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## FINAL NOTICE

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To: **Colin Mark Gamwells**

Of: **c/o Denton Wilde Sapte  
5 Chancery Lane  
Clifford's Inn  
London  
EC4A 1BU**

Date: **27 February 2004**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA) gives you final notice about its decision to make a prohibition order.**

### **PROHIBITION ORDER**

The FSA gave you a Decision Notice on 17 October 2003 which notified you that pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to make a prohibition order prohibiting you from performing the functions set out at (a) below (as defined in the FSA's Supervision Manual at SUP 10.4) in relation to the regulated activities set out at (b) below carried on by authorised persons generally:

(a) Functions

- Director function;
- Compliance oversight function;
- Significant management (designated investment business) function;
- Investment adviser function;
- Customer trading function.

(b) Activities

- dealing in investments as principal;
- dealing in investments as agent;
- arranging deals in investments;
- advising on investments.

You have not referred the matter to the Financial Services and Markets Tribunal within 28 days of the date on which the Decision Notice was issued to you. Accordingly, for the reasons set out below, the FSA makes a prohibition order in the terms set out above.

## **REASONS FOR THE PROHIBITION ORDER**

### **Introduction**

1. The prohibition order is made by reason of the conduct of Colin Mark Gamwells ("Gamwells") in 1996 and 1997 in his capacity as Director and Head of Dealing of Brandeis (Brokers) Limited ("BBL"). In particular:
  - 1.1 during 1996 and 1997 BBL deliberately mispriced the Black Customers (as hereafter defined) in respect of their copper orders on frequent occasions;
  - 1.2 further on a number of occasions in 1996 and 1997 BBL deliberately misused confidential information as to the Black Customers' intentions and orders;
  - 1.3 BBL failed to ensure fair treatment to the Black Customers;
  - 1.4 BBL failed to organise and control its internal affairs in a responsible manner.
2. As Head of Dealing, Gamwells had responsibility for ensuring that BBL's trading activities with and for customers were conducted in compliance with regulatory requirements. Gamwells failed fundamentally to discharge this responsibility. Further Gamwells was himself involved in the deliberate mispricing of the Black Customers and the deliberate misuse of confidential information in relation to the Black Customers' intentions and orders.

### **Relevant Statutory Provisions**

3. The FSA is authorised by section 56 of the Act to exercise the power to make a prohibition order if it appears to the FSA that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.
4. The FSA has in mind, when exercising its powers, section 2(2) of the Act which sets out the FSA's regulatory objectives, namely:
  - 4.1 the market confidence objective: that is, maintaining confidence in the financial system;

- 4.2 the public awareness objective: that is, promoting public understanding of the financial system;
  - 4.3 the protection of consumers objective: that is, securing the appropriate degree of protection for consumers;
  - 4.4 the reduction of financial crime objective.
5. The procedure to be adopted in relation to prohibition orders is set out at sections 57 and 58 of the Act.

### **Relevant Guidance**

6. In deciding to make this prohibition order, the FSA has had regard to guidance published in the FSA Handbook, in particular in the Enforcement Manual at:
- 6.1 ENF 8.1.2. The exercise of the power to make a prohibition order assists the FSA to meet its regulatory objectives, including the market confidence objective. The FSA considers that Gamwells presents such a risk to confidence in the market generally that it is necessary for the FSA to exercise its power to make a prohibition order in the terms proposed.
  - 6.2 ENF 8.6.1A. Where the individual is not an approved person, prohibition may be the only appropriate action available. In these cases, the FSA will consider the severity of the risk posed by the individual. The FSA considers that, as Gamwells is not an approved person and it does not have the option of withdrawing approval or exercising its disciplinary powers in relation to him, a prohibition order is the only appropriate action available. The FSA further considers that this is a most serious case of lack of fitness and propriety such that Gamwells presents such a risk to confidence in the market generally that it is necessary for the FSA to exercise its power to make a prohibition order in the terms proposed.
  - 6.3 ENF 8.6.2. The FSA considers that:
    - 6.3.1 Gamwells is not fit and proper to perform functions in relation to regulated activities. In particular he does not satisfy the criterion of honesty, integrity and reputation. He has demonstrated a lack of openness and honesty in dealing with market participants and regulators. He has demonstrated a lack of ability and willingness to comply with regulatory, legal and professional standards and ethical standards. In addition he does not satisfy the criterion of competence and capability. He has demonstrated fundamental failings in his performance of functions in relation to regulated activities.
    - 6.3.2 The length of time that has passed since events in 1996 and 1997 is not sufficient to render the making of a prohibition order inappropriate. The conduct in question demonstrates a fundamental lack of fitness and propriety. Gamwells' subsequent conduct has not demonstrated any improvement, in that during the intervening

