
FINAL NOTICE

To: **Steven Harrison**

Date of Birth: 18 June 1965

Date: 8 September 2008

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about a requirement to pay a financial penalty.

1. THE PENALTY

1.1 For the reasons listed below and pursuant to section 123 of the Financial Services and Markets Act 2000 (“the Act”), the FSA has decided to impose a financial penalty of £52,500 on you Steven Harrison, for engaging in market abuse on 28 September 2006.

1.2 The level of the penalty reflects that:

1.2.1 Mr Harrison agreed to settle at an early stage of the FSA's investigation. He therefore qualified for a 30% (stage 1) reduction in penalty, pursuant to the FSA's executive settlement procedures. Were it not for this discount, the FSA would have sought to impose a financial penalty of £75,000 on Mr Harrison; and

1.2.2 Mr Harrison has undertaken to the FSA that, for a period of 12 months from 1 August 2008, he will not perform:

- (a) any controlled function in relation to any regulated activity carried on by an authorised person; and
- (b) any of the activities, whether or not such activities would otherwise fall within the scope of controlled functions for the purposes of section 59 of the Act, listed below:
 - (i) communicate with investors;
 - (ii) execute any trades or investment transactions;
 - (iii) take discretionary investment management decisions;
 - (iv) conduct investment analysis or make investment recommendations; and
 - (v) receive or make calls to sell-side investment banks or other parties with a view to arranging deals in investments.

1.3 Mr Harrison confirmed on 14 August 2008 that he would not be referring the matter to the Financial Services and Markets Tribunal.

1.4 Accordingly, for the reasons set out below and having agreed with Mr Harrison the facts and matters relied on, the FSA imposes a financial penalty on Mr Harrison in the amount of £52,500.

2. REASONS FOR THE ACTION

Summary of conduct in issue

2.1 During September 2006 Mr Harrison was an approved person holding controlled function 27 (investment manager) at Moore Europe Capital Management Limited (“MECM”) where he was a portfolio manager for the Moore Credit Fund.

2.2 On 28 September 2006, Mr Harrison was given inside information in respect of the imminent refinancing of Rhodia SA (“Rhodia”) bonds. Later on the same day Mr Harrison instructed a colleague to buy up to 10 million Rhodia 10.50% Senior Notes due 2010 (“the 10.50 bonds”) in the knowledge that there was to be an imminent refinancing by Rhodia which would involve their tendering for those bonds at a premium to the market price. In the event only 2 million 10.50 bonds were purchased.

2.3 The 10.50 bonds were purchased by the Moore Credit Fund at the price of EUR 118.75 for a total consideration of EUR 2,446,166.67. On Monday 2 October 2006 Rhodia announced that it had commenced a cash tender offer and consent solicitation for certain specified bonds including its 10.50 bonds and that there would be concurrent issue of new floating rate notes to finance this. On 16 October, Rhodia announced the pricing of the tender offer: the 10.50 bonds would be repurchased at the price of EUR 120.952. The Moore Credit Fund accepted the tender for the bonds on 17 October 2006, resulting in a profit of approximately EUR 44,000 to the Moore Credit Fund.

Relevant statutory provisions

2.4 The FSA is authorised by the Act to exercise the following powers.

2.5 Section 123 of the Act empowers the FSA to impose financial penalties in cases of market abuse. In particular, section 123(1) of the Act provides as follows:

“If the [FSA] is satisfied that a person (“A”)-

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

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

2.6 Section 118(1) of the Act defines market abuse. It provides:

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

- (a) occurs in relation to--*
 - (i) qualifying investments admitted to trading on a prescribed market,*
 - (ii) qualifying investments in respect of which a request for admission to trading on such a market has been made, or*
 - (iii) in the case of subsection (2) or (3) behaviour, investments which are related investments in relation to such qualifying investments, and*
- (b) falls within any one or more of the types of behaviour set out in subsections (2) to (8).”*

2.7 The behaviour relevant to this case is set out in subsection 118(2):

“The first type of behaviour is where an insider deals, or attempts to deal, in a qualifying investment or related investment on the basis of inside information relating to the investment in question.”

2.8 By section 118A, behaviour is to be taken into account only if it occurs:

“(a) in the United Kingdom...”

2.9 By section 118B, an insider is any person who has inside information, amongst other things:

“(c) as a result of having access to the information through the exercise

of his employment, profession or duties...”

