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 B did not act with a lack of integrity and rejected all of the Authority's findings to that effect.

FINANCIAL CONDUCT AUTHORITY

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DECISION NOTICE

To: **B**

Reference Number: **TXS01622**

Date: **23 June 2021**

1. ACTION

1.1. For the reasons given in this Notice, the Authority has decided to make an order prohibiting B 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 July 2010 and August 2011, B 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. Further, B recklessly made inaccurate and misleading comments regarding that relationship in December 2012.

2.2. B was employed as the Sub-Regional (Market) Head for Russia and Eastern Europe at Bank Julius Baer & Co. Ltd. ("BJB") in Switzerland from 2008 to 2014. B had responsibility for functional line management of the Russian and

Eastern European Desk at Julius Baer International Limited ("JBI"), a firm authorised by the Authority. On 30 March 2011, B was also appointed to the Board of Directors of JBI and approved by the Authority to perform the CF2 (Non-executive director) controlled function. His misconduct was undertaken in both his role as a Sub-Regional (Market) Head at BJB and, from 30 March 2011, as a non-executive director of JBI.

2.3. The Russian and Eastern European Desk had dual reporting lines up to JBI's Management Committee and to B, as the 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. B approved Julius Baer's entry 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. As B was aware, Mr Merinson was an employee of the Yukos Group. B approved 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. In order to effect these commission payments to Mr Merinson, B approved of arrangements whereby Julius Baer charged the Yukos Group Companies unusually high levels of commission for executing large foreign exchange ("FX") transactions. These FX transactions took place in August 2010, November 2010 and August 2011. 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, although Julius Baer also benefited

significantly from the transactions. Although the Authority has not seen any evidence that B 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, B 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. B, 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. In particular:

(1) In July 2010, B approved of Julius Baer entering into Finder's arrangements with Mr Merinson. Under these arrangements, it was agreed that Mr Merinson would receive a 'one-off' payment, totalling around 1% of the total assets on the Yukos Capital account, which could be generated from a large USD/GB CoY on which Julius Baer would apply 1.4% commission, with 70% of this paid to Mr Merinson. In return, Mr Merinson and Mr Feldman would arrange for Yukos Capital to deposit a sum in the region of GBP 280 million to GBP 430 million with Julius Baer, with further substantial funds to follow. Contrary to the provisions of BJB's Co-operation with Finders Policy, these arrangements were not reflected in Mr Merinson's written Finder's agreement, which instead provided that Mr Merinson would receive the standard Finder's fee of 25% of the net income generated by BJB from clients introduced by Mr Merinson. In approving these arrangements, B 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 arrangements involved a breach of Mr Merinson's and Mr Feldman's duties to the relevant Yukos Group Companies, and the improper payment of what were in effect Yukos' funds to Mr Merinson

(and, because of the involvement of Mr Feldman, the sole director of Yukos Capital, in approving the arrangements, potentially to Mr Feldman).

(2) In August 2010, the First FX Transaction was carried out, in which Julius Baer converted 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. There was no proper commercial rationale for the payment to Mr Merinson. B approved the First Commission Payment and thereby approved the arrangements by which the commission was generated in the First FX Transaction. In doing so, B recklessly failed to have regard to the obvious risk, of which he must have been aware, that the First FX Transaction was undertaken in breach of Mr Merinson's and Mr Feldman's duties to Yukos Capital, was not in the interests of that company, and was 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, B 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, B 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 (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. B approved the Second Commission Payment and thereby approved the arrangements by which the commission was generated in the Second FX Transaction. In doing so, B 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, B became aware of concerns that had been raised about the Second FX Transaction by a senior manager at BJB Bahamas. In response to those concerns, B was tasked with putting in place an 'acceptable framework' for C and the bank to operate in and was asked to 'regularise pending issues'. In the circumstances, B must have been aware that there was a risk that the arrangements with Mr Merinson were improper, but he recklessly did not take any steps to prevent the Second Commission Payment, which was ultimately paid to Mr Merinson on 31 December 2010, before B had taken the actions he was tasked with.

(6) In January 2011, notwithstanding that he had been tasked with putting in place an 'acceptable framework' and to 'regularise pending issues', B agreed that C should negotiate new Finder's arrangements with Mr Merinson, including that Mr Merinson would be entitled to receive 70% of the commission earned on transactions in respect of new inflows of funds, generated through a trading approach that was consistent with that adopted for the First and Second FX Transactions. In doing so, B recklessly failed to have regard to the obvious risk, of which he must have been aware, that there was no proper commercial rationale for such an arrangement and that the trading approach 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.

(7) In August 2011, B was informed by C that one of the four 70% retrocession payments that he (and A) had previously approved would be used in respect of a FX transaction in which EUR 7 million was converted into USD for Fair Oaks (the Third FX Transaction). B was not specifically informed that the transaction used the same trading approach as for the First and Second FX Transactions and was executed with a high margin, to allow Julius Baer to fund both its commission and a commission payment to Mr Merinson, which on this transaction amounted to CHF 64,518.89 and was later paid (together with other commission due to Mr Merinson) on 1 February 2012. However, having approved the arrangements by which the commission was generated in the First and Second FX Transactions, B must have been aware of the obvious risk that the Third FX Transaction had no proper commercial rationale, that it was undertaken in breach of Mr Merinson's and Mr Feldman's duties to the relevant Yukos Group Companies, that it was not in the interests of those companies, and that it was undertaken to divert funds improperly to Mr Merinson (and potentially to Mr Feldman). However, he recklessly failed to have regard to that risk and did not take any steps to prevent the Third Commission Payment.

(8) In December 2012, when asked by BJB Compliance to provide his comments on an email setting out extensive concerns about the arrangements with Mr Merinson, Mr Feldman's involvement in those arrangements, and the payments made pursuant to them, B gave inaccurate and/or

misleading statements. In doing so, he recklessly failed to have regard to the truth of his statements.

2.7. B's reckless conduct occurred in the context of a number of further occasions where matters were brought to his attention which ought to have caused him, given the matters cumulatively known to him at the time and given his experience as a senior financial services professional, to have questioned and raised concerns about Julius Baer's arrangements with Mr Merinson and the Yukos Group Companies, rather than approve them and continue to support them as the relationship progressed:

(1) In August 2010, C 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". B should have recognised the risk that this could have been an attempt by Mr Merinson to disguise the true nature of the payment and, in light of the other suspicious elements of the arrangements, it ought to have caused him concern and to follow-up with further investigation into the arrangements.

(2) In January 2011, C sought approval for Mr Merinson's request that a term be included in a new Finder's agreement that the agreement should not be disclosed to anyone other than Mr Feldman. When this request was drawn to B's attention, it should have caused him to be suspicious and to pursue a further investigation into the arrangements, and he should have recognised the risk that it was an attempt to hide the fees that had been paid to Mr Merinson.

(3) In February 2011, B was made aware that Mr Feldman had requested that draft letters he had been asked to sign confirming that the payments to Mr Merinson were approved, be amended to include the wording 'I sign on the understanding that you will be providing me with confirmation of Julius Baer's commitment to confidentiality'. B should have recognised the risk that Mr Feldman's request was an attempt to hide the payments to Mr Merinson but he did not raise any concerns, including when the letters were provided containing such wording and signed only by Mr Feldman.

(4) In July 2011, C's line manager at JBI emailed B and questioned the ethics of the payments to Mr Merinson, the size of the

commission charged and the high-risk nature of the Yukos relationship and raised doubts about whether sufficient assurances had been obtained relating to the transparency of the payments. B took no action in response and proceeded to approve the opening of an account for Yukos Hydrocarbons with BJB Guernsey.

2.8. As a result of B's failure to have regard to the obvious risks described in paragraph 2.6 above, of which he must have been aware, and to take appropriate action in light of them, B was reckless and failed to act with integrity. His failure to act with integrity partly occurred after he had been appointed to the role of non-executive director at JBI holding the CF2 (Non-executive director) controlled function, on 30 March 2011, in breach of Statement of Principle 1 of the Authority's Statements of Principle for Approved Persons, which at the relevant times required approved persons to act with integrity in carrying out their controlled functions. Following his appointment to this role, B permitted the Finder's arrangements with Mr Merinson to continue without taking any meaningful steps to address the risks arising from Julius Baer's relationship with Yukos and Mr Merinson. As a consequence of his lack of integrity, the Authority considers that B 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 B 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 the 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 clients 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. B was employed as the Sub-Regional (Market) Head for Russia and Eastern Europe for BJB from 2008 to 2014. From January 2010 to 30 March 2011, he reported to the Regional Head for Latin America, Spain, Russia, CEE and Israel for BJB, A, who was a member of BJB's Executive Board. After March 2011, B reported to another Senior Executive at BJB who also held a position on the Board of JBI.

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. JBI's Russian and Eastern European Desk reported to JBI's Management Committee. It also had a functional reporting line to B, as the Sub-Regional (Market) Head, who therefore had functional line management responsibility for C.

4.4. From 30 March 2011 until 18 June 2014, B was also a non-executive director of JBI and approved by the Authority as a CF2 (Non-executive director) controlled function holder.

Yukos Group accounts with Julius Baer

4.5. 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.

4.6. 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);

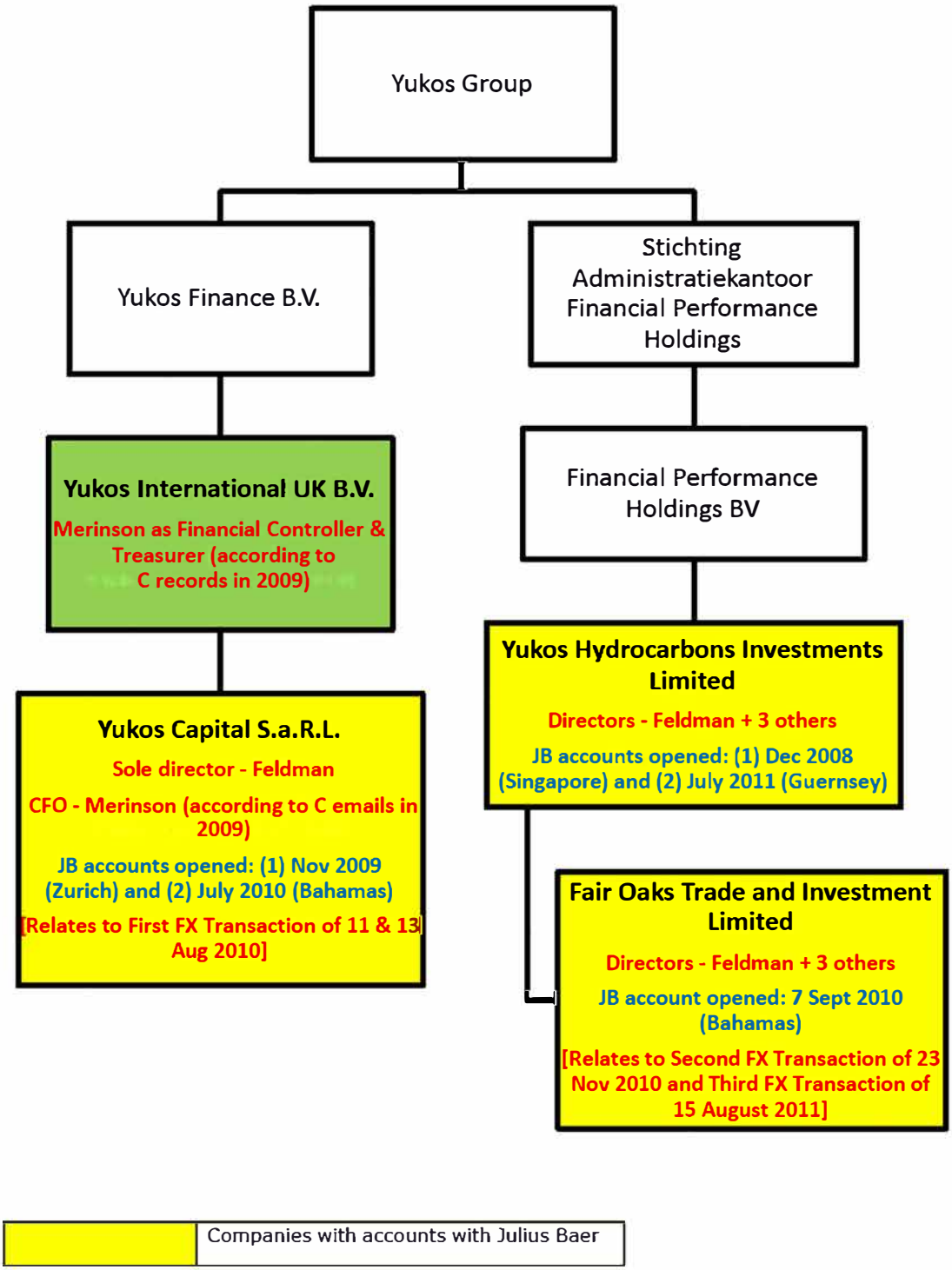
(2) Yukos Capital, a company incorporated in Luxemburg, opened an account with BJB Switzerland in November 2009 and an account with BJB Bahamas in July 2010 (C was the relationship manager for both accounts); and

(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).

