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## FINAL NOTICE

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To: **Rameshkumar Satyanarayan Goenka**

DOB: 12/05/1945

Date: 17 October 2011

### 1. ACTION

- 1.1. For the reasons given in this Notice, the FSA hereby imposes on Mr Goenka a financial penalty of USD 6,517,600 (approximately £4.0 million) plus restitution of USD 3,103,640 (approximately £1.9 million) which will be passed on by the FSA to the institution which has suffered a loss as a result of Mr Goenka's actions.
- 1.2. The total penalty sum the FSA hereby imposes on Mr Goenka (penalty plus restitution) is therefore USD 9,621,240 (GBP £ 6,108,707 equivalent).

### 2. SUMMARY OF REASONS

- 2.1. The FSA decided to take this action because Mr Goenka placed orders to trade which artificially inflated the closing price of Reliance GDRs, an instrument traded on the International Order Book of the London Stock Exchange, on 18 October 2010. Mr Goenka arranged for a series of substantial and pre-planned trades in

those securities to be executed in the final seconds of the LSE closing auction. The orders were placed with the intention of increasing the closing price for Reliance GDRs above a certain level. At the time, Mr Goenka held a structured product on which the pay-out depended on the closing price of Reliance GDRs that day. By increasing the closing price, Mr Goenka was able to avoid a loss of USD 3,103,640 under the terms of the structured product.

- 2.2. The FSA has concluded that Mr Goenka's actions amounted to market abuse (market manipulation) contrary to section 118(5) of the Financial Services and Markets Act 2000, and decided to impose a financial penalty under section 123(1) of the Act of USD 6,517,600.
- 2.3. Mr Goenka agreed to settle at an early stage of the FSA's investigation and has therefore qualified for a 30% (Stage 1) discount under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of USD 9,310,920.
- 2.4. In addition, the FSA hereby requires Mr Goenka to pay restitution of USD 3,103,640 pursuant to section 384(5) of the Act, which will be passed on to the counterparty to the structured product, who paid Mr Goenka an increased amount as a direct result of Mr Goenka's manipulation of the price of Reliance GDRs.
- 2.5. The FSA considers that Mr Goenka's misconduct was serious and has taken account of:
  - a) the fact that Mr Goenka had planned to engage in similar behaviour in April 2010 in relation to another structured product that he held;
  - b) the fact that Mr Goenka's misconduct involved considerable pre-planning. The trading concerned necessitated very substantial financial outlay and involved others; and
  - c) Mr Goenka's extensive experience as an investor.

### **3. DEFINITIONS**

- 3.1. The following definitions are used in this Notice:

“the Act” means the Financial Services and Markets Act 2000.

“Closing Auction” means the closing auction of the LSE. This is a limited-period auction which takes place at the

close of the main trading session. The results of the closing auction determine the closing price of listed securities.

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| “the FSA”   | means the Financial Services Authority.   |
| “GDRs”      | means Global Depository Receipts. These are parcels of shares in a particular company, which are listed and traded on international exchanges separately from the company’s shares. One GDR is equivalent to a multiple of the underlying security. |
| “Mr Goenka” | means Mr Rameshkumar Satyanarayan Goenka.   |
| “IOB”       | means the International Order Book of the London Stock Exchange.  |
| “LSE”       | means the London Stock Exchange.  |
| “Reliance”  | means Reliance Industries Limited.  |

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

##### *Mr Goenka*

- 4.1. Mr Goenka is an Indian businessman who has been living in Dubai for the last 12 years. He is a prominent and sophisticated investor with a substantial portfolio of investments.
- 4.2. Mr Goenka is not a member of the LSE and so can only trade on its markets through a member firm.

##### *The Structured Products*

- 4.3. The following two structured products (together “the Structured Products”) were purchased by Mr Goenka in 2007 and are referred to in this Notice. He purchased the Structured Products through accounts held with one of his banks:
  - a) A “3Y USD Phoenix Plus Worst of Gazprom/ Lukoil/ Surgut” issued on 30 April 2007 which had a maturity date of 30 April 2010 (“Structured Product 1”).

- b) An “Airbag Leveraged Laggard Note on Indian ADR – Private Placement” issued on 17 October 2007 which had a maturity date of 18 October 2010 (“Structured Product 2”).
- 4.4. The Structured Products each had a cost (face value) of USD 10 million.
- 4.5. The Structured Products related to a basket of three GDRs, representing shares in three different companies, as follows:
- a) In relation to Structured Product 1 the three GDRs concerned related to Russian companies, Gazprom, Lukoil and Surgutneftegaz.
  - b) In relation to Structured Product 2 the three GDRs concerned related to Indian securities, Reliance Industries, ICICI Bank and HDFC Bank.
- 4.6. For both the Structured Products the final payout to Mr Goenka was dependent on the closing price of the worst performing or “laggard” of the three different GDRs on the stated maturity dates. To determine the payout, the closing price of the laggard GDR would be judged against two figures being (a) the initial price of the “laggard” and (b) a pre-determined and lower “knock-in price”. Depending on the closing price of the “laggard” in relation to these two markers Mr Goenka would achieve one of the following outcomes:
- a) If the closing price was higher than its initial price, Mr Goenka would be paid an uplift (based on a formula) over and above the USD 10 million face value (a win scenario).
  - b) If the closing price was above the “knock-in price” but below its initial price the face value of USD 10m would be repaid (a break-even scenario).
  - c) If the closing price was below the “knock-in price” Mr Goenka would receive a pre-determined number of the laggard GDRs, whose value would be substantially less than the face value he had paid for the structured product (a loss scenario). The lower the closing price the larger would be the loss realised by Mr Goenka.

#### *The Closing Auction*

- 4.7. The closing price for the GDRs on which the Structured Products were based was determined by the closing auction on the LSE’s IOB. The initial phase of the closing auction, starting at 15:30 GMT, lasts for ten minutes and is known as the auction call phase. During this phase, member firms place orders that are recorded by the exchange but do not immediately result in a trade. Each time an order is entered, deleted or amended, the theoretical price and theoretical volume that will result from the closing auction is re-calculated.

