

Insights

FCA PUBLISHES DECISION NOTICE AGAINST FORMER CEO FOR MARKET ABUSE

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SUMMARY

The FCA has published a Decision Notice and fined the former CEO of WorldSpreads Ltd for engaging in market abuse (dissemination, manipulating transactions and false or misleading impressions) and banned him from performing any roles linked to regulated activity. The decision has been made public but has also been referred to the Upper Tribunal so that proposed action will only take effect if upheld by the Upper Tribunal.

This decision which follows the previous actions in 2017 against the former CFO and Financial Controller, along with the public censure last week against an AIM company for committing market abuse by publishing false information, is a timely reminder of the need for companies to disclose accurate and timely information to the market.

The Admission document

Mr Foley was the former CEO of WorldSpreads Ltd (WSL) and its parent company WorldSpreads Group Plc (WSG) which provided online trading facilities in financial markets through financial spread-betting and CFDs. WSG's AIM admission document failed to mention:

- undisclosed loans by directors and executives to subsidiaries of WSG which, as at admission in 2007, were still outstanding in the sum of at least €1.6 million. This was never disclosed in the annual accounts; and
- the internal hedging strategy which involved the use of fake client trading accounts and the unauthorised use of actual trading accounts. The FCA believes this omission was because it was acknowledged amongst the participants as being an inappropriate and unethical practice, being once described by Mr Foley in an email as "*contrary to all trading standards and ethics for a trading desk.....*". This too was not disclosed in the annual accounts until at least 2009.

Spread-betting

The FCA considers that between January 2010 and March 2012 (when WSL and WSG became insolvent following the Board becoming aware of longstanding wrongful treatment of client monies):

- large spread bets were placed on WSG's shares on the trading accounts of WSL clients on terms which made statements in WSG's annual accounts as to its credit policy false and misleading; and
- large spread bets were carried out on two clients' accounts by Mr Foley without their knowledge with the intention of creating artificial demand for WSG shares.

Findings

The FCA found that:

- Mr Foley engaged in market abuse by disseminating information that gave a false and misleading impression of WSG's financial position, knowing that such information was false and misleading by failing to declare the internal loans and the internal hedging. By doing so he deliberately misled the market;
- the large spread bets rendered statements as to WSG's credit policy in its annual accounts false and misleading;
- Mr Foley effected transactions which gave a false or misleading impression as to the demand for WSG shares and employed manipulating devices in order to deceive the market; and
- by using client accounts to effect transactions, Mr Foley sought to circumvent his obligations to disclose his dealings to WSG thereby preventing WSG from complying with its notification requirements under Rule 17 of the AIM Rules for Companies.

Mr Foley has referred the Decision Notice to the Upper Tribunal where he and the FCA will each present their cases.

In 2017 the FCA fined and banned:

- WSL's CFO, Niall O'Kelly £11,900 for (i) providing information in WSG's admission document which he knew was materially inaccurate and which gave a false impression of WSG's financial position; (ii) approving accounts which contained material inaccuracies and (iii) providing an inaccurate description of WSG's financial strength to analysts; and
- WSL's Financial Controller, Lukhvir Thind £105,000 for falsifying critical financial information concerning WSL's client liabilities and its cash position, which was passed to the company's auditors. By 31 March 2011, these misstatements amounted to £15.9 million. It was the

revelation of the client money shortfall that led to the collapse of WSL, and to WSG, in March 2012.

[Final Notice – Mr Foley](#)

[Final Notice – Niall O’Kelly](#)

[Final Notice – Lukhvir Thind](#)

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