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FINAL NOTICE

To: Niall Stephen Patrick O'Kelly
IRN: NSO01004 (inactive)
Date: 7 April 2017

1. ACTION

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

(1) imposes on Niall Stephen Patrick O'Kelly, a financial penalty of £11,900 pursuant to section 123(1) of the Act for engaging in market abuse (dissemination); and

(2) makes an order, pursuant to section 56 of the Act, prohibiting Mr Niall Stephen Patrick O'Kelly from performing any function in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm. This order takes effect from 7 April 2017.

1.2. Mr O'Kelly provided verifiable evidence that payment of the penalty proposed by the Authority would cause him serious financial hardship. Had it not been for this, the Authority would have imposed a financial penalty of £468,756 (or £328,100 adjusted for a 30% (Stage 1) settlement discount) on Mr O'Kelly.

2. SUMMARY OF REASONS

2.1. Mr O'Kelly was a chartered accountant and Chief Financial Officer ("CFO") at Worldspreads Limited ("WSL"), a financial spread-betting company, and Worldspreads Group plc ("WSG") its holding company. WSG was quoted on AIM. At various times between 2004 and 2012 he held at WSL the significant influence functions of CF1 (Director), CF2 (Non-Executive Director), CF10a (CASS Oversight) and CF28 (Systems and Controls).

2.2. In August 2007 WSG floated on AIM. Mr O'Kelly was closely involved with drafting and approving the formal documentation that WSG was obliged to prepare for the purposes of its flotation and he was aware of his and WSG's obligations to provide accurate information to the market in this documentation. However, despite this obligation, WSG's AIM admission documentation contained information that Mr O'Kelly knew was materially misleading in that:

(1) it contained Annual Accounts for WSG that were substantially incorrect;
(2) it did not disclose the fact that some WSG executives had made significant loans to WSG's subsidiary, Subsidiary A; and
(3) despite claiming that WSG took a conservative approach to risk management, it did not explain that certain WSG Subsidiaries, hedged considerable trading exposures internally with company executives and did not, in practice, always enforce losses incurred by those executives on those transactions, a risk management model that was highly unorthodox, risky and caused losses to the subsidiaries.

2.3. Had accurate information about the Internal Loan, "internal hedging" and profit figures been given in the AIM document, WSG's flotation might have been delayed or cancelled, or investors might not have purchased shares at all. Mr O'Kelly understood this, and WSG's obligations on these material issues in the AIM admission document. Mr O'Kelly's non-disclosure of material information in WSG's AIM admission document was deliberate and was intended to mislead the market.

2.4. Furthermore, from the date of WSG's flotation until its collapse in March 2012, Mr O'Kelly acted to falsify critical financial information, or omit material information, concerning WSG's profit and loss and client liabilities (and so its cash position). He knew this false, or incomplete, information would be passed to WSG's auditors

for the purpose of the Annual Accounts of WSG and certain of its Subsidiaries for 2007 through to 2011. Accordingly, Mr O'Kelly knew that WSG's Annual Accounts for those years would be, and were, materially inaccurate. In doing so, Mr O'Kelly concealed from the market, liabilities that represented Client Money shortfalls in the 2010 and 2011 Annual Accounts of WSL and WSG. By 31 March 2011, WSL's Client Money shortfall was very significant, at £15.9 million and WSG as a whole did not have the funds to cover this shortfall.

2.5. Mr O'Kelly thereby engaged in market abuse contrary to section 118(7) of the Act by disseminating information that gave a false and misleading impression of WSG's financial position, knowing that such information was false and misleading. His conduct was particularly serious in that the dissemination was deliberate and was intended to mislead the market.

2.6. Mr O'Kelly also lacks fitness and propriety for the following reasons:

(1) he knowingly falsified accounting information at WSG and certain of its Subsidiaries and allowed false, or incomplete, information to be included in WSG's AIM admission documentation and passed to WSG's auditors;

(2) he helped manage an "internal hedging" strategy which involved the use of fake client trading accounts and the unauthorised use of actual client trading accounts;

(3) he engaged in deliberate market abuse contrary to section 118(7) of the Act, despite having been, during the Relevant Period, an approved person;

(4) in breach of his regulatory obligations, between January 2008 and March 2012, knowing that it was improper to do so, Mr O'Kelly effected and/or oversaw the improper transfers of Client Money from segregated Client Bank Accounts to House Accounts and accounted for resulting shortfalls in Client Money at WSL using a fictitious balancing line item in internal daily Client Money reconciliations.

2.7. The Authority therefore imposes a financial penalty on Mr O'Kelly in the amount of £11,900 pursuant to section 123(1) of the Act, for engaging in market abuse; and to make a prohibition order pursuant to section 56 of the Act in the terms set out at paragraph 1.1(2) above.

2.8. Any facts or findings in this notice relating to "directors", "senior executives", "executives", "members of staff" or "professional advisers" should not be read as

relating to all such persons, or even necessarily any particular person in that group.

3. DEFINITIONS

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

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

"AIM" means the Alternative Investment Market

"Annual Accounts" means the Annual Accounts of Subsidiary A, WSL or WSG prepared in accordance with International Financial Reporting Standards

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

"CASS" means the Authority's Client Assets Sourcebook

"Client Bank Account" means a bank account of any WSG entity that held Client Money which was used for depositing money from its clients in relation to its MiFID or designated investment business. The monies in these bank accounts should not have been intermingled with those monies in "House Accounts" (see below). Moreover, the name of Client Bank Accounts must include an appropriate description to distinguish the money in them from House Cash

"Client Money" means money of any currency that a WSG entity receives or holds for, or on behalf of, a client in the course of its MIFID or designated investment business

"Client Money Resource" means the aggregate balance on the firm's Client Bank Accounts

"Client Money Requirement" means the total amount of Client Money a firm is required to have segregated in Client Bank Accounts under the client money rules

"Contract for Difference (CFD)" means a contract between two parties (a CFD provider and a client) to pay each other the change in the price of an underlying asset. At the expiry of the contract, the parties exchange the difference between the opening and closing prices of a specified financial instrument, such as shares, without owning the specified financial instrument

"FSCS" means the Financial Services Compensation Scheme

"(Financial) Spread Bet" means a contract between a provider, such as WSL, and a client which takes the form of a bet as to whether the price of an underlying asset (such as an equity) will rise or fall. A client who spread bets does not own, for example, the physical share, he simply bets on the direction he thinks the share price will move. Spread Bets are similar to CFDs except in relation to capital gains tax and expiration dates of the contracts

"House Account" means a WSG bank account (or bank account of any entity within WSG) holding the entity's own monies

"Internal Loan" means the personal funds provided to Subsidiary A by certain of its directors and senior executives in September 2006

"House Cash" means cash generated by WSG or any entity within WSG in the ordinary course of their business and to be used for their business activities

"MiFID" means the Markets in Financial Instruments Directive which came into force on 1 November 2007

"NOMAD" means Nominated Advisor

"Relevant Period" means 25 July 2007 to 16 March 2012

"Special Administration Regime" means a type of insolvency proceedings which has three objectives, one of which is especially concerned with the return of client property

"Subsidiaries" includes WSL, Subsidiary A and Subsidiary B

"Subsidiary A" means a subsidiary of WSG

"Subsidiary B" means a subsidiary of WSG

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

"Total Cash" means the aggregate of House Cash and Client Money at any particular date

"Trade Payables" means monies owed by WSL / WSG to, for example, its suppliers or contractual liabilities

"Trading System Reports" means the reports produced from the various trading systems of WSL and WSG. The reports showed individual client cash balances and the value of their open positions at the end of each business day. For the purposes of Trade Payables in the Annual Accounts of WSL and WSG, the client cash balances from the Trading System Reports were used

"WSG" means WorldSpreads Group Plc

"WSL" means WorldSpreads Limited

4. FACTS AND MATTERS

Background

WorldSpreads Limited

4.1. WSL was incorporated in the UK on 15 September 2003 and regulated by the Authority from November 2004. Its principal activity was the provision of online trading facilities in financial markets through financial spread betting and CFDs. Its clients were able to invest in, hedge, or speculatively bet on thousands of global financial instruments. By 2011, WSL had approximately 15,000 clients (of whom typically 3,000 were active at any one time). Its clients came from across Europe, the Middle East, Asia and South Africa. WSL's clients were primarily retail clients.

