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## FINAL NOTICE

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To: Vantage Capital Markets LLP

Of: 1<sup>st</sup> Floor, Equitable House, 47 King William Street,  
London EC4R 9AF

Dated: 17 June 2010

**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. The FSA gave Vantage Capital Markets LLP (“VCM”) a Decision Notice on 17 June 2010 which notified VCM that pursuant to section 206 of the Financial Services and Markets Act (the “Act”), the FSA had decided to impose a financial penalty of £700,000 on VCM for contravening section 59 of the Act and breaching Principle 3 of the FSA’s Principles for Business (the “Principles”) from 29 July 2005 to 31 December 2009 (“the relevant period”).
- 1.2. VCM has confirmed that it will not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber).
- 1.3. Accordingly, for the reasons set out below and having agreed with VCM the facts and matters relied on, the FSA imposes a financial penalty on VCM in the amount of £700,000.
- 1.4. VCM agreed to settle at an early stage of the FSA’s investigation. VCM, therefore, qualified for a Stage 1 discount under the FSA’s executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £1 million on VCM.

### 2. REASONS FOR THE ACTION

- 2.1. Throughout the relevant period:
  - (1) VCM was an inter-dealer broker which became an authorised firm on 29 July 2005; and

- (2) Mr Daniel William Hassell performed the role of Controlled Function 4 (Partner) (the “Partner Function”) and had a significant influence over the affairs of VCM despite not being approved to do so by the FSA.
- 2.2. VCM has contravened section 59 of the Act and breached Principle 3 of the Principles by failing to:
  - (1) take reasonable care to ensure that Mr Hassell did not perform a controlled function, even though VCM was aware that the FSA was not satisfied that Mr Hassell was a fit and proper person to perform the Partner Function; and
  - (2) take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems to ensure that it had robust controls to limit the scope of Mr Hassell’s influence and role.
- 2.3 As a result, the FSA has imposed a financial penalty on VCM of £700,000.

### 3. **RELEVANT STATUTORY PROVISIONS, RULES AND GUIDANCE**

#### **Relevant Statutory Provisions**

- 3.1. The FSA’s statutory objectives, set out in section 2(2) of the Act, are: market confidence; public awareness; the protection of customers; the reduction of financial crime and contributing to the protection and enhancement of the stability of the UK financial system.

#### ***Section 59 of the Act***

- 3.2. Section 59(1) states:

*‘An authorised person (‘A’) must take reasonable care to ensure that no person performs a controlled function under an arrangement entered into by A in relation to the carrying on by A of a regulated activity, unless the Authority approves the performance by that person of the controlled function to which the arrangement relates.’*
- 3.3. Under section 59(3) ‘controlled function’ (commonly abbreviated to ‘CF’) means a function of a description specified in rules set out by the FSA. These are specified in the FSA Supervision Manual at 10.4.1R and 10.4.5R.
- 3.4. Section 59(4) provides that the FSA may specify a description of function under subsection (3) only if, in relation to the carrying on of a regulated activity by an authorised person, it is satisfied that the first, second or third condition is met. The first condition is relevant for the purposes of this investigation.
- 3.5. Section 59(5) provides that the first condition is one which is likely to enable the person responsible for its performance to exercise a significant influence

on the conduct of the authorised person's affairs, so far as relating to the regulated activity.

3.6. Arrangement is defined under Section 59(10) of the Act:

- ‘(a) means any kind of arrangement for the performance of a function of A which is entered into by A or any contractor of his with another person; and*
- (b) includes, in particular, that other person's appointment to an office, his becoming a partner or his employment (whether under a contract of service or otherwise).’*

***Financial penalties in relation to authorised persons***

3.7. The FSA is authorised pursuant to section 206 of the Act, if it considers that an authorised person has contravened a requirement imposed on him by or under the Act, to impose on him a penalty in respect of the contravention, of such amount as it considers appropriate.

