Financial Conduct Authority

FINAL NOTICE

To: Deutsche Bank AG

Reference Number: 150018

Address: Winchester House
1 Great Winchester Street
London
EC2N 2DB

Date: 23 April 2015

1. ACTION

1.1. For the reasons given in this notice, the Authority hereby imposes on Deutsche Bank AG ("Deutsche Bank") a financial penalty of £226,800,000, in accordance with section 206 of the Financial Services and Markets Act 2000.

1.2. Deutsche Bank 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 £324,000,000 on Deutsche Bank.

2. SUMMARY OF REASONS

2.1. Serious misconduct by Deutsche Bank led to breaches of Principles 5, 3 and 11 of the Authority's Principles for Businesses: first, through Deutsche Bank's attempted manipulation of IBOR rates and improper influence over IBOR submissions, second, through its systems and controls failings and third, through serious deficiencies in the way Deutsche Bank dealt with the Authority in relation to IBOR matters. The direct involvement of Managers and Senior Managers in many aspects of Deutsche Bank's misconduct aggravates the seriousness of the breaches.

2.2. The culture of misconduct described in this Notice was not confined to a small group of individuals. Within Global Markets, it extended to a number of areas within GFFX London including the MMD desk, Pool Trading desk and FX Forwards desks. It also extended to GFFX desks abroad, including Frankfurt, Tokyo and New York. The IBOR-related misconduct included at least one trader in the Bank's Global Rates Division.

2.3. Furthermore, Deutsche Bank's unacceptably slow and ineffective response to some of the Authority's enquiries has prolonged the process of formal investigation significantly. This included misleading the Authority on issues of importance. These failings involved Deutsche Bank Managers and Senior Managers.

2.4. The Authority expects firms to promote a culture which requires staff to have regard to the impact of their behaviour on other market participants and the financial markets as a whole. This includes responding promptly, effectively and accurately to regulatory enquiries.

2.5. The Bank's leadership has stated publicly that it promotes a culture of integrity. However, due to concerns over cultural failings at Deutsche Bank including the findings of this Notice, the Authority will continue to monitor the Bank's success in implementing cultural change via ongoing supervisory action.

<u>Principle 5 breaches</u>

2.6. Principle 5 requires firms to observe proper standards of market conduct. The breaches of Principle 5 arise from Deutsche Bank attempting to manipulate and improperly influence IBOR rates. Over at least 5 years, across a range of LIBOR currencies and EURIBOR, the MMD and Pool Trading desks engaged in a course of conduct to manipulate Deutsche Bank's IBOR submissions and improperly influence other Panel Bank's IBOR submissions in order to profit. This misconduct was routine and involved instances of collusion with a number of external parties and trading activity designed to maximise the potential impact of the misconduct on the IBOR rates. Managers at Deutsche Bank were central to this misconduct. There was a culture within GFFX to increase revenues without proper regard to the wider integrity of the market.

2.7. Deutsche Bank's misconduct in relation to EURIBOR exemplifies the seriousness of the misconduct and its potential to have a significant impact on the markets. Deutsche Bank used a three pronged approach in an attempt to maximise the impact on EURIBOR. For example, certain Traders would engage in one or more of the following types of conduct: (i) influence Deutsche Bank's Submitters to alter Deutsche Bank's EURIBOR submission; (ii) contact other Panel Banks and request that they put in different EURIBOR submissions; and (iii) on occasion offer or bid cash in the market to create the impression of an increased or reduced supply in order to influence other Panel Banks to alter their EURIBOR submissions.

2.8. Specific details of the manipulation of Deutsche Bank's IBOR submissions and the improper influence over the submissions of other Panel Banks are provided under "Principle 5 Facts and Matters" at paragraphs 4.2 to 4.49 below. Commentary on these failings is then provided under "Principle 5 Failings" at paragraphs 5.2 to 5.5 below.

<u>Principle 3 breaches</u>

2.9. Principle 3 requires firms to take reasonable care to organise and control their affairs responsibly and effectively, with adequate risk management systems. Although Deutsche Bank had in place general policies and procedures concerning compliance standards which required, among other things, staff to act with integrity, the principal breach of Principle 3 arises from Deutsche Bank's failure to have any IBOR-specific systems and controls in place and, moreover, its failure to address this absence of any IBOR-specific systems and controls even after being put on notice of the risk of misconduct.

2.10. In addition, Deutsche Bank had seriously defective systems and controls in place to support audit and investigation of Trader misconduct more generally. Specifically, Deutsche Bank's systems for identifying and recovering recordings of Trader telephone calls and mapping trading books to Traders were inadequate. These failings directly impeded the Authority's investigation of IBOR misconduct causing significant delays and difficulties to the process.

2.11. Together, these defective systems and controls are illustrative of a culture where minimising the risk of Trader misconduct was not at the forefront of the priorities of Global Markets.

2.12. Specific details of Deutsche Bank's systems and controls failings are provided under "Principle 3 Facts and Matters" at paragraphs 4.50 to 4.77 below. Commentary on these failings is then provided under "Principle 3 Failings" at paragraphs 5.6 to 5.15 below.

Principle 11 breaches

2.13. Principle 11 requires firms to deal with their regulators in an open and cooperative way, and to disclose to the appropriate regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice. The Principle 11 breaches arise from instances when Deutsche Bank provided false, inaccurate or misleading information to the Authority including a number of failures arising during the course of the Authority's investigation into Deutsche Bank's IBOR misconduct.

2.14. Deutsche Bank provided inaccurate and misleading information to the Authority regarding its ability to disclose to the Authority a report commissioned by the BaFin which was relevant to aspects of Deutsche Bank's IBOR misconduct. In short, Deutsche Bank failed to disclose the report and told the Authority that the BaFin had prohibited disclosure of the report to the Authority. However, there was no such prohibition. The Authority considers this aspect of Deutsche Bank's misconduct to be reckless. The Authority accepts that recklessness is not the same as deliberately acting improperly.

2.15. Separately, Deutsche Bank provided a formal attestation to the Authority stating that its systems and controls in relation to LIBOR submissions were adequate at a time when no such systems and controls were in place. The attestation was known to be false by the person who drafted it at the time it was sent to the Authority.

2.16. Furthermore Deutsche Bank failed during the course of the Authority's investigation to provide accurate, complete and timely information, explanations and documentation to the Authority. Although the Authority has concluded that there was no intention on the part of Deutsche Bank to deliberately conceal documents or information, these failures caused delay to and difficulties for the investigation.

2.17. These Principle 11 failings also reflect further cultural shortcomings in that Deutsche Bank did not place sufficient importance on ensuring the accuracy and completeness of its communications with the Authority, including in respect of the production of information and documents. The breaches are particularly serious given that they all relate to IBOR misconduct at Deutsche Bank at a time when the integrity of the UK financial markets was subject to particular scrutiny and criticism due to the emergence of widespread IBOR manipulation.

2.18. Specific details of Deutsche Bank's failure to deal with the Authority in an open and cooperative way are provided under "Principle 11 Facts and Matters" at paragraphs 4.78 to 4.121 below. Commentary on these failings is then provided under "Principle 11 Failings" at paragraphs 5.16 to 5.30 below.

Penalty

2.19. The integrity of benchmark reference rates such as LIBOR and EURIBOR is of fundamental importance to both UK and international financial markets. Deutsche Bank's misconduct in relation to IBOR risked harm to other market participants, undermined the integrity of IBOR and threatened confidence in and the stability of the UK financial system. The related failing to have IBOR-specific systems and controls in place exacerbated the duration and extent of Deutsche Bank's IBOR misconduct. The other systems and controls failings identified are reflective of a poor risk control environment and had a direct adverse impact on the Authority's investigation of IBOR matters. The resulting Principle 5 and Principle 3 breaches warrant a significant financial penalty.

2.20. The failures to deal with the Authority in an open and cooperative way are viewed as separate and serious issues. This is especially so given the number of separate failings that comprise the overall breach of Principle 11. That some of these failings involve Deutsche Bank's Senior Management, and include provision of a formal attestation to the Authority known by the person who drafted it to be false, makes this area of misconduct particularly serious. The totality of the resulting Principle 11 breaches also warrants a significant financial penalty.

2.21. Overall, the Authority considers it is appropriate to impose a financial penalty of £226,800,000 on Deutsche Bank.

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.

“BaFin” means Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Financial Supervisory Authority for Germany)

“BBA” means the British Bankers’ Association.

“BBA Guidelines” means the additional guidelines circulated by the BBA’s FX & MM committee to Panel Banks on 2 November 2009.

“Broker” means interdealer Broker who acted as intermediary in, amongst other things, deals for funding in the cash markets and interest rate derivatives contracts.

“Broker Firm” means a firm that employed Brokers.

“CHF” means Swiss Franc.

“Combined Relevant Period” means 2005 to May 2014.

“Compliance Manager” means a Manager in Deutsche Bank’s Compliance Department.

“DEPP” means the FCA’s Decision Procedure and Penalties Manual.

“Derivatives Trader” means a Deutsche Bank Trader employed primarily to trade interest rate derivatives.

“Deutsche Bank Compliance” means the Compliance Department of Deutsche Bank.

“Deutsche Bank Legal” means the Legal Department of Deutsche Bank.

“EBF” means European Banking Federation.

“EURIBOR” means Euro Interbank Offered Rate.

“External Trader” means an employee of a Panel Bank trading interest rate derivatives.

“FCA” means the Financial Conduct Authority.

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

"FX&MM Committee" means the BBA's Foreign Exchange and Money Markets Committee, which had responsibility for the functioning and development of LIBOR.

"GBP" means Great Britain Pound (Sterling).

"GFFX" means the Global Finance and FX Forwards Department of Deutsche Bank's Investment Bank.

"Global Markets" means Deutsche Bank's Global Markets Division which sits within the Investment Bank

"IBOR" is a generic reference to both EURIBOR and LIBOR together.

"Investment Bank" means Deutsche Bank's global investment banking business, headquartered in London

"JPY" means Japanese yen.

