
FINAL NOTICE

To: Getco Europe Limited

Of: Vintners Place, 2nd Floor, 68 Upper Thames Street, London EC4V 3BJ

Dated: 8 April 2010

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about a requirement to pay a financial penalty.

1. THE PENALTY

- 1.1. The FSA gave Getco Europe Limited (“GEL” or the “Firm”) a Decision Notice on 29 March 2010 which notified the Firm that pursuant to section 206 of the Financial Services and Markets Act 2000 (“the Act”), the FSA had decided to impose a financial penalty of £1.4 million on the Firm in respect of breaches of rules set out in chapter SUP 17 of the FSA Handbook which occurred between 5 November 2007 and 27 March 2009 (“the Relevant Period”).
- 1.2. The Firm has confirmed that it will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3. Accordingly, for the reasons set out below, the FSA imposes a financial penalty on the Firm in the amount of £1.4 million.
- 1.4. This penalty is discounted by 30% pursuant to Stage 1 of the early settlement discount scheme.

2. REASONS FOR THE ACTION

Summary

- 2.1. Accurate and complete transaction reporting is essential to enable the FSA to meet its statutory objectives of maintaining market confidence and reducing financial crime. The primary function for which the FSA uses transaction reports is to detect and investigate suspected market abuse, insider trading and market manipulation.
- 2.2. A transaction report is a data set submitted to the FSA that relates to an individual financial market transaction which includes details of the product traded, the firm that undertook the trade, the trade counterparty and the trade characteristics such as buy/sell identifier, price and quantity.
- 2.3. In the Relevant Period GEL breached Chapter 17 of the Supervision Manual, which is part of the FSA Handbook (SUP 17) in that it failed to submit correct transaction reports in respect of approximately 46.3 million transactions.
- 2.4. The FSA considers these failings to be particularly serious because:
 - (1) GEL's failure to submit accurate transaction reports could have a serious impact on the FSA's ability to detect and investigate suspected market abuse and consequently could impact the FSA's ability to maintain market confidence and reduce financial crime. In addition its failure has impaired the FSA's ability to provide accurate transaction reporting data to overseas regulators;
 - (2) the inaccurate reporting impacted a large number of equity transactions, the only asset class in which GEL executed reportable transactions during the Relevant Period; and
 - (3) GEL's failures occurred during a period of heightened awareness around transaction reporting issues as a result of the implementation of the Markets in Financial Instruments Directive ("MiFID") and public statements by the FSA in Market Watch.
- 2.5. There are a number of matters which the FSA has taken into account which mitigate the breaches in this case, in particular:
 - (1) following the implementation of MiFID, GEL put in place appropriate transitional arrangements to report its LSE trades to the FSA, pending confirmation from a third party that it would continue to report transactions on GEL's behalf. GEL stopped the transitional arrangements when it received this confirmation from the third party;

- (2) GEL conducted an internal investigation into the transaction reporting issues upon FSA notification of the issues to the firm and took appropriate action to ensure that full reporting of the LSE trades took place in the future;
- (3) GEL took prompt steps to ensure that the missing LSE transactions were reported retrospectively to the FSA;
- (4) GEL implemented additional regular reviews of transaction reporting from April 2009, to include transactions executed on all the regulated markets and Multilateral Trading Facilities (“MTFs”) used by GEL;
- (5) during the Relevant Period GEL actively considered ways to mitigate the regulatory risk and cost arising from reliance on third parties and has been pursuing options designed to achieve this aim;
- (6) the FSA accepts that the breaches were not deliberate or reckless and that there was no commercial motivation for the breaches; and
- (7) GEL cooperated fully with the FSA in the course of its investigation.

Relevant statutory and regulatory provisions

- 2.6. The FSA is authorised pursuant to section 206 of the Act, if it considers that an authorised person has contravened a requirement imposed on him by or under the Act, to impose on him a penalty in respect of the contravention, of such amount as it considers appropriate.
- 2.7. Maintaining market confidence and the reduction of financial crime are statutory objectives for the FSA under Section 2(2) of the Act.
- 2.8. The transactions which are required to be reported to the FSA are defined in SUP 17.1.4R which states:

“A firm which executes a transaction:

- (1) in any financial instrument admitted to trading on a regulated market or a prescribed market (whether or not the transaction was carried out on such a market); or*
- (2) in any OTC derivative the value of which is derived from, or which is otherwise dependent upon, an equity or debt-related financial instrument which is admitted to trading on a regulated market or on a prescribed market;*

must report the details of the transaction to the FSA.”

