Financial Conduct Authority

FCA
FINANCIAL CONDUCT AUTHORITY

FINAL NOTICE

To:	ICAP Europe Ltd
Of:	2 Broadgate Circle, London EC2M 7UR
FCA Reference Number:	188984
Date:	25 September 2013

ACTION

1. For the reasons given in this notice, the FCA imposes on ICAP Europe Ltd ("IEL") a financial penalty of £14 million in accordance with section 206 of the Financial Services and Markets Act 2000 (the "Act").

2. IEL agreed to settle at an early stage of the FCA's investigation and therefore qualified for a 30% (Stage 1) discount under the FCA's executive settlement procedures. Were it not for this discount, the FCA would have imposed a financial penalty of £20 million on IEL.

SUMMARY OF REASONS

3. The London Interbank Offered Rate ("LIBOR") is a benchmark reference rate that is fundamental to the operation of both the UK and international financial markets, including markets in interest rate derivatives contracts.

4. The integrity of benchmark reference rates such as LIBOR is therefore of fundamental importance to both the UK and international financial markets.

5. Between 17 October 2006 and 25 November 2010 (the "Relevant Period"), IEL breached Principles 5 and 3 of the FCA's Principles for Businesses in that a number of its employees sought to manipulate the Japanese yen ("JPY") LIBOR submissions made by various banks that contributed to the calculation of published LIBOR rates ("Panel Banks").

6. IEL, through its Brokers, colluded with traders at UBS AG ("UBS") as part of a co-ordinated attempt to manipulate JPY LIBOR submissions made by Panel Banks. IEL Brokers' misconduct risked undermining the integrity of the JPY LIBOR benchmark reference rate.

A. Principle 5 breaches: attempts to manipulate JPY LIBOR rates

7. IEL acted improperly and breached Principle 5 by failing to observe proper standards of market conduct. IEL breached Principle 5 in that a number of its Brokers colluded with two UBS traders and attempted to manipulate the final published JPY LIBOR rate by seeking to influence submissions made by other Panel Banks to levels requested by the UBS traders. Certain Brokers understood that traders at UBS were seeking to manipulate JPY LIBOR in order to improve the profitability of their trading positions.

8. IEL's Brokers were in regular contact with Panel Banks. This included the provision of a daily email "Run-Through," whereby one IEL Broker provided Panel Banks with his assessment (purportedly based on the knowledge he had gained through his broking of transactions in the market and his general view of the market) of the correct level of JPY LIBOR. Some IEL Brokers believed that Panel Banks treated the Run-Throughs as an important element to be taken into account when making daily LIBOR submissions.

9. Some IEL Brokers believed that the degree of reliance placed on its Run-Throughs by Panel Banks increased significantly during the financial crisis, because there were very few interbank cash transactions on which to base LIBOR submissions. The IEL Broker who principally sent the Run-Throughs was so certain of his status in the market with regard to his assessment of the correct level of LIBOR that he referred to himself as "*Mr Libor*" or even "*Lord Libor.*"

10. IEL Brokers colluded with traders at UBS to manipulate the JPY LIBOR rates for UBS's benefit. In particular on or around dates on which the level of JPY LIBOR was of particular significance for these traders:

    i. IEL Brokers emailed deliberately skewed Run-Throughs to some Panel Banks; and

    ii. IEL Brokers directly requested certain Panel Banks to make specific JPY LIBOR submissions that would benefit the traders.

11. The IEL Brokers helped the UBS traders because UBS was a significant client which accounted for a substantial proportion of the revenue of the relevant desk. In particular, Trader A's value to IEL was not limited to the revenue which he personally generated. Trader A made it possible for IEL to facilitate numerous trades for other clients by acting as a counterparty for those trades. Had Trader A not been willing to provide "*a lot of liquidity*" by acting as a counterparty, then IEL would have lost out on the substantial commissions gained from those trades.

12. In addition, one IEL Broker, who was central to the collusion, received (at the instigation of one manager) £5,000 per quarter in corrupt bonus

payments, which were paid to him as an allocation from the bonus pool of the relevant desk to reward him for his efforts in influencing Panel Banks' JPY LIBOR submissions.

13. IEL Brokers colluded and schemed with Trader A to try to manipulate the JPY LIBOR rates without getting caught. Three Brokers (including one manager) were central to the collusion, although at least seven other individuals (including another manager) spanning three desks also participated. The collusion continued with another trader at UBS even after Trader A had left.

14. In total, UBS made at least 330 written requests to IEL Brokers during the Relevant Period. UBS also made oral requests, which by their nature are not documented and so cannot be counted precisely. Although IEL Brokers did not always accommodate the requests of UBS traders, they often followed them, particularly when Trader A had large fixings or when the firm's commissions or the Brokers' individual bonuses were threatened. On occasion, Brokers also sought to manipulate Panel Banks' JPY LIBOR submissions, without a direct request from traders at UBS, if they thought that doing so would benefit their trading positions.

15. IEL's breaches of Principle 5 were extremely serious. Its misconduct gave rise to a risk that the published LIBOR rates would be manipulated and the integrity of those rates undermined. Brokers' manipulation of Run-Throughs increased the risk of manipulation of the published JPY LIBOR rates because they were sent to several Panel Banks. The averaging process applied to submissions as part of the calculation of the published rate means that the risk of manipulation is greater if more than one Panel Bank's submission has been manipulated.

B. Principle 3 breaches: systems and controls failings

16. IEL breached Principle 3 throughout the Relevant Period by failing to have adequate risk management systems or effective controls in place to monitor and oversee its broking activity.

17. While IEL's senior management might not have been expected to foresee the specific misconduct that occurred, the firm failed to have adequate systems and controls in place during the Relevant Period to address the general risk of collusion between IEL Brokers and their clients (which included the risk of Brokers over-accommodating their clients).

18. Although IEL had certain policies and procedures in place to govern individual Broker behaviour in general, these policies and procedures were inadequately designed, and in cases of Broker collusion, were easily circumvented.

19. During the Relevant Period, IEL failed to adequately review the Brokers' communications for compliance issues generally or place any compliance staff on the broking floors.