"Legal Manager" means a manager in Deutsche Bank's Legal Department.

"LIBOR" means London Interbank Offered Rate.

"MMD Desk" means the Money Markets Derivatives desk comprised of Derivatives Traders which sat within GFFX.

"Money Market Trader" means a Deutsche Bank employee with responsibility for trading cash and managing the funding needs of the bank.

"Manager" means a Deutsche Bank employee with direct line management responsibility over Derivatives Traders and/or Submitters (e.g. a head of desk and above).

"Management Board" means the Management Board or 'Vorstand' of Deutsche Bank.

"OTC" means over the counter.

"P&L" means profit and loss.

"Panel Bank" means a contributing bank, other than Deutsche Bank, with a place on the BBA panel for contributing LIBOR submissions in one or more currencies, or a place on the EBF panel for contributing EURIBOR submissions.

"Pool Trading Desk" means the desk within GFFX which comprised Deutsche Bank's Money Market Traders.

"Principle 5 Relevant Period" means January 2005 to December 2010.

"Principle 3 Relevant Period" means January 2005 to February 2013.

"Principle 11 Relevant Period" means January 2011 to 31 May 2014.

"Senior Manager" means an individual within Deutsche Bank who is more senior than a Manager, for example one with responsibility to oversee a business area.

"Senior Management" means one or more Senior Managers.

"Submitter" means a Deutsche Bank employee with responsibility for making Deutsche Bank's LIBOR or EURIBOR submissions.

"Trader" means a Deutsche Bank employee trading cash or interest rate derivatives.

"USD" means US Dollar.

4. FACTS AND MATTERS

4.1. The facts and matters relevant to the breaches are set out below as follows:

Paragraphs 4.2 to 4.49	Principle 5 Facts and Matters
Paragraphs 4.50 to 4.77	Principle 3 Facts and Matters
Paragraphs 4.78 to 4.121	Principle 11 Facts and Matters

PRINCIPLE 5 FACTS AND MATTERS

4.2. Principle 5 of the Authority's Principles for Businesses requires firms to observe proper standards of market conduct.

4.3. The Principle 5 Relevant Period is January 2005 to December 2010. Where more specific time periods are relevant to particular aspects of misconduct, these are specified below.

4.4. The facts and matters resulting in breaches of Principle 5 arise from two key areas of misconduct:

- Manipulation of Deutsche Bank's submissions to benefit its trading positions; and

- Instances of collusion and trading activity to improperly influence the submissions of other Panel Banks.

4.5. The facts and matters relating to these two areas of misconduct are set out below, following an explanation of background matters relevant to the misconduct.

Background[1]

LIBOR and EURIBOR

4.6. LIBOR is the most frequently used benchmark for interest rates globally, referenced in transactions with a notional standing value of at least USD 500 trillion.

4.7. During the Principle 5 Relevant Period, LIBOR was published for ten currencies and fifteen maturities. However, the large majority of financial contracts use only a small number of currencies and maturities. For example, JPY, USD and GBP LIBOR are widely used currencies and one, three and six months are commonly used maturities.

4.8. LIBOR was during the Principle 5 Relevant Period published on behalf of the BBA and EURIBOR is published on behalf of the EBF. LIBOR (in each relevant currency) and EURIBOR are set by reference to the assessment of the interbank market made by a number of Panel Banks. The Panel Banks were selected by the BBA and EBF and each bank contributes rate submissions each business day. Both LIBOR and EURIBOR require the contributing banks to exercise their subjective judgement in evaluating the rates at which money may be available in the interbank market when determining their submissions.

4.9. Interest rate derivative contracts typically contain payment terms that refer to benchmark rates. LIBOR and EURIBOR are by far the most prevalent benchmark rates used in OTC interest rate derivatives contracts and exchange traded interest rate contracts.

4.10. Both LIBOR and EURIBOR have definitions that set out the nature of the judgment required from Panel Banks when determining their submissions:

1 This background section provides information relevant to the Principle 5 Relevant Period; it does not contain information which is necessarily current in relation to the construction of the benchmarks at the date of publication of this Notice.

- Between 1998 until February 2013 (the end of the Principle 3 Relevant Period), the LIBOR definition published by the BBA was as follows "*the rate at which an individual contributor panel bank could borrow funds, were it to do so by asking for then accepting interbank offers in reasonable market size just prior to 11:00am London time*".

- Since 1998, the EURIBOR definition published by the EBF has been as follows: "*The rate at which Euro interbank term deposits are offered by one prime bank to another prime bank within the EMU zone at 11am Brussels time*".

4.11. The definitions were therefore different. LIBOR focused on the contributor bank itself and EURIBOR made reference to a hypothetical prime bank. However each definition required submissions related to funding from the contributing banks. The definitions did not allow for consideration of factors unrelated to borrowing or lending in the interbank market.

4.12. LIBOR and EURIBOR are important to Derivatives Traders and Money Market Traders because they impact on the value of transactions within their trading books. Both benchmark rates affected Traders' payment obligations pursuant to certain contracts underlying their derivatives transactions. The Traders therefore stood to profit or reduce losses in respect of certain trades as a result of movements in LIBOR and EURIBOR. Traders monitored the exposure of their trading positions on a daily basis. Traders commonly referred to the determination of a floating rate contractual amount referenced to LIBOR or EURIBOR on a particular day as a "fixing".

4.13. During the Principle 5 Relevant Period it was commonplace that the P&L of Derivatives and Money Market Traders' books was a factor in the determination of the size of their bonuses and opportunities for advancement.

<u>LIBOR and EURIBOR at Deutsche Bank</u>

4.14. In the Principle 5 Relevant Period, Deutsche Bank contributed by way of daily rate submissions for the purpose of the calculation of LIBOR rates in several currencies including USD, JPY, GBP and CHF and also to EURIBOR.

4.15. Deutsche Bank typically assigned responsibility for making LIBOR and EURIBOR rate submissions to certain Money Market Traders who formed the Pool Trading Desk. The CHF and EURIBOR Submitters were based in Frankfurt whilst the USD, JPY and GBP Submitters were based in London. Between at least December 2006 and November

2009, the responsibility for the submission of JPY LIBOR rates was delegated to Derivatives Traders.

4.16. At Deutsche Bank, Money Market Traders were responsible for managing the funding needs of the bank and therefore executed intrabank and interbank borrowing and lending transactions. Money Market Traders at times used derivative products referenced to LIBOR and EURIBOR to hedge their cash trades.

4.17. Money Market Traders also traded derivative products referenced to LIBOR and EURIBOR to generate additional profit for Deutsche Bank. These trades were not carried out for the purpose of hedging cash trades or reducing risk exposure on the money market books and were captured in separate proprietary trading books.

4.18. Derivatives Traders who formed the MMD Desk executed derivative transactions referenced to LIBOR and EURIBOR to make markets for their clients or as part of a speculative proprietary trading strategy to generate profit for the bank.

4.19. At Deutsche Bank in London, Derivatives Traders and Money Market Traders were part of GFFX. The USD, JPY and GBP LIBOR Derivatives Traders would sit amongst the Money Market Traders who typically acted as Deutsche Bank Submitters. For the majority of the Principle 5 Relevant Period, Money Market Traders (including those who were also Submitters) and Derivatives Traders of the same currency would sit either next to or directly behind each other on the trading floor (with the exception of EUR and CHF for which the Money Market Traders were located in Frankfurt and the Derivative Traders in London). Money Market Traders and Derivatives Traders were actively encouraged by Managers to share information about currencies and markets. Although Traders were subject to Deutsche Bank's general policies and procedures concerning compliance standards, Managers placed no specific limitations on what the Traders could or should discuss regarding LIBOR and EURIBOR.

Manipulation of Deutsche Bank's submissions to benefit its trading positions

4.20. LIBOR and EURIBOR submissions made by Deutsche Bank were manipulated for the purpose of benefiting Deutsche Bank Traders' trading positions. This included the following misconduct:

- Improper submissions on behalf of Deutsche Bank Derivatives Traders;

- Improper submissions to benefit Submitters' own trading positions.

4.21. Details and examples of each type of misconduct are set out below.

Improper submissions on behalf of Deutsche Bank Derivatives Traders

4.22. Derivatives Traders routinely made requests to Submitters with the goal of influencing Deutsche Bank's JPY, CHF, USD, LIBOR and EURIBOR submissions during the Principle 5 Relevant Period. In respect of GBP LIBOR requests were made to Submitters on occasion.

4.23. Derivatives Traders were motivated by profit and sought to benefit their (and thus Deutsche Bank's) derivative trading positions by attempting to influence the final benchmark rates. The final benchmark rates affected the Derivatives Traders' payment obligations pursuant to the contracts underlying their derivatives transactions such that the Derivatives Traders stood to profit or reduce losses as a consequence of movements in the final benchmark rates resulting from Deutsche Bank's submissions.

4.24. Improper requests took place over a number of years and typically involved one, three and six month maturities. This misconduct involved at least 29 Deutsche Bank individuals including Managers, Derivative Traders and Submitters, primarily based in London but also in Frankfurt, Tokyo and New York.

4.25. In addition to written requests, Derivatives Traders often made oral requests. These included in person requests in London by Derivative Traders sitting in close proximity to the Submitters and requests made via the telephone. In USD LIBOR oral requests were openly communicated and more commonplace than written requests.

4.26. Deutsche Bank Submitters on occasions solicited requests from Derivatives Traders in advance of submitting the daily benchmark rates. For example, on 26 September 2005, in relation to USD LIBOR, Manager A emailed Derivatives Trader A asking "*libors any requests*" to which Derivative Trader A responded "*HIGH FREES* [THREES], *LOW 1MUNF* [MONTH]"[2]. The following day, Manager A and Derivatives Trader A engaged in a similar exchange, "*libor requests?*" "*LOW 1 MUNF* [MONTH]*....SAME AS YEST*...".

[2] All quotes are as written in the original documents without any correction to spelling and grammar. Square brackets have been used where required for purposes of clarity.

