FINAL NOTICE

To: **Lamprell plc**

Of: Fort Anne
Douglas
Isle of Man
IM1 5PD

Date: 15 March 2013

ACTION

1. For the reasons given in this notice, the FSA hereby imposes on Lamprell plc ("Lamprell" or "the Company") a financial penalty of £2,428,300 in accordance with section 91(1) of the Financial Services and Markets Act 2000 ("the Act").

2. Lamprell agreed to settle at an early stage of the FSA's investigation and 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 £3,469,125 on Lamprell.

SUMMARY OF REASONS

3. Lamprell is a UK listed company, based in the United Arab Emirates, which provides diversified engineering and contracting services to the oil, gas and renewable energy industries.

4. Lamprell's budget for 2012 provided expected revenue for the year of USD $1.4bn and expected gross profit for the year of USD $171m. This budget was used as the basis from which guidance was given to the market as to the Company's financial expectations for the year. Analyst reports on Lamprell in early 2012 broadly reflected the Company's budget for the year.

5. On 16 May 2012, Lamprell issued a profit warning ("the May Trading Update"). The May Trading Update informed the market that due to various operational issues, expected revenue and profit for the year would be substantially lower than the Board's original expectations for the year. On the day of the May Trading Update, Lamprell's share price dropped by 57%.

6. The deterioration in Lamprell's financial performance in early 2012 was the result of various operational issues. There were serious systems and controls failings at Lamprell which meant that Lamprell could not at that time adequately monitor the full impact of operational issues on the Company's financial performance for the year. Lamprell's systems and controls in respect of financial oversight of the business had not grown and developed in line with the Company's operational growth. As such, Lamprell could not adequately assess its financial performance against budget and against market expectations as accurately as it ought to have been able to do.

7. In particular, Lamprell's systems and controls were inadequate in that:

   (i) Project reporting did not include an assessment of project performance against Lamprell's budget for the financial year. Project reporting only considered the financial performance of a project against that individual project's budget, not against Lamprell's budget for the financial year;

   (ii) Lamprell did not properly track the award of new business against budget, such that if an expected award of new business by a certain date was delayed, the impact of this delay was not automatically assessed for its impact on Lamprell's budget; and

   (iii) Lamprell did not have sufficient visibility of the utilisation of its staff. Under utilisation of staff was a key reason for the revised revenue and profit figures released in the May Trading Update, but this had not been appreciated by Lamprell until this time.

8. The shortcomings in Lamprell's systems and controls meant that Lamprell did not recognise its deteriorating financial position as soon as it should have done. In the circumstances, Lamprell did not inform the market of its deteriorating financial position in a timely way.

9. On the basis of the problems outlined above, Lamprell breached Listing Principle 2 by failing to take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with certain of its obligations as a listed company.

10. In addition, prior to the May Trading Update, Lamprell issued a number of announcements to the market including its financial results for 2012 and announcements regarding certain contract awards. Through its failure to inform the market of the correct financial position due to its systems and controls failings, Lamprell breached DTR 1.3.4R by failing to take all reasonable care to ensure that information it notified to a RIS did not omit anything likely to affect the import of the information.

11. By 29 April 2012, Lamprell's senior management had sufficient information such that the Company should have at least issued a holding statement putting the market on notice of a potential material deterioration in its financial position. By failing to release any information to the market until 16 May 2012, Lamprell breached DTR 2.2.1R as it failed to notify a RIS as soon as possible of inside information which directly concerned it.

12. Further, the existence of inside information within Lamprell by 29 April 2012 meant that Lamprell was in a prohibited period for the purposes of the Model Code on directors' dealings in securities ("the Model Code"). Lamprell should, therefore, not have given persons discharging managerial responsibility ("PDMRs") clearance to deal in Lamprell's shares after this date. However, Lamprell gave clearances to deal on 1 May 2012 and PDMRs continued to deal in the Company's shares, including on 2 May 2012. Lamprell therefore breached Listing Rule 9 Annex 1 (R) and specifically paragraph 8 of the Model Code. The FSA does not suggest that any culpability attaches to those PDMRs who dealt in Lamprell's shares during this period (there is no finding that the PDMRs were dealing based on inside information).

13. The FSA considers these breaches by Lamprell to be serious. Lamprell was unable to comply with certain of its obligations as a listed company for a prolonged period of time. Its systems and controls concerning its ability to keep the market properly informed of its financial position on an on-going basis were inadequate and outdated for a company of its size and complexity. As a result, there was a risk that investors might be making decisions based on incomplete information. When the inside information about the Company's financial prospects was released to the market in the May Trading Update, Lamprell's share price fell significantly demonstrating the importance of that inside information. The systems and controls failings resulted in a number of breaches, both of the Listing Principles and of rules applicable to listed companies.

