Reference number FIN/2008/0016

UPPER TRIBUNAL (TAX AND CHANCERY CHAMBER)
FINANCIAL SERVICES

GRAHAM BETTON **Applicant**

- and -

THE FINANCIAL SERVICES AUTHORITY **Respondents**

TRIBUNAL: SIR STEPHEN OLIVER QC
IAN ABRAMS
CHRISTOPHER CHAPMAN

Sitting in London to review the information as to means provided by the Applicant

FURTHER DECISION

1. We have already concluded that the appropriate action for the FSA to take against Mr Graham Betton in the light of participation in the share ramping scheme is to make a prohibition order.

2. We now address the question whether it is appropriate to impose a financial penalty on Mr Betton. For this purpose we take into account all factors of the conduct. These will include its seriousness and its impact. It is appropriate for the FSA to take account of the fact that the person in question is an individual and of that individual's financial resources. It is also appropriate for the FSA to take into account verifiable evidence that the individual would suffer serious financial hardship if the penalty were to be fixed at a level otherwise appropriate for the particular breach. We recognise that such hardship can be attributable to the individual's current financial position and that this could be affected by the imposition of the prohibition order. Any consideration of the financial hardship can be made only if the individual proves that he will suffer hardship.

3. It would not, in our view, be appropriate to recognise an individual's financial hardship if that were in any way attributable to his expenditure and to his dissipation of assets in anticipation of enforcement action.

4. The FSA determined (in the Decision Notice of 19 June 2007) that the appropriate financial penalty should be £500,000 for market abuse pursuant to section 123(3) of FSMA; the Decision Notice goes on to say that that amount is to be reduced to £100,000 to take account of the economic impact of the prohibition order. In determining the financial penalty to be imposed upon Mr Betton, we have already concluded that he was not the instigator and the leader in the share ramping scheme. That role was taken by Mr Eagle. Mr Betton was, however, an experienced broker. He had had over 30 years experience in the financial industry. At the relevant time he was the only director, apart from Mr Eagle, of S P Bell. Notwithstanding his seniority and experience he allowed himself to participate deliberately and actively in the scheme for over six months. He knew that the scheme involved a course of conduct that was improper and highly misleading to the market. Instead of challenging Mr Eagle, whom Mr Betton knew had a conflict of interest, Mr Betton assisted in the scheme. He did not check that the trading that he and another S P Bell brokers embarked upon was authorised by the clients for which they were responsible. Moreover, he was aware that many of the clients did not have funds to settle the trading unknowingly being conducted on their behalf.

5. The seriousness of Mr Betton's conduct is aggravated by the fact that he was managing director of an authorised firm which had been exploited to carry out the share ramping scheme over a long period of time and Mr Betton actively participated in it. Moreover the share ramping scheme had an impact on the behaviour of prescribed markets. Its suspension for over a week must have caused confidence in the AIM market to be undermined. Further, the Eagle clients' unsettled positions crystallised at debts of more than £9 million.

6. In all the circumstances and having regard to the findings in our previous Decision, we think that Mr Betton's conduct has demonstrated a lack of fitness and propriety calling for the imposition of the prohibition order. We note that the FSA concluded that, in the light of Mr Betton's individual circumstances and, in particular, his age and the fact that his entire career had been in the financial services industry, the prohibition coupled with the penalty would cause serious financial hardship. Consequently the penalty was reduced to £100,000.

7. In determining the appropriate amount of penalty to be imposed upon Mr Betton, we have, since the hearing in 2010, sought to obtain from Mr Betton certain particularised information as to his means. Mr Betton's responses to our requests had been incomplete and have left a number of matters unanswered. Until we are satisfied on the points identified below, we will remain unable to assess whether account is to be taken of financial hardship. We note in this connection the following submission by the FSA in their letter of 28 January 2011:

> "The Authority considers that in the light of the fact that Mr Betton's financial position remains unclear given he has still not provided full disclosure of his assets; no deduction should be made to the headline financial penalty figure of £500,000. This is the appropriate penalty for the misconduct committed by Mr Betton."

8. £500,000 is, in our view, the correct penalty to be imposed in the circumstances; that is without regard to the financial hardship likely to be suffered by Mr Betton. Before we can take account of such financial hardship we need details of the following matters:

(i) Regarding the Florida property, we do not know whether it has been jointly owned by Mr Betton or whether it has been his sole property. We do not know whether it has yet been sold. Nor do we know whether it has been let and, if so, what rent has been obtained.

(ii) In their letter of 5 October 2010 the FSA (in paragraph 20) listed £19,220 of receipts in Mr Betton's bank statements. The £5,500 (15 September 2009) and the £2,000 (1 December 2009) are said to be wages from CAB. The £1,950 (19 May 2010) and the £1,810 (23 August 2010) are said to relate to payments by CAB to Mrs Betton. We need to know what their actual earnings have been from CAB in the year 2010.

(iii) The bank statement entry for £7,000 (22 January 2010 at Southport) has no explanation and needs one.

(iv) Regarding the UK property, we understand that before Mr Betton transferred a quarter share to Mrs Betton in 2007, he had a half interest in the property. This should be confirmed.

(v) Regarding the Pritchard Statement, we still need the statement covering the calendar 2007.

(vi) Mr Betton's bank statements show receipts of £2,368 from a "funds flow" account in March and June 2010. ? ? from Mr Betton statements to show the source of these funds and we need details of the funds flow account.

9. The missing information is covered by the Directions attached to this Decision.

SIR STEPHEN OLIVER QC
JUDGE OF THE UPPER TRIBUNAL

RELEASE DATE: 1 March 2011