Financial Services Authority

FINAL NOTICE

To: **Christopher Parry**

Date of birth: **28 May 1971**

Date: **6 October 2009**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") of its decision to issue a public censure.

1 ACTION

1.1 The FSA gave you a Decision Notice dated 20 August 2009 which notified you that, for the reasons sent out below, the FSA had decided to publish a statement that you have engaged in market abuse.

1.2 On 15 September 2009 you confirmed that you will not be referring the matter to the Financial Services and Markets Tribunal.

1.3 The public censure will be issued on 7 October 2009 and will take the form of this Final Notice, which will be published on the FSA's website.

2 REASONS FOR THE ACTION

Summary of the conduct in issue

2.1 The FSA considers that, as a result of Mr Parry's execution of sales by K2 Corporation ("K2") of Barclays Bank PLC ("Barclays") Floating Rate Notes ("FRNs") ahead of a new Barclays FRN issue on 15 March 2007, Mr Parry engaged in market abuse contrary to section 118(2) of the Financial Services and Markets Act ("the Act").

2.2 On the morning of 15 March 2007, Mr Parry received inside information in relation to a proposed new issue of Barclays FRNs. Shortly after Mr Parry sold a total of $65 million Barclays FRNs from K2's existing portfolio holdings in two transactions to counterparties who were unaware of the new issue in the knowledge that K2 would place an order for $200 million of the new issue.

2.3 The new Barclays issue was announced to the market at 15:16 on 15 March 2007.

2.4 The counterparties recognised mark to market losses of $66,000 on their trades with K2, on the day of the announcement of the new issue. They both requested K2 to reverse the trades on the basis that they would have bid at a lower price had they known a new comparable issue was imminent.

2.5 Mr Parry dealt on the basis of inside information about a new issue from BarCap by executing the sales. His behaviour was therefore in breach of section 118(2) of the Act.

2.6 Mr Parry did not believe that his actions amounted to market abuse but he had a responsibility to consider whether the information was capable of being inside information. He should have realised that the information he received about the new Barclays issue was inside information and consequently he should not have executed the sales.

3 RELEVANT REGULATORY PROVISIONS

Market abuse

3.1 Market abuse is defined under section 118 of the Act as behaviour (whether by one person alone or by two or more persons jointly or in concert) which occurs in relation to qualifying investments admitted to trading on a prescribed market and falls within any one or more of the types of behaviour set out in subsections (2) to (8) of the Act.

3.2 Section 118(2) of the Act states:

"*The first type of behaviour is where an insider deals, or attempts to deal, in a qualifying investment or related investment on the basis of inside information relating to the investment in question.*" .

3.3 The relevant definition of a qualifying investment is within section 118(1)(a)(i) of the Act, which refers to qualifying investments which are admitted to trading on a prescribed market.

3.4 The relevant provision defining an insider under section 118B is:

"*any person who has inside information –*
(c) as a result of having access to the information through the exercise of his employment, profession or duties"

3.5 Inside information is defined in section 118C(2) as:

"*information of a precise nature which-*
(a) is not generally available,
(b) relates, directly or indirectly, to one or more issuers of the qualifying investments or to one or more of the qualifying investments, and
(c) would, if generally available, be likely to have a significant effect on the price of the qualifying investments or on the price of related investments"

3.6 Under section 118C(5) information is precise if it:

"*(a) indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur, and*

b) is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of qualifying investments or related investments."

3.7 Under section 118C(6) information would be likely to have a significant effect on price "*if and only if it is information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions*".

3.8 Under section 118C(8) "*information which can be obtained by research or analysis conducted by, or on behalf of, users of a market is to be regarded as being generally available to them.*"

3.9 Under section 123(1) of the Act:

"*If the Authority is satisfied that a person ('A')*

(a) *is or 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,

it may impose on him a penalty of such amount as it considers appropriate."

3.10 Section 123(2) states:

"*But the Authority may not impose a penalty on a person if, having considered any representations made to it in response to a warning notice, there are reasonable grounds for it to be satisfied that –*

(a) he believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of subsection (1), or

(b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of that subsection."

3.11 The FSA has issued the Code of Market Conduct ("MAR") pursuant to section 119 of the Act. Under section 122 of the Act, MAR may be relied upon in so far as it indicates whether or not particular behaviour should be taken to amount to market abuse. The following parts of MAR have particular relevance to this case.