WorldSpreads Group Plc

4.2. WSL was wholly-owned by WSG, a non-trading holding company incorporated in Ireland and quoted on AIM and the Irish Enterprise Securities Market in August 2007 and May 2008 respectively. Following the disposal of Subsidiary A, in 2009, WSL became the primary revenue generator of WSG.

4.3. WSG's Annual Accounts incorporated the results of WSL which, after Subsidiary A was sold, accounted for the majority of WSG's results. For example, based on the figures in both WSG and WSL's 2011 Annual Accounts, WSL's revenue accounted for, approximately, 94%[1] of that of WSG's.

Worldspreads' Expansion and Positive Growth Story

4.4. WSG's expansion out of Ireland, where it was founded, started in the UK through the establishment of WSL and a network of partnerships. Throughout 2010 and 2011, WSG continued to expand rapidly into international markets, establishing offices, and subsidiaries, across Europe, South Africa and the Middle East. By 2011 WSL had become a mid-size spread-betting company within the UK market partly due to business from these international offices being booked in London.

4.5. WSG's 2010 and 2011 Annual Accounts consistently showed strong revenue growth and a cash-rich balance sheet. Several industry analysts published positive research, including buy recommendations, in respect of WSG after the publication of its 2010 and 2011 Annual Accounts. Partly on the basis of this positive research, one large institutional investor purchased 2 million shares in July 2011 which amounted to 7.43% of WSG's issued share capital.

4.6. On 1 August 2007 WSG floated on AIM at a price of 51.25p; its price reached a peak of 113.5p in May 2008. The average share price during 2010 and 2011 was 66p. WSG's lowest share price, of 37p, was in the last month of trading in February / March 2012.

[1] Using an exchange rate of €1 / £0.88 as at 31 March 2011 (source: xe.com)

4.7. However, as described further below, WSG's Annual Accounts, and those of certain of its Subsidiaries, were materially inaccurate from at least year end 2006. Mr O'Kelly was aware of this, particularly with respect to profitability and cash because he knew that the balance sheets of WSG and certain of its Subsidiaries were falsified in order to conceal, at first, WSG's financial difficulties and, later, to conceal large Client Money shortfalls.

Financial Spread-Betting

4.8. WSL and Subsidiary A's clients were able to trade through financial spread bets or CFDs. Spread betting enables clients to speculate, or bet, on the movement, up or down, of a particular asset (such as a share). Trading through a spread bet means that clients do not have to pay the full value of the underlying financial instrument, instead, clients will deposit margin in cash to fund their trades. The cash received by WSL in relation to their trading belonged to WSL's clients. It should have been received and held as Client Money in accordance with the CASS rules and therefore kept separately from the company's own cash as Client Money, subject to strict regulation and internal policies, some of which are described below.

4.9. When a client of WSL or Subsidiary A took out a spread bet, the risk of the spread bet would lie with the companies. To minimise the risk to themselves, and depending on their risk management policy, WSL or Subsidiary A should have hedged their risk, either fully or partially, by taking out CFDs in the same asset with third party brokers. The companies used numerous third party brokers to hedge their clients' positions. In order to hedge with third party brokers, WSL and Subsidiary A had to fund their broker accounts, known as margin accounts. Third party brokers monitored these accounts and hedged only when sufficient funds were in the account. If there were insufficient funds in these accounts, WSL or Subsidiary A themselves would be on "margin call" meaning that WSL would have to increase funding of these accounts.

Mr O'Kelly

4.10. Mr O'Kelly qualified as a chartered accountant in 1993. He joined WSG in January 2004 as the CFO of WSG and, later, WSL. Mr O'Kelly became an approved Person at WSL on 6 August 2008 holding the controlled function of CF2 (Non-Executive Director), and then progressing to CF1 (Director) and CF28

(Systems and Control) on 18 May 2010. He was approved as CF10a (CASS operational oversight) on 1 October 2011. Amongst Mr O'Kelly's responsibilities were oversight, in particular oversight of the reconciliation of Client Money and compiling and producing the Annual Accounts for WSG and its subsidiaries. In discharging both of these responsibilities he worked closely with WSL's Financial Controller, Lukhvir Thind ("Mr Thind"), whilst retaining ultimate responsibility himself.

4.11. Mr O'Kelly resigned from WSG and WSL on 28 February 2012.

CASS requirements in place from 2007 to 2012

4.12. WSL held Client Money in accordance with rules set out in the Authority's Client Assets Sourcebook or "CASS". With the introduction of MiFID in November 2007, monies of retail and professional clients could be used by firms for their own purposes provided the firm has considered the client's best interest rule and a legitimate title transfer collateral agreement ("TTCA") was in place. If the monies were subject to TTCA agreements they ceased to be Client Money and became the firms' own monies. Client Money must at all times be segregated from the firms' own monies. From 1 December 2010, firms were prohibited from using TTCA to transfer ownership to the firm of retail client monies in relation to CFDs or spread bets. The firm contracted to provide Client Money protection to all clients. Mr O'Kelly held the CF10a (CASS operational oversight) approved function at WSL and therefore had ultimate responsibility at WSL for ensuring that Client Money was handled in compliance with CASS.

WSL's internal policies and agreements with respect to Client Money

4.13. In addition to CASS, WSL had its own Client Money policies, procedures and agreements which Mr O'Kelly understood and was bound by. These stated the following:

(1) all Client Money belonging to clients of the spread betting desk was to be held in segregated bank accounts and none of it was to be passed to intermediate brokers. The clients of WSL's CFD brokerage desk, while considered professional, were also segregated;

(2) on a daily basis, Mr O'Kelly, as the Finance Director, was to review the daily Client Money Resource against Client Money Requirement to ensure

that there were no discrepancies. To reconcile any discrepancies, he was to authorise payments as required to equalise the Client Money Resource and the Client Money Requirement; and

(3) where it was not possible to perform this daily internal Client Money reconciliation, Mr O'Kelly, as Finance Director was: *"[…] required by Regulations to notify the FSA forthwith by telephone and confirm in writing."*

4.14. As with CASS compliance, Mr O'Kelly had ultimate responsibility at WSL for ensuring that the firm handled Client Money in compliance with its own internal policies.

Collapse of WSL and WSG

4.15. By 2012, due to a number of factors, albeit not apparent from their Annual Accounts, WSL and WSG were in severe financial difficulties and not able to continue as going concerns. WSL suffered from unpredictable, and often poor, trading results and revenue was further impacted by a client recruitment campaign which eliminated the revenue generated from spreads charged to clients. WSG also invested heavily in overseas expansion and IT. This all resulted in a significant net cash outflow from the business.

4.16. The formal insolvencies of WSL and WSG were triggered on 16 March 2012, when Mr Thind informed WSG's board of longstanding wrongful treatment of Client Money at WSL. Mr O'Kelly confirmed this to the board shortly afterwards and also that there had been misstatements in the Annual Accounts of WSL and WSG over several years. Initial investigations by WSL and WSG concluded that Client Money had been comingled with WSL's House Cash leaving a shortfall in the funds owed to clients of approximately £13 million.

4.17. The Authority was informed, on 16 March 2012, of the irregularities in WSL's accounts, specifically that Client Money reconciliations had been deliberately falsified and that there had been inappropriate treatment of Client Money for a number of years. As a result, WSG's shares were suspended. On 18 March 2012, WSL was placed into the Special Administration Regime. As at January 2017, the FSCS had paid out £17.9 million in respect of 3,833 claims for Client Money losses.

Key features of WSG's operations pre-flotation

Undisclosed loans by directors and executives to subsidiaries of WSG

4.18. Mr O'Kelly took part in an Internal Loan arrangement which involved the secret provision of funds, by certain directors to certain Subsidiaries in order to alleviate financial difficulties. This Internal Loan, which was outstanding for several years, was never declared as such either in the AIM Admission documents or subsequent Annual Accounts despite specific requirements that such loans be disclosed. As a result, investors were ignorant of the financial difficulties of WSG and the subsequent obligations owed, by WSG, to its directors.

4.19. From at least the first quarter of 2006 some of WSG's Subsidiaries were experiencing difficulties with both their cash flows and balance sheets. These difficulties specifically related to a lack of funds for hedging with brokers but also included meeting the expectations of WSG's lenders.