- 2.9. SUP 17.2.1R states:

- “A firm may rely on a third party acting on the firm’s behalf to make a transaction report to the FSA”.*
- 2.10. SUP 17.2.3R provides:
- “A firm is relieved of its obligation to make a transaction report if the transaction is instead reported directly to the FSA by an approved reporting mechanism...”*
- 2.11. SUP 17.2.4 G provides:
- “The FSA will expect a firm which seeks to rely upon the waiver in SUP 17.2.3R to take reasonable steps to verify that transaction reports will be made in accordance with the standards laid down in this chapter and in particular should ascertain and remain satisfied that:*
- ...
- (2) the terms of the agreement between itself and the relevant trade matching or reporting system, regulated market or MTF, make appropriate provision obliging the provider of the transaction reporting service to make transaction reports on its behalf;*
- (3) the arrangements provide for confirmation in each case that a transaction report has been made on its behalf.”*
- 2.12. The time period for making reports is stipulated in SUP 17.2.7R:
- “A firm must report the required details of the transaction to the FSA as quickly as possible and by not later than the close of the working day following the day upon which that transaction took place.”*
- 2.13. SUP 17.4.1EU provides:
- “Reports of transactions ...shall contain the information specified in SUP 17 Annex 1 EU which is relevant to the type of financial instrument in question and which the FSA declares is not already in its possession or is not available to it by other means.”*
- 2.14. SUP 17.4.2R provides:
- “The reports referred to in SUP 17.4.1 ... shall, in particular include details of the names and the numbers of the instruments bought or sold, the quantity, the dates and times of execution and the transaction prices and means of identifying the firms concerned.”*
- 2.15. Annex 1 EU to SUP 17 provides lists of fields and mandatory information to be provided as the minimum content of a transaction report.

- 2.16. The FSA's approach to exercising its main enforcement powers is set out in the Decision Procedure & Penalties Manual ("DEPP") and Enforcement Guide ("EG").

Facts and matters relied upon

Background

- 2.17. GEL has been regulated by the FSA since 27 August 2003, with Part IV Permissions to arrange deals in investments, as well as dealing as principal and agent in trades. GEL is a proprietary trading firm undertaking market making on electronic markets, all of which are regulated markets and MTFs. GEL trades only as principal and does not conduct OTC transactions. GEL does not deal directly with retail or institutional clients.
- 2.18. SUP 17 requires transaction reports containing mandatory details to be submitted to the FSA by the end of the next business day following the day on which the firm entered into the transaction. At the end of each working day transaction reports received by firms are loaded onto the FSA's transaction monitoring system.
- 2.19. Firms are required to report transactions to the FSA using one or more Approved Reporting Mechanisms ("ARMs"), which are specialised systems approved by the FSA for the purpose of transaction reporting.
- 2.20. The implementation of the Markets in Financial Instruments Directive (MiFID) across all European Economic Area ("EEA") member states on 1 November 2007 (effective on 5 November for transaction reporting) introduced changes to the list of products for which transactions have to be reported and standardisation of the list of fields which need to be included in the reports. SUP 17 was amended from 1 November 2007 to reflect these changes. Whilst the changes required to be implemented by firms in order to give effect to transaction reporting required by MiFID were significant, the mandatory content of the transaction reports for many products remained largely unaffected by the changes under MiFID.
- 2.21. The FSA has provided information to firms in its "Market Watch" publication prior to and during the Relevant Period, on transaction reporting issues. In order to assist firms with transaction reporting generally and with respect to changes introduced by MiFID, the FSA issued a Transaction Reporting User Pack (TRUP) in July 2007.
- 2.22. Statements were made by the FSA in Market Watch in March 2007 and June 2008 (Issues 19 and 28 respectively) and TRUP that firms should regularly review the integrity of transaction report data.
- 2.23. Issue 28 of Market Watch in June 2008 stated:

“Firms must report transactions to us accurately to help us monitor for market abuse and maintain market confidence. Accuracy in transaction reports also reduces the number of requests for clarification that we need to make to firms.

Therefore, we encourage all firms to review the integrity of their transaction report data regularly. Our Transaction Monitoring Unit is happy to provide firms a sample of reports we have received so that firms can check those transaction reports against their own records.

...

We will be undertaking regular reviews of the quality and completeness of firms’ submissions. We expect firms now to be fully compliant with the transaction reporting requirements set out in SUP 17. Where we identify problems with transaction reporting we will consider the use of our enforcement tools. In doing so, we will take into account the appropriateness of the Firm’s systems and controls, including its monitoring programme around transaction reporting.”