4.27. Deutsche Bank's Submitters routinely took the requests into account when making JPY, CHF, USD LIBOR and EURIBOR submissions and on occasion when making GBP LIBOR submissions.

4.28. The following are examples of Derivative Traders' requests:

- On 4 April 2006, Derivatives Trader B made the following JPY LIBOR request, "*...could u set 1m at 8bps* [0.08] *pls? thanks"*. Submitter A responded "*done mate*". Derivative Trader B replied the following day, "*Thanks mate... the 1m back to 7bps* [0.07] *today pls*" to which Submitter A responded "*affirmative*". Deutsche Bank's JPY submissions exactly matched these requests.

- On 25 July 2008, Derivatives Trader C called Submitter B. He asked, *"...can we have like 76* [2.76] *today for three Swissy* [CHF]?" Submitter B replied "*Yeah, yeah sure*". Later in the call Derivative Trader C explained, "*...just today we have two yards* [2 billion] *threes so even if you could put six and a half* [2.765] *that would be nice ...Today for three month, like a high very high three month but then a low one month, that's very good"*. Submitter B confirmed he would do as requested. On 25 July 2008, Deutsche Bank's three month CHF submission was 2.765, a rise of 1.5 basis points from the previous day. Deutsche Bank's one month CHF submission was 2.27, a fall of one basis point from the previous day.

- On 1 April 2005, Derivatives Trader A requested, *"COULD WE PLS HAVE A LOW 6MTH FIX TODAY OLD BEAN?"*. Deutsche Bank's six month USD LIBOR submissions on 13 June 2005 was 3.375 down from 3.39 the previous day. On 15 May 2008, the same Derivatives Trader asked, "*Low 1mth today pls shag, paying on 18 bio*." On 15 May 2008 Deutsche Bank's USD submission was 2.48 one basis point lower than the previous day.

- On 29 December 2006, Manager B and Submitter C had the following exchange:

  Manager B: *"...COULD I BEG YOU FOR A LOW 3M* [EURIBOR] *FIXING TODAY PLEASE..THANT WOULD BE THE BEST XMAS PRESENT* ;)"

  Submitter C: "*...BE A PLEASURE, NO PROBS WE HAVE NOTHING ON THE OTHER SIDE HERE. WILL PUT IN 71 [3.71] AT LEAST MAYBE WE CLD [could] PUT IN 70 [3.70]...*"

Manager B: "*LOW AS POSSIBLE AS WE HAVE 2.5 YARDS [2.5 billion] ON IT TODAY, SO WOULD BE VERY HELPFULL*"

On 29 December 2006, Deutsche Bank's three month EURIBOR submission was 3.70 a 3 basis point drop from the day before.

4.29. Traders occasionally made requests on days they did not have fixings in the hope that Deutsche Bank's submission would influence other Panel Banks future submissions. For example, on 28 November 2006 Derivative Trader D stated, "*...Altho I don't have a huge 1mL [one month USD LIBOR] fix tomw, I am paying 1mL on about 40bn throughout December so I was hoping for a low 1mL fix tomw to set the tone*".

4.30. Finally, it should be noted Traders on the FX Forwards desk within GFFX also made requests in relation to other benchmark rates. The existence of these requests, which put at risk the integrity of those benchmark rates, demonstrates the misconduct was not confined solely to the MMD and Pool Trading Desks and LIBOR and EURIBOR.

Improper submissions to benefit Submitters' own trading positions

4.31. Throughout the relevant period, Deutsche Bank Submitters routinely took their own derivatives positions into account when making Deutsche Bank's USD and GBP LIBOR submissions. Submitters were motivated by profit and sought to benefit their own (and thus Deutsche Bank's) derivative trading positions by attempting to influence the final benchmark LIBOR rates.

4.32. By way of example, on 31 August 2010, Submitter D telephoned a colleague who was out of the office. During the call Submitter D relayed that Derivatives Trader E, had come over to his desk and requested that three month GBP LIBOR be put down a tick because he had a fixing. Submitter D was clearly concerned because the request was inconsistent with the direction that suited the derivative positions of Money Market Traders. An extract of the conversation is set out below:

- Submitter D: *"But I said we've got stuff up about 15th September we need higher libors don't we?"*

  COLLEAGUE: *"Yeah"*

  Submitter D: *"Yeah I said you know, he said [Derivatives Trader E] ok yeah just can you do it for me today..."*

COLLEAGUE: *"Right okay fine"*

Submitter D: *"So I've moved it down a tick to 73 [0.73]…I've looked and I know we've got fixings on the 15th haven't we, of September. We want it higher, we want 3s high don't we"*

COLLEAGUE: *"We're going to get in trouble if we keep moving it up and down…"*

On 31 August 2010 Deutsche Bank's three month GBP LIBOR submissions was 0.73 compared to 0.74 the previous day.

4.33. From at least December 2006 to November 2009, the task of making JPY LIBOR submissions was delegated to Derivative Trader B and then later to Derivative Trader C. During this period they routinely took into account their own derivatives trading positions when making JPY LIBOR submissions. Money Market Trader A, the JPY Money Market Trader who should have been the JPY submitter, made a conscious decision to delegate the task of making JPY LIBOR submissions to Derivatives Traders B and C because they had large derivative positions that were impacted by JPY LIBOR. He explained this to Derivative Trader F on 4 October 2007 in the following way, "*Hi mate, the libors are set by [Derivative Trader B] as he got more exposure on the fixing than in the cash book, I'll fwd ur message to him".*

Collusion and trading activity in an attempt to improperly influence the submissions of other Panel Banks

4.34. Deutsche Bank engaged in behaviour that was intended to improperly influence the submissions of other Panel Banks. This included the following misconduct:

- Improper trading to benefit the trading positions held by Deutsche Bank Derivatives Traders
- Instances of collusion with other Panel Banks (EURIBOR and JPY LIBOR)
- Instances of collusion with Broker firms

<u>Improper trading to benefit the trading positions held by Deutsche Bank Derivatives Traders</u>

4.35. On occasions, Deutsche Bank EURIBOR Submitters would bid or offer in the cash market in response to requests from Derivative Traders for favourable submissions. The primary motivation was to influence the EURIBOR submissions of other Panel Banks and therefore move the final EURIBOR rate to benefit Deutsche Bank's derivative positions.

4.36. On those occasions, Submitters were willing to offer cash at lower rates than they would normally do so to attempt to influence the EURIBOR submissions of other Panel Banks. This is illustrated in the following exchange on 19 March 2007 between Submitter C and Manager B:

- Submitter C: "*FYG* [Broker Firm 1] *DOWN TO 3.89 IN THE 3M AS WELL. WE ARE OFFERING AGRESSIVELY".*

  Manager B: "*thanks* [Submitter C]*..."*

  Submitter C: "*HAVE JUST GUIVEN* [GIVEN] *... AT 87.5"*

  Manager B: *"oh my god! we don't want this to cost u money, do it only if it makes sense as well for you – dont wanna be annoying"*.

  Submitter C: "*NO WORRIES, I WLD OFFER AT 88.5 ANYWAY SO ITS 1 bp [basis point] GIVE AWAY. THAT'S EUR 6K. SO NOTHING TO WORRY ABOUT. AND WE GOT HIS SCREEN DOWN WHICH IS QUIETE IMPORTANT. 1/10 IN THE 3M FIX IS WORTH IT".*

4.37. On 20 June 2007, Submitter E set out to Manager B that he would offer one month cash in the market to try and get the one month EURIBOR fixing to come down.

- Manager B: "*[Submitter E] my friend – we really need the 1mth fixing to come down if you could do anything"*

  Submitter E: "*SURE MAT E..WE TRY BEST HERE ...OFFERING AT MOM IN 1M FOR U TO GET IT HOPEFULLY LOW FOR TOM [TOMORROW] ... [SUBMITTER F] WILL ALSO OFFER LOW TO THE BROKERS AND WILL ALSO SEND LOW 1M FIXING ON GOING FORWARD..WE WILL DO OUR BEST MATE"*

<u>Instances of collusion with other Panel Banks: EURIBOR</u>

4.38. At various times between at least June 2005 and April 2007, Manager B colluded with other Panel Banks. He routinely made requests to External Traders for high or low EURIBOR submissions. Manager B sought to influence the submissions of other Panel Banks with the aim that the final published EURIBOR rate would improve the profit or reduce the loss of his trading positions.

4.39. The majority of the requests were made to External Trader A at Panel Bank 1, who Manager B also enlisted to make requests on his behalf to External Traders at other Panel Banks. Manager B was aware that External Trader A was carrying out his instructions and that in doing so would increase the chances of EURIBOR being manipulated to benefit the trading positions of Deutsche Bank for which Manager B was responsible.

4.40. An instance of this collusion related to the 7 September 2006 EURIBOR fix when Manager B attempted to obtain a low one month EURIBOR fix:

- On 6 September 2006, Manager B contacted External Trader A and requested a low one month EURIBOR submission: *"I seriously need your help tomorrow on the 1mth fix".* He also asked him to pass on the request, "*and ask at [Panel bank 2] but don't say it's from me*".

- On 7 September 2006, Manager B reminded External Trader A: "*I'm begging u pleassssssssssssssseeeeeeeeee I'm on my knees*". Manager B repeated his request: "*can u beg the [Panel Bank 2] guy as well?*" The External Trader replied: "*ok I'm telling him".*

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

- On 7 September 2006, after the day's EURIBOR rates were published, the following exchange took place between Manager B and External Trader A:

  Manager B: "*3.08 !!! thaaaaaaaaaaaaaanks"*

  External Trader A: *"u see u see"*

4.41. A further instance of this collusion related to the 13 November 2006 EURIBOR fix when Manager B attempted to obtain a low one month and three month EURIBOR fix:

- On 7 November 2006, Manager B contacted External Trader A, making a request for a low one month and a low three month, stating: "*the most important is Monday*" [*i.e.* Monday 13 November 2006].

