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FINAL NOTICE

To:	Christian Bittar
Date of Birth:	12 January 1972
Authority Reference Number:	CXB01301
Date:	14 September 2018

ACTION

1. For the reasons given in this notice, the Authority hereby makes an order, pursuant to section 56 of the Act, prohibiting Mr Bittar from performing any function in relation to any regulated activity carried on by an authorised or exempt person, or exempt professional firm.

REASONS FOR THE ACTION

2. On 13 April 2017, the Authority gave Mr Bittar a decision notice, a copy of which is attached to this notice at Appendix 1 ("the Decision Notice").

3. The Decision Notice notified Mr Bittar that the Authority had decided to take the following action:

   (i) impose on Mr Bittar a financial penalty of £6,500,000 pursuant to section 66 of the Act; and

   (ii) make an order, pursuant to section 56 of the Act, prohibiting Mr Bittar from performing any function in relation to any regulated activity carried on by an authorised or exempt person, or exempt professional firm.

4. On 10 May 2017, Mr Bittar referred the Decision Notice to the Upper Tribunal (Tax and Chancery Chamber) ("the Tribunal"). Mr Bittar's reference to the Tribunal was stayed on 1 August 2017.

5. Following the stay of Mr Bittar's reference, on 2 March 2018, Mr Bittar pleaded guilty to a criminal charge of conspiracy to defraud. The criminal charge to which Mr Bittar pleaded guilty included substantially the same conduct to that on which the Decision Notice was based. On 20 July 2018, Mr Bittar was sentenced to 5 years and 4 months in prison and ordered to pay £2,500,000 million by way of confiscation, plus costs.

6. Given the sentence imposed on Mr Bittar for substantially the same conduct as described in the Decision Notice and in light of the Crown Court Judge's sentencing remarks which are attached to this Notice at Appendix 2, the Authority considers the underlying purposes of the original penalty, including that of specific and general deterrence, have been met without the imposition of any additional penalty. Were it not for these particular circumstances, the Authority would have sought to impose a penalty of £6,500,000 for the reasons set out in the Decision Notice.

7. Accordingly, with the consent of the Authority and Mr Bittar, by order dated 14 September 2018 the Tribunal directed that the Authority should not impose a penalty on Mr Bittar and that Mr Bittar's reference regarding the prohibition order be dismissed.

8. In light of the above, the Authority has issued this Final Notice.

PROCEDURAL MATTERS

9. This Final Notice is given under, and in accordance with, section 390 of the Act.

Publicity

10. 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 Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to Mr Bittar or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

12. For more information concerning this matter generally, contact Steven King (direct line: 020 7066 3408) of the Enforcement and Market Oversight Division of the Authority.

Mark Francis

Director, Enforcement and Market Oversight Division

Financial Conduct Authority

Appendix 1

Financial Conduct Authority
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DECISION NOTICE

To:	Christian Bittar
Date of Birth:	12 January 1972
Authority Reference Number:	CXB01301
Date:	13 April 2017

ACTION

1. For the reasons given in this Notice, the Authority has decided to:

   (1) impose on Christian Bittar a financial penalty of £6,500,000 pursuant to section 66 of the Act; and

   (2) make an order, pursuant to section 56 of the Act, prohibiting Mr Bittar from performing any function in relation to any regulated activity carried on by an authorised or exempt person, or exempt professional firm.

SUMMARY OF REASONS

2. The Authority has decided to take this action because during the period from 9 March 2005 to 4 June 2009 (inclusive) Mr Bittar was knowingly concerned in a contravention of Principle 5 by Deutsche in relation to EURIBOR.

Euro Interbank Offered Rate

3. EURIBOR is a benchmark reference rate fundamental to the operation of both UK and international financial markets. Its integrity is of fundamental importance to confidence in the financial system.

4. EURIBOR is published daily in a number of maturities and is set according to a definition published by the EBF. The definition of EURIBOR requires contributing banks to make submissions based on borrowing and lending in the interbank market. The definition does not allow for consideration of any other factors.

5. Banks on the EURIBOR panel make daily submissions to the EBF to enable EURIBOR to be calculated.

6. Mr Bittar was a Derivatives Trader at Deutsche. Trading positions for which he was responsible in the course of his employment were referenced to EURIBOR and the profitability of those positions was dependent on where EURIBOR was set.

Deutsche's Final Notice

7. On 23 April 2015, the Authority gave Deutsche a Final Notice and imposed on Deutsche a financial penalty of £226.8 million, in respect of significant failings in relation to the interbank interest rate benchmark setting process. These included breaches in relation to EURIBOR (involving various staff of Deutsche) of Principle 5, which provides that a firm must observe proper standards of market conduct.

8. The Final Notice sets out that Deutsche breached Principle 5 by, inter alia, manipulating its own EURIBOR submissions that formed part of the calculation of the published EURIBOR rate and by colluding with External Traders at Panel Banks.

Mr Bittar's misconduct in relation to EURIBOR submissions

9. Mr Bittar acted improperly and was knowingly concerned in Deutsche's breach of Principle 5 in that (in the course of his employment at Deutsche) he routinely made requests to Deutsche Submitters and, via External Traders, to other Panel Banks to make EURIBOR submissions which were high or low relative to the submissions the banks concerned should have made taking into account the EURIBOR Code of Conduct issued by the EBF (referred to in this Notice as "high or low EURIBOR submissions"). He did so to benefit the profitability of Deutsche trading positions for which he was responsible and (on some occasions) for the benefit of the profitability of the trading positions for which External Traders were responsible. Mr Bittar knew it was improper to make such requests.

10. The Authority has found evidence of:

    (1) 81 communications in which Mr Bittar made requests to Deutsche Submitters for high or low EURIBOR submissions to benefit trading positions;

    (2) the following communications with External Traders:

        (a) 46 in which Mr Bittar made requests for high or low EURIBOR submissions to benefit his trading positions;

        (b) 21 in which Mr Bittar received (and agreed to act on) requests for high or low EURIBOR submissions to benefit the External Traders' trading positions; and

(c) a further 12 in which Mr Bittar either received or made requests for high or low EURIBOR submissions to benefit trading positions, but it is unclear which.

11. Mr Bittar requested submissions in more than one EURIBOR maturity in over 30 of these communications and on several occasions, Mr Bittar requested high or low EURIBOR submissions to be made for extended periods of time, including for more than a month.

12. On 12 occasions (evidenced in the communications referred to at sub-paragraph 10(2) above), Mr Bittar worked with others to influence the EURIBOR submissions of between two and five other Panel Banks in order to increase the chances of EURIBOR being set at a rate that would benefit the Deutsche trading positions for which he was responsible and the trading positions of External Traders.

13. Mr Bittar was aware that the process for setting EURIBOR (interpreted in the light of the EURIBOR Code of Conduct) required submissions from Panel Banks to be based on the submitters' assessment to the best of their knowledge, of the rate (to two decimal places) at which Euro loans were being offered by prime banks in the interbank market, and that the definition did not allow for consideration of the effect on trading positions of Deutsche or other Panel Banks. He was also aware that EURIBOR was used by third parties in a range of financial transactions and markets and that any variation to the EURIBOR rate would affect the parties to those transactions. Mr Bittar knew, therefore, that it was improper for him to:

(1) make requests of Deutsche Submitters for EURIBOR submissions for the benefit of his own trading positions; or

(2) collude with External Traders with a view to the Deutsche Submitters and/or other Panel Banks' submitters making EURIBOR submissions for the benefit of his own and/or the External Traders' trading positions.

14. As such, Mr Bittar was knowingly concerned in Deutsche's contravention of proper standards of market conduct, contrary to Principle 5.

Sanction

15. The UK and international financial system relies on the integrity of benchmark reference rates such as EURIBOR. Mr Bittar's misconduct threatened confidence in the integrity of the UK financial system and could have caused significant harm to other market participants and consumers.

16. During the Relevant Period, Mr Bittar was an approved person. Approved persons must act with honesty and integrity. Mr Bittar's actions were carried out deliberately and demonstrate a lack of integrity.

17. In light of the seriousness of the matters set out in this Notice, and the need for deterrence of Mr Bittar and others, Mr Bittar's misconduct warrants the imposition of a significant penalty. The Authority considers it appropriate to impose a financial penalty of £6,500,000.

18. In addition, as a result of his lack of integrity, the Authority considers that Mr Bittar is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt

person or exempt professional firm and, as such, should be prohibited from doing so.

DEFINITIONS

19. The definitions below are used in this Notice:

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

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

"DEPP" means the Authority's Decision Procedure and Penalties Manual;

"Deutsche" means Deutsche Bank AG;

"Deutsche Submitter" means an individual responsible for determining and making EURIBOR submissions on behalf of Deutsche;

"Derivatives Trader" means an interest rate derivatives trader;

"EBF" means the European Banking Federation;

"EG" means the Authority's Enforcement Guide;

"ENF" means the Authority's Enforcement Manual;

"EONIA" means the Euro Over Night Index Average. EONIA is the overnight reference rate for the Euro. It is computed as a weighted average of all overnight unsecured lending transactions in the interbank market, undertaken in the European Union and European Free Trade Association (EFTA) countries;

"EURIBOR" means the Euro Interbank Offered Rate (for one or more maturities, as the context requires);

"EURIBOR Code of Conduct" means the Code of Conduct issued by the EBF in relation to EURIBOR, which was applicable during the Relevant Period and set out (among other things) the obligations of Panel Banks in relation to EURIBOR submissions;

"External Trader" means a Derivatives Trader at a Panel Bank other than Deutsche;

"FIT" means the section of the Handbook entitled "The Fit and Proper test for Approved Persons";

"Panel Bank" means a bank with a place on the EBF panel for contributing EURIBOR submissions;

"Principle 5" means Principle 5 of the Authority's Principles for Businesses;

"Relevant Period" means 9 March 2005 to 4 June 2009 (inclusive); and

"Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

FACTS AND MATTERS

EURIBOR and interest rate derivatives contracts

20. EURIBOR is a widely used benchmark for interest rates globally, used in over-the-counter interest rate derivatives contracts and exchange traded interest rate contracts, as well as in consumer contracts such as loans and mortgages. Statistics published by Euronext indicate that the total volume of short term interest rate contracts traded on the London International Financial Futures And Options Exchange in 2011 was €477 trillion, including over €241 trillion relating to the three month EURIBOR futures contract (at the time, the fourth largest interest rate futures contract by volume in the world).

