NEUTRAL CITATION NUMBER: [2011] UKUT 344 (TCC)

FS/2010/0014

IN THE UPPER TRIBUNAL (TAX AND CHANCERY CHAMBER)

FINANCIAL SERVICES

BETWEEN

JASON GEDDIS

Applicant

-and-

THE FINANCIAL SERVICES AUTHORITY

Respondent

Tribunal: **Andrew Bartlett QC**

Sandi O'Neill

Christopher Burbidge

Sitting in public in London on 6-8 July 2011

Date of written decision: 26 August 2011

For the Applicant: **Roderick Abbott**

For the Respondent: **Clare McMullen**

MARKET ABUSE - FSMA s118(5) –Whether abuse premeditated – No - Penalty to be imposed – Censure - Whether applicant fit and proper – Yes – Prohibition not justified

DECISION

INTRODUCTION

1. This reference concerns the sanctions imposed by the Financial Services Authority on the applicant, Mr Jason Geddis, in relation to market abuse committed by him during trading on the London Metal Exchange on 21 November 2008. In its Decision Notice dated 11 June 2010 the Authority decided to impose a penalty of £25,000, and made a prohibition order preventing him from performing any function in relation to any regulated activities.

2. Mr Geddis has referred to the matter to the Tribunal, contending that the imposed sanctions were excessive and that he should have been subject to no more than a public statement that he had engaged in the market abuse. By the Financial Services and Markets Act ("FSMA") s133 the Tribunal's function, having heard the evidence, is to determine what, if any, is the appropriate action for the Authority to take in relation to the matter referred.

THE EVIDENCE

3. The evidence comprised relevant documentation, recordings and transcripts of relevant conversations, FSA interviews, witness statements, and live evidence from Mr Whiting and Mr Geddis. We also received seven character witness statements concerning Mr Geddis.

4. Mr Whiting was called by the FSA as an expert witness to assist on points concerning trading on the LME. He had been Executive Director, Regulation & Compliance, at the LME from December 1997 to July 2004. We found his report and oral evidence to be of material assistance, with the caveat that because of the nature of his experience (in the Civil Service and as a regulator) his perspective inevitably differed from that of a trader such as Mr Geddis.

5. Mr Geddis was cross-examined at length by Ms McMullen on behalf of the FSA. We found him to be an honest and careful witness who tried to assist us to the best of his ability.

6. The Authority additionally wished to call Mr O'Hegarty, the current Deputy Chief Executive of the LME. Mr Abbott objected to his statement on a variety of grounds. On examination it appeared that Mr O'Hegarty's statement consisted partly of uncontroversial facts and partly of statements about the intention of the LME's Lending Guidance (substantially overlapping with the evidence of Mr Whiting). We admitted his statement to the extent that it was admissible, on the basis that Mr Abbott did not need to cross-examine him on topics which were matters of legal argument for the Tribunal to decide, such as the objective meaning of the published Guidance.

THE FACTS

7. The facts were largely uncontroversial between the parties. There was disagreement over the nature of Mr Geddis' trading strategy and his state of mind. Our findings are set out below.

Background

8. In November 2008, Mr Geddis was a trader and Vice President employed by Dresdner Kleinwort Limited ("the Firm") in its Listed Products Group. Mr Geddis 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. In the course of his employment Mr Geddis traded in various different metals contracts on the LME, on behalf of the Firm itself and its clients. His line manager was Mr Fabian Somerville-Cotton, who was the Managing Director of the Firm's Listed Products Group and was a member of the LME Board. Mr Somerville-Cotton had found Mr Geddis to be very professional and competent, and to be exemplary in his conduct and in his knowledge of the LME rules.

9. The contracts traded on the LME are based on warrants, instruments that entitle the holder to take delivery of a number of lots of the specified metal in the specified LME warehouse. Trading on the LME takes place throughout the day on the LME's electronic trading platform (called LMEselect) and between market participants over the telephone. The LME also holds four open outcry trading sessions on its trading floor each trading day in which contracts relating to each metal are traded in turn for a five minute period. This is known as the ring. The first ring session for Lead begins at 12:05.

10. The trading relevant to this case is trading in Tom-Next Standard Lead contracts. This involves buying warrants deliverable on the day after the trade date and simultaneously selling warrants deliverable two days after the trade date (if borrowing) or selling warrants one day after the trade date and buying warrants two days after the trade date (if lending). The last time at which Lead contracts for delivery the following trading day can be traded on the LME is 12:30. Thus only the first ring session is used for Tom-Next trading.

