

**Pursuant to the decision of the Upper Tribunal issued on [13 June 2023](#), this Decision Notice no longer applies and the Authority has decided to take no further action. The Upper Tribunal found that A did not act with a lack of integrity and rejected all of the Authority's findings to that effect.**



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## DECISION NOTICE

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To: **A**

Date of birth: **October 1958**

Date: **23 June 2021**

### **1. ACTION**

1.1. For the reasons given in this Notice, the Authority has decided to make an order prohibiting A from performing any function in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm, pursuant to section 56 of the Act.

### **2. SUMMARY OF REASONS**

2.1. The Authority considers that, between August and December 2010, A acted recklessly and with a lack of integrity in respect of his management and oversight of the relationship of the Julius Baer Group of companies ("Julius Baer") with the Yukos Group and with the Finder associated with the Yukos Group, Dmitri Merinson.

2.2. A was employed as the Regional Head for Latin America, Spain, Russia, Central and Eastern Europe and Israel at Bank Julius Baer & Co. Ltd. ("BJB") in Switzerland from January 2010 until March 2011. In that position, A had responsibility for the line management of B, Sub-Regional (Market) Head for Russia and Eastern Europe at BJB. B had responsibility for

functional line management of the Russia and Eastern European Desk at Julius Baer International Limited ("JBI"), a firm authorised by the Authority. A also sat on BJB's Executive Board from 2005 until July 2017, where he held the position of non-executive director.

- 2.3. The Russian and Eastern European Desk had dual reporting lines up to JBI's Management Committee and to B, as Sub-Regional (Market) Head. As Sub-Regional (Market) Head, B's direct reports included the JBI relationship manager, C, who had responsibility for the day-to-day conduct of Julius Baer's relationship with certain companies in the Yukos Group and with Mr Merinson, and who was employed as part of the Russian and Eastern European Desk.
- 2.4. In July 2010, Julius Baer entered into Finder's arrangements with Mr Merinson in which Julius Baer agreed to pay fees (known as 'Finder's fees') to Mr Merinson for introducing Yukos Group Companies to Julius Baer. Mr Merinson was an employee of the Yukos Group. Julius Baer entered into these arrangements on the understanding that, if Finder's fees were paid to Mr Merinson, Daniel Feldman, who was a director of various Yukos Group Companies, including the sole director of Yukos Capital, would ensure that the Yukos Group placed large cash sums with Julius Baer from which Julius Baer could generate significant revenues. Pursuant to these Finder's arrangements (which were initially agreed in July 2010 and amended in October 2010), Mr Merinson received three commission payments: in September 2010, December 2010 and February 2012. The rates of commission paid to Mr Merinson by Julius Baer were far in excess of the standard rates paid to individuals for introducing business to Julius Baer. In the course of the Finder's relationship, Julius Baer paid Mr Merinson commission of approximately USD 3 million.
- 2.5. A approved the First and Second Commission Payments in the knowledge that Julius Baer had entered into these Finder's arrangements with Mr Merinson and that Mr Merinson was an employee of the Yukos Group. He thereby approved the arrangements by which the commission was generated, which involved Julius Baer charging the Yukos Group Companies unusually high levels of commission for executing large foreign exchange ("FX") transactions. These FX transactions took place in August 2010 and November 2010 (a third FX transaction took place in August 2011 after A had left his position as the Regional Head). The majority of the commission generated was then transferred to Mr Merinson, on Mr

Feldman's instructions and in accordance with the Finder's arrangements approved by B and A, although Julius Baer also benefited significantly from the transactions. Although the Authority has not seen any evidence that A was aware at the time, in April 2011, JBI also facilitated Mr Merinson's transfer to Mr Feldman of half of the commission he received from BJB as a result of the first two FX transactions.

2.6. Notwithstanding the unusual nature of the arrangements and the significant revenues which Julius Baer stood to earn from them, A recklessly failed to have regard to the obvious risks arising from Julius Baer's relationship with Mr Merinson and Yukos and failed to take appropriate action in light of them. A, who was an experienced financial services professional, must have been aware of those risks, including the risk that in agreeing to the arrangements with Mr Merinson and in approving significant payments to Mr Merinson pursuant to those arrangements, Julius Baer might be facilitating or even participating in financial crime. It appears to the Authority that, had A objected to the arrangements or arranged for them to be properly investigated, it is unlikely that they would have proceeded. In particular:

(1) In August 2010, at a time when he was aware that Julius Baer had entered into Finder's arrangements with Mr Merinson in July 2010, A approved the First Commission Payment and thereby approved both those Finder's arrangements and the arrangements by which the commission was generated in the First FX Transaction. The First FX Transaction involved Julius Baer converting approximately GBP 271 million received from Yukos Capital into USD. The trading took place at rates 11 times Julius Baer's standard commission rate for FX transactions of this size, and resulted in commission totalling in excess of USD 2.3 million being charged to Yukos Capital; 80% of the commission was paid to Mr Merinson and the remaining 20% (approximately USD 469,000) was retained by Julius Baer. This constituted a return of 0.11%, which was itself more than double its standard commission on an FX transaction of this size. A gave his approval after he was made aware that C had sought approval (which was refused by BJB Legal) for a request by Mr Merinson that the First Commission Payment be referenced as "Investment Capital Gain", which should have caused A to recognise the risk that this was an attempt by Mr Merinson to disguise the true nature of the payment. In giving his

approval, A recklessly failed to have regard to the following obvious risks, of which he must have been aware:

- a. The risk that there was no proper commercial rationale for any payment to Mr Merinson or for a Finder's agreement with Mr Merinson, which related to the introduction of Yukos Capital to Julius Baer; and
  - b. The risk that the Finder's arrangements and the First FX Transaction involved a breach of both Mr Merinson's and Mr Feldman's duties to the relevant Yukos Group Companies, were not in the interests of those companies, and were made in order to facilitate the improper diversion of funds from Yukos Capital to Mr Merinson (and, because of the involvement of Mr Feldman, the sole director of Yukos Capital, in approving the Finder's arrangements and the First FX Transaction, potentially to Mr Feldman).
- (2) In October 2010, A approved amendments proposed by Mr Merinson and Mr Feldman to the original Finder's arrangements, under which Mr Merinson's Finder's fee was increased from 25% to 35% of net income generated by Julius Baer, and under which he was permitted to receive four additional 'one-off' payments, calculated as 70% of Julius Baer's commission on four large transactions, relating to new inflows of funds, to take place by October 2011. Only the increase in Mr Merinson's share of net income was documented. In return, among other things, Yukos' funds were to remain with Julius Baer for at least three years. There was no proper commercial rationale for these arrangements and, in approving them, A recklessly failed to have regard to the obvious risk, of which he must have been aware, that these arrangements were in breach of Mr Merinson's and Mr Feldman's duties to the relevant Yukos Group Companies, were not in the interests of those companies and were designed to divert funds improperly from the Yukos Group Companies to Mr Merinson (and potentially to Mr Feldman).
- (3) In November 2010, the Second FX Transaction was carried out, in which Julius Baer converted approximately USD 68 million of Yukos funds (which formed a portion of the funds converted into USD by the First FX Transaction) into EUR. The trading approach, which mirrored that adopted in the First FX Transaction and was agreed with Mr Feldman, involved a large

daily rate range and Fair Oaks (a Yukos Group company of which Mr Feldman was a director) paying just above the worst rate available in the market, so that the spread between that and the rate at which Julius Baer transacted would cover both the commission required by Julius Baer and a further commission payment which would be made to Mr Merinson as Finder. There was no proper commercial rationale for Yukos to adopt such an arrangement. The transaction took place at a rate approximately 30 times higher than Julius Baer's standard commission rate for transactions of this size, and resulted in commission in excess of USD 1 million being charged to Fair Oaks; 70% of this sum was paid to Mr Merinson, and the remaining 30% (approximately USD 320,000) was retained by Julius Baer and constituted a return of 0.47%. This was itself far in excess of Julius Baer's standard commission on an FX transaction of this size. A approved the Second Commission Payment and thereby approved the arrangements by which the commission was generated in the Second FX Transaction. In doing so, A recklessly failed to have regard to the obvious risk, of which he must have been aware, that the transaction formed part of an improper scheme to divert funds to Mr Merinson (and potentially to Mr Feldman) in breach of their duties to the relevant Yukos Group Companies.

- (4) In the event, before the Second Commission Payment was made, A became aware of concerns that had been raised about the Second FX Transaction by a senior manager in BJB Bahamas. In response to those concerns, A set B the task of putting in place an 'acceptable framework' for C and the bank to operate in and asked him to 'regularise pending issues', and did not make any further enquiry into the concerns which had been expressed. In the circumstances, A must have been aware that there was a risk that the arrangements with Mr Merinson were improper, yet he recklessly proceeded to confirm his approval of the Second Commission Payment, which was ultimately paid to Mr Merinson on 31 December 2010, before B had taken the actions that A had tasked him with.

2.7. As a result of the above, A was reckless and failed to act with integrity. As a consequence, the Authority considers that A is not fit and proper to perform any function in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm.

### **3. DEFINITIONS**

3.1. The definitions below are used in this Notice:

“the Act” means the Financial Services and Markets Act 2000;

“the Authority” means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

“BJB” means Bank Julius Baer & Co. Ltd., a company incorporated in Switzerland;

“BJB Bahamas” means Julius Baer Bank (Bahamas) Limited, a company incorporated in the Bahamas;

“the BJB Bahamas Senior Manager” means the senior manager at BJB Bahamas who raised concerns about the Second FX Transaction;

“BJB Compliance” means BJB’s compliance department and collectively members of that department, which was based in Switzerland;

“BJB Guernsey” means BJB’s Guernsey branch;

“BJB Legal” means BJB’s legal department and collectively members of that department, which was based in Switzerland;

“BJB Senior Manager A” means one of the senior managers at BJB;

“BJB Senior Manager B” means another of the senior managers at BJB;

“BJB Singapore” means BJB’s Singapore branch;

“BJB Switzerland” means BJB’s office in Zurich;

“Booking Centre” means an entity of the Julius Baer Group which had permission to provide clients with banking, dealing and custody services. The Julius Baer Booking Centres were all located in countries outside of the UK (including Switzerland, Guernsey, Bahamas, and Singapore);

“Commission Payments” means payments made to Mr Merinson by Julius Baer following the execution of the First FX Transaction, the Second FX Transaction and the Third FX Transaction;

“the First Commission Payment” means the payment made to Mr Merinson on or around 1 September 2010;

“the Second Commission Payment” means the payment made to Mr Merinson on 31 December 2010;

“the Third Commission Payment” means the payment made to Mr Merinson on 1 February 2012;

“Compliance” means BJB Compliance and/or JBI Compliance;

“Co-operation with Finders Policy” means BJB’s policy document titled “Cooperation with Finders” which was effective from 11 June 2010;

“CoY” means a derivate instrument combining a foreign exchange linked deposit with a currency option, with the aim of providing a higher yield or return than that available for a standard deposit. The foreign exchange linked deposit is higher risk than a normal deposit as it is exposed to foreign exchange rate movements;

“Fair Oaks” means Fair Oaks Trade and Investment Limited;

“Finder” means an external third party engaged by Julius Baer with the sole task of introducing potential clients to Julius Baer in return for commission, also referred to by Julius Baer as an introducer;

“FX” means forex or foreign exchange;

“FX Transactions” means the First FX Transaction, the Second FX Transaction and the Third FX Transaction;

“First FX Transaction” means collectively the series of FX transactions conducted by Julius Baer for Yukos Capital between 11 and 13 August 2010;

“Second FX Transaction” means collectively the series of FX transactions conducted by Julius Baer for Fair Oaks on 23 November 2010;

“Third FX Transaction” means the FX transaction converting EUR 7,000,000 into USD conducted by Julius Baer for Fair Oaks pursuant to an order placed on 15 August 2011;

“JBI” means Julius Baer International Limited;

“JBI Compliance” means JBI’s compliance department and collectively members of that department, based in London;

“the JBI Line Manager” means C’s line manager at JBI;

“the JBI Trader” means the trader at JBI who was involved in the FX Transactions;

“Julius Baer Group” or “Julius Baer” means the Julius Baer Group of companies which includes: BJB, BJB Bahamas, BJB Singapore, BJB Guernsey, BJB Switzerland and JBI;

“RDC” means the Regulatory Decisions Committee of the Authority (see further under Procedural Matters below);

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

“the Warning Notice” means the warning notice given to A dated 23 April 2020;

“Yukos”, “Yukos Group” or “Yukos Group Companies” means the Yukos group of companies which includes Yukos Capital, Yukos International, Yukos Hydrocarbons and Fair Oaks;

“Yukos Capital” means Yukos Capital S.a.R.L.;

“Yukos Hydrocarbons” means Yukos Hydrocarbons Investments Limited; and

“Yukos International” means Yukos International UK BV.



## **4. FACTS AND MATTERS**

### **Background**

#### ***JBI corporate structure***

- 4.1. JBI is a UK incorporated company and wholly owned subsidiary, together with BJB, of Julius Baer Group. The Julius Baer Group undertakes private banking and is based in Switzerland. JBI has been authorised since 2001 to provide investment advisory and management services, but it is not authorised as a bank in the UK. Consequently, JBI's clients are also clients of BJB and it is BJB which provides them with custodian, dealing and banking services via its Booking Centres. JBI's revenues are therefore dependent on the amounts that BJB determines should be allocated to it, as it is BJB that earns revenue from the activities generated from clients introduced by JBI, and JBI does not charge its clients directly.

#### ***JBI's Russian and Eastern European Desk***

- 4.2. From January 2010 to 30 March 2011, A was employed by BJB as the Regional Head for Latin America, Spain, Russia, Central and Eastern Europe and Israel. A was also a member of BJB's Executive Board from 2005 until July 2017, where he held the position of non-executive director. From March 2011 until December 2017, A was the CEO of Julius Baer Latin America.
- 4.3. C was employed by JBI as part of JBI's Russian and Eastern European Desk from 1 January 2009 until 28 November 2012, reporting to the JBI Line Manager. JBI's Russian and Eastern European Desk reported to JBI's Management Committee. It also had a functional reporting line to B, the Sub-Regional (Market) Head for Russia and Eastern Europe, who was an employee of BJB, and who therefore had functional line management responsibility for C. During the period that he was employed by BJB as the Regional Head for Latin America, Spain, Russia, Central and Eastern Europe and Israel, A was the line manager of B.

#### ***Yukos Group accounts with Julius Baer***

- 4.4. The Yukos Group comprises a number of holding companies incorporated in various jurisdictions which own the residual non-Russian assets of the Russian oil

group of the same name. The Yukos Group was declared bankrupt in disputed circumstances in 2006 and a number of companies in the group have been and continue to be involved in litigation in an effort to recover monies to distribute to shareholders and creditors.

