



FINAL NOTICE

To: Michael Coscia

Date of Birth: 7 July 1962

Date: 3 July 2013

ACTION

1. For the reasons given in this notice, the FCA hereby imposes on Michael Coscia a financial penalty of USD 903,176 (approximately £597,993¹) pursuant to section 123(1) of the Act for engaging in market abuse.
2. Mr Coscia agreed to settle at an early stage of the FCA's investigation. Mr Coscia therefore qualified for a 30% (stage 1) discount under the FCA's executive settlement procedures. Were it not for this discount, the FCA would have imposed a financial penalty of USD 1,155,076 (approximately £764,776) on Mr Coscia.

SUMMARY OF REASONS

3. The FCA has concluded that Mr Coscia deliberately engaged in a form of manipulative trading known as "layering" over a six week period between 6 September 2011 and 18 October 2011. The trading activity related to High Frequency Trading, in Commodities Futures, on ICE. Mr Coscia placed and rapidly cancelled large orders which he did not intend to trade with the intention of creating a false impression as to the weight of buyer or seller interest thereby "layering" the order book and manipulating the market.
4. The FCA has concluded that Mr Coscia's behaviour amounted to deliberate market abuse (market manipulation) contrary to section 118(5) of the Act in that it gave

¹ Conversion per exchange rate as at 29 May 2013

a false or misleading impression as to the supply, demand, or price for qualifying investments and secured the price of such investments at an artificial level.

5. The FCA therefore imposes a financial penalty of USD 903,176 (approximately £597,993).

DEFINITIONS

6. The following definitions are used in this Notice:

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

“the FCA” means the Financial Conduct Authority

“the Relevant Period” means between 6 September 2011 and 18 October 2011

“ICE” means ICE Futures Europe, a Recognised Investment Exchange

“HFT” means High Frequency Trading

“Brent” means Brent Crude Futures (Oct11, Nov11 and Dec11 contracts)

“Gas Oil” means Gas Oil Futures

“WTI” means Western Texas Intermediate Crude Futures

“DEPP” means the Decision Procedure and Penalties Manual in the FCA's Handbook

FACTS AND MATTERS

7. Mr Coscia is an experienced market participant with 25 years' trading experience. Mr Coscia is not a member of ICE or an approved person and traded from the United States through a Direct Market Access provider². This Notice is concerned with trading by Mr Coscia which was conducted on his own proprietary account.
8. Mr Coscia traded the following products on ICE during the Relevant Period:
 - a. Brent
 - b. Gas Oil
 - c. WTI
9. Mr Coscia used an automated algorithmic programme, which he had designed, to trade during the Relevant Period. The programme required certain conditions to be met including: (i) the bid/offer price having remained constant for a certain minimum period of time; (ii) a minimum size bid/offer spread; and (iii) the

² Direct Market Access is a service offered by some stockbrokers who are exchange member firms that enables investors to place buy and sell orders directly on the order book.

quantity of lots comprising the best bid and offer being within certain parameters. The programme then placed a series of connected orders with short intervals which were a matter of milliseconds apart. The frequency and speed of Mr Coscia's order activity when using the algorithm were sufficient for it to be described as HFT which is when market participants use an automated system to place market orders at much faster rates than is feasible using manual order entry.

10. Mr Coscia's trading programme was made of two "legs". "Leg One" was to place a small order (typically 10 -20 lots) on the order book around the level of the best price i.e. the best bid or offer. Once the small order was in place ("resting"), several large orders (over 50 lots) were placed on the other side of the order book. The large orders were entered at progressively improving price levels. The sequence of events was timed to last a total of approximately 300 milliseconds after which the orders (small or large) would all be cancelled immediately and simultaneously if not previously executed.

11. An example of how the orders appeared on the order book is as follows:

Time ³	Time interval (milliseconds)	Order Buy/sell	Order Price	Volume (lots)	Best Bid	Best Offer
00:00:00:000	0	Buy	115.86	17	115.86	115.88
00:00:00:023	23	Sell	115.89	122	115.87	115.88
00:00:00:122	99	Sell	115.88	85	115.86	115.88
00:00:00:231	109	Sell	115.87	54	115.86	115.88

12. In this example, the small initial buy order (17 lots) was placed at the prevailing best bid price. The initial large sell order (122 lots) was placed almost simultaneously and 3 ticks away from the initial buy order and one tick above best offer. Two additional large sell orders (85 and 54 lots respectively) were each then placed at intervals of approximately 100 milliseconds and at improved prices.

