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**FINAL NOTICE**

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To: W H Ireland Limited

Firm Reference Number: 140773

Date: 22 February 2016

**1. ACTION**

1.1. For the reasons given in this notice, the Authority hereby imposes on W H Ireland Limited ("WHI"):

- (1) Pursuant to section 206 of the Act a financial penalty of £1,200,000; and
- (2) Pursuant to section 206A of the Act a restriction for a period of 72 days from the date the Final Notice is issued, on its Corporate Broking Division, from taking on New Clients in relation to the carrying on of its regulated activities.

1.2. WHI agreed to settle at an early stage of the Authority's investigation. WHI therefore qualified for a 20% (stage 2) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed:

- (1) a financial penalty of £1,500,000; and
- (2) a restriction on its Corporate Broking Division of 90 days from the taking on of New Clients.

**2. SUMMARY OF REASONS**

2.1. WHI breached Principle 3 because it failed to take reasonable care to organise and control effective systems and controls to protect against the risk of market abuse occurring during the period 1 January to 19 June 2013.

2.2. Market abuse is serious and undermines confidence in the integrity of the UK financial services sector. The first line of defence in the fight against market abuse is the systems and controls that firms have in place to protect against, detect and help prevent it, including comprehensive compliance oversight, robust governance, and adequate training.

2.3. WHI failed to maintain an adequate control environment in respect of market abuse. This gave rise to a heightened risk of market abuse occurring and continuing undetected. These failings included:

- (1) weak market abuse controls to detect and mitigate against the risk of market abuse arising from how inside information was handled, personal account dealing and conflicts of interest;
  - (2) deficient compliance oversight including monitoring and oversight of market abuse controls, the provision of MI, risk assessment and dealing with suspicious transactions;
  - (3) poor governance including a lack of clearly allocated responsibilities, reporting lines and accountability and, as Board packs were insufficiently detailed, a lack of market abuse MI and a lack of challenge and review of this by the Board and its committees; and
  - (4) WHI did not have a formal way of identifying and recording what training had been given and to whom.
- 2.4. In addition to the breach of Principle 3, WHI also breached the following SYSC rules in the FCA Handbook which relate to conflicts of interest in that it failed to:
- (1) keep and regularly update a record of the kinds of service or activity carried out by WHI in which a conflict of interest entailing a material risk of damage to the interests of one of more clients has arisen or may arise (SYSC 10.1.6R);
  - (2) maintain an effective written conflicts of interest policy which was appropriate to the size and organisation of WHI and the nature, scale and complexity of its business (SYSC 10.1.10R(1)); and
  - (3) have an adequate conflicts of interest policy which identified by reference the specific services and activities carried out by WHI, the circumstances which constituted or may have given rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients and specified the procedures to be followed and measures to be adopted in order to manage such conflicts (SYSC 10.1.11R).
- 2.5. WHI's failings merit the imposition of a significant penalty. The Authority considers these failings to be particularly serious for the following reasons:
- (1) During the Relevant Period WHI provided a number of services including: corporate finance advice, acting as NOMAD and/or Broker to corporate clients, research services, private client broking, and market making. The broad range of services offered meant that a broad set of risks of market abuse needed specifically to be addressed. In particular, corporate broking services formed a significant part of WHI's business activity. During the Relevant Period WHI's private client broking function had around 9,000 clients who may have bought and sold financial instruments through WHI or been advised by WHI and it had approximately £2.5 billion of assets under management. WHI's business activities meant that it routinely received inside information, this key risk meant that the firm needed robust systems and controls to protect against this risk materialising.
  - (2) In addition, if market abuse occurred as a result of mishandling inside information or otherwise, there was plainly scope for there to be an impact on the market and a risk that a large number of market participants could have been affected.

- (3) The Authority has published a number of communications to the industry making clear the importance of firms countering the risks of market abuse with effective controls.
  - (4) Despite being made aware of these failings in August 2013 by the Skilled Person, the Implementation Report indicated that WHI had implemented some but not all of the recommended improvements to the systems and controls relevant to minimising the risk of market abuse.
- 2.6. The Authority therefore imposes a financial penalty on WHI in the amount of £1,200,000 pursuant to section 206 of the Act and to restrict its Corporate Broking Division from taking on New Clients in relation to the carrying on of its regulated activities pursuant to section 206A of the Act.
- 2.7. The Authority recognises that the Firm has made and continues to make significant changes to its management team. These changes began in mid-2012 when a number of the key issues identified within the Skilled Persons report had begun to be addressed. The Authority recognises the Firm's cooperation with its investigation.

### **3. DEFINITIONS**

3.1. The definitions below are used in this Final Notice.

"the Act"	The Financial Services and Markets Act 2000
"AIM"	Alternative Investment Market
"Authority"	The body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority
"Board"	The Board of WHI Limited
"CESR"	Committee of European Securities Regulators
"COBS"	Conduct of Business Sourcebook, part of the FCA Handbook
"Controlled Function"	Controlled Function as set out in the FCA Handbook
"DMA"	Direct Market Access: Electronic trading facilities which give investors wishing to trade in financial instruments a way to directly buy and sell through the order book of an exchange without using a broker as an intermediary to trade the instruments
"FCA Handbook"	The Authority's handbook of rules and guidance
"House stocks"	Stocks of WHI corporate clients
"Implementation Report"	A report dated August 2014 on the implementation of the original Skilled Person's recommendations
"Insider List"	List of individuals who are in possession of inside information

"ISIN"	International Securities Identification Number
"MI"	Management Information
"New Clients"	Any individual, partnership, corporation sole, or body corporate whether incorporated in the UK or outside of the UK that has not signed a letter of engagement with the Firm by the date of the Final Notice
"NOMAD"	Nominated Adviser to companies listed on the AIM stock
"PAD"	Personal account dealing: individual employees undertaking trading on their own accounts
"Principles"	The Authority's Principles for Businesses
"Relevant Period"	The period between 1 January 2013 and 19 June 2013
"Skilled Person"	A person appointed to make a report required by section 166 of the Financial Services and Markets Act 2000
"STR"	Suspicious Transaction Report: reports through which a firm which arranges or executes a transaction for a client and which has reasonable grounds to suspect that the transaction might constitute market abuse must notify the FCA
"SYSC"	The Senior Management Arrangements Systems and Controls section of the FCA Handbook
"Tribunal"	The Upper Tribunal (Tax and Chancery Chamber)

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

##### **Background to WHI**

- 4.1. WHI, authorised by the Authority on 1 December 2001, is one of ten wholly owned subsidiaries of WHI Group plc, a holding company quoted on AIM. WHI is based in Manchester and London with smaller offices in seven other locations in the UK and it has approximately 208 employees.
- 4.2. WHI is organised into a number of divisions and teams including Private Wealth Management, Corporate Broking, Internal Audit and Risk and the Compliance Department.
- 4.3. During the Relevant Period, WHI's main activities were client and corporate broking, private wealth management and market making.
- 4.4. Corporate Broking services undertaken included corporate finance and arranging fund raisings for clients and writing research and market making in corporate stocks only.
- 4.5. WHI acted as NOMAD to 85 corporate clients listed on AIM. NOMAD firms play an important role. They manage the admission of new issues to AIM, guide

companies through the listing process and have responsibility for maintaining standards on AIM and upholding the reputation of AIM.