20. At certain times during the Relevant Period, one Broker, who had only one client, worked in an overseas IEL office which had no Compliance staff and was in a different country from the two different desks to which

he reported. No steps were taken to mitigate the risk of this arrangement.

21. IEL's managers were responsible for day-to-day misconduct monitoring and reporting and were the first line of defence against Broker misconduct. This line of defence was ineffective where those managers failed to report misconduct to the firm's Compliance department or were involved in their desk's misconduct.

22. IEL also had a policy under which individual desks within the firm were periodically audited for compliance issues. However, during the Relevant Period, no audit of the desk at the centre of the misconduct (the JPY Derivatives Desk) was carried out.

23. IEL's lack of adequate systems, controls, supervision and monitoring throughout the Relevant Period meant that this misconduct went undetected and continued throughout the Relevant Period.

C. Penalty

24. The integrity of benchmark reference rates such as LIBOR is of fundamental importance to both UK and international financial markets. The misconduct of IEL's Brokers could have caused serious harm to other market participants. The Brokers' misconduct also risked undermining the integrity of LIBOR and threatened confidence in and the stability of the UK financial system. The misconduct of certain Brokers was routine, widespread and condoned by managers. The Brokers engaged in this serious misconduct in order to serve their own interests. The duration and extent of their misconduct was exacerbated by IEL's inadequate systems and controls.

25. The FCA therefore considers it is appropriate to impose a very significant financial penalty of £20 million on IEL in relation to its breaches of Principles 3 and 5 during the Relevant Period.

DEFINITIONS

26. The following definitions are used in this Notice (whether capitalised or not):

"Act" means the Financial Services and Markets Act 2000, as amended by the Financial Services Act 2012.

"BBA" means the British Bankers' Association.

"Broker" or "Brokers" means an interdealer broker or brokers who acted as intermediaries in, amongst other things, deals for funding in the cash markets and interest rate derivatives contracts. Brokers 1-8 are specifically referred to in this notice.

"DEPP" means the FCA's Decision Procedure & Penalties Manual.

“FCA” means the Financial Conduct Authority, which was, until 1 April 2013, known as the Financial Services Authority.

“FCA Handbook” means the FCA Handbook of rules and guidance.

“GBP” means pound sterling.

“IEL” means ICAP Europe Ltd.

“IEL’s Cable Desk” or “Cable Desk” means the desk at IEL responsible for facilitating trades for institutional clients in relation to pound sterling forward currency exchange products (referred to as “Cable” products).

“IEL’s Cash Desk” or “Cash Desk” means the desk at IEL responsible for facilitating trades for institutional clients in relation to physical cash denominated in various currencies, including JPY.

“IEL’s JPY Derivatives Desk” or “JPY Derivatives Desk” means the desk at IEL responsible for facilitating trades for institutional clients in relation to JPY derivatives products.

“JPY” means Japanese Yen.

“LIBOR” means London Interbank Offered Rate.

“Manager” means an IEL Broker with direct line day-to-day management responsibility over other Brokers.

“Panel Bank” or “Panel Banks” means the contributing banks that submitted LIBOR rates to the BBA in one or more currencies. UBS and Panel Banks A to D were JPY LIBOR Panel Banks and are referred to in this notice. At least two JPY LIBOR Panel Banks other than UBS were contacted by IEL Brokers in connection with their efforts to manipulate LIBOR.

“Relevant Period” means 17 October 2006 to 25 November 2010.

“Run-Through” means the daily information IEL Brokers provided to their clients concerning bid and offer prices for cash as well as suggestions as to where the Brokers believed the published LIBOR rate would set for that day.

“Trader A” is an interest rate derivatives products trader employed by UBS.

“Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

“UBS” means UBS AG.

“USD” means US Dollar.

FACTS AND MATTERS

A. Background

LIBOR and interest rate derivatives contracts

27. LIBOR is the most frequently used benchmark for interest rates globally; it is referenced in transactions with a notional outstanding value of at least USD 500 trillion.

28. LIBOR is currently published for five currencies with seven maturities,[1] although the majority of financial contracts use only a small number of currencies and maturities. JPY is a widely used currency and one, three and six months are commonly used maturities.

29. LIBOR was published at the relevant time on behalf of the BBA. LIBOR (in each relevant currency) is set by reference to the assessment of the interbank market made by a number of Panel Banks. Panel Banks are selected by the BBA and each Panel Bank contributes LIBOR rate submissions each business day. These submissions are not averages of the relevant Panel Banks' transacted rates on a given day. Rather, LIBOR requires Panel Banks to exercise their judgement in evaluating the rates at which money may be available to them in the interbank market when determining their submissions.

30. Interest rate derivative contracts typically contain payment terms that refer to benchmark rates. LIBOR is by far the most prevalent benchmark rate used in over-the counter interest rate derivatives contracts and exchange traded interest rate contracts.

Definition of LIBOR

31. The definition of LIBOR sets out the precise nature of the judgement required from Panel Banks when determining their submissions. Since 1998, the LIBOR definition published by the BBA has been as follows: "*The rate at which an individual contributor panel bank could borrow funds, were it to do so by asking for and then accepting interbank offers in reasonable market size just prior to 11:00 London time.*"

32. The definition requires Panel Banks to make their own submissions. The definition does not allow for consideration of factors unrelated to borrowing or lending in the interbank market.

33. During the Relevant Period (particularly during the financial crisis), there was very little interbank lending to guide LIBOR submitters at Panel Banks. Submitters at those Panel Banks therefore came to rely

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[1] Prior to publication of the Wheatley Review in September 2012, LIBOR was published for 10 currencies with 15 maturities.

increasingly on Broker-provided market colour and Run-Throughs to inform their LIBOR submissions.

34. Indeed, one JPY LIBOR submitter (who later became a Broker) described the environment as follows: *"I would say that most banks prefer to ask a broker where the other banks will set their* [LIBOR rates, and] *match theirs accordingly*."

35. This practice was questionable. Indeed, BBA guidance released in November 2009, explicitly stated that Panel Banks should not ask brokers were they believe LIBOR rates will fix as a basis for their submissions.

IEL's role in the financial markets and LIBOR

36. IEL acts as a voice and electronic Broker for institutional clients transacting in the wholesale financial markets. During the Relevant Period, IEL's main role as a Broker was to bring together counterparties to execute trades in return for commissions and where necessary, provide information to clients.