13. The FCA considers that the large sell orders created an impression of significant supply. The large sell orders also created a disparity between the quantum of bids/demand and offers/supply on the order book and the last large sell order narrowed the bid offer spread and moved the sell price towards the small resting buy order. Other market participants were induced to place orders in the same direction, i.e. sell orders/offers, on the basis that the large sell orders represented a legitimate indication of seller interest.

14. In this example, the last large sell order (54 lots) improved the best offer price to 115.86 and the small buy order then traded in two "shapes" (3 and 14 lots respectively) at a price of 115.86. As a consequence of the large sell orders

³ This is taken as a notional time to illustrate the sequence

potential sellers were willing to sell at 115.86 rather than 115.88 and Mr Coscia was able to buy more cheaply than he might otherwise have done.

15. As soon as the small buy order was executed (in full in this example) the trading programme then cancelled all the large sell orders immediately and simultaneously, as shown in the table below. This completed “Leg One” of Mr Coscia’s trading programme.

Time	Time interval (milliseconds)	Order Buy/ Sell	Order Price	Volume (lots)	Best Bid	Best Offer
00:00:00:232	1	Buy order traded	115.86	3		
00:00:00:234	2	Buy order traded	115.86	14		
00:00:00:257	23	Sell order cancelled	115.89	122	115.84	115.86
00:00:00:261	4	Sell order cancelled	115.88	85	115.84	115.86
00:00:00:265	4	Sell order cancelled	115.87	54	115.84	115.86

16. The trading programme would also automatically cancel all the remaining large sell orders following a partial execution of any individual large sell order. By contrast a partial execution of the small buy order would not automatically result in the cancellation of any of the remaining large sell orders in the sequence. The programme therefore favoured execution of the small buy order over the execution of the large sell orders.

17. “Leg Two” of the programme involved following the same sequence in reverse on the opposite side of the order book so as to trade out of the position created by the previous leg. That is, Mr Coscia would place a small sell order (equal to the “long” position established as result of the earlier buying) followed by several large buy orders with the same sequence of events leading to cancellation (i.e. full execution of the small order and cancellation of the large orders either in full or after the partial execution of a large order, or cancellation of all the unexecuted orders after the default expiry time for the sequence). This is set out in the table below.

Time	Time interval in milliseconds	Order Buy/ Sell	Order Price	Volume (lots)	Best Bid	Best Offer
00:00:00:294	29	Sell	115.88	17	115.84	115.86
00:00:00:316	22	Buy	115.82	99	115.84	115.86
00:00:00:423	107	Buy	115.83	88	115.84	115.86
00:00:00:550	127	Buy	115.86	122	115.85	115.88

00:00:00:579	29	Sell order traded	115.88	17		
00:00:00:593	14	Buy order cancelled	115.86	122	115.87	115.90
00:00:00:607	14	Buy order cancelled	115.83	88	115.87	115.90
00:00:00:609	2	Buy order cancelled	115.82	99	115.87	115.90

18. The FCA considers that the large buy orders created an impression of significant demand. The large buy orders also created a disparity between the quantum of bids/demand and offers/supply on the order book and the last large buy order narrowed the bid offer spread and moved the buy price towards the small resting sell order. Market participants were induced to place orders in the same direction i.e. buy orders/bids on the basis that the large buy orders represented a legitimate indication of buying interest. As a consequence of the large buy orders potential buyers were willing to buy at 115.88 rather than 115.86 and Mr Coscia was able to sell at a higher price than he might otherwise have done.
19. In the above example Mr Coscia made a profit of USD 340 from buying and selling 17 lots in trading that lasted less than one second.
20. A chart at Appendix 1 illustrates the impact of the orders placed by Mr Coscia on the mid-price⁴ (an average of the best bid and best offer) during the trading described in the above example. It also illustrates the reversal of strategy from Leg 1 to Leg 2 in order for Mr Coscia to buy at a lower price and sell at a higher price. Appendix 1a provides an animation of this chart.
21. The trading pattern illustrated in the example above was often repeated hundreds of times within a day with Mr Coscia typically placing and rapidly cancelling over a thousand large orders in a day's trading.
22. There was a stark contrast in the ratio of large to small order trade execution and cancellations in relation to Mr Coscia's trading in Brent during the Relevant Period as the table below illustrates. Of Mr Coscia's large orders (over 50 lots) only 0.1% were ever fully executed compared to 44.5% of his small orders (10 to 20 lots).

