
FINAL NOTICE

To: Gavin Duncan Paul Breeze
Date of birth: 15 June 1961
Date: 15 July 2016

1. ACTION

1.1. For the reasons given in this notice, the Authority hereby:

a) imposes on Mr Breeze a financial penalty of £59,557; and

b) requires Mr Breeze to pay restitution of £1,850 together with interest amounting to £259, which will be passed on by the Authority to the persons who have suffered loss as a result of Mr Breeze's actions; and

c) imposes a public censure on Mr Breeze.

1.2. Mr Breeze agreed to settle at an early stage of the Authority's investigation. Mr Breeze therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £85,057 on Mr Breeze.

1.3. For the avoidance of doubt, no criticism is intended of any party mentioned in this Notice, other than Mr Breeze.

2. SUMMARY OF REASONS

- 2.1. On 18 and 19 September 2014, Mr Breeze attempted to sell his entire shareholding, of 1,273,500 shares in MoPowered Group plc. At the time Mr Breeze held inside information and had been made an insider in relation to a proposed share placing by MoPowered intended to raise £3.5 million at a substantial discount to the prevailing share price. Mr Breeze successfully disposed of 10,000 shares, thereby avoiding a loss of £1,900. While the Authority recognises that it is unlikely that Mr Breeze would have been able to sell his entire shareholding at this price, had he been able to, his loss avoidance could have been up to approximately £242,000. Mr Breeze's decision to sell his shares was made on the basis of the inside information which he held. After the market had closed on Friday 19 September 2014, MoPowered announced its intended share placing. Within the first hour of trading on Monday 22 September 2014, the share price had dropped by approximately 65% (from 20.25 pence to 8 pence) as a result of the news and finally closed at 7 pence on the day.
- 2.2. Further, Mr Breeze disclosed the inside information to another shareholder who was not already in possession of the information. Mr Breeze did not take any steps to ascertain if the other shareholder was already aware of the inside information, or to check the appropriateness of disclosing it. The other shareholder did not deal on the basis of the inside information.
- 2.3. The Authority considers that Mr Breeze's trading amounts to market abuse in breach of section 118(2) of the Act. The Authority therefore proposes to impose a financial penalty on Mr Breeze in the amount of £59,557 pursuant to section 123 (1) of the Act and require restitution pursuant to section 384(5) of the Act.
- 2.4. The Authority considers that Mr Breeze's disclosure of inside information amounts to market abuse in breach of section 118(3) of the Act. For the reasons given in this Notice, the Authority therefore proposes to issue a public statement pursuant to section 123(3) of the Act.

3. DEFINITIONS

- 3.1. The definitions below are used in this Final Notice.

"AIM" means the London Stock Exchange's Alternative Investment Market

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

“the Authority” means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority

“MoPowered” means MoPowered Group plc, a public company listed on AIM

“NOMAD” means a nominated advisor which a company is required to appoint in respect of its listing on AIM

“the Regulations” means the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber)

4. FACTS AND MATTERS

Background

- 4.1. Mr Breeze resides in Jersey. He is an experienced individual in the field of mobile payment software applications. Mr Breeze has held several directorships of private companies. He is currently a Non-Executive Director of two listed companies. In his capacity as a non-executive director of listed companies, Mr Breeze has received training on the obligations of those who hold inside information. He has been an insider on a number of occasions and accepts that he is familiar with the relevant rules.
- 4.2. MoPowered plc designs mobile payment software applications. It was established in 2006 and since 18 December 2013 has been admitted to trading on AIM.
- 4.3. In 2008 Mr Breeze became involved with MoPowered as a significant seed investor, investing over £800,000 in the company, and in December of that year he was appointed to the role of Non-Executive Director. Between 2009 and mid-2013 (when he resigned as a director and ceased his involvement with the company) Mr Breeze was Non-Executive Chairman of MoPowered.
- 4.4. In June 2014, MoPowered decided to raise capital of £3.5 million through a share placing. A share placing involves the private offering of a company’s shares to a number of chosen investors. The new shares are not offered to the general investing public. A share placing is usually priced at a discount to a company’s current share price. Consequently, the price of a company’s shares following a placing is generally expected to fall. The price of a share issued in a share placing

is largely determined by the price at which the investors are willing to subscribe for the share. The pricing negotiations are handled by the company's broker, with the company being the ultimate decision maker. The exact price of a placing is often not determined until late in the process. Where shares in a placing are to be listed on AIM, the company must work closely with its NOMAD in respect of the arrangements and the listing.