14. Lamprell has provided significant and extensive pro-active cooperation throughout the course of the FSA's investigation, including providing the FSA with full access to relevant employees as well as the internal investigation work that had previously been carried out by the Company and its legal advisors. In addition, Lamprell has accepted from the outset that certain deficiencies existed in its relevant systems and controls and has made significant efforts to remedy the problems that existed in the past.

15. In calculating the penalty imposed on Lamprell, the FSA has adopted a methodology using a percentage of market capitalisation as part of the five step framework in the current FSA penalty regime. This methodology sets a precedent going forward for similar breaches by listed companies and is expected to increase the level of financial penalties for these types of breaches (compared to the penalty levels under the previous penalty regime for similar breaches).

DEFINITIONS

16. The definitions below are used in this Final Notice:

"the Act" means the Financial Services and Markets Act 2000

"ERP system" means Enterprise Resource Planning system

"the FSA" means the Financial Services Authority and any successor entity

"Lamprell" or "the Company" means Lamprell plc

"MIS" means Maritime Industrial Services Co Ltd Inc.

"the May Trading Update" means Lamprell's Trading Update dated 16 May 2012

"RIS" means a Regulated Information Service

"UKLA" means the United Kingdom Listing Authority

"DTR" means Disclosure Rules and Transparency Rules

"DEPP" means the FSA's Decisions Procedures and Penalties Guide

"LR" means Listing Rule

"PDMR" means persons discharging managerial responsibility as defined in section 96B(2) of the Act and the Glossary to the FSA Handbook

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber)

"UAE" means the United Arab Emirates

FACTS AND MATTERS

Company background

17. Lamprell's business started in the 1970s in the UAE. It was originally a private family run business dealing predominantly with the refurbishment of oil rigs. Lamprell's business grew progressively and in the late 1990s it began to diversify into the new build construction market for the offshore oil and gas sector. It further diversified in the years that followed into the renewable energy sector. In July 2011, Lamprell acquired MIS which effectively doubled its operational size. Lamprell's financial reporting year follows the calendar year.

18. Lamprell has 3 main facilities in the UAE at Sharjah, Jebel Ali and Hamriyah. As at the start of 2012, it had approximately 14,000 employees across all of its operations.

19. Lamprell was admitted to trading on AIM in 2006 and transferred to the Main Market of the London Stock Exchange in November 2008. As at the start of 2012, Lamprell was a member of the FTSE 250 index with a market capitalisation of approximately £742m. It had 260,363,101 issued shares trading at around £2.85.

Systems and controls failings

Overview of systems and controls

20. Lamprell's business is made up of a large number of individual projects. These projects range considerably in size and complexity, from the simple repairs of rigs through to the bespoke construction of rigs and most recently offshore wind farm installation vessels. Lamprell's major projects, in terms of size and complexity (and thus financial import to the Company), will often span two or more of the Company's yearly accounting periods and individual projects can therefore have a material impact on the Company's trading performance. In particular, delays in equipment delivery or construction, which can be the result of third party failings and other issues beyond Lamprell's control, can often lead to revenue and profit having to be deferred from one accounting period to another. Moreover, the Company's financial results, on a monthly basis, are "lumpy" and not necessarily reflective of underlying performance against budget. Consequently, analysing results is complex and requires significant time and sound judgment from senior management.

21. As at the start of 2012, the financial performance of Lamprell was overseen and managed by the Board principally on the basis of two internal monthly reports:

(i) Monthly board reports which set out key issues for the Company and provided information on each of Lamprell's major projects (both operational and financial) ("the Board Reports").

(ii) Monthly financial reports which provided a summary of financial performance for each month at group level ("the Financial Reports").

22. Both the Board Reports and the Financial Reports were based on "cost-to-complete" accounting, which is a standard accounting methodology in this industry. At the outset of a project, a Project Estimating Document ("PED") would be produced. This set out the projected costs for the project, together with projected revenue and profit. When the project commenced, the PED became the budget for the project. Revenue is recognised as the project progresses, but no profit is recorded on long term projects until costs on the project reached 20% of total budgeted costs, following which Lamprell recognises profit in proportion to the percentage of costs incurred. This method of accounting can produce "lumpy" monthly results for a company because costs are not always incurred in a uniform or predictable manner through the life of a project and profits do not necessarily match revenue in a specific accounting period.

23. The Board Reports were based on information provided in monthly reports for each individual project, produced by the relevant project team ("the Project Reports"). The Project Reports and Board Reports were compiled by the commercial department of the Company. The Project Reports would include financial information based on the individual project's budget (*i.e.*, it would compare actual figures to budgeted figures for the project for each month). In theory, the Project Reports would highlight any serious performance issues on the projects (whether operational or financial) and such issues would then be fed through into the Board Reports, thereby notifying Lamprell's senior management of material issues on the Company's major projects.

24. The Financial Reports provided group level information. This included a comparison of actual revenue and profit against the Company's budgeted revenue and profit for the month of the report (and this information would be looked at on a cumulative

basis in the Financial Reports as the year progressed). The financial information used to compile the Financial Reports included the same information that was used to produce the Board Reports in respect of the Company's major projects, although this information was separately verified by the Finance department.

