Banque Havilland SA has referred this Decision Notice to the Upper Tribunal to determine what (if any) the appropriate action is for the FCA to take, and remit the matter to the FCA with such directions as the Upper Tribunal considers appropriate.

David Rowland, exercising third party rights, has also referred this Decision Notice to the Upper Tribunal which will determine whether to dismiss that reference or remit it to the FCA with a direction to reconsider and reach a decision in accordance with the findings of the Upper Tribunal.

Therefore, the findings outlined in this Decision Notice are provisional in that they reflect the FCA's belief as to what occurred and how it considers the behaviour described should be characterised. The Upper Tribunal's decision will be made public on its website.

FINANCIAL CONDUCT AUTHORITY

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DECISION NOTICE

To: **Banque Havilland SA**

Firm Reference Number: **511239**

Address: **5 Savile Row, London W1S**

Date: **17 January 2023**

1. ACTION

1.1. For the reasons given in this Notice, the Authority has decided to impose on Banque Havilland SA a financial penalty of £10,000,000 pursuant to section 206 of the Act.

2. SUMMARY OF REASONS

2.1. During the Relevant Period the Firm acted without integrity by creating and disseminating a document, the Presentation, which contained obviously improper advice for potential investors by recommending manipulative trading strategies, including recommending conduct which could be a criminal offence, had it taken place in the UK.

2.2. The Presentation set out the Strategy. The Strategy comprised a multi-faceted approach that included conduct aimed at creating a false or misleading impression as to the market in, or the price of, Qatari bonds, with the objective of harming the

economy of Qatar. Creating a false or misleading impression as to the market in, or the price of, Qatari bonds would be an extremely serious matter and potentially a criminal offence, if it were to take place in the UK (contrary to section 90 of the Financial Services Act 2012). Section 1H of the Act provides that an offence involving such misconduct amounts to "financial crime" for the purpose of the Act.

2.3. The Strategy included regulated advice (pursuant to article 53 of the Regulated Activities Order and section 22(1) of the Act) aimed at the UAE and/or other states in the Middle East region because it advised those potential investors to transfer their existing holdings of Qatari bonds into a "protected cell company" to "preserve integrity" before manipulative trading intended to destabilise the Qatari economy took place, which trading was to include the purchase of CDS and the sale and purchase of Qatari bonds.

2.4. The Firm intended to present the Strategy to representatives of the UAE and/or other states in the Middle East region (whom the Firm considered might have reasons to want to put economic pressure on Qatar) as a way of marketing its services, and did provide a copy to an individual from an Abu Dhabi's sovereign wealth fund. Accordingly, the Firm breached Principle 1 (Integrity) of the Authority's Principles for Businesses.

2.5. The Authority therefore has decided to impose on the Firm a financial penalty of £10,000,000 pursuant to section 206 of the Act.

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 Financial Conduct Authority;

"CDS" means credit default swaps;

"COCON" means Code of Conduct in the Authority's Handbook;

"Currency Peg" means a policy in which a national government sets a specific fixed exchange rate for its currency with a foreign currency or a basket of currencies;

"DEPP" means the Decision Procedure and Penalties Manual, part of the Authority's Handbook of Rules and Guidance;

"EG" means the Authority's Enforcement Guide set out in the Authority's Handbook;

"the Financial Institution" means a financial institution being established through a partnership of an Abu Dhabi sovereign wealth fund and the Rowland Family before, and during, the Relevant Period. It was not a project of the Firm;

"the Firm" means Banque Havilland SA;

"Head Office" means the head office of the Firm in Luxembourg;

"Individual A" means the individual engaged by the Firm to market its services in the UAE and the wider Middle East region;

"the Indian Article" means an article regarding the Presentation published by an Indian media organisation called the Business Standard, entitled "*Gulf Crisis may affect Qatar's security, India's economic interests*" on 12 October 2017;

"the Intercept" means a media organisation called The Intercept.com;

"the Intercept Article" means an article regarding the Presentation published by the Intercept on 9 November 2017;

"London Branch" means the branch of the Firm based in London;

"MLRO" means Money Laundering Reporting Officer;

"PERG" means the Perimeter Guidance Manual in the Authority's Handbook;

"the Presentation" means the document drafted by the Firm setting out a series of steps which could be taken to harm the economy of Qatar, by using manipulative trading practices aimed at creating a false or misleading impression as to the market in or the price of Qatari bonds;

"PRIN" means the Principles for Businesses, part of the Authority's Handbook of Rules and Guidance;

"the Regulated Activities Order" or "the RAO" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

"the Relevant Period" means the period from 12 September 2017 to 13 November 2017;

"Mr Rowland" means Edmund Lloyd Rowland;

"the Rowland Family" means the family of David Rowland;

"the SFNH Document" means a document created by David Edward Weller on 14 September 2017 entitled "*Setting Fire to the Neighbour's House fund*" setting out details of a series of steps to devalue the Qatari Riyal by increasing and encouraging selling pressure;

"the Strategy" means the series of steps as set out in the Presentation which could be taken to harm the economy of Qatar by using manipulative trading practices aimed at creating a false or misleading impression as to the market in or the price of Qatari bonds;

"SYSC" means the Senior Management Arrangements, Systems and Controls Sourcebook, part of the Authority's Handbook of Rules and Guidance;

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber);

"UAE" means United Arab Emirates;

"Warning Notice" means the Warning Notice given to the Firm dated 14 October 2021; and

"Wash Trade" means a sale or purchase of an instrument where there is no change in beneficial interest or market risk, or where the transfer of beneficial interest or market risk is only between parties acting in concert or collusion, other than for legitimate reasons.

4. FACTS AND MATTERS

Background

The Firm

4.1. The Firm was established in 2009 by the Rowland Family and described itself, during the Relevant Period, on its website "*as being managed with the financial conservatism which is the family's hallmark"*. The Firm's head office is in Luxembourg. It has various branch offices, including one in London. The Firm was also described on its website as "*an integral part of the* [Rowland] *Family's interests on both a professional and personal level*".

Key individuals

4.2. The key individuals involved in this matter were all employed in the London Branch, namely Edmund Lloyd Rowland, David Edward Weller and Vladimir Bolelyy. During the Relevant Period:

4.2.1. Mr Rowland was approved by the Authority as Senior Manager Function 21 EEA Branch Senior Manager ("SMF21") at the Firm. Those holding SMF21 are employees who have a significant responsibility for one or more significant business units of a branch of an incoming EEA firm in the UK. Mr Rowland was Chief Executive of the London Branch for almost three years before stepping down in April 2017, after which he retained his SMF21 status. He was formally re-appointed as Chief Executive on 26 September 2017 (part way through the Relevant Period) and continued in this role until his resignation on 13 December 2017.

4.2.2. Mr Weller was the Head of Asset Management at the London Branch and was also approved by the Authority as an SMF21; he reported to Mr Rowland and to the Firm's Group Head of Asset Management.

4.2.3. Mr Bolelyy was employed by the Firm as a senior investment analyst and was Mr Rowland's assistant reporting directly to him.

4.3. Throughout the Relevant Period, all three individuals were employed by and received salary from the Firm only.

Marketing in the UAE

4.4. On 18 April 2017, the Firm engaged the services of Individual A to provide "*consulting and professional assistance in developing Banque Havilland in the United Arab Emirates*". This was defined as expanding "*the undertaking of Banque Havilland in the UAE and broader Middle East, with specific assistance in terms of strategic marketing, local networking or anything else which will be agreed by the Parties as useful to serve the present purpose"*. Individual A was paid a monthly fee of US $10,000 for these services. In addition to this consultancy role, Individual A was also a special adviser to the Crown Prince of Abu Dhabi (the capital of the UAE).

The Qatar diplomatic crisis

4.5. In June 2017, as was widely reported in the press, a Saudi-led coalition of Gulf states (including the UAE) severed diplomatic relations with Qatar, citing Qatar's alleged support for terrorism as the main reason. The Qatari Riyal had a currency peg with the US Dollar throughout the Relevant Period.

30 August 2017 meeting

4.6. On 30 August 2017, at a meeting organised by Individual A, Mr Rowland and David Rowland (Mr Rowland's father and the ultimate controller of the Firm) met with a senior representative of an Abu Dhabi sovereign wealth fund. Prior to that meeting, on 27 August 2017, Mr Rowland had referred to the forthcoming meeting and stated to a colleague: *"they have another potential opportunity they want me to look at also"*. Mr Rowland told the Authority during an interview that at this meeting it was made clear to him, in the absence of David Rowland, that the UAE sovereign wealth fund's representatives were concerned about the substantial exposure that Emirati banks had in the interbank market to Qatar and particularly to the local banking sector. This was due to the situation between Qatar and the UAE, and the representatives' fears that the stand-off would be significantly extended, as no rapprochement seemed to be on the horizon. This was a reference to the political tensions in that region, which had worsened since June 2017.

The Presentation

4.7. At some point after the 30 August 2017 meeting and no later than 12 September 2017, Mr Rowland tasked Mr Bolelyy with preparing a written presentation as to how economic pressure might be put on Qatar. Subsequently, on 12 September 2017 Mr Bolelyy sent himself an email recording the following matters in a number of bullet points, all of which he then included in the first draft: *"Bond exposure; What natters [sic] is western view; Foreign reserves; Currency peg break; Cash to pay for insurance; "Sanctions don't work unless everyone is doing it"; Currency peg pressure is effective when thought by everyone; Avoid jargon; Segregated vehicle".*

4.8. The first draft of the document which became the Presentation, prepared by Mr Bolelyy on 12 September 2017 in the form of slides, was named "*Qatar Opportunity*" and proposed a series of steps with the purpose of devaluing the Qatari Riyal and breaking its peg to the US Dollar.

13 September 2017 meeting

4.9. On the following day, 13 September 2017, a meeting was convened at short notice of various individuals in the London Branch; these individuals were Mr Rowland, Mr Weller, Mr Bolelyy, another employee of the Firm and an individual not employed by the Firm.