- 4.5. In September 2014, MoPowered instructed a broker to identify potential investors for the placing. In addition, a limited number of the largest existing shareholders were approached about investing in the placing by the company, which wanted to inform them of the potentially dilutive effect of the placing and to offer them an opportunity to subscribe for shares. As a significant shareholder holding 8.1% of the issued shares, Mr Breeze was among those approached by the CEO of MoPowered.

Becoming an insider

- 4.6. Information about the share placing was price-sensitive and as such was tightly controlled with the number of existing shareholders approached intentionally limited in order to minimise the risk of insider dealing.
- 4.7. On 12 September 2014, the CEO of MoPowered telephoned Mr Breeze and informed him of the proposed share placing at a discounted price. Following this call, the CEO instructed MoPowered's NOMAD to include Mr Breeze on the insider list for the placing.
- 4.8. At 13:14 on 12 September 2014, shortly after the call, the CEO sent Mr Breeze an email, attaching a presentation (referred to as "the deck") setting out the timetable for the share placing and its announcement, and MoPowered's plans for use of the funding. In the email, the CEO noted "*existing shareholders...will get priority in the allocation and that, regrettably, the placing is likely to be priced at a discount to the current share price*". The deck also included details of MoPowered's unpublished interim financial results, including that whilst revenue had increased, pre-tax losses had increased from £1.4 million to £2.3 million.
- 4.9. Slide 2 of the deck included the following disclaimer, headed "Important Information" and printed in bold type:

"The information contained in the slides is confidential ... and as such may constitute relevant information for the purposes of s.118 of the Financial Services and Markets Act 2000 (as amended) ("FSMA") and non-public price sensitive information for the purposes of the Criminal Justice Act 1993 (as amended). In agreeing to attend the presentation and/or receive these slides, you have agreed to be treated as an "insider" in relation to the information to be disclosed. Accordingly, recipients of these slides and/or attendees at the presentation should not deal in any securities of the Company until the date of a formal announcement by the Company in connection with such information. Dealing in securities of the Company in advance of this date may result in civil and/or criminal liability."

4.10. Mr Breeze did not reply to the CEO's email or provide any other indication as to whether he intended to subscribe for shares in the placing.

4.11. However, at 13:18 on 12 September 2014 (four minutes after receiving it), Mr Breeze forwarded the CEO's email of 12 September 2014 with the attached deck to another shareholder who was not himself an insider. In his forwarding email, Mr Breeze stated merely *"What do you think?"*. Mr Breeze sent this email without first taking steps to ascertain whether that shareholder had been made an insider to the placing, or that it was appropriate to forward it. Mr Breeze told the Authority that based on the CEO's email at 13:14 on 12 September 2014, he assumed the recipient *"would be contacted"* by the CEO but accepts he ought to have taken positive steps to ascertain whether the recipient had been made an insider. The shareholder did not trade on the basis of the information.

4.12. On 18 September 2014, at 08:33, the CEO sent Mr Breeze a further email informing him that, while MoPowered had succeeded in obtaining commitments to raise the full £3.5 million, one institutional investor *"has turned round at the last minute to say that they will only put their money in at 5p per share which is an enormous discount to the current market price. We need to find a further c£400,000 by around noon to get the price to 10p otherwise, I'm afraid, we have to accept what's on the table. Could we have a call this morning to see if you'd consider participating under these circumstances?"* The then market price was approximately 24.25 pence.

- 4.13. Following receipt of this email, Mr Breeze emailed his broker at 09:38 with an instruction to *"Please sell all my MoPowered at any price."*
- 4.14. At 09:45 on 18 September 2014, Mr Breeze emailed the CEO expressing his frustration with the share placing process and informing him that he would not be taking part in the share placing at any price. In this email Mr Breeze gave no indication of his intention to sell his shares in MoPowered. Mr Breeze told the Authority that he was angry that the CEO had approached him at the last minute, in his view putting him under pressure to invest another £400,000, with the success of the placing (at 10p) being all down to him, and that, for this reason, he decided to sell his entire shareholding.
- 4.15. Due to the relative lack of liquidity in MoPowered shares, Mr Breeze's broker informed him later in the morning of 18 September 2014 that they would not be able to sell his entire shareholding in one order. The broker suggested starting with an order of 10,000 shares and warned Mr Breeze that as the market was not looking for stock, the 10,000 share order might *"do more harm than good"* - meaning that Mr Breeze's order could have a negative effect on MoPowered's share price. At 11:11 Mr Breeze replied: *"I would like to sell as much as I can, as soon as I can."*
- 4.16. By the close of the market on 19 September 2014, Mr Breeze's broker had sold 10,000 of his 1,273,500 MoPowered shares at a price of 26 pence per share. The closing price of MoPowered's shares that day was 20.25 pence per share.