21. EURIBOR is published on behalf of the EBF. EURIBOR is currently published for fifteen maturities, with one month, three months and six months the most commonly used maturities. EURIBOR requires submissions from contributing banks based on borrowing and lending between prime banks in the interbank market within the Euro zone. The Panel Banks are selected by the EBF and each bank contributes rate submissions (for a number of maturities) each business day. These submissions are not averages of the relevant banks' transacted rates on a given day. The EBF requires Panel Banks to exercise their subjective judgement in evaluating the rates at which money may be available in the interbank market, in accordance with the prevailing definition of EURIBOR, when determining their submissions.

22. Since 1998, the EURIBOR definition, as published by the EBF in the EURIBOR Code of Conduct has been as follows:

> *"he rate at which euro interbank term deposits are offered within the EMU zone by one prime bank to another at 11.00 a.m. Brussels time…".*

23. The definition of EURIBOR requires submissions based on the judgement of the Panel Bank as to borrowing and lending in the interbank market. The definition does not allow for Panel Banks' submissions to take into account factors such as the impact of the submissions on a bank's trading positions.

24. The EURIBOR Code of Conduct provided that Panel Banks must quote the required rates *"to the best of their knowledge…accurately with two digits behind the comma* [ie to two decimal places]".

25. Throughout the Relevant Period, between 39 and 48 banks submitted EURIBOR rates in each maturity to the EBF daily. The final benchmark EURIBOR rate in each maturity was (and still is) calculated by excluding the highest 15% and lowest 15% of all the submissions collated and then rounding the average of the remaining submissions.

26. During the Relevant Period, EURIBOR was (as it is now) relevant to a variety of trading positions held by Deutsche. The Derivatives Traders at Deutsche entered into many types of interest rate derivatives contracts that contained payment terms that were typically defined by reference to benchmark rates such as EURIBOR. The trading positions that were referenced to EURIBOR therefore stood to make a profit or loss dependent on movements in EURIBOR.

27. Where Derivatives Traders have positions which are linked to EURIBOR, they will know on any particular day their books' exposure to a movement in EURIBOR. EURIBOR movements are, therefore, of fundamental importance to such Derivatives Traders.

Deutsche's Final Notice

28. On 23 April 2015, the Authority gave Deutsche a Final Notice and imposed on Deutsche a financial penalty of £226.8 million, in respect of significant failings in relation to the interbank interest rate benchmark setting process. These included breaches in relation to EURIBOR (involving various staff of Deutsche) of Principle 5, which provides that a firm must observe proper standards of market conduct.

29. The Final Notice sets out that Deutsche breached Principle 5 by, *inter alia*, manipulating its own EURIBOR submissions that formed part of the calculation of the published EURIBOR rate and by colluding with External Traders at Panel Banks.

Mr Bittar's role at Deutsche

30. Mr Bittar commenced his employment with Deutsche in November 1999 as an overnight index swap trader. From January 2001 to March 2002, Mr Bittar traded overnight index swaps in Euros, EONIAs and one month forward rate agreements. From March 2002 until after the end of the Relevant Period, Mr Bittar traded Euro interest rate derivatives.

31. From February 2006, Mr Bittar was a Managing Director of the Global Finance and FX Forwards Group (London).

32. On 20 December 2011, Deutsche terminated Mr Bittar's employment, citing misconduct in relation to EURIBOR submissions.

33. Mr Bittar was approved to perform the CF26 Customer Trading function from the start of the Relevant Period to 31 October 2007, and the CF30 Customer function from 1 November 2007 until after the end of the Relevant Period.

Requests made and received by Mr Bittar

34. The Authority has found evidence of:

    (1) 81 communications in which Mr Bittar made requests to Deutsche Submitters for high or low EURIBOR submissions to benefit trading positions of Deutsche for which he was responsible and/or trading positions for which External Traders were responsible;

    (2) the following communications with External Traders:

        (a) 46 in which Mr Bittar made requests for high or low EURIBOR submissions to benefit such trading positions;

        (b) 21 in which Mr Bittar received (and agreed to act on) requests for high or low EURIBOR submissions to benefit the External Traders' trading positions; and

(c) a further 12 in which Mr Bittar either made or received requests for high or low EURIBOR submissions to benefit trading positions, but it is not clear which.

35. Mr Bittar requested submissions in more than one EURIBOR maturity in over 30 of these communications and on several occasions, Mr Bittar requested high or low EURIBOR submissions to be made for extended periods of time, including for more than a month.

36. Such requests had the aim of influencing the final EURIBOR rate published by the EBF. This, in turn, would impact the profit or loss made on trading positions for which Mr Bittar and the External Traders were responsible.

37. Mr Bittar's motive when making requests was to benefit the profitability of those trading positions. The vast majority of the remuneration that Mr Bittar received during the Relevant Period was directly linked to the profit he made on the trading positions of Deutsche for which he was responsible.

Requests to Deutsche Submitters

38. Examples of requests made by Mr Bittar to Deutsche Submitters in the course of his employment at Deutsche appear below. When making these requests, Mr Bittar sometimes referred to the trading positions of Deutsche for which he was responsible, demonstrating his motive for making the requests:

(1) On 2 February 2006, Mr Bittar requested: *"I HAVE 30 BIO FIX THX TO YOU !! CUD U HELP US AND PUT A LOW 1 MTH FIXING ?",* which received a positive response from the Deutsche Submitter.

(2) On 18 October 2006, Mr Bittar requested: *"CAN I BEG YOU TO ... PUT A LOW 1MNTH FIXING AND LOW 3MNTH FIXING? THE ONE MNTH BEING A LOT MORE INMPORTANT AS WE HAVE 27BIO FIXING"*. Mr Bittar received a positive response from the Deutsche Submitter.

(3) On 12 April 2007, Mr Bittar requested *"GUYS I HAVE A HUGE FAIVOR TO ASK I HAVE A BIG 1M FIXING TODAY SO I NEED IT PRETTY LOW PLEASE IF POSSIBLE.. AND THEN HIGH 3M AND LOW 6M ;) AS WELL.. IF YOU ARE OK WITH THAT".* Mr Bittar received a positive response from the Deutsche Submitter.

External Trader requests

39. In the course of his employment at Deutsche, Mr Bittar made requests to External Traders, and passed on requests from External Traders to Deutsche Submitters. The majority of requests by Mr Bittar were made to External Trader A at Panel Bank 1. Requests made and received between Mr Bittar and External Trader A were not in English. The example quotes from these communications set out in this Notice are therefore translations.

40. Examples of External Trader requests are set out below:

(1) On 28 September 2005, Mr Bittar contacted an External Trader, stating *"Amigo u gonna put a high Libor* [sic] *tomorrow";* the

External Trader responded stating *"will spk with my frd guess 17 will fix."*

(2) On 11 August 2006, Mr Bittar contacted External Trader A stating: *"I need 3m in the sky and 6mth in the sky"*. External Trader A agreed, and explained: *"same 3m in the sky I'm receiving 1.5 bn"*. Mr Bittar said: *"I've got 21 bio of 1mth and 6bio of 3m I'm begging you help me"*. External Trader A replied: *"ok I'm taking care of you"*.

(3) On 31 May 2006, External Trader A contacted Mr Bittar stating *"could you please tell your guys to set a 12m low fixing"*. Mr Bittar replied *"ok"*. On the same day, Mr Bittar requested a low twelve month fixing from the Deutsche Submitter.

41. However, if a request from an External Trader did not suit the trading position of Deutsche for which he was responsible, Mr Bittar would ignore it.

42. On 12 occasions evidenced by communications between Mr Bittar and External Traders, he worked with others to influence the EURIBOR submissions of between two and five other Panel Banks in order to increase the chances of EURIBOR being manipulated to benefit the trading positions of Deutsche for which he was responsible and the trading positions of External Traders. Again, the majority of requests by Mr Bittar were made to External Trader A, with Mr Bittar asking External Trader A to make requests on his behalf to External Traders at other Panel Banks. Examples of this conduct are set out in paragraphs 43 to 49 below.

7 September 2006 fix

43. On 6 September 2006, Mr Bittar contacted External Trader A and requested a low one month submission: *"I seriously need your help tomorrow on the 1mth fix"*. Mr Bittar reminded External Trader A on two further occasions that day and also asked him to pass on his request for a low one month submission to Panel Bank 2 because *"my finances department is against me they are going to set it high"*.

44. On 7 September 2006, Mr Bittar reminded External Trader A: *"I'm begging u pleassssssssssssssseeeeeeeeee I'm on my knees"*. Mr Bittar explained that his cash desk was *"taking it* [i.e. the submission] *to the sky"*. In the same exchange, Mr Bittar repeated his request: *"can you beg the* [Panel Bank 2] *guy as well?"*. The External Trader replied: *"ok I'm telling him"*.

45. External Trader A passed on Mr Bittar's requests for a low one month submission to the submitter at Panel Bank 1 and to an External Trader at Panel Bank 2.

