Financial Services Authority

FINAL NOTICE

To: **Jason Geddis**

Address: **38 Sutherland Place**
Wickford
Essex
SS12 9HD

Date: **20 September 2011**

ACTION

1. For the reasons given in this notice, the FSA hereby imposes a public censure on Mr Geddis in the form of this notice.

SUMMARY OF REASONS

2. The FSA gave Mr Geddis a Decision Notice on 11 June 2010 which notified him that the FSA had decided to impose a financial penalty on him pursuant to section 123(1) of the Financial Services and Markets Act 2000 ("the Act"), and a prohibition order pursuant to section 56 of the Act.

3. On 2 July 2010 Mr Geddis referred this Decision Notice to the Upper Tribunal (Tax and Chancery Chamber) ("the Tribunal"). The written decision of the Tribunal was published on 2 September 2011, and can be found on the Tribunal's website.

4. The Tribunal determined that the FSA should impose a public censure on Mr Geddis pursuant to section 123(3) of the Act for engaging in market abuse.

DEFINITIONS

5. 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 LME" means the London Metals Exchange

"the Firm" means Dresdner Kleinwort Limited

6. The relevant statutory and regulatory provisions are set out in Annex 1.

FACTS AND MATTERS

7. In November 2008, Mr Geddis was a trader employed by the Firm in its Listed Product Group. He had responsibility for LME trading and broking in London on behalf of the Firm and had held this role since 2005. He had some 20 years' experience working in LME-related roles in London.

8. As is set out more fully in the Tribunal's decision dated 26 August 2011, Mr Geddis committed market abuse during the morning of 21 November 2008. In summary, he rapidly built up a very large position in certain short term Lead contracts traded on the LME and used this position to drive the price of those contracts to unprecedented levels in the course of trading in the LME's open outcry session, called the ring.

9. The Tribunal concluded that Mr Geddis was initially trading in pursuance of a legitimate trading strategy, namely to borrow a substantial number of the contracts in order to sift through them for those of a particular kind that could be sold over the counter to a client for a premium to the market price. The Tribunal determined that this strategy was abandoned shortly before the first ring session, and that Mr Geddis's ramping up of the price was the result of him getting caught up in the excitement of trading.

10. Shortly after the ring, the LME authorities intervened and instructed the Firm to adjust their trades to the levels dictated by LME rules and to compensate others who had been affected by Mr Geddis's trading. The Firm did not realise its trading profit, and it paid compensation of over £30,000 to other market participants. The LME subsequently imposed a fine on the Firm of £150,000.

11. Mr Geddis was disciplined by his employer and received a final written warning. The FSA investigated Mr Geddis for market abuse. He was made redundant in December 2009.

FAILINGS

12. The Tribunal found that Mr Geddis's behaviour on 21 November 2008 amounted to market abuse contrary to section 118(5)(b) of the Act as follows:

   i. it occurred in relation to a qualifying investment traded on a prescribed market, i.e. futures contracts traded on the LME; and

ii. it secured the price of those contracts at an abnormal level.

13. The price level of $300 secured by Mr Geddis in the course of his trading was far above any price levels achieved at any time since the introduction of the Lending Guidance in 1998. For comparison, the highest backwardation reached since the beginning of 2007 had been $30 on 17 January 2008.

SANCTION

14. The Tribunal found that Mr Geddis's behaviour was committed through a lack of care in an exceptional situation, and not through a deliberate abusive trading strategy. In considering the appropriate sanction the Tribunal pointed to the following:

i. The evidence indicated a high level of confidence in the market run by the LME, and that abusive behaviour on the LME is very rare indeed.

ii. Mr Geddis did not profit from the breach.

iii. The breach took place over a very limited period of time.

iv. The breach was committed through a lack of care in an exceptional situation, not through a premeditated plan to act improperly.

v. The breach was not difficult to detect, and the market authorities became aware of it very quickly.

vi. Mr Geddis sought appropriate assistance as soon as he appreciated that he had acted wrongly.

vii. The consequences of his breach were very quickly unravelled and set right. No third party suffered loss.

viii. Mr Geddis co-operated with the relevant authorities.

ix. Mr Geddis had no adverse compliance history; on the contrary, he was highly respected for his integrity and competence.

x. His Firm subjected him to disciplinary proceedings, and the Firm itself was disciplined by the LME.

xi. Because the ongoing FSA investigation rendered Mr Geddis unable to obtain suitable alternative employment after his redundancy, the personal and financial impact of the incident upon him has been severe.

15. The Tribunal directed the Authority to impose a public censure on Mr Geddis. The Authority therefore hereby issues a public censure in the form of this notice.

PROCEDURAL MATTERS

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

Publicity

17. 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 Geddis or prejudicial to the interests of consumers.