***Partner Function (CF4)***

3.8. The Partner Function is a governing function and is described at SUP 10.6.17R to SUP 10.6.23R.

3.9. SUP 10.6.1G sets out the Introduction to the Governing Functions. SUP 10.6.1G states:

*‘Every firm will have one or more persons responsible for directing its affairs. These persons will be performing the governing functions and will be required to be approved persons unless the application provisions in SUP 10.1, or the particular description of a controlled function, provide otherwise. For example, each director of a company incorporated under the Companies Acts will perform the governing function in relation to that company.’*

3.10. SUP 10.6.17R defines the Partner Function:

- ‘(1) If a firm is a partnership, the partner function is the function of acting in the capacity of a partner in that firm.*
- (2) If the principal purpose of the firm is to carry on one or more regulated activities, each partner performs the partner function.*
- (3) If the principal purpose of the firm is other than to carry on regulated activities:*
  - (a) a partner performs the partner function to the extent only that he has responsibility for a regulated activity; and*
  - (b) a partner in a firm will be taken to have responsibility for each regulated activity except where the partnership has*

*apportioned responsibility to another partner or group of partners.'*

- 3.11. By virtue of SUP 10.6.21R and 10.6.22G the Partner Function applies to LLPs. SUP 10.6.21R states:

*'If a firm is a limited liability partnership, the partner function extends to the firm as if the firm were a partnership and a member of the firm was a partner.'*

- 3.12. A 'partner' is defined by the FSA handbook glossary as:

*'(in relation to a firm which is a partnership) any person appointed to direct its affairs including:*

*(a) a person occupying the position of a partner (by whatever name called); and*

*(b) a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the partners are accustomed to act.'*

### ***The Principles***

- 3.13. The Principles are requirements imposed under section 138 of the Act. They represent a general statement of the fundamental obligations of authorised firms under the regulatory system.

- 3.14. Principle 3 states that:

*'A firm must take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems.'*

## **4. FACTS AND MATTERS RELIED ON**

### ***Background***

#### ***VCM***

- 4.1. VCM is an authorised person and it carries on business as an inter-dealer broker with approximately 80 brokers who use its facilities.
- 4.2. VCM was formed in 2004 and has three capital partners. Mr Hassell, whilst not being a capital partner, was involved in its formation. Mr Hassell performed a senior management role at VCM (referred to in this Notice as a "Partner" role).
- 4.3. A significant level of VCM's business is attributable to those desks which joined VCM from Mr Hassell's former business in its merger with VCM's predecessor company in 2002.

- 4.4. VCM applied for authorisation on 1 November 2004 and at the same time applied for FSA approval for Mr Hassell to perform the Partner Function. VCM's Regulatory Business Plan, submitted with its application for authorisation, stated that VCM's brokerage division would be under the direct supervision of Mr Hassell as Head of Brokerage.
- 4.5. At the time of VCM's application for authorisation, Mr Hassell was the subject of an FSA investigation. In light of that investigation, the FSA communicated its concerns to VCM about approving Mr Hassell to perform a controlled function and VCM subsequently withdrew its application in relation to Mr Hassell on 5 May 2005. VCM became authorised on 29 July 2005.
- 4.6. On 14 February 2007, the FSA notified Mr Hassell that it had discontinued its investigation into his conduct. On 15 February 2007, VCM applied for a second time for Mr Hassell to hold approved person status. On 17 May 2007, the FSA informed VCM and Mr Hassell that, due to issues arising during its investigation, it was not satisfied that Mr Hassell was a fit and proper person to hold the Partner Function. VCM subsequently withdrew its application for Mr Hassell to be an approved person.

*Mr Hassell's role and influence at VCM*

- 4.7. Mr Hassell has worked in the financial services industry since 1983. Throughout the relevant period Mr Hassell was not an approved person.
- 4.8. Mr Hassell did not have an official title or job description at VCM other than "consultant". However, in practice, despite not being approved to perform a controlled function, Mr Hassell acted as a Partner of VCM and his contribution to, and influence over, VCM was significant. In particular:
- (1) Mr Hassell's historical financial and business contribution to the current business of VCM was significant because:
    - (a) approximately half of the current level of VCM revenue was (and is still) attributable to that part of the business previously owned by Mr Hassell; and
    - (b) a significant number of VCM staff were accustomed to considering Mr Hassell as a senior manager of the business having come with him to VCM or having been recruited by Mr Hassell to VCM;
  - (2) Mr Hassell received approximately a third of the profits, the remaining two-thirds being split between the capital partners;
  - (3) there was an expectation that Mr Hassell would receive a third of the proceeds of a sale or float of VCM;
  - (4) Some VCM employees viewed Mr Hassell as a Partner;
  - (5) Mr Hassell was, on occasion, held out to be a Partner and/or owner of VCM in correspondence with third parties;

- (6) Mr Hassell was often included, together with VCM management, in the circulation of management information including accounts and financial information;
  - (7) Mr Hassell attended a number of management and board meetings and had significant involvement in strategic planning at VCM;
  - (8) Mr Hassell had an intrinsic and indispensable part in the broker recruitment process; and
  - (9) Mr Hassell was involved in resolving desk disputes, some contract negotiations and shared an office with one of the capital partners.
- 4.9. These factors amounted to Mr Hassell having a significant influence on the regulated affairs of VCM and performing the Partner Function.