- 4.6. WHI also provided research to institutional investors, and private clients, investors and networks.
- 4.7. WHI's Private Wealth Management function had approximately £1.7bn under management and provided services such as, private client stockbroking, and independent financial advice.
- 4.8. WHI also engaged in market making in approximately 85 stocks.

#### **Risks inherent in the business**

- 4.9. Due to the range of work which WHI undertook during the Relevant Period, WHI's business activities made it particularly vulnerable to the potential risks of market abuse as detailed below:
  - (1) WHI routinely received inside information during the course of carrying on parts of its business, for instance corporate broking and NOMAD services (the "private side").
  - (2) WHI also operated business lines, such as market making, private client stockbroking and investment research which did not routinely receive inside information (the "public side").
  - (3) There was an inherent risk that, if inside information passed from the private side to the public side, or from the private side to external third parties, it might either be abused (e.g. by a third party seeking to make a financial gain) or improperly disclosed (e.g. by being incorporated into research analysis).
  - (4) It was therefore important for WHI to establish properly documented and robust controls: (i) to prevent the uncontrolled transfer of inside information from the private side to the public side of its business (and between different parts of the private side); and (ii) to ensure that if it was necessary for inside information to be passed either to the public side of the business or to external parties that this was done in a controlled manner with proper safeguards in place.
  - (5) WHI's large client base meant that there was a risk of WHI being used for market abuse by clients who had come by inside information from other sources. Poor surveillance and training increased the risk that this would go unnoticed.
- 4.10. In addition, WHI had offices throughout the UK, but only had compliance staff permanently located in the London and Manchester offices. This meant that many offices had no permanent compliance department employees and so to ensure that internal compliance procedures were implemented WHI was reliant on robust and detailed MI and oversight by the central compliance function.
- 4.11. Another aspect of WHI's business activities which made it vulnerable to the risk of market abuse was that it undertook different types of trading, each of which required separate consideration by the compliance department. Trading at WHI took place in three different ways, each of which entailed particular risks of market abuse:

- (1) Market making which involves a risk of market abuse if market makers have access to inside information.
- (2) Non-employee trading in which external parties might be provided with inside information and informed about trades, events or research. As set out at paragraph 4.21 below, "Chinese walls" allow firms to stop inside information being disclosed. When a decision is made that particular people need to be granted access to inside information, those individuals can be taken over the Chinese wall or "wall-crossed" so that they receive relevant inside information. In the absence of clear controls and procedures for wall-crossing, there is an obvious and serious risk of market abuse because those in receipt of inside information might rely on that information to trade or might encourage others to trade on the basis of that inside information to the detriment of other market users who do not have access to that information.
- (3) PAD, which involves individual employees at WHI undertaking trading on their own accounts. This is discussed further in paragraphs 4.25 - 4.34 below. Unless PAD is adequately controlled there is a risk that employees trading on their own behalf can profit from information which has come to their knowledge in their professional capacity and which is not available to other market participants.

#### **History of the Authority's statements on market abuse systems and controls**

- 4.12. The Authority has made a number of public statements about the standards that are expected of firms in relation to market abuse systems and controls.
- 4.13. The following are examples of some of the relevant guidance issued by the Authority:
  - (1) In 2005, Issues 12 and 14 of 'Market Watch' (a newsletter published by the Authority on its website) advised firms:
    - (a) on their obligations to submit STRs and firms were referred to guidance by CESR on this issue. Advice and guidance was given about what the Authority expected from the submission of STRs;
    - (b) that when deciding what transactions to report, they should apply the key test of whether "there are reasonable grounds for suspecting the transaction involves market abuse";
    - (c) of the requirement to report transactions even if they retrospectively become suspicious;
    - (d) that the quality of an STR is improved when detailed client information is provided and when a thorough explanation of why trades are considered to be suspicious is given;
    - (e) to submit along with an STR any relevant recorded conversations, market announcements, trading history and ISIN identifier where applicable; and
    - (f) that if the Authority identified a trade that it would expect a firm to have notified it about, then the Authority's first step would be to ask what systems and controls it has in place to identify suspicious

trades, then to ask WHI why it did not identify the relevant trade (the example was given that, if this was due to a lack of staff training about market abuse and the STR requirements, then the Authority could take action).

- (2) In June 2006, Issue 16 of Market Watch reminded firms of the need to focus on the management of conflicts, complying with their obligations under the Market Abuse Directive and reporting wrongdoing by employees.
- (3) In December 2006, Issue 18 of Market Watch reminded firms of their obligations under the STR regime and the obligation on management to interpret and apply the rules on STRs. Issue 18 of Market Watch also referred to the need for firms to have in place appropriate and robust monitoring systems.
- (4) In March 2007, Issue 19 of Market Watch contained further emphasis on the importance of STRs and included a number of case studies on STRs which highlighted the importance of STRs to address market abuse.
- (5) In July 2007, Issue 21 of Market Watch reminded firms of the good practice of maintaining proper procedures for PAD and of testing compliance with the policies in place.
- (6) In August 2007, the Authority published a 'Factsheet' regarding the importance and significance of STRs on its website. It included worked examples of what firms should look for when considering suspicious transactions and when they should be submitted.
- (7) In October 2008, Issue 29 of Market Watch referred to the obligations on senior management and the compliance department (in hedge funds) to ensure adequate monitoring, control of inside information and training was in place.
- (8) In Final Notices published in 2009 (Mark Lockwood) and 2011 (Caspar Jonathan William Agnew), the Authority made clear the importance of firms reviewing trades done and making STRs when appropriate.
- (9) In June 2012 the Authority sent a letter to all authorised firms including WHI. It referred to the STR regime and certain market abuse concerns and explained that the Authority required firms to have in place appropriate systems and controls to prevent market abuse including: generating STRs, maintaining records of suspicious trades which were investigated but not reported, market abuse training and compliance monitoring.