37. The information IEL Brokers provided to their clients included advice as to where they believed the published LIBOR rates would set on particular days.

38. As a Broker, IEL, among other things, helps facilitate interbank funding by introducing and assisting clients (including Panel Banks) to negotiate: (i) deposits and loans; and (ii) trades in relation to interest rate derivatives products that are directly referenced to LIBOR rates. This provides IEL with particular market insight into cash trading prices and expected LIBOR rates. Based on this insight, IEL is able to provide their clients (including Panel Banks) with suggestions (in Run-Throughs) as to where LIBOR will set on particular dates.

IEL's internal structure

39. IEL is (and was during the Relevant Period) organised by various "desks" of Brokers. Each desk specialises in facilitating trades in different currencies and financial products on behalf of its respective clients.

40. IEL's JPY Derivatives Desk is responsible for facilitating trades for institutional clients (including Panel Banks) in relation to JPY derivatives products. Throughout the Relevant Period, the JPY Derivatives Desk was comprised of at least five Brokers, including Brokers 1, 2, 5 and 6. The JPY Derivatives Desk distributed a portion of the desk's net revenue as a bonus paid to each Broker on the desk.

41. IEL's Cash Desk is responsible for facilitating trades for institutional clients (including Panel Banks) in relation to cash instruments in various currencies, including JPY. Two Brokers on the Cash Desk (Brokers 3 and 4) participated in Trader A's attempts to manipulate LIBOR.

42. IEL's Cable Desk is responsible for facilitating trades for institutional clients (including Panel Banks) in relation to pound sterling/US dollar spot

and forward exchange transactions. Trader A made requests to two individuals on the Cable Desk (Brokers 7 and 8) as part of his attempts to manipulate LIBOR.

B. Principle 5 breaches: attempts to manipulate JPY LIBOR rates

IEL and Trader A

43. Trader A was one of the JPY Derivatives Desk's most significant clients. He worked at UBS throughout most of the Relevant Period. Trader A's trading positions were principally interest rate derivatives contracts whose underlying payment obligations were determined by the published one, three and six month JPY LIBOR rates on particular fixing dates.

44. Trader A appealed to Broker 1 to collude with him to try to influence Panel Banks' JPY LIBOR submissions and thereby influence in his favour the overall published JPY LIBOR rates.

45. Brokers on the JPY Derivatives Desk, in particular Brokers 1 and 2, wanted to assist Trader A because Trader A and UBS were significant clients of the JPY Derivatives Desk. Whilst Trader A was at UBS:

    i. UBS was the JPY Derivatives Desk's largest client and on average accounted for approximately 22% of the Desk's revenue (although at times, this was more than 30%);

    ii. Trader A was the JPY Derivatives Desk's largest individual client (and third largest overall client) and on average accounted for around 12% of the Desk's revenue, (although at times, this was more than 20%); and

    iii. IEL's brokers understood that the agreement in place to cover trades facilitated by IEL for Trader A was one of UBS' most expensive fixed fee agreements at the time.

46. Initially, Brokers 1 and 2 persuaded Broker 3 to participate in the collusion in exchange for: (i) meals and champagne; (ii) a percentage of certain commissions IEL gained from transactions brokered by the JPY Derivatives Desk; and (iii) Trader A's agreement on one occasion to enter into a trade with a client of Broker 3, at a favourable rate "*just for* [Broker 3]", thereby allowing Broker 3 to earn commission. Subsequently, Broker 3, demanded additional compensation to assist Trader A. Trader A's value to IEL was not limited to the revenue for which he personally accounted. He also made it possible for IEL to facilitate numerous trades for other clients by acting as a counterparty for those trades. This was particularly important during the financial crisis. Had Trader A not been willing to provide "*a lot of liquidity*" by acting as a counterparty for those trades, then IEL would have lost out on the substantial commissions it gained from those trades.

47. Although the commission IEL received from UBS in relation to trades it facilitated for Trader A was fixed by contract, the corresponding

commission IEL could receive from the other counterparties to those trades was not. Indeed, at times, the commission paid by these other counterparties could be much more than the amount IEL received from Trader A as commission for that transaction.

48. Additionally, because part of the compensation awarded to the JPY Derivatives Desk's Brokers was in the form of a bonus calculated as a share of the Desk's total revenue, everyone on the desk (and especially Brokers 1 and 2, who received larger bonuses) was incentivised to keep Trader A happy so that IEL could retain Trader A's business. Brokers 1, 2 and 5 were further incentivised to help Trader A because the three shared their commissions, including commissions they received from Trader A.

49. On occasion, Trader A threatened to stop using IEL if the Brokers failed to accommodate his requests.

Run-Throughs

50. Broker 3 was a cash Broker with long-standing and close relationships with individuals at a number of Panel Banks, including JPY LIBOR submitters at some of those Panel Banks. Broker 3 communicated regularly with some of those submitters about their and other Panel Banks' intended JPY LIBOR submissions. Broker 3 used this and other market colour to assess where he believed the published JPY LIBOR rates would set each day and then circulated that assessment in a daily email (a Run-Through) containing JPY LIBOR suggestions that purported to be based on objective market colour. This email was typically sent to Broker 3's clients several hours before Panel Banks made their actual LIBOR submissions, and accordingly could be useful to submitters at Panel Banks trying to determine what JPY LIBOR rates they should submit.

51. Some IEL Brokers believed that Panel Banks treated the Run-Throughs as an important element to be taken into account when making daily LIBOR submissions. The IEL Broker who principally sent the Run-Throughs out was so certain of his status in the market with regard to his assessment of the correct level of LIBOR that he referred to himself as "*Mr Libor*" or even "*Lord Libor.*"

52. Broker 1 and possibly also Broker 3 believed that during the financial crisis certain Panel Banks (including Panel Banks that did not directly receive them) were "*copying*" Broker 3's Run-Throughs "*across all periods*" because, in part, traders and submitters at those Panel Banks believed that the JPY LIBOR suggestions in Broker 3's Run-Throughs were accurate reflections of actual bid and offer prices for JPY cash trades and other market data.

