
FINAL NOTICE

To: TFS-ICAP Limited

Reference
Number: 206018

Address: Beaufort House
15 St Botolph Street
London
EC3A 7QX

Date: 23 November 2020

1. PROPOSED ACTION

- 1.1. For the reasons given in this Final Notice, the Authority hereby imposes on TFS-ICAP Limited ("TFS-ICAP") a financial penalty of £3,444,100 pursuant to section 206 of the Act.
- 1.2 TFS-ICAP agreed to resolve this matter and qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £4,920,100 on TFS-ICAP.

2. SUMMARY OF REASONS

- 2.1. TFS-ICAP is an electronic and voice interdealer broking firm, acting for institutional clients operating in the wholesale financial markets, specifically in FX options. The FX options market is a global market where participants have global

and continuous requirements for liquidity. Brokers have an important role in this market in that they source liquidity and prices, and bring together buyers and sellers in financial instruments.

- 2.2. A central role of FX option brokers is to provide information relating to prices and trades to clients. Together with other data available to institutional market participants, this assists market participants to make informed trading decisions. Conduct by brokers that leads to misleading information being disseminated risks market participants having regard to incorrect information when making their trading decisions.
- 2.3. A practice that involves misleading information being communicated by brokers is that of "printing". Printing involves a broker communicating to clients that a trade has been executed at a specified price and/or size when no such trade has taken place. Market participants are entitled to expect that the information provided to them by the broker represents actual activity in the market and any trading decisions which factor in this information, amongst other sources of data, may therefore be made on an incorrect view of the market.
- 2.4. Printing occurred amongst FX options brokers at TFS-ICAP through the Relevant Period. Brokers saw printing as being part of the role and one that "*everyone was doing*". It took place openly on desks, with the motivation of generating business for the firm. Certain Desk Heads were aware that brokers at TFS-ICAP engaged in printing and had themselves printed trades.
- 2.5. TFS-ICAP breached Principle 2, Principle 3 and Principle 5 of the Authority's Principles for Businesses.
- 2.6. Principle 2 requires a firm to conduct its business with due skill, care and diligence. There were warning signs that printing might be taking place at TFS-ICAP, but the risk was not addressed appropriately such that printing was able to continue through the Relevant Period. Furthermore, on occasions when instances of printing were raised at an affiliate company, TFS-ICAP failed to engage properly with the risk that there may be misconduct at TFS-ICAP. Despite the extent of the behaviour, there are no records of Senior Managers (those managers above the

level of Desk Head) being aware of printing: TFS-ICAP did not act with due skill, care and diligence in overseeing broker conduct and dealing with the risk.

- 2.7. Principle 3 requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. TFS-ICAP did not have adequate systems and controls in place to counter the risk of printing or to deal with any actual instances of printing. The governance structure of TFS-ICAP meant that oversight of the broking desks was limited and Desk Heads were inadequate as a first line of defence to counter the risk of printing. Furthermore, the compliance function was insufficiently engaged and there were inadequate processes in place to ensure Compliance had an appropriate engagement with the broking desks to counter the risk of printing.
- 2.8. Principle 5 requires a firm to observe proper standards of market conduct. Printing took place at TFS-ICAP through the Relevant Period, and was conducted openly across multiple broking desks to the extent that brokers saw it as part of the role of broking. The purpose of giving an incorrect impression of trading activity was to encourage trades when such trades might otherwise not have happened. This was done without regard for the interests of market participants or the wider financial system.
- 2.9. The Authority considers these breaches to be serious. Printing was a periodic occurrence conducted openly on multiple FX options desks at TFS-ICAP through the Relevant Period and had the effect of market participants being provided with misleading information, thereby undermining the integrity of the market.
- 2.10. The Authority hereby imposes on TFS-ICAP a financial penalty of £3,444,100 pursuant to section 206 of the Act for breaches of Principle 2, Principle 3 and Principle 5.
- 2.11. The Authority notes that since the end of the Relevant Period a Senior Manager and a Desk Head have left TFS-ICAP, and the composition of the TFS-ICAP Board has changed. TFS-ICAP's compliance regime is also subject to monitoring by an Independent Monitor appointed in 2018, which includes testing of communications and trading data and reviewing policies and procedures. The Independent Monitor

has reported that no instances of printing have been identified by TFS-ICAP, nor the Independent Monitor, under the new monitoring regime that has been implemented.

- 2.12. TFS-ICAP agreed to resolve this matter and qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £4,920,100.

