

## DECISION NOTICE

---

**To:** Lombard Capital plc (**Lombard**)

**Address:** Steve Monico Ltd, 19 Goldington Road, Bedford MK40 3JY

**Date:** 15 September 2020

---

### ACTION

1. For the reasons given in this notice, Aquis Stock Exchange (**AQSE**) has decided to impose on Lombard a fine of £23,800.
2. Lombard cooperated fully with AQSE in the investigation and agreed to settle at an early stage. Accordingly, Lombard qualified for a 30% discount under AQSE's settlement procedures. Without this the financial penalty would have been £34,000.
3. In determining the sanctions, AQSE considered whether to exercise its power to withdraw the securities from trading on the AQSE Growth Market. However, given that withdrawal would likely to cause significant damage to investors' interests and have a sustained and lasting impact, AQSE has not imposed this sanction.

### BACKGROUND

4. Lombard's shares were initially admitted to the AQSE Growth Market in 2007, when it was an investment vehicle named High Road Capital plc. It was renamed Agneash Soft Commodities plc in 2011, then Lombard in 2012. It presently describes itself as a company "established to take advantage of opportunities to invest in or acquire a company or companies, or businesses or assets."
5. In early 2016, Lombard appointed Alfred Henry Corporate Finance Limited (**Alfred Henry**) as its corporate adviser, and David Grierson as a director, joining Brent Fitzpatrick on its board. Alfred Henry remain Lombard's corporate adviser today, and David Grierson and Brent Fitzpatrick continued to comprise Lombard's board until June 2020, when David Grierson was replaced by Barry Fromson.
6. In addition to having shares admitted to trading on the AQSE Growth Market, Lombard has also issued unlisted convertible bonds and warrants, and through a wholly-owned subsidiary, LCP Financial Limited (**LCP**), bonds which are listed on the Vienna MTF operated by the Vienna Stock Exchange. Similar to Lombard, LCP's board comprised David Grierson and Brent Fitzpatrick from incorporation until August 2019, when David Grierson was replaced by Barry Fromson.

## Recent share price movement and suspensions from trading

7. Until March 2020, Lombard's share price had been flat at 2.75p for the preceding seven months and implied a valuation of Lombard at around £116,000.
8. On 2 March, Lombard announced that holders of £440,000 worth of its convertible bonds had given notice to convert them into new shares at a price of 10p per share. The convertible bondholders also requested that two coupon payments due under the convertible bonds were paid in new shares at a price of 2.75p per share, amounting to around £26,000 in total. Lombard's share price did not immediately react to this announcement, but the issue of further shares increased its market capitalisation to around £263,000.
9. On 26 March, Lombard's share price began to increase. On 27 March, the daily volume of trading in Lombard's shares was the highest it had been since 2017. Lombard's share price continued to increase, reaching 18p on 27 April, which implied a valuation of Lombard at around £1.7m. This represented an increase in the share price of more than 550% from 26 March to 27 April.
10. From 27 April to 20 May, Lombard's shares were suspended from trading for reasons set out below. Upon restoration on 20 May, Lombard announced that the holders of £507,000 worth of its bonds listed in Vienna "wish for their bonds to be repaid and the funds immediately used to acquire ordinary shares in the company at a price of 25p per share." Further, certain holders of its warrants had given notice to exercise those at a price of 10p per share, amounting to £320,000 in total. The issue of these further shares increased Lombard's market capitalisation to around £2.7m.
11. Again, Lombard's share price continued to increase. On 5 June, it was 45p, implying a valuation of Lombard at around £6.7m. Before market open the next trading day, Lombard's shares were suspended for a second time pending the outcome of an AQSE investigation.

## APPLICABLE RULES

### Rule 30 (Responsibilities of an Issuer)

12. Rule 30 provides that:

*In addition to compliance with these rules, an issuer must observe its wider responsibilities and is required to conduct its affairs to avoid impairing the reputation and integrity of the AQSE Growth Market.*

13. Generally, where an issuer appears to have failed to comply with the requirements of applicable law and regulation such as the Market Abuse Regulation (**MAR**) or the Disclosure Guidance and Transparency Rules sourcebook in the FCA Handbook (**DTR**) it will follow that the issuer's conduct impaired, or risked impairing, the reputation and integrity of the AQSE Growth Market in breach of Rule 30.

