
FINAL NOTICE

To: **Paul Stephany**

**Individual
Reference
Number:** **PMS01181**

Date: **4 February 2019**

1. ACTION

- 1.1. For the reasons given in this Final Notice, the Authority hereby imposes on Mr Stephany a financial penalty of £32,200.

2. SUMMARY OF REASONS

- 2.1. Mr Stephany was a portfolio fund manager at Newton Investment Management Limited ("Newton"), managing four funds that invested in UK equities. On 21 September 2015, in relation to the initial public offering ("IPO") of On The Beach Group plc ("OTB"), Mr Stephany contacted External Fund Managers at competitor firms and attempted to influence them so that they would cap their orders at the same price limit as his order. This was an attempt to get investors to use their collective power and thereby undermine

the proper price formation process of the IPO, which risked causing harm to other market participants. This followed a similar attempt by Mr Stephany on 9 July 2015 in relation to a placing by Market Tech Holdings Limited ("Market Tech").

- 2.2. IPOs and placings play a vital role in helping companies raise capital in the UK's financial markets. These capital raising mechanisms depend on the effective operation of the UK's financial markets and are predicated on natural market forces determining pricing. Issuers and investors reasonably expect the prices set in capital raisings by way of the Bookbuild to be fair and reflective of genuine market demand. When investors attempt to undermine this price formation process the efficiency and stability of the UK's financial markets is threatened. Such conduct undermines the Authority's strategic objective of ensuring that relevant markets function well, and also its operational objective of protecting and enhancing the integrity of the UK financial system.
- 2.3. On 21 September 2015, Mr Stephany sent an email to himself, which he blind copied to 14 External Fund Managers at 11 competitor firms, that included the following statement regarding the OTB IPO: *"I wanted to urge those considering or in for the OTB IPO to think about moving to a 260m pre money valuation limit. I have done that first thing this morning with my 17m order."*
- 2.4. Previously, on 9 July 2015, Mr Stephany had telephone conversations with two External Fund Managers at competitor firms regarding a placing by Market Tech in which he engaged in similar communications. In one of those exchanges he stated the following: *"...I think push them for it to kind of 220 price rather than 230 plus they're talking about."* Mr Stephany then stated, *"[I] will be submitting a chunky order at that 220 level."*
- 2.5. By engaging in such communications, Mr Stephany acted contrary to Statement of Principle 3. He failed to observe proper standards of market conduct by attempting to influence External Fund Managers at competitor firms so that they would cap their orders for an allocation of shares at the same price limit as his order. Mr Stephany attempted to get them to use their collective power and thereby undermine the proper price formation process of both the OTB IPO and the Market Tech placing for the benefit of the funds that he managed. His actions risked causing harm to issuers and existing shareholders, as they could have resulted in less capital being raised and existing shareholdings being valued at less than they might have been, and threatened the orderliness of the UK's financial markets. Furthermore, following the OTB IPO, Mr Stephany also contacted

External Fund Managers at a competitor firm to suggest that they might adopt the same strategy in respect of future offerings.

- 2.6. Contrary to Statement of Principle 2, Mr Stephany demonstrated a lack of due skill, care and diligence by failing to give adequate consideration to the risks associated with engaging in communications with External Fund Managers at competitor firms in this way and for these purposes. Mr Stephany gave some consideration to whether his email regarding the OTB IPO was appropriate, but he failed to search for, or identify, guidance from Newton which was relevant to sending such a communication. He also did not consult Newton's compliance department or his line manager, either in relation to the OTB IPO or the Market Tech placing, to seek their views on whether his actions were appropriate. Such communications with External Fund Managers were also contrary to Newton's internal policies and procedures.
- 2.7. The Authority therefore hereby imposes a financial penalty on Mr Stephany in the amount of £32,200 pursuant to section 66(3) of the Act for failing to comply with Statements of Principle 2 and 3.

3. DEFINITIONS

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

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

the "Authority" or the "FCA" means the Financial Conduct Authority;

"Berenberg" means Joh. Berenberg, Gossler & Co. KG;

"Bookbuild" means the process by which a Bookrunner attempts to determine at what price to offer an IPO or placing based on demand from institutional investors. This involves a Bookrunner that builds a book by accepting orders from fund managers, who indicate the number of shares they desire and the price they are willing to pay for them;

"Bookrunner" means the firm responsible for managing the Bookbuild and/or individuals acting on that firm's behalf;

"Canaccord" means Canaccord Genuity Limited;

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

the "Emails" means collectively the 8.10am Email and the 9.03 Email;

"External Fund Manager" means a fund manager at a firm other than Newton. Ten External Fund Managers are referred to in this Notice from External Fund Manager A to J;

the "Handbook" means the FCA's Handbook of rules and guidance;

"Inflexion" means OTB Holdings Limited Partnership, a partnership whose general partner, Inflexion 2010 General Partner Limited, was advised by the private equity firm Inflexion Private Equity Partners LLP;

"IPO" means initial public offering;

the "LSE" means the London Stock Exchange;

"Market Tech" means Market Tech Holdings Limited;

"Newton" means Newton Investment Management Limited, which is part of the BNY Mellon group;

"Numis" means Numis Securities Limited;

"OTB" means On The Beach Group plc;

"placing" means a sale of new shares by an issuer by way of direct sale, rather than by way of a public offering;

"post-money" means the valuation of a company's total or individual shares during the bookbuilding stage of an IPO *after* the company goes public, therefore taking into account the likely additional investment investors will make in the issuer company;

"pre-money" means the valuation of a company's total or individual shares during the bookbuilding stage of an IPO *before* the company goes public, therefore discounting the likely additional investment investors will make in the issuer company;

"Shore Capital" means Shore Capital Group Limited;

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

the “8.10am Email” means the email sent by Mr Stephany which was blind copied to various External Fund Managers on 21 September 2015 at 8.10am. See paragraph 4.18 of this Notice; and

the “9.03am Email” means the email sent by Mr Stephany which was blind copied to various External Fund Managers on 21 September 2015 at 9.03am. See paragraph 4.21 of this Notice.

