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

FINANCIAL CONDUCT AUTHORITY

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DECISION NOTICE

To: **C**

Reference Number: **LMY01007**

Date: **23 June 2021**

1. ACTION

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

2. SUMMARY OF REASONS

2.1. The Authority considers that C failed to act with integrity whilst a relationship manager at Julius Baer International Limited ("JBI") between July 2010 and December 2011, when she was approved by the Authority to perform the CF30 (Customer) controlled function. C acted recklessly in relation to the overall conduct of the relationship of the Julius Baer Group of companies ("Julius

Baer") with the Yukos Group and with the Finder associated with the Yukos Group, Dmitri Merinson.

2.2. C was employed by JBI in London as a relationship manager on the Russian and Eastern European Desk. The Russian and Eastern European Desk had a dual reporting line, reporting to JBI's Management Committee and also maintaining a functional reporting line to B, Sub-Regional (Market) Head for Russia and Eastern Europe at Bank Julius Baer & Co. Ltd. ("BJB") in Switzerland. BJB and JBI are both part of the Julius Baer Group. In respect of the conduct of the relationship with the Yukos Group and Mr Merinson, C routinely sought approval for the arrangements she negotiated from B and A, the Regional Head for Latin America, Spain, Russia, Central and Eastern Europe and Israel at BJB from January 2010 until March 2011, who had responsibility for the line management of B. B was also a member of JBI's Board of Directors from 30 March 2011 onward.

2.3. C negotiated Julius Baer's entry into Finder's arrangements with Mr Merinson in which Julius Baer agreed to pay fees (known as 'Finder's fees') to Mr Merinson for introducing Yukos Group Companies to Julius Baer. Mr Merinson was an employee of the Yukos Group and C's understanding was that he had responsibility for oversight and control of financial operations at two of the Yukos Group Companies, Yukos Capital and Yukos International. C negotiated the Finder's arrangements with Mr Merinson and Daniel Feldman, who was a director of various Yukos Group Companies, including the sole director of Yukos Capital. She did so on the understanding that, if Finder's fees were paid to Mr Merinson, Mr Feldman would ensure that the Yukos Group placed large cash sums with Julius Baer from which Julius Baer could generate significant revenues. Pursuant to these Finder's arrangements (which were initially agreed in July 2010 and amended in October 2010), Mr Merinson received three commission payments: in September 2010, December 2010 and February 2012. The rates of commission paid to Mr Merinson by Julius Baer were far in excess of the standard rates paid to individuals for introducing business to Julius Baer. In the course of the Finder's relationship, Julius Baer paid Mr Merinson commission of approximately USD 3 million.

2.4. In order to effect these commission payments to Mr Merinson, C facilitated arrangements whereby Julius Baer charged the Yukos Group Companies unusually high levels of commission for executing large foreign exchange ("FX") transactions. These FX transactions took place in August 2010, November 2010 and August 2011. The majority of the commission generated was then transferred to Mr Merinson, on Mr Feldman's instructions and in accordance with the Finder's arrangements negotiated with Mr Merinson and Mr Feldman, although Julius Baer also benefited significantly from the transactions. C also became aware in August 2010 that Mr Merinson intended to transfer a proportion of the commission he received from Julius Baer to Mr Feldman, and in April 2011 that Mr Merinson transferred to Mr Feldman an amount equal to 50% of the First and Second Commission Payments, but did not inform either Compliance or her senior managers.

2.5. C was responsible for managing the relationship with Mr Merinson and Yukos on a day-to-day basis. There were numerous suspicious features to this relationship, all of which were known to C who must have been aware of the obvious risks arising from the relationship. C failed to have regard to those risks, which included that in effecting significant payments to Mr Merinson pursuant to Finder's arrangements, Julius Baer might be facilitating or even participating in financial crime, and failed to take appropriate action in light of them. In failing to do so, C was reckless. In particular:

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

recklessly failed to have regard to the following obvious risks of which she must have been aware:

a. The risk that there was no proper commercial rationale for any payment to Mr Merinson or for a Finder's agreement with Mr Merinson, which related to the introduction of Yukos Capital to Julius Baer; and

b. The risk that the arrangements involved a breach of Mr Merinson's and Mr Feldman's duties to the relevant Yukos Group Companies, and the improper payment of what were in effect Yukos' funds to Mr Merinson (and, because of the involvement of Mr Feldman, the sole director of Yukos Capital, in approving the arrangements, potentially to Mr Feldman).

