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## FINAL NOTICE

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To: **Barclays Bank PLC**  
Firm  
Reference  
Number: **122702**  
Address: **1 Churchill Place**  
**London**  
**E14 5HP**  
Date: **23 May 2014**

### **1. ACTION**

- 1.1. For the reasons given in this notice, the Authority hereby imposes on Barclays Bank PLC a financial penalty of £26,033,500 for breaches of Principles 3 and 8 of the Authority's Principles for Businesses between 7 June 2004 and 21 March 2013.
- 1.2. Barclays agreed to settle at an early stage of the Authority's investigation and therefore 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 £37,190,800 on Barclays.

## **2. SUMMARY OF REASONS**

- 2.1. Barclays joined the Gold Fixing on 7 June 2004. During the Relevant Period Barclays was one of five Gold Fixing Members that have contributed to setting the price of gold in the Gold Fixing. The Gold Fixing is an important pricing mechanism which provides market users with the opportunity to buy and sell gold at a single quoted price.
- 2.2. During the Relevant Period, Barclays breached Principles 3 and 8 in relation to its participation in the Gold Fixing.
- 2.3. During the Relevant Period, Barclays breached Principle 3 by failing to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. In particular, Barclays failed to:
  - (i) create or implement adequate policies or procedures to properly manage the way in which Barclays' traders participated in the Gold Fixing;
  - (ii) provide adequate specific training to Precious Metals Desk staff in relation to their participation in the Gold Fixing; and
  - (iii) create systems and reports that allowed for adequate monitoring of traders' activity in connection with the Gold Fixing. The systems and reports did not formally record orders placed by traders in the Gold Fixing until 5 February 2013 and did not identify Gold Fixing transactions separately from general gold spot trades until 21 March 2013. As a result, Barclays was unable to adequately monitor what trades its traders were executing in the Gold Fixing or whether those traders may have been placing orders to affect inappropriately the price of gold in the Gold Fixing.
- 2.4. Barclays' breach of Principle 3 in relation to the Gold Fixing is particularly serious given the importance of the Gold Fixing as a price-setting mechanism which, as explained above, provides market users with an opportunity to buy and sell gold at a single quoted price; therefore, any inappropriate conduct in the Gold Fixing could affect both UK and international financial markets.

- 2.5. During the Relevant Period, Barclays also breached Principle 8 by failing to adequately manage certain conflicts of interest between itself and its customers. In particular, Barclays failed to adequately manage the inherent conflict of interest that existed from (i) Barclays participating in the Gold Fixing and contributing to the price fixed during the Gold Fixing, while at the same time also (ii) selling to customers options products that referenced, and were dependent on, the price of gold fixed in the Gold Fixing, by not putting in place policies, procedures, systems and training in relation to the Gold Fixing which would have adequately enabled its staff to properly identify and manage the risks arising from this inherent conflict of interest.
- 2.6. The Authority identified one occasion in which the risk created by Barclays' failure to adequately manage this conflict of interest was realised. On 28 June 2012, a Barclays trader, Mr Daniel Plunkett, participated actively in the Gold Fixing even though he was responsible for risk-managing an options contract that Barclays had entered into with its customer (Customer A) and for which the first pay-out (and the profit on Mr Plunkett's book) was dependent on the price of gold fixed in the 28 June 2012 Gold Fixing.
- 2.7. The firm's lack of specific training and guidance, given the absence of clear and sufficiently-tailored policies and procedures with respect to the Gold Fixing, meant that Barclays' personnel (including supervisors) may have been unaware of which conflicts of interest they should pay particular attention to in relation to the Gold Fixing. Similarly, Barclays' lack of systems and controls to record internal orders and flag trades that related specifically to the Gold Fixing left the firm unable to supervise traders' activities in the Gold Fixing adequately.
- 2.8. These failings led to an increased risk of inappropriate conduct by Barclays' traders participating in the Gold Fixing.
- 2.9. Indeed, in the instance identified by the Authority, the Authority has found that Mr Plunkett placed orders during the 3:00 p.m. Gold Fixing on 28 June 2012 with the intention of increasing the likelihood that the price of gold would fix below a certain level, preferring his interests over those of Customer A. In particular, he placed a large sell order of between 40,000 oz. (100 bars) and 60,000 oz. (150 bars) with Barclays' representative on the Gold Fixing, then withdrew it completely one minute later and subsequently placed another large sell order of between 40,000 oz. (100 bars) and 60,000 oz. (150 bars) two minutes after that. These orders contributed to the price of gold fixing at a level which was lower

than the Barrier specified in a digital options contract that the firm had previously entered into with Customer A. As a result, Barclays did not have to make a USD3.9m payment to Customer A, and Mr Plunkett's book thereby profited by USD1.75m (excluding hedging), which was in addition to the initial profit that his book had received upon the sale of the Digital. Subsequently, Barclays voluntarily took steps to fully compensate Customer A the amount that it would have been due had the Gold Fixing on 28 June 2012 fixed above the Barrier.