4. FACTS AND MATTERS

- 4.1. Mr Stephany was, at all material times, a portfolio fund manager at Newton and held the CF30 (Customer) controlled function. In this role, he was lead manager in respect of four funds: the Newton UK Equity Fund and the Newton UK Opportunities Fund, both of which invest predominately in UK securities across companies of all sizes in any industry, the Johnson & Johnson (UK) Group Retirement Plan and the Merseyside Pension Fund. These funds had collectively over £1.8 billion of assets under management as at 3 August 2015. Mr Stephany was responsible for managing these funds in accordance with client requirements and Newton’s investment philosophy and processes. At the time of the events in question, Mr Stephany had worked in financial services for over 10 years.
- 4.2. At all material times, Newton had in place policies and procedures regarding fair dealing with competitors and anti-competitive behaviour, investor collaboration and the escalation of risks and concerns. These policies and procedures warned against the risks of engaging in certain communications with investors at other firms and emphasised that, if an employee was faced with a situation in which they were unsure of the correct action to take, they should consult their line manager, the compliance department or other persons with relevant expertise, and that issues of concern should be promptly escalated. In particular, the BNY Mellon Code of Conduct explained that the firm *“is committed to fair dealing with [its] clients, suppliers, competitors and employees”* and warned against *“[...] entering into formal or informal agreements, whether written or oral, with competitors regarding: Fixing prices or terms, or any information that impacts prices or terms”*. Newton’s Note on Investor Collaboration instructed fund managers not to *“disclose Newton’s investment intentions or expectations”* and to consider *“if we could be deemed to be acting in concert”*, which refers to the regulatory rules which apply where two or more parties act together as a “concert party” in relation to the takeover of a company. Further, Newton’s Governance Manual set out that, in respect of material risks and issues that may arise from time to time, *“[...] it is vital that they are promptly*

escalated to the appropriate bodies and individuals. In the first instance issues should be escalated to your manager." Newton's guidance regarding these compliance matters was provided to Mr Stephany on an ongoing basis between June 2013 and February 2015.

OTB IPO

- 4.3. OTB is a UK online retailer of short-haul beach holidays. An IPO of its ordinary share capital was launched in September 2015 and the company was admitted to the premium segment of the Official List of the LSE, and to trading on the LSE's main market for listed securities, on 28 September 2015.
- 4.4. On 9 September 2015, potential investors were provided with a pathfinder prospectus and attended management roadshows. Numis was the Bookrunner on this IPO.
- 4.5. Mr Stephany was the lead fund manager at Newton in respect of the OTB IPO. This role involved: preparing an internal research note on this IPO for his colleagues; communicating with the Bookrunner to receive updates on the progress of the Bookbuild; and co-ordinating the submission of orders via Newton's dealing desk for his own funds, as well as those of his colleagues at Newton. Mr Stephany received the pathfinder prospectus and Numis' research note and met with OTB management to discuss the IPO.
- 4.6. A Bookrunner's role in an IPO includes obtaining orders for the Issuer's shares from potential investors. Issuers and investors reasonably expect the prices set in capital raisings by way of the Bookbuild to be fair and reflective of genuine market demand, with orders submitted by investors at different price limits and reflecting their views on, and valuation of, the issuer. The proper price formation process will therefore be undermined, if investors use their collective power to influence the share price by capping their orders at a certain price limit.
- 4.7. An indicative range of the share price may be provided to potential investors. However, investors may still wish to limit the price they are prepared to pay for the shares. Such order limits may be expressed as a price-per-share, or as the investor's estimated total value of the company pre-money or post-money. Investors form a view of their valuation of the shares, for example from undertaking their own research, attending meetings with the Bookrunner and issuer, their sense of the level of interest from discussions with other market participants (for example their views of the company's prospects), their own experience of previous IPOs, and their expertise gained from investing in the specific sector and the wider market.

- 4.8. When orders are received they are entered into the “book”. The Bookrunner will seek to “cover” the book with sufficient demand from investors within the indicative range or at a particular target price to meet the desired fund-raising target. The Bookrunner will contact investors to determine their interest in submitting an order before the book is “closed” at a specified point in time. Up until the book is closed investors can withdraw or make changes to their order, including adjusting its size and price. The issuer and its advisers will then review the orders, including the limits placed on them, and provided there is sufficient demand will decide how many shares it wishes to sell to investors and at what price. Those shares are then “allocated” to investors. If there is insufficient demand the issuer may re-price or cancel the IPO. Alternatively, if demand from investors exceeds the total number of shares offered this is known as an IPO being “oversubscribed”.
- 4.9. In the OTB IPO, in addition to the sale of shares that were privately held, the firm was seeking to raise £10 million of new investment (also known as ‘new money’). Accordingly, if an investor wished to submit an order with a price limit this was achieved by reference to the pre-money or post-money valuation, e.g. £260 million pre-money was equivalent to £270 million post-money, or a price-per-share of 208p.

Mr Stephany’s communications

- 4.10. On 16 September 2015, Mr Stephany called the Bookrunner at Numis for an update on the OTB IPO. During the conversation, the Bookrunner stated that there was “[q]uite a bit of price sensitivity...there are orders as low as 260 million [pre-money]...[and] some big orders, a £20 million quid, a £25 million quid...[at] 300 million....”
- 4.11. Later the same day, on the instruction of Mr Stephany, Newton’s dealers submitted an order to Numis in the amount of approximately £13.6 million with a price limit based on an overall valuation of OTB at £270 million pre-money (or 216p per share). Mr Stephany then separately confirmed to the Bookrunner at Numis that his order had been submitted.
- 4.12. On 17 September 2015, Mr Stephany circulated a note within Newton which recommended investment in the OTB IPO based on his valuation of £270 million pre-money.
- 4.13. The next day, on Friday 18 September 2015, Mr Stephany had a further telephone conversation with the Bookrunner at Numis. During that telephone call the Bookrunner stated that Newton’s order was “pretty much on the money” although there was “a chance

it [the IPO price] comes in a tiny bit below [that]". He went on to say, "if it doesn't come at your price, it would be at 260 [million pre-money]."