- 4.8. The theoretical price and volume, known as the Indicative Uncrossing Price (the “IUP”) and the Indicative Uncrossing Volume (the “IUV”) are visible to the member firms.
- 4.9. Subsequently, in the price determination/uncrossing phase of the auction, the exchange seeks to match orders for each stock. This occurs at a randomly determined time, in a thirty second period after the end of call phase, between 15:40:00 and 15:40:30 GMT. At that randomly determined time, the exchange runs an algorithm that seeks to optimise the volume of securities executed. The algorithm determines the price for each security at which the greatest volume can be traded and matches the orders accordingly; this is the closing price. Once the algorithm has been applied, the exchange disseminates the closing price and advises member firms, whose orders have been executed, of the trades.

*The performance of the structured products*

- 4.10. In the event, the worst performing securities in the baskets of GDRs were as follows:
- a) Gazprom for Structured Product 1.
  - b) Reliance for Structured Product 2.
- 4.11. In relation to both Structured Products, as the respective maturity dates approached, indicative prices were close to the “knock-in price” levels and therefore there was a degree of uncertainty as to whether Mr Goenka would recover his outlay under the Structured Products or realise a financial loss.

*The plan to manipulate closing prices*

*a) The Gazprom plan*

- 4.12. Structured Product 1 was due to reach maturity on 30 April 2010. The lower “knock-in price” for Gazprom was USD 23.91; in the course of the month Gazprom GDRs were trading between USD 23.10 and USD 25.57.
- 4.13. In early April 2010 A, a London-based investment adviser to Mr Goenka, approached B, a London-based broker, on behalf of Mr Goenka, to establish whether it was possible to increase the closing price of certain GDRs on a given date by placing large trades in the LSE closing auction.
- 4.14. On 22 April 2010 A called B to discuss the practicalities of trading in a closing auction. At that time B asked the names of the two stocks to be traded and was

told “*Reliance*” and “*Gazprom*”. A said that A would arrange a conference call to put B in touch with “*this person in Dubai*”, that person being Mr Goenka.

- 4.15. Later that day a conference call took place during which A introduced Mr Goenka to B. Mr Goenka’s opening comment was “*I just want to understand how this auction works ...in terms with IOB*”. B then proceeded to explain the closing auction process in considerable detail. In particular, B explained the likely price movements that might result from placing orders of various sizes. Mr Goenka explained that he was looking to trade in Gazprom first and explored with B the necessary steps for increasing the closing price, the latest time at which an order could be placed and a number of working examples were discussed. In the course of the call Mr Goenka asked “*Can I ask you now closing at 23.42... if I want to make it 23.45 how can we do it?*”. B replied “*you will have to clear out everyone that was selling at 42 and for safety’s sake go all the way to somebody closing at 46...*” The parties arranged for Mr Goenka to set up an online video calling account in order that Mr Goenka could see B’s screen in real time whilst B was trading in the auction.
- 4.16. Mr Goenka stressed to B that there should be a number of practice runs before actual trading. Mr Goenka said there would be time to observe between 5 and 10 auctions before the actual trading and that they would have “*a few trial runs*” in order to “*try to minimise the mistakes*”.
- 4.17. On 29 April 2010 a conference call took place between Mr Goenka, B and A. The three parties discussed arrangements for the following day’s trading. B confirmed that B had increased B’s firm’s trading limit from £30 million to £50 million in order to facilitate the Gazprom trading Mr Goenka required. The parties discussed the course of action to be taken if that limit were to be exceeded and they also explored the very latest time at which it would be possible to enter orders in the auction.
- 4.18. Mr Goenka decided on a two-pronged approach to the manipulation of the GDR price for Gazprom. Firstly, Mr Goenka would be ready to execute substantive trades in the market (pre-auction) in order to ensure that the price remained at a level close to the “*knock-in price*” going into the closing auction. Secondly, Mr Goenka would place a series of substantial trades in the final seconds of the closing auction in order to ensure the closing price was at or above the level he desired.
- 4.19. In relation to the first stage of the plan, during the day on 30 April 2010 Mr Goenka purchased three tranches of Gazprom GDRs on the LSE, totalling 225,000 GDRs, at a cost of approximately USD 5,363,759. The three trades concerned were executed by Mr Goenka in order to ensure that the price of Gazprom going in to the auction remained at a level that Mr Goenka could then raise to his desired level by virtue of the orders he intended to execute in the auction.

- 4.20. At 2.11pm on 30 April 2010 B was provided with a list of the orders Mr Goenka wished B to place in the closing auction. The orders were all at price levels above any of the trading in Gazprom GDRs so far that day. The cost of the orders totalled USD 66 million dollars. B was informed by A that B should enter all of the orders on to B's trading system in preparation for the auction and that A would inform Mr Goenka. B duly confirmed that B had done this. Mr Goenka subsequently called B and asked that they speak by unrecorded mobile telephone in relation to the trading. Subsequently, calls were made on both recorded lines and on mobile telephones.
- 4.21. The price of Gazprom GDRs prevailing in the market at the time the orders were sent to B (at 2.11pm) was approximately USD 23.84, USD 0.07 below the knock-in price. However, shortly before the auction was due to commence President Putin made a live announcement on Russian television about a proposed merger of Gazprom and the Ukrainian gas company Naftogaz. The price of Gazprom securities fell on the news.
- 4.22. Mr Goenka was informed of the Putin announcement and its impact. As a result of the Putin announcement Mr Goenka instructed B not to proceed with the planned auction trading because the Gazprom price had moved too far to be manipulated. B noted that the plan "*will now need much more money and won't be worth it*". At 3.36pm Mr Goenka called A to inform A that "*we're not doing anything, we've lost the game*". Mr Goenka explained to A that "*basically, what happened is the Putin news came out... the stock went down 2% so we can't do anything*".

