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BOARD NOTICE 594

DISCIPLINARY ACTION

27 July 2001

JAMES ARCHER, ADRIAN EZRA and DAVID CRISANTI

In November 1999 SFA brought disciplinary proceedings against Mr Archer, Mr Ezra and Mr Crisanti in relation to trading in Stora A shares on the Stockholm Stock Exchange (“the SSE”) on 29 December 1998 and subsequent attempts to disguise the true circumstances of the trading. The proceedings were determined by the Disciplinary Tribunal earlier this year with the following outcome:

- **Mr Archer was found not to be fit and proper to be registered and has been expelled from the Register of Representatives**
- **Mr Ezra was found not to be fit and proper to be registered and has been expelled from the Register of Representatives**
- **Mr Crisanti was found not to be fit and proper to be registered and has been expelled from the Register of Representatives and the Register of Managers.**

Each has been required to pay a contribution to SFA’s costs.

Each was employed by Credit Suisse First Boston (Europe) Ltd (“CSFB”). Mr Crisanti was Global Head of Index Arbitrage. Mr Ezra was a Vice President in Equity Index Arbitrage responsible for European Index Arbitrage, including the Swedish book. He reported to Mr Crisanti. Mr Archer was a junior trader on the index arbitrage desk, responsible for trading the Swedish book. He reported to, and sat next to, Mr Ezra. The three were close friends.

The Tribunal found that the misconduct alleged against Mr Archer, Mr Ezra and Mr Crisanti arose out of “a blatant attempt to manipulate the OMX Index on the SSE on the morning of 29 December 1998 and of their persistent attempts to disguise the circumstances from SSE Market Surveillance and from CSFB’s compliance department.”

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Following a merger between two Swedish companies, Stora Kopparbergs Bergslags AB and Enso OYJ, the last day for trading the separate Stora A and Enso stocks would be 29 December 1998 following which Stora A would leave the OMX Index and be replaced by Stora Enso. Mr Archer had tendered the Swedish book's Stora A shares for conversion into Stora Enso on 17 December 1998. This left the Swedish book temporarily unbalanced: it was short of Stora A and would benefit from a fall in the price at which Stora A would leave the Index on 29 December 1998.

On the morning of 29 December 1998 Stora A opened at 90 SEK. The bid stack disclosed only four bids for a total of no more than 20,800 shares. Mr Archer knew that there were no further bids at lower levels and that the chance of influencing the price of Stora A shares by selling heavily into the market was remote. Mr Archer arranged with a broker at Nordiska Fondkommission AB ("Nordiska") to place a buy order for 80,000 Stora A shares on behalf of CSFB at SEK60. The Nordiska broker placed the order at 09:26. Mr Archer himself placed a sell order for 93,000 Stora A shares at SEK60 at 09:27. This matched with the higher bids and with his own bid at SEK60: it matched with his own bid as to 72,200 shares. Mr Archer placed further sell orders to meet any buy orders arising from the fall in price.

If these deals had stood unchallenged, they would, because of their volume and price, significantly have affected the calculation of the OMX Index (which is calculated on a VWAP basis). However the SSE noticed the unusual trading and telephoned CSFB to make enquiries. Mr Archer put forward the explanation that the large trade had been an error in that Mr Archer had intended to sell 10,000 shares but had, in error, entered 100,000 shares into the system. This was a deliberate lie which was intended to mislead the SSE.

The SSE suggested that Mr Archer contact his counterparties with a view to cancelling the trades. In order to conceal the self-trade, Mr Archer and the Nordiska broker devised an elaborate charade in which they pretended to come to an agreement with an imaginary client to replace the deal of 72,200 Stora A shares at 60 SEK with a similar deal at 75 SEK off-exchange. To give an air of credibility to the deception, the substitute deal was recited on a dealing telephone line so that the conversation was recorded.

Both Mr Archer and Mr Ezra made use of mobile telephones rather than CSFB's taped dealing lines: for example Mr Archer made use of a mobile telephone in relation to the placing of the buy order at SEK 60 and the arrangements to make the pretend agreement. It was well understood that CSFB did not permit the use of mobile telephones for dealing and this was known to Mr Archer and Mr Ezra.

The SSE was not satisfied with Mr Archer's explanation and on 30 December 1998 the SSE requested a copy of the contract note from Nordiska. The Nordiska broker told Mr Archer of this development: the contract note would demonstrate that Nordiska had been acting on behalf of CSFB and that the deal was a self-trade. Nordiska provided a copy contract note to the SSE on 14 January 1999. On 21 January 1999 the SSE wrote to CSFB asking for a full explanation.

On receipt of the SSE's letter, CSFB's compliance department started an investigation. Explanations were obtained from Mr Archer and Mr Ezra. These explanations were untrue. Both had decided to try to deceive CSFB.

A draft reply to the SSE was circulated for approval within CSFB, including Mr Crisanti. Mr Crisanti knew that the explanation put forward by Mr Ezra and Mr Archer was untrue. A response was sent on 1 February 1999 which supported the untrue explanations already given to the SSE.

Both the SSE and CSFB continued to investigate the matter.

On 9 February 1999 at a meeting at CSFB Mr Archer initially tried to brazen the matter out but eventually stated that he had not been honest in his explanation of the input error and confessed that he had, in fact, carried out a self-trade.