Establishing the IEL Broker-Trader A scheme

53. At first, to help him to decide what trading positions he should take, Trader A regularly asked Brokers 1 and 2 to seek Broker 3's opinion on where the overall published JPY LIBOR rates would set on particular days,

which was based in part on Broker 3's knowledge of what JPY LIBOR rates individual Panel Banks would be submitting

54. But despite being provided with this advance market colour, around September 2006 Trader A became increasingly concerned about certain interest rate derivatives trading positions he held that were about to fix, because the published JPY LIBOR rates at that time were moving against him.

55. To address these concerns, Trader A and Broker 1 decided to enlist the help of Broker 3 to help Trader A make profits or reduce losses on his positions by trying to influence the JPY LIBOR submissions of other Panel Banks on or around Trader A's fixing dates. As a result Broker 1 and Broker 2 persuaded Broker 3 on occasion to:

    i. email skewed Run-Throughs to Panel Banks; and

    ii. leverage his relationships with certain submitters at Panel Banks to try to persuade those individuals to make certain JPY LIBOR submissions (for the purpose of benefitting Trader A's trading positions).

56. To augment the actions of Broker 3, Broker 1 regularly contacted a submitter he knew at a Panel Bank and suggested that he make JPY LIBOR submissions that were consistent with the skewed Run-Throughs of Broker 3.

57. Starting from 17 October 2006, Trader A was routinely asking IEL Brokers to influence other Panel Banks to benefit his trading positions and in response to some of his requests the Brokers did some or all of the above in attempts to help Trader A and thereby profit from Trader A's and UBS's business. At a later point in time Trader A also contacted an IEL Broker he knew on IEL's Cable Desk (Broker 7) and asked him to use his JPY submitter contact at Panel Bank D to get him to make JPY LIBOR submissions to benefit Trader A's trading positions.

58. But as the frequency of Trader A's requests increased, Broker 3 demanded more substantial compensation. For example:

    i. On 18 April 2007, Broker 3 emailed Broker 2, stating: "*With* [UBS] *how much does* [Trader A] *appreciate the yen libor scoop? It seems to me that he has all his glory etc and u guys get his support in other things. I get the drib and drabs.*" In that email, Broker 3 then requested "*some form of performance bonus per quarter from your . . . bonus pool to me for the libor service.*"

    ii. The following day, Broker 3 sent another email to Broker 2 threatening "*LIBORS NO MORE,*" if he did not receive sufficient compensation. Broker 3 added that "*As far as I was concerned* [Trader A] *was paying for the libor assist for my assistance*" and that were he not to be compensated properly, there would be "*no more mr libor.*"

59. Because Brokers 1 and 2 believed that Broker 3 was critical to the success of the scheme, they agreed (with Trader A's support) to pay him a "*LIBOR services*" bonus or "*fixing service*" bonus as a reward. The bonus money was derived from UBS's brokerage commission and was allocated to Broker 3 out of the JPY Derivatives Desk's bonus pool. From June 2007 to September 2009, Broker 3 received £50,000 (£5,000 per quarter) in bonus payments, which the three Brokers knew to be corrupt.

60. Once Broker 3 was informed that he would receive this bonus, there was no uncertainty as to what was expected of him. Broker 1 later recounted to Broker 2 that he had told Broker 3 that IEL and Trader A would "*line* [Broker 3]*'s pockets*," and that, in exchange, they expected him to do such things as "*keep*[ing] *6mos libor up"* by sending out JPY Run-Throughs "*higher*" than Broker 3's "*genuine opinion*" of where JPY LIBORs would set that day.

Operation of the IEL Brokers-Trader A scheme

61. Having established the scheme, the IEL Brokers and Trader A put it into operation. Trader A would approach the Brokers with the published JPY LIBOR rates he wanted them to seek to achieve. Typically, Trader A made his requests to Broker 1 (or if Broker 1 was unavailable, then one of at least six other members of the JPY Derivatives Desk). Trader A assumed that his request would be passed to Broker 3 so that Broker 3 could skew his JPY LIBOR Run-Through to reflect Trader A's requests or directly ask his contacts at Panel Banks to make submissions consistent with Trader A's requests. On a limited number of occasions, Trader A also made his requests directly to Broker 3.

62. The examples below show Trader A's approaches to IEL Brokers:

    i. On 24 October 2006, Trader A emailed Broker 1, explaining that he had large fixing dates in the coming days and would benefit from the six month JPY LIBOR rate remaining high: "*on weds have 100b[billion] 6m[month] fix, on mon another 100b 6m fix, Tuesday another 100b fix and . . . on thurs next week 200b 6m fix all received libor so really really need 6m to stay high pls.*" Broker 1 relayed Trader A's preferences to Broker 3, stating: "*Realise it might be getting harder but need 6 month kept as high as possible....tomorrow I* [meaning Trader A] *have a massive fix, today just large!*"

    ii. On 10 September 2007, Trader A informed Broker 1 that he "*need*[ed] *high at the start of oct*" and thereafter he wanted the Brokers to "*push for lower fixes*." Broker 1 replied, "*gotcha . . . just give me a 'wish list' at the start of each day and I will compose a begging letter to* [Broker 3] *after lunch*."

    iii. On 21 September 2007, Broker 1 emailed Broker 3, thanking him for his Run-Through on 20 September and then asking him as follows: *"[C]ould you do your best to hold these as low as possible please. I realise the pressure is on the top side at the moment but if you should send them out lower than you reckon*

they should be it would be a great help . . . I [meaning Trader A] *have a very large 6mos exposure especially.*"

iv. On 15 August 2008, Trader A told Broker 1 that "*today is the last day I need a high 6m . . . after that I need it as low as poss . . . really need low 3m tonight*." In response to the request for the low three month submission, Broker 1 informed Trader A that Broker 3 "*has sent out down 1bp [basis point]*." Following up on Trader A's request for submissions "*as low as poss*" after 15 August, Broker 1 texted Broker 3 on 28 August to remind Broker 3 that Trader A "*need*[ed] *a massive favour today and* [that Broker 3 should] *send out* [his] *run through lower than it should be* [because Trader A] *has massive exposure in all periods.*"

63. In response to receiving Trader A's requests directly or indirectly, Broker 3 on a significant number of occasions skewed the JPY Run-Throughs directly or communicated with traders and submitters at Panel Banks to request that they make particular JPY LIBOR submissions.

