

NOTE: This prohibition order was revoked by the FCA on 3 August 2016

Financial Services Authority



FINAL NOTICE

To: **Steven Noel Perkins**

Of: **5 Park Road, Brentwood, Essex CM14 4TX**

Date: **24 June 2010**

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

THE ACTION

1. The FSA gave Steven Noel Perkins ("Mr Perkins") a Decision Notice on 24 June 2010 which notified Mr Perkins that pursuant to sections 56 and 123(1) of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose on Mr Perkins:
 - (i) A prohibition order pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), prohibiting Mr Perkins from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm on the grounds that you are not a fit and proper person; and
 - (ii) A financial penalty of £72,000 pursuant to section 123(1) of the Act for engaging in market abuse in breach of section 118(5) of the Act.
2. Mr Perkins confirmed on 21 June 2010 that he will not be referring the matter to the Financial Services and Markets Tribunal.
3. Accordingly, for the reasons set out below, the FSA imposes a prohibition order and a financial penalty on Mr Perkins.

4. The prohibition order referred to in paragraph 1(i) above has effect from 24 June 2010. The FSA may revoke the prohibition order, on Mr Perkins' application, at any time after five years from 24 June 2010. In considering any future applications for approval by Mr Perkins, the FSA will consider whether Mr Perkins' alcoholism continues to present a risk, and any other new evidence that he is not fit and proper.
5. Mr Perkins' behaviour merits the imposition of a total penalty of £150,000, but because this level of fine would cause Mr Perkins serious financial hardship, this has been reduced to £90,000. This penalty was further discounted by 20% pursuant to the stage 2 early settlement discount scheme.
6. The proposed action is based on Mr Perkins' behaviour in three separate regards:
 - (i) Mr Perkins carried on unauthorised trading over a 19 hour period on 29 and 30 June 2009.
 - (ii) A significant amount of the unauthorised trading carried out by Mr Perkins constituted market abuse in that it gave a false and misleading impression as to the supply, demand and price of ICE August 2009 Brent Crude Futures contract ("Brent") and, further, in that it secured the price of Brent at an abnormal and artificial level. The trading records show that Mr Perkins' trading had the direct effect of increasing the price of Brent.
 - (iii) Mr Perkins lied to his employer in placing the trades on 29 June and then initially attempted to cover up his unauthorised trading on 30 June.

Background

7. This matter concerns trading by Mr Perkins on Monday 29 and Tuesday 30 June 2009. All of Mr Perkins' trading was in Brent and took place on the ICE Futures Europe exchange ("ICE"). ICE is an international commodities futures exchange which lists crude oil and refined products futures.
8. At the time of the trading, Mr Perkins was a senior broker with PVM Oil Futures Ltd ("PVM"). Mr Perkins had worked for PVM as a broker since 1998. PVM is an execution only oil brokerage; it does not carry on any proprietary trading.¹ Mr Perkins was employed by PVM in a broking capacity which means that his job was to execute orders placed with him by clients. He had no discretion to execute trades for clients' accounts without their prior authorisation and had no proprietary or personal trading role or facilities.
9. There are two desks within PVM that deal exclusively with futures contracts, one desk deals with Brent contracts (all maturities) and one desk deals with Gasoil contracts. Mr Perkins was a broker on PVM's Brent futures desk ("the Brent desk") and had held this position with PVM since February 1998.
10. The brokers on the Brent desk are able to trade through WebICE, the online trading platform provided by ICE. At the time of the trading in June 2009, PVM's brokers

¹ There is one exception to this in that PVM have one proprietary trader, however he is not relevant to this matter and none of the brokers, including Mr Perkins, could take proprietary positions.

were able to access WebICE through any internet connection, whether at PVM's office, at home or elsewhere.

11. The clients of the Brent desk range from large oil companies through to independent individual traders who trade for their own account (generally known as 'local traders' or 'locals').
12. One client of the Brent desk who is a local trader will be referred to in this notice as Client A. Client A had an office at a trading arcade run by Firm A. Firm A also provides Client A with clearing services for the trades he executes through brokers, including PVM. Client A is relevant to the investigation because Mr Perkins' trades on 29 and 30 June were purportedly carried out on behalf of Client A.