(2) Between 11 and 13 August 2010, on the instructions of Mr Feldman, C helped to facilitate the First FX Transaction, in which Julius Baer converted approximately GBP 271 million received from Yukos Capital into USD. The trading took place at rates 11 times Julius Baer's standard commission rate for FX transactions of this size, and resulted in commission totalling in excess of USD 2.3 million being charged to Yukos Capital; 80% of the commission was paid to Mr Merinson and the remaining 20% (approximately USD 469,000) was retained by Julius Baer. This constituted a return to Julius Baer of 0.11%, which was itself more than double its standard commission on an FX transaction of this size. There was no proper commercial rationale for the payment to Mr Merinson. Furthermore, the trading approach used to execute the transaction, which included ensuring that the rate charged to Yukos Capital was above the worst rate for the day, had the effect that the amount charged for the combination of Julius Baer's commission and the commission payment that was to be made to Mr Merinson would not be obvious, and that anyone with cause to examine Yukos Capital's records would not be put on notice that the commission was of an unusual size. C recklessly failed to have regard to the obvious risk, of which she must have been aware, that the First FX Transaction was undertaken in breach of Mr Merinson's and Mr Feldman's duties to Yukos Capital, was not in the interests of that company, and was made in order to facilitate the improper diversion of funds from Yukos Capital to Mr

Merinson (and potentially to Mr Feldman), in a way which would not be obvious to someone other than Mr Feldman and Mr Merinson.

(3) On 16 August 2010, Mr Merinson informed C that he intended to transfer a proportion of the First Commission Payment to Mr Feldman, but although she made a record of Mr Merinson's intention she did not inform her senior managers or Compliance. Thereafter, she facilitated the First Commission Payment. In doing so, C recklessly failed to have regard to the obvious risk, of which she must have been aware, that the arrangements which she had set up at Mr Merinson's and Mr Feldman's request were improper, were in breach of their duties to the relevant Yukos Group Companies, were not in the interests of those companies, and amounted to an improper diversion of funds from Yukos Capital to Mr Merinson and Mr Feldman. She also recklessly failed to have regard to the obvious risk, of which she must have been aware, that, by omitting to inform Compliance and her senior managers about Mr Merinson's stated intention to transfer a proportion of his commission to Mr Feldman, they would be deprived of significant information about the risks posed by the arrangements.

(4) In October 2010, C negotiated and agreed with Mr Feldman and Mr Merinson amendments to the original Finder's arrangements, under which Mr Merinson's Finder's fee was increased from 25% to 35% of net income generated by Julius Baer, and under which he was permitted to receive four additional 'one-off' payments, calculated as 70% of Julius Baer's commission on four large transactions, relating to new inflows of funds, to take place by October 2011. Only the increase in Mr Merinson's share of net income was documented. In return, among other things, Yukos' funds were to remain with Julius Baer for at least three years. There was no proper commercial rationale for these arrangements and C recklessly failed to have regard to the obvious risk, of which she must have been aware, that these arrangements were in breach of Mr Merinson's and Mr Feldman's duties to the relevant Yukos Group Companies, were not in the interests of those companies and were designed to divert funds improperly from the Yukos Group Companies to Mr Merinson and potentially to Mr Feldman.

(5) In November 2010, C helped to facilitate the Second FX Transaction, in which Julius Baer converted approximately USD 68 million of Yukos funds (which formed a portion of the funds converted into USD by the First FX Transaction) into EUR. The trading approach, which mirrored that adopted in the First FX Transaction and was agreed with Mr Feldman, involved a large daily rate range and Fair Oaks (a Yukos Group company of which Mr Feldman was a director) paying just above the worst rate available in the market, so that the spread between that and the rate at which Julius Baer transacted would cover both the commission required by Julius Baer and a further commission payment which would be made to Mr Merinson as Finder. There was no proper commercial rationale for Yukos to adopt such an arrangement. The transaction took place at a rate approximately 30 times higher than Julius Baer's standard commission rate for transactions of this size, and resulted in commission in excess of USD 1 million being charged to Fair Oaks; 70% of this sum was paid to Mr Merinson, and the remaining 30% (approximately USD 320,000) was retained by Julius Baer and constituted a return of 0.47%. This was itself far in excess of Julius Baer's standard commission on an FX transaction of this size. C recklessly failed to have regard to the obvious risk, of which she must have been aware, that the transaction was executed in a way which meant that the level of commission would not be obvious to someone other than Mr Feldman and Mr Merinson, and that it formed part of an improper scheme to divert funds to Mr Merinson and potentially to Mr Feldman in breach of their duties to the relevant Yukos Group Companies.