4.10. At the meeting, which appears to have lasted for about a quarter of an hour and was subsequently described by Mr Weller subsequently as a brain-storming session, Mr Rowland asked for ideas on how negatively to impact the Qatari economy by undermining the value of the country's currency. Mr Rowland explained that Saudi Arabia, Abu Dhabi [sic] and Egypt were keen as nation states to persuade Qatar to stop some of its funding activities. He further explained that the 3 countries had a combined US $23 billion of Qatari assets that they were prepared to use to pressure the Qatari Riyal. Mr Rowland went on to state that the potential economic interest for the Rowland Family would come from being able to charge a small fee on the assets which would be transferred to a vehicle arranged by the Rowland Family.

4.11. The Authority infers that the Firm intended that the Presentation would be presented to representatives of the UAE and/or other states in the Middle East region, which the Firm considered might have reasons to want to put economic pressure on Qatar, in the hope it might lead to business for the Firm. Regardless of whether the Strategy as set out in the Presentation was practicable or likely to be accepted by such representatives, the Authority concludes that it was a way of signalling to potential investors that the Firm was willing to countenance improper market conduct, in order to advance its interests.

4.12. Following this meeting, none of the attendees raised any concerns with the Firm's MLRO or to any other senior manager. In addition, no concerns were raised to Head Office or via the Firm's whistle-blowing procedures.

Iterations of the Presentation

4.13. Later that day, 13 September 2017, Mr Bolelyy emailed the attendees of the earlier meeting to request their "*credible, high-level ideas re: a possible transaction structur*e," and asked that they "*jot something coherent down"* . He explained that what he described as the "*winning idea*" would go into a presentation, the drafting of which he would take care of, and that it would be shared and discussed at a "*high level*".

4.14. On 14 September 2017, Mr Bolelyy emailed a draft of the Presentation to Mr Rowland and stated as follows: *"Attached is a work in progress based on fragments of information exchanged so far. As discussed yesterday, it will be useful for all of us to sit down and nail down the basic skeleton. When can you do today?".*

4.15. This version of the Presentation included further details of the Strategy, specifically regarding the stated aim of putting pressure on the Qatari Riyal to such an extent that the Qatar National Bank would need to deploy significant portions of Qatar's foreign exchange reserves to maintain its value in relation to the US Dollar.

4.16. This version of the Presentation explicitly stated that "*maintaining the* [currency] *peg requires extensive use of central bank foreign exchange reserves. Existing G$15bn [sic] of Qatari bonds represent close to 50% of all central bank reserves available*" and noted that "*the selling pressure* [generated by the Strategy] *creates upward pressure on the Qatari Riyal-US Dollar peg and forces Qatar National Bank to defend it by decreasing available foreign exchange reserves*".

4.17. The Presentation envisaged the purchasing of Qatari bonds, deployment of long CDS and long credit forwards with the express aim of negatively impacting the value of the Qatari Riyal against the US Dollar.

4.18. Later on 14 September 2017, in response to Mr Bolelyy's previous request for contributions to what he described as '*a possible transaction structure'*, Mr Weller emailed a document to Mr Bolelyy which contained his ideas. Mr Weller has subsequently stated, that this document reflected what had been discussed amongst the participants at the meeting on the previous day, together with some research he had conducted through open sources on the internet. The document was entitled "Setting Fire to the Neighbour's House fund" ("the SFNH Document") and set out more details of the Strategy, namely, to devalue the Qatari Riyal by increasing and encouraging selling pressure. The SFNH Document ended with a cartoon depicting Qatar and the statement "*Repeat as desired*". Mr Weller has subsequently stated that at the time he did not regard the contents of the SFNH Document as representing a serious proposal and that it was simply reflective of a subject that Mr Rowland wished to explore.

4.19. The steps set out in the SFNH Document proposed to "[q]*uietly pick up some Qatar paper*" or bonds "*2026s and 2030s*", using "*old school account painting*" to "*get some ownership*", which would be used to "[c]*ontrol the yield curve"* by co-

operating parties "*acting in concert*", trading back and forth at incrementally lower prices. The final step in this stage would be to "*dump*" these holdings on the open market, driving the bond "*price further down and* [to be then] *picked back up* [by] *the original seller".*

4.20. Following this, the plan was to "[e]*stablish positions in Forwards on Riyal, options where possible",* (…) "*get long the CDS slowly with larger houses, just enough to move the price to make it news worthy (sic)*".

4.21. Next, "[f]*ire up the PR machine… to remind people there is [a] problem with Qatar…*". A further increase of the CDS position was advised and then, "*PR wave two"* stating that *"despite the massive SWF [sovereign wealth fund] pressure is building that could see Qatar having restricted access to Dollar…* [and] *credit rating may be affected with the long-term future of the country now in doubt… Peg won't break, though credit markets will be looking shambolic…Once fire fully alight clear out the* [UAE Dirham] *specs for a profit".*

4.22. Accordingly, the SFNH Document proposed a way in which the Qatari Riyal/ US Dollar currency peg might be attacked. In summary, the SFNH Document suggested a series of steps namely: (1) building up a portfolio of specific Qatari debt without attracting attention by parties acting in concert in a series of Wash Trades, (2) later dumping the position in order to create a false impression in the market of a flight from Qatari debt, (3) opening a CDS position on the debt (bonds) and then 'dumping' the said debt to drive the price down, (4) increasing and closing the CDS position in order to add negative pressure on Qatari assets/currency/economy, to profit from the manipulative bond trading, and increasingly stressed markets, and (5) using a PR campaign deliberately magnifying the false impression to increase selling of the Qatari Riyal or Qatari bond holdings and encourage other market participants to do likewise.

4.23. In the evening of 14 September 2017, Mr Bolelyy took most of the content from the SFNH Document and added it to the draft Presentation including the content set out in the bullet points in the paragraph below.

4.24. Thereafter until 18 September 2017 Mr Bolelyy actively worked on the Presentation which in its final form was entitled "Distressed Countries Fund" and set out in detail the Strategy, which included the following:

- "*To preserve integrity of existing Qatari bond holdings, an in-situ transfer will be arranged into a protected cell company";*

- "*Gear up to control the yield (and thus bond prices)"* by purchasing "*medium and long-term Qatar paper*", as it "*should favourably affect CDS pricing at later stage*";

- "*Establish a crossing transaction arrangement whereby another affiliated party sells the same bond holdings back to the original seller and thereby creates additional downward pressure*";

- "*Purchase CDS on Qatar* (…) *to move the price sufficiently to make it newsworthy*";

- "*Fire up the PR Machine to remind people there is a problem with Qatar*";

- "*Increase the positions*", by "*buying additional CDS*" to lead to "*falling of bond price, raising rates, and escalation in CDS premia*";

- "*Refresh the PR message to add more fuel to the fire*", as it will "*focus on the prospect of restricted access to US Dollar and now-doubtful stability of the country";*

- "*FIFA Option…Qatar has committed to $200BN of spending for its hosting of 2022 World Cup…negative publicity can resurface around the original award of the tournament…If Qatar now spends its reserves on protecting the currency and domestic credit markets, there is less dry powder to fund the infrastructure spending".*

4.25. The finalised Presentation therefore outlined how to impact the economy of Qatar negatively through manipulative trading practices, including direct reference to crossing transactions between two parties working in conjunction with the stated aim of artificially driving down the price of Qatari government-backed bonds, therefore weakening Qatar financially, in other words Wash Trades. The Strategy included a coordinated PR strategy designed to increase the pressure placed upon Qatar in addition to the existing sanctions and to force the Qatari government to utilise its central bank foreign exchange reserves, to maintain the currency peg between the Qatari Riyal and the US Dollar. As such, the Presentation clearly contemplated manipulative trading which aimed to create a false or misleading

impression as to the market in or the price of Qatari bonds which, if conducted in the UK, could amount to a criminal offence (contrary to section 90 of the Financial Services Act 2012).

What then happened to the Presentation

4.26. On 18 September 2017, in preparation for a scheduled visit to Abu Dhabi by Mr Rowland, David Rowland and Mr Bolelyy, Mr Bolelyy emailed a copy of the Presentation to his personal email account and, at Mr Rowland's request, printed two copies for Mr Rowland to take with him to Abu Dhabi.

4.27. Following a request from Mr Rowland to send him a soft copy of "*the Qatar presentation in the morning",* Mr Bolelyy also emailed him the final version of the Presentation at approximately 7pm on 18 September 2017. Mr Bolelyy informed Mr Rowland that it was the latest version and the same as Mr Bolelyy had given him that afternoon "*for review".*

4.28. Mr Rowland immediately forwarded the Presentation to Individual A, with whom he had had a meeting at the Firm's London Branch five days' earlier. He also forwarded a copy of the Presentation to David Rowland.

4.29. Mr Rowland explained in interview with the Authority that he requested Mr Bolelyy to print copies of the Presentation "*because it was related to the UAE*" and confirmed that the Abu Dhabi trip was an opportunity potentially to discuss the Presentation with senior individuals, including from an Abu Dhabi sovereign wealth fund. During the trip, Mr Bolelyy provided a copy of the Presentation to an employee of this Abu Dhabi's sovereign wealth fund.

4.30. For an authorised firm to contemplate such a course of action (including recommending conduct which could be a criminal offence if it took place in the UK), intending it to be presented to potential investors, indicates a clear lack of integrity. This is regardless of whether the Strategy set out in the Presentation was achievable in reality (either by the Firm or by potential investors or recipients of the Presentation).

Press reports and the Firm's response

4.31. Mr Rowland, David Rowland and Mr Bolelyy visited Abu Dhabi from 21 to 25 September 2017. The Presentation was later reported in the media to have reached

the email inbox of the UAE Ambassador to the US between 18 September and 12 October 2017 and was said to have been stored under the heading "Rowland Banque Havilland". The UAE Ambassador to the US subsequently stated to the Firm's legal advisers in New York (through his own legal advisers) that he "*did not receive the Presentation*". The Presentation eventually became publicly available on the internet (see below).

12 October 2017

4.32. On 12 October 2017, as part of a pattern of sending press reports regarding Qatar to the attendees of the 13 September 2017 meeting, Mr Weller discovered an article by an Indian media organisation called the Business Standard, entitled "*Gulf Crisis may affect Qatar's security, India's economic interests*" ("the Indian Article").

