
FINAL NOTICE

To: **Nicholas James Kyprios**

FSA

Reference

Number: NJK0I024

Address: c/o Credit Suisse Securities (Europe) Ltd
One Cabot Square
London
E14 4OJ

13 March 2012

ACTION

1. For the reasons given in this notice, the Financial Services Authority (“**FSA**”) hereby imposes on Nicholas James Kyprios a financial penalty of £210,000.
2. Mr Kyprios agreed to settle at an early stage of the FSA’s investigation and therefore qualified for a 30% (stage 1) discount under the FSA’s executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £300,000 on him.

SUMMARY OF REASONS

3. Mr Kyprios, Head of Credit Sales at Credit Suisse Securities (Europe) Limited (“**Credit Suisse**”), disclosed information that had been treated as inside information to a potential investor without wall crossing him. The information he disclosed was confidential to Credit Suisse's client Liberty Global, Inc. (“**Liberty**”) and he did not have Liberty's permission to disclose it.¹

¹ As explained in paragraph 7, the FSA does not allege that the information was inside information for the purposes of the *Financial Services and Markets Act 2000*.

4. Mr Kyprios' actions breached Principles 2 (skill, care and diligence) and 3 (market conduct) of the FSA's Statements of Principles for Approved Persons.
5. In November 2009 Liberty, a US telecommunications company, agreed to acquire Unitymedia GmbH ("**Unitymedia**"), a German cable television company. Liberty appointed Credit Suisse as lead book runner for a potential €2.5 billion bond issue ("**the Unitymedia Bond Issue**") the proceeds of which were likely to be used in part to finance Liberty's acquisition of Unitymedia and in part to refinance outstanding listed Unitymedia bonds in a complex transaction. Although this bond was initially to be issued by a different subsidiary of Liberty, it was: referenced on the assets of Unitymedia; to be "*pushed down*" to Unitymedia upon issuance; and publicly marketed as a Unitymedia bond.
6. On 11 November 2009, in advance of the announcement of Liberty's takeover of Unitymedia and the Unitymedia Bond Issue, Mr Kyprios signalled the following information to Fund Manager A without authority and consequently in breach of Credit Suisse's procedures and despite the fact that Fund Manager A asked not to be wall crossed:
 - (i) Unitymedia was potentially about to bring a big bond issue to market;
 - (ii) the issue was intended to be announced the next day;
 - (iii) the potential rating of the issue;
 - (iv) Unitymedia would redeem outstanding bonds; and
 - (v) the issue was M&A-related.
7. Since the information was not price-sensitive in relation to qualifying investments, the FSA does not allege the information that Mr Kyprios disclosed was "*inside information*" for the purposes of section 118 of the Financial Services and Markets Act 2000 ("**the Act**"). Nevertheless, the FSA regards Mr Kyprios' misconduct as a serious breach of the FSA's Statement of Principles for Approved Persons because:
 - (i) Mr Kyprios breached Principle 3 by disclosing information being treated internally as "*inside information*" without authority and in breach of wall crossing procedures. The information was price sensitive to outstanding Unitymedia Floating Rate Notes and Unitymedia Credit Default Swaps ("**CDSs**"), which were non-qualifying investments. There was a risk that Fund Manager A would trade on the information or tell others who would trade and, therefore, have an impact on the market. Mr Kyprios' misconduct occurred on an open trading floor where his staff and traders who were responsible for trading Unitymedia bonds and CDSs might hear him. His conduct set the tone for his department. Mr Kyprios' conduct in this regard fell below the standard of conduct required of an approved person;
 - (ii) Mr Kyprios justified his conduct on the grounds *he* thought the information was not "*actionable*". Even if this were the case, which it was not because it was price sensitive with respect to non-qualifying investments, this could not be a justification for his actions because:
 - The critical characteristic of client confidential information is its *non-public* nature not its "*actionability*"; and
 - Mr Kyprios was *told* that he had received inside information and that he was

prohibited from discussing it with non-wall crossed parties.

- (iii) Mr Kyprios breached Principle 2 by failing to exercise the skill, care and diligence expected of approved persons in that he disclosed client confidential information without client permission. His lack of care is evidenced by his participation in a guessing game in which he effectively disclosed the name of the potential issuer.