(6) In late November 2010, C requested approval for the payment of the Second Commission Payment to Mr Merinson. In doing so, she recklessly failed to have regard to the obvious risks identified above of which she must have been aware.

(7) On 7 April 2011, C's assistant arranged for half of the commission received by Mr Merinson to be paid to Mr Feldman. C was aware of this payment, as was her line manager at JBI. The payment reflected Mr Merinson's intention, made known to C on 16 August 2010, to transfer a proportion of his commission to Mr Feldman, and was a crystallisation of the risk that the arrangements which she had set up at Mr Merinson's and

Mr Feldman's request amounted to an improper diversion of funds from Yukos to Mr Feldman as well as to Mr Merinson. C did not inform Compliance or her senior managers of the payment and recklessly failed to have regard to the obvious risk, of which she must have been aware, that they would be unaware of the conflicts of interest arising from Mr Merinson transferring a proportion of the commission he received to Mr Feldman, who had been responsible for approving the commission.

(8) C was aware of and helped to facilitate the Third FX Transaction, which was executed in August 2011 and in which EUR 7 million was converted into USD for Fair Oaks. The transaction used the same trading approach as for the First and Second FX Transactions and was executed with a high margin, to allow Julius Baer to fund both its commission and a commission payment to Mr Merinson, which on this transaction amounted to CHF 64,518.89 and was paid (together with other commission due to Mr Merinson) on 1 February 2012. There was no proper commercial rationale for the commission payable to Mr Merinson. C failed to have regard to the obvious risk, of which she must have been aware, that this transaction was undertaken in breach of Mr Merinson's and Mr Feldman's duties to the relevant Yukos Group Companies, was not in the interests of those companies, and was undertaken to divert funds improperly to Mr Merinson (and potentially to Mr Feldman).

2.6. C's reckless conduct occurred in the context of a number of further occasions where Mr Merinson and/or Mr Feldman made requests which ought to have caused C, given the matters cumulatively known to her at the time of the requests, to have questioned Julius Baer's arrangements with Mr Merinson and the Yukos Group Companies and to have raised concerns about them with senior managers at Julius Baer or with Compliance:

(1) On 16 August 2010, C sought approval (which was refused by BJB Legal) for a request by Mr Merinson that the First Commission Payment be referenced as "Investment Capital Gain". C should have recognised the risk that this could have been an attempt by Mr Merinson to disguise the true nature of the payment and, in light of the other suspicious elements of the arrangements, it ought to have caused her concern.

(2) In January 2011, tasked to negotiate a new Finder's agreement with Mr Merinson that would record his entitlement to receive 70% of commission earned in transactions in respect of new inflows of funds, generated through a trading approach that was not commercially beneficial to Yukos Group Companies, C sought approval for Mr Merinson's request that a term be included that the agreement should not be disclosed to anyone other than Mr Feldman. Mr Merinson's request should have caused C to be suspicious, and she should have recognised the risk that it was an attempt to hide the fees that had been paid to Mr Merinson.

(3) On 1 February 2011, C sought BJB Compliance's approval for Mr Feldman's request that draft letters he had been asked to sign confirming that the payments to Mr Merinson were approved, be amended to include the wording 'I sign on the understanding that you will be providing me with confirmation of Julius Baer's commitment to confidentiality'. She did so without drawing attention to the fact that she had been told on 16 August 2010, that Mr Merinson intended to share a proportion of the First Commission Payment with Mr Feldman. C should have recognised the risk that Mr Feldman's request was an attempt to hide the payments to Mr Merinson.

2.7. C's conduct fell below that expected of an approved person. As a result of her failure to have regard to the obvious risks described in paragraph 2.5 above, of which she must have been aware, and to take appropriate action in light of them, C was reckless and failed to act with integrity in relation to the conduct of Julius Baer's relationship with Mr Merinson and Yukos. As a consequence, the Authority considers that C is not fit and proper to perform any function in relation to any regulated activities carried on by an authorised or exempt person, or exempt professional firm.