3. DEFINITIONS

- 3.1. 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

"Desk Head" means a senior broker at TFS-ICAP Limited who had management responsibility over a particular broking desk

"FCA Handbook" means the Authority's handbook of rules and guidance

"FX option" means a foreign exchange currency option

"Principles" means the Authority's Principles for Businesses

"the Relevant Period" means 1 January 2008 to 31 December 2015

"Senior Manager" means an individual with management responsibility for TFS-ICAP Limited above the level of Desk Head

"TFS-ICAP" means TFS-ICAP Limited

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

“Volbroker” means the proprietary electronic trading platform used by brokers at TFS-ICAP Limited

4. FACTS AND MATTERS

BACKGROUND

Structure of TFS-ICAP

- 4.1. TFS-ICAP was authorised by the Authority on 1 December 2001. TFS-ICAP is an electronic and voice interdealer broking firm, acting for institutional clients operating in the wholesale financial markets, specifically in FX options. It was formed as a joint venture between three corporate partners in 2000.
- 4.2. As an interdealer broker, TFS-ICAP’s main business is to bring together counterparties for which TFS-ICAP arranges trades in return for a brokerage fee. Over the Relevant Period, TFS-ICAP generated average annual revenue of £26.1 million.
- 4.3. TFS-ICAP’s front office broking department was organised into several desks based on the different markets in which it operated. These desks were G10, Emerging Markets, Exotics and Crosses and each would specialise in arranging trades in particular groups of currency pairs. Each desk was led by a senior broker who was the Desk Head and usually comprised up to ten brokers. The Desk Heads reported to TFS-ICAP’s Directors. In total, in the Relevant Period, the number of brokers in TFS-ICAP at any one time averaged approximately thirty-seven.
- 4.4. TFS-ICAP is affiliated with other international firms. The broking systems between these firms were connected such that brokers from each had access to trading information on the Volbroker system (described below). Certain staff at TFS-ICAP had roles and responsibilities which involved engagement with or oversight over certain persons in an affiliated firm.

TFS-ICAP's governance arrangements

- 4.5. TFS-ICAP was led by London-based Directors, whose roles encompassed both TFS-ICAP and an affiliate. Additionally, at least one London-based Desk Head held a role which extended to overseeing certain brokers in an affiliate firm.
- 4.6. TFS-ICAP had a Board but there were no TFS-ICAP senior management committees in place between the broking desks and the Board during the Relevant Period.
- 4.7. Under a services agreement, a third party agreed to provide, and provided, services addressing certain aspects of TFS-ICAP's business, consistent with the terms of a joint venture agreement. Those services included the provision of compliance function services; TFS-ICAP did not have its own separate compliance function.

The activity of broking

- 4.8. TFS-ICAP offered its clients, typically large multinational banks, brokerage services as well as direct access to Volbroker, its proprietary electronic trading platform. One of the functions of the Volbroker system allows for a list of prices in the form of option volatilities for certain FX option pairs to be available to clients on which they can seek to trade. It also provides details of trades that have taken place through TFS-ICAP. This system was used by TFS-ICAP brokers as well as being available for its clients to use.
- 4.9. The essence of broking is that of the timely communication of information, and the ability of traders to act upon it, along with other data, to make trading decisions. Where TFS-ICAP brokers are used as an intermediary between traders, bids and offers may be communicated through instant message, by voice communication or by brokers placing bids and offers on Volbroker on behalf of a client. Similarly, information regarding trades that have taken place could be communicated from clients to brokers and from brokers to clients through these mediums. Where a trade was shown on Volbroker, it would be visible to TFS-ICAP's clients.

- 4.10. TFS-ICAP was a significant broker within the UK FX options market during the Relevant Period. Information provided by brokers at TFS-ICAP to clients was therefore an important part of the overall data available in the operation of this market.

Printing

- 4.11. Printing involves communicating, via screen, instant message, voice or other method, that a trade has been executed at a specified price and/or size, when no such trade has taken place. This has the effect of informing clients as to the levels at which trades are taking place, when in fact no such trade took place at that price level.
- 4.12. Market participants are entitled to expect that the information provided to them by the broker represents actual activity in the market and any trading decisions which factor in this information, amongst other sources of data, may therefore be made on an incorrect view of the market. Disseminating misleading information would not be in the interests of these market participants and would undermine the integrity of the market.

