Financial Services Authority

FINAL NOTICE

To:	**Caspar Jonathan William Agnew**
Address:	**J.P. Morgan Securities Limited** **JPMorgan Chase Bank, N.A.** **125 London Wall** **London** **EC2Y 5AJ**
Individual Reference No:	**CJA01049**
Date:	**3 October 2011**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives Caspar Jonathan William Agnew final notice about a requirement to pay a financial penalty of £65,000:

1. ACTION

1.1. The FSA gave Mr Agnew a Decision Notice on 19 August 2011, which notified him that for the reasons given below and pursuant to section 66(1) of the Financial Services and Markets Act 2000, the FSA had decided to impose on Mr Agnew a financial penalty of £65,000 on the grounds that Mr Agnew has failed to exercise due skill, care and diligence in breach of Principle 2 of the FSA's Statement of Principle and Code of Practice for Approved Persons.

1.2. Mr Agnew has notified the FSA that he will not refer the matter to the Upper Tribunal (Tax and Chancery Division). Accordingly, the FSA hereby imposes on Mr Agnew a financial penalty of £65,000.

2. SUMMARY OF REASONS FOR THE ACTION

2.1. This notice is issued to Mr Agnew as a result of his conduct on 15 June 2009 and immediately thereafter. At that time he was approved to perform the Customer Function (CF 30), a controlled function, at an investment bank, JP Morgan Cazenove Limited ("the Bank"). This role permitted him to execute orders on behalf of customers in relation to the sale and purchase of investments. As an approved person, he was required to report any suspicious transactions to the Compliance Department of the Bank in order to facilitate its filing of Suspicious Transaction Reports ("STRs") with the FSA.

2.2. On 15 June 2009 and immediately thereafter Mr Agnew breached Statement of Principle 2 of the FSA's Statements of Principle and Code of Practice for Approved Persons in that he failed to act with due skill, care and diligence. Specifically, in respect of certain transactions carried out by Mr Agnew on behalf of a client:

(1) he failed to recognise that there were reasonable grounds to suspect that the transactions constituted insider dealing or market abuse; and

(2) as a consequence, he failed to alert the Compliance Department of the Bank to the possibility that the transactions were suspicious.

2.3. The impact of Mr Agnew's failings was that the Bank did not consider whether to report the transactions to the FSA through an STR.

2.4. The FSA regards Mr Agnew's misconduct as serious in view of the following factors:

(1) at the time of the misconduct he was a highly experienced market professional in a senior position at the Bank;

(2) he had received extensive regulatory and compliance training and significant compliance resources were at his disposal; and

(3) the unscheduled announcement of a significant corporate event had a clear, immediate and substantial detrimental effect on the price of the shares in which he had traded which, when considered in light of the relevant circumstances of the trading, clearly gave reasonable grounds to suspect that the transactions constituted market abuse.

2.5. The FSA therefore considers that Mr Agnew's conduct merits the imposition of a financial penalty of £65,000.

3. DEFINITIONS

3.1. The definitions below are used in this Final Notice:

"the Act" means the Financial Services and Markets Act 2000

"the FSA" means the Financial Services Authority

"the Bank" means JP Morgan Cazenove Limited

"STR" means Suspicious Transaction Report

"APER" means the Statements of Principle and Code of Practice for Approved Persons set out in the FSA Handbook

4. RELEVANT STATUTORY PROVISIONS

4.1. The FSA's statutory objectives, set out in Section 2(2) of FSMA, include market confidence, the protection of consumers and the reduction of financial crime.

4.2. Section 66 of FSMA provides that:

> *(1) The FSA may take action against a person if:*
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> *(a) it appears to the FSA that he is guilty of misconduct; and*
>
> *(b) the FSA is satisfied that it is appropriate in all the circumstances to take action against him.*
>
> *(2) A person is guilty of misconduct if, while an approved person:*
>
> *(a) he has failed to comply with a statement of principle issued under section 64 [of FSMA]…*
>
> *(3) If the FSA is entitled to take action under this section against a person, it may*
>
> *(a) impose a penalty on him of such amount as it considers appropriate; or*
>
> *(b) publish a statement of his misconduct.*

4.3. The Statements of Principle issued under Section 64 of FSMA are set out in APER, which is found in the High Level Standards section of the FSA's Handbook.