*b) The Reliance plan*

- 4.23. As with Structured Product 1, the payout for Structured Product 2 was dependent on the closing price of the "laggard" (Reliance) in comparison to a "knock-in price" on the maturity date of 18 October 2010. The "knock-in price" for Reliance was USD 48.65.
- 4.24. In early October 2010 Mr Goenka informed A that he wished to buy Reliance GDRs and participate in the LSE closing auction on 18 October 2010. A put Mr Goenka in touch with B so that he could "*directly transact*".
- 4.25. On 11 October 2010 Mr Goenka spoke to B directly to discuss trading in Reliance. Mr Goenka informed B that "*there is an enhancement job to do*". Mr Goenka asked B to "*think of a strategy for ourselves, our strike is there*" and "*we have to take ourselves up higher*". B said that together they would "*think about what to do*".

- 4.26. On the morning of 18 October 2010 B spoke with Mr Goenka regarding the trading plans for that day's auction. The opening price for Reliance GDRs that morning was USD 47.20. B assured Mr Goenka he should not worry as "*it will happen in the last ten seconds*". Another call followed between B and Mr Goenka in which they discussed tactics.
- 4.27. At 3.19pm, approximately 10 minutes before the auction commenced, Mr Goenka called B to confirm his orders for the auction trade. At the time Reliance GDRs were trading at USD 48.28. Mr Goenka provided B with details of the following orders that he wished to place:
- simultaneous buy and sell orders of 100 GDRs at USD 48.69;
  - simultaneous buy and sell orders of 100 GDRs at USD 48.71;
  - an order to buy 18,000 GDRs at market. An order at market has no price limit and is given priority in the uncrossing phase of the auction;
  - an order to buy 770,000 GDRs at USD 48.71;
  - a further standby order of 351,000 GDRs at USD 48.69 to act as "a cushion" and only be released on Mr Goenka's order.
- 4.28. Taken in their entirety, Mr Goenka's orders were equivalent to 280% of the average daily volume of trading in Reliance GDRs at that time. All the orders were above the knock-in price and the level at which the GDRs were trading at the time. In total the orders, if filled in their entirety, would have required an expenditure of approximately USD 55.4 million.
- 4.29. Mr Goenka informed B that the order to buy 18,000 GDRs at market and the order to buy 770,000 GDRs at USD 48.71 should be entered at 3:39:54 pm (i.e. six seconds before the auction close). Mr Goenka said he would instruct B at 3:39:54 pm whether the final "cushion" order of 351,000 was necessary. In a later call both agreed that six seconds was too little time for B to operate and that B would therefore place the orders for 18,000 and 770,000 eight seconds before auction close.
- 4.30. Mr Goenka was in continuous contact with B during the closing auction. During that time the first four orders were placed. The order to buy 18,000 at market was entered at 3:39:50 pm, and the order to buy 770,000 at USD 48.71 was entered at 3:39:52 pm, ten and eight seconds respectively before the start of the randomisation period. The "cushion" order to buy 351,000 was not entered.



- 4.31. Prior to entering that final order for 770,000 GDRs the Reliance IUP was USD 47.93, 72 cents below the “knock-in price” of USD 48.65. The impact of Mr Goenka’s orders was to increase the IUP price to USD 48.71, 6 cents above the “knock-in price”. This higher indicative IUP was maintained throughout the remainder of the auction, and became the uncrossing, or closing, price. The increase from USD 47.93 to USD 48.71 represented a percentage increase of 1.7%. Mr Goenka’s orders in the closing market were not all filled: the 193,550 GDRs he did purchase represented 46% of that day’s trading volume and 90% of the trading in the closing auction. Had the final order entered by Mr Goenka for 770,000 GDRs been filled in its entirety that single order would have cost him USD 37.5 million and would have represented over 200% of the average daily trading volume for Reliance GDRs at the time.
- 4.32. At the conclusion of the auction Mr Goenka told B that he really appreciated B’s efforts and that B was “*the world’s number one broker*”, and assured B of good business in the future.
- 4.33. The price of Reliance GDRs dropped back the next day to close at USD 47.10. Mr Goenka sold the Reliance GDRs he had acquired. By spreading the sales over several days (between 21 October 2010 and 29 October 2010) Mr Goenka was able to avoid a loss on the disposal.
- 4.34. As a result of the price achieved in the auction by Mr Goenka he was paid USD 10 million by the issuing bank under Structured Product 2. Had the Reliance price remained at its last indicative auction uncrossing level of USD 47.93, which was below the “knock-in” price, Mr Goenka would only have received 143,884 Reliance GDRs from the issuing bank, with a value of USD 6,896,360, which would have equated to a loss on Structured Product 2 of USD 3,103,640.

## 5. FAILINGS

- 5.1. The relevant statutory and regulatory provisions and excerpts from the Code of Market Conduct, issued by the FSA under section 124 of the Act, are contained in the Annex.
- 5.2. In particular, the FSA notes the following specific example of market abuse (price manipulation) contained in the Code of Market Conduct at MAR 1.6.15E:

*“a trader buys a large volume of commodity futures, which are qualifying investments, (whose price will be relevant to the calculation of the settlement value of a derivatives position he holds) just before the close of trading. His purpose is to position the price of the commodity futures at a false, misleading, abnormal or artificial level so as to make a profit from his derivatives position”.*

- 5.3. The FSA has concluded that, on 18 October 2010, Mr Goenka engaged in market abuse contrary to section 118(5) of the Act by effecting orders to trade which gave a false or misleading impression as to the demand for and price of Reliance GDRs. Further, the trading activity secured the price of those securities at an artificial level.

*Qualifying investments*

- 5.4. Mr Goenka's behaviour was in relation to qualifying investments admitted to trading on a prescribed market within the terms of section 118(1)(a) of the Act.