25. In addition to the Board Reports and the Financial Reports, in 2012 Lamprell introduced a scheduled quarterly re-forecast. The re-forecasts, made at the end of each quarter, would provide the revised expected full year performance for Lamprell which could then be compared to the Company's budget for the year. The first re-forecast produced by Lamprell was based on the first quarter's figures for 2012 and was produced by the Finance Department in draft on 29 April 2012 ("the Q1 Re-forecast"). It had limited circulation and was initially considered to be unreliable by senior management on the basis that they had not yet interrogated and approved the underlying judgments upon which the Q1 Re-forecast was based. This is considered to be critical in a projects based business. (Nevertheless, as explained at paragraphs 61-72 below, the information in possession of certain members of senior management by 29 April 2012 was sufficient such that steps should have been taken to update the market soon after that date).

<u>Systems and controls inadequacies</u>

26. There were two high level problems with Lamprell's systems and controls in respect of its ability to adequately monitor its financial performance against budget, the Company's guidance to the market and market expectations:

(i) The information provided in the Board Reports and Financial Reports was inadequate for a company of Lamprell's size and complexity in that they failed to properly consider the impact of variances in project performance and the timing of awards on the current year's financial position on a monthly basis.

(ii) In the first quarter of 2012, the Financial Reports were produced late and this meant that senior management did not have financial information for the months of January to March until later than usual.

27. Lamprell had experienced considerable year on year growth in the years preceding 2012. In 2012, Lamprell's budgeted revenue was 22% higher than its revenue in 2011 (2011 revenue being 127.8% higher than 2010).

28. However, Lamprell's systems and controls in respect of financial oversight of the business had not grown and developed in line with the Company's operational growth. Because of the difficulties with the implementation of the ERP system, much of the financial information was still compiled manually and based on Excel spread sheets. The Company was therefore being run on the basis of historical systems that were no longer adequate.

29. This general problem regarding the lack of sophistication of the Company's systems had been recognised by senior management. Steps were being taken to implement an up-to-date ERP system which would be a comprehensive system to integrate all management information across the Company, including financial information. However, the Company experienced significant delays and problems with the

implementation of the ERP system and it had not been successfully implemented by the time of the May Trading Update.

30. The shortcomings in Lamprell's systems and controls were compounded by its acquisition of MIS in July 2011. This acquisition effectively doubled Lamprell's size operationally, yet there were inadequate systems and controls in place at Lamprell to enable the timely financial integration of the two companies. The Company also experienced difficulties in integrating the different systems being operated by MIS (which, in fact used two systems itself) and Lamprell which meant that the financial data being produced by the various systems was often difficult to interpret accurately. In the first quarter of 2012, the Finance Department's resources were focussed on the production of the Company's statutory accounts for 2011 (released on 26 March 2012) which had to incorporate financial data from MIS post-acquisition. As a result of the difficulties in integrating the financial information from MIS, the Finance Department had insufficient resource to produce the monthly Financial Reports on time for the first quarter of 2012. Consequently the scheduled quarterly re-forecast based on actual results for the three months to 31 March 2012 was not undertaken until the end of April 2012 and the Q1 Re-forecast not produced until 29 April 2012.

31. Due to the general inadequacy of Lamprell's systems and controls (as outlined above) and the delay in the production of the Q1 Re-forecast, it was not until the end of April 2012 that the impact of operational issues on the financial position for the year began to be appreciated by the Company's senior management.

<u>Reporting in the first quarter of 2012</u>

32. As described above, Board Reports and Financial Reports were produced for the months of January, February and March 2012. These reports would usually be finalised 2-3 weeks after the month end and circulated to the Board. However, for the reasons explained above, the Financial Reports were produced later than usual:

- January Financial Report — Produced 25 March 2012
- February Financial Report — Produced 9 April 2012
- March Financial Report — Produced 26 April 2012

33. The Financial Reports for, February and March showed that revenue and profit were considerably behind budget for the year-to-date and that the figures were deteriorating over time. In the March Financial Report, produced at the end of April 2012, the year-to-date revenue was stated to be 31% behind budget with a gross profit margin of 4.3% as against a budgeted 10%.

34. Whilst senior management naturally had some concerns over the deteriorating figures in the Financial Reports, they did not think that this was reflective of a problem for Lamprell in meeting its overall budget for the year. First, cost-to-complete accounting can produce "lumpy" figures and it is possible to see large shifts in revenue and profit between one month and the next, especially given that revenue and profit is recorded on a percentage of completion of a project rather than smoothly over a project's lifetime. Senior management therefore believed revenue and profit would catch up

with budget as the year progressed and the major projects reached more advanced stages. Second, the Board Reports (which were based on the monthly Project Reports) did not indicate any unexpected operational or financial issues with the major projects and the projects were shown to be on track to meet their delivery dates. There was, therefore, no clear warning sign available to senior management of any substantive issues with the Company's major projects.

