
FINAL NOTICE

To: David Massey

Date of Birth: 10 June 1965

Date: 21 February 2011

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the “FSA”) has taken the following action:

ACTION

1. The FSA gave Mr David Massey (“Mr Massey”) a Decision Notice on 4 December 2009. This imposed on him a financial penalty, pursuant to section 123(1) of the Financial Services and Markets Act 2000 (“the Act”), for engaging in market abuse and a prohibition order, pursuant to 56 of the Act, prohibiting Mr Massey from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm on the grounds that he is not a fit and proper person.
2. On 21 December 2009 Mr Massey referred the matter to the Upper Tribunal (Tax and Chancery Chamber) (“the Tribunal”). The written decision of the Tribunal was published on 2 February 2011, which is located on the Tribunal’s website. The Tribunal determined that the FSA should impose on Mr Massey the following:
 - 2.1 a financial penalty of £150,000 pursuant to section 123(1) of the Financial Services and Markets Act 2000 (the “Act”), for engaging in market abuse; and

- 2.2 a prohibition order, pursuant to section 56 of the Act, prohibiting Mr Massey from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm on the grounds that he is not a fit and proper person.
3. With effect from 21 February 2011 the FSA hereby makes an order prohibiting Mr Massey from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm and imposes a financial penalty of £150,000 on Mr Massey.

REASONS FOR THE ACTION

Summary

4. As is set out more fully in the Tribunal's decision, Mr Massey committed market abuse in November 2007. In summary, on 1 November 2007 Mr Massey was in possession of inside information concerning Eicom plc ("Eicom") a company then listed on the Alternative Investment Market of the London Stock Exchange. The inside information which Mr Massey possessed was that Eicom had expressed its willingness, short of a legally binding commitment, to issue up to 3 million shares (then more than 9 per cent of Eicom's existing issued share capital) at 3.5p per share (then a 59 per cent discount to the market price) to Mr Massey. Mr Massey knew that it was very likely that Eicom would proceed to issue 3 million shares, or a lesser but still very substantial number, at 3.5p per share, if he requested them to do so.
5. By a series of emails Mr Massey agreed with Eicom that it would hold the offer to issue the shares open until 2 November 2007. On the morning of 1 November 2007 Mr Massey sold short 2.5 million Eicom shares to a third party for 8p per share. Almost immediately afterwards Mr Massey contacted Eicom stating that he would like to purchase 2.6 million Eicom shares at a price of 3.5p per share, as had previously been discussed. Although Eicom's willingness to issue shares to Mr Massey was not legally binding, Mr Massey was aware that it was very likely that the company would do so. In the event Eicom did issue the 2.6 million shares to Mr Massey thereby enabling him to cover his short position on the 2.5 million shares he had sold earlier at 8p per share. This transaction resulted in Mr Massey making a personal profit of £111,474.
6. On the afternoon of 2 November 2007 Eicom issued a Regulatory News Service ("RNS") announcement stating that the company had issued 4,283,740 Eicom shares at an average price of 3.4p per share.¹ 43 seconds after the RNS announcement Eicom's share price began to fall, eventually closing the day at 4.5p per share (a fall of 47 per cent from the opening price of 8.5p per share).

¹ Of the 4,283,740 shares Eicom announced the issue of on 2 November 2007, 2.5 million were issued to Mr Massey and the remaining 1,783,740 were issued to a third party.

7. In the days following the announcement Mr Massey made misleading statements to his employer and his employer's compliance consultant as to the circumstances surrounding the transaction, including stating that he barely knew Eicom when he had in fact previously worked as a consultant for the company, and that the issue of shares which he purchased were part of a series of pre-announced Eicom placings. However, whilst these statements were misleading, the Tribunal concluded that '*These were not premeditated attempts to deceive. ... Mr Massey is liable to persuade himself of a distorted version of the facts when he feels that his interests are at stake*'.²
8. The Tribunal found that in engaging in market abuse contrary to the Act Mr Massey lacked the necessary honesty and integrity to be a fit and proper person. The Tribunal's decision included the following passage:

*By engaging in market abuse, and persuading himself on inadequate grounds that he was entitled to act as he did, Mr Massey contravened the standards of the regulatory system. By misleading Ms Bhattacharjee and Mr Zimmerman concerning the true facts, he failed to act to an appropriate standard of honesty and integrity. His distortions of the truth give strong cause for concern. On the evidence of this case he is in our view not a fit and proper person, and a prohibition order is justified.*³

IMPORTANT

9. This Final Notice is given in accordance with section 390 of the Act.

Manner of and time for payment

10. The financial penalty of £150,000 must be paid in full by Mr Massey by no later than 7 March 2011, 14 days from the date of the Final Notice.

If the financial penalty is not paid

11. If all or any of the financial penalty is outstanding on 8 March 2011, the FSA may recover the outstanding amount as a debt owed by Mr Massey and due to the FSA.

Publicity

12. 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 a manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to Mr Massey or prejudicial to the interests of consumers.

² DAVID MASSEY – and – THE FINANCIAL SERVICES AUTHORITY FIN/2009/0024, paragraph 50.

³ DAVID MASSEY – and – THE FINANCIAL SERVICES AUTHORITY FIN/2009/0024, paragraph 56

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

FSA contacts

14. For more information concerning this matter generally, you should contact Andrew Speake or Richard Topham at the FSA (direct line: 020 7066 5564 / 020 7066 1180).

Tracey McDermott
Head of Department
FSA Enforcement & Financial Crime Division