The announcement

- 4.17. On Friday 19 September 2014 at 17:45, MoPowered announced its interim financial results for the six months ending 30 June 2014 and that it proposed a share placing to raise £3.5 million in funding. The results included a revenue increase of 39% to £753,204 but stated that its losses had increased pre-tax from £1.4 million to £2.3 million and there had been a 49% increase in costs. This information had been included in the attachments to the email sent to Mr Breeze on 12 September 2014 and forwarded by him to another shareholder who was not an insider.
- 4.18. On 22 September 2014 at 07:00 MoPowered announced it had raised approximately £3.5 million through its share placing at an issue price of 5 pence per share.

- 4.19. As a result of these announcements, MoPowered's share price fell from a closing price of 20.25 pence prior to the announcement on 19 September 2014 to approximately 8 pence within the first hour of trading following the announcement on 22 September 2014.
- 4.20. At 10:38 on 22 September 2014, Mr Breeze's broker telephoned him to inform him of the announcement and the resultant fall in share price to about 8p and to ascertain whether Mr Breeze wanted them to continue selling at this level. Mr Breeze responded, "*I wouldn't bother ... there's going to be no demand at this price...but I was yes*", and consequently cancelled his order.
- 4.21. At 16:35 on 22 September 2014, MoPowered's share price closed at 7 pence, representing a fall of 65% from the previous trading day's close of 20.25 pence.
- 4.22. Mr Breeze's sale of 10,000 shares on 19 September 2014 allowed him to avoid a loss of £1,900. While the Authority recognises that it is unlikely that Mr Breeze would have been able to sell his entire shareholding at this price, had he been able to, he could have avoided a loss of up to approximately £242,000.

5. FAILINGS

- 5.1. The statutory and regulatory provisions relevant to this Final Notice are referred to in Annex A.
- 5.2. The dealing in MoPowered shares by Mr Breeze over the period of 18 to 19 September 2014 amounts to market abuse (insider dealing) in breach of section 118(2) of the Act for the reasons set out below.
- 5.3. The disclosure of inside information to the other shareholder on 12 September 2014 amounts to market abuse (improper disclosure) in breach of section 118(3) of the Act for the reasons set out below.

The shares were qualifying investments traded on a prescribed market

- 5.4. MoPowered shares are, and at the material time were, traded on AIM. They are therefore "qualifying investments" admitted to trading on a "prescribed market" for the purposes of article 10 of the Regulations. Accordingly, Mr Breeze's behaviour fell within section 118(1)(a)(i) of the Act. In addition, Mr Breeze's trading in

MoPowered shares occurred in the UK, fulfilling the jurisdictional criteria set out at section 118A(1)(a) and section 118A(1)(b)(i) of the Act.

Mr Breeze's status as an "insider"

- 5.5. Mr Breeze was made an insider as defined in section 118B(b) of the Act. Mr Breeze became an insider when he was given inside information in his capacity as a significant shareholder in MoPowered, for the purpose of establishing whether he wished to participate in its proposed placing.
- 5.6. Mr Breeze accepted in interview that he had been given inside information and that he understood this at the time.

The information disclosed to Mr Breeze was inside information

- 5.7. The information disclosed by MoPowered to Mr Breeze in relation to MoPowered's proposed share placing and interim financial results was inside information under section 118C of the Act for the following reasons.

(a) Precise

- 5.8. The information disclosed to Mr Breeze during the telephone call on 12 September 2014 and in the emails from the CEO to Mr Breeze on 12 September 2014 and 18 September 2014 was precise for the purpose of section 118C(5) of the Act because it indicated an event that was reasonably expected to occur and which was sufficiently specific to enable a conclusion to be drawn as to the possible effect on MoPowered's share price. It was clear from the information provided to Mr Breeze that the placing would be at a substantial discount to the prevailing share price. By the morning of 18 September 2014, Mr Breeze was aware that the placing would be priced at 5 pence per share unless a further £400,000 could be found to raise it to 10 pence per share. It was clear from this information that when the placing and the interim financial results were announced, it would be likely to cause a fall in the share price.