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

FSA contacts

19. For more information concerning this matter generally, contact Helena Varney (direct line: 020 7066 1294/fax: 020 7066 1295) of the Enforcement and Financial Crime Division of the FSA.

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

ANNEX 1

RELEVANT STATUTORY AND REGULATORY PROVISIONS

Statutory provisions

1. The FSA's statutory objectives, set out in Section 2(2) of the Act, are market confidence, public awareness, the protection of consumers and the reduction of financial crime.

2. The FSA has the power pursuant to section 56 of the Act to make an order prohibiting an individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.

3. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

4. Market abuse is defined at section 118(1) of the Act:
"For the purposes of this Act, market abuse is behaviour … which (a) occurs in relation to (i) qualifying investments admitted to trading on a prescribed market …., and (b) falls within any one or more of the types of behaviour set out in subsections (2) to (8)."

5. Qualifying investments and prescribed markets are defined by SI 2001/996 and article 1(3) of the Market Abuse Directive.

6. Section 118(5) of the Act provides:
"The fourth [type of behaviour] 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."

7. The FSA is authorised pursuant to section 123(1) of the Act to exercise its power to impose a financial penalty where it is satisfied that a person (A)
   (a) has engaged in market abuse, or
   (b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by A, would amount to market abuse.

8. Pursuant to section 123(3) of the Act, if the FSA is entitled to impose a penalty on a person under section 123 it may instead publish a statement to the effect that the person has engaged in market abuse.

Fit and proper test for approved persons

9. The criteria for assessing fitness and propriety are set out in FIT. The most important considerations will be the person's (i) honesty, integrity and reputation; (ii) competence and capability; and (iii) financial soundness.

10. FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person, including the person's honesty and integrity. FIT 2.1.1G provides that, in determining a person's honesty and integrity, the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G.

11. FIT 2.1.3G refers to various matters, including:

"(5) whether the person has contravened any of the requirements and standards of the regulatory system or the equivalent standards or requirements of other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies."

The Code of Market Conduct

12. The FSA has issued the Code of Market Conduct ("MAR"), pursuant to section 119 of the Act.

13. MAR 1.2.3G provides that there is no requirement for the person engaging in the behaviour in question to have intended to commit market abuse.

14. MAR 1.6.4E(1) provides a description of behaviour that amounts to market abuse under section 118(5) of the Act:

"transactions or orders to trade by a person… that secure a dominant position over the supply of or demand for a qualifying investment and which have the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions, other than for legitimate reasons."

15. MAR 1.6.10E sets out factors which are to be taken into account in assessing whether the behaviour was market abuse through securing the price at an abnormal level, these include:

(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;"

(2) "the extent to which price… and the volatility of [the price] for the investment in question, are outside their normal intra-day, daily, weekly or monthly range;" and

(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."

16. MAR 1.6.4E(4) provides that behaviour characterised as an abusive squeeze amounts to market abuse. The description of an abusive squeeze appears at MAR 1.6.4E(4)(a)-(c) which states that an abusive squeeze is a situation in which a person:

"(a) has a significant influence over the supply of …. a qualifying investment….;

(b) has a position (directly or indirectly) in an investment under which quantities of the product in question are deliverable; and

(c) engages in behaviour with the purpose of positioning at a distorted level the price at which others have to … take delivery… to satisfy their obligations in relation to a qualifying investment (the purpose need not be the sole purpose of entering into the transaction or transactions, but must be an actuating purpose)."

17. MAR 1.6.11E outlines factors that are to be taken into account when determining whether a person has engaged in an abusive squeeze. These include:

"(1) the extent to which a person is willing to relax his control or other influence in order to help maintain an orderly market, and the price at which he is willing to do so; for example, behaviour is less likely to amount to an abusive squeeze if a person is willing to lend the investment in question;" and

"(4) the extent to which the spot or immediate market compared to the forward market is unusually expensive or inexpensive or the extent to which borrowing rates are unusually expensive or inexpensive."

18. MAR 1.6.16E provides an example of an "abusive squeeze":

"A trader with a long position in bond futures buys or borrows a large amount of the cheapest to deliver bonds and either refuses to re-lend these bonds or will only lend them to parties he believes will not re-lend to the market. His purpose is to position the price at which those with short positions have to deliver to satisfy their obligations at a materially higher level, making him profit from his original position."

Enforcement policy

19. 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 the Decision Procedure and Penalties manual ("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.

20. The FSA's policy in relation to the decision to make a prohibition order is set out in Chapter 9 of Enforcement Guide.

The market abuse regime

21. In enforcing the market abuse regime, the FSA's priority is to protect markets from any damage to their fairness and efficiency caused by, inter alia, 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 helps to promote efficient, orderly and fair markets, as well as deterring potential future market abuse.