46. On 7 September 2006, after the day's EURIBOR rates were published, the following exchange took place between Mr Bittar and External Trader A:

Bittar:	*3.08 !! thanksssssssss*
External Trader:	*u see u see*
Bittar:	*thaaaaaanks*

16 October 2006 fix

47. Mr Bittar attempted to obtain a high one month EURIBOR fix on Monday 16 October 2006 in order to benefit the trading positions of Deutsche for which he was responsible, first discussing his intention to do this over a month earlier, on 7 September 2006. Examples of his communications are set out below:

(1) On 7 September 2006, Mr Bittar contacted External Trader A. External Trader A asked Mr Bittar: "*...for Oct, you want a high fix right?*" Mr Bittar replied "*Yes*".

(2) In the same chat, Mr Bittar discussed his intention to obtain a high fix. Mr Bittar said: "*my cash desk will be against us so we'll have to do some lobbying and* [Panel Bank 6] *is against us as well and probably* [Panel Bank 7]. *I'll talk to* [External Trader at Panel Bank 5]*, he's probably in the same direction as us*".

(3) In a chat on 11 September 2006, Mr Bittar contacted External Trader A and asked: "*in October should we set the fixing sky high or doesn't that work for you?*". External Trader A replied: "*yes yes sky high*".

(4) In a chat on 27 September 2006, External Trader A appeared to tease Mr Bittar: "*I forgot, do you want it low or high in October*". Mr Bittar replied: "*high libor* [sic] *like you you are scaring me*".

(5) The teasing continued, for example, in a chat on 4 October 2006, External Trader A said "*you remind me when you have your big fixing on October that I put if* [sic] *very low*". Mr Bittar replied: "*I am begging you ... stop*".

(6) On 10 October 2006, Mr Bittar sought to influence the one month EURIBOR submissions of a number of other Panel Banks by making requests to External Trader A and an External Trader at Panel Bank 4, and enlisting External Trader A to make requests for his benefit to External Traders at Panel Banks 2 and 3.

(7) In a chat on 13 October 2006 (which was a Friday), Mr Bittar engaged in the following exchange with External Trader A:

Bittar:	*Monday is the big fixing start mentioning it to them now*
External Trader A:	*very low?*
Bittar:	*please mate and insist a lot*
External Trader A:	*very low*
Bittar:	*then we put it down again*
External Trader A:	*ok I'll tell them*
Bittar:	*today and Monday?*

External Trader A: *today too?*

Bittar: *I mean start mentioning it to them today*

External Trader A: *I sent the Bloomberg*

Bittar: *did you insist a lot????*

External Trader A: *a lot*

(8) Following the publication of EURIBOR on 16 October 2006, Mr Bittar and External Trader 1 discussed in a Bloomberg chat the submissions made by Deutsche and Panel Banks 1, 2 and 3, following which Mr Bittar stated "*Thanks in any case*" to External Trader A.

13 November 2006 fix

48. Mr Bittar also attempted to obtain a low one month and three month EURIBOR fix on 13 November 2006. Examples of his communications are set out below:

(1) On 7 November 2006, Mr Bittar contacted External Trader A, making a request for a low one month and a low three month, stating: "*the most important is Monday*" [i.e. Monday 13 November 2006]. Mr Bittar informed External Trader A that the size of the trading position of Deutsche for which he was responsible was 85 billion Euro.

(2) On 10 November 2006, Mr Bittar contacted External Trader A, "*begging*" him to procure a one month submission of "*36*" from Panel Bank 1, as well as from Panel Bank 2.

(3) External Trader A made a request to a submitter at Panel Bank 1 on 10 November 2006. The submitter responded positively to External Trader A "*of course we will put in a low fixing*".

(4) On 10 November 2006, External Trader A also contacted an External Trader at Panel Bank 2 saying, "*Dude, I need a very low fixing on the 1m Monday...we have the whole world against us... [Mr Bittar] 85bn... Me 15bn*". Mr Bittar checked with External Trader A that he had passed on his request to Panel Bank 2.

(5) On 13 November 2006, which Mr Bittar described as "*the big day*", Mr Bittar and External Trader A engaged in the following chat:

Bittar: *man, will you call* [Panel Bank 2], *please?*

External Trader: *yes, and* [Panel Bank 3]

Bittar: *don't tell them that it's for me, because they hate me*

External Trader: *of course not*

Bittar: *I am beeeeeegging you*

(6) Following that exchange on 13 November 2006, External Trader A passed requests to External Traders at Panel Bank 2 and Panel Bank 3 for a low one month submission. The External Traders at these Panel Banks agreed to act on those requests. External Trader A then followed up by reminding the submitter at Panel Bank 1. The submitter at Panel Bank 1 indicated an intention to make a submission lower than the level at which brokers thought EURIBOR would be set that day, replying: "*no problem. I had not forgotten. The brokers are going for 3.372, we will put in 36 for our contribution*".

(7) External Trader A sent Mr Bittar a copy of that communication with Panel Bank 1's submitter. Mr Bittar replied: "*I love you*".

49. Mr Bittar was aware that the process for setting EURIBOR (interpreted in the light of the EURIBOR Code of Conduct issued by the EBF) required submissions from Panel Banks to be based on the submitters' assessment, to the best of their knowledge, of the rate (to two decimal places) at which Euro loans were being offered between prime banks in the interbank market and that the definition did not allow for consideration of the effect on trading positions of Deutsche or other Panel Banks. He was also aware that EURIBOR was a benchmark reference rate used by third parties in a range of financial transactions and markets and that to have the confidence of such parties the rate had to be seen to be fixed in good faith and independently of the commercial self-interest of those involved in fixing it. Mr Bittar knew, therefore, that it was improper for him to:

(1) make requests of Deutsche Submitters for EURIBOR submissions for the benefit of his own trading positions; or

(2) collude with External Traders with a view to the Deutsche Submitters and/or other Panel Banks' submitters making EURIBOR submissions for the benefit of his own and/or the External Traders' trading positions.

FAILINGS

50. The regulatory provisions relevant to this Notice are referred to in Annex A.

Knowing concern in Deutsche's breach of Principle 5

51. Section 66(2)(b) of the Act states that a person is guilty of misconduct if, while an approved person, he has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.

52. For the purposes of this Notice, Deutsche is the "relevant authorised person" under section 66(2)(b) of the Act and its breach of Principle 5 is the "contravention of a requirement imposed on that authorised person" by or under the Act.

53. Mr Bittar was an approved person during the Relevant Period. He was knowingly concerned in Deutsche's breach of Principle 5 because during the Relevant Period, in the course of his employment at Deutsche:

(1) he made requests to:

(a) Deutsche Submitters for high or low EURIBOR submissions;

(b) External Traders for high or low EURIBOR submissions;

(2) the requests were made to benefit the profitability of Deutsche's trading positions for which he was responsible, and (on some occasions) to benefit the profitability of the trading positions for which External Traders were responsible; and

(3) he knew that it was improper to make requests for EURIBOR submissions in order to benefit the profitability of such trading positions.

Lack of fitness and propriety

54. The relevant sections of FIT are set out in the appendix to this notice. FIT 1.3.1G states that the Authority will have regard to, among other things, a person's honesty and integrity when assessing the fitness and propriety of a person to perform a particular controlled function.

55. Mr Bittar is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm because he lacks integrity, as demonstrated by his conduct, as set out above.

SANCTION

Financial Penalty

56. Mr Bittar's misconduct took place from 9 March 2005 to 4 June 2009 (inclusive), during which period he deliberately made requests, and colluded with External Traders in the manner set out above, in order to benefit the trading positions of Deutsche for which he was responsible and the trading positions of External Traders. Mr Bittar was aware that EURIBOR was used by third parties in a range of financial transactions and markets and he acted as he did knowing that any variation to the EURIBOR rate would affect the parties to those transactions.

57. The Authority considers that, given the ongoing importance of EURIBOR to the UK and worldwide financial markets and Mr Bittar's very high levels of remuneration during the Relevant Period, a significant financial penalty is merited to deter future misconduct in the EURIBOR submissions process.

58. The Authority's policy on the imposition of financial penalties is set out in DEPP. The detailed provisions of DEPP which were in force from 28 August 2007 to 5 March 2010 are set out in Annex A.

59. In determining the financial penalty, the Authority has had regard to this guidance. The Authority has also had regard to the provisions of ENF relevant to the pre-28 August 2007 part of the Relevant Period (and which to all intents and purposes is identical to DEPP).

60. The Authority considers the following DEPP factors to be particularly important in assessing the sanction.

Deterrence – DEPP 6.5.2(1)

61. DEPP 6.5.2(1) states that when determining the appropriate level of penalty, the Authority will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

62. The Authority considers that the need for deterrence of Mr Bittar and others means that a significant financial penalty on Mr Bittar is appropriate. In particular, Mr Bittar received very high levels of remuneration from Deutsche Bank during the Relevant Period. While the extent to which his misconduct directly increased the level of his earnings is unknown, the vast majority of his remuneration was directly linked to the performance of the trading positions of Deutsche for which he was responsible, the profitability of which he sought to benefit by his misconduct.

Nature, seriousness and impact of the breach – DEPP 6.5.2(2)

63. EURIBOR is of central importance to the operation of UK and worldwide financial markets. Doubts about the integrity of EURIBOR threaten confidence in these markets.

64. The Authority has taken into account the frequency of Mr Bittar's misconduct and the lengthy period over which it was committed. Mr Bittar acted improperly, over a prolonged period of more than four years, by:

    (1) requesting high or low EURIBOR submissions to be made by Deutsche Submitters in 81 communications;

    (2) requesting high or low EURIBOR submissions to be made by External Traders in 46 communications;

    (3) receiving (and agreeing to act on) requests from External Traders for high or low EURIBOR submissions to benefit trading positions in 21 communications; and

    (4) either receiving or making requests for high or low EURIBOR submissions to benefit trading positions in a further 12 communications.

    Mr Bittar requested submissions in more than one EURIBOR maturity in over 30 of these communications, and on several occasions Mr Bittar requested high or low EURIBOR submissions to be made for extended periods of time.