(b) Not generally available

- 5.9. MoPowered's proposed share placing and interim results were not generally available information for the purposes of section 118C(2)(a) of the Act prior to

the announcement by MoPowered on 19 September 2014. Mr Breeze was aware that this information was confidential and not generally available.

(c) Significant effect on price

- 5.10. It was likely that, if generally available, the information given by MoPowered to Mr Breeze concerning the placing and its interim results would have had a significant effect on the share price of MoPowered shares for the purposes of section 118C(2)(c) and section 118C(6) of the Act. It was information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions. There was a real prospect of that information having a significant negative effect on the price of MoPowered shares. It is notable that when the share placing and interim results were announced, MoPowered's share price fell from 20.25 pence to approximately 8 pence (a fall of 65%) within the first hour of trading following that announcement.

The information disclosed to the other shareholder was inside information

- 5.11. As set out in paragraphs 5.7 to 5.10 above, the email and its attachments which Mr Breeze sent to another shareholder contained inside information. It was disclosed otherwise than in the proper course of the exercise of Mr Breeze's employment, profession or duties. The disclosure was not made for any of these reasons and was merely to obtain the opinion of another shareholder as to the merits of subscribing for shares in the placing.

Conclusion on market abuse (insider dealing and improper disclosure)

- 5.12. Mr Breeze's decision to trade was taken on the basis of the information provided to him by MoPowered on 12 and 18 September 2014. As a result of the circumstances described above, the Authority considers that Mr Breeze engaged in market abuse (insider dealing) contrary to section 118(2) of the Act.
- 5.13. For the reasons given in 5.11 above, the Authority considers that Mr Breeze engaged in market abuse (improper disclosure) contrary to section 118(3) of the Act by disclosing the email dated 12 September 2014 together with its attachments.

- 5.14. Pursuant to section 123(1) of the Act, the Authority may therefore impose a penalty of such amount on Mr Breeze as it considers appropriate.
- 5.15. Section 123(2) of the Act states that the Authority may not impose a penalty for market abuse in certain circumstances. The Authority is satisfied that these circumstances do not apply to Mr Breeze's conduct as described in this notice.
- 5.16. Pursuant to section 384(2) and section 384(5) of the Act, the Authority may exercise the power to require restitution if it is satisfied that a person has engaged in market abuse and that one or more persons has suffered loss as a result of the market abuse.
- 5.17. Section 384(4) of the Act provides that the Authority may not require restitution in certain circumstances. The Authority is satisfied that these circumstances do not apply to Mr Breeze's conduct as described in this notice.
- 5.18. Section 123(3) of the Act states that if the Authority is entitled to impose a penalty on a person it may, instead of imposing a penalty on him, publish a statement to the effect that he has engaged in market abuse.

6. SANCTION

Breach of section 118(2) of the Act – restitution

- 6.1. Under section 384 of the Act the Authority 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 to the Authority to be just having regard to the extent of loss. The Authority has published guidance on the exercise of its power under section 384 of the Act in Chapter 11 of its Enforcement Guide.
- 6.2. In this case, the loss avoided by Mr Breeze's market abuse was borne by the purchasers of his MoPowered shares on 19 September 2014. Mr Breeze informed the Authority voluntarily that he would be willing to pay restitution to the purchaser of his shares. The Authority considers it just that Mr Breeze pay in restitution the full amount of the loss suffered by those purchasers, £1,850, together with interest on that sum at the rate of 8% per annum, amounting to £259 as at the date of this Notice. The loss has been calculated by comparing the price paid by the purchasers for the shares with the value of the shares

immediately after the announcement was made. The Authority therefore requires Mr Breeze to pay £2,109 to it in restitution, which it will pass on to the purchasers of Mr Breeze's shares.

Breach of section 118(2) of the Act - Financial penalty

- 6.3. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In determining the penalty to be imposed on Mr Breeze, the Authority has had regard to Chapter 6 of DEPP as it applied in September 2014. In respect of conduct occurring on or after 6 March 2010, the Authority 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

- 6.4. Pursuant to DEPP 6.5C.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the market abuse where it is practicable to quantify this.
- 6.5. As a result of the restitution required pursuant to paragraph 6.2 above, disgorgement will be reduced from the £1,900 loss avoided by Mr Breeze by the amount of restitution paid before interest, being £1,850. In accordance with DEPP 6.5C.1G, the Authority will charge interest on Mr Breeze's benefit at 8% per year from receipt, amounting to £7.
- 6.6. The Step 1 figure is therefore £57.