Overview of facts

13. On 29 June 2009, Mr Perkins placed a number of orders to buy and sell Brent with the Brent desk, purportedly on behalf of Client A. However, only one of these trades had Client A's authorisation, the rest were unauthorised (and indeed, Client A did not have any knowledge of these trades until the following day). As described above, Mr Perkins' job was confined to acting as a broker to execute trades ordered by clients; he was not permitted to execute any trades without a client's prior authorisation. Mr Perkins' trading on 29 June had no impact on the price of Brent. However, these unauthorised trades are relevant with regard to Mr Perkins' fitness and propriety.
14. On 30 June 2009, Mr Perkins traded a high volume of Brent through WebICE in the early hours of the morning. All of this trading was without client authorisation. It was carried out by Mr Perkins at his home on his laptop. This trading gave a false and misleading impression as to the supply, demand and price of Brent and it had the direct effect of increasing the price of Brent to an abnormal and artificial level. Mr Perkins' trading therefore amounted to market manipulation. This unauthorised trading is also relevant to his fitness and propriety.
15. Mr Perkins was contacted by PVM at around 7.45am on 30 June with regard to the trades he had executed overnight. Mr Perkins lied to PVM on several separate occasions and told PVM that the trades had been authorised by Client A. PVM did not find out that the trades were unauthorised for over 2 hours, until around 10am when Mr Perkins admitted that the trades were not for Client A.
16. Mr Perkins' unauthorised trading and its impact on the market were prominent in the press in the days following the trading.
17. Mr Perkins' explanation for his trading on 29 and 30 June is that he was drunk. He says that he drank heavily throughout the weekend and continued drinking from around mid-day on Monday 29 June. He claims to have limited recollection of events on Monday and claims to have been in an alcohol induced blackout at the time he traded in the early hours of 30 June. Mr Perkins' explanation for his behaviour is supported by medical evidence obtained by Mr Perkins.
18. Mr Perkins' behaviour was contrary to PVM's policies and procedures and the FSA makes no criticism of PVM in this notice. Mr Perkins was immediately suspended by PVM on 30 June 2009 and his employment later terminated.

Overview of conclusions and reasons for sanction

19. That a person is drunk when he behaves in a certain way does not negate a finding of market abuse or a finding that they are not fit and proper. That Mr Perkins is not fit and proper is evident from his behaviour, even if that behaviour was the result of him being under the influence of alcohol at the time.
20. The FSA considers Mr Perkins' conduct to be serious because:
 - (i) The trading on 29 and 30 June was unauthorised.
 - (ii) By his own admission, Mr Perkins traded on 29 and 30 June after drinking so heavily that he was not capable of assessing the consequences of his actions.
 - (iii) The manipulation of the market was a direct result of Mr Perkins' trading. His trading shows a clear pattern of trades which increased the price of Brent over a period of time.
 - (iv) The conduct had a significant impact on the market and damaged confidence in ICE. This was particularly evident given the widespread press coverage of the trading.
 - (v) Mr Perkins lied to PVM, first in saying that orders he was placing on 29 June were for Client A; and, second in saying that orders he executed in the early hours of the morning on 30 June were for Client A.
21. Mr Perkins' behaviour therefore merits a substantial financial penalty for market abuse and a prohibition. The FSA has taken into account the following factors in mitigation:
 - (i) Mr Perkins has co-operated with the FSA's investigation, including voluntarily answering questions during interviews. He has provided an open account of events from the outset of the investigation.
 - (ii) Mr Perkins' trading seems to have been the result of extremely heavy drinking resulting from his alcoholism, which he now acknowledges. There is no identifiable overall motive for the trading.
22. The FSA has taken into account that Mr Perkins says his behaviour took place when he was in an alcohol induced blackout and the evidence supporting his account of being drunk and his alcoholism. In July 2009, Mr Perkins joined a rehabilitation programme for alcoholics and since that time has stopped drinking. For this reason, the FSA considers that it is possible that Mr Perkins may be rehabilitated over time and may be fit and proper again in the future. Therefore, the prohibition is expressed to be for a minimum period of 5 years, at which point the FSA may be minded to revoke the prohibition. In considering any future applications for approval by Mr Perkins, the FSA will consider whether Mr Perkins' alcoholism continues to present a risk.

RELEVANT STATUTORY AND REGULATORY PROVISIONS

Statutory provisions

23. Section 2(2) of the Act sets out the FSA's statutory objectives. The objectives are market confidence, public awareness, protection of consumers and the reduction of financial crime.
24. Section 56 of the Act gives the FSA the power to make an order prohibiting an individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.
25. Section 63 of the Act gives the FSA the power to withdraw an approval given under section 59 of the Act if it considers that the approved person in question is not fit and proper.
26. The market abuse provisions are set out at section 118 of the Act. Market abuse is defined at section 118(1) of the Act:

“For the purposes of this Act, market abuse is behaviour.... which (a) occurs in relation to (i) qualifying investments admitted to trading on a prescribed market...., and (b) falls within any one or more of the types of behaviour set out in subsections (2) to (8).”
27. Section 118(5) provides:

“The fourth [type of behaviour] is where the behaviour consists of effecting transactions or orders to trade (otherwise than for legitimate reasons and in conformity with accepted market practices on the relevant market) which

 - (a) give, or are likely to give, a false or misleading impression as to the supply of, or demand for, or as to the price of, one or more qualifying investments, or
 - (b) secure the price of one or more such investments at an abnormal or artificial level.”
28. The FSA is authorised pursuant to section 123(1) of the Act to exercise its power to impose a financial penalty where it is satisfied that a person (A) (a) 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. Statutory defences are set out at section 123(2) of the Act.