3.12 MAR 1.2.3G states that section 118(1) does not require the person engaging in the behaviour to have intended to commit market abuse.

3.13 MAR 1.3.4E states "*in the opinion of the FSA, if the inside information is the reason for, or a material influence on, the decision to deal or attempt to deal, that indicates that the person's behaviour is "on the basis of" inside information*".

3.14 MAR 1.2.12E sets out factors which the FSA would take into account in determining whether or not information is generally available and are indications that it is. These include whether the information has been disclosed to a prescribed market, is contained in records open to the public or can be obtained from analysing or developing other information which is generally available.

Statement under section 123 (3) of the Act

3.15 The FSA is entitled under section 123(3) of the Act to exercise its power to publish a statement to the effect that he has engaged in market abuse.

3.16 The FSA's approach to exercising its main enforcement powers and policy on the imposition of financial penalties is set out in the Decision Procedure & Penalties manual ("DEPP") and the Enforcement Guide ("EG"). As this matter relates to events prior to the introduction of EG and DEPP (28 August 2007), the FSA has also had regard to the previous relevant policies set out in the Enforcement Manual.

4 FACTS AND MATTERS RELIED UPON

Background

4.1 At the relevant time, Mr Parry was a Vice President within Dresdner Kleinwort, the investment banking division of Dresdner Bank AG ("Dresdner") and part of the Portfolio Management Team within Dresdner's Structured Investment Unit ("SCI") which manages the bank's Structured Investment Vehicle, (K2). Mr Parry had approval to undertake the customer controlled function on behalf of Dresdner (CF 30).

4.2 In March 2007, lower tier two (a category of subordinated debt) FRNs made up a quarter of K2's portfolio and were regarded as a core aspect of their business.

K2 trades in Barclays FRNs on 15 March 2007

4.3 On the morning of Thursday 15 March 2007 Barclays provided a working mandate for Barclays Capital ("BarCap") to contact key investors to ascertain their appetite for a proposed new issue.

4.4 At 10:02 on 15 March 2007, BarCap contacted K2 and spoke with Darren Morton, the co-head of the SCI Portfolio Management Team. K2 was one of BarCap's top three accounts for lower tier two FRNs and BarCap regarded it as essential to have a lead order from those accounts in order to successfully launch a new issue of this nature.

4.5 During the 10:02 telephone call, BarCap told Mr Morton that a new issue would probably be announced the following Tuesday unless the market became very volatile and that he was being given "*a very early heads up*".

4.6 Mr Morton was informed that:

1) BarCap had been given a mandate by Barclays' Treasury to contact key investors to gauge appetite before the new issue was made public;

2) he should keep the information to himself and within his firm;

3) the new issue would be "*a Barclays lower tier two transaction*" in "*US dollars*" and that the structure would be a "*10 year non call five or thereabouts*"*;*

4) the size of the deal would be "*about a billion dollars*"; and

5) (in respect of the discount margin) "*the spread's going to be 20 area*", meaning LIBOR plus 20 basis points.

4.7 Mr Morton passed the information regarding the new issue, as set out in paragraphs 4.5 and 4.6 above to Mr Parry.

4.8 Following receipt of this information, at 11:51 Mr Parry sought a bid for $30 million Barclays FRNs, maturing 11 September 2017 ("the September FRNs"). At 11:57, Mr Parry accepted a bid for the September FRNs at a discount margin of LIBOR plus 16.1 basis points.

4.9 At 11:57, at the same time as the trade of $30 million of the September FRNs, Mr Morton informed BarCap that K2 would have an appetite for $200 million of the new issue at the proposed discount margin of LIBOR plus 20 basis points. BarCap informed Mr Morton that *"Nowt will happen, we think until Tuesday… we will be back to you possibly for an update on Monday, but almost certainly by Tuesday, okay*.

4.10 Once BarCap had received positive indications of appetite from K2 and two other key accounts, further selected accounts were contacted by BarCap to gauge their appetite ahead of the announcement.

4.11 At 13:40, BarCap told Mr Morton that "*it might happen that we might in fact just go ahead and just announce it today*" which was a change from the earlier indication of an announcement within four working days and is in fact what happened. Mr Morton confirmed K2's order as firm for $200 million of the new issue.