4.33. The Indian Article referred to leaked or stolen emails from the Firm allegedly found in the in-box of the UAE Ambassador to the US. The article claimed that these emails revealed an "*economic warfare strategy"* which involved *"setting up a confidential commercial entity with sizeable size to buy certificate of deposits (CDs) of Qatari banks, then selling the CDs back to original sellers at a lower price, thereby reducing the market pricing. Negative global public relations campaign is done, showing instability in Qatar as a key reason for this downward pressure on CDs pricing. This will ultimately either force Qatar's financial ministry to either break the currency peg, or at least spend a lot of dollar reserves to maintain their pricing when panic initiates global buyers to sell Qatari Riyal*." The article stated that "*David Rowland* (…) *could be serving UAE's interests in the ongoing spat. He is the man behind the meteoric rise of Banque Havilland…*".

4.34. At 12:35 on 12 October 2017, Mr Weller emailed a link to the Indian Article to Mr Rowland, who had by then resumed his position as Chief Executive of the London Branch. , Mr Rowland responded at 12.42pm with "*made me laugh*".

4.35. At 3.02pm, Mr Weller sent a further email saying, "*trending on Qatari Twitter as I type*" with an image from the social media site, Twitter, showing the following: "*#UAE targeted #Qatar's Economy using…Rowland's Banque Havilland amid #GulfCrisis…*".

4.36. At 4.10pm David Rowland and Mr Rowland discussed the Indian Article on the telephone. David Rowland asked Mr Rowland *"What about that thing in the Indian paper? How do you think that got there?*" Mr Rowland responded *"Probably, I*

assume – probably a leak from their office I would imagine…. never been talked to anyone else, so…don't matter. Use it as a badge of honour when we go and see them next time". The Authority infers that "their office" refers to the office of the Abu Dhabi's Sovereign Wealth Fund, which had been provided with a copy of the Presentation during the visit referred to at paragraph 4.31 above.

4.37. Neither Mr Weller nor Mr Rowland forwarded either of Mr Weller's emails to the Firm's Compliance Officer, or to Head Office, or took any other steps to inform other members of the Firm's senior management, or the Authority, of the allegations on that day. Head Office was in fact aware of the content of the Indian Article, yet no steps were taken by it to check if there was any substance to the allegations. Reliance by Head Office appears to have been placed at the time on the fact that the Indian Article was published by a relatively unknown media source and that the focus of the article was on David Rowland, who had been the subject of negative press attention previously, and therefore the article was believed by the Firm's Head Office to lack credibility.

13 October 2017

4.38. The next day, a journalist from a media organisation called The Intercept.com ("the Intercept") contacted the lawyer who represented the Firm in the US to obtain a comment regarding the discovery of the Presentation in the mailbox of the UAE Ambassador to the US. The journalist provided specific details of the Presentation that would allow the Firm to discover it on their systems, stating that the Firm should search for "*'Qatar Opportunity' and 'Distressed Countries Fund.' The Mission Statement includes: 'Control the Yield curve, decide the future'*".

4.39. At 6.49pm David Rowland telephoned Mr Rowland. They discussed how their mobile phones may have been hacked while they were in Abu Dhabi. Mr Rowland said "*Yes, if I was to guess. Nothing wrong, if you look at the two things they've got, there's nothing wrong with the two things, …There's nothing in them".* The Authority considers that this conversation indicates that Mr Rowland was aware of the Presentation and its contents. David Rowland asked Mr Rowland what he was intending to say to the Firm's US lawyer. Mr Rowland said that his "plan" was to say: "*Banque Havilland S.A does not trade in bonds, securities, CDS or any instruments of Qatar names and has no plans to. Banque Havilland is a prestigious private banking group and will make no further comments on politically motivated storylines*". David Rowland replied that he "*like[d] that*". Mr Rowland later said to his father that "*our story just has to be its purely politically motivated because of*

our, because of your friendship with the Crown Prince, leave it, that might bring us a lot of points."

4.40. The Firm's response to the Intercept, as directed by Mr Rowland, to the Intercept was as worded above.

4.41. However, the Firm took no steps to look for the Presentation on the Firm's internal systems or to investigate whether the allegations had any substance.

18 October 2017

4.42. The journalist from the Intercept contacted the Firm's US lawyer again on 18 October 2017 and informed him that he was aware that Mr Bolelyy was the author of the document in the Intercept's possession. The journalist also provided further questions that he wanted the Firm to answer prior to moving forward with publication of the story. These questions provided indications of the content of the document, including: "*Has the plan outlined in the "Distressed Countries Fund" [the Presentation] document commenced? If so, when did it begin? If not, when is it planned to begin, if at all? Is Banque-Havilland helping the UAE undermine the economy of Qatar so that the UAE can gain diplomatic advantage*?"

4.43. These further questions were shared with Mr Rowland by the Firm's US lawyer, and were forwarded to senior individuals at Head Office and also to David Rowland. The Firm's US lawyer suggested responding as follows: *"Banque Havilland reaffirms that it is not participating in and has never participated in any trading in the currency, bonds or other derivatives of Qatar. The plans described in that document do not include any participation by BH [Banque Havilland]".* As before, Mr Rowland took no steps to identify the document on the Firm's internal systems or to discuss the document with the staff involved, despite the specific reference by the Intercept journalist to Mr Bolelyy as the author of the document. In addition, the Firm failed to notify the Authority that an article containing these allegations was going to be published.

4.44. At 6.50pm, David Rowland and Mr Rowland further discussed the matter on the telephone. Mr Rowland said that the Intercept had *"obviously only got the attachment".*

19 October 2017

4.45. On 19 October 2017, David Rowland telephoned Mr Rowland at 1.30pm. They discussed the [suspected] hacking of their mobile telephones. David Rowland said *"We can capitalise on this ….. and we don't put any – don't let's put anything on the Bank emails."* Mr Rowland agreed with David Rowland's suggestion.

4.46. Mr Rowland and David Rowland then discussed taking Mr Bolelyy off the Firm's payroll as soon as they could and transferring him from the Firm to another Rowland Family entity. David Rowland said *"All we've got to do is play by the fucking rules and we have, we've not broken any fucking laws".* Mr Rowland responded by saying *"No. The answer is if they ever write to you, you just say, all you've got to say to them, is that the Bank was not involved in anything. But the principal is asked of hedging strategies to protect their 15 billion dollar investment. That's all you've got to say".* David Rowland responded by saying that he liked that. Mr Rowland further said that *"We know that's what you're allowed to - and if you look at the Presentation that's all it says. This is how you protect the value of your 15 billion dollar investment. And then everyone will understand, even the jokers down there".* David Rowland stated that *"You can capitalise on all this shit".*

9 November 2017

4.47. On 9 November 2017, the Intercept published the Intercept Article, stating that the Presentation had been found in the inbox of the UAE Ambassador to the US and providing copies of some of the Presentation slides. The article was titled "*Leaked Documents Expose Stunning Plan To Wage Financial War On Qatar (…)*" and explained that "*economic warfare involved an attack on Qatar's currency using bond and derivatives manipulation….The outline, prepared by Banque Havilland, (…) laid out a scheme to drive down the value of Qatar's bond and increase the cost of insuring them, with the ultimate goal of creating a currency crisis that would drain the country's cash reserves*".

4.48. The content of the pages featured in the Intercept Article were identical to the Presentation as sent by Mr Rowland to Individual A and David Rowland on 18 September 2017. The Intercept Article identified Mr Bolelyy as the creator of the Presentation, according to the metadata of the document obtained by the Intercept.

4.49. The publication of the Intercept Article led to the immediate resignation of Mr Bolelyy on 9 November 2017, and an internal investigation was initiated by Head Office on 13 November 2017.

4.50. The Firm, via Mr Rowland, in his capacity as Chief Executive of the London Branch, contacted the Authority on 14 November 2017 by telephone, providing limited information regarding the events referred to above and the involvement of the Firm. This was followed up by an email from Mr Rowland to the Authority on 15 November 2017 noting what was said in the call, as follows: *"1. An article mentioning a junior analyst name [sic] for the creation of a non bank presentation. 2. A forensic investigation being held. 3. The groups [sic] regulator CSSF was informed. 4. The PR firm the group uses has clarified the facts. 5. We will share the findings of the investigation once complete subject to CSSF approval".*

4.51. On 13 December 2017 Mr Rowland resigned as an employee, Chief Executive of the London Branch and member of the executive management of the Firm with immediate effect, and Mr Weller left the Firm on 10 April 2018.

5. FAILINGS

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

Principle 1

5.2. Principle 1 requires a firm to conduct its business with integrity. During the Relevant Period, the Firm breached Principle 1 by creating and disseminating the Presentation (for purposes that included marketing the Firm) which recommended the Strategy that included engaging in obviously improper conduct.

5.3. The Strategy set out a multi-faceted approach that included conduct aimed at creating a false or misleading impression as to the market in, or the price of, Qatari bonds, with the objective of harming the economy of Qatar. Creating a false or misleading impression as to the market in, or the price of, Qatari bonds would be an extremely serious matter and a criminal offence, if it were to take place in the UK (contrary to section 90 of the Financial Services Act 2012). Section 1H of the Act provides that an offence involving such misconduct amounts to "financial crime" for the purpose of the Act.

5.4. The Strategy included regulated advice (pursuant to article 53 of the Regulated Activities Order and section 22(1) of the Act) aimed at the UAE and/or other states in the Middle East region because it advised those potential investors to transfer their existing holdings of Qatari bonds into a "protected cell company" to "preserve

integrity" before manipulative trading intended to destabilise the Qatari economy took place, which trading was to include the purchase of CDSs and the sale and purchase of Qatari bonds.

6. SANCTION

Financial penalty

6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. DEPP 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.

Step 1: disgorgement

6.2. Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.

6.3. The Authority has not identified any financial benefit that the Firm derived directly from its breach.

6.4. Step 1 is therefore £0.

Step 2: the seriousness of the breach

6.5. Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area.

6.6. The Authority considers that the revenue generated by the Firm's London Branch is not an appropriate indicator of the harm or potential harm caused by its breach. The Authority has not identified an alternative indicator of harm or potential harm and so, pursuant to DEPP 6.5A.2G(13), has determined the appropriate Step 2 amount by taking into account those factors which are relevant to an assessment of the level of seriousness of the breach.