4.20. In order to resolve these issues, some directors of Subsidiary A, including Mr O'Kelly, provided personal funds to Subsidiary A (the "Internal Loan") in September 2006. Altogether, €1,625,000 was provided by directors and senior executives of whom Mr O'Kelly himself loaned €100,000. The majority of these funds were held in WSG's bank accounts but, incorrectly, were not accounted for as loans.

4.21. Outstanding loans should be treated as liabilities in Annual Accounts and disclosed in the tables of loans and borrowings in the notes thereto. Moreover, any loans by directors should also be appropriately disclosed as "related party transactions" in the notes of Annual Accounts. Mr O'Kelly, as a chartered accountant, responsible for the Annual Accounts of WSG and its Subsidiaries, was aware of this requirement[2].

4.22. Despite this, the Internal Loan was not disclosed within Subsidiary A's, or WSG's, Annual Accounts between 2007 and 2012. Furthermore, the Internal

[2] Mr O'Kelly admitted, in interview, that the loans had not been accounted for as such in WSG's accounts. While he did not specifically state that he was required to account for the loans as related party transactions, for example, the Authority considers that this is a basic accounting concept and Mr O'Kelly, as an experienced accountant would have been aware of this fact.

Loan was not disclosed in WSG's AIM admission document in August 2007 (see paragraphs 4.38 to 4.42 below).

"Internal hedging" accounts

4.23. Between 2003 and 2009, Subsidiary A and Subsidiary B engaged in a practice described within those companies as "internal hedging" in which some directors and members of staff at those companies ("the Participants") took opposite positions to certain client bets. The Participants did not use accounts in their own names for their hedging activities. Instead, they used client trading accounts (without the clients' knowledge), fictitious client trading accounts and later, accounts that they specifically opened for repaying the Internal Loan (the 'Gamma' accounts). In this way, the strategy was concealed from the companies' auditors which allowed the Participants to present debts arising from these internal hedges as real assets, even though the Participants were not expected to make good their losses.

4.24. In theory, these positions should have provided those Subsidiaries with a hedge to protect them in the event that the client bets were successful. In such circumstances, the hedge would show a loss which, in theory, would be payable to those Subsidiaries by the Participants. Conversely, if client bets were unsuccessful, the hedge would show a profit which would be payable to the Participants. In practice, the term "internal hedging" was a misnomer, because the Participants, typically, did not settle their losses and so the strategy did not remove risk from those Subsidiaries' books. It was a risky and highly unorthodox strategy.

4.25. Although one objective of the "internal hedging" strategy was to reduce external hedging costs which absorbed a significant proportion of the companies' available cash in margin charges, a further objective was to enable the Participants to make personal profits or repay loans including the Internal Loan (see paragraphs 4.18 to 4.22).

4.26. In practice, profits from "internal hedging" were added to a pool of monies held on behalf of the Participants and managed by Mr O'Kelly. Debit balances on internal hedging accounts became debtors, or assets, in the books of WSG's relevant Subsidiaries. However, as the Participants did not generally settle losses these debtors artificially inflated these companies' (and therefore WSG's)

assets. As stated above, Mr O'Kelly was responsible for producing WSG's Annual Accounts so he was aware of the misleading impression these debtor accounts created with respect to WSG's financial position.

4.27. The reality of "internal hedging" was acknowledged by another Participant in the practice who wrote in an email, dated 11 January 2008, to which Mr O'Kelly was copied in: *"Lets* [sic] *not fool ourselves – Gamma* [an "internal hedging" account] *strips out a considerable amount of volatility on a cosmetic basis only […] there will never be any money coming in from Gamma losses (at least until there is an exit)*".

Profit misstatements pre-flotation

4.28. From 2006, Mr O'Kelly, with the knowledge of certain other WSG executives, deliberately falsified WSG's Annual Accounts in order to present a more positive profit and loss position to the market. Mr O'Kelly did this by, amongst other things relating to costs and revenue, increasing assets, and decreasing liabilities in Subsidiary A and Subsidiary B's balance sheets until they were sold in 2009. Thereafter, falsifications were made to the balance sheet of WSL.

4.29. These falsifications involved the inclusion of the "internal hedging" accounts as debtors, and so assets, on the balance sheets of those Subsidiaries which then featured in the Annual Accounts of WSG and which were published to the market. Mr O'Kelly sent one Participant frequent updates on these "internal hedging" accounts, the balances of which fluctuated significantly. The Authority does not have the balances for 30 March, the end of WSG's financial year for each year in question. However, the following figures reflect the balances closest to 30 March from 2005 to 2007. It is not known whether they represent the entirety of the internal hedge accounts. The Annual Accounts for these specific years featured in the AIM Admission document (see below).

Table 1: Mr O'Kelly's updates regarding balances on Internal Hedging Accounts

Internal Hedge Account Balance Update	Balance on Subsidiary A and Subsidiary B's Internal Hedge Accounts
28 March 2005	-€338,331
20 March 2006	-€518,466
26 March 2007	-€346,270

4.30. As set out in the section below, this practice continued up until 2009 when Subsidiary A was sold. The new owners, following the discovery of the "internal hedging" accounts commissioned a retrospective audit of, amongst other things, the year-end accounts for 2009. Based on the evidence in their possession, auditors found that, alongside other accounting irregularities, Subsidiary A's profit alone in 2009 had been overstated by €2.5 million. In doing all of the above, Mr O'Kelly also provided false information to the auditors of WSG.

Non-disclosure of material information in WSG's AIM admission document

4.31. WSG was admitted to trading on the LSE's AIM on 1 August 2007 raising £5.77 million. However, Mr O'Kelly knew that material information was either omitted from, or falsified within, WSG's AIM admission documents in order to ensure WSG was successful in its IPO. Potential investors have a clear right to accurate disclosure and the Authority considers that had there been accurate disclosure within WSG's AIM admissions documents, this may have led to the delay or cancellation of the admission.

The verification process

4.32. WSG was assisted in its flotation by professional advisors. This assistance included due diligence on the company, providing guidance to WSG on both the flotation process and its obligations under key AIM rules, and helping to prepare both the pathfinder and final admission document. The content of these documents was the subject of a detailed verification process. Mr O'Kelly signed the verification notes, the pathfinder itself and the final version of the admission

document. Mr O'Kelly also signed an individual responsibility statement in respect of the pathfinder and the final admission documents.

4.33. The Authority in this Notice does not criticise the conduct of any of the professional advisers involved in WSG's admission to AIM or in the preparation of WSG's Annual Accounts or those of its Subsidiaries.

4.34. At the material time, the AIM rules specified the information that had to be included in an AIM admission document. The overriding requirement was that the document had to contain all information that the company reasonably considered necessary to enable investors to form a full understanding of, amongst other matters, the assets and liabilities, financial position, profits and losses and prospects of the company and its shares for which admission is being sought (see Annex B for the relevant AIM rules).

4.35. Such issues were dealt with in detail during various WSG board meetings in July 2007 attended by Mr O'Kelly and WSG's professional advisors. During these meetings, Mr O'Kelly signed various documents and was made aware of a number of responsibilities and obligations. For example:

(1) Mr O'Kelly confirmed that he had received a memorandum on directors' liabilities which contained amongst others, a paragraph explaining the potential liabilities to which directors could be exposed if the admission document was inaccurate, incomplete or misleading. Those potential liabilities included actions under section 118 of the Act for market abuse and section 397 of the Act for misleading statements;

(2) Mr O'Kelly signed a letter entitled 'Director's letter of authority, responsibility statement and declaration of interest' in respect of the pathfinder document. In this responsibility statement Mr O'Kelly approved the document and the verification notes relating to it; and

(3) Mr O'Kelly was reminded that the verification notes had been prepared to help verify the contents of the pathfinder, to ensure that all the facts stated in it were true and accurate and that all opinions and statements in it were reasonably and honestly held and that there was no omission of material facts which would otherwise make any statements in the pathfinder misleading.

4.36. The verification notes asked Mr O'Kelly to confirm and verify, for example that:

(1) there were no outstanding loans granted by any director or any member of the group;

(2) the directors believe that WSG's key strengths included having a successful risk management model.

4.37. On 25 July 2007, WSG submitted its application for admission to AIM to the LSE. The application form contained the following declaration:

> *"the admission document complies with the AIM Rules for Companies and includes all such information as investors would reasonably expect to find and reasonably require for the purpose of making an informed assessment of the assets, liabilities, financial position, profits, losses, and as to the prospects of the issuer and the rights attaching to its securities"*.