2.10 Section 118C defines “inside information” for the purposes of Part VIII of the Act:

“(2) In relation to qualifying investments, or related investments....inside information is information of a precise nature which-

- (a) is not generally available;*
- (b) relates, directly or indirectly, to one or more issuers of the qualifying investments or to one or more of the qualifying investments; and*
- (c) would if generally available, be likely to have a significant effect on the price of the qualifying investments or on the price of the related investments...*”

2.11 By section 118C(5) information is precise if it:

- “(a) indicates circumstances that exist or may be reasonably expected to come into existence or an event that has occurred or may be reasonably expected to occur, and*
- (b) is specific enough to enable a conclusion to be drawn as to the possible effect on the price of those qualifying investments or related investments.”*

2.12 By section 118C(6):

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

2.13 Section 130A grants the Treasury the power to specify by order the prescribed markets and qualifying investments. The Treasury has done so by the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001 SI 2001/996 (as amended by (Financial Services and Markets Act 2000 (Market Abuse) Regulations), Reg 10 (2), SI 2005/381).

Relevant FSA Guidance

2.14 The FSA has issued the Code of Market Conduct (“MAR”) pursuant to section 119 of the Act. Under section 122 of the Act the Code may be relied on in so far as it indicates whether or not particular behaviour should be taken to amount to market abuse.

2.15 MAR 1.3.4E provides:

"In the opinion of the FSA, if the inside information is the reason for, or a material influence on, the decision to deal or attempt to deal, that indicates that the person's behaviour is "on the basis of" inside information."

Facts and Matters Relied On

Rhodia Bonds

- 2.16 Rhodia is an international company with its European headquarters in France which manufactures speciality chemicals. The company has equity listings on Euronext France and on the New York Stock Exchange. It has also issued corporate securities in the form of bonds of which the Euro denominated notes tend to be listed on the Luxembourg Stock Exchange and trade in the London over-the-counter market off-exchange. The Luxembourg Stock Exchange is a regulated market within the meaning of Article 1.13 of the Investment Services Directive (93/22/EEC).
- 2.17 The 10.50 bonds were closely held because of the high coupon and therefore traded less often than the 8% bonds issued by Rhodia. Only EUR 117,650,000 of the 10.50 bonds were outstanding. In addition, as large amounts of the issue were held by a few market participants and therefore the amount which actually traded (the 'free-float') was further reduced.
- 2.18 In early September 2006 the Moore Credit Fund held no 10.50 bonds. On 7 September 2006 the Moore Credit Fund purchased 16,367,000 of the 10.50 bonds.
- 2.19 During September 2006, Credit Suisse had a series of meetings with Rhodia regarding a potential refinancing which involved the company tendering for some of its more expensive debt, which included the 10.50 bonds. Whilst it was expected by the market that Rhodia would re-finance its debt, it was anticipated this would occur within the following 6-9 months, not imminently.
- 2.20 By 27 September 2006, the proposed refinancing was at an advanced stage.

Accounts of Events of 28 September 2008

- 2.21 As at 28 September 2006, Credit Suisse knew that Rhodia intended to go to its Board the following day to seek its authorisation to launch the refinancing as soon as practicable. Credit Suisse contacted Mr Harrison in order to help establish the correct pricing and other feedback on the specifics of the proposed refinancing which involved the tender for certain of its existing bonds and the issue of new floating rate notes. This necessitated providing Mr Harrison with inside information regarding the proposed refinancing.
- 2.22 There then followed a series of telephone conversations and instant messages between Credit Suisse and Mr Harrison with three substantive telephone calls at the following times:
- 2.22.1 Mr Harrison calling Credit Suisse at 12.15; call length 10 minutes and 50 seconds;
 - 2.22.2 Mr Harrison calling Credit Suisse at 16.29; call length 13 minutes and 12 seconds; and
 - 2.22.3 Credit Suisse calling Mr Harrison at 17.19; call length 1 minute and 36

seconds.