65. On 12 occasions, Mr Bittar made a calculated effort to influence the EURIBOR submissions of between two and five other Panel Banks, in order to increase the chances of EURIBOR being manipulated to benefit the trading positions of Deutsche for which he was responsible and the trading positions of External Traders.

66. Mr Bittar's misconduct could have caused significant harm to other market participants and consumers.

67. Mr Bittar was, during the Relevant Period, an experienced market professional.

68. Mr Bittar's misconduct was carried out in order to benefit trading positions in the expectation of personal benefit.

69. In considering what penalty it is appropriate to impose on Mr Bittar, the Authority has taken into account that:

    (1) it has found no evidence of concealment by Mr Bittar from management or others within Deutsche in relation to his requests to Deutsche Submitters for high or low EURIBOR submissions; and

    (2) in committing the misconduct, Mr Bittar was not in breach of any internal procedures, or failing to follow any relevant internal guidance or training, and that the culture within Deutsche during the Relevant Period (even at senior levels) did little, if anything, to discourage such misconduct.

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

70. Mr Bittar's conduct was deliberate. He acted as he did despite knowing that it was improper.

Conduct following the breach – DEPP 6.5.2(8)

71. When interviewed by the Authority, Mr Bittar admitted that he made requests to Deutsche Submitters and to External Traders. However, Mr Bittar did not admit that his conduct was improper. Instead, Mr Bittar claimed that in making the requests he was giving his expert opinion on what he genuinely thought the rate should be and that he was aiming for a fair reflection of where the market should be, as assessed by reference to the analysis that he used in taking trading positions. In deciding the penalty which it is appropriate to impose on Mr Bittar, the Authority has taken note of his admissions but weighed them against his attempts to justify his behaviour which, for the reasons set out in this Notice, it does not accept. On that basis, the penalty has not been reduced on account of any co-operation by Mr Bittar.

Prohibition Order

72. The Authority considers that Mr Bittar's actions, as described in this Notice, demonstrate that he lacks integrity. As such, the Authority considers that he is not fit and proper to perform functions in relation to regulated activities, and that it is therefore appropriate to prohibit Mr Bittar from carrying out any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm.

REPRESENTATIONS

73. Annex B contains a brief summary of the key representations made by Mr Bittar and how they have been dealt with.

74. The Authority also received representations from External Trader A, a third party whom the Authority at the relevant stage considered to be identified in the reasons set out in the Warning Notice issued to Mr Bittar on 15 May

2014 and to whom, in the opinion of the Authority, the matter is prejudicial. (In the light of his particular circumstances, the Authority gave External Trader A the opportunity to make representations notwithstanding he did not fall within the provisions of section 394 of the Act, which give third parties the right to make representations in certain circumstances.) External Trader A's representations were concerned with the case against Mr Bittar rather than the matters which identified himself and were prejudicial to him, and supported, rather than added to, the representations of Mr Bittar; the Authority therefore does not deal with them separately in this Notice.

75. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by Mr Bittar and External Trader A, whether or not set out in Annex B.

PROCEDURAL MATTERS

76. This Notice is given under sections 57 and 67 of the Act and in accordance with section 388 of the Act. The following paragraphs are important.

Decision maker

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

The Tribunal

78. Mr Bittar has the right to refer the matter to which this Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Bittar has 28 days from the date on which this Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email fs@hmcts.gsi.gov.uk). Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website:

http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal

79. A copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Steven King at the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

80. Once any referral is determined by the Tribunal and subject to that determination, or if the matter has not been referred to the Tribunal, the Authority will issue a final notice about the implementation of that decision.

Serious Fraud Office Investigation

81. The Serious Fraud Office is also conducting an investigation into the facts and matters set out in this Notice. The Authority has made no findings as

to whether a criminal offence has been committed, and has taken no account of that investigation in reaching the decision to issue this Notice.

Access to evidence

82. Section 394 of the Act applies to this Notice. In accordance with section 394(1), Mr Bittar is entitled to have access to:

    (1) The material upon which the Authority has relied in deciding to give Mr Bittar this Notice; and

    (2) The secondary material which, in the opinion of the Authority, might undermine that decision.

Confidentiality and publicity

83. This Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). Section 391 of the Act provides that a person to whom this Notice is given or copied may not publish the Notice or any details concerning it unless the Authority has published the Notice or those details.

84. However, the Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. Mr Bittar should be aware, therefore, that the facts and matters contained in this Notice may be made public.

Contact

85. For more information concerning this matter generally, Mr Bittar should contact Steven King (direct line: 020 7066 3408) or Joanna Simon (direct line: 020 7066 7418) at the Authority.

Beverley Walker

Beverley Walker, Manager DMC Secretariat on behalf of
Peter Hinchliffe
Deputy Chair, Regulatory Decisions Committee

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. The Authority's strategic objective, set out in section 1B(2) of the Act, is ensuring that the relevant markets function well. The Authority's operational objectives, as set out in section 1B(3) of the Act, are: the consumer protection objective; the integrity objective; and the competition objective.

2. **Knowingly concerned**

2.1. The Authority has the power, pursuant to section 66(1) of the Act, to impose a financial penalty of such amount as it considers appropriate where it appears to the Authority that a person is guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action against him.

2.2. A person is guilty, pursuant to section 66(2)(b) of the Act, of misconduct if, while an approved person, he has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.

2.3. The Authority's Principles for Businesses ("PRIN") were issued pursuant to section 137A of the Act and are general statements regarding the fundamental obligations of firms under the regulatory system.

3. ***PRIN***

3.1. Principle 5 states: *"A firm must observe proper standards of market conduct"* (PRIN 2.1.1R).

4. **The Authority's Principles - The Fit and Proper test for Approved Persons**

4.1. FIT sets out the criteria for assessing a person's fitness and propriety.

4.2. FIT 1.1.2G states:

> *"The purpose of FIT is to set out and describe the criteria that the appropriate regulator will consider when assessing the fitness and propriety of a candidate for a controlled function (see generally SUP 10A and SUP 10B on approved persons). The criteria are also relevant in assessing the continuing fitness and propriety of approved persons."*

4.3. FIT 1.3.1G states that the Authority will have regard to, among other things, a person's honesty and integrity when assessing the fitness and propriety of a person to perform a particular controlled function.

4.4. FIT 1.3.3G states:

> *"The criteria listed in FIT 2.1 to FIT 2.3 are guidance and will be applied in general terms when the appropriate regulator is determining a person's fitness and propriety. It would be impossible to produce a definitive list of all the matters which would be relevant to a particular determination."*

4.5. FIT 2.1.1 G states:

> *"In determining a person's honesty, integrity and reputation, the appropriate regulator will have regard to all relevant matters including, but not limited to, those set out in FIT 2.1.3G which may have arisen either in the United Kingdom or elsewhere. [...]"*

4.6. FIT 2.1.3G provides a non-exhaustive list of matters to which the Authority will have regard in determining a person's honesty, integrity and reputation.

5. Financial penalty

5.1. Mr Bittar's misconduct took place from 9 March 2005 to 4 June 2009 (inclusive).

5.2. The Authority's policy on the imposition of financial penalties and public censures is set out in DEPP. The provisions of DEPP set out below are those which were in force from 28 August 2007 to 5 March 2010.

5.3. DEPP 6.5.1(1) states that the Authority will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned. The list of factors in DEPP 6.5.2 G is not exhaustive: not all of these factors may be relevant in a particular case, and there may be other factors, not included below, that are relevant.

5.4. DEPP 6.5.2(1) states that when determining the appropriate level of penalty, the Authority will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

5.5. DEPP 6.5.2(2) states that the Authority will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached. The considerations that may be relevant include:

(a) the duration and frequency of the breach; and

(d) the loss or risk of loss caused to consumers, investors or other market users.

5.6. DEPP 6.5.2(3) states that the Authority may take account of the extent to which the breach was deliberate or reckless.

5.7. For the period between 9 March 2005 and 27 August 2007, the Authority's approach to deciding whether to impose a financial penalty, and the factors to determine the level of that penalty, are listed in chapter 13 of ENF.

5.8. ENF 13.1.2 stated: *"Financial penalties are one of a variety of regulatory tools the FSA may employ to help it achieve its regulatory objectives. This principal purpose of financial penalties is to promote high standards of regulatory conduct by deterring firms and approved persons who have*

breached regulatory requirements from committing further contraventions, helping to deter other firms and approved persons from committing contraventions, and demonstrating generally to firms and approved persons the benefits of compliant behaviour."

5.9. ENF 13.3.3 G stated: "*The factors which may be relevant when the* [Authority] *determines the amount of a financial penalty for a firm or approved person include the following.*" Some of the relevant factors are set out below.

5.10. ENF 13.3.3 G (1) related to "*the seriousness of the misconduct or contravention*" and stated: "*In relation to the statutory requirement to have regard to the seriousness of the misconduct or contravention, the* [Authority] *recognises the need for a financial penalty to be proportionate to the nature and seriousness of the misconduct or contravention in question. The following may be relevant:*

(a) in the case of an approved person, the [Authority] *must have regard to the seriousness of the misconduct in relation to the nature of the Statement of Principle or requirement concerned;*

(b) the duration and frequency of the misconduct or contravention...;

...

(d) the impact of the misconduct or contravention on the orderliness of financial markets, including whether public confidence in those markets has been damaged

(e) the loss or risk of loss caused to consumers or other market users."