#### **The Skilled Person's Report**

- 4.14. In June 2013 the Authority raised concerns with WHI regarding the systems and controls in respect of market abuse. On 10 July 2013 the Authority required WHI to commission a Skilled Person's report.
- 4.15. The Skilled Person identified weaknesses in both WHI's ability to identify and mitigate risks associated with market abuse and in the ability of the compliance department to administer market abuse related systems and controls. It identified particular weaknesses in the following areas:
  - (1) market abuse controls including the handling of inside information, PAD, DMA trading and wall-crossing, and the release of sales and research

communications (documents prepared by the research team at WHI analysing particular financial instruments or markets);

- (2) compliance oversight including a weak market abuse risk assessment, and the analysis of automated surveillance alerts;
  - (3) governance including formal oversight by the Board and management committees of market abuse systems and controls, the receipt of MI and market abuse policy documentation; and
  - (4) training and awareness including awareness of market abuse requirements across WHI.
- 4.16. WHI agreed to implement each of the Skilled Person's recommendations across all the relevant areas with deadlines ranging from three to 12 months.
- 4.17. In July 2014, WHI commissioned the Implementation Report by the Skilled Person to assess the extent to which it had complied with the Skilled Person's recommendations. The findings of the review are set out in more detail at paragraphs 4.71 - 4.73 below.

#### **Market Abuse policies, procedures and controls**

- 4.18. Properly designed market abuse policies, procedures, and controls are an important defence against the risk of market abuse events crystallising.
- 4.19. During the Relevant Period there were weak market abuse controls in place at WHI to mitigate the risk of market abuse associated with the handling of inside information, PAD, conflicts of interest and DMA trading.

#### *Handling Inside Information*

- 4.20. Inside information is information which relates, directly or indirectly, to issuers or financial instruments that is not generally available and has not been made available to the public through appropriate channels, such as through a press release or a public statement from a company's senior officers. The information is material if, were it to be generally available, it would be likely to have a significant effect on the price of the financial instrument or on the price of related investments.
- 4.21. The purpose of a Chinese wall is to prevent inside information or other sensitive information being disclosed to individuals within a firm who should not have access to that information. When a decision is made that particular people need to be granted access to inside information, those individuals can be wall-crossed to permit them to receive relevant inside information. It is important for the wall-crossing procedure to be carefully controlled and recorded so that individuals: understand the obligations of becoming an insider, are only wall-crossed if appropriate and the firm is aware at all times of who has been wall-crossed.
- 4.22. The importance of the careful control of inside information is well known and has been the subject of rules and guidance (see Annex A).
- 4.23. The procedure for dealing with inside information and wall-crossing at WHI was insufficient for the following reasons:
- (1) while the procedure for the wall-crossing of staff was specified, there was no procedure for wall-crossing clients;



- (2) corporate broking staff were not provided with clear guidance or a script as to what they could or could not disclose in communications with potential investors prior to wall-crossing;
  - (3) emails drafted by corporate broking and research staff detailing initial information on potential investment opportunities were not reviewed by the compliance department prior to circulation to ensure that they did not contain inside information;
  - (4) the compliance department did not monitor calls made between staff and third parties to ensure that wall-crossing was happening appropriately and/or whether market abuse was occurring; and
  - (5) whilst Corporate Finance was located separately, there was insufficient physical separation of research staff and corporate and private client staff meaning that teams could have overheard inside information or have viewed such information on computer screens.
- 4.24. The Authority considers that inadequate systems and controls relating to the handling of inside information led to a risk that inside information may have been communicated inappropriately to both internal and external third parties before they were wall-crossed. In addition, poor record keeping and inadequate monitoring in relation to inside information increased the risk that important information about communications was not recorded and that inappropriate disclosure of inside information went undetected.

*PAD*

- 4.25. PAD is an area of inherent risk for any firm in this sector given the potential for employees to seek to make personal profit from inside information or other information that they became aware of in their professional capacity.
- 4.26. The Authority has clearly articulated the obligations on firms which allow employees to conduct PAD. The Authority requires firms to establish, implement and maintain adequate arrangements aimed at preventing employees from committing acts of market abuse and from misusing or improperly disclosing confidential information. See COBS 11.7.1R.
- 4.27. During the Relevant Period WHI had PAD rules in place. However, its PAD rules were inadequate in the following ways:
- (1) WHI's PAD rules were inconsistent as to whether external PAD accounts were permitted. They stated that new employees must notify the compliance department of any external personal accounts held and permission was required to deal through them but this was inconsistent with another section of the rules which stated that employees were "only permitted to deal through an account with WHI Limited". Although WHI intended its PAD rules to cover dealing in any instruments, WHI's PAD rules did not make clear whether they were intended to cover all PA dealing by staff or just PA dealing by staff in House stocks and shares in WHI plc.
  - (2) There was inconsistency as to whether an employee's holdings must be declared at the commencement of employment and there was no requirement for new employees to declare their external PAD holdings on an annual basis.

- (3) WHI also required attestations from employees that they had read and understood the PAD rules. However, this system of PAD attestations was also inadequate as the PAD attestation lacked clarity. It only referred to PAD in WHI Group shares; employees were not required to attest that they understood and acknowledged WHI's wider PA dealing procedures in non-WHI shares. Moreover, an annual refresher attestation confirming employees' understanding of the rules was not conducted. In the absence of a comprehensive and obligatory annual PAD attestation there was a risk that staff might have misunderstood the importance of the PAD rules, not known if the PAD rules had changed and PAD records might not have been kept up to date.
- 4.28. The monitoring of any PAD policy is crucial in ensuring that it is effective in preventing employees from committing market abuse and from misusing or improperly disclosing confidential information. A firm cannot rely solely on employees pro-actively complying with the policy. The system of monitoring used by WHI had the following inadequacies:
- (1) The PAD register during the Relevant Period was incomplete and there was neither an accurate or comprehensive record maintained of employees' PAD. This led to a potential risk that PAD could be undertaken during the Relevant Period without the knowledge or authorisation of the relevant manager.
- (2) The monitoring of staff compliance with the PAD rules was undertaken by the compliance department in Manchester who carried out daily PA monitoring activities. This was inadequate for the following reasons:
- (a) The monitoring team did not check employees' PAD against the Research Log or work in progress ("WIP") list which showed the companies that were subject to research or which were in discussion with WHI about potential transactions including proposed fund raisings and acquisitions. This gave rise to a risk that staff could possibly deal ahead of unpublished research or deal while in possession of inside information which was recorded in the Research Log and/or WIP list but not on the list of House stocks or the Insider List.
- (b) The daily monitoring did not include checks for PAD in the securities of companies that were discussed by research analysts at morning meetings when a research note had been disseminated. There was a risk that the daily monitoring failed to identify trades in breach of the restriction, which prohibited staff from dealing 24 hours before, or after, publication.
- (c) Breaches of the PAD rules were recorded within MI which was distributed monthly to senior management but was not provided to the Board until May 2013. Consequently there was a risk that the existence and significance of PAD breaches might have been overlooked by the Board. Further, there was no record in the MI of repercussions for repeat breaches.
- 4.29. Without WHI consistently imposing robust sanctions for breaches of their PAD rules there was a risk that employees may have repeatedly breached the PAD rules exposing WHI to potential market abuse.