⁴ The mid-price line in Appendix 1 and Appendix 1a reflects all changes in the mid-price over the course of the example.

Brent	Orders executed in full or partial	Orders fully executed	Orders cancelled after partial execution	Orders cancelled without any execution
All orders	11.5%	9.7%	1.8%	88.5%
Large Orders (over 50 lots)	3.5%	0.1%	3.4%	96.5%
Small Orders (10-20 lots)	63%	44.5%	18.5%	37%

23. The orders placed by Mr Coscia were resting on the order book for typically less than one second. The FCA has concluded that placing the large orders for such a short period of time and automatically cancelling the remainder of a large order in the event of a partial execution made it very unlikely that the large orders would be executed. The execution statistics for Mr Coscia's orders demonstrates that very few were in fact executed. However, the false impression of liquidity provided by Mr Coscia's large orders made it more likely that the small order would trade as market participants were induced to trade on the opposite side of the order book to the large layered orders.
24. In Brent over the Relevant Period the market average was to display an order size of 2 lots. Mr Coscia's average was to display an order size of 40 lots. Mr Coscia's practice of regularly placing large orders over 50 lots was highly unusual in that market. Mr Coscia's large layered orders made up a significant proportion of the total demand and supply on the order book (i.e. market depth) such that they were capable of having a detrimental impact on the wider market as they did not reflect a genuine intention to trade. Mr Coscia's large layered orders are consistently over 50% of the market depth within five ticks of the best bid and best offer price at the time that they are placed and typically represent 75% of the market depth.
25. Two graphs at Appendix 1b illustrate the proportion of market depth taken up by Mr Coscia's large layered orders placed in the example in this Notice against all buy/ sell orders in the market within five ticks of the best bid or best offer price at the time Mr Coscia placed the large orders. The market depth of Mr Coscia's orders is also illustrated in the animated chart at Appendix 1a.
26. Mr Coscia accepted at an early stage that he used the algorithm described above in relation to Brent, Gas Oil and WTI. A summary of Mr Coscia's profit and loss during the Relevant Period is set out in the table below. Although Mr Coscia did not always make an end of day net profit, the nature of his manipulative trading strategy was such that he caused detriment to the market:

	Net Profit/ Loss⁵ (USD)
Brent	217,510
Gas Oil	-9,350
WTI	71,760
Total Net Profit	279,920

27. Overall Mr Coscia profited substantially from his trading to the detriment of other market participants.
28. As Mr Coscia's large orders were so unlikely to be executed (due to their short resting time on the order book and inevitable cancellation once the small order was executed or they were partially executed) they created false impressions of liquidity rather than genuine market supply and demand.
29. The market participants who were most likely to trade with Mr Coscia and be impacted by his trading strategy were HFT market participants or traders using algorithmic and/ or automated systems rather than manual traders.
30. At least one significant market participant withdrew from ICE during the Relevant Period directly as a result of Mr Coscia's trading pattern which reduced liquidity for other market participants as well as resulting in the loss of trading opportunity.
31. ICE investigated Mr Coscia's trading and used a monitoring tool to identify the layering trading pattern. ICE found that Mr Coscia's trading pattern was a breach of ICE rule G.20 relating to Disorderly Trading which states: *"it shall be an offence for a trader or Member to engage in disorderly trading whether by high or low ticking, aggressive bidding or offering or otherwise."*

FAILINGS

32. The statutory and regulatory provisions relevant to this Final Notice are set out in Appendix 2.
33. The FCA is satisfied that, during the Relevant Period, Mr Coscia engaged in market abuse contrary to section 118(5) of the Act by effecting transactions and/or orders to trade which gave, or were likely to give, a false or misleading impression as to the supply of, or demand for or the price of Commodities Futures on ICE. Further, the trading activity secured, or was likely to secure, the price of the Commodities Futures in question at an artificial level.
34. Mr Coscia'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.

⁵ The net profit/ loss is calculated by reference to the total of end of day net positions during the Relevant Period ahead of any deductions for transaction costs.

35. The transactions or orders to trade were not effected for legitimate reasons and in conformity with accepted market practices, but in order to create a false or misleading impression.