4.5. Between November 2009 and 28 November 2012, C acted as a JBI relationship manager for certain of the Yukos Group Companies. During this period, the Yukos Group Companies held the following accounts with Julius Baer:

(1) Yukos Hydrocarbons, a company incorporated in the British Virgin Islands, opened an account with BJB Singapore in 2008 (in respect of which the JBI Line Manager was the relationship manager) and an account with BJB Guernsey in July 2011 (in respect of which C was the relationship manager);

(2) Yukos Capital, a company incorporated in Luxemburg, opened an account with BJB Switzerland in November 2009 and an account with BJB Bahamas in July 2010 (C was the relationship manager for both accounts); and

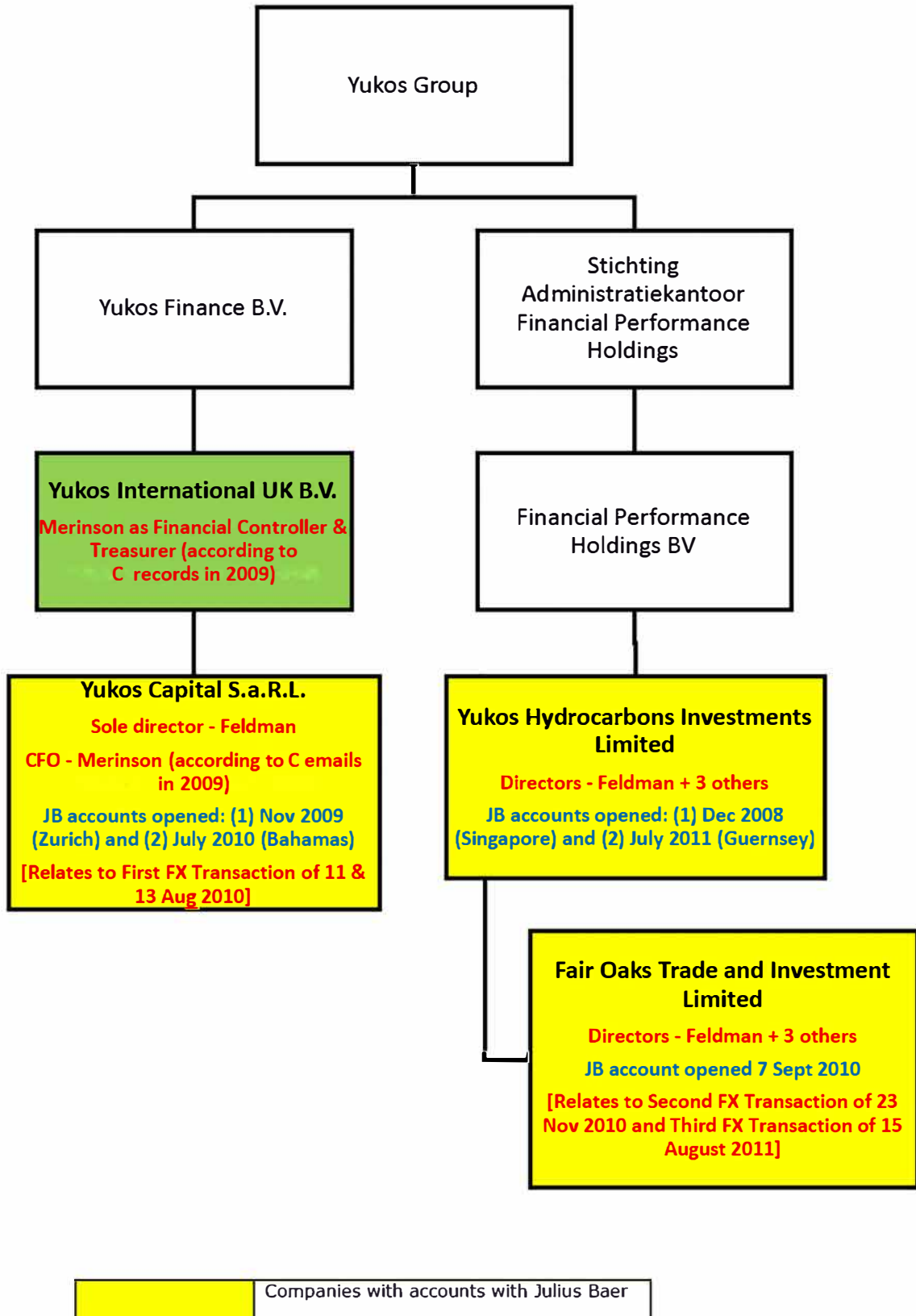
(3) Fair Oaks, a company incorporated in the British Virgin Islands and the wholly owned subsidiary of Yukos Hydrocarbons, opened an account with BJB Bahamas in September 2010 (with C as the relationship manager).

4.6. C dealt principally with two individuals, Mr Feldman and Mr Merinson, in relation to the Yukos Group Companies' accounts. In June 2009, C recorded that Mr Merinson, a Russian citizen residing in the Netherlands, was employed as the Financial Controller and Treasurer for Yukos International (the parent company of Yukos Capital). She described him in an email dated 9 October 2009 to B as the Chief Financial Officer of both Yukos Capital and Yukos International, and in an email dated 13 November 2009 to BJB Compliance, copying in B, as the Chief Financial Officer of Yukos Capital. In so describing Mr Merinson, irrespective of his precise job title, C conveyed her understanding that Mr Merinson had responsibility for oversight and control of financial operations at Yukos International and Yukos Capital. He was a Yukos employee throughout the period of JBI's relationship with the Yukos Group Companies. Mr Feldman was a lawyer, practising in the United States of America.

He was also the sole director of Yukos Capital, and a director of Yukos Hydrocarbons and Fair Oaks.

- 4.7. Figure 1 below illustrates the above information regarding the Yukos Group and accounts held by companies within the group at Julius Baer:

**Figure 1**



### ***Finders at JBI***

- 4.8. One of the ways that JBI obtained new business was through 'Finders'. BJB defined Finders (also called 'introducers') in its Co-operation with Finders Policy as 'natural and legal persons ... who introduce potential clients to [BJB] in return for remuneration. The sole task of the finder is to introduce clients to [BJB]'.

### ***Agreement for Mr Merinson to act as Finder for Yukos***

- 4.9. In June 2009, C had a meeting with Mr Merinson at which they discussed the opening of an account for Yukos International. It was also agreed that Mr Merinson would be set up as a Finder and Mr Merinson completed the documents required to open a personal account.
- 4.10. C subsequently arranged for a personal account for Mr Merinson to be opened with BJB Singapore in July 2009. Mr Merinson provided C with 'comprehensive background information both on himself and the company'. C compiled and signed a due diligence report on Mr Merinson (which was required in order to open his account) which stated that Mr Merinson had 'established' Yukos International and still worked there as the 'Financial Controller and Treasurer'. C also completed an account opening form which described Mr Merinson as an employee of Yukos International and his position as 'Advisor'. BJB Singapore (Legal and Compliance) sought approval from B, as the Sub-Regional (Market) Head for Russia, for the opening of Mr Merinson's account, and provided him with copies of due diligence information and information from Merinson's account opening forms. B responded by giving his approval.
- 4.11. In October and November 2009, C corresponded with B and others, including BJB Compliance, regarding the opening of accounts for Yukos International and Yukos Capital. C explained to B that she had discussed the account openings with Mr Merinson, describing him as 'my Russian contact [...] the Chief Financial Officer of both companies [...]'. In a subsequent email to BJB Compliance regarding the opening of an account for Yukos Capital, to which B was copied, she also explained that 'When I need to communicate with the client, I will contact Dmitri Merinson, my Russian contact who is the CFO of Yukos Capital S.a.R.L. and who attends all the board meetings'.

- 4.12. A memorandum was sent to A on 3 November 2009 by a BJB senior manager regarding the opening of the Yukos International account which described it as not 'plain-vanilla', due to its directors being US residents, but recommended to A that it should nonetheless be approved. The memorandum was copied to B and noted that B would be happy to discuss the matter with A in more detail. In his covering email, the BJB senior manager informed A that, as A was about to go on a business trip, he would take the matter up with another BJB manager, who replied on 5 November 2009, copying in BJB Compliance but not A, that he had no objection.
- 4.13. An account for Yukos Capital was opened with BJB Switzerland on 13 November 2009. The account opening was approved by B and BJB Compliance; the JBI Line Manager was also aware of the account opening request. It appears that A's approval for the opening of the Yukos Capital account was not sought. The Authority has found no evidence that Mr Merinson was referenced as a Finder on any documentation relating to the opening of the Yukos Capital account.
- 4.14. On 7 July 2010, C met with Mr Feldman and Mr Merinson. They told her they were expecting a large payment to be made to Yukos Capital (in the region of £280 million to £430 million), as a result of a successful litigation award.
- 4.15. According to C's notes of this meeting, Mr Feldman asked if Julius Baer could pay a 'one-off fee' to Mr Merinson totalling around 1% of the total assets on the account. C told Mr Feldman that this 'could only be done if the bank has a guaranteed [return on assets] of at least 1.2% so that we still get 20 basis points'. Mr Feldman agreed to this. C notes also stated that existing funds would remain with, and further funds would be paid into, Yukos' accounts with Julius Baer, if the bank could arrange the 'one off retrocession payment'. This payment was to be funded by a CoY on which Julius Baer would charge commission of 1.4%, 70% of which would then be paid to Mr Merinson as a Finder's fee, a proportion far in excess of the standard rates typically paid to Finders by Julius Baer.
- 4.16. The effect of what was discussed at the meeting on 7 July 2010 was that if Julius Baer facilitated payment to Mr Merinson of a large sum of money, Mr Merinson

and Mr Feldman would ensure that Yukos Capital would place significant funds with BJB.

4.17. In an email dated 7 July 2010, C outlined to B the arrangements she had discussed with Mr Feldman and Mr Merinson and asked for his approval. She also copied the JBI Line Manager into the email. C explained in her email:

(1) The proposed arrangement involved payment of a 'one-off fee' to Mr Merinson, whom she referred to as the 'introducer registered on the [Yukos Capital] account', equating to approximately 1% of the total assets on the Yukos Capital account. In her email C noted that 'this is just to indicate the kind of amount that they are hoping Mr Merinson will receive although of course contractually it could not be worded like that'.

(2) She had told Mr Feldman that the payment to Mr Merinson could only be done if Julius Baer had a guaranteed return on assets of at least 1.2% so that it maintained its margin of 20 basis points. B was therefore aware that the proposed payment was to be funded by Yukos.

(3) The fee to be paid to Mr Merinson could be generated from a large 'USD/GBP CoY' on which Julius Baer would apply 1.4% commission and pay 70% of this to Mr Merinson. C also stated that as part of the arrangement Julius Baer would not be required to pay Mr Merinson the standard Finder's fee of 25% of the bank's net revenues (which it appears had previously been agreed in principle with him) 'until at least 1 year after the credit of the funds to the [Yukos Capital] account'.

4.18. C stated, 'If we can do this for the client, the funds will stay with us [...] there will be further substantial funds to come'. The non-standard one-off fee to be paid to Mr Merinson was therefore directly linked to the promise of significant future inflows from the Yukos Group. The level of funds proposed, as well as the political sensitivities relating to dealing with Yukos, made Yukos a significant client for Julius Baer.

4.19. The Authority has not identified any documents confirming B's approval of the arrangements set out in C's email. However, there is no evidence that B objected to the proposed arrangements and, given that his approval was expressly sought and that payment on similar terms was subsequently made

to Mr Merinson, the Authority has concluded that it is highly likely that B did approve them. B appears not to have raised any concerns with the proposed arrangements or to have queried why Yukos could not simply transfer funds direct to Mr Merinson if it wished to pay him a large sum of money.

- 4.20. Shortly after sending her email on 7 July 2010, C met with Mr Merinson and Mr Feldman again. (During that meeting, after the matters outlined below were discussed, they were joined by a JBI colleague from another department.) The contact report stated that at this meeting, Mr Feldman informed C that Yukos Capital was due to receive the equivalent of approximately USD 422m in GBP, that the funds would need to be converted to USD, and that the intention was that commission of up to USD 1,250,000 would be generated on the FX transaction, 80% of which would be paid to Mr Merinson. The remaining 20% of the commission (up to USD 250,000) would be retained by Julius Baer, giving a return to Julius Baer of six basis points. The contact report was incorrectly dated 7 August 2010, was filed on JBI's system on 19 August 2010, and appears to have been drafted after the First FX Transaction took place (see paragraph 4.26 below). The Authority considers this might account for the differences between the information recorded in this report and C's notes of the meeting earlier that day.
- 4.21. On 8 July 2010, Mr Merinson entered into a Finder's agreement with BJB which provided for payment of Finder's fees equal to 25% of the net income generated by BJB from clients introduced by Mr Merinson (one of four standard remuneration models used by BJB for Finders). The agreement did not refer to the large 'one-off' payment that had been agreed. Mr Merinson signed and returned the Finder's agreement which he dated 7 July 2010.
- 4.22. Contrary to usual procedure and in particular to the provisions of BJB's Cooperation with Finders Policy, the non-standard remuneration agreed with Mr Merinson was not recorded in a side-letter or an appendix to the Finder's agreement. The Authority has not seen any evidence that, at the time BJB entered into the Finder's agreement with Mr Merinson, Compliance staff at JBI or BJB were aware that a large 'one-off' payment had been separately agreed with Mr Merinson.
- 4.23. On 16 July 2010, a BJB senior manager sent an email to the JBI Line Manager requesting details of the proposed Finder's arrangement with Mr Merinson so that



BJB Senior Manager B could 'quickly discuss' it with A, whose approval of the non-standard terms of the agreement was required under BJB's Co-operation with Finders Policy. The email added that B 'already supports the case'. The JBI Line Manager responded with the following details: 'an initial inflow of gbp 280mn, aiming for a return of 140bps this year (to make the payout economically justifiable); out of the 280mn a separate 30mn pot (have to double-check this figure, but I'm pretty sure it's correct for active advisory – have to check the agreed fee with C'. The Authority infers that, following this email exchange, A was made aware of Julius Baer's entry into Finder's arrangements with Mr Merinson.

- 4.24. On 22 July 2010, BJB Compliance sent an email to A and BJB Senior Manager B under the subject 'High Risk Client Approval'. The email attached account approval documentation from BJB Bahamas and enhanced due diligence completed by C relating to the opening of a Yukos Capital account at BJB Bahamas. BJB Compliance noted that it had no issues with the account opening and asked that the form attached to the email was signed.