6.7. In assessing the seriousness level, the Authority has taken into account various factors which reflect the impact and nature of the breach, and whether it was

committed deliberately or recklessly. DEPP 6.5A.2G(11) lists factors which are likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:

6.7.1. the Firm failed to conduct its business with integrity by creating and disseminating the Presentation to parties that might have an interest in actioning it, with the expectation of profit;

6.7.2. the breach actively encouraged the commission of financial crime pursuant to section 1H of the Act; and

6.7.3. the breach was committed by the Firm deliberately.

6.8. DEPP 6.5A.2G(12) lists factors which are likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers the following factor to be relevant:

6.8.1. the Firm made no profit as a result of the breach.

6.9. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 5 and has determined that the appropriate Step 2 figure is £10,000,000.

Step 3: mitigating and aggravating factors

6.10. Pursuant to DEPP 6.5A.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.

6.11. The Authority considers that there are no factors which aggravate or mitigate the breach.

6.12. Step 3 is therefore £10,000,000.

Step 4: adjustment for deterrence

6.13. Pursuant to DEPP 6.5A.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.14. The Authority considers that the Step 3 figure of £10,000,000 is sufficient in relation to the breach to meet its objective of credible deterrence. The Authority has therefore not increased the penalty at Step 4.

6.15. Step 4 is therefore £10,000,000.

Step 5: settlement discount

6.16. Pursuant to DEPP 6.5A.5G, if the Authority and the firm on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the firm reached agreement.

6.17. The Firm and the Authority did not reach an agreement so no discount applies to the Step 4 figure. The Step 5 figure is therefore £10,000,000.

Penalty

6.18. The Authority has therefore decided to impose a total financial penalty of £10,000,000 on the Firm for breaching Principle 1.

7. REPRESENTATIONS

7.1. Annex B contains a brief summary of the key representations made by the Firm, and by David Rowland as a third party, in response to 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 account of all of the representations made by the Firm and by David Rowland as a third party, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

8.1. This Notice is given to the Firm under section 208 and in accordance with section 388 of the Act.

Decision maker

8.2. 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

8.3. The Firm 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, the Firm has 28 days from the date on which this Notice is given to it 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: 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).

8.4. 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 Form FTC3 must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy should be sent to Victoria Chaloyard 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 David Rowland as a third party identified in the reasons above and to whom in the opinion of the Authority the matter to which those reasons relate is prejudicial. As a third party, David Rowland has similar rights to those mentioned in paragraphs 8.3 and 8.8 above in relation to the matters which identify him.

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 Victoria Chaloyard at the Authority: direct line: 020 7066 3108/email: victoria.chaloyard@fca.org.uk.

Tim Parkes

Chair, Regulatory Decisions Committee

ANNEX A

1. RELEVANT STATUTORY PROVISIONS

1.1. The Authority's operational objectives, set out in section 1B(3) of the Act, include the integrity objective of protecting and enhancing the integrity of the UK financial system, which includes it not being used for a purpose connected with financial crime.

1.2. Section 206(1) of the Act provides:

"If the appropriate regulator considers that an authorised person has contravened a relevant requirement imposed on the person it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate."

1.3. Section 1H of the Act provides:

"(3) "Financial crime" includes any offence involving

(a) fraud or dishonesty,

(b) misconduct in, or misuse of information relating to, a financial market.

(4) "Offence" includes an act or omission which would be an offence if it had taken place in the United Kingdom."

1.4. Section 90 of the Financial Services Act 2012 provides that:

"(1) a person ("P") who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any relevant investments commits an offence if—

(a) P intends to create the impression, and

(b) the case falls within subsection (2) or (3) (or both).

(2) The case falls within this subsection if P intends, by creating the impression, to induce another person to acquire, dispose of, subscribe for or underwrite the investments or to refrain from doing so or to exercise or refrain from exercising any rights conferred by the investments.

(3) The case falls within this subsection if—

(a) P knows that the impression is false or misleading or is reckless as to whether it is, and

(b) P intends by creating the impression to produce any of the results in subsection (4) or is aware that creating the impression is likely to produce any of the results in that subsection.

(4) Those results are—

(a) the making of a gain for P or another, or

(b) the causing of loss to another person or the exposing of another person to the risk of loss."

1.5 Article 53(1) of the Regulated Activities Order provided that advising a person is a specified kind of activity if the advice is-

(a) given to the person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and

(b) advice on the merits of his doing any of the following (whether as principal or agent)-

(i). buying, selling, subscribing for or underwriting a particular investment which is a security, structured deposit or a relevant investment, or

(ii). exercising any right conferred by such an investment to buy, sell, subscribe for or underwrite such an investment.

1.6 Section 22(1) of the Act provides that an activity is a regulated activity for the purpose of the Act if it is an activity of a specified kind which is carried on by way of business and (a) relates to an investment of a specified kind.

2. RELEVANT REGULATORY PROVISIONS

2.1. In exercising its powers to impose a financial penalty, the Authority has had regard to the relevant regulatory provisions published in the Authority's Handbook. The main provisions that the Authority considers relevant are set out below.

Principles for Businesses (PRIN)

2.2. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook. They derive their authority from the Authority's rule-making powers set out in the Act.

2.3. Principle 1 provides:

"A firm must conduct its business with integrity."

Decision Procedure and Penalties Manual ("DEPP")

2.4. Chapter 6 of DEPP, which forms part of the Authority's Handbook, sets out the Authority's statement of policy to the imposition and amount of financial penalties under the Act. In particular, DEPP 6.5A sets out the five steps for penalties imposed on firms in respect of conduct taking place on or after 6 March 2010.

The Enforcement Guide

2.5. The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act.

2.6. Chapter 7 of the Enforcement Guide sets out the Authority's approach to exercising its power to impose a financial a penalty.

ANNEX B: REPRESENTATIONS

1. A summary of the key representations made by the Firm and by the third party, David Rowland, and the Authority's conclusions in respect of them (in bold type), is set out below.

The Firm's Representations

The Regulated Advice issue

2. The Presentation was not regulated advice, pursuant to section 22 of the Act. By section 22 of the Act, a *"regulated activity"* is, in summary: (1) a specified activity, (2) relating to an *investment of a specified kind*, and which is (3) carried on *by way of business*. Activities and investments are specified in the RAO. As the Presentation was not a regulated activity, or an ancillary activity to a regulated activity, as a matter of law, the Firm cannot be held liable for a breach of Principle 1 or, indeed, any of the Principles for Businesses.

3. During the Relevant Period, under Article 53 (Advising on investments) of the RAO, advising a person was a specified activity if the advice was (a) *given* to a person in his capacity as an *investor or potential investor*, or in his capacity as agent for an investor or potential investor; and (b) *advice on the merits* of the investor or potential investor buying, selling, subscribing for or underwriting a particular investment which is a security or a contractually based investment.

4. The requirements of Article 53 are therefore that: i. advice must be given; ii. the advice must go to a person in their capacity as an investor or potential investor (or an agent of the same); iii. the advice must be on the merits; and iv. the advice must relate to a particular investment.

5. The Presentation was not given to anyone; and it was not intended to be given to an investor or potential investor (or agent thereof).

6. Neither the Abu Dhabi sovereign wealth fund nor its senior representative were investors, or potential investors, for these purposes and there was nothing to suggest that the senior representative was acting as an agent for an investor or potential investor. Mr Rowland stated that the UAE banking sector had exposure to Qatari bonds, not the Abu Dhabi sovereign wealth fund or its senior representative.

The banks that the senior representative had in mind which might be interested in receiving the Presentation were unnamed and unknown to Mr Rowland.

7. The Perimeter Guidance Manual ("PERG") 8.29 provided guidance as to what constituted investment advice. PERG 8.29.1 provided that advice "*must relate to the buying or selling of an investment – in other words, the pros or cons of doing so*". The distinction between giving information and advising is between providing *"information for the purpose of enabling someone else to decide upon a course of action and [advising] someone as to what course of action he should take"*[1]. *Advice "requires an element of opinion on the part of the adviser. In effect, it is a recommendation as to a course of action"*[2]*.* Conveying mere information is not regulated advice. The Presentation did not contain any recommendations or encouragement to buy or sell investments, was not presented as being suitable for any particular person and was not based on a consideration of the circumstances of anyone in particular. Accordingly, it cannot be regulated advice within the specific meaning of Article 53 of the RAO and PERG.

8. Regulated advice must relate to a "particular", or a specific, investment. The Authority's guidance at PERG 2.7.15G provides that: *"Giving a person generic advice about specified investments (for example, invest in Japan rather than Europe) is not a regulated activity….".* The Presentation did not contain advice in relation to a "particular investment".

9. As to the application of the Principles for Businesses, in the event that the Presentation is not considered to be regulated advice, the preparation of the Presentation, or the formulation of the Strategy contained therein, cannot have been carried on *"in connection with a regulated activity" [PRIN 3.2.1AR(3)*[3]*]* (e.g. arranging deals in investments or advising on investments). There was no arranging. The Presentation contained a vague and general commercial proposition that was never executed. Accordingly, the Firm's activities could not be said to be ancillary activities in relation to designated investment business.

Was the Presentation given?

[1] Lord Hoffman in South Australia Asset Corp v York Montague [1996] 3 All E.R. 365 at 372j
[2] PERG 5.8.8 G
[3] PRIN 3.2.1AR: PRIN applies with respect to the carrying on of:
(1) regulated activities; (2) activities that constitute dealing in investments as principal, disregarding the exclusion in article 15 of the Regulated Activities Order (Absence of holding out etc); and (3) ancillary activities in relation to designated investment business, home finance activity, credit-related regulated activity, insurance mediation activity and accepting deposits.

10. As requested by Mr Rowland, Mr Bolelyy printed off two copies of the Presentation to take on the trip to Abu Dhabi, so that it could be discussed with a representative of an Abu Dhabi sovereign wealth fund. Mr Bolelyy signed a statement, dated 15 November 2017, saying that during the visit he had handed one single copy of the Presentation to a (named) senior employee of an Abu Dhabi sovereign wealth fund. On 13 November 2017 Mr Rowland confirmed that Mr Bolelyy had said to him on 21 September 2017, that he had provided the Presentation to the senior employee. On 25 November 2017, Mr Rowland signed a statement saying that he was made aware that Mr Bolelyy may have given the Presentation to a junior employee at the same Abu Dhabi sovereign wealth fund.