- 2.10. Were Barclays to have had adequate systems and controls with respect to its participation in the Gold Fixing (Principle 3) or to have properly considered and mitigated the risks arising from conflicts of interest (Principle 8), then Mr Plunkett's trading on 28 June 2012 may have been avoided.
- 2.11. Although there are differences between the LIBOR and EURIBOR processes and the Gold Fixing process, the Authority considers Barclays' failures to be particularly serious because Barclays' investigation into LIBOR and EURIBOR should have caused Barclays to have reviewed its systems and controls with respect to other price-setting mechanisms, including the Gold Fixing, prior to 28 June 2012. Indeed, this incident involving Mr Plunkett, which occurred the day after the Authority published its Final Notice to Barclays in relation to LIBOR and EURIBOR, may have been avoided had Barclays done so.
- 2.12. Since 28 June 2012, Barclays has enhanced its systems and controls in relation to the Gold Fixing, as well as in relation to other reference rates. Barclays has committed significant resources to this work. In addition, the Authority acknowledges that Barclays brought Mr Plunkett's conduct on 28 June 2012 promptly to the attention of the Authority and has co-operated with the Authority's investigation.

### **3. DEFINITIONS**

- 3.1. The definitions below are used in this Final Notice.

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

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

"Authority's Handbook" means the Authority's Handbook of rules and guidance.

"Barclays" means Barclays Bank PLC.

“Barrier” means the price of USD1,558.96 in the 3:00 p.m. Gold Fixing on 28 June 2012.

“Chairman” means the Gold Fixing Member (one of the Gold Fixing Members) that presides over the Gold Fixing. The Chairmanship is rotated amongst the Gold Fixing Members on a yearly basis.

“Customer A” means Barclays’ counterparty to the Digital.

“DEPP” means the part of the Authority’s Handbook entitled ‘Decision Procedure and Penalties Manual’.

“Digital” means the digital options contract between Barclays and Customer A.

“ENF” means the part of the Authority’s Handbook entitled ‘Enforcement’.

“EG” means the part of the Authority’s Handbook entitled ‘The Enforcement Guide’.

“EURIBOR” means the Euro Interbank Offered Rate.

“FICC” means Barclays’ Fixed Income Currencies and Commodities business area.

“Global Commodities” means the Barclays business area responsible for the commodity asset class. Global Commodities is part of FICC.

“Gold Fixing” means the London Gold Fixing process which takes place between the five Gold Fixing Members twice daily, at 10:30 a.m. and 3:00 p.m. each business day.

“Gold Fixing Members” means the member banks which participate in the Gold Fixing. During the Relevant Period, the five Gold Fixing Members were Barclays, Deutsche Bank, HSBC, Scotiabank and Société Générale.

“Investment Bank” refers to the investment bank division of Barclays.

“LIBOR” means the London Interbank Offered Rate.

“Metals Desk” means the Barclays desk responsible for trading in all metals. It is divided into the Base Metals Desk and the Precious Metals Desk. The Metals Desk is part of Global Commodities.

"Precious Metals Desk" means the Barclays trading desk responsible for precious metals. These metals are gold, silver, platinum, palladium and rhodium. The Precious Metals Desk is part of Global Commodities.

"Principle" or "Principles" means the Authority's Principles for Businesses.

"Relevant Period" means 7 June 2004 to 21 March 2013.

"Sales Desk" means the Barclays Emerging Market Sales Desk, which is responsible for selling multiple products to emerging market-based clients.

"SUP" means the part of the Authority's Handbook entitled "Supervision Manual".

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

"USD" means U.S. Dollars

#### **4. FACTS AND MATTERS**

##### **Background**

- 4.1. Barclays is a full service bank, headquartered in London, with operations in retail, wholesale and investment banking, as well as wealth management, mortgage lending and credit cards. It has been authorised by the Authority since 1 December 2001 to perform a number of regulated activities.
- 4.2. Barclays has been a member of the Gold Fixing since 7 June 2004 and during the Relevant Period was one of five Gold Fixing Members that contributed to setting the price of gold in the Gold Fixing. The Gold Fixing is an important pricing mechanism which provides market users with the opportunity to buy and sell gold at a single quoted price.
- 4.3. The Gold Fixing takes place twice daily (at 10:30 a.m. and 3:00 p.m. each business day) on a closed conference call between the Gold Fixing Members.
- 4.4. Barclays' participation in the Gold Fixing takes place through its Precious Metals Desk, which trades gold, silver, platinum, palladium and rhodium products. One of the types of products sold by the Precious Metals Desk is 'exotic' options contracts that reference precious metals fixings. For example, it sold Customer A the Digital, which referenced the Gold Fixing. Exotic options differ from standard 'vanilla' options in that they have non-standardised terms and offer a bespoke range of features or characteristics, which gives them greater complexity. The

majority of exotic options are traded bilaterally, whereas vanilla options are often traded on exchanges.

*Mechanics of the Gold Fixing*

- 4.5. More generally, the Precious Metals Desk is part of the Metals Desk, which sits within Barclays' Global Commodities business. Global Commodities was part of the FICC division of Barclays' Investment Bank during the Relevant Period.
- 4.6. As described on the Gold Fixing website, the Gold Fixing takes place as follows:
- (1) Immediately prior to the commencement of the Gold Fixing, the Chairman determines what is considered to be the then prevailing USD spot price for gold in the London market. This price will be used as the opening price for the Gold Fixing.
  - (2) Each of the Gold Fixing Members will then declare whether, at the opening price, they have buying, selling or no interest.
  - (3) If there is no buying and no selling interest at the opening price, then the Chairman may announce the price as "fixed" at that opening price.
  - (4) However, if at the opening price there is only selling or buying interest, then the Chairman will ask for figures and may then either: (i) declare the price as fixed if the quantity offered or wanted is 20,000 oz. (50 bars) or less (see below regarding pro-rata fixings); or (ii) move the opening price lower or higher until there is two-way interest.
  - (5) If at a price being tried there is two-way interest, then the Chairman will call for figures. Sellers will declare the number of bars they wish to sell and then the buyers will disclose the number of bars they wish to buy. Gold Fixing Members are required to declare their interest in increments of five bars, but there is no such requirement in relation to their underlying customers, *i.e.* their underlying customers can place their orders for any amount, not only in increments of five.
  - (6) For example, if a seller wants to sell 40,000 oz. (100 bars) and a buyer wants to buy only 10,000 oz. (25 bars), then the Chairman will progressively move the price down and at each stage ask for expressions of buying and selling interest and then for figures. Likewise, if a buyer wants to buy 40,000 oz. (100 bars) but a seller wants to sell only