Omissions in the AIM admission document

4.38. Despite the clear obligations which bound Mr O'Kelly and which he understood, WSG's AIM admission document omitted material information.

4.39. First, the AIM admission document did not mention the Internal Loan which, as at 1 August 2007, was still outstanding in the sum of at least €1.6 million. As "related party transactions" the loan should have been included in the AIM admission (and pathfinder) document being listed as a liability in WSG's consolidated balance sheet and by inclusion in the table of "Interest bearing Loans and Borrowings". Instead WSG's AIM admission (and pathfinder) document stated that there were *"no outstanding loans granted […] by any Director to any member of the Group."*

4.40. Second, the AIM admission document did not mention the "internal hedging" strategy because, the Authority considers, it was acknowledged within WSG as being an inappropriate and unethical practice. In fact, one of the Participants described "internal hedging", in an email sent fifteen days after WSG's admission to AIM, as being: *"contrary to all trading standards and ethics for a trading desk. I guarantee you there is* [not] *a single trading desk in the world where traders take part of the book themselves without shareholder approval*

and proper procedure". Instead, when describing how it hedged risk, it was stated that WSG took a "*conservative approach to risk management*" which utilised the wholesale markets.

4.41. Third, having previously falsely inflated the profit figures in WSG's Annual Accounts, Mr O'Kelly knew that the AIM admission document, which was compiled in July 2007 and which contained the misleading 2006 and 2007 Annual Accounts, was misleading with respect to profit.

4.42. These three issues, loans from directors, the "internal hedging" strategy and profit figures, were highly material to the flotation of WSG. In addition to the explicit requirements for accurate disclosure set out in the AIM admission document, potential investors would have needed to receive accurate information on these matters in order to decide whether or not to invest in WSG shares. In addition to the basic requirement for accurate financial information:

(1) the fact of the Internal Loan should have been explained to investors because it was, potentially, an indication that WSG was not generating enough cash and/or that banks were unwilling to lend WSG money; and

(2) similarly, prospective investors would have wanted to know about the "internal hedging" strategy because, it was highly unorthodox, risky and potentially created conflicts of interest where the Participants sought to make profits at the expense of WSG and, again, it could have been an indication that WSG was not generating enough cash.

Profit misstatements post-flotation

4.43. Following WSG's admission to AIM, Mr O'Kelly and some other directors continued to present falsified WSG Annual Accounts to the market in order to present a more positive impression of the company. Mr O'Kelly admitted in interview that, by March 2009 the Annual Accounts of WSG were misstated, with respect to profit, by €5 million. He further admitted that this misstatement increased in 2010 and again in 2011 although was unable in interview to be precise as to the exact figures. For March 2010, Mr O'Kelly stated that WSL's profit misstatement was between £7-8 million. The Authority notes that, in 2010, WSL's reported profit (before tax) figure was £2,395,619.

4.44. This falsification was carried out in a number of ways including adjustments to revenue and costs but also by increasing assets and decreasing liabilities on the balance sheet of WSG and its Subsidiaries. In doing so, Mr O'Kelly allowed WSG to either conceal material losses or to materially reduce the amount of loss posted. The false decrease in liabilities also served the added purpose of disguising the Client Money shortfall which emerged within WSL (see below) particularly between 2010 and 2011.

4.45. In internal communications the gap between what Mr O'Kelly agreed to report, externally, as the financial position of WSG, and its real financial position, was referred to as the "Blackhole" or the "You know what".

4.46. Corporate restructuring during 2009 provided WSG with the opportunity to reduce the €5 million 'Blackhole' by €3.5 million through the write off of €1.5 million worth of 'internal hedging' debtors to one company, and the transfer of approximately €2 million worth of 'internal hedging' debtors to another. However, while Mr O'Kelly reported the size of the Blackhole to others involved in the conspiracy as having been reduced to €1.5 million after the disposals he knew that, in fact, it increased substantially over the years culminating in approximately €9 - 10 million by 2011.

4.47. Mr O'Kelly told others involved in the conspiracy that, for example, in the March 2010 Annual Accounts, the Blackhole of €1.5 million was hidden by adjustments to specific line items in WSL's balance sheet. In order to keep track of the "Blackhole" after March 2010, Mr O'Kelly was asked to create a secret balance sheet which represented the various adjustments in one, single line item. This secret balance sheet, which purported to represent the real financial position of the company, was named "Blueprint" and Mr O'Kelly produced one for December 2010 and March 2011 showing 'Blackholes' of £927,759 and £1.2 million respectively. However, the real figure was, as stated above, much higher.

Client money shortfall

4.48. Throughout Mr O'Kelly's employment at WSG, the group often experienced financial difficulties resulting in a lack of House Cash. As a result, as Mr O'Kelly was aware, WSL often struggled to meet its margin calls, business operations and the company's investment in its expansion. This was especially acute between 2010 and 2012.

4.49. In fact, from December 2009 until entering into the Special Administration Regime, the amounts of Client Money WSL should have been holding for its clients exceeded the total Client Money held, plus the cash held not just by WSL, but by WSG as a whole (including cash held in broker accounts). That is to say, had all of WSL's clients chosen to close their trading positions and request the return of their funds simultaneously, WSG would have been unable to cover these. Any shortfall in Client Money should have been made good immediately by WSL.

Financial Troubles at WSL and the resultant misuse of Client Money

4.50. As a result of WSL's cash problems referred to above, Mr O'Kelly and, WSL's financial controller, Mr Thind, improperly, and secretly, transferred Client Money from WSL's Client Bank Accounts to House Accounts in order to fund margin calls from brokers and for company operations from January 2008 to March 2012. Mr O'Kelly, as CF10a, understood that Client Money required special protections and so there should have been segregation of Client Money from House Accounts. He understood that it was not appropriate to use Client Money for business purposes.

Concealment of Client Money shortfall

4.51. Mr Thind, acting under Mr O'Kelly's instruction, hid the existence of the Client Money shortfall by using a fictitious line item in internal Client Money reconciliations which equated to the shortfall. This balancing figure aided Mr Thind and Mr O'Kelly during the audit period when they falsified underlying Trading System Reports in order to conceal the Client Money shortfall from the auditors of WSL. As a result, audited financial statements of WSL, which were consolidated into those of WSG (and which were published to the market), did not, purposefully, reveal the existence of the Client Money shortfall which, for example, was over £15 million on 31 March 2011. As WSL was required to top up Client Money shortfalls with its own funds, the financial statements of WSL and WSG were therefore also misstated with respect to House Cash. Mr O'Kelly dealt with market analysts and investors so would have known that House Cash was a particular point of interest to the market.

4.52. WSL prepared internal Client Money reconciliations on a daily basis. These were known within the company as "Seg Reports". "Seg" referred to "segregated" as Client Money was to be held in segregated Client Bank Accounts, separate from WSL's House Accounts. The Seg Reports calculated the following at the close of each business day:

(1) total amount owed by WSL to its clients as recorded in WSL's various trading systems ("Client Money Requirement"); and

(2) cash which WSL held on behalf of its clients in WSL's Client Bank Accounts ("Client Money Resource").

4.53. Mr O'Kelly was ultimately responsible for the reconciliations of, on a daily basis, the Client Money Requirement against Client Money Resource albeit Mr Thind carried them out in practice. If the Client Money Resource was less than the Client Money Requirement, a reconciling transfer should have been made out of WSL's House Accounts and into the Client Bank Accounts and vice versa. These daily reconciliations were not circulated outside WSL's finance department.

4.54. Over the period covered by WSG's 2010 and 2011 Annual Accounts WSL's daily Client Money Requirement exceeded its Client Money Resource frequently and significantly. However, instead of reconciling this shortfall properly, Mr O'Kelly (and Mr Thind) took steps to conceal it from WSG's auditors by sending the auditors falsified Client Money reconciliations and, in an attempt to conceal this falsification on WSL's computer systems, the data which underlay the Client Money reconciliations. The first time this occurred was on 11 June 2010 when Mr O'Kelly emailed a falsified Client Money reconciliation to WSL's and WSG's auditors[3].