11. An important feature of trading on the LME is that its contracts can only be settled through physical delivery of the underlying commodity, supply of which is necessarily limited. There is no option to settle the contracts in cash. An abusive squeeze can therefore occur when a market participant deliberately builds up a large or dominant position with a view to positioning the price of the derivatives contract such that short position holders will have to deliver at a materially higher level to satisfy their obligations.

12. In order to avoid the potential for abuse of a dominant position, the LME has a set of rules known as the Lending Guidance. The Lending Guidance was originally introduced by the LME in October 1998 in a report headed "Market Aberrations: The Way Forward", as part of a package of measures relating to transparency, information, surveillance, discipline and market intervention introduced to discourage market aberrations.

13. The Lending Guidance reflects the principle that a dominant position holder would be abusing the market if it used its dominant position to require other market users to pay more to meet their needs than they would have had to pay had the market reflected the natural interplay of supply and demand without any participants having a dominant position [paragraph 13.12]. Its purpose was stated to be to reduce the risk of abuse by dominant long positions; it was not aimed at dominant positions themselves [paragraph 13.24].

14. Compliance with the Lending Guidance became obligatory under the rules of the LME in December 2005. The notice published at that time also set out clarification and explanation of a number of practical aspects of the Lending Guidance. It affects trading by anyone holding a dominant WTC position. WTC stands for Warrants, Tom and Cash. This is the total of warrants held on the relevant trading day, plus warrants purchased for the following trading day (i.e. tomorrow or Tom) plus warrants purchased for two trading days forward (known as the Cash position). A WTC position is dominant if it is 50% or more of the live warrants available that day. As the WTC position includes the future purchase of warrants, it is possible for a single position holder's position to exceed 100%. The LME publishes live warrant figures at 9am each morning so that market participants are aware of the size of their position relative to the market. Participants are required to report large positions held at the end of each day to the LME; these are also published, anonymously, by the LME each morning.

15. The Lending Guidance operates as a pricing control. It requires a member holding a dominant WTC position to lend into the market at specified price levels when the market is in a backwardation. Backwardation is when the price of metal on the nearby delivery date exceeds the price of that metal on the forward delivery date. The price levels are set by reference to the official cash settlement price published by the LME the previous business day. The particular price level applicable depends upon the percentage degree of dominance.

The trading on Friday 21 November 2008

16. On 21 November 2008 Mr Geddis began to build up a position on behalf of the Firm in Tom-Next Lead futures contracts by trading on LMEselect, having started the day with almost none. By 08:28 he had placed 20 trades and so had built up a position equivalent to over 50% of the live warrants available that day (although the live warrant figure would

not actually be announced by the LME until 9am). Mr Geddis continued to borrow, placing another 26 trades before the market moved into a backwardation at 09:54. At that point, because he held a dominant position and the market was in a backwardation, the FSA contends that Mr Geddis was obliged to lend in accordance with the Lending Guidance. He continued borrowing Tom-Next Lead until 10:38, when his borrowing temporarily stopped. At 11:24 he began borrowing again.

17. His evidence to us was that up to that time his strategy had been to undertake 'sifting', looking for European warrants. We consider the topic of sifting separately below.

18. Mr Geddis calculated his position in the course of the morning and was aware that he held a dominant position; this was mentioned in a discussion with Mr Somerville-Cotton, probably about 11:00 to 11:20, during one of the latter's routine walks around the trading floor of the Firm to monitor trading activity. Mr Somerville-Cotton felt comfortable that Mr Geddis knew what he was doing, and did not see any need to contact the LME authorities. By 11:56 Mr Geddis had increased his WTC position to over 122%. Probably around that time Mr Somerville-Cotton told him to stop trading on LMEselect and to make himself available to the ring, or something to that effect. Mr Somerville-Cotton said nothing to him about price levels.

19. Bids had been posted by other market participants seeking to borrow Tom-Next during the course of the morning and these were visible to Mr Geddis on LMEselect. Mr Geddis was aware of these bids. The FSA contends that he was obliged to respond to all of them at the price level specified in the Guidance. In response to one bid for 61 lots, he lent one lot in order to find out the identity of the party wishing to borrow. A number of the bids remained open at the time that trading moved into the ring at 12:05.