35. There were three specific shortcomings in the Financial Reports and the Board Reports:

(i) The Board Reports showed project information as against each project's individual budget, not as against the Company's budget for the financial year. In instances where revenue and profit on a project were delayed, the impact of that delay on the Company's budget was not assessed. Therefore, if the effect of a project delay was that revenue and profit were deferred from Lamprell's financial accounting period for 2012 and into 2013, then that was not apparent within the Project Reports and therefore not shown in the Board Reports.

(ii) Lamprell did not adequately monitor the impact of the award of new business against budget on an on-going basis. Thus, if a new project award was expected by a certain date, but was not in fact finalised until a later date, the fact that this might result in some revenue and profit being deferred to a later accounting period was not recognised.

(iii) Neither report adequately showed levels of staff utilisation. If staff were not being utilised on projects in accordance with expectations, this effectively represented an increased cost to Lamprell. However, the reports did not give any indication of on-going utilisation levels.

36. Each of these shortcomings in the reports is described in more detail below.

<u>Deficiencies in the Board Reports</u>

37. As explained above, the Board Reports were based on monthly Project Reports for each major project. However, there was a serious disconnect between project reporting and the Company's ability to monitor its on-going financial performance for the year.

38. In general terms, the project managers were focussed on the performance of their project against that project's individual budget. They did not focus on the financial performance of the project against the Company's overall performance for the financial year. Furthermore, there was no additional reporting mechanism to bridge the gap between project performance against project budget and against group budget.

39. Therefore, where a project's delivery date was beyond the end of the Company's financial year (*i.e.,* it fell into the fiscal year 2013 or later), delays could cause revenue and profit to move from the current accounting period to the next. Such delays would not necessarily have a material impact on the project's overall financial performance, but would impact on the Company's reporting of its financial performance for the year. However, the significance of revenue and profit being

deferred was only considered as against the project's budget. The impact of such delays on Lamprell's reporting of its financial performance for the year was not given adequate consideration.

40. Movements of revenue and profit recognition for the financial year were therefore only fully appreciated by senior management once the re-forecasted figures had been escalated to them at the end of April 2012.

Awards of new business

41. Lamprell's budget factored in the anticipated award of new business during the financial year. This accounted for projects which were identified at the time the budget was compiled and which Lamprell expected would be awarded to it within a specific time. It also included projects that were not specifically identified but were anticipated within the financial year (for example, rig repair and rig refurbishment work that has a short bid to award cycle).

42. A further shortcoming in Lamprell's systems and controls was inadequate monitoring of the timing and award of anticipated new business. There was no system in place which calculated the impact on budget when an anticipated project was either (a) not awarded within the timeframe expected (meaning revenue and profit from the project would be deferred) or (b) not awarded at all.

43. As for the issues described above, the impact of late project awards was not adequately appreciated by senior management until it became visible to certain members of senior management through the re-forecasting process at the end of April 2012.

Utilisation of staff

44. In January 2012, there were delays to equipment deliveries on a number of Lamprell's major projects (these projects were all to build Super 116E oil rigs). Equipment delays on projects are common and project managers have to constantly re-schedule work to deal with late equipment deliveries. However, the equipment delivery delays on these particular projects were such that it meant the projects could not be run efficiently and that staff employed by Lamprell to work on these projects were not deployed efficiently or as planned and this in turn meant that they were not being fully utilised. The equipment delivery delays persisted through February and March which meant staff were under-utilised on these projects for a prolonged period of time.

45. The on-going under-utilisation of staff across these major projects was not visible physically on the ground because of the scale of the projects and the sites and the number of staff working in the facilities at any given time. Under-utilisation of staff did not appear in the Board Reports because the Project Reports only accounted for staff time actually charged to the projects. Nor did under-utilisation appear in the Financial Reports (although headcount numbers did). Thus, there was no detailed assessment of staff utilisation rates and Lamprell had no ability to see that under-utilisation of staff on these projects was having a significant impact on the Company's financial performance for the year.

46. It was not until the re-forecast at the end of April 2012 that senior management could begin to fully appreciate the financial impact of staff under-utilisation. This issue had a significant impact by reducing expected profit for the year by around USD $20m.

The Q1 Re-forecast

47. The Q1 Re-forecast process was undertaken at the end of April 2012. Until that point in time, the shortcomings in Lamprell's systems and controls meant that senior management of the Company had not appreciated that the Company was facing significant challenges with respect to its financial performance for the year.

48. The Q1 Re-forecast was produced by the Finance Department. The first draft of the Q1 Re-forecast was produced by the Finance Department and circulated to certain members of senior management on 29 April 2012. However, as the re-forecast model had not been used before, those members of senior management who received the Q1 Re-forecast were sceptical about the accuracy of the re-forecasted figures. Further work was therefore carried out to verify the figures used to produce the Q1 Re-forecast and the re-forecast model itself.