11. Mr Bolelyy subsequently withdrew his statement that he had passed the copy of the Presentation to the (named) senior employee. He then added he may have given the Presentation to a junior employee. Mr Rowland subsequently withdrew his statement.

12. Mr Rowland purported to explain why he did so. He said that he had had no knowledge of Mr Bolelyy sharing the Presentation and he had assumed that the investigation had already determined that he had. However, when he later learnt that the senior employee of the Abu Dhabi sovereign wealth fund had been in Brazil at the time of the trip to Abu Dhabi, he considered he had been mistaken.

13. The Authority refers to the telephone call between Mr Rowland and David Rowland on 12 October 2017. In this call, David Rowland asked Mr Rowland how he thought the *"thing in the Indian paper got there".* Mr Rowland replied *"probably, I assume – probably a leak from their office I would imagine".* Mr Rowland then says he is aware that the content of the Presentation had been discussed with "*their*" office. The Authority infers that "*their office*" refers to the office of the Abu Dhabi sovereign wealth fund, which had been provided with a copy of the Presentation during the visit. Mr Rowland appeared to see publication of the Firm's involvement as *"a badge of honour"* with respect to the Abu Dhabi sovereign wealth fund.

14. Mr Rowland has stated that the Presentation (albeit in a different form) was requested by the senior representative of the Abu Dhabi sovereign wealth fund. Two copies of the Presentation were taken on the visit to Abu Dhabi, so that it could be discussed with them. The Authority considers

that it is likely that Mr Bolelyy did in fact provide a copy of the Presentation to a representative of the Abu Dhabi sovereign wealth fund (albeit not the senior representative who was in Brazil at the time) and that Mr Rowland knew that he had done so.

Was the Presentation given to the person in his capacity as an investor or potential investor?

15. **PERG 8.27.1G provides that advice must be given to or directed at someone who either holds investments or is a prospective investor (or their agent). PERG 8.27.5G provides that advice will still be covered by Article 53(1) even though it may not be given to or directed at a particular investor (for example, advice given in a periodical publication or on a website). The expression 'investor' has a broad meaning and will include institutional or professional investors. There was, therefore, no requirement that the person to whom the advice was given be an existing client, or investor, or that there be an intention that the relationship would continue after the advice was given. In addition, advice can still be regulated if it was not specifically tailored for the person to whom it was given.**

16. **The Authority considers the Presentation was given to an Abu Dhabi sovereign wealth fund. The sovereign wealth fund is owned by the government of Abu Dhabi (one of the seven Emirates of the UAE). The UAE held Qatari bonds. The Strategy was aimed at the UAE, amongst others, and it advised those investors to transfer their existing holdings of Qatari bonds into a "protected cell company" to "preserve integrity", before manipulative trading intended to destabilise the Qatari economy took place, which trading was to include the purchase of CDS and the sale and purchase of Qatari bonds. The Abu Dhabi sovereign wealth fund was therefore an investor, a potential investor and/or an agent of the UAE, which was itself an investor or potential investor for the purpose of Article 53 of the RAO.**

Did the Presentation include advice on the merits?

17. **Article 53(b) requires the advice to be "on the merits" rather than mere information. There are various elements to the difference between advice and information. Advice must relate to the buying, holding or selling of an**

investment, in other words, the pros or cons of doing so (PERG 8.29). PERG 8.28 sets out what advice means, namely, requiring an element of opinion on the part of the adviser, in effect, being a recommendation as to a course of action. Regulated advice includes any communication with the customer which, in the particular context in which it is given, goes beyond the mere provision of information and is objectively likely to influence the customer's decision whether or not to buy or sell. Any significant element of evaluation, value judgment or persuasion is likely to mean that advice is being given.

18. **The fact that advice was not implemented (or even could not be implemented) should not stop it from being advice. Incompetence does not turn advice into mere information.**

19. **The Authority has considered the contents of the Presentation, namely, Establish the Execution Strategy (Stage 1); Gear Up to Control the Yield Curve (Stage 2); and Public Relations Machine and Position Increase (Stage 3).**

20. **Stage 1 advised the recipient of the Presentation on the steps needed to preserve the integrity of their existing Qatari bond holdings and arranging an in-situ transfer into a protected cell company. This involved, inter alia, the creation of a sizeable, strong and standalone entity which could be viewed as a smaller counterpart to central bank reserve holdings, with the Qatari bond holdings serving as collateral. Stage 1 also advised the recipient of the Presentation to assess global market conditions for the Qatari Riyal and CDS to establish the execution strategy. This involved, inter alia, determining available liquidity, supply and pricing. It also involved identifying appropriate instruments such as currency forwards, currency options and bond CDS.**

21. **Stage 2 advised the recipient of the Presentation as to the reasons behind the recommendation to purchase medium and long-term Qatari paper and CDS. It was indicated in the Presentation that this would, inter alia, allow the participant to control the yield curve (and thus bond prices) and should favourably affect CDS pricing at a later stage.**

22. **Stage 3 advised the recipient of the Presentation to utilise a public relations message and to increase positions, by simultaneously hitting all**

second-tier bank CDS lines and by increasing existing positions with larger banks and buying additional CDS, leading to falling bond prices, rising rates and the escalation of CDS premia.

23. In light of the above, the Authority considers that the Presentation contains a significant element of evaluation, value judgement and persuasion. It goes beyond the mere provision of information. Accordingly, it should be considered to be "advice on the merits".

Did the advice relate to a "particular", or a specific, investment?

24. PERG 8.26 provides examples of generic advice and particular investments. The current PERG 8.28.5G states that "A key question is whether an impartial observer, having due regard to the regulatory regime and guidance, context, timing and what passed between the parties, would conclude that what the adviser says could reasonably have been understood by the customer as being advice"[4].

25. The advice in the Presentation relates to: (i) transferring the UAE's holding of Qatari bonds into a protected cell company and using the bonds as collateral ("the Protected Cell Company"); (ii) buying medium and long-term Qatari paper (i.e. bonds); wash-trading with an affiliated party; buying CDS on Qatar "to move the price" of the bonds; and buying additional CDS to drive down bond prices/increase CDS premia, all with the ultimate aim of causing Qatar to deploy substantial resources to support the value of its currency ("the Underlying Investment").

26. The Protected Cell Company was clearly intended to be a preliminary arrangement intended to support the Strategy, which involved the transfer of existing bond holdings. Accordingly, it identifies the securities to be transferred (i.e. all the investor's existing holdings of Qatari paper). As such, the Authority considers it to have been advice in relation to a specific investment.

[4] PERG 8.28.5G came into force on 23.02.2018 after the end of the Relevant Period, but notwithstanding this, context must still have been relevant.

27. The advice regarding the Underlying Investment should be seen in context and in light of what passed between/was known by the parties, namely that: (i) the Firm and the recipient of the advice were aware that the UAE was holding significant amounts of Qatari paper (i.e. bonds); (ii) the purpose of the Strategy was to manipulate the market price of the Qatari Riyal for the benefit of the UAE and the detriment of Qatar; and (iii) the recipient of the advice was aware of the quantity of the Qatari paper held.

28. The proposal to enter into CDS was to be underpinned by the Qatari paper and the context makes it clear that the transactions were to be based on the bond holdings. Accordingly, the investment referred to in the Presentation would have been clear to both parties, and the advice about the Underlying Investment should therefore be considered to be advice in relation to a specific investment.

29. The Authority considers that both parts of the advice as set out in the Presentation, namely the advice regarding the Protected Cell Company and the Underlying Investment, are sufficiently specific or "particular" for the purpose of Article 53(b)(i) of the RAO.

Application of the Principles for Businesses to ancillary activities

30. The Firm has raised the issue as to whether, if the Authority concluded that all or significant parts of the Presentation were unregulated, the Principles for Businesses would nonetheless apply to the unregulated part(s).

31. Since the Authority has found that the entirety of the Presentation was regulated advice, it is not necessary for it to determine this issue. However, in light of the Firm's submissions the Authority makes the following observations.

32. **If unregulated activities are "ancillary activities in relation to designated investment business", this would constitute an alternative basis upon which the Principles for Businesses could apply to a Firm (PRIN 3.2.1AR(3)). "Ancillary activity" is defined in the Handbook Glossary as: *"an activity which is not a regulated activity but which is: (a) carried on in connection with a regulated activity; or (b) held out as being for the purposes of a regulated activity".* This scenario may have occurred if, for**

example, the Authority had found that the advice regarding the Protected Cell Company was regulated advice and the advice regarding the Underlying Investment was not (or vice-versa).

33. Had this been the case, the Authority considers that there would have been a sufficient connection between the regulated business and the assumed ancillary (unregulated) activity, and that the "*ancillary*" activity had a subsidiary, supporting function in relation to the regulated activity. The Authority notes that it would be difficult, if not impossible, to untangle the two connected parts of the overall Strategy and the regulated activity cannot, on the facts, be said to have been insignificant. Accordingly, the Authority considers that the unregulated activity would have met the criteria set out in PRIN 3.2.1AR(3), as it was carried on in connection with a regulated activity.

The Presentation as "Bank Business"

34. The Presentation was not created or sent by any person doing an act for and on behalf of the Firm. It was not created or shared by way of "Bank Business". Unless the Presentation was demonstrated to be, on the facts, Bank Business the Firm cannot commit a breach of Principle 1 and incur a financial penalty. The Firm provided a number of reasons, to be considered in the round, as to why the Presentation should not be considered to be Bank Business (or facts which undermined the Authority's case that it was Bank Business). These are as follows.

The reasons for the creation of the Presentation

35. The Presentation arose out of a request from Mr Rowland to Mr Bolelyy. Mr Rowland, whilst still a member of the Board in Luxembourg and drawing a modest salary, was not working for the Firm at the time he tasked Mr Bolelyy to produce this document and had stood down as Chief Executive of the London Branch on 24 May 2017. Drawing a modest salary from the Firm throughout the Relevant Period is not a reliable indicator as to whether his work was restricted to Bank Business at the time.

36. Mr Rowland was heavily engaged in another project with an Abu Dhabi sovereign wealth fund at the time, seeking to establish the Financial Institution with it which was not a project of the Firm. The Abu Dhabi sovereign wealth fund was not a

client, or prospective client, of the Firm but a business partner of Mr Rowland in his separate business project to establish the Financial Institution.