3. DEFINITIONS

3.1. The definitions below are used in this Notice:

"the Act" means the Financial Services and Markets Act 2000;

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

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

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

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

"BJB Compliance" means BJB's compliance department and collectively members of that department, which was based in Switzerland;

"BJB Guernsey" means BJB's Guernsey branch;

"BJB Legal" means BJB's legal department and collectively members of that department, which was based in Switzerland;

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

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

"BJB Singapore" means BJB's Singapore branch;

"BJB Switzerland" means BJB's office in Zurich;

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

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

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

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

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

"Compliance" means BJB Compliance and/or JBI Compliance;

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

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

"Fair Oaks" means Fair Oaks Trade and Investment Limited;

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

"FX" means forex or foreign exchange;

"FX Transactions" means the First FX Transaction, the Second FX Transaction and the Third FX Transaction;

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

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

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

"JBI" means Julius Baer International Limited;

"JBI Compliance" means JBI's compliance department and collectively members of that department, based in London;

"the JBI Line Manager" means C's line manager at JBI;

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

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

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

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

"the Warning Notice" means the warning notice given to C dated 23 April 2020;

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

"Yukos Capital" means Yukos Capital S.a.R.L.;

"Yukos Hydrocarbons" means Yukos Hydrocarbons Investments Limited; and

"Yukos International" means Yukos International UK BV.

4. FACTS AND MATTERS

Background

JBI corporate structure

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

JBI's Russian and Eastern European Desk

4.2. C was employed by JBI as a relationship manager on JBI's Russian and Eastern European Desk from 1 January 2009 until 28 November 2012, reporting to the JBI Line Manager. During that period, C held the CF30 (Customer) controlled function. Prior to joining JBI, C had held the CF21 (Investment adviser) controlled function at a wealth and asset management firm from 12 April 2005 to 31 October 2007, and the CF30 controlled function at the same firm from 1 November 2007 to 12 December 2008.

4.3. JBI's Russian and Eastern European Desk reported to JBI's Management Committee. It also had a functional reporting line to B, the Sub-Regional (Market) Head for Russia and Eastern Europe, who was an employee of BJB, and who therefore had functional line management responsibility for C. B reported to A, Regional Head for Latin America, Spain, Russia, CEE and Israel, from January 2010 until March 2011. A was an employee of BJB and a member of BJB's Executive Board. After March 2011, B reported to another Senior Executive at BJB who also held a position on the Board of JBI. From 30 March 2011

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

Yukos Group accounts with Julius Baer

4.4. The Yukos Group comprises a number of holding companies incorporated in various jurisdictions which own the residual non-Russian assets of the Russian oil group of the same name. The Yukos Group was declared bankrupt in disputed circumstances in 2006 and a number of companies in the group have been and continue to be involved in litigation in an effort to recover monies to distribute to shareholders and creditors.