PRINTING AT TFS-ICAP

The practice of printing

- 4.13. Printing took place at TFS-ICAP through the Relevant Period. It was viewed by certain TFS-ICAP brokers as market practice (it was "*just considered market practice and everyone was doing it*"); across the Emerging Markets, G10 and Crosses desks it was an accepted practice which took place openly. Indeed, one Desk Head saw it as being part of the role of broking.
- 4.14. One way that printed trades could be communicated to clients and the market was through Volbroker. Brokers entered details of a trade which would then be displayed as a completed transaction to Volbroker users. However, as a printed trade could not be executed, once communicated through Volbroker it would

subsequently be cancelled after being posted. In addition to Volbroker, printed trades might also be communicated by brokers using instant messages.

Examples of printing at TFS-ICAP

4.15. Set out below are examples of printing that took place by brokers at TFS-ICAP. These involved brokers communicating details of four separate trades via instant message to clients, but these trades had not occurred.

(i) On 8 January 2014, between 8.00am and 11.30am, a broker at TFS-ICAP communicated details of a specific Latin American FX option trade to a client;

(ii) On 8 January 2014, between 10.00am and 11.30am, a broker at TFS-ICAP communicated details of a specific Latin American FX option trade to a client;

(iii) On 12 February 2014, between 12.30pm and 2.00pm, a broker at TFS-ICAP communicated details of a specific Latin American FX option trade to a client; and

(iv) On 22 April 2014, between 9.00am and 10.30am, a broker at TFS-ICAP communicated details of a specific Latin American FX option trade to a client.

4.16. The four trades described in the communications noted above did not take place, thus misleading information about market activity was provided.

The purpose of printing

4.17. The purpose of printing at TFS-ICAP was to generate business by encouraging trades to take place when such trades might otherwise not have happened. One broker when asked, "*So [the purpose of printing is] generating interest is that correct?*", responded, "*Yes it's trying to, it's trying to you know grease the wheels of motion*". This broker noted that "*if you have a tight price the people won't do,*

you know the purpose would have been to get them, entice them into trade at that level". Another broker stated that printing was a way to encourage a trade to take place when two clients were close on a price but not willing to meet; it was done to get a party "to react and do the trade".

- 4.18. The business that a broker at TFS-ICAP generated was one factor that was considered when calculating their overall remuneration. As such, there was a potential risk that brokers had a motivation to print in order to generate additional revenue for TFS-ICAP given the personal remuneration they stood potentially to gain.
- 4.19. On the Emerging Markets desk, decisions over printing a trade would, on occasion, be discussed and agreed collectively and in such instances the whole desk might be instructed to print a particular trade by the senior brokers. Moreover, junior brokers learnt about printing by being involved in such discussions with more senior brokers.
- 4.20. On occasion, certain clients requested that trades were printed for their own purpose as it could be beneficial to them for other clients to be provided with such misleading information.

TFS-ICAP'S AWARENESS OF PRINTING

Extent of the practice

- 4.21. Printing was a periodic occurrence through the Relevant Period at TFS-ICAP, was conducted openly across multiple broking desks and was freely discussed by brokers. Two Desk Heads knew of printing taking place by the brokers at TFS-ICAP during the Relevant Period and, indeed, printed trades themselves.
- 4.22. Whilst there is evidence that printing took place openly by brokers at TFS-ICAP, there is no direct evidence that Senior Managers were aware prior to 2015. Accordingly, there is no finding made that Senior Managers were aware of printing at TFS-ICAP prior to 2015, although the Authority does conclude that Senior

Managers should have been aware of printing had TFS-ICAP acted with due skill, care and diligence.

Awareness from overseas claim

- 4.23. In 2008, an overseas-based former employee of an overseas affiliate entity of TFS-ICAP made allegations about being encouraged to carry out printing by an employee of TFS-ICAP and also alleged that such printing took place at TFS-ICAP. As a result of these allegations, there was information available on which TFS-ICAP was on notice of the possibility of printing taking place.
- 4.24. While the allegations made by the former overseas-based employee were not proven, they painted a picture of printing being a common occurrence on the broking desks at TFS-ICAP.
- 4.25. Despite this, there was limited awareness amongst TFS-ICAP's Senior Managers of the allegation of printing that had been made and the Compliance function was unaware of them as it was not notified of the matter despite the clear compliance ramifications. As such, whilst the allegations raised the issue of printing taking place, these concerns were not escalated to Compliance and therefore no steps were taken to address the risk that printing may have been occurring at TFS-ICAP.

Discovery of printing in an overseas affiliate

- 4.26. In August 2015, TFS-ICAP was made aware that the printing of Latin American currency pairs was taking place at an overseas affiliate. This was notified to TFS-ICAP Senior Managers by a broker at TFS-ICAP who had identified certain prices and trades on Volbroker. The prices and trades in question were posted in the name of a specific bank and the broker understood that this bank did not trade in Latin American currencies, which thus attracted his attention.
- 4.27. TFS-ICAP took some steps to understand the details of what had taken place. Information was extracted from Volbroker that identified the volume and the trades entered and the login names of the brokers that were responsible.