4.12 Approximately three minutes after this conversation concluded, at 13:45, Mr Parry sought a bid to sell a further $35 million of the September FRNs. At 14:06, Mr Parry accepted a bid from a counterparty and sold $35 million of the September FRNs, which represented the remainder of this holding in the portfolio. These were sold at a discount margin of LIBOR plus 16.4.

4.13 The sales of a total of $65 million September FRNs were made at a time when Mr Morton was in possession of the information regarding the potential new issue described above, which was likely to have an impact on the market for September FRNs and Mr Parry knew this.

4.14 At 15:16, the new Barclays issue was announced by BarCap. This was formally priced and allocated on the following day. The terms of the new issue were effectively the same as had been given to Mr Morton, and subsequently Mr Parry, by BarCap in the 10:02 call ahead of the announcement, save that the size of the new issue had been increased from one billion to one and a half billion dollars.

4.15 Shortly after the announcement of the new issue, both counterparties who had been sold the September FRNs made complaints to K2 stating that they would have bid a lower price had they known of a new Barclays issue and requested a reversal of the trades.

4.16 Mr Parry spoke with one of the counterparties concerned and told them that he did not know the timing of the new issue.

4.17 The two counterparties recognised mark to market losses of $66,000 on 15 March 2007 as a direct result of the purchases of the September FRNs.

5 REPRESENTATIONS

5.1 Mr Parry's representations challenged the FSA's allegation that he committed market abuse under section 118C(2) of the Act for the following reasons:

(a) he did not accept and argued there was insufficient evidence to establish, that he received inside information in relation to the proposed new issue of Barclays FRNs within the meaning of the Act; and

(b) that it therefore follows that he did not act on the basis of inside information.

5.2 He further argued that the key issue for the FSA to establish is precisely what information was passed by Mr Morton to Mr Parry and whether Mr Parry, having relied on that information, was not entitled to deal as he did. Mr Parry stated that he did not propose to deal with Mr Morton's motives and whether the information provided to him by Mr Morton was in fact inside information. Mr Parry's emphasis was to impress upon the FSA that he had not received all the information as alleged and that it was appropriate for him to have dealt as he did.

5.3 On the issue of the appropriate standard of proof to be applied, it was asserted that the standard should be on a balance of probabilities and the burden on the FSA is high given that this is a case of alleged serious market abuse. The consequences of a finding of market abuse against Mr Parry would be very serious personally and professionally.

5.4 In relation to the issue of whether information was passed to him, Mr Parry challenged the FSA's view that he had substantially the same information about the new issue as Mr Morton. He argued that for there to be a finding of market abuse against him, it would have to be clear that he received all the necessary information from Mr Morton and for him to have dealt on the basis of that information.

5.5 As to the discussion Mr Parry had with Mr Morton, Mr Parry acknowledged that there was a dialogue with Mr Morton after the call at 10:02 but again confirmed he did not receive all the information from Mr Morton as alleged by the FSA. Most importantly, he was not informed that it would have been improper to deal on the basis of that information. Mr Parry challenged Mr Morton's assertion that he had told Mr Parry the details "pretty much verbatim" stating that crucial elements of the deal had been omitted. He further stated that he did not recollect any further substantive discussions with Mr Morton following the calls at 11:57 and 13:40. Critically he had not been told that the information was sensitive and not yet public.

5.6 Mr Parry confirmed that he had a degree of personal knowledge about the possibility a new issue given that Barclays had already aired the possibility of this issue earlier in February 2007. Also, given his knowledge of the market, he would have been able to make certain assumptions about the issuer, the type of bond, the term and currency. However, he did not know anything about the size of the issue, the discount margin or the timing.

5.7 Mr Parry alleged that Mr Morton's evidence on what information he had passed to Mr Parry was neither 'clear' nor 'precise' or 'sufficiently reliable'. He challenged Mr Morton's recollection and openness and represented that the FSA should prefer his evidence to that of Mr Morton.

5.8 Mr Parry went on to highlight the difficulties he saw in assessing whether the information passed to Mr Morton met the criteria required to be regarded as information which was sufficiently precise, not generally available and likely to have a significant effect on price. He said he could not comment with any accuracy on what and how the information was passed and received by Mr Morton. He represented that the manner and tone of the information would have had a significant impact on how it was received by Mr Morton and therefore would also impact on how it was passed to Mr Parry and whether he could be considered to be an insider.

