

Financial Services Authority



FINAL NOTICE

To: Barnett Michael Alexander
Date of birth: 7 April 1964
FSA Reference Number: BMA01020
Date: 14 June 2011

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about a prohibition order:

1. ACTION

- 1.1. The FSA gave Barnett Michael Alexander a Decision Notice on 7 June 2011 which notified Mr Alexander that pursuant to section 56 of the Act the FSA had decided to make an order prohibiting Mr Alexander from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm because he is not a fit and proper person. The FSA is minded to revoke the prohibition order on Mr Alexander's application at any time after five years from the date of this Final Notice, in the absence of new evidence that he is not fit and proper.
- 1.2. Mr Alexander has confirmed that he will not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber). Accordingly, for the reasons set out below, the FSA has made an order prohibiting Mr Alexander from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. The prohibition order takes effect from 14 June 2011.

- 1.3. In a related action brought against him by the FSA in the High Court of England and Wales under section 381 of the Act, Mr Alexander has agreed to:
 - (1) the imposition of a permanent restraining injunction upon him, which prohibits the behaviour that is the subject of this notice;
 - (2) the payment of a financial penalty of £700,000 to the FSA in respect of market abuse;
 - (3) the payment of restitution of £322,818 to the firms which have suffered loss as a result of his market abuse.
- 1.4. Mr Alexander agreed to settle at an early stage of the FSA's investigation. He therefore qualifies for a 30% (Stage 1) discount on his financial penalty (but not the requirement to make restitution) under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have asked the court to impose a financial penalty of £1,000,000 on Mr Alexander.

2. REASONS FOR THE ACTION

Summary

- 2.1. In the period 1 January 2009 to 25 May 2010 (“the relevant period”), Mr Alexander was a self-employed trader dealing in shares, Contracts for Differences (“CfDs”) and spread bets from his home address. During this period Mr Alexander entered into a trading strategy designed to influence, in his favour, the prices of CfDs and spread bets offered by retail providers of those products. The providers concerned formed the prices of their CfDs and spread bets by direct and immediate reference to the best bid and offer prices for the underlying shares on the London Stock Exchange (“LSE”).
- 2.2. Dealing in his own name, Mr Alexander used a Direct Market Access (“DMA”) CfD account to execute trades the effect of which was to narrow the prevailing bid-offer spread.
- 2.3. Immediately after he had influenced the LSE bid-offer spread, Mr Alexander would typically buy or sell CfDs and spread bets to profit from the favourable prices arising out of his previous trading.
- 2.4. Mr Alexander dealt in CfDs and spread bets through three spread betting firms using accounts in his name and accounts in the names of third parties. The vast majority of profit attributable to this conduct was generated in accounts in the names of third parties, for the benefit of Mr Alexander.
- 2.5. Mr Alexander’s behaviour amounts to market abuse contrary to section 118(5)(a) and (b) of the Act.
- 2.6. Mr Alexander generated a net profit after commission of £629,130 through this behaviour. Of this profit, £306,312 has been retained by the CfD and spread bet brokers under their standard account terms and conditions.
- 2.7. The FSA regards this as a serious case of market abuse because of the following factors:
 - (1) Mr Alexander was an experienced trader and former private client stockbroker;
 - (2) his behaviour was deliberate and repeated on a regular basis over 16 months;

- (3) by trading through accounts in the names of third parties Mr Alexander sought to conceal his behaviour from retail CfD and spread bet brokers; and
 - (4) Mr Alexander obtained a substantial economic benefit from his trading.
- 2.8. In mitigation the FSA has had regard to the fact that Mr Alexander was not working in the financial services industry at the time of the misconduct and that he has admitted his market abuse.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

Statutory provisions

Market Abuse

- 3.1. Section 118 of the Act defines market abuse. References in this notice to provisions in this part of the Act are to those in force during the period of the behaviour referred to. In particular, section 118 of the Act provides as follows:

- (1) *For the purposes of this Act, market abuse is behaviour (whether by one person alone or by two or more persons jointly or in concert) which—*

- (a) occurs in relation to—*

- (i) qualifying investments admitted to trading on a prescribed market,*
- (ii) qualifying investments in respect of which a request for admission to trading on such a market has been made, or*
- (iii) in the case of subsection (2) or (3) behaviour, investments which are related investments in relation to such qualifying investments, and*

- (b) falls within any one or more of the types of behaviour set out in subsections (2) to (8).*

- (5) *The fourth is where the behaviour consists of effecting transactions or orders to trade (otherwise than for legitimate reasons and in conformity with accepted market practices on the relevant market) which—*

- (a) give, or are likely to give, a false or misleading impression as to the supply of, or demand for, or as to the price of, one or more qualifying investments, or*
- (b) secure the price of one or more such investments at an abnormal or artificial level.*