- On 10 November 2006, Manager B contacted External Trader A, "*begging*" him to procure a one month submission of *"36" [3.36]* from Panel Bank 1, as well as from Panel Bank 2.

- External Trader A made a request to the submitter at Panel Bank 2 on 10 November 2006. The submitter responded positively to External Trader A "*of course we will put in a low fixing".*

- On 10 November 2006 External Trader A also contacted an External Trader at Panel Bank 2 saying, "*Dude, I need a very low fixing on the 1m Monday…we have the whole world against us…*".

- On 13 November 2006, which Manager B described as "*the big day*", Manager B and External Trader A engaged in the following conversation:

  Manager B: *"man, will you call [Panel Bank 2], please?"*

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

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

  External Trader A: "*of course not"*

  Manager B: *"I am beeeeeeeeeegging you"*

- Following that exchange on 13 November 2006, External Trader A passed requests to External Traders at Panel Bank 2 and Panel Bank 3 for a low one month submission. The External Traders at these Panel Banks agreed to act on those requests. External Trader A then followed up by reminding the submitter at Panel Bank 1. The submitter at Panel Bank 1 replied: "*no problem. I had not forgotten. The brokers are going for 3.372, we will put in 36 [3.36] for our contribution*" External Trader A sent Manager B a copy of Panel Bank 1's reply. Manager B replied: "*I love you*".

<u>Instances of collusion with other Panel Banks: JPY LIBOR</u>

4.42. At various times between September 2008 and July 2009, Derivatives Trader C colluded with External Trader B at Panel Bank 4 by making JPY LIBOR submissions which took into account requests made by External Trader B. Derivatives Trader C knew that in making requests to him, External Trader B was motivated by profit and seeking to benefit External Trader B's trading positions.

4.43. For example, the following Bloomberg exchange took place on 18 September 2008:

- External Trader B: "*you got any ax on 6m fix tonight?"*

Derivatives Trader C: *"absoluetly none but i can help"*

External Trader B: "*can you set low as a favour for me?"*

Derivatives Trader C: *"done"*

Following this request, Derivatives Trader C decreased his six month LIBOR submission by six basis points.

4.44. During June and July 2009, the collusion between Derivatives Trader C and External Trader B went beyond attempts to manipulate the JPY LIBOR submission for a single day and extended over a longer period. External Trader B needed a high six month LIBOR rate for the first two weeks of July 2009 and sought Derivative Trader C's assistance in a series of communications from 4 June 2009 onwards. Derivatives Trader C was prepared to assist External Trader B on the basis that, in return, External Trader B would assist him in seeking to achieve a low six month JPY LIBOR rate from the second half of July 2009 for the benefit of Derivative Trader C's trading positions. External Trader B further incentivised Derivative Trader C by entering into a series of facilitation trades that would benefit Derivative Trader C's trading positions if the JPY LIBOR rate remained high until 17 July 2009 and fell thereafter.

4.45. On 26 June 2009, the following Bloomberg exchange took place:

- External Trader B: *basically i will help you in 2 weeks time … i am the saem way"*

  Derivatives Trader C: "*perfect"*

  External Trader B:*"but for the next 2weeks i really really need you to put 6m higfher" … "after that i need 6m to crash off … like you…but please move 6m up on monday"*

  Derivatives Trader C: *"understood"*

  External Trader B: *"thx … I need you in the panel on monday"*

  Derivatives Trader C: *"ok enough … cheers"*

  On 26 June 2009, Derivatives Trader C increased his six month LIBOR submission by 10 basis points to 0.65. On 29 June 2009, he increased his submission by a further six basis points to 0.71. Derivative Trader C submissions were consistent with the request until 8 July 2009.

<u>Instances of collusion with Broker Firms</u>

4.46. On occasions between January 2008 and July 2009, Derivatives Traders made requests to Broker Firms. They did this to attempt to influence the LIBOR submissions of other Panel Banks through information disseminated by the Broker Firms as part of market colour they provide to their clients.

4.47. For example, on 27 February 2008 Manager A received a message from Broker Firm 2 relating to USD LIBOR stating *"which direction do you want tom [tomorrow's] 1mth libor pushed?"* to which Manager A responds *"lower and 3mth higher".*

4.48. On 24 March 2009, Derivative Trader G contacted Broker Firm 3 and persuaded him to update the prediction he had circulated for the USD one month LIBOR setting with a lower number.

4.49. On 10 July 2009, Money Markets Trader A contacted Broker Firm 2 and while discussing three month JPY LIBOR asked "*any chance to get it lower or some resistance…"* The Broker responded *"ill try prob Monday can get it lower*".

PRINCIPLE 3 FACTS AND MATTERS

4.50. Principle 3 of the Authority's Principles for Businesses requires firms to take reasonable care to organise and control their affairs responsibly and effectively, with adequate risk management systems.

4.51. The Principle 3 Relevant Period is 1 January 2005 to 28 February 2013. Where more specific time periods are relevant to particular aspects of misconduct, these are specified below.

4.52. The facts and matters resulting in breaches of Principle 3 arise from two separate issues, each of which is detailed in turn below:

- Lack of systems and controls in relation to IBOR submissions;
- Inadequate systems and controls around Trader misconduct.

Lack of systems and controls in relation to IBOR submissions

4.53. Although between January 2005 and June 2011, Deutsche Bank had in place general policies and procedures concerning compliance standards which required, amongst other things, staff to act with integrity, it had no IBOR-specific systems and controls in place. This failure to have any IBOR-specific systems and controls in place comprises the key Principle 3 breach by Deutsche Bank.

4.54. No records were kept of which individuals submitted IBOR rates. Duties to make IBOR submissions on behalf of Deutsche Bank were nominally assigned to specific individuals by Manager A but responsibilities for submissions were often then informally sub-delegated without proper record keeping. Furthermore, no records were kept regarding the rationale behind the rates submitted.

4.55. Submitters received no formal training on the LIBOR or EURIBOR submission processes. There were no systems and controls to ensure Submitters had received and understood the Terms of Reference or Guidance published on LIBOR by the BBA or the EURIBOR Code of Conduct.

4.56. Deutsche Bank failed to recognise the conflict of interest inherent in the same group of Traders submitting IBOR rates on the one hand, and trading derivatives directly impacted by those IBOR rates on the other. Rather, this inherent conflict was aggravated by the way in which the business was run. In particular:

- Submitters were permitted to trade derivatives, not only for hedging purposes, but also to profit from movements in IBOR rates.

- Money Market Traders, Derivative Traders and Submitters worldwide were encouraged to share market information on a daily basis without consideration of any actual or potential conflict of interest. In London, they were placed next to one another on the trading floor.

- In some instances the Derivatives Trader and Submitter were the same person. The two individuals responsible for Deutsche Bank's JPY LIBOR submissions between 2006 and November 2009 were primarily JPY Derivative Traders.

4.57. From no later than April 2008 Deutsche Bank was put on notice of the risk of Trader manipulation arising out of the IBOR submission processes. Deutsche Bank failed to respond to this risk by either introducing systems and controls or instituting a formal audit of the processes in order to assess what systems and controls were required. Although at the time the BBA may have considered that money market traders were well placed to set LIBOR this did not absolve Deutsche Bank of the obligation to identify and manage the risks associated with such an arrangement.

4.58. There were a number of clear messages to Deutsche Bank of the risk arising from its IBOR submissions. For example:

- Senior Manager A attended a meeting of the BBA Board on 16 April 2008 at which both lowballing of LIBOR submissions and potential trader manipulation of LIBOR were discussed. A former trader at the meeting claimed that traders procured LIBOR submissions to suit their trading positions.

- Also on 16 April 2008, the risk of trader manipulation was mentioned in a Wall Street Journal article entitled "*Bankers Cast Doubt on Key Rate amid Crisis*". The article was read and discussed by at least one Senior Manager.

- Concerns were raised by regulators in 2010 regarding USD LIBOR.

- On 18 August 2010, Deutsche Bank's internal annual compliance risk assessment explicitly identified an ongoing risk of Trader manipulation.

4.59. In November 2007 and September 2009 the EURIBOR Steering Committee wrote to all EURIBOR Panel Banks to emphasise the need for adequate systems and controls and accurate submissions in relation to EURIBOR. Furthermore, in July 2009, the BBA circulated revised Terms of Reference on LIBOR submissions to all panel banks and in November 2009 circulated additional guidelines for making LIBOR submissions. The latter included a requirement for Panel Banks to audit their submission procedures. This correspondence and these publications should have prompted Deutsche Bank to review its LIBOR submission process in order to ensure that it satisfied the Terms of Reference and was in line with the Guidance.

4.60. From as early as 2006, Senior Manager B was aware of traders making request to submitters to manipulate Deutsche Bank's IBOR submissions.

4.61. Senior Manager B sought personally on one occasion to improperly influence LIBOR submissions. On 4 October 2007, in response to rumours in the market that another large European bank was "struggling for finance", he instructed Manager A by email to "Make sure our libors are on the low side for all ccys [currencies]". The evidence does not support a finding that this instruction was followed.

4.62. From September 2010 at the latest Senior Managers B and C were on notice that a trader at another bank had sought to influence LIBOR submissions and that at least one of their own traders found this acceptable. On 9 September 2010, an FX Forwards Trader emailed Senior Managers B and C and three Managers regarding External Trader B who had been dismissed from another Panel Bank for alleged IBOR misconduct. The FX Forwards Trader wrote "of course [External Trader B] requested that submissions be favourable to his position [but his employer] evidently took a hard line with him for some reason”.

4.63. Notwithstanding his knowledge of IBOR misconduct Senior Manager B denied in internal and external conversations that there was any possibility of improper influence over LIBOR submissions. On 17 April 2008, Senior Manager B – having been told of the BBA discussion the previous day – responded to the BBA that the suggestion traders “are manipulating [LIBOR] to make P&L is so far from factual” and that “people do not collude, banks do not collude to try and set a LIBOR rating”. As late as 15 November 2010, Senior Manager B insisted to Compliance Officer A that nobody other than the Submitter himself would be interested in Deutsche Bank’s LIBOR submissions.