- 4.28. While there was no evidence of printing taking place by TFS-ICAP brokers in this particular instance, the information regarding the affiliate should have triggered a wider investigation as to whether printing was taking place by brokers at TFS-ICAP. The enquiries made focussed on prices being entered in the name of the particular bank only, but did not address printing more broadly. Whilst one Senior Manager claimed to have considered it very serious, that two brokers at the affiliated firm "*broke every rule in the book*" and claimed that there was a sense of outrage and disbelief at TFS-ICAP about the issue, there were no further enquiries conducted into printing at TFS-ICAP. This was despite the risk of potential UK-based misconduct and, more generally, the potential risk posed by the movement of staff between TFS-ICAP and its affiliate.
- 4.29. The compliance function for TFS-ICAP did not have any active role or input into the matter or indeed any specific knowledge of the issues. Hence, printing was not considered by the compliance function to be a problem that required attention. Compliance also gave no consideration as to whether the alleged misconduct might have occurred more widely.
- 4.30. No formal written instructions or guidance expressly addressing the prohibition of printing were given to brokers in London following the discovery of misconduct in the overseas affiliate; nor did Senior Managers make any written record of discussions taking place about such conduct. Similarly, no formal changes aimed specifically at the risk of printing were instigated by TFS-ICAP as a result. The formal action taken by TFS-ICAP was restricted to the limited enquiries into the events of August 2015. There was no wider action or engagement with printing beyond this episode; nor was there any involvement by Compliance. There was no written instruction issued to brokers focussed expressly on prohibiting printing until an email was sent in June 2017 to all staff.
- 4.31. However, some limited and informal steps were taken. Following the suspension of the brokers in the overseas affiliate, the Emerging Markets desk of TFS-ICAP was given a verbal instruction prohibiting printing. No explanation was given as to the reasoning behind this prohibition. Subsequently, the brokers on the Emerging Markets desk were called to a meeting, with several TFS-ICAP Desk

Heads and a Senior Manager, where brokers were informed that printing was prohibited.

- 4.32. Compliance was not present and no record was kept of the meeting. There were no subsequent email communications or formal records in respect of the meeting or the matters discussed.
- 4.33. In October 2015 allegations were made towards the end of a social event by a broker under investigation for the events of August 2015 to a Senior Manager at TFS-ICAP that widespread misconduct by printing trades had taken place by TFS-ICAP brokers. Despite being made aware of the form in which the printing had taken place, and its extent, no formal action was taken to engage adequately with the allegations. The Senior Manager did not act on the allegations or make any enquiries as to whether the alleged misconduct had in fact taken place. Neither was Compliance informed. TFS-ICAP's response was inadequate despite there being allegations of printing by brokers at TFS-ICAP. As such, and despite the instructions given at the meeting referred to at paragraph 4.31 above, it failed to properly deal with the risk that printing may be occurring amongst brokers across its desks.
- 4.34. In all, TFS-ICAP's reaction to the warning signs that printing may have been taking place was inadequate and ineffective. There was a failure to involve governance and oversight functions or to notify regulators. When Compliance became aware following the events of August 2015, there was a failure to robustly consider the issues particularly the potential risk of misconduct at TFS-ICAP.

SYSTEMS AND CONTROLS TO DETECT AND PREVENT PRINTING

Governance

- 4.35. TFS-ICAP's governance arrangements were inadequate in that there was a lack of appropriate oversight and governance structures in place. The lack of a formal senior management board or committee structure meant that compliance and conduct risks and issues were not properly considered. As such, there was an

inadequate structural safeguard in place to ensure effective oversight of the conduct of brokers at TFS-ICAP.

- 4.36. In the period 2013-2015 the Board met infrequently, only once a year, and convened solely to approve TFS-ICAP's accounts. The risk of printing, or indeed any conduct matter, was not discussed by the Board when it met in this period. The infrequent meetings of the Board, and its limited scope, reflect an absence of proper oversight of the business activities at senior management level. There were also no senior management committees in existence below the Board. As such, there was no decision-making forum that had any awareness of the risk of, or the occurrence of, printing. There was therefore no adequate oversight of the business by TFS-ICAP management. As such, there was no properly functioning method for matters relating to TFS-ICAP to be escalated to appropriate TFS-ICAP senior management bodies for consideration. Furthermore, there was no internal audit function during the Relevant Period that might have considered the extent of senior management oversight.
- 4.37. As such, despite printing taking place at TFS-ICAP during the Relevant Period neither the Board nor any senior management committees appear to have had any awareness of printing and no consideration was given to the potential risk or seriousness involved.