Fit and proper test for approved persons

29. The criteria for assessing fitness and propriety are set out in FIT. Pursuant to FIT 1.3.1G, the most important considerations will be the person's (i) honesty, integrity and reputation; (ii) competence and capability; and (iii) financial soundness.

30. In assessing the fitness and propriety of an approved person under the criterion of honesty, integrity and reputation, the FSA will have regard to the matters including, but not limited to, those set out in FIT 2.1.3G.
31. FIT 2.1.3G refers to various matters including:
- “(5) whether the person has contravened any of the requirements and standards of the regulatory system or the equivalent standards or requirements of other regulatory authorities (including a previous regulator), clearing houses or exchanges, professional bodies, or government bodies or agencies.”
32. In assessing the fitness and propriety of an approved person under the criterion of competency and capability, the FSA will have regard to the matters including, but not limited to, those set out in FIT 2.2.
33. FIT 2.2.2 states:
- “A person may have been convicted of, or dismissed or suspended from employment for, drug or alcohol abuses or other abusive acts. This will be considered only in relation to a person’s continuing ability to perform the particular controlled function for which the person is or is to be employed.”

The Code of Market Conduct

34. The FSA has issued the Code of Market Conduct ("MAR"), pursuant to section 119 of the Act.
35. MAR 1.6.4 E provides descriptions of behaviour that amount to market abuse under section 118(5) of the Act. One of the descriptions of behaviour relevant to this case is provided at MAR 1.6.4 E (3):
- “entering small orders into an electronic trading system, at prices which are higher than the previous bid or lower than the previous offer, in order to move the price of the qualifying investment, other than for legitimate reasons.”
36. MAR 1.6.9E sets out factors that are to be taken into account in determining whether a person’s behaviour has given a false or misleading impression. The relevant factors at MAR 1.6.9E are as follows:
- “(1) the extent to which orders to trade given or transactions undertaken represent a significant proportion of the daily volume of transactions in the relevant qualifying investment on the regulated market concerned, in particular when these activities lead to a significant change in the price of the qualifying investment;
- (2) the extent to which orders to trade given or transactions undertaken by persons with a significant buying or selling position in a qualifying investment lead to significant changes in the price of the qualifying investment or related derivative or underlying asset admitted to trading on a regulated market;

(5) the extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed.”

37. MAR 1.6.10 E sets out factors which are to be taken into account in assessing whether the behaviour was market abuse through securing the price at an abnormal level. These factors include:

“the extent to which price.... and the volatility of [the price] for the investment in question, are outside their normal intra-day, daily, weekly or monthly range;” and

“whether a person has successively and consistently increased or decreased his bid, offer or the price he has paid for a qualifying investment or related investment.”

Enforcement policy

38. Section 124 of the Act requires the FSA to issue a statement of its policy with respect to the imposition of penalties for market abuse and the amount of such penalties. The FSA’s policy in this regard is contained in Chapter 6 of the Decision Procedure and Penalties manual (“DEPP”). In deciding whether to exercise its power under section 123 in the case of any particular behaviour, the FSA must have regard to this statement. Extracts from DEPP are set out in Annex A.
39. The FSA’s policy in relation to the decision to make a prohibition order is set out in Chapter 9 of the Enforcement Guide (“EG”). Extracts from chapter 9 of EG are also set out in Annex A.

The market abuse regime

40. 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 manipulation of the price formation mechanism of 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.

FACTS AND MATTERS RELIED ON

41. The background to this matter is set out at paragraphs 7 - 18 above.

Trading on Monday 29 June 2009

42. Mr Perkins was not at work on Monday 29 June. He was travelling back from a PVM golf weekend in the morning and had the rest of the day off. Mr Perkins had drunk heavily throughout the weekend and continued drinking from around mid-day on Monday 29 June.