10,000 oz. (25 bars), then the Chairman will progressively move the price being tried up. This process continues until supply meets demand or the imbalance is 20,000 oz. (50 bars) or less and the Chairman decides to declare a pro-rata fixing and the price fixed.

- (7) In the event that it proves impossible to meet supply and demand exactly or the difference is 10,000 oz. (25 bars) or less, the Chairman may declare the price fixed and the Gold Fixing Members will divide pro-rata the difference between themselves. For example, if there is more buying than selling interest with two buyers and three sellers and the difference is 10,000 oz. (25 bars), both of the buyers will reduce their buying interest by five bars and each of the sellers will increase their selling interest by five bars. This pro-rata arrangement is solely between the members and will not affect their underlying customers' orders.
- (8) At any time a Gold Fixing Member, or their underlying customers, may increase, decrease or withdraw a previously-declared selling or buying order or place a completely new order. In such circumstances, if a Gold Fixing Member requires a short pause in order to enable them to recalculate their overall level of interest, then the Gold Fixing Member may call "flag", which brings the Gold Fixing to a temporary halt. The Chairman cannot fix the price while a flag prevails.
- (9) When supply meets demand at a price being tried or the Chairman has declared a pro-rata fixing and the price as fixed, he will then provide equivalent Gold Fixing prices in Pounds Sterling and Euros, using the then prevailing exchange rates.
- (10) The USD Gold Fixing price is the price for one troy ounce of gold delivered in London in the form of LBMA Good Delivery gold bars of approximately 400 oz. each.

### **The Digital**

- 4.7. On 28 June 2011, Barclays entered into the Digital with Customer A. The Digital was a 'digital' option, meaning it had only two potential values (i) a fixed pay-out to Customer A if the option finished 'in the money'; or (ii) no pay-out if the option finished 'out of the money'. In order to determine whether a digital option finishes in or out of the money, reference is usually given to the price or level of a

specified investment or reference rate level on a specified date, also known as the observation date.

- 4.8. The Digital had a notional amount of approximately USD43m and upon the signing of the contract, Customer A paid a premium of 8.18% of the notional value, USD4.4m, to Barclays, of which a proportion was attributed as a profit to Mr Plunkett's book. The Digital had two observation dates, 28 June 2012 and 20 June 2013, and referenced the price fixed during the 3:00 p.m. Gold Fixing on each of these dates.
- 4.9. Under the terms of the Digital, if the price fixed in the 28 June 2012 Gold Fixing at 3:00 pm exceeded USD1,558.96 (the Barrier), a payment of 9% of the notional amount, or approximately USD3.9m, would accrue to Customer A. If the price fixed during the 20 June 2013 Gold Fixing exceeded USD1633.91, a payment of 18% of the notional amount would accrue to Customer A, less any accrued percentage payment related to the 28 June 2012 Gold Fixing.
- 4.10. The Digital was sold to Customer A by Barclays' Sales Desk. Mr Plunkett was therefore aware of the terms of the Digital. The Digital referenced the price of gold fixed in the 3:00 p.m. Gold Fixing on 28 June 2012. As described in paragraph 4.9 above, the terms provided that if the price fixed above USD1,558.96 (the Barrier) then Barclays would be required to make a USD3.9m payment to Customer A. Part of this payment would be attributed to Mr Plunkett's book. If, however, the price of gold fixed below the Barrier, then Barclays would not have to make the USD3.9m payment to Customer A and a percentage of the additional profit would be attributed to Mr Plunkett's book.

#### **Mr Plunkett's trading during the 28 June 2012 Gold Fixing**

- 4.11. Mr Plunkett was aware that the Digital was the main risk exposure he had to manage on 28 June 2012. On the evening of 27 June 2012, Mr Plunkett sent an email summarising his risk exposures to other members of the Commodities business area, including members of the Precious Metals Desk, stating that the Digital was his "*main event*" for 28 June 2012 and that he was hoping for "*a mini puke to 1558 for fixing*". The Authority understands the phrase "*mini-puke*" used by Mr Plunkett to have meant a drop in the price of gold ahead of the 28 June 2012 Gold Fixing – the price in the 3:00 p.m. 27 June 2012 Gold Fixing had fixed at USD1,573.50 and COMEX Gold futures were trading at approximately USD1,577.50 at the time of his email. Mr Plunkett repeated this sentiment on the

morning of 28 June 2012, stating to a colleague *"hopefully we fix 1558, or 1558.75 ideal"*.