### *Conflicts of Interest*

- 4.30. A significant risk of market abuse arises from inadequate systems and controls to deal with potential conflicts of interest.
- 4.31. WHI's business activities (described in detail at paragraph 4.1 – 4.11 above) contained inherent potential for conflicts of interest to arise. For example, WHI had both a private side business such as the corporate division and a public side business such as private client stockbrokers. This structure meant that a conflict might emerge between, for instance, a corporate client of WHI trying to acquire another company and WHI's private clients and their brokers who could profit from trading in the stocks of the target company in advance of the acquisition being made public.
- 4.32. SYSC 10.1.6R provides that a firm must keep and regularly update a record of where the kinds of service or activity carried out in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or may arise. During the Relevant Period WHI's conflict of interest document (within WHI's Compliance Plan) did not function as a conflicts record/register as it was simply a document outlining the systems, controls and procedures in respect of conflict of interest rather than, as required, a regularly updated record of the services or activities in which a conflict of interest which may result in damage to one or more clients has or may arise. WHI therefore failed to have a comprehensive record of when and where risks of conflicts of interest might emerge.
- 4.33. In addition, WHI's conflicts of interest document did not function as an effective conflicts of interest policy as required by SYSC 10.1.10R (1). Instead, the document referred to WHI's 'regulatory control environment' and other policy documents relating to market abuse and inside information. Consequently, staff may have been confused by the inclusion of market abuse related policies and procedures in a document dealing with conflicts of interest. More importantly, the document does not allow WHI to take reasonable steps to identify the circumstances which constitute or may give rise to a conflict of interest and does not specify procedures to be followed and the effective organisational and administrative arrangements to manage conflicts, in breach of SYSC 10.1.11R.

### **Compliance Oversight**

- 4.34. A number of WHI's compliance oversight systems and controls were inadequate including those in respect of risk assessments, monitoring and surveillance, MI, and STRs. This limited WHI's ability to ensure that the market abuse risks inherent in its business activities were adequately mitigated.

### *Compliance framework and risk assessment*

- 4.35. Having in place a formal market abuse risk assessment and a compliance risk management framework which fully takes account of the risks facing a firm is key to ensuring that a firm designs and implements controls in respect of market abuse risks applicable to its business.
- 4.36. As set out at paragraphs 4.9 – 4.11 above, WHI's business activities made it vulnerable to the risk of market abuse in various ways.
- 4.37. However, despite these risks, no formal risk assessment or risk management framework for market abuse was in place during the Relevant Period. Consequently, market abuse monitoring undertaken by the compliance

department was not based on a proper assessment of the nature and seriousness of market abuse risks and the probability and impact of market abuse risks crystallising.

- 4.38. Although WHI had a compliance plan which addressed market abuse, it merely set out some of the obvious ways market abuse could occur. The Compliance Plan was not a forward-looking plan detailing the compliance department's role in relation to market abuse or a timetable of activities to be undertaken by the compliance department to mitigate market abuse risks. Without a sufficiently detailed plan in place, there was a risk that WHI would not fully understand the risks from market abuse and would not provide the required time and resources for the compliance department to deal effectively with market abuse issues.

#### *Monitoring and surveillance*

- 4.39. WHI's compliance department's oversight was insufficiently thorough and should have overseen the broad range of trading, business and responsibilities undertaken by WHI, including monitoring of principal trading and client trading, approving and monitoring PAD, maintaining Insider Lists and research documents and ensuring compliance with its STR obligations.
- 4.40. WHI undertook various daily monitoring activities including preparing reports on the previous day's trading and PAD, and using a vendor provided surveillance software system ("Surveillance System") to monitor trades undertaken through WHI's internal trading system. The Surveillance System was designed to flag exceptions, including trades not performed at best execution, where there was a risk of market abuse.
- 4.41. The monitoring systems WHI used and the surveillance performed as part of its daily monitoring were inadequate for the following reasons:
- (1) The Surveillance System reviewed trading activity and generated exceptions based on parameters set by WHI but WHI set the parameters too narrowly and did not address specific business activities or the full breadth of its market abuse risks. For example, WHI failed to calibrate the system to identify potential Market Abuse from activities such as DMA. This was because the compliance department was not aware that WHI offered DMA services to its clients and therefore had not appropriately designed the surveillance around the risk. DMA increases the risk of manipulation and WHI did not have tests to assess whether such manipulation was occurring;
  - (2) The parameters set during the Relevant Period produced a significant volume of alerts which could not be reviewed in a timely and consistent manner. At the end of the Relevant Period there was a backlog of 60 days between the date of the trade and the date the alerts were reviewed by the compliance department. This led to a heightened risk that WHI could not fulfil its obligations to report potential market abuse or suspicious transactions to the Authority without delay.
  - (3) The exception reports generated by the Surveillance System were only useful to the extent to which the data provided in the reports was analysed by competent staff in the compliance department. Without analysis the reports on their own were not sufficient to act as indicators of market abuse. However, there was no system or training in place to guide staff in the compliance department as to which alerts should be investigated. This problem was exacerbated by the fact that the compliance staff tasked with

the review process were junior members of the team with limited experience or training in market abuse.

- (4) WHI was overly reliant on the Surveillance System for identifying suspicious trades and did not have in place a 'back up' manual monitoring programme focused on mitigating key market abuse including spot checks of individual trader activity, reviews of peaks in activity or reviews of activity in high risk stocks.

#### *Market Abuse MI*

- 4.42. An important part of the compliance oversight process is to use MI to identify potential risks, forecast problems and determine how to mitigate risks.
- 4.43. The Authority is concerned that the Board and Risk and Compliance Committee did not receive any significant MI relating to market abuse for the majority of the Relevant Period. For example the 60 day backlog in trade surveillance of the Surveillance System was not reported to the Board, nor was the number of STRs filed. From May 2013, a Compliance MI spreadsheet was provided to the Board but this did not have a separate section for market abuse and it was not clear which breaches were market abuse related.
- 4.44. Further, there were no documented procedures for the escalation of market abuse issues from the compliance department to the Board. This created a danger that significant risks and issues concerning market abuse might not be escalated to the Board which, in turn, meant that it was unable to fully discharge its oversight responsibility.

