
FINAL NOTICE

To: Andre Jean Scerri
Date of Birth: 1 August 1973
Date: 29 October 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 ACTION

- 1.1. The FSA gave Andre Jean Scerri ("Mr Scerri") a Decision Notice on 23 July 2009 which notified Mr Scerri that pursuant to Section 118 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty of £46,062.50 on Mr Scerri in respect of market abuse in the form of insider dealing.
- 1.2. Mr Scerri referred the matter to the Upper Tribunal (Tax and Chancery Chamber) (the "Tribunal"). The Tribunal, in a written decision dated 17 June 2010 determined that Mr Scerri had committed market abuse in the form of insider dealing. In a further written decision dated 6 October 2010 the Tribunal determined that:
- (1) Mr Scerri's profits of £46,062.50 should be disgorged by way of financial penalty; and
 - (2) an additional financial penalty of £20,000 should be imposed upon Mr Scerri.

Both decisions can be found on the Tribunal's website.

- 1.3. Accordingly, for the reasons set out below, the FSA imposes a financial penalty on Mr Scerri in the amount of £66,062.50.

2. REASONS FOR THE ACTION

- 2.1. Mr Scerri was a private retail investor. He took positions in various AIM shares, using a broker and trading on an execution only basis. One of the shares which Mr Scerri traded was Amerisur Resources plc (“Amerisur”). This was an oil and gas exploration company, which was then called Chaco Resources plc.
- 2.2. On 23 May 2007, Mr Scerri had a long position in Amerisur through CFDs equivalent to 1,785,000 shares. At 9.27am, Scerri placed an order with his broker to increase this long position by purchasing CFDs equivalent to 150,000 shares at a price of 9.25 pence.
- 2.3. Shortly after placing this call with his broker, Mr Scerri received inside information from a fellow shareholder, at 10:00am and 10.12am, that Amerisur would announce a placing at a discount to the market price the next day. On the basis of this inside information, Mr Scerri placed sell orders to his broker between 10.16am and 10.34am, selling down his existing long position in Amerisur at a price of 8.875 pence (with respect to 1 million shares) and 8.75 pence (with respect to 785,000 shares). Mr Scerri cancelled his original buy order.
- 2.4. Mr Scerri received a call from Amerisur’s NOMAD at 10.28am informing him about the placing and formally making Mr Scerri an insider. Mr Scerri was invited to participate in the placing and he agreed to subscribe to 1.5 million shares at a price of 6 pence.
- 2.5. As a result of acting on inside information, Mr Scerri was able to sell his shares in Amerisur and subscribe at the much cheaper placing price. As a result, he made an economic gain of £46,062.50 (or avoided a loss of this amount).
- 2.6. In its Decision dated 17 June 2010, the Tribunal rejected Mr Scerri’s account of events and his claim that he was acting upon “rumour”. The Tribunal stated:

“Mr Scerri, we think knew from the start (when he received the [communication from the insider]) that that information was not in the public domain and this was confirmed by the [Amerisur’s NOMAD] telephone conversation. With those factors in mind we cannot resist the conclusion that [Mr Scerri] was fully aware that this information given him by [the insider] and then by [Amerisur’s NOMAD] was price sensitive and not yet in the public domain; it must have been inside information.”
- 2.7. The Tribunal accordingly concluded that *“as a matter of law Mr Scerri committed market abuse as alleged by the FSA.”*
- 2.8. On the question of penalty, the Tribunal noted that the FSA had originally sought £46,062.50 reflecting the amount of Mr Scerri’s gain and whilst the FSA considered an additional penalty of £20,000 to be appropriate given Mr Scerri’s misconduct, the FSA had not sought to impose this on the basis of Mr Scerri’s statement of means which showed that he did not have the resources to pay an additional sum. However, recent information suggested that Mr Scerri may have understated his resources.

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2.9. The Tribunal therefore suspended deciding upon penalty until the parties had been able to consider the recent information and prepare submissions as to whether an additional penalty of £20,000 should be imposed on Mr Scerri.

2.10. In its Decision dated 6 October 2010 the Tribunal held that Mr Scerri's original statement of means was misleading and incomplete. Mr Scerri had failed to disclose a 50% holding in Harruba Estates, which owned properties:

“Haruba Estates, it appears, owned properties said to have a value of €1,227,782 which were mortgaged to secure a loan of €1,328,022 in June 2008. This had not been mentioned in Mr Scerri's statement of means.

The statement of means of February 2009 was misleading in that it stated that Mr Scerri was impecunious and specifically that it omitted to say that he had a 50% holding in Harruba Estates.”

2.11. The Tribunal concluded that Mr Scerri had failed to provide verifiable evidence that he would have suffered financial hardship had an additional penalty of £20,000 been imposed when the Warning Notice or Decision Notice was issued.

2.12. The Tribunal also considered Mr Scerri's current financial situation and heard evidence that *“in November 2009 and ending in April or May 2010 (with the hearing of the reference only a month off) Mr Scerri lost some £324,000 through hundreds (and possibly thousands) of trades in indices and currencies.”*

2.13. On the question of financial penalty, and considering Mr Scerri's current financial situation, the Tribunal accepted the FSA's submissions and imposed an additional penalty of £20,000 upon Mr Scerri. The Tribunal stated:

“The events of the five months leading to the hearing produced a financial disaster of Mr Scerri's own making. That disaster had nothing to do with the issue of whether Mr Scerri's behaviour in May 2007 amounted to market abuse. While the outcome of the trades in indices and currencies will have seriously affected Mr Scerri's solvency, we do not consider this to be a material consideration in the present case. Absent the impact of those trading losses, Mr Scerri should have been able to weather a £66,000 penalty without undue hardship. We see those trades and the losses caused by them as too remote. We see them and their outcome as self-induced damage to Mr Scerri's state of solvency. We think the right penalty is £66,000 and that that should be imposed irrespective of those recent trading losses.”

3. IMPORTANT

3.1. Final Notice is given to Mr Scerri in accordance with section 390 of the Act.

Manner of and time for Payment

- 3.2. The financial penalty of £66,062.50 must be paid in full by Mr Scerri to the FSA by no later than 12 November 2010, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 3.3. If all or any of the financial penalty is outstanding on 13 November 2010, the FSA may recover the outstanding amount as a debt owed by Mr Scerri and due to the FSA.

Publicity

- 3.4. 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.
- 3.5. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 3.6. For more information concerning this matter generally, you should contact Greg Brandman (Tel: 020 7066 3032) of the Enforcement and Financial Crime Division of the FSA.

Tracey McDermott
Head of Department
FSA Enforcement and Financial Crime Division