### **Rule 34 (Price-sensitive Information)**

14. Rule 34 provides that:

*An issuer must announce as soon as possible inside information in accordance with its obligations under MAR.*

15. In order to comply with Rule 34, an issuer must comply with Article 17 (Public disclosure of inside information) of MAR, which requires an issuer to “inform the public as soon as possible of inside information which directly concerns that issuer.” Provided certain conditions are met, an issuer may delay the announcement of inside information where “immediate disclosure is likely to prejudice the legitimate interests of the issuer”. Where an issuer delays disclosure, it must retrospectively inform the competent authority of the delay immediately after the information is announced.
16. For the purposes of Rule 34, “inside information” has the meaning given to that term in Article 7 (Inside information) of MAR, which is “information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments”. In MAR, “information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments” means “information a reasonable investor would be likely to use as part of the basis of his or her investment decisions.”
17. Article 7(2) of MAR states that “information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments” to which it relates. In EU and domestic case law <sup>1</sup> it has been established that where information refers to future circumstances or events, in order for such information to be “precise” there must be more than a “fanciful” chance of such circumstances or events occurring, but the threshold is lower than the event or circumstances being “more likely than not” to occur.
18. Article 7(2) and 7(3) of MAR further state that “in the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information... An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information” as set out in Article 7.

---

<sup>1</sup> See in particular *Hannam v. FCA* [2014] UKUT 0233 (TCC).

19. The UK's competent authority for the purposes of MAR is the FCA. Accordingly, AQSE does not determine or enforce infringements of MAR. However, where an issuer appears, on the facts available to AQSE, likely to have breached Article 17 of MAR, AQSE will treat that as a breach of Rule 34.
20. AQSE also expects that, in order to be able to comply with Rule 34, an issuer will comply with Article 18 (Insider lists) of MAR. Article 18 requires an issuer with securities admitted to trading on an SME growth market, such as the AQSE Growth Market, to be able provide the competent authority, upon request, with "a list of all persons who have access to inside information and who are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information, such as advisers, accountants or credit rating agencies".

#### **Rule 41 (Interests in Shares)**

21. Rule 41 provides that:

*An issuer with shares admitted to trading must announce as soon as possible any notifiable change to a significant shareholding in its shares, giving the information specified by Appendix 3.*

22. For the purposes of Rule 41, "significant shareholding" means a shareholding of 3% or more. "Notifiable change" means the acquisition of a significant shareholding, a change in the applicable threshold of a significant shareholding, or an event which results in a person ceasing to have a significant shareholding. "Applicable threshold" means each percentage point between 3% and 100%.
23. Rule 41 reflects the requirements of the DTR. DTR 5.1.2R requires a person to notify an issuer if the percentage of its voting rights he holds as shareholder reaches, exceeds or falls below 3%, and each 1% threshold thereafter up to 100%, as a result of an acquisition or disposal of shares or events changing the breakdown of the issuer's voting rights. DTR 5.8.12R requires an issuer, on receipt of such notification, to announce all the information contained in the notification.
24. Appendix 3 requires that an announcement made under Rule 41 should contain the information disclosed to the issuer in any relevant shareholder notification under the DTR or applicable overseas regulation.

#### **Rule 51 (Transactions)**

25. Rule 51 provides that:

*An issuer must announce as soon as possible the agreed terms of an acquisition or disposal (by itself or a subsidiary) which, if made public, would be likely to have a significant effect on the price of its securities. An announcement must contain the information specified by Appendix 5.*

26. Appendix 5 requires that an announcement made under Rule 51 must contain the following information, where known to the issuer:

- a) particulars of the transaction, including the name of any relevant company or business;*
- b) a description of the assets which are the subject of the transaction;*
- c) if applicable, a description of the turnover and profits attributable to the assets (and in the case of an acquisition, a description of any goodwill being acquired);*
- d) the consideration and how it is being satisfied, including any arrangements for the payment of deferred consideration and any agreement for the repayment or assumption of inter-company or third-party debt;*
- e) in the case of a disposal and where possible, the profit or loss realised in relation to book value and the proposed application of the proceeds (or where the consideration is satisfied in shares, the issuer's intentions regarding the sale or retention of the holding); and*
- f) any other information reasonably required to assess the impact and effects of the transaction on the issuer.*

#### **Rule 74 (Suspension of Trading)**

27. Rule 74 provides that AQSE may, at its discretion, suspend trading in the securities of an issuer in various circumstances, including where it is necessary to ensure an orderly market, the protection of investors or the integrity of the AQSE Growth Market. The guidance notes on Rule 74 clarify, for the avoidance of doubt, that even when trading in an issuer's securities is suspended, it must comply with its obligations under the AQSE Growth Market Rules for Issuers.