64. Broker 3 agreed that he accommodated Trader A's and Broker 1's requests only on a limited number of occasions (the FCA has concluded that there were at least 20 occasions), but claimed that he only did so within what he perceived to be a reasonable range. However, Broker 3's communications indicate that at times, his LIBOR suggestions were outside of the range of what he perceived to be reasonable (see example at paragraph [66] below). Further, it appears that Broker 3's reasonable range encompassed only LIBOR suggestions that were not "…*too far from the truth* [as otherwise] *banks* [would] *tend to ignore him*."

65. Of these methods, Broker 3 more frequently tried to indirectly influence Panel Banks by skewing his JPY Run-Through. Indeed, even when Broker 3 received Trader A's LIBOR requests *after* he had circulated IEL's Run-Through, he was (on occasion) willing to resend a "*revised*" Run-Through that incorporated Trader A's requests. For example:

i. In his Run-Through of 28 June 2007, Broker 3 suggested a six month JPY LIBOR rate of "*0.86*." But this suggested LIBOR rate did not benefit Trader A's trading positions. Noting this, Broker 1 said to Broker 2: "*this is getting serious* [Trader A] *is not happy with the way things are progressing*. . . . *Can you please get hold of* [Broker 3] *and get him to send out 6 mos libor at 0.865 and to get his banks setting it high. This is very important because* [Trader A] *is questioning my (and our) worth*." Broker 2 then emailed and spoke to Broker 3 to emphasise that "*the carrot might go if this carries on*" (meaning if Broker 3 again failed to accommodate Trader A's requests, then he might lose his bonus or additional benefits). Broker 3 apparently took this threat seriously and resent a "*revised libors*" list that suggested a six month JPY LIBOR rate of "*0.865*."

ii. On 4 September 2007, in an email titled "*3mos libor going to the moon!*," Broker 1 emailed Broker 3, asking Broker 3 to

suggest a three month JPY LIBOR rate that was "*highe*r" than the previous day. In response, Broker 3 told Broker 1 that he thought that "*3M shud be 95*." Nevertheless, Broker 1 asked Broker 3 to "[t]*ry and send out 96 if you can please*." Despite the fact that this was higher than Broker 3 believed LIBOR would be, he agreed to accommodate Trader A's request, stating "[of] *course*" and first sent out a Run-Through suggesting three month JPY LIBOR of "*0.96*" and then shortly thereafter, sent a revised Run-Through suggesting "*0.98*."

66. It appears that on occasion, Broker 3 also communicated directly with traders and submitters at Panel Banks to attempt to influence their JPY LIBOR submissions. For example, on 27 February 2008, the following exchanges took place:

    i. Broker 1 informed Broker 3 of Trader A's request, stating "[n]*eedless to say have a rather large fixing in 3mos and would really like to see it get dragged up a couple of bps.*" Broker 3 then informed Broker 1 that although he "*can't really see it going up by 2bps* [because] *3mos has been pretty flat all month* [and] [h]*asn't gone above 90 as far as* [he] *can remember,*" he had still "*moved 6m up today*" to assist Trader A.

    ii. After Broker 1 thanked Broker 3 in advance for "*work*[ing] *his magic*," Broker 3 sent out a suggested three month JPY LIBOR rate of "*0.92*" (which was 2.5 basis points higher than the previous day) and a six month rate of "*0.98*" (which was 2 basis points higher than the previous day).

    iii. Later that day, a derivatives products trader and a submitter at Panel Bank D separately questioned the Run-Through. The trader asked Broker 3: "[Y]*ou think 3s will be 92? Where is that coming from?*" Similarly, the submitter asked Broker 3: "*3m cash offer at 88, where does 92 come from??.*" Broker 3 tried to assuage their concerns by separately telling the trader and submitter that there was "*a lot of movement in the forwards this morning*" and "*good names taken yen cash at 90 and looking for further offers in the market*," even though—based on Broker 3's prior communications with Broker 1—that does not seem to have been the case.

    iv. Trader A informed Broker 1 that he wanted the Brokers to seek to obtain "*low 6's relative to 3m.*" Broker 1 reassured Trader A that the Brokers would "*try and move the 3m more than the 6m* [and that Broker 3] *knows what we are after, will remind him again later.*"

    v. Broker 1 conveyed this information to Trader A, and added that Trader A could "*help* [him]*self out a bit with these libors*" if he could get the submitter at UBS to "*move 6m up 2bps,*" which would "*affect 1m and 3m*" LIBOR rates.

67. On occasion, Broker 1 would also directly request JPY LIBOR submitters that he knew to make specific submissions. For example, Broker 1 would

text or call his friend, a submitter at Panel Bank A, to make particular JPY LIBOR submissions that would have benefitted Trader A. Trader A knew that Broker 1 had this relationship and would, for example, expressly ask Broker 1 to see if he could "*get your mate at* [Panel Bank A] *to put 6m libor up*."

Extent of IEL Brokers' involvement in the scheme

68. Although Brokers 1, 2 and 3 were the main IEL Brokers who colluded with Trader A to attempt to manipulate LIBOR, they were not the only IEL Brokers involved. Other Brokers on the JPY Derivatives and Cable Desks assisted Trader A on a number of occasions by:

   i. Passing requests from Trader A to Broker 3 when Brokers 1 or 2 were unable to do so;

   ii. Disseminating skewed Run-Throughs under Broker 3's name when Broker 3 was unable to do so; and

   iii. Approaching a contact at Panel Bank D (through Broker 7), to ask Panel Bank D to ensure that they made particular LIBOR submissions.