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

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

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

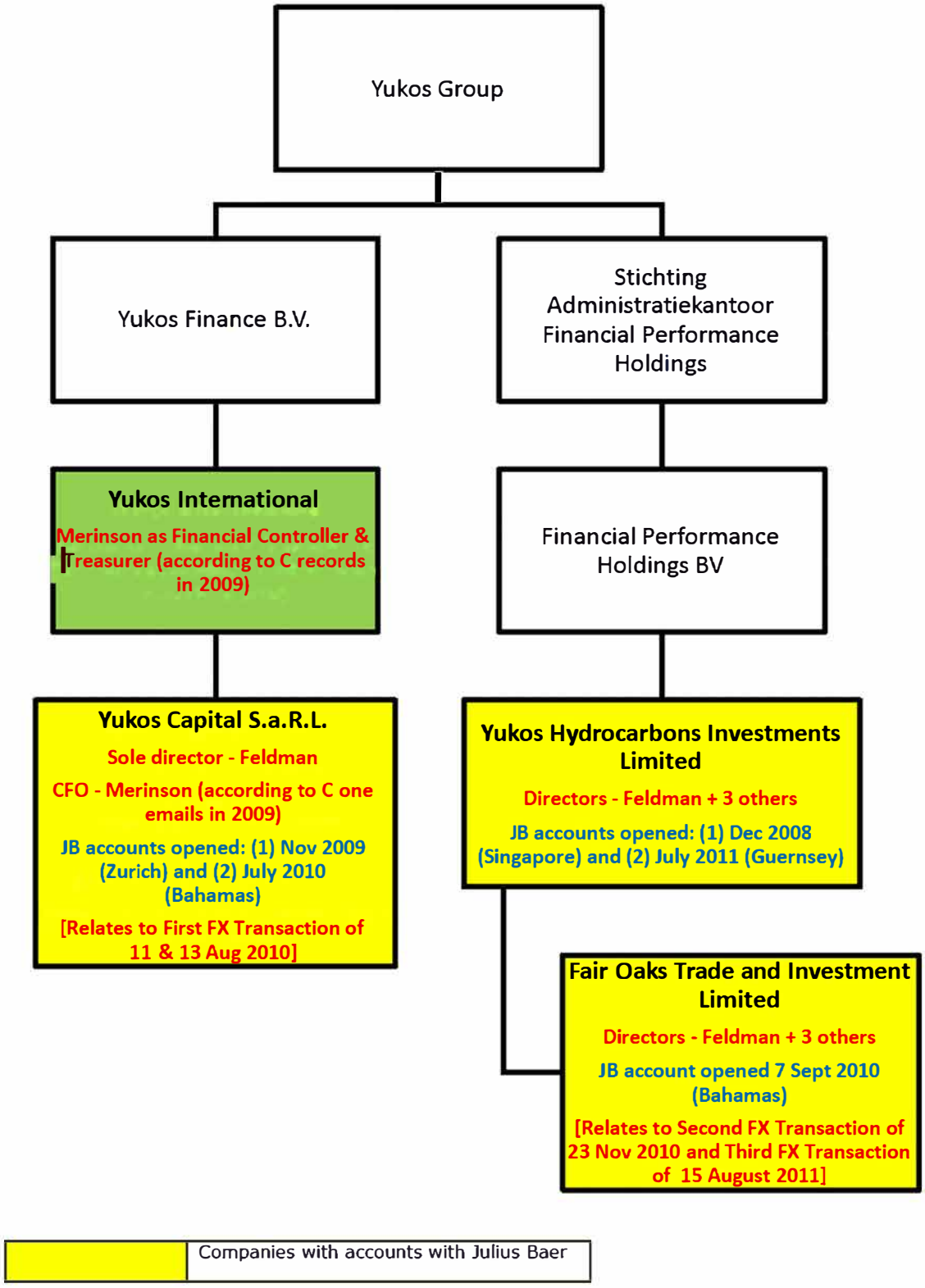
(3) Fair Oaks, a company incorporated in the British Virgin Islands and the wholly owned subsidiary of Yukos Hydrocarbons, opened an account with BJB Bahamas in September 2010 (with C as the relationship manager).

4.6. C dealt principally with two individuals, Mr Feldman and Mr Merinson, in relation to the Yukos Group Companies' accounts. In June 2009, C recorded that Mr Merinson, a Russian citizen residing in the Netherlands, was employed as the Financial Controller and Treasurer for Yukos International (the parent company of Yukos Capital). She described him in an email dated 9 October 2009 to B as the Chief Financial Officer of both Yukos Capital and Yukos International, and in an email dated 13 November 2009 to BJB Compliance, copying

in B, as the Chief Financial Officer of Yukos Capital. In so describing Mr Merinson, irrespective of his precise job title, C conveyed her understanding that Mr Merinson had responsibility for oversight and control of financial operations at Yukos International and Yukos Capital. He was a Yukos employee throughout the period of JBI's relationship with the Yukos Group Companies. Mr Feldman was a lawyer, practising in the United States of America. He was also the sole director of Yukos Capital, and a director of Yukos Hydrocarbons and Fair Oaks.

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

Figure 1


Yukos Group
Yukos Finance B.V.
Stichting Administratiekantoor Financial Performance Holdings
Yukos International
Merinson as Financial Controller & Treasurer (according to C records in 2009)
Financial Performance Holdings BV
Yukos Capital S.a.R.L.
Sole director - Feldman
CFO - Merinson (according to C one emails in 2009)
JB accounts opened: (1) Nov 2009 (Zurich) and (2) July 2010 (Bahamas)
[Relates to First FX Transaction of 11 & 13 Aug 2010]
Yukos Hydrocarbons Investments Limited
Directors - Feldman + 3 others
JB accounts opened: (1) Dec 2008 (Singapore) and (2) July 2011 (Guernsey)
Fair Oaks Trade and Investment Limited
Directors - Feldman + 3 others
JB account opened 7 Sept 2010 (Bahamas)
[Relates to Second FX Transaction of 23 Nov 2010 and Third FX Transaction of 15 August 2011]
Companies with accounts with Julius Baer

Finders at JBI

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

Agreement for Mr Merinson to act as Finder for Yukos

4.9. In June 2009, C had a meeting with Mr Merinson at which they discussed the opening of an account for Yukos International. It was also agreed that Mr Merinson would be set up as a Finder and Mr Merinson completed the documents required to open a personal account.