4.64. This is reflected in the approach of Deutsche Bank Compliance to IBOR related systems and controls. On 25 October 2010, the supervisor of Compliance Officer A told Compliance Officer A that as the Authority were looking into LIBOR systems and controls he wanted a formal review of those systems and controls across multiple currencies. Compliance Officer A commented a few days later to another employee that if the review proceeded “the business is going to go completely mental” and that the idea was “crazy”. No review took place until five months later.

4.65. In addition Deutsche Bank failed to respond effectively to other warning signs regarding the conduct of traders on the MMD desk. On 18 February 2010, Deutsche Bank’s forensic audit function submitted to the Management Board a formal report into aspects of the operation of the MMD desk unrelated to IBOR which also mentioned cultural and conduct issues, some involving Derivatives Trader A and Manager B. The concerns in the report about trader behaviour did not result in any increased scrutiny of their trading practices.

4.66. In March 2011, prompted by the Authority’s request for an attestation regarding its IBOR-specific systems and controls, Deutsche Bank initiated a limited desk review of IBOR systems and controls. However, the review was conducted by a junior member of staff under the supervision of Compliance Officer A and, despite being completed during May 2011, it was never distributed.

4.67. Only after evidence of Trader manipulation of LIBOR submissions within Deutsche Bank had been discovered in May 2011 did Deutsche Bank begin the process of introducing formal systems and controls into its IBOR submission processes. Deutsche Bank began to take steps from June 2011 to introduce specific LIBOR systems and controls, but it was not until February 2013 that systems and controls fully addressing the inherent conflict of interest between Traders and Submitters were in place.

Inadequate systems and controls around Trader misconduct

4.68. During the investigation, other systems and controls failings that related not only to IBOR misconduct but more widely to supporting the audit and investigation of all types of Trader misconduct came to light.

4.69. The first of these concerned Deutsche Bank's tape recording system used to record Traders' telephone calls ("the Trader Audio System"). The second concerned Deutsche Bank's systems for identifying which Traders were responsible for particular trading activity.

Inadequate Trader Audio System

4.70. The Trader Audio System was used by Deutsche Bank from 2007 onwards. It was not fit for purpose because it did not allow Deutsche Bank to identify and recover within a reasonable time the audio recordings it had in its possession for any given Trader. Neither did Deutsche Bank know, at any given time, how much audio it possessed in relation to a particular Trader.

4.71. The Trader Audio System worked by allocating each Trader to a random recording device at the time the Trader logged on to his telephone line. This meant that the system recorded the telephone calls of a single Trader on to many different digital audio tapes ("DAT Tapes") and that each DAT Tape contained recordings of many different Traders.

4.72. In order to find a particular call, it was necessary to cross-reference detailed preservation spreadsheets with the DAT Tape inventory. This process was suitable for the purpose of extracting particular conversations, for example to resolve disputes about trading instructions, but it was unsuitable for the purpose of scrutinising potential misconduct by individual Traders over a period of time, whether in the context of internal enquiries or investigations, or in the context of formal regulatory investigations. In this context, the manual spreadsheet and tape inventory analysis required was extremely time consuming.

4.73. For example, Deutsche Bank has estimated that to identify and retrieve all calls for a single Trader for a single month using the standard retrieval process would take 105 hours of machine time. In the event of a much more wide-ranging regulatory request, retrieval using the standard retrieval process could take years to complete.

4.74. The inadequacies of the Trader Audio System caused significant problems for Deutsche Bank in identifying and retrieving audio recordings of relevance during the Authority's investigation of its IBOR submissions. Audio recordings for a large number of individuals over a significant period of time were requested by the Authority. Due to the short-comings of the system, retrieval of the required audio recordings took far longer than was reasonable. For example, Deutsche Bank took over two years to identify and produce all relevant audio recordings that had first been requested by the Authority in December 2012. Furthermore, this would have taken even longer had Deutsche Bank not, at a late stage, abandoned the standard retrieval system in favour of a much more intensive and bespoke 'power retrieval' process.

Inadequate mapping of trading books to Traders

4.75. The second subsidiary system and control failing found during the Authority's investigation concerned Deutsche Bank's systems for identifying which traders were responsible for particular trading activity. There was no system for mapping trading books to the Traders responsible for managing the books. Nor was there a system for recording or identifying which Trader was responsible for each individual trade.

4.76. The systems for recording trading data at Deutsche Bank were designed with the aim of understanding the risk and return of the trading books, but were inadequately designed for the purpose of scrutinising the conduct of individual Traders, whether this was in the context of an internal investigation or external regulatory investigations. As was the case in relation to the Trader Audio System, scrutiny of an individual Trader's conduct required an intensive and time-consuming manual process of reconciliation.

4.77. In the context of the Authority's IBOR investigation, it was necessary to know which Traders were responsible for particular trading books and particular trades. Deutsche Bank was ultimately able to provide this information but, due to the systemic flaw in the relevant systems and controls, failed to provide it in a timely manner.

PRINCIPLE 11 FACTS AND MATTERS

4.78. Principle 11 of the Authority's Principles for Businesses requires firms to deal with their regulators in an open and cooperative way, and to disclose to the appropriate regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice.

4.79. The Principle 11 Relevant Period is 4 February 2011 to 31 May 2014. Where more specific time periods are relevant to particular failings, these are provided below.

4.80. The facts and matters resulting in breaches of Principle 11 arise from three separate issues, each of which is detailed in turn below:

- Failure to provide information and inaccurate and misleading statements to the Authority
- False attestation to the Authority
- Failures during the course of the Authority's investigation

Failure to provide information and providing inaccurate and misleading statements to the Authority

4.81. In 2012, the BaFin commissioned a third party review relating to Deutsche Bank's IBOR misconduct. This review was completed in 2013 and a report was produced detailing the results of the review ("the Report").

4.82. The BaFin provided the Report to Deutsche Bank in August 2013, along with a detailed covering letter and other documents arising from associated reviews of Deutsche Bank in relation to IBOR matters ("the Other Materials"). The Report and the Other Materials contained certain criticisms of Deutsche Bank. The Bank did not agree with some of these criticisms.

4.83. Senior Manager E in Deutsche Bank's London office had, at around this time, informed the Authority that receipt of the Report was imminent. In response, the Authority requested a copy of the Report or details of its findings when available, subject to the BaFin's permission.

4.84. Following Deutsche Bank's review of the Report and Other Materials, Senior Management was concerned to maintain confidentiality. They wanted to restrict the immediate circulation of the Report and Other Materials. Insofar as this could not be achieved, they preferred the BaFin to provide the documents to external parties rather than do so themselves. Deutsche Bank therefore sought advice on their notification obligations to the Authority. At the end of August 2013, Deutsche Bank's legal advisers advised that failure to disclose the existence and key conclusions of the Report and Other Materials to the Authority would likely be considered by the Authority a breach of Principle 11.

4.85. Senior Manager F attended a meeting with senior representatives of the BaFin in early September 2013 ("the September Meeting"), and among other topics raised Deutsche Bank's concerns regarding disclosure of the Report and Other Materials. The BaFin gave no indication that it in any way disapproved of or restricted disclosure of the Report to the Authority by Deutsche Bank.

4.86. Following the September Meeting, Senior Manager F provided a debrief by telephone to Senior Manager G. Deutsche Bank prepared a speaking note on 6 September 2013 for the purpose of telephoning *inter alia* the Authority regarding disclosure of the Report and Other Materials ("the Speaking Note"). The Speaking Note stated as follows:

> *....the* BaFin *has explicitly stated to DB that it would not approve of DB sharing either copies or details of the contents of the aforementioned documents* [including the Report] *with foreign regulators at this stage.*

4.87. Also on 6 September 2013, Senior Manager F, who had attended the September Meeting on behalf of Deutsche Bank, de-briefed a Manager within Deutsche Bank Legal, Legal Manager A. Legal Manager A drafted a note of the September Meeting ("the Attendance Note") which was ambiguous but could also be interpreted to indicate that the BaFin had prohibited disclosure of the Report and Other Materials by Deutsche Bank to the Authority. The Attendance Note was Deutsche Bank's only note of the September Meeting.

4.88. However, on 10 September, a member of the Deutsche Bank Legal team explained in an email to Deutsche Bank Legal Managers that "*subject to the* [Management] *Board agreeing, we would likely inform the other regulators about receipt of the* [Report and the Other Materials] *but only be prepared to share the* [Report]". Further, papers sent to the Management Board for a Management Board Meeting on 10 September included a slide stating that disclosure of the Report to the Authority "*may be acceptable for the BaFin"*

4.89. Despite this, on 13 September, the Authority's Enforcement and Financial Crime Division was updated on the basis of the Speaking Note. This misleading message was substantially repeated in a call from Senior Manager E to the Authority's Supervision Department on 16 September.

4.90. It was again repeated in an email sent on behalf of Deutsche Bank to the Authority on 16 September which was also based on the Speaking Note and stated as follows:

> *DB received several documents from the* BaFin *in August 2013 including* [the Report]*… The* BaFin *has indicated to DB that it would not approve of DB sharing either copies or details of the contents of the documents referred to above with foreign regulators at this stage. In these circumstances, the Bank feels that it has no option but to defer to the* BaFin's *wishes. As discussed, if you would like further information, we would therefore ask that you speak directly with your contacts at the BaFin."*

4.91. The information given to the Authority in the telephone calls of 13 and 16 September, and the email of 16 September, was inaccurate and misleading. The BaFin had not placed any prohibition or restriction on Deutsche Bank disclosing the Report to the Authority.

4.92. Senior Manager G had authorised these communications to be delivered to the Authority even after the phrase in the email of 16 September "*no option but to defer to the BaFin's wishes [that the Report not be disclosed to foreign regulators]*" had been explicitly queried with Deutsche Bank by legal advisers.

4.93. On 27 September, the Authority was informed for the first time by the BaFin that it had not prohibited disclosure of the Report or given any indication to Deutsche Bank that provision of the Report to the Authority was restricted.