#### ***First FX Transaction***

- 4.25. On 11 August 2010, approximately GBP 271 million was received into Yukos Capital's account with BJB Switzerland.
- 4.26. Between 11 and 13 August 2010, on the instructions of Mr Feldman who confirmed in a handwritten note dated 12 August 2010 his awareness of the rates used for the transactions, C and the JBI Trader arranged for currency trades to be executed by BJB on behalf of Yukos Capital, converting GBP 271,233,490 to USD 422,419,038. The transactions were executed by BJB at an average market rate of 1.566051, but Yukos Capital was charged the rate of 1.5574. The difference between the two rates was taken by BJB as commission, generating commission in excess of USD 2.34 million from the transaction and resulting in a commission rate of approximately 0.55% of the principal sum converted, which with Mr Feldman's agreement was to fund both the one-off payment to Mr Merinson and the commission required by BJB. At the time, Julius Baer usually applied an FX commission rate of 0.15% for amounts over CHF 1 million and 0.05% for conversions over CHF 5 million. The commission rate charged on this transaction was therefore approximately 11 times the standard commission rate for a transaction of this size. A informed the Authority that this high level

of commission did not reflect the costs of executing this specific transaction, but rather what Julius Baer required to cover the overall costs of servicing a private banking relationship with Yukos, including the payment of a Finder's fee to secure that business. However, the Authority does not consider that there was a proper commercial rationale for making a payment to Mr Merinson in this way; if Yukos had wished to pay Mr Merinson it could have done so directly, rather than through such an arrangement.

- 4.27. C, Mr Feldman and Mr Merinson were present while the JBI Trader instructed BJB to carry out the trades, including while trading was conducted overnight. C's contact report and a subsequent email dated 16 August 2010 to BJB Compliance, B and A, copying in the JBI Line Manager, stated that Mr Feldman and Mr Merinson had remained in JBI's offices from 8am on Thursday morning until 9am on Friday morning and the JBI Trader had guided them in order 'to get the best possible rate and thereby maximise the commission'. C informed the Authority at interview that there was 'a pre-agreed commission level that was going to have to be charged for the foreign exchange', and that ideally that level should not result in the rate charged to Yukos being worse than the worst rate over those two days. The Authority considers that the trading approach used was intended to ensure that the overall rate achieved, after the addition of a commission rate which was to fund BJB's commission and Mr Merinson's retrocession payment, would be no worse than the worst rate available on the market on the day, with the consequence that anyone with cause to review Yukos Capital's records would simply see the booked rate (1.5574), and would be unaware that the transaction had been executed at a much more favourable rate by BJB and that the commission was of an unusual size.
- 4.28. C met a member of JBI's Board shortly after the trades had been executed. The Board member then emailed B on 13 August 2010, copying in the JBI Line Manager, to 'share [his] excitement' about C's 'success'. In his email, he noted that 'assets in excess of 300mUSD have arrived and that an FX transaction to convert them from GBP into USD has yielded about USD 500,000 in commission for JB'. In fact, as noted above, BJB had generated commission of approximately USD 2.34 million from the transaction, but it retained approximately USD 500,000 after payment of the Finder's fee to Mr Merinson. This was twice the amount that had been anticipated when the FX

transaction had been discussed at C's second meeting with Mr Merinson and Mr Feldman on 7 July 2010.

### ***First Commission Payment to Mr Merinson***

- 4.29. As mentioned in paragraph 4.27 above, on 16 August 2010, C emailed BJB Compliance, B and A, copying in the JBI Line Manager, providing details of the First FX Transaction. C's email confirmed the amount of total commission, the amount earned in commission by Julius Baer (11 basis points) and that 80% of the commission, equal to USD 1,877,152.74, should be transferred to Mr Merinson as the Finder on the account. The Authority considers that A would have appreciated that the amount of commission which Julius Baer had generated from the First FX Transaction was significantly in excess of the amount that would normally be associated with a large FX trade.
- 4.30. B and A verbally confirmed to C their approval of the First Commission Payment to be made to Mr Merinson. The Authority has not seen any evidence that either B or A questioned the commercial rationale of Yukos Capital in agreeing the First FX Transaction or what interest Yukos Capital would have in maximising the commission payable.
- 4.31. On 19 August 2010, C requested, copying in B and A, that the First Commission Payment be paid to Mr Merinson and, as requested by Mr Merinson, that payment be made 'preferably with the payment reference "Investment Capital Gain" ([...] to ensure that it is not classified as employment income which is taxed differently in the Netherlands)'. BJB Legal refused to agree to this request but did agree that it could be stated that the payment was not employment income. It was obvious that if the payment was referenced as an 'Investment Capital Gain' this would be an untrue statement. This should have raised suspicions for A.
- 4.32. BJB Compliance raised concerns about the proposed payment to Mr Merinson, noting that commission of 80% on an FX trade was not in line with Mr Merinson's Finder's agreement with BJB and that A's approval would be required as the payment of an 80% Finder's fee exceeded BJB's 'maximum standards'. A responded on 20 August 2010, copying in B (amongst others), stating 'We are in front of a "fait accompli" so not much room for objection, unless we wish to transfer the relationship to another financial institution'. This suggests that A considered that Julius Baer's banking relationship with Yukos

Capital depended on Mr Merinson receiving the First Commission Payment. A confirmed at interview that he approved of the transaction and was in full agreement with it, but said that at the time he thought Mr Merinson was an independent consultant.

4.33. At interview, A recalled a conference call taking place at his behest between himself, B and C prior to any fees being paid to Mr Merinson, so that A could ask C about the connection between Mr Merinson and Yukos. He said that C told him during that call that Mr Merinson was a former employee of Yukos and was currently acting as a consultant to Yukos. It appears that during that call A approved the payment of a large retrocession to Mr Merinson after satisfying himself that the transaction was commercially beneficial to the Julius Baer Group. A said he could not recall the precise date of the call, but that it was definitely prior to any payment being made to Mr Merinson as it was he (i.e. A) who insisted on a one-off payment for Mr Merinson's Finder's fee. C told the Authority that she was open about Mr Merinson's employment relationship with Yukos. B did not refer to the call at interview and the Authority has seen no evidence to confirm whether a call took place at this time or the contents of any discussions, but C had previously told B and others that Mr Merinson was a current employee of Yukos (see paragraphs 4.6 and 4.11 above) and also told BJB Compliance this on 19 August 2010 (see paragraph 4.34 below). The Authority infers from the evidence it has seen that A was aware that Mr Merinson was an employee of the Yukos Group at the time he approved the First Commission Payment.

4.34. Also on 19 August 2010, a member of BJB's Business & Operational Risk Division emailed BJB Compliance and stated that their attention had been drawn to the First FX Transaction. They explained that they had taken a closer look at the relationship with Yukos and the transaction documentation and had a number of questions, including in respect of the role of Mr Merinson. Later that day, at BJB Compliance's request, C emailed BJB Compliance 'a little background on the recent inflow to the JB Zurich account of Yukos Capital SaRL'. In respect of Mr Merinson's role, C stated: 'The finder registered on these accounts is Dmitry Merinson who works as the Financial Director for Yukos International U.K. BV. This is a Dutch company within the Yukos group structure and it is indirectly the ultimate 100% shareholder of Yukos Capital SaRL. He does not have signing power on any of the group's companies or bank accounts but he is heavily

involved in choosing which banks should hold funds awarded to subsidiary companies of Yukos International U.K. BV. he introduced the business to me and is registered on the accounts for which I am the Relationship Manager as the Finder (in accordance with his JB Finder agreement).'

- 4.35. On 1 September 2010, BJB Compliance asked C in an email if there was an agreement between Yukos Capital and Mr Merinson that he was entitled to receive Finder's fees from BJB and, noting that C had stated that he was the 'Financial Director for Yukos International', stated that this 'needs to be clarified for conflict of interest issues'. C called BJB Compliance and explained that Mr Feldman knew about BJB's agreement with Mr Merinson and the large one-off payment that was being made to him. C agreed with BJB Compliance that she would get written confirmation from Mr Feldman expressly confirming this. She informed BJB Compliance later that day that she had spoken to Mr Feldman and he was happy to provide written confirmation, but he had already left London to catch a flight. BJB Compliance confirmed that C could obtain Mr Feldman's written confirmation when she next met with him.
- 4.36. On or around 1 September 2010, the First Commission Payment of approximately USD 1.75 million was paid into Mr Merinson's BJB Singapore account by BJB. This appears to have been the amount payable after deducting VAT, the gross amount being approximately USD 1.87 million. B signed a letter to Mr Merinson dated 3 September 2010 regarding the payment which stated that BJB confirmed that 'contrary to [the Finder's Agreement], this represents a one-off payment and no further payments are or will become due with respect to the specific client introduced'.
- 4.37. On 3 September 2010, C's assistant sent an email to Mr Feldman and another Fair Oaks director, copying in C, confirming that the new Fair Oaks account was open and that JBI would proceed to make a transfer from the Yukos Capital account to the Fair Oaks account as per their instructions. On 7 September 2010, the other Fair Oaks director asked for confirmation of the credit to Fair Oaks' account. C confirmed the transfer of USD 422,144,704 the same day.

***Amendment to Mr Merinson's Finder's agreement with BJB***

- 4.38. C met with Mr Feldman and Mr Merinson on 13 October 2010. She did not obtain the written confirmation BJB Compliance had requested from Mr Feldman at this time, although C told the Authority that she provided Mr Feldman with draft letters to be signed by himself and another director of Yukos Hydrocarbons in September or October 2010. The letters were finally signed, by Mr Feldman only, on 24 February 2011.
- 4.39. During their meeting, Mr Feldman informed C that Yukos Capital was due to receive approximately USD 400 million from four successful pieces of litigation. C agreed that she would try to secure the following terms:
- (1) an increase in the Finder's fee recorded in Mr Merinson's Finder's agreement from 25% to 35% of the net income generated by Julius Baer from clients introduced by Mr Merinson; and
  - (2) four additional 'one-off' payments to Mr Merinson, calculated as 70% of Julius Baer's commission on four large transactions to take place by October 2011.
- 4.40. C agreed to try to secure the above terms so long as:
- (1) Julius Baer could charge Yukos 12 basis points on un-invested assets (at that time around USD 372 million); and
  - (2) a proposed payment of USD 50 million from Yukos Capital's account with Julius Baer would be paid into the Yukos Hydrocarbons account with BJB Singapore rather than to an account with another bank (the funds would thus stay within Julius Baer).
- 4.41. From her notes of the meeting, it is clear that C's expectation was that in respect of each large inflow of funds to Yukos Capital's account Julius Baer would arrange for an FX transaction 'which would immediately earn the bank up to 15 basis points, while up to 35 basis points would be paid to [Mr Merinson]'. Those funds would then remain with Julius Baer 'for at least 3 years charging even for custody of non-invested assets'.

- 4.42. On or around 13 October 2010, C met with A and discussed the proposed arrangement. At interview, A said that he gave his approval in principle and told C to keep her line management informed and to discuss the proposal with other senior BJB staff.
- 4.43. On 15 October 2010, C sought approval from A to the proposal by email, copied to B. The approval of A, as the Regional Head, for the non-standard remuneration rate was required under the Co- operation with Finders Policy. The proposal put forward by C again involved Julius Baer increasing its usual fees in order to take into account both the payment of a retrocession to Mr Merinson and the commission required by Julius Baer, whilst also ensuring that Julius Baer retained large sums already deposited with it and would receive further large inflows. A emailed B and BJB Senior Manager A stating that 'Your recommendation should be prior'.
- 4.44. On 22 October 2010, BJB Senior Manager A, following a discussion with B, sent an email to C (copying in B and the BJB Bahamas Senior Manager) asking her to send a short and simple business case to justify the increase in the Finder's fees for Mr Merinson, including estimating recurrent income to which the proposed 35% Finder's commission rate would apply and 'one shot transaction income' to which the proposed rate of 70% would apply. C responded, by email dated 25 October 2010 (copying in A as well as B and the BJB Bahamas Senior Manager), that she had discussed the proposal in detail with A when he was in London and he had given her 'the impression that he understood the scenario and would respond positively to my request very quickly'. She also set out her expectations of the future inflows of cash to Julius Baer from Yukos Capital and the potential revenues this would generate, which she indicated would be in jeopardy if Mr Merinson's Finder's agreement rate was not raised to be in line with the rate he had apparently agreed with another financial institution:
- (1) For 2011, she estimated gross revenues of USD 4,258,475 and net revenues of USD 1,946,950; the difference of USD 2,311,525 being the amount to be paid to Mr Merinson. Of the gross revenue for 2011, USD 2,345,000 was expected to be generated by one-off large transactions. C's email explained that there would be 'an opportunity to do one-off high revenue-yielding transactions' on each inflow and that it was proposed to pay Mr Merinson 70% of commission on four large transactions. The net

income for Julius Baer from these transactions was estimated at USD 703,791.

(2) For 2012, she estimated gross revenues of USD 987,600 and net revenues of USD 641,340; again, the difference being the amount to be paid to Mr Merinson.

4.45. On 25 October 2010, A emailed BJB Senior Manager A and C to say that he was on vacation but had 'discussed the issue with [B] prior to giving my no objection'. C and B subsequently had a meeting to discuss the proposal and on 28 October 2010, B emailed BJB Senior Manager A and C, copying in A, stating that he approved the 'next steps of the relationship'. The Authority has seen no evidence that any of C, A, B or BJB Senior Manager A queried why Mr Feldman wished to ensure that Mr Merinson received non-standard retrocessions of this size, despite the fact such payments would significantly drive up Yukos' transaction costs.

4.46. The Authority has seen no evidence that JBI Compliance or BJB Compliance were informed or consulted about the proposal at this time.

4.47. On 23 November 2010, Mr Merinson signed an addendum to his Finder's agreement with BJB. This included the increased Finder's fees of 35% of the net income generated by BJB, but, contrary to usual procedure and in particular to the provisions of BJB's Co-operation with Finders Policy, did not record the four 'one-off' payments agreed based on 70% of Julius Baer's net revenues from four large transactions. A should have been aware of this as C sent an email to him and B the following day which attached the addendum signed by Mr Merinson. In addition, prior to this, on 28 October 2010, C copied A and B into an email asking for a new Finder's agreement for Mr Merinson to be prepared giving him 35% of BJB's net revenues rather than 25%, but which made no reference to the four 'one-off payments' that had been agreed.

### ***Second FX Transaction***

4.48. Also on 23 November 2010, C arranged for the JBI Trader to carry out a further set of FX transactions on Fair Oaks' BJB Bahamas account at commission rates which exceeded Julius Baer's standard margin rate – the Second



FX Transaction. C emailed Mr Feldman immediately before the transactions took place, to keep him informed of the approach being adopted by the JBI Trader. The funds used for the Second FX Transaction comprised a portion of the funds which had been converted into USD by the First FX Transaction; the sum of approximately USD 68 million was converted to EUR 50,040,473, generating a total commission of USD 1,062,000. The reason for the transaction was set out in a letter from Mr Feldman and another Fair Oaks director to C dated 17 November 2010, which stated that EUR 50 million was needed 'to cover potential expenses incurred by the group'.