43. During the course of the afternoon on 29 June, Mr Perkins placed eight separate orders with the PVM Brent desk by telephone between 13:34 and 19:12. In respect of each order, Mr Perkins informed the PVM broker he was speaking to that the orders were for Client A.
44. The table below details the orders placed by Mr Perkins:

	Buy/Sell	Volume/ lots	Contract	Order ticket No	Broker time stamp
1.	S & B	25 & 25	Brent	888519	13:34
2.	B	15	Brent	851119	14:37
3.	S	15	Brent	889123	15:07
4.	B	15	Brent	851122	16:12
5.	B	100	Brent	889130	17:30
6.	S	50	Brent	889129	18:20
7.	B	100	Brent	888623	18:35
8.	S	50	Brent	888627	19:12

45. As a result of these orders, Client A had a net long position of 115 lots.² This is a relatively significant long outright position for a local trader, with a nominal value of over US\$8 million.
46. Client A did not authorise seven of the eight orders. The orders between 14:37 and 19:12 were all unauthorised.

Trading on 30 June 2009

47. Mr Perkins traded in two distinct periods on 30 June: 01:22 to 03:41 (“the First Period”); and 07:00 to 09:46 (“the Second Period”). All of the trading was undertaken by Mr Perkins at home from his laptop through WebICE.

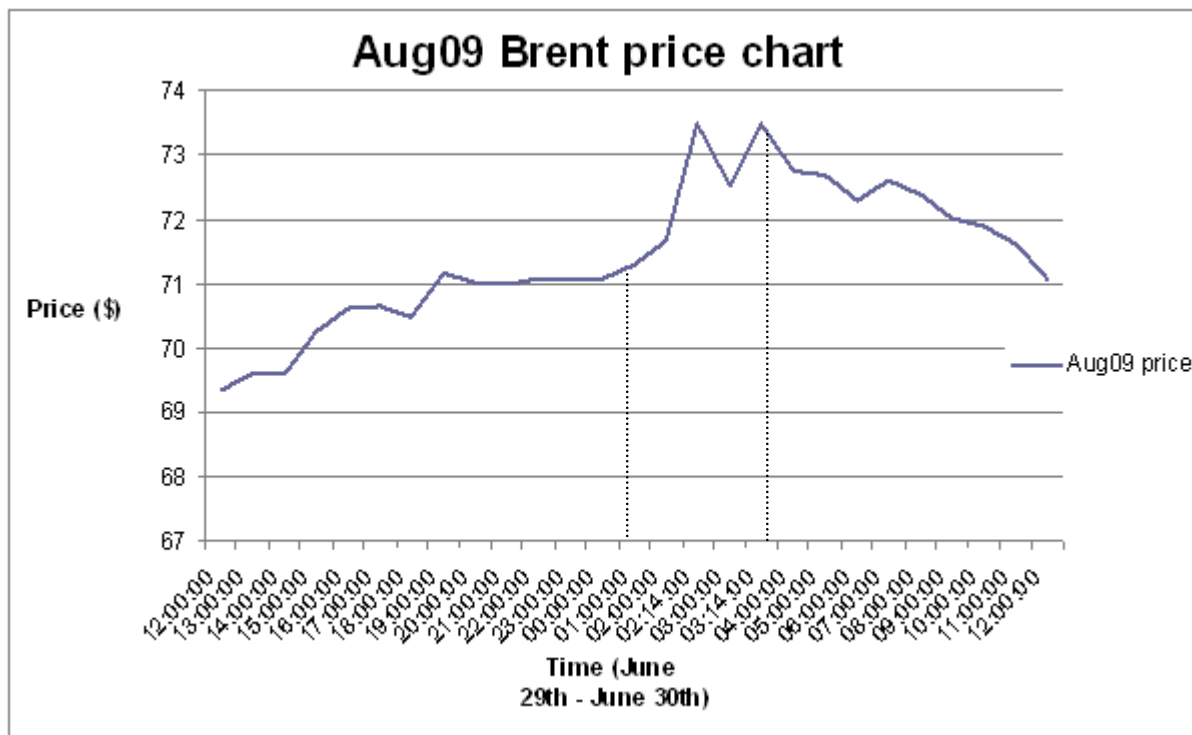
The First Period (01:22 to 03:41)

48. During the First Period, Mr Perkins bought a total of 9,045 lots and sold a total of 1,920 lots. His net long position at the end of the First Period was therefore 7,125 lots. This is a very significant volume of trading at this time of the night. Statistics show that the average daily volume for Brent executed on WebICE between 01:00 and 04:00 UK time in 2009 was approximately 514 lots.
49. The long outright position of 7,125 lots built by Mr Perkins over the First Period had a very significant nominal value of over US\$520 million. 7,125 lots represent 7,125,000 barrels of oil.
50. The price of Brent increased during the First Period – Mr Perkins’ first trade at 01:22 was at a price of US\$71.40 and his last trade at 03:41 was at a price of US\$73.05, US\$1.65 higher. The highest price Mr Perkins traded at during the First Period was US\$73.49, over US\$2 higher than his first trade (the highest peak during the First

² One lot represents 1,000 barrels of oil and these trades were priced at between US\$70.30 and US\$71.31 oil per barrel.