4.55. Set out below is a description of how this process affected WSL's and WSG's 2011 Annual Accounts. For the 2011 Annual Accounts, the process began with a false line item in WSL's internal Client Money reconciliations called "Seg Ireland" which, in the manner described below, carried through to WSG's 2011 Annual Accounts rendering them materially inaccurate. The Authority has not been able to identify a corresponding line entry in WSL's internal Client Money

[3] Mr Thind was copied into this email chain containing the same attachments on 25 June 2010.

reconciliations for the period covered by WSL's and WSG's 2010 Annual Accounts. However, the Authority considers that Mr Thind and Mr O'Kelly followed the same process of falsification for WSG's 2010 Annual Accounts which have also been found to be misstated.

WSG's 2011 Accounts – Seg Ireland

4.56. In the period covered by WSG's 2011 Annual Accounts Mr Thind produced a number of Seg Reports containing an entry named "Seg Ireland". This entry purported to represent cash WSL held in a Client Bank Account, entitled Seg Ireland, and was notionally included as part of the Client Money Resource. However, in fact, WSL held no cash corresponding to the Seg Ireland entries, which were entirely fictitious.

4.57. Mr Thind and Mr O'Kelly designed the Seg Ireland entries as balancing figures for management accounting purposes so they could understand the size of WSL's Client Money shortfall and how it changed over time. However, as described below, in 2011, they used the Seg Ireland entries as the basis for further falsification of management information which was, with Mr O'Kelly's knowledge, passed to WSL's and WSG's auditors for the purpose of preparing published Annual Accounts.

4.58. Table 2 shows the substantial shortfall in Client Money Resource, and the corresponding Seg Ireland figure included in Seg Reports, on various days over the period covered by WSG's 2011 Accounts.

Table 2: Examples of Client Money reconciliations including "Seg Ireland"

	26/10/2010	**8/11/2010**	**02/02/2011**	**31/03/2011**
Actual Client Money Requirement (£)	19,592,023	22,104,520	24,223,240	23,584,931
Actual Client Money Resource (£)	9,173,632	9,145,548	7,504,893	8,037,432
"Seg Ireland" figure including in Client Money Resource equating to approximate Client Money shortfall (£)	10,473,032	12,756,662	16,500,000	15,500,000

Concealment of Client Money shortfall in WSG's 2011 Annual Accounts – falsification of Client Money Requirement

4.59. WSL's auditors reviewed Seg Reports as part of the company's annual audit. It is standard auditing practice to verify reported Client Money against third party bank statements. Therefore, had they received Seg Reports with Seg Ireland entries, WSL's auditors would likely have quickly identified that the Seg Ireland entries were fictitious. Therefore, Mr Thind and Mr O'Kelly further falsified the Seg Reports that were sent to the auditors by deleting the Seg Ireland entries and, instead, to support the fiction that there was no Client Money shortfall, falsely reduced the Client Money Requirement to match the Client Money Resource.

4.60. For example, on 1 April 2011, as part of the Client Money reconciliation process Mr Thind sent Mr O'Kelly a Seg Report for 31 March 2011. As shown at Table 2, this report included a fictitious Seg Ireland entry of £15,500,000. By including the Seg Ireland figure, Client Money Resource was increased to £23,536,832, roughly equivalent to the Client Money Requirement of £23,584,931[4].

[4] Please note that all numbers in this notice have been rounded to the nearest pound.

4.61. In June 2011, the Seg Report for the same day (31 March 2011) was sent by Mr Thind (copying in Mr O'Kelly to the email) to WSL's auditors for the purpose of WSL's annual audit. However, a different version of the report was sent which did not include the Seg Ireland fictitious balance, reducing the Client Money Resource to, the more accurate, £8,037,432. Instead, however, to conceal the significant Client Money shortfall, in the Seg Report sent to the auditors in June 2011, Mr Thind and Mr O'Kelly falsely reduced the Client Money Requirement to match, approximately, the Client Resource figure. The June version shows a Client Money Requirement balance of £7,985,532, falsely reduced by £15,500,000. This reduction matched the Seg Ireland figure in the original version of the Seg Report which Mr Thind sent to Mr O'Kelly on 1 April 2011.

4.62. In order to conceal from WSL's auditors this false reduction in the Client Money Requirement balance, Mr Thind and Mr O'Kelly falsified the underlying data which supported it. The Client Money Requirement figure was derived from reports generated from the various trading systems used at WSL ("Trading System Reports"). These Trading System Reports, some of which were reviewed by WSL's auditors, showed individual client cash balances at the end of the business day i.e. the amount of cash WSL owed its individual clients at the end of any business day which, when aggregated, equated to the Client Money Requirement.

4.63. For the purposes of presentation in WSG and WSL's 2010 and 2011 Annual Accounts, Mr Thind, under Mr O'Kelly's instruction, amended and deleted individual client cash balances in these Trading System Reports in order to reduce WSL and WSG's liability to its clients and ensure its reported liability matched the amount of Client Money actually held in WSL's Client Bank Accounts and did this in response to auditors' requests to check the calculations.

4.64. As stated above, the Authority has not been able to identify internal Client Money reconciliations with the fictitious Seg Ireland figure for the period covered by WSL's and WSG's 2010 Annual Accounts. However, the Authority has confirmed that, for the purposes of the 2010 audit, Mr O'Kelly, copying Mr Thind, sent the auditors Trading System Reports in which individual client cash balances had been materially falsified by Mr Thind.

Representation on the balance sheets of WSL and WSG

4.65. WSL and WSG's liability to its clients made up the majority of WSL and WSG's 'Trade and Other Payables' figure on the balance sheet in their Annual Accounts. The liability to their clients was, principally, the Client Money Requirement.

4.66. The Authority has compared what it considers to be original, unamended Trading System Reports for 31 March 2010 and 2011 to those provided to the auditors of WSL for the same day, as described below.

4.67. Unamended Trading Systems Reports state that, as at 31 March 2010, WSL's total liability to its clients was £23,819,196. However, the Trading System Report submitted by Mr O'Kelly to the auditors of WSL for the same date, showed this liability to be only £19,997,684. Acting under Mr O'Kelly's instruction, Mr Thind's deletions of, and amendments to, Client Bank Account balances, account for this reduction of £3,821,513.

4.68. Unamended Trading Systems Reports state that, as at 31 March 2011, WSL's total liability to its clients was £39,501,152. However, the Trading System Report submitted by, this time, Mr Thind to the auditors of WSL for the same date, was £23,561,757. Acting under Mr O'Kelly's instruction, Mr Thind's deletions of, and amendments to, client account balances, account for this reduction of £15,939,396.

4.69. As a result of these falsifications the Trade Payables figures in the WSL Annual Accounts for 2010 and 2011 were understated as follows:

Table 3: Effect of the falsification of the Trade Payables balance in 2010 and 2011

	2010	**2011**
Client liability in reports as provided to auditors (£)	19,997,684	23,561,757
Less Adjustments made by WSL (£)[5]	(5,790,411)	(2,973,327)
Trade Payables figures reported in WSL's Annual Accounts (£)	14,207,273	20,588,430
Trade Payables figures per FCA calculation (£)	18,028,786	36,527,826
Value of Trade Payables misstatement (£)	3,821,513	15,939,396

4.70. The assets and liabilities in WSL's balance sheet made up the majority of those in WSG's balance sheet. Therefore, these misstatements were carried through, almost identically, into WSG's consolidated balance sheet for 2010 and 2011. Mr O'Kelly was responsible for compiling the Annual Accounts of WSG and its Subsidiaries. In addition he was one of the signees of WSL's Annual Accounts for 2010 and 2011. As the CFO and as a chartered accountant, Mr O'Kelly understood that the falsified Trade Payables figures described above were included in WSL's Annual Accounts and were therefore incorporated into the Annual Accounts of WSG and, in fact, accounted for the majority of the results of WSG.

4.71. The published Annual Accounts of WSG were considered by market analysts in their recommendations to buy WSG shares. WSG's Annual Accounts, and the market analyst recommendation notes were, in turn, considered by investors in their decision to purchase WSG shares.

Cash misstatements from 2010

[5] The Authority has not been able to determine the rationale for these adjustments.