MiFID Implementation - Reporting of London Stock Exchange Trades

- 2.24. In May 2007, GEL engaged a third party to clear and settle all of its transactions executed on the London Stock Exchange (“LSE”); and as part of this arrangement the third party was to ensure that the firm’s LSE transactions were reported to the FSA via a Permitted Reporting System (“the External ARM”). GEL’s reporting of LSE transactions was consistently conducted in this way from May 2007 to the introduction of MiFID in November 2007.
- 2.25. Ahead of the implementation of MiFID, GEL made enquiries of the third party to ensure that the External ARM would continue to report all LSE transactions to the FSA. By the date of implementation, it had not received a satisfactory assurance and GEL therefore used the FSA’s ARM, Transaction Reporting System (“TRS”), to report all LSE transactions from 5 to 12 November 2007. At that point GEL received a verbal assurance from the third party that all GEL’s LSE transactions were continuing to be reported to the FSA through the External ARM in accordance with the previous arrangements. From this date GEL therefore stopped separate reporting of LSE transactions via TRS.
- 2.26. In January 2008 GEL requested and received written confirmation from the third party that GEL’s LSE transaction reports were being properly reported. Due to ongoing conversations with the third party, and the fact that GEL was paying the third party an inclusive fee per transaction for clearing, settlement and transaction reporting (totalling £960,000 during the Relevant Period), GEL continued to believe that its LSE transactions were being reported via the External ARM. During the Relevant Period GEL did not request transaction reporting data from the FSA, nor did it obtain any other form of confirmation to ensure that all LSE transactions were being accurately reported to the FSA.

- 2.27. In January 2009 the FSA identified that transaction reports had not been submitted by the firm to the FSA in relation to all transactions executed on the LSE between 5 November 2007 and 26 February 2009. This affected approximately 32 million of GEL's trades, which represented 17.2% of the firm's reportable transactions in the Relevant Period.
- 2.28. GEL only became aware that LSE trades were not being reported when notified by the FSA on 26 January 2009. The firm then liaised with the third party regarding the non-submission issue. The third party eventually confirmed on 2 March 2009 that reports in respect of LSE transactions had not been sent to the FSA since MiFID implementation. From 28 February 2009 GEL began to report LSE transactions directly through another ARM. From March 2009 the firm's transaction reporting process and procedures encompassed its LSE activity.

Reporting of non-LSE trades

- 2.29. After MiFID implementation GEL reported all of its non-LSE transactions directly through TRS until 2 February 2009, when all such transactions were reported through a different ARM.
- 2.30. Between November 2007 and January 2009 GEL had in place a transaction reporting review process which captured non-LSE transactions. The process involved:
- (1) the daily automated reconciliation of information held on GEL's systems relating to reportable transactions executed on EEA regulated markets (other than the LSE), against the data received by the firm from the respective regulated markets;
 - (2) files which required correction following the identification of errors were manually reviewed, corrected and submitted to the ARM; and
 - (3) the response file received by the ARM from the FSA was then automatically reconciled against data initially sent by the firm.
- 2.31. Despite the daily reconciliation process, a number of transaction reporting errors occurred in the Relevant Period in addition to the LSE transaction reporting error described above:
- (1) in June 2009 the FSA identified that the wrong time was reported for all transactions between 9 and 27 March 2009, affecting approximately 9.4 million reports. This arose because the firm's transaction reporting review process did not accurately reflect the three week period when the usual time difference between the US and the UK changed because of the different start and finish dates for daylight saving. This same error had also occurred during a three week period in March 2008 and a one week

period in October 2008, affecting an additional 4.3 million transaction reports; and

- (2) in January 2010 the firm confirmed that within the Relevant Period over 620,500 trades were not reported to FSA at all or were reported twice to the FSA as a result of errors which occurred during the daily processing of transaction reporting data.

The firm’s reconciliation process failed to identify the above errors in the Relevant Period.

- 2.32. The firm began undertaking monthly audits from April 2009 when it requested copies of three days’ transaction reporting data from the FSA to compare this for accuracy with what was held on GEL’s own systems. However, the audit did not identify the time error shortcoming noted above.