- 4.12. At the start of the 28 June 2012 Gold Fixing at 3:00 p.m., the Chairman proposed an opening price of USD1,562.00. However, the proposed price quickly dropped to USD1,556.00, following a drop in the price of August COMEX Gold Futures (which was caused by significant selling in the August COMEX Gold Futures market, independent of Barclays and Mr Plunkett). The proposed price in the 28 June 2012 Gold Fixing fell to USD 1,555.00 and then rose, eventually fixing at USD1,558.50 at 3:10 p.m.
- 4.13. At 3:06 p.m., shortly after the Chairman had increased the proposed price to USD1,558.50, Mr Plunkett, who had not placed any previous orders during the Gold Fixing, placed a large sell order of between 40,000 oz. (100 bars) and 60,000 oz. (150 bars), with Barclays' representative on the Gold Fixing. This order was incorporated by Barclays' representative into Barclays' net position, which led to Barclays declaring itself to be a seller of 52,000 oz. (130 bars).
- 4.14. The purpose of Mr Plunkett's order was to decrease the likelihood of the proposed price rising further (above the Barrier) and to increase the likelihood that the price would fix at USD1,558.50 (below the Barrier).
- 4.15. Once all the Gold Fixing Members had declared their respective positions at USD1,558.50, the level of selling in the 28 June 2012 Gold Fixing exceeded the level of buying by 190 bars (155 bars buying/345 bars selling). This suggested that the proposed price in the 28 June 2012 Gold Fixing was likely to move lower.
- 4.16. At 3:07 p.m. Mr Plunkett withdrew his entire sell order, which resulted in Barclays' representative withdrawing Barclays' position, selling 130 bars). This reduced the imbalance in the 28 June 2012 Gold Fixing from 190 bars to 60 bars (155 bars buying/215 bars selling).
- 4.17. By withdrawing his entire sell order, Mr Plunkett intended to bring the difference between buying and selling interests within the 50 bar margin required for the price to fix. This would also increase the likelihood of the price fixing at USD1,558.50 (below the Barrier).
- 4.18. Following Mr Plunkett's withdrawal of his order, one of the Gold Fixing Members reduced its selling position by 10 bars, bringing the imbalance in the 28 June 2012 Gold Fixing to 50 bars. However, before the price was fixed, there were a

number of further changes in the levels of buying and selling in the 28 June 2012 Gold Fixing, which coincided with an increase in the price of August COMEX Gold Futures.

- 4.19. As a result of these changes, the level of buying at USD1,558.50 exceeded the level of selling (155 buying/45 selling), and the proposed price was likely to move higher. Given that the price of August COMEX Gold Futures was trading around USD1,560.00 at this time, if the Chairman did move the proposed price in the 28 June 2012 Gold Fixing higher, it was likely to be to a similar price level (which was higher than the Barrier).
- 4.20. At 3:09 p.m., Mr Plunkett again placed a large sell order, 60,000 oz. (150 bars), with Barclays' representative, who, also taking into account changes in customers' orders, declared Barclays' net position in the 28 June 2012 Gold Fixing to be selling 40,000 oz. (100 bars).
- 4.21. By placing his sell order, Mr Plunkett intended to increase the likelihood of the price fixing at USD1,558.50 (below the Barrier).
- 4.22. Barclays' sell order, of which Mr Plunkett's order was a significant component, had the effect of bringing the level of buying and selling in the 28 June 2012 Gold Fixing to a point where the imbalance was 10 bars (155 buying/145 selling), and the price could be fixed. Indeed, shortly after Mr Plunkett placed this order, two of the Gold Fixing Members adjusted their orders and at 3:10 p.m. the Chairman declared the price to be fixed at USD1,558.50 (below the Barrier). As a result, Barclays was not obligated to make the USD3.9m payment to Customer A, and Mr Plunkett's book profited by USD1.75m (excluding hedging), which was in addition to the initial profit that his book had received upon the sale of the Digital.
- 4.23. In the event involving Mr Plunkett on 28 June 2012, the difference between the price of gold in the Gold Fixing and the Barrier was relatively small. Were the difference between the price of gold in the Gold Fixing and the Barrier to have been larger, the likelihood of Customer A's position in the Digital being ultimately affected by Mr Plunkett's orders would have been lower, although still possible.
- 4.24. In addition, the Authority acknowledges that Barclays brought Mr Plunkett's conduct on 28 June 2012 promptly to the attention of the Authority and has co-operated with the Authority's investigation.

### **Events after the 28 June 2012 Gold Fixing**

- 4.25. Shortly after the conclusion of the 28 June 2012 Gold Fixing, Mr Plunkett repurchased 60,000 oz. (150 bars) of gold by executing an internal trade with Barclays' Gold Spot Book. The purpose of executing this order was to unwind the 60,000 oz. (150 bars) position he had taken during the 28 June 2012 Gold Fixing.
- 4.26. Mr Plunkett's trade was executed at a higher price than that at which he had sold during the 28 June 2012 Gold Fixing, and his trading book suffered an immediate loss of approximately USD114,000.

### **Customer A's enquiry and Barclays' internal investigation**

- 4.27. Very shortly after the conclusion of the 28 June 2012 Gold Fixing, Customer A became aware that the price had fixed just below the Barrier and sought an explanation from Barclays as to what happened in the Gold Fixing.
- 4.28. Barclays promptly conducted an internal investigation into Mr Plunkett's actions to determine what had happened during the 28 June 2012 Gold Fixing.
- 4.29. Following its internal investigation, Barclays voluntarily repaid Customer A the full amount that Customer A would have been due had the price of the 28 June 2012 Gold Fixing fixed above the Barrier.