#### *STRs*

- 4.45. An important component of the compliance systems and controls at a firm facing market abuse risks is the investigation of suspicious transactions, the collation of STRs and the reporting of STRs to the Authority. STR's are key to the Authority's ability to protect and enhance the integrity of the UK financial system and, as set out at paragraph 4.13 above, has been the subject of guidance from the Authority.
- 4.46. WHI's systems and controls in respect of STRs were inadequate for the following reasons:
  - (1) WHI's STR procedures put the emphasis on employees to make judgements as to whether a transaction was sufficiently suspicious to require escalation to the compliance department rather than requiring staff to escalate all suspicious transactions;
  - (2) The STR procedures were insufficiently detailed and did not provide information about how a suspicious transaction should be reported and communicated to the compliance department.
  - (3) There was no detailed log of suspicious incidents or audit trail of surveillance alerts and escalations and no rationale for not submitting STRs. This meant there were insufficient records of STRs to demonstrate that WHI had complied with its regulatory requirements. The only audit trail on STRs and suspicious incidents maintained by the compliance department was a record of emails detailing communications on each reported incident.

- (4) There was no documented procedure for the escalation of suspicious transactions to the Authority or documented guidelines setting out factors which should be taken into account as part of the decision making process.
  - (5) No formal STR MI was provided to management or the Board.
- 4.47. As a consequence of these failings, there was a substantive risk that suspicious transactions would not be reported to the compliance department and that STRs would not be filed. Further, the lack of formal STR MI could result in Management and the Board failing to recognise and act on emerging market abuse risks and issues.

### **Governance**

- 4.48. A well defined corporate governance structure with roles, responsibilities, and accountability clearly demarcated is needed so that firms can mitigate the risk of market abuse.
- 4.49. WHI did not clearly allocate responsibilities, reporting lines and accountabilities for market abuse and there were no terms of reference for the Board or for the Compliance and Risk Committee. The Audit Committee's Terms of Reference lacked an explicit allocation of responsibility. In addition, there was little documented discussion of market abuse matters at Board meetings and insufficient challenge and action when they were discussed.

#### *The Compliance and Risk Committee*

- 4.50. The Compliance and Risk Committee met four times during the Relevant Period but did not have a documented or formal role with regard to market abuse. Market abuse was not a standing agenda item and the Committee did not receive any significant MI related to market abuse.
- 4.51. The Compliance and Risk Committee's minutes did not contain information on discussions held and decisions made or agreed actions to be tracked in subsequent meetings. There was no framework for this committee (or for the Audit Committee as set out below) to report to the Board for the escalation of any concerns over the controls and governance of risk and any breaches or potential breaches.
- 4.52. The Compliance and Risk Committee was therefore insufficiently involved in the market abuse risks and issues facing the business during the Relevant Period.

#### *Internal Audit Function and Audit Committee*

- 4.53. A firm's audit function serves an important role in helping a firm identify deficiencies in its systems and controls against market abuse. The internal auditor's role is to provide independent, objective assurance to the Audit Committee that the risk management, control and governance processes are adequate.
- 4.54. During the Relevant Period there was no adequate audit plan in place at WHI. Two 'internal audit plans' from 2012 and 2013 have been reviewed by the Authority but both of these plans were inadequate as they consisted of a single page on which a series of headings was listed without any detail.
- 4.55. The Audit Committee Board packs for the two Audit Committee meetings held during the Relevant Period show that market abuse risks were discussed but not

in sufficient detail and there is no record that the market abuse issues raised in the audit report or in the minutes were acted on.

- 4.56. The actions which were recorded were not referred to in the next Audit Committee meeting and there were no adequate risk management policies and procedures drafted or brought into effect.

#### *The Board*

- 4.57. During the Relevant Period there were three meetings of WHI's Board. However, there was little documented discussion of market abuse matters and where there was discussion the action taken (if any) was not recorded.
- 4.58. In these meetings and the Board packs which preceded them, potentially significant market abuse issues were raised. However, there is no evidence that a plan was put in place to deal with the issues, and nor did the Board request further MI from the compliance department. For example, after receiving significant indications of concern about market abuse in the January 2013 Board meeting the Board did not ask the compliance department to report on market abuse issues or present the Board with a plan for dealing with the issues raised.
- 4.59. The Authority is concerned that the Board did not identify the MI, such as a formal report on market abuse from the compliance department, it expected to receive to be presented at every Board meeting. Without such MI and a lack of formal record of discussion, challenge, and resolution, the Board was not able to fully discharge its oversight responsibility for market abuse.

#### **Training and awareness**

- 4.60. Training in market abuse should ensure both that staff are made aware of their obligations in relation to market abuse and that they have sufficient understanding to recognise behaviour which constitutes market abuse in their day to day business and the Authority has provided guidance in this area.

#### *Training*

- 4.61. WHI's Compliance Plan referred to the need to have adequate training in place. However, whilst in fact new recruits during the Relevant Period all received market abuse training no formal market abuse training programme was in place during the Relevant Period.
- 4.62. In terms of face to face staff training, with the exception of specific training on STRs, no broader market abuse training was given to staff during the Relevant Period.
- 4.63. The only training document specifically on market abuse provided to all staff was called "Market abuse How is it construed?". This document did not accurately describe what market abuse is or refer to market abuse offences and did not give examples or define inside information.
- 4.64. New joiners and existing staff were required to complete online training which contained a module on market abuse. Although WHI had records tracking completion rates, a small number of staff did not in fact complete the online training during the Relevant Period. There were no sanctions for non-completion of the training or reference to this as part of the employee appraisal process nor did WHI's MI address this issue properly.

- 4.65. Some informal training was provided. This included PowerPoint presentations and emails circulated by the compliance department to employees enclosing articles about market abuse related news. However, there was no mechanism to confirm that employees had received and understood the training material.
- 4.66. The Authority is concerned that such high level and informal methods of training are inadequate to inform and educate staff sufficiently about market abuse although informal training can form part of a wider training programme.
- 4.67. In light of the above the Authority considers that there was an inadequate level of understanding of market abuse across the business during the Relevant Period.

#### *Training of compliance staff*

- 4.68. The proper training of compliance staff is an important element of ensuring effective monitoring for market abuse. Without the right level of skills and experience in market abuse, the compliance department will not be able to provide robust scrutiny of the business.
- 4.69. The training in place for compliance staff was insufficient: no additional formal market abuse training was provided to compliance staff over and above the online training provided to all staff. Further, the compliance department monitoring team responsible for undertaking daily market abuse monitoring activities had limited experience.
- 4.70. The Authority considers that in the absence of a formal training programme for compliance department staff WHI's ability to mitigate against market abuse was significantly compromised.