*Legitimate reasons and accepted market practices*

- 5.5. The orders to trade were not effected for legitimate reasons and in conformity with accepted market practices:
- (1) The orders to trade were planned and executed to move the price of Reliance GDRs to close at a level above the "knock-in price" of USD 48.65. Mr Goenka needed to achieve this price movement in order to avoid a loss (of approximately USD 3.1million) under Structured Product 2, of which he was the sole beneficiary. Mr Goenka therefore had an actuating purpose behind the trading and the trading strategy was carefully pre-planned. In order to execute the plan Mr Goenka directed considerable resources (in excess of USD 54 million) to facilitating the price movement.
  - (2) In addition Mr Goenka's trading activity was not in conformity with accepted market practices; there were no such practices in the relevant market at the time.

*False or misleading impression*

- 5.6. Mr Goenka's orders were all at a price above the prevailing market price. The price of Reliance GDRs closed at USD 48.71 which was USD 0.78 cents higher than the indicative price of USD 47.93 prior to the entry of Mr Goenka's orders in the final seconds of the closing auction. Mr Goenka's purchase of 193,550 Reliance GDRs in the closing auction was the vast majority of the trading in that security in the auction, and 46% of the day's trading in Reliance GDRs. His purchases were subsequently unwound.

*Artificial level*

- 5.7. In addition, the size, timing and pricing of Mr Goenka's orders were designed to secure the closing price above the knock-in price on Structured Product 2 and to prevent other market participants from having time to react. Mr Goenka's instructions to place the orders in the last few seconds of the auction effectively

ensured that there would be little or no time for potential sellers to enter orders in response to the buy orders entered by B. The trading successfully positioned the price USD 0.78 higher than the indicative price immediately before the trades were placed. This was an artificial level, not reflective of the proper interplay of supply and demand in the market.

- 5.8. The FSA considers that Mr Goenka's sole purpose in trading in Reliance GDRs on 18 October 2010 was to secure their price at an artificial level that was favourable to him, to avoid losses on Structured Product 2. His behaviour was a deliberate manipulation of the market.

### *Conclusion on market abuse*

- 5.9. In the circumstances described above the FSA finds that Mr Goenka engaged in market abuse in October 2010 contrary to section 118(5) of the Act. Mr Goenka's earlier behaviour in relation to Gazprom in April 2010 is relevant to Mr Goenka's trading in Reliance GDRs in October 2010. Mr Goenka's behaviour in relation to Gazprom is further evidence that the Reliance market manipulation was deliberate and carefully planned.
- 5.10. Pursuant to section 123(1) of the Act the FSA may therefore impose a penalty of such amount as it considers appropriate on Mr Goenka.

## **6. SANCTION**

- 6.1. Under section 123(1) of the Act, the FSA may impose a penalty on any person if it is satisfied that he has engaged in market abuse. Under section 123(2) of the Act, the FSA may not impose a penalty if there are reasonable grounds for it to be satisfied that he believed on reasonable grounds that his behaviour did not amount to market abuse, or that he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which amounted to market abuse. The FSA does not consider that there are reasonable grounds for it to be so satisfied in this case.
- 6.2. The FSA's policy on imposing a financial penalty is set out in Chapter 6 of DEPP, relevant excerpts of which are contained in the Annex.
- 6.3. The principal purpose of imposing a financial penalty is to promote high standards of regulatory and market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter others from committing breaches and demonstrating generally the benefits of compliant behaviour (DEPP 6.1.2G).

- 6.4. In enforcing the market abuse regime, the FSA's priority is to protect prescribed markets from any damage to their fairness and efficiency caused by the manipulation of shares in relation to the market in question. Effective and appropriate use of the power to impose penalties for market abuse will help to maintain confidence in the UK financial system by demonstrating that high standards of market conduct are enforced in all UK regulated markets.
- 6.5. In determining whether to take action for a breach and, if so, what action is appropriate and proportionate, the FSA considers all the relevant circumstances of the case (DEPP 6.2.1G and DEPP 6.4.1G). For the reasons set out below, the FSA has decided that it is appropriate to impose a financial penalty on Mr Goenka.
- 6.6. As the behaviour in this case occurred after 6 March 2010 the FSA's new penalty regime applies. The FSA applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5C sets out the details of the five-step framework that applies in respect of financial penalties to be imposed on individuals in market abuse cases.

#### Step 1: Disgorgement

- 6.7. Pursuant to DEPP 6.5C.1G, at Step 1 the FSA seeks to deprive an individual of the financial benefit derived as a direct result of the market abuse (which may include the loss avoided) where it is practicable to quantify this.
- 6.8. In relation to Structured Product 2, Mr Goenka avoided a loss of USD 3,103,640 as a result of the market abuse.
- 6.9. As set out in paragraph 6.31 below, the FSA requires Mr Goenka to pay restitution in the full amount of the loss he avoided. As a result there is no further benefit to him derived from his market abuse, and so the Step 1 figure is nil.

#### Step 2: The seriousness of the market abuse

- 6.10. Mr Goenka's market abuse was not referable to his employment therefore the appropriate basis for calculation at Step 2 is the loss he avoided as a result of his market abuse i.e USD 3,103,640.
- 6.11. Pursuant to DEPP 6.5C.2G, at Step 2 the FSA determines a figure that reflects the seriousness of the market abuse. That figure is based either on the individual's relevant income (where the abuse relates to their employment) or by reference to a profit multiple which reflects the seriousness of the market abuse.
- 6.12. The market abuse engaged in by Mr Goenka was not connected to any employment and therefore, pursuant to DEPP 6.5C.2 G (3), the seriousness is to be reflected in a multiple of the profit made or loss avoided reflecting the level of seriousness set out in DEPP 6.5C.2 G (8) as follows:

- a) Level 1 – profit multiple of 0;
- b) Level 2 – profit multiple of 1;
- c) Level 3 – profit multiple of 2;
- d) Level 4 – profit multiple of 3; and
- e) Level 5 – profit multiple of 4.