Compliance framework

- 4.38. Compliance oversight was structured such that there was no dedicated compliance monitoring plan for TFS-ICAP.
- 4.39. Compliance policies and procedures were contained within a Compliance Manual, which applied to one of the companies which provided services to TFS-ICAP. While the Compliance Manual referenced its application to TFS-ICAP, it lacked any specificity to TFS-ICAP. Whilst there was a section on market conduct issues which outlined and prohibited certain behaviours, it did not contain any express mention of printing.

- 4.40. Similarly, a Code of Ethics applied to TFS-ICAP which addressed general broker practices, but did not expressly provide direction on printing. Indeed, there was no document that expressly did so. Neither was the provision of trade data to clients raised as an issue in this document.
- 4.41. There was therefore a lack of any express reference to printing in the relevant compliance documents. Compliance policies and procedures were generic. TFS-ICAP considered that the Code of Ethics covered most potential misconduct and that printing had always been clearly prohibited, while not expressly so. Overall, documented policies as they might relate to printing were generic meaning that the preventative mechanisms for addressing printing were inadequate. TFS-ICAP also did not carry out any compliance reviews or assessments during the Relevant Period that might have addressed printing.

Compliance monitoring

- 4.42. The Compliance systems and controls were inadequate during the Relevant Period in several respects. In particular, there were significant weaknesses in its monitoring capabilities due to deficiencies in the abilities and knowledge of the Monitoring Team. The compliance monitoring undertaken was itself inadequate to effectively identify potential misconduct or to provide appropriate level of compliance control, and brokers were largely ring fenced and inaccessible to Compliance. This resulted in Compliance not being focused on important risks or issues that were unique to TFS-ICAP or on specific risks such as printing.
- 4.43. The generic approach of Compliance to monitoring meant that indications of printing potentially taking place were not specifically looked for. Whilst a compliance monitoring programme was in place across all trades on Volbroker and all electronic communications, the focus of this was on potential market abuse activity, but without any separate consideration given to printing. The lack of scrutiny on printing meant that the risk of it taking place was not adequately managed. Furthermore, the compliance monitoring that was in place was ineffective in detecting printing.

- 4.44. Despite printing occurring at TFS-ICAP through the Relevant Period, Compliance was not aware of printing taking place within TFS-ICAP until 2015. This was despite warning signs that printing may have been taking place.
- 4.45. When TFS-ICAP uncovered evidence of misconduct taking place in an overseas affiliate in August 2015, Compliance was not involved and therefore this incident did not trigger Compliance putting in place steps to monitor for printing in the UK. Indeed, there was no clear mechanism for the escalation of issues to Compliance. There was also no record of any actions taken to either detect or prevent printing from taking place. Additionally, Compliance Reports were also not provided to TFS-ICAP. As such, Compliance was not aware of potential or actual instances of printing, nor was it monitoring for it, during this period.

Broker training and interaction with Compliance

- 4.46. There was no compliance training specifically relating to printing given to brokers, and no training expressly relating to the communication of trading information. In an external compliance report commissioned by TFS-ICAP into certain aspects of its compliance regime prior to the Authority's investigation, it was noted that the training that brokers were required to carry out was viewed as a "*generic tick-box exercise.*"
- 4.47. Compliance did not engage with brokers specifically in relation to printing. Brokers were unaware if Compliance knew of the practice and there were no communications from Compliance expressly addressing printing during the Relevant Period. Senior Managers incorrectly considered that brokers were often verbally updated by Compliance about what they should and should not do. However, Compliance did not give brokers any instruction warning against or prohibiting printing.
- 4.48. Consequently, Compliance was not properly engaged with the conduct of brokers; nor did it seek to give adequate direction on printing. Even when misconduct was discovered overseas in 2015, Compliance was not engaged so as to be able to take adequate steps regarding interacting with brokers either through assessing training needs, issuing guidance or through interacting with them more generally.

Governance and compliance improvements

- 4.49. The Authority notes that since the end of the Relevant Period a Senior Manager and a Desk Head have left TFS-ICAP, and the composition of the TFS-ICAP Board has changed.
- 4.50. In addition, following the end of the Relevant Period, TFS-ICAP, together with an affiliate, commissioned an external review of its compliance controls framework. TFS-ICAP's compliance regime is also subject to monitoring by an Independent Monitor appointed in 2018, which includes testing communications and trading data, reviewing policies and procedures and interviewing individuals at TFS-ICAP. The Independent Monitor has reported that no instances of printing have been identified by TFS-ICAP, nor the Independent Monitor, under the new monitoring regime that has been implemented.