4.72. WSG did not publicly state what its own cash figures were. Rather it stated all cash held (including that held in client and broker accounts). At the same time, many of WSG's related bank accounts were not clearly designated as either House or Client Bank Accounts. As a result, the Authority aggregated the cash balances of all types of accounts related to any entity within WSG and compared it to WSL's Client Money Requirement over the Relevant Period. Given the existence of the Client Money shortfall in 2010 and 2011, and WSL's regulatory requirement to cover any shortfall with its own funds, it stands to reason that WSG's own cash position was not as inferred in its published Annual Accounts. On some occasions, WSG's cash position would have been reduced to nothing. In these circumstances, all of the public statements that WSG made about its cash position in 2010 and 2011 were false and misleading. Mr O'Kelly, as the CFO of WSG, was aware of the true cash position and was also responsible for the public messaging of WSG with respect to its financial position.

Dealings with analysts

4.73. In various public statements including trading updates, preliminary results announcements, Annual Accounts and interim results, a number of positive statements were made by WSG in relation to its overall cash and the company's balance sheet. These included quotes, all of which were approved by Mr O'Kelly such as:

(1) *"This has substantially strengthened the Group's statement of financial position and is evident in the strong net cash position at year end" (WSL Annual Accounts 2010); and*

(2) *"The Group's cash position as at year end remains strong at €11m" (WSG trading update from March 2011).*

4.74. Mr O'Kelly liaised with market research analysts, particularly with respect to their financial summaries. Following announcements such as those listed above, market analysts published research notes on WSG containing "Buy" recommendations noting, for example:

(1) *"a cash rich balance sheet … We therefore reiterate our BUY recommendation" (March 2010) …*

(2) *"WorldSpreads ended FY11 with €12m of own cash … With this strong balance sheet the company is well positioned to execute its growth plans…" (July 2011)*

4.75. Institutional investors who purchased 140,000 and 2,041,097 WSG shares in 2010 and 2011 respectively based their investment decision on the company's announcements and market analyst recommendations with respect to cash. In one case, the investor was presented with a presentation pack, prepared by Mr O'Kelly, in advance of its decision to invest in June 2011.

4.76. Mr O'Kelly's dissemination of information, from 25 July 2007 when WSG submitted its application for admission to AIM to the LSE until the Authority was informed on 16 March 2012 of the irregularities in WSL's accounts, was deliberate and was intended by him to mislead the market.

5. FAILINGS

5.1. The regulatory and legislative provisions relevant to this Final Notice are referred to in Annex B.

Market abuse

5.2. Throughout the Relevant Period shares in WSG were qualifying investments admitted to trading on AIM, a prescribed market for the purposes of section 118 of the Act, or were qualifying investments for which a request for admission to trading on AIM had been made.

5.3. For the purposes of section 118 of the Act, market abuse includes behaviour by one person alone, or by two or more persons acting jointly or in concert.

Dissemination of information

5.4. Pursuant to section 118(7) of the Act, market abuse includes behaviour which consists of the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to a qualifying investment by a person who knew or could reasonably be expected to have known that the information was false or misleading.

5.5. Mr O'Kelly disseminated information during the Relevant Period by:

(1) providing information as part of WSG's request for admission to trading on AIM and in WSG's AIM admission document which he knew was materially inaccurate and gave a false impression of WSG's financial position.

(2) approving as finance director WSG's Annual Accounts for the years 2007 to 2011 and other public statements including trading updates, preliminary results announcements and interim results knowing that they contained material inaccuracies as to profit, trade payables and cash.

(3) providing an inaccurate description of WSG's financial strength to analysts researching WSG's financial strength, as described in paragraph 4.74 above.

5.6. Mr O'Kelly held the senior position of finance director of WSL and WSG and he was an approved person. He had ultimate oversight of, and responsibility for, the content of WSL's Annual Accounts and other public statements. He knew that the inaccuracies would have a material impact on the content of WSG's Annual Accounts.

5.7. Mr O'Kelly's failure to inform WSL's or WSG's auditors or the full board of either company or the market that WSG's published financial information was materially inaccurate was a continuing act of dissemination for the purposes of section 118(7) of the Act.

Gives or is likely to give a false or misleading impression

5.8. The AIM admission document, profit statements, trade payables information and cash statements described in this notice were materially inaccurate, grossly reducing WSL's liabilities to its customers and inflating WSG's balance sheet. As set out at paragraphs 4.66 and 4.67 above, in its 2010 Annual Accounts, WSL's Trade Payables were misstated by almost £4m and in its 2011 Annual Accounts WSL's Trade Payables were misstated by almost £16 million. WSL's financial results, such as revenue, made up over 90% of WSG's reported revenue. Therefore, the materiality of these misstatements was mirrored in the published Annual Accounts of WSG. It was the revelation of the Client Money shortfall that led to the collapse of WSL, and so WSG, in March 2012.

Person who knew or could reasonably be expected to have known that the information was false or misleading

5.9. Mr O'Kelly was WSL's and WSG's finance director. He was also a chartered accountant. He knew that WSL's Annual Accounts would have a material impact on WSG's Annual Accounts. In these circumstances, Mr O'Kelly knew that the information was false or misleading.

Conclusion on market abuse (dissemination)

5.10. For the reasons set out above and having regard to the provisions of MAR (set out in Annex B to this notice) the Authority finds that Mr O'Kelly engaged in market abuse contrary to section 118(7) of the Act. Further, his behaviour was deliberate and he intended to mislead the market.

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 O'Kelly.

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 O'Kelly's conduct as described in this notice.

Fitness and Propriety

5.13. The relevant sections of FIT are set out in Annex B. FIT 1.3.1 G states 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, as more particularly described in FIT 2 (Main assessment criteria). FIT 1.3.1BG states that in the Authority's view, the most important considerations will include, among other matters, a person's honesty, integrity and reputation when assessing a person's fitness and propriety.

5.14. As described above, for a period of almost five years, Mr O'Kelly deliberately falsified the presentation of WSG's financial information, including in documentation supporting WSG's admission to trading on AIM, knowing that the falsified information would be reflected in and have a material impact on WSL's and WSG's published Annual Accounts. He did this despite being an approved

person and a chartered accountant and holding a senior position at WSL, a regulated firm, and at WSG.

5.15. Furthermore over the Relevant Period, Mr O'Kelly:

a) engaged in an "internal hedging" strategy which involved the use of fake client trading accounts or real client trading accounts without their knowledge;

b) knowingly provided false information to auditors; and

c) despite being the approved person at WSL responsible for Client Money, deliberately misused Client Money at WSL and oversaw an improper accounting treatment of WSL's client funds to hide the resulting Client Money shortfall.

5.16. In light of these considerations, the Authority considers that Mr O'Kelly's actions were dishonest. Because he lacks honesty, Mr O'Kelly is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

6. SANCTION

Financial Penalty

6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. The detailed provisions of DEPP are set out at Annex A. In determining the appropriate financial penalty, the Authority has had regard to Chapter 6 of DEPP. The current penalty guidance ("New DEPP") is relevant to breaches that took place on or after 6 March 2010. Before that date, a previous version of DEPP ("Old DEPP") was in force.

6.2. Mr O'Kelly's abusive behaviour took place over the period from 25 July 2007 to 16 March 2012. As this abuse took place over a period when Old DEPP and then New DEPP were in force the Authority has split its penalty calculation to produce, first, a penalty covering abuse in the period from 25 July 2007 to 5 March 2010 applying Old DEPP and, second, a penalty covering abuse in the period from 6 March 2010 to 16 March 2012 applying New DEPP in force over

that later period. The Authority has added the two penalties together to produce the total penalty.

6.3. The Authority considers that a financial penalty of £468,756 (or £328,100 adjusted for a 30% (Stage 1) settlement discount) would have been the appropriate financial penalty to impose on Mr O'Kelly. But having taken into account all the circumstances of the case, and that Mr O'Kelly has provided verifiable evidence that payment of the penalty proposed by the Authority would cause him serious financial hardship, the total financial penalty which the Authority imposes on Mr O'Kelly is £11,900.[6]

6.4. A full calculation and explanation of how DEPP has been applied is set out at Annex A. In summary this penalty is calculated as follows:

(1) For Mr O'Kelly's abusive behaviour between 25 July 2007 and 5 March 2010, under Old DEPP, the Authority would have imposed a financial penalty of £250,000 before Stage 1 settlement discount and before taking into account verifiable evidence of serious financial hardship.