Step 2: the seriousness of the breach

- 6.7. Pursuant to DEPP 6.5C.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the market abuse. 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 for their 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"); and

(b) for market abuse cases which the Authority assesses to be seriousness level 4 or 5, £100,000.

6.8. In cases where the market abuse was not referable to the individual's employment the Authority determines the profit multiple which applies by considering the seriousness of the market abuse and choosing a multiple between 0 and 4.

6.9. 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

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

6.11. DEPP 6.5C.2G(13) states that factors tending to show that market abuse was deliberate include situations where:

(1) 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;

(2) the individual intended to benefit financially from the market abuse, either directly or indirectly;

(3) the individual knew or recognised that the information on which the dealing was based was inside information.

6.12. In considering whether Mr Breeze committed market abuse deliberately the Authority took into account the following facts:

- (1) Mr Breeze was aware that the information was inside information and he foresaw that the likely consequences of his actions would result in market abuse. He nevertheless proceeded to deal and attempt to deal;
- (2) Mr Breeze intended to benefit from the market abuse by avoiding a loss. Once the public announcement of the share placing had been made and MoPowered's share price had dropped significantly, Mr Breeze cancelled his order. This indicates Mr Breeze's intention to benefit financially from the market abuse;
- (3) Mr Breeze is a director of two listed companies and he was an experienced user of the markets. He recognised that the information he was given on 12 September 2014 and 18 September 2014 was inside information;
- (4) Although Mr Breeze was angry at being asked to put more money into MoPowered in order to support the placing at 10p per share, this does not mean that his sale and attempt to sell his shareholding on the basis of inside information was inadvertent or that he was reckless.

6.13. DEPP 6.5C.2G(15) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:

- (1) The level of loss which Mr Breeze intended to avoid was significant. Had Mr Breeze been successful in executing his entire order, he could have avoided a loss of up to approximately £242,000 (the Authority recognises that it is unlikely that Mr Breeze would have been able to sell his entire shareholding at this price);
- (2) Mr Breeze has a prominent position in the market; he holds several directorships, including at two listed companies;
- (3) The Authority considers the market abuse was deliberate.

6.14. DEPP 6.5C.2G(16) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers the following factors to be relevant:

- (1) In the event, Mr Breeze avoided relatively little loss as a result of the market abuse; and

(2) There was no, or limited, effect on the orderliness of or confidence in the markets as a result of Mr Breeze's market abuse.

6.15. Taking all of these factors into account, the Authority considers the seriousness of the market abuse to be level 4. This means the Step 2 figure is the higher of:

(a) $3 \times \text{£}1,900 = \text{£}5,700$; and

(b) $\text{£}100,000$

6.16. The Step 2 figure is therefore $\text{£}100,000$.

Step 3: Mitigating and aggravating factors

6.17. Pursuant to DEPP 6.5C.3G, at Step 3 the Authority 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.

6.18. The Authority considers that the co-operation given by Mr Breeze during its investigation is a significant factor that mitigates the breach. He voluntarily travelled to the UK to attend an interview under caution. In interview, he made various voluntary admissions which reduced the cost and time of the investigation and offered to provide restitution to the individuals who bought his 10,000 shares prior to the MoPowered announcement. Following his interview, Mr Breeze has voluntarily provided additional documents to the Authority.

6.19. Accordingly, the Authority considers that the Step 2 figure should be decreased by 15%.

6.20. The Step 3 figure is therefore $\text{£}85,000$.

Step 4: Adjustment for deterrence

6.21. Pursuant to DEPP 6.5C.4G, if the Authority 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 market abuse, then the Authority may increase the penalty.

6.22. The Authority considers that the Step 3 figure of $\text{£}85,000$ represents a sufficient deterrent to Mr Breeze and others, and so has not increased the penalty at Step 4.

6.23. The Step 4 figure is therefore $\text{£}85,000$.

Step 5: Settlement discount

- 6.24. Pursuant to DEPP 6.5C.5G, if the Authority and the 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 Authority and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.
- 6.25. The FCA and Mr Breeze reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.
- 6.26. The Step 5 figure is therefore £59,500.