4.7. 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.

4.8. 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

4.9. 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

4.10. 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.

4.11. 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 Mr Merinson's account opening forms. B responded by giving his approval.

4.12. 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'.

4.13. 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. 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 GBP 280 million to GBP 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's 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 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 Co-operation 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'.

4.24. On 23 July 2010, B sent an email to the JBI Line Manager in relation to the Yukos relationship, in which he stated: 'Roughly a year ago [C] came to me saying that the ac opening was not accepted. I told [her] to give me all the information so I could take it up with the relevant people. After talking to compliance and legal I was able [to] make them reassess the decision and ac opening was approved. I think that part of the success (renumeration) [sic.] should be allocated at my discretion. Whats your opinion?' This email suggests that B was close to the detail of the Yukos relationship and had intervened to allay concerns raised by BJB Legal and BJB Compliance when the Yukos Capital account was opened with BJB Switzerland in November 2009.

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. This was also B's understanding. 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 Capital 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 with 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, Julius Baer 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 B 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 forwarded C's email to the JBI Line Manager and stated 'Between our discussion and the situation we have now I am missing an update. In the meantime I could talk to C.' B and A subsequently

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. B was also aware that the JBI Trader made use of the volatility of the FX trading to maximise the commission, rather than securing best execution for Yukos Capital, Julius Baer's client, and charging the standard commission rate for a transaction of this size.

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 B.

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.

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 Finder'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 (see paragraph 4.78 below).

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 15 October 2010, C sought approval from A to the proposal by email, copied to B. The approval of A, as the Region 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'.

4.43. 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 as 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.

4.44. 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 further non-standard retrocessions of this size, despite the fact such payments would significantly drive up Yukos' transaction costs.

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

4.46. 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. B should have been aware of this as C sent an email to him and A the following day which attached the addendum signed by Mr Merinson. In addition, prior to this, on 28 October 2010, C copied B and A 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

4.47. 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'.

4.48. 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% retrocession payments in relation to it, prior to the trading taking place.

4.49. The Second FX Transaction converted USD 68 million at a market rate of 1.33855. 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.

4.50. 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 4.42 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

4.51. 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.

4.52. 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.

4.53. 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 4.54 below).

B's knowledge of the Second FX Transaction

4.54. 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%)'.

4.55. 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.

4.56. 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 (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.

4.57. On 25 November 2010, the BJB Bahamas Senior Manager raised concerns with BJB Senior Manager A about the Second FX Transaction 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).

4.58. 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.

Second Commission Payment to Mr Merinson

4.59. 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)'.

4.60. 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 [of BJB Bahamas]'. 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'.

4.61. B was not copied in to the correspondence from the BJB Bahamas Senior Manager, but given that he was tasked by A with putting in place an acceptable framework to address the concerns raised and was liaising with BJB Senior Manager A who was in contact with the BJB Bahamas Senior Manager, the Authority has inferred that he must have been aware of the concerns raised concerning the size of the retrocession payment to Mr Merinson, the lack of appropriate client authorisation for the Second FX Transaction and Mr Merinson's links to Yukos.

4.62. 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" 17th 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'.

4.63. 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 BJB Senior Manager A to A asking for his approval on 21 December 2010.

4.64. 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.

4.65. 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 Switzerland in order to enable BJB Switzerland 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.

4.66. 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.

Mr Merinson's request for confidentiality

4.67. On 5 January 2011, it was agreed during a conference call involving C, B, and other senior BJB staff that Mr Merinson should be offered a Finder's agreement with BJB Bahamas. Following the conference call, BJB Senior Manager A sent an email to the BJB Bahamas Senior Manager on 6 January 2011 titled 'URGENT Finder agreement to be prepared ASAP URGENT', asking him to prepare a Finder's agreement based on terms defined in an attached appendix. BJB Senior Manager A added: 'Please note that additionally to terms defined in this appendix, It was agreed VERBALLY to accept three further 70% retrocession transactions between now and 23/11/11 […] all three of these can now only be used for **new funds** […] for transactions where the price/rate booked to the client is at least better than the worst rate/price of the day'. The requirement that the rate booked to the client had to beat the worst available price on the day, is consistent with the trading approach adopted in respect of the First and Second FX Transactions. The adoption of this trading approach for potentially three further retrocession transactions indicates that senior management within Julius Baer (including B) were aware of and supported the trading approach that had been adopted in respect of the First and Second FX Transactions.

4.68. On 7 January 2011, C met with Mr Merinson and discussed, among other things, Mr Merinson entering into a Finder's agreement with BJB Bahamas. During the meeting, Mr Merinson requested that the agreement should include restrictions limiting Julius Baer's ability to disclose his role as Finder on the Yukos accounts to anyone other than Mr Feldman. This request should have caused C (and subsequently B when it was brought to his attention) to be suspicious, but she (and subsequently B) did not recognise the risk that an attempt was potentially being made to hide the fees that had been paid to Mr Merinson.

4.69. C asked BJB Compliance to approve the amendment proposed by Mr Merinson. On 24 January 2011, BJB Compliance responded to C to inform her that BJB would not agree to this request, explaining 'complete transparency of any finders' agreement should be ensured within the Yukos Group structure'. BJB Compliance said that it could consent to wording limiting disclosure of the Finder's agreement only to clients introduced by Mr Merinson. BJB Compliance also asked C to provide confirmation that the terms of Mr Merinson's Finder's agreement with BJB were known to Mr Feldman and 'ideally' also to another Yukos director.

4.70. On the same date, BJB Compliance emailed the JBI Line Manager and B to draw their attention to:

(1) Mr Merinson's request that his Finder's agreement should not be disclosed to anyone at Yukos other than Mr Feldman;

(2) the fact that written confirmation had not yet been received from Mr Feldman to confirm he was aware of the payments which had been made to Mr Merinson and of his Finder's agreement with BJB (which had been outstanding since the time of the First FX Transaction); and

(3) the amount of commission charged by BJB and paid to Mr Merinson in connection with the First and Second FX Transactions.

4.71. BJB Compliance suggested that payment of C's 2010 bonus should be conditional on her obtaining: (i) Mr Merinson's signature to a copy of the Finder's agreement with BJB Bahamas which did not limit BJB's right to disclose the agreement only to Mr Feldman; and (ii) Mr Feldman's written confirmation that he was aware of Mr Merinson receiving Finder's fees from BJB.

4.72. On 31 January 2011, C emailed BJB Compliance, copying in the JBI Line Manager, stating that she would inform Mr Merinson that the restriction on disclosure that he had requested could not be agreed and that she had previously told BJB Compliance on 6 December 2010 that she would obtain confirmation from Mr Feldman in February 2011.

4.73. Following BJB Compliance's email of 24 January 2011 raising concerns, B emailed a BJB manager and requested a discussion on 'next steps' arising from

the concerns raised. This was followed by an email on 31 January 2011 from the JBI Line Manager to B and the BJB manager, confirming he had 'had a lengthy discussion with' C and had 'checked the correspondence and the file notes' made by C 'for the relevant meetings and discussions, which are all noted or on recorded lines – internally and externally', and could 'find no reason to believe that there is anything underhand or improper going on'. C was subsequently paid a bonus of GBP 381,300.

Mr Feldman's request for confidentiality

4.74. On 1 February 2011, C emailed BJB Compliance (copying in B and the JBI Line Manager) and stated that Mr Feldman had asked that the wording 'I sign on the understanding that you will be providing me with confirmation of Julius Baer's commitment to confidentiality' be added to the letters he was to sign confirming the payments to Mr Merinson and that his Finder's agreement with BJB was known to the relevant Yukos entities. B did not recognise the risk that this request was an attempt to hide the payments to Mr Merinson from Julius Baer funded by the Yukos accounts.

4.75. On 7 February 2011, BJB Compliance recorded in a memo which was sent to B and a BJB manager, that Mr Feldman was making a 'commitment to confidentiality' a condition of him providing confirmation to BJB that Mr Merinson's agreement was 'known and accepted' by Yukos Capital. The memo provided B with an overview of the Yukos accounts at BJB, the commercial terms agreed in relation to the Yukos business, the Finder's agreement and retrocession arrangements with Mr Merinson, and the compliance issues arising. According to the memo, C provided information that Mr Merinson was the Financial Director at Yukos International and was 'heavily involved in choosing which banks should hold funds awarded to subsidiary companies of [Yukos International]'. It set out payments into/out of the accounts of Yukos Capital and Fair Oaks. It also noted that Yukos International was indirectly the 100% shareholder of Yukos Capital.

4.76. The memo raised three main compliance issues connected to all of the above: (i) conflict of interests; (ii) cross border payment of retrocessions; and (iii) reputational risk. In relation to the conflict of interests, it stated: 'The business [Mr Merinson] introduces to the bank is related to his professional activity within the Yukos corporate structure. We have requested that we receive written

confirmation from […] Feldman, that this agreement is known and accepted by Yukos Capital. [Mr Feldman] is now making it conditional for his signature on this confirmation that he obtains a "commitment to confidentiality" from BJB […] In any case, it should be considered whether to obtain additional comfort from a superior group entity should also confirm its awareness of these arrangements, e.g. the Stichting Yukos (Dutch foundation)'.

4.77. On 14 February 2011, B and the BJB manager had a conference call with C. Following this call, the BJB manager sent an email to BJB Compliance, copying in B. This email explained that their current understanding was that Mr Merinson did not hold any official position at Yukos Capital and did not receive a salary, but could be considered an 'external employee' akin to a consultant. The Authority notes that C had previously identified Mr Merinson to B as the Chief Financial Officer of Yukos International and Yukos Capital – see paragraphs 4.6 and 4.11 above. The BJB manager's email also suggested that, due to the way in which Yukos was structured and the nature of Mr Feldman's role, seeking additional confirmation regarding the payments to Merinson from someone at Yukos other than Mr Feldman 'would not add any value but rather irritate further'. The email also stated that B and C would meet with Mr Feldman and Mr Merinson at the next opportunity in London.

4.78. On 24 February 2011, C provided BJB Compliance and B with copies of letters signed by Mr Feldman for Yukos Capital and Fair Oaks on that date (although the letters were dated 3 September 2010), confirming that: (i) he authorised the First Commission Payment to Mr Merinson; and (ii) Mr Merinson could receive Finder's fees of 35% of net income generated by Julius Baer from future transactions carried out for Yukos Capital and Fair Oaks. The letters included the additional wording regarding a 'commitment to confidentiality' from Julius Baer that Mr Feldman had requested. There was a reference to Yukos Capital's approval for 'four more opportunities' for retrocessions in the letter confirming the First Commission Payment. In the letter referring to Fair Oaks, Mr Feldman confirmed approval of the 35% Finder's fees on his own behalf and on behalf of another director of Fair Oaks. However, that director did not sign the document. This does not appear to have been challenged by anyone at BJB or JBI (including B) despite Mr Merinson's contemporaneous request to limit the disclosure of his Finder's agreement to Mr Feldman (see paragraph 4.68 above) and despite the fact that it had been Mr Feldman who had approved the arrangements in the first

place. The Fair Oaks letter also made no reference to one-off retrocession payments, despite the fact that the Second Commission Payment had already been funded by commission charged to Fair Oaks.

4.79. On 24 February 2011, Mr Merinson annotated a copy of the Finder's agreement he had with BJB Zurich, requesting C terminate it with immediate effect. However, this was not actioned until later in July 2011. It appears from C's email on 1 February 2011 that Mr Merinson was content with the amended wording of the Finder's agreement with BJB Bahamas and the agreement was completed on 24 February 2011.

B becomes a non-executive director of JBI

4.80. On 30 March 2011, B became a non-executive director of JBI and was approved by the Authority to perform the CF2 (Non-executive director) controlled function.

Onward payments from Mr Merinson to Mr Feldman

4.81. 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 B knew about the transfers at this time or of Mr Merinson's intention to share his commission with Mr Feldman.

Opening of Yukos Hydrocarbons account in Guernsey and concerns raised in July 2011

4.82. On 18 July 2011, C emailed B, copying in the JBI Line Manager and members of JBI's senior management, seeking approval to open an account for Yukos Hydrocarbons in Guernsey.