period Gamwells has persistently demonstrated a lack of openness and honesty in his dealings with regulators.

6.3.3 Gamwells poses a severe risk to confidence in the financial system.

7. In addition the FSA has had regard to the following:

7.1 SUP 10: the FSA has considered the nature of the functions for which Gamwells had received approval in the past and the standard of conduct to be expected of an approved person. The FSA considers that Gamwells has failed fundamentally to satisfy this standard.

7.2 FIT 2: the FSA has considered its guidance on the application of the Fit and Proper test for Approved Persons. The FSA considers that Gamwells does not satisfy the criteria of (a) honesty, integrity and reputation and (b) competence and capability.

### **Facts and Matters Relied On**

8. The FSA considers that Gamwells is not a fit and proper person to perform the functions set out at 'Action (a)' in relation to the activities set out at 'Action (b)' on the basis of the facts and matters set out at paragraphs 9 to 36.

#### Background

9. During 1996 and 1997 Gamwells was employed by BBL as a Director and Head of Dealing. As Head of Dealing, Gamwells had responsibility for BBL's trading activities with and for customers.

10. During this time Herbert Black and his associated companies American Iron and Metal Co Inc ("AIM") and Lito Trade Inc ("Lito") were each non-private customers of BBL. Black, AIM and Lito are hereafter severally and collectively referred to as "the Black Customers".

11. At the material time the Black Customers were very active in trading copper contracts on the London Metal Exchange ("the LME"). BBL was a Ring Dealing Member of the LME. The Black Customers tended to trade in large volume for speculative purposes and were known by other market participants (including BBL and its employees) to do so. They were BBL's largest customer during 1996 and 1997 and its largest source of commission revenue.

12. At the material time BBL ran a proprietary trading book ("the copper book") as well as executing copper orders for customers. Both the copper book and the execution of customer orders were the responsibility of the BBL copper dealers. In addition, three other BBL proprietary trading books traded copper: the options book, the averaging/backpricing book and the arbitrage book. The dealers responsible for these three proprietary books would also give orders to the copper dealer.

13. BBL earned income from customer orders, including the orders of the Black Customers, through commission charged at pre-agreed levels. The customer would be charged the price paid by BBL and would pay an additional commission. It was an express term of the contract between BBL and the Black Customers that the

Black Customers would be charged a specified commission.