(2) For Mr O'Kelly's abusive behaviour from 6 March 2010 to 16 March 2012, under New DEPP, the Authority would have imposed a financial penalty of £218,756 before Stage 1 settlement discount and before taking into account verifiable evidence of serious financial hardship, calculated as follows:

a) At Step 1, there is no amount subject to disgorgement.

b) At Step 2, Mr O'Kelly's relevant income is £303,829 and a seriousness level of 5 has been applied (40% of relevant income), giving a Step 2 figure of £121,531.

c) At Step 3, a 20% discount has been applied to the Step 2 figure in mitigation due to Mr O'Kelly's co-operation with the Authority's investigation, giving a Step 3 figure of £109,378.

[6] Mr O'Kelly lives in the Republic of Ireland and will pay a penalty of €13,700 calculated using the conversion rate on 9 January 2017.

d) At Step 4, the Authority has doubled the penalty to achieve credible deterrence, giving a Step 4 figure of £218,756. But the Authority accepts that the payment of this penalty, in addition to that applicable under Old DEPP, of £250,000 (before Stage 1 settlement discount) would have caused Mr O'Kelly serious financial hardship and has therefore reduced the total penalty to £17,124.

e) At Step 5, the Authority has applied a Stage 1 settlement discount of 30%, giving a Step 5 figure of £11,900 (rounded down to the nearest £100).

(3) Accordingly, the combined financial penalty that the Authority would have imposed on Mr O'Kelly under Old DEPP and New DEPP would have been £468,756 (£250,000 plus £218,756) (or £328,100 adjusted for a 30% (Stage 1) settlement discount), had he not provided verifiable evidence that payment of the penalty proposed by the Authority would cause him serious financial hardship. But having taken into account all the circumstances of the case, and that Mr O'Kelly has provided verifiable evidence that payment of the penalty proposed by the Authority would cause him serious financial hardship, the total financial penalty which the Authority imposes on Mr O'Kelly is £11,900.

Prohibition

6.5. The Authority has had regard to the guidance in Chapter 9 of EG in considering whether to impose a prohibition order on Mr O'Kelly. The Authority has the power to prohibit individuals under section 56 of the Act.

6.6. The Authority considers that, due to his dishonesty, that he has engaged in deliberate market abuse, and the circumstances in which he oversaw the improper transfers of Client Money, Mr O'Kelly is not a fit and proper person to perform any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm, and that a prohibition order should be imposed on him under section 56 of the Act.

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 by Mr O'Kelly to the Authority as follows: €1,141 on a quarterly basis starting from 1 month from the date of the Final Notice with a final payment of €1,149, 3 years 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 8 April 2020, the Authority may recover the outstanding amount as a debt owed by Mr O'Kelly 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 or Kathryn Davies at the Authority (direct line: 020 7066 7418 or 020 706 64956, email joanna.simon@fca.org.uk or kathryn.davies@fca.org.uk).

Mario Theodosiou
Financial Conduct Authority, Enforcement and Market Oversight Division

Annex A: Calculation of Financial penalty

Financial penalty under Old DEPP

1.1. References to DEPP in paragraphs 1.2 to 1.8 are to Old DEPP. The Authority considers the following DEPP factors to be particularly important in assessing the financial penalty payable for his market abuse prior to 6 March 2010.

Deterrence – DEPP 6.5.2(1)

1.2. The principal purpose of a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant individuals. The Authority considers that the need for deterrence means that a substantial fine on Mr O'Kelly is appropriate.

Nature, seriousness and impact of the breach – DEPP 6.5.2(2)

1.3. Mr O'Kelly's breaches were extremely serious. The period of the market abuse here was particularly long from 25 July 2007 until 5 March 2010.

1.4. Mr O'Kelly's abusive behaviour had a serious impact on the financial markets. For instance WSG raised £5.77 million on its AIM flotation. The Authority considers that the AIM flotation would probably not have proceeded had WSG's AIM admission documentation been accurate and full.

The extent to which the breach was deliberate or reckless DEPP 6.5.2(3)

1.5. The Authority considers that Mr O'Kelly's actions were deliberate. He also consolidated and oversaw putting together the financial documentation that formed the basis of the verification notes and AIM flotation documents. As CFO of WSG he had a responsibility to ensure the accuracy of the AIM admission document and Annual Accounts. However, he deliberately allowed WSG to apply for admission to trading based on serious misrepresentations and permitted WSG's Annual Accounts thereafter to contain false and misleading information.

1.6. In light of these factors and considering previous financial penalties levied on other individuals for market abuse under section 118(7) of the Act, the Authority considers that Mr O'Kelly's conduct merits a significant penalty of £250,000 for his abusive behaviour between 25 July 2007 and 5 March 2010 before settlement discount.

1.7. Mr O'Kelly agreed to settle at an early stage of the Authority's investigation. Mr O'Kelly therefore qualified for a 30% (Stage 1) discount under the Authority's executive settlement procedures. The financial penalty for Mr O'Kelly's breach of section 118(7) of the Act in the period prior to 6 March 2010 would therefore have been £175,000 after Stage 1 discount had Mr O'Kelly not provided verifiable evidence that payment of this amount would have caused him serious financial hardship (see 1.28 below).

Financial penalty under New DEPP

1.8. In respect of any breach occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5.C sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals who have committed market abuse.

Step 1: Disgorgement

1.9. 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. Mr O'Kelly did not derive a direct financial benefit from the market abuse. The Step 1 figure therefore is nil.

Step 2: The Seriousness of the Breach

1.10. The market abuse was undertaken by Mr O'Kelly in the course of his employment. On this basis, DEPP 6.5C.2(2) provides that the Step 2 figure will be the greater of: (a) a figure based on a percentage of Mr O'Kelly's relevant income; (b) 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 (c) where the seriousness level of the abuse is considered to be level 4 or 5, £100,000.

1.11. The Authority has not identified any profit made or loss avoided for Mr O'Kelly's own financial benefit from the market abuse. Therefore, the Authority will use the greater of a figure based on a percentage of Mr O'Kelly's relevant income or £100,000 for Step 2.

Relevant Income

1.12. Pursuant to DEPP 6.5C.2(4) and (5), because the market abuse took place over a period of greater than 12 months Mr O'Kelly's relevant income will be the gross amount of all benefits he received in connection with his employment during the period of the market abuse. The period of the market abuse, for the purposes of the calculation of relevant income, was from 6 March 2010 to 16 March 2012. Mr O'Kelly's relevant income is £303,829.

1.13. DEPP 6.5C.2(6)(a) provides that in cases where the market abuse was referable to the individual's employment, the Authority will determine the percentage of relevant income which will apply by considering the seriousness of the market abuse and choosing a percentage between 0% and 40%.

1.14. DEPP 6.5C.2(8) provides that where the market abuse was referable to the individual's employment the percentage 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 the following five levels and percentages apply:

(a) level 1 – 0%
(b) level 2 – 10%
(c) level 3 – 20%
(d) level 4 – 30%
(e) level 5 – 40%

1.15. DEPP 6.5C.2(10) provides that the Authority will take into account factors which relate to the following four categories in determining the seriousness of the abuse: (a) factors relating to the impact of the market abuse; (b) factors relating to the nature of the market abuse; (c) factors tending to show whether the market abuse was deliberate; and (d) factors tending to show whether the market abuse was reckless.

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

(1) by misrepresenting profit and Trade Payables in WSG's accounts, Mr O'Kelly ultimately misled WSG's investors which had a serious adverse effect on confidence in the markets (DEPP 6.5C.2(15)(b)).

(2) Mr O'Kelly committed the market abuse for a sustained period of time, for just over two years (for the purposes of the penalty calculation under New DEPP) and on multiple occasions. (DEPP 6.5C.2(15)(c)).

(3) Mr O'Kelly breached a position of trust, as CFO at WSL and WSG (DEPP 6.5C.2(15)(d)).

(4) Mr O'Kelly had a prominent position within the market (DEPP 6.5C.2(15)(e)).

(5) Mr O'Kelly acted deliberately and with intent to mislead the market (DEPP 6.5C.2(15)(f)).

1.17. The Authority also considers that the following factors are relevant:

(1) Mr O'Kelly instructed Mr Lukhvir Thind, his direct report and Financial Controller at WSL, to commit market abuse. (DEPP 6.5C.2(12)(c)).