6.13. In assessing the seriousness level, the FSA takes into account various factors which reflect the nature and impact of the market abuse and whether it was committed deliberately or recklessly.

6.14. DEPP 6.5C.2G(16) lists factors which are likely to be considered factors in favour of seriousness between levels 1 to 3. A level 1 to 3 status would be appropriate where little or no profits were made (or losses avoided), where there was no or limited actual or potential effect on the orderliness of or confidence in markets, and where the market abuse was committed negligently or inadvertently.

6.15. The FSA does not consider any of these factors to apply to this case. The loss avoided was substantial. Manipulation of prices for ulterior motives poses a very real risk to the orderliness of and confidence in the markets. Further, the reasons discussed for the trading and the very careful planning that took place prior to the trading exclude any suggestion that the market manipulation was committed negligently or inadvertently.

6.16. DEPP 6.5C2G(15) lists factors likely to indicate a market abuse of levels 4 or 5. Of those factors, the FSA considers the following factors to be relevant:

- a) The level of benefit (loss avoided) by Mr Goenka of USD 3,103,640 was significant.
- b) On 18 October 2010 Reliance GDRs closed at an inflated price of USD 48.71. Although the price movement was not, of itself, substantial, it was the result of abusive trading by an experienced investor whose wealth was sufficient to bring about such price movements. Abusive trading by such individuals who are in a position to manipulate the markets in this way has a serious adverse effect on confidence in the markets generally, in addition to the disorder created on the IOB that day.
- c) Whilst the finding in this Notice relates to Structured Product 2, the evidence shows that Mr Goenka had intended to engage in market abuse on an earlier occasion, to avoid losses on Structured Product 1. Although market abuse was only committed on one occasion, the FSA considers Mr Goenka's earlier intentions make his actions that day more serious.
- d) Mr Goenka enjoys a prominent position as an investor in the UK and overseas

markets.

- e) As set out below, the FSA considers that the market abuse was committed deliberately.
- 6.17. DEPP 6.5C2G(13) and (14) set out a number of factors tending to show whether the market abuse in question was deliberate or reckless. The FSA considers the following factors (a,b and g) of DEPP 6.5C.2G(13) to be relevant:
- a) The market abuse was intentional. Mr Goenka intended or foresaw that the likely consequences of his actions would result in an increase in the price of GDRs.
  - b) Mr Goenka intended to benefit financially from the market abuse directly in that he intended to avoid a loss of USD 3,103,640 under Structured Product 2.
  - g) Mr Goenka's actions were repeated. But for the unexpected announcement by President Putin on 30 April 2010 which caused the price of Gazprom to fall, Mr Goenka would have engaged in the same form of abusive behaviour on an earlier occasion in relation to Structured Product 1.
- 6.18. Taking into account the factors above, the FSA considers that that the behaviour of Mr Goenka is at level 4 of seriousness. The multiple to be applied at Step 2 is therefore 3.
- 6.19. Accordingly, the Step 2 figure is USD 9,310,920.

### Step 3: Mitigating and aggravating factors

- 6.20. Pursuant to DEPP 6.5C.3G, at Step 3 the FSA 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 market abuse. Any such adjustment will be made by way of a percentage adjustment to the figure determined at Step 2.
- 6.21. The FSA has borne in mind that Mr Goenka acted in concert with two FSA approved persons who, Mr Goenka asserts, raised no concerns with him as to his behaviour. The FSA has also borne in mind that Mr Goenka has not been the subject of any prior disciplinary action by the FSA.
- 6.22. The FSA does not consider that any of the aggravating or mitigating factors set out at DEPP 6.5C.3G(2) affect to a significant extent the penalty appropriate to Mr Goenka's actions.
- 6.23. Having regard to the above matters, the FSA does not consider it necessary to make any adjustment for Step 3. At Step 3 the penalty is therefore USD 9,310,920.

#### Step 4: adjustment for deterrence

- 6.24. Pursuant to DEPP 6.5C.4G, if the FSA considers that the figure arrived at after Step 3 is insufficient to deter the individual who engaged in market abuse, or others, from committing further or similar breaches, then the FSA may increase the penalty.
- 6.25. The FSA does not consider it necessary to increase the Step 3 figure in this case.

#### Step 5: Settlement discount

- 6.26. Pursuant to DEPP 6.5D.4G, if the FSA and an individual on whom 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 FSA and the individual reached agreement. The settlement discount does not apply to the disgorgement of the benefit calculated at Step 1.
- 6.27. The FSA and Mr Goenka reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.
- 6.28. The penalty after Step 5 is therefore USD 6,517,644.

#### **Penalty**

- 6.29. The FSA therefore imposes a total financial penalty of USD 6,517,644 on Mr Goenka for market abuse.
- 6.30. It is the FSA's policy to round down the final penalty figure to the nearest £100. As these calculations are in USD and the payment will be made in USD, the FSA has rounded down the final penalty figure to the nearest USD 100. The final penalty is therefore USD 6,517,600 (approximately £4.0 million).

#### **Restitution**

- 6.31. Under section 384 of the Act the FSA has the power, if it is satisfied that a person has engaged in market abuse and that one or more persons have suffered loss as a result of the market abuse, to require restitution to be paid to the appropriate person of such amount as appears just to the FSA, in accordance with such arrangements as the Authority considers appropriate. The FSA has published guidance on the exercise of its power under section 384 of the Act in Chapter 11 of its Enforcement Guide.
- 6.32. In this case the market abuse carried on by Mr Goenka caused the counterparty to Structured Product 2 to pay him USD 10 million rather than the Reliance GDRs with a market value of USD 6,896,360 which it would otherwise be required to pay him under the terms of Structured Product 2. The FSA considers it just that Mr Goenka pay the full amount of the difference, USD 3,103,640, in restitution. The

FSA therefore requires Mr Goenka to pay USD 3,103,640 to it in restitution, which will be passed on by it to the counterparty.