5.11. ENF 13.3.3 G (2) related to "*the extent to which the contravention or misconduct was deliberate or reckless*" and stated:

> "*In determining whether a contravention or misconduct was deliberate, the* [Authority] *may have regard to whether the... approved person's behaviour was intentional, in that they intended or foresaw the consequences of their actions.*
>
> *If the* [Authority] *decides that behaviour was deliberate or reckless, it may be more likely to impose a higher penalty on... [an] approved person than would otherwise be the case.*"

5.12. ENF 13.3.3 G (3) related to "*Whether the person on whom the penalty is to be imposed is an individual, and the size, financial resources and other circumstances of the firm or individual*" and stated: "*This will include having regard to whether the person is an individual, and to the size, financial resources and other circumstances of the... approved person. The* [Authority] *may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the... approved person were to pay the level of penalty associated with the particular contravention or misconduct. The* [Authority] *regards these factors as matters to be taken into account in determining the level of a penalty, but not to the extent that there is a direct correlation between those factors and the level of penalty. The size and financial resources of* [an] *approved person may be a relevant consideration, because the purpose of a penalty is not to*

render [an] approved person insolvent or to threaten [his] solvency. Where this would be a material consideration, the [Authority] *will consider, having regard to all other factors, whether a lower penalty would be appropriate; this is most likely to be relevant to... approved persons with lower financial resources; but if [an] individual reduces [his] solvency with the purpose of reducing [his] ability to pay a financial penalty, for example by transferring assets to third parties, the* [Authority] *will take account of those assets when determining the amount of a penalty."*

5.13. ENF 13.3.3 G (5) related to "*conduct following the contravention*" and stated:

> *"The* [Authority] *may take into account the conduct of the... approved person in bringing (or failing to bring) quickly, effectively and completely the contravention or misconduct to the* [Authority]*'s attention and:*
>
> (a) *the degree of cooperation the... approved person showed during the investigation of the contravention or misconduct (where* [an] *approved person has fully cooperated with the* [Authority]*'s investigation, this will be a factor tending to reduce the level of financial penalty);*
>
> (b) *any remedial steps taken since the contravention or misconduct was identified, including identifying whether consumers suffered loss, compensating them, taking disciplinary action against staff involved (if appropriate), and taking steps to ensure that similar problems cannot arise in the future."*

6. **Prohibition order**

6.1. The Authority has the power, pursuant to section 56 of the Act, to make a prohibition order if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or exempt professional firm. Pursuant to section 56(2) of the Act, such an order may relate to a specified function, any function falling within a specified description or any function.

6.2. The Authority's approach to deciding whether to impose a prohibition order, and the scope of any such prohibition order, is set out in chapter 9 of the Authority Enforcement Guide ("EG"). The provisions of EG set out below are those which have been in force since 1 April 2013.

6.3. EG 9.1 sets out that the Authority's power to make a prohibition order under section 56 of the Act helps it work towards achieving its statutory objectives. The Authority may exercise this power where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities, or to restrict the functions which he may perform.

6.4. EG 9.3 states:

> *"In deciding whether to make a prohibition order and/or, in the case of an approved person, to withdraw its approval, the*

[Authority] *will consider all the relevant circumstances including whether other enforcement action should be taken or has been taken already against that individual by the* [Authority]. *As is noted below, in some cases the* [Authority] *may take other enforcement action against the individual in addition to seeking a prohibition order and/or withdrawing its approval. The* [Authority] *will also consider whether enforcement action has been taken against the individual by other enforcement agencies or designated professional bodies."*

6.5. EG 9.5 states:

> *"The scope of a prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally."*

6.6. EG 9.8 to 9.14 set out guidance on the Authority's approach to making prohibition orders against approved persons.

6.7. EG 9.8 states that, in deciding whether to make a prohibition order, the Authority will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.

6.8. Specifically in relation to approved persons, EG 9.9 states that in deciding whether to make a prohibition order, the Authority will consider all the relevant circumstances of the case. These include, but are not limited to, the following:

> *"(2) Whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness).*
>
> *(3) Whether, and to what extent, the approved person has:*
>
> *[...]*
>
> *(b) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules) or failed to comply with any directly applicable Community regulation made under MiFID or any directly applicable provision of the auction regulation.*
>
> *[...]*
>
> *(5) The relevance and materiality of any matters indicating unfitness.*
>
> *(6) The length of time since the occurrence of any matters indicating unfitness.*

(7) The particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates.

(8) The severity of the risk which the individual poses to consumers and to confidence in the financial system.

[...]"

6.9. EG 9.10 states:

> *"The* [Authority] *may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the individual is not fit and proper to continue to perform a controlled function or other function in relation to regulated activities. It may also take account of the particular controlled function which an approved person is performing for a firm, the nature and activities of the firm concerned and the markets within which it operates."*

6.10. EG 9.11 states:

> *"Due to the diverse nature of the activities and functions which the* [Authority] *regulates, it is not possible to produce a definitive list of matters which the* [Authority] *might take into account when considering whether an individual is not a fit and proper person to perform a particular, or any, function in relation to a particular, or any, firm."*

6.11. EG 9.13 states:

> *"Certain matters that do not fit squarely, or at all, within the matters referred to above may also fall to be considered. In these circumstances the* [Authority] *will consider whether the conduct or matter in question is relevant to the individual's fitness and propriety."*

ANNEX B

REPRESENTATIONS

1. Mr Bittar's representations (in italics), and the Authority's conclusions in respect of them, are set out below.

No knowing concern in a contravention by Deutsche of Principle 5

2. *Neither making requests to Deutsche submitters, nor conferring with other Panel Banks, in respect of EURIBOR submissions was a contravention by Deutsche of Principle 5.*

3. *The EURIBOR Code of Conduct was governed by Belgian law, and the obligations of Panel Banks under the Code of Conduct were a matter of contract as between themselves and the EBF. Properly construed in accordance with Belgian contract law, the Code of Conduct did not preclude (either expressly or by implication) the taking into account by a Panel Bank of its own commercial interests in determining its submissions in relation to EURIBOR rates. In the absence of such prohibition, this was permitted. This view was supported by the opinion of an expert on Belgian law, Professor Wtterwulghe. (In this respect EURIBOR differed from LIBOR, where it had been established under English law that it was impermissible for submitters to take their own commercial interests into account.)*

4. *Throughout the Relevant Period, there would always have been a range of figures at which it would be reasonable to make EURIBOR submissions, based on prevailing market conditions. The Code of Conduct required Panel Banks to submit rates which corresponded with the EURIBOR definition* "to the best of their knowledge". *Where a Panel Bank genuinely believed, to the best of its knowledge, that a range of rates would correspond to that definition, the Code of Conduct left it to the Panel Bank's discretion which of those rates to submit and it was free to favour its own commercial interests in making that decision.*

5. *In assessing what market standards were applicable to Deutsche during the Relevant Period, it was important to strip out regulatory hindsight. Although, at the present day, the EURIBOR submissions process was the subject of detailed regulation, that was not the case during the Relevant Period. There were no applicable standards outside the Code of Conduct.*

6. EURIBOR was designed, and used, as a benchmark reference rate and could not have functioned properly on the basis that Panel Banks were permitted to submit rates influenced by their own interests. It was intended to be (and was) used in transactions in a number of markets by parties other than Panel Banks and, as such, required public confidence to operate effectively; a benchmark reference rate would not inspire such confidence if it was not seen to be fixed in good faith and independently of the commercial self-interest of those involved in fixing it. The Authority considers that neither the definition of EURIBOR nor the EURIBOR Code of Conduct, on their proper construction (having regard to the purpose of

EURIBOR), permitted Panel Banks to make submissions with the intention of furthering their commercial self-interest.

7. The Authority accepts that, on any given day, a submitter might be faced with the task of choosing a single rate (accurate to two decimal places) from among a range of possible submissions, each of which might be objectively justified. However, it does not accept that the requirement under the Code of Conduct to submit rates corresponding to the definition *"to the best of their knowledge"* meant that they were free to select from those possible submissions according to their own commercial interests. The question posed for Panel Banks by the EURIBOR definition, namely what was the *"rate at which euro interbank term deposits are being offered within the EMU zone by one prime bank to another at 11.00 a.m. Brussels time..."*, required an objective assessment which (although it permitted some subjective judgement in answering the question, to the best of the Panel Bank's knowledge) did not permit an answer to be selected based (either wholly or partly) on commercial self-interest. Accordingly, it was immaterial that the Code of Conduct did not expressly prohibit such considerations from being taken into account.

8. Given the Authority's conclusion on the proper interpretation of the obligations on Panel Banks in respect of EURIBOR and the Code of Conduct, it is not necessary to look for any further applicable regulatory standards in order to establish that it was a contravention of proper market standards for Deutsche to make requests to its submitters, and to collude with other Panel Banks, in order to make EURIBOR submissions for the benefit of its (and/or their) commercial interest. Nevertheless, the Authority also considers that proper market standards would not be met by market participants working together to cause a reference rate to be fixed at a particular level that furthered their own interests.

9. *If making requests to Deutsche submitters, or conferring with other Panel Banks, was a contravention by Deutsche of Principle 5, Mr Bittar was not knowingly concerned in it.*

10. *In order to establish a case that Mr Bittar was* "knowingly concerned" *in a breach of Principle 5 by Deutsche, the Authority would need to establish that Mr Bittar was aware not only of the facts evidencing Deutsche's breach of standards of market conduct (the fact that he was making requests for the benefit of the relevant commercial interests) but also of the fact that this amounted to a breach of the EURIBOR Code of Conduct. While case law established that a person is taken to know the law (so that it need not be shown that Mr Bittar was aware that the conduct amounted to a breach of Principle 5), the EURIBOR Code of Conduct was a matter of foreign law and, as such, a matter of fact under English procedural law and the Authority would need to prove that he was aware of what it required.*

11. The Authority considers that Mr Bittar knew that, in making the requests to Deutsche Submitters and External Traders, he was acting improperly and in breach of the requirements of the EURIBOR Code of Conduct, and

that, in working with others to influence the setting of EURIBOR in order to further his own interests, he was acting improperly and in breach of proper standards of market conduct. (It is therefore not necessary to reach a conclusion as to whether a lesser degree of knowledge would suffice to establish a case of knowing concern in Deutsche's breach of Principle 5.)