14. BBL's copper dealer was responsible for calculating the prices to be reported to customers.
15. Much of the trading in LME copper contracts effected by BBL on behalf of the Black Customers had the following characteristics:
  - 15.1 while BBL carried out such transactions as a principal in form, it was a riskless principal (save for credit and operational risk involved in dealing with the Black Customers and the counterparty). The risk of going short or long attached to the Black Customers;
  - 15.2 BBL received a commission for effecting the transactions;
  - 15.3 the Black Customers gave BBL a considerable amount of discretion;
  - 15.4 BBL had assured the Black Customers that it would always attempt to transact business with them on the best terms available at the relevant times (although BBL had, in its terms of business, also notified the Black Customers of the inherent conflict arising from its proprietary dealings and had excluded best execution).
16. In such circumstances, BBL's relationship with the Black Customers was in substance that of an agent, or that of a fiduciary, owing the following obligations:
  - 16.1 to act in the best interests of the Black Customers, putting their interests ahead of its own;
  - 16.2 to be truthful, open and fair with the Black Customers;
  - 16.3 to attempt to procure for the Black Customers the best terms available at the relevant time;
  - 16.4 where the Black Customers entrusted confidential information to BBL, to deal with that information for the purposes authorised by the Black Customers and not otherwise;
  - 16.5 to charge the Black Customers prices which reflected the prices at which BBL had filled the order plus or minus the agreed commission;
  - 16.6 where BBL received an order from the Black Customers, not to take advantage of that order so as to obtain an undisclosed benefit for itself or for a third party.
17. The FSA considers that the existence and scope of these obligations is clear and was clear at the material time. BBL failed to perform these obligations in relation to the orders placed by the Black Customers in the manner set out below. As Head of Dealing, Gamwells had a responsibility for BBL's proper performance of these obligations. Gamwells failed fundamentally to discharge this responsibility. Gamwells also himself owed the obligations set out at paragraph 16. Gamwells deliberately breached each of these obligations in relation to the orders placed by the

Black Customers in the manner set out below.

Mispricing

18. It was an express term of the contract between BBL and the Black Customers that the Black Customers would be charged a specified commission. Accordingly the prices charged to the Black Customers in respect of orders placed by the Black Customers should have reflected the prices at which their orders had been executed. However on frequent occasions in 1996 and 1997:
  - 18.1 BBL charged the Black Customers prices which, in relation to buy orders, did not reflect and were higher than the prices at which their copper orders had been executed and which, in relation to sell orders, did not reflect and were lower than the prices at which their copper orders had been executed (each of which amounted to overcharging the Black Customers);
  - 18.2 BBL did not deal with the orders of the Black Customers fairly and in due turn;
  - 18.3 BBL did not allocate orders fairly (together referred to as mispricing).
19. BBL deliberately mispriced the Black Customers in respect of their copper orders on frequent occasions in 1996 and 1997. In particular, BBL mispriced the orders of the Black Customers on 29 dates in 1996 and 1997 in the total amount of about \$1.3 million.
20. Further on a number of occasions in 1996 and 1997 BBL took advantage of confidential information as to the Black Customers' intentions and orders. In particular:
  - 20.1 BBL traded ahead of the orders of the Black Customers and subsequently allocated tonnage to the Black Customers at prices higher or lower than the prices at which BBL had itself traded;
  - 20.2 BBL allocated tonnage to the Black Customers from the copper book at prices higher or lower than BBL had transacted the executions in the market.
21. BBL profited substantially from the deliberate mispricing of the Black Customers' orders, at the Black Customers' expense. This was misconduct of the most serious order. As Head of Dealing, Gamwells had responsibility for BBL's mispricing.

Misuse of confidential information

22. Information as to the orders and intentions of the Black Customers was confidential and was provided to BBL and its employees on a confidential basis. BBL and its employees were not authorised by the Black Customers to disclose such information either internally or externally, save as was necessary in order to facilitate the provision of the advice or the execution of the order in question and save as required by any legal or any regulatory requirement.
23. On occasions in 1996 and 1997, BBL misused confidential information relating to the

intentions and orders of the Black Customers as follows:

- 23.1 through disclosure of the Black Customers' intentions and orders to BBL proprietary traders;
  - 23.2 through disclosure of the Black Customers' intentions and orders to third parties;
  - 23.3 through trading ahead of the Black Customers for the benefit of the copper book or for the benefit of other BBL proprietary trading books or for the benefit of third parties;
  - 23.4 through mispricing the Black Customers' orders.
- 24. In particular BBL misused confidential information relating to the intentions and orders of the Black Customers on 29 dates in 1996 and 1997.
  - 25. In deliberately misusing confidential information relating to the intentions and orders of the Black Customers, BBL acted to the actual or potential benefit of BBL and to the actual or potential detriment of the Black Customers. BBL profited substantially from its misuse of confidential information relating to the intentions and orders of the Black Customers. This was misconduct of the most serious order. As Head of Dealing, Gamwells had responsibility for BBL's misuse of confidential information.
  - 26. If or to the extent that the mispricing and misuse of confidential information referred to at paragraphs 18 to 25 were not deliberate, they arose from a failure to act with due skill, care and diligence, which failure was of the most serious order.