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

4.5. APER 4.2.2E and APER 4.2.3E state that "*failing to inform…his firm…of material information in circumstances where he was aware, or ought to have been aware, of such information, and of the fact that he should provide it…*" is conduct which, in the opinion of the FSA, does not comply with Statement of Principle 2.

The Suspicious Transaction Reporting Regime and associated guidance

4.6. Firms are required to report suspicious transactions where there are reasonable grounds for suspecting that the transaction constitutes market abuse. Suspicious Transaction Reports are one of the FSA's primary intelligence assets which allow the FSA to benefit from market participants' proximity to the market and assist the FSA in identifying possible market abuse.

4.7. The requirement to report suspicious trades is set out in SUP 15.10.2R:

"A firm which arranges or executes a transaction with or for a client in a qualifying investment admitted to trading on a prescribed market and which has reasonable grounds to suspect that the transaction might constitute market abuse must notify the FSA without delay."

4.8. SUP 15.10.4G (2) states:

"*Assistance in identifying the elements constituting market abuse may be derived from the Code of Market Conduct (MAR 1), and some example indications of market abuse are set out in SUP 15 Ann 5 G. A fuller set of example indications is published by the Committee of European Securities Regulators (CESR)."*

4.9. SUP 15 Annex 5 G (referred to in SUP 15.10.4G (2) above) includes the following example indication under the heading 'Possible Signals of Insider Dealing':

"*5. There is unusual trading in the shares of a company before the announcement of price sensitive information relating to the company.*"

4.10. The example indications published by CESR, referred to in SUP 15.10.4G (2) above (see CESR 04-505b: Market Abuse Directive Level 3 – First Set of CESR guidance and information on the common operation of the Directive) include the following indications of possible suspicious transactions:

"5.9(d) Significant trading by major shareholders or other insiders before the announcement of important corporate events."

"5.9(e) Unusual trading in the shares of a company before the announcement of price sensitive information relating to the company; transactions resulting in sudden and unusual changes in the volume of orders and shares prices before public announcements regarding the security in question."

Enforcement policy

4.11. The FSA's policy in relation to the imposition of financial penalties is set out in Chapter 6 of the part of the FSA Handbook entitled Decision Procedure and Penalties Manual ("DEPP"). DEPP 6.2.1G states that the FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty and sets out a non–exhaustive list of factors that may be relevant for this purpose.

4.12. In determining the appropriate level of financial penalty, the FSA has had regard to DEPP 6.5 as it stood on 15 June 2009 and immediately thereafter.

5. FACTS AND MATTERS

Background

5.1. Mr Agnew has been employed in the financial services industry for over 20 years and he has acted as a sales trader for investment banks since 1996. At the relevant date, Mr Agnew held the position of Director and had received extensive regulatory and compliance training throughout his career. Mr Agnew is, and was on 15 June 2009,

approved by the FSA and has held the CF30 (Customer) function since October 2007. Prior to this he held the CF21 (Investment adviser) function from December 2001.

5.2. Issuer X is a UK listed company with shares trading on the London Stock Exchange. Client Y is a hedge fund. Client Y was a major shareholder of Issuer X's shares at that time. Client Y held positions in both the shares of Issuer X and contracts for differences referenced to the shares of Issuer X.

5.3. This notice concerns Mr Agnew's conduct on 15 June 2009 and immediately thereafter in relation to the sale of Issuer X's shares on behalf of Client Y.

Events from 9 - 12 June 2009

5.4. On 9 June Client Y contacted Mr Agnew and instructed him to begin selling its positions in Issuer X in significant amounts.

5.5. From Tuesday 9 June to Friday 12 June, Mr Agnew sold a total of 11,456,000 of Issuer X's shares on behalf of Client Y (with 11,356,000 being sold between 9 and 11 June). This represented approximately 32% of Client Y's holding and constituted over 4% of Issuer X's issued share capital.