5.9 Mr Parry also addressed the FSA's reliance on circumstantial evidence and in particular the following matters:

(a) on the matters relating to the usual working practices at the office, that is, that he and others sat close to Mr Morton whose practice it was to talk openly with his colleagues on relevant work related matters;

(b) the fact that he would have known all the key characteristics of the proposed issue. This point has been dealt with in some detail above and Mr Parry's position is clearly stated, that he did not receive all the necessary information; and

(c) the timing of the sales and the speed with which Mr Parry sought the bids. As to the first sale, the bid was sought and the sale concluded some two hours after the conversation with BarCap, which Mr Parry asserted proved nothing. With regard to the second bid and sale, while this did coincide with Mr Morton's call at 13:40, there is no evidence that Mr Morton passed on the details of this call to Mr Parry. He asserted that the timing was simply a coincidence.

5.10 Mr Parry argued that the circumstantial evidence relied upon by the FSA did not give rise to any compelling inferences as to his state of knowledge at the relevant time.

6 CONCLUSION

6.1 Having considered Mr Parry's representations, the FSA is satisfied that Mr Parry engaged in market abuse in breach of section 118(2) of the Act. Mr Parry received inside information from Mr Morton in relation to a proposed new issue of Barclays FRNs and dealt on the basis of that information.

6.2 Due to the proximity of their working environment, the FSA is satisfied that Mr Morton would have passed on the details of the call at 10:02 to Mr Parry. It being consistent with team practice, it would have been likely that they would have discussed the 10:02 call. The FSA makes no finding however as to whether details of the subsequent conversations at 11.57 and 13.40 were passed by Mr Morton to Mr Parry. It is noted that there is conflicting evidence between Mr Parry and Mr Morton on this issue and it is further noted that, against his personal interest, Mr Morton stated that he had no recollection of whether this information was passed to Mr Parry. Nevertheless, for the reasons set out in this Notice, the FSA does not consider it relevant to make a determination as to whether the subsequent information was passed to Mr Parry, as the call at 10:02 was sufficient to amount to inside information.

6.3 Nevertheless, regardless of the above the FSA is satisfied that Mr Parry did not believe he was committing market abuse. The substantive requirements of market abuse are set out further below.

6.4 The September FRNs were at the material time admitted to trading on a prescribed market, namely the London Stock Exchange. They were therefore qualifying investments for the purposes of section 118(1).

6.5 Mr Parry had received the following information about the new issue shortly after 10:02 on 15 March;

i) A mandate had been granted by Barclays Treasury for a new issue;
ii) Barclays' name as the issuer;
iii) The issue was to be a lower tier two FRN;
iv) The structure of the new issue would be ten years to maturity and callable after a period of five years;
v) The currency was to be US dollars;
vi) The proposed discount margin was to be LIBOR plus 20 basis points;
vii) The proposed size of the deal was to be about a billion US dollars; and
viii) The proposed timing was in four working days time.

6.6 In the 11:57 call, Mr Morton was told that nothing would happen before Tuesday and that Mr Lawler would "*possibly*" have an update on Monday but "*almost certainly*" by Tuesday. As stated at paragraph 6.2 above, the FSA makes no finding as to whether the information in this call was passed to Mr Parry.

6.7 Shortly after a further telephone call from BarCap at 13:40, Mr Morton was informed that the proposed timing of the announcement of the new issue might be announced that day. The FSA again refers to paragraph 6.2 above and notes that it accepts that Mr Morton did not appreciate the change in timing of the announcement.

6.8 BarCap was a reliable source of information about the new issue. Absolute certainty is rarely present in the new issue process due to a variety of factors such as changing market conditions. In this instance, however, the fact that a mandate had been granted by Barclays Treasury together with the precise nature of the information provided Mr Parry with a reasonable expectation that a new issue would be announced. This information was precise, for the purposes of section 118C(2) and (5) of the Act.

6.9 This information was not generally available to those using the market for the purposes of section 118C(2), either at the time it was disclosed to Mr Parry or at the time of either of the sales of the September FRNs.

