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## FINAL NOTICE

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To: Michael Ross Curtler

Date of Birth: June 1972

Individual Reference Number: MRC01098

Date: 29 February 2016

### **ACTION**

1. For the reasons given in this Final Notice, the Authority hereby makes an order prohibiting Michael Ross Curtler ('Mr Curtler'), pursuant to section 56 of the Act, from performing any function in relation to any regulated activity carried on by any authorised or exempt person, or exempt professional firm.

### **SUMMARY OF REASONS**

2. The Authority has taken this action because Mr Curtler committed deliberate misconduct by manipulating or attempting to manipulate the USD LIBOR rate.
3. On 8 October 2015 Mr Curtler pleaded guilty before the United States District Court for the Southern District of New York to a single count of conspiracy to commit wire fraud and bank fraud. The text of the indictment specified among other things that Mr Curtler was part of a scheme which sought, by "*materially false and fraudulent pretenses, representations and promises*" to "*manipulate and attempt to manipulate*" benchmark interest rates including the USD LIBOR rate between "*at least in or about January 2003*" to "*at least in or about 2011*".
4. In light of this criminal conviction for an offence of dishonesty, including the circumstances of his offence in relation to the financial markets, the Authority finds that Mr Curtler lacks honesty and integrity and that he is not a fit and proper person to perform functions in relation to any regulated activity under the Act.

## **DEFINITIONS**

5. The definitions below are used in this 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;

“BBA” means the British Bankers’ Association, which until 31 January 2014 was the administrator of LIBOR;

“EG” means the Authority’s Enforcement Guide;

“FIT” means the Authority’s Fit and Proper test for Approved Persons;

“USD” means US Dollar;

“USD LIBOR” means the London Interbank Offered Rate for US Dollar;

“LIBOR” means the London Interbank Offered Rate;

“Deutsche” means Deutsche Bank AG.

## **FACTS AND MATTERS**

6. LIBOR is an interest rate benchmark fundamental to the operation of both UK and international financial markets. LIBOR is published daily in a number of currencies and maturities. Until 31 January 2014, LIBOR was administered by the BBA and was set according to a definition published by the BBA.<sup>1</sup> Banks on the LIBOR panels make daily submissions to enable LIBOR to be calculated.
7. Mr Curtler was employed by Deutsche between 1993 and December 2012. During the period between 2000 and 2012, Mr Curtler traded a variety of financial instruments that were tied to USD LIBOR.
8. On occasions Mr Curtler submitted Deutsche’s USD LIBOR submissions. When he did so, he understood that those submissions were supposed to reflect only the rate at which Deutsche perceived it could borrow USDs in the London interbank market.
9. Mr Curtler received requests from Deutsche traders to alter his USD LIBOR submissions. These requests were made to benefit the trading positions of Deutsche and the individual traders. Mr Curtler made alterations to the USD LIBOR submissions consistent with these requests. Mr Curtler also solicited requests from traders and changed his USD LIBOR submissions accordingly. Mr Curtler knew what he was doing was wrong.
10. On 23 April 2015 the Authority published a Final Notice in respect of Deutsche for significant failings in relation to LIBOR. On 8 October 2015 Mr Curtler pleaded guilty before the United States District Court for the

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<sup>1</sup> Since 1 February 2014, LIBOR had been administered by ICE Benchmark Administration Limited (“IBA”) <https://www.theice.com/iba>.

Southern District of New York to a single count of conspiracy to commit wire fraud and bank fraud.

## **FAILINGS**

11. The regulatory provisions relevant to this Notice are referred to in Annex A. FIT 1.3.1G states that the Authority will have regard to, among other things, a person's honesty and integrity when assessing the fitness and propriety of a person to perform a particular controlled function.
12. Mr Curtler engaged in a serious and sustained course of improper conduct. His actions were dishonest because he knew that taking trading positions into account when making USD LIBOR submissions was not permitted and that what he was doing was wrong. On 8 October 2015, he accepted his guilt before a United States court in respect of this behaviour.
13. Mr Curtler's criminal conviction demonstrates that he lacks honesty and integrity. The seriousness of the misconduct was aggravated by the fact that:
  - a. Mr Curtler was an experienced employee of Deutsche and was an approved person;
  - b. Mr Curtler engaged in this improper activity over a prolonged period of time; and
  - c. LIBOR is of central importance to the operation of UK and worldwide financial markets. Doubts about the integrity of LIBOR threaten confidence in those markets.

## **SANCTION**

14. The Authority therefore prohibits Mr Curtler from carrying out any function in relation to any regulated activity carried out by any authorised person, exempt person or exempt professional firm.

## **PROCEDURAL MATTERS**

### **Decision maker**

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

### **Publicity**

17. 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 a 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.

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

**Authority Contacts**

19. For more information concerning this matter generally, please contact Patrick Meaney (direct line: 020 7066 7420) or Michael Prange (direct line: 020 7066 1386) of the Enforcement and Market Oversight Division of the Authority.

Therese Chambers

**Project Sponsor  
Financial Conduct Authority  
Enforcement and Market Oversight Division**

## ANNEX A

### GUIDANCE AND POLICY TO STATUTORY PROVISIONS AND RULES

#### RELEVANT STATUTORY PROVISIONS

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

#### The Fit and Proper test for Approved Persons ("FIT")

2. FIT sets out the criteria for assessing a person's fitness and propriety.
3. FIT 1.1.2G states:

*"The purpose of FIT is to set out and describe the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function (see generally SUP 10 on approved persons). The criteria are also relevant in assessing the continuing fitness and propriety of approved persons. The criteria that the Authority will consider in relation to an authorised person are described in COND."*

4. FIT 1.2.3G states:

*"Under section 63(1) of the Act (Withdrawal of approval), the Authority may withdraw its approval if it considers that the person in respect of whom the approval was given is not fit and proper to perform the controlled function to which the approval relates."*

5. FIT 1.3.1G states that the Authority will have regard to, among other things, a person's honesty and integrity when assessing the fitness and propriety of a person to perform a particular controlled function.
6. FIT 1.3.3G states:

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

7. FIT 2.1.1 states:

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

#### Prohibition order

8. The Authority's approach to deciding whether to impose a prohibition order, and the scope of any such prohibition order, is set out in chapter 9 of EG. The

provisions of EG set out below are those which were in force from 28 August 2007.

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

10. EG 9.3 states:

*"In deciding whether to make a prohibition order and/or, in the case of an approved person, to withdraw its approval, the Authority will consider all the relevant circumstances including whether other enforcement action should be taken or has been taken already against that individual by the Authority. ... in some cases the Authority may take other enforcement action against the individual in addition to seeking a prohibition order and/or withdrawing its approval. The Authority will also consider whether enforcement action has been taken against the individual by other enforcement agencies or designated professional bodies."*

11. EG 9.5 states:

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

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

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

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

*(2) Whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness).*

*(3) Whether, and to what extent, the approved person has:*

- a. *[.....]*
- b. *been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules) or failed to comply with any directly applicable Community regulation made under MiFID or any directly applicable provision of the auction regulation.*

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

15. One example of a type of behaviour which have previously resulted in the Authority deciding to issue a prohibition order or withdraw the approval of an approved person, set out in EG 9.12, is “[s]evere acts of dishonesty”.