15 June 2009 – announcement

5.6. At 7.44a.m. on Monday 15 June, Issuer X made an unscheduled announcement (a non-routine announcement which had not been anticipated by Issuer X's published schedule of corporate events). It stated its intention to raise a substantial and specified amount by means of a Firm Placing and Open Offer of new ordinary shares and its intention to make a tender offer to holders of certain bonds.

5.7. After the announcement, the price of Issuer X shares declined in the period from the close of the market on 12 June to the close of the market on 15 June by approximately 30%. As at that time Client Y had avoided losses of over £5 million as a result of the trades executed by Mr Agnew, a figure equivalent to the cumulative detriment to the buyers of those shares and indicative of the market impact of those trades.

5.8. On the morning of 15 June, after the announcement was issued, Mr Agnew had a conversation with a representative of Client Y in which they discussed the possibility that there had been a pre-marketing of holders of Issuer X shares before the announcement (some market participants refer to this process as a "pre-sounding exercise"). Pre-marketing is a technique used to gauge interest in a corporate event as a consequence of which inside information may be provided to the pre–marketed party. Mr Agnew was aware that major shareholders were likely to have obtained inside information through pre-marketing. In the circumstances it was likely that Client Y would have been pre-marketed at some stage prior to the announcement and as a consequence been in receipt of inside information.

5.9. After the announcement and despite Mr Agnew's awareness that Client Y had avoided significant loss and was likely to have been pre-marketed, he did not have any suspicions or consider that there was any reason to report the transactions. Mr Agnew's view was that Client Y was simply fortunate in the timing of its transactions.

5.10. At no time after the announcement by Issuer X did Mr Agnew approach his Compliance Department or other management to report any suspicions in respect of the transactions.

6. FAILINGS

6.1. The FSA expects individuals who are market participants and approved persons to be alert to the possibility that customers may be seeking to use regulated firms to facilitate financial crime, including insider dealing.

6.2. Where it is not apparent to a broker whether or not the trade is in breach of relevant legal or regulatory requirements or the suspicion only becomes apparent once a trade has been executed or in light of a subsequent corporate event, the broker should report the trade internally in order to facilitate the appropriate filing of an STR.

6.3. The FSA's view is that the following factors, considered in the light of SUP 15.10 and associated guidance, should have led Mr Agnew to report the transactions executed between 9 and 12 June 2009 to his Compliance Department or senior management:

(1) the fact that Client Y, a major shareholder in Issuer X, was likely to have obtained inside information through pre-marketing at some stage prior to the announcement; and

(2) the timing of the sales immediately prior to the announcement by Issuer X.

6.4. Mr Agnew's suspicions should further have been raised by the following factors:

(1) the fact that the announcement by Issuer X on 15 June was unscheduled; and

(2) the effect of the announcement on the share price.

Conclusions

6.5. Mr Agnew should have recognised that there were reasonable grounds to suspect that the transactions constituted market abuse. The failure by a person exercising the customer function adequately to recognise and then internally report suspicious transactions could put market confidence at risk. The FSA relies upon firms to submit STRs to assist it in maintaining market confidence in the financial system. The failure to recognise and report suspicious transactions may also facilitate financial crime.

6.6. The FSA's view is that, whilst it may have been reasonable for Mr Agnew not to have identified Client Y's trading as significant or unusual at the time he was carrying out the relevant transactions, when he re-assessed it in the light of the announcement on 15 June he should have concluded that there were reasonable grounds to suspect that the transactions constituted market abuse. Mr Agnew should have recognised that the factors set out above at paragraphs 6.3 and 6.4 amounted to trading by a major shareholder, who was likely to have obtained inside information through pre-marketing, just prior to a major unscheduled price sensitive announcement.

6.7. The FSA accepts that Mr Agnew did not consider that he was required to report the transactions and that he did not deliberately close his mind to the issue. However, Mr

Agnew failed to recognise that there were reasonable grounds to suspect that the transactions constituted market abuse after the announcement was made; he should have done so, given his professional experience, his position and the training he had received. Mr Agnew should therefore have reported the transactions to the Compliance Department of the Bank. The fact that he did not do so amounts to a failure to act with the due skill, care and diligence required of an approved person in accordance with Statement of Principle 2.

7. SANCTION

7.1. The principal purpose for which the FSA imposes sanctions is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant behaviour.