SANCTION

36. The principal purpose of imposing a financial penalty or issuing a public censure is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefit of compliant behaviour. Financial penalties and public censures are therefore tools that the FCA may employ to help it achieve its statutory objectives.
37. The FCA's strategic objective is ensuring that markets function well. The FCA's integrity objective is protecting and enhancing the integrity of the UK financial system which includes its not being affected by behaviour that amounts to market abuse.
38. Under section 123(1) of the Act, the FCA 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 FCA 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 FCA does not consider that there are reasonable grounds for it to be so satisfied in this case.
39. The FCA's policy for imposing a financial penalty is set out in DEPP. In respect of conduct occurring on or after 6 March 2010, the FCA 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 imposed on individuals in market abuse cases.

Step 1: disgorgement

40. Pursuant to DEPP 6.5C.1G, at Step 1 the FCA seeks to deprive an individual of the financial benefit derived directly from the market abuse where it is practicable to quantify this. The FCA will ordinarily also charge interest on the benefit.
41. The FCA requires Mr Coscia to disgorge the financial benefit by reference to the net profit made by Mr Coscia on ICE over the Relevant Period which amounts to USD 279,920 (excluding interest) before any deductions for transaction fees. Interest at an annual rate of 8%⁶ results in a Step 1 figure of USD 315,376.

Step 2: the seriousness of the breach

42. Pursuant to DEPP 6.5C.2G, at Step 2 the FCA determines a figure that reflects the seriousness of the market abuse. That figure is dependent on whether or not the market abuse was referable to the individual's employment. The market abuse committed by Mr Coscia was not referable to his employment.

⁶ Calculated monthly

43. In cases where the market abuse was not referable to the individual's employment, the Step 2 figure will be the greater of:

(a) a multiple of the profit made or loss avoided by the individual as a direct result of the market abuse (the "profit multiple"); and

(b) for market abuse cases which the FCA assesses to be seriousness level 4 or 5, £100,000. In cases where the market abuse was not referable to the individual's employment the FCA determines the profit multiple which applies by considering the seriousness of the market abuse and choosing a multiple between 0 and 4.

44. The profit multiple range is 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:

Level 1 – profit multiple of 0

Level 2 – profit multiple of 1

Level 3 – profit multiple of 2

Level 4 – profit multiple of 3

Level 5 – profit multiple of 4

45. In assessing the seriousness level, the FCA takes into account various factors which reflect the impact and nature of the market abuse, and whether it was committed deliberately or recklessly. DEPP 6.5C.2G (13) lists factors tending to show the market abuse was deliberate, which include (b) the individual intended to benefit financially from the market abuse, and (g) the individual's actions were repeated. DEPP 6.5C.2G (15) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the FCA considers the following factors to be relevant:

- i. The layering strategy was employed over a six week period. This encompassed 30 days trading in Brent, 18 days trading in Gas Oil and 3 days trading in WTI where the layering strategy was used;
- ii. The impact on ICE was significant due to the high volume and frequency of trading using the layering strategy. The trading pattern illustrated in the example above was often repeated hundreds of times a day with Mr Coscia typically placing and rapidly cancelling over a thousand large orders in a day's trading. Further, Mr Coscia's large orders which were subsequently cancelled typically made up over 75% of all orders within five ticks of the best bid or best offer price and therefore a significant proportion of the total demand and supply on the order book;
- iii. Although there was no significant impact on the price of ICE products, Mr Coscia's trading pattern created false liquidity in the market which he used to his advantage and to the detriment of other market participants. Mr Coscia's large orders were on average 20 times the size of the average size of orders in Brent;

- iv. Liquidity in the market over the Relevant Period was reduced when at least one other significant market participant stopped trading as a result of the adverse impact of Mr Coscia's trading strategy on their algorithms;
 - v. Mr Coscia made substantial profits by taking advantage of small changes in price and the spread which were triggered by the layering strategy;
 - vi. Mr Coscia was an experienced market participant;
 - vii. Mr Coscia deliberately instigated this abusive trading strategy in that he designed the algorithms which he used and set out to benefit financially from it; and
 - viii. The layering strategy was a breach of ICE rules in relation to disorderly trading.
46. The FCA is of the view that Mr Coscia's conduct is at level 4 in terms of its seriousness and has applied a profit multiple of 3 in line with the level of seriousness.
47. As the FCA considers the Step 1 disgorgement figure (excluding interest) to be an appropriate reflection of profit made as a direct result of the market abuse the FCA has applied a profit multiplier of 3 to that figure, giving a figure of USD 839,760 at the end of Step 2.