Analysis of Breaches

Breaches of SUP 17

- 2.33. The firm relied on a third party to report transactions on its behalf via the External ARM, but failed to ensure that the FSA was receiving the transaction reports. The following table summarises the transactions which were not reported or incorrectly reported in breach of SUP 17.1.4 R or SUP 17.4.1 EU respectively during the Relevant Period:

Shortcoming	Number of Trades Impacted	Percentage (%) of reportable transactions in the period
Transactions reported with incorrect time in March and October 2008, and March 2009.	13,684,602	7.4
Transactions not reported due to third party issue	31,991,874	17.2
Other Transaction reports misreported due to failure to report and duplications	620,579	0.3

3. SANCTION

- 3.1. The FSA’s policy on the imposition of financial penalties and public censures is set out in DEPP and EG. In determining the financial penalty, the FSA has had regard to this guidance. The principal purpose of a financial penalty is to promote

high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions and demonstrating generally to firms the benefit of compliant behaviour.

3.2. The FSA considers that the seriousness of this matter merits the imposition of a significant financial penalty.

3.3 The FSA has had regard to the following factors:

- (1) the number of transaction reporting errors and omissions and the protracted period of the omissions could have created a serious risk of hampering the FSA in its statutory objective of maintaining market confidence through detecting and investigating market abuse and reducing financial crime. As the FSA will have sent a large number of GEL's incorrect transaction reports to other competent authorities in compliance with obligations under MiFID, the errors also create a serious risk of hampering other competent authorities' work in maintaining market confidence and of damaging the FSA's credibility within the European Economic Area;
- (2) a total of 46.3 million, 25% of the firm's total reportable transactions were affected by inaccurate or incomplete reporting; and
- (3) GEL failed to conduct testing of the integrity of its data until April 2009 despite the FSA's encouragement in Market Watch Issues 19 and 28 and TRUP, and the FSA's stated willingness to provide firms with sample reports so that firms could check those transaction reports against their own records.

3.4 The FSA has also had regard to the following mitigating factors:

- (1) GEL put in place a transitional measure to report LSE transactions via TRS upon the implementation of MiFID, until GEL obtained an assurance from the third party on 12 November 2007 that all LSE transaction reports would be submitted to the FSA via the External ARM;
- (2) GEL also received written confirmation in January 2009 from the third party indicating that the third party did arrange for transaction reports to be sent to the FSA. After the discovery of the transaction reporting failures, the External ARM informed the third party that the errors resulted from a failing in the third party's own systems;
- (3) senior management attention and internal resources have been committed in order to carry out an investigation into the transaction reporting issues. The majority of the transactions affected by the breaches were confirmed

by the firm between January and October 2009. GEL engaged actively with the FSA to begin reporting the missing transaction data as quickly as possible. However, the total quantity of transaction reports affected by the incorrect time stamp in March and October 2008 was only confirmed in January 2010, further to an additional FSA query;

- (4) during the Relevant Period GEL actively considered ways to mitigate the regulatory risk and cost arising from reliance on third parties and has been pursuing options designed to achieve this aim;
- (5) GEL introduced an additional transaction reporting monitoring procedure in the form of a monthly audit soon after the Relevant Period from April 2009;
- (6) once the transaction reporting issue was initially identified and at a time before the FSA had decided to conduct a formal investigation or to initiate enforcement proceedings, GEL introduced changes to its reporting systems. No further transaction reporting issues have been apparent since these changes were made;
- (7) the FSA accepts that the breaches were not deliberate or reckless and that there was no commercial motivation for the breaches; and
- (8) GEL has cooperated fully throughout the FSA's investigation.

4. CONCLUSIONS

- 4.1 The FSA considers in all the circumstances that these breaches merit a substantial financial penalty. In determining the financial penalty the FSA has considered the need to deter GEL and other firms from committing similar breaches. The FSA has also had regard to penalties in other similar cases.
- 4.2 The FSA considers that a financial penalty of £1.4 million is appropriate, after taking account of the applicable Stage 1 discount for early settlement.

5. DECISION MAKERS

- 5.1 The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers on behalf of the FSA.

6. IMPORTANT

- 6.1. This Final Notice is given to the Firm in accordance with section 390 of the Act.

Manner of and time for Payment

- 6.2. The financial penalty must be paid in full by the Firm to the FSA by no later than 22 April 2010, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 6.3. If all or any of the financial penalty is outstanding on 23 April 2010, the FSA may recover the outstanding amount as a debt owed by the Firm and due to the FSA.

Publicity

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

FSA contacts

- 6.6 For more information concerning this matter generally, GEL should contact Celyn Armstrong (020 7066 2818) or Dan Enraght-Moony (020 7066 0166) at the FSA.

.....
Tracey McDermott

Head of Department

FSA Enforcement and Financial Crime Division