69. For example:

   i. On 30 October 2006, Trader A asked Broker 5 to "*give us a shout when you get in . . . . can you try to keep 6m libor up again, I need it high till thurs* [2 November 2006] *then after I am out of a lot of these fixes*." Broker 5 replied, "*hi* [Trader A]*, have just had a word with our cash guys and they said they will be on the case again.*"

   ii. On 1 November 2007, Broker 1 asked Broker 6 to appeal to Broker 4 (who was Broker 3's cover) to "*doctor 6m libor down*," explaining that it was "*v important*." Broker 6 told Broker 1 that although Broker 4 believed that LIBOR was likely to remain "*unchanged,*" Broker 4 was nevertheless "*working on pushing them down.*" On the previous day (31 October 2007), Broker 4 had sent a Run-Through (under Broker 3's name) suggesting that six month JPY LIBOR would set at "*0.995.*" Despite his view that the six month rate was likely to remain the same on 1 November, Broker 4 nevertheless sent out a Run-Through (again, under Broker 3's name) suggesting a six month JPY LIBOR rate of "*0.95*[0]" for 1 November. This was 4.5 basis points lower than the previous day.

70. Even after Trader A left UBS, Broker 1 and Broker 3 continued to help another trader at UBS attempt to manipulate JPY LIBOR. They did this because Trader A's trading book remained with UBS and was a source of significant potential business for IEL. For example, on 11 November 2009, after Trader A had left UBS, Broker 1 expressed his frustration in an email that UBS was challenging the amount of commission it would pay to IEL, even though "*they are still asking* [Broker 3] *for 'arbitrage' help* [a euphemism for helping to manipulate LIBOR rates] *(we moved*

6m 3/8ths last night, their favour in a static market and the P and L benefit could easily cover some sort of monthly cap."

71. The IEL Brokers' role in the collusion was not limited to passively executing Trader A's requests. Broker 1 also schemed with Trader A about how Trader A could best manipulate JPY LIBOR without "*getting into shit.*" For example:

    i. On 28 February 2008, Broker 1 told Trader A: "[Y]*ou were again the most conservative in your libor moves, you can still afford to move 6m up without affecting the fix and that would allow you to move 1m and 3m higher . . .which will affect the fix.*"

    ii. On 15 July 2009, Trader A told Broker 1 that he had a plan to lower 6 month LIBOR in co-operation with Panel Banks B and C. On 22 July 2009, Trader A told Broker 1 that the three Panel Banks were going to put that plan into action. Broker 1 suggested to Trader A that: "[I]*f you drop your 6m dramatically on the 11th mate, it will look v fishy, especially if* [Banks B and C] *go with you. I'd be v careful how you play it, there might be cause for a drop as you cross into a new month but a couple of weeks in might get people questioning you.*" Trader A reassured Broker 1, "*don't worry will stagger the drops*[,] *ie 5bp then 5bp. Us then* [Panel Bank C] *then* [Panel Bank B] *then us then* [Panel Bank C] *then* [Panel Bank B]." Broker 1 replied, "*great the plan is hatched and sounds sensible.* He added that he did not "*want* [Trader A] *getting into shit*." The next day Broker 1 said to Trader A, "*nice knowing you have the "3 top fixers all onside in the 6m it can really shift* [the published LIBOR rates]."

Principle 5 - conclusion

72. In total, during the Relevant Period, Trader A made at least 330 JPY LIBOR requests to IEL Brokers, with the intention that those requests would be relayed to Broker 3 (or his cover on the Cash Desk) or Panel Banks directly. These requests included:

    i. At least 278 JPY LIBOR requests to Broker 1 (one of which was also directed to Broker 2);

    ii. At least 11 JPY LIBOR requests to Broker 2 (one of which was also directed to Broker 1);

    iii. At least 33 JPY LIBOR requests to other Brokers on the JPY Derivatives Desk;

    iv. At least 5 JPY LIBOR requests to Broker 3; and

    v. At least 3 JPY LIBOR requests to Broker 7.

73. The calculations above do not include:

   i. Requests that Trader A made to IEL Brokers by telephone (because, by their nature, such oral requests are undocumented and therefore cannot be counted precisely); and

   ii. Efforts that Brokers made to assist Trader A without having received a direct request, which are mostly not documented and cannot be counted precisely.

74. Although IEL Brokers did not always accommodate Trader A's requests, particularly when they believed that those requests were so unreasonable that no Panel Bank would follow such suggestions (and even making them would cost IEL its credibility), IEL Brokers did follow Trader A's requests frequently, particularly when Trader A had large fixings or when the firm's commissions or the Brokers' individual bonuses were threatened.

75. The Brokers' motivation for colluding with Trader A to try to manipulate the published JPY LIBOR rates was to secure additional revenue for the firm and bonuses for individuals.

C. Principle 3 breaches: systems and controls failings

Inadequate policies and practices

76. IEL had the following policies and practices in place to monitor the conduct of its Brokers:

   i. Broker training programmes, run by IEL's Compliance department, in which Brokers were enrolled on courses covering general regulatory and ethical issues, such as market abuse, personal dealing, bribery and corruption;

   ii. Automated review of written Broker communications, using standard market abuse terms. This was a practice rather than a formal policy;

   iii. A range of automated monitoring and trade surveillance reports;

   iv. Escalation by managers to IEL's Compliance department of regulatory concerns. This was governed by the written standard job description for managers, which included IEL's compliance manual and which imposed on all employees the responsibility of "*informing your managing director or Compliance of any potential compliance issues you become aware of or have a concern about*"; and

   v. Periodic audits of separate desks within IEL.

77. These policies and practices were insufficiently rigorous. In particular, and as described below, they were not supplemented by effective hands-

on monitoring of the relevant Brokers and review of day-to-day conduct, and they were easily circumvented.

78. There was inadequate managerial supervision and oversight of the IEL Brokers. Managers were expected to report any misconduct on the desk but no monitoring of the relevant managers was done to ensure that they did identify and report misconduct. Therefore in circumstances such as these where managers were themselves complicit in the misconduct, it went undetected.

79. For example, at certain times in the Relevant Period, Broker 1 worked in an overseas ICAP office in which there were no Compliance staff. At these times, Broker 1 was in a different country from the two different desks to which he reported (or reasonably should have reported) and had no effective oversight.

80. Furthermore, Broker 3 was not effectively supervised. Broker 3's purported manager explained that Broker 3 was "*almost like his own little desk*" and was unsure whether he was Broker 3's actual manager or just responsible for approving Broker 3's administrative requests (such as holiday leave).

Lack of Compliance review or audit

81. IEL also had a policy under which individual desks within the firm were periodically audited for compliance issues. However, during the Relevant Period, no audit of the desk at the centre of the misconduct (the JPY Derivatives Desk) was carried out.