Identification of concerns

- 4.10. Between 19 February and 3 March 2009, the FSA conducted an ARROW visit to VCM. On 16 April 2009, FSA Supervision requested that VCM write to the FSA setting out Mr Hassell's role and responsibilities, who he engaged with in the course of his work, to confirm that Mr Hassell had no economic interest in VCM and that he was not undertaking any approved person role.
- 4.11. As a result of issues arising out of the ARROW visit, in early July 2009, the FSA notified VCM that an investigation had been commenced into its conduct regarding Mr Hassell's role at VCM. In August 2009, as a result of the ARROW review, the FSA required VCM to obtain an independent report pursuant to Section 166 of the Act which reviewed and commented upon governance and control arrangements within VCM.
- 4.12. In October 2009, VCM voluntarily instructed regulatory compliance consultants to specifically review the activities performed (or perceived to have been performed) by Mr Hassell in relation to controlled functions. In November 2009, the regulatory compliance consultants prepared a report using a 'traffic light' system to set out its findings, with 'Red' representing 'High risk conduct or perception' ("the Compliance Report"). In relation to Mr Hassell performing the Partner Function at VCM, the Compliance Report identified six high (red) risks, seven medium (amber) risks and six low (and which would not normally constitute activity warranting a Controlled Function) (green) risks. The following sets out the six red risks:

*Red risks*

- (1) *'Possible perception of the junior or more recently recruited staff is that Mr Hassell is a Capital Partner. This could lead to Mr Hassell receiving e-mails[...] and increase the risk that Mr Hassell makes a decision'.*
- (2) *'By attending the Board meetings there is an increased risk that Mr Hassell starts to direct the affairs of the business (Decision making, directing, instructing)'.*

- (3) *‘Mr Hassell would possibly be on the Board if the circumstances were different...Although Mr Hassell’s comments indicate that he has been restrained it also shows that there is a desire and, therefore, a risk that he acts in the capacity of the Board’.*
- (4) *‘Mr Hassell is copied in on various confidential documents (Revenues, Accounts, Pay)...This could highlight that Mr Hassell is perceived as having access to the same level of information as the Capital Partners’.* (original emphasis)
- (5) *‘Last year Mr Hassell was paid a draw and relatively large discretionary bonus...There may be a risk that Mr Hassell is seen as a Capital Partner in all but name, i.e. is Mr Hassell paid a relatively significant bonus to compensate for a lack of equity stake?’*
- (6) *‘When providing a personal reference for a Head of Broking Desk, Mr Hassell described himself as ‘Partner and Consultant to VCM LLP’...To externally be communicating that the position is one of ‘Partner’ is open to misinterpretation’.*

4.13. Whilst the risks highlighted areas where Mr Hassell could be performing or could be perceived to be performing the Partner Function, the Compliance Report did not express a view on whether Mr Hassell was performing the Partner Function. The risks highlighted are consistent with the findings of the FSA that VCM did not have adequate systems and controls in place to effectively monitor and mitigate the risk that Mr Hassell was performing the Partner Function.

#### **The FSA’s findings**

4.14. VCM contravened section 59 of the Act in the relevant period by failing to take reasonable care to ensure that no person performed a controlled function unless the FSA had approved the person to perform a controlled function. VCM also breached Principle 3 by failing to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems. In particular, VCM failed to:

- (1) take reasonable care to ensure that Mr Hassell did not perform a controlled function, even though VCM was aware that the FSA was not satisfied that Mr Hassell was a fit and proper person to perform the Partner Function; and
- (2) take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems to ensure that it had robust controls to limit the scope of Mr Hassell’s influence and role.

4.15. The breach is aggravated by the following:

- (1) the systems and controls weaknesses persisted for a number of years; and

- (2) the FSA raised specific concerns regarding Mr Hassell's fitness and propriety to VCM in May 2005 and in May 2007.

4.16 The breach is mitigated by the following:

- (1) VCM worked co-operatively with the FSA during its investigation;
- (2) at no stage during the relevant period did Mr Hassell transact any business on VCM's brokerage desks on behalf of clients;
- (3) the FSA is not aware of any client detriment arising from the breach; and
- (4) VCM instructed the compliance consultants to seek to resolve the FSA's concerns.