- 4.49. C agreed with Mr Feldman that Mr Merinson could utilise one of the four 70% retrocession payments previously approved by B and A in relation to the Second FX Transaction. C did not inform JBI or BJB senior management of the Second FX Transaction, or of the intention to use one of the four 70% retrocessions payments in relation to it, prior to the trading taking place.
- 4.50. The Second FX Transaction converted USD 68 million at a market rate of 1.338855. The rate charged to Fair Oaks was 1.3589, which included the total commission charged (USD 1,062,000, a rate of approximately 1.56%), 30% of which was retained by Julius Baer. Julius Baer's retained commission was equivalent to it charging Yukos a commission rate of 0.47% of the principal amount, i.e. approximately nine times Julius Baer's standard FX commission rate for transactions of this size. The total commission rate (1.56%) for the Second FX Transaction was approximately 30 times higher than Julius Baer's standard FX commission rate for transactions of this size and consequently significantly higher than a client would normally pay Julius Baer for an FX transaction.
- 4.51. The commission charged for the Second FX Transaction (1.56%) was much higher than that outlined by C in her email of 15 October 2010 (see paragraph 4.43 above), in which she had stated her intention to charge 0.5% for executing 'large FX deals' with Julius Baer retaining 0.15% of the principal amount in commission and 0.35% of the principal amount being transferred to Mr Merinson. No commercial reason was given for why Mr Feldman was willing for Fair Oaks to pay significantly more commission (nearly three times more) than he had previously negotiated on behalf of Yukos Capital, namely 0.55%.

### ***Trading approach for the Second FX Transaction***

4.52. As for the First FX Transaction, the trading approach used in relation to the Second FX Transaction had the effect of maximising the commission achieved and thereby the revenue of Julius Baer and commission payable to Mr Merinson, in a way that the Authority considers would not be readily apparent to an auditor or anyone else inspecting the records of Fair Oaks. C and the JBI Trader were responsible for JBI's use of this trading approach and Mr Feldman approved of it.

- (1) C agreed with Mr Feldman in advance of the Second FX Transaction that an intra-day range of two cents in the USD/Euro exchange rate was required before any trading could take place. C's contemporaneous notes of her meeting with Mr Feldman on 23 November 2010 record that the use of one of the four 70% retrocession payments depended on the range being sufficiently large.
- (2) C and the JBI Trader monitored the daily range (and updated Mr Feldman as to the same), commencing trading only when the two cents range had been reached.
- (3) The worst rate of the day on 23 November 2010 was 1.3625. JBI executed the first and second tranches making up the Second FX Transaction at a rate of 1.33855. The rate charged to Fair Oaks was 1.3589, just over two cents more than the rate of 1.33855 and slightly better than the worst rate of the day.
- (4) Anyone with cause to review Fair Oaks' records would simply see the booked rate, 1.3589 inclusive of commission, and would be unaware that the transaction had been executed at a much more favourable rate by BJB.

4.53. The Authority has not seen any evidence of there being any commercial rationale for Mr Feldman requiring a range of two cents in order to trade and does not consider there to be any such rationale. Fair Oaks did not benefit from what should have been a favourable move in the direction of the USD/Euro price during the afternoon of 23 November 2010. However, making use of the volatility of the FX trading and the '2 cent range' would, and in fact did, generate a very significant level of commission for Julius Baer and Mr Merinson.

4.54. Moreover, trading within the daily range also had the effect that the commission charged was effectively obfuscated within the booked rate, limiting the possibility that the large commission payment to Julius Baer would be identified and examined by Yukos or its auditors. Scrutiny of the payments to Julius Baer and subsequently to Mr Merinson would also have been hindered by the absence of any written agreement relating to the 70% payment to Mr Merinson and the lack of written client instructions in relation to the Second FX Transaction. The driving factor in the trading was therefore not to secure best execution for Fair Oaks, but to generate commission for Julius Baer and Mr Merinson, and there was a clear risk that the arrangements were being structured in this way to limit the possibility of the commission being detected. In fact, it is clear that if the range had been too narrow, no trading would have taken place (see paragraph 4.55 below).

***A's knowledge of the Second FX Transaction***

4.55. On 24 November 2010, C emailed B and A and requested approval for a payment of USD 742,000 to Mr Merinson, being 70% of the commission generated by BJB for executing the Second FX Transaction. C's email stated:

'Daniel Feldman asked me if they could utilise one of the four 70% retrocession transactions for the conversion of USD68mil into EUR. Otherwise, they would simply convert the USD into EUR as and when invoices are received. This also depended on the range of the EUR:USD rate being large (around 2 cents) over the course of our meeting today (i.e. from 8am to 6pm UK time). I agreed to this confirming that this would then leave them with just three 70% retrocession transactions between now and November 2011 ... The range was such that we were able to execute the FOREX yesterday, gaining net revenues for JB of USD320,000. The retrocession to be transferred to Dmitri Merinson is approximately USD742,000 (70%)'.

4.56. C therefore highlighted the importance of the two cent range and the option to utilise one of the 70% retrocession payments, without which no trading would have taken place. C also explained that Mr Feldman had indicated that if one of the 70% retrocessions could not be utilised he would simply convert USD to EUR as and when invoices were received, an approach that would have resulted in much lower commission payments by Fair Oaks. Her email

also confirmed the substantial commission paid to Mr Merinson and retained by Julius Baer.

- 4.57. B responded (copying in A and others) the same day, stating that he did not recall agreeing to four 'one-off' payments of 70% of BJB's net revenue, although he did recall approving one, and said he did not 'support this set up'. C replied to the email (again copying in A and others) attaching a copy of B's email of 28 October 2010, reminding him that he had previously approved the arrangement. The arrangements that B had previously approved were actually based on transactions and retrocession payments relating to new inflows of cash to Julius Baer from Yukos, whereas the Second FX Transaction involved a portion of the same funds which had been converted into USD by the First FX Transaction; however, neither B nor A raised this with C. A emailed B separately and stated 'your jurisdiction and judgment, let me know later'. B replied to C later that day (copying in A) stating 'I approve' and A then replied 'No objection'. In approving this retrocession payment to Mr Merinson, neither B nor A questioned the probity of Mr Feldman's instructions to C.
- 4.58. On 25 November 2010, the BJB Bahamas Senior Manager raised concerns with BJB Senior Manager A about the Second FX Transaction, in an email that was not copied to C, and asked that they be escalated to A 'and/or' B. In this and subsequent emails, the BJB Bahamas Senior Manager raised the following concerns (amongst others):
- (1) He noted that C, Mr Feldman and Mr Merinson had '[...] worked out with the dealing room in [Zurich] (by-passing Nassau) a spread of almost 1.5% on a \$68 mio against Euro', questioning 'How can such a spread be negotiated from a [sic.] ethical standpoint?'. He added: 'It also seems that [C] is ready to do just about anything for these intermediaries which may put the bank at risk if/when officers of the company look at what is taking place'.
  - (2) He questioned A's and B's awareness of the commission generated: 'I understand that [A] and [B] authorized these 4 transactions... However, they do not know how these intermediaries are profiting from these. The spread in this case is EUR 760,766!'. As noted

above, A and B were in fact fully aware of the commission being charged by Julius Baer and the amount it had agreed to pay to Mr Merinson from the transaction.

- (3) He noted that the Second FX Transaction could violate fundamental banking regulations, including Julius Baer's obligations of best execution, market practices and fiduciary obligations, noting also the lack of appropriate authorisation from an officer of Fair Oaks for the Second FX Transaction.
- (4) He also confirmed that a google search of Mr Merinson showed that he was a manager at Yukos International. He suggested that C should explain further her relationships with Mr Feldman and Mr Merinson, and 'who are the real "forces" in the driver seat'.
- (5) He also questioned the apparent lack of an investment strategy (noting that the Second FX Transaction used a portion of the funds from the First FX Transaction).

4.59. The BJB Bahamas Senior Manager stated that the proposed payment to Mr Merinson would be withheld until discussions with B 'and/or' A had taken place and that he required the relationship to be 'validated by hierarchy' prior to taking any further steps to effect payment.

4.60. It appears that the BJB Bahamas Senior Manager's concerns were escalated to A and, as a result, A asked B to put in place 'an acceptable framework' for C to operate within in the future, without making any further enquiry into the concerns which had been expressed.

#### ***Second Commission Payment to Mr Merinson***

4.61. On 14 December 2010, BJB Senior Manager A emailed C, copying in B, stating that he had spoken to A and B and had requested that the paperwork to pay Mr Merinson's retrocession be prepared. It was noted that due to the amount of money involved, A, as Chairman of the Board of Directors of BJB Bahamas, needed to sign the documents.

4.62. On 17 December 2010, BJB Senior Manager A emailed B, copying in A and BJB Senior Manager B, stating that A had told him that B needed to 'define an acceptable framework for [C] and the

bank to operate in'. BJB Senior Manager A suggested this would include (among other things):

- (1) getting 'a signature from someone above [Mr Merinson] to ensure transparency of retro';
- (2) transaction orders and instructions 'to be properly documented and signed by client'; and
- (3) 'define acceptable spread range (based on transaction side [sic.] and product)'.

4.63. On 21 December 2010, BJB Senior Manager A emailed a memorandum to A for his 'review and approval' (copying in B). BJB Senior Manager A stated 'please note that as per your request, I've asked B to provide us and C with an acceptable framework to operate this particular relationship in the future. B being on holiday we can expect this framework early next year.' He also stated that C is 'pushing for at least a payment before Christmas to the finder, rest of payment is due on a yearly basis as per frequency of payment defined in finder agreement. Therefore, in order to proceed I need your approval as Chairman of the Board'. A replied to B and BJB Senior Manager A on 22 December 2010, 'No objection for payment. Please regularise pending issues and set up correct framework. Last time it comes to my approval without Market Head [i.e. B] approval'.

4.64. The Authority has identified an unsigned memorandum titled 'Information Memorandum to the Board related to Russian business introduced to Julius Baer Bank and Trust Nassau thereafter "the Bank" 17<sup>th</sup> day of December 2010' which states:

WHEREAS, it was noted that the Bank Julius Baer & Co. AG, Zurich (Julius Baer Zurich) entered into a finder agreement (agreement) dated July 8th, 2010 with new conditions signed on 23.11.2010 with D.M., for the introduction of accounts to the Julius Baer Group.

WHEREAS, it was further noted that the Bank has benefited from this agreement, by way of accounts opened in its books.

NOW, THEREFORE, BE IT RESOLVED that a payment in the amount of CHF 786,387.44 for Q3 and Q4.2010 be made to Julius Baer Zurich so that they can meet their obligations under said agreement. This payment being based on the calculation attached, which forms part of this Memorandum and being pre-approved by B, Market Head CEE, Russia'.

- 4.65. The memorandum included a signature block for A (as Chairman of the Board) under the words 'Reviewed with no objections'. The memo attached four calculations showing the 25% and 35% retrocessions due to Mr Merinson in Q3 and Q4 2010 and the 70% retrocession payable in relation to the Second FX Transaction. The Authority considers that this is the memorandum that was attached to the email from the BJB Senior Manager to A asking for his approval on 21 December 2010.
- 4.66. B stated at interview that he discussed the payment of the Second Commission Payment with BJB Senior Manager A and A and they 'resolved that as a group of three'. BJB Senior Manager A stated at interview that A took over responsibility for the issue. A's evidence at interview was that B and BJB Senior Manager A approved the payment of the Second Commission Payment to Mr Merinson before he gave his approval. The evidence suggests that all three were involved in discussions relating to the payment of the fee and that A's final approval was required before the payment to Mr Merinson could be made.
- 4.67. On 22 December 2010 A, on behalf of the Board of BJB, approved a payment of CHF 786,387.44 from BJB Bahamas (where the Second FX Transaction was booked) to BJB Zurich in order to enable BJB Zurich to pay Mr Merinson fees including a 'one-off' of 70% of the commission received by BJB on the Second FX Transaction. A and B were aware that the 'framework' A had requested, which was designed to address the concerns of the BJB Bahamas Senior Manager, had not been put in place at this time and would not be until 'early next year', but nonetheless A approved the Second Commission Payment and B took no steps to prevent it.
- 4.68. The Second Commission Payment totalling CHF 723,977 was paid by BJB Switzerland into Mr Merinson's personal BJB Singapore account on 31 December 2010.

### ***A ceases to be Regional Head***

- 4.69. From March 2011, A ceased to be Regional Head for Latin America, Spain, Russia, Central and Eastern Europe and Israel and became the CEO of BJB in Latin America. B no longer reported to A and instead reported to A's replacement as Regional Head, another BJB senior manager. A accordingly ceased to have responsibility for the oversight of the Yukos relationship.

### ***Onward payments from Mr Merinson to Mr Feldman***

- 4.70. On 7 April 2011, C's assistant arranged for two cash transfers to be made from Mr Merinson's personal account for the benefit of Mr Feldman. C had previously been informed, on 16 August 2010, that Mr Merinson 'was going to transfer a proportion of the commission away to Daniel Feldman's Julius Baer account' but, although she recorded this in a file note, did not share this information with anyone else at Julius Baer, except for her assistant and possibly the JBI Line Manager. C was copied into her assistant's email to BJB Singapore giving instructions for the transfers and the Authority infers that she was aware of them. The total amount transferred was USD 1,262,451, exactly 50% of the commission fees paid to Mr Merinson by Julius Baer in the First and Second Commission Payments. The JBI Line Manager signed the paperwork authorising the payments. The Authority has seen no evidence that A knew about the transfers at this time or of Mr Merinson's intention to share his commission with Mr Feldman.

### ***Third FX Transaction***

- 4.71. On 15 August 2011, the JBI Trader sent an email to Mr Feldman, copying in C, to confirm that a trade had been placed to sell EUR 7 million and to buy USD for Fair Oaks. Mr Feldman confirmed the trade on the same day. On 16 August 2011, a staff member at BJB Bahamas emailed C and others to confirm the trade and questioned why the bank had made such a high margin on the trade. In reply, C stated, 'The agreement with the client was that for any foreign exchanges, the rate booked to the client would always have to be at least 8 basis points above the low of the day so that the ultimate beneficial owners cannot be disadvantaged (sic). This transaction complies with that agreement. In order to achieve a large margin on such FX trades, [the JBI Trader] has to exclusively monitor the rate all day (which means he can do nothing else)



and our hope is that this commitment to the trade is then rewarded by the margin achieved’.