### **Systems and controls in relation to the Gold Fixing**

- 4.30. During the Relevant Period, Barclays' systems and controls in relation to the Gold Fixing failed to: (i) provide staff with appropriate guidance or training with respect to their obligations concerning their participation in the Gold Fixing; and (ii) have measures in place that would adequately allow supervisors to monitor traders' activities during the Gold Fixing.
- 4.31. As at 28 June 2012, Precious Metals Desk staff had not been given adequate training or guidance regarding what they were, or were not, permitted to do during the Gold Fixing. The training that staff had received specifically in relation to the Gold Fixing had been principally in relation to the mechanics of how to place orders in the Gold Fixing, rather than specific training and guidance (for example, on the circumstances in which they were or were not allowed to participate in the Gold Fixing and the circumstances in which they were or were not allowed to place proprietary trades whilst the Gold Fixing was taking place). The lack of specific guidance is detailed further in paragraphs 4.32 and 4.33 below.

- 4.32. Further, although Barclays had several general policies in place in relation to market abuse, market conduct and supervision, all of which provided for mandatory training to Barclays' traders regardless of their business area, none of those policies were sufficiently-tailored to trading reference rates or precious metals products (and did not address the Gold Fixing or products referencing the Gold Fixing) so as to provide traders and supervisors with adequate guidance on what they should do in respect of the Gold Fixing. Rather, these general policies were framed at a high level of generality, stating that traders and supervisors should recognise conflicts of interest and abusive trading practices. Given the nature and characteristics of the Gold Fixing, Barclays should have implemented specific policies and procedures to clarify how its employees should conduct themselves in relation to Gold Fixing.
- 4.33. For example, the general policies did not provide guidance on: (i) when traders could participate in the Gold Fixing; (ii) how traders placing trades in the Gold Fixing should be supervised; (iii) how traders' conduct in relation to the Gold Fixing should be monitored; and (iv) what records and audit trail needed to be retained in relation to the Gold Fixing.
- 4.34. Since 28 June 2012, Barclays has undertaken a significant amount of work—and committed significant resources—to review its systems and controls in relation to the Gold Fixing (as well as in relation to other reference rates). This resulted in Barclays implementing policies and procedures related specifically to the Gold Fixing. On 8 November 2012 Barclays circulated Gold Fixing guidelines to the Precious Metals Desk, providing staff with specific guidance on when and how they could participate in the Gold Fixing and concerns of which they should be aware. On 5 February 2013 Barclays formally adopted and distributed those guidelines in a policy entitled '*The London Gold Fixing Desk Procedures*'. That policy also included procedures for supervising staff participating in the Gold Fixing, recording orders placed by traders during the Gold Fixing and various other matters related to the Gold Fixing. It was only after this policy was distributed that Barclays held training workshops for staff on their obligations with respect to participating in and supervising the Gold Fixing.
- 4.35. However, the lack of any policies and procedures in the Relevant Period tailored to the Gold Fixing resulted in an increased risk that Barclays' traders might engage in inappropriate conduct and that Barclays would not be able to effectively detect such behaviour.

- 4.36. Barclays' systems and reports also did not formally record orders placed by traders in the Gold Fixing until 5 February 2013. In addition, Barclays relied upon systems and reports that did not differentiate between Gold Fixing and gold spot market trades executed by its traders. (Barclays addressed this on 21 March 2013, when it updated its systems to specifically record Gold Fixing trades as such.) This meant that during the Relevant Period, Barclays could not adequately monitor its traders' orders and trades executed in the Gold Fixing.
- 4.37. In addition, given the significance and characteristics of the Gold Fixing, Barclays should have placed more importance on designing and implementing robust systems and controls in relation to the Gold Fixing prior to when it did.
- 4.38. This is especially so given that Barclays' investigation into LIBOR and EURIBOR should have caused Barclays to have reviewed its systems and controls with respect to other price-setting mechanisms (including the Gold Fixing) prior to 28 June 2012, even though there are differences between the LIBOR and EURIBOR processes and the Gold Fixing process.

#### **Identification and management of conflicts of interest in relation to the Gold Fixing**

- 4.39. As at 28 June 2012, Barclays had two policies that dealt generally with conflicts of interest: (i) the Global Conflicts of Interest Policy, dated 12 December 2011; and (ii) the Global Code of Conduct, dated 30 October 2009, which stated that Barclays employees were "*expected to make every effort to avoid situations and conflicts that may compromise or give the appearance the they may compromise [their] ability to carry out [their] responsibilities to the firm and its clients.*" (In addition, as at 28 June 2012, the members of the Precious Metals Desk had received general training related to conflicts of interest.)
- 4.40. Although these policies highlighted how employee-client and firm-client conflicts of interest should be identified and managed in general, they gave only limited examples of how these might arise, none of which referred to the Gold Fixing. These policies did not provide sufficient guidance to inform traders or their supervisors about what types of conflicts of interests with customers could exist when they traded in the Gold Fixing and what they should do to mitigate those conflicts. For example, the policies did not identify or manage the inherent conflict of interest that arose from Barclays being a member of the Gold Fixing (and thereby contributing to the price at which gold would fix in the Gold Fixing)

at the same time as it was selling to customers products that referenced the Gold Fixing prices.