20. Mr Geddis traded in the ring through a broker. Given the dominance of his position, had he been following the Lending Guidance, he would have opened the ring with an offer to lend at level. He did not do this. He waited to see where the market was trading and then put in his first offer to lend in the ring at double the price of the previous trade. Once that offer was filled, Mr Geddis put new offers into the market each time his previous offer was filled. Having first lent in the ring at $20 back, he then increased his offer to $30 back, he then decreased it slightly to $25 back, but he then significantly ramped up the price of his offers to $100 back, then $200 back and finally to $300 back. Mr Geddis's final offer in the ring at $300 back was not filled. Following the ring but before 12.30, two further offers were made by Mr Geddis on LMEselect (through the broker), both at $300 back. These offers were partially filled. These price levels were 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. Mr Geddis lent a total of 340 lots in the ring. If the dominant position trades had stood, they would have resulted in a profit for the Firm of approximately $1.4 million.

21. The evidence showed that Mr Geddis had no discernible motive for attempting to procure this extraordinary profit for his firm. If he had secured it, it would not have directly affected his own remuneration. And he could not possibly have thought that he would secure such profit, since the flare out of the price was obvious and could not fail to attract close attention from the market authorities.

The aftermath

22. A matter of seconds after the ring trading ended at 12:10 Mr Geddis asked a colleague to get Mr Somerville-Cotton. On the recording of the ring trading Mr Geddis can be heard to make this request. We noted that on the recording Mr Geddis's voice sounded controlled, both while speaking to the broker and while making this request. However, it was not easy from the recording alone to judge his state of mind. The evidence was that the colleague banged on Mr Somerville-Cotton's door looking quite anxious and saying that Mr Geddis needed to see him. In a meeting on 27 November 2008 with the LME Mr Somerville-Cotton said he had gone to speak to Mr Geddis and found him 'shaking like a leaf'. In a letter written a few days later (the Firm's letter of 1 December 2008 to the LME), Mr Somerville-Cotton's description was: "Immediately after the Ring closed, JG [Mr Geddis] contacted his desk head and FSC [Mr Somerville-Cotton] and appeared to be in a state of shock by virtue of the realisation of what had occurred." In interview Mr Somerville-Cotton described Mr Geddis as looking anxious and concerned at this time. Mr Geddis's own description on 9 December 2008 was that he had been in a state of panic. In his FSA interview on 16 June 2009 he said that under the calm voice he was doing somersaults in his belly. In oral evidence he explained that he called for Mr Somerville-Cotton because of the disorderly market. We have concluded that, despite the controlled voice which can be heard on the recording, Mr Geddis was in a state of high anxiety at the time, was very concerned about what he had done in causing the market to become disorderly, and wanted the assistance of Mr Somerville-Cotton in order to deal with it.

23. Mr Geddis continued to speak on the telephone to the broker, dealing with ring trading for other metals, and had a discussion with the broker concerning the broker's commission for the extraordinary lead trading. We interpret Mr Geddis's cheeriness during this conversation as a means of hiding from the broker the level of his concern about his own conduct. With only a two minute interruption, these conversations continued until 12:28, after which Mr Geddis, Mr Somerville-Cotton, and the Firm's compliance officer, Ms Anita Sharma, were able to start discussing how to deal with the disorderly market in lead and the need to adjust the trades. Mr Geddis said to Mr Somerville-Cotton that he should not have been lending at the level at which he had done. Their discussion had hardly begun when LME personnel telephoned and were put through to them. After some initial connection problems the substantive conversation commenced at 12:41. In the course of the conversation Mr Geddis, Mr Somerville-Cotton and Ms Sharma all tried to raise a

query that the LME ought to have contacted Mr Geddis with instructions prior to the commencement of the ring. The LME declined to enter into any debate, instructing that all the Firm's trading had to be adjusted back down to level, and that the Firm had to compensate market participants who had borrowed from others than the Firm at price levels in excess of those at which the Firm should have lent in accordance with the Guidance.

24. The Firm and Mr Geddis accepted and implemented the LME's instructions, commencing immediately. We note that in Mr Geddis's subsequent conversation with the broker, the latter expressed his surprise that the LME's specific lending guidance had been issued to the Firm after the trading rather than before. 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.

25. As Mr Somerville-Cotton commented in his FSA interview, the LME market mechanisms worked very well indeed; all parties realised very quickly that a mistake had been made and it was fully rectified. We note that the LME stated that there had only been a single occasion of actual or suspected failure to comply with the Lending Guidance since February 1999, which was in May 2007, when a firm was fined for failing to report properly its warrant positions and for failing to comply with the Guidance for part of a day.

