
FINAL NOTICE

To:	Mark Samuel Taylor
Date of Birth:	30 October 1971
FCA Reference Number:	MST00007
Date:	5 May 2016

1. ACTION

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

- 1.1.1. imposes on Mark Samuel Taylor a financial penalty of £36,285 for engaging in market abuse (insider dealing); and
- 1.1.2. makes an order prohibiting Mr Taylor from performing any function in relation to any regulated activity carried on by an authorised or exempt person, or exempt professional firm.

1.2. Mr Taylor provided verifiable evidence of serious financial hardship. Had it not been for his reduced financial circumstances, the Authority would have imposed a financial penalty of £78,819 (before stage 1 settlement discount).

1.3. Mr Taylor provided full admissions of his conduct to the Authority in an early interview under caution, and accordingly the Authority has reduced the financial penalty by 25% (under step 3 of the Authority's five-step framework to determine the appropriate level of penalty).

1.4. Mr Taylor also agreed to settle at an early stage of the Authority's investigation. He therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures.

1.5. The Prohibition Order has effect 2 days after the date of this Notice. The FCA is minded to revoke the Prohibition Order, on Mr Taylor's application, at any time after two years from the date of the Final Notice, in the absence of new evidence that Mr Taylor is not fit and proper.

2. SUMMARY OF REASONS

- 2.1. On 12 March 2015 Mr Taylor, an experienced financial adviser, purchased 5,582 shares in Ashcourt Rowan Plc for £15,012. Mr Taylor's trade was made on the basis of inside information which he had obtained from an email circulated in error by his employer, Towry Limited. Mr Taylor was aware that the information was inside information and that his trading constituted market abuse. Mr Taylor bought the shares for his own account using funds from his self-invested personal pension.
- 2.2. On 12 March 2015, subsequent to Mr Taylor's purchase of the Ashcourt Rowan shares, Towry publicly announced its intention to make a revised offer to acquire Ashcourt Rowan at £3.49 per share. This news caused the share price of Ashcourt Rowan to increase by 26%. Shortly after the announcement, on the same day, Mr Taylor sold all 5,582 shares in Ashcourt Rowan for £18,510, making a profit of £3,498.
- 2.3. The Authority considers that Mr Taylor's behaviour amounts to market abuse in breach of section 118(2) of the Act. The Authority therefore proposes to impose a financial penalty on Mr Taylor in the amount of £36,285 pursuant to section 123(1) of the Act. The Authority also proposes to make a prohibition order pursuant to section 56 of the Act on the basis that it considers that Mr Taylor is not a fit and proper person to perform any function in relation to a regulated activity carried on by an authorised person as his conduct has demonstrated a lack of honesty and integrity.

3. DEFINITIONS

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

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

"Ashcourt Rowan" means Ashcourt Rowan Plc;

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

"DEPP" means the Authority's Decision Procedures and Penalties Manual;

"MAR" means the Code of Market Conduct issued pursuant to section 119 of the Act;

"Mr Taylor" means Mark Samuel Taylor, the subject of this Notice;

"the Regulations" means the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005;

"SIPP" means self-invested personal pension;

"SUP" means the FCA Supervision manual

"Towry" means Towry Limited; and

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

4. FACTS AND MATTERS

Mr Taylor

- 4.1. Mr Taylor is 44 years old and has been unemployed since his dismissal from Towry on 14 July 2015 for gross misconduct as a result of the incident which is the subject of this Notice. He had worked as a chartered financial planner at Towry for 2.5 years up to his dismissal. Before joining Towry he had worked for 22 years as an independent financial adviser in the retail banking sector. Mr Taylor occasionally traded in shares and managed funds for his SIPP account, using a broker. These trades were usually for cash amounts in the range of £1,000 to £3,000. Mr Taylor represented at interview that he would typically trade based on the current price of a stock, tips on a broker's website, and wider research from public sources.