#### **FINDINGS OF FACT**

28. The documents and information reviewed for the purposes of the AQSE investigation indicate that the chronology of relevant events in this matter was as follows:

<b>Date</b>	<b>Event</b>
3 March	Identification of a freehold plot of land at Gaskell House, 45-49 Rough Hey Road, Grimsargh, Preston PR2 5AR ( <b>Gaskell House</b> ) as target for acquisition
11 March	Incorporation of Waste and Recycling Solutions Limited ( <b>WARS</b> ) Appointment of Robert Malone as director of WARS
26 March	Lombard's share price begins to rise
1 April	Announcement – Statement in respect of new business opportunity
23 April	Exchange of contracts for the acquisition of Gaskell House
27 April	First suspension of trading Announcement – Suspension of trading and acquisition update

28 April	Appointment of Barry Fromson as director of WARS
20 May	Restoration of trading Announcement – Property Acquisition and Share Issues
1 June	Appointment of Barry Fromson as director of Lombard Announcement – Appointment of director
8 June	Second suspension of trading Resignation of David Grierson as director of Lombard Completion of acquisition of Gaskell House Announcement – Completion of property purchase and change of board

### **Disclosure of the identification of Gaskell House as target for acquisition and the incorporation of WARS**

29. On 1 April, Lombard announced that LCP had formed a wholly-owned subsidiary, WARS, which would “seek to undertake a waste and recycling trade” and that “The first assets to be acquired have been identified and WARS are currently moving towards exchanging contracts with immediate effect”.
30. In response to AQSE enquiries, Lombard advised that Gaskell House was identified as a target for acquisition on 3 March. Companies House filings indicate that WARS was incorporated on 11 March.
31. An announcement of a “new business opportunity” was made by Lombard on 1 April which disclosed the appointment of a new managing director of WARS, who had been charged with “amalgamating various disjointed sectors of the waste industry into a cohesive Waste Group”. The announcement stated that “The first asset to be acquired had been identified and WARS are currently moving towards exchanging contracts with immediate effect”.

### **Disclosure of the exchange of contracts for the acquisition of Gaskell House**

32. Following a continued rise in Lombard’s share price, on 27 April, Alfred Henry advised AQSE that Lombard had exchanged contracts for the acquisition of a property the previous week, and requested the suspension of Lombard’s shares pending the release of further information. Accordingly, AQSE suspended the shares intraday.
33. At the same time as the suspension, Lombard released an announcement explaining that it had requested the suspension “following a period of fluctuations in the share price.” The announcement also confirmed that Lombard had “agreed” the acquisition of its first waste and recycling asset the previous week, and it would “make a full announcement on the details”.

34. Subsequently, in response to AQSE enquiries, Lombard confirmed that contracts were exchanged on 23 April.

#### **Disclosure of the terms and other details of the Gaskell House transaction**

35. On 20 May, AQSE restored trading in Lombard's shares. At the same time, Lombard released an announcement identifying the property to be acquired as Gaskell House. The announcement provided further information about Gaskell House, such as the size and nature of the property, and stated that:

- The purchase price was £1,080,000 cash (£900,000 plus VAT)
- A deposit of £150,000 was paid on 22 April
- Completion would occur on 29 May
- Completion was only conditional on payment of the remainder of the purchase price, and two companies that had "worked closely with Lombard" had "underwritten any shortfall"

36. The address of the property to be acquired, the size and nature of the property, the purchase price, the deposit paid and the proposed completion date was known to Lombard on or before contracts were exchanged on 23 April, but was not announced until 20 May.

#### **Insider list**

37. In response to AQSE enquiries, Alfred Henry provided an insider list on 7 May recording the persons who, at that time, had inside information in relation to Lombard's shares.
38. On further enquiry and analysis, Lombard acknowledged that a number of advisers and consultants that had received inside information in respect of the transaction were not on the insider list.

#### **Disclosure of interests in shares**

39. Lombard's 20 May announcement also disclosed that certain holders of the bonds listed in Vienna "wish for their bonds to be repaid and the funds immediately used to acquire ordinary shares" and certain holders of warrants had given notice to exercise those and receive shares in Lombard. The announcement stated that as a result of these transactions, Lombard would

issue 5,228,000 new ordinary shares, and included the following table showing the significant shareholdings that would exist:

<i>Shareholder</i>	<i>Shares issued</i>	<i>Shares after (no.)</i>	<i>Shares after (%)</i>
<i>Richard Murray</i>	<i>2,000,000</i>	<i>4,437,558</i>	<i>29.96%</i>
<i>John Reilly</i>	<i>1,000,000</i>	<i>2,218,779</i>	<i>14.98%</i>
<i>Ross Maxwell</i>	<i>1,432,000</i>	<i>1,432,000</i>	<i>9.67%</i>
<i>Robert Lyndsay</i>	<i>596,000</i>	<i>596,000</i>	<i>4.02%</i>
<i>Peter Harding</i>	<i>200,000</i>	<i>443,756</i>	<i>3.00%</i>