4.83. On the same date, the JBI Line Manager emailed B stating he had been 'consistently left out of the loop on all matters arising from this client relationship' and he did not support the Yukos relationship being managed by C. In his email to B, the JBI Line Manager stated that he was not sure if issues raised by BJB Compliance about the Yukos relationship had been resolved and stated that 'also purely based in the size of the retro paid to [Mr Merinson]; I think it is unethical and that it sets a bad example for doing business in this market, especially with such a high risk relationship.' It does not appear that B took any action as a result of this email. The account opening for Yukos Hydrocarbons in Guernsey was subsequently approved by B the following day.

Third FX Transaction

4.84. 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 disadvanted (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'. C's suggestion that the arrangement was so that the ultimate beneficial owners would not be disadvantaged makes no sense in the context of seeking to achieve a large margin. Ensuring the rate was better than the worst on the day did not avoid disadvantage, but did have the effect of making it more difficult for a third party with cause to examine Fair Oaks' records to understand the nature of the arrangement.

4.85. On 17 August 2011, C emailed B and stated 'We have done an FX on the USD 7mil funds which came in to the Guernsey account and I've been asked if we can use one of the one-off 70% deals for the trade. This would leave just one more until 1st November 2011.' This conversion of USD 7 million in the Guernsey account (which was the account of Yukos Hydrocarbons) was a different transaction to the conversion of EUR 7 million for Fair Oaks that had taken place on 15 August 2011. C asked B to call her 'to discuss the potential one-off deal and other matters'. The Authority has not seen any evidence of any response to that request from B, however a BJB manager replied on his behalf to say that B might be able to call C later, adding 'we are irritated that they're just fishing for reasons to leave now that they have what they wanted (i.e. the FX deals)…'.

4.86. On 19 August 2011, C sent a further 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)'. She concluded her email by mentioning again the conversion of USD 7 million into EUR and that she intended to use one of the one-off 70% deals for that transaction. 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 does not have any further correspondence on the subject of applying a one-off retrocession to the conversion of USD 7 million to EUR on the BJB Guernsey account. The absence of a Finder's agreement between Mr Merinson and BJB Guernsey would have made such a payment extremely difficult, and the Authority has inferred that the idea was dropped as a consequence.

4.87. 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.

4.88. 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 assets from BJB Bahamas

4.89. 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'. B was copied into this email exchange. The account opening did not proceed.

Third Commission Payment to Mr Merinson and further account opening

4.90. 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.

4.91. On 2 October 2012, C emailed B, another member of JBI's Board and BJB Compliance seeking approval to open a BJB Switzerland account for another Yukos company which was due to receive approximately USD 100 million before the end of the year. On 8 October 2012, B and the member of JBI's Board gave their approval.

The JBI Line Manager notifies JBI Compliance of potentially suspicious activities

4.92. 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 the 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.

4.93. The email explained that:

(1) the agreement with Mr Merinson involved Julius Baer paying approximately 80% of its revenues from profits on introduced accounts to Mr Merinson when 'our and industry standard is 25%';

(2) Mr Merinson had been paid around USD 2 million 'on the back of a series of large, one-off FX transactions for which [Julius Baer] took non-standard commission';

(3) Mr Feldman (as opposed to anyone else within Yukos) had signed letters requested by BJB Compliance confirming that Yukos had no objections to Mr Merinson receiving Finder's fees;

(4) Mr Feldman had subsequently received a USD 500,000 loan payment from Mr Merinson from his personal account at Julius Baer;

(5) Mr Merinson had alleged to the JBI Line Manager 'that inside his company there are suspicions that he received a retro payment from [Julius Baer] and that this is a serious problem'.

4.94. The JBI Line Manager stated in his email that he suspected that:

(1) the payments to Mr Merinson and his Finder's agreement with BJB were 'in conflict with our, Yukos's rules and legal requirements in the UK and [Switzerland]';

(2) Mr Feldman had a conflict of interest in the matter and his authorisation of Julius Baer's arrangements with Mr Merinson was 'invalid'; and

(3) the payment to Mr Merinson and his Finder's agreement with BJB were not known to Yukos and that Mr Merinson was taking steps to attempt to hide the arrangements.

4.95. 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 […]'.

4.96. The email was immediately forwarded to senior management at both JBI and BJB, including B. B was asked by BJB Compliance to provide his comments on the email. On 5 December 2012, B emailed BJB Compliance and a BJB senior manager his comments, which included that Compliance and the 'Region Head' (i.e. A) had approved the retrocession arrangements, that B's recollection was that Mr Merinson was at that time not an employee of Yukos and that in any event, 'an additional signature' from Yukos had been requested after the First FX Transaction. These statements were inaccurate and/or misleading. There is no evidence that Compliance approved the retrocession arrangements. B was aware that Mr Merinson had been an employee of Yukos at the material times and that the confirmation obtained regarding Yukos' knowledge of the Finder's arrangements came from Mr Feldman and was obtained after the Second FX Transaction.

4.97. 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.

4.98. On or around 27 February 2014, Yukos informed JBI that it wished to close its accounts with BJB and that JBI should arrange the liquidation of the assets BJB 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. For example, shortly before Yukos ended the business relationship on 27 February 2014, on 17 February 2014

B and a member of JBI's Board were still having meetings with Mr Merinson and were discussing opening accounts for clients introduced by him. B stated in relation to one of these accounts, 'Push…we have to open this account. Otherwise we will loose [sic.] 100m'. No further accounts were opened during this period and no new funds were received from the Yukos Group Companies.

4.99. On 22 May 2014, 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.

Related litigation

4.100. 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.

4.101. 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, B'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. B 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) On 7 July 2010, C met Mr Feldman and Mr Merinson, and later that day reported to the JBI Line Manager and to B, to whom she had a functional reporting line, 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, whom she described as the introducer (or Finder) registered on the Yukos Capital account, 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) B, who had previously been told by C that Mr Merinson was an employee of Yukos Capital and Yukos International, was aware of and approved these arrangements in his capacity as BJB's Sub-Regional (Market) Head for Russia and Eastern Europe to whom C had a functional reporting line. In so doing, he 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. B 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;

b. Given Mr Feldman's involvement in approving these arrangements, as 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, and the indication that agreeing the payment to Mr Merinson was a condition of funds remaining with Julius Baer (with more to come), the risk that the arrangements involved a breach of both Mr Merinson's and Mr Feldman's duties to the relevant Yukos Group Companies, and the improper payment of what were in effect Yukos' funds to Mr Merinson (and potentially to Mr Feldman).

(3) Between 11 and 13 August 2010, on the instructions of Mr Feldman, C and the JBI Trader facilitated the First FX Transaction, in which approximately GBP 271 million received from Yukos Capital was converted into USD. It was agreed with Mr Feldman that the commission charged by Julius Baer would be used to fund the 'one-off' retrocession payment to Mr Merinson and Julius Baer's own commission, as had been discussed and agreed on 7 July 2010. 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. There was

no proper commercial rationale for the payment to Mr Merinson. B approved the First Commission Payment and thereby approved the arrangements by which the commission was generated in the First FX Transaction. In doing so, B recklessly failed to have regard to the obvious risk, of which he must have been aware, that the First FX Transaction was undertaken in breach of Mr Merinson's and Mr Feldman's duties to Yukos Capital, was not in the interests of that company, and was made in order to facilitate the improper diversion of funds from Yukos Capital to Mr Merinson (and potentially to Mr Feldman).

(4) In October 2010, B (and 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, B 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).

(5) In November 2010, the Second FX Transaction took place, in which approximately USD 68 million of Yukos funds (which formed a portion of the funds converted into USD by the First FX Transaction) was converted 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 for 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. B (together with 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, B 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 facilitate the improper diversion of funds from Yukos Capital to Mr Merinson (and potentially to Mr Feldman) in breach of their duties to the relevant Yukos Group Companies.

(6) In the event, before the Second Commission Payment was made, B 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, B was tasked by A with putting in place an 'acceptable framework' for C and the bank to operate in and was asked to 'regularise pending issues'. In the circumstances, B must have been aware that there was a risk that the arrangements with Mr Merinson and Yukos were improper, but he recklessly did not take any steps to prevent the Second Commission Payment, which was ultimately paid to Mr Merinson on 31 December 2010, before B had taken the actions he was tasked with.

(7) In January 2011, notwithstanding that he had been tasked with putting in place an 'acceptable framework' and to 'regularise pending issues', B agreed that C should negotiate new Finder's arrangements with Mr Merinson, including that Mr Merinson would be entitled to receive 70% of the commission earned on transactions in respect of new inflows of funds, generated through a trading approach that was consistent with that adopted

for the First and Second FX Transactions. In doing so, B recklessly failed to have regard to the obvious risk, of which he must have been aware, that there was no proper commercial rationale for such an arrangement and that the trading approach 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.

(8) In August 2011, B was informed by C that one of the four 70% retrocession payments that he (and A) had previously approved would be used in respect of a FX transaction in which EUR 7 million was converted into USD for Fair Oaks (the Third FX Transaction). B was not specifically informed that the transaction used the same trading approach as for the First and Second FX Transactions and was executed with a high margin, to allow Julius Baer to fund both its commission and a commission payment to Mr Merinson, which on this transaction amounted to CHF 64,518.89 and was later paid (together with other commission due to Mr Merinson) on 1 February 2012. However, having approved the arrangements by which the commission was generated in the First and Second FX Transactions, B must have been aware of the obvious risk that the Third FX Transaction had no proper commercial rationale, that it was undertaken in breach of Mr Merinson's and Mr Feldman's duties to the relevant Yukos Group Companies, that it was not in the interests of those companies, and that it was undertaken to divert funds improperly to Mr Merinson (and potentially to Mr Feldman). However, he recklessly failed to have regard to that risk and did not take any steps to prevent the Third Commission Payment.

(9) In December 2012, when asked by BJB Compliance to provide his comments on an email setting out extensive concerns about the arrangements with Mr Merinson, Mr Feldman's involvement in those arrangements, and the payments made pursuant to them, B gave inaccurate and/or misleading statements as described in paragraph 4.96. In doing so, he recklessly failed to have regard to the truth of his statements.

5.5. B's reckless conduct occurred in the context of a number of further occasions where matters were brought to his attention which ought to have caused him, given the matters cumulatively known to him at the time and given his experience as a senior financial services professional, to have questioned and raised concerns about the arrangements with Mr Merinson and the Yukos Group

Companies, rather than approve them and continue to support them as the relationship progressed:

(1) In August 2010, C sought approval (which was refused by BJB Legal) for Mr Merinson's request that the First Commission Payment be referenced as "Investment Capital Gain". B should have recognised the risk that this could have been an attempt by Mr Merinson to disguise the true nature of the payment and, in light of the other suspicious elements of the arrangements, it ought to have caused him concern and to follow-up with further investigation into the arrangements.

(2) In January 2011, C sought approval for Mr Merinson's request that a term be included in a new Finder's agreement that it should not be disclosed to anyone other than Mr Feldman. When this request was drawn to B's attention, it should have caused him to be suspicious and to pursue a further investigation into the arrangements, and he should have recognised the risk that it was an attempt to hide the fees that had been paid to Mr Merinson.

(3) In February 2011, B was made aware that Mr Feldman had requested that draft letters he had been asked to sign confirming that the payments to Mr Merinson were approved, be amended to include the wording 'I sign on the understanding that you will be providing me with confirmation of Julius Baer's commitment to confidentiality'. B should have recognised the risk that Mr Feldman's request was an attempt to hide the payments to Mr Merinson but he did not raise any concerns, including when the letters were provided containing such wording and signed only by Mr Feldman.

(4) In July 2011, the JBI Line Manager emailed B and questioned the ethics of the payments to Mr Merinson, the size of the commission charged and the high-risk nature of the Yukos relationship and raised doubts about whether sufficient assurances had been obtained relating to the transparency of the payments. B took no action in response and proceeded to approve the opening of an account for Yukos Hydrocarbons with BJB Guernsey.

5.6. B's reckless conduct occurred both before and after he had been appointed to the role of non-executive director at JBI holding the CF2 (Non-executive director) controlled function, on 30 March 2011. In addition, following his appointment, B permitted the Finder's arrangements with Mr Merinson to continue without taking any meaningful steps to address the obvious risks arising from Julius Baer's

relationship with Mr Merinson. The Authority therefore considers that B breached Statement of Principle 1 of the Authority's Statements of Principle for Approved Persons, which at the relevant times required approved persons to act with integrity in carrying out their controlled functions.