49. It was not until late on 14 May 2012 that the final Q1 Re-forecast and accompanying draft announcement was circulated to Lamprell's full Board. The May Trading Update was finalised the following day and released at 7am on 16 May.

Communications with the market

50. Lamprell made a number of announcements to the market prior to the May Trading Update.

(i) On 26 March 2012, it announced its Preliminary Results for the year ending 31 December 2011. The Company's release included wording which stated:

> *"…The Board remains optimistic that the long term prospects of the Group continue to be promising*."

(ii) On 25 April 2012, Lamprell announced the Exercise of Contract Options. The Company's release included wording which stated:

> *"…This is another significant contract award, demonstrating the health of the market for jackup rigs and reflecting Lamprell's strong reputation for quality and service, whilst further extending our growing order book."*

(iii) On 1 May 2012, Lamprell announced a Contract Award. The Company's release included wording which stated:

> "*… This further evidences the sustained demand for these rigs and the confidence in Lamprell's ability to deliver a quality product with strong commitment to customer service*."

Dealing by PDMRs

51. Two PDMRs sought clearance from the Company to deal in Lamprell shares. The clearances were first sought by the PDMRs on 5 April and 25 April 2012 respectively. The Company gave clearances to PDMRs to deal in Company shares on occasions in April 2012 and on 1 May 2012. On the basis of these clearances, PDMRs dealt in the Company's shares during April 2012 and a significant amount of trading by PDMRs was also undertaken on 2 May 2012 based on the clearances given on 1 May 2012. Late in the day on 2 May 2012, Lamprell took steps to stop dealings by employees in the Company's shares. The decision to stop such dealing was based on the information contained in the Q1 Re-forecast.

FAILINGS

52. The shortcomings in Lamprell's systems and controls, together with the Company's announcements to the market, resulted in Lamprell breaching a number of the FSA's Principles and Rules for listed companies:

(i) Listing Principle 2
(ii) DTR 1.3.4R
(iii) DTR 2.2.1R
(iv) LR 9 Annex 1 (R) and specifically paragraph 8 of the Model Code.

53. Each of these breaches is discussed below. The provisions referenced below are set out in full at Annex 1 to this Notice.

Listing Principle 2

54. Listing Principle 2 states:

> *A listed company must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations.*

55. Lamprell's obligations as a listed company include notifying a RIS as soon as possible of inside information which directly concerns it.

56. The shortcomings in its systems and controls meant that Lamprell was unable to adequately review its financial performance against the budget set for the year. This budget had been used as the basis from which guidance was given to the market as to the Company's expected revenue and profit for the year and was reflected in analyst publications on Lamprell and the market's expectations for the Company. Any material changes to Lamprell's expected financial performance for the year (whether positive or negative) represented important inside information which the Company was obliged to release to the market as soon as possible. However, the problems with Lamprell's systems and controls meant it was unable to identify and release information about its financial performance in a timely fashion.

57. Lamprell had experienced considerable year on year growth in the years preceding 2012, particularly as a result of the MIS acquisition. However, the Company's

systems and controls in respect of financial oversight of the business had not grown and developed in line with the Company's operational growth and Lamprell had not made sufficient progress in establishing and maintaining systems and controls that were adequate for a public company of its size and complexity. In particular, although Lamprell had sought to introduce an ERP system to address the acknowledged lack of sophistication in the existing systems and controls, the integration of the ERP system had encountered significant delays. This meant that the Company continued to rely on manual processes in the production of Board Reports and Financial Reports which ultimately did not provide senior management with adequate financial oversight of the business.

58. In short, Lamprell did not have adequate systems and controls in early 2012 to enable it to give the market important information as to its financial performance in a timely fashion. It had not made sufficient progress to ensure such systems and controls were in place. This failure meant the Company did not provide the market with complete information regarding Lamprell's financial performance in a timely manner.

DTR 1.3.4R

59. DTR 1.3.4R states:

> *An issuer must take all reasonable care to ensure that any information it notifies to a RIS is not misleading, false or deceptive and does not omit anything likely to affect the import of the information.*

60. Certain announcements prior to the May Trading Update gave the market the overall impression that Lamprell was performing well operationally in the year to date. However, due to its systems and controls failings, Lamprell was not updating the market regarding its correct financial position. Lamprell's announcements to the market therefore omitted to inform the market of the Company's deteriorating financial position and performance for the year. The breach of DTR 1.3.4R was therefore a consequential breach arising from the systems and controls failings. It was these systems and controls failings together with the issuance of announcements to the market that meant Lamprell did not take all reasonable care when making certain announcements not to omit important information about its deteriorating financial position.