- 4.72. On 19 August 2011, C sent an email to B and copied in the JBI Line Manager, a member of JBI’s Board and others, and stated ‘even though both you and A fully pre-approved the four one-off 70% transactions already, I am writing to refresh memories and to ensure that [a member of the JBI Board] is kept fully in the loop (we will be using one of the one-off retrocessions for the conversion of EUR7mil into USD)’. The member of JBI’s Board responded to C’s email to thank her for keeping him informed. Later that day, B emailed a BJB manager and stated ‘what do you think?’ The Authority has seen no evidence that A was informed of the Third FX Transaction at the time or that he was involved in approving it or the Third Commission Payment (see paragraph 4.78 below).
- 4.73. On 29 December 2011, a staff member at BJB Bahamas emailed C in relation to the ‘2011’s transactions’ and stated ‘I wanted confirmation that we are only to pay out one one-off retrocession for the conversion of EUR7mil into USD on 15th August. This is the only one that I have in my records also so I just wanted to ensure that we were on the same page’. C replied to confirm that was correct.
- 4.74. The calculations undertaken by the staff member at BJB Bahamas show that CHF 64,518.89 was paid to Mr Merinson in respect of the Third FX Transaction.

***Request by C to open a Fair Oaks account at BJB Guernsey in order to transfer Fair Oaks asset from BJB Bahamas***

- 4.75. In December 2011, A was part of discussions following a request from Yukos to open an account for Fair Oaks with BJB Guernsey.
- 4.76. On 5 December 2011, C emailed B and copied in BJB Compliance, JBI Compliance and JBI senior management, and requested B’s approval to open another account for Fair Oaks at BJB Guernsey. In the email, she explained that Mr Merinson and Mr Feldman wanted to transfer funds from BJB Bahamas on account of a leak of information. She added that Mr Merinson ‘only has one “one-off” retrocession left this year and he has no intention of entering into a Finder agreement with Guernsey’ although she noted that there was ‘a possibility that the finder will seek to request one-off retrocessions for new

inflows... but no retrocessions will be deducted from fees paid for annual custody fees or daily trading'. BJB Compliance responded that the reasons for the transfer were not 'sufficiently plausible' and that a transfer would involve making a notification in the Bahamas and the prior agreement of regulators in Guernsey. C asked what the maximum amount the client could transfer would be to avoid the notification requirements. BJB Compliance responded on 13 December 2011, stating that it viewed the request as 'highly unusual and still not sufficiently justified' and adding 'Furthermore it is not up to the bank to advise on what is acceptable rationale for the transfer, either the client can give us a plausible reason or not'. The account opening did not proceed.

- 4.77. On 15 December 2011, A attended a teleconference with C and other BJB senior managers to discuss the proposed transfer from the Fair Oaks account at BJB Bahamas to the Yukos account at BJB Guernsey. In the meeting minutes, it is noted that A raised the issue of the retrocession payments provided to the client upon the condition that 'the funds stayed with JB Bahamas for 3 years'. In relation to the proposed transfer from Fair Oaks to BJB Guernsey, A stated that it would need to be made clear that there was no financial gain to the client or the Finder from the move.

***Third Commission Payment to Mr Merinson***

- 4.78. On 1 February 2012, the Third Commission Payment was paid into Mr Merinson's personal BJB Singapore account in the sum of CHF 373,256. The Third Commission Payment was made up of two sums. The first sum was paid under Mr Merinson's Finder's agreement with BJB being 35% of the income generated from the Yukos Capital and Fair Oaks accounts during 2011. The second sum was from commission earned on the Third FX Transaction. This brought the total amount of the three commission payments to Mr Merinson to approximately USD 3 million.

***The JBI Line Manager notifies JBI Compliance of potentially suspicious activities***

- 4.79. On 28 November 2012, C's employment with JBI was terminated. On 30 November 2012, the JBI Line Manager sent an email to JBI Compliance detailing potentially suspicious activities involving C, Mr Merinson and Mr Feldman. The email stated that C 'proposed a non-standard [Finder's] agreement for [Mr Merinson] in order to bring this business to [Julius Baer] (approx. USD400 million)'. The email referred to the FX Transactions and

payment of retrocession fees to Mr Merinson, and also explained that Mr Merinson had made a payment to Mr Feldman from his Julius Baer account.

- 4.80. The email concluded: 'I suspect that once DM's deal with JB is found out, we could be open to legal action from Yukos and in breach of FSA and FINMA regulations and potentially the UK Bribery Act 2010 [...]'.
- 4.81. Despite the seriousness of the matters addressed in the JBI Line Manager's email and the fact that JBI was quickly able to substantiate some of these matters, JBI did not report them to UK law enforcement until 22 May 2014. It subsequently did not provide the details to the Authority until 7 July 2014, some 19 months after receiving the JBI Line Manager's email.
- 4.82. On or around 27 February 2014, Yukos informed JBI that it wished to close its accounts with BJB and that JBI should liquidate the assets it was holding in its accounts. Up until this point, the new relationship manager for the Yukos accounts (who was unaware of the unusual transactions and commission arrangements) and B had continued to discuss additional business opportunities with Mr Merinson and Mr Feldman.
- 4.83. On 8 April 2014, an internal meeting took place between A and other BJB senior managers to discuss next steps. It was agreed that A would address BJB's intention to compensate the client for the inflated margin and that Mr Feldman and Mr Merinson should participate by repaying their Finder's fees.
- 4.84. On 21 May 2014, A and another BJB senior manager attended a meeting with Mr Merinson, during which he 'explained that the requested confirmation by the Y-Group board on the finder's set up cannot be obtained'. It was recorded that during the meeting Mr Merinson showed 'cooperation to participate in the compensation payment'.
- 4.85. On 22 May 2014, an internal call was held which A attended. It was agreed that a suspicious transaction report should be filed in the affected jurisdictions.
- 4.86. On the same day, JBI reported potential acts of bribery and corruption to UK law enforcement. It referred to payments made by Julius Baer to Mr Merinson in Finder's fees and stated that the payments may have been tainted by a scheme by Mr Merinson and Mr Feldman to defraud entities in the Yukos Group.

- 4.87. On 6 June 2014, there was a meeting between Mr Merinson and A. A note of the meeting reported that A told Mr Merinson that his offer of participation in the compensation was not sufficient and that A said to Mr Merinson that BJB was ready to compensate Yukos up to 3 million USD. Mr Merinson responded that it was not necessary as changes in the Yukos Group board were expected after which the respective confirmation of the Finder's set up could be obtained.
- 4.88. On 12 June 2014, Mr Merinson called A and stated that there were contemporaneous Yukos Group minutes approving the transaction which could be provided. Mr Merinson offered to meet A to find a solution. A responded that negotiations could only be with the Yukos Group.

### ***Related litigation***

- 4.89. Mr Merinson's employment with Yukos ended on 1 January 2016. Yukos International, Yukos Capital and Yukos Hydrocarbons instituted court proceedings against Mr Merinson in England on 3 May 2017 alleging, among other things, that he had breached his employment contract by taking "kickbacks" amounting to millions of pounds from financial institutions with which he was charged with negotiating the Yukos Group's financial and banking arrangements and that he knew or must have known that the fee sharing arrangement with Julius Baer was in breach of his obligations under his employment contract. Yukos also instituted court proceedings in the US against Mr Feldman, alleging, among other things, that Mr Feldman breached fiduciary duties owed to companies for which he was a director and misappropriated monies for personal gain.
- 4.90. Julius Baer brought its concerns regarding the payments to Mr Merinson to the attention of the Yukos Group and on 31 May 2018 it provided restitution for losses incurred by the Yukos Group plus interest.

## **5. FAILINGS**

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

### **Lack of fitness and propriety**

- 5.2. The Authority will have regard to a number of factors when assessing the fitness and propriety of a person, including the person's honesty, integrity and reputation.

- 5.3. As a result of the facts and matters described above, A's conduct has fallen short of the minimum regulatory standards and the Authority considers he is not fit and proper because he lacks the requisite integrity. A person may lack integrity where he acts recklessly.
- 5.4. A was reckless in relation to the conduct of Julius Baer's relationship with Mr Merinson and Yukos. He must have been aware of the obvious risks arising from this relationship, but failed to have regard to those risks and failed to take appropriate action in light of them.
- (1) In July 2010, Julius Baer entered into Finder's arrangements with Mr Merinson, which were negotiated by C with Mr Feldman and Mr Merinson. These arrangements were entered into after C reported to the JBI Line Manager and B on 7 July 2010 that:
- a. Mr Feldman had indicated that he would arrange for Yukos Capital to deposit a sum with Julius Baer representing an inflow of funds from a successful litigation award, which he expected would be between £280 million and £430 million.
  - b. Mr Feldman, the sole director of and sole signatory for Yukos Capital, had also asked whether Julius Baer would be able to make a 'one-off' payment to Mr Merinson, of around 1% of the total assets on the account.
  - c. She had responded that Julius Baer would need a guaranteed return on assets of at least 1.2%, that the fee to Mr Merinson could be generated from a large USD/GB CoY on which Julius Baer would apply 1.4% commission and pay 70% of this to Mr Merinson, and that Mr Merinson would not receive for at least one year the standard Finder's fee of 25% of the net income generated by BJB from clients introduced by Mr Merinson (which it appears had previously been agreed in principle with him and which, contrary to the provisions of BJB's Co-operation with Finders Policy, was subsequently the only payment mentioned in Mr Merinson's written agreement that he entered into the following day).

- d. On that basis, she was told that the funds would remain with Julius Baer on the Yukos Hydrocarbons account and that there would be further substantial funds to come.
- (2) In August 2010, at a time when he was aware that Julius Baer had entered into Finder's arrangements with Mr Merinson, and that Mr Merinson was a Yukos employee, A approved the First Commission Payment. A thereby approved both the Finder's arrangements which Julius Baer had entered into with Mr Merinson and the arrangements by which the commission was generated in the First FX Transaction. The First FX Transaction involved Julius Baer converting approximately GBP 271 million received from Yukos Capital into USD. The trading took place at rates 11 times Julius Baer's standard commission rate for FX transactions of this size, and resulted in commission totalling in excess of USD 2.3 million being charged to Yukos Capital; 80% of the commission was paid to Mr Merinson, and the remaining 20% (approximately USD 469,000) was retained by Julius Baer. This constituted a return to Julius Baer of 0.11%, which was itself more than double its standard commission on an FX transaction of this size. A gave his approval after C had sought approval (which was refused by BJB Legal) for Mr Merinson's request that the First Commission Payment be referenced as "Investment Capital Gain", which should have caused A to recognise the risk that this was an attempt by Mr Merinson to disguise the true nature of the payment. In giving his approval, A recklessly failed to have regard to the following obvious risks, of which he must have been aware:
- a. The risk that there was no proper commercial rationale for any payment to Mr Merinson or for a Finder's agreement with Mr Merinson, which related to the introduction of Yukos Capital to Julius Baer. A did not question why Yukos would wish to pay such a large sum of money to an employee and why, even if it did want to reward Mr Merinson, it would want to do so through a Finder's relationship with Julius Baer; and
  - b. Given the involvement of Mr Feldman, the sole director of and signatory for Yukos Capital and the only person at Yukos (other than Mr Merinson) known to be aware of the arrangements, in approving the Finder's arrangements and in the First FX Transaction, the risk that the

arrangements and the First FX Transaction involved a breach of both Mr Merinson's and Mr Feldman's duties to the relevant Yukos Group companies, were not in the interests of those companies, and were made in order to facilitate the improper diversion of funds from Yukos Capital to Mr Merinson (and potentially to Mr Feldman).

- (3) In October 2010, A approved amendments proposed by Mr Feldman and Mr Merinson to the original Finder's arrangements, under which Mr Merinson's Finder's fee was increased from 25% to 35% of net income generated by Julius Baer, and under which he was permitted to receive four additional 'one-off' payments, calculated as 70% of Julius Baer's commission on four large transactions, relating to new inflows of funds, to take place by October 2011. Only the increase in Mr Merinson's share of net income was documented. In return, among other things, Yukos' funds were to remain with Julius Baer for at least three years. There was no proper commercial rationale for these arrangements and, in approving them, A recklessly failed to have regard to the obvious risk, of which he must have been aware, that these arrangements were in breach of Mr Merinson's and Mr Feldman's duties to the relevant Yukos Group Companies, were not in the interests of those companies, and were designed to divert funds improperly from the Yukos Group Companies to Mr Merinson (and potentially to Mr Feldman).
- (4) In November 2010, the Second FX Transaction was carried out, in which Julius Baer converted approximately USD 68 million of Yukos funds (which formed a portion of the funds converted into USD by the First FX Transaction) into EUR. The trading approach (which mirrored that adopted in the First FX Transaction and was agreed with Mr Feldman) involved a large daily rate range and Fair Oaks paying just above the worst rate available in the market, so that the spread between that and the rate at which Julius Baer transacted would cover both the commission required by Julius Baer and a further commission payment which would be made to Mr Merinson as Finder. There was no proper commercial rationale for Yukos to adopt such an arrangement. The trading approach had the effect that the amount charged for the combination of Julius Baer's commission and the retrocession payment that was to be made to Mr Merinson would not be obvious; and by ensuring that the rate charged to Fair Oaks was above the worst rate of the day, had the effect that anyone with cause to examine Fair

Oaks' records would not be put on notice that the commission was of an unusual size. The Second FX Transaction took place at a rate approximately 30 times higher than Julius Baer's standard commission rate for transactions of this size, and resulted in commission in excess of USD 1 million being charged to Fair Oaks; 70% of this sum was paid to Mr Merinson, and the remaining 30% (approximately USD 320,000) was retained by Julius Baer and constituted a return of 0.47%. This was itself far in excess of Julius Baer's standard commission on an FX transaction of this size. A approved the Second Commission Payment and thereby approved the arrangements by which the commission was generated in the Second FX Transaction. In doing so, A recklessly failed to have regard to the obvious risk, of which he must have been aware, that the transaction formed part of an improper scheme to divert funds to Mr Merinson (and potentially to Mr Feldman) in breach of their duties to the relevant Yukos Group Companies.

- (5) In the event, before the Second Commission Payment was made, A became aware of the concerns that had been raised about the Second FX Transaction by the BJB Bahamas Senior Manager. In response to those concerns, A set B the task of putting in place an 'acceptable framework' for C and the bank to operate in and asked him to 'regularise pending issues', and did not make any further enquiry into the concerns which had been expressed. In the circumstances, A must have been aware that there was a risk that the arrangements with Mr Merinson and Yukos were improper, yet he recklessly proceeded to confirm his approval of the Second Commission Payment, which was ultimately paid to Mr Merinson on 31 December 2010, before B had taken the actions that A had tasked him with.