Further meetings took place at CSFB with Mr Archer, Mr Ezra and Mr Crisanti during February 1999 from which the following emerged:

- initially Mr Archer had said that Mr Ezra had not been involved in the self-trade. He subsequently stated that Mr Ezra knew of his intention to do the self-trade, did not stop him from doing it and was fully aware of the transaction before it was executed.
- Mr Ezra said that he had not been involved in the self-trade and that he had told Mr Archer that a self-trade would not be a good idea on 28 December 1998, the day before the trade. It had been agreed by the three of them not to report the matter to Compliance.
- Mr Crisanti admitted to CSFB that he had known about the self-trade and the lying explanations put forward by Mr Ezra and Mr Archer before the response was sent to the SSE. He had decided to come forward when he learnt that Mr Archer was implicating Mr Ezra.

The three were dismissed by CSFB shortly afterwards.

The Tribunal noted that each of the three had admitted lying and deceit and it listened carefully to their evidence. The Tribunal concluded that they had still not been fully frank and honest.

The Tribunal found as follows:

- the Tribunal rejected attempts to diminish Mr Archer's culpability: he was fully aware of his responsibilities, that he was required to observe a high standards of integrity and fair dealing and he understood precisely how the Swedish market operated. The Tribunal rejected the suggestion that what he did was the result of inadequate instruction or training; it also rejected the assertion that he did not know that a self-trade was improper, noting that his first reaction when questioned by the SSE was to lie.
- Mr Archer was not an SSE registered trader. He had been given unambiguous instructions by Compliance not to trade directly on the SSE's electronic trading system. However he placed sell orders directly onto that system on 29 December 1998. The Tribunal found that he knew he was not entitled to trade on the SSE in this manner.
- Mr Ezra was a party to misleading the SSE by putting forward the false explanation of the input error and later taking part in deceiving Compliance and the SSE. The Tribunal did not find that Mr Ezra had been a party to the self-trade or that he had been aware of Mr Archer's intention to place a buy order for 80,000 Stora A shares.
- The Tribunal did not find that Mr Crisanti knew of the self-trade before 21 January 1999. Mr Crisanti readily forsook his responsibility to report his subordinates' deceptive behaviour and joined with them in further deceit.

- Mr Ezra and Mr Crisanti readily joined in the deception designed to cover up Mr Archer's blatant market manipulation. Bonuses were normally payable at the end of February or the beginning of March and a very large sum was to be allocated to Mr Crisanti and his team. It was clear that once the true facts about the self-trade and the initial deceit of the SSE and Compliance became known, the bonus would be unlikely to be paid: it seemed to the Tribunal that a possible explanation for the readiness with which Mr Ezra and Mr Crisanti went along with the deception was that they hoped to delay discovery until after payment of the bonus.

The Tribunal concluded that:

- Mr Archer had breached Principle 1 of the FSA's Statements of Principle (high standards of integrity and fair dealing) by (i) the trading strategy adopted on 29 December 1998; (ii) trading directly on the SSE when not authorised to do so; and (iii) deliberately concealing the facts of his trading from the SSE and Compliance. Mr Archer had also breached Principle 3 of the FSA's Statements of Principle (high standards of market conduct) by placing buy and sell orders which caused CSFB to trade with itself.
- Mr Ezra had breached Principle 1 by his deliberate concealment of the manner in which CSFB had been caused to trade with itself.
- Mr Crisanti had breached Principle 1 by his deliberate concealment of the manner in which CSFB had been caused to trade with itself.

The Tribunal also concluded that all three were no longer fit and proper on the following basis:

“The misconduct proved in this case falls within the grave category of market manipulation. It is just as dishonest to make a false entry on the screen of an automated system as it is to write a false entry in a book. The trade in this case was intended to influence the price of the OMX Index and, but for the vigilance of the SSE Surveillance, would have done so and could have caused significant loss to others who traded believing that any persons authorised to trade were of high integrity and completely trustworthy. Though the circumstances are different from those in which the client places trust in his solicitor, the degree of trust placed on those who deal in the market is just as great. If it is betrayed, public confidence is equally undermined. Before the Tribunal each of the defendants was only prepared to accept responsibility with reservations. We consider that the persistence and guile of the attempts to deceive the SSE Surveillance and the Compliance Department of CSFB including the devious use of pre-arranged telephone calls aggravates the defendants' misconduct and accentuates their lack of integrity.

We have concluded that the misconduct of each of the defendants is so grave that the only penalty appropriate is removal from the register. We are satisfied that they have been shown not to be fit and proper persons to be registered and we order their names to be removed accordingly.”

Mr Crisanti also sought to have the transcript of his SFA interview excluded from the evidence before the Tribunal. The Tribunal ruled that the transcript should be admitted, concluding that SFA proceedings were to be viewed as civil rather than criminal for the purposes of the European Convention on Human Rights and further that there would be no adverse effect on the fairness of the hearing.

Questions

Any enquiries regarding this Notice should be addressed to Jeremy La Niece, Enforcement Counsel
Tel: 020 7676 1346.

BY ORDER OF THE BOARD

LYNDA BLACKWELL

SECRETARY