5. FAILINGS

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

BREACH OF PRINCIPLE 2

- 5.2. Principle 2 requires a firm to conduct its business with due skill, care and diligence.
- 5.3. The Authority considers that TFS-ICAP failed to act with due skill, care and diligence, because printing was able to continue openly during the Relevant Period without challenge by Senior Managers or members of the Compliance function. Whilst there is no evidence that Senior Managers or Compliance were aware that printing was taking place, if TFS-ICAP had conducted its business with due skill, care and diligence printing would have been discovered and printing stopped. That was not the case.
- 5.4. When indicators of risk were presented to TFS-ICAP, either no steps or inadequate steps were taken to address the risk of printing. The allegations raised in 2008 provided an opportunity for TFS-ICAP to have been aware of the possibility that printing was taking place. However, the risk was not addressed.

- 5.5. In 2015, specific instances of printing were uncovered at an affiliate which should have prompted TFS-ICAP to consider the risk that printing may have been occurring. TFS-ICAP's response was focussed on the specific instances and only informal verbal instructions to stop printing were given to brokers, without due involvement of Compliance. As such, TFS-ICAP's response lacked due skill, care and diligence.

BREACH OF PRINCIPLE 3

- 5.6. TFS-ICAP breached Principle 3 by failing to take reasonable care to ensure that it had effective systems and controls in place to manage the risk of misconduct occurring, in that its governance structure did not ensure adequate oversight of its business and its compliance arrangements were inadequate. This failure increased the risk that misconduct would not be identified or properly investigated.

Governance failings

- 5.7. The manner in which TFS-ICAP's governance structure was organised throughout the Relevant Period meant that its management had inadequate oversight of its business.
- 5.8. TFS-ICAP's Board met once a year in the period 2013-2015 and its remit was limited. Consequently, it did not engage with any conduct issues that may have been relevant and, more particularly, it did not discuss any issues relating to printing. There were also no senior management committees or bodies in place resulting in no proper escalation path for TFS-ICAP issues to TFS-ICAP management bodies. Any matters relating to the risk of, or actual instances of, misconduct could therefore not be adequately overseen and managed by TFS-ICAP.

Compliance failings

- 5.9. TFS-ICAP's compliance arrangements were inadequate and ineffective in detecting and preventing printing. Systems to control the risk arising from printing comprised the policies and procedures set out in the Compliance Manual and Code of Ethics. However, these were inadequate in that they were too high level. Whilst there was a section on market conduct issues in the Compliance Manual which outlined and prohibited certain behaviours, there was no express focus on printing in the compliance policies and procedures; nor was there anything on providing trading information to clients.
- 5.10. Brokers were also not engaged by Compliance, both on a general level and also in respect of there being interactions to advise on appropriate conduct. Neither were there discussions or communications between Compliance and brokers on printing specifically. Compliance training for brokers was also insufficient with no focus on addressing printing.
- 5.11. Compliance monitoring was inadequate and also gave no consideration at all to printing, and furthermore the Compliance Reports were not provided to TFS-ICAP.

BREACH OF PRINCIPLE 5

- 5.12. Principle 5 requires a firm to observe proper standards of market conduct.
- 5.13. TFS-ICAP breached Principle 5 through the engagement by brokers at the firm in printing through the Relevant Period. Printing involves misleading information being communicated by brokers, namely that a trade has been executed at a specified price and/or size when no such trade has taken place. Market participants are entitled to expect that the information provided to them by the broker represents actual activity in the market and any trading decisions which factor in this information, amongst other sources of data, may therefore be made on an incorrect view of the market. Such behaviour would not be in the interests of these market participants and would undermine the integrity of the market. Printing was a periodic occurrence at TFS-ICAP through the Relevant Period and was conducted openly across multiple broking desks.

5.14. Printing was an accepted practice at TFS-ICAP, such that brokers saw it as part of the role of broking. The purpose of printing at TFS-ICAP was to generate business by encouraging trades to take place when such trades might otherwise not have happened. This was done without proper regard to the wider integrity of the market, in breach of Principle 5.

6. SANCTION

6.1. The Authority has concluded that a financial penalty is the appropriate sanction in the circumstances of this case.

6.2. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of the Authority's Decision Procedure and Penalties Manual ("DEPP"). The regulatory provisions governing the determination of financial penalties changed on 6 March 2010.