12. *Mr Bittar had always admitted making requests. However, he only ever made requests for submissions within a range of reasonable estimates. He identified the appropriate range by applying his trading model, which was based, to a significant extent, on his assessment of the correlation between EURIBOR and EONIA from time to time, on the basis of which he was a very successful trader. As a known market expert in interest rate curve and related market instruments, he was uniquely well-placed within Deutsche to assist with estimating what EURIBOR should be. He always sought fair and accurate rates, exercising his expert judgement to determine what those were. He did not deny that, when he made requests in relation to EURIBOR submissions, he was motivated to do so by his trading positions, but his requests would always be within a range which was objectively justifiable by reference to his model. Indeed, on occasion he complained that he thought Deutsche submitters were submitting rates that were inappropriate.*

13. *The practice of traders making requests in respect of benchmark rates was widespread at Deutsche and within the market more generally. It was conducted openly (including by Mr Bittar) and senior management of Deutsche and other Panel Banks, as well as the EURIBOR Steering Committee, were aware of the practice and took no steps to stop it. Deutsche had no rules or guidelines in place to prevent the practice; indeed, senior management at Deutsche facilitated and encouraged it. Mr Bittar received no training at Deutsche regarding the submission process. He was encouraged in his performance appraisals to liaise with Deutsche Submitters. A judgment by the Frankfurt Labour Court in 2013 recognised the lack of relevant rules and guidelines within Deutsche, when it ordered the reinstatement of submitters dismissed by Deutsche for communicating with Mr Bittar and others in respect of EURIBOR submissions.*

14. *Mr Bittar had always admitted communicating from time to time with counterparts at other Panel Banks about submissions. He regarded the communications as forming a (relatively minor) part of his job. He would discuss all aspects of the market, discuss potential and actual trades and discuss trading. As part of that, from time to time, Mr Bittar communicated about EURIBOR submissions.*

15. The Authority considers that Mr Bittar made requests to Deutsche Submitters, and to External Traders, to benefit his own Trading Positions. To the extent that Mr Bittar's requests were always in a range which reflected his statistical analysis of the spread between EURIBOR and EONIA, this merely reflects the fact that his trading positions were based on that model. Requests were frequently couched in terms that make it clear that he was motivated by his own self-interest (examples of these are summarised in this Notice). Indeed, as set out in his representations

summarised above, Mr Bittar admitted that he had made requests when it suited his trading book to do so.

16. Notwithstanding the lack of rules and guidance on the part of Deutsche, Mr Bittar was aware of the EURIBOR definition and that it did not permit commercial interests to be taken into account. The Authority considers that, properly construed, his complaints about inappropriate rates referred to at paragraph 12 above were motivated by his perception that Deutsche's submissions were for the benefit of the trading positions of others within Deutsche and contrary to his own, and in any event they indicate an awareness of what was to be expected in setting EURIBOR in accordance with the Code of Conduct. His conduct in colluding with External Traders is evidence of his disregard of Deutsche's duties in relation to the setting of EURIBOR according to the Code of Conduct. Further, on one occasion (on 8 November 2006) Mr Bittar was informed by an External Trader, who had recently moved from one Panel Bank to a new job at another, that he would not be permitted (due to conflict of interest, legal and regulatory considerations) to make requests of his new employer's submitters.

17. For the avoidance of doubt, the Authority accepts that Mr Bittar did, on some occasions, provide information to Deutsche Submitters, based on his own experience and expertise, which was (or might be) relevant to their decision as to what rate to submit, and did not amount to requests for a submission to benefit his interests. It was not inappropriate, as such, for information of this kind to be passed to Deutsche Submitters, and the Authority does not criticise Mr Bittar's behaviour in that respect. Likewise, the Authority accepts that some of Mr Bittar's communications with External Traders about trading activities in the derivatives market were within the bounds of acceptable conduct. Such instances do not form part of the Authority's case against Mr Bittar.

No effect on the EURIBOR rate

18. *The Authority had failed to establish that any request made by Mr Bittar, or any EURIBOR submission made following such a request, was at an artificial, inappropriate or unreasonable level; that any request by Mr Bittar ever had any effect on the EURIBOR rate; that any request by him ever produced even the slightest commercial advantage for him or for Deutsche; or that any counterparty ever sustained a single cent of loss.*

19. Whatever the effect of his requests on the EURIBOR rate, the Authority is satisfied (as explained at paragraphs 11, 15 and 16 above) that Mr Bittar made requests in respect of EURIBOR submissions, and encouraged External Traders to do so, because he believed that it might lead to a EURIBOR rate being set that would be more advantageous to his trading positions than it might otherwise have been. It is also satisfied that his collusion with External Traders was based on a belief on his part that this would increase the prospects of success and/or result in a greater movement of the EURIBOR rate in the direction that he sought. It is not necessary, in order to establish his knowing concern in Deutsche's breach

of Principle 5, to show that either he or Deutsche were successful in their efforts to secure commercial advantage. The Authority has not included in the penalty it has decided to impose on Mr Bittar any element of disgorgement of profits.

Inconsistency

20. *Mr Bittar understood that, in other cases before the Authority's Regulatory Decisions Committee (the decision-maker in this case), like allegations of knowing involvement in connection with benchmark rate submissions were made by the Authority and rejected by the Committee. It was to be inferred from the refusal of the Authority to identify any material distinction between the circumstances of such cases and Mr Bittar's case that there was no such distinction. Accordingly, it would be irrational for the Authority to find that Mr Bittar had been knowingly concerned in a contravention of Principle 5 by Deutsche. The Upper Tribunal had confirmed this in its decision in* Carrimjee v FCA ([2015] UKUT 0079 (TCC)).

21. *The Authority's position in these proceedings was inconsistent with how it had put its case in the Upper Tribunal proceedings in respect of Mr Bittar's third party reference of the Deutsche Final Notice. In that case, it was alleging only that Mr Bittar ought to have known that he and others were acting with impropriety, rather than actual knowledge on his part. It was a breach of duty by the Authority to pursue these proceedings on the basis it did in the light of the different position taken in the other proceedings.*

22. The Authority makes no comment in this Notice on the facts or merits of any other cases, which are not relevant to Mr Bittar's particular position. Having considered the facts of Mr Bittar's case, it is satisfied that Mr Bittar's conduct merits the financial penalty and the prohibition order which it has decided to impose. It notes that the Upper Tribunal in *Hussein v FCA ([2016] UKUT 0549 (TCC))* has clarified that in *Carrimjee* it was stating that the Authority could not argue before it against an outcome by which it had become bound by virtue of Final Notices to particular individuals, and that each case should be decided on its own facts.

23. The Authority does not comment in this Notice on the arguments made in any other proceedings. The Authority is satisfied, for the reasons set out above, that Mr Bittar had actual knowledge of the impropriety of his and Deutsche's conduct. It is therefore not necessary to consider whether or not some lesser degree of knowledge (such as constructive knowledge) would have sufficed to establish "knowing concern".

Time-bar

24. *Section 66(4) of the Act prevented the Authority from taking action under section 66 for the imposition of a financial penalty unless it began proceedings (that is, issued a warning notice), before the end of three years beginning with the day on which it first knew of the misconduct. Section 66 (5) provided that it was to be taken as knowing of misconduct*

if it had information from which the misconduct could reasonably be inferred. The Authority had in its possession more than three years before the Warning Notice was issued to Mr Bittar in this matter (on 15 May 2014), documents from which Mr Bittar's alleged misconduct could be inferred because it was clear from the documents that he was making requests of the type on which the Authority relied. The Authority thereby had knowledge of a pattern of behaviour which they said constituted his misconduct. Thus, the claim for a financial penalty was time-barred.

25. The Authority accepts that, more than three years before the issue of the Warning Notice, it had in its possession copies of five communications which might have indicated to it that in each instance Mr Bittar had made an improper request in relation to EURIBOR submissions. However, the Authority does not rely on any of those documents in support of the case set out in this Notice, and none of those instances forms part of the case against Mr Bittar. Action is not time-barred under section 66(4) of the Act simply because the Authority has information from which it can reasonably be inferred that an individual is guilty of misconduct of a similar type to that alleged in proceedings against him (see *Jeffery v FSA (FS 2010/0039)*). Each instance of an inappropriate request by Mr Bittar which forms part of the case against Mr Bittar in these proceedings constitutes a separate act of misconduct by him and action under section 66 of the Act is not time-barred in relation to any of those instances.

Mr Bittar was a scapegoat

26. *None of the senior managers of Deutsche had been the subject of proceedings by the Authority (or, it appeared, even interviewed). Nor had any members of Deutsche's compliance or audit functions been the subject of investigation, and Mr Bittar was a scapegoat. It was common ground between Mr Bittar and the Authority that activity similar to that complained of was common across Panel Banks but few individuals had been singled out for action by the Authority.*

27. This Notice is concerned only with the case against Mr Bittar, which the Authority considers to be made out, for the reasons set out in this Notice.

The Authority's approach to the financial penalty was flawed

28. *Even if (contrary to his primary position) Mr Bittar was knowingly concerned in a contravention of Principle 5 by Deutsche for which a financial penalty was not time-barred, the Authority's approach to setting the financial penalty was flawed, in the following respects:*

(a) Deterrence. The Authority had failed to take into account the fact that it had imposed a penalty on Deutsche in circumstances where it had not prohibited (but instead facilitated and encouraged) the requests; and that it was not alleged that Mr Bittar's remuneration was earned in consequence of the alleged misconduct.

(b) The nature, seriousness and impact of the breach. The Authority had failed to have regard to the circumstances of the alleged breach: in

particular, that the misconduct was not prohibited, it was encouraged by Deutsche and it was in accordance with prevailing market practice. Also, it had failed to take into account that Mr Bittar's conduct was not alleged to have had any effect on the EURIBOR rate; the alleged potential effect on consumers and market confidence were speculation; the Authority had not explained why Mr Bittar's status as an experienced market professional was relevant; and, while stating that it took account of the fact that there was no evidence of concealment or of any breach of procedures, guidelines and training, it could not have given sufficient weight to such matters.