4.94. On 30 January 2014, the Authority's Enforcement team dealing with the investigation of IBOR misconduct extended the scope of its investigation to include Principle 11 issues. A few days later, Senior Manager H spoke to the Authority's Director of Enforcement to suggest that the Authority's investigation into the Bank's non-disclosure of the Report was not necessary or appropriate, and represented that Deutsche Bank's Attendance Note of the September Meeting substantiating its position on non-disclosure was precise, contemporaneous and reliable. His suggestion was not accepted.

4.95. Following his telephone call with the Director of Enforcement, Senior Manager H discovered that his representations concerning the Attendance Note may have been misleading. However, he took no steps to contact the Authority to correct or qualify them.

4.96. The representations were misleading in that the Attendance Note was not precise, contemporaneous or reliable and had been drafted two days after the September meeting by Legal Manager A who had not been present.

False attestation to the Authority

4.97. On 4 February 2011, Deutsche Bank received a request from the Authority for an attestation as to the adequacy of the systems and controls in place for its LIBOR submissions. This attestation was requested of all banks that contributed to the LIBOR setting process due to the widespread concerns in relation to LIBOR at this time and the need for banks to ensure the integrity of their LIBOR submissions.

4.98. This had been preceded, in December 2010, by a request by the BBA for all Panel Banks to confirm that an audit of the LIBOR submissions process had been carried out. On 12 January 2011, Compliance Officer A signed and submitted the confirmation to the BBA which stated that Deutsche Bank's LIBOR submissions had been audited. However, this was false. There had been no audit of controls in relation to LIBOR. A narrower review by external counsel into USD LIBOR only had started but was not yet complete. In email correspondence from Compliance Officer A, the BBA confirmation was referred to as "*an arse-covering exercise* [by the BBA]"

4.99. Prior to the date of the Authority's request for an attestation, the possibility of manipulation of LIBOR submissions in order to benefit trader positions was a known risk within Deutsche Bank.

4.100. The deadline given for Deutsche Bank's attestation to the Authority was 18 March 2011. The attestation request stated:

> *Should the current arrangements not be considered wholly adequate, please provide reasons for this and what plans are in place in order to address the identified issues.*

4.101. The attestation request was addressed to Senior Manager I. Compliance Officer A took the lead on preparing the attestation.

4.102. Following receipt of the request, Compliance Officer A undertook some investigations around systems and controls relating to Deutsche Bank's LIBOR submissions. For example, Compliance Officer A looked at communication monitoring, and details of the LIBOR submissions process. Through this work, Compliance Officer A was informed that there were no LIBOR-specific systems and controls designed to ensure the integrity of Deutsche Bank's LIBOR submissions and, in particular, that Deutsche Bank's communication monitoring was focussed on other market conduct issues and would not capture LIBOR-related "buzz words".

4.103. Compliance Officer A also enquired for how many currencies Deutsche Bank made LIBOR submissions. During a conference call of 7 February 2011 he had stated that he had "*absolutely no idea*". On 15 March, three days before the deadline to submit the attestation, he was informed by Manager A that Deutsche Bank made LIBOR submissions for ten currencies.

4.104. A draft attestation from Deutsche Bank was provided by Compliance Officer A to Senior Managers, who approved it. One of those, Senior Manager I, to whom the attestation request had been addressed, signed it.

4.105. On 18 March 2011, the signed document ("the Attestation") was sent to the Authority. It included the following crucial paragraphs:

> *In response to the* [Authority's] *letter of 4 February 2011, the Compliance department have conducted spot checks on a random sample of LIBOR submissions across a number* [of] *currencies. In addition DB monitors all email and instant messaging communications of all front office staff. The focus of this surveillance is DB's market conduct, such that key words and phrases within the monitoring tool are designed to flag potential market conduct issues. Any potential issues can be escalated and investigated as necessary.*
>
> *In light of the above, I consider, together with the senior management* [names of Senior Manager B and Senior Manager C provided]*…. that DB currently has adequate systems and controls in place for the determination and submission of DB's LIBOR fixings.*

4.106. These paragraphs were false in the following respects, all of which were known at the time to Compliance Officer A:

(i) Deutsche Bank did not have adequate systems and controls in place. There was no specific desk procedure governing LIBOR submissions and Deutsche Bank was yet to devise a response to the BBA Terms of Reference published in July 2009.

(ii) There had been no spot checks carried out on LIBOR submissions. The first of these were not completed until at least five days after the attestation was sent to the Authority.

(iii) Deutsche Bank's monitoring of communications of front office staff did not include any LIBOR-specific terms. In particular, there were no exact matches between the lexicon used in Deutsche Bank's internal IBOR investigation and the lexicon used to monitor front-office communications.

4.107. The two Senior Managers named in the attestation, plus Senior Manager I who signed it, failed to take sufficient interest in the Authority's request for the attestation or its content. The task of preparing the attestation was delegated to Compliance Officer A with minimal Senior Management oversight. Both Senior Managers named in the attestation approved the final draft. Senior Manager I made minor changes but took no independent steps to verify the accuracy of the information provided.

4.108. In June 2011, Deutsche Bank began a period of intensive scrutiny of the shortcomings of Deutsche Bank's LIBOR systems and controls with the creation of a LIBOR steering committee which included senior representatives of Deutsche Bank Compliance and Audit. This resulted in a major overhaul of those systems and controls. Although updates as to Deutsche Bank's subsequent enhancements to IBOR-specific controls were provided to the Authority, at no stage did Deutsche Bank explicitly correct the false information it had provided in the Attestation.

Failures during the course of the Authority's investigation

4.109. The Authority's investigation of Deutsche Bank commenced on 1 May 2012. The scope of the investigation was for the period 1 January 2005 to 31 December 2010.

4.110. During the course of the Authority's investigation Deutsche Bank failed to deal appropriately with information relevant to the investigation in the following respects:

- Failure to give accurate information to the Authority regarding audio recordings;
- Failure to produce documents in an appropriate timeframe;
- Destruction of documents subject to the Authority's preservation notice.

4.111. The facts and matters relating to each of these failings are detailed in turn below.

<u>Failure to give accurate information to the Authority regarding audio recordings</u>

4.112. During the course of the investigation, it was necessary for the Authority to obtain and review a significant amount of evidence from Deutsche Bank. An important source of evidence required by the Authority was audio recordings of telephone calls, for example, those taking place amongst Derivative Traders and Submitters. Deutsche Bank repeatedly failed to treat with sufficient care the accuracy, completeness and promptness of the information, documents and explanations provided to the Authority.

4.113. On 4 May 2011, the FSA issued Deutsche Bank with a preservation notice including all recorded telephone calls for individuals making LIBOR submissions or who traded derivatives linked to LIBOR. In a response dated June 2011, Deutsche Bank stated that its compliance department had issued an instruction to preserve communications "*from 1st December 2010 until further notice*".

4.114. The issue of available telephone calls was raised again, this time in the context of the Authority's formal investigation, in an information request to Deutsche Bank dated 8 August 2012 ("the August Request") which sought relevant calls of specified custodians. In its response of 10 August 2012, Deutsche Bank stated that the availability of these calls was "*subject to*" the retention requirements of the various jurisdictions. It went on to say that recordings for London custodians existed from December 2010 onwards and for Frankfurt custodians from January 2011 onwards.

4.115. However, as a result of systems failures together with Deutsche Bank's failure to consult adequately with key technical personnel, the statements made regarding the existence of audio recordings were inaccurate and misleading:

(i) There were several thousand audio recordings for UK custodians dating back as far as 2007, preserved as a result of other litigation holds, of which around 3,500 were potentially relevant to the Authority's investigation;

(ii) At least one of those litigation holds, which ensured the preservation of telephone calls of three key LIBOR custodians back to January 2010, had been ordered by Compliance specifically because they may be needed for ongoing LIBOR enquiries;

(iii) Audio recordings were available for Frankfurt custodians from 2008 onwards.

4.116. These inaccurate and misleading statements were compounded by further inaccuracies linked to the August Request:

(i) The Authority had sent a draft copy of the 8 August request for comment by Deutsche Bank at the end of July 2012. In a response of 2 August 2012, Deutsche Bank suggested that as relevant audio prior to December 2010 had all been deleted, the request should be revised to seek only telephone calls from that date onwards.

(ii) Given the supposed deletion of relevant audio the Authority asked whether it was possible to recover deleted audio files. On 31 August 2012, Deutsche Bank answered the Authority's question but failed to point out that the weekly destructions of audio recordings described in the process document attached to its response had been suspended since 2009.

Failure to produce documents in an appropriate timeframe

4.117. As noted above, it was necessary for the Authority to obtain and review a significant amount of documentation from Deutsche Bank during the investigation. Such production would necessarily require Deutsche Bank to employ significant internal and external resource and would take a long time. However, document collection and production was not achieved to the standard or in the timeframe expected during the investigation, and there were two particular issues that arose in relation to document production that were unacceptable.

4.118. Firstly, Deutsche Bank did not discover or review trader communications from a relevant trading platform with a communications function until over two years into the Authority's investigation. As with audio recordings, this was a result of systems failures together with Deutsche Bank's failure to consult adequately with key technical personnel. As a result, in August 2012, Deutsche Bank misinformed the Authority that all electronic communications of relevant custodians had been identified. This was discovered by Deutsche Bank and reported to the Authority in July 2013, although this was following the Authority's interview of an individual who explained the relevance of the platform. Following review, it was found that this communication platform did contain documents highly relevant to the Authority's investigation..

4.119. Secondly, Deutsche Bank's provision of certain other relevant electronic communications to the Authority was unacceptably slow. This was most striking in USD, given that the Bank had devoted considerable resources to retrieving communications relating to USD LIBOR since the spring of 2010.

4.120. As a result the Authority interviewed Derivative Trader A without key documents. Furthermore, notable documents concerning Derivative Trader A were provided to Derivative Trader A's solicitor three months prior to the same documents being provided to the Authority.