37. The genesis of the document was a meeting on 30 August 2017 (referred to at paragraph 4.6) ("the August Meeting") and the purpose of that meeting was to discuss the Financial Institution. The meeting was not attended by anyone who was actively working for the Firm at the time. It was attended by Mr Rowland and David Rowland and potential business partners of the Financial Institution. David Rowland had not been involved in the management of the Firm, nor had he attended meetings of the Board. David Rowland confirmed this in his representations as a third party. Mr Rowland, meanwhile, had been spending his time on the project to set up the Financial Institution.

38. David Rowland and Individual A were sent the Presentation, not because of their connections to the Firm but because of their connections to the Rowland Family's other business interests, namely the setting up of the Financial Institution in which they were both involved. Individual A helped to facilitate other business projects outside of the Firm. When Individual A received the Presentation from Mr Rowland it cannot be assumed that he received it in his capacity of a consultant to the Firm; there is no direct evidence of the capacity in which he was acting when he received the document. The Presentation was sent to Individual A's personal email address, rather than his dedicated Firm email address.

39. Neither the Abu Dhabi sovereign wealth fund nor its senior representative were clients or prospective clients of the Firm. They were prospective business partners of Mr Rowland with respect to the Financial Institution. There is no evidence that the Firm was involved in marketing in the Middle East, or to Middle Eastern clients, at the time. There was a representative office in the UAE for expatriates. The Firm had no Emirati clients but it did have a small number of Middle Eastern clients. Further, the idea that there was a collateral benefit to the Firm and that made the Presentation a Firm project is simply not credible.

40. Mr Rowland was an SMF 21 (EEA Branch Manager) of the Firm during the Relevant Period and thereafter, up to 15 December 2017. Mr Rowland remained a Board Member of the Firm and continued to be influential in the London Branch. Mr Rowland was described, by another senior member of staff as still being the "Boss" even after he formally stood down as the Chief Executive. Although he may not have been spending all his time working on the Firm's matters during the Relevant Period (for example

when he was working on the Financial Institution project), this did not preclude him from spending some of his time working on matters relating to the Firm.

41. In the same way, meetings with representatives of an Abu Dhabi sovereign wealth fund, to discuss, inter alia, the Financial Institution project, do not preclude discussions occurring on other matters, including matters which were Bank Business. The Financial Institution was not yet set up and operating during the Relevant Period: at that point it was still just a project, rather than being an existing entity capable of providing the regulated services which the Firm was in the business of providing.

42. Prior to the August Meeting Mr Rowland had mentioned the meeting to a colleague and stated: *"I am now seeing [the senior representative] in London on Wednesday so will finalise all [the Financial Institution] issues with him then, they have another potential opportunity they want me to look at also"*. The Authority notes that the Presentation was entitled *"the Qatar Opportunity"* and infers that the other "potential opportunity" referred to by the senior representative concerned Qatar. Discussions at the August Meeting regarding the Financial Institution did not preclude discussions on other matters which could be taken forward as Bank Business. Such matters include the Presentation.

43. Working on the proposed establishment of the Financial Institution did not preclude Mr Rowland, or indeed anyone else, from separately working on Bank Business.

44. David Rowland was the Honorary President of the Firm; Individual A was paid $10,000 per month by the Firm to "develop [the Firm] in the UAE" and would have had an interest in any marketing by the Firm in the region. Mr Rowland was aware of Individual A's role within the Firm and had been asked by Individual A for a copy of the Presentation, before it was sent to him on 18 September 2017. The Authority considers that Individual A must have been aware that it was being prepared, in advance of the Presentation being sent to him. The Authority notes that Individual A had met Mr Rowland in the London Office on 13 September 2017 and close to the time of Mr Rowland's meeting with Mr Weller, Mr Bolelyy, another employee of the Firm and an individual not employed by the Firm, referred

to at paragraphs 4.9 and 4.10. The Authority infers the Presentation was sent to Individual A in his capacity as a consultant to the Firm.

The implausibility of the Strategy

45. The content of the Presentation suggests it was not a document prepared for and on behalf of the Firm. The Firm provides private banking and services to institutional clients; it was/is unable to trade the products described in the Presentation and it did not have the means to trade in the volumes that could have moved the markets or interest curve in relation to the Qatari Riyal. The Firm did not trade, and has never traded, the Qatari Riyal and the currency had never been opened on the Firm's trading system. For the Qatari Riyal to be traded, new corresponding banking relationships would have had to have been established or new Qatari accounts would have had to have been opened with the Firm's existing cash correspondent banks. No such steps were ever taken. The size and scale of the operation made the conduct outlined in the Presentation way beyond the resources of the Firm.

46. The Presentation was not reviewed by the Firm's centralised risk and compliance systems and was never subject to the Firm's product approval process. If the Presentation had been a project of the Firm it would have been analysed by the Firm's centralised risk and compliance functions in Luxembourg and it would have been subject to new product approval by the management committees (risk committee and authorised management committee) before being submitted to the Board of Directors for final approval. This did not happen.

47. The notion that the Presentation was a marketing document is undermined by the contents of the Presentation itself, which is wholly unrealistic and amateur. It is the antithesis of marketing to demonstrate "amateur incompetence" and it is further the antithesis of good marketing for the Firm to advance an illegal trading strategy. There was no branding of Banque Havilland anywhere within the Presentation. The Presentation was simply sent as a draft to two people, David Rowland and Individual A. It was not disseminated. The fact that it was a draft document in itself undermines any suggestion that it was intended as a marketing document or for wider distribution.

48. The Presentation refers to an execution strategy and implies that further advice would be required. Even if the execution of the entire Strategy was beyond the resources and competence of the Firm, it could still have been

involved, for example in sourcing the further advice required. The Authority also notes that Mr Rowland had indicated, in the meeting on 13 September 2017, referred to at paragraphs 4.9 and 4.10, that the economic interest for the Rowland Family would come from potentially being able to charge a small fee on the assets put into the holding vehicle which appears to be the Protected Cell Company referred to in the Presentation.

49. The Presentation was so obviously improper that it would have made no sense for Mr Rowland to have sent it to the Firm's compliance function or to the Board of Directors for approval.

50. Furthermore, it is not surprising in the circumstances that there was no explicit Firm branding on the Presentation; it was not a conventional marketing document but one which was designed to be a clear indicator that the Firm (and therefore the Rowland Family) were supportive of the UAE in its economic conflict with Qatar. During telephone calls between Mr Rowland and David Rowland, Mr Rowland referred to the Presentation as a *"badge of honour when we go and see them"* [i.e. the Abu Dhabi sovereign wealth fund] (paragraph 4.36); and David Rowland said that *"we can capitalise on this"* (paragraph 4.45).

Resources involved (human and non-human)

51. Mr Bolelyy was tasked by Mr Rowland with producing a presentation. Although exclusively on the Firm's payroll, Mr Bolelyy was in essence Mr Rowland's personal assistant rather than the "analyst" which his official job title at the Firm suggested. Mr Rowland would use him as such, not differentiating between tasks which were Bank Business and those which were not. Mr Bolelyy was not certified by the Firm for the purpose of the Authority's Senior Managers and Certification Regime (SMCR).

52. Non-Bank Business and other business of the Rowland Family was conducted from the Firm's premises. The set-up in the London Branch was sufficiently fluid to enable Mr Rowland to conduct non-Bank Business from the Firm's London premises. Mr Rowland's resignation from the Chief Executive role simply meant that his use of the Firm's resources for personal projects became even more transparent. The London office was used by Mr Rowland as a private office and the Firm's physical

and human assets could be, and were, used by him to further and advance his wider business interests outside of those of the Firm.

53. The use of the Firm's email systems and the use of the Firm's systems for preparation of the Presentation does not support the Authority's view that it was indicative of the document being prepared on behalf of the Firm. People working on the Financial Institution project used their Firm email addresses; the Presentation was created by Mr Bolelyy using a template from the documents used with respect to the Financial Institution project; and the Presentation was not stored on the Firm's main IT system but in a personal folder to which only Mr Bolelyy had access, contrary to the policy of the Firm. A Firm document should not be stored in a personal folder. It should be stored in a part of the Firm's server that was accessible to others.

54. The trip that Mr Rowland and Mr Bolelyy embarked upon to Abu Dhabi had nothing to do with the Firm. The trip was organised and arranged through the Personal Assistant to the family office, and not through the Firm. The itinerary for the trip shows that there was no Bank Business involved in the trip at all. No-one who went on the trip to Abu Dhabi went in their capacity as representatives of the Firm. The Firm was not aware of, nor did it authorise, the trip for the purposes of the Firm's business. The expenses associated with the trip were not claimed from the Firm nor paid by the Firm. None of the persons Mr Rowland intended to meet on the trip were clients, or prospective clients, of the Firm.

55. Mr Bolelyy was not a "personal assistant" for the purpose of COCON 1.1.2R(6)(r)[5]. Working for Mr Rowland on personal, or non-Firm matters, did not preclude him from working for the Firm on Bank Business. Mr Bolelyy's salary was exclusively paid by the Firm; he did not receive an income from Mr Rowland, or the Rowland Family, directly.

56. There was no clear separation between Rowland Family interests and the Firm's interests so far as work carried out at the London Branch was concerned. The Authority does not consider it appropriate for the Firm to rely on this failure, to argue now that the assistance and expertise which Mr Rowland needed from the Firm's employees for the creation of the Presentation meant that the Presentation was not Bank Business. The

[5] COCON 1.1 Application: COCON 1.1.2R(6): Persons to whom COCON applies

Authority notes that this assistance and expertise were not available to Mr Rowland outside the Firm.

57. The Presentation was created in the Firm's London Office premises, using the Firm's IT systems, and was disseminated from Mr Rowland's Firm email account. Mr Bolelyy's email to self, dated 12 September 2017 (referred to in paragraph 4.7), was sent by him to and from his email address at the Firm. In the Authority's view, the clearly inappropriate nature of the Presentation makes it likely that Mr Bolelyy would not have filed it in the usual place within the Firm's IT systems, where it would have been accessible to other employees of the Firm not involved in assisting with the preparation of the Presentation.

58. The administrative arrangements for the trip to Abu Dhabi in September 2017 do not indicate as to whether the purpose of the trip was solely for Mr Rowland (and others) to discuss the setting up of the Financial Institution. The Rowland Family had multiple and parallel business operations, including the Firm. Discussions on setting up the Financial Institution did not preclude discussions on other matters which were Bank Business.

