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# FINAL NOTICE

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To: Michael Ackers

Of: 250 Bishopsgate  
London  
EC2M 4AA

Date: 15 April 2003

**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 Pursuant to section 206 of the Financial Services and Markets Act 2000 (“the Act or FSMA”) and for the reasons set out below, the FSA has decided to impose a financial penalty of £70,000 on Michael Ackers in respect of a breach of former Principle 3 of the FSA Statements of Principle as applied in 1998 (“the former FSA Principles”).

1.2 You have agreed not to refer the matter to the Financial Services and Markets Tribunal. Accordingly, for the reasons set out below, the FSA imposes a financial penalty on you in the amount of £70, 000.

2. **RELEVANT STATUTORY PROVISIONS AND REGULATORY RULES**

2.1 Section 206 of FSMA 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.”*

2.2 The Financial Services and Markets Act 2000 (the Transitional Provisions and Failings) (Civil Remedies, Discipline, Criminal Offences etc) (2) Order 2001 (“the

Transitional Order”) provides, at Articles 7 & 8, that the powers conferred by sections 205 and 206 of FSMA apply in relation to any act of misconduct within the meaning of Rule 7.23(A)(3) of the Rules of the Securities and Futures Authority (“the SFA Rules”) as if the authorised person had contravened a requirement imposed by or under FSMA.

2.3 SFA Rule 7.23A(3) provided that:

*“an act of misconduct is -*

*(a) a breach of the rules of SFA;*

*(b) a breach of the [Financial Services] Act [1986] or the provisions made under it.”*

2.4 Former Principle 3 of the FSA Principles (“ former Principle 3”) stated that:

*“A firm should observe high standards of market conduct. It should also, to the extent endorsed for the purpose of this principle, comply with any code or standard as enforced from time to time and as it applies to the firm either according to its terms or by rulings made under it”.*

2.5 Rule 2-24 (3) of the SFA Rules stated that:

*“The [FSA] Principles apply directly to a registered person as they apply to a firm”.*

### **3. RELEVANT GUIDANCE**

3.1 There was no general guidance on what constituted market misconduct for the purposes of former Principle 3. Such guidance as there was, is to be found in related rules, for example Rules 2.10 and 14.11 of the London Stock Exchange Rules.

3.2 In addition, the Guidance Release 1/93 on *“Proper Trades in Relation to On-Exchange Derivatives”* issued in April 1993 by the Securities and Investment Board (“SIB”) contained general points which were *“relevant to the requirement on market practice in ... Principle 3”*. In particular, the guidance identified criteria relevant to determining what is and what is not a proper trade:

*“The expression 'proper trade' is intended as shorthand for 'proper trade for a particular person to undertake'. In other words, it looks at the trade from the viewpoint of a particular party to it. A trade may be improper for one of the parties, because of his improper purpose...*

*There are two situations in which a trade effected for a customer may be an improper trade. The first is where the firm has its own improper purpose in effecting the trade. The second is where the firm is taken to share the improper purpose of its customer, either because it is aware of that improper purpose or because it would have been, if it had not closed its eyes to it.”*

It also discussed what qualified as a *“proper trading purpose”*. Essential ingredients were that a trade was conducted at market risk and with a proper economic purpose.

To the extent that the price has been fixed in advance and is designed to distort the market price of the shares, it is an improper trade.

- 3.3 Similar considerations are found in the Code of Market Conduct which describes behaviour which will constitute market abuse where the principal effect of the transactions will be, amongst other things, to inflate the apparent price or value of a security so that a false or misleading impression is likely to be given to the regular user of the relevant market (MAR 1.5.8). The Code goes on to state:

*“A transaction which creates a false or misleading impression will not normally be considered to have a legitimate commercial rationale where the purpose behind the transaction was to ... move the price of [the security]”* (MAR 1.5.9).

While the Code is guidance for the purposes of the market abuse regime under FSMA and was not in force at the time, it reflects standards of market conduct built up over a period of time. It is therefore relevant to the issue of what standards prevailed in 1998.