6.3. The conduct in issue took place both before and after 6 March 2010. As set out at paragraph 2.7 of the Authority Policy Statement 10/4, when calculating a financial penalty where the conduct straddles penalty regimes, the Authority must have regard to both the penalty regime which was effective before 6 March 2010 ("the old penalty regime") and the penalty regime which was effective after 6 March 2010 ("the current penalty regime").

6.4. The Authority has adopted the following approach:

- Calculated the financial penalty for TFS-ICAP's breach from 1 January 2008 to 5 March 2010 under the old penalty regime;
- Calculated the financial penalty for TFS-ICAP's breach from 6 March 2010 to 31 December 2015 under the current penalty regime;
- Added the penalties calculated to produce a total financial penalty.

Financial penalty under the old penalty regime

6.5. The Authority's policy on the imposition of a financial penalty relevant to the misconduct prior to 6 March 2010 is set out in Chapter 6 of DEPP that was in force

up to and including 5 March 2010. All references to DEPP in this section are references to that version.

6.6. The Authority has also had regard to the corresponding provisions of Chapter 7 of the Authority's Enforcement Guide in force at the time.

6.7. In determining whether a financial penalty is appropriate, the Authority is required to consider all the relevant circumstances of the case. DEPP 6.5.2G sets out a non-exhaustive list of factors which may be relevant to determining the appropriate level of financial penalty. The Authority considers that the following factors are particularly relevant in this case.

Deterrence (DEPP 6.5.2(1))

6.8. When determining the level of penalty, the Authority has regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and market conduct.

6.9. The Authority considers that the financial penalty will deter TFS-ICAP and other FX options firms in the market from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

The nature, seriousness and impact of the breach (DEPP 6.5.2(2))

6.10. The Authority considers TFS-ICAP's breaches to be serious in that printing occurred through the Relevant Period and impacted multiple broking desks without challenge from senior management or the Compliance function. Furthermore, two Desk Heads were aware of printing taking place at TFS-ICAP, and carried out printing themselves.

6.11. The breaches concern serious weaknesses in the systems and controls at TFS-ICAP.

- 6.12. The breaches resulted in the integrity of the market being undermined (through the risk that market participants may make trading decisions based on misleading information).

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

- 6.13. Printing was carried out deliberately by brokers across multiple desks through the Relevant Period. It was seen by certain brokers as being part of the job of a broker.

Old regime conclusion

- 6.14. Having considered all the circumstances set out above, the Authority considers that £875,000 is an appropriate financial penalty to impose on TFS-ICAP under the old regime (£1,250,000 before application of a 30% penalty discount for agreeing to resolve this matter).

Financial penalty under the current penalty regime

- 6.15. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.

Step 1: disgorgement

- 6.16. Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.17. Whilst the purpose of printing was ultimately to generate business, for a potential financial gain, there is no quantifiable financial benefit that can be attributed from the breaches.
- 6.18. Step 1 is therefore £0.

Step 2: the seriousness of the breach

- 6.19. Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area.
- 6.20. The Authority considers that the revenue generated by the relevant broking desks at TFS-ICAP is indicative of the harm or potential harm caused by its breach. The Authority has therefore determined a figure based on a percentage of TFS-ICAP's relevant revenue. TFS-ICAP's relevant revenue is the revenue derived by the relevant broking desks at TFS-ICAP during the period of the breach. These desks represented 84% of the firm's revenue in the period of TFS-ICAP's breach, from 6 March 2010 to 31 December 2015. The Authority considers TFS-ICAP's relevant revenue for this period to be £122,338,445.
- 6.21. In deciding on the percentage of the relevant revenue that forms the basis of the step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on firms there are the following five levels:
- Level 1 – 0%
 - Level 2 – 5%
 - Level 3 – 10%
 - Level 4 – 15%
 - Level 5 – 20%
- 6.22. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. DEPP 6.5A.2G(11) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:

(b) the breach revealed serious or systemic weaknesses in the firm's procedures or in the management systems or internal controls relating to all or part of the firm's business: TFS-ICAP's systems and controls were inadequate to address the risk of, or actual occurrences of, printing taking place; and

(f) the breach was committed deliberately or recklessly: printing was carried out deliberately by brokers.

6.23. DEPP 6.5A.2G(12) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers the following factors to be relevant:

(b) there was no or little loss or risk of loss to consumers, investors or other market users individually and in general: the purpose of printing at TFS-ICAP was to generate business by encouraging trades to take place when such trades might otherwise not have happened; there are nonetheless no indications that any clients in fact suffered any loss.