Destruction of documents contrary to the Authority's preservation notice

4.121. The Authority sent Deutsche Bank a preservation notice on 4 May 2011. In July 2012, Deutsche Bank destroyed 482 tapes of telephone calls which fell within the scope of the Authority's preservation notice without realising this was the case.

5. FAILINGS

5.1. The breaches of the Authority's Principles arising from the facts and matters described at Section D above are detailed below as follows:

Paragraphs 5.2 to 5.5	Principle 5 Failings
Paragraphs 5.6 to 5.15	Principle 3 Failings
Paragraphs 5.16 to 5.30	Principle 11 Failings

PRINCIPLE 5 FAILINGS

5.2. The facts and matters relevant to Principle 5, as detailed at paragraphs 4.2 to 4.49 above, give rise to a breach of Principle 5.

5.3. The misconduct resulting in this breach persisted over at least 6 years, involved routine behaviour that sought to manipulate IBOR rates and also involved collusion with external parties and trading activities to impact the IBOR submissions of other Panel Banks. The routine attempts to manipulate EURIBOR both within and outside Deutsche Bank, using a three pronged approach to maximise impact, is particularly serious.

5.4. It is also notable that a number of Managers were central to this misconduct. In particular, Manager B was aware of improper requests across most of the currencies referred to in this Notice; in addition he routinely made requests both internally at Deutsche Bank and externally to other Panel Banks as set out above. Manager A was aware of, and received, improper requests from USD Derivatives Traders; in addition he solicited requests from USD Derivatives Traders. Furthermore, Managers A and B reported into Senior Manager B who was also aware of the improper requests.

5.5. This type of misconduct was widespread in the investment banking industry and undermined confidence in the UK financial systems. The long duration and wide scope of the misconduct at Deutsche Bank, and the fact that Managers at Deutsche Bank were central to the misconduct, makes this breach by Deutsche Bank extremely serious and illustrates a culture within GFFX which was intent on generating profits without proper regard to the wider integrity of the market.

PRINCIPLE 3 FAILINGS

5.6. Each set of facts and matters relevant to Principle 3, as detailed at paragraphs 4.50 to 4.77 above, independently gives rise to a breach of Principle 3. In each instance, Deutsche Bank failed to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

Lack of systems and controls in relation to IBOR submissions

5.7. The lack of systems and controls, policies or formal training in respect of IBOR submissions constituted a serious failure on the part of Deutsche Bank to organise and control its affairs responsibly and effectively, and to manage risks adequately.

5.8. Of particular note is the failure to recognise, manage or mitigate the conflict of interest inherent in a single group of Traders making IBOR submissions (or working closely with Submitters) on the one hand and trading derivatives directly impacted by IBOR settings on the other. This accentuated these risks. A Manager in Deutsche Bank Compliance stated in interview with the Authority that "*of course* [this was an] *inherent conflict of interest*".

5.9. Managers and Senior Managers within Global Markets, insofar as they were focused on conduct risks, prioritised those which impacted the Bank's revenues or reputation. There was insufficient consideration of risks which might affect the integrity of the market more widely. On the contrary, warning signs of the risk of Trader manipulation were ignored.

5.10. These facts exemplify a culture within Global Markets which either fostered, or failed to search for and root out, systemic deficiencies and conduct risks.

5.11. Systems and controls around IBOR submissions were only introduced once evidence of Trader misconduct at Deutsche Bank was discovered. The failure to take action until Deutsche Bank identified Trader misconduct demonstrated a reactive approach that failed to identify and manage the clear conflict of interest risk inherent in the structure of the business and the warning signs of potential misconduct.

Inadequate systems and controls around Trader misconduct

5.12. The failure of the audio and trader mapping systems is further evidence of the low prioritisation at Deutsche Bank of processes designed to scrutinise and control trader misconduct.

5.13. The lack of appropriate systems to retrieve recorded Trader telephone calls and to map trading books and trades constituted a serious failure on the part of Deutsche Bank to organise and control its affairs responsibly and effectively, and to manage risks adequately.

5.14. These failings demonstrate that there was a lack of appreciation within Deutsche Bank of the need to ensure systems are suitable for risk management and compliance purposes, enabling appropriate and timely investigations of potential Trader misconduct. The shortcomings of these particular systems came to light during the course of the Authority's investigation, but these systems issues would have been equally problematic in relation to any internal or regulatory agency enquiries or investigations concerning the possible misconduct of individual Traders.

5.15. The inadequacies of the systems made the process of investigating the issues relating to IBOR submissions more difficult and time consuming than it should have been. While these issues were eventually resolved insofar as they affected the Authority's investigation, the failures of these systems would, for example, have posed particular risks in a situation where there was a need to urgently investigate ongoing potential misconduct.

PRINCIPLE 11 FAILINGS

5.16. Each set of facts and matters relevant to Principle 11, as detailed at paragraphs 4.78 to 4.121 above, independently gives rise to a breach of Principle 11. In each instance, Deutsche Bank failed to deal with the Authority in an open and cooperative way, and to disclose to the Authority information relating to Deutsche Bank of which the Authority would reasonably expect notice.

5.17. These Principle 11 failings are particularly serious because they involve the Authority being given important information that was inaccurate, misleading, and in one instance known to be false at the time by the person who drafted the Attestation. Furthermore, the breaches involve Managers and Senior Managers and this accentuates the overall seriousness of the conduct.

Failure to provide information and inaccurate and misleading statements to the Authority

5.18. The Report was relevant to the Authority's investigation of Deutsche Bank in relation to IBOR and it was critical of Deutsche Bank. It should have been disclosed to the

Authority soon after its receipt. The Authority had specifically requested provision of the Report, although in any event, the disclosure should have been made pro-actively by Deutsche Bank to the Authority. Deutsche Bank's failure to disclose the Report is a clear and serious breach of Principle 11 in that it failed to disclose appropriately to the Authority a document of which the Authority would reasonably expect notice.

5.19. However, the most egregious aspect of this Principle 11 breach is the inaccurate and misleading statements made to the Authority that the BaFin had restricted disclosure of the Report, and that Deutsche Bank had no option but to comply with the BaFin. In this respect, Deutsche Bank failed to deal with the Authority in an open and cooperative way.

5.20. The Authority considers the making of such statements by Deutsche Bank to have been reckless. The seniority of the individuals dealing with and responsible for this issue is particularly concerning.

5.21. The seriousness of this Principle 11 breach is further compounded by the telephone call from Senior Manager H to the Director of Enforcement seeking to persuade the Authority to reconsider this aspect of its investigation on a false premise, even though this had no actual effect on the progress of the investigation. Furthermore, the fact that Senior Manager H then discovered that the representations made may have been misleading, but failed to take any action to correct what had been said to the Director of Enforcement, indicates that Senior Manager H closed his mind to the potential consequences of misleading the Authority in a manner that the Authority considers was reckless.

False attestation to the Authority

5.22. The Attestation requested by the Authority reflected the widespread focus on the integrity of LIBOR submissions at the time. It should have been a priority for Deutsche Bank to properly check the systems and controls around its LIBOR submissions and respond to the attestation request appropriately. This is especially so given that at the time of providing the Attestation, Deutsche Bank was on notice of the possibility of manipulation of LIBOR submissions in order to benefit Derivative Traders' positions. Deutsche Bank's failure to deal appropriately with the Authority's request for an attestation is a clear breach of Principle 11 in that Deutsche Bank failed to deal with the Authority in an open and cooperative way.

5.23. Senior Manager I fully delegated dealing with the attestation to Compliance Officer A and failed to carry out any independent checks on the information being sent to the Authority. The Attestation placed specific reliance on named Senior Managers being satisfied as to the systems and controls. Those Senior Managers had not given proper consideration to the Attestation being provided and allowed it to be sent to the Authority without sufficient scrutiny, even though it expressly relied on their personal approval of the systems and controls.

5.24. The false Attestation is particularly serious because Compliance Officer A knew that the attestation was false in all material respects at the time it was sent to the Authority.

5.25. This breach of Principle 11 is aggravated by the fact that Compliance Officer A had only two months previously signed a false confirmation to the BBA, on behalf of Deutsche Bank, in relation to LIBOR submissions. At the time he made the BBA confirmation, Compliance Officer A did not even know for how many currencies Deutsche Bank made LIBOR submissions. This attitude demonstrates a fundamental misunderstanding of the importance of the integrity of LIBOR and, moreover, the importance of providing an accurate confirmation to the BBA. Whilst the BBA is not a “regulator” for the purposes of Principle 11, Deutsche Bank’s prior false confirmation to the BBA is considered by the Authority to be a factor which seriously aggravates this aspect of the Principle 11 breach.

5.26. The false statements to the Authority and the BBA show that there were deficiencies in the attitude towards conduct risk within Global Markets. The relevant compliance personnel and Senior Managers involved in these matters failed to pay proper regard to the risks surrounding IBOR submissions and the importance of providing accurate information to the Authority and the BBA.

Failures during the course of the Authority’s investigation

5.27. The numerous failings that arose in relation to the collection and provision of information and documentation to the Authority during the investigation together amount to a further breach of Principle 11. Whilst these failings were non-deliberate, they still resulted in a failure to disclose appropriately to the Authority information and documentation that the Authority required.

5.28. These failures were serious because they caused significant delay to the Authority’s investigation and they risked compromising the results of the investigation. In addition, the failures impacted on and caused delay to other related investigations being conducted by the Authority.

5.29. The Authority has concluded that there was no intention on the part of Deutsche Bank to deliberately conceal documentation or information. However, Deutsche Bank's collection and provision of documents and information to the Authority was not of an acceptable standard. Insufficient enquiries were made of technical personnel in respect of the Trader audio and relevant communication platforms, accentuating the underlying systems failures. Deutsche Bank repeatedly failed to treat with sufficient care the accuracy, completeness and promptness of the information, documentation and explanations provided to the Authority.

5.30. In a matter of this scale, it is expected that mistakes will be made and there will be allowances for human error. However, the scale and seriousness of the failures to collect and provide documents by Deutsche Bank during this investigation are such that they together amount to a breach of Principle 11, especially in light of the significant delays to the investigation and difficulties that resulted.