- 4.14. Later on that same call, Mr Stephany explored the possibility of reducing his overall valuation and his price limit by £10 million to £260 million pre-money at a future point in time. This was in the event that Newton's order would be increased by £2.5 million due to additional demand from his colleagues at Newton. The Bookrunner at Numis responded that such actions would *"...probably end up just looking a wee bit silly, because I think it will be done at the price you're at, at the 270 [million pre-money]..."*. Later that day, Newton confirmed to Numis that it wished to increase its order size from £13.6 million to approximately £16.8 million pursuant to demand from other fund managers at Newton.
- 4.15. On 18 September 2015, Numis issued a marketing update to OTB confirming that the book was not covered. Numis had received approximately £83 million worth of orders at a price limit of £260 million pre-money, and approximately £42 million of orders at a price limit of £270 million pre-money.
- 4.16. Over the weekend of 19 and 20 September 2015, Mr Stephany decided that, taking into account unfavourable market conditions, he should reduce his valuation of OTB by £10 million to £260 million pre-money. Mr Stephany also decided to communicate his views to potential investors at other firms, after first considering whether it was appropriate to send such a communication. This involved him conducting internet based research into concert party rules, although he did not research Newton's policies and procedures and did not keep any records of the materials he did consider. In any event, he reached the conclusion that there were no negative implications and that he should therefore send such a communication.
- 4.17. On 21 September 2015 at 7.48 am, the day the book was due to close on the OTB IPO, Mr Stephany instructed his dealers to lower Newton's order to £260 million pre-money. This was also communicated by email to other Newton fund managers involved in the order. Mr Stephany explained in the email that the change was prompted by market weakness and uncertainty regarding the US Federal Reserve's decision not to move interest rates. The revised order was communicated by Newton to Numis at 7.55am.

- 4.18. On the same day at 8.10am, Mr Stephany sent the 8.10am Email to himself, blind copied to 14 External Fund managers at 11 competitor firms, with the subject heading, "Urgent-on the beach IPO". The 8.10am Email stated:

"Sorry for the out the blue email but I wanted to urge those considering or in for the OTB IPO to think about moving to a 260m pre money valuation limit. I have done that first thing this morning with my GBP17m order. I don't usually do last minute brinkmanship on IPOs but think there are particularly good reasons on this one given-

-significant market uncertainty since Fed decision

-huge private equity profits bagged by Inflexion given they bought it for c73m two years plus have taken mgmt fees and dividends

- the c. 15x PER which looks attractive is predicated on significant top and bottom line growth

-this is a relatively large placing in a small cap so sensitive to future mkt weakness

I haven't received any indication that the books are well covered or even covered so suspect this one is still very much open to price movement. Please have a think and mention to any colleagues or have put orders in."

- 4.19. Although Mr Stephany attempted to send the 8.10am Email to 14 External Fund Managers, it was only received by 11 of them on 21 September 2015 and by one other the following day.
- 4.20. The 8.10am Email included Mr Stephany's proposed price limit of £260 million pre-money and confirmed that an order on behalf of Newton was submitted based on this (he rounded up Newton's order from approximately £16.8 million to £17 million). This was not an unusual valuation of OTB when compared to other orders as a number of other fund managers had already submitted an order with the same price limit. Mr Stephany also urged the External Fund Managers in the 8.10am Email to move their orders to Newton's level and to mention this to any colleagues that had already placed orders. This was an attempt by Mr Stephany to get investors to use their collective power and thereby undermine the proper price formation process of the IPO.
- 4.21. Later that same morning, Mr Stephany sent the 9.03am Email to himself, blind copied to the same External Fund Managers at competitor firms, which noted that the book was to close at 2pm. The 9.03am Email further stated that *"Numis have had two orders limited at 260 of c20m each already."* The information in the 9.03am Email was based on Mr Stephany's earlier telephone call with the Bookrunner at Numis on 16 September 2015.

- 4.22. Mr Stephany did not escalate or discuss the Emails, with anyone at Newton, including the firm's compliance department, either before or immediately after sending them. He did forward the 8.10am Email to his line manager and two other colleagues at Newton for their information. However, he only did so on 22 September 2015, the day after it was sent.

Responses from External Fund Managers

- 4.23. External Fund Manager A responded by email to the 8.10am Email and told Mr Stephany that he valued OTB at £270 million post-money (£260 million pre-money) if there was a full exit by OTB's majority owners, the private equity firm Inflexion, but less if not. At 9.05am, Mr Stephany replied to External Fund Manager A and stated *"...I think full exit v unlikely given that book coverage sounds thin at best but I may be wrong. We have the power on this one."*
- 4.24. External Fund Manager B responded to the 9.03am Email to indicate that he was not involved but had forwarded the Emails to his colleague at the same firm, External Fund Manager C. Mr Stephany responded to thank External Fund Manager B and stated *"I may be wrong but I think the power balance is for new money here"*.
- 4.25. In an exchange with Mr Stephany about the Emails, External Fund Manager D stated *"Good luck [w]onder if [Fund Manager A] will listen to you this time."* External Fund Manager D subsequently stated *"Some collective bargaining from the buy side not a bad thing. Have you heard back from anyone?"*. Mr Stephany replied *"not really"*.
- 4.26. External Fund Manager E contacted the Bookrunner at Numis at 9.39am to explain that his firm would not be participating in the IPO and that one of the reasons for that was that there was correspondence *"flying around, which, from a compliance perspective, looks quite tricky"* and that this was around *"pricing and book colour"*. External Fund Manager E also said to the Bookrunner at Numis that he thought *"it feels like there's quite an organised attempt to get the price down"* and said *"...I feel really uncomfortable being associated with it, put it that way"*.
- 4.27. External Fund Managers C and F, who worked at the same firm, separately attempted to contact Mr Stephany on the morning of 21 September 2015 after being forwarded the Emails. Mr Stephany then had a telephone call with External Fund Manager C in which he reiterated the points initially raised in the 8.10am Email.

- 4.28. Mr Stephany followed up this call with an email to External Fund Managers C and F. This email stated *"[i]f you are a material part of this book, I really think it's worth pushing back on this."* Furthermore, Mr Stephany stated that External Fund Manager A *"reckons 270 is fair if PE [Inflexion] out completely and 260 if not. On Friday anyway the books weren't even covered at the lowest possible free float"*.
- 4.29. The other recipients of the Emails did not provide any substantive replies to Mr Stephany. However, shortly after receipt both External Fund Manager G and External Fund Manager H escalated concerns about the 8.10am Email within their respective firms.