FACTS AND MATTERS

Background

8. Mr Kyprios is and was at the relevant time approved to perform the CF30 (Customer) controlled function on behalf of Credit Suisse.
9. Credit Suisse wall crossed Mr Kyprios on 9 November 2009. It is likely that he was told the key terms of the potential Unitymedia Bond Issue including timing and the intention to redeem all of Unitymedia's outstanding bonds. Credit Suisse sent him an email prohibiting him from discussing the information he was given with anyone outside Credit Suisse and telling him it was inside information.
10. Mr Kyprios was wall crossed so he could give input into the market potential of the proposed transaction and assist in wall crossing five pre-selected external investors to seek their views on the proposed issue. He was also mandated to market the Unitymedia Bond Issue which included securing the attendance of investors at road shows in London and Frankfurt following the announcement of the issue. He was not, however, given permission to wall cross any investors save the five investors whom Liberty had pre-approved or to tell any other investors anything about the potential issue prior to the announcement.
11. The invitation to the London road show distributed to potential investors on 11 November 2009, prior to the calls described below, referred merely to a "*potential deal on Thursday*". A follow up Bloomberg said only "*for clarification, we expect this will result in offerings in Euro, possible USD, of Senior Secured and Senior Bonds.*"
12. Mr Kyprios had 26 direct reports and sat with his team in an open plan area on the Credit Suisse trading floor. All relevant calls were held at his desk within possible earshot of staff and Credit Suisse traders.

Call with Fund Manager A

13. On 11 November 2009 Mr Kyprios called Fund Manager A, to follow-up on his invitation to the London road show.
14. Mr Kyprios began the call by disclosing the potential rating of the Unitymedia Bond Issue. He said "*I have been wall-crossed so I want to be careful to a certain extent*" but immediately disclosed the issuer was European and outstanding bonds would be redeemed. He then signalled to Fund Manager A that the issuer was German and the issue was M&A related.
15. Mr Kyprios said, "*We could play this game. You're going to be my charades partner*" and invited Fund Manager A to rule out issuers. Fund Manager A began guessing and Mr Kyprios ruled out incorrect names. He led Fund Manager A to the correct issuer in a game of "*getting warmer*" telling him where in the alphabet to focus his guesses and letting him know the issuer had alternative names (Unitymedia was also known as "*lesy*" and "*ish*").
16. When Fund Manager A guessed "*Unitymedia*" Mr Kyprios signalled he was correct by repeatedly saying, "*the line is breaking up*". It was not. Fund Manager A appears to confirm

he understood the issuer was Unitymedia by saying, "*I can't get the unity in my hearing*". Mr Kyprios laughed.

Call with Fund Manager B

17. On 11 November 2009 Mr Kyprios called Fund Manager B in Germany. He told him that Fund Manager B knew the management of the potential issuer and "*you may have capacity coming*", i.e. there may be a redemption of bonds. Fund Manager B asked if the issuer was German and Mr Kyprios said he could not say but commented "*you're a smart man*".
18. Mr Kyprios disclosed the potential issue was in the TMT sector by using an obvious play on words based on the name of Fund Manager B's TMT sector analyst.

Factors common to the calls

19. Neither Fund Manager A or B agreed to be wall crossed. He engaged in a guessing game with both men. They were the only non-wall crossed parties he spoke to about the road shows prior to the announcement.

Outstanding Unitymedia bonds

20. Unitymedia had €1.97 billion in bonds admitted to trading at the time Mr Kyprios engaged in these calls. Unitymedia-related CDSs were also trading in the market. The majority of Unitymedia's outstanding bonds were admitted on the GEM segment of the Irish Stock exchange so were not "*qualifying investments*" for the purposes of the market abuse regime. Neither were Unitymedia-related CDSs. The remainder of Unitymedia's issued instruments comprised bonds that *were* qualifying investments for the purposes of the Act.
21. On 12 November 2009 those outstanding Unitymedia bonds that were qualifying investments for the purposes of section 118 were all trading at or close to their call levels. Accordingly, because the announcement of the Unitymedia Bond Issue could not and did not significantly impact the price of those instruments, Enforcement decided not to pursue market abuse.
22. Those outstanding Unitymedia bonds that were not qualifying investments were trading below par on 11 November 2009, so information about their redemption, was, on that date, price sensitive. In fact, the price of those bonds rose significantly between the close of trading on 12 November 2009 and the close on 13 November 2009, following the announcement of the Unitymedia Bond Issue. Information about redemption of outstanding Unitymedia debt was also price sensitive as regards the Unitymedia CDSs. The announcement of the Unitymedia Bond Issue on 13 November 2009 caused a sharp increase in the price of those CDSs.