4.10. C subsequently arranged for a personal account for Mr Merinson to be opened with BJB Singapore in July 2009. Mr Merinson provided C with 'comprehensive background information both on himself and the company'. C compiled and signed a due diligence report on Mr Merinson (which was required in order to open his account) which stated that Mr Merinson had 'established' Yukos International and still worked there as the 'Financial Controller and Treasurer'. C also completed an account opening form which described Mr Merinson as an employee of Yukos International and his position as 'Advisor'. BJB Singapore (Legal and Compliance) sought approval from B, as the Sub-Regional (Market) Head for Russia, for the opening of Mr Merinson's account, and provided him with copies of due diligence information and information from Mr Merinson's account opening forms. B responded by giving his approval.

4.11. In October and November 2009, C corresponded with B and others, including BJB Compliance, regarding the opening of accounts for Yukos International and Yukos Capital. C explained to B that she had discussed the account openings with Mr Merinson, describing him as 'my Russian contact […] the Chief Financial Officer of both companies […]'. In a subsequent email to BJB Compliance regarding the opening of an account for Yukos Capital, to which B was copied, she also explained that 'When I need to communicate with the client, I will contact Dmitri Merinson, my Russian contact who is the CFO of Yukos Capital S.a.R.L. and who attends all the board meetings'.

4.12. An account for Yukos Capital was opened with BJB Switzerland on 13 November 2009. The account opening was approved by B and BJB Compliance; the JBI Line Manager was also aware of the account opening request. The Authority has found no evidence that Mr Merinson was referenced as a Finder on any documentation relating to the opening of the Yukos Capital account.

4.13. On 7 July 2010, C met with Mr Feldman and Mr Merinson. They told her they were expecting a large payment to be made to Yukos Capital (in the region of GBP 280 million to GBP 430 million), as a result of a successful litigation award.

4.14. According to C's notes of this meeting, Mr Feldman asked if Julius Baer could pay a 'one-off fee' to Mr Merinson totalling around 1% of the total assets on the account. C told Mr Feldman that this 'could only be done if the bank has a guaranteed [return on assets] of at least 1.2% so that we still get 20 basis points'. Mr Feldman agreed to this. C's notes also stated that existing funds would remain with, and further funds would be paid into, Yukos' accounts with Julius Baer, if the bank could arrange the 'one off retrocession payment'. This payment was to be funded by a CoY on which Julius Baer would charge commission of 1.4%, 70% of which would then be paid to Mr Merinson as a Finder's fee, a proportion far in excess of the standard rates paid to Finders by Julius Baer.

4.15. C therefore believed, as a result of what was discussed at the meeting on 7 July 2010, that Julius Baer could secure further business if it facilitated payment to Mr Merinson of a large sum of money. In negotiating the level of fees that Julius Baer proposed to charge Yukos Capital, she was aware that Julius Baer needed to increase its usual fees in order to take into account both the commission it required and the proposed retrocession payment to Mr Merinson.

4.16. C stated to the Authority in interview that Mr Feldman told her Yukos wished BJB to pay Mr Merinson a Finder's fee in order to incentivise him and reward him for assisting Yukos with its litigation. However, the Authority has seen no written records to confirm this; C did not record this in her contact report or in any subsequent correspondence regarding the proposed payment. C told the Authority she did not probe Mr Feldman's explanation at the time, for example, by seeking to understand why Yukos wished to remunerate Mr Merinson,

an employee who received a salary of USD300,000 per annum from Yukos, via a Finder's fee rather than paying him directly.

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

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

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

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

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

4.19. The Authority has not identified any documents confirming B's approval of the arrangements set out in C's email. However, there is no evidence that

B objected to the proposed arrangements and, given that his approval was expressly sought and that payment on similar terms was subsequently made to Mr Merinson, the Authority has concluded that it is highly likely that B did approve them.