6.24. The Authority also considers that the following factors are relevant:

Factors relating to the impact of a breach committed by a firm (DEPP 6.5A.2G(6))

(a) the level of benefit gained or loss avoided, or intended to be gained or avoided, by the firm from the breach, either directly or indirectly: the purpose of printing at TFS-ICAP was to generate business by encouraging trades to take place when such trades might otherwise not have happened, with the aim of generating revenue for TFS-ICAP. As such, the misconduct was carried out with the intention of benefiting TFS-ICAP; and

(f) whether the breach had an adverse effect on markets: printing involved the communication of misleading information to the market. Consequently, TFS-ICAP's breach undermined the integrity of the market.

Factors relating to the nature of a breach by a firm (DEPP 6.5A.2G(7))

(b) the frequency of the breach: printing occurred at TFS-ICAP through the Relevant Period and was conducted openly across multiple desks;

Factors tending to show the breach was deliberate (DEPP 6.5A.2G(8))

(f) the breach was repeated: printing took place by brokers through the Relevant Period.

6.25. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 4 and so the Step 2 figure is 15% of the relevant revenue, resulting in a penalty of £18,350,767.

6.26. DEPP 6.5.3(3) provides that the Authority may decrease the level of penalty arrived at after applying Step 2 of the framework if it considers that the penalty is disproportionately high for the breach concerned.

6.27. The Authority considers that a penalty of £18,350,767 is disproportionately high for the breach concerned. In order to achieve a penalty that (at Step 2) is proportionate to the breach, the Step 2 figure is reduced to £3,670,153.

6.28. Step 2 is therefore £3,670,153.

Step 3: mitigating and aggravating factors

6.29. Pursuant to DEPP 6.5A.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.

6.30. The Authority acknowledges that TFS-ICAP has cooperated fully with the Authority's investigation but does not consider that the financial penalty as set out in Step 2 should be adjusted.

6.31. Step 3 is therefore £3,670,153.

Step 4: adjustment for deterrence

- 6.32. Pursuant to DEPP 6.5A.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.
- 6.33. The Authority considers that the Step 3 figure of £3,670,153 represents a sufficient deterrent to TFS-ICAP and others, and so has not increased the penalty at Step 4.
- 6.34. Step 4 is therefore £3,670,153.

Step 5: settlement discount

- 6.35. Pursuant to DEPP 6.5A.5G, if the Authority and the firm on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the firm reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.
- 6.36. The Authority and TFS-ICAP reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.
- 6.37. Step 5 is therefore £2,569,100.

Total penalty

- 6.38. The Authority hereby imposes a total financial penalty of £3,444,100 on TFS-ICAP for breaching Principle 2, Principle 3 and Principle 5 (£4,920,100 before the 30% discount for settlement).

7. PROCEDURAL MATTERS

7.1. This Notice is given to TFS-ICAP under section 206 of the Act and in accordance with section 390 of the Act.

7.2. The following statutory rights are important.

Decision maker

7.3. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

Manner and time for payment

7.4. The financial penalty must be paid in full by TFS-ICAP to the Authority no later than 7 December 2020.

If the financial penalty is not paid

7.5. If all or any of the financial penalty is outstanding on 8 December 2020, the Authority may recover the outstanding amount as a debt owed by TFS-ICAP and due to the Authority.

Publicity

7.6. 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 you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

- 7.8. For more information concerning this matter generally, contact Matthew Ball (direct line: 020 7066 6970 / email: matthew.ball@fca.org.uk) or Benjamin James at the Authority (direct line: 020 7066 4828 / email: ben.james@fca.org.uk).

Mario Theodosiou

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1.1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include the integrity objective.

1.2. Section 206(1) of the Act provides:

"If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act... it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate."

RELEVANT REGULATORY PROVISIONS

Principles for Businesses

1.3. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook. They derive their authority from the Authority's rule-making powers set out in the Act. The relevant Principles are as follows.

1.4. Principle 2 provides that:

A firm must conduct its business with due skill, care and diligence.

1.5. Principle 3 provides that:

A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

1.6. Principle 5 provides that:

A firm must observe proper standards of market conduct.

DEPP

- 1.7. Chapter 6 of DEPP, which forms part of the Authority's Handbook, sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.

The Enforcement Guide

- 1.8. The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act.
- 1.9. Chapter 7 of the Enforcement Guide sets out the Authority's approach to exercising its power to impose a financial a penalty.