Events post 21 September 2015

- 4.30. In any event, the Bookbuild failed to generate sufficient demand and accordingly the book did not close at 2pm on 21 September 2015. None of the External Fund Managers who received Mr Stephany's 8.10am Email changed their order to the suggested price limit of £260 million pre-money. One External Fund Manager who received the 8.10am Email maintained a previously submitted order with this limit.
- 4.31. Following the failure to generate sufficient demand at the target price, the Bookrunner then explored investors' interest in a new deal with a lower price and smaller fundraising target. Newton, at the direction of Mr Stephany, reduced its order size first to £14 million and then to £10.5 million, but maintained the price limit of £260 million pre-money. In this context, Mr Stephany stated in a chat message with External Fund Manager I that he was *"in the midst of potentially getting an IPO canned single handedly...by pushing the price down"*.
- 4.32. The OTB IPO completed on 22 September 2015. It raised £90.2 million of net proceeds and shares were admitted to trading on 28 September 2015 at the lower valuation of £240 million market capitalisation (i.e. £230 million pre-money or 184p per share). Newton received 4.75 million shares at 184p per share (a cash value of £8.74 million). The price of OTB shares increased after admission and over the following two weeks the last price was between 208p and 215p per share. This represented an increase in value (or IPO discount) of approximately 13-17%.
- 4.33. On 23 September 2015, External Fund Manager G responded to the Emails and raised concerns that Mr Stephany's communication *"could potentially give rise to a situation where a group of shareholders were viewed to be acting in concert with its attendant implications. Whilst I'm sure it wasn't your intention, I would prefer not to be canvassed*

in this way in the future". Mr Stephany did not escalate this email at Newton, but responded to External Fund Manager G on 25 September 2015 that he "did consider 'concert party' rules" but was satisfied that there was no "wrongdoing".

- 4.34. Later on 23 September, the compliance department of External Fund Manager H contacted Newton's compliance department to raise concerns that the 8.10am Email was inappropriate.
- 4.35. On 25 September 2015, in an email to External Fund Managers C, F and J (the latter had also been sent the Emails on 21 September and worked at the same firm), Mr Stephany stated the following:

"If you did indeed come in with a low ball bid for OTB, thanks very much. I think we should do more of this – not be bullied by the brokers who say "this is coming at X price" like it or lump it. The fact is, there are relatively few funds with reasonable firepower in the small cap IPOs and they days of high teen PE [price earnings] multiple deals should be well over..."

- 4.36. Accordingly, these events indicate that over the weekend of 19 and 20 September 2015, Mr Stephany reflected back on the call that he had with the Bookrunner at Numis on 18 September 2015. This call had informed Mr Stephany that there was a possibility that the OTB IPO could complete at a price of £260 million pre-money. In those circumstances, Mr Stephany fully appreciated that if the IPO proceeded OTB could be forced to issue the shares at that lower price if he and other investors submitted their orders with such a price limit. The lack of demand in the market prompted Mr Stephany to reduce his previous order of £270 million pre-money to £260 million pre-money. He then disclosed confidential information about his order, including this price limit and its size, to External Fund Managers and attempted to influence them so that they would cap their orders at the same price limit as his order.

Market Tech placing

- 4.37. Market Tech is a Guernsey-based holding company which holds real estate assets in Camden Town in London and runs an e-commerce business based around an online platform called market.com.
- 4.38. Market Tech announced a placing on 9 July 2015. Shore Capital and Canaccord were appointed as joint global coordinators and joint Bookrunners and Berenberg was also appointed as a joint Bookrunner. The announcement of the placing was published on the

LSE's website on 9 July 2015 and stated that the placing would be by way of an accelerated Bookbuild of up to 90 million placing shares.

- 4.39. On 7 July 2015, Mr Stephany telephoned the Bookrunner at Canaccord and explained that the Market Tech placing had been mentioned to him by a colleague. The Bookrunner confirmed that Market Tech intended to raise £150-£175 million.
- 4.40. On 8 July 2015, Mr Stephany indicated to the Bookrunner at Canaccord that he wished to participate in the placing at a price of 210p per share. Mr Stephany explained that his pricing was determined by reference to the tax changes in relation to buy-to-let properties and his consideration of Market Tech's value against the monies being raised. The Bookrunner at Canaccord replied at 5.05pm that indications started at 225p, with the majority of investors' indications at 230p. Mr Stephany explained that he did not agree with the valuation at 230p per share. The Bookrunner at Canaccord responded that *"For me to argue for any downward movement in price I would need a pretty knockout order to be honest. [Market Tech] seems pretty set on 230p at the moment"*.
- 4.41. On the morning of 9 July 2015, Mr Stephany had a telephone call with External Fund Manager A. During this call Mr Stephany expressed his views on the performance of Market Tech, including that he now valued the company at 220p per share. This call was similar to a telephone call that Mr Stephany made shortly afterwards to External Fund Manager C. During that later call Mr Stephany discussed the valuation of Market Tech in relation to the forthcoming placing and explained that he was *"calling a few people"* about this. Mr Stephany explained that he would be submitting a large order at 220p and suggested that External Fund Manager C think about submitting an order at the same level. He said, *"Basically the upshot is I think push them for it to kind of 220 price rather than 230 plus they're talking about"*. Mr Stephany then stated, *"[I] will be submitting a chunky order at that 220 level."* He also added, *"I've spoken to one other person so far who intends to join me in that... strategy. So yes, you have a think about it."* External Fund Manager C already held shares in Market Tech and maintained his order at a higher price than the one suggested by Mr Stephany.
- 4.42. Later that day, Newton's dealing desk submitted an order to Canaccord for approximately 8 million shares at 220p. Newton's order represented approximately 10% to 12% of the placing. At 2.38pm, Fund Manager A's dealing desk submitted an order for 2,125,000 shares, also at the price of 220p per share. These two orders were the only orders at 220p and they were the lowest in the book. In discussion with a colleague on Newton's

dealing desk, Mr Stephany recognised that pricing his order with such a limit could mean that he missed out on this investment when he said *"I know it may miss..."*.