5.7. JBI introduced an anti-fraud policy in 2009 and all staff were provided with anti-bribery and corruption training and a copy of JBI's anti-bribery and corruption policy in 2011. From July 2011, a Julius Baer Group policy combatting fraudulent and improper activities required staff to report such matters to management and to raise any potential issues they became aware of in the control environment. Despite these measures, which sought to highlight the risks of financial crime, B failed to question the appropriateness of the Finder's arrangements.

5.8. 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. B was an experienced financial services professional and held a senior position with BJB and, from 30 March 2011, with JBI. B 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, B, who had functional line management responsibility for C in respect of her conduct of Julius Baer's relationship with Mr Merinson and Yukos, approved of the terms of the Finder's arrangements with Mr Merinson and continued to support these arrangements as the relationship progressed. He also approved and/or failed to prevent the payment of the Commission Payments, and thereby approved the arrangements by which the commission was generated in the FX Transactions. 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 B's misconduct, involving a lack of integrity, the Authority considers that B 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 B under section 56 of the Act in those terms.

6.2. In deciding to impose a prohibition order on B, the Authority has had regard to the guidance in Chapter 9 of EG. The Authority has, in particular, taken account of the fact that B's misconduct occurred several years ago. However, the Authority considers that the seriousness of B'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 more than two years, in breach of Statement of Principle 1 for part of that period, is such that B poses a serious risk to confidence in the UK financial system. The Authority considers that it is appropriate to impose a prohibition order on B 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 B 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 B, Mr Merinson and Mr Feldman, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

8.1. This Notice is given to B 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. B 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, B 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). 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).

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.

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.

The Authority's Statements of Principle for Approved Persons

1.13. At the relevant times (between 30 March 2011 and August 2011), the Statements of Principle issued by the Authority under section 64(1) of the Act with respect to the conduct of approved persons were set out in the part of the Handbook entitled "Statements of Principle and Code of Practice for Approved Persons" ("APER").

1.14. APER 2.1.2P set out the Statements of Principle. These included Statement of Principle 1: "An approved person must act with integrity in carrying out his controlled function."

ANNEX B

REPRESENTATIONS

B's Representations

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

Recklessness and lack of integrity

2. *B did not act recklessly and does not lack integrity. Although the Tribunal in* Keydata[1] *stated that, where recklessness is alleged, the standard to be applied is an objective one, that is not the appropriate test. Instead, the correct test for recklessness is that which was applied by the Tribunal in* Tinney[2] *and involves both objective and subjective considerations. A person acts recklessly when they are subjectively aware of a risk and, in the circumstances subjectively known to them, it is objectively unreasonable to take the risk. In order to reach a conclusion about whether a person acted recklessly, it is necessary first to determine what they actually knew.*

3. *At the time, and with the information known to B, it was neither clear nor obvious that Mr Merinson and Mr Feldman were party to an improper scheme to divert funds from Yukos for their personal benefit, and in any event it simply did not occur to him.*

4. *There were a large number of individuals within Julius Baer who knew all the facts that B knew, but none of them stopped the transactions in question or the retrocession arrangements with Mr Merinson. Those who raised questions were apparently satisfied with the answers they received and the steps taken to address their concerns. If the risk of wrongdoing was obvious, one would expect most of those people to have identified it.*

5. *B had nothing to gain from acting recklessly and much to lose. He derived no personal benefit from the Yukos account. He had an excellent reputation, which would be damaged if he was found to have acted recklessly. He had no reason to risk his job for two individuals he had never met or a junior relationship manager.*

6. The Authority has concluded, on the basis of the evidence it has seen, that the risks arising from Julius Baer's relationship with Mr Merinson and Yukos must have been obvious to B, given his knowledge of the Finder's arrangements, and that B must have been aware of them. B failed to have regard to those risks and failed to take appropriate action in light of them. As a consequence, the Authority considers that B acted recklessly and without integrity.

7. Given its conclusion that B 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 B's submissions regarding the correct test for recklessness.

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

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

8. Whilst other individuals at Julius Baer knew of various elements of the arrangements, B had more knowledge of the arrangements than most of them. The Authority considers that a person acting with integrity in B's position, having his knowledge, would not have approved and supported the arrangements, and instead would have raised questions about the situation and taken meaningful steps to address the risks arising from Julius Baer's relationship with Mr Merinson and Yukos.

9. Irrespective of the reason(s) why B acted recklessly, the Authority considers that the evidence clearly shows that his conduct was reckless.

Evidence

10. *Whether B acted with integrity or not depends, amongst other things, on what he knew and was told by others. There were numerous meetings and telephone conversations in which information was imparted which have left no documentary record, or no record has been found and produced to B. The events occurred a decade ago and B does not have a detailed and precise recollection of them or of exactly what he was told when.*

11. The Authority acknowledges that the relevant events occurred some time ago and has taken into account B's concern regarding his ability to recall them in detail. The Authority also acknowledges that detailed notes were not produced of all meetings and telephone conversations which took place. However, there are extensive contemporaneous documents, many of which are file notes written by C and correspondence involving B, and the Authority is satisfied that these, along with the other evidence it has seen, support the conclusions it has reached.

Standard of proof

12. *The applicable standard of proof is the balance of probabilities. It is necessary to consider whether it is more likely than not that B was aware of the risk in question, and what facts, on the balance of probabilities, he knew or believed, before deciding whether, if B took a risk, it was an unreasonable one to take. An important factor in considering this is the inherent likelihood of the allegation; it is far more likely that the behaviour was not obviously suspicious at the time, if a large number of people fail to identify behaviour which appears suspicious in retrospect.*

13. The Authority agrees that the appropriate standard of proof in determining the facts and what B knew is the balance of probabilities. The Authority also agrees that, in assessing probability, it is necessary to have regard to the inherent likelihood of the relevant allegation. The Authority considers that this should be considered primarily by reference to the evidence that supports the allegation, rather than by whether or not other persons considered the behaviour to be suspicious, in particular where those other persons have different degrees of knowledge of the relevant facts and different responsibilities, and this is the approach that the Authority has taken in this case. In taking this approach, the Authority has concluded, on the balance of probabilities, that B must have been aware of the obvious risks arising from Julius Baer's relationship with Mr Merinson and Yukos.

Background

B's role at BJB

14. *As Sub-Region Head, B's primary responsibility was to market and expand the business in the Central and Eastern European/Russian market. He was not responsible for hiring relationship managers in the UK; nor did he have any client relationship management role. He grew the bank's team for his market to around 150 employees, and by the time he left Julius Baer in 2014 there were 10 team heads for his market and around 50 relationship managers. B set the goals for each of the regional teams under his remit for expanding the bank's business and relayed those goals to the team heads in each office, who were responsible for the business operations, including obtaining new clients and attracting funds. How the teams obtained clients and attracted funds from existing clients was largely a matter for the local business to determine.*

15. *B's role was always demanding and time intensive. During the period of the events in question, B was not responsible for the relationship with any specific clients, and generally did not see what transactions were undertaken for particular clients. He did not have access to information about transactions at corporate entities other than BJB, or to the client relationship records at JBI. He also did not have any particular responsibility in relation to Finders.*

16. *Any engagement with the Yukos accounts was only a small fraction of B's day- to-day workload, given his other commitments. Further, to the extent documents concerning Yukos crossed his desk or he had discussions regarding Yukos, this was not part of his principal responsibilities.*

17. *Given Yukos' political sensitivities, there was a discussion at the very highest levels within Julius Baer on whether to accept Yukos as a client. B was not central to these discussions and took very little part in them. B did not have any particular interest in the Yukos account. Although it was relatively large, there were many other accounts of a similar size and, as a proportion of the total assets and revenues in the market overall, its contribution was very small, and the assets that Yukos brought to Julius Baer was not a particular focus for him. B's role was to market Julius Baer as a private bank, providing wealth management services principally to individuals and families, so Yukos was not the type of customer that B's marketing efforts were targeted at.*

18. Notwithstanding the extent of his wider responsibilities, B had responsibility for functional line management of C and it is clear from the contemporaneous evidence that in approving Mr Merinson's Finder's arrangements, and the FX Transactions and Commission Payments pursuant to those arrangements, he took a close interest in the details and had such knowledge that he must have been aware of the risk that the arrangements were improper.

19. The level of funds that Yukos was to bring to BJB in 2010 amounted to about 10% of the total of B's Region's assets under management in 2008, with the expectation that further funds would follow. This level of funds, and the political sensitivities relating to dealing with Yukos, made Yukos a significant client for Julius Baer and for B.

Julius Baer's matrix management structure

20. *Julius Baer's matrix management structure meant that JBI's employees had a reporting line to local line management at JBI, as well as a functional reporting line to a regional head at BJB. The management structure dictated that C report to the JBI Line Manager in respect of day-to-day operational issues. This would include keeping him abreast of the client relationships she was managing and seeking advance and guidance. In turn, the JBI Line Manager reported directly to the CEO of JBI, including regarding any operational issues in respect of those he managed. The JBI Line Manager reported to B, as appropriate, in respect of strategic and business matters, which B could then escalate to A (and from March 2011 his replacement) as appropriate.*

21. *As B was not C's line manager, and as it was not his role to supervise particular client relationships, B did not expect to have to micro- manage C. He generally had no reason to be concerned that C, supported by the JBI Line Manager, would fail to attract and retain clients such as Yukos without his detailed involvement. B spoke with the JBI Line Manager weekly and there were also monthly team meetings. In this way, B relied on the JBI Line Manager to tell him what he needed to know about the JBI Line Manager's desk.*

22. *B had a limited number of communications with C, as is apparent from contemporaneous documents. B was sporadically involved and often when C sent self-congratulatory emails or sought ex post facto approval for what she had already done. Many of these emails copied in other senior individuals and B responded to fewer than half of the emails that he received from C.*

23. *The key problem in management terms was that C agreed retrocession arrangements without prior approval. She should have discussed any non-standard proposal with the JBI Line Manager, and then it should have been elevated within the bank to all relevant departments and ultimately to A, before she reached any agreement on the bank's behalf. The fact that no email has been produced which specifically tells C to follow proper procedures does not mean that she was not told to do so. B met C from time to time in London or Zurich and made this clear to her.*

24. *It appears that the JBI Line Manager's relationship with C became strained in around early 2011. Thereafter, the JBI Line Manager portrayed himself, incorrectly, as having been opposed to the Yukos accounts for which C was responsible and the arrangements with Mr Merinson, which he had previously supported. B attributed this to jealousy on the part of the JBI Line Manager, over the fact that C's Yukos relationship generated significantly larger bonuses for her than his own clients did for him.*

25. The Authority notes B's description of how the matrix management structure was intended to operate. However, the contemporaneous evidence demonstrates that, in practice, B took a close interest in the Yukos relationship and frequently discussed matters with C directly. This is supported by C's evidence in interview that she extensively liaised with B in respect of the Yukos relationship from 2009 onwards. B also appears not to have placed reliance on

the JBI Line Manager exercising any form of effective management of C or of the relationship with Mr Merinson and Yukos.

26. There is no evidence of B insisting that C follow proper procedures; had he done so, the Authority considers it is unlikely that she would have bypassed the JBI Line Manager in seeking approvals. The Authority also notes that there are no examples in the contemporaneous emails of B asking C to run matters past the JBI Line Manager and that B generally did not copy the JBI Line Manager into emails that he sent to C.

27. The Authority agrees that it appears that the JBI Line Manager's relationship with C worsened in early 2011 and that the reliability of his evidence is questionable. Accordingly, the Authority has only accepted statements made by the JBI Line Manager where there is other corroborating evidence. The conclusions it has reached regarding the conduct of B are not reliant on the JBI Line Manager's evidence.

BJB's use of Finders

28. *It was common for Julius Baer to obtain new business by using Finders. B was therefore familiar with the role of Finders, although responsibility for Finders did not fall within his remit as a Market Head. Most Finders had some relationship with the clients they introduced which meant that they would have, to a greater or lesser extent, some influence over whether the client invested with Julius Baer. There was therefore nothing inherently surprising about an adviser to Yukos being a Finder. B would have considered it a serious issue to have a client's employee as a Finder for the client, but he did not know or suspect that Mr Merinson was an employee.*

29. Regardless of B's usual role in respect of Finders, it is clear from the evidence that he took an active role in Julius Baer's relationship with Mr Merinson and Yukos. In particular, his approval was sought and given for the Finder's arrangements negotiated by C in July 2010 and subsequently amended in October 2010. B gave his approval in the knowledge that Mr Merinson was a Yukos employee, as a result of information provided to him by C in October and November 2009. In the circumstances, he must have been aware of the risk that the arrangements with Mr Merinson were improper.