Breaches of Credit Suisse policy

23. Credit Suisse's Bank Compliance Manual included a core code of ethical values, including "*Confidentiality*". This included the obligation to "*treat confidential information as such and [not to] disclose non-public information concerning...clients...unless required by law.*" The manual said, "*Supervisors are expected to lead by example and to set the right tone and culture at all times.*"
24. Credit Suisse's Handling of Client Information Policy was implemented to "*protect against the misuse and misappropriation of client information...*" It said, "*The protection of client information is the responsibility of every employee.*" It defined misuse of client information as, amongst other things, "*tipping clients about the activities of other clients.*" In further guidance the policy stated that, "*Credit Suisse employees should be careful not to disclose*

information that could reasonably lead to the identification of clients or their transactions or implies that a specific client is engaged in a specific transaction."

25. Further, the policy required employees to protect client information on telephone conversations, "*especially on the trading floor*".
26. The bank's Information Barrier Policy defined confidential information as "*nonpublic information*" and stipulated that client confidential information must be used only for the purpose for which it was provided, "*misuse*" being "*any other use without the permission of the client.*"
27. Credit Suisse also had in place detailed procedures for the wall crossing of third parties that included a requirement that wall crossed parties agree to keep information confidential and not deal in relevant securities.
28. Mr Kyprios had read all of the relevant policies.

Mr Kyprios' explanation of his conduct

29. Mr Kyprios described his conversation with Fund Manager A as "*banter*" not intended to disclose "*actionable*" information. While the FSA accepts there was an element of playfulness in Mr Kyprios' manner, the content and meaning of the calls was clear.

FAILINGS

30. The regulatory provisions relevant to this Decision Notice are referred to in Annex A.
31. Mr Kyprios was an "*approved person*" for the purposes of section 66(2)(a) of the Act. The FSA has jurisdiction to take action against him for misconduct.
32. Mr Kyprios held CF30 at the time of the conduct which, pursuant to the Supervision section of the FSA Handbook ("**SUP**") includes "*dealing, as principal or as agent, and arranging (bringing about) deals in investments...*" (SUP 10.10.7A). His calls with potential investors were related to client activity carried out within the scope of his controlled function.
33. The FSA is satisfied Mr Kyprios failed to observe proper standards of market conduct in carrying out his controlled function because he disclosed to Fund Manager A confidential information that was being treated as inside information, in breach of wall crossing procedures.
34. The FSA is satisfied Mr Kyprios failed to act with due skill, care and diligence in carrying out his controlled function because he engaged in a guessing game in which he disclosed key details of the potential Unitymedia Bond Issue to Fund Manager A without Liberty's permission.
35. Mr Kyprios' conduct is aggravated by the following factors:
 - (i) he was in a senior position, located on an open trading floor, when he engaged in the conduct, which may have set a bad example for his subordinates and increased the number of people who might have heard the confidential information;
 - (ii) he ran the risk that Fund Manager A or others he told would trade on the information. Fund Manager A held over 16,000,000 outstanding Unitymedia bonds at the time of their call;

- (iii) he admitted hearing market rumours about Unitymedia, which meant he should have been extra circumspect in his use of the information; and
- (iv) his conduct was not isolated.

SANCTION

36. The FSA's approach in deciding whether to take action and determining the appropriate financial penalty is set out in Chapter 6 of the Decision Procedure and Penalties Guide ("DEPP") in force at the time of the misconduct.
37. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring firms and approved persons who have breached regulatory requirements from committing further contraventions, helping to deter other firms and approved persons from committing contraventions and demonstrating to firms and approved persons, the benefit of compliant behaviour (DEPP 6.1.2G).
38. In determining whether a financial penalty is appropriate and proportionate, the FSA considers all the relevant circumstances of the case. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be of relevance in determining the amount of a financial penalty. The FSA considers the factors below to be particularly relevant.

Deterrence: DEPP 6.5.2G (1)

39. The FSA has had regard to the deterrent purpose and, in particular, took into account the following factors:
- (i) Mr Kyprios' seniority and the potential impact of his conduct on other approved persons on his staff; and
 - (ii) The FSA considers that a substantial penalty is required to show that such conduct is wrong and serious and to deter Mr Kyprios and others from engaging in such conduct in the future.

The nature, seriousness and impact of the breach: DEPP 6.5.2G (2)

40. The FSA has had regard to the aggravating factors set out above.
41. Although Mr Kyprios' conduct occurred over a short period of time, it did not consist of an isolated breach. While Mr Kyprios' conduct does not appear to have had an adverse effect on markets, he ran the risk that Fund Manager A, Fund Manager B and Credit Suisse traders within earshot would deal on the information or further disclose it.