(2) Mr O'Kelly was a qualified accountant and was an approved person (DEPP 6.5C2G(12)(e))

1.18. The Authority usually expects to assess deliberate market abuse as seriousness level 4 or 5, DEPP 6.5C.2 G(3)(c).

Level 5 seriousness

1.19. The Authority considers the seriousness of Mr O'Kelly's market abuse to be level 5. The Step 2 figure is the higher of 40% of Mr O'Kelly's relevant income of

£303,829, a sum of £121,531, and £100,000. The figure at Step 2 is therefore £121,531.

Step 3: Mitigating and Aggravating factors

1.20. DEPP 6.5C.3G provides that the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2 to take into account factors which aggravate or mitigate the market abuse.

1.21. The Authority does not consider that there are any such aggravating factors to Mr O'Kelly's market abuse. However, the Authority considers that the co-operation given by Mr O'Kelly during its investigation is a factor that mitigates the abuse.

1.22. In interview Mr O'Kelly provided explanations to questions that necessarily implicated him and made full admissions of wrongdoing when questioned on events that related to him. Furthermore Mr O'Kelly provided information regarding the conduct of Mr Lukhvir Thind and provided a chronology of the abuse from before the admission of WSG to the AIM market to the collapse of WSL and WSG.

1.23. DEPP 6.5C.3 G(2)(b) provides that the Authority will consider the degree of cooperation the individual showed during the course of the investigation of the market abuse by the Authority or any other regulatory authority allowed to share information with the Authority.

1.24. Accordingly the Authority considers that a 10% discount for cooperation should be applied. The Step 3 figure, after a 10% discount is applied to the Step 2 figure, is £109,378.

Step 4: Adjustment for deterrence

1.25. 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.

1.26. The Authority considers that the Step 3 figure of £109,378 is too small in relation to the breach to meet its objective of credible deterrence, taking into account the importance of the provision of accurate financial statements by listed companies to maintaining the integrity of the market. Accordingly the Authority has applied a deterrence multiplier of 2 at this stage.

1.27. The Step 4 figure is therefore £218,756 (before taking into account serious financial hardship)

Serious Financial Hardship

1.28. 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 £468,756 (£218,756 under New DEPP plus £250,000 under Old DEPP[7]) would cause Mr O'Kelly serious financial hardship. The Authority has therefore reduced the figure at Step 4 to £17,124[8].

Step 5: Settlement Discount

1.29. Pursuant to DEPP 6.5C.5G, if the Authority and an individual, on whom a penalty is to be imposed, agree the amount of the financial penalty and other terms, the DEPP 6.7.3 provides that the amount of the financial penalty which would otherwise have been payable will be reduced to reflect the stage at which the Authority and Mr O'Kelly reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

1.30. The Authority and Mr O'Kelly reached an agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.

1.31. The figure at Step 5, rounded down to the nearest £100, is therefore **£11,900** or **€13,700** (rounded down to the nearest £100 and €100).

Conclusion

[7] Before any settlement discount

[8] Mr O'Kelly lives in the Republic of Ireland and will pay a penalty of €13,700 as calculated by the conversion rate on9 January 2017.

1.32. The Authority therefore imposes a total financial penalty of **€13,700** on Mr O'Kelly.

Annex B: Relevant Statutory and Regulatory Provisions

1. RELEVANT STATUTORY PROVISIONS

The Authority has the power under section 56(1) of the Act to prohibit an individual from performing a specified function, any function falling within a specified description or any function.

Under section 56(1) of the Act the Authority may prohibit that individual if the 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 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.

Section 123(2) sets out certain circumstances in which the Authority may not impose a penalty on a person:

"But the Authority may not impose a penalty on a person if, having considered representations made to it in response to a warning notice, there are reasonably 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 [subsection 123(1)]."*

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;*
>
> *(ii) qualifying investments in respect of which a request for admission to trading on such a market has been made*
>
> *…and*

(b) falls within any one or more of the types of behaviour set out in subsections (2) to (8)."

The behaviour relevant to this case is set out in subsection 118(7) which states that:

"The sixth is where the behaviour consists of the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to a qualifying investment by a person who knew or could reasonably be expected to have known that the information was false or misleading"

By section 118A(1), 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…"

2. RELEVANT HANDBOOK PROVISIONS

Code of Market Conduct

The Authority has issued the Code of Market Conduct ("MAR") pursuant to section 119 of the Act.[9]

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 2012.

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.

MAR 1.8.3 G Descriptions of behaviour that amount to market abuse (dissemination)

The following behaviours are, in the opinion of the FCA, market abuse (dissemination):

[9] All references to MAR in this Annex refer to the version of MAR in force at the time of the misconduct and market abuse.

(1) knowingly or recklessly spreading false or misleading information about a qualifying investment through the media, including in particular through an RIS or similar information channel;

(2) undertaking a course of conduct in order to give a false or misleading impression about a qualifying investment.

MAR 1.8.4 E Factors to be taken into account in determining whether or not behaviour amounts to market abuse (dissemination)

In the opinion of the FCA, if a normal and reasonable person would know or should have known in all the circumstances that the information was false or misleading, that indicates that the person disseminating the information knew or could reasonably be expected to have known that it was false or misleading.

3. DECISION PROCEDURES AND PENALTIES MANUAL

In determining the level of financial penalty to be paid for abusive behaviour occurring after 6 March 2010 the Authority has had regard to the provisions of DEPP, particularly DEPP 6.3 G, DEPP 6.5C G, DEPP 6.5D G and DEPP 6.7 G. For abusive behaviour occurring before that date the Authority has had regard to the provisions of DEPP that were in force at the time.

4. ENFORCEMENT GUIDE ("EG")

Section 7 of EG deals provides guidance regarding financial penalties and public censures and can be accessed at this link:

https://www.handbook.fca.org.uk/handbook/EG/7/1.html

Section 9 of EG provides guidance regarding prohibition orders and can be accessed here:

https://www.handbook.fca.org.uk/handbook/EG/9/?view=chapter

5. FIT AND PROPER TEST FOR APPROVED PERSONS ("FIT")

Paragraph 1.3.1 G of FIT states:

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, as more particularly described in FIT 2. FIT 1.3.1B G states that in the Authority's view the most important considerations will be the person's:

(1) honesty, integrity and reputation;

(2) competence and capability; and

(3) financial soundness.

FIT 1.3.3 G states:

> The criteria listed in FIT 2.1 to FIT 2.3 are guidance and will be applied in general terms when the Authority is determining a person's fitness and propriety. It would be impossible to produce a definitive list of all the matters which would be relevant to a particular determination. A relevant authorised person assessing the fitness and propriety of staff being assessed under FIT should be guided by substantially the same criteria in FIT 2.1 to FIT 2.3 (to the extent applicable to the firm) recognising that this is not intended to be a definitive list of matters to be considered.

FIT 1.3.4 states:

> If a matter comes to the Authority's attention which suggests that the person might not be fit and proper, the Authority will take into account how relevant and how important it is. In this same way, if a matter comes to the attention of a relevant authorised person which suggests that any staff being assessed under FIT might not be fit and proper, the firm should take into account how relevant and how important that matter is.

The relevant criteria in this case are honesty, integrity and reputation.

In assessing the fitness and propriety of an approved person under the criterion of honesty, integrity and reputation, the Authority will have regard to the matters including, but not limited to, those set out in FIT 2.1.3 G.

6. CASS CLIENT ASSETS RULES

The CASS Rules deal with the proper treatment of Client Money. In summary the CASS Rules mandate that client money should be segregated (CASS 7.4.1) and prevent the use of Client Money by the firm for its own account (CASS 7.3.1)

7. AIM RULES

The LSE's AIM Rules for Companies in force from February 2010 sets out the following relevant rules:

Rule 31 – AIM company and directors' responsibility for compliance

"An AIM company must:[…]

- *ensure that each of its directors accepts full responsibility, collectively and individually, for its compliance with these rules; and*
- *ensure that each director discloses to the AIM company without delay all information which the AIM company needs in order to comply with the rule 17 insofar as that information is known to the director or could with reasonable diligence be ascertained by the director."*

Schedule 2

(k) the information required by the Notes and any other information which it reasonably considers necessary to enable investors to form a full understanding of:

(i) the assets and liabilities, financial position, profits and losses, and prospects of the applicant and its securities for which admission is being sought;
(ii) the rights attaching to those securities; and
(iii) any other matter contained in the admission document.