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**FINAL NOTICE**

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To: **Stewart McKegg**  
Date of birth: 24 September 1954  
Date: 16 October 2008

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

**THE PENALTY**

The FSA gave Mr McKegg a Decision Notice on 13 October 2008 which notified him that pursuant to section 123 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a penalty of £14,411.25 on him for behaviour constituting market abuse on 23 May 2007. This sum represents the disgorgement of Mr McKegg's profit. Mr McKegg's behaviour merits the imposition of a total penalty of £34,411.25 (being a penalty of £20,000 plus disgorgement of Mr McKegg's profit) but because of his financial circumstances this has been reduced to £14,411.25.

Mr McKegg confirmed on 3 October 2008 that he will not be referring the matter to the Financial Services and Markets Tribunal.

Accordingly, for the reasons set out below and having agreed with Mr McKegg the facts and matters relied on, the FSA imposes a financial penalty of Mr McKegg in the amount of £14,411.25.

## **REASONS FOR THE ACTION**

### **Summary of the conduct in issue**

1. At the relevant time, May 2007, Mr McKegg was a private retail investor. One of the stocks that he regularly dealt in was Amerisur Resources Plc (“Amerisur”/“the Company”), which was then named Chaco Resources Plc.
2. Amerisur is an oil and gas exploration company with projects in South America. The Company’s shares are admitted to trading on the Alternative Investment Market (“AIM”).
3. Blue Oar Securities Plc (“Blue Oar”) was the appointed NOMAD for Amerisur and also acted as a broker for Amerisur in a share placing which took place in May 2007.
4. On 23 May 2007 Blue Oar contacted Mr McKegg at 10.09am and made Mr McKegg an insider in relation to a placing of Amerisur shares to be announced to the market on 24 May 2007. In the course of this conversation, Blue Oar advised Mr McKegg that the placing price was 6 pence, that the placing would be announced the next day and that Mr McKegg was not permitted to speak to anyone about the placing nor trade until it was announced to the market on 24 May 2007.
5. Following receipt of this inside information Mr McKegg sold 549,000 Amerisur shares, which constituted his entire shareholding in Amerisur at 8.625 pence per share. Mr McKegg then purchased 750,000 shares at 6 pence per share in the placing. Following the announcement of the placing on 24 May 2007, the price of Amerisur’s shares fell to 7.5 pence.
6. By his actions, Mr McKegg realised a profit of £14,411.25.
7. On the basis of the facts and matters set out below, the FSA finds that:
  - i. Mr McKegg engaged in market abuse; and
  - ii. in all the circumstances it is appropriate to impose a penalty on Mr McKegg in the amount stated.

### **Relevant statutory provisions**

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

*"If the Authority is satisfied that a person ("A")-*

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

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

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

9. Section 118 of the Act defines market abuse. In particular it provides as follows:

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

*(a) occurs in relation to—*

- (i) qualifying investments admitted to trading on a prescribed market,*
- (ii) 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)."*

10. 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."*

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

*"(a) in the United Kingdom..."*

12. By section 118B, an insider is any person who has inside information:

*"(b) as a result of his holding in the capital of an issuer of qualifying investments."*

13. By section 118C(2), inside information is defined as information of a precise nature which:

*"(a) is not generally available,*

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

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

14. By section 118C(5), information is precise if it:

*"(a) indicates circumstances that exist or may reasonably be expected to come into*

*existence or an event that has occurred or may reasonably be expected to occur, and*

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

15. 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."*

### **Relevant guidance**

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

17. MAR 1.3.4E provides as follows:

*"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**

18. Mr McKegg had traded in shares for approximately two years, mainly in Amerisur. He had been following Amerisur through company news announcements and bulletin boards.

19. Amerisur is an oil and gas exploration company with projects in South America. Blue Oar was the appointed NOMAD for Amerisur and acted as its broker in the share placing of 250 million shares to be announced to the market on 24 May 2007. Amerisur sought to increase its shares in issue by 45% at 6 pence per share, a discount of 30% to the current trading price of 9 pence.

20. On 23 May 2007 Blue Oar contacted a number of existing Amerisur shareholders to invite them to participate in this placing.

21. On 23 May 2007 at 10.09am, Mr McKegg called Blue Oar and during this conversation, Blue Oar advised Mr McKegg of the following:

- a. the information that they were about to discuss was confidential;
- b. Mr McKegg would, if he received the information, be made inside on a matter;
- c. he would be inside until the next morning; and

- d. if he agreed to be made inside, he could not trade or speak to others about the information.
21. Mr McKegg agreed to the terms and was provided with the following information:
- a. Amerisur was raising £15 million by way of a placing;
  - b. the placing price was 6 pence;
  - c. the placing would be announced to the market the following day, 24 May 2007; and
  - d. there was a possibility of the price of Amerisur shares falling depending on how the market took the information.