Training in market abuse

- 4.2. On 1 December 2014, Towry circulated an email to all staff, including Mr Taylor, which announced that the firm had recently revised its personal account dealing policy. The email contained a link to a page on Towry's intranet entitled in relevant part "*Compliance Guide – Personal Account Dealing Policy*". Paragraph 4, entitled "*Insider dealing*", included a reminder to employees of the offence under Part V of the Criminal Justice Act 1993, and warned them not to "*undertake any transaction that constitutes insider dealing*". Paragraph 4.5, entitled "*Market Abuse*", warned employees not to "*undertake a transaction that would contravene the FCA's Code of Market Conduct*."
- 4.3. The intranet page described in the previous paragraph contained a link to another intranet page entitled "*Compliance Guide – Insider Dealing*". This page included a description of the three insider dealing offences contained in the Criminal Justice Act 1993. It also included a link to a factsheet published by the Authority in June 2008, entitled "*Why market abuse could cost you money*" which provided a detailed description, with examples, of behaviour that might constitute market abuse under the European Market Abuse Directive.
- 4.4. Mr Taylor stated at interview that he does not recall reviewing the above information during his employment with Towry, nor does he recall being aware of a Personal Account Dealing Policy which was applicable to him. However, he said that he did understand the definition of "inside information" and was aware that trading whilst in possession of such information was prohibited by law.

The takeover proposal and communications from Towry

- 4.5. At the relevant time, Ashcourt Rowan was a wealth management company listed on the London Stock Exchange's sub-market AIM and based in London. Towry is a privately-held British wealth management company based in London.
- 4.6. On 2 February 2015, Towry made an offer to acquire Ashcourt Rowan for £2.70 per share. Discussions between Towry and Ashcourt Rowan continued without a deal being finalised. By opening of the markets on 12 March 2015, the share price of Ashcourt Rowan had risen to £2.65.
- 4.7. On 12 March 2015, at 10:14am and prior to any public announcement, the CEO of Towry sent an email to all of its staff, including Mr Taylor, stating that Towry had increased its offer for Ashcourt Rowan to £3.49 per share. At 10:21am, he tried to

recall this message. At 10:22am, Towry's CEO sent a further email to all staff stating that the increased offer price "*is not public information yet*" and warning staff not to act on the information, because "*it is potentially insider trading*".

- 4.8. At 12:15pm Towry issued a public announcement that it had made a revised offer for Ashcourt Rowan at £3.49 per share. At 12:30pm, Towry's CEO emailed all staff confirming that this announcement had been made.

Mr Taylor's actions

- 4.9. Mr Taylor was away from Towry's office for part of the morning of 12 March 2015, returning at 10:55am. Mr Taylor recalled at interview that he checked his emails shortly before he arrived back at the office, and that he did read the emails described at paragraph 4.7 above. Mr Taylor also stated at interview that he understood the sequence of emails to mean that the information regarding the increased offer price was "inside information" and that he would be committing an illegal act of market abuse if he traded Ashcourt Rowan shares while in possession of that information.
- 4.10. At 11:32am on 12 March 2015, Mr Taylor used his online trading account with a broking firm to purchase 5,582 shares in Ashcourt Rowan, at 268.7006p per share for a total of £15,011.82.
- 4.11. At 11:33am the broker emailed Mr Taylor at his Towry work email address, providing a copy of the contract note in relation to the above share purchase. Less than a minute after receiving this confirmation email, Mr Taylor changed the email address to which future trade confirmations should be sent, so that these would be sent to a personal email address instead. At interview, Mr Taylor said that he made that change to his email address even though an email had already been sent to his work address relating to the share purchase because he panicked, knowing that he had acted improperly.
- 4.12. Between 12:30pm and 12:47pm Mr Taylor said that he would have read the CEO's email described at paragraph 4.8 above, confirming that a public announcement had been made regarding the revised offer price. Mr Taylor confirmed at interview that he understood this email to mean that it was now public knowledge that Towry had made a revised offer for Ashcourt Rowan.
- 4.13. At 12:47pm, Mr Taylor sold the 5,582 shares in Ashcourt Rowan for 331.6p each, totalling £18,509.91 and making a profit of £3,498. The broker emailed the trade confirmation for this share sale to Mr Taylor's personal email address.
- 4.14. The next day, 13 March 2015, Mr Taylor called the broker through which he had placed the above trades and asked "*whether it's possible to reverse a buy-sell trade that I placed yesterday within my SIPP?*" for the reason that "*I fear I may have been guilty or be judged to be guilty of insider trading.*" The broker informed Mr Taylor that it was not possible to reverse the trade and stated "*it's probably one for your compliance department*".
- 4.15. Despite realising that he was guilty of insider trading, Mr Taylor informed neither Towry's compliance function, nor the Authority, of his concerns. He stated at interview, "*I just buried my head and hoped the problem would go away.*"
- 4.16. Mr Taylor's broker reported the trading to the Authority as suspicious in accordance with its obligation to do so under SUP 15.10.2R.