- 3.4 In deciding whether to take disciplinary action, the FSA has regard to the Enforcement Manual of the FSA Handbook at Chapters 11-13. It must also have regard, when deciding to exercise its power under section 206 of FSMA, to any statement issued by the SFA in force at the relevant time with respect to the SFA's policy on the taking of disciplinary action (Transitional Order, paragraph 4 of article 8). The only statement of the SFA's policy was that contained in Board Notice 497. While that Board Notice was published in October 1998, it reflected the SFA's policy which was in force as to whether disciplinary action should be taken when the conduct in question took place.

#### 4. REASONS FOR THE ACTION

##### Summary

- 4.1 Michael Ackers an employee of ABN Amro Equities (UK) Ltd ("AAE") breached former Principle 3 of the FSA's Statements of Principle in failing to maintain high standards of market conduct in that:
- (a) on 30 April 1998, Mr Ackers accepted instructions to purchase shares in Carlton Communications Plc ("Carlton") in circumstances where he had strong reasons to suspect that the instructions were given to pursue an improper strategy to move the closing price of the stock to a particular level and were therefore improper;
  - (b) he effected the trades and further instructions knowing that they were or were likely to have a significant effect on the market price of the shares in Carlton. This amounted to a distortion of the market price of the shares;
  - (c) Mr Ackers breached the 3 minute reporting rules of the London Stock Exchange ("LSE") by deliberately delaying the reporting of agency crosses during the post close agency period in order to guarantee that the last trade reported at 17:15:00 was priced at an artificially high price;

- (d) Mr Ackers failed to report the trading instructions to either AAE senior management or to the compliance department.
- 4.2 By his conduct Mr Ackers demonstrated failings viewed by the FSA as serious taking account of the following factors:
- (a) Improper instructions to move the price of Carlton to close higher were initially received by two of Mr Ackers' traders ("the equity traders"). Those instructions also required the equity traders to close out the short position on their own book before trading on the market. The equity traders were very concerned as to the propriety of instructions and reported their concerns to Mr Ackers;
  - (b) Mr Ackers' seniority and experience should have alerted him to the impropriety of the order when first informed of it by the equity traders. In his own conversations direct with the US sales trader Mr Ackers did not challenge the propriety of what was proposed. Mr Ackers had strong reasons to suspect that the sales trader's underlying strategy remained improper; and
  - (c) Mr Ackers should have refused the order and reported the matter to his senior management and/or the compliance department.

#### **Facts and Matters Relied On**

- 4.3 Mr Ackers was the joint Head of the UK Equity Trading Desk and among other things managed and traded the GMAN01 general manufacturing book. Mr Ackers was registered with SFA as a General Representative from April 1992 and as a General Representative and Manager from December 1998. Since 1 December 2001 Mr Ackers has been regulated by the FSA as an approved person under FSMA.
- 4.4 At all material times and prior to the commencement of FSMA, AAE was an Authorised Person and bound by the SFA Rules. Since 1 December 2001, AAE has been an authorised person under FSMA and has been regulated by the FSA. AAE is part of the ABN Amro Bank NV Group and its principal activities are market making, customer facilitation and research in European equities on behalf of primarily institutional clients.
- 4.5 Mr Ackers was assisted on the GMAN01 Book by the equity traders, who were both registered with SFA as General Representatives.
- 4.6 ABN AMRO Inc ("AAI") is a member of the ABN AMRO group based in New York. At the material time the US sales trader from whom the instructions were received, was Head of the International Equities Sales Trading Desk at AAI in New York. The US sales trader was responsible for managing the client account of a US investment adviser.
- 4.7 During 1998 AAE, in order to increase business from US customers, sought to promote its customer services to the clients of AAI and in particular to those customers in the US ABN Amro Group had categorised as "Tier One". Tier One

clients were preferred clients who operated in equity markets and would be supported by quoting firm competitive prices, significant capital commitment and other research and trading services by the ABN Amro Group. AAE had maintained a list of Tier One clients from at least December 1996 and the importance of such clients was known to senior staff and traders of AAE. The customer referred to in this Notice was a Tier One Client.