40. As at the date of the investigation report, no further issues of shares had been announced by Lombard since 20 May, and a table of significant shareholders on Lombard’s website included the following additional shareholders:

- Barry Fromson (1,727,727 shares)
- Platform Securities Nominees Limited (1,426,000 shares)
- Seventy Seven (548,450 shares)
- Sunvest Corporation Limited (455,000 shares)

41. Taken together, the foregoing information implies that the following additional changes in significant shareholdings occurred as a result of the share issue Lombard announced on 20 May:

<i>Shareholder</i>	<i>Shares before (no.)</i>	<i>Shares before (%)</i>	<i>Shares after (no.)</i>	<i>Shares after (%)</i>
<i>Barry Fromson</i>	<i>1,727,727</i>	<i>18.03%</i>	<i>1,727,727</i>	<i>11.67%</i>
<i>Platform Securities Nominees Limited</i>	<i>1,426,000</i>	<i>14.88%</i>	<i>1,426,000</i>	<i>9.63%</i>
<i>Seventy Seven</i>	<i>548,450</i>	<i>5.72%</i>	<i>548,450</i>	<i>3.70%</i>
<i>Sunvest Corporation Limited</i>	<i>455,000</i>	<i>4.75%</i>	<i>455,000</i>	<i>3.07%</i>
<i>Total</i>	<i>9,581,784</i>	<i>100.00%</i>	<i>14,809,784</i>	<i>100.00%</i>

42. In response to AQSE enquiries, Lombard confirmed that the table of significant shareholdings in the 20 May announcement should have included additional shareholders pursuant to Rule 41.

## **BREACHES OF THE RULES**

43. Whilst the acquisition of Gaskell House may not have been “viable” until 1 April, the fact Lombard was contemplating a venture into the waste management sector, had identified a



target property and was serious enough to incorporate a subsidiary on 11 March (being the first public step in a protracted process) coupled with the relative inactivity of the business up to then, should have been recognised by Lombard as information a reasonable investor would be likely to use as part of the basis of his or her investment decisions. This finding is supported by the increase in Lombard's share price from 26 March which, in the absence of any other explanation, appears likely to have been caused by a leak of such information, or a reaction to the appearance of information about the incorporation of WARS (the name of which, "waste and recycling solutions", clearly revealed that Lombard was contemplating the venture) appearing in publicly-available Companies House filings from 11 March. Accordingly, by failing to announce this information sooner, Lombard breached Rule 34.

44. Notwithstanding Lombard's previous announcement that it was "moving towards exchanging contracts", the fact that contracts had actually been exchanged on 23 April was also information a reasonable investor would be likely to use as part of the basis of his or her investment decisions. The acquisition was clearly very significant to Lombard – the purchase price was high in relation to its market capitalisation at the time, and it confirmed Lombard's venture into the waste management sector after a long period of relative inactivity for the business. Accordingly, by failing to announce the exchange of contracts on 23 April (or if exchange occurred late in the day on 23 April, before market open on 24 April) Lombard breached Rules 34 and 51.
45. Further information such as the address of the property to be acquired, the size and nature of the property, the purchase price, the deposit paid, the proposed completion date and agreements with the other two companies to underwrite any shortfall on the purchase price, was also information a reasonable investor would be likely to use as part of the basis of his or her investment decisions. This information would have been known to Lombard before contracts were exchanged on 23 April and, in light of the share price movement (indicative of a leak of price-sensitive information or rumour), the announcement of the information would have mitigated against potential insider dealing. It may be that immediate disclosure (i.e., before contracts were exchanged) would have prejudiced Lombard's legitimate interests, but it should have been announced upon exchange. Accordingly, Lombard breached Rules 34 and 51 by not announcing it until 20 May.
46. A number of advisers and consultants were aware of Lombard's connection to the acquisition and should have been included in Lombard's insider list. Accordingly, by failing to include them in its insider list, Lombard appears likely to have failed to comply with Article 18 of MAR, and therefore impaired, or risked impairing, the reputation and integrity of the AQSE Growth Market, in breach of Rule 30.
47. By failing to announce the notifiable changes to the significant shareholdings held by Barry Fromson (from 18.03% to 11.67%), Platform Securities Nominees Limited (from 14.88% to 9.63%), Seventy Seven (from 5.72% to 3.70%) and Sunvest Corporation Limited (from 4.75% to 3.07%), Lombard breached Rule 41, and may have failed to comply with DTR 5.8.12R.