#### Involvement of Gamwells in mispricing and misuse of confidential information

- 27. Gamwells was responsible for the conduct of BBL's dealing staff and for the proper execution of customer orders and the proper use of confidential information. Gamwells sat next to the dealers and was closely aware of their activities in the course of each trading day. Gamwells was aware of and permitted BBL's deliberate mispricing of the Black Customers' orders. He was also aware of and permitted BBL's deliberate misuse of confidential information relating to the intentions and orders of the Black Customers. Gamwells himself participated in the deliberate mispricing of the Black Customers' orders. He also participated in the deliberate misuse of confidential information relating to the intentions and orders of the Black Customers by providing confidential information relating to those intentions and orders to other BBL proprietary traders and by trading ahead of the Black Customers. This was misconduct of the most serious order.

#### Conflicts of interest

- 28. As Head of Dealing, Gamwells was required to ensure that BBL gave fair treatment to the Black Customers and did not unfairly place BBL's interests above those of the Black Customers in relation to the performance of its obligations. However, Gamwells:
  - 28.1 failed to take adequate steps to avoid any conflict of interest arising;

- 28.2 failed to take adequate steps to ensure fair treatment to the Black Customers;  
and
  - 28.3 unfairly placed BBL's interests above those of the Black Customers.
29. These failings were of the most serious order.

Internal controls

- 30. Gamwells did not cause BBL to have a procedure to enable independent verification that the price charged to the customer reflected the prices of the deals comprised in that allocation. Complete reliance was placed on the dealer in this regard.
- 31. No guidance on allocation or mispricing was given in the various compliance manuals in place at BBL in 1996 and 1997. No specific guidance and compliance training was provided to BBL employees on these issues at those times.
- 32. Gamwells did not prohibit, discourage or monitor the sharing of confidential information and did not operate a system of Chinese walls in order to manage the inherent conflict of interest with which the BBL copper dealer was faced in filling both customer and proprietary orders. All the dealers and account executives sat together in the same trading room in BBL's offices. There was an unrestricted passage of information between certain BBL employees as to the Black Customer orders. In addition, customer orders were frequently called across the trading room to a central order desk during Ring trading times.
- 33. Only limited guidance on confidentiality was given in BBL's internal manuals and other documents in place at BBL in 1996 and 1997. BBL's internal manuals did not, during 1996 and 1997, provide any specific guidance on, and no additional guidance or training was provided to BBL employees in relation to, the need to keep matters such as client orders confidential from fellow dealers, account executives and other employees in particular circumstances.
- 34. Without effective Chinese walls there were obvious conflicts of interest between BBL, which ran proprietary trading books as well as executing orders for customers, and the Black Customers. Notwithstanding the obvious nature of these conflicts and notwithstanding his responsibility as Head of Dealing:
  - 34.1 Gamwells provided no specific training or guidance on the management of such conflicts of interest, particularly in relation to the dual capacity nature of the market;
  - 34.2 Gamwells did not cause any specific procedures to manage such conflicts of interest to be implemented;
  - 34.3 Gamwells did not cause any compliance monitoring to be undertaken to ascertain the manner in which conflicts of interest were being managed;
  - 34.4 Gamwells did not ensure that an adequate audit trail existed which permitted the independent verification that customer executions reflected the prices traded in the market place.



35. The internal organisation of BBL did not satisfy SFA's requirements. In particular:
  - 35.1 BBL failed to organise and control its internal affairs in a responsible manner;
  - 35.2 BBL failed to have adequate arrangements to ensure that its staff were properly supervised;
  - 35.3 BBL failed to implement well-defined compliance procedures, including appropriate Chinese walls; and
  - 35.4 BBL failed to ensure that it maintained adequate records.
36. As Head of Dealing, Gamwells had responsibility for ensuring that BBL's trading activities with and for customers were conducted in compliance with SFA's Rules. Gamwells failed fundamentally to discharge this responsibility. These failings were of the most serious order.