- 4.8 AAE maintained a client facilitation book in Carlton, in order to make a market in the shares and to facilitate customer orders. Carlton's opening bid/offer spread on 30 April 1998 was 511/514p. During the course of the morning the desk received an order for 300,000 Carlton shares. However, there was limited liquidity in the stock and the equity traders, who were both working the order, were not able to fill it completely from the market. The order was completed by way of an agency cross and selling short from the GMAN01 Book, both at a price of 516p.
- 4.9 At 15:16:09, the US sales trader telephoned one of the equity traders and said that he needed to speak to him at around 16:15 later that day, that is 15 minutes before the close as they would be working on a "*special situation*" together. No order was placed by the US sales trader during this call.
- 4.10 At 16:06:47, the US sales trader telephoned the equity trader to give him instructions for an order on behalf of the US investment adviser. He instructed him to buy 500,000 shares and to close the stock at 550 to 555p. The US sales trader also urged the equity trader to close out the short proprietary position held on the GMAN01 book before executing the US investment adviser's buy order.
- 4.11 Between 16:19:38 and 16:21:03 the equity traders purchased 238,267 Carlton shares in twelve trades at prices ranging between 515.75p and 525p. As a result, the GMAN01 Book's short position of 233,969 Carlton shares was closed at a loss of approximately £10,000 before the equity traders began to work the US investment adviser's buy order. The result of this activity caused the bid/offer spread for Carlton to move up to 513/514p by 16:21:18.
- 4.12 During the course of the day, Mr Ackers had been involved in other matters and arrived on the GMAN01 desk between 16:19 and 16:23. On his return, the equity traders spoke to him to express their concerns about the US sales trader's instructions. In reporting to Mr Ackers they had properly reported their reservations to a senior member of staff. As a result of these conversations Mr Ackers was alerted to the impropriety of the US sales trader's instructions.
- 4.13 At 16:22:57 Mr Ackers telephoned the US sales trader and expressed his concern at what he understood to be the US sales trader's instructions. He expressed a willingness to carry out the US sales trader instructions and asked for a clarification of those instructions. The US sales trader's response was to restate his requirements as an order to buy 500,000 shares paying up to 555p somewhere near the close. If a balance of the 500,000 shares remained to be bought at the close, the US sales trader had a seller willing to sell him the stock. Mr Ackers confirmed he understood the instructions.

- 4.14 Mr Ackers' first purchase order was at 16:24:23 for 250,000 shares at a limit price of 525p. The bid/offer spread at that time was 517p to 524p. Between 16:24:07 and 16:26:15 Mr Ackers purchased a total of 44,104 Carlton shares at a price of 525p. His order remained on the book as a bid of 205,896 shares at a limit price of 525p. Mr Ackers' trading activity during this period represented 100% of all on order book trading activity and 93% of all trading activity (on and off the order book). By 16:26:57 the bid/offer spread for Carlton had moved up to 525.5p to 528p.
- 4.15 At 16:26:50 the US sales trader telephoned Mr Ackers. During that conversation, Mr Ackers informed the US sales trader that, although he had not bought much of the order as yet, he was still working on it. The US sales trader confirmed he was happy that Mr Ackers was involved and that he (Mr Ackers) knew what he (the US sales trader) was "*trying to do*".
- 4.16 Between 16:27:18 and 16:29:37, Mr Ackers bought 100,000 shares at 535p, 50,000 at 537p, 75,000 at 540p, 100,000 at 555p and 100,000 at 550p. Mr Ackers' trading during this period represented 100% of all on order book trading activity and 99% of all trading activity (on and off the order book). By 16:29:19, the bid/offer spread of Carlton had moved up to 550p-570p.
- 4.17 Mr Ackers' last order was entered at 16:29:17. Following the execution of this trade at 16:29:37, AAE took no further part in any order book activity in the remaining 23 seconds of trading prior to the close of the market at 16:30:00. At 16:30:00 the closing price of Carlton was set at 535.5p by trades between two other parties.
- 4.18 During the last ten minutes of trading, the price of Carlton moved from 515.75p to 535.5p, reaching a high of 555p, 56 seconds before the close of trading. AAE was responsible for 99% of these trades.
- 4.19 Following the close of trading, the US sales trader instructed Mr Ackers to purchase the remainder of the order, 26,596 shares, by way of agency cross at a price of 555p even though the stock had closed at 535.5p.
- 4.20 The US sales trader stressed to Mr Ackers that he wanted the "*closing print*" of Carlton to be 555p. At 16:34:20 Mr Ackers crossed 26,600 Carlton shares at 555p. The seller of the stock was another U.S. customer of the US sales trader.
- 4.21 Even though the original Carlton order had been filled, the US sales trader instructed Mr Ackers to sell by agency cross a further 73,400 shares and by that order to try, if possible, to achieve a final print of the day on Reuters of 555p. The US sales trader however asked Mr Ackers first to put through 23,400 shares of the order to see what, if any, further market activity occurred before putting through the balance of the order.
- 4.22 Although Mr Ackers informed the US sales trader that this would be in breach of the LSE trade reporting rules as the trade would already have been struck with only publication delayed, Mr Ackers input an agency cross at 16:49:28 for 23,400 Carlton shares and at 17:13:39 for 50,000 Carlton shares, both at 555p. The seller of the stock was again the US sales trader's other US customer.