6. SANCTION

6.1. The Authority's policy on the imposition of financial penalties and public censures is set out in DEPP. The detailed provisions of DEPP are set out at Annex A.

6.2. In determining the appropriate financial penalty, the Authority has had regard to the guidance in DEPP. The current penalty guidance is relevant to breaches that took place on or after 6 March 2010.

6.3. With regard to the breaches of Principle 5 and Principle 3, the majority of the misconduct took place before 6 March 2010 and the Authority has therefore considered the version of DEPP in existence prior to 6 March 2010.

6.4. With regard to the breaches of Principle 11, this misconduct all took place after 6 March 2010 and the Authority has therefore considered the current versions of DEPP in determining the appropriate penalty.

PRINCIPLE 5 AND PRINCIPLE 3 SANCTION

6.5. The Authority considers the following DEPP factors to be particularly important in assessing the Principle 5 and Principle 3 sanction.

Deterrence – DEPP 6.5.2G(1)

6.6. The principal purpose of 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 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 very significant fine on Deutsche Bank is appropriate.

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

6.7. Deutsche Bank's breaches were extremely serious. The IBOR misconduct took place over at least 6 years across a number of LIBOR currencies and EURIBOR. There was a culture where the manipulation of the IBOR submission processes was pervasive and was considered within GFFX to be part of normal business practice. The misconduct also extended to instances of collusion with external parties in order to improperly influence the IBOR rates of other Panel Banks. In particular, Deutsche Bank took a "three pronged" approach to the manipulation of EURIBOR in order to maximise its influence on this benchmark. This behaviour was motivated by profit. That certain Deutsche Bank Managers were central to the IBOR misconduct further accentuates the seriousness of the breach.

6.8. Deutsche Bank's complete failure to have any IBOR-specific systems and controls in place was a serious systemic weakness in its systems and controls. The failure of Deutsche Bank to take action to put in place appropriate systems and controls, especially considering that it was on notice of the risk of Trader manipulation, represents a serious breach of Principle 3. In addition to this, Deutsche Bank's systems for recovering trader telephone calls and mapping trading books were inadequate to enable it to scrutinise and investigate Trader misconduct effectively.

6.9. Deutsche Bank's failings undermined the integrity of benchmark rates which are of fundamental importance to the UK and international financial markets. These failings risked widespread harm to other market participants who held investments related to IBOR.

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

6.10. The Authority does not conclude that Deutsche Bank as a firm engaged in deliberate misconduct. Nevertheless, the misconduct of Deutsche Bank's employees and Managers was at least reckless and often deliberate. Deutsche Bank's cultural shortcomings and systems and controls failings allowed this misconduct to persist over an extended period of time.

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

6.11. Deutsche Bank is a large, sophisticated and well-resourced financial services institution. Serious breaches by firms such as Deutsche Bank merit the highest penalties.

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

6.12. Deutsche Bank sought to manipulate LIBOR and EURIBOR submissions in order to improve the profitability of its trading positions. The Authority has not determined the amount of benefit gained.

Conduct following the breach – DEPP 6.5.2G(8)

6.13. The level of Deutsche Bank's cooperation has been considered in determining penalty and it is acknowledged that certain aspects of Deutsche Bank's conduct during the Authority's investigation are dealt with as part of the Principle 11 breach.

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

6.14. The FCA has previously issued two Final Notices against Deutsche Bank:

- The FCA issued a Final Notice dated 21 August 2014 to Deutsche Bank for breaches of the Supervision Manual rules in respect of Deutsche Bank's inaccurate reporting of CFD Equity Swaps. Deutsche Bank was fined £4,718,800 in respect of this breach.

- The FCA issued a Final Notice dated 10 April 2006 to Deutsche Bank for breaches of Principle 5 and Principle 2 (a firm must conduct its business with due skill, care and diligence) in respect of trading misconduct. Deutsche Bank was fined £6,363, 643 in respect of these breaches.

6.15. These previous Final Notices have limited impact on the penalty in this matter as there are no direct similarities between the breaches.

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

6.16. The Authority has issued Final Notices to five other Panel Banks in respect of misconduct similar to that of Deutsche Bank in relation to the Principle 5 and Principle 3 breaches. The Authority has considered Deutsche Bank's misconduct relative to other firms in determining penalty.

PRINCIPLE 11 SANCTION

6.17. The current version of DEPP is relevant to the sanction for the Principle 11 breaches. This requires the Authority to apply a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5.A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms and these are referred to below.

Step 1: Disgorgement

6.18. 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. The Authority has not identified any financial benefit that Deutsche Bank derived from its Principle 11 breaches.

6.19. The figure after Step 1 is therefore £0.

Step 2: The seriousness of the breach

6.20. 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 of its breach, the Step 2 figure will be based on a percentage of the firm's revenue from the relevant products or business area.

6.21. The Authority considers that the revenue generated by Deutsche Bank is not an appropriate indicator of the harm or potential harm caused by its breaches of Principle 11 and there is no alternative indicator of harm or potential harm. Pursuant to DEPP 6.5A.2G(13), the Authority has determined the appropriate Step 2 amount by taking into account those factors which are relevant to an assessment of the level of seriousness of the breaches.

6.22. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. The Authority considers the following factors to be relevant to the seriousness of Deutsche Bank's breach:

(i) Factors relating to the nature of the breach:

The requirement on firms to deal with their regulator openly and cooperatively is a central plank of the Authority's regulatory regime. Deutsche Bank did not act openly and cooperatively in a number of instances across at least a 3 year period, including during the course of the Authority's investigation of IBOR matters. False or inaccurate and misleading information was provided to the Authority on a number of occasions. Senior Managers at Deutsche Bank were involved in aspects of the misconduct amounting to Principle 11 breaches.

Overall, Deutsche Bank's attitude to its Principle 11 obligations was seriously deficient. Such an attitude undermines the effectiveness of the regulatory regime and, ultimately, poses a risk to the market.

(ii) Factors relevant to whether the breaches were reckless or deliberate:

One breach of Principle 11 involved the provision of information to the Authority which was known to be false (*i.e.* the false attestation regarding LIBOR systems and controls). Senior Managers were involved in this breach, and while they did not know that the information provided in the Attestation was false, they failed to take sufficient interest in the Attestation and did not test the accuracy of important information provided to the Authority. As a result, the Authority was given completely false information by the person dealing with the attestation.

Furthermore, the failure to disclose the Report and the inaccurate and misleading information given to the Authority in this regard was, in the Authority's view, reckless. The message conveyed to the Authority about the Report did not reflect the possibility that disclosure of the Report to the Authority "may be acceptable" to BaFin even though this was known to certain individuals within Deutsche Bank and the message to be given to the Authority had been queried by legal advisers. Deutsche Bank should have addressed this matter given the seniority of those involved and the fundamental importance of ensuring that accurate and complete information is provided to the Authority.

6.23. DEPP 6.5AG(11) lists factors that are likely to be considered "level 4 or 5 factors". Of these, the Authority considers the following factors to be relevant:

(i) The breach revealed serious weaknesses in Deutsche Bank's systems and controls; and

(ii) The breach involved the provision of information to the Authority that was known to be false, by the person who drafted the attestation, at the time it was provided.

6.24. Taking all of the above into account, the Authority considers the seriousness of the breach to be level 4. The Step 2 figure is £150,000,000.

Step 3: Mitigating and aggravating factors

6.25. 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.

6.26. The Authority has determined that there are no aggravating factors.

6.27. Notwithstanding the Principle 11 findings, in determining the appropriate level of penalty, the Authority acknowledges the good cooperation provided by Deutsche Bank during the investigation of the Principle 11 issues.

6.28. The figure after Step 3 is therefore £144,000,000.

Step 4: Adjustment for deterrence

6.29. 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.

6.30. The Authority considers that the Step 3 figure of £144,000,000 represents a sufficient deterrent to Deutsche Bank and other banks, and so has not increased the penalty at Step 4.

6.31. The figure after Step 4 is therefore £144,000,000.

Step 5: Settlement discount

6.32. 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.

6.33. The Authority and Deutsche Bank reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.

6.34. The figure after Step 5 is therefore £100,800,000.

Total sanction

6.35. The Authority therefore proposes to impose on Deutsche Bank a financial penalty in the sum of £226,800,000 comprising:

(i) a penalty of £126,000,000 relating to Deutsche Bank's breaches of Principles 5 and 3 (this penalty is reduced by 30% from £180,000,000 following settlement during Stage 1); and

(ii) a penalty of £100,800,000 relating to Deutsche Bank's breaches of Principle 11 (this penalty is reduced by 30% from £144,000,000 following settlement during Stage 1).

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 Deutsche Bank to the Authority by no later than 7 May 2015, 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 7 May 2015, the Authority may recover the outstanding amount as debt owed by Deutsche Bank 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, please contact Patrick Meaney (+44 (0)20 7066 7420) or Mike Prange (+44 (0)20 7066 1386) at the Authority.

Therese Chambers
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ANNEX A

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FCA GUIDANCE

1. STATUTORY PROVISIONS

1.1. The Authority'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. Deutsche Bank 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 Authority's rules made under Section 138 of the Act.

2. 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 Handbook").

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

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 Authority's Handbook. They derive their authority from the Authority's rule-making powers as set out in the Act and reflect the Authority'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.*"

Principle 5 provides:

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

Principle 11 provides:

"A firm must deal with its regulators in an open and co-operative way, and must disclose to the appropriate regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice."

Decision Procedure and Penalties Manual ("DEPP")

2.5. In respect of breaches which occurred before 6 March 2010, the relevant provisions of DEPP are as set out below.

2.6. 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*."

2.7. DEPP 6.5.2 sets out some of the factors that might 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 Authority;

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

(12) Authority guidance or other published materials; and

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

2.8. In respect of breaches which took place after 6 March 2010, the current version of DEPP can be found on the Authority's website.