DTR 2.2.1R

61. DTR 2.2.1R states:

> *An issuer must notify a RIS as soon as possible of any inside information which directly concerns the issuer unless DTR 2.5.1 R applies.*

62. Lamprell breached DTR 2.2.1R by failing to inform the market of its deteriorating financial position at an earlier date. Lamprell's senior management had by 29 April 2012 received sufficiently clear information that it should have at the least issued a holding statement putting the market on notice of a potential material change to its expected financial performance soon after that date.

63. By 29 April 2012, Financial Reports for January, February and March 2012 were available to senior management. The Q1 Re-forecast (albeit in draft) was also available to certain members of senior management and it indicated that Lamprell's financial performance for the year would fall significantly below budget. However, instead of releasing a holding announcement to the market at this time, no information was released to the market until the further work was undertaken between 29 April and 14 May 2012 to verify the figures in the Q1 Re-forecast and to check the basis of the re-forecast model.

64. The information received by the senior management of Lamprell by 29 April 2012, comprising the Financial Reports for January to March and the Q1 Re-forecast ("the Financial Information"), met the statutory test for of inside information.

65. Information is "inside information" if it meets a number of set criteria set out in section 118C of the Act. Each of the relevant criteria is discussed below.

66. First, the information must be "precise". Information is "precise" for the purposes of section 118C of the Act if it:

(a) *indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur, and*

(b) *is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of qualifying investments or related investments.*

67. The Financial Information indicated that Lamprell's financial position and performance for the year would fall significantly short of its budgeted position and performance; this information was specific enough to allow the conclusion to be drawn that it would have a negative impact on the price of Lamprell's shares. Therefore, the Financial Information was precise for the purposes of section 118C of the Act.

68. Second, the information must not be generally available. The Financial Information was not generally available as only senior management received the totality of the Financial Information and were in the unique position of being able to understand its implications on the financial position and performance for the year.

69. Third, the information must relate, directly or indirectly, to one or more issuers of the qualifying investments. The Financial Information related directly to Lamprell.

70. Fourth, the information would, if generally available, be likely to have a significant effect on the price of the qualifying investments or on the price of related investments. It was likely that, if generally available, the information would have had a significant effect on Lamprell's share price for the purposes of sections 118C(2)(c) and 118C(6) of the Act in that it was information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions.

71. The Financial Information therefore met the statutory test for inside information and, at the least, a holding statement should have been released to the market soon after 29 April 2012. However, updating information was not released to the market until the May Trading Update. Lamprell's senior management instead focused on the accuracy of the information and the re-forecasting model. A substantial amount of work was undertaken by the Finance Department and the Commercial Department to ensure the information in the re-forecast was correct. However, the release of updated information to the market was delayed for too long.

72. Lamprell therefore breached DTR 2.2.1R by failing to release the inside information as soon as possible.

LR 9 Annex 1 (R) paragraph 8 of the Model Code

73. LR 9 Annex 1 (R) and specifically paragraph 8 of the Model Code imposes restrictions on dealing in securities of a listed company in respect of PDMRs. The Model Code states at paragraph 8:

> *A restricted person must not be given clearance to deal in any securities of the company: (a) during a prohibited period…*

A prohibited period includes:

> *Any period when there exists any matter which constitutes inside information in relation to the company.*

74. Upon receipt of the Financial Information on 29 April 2012, the Company was in possession of inside information. As such, from that date, Lamprell was in a prohibited period for the purposes of the Model Code and PDMRs should not have had clearance to deal in Lamprell's shares. However, Lamprell continued to allow PDMRs to trade in the Company's shares and granted further clearances to trade on 1 May 2012. A significant amount of trading was undertaken by PDMRs on 2 May 2012. Lamprell therefore breached LR 9 Annex 1 (R) and specifically paragraph 8 of the Model Code by giving clearance to the PDMRs' to deal in Lamprell's shares during a prohibited period.

75. The FSA does not suggest that any culpability attaches to the PDMRs who dealt in Lamprell's shares during this period. The PDMRs who dealt sought clearance in advance of trading from the Company. The initial clearances to deal were sought prior to the Financial Information being available. There is no suggestion that the relevant PDMRs were privy to any part of the Financial Information at any time.

SANCTION

76. The FSA's policy for imposing a financial penalty is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which is part of the FSA Handbook.

77. In respect of conduct occurring on or after 6 March 2010, the FSA is required to apply a five-step framework to determine the appropriate level of financial penalty. DEPP

6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms and these are applied to this case below.

Step 1: disgorgement

78. Pursuant to DEPP 6.5A.1G, at Step 1 the FSA seeks to deprive a firm of the financial benefit derived directly from the breach. Lamprell did not derive any financial benefit directly from its breaches.

79. The Step 1 figure is £0.

Step 2: the seriousness of the breach

<u>Appropriate indicator of seriousness of breach</u>

80. Pursuant to DEPP 6.5A.2G, at Step 2 the FSA determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm’s revenue from the relevant products or business area.

81. However, in this case, the FSA considers that the revenue generated by Lamprell is not an appropriate indicator as it does not reflect the harm or risk of harm resulting from the Company’s breaches.