- 4.41. Although in certain circumstances and where any conflicts are managed appropriately, Barclays may decide to participate in the Gold Fixing in order to manage its risk from exposure to its clients, further consideration should have been given to the types of conflicts of interest that could arise in relation to the Gold Fixing and guidance should have been given as to how these should be managed.
- 4.42. Barclays also did not put in place policies, procedures and training in relation to the Gold Fixing which would have adequately enabled its staff to properly identify and manage the risks arising from this inherent conflict of interest.
- 4.43. As a result, Barclays did not adequately identify or manage the conflict of interest that existed when Mr Plunkett participated in the 28 June 2012 Gold Fixing at the same time as he was responsible for risk-managing the Digital with Customer A. This failure occurred even though a number of individuals within Barclays had been notified about the Digital, Barclays' interest in the Digital and the fact that the Digital referenced the 28 June 2012 Gold Fixing.
- 4.44. Since 28 June 2012, Barclays has enhanced its systems and controls relating to the Gold Fixing. On 5 February 2013, Barclays formally adopted guidelines for the Precious Metals Desk, stating, for example, that traders could not participate in the Gold Fixing for any reason if they were a party to a Digital-type exotic observation against the Gold Fixing, that the firm had in place a formal policy or procedure that sought to specifically address conflicts of interest with customers who were counterparties to products that referenced the Gold Fixing.

## **5. FAILINGS**

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

### **Breach of Principle 3**

- 5.2. Principle 3 states:

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

- 5.3. For the reasons set out in paragraphs 4.30 to 4.37 Barclays breached Principle 3 by failing to take reasonable care to organise and control its affairs properly and effectively in relation to the Gold Fixing.

## **Breach of Principle 8**

5.4. Principle 8 states:

*"A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client."*

5.5. For the reasons set out in paragraphs 4.39 to 4.44 Barclays breached Principle 8 by failing to adequately manage certain conflicts of interest between itself and its customers. In particular, Barclays failed to adequately manage the inherent conflict of interest that existed from (i) Barclays participating in the Gold Fixing and contributing to the price agreed during the Gold Fixing, while at the same time also (ii) selling to customers options products that referenced, and were dependent on, the price of gold determined by the Gold Fixing, by not putting in place policies, procedures, systems and training in relation to the Gold Fixing which would have adequately enabled its staff to properly identify and manage the risks arising from this inherent conflict of interest.

## **6. SANCTION**

6.1. The Authority has considered the disciplinary and other options available to it and has concluded that a financial penalty is the appropriate sanction in the circumstances of this particular case.

### **Financial Penalty**

6.2. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. Changes to DEPP were introduced on 6 March 2010. Given that Barclays' misconduct occurred both before and after that date, the Authority has had regard to the provisions of DEPP in force before and after 28 August 2007 and of EG from 28 August 2007.

### **Failings prior to 6 March 2010**

6.3. Applying the penalty policy that applied from 28 August 2007 to 5 March 2010, DEPP 6.5.2G sets out factors that may be of particular relevance in determining the appropriate level of financial penalty for a firm. The criteria are not exhaustive and all relevant circumstances of the case are taken into consideration in determining whether a financial penalty is appropriate and the amount of that penalty. The Authority has had regard to the factors from DEPP 6.5.2G listed below in determining the amount of the penalty.

6.4. In relation to the misconduct that occurred prior to 28 August 2007, the Authority has had regard to the relevant provisions of ENF that were in force at the time.

6.5. In determining the financial penalty to be attributed to Barclays' misconduct from 7 June 2004 to 5 March 2010, the Authority has had particular regard to the following:

*Deterrence - DEPP 6.5.2G(1)*

6.6. The principal purpose of a financial penalty is to promote high standards of regulatory and 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. The Authority considers that the need for deterrence means that a significant fine on Barclays is appropriate. A significant fine is appropriate here due to the importance of ensuring the integrity of price-setting mechanisms, such as the Gold Fixing, used by market participants, and especially in light of the matters stated in paragraph 2.11 above.

*Nature, seriousness and impact of the breach - DEPP 6.5.2G (2)*

6.7. The breach revealed serious weaknesses in the firm's procedures, systems and controls relating to the Gold Fixing.

6.8. The Authority has concluded that the inadequate systems and controls in relation to the Gold Fixing led to an increased risk of inappropriate conduct by Barclays' personnel participating in the Gold Fixing. For example, this led to an increased risk that the interests of Barclays' customers who were counterparties to options trades with Barclays could be disadvantaged on those trades, because traders could seek to participate in the Gold Fixing with the intention of increasing the likelihood that the price would fix below a certain level, preferring their interests over customers.

*Extent to which the failings were deliberate or reckless - DEPP 6.5.2G(3)*

6.9. The Authority does not conclude that Barclays as a firm engaged in deliberate or reckless misconduct.

*Size, financial resources and other circumstances of the firm - DEPP 6.5.2G(5)*

6.10. Barclays is a large, sophisticated and well-resourced financial services firm. Serious breaches committed by such a firm warrant high penalties.

*Amount of benefit gained or loss avoided – DEPP 6.5.2G(6)*

- 6.11. Barclays did initially derive a financial benefit from Customer A as a direct result of the breaches set out in this notice; however, the Authority is satisfied that Barclays has voluntarily and fully compensated the affected customer and has ultimately derived no financial benefit from that instance.

*Conduct following the breach – DEPP 6.5.2G(8)*

- 6.12. In determining the appropriate level of penalty, the Authority acknowledges that Barclays voluntarily and fully compensated Customer A for its loss.
- 6.13. Although Barclays took several months to correct its systems and controls failures and adequately identify and mitigate conflicts of interests which arose from Barclays being a member of the Gold Fixing and selling to customers products referencing the Gold Fixing, the Authority acknowledges that since 28 June 2012 Barclays has enhanced its systems and controls in relation to the Gold Fixing, as well as in relation to other reference rates.
- 6.14. In addition, the Authority acknowledges that Barclays brought Mr Plunkett's conduct on 28 June 2012 promptly to the attention of the Authority and has co-operated with the Authority's investigation.

