Company B and the Board agreed this would be good for ConvaTec in the long term. Sir Christopher's rationale for speaking to Company B specifically was because of the Board's agreement to Company B becoming a strategic shareholder. Broker A agreed that Company B was in a special position and encouraged Sir Christopher to make the disclosure to Company B. The disclosure to Company B can therefore not be equated with an ordinary shareholder being given a tip off about a development which might affect share value.
47. **The Authority considers that the evidence does not support Sir Christopher's submission that he called Companies A and B in order to ascertain their views on the potential retirement of the CEO. Instead, the Authority considers that the purpose, or at least the primary purpose, of the calls was to give the recipients the news that the CEO was likely to be retiring due to the expected revision of the Company's financial guidance before the news was publicly announced, so that it was not a surprise to them. This is supported by statements made by Sir Christopher to the Authority in interview, by Broker A's account in interview of their understanding of the reason for the calls, by the fact that the calls lasted for no more than one or two minutes which suggests there was no genuine consultation, and by the fact that the Board was not informed of their views after the calls had been made. Further, as set**

**out below, Company A had a Board director representative, which was the appropriate means for Company A to be consulted about the possible retirement of the CEO.**

- 48. The Authority acknowledges that DTR 2.5.7G(2) provides that an issuer may, depending on the circumstances, be justified in disclosing inside information to certain categories of recipient, including major shareholders, and that this guidance was replicated in ConvaTec's Market Disclosure Policy. However, this does not mean that disclosing inside information to a major shareholder is always justified; the exception to the general rule against non-disclosure of inside information should be interpreted strictly and the disclosure still has to be reasonable and necessary: in the Authority's view, that was not the case in respect of the disclosures to Individuals A and B.**
- 49. The Authority does not agree that Company A's status as the largest shareholder with a seat on the Board meant that it was reasonable and necessary for Sir Christopher to make the disclosures to Individual A. Company A had a director on the Board pursuant to the relationship agreement who could, as set out above, have provided input from Company A's perspective on the potential retirement of the CEO. In these circumstances, even if Individual A was responsible for the investment, that was not, in the Authority's view, a good reason for disclosing inside information to them. Further, the fact that the relationship agreement imposed confidentiality and no-dealing obligations on all persons at Company A, did not make it reasonable and necessary for Sir Christopher to disclose inside information to Individual A.**
- 50. The Authority does not consider that Sir Christopher's discussion with Individual B, representing Company B, fell within the limited exception in Article 10(1) of EU MAR. Notwithstanding its intentions, Company B was not as large a shareholder as Company A and did not have a relationship agreement in place. Sir Christopher did not disclose the information to several larger shareholders. Further, the Authority considers that it was particularly inappropriate for Sir Christopher to disclose the information to Individual B in circumstances where he was aware of Company B's active intention to build a more significant shareholding in ConvaTec. Sir Christopher's conduct gave rise to a risk of insider dealing, albeit a risk that did not crystallise.**

*Advice from Executive A and Broker A*

51. Sir Christopher indicated his intention to speak to Companies A and B to Executive A and reported back to Executive A shortly after making the disclosures. Executive A's responsibilities included giving legal advice to ConvaTec and administering the relevant policies and procedures in the Company's Market Disclosure Policy, and Sir Christopher reasonably anticipated that they would have raised any concerns or doubts about his stated intention. He therefore believed in good faith that he had the tacit approval of Executive A to the disclosures.
52. Sir Christopher sought advice from Broker A during the afternoon of 10 October 2018, who encouraged Sir Christopher to make the disclosure to Company B and positively supported the disclosure to Company A. Broker A emphasised that these particular shareholders were in a special position that was materially different to institutional and more passive investors, recognised that Sir Christopher had had a lot of historic dialogue with them, and considered it was appropriate for Sir Christopher to have a discussion with these particular investors on an issue as sensitive as the potential departure of the CEO.
53. Broker A advised Sir Christopher to call Company B in circumstances where they had more detailed knowledge than Sir Christopher of Company B's desire to increase its shareholding in the near future. Against that background, it is even more significant

that Broker A still felt it was appropriate for Sir Christopher to speak to Company B. Had Broker A any concerns with such a disclosure they would presumably not have advised as they did.