82. Albeit the Cash Desk was reviewed twice during the Relevant Period and the Brokers' misconduct was not discovered, a review or audit of the JPY Derivatives Desk during the Relevant Period might have revealed:

    i. Broker 1's frequent discussions with Trader A (Broker 1's only client);

    ii. Broker 1 relaying Trader A's requests to other IEL Brokers and the fact that those IEL Brokers on occasion took Trader A's requests into account;

    iii. The collusion to disseminate skewed Run-Throughs; and

    iv. The lack of effective oversight of certain employees.

83. Further, a risk-based compliance review or audit might have revealed that, because Trader A and UBS represented an extremely high proportion of the JPY Derivatives Desk's revenue, there was a significant risk that the JPY Derivatives Desk could be (and indeed was) beholden to Trader A's preferences. This risk was exacerbated by the fact that Trader A was Broker 1's only client. Indeed, Broker 1 stated as much in an email he wrote to Broker 2: "*I am obviously totally reliant upon* [Trader A's] *business and need to fall into line with his wishes*."

84. However, for most of the Relevant Period, IEL had no Compliance staff based on the broking floors and IEL did not conduct a review of the JPY Derivatives Desk and further, had no Compliance staff at all in one of the overseas offices from which Broker 1, for a time, colluded with Trader A.

85. The culture of IEL's business gave undue weight to revenue generation at the expense of regulatory requirements. IEL's employees and managers were incentivised to focus heavily on revenue and this created a poor compliance culture within the firm.

86. For example, Brokers 1 and 2 have explained that it was unlikely that an IEL Broker would ever escalate to their Compliance department (or to the FCA) concerns about a client. Broker 1 said that it was not "*realistic*" to expect him to report Trader A's actions. He said, "*I don't see any benefit, other than the fact we'd lose a line*" and "*It's not up to me. I'm not a regulator . . . . I think if brokers brought everything to [regulators] then the brokers would end up having no clients . . . . .*"

87. One manager who was complicit in the collusion said, "*I go to Compliance,* [and if a Trader] *gets sacked, how many more lines have I got the next day? You have no lines . . . . If you're known as a grass to traders, you're not going to do very well in terms of how many people want to talk to you . . .*"

88. In conclusion, IEL failed to design or implement systems and controls that were adequate to detect the widespread and prolonged misconduct in relation to LIBOR. This failing, combined with a poor compliance culture within the firm, exacerbated the duration and extent of the IEL Brokers' misconduct during the Relevant Period.

89. ICAP plc made significant improvements to IEL's systems and controls at the end of the Relevant Period in late 2010, as a result of a section 166 skilled persons report and implementation programme.

FAILINGS

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

A. Principle 5

91. Principle 5 of the FCA's Principles for Businesses requires a firm to observe proper standards of market conduct.

92. IEL, acting through two managers and the IEL Brokers, failed to observe proper standards of market conduct (and thereby breached Principle 5) on numerous occasions during the Relevant Period. IEL committed these breaches through the acts of IEL Brokers, on or around the fixing dates for Trader A's interest rate derivative positions, and in order to benefit those positions:

    i. Through skewed Run-Throughs, indirectly or directly disseminating to Panel Banks suggested JPY LIBOR rates that were knowingly misleading;

ii. Requesting that submitters at Panel Banks make particular JPY LIBOR submissions; and

iii. Asking contacts at Panel Banks to ensure that those Panel Banks made particular JPY LIBOR submissions.

93. The Brokers' intentions in committing this misconduct were to secure additional revenue for IEL and bonuses for its employees. This misconduct was carried out openly and involved IEL managers.

94. IEL's breach of Principle 5 created a significant and unacceptable risk that the published JPY LIBOR rates would be manipulated and the integrity of LIBOR would be impugned.

B. Principle 3

95. Principle 3 of the FCA's Principles for Businesses requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

96. IEL breached Principle 3 throughout the Relevant Period by failing to have adequate risk management systems or effective controls in place to monitor and oversee the relevant broking activity. There were serious deficiencies with IEL's policies and practices, there was inadequate oversight of certain Brokers, there was no review by Compliance or audit of the relevant part of the business and the culture within the firm was poor.

97. Routine and widespread misconduct by IEL Brokers was allowed to continue unchecked throughout the Relevant Period. Some managers knew about and participated in the misconduct.

98. IEL's lack of adequate systems and controls exacerbated the duration and extent of Brokers' misconduct during the Relevant Period.

SANCTION

99. The FCA's policy on the imposition of financial penalties and public censures is set out in the FCA's Decision Procedure & Penalties Manual ("DEPP"). The detailed provisions of DEPP are set out in Annex A.

100. In determining the financial penalty, the FCA has had regard to this guidance. The FCA's current penalty regime applies to breaches that take place on or after 6 March 2010. However, most of the Relevant Period falls under the previous penalty regime, so DEPP in its pre-6 March 2010 form has been applied. The FCA has also had regard to the provisions of the FCA's Enforcement Manual ("ENF") relevant to the pre-28 August 2007 part of the Relevant Period.

101. The FCA considers the following DEPP factors to be particularly important in assessing the sanction.

Deterrence - DEPP 6.5.2G(1)

102. 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 FCA considers that the need for deterrence means that a very significant fine on IEL is appropriate.

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

103. IEL's breaches were extremely serious. The misconduct of IEL Brokers took place repeatedly over several years and encompassed a number of incidents that involved a significant number of employees (including two managers) on a number of desks. Indeed, during the Relevant Period, it was considered to be a normal and acceptable business practice on IEL's JPY Derivatives Desk to attempt to manipulate LIBOR for the benefit of Trader A and UBS. In total, at least ten individuals (including two managers) on three desks participated in the attempts to manipulate LIBOR. The misconduct leveraged Trader A's efforts to manipulate JPY LIBOR by influencing a much larger number of Panel Banks than he could influence himself.

104. The misconduct included the deliberate dissemination of false suggestions of appropriate LIBOR rates to Panel Banks as part of a co-ordinated attempt to manipulate JPY LIBOR submissions made by Panel Banks.