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

42. Mr Kyprios' actions were careless and contravened Credit Suisse's own internal policies and procedures which he had read.

Whether the person on whom the penalty is imposed is an individual: DEPP 6.5.2G (4)

43. The FSA has had regard to the fact that Mr Kyprios is an individual and so the penalty will have a substantial impact upon him. The FSA also considers that Mr Kyprios' seniority makes his breaches more serious.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2G (5)

44. The FSA has no verifiable evidence that the proposed penalty will cause Mr Kyprios serious financial hardship.

Difficulty of detecting the breach DEPP 6.5.2G (7)

45. The FSA has also taken into account the fact that Mr Kyprios engaged in guessing games with Fund Managers A and B.

Disciplinary record and compliance history: DEPP 6.5.2G (9)

46. Mr Kyprios has no adverse previous disciplinary record or compliance history.

47. Having had regard to all the above factors the FSA proposes a financial penalty of £210,000. This penalty has been reduced by 30% from a proposed penalty of £300,000 pursuant to Stage 1 of the early settlement discount scheme.

PROCEDURAL MATTERS

Decision maker

48. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

49. This Final Notice is given under, and in accordance with, section 390 of the Act.

Manner of and time for Payment

50. The financial penalty must be paid in full by Nicholas James Kyprios to the FSA by no later than 27 March 2012, 14 days from the date of the Final Notice.

If the financial penalty is not paid

51. If all or any of the financial penalty is outstanding on 27 March 2012, the FSA may recover the outstanding amount as a debt owed by Mr Kyprios and due to the FSA.

Publicity

52. 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.

53. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

54. For more information concerning this matter generally, contact Steven Clark (direct line: 020 7066 2172 of the Enforcement and Financial Crime Division of the FSA.

Matthew Nunan
FSA Enforcement and Financial Crime Division

NICHOLAS JAMES KYPRIOS

ANNEX A - RELEVANT STATUTORY AND REGULATORY PROVISIONS

RELEVANT LAW

Jurisdiction

- 1 Section 66(1) of the Act stipulates the circumstances in which the FSA can take action against a person for misconduct:

"(1) The Authority may take action against a person under this section if-

(a) it appears to the Authority that he is guilty of misconduct: and

(b) the Authority is satisfied that it is appropriate in all the circumstances to take action against him. "

- 2 Section 66(2) of the Act provides that:

"(2) A person is guilty of misconduct if, while an approved person-

(a) he has failed to comply with a statement of principle issued under section 64...

- 3 APER is the FSA's Statements of Principle and Code of Practice for Approved Persons, issued under section 64 of the Act. Pursuant to APER 1.1.2G the Statements of Principle apply only to the extent that a person is performing a controlled function for which approval has been sought and granted. The Code of Practice is incorporated as APER 4.

Disciplinary powers

- 4 The FSA's powers having established a person is guilty of misconduct are in section 66(3) of the Act which, at the time of the alleged misconduct, provided:

"(3) If the Authority is entitled to take action under this section against a person, it may-

(a) impose a penalty on him of such amount as it considers appropriate; or

(b) publish a statement of his misconduct. "

RELEVANT GUIDANCE

Relevant Statements of Principle

- 5 The relevant Statements of Principle for Approved Persons are as follows:

(i) Statement of Principle 2: *"An approved person must act with due skill, care and diligence in carrying out his controlled function."*

(ii) Statement of Principle 3: *"An approved person must observe proper standards of market conduct in carrying out his controlled function."*

6 APER 3.1.4 provides, *inter alia*, that:

"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. "

7 Pursuant to APER 3.1.6G, APER 4 (and in particular, the examples given in APER 4 of behaviour that may be in breach of a generic description of conduct in the code) is not exhaustive of the kind of conduct that may contravene the Statements of Principle.

Breach of Statement of Principle 2

8 APER 4.2 lists specific examples of conduct which, in the opinion of the FSA, does not comply with Statement of Principle 2. This includes failing to pay due regard to the interests of a customer, without good reason (APER 4.2.14E).

Breach of Statement of Principle 3

9 The only example given in APER 4.3 of a factor to be taken into account regarding Principle 3 is compliance with the Code of Market Conduct ("**MAR**") or relevant market codes and exchange rules. Since MAR deals almost exclusively with market abuse it is not of direct assistance in this case. However APER 4.3 is not exhaustive.