Period was at US\$73.50, although Mr Perkins was not party to the trades at this price).

51. The graph below details the Brent price between midday on 29 June through to midday on 30 June 2009.³



52. US\$1.65 is a significant movement in the price of Brent at this time of the night (other than in the circumstances of a geographical or political event, for example) as the market is usually relatively inactive during UK night time with little price fluctuation.
53. Mr Perkins originated 1,921 buy trades during the First Period, which meant that in 83% of his buy trades he was the originator (out of a total of 2,318 buy trades he executed).⁴ This means that Mr Perkins as originator entered the bid price into the trading platform, he did not simply hit other people's offers already on the screen. A large part of his trading in the First Period involved him continuously entering bids at levels higher than the prevailing best bid in the market with the direct effect of increasing the price of Brent.
54. It is clear from the trading records that it was Mr Perkins' trading in the First Period that was the primary cause of the increase in the price of Brent. This is because of the following factors:

³ This graph is plotted such that the price at each hour is recorded, plus extra points at 02.14 and 03.14 on 30 June when the peak price was achieved. The lines show the start and end of the First Period.

⁴ By lots, Mr Perkins originated purchases in the First Period were 6,622 lots. This was 73% of the total lots he purchased in the First Period (9,045).

- (i) Mr Perkins' trading dominated the market during the First Period. By volume of lots traded, Mr Perkins was party to 69% of market volume traded in the First Period; and
- (ii) Mr Perkins continuously bought at a slightly increased price to where the market was trading thereby gradually and continuously pushing up the price. This is a continuous pattern throughout Mr Perkins' trading in the First Period.
- (iii) Once Mr Perkins stopped trading, the price of Brent immediately and continually started to decrease. By 07:00, the price had dropped from US\$73.05 (at 03:41, the end of the First Period) to US\$72:62

The Second Period (07:00 to 09:46)

- 55. During the Second Period, Mr Perkins sold a total of 2,591 lots (he did not execute any buy trades). Mr Perkins was essentially trying to sell out of the long position he had accumulated during the First Period. Mr Perkins' access to ICE was suspended at around 10:00 when PVM discovered that the trades were unauthorised. By this time, Mr Perkins had reduced the long position from 7,125 lots to 4,534 lots. PVM then took over and traded out of the remaining long position.

Discovery of Unauthorised Trades

- 56. Mr Perkins' unauthorised trading on 30 June was discovered by PVM at approximately 10:00. Prior to this discovery, and during the Second Period, Mr Perkins lied to PVM to cover up what he had done.
- 57. Between 06:30 and 06:45, Mr Perkins sent an untrue text message to the Managing Director in charge of the Brent desk to tell him that he would not be in the office that day as a relative was unwell.
- 58. At approximately 07:45, Mr Perkins was called by an administration clerk from PVM's back office. The clerk had seen on PVM's back office system the trades put on by Mr Perkins overnight and telephoned Mr Perkins to ask him who the trades were for so that he could start to pass them on to the relevant clearer. Mr Perkins informed the clerk that the trades were for Client A and that Client A had been with him at his home, trading through the night. On that basis, the clerk started to transfer the trades to Firm A. The clerk also informed the Managing Director that Mr Perkins had said the trades were for Client A.
- 59. Mr Perkins spoke to the administration clerk at PVM several times between around 07:45 and 09:00 and he maintained that the trades were for Client A.
- 60. PVM's compliance officer also spoke to Mr Perkins by telephone at around 08:00. Mr Perkins told the compliance officer that Client A had asked him to work out of the position. The compliance officer told Mr Perkins to stop trading from home and that Client A should put all further orders through the Brent desk direct. Mr Perkins agreed to this, but then told the Brent desk that he would pass the orders from Client A to the desk and continued trading out of the position from home.
- 61. The fact that the trades were unauthorised was eventually discovered at around 10:00 when the compliance officer telephoned Mr Perkins again to find out why he had not

asked Client A to deal with the Brent desk direct, as previously requested. When the compliance officer challenged Mr Perkins over the trades, Mr Perkins admitted that the trades were not authorised by Client A.

Mr Perkins' motive

62. Mr Perkins says the trading on 29 and 30 June was a result of the amount of alcohol he had consumed over the weekend and on Monday 29 June. There is evidence to support Mr Perkins' account that he did consume a large amount of alcohol in the days prior to the trading and on 29 June. There is also evidence to support Mr Perkins' assertion that his alcoholism led him to drinking heavily and in an uncontrolled way, which in turn led him to trading as he did.
63. For the reasons set out above, while the FSA accepts that Mr Perkins had drunk heavily prior to his trading, this does not impact on the finding of market abuse, nor that Mr Perkins is not fit and proper based on his behaviour on 29 and 30 June.