- 4.23 Accordingly, Mr Ackers accepted and executed trading instructions from the US sales trader, on behalf of a customer, in circumstances where he had strong reasons to suspect that the instructions were given to pursue an improper strategy to move the closing price of Carlton to close higher.
- 4.24 He further accepted instructions to execute agency crosses during the post-close trade reporting period and to delay reporting them to the LSE in order to guarantee that the last trade reported that day in Carlton was priced at 555p. He also failed to report these instructions to senior management or compliance.

## **5. CONCLUSION ON CONTRAVENTIONS**

- 5.1 In deciding to give this Notice, the FSA has concluded that the circumstances of this case disclose a serious breach of former Principle 3 including misconduct involving a distortion of the price of Carlton shares with resulting loss or risk of loss to other market users (ENF 11.4.1).
- 5.2 Being a senior trader, Mr Ackers was in a position to reject the order outright, without necessarily consulting first with the compliance department or more senior management. The equity traders had quite properly reported the issue to him as their joint Head of Trading. Mr Ackers failed to take any steps either to reject or to report the order.
- 5.3 Mr Ackers accepted instructions from the US sales trader to purchase shares in Carlton in circumstances where he had strong reasons to suspect that the instructions were given to pursue an improper strategy to move the closing price of the stock to a particular level and was therefore improper. At no point, either before or after the acceptance or execution of the instructions, did he escalate the issue upwards or to the compliance department.
- 5.4 Moreover, Mr Ackers knew that execution of the order would have a significant impact on the price of the shares but nevertheless executed the order.

## **6. PENALTY**

- 6.1 In considering what action it should take in response to its conclusion that the circumstances of this case disclose a serious breach of former Principle 3, the FSA has had regard to the approved person status of Mr Ackers and whether it would be appropriate to withdraw his approval under section 63 of FSMA. The FSA noted in this regard that the SFA agreed with the Director of UK Equities at AAE, that his registration be suspended for a period of 3 years. There is no power to suspend registration as an approved person under FSMA and therefore no intermediate step between a financial penalty and withdrawal of approval.
- 6.2 The FSA concluded that it would not be appropriate to withdraw Mr Ackers' approval for the following reasons:

- (a) Mr Ackers' integrity is not directly impugned by the misconduct: he was seeking to manage a demanding client (albeit part of the same global group); while his conduct was inappropriate, it did not amount to a breach of former FSA Principle 1.
- (b) Mr Ackers did not follow through the US sales trader's instructions to their logical conclusion: he did not trade during the last 23 seconds before the close. Moreover, his last order (and trade) was below the market high of 555p achieved by his penultimate order. He may therefore have been taking some steps to mitigate the damage to the market and/or reduce the prospect of the LSE querying the trading.
- (c) While he was a senior trader with management responsibilities and therefore had no excuse for his improper conduct, Mr Ackers was unsupported by AAE in so far as there was an inadequate presence of compliance. He was denied the ability readily to plead compliance in aid of a refusal to accept the improper instructions from the US sales trader.