Compliance and Legal functions

30. *BJB Compliance took a close interest in the Yukos relationship and the arrangements with Mr Merinson in particular. BJB Compliance required steps to be taken to provide the bank with assurance that Yukos knew about and consented to these arrangements. B had no reason to think that BJB Compliance had not properly and diligently considered all relevant compliance issues, or to question its judgement as to what was required and appropriate.*

31. *BJB Compliance in fact had more information than B and had it drawn to its attention at the relevant time, which B did not. In particular, BJB Compliance was told that Mr Merinson was an employee of Yukos before he received any payment but did nothing to stop the payment and did not regard his employment status as information requiring any urgent attention at all. In contrast, B did not know in July 2010 that Mr Merinson was an employee of Yukos. Absent red flags, B was entitled to rely on the normal functioning of BJB Compliance and BJB Legal.*

32. The Authority acknowledges that, as a result of emails sent to it on 19 August 2010, BJB Compliance was aware of details of the Finder's arrangements, including that Mr Merinson was an employee of Yukos International, and subsequently asked C to get written confirmation from Mr Feldman expressly confirming that Yukos Capital knew about the Finder's agreement with Mr Merinson and the large 'one- off' payment being made to him. However, unlike B, BJB Compliance was not aware of these matters when B approved the Finder's arrangements. Further, whatever B's understanding of the role of BJB Compliance in assessing the Finder's arrangements, B was in a senior management position and, given the information he had, the arrangements were suspicious and the grounds for suspicion grew as time went on. It was not appropriate for him to approve and continue to support the arrangements in such circumstances.

Relevant events

Email of 23 July 2010

33. *The context for B's email of 23 July 2010 to the JBI Line Manager was that the JBI Line Manager was arguing that, as C's team head, his bonus should take into account the monies brought in on the Yukos account for which she was the relationship manager. B disagreed. In his email, B was not suggesting that he himself should receive a bonus for anything he had done, but rather asking rhetorically what the JBI Line Manager would say if B argued that he should receive part of the bonus relating to the Yukos account. B's point was that senior people should not expect that everything they did to assist more junior employees would be rewarded in their bonus.*

34. B's submission that he was making a rhetorical point in his email of 23 July 2010 is not a natural reading of that email. Instead, the email appears to be about whether B should have a share of the JBI Line Manager's anticipated bonus and suggests that B was close to the detail of the Yukos relationship and had intervened to allay concerns raised by BJB Legal and BJB Compliance when the Yukos Capital account was opened in November 2009. In addition, the fact that B referred to the account opening in his email of 23 July 2010 shows that he had not forgotten the events leading to the Yukos Capital account opening being approved, and supports the Authority's view that he would have known that Mr Merinson was a Yukos employee in July 2010.

July 2010 Finder's arrangements

35. *B did not approve the Finder's arrangements and he was not aware of the risks in relation to which it is alleged he acted recklessly. Many other people were aware of the features of the Finder's arrangements agreed with Mr Merinson in July 2010, but nobody documented any objection at the time and all were apparently satisfied with what they were told.*

36. *B does not recall C's email of 7 July 2010 or whether he read it in any detail, and there is no record of him responding to it. The fact the email was copied to the JBI Line Manager would likely have been relevant to how closely he felt he needed to engage with this email, as the JBI Line Manager was evidently aware of the situation and was supervising C. The fact that B did not reply to the email also suggests that it was not particularly significant to him. Further, as C agreed an entirely different retrocession arrangement in the second meeting of 7 July 2010, it is clear that she did not need a response to her email.*

37. *There is nothing in C's email of 7 July 2010 which suggests that Mr Merinson was an employee of any Yukos company. B is sure that he was not aware that Mr Merinson was an employee because he would have regarded it as a serious issue for an employee to be paid a fee for introducing their employer. Mr Merinson had not been mentioned to B in any document since he was copied into an email from C to BJB Compliance eight months earlier. That email was directed principally to BJB Compliance and contained only a single incidental reference to Mr Merinson's position in a long email and said nothing about him being a Finder. In the circumstances, it is entirely credible that B would by July 2010 have forgotten what position C attributed to him, even assuming he had ever focussed on it previously.*

38. *C presented the proposal to pay Mr Merinson a percentage of assets transferred to the Yukos Capital account as coming from Mr Feldman. It therefore appeared that the sole director of Yukos Capital gave his informed consent to Mr Merinson receiving this payment, and that he was agreeing that Yukos Capital would fund the payment. If Julius Baer was going to make a payment to Mr Merinson in such circumstances, Mr Feldman, as Yukos Capital's sole director, was the appropriate person to approve the payment.*

39. *C's email of 7 July 2010 did not ask B to approve the arrangements with Mr Merinson and his approval was not required. Under the Co-operation with Finders Policy, it was the responsibility of the Finance Department to handle new Finders and only A, as the Region Head, could overrule Finance or authorise higher than standard commission rates. B was not responsible for authorising or documenting the arrangement with Mr Merinson; he would not have had any reason to see the Finder's agreement and has no recollection of being involved in it. He was surprised to learn later that the written agreement did not provide for the payment that was made.*

40. *The suggestion that Mr Merinson be paid a one-off fee came from Mr Feldman. B cannot recall, if indeed he ever knew, who suggested that Mr Merinson's one-off fee be a percentage earned by Julius Baer on a particular transaction for Yukos. The idea was certainly not his own. In any event, B's understanding was that what was contemplated was that Mr Merinson would only receive a fee at the time that the anticipated assets came to Julius Baer, rather than a percentage of all revenues they generated in the future. In that context, the amount of the Finder's fee was not unusual.*

41. *B also did not propose an increase of Mr Merinson's one-off fee to 80% whilst C was on wedding leave; he had no contact with Mr Merinson or Mr Feldman at this time and would have had no reason to make such a proposal. Instead, it appears that this was agreed at the second meeting of 7 July 2010, as is outlined in C's report of that meeting. There is no evidence that B received this report or was informed of what was discussed. B was not informed until 16 August 2010 of the arrangements ultimately agreed and was not asked to approve them in advance. His reaction to being told what had been agreed was to inform the JBI Line Manager by email that 'Between our discussion and the situation we have now I am missing an update'. This email is inconsistent with B having negotiated the final arrangements or having any close involvement in them at all.*

42. Although there is no documentary evidence of B saying that he approved the arrangements set out in C's email of 7 July 2010, the Authority notes that on 16 July 2010 a BJB senior manager, who worked closely with B, sent an email to the JBI Line Manager requesting details of the proposed Finder's arrangements with Mr Merinson, which included the statement that B '*already supports the case*'. Further, 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 considers it is highly likely that B did approve them.

43. The Authority considers it likely that B would have paid close attention to C's email of 7 July 2010. The email was addressed to him and, in outlining arrangements for the inflow of substantial funds from a politically sensitive client, and the potential implications of not meeting Mr Feldman's request, was a significant communication. The reason the JBI Line Manager was copied into the email appears to have been because C was about to go on wedding leave, rather than to keep him informed in a managerial capacity. In any event, B and the JBI Line Manager discussed the matter subsequently, whilst C was on wedding leave, as is clear from the email of 23 July 2010.

44. In giving his approval, B would have been aware that Mr Merinson was a Yukos employee as a result of C having described him as the Chief Financial Officer of both Yukos Capital and Yukos International in an email to B dated 9 October 2009, and as a result of being copied into an email from C to BJB Compliance dated 13 November 2009 which described Mr Merinson as the Chief Financial Officer of Yukos Capital. Given his involvement in the account openings for Yukos Capital and Mr Merinson, and given that this was a large and politically sensitive relationship, the Authority does not consider it credible that B had by this time forgotten Mr Merinson's role at Yukos. The arrangements were suspicious and, regardless of the knowledge and actions of other Julius Baer staff, B should have had regard to the obvious risks associated with the arrangements, of which he must have been aware.

45. It was not reasonable for B to take comfort from Mr Feldman's role in the arrangements. Notwithstanding Mr Feldman's position as a director, there was no commercial rationale for him to propose that Mr Merinson should be paid a percentage of assets, and that this should be achieved by means of a retrocession payment on a non-standard FX transaction, so B must have been aware of the risk that the arrangements were improper. However, B did not question why Yukos would wish to pay such a large sum of money to an employee or why, even if it did want to reward Mr Merinson, it would want to do so through a Finder's relationship with Julius Baer. He also did not have regard to the risk that the arrangements involved a breach of Mr Feldman's duties to the relevant Yukos Group companies, or the risk that Mr Feldman also stood to benefit financially from the arrangements.

46. B had a good reason to be interested in the Finder's agreement, as its purpose was to contain the terms of a relationship for Julius Baer which was significant to his area of responsibility. B was made aware that the retrocession payment was not mentioned in the Finder's agreement at the latest by 20 August 2010, when he was copied into an email chain which made this clear, yet he did not raise any concerns or take any action to prevent the First Commission Payment being paid to Mr Merinson.

47. Even if it was B's understanding that the amount of the Finder's fee was not unusual, given that the arrangements themselves were so unusual, he must have been aware of the obvious risk that there was no proper commercial rationale for making such a large 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.

48. Although B's email to the JBI Line Manager on 16 August 2010, in which he stated that he was missing an update, suggests that he might not have been aware of all of the details of the arrangements that C agreed with Mr Feldman and Mr Merinson, the Authority considers that the differences between the ultimate arrangements agreed and those set out in C's email of 7 July 2010 do not make any material difference to the obvious risks pertaining to the arrangements, which B must have been aware of, given his knowledge and position.

First FX Transaction and First Commission Payment

49. *B had no reason to consider that C's account of how the First FX Transaction took place raised a red flag. It was in the client's interests for Julius Baer to get as good a rate as possible, given that the rate it would pay would be the rate achieved after the application of the payment to Mr Merinson and Julius Baer's own commission. Since Julius Baer's commission was a percentage of the dollar amount, the best rate for the client would also maximise Julius Baer's commission.*

50. *Based on the facts known to B, the First FX Transaction did not appear suspicious. The commercial sense or otherwise of the First FX Transaction, which was carried out on the basis that the funds would remain with the bank for the medium term with a particular charging structure, was primarily a matter for the client, the individuals involved in the transaction and perhaps their line managers. B was not usually involved in specific transactions and did not scrutinise the terms of transactions forensically with a view to identifying potential frauds. He expected to be alerted if a transaction brought to him was suspicious, but here he was told that the client was pleased with the transaction and a member of JBI's Board was excited by it. B had no detailed information about how the commission had been generated, other than this had been by the JBI individuals working through the night to exploit exchange rate movements, and he was not told that the client was being charged a rate close to the worst rate of the day. B is not aware of anyone at the time considering what the client's reasons might be for the overall package of charges it was accepting from the bank.*

51. *B was aware of the First Commission Payment, but he did not approve it. B recalls that a discussion between C, A and B regarding a payment to Mr Merinson took place at the time of the Second FX Transaction, not the first. A approved the First Commission Payment based on a commercial assessment and there is no evidence that B was involved in A's approval. It is apparent that A was fully aware of how the First Commission Payment had been funded and did not see any need to stop it. Once A had said he was not going to oppose the payment to Mr Merinson, there was no point in B saying anything more.*

52. *B understood that Mr Merinson was an adviser for Yukos but was not aware of any employee relationship at this time. There is nothing inherently suspicious about a company being content for an adviser to be remunerated through a retrocession*

payment, provided the company is aware of and consents to the remuneration, as Mr Feldman did.

53. *In contrast to B's understanding, the fact that Mr Merinson was both a Yukos employee and a Finder for the Yukos Capital account was drawn to BJB Compliance's attention prior to the First Commission Payment being approved by A. However, BJB Compliance did not consider that this required urgent consideration and considered that the potential conflict of interest issue could be dealt with sufficiently by a letter signed by Mr Feldman. B was entitled to leave it to BJB Compliance to ensure that satisfactory evidence of Yukos' approval was obtained. As he understood that BJB Compliance was content with the retrocession arrangements, he did not think that there was anything suspicious and was not aware of any risk of Mr Merinson being in breach of his duties to Yukos or that Yukos might be being defrauded by Mr Feldman and Mr Merinson.*

54. C emailed B, among others, on 16 August 2010 with details of the First FX Transaction. B was an experienced financial services professional and must have appreciated that the amount of commission which Julius Baer generated from the First FX Transaction was significantly in excess of the amount that would normally be associated with a large FX trade. Even if B understood that the high level of commission did not reflect the costs of executing the specific transaction, but rather what Julius Baer required to cover the overall costs of servicing a private banking relationship with Yukos, he must have realised that there was no proper commercial rationale for making a payment to Mr Merinson in this way.