CONCLUSIONS

Market abuse

64. The elements of limb (a) of section 118(1) are satisfied in this case:
 - (i) The investments in question were ICE August 2009 Brent Crude Futures contracts. Commodity derivatives are qualifying investments (SI 2001/996 and art 1(3) of MAD).
 - (ii) The ICE Futures Europe exchange is a prescribed market (SI 2001/996).
 - (iii) The behaviour was "in relation to" the qualifying investments because it involved buying and selling Brent contracts.
65. The transactions effected by Mr Perkins amounted to market abuse under section 118(5) of the Act:
 - (i) The execution of the trades by Mr Perkins on WebICE amounted to "effecting transactions" for the purposes of section 118(5).
 - (ii) There were no legitimate reasons for the transactions, nor were they in conformity with Accepted Market Practices.
 - (iii) Mr Perkins' trading gave a false and misleading impression as to supply, demand and the price of Brent because the trades represented to the market that there was a genuine buyer or seller at the price stated on the orders, but none of the trades were in fact authorised by a client. Each order was therefore false and misleading.
 - (iv) Mr Perkins' trading secured the price of the Brent contract at an abnormal and artificial level. The price rose by around US\$1.65 during the course of Mr Perkins' trading in the First Period. This is a significant movement in the price of Brent at this time of the night and it is clear that Mr Perkins' trading was primarily responsible for the change in the price.

Fitness and propriety

66. Mr Perkins' lack of fitness and propriety is evidenced by a number of matters:
- (i) Mr Perkins placed several unauthorised trades through the Brent desk during the afternoon of Monday 29 June. He lied to the brokers on the Brent desk in saying these trades were being placed on behalf of Client A, whereas Client A had not authorised these trades and did not learn of their existence until the following day.
 - (ii) Mr Perkins placed a high volume of unauthorised trades on WebICE on 30 June. The trades during the First Period evidence a continuous pattern which directly caused an increase in the price of Brent.
 - (iii) Mr Perkins lied on various occasions to PVM when questioned about the trades he had placed on WebICE. These lies were designed to cover his tracks and buy him more time. This delayed the detection of the unauthorised trading for over 2 hours.
 - (iv) Mr Perkins poses an extreme risk to the market when drunk, as clearly demonstrated by his behaviour on 29 and 30 June.
67. Mr Perkins' account for the trading on 29 and 30 June is that he was drunk and was in an alcohol induced blackout during the First Period. The fact that a person is drunk when he behaves in a certain way does not negate a finding that they are not fit and proper. Mr Perkins' lack of fitness and propriety is evident from his behaviour, whatever his state of mind at the time.
68. The criteria in FIT (as set out at paragraphs 29-33 above) are relevant to this matter in that Mr Perkins' trading breached the requirements and standards of ICE and his alcoholism continues to affect his ability to perform a controlled function.
69. Therefore, Mr Perkins should be prohibited on the basis that he is not fit and proper.

ANALYSIS OF THE SANCTION

70. The FSA considers Mr Perkins' conduct to be serious because:
- (i) The trading on 29 and 30 June was unauthorised.
 - (ii) By his own admission, Mr Perkins traded on 29 and 30 June after drinking so heavily that he was not capable of assessing the consequences of his actions.
 - (iii) The manipulation of the market was a direct result of Mr Perkins' trading. His trading in the First Period shows a clear pattern of trades which increased the price of Brent over a period of time.
 - (iv) The conduct had a significant impact on the market and damaged confidence in ICE. This was particularly evident given the widespread press coverage of the trading.

- (v) Mr Perkins lied to PVM, first in saying that orders he was placing on 29 June were for Client A; and, second in saying that orders he executed through WebICE in the First Period were for Client A.
71. The FSA has taken into account the following factors which tend to mitigate the seriousness of Mr Perkins' conduct:
- (i) Mr Perkins has co-operated with the FSA's investigation, including voluntarily answering questions during interview. Whilst Mr Perkins did not initially admit his wrongdoing to PVM, he has provided an open account of events from the outset of the investigation.
 - (ii) Mr Perkins' trading seems to have been the result of extremely heavy drinking resulting from his alcoholism, which he now acknowledges. There is no identifiable overall motive for the trading.
72. The FSA has also had regard to the sanctions imposed in other market abuse cases.