- 2.23 According to Credit Suisse, in the initial telephone call a member of Credit Suisse's staff asked Mr Harrison if he wished to receive restricted information in connection with an upcoming financing. Mr Harrison said that he would. Mr Harrison was then told the proposed size of the refinancing deal, EUR 1.1 billion; the proposed timing of the announcement, Monday 2 October 2006; the anticipated type of structure, floating rate instrument priced over 3 month Euribor; the pricing range being considered for the new bonds, namely 275-300 basis points over 3 month Euribor; and which existing bonds were likely to form part of the tender offer, which included the 10.50 bonds.
- 2.24 According to Credit Suisse, Mr Harrison replied that he would think about the information and come back with a response; and that Mr Harrison responded later the same day or the next morning. The telephone call logs put the time of this second conversation at 16.29 on 28 September 2006.
- 2.25 The relevant telephone calls were not recorded. In the circumstances of this case the FSA has not been able to determine the precise circumstances and terms in which the information was passed to Mr Harrison. The FSA finds that inside information was provided to Mr Harrison even if it were not identified by him as inside information, or restricted information.
- 2.26 Mr Harrison now accepts, and the FSA finds, that he was provided with certain precise information which was not generally available concerning the proposed transaction including the proposed size of the offering, the price that would be offered for any bonds that might be tendered as part of the refinancing, and the proposed time of the tender. Mr Harrison did not consider at the time that the information he was given was inside information; and failed to consider what should have been a clear and obvious risk that purchasing further bonds before the information was generally available would result in his engaging in conduct that amounted to market abuse. He accepts, and the FSA finds, that he should have recognised that the information that was conveyed to him by Credit Suisse constituted inside information, even if he did not initially recognise it as such.

Purchase of the Bonds

- 2.27 Following the receipt of this information Mr Harrison gave instructions to purchase the 10.50 bonds. Two million 10.50 bonds were purchased following this instruction at 118.75. The purchase was recorded as taking place by 17.04.

Rhodia's tender for its bonds

- 2.28 The tender and basis of the pricing (50 basis points against the relevant benchmark) for certain of the outstanding Rhodia bonds with coupons of 8% and 7.625% and the 10.50 bonds was announced on 2 October 2006. The pricing for the tender of these bonds was determined and announced on 16 October 2006. The tender price paid was more attractive if the bonds were tendered by 17 October.
- 2.29 The 2 million 10.50 bonds were sold by Moore Credit Fund back to Rhodia and

yielded a profit of approximately EUR 44,000.

Mr Harrison engaged in market abuse

- 2.30 The FSA considers Mr Harrison's behaviour amounts to market abuse. The FSA is satisfied that Mr Harrison's behaviour fell within the description of market abuse contained within Part VIII of the Act. The FSA finds that:
- 2.30.1 Mr Harrison required or encouraged another to engage in behaviour which if Mr Harrison had engaged in would have amounted to market abuse; namely that an insider deals in a qualifying investment on the basis of inside information relating to the investment in question;
 - 2.30.2 The behaviour occurred in the United Kingdom;
 - 2.30.3 The 10.50 bonds were at the material time admitted to trading on the Luxembourg Stock Exchange. They are therefore qualifying investments admitted to trading on a prescribed market for the purposes of the market abuse regime;
 - 2.30.4 Mr Harrison had inside information as a result of having access to the information through the exercise of his employment as a portfolio manager for the Moore Credit Fund;
 - 2.30.5 That the information provided to Mr Harrison was information of a precise nature which was not generally available. The information included:
 - (a) the proposed timing of the announcement, which was 2 October 2006;
 - (b) the bonds that would form the tender offer, which included the 10.50 bonds.
 - (c) the proposed size of the refinancing deal which was EUR 1.1 billion;
 - (d) the anticipated structure of the new bonds, which was a floating rate instrument priced over 3 month Euribor; and
 - (e) the pricing range being considered, namely 275-300 basis points over 3 month Euribor.
 - 2.30.6 The information indicated events that may reasonably be expected to occur, and was specific enough to enable a conclusion to be drawn as to the possible effect of that event on the price of the 10.50 bonds;
 - 2.30.7 If the information had been generally available it would have been likely to have a significant effect on the price of the 10.50 bonds. The FSA considers that the information is of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions. After the announcement on 2 October 2006, the price

moved up from 118.50 to 121.00. The market-makers that the FSA obtained opinions from all agreed that the information would be likely to have a significant effect on the price of the bonds; and the FSA finds that it would have had that effect;

2.30.8 The information provided to Mr Harrison was not generally available: it had not been disclosed through a regulatory information service; or otherwise. Although there was speculation that Rhodia would seek to refinance its bonds, which bonds it would seek to refinance, the timing and the price were not generally available; and

2.30.9 Mr Harrison's decision was made on the basis of the above information in that it was at least a material influence on the decision to deal, if not necessarily the sole reason.

2.31 The FSA is accordingly satisfied that Mr Harrison's behaviour constitutes market abuse within the context of the required elements under section 118 of the Act.