4.17. In later interaction with Towry, and subsequently the FCA, Mr Taylor admitted his misconduct and provided a prompt and detailed account of the events under investigation.

5. **FAILINGS**

5.1. The statutory provisions, regulatory provisions and guidance relevant to this Notice are referred to in Annex A.

5.2. The dealing in Ashcourt Rowan shares by Mr Taylor on 12 March 2015 amounts to market abuse (insider dealing) in breach of section 118(2) of the Act for the following reasons.

The shares were qualifying investments traded on a prescribed market

5.3. At the material time Ashcourt Rowan's shares 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 Taylor's behaviour fell within section 118(1)(a)(i) of the Act. In addition, Mr Taylor's trading in Ashcourt Rowan shares occurred in the UK, fulfilling the jurisdictional criteria set out in section 118A(1)(a) and section 118A(1)(b)(i) of the Act.

Mr Taylor's status as an "insider"

5.4. Mr Taylor was "*an insider*" as defined in section 118B(e) of the Act. Mr Taylor became an insider as a result of acquiring inside information from Towry. Mr Taylor knew or could reasonably be expected to have known that the information he received from Towry was inside information because:

5.4.1. Mr Taylor had read the 10:22am email from Towry's CEO which explicitly warned recipients not to act on the information that Towry had made a revised offer for Ashcourt Rowan because it would be potentially insider dealing; and

5.4.2. Mr Taylor knew that the increased offer price was not public information at that time.

5.5. As noted previously, Mr Taylor stated in interview with the Authority, that he understood that the information in the 10:22am email from Towry's CEO concerning the increased offer price was in fact inside information.

The information disclosed in error to Mr Taylor was inside information

5.6. The information disclosed by Towry to Mr Taylor satisfies the test for inside information under section 118C of the Act for the following reasons.

(a) Precise

5.7. The information disclosed by Towry to Mr Taylor, namely that Towry had increased its offer for Ashcourt Rowan to £3.49 per share, was precise for the purpose of section 118C(5) of the Act. Ashcourt Rowan shares were trading at around £2.65 on the morning on 12 March 2015, so the information was specific enough to enable a conclusion to be drawn that the price of Ashcourt Rowan shares trading in the market would rise.

(b) Not generally available

5.8. The fact of the revised takeover offer was not generally available information for the purposes of section 118C(2)(a) of the Act prior to the announcement by Towry at 12:15pm. Moreover, Mr Taylor understood that the fact of the revised offer was probably not public or generally available, as he had read the 10:22am email sent from Towry's CEO which stated that the information may not be public yet, and instructed staff not to communicate the information to anyone until they were told that it is in the public domain.

(c) Significant effect on price

5.9. It was likely that, if generally available, the information provided by Towry to Mr Taylor would have had a significant effect on the share price of Ashcourt Rowan for the purposes of section 118C(2)(c) and section 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. There was a real prospect of that information having a significant effect on the price of Ashcourt Rowan shares. It is notable that the share price of Ashcourt Rowan rose from £2.65 to £3.35, an increase of 26%, in the period from 12:15pm (when the Towry announcement was made) to close of trading at 4:30pm.

Conclusion on market abuse (insider dealing)

5.10. Mr Taylor's decision to trade was taken on the basis of the information provided by Towry and the information related directly to Ashcourt Rowan. In the circumstances described above, the Authority is satisfied that Mr Taylor engaged in market abuse (insider dealing) contrary to section 118(2) of the Act.

5.11. Pursuant to section 123(1) of the Act, the Authority may therefore impose a penalty of such amount as it considers appropriate on Mr Taylor.

5.12. 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 Taylor's conduct as described in this Notice.