- 4.43. Market Tech was disappointed with Newton's order, but believed that it was important to accommodate Newton if possible. Market Tech and Mr Stephany, on behalf of Newton, subsequently agreed to a higher price of 223p per share. The placing price was accordingly established at this level and communicated to other investors. Shortly afterwards, External Fund Manager A also increased his order to 223p after being told that lower orders were likely to miss out. At 4.53pm, Newton contacted Canaccord to increase the size of its order to approximately 9 million shares. The book closed at 5pm with the shares priced at 223p per placing share. Newton was allocated 9 million shares at that price. The firm of External Fund Manager A was allocated 2 million shares at the same price.
- 4.44. On 13 July 2015, Mr Stephany exchanged chat messages with External Fund Manager D, a fund manager at a competitor firm that did not participate in the placing. During that exchange Mr Stephany indicated that he had contacted External Fund Managers A and F *"...to get them to push the price down..."* but *"...they didn't help me out..."*.
- 4.45. Mr Stephany's communications with External Fund Managers A and C were contrary to Newton's internal policies and procedures. However, he did not give any consideration to whether these communications were appropriate and did not consult Newton's compliance department or his line manager to seek their views on whether they were appropriate.
- 4.46. During a placing the proper price formation process – similar to the process described in paragraphs 4.6 and 4.7 above with regard to IPOs – is based on the investors submitting orders at a price limit based on their own valuations, rather than using their collective power to influence the share price by capping their orders at a certain price limit. Hence, the events described above indicate that, in a manner similar to the strategy he later deployed in relation to the OTB IPO, Mr Stephany attempted to get investors at competitor firms to cap their orders at the same price limit as his, in an attempt to get them to use their collective power and thereby undermine the proper price formation process of the Market Tech placement.

5. FAILINGS

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

Breaches of the Statements of Principle

- 5.2. Contrary to Statement of Principle 3, Mr Stephany failed to observe proper standards of market conduct. He did this by attempting to influence External Fund Managers at competitor firms in the OTB IPO and Market Tech placing so that they would cap their orders for an allocation of shares at the same price limit as his orders. Mr Stephany's actions were an attempt to get the External Fund Managers at competitor firms to use their collective power and thereby undermine the proper price formation process in an IPO and a placing for the benefit of the funds that he managed.
- 5.3. The price formation process is vitally important to UK financial markets. Issuers and investors reasonably expect the prices set in capital raisings by way of the Bookbuild to be fair and reflective of genuine market demand. When an investor or investors attempt to influence others at competitor firms so that they submit orders at the same price limit, in an attempt to use their collective power, the proper operation of UK financial markets is put at risk. Mr Stephany recognised that the shares in the OTB IPO and Market Tech placing were susceptible to being issued at a lower price in these circumstances, and his conduct created the risk that the issuers would raise less capital and the existing shareholdings would be valued less than would otherwise have been the case. Furthermore, in relation to the OTB IPO, one External Fund Manager referred to the Emails when explaining their decision not to participate in the IPO, and two other External Fund Managers raised concerns about the 8.10am Email.
- 5.4. In addition, contrary to Statement of Principle 2, in both the OTB IPO and Market Tech placing Mr Stephany demonstrated a lack of due skill, care and diligence by failing to give adequate consideration to the risks associated with engaging in such communications with External Fund Managers at competitor firms. Mr Stephany gave some consideration to whether his 8.10am Email regarding the OTB IPO was appropriate but failed to search for, or identify, guidance from Newton which was relevant to sending such a communication. He also did not consult Newton's compliance department or his line manager, either in relation to the OTB IPO or the Market Tech placing, to seek their views

on whether his actions were appropriate. His communications with External Fund Managers were also contrary to Newton's internal policies and procedures.

6. SANCTION

Financial penalty

- 6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. The principal purpose of imposing 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, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.
- 6.2. In determining whether a financial penalty is appropriate the Authority is required to consider all the relevant circumstances of a case. Applying the criteria set out in DEPP 6.2.1G (regarding whether or not to take action for a financial penalty or public censure) and DEPP 6.4.2G (regarding whether to impose a financial penalty or public censure), the Authority considers that Mr Stephany's breach of Statements of Principle 2 and 3 was sufficiently serious that the imposition of a financial penalty is an appropriate sanction.
- 6.3. 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 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.

Step 1: disgorgement

- 6.4. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.5. The Authority has not identified any financial benefit that Mr Stephany derived directly from the breach.
- 6.6. Step 1 is therefore £0.

Step 2: the seriousness of the breach

- 6.7. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.

- 6.8. The period of Mr Stephany's breach was from July 2015 to September 2015. DEPP 6.5B.2G(2) states that where the breach lasted less than 12 months, the relevant income will be that earned by the individual in the 12 months preceding the end of the breach. Mr Stephany's relevant income for this period is £322,616.
- 6.9. In deciding on the percentage of the relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:
- Level 1 – 0%
 - Level 2 – 10%
 - Level 3 – 20%
 - Level 4 – 30%
 - Level 5 – 40%
- 6.10. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly.

Impact of the breach

- 6.11. Mr Stephany submitted orders on behalf of funds that he managed. He intended to gain an indirect benefit from the breach as his remuneration was connected to the performance of the funds he managed. However, the benefit he would have gained was limited and in any event he gained no actual benefit due to the restructuring of the OTB IPO and the increase of his order price limit in relation to the Market Tech placing (DEPP 6.5B.2G(8)(a)).
- 6.12. There was a risk of loss to the issuers and existing shareholders, if Mr Stephany had successfully undermined the proper price formation process in the OTB IPO and the Market Tech placing such that the prices had settled at a lower level than they otherwise would have done. However, the Authority acknowledges that the price of Mr Stephany's order in the OTB IPO was not an unusual valuation of OTB when compared to other orders as, by the time of the 8.10am Email, a number of other fund managers already had placed an order with a price limit of £260 million pre-money (DEPP 6.5B.2G(8)(b)).

- 6.13. Mr Stephany's breach put at risk the orderliness of, or confidence in, the UK financial markets. IPOs and placings play a vital role in helping companies raise capital in the UK's financial markets. Mr Stephany's attempts to get External Fund Managers at competitor firms to use their collective power and thereby undermine the price formation process threatened the effective operation of these markets (DEPP 6.5B.2G(8)(f)).

Nature of the breach

- 6.14. Although Mr Stephany's conduct occurred over a relatively short period of time, it did not consist of an isolated breach (DEPP 6.5B.2G(9)(b)).
- 6.15. Mr Stephany is an experienced industry professional but not a senior manager (DEPP 6.5B.2G(9)(j) and (k)).
- 6.16. Although Mr Stephany took some steps to determine whether the 8.10am Email was appropriate, these were inadequate. For example, he did not consult Newton's compliance department or his line manager before sending the email (DEPP 6.5B.2G(9)(n)).