- 3.2. Under The Financial Service and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001 (made under section 118(3) of the Act):

- (1) all markets operated under the rules of a UK recognised investment exchange (which includes the LSE) are prescribed markets; and

- (2) all investments specified for the purposes of defining a regulated activity (including shares traded on the LSE) are qualifying investments.
- 3.3. By section 130A of the Act, “accepted market practices” in relation to a market situated within the UK are practices that are reasonably expected in the financial market or markets in question and are accepted by the FSA. Where the FSA accepts a market practice it will be listed in MAR 1 Annex 2. There were no accepted market practices relating to the LSE during the relevant period.

Injunctions, restitution and penalties for market abuse

- 3.4. By section 381 of the Act, if, on the application of the FSA, the court is satisfied—
- (1) that there is a reasonable likelihood that any person will engage in market abuse, or
- (2) that any person is or has engaged in market abuse and that there is a reasonable likelihood that the market abuse will continue or be repeated,

the court may make an order restraining (or in Scotland an interdict prohibiting) the market abuse.

- 3.5. Section 381 also provides that the court may impose a freezing order over the assets of a person who may be, or may have been, engaged in market abuse.
- 3.6. By section 383 of the Act, if the court is satisfied that a person has engaged in market abuse, it may require the person concerned to pay to the FSA such amount as appears to the court to be just having regard to the profits appearing to the FSA to have accrued and to the extent of the loss or other adverse effect. Any sum paid to the FSA under this section must be distributed by it among such qualifying persons as the court may direct.
- 3.7. By section 129 of the Act, the court may, if it considers it appropriate, make an order requiring the person against whom an application under section 381 or 383 has been made to pay to the FSA a penalty of such amount as the court considers appropriate.

Decision Procedure and Penalties Manual (“DEPP”)

- 3.8. Section 123(1) of the Act authorises the FSA to impose financial penalties in cases of market abuse. Section 124 of the Act requires the FSA to issue a statement of its policy with respect to the imposition of penalties for market abuse and the amount of such penalties. The FSA’s policy in this regard is contained in Chapter 6 of DEPP. In deciding whether to exercise its power under section 123 in the case of any particular behaviour, the FSA must have regard to this statement of policy. In considering the appropriate penalty in relation to Mr Alexander the FSA has had regard to DEPP 6 as it applied during the relevant period.

The Code of Market Conduct (“MAR”)

- 3.9. The statutory framework behind MAR and provisions from it that are relevant to this matter are set out in Annex 1 to this notice.

4. FACTS AND MATTERS RELIED ON

Personal background

- 4.1. At the relevant time Mr Alexander was a self-employed trader dealing in shares, CfDs and spread bets from his home address. Mr Alexander was an FSA approved person at a private client stockbroker holding FSA Controlled Function 2 (Non-executive director) from 31 October 2006 to 11 March 2011. Mr Alexander's conduct does not relate to the performance of his controlled function.
- 4.2. Mr Alexander worked as a private client stockbroker from 1988 to 2000 for various firms and during this period of his employment held a status with a predecessor regulator equivalent to that of an FSA approved person. Since 2000 Mr Alexander has mainly been a self-employed trader.

Market background

Contracts for Differences and Spread Bets

- 4.3. CfDs and spread bets are both types of financial derivative instruments. A CfD in shares is an agreement to exchange the difference in value of a particular share between the time and date when the contract is opened and the time and date when the contract is closed. Investors can buy then sell CfDs, taking a "long" position or sell then buy CfDs, thereby taking a "short" position.
- 4.4. Through CfDs, investors can gain exposure to share price movement without owning the shares. A key financial advantage is that investors can acquire exposure to price movement of a large number of shares without having to invest the same capital as would be required to buy and sell the shares themselves. CfD providers will require investors to pay a deposit (or "margin") in respect of the CfD position opened, usually in the sum of around 10% of the investor's exposure to price movement in the shares.
- 4.5. The FSA Handbook defines a spread bet as a CfD that is a gaming contract. The exposure to the movement in the price of the shares and the principal "up side" and "down side" of the instruments is the same, although there are slight differences between spread bets and other types of CfD in fees, margin, pricing and tax treatment of profits.