54. Sir Christopher should not be criticised for the fact that there is no audio recording or written record of the calls, and for the fact that nobody else from ConvaTec was in attendance. He was abroad at the time, Broker A did not advise against having a direct discussion, and Sir Christopher relayed the substance of the discussions to Executive A shortly afterwards.
55. **The support that Sir Christopher had, or believed he had, from Executive A and Broker A for the disclosures does not mean that objectively it was reasonable and necessary for him to make the disclosures and therefore that they were within the normal exercise of his employment, profession or duties. The Authority considers this factor is more relevant to whether or not Sir Christopher acted negligently.**
56. **As explained in more detail below, the Authority considers that it was not sufficient for Sir Christopher to rely on the fact that neither Executive A nor Broker A advised him against making the calls. Based on his own considerable experience and position, and having received relevant training on EU MAR, Sir Christopher should have realised that it was not in the normal exercise of his employment, profession or duties to make the disclosures. Similarly, regardless of Broker A's understanding of Company B's intention to build a more significant shareholding in ConvaTec, given his own understanding, Sir Christopher should have questioned the appropriateness of his disclosure to Individual B in such circumstances.**
57. **The statements in the Notice that no audio recording nor any contemporaneous written record was made of Sir Christopher's conversations, and that nobody else from ConvaTec was in attendance, are statements of fact, not criticisms of Sir Christopher.**

*Reasons given by the Authority in support of its view that the disclosures were not made in the normal exercise of Sir Christopher's employment, profession or duties*

58. The reasons given by the Authority to support its view that the disclosures were outside of the normal exercise of Sir Christopher's employment, profession or duties do not withstand scrutiny.
59. In respect of the Authority's comments on Sir Christopher's explanation for the disclosures, the Authority has ignored the importance he placed on the legitimate aim of giving the shareholders an opportunity to comment on the CEO's potential departure. It is also legitimate for a discussion with a key shareholder to have a dual purpose, namely maintaining a key strategic relationship and providing an opportunity to comment. The Authority has also not taken into account the unique and strategic position of Companies A and B which, given the purpose of contacting them, meant that the disclosures were not unfair.
60. In respect of the timing of the disclosures, the obligations of confidentiality and no-dealing in place prevented any opportunity for improper dealing, and it is common ground that no improper dealing occurred. There also was a good reason for the timing, which was to provide strategic investors with an opportunity to comment on the potential departure of the CEO before matters had crystallised. In addition, ConvaTec's procedures related to information that had been classified as inside information, whereas the disclosures did not involve information that had been so designated. The disclosures therefore did not breach the Company's usual process.
61. Recital 19 to EU MAR is principally addressing matters that would not amount to inside information at all, and should not be treated as exhaustive of the circumstances where disclosure might be lawful pursuant to Article 10(1) of EU MAR. In addition, if a

chairman is unable to discuss with a key strategic shareholder the potential retirement of the CEO it is unclear what meaningful discussion could be had between shareholders and management "regarding the business".