#### **Implementation Report**

- 4.71. Since the Relevant Period WHI has implemented a number of improvements to its systems and controls in respect of market abuse. Between August and September 2014 the Skilled Person assessed the extent to which WHI had implemented the recommendations made in the original report and set out its findings in an Implementation Report.
- 4.72. However, the Skilled Person also found that there were some recommendations which had not been implemented adequately within the time set by the Skilled Person. In particular, these included (but were not limited to) the following:
- (1) Although a market abuse risk assessment had been presented to the Board, it had not been formally approved by the Board within three months as required by the Skilled Person. The same applies to the Compliance Monitoring Plan, Terms of Reference for Compliance and PAD rules which had been provided to the Board but not approved within the timescales set. Most importantly, the Compliance Monitoring Programme proposed by WHI was not complete by the time of the Implementation Report and did not wholly facilitate effective risk based compliance monitoring in a number of different ways.
  - (2) With respect to the Surveillance System, the Skilled Person required improvements to the design and operational development and alert review procedures within six months and to introduce interim manual monitoring within three months.. The Implementation Report noted that although WHI had reconfigured the parameters of the Surveillance System, it did not



introduce a manual monitoring programme as suggested and the previous parameters were used until May 2014..

- 4.73. The Skilled Person recommended that within six months WHI should develop and implement a formal market abuse training programme and formal records of training should be maintained. Although an email about training was sent to 90 members of staff, the overall completion rate of training was unclear and there was no evidence of spot checks to ensure that staff had understood the training, in accordance with the Skilled Person's recommendation.

## **5. FAILINGS**

- 5.1. The regulatory provisions relevant to this Final Notice are referred to in Annex A.
- 5.2. Principle 3 requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- 5.3. WHI breached Principle 3 because it failed to organise and control its affairs in respect of market abuse responsibly and effectively.
- 5.4. On the basis of the facts and matters set out above, WHI failed to maintain an appropriate control environment in respect of market abuse and this gave rise to a substantive risk of market abuse occurring. The control environment was inadequate because:
- (1) Market abuse policies, procedures and controls were either not in place or were inadequate to identify, prevent or mitigate the risk of market abuse. Specifically, WHI did not:
    - (a) have a comprehensive procedure in place for handling inside information to prevent the risk that inside information could be communicated improperly and to ensure that the disclosure of inside information was appropriately recorded and controlled;
    - (b) put in place clear and consistent rules for PAD;
    - (c) ensure that PAD was accurately registered and monitored; and
    - (d) put in place a policy to address how conflicts of interest were to be dealt with or record all actual or potential conflicts of interest.
  - (2) Oversight of WHI's systems and controls was not sufficient to allow WHI to fully understand the market abuse risks in its business activities and to mitigate those risks. In particular:
    - (a) there was no risk assessment or risk management framework to consider market abuse risks;
    - (b) WHI was overly reliant on an automated trade monitoring system which was not adequately set up and the exception reports generated by the monitoring system were not promptly or adequately reviewed or investigated;
    - (c) no MI was provided to the Board at all until May 2013 and, even after that date, the MI provided to the Board did not specifically consider the risks of market abuse; and

- (d) the STR procedure was inadequately detailed and STRs were not logged, escalated or reported to the Board where appropriate.
- (3) WHI failed to address and alleviate the risk of market abuse. More specifically:
  - (a) a lack of Terms of Reference or specific role in respect of market abuse for Board and the Compliance and Risk Committee meant that WHI was less able to engage with market abuse risks and issues; and
  - (b) the Board was not provided with MI relating to market abuse for most of the Relevant Period and even when market abuse issues were raised it did not give them adequate consideration.
- (4) Training at WHI was inadequate because:
  - (a) the training programme in place at WHI for all staff was insufficient in scope and detail and in some cases the required programmes were not conducted leading to a risk that employees did not understand the risks of market abuse; and
  - (b) compliance department staff were not adequately trained, which meant they were constrained in their ability to identify potential market abuse, and were not sufficiently clear as to what their responsibilities were and how they were to discharge their duty to mitigate market abuse.
- (5) In addition, with regard to conflicts of interest as set out in paragraphs 4.33 – 4.36 (and summarised at paragraph 5.4(1)(d) above), WHI failed to comply with SYSC in relation to its failure to keep and regularly update a conflicts of interest register or record (SYSC 10.1.6R), and establish and implement an effective conflicts of interest policy which identified the circumstances which constituted or may have given rise to a conflict of interest and specified the procedures to be followed and measures to be adopted in order to manage such conflicts (SYSC 10.1.10R(1) and (SYSC 10.1.11R).

## **6. SANCTION**

### **Introduction**

- 6.1. The Authority therefore imposes a financial penalty of £1,200,000 on WHI for breaching Principle 3 and associated SYSC rules.
- 6.2. In addition to imposing a financial penalty, it is also appropriate to impose a restriction on WHI. Imposing a restriction, in addition to a financial penalty, is a more effective and persuasive deterrent than a financial penalty alone.
- 6.3. Accordingly the Authority, in addition to the financial penalty, also imposes a restriction for a period of 72 days from the date the Final Notice is issued, on WHI's Corporate Broking Division, from taking on New Clients in relation to the carrying on of its regulated activities.
- 6.4. In imposing the combined penalty and restriction, and pursuant to DEPP 6A.4.2(4) and (5), the Authority has reduced the amount of the financial penalty

so that the combined impact of the sanctions is proportionate in relation to the breach and deterrent effect of the sanctions.

### **Financial penalty**

- 6.5. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five step framework to determine the appropriate level of financial penalty. DEPP 6.5A sets out the details of the five step framework that applies in respect of financial penalties imposed on firms.

#### Step 1: disgorgement

- 6.6. Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.7. The Authority has not identified any financial benefit that WHI derived directly from its breach
- 6.8. Step 1 is therefore £0

#### Step 2: the seriousness of the breach

- 6.9. Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of WHI's revenue from the relevant products or business area.
- 6.10. The Authority considers that the revenue generated by WHI's Private Wealth Management and Corporate Broking Divisions is indicative of the harm or potential harm caused by its breach.
- 6.11. The Authority has determined the appropriate Step 2 amount by taking into account those factors which are relevant to an assessment of the level of seriousness of the breach.
- 6.12. DEPP 6.5A.2G(11) sets out factors likely to be considered 'level 4 factors', or 'level 5 factors'. The Authority considers the following factors to be relevant:
- (1) The breach revealed serious and systemic weaknesses in WHI's procedures, management systems and internal controls around market abuse which gave rise to a significant risk of market abuse occurring; and
  - (2) In failing to put in place adequate market abuse policies, procedures and controls to identify, prevent and mitigate the risk of market abuse, WHI caused a significant risk of loss to individual consumers, investors or other market users.
- 6.13. DEPP 6.5A.2G(12) sets out factors likely to be considered 'level 1 factors', 'level 2 factors' or 'level 3 factors'. The Authority considers the following factors to be relevant:
- (1) the Authority has not identified any direct or indirect financial benefit to WHI as a result of the breaches of Principle 3.