This was inside information.

22. Following the conversation with Blue Oar at 10.09am, Mr McKegg contacted his broker at 10.19am seeking to find a bid price for 350,000 of his Amerisur shares. At 10.47am Mr McKegg increased his sell order to 549,000 Amerisur shares which constituted his entire shareholding in Amerisur.
23. Mr McKegg also placed an order for 750,000 Amerisur shares in the forthcoming placing.
24. At 10.57am Mr McKegg's 549,000 shares were duly sold at 8.625 pence per share. At 3.21pm it was confirmed that Mr McKegg had been allocated 750,000 shares in the placing at the price of 6 pence per share.
25. On announcement of the placing on 24 May 2007, the price of Amerisur shares fell to 7.5 pence from a closing price of 8.5 pence on 23 May 2007.

#### **Mr McKegg engaged in market abuse**

26. The behaviour identified in this Final Notice is considered to amount to market abuse and to have satisfied the required elements under sections 118 to 118C of the Act, each of which is addressed in the following paragraphs.
27. Mr McKegg's trading in Amerisur shares occurred in the UK (s118A(1)(a) of the Act).
28. Amerisur's shares are and were at the material time admitted to trading on the AIM market of the London Stock Exchange. They are therefore qualifying investments admitted to trading on a prescribed market for the purposes of the market abuse regime (s118(1)(a)(i) of the Act).
29. Mr McKegg became an insider as a result of being given inside information by Blue Oar in his capacity as a shareholder of the Company (s118B(b) of the Act).
30. The information that was communicated to him regarding the placing was of a precise

nature which was not generally available and would, if generally available be likely to have a significant effect of the price of the qualifying investment (s118C of the Act).

31. The information was specific enough to enable a conclusion to be drawn as to the likely effect of that event on Amerisur's share price (s118C(5)(b) of the Act).
32. Mr McKegg dealt on the basis of inside information (s118(2) of the Act).

### **Penalty**

33. 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 has also had regard to the relevant provisions of its Enforcement Manual as they were in force at the relevant time.
34. 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.
35. 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.
36. 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.
37. The FSA has had regard, in particular, to the following circumstances of this case:
  1. Mr McKegg's behaviour was deliberate.
  2. Mr McKegg realised a profit of £14,411.25 from his market abuse. This profit should be disgorged consistent with the principle that a person should not benefit from his misconduct.
  3. Mr McKegg had never been made an insider before and is not a professional market investor.

4. After he had been wall-crossed and prior to selling his shares, Mr McKegg did ask his own broker in unspecific terms whether or not it was possible to sell shares and participate in a placing, although he did not fully reveal the situation.
  5. Mr McKegg has co-operated with the FSA's investigation and attended an interview voluntarily. In addition, Mr McKegg has agreed to settle this matter at an early stage of the investigation.
  6. Mr McKegg has not previously been the subject of any FSA disciplinary action.
38. The penalty is intended to have a deterrent effect on those who may consider engaging in market abuse. In determining the financial penalty the FSA has considered the need to deter Mr McKegg and others in engaging in market abuse. The FSA has also had regard to penalties imposed in other market abuse cases. The FSA would have imposed an additional penalty of £20,000 on Mr McKegg but has had regard to his financial resources and other circumstances (DEPP 6.5.2(5)) in determining that the penalty should be limited to the disgorgement of his profit of £14,411.24.

## **DECISION MAKERS**

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 McKegg in accordance with section 390 of the Act.

### **Manner of and time for Payment**

The financial penalty must be paid by Mr McKegg to the FSA by instalments as set out below. The first instalment of the financial penalty of £1,211.25 must be paid to the FSA no later than 30 October 2008, being no less than 14 days beginning with the date on which this is given to Mr McKegg, followed by 11 monthly instalments each of £1,200, payable on 1st day of the month ("the due date"). If the due date falls on a public holiday (including Saturdays and Sundays) in any given month, then the due date is deemed to be due on the next business day immediately following the public holiday concerned.

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

Each instalment must be paid on the due date as specified above and in any event, no later than 14 days after each due date ("the payment period"). If any instalment is not paid within the payment period, and an instalment amount is outstanding on the 15<sup>th</sup> day after the due

date, the whole of the outstanding amount of the penalty will become due and the FSA may recover the same as a debt owed by Mr McKegg 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 Mr McKegg 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 Nicola Fleming (Tel: 020 7066 7100) of the Enforcement Division of the FSA.

**Tracey McDermott**  
Head of Department,  
FSA Enforcement Division