5.5. There was no proper commercial rationale for the unusual and elaborate steps requested by Mr Feldman and implemented by Julius Baer to generate funds for the benefit of Mr Merinson. A was an experienced financial services professional and held a senior position with BJB. A must have been aware, given his experience and in light of the matters set out above, of the obvious risks arising from Julius Baer's relationship with Mr Merinson and Yukos. However, rather than object to the Finder's arrangements or arrange for them to be properly investigated, A continued to support them as the relationship progressed, and approved the payment of the First and Second Commission Payments



pursuant to the arrangements. In doing so, he acted recklessly and with a lack of integrity.

## **6. SANCTION**

6.1. The Authority has the power to prohibit an individual under section 56 of the Act if it appears to the Authority that the individual is not a fit and proper person. In light of the serious nature of A's misconduct, involving a lack of integrity, the Authority considers that A is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. The Authority considers that it is therefore appropriate and proportionate in all the circumstances to impose a prohibition order on A under section 56 of the Act in those terms.

6.2. In deciding to impose a prohibition order on A, the Authority has had regard to the guidance in Chapter 9 of EG. The Authority has, in particular, taken account of the fact that A's misconduct occurred several years ago and that he has never carried out a financial services role in the UK or been an approved person. However, the Authority considers that the seriousness of A's misconduct, which involved him recklessly failing to have regard to the obvious risks arising from Julius Baer's relationship with Mr Merinson and Yukos and the payment of significant amounts of commission pursuant to that relationship, and failing to take appropriate action in light of those risks, over a period of several months, is such that A poses a serious risk to confidence in the UK financial system. The Authority considers that it is appropriate to impose a prohibition order on A in order to advance the Authority's operational objectives of securing an appropriate degree of protection for consumers and of protecting and enhancing the integrity of the UK financial system.

## **7. REPRESENTATIONS**

7.1. Annex B contains a brief summary of the key representations made by A and by Mr Merinson and Mr Feldman (as persons with third party rights in respect of the Warning Notice) and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into

account all of the representations made by A, Mr Merinson and Mr Feldman, whether or not set out in Annex B.

## **8. PROCEDURAL MATTERS**

8.1. This Notice is given to A under section 57 and in accordance with section 388 of the Act.

8.2. The following statutory rights are important.

### **Decision maker**

8.3. The decision which gave rise to the obligation to give this Notice was made by the RDC. The RDC is a committee of the Authority which takes certain decisions on behalf of the Authority. The members of the RDC are separate to the Authority staff involved in conducting investigations and recommending action against firms and individuals. Further information about the RDC can be found on the Authority's website:

<https://www.fca.org.uk/about/committees/regulatory-decisions-committee-rdc>

### **The Tribunal**

8.4. A has the right to refer the matter to which this Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, A has 28 days from the date on which this Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email: [fs@hmcts.gsi.gov.uk](mailto:fs@hmcts.gsi.gov.uk)). Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website:

<http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>

8.5. A copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference

notice should be sent to Nicholas Hills at the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.

- 8.6. Once any such referral is determined by the Tribunal and subject to that determination, or if the matter has not been referred to the Tribunal, the Authority will issue a final notice about the implementation of that decision.

### **Access to evidence**

- 8.7. Section 394 of the Act applies to this Notice.

- 8.8. The person to whom this Notice is given has the right to access:

- (1) the material upon which the Authority has relied in deciding to give this Notice; and
- (2) the secondary material which, in the opinion of the Authority, might undermine that decision.

### **Third party rights**

- 8.9. A copy of this Notice is being given to the following persons, pursuant to section 393(4) of the Act, as third parties identified in the reasons above and to whom in the opinion of the Authority the matter to which those reasons relate is prejudicial. Each of those parties has similar rights to those mentioned in paragraphs 8.4 and 8.8 above in relation to the matters which identify him/her/it:

- (1) Dmitri Merinson
- (2) Daniel Feldman
- (3) Bank Julius Baer & Co. Ltd
- (4) Julius Baer International Ltd

### **Confidentiality and publicity**

- 8.10. This Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). In accordance with section 391 of the Act, a person to whom this Notice is given or

copied may not publish the Notice or any details concerning it unless the Authority has published the Notice or those details.

- 8.11. However, the Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. The persons to whom this Notice is given or copied should therefore be aware that the facts and matters contained in this Notice may be made public.

### **Authority contacts**

- 8.12. For more information concerning this matter generally, contact Rory Neary at the Authority (direct line: 020 7066 7972/email: [Rory.Neary2@fca.org.uk](mailto:Rory.Neary2@fca.org.uk)).

**Tim Parkes**  
**Chair, Regulatory Decisions Committee**

## **ANNEX A**

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

#### **RELEVANT STATUTORY PROVISIONS**

- 1.1. The Authority's statutory objectives are set out in Part 1A of the Act, and include the operational objectives of securing an appropriate degree of protection for consumers and of protecting and enhancing the integrity of the UK financial system (set out in sections 1C and 1D of the Act).
- 1.2. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

#### **RELEVANT REGULATORY PROVISIONS**

##### The Fit and Proper Test for Approved Persons

- 1.3. The part of the Authority's Handbook entitled "The Fit and Proper Test for Employees and Senior Personnel" ("FIT") sets out the criteria that the Authority will consider when assessing the fitness and propriety of an individual to perform a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 1.4. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.
- 1.5. FIT 2.1.1G provides that in determining a person's honesty and integrity the Authority will have regard to all relevant matters.

### The Authority's policy for exercising its power to make a prohibition order

- 1.6. The Authority's policy in relation to prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG").
- 1.7. EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he or she may perform.
- 1.8. EG 9.2.2 sets out the general scope of the Authority's powers in respect of prohibition orders, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.
- 1.9. EG 9.2.3 provides that the scope of a prohibition order will depend on the range of functions that the individual performs in relation to regulated activities, the reasons why he is not fit and proper, and the severity of risk which he poses to consumers or the market generally.
- 1.10. EG 9.3.2 provides that, when deciding whether to make a prohibition order against an approved person, the Authority will consider all the relevant circumstances of the case which may include, but are not limited to, the following factors (among others):
  - (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of an approved person are contained in FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
  - (2) whether, and to what extent the approved person has failed to comply with the Statements of Principle;
  - (3) the relevance and materiality of any matters indicating unfitness;
  - (4) the length of time since the occurrence of any matters indicating unfitness;
  - (5) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates;

(6) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and

(7) the previous disciplinary record and general compliance history of the individual.

1.11. EG 9.5.1 provides that, where the Authority is considering making a prohibition order against a person who is not an approved person, the Authority will consider the severity of the risk posed by the individual, and may prohibit the individual where it considers this is appropriate to achieve one or more of its statutory objectives.

1.12. EG 9.5.2 provides that, when considering whether to exercise its power to make a prohibition order against such an individual, the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to, where appropriate, the factors set out in EG 9.3.2.

## **ANNEX B**

### **REPRESENTATIONS**

#### **A's Representations**

1. A summary of A's representations, and the Authority's conclusions in respect of them, is set out below.

#### **Summary of A's position**

2. *The case against A is based on a series of inferences as to his knowledge, each of which is incorrect and is unsupported by the contemporaneous documents. The contemporaneous documents show that A acted properly based on the (often incorrect) information he had. He took decisions at a time when he was being actively misled as to the true position.*
3. *A's role in the approval of any Finder's relationship or payment of commission was to review and give high-level approval to proposals (where he believed appropriate), the detail of which was managed by specialists within the relevant market with responsibility for the client relationship, and which had been reviewed in detail and approved by local management, senior BJB Compliance officers specialising in the review of high-risk customers and transactions, and the Market Head concerned. He relied on the honesty, integrity and competence of his staff.*
4. *C acted in her own interests and those of Mr Merinson and Mr Feldman, not those of BJB, JBI or Yukos. She misled senior staff at Julius Baer, including A, and carefully concealed crucial information from them. In particular, she carefully withheld three critical facts from A:*
  - a. *That Mr Feldman was going to receive a kickback from Mr Merinson. Mr Feldman was in effect authorising the payment of Finder's fees to himself, rather than being an independent director acting in the best interest of Yukos. C knew this but carefully omitted it from all requests for approval.*
  - b. *That Mr Merinson was in fact a Yukos Group employee, not an independent adviser and consultant which is what she told A.*
  - c. *That Mr Merinson was in reality in control of the funds held by Yukos and was therefore operating as a shadow director of Yukos. This was clear from a letter that C prepared in March 2010, addressed to Yukos International but concerning the Yukos Capital account, which was signed by her and another relatively junior JBI employee who was not ordinarily involved in that account, and approved by Mr Merinson. The letter confirmed that JBI would not execute transfer instructions without receiving 'valid confirmation' from Mr Merinson and provided that this procedure applied 'with no exceptions'.*
5. *C withheld these facts because she recognised that, if A was aware of them, he would act with integrity and would not have sanctioned the Finder's arrangement or payments.*
6. *A was not engaged in the detail of Mr Merinson's Finder's arrangements or of the Yukos accounts and the development of the relationship. He authorised the First and Second Commission Payments to Mr Merinson only on the basis that outstanding*



*concerns were resolved and proper documentation was obtained to support the transactions. In particular, he insisted that evidence needed to be obtained that a properly authorised representative of Yukos approved the transactions.*

7. The Authority does not agree that A acted properly based on the information he had. A was aware of the key features of the Finder's arrangements with Mr Merinson and of the arrangements by which commission was generated in the First and Second FX Transactions. The Authority also considers that he was aware that Mr Merinson was a Yukos employee (see paragraph 10 below). Given that he was an experienced financial services professional, the risk that there was no proper commercial rationale for these arrangements must have been clear to him and he should have regarded them as suspicious.
8. The Authority agrees that it was appropriate for A to place reasonable reliance on those reporting to him. However, where he was aware of matters that gave rise to causes for concern, he should have asked questions and sought assurance that the proper steps had been taken, rather than fail to have regard to the risks and place the blame on others.
9. Although A did not know of Mr Merinson's intention to share his commission with Mr Feldman, of which C was informed on 16 August 2010, he must have been aware of the risks: (i) that there was no proper commercial rationale for any payment to Mr Merinson or for a Finder's agreement with Mr Merinson, which related to the introduction of Yukos Capital to Julius Baer; and (ii) given Mr Feldman's involvement, that the arrangements were made in order to facilitate the improper diversion of funds not only from Yukos Capital to Merinson, but also potentially to Mr Feldman too.
10. As explained in paragraph 4.34 of this Notice, the Authority infers from the evidence it has seen that A was aware that Mr Merinson was a Yukos employee.
11. C explained to the Authority that the procedure set out in the letter she prepared in March 2010 was required because, although Mr Feldman was authorised to give such transfer instructions to JBI, in light of his US residence he would need to do so via Mr Merinson. The Authority considers that the question of whether or not C should have disclosed the contents of this letter to A is irrelevant to A's own culpability. Irrespective of Mr Merinson's exact role, the arrangements were clearly suspicious and should have led A to question why Yukos would wish to pay such a large sum of money to Mr Merinson through a Finder's relationship with Julius Baer.
12. The Authority does not agree that A approved the First and Second Commission Payments only on the basis that concerns would be resolved. He took no steps to address any of the concerns when approving the First Commission Payment, and knew that the concerns had not been addressed when he approved the Second Commission Payment.

### **Recklessness and lack of integrity**

13. *Although the Tribunal in Keydata<sup>1</sup> stated that, where recklessness is alleged, the standard to be applied is an objective one, that is not the appropriate test. Instead,*

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<sup>1</sup> *Stewart Owen Ford and Mark John Owen v The Financial Conduct Authority* [2018] UKUT 0358 (TCC)

*the correct test for recklessness is that which was applied by the Tribunal in Tinney<sup>2</sup> and provides that state of mind and knowledge are essential components of recklessness. The person in question must be aware of a risk and it must be unreasonable to take the risk in light of the circumstances as the person himself believes them to be.*

14. *There is no basis for a finding of recklessness against A. He was not aware of the relevant key risks because he was being deceived as to the salient facts, and it was reasonable for him to act as he did, on the basis of the (false) information that was provided to him. He asked appropriate questions and sought clarification where necessary. He also gave instructions to ensure that the transactions were properly approved and authorised by Yukos and the documentation was regularised. Had he known the truth, he would not have permitted the transactions to proceed.*
15. *The Authority has concluded, on the basis of the evidence it has seen, that A had sufficient knowledge of the key facts of Julius Baer's relationship with Yukos and Mr Merinson that he must have been aware of the obvious risks arising from the relationship, and that he failed to have regard to those risks and failed to take appropriate action in light of them. As a consequence, the Authority considers that A acted recklessly, and without integrity.*
16. *Given its conclusion that A must have been aware of the risks, which supports a finding of recklessness whichever test applies, the Authority does not consider it necessary to respond to A's submissions regarding the correct test for recklessness.*

## **Evidence**

17. *The Authority disclosed a number of documents after the Warning Notice was given to A. This late disclosure contains powerful exculpatory material relevant to A's case and demonstrates that significant parts of the case advanced in the Warning Notice are incorrect.*
18. *The Authority has failed properly to take into account the different knowledge of different BJB and JBI staff. Where newly disclosed contemporaneous evidence falsifies its previous case, the Authority sometimes accepts that its assumptions and inferences of A's wrongdoing and knowledge were wrong. But where there remain fundamental gaps in the Authority's case, an attempt is still made to fill the gaps with unjustified inferences and assumptions.*
19. *In reaching its decision that A acted with a lack of integrity, the Authority has had regard to all relevant evidence, including the documents that were disclosed after the Warning Notice was given to A. The Authority has also had regard to the knowledge of other BJB and JBI staff at different times. The Authority's conclusions with regard to the relevant facts and matters are set out in this Notice and the Authority does not consider any of them to be based on unjustified inferences or assumptions.*

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<sup>2</sup> *Andrew Tinney v The Financial Conduct Authority* [2019] UKUT 0227 (TCC)

## **Background**

### A's role and responsibilities

20. *A was an executive director of BJB, not of JBI. His responsibilities were far wider than the UK regulated entity and he was not personally regulated in the UK. He had over 340 staff under his management and nine direct reports, of which seven were very senior managers or heads of a country or group of countries. His expertise was in Latin America and he was only an interim Region Head for Russia, Central and Eastern Europe, which made his reliance on the senior region and Compliance staff more acute.*
21. *A was exceptionally busy and would regularly travel overseas for work. He estimates he received over 100 emails a day in 2010. He did not have time to read, still less closely analyse them, so a failure to spot something in a long email is unlikely to be good evidence of a lack of integrity. Where a decision or judgement was required from him, he was reliant upon his staff to provide all the material necessary, and in good time, to enable him to reach appropriate decisions and judgements.*
22. *A could not and did not ignore risks he was aware of. But in the absence of evidence to the contrary, he was entitled to proceed on the basis that his staff were honest and providing him with complete reports, and that they were doing their jobs properly.*
23. *The Authority acknowledges that A held a very senior position at BJB, had a great deal of responsibility and was very busy, and has taken all these matters into account in considering the evidence. However, there is clear documentary evidence that A was closely involved in considering and approving the arrangements with Mr Merinson. Whilst A was entitled to place some reliance on the views of others, he was ultimately responsible for approving the arrangements, and the Authority considers that on the facts known to A, the risks arising from the arrangements must have been obvious to him, and that he failed to have regard to them and take appropriate action in light of them.*

### Private banking

24. *Private banks offer a full-service banking relationship to clients with complex banking needs. The charges agreed with clients are often substantial, reflecting the complex due diligence and AML work needed to take on a client and the high cost of providing a bespoke, specialist banking service. Generally, a private bank like BJB would seek to charge fees of 100 basis points of assets held per annum (i.e. 1%) in order to be profitable.*
25. *Given its political sensitivities and the extensive litigation and arbitration it was involved in worldwide, the Yukos Group relationship was a good example of the need for private banks and the complexity of the services they provide.*
26. *The Authority agrees that, given the political sensitivities and the level of funds involved, the decision to take on Yukos as a client would have been a significant one for Julius Baer, and acknowledges that these matters would have been factors in determining the level of fees to charge. The Authority notes the lack of contemporaneous evidence supporting A's assertion that BJB needed to, or aimed to, make 100 basis points per annum from its relationship with Yukos. In any*

event, BJB's fees, whatever their level, needed to be appropriately disclosed to, and approved by, Yukos, its client, but this did not happen.