Automatic trading and Pricing

- 4.6. Many retail brokers provide CfD and spread betting services by way of automated electronic trading systems. These systems are accessible online and allow clients to transact CfDs and spread bets with such firms. Up to certain parameters, and at the discretion of the firms, the electronic dealing of CfDs and spread bets is carried out automatically without human intervention or oversight.
- 4.7. Automated electronic trading systems will often offer CfDs and spread bets at prices determined by direct and immediate reference to the LSE touch price, being the best bid and best offer in the underlying shares on the LSE at any given point during the trading day.
- 4.8. For example, if a new order is placed on the LSE and the best bid price goes up, the price at which the retail derivative providers are prepared to buy CfDs and spread bets will in the case of some brokers automatically change to match the best bid price on the LSE. The prices of CfDs and spread bets will in the case of some

brokers track the LSE spread regardless of the volume of shares behind the orders placed on the LSE.

- 4.9. Automated electronic trading systems can therefore continuously provide investors with the opportunity to buy and sell CfDs and spread bets at the current best bid and offer price quoted on the LSE, subject to any additional price spread that a firm wishes to apply.

Direct Market Access Contracts for Differences

- 4.10. DMA CfDs are equity-linked derivative products that allow clients direct access to the LSE order book. Mr Alexander placed orders to buy or sell DMA CfDs with his DMA provider, which immediately and automatically placed corresponding orders to buy or sell shares on the order book at the same price and in the same volume as the CfD orders.
- 4.11. Mr Alexander knew that his orders for DMA CfDs would result in matching orders for shares on the order book in the normal way. References in this notice to Mr Alexander entering an order to buy or sell shares, or withdrawing any such order, are to Mr Alexander carrying out such actions by means of the process set out above.

Mr Alexander's behaviour

- 4.12. Mr Alexander developed a trading strategy that took advantage of the fact that some retail CfD and spread bet brokers price CfDs and spread bets by direct and immediate reference to the best bid and offer price for the underlying share on the LSE without regard to the volume.
- 4.13. Identifying this price relationship, Mr Alexander traded in shares for the purpose of influencing the prices of CfDs and spread bets. It was Mr Alexander's practice to enter orders for shares above the current best bid price, or below the current best offer price, on the LSE, observe the prices of CfDs and spread bets change as a result, and then trade those products profitably through accounts in his name and the names of third parties.
- 4.14. Mr Alexander generally sought to influence both the opening and closing legs of his CfD and spread bets positions. In the case of a long position, Mr Alexander would depress the offer price and then increase the bid price. This approach would be reversed in the case of a short position. Occasionally the market would move for Mr Alexander after he opened a CfD or spread bet condition, and it would not be necessary for him to influence the closing leg of that transaction.
- 4.15. Mr Alexander identified certain large mid cap shares with naturally wide spreads for the execution of his strategy. Such spreads often occur early in the trading day, when trading on the LSE is at its least active.
- 4.16. On most trading days during the relevant period, Mr Alexander executed his strategy several times a day through ten CfD and spread betting accounts in four different names. The purpose of using multiple accounts was to avoid the increased scrutiny brokers are likely to give to a highly profitable account by spreading profits amongst them.
- 4.17. These accounts were opened by third parties at Mr Alexander's request, but were operated by Mr Alexander using online trading facilities. When Mr Alexander required funds from these accounts, he would ask the third party in question to

request a transfer from their account to a bank account under his control. The total profit transferred was £322,818.

- 4.18. Mr Alexander's activity came to light in December 2009, when a retail broker submitted a suspicious transaction report to the FSA and closed the relevant trading account. The FSA discovered that Mr Alexander controlled other trading accounts and was carrying out the same activity, and alerted the retail brokers concerned. Subsequently Mr Alexander's accounts were closed and the sums standing to the credit of those accounts (amounting to £306,312) were retained by the brokers.
- 4.19. In May 2010 the FSA issued proceedings against Mr Alexander in the High Court and obtained an interim injunction freezing his assets and preventing him from engaging in market abuse in the manner set out in this notice.
- 4.20. The following is an example of Mr Alexander both seeking to influence and influencing the opening and closing legs of a CfD transaction:
 - (1) On 3 December 2009 at 14:16, the LSE order book for shares of Domino Printing Sciences plc ("Domino") showed a best bid of 290p in 591 shares (i.e., an unfulfilled order to buy 591 shares at 290p per share) and a best offer of 298.7p in 1818 shares (i.e., an unfulfilled order to sell 1818 shares at 298.7p per share). The bid-offer spread was therefore "290p by 298.7p".
 - (2) At 14:16:28, Mr Alexander entered an order to sell 15 shares in Domino at 291p. The effect of this order was to enter into the LSE order book a new best offer at 291p, thus tightening the LSE bid offer spread to "290p by 291p".
 - (3) When this order was placed, an unrelated party bought the shares (at 14:16:28.633885), so the bid-offer spread immediately returned to its previous position of 290p by 298.7p. Mr Alexander had therefore sold 15 Domino shares at a price of 291p.
 - (4) Nine minutes later, at 14:25, the LSE order book was showing a best bid of 290p (in 591 shares) and a best offer of 298.7p (in 1718 shares).
 - (5) At 14:25:51, Mr Alexander entered an order to sell 13 shares, this time at a slightly higher price of 292p. The effect of this order was to cause the entry into the LSE order book of a new best offer at 292p, thus tightening the LSE bid offer spread to "290p by 292p".
 - (6) The automated electronic trading system of a retail derivative provider ("Firm A") matched the LSE's best bid-offer spread of 290p by 292p in respect of CfDs, allowing its clients to buy CfDs at 292p (prior to the order placed by Mr Alexander, CfDs would have been available to buy at the higher price of 298.7p).
 - (7) At 14:26:00 (i.e. 9 seconds after Mr Alexander caused the share order to be entered), an account at Firm A in the name of a relative of Mr Alexander bought CfDs with exposure to the equivalent of 6,700 Domino shares at a price of 292p. This transaction thereby opened a CfD position in Domino on this account.
 - (8) The order for 13 shares traded on the LSE at 14:35:34 when an unrelated third party bought the shares offered. Mr Alexander had therefore sold a further 13 Domino shares at a price of 292p.