Dissemination of the Presentation

59. The Presentation was not received by the UAE Ambassador. The Ambassador's lawyers stated in written legal correspondence (produced around 16 June 2021) that the Ambassador did not receive the Presentation, nor did he communicate with any representative of the Firm concerning the Presentation or its underlying subject matter. David Rowland also confirmed this in his representations on the Warning Notice as a third party.

60. The Presentation was simply sent in draft to two people, David Rowland and Individual A. There is no credible evidence that it was given to anyone else, only David Rowland and Individual A. The Presentation was not disseminated within the ordinary dictionary meaning of the word. The fact that it was a draft document, and marked "draft", in itself undermines any suggestion that it was intended as a marketing document. Documents marked "draft" are not for wider distribution.

61. The Authority notes that the Presentation was reported to have been found in the UAE Ambassador's Outlook Tasks under the name of "Rowland

Banque Havilland", appearing to indicate the origin of, or at least the Firm's connection with, the Presentation. The Authority makes no findings as to why it was reported that the Presentation was found in the UAE Ambassador's Outlook Tasks.

62. **In the circumstances set out above, the Authority considers that it is appropriate to state that the Presentation was "disseminated" (within the ordinary dictionary meaning of the word). In addition to Mr Rowland sending the Presentation externally by email (i.e. outside the Firm's email systems), it was given by Mr Bolelyy to a representative of an Abu Dhabi sovereign wealth fund (and was subsequently reported to have been found on the UAE Ambassador's computer system).**

Views of relevant persons

63. Other employees, including those on whom the Authority relies with respect to other aspects of their evidence and are treated as reliable witnesses, considered that the Presentation was not a project of the Firm.

64. An individual not employed by the Firm was at the meeting on 13 September 2017 and subsequently involved in the Presentation's production (referred to in paragraph 4.9). The Authority has asserted that the presence of Firm staff suggested it was a Firm project but does not engage in the issue as to whether the involvement of non-Firm staff suggests it was not.

65. Events after the UAE trip confirm that the Presentation was not Bank Business. When the articles and rumours started to appear online, the evidence is clear that Mr Rowland, David Rowland and other Rowland Family members all viewed it as a Rowland Family issue rather than a Firm one, albeit one which had reputational consequences for the Firm due to the family association. It was not escalated by Mr Rowland to the Firm until the publication of the Intercept Article.

66. The Firm's actions following publication of the Intercept Article support its position that the Presentation was not Bank Business in that they demonstrate that such a document would never have been produced on behalf of the Firm: the Luxembourg Regulator, CSSF, was notified the day after the article was published and the Authority was notified on 14 November 2017. The Firm engaged lawyers in the UK and Luxembourg, and disciplinary action was taken against Mr Rowland, Mr Weller

and Mr Bolelyy. The report was subsequently volunteered by the Firm to the CSSF and to the Authority (through the CSSF).

67. Employees' views (particularly those with very limited involvement in the matter) as to whether the Presentation was Bank Business or Rowland Family business, are of limited relevance. The assessment as to whether the Presentation was Bank Business or not is an objective one, taking into account all the circumstances and evidence. One person who was not employed by the Firm was involved in the Presentation's production; however, his input appears to have been limited to advising on football matters (i.e. not on financial services) and the preparation of the slide regarding the "FIFA Option" referenced at paragraph 4.24. All other personnel involved in the Presentation's production, and in relation to the financial services content (as opposed to the football content) were employed by, and received a salary exclusively from, the Firm during the Relevant Period. Receiving assistance from a person not employed by the Firm, for a limited part of the Presentation, does not in the Authority's view change the nature of the document as a whole.

68. The Authority has taken into account actions by the Firm subsequent to the publication of the Intercept Article, including that the Firm's senior management in Luxembourg acted promptly by making regulatory notifications and instructing lawyers to prepare an internal report, which was provided to the Authority via the CSSF; however, it does not consider that these actions support the Firm's contention that the Presentation was not Bank Business.

Attribution as a matter of law

69. It is only Mr Rowland's actions which could, as a matter of law, be attributed to the Firm, Mr Weller and Mr Bolelyy not being sufficiently senior.

70. **The Authority considers that Mr Rowland was directly responsible, and personally culpable, for the misconduct referred to in this Notice. As such, his misconduct can properly be attributed to the Firm as a matter of law, and is not an issue in dispute. It is therefore not necessary for the Authority to consider whether the actions of Mr Weller and/or Mr Bolelyy are, in themselves, attributable to the Firm.**

Proportionality

71. Even if the Authority concluded, as a matter of evidence, that Mr Rowland had lacked integrity it is not obliged to attribute that lack of integrity onto the Firm if it considers that such a finding would be disproportionate and inconsistent with the regulatory objectives of the Authority.

72. There has not been an allegation that the Firm has lacked integrity at an organisational level. A lack of integrity is the most serious allegation which may be made against a financial institution. It is unprecedented. The Firm has tried to do the right thing following discovery of the issues, including making prompt notifications to the regulators, ordering a detailed forensic investigation and removing the individuals involved from the Firm. The Firm has admitted that its corporate governance within the London Branch failed, and its systems and controls have been significantly improved. The actions of the Firm are not the actions of an organisation that lacks integrity. It is not necessary to taint the Firm with a finding based on the actions of a single individual.

73. It is likely that a Principle 1 (integrity) finding would cause disproportionate harm to the Firm. Banking is a business based largely on trust; an integrity finding poses a real threat to the continued viability of the Firm.

74. The Authority has not asserted that the Firm has lacked integrity at an organisational level nor that it currently lacks integrity.

75. The misconduct committed by Mr Rowland, Mr Weller and Mr Bolelyy, in respect of which the Authority concludes all three to have lacked integrity, was particularly serious. Mr Rowland's misconduct is attributable to the Firm. The Authority has noted, inter alia, the governance changes and the Firm's actions on discovery of the breach and has taken these into account when assessing the proportionality of a conclusion of lack of integrity. The Authority has noted its criminal prosecution of National Westminster Bank plc[6] and taken into account the Firm's view that this matter is unprecedented. Notwithstanding these matters, the Authority considers that it is reasonable and proportionate to conclude that the Firm lacked

[6] National Westminster Bank plc was fined £264,772,619.95 on 13 December 2021

integrity with respect to one aspect of its business during the Relevant Period.

Enforcement's unfair approach to the case

76. The Firm has a number of concerns with the conduct and the approach to the investigation of the Authority's Enforcement case team ("Enforcement"). Accordingly, this has been unfair to the Firm.

77. Enforcement has not conducted its own thorough investigation of the underlying facts and matters. It has simply relied on the report commissioned by the Firm ("the Project Gulf Report"), carried out a limited number of interviews, and reached a different conclusion as to whether the Presentation was created for and on behalf of the Firm. Enforcement decided not to interview obviously relevant witnesses who should have been interviewed (for example, the individual not employed by the Firm referred to in paragraphs 4.9 and 4.10). Reasonable lines of enquiry were not followed. Rather than obtaining all relevant evidence, seeing where the evidence leads and reaching an appropriate conclusion, Enforcement has chosen not to do this, and continued with their initial false case theory and factual narrative.

78. The decision to give the Firm this Notice was made on behalf of the Authority by the RDC. As is explained in paragraph 8.2 of the Decision Notice, the RDC is a committee of the Authority which takes certain decisions on behalf of the Authority, and its members are separate to the Authority staff involved in conducting investigations and recommending action against firms and individuals. The RDC has decided to give this Notice on the basis of the evidence before it regarding the conduct of the Firm.

79. The RDC noted the reasons provided by Enforcement for not interviewing other individuals and considers that this was reasonable in all the circumstances. Accordingly, it does not consider that Enforcement's approach to the case has resulted in the Firm being treated unfairly.

80. The submissions made by the Firm, as to the nature and conduct of the investigation, have been duly considered by the RDC but it considers that they do not undermine the evidence on which the decision is based.

Systems and Controls in the London Office

81. The Firm accepts that weaknesses in the Firm's systems and controls within the London office enabled non-Bank Business to be undertaken from its London premises and enabled Mr Rowland, utilising the Firm's human and physical resources, to pursue his own business interests separate to those of the Firm from those premises. In failing to prevent non-Bank Business being conducted from the London Office, the Firm accepts that it failed to conduct its business from the London Office with due skill, care and diligence in breach of Principle 2 (a firm must conduct its business with due skill, care and diligence).

82. The Authority has noted that the Firm has accepted it has breached Principle 2. The Authority considers that the Firm's failures go further than a breach of Principle 2 and are more appropriately classified as a breach of Principle 1 (integrity).

Financial Penalty

Step 2: seriousness and relevant revenue

83. The relevant revenue in this case is the revenue of the London Branch (which the Firm asserts is consistent with DEPP 6.5A.2) and not the revenue of the Firm outside of the operation of the London Branch. The relevant revenue of the London Branch from 1 April 2017 to 31 March 2018 was £4,374,473. This should be the figure utilised at Step 2.

84. Relevant revenue has not been utilised, as it was considered by Enforcement that relevant revenue is not an appropriate indicator of the harm, or the potential harm, caused by the breach. This approach wrongly separates the need for the penalty to be commensurate with the Firm's resources.
85. Because the relevant revenue figure calculated in the usual way produces a Step 2 figure which Enforcement considers does not appropriately reflect the Firm's misconduct, it concluded that some other approach had to be found. This is not appropriate and the usual relevant revenue metric (that is the relevant revenue of the London Branch) should be utilised. Enforcement's approach is unfair to the Firm and there is no good reason to justify removing the link with the Firm's resources.

86. The Firm refers to the Credit Suisse Final Notice dated 19 October 2021[7] ("*the Credit Suisse Case*") which involved, inter alia, breaches of Principle 3 (management and control) in relation to financial crime and AML weaknesses, which were exposed by three transactions related to two infrastructure projects in the Republic of Mozambique. A financial penalty based on relevant revenue was utilised in similar circumstances. This is as applicable to the Firm in this case as it was in the *Credit Suisse* Case.