Whether the breach was deliberate

- 6.17. Mr Stephany planned to send the 8.10am Email. However, he conducted some limited research into whether it was appropriate and concluded (albeit wrongly) that it was. Accordingly, the Authority concludes that he did not intend to breach, and did not foresee that his actions would result in a breach of, the Statements of Principle (DEPP 6.5B.2G(10)(a)).
- 6.18. Mr Stephany did not attempt to conceal his misconduct. He also did not commit the breach in such a way as to avoid or reduce the risk that the breach would be discovered, or in the belief that it would be difficult to detect. He did not, however, inform the Bookrunners of his actions (DEPP 6.5B.2G(10)(d), (e) and (f)).

Level of seriousness

- 6.19. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. The Authority considers that none of these factors apply.
- 6.20. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority finds the following factors to be relevant:

- (1) Although Mr Stephany intended to gain an indirect benefit from the breach, the benefit he would have gained was limited and in any event he gained no actual benefit (DEPP 6.5B.2G(13)(a)); and
- (2) Mr Stephany did not intend to breach, and did not foresee that his actions would result in a breach of, the Statements of Principle. (DEPP 6.5B.2G(13)(d)).

6.21. Taking all of the above factors into account, the Authority finds the seriousness of the breach to be level 2 and so the Step 2 figure is 10% of £322,616.

6.22. Step 2 is therefore £32,261.

Step 3: mitigating and aggravating factors

6.23. Pursuant to DEPP 6.5B.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 breach.

6.24. Having considered each of the factors listed in DEPP 6.5B.3G, the Authority has concluded that there are no aggravating or mitigating factors such as to justify an adjustment to the Step 2 figure. In reaching this conclusion, the Authority has taken account of the fact that the Authority has not previously taken Enforcement action in relation to this type of breach connected to an IPO or placing. The Authority has also considered that Mr Stephany has not been the subject of any prior disciplinary action by the Authority.

6.25. Step 3 is therefore £32,261.

Step 4: adjustment for deterrence

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

6.27. The Authority considers that the Step 3 figure of £32,261 represents a sufficient deterrent to Mr Stephany and others, and so has not increased the penalty at Step 4.

6.28. Step 4 is therefore £32,261.

Step 5: settlement discount

6.29. Pursuant to DEPP 6.5B.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.

6.30. No settlement discount applies.

6.31. The Authority has rounded down the final penalty to the nearest £100 (in accordance with its usual practice). Step 5 is therefore £32,200.

Penalty

6.32. The Authority hereby imposes a financial penalty of £32,200 on Mr Stephany for breaching Statements of Principle 2 and 3.

7. REPRESENTATIONS

7.1. Annex B contains a brief summary of the key representations made by Mr Stephany and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by Mr Stephany, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

8.1 This Notice is given to Mr Paul Stephany under and in accordance with section 390 of the Act. The following statutory rights are important.

Decision maker

8.2 The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.

Manner and time for payment

8.3 The financial penalty must be paid in full by Mr Stephany to the Authority no later than 14 days from the date of this Notice.

If the financial penalty is not paid

8.4 If all or any of the financial penalty is outstanding after a period of 14 days from the date of this Notice, the Authority may recover the outstanding amount as a debt owed by Mr Stephany and due to the Authority.

Publicity

- 8.5 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.
- 8.6 The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

- 8.7 For more information concerning this matter generally, contact Stephen Robinson (020 7066 1338) or Ross Murdoch (020 7066 5396) of the Enforcement and Market Oversight Division of the Authority.

Mario Theodosiou

Head of Department, Wholesale 2
Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT STATUTORY PROVISIONS

- 1.1. The Authority's general duties established in section 1B of the Act include the strategic objective of ensuring that the relevant markets function well and the operational objective of protecting and enhancing the integrity of the UK financial system.
- 1.2. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. A person is guilty of misconduct if, while an approved person, he has failed to comply with a Statement of Principle issued under section 64 or section 64A of the Act, or has been knowingly concerned in a contravention by a relevant authorised person of a relevant requirement imposed on that authorised person.

2. RELEVANT REGULATORY PROVISIONS

- 2.1. Unless otherwise stated, the regulatory provisions set out below were in force at all material times.

Statements of Principle and Code of Practice for Approved Persons ("APER")

- 2.2. The Authority's Statements of Principle are contained in APER and are rules of conduct which were made under section 64 of the Act. APER also sets out descriptions of conduct which, in the opinion of the Authority, does not comply with a Statement of Principle:
- 2.3. APER 3.1.4 provides that:

"(1) An approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises where an approved person's conduct was deliberate or where the approved person's standard of conduct was below that which

would be reasonable in all the circumstances (see DEPP 6.2.4G (Action against approved persons under section 66 of the Act)).

(2) For the avoidance of doubt, the Statements of Principle do not extend the duties of approved persons beyond those which the firm owes in its dealings with customers or others."

2.4. Statement of Principle 2 states:

"An approved person must act with due skill, care and diligence in carrying out his accountable functions"

2.5. Statement of Principle 3 states:

"An approved person must observe proper standards of market conduct in carrying out his accountable functions"

Financial penalty

2.6. Chapter 6 of DEPP, which forms part of the Handbook, sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act. In particular, DEPP 6.5B sets out the five steps for penalties imposed on individuals in non-market abuse cases.

ANNEX B
REPRESENTATIONS

1. Mr Stephany's representations (in italics), and the Authority's conclusions in respect of them, are set out below.

Absence of proper standard of market conduct

2. *The Authority seeks to rely on a market standard that is not borne out by any clear rule. There is no guidance, no provision in the Handbook, no previous decision of the Authority and no other case law that articulates the proper standard of market conduct that is alleged to have been breached.*
3. *The Authority asserts that the price formation process of an IPO or placing should operate on the level of individual fund managers, with each of the investors bidding independently of one another. However, this is just an assertion and the body of evidence does not support this assertion. It logically follows that there is no evidence to show that Mr Stephany was trying to undermine this process.*
4. *Market forces are not necessarily the same as investors putting in "blind" bids. For instance, in India, the IPO bidding process is completely transparent; the bids are made public so investors can factor in the valuation of other investors in their own bids.*
5. *Information sharing among investors is accepted in the market. If the contention is that the price formation process only functions properly if all the investors submit their bids independently of each other, then information sharing could in no form be allowed as it necessarily influences the valuation of other investors thus compromising their independence. It follows that collectivity in itself cannot be the vice, since that would result in an impracticably broad standard.*
6. *There is no clear distinction between information sharing and influencing. Investors do not share information on their valuations as a gift or to initiate an academic discussion. They share this information precisely because they wish to influence the valuation of other investors. It follows that, if the Authority asserts that it is a breach of proper standards of market conduct if investors attempt to influence other investors in determining the price limit of their bids, the Authority needs to point to some evidence*

that shows the line between acceptable information sharing and attempted influencing that is considered misconduct. These types of behaviour only differ in scale and not in substance. Hence, in order to establish a proper standard, it should be determined to what extent the discussion of valuations is considered to be proper information sharing as opposed to influencing which is purported to undermine the price formation process.