6.10 This information was likely to affect a reasonable investor's decision to buy or sell as well as the terms on which he would be prepared to do so as the discount margin was almost four basis points cheaper than the trading levels of the September FRNs. In the context of market conditions of March 2007 this difference in pricing was such that it would have been regarded to be material to the bid for the September FRNs. Furthermore, the size of the new issue was proposed to be double the size of the September FRN issue which was material information as it would increase liquidity on the secondary market. Thus the new issue was likely to have a significant impact on the price of the September FRNs. This information was likely to have a significant price effect, for the purposes of section 118C(2) and (6) of the Act.

6.11 Therefore, Mr Parry's decision to sell the September FRNs was on the basis of inside information for the purposes of section 118(2) of the Act.

6.12 The FSA notes Mr Parry's representations on the market practice prevalent at the time. It also accepts that Mr Parry believed that his behaviour did not amount to market abuse. In the absence of any guidance from ICMA the only specific guidance available to Mr Parry were the interim guidelines from Dresdner where *"in the past it has been determined that SCI is not routinely privy to price sensitive non-public [information]"*. Consequently, in these circumstances it is noted that Mr Parry was working in an environment where until a deal had closed, the accepted view was that, in the absence of information generally regarded as inside information, that information was not regarded as specific or price sensitive and therefore any activity related to such information could not be abusive.

6.13 Although the FSA finds that Mr Parry believed he had not received inside information the FSA does not accept his representations that his belief was reasonable. The FSA finds that Mr Parry had a responsibility to consider whether the information was capable of being inside information, regardless of the market practice. The fact of the market practice at the time is not sufficient to satisfy the FSA that there are reasonable grounds for it to be satisfied that Mr Parry did not engage in market abuse under S123 (2) (a). The FSA finds that the information available to Mr Parry enabled him to be in a more advantageous position given that he knew about the new issue.

6.14 The FSA notes that the burden of proof in a case of serious market abuse is high and that the standard of proof is on a balance of probabilities.

7 SANCTION

Statement under section 123 (3)

7.1 The principal purpose of imposing a sanction is to promote high standards of regulatory and/or 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.

7.2 In determining the appropriate sanction, the FSA will take into account all the circumstances of a particular case. These include the nature and seriousness of the abuse, the person's conduct following the abuse (including their co-operation with the FSA's investigation), the nature of the market that has been abused, the likelihood of behaviour of the same type being repeated and the need to deter such behaviour, and the previous history of the person concerned.

7.3 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 the misuse of information in relation to the market in question. Effective and appropriate use of the power to impose the appropriate sanction 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 and the FSA's protection of consumers' objective, as well as deterring potential future market abuse.

7.4 The FSA has had particular regard to whether the imposition of a financial penalty as well as the imposition of a prohibition order would be the most appropriate sanction. However, having taken account of all the circumstances in this case and the guidance set out in DEPP 6, the FSA has decided that a statement under section 123 (3) is the appropriate sanction. In the circumstances of this particular case the FSA's priorities of deterrence, protecting prescribed markets and the protection of consumers are achieved by this a sanction.

7.5 The FSA notes that Mr Parry was an approved person, experienced market professional and in a position of trust. These are also relevant factors in considering the appropriate sanction. However, the FSA accepts he did not believe that he acted in an abusive manner.

7.6 The FSA has had regard to the following mitigating features:

a) Mr Parry did not make any personal profit;
b) Mr Parry has subsequently undertaken further training in market abuse;
c) No clear guidance was provided to Mr Parry or the OTC credit markets; and
d) Mr Parry has no adverse previous disciplinary record or compliance history.

7.7 In the event that the FSA had found Mr Parry to have acted deliberately, recklessly or in breach of compliance department guidelines, the FSA would have imposed a higher penalty, including a prohibition. This would have called into question his fitness and propriety as an approved person and would have resulted in a more severe penalty, including a financial penalty and a prohibition.

8 DECISION MAKER

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

9 IMPORTANT

9.1 This Final Notice is given to you in accordance with section 390 of the Act. The following statutory rights are important.

Confidentiality and 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, contact Helena Varney (direct line: 020 7066 1294) or Roshnee Shah (direct line: 020 7066 1430) at the FSA.

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Tracey McDermott
Head of Department
FSA Enforcement Division