*Disciplinary record and compliance history – DEPP 6.5.2G(9)*

- 6.15. The Authority has taken into account the fact that Barclays was the subject of the following disciplinary action in the period prior to 6 March 2010:
- (i) Barclays and one of its affiliates were fined £2.45m on 19 August 2009 for breaches of SUP 17 of the Authority's Handbook and Principles 2 and 3 which occurred between 1 October 2006 and 30 October 2008 in its submission of transaction reports.

*Other action taken by the Authority - DEPP 6.5.2G(10)*

- 6.16. In determining whether and what financial penalty to impose on Barclays in respect of its breach of Principles 3 and 8, the Authority has taken into account action taken by the Authority in relation to other authorised persons for comparable breaches.

*Proposed penalty for breaches prior to 6 March 2010*

- 6.17. Taking the above factors into consideration, the Authority has concluded a financial penalty of £15,000,000 is appropriate in relation to Barclays' failings in the period prior to 6 March 2010.

*Settlement discount*

- 6.18. The Authority and Barclays reached settlement at Stage 1 and so a 30% discount applies to the total financial penalty proposed for Barclays' failings for the Relevant Period.

**Failings on or after 6 March 2010**

- 6.19. In respect of conduct occurring on or after 6 March 2010, the Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. For this period the Authority applies a five-step framework, as set out in DEPP 6.5A, to determine the appropriate level of financial penalty on firms.

**Step 1: disgorgement**

- 6.20. 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.
- 6.21. Barclays did initially derive a financial benefit from Customer A as a direct result of the failings set out in this Final Notice; however, the Authority is satisfied that Barclays voluntarily and fully compensated the affected customer and has ultimately derived no financial benefit.
- 6.22. Step 1 is therefore £0.

**Step 2: the seriousness of the breach**

- 6.23. 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.
- 6.24. The Authority considers that the revenue generated by Barclays is indicative of the harm or potential harm caused by its breach. The Authority has therefore determined a figure based on a percentage of Barclays' relevant revenue. The period of Barclays' breach was from 7 June 2004 to 21 March 2013. The

Authority considers Barclays' relevant revenue for the new penalty regime (for the period 6 March 2010 to 21 March 2013) to be £113,799,160.

- 6.25. 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%

- 6.26. 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, as described in DEPP 6.5A.2G.

- 6.27. The Authority considers the following factors to be relevant to the seriousness of Barclays' breach:

*Impact of the breach*

- 6.28. The breach caused a significant loss to an individual customer as well as loss or risk of loss to investors or other market users who invested in products referencing the Gold Fixing. The Gold Fixing is an important price-setting mechanism that affects both UK and international financial markets.

*Nature of the breach*

- 6.29. The breach revealed serious weaknesses in the firm's procedures, systems and controls relating to the Gold Fixing.
- 6.30. The Authority considers that the breach led to an increased risk of inappropriate conduct, including a risk of financial crime, by Barclays' personnel participating in the Gold Fixing. For example, there was an increased risk that the interests of Barclays' customers who were counterparties to options trades with Barclays could be disadvantaged on those trades.

6.31. The seriousness of Barclays' failing is underscored by the fact that, in the event of inappropriate conduct occurring in relation to the Gold Fixing, the potential for Barclays to benefit (and customers to suffer detriment) was not limited to the impact on portfolios managed by the Precious Metals Desk. The risk also extended to portfolios managed by other desks, given that from time-to-time they would include gold-referenced products that might be impacted by the level of the Gold Fixing.

*Whether the breach was deliberate or reckless*

6.32. The Authority has not found that Barclays acted deliberately or recklessly.

6.33. Taking all of these factors into account, the Authority has concluded the seriousness of the breach to be level 4 and so the Step 2 figure is 15% of £113,799,160.

6.34. Step 2 is therefore £17,069,874.

### **Step 3: mitigating and aggravating factors**

6.35. 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.

6.36. The Authority considers that the following factors aggravate the breach:

- (i) The firm only identified the failings after the events on 28 June 2012.
- (ii) The firm's previous disciplinary history including but in addition to that in paragraph 6.15:
  - a) Barclays was previously fined £59.5m on 27 June 2012 for breaches of Principles 2, 3 and 5 for misconduct relating to the LIBOR and EURIBOR benchmarks.
  - b) On 24 January 2011, the Authority took enforcement action against Barclays Capital Securities Limited (a separate legal entity but one within the same division of the Investment Bank and with the same shared services environment using the same personnel and systems), imposing a financial penalty of £1,127,559 in respect of a breach of Principle 10 arising from a failure to segregate client money between 1 December 2001 and 29 December 2009.

c) Barclays and an affiliate were fined £7.7m on 14 January 2011 for breaches of Principle 9 which occurred between July 2006 and November 2008 in relation the sale of Aviva's Global Balanced Income Fund and Global Cautious Income Fund.

(iii) Although there are differences between the LIBOR and EURIBOR processes and the Gold Fixing process, Barclays' breaches are aggravated by the fact that Barclays' investigation into LIBOR and EURIBOR should have caused Barclays to have reviewed its systems and controls with respect to other price-fixing mechanisms, including the Gold Fixing, prior to 28 June 2012. Indeed, the incident involving Mr Plunkett, which occurred the day after the Authority published its Final Notice to Barclays in relation to LIBOR and EURIBOR, may have been avoided had Barclays done so.