Financial penalty

73. The principal purpose for which the FSA imposes sanctions is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant behaviour.
74. In determining the proposed financial penalty, the FSA has considered the need to deter other market participants from engaging in this type of activity and to maintain confidence in the ICE market.
75. The FSA has taken all the circumstances of this case into account in deciding that the imposition of a financial penalty in this case is appropriate, and the level of the penalty imposed is proportionate. The FSA has had particular regard to the guidance set out in DEPP 6.
76. In all the circumstances, the FSA considers that the imposition of a financial penalty of £72,000 on Mr Perkins is appropriate. As stated above, but for the discount on the basis of serious financial hardship and the further discount for early settlement, the appropriate penalty would have been £150,000.

Prohibition

77. The FSA's effective use of the power to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities helps the FSA to work towards its regulatory objectives of protecting consumers, promoting public awareness, maintaining confidence in the financial system and reducing financial crime.
78. The FSA is satisfied that Mr Perkins is not a fit and proper person to perform regulated activities. He should therefore be prohibited from performing any controlled function under section 56 of the Act. The FSA may revoke the prohibition order, on Mr Perkins' application, at any time after five years from 24 June 2010.

79. In determining the terms of the prohibition, the FSA has taken into account that Mr Perkins says his behaviour took place when he was in an alcohol induced blackout and the evidence supporting his account of being drunk and being an alcoholic. In July 2009, Mr Perkins joined a rehabilitation programme for alcoholics and has stated that since that time has stopped drinking. For this reason, the FSA considers that it is possible that Mr Perkins may be rehabilitated over time and may be fit and proper again in the future. The prohibition is therefore expressed to be for a minimum period of 5 years, at which point the FSA may revoke the prohibition order. In considering any future applications for approval by Mr Perkins, the FSA will consider whether Mr Perkins' alcoholism continues to present a risk, and any other new evidence that Mr Perkins is not fit and proper.

DECISION MAKERS

80. 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

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

MANNER OF AND TIME FOR PAYMENT

82. The FSA is in possession of evidence that it would cause Mr Perkins serious financial hardship if he were required to pay the full penalty in one instalment. Accordingly, the financial penalty of £72,000 is payable in 36 equal instalments of £2,000 per month. The first instalment of £2,000 is payable on Monday 20 December 2010, and thereafter the monthly instalments are payable on 20th day of each month, ending with the payment of the final instalment on Wednesday 20 November 2013.

IF THE FINANCIAL PENALTY IS NOT PAID

83. If all or any of the financial penalty is outstanding on 21 November 2013, the FSA may recover the outstanding amount as a debt owed by Mr Perkins and due to the FSA.

PUBLICITY

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

FSA CONTACTS

86. For more information concerning this matter generally, you should contact Rebecca Stephenson (Tel: 020 7066 9496) or Karen Lee (Tel: 020 7066 1316) of the Enforcement and Financial Crime Division of the FSA

Tracey McDermott
FSA Enforcement and Financial Crime Division

Annex A

Extracts from EG and DEPP

Enforcement Guide

1. EG 9.3-9.7 sets out the FSA's general policy in deciding whether to make a prohibition order and/or withdraw an individual's approval. The FSA will consider all the relevant circumstances including whether other enforcement action should be taken or has been taken already against that individual by the FSA. In some cases the FSA may take other enforcement action against the individual in addition to seeking a prohibition order.
2. EG 9.4 provides that the FSA has the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. Depending on the circumstances of each case, the FSA may seek to prohibit individuals from performing any class of function in relation to any class of regulated activity, or it may limit the prohibition order to specific functions in relation to specific regulated activities. The FSA may also make an order prohibiting an individual from being employed by a particular firm, type of firm, or any firm.
3. EG 9.5 provides that the scope of a prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of the risk which he poses to consumers or to the market generally.
4. EG 9.8-9.14 sets out additional guidance on the FSA's approach to making prohibition orders against approved persons and/or withdrawing such persons' approvals.
5. EG 9.8 provides that when the FSA has concerns about the fitness and propriety of an approved person, it may consider whether it should prohibit the person from performing functions in relation to regulated activities, withdraw its approval, or both. In deciding whether to withdraw its approval and/or make a prohibition order, the FSA will consider in each case whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions or by issuing a private warning.
6. EG 9.9 provides that when it decides whether to make a prohibition order against an approved person and/or withdraw its approval, the FSA will consider all the relevant circumstances of the case. These may include, but are not limited to:
 - i. The matters set out in section 61(2) of the Act.
 - ii. Whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability); and FIT 2.3 (Financial soundness).
 - iii. Whether, and to what extent, the approved person has:

- a) failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons; or
 - b) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules);
- iv. The relevance and materiality of any matters indicating unfitness.
 - v. The length of time since the occurrence of any matters indicating unfitness.
 - vi. The particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates.
 - vii. The severity of the risk which the individual poses to consumers and to confidence in the financial system.
 - viii. The previous disciplinary record and general compliance history of the individual including whether the FSA, any previous regulator, designated professional body or other domestic or international regulator has previously imposed a disciplinary sanction on the individual.
7. EG 9.10 provides that the FSA may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the individual is fit and proper to continue to perform a controlled function or other function in relation to regulated activities. It may also take account of the particular controlled function which an approved person is performing for a firm, the nature and activities of the firm concerned and the markets within which it operates.
8. EG 9.11 states that it is not possible to produce a definitive list of matters which the FSA may take into account when considering whether an individual is not a fit and proper person to perform a particular, or any, function in relation to a particular, or any, firm. EG 9.12 sets out a list of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person, including:
- i. Providing false or misleading information to the FSA: including information relating to identity, ability to work in the United Kingdom, and business arrangements;
 - ii. Failure to disclose material considerations on application forms;
 - iii. Severe acts of dishonesty, e.g. which may have resulted in financial crime;
 - iv. Serious lack of competence; and
 - v. Serious breaches of the Statements of Principle for approved persons, such as failing to make terms of business regarding fees clear or actively misleading clients about fees; acting without regard to instructions; providing misleading information to clients, consumers or third parties; giving clients poor or inaccurate advice; using intimidating or threatening behaviour towards

clients and former clients; failing to remedy breaches of the general prohibition or to ensure that a firm acted within the scope of its permissions.

9. EG 9.13 provides that certain matters which do not fit squarely, or at all, within the matters referred to above may also fall to be considered and that in these circumstances the FSA will consider whether the conduct or matter in question is relevant to the individual's fitness and propriety.

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10. DEPP 6.2 sets out a number of factors to be taken into account when the FSA decides to take action for behaviour appearing to be market abuse. They are not exhaustive, but include the nature and seriousness of the suspected behaviour and the conduct of the person concerned after the behaviour was identified.
11. 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.
12. DEPP 6.5 states that the FSA will consider all the relevant circumstances of a case when it determines the level of a financial penalty that is appropriate and in proportion to the breach concerned. DEPP 6.5 identifies a non-exhaustive list of factors which may be relevant including deterrence, the nature, seriousness and impact of the breach in question, the extent to which the breach was deliberate or reckless, whether the person on whom the penalty is to be imposed is an individual, the amount of benefit gained or loss avoided, the difficulty of detecting the breach and conduct after the breach.
13. The FSA has made it clear that wrongdoers must not only realise that they face a real and tangible risk that they will be held to account but that they must also expect a significant penalty. The FSA has stated that it will seek to ensure that the sanctions it imposes, including financial penalties, are fixed at levels that are sufficient to deter potential wrongdoers and that, where necessary, the FSA will increase penalties to achieve this.

DEPP 6.5 Determining the appropriate level of financial penalty

14. DEPP 6.5.2 G lists a number of factors which may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act. The relevant factors are set out below.
15. When determining the appropriate level of penalty, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing

similar breaches, as well as demonstrating generally the benefits of complaint business (DEPP 6.5.2 G (1)).

16. The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached. Among the relevant considerations are the duration and frequency of the breach and the loss or risk of loss caused to consumers, investors or other market users (DEPP 6.5.2 G (2)).
17. The FSA will have regard to the extent to which the breach was deliberate or reckless. The FSA will regard as more serious a breach which is deliberately or recklessly committed. If the FSA decides that the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case (DEPP 6.5.2 G (3)).
18. The matters to which the FSA may have regard in determining whether a breach was deliberate or reckless include, but are not limited to, the following:
 - i. whether the breach was intentional, in that the person intended or foresaw the potential or actual consequences of its actions; and
 - ii. whether the person has given no apparent consideration to the consequences of the behaviour that constitutes the breach.
19. When determining the amount of a penalty to be imposed on an individual, the FSA will take into account that individuals will not always have the resources of a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level (DEPP 6.5.2 G (4)).
20. A person's incentive to commit a breach may be greater where the breach is, by its nature, harder to detect. The FSA may, therefore, impose a higher penalty where it considers that a person committed a breach in such a way as to avoid or reduce the risk that the breach would be discovered, or that the difficulty of detection (whether actual or perceived) may have affected the behaviour in question (DEPP 6.5.2 G (7)).
21. The FSA may take the previous disciplinary record and general compliance history of the person into account. This will include whether the FSA has taken any previous disciplinary action against the person, and the general compliance history of the person (DEPP 6.5.2 G (9)).
22. The FSA and the person on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, DEPP 6.7 provides that the amount of the penalty which might otherwise have been payable will be reduced to reflect the stage at which the FSA and the person concerned reach an agreement (DEPP 6.5.2 G (13)).