- (9) At 15:10, the LSE order book for shares of Domino showed a best bid of 290p (in 10414 shares) and a best offer of 298.6p (in 162 shares).
 - (10) At 15:10:50, Mr Alexander caused an order for 21 Domino shares to be placed on the LSE order book at 297.2p. This tightened the LSE bid offer spread to “297.2p by 298.6p”.
 - (11) Again, the automated electronic trading system of Firm A matched the LSE best bid-offer spread of 297.2p by 298.6p, thereby allowing its clients to sell CfDs at 297.2p (prior to the order placed by Mr Alexander, CfDs would have been available to sell at a lower price of 290p).
 - (12) At 15:11:07 (i.e., 17 seconds after Mr Alexander caused the share order to be entered), the account at Firm A sold CfDs with exposure to 6,700 Domino shares at a price of 297.2p. This transaction thereby closed the CfD position in Domino on the account at Firm A.
 - (13) The order for 21 shares on the LSE traded at 15:14:10 when an unrelated third party sold the shares to the DMA CfD provider.
 - (14) The effect of the above trading between 14:16 and 15:14 on 3 December 2009 in terms of profit and loss is as follows:
 - (15) The account at Firm A made a profit of 5.2p per share on the equivalent of 6700 shares, a total gross profit of £348.40 (before fees and charges).
 - (16) Mr Alexander sold 15 shares at 291 and 13 shares at 292p, then bought 21 shares at 297.2p. The net cost of these transactions was £19.20p (i.e., the difference between the cost of buying and selling the shares), plus the account was left with a short position of 7 Domino shares. There would also have been administration charges payable in respect of these trades.
 - (17) The profit made through the CfD transactions at Firm A was many times greater than the small costs associated with trading the shares.
- 4.21. The above pattern of behaviour, or a variant that influences one leg of a CfD or spread bet transaction only, was carried on by Mr Alexander regularly during the relevant period and caused firms to make losses of £629,130 (and one firm in particular approximately £600,000) which he received as profit.

5. ANALYSIS OF BREACHES

Section 118(1)

- 5.1. The FSA is satisfied that by trading in DMA CfDs as described in this notice Mr Alexander carried on behaviour in relation to qualifying investments admitted to trading on a prescribed market, namely the underlying shares admitted to trading on the LSE.

Section 118(5)

- 5.2. The FSA is satisfied that Mr Alexander engaged in market abuse in breach of section 118(5)(a) and (b) of the Act. The requirements of these provisions are:
- (1) the behaviour must consist of effecting transactions or orders to trade;
 - (2) his behaviour must not have been both:
 - (a) for legitimate reasons; or

- (b) in conformity with accepted market practices on the LSE;
 - (3) the behaviour must either:
 - (a) give or be likely to give a false or misleading impression as to the supply of, or demand for, or as to the price of, the shares; or
 - (b) secure the price of one or more qualifying investments at an abnormal or artificial level.
- 5.3. Each of these elements is satisfied in respect of Mr Alexander's behaviour:
- (1) By placing orders for DMA CfDs Mr Alexander effected orders to trade.
 - (2) The orders placed by Mr Alexander were not for legitimate reasons because they were placed for the purpose of influencing the price at which CfDs and spread bets could be bought and sold through accounts under his control. There were no accepted market practices as defined by section 130A of the Act on the LSE during the relevant period.
 - (3) The orders for shares effected by Mr Alexander caused the creation of a false and misleading impression as to the price of shares. It is clear that Mr Alexander was not looking to trade shares profitably, as would be expected, as orders placed on his account were the opposite of normal and rational trading in that they were deliberately loss making as a result of being entered for the purpose of influencing the price at which CfDs and spread bets as set out in this notice. By doing so Mr Alexander caused his DMA CfD provider to misrepresent to the market the true price of the shares.
 - (4) Further, orders for shares placed by Mr Alexander had the effect of securing the price of shares at an artificial level. They were not placed at a price that would have enabled the profitable trading of shares, but were placed for the purpose of creating an artificial market price for the underlying shares in order to influence the price at which CfDs and spread bets would be available.