(c) The extent to which the alleged breach was deliberate or reckless. Even if it established knowledge of impropriety on Mr Bittar's part, the Authority did not give sufficient regard to the mitigating factors mentioned in (b) above.

(d) Conduct following the alleged breach. The Authority had not reduced the penalty to reflect Mr Bittar's candour and co-operation with its investigations.

(e) A substantial financial penalty would be grossly disproportionate to the Authority's stated objectives in deterring future misconduct, so would not be an "appropriate" penalty for the purposes of section 66(3)(a) of the Act (which permits the Authority to impose a penalty of such amount as it considers appropriate).

29. In reaching its decision on the financial penalty in this case, the Authority has taken into account all relevant factors, including, to the extent applicable, the matters set out in paragraph 28 above. For the reasons explained in this Notice, the Authority considers Mr Bittar's misconduct to have been serious and to merit the significant penalty which it has decided to impose. The factors to which the Authority attaches particular weight are set out in paragraphs 56 to 71 of this Notice.

No lawful basis for a prohibition order

30. *Even if Mr Bittar was knowingly concerned in a contravention of Principle 5 by Deutsche, the contravention would be of a standard which was insufficiently clear to support a finding of a lack of integrity. As affirmed by the Upper Tribunal in* Batra v FCA ([2014] UKUT 0214 (TCC), "Where there are genuinely grey areas, a finding of lack of integrity would not be appropriate."

31. *Further, the Authority's Enforcement and Market Oversight Division had taken the position that it was not necessary to make a finding of lack of integrity in order to justify a prohibition order. If lack of integrity was not established, then in the absence of any other case for a prohibition, it was not open to the Authority to make such an order.*

32. Given its conclusion that Mr Bittar had actual knowledge of the impropriety of the requests (and collusion) in relation to EURIBOR in which he was involved, and that he committed deliberate misconduct, the Authority

considers that Mr Bittar's misconduct clearly demonstrates that he lacks integrity.

33. In the light of this conclusion, the Authority considers that Mr Bittar lacks fitness and propriety and it is not necessary to establish any additional or different basis for the prohibition order.

Appendix 2

REGINA

v

CHRISTIAN BITTAR

PHILLIPPE MORYOUSSEF

SENTENCE

In preparation for the introduction of the Euro, the European Single Currency, in 2002, the European Banking Federation (EBF) and the Financial Markets Association (ACI) established the Euro Interbank Offer Rate, commonly known as Euribor, as the currency's money market reference rate.

Euribor is defined in the Preface to the Euribor Code of Conduct as:

"the rate at which Euro inter bank term deposits are being offered within the EMU zone by one prime bank to another at 11 am Brussels time ("the best price between the best banks")".

Euribor replaced the old and redundant national benchmark rates. It is described by Nicholas Bomcke, the then Secretary General of the European Banking Federation as:

"the new reference rate within the single currency zone ... to establish for central banks, financial institutions and those who dealt with them, a reliable rate on which they could base their financial transactions."

In the course of the trial, Cliff Martindale, an highly experienced interest rate derivatives trader, gave evidence that it was hard to overstate the importance of Euribor. It is the primary bench mark for short term interest rates and one of the most globally significant numbers in finance. It is used as the basis for the pricing and valuation of a vast range of financial instruments.

Ronald Anderson, a Professor of Finance from 2000 gave evidence that the Financial Stability Board estimated the size of Euribor related markets as being in the region of $150 - $180 trillion. 90% of Euro denominated syndicate loans are referenced to Euribor, as are 60% of the $5.8 trillion market for ordinary loans in Euros, and 28% of the estimated $5.1 trillion Euro denominated retail mortgages.

Helmut Konrad gave evidence in the trial. He was the banker who originally thought of creating a Euro reference rate as far back as 1996. By the time the Euro brought into use, he was President of ACI Germany, ACI being one of the 2 organisations which had established Euribor. He set up and was a member of the Working Group which drafted both the definition of Euribor and its Code of Conduct.

The Code has featured prominently in the trial. As far as the practicalities of achieving daily published Euribor rates in the 15 separate tenors are concerned, it was a model of clarity and precision. It defined how many panel banks were to make daily submissions in each tenor. It set out how a bank qualified as a panel bank. It gives directions as to when the submissions had to be made. However, neither the definition of Euribor nor the Code gave any instruction, guidance or assistance as to how the panel banks' submitters should determine the rates they submit.

That failure might be thought by an interested observer to be at best foolhardy, if not utterly negligent. It was an open door for those involved in the conspiracy to manipulate, or attempt to manipulate, the Euribor rate for the advantage of their own bank's trading positions.

As Herr Konrad said that from the beginning the Working Group was alive to the difficulties of giving instructions as to how submitters were to arrive at their submitted rates. There were many factors to take into account, including the prices being offered on the market and looking at the trades actually done. Views clearly differed as to what the submitter could legitimately take into account. But the real difficulty was that the rates submitted were subjective – that is, they were "the best price between the best banks", in the opinion of the submitter.

In cross examination, Mr Konrad was asked about the assessment the submitter had to make. He said that the submitter had to exercise his judgement about lending rates. He expected the submitter to put in a genuine assessment and that the submitter's bank would be willing and able to lend at that rate. He expected the banks to operate to high ethical standards and that the good faith of the panel bank and submitter was

important. This case has shown all too clearly that both the banks and some of their employees fell far below those standards. The senior managers should have known what was going on and should have stopped it. They should have provided proper training in the Euribor rate and setting process. There should have been a Chinese wall between the submitters on the cash desk and the derivative traders.

As there is no correct or definitive answer to the Euribor question, different banks entered different submissions. Consequently, on each day, in each tenor, there was a range of submissions. The Working Group knew there was a possibility of a bank, or a number of banks trying to manipulate the Euribor rate. They believed that the risk of any such attempted manipulation succeeding was small and that the risk was substantially reduced by the process of trimming of the top and bottom 15% of the submissions and by averaging the remainder in order to produce the published rates. The Group therefore concluded that it would be pointless to lay down any instructions as to how a submitter arrived at the rates.

But whatever approach a submitter takes, it is contrary to the spirit of the Code and not permissible to choose a figure, even if it is within the range, in order to advantage the trading position of a trader or the bank. How could taking into account a trader's position be consistent or compatible with an independent interest rate? Submitting a high or low rate with the intent of advantaging a trading position is unlawful. If the rate is successfully moved, the trader or bank will consequently make a profit at the expense of the counterparty to the trade, who will make a corresponding loss. As the trades CB, for instance, was involved in frequently ran into billions, the smallest movement of the Euribor rate in his favour would provide him with a substantial profit.

Whilst the approach of the Euribor Working Group, later to become the Euribor Steering Group was understandable, events highlighted in this case have shown how naïve it was. Bankers may earn huge amounts of money, but they remain human beings, and sometimes the prospect of earning money either for their bank or themselves, or the risk of losing money, stifles both ethics and honesty.

CB

You CB pleaded guilty on 2 March 2018 some weeks before the trial was to begin. On any view, you were a principal conspirator. You knew perfectly well that if you succeeded in manipulating the Euribor rate you

could make substantial profits at the expense of those you were trading with.

You committed the offence in 3 ways:

1. Intra-bank collusion – that is, by asking the submitters of your bank, Deutsche Bank, to make high or low Euribor submissions intending to advantage your trading positions;
2. Inter-bank collusion – that is, by asking others employed by other banks, including PM at Barclays and later at the Royal Bank of Scotland and Stephan Esper at Societe Generale to do the same;
3. cash pushing, that is, by offering cash to the market with the intention of altering the Euribor rate in the lead up to a fixing or reset date.

On some occasions, you had planned your strategy in advance of an important "fixing day", when trades were to mature or were to be re-set, working in collusion with your associates in many different banks over weeks and even months.

You were a highly successful derivatives trader, perhaps the best in the world. One of your character witnesses, who worked with you are Deutsche, describes you as "the single most talented trader I have ever met". Another says you were "without doubt, the best short end derivatives trader in the country". DB had no doubt about your value to them and paid you huge sums. Your remuneration between 2005 and 9 was staggering. You received over £3.5 million in 2005 and in 2009 this had risen to £47.8 million. It is beyond irony that you were legitimately earning huge sums and there was no obvious need to resort to dishonest manipulation. That said, when you succeeded in manipulating the Euribor rates to your trading advantage you personally made a great deal of money. Indeed, you have admitted that your benefit from your criminal conduct amounted to £2.5 million.

Why then did you resort to dishonesty? Mr Cameron points to the character witnesses who say you are not a greed man. Indeed in 2008 you offered to give back your bonus, and continued to work after you had reached the cap put on your bonus in the following year. So greed alone does not provide a full answer. Mr Cameron suggests that part of the reason for your offending was to keep making money for the bank and so preserve your reputation as been such a successful trader. He may well be right. In my view, the reason for your offending came at least in part from the satisfaction of being able to beat the system, undetected for so many

years, by manipulating the Euribor rate to your own trading advantage. Derivatives trading is often said to be a form of betting. You took the analogy one step further, by loading the dice.

When looking at the gravity of your offending to determining the appropriate starting point for sentence, I take into account the 9 Background Factors listed in his Outline Note of Mitigation. In particular, I accept that making Euribor requests was not your invention and nor was the practice confined to Deutsch Bank and Barclays Bank. It is apparent that at the time of your offending there was "an industry wide lack of recognition of conflict of interest" between the derivatives desk and the other desks. Certainly others above you at DB were aware of the request culture and took no steps to stop it.

Again, it is true that there was no specific DB policy regarding Euribor and that little or no training was given to the submitters. However, with your experience you knew precisely how such reference rates worked. You took advantage of the fact that you knew the compliance procedures at Deutsche and the other banks were so lax or poor that you could do as you wished with little risk of being found out.