7.2. The FSA has taken all the circumstances of this case into account in deciding that the imposition of a financial penalty in this case is appropriate, and that the level of the penalty is proportionate. The FSA has had particular regard to the guidance set out in Chapter 6 of the FSA's Decision Procedure and Penalties manual ('DEPP').

7.3. In determining whether a financial penalty is appropriate and proportionate, the FSA considers all the relevant circumstances of the case. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be of relevance in determining the amount of a financial penalty. In deciding the appropriate penalty, the FSA considers the factors outlined below to be particularly relevant:

Deterrence: DEPP 6.5.2G (1)

7.4. In determining the appropriate level of penalty, the FSA has had regard to the need to promote high standards of regulatory conduct by deterring those who have committed breaches from committing further breaches and to help to deter others from committing similar breaches.

7.5. The FSA has had regard to the need to ensure that those who are approved persons performing customer functions apply due skill, care and diligence in identifying and reporting grounds to suspect that transactions constitute market abuse.

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

7.6. The FSA recognises that the breach in question was not of lengthy duration and that it relates to one particular instance over a long professional career. However, the failure by a person exercising the customer function adequately to recognise and then report grounds to suspect market abuse could put market confidence at risk. Brokers have an important role in preventing and detecting possible market abuse because of their close proximity to the market and to clients. This is particularly the case at a financial institution such as the Bank, which had and has a substantial number of institutional clients who, as a result of pre-marketing exercises, are frequently made privy to inside information prior to corporate announcements.

7.7. The FSA relies upon firms to submit STRs to assist it in maintaining market confidence in the financial system. Compliance with these obligations is of particular importance where a firm is regularly engaged in executing substantial trades on behalf of institutional clients. The failure to recognise and report suspicious transactions may also facilitate financial crime.

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

7.8. The FSA considers that Mr Agnew's conduct was not deliberate or reckless. He should have recognised the transactions as suspicious after the announcement was issued but, as a result of an error of judgement, failed to do so.

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

7.9. The FSA has had regard to the fact that Mr Agnew is an individual and Enforcement action may therefore have a greater impact on him than on a corporate entity.

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

7.10. The FSA has taken into account Mr Agnew's financial resources and considers that the penalty to be imposed upon him is proportionate and necessary to be effective as a deterrent. The penalty is considered necessary to act as an incentive to Mr Agnew and others, including other brokers carrying out a substantial amount of trading at firms such as the Bank, to comply with regulatory standards and required standards of market conduct. Mr Agnew has provided no evidence that he would suffer serious financial hardship or financial difficulties if he were to pay the penalty.

Conduct following the breach: DEPP 6.5.2G (8)

7.11. Mr Agnew has co-operated with the FSA throughout this investigation.

Disciplinary record: DEPP 6.5.2G (9)

7.12. The FSA notes that Mr Agnew has not been subject to previous regulatory action.

8. REPRESENTATIONS AND FINDINGS

8.1. Below is a brief summary of the key written and oral representations made by Mr Agnew and how they have been dealt with. In making the decision which gave rise to the obligation to give this notice, the FSA has taken into account all of Mr Agnew's representations, whether or not explicitly set out below.

Grounds to suspect market abuse

8.2. Mr Agnew made representations that:

(1) "reasonable grounds to suspect that the transaction might constitute market abuse" (as set out in SUP 15.10.2R) has the same meaning as "reasonable

grounds to suspect that the transaction constitutes market abuse"; in this context the word "might" has no impact on the meaning of the phrase;

(2) Client Y was obliged to, and did, report its trading to the market. It was therefore highly unlikely, although not inconceivable, that Client Y would trade on the basis of inside information;

(3) the original contact between Mr Agnew and Client Y in relation to the trading was for a solicited sale, and the purchaser by whom it was solicited went on to buy the majority of the stock that Client Y sold;

(4) one of the features which is an indicator of insider dealing is persistent selling with an indifference to price; that feature was not present here. Nor did Client Y dispose of all – or even most – of its stock;

(5) although the announcement was unscheduled, at the time there was a huge amount of speculation about capital raisings by any companies with large amounts of debt to refinance, such as Issuer X. Further, at the time of the trading there was speculation that Issuer X's stock was going to be included in the FTSE 250. Trading is less noteworthy when there is such speculation, because the buyer may have a strategy of buying FTSE 250 stocks. If the holder of such stock wants to sell this is likely to be a good time to sell; there is often higher volume at a time of index inclusion/exclusion, and particularly so with relatively illiquid stocks like that of Issuer X; and

(6) on a fair analysis, when all the relevant factors are taken together, the view of Mr Agnew that there were not reasonable grounds to suspect that the transactions constituted market abuse was one which he could reasonably reach.