Lack of fitness and propriety

- 5.4. The FSA considers that Mr Alexander's behaviour as set out in this notice demonstrates that he has acted without honesty and integrity.
- 5.5. Mr Alexander caused orders for shares to be entered on the LSE order book in the knowledge that they misrepresented to the CfD and spread bet brokers the true price of the shares. He did this for the collateral purpose of creating prices that did not represent the true price and that were favourable to him. As such, his trading was not for legitimate reasons.
- 5.6. Mr Alexander concealed the trading in CfDs and spread bets by trading through three brokers and accounts in the names of third parties. Using the accounts of others without having the required Power of Attorney, for the purpose of misleading the retail brokers with whom Mr Alexander traded, is in itself evidence of a lack of fitness and propriety. Mr Alexander worked within the financial services industry for 10 years. The FSA considers that he would have had no doubt that trading in this manner was contrary to the terms and conditions of the account providers but chose to do so regardless.
- 5.7. The FSA considers Mr Alexander's behaviour a form of market manipulation, which threatens confidence in the integrity of the financial markets of the UK. That he embarked on this behaviour, carried it on for 16 months and executed it in part

through accounts in the names of third parties demonstrates a failure to satisfy the criteria of honesty and integrity.

6. ANALYSIS OF SANCTION

Financial penalty

- 6.1. If Mr Alexander had not agreed to settle the High Court claim made by the FSA at an early stage and qualified for a 30% (Stage 1) discount on his financial penalty, the FSA would have asked the court to impose a financial penalty of £1,000,000 on Mr Alexander. The FSA reached the view that a penalty of this amount was appropriate and proportionate after taking all the circumstances of this case into account and considering the guidance in DEPP 6.
- 6.2. The principal purpose of imposing a financial penalty or issuing a public censure is to promote high standards of regulatory and market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.
- 6.3. In enforcing the market abuse regime, the FSA's priority is to protect prescribed markets from any damage to their fairness and efficiency caused by, amongst other things, the manipulation of the price formation mechanism of the market in question. Effective and appropriate use of the power to impose penalties for market abuse will help to maintain confidence in the UK financial system by demonstrating that high standards of market conduct are enforced in the UK financial markets. The public enforcement of these standards also furthers public awareness of the FSA's statutory objective of the protection of consumers, as well as deterring potential future market abuse.
- 6.4. DEPP 6.2.2 sets out a number of factors to be taken into account when the FSA decides whether to take action in respect of market abuse. They are not exhaustive but include the nature and seriousness of the behaviour, the degree of sophistication of the users of the market in question, the size and liquidity of the market and the susceptibility of the market to market abuse. Other factors include action taken by the FSA in similar cases, the impact that any financial penalty or public statement may have on financial markets or on the interests of consumers and the disciplinary record and general compliance history of the person concerned.
- 6.5. DEPP 6.4 sets out a number of factors to be taken into account when the FSA decides whether to impose a financial penalty or issue a public censure. They are not exhaustive but include deterrent effect, whether a person has made a profit or loss by his misconduct, the seriousness of the behaviour and the FSA's approach in similar previous cases.
- 6.6. DEPP 6.5 (as it applied during the relevant period) sets out some of the factors that may be taken into account when the FSA determines the level of a financial penalty that is appropriate and proportionate to the misconduct. They are not exhaustive but include deterrence, the nature, seriousness and impact of the misconduct, the extent to which the breach was deliberate or reckless, whether the person on whom the penalty is to be imposed is an individual, his status, position and responsibilities, financial resources and other circumstances, the amount of any benefit gained or loss avoided, the difficulty of detecting the breach, the disciplinary record and compliance history of the person and the action that the FSA has taken in relation to similar misconduct by other persons.