4.20. Shortly after sending her email on 7 July 2010, C met with Mr Merinson and Mr Feldman again. (During that meeting, after the matters outlined below were discussed, they were joined by a JBI colleague from another department.) The contact report stated that at this meeting, Mr Feldman informed C that Yukos Capital was due to receive the equivalent of approximately USD 422m in GBP, that the funds would need to be converted to USD, and that the intention was that commission of up to USD 1,250,000 would be generated on the FX transaction, 80% of which would be paid to Mr Merinson. The remaining 20% of the commission (up to USD 250,000) would be retained by Julius Baer, giving a return to Julius Baer of six basis points. The contact report was incorrectly dated 7 August 2010, was filed on JBI's system on 19 August 2010, and appears to have been drafted after the First FX Transaction took place (see paragraph 4.26 below). The Authority considers this might account for the differences between the information recorded in this report and C's notes of the meeting earlier that day.

4.21. Later in the afternoon of 7 July 2010, C left the office to go on leave until 2 August 2010.

4.22. On 8 July 2010, C's assistant completed a 'Finder's Assessment Form' for Mr Merinson which was signed on behalf of C by the JBI Line Manager. The form did not record that a large 'one-off' payment had been agreed with Mr Merinson, even though it contained a field to be completed where a 'special model' of remuneration had been agreed.

4.23. C's assistant also emailed Mr Merinson a written Finder's agreement with BJB which provided for payment of Finder's fees equal to 25% of the net income generated by BJB from clients introduced by Mr Merinson (one of four standard remuneration models used by BJB for Finders). The agreement did not refer to the large 'one-off' payment that had been agreed but, in her covering email to Mr Merinson and Mr Feldman, C's assistant stated that the 'one off payment

that [C] has discussed and confirmed with you will be organised separately from [the Finder's] agreement (in case you wonder why it is not included*)*'. Mr Merinson signed and returned the Finder's agreement which he dated 7 July 2010.

4.24. Contrary to usual procedure and in particular to the provisions of BJB's Co-operation with Finders Policy, the non-standard remuneration agreed with Mr Merinson was not recorded in a side-letter or an appendix to the Finder's agreement. The Authority has not seen any evidence that, at the time BJB entered into the Finder's agreement with Mr Merinson, Compliance staff at JBI or BJB were aware that a large 'one-off' payment had been separately agreed with Mr Merinson.

First FX Transaction

4.25. On 11 August 2010, approximately GBP 271 million was received into Yukos Capital's account with BJB Switzerland.

4.26. Between 11 and 13 August 2010, on the instructions of Mr Feldman who confirmed in a handwritten note dated 12 August 2010 his awareness of the rates used for the transactions, C and the JBI Trader arranged for currency trades to be executed by BJB on behalf of Yukos Capital, converting GBP 271,233,490 to USD 422,419,038. The transactions were executed by BJB at an average market rate of 1.566051, but Yukos Capital was charged the rate of 1.5574. The difference between the two rates was taken by BJB as commission, generating commission in excess of USD 2.34 million from the transaction and resulting in a commission rate of approximately 0.55% of the principal sum converted, which with Mr Feldman's agreement was to fund both the one-off payment to Mr Merinson and the commission required by BJB. At the time, Julius Baer usually applied an FX commission rate of 0.15% for amounts over CHF 1 million and 0.05% for conversions over CHF 5 million. The commission rate charged on this transaction was therefore approximately 11 times the standard commission rate for a transaction of this size. A informed the Authority that this high level of commission did not reflect the costs of executing this specific transaction, but rather what Julius Baer required to cover the overall costs of servicing a private banking relationship with Yukos, including the payment of a Finder's fee to secure that business. This was also C's understanding. However, the Authority does not consider that there was a proper

commercial rationale for making a payment to Mr Merinson in this way; if Yukos had wished to pay Mr Merinson it could have done so directly, rather than through such an arrangement.

4.27. C, Mr Feldman and Mr Merinson were present while the JBI Trader instructed BJB to carry out the trades, including while trading was conducted overnight. C's contact report and a subsequent email dated 16 August 2010 to BJB Compliance, B and A, copying in the JBI Line Manager, stated that Mr Feldman and Mr Merinson had remained in JBI's offices from 8am on Thursday morning until 9am on Friday morning and the JBI Trader had guided them in order 'to get the best possible rate and thereby maximise the commission'. C informed the Authority at interview that there was 'a pre-agreed commission level that was going to have to be charged for the foreign exchange', and that ideally that level should not result in the rate charged to Yukos Capital being worse than the worst rate over those two days. The Authority considers that the trading approach used was intended to ensure that the overall rate achieved, after the addition of a commission rate which was to fund BJB's commission and Mr Merinson's retrocession payment, would be no worse than the worst rate available on the market on the day, with the consequence that any third party with cause to review Yukos Capital's records would simply see the booked rate (1.5574), and would be unaware that the transaction had been executed at a much more favourable rate by BJB and that the commission was of an unusual size.