## **5. ANALYSIS OF BREACHES**

- 5.1. Taken as a whole, it is clear that Mr Hassell had an important role at VCM throughout the relevant period and that he performed the Partner Function.
- 5.2. VCM failed to take reasonable steps to ensure that Mr Hassell did not exercise a significant influence over the affairs of VCM. The effect of this was that an individual, whom the FSA had not approved to perform a controlled function due to concerns regarding his fitness and propriety, was involved in directing the affairs of VCM throughout the relevant period.
- 5.3 By reason of the facts and matters set out in section 4 above, the FSA considers that VCM failed to take reasonable care to ensure that Mr Hassell did not perform a controlled function in contravention of section 59 of the Act and VCM failed to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems in breach of Principle 3.

## **6. SANCTION**

- 6.1. The FSA's policy on the imposition of financial penalties is set out in the FSA's Decision Procedure & Penalties manual (DEPP) and the Enforcement Guide (EG). In determining the sanctions, the FSA has had regard to this guidance. The FSA has also had regard to the provisions of the FSA's Enforcement manual (ENF) which were in force during the first part of the relevant period.
- 6.2. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions and demonstrating generally to firms the benefit of compliant behaviour.
- 6.3. For the reasons set out above, the FSA considers that VCM contravened section 59 and Principle 3. In determining that the financial penalty is appropriate and proportionate in this case, the FSA has considered all the



relevant circumstances. The FSA considers the following factors to be particularly important.

*Deterrence (DEPP 6.5.2(1))*

- 6.4. A substantial financial penalty is required to remind authorised firms to ensure that persons who are not approved do not perform controlled functions and that there should be appropriate systems and controls in place to mitigate against this risk. This is particularly important where significant financial benefit may flow from allowing a non-approved person to perform such a function. It is also critical that firms that are on notice of concerns of the FSA treat those appropriately and ensure robust systems and controls are in place.

*Nature, seriousness and impact of the breach (DEPP 6.5.2(2))*

- 6.5. The FSA has had regard to the seriousness of the breach, including the duration of the breach and whether the breaches revealed systemic weaknesses of the management systems or internal controls. For the reasons set out at section 4 above, the FSA considers that VCM failed to appropriately monitor or control Mr Hassell's role over a four year period.

*The size, financial resources and other circumstances of the firm (DEPP 6.5.2(5))*

- 6.6. The FSA has no evidence to suggest that VCM is unable to pay the financial penalty.

*Conduct following the breach (DEPP 6.5.2(8))*

- 6.7. VCM did not bring the breach to the FSA's attention. However, in October 2009, VCM voluntarily appointed regulatory compliance consultants to review the activities performed (or perceived to have been performed) by Mr Hassell in relation to controlled functions. The consultants highlighted areas of risk, which VCM then sought to address.
- 6.8. VCM has been co-operative with the Enforcement investigation.

*Disciplinary record and compliance history (DEPP 6.5.2(9))*

- 6.9. VCM has not been the subject of previous disciplinary action.

*Other action taken by the FSA (DEPP 6.5.2(10))*

- 6.10. In determining the level of financial penalty, the FSA has taken into account penalties imposed by the FSA on other authorised persons for similar behaviour.

**Conclusions**

- 6.13. The FSA considers, in all the circumstances, that the seriousness of the contravention of section 59 and breach of Principle 3 by VCM merits a substantial financial penalty. In determining the financial penalty, the FSA has

considered the need to deter market participants from engaging in this type of activity. The FSA has also had regard to penalties in other similar cases. The FSA considers that a financial penalty of £700,000 (after discount for early settlement) is appropriate.

**7. DECISION MAKER**

- 7.1. 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.

**8. IMPORTANT**

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

**Manner and time for Payment**

- 8.2. The financial penalty must be paid in full by VCM to the FSA by no later than 17 September 2010, three months from the date of the Final Notice.

**If the financial penalty is not paid**

- 8.3. If all or any of the financial penalty is outstanding on 18 September 2010, the FSA may recover the outstanding amount as a debt owed by VCM and due to the FSA.

**Publicity**

- 8.4. 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.
- 8.5. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

**FSA contacts**

- 8.6. For more information concerning this matter generally, please contact Clare Hitchcock (direct line: 020 7066 1490) or Philip Annett (direct line: 020 7066 0534) of the Enforcement and Financial Crime Division of the FSA.

**Tracey McDermott**  
**Head of Department**  
**FSA Enforcement and Financial Crime Division**