62. Sir Christopher's disclosures were reasonable in the circumstances and there were no other effective ways of achieving the relevant aims.
63. **As mentioned above, the Authority considers that the purpose, or at least the primary purpose, of the disclosures was so that the shareholders would not be surprised by the announcement, rather than to give them an opportunity to comment. The Authority considers that it was not reasonable and necessary to make the disclosures for this purpose and therefore does not consider there was a good reason for the timing of the disclosures.**
64. **The Authority acknowledges that ConvaTec had not classified the expected revision to financial guidance and the potential retirement of the CEO as inside information at the time of Sir Christopher's disclosures and so agrees that he did not breach ConvaTec's documented procedures for handling inside information. Nevertheless, the Authority considers that ConvaTec's documented procedures provide indicative guidance regarding the timing of discussions with shareholders prior to an RNS announcement and support the Authority's view that it was not reasonable and necessary for Sir Christopher to make the disclosures on 10 October 2018.**
65. **The Authority considers that the information disclosed by Sir Christopher was precise, and that he did not have discussions of a general nature regarding the Company's business with Individuals A and B. Accordingly, the Authority considers that the disclosures were outside the scope of Recital 19 to EU MAR and that this supports its conclusion that the disclosures were not in the normal exercise of Sir Christopher's employment, profession or duties.**
66. **The Authority considers that the disclosures were not reasonable, necessary or proportionate in the circumstances. There were other more appropriate means by which Sir Christopher could have ensured the support of the Company's major shareholders, for example, by giving them access to the Company's senior management team in calls held immediately after the RNS announcements.**

#### Whether Sir Christopher was negligent

67. Sir Christopher was not negligent. If there was any breach of Article 10(1) of EU MAR, it was inadvertent.
68. The Authority has failed to give sufficient weight to the true likelihood, as Sir Christopher reasonably understood it, of an announcement of a revision to guidance and the retirement of the CEO.
69. The Authority has failed to give sufficient weight to the fact that the disclosures were made with the support and encouragement of Broker A, whose advice he sought and who was highly experienced and reputable, and only after Sir Christopher had indicated his intention to make the disclosures to Executive A. Both Broker A and Executive A had full visibility of all relevant underlying facts. Neither of them, nor the Company or Broker B, considered that inside information had arisen at the time of the disclosures. It is therefore not reasonable to conclude that Sir Christopher should have realised he was disclosing inside information.
70. It is unfair to assert that Sir Christopher's knowledge of Company B's intentions should have alerted him to the inappropriateness of making the disclosures, when Broker A had significantly more information as to the timing of Company B's potential order yet still encouraged him to speak to Company B. Acting in accordance with advice from the Company's broker constitutes reasonable and prudent behaviour, not negligence.

71. It is also unfair to contend that Sir Christopher “*should have obtained clear, formal advice*”. Sir Christopher told Executive A that he intended to speak to Companies A and B and requested a call from the brokers, precisely so that he could obtain their advice. He then received advice from Broker A which supported the disclosures. Sir Christopher was on holiday at the time so arranging a phone call with Broker A was sufficiently formal and appropriate in the circumstances. There was no need for advice to be in writing; advice is often provided orally by professional advisers. Sir Christopher was also extremely busy at the time, given his responsibilities in respect of the developing situation, so notifying Executive A, whose responsibilities included giving legal advice to ConvaTec and overseeing its compliance with EU MAR, before and after the disclosures and taking advice from Broker A was an appropriate investment of time and effort in obtaining advice.
72. As the Authority accepts, Sir Christopher believed he was acting in the best interests of the Company, in his role as Chairman, in making the disclosures. He would not have made the disclosures if he had been advised by Broker A or Executive A that the information was inside information and/or that it should not be disclosed.
73. **As explained in paragraph 6.24 of this Notice, the Authority has taken into account factors which might support a conclusion that Sir Christopher was not negligent. Nevertheless, the Authority considers that Sir Christopher’s actions were negligent. Given his training, considerable experience and position, he should have realised that the information he disclosed amounted, or may have amounted, to inside information and that it was not in the normal exercise of his employment, profession or duties selectively to disclose it. He failed properly to apply his mind to the specific question of what information, if any, he might properly disclose, as well as when, in what manner and to whom, and failed to obtain clear, formal advice regarding this question, before making the disclosures.**
74. **The Authority has had regard to the fact that Executive A was aware that Sir Christopher intended to call a named contact at each of Companies A, B and C, and to the fact that Broker A was aware that he was in the process of calling the ConvaTec Board, including Company A, and agreed that he should inform Companies B and C of the impending RNS announcements. However, neither Executive A nor Broker A understood that he would call, or had called, Individual A at Company A: Individual A was not the person Sir Christopher mentioned to Executive A, nor Company A’s Board representative. Moreover, the disclosure to Individual A was made before Sir Christopher spoke to Broker A, so Sir Christopher cannot have been relying on the advice of Broker A when he decided to disclose information to Individual A. In all the circumstances, the Authority considers it was not sufficient for Sir Christopher to rely on the fact that neither Executive A nor Broker A advised him against making the calls.**
75. **The Authority acknowledges that Broker A agreed that Sir Christopher should speak to Company B in circumstances where they were aware that Company B intended to build a more significant shareholding in ConvaTec around that time. However, this does not alter the Authority’s view that, given Sir Christopher’s own knowledge, experience and position, this was an important additional factor that should have alerted Sir Christopher to the importance of obtaining clear, formal advice regarding the appropriateness of making that disclosure.**
76. **As mentioned above, the Authority has taken into account Sir Christopher’s discussion with Broker A after his call with Individual A and before his call with Individual B. The Authority notes that, although Broker A agreed that Sir Christopher should disclose the impending RNS announcements reporting the revised guidance and the CEO’s resignation, Sir Christopher did not seek**