6.37. Having taken into account these factors, the Authority has concluded that the Step 2 figure should be increased by 30%.

6.38. Step 3 is therefore £22,190,836.

#### **Step 4: adjustment for deterrence**

6.39. 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.

6.40. The Authority has concluded that the Step 3 figure of £22,190,836 is sufficient to deter Barclays and others from committing further or similar breaches.

6.41. Step 4 is therefore £22,190,836.

#### **Step 5: settlement discount**

6.42. 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.

- 6.43. As described in paragraph 6.18 above, the Authority and Barclays reached agreement at Stage 1 and so a 30% discount applies to the total financial penalty proposed for Barclays' failings for the Relevant Period (£15,000,000 + £22,190,836 = £37,190,836).

### **Conclusion**

- 6.44. In light of the matters set out in paragraphs 6.18 and 6.43 (and having considered the proportionality of the overall amount), the Authority therefore imposes a total financial penalty of £26,033,500 on Barclays for breaching Principles 3 and 8.

## **7. PROCEDURAL MATTERS**

### **Decision maker**

- 7.1. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.
- 7.2. This Final Notice is given under, and in accordance with, section 390 of the Act.

### **Manner of and time for Payment**

- 7.3. The financial penalty must be paid in full by Barclays to the Authority by no later than 5 June 2014, 14 days from the date of the Final Notice.

### **If the financial penalty is not paid**

- 7.4. If all or any of the financial penalty is outstanding on 6 June 2014, the Authority may recover the outstanding amount as a debt owed by Barclays and due to the Authority.

### **Publicity**

- 7.5. 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.

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

**Authority contacts**

- 7.7. For more information concerning this matter generally, contact Harsh Trivedi (direct line: 020 7066 4798), Jonathan Froome (direct line: 020 7066 5438) or David Edmunds (direct line: 020 7066 6150) of the Enforcement and Financial Crime Division of the Authority.

Jamie Symington

Financial Conduct Authority, Enforcement and Financial Crime Division

## **ANNEX A**

### **RELEVANT STATUTORY AND REGULATORY PROVISIONS**

#### **1 RELEVANT STATUTORY PROVISIONS**

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

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."*

#### **2 RELEVANT REGULATORY PROVISIONS**

2.1 In exercising its power to issue a financial penalty, the Authority must have regard to the relevant provisions in the Authority's Handbook of rules and guidance (the Authority's Handbook).

2.2 In deciding on the action proposed, the Authority has also had regard to guidance published in the Authority's Handbook and set out in the Regulatory Guides (as in force from time to time), in particular the Decision Procedure and Penalties Manual (DEPP) and the Enforcement manual (ENF).

##### *Principles for Businesses*

2.3 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.

2.4 Principle 3 provides:

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

2.5 Principle 8 provides:

(2) *"A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client."*

*DEPP*

- 2.6 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.
- 2.7 Changes to DEPP were introduced on 6 March 2010. Given that the misconduct also occurred prior to that date, the Authority has had regard to the provisions of DEPP in force from 28 August 2007 to 5 March 2010 and the provisions of ENF that were in force before 28 August 2007. The relevant provisions of DEPP and ENF are set out below and are referred to in the main body of this notice.
- 2.8 From 28 August 2007 to 5 March 2010, DEPP 6.1.2 provided that the principal purpose of imposing a financial penalty is to "*promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour*".
- 2.9 DEPP 6.5.2 sets out some of the factors that may be taken into account when the Authority determines the level of a financial penalty that is appropriate and proportionate to the misconduct as follows:
- (1) deterrence;
  - (2) the nature, seriousness and impact of the breach in question;
  - (3) the extent to which the breach was deliberate and reckless;
  - (4) whether the person on who the penalty is to be imposed is an individual;
  - (5) the size, financial resources and other circumstances of the person on whom the penalty is to be imposed;
  - (6) the amount of benefit gained or loss avoided;
  - (7) difficulty of detecting the breach;
  - (8) conduct following the breach;
  - (9) disciplinary record and compliance history;
  - (10) other action taken by the FSA;
  - (11) action taken by other domestic or international regulatory authorities;
  - (12) FSA guidance or other published materials; and
  - (13) the timing of any agreement as to the amount of the penalty.

2.10 With respect to the amount of financial penalty for the period from 6 March 2010 onwards, the Authority's five-step framework to determine the appropriate level of financial penalty on firms is described in paragraphs 6.19 to 6.43 above.

*The Enforcement manual*

2.11 The Authority has also had regard to the provisions of the Enforcement manual (ENF) in force prior to 28 August 2007, in relation to misconduct which occurred prior to that date.

2.12 Prior to 28 August 2007 ENF 13.1.2 provided that the principal purpose of imposing a financial penalty was 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.

2.13 ENF 13.3.3 sets out some of the factors that may be taken into account when the Authority determines the level of a financial penalty that is appropriate and proportionate to the misconduct as follows:

- (1) the nature and seriousness of the misconduct or contravention in question;
- (2) the extent to which the contravention or misconduct was deliberate or reckless;
- (3) 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;
- (4) the amount of profits accrued or loss avoided;
- (5) conduct following the contravention;
- (6) disciplinary record and compliance history;
- (7) previous action taken by the Authority;
- (8) action taken by other regulatory authorities; and
- (9) action taken by any previous regulator regarding the general level of penalties.

*EG*

2.14 EG sets out the Authority's approach to exercising its main enforcement powers under the Act.

2.15 Chapter 7 of EG sets out the Authority's approach to exercising its power to impose a financial penalty.