6.14. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 4 so that the Step 2 figure is £1,250,000.

Step 3: mitigating and aggravating factors

6.15. Pursuant to DEPP 6.5A.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.

6.16. The Authority considers that the following factors aggravate the breach:

- (1) The Authority's Market Watch newsletters were well publicised prior to the Relevant Period and publications during the period 2005 – 2009 cover topics including: firms' obligations under the STR regime; the need for firms to have in place appropriate and robust monitoring systems; maintaining proper procedures for PAD; testing compliance with the policies in place; and obligations on senior management and the compliance department to ensure adequate monitoring, control of inside information and training;
- (2) In June 2012 the Authority sent a letter to all authorised firms including WHI. It referred to the STR regime, market abuse concerns and described how the STR system was meant to work in some detail; and
- (3) WHI agreed to implement each of the Skilled Person's recommendations across all of the relevant areas within three to 12 months. In July 2014, a year after the initial review, WHI commissioned the Implementation Report to assess the extent to which it had complied with the Skilled Person's recommendations. The Implementation Report found that WHI had implemented some but not all of the recommended improvements to the systems and controls relevant to minimising the risk of market abuse.

6.17. Having taken these aggravating factors into account, the Authority considers that an aggregate uplift of 20% is appropriate.

6.18. Step 3 is therefore £1,500,000.

Step 4: adjustment for deterrence

6.19. Pursuant to DEPP 6.5A.4G, if the FCA considers the figure arrived at after Step 3 is insufficient to deter WHI who committed the breach, or others, from committing further or similar breaches, the Authority may increase the penalty.

6.20. The Authority considers that the Step 3 figure of £1,500,000 represents a sufficient deterrent to WHI and others, and so has not increased the penalty at Step 4.

6.21. Step 4 is therefore £1,500,000.

Step 5: settlement discount

6.22. Pursuant to DEPP 6.5A.5G, if the Authority and WHI on which a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and WHI reached agreement.

- 6.23. The Authority and WHI reached agreement at Stage 2 and so a 20% discount applies to the Step 4 figure.
- 6.24. Step 5 is therefore £1,200,000.

#### Penalty

- 6.25. The Authority therefore imposes a total financial penalty of £1,200,000 on WHI for breaching Principle 3 and not complying with SYSC 10.1.6R, SYSC 10.1.10R(1) and SYSC 10.1.11R.

#### **Restriction**

- 6.26. The Authority also imposes a restriction for a period of 72 days from the date the Final Notice is issued, on WHI's Corporate Broking Division, from taking on New Clients in relation to the carrying on of its regulated activities. The restriction the Authority has imposed is a disciplinary measure in respect of WHI's misconduct during the Relevant Period.
- 6.27. When determining whether a restriction is appropriate, the Authority is required to consider the full circumstances of the case. The Authority will impose a restriction where it believes that such action will be a more effective and persuasive deterrent than the imposition of a financial penalty alone. DEPP 6A.2.3G specifies examples of circumstances where the Authority may consider it appropriate to impose a restriction.
- 6.28. The Authority considers the following factors are relevant:
- (1) WHI has failed properly to carry out all agreed remedial measures as described in paragraph 6.16(3); and
  - (2) The misconduct appears to be widespread involving a number of individuals across a particular business area (suggesting a poor compliance culture). A number of individuals across multiple departments were involved in WHI's failure to maintain a strong control environment in respect of market abuse which gave rise to a substantive risk of market abuse occurring.
- 6.29. The Authority considers it appropriate to impose a restriction here in relation to activities directly linked to the breach. Given the systemic nature of WHI's breach, the Authority considers that a restriction affecting the regulated activities of WHI's Corporate Broking Division is appropriate. By restricting WHI, the Authority signals to the market that where a firm operates with a weak market abuse control environment, the Authority will take disciplinary action to suspend and / or restrict that firm's activities.

#### **Length of restriction**

- 6.30. When determining the length of the restriction that is appropriate for the breach concerned, and also the deterrent effect, the Authority will consider all the relevant circumstances of the case. DEPP 6A.3.2G sets out factors that may be relevant in determining the appropriate length of the restriction. The Authority considers that the following factors are particularly relevant in this case.

Deterrence (DEPP 6A.3.2G(1))

- 6.31. When determining the appropriate length of the restriction, the Authority 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 compliant business.
- 6.32. The Authority considers that the restriction imposed will emphasise that the Authority must be able to rely on firms to take actions required to mitigate or resolve market abuse risks. Due to the range of work which WHI undertook during the Relevant Period, WHI's business activities were particularly vulnerable to the potential risks of market abuse. Effective and credible deterrence indicates a significant period of restriction.

The seriousness of the breach (DEPP 6A.3.2G(2))

- 6.33. When assessing the seriousness of the breach, the Authority takes into account various factors (which may include those listed in DEPP 6.5A.2G(6) to (9)) which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly.
- 6.34. When considering the seriousness of the breach, the Authority has taken into account the following factors listed at paragraphs 6.12 (1) to (2) and 6.13 (1).

Aggravating and mitigating factors (DEPP 6A.3.2G(3))

- 6.35. The Authority takes into account various factors (which may include those listed in DEPP 6.5A.3G(2)) which may aggravate or mitigate a breach.
- 6.36. When considering the aggravating and mitigating factors, the Authority has taken into account the following factors listed at paragraphs 6.16 (1) to (3).

Impact of restriction on WHI (DEPP 6A.3.2G(4))

- 6.37. When assessing the impact of the restriction on WHI, the Authority has taken into account the following:
- (1) WHI's expected lost revenue and profits from not being able to carry out the restricted activity;
  - (2) potential economic costs, for example, the payment of salaries to employees who will not work or will have reduced work during the period of restriction;
  - (3) the effect on other areas of WHI's business; and
  - (4) whether the suspension or restriction would cause WHI serious financial hardship.

Impact of restriction on persons other than WHI (DEPP 6A.3.2G(5))

- 6.38. When assessing the impact of the restriction on persons other than WHI, the Authority considers the following to be relevant: the extent to which clients may suffer loss or inconvenience as a result of the suspension or restriction. We do not

consider that the potential loss or inconvenience to potential New Clients is an appropriate reason not to impose the restriction.

- 6.39. Taking all of these factors into account, the Authority considers the total length of the restriction which it is appropriate to impose is 90 days.