**advice, and was not given advice, about whether the disclosures constituted inside information. The Authority therefore considers it is fair to conclude that Sir Christopher should have obtained clear, formal advice regarding the specific question of what information, if any, he might properly disclose, as well as when, in what manner and to whom, before making the disclosures.**

- 77. The Authority agrees that Sir Christopher believed that he was acting in the best interests of ConvaTec by making the disclosures, but does not consider that this excuses his actions.**

Financial penalty

78. The Authority has not taken disciplinary action against the Company or its brokers. Given Broker A's knowledge of all material underlying facts, their greater knowledge of Company B's intentions and their support for the disclosures, it is inconsistent and/or unduly severe for action to be taken against Sir Christopher.
79. It is disproportionate to impose a financial penalty on Sir Christopher. There is no proper basis for any disciplinary action against Sir Christopher, but if the Authority concluded that it was appropriate to take action, a public censure would be more than sufficient in the particular circumstances of the case. It would carry significant stigma for Sir Christopher and is a genuine sanction.
80. If a financial penalty is imposed, the matters relating to the involvement of Broker A described at paragraph 78 above should be a material consideration in the calculation, along with the other factors which demonstrate that Sir Christopher did not act negligently.
81. The penalty should not be categorised as Level 3 seriousness at Step 2 of the penalty calculation, as it is less serious than other selective disclosure cases the Authority has previously brought. There should also be a significant mitigation discount at Step 3 of the penalty calculation to reflect the fact that he acted with the knowledge of, and/or on the advice of, Broker A and Executive A, and to reflect his cooperation and previously distinguished record, and the fact that he was a diligent and careful Chairman who was particularly concerned to ensure effective governance and proper process.
- 82. Given its conclusion that Sir Christopher negligently disclosed inside information, the Authority considers that it is not unfair to take disciplinary action against him in circumstances where it has not taken action against anybody else. He was the only person who made the unlawful disclosures of inside information contrary to Article 10(1) of EU MAR. Further, given this conclusion, the Authority considers that it is proportionate and appropriate to impose a financial penalty on Sir Christopher.**
- 83. The Authority has had regard to the involvement of Broker A in considering the seriousness of Sir Christopher's market abuse. In particular, as explained in paragraph 6.24(b) of this Notice, the Authority considers that Sir Christopher was negligent notwithstanding the fact that Broker A did not advise him against making the calls.**
- 84. The Authority considers that it is appropriate to assess the seriousness of Sir Christopher's market abuse as Level 3 for the purpose of the penalty calculation. As explained in paragraph 6.26 of this Notice, the Authority has taken all relevant factors into account in reaching this conclusion. At Step 3, the Authority has had regard to Sir Christopher's previously clean disciplinary record and to his cooperation, but does not consider that these mitigating factors merit a reduction of the penalty.**