82. The FSA considers the appropriate indicator is the Company’s market capitalisation as it reflects the harm or risk of harm resulting from the breaches. The higher the shareholder value, the more investor money is at stake and the impact of a breach (and/or the risk arising from a breach) on shareholders and the overall market is greater.

83. In this case, the FSA considers that the market capitalisation of Lamprell should be measured based on the average market capitalisation during the period of the Listing Principle 2 breach, being from no later than 1 January 2012 to 15 May 2012 inclusive. Lamprell’s average market capitalisation during this period was £841m.

<u>Scale</u>

84. In cases where revenue is not the appropriate indicator of the harm or potential harm of the firm’s breach, DEPP 6.5A.2G (13) allows the FSA to adopt a scale other than the 0-20% scale prescribed in DEPP 6.5A.2G (3).

85. The FSA considers that a scale of 0-0.5% of market capitalisation (applied according to the seriousness of the breach) is appropriate in order that the penalty properly reflects the seriousness of the breach.[1]

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1 On the basis that Level 1 would be 0% of the market capitalisation; Level 2 - 0.125%; Level 3 – 0.25%; Level 4 - 0.375%; and Level 5 - 0.5%.

Level of seriousness

86. This breach is considered by the FSA as a serious breach because Lamprell was unable to comply with certain of its obligations as a listed company for a prolonged period of time. Its systems and controls concerning its ability to keep the market properly informed of its financial position on an on-going basis were inadequate and outdated for a company of its size and complexity. As a result, there was a risk that investors might make decisions based on incomplete information. When the inside information about the Company's financial prospects was released to the market in the May Trading Update, Lamprell's share price fell significantly demonstrating the importance of that inside information.

87. In assessing the seriousness level for the purpose of penalty, the FSA takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. These breaches by Lamprell did not occur as a result of deliberate or reckless behaviour.

88. DEPP 6.5A.2G(11) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the FSA considers the following factors to be relevant to the breaches by Lamprell:

(i) The Company's breaches revealed serious and systemic weaknesses in the firm's systems and controls. Lamprell's failure to have adequate systems and controls meant that senior management could not adequately monitor the full impact of operational issues on the Company's financial position and performance for the fiscal year. As such, Lamprell could not assess its financial performance against budget and market expectations as accurately as it ought to have been able to do.

(ii) The Company's breaches gave rise to a risk of investors making investment decisions without the benefit of current and accurate information. Existing shareholders suffered a significant fall in the value of their investment when the share price fell 57% following the May Trading Update.

(iii) There were a series of market announcements which informed the market of the continued strength of Lamprell's operations.

89. Even though the breaches did not result from deliberate or reckless behaviour, on the basis of the factors discussed above, the FSA considers the seriousness of the breach to be level 4. Therefore, the Step 2 figure is 0.375% of £841m.

90. The Step 2 figure is £3,153,750.

Step 3: mitigating and aggravating factors

91. Pursuant to DEPP 6.5A.3G, at Step 3 the FSA may increase or decrease the amount of the financial penalty arrived at after Step 2 (not including any amount to be disgorged

as set out in Step 1) to take into account factors which aggravate or mitigate the breach.

92. The FSA considers that the following factor aggravates the breach:

(i) In July 2011, the UKLA sent a letter to Lamprell highlighting concerns around the Company's systems and controls for dealing with the release of inside information. This letter put the Company on notice that their systems and controls in this area needed to be improved. If a company receives prior warning from the FSA regarding issues that later form the basis of a breach, the FSA considers this to be a serious aggravating factor when determining the penalty to be imposed for the breach.

93. The FSA considers that the following factors mitigate the breach:

(i) Lamprell has shown a great degree of pro-active co-operation throughout the investigation. It has accepted that problems existed with its systems and controls from the outset of the investigation and worked with the FSA to assist fully with all aspects of the investigation. Lamprell's co-operation included paying for individuals based in Dubai to come to London to attend interviews, providing full access to the internal investigation work already undertaken by their legal advisors and providing the FSA with access to an on-line database of relevant electronic documentation established and controlled by external consultants.

(ii) Lamprell has taken significant steps to seek to ensure the problems with the systems and controls are remedied. These steps have included replacing certain members of senior management; retaining external consultants to conduct a comprehensive review of the business and the Company's major projects; and making significant improvements in the Company's internal systems, controls and financial reporting processes, in particular in respect of having improved project controls, a robust financial forecasting model and staff utilisation reporting.

94. Having taken into account these aggravating and mitigating factors, the FSA considers that an upward adjustment of 10% is made to the penalty figure at Step 3. Lamprell had previously received a warning letter from the FSA directly relating to its systems and controls failings around the disclosure of inside information to the market. This represents a serious aggravating factor. Had it not been for the relevant mitigating factors, in particular the co-operation of the Company during the FSA investigation, the upward adjustment would have been significantly higher.