#### Fitness and propriety

37. In the light of the facts and matters set out at paragraphs 1 to 36, it appears to the FSA that Gamwells is not a fit and proper person to perform the functions set out at 37.1 in relation to the regulated activities set out at 37.2 carried on by authorised persons generally:
  - 37.1 Director function, compliance oversight function, significant management (designated investment business) function, investment adviser function and customer trading function;
  - 37.2 Dealing in investments as principal, dealing in investments as agent, arranging deals in investments and advising in investments.
38. Gamwells has failed to satisfy the criterion of honesty, integrity and reputation. In particular, Gamwells, who was BBL's Director of Dealing with specific responsibility for these matters, was aware of and permitted BBL's deliberate mispricing and misuse of confidential information and himself participated in mispricing and misuse of confidential information. Gamwells provided confidential information to BBL proprietary traders and himself traded ahead of the Black Customers. Gamwells unfairly placed BBL's interests above those of the Black Customers. Accordingly Gamwells has demonstrated serious and fundamental failings in his performance of his functions and has demonstrated that he is not fit and proper to perform such functions in relation to regulated activities carried on by authorised persons generally.
39. If or to the extent that these failings were not deliberate, they demonstrate a fundamental lack of due skill, care and diligence such that Gamwells fails to satisfy the criterion of competence and capability.
40. Further Gamwells has failed to satisfy the criterion of competence and capability in relation to the discharge of his managerial obligations. As Head of Dealing Gamwells had responsibility for ensuring that BBL's trading activities were conducted in compliance with regulatory requirements. Gamwells failed fundamentally to discharge that responsibility. In particular he failed to ensure fair treatment to customers by BBL and he failed to have in place satisfactory systems of

internal control. Accordingly Gamwells has demonstrated serious and fundamental failings in his performance of his managerial functions and has demonstrated that he is not fit and proper to perform such functions in relation to regulated activities carried on by authorised persons generally.

41. Further Gamwells has failed to satisfy the criterion of honesty, integrity and reputation in that:
  - 41.1 Gamwells has demonstrated a lack of openness and honesty in dealing with the Black Customers and in his subsequent explanations provided to SFA;
  - 41.2 Gamwells has demonstrated a lack of ability and willingness to comply with regulatory, legal, professional and ethical standards by:
    - 41.2.1 his failure to ensure fair treatment to the Black Customers;
    - 41.2.2 his failure to have in place satisfactory systems of internal control;
    - 41.2.3 his deliberate participation in mispricing and misuse of confidential information;
    - 41.2.4 his lack of openness and honesty in his subsequent explanations provided to SFA.
42. The FSA considers that by his conduct in 1996 and 1997 Gamwells has demonstrated a fundamental lack of fitness and propriety. Gamwells' subsequent conduct has not demonstrated any improvement, whether by the acknowledgement of these serious failings or otherwise. Rather, Gamwells has demonstrated a continuing lack of openness and honesty in his dealings with regulators.

#### Conclusion

43. Accordingly it appears to the FSA that Gamwells is not fit and proper to perform the functions set out at paragraph 37.1 in relation to the regulated activities set out at paragraph 37.2 carried on by authorised persons generally. The FSA considers that it is necessary to make this prohibition order as this is a most serious case of lack of fitness and propriety such that Gamwells represents a risk to confidence in the market generally.

### **IMPORTANT**

This Final Notice is given to you in accordance with section 390 of the Act.

### **Publicity**

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.

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

**FSA contact**

For more information concerning this matter generally, you should contact Anila Bedi (direct line: 020 7066 1304/fax: 020 7066 9721) of the Enforcement Division of the FSA.

Martyn Hopper  
FSA Enforcement Division