#### **Settlement discount**

- 6.40. WHI agreed to settle at an early stage of the Authority's investigation. WHI therefore qualified for a 20% (stage 2) discount to the length of the restriction under the Authority's executive settlement procedures, reducing the restriction to 72 days. Were it not for this discount, the Authority would have imposed a restriction of 90 days on WHI's Corporate Broking Division.

#### **Conclusion**

- 6.41. The Authority therefore imposes a total financial penalty of £1,200,000 on WHI for breaching Principle 3.
- 6.42. In addition to imposing a financial penalty, the Authority considers that it is also appropriate to impose a restriction on WHI's Corporate Broking Division that, for a period of 72 days, from taking on New Clients in relation to the carrying on of its regulated activities.
- 6.43. Pursuant to DEPP 6A.4.2, the Authority considers that the combination of sanctions is proportionate considering the nature and seriousness of the Principle 3 breach.

## **7. PROCEDURAL MATTERS**

#### **Decision maker**

- 7.1. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.
- 7.2. This Final Notice is given under, and in accordance with, section 390 of the Act.

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

- 7.3. The financial penalty must be paid in full by WHI to the Authority by no later than 8<sup>th</sup> March 2016, 14 days from the date of the Final Notice.
- 7.4. If all or any of the financial penalty is outstanding on 9<sup>th</sup> March 2016, the Authority may recover the outstanding amount as a debt owed by WHI and due to the Authority.

#### **Publicity**

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

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

**Authority contacts**

- 7.7. For more information concerning this matter generally, contact Anna Couzens at the Authority (direct line: 020 7066 6772).

Anthony Monaghan

Project Sponsor

Financial Conduct Authority, Enforcement and Market Oversight Division



## **ANNEX A**

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

#### **1. Statutory Provisions**

The FCA's statutory objectives, set out in section 2(2) of the Act include market confidence.

Section 206 of the Act provides:

If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act...it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.

WHI is an authorised person for the purposes of section 206 of the Act. The requirements imposed on authorised persons include those set out in the FCA's rules made under section 138 of the Act.

Section 206A of the Act provides that where an authorised person has contravened a requirement imposed on it under the Act the Authority may impose, for such a period as it considers appropriate, such suspensions of that person's permissions or limitations or other restrictions in relation to the carrying on of a regulated activity by the person as it considers appropriate. A restriction may, in particular, be imposed so as to require the person concerned to take, or refrain from taking, specified action. The period for which the suspension/restriction is to have effect may not exceed 12 months.

Section 206(1) of the Act provides:

If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act... it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.

#### **2. Regulatory Provisions**

In exercising its power to issue a financial penalty, the FCA must have regard to the relevant provisions in the FCA handbook.

In deciding on the action, the FCA has also had regard to guidance set out in the Regulatory Guides, in particular the Decision Procedure and Penalties Manual (DEPP).

#### **3. Principles for Businesses**

The Principles for Businesses are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the FCA Handbook. They derive their authority from the FCA's rule-making powers as set out in the Act and reflect the FCA's regulatory objectives. Principle 3 provides:

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

#### **4. DEPP**

Chapter 6 of DEPP, which forms part of the Authority's Handbook, sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties and restrictions under the Act.

#### **5. The Enforcement Guide**

The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act.

Chapter 7 of the Enforcement Guide sets out the Authority's approach to exercising its power to impose a financial penalty and restrictions.

#### **6. Conduct of Business Sourcebook (COBS)**

##### **COBS 11.7.1R provides:**

A firm that conducts designated investment business must establish, implement and maintain adequate arrangements aimed at preventing the following activities in the *case* of any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information *as* defined in the Market Abuse Directive or to other confidential information relating to clients or transactions with or for clients by virtue of an activity carried out by him on behalf of the firm:

- (1) entering into a personal transaction which meets *at* least one of the following criteria:
  - (a) that person is prohibited from entering into it under the Market Abuse Directive;
  - (b) it involves the misuse or improper disclosure of that confidential information;
  - (c) it conflicts or is likely to conflict with an obligation of the firm to a customer under the regulatory system or any other obligation of the firm under MiFID or the UCITS Directive;
- (2) advising or procuring, other than in the proper course of his employment or contract for services, any other person to enter into a transaction in designated investments which, if a personal transaction of the relevant person, would be covered by (1) or a relevant provision;
- (3) disclosing, other than in the normal course of his employment or contract for services, any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that *as* a result of that disclosure that other person will or would be likely to take either of the following steps:
  - (a) to enter into a transaction in designated investments which, if a personal transaction of the relevant person, would be covered by or a relevant provision;
  - (b) to advise or procure another person to enter into such a transaction.

## 7. Senior Management Arrangements, Systems and Controls Sourcebook (SYSC)

The FCA handbook sets out high level standards relating to senior management arrangements, systems and controls in SYSC. SYSC 10 sets out the FCA's general rules on conflicts of interest.

### **SYSC 10.1.6R provides:**

A common platform firm and a management company must keep and regularly update a record of the kinds of service or activity carried out by or on behalf of that firm in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.

### **SYSC 10.1.10R(1) provides:**

Conflicts policy

- (1) A common platform firm and a management company must establish, implement and maintain an effective conflicts of interest policy that is set out in writing and is appropriate to the size and organisation of the firm and the nature, scale and complexity of its business.
- (2) Where the common platform firm or the management company is a member of a group, the policy must also take into account any circumstances, of which the firm is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

### **SYSC 10.1.11R provides:**

Contents of policy

- (3) The conflicts of interest policy must include the following *content*:
  - (a) it must identify in accordance with SYSC 10.1.3 R and SYSC 10.1.4 R, by reference to the specific services and activities carried out by or on behalf of the common platform firm or management company, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients; and
  - (b) it must specify procedures to be followed and measures to be adopted in order to manage such conflicts.
- (4) The procedures and *measures* provided for in paragraph (1)(b) must:
  - (a) be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified in paragraph (1)(a) carry on those activities at a level of independence appropriate to the size and activities of the common platform firm or the management company and of the group to which either of them respectively belongs, and to the materiality of the risk of damage to the interests of clients; and

- (b) include such of the following as are necessary and appropriate for the common platform firm or the management company<sup>4</sup> to ensure the requisite degree of independence:
- (i) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;
  - (ii) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the firm;
  - (iii) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
  - (iv) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out services or activities; and
  - (v) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate services or activities where such involvement may impair the proper management of conflicts of interest.
- (5) If the adoption or the practice of one or more of those *measures* and procedures does not ensure the requisite level of independence, a common platform firm and a management company must adopt such alternative or additional measures and procedures as are necessary and appropriate for the purposes of paragraph (1)(b).