55. B must have been aware of the risks pertaining to the First FX Transaction, given his understanding of how it took place. He was aware from C's email of 16 August 2010 that the JBI Trader made use of the volatility of the FX trading to maximise the commission, rather than securing best execution for Yukos Capital and charging the standard commission rate for a transaction of this size, but did not question this. The fact that he was told that the client was pleased and that a member of JBI's Board was excited about the transaction does not excuse his failure to have regard to the risk, which must have been obvious to him on the facts that he knew, that the First FX Transaction was undertaken in breach of Mr Merinson's and Mr Feldman's duties to Yukos Capital, was not in the interests of that company and was made in order to facilitate the improper diversion of funds from Yukos Capital to Mr Merinson (and potentially to Mr Feldman).

56. The fact that B approved the First Commission Payment is apparent from an email sent by C to a senior manager of BJB, copied to B and A, on 19 August 2010, in which she stated that both B and A had given their verbal approval for the First Commission Payment. A's statement on 20 August 2010, copying in B, that there was a "fait accompli", reflected A's decision not to object to payment because it had already been agreed with Mr Merinson, and the alternative was to let the funds go to another financial institution. B could and should have raised concerns as he was copied into the emails, notwithstanding A's approval, and the fact he did not do so indicates that he continued to approve the payment.

57. As explained above, the Authority considers that B would have been aware at the time that Mr Merinson was a Yukos employee. Given Mr Feldman's involvement in the Finder's arrangements and the First FX Transaction, and the fact that he was the

only other person at Yukos known to be aware of them, his consent to the payment of remuneration to Mr Merinson did not make the payment any less suspicious.

58. Although BJB Compliance was aware of details of the Finder's arrangements, including that Mr Merinson was an employee of Yukos International, B was only aware that BJB Compliance considered the transaction to be "plausible", which the Authority understands to mean that BJB Compliance 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. Further, whatever his understanding of the role of BJB Compliance, B was in a senior management position and, given the information he had, he must have been aware of the risks relating to the First FX Transaction and the payment of a retrocession to Mr Merinson pursuant to it. It was not appropriate for him to approve the First Commission Payment in such circumstances.

Investment Capital Gain

59. *C's email outlining Mr Merinson's request that payment be made 'preferably' with the payment reference "Investment Capital Gain" suggested that the description was not crucial to Mr Merinson. B's reaction was to tell C that the payment could not be described as "Investment Capital Gain". She immediately confirmed that would not be a problem and that the important point was to make clear that the payment was not employment income. B then signed a letter stating that the payment was a retrocession; he thus knew that the request had not been complied with and that this did not give rise to any problem.*

60. *There was nothing in the request to suggest an attempt to disguise the payment, or its nature, from Yukos, or that the payment was not properly authorised by Yukos Capital.*

61. *It must have been obvious to all those who saw C's email of 19 August 2010 that the payment to Mr Merinson was not an "Investment Capital Gain", yet none of the many people at Julius Baer who were aware of the request, and who had the same information as B, regarded it as suspicious, including BJB Compliance and BJB Legal. It is unrealistic to suggest that B should have challenged those departments.*

62. As it was obvious that describing the payment as an "Investment Capital Gain" would be an untrue statement, given all that he knew at the time about the Finder's arrangements and the First FX Transaction, B should have recognised the risk that this could have been an attempt by Mr Merinson to disguise the true nature of the payment and so it ought to have caused him concern and to follow-up with further investigation into the arrangements with Mr Merinson.

October 2010 amendments to Mr Merinson's Finder's arrangements

63. *A's statement in his email to B and BJB Senior Manager A that 'Your recommendation should be prior' was not an indication that A would defer to anyone else's view or that A was not otherwise apprised of the situation with Yukos. Indeed, the contemporaneous documents suggest that A formed his own positive view of C's proposal on the basis of a direct discussion with her before any discussion with B.*

64. *B had a subsequent discussion with C because he was unclear about how commission of 35% of revenues would work alongside one-off retrocessions. His view was that C should revert in advance of a specific transaction with an explanation of how the retrocession arrangement she proposed would apply to that, and that she should obtain A's approval before the transaction occurred. He understood A to be happy with that approach, and he would have read A's email of 25 October 2010 as confirming that. When B sent his email saying that he approved of the next steps of the relationship, he meant that C should proceed as they had discussed, not that he was approving the proposals in her prior emails.*

65. *In any event, the emails show that, at a time when A had discussed the matter with C in detail, but B had not discussed it with her at all, A had a conversation with B and then sent a 'no objection' email having already indicated his support to C orally. If A intended to approve C's proposals in full, that can only have been on the basis of what C had told him, not his discussion with B, who had no information or insight to provide.*

66. *B acceded to A's decision to approve the arrangements in the belief that Mr Merinson was not an employee of Yukos and that Mr Feldman, a director of the client, approved the new arrangements. It did not occur to B that the new Finder's arrangements were not properly authorised by Yukos. It was not obvious, and did not occur to B, that Mr Feldman might be in breach of his obligations to Yukos in approving the new arrangements. It also did not occur to him that Mr Feldman might benefit personally from the retrocession arrangements.*

67. *There was no indication of secrecy surrounding the new arrangements. B was not involved in the preparation of the addendum to Mr Merinson's Finder's agreement and neither saw it nor knew its contents. He had no reason to think that Julius Baer would not document the arrangements with Mr Merinson properly and was astonished when he later found out they were not fully documented.*

68. The Authority acknowledges that A had ultimate responsibility for approving the amendments to the Finder's arrangements, given that his approval was required under the Co-operation with Finders Policy for the non-standard remuneration rate, and that A reached his own view that approval should be given, including in light of a discussion that he had with C. However, it is clear from A's email of 25 October 2010 that he had taken into account B's views before giving his approval. Further, although B later expressed irritation at being asked to approve the Second Commission Payment after the Second FX Transaction had already taken place, his statement in his email of 28 October 2010 that he approved the next steps of the relationship was made in response to C's email of 25 October 2010, in which she explained that A was in favour of the proposed revised arrangements and set out her expectations of the future financial benefits this would bring to Julius Baer, which she indicated would be in jeopardy if Mr Merinson's Finder's agreement rate was not raised. B does not say in that email that he was approving a proposal that C discuss any proposed retrocession transaction and obtain A's approval before it took place, and the Authority considers that he meant he was approving the proposed revised Finder's arrangements.

69. As mentioned above, the Authority considers that the evidence supports its conclusion that B knew at the time that Mr Merinson was a Yukos employee. Further, given that there was no proper commercial rationale for the Finder's arrangements, there was an 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, because of his involvement in approving the arrangements, potentially to 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.

70. B 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

71. *In B's response to C's email of 24 November 2010, he expressed irritation at being asked to approve transactions only after they had been executed. C's completion of the Second FX Transaction without seeking the required approval was contrary to what had been agreed with her and was an example of her seeking to go outside the formal structures and procedures within Julius Baer. It did not however suggest that a fraud might be being perpetrated on Yukos.*

72. *After A sent an email to B saying 'Your jurisdiction and judgment, let me know', B discussed C's email with A in his office. B was initially opposed to the payment. A called C from his office and the outcome was that A approved the payment to Mr Merinson on the basis of a commercial assessment of whether the payment commitment brought about by C should be honoured. B sent an email saying that he approved the payment because A had already said that he approved it.*

73. *B and A felt that the fact that C only sought approval after executing the transaction and agreeing that the bank would make the payment made it commercially difficult to refuse approval. The fact they thought about it in this way indicates they did not suspect an improper diversion of funds from Yukos. If B had been aware of any risk of impropriety, it would not have mattered to him that C had already promised the payment; he would not have been content to allow the retrocession to occur without asking questions, even if A had approved it.*

74. *B was told that the director of Yukos Capital, Mr Feldman, wanted to use a retrocession on the transaction and that he appeared to be fully aware of what had happened. It was not obvious, and it did not occur to B, that Mr Feldman might be in breach of his obligations to Yukos in approving the payment to Mr Merinson. In*

particular, it did not occur to him that there might be a scheme to divert funds improperly to Mr Feldman.

75. *B was not sent the emails from the BJB Bahamas Senior Manager and has no recollection of knowing about his specific concerns. He believes that he would have been kept out of the discussions because they related to BJB Bahamas, which was a separate legal entity. The only occasion when the concerns raised by the BJB Bahamas Senior Manager could have been communicated to B was a meeting between him, A and BJB Senior Manager A on 13 December 2010, but BJB Senior Manager A's evidence was that the BJB Bahamas Senior Manager's specific concerns were not discussed at that meeting. A had the ultimate say and strong views on the Yukos relationship, and B took a back seat at the meeting. B was not involved in the memorandum which was then prepared for A's signature approving the Second Commission Payment, and its statement that he pre- approved the payment is inaccurate. As the particular issues raised by the BJB Bahamas Senior Manager were not drawn to B's attention, he cannot be criticised for not acting on them. Further, as BJB Senior Manager A knew more about the relevant facts than B, but is not alleged to lack integrity, it would be wrong in these circumstances to find that B lacked integrity.*

76. *A took ownership of the case and decided to authorise payment, at a time when B was on holiday. B was not involved in approving the payment in December 2010 as is clear from A's comment 'Last time it comes to my approval without Market Head approval'. He was also not asked to put a framework in place before the payment to Mr Merinson was made. He does not recall that the framework was to be put in place in response to the BJB Bahamas Senior Manager's concerns. The framework was to ensure that proper documentation was obtained for future transactions; it was never intended to be a framework for approving the Second Commission Payment.*

77. As mentioned above, the Authority considers that the evidence does not support B's submission that it had been agreed that C had to obtain approval prior to carrying out any proposed FX transaction. However, the Authority agrees that the Second FX Transaction did not accord with what had been agreed by A and B, as they had agreed arrangements based on 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. B, however, did not raise this with C and simply granted C's request for approval of the payment to Mr Merinson. In doing so, B thereby approved the arrangements by which the commission was generated in the Second FX Transaction.

78. B accepts that, if he had been aware of any risk of impropriety, it would not have been appropriate for him to approve the Second Commission Payment, notwithstanding that A was also approving it and that commercial difficulties would have arisen if payment had been approved. Although B claims he was not aware of any such risk, the risks associated with the Second FX Transaction were obvious, as is apparent from the fact that they were immediately recognised by the BJB Bahamas Senior Manager. Given B's experience and the facts he was aware of, the Authority considers that he must have been aware of the risks, and that his failure to have regard to them was reckless.

79. The Authority considers that the evidence supports the conclusion that B was made aware of the specific concerns of the BJB Bahamas Senior Manager. The BJB Bahamas Senior Manager had asked for his concerns to be escalated to A 'and/or' B, and BJB Senior Manager A subsequently had discussions 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, included points that appeared to be designed specifically to address the concerns raised by the BJB Bahamas Senior Manager. The Authority therefore infers that B must have been aware of the concerns raised concerning the size of the retrocession payment to Mr Merinson, the lack of appropriate client authorisation for the Second FX Transaction and Mr Merinson's links to Yukos.

80. As mentioned in paragraph 4.64 of this Notice, the Authority considers that all three of A, B and BJB Senior Manager A were involved in discussions relating to the payment of the Second Commission Payment and that A's final approval was required before the payment to Mr Merinson could be made. At the time, in light of the concerns raised by the BJB Bahamas Senior Manager, B must have been aware that there was a risk that the arrangements with Mr Merinson and Yukos were improper, but he failed to take any steps to prevent the Second Commission Payment, which was ultimately paid to Mr Merinson on 31 December 2010, before B had taken the actions he was tasked with.

<u>January 2011 preparation of new Finder's agreement with Mr Merinson</u>

81. *The intention in the conference call of 5 January 2011 was that the full arrangements with Mr Merinson should be documented. These were the same arrangements previously approved by A in October 2010, subject to certain restrictions: the one-off retrocessions were only to be applicable in respect of new funds coming to the bank and the client had to receive a price which was at least as good as the worst price in the market on the day of the transaction. Notwithstanding his prior questions about the Second FX Transaction, it appears that the BJB Bahamas Senior Manager was not then concerned about the arrangements which were to be documented. The BJB Bahamas Senior Manager had since been told that written approval was to be obtained from the client, Compliance were supervising the arrangements and a new procedure was to be adopted, so that payments could be accounted for internally properly. B was entitled to be satisfied on the same basis.*

82. *B was not responsible for documenting Finder's agreements and was not normally involved in their terms. He was not sent a copy of the agreement in draft or when executed, and he reasonably assumed that those responsible for documenting the arrangements had done so properly. He was also not sent a copy of the email from BJB Senior Manager A dated 6 January 2011, so he was not aware that the retrocessions were not to be included in the written agreement, if indeed that was what the email meant. Accordingly, B was not aware that, if the agreement was shown to Yukos, it would not disclose the full benefit to Mr Merinson of transactions with Julius Baer. B thought that the agreement would show that.*

83. *The alleged risks did not occur to B and were not obvious, as is apparent from the involvement of the BJB Bahamas Senior Manager. The facts which are alleged to have disclosed a risk of wrongdoing also applied to the First Commission Payment and so were also known to others, including BJB Compliance, BJB Senior Manager A and BJB Legal. The fact that none of them said that a stop should be put to the*

arrangements with Mr Merinson shows that it is credible that B was not aware of the risks and that these risks were not clear at the time.