3. SANCTION

3.1 Section 124(1) of the Act requires the FSA to issue a statement of its policy with respect to the imposition of penalties for market abuse and the amount of such penalties. The FSA's policy in this regard is contained in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP 6"). In deciding whether to exercise its power under section 123 in the case of any particular behaviour, the FSA must have regard to this statement. The FSA also has regard to the relevant provisions of its Enforcement Manual as they were in force at the relevant time.

3.2 The FSA's published policy states that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

3.3 In enforcing the market abuse regime, the FSA's priority is to protect prescribed markets from any damage to their fairness and efficiency caused by the misuse of information in relation to the market in question. Effective and appropriate use of the power to impose penalties for market abuse will help to maintain confidence in the UK financial system by demonstrating that high standards of market conduct are enforced in the UK financial markets. The public enforcement of these standards also furthers public awareness of the FSA's protection of consumers objective, as well as deterring potential future market abuse.

3.4 DEPP 6.2 sets out a number of factors to be taken into account when the FSA decides whether to take action in respect of market abuse. They are not exhaustive but include the nature and seriousness of the behaviour, the degree of sophistication of the users of the market in question, the size and liquidity of the market and the susceptibility of the market to market abuse. Other factors include action taken by the FSA in similar cases, the impact that any financial penalty or public statement may have on the financial markets or on the interests of consumers and the

disciplinary record and general compliance history of the person concerned.

- 3.5 DEPP 6.4 sets out a number of factors to be taken into account when the FSA decides whether to impose a financial penalty or issue a public censure. They are not exhaustive but include deterrent effect, whether a person has made a profit or loss by his misconduct, the seriousness of the behaviour and the FSA's approach in similar previous cases.
- 3.6 DEPP 6.5 sets out a number of factors to be taken into account when the FSA determines the level of a financial penalty that is appropriate and proportionate to the misconduct. They are not exhaustive but include deterrence, the nature, seriousness and impact of the misconduct, the extent to which the breach was deliberate or reckless, whether the person on whom the penalty is to be imposed is an individual, his financial resources and other circumstances, the amount of any benefit gained or loss avoided, disciplinary record and compliance history and action that the FSA has taken in relation to similar misconduct by other persons.
- 3.7 The FSA has taken all of the circumstances of this case into account and considered the guidance in DEPP 6 in deciding that it is appropriate in this case to take action in respect of behaviour amounting to market abuse, that the imposition of a financial penalty is appropriate and that the level of financial penalty is appropriate and proportionate.
- 3.8 The FSA has had regard, in particular, to the following circumstances of this case:
 - 3.8.1 Mr Harrison was an experienced industry professional and an approved person: even if he were not aware of it at the time, he should have been aware that the information provided was inside information and that dealing on the basis of that information amounted to market abuse;
 - 3.8.2 The fund managed by Mr Harrison made approximately EUR 44,000 profit;
 - 3.8.3 Mr Harrison's conduct was not deliberate; he ought to have realised that the information he was given constituted inside information even though it was not identified by Mr Harrison as such and this should have restricted his subsequent behaviour;
 - 3.8.4 Mr Harrison made no personal profit;
 - 3.8.5 Mr Harrison has no previous disciplinary record; and
 - 3.8.6 Mr Harrison has co-operated with the FSA's investigation in attending three voluntary interviews.
- 3.9 In determining the financial penalty the FSA has taken into account the agreement made between the FSA and Mr Harrison has undertaken to the FSA that he will not perform any controlled function in relation to any regulated activity carried on by an authorised person and those activities listed at paragraph 1.2.2(b) above for a period of 12 months from 1 August 2008 and in the circumstances, the FSA imposes a financial penalty on Mr Harrison of £75,000, before discount for early settlement.

DECISION MAKER

The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers on behalf of the FSA.

IMPORTANT

This Final Notice is given to Mr Harrison and in accordance with section 390 of the Act.

Manner of and time for Payment

The financial penalty must be paid in full by Mr Harrison to the FSA by no later than 22 September 2008, 14 days from the date of the Final Notice.

If the financial penalty is not paid

If all or any of the financial penalty is outstanding on 23 September 2008, the FSA may recover the outstanding amount as a debt owed by Mr Harrison and due to the FSA.

Publicity

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

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

FSA contacts

For more information concerning this matter generally, you should contact Ken O'Donnell at the FSA (direct line: 020 7066 1374 /fax: 020 7066 1375).

Jamie Symington
Head of Department
FSA Enforcement Division