Proposed penalty

- 6.27. The Authority therefore imposes a total financial penalty of £59,557 (representing the Step 1 figure of £57 together with the Step 5 figure of £59,500) on Mr Breeze for market abuse.

Breach of section 118(3) of the Act – Public Statement

- 6.28. The Authority proposes to publish a statement of Mr Breeze's misconduct pursuant to section 123(3) of the Act for breaching section 118(3) FSMA. As the misconduct took place after 6 March 2010, the Authority's new penalty regime applies. The authority has also had regard to the provisions of Chapter 7 of the Enforcement Guide.
- 6.29. The Authority's policy for imposing a financial penalty or publishing a statement of misconduct is set out in Chapter 6 of DEPP. DEPP 6.4.2G notes that the criteria for determining whether it is appropriate to issue a public censure rather than impose a financial penalty include those factors that the Authority will consider in determining the amount set out in DEPP 6.5A to DEPP 6.5D. The Authority considers the following factors to be particularly relevant in this case.

Deterrence

- 6.30. When determining the level of penalty, the Authority has regard to the principal purpose for which it imposes sanctions, namely to promote the integrity of the market by deterring individuals from committing market abuse.

The extent of profit made or loss avoided

- 6.31. The other shareholder did not trade on the basis of the inside information disclosed to him by Mr Breeze and accordingly there was no profit made or loss avoided.

Seriousness of the breach

- 6.32. Given the lack of impact on the market as a result of the recipient not trading on the basis of the information, the Authority does not consider Mr Breeze's disclosure of inside information to be sufficiently serious to warrant a financial penalty. However, the Authority wishes to make it clear that passing on inside information on the basis of an assumption that the recipient will receive it formally as an insider in due course may amount to serious misconduct in other circumstances.

Mr Breeze admitted the breach

- 6.33. Mr Breeze admitted the breach during an interview under PACE caution and provided details of the shareholder to whom he passed on the inside information. The cooperation to the Authority enabled it to expedite this particular line of inquiry.

7. PROCEDURAL MATTERS

Decision maker

- 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 under, and in accordance, with section 390 of the Act.

Manner of and time for Payment

- 7.3. The financial penalty must be paid in full by Mr Breeze to the Authority by no later than 29 July 2016, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 7.4. If all or any of the financial penalty is outstanding on 30 July 2016, the Authority may recover the outstanding amount as a debt owed by Mr Breeze and due to the Authority.

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 Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- 7.6. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

- 7.7. For more information concerning this matter generally, contact Joanna Simon (direct line: 020 7066 7418) or Udani Eriyagolla (direct line: 0207 066 9468) of the Enforcement and Market Oversight Division of the Authority.

Mario Theodosiou
Project Sponsor
Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A: Relevant Statutory and Regulatory Provisions

STATUTORY PROVISIONS

1. The Authority's statutory objectives are set out in section 1B(3) of the Financial Services and Markets Act 2000 as amended by the Financial Services Act 2012 and include the integrity objective.
2. The Authority has the power under section 123(1) of the Act to impose a financial penalty where it is satisfied that a person has engaged in market abuse.
3. Section 118(1)(a) of the Act defines 'market abuse' as "*behaviour (whether by one person alone or by two more persons jointly or in concert) which –*
 - (a) *occurs in relation to:*
 - (i) *qualifying investments admitted to trading on a prescribed market;*
 - ...and*
 - (b) *falls within any one or more of the types of behaviour set out in subsections (2) to (8)."*
4. Section 118(2) sets out the behaviour that will amount to insider dealing:

"... where an insider deals or attempts to deal, in a qualifying investment or related investment on the basis of inside information relating to the investment in question."
5. Section 118(3) sets out the behaviour that will amount to improper disclosure:

"...where an insider discloses inside information to another person otherwise than in the proper course of the exercise of his employment, profession or duties."
6. Section 118A(1) states that behaviour is taken into account if it occurs:
 - (a) *in the United Kingdom, or*
 - (b) *in relation to—*
 - (i) *qualifying investments which are admitted to trading on a prescribed market situated in, or operating in, the United Kingdom ..."*
7. Section 118B of the Act provides that an insider is any person who has inside information:
 - (b) *as a result of his holding in the capital of an issuer of qualifying investments"*

8. Section 118C(2) sets out the requirements for information to be inside information:

"(2) In relation to qualifying investments, or related investments, which are not commodity derivatives, inside information is information of a precise nature which –

- (a) is not generally available*
- (b) relates, directly or indirectly, to one or more issuers of the qualifying investments or to one or more of the qualifying investments, and*
- (c) 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."*

9. Section 118C(5) states that information will be precise 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 the qualifying investments or related investments."*

10. Section 118C(6) of the Act sets out when the information will have a significant effect on price:

"Information would be likely to have a significant effect on price if and only if it is information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions."