26. Mr Geddis was unable to explain his course of trading from 11:24 onwards. At a meeting on 25 November 2008 he was still visibly upset, and stated that he had had a 'moment of madness'. At a meeting on 9 December 2008 he said he had 'lost focus', and had been 'caught up in the moment'.

27. 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. Owing to the ongoing investigation he was unable to find other employment sufficient to meet his outgoings.

28. The FSA's investigation culminated in a Decision Notice issued on 11 June 2010. The principal findings and outcome were:

    a. Mr Geddis had deliberately conducted market abuse by means of an abusive squeeze.

    b. His motive had been to make a profit for his employer.

    c. He had demonstrated a lack of integrity such as to show that he was not fit and proper.

d. His behaviour was such as to merit a fine of £100,000, but this was to be reduced to £25,000 because of his financial situation.

e. Because he was not fit and proper, he was prohibited from performing any function in relation to any regulated activity carried on by an authorised or exempt person or exempt professional firm.

29. An important element in the FSA's reasoning was that Mr Geddis was discovered to have conducted a somewhat similar pattern of trading on Tuesday 18 November 2008, which he had not mentioned to the FSA during his very lengthy interviews. We consider this separately below, together with the topic of sifting.

THE LENDING GUIDANCE AND LME RULES

30. The LME Report 'Market Aberrations: The Way Forward', issued in October 1998 referred at paragraph 13.12 to the general principle that a dominant position holder incurred additional responsibilities to the market to avoid market abuse, which meant that while it had a dominant stock position it would no longer be able to undertake trading strategies that would be acceptable in other circumstances. To avoid abuse, a dominant position holder had to avoid using its dominant position to require other market users to pay more to meet their needs than they would have had to pay if the market had reflected the natural interplay of supply and demand without any participant having a dominant position. To achieve greater certainty in the implementation of this principle, the LME Board introduced policy guidance as follows:

> "13.24 In the Board's view it is desirable, in order to reduce the risk of abuse by dominant long positions, that there should be a presumption that in the absence of special factors:
>
> i If at any time a member or client holds 50% or more of the warrants and/or cash today/cash positions in relation to stocks, he should be prepared to lend, if asked, at no more than a premium of ½% of the cash price for a day …
>
> ii If at any time a member or client holds 80% or more of the warrants and/or cash today/cash positions in relation to stocks, he should be prepared to lend, if asked, at no more than a premium of ¼% of the cash price for a day …
>
> iii If at any time a member or client holds 90% or more of the warrants and/or cash today/cash positions in relation to stocks, he should be prepared to lend, if asked, at no more than the cash price.
>
> iv As with the publication of large position information, in determining the application of the guidelines, it would be appropriate for the LME to aggregate the positions of a

client across all brokers in reaching its estimate of dominant positions. Likewise it would be appropriate to aggregate the positions of a member, its related group companies and its clients unless the firm could demonstrate that the positions were independent."

31. From 1998 to 2005 this guidance was described as a desirable presumption in the absence of special factors (see its introductory terms). In 2005 it was turned into a rule of the Exchange. Rule 16.3 stated that members should comply with the Lending Guidance, which was defined as "paragraph 13.24 of Market Aberrations: The Way Forward, published by the Exchange in October 1998, setting out the behaviour required of the holders of dominant long positions in the Exchange's metal markets, including any clarification or explanation of that behaviour issued by the Exchange from time to time".

32. The obligation was worded, therefore, as a "presumption", which was "desirable", and which set out steps which a member had to be "prepared to" undertake "if asked".

33. The expression "if asked" is ambiguous. It could mean either "if asked by a market participant to lend" or "if asked by the Exchange to lend at the price stated in the Guidance". At the same time as issuing the new rule, the Exchange issued a document giving "Clarification and Explanation", as envisaged in the definition. This removed the ambiguity over the meaning of "should be prepared to lend, if asked". It stated that this expression meant that the dominant position holder should respond to demand in the market for borrowing at the premium set by the Lending Guidance.

34. Paragraph 17 of the Clarification and Explanation stated that the holder of the dominant position was ultimately responsible for his own compliance with the Lending Guidance. The Clarification document was evidently intended to assist members in so complying.