6.7. The FSA has had particular regard to the following circumstances of this case:

Aggravating features

- (1) Mr Alexander has 10 years' experience of working in the financial services industry and during the relevant period was an approved person, albeit that his role was a non-executive director of a company in liquidation. The FSA considers that his experience and approved person status make the breach more serious, despite the fact that Mr Alexander's conduct did not relate to the performance of his controlled function,
- (2) Mr Alexander's behaviour was deliberate and motivated by personal gain. It caused firms to make losses of £629,130 (including approximately £600,000 at one firm) which he received as profit.
- (3) The market abuse was carried on regularly over a period of 16 months.
- (4) by trading through accounts in the names of third parties Mr Alexander sought to conceal his behaviour from retail CfD and spread bet brokers

Mitigating features

- (1) There have been no previous findings of market misconduct against Mr Alexander.
- (2) Mr Alexander was not working in the financial services industry at the time.
- (3) Mr Alexander has admitted his market abuse.

6.8. Mr Alexander has stated to the FSA that he was not aware that his conduct amounted to market abuse at the time it was carried on. The FSA considers that in view of Mr Alexander's experience and his use of accounts in the names of third parties to conceal his behaviour, his behaviour was deliberate and he knew it was improper, whether or not he believed it amounted to market abuse.

6.9. Mr Alexander has also stated that his trading strategy was only possible because of the way in which the retail derivative brokers chose to price their products. The FSA does not consider that this mitigates the seriousness of Mr Alexander's conduct.

Prohibition Order

6.10. Section 56 of the Act provides that the FSA may prohibit an individual if it appears that he is not a fit and proper person to perform functions in relation to a specified regulated activity or all regulated activities.

6.11. In deciding whether to issue a prohibition order against Mr Alexander pursuant to section 56 of the Act, the FSA has had regard to its policies published in Chapter 9 of the Enforcement Guide ("EG 9").

6.12. The relevant matters set out in EG 9.9 for the FSA to consider in this case are:

- (1) The criteria for assessing the fitness and propriety of an individual to perform functions in relation to regulated activities (EG 9.9(2), particularly that relating to honesty, integrity and reputation);
- (2) Whether the individual has engaged in market abuse (EG 9.9(4));
- (3) The relevance and materiality of any matters indicating unfitness (EG 9.9(5));

- (4) The length of time since the occurrence of any matters indicating unfitness (EG 9.9(6)); and
 - (5) The severity of the risk which the individual poses to consumers and confidence in the financial system (EG 9.9(8)).
- 6.13. The FSA considers that the behaviour of Mr Alexander as set out above, demonstrates a lack of honesty and integrity. The FSA is therefore satisfied that Mr Alexander is not a fit and proper person to perform any function in relation to any regulated activity and it is appropriate that a Prohibition Order be made against him.

Permanent Injunction

- 6.14. Due to the ongoing and regular nature of Mr Alexander's behaviour the FSA deemed it appropriate to seek an interim restraining and freezing injunction against him under section 381 of the Act. This injunction was made by the High Court on 21 May 2010, freezing the assets of Mr Alexander and preventing him from trading in the manner described in this notice.
- 6.15. The restraining injunction has now been made permanent by agreement between the FSA and Mr Alexander. The FSA is satisfied that having obtained the injunction to immediately halt Mr Alexander's trading scheme it is appropriate to continue it as by doing so Mr Alexander will be prohibited from carrying on his abusive behaviour.

Restitution

- 6.16. Under section 383 of the Act the court has the power, on the FSA's application, to require restitution to be paid to the FSA and distributed by it to parties who have suffered loss as a result of market abuse. In this case, the market abuse carried on by Mr Alexander caused retail derivative brokers to suffer quantifiable loss. As a result, Mr Alexander has agreed to make restitution to firms affected by his conduct. The total sum of this restitution is £322,818.

7. CONCLUSIONS

Financial Penalty

- 7.1. The FSA considers that Mr Alexander's behavior was a deliberate scheme carried on by an experienced trader and former private client stockbroker for a sustained period of time with the aim of personal enrichment. The FSA therefore considers this to be a serious case of market abuse.
- 7.2. Taking into account all the relevant factors the FSA considers that a penalty of £700,000 is appropriate.

Prohibition Order

- 7.3. Mr Alexander's behaviour demonstrates a lack of honesty and integrity. The FSA is therefore satisfied that Mr Alexander is not a fit and proper person to perform any function in relation to any regulated activity and in order to meet the FSA's statutory objectives it is appropriate that a Prohibition Order be made against him. The FSA is minded to revoke the prohibition order on Mr Alexander's application at any time after five years from the date of the Final Notice, in the absence of new evidence that he is not fit and proper.

Permanent Injunction

- 7.4. Mr Alexander agreed to the making of a permanent injunction prohibiting him from carrying out the behaviour that is the subject of this notice. If he breaches this injunction Mr Alexander may be found in contempt of court and may be imprisoned, fined or have his assets seized. Any other person who knows of this order and does anything which helps or permits Mr Alexander to breach its terms may also be held in contempt of court and subject to the same sanctions. A copy of the injunction can be found at Annex 2.