6. SANCTION

Financial Penalty

6.1. 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 Taylor, the Authority has had regard to Chapter 6 of DEPP as it applied in March 2015. 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

- 6.2. 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.
- 6.3. Mr Taylor derived a direct financial benefit from the market abuse in the form of the profit he made on the trade in the Ashcourt Rowan shares. This profit amounts to £3,498. In accordance with DEPP 6.5C.1G, the Authority proposes to charge interest on Mr Taylor's benefit at 8% per year from receipt, amounting to £321.
- 6.4. The Step 1 figure is therefore £3,819.

Step 2: the seriousness of the breach

- 6.5. Pursuant to DEPP 6.5C.2G, at Step 2 the Authority 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 Authority considers that the the market abuse committed by Mr Taylor was referable to his employment as had he not been employed by Towry, he would not have received the inside information. Thus, his position as an employee of the firm enabled him to commit the market abuse.
- 6.6. In cases where the market abuse was referable to the individual's employment, the Step 2 figure will be the greater of:
 - 6.6.1. a figure based on a percentage of the individual's "relevant income";
 - 6.6.2. 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
 - 6.6.3. for market abuse cases which the Authority assesses to be seriousness level 4 or 5, £100,000.
- 6.7. In cases where the market abuse was referable to the individual's employment the Authority determines the percentage of relevant income which applies by considering the seriousness of the market abuse and choosing a percentage between 0% and 40%.
- 6.8. An individual's "relevant income" is the gross amount of all benefits received by the individual from the employment in connection with which the market abuse occurred (the "relevant employment") for the period of the market abuse. Where the market abuse was a one-off event, the relevant income is that earned by the individual in the 12 months preceding the market abuse. For Mr Taylor, this amount is £76,975.
- 6.9. The percentage range and profit multiple range are divided into five fixed levels which reflect, on a sliding scale, the seriousness of the market abuse; the more serious the market abuse, the higher the level. For penalties imposed on individuals for market abuse there are the following five levels:

Level 1 – 0%, profit multiple of 0

Level 2 – 10%, profit multiple of 1

Level 3 – 20%, profit multiple of 2

Level 4 – 30%, profit multiple of 3

Level 5 – 40%, 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.2(13) states that the factors tending to show that market abuse was deliberate include situations where:

6.11.1. 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; and

6.11.2. the individual sought to conceal his misconduct.

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

6.12.1. On his own account, Mr Taylor had immediately identified that the information he received was inside information and that to trade on the basis of it was illegal;

6.12.2. Even though Mr Taylor identified that the information he had received was inside information, he nevertheless traded on that information;

6.12.3. Mr Taylor intended to benefit financially from the market abuse;

6.12.4. Mr Taylor knew that the information on which the dealing was based was inside information;

6.12.5. Mr Taylor was an experienced financial services professional; and

6.12.6. Mr Taylor failed to take any steps immediately after trading, other than to ring his broker the following day and ask whether the trading could be reversed. He also failed to bring this to the attention of the relevant individuals at Towry. It is also relevant that Mr Taylor changed the email address to which his broker's trade confirmations would be sent, from his work email address to a personal email address. The Authority considers this to be an attempt by Mr Taylor to conceal his engagement in market abuse.

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:

6.13.1. Mr Taylor acted deliberately;

6.13.2. the facts outlined in 6.12.6; and

6.13.3. Mr Taylor was an approved person and held a controlled function CF30 at the time at which he committed market abuse, and was subject to the standards

of honesty and integrity that apply to professionals operating within the financial services market which he breached by committing market abuse. Mr Taylor also breached a position of trust in relation to his employment contract.

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:

6.14.1. Mr Taylor made relatively little profit as a result of the market abuse;

6.14.2. Mr Taylor committed market abuse on only one occasion; and

6.14.3. There was no, or limited effect on the orderliness of or confidence in the markets as a result of Mr Taylor'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:

6.15.1. $3 \times \text{£}3,498 = \text{£}10,494$;

6.15.2. $30\% \text{ of } \text{£}76,975 = \text{£}23,092$; and

6.15.3. $\text{£}100,000$.

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 early and full admissions made by Mr Taylor during its investigation constitute a significant factor that mitigates the breach. In his interview under caution, Mr Taylor provided a prompt and detailed account of the events relating to the trade and co-operated with the Authority in that he gave detailed answers to questions about his dealing and the surrounding circumstances. That detailed account, which he provided voluntarily and unconditionally, has been relied on by the Authority and has expedited significantly its investigation. Accordingly, the Authority considers that the Step 2 figure should be reduced by 25%.