84. The email sent by BJB Senior Manager A on 6 January 2011 makes it clear that the intention was not to document all of the arrangements with Mr Merinson, as it referred to the fact that it had been agreed verbally to accept three further retrocession transactions in addition to the written terms which were to be recorded in the Finder's agreement with BJB Bahamas. That email also makes it clear that this was agreed at the conference call the day before, which B had attended, so B would have been aware that the retrocessions were not to be included in the written agreement and that, if the written agreement was disclosed to Yukos, the full benefit to Mr Merinson of the transactions with Julius Baer would not be apparent.

85. There was a significant difference between these arrangements and those previously approved, as this Finder's agreement was to record Mr Merinson's entitlement to be remunerated for the introduction of Yukos Capital and Fair Oaks to BJB Bahamas, whereas under the existing agreement it would not have been apparent that he had any entitlement to be remunerated for funds held by Fair Oaks. However, these arrangements involved similar risks to those relating to the revised arrangements agreed by B in October 2010, and so it must have been obvious to him that there was no proper commercial rationale for such arrangements.

86. The Authority acknowledges that the BJB Bahamas Senior Manager prepared this Finder's agreement as requested, but does not consider that this means that the risks posed were not obvious, given the similarity of these arrangements with the previous ones which the BJB Bahamas Senior Manager had raised concerns about. The Authority has not seen any evidence that BJB Legal was aware of the arrangements and notes that BJB Compliance was not involved in the arrangements agreed in October 2010 and raised concerns regarding these arrangements on 24 January 2011. The lack of objection from BJB Senior Manager A, who was proceeding on the basis of approvals and direction from A and B, does not excuse B's reckless conduct in agreeing that C should negotiate these new Finder's arrangements.

<u>January 2011 Mr Merinson's request for confidentiality</u>

87. *B reasonably did not consider Mr Merinson's request to restrict disclosure of his Finder's agreement to be suspicious. At the time that he learned of the request, he was also told that BJB Compliance would be content to amend the agreement, provided it was clear that its terms could be disclosed to the bank's clients, and he saw no reason to object to that. There is nothing in the evidence to suggest that BJB Compliance regarded Mr Merinson's request for confidentiality as suspicious, as long as the Finder's arrangements were not being kept from the client. B did not act with a lack of integrity, if he did not identify a risk of impropriety from the very email in which BJB Compliance set out the relevant factors and identified what they considered to be the solution. Further, B followed up BJB Compliance's email with the JBI Line Manager, who sent a clear email indicating that he had investigated the matter thoroughly and that there was no question of impropriety.*

88. *On the information provided to B, Mr Merinson immediately accepted wording proposed by BJB Compliance which did not limit disclosure to Mr Feldman. It appeared to B that Mr Merinson was in fact concerned to ensure that his arrangements were not disclosed to third parties, not that he was concerned about disclosure to*

Yukos. The information C included in her emails to B indicated that Mr Merinson was happy for Julius Baer to explain the retrocession arrangements to any directors of Yukos.

89. Mr Merinson's request that the Finder's agreement with BJB Bahamas should include restrictions limiting Julius Baer's ability to disclose his role as Finder on the Yukos accounts to anyone other than Mr Feldman should have caused B, given the matters cumulatively known to him at the time, to be suspicious that it might have been an attempt to hide the fees that had been paid to Mr Merinson. This risk is also evident from BJB Compliance's email to B and the JBI Line Manager on 24 January 2011, which drew their attention to the request and made it clear that it was concerned that the Finder's arrangements were not being properly disclosed to Yukos.

90. The fact that Mr Merinson accepted BJB Compliance's revised wording should have only provided limited comfort to B, as in practice, given that Mr Feldman was the sole director of Yukos Capital and the only Fair Oaks director with whom Julius Baer had dealings regarding the Finder's arrangements, this wording would mean that it was unlikely that BJB would disclose the Finder's agreement to anyone other than Mr Feldman. In addition, given all the suspicious signs relating to the Finder's arrangements and payments of commission pursuant to them, it was not sufficient for B to rely on the JBI Line Manager's conclusion that there was no reason to believe that there was anything improper involved in Mr Merinson's request.

<u>February 2011 Mr Feldman's request for confidentiality</u>

91. *The risk relating to Mr Feldman's request for a confirmation of Julius Baer's commitment to confidentiality was not clear at the time. Mr Merinson had just agreed that his Finder's agreement could be disclosed to any client he introduced. At the time, there was no reason for B to think that Mr Feldman meant that the letters he was going to sign could not be disclosed, or that Mr Merinson would be happy if the documents showing Yukos' consent to him being paid could not be shown to anyone else at Yukos; Mr Merinson would presumably wish to rely on those documents if the payments were ever questioned.*

92. *As B was aware, BJB Compliance and BJB Legal considered Mr Feldman's request and decided to provide the confirmation requested. BJB Compliance had asked for letters approving the arrangements with Mr Merinson and were content for them to be signed by Mr Feldman alone. BJB Senior Manager A and the BJB Bahamas Senior Manager also knew that Mr Feldman alone was to sign the letters and did not challenge this. The letters were seen as necessary to ensure that Mr Feldman did indeed approve the arrangements, not to establish his bona fides, which no-one had called into question. If there had been a concern about Mr Feldman, his signature would obviously not have been enough. Given the political sensitivities relating to Yukos, a concern for confidentiality was hardly surprising, especially in the context of Wikileaks information appearing in the press. It is therefore entirely credible that it did not occur to B that Mr Feldman might in fact be a fraudster conspiring with Mr Merinson.*

93. *B was entitled to rely on the information provided by C that Mr Merinson was not employed by Yukos. She was the person most closely involved and who should have known what Mr Merinson's role was. If B had ever focussed on the description of Mr Merinson in 2009, he had forgotten it by February 2011 and did not know that Mr Merinson was employed by Yukos. BJB Compliance also accepted the description of Mr Merinson now provided by C.*

94. The Authority considers that the risk that Mr Feldman's request was an attempt to hide the payments to Mr Merinson should have been recognised by B, given the matters cumulatively known to him at the time and given his experience as a financial services professional. Mr Feldman's requested wording was capable of meaning that the letters could not be disclosed to anyone at all. Further, even if it was interpreted as permitting disclosure to Yukos Capital and Fair Oaks, Mr Feldman was the sole director of Yukos Capital and the only director of Fair Oaks with whom Julius Baer had any dealings regarding the Finder's arrangements.

95. The Authority acknowledges that ultimately, despite the concerns raised by BJB Compliance, Mr Feldman's letters still included the additional wording regarding a commitment to confidentiality and were signed by him alone. However, given the compliance issues raised by BJB Compliance in its memo of 7 February 2011, and all the obvious risks relating to the arrangements which B must have been aware of, B should not have been satisfied that the various concerns raised had been properly addressed.

96. The email sent by the BJB manager to BJB Compliance following his call with B and C on 14 February 2011 only stated the BJB manager's and B's understanding with regard to Mr Merinson's position at Yukos Capital. It did not mention Yukos International and, given B's involvement in the conduct of Julius Baer's relationship with Yukos and Mr Merinson, the Authority does not consider it credible that he would have forgotten that Mr Merinson held the position of Chief Financial Officer at Yukos International.

<u>B becomes an approved person</u>

97. *The fact that B was appointed to a non-executive position with JBI does not mean that he came under any relevant obligations which he did not already owe to his employer. In addition, given that he was already required to act in accordance with similar regulatory requirements in Switzerland, his regulatory duties upon becoming an approved person were not materially enhanced.*

98. B was appointed to the role of non-executive director at JBI, holding the CF2 (Non-executive director) controlled function, on 30 March 2011. As an approved non-executive director, B owed fiduciary duties to JBI and duties under the regulatory system, in particular the Authority's Statements of Principle for Approved Persons. Following his appointment, B permitted the Finder's arrangements with Mr Merinson to continue without taking any meaningful steps to address the obvious risks arising from Julius Baer's relationship with Mr Merinson. In doing so, the Authority considers that Mr Merinson acted with a lack of integrity in breach of Statement of Principle 1.

<u>Opening of Yukos Hydrocarbons account in Guernsey and concerns raised in July 2011</u>

99. *There was no apparent risk in the opening of a new account for Yukos Hydrocarbons, and B did not perceive there to be any risk. B reasonably relied on Compliance to conduct checks and to flag any concerns to him, but no concerns were flagged to him.*

100. *The JBI Line Manager's email of 18 July 2011 did not raise material concerns for B. B did not believe that the email was warning that the Yukos relationship was high-risk in any sense other than politically high-risk. He reasonably*

would have interpreted the email as an outburst by a person concerned to protect his own personal interests, whose principal concern was that C was the relationship manager for the new Yukos Hydrocarbons account, rather than himself. The email was inconsistent with the JBI Line Manager's past informed support for the payments to Mr Merinson and proceeded on a basis which B with good reason understood to be incorrect, that the issues raised by BJB Compliance had not been resolved to BJB Compliance's satisfaction. It is therefore unfair to criticise B for not acting on the JBI Line Manager's email.

101. Although the JBI Line Manager's motive for sending his email of 18 July 2011 can be questioned, the Authority considers that he raised important concerns about the Yukos relationship which ought to have led to a person in B's position to take steps to investigate whether they had any merit. In these circumstances, it was not appropriate for B to take no action in response to the JBI Line Manager's email and to proceed to approve the opening of the new account for Yukos Hydrocarbons.

Third FX Transaction and Third Commission Payment

102. *Evidence obtained by the Authority after the Warning Notice was issued resulted in the Authority withdrawing its original allegations against B in respect of the Third FX Transaction and proposing new allegations. The fact that the original allegations were made at all is consistent with other indications that the Authority has viewed the entire case through the prism of an assumption that B lacks integrity, which has distorted the way it sees the evidence.*

103. *The Act precludes the Authority from issuing a Decision Notice in relation to a prohibition order on the basis of reasons which were not included in the Warning Notice. In particular given the delays in this case, there is no excuse for the Authority not having investigated properly the transactions which occurred in 2011, obtained obviously relevant documents, and reached a final conclusion on the allegations to make against B, well before the Warning Notice was issued.*

104. *It is acknowledged by the Authority that there is no evidence that B was informed about the Third FX Transaction. In fact, the evidence is that C kept the transaction away from B. She told him that she intended to use one of the one-off retrocessions on a conversion of an inflow of dollars, whereas the Third FX Transaction did not involve an inflow.*

105. *C also did not tell B anything about the terms of the Third FX Transaction; in particular, she did not tell him that the margin was at the same level as the margin on the First or Second FX Transactions. In fact, the transaction she did tell him about was entirely unlike the First and Second FX Transactions, as it generated a much smaller commission.*

106. *B was not responsible for approving retrocession payments and there is no evidence that he approved, or was asked to approve, the Third Commission Payment.*

107. The Authority accepts that, as a result of its review of the further evidential documents obtained from Julius Baer following the issue of the Warning Notice, the descriptions of the Third FX Transaction, and of B's failings in respect of it, in the Warning Notice were inaccurate in a number of respects. Having reviewed the relevant evidence (including the new material), the Authority is of the view that it supports the conclusion that B acted recklessly in respect of the Third FX

Transaction (as it is now understood by the Authority). B was given the opportunity to make, and did make, submissions regarding the Authority's revised view of the Third FX Transaction and of B's failings in respect of it. In the circumstances, the Authority does not consider it to be unfair for this Notice to include an amended description of the Third FX Transaction and a finding that B acted recklessly in respect of it.

108. B was informed by C on 19 August 2011 that one of the four 70% retrocession payments that he and A had previously approved would be used in respect of a FX transaction converting EUR 7 million into USD (the Third FX Transaction). Although B was not specifically informed of the terms of the Third FX Transaction or that it used the same trading approach as for the First and Second FX Transactions, having approved the arrangements by which the commission was generated in the First and Second FX Transactions, B must have been aware of the same risks which arose in relation to those transactions.

109. The Authority notes that C also told B that she intended to use one of the 70% retrocession payments in respect of the conversion of an inflow of USD 7 million into the Yukos Hydrocarbons Guernsey account. It appears that C raised this with B, because it was outside the arrangements that she already had approval for, unlike the Third FX Transaction.