7. *So far, no such indication has been given by the Authority, hence the lack of written material. If the Authority wishes to establish such a line or to block all behaviours that compromise the independence of the investors' valuations, then the correct way to do this is through the promulgation of guidance. It should not be sought to be enforced through enforcement proceedings or by publication of a final notice.*
8. Mr Stephany's communications in relation to the Market Tech placing and the OTB IPO sought to influence the External Fund Managers at competitor firms, so that they would cap their bids at the same price limit as his. This was an attempt to get them to use their collective power and thereby undermine the proper price formation process. Whether bids are made public or not, it is still improper for investors at competitor firms to use, or attempt to use, their collective power and thereby undermine the proper price formation process.
9. Such behaviour is improper because it threatens the proper functioning of the market, where pricing should be determined by the operation of natural market forces.
10. In a properly functioning IPO or placing Bookbuild, fund managers at competitor firms do not use or seek to use their collective power against issuers. Mr Stephany's attempts to do so, and thereby increase the chances of a reduced share price, were improper.
11. It is, or should be, apparent to market participants familiar with the proper standards of market conduct, that Mr Stephany's conduct fell below such standards. His conduct was also inconsistent with Newton's policies and procedures.
12. It is not necessary to draw a specific line between acceptable general information-sharing and misconduct, to appreciate that Mr Stephany's conduct fell into the latter category.

Information sharing is part of the price formation process

13. *The price formation process in IPOs and placings is much more complex than how the Authority tries to depict it. There is a whole range of interactions between the market*

participants. Those interactions take many forms, from press articles through road shows to private gatherings among fund managers.

14. *It is acknowledged that brokers acting as Bookrunners have considerable power in the market. As the brokers' power stems from information asymmetry between the sell and the buy side, factors that reduce the asymmetry are beneficial to the price formation process. Information sharing among the buy side participants and in particular fund managers who invest a lot of time, money and effort in discovering the right value of the shares serves this purpose.*
15. *This means that to a certain extent bidders are allowed to use their collective bargaining power. There are constraints built in the process itself that limit the use of such collective bargaining, for example if the fund managers bid at too low a price, they might lose out on the investment possibility or they may fall out with brokers which may harm their future positions in the market.*
16. *The legitimacy of information sharing between fund managers is accepted by professionals in the market, by the LSE and even by the Authority. The Authority has explicitly acknowledged that, just as the brokers have the incentive to "talk up the book" i.e. communicate in a way to push prices up, the potential investors have the incentive to talk it down.*
17. *Mr Stephany's conduct in essence was not different from other types of information sharing that aims to counterbalance the influence of brokers.*
18. Any debate about the level of detail of information sharing which took place does not affect the central allegation made against Mr Stephany, namely that it is contrary to proper standards of market conduct to attempt to influence competitors so that they would cap their bid at the same price limit as him, using their collective power and thereby undermining the proper price formation process.
19. There is no need to counterbalance information asymmetries present in a Bookbuild (if any), because those on the buy-side understand the role of the Bookrunner in that process and can take appropriate account of any such asymmetries. It is not proper for fund managers at competitor firms to make, or seek to make, use of their collective power in an attempt to counteract the effect of a Bookrunner soliciting higher bids.

20. There is a distinction between discussing valuations and disclosing certain information about bids on the one hand, and seeking to influence potential investors to bid at the same price limit, in an attempt to use their collective power and thereby undermine the proper price formation process, on the other hand. The boundaries of what is legitimate in respect of the former do not need to be considered, because Mr Stephany's conduct fell into the latter category.

Mr Stephany communicated a valuation that he genuinely believed was reasonable

21. *Mr Stephany accepts that it would have been improper market conduct for an investor to have sought to have influenced other fund managers at competitor firms to place bids at a price below that which he considered was objectively reasonable at the time (or to persuade them to do the same). However, both in his communications relating to the Market Tech placing and in the 8.10am Email Mr Stephany shared his views on the share price that he believed was the correct one based on his research on the companies, the status of the given Bookbuild, as well as recent market developments that he believed had a bearing on the valuation. In other words, there was no attempt on his part to push the price below what was reasonable. He was simply trying to influence the External Fund Managers so that they took into account his calculations when submitting their bids. This is akin to the many articles that appear in the press trying to influence investors' views on the valuation of the shares of a given company.*
22. The price formation process in a properly functioning market should produce a price which is fair and reflective of market demand, by contrast to what an individual investor may consider to be a reasonable price. As such the fact that Mr Stephany was trying to achieve a share price that he genuinely believed was reasonable does not make his conduct proper. Mr Stephany's views on the fair price are not, and could not be, 'objectively reasonable' and are not indicative of the real fair price determined during the proper price formation process. Mr Stephany's views could not take all market forces into account and determine what an issuer ought to be able to raise by way of capital in an IPO or placing.

Mr Stephany did not seek any reciprocity

23. *The Enforcement case team's submissions with regard to any cooperation between the External Fund Managers were ambiguous. Mr Stephany's conduct is referred to as an attempt to "influence", "persuade", "coordinate", "get others to act together". It is thus particularly important to make it clear that the conduct in question was not coordination in any meaningful sense of the word because Mr Stephany sent the 8.10am Email after he had submitted his own bid, without requesting any response, without relying on any action of the External Fund Managers. This is clearly shown by his choice of sending it by*

blind copy, including to people he did not even know. This method of communication not only does not incite coordination, it effectively prevents it as the recipients do not know about the other recipients and have no means to contact them.