Restitution

- 7.5. Mr Alexander's behaviour caused retail derivative brokers to suffer loss. As his behaviour constituted market abuse Mr Alexander is required to make restitution to the affected firms for the amount of their loss.

8. DECISION MAKERS

- 8.1. 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.

9. IMPORTANT

- 9.1. This Final Notice is given to Mr Alexander in accordance with section 390 of the Act.

Publicity

- 9.2. 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.
- 9.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA Contacts

- 9.4. For more information concerning this matter generally, you should contact Celyn Armstrong (direct line: 020 7066 2818) or Simon Bowker (direct line: 020 7066 5308) at the FSA.

Jamie Symington

Head of Department

FSA Enforcement and Financial Crime Division

ANNEX 1

The Code of Market Conduct

1.1 Section 119 of the Act provides as follows:

- (1) *The Authority must prepare and issue a code containing such provisions as the Authority considers will give appropriate guidance to those determining whether or not behaviour amounts to market abuse.*
- (2) *The code may among other things specify—*
 - (a) *descriptions of behaviour that, in the opinion of the Authority, amount to market abuse;*
 - (b) *descriptions of behaviour that, in the opinion of the Authority, do not amount to market abuse;*
 - (c) *factors that, in the opinion of the Authority, are to be taken into account in determining whether or not behaviour amounts to market abuse;*
 - (d) *descriptions of behaviour that are accepted market practices in relation to one or more specified markets;*
 - (e) *descriptions of behaviour that are not accepted market practices in relation to one or more specified markets.*
- (3) *The code may make different provision in relation to persons, cases or circumstances of different descriptions.*

1.2 The FSA has issued the Code of Market Conduct (“The Code”) under section 119 and it forms the first section of the Market Conduct Sourcebook (MAR 1) in the FSA’s Handbook of Rules and Guidance. References in this notice to provisions of The Code (or MAR 1) are to the provisions in force at the time of the behaviour in this notice.

1.3 Under section 122 of the Act:

- (1) *If a person behaves in a way which is described (in the code in force under section 119 at the time of the behaviour) as behaviour that, in the Authority's opinion, does not amount to market abuse that behaviour of his is to be taken, for the purposes of this Act, as not amounting to market abuse.*
- (2) *Otherwise, the code in force under section 119 at the time when particular behaviour occurs may be relied on so far as it indicates whether or not that behaviour should be taken to amount to market abuse.*

1.4 In accordance with section 122(2) if the Act, provisions identified by the letter ‘E’ may be relied upon so far as they describe behaviour which, in the opinion of the FSA, amounts to market abuse or in accordance with section 119(2)(c) of the Act, describe factors that, in the opinion of the FSA, are to be taken into account in determining whether or not behaviour amounts to market abuse.

MAR guidance relating to section 118(5)

1.5 Behaviour which consists of effecting transactions or orders to trade which give or are likely to give a false or misleading impression as to the price of one or more qualifying investments and/or secure the price of one or more such investments at an abnormal or artificial level is market abuse under sections 118(5)(a) and (b) respectively. The relevant parts of the Code are contained in MAR1.6.

1.6 Paragraph 1.6.2E of the Code sets out those behaviours which are market abuse of a type involving false or misleading impressions, including:

“(1) buying or selling qualifying investments at the close of the market with the effect of misleading investors who act on the basis of closing prices, other than for legitimate reasons;”

1.7 Paragraph 1.6.5 of the Code sets out factors that are to be taken into account when considering whether behaviour is for legitimate reasons. The Code sets out factors that indicate behaviour is not for legitimate reasons, including:

“(2) if the person has another, illegitimate, reason behind the transactions or order to trade;

(3) if the transaction was executed in a particular way with the purpose of creating a false or misleading impression.”

1.8 Paragraph 1.6.9E of the Code sets out factors that are to be taken into account in determining whether a person’s behaviour has given a false or misleading impression, including:

(5) the extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reverse;

1.9 Paragraph 1.6.10E of the Code sets out factors that are to be taken into account in determining whether a person’s behaviour has secured a price at an abnormal or artificial level, including:

“(1) the extent to which the person had a direct or indirect interest in the price or value of the qualifying investment or related investment...; ...

(3) whether a person has successively and consistently increased or decreased his bid, offer or the price he has paid for a qualifying investment or related investment.”