## **7. PROCEDURAL MATTERS**

### **Decision Makers**

- 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 to you in accordance with section 390 of the Act.

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

- 7.3. The financial penalty and restitution sum must be paid in full by Mr Goenka, either by the FSA drawing down the full amount from a Letter of Credit provided by Mr Goenka or by Mr Goenka directly, by no later than 7 November 2011, 21 days from the date of this Final Notice.

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

- 7.4. If any or all of the financial penalty or the restitution sum is outstanding on 8 November 2011, the FSA may recover the outstanding amount as a debt owed by Mr Goenka and due to the FSA.

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

### **FSA contacts**

- 7.7. For more information concerning this matter generally, you should contact Kevin Thorpe of the Enforcement and Financial Crime Division of the FSA (direct line:



020 7066 4450).

**Matthew Nunan**

**Acting Head of Department**

**FSA Enforcement and Financial Crime Division**

## ANNEX: Relevant Statutory and Regulatory Provisions

- 1.1. The FSA has the power, pursuant to section 123(1) of the Act, to impose a financial penalty where it is satisfied that a person (“A”) has engaged in market abuse or by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by A, would amount to market abuse.
- 1.2. Section 123(2) of the Act states that the Authority may not impose a penalty for market abuse in certain circumstances:

*But the Authority may not impose a penalty on a person if ... there are reasonable grounds for it to be satisfied that –*

*(a) he believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of subsection (1), or*

*(b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of that subsection.*
- 1.3. Under section 118(1) of the Act market abuse is behaviour which occurs in relation to qualifying investments admitted to trading on a prescribed market, and which falls within any one or more of the types of behaviour set out in subsections (2) to (8).
- 1.4. By virtue of the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001 (SI 2001/996) (as amended) the IOB of the LSE is a prescribed market.
- 1.5. By virtue of EC Directive 93/22/EC and Article 1(3) of the Insider Dealing/Market Abuse Directive (2003/6/EC) Reliance GDRs and Gazprom GDRs are qualifying investments for the purposes of the Act.
- 1.6. Section 118(5) of the Act describes a form of behaviour amounting to market abuse where an individual engages in behaviour (in relation qualifying investments on a prescribed market) otherwise than for legitimate reasons and in conformity with accepted market practices which:
  - a) Gives or is likely to give a false or misleading impression as to the supply of, or demand for, or as to the price of, one or more qualifying investments, or
  - b) Secures the price of one or more such investments at an abnormal or artificial level.
- 1.7. The FSA has the power, pursuant to section 384 of the Act, if it is satisfied that a

person has engaged in market abuse and either that profits have accrued to the person concerned as a result of the market abuse or that one or more persons have suffered loss or been otherwise affected as a result of the market abuse, to require the person concerned to pay, in accordance with such arrangements as the FSA considers appropriate, to the appropriate person such amount as appears to the FSA to be just, having regard to the profits accrued or the extent of the loss or other adverse effect.

### The Code of Market Conduct

- 1.8. The Code of Market Conduct (“MAR”) issued by the FSA pursuant to section 119 of the Act provides assistance in relation to section 118(5) of the Act when determining whether or not behaviour amounts to market abuse. In deciding to take the action proposed, the FSA has had regard to MAR and other guidance published in the FSA Handbook.
- 1.9. MAR 1.2.3 G states that section 118(1)(a) of the Act does not require the person engaging in the behaviour in question to have intended to commit market abuse.
- 1.10. MAR 1.6.5E gives guidance on “legitimate reasons” and lists a number of factors to be taken into account including whether there was an actuating purpose or illegitimate reason behind the trading and whether the trading was executed in a particular way with the purpose of creating a false or misleading impression.
- 1.11. MAR 1.6.9E gives guidance on “false or misleading impression” and lists a number of factors to be taken into account including the extent to which the trading represents a significant volume of trading in the qualifying investment and the extent to which orders to trade were undertaken at or around a specific time “*when reference prices, settlement prices and valuations are calculated and lead to price changes which have an effect on such prices and valuations*”.
- 1.12. MAR 1.6.10E gives guidance on whether behaviour amounts to “securing an abnormal or artificial price level” and lists a number of factors to be taken into account including the extent to which the individual had a direct interest in the price of the qualifying investment, the extent to which the volatility movements are outside their usual daily, weekly or monthly range and whether the individual has successively or consistently increased their bid or offer price.
- 1.13. MAR 1.6.15E gives two examples of market abuse (manipulating prices): under 118(5) of the Act which are relevant to this matter. Those examples are where:
  - 1) “*a trader simultaneously buys and sells the same qualifying investment (that is, trades with himself) to give the appearance of a legitimate transfer of title or risk (or both) at a price outside the normal trading range for the qualifying investment. The price of the qualifying investment is relevant to the calculation of the settlement value of an option. He does this while holding a*

*position in the option. His purpose is to position the price of the qualifying investment at a false, misleading, abnormal or artificial level, making him a profit or avoiding a loss from the option”*

- 2) *“a trader buys a large volume of commodity futures, which are qualifying investments, (whose price will be relevant to the calculation of the settlement value of a derivatives position he holds) just before the close of trading. His purpose is to position the price of the commodity futures at a false, misleading, abnormal or artificial level so as to make a profit from his derivatives position”.*

### **Relevant Guidance – Decision Procedures and Penalties Manual (DEPP)**

1.14. Section 123(1) of the Act authorises the FSA to impose financial penalties in cases of market abuse. Section 124 of the Act requires the FSA to issue a statement of its policy with respect to the imposition of penalties for market abuse and the amount of such penalties. The FSA’s policy in this regard is contained in Chapter 6 of the Decision Procedure and Penalties Manual (DEPP) as applicable from 28 August 2007. In deciding whether to exercise its power under section 123 of the Act, the FSA must have regard to this statement.