#### Finders

27. *In 2010, the use of Finders was ordinary commercial practice in Swiss private banking, and BJB was no exception. Significant sums were paid by private banks to secure business. A Finder would generally have a relationship with the client of some nature and would usually have a degree of influence over whether the client would bank or invest with BJB. That is why the standard form of Finder's agreement required disclosure of remuneration by the Finder to the client and expressly permitted BJB to make similar disclosures. The potential for conflicts of interest was well understood and was ordinarily managed by BJB Compliance in a case of any complexity.*
28. *The fees paid to a Finder were a product of three factors: (a) fees earned by BJB; (b) assets under management; and (c) time. A private bank is willing to pay a larger, one-off payment on new funds to a Finder because it hopes to retain those new funds in the longer term, and for that reason Finders were often initially paid more than the bank was earning in fees from the client.*
29. *The Co-operation with Finders Policy contained three standard remuneration models. When analysed alongside these models, the sums received by Mr Merinson were not unusual or surprising, and this is demonstrated by the fact that BJB could have agreed to make payments to Mr Merinson under its standard remuneration models of over USD 3 million without any special approvals process. The fees agreed with Mr Merinson were comparable to what BJB would have been willing to pay a Finder under its standard terms. The fee rates and levels were usual in the market and the sums paid to Mr Merinson were not surprising to A. Julius Baer did not pay Mr Merinson under a standard remuneration model because it was more commercially advantageous to it to agree bespoke terms.*
30. Mr Merinson's Finder's arrangements did not reflect the usual commercial position when BJB was taking on a client introduced through a Finder. The usual basis for such an arrangement was that the Finder would be paid from the profits that BJB made from the client relationship, on a periodical basis after BJB had earned it. However, in this case, the Finder, Mr Merinson, was effectively paid by the client, Yukos, and moreover this was not on the basis of a standard remuneration model, but through retrocession payments which were not documented in his written Finder's agreement. Further, Mr Merinson was not a Finder in the usual sense, as he was not retained by BJB to locate and introduce potential clients, but was instead employed by Yukos. Even if it was the case that there were commercial reasons for BJB to pay Mr Merinson such levels of fees, there was no proper commercial rationale for Yukos to pay Mr Merinson through such a Finder's arrangement; if Yukos had wished to pay Mr Merinson it could have done so directly.
31. The Authority also does not agree with the submission that the fees agreed with Mr Merinson were comparable to what BJB would have been willing to pay a Finder under its standard terms. The initial plan, as documented in C's email of 7 July 2010 to B, of paying Mr Merinson a fee equivalent to approximately 1% of the total assets on the Yukos Capital account was significantly more than BJB would have paid under its standard terms. When the arrangements changed in October 2010, Mr Merinson's remuneration under his Finder's agreement was increased from 25% to 35% of net income, which was higher than the standard model permitted, plus 70%

of revenues on large transactions. If the relationship with Yukos had proceeded as anticipated at the time, the payments to Mr Merinson would have significantly exceeded the highest possible payments under the standard models.

## **Relevant events**

### July 2010 Finder's arrangements

32. *A did not see the Finder's agreement entered into by Mr Merinson on 8 July 2010 or email correspondence relating to it, which indicated that Mr Merinson was not willing to have his remuneration properly disclosed to Yukos Capital.*
33. *The email correspondence between a BJB senior manager and the JBI Line Manager on 16 July 2010 shows that the JBI Line Manager supported the Finder's arrangements, that no discussions had been held with A at that point, and that BJB Senior Manager B planned to speak to A once he had the requested information, which would not be fully available until after C returned to work in August 2010. There is no evidence that, prior to the First FX Transaction, A was in fact ever spoken to about the proposed one-off payment to Mr Merinson or that he approved it in advance. In addition, BJB's procedures required written approval by A, but none has been found.*
34. The Authority acknowledges that there is no evidence that A saw the Finder's agreement entered into by Mr Merinson on 8 July 2010 or email correspondence relating to it. However, the 16 July 2010 email correspondence shows that senior managers at BJB considered it appropriate for A to be made aware of the Finder's arrangements, and his approval of the non-standard terms of the agreement was required under BJB's Co-operation with Finders Policy. In the circumstances, the Authority infers that, following the 16 July 2010 email exchange, A was made aware of Julius Baer's entry into Finder's arrangements with Mr Merinson, and considers that, when he subsequently approved the First Commission Payment, A thereby approved Mr Merinson's Finder's arrangements.

### First FX Transaction and First Commission Payment

35. *C's email of 16 August 2010 to BJB Compliance, B and A did not mention that Mr Merinson had informed her earlier that day that he was going to transfer a proportion of his commission to Mr Feldman, the sole director of Yukos Capital. The conflict of interest was obvious and serious. Instead of informing BJB Compliance and her seniors, C decided to conceal it. She must have realised that neither A nor BJB Compliance would have approved the payment, if they had been aware that Mr Feldman would be receiving a share of the commission.*
36. *It appears, from an email sent by B to the JBI Line Manager, that B had not been kept up to date with what was happening and had not approved the retrocession arrangements. It is correct that both B and A expressed verbal approval for the First Commission Payment. This occurred in a telephone call between them and C, at which, in response to A's questions, C stated that Mr Merinson was a former employee and a consultant to Yukos. A therefore identified the risk of a potential conflict of interest and addressed it. If C had mentioned that Mr Merinson was a current Yukos employee or that she knew that Mr Feldman would receive a share of the payment to Mr Merinson, A would not have approved the First FX Transaction. C knew this, which is why she did not tell him.*

37. *A was not copied into C's email of 19 August 2010 to BJB Compliance and was not informed of its contents. This is consistent with C's practice of being deliberately selective as to the information that she provided to different people.*
38. *A was aware that all Finders had to hold an account with BJB and were subject to BJB Compliance review and due diligence. A reasonably expected that any concern about a relationship between a Finder and a client would have been identified by BJB Compliance and reported to him. However, despite Mr Merinson's role being identified to it by a member of BJB's Business & Operational Risk Division as a potential area of concern and despite being informed by C that Mr Merinson was both a Finder and the Financial Director for Yukos International, BJB Compliance considered the transaction to be plausible and did not identify the obvious conflict of interest at that time or raise any concerns with A. BJB Compliance's failure to do its job properly is not a proper basis for a finding of a lack of integrity against a senior director who relied on their competence and expertise.*
39. *By the time A was invited to give his approval of the First Commission Payment 'as an exception', A's reply that 'We are in front of a "fait accompli" so not too much room for objection, unless we wish to transfer the relationship to another financial institution' was correct, on the information known to him. The request had been raised by C, whom at the time he had no reason to doubt. She had referred it to BJB Senior Manager B, who then referred it to BJB Compliance and BJB Legal, who had approved the transaction. A could not see a basis for undermining the contract to which C had already committed the bank. When he gave his approval, he did so on the understanding that the arrangements had been approved by the sole director of Yukos Capital and on the express basis that they were not concealed from Yukos.*
40. *C's seeking of approval for Mr Merinson's request that the First Commission Payment be described as an "Investment Capital Gain" was dealt with appropriately. Two hours after the email was received in the evening of 19 August 2010, it was referred by BJB Senior Manager B to BJB Legal, who rejected the request. A was only asked to approve the transaction on the basis that the retrocession would be described (correctly) as commission. By the time he came to review the email chain and consider it, the request had already been analysed, rejected and resolved. No wider review was needed, as the request was dealt with by writing a letter confirming that Mr Merinson was not an employee of the bank.*
41. *B's letter to Mr Merinson dated 3 September 2010 implemented A's request for a written record that the payment to Mr Merinson was a one-off.*
42. *A does not agree that there was no proper commercial rationale for any payment to Mr Merinson or for Mr Merinson's Finder's arrangements. For Julius Baer, the commercial rationale was to attract new funds under management; for Mr Merinson, the rationale was to earn commission; for Yukos, the rationale was to reward and maintain the loyalty and services of an important adviser to the company by permitting him to earn referral commission. Further, the fees charged by BJB were reasonable and in line with the Co-operation with Finders Policy and the costs of private banking services in the market.*

43. *The purposes of the First FX Transaction were first, to sell a large quantity of sterling to meet Yukos' legitimate business requirement to hold its assets predominantly in US dollars, and secondly, to charge commission sufficient to cover the costs of offering a private banking relationship to Yukos, including the reasonable costs of securing that business from Mr Merinson. As a result, the commission was higher than would ordinarily be charged on a transaction of that size. There was nothing wrong with this: the costs of securing new business, including the remuneration of Finders, inevitably must be reflected in the charges negotiated by a bank with its customers. If a bank has to pay a Finder, its own charges will need to be higher to pay the agreed compensation to the Finder.*
44. *There was nothing unreasonable about the level of remuneration payable to BJB or the Finder. Applying BJB's Co-operation with Finders Policy, the level of payment to Mr Merinson was reasonable and commercial. The Co-operation with Finders Policy would have permitted a much larger payment to be made on these new assets over two years; A was approving a smaller payment to be made immediately on a one-off basis, which was a reasonable commercial decision on the information he had.*
45. *There is also nothing wrong with applying a substantial commission to a FX transaction, providing that it has been agreed with the client as part of an overall fee arrangement which makes the banking relationship commercially feasible and mutually beneficial. In accordance with the traditional private banking model at that time, the fees charged for a transaction did not necessarily reflect the cost of executing the specific transaction, but the cost of the overall service.*
46. As explained in paragraph 9 above, although A was not made aware of Mr Merinson's intention to share his commission with Mr Feldman, the Authority considers that, given the involvement of Mr Feldman, the sole director of and signatory for Yukos Capital and the only other person at Yukos known to be aware of the arrangements, A must have been aware of the risk that the arrangements were made in order to facilitate the improper diversion of funds not only from Yukos Capital to Merinson, but also potentially to Mr Feldman too.
47. As explained in paragraph 10 above, the Authority infers from the evidence it has seen that A was aware that Mr Merinson was a Yukos employee. Given this and all the other information that A was aware of at the time, the Authority considers that A acted recklessly in approving the First Commission Payment.
48. The Authority understands BJB Compliance's comment that the transaction was "plausible" meant that they considered there were no concerns with the source of the funds, rather than that they had considered the propriety of the First FX transaction and the First Commission Payment. A therefore had no reason to believe that BJB Compliance had approved the arrangements with Mr Merinson or the First Commission Payment, either at the time he gave his verbal approval or when he confirmed his approval on 20 August 2010.
49. BJB Compliance did in fact recognise that there were conflicts of interest issues, as is apparent from BJB Compliance's email to C of 1 September 2010. Although these issues were not raised with A, and he was not copied into C's email of 19 August 2010 to BJB Compliance, given the information he had, he must have been aware of the risks arising from the First FX Transaction and the payment of a retrocession to Mr Merinson pursuant to it.

50. Although it was the case that, by the time A confirmed his approval of the First Commission Payment on 20 August 2010, BJB Legal had already refused the request that the payment be made with the payment reference "Investment Capital Gain", as using such a reference would be an untrue statement, A should have recognised the risk that the request could have been an attempt to disguise the true nature of the payment.
51. The commission rate charged on the First FX Transaction was approximately 11 times the standard commission rate for a transaction of this size. Even if it was the case, as A submits, that the high level of commission did not reflect the costs of executing this specific transaction, but rather what Julius Baer required to cover the overall costs of servicing a private banking relationship with Yukos, including the payment of a Finder's fee to secure that business, the Authority does not agree that there was a proper commercial rationale for making a payment to Mr Merinson in this way. Had Yukos wished to reward Mr Merinson, it could simply have paid him directly. There is no record of A ever asking why Yukos Capital wished to pay such a large sum to Mr Merinson or why, even if it did want to reward him, it would want to do so through a Finder's relationship with Julius Baer. There is also no evidence of him asking why such arrangements would have the effect of incentivising Yukos Capital to keep its money with BJB. In the circumstances, A's decision to approve the First Commission Payment for commercial reasons was inappropriate and reckless. The matter was not a 'fait accompli', as A could have refused to approve the payment.