ANNEX 2

**INJUNCTION PURSUANT TO SECTION 381 OF THE
THE FINANCIAL SERVICES AND MARKETS ACT 2000**

Claim No. HC10C01696

IN THE HIGH COURT OF JUSTICE

IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

CHANCERY DIVISION

The Honourable Mr Justice Newey

Dated 9 June 2011

BETWEEN

**THE FINANCIAL SERVICES AUTHORITY
(a company limited by guarantee)**

Claimant

and

- (1) BARNETT MICHAEL ALEXANDER**
- (2) ANGELA ANNE REILLY**
- (3) GERALD REILLY**
- (4) GLENN JOHN McGARRY**

Defendants

Barnett Michael Alexander of 13 Turnberry Road Glasgow G11 5AG

PENAL NOTICE

**IF YOU BARNETT MICHAEL ALEXANDER DISOBEY THIS ORDER YOU MAY
BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED,
FINED OR HAVE YOUR ASSETS SEIZED**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING
WHICH HELPS OR PERMITS BARNETT MICHAEL ALEXANDER TO BREACH
THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF
COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED**

UPON HEARING Counsel for the Claimant and for the Defendants

IT IS ORDERED BY CONSENT that:

INJUNCTION

1. This is a Restraining Injunction made against Barnett Michael Alexander (“the First Defendant”), under section 381 of the Financial Services and Markets Act 2000. It was made on 9 June 2011 by Mr Justice Newey on the application of the Financial Services Authority (“the Claimant”) and by consent. The Judge accepted the undertakings set out in Schedule A at the end of this Order.
2. The First Defendant has a right to apply to the court to vary or discharge the order — see paragraph 9 below.
3. Upon service of this Order on the First Defendant the Order of the Honourable Mr Justice Mann made on 28 May 2010 against the First and Second Defendants shall cease to have effect save as stated below.
4. The First Defendant must not, whether by himself or his servants or agents, in the circumstances indicated in section 118A of the Financial Services and Markets Act 2000 (“the Act”), effect transactions or orders to trade in relation to qualifying investments admitted to trading on a prescribed market (within the meaning of section 118(1)(a) of the Act) or in respect of which a request for admission of trading on such a market has been made at a time when either he, or a person under his influence or control, or a person for whom he acts as agent, is intending, within one hour (ignoring times when that market is not open for trading), to enter into a transaction in relation to any investment the price or value of which depends on the price or value of that security.

OTHER ORDERS

5. The First Defendant shall pay to the Claimant within 14 days of the date hereof a penalty in the sum of £700,000 pursuant to section 129 of the Financial Services and Markets Act 2000. As from the date hereof the restraint imposed by the Order of the Honourable Mr Justice Mann made on 28 May 2010 over the account numbered 3128881742 held with the Birmingham Midshires division of Bank of Scotland plc

shall be lifted to allow this payment and the payment in the paragraph immediately following. Following the making of such payments the said restraint shall be lifted generally.

6. The First Defendant shall pay to the Claimant within 14 days of the date hereof the sum of £322,818 pursuant to section 383(4) of the Financial Services and Markets Act 2000 which the Claimant shall distribute as follows:
 - (1) £301,005 to City Index Limited;
 - (2) £4,609 to London Capital Group Holdings plc; and
 - (3) £17,204 to Monecor (London) Limited.
7. The claim against the Second, Third and Fourth Defendants is discontinued.
8. There be no order as to the costs of the claim.

VARIATION OR DISCHARGE OF THIS ORDER

9. Anyone served with or notified of this order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the Claimant's legal representatives in writing and give at least 7 clear days' notice. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Claimant's legal representatives in advance.

INTERPRETATION OF THIS ORDER

10. A Defendant who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
11. A Defendant which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

PARTIES OTHER THAN THE CLAIMANT AND THE FIRST DEFENDANT

Effect of this order

12. It is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized.

COMMUNICATIONS WITH THE COURT

All communications to the court about this order should be sent to Room TM 5.05, Royal Courts of Justice, Strand, London WC2A 2LL quoting the case number. The telephone number is 020 7947 6754.

The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday.

SCHEDULE A

UNDERTAKINGS GIVEN TO THE COURT BY THE CLAIMANT

The Claimant does not give any undertaking in damages to the Defendant.

- (1) Anyone notified of this order will be given a copy of it by the Claimant's legal representatives.
- (2) The Claimant will pay the reasonable costs of anyone other than the Defendant which have been incurred as a result of this order including the costs of finding out whether the person holds any of the Respondent's assets. .
- (3) If and insofar as this order ceases to have effect the Claimant will immediately take all reasonable steps to inform in writing anyone to whom it has given notice of this order, or who it has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.

NAME AND ADDRESS OF CLAIMANT'S LEGAL REPRESENTATIVES

The Claimant's legal representatives are-

The Financial Services Authority

25 The North Colonnade
Canary Wharf
London E14 5HS

Tel: 020 7066 1000
Fax: 020 7066 1099

Attention: Jon Gerty, Enforcement Division
Email: jon.gerty@fsa.gov.uk