110. Although there is no documentary evidence that B approved the Third Commission Payment, the Authority considers that he should have taken steps to prevent the Third Commission Payment being made, given the information he had regarding the Third FX Transaction and given the risks relating to it that he must have been aware of, including as a result of the email from the JBI Line Manager sent to him the previous month which raised concerns about the relationship with Mr Merinson.

<u>Concerns raised by the JBI Line Manager in November 2012</u>

111. *B believed at the time, and continues to believe, that the JBI Line Manager sent his email of 30 November 2012 because he understood that C's responsibility for Yukos was not going to be transferred to him. The email contains a number of demonstrably incorrect or misleading statements and B knew at the time that it was disingenuous. B was asked to comment and did so from memory knowing that much of what the JBI Line Manager said was nonsense.*

112. *In his email of 5 December 2012, B was correct to state that Mr Merinson's retrocession arrangements were approved by JBI Compliance. His understanding was, and remains, that JBI Compliance considered and approved the retrocession arrangements, as this is what should have occurred. In addition, BJB Compliance was aware of the arrangements with Mr Merinson and permitted payments to be made to Mr Merinson pursuant to them. It approved the arrangements with Mr Merinson for the First FX Transaction and (as amended) to include four one-off payments, provided Mr Feldman signed to confirm that Yukos Capital and Fair Oaks knew of and consented to them.*

113. *B's statement in his email that Mr Merinson was not a Yukos employee reflected his honest belief at the time. Mr Merinson's employment status was not of significance in 2009, when B received documents in which it was stated that Mr Merinson was the CFO of Yukos International. If he had registered this information in the first place, B had forgotten it by July 2010 when the Finder's arrangements*

were being discussed, particularly because he would have regarded it as unacceptable for an employee to act as a Finder in relation to his employer. In any event, C told B that Mr Merinson was a consultant, when his status was raised in February 2011.

114. *B was also correct to state in his email that an additional signature from Yukos had been requested after the First FX Transaction. The additional signature that B was referring to was Mr Feldman's signature on the letters requested by BJB Compliance on 1 September 2010, relating to the retrocession payments. He meant that the signature requested was in addition to whatever signature had been obtained in relation to the execution of the transaction itself. He had no reason to focus on whether the signature was by the same or another person. The fact that Mr Feldman's signature was not obtained until after the Second FX Transaction does not render what B said misleading.*

115. *The allegation that B showed a reckless disregard of the truth in his email is an inherently unlikely one. He knew that BJB Compliance would see and consider what he said, and that if he misrepresented BJB Compliance's role he would immediately be found out. However, there is no evidence that BJB Compliance disagreed with what he said. There would have been no benefit to B in making statements he suspected might be incorrect or misleading, because what he said could be checked by looking at the documents.*

116. Although elements of the JBI Line Manager's email of 30 November 2012 were misleading, and irrespective of the JBI Line Manager's motivation, it was incumbent upon B to provide BJB Compliance with accurate and not misleading comments on the JBI Line Manager's email.

117. There is no evidence that either JBI or BJB Compliance approved the retrocession arrangement. As B was aware, the retrocession arrangement was not part of the information given to JBI Compliance when Mr Merinson was set up as a Finder, and it was not recorded in his Finder's agreement. Although BJB Compliance was later informed of details of the retrocession arrangements, it was not asked to consider them before they were agreed and did not approve them. Its later involvement was to attempt to gain comfort that the arrangements that had already been made were not improper.

118. At the time Mr Merinson entered into his Finder's arrangements, B understood him to be a Yukos employee as a result of information provided by C in October and November 2009. Given the close interest he showed in the opening of the Yukos Capital account before giving his approval, and that he had also been involved in the approval of Mr Merinson's account opening, the Authority does not consider it credible that B had by this time forgotten Mr Merinson's role at Yukos. This was a very large and politically sensitive relationship, with substantial prospects for growth, and he was closely monitoring it.

119. B's statement regarding the request for an additional signature was misleading, as it suggested that the request was from someone not involved in the Finder's arrangements and that confirmation was received at that time, when in reality the letters were received several months later, signed only by Mr Feldman. The Authority does not accept B's submission that the additional signature he was referring to was that of Mr Feldman. That is not credible, as the additional signature

had to be one from the client, rather than one of the people who had proposed the arrangements. Further, the JBI Line Manager had stated that he suspected that Mr Feldman's authorisation of the arrangements was invalid, so B would have known that BJB Compliance would not consider Mr Feldman's signature to be capable of providing any comfort that the arrangements were genuinely approved by Yukos.

120. The Authority has noted B's submission that it is inherently unlikely that B acted recklessly, but considers that the evidence demonstrates that he made inaccurate and/or misleading statements and supports that conclusion.

Prohibition order

121. *B denies that he was reckless and that his actions evidence a lack of integrity. However, even if the Authority considers that he ought to have appreciated a risk of wrongdoing, a prohibition order is not appropriate. B has reflected seriously on what happened and, although he does not accept that any risk of wrongdoing against Yukos was obvious at the time, he would now be more alert to consider whether a non-standard transaction, particularly one that generated large payments to a third party, had any commercial rationale from the client's perspective.*

122. *Imposing a prohibition order would not advance the Authority's operational objective of protecting and enhancing the integrity of the UK financial system, because B poses no risk to the integrity of the UK financial system. B fully appreciates the importance of the financial services sector not being used to facilitate fraud; if there was a fraud on Yukos in this case, he was unaware of it and did not benefit in any way. B has also never been based in the UK and has never had an operational role in the UK financial services sector. B's time as a non- executive director of JBI, which ended over six years ago, is the only time in his career when he has been approved by a UK regulator. He has no intention of performing any regulated function in the UK in the future, and so does not pose any risk to the public.*

123. *It would also undermine the integrity of the UK regulatory regime, and therefore of the financial system, to impose a prohibition order on B, when no action is being taken against C's superiors at JBI. In particular, it would be unfair, and would undermine confidence in the UK financial system, to prohibit B, while allowing the JBI Line Manager, who supported the relationships with Mr Merinson and Mr Feldman, was solely responsible for approving the transfers from Mr Merinson for Mr Feldman's benefit in April 2011 and provided misleading information in his email of 30 November 2012, to pursue a career in the financial sector without any criticism of his conduct. It is also inconsistent and unfair for the Authority to take action against B but not against several others at BJB who were involved in the relevant events with similar levels of knowledge of the relevant facts.*

124. *Although B was, from 30 March 2011, a non-executive director of JBI, the allegations against him do not concern his actions in that role, but rather his actions as an employee of BJB. He was not the manager of C or responsible for directly supervising her, and did not have responsibility for approving the Finder's arrangements with, or payments to, Mr Merinson, as that was A's role. His was a non-operational, business development function, and the problems which arose in this case are not associated with that function.*

125. *To justify a prohibition order against a person such as B, who is not currently performing any regulated activity or controlled function and is not applying for*

permission to do so, requires something more than the conclusion that, if the person were to apply for approval, that application would be rejected. It would be disproportionate to make an order, the breach of which attracts criminal sanctions in the UK, in these circumstances. Further, the utility of such an order is unclear when it is not suggested that B is likely to do anything relevant in the UK in any event, and he does not intend to in the limited period that remains of his professional career.

126. *Over six years have passed since JBI notified the Authority of the retrocession payments and associated facts. The lack of urgency in bringing these proceedings cannot be reconciled with the suggestion that B poses a serious risk to the UK financial services sector. B has not posed any risk to confidence in the UK financial system since these events and to impose a prohibition order, with the attendant irreparable reputational damage, would be a disproportionate and unwarranted step.*

127. *B's general compliance history should be taken into account. He has had a long and successful career in financial services since 1988 and has an unblemished record. Furthermore, the events in question occurred about a decade ago.*

128. *B was an employee of BJB, was based in Switzerland and had no formal responsibility in respect of any of the matters in respect of which he is alleged to have been reckless. Other individuals at a similar or higher level within Julius Baer outside the UK were involved in the relevant events and there is no good reason for singling out B. The appropriate regulator to consider B's conduct, since he is not proposing to work in the UK, is the financial regulator in Switzerland, but it has not threatened nor taken any action against him despite being aware of the circumstances and having similar objectives to those of the Authority. It would be an inappropriate assertion of a long-arm jurisdiction for the Authority to make a prohibition order against B in circumstances where the Swiss financial regulator has taken no action.*

129. *In addition, the main allegations against B arise out of the First and Second FX Transactions, when B was not carrying out regulated activities within the scope of the Act. If the prohibition order is not intended to prevent B from performing a similar role, it is difficult to see what legitimate point there could be for a prohibition order. On the other hand, if the prohibition order is intended to prevent B from performing a similar role to that which he did in 2010, that would be unjustified, as it would prevent him from carrying out activities overseas which are not regulated activities within the scope of the Act.*

130. For the reasons set out in this Notice, the Authority considers that B acted recklessly and with a lack of integrity. The Authority has had regard to B's submissions regarding why he should not be prohibited, and to the relevant factors in EG, and has concluded that the seriousness of his misconduct is such that he is not a fit and proper person and poses a serious risk to confidence in the UK financial system. The Authority therefore considers that it is appropriate to prohibit him, 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.

131. The Authority has also had regard to B's submission that he would now be more alert to considering whether a non-standard transaction had any commercial rationale from the client's perspective. However, the Authority considers that, given B's experience as a financial services professional, the risks arising from the Finder's relationship with Mr Merinson, including that there was no proper commercial rationale for any payment to him, were so obvious that B must have been aware of them. B acted recklessly in failing to have regard to these risks, and to take appropriate action in light of them, and his statement that he has learnt from these events does not give the Authority sufficient reason to believe that, having demonstrated a lack of integrity, he is now a person of integrity who is fit and proper.

132. The Authority considers that B does pose a risk to the integrity of the UK financial system. His reckless conduct occurred over a period of more than two years and he held a controlled function at a UK financial services firm for a part of that period, and before then he was in a position in which he exercised management functions over persons employed by such a firm. Whether he is based in the UK or not, and whatever his current intentions, the Authority considers it is clear that he poses a risk to the integrity of the UK financial system.

133. The Authority has reached its conclusion that B acted recklessly and that it is appropriate to prohibit him, having had regard to the relevant evidence in this case, including the submissions that it has received from B. The Authority's decisions on whether or not to take action against other persons, including the JBI Line Manager, are not relevant considerations in deciding on the appropriate action to take with regard to B's own conduct.

134. B's misconduct occurred when he had functional management responsibility for C in respect of her conduct of Julius Baer's relationship with Mr Merinson and Yukos. He was in a position of considerable responsibility and was asked to approve arrangements that were suspicious. He gave that approval despite the obvious risks, of which he must have been aware and to which he failed to have regard. In the circumstances, the Authority considers that there is no function in respect of any regulated activity for which B would be a fit and proper person.

135. The Authority does not agree that it is disproportionate to impose a prohibition order on B in circumstances where he is not currently performing any regulated activity or controlled function and does not intend to do any relevant work in the UK in the future, given the seriousness of his misconduct.

136. The Authority recognises that the relevant events occurred some time ago, but in the circumstances, given the seriousness of his misconduct, the Authority does not consider that the passage of time means that B is now a person of integrity.

137. The Authority acknowledges that it is not aware of any evidence that B has been subject to disciplinary proceedings in the past and has taken this into account, but overall considers the seriousness of his misconduct outweighs this and other mitigating factors.

138. The Authority does not agree that the imposition of a prohibition order would amount to an improper extra-territorial exercise of the Authority's powers. The Authority is not prevented from taking action to advance its operational objectives, because an overseas regulator could have taken similar action but has not done so.

Further, the fact that B had functional management responsibility for C when based in Switzerland was a consequence of JBI's matrix management system. In circumstances where B chose to perform a role that involved management responsibility over employees based in England at a UK authorised firm, it is appropriate for the UK regulator to take action against him. This applies all the more in respect of the period when he was a UK approved person.

139. The prohibition order that the Authority has decided to impose would have the effect that B would not be permitted to perform any function in relation to any regulated activities carried on by an authorised person, exempt person or exempt professional firm. The Authority considers that this would advance its consumer protection and integrity operational objectives and is therefore appropriate.

Mr Merinson's Representations

140. *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.*

141. *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.*

142. *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.*

143. *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.*

144. *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.*

145. 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.

146. 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.

147. 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.

148. The Authority acknowledges that senior individuals in the Julius Baer group were familiar with the proposed arrangements from an early stage and supported them.

149. 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

150. *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.*

151. *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.*

152. *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.*

153. *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.*

154. *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.*

155. 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.

156. 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.

157. 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.

158. 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.

159. 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.