87. At its highest, the Presentation was no more than the thoughts of those persons who were involved in its production committed to paper and sent to two persons, David Rowland and Individual A, both of whom did not see the email and took no action. The Firm considers that the alleged Principle 1 breach arises from a technical legalistic attribution of the actions of certain individuals to the Firm, rather than from a corporate systemic malaise. Accordingly, the seriousness of the misconduct, notwithstanding a finding of a lack of integrity, should not be level 5.

88. The Firm considers that its case should be categorised instead as a level 4 case in terms of seriousness, in light of the level 4 finding in the *Credit Suisse Case* which, notwithstanding being a Principle 3 case, involved actual loss to the people of Mozambique and the commission of a crime. The Firm is being treated in a disproportionate and excessive way.

89. DEPP 6.5A.2G allows for the Authority to use an alternative metric where revenue is not appropriate, and the Authority has done so in many previous cases.

90. In the *Credit Suisse Case* there was a link between the amount of business done through the Credit Suisse Emerging Markets Group (over which there were poor controls) and the harm caused (namely the amount of money available for bribery and corruption). Utilising a relevant revenue metric was appropriate in the *Credit Suisse Case*.

91. In this case, the harm that might have been caused by the misconduct bore no relation to the Firm's activities and/or the revenue earned by the London Branch of the Firm (or indeed the total revenue earned by the Firm).

[7] https://www.fca.org.uk/publication/final-notices/credit-suisse-2021.pdf

92. Accordingly, the Authority considers that it is more appropriate to use an alternative metric rather than relevant revenue, when considering the appropriateness of the Step 2 figure.

93. The Authority notes the comparator case of the Bank of Beirut, Final Notice dated 4 March 2015[8] ("the Bank of Beirut Case"), where the underlying concerns related to AML controls and the potential for the Bank of Beirut to be exploited for financial crime. The Authority considers that the financial penalty on the Firm should be substantially greater than the financial penalty of £3 million imposed on the Bank of Beirut in 2015, taking into account, inter alia, (i) that the Bank of Beirut was also subject to the financial impact of a new customer restriction, (ii) the Firm's significantly more serious misconduct, and (iii) the Firm's Principle 1 breach rather than the Bank of Beirut's Principle 11 (Relations with regulators) breach.

94. The Authority does not consider that in all the circumstances a level 5 finding of seriousness is disproportionate or unfair. It appropriately reflects the very serious nature of the misconduct in this case.

95. Accordingly, the Authority considers that a £10,000,000 figure at Step 2 is reasonable and proportionate to the misconduct.

Step 3: Aggravating and mitigating circumstances.

96. The Firm has shown co-operation which goes beyond what was required. This is due to the early disclosure, and the quality, of the Project Gulf Report which the Firm considered at the time to be (but which has subsequently been held not to be) covered by legal professional privilege. The quality of the Project Gulf Report was such that the Authority did not consider it necessary for it to conduct any meaningful investigation beyond interviewing five persons, and this saved the Authority time and resource. A reduction of 10% should be applied to reflect the exceptional co-operation from the Firm.

[8] https://www.fca.org.uk/publication/final-notices/bank-of-beirut.pdf

97. Regulated firms are expected to co-operate fully with the Authority in its investigation of suspected misconduct. The production by the Firm in this case of an internal review report, which was not subject to legal professional privilege, is not considered by the Authority to be exceptional co-operation justifying a reduction at Step 3.

Breach of Principle 2 (rather than breach of Principle 1)

98. The Firm has accepted that it failed to conduct its business from the London Office with due skill, care and diligence in breach of Principle 2.

99. In addition to the points made above, the Firm considers that the assessment of seriousness should be reduced from that proposed for a breach of Principle 1, as the misconduct would be one based on negligence rather than on a deliberate act. Further, any penalty should be assessed on the allegations upon which the alleged negligence is founded, rather than the consequences of the negligence. For these reasons a level 3 finding is appropriate.

100. The Authority considers that the Firm's failures are more appropriately treated as a breach of Principle 1 rather than of Principle 2.

David Rowland's Representations

101. The 30 August 2017 meeting was organised by Individual A, because the senior representative of an Abu Dhabi sovereign wealth fund was due to be in London on other business. It was an informal, unstructured meeting, with no agenda. David Rowland attended the meeting to advance his interest in the Financial Institution, which was a proposed partnership between the Abu Dhabi sovereign wealth fund and David Rowland. This project was discussed in addition to personal greetings and probably matters related to UK politics. The meeting lasted at most 20 minutes, the Firm was not mentioned, and no mention was made of anything which could have related to what became the contents of the Presentation. As the meeting concluded, David Rowland went downstairs to use the cloakroom, leaving Mr Rowland talking with the senior representative. Mr Rowland subsequently briefly mentioned to David Rowland something about the Abu Dhabi sovereign wealth fund *"hedging their exposure".*

102. David Rowland's attendance at the August Meeting had no significance and was not relevant to the subsequent creation of the Presentation, nor did he have any

"behind the scenes" role in its creation. His involvement with the UAE is wholly unrelated to the Firm. David Rowland does not think he has ever discussed the Firm with the senior representative of the Abu Dhabi sovereign wealth fund or with the Ruler of the UAE, whom David Rowland regards as a very close personal friend.

103. David Rowland has never attended any Board Meetings of the Firm or any management meetings, nor has he been involved, or interfered, in any manner in the management of the Firm. David Rowland's attendance at the August Meeting does not indicate that the Presentation was Bank Business, or that Bank Business was discussed. David Rowland may have been Honorary President of the Firm, but it meant nothing and gave him no authority in the Firm, it was a fiction. The title was merely there to demonstrate his support for, and underwriting of, the Firm and to give confidence to depositors.

104. David Rowland went to Abu Dhabi with Mr Rowland in late September 2017. He did not discuss, read or look at the Presentation with Mr Rowland or anyone else during this visit. It was inconceivable that Mr Rowland would have not mentioned the Presentation to David Rowland, had he intended to hand over the Presentation to promote the interests of the Rowland Family. Bank Business had no relevance to the trip and the Firm has, and had, no relationship with the UAE.

105. The Presentation was not "disseminated". The term dissemination is only used to describe an act of distributing widely; this did not happen, as it was only sent to David Rowland and Individual A, and there was no intention by either David Rowland or Individual A to disseminate the Presentation. David Rowland was not aware at the time he received the Presentation that he had received it by email and did not open, read, print or forward it or give a copy to anyone else. The Presentation was deleted from David Rowland's computer by the automatic seven-day deletion policy on his email system. The UAE Ambassador confirmed to David Rowland, at the Abu Dhabi Grand Prix towards the end of November 2017, that he had never received a copy. Accordingly, there was no meaningful "dissemination", and as this term is pejorative, it should not be used.

106. David Rowland was not aware of the Presentation, or its contents, until The Intercept made contact. The telephone calls between David Rowland and Mr Rowland on 12, 13 and 19 October 2017 do not indicate that David Rowland was aware of the contents of the Presentation. Throughout these telephone calls David Rowland and Mr Rowland were concerned about their communications being hacked by agents of Qatar. The Presentation was not discussed; David Rowland's concerns

related to a document regarding the Financial Institution and whether his phone had been hacked. They therefore talk about what he and Mr Rowland should do with their phones and their email addresses. The telephone calls were unguarded conversations between father and son and do not show any attempt at a cover-up.

107. David Rowland has no idea what the references to "*their office*" refers to but speculates that it could be Qatar or the office of Individual A who had also been hacked by Qatar. The reference in the telephone calls to "*badge of honour*" is nothing to do with the Presentation, nor to an economic warfare strategy. It concerned the bad publicity resulting from being attacked by Qatar, due to David Rowland's friendship with and connection to the UAE. The Presentation could not be used as a badge of honour; it was nonsense and a hugely embarrassing document.

108. The Authority has not asserted that David Rowland was present during the conversation between Mr Rowland and the senior representative of the Abu Dhabi sovereign wealth fund, when the request for advice is said to have occurred. Discussions at the August Meeting regarding the Financial Institution did not preclude discussions on other matters which could be taken forward as Bank Business. Such matters include the Presentation. The Authority has not asserted that David Rowland had a "behind the scenes" role in the creation of the Presentation.

109. Mr Rowland forwarded a copy of the Presentation to Individual A and David Rowland using their email addresses outside the Firm. The Authority has not asserted that David Rowland forwarded the Presentation. Having taken into account all the relevant evidence, including that of Mr Bolelyy and Mr Rowland, and the contents of the telephone calls on 12, 13 and 19 October 2017 between David Rowland and Mr Rowland, the Authority has concluded that Mr Bolelyy did provide a copy of the Presentation to a representative of the Abu Dhabi sovereign wealth fund during the trip to Abu Dhabi. Accordingly, the Authority considers that it is appropriate to state that the Presentation was "disseminated".

110. The Authority refers to the fact that between April 2014 and June 2018 (which includes the Relevant Period) the Firm's website referred to David Rowland as its Honorary President and that, during the telephone call on 19 October 2017, David Rowland stated to Mr Rowland "*don't let's put anything on the Bank emails…and you can put that Vladimir [Bolelyy],*

make him have one on, with Liwathon…and as soon as we can we take him off the Bank's payroll". **The Authority infers that, in practice, David Rowland had a level of influence and management within the Firm.**

111. In the telephone call between David Rowland and Mr Rowland on 12 October 2017, David Rowland asked Mr Rowland how he thought the "*thing in the Indian paper got there*". Mr Rowland replied "*probably, I assume – probably a leak from their office I would imagine*". Mr Rowland then said he was aware that the content of the Presentation had been discussed with "*their*" office. The Authority infers that "*their office*" refers to the office of the Abu Dhabi sovereign wealth fund, which had been provided with a copy of the Presentation during the visit. Mr Rowland also stated to David Rowland "*Never been talked to anyone else*". The Authority infers that Mr Rowland was saying that the Presentation had not been discussed with anyone other than the Abu Dhabi sovereign wealth fund. Mr Rowland appeared to regard publication of the Firm's involvement as "*a badge of honour when we go and see them next time*", and David Rowland stated that "*you can, we can capitalise on this*" [with respect to the Abu Dhabi sovereign wealth fund]. The Authority infers that at the time of the telephone calls David Rowland is likely to have been aware that the Presentation had been provided to the Abu Dhabi sovereign wealth fund.