6.19. The Step 3 figure is therefore $\text{£}75,000$.

Step 4: Adjustment for deterrence

6.20. 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.

6.21. The Authority considers that the Step 3 figure of $\text{£}75,000$ represents a sufficient deterrent to Mr Taylor and others, and so does not propose to increase the penalty at Step 4.

6.22. The Step 4 figure is therefore £75,000.

Serious financial hardship

6.23. Pursuant to DEPP 6.5D.2G, the Authority will consider reducing the amount of a penalty if an individual will suffer serious financial hardship as a result of having to pay the entire penalty. The Authority accepts that the payment of a penalty of £75,000 plus disgorgement of £3,819 would cause Mr Taylor serious financial hardship. The Authority has therefore reduced the penalty to £46,380, together with disgorgement of £3,819, in total £50,199.

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 Authority and Mr Taylor reached agreement at Stage 1 and so a 30% discount applies to the financial penalty element of £46,380 after Step 4 and the discount for serious financial hardship.

6.26. The Step 5 figure is therefore £32,466.

Proposed penalty

6.27. The Authority therefore proposes to impose a total financial penalty of £36,285 (representing the Step 1 figure of £3,819 together with the Step 5 figure of £32,466) on Mr Taylor for market abuse.

Prohibition

6.28. The Authority considers it appropriate to make an order prohibiting Mr Taylor from performing any function in relation to any regulated activity carried on by an authorised person. In reaching this decision, the Authority has also had regard to the guidance in Chapter 9 of the EG (the relevant provisions of which are set out in the annex to this Notice) and the following factors in particular:

6.28.1. Mr Taylor acted without honesty and integrity by deliberately engaging in market abuse; and

6.28.2. The dishonest nature of Mr Taylor's actions demonstrate that he presents a serious and continuous risk to consumers and to confidence in the financial system.

6.29. The FCA notes that Mr Taylor has not previously been disciplined by the FCA. In proposing to impose a prohibition order in the terms set out in paragraph 1.4, the FCA has had regard to the following steps taken by Mr Taylor to rehabilitate himself in that:

6.29.1. Mr Taylor admitted his misconduct to Towry, albeit at a time when he had been asked to justify his conduct. Mr Taylor admitted that he had traded on

information he knew to be inside information to Towry. As a result, he is no longer employed by Towry; and

6.29.2. Mr Taylor has been open and contrite in his dealings with the FCA. He admitted his misconduct at the earliest stage in the investigation.

7. PROCEDURAL MATTERS

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 Taylor to the Authority by no later than 19 May 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 20 May 2016, the Authority may recover the outstanding amount as a debt owed by Mr Taylor 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 Notice relates as it considers appropriate.

Authority contacts

7.7. For more information concerning this matter generally, contact Ken O'Donnell (direct line: 020 7066 1374), Karen Jones (direct line 020 7066 3910) or Meg Gardiner (direct line: 020 7066 3118) at the Authority.

Mario Theodosiou

**Enforcement and Market Oversight Division
Financial Conduct Authority**

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 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 ..."*
6. Section 118B of the Act provides that an insider is any person who has inside information:
 - (c) *as a result of having access to the information through the exercise of his employment, profession or duties," [or]*
 - (e) *which he has obtained by other means and which he knows, or could reasonably be expected to know, is inside information."*
7. 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."*

8. 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."*

9. 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."

10. 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."

11. With regard to prohibitions, the FCA may prohibit an individual from carrying out regulated activities under section 56 of the Act which states:

"Subsection (2) applies if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.

The Authority may make an order ("a prohibition order") prohibiting the individual from performing a specified function, any function falling within a specified description or any function."

HANDBOOK PROVISIONS

Code of Market Conduct

12. The Authority has issued the Code of Market Conduct ("MAR") pursuant to section 119 of the Act.

13. 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.

14. MAR 1.2.3G states that it is not a requirement of the Act that the person who engaged in the behaviour amounting to market abuse intended to commit market abuse.