Your involvement in the conspiracy principally took place between 2005 and up to the global financial crisis in August 2007. You knew what you were doing was dishonest. You did not hesitate to involve others in your fraud. Your assistant Oleysia Stokfenko would certainly not have become involved but for you. You were not remotely concerned about the consequences of your actions – either to the counterparties to your trades who lost when you succeeded in moving the Euribor rates, or to the risk of undermining of confidence in Euribor.

In these circumstances, the purpose of sentencing in this most serious offence is twofold. Firstly, to punish your wrongdoing. And secondly, to send a clear message of deterrence to others working in the world of banking and finance that those convicted of dishonestly manipulating interest rates will face lengthy custodial sentences.

When passing sentence in the case of R v Hayes [2015] EWCA Crim 1944, Cooke J said:

"High standards of probity are to be expected of those who operate in the banking system, whether they are bankers dealing with deposits and the lending of money or traders in an investment banking context. What

this case has shown is the absence of this integrity that ought to characterise banking."

He went on to observe that the conduct in that case had to be marked out as dishonest and wrong and:

"a message sent out to the world of banking accordingly. The reputation of Libor is important to this city as a financial centre and to the banking industry in this country. Probity and honesty are essential, as is trust which is based upon it. The Libor activities in which you played a leading part put all that in jeopardy".

Thomas LCJ emphasised this in the Appeal case, when he said:

"this court must make it clear to all in the financial markets ... that conduct of this type, involving fraudulent manipulation of the markets, will result in severe sentences of considerable length ..."

Of course, that case concerned the Libor reference rate, not Euribor. However, the principals apply equally to Euribor and the Euro zone.

Turning to the Sentencing Council Definitive Guideline for Fraud Offences. As far as culpability is concerned, almost every single factor in the category of high culpability applies in your case – you played a leading role in group activity, you involved others, you breached your position of trust, the offending was extremely sophisticated and involved substantial planning, the fraud was committed over years and there were a large number of what the guideline calls "victims". As far as harm is concerned, you fall into the highest category as the loss or intended loss is well over £500.000. The starting point based on £1 million is 7 years imprisonment with a range of 5 – 8 years.

For the reasons I have set out, this case is so serious that in my judgement the appropriate starting point is 9 years imprisonment.

I now turn to mitigation. I am acutely aware that you are of previous good character. You have provided the court with a wealth of character references speaking to your positive good character. I appreciate that your career, certainly in banking, is at an end. The offending took place some years ago. The strain of these proceedings and your inevitable prison sentence will already have had an adverse effect on your life and, more importantly, on your family. You have only yourself to blame for that. I accept that you are unlikely to commit any further criminal offences.

Such mitigating factors do not usually carry much weight when reckoned against the seriousness of your offending. However, in this case, the conspiracy ended almost 10 years ago. There has been a considerable delay between the offending and trial. Some of the delay can properly be laid at your door – but by no means all of it. I accept that this delay has caused you considerable anxiety. Your life has been changed beyond recognition and I am not dealing with the same man as at the time of your offending. I therefore reduce the sentence further to 8 years.

You also have one substantial mitigating factor available to you – that you pleaded guilty. At an early stage of the proceedings you entered a plea of Not Guilty. You also indicated that there was a fundamental question of law which needed to be determined before trial. This became known as the 'the Belgian law question'. All parties agreed that this issue was central to the trial and that the hearing should be deemed a Preparatory Hearing. I heard evidence and submissions over several days in September 2017. On 22 September 2018, I ruled that Article 6 of the Euribor Code of Practice prohibited panel banks making submissions for the purpose of setting the daily Euribor rates which were intended to create an advantage to the trading positions of that bank or another bank.

This Ruling was appealed on your behalf. On 31 January 2018, the Court of Appeal dismissed your appeal and permission to take the matter to the Supreme Court was refused.

The affect of the Ruling, as confirmed by the Court of Appeal, was devastating to your defence. The prosecution evidence, principally in the form of emails, Bloomberg chats, recorded telephone calls and other messages between yourself, Moryoussef, Esper, Hauschild and several others, provided abundant evidence of manipulation and attempted manipulation of the Euribor rates. The sole issue left for the jury was whether what you had done was dishonest. It was at that point that you decided to plead guilty. That could not have been an easy decision to take, particularly having maintaining your innocence for so long.

In normal circumstances such a late guilty plea would only attract limited credit. But this was anything but a normal case. You were entitled to ask me and then the Court of Appeal to determine the law. It can therefore be fairly said that you pleaded guilty at the first opportunity when the law had been set out. Of equal importance is the consequence of your guilty plea. In general terms, the defence of the other 5 defendants had 2 limbs – there was no conspiracy to defraud and even if there was, the defendants were not dishonest. By pleading guilty, the prosecution were able to

prove that there was in fact a conspiracy. The issues were consequently halved and the time that this trial may have taken was reduced substantially. Bearing in mind the principles set out by the Court of Appeal in the cases of R v Girma [2010] 1 Cr. App. R. (S.) 28 and R v Sanghera {2016] 2 Cr. App. R. (S.) 15, as echoed by the Sentencing Council, it is appropriate to give you the maximum reduction in sentence to reflect your plea. I therefore reduce your sentence to 64 months imprisonment – 5 years 4 months.

Effect of Sentence ...

Prosecution Costs Order - £799,957.

Victim Surcharge applies.

PM

PM and CB knew each other extremely well over many years, both professionally and socially. They had both worked together at Societe Generale. That is where PM met Stephan Esper, after CB had left that bank. They remained in contact after moving their new banks. The derivatives world is small and tight knit. CB moved to Deutsche, PM to Barclays, whilst Esper remained at Societe Generale.

There is no doubt that by 2005, PM had joined the conspiracy. Exactly when he joined and he became involved is more difficult to determine. In his Prepared Statement put forward in Interview during the SFO investigation, he accepted that he had on occasion told the Euribor submitters on the Barclays cash desk what rate or rates he preferred. He took care to emphasise that he didn't specify any rate and knew that even if the submitter took into account his preference, the rate submitted would have to be "within the permitted range". He had little option but to make this concession, as by the time he made this Statement he was well aware the SFO investigators had possession of the communications between himself and the Barclays submitters. However, he maintained that there was nothing wrong with making the requests and that he was not acting dishonestly.

There was also a substantial volume of communications between PM and traders working in different banks - CB at Deutsche, Esper at Societe Generale, Zrihen at Calyon, Sander at HSBC France, Saitta at JP Morgan

and Zanoni at BNP Paribas, for example. In these conversations PM blatantly discussed Euribot manipulation and attempted manipulation. So he was involved in both intra bank and inter bank collusion. He was also actively involved in cash pushing, discussing cash desks at various banks offering to borrow or lend money to the market in order to help move the rates. On 16.3.07, for instance, he told a trader at DB in Frankfurt: "We'll push the cash right down." On another occasion he told the same banker that "on the IMM date, you push cash down. And that's it. If everybody does it, I'm telling you, if there are 4 people, 5 people who do it ... the Deutsche treasury is in on it, it's going to push cash through the bottom." The strategy obviously worked. On 19.3.07 he said: "They are flooding the market. They are already massively long on futures ... All in all they earned some dough." That says 2 things. Firstly, that his motivation was greed. But, perhaps more importantly, he was confessing to his pivotal role in manipulating the Euribor rate.

In a number of these communications PM spoke of his concern about the consequences of what he was doing if it was discovered. He was worried about being sacked. He took care to tell others to say nothing of what they were doing. He told "Remi" at Societe Generale, for example, "Keep quiet about the 3m fixing. This may come back on us." But these concerns did not prevent him participating in the conspiracy. In the same way as CB, generous remuneration did not stop him acting fraudulently. Greed was clearly his principal motivation. Although his income was more than generous by anyone's standards, he thought he deserved more. He asked Barclays to change the way he was paid, asking to be paid a percentage of the profits he made for the bank – just as CB was paid by Deutsche. When Barclays refused, he resigned and went to work for the Royal Bank of Scotland.

The evidence against PM was overwhelming and when CB pleaded guilty his defence was seriously undermined. He then asked for his case to be listed for mention. Regrettably, when it was listed he failed to attend. He had instructed a French advocate to write to the court explaining that he had decided to abscond and flee to France, safe in the knowledge that an earlier attempt by the SFO to have Esper extradited to the United Kingdom to face this Indictment had failed. The letter demonstrates the ignorance of the advocate of English law, though that cannot excuse the impertinence of some of its contents, which if written by an English advocate would be dealt with by contempt proceedings. I stress that this, of course, cannot be held against PM. The letter made it clear that he would not return for trial, he had dismissed his legal team and had no

intention of instructing anyone to represent him. I therefore decided that it was in the interests of justice to try him in his absence.

Following his conviction, no further word has come either from himself or his advocate. No mitigation has therefore been placed before. I am well aware that he is of previous good character and that his reputation was high in the banking world. Had he been represented, no doubt similar submissions would have been made as those in CB's case. None of these matters would carry much weight in the light of the seriousness of the case.

As far as the Sentencing Guidelines are concerned, he falls into the same category as CB. However, I am satisfied that his level of involvement in this conspiracy is at least equal to that of CB. He was certainly more involved in the organisation of the conspiracy over a prolonged period of time. He was in contact with far more of the other conspirators that CB. However, he was not the same calibre of trader as CB and made far less for either himself of his bank as his trades were far smaller. The appropriate sentence in his case is therefore 8 years imprisonment.

I should emphasise that when considering the appropriate sentence in PM's case, I have entirely disregarded the fact of his absconding. It is not an aggravating feature of his case. His failure to attend his trial and thereby breaching his bail conditions will be dealt with as and when he is arrested and brought back before this court.

Effect of sentence ...

Victim support