11. Section 123(2) of the Act provides a defence to the FCA imposing a penalty for market abuse:

"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."*

12. Section 123(3) of the Act provides a the FCA power to issue a public statement:

"if the [FCA] is entitled to impose a penalty on a person under this section it may, instead of imposing a penalty on him, publish a statements to the effect that he has engaged in market abuse."

13. Section 384(2)-(3) of the Act provides the FCA with the power to require restitution:
- "(2) The [FCA] may exercise the power in subsection (5) if it is satisfied that a person ("the person concerned")*
- (a) has engaged in market abuse...*
- And the conditions in subsection (3) Is fulfilled,*
- (3) The condition is – ...*
- (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the market abuse."*

14. Section 384(5) Act provides the FCA with the power to require restitution:
- "The power referred to in [subsection (2)] is a power to require the person concerned, in accordance with such arrangements as the regulator exercising the power (the "regulator concerned") considers appropriate, to pay to the appropriate person or to distribute among the appropriate persons such amount as appears to the regulator concerned to be just having regard -*
- (b) in a case within paragraph (b) of subsection (1) or (3), to the extent of the loss or other adverse effect"*

HANDBOOK PROVISIONS

Code of Market Conduct

15. The Authority has issued the Code of Market Conduct ("MAR") pursuant to section 119 of the Act.
16. Under section 122(2) of the Act, the version of MAR in force at the time when particular behaviour occurs may be relied upon insofar as it indicates whether or not that behaviour should be taken to amount to market abuse. The following references are to the version of MAR as at March 2015.
17. MAR 1.3.4 E provides that:
- "In the opinion of the FCA, if the inside information is the reason for, or a material influence on, the decision to deal or attempt to deal, that indicates that the person's behaviour is "on the basis of" inside information."*

Decision Procedures and Penalties manual ("DEPP")

18. Section 124 of the Act requires the Authority to issue a statement of policy with respect to the imposition of penalties for market abuse and the amount of such penalties. The Authority's policy in this regard is contained in Chapter 6 of 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 Authority must have regard to this statement.
19. DEPP 6.2 sets out a number of factors to be taken into account when the Authority decides to take action for a financial penalty. The factors are not exhaustive, but include the nature and seriousness of the suspected breach and the conduct of the person after the breach.
20. In deciding whether to exercise its power under section 123 of the Act in the case of any particular behaviour, the Authority must have regard to the statement of policy published under section 124 of the Act. In determining the penalty to be imposed on Mr Breeze, the Authority has had regard to DEPP 6.
21. DEPP 6.3 sets out factors which the Authority may take into account in determining whether the conditions in section 123(2) of the Act are met. Relevant factors include:
 - (a) 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 as amounting or not amounting to market abuse (DEPP 6.3.2(1)G);
 - (b) whether the Authority 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. The Authority 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 should be given (DEPP 6.3.2(2)G);
 - (c) the level of knowledge, skill and experience to be expected of the person concerned (DEPP 6.3.2(4)G);
 - (d) 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.
22. DEPP 6.4 sets out factors which the Authority may take into account in determining whether to impose a financial penalty or public censure. These factors include:
 - (a) whether or not deterrence may be effectively achieved by issuing a public censure (DEPP 6.4.2(1)G);
 - (b) if the breach is more serious in nature or degree, this may be a factor in favour of a financial penalty, on the basis that the sanction should reflect the seriousness of the breach; other things being equal, the more serious the breach, the more likely the Authority is to impose a financial penalty (DEPP 6.4.2(3)G);

- (c) The Authority's approach in similar previous cases: the Authority will seek to achieve a consistent approach to its decisions on whether to impose a financial penalty or issue a public censure.

DEPP 6.5 sets out the principles relating to the Authority's penalty setting regime and DEPP 6.5C sets out the five step framework that applies in respect of financial penalties imposed on individuals in market abuse cases. Details of this framework are set out in the body of this Notice.