8.3. The FSA has found that:

(1) in SUP 15.10.2R "reasonable grounds to suspect that the transaction might constitute market abuse" has, in the FSA's view, the same meaning as "reasonable grounds to suspect that the transaction constitutes market abuse";

(2) although insider dealing before an important announcement may be less likely by a major shareholder who is obliged to report the trading, it is still a possibility which must be considered in light of all of the relevant circumstances;

(3) Client Y was made aware that there was a potential buyer of Issuer X's stock on 22 May 2009; however, Client Y did not begin to sell Issuer X's stock until 9 June 2009, shortly before the announcement;

(4) due to the large amount of stock that Client Y was seeking to sell, attempting to sell 'at any price' would most likely have caused the stock price to drop sharply, and would therefore have been counter-productive if Client Y were seeking to avoid loss through insider dealing. In the circumstances, it

appeared that Client Y had sold the maximum number of shares it was able to without significantly impacting the share price;

(5) although there was speculation in the market about Issuer X at the time of the trading which may have made the trading less noteworthy, in all of the circumstances Client Y's trading was suspicious notwithstanding such speculation; and

(6) while there were not reasonable grounds to suspect that the transactions constituted market abuse at the time of the trading, when considering the trading in light of the subsequent announcement there clearly were such reasonable grounds. Mr Agnew should have reported the trades to his firm's compliance department; in the circumstances his decision not to do so was not one that a person in Mr Agnew's position, acting with due skill, care and diligence, could reasonably make.

Penalty

8.4. Mr Agnew made representations that:

(1) the proposed penalty was markedly too high in all of the circumstances. At worst this was a misjudgement following an honest and careful exercise of judgement. By reference to the level of penalties in other cases the amount should be around £20,000 at the very highest; and

(2) it would be unfair, especially in relation to an honest error, to penalise an individual on the basis of the type and size of firm for which he works – there is not a higher level of skill, care and diligence, nor a different standard of suspicion, required of individuals working in big firms as opposed to small firms.

8.5. The FSA has found that:

(1) Mr Agnew's integrity is not questioned in any way; although he made a misjudgement, he did so entirely honestly. However, in the circumstances his misjudgement constituted a failure to act with due skill, care and diligence. Bearing in mind the need for the credible deterrence of such behaviour, the penalty imposed on Mr Agnew must be sufficient to deter him and others like him from similar behaviour; and

(2) it is correct that there is not a higher level of skill, care and diligence, nor a different standard of suspicion, required of individuals working in big firms as opposed to small firms. However, the impact of any misconduct will be greater where the firm has more influence, standing and visibility in the market, and deals with a higher number of cases which are of a larger size; this is the case even in relation to an honest error.

9. PROCEDURAL MATTERS

Decision maker

9.1. The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

9.2. This Final Notice is given to Mr Agnew in accordance with section 390 of the Act.

Manner of and time for Payment

9.3. The financial penalty of £65,000 must be paid in full by Mr Agnew to the FSA by no later than 17 October 2011, 14 days from the date of the Final Notice.

If the financial penalty is not paid

9.4. If all or any of the financial penalty is outstanding on 18 October 2011, the FSA may recover the outstanding amount as a debt owed by Mr Agnew and due to the FSA.

Publicity

9.5. 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 Mr Agnew or prejudicial to the interests of consumers.

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

FSA contact

9.7. For more information concerning this matter generally, Mr Agnew should contact Helena Varney or Karen Jones at the FSA (direct line: 020 7066 1294 / 0207 066 3910).

Matthew Nunan
Acting Head of Department
FSA Enforcement and Financial Crime Division