Step 3: mitigating and aggravating factors

48. Pursuant to DEPP 6.5C.3G, at Step 3 the FCA 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.
49. The FCA considers that the following factor aggravates the breach:
- i. The FCA had issued guidance on layering/ spoofing in Markets Watch 33 in 2009 and published a Decision Notice in relation to Swift Trade in August 2011 shortly before the start of the Relevant Period where a substantial penalty was imposed for market manipulation by layering.
50. The FCA considers that the following factors mitigate the breach:
- i. Mr Coscia stopped using the algorithms when he was notified of concerns over his trading strategy in the course of an investigation by ICE; and
 - ii. Mr Coscia made certain admissions with respect to use of the algorithm and trading strategy and has cooperated with requests for information from ICE during its investigation as well as voluntarily cooperating with the FCA's investigation.
51. Having taken account of the aggravating and mitigating factors, the FCA considers that the factors balance each other such that the Step 2 figure should not be increased or decreased.
52. The Step 3 figure is USD 839,760.

Step 4: adjustment for deterrence

53. Pursuant to DEPP 6.5C.4G, if the FCA 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 FCA may increase the penalty.
54. The FCA does not consider that it is necessary to increase the Step 3 figure in this case.

Step 5: settlement discount

55. Pursuant to DEPP 6.5C.5G, if the FCA and an individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, in recognition of the benefit of such agreement 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 FCA and the individual reached agreement. The settlement discount does not apply to the disgorgement of the benefit calculated at Step 1.
56. The FCA and Mr Coscia reached agreement at Stage 1 and accordingly a 30% discount applies to the Step 4 figure resulting in a reduction to USD 587,800 (rounded down to nearest 100).
57. With the addition of the Step 1 disgorgement figure, plus interest, the figure after Step 5 is USD 903,176.

Final figure

58. The FCA therefore imposes a total financial penalty of USD 903,176 (approximately £597,993) on Mr Coscia for market abuse.

PROCEDURAL MATTERS

Decision maker

59. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.
60. This Final Notice is given under, and in accordance with section 390 of the Act.

Manner of and time for Payment

61. The financial penalty must be paid in full by Mr Coscia to the FCA by no later than 10 July 2013, 7 days from the date of the Final Notice.

If the financial penalty is not paid

62. If all or any of any of the financial penalty is outstanding on 11 July 2013, the FCA may recover the outstanding amount as a debt owed by Mr Coscia and due to the FCA.

Publicity

63. 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 FCA must publish such information about the matter to which this notice relates as the FCA considers appropriate. The information may be published in such manner as the FCA considers appropriate. However, the FCA may not publish information if such publication would, in the opinion of the FCA, be unfair to Mr Coscia or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

FCA contacts

65. For more information concerning this matter generally, contact Naomi Thomas at the FCA (direct line: 020 7066 7382 /fax: 020 7066 7383).

Jamie Symington

Head of Department

Financial Conduct Authority, Enforcement and Financial Crime Division

APPENDICES – ATTACHED SEPARATELY

[APPENDIX 1 – CHART: EXAMPLE OF TRADING](#)

[APPENDIX 1A – ANIMATED CHART POWERPOINT PRESENTATION: EXAMPLE OF TRADING](#)

[APPENDIX 1B – GRAPHS: MARKET DEPTH OF TRADES FROM EXAMPLE OF TRADING](#)

APPENDIX 2

Relevant Statutory and Regulatory Provisions

The FCA's Objectives

1. Under section 1B of the Financial Services Act 2012, in discharging its general functions the FCA⁷ must, so far as is reasonably possible, act in a way which is compatible with its strategic objective, and advances one or more of its operational objectives. The FCA's strategic objective is: ensuring that the relevant markets function well. The FCA's operational objectives include the integrity objective which is protecting and enhancing the integrity of the UK financial system.
2. The "integrity" of the UK financial system includes:
 - (a) its soundness, stability and resilience,
 - (b) its not being used for a purpose connected with financial crime,
 - (c) its not being affected by behaviour that amounts to market abuse,
 - (d) the orderly operation of the financial markets, and
 - (e) the transparency of the price formation process in those markets.

Financial Services and Markets Act 2000 ("the Act") and related legislation

3. Section 123(1) of the Act provides that *"If the [FCA] is satisfied that a person ("A") –*
 - (a) is or has been engaged in market abuse, or*
 - (b) 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,*

it may impose on him a penalty of such amount as it considers appropriate."
4. Section 123(2) of the Act states that the FCA 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 –

⁷ The Financial Conduct Authority (which prior to 1 April 2013 was known as the Financial Services Authority) is referred to in this Annex as the "FCA". Quotations taken from legislation, in which the FCA has been referred to as the "Authority" have been amended for this purpose in this Annex.