#### October 2010 amendments to Finder's arrangements

52. *It is understandable why A informed B and BJB Senior Manager A that their recommendation 'should be prior', in respect of C's request for approval to proposed amendments to the Finder's arrangements in October 2010. It was a complex proposed suite of transactions and it required proper analysis, which was the job of the managers below A.*
53. *The proposal was for Mr Merinson to receive 70% of commission on up to four new transactions executed by October 2011, subject to important conditions, namely: (i) the transactions were to be in respect of new money to the bank, derived from successful litigation. Yukos was likely to have an additional incoming USD 400 million and the bank wished to attract this new money; (ii) the commission to be charged would be 50 basis points, split 70%/30% between Mr Merinson and the bank; and (iii) the funds would be held at the bank for at least three years. These arrangements were commercially reasonable and were in line with BJB's Co-operation with Finders Policy. It was not improper for BJB to remunerate Mr Merinson based on its fee income; that was and remains standard practice.*
54. *The increase in commission on net income from 25% to 35% was in line with the Co-operation with Finders Policy and was agreed, so as to match the terms of Mr Merinson's Finder's agreement with those of another private bank.*
55. *If these arrangements were not properly documented, that is not A's fault. He approved the arrangements in writing, by email. It was not for him to formally document the Finder's agreement and there is no evidence he was aware that it was not properly documented.*



56. *At the time that he approved the proposal, A did not know that Mr Merinson was a director of Yukos, or that Mr Merinson was intending to pay a share of the commission to Mr Feldman.*
57. The Authority agrees that it is reasonable for a person in A's position to take into account the views of senior managers reporting to him before making a decision on whether to approve proposed arrangements. However, the Authority notes that at interview, A said that he gave his approval in principle to the proposed revised Finder's arrangements for Mr Merinson at a meeting with C on or around 13 October 2010, before it was discussed with other senior BJB staff. Further, even though A discussed the arrangements with B before stating that he did not object to them, it was A who had ultimate responsibility for approving the amendments to the Finder's arrangements. In addition, the Authority notes that A did not rely on advice from BJB Legal or BJB Compliance in making his decision to approve the arrangements.
58. As explained above, although the Authority accepts that there is no evidence that A was aware that Mr Merinson was intending to transfer a share of his commission to Mr Feldman, it considers that, given the involvement of Mr Feldman, the sole director of and signatory for Yukos Capital and the only other person at Yukos known to be aware of the arrangements, A must have been aware that there was a risk that the arrangements were made in order to facilitate the improper diversion of funds not only from Yukos to Merinson, but also potentially to Mr Feldman too.
59. As explained above, the Authority considers that the evidence shows that, at this time, A was aware that Mr Merinson was a Yukos employee. As with the original arrangements, there was no proper commercial rationale for the revised arrangements, and A failed to have regard to the obvious risk that the arrangements were in breach of Mr Merinson's and Mr Feldman's duties to the relevant Yukos companies, were not in the interests of those companies, and were designed to divert funds improperly from the Yukos companies to Mr Merinson and, given his involvement, potentially to Mr Feldman. There is no evidence that A queried why Mr Feldman wished to ensure that Mr Merinson received such large non-standard retrocessions, when such payments would significantly drive up Yukos' transaction costs.
60. A should have been aware that the addendum to Mr Merinson's Finder's agreement with BJB did not document the arrangements with Mr Merinson properly. He was copied into an email from C dated 28 October 2010 asking for the revised Finder's agreement to be prepared, on the basis that Mr Merinson should receive 35% of BJB's net revenues rather than 25%, and stating that this had been approved by B and A. The email made no reference to the four additional 70% retrocessions which had been agreed by B and A. Further, C's email of 24 November 2010 to B and A seeking approval of the payment of the Second Commission Payment attached the new addendum to Mr Merinson's Finder's agreement, which in accordance with C's email of 28 October 2010, showed only an increase in his share of net income to 35% and made no mention of any entitlement to retrocession payments.

#### Second FX Transaction and Second Commission Payment

61. *None of the communications between BJB Compliance and C in September 2010 regarding the need to get written confirmation from Yukos for the*

*First FX Transaction due to conflict of interest issues were relayed to A prior to him approving the Second Commission Payment.*

62. *C departed from the approved revised Finder's arrangements in arranging the Second FX Transaction. First, the Second FX Transaction was booked with a commission of more than triple the level that had been approved by A and B. Secondly, C permitted the Second FX Transaction to take place over existing funds, rather than new funds.*
63. *By saying to B 'your jurisdiction and judgement', A was making clear that the first review and recommendation needed to be made by B, following which A would consider whether to give his approval. As was his usual practice, A was insistent that the proper approval and review process should be followed and respected.*
64. *A's 'no objection' was altered as new information was provided to him regarding concerns raised by the BJB Bahamas Senior Manager. These concerns were raised by BJB Senior Manager A with him at a meeting on 13 December 2010. A was concerned, although he only received a high-level summary and did not see the BJB Bahamas Senior Manager's emails, and took prompt and decisive action to deal with them. He instructed BJB Senior Manager B to ensure that the issues were resolved, that the resolution was properly documented in writing and that he was copied into the email to B. All of these steps were carried out. The fact that the concerns raised by the BJB Bahamas Senior Manager were addressed is inconsistent with a suggestion that A acted recklessly.*
65. *A's email of 22 December 2010 gave two instructions: to regularise the pending issues and to set up a correct framework. The framework was an entirely proper, clear written delegation of responsibility to B to resolve the potential conflict of interest and other issues. It is clear from the email that A was directing that the 'pending issues' be regularised as part of his approval of the Second Commission Payment; his direction for regularisation of the issues did not only cover future transactions. A was also justifiably concerned that C was tending to come to him directly, rather than after prior management review.*
66. *It was not necessary to suspend payment to Mr Merinson pending completion of all of the steps identified. The commission had already been charged to Yukos and the question was whether to pay 70% of it to Mr Merinson's account, which was ultimately a commercial judgement for A.*
67. *The Authority acknowledges that there is no evidence that A was made aware of the steps that BJB Compliance had requested C to take to address conflict of interest issues relating to the Finder's arrangements. However, it does not appear that A was reliant on BJB Compliance, as there is no evidence that BJB Compliance was informed or consulted about the revisions to the Finder's arrangements or about the propriety of paying Mr Merinson the Second Commission Payment, notwithstanding the concerns raised about the Second FX Transaction by the BJB Bahamas Senior Manager.*
68. *The Authority notes that the commission charged for the Second FX Transaction was much higher than that outlined by C in her email of 15 October 2010, and also that A and B had agreed arrangements based on new inflows of cash to Julius Baer, whereas the Second FX Transaction involved a portion of the same*

funds which had been converted into USD by the First FX Transaction. A, however, did not raise these differences with C and simply stated that he had no objection to B's approval of the payment to Mr Merinson. In doing so, A thereby approved the arrangements by which the commission was generated in the Second FX Transaction. The fact that B had already given his approval of the payment does not absolve A of responsibility for his decision to give approval or mitigate his failure to have regard to the obvious risks associated with the Second FX Transaction.

69. The Authority considers it likely that A was made aware of the details of the BJB Bahamas Senior Manager's concerns. The BJB Bahamas Senior Manager stated that he would withhold payment until discussions with B 'and/or' A had taken place, and BJB Senior Manager A subsequently discussed the matter with both of them. Further, the framework that B was tasked by A to put in place, as explained by BJB Senior Manager A in his email of 17 December 2010 which was copied to A, included points that appeared to be designed specifically to address the concerns raised by the BJB Bahamas Senior Manager. Although A asked B to put in place 'an acceptable framework' for C to operate within in the future and to 'regularise pending issues', A did not make any further enquiry into the concerns which had been expressed.
70. The Authority does not agree that A's approval of the payment was given on the condition that the various issues would first be resolved; the Second Commission Payment was paid to Mr Merinson before B had taken the actions that A had tasked him with, and A was aware when he gave his approval that the framework he had requested would not be in place until 'early next year'. In the circumstances, A must have been aware that there was a risk that the arrangements with Mr Merinson and Yukos were improper, and so, notwithstanding any commercial reasons for the payment, it was reckless of him to give his approval.

### **Prohibition**

71. *The evidence does not support a finding that A lacks integrity and so a prohibition order is inappropriate. In any event, a prohibition does not follow automatically from a reckless lack of integrity, as is clear from the Tribunal's decision in Tinney.*
72. *A decade has passed since the relevant events. A has never been regulated by the Authority and has never lived or worked in the UK, save for occasional business trips. He retired in 2017 and has no intention of conducting any regulated business in the UK or elsewhere. There is therefore no risk to the UK financial system. Prohibition is protective, not punitive, and it is not obvious what prohibition will in practice achieve.*
73. *A gave a full account of his conduct to the Swiss regulator, which has not taken any steps to discipline him.*
74. For the reasons set out in this Notice, the Authority considers that A acted recklessly and with a lack of integrity, and that his conduct was therefore not that of a fit and proper person. The Authority agrees that a prohibition order does not necessarily follow from a conclusion that an individual acted recklessly but, having had regard to the relevant factors in the Authority's Enforcement Guide, has concluded that the seriousness of A's misconduct is such that it is appropriate to impose a prohibition order.

75. The Authority recognises that the relevant events occurred about a decade ago, but does not consider that the passage of time means that A is now a fit and proper person or that he no longer poses a risk to confidence in the UK financial system.
76. A was in a role which meant that decisions he made had the potential to affect how JBI, a UK authorised firm, conducted its business and whether it complied with its regulatory obligations. It was drawn to A's attention in September 2010 that, in such a position, his actions might fall within the Authority's regulatory remit. A must have appreciated the risk that, in agreeing to the arrangements with Mr Merinson, and in approving significant payments to Mr Merinson pursuant to those arrangements, Julius Baer, including JBI, might be facilitating or even participating in financial crime. Had A objected to the arrangements or arranged for them to be properly investigated, it appears to the Authority unlikely that they would have proceeded. Accordingly, the Authority considers that the fact that A has never been regulated by the Authority or worked in the UK does not mean that he poses no risk to the UK financial system. Further, unless a prohibition order is imposed, there can be no guarantee that A will not in future undertake a function in respect of a regulated activity carried on by a UK authorised person, notwithstanding his current intentions.
77. The Authority does not consider it is inappropriate for it to impose a prohibition order to advance its consumer protection and integrity objectives, in circumstances where an overseas regulator could have taken similar action but has not done so.

### **Mr Merinson's Representations**

78. *The Warning Notice misrepresents Mr Merinson's activities and relationships. He was never the Chief Financial Officer of Yukos Capital or of any other Yukos Group entity. Instead, he was employed by Yukos International, with his duties largely restricted to bookkeeping and financial control.*
79. *He was therefore not involved in determining the fees that the respective Yukos entities paid to Julius Baer. Those fees mainly reflected the difficulties that Julius Baer had with the onboarding of a group with as controversial a history as Yukos.*
80. *The Finder's fees paid to him by Julius Baer were approved by an authorised representative of the respective Yukos Group Companies on behalf of which the transactions were undertaken. The arrangements were also made aware to various directors within the wider Yukos Group, yet no objections were raised at the time.*
81. *His contractual arrangement with Julius Baer were known from the outset to those at the top level of Julius Baer, as it was concluded upon Julius Baer's own initiative.*
82. *His business relationship with Mr Feldman was limited to a loan provided to him at arm's length, on which Mr Feldman paid interest in line with the market. There was never any intention to hide this arrangement, or any of the other arrangements, from either Julius Baer or Yukos. This is apparent from the fact that the transfers to Mr Feldman involved his account at Julius Baer.*
83. There is substantial evidence that Mr Merinson was employed by Yukos and, in particular, that he had an official role at Yukos International, the parent company of Yukos Capital. Irrespective of his precise job title, C's understanding,

based on due diligence and meetings with him and Mr Feldman, was that Mr Merinson had responsibility for oversight and control of financial operations at Yukos International and Yukos Capital. This was reflected in the fact that in June 2009 she described him as the Financial Controller and Treasurer for Yukos International, in October 2009 she described him as the Chief Financial Officer of both Yukos Capital and Yukos International, and in November 2009 she described him as the Chief Financial Officer of Yukos Capital.

84. The contemporaneous documents demonstrate that Mr Merinson was involved in determining the fees paid by Yukos entities to BJB. For example, he was present at the meetings on 7 July 2010 at which the key terms of the arrangements were negotiated; he was present in JBI's offices, when the First FX Transaction took place in August 2010; and he was present at the meeting on 13 October 2010, when further retrocessions and amendments to the terms of the arrangements were discussed.
85. There is no evidence that the arrangements were known to anyone in the Yukos Group other than Mr Feldman, with whom Mr Merinson shared the commission he received from the First and Second Commission Payments.
86. The Authority acknowledges that senior individuals in the Julius Baer group were familiar with the proposed arrangements from an early stage and supported them.
87. The Authority considers that Mr Merinson's assertion that his payment of exactly half the commission he received from the First and Second FX Transactions to Mr Feldman was pursuant to a loan is not credible. The Authority has not seen any evidence of a loan agreement or of interest payments from Mr Feldman to Mr Merinson.

### **Mr Feldman's Representations**

88. *Mr Merinson was never the Chief Financial Officer of Yukos Capital nor any other Yukos Group company, and had no official role at Yukos Capital nor Yukos International whilst Mr Feldman was a director of Yukos Capital.*
89. *Mr Merinson did not share his commission with Mr Feldman, nor was there any pre-arranged agreement to do so. Instead, Mr Merinson gave Mr Feldman an arms-length documented loan, on which he made interest payments from the outset. This was done transparently as Mr Merinson sent Mr Feldman the money directly from his Julius Baer account.*
90. *The conversion from GBP to USD was known throughout the Yukos Group. Yukos knew the original amount in GBP and the amount in USD that was ultimately deposited and were satisfied. FX rates are readily available so the fees paid could be determined. Others at Yukos could have also asked him about the fees, but did not do so. Instead, they lauded the arrangement with Julius Baer for the lowest custody fees being paid by the Yukos Group to any bank.*
91. *The fees paid for the FX Transaction were not exorbitant. Even if it was considered that they were higher than normal, that would reflect the politically sensitive nature of doing business with Yukos. There was tremendous pressure to bank the money and to do so quickly, but the political sensitivities meant there were few choices. To apply business norms to a far from normal business situation is unfair.*

92. *Mr Feldman's request to Julius Baer to keep details of the transactions confidential was aimed at keeping the information confidential from its adversaries in the litigation. This was Yukos' policy and a common request made to service providers that Yukos dealt with.*
93. As mentioned above, there is substantial evidence that Mr Merinson was employed by Yukos and, in particular, that he had an official role at Yukos International.
94. Mr Feldman's submission regarding Mr Merinson's sharing of the commission payments with him is not credible. The Authority has not seen any evidence of a loan agreement or of interest payments from Mr Feldman to Mr Merinson.
95. The Authority does not dispute that others in Yukos may have known about the conversion of GBP to USD. However, the Authority disagrees that they could have calculated the charges by looking at the exchange rate. Although it would have been possible to identify that the conversion was at a rate above the worst rate for the day, the actual charges, and the fact that the majority of them were being paid to Mr Merinson, and then shared with Mr Feldman, would not have been apparent. The Authority therefore considers it unlikely that the Yukos Group would have been satisfied, if they had known the real cost. Further, whilst the custody fees were transparent to the Yukos Group, the retrocession arrangements, which were not in Yukos' interests, were not transparent and there is no evidence that these were known of or approved.
96. Mr Feldman's submission that the high charges for the First FX Transaction reflected BJB's interest in being remunerated for taking the political risk of having Yukos as a client ignores the fact that 80% of the amount charged was paid to Mr Merinson and shared with Mr Feldman. In addition, the same logic does not apply to the further one-off retrocessions negotiated in October 2010. The Authority does not accept that the political sensitivities justified the arrangements agreed by Mr Feldman.
97. The Authority does not agree that disclosure of the remuneration arrangements for Mr Merinson were sensitive matters that Yukos needed to keep secret. Rather, they were sensitive for Mr Merinson and Mr Feldman, because they wished to keep them hidden from Yukos.