Accordingly, the FSA considers that the appropriate action is to impose a financial penalty under section 206 of FSMA.

- 6.3 In exercising its powers under section 206 of FSMA, the FSA must have regard to any SFA statement in force at the relevant time with respect to its policy on the imposition of and the amount of penalties (paragraph 8(4) of the Transitional Order). At the same time the FSA must have regard to its own guidance with regard to financial penalties. Therefore, in deciding the level of any financial penalty, the FSA has had regard to guidance published in the SFA Briefing Update 12 dated March 1996 ("Update 12"), being the relevant guidance in April 1998, and to the FSA Enforcement Manual at Chapter 13 ("ENF 13"). The FSA has also had regard to the levels of penalties imposed by the SFA in previous disciplinary cases of the SFA
- 6.4 The main purpose of imposing a financial penalty is to promote high standards of regulatory conduct (which includes expressing condemnation of the wrongdoing) by deterring approved persons who have breached regulatory requirements from committing further breaches, helping to deter others from committing contraventions and demonstrating generally to approved persons the benefits of compliant behaviour (ENF 13.1.2 and Update 12, paragraph 10).
- 6.5 The severity of the penalty should reflect the degree of wrongdoing in each case and be proportionate to the breach in question. The level of financial penalty should also take account of all the relevant circumstances of the case (ENF 13.3.1 and Update 12 paragraph 11).
- 6.6 Particular factors which are relevant to determining the amount of the financial penalty include:
  - (a) The misconduct in this case was very serious in the context of the need to maintain the integrity of UK financial markets, the underlying purpose of former Principle 3.



- (b) Mr Ackers accepted the instructions after being alerted to the impropriety, by the equity traders. He had strong reasons to suspect that the purpose of the instructions was to move the price of Carlton to close higher.
- (c) Accordingly, he accepted and executed the instructions, having reasons strongly to suspect the US sales trader's strategy and knowing the likely effect of his trading. He understood that the manner of his trading would or would be likely to distort the price of the shares and the improper trading could have had a serious effect on market confidence. Moreover, his actions facilitated improper conduct by AAI.
- (d) Mr Ackers' seniority and experience should have led him to refuse the order and report the matter to the compliance department and/or senior management.
- (e) Mr Ackers' bonus compensation for 1998 was reduced following AAE's findings on the conclusion of its internal disciplinary process.
- (f) The investigation process and the subsequent trading guidance from AAE have contributed to Mr Ackers having learned valuable lessons in relation to the management of the trading referred to in this Notice.

6.7 In all the circumstances, and making due allowance for the extent to which Mr Ackers has co-operated with SFA and the FSA in their investigations, the FSA has concluded that the appropriate financial penalty is £70,000.

## **IMPORTANT**

This Final Notice is given to you in accordance with section 390 of FSMA.

### **Manner of payment**

The amount of £70,000 must be paid to the FSA in full.

### **Time for payment**

The penalty must be paid to the FSA no later than 30 April 2003, being not less than 14 days beginning with the date on which this notice is given to you.

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

If all or any of the penalty is outstanding on 30 April 2003, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

## **Publicity**

Sections 391(4), 391(6) and 391(7) of FSMA 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. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair or prejudicial to the interests of consumers.

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

## **FSA Contacts**

For more information concerning this matter generally you should contact Sunita Babbar of the Enforcement Division at the FSA (direct line: 020 7676 1466/ fax 020 7676 9721)

Martyn J Hopper  
Head of Market Integrity  
FSA Enforcement Division