105. There were also serious weaknesses in IEL's systems and controls throughout the Relevant Period.

106. LIBOR is a benchmark reference rate in a number of relevant markets, including markets in over-the-counter and exchange-traded derivatives contracts. LIBOR also has a wider impact on other markets. The integrity of benchmark reference rates such as LIBOR is of fundamental importance both to UK and international financial markets. The misconduct of IEL Brokers threatened the integrity of those benchmarks and confidence in, and the stability of, the UK financial system.

107. The Brokers could have caused serious harm to other market participants if the published LIBOR rates were affected by their actions on any given day. The Brokers sent out skewed Run-Throughs they believed Panel Banks would rely upon. They also targeted specific Panel Banks to attempt to influence their submissions. IEL Brokers could have potentially affected a large number of Panel Banks' submissions, and therefore increased Trader A's chances of affecting the overall published LIBOR rates than any individual Panel Bank or trader acting on their own.

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

108. The FCA does not conclude that IEL (as a firm) engaged in deliberate misconduct. Nevertheless, the improper actions of a number of IEL Brokers involved in the misconduct were deliberate. IEL, because of a

poor culture and weak systems and controls, failed to prevent the deliberate, reckless and frequently blatant actions of its employees.

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

109. Although IEL is not as big or well-resourced as a major bank, it is one of the biggest, most sophisticated and well-resourced interdealer brokerage firms in the UK. Serious breaches committed by a firm such as IEL merit substantial penalties.

The amount of benefit gained or loss avoided - DEPP 6.5.2G(6)

110. IEL Brokers sought to influence Panel Banks' LIBOR submissions in order to assist one of their clients (UBS) and thereby secure additional commission for themselves. During the Relevant Period, IEL received from UBS approximately £2 million in fixed fee commission income for trades the JPY Derivatives Desk facilitated for Trader A. Having received this commission, Brokers 1 and 2 allocated a total of £50,000 (10 payments of £5000) in corrupt bonuses to Broker 3 for his assistance with the collusion.

111. This does not include commission income IEL might have received from its other clients as a result of Trader A's willingness to serve as a counterparty to trades IEL facilitated for those other IEL clients. The FCA estimates that this amount was equal to, and perhaps twice, the amount IEL received from UBS during the Relevant Period.

Conduct following the breach - DEPP 6.5.2G(8)

112. In determining the appropriate level of penalty, the FCA considered the level of cooperation provided by IEL during the course of the FCA's investigation.

113. In April 2010, FCA Supervision requested a section 166 review of ICAP Group's systems and controls after identifying several key weaknesses in the Group's Compliance function, Market Abuse controls, and Governance arrangements. The review and implementation programme was released in August 2010, and as a consequence, ICAP plc made significant improvements to its (and IEL's) systems and controls commencing at the end of the Relevant Period, in late 2010. After being made aware of the Brokers' misconduct in June 2011, both ICAP plc and IEL made further improvements to their systems and controls.

Disciplinary record and compliance history - DEPP 6.5.2G(9)

114. The FCA has taken into account the fact that IEL has no previous disciplinary history.

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

115. On 27 June 2012, the FCA issued a final notice against Barclays Bank plc with respect to the firm's attempted manipulation of LIBOR. On 19

December 2012 and 6 February 2013, the FCA issued final notices against UBS AG and The Royal Bank of Scotland plc, respectively, with respect to those firms' attempted manipulation of LIBOR. The FCA has considered IEL's misconduct relative to these other firms in determining IEL's penalty.

Quantum of financial penalty

116. Taking into account all the factors listed above, in particular the relative seriousness of the conduct, as compared with Barclays, RBS and UBS and the size and financial resources of IEL as compared with these three banks, the FCA has imposed a penalty of £20 million on IEL, which has been discounted to £14 million because IEL qualified for a 30% stage 1 discount.

PROCEDURAL MATTERS

Decision maker

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

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

Manner of and time for Payment

119. The financial penalty must be paid in full by IEL to the FCA by no later than 9 October 2013, 14 days from the date of the Final Notice.

If the financial penalty is not paid

120. If all or any of the financial penalty is outstanding on 10 October 2013, the FCA may recover the outstanding amount as a debt owed by IEL and due to the FCA.

Publicity

121. 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 FCA must publish such information about the matter to which this notice relates as the FCA considers appropriate. However, the FCA may not publish information if such publication would, in the opinion of the FCA, be unfair to you or prejudicial to the interests of consumer.

122. The FCA intends to publish such information about the matter to which this Final Notice relates as it consider appropriate.

FCA contacts

123. For more information concerning this matter generally, please contact Patrick Meaney (+44 (0)20 7066 7420) or David Hayton (+44 (0)20 7066 1404) at the FCA.

Matthew Nunan
Project Sponsor
FCA Enforcement and Financial Crime Division

ANNEX A

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FCA GUIDANCE

1. STATUTORY PROVISIONS

1.1. The FCA's statutory objectives, set out in section 2(2) of the Act, are market confidence, financial stability, consumer protection and the reduction of financial crime.

1.2. Section 206 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.*"

1.3. IEL is an authorised person for the purposes of section 206 of the Act. The requirements imposed on authorised persons include those set out in the FCA's rules made under section 138 of the Act.

2. REGULATORY PROVISIONS

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

2.2. In deciding on the action proposed, the FCA has also had regard to guidance published in the FCA Handbook and set out in the Regulatory Guides, in particular the Decision Procedure and Penalties Manual (DEPP).

Principles for Businesses ("PRIN")

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

2.4. Principle 3 provides:

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

2.5. Principle 5 provides:

"*A firm must observe proper standards of market conduct.*"

Decision Procedure and Penalties Manual (DEPP)

2.6. Guidance on the imposition and amount of penalties is set out in Chapter 6 of DEPP. Changes to DEPP were introduced on 6 March 2010. Given that

the majority of the misconduct occurred prior to that date, the FCA has had regard to the provisions of DEPP in force prior to that date.

2.7. DEPP 6.1.2 provides 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*."

2.8. DEPP 6.5.2 sets out some of the factors that may be taken into account when the FCA 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 or 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 FCA;

(11) action taken by other domestic or international regulatory authorities;

(12) FCA guidance or other published materials; and

(13) the timing of any agreement as to the amount of the penalty.

2.9. The FCA 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.