35. Paragraphs 2-7 of the Clarification and Explanation were titled: "How to Calculate a Dominant Position". This stated that the figures used in calculating a WTC position were those reported by members to the Exchange by 8.30am each business day, as being their WTC positions as at the close of business on the previous business day (see in particular paragraphs 5 and 7). This gave a clear impression that calculation was to take place once per day. Paragraphs 8-16 were titled: "How a Dominant Position Triggers the Lending Guidance". The impression that calculation was to take place once per day was reinforced by the worked example in paragraphs 8-11, which commenced with a set starting point, and made no reference to the possibility of a dominant position being built up in the course of a day. It was further reinforced by paragraph 14, which pointed out that, where a dominant position holder reduced his WTC position on one day by lending Tom/next, he would be adding to his C position "for the purposes of calculating his WTC position the next morning".

36. There were special rules for a dominant position held for five or more successive days, but there was no express mention, either in the Lending Guidance or in the Clarification and Explanation, of steps required on the day during which a dominant position was first achieved.

37. Paragraph 18 advised that the LME Compliance Department calculated dominant positions on the basis of position reports submitted electronically by members and, when it identified a dominant position, would contact the position holder both to confirm the figures used to calculate the dominant position and to discuss any steps to be taken.

38. The FSA in its submissions placed emphasis upon the circumstance that the Firm and Mr Geddis decided not to contest the LME's interpretation of the Guidance. We were not greatly impressed by that consideration. It was clear to us that the Firm took a policy decision not to argue with the LME. Mr Geddis adopted a similar line; as he said in his evidence, "it was a matter of taking responsibility and accepting what had happened was my fault." While it is true that he made a concession in a meeting with the LME authorities on 9 December 2008 that he was (according to a note mis-dated as 9 December 2009) "fully aware of his obligations as a dominant position holder to lend, and to lend at level given the intensity of dominance, without receiving any instructions from LME Market Surveillance to lend", it was not clear that this answer related to what he had thought on 21 November 2008, as opposed to relating to the time of the meeting, particularly in view of his query on 21 November that he had not received lending instructions from the LME. Mr Geddis's second witness statement was explicit that at the time of the telephone call from LME Surveillance on 21 November 2008 he did not think he had traded in breach of the Lending Guidance, and that it was only when he returned to work after the weekend that he decided to accept the LME's view that he had traded in breach of the Guidance.

39. Mr Abbott submitted that, in view of the wordings in the Lending Guidance to which we have made reference above, (1) whatever the logic of the LME's subjective intent as explained by Mr Whiting and Mr O'Hegarty, the Lending Guidance as actually written did not apply until the day after a dominant position was first achieved, and (2) it was unsurprising that Mr Geddis (as shown by his and others' reaction on the day) had expected to be contacted by the LME Compliance Department when circumstances arose which required him to comply with the specific terms of the Guidance concerning price level. We accept those submissions. We are bound to say that the Guidance and its supporting document were not worded with the requisite clarity. To a degree this was understandable since, as we heard in evidence from Mr Whiting, the build-up of a dominant trading position within a single trading day was very unusual and had not occurred before November 2008. By requiring the calculation of a dominant position to be made by reference to the position at the close of business on the previous business day, it failed to address the situation which could arise on the first day during which a dominant

position was achieved. If the case against Mr Geddis had rested solely on the Lending Guidance, we would have rejected it.

40. Rule 9.7 of Part 2 of the LME Rules provided:

> "No member shall manipulate or attempt to manipulate the market, nor create or attempt to create a disorderly market nor assist its clients, or any other person, to do so."

41. It is not in dispute that Mr Geddis caused the Firm to be in breach of rule 9.7 by creating a disorderly market. It is also not in dispute that Mr Geddis's conduct on Friday 21 November 2008, because it secured the price of Tom-Next Lead contracts at an abnormal level, amounted to market abuse within the meaning of the Financial Services and Markets Act 2000 s118(5).[1]

'SIFTING', AND THE TRADING ON TUESDAY 18 NOVEMBER 2008

42. The principle of sifting was explained to us by Mr Whiting. Although the LME sets minimum standards for the quality of metal placed on warrant, the quality of metal varies. Metal of a higher quality may attract a premium. Firms may also be willing to pay a premium to acquire warrants of a certain brand or those representing metal stored at particular locations (since the location will affect the transport costs). Sifting is the process of acquiring warrants in sufficient quantity through trading on the LME in the hope of acquiring warrants that can be sold over the counter at a premium. If successful, sifting can be seen as a cheap way to acquire high value warrants. In normal market conditions a sifter has to acquire the large majority of warrants in order to sift effectively, and sifting strategies normally continue over an extended period. Mr Geddis confirmed in evidence that sifting would normally continue from day to day: "the sifting strategies normally take place over a certain amount of time, and you build up your position on a daily basis. You borrow one morning and you continue to borrow the next day, increasing the position".