95. The Step 3 is £3,469,125.

Step 4: adjustment for deterrence

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

97. The FSA considers that the Step 3 figure of £3,469,125 represents a sufficient deterrent to Lamprell and others, and so has not increased the penalty at Step 4.

98. The Step 4 figure is £3,469,125.

Step 5: settlement discount

99. Pursuant to DEPP 6.5A.5G, if the FSA and the firm 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 firm reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

100. The FSA and Lamprell reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.

101. The Step 5 figure is £2,428,387.50.

Penalty

102. The FSA therefore imposes a total financial penalty of £2,428,300 on Lamprell for the breaches set out in this notice.

PROCEDURAL MATTERS

Decision maker

103. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

104. This Final Notice is given under section 92(1) of the Act and in accordance with section 390 of the Act.

Manner of and time for Payment

105. The financial penalty must be paid in full by Lamprell to the FSA no later than 1 April 2013, 14 days from the date of the Final Notice.

If the financial penalty is not paid

106. If all or any of the financial penalty is outstanding on 1 April 2013, the FSA may recover the outstanding amount as a debt owed by Lamprell and due to the FSA.

Publicity

107. 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.

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

FSA contacts

109. For more information concerning this matter generally, contact Nick Bayley (direct line: 020 7066 5342) or Rebecca Green (direct line: 020 7066 9496) of the FSA.

Matthew Nunan
Project Sponsor
FSA Enforcement and Financial Crime Division

Annex 1

Listing Principles, DTR and LR relevant to the Warning Notice

LR 7.1.1R states:

> *The Listing Principles apply to every listed company with a premium listing of equity shares in respect of all its obligations arising from the listing rules and the disclosure rules and transparency rules.*

LR 7.1.2G states:

> *The purpose of the Listing Principles is to ensure that listed companies pay due regard to the fundamental role they play in maintaining market confidence and ensuring fair and orderly markets.*

Listing Principle 2 states:

> *A listed company must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations.*

LR 7.2.2.G states:

> *Principle 2 is intended to ensure that listed companies have adequate procedures, systems and controls to enable them to comply with their obligations under the listing rules and disclosure rules and transparency rules. In particular, the FSA considers that listed companies should place particular emphasis on ensuring that they have adequate procedures, systems and controls in relation to:*
>
> .....
>
> *(2) the timely and accurate disclosure of information to the market.*

LR 7.2.3G states:

> *Timely and accurate disclosure of information to the market is a key obligation of listed companies. For the purposes of Principle 2, a listed company with a premium listing should have adequate systems and controls to be able to:*
>
> *(1) ensure that it can properly identify information which requires disclosure under the listing rules or disclosure rules and transparency rules in a timely manner; and*
>
> *(2) ensure that any information identified under (1) is properly considered by the directors and that such a consideration encompasses whether the information should be disclosed.*

DTR 1.1.1R states:

> *(1) DTR 1 and DTR 2 apply to an issuer whose financial instruments are admitted to trading on a regulated market in the United Kingdom….*

DTR 1.3.4R states:

> *An issuer must take all reasonable care to ensure that any information it notifies to a RIS is not misleading, false or deceptive and does not omit anything likely to affect the import of the information.*

DTR 2.1.3G states:

> *The purpose of this chapter is to:*
>
> *(1) promote prompt and fair disclosure of relevant information to the market….*

DTR 2.2.1R states:

> *An issuer must notify a RIS as soon as possible of any inside information which directly concerns the issuer unless DTR 2.5.1 R applies.*

LR 9.1.1R states:

> *This chapter applies to a company that has a premium listing of equity shares.*

LR 9 Annex 1R provides the Model Code on directors' dealings in securities ("the Model Code").

Introduction to the Model Code:

> *This code imposes restrictions on dealing in securities of a listed company beyond those imposed by law. Its purpose is to ensure that persons discharging managerial responsibilities 1do not abuse, and do not place themselves under suspicion of abusing, inside information that they may be thought to have, especially in periods leading up to an announcement of the company's results.*

The Model Code states at paragraph 8:

> *A restricted person must not be given clearance to deal in any securities of the company: (a) during a prohibited period…*

The Model Code states at paragraph 1(e)(ii):

> *A prohibited period means….. any period where there exists any matter which constitutes inside information in relation to the company.*

The Model Code states at paragraph 1(f):

> *A restricted person means a person discharging managerial responsibilities.*

LR 9.2.8AG states:

> *(1) The Act provides that an individual who is not a director can still be a person discharging managerial responsibilities in relation to an issuer if they are a "senior executive of such an issuer" and they meet the criteria set out in the Act.*
>
> *(2) An individual may be a "senior executive of such an issuer" irrespective of the nature of any contractual arrangements between the individual and the issuer and notwithstanding the absence of a contractual arrangement between the individual and the issuer, provided the individual has regular access to inside information relating, directly or indirectly, to the issuer and has power to make managerial decisions affecting the future development and business prospects of the issuer.*