1.15. DEPP 6.2 sets out a number of factors to be taken into account when the FSA decides to take action for a financial penalty. They are not exhaustive, but include the nature and seriousness of the suspected behaviour, and the conduct of the person concerned after the behaviour was identified.

1.16. In deciding whether to exercise its power under section 123 in the case of any particular behaviour, the FSA must have regard to this statement of policy. Therefore, in determining the penalty to be imposed on Mr Goenka, the FSA has had regard to DEPP 6 as it applied in October 2010. With regard to the application of section 123(2) of the Act, DEPP 6.3.2 G sets out factors that the FSA may take into account in determining whether the conditions of 123(2) are met. Factors relevant to this notice include:

- (1) whether, and if so to what extent, the behaviour in question was or was not analogous to behaviour described in the Code of Market Conduct (see MAR 1) as amounting or not amounting to market abuse or requiring or encouraging;
- (2) whether the FSA has published any guidance or other materials on the behaviour in question and if so, the extent to which the person sought to follow that guidance or take account of those materials (see the Reader’s Guide to the Handbook regarding the status of guidance.) The FSA will consider the nature and accessibility of any guidance or other published materials when deciding whether it is relevant in this context and, if so,

what weight it should be given; and

- (3) whether, and if so to what extent, the behaviour complied with the rules of any relevant prescribed market or any other relevant market or other regulatory requirements (including the Takeover Code) or any relevant codes of conduct or best practice.
- (4) the level of knowledge, skill and experience to be expected of the person concerned

#### 1.17. The five steps for penalties imposed on individuals in market abuse cases

##### **Step 1 – disgorgement**

DEPP 6.5C.1G The FSA will seek to deprive an individual of the financial benefit derived as a direct result of the market abuse (which may include the profit made or loss avoided) where it is practicable to quantify this. The FSA will ordinarily also charge interest on the benefit.

##### **Step 2 – the seriousness of the market abuse**

DEPP 6.5C.2G (1) The FSA will determine a figure dependent on the seriousness of the market abuse and whether or not it was referable to the individual's employment. This reflects the FSA's view that where an individual has been put into a position where he can commit market abuse because of his employment the fine imposed should reflect this by reference to the gross amount of all benefits derived from that employment.

(2) In cases where the market abuse was referable to the individual's employment, the figure for the purpose of Step 2 will be the greater of:

(a) a figure based on a percentage of the individual's "relevant income". The percentage of relevant income which will apply is explained in paragraphs (6) and (8) to (16) below;

(b) a multiple of the profit made or loss avoided by the individual for his own benefit, or for the benefit of other individuals where the individual has been instrumental in achieving that benefit, as a direct result of the market abuse (the "profit multiple"). The profit multiple which will apply is explained in paragraphs (6) and (8) to (16) below; and

(c) for market abuse cases which the FSA assesses to be

seriousness level 4 or 5, £100,000. How the FSA will assess the seriousness level of the market abuse is explained in paragraphs (9) to (16) below. The FSA usually expects to assess market abuse committed deliberately as seriousness level 4 or 5.

(3) In cases where the market abuse was not referable to the individual's employment, the figure for the purpose of Step 2 will be the greater of:

(a) a multiple of the profit made or loss avoided by the individual for his own benefit, or for the benefit of other individuals where the individual has been instrumental in achieving that benefit, as a direct result of the market abuse (the "profit multiple"). The profit multiple which will apply is explained in paragraphs (7) to (16) below; and

(b) for market abuse cases which the FSA assesses to be seriousness level 4 or 5, £100,000. How the FSA will assess the seriousness level of the market abuse is explained in paragraphs (9) to (16) below. The FSA usually expects to assess market abuse committed deliberately as seriousness level 4 or 5.

(4) An individual's "relevant income" will be the gross amount of all benefits received by the individual from the employment in connection with which the market abuse occurred (the "relevant employment") for the period of the market abuse. In determining an individual's relevant income, "benefits" includes, but is not limited to, salary, bonus, pension contributions, share options and share schemes; and "employment" includes, but is not limited to, employment as an adviser, director, partner or contractor.

(5) Where the market abuse lasted less than 12 months, or was a one-off event, the relevant income will be that earned by the individual in the 12 months preceding the final market abuse. Where the individual was in the relevant employment for less than 12 months, his relevant income will be calculated on a pro rata basis to the equivalent of 12 months' relevant income.

(6) In cases where the market abuse was referable to the individual's employment:

(a) the FSA will determine the percentage of relevant income which will apply by considering the seriousness of the market abuse and choosing a percentage between 0%

and 40%; and

(b) the FSA will determine the profit multiple which will apply by considering the seriousness of the market abuse and choosing a multiple between 0 and 4.

(7) In cases where the market abuse was not referable to the individual's employment the FSA will determine the profit multiple which will apply by considering the seriousness of the market abuse and choosing a multiple between 0 and 4.

(8) The percentage range (where the market abuse was referable to the individual's employment) and profit multiple range (in all cases) are divided into five fixed levels which reflect, on a sliding scale, the seriousness of the market abuse. The more serious the market abuse, the higher the level. For penalties imposed on individuals for market abuse there are the following five levels (the percentage figures only apply where the market abuse was referable to the individual's employment):

- (a) level 1 - 0%, profit multiple of 0;
- (b) level 2 - 10%, profit multiple of 1;
- (c) level 3 - 20%, profit multiple of 2;
- (d) level 4 - 30%, profit multiple of 3; and
- (e) level 5 - 40%, profit multiple of 4.

(9) The FSA will assess the seriousness of the market abuse to determine which level is most appropriate to the case.