43. Mr Whiting considered that firms would not normally use the Tom/Next market to sift, but it was clear to us from Mr Geddis's evidence that Mr Geddis did so. Mr Somerville-Cotton confirmed in his FSA interview that Mr Geddis's sifting strategy was not unusual.

44. At a late stage in the FSA's investigation process, it was discovered that Mr Geddis had built up a dominant position not only on 21 November, but also on 18 November, in the course of the day. He explained in oral evidence that as far as he could recollect he had been sifting for Singaporean warrants on 18 November, and then had traded for profit in

[1] The FSA contended that his trading also fell within s118(5) because it gave a false or misleading impression as to the supply of or demand for the contracts. This was disputed by Mr Geddis. The FSA expressly accepted that the addition of this further contention had no impact on the appropriate penalty. We have therefore not considered it further.

the first ring. The records showed that he had not traded on that day in accordance with the LME's understanding of the Lending Guidance. The average price of his trades was at a backwardation of $6.70. This was not an unusual level and had not attracted attention at the time.

45. On 16 June 2009 Mr Geddis was interviewed by the FSA at some length, from 2:40 to 6:25pm. In his long interviews by the FSA Mr Geddis did not mention the events of 18 November despite being asked about his previous experience of having a dominant position. Because of his failure to mention the events of 18 November, his answers were substantially incorrect, and we have had to consider the significance of this. Having heard Mr Geddis cross-examined we have no hesitation in judging this to be a failure of recollection rather than anything more sinister. 18 November 2008 had not been an eventful day for him. He had come to interview 7 months later to answer questions about 21 November, which had been very eventful, and we do not find it surprising that his manner of trading on 18 November was not present to his mind at interview, if indeed he could remember it at all.

46. Mr Geddis in his oral evidence explained that the sifting for Singaporean warrants, on which he had been engaged on 18 November, came to an end, and on 21 November he was sifting for a customer who wanted European warrants. His explanation for his dominant position being built up within a single day on 18 November and again on 21 November was that it was due to the liquidity of the market. The FSA challenged these explanations, but we found them convincing and considered that Mr Geddis was being truthful in giving them.

OUR ASSESSMENT OF MR GEDDIS AND THE EVENTS OF 21 NOVEMBER

47. We indicated above that we found Mr Geddis to be an honest and careful witness who tried to assist us to the best of his ability. The character witnesses described Mr Geddis as, among other things, dependable, honest, loyal, diligent, reliable, sensible, competent, respected, patient, and courteous. His manager's comments in his performance review as at 30 October 2008 stated: "Jason has received positive feedback from a number of areas, notably compliance and is regarded as a market expert, who has high integrity and professional in his role". Mr Somerville-Cotton, in interview by the FSA, described Mr Geddis as having been an exemplary market professional for 20 years and stated that he was an extremely highly regarded individual in the LME.

48. The Authority did not dispute that the descriptions of Mr Geddis's character given by the character witnesses were an accurate assessment of Mr Geddis prior to the events in question. However, the Authority's case was that the market abuse committed by Mr Geddis was part of a premeditated strategy to carry out an abusive squeeze in order to

make profits for his employer. We are unable to accept the Authority's analysis. We conclude as follows:

a. We do not regard the events of 18 November 2008 as proof of an improper motive. We find that on that date Mr Geddis completed the sifting in which he had been interested and then traded in the ring for profit, without any appreciation that the price levels at which he traded were contrary to the LME's interpretation of the Lending Guidance.

b. The events of 21 November 2008 are inconsistent, in our view, with a premeditated strategy of making profits through an abusive squeeze. No one carrying out such a strategy would have induced such a dramatic rise in the prices, since that could not fail to draw attention to what was happening, resulting in the failure of the plan.