(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. "

5. 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).
6. Section 130A of the Act provides for the Treasury by order to specify (a) the markets which are prescribed markets and (b) the investments that are qualifying investments in relation to the prescribed markets.
7. By virtue of the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001 (SI 2001/996) (as amended) ICE Futures Europe is a prescribed market.
8. By virtue of EC Directive 93/22/EC and Article 1(3) of the Insider Dealing/Market Abuse Directive (2003/6/EC) Brent, Gas Oil and WTI Crude futures are qualifying investments for the purposes of the Act.
9. Section 118(5) of the Act describes a form of behaviour amounting to market abuse where an individual engages in behaviour (in relation to qualifying investments on a prescribed market) otherwise than for legitimate reasons and in conformity with accepted market practices which:

a) Give, or are 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) Secure the price of one or more such investments at an abnormal or artificial level.

Relevant Handbook Provisions

The Code of Market Conduct

10. The Code of Market Conduct ("MAR") issued by the FCA 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.
11. Section 122(2) provides that the MAR in force under section 119 of the Act at the time when particular behaviour occurs may be relied on so far as it indicates whether or not that behaviour should be taken to amount to market abuse.
12. 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.
13. MAR 1.6.5E provides a number of factors to be taken into account when considering whether behaviour is for "legitimate reasons", and are indications that it is not. These include 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.

14. MAR 1.6.9E lists a number of factors to be taken into account in determining whether or not a person's behaviour amounts to market abuse (manipulating transactions). These include the extent to which orders to trade given change the representation of the best bid or offer prices in a financial instrument admitted to trading on a regulated market, or more generally the representation of the order book available to market participants, and are removed before they are executed.
15. MAR 1.6.10E lists factors to be taken into account in determining whether or not a person's behaviour in securing an abnormal or artificial price level amounts to market abuse (manipulating transactions). These include the extent to which the individual had a direct interest in the price of the qualifying investment.
16. Annex 2 to MAR sets out the factors to be taken into account when assessing whether to accept a particular market practice as a defence for market abuse (manipulating transactions). There are currently no relevant accepted market practices.

Relevant Guidance – Decision Procedure and Penalties Manual (DEPP)

17. Section 124 of the Act requires the FCA to issue a statement of its policy with respect to the imposition of penalties for market abuse and the amount of such penalties. The FCA's policy in this regard is contained in Chapter 6 of the Decision Procedure and Penalties Manual (DEPP) as applicable from 6 March 2010. In deciding whether to exercise its power to impose a financial penalty under section 123 of the Act, the FCA must have regard to this statement.
18. DEPP 6.2 sets out a number of factors to be taken into account when the FCA 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.
19. In deciding whether to exercise its power under section 123 in the case of any particular behaviour, the FCA must have regard to this statement of policy. Therefore, in determining the penalty to be imposed on Mr Coscia, the FCA has had regard to DEPP 6.
20. With regard to the application of section 123(2) of the Act, DEPP 6.3.2 G sets out factors that the FCA 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 FCA 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 FCA 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

21. DEPP 6.5C sets out the details of the five step framework that applies in respect of financial penalties imposed on individuals in market abuse cases. Details of this framework are contained in the body of this Notice.

Enforcement Guide

22. Paragraph 7.1 of the Enforcement Guide provides that the effective and proportionate use of the FCA's enforcement powers will play an important role in the FCA's pursuit of its statutory objectives. Amongst others, imposing financial penalties shows that the FCA is upholding regulatory standards and helps to maintain market confidence.

Relevant Commentary

23. In the FCA's publication Market Watch, Issue No. 33 August 2009, the FCA issued commentary on manipulation of the order book – "layering or spoofing". The publication stated that the FCA had seen this most frequently when clients layer the order book, in which multiple orders are submitted at different prices on one side of the order book slightly away from the touch; submitted an order to the other side of the order book (which reflected the client's true intention to trade); and following the execution of the latter order, rapidly removing the multiple initial orders from the book. The FCA stated that this behaviour could constitute market abuse (manipulating transactions) under section 118(5) of the Act.

ICE Rules

24. ICE Rule G.20 on Disorderly Trading states: *"it shall be an offence for a trader or Member to engage in disorderly trading whether by high or low ticking, aggressive bidding or offering or otherwise."*