24. The Authority does not allege that Mr Stephany agreed or attempted to make a formal agreement with the External Fund Managers to drive down the share price. However, he sought to achieve the same effect. By seeking to get investors to cap their orders at the same price limit as his, in an attempt to get them to use their collective power, Mr Stephany was thereby undermining the proper price formation process. Mr Stephany acted in breach of proper standards of market conduct.

The reactions of the External Fund Managers

25. *No one expressed any concerns about the Market Tech calls. The great majority of the External Fund Managers who received the 8.10am Email also did not express any concerns. Some of them clearly approved of it. Those who did express some concern, did so for various reasons, such as that it was a possible breach of concert party rules, none of which corresponds with the Authority's case. It is notable that one of the External Fund Managers escalated the 8.10am Email to the person who headed the compliance department of one of the world's leading asset management companies and this person did not see the need to report it either to the Authority or to Newton or take any action to escalate the issue any further.*
26. *This clearly shows that there was no consensus on the market as to the existence of a market standard that would render Mr Stephany's conduct unacceptable and a breach of Statement of Principle 3. Market standards in this area do not dictate that rivals cannot share information with each other with a view to influencing each other's valuations. In the absence of any written material and any common ground among the market actors it cannot be alleged that there existed a standard of proper market conduct that would have prevented Mr Stephany from acting as he had done.*
27. Whilst not every External Fund Manager raised concerns about the 8.10am Email, there is evidence that it was considered both unusual and improper for a fund manager to communicate with others in this manner. For example, some recipients of the 8.10am email said that *"[...] the out of the blue comment was a fair reflection, I wasn't expecting anything such as this."* Others said they were surprised when they received the email and were incredulous that it had been sent. Still others said that it was something they

never would have sent themselves. Some went even further and said that it was "*below a standard that I would expect for someone that worked in Financial Services*". Mr Stephany himself said in interview with the Authority that he had never sent, or received, anything like the 8.10 Email before.

28. Raising a possible breach of concert party rules as a concern – as some of the External Fund Managers did – cannot be regarded as misguided, because even if the concert party rules do not specifically apply to Mr Stephany's conduct, those rules are the manifestation of an underlying principle. This is that investors should not attempt to influence competitor firms, so that they cap their bids at the same price limit, using their collective power and thereby undermining the proper price formation process. The Authority does not accept that any significant number of market participants would consider it appropriate for a fund manager to attempt to enlist the assistance of competitor firms to push down the price at which an IPO or placing closes.

Source of underlying rules: competition law

29. *There is an obvious source of underlying rules that could be used to determine whether Mr Stephany's conduct was acceptable or not and this source is competition law. However, the Authority has clearly stated that in these proceedings Mr Stephany's conduct should not be assessed in the light of competition law and so the outcome of this case should not depend on competition rules.*
30. *This means that the proper standards of market conduct cannot be found to be based on competition law. It follows that in order to find that Mr Stephany was in breach of Statement of Principle 3, it needs to be established that he committed misconduct even if there was no breach of competition rules. Indeed, for the purposes of these proceedings it needs to be assumed that no competition law breach occurred.*
31. *Therefore, the Authority would have to show that the proper standard of market conduct alleged to have been breached exists independently of competition law. However, the market standard cannot be complementary to competition law because they operate in the same space and apply to the same conduct. There cannot be a "shadow" principle that operates alongside competition law and has a wider scope.*
32. *This is a complex market and competition law aims to tackle these complexities; that is the very reason for competition law being so technical. The Authority cannot at the same time disclaim those technicalities but rely on the same underlying principle to claim that*

there is a blanket standard that covers even the areas that are not covered by the vast body of competition law.

33. The case against Mr Stephany does not require an analysis of competition law. Market participants know, or ought to know, that one fund manager seeking to persuade other fund managers at competitor firms to bid at the same price as him, in an attempt to get them use their collective power to lower prices in a capital raising, is improper. This stems from a fundamental principle that behaviour that seeks to influence persons so that they submit bids at a certain price, using their collective power, undermines the proper price formation process and is behaviour that is below proper standards of market conduct.

Personal culpability

34. *Even if the Authority finds that Mr Stephany failed to observe proper standards of market conduct – which is not accepted by Mr Stephany – it is submitted that Mr Stephany is not in breach of Statement of Principle 3 because his conduct was reasonable in all the circumstances and so he is not personally culpable of not observing proper standards of market conduct. The reason for this is that the standard was not clear, well understood or readily available. Indeed, it is this case that will for the first time clearly delineate the standards to be observed in this area.*
35. *Mr Stephany at the time had no material available to him which remotely had a bearing on his conduct. He did the best he could, conducting research into the propriety of sending the 8.10am Email but not surprisingly was not able to find any relevant or applicable regulatory guidance or assistance. In these circumstances, his conduct cannot be deemed to have been unreasonable.*
36. The Authority does not accept that Mr Stephany's behaviour was reasonable. While Mr Stephany did not seek a formal agreement, he sought to achieve the same effect. He was intentionally seeking to persuade others to join with him in a strategy of using their collective power when bidding, so as to achieve a lower issue price, thereby undermining the proper price formation process. Even without any specific guidance from the Authority (but with written relevant guidance available from Newton), it was not reasonable for Mr Stephany in all the circumstances to believe that what he was doing, and attempting to achieve, was in accordance with proper standards of market conduct.

Statement of Principle 2

37. *Mr Stephany did not fail to act with due skill, care and diligence. He searched for relevant guidance and there was no relevant information either in the Handbook or in Newton's internal policies. There were no identifiable warning signs available to Mr Stephany which suggested he should not take the course of action he did.*
38. *It is true that Mr Stephany did not immediately raise the issue with his line manager. However, given the line manager's reaction when Mr Stephany eventually escalated the issue to him, it is unlikely that the line manager would have raised any compliance concerns about the 8.10am Email had he seen it at an earlier stage.*
39. Mr Stephany did not conduct any research at all into potentially relevant rules before the Market Tech communications.
40. In the case of the OTB IPO the fact that Mr Stephany did conduct some research shows that he himself had some doubts about the legitimacy of his planned course of action. In these circumstances, he ought to have consulted with, and sought guidance from, his employer's compliance department or his line manager. It is not clear how his line manager would have reacted had Mr Stephany consulted him in advance. Speculation as to what the line manager would or would not have done does not change the fact that Mr Stephany failed to consult him or his firm's compliance department. It follows that he failed to act with due skill, care and diligence.