c. We reject the submission that Mr Geddis ought to have known that under the Lending Guidance as written he was required to calculate the dominance of his position at each point during the day for the specific purpose of imposing on himself at the appropriate moment in the day the price fixing regime set out in the Guidance. The Lending Guidance was poorly expressed and did not deal expressly with the acquiring of a dominant position in the course of a single day. Mr Geddis was, however, rightly aware at the material time of his dominant position, and ought in our view to have had in mind the objective which the Guidance had been intended to achieve. His failure consisted in not taking sufficient care, while holding a dominant position, to avoid creating a disorderly market.

d. We accept Mr Geddis's explanation that on 21 November in his course of trading from 11:24 onwards he lost sight of his European sifting strategy and got caught up in the excitement of trading. After trading in the ring, he realised that he had acted wrongly because through use of his dominant position he had created a disorderly market. This was a serious mistake. Having realised that he had been in error, he did the right thing, which was to call immediately for assistance from Mr Somerville-Cotton. He did this without delay, while still on the telephone to the broker. After the ring he put two further offers into the market to stop shorts defaulting, but without thinking clearly about what was required; to avoid continuing the disorder, the offers should have been priced at level.

e. Afterwards he assisted with setting right the consequences of his improper trading.

f. We observe that the exceptional nature of the course of events, ie, the building up of a dominant position from nothing in the course of a single day, partly explains the lack of relevant express provision in the Lending Guidance and contributed to Mr Geddis's failure to keep in mind the need for particular caution.

49. The Authority has not satisfied us that Mr Geddis demonstrated a lack of integrity. On the contrary, we find that he is a person of integrity. We consider that his conduct in creating a disorderly market fell below the proper standard of care, but it was not a failure of integrity.

SANCTIONS

50. The Authority considered that a fine of £100,000 was appropriate, but reduced it to £25,000 because of Mr Geddis's difficult financial situation. Given the further deterioration in his financial position since the time of the Decision Notice, the Authority accepted that (even on the Authority's case) it would not now be appropriate to impose any fine on Mr Geddis. However, we were asked by the Authority to state what fine we would have imposed if Mr Geddis's had not been in straitened circumstances. Mr Abbott submitted that a public censure was the appropriate penalty, without any fine.

51. When imposing a sanction the Authority acts in furtherance of its regulatory objectives. They are set out in Section 2(2) of the Act. The objective relevant to this case is the market confidence objective. The Authority's approach to enforcement is set out in its Enforcement Guide (EG). The Authority's aims in exercising its enforcement powers are set out in EG 2.2(4) and are to:

a. Change the behaviour of a person who is subject to action;

b. Deter future non-compliance by others;

c. Eliminate any financial gain or benefit from non-compliance;

d. Where appropriate, remedy the harm caused by non-compliance.

52. The purpose of imposing a fine or censure is stated explicitly in DEPP 6.1.2G, namely to promote high standards of regulatory and/or market conduct by:

a. Deterring persons who have committed breaches from committing further breaches;

b. Helping to deter other persons from committing similar breaches; and

c. Demonstrating generally the benefits of compliant behaviour.

53. On the facts of the present case the following factors seem to us to be particularly pertinent:

    a. The evidence placed before us indicated a high level of confidence in the market run by the LME. It seems that abusive behaviour is very rare indeed.

    b. Mr Geddis did not profit from the breach.

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

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

    e. The breach was not difficult to detect; on the contrary, the market authorities became aware of it very quickly.

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

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

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

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

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

    k. 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.

54. In these circumstances, we do not consider it appropriate to levy a fine on Mr Geddis, irrespective of the information concerning his current financial resources. We accept Mr Abbott's submission that the Authority misjudged the facts of the case and misjudged Mr Geddis, and in any event he has suffered very substantial financial detriment as a result of his error. In fairness to the Authority we observe that in the period leading up to the Decision Notice Mr Geddis did not have the representation which he had before us, and his case had been put forward in a manner which did not reveal its real strengths.

55. We consider that in this case the regulatory objectives will be properly advanced by a public censure. We accordingly direct that the authority should issue a statement

pursuant to s205 of the Financial Services and Markets Act 2000, in line with our analysis in this decision.

56. We disagree with the Authority's decision on prohibition. Mr Geddis had been involved in the market for 20 years without any compliance problems. He demonstrated a lack of care resulting in a disorderly market on a single occasion, in a manner which we are sure he will never repeat. He has learned his lesson. In our view he is fit and proper, and no prohibition order is justified.

57. Our decision is unanimous.

Andrew Bartlett QC

Judge of the Upper Tribunal

Signed on original 26 August 2011