(10) In deciding which level is most appropriate to a market abuse case, the FSA will take into account various factors which will usually fall into the following four categories:

- (a) factors relating to the impact of the market abuse;
- (b) factors relating to the nature of the market abuse;
- (c) factors tending to show whether the market abuse was deliberate; and
- (d) factors tending to show whether the market abuse was reckless.

- (11) Factors relating to the impact of the market abuse include:
- (a) the level of benefit gained or loss avoided, or intended to be gained or avoided, by the individual from the market abuse, either directly or indirectly;
  - (b) whether the market abuse had an adverse effect on markets and, if so, how serious that effect was. This may include having regard to whether the orderliness of, or confidence in, the markets in question has been damaged or put at risk; and
  - (c) whether the market abuse had a significant impact on the price of shares or other investments.
- (12) Factors relating to the nature of the market abuse include:
- (a) the frequency of the market abuse;
  - (b) whether the individual abused a position of trust;
  - (c) whether the individual caused or encouraged other individuals to commit market abuse;
  - (d) whether the individual has a prominent position in the market;
  - (e) whether the individual is an experienced industry professional;
  - (f) whether the individual held a senior position with the firm; and
  - (g) whether the individual acted under duress.
- (13) Factors tending to show the market abuse was deliberate include:
- (a) the market abuse was intentional, in that the individual intended or foresaw that the likely or actual consequences of his actions would result in market abuse;
  - (b) the individual intended to benefit financially from the market abuse, either directly or indirectly;
  - (c) the individual knew that his actions were not in accordance with exchange rules, share dealing rules



and/or the firm's internal procedures;

- (d) the individual sought to conceal his misconduct;
- (e) the individual committed the market abuse in such a way as to avoid or reduce the risk that the market abuse would be discovered;
- (f) the individual was influenced to commit the market abuse by the belief that it would be difficult to detect;
- (g) the individual's actions were repeated;
- (h)

(14) Factors tending to show the market abuse was reckless include:

- (a) the individual appreciated there was a risk that his actions could result in market abuse and failed adequately to mitigate that risk; and
- (b) the individual was aware there was a risk that his actions could result in market abuse but failed to check if he was acting in accordance with internal procedures.

(15) In following this approach factors which are likely to be considered 'level 4 factors' or 'level 5 factors' include:

- (a) the level of benefit gained or loss avoided, or intended to be gained or avoided, directly by the individual from the market abuse was significant;
- (b) the market abuse had a serious adverse effect on the orderliness of, or confidence in, markets;
- (c) the market abuse was committed on multiple occasions;
- (d) the individual breached a position of trust;
- (e) the individual has a prominent position in the market; and
- (f) the market abuse was committed deliberately or recklessly.

(16) In following this approach factors which are likely to be

considered 'level 1 factors', 'level 2 factors' or 'level 3 factors' include:

- (a) little, or no, profits were made or losses avoided as a result of the market abuse, either directly or indirectly;
- (b) there was no, or limited, actual or potential effect on the orderliness of, or confidence in, markets as a result of the market abuse; and
- (c) the market abuse was committed negligently or inadvertently.

### **Step 3 - mitigating and aggravating factors**

**DEPP 6.5C.3G** (1) The *FSA* 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 *market abuse*. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.

(2) The following list of factors may have the effect of aggravating or mitigating the *market abuse*:

- (a) the conduct of the individual in bringing (or failing to bring) quickly, effectively and completely the *market abuse* to the *FSA's* attention (or the attention of other regulatory authorities, where relevant);
- (b) the degree of cooperation the individual showed during the investigation of the *market abuse* by the *FSA*, or any other regulatory authority allowed to share information with the *FSA*;
- (c) whether the individual assists the *FSA* in action taken against other individuals for *market abuse* and/or in criminal proceedings;
- (d) whether the individual has arranged his resources in such a way as to allow or avoid disgorgement and/or payment of a financial penalty;
- (e) whether the individual had previously been told about the *FSA's* concerns in relation to the issue, either by means of a private warning or in supervisory correspondence;
- (f) the previous disciplinary record and general

compliance history of the individual;

(g) action taken against the individual by other domestic or international regulatory authorities that is relevant to the *market abuse* in question;

(h) whether *FSA guidance* or other published materials had already raised relevant concerns, and the nature and accessibility of such materials; and

(i) whether the individual agreed to undertake training subsequent to the *market abuse*.

#### **Step 4 - adjustment for deterrence**

**DEPP 6.5C.4G** (1) If the *FSA* considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the *market abuse*, or others, from committing further or similar abuse then the *FSA* may increase the penalty. Circumstances where the *FSA* may do this include:

(a) where the *FSA* considers the absolute value of the penalty too small in relation to the *market abuse* to meet its objective of credible deterrence;

(b) where previous *FSA* action in respect of similar *market abuse* has failed to improve industry standards; and

(c) where the penalty may not act as a deterrent in light of the size of the individual's income or net assets.

#### **Step 5- settlement discount**

**DEPP 6.5C.5G** The *FSA* and the individual on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, 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 *FSA* and the individual concerned reached an agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

1.18. DEPP 6.3 sets out an inexhaustive list of factors which the *FSA* may take into account when deciding whether either of the two conditions in section 123(2) of the

Act is met. These include:

- (1) whether the behaviour was analogous to behaviour described MAR;
- (2) whether the FSA has published any guidance on the behaviour;
- (3) the level of knowledge, skill and experience to be expected of the person concerned;
- (3) whether, and if so to what extent, the person can demonstrate that the behaviour was engaged in for a legitimate purpose and in a proper way;
- (4) whether, and if so to what extent, the person followed internal procedures in relation to the behaviour (for example, did the person discuss the behaviour with internal line management and/or internal legal or compliance departments), and
- (5) whether the person sought any appropriate advice and followed that advice.

1.19.DEPP 6.4 and 6.5 state that the FSA will consider all the relevant circumstances of a case when deciding whether to impose a penalty or issue a public censure and when it determines the level of a financial penalty that is appropriate.