15. MAR 1.2.8 E provides that:

"In the opinion of the FCA, the following factors are to be taken into account in determining whether or not a person could reasonably be expected to know that information in his possession is inside information and therefore whether he is an insider under section 118B(e) of the Act, and indicate that the person is an insider:

- (1) if a normal and reasonable person in the position of the person who has inside information would know or should have known that the person from whom he received it is an insider; and*
- (2) if a normal and reasonable person in the position of the person who has inside information would know or should have known that it is inside information."*

16. MAR 1.2.12 E sets out factors that are to be taken into account in determining whether or not information is generally available, each of which indicate that the information is generally available (and therefore that it is not inside information):

- "Whether the information has been disclosed to a prescribed market through a regulatory information service or RIS or otherwise in accordance with the rules of that market;*
- "Whether the information is contained in records which are open to inspection by the public;*
- "Whether the information is otherwise generally available, including through the Internet, or some other publication (including if it is only available on payment of a fee), or is derived from information which has been made public;*
- "Whether the information can be obtained by observation by members of the public without infringing rights or obligations of privacy, property or confidentiality; and*
- "The extent to which the information can be obtained by analysing or developing other information which is generally available."*

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."

18. MAR 1.3.20 G contains an example of market abuse which is analogous to this case, in that it relates to an employee who gains inside information from his employer, about business dealings of the employer, and trades for his personal account on the basis of that information:

"An employee at B PLC obtains the information that B PLC has just lost a significant contract with its main customer. Before the information is announced over the regulatory information service the employee, whilst being under no obligation to do so, sells his shares in B PLC based on the information about the loss of the contract."

Fit and Proper Test for Approved Persons ("FIT")

19. The Fit and Proper Test for Approved Persons in the Authority's Handbook sets out the criteria that the Authority will consider when assessing the continuing fitness and propriety of approved persons (FIT 1.1.2G).
20. FIT 1.3.1G provides that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function, the most important of which are:
 - (1) honesty, integrity and reputation;
 - (2) competence and capability; and
 - (3) financial soundness.
21. FIT 2.1 sets out the factors which the Authority will consider when determining a person's honesty, integrity and reputation. The Authority will consider all relevant matters including, but not limited to, those set out in FIT 2.1.3G. The matters in FIT 2.1.3G include:
 - (3) whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings by the Authority or other regulators;
 - (4) whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature;
 - (5) whether the person has contravened any of the requirements and standards of the regulatory system;
 - (10) whether the person has been investigated, disciplined, censured or suspended or criticised by a regulatory or professional body.
22. In assessing Mr Taylor's fitness and propriety, the Authority had regard to his honesty, integrity and reputation and all relevant matters relating to this.

Decision Procedures and Penalties manual ("DEPP")

23. 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.
24. 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.

25. 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 Taylor, the Authority has had regard to DEPP 6.
26. 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.
27. 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.
28. 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.

The Enforcement Guide (EG)

29. Chapter 7.1 of EG provides that the effective and proportionate use of the Authority's powers, rules and Statements of Principle for Approved Persons will play an important role in the Authority's pursuit of its statutory objectives. Imposing financial penalties, suspensions and public censures shows that the Authority is upholding regulatory standards and helps to maintain market confidence and deter financial crime.
30. Chapter 9 of EG sets out the Authority's policy in respect of prohibition orders. Chapter 9.1 of EG provides that the Authority may exercise its power under section 56 of the Act to make a prohibition order where it considers that, to achieve any of its statutory objectives, it is appropriate to either prevent an individual from performing any function in relation to regulated activities, or to restrict the functions which he may perform. EG 9.9 states that when it decided whether to make a prohibition order against an approved person, the Authority will consider all the relevant circumstances of the case, which may include whether the approved person has engaged in market abuse.
31. Chapter 9.17 provides that when considering making a prohibition order against an individual who is not approved, the Authority will consider the severity of the risk posed by the individual and may prohibit the individual where it considers this is appropriate to achieve one or more of its statutory objectives. Paragraph 9.18 provides that when considering whether to exercise its power to make a prohibition order against an individual who is not approved, the Authority will consider all the relevant circumstances of the case.
32. Chapter 9.23 provides that in appropriate cases the Authority may take other action against an individual in addition to making a prohibition order, including the use of its power to impose a financial penalty.

The FCA Supervision Manual ("SUP")

33. Chapter 15.10.2R of SUP provides that a firm which arranges or executes a transaction with or for a client and which has reasonable grounds to suspect that the transaction might constitute market abuse must notify the FCA without delay.