4.28. C met with a member of JBI's Board shortly after the trades had been executed. The Board member then emailed B on 13 August 2010, copying in the JBI Line Manager, to 'share [his] excitement' about C's 'success'. In his email, he noted that 'assets in excess of 300mUSD have arrived and that an FX transaction to convert them from GBP into USD has yielded about USD 500,000 in commission for JB'. In fact, as noted above, Julius Baer had generated commission of approximately USD 2.34 million from the transaction but it retained approximately USD 500,000 after payment of the Finder's fee to Mr Merinson. This was twice the amount that had been anticipated when the FX transaction had been discussed at C's second meeting with Mr Merinson and Mr Feldman on 7 July 2010.

First Commission Payment to Mr Merinson

4.29. As mentioned in paragraph 4.27 above, on 16 August 2010, C emailed BJB Compliance, B and A, copying in the JBI Line Manager, providing details of the First FX Transaction. C's email confirmed the amount of total commission, the amount earned in commission by Julius Baer (11 basis points) and that 80% of the commission, equal to USD 1,877,152.74, should be transferred to Mr Merinson as the Finder on the account.

4.30. B forwarded C's email to the JBI Line Manager and stated 'Between our discussion and the situation we have now I am missing an update. In the meantime I could talk to C.' B and A subsequently verbally confirmed to C their approval of the First Commission Payment to be made to Mr Merinson. The Authority has not seen any evidence that either B or A questioned the commercial rationale of Yukos Capital in agreeing the First FX Transaction or what interest Yukos Capital would have in maximising the commission payable. B was also aware that the JBI Trader made use of the volatility of the FX trading to maximise the commission, rather than securing best execution for Yukos Capital, Julius Baer's client, and charging the standard commission rate for a transaction of this size.

4.31. Earlier on 16 August 2010, C met with Mr Merinson, with Mr Feldman attending the meeting by telephone. According to C's note of the meeting, Mr Merinson asked that the payment of commission be made to him with the payment reference 'Investment Capital Gain'. Mr Merinson also informed C that he was 'going to transfer a proportion of the commission away to Daniel Feldman's Julius Baer account'. C did not raise any concerns or take any other steps in relation to Mr Merinson having informed her of his intention to share the commission paid to him by Julius Baer with Mr Feldman. Although recorded in her file note, it seems that, except for her assistant (who entered the file note on JBI's system) and possibly the JBI Line Manager (who in April 2011 authorised two cash transfers from Mr Merinson's personal account for the benefit of Mr Feldman (see paragraph 4.76 below)), C did not at any time share this information with anyone else at Julius Baer, despite having the opportunity to do so. In particular, C did not mention this information in the email that she sent to BJB Compliance, B and A later that day (see paragraph 4.29 above), which

updated them on the current situation with Yukos Capital, including matters that had been raised by Mr Feldman in the meeting.

4.32. On 19 August 2010, C requested, copying in B and A, that the First Commission Payment be paid to Mr Merinson and that payment be made 'preferably with the payment reference "Investment Capital Gain" ([…] to ensure that it is not classified as employment income which is taxed differently in the Netherlands)'. BJB Legal refused to agree to this request but did agree it could be stated that the payment was not employment income. It was obvious that if the payment was referenced as an 'Investment Capital Gain' this would be an untrue statement. This should have raised suspicions for C.

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

4.34. Also on 19 August 2010, a member of BJB's Business & Operational Risk Division emailed BJB Compliance and stated that their attention had been drawn to the First FX Transaction. They explained that they had taken a closer look at the relationship with Yukos and the transaction documentation and had a number of questions,

including in respect of the role of Mr Merinson. Later that day, at BJB Compliance's request, C emailed BJB Compliance 'a little background on the recent inflow to the JB Zurich account of Yukos Capital SaRL'. In respect of Mr Merinson's role, C stated: 'The finder registered on these accounts is Dmitry Merinson who works as the Financial Director for Yukos International U.K. BV. This is a Dutch company within the Yukos group structure and it is indirectly the ultimate 100% shareholder of Yukos Capital SaRL. He does not have signing power on any of the group's companies or bank accounts but he is heavily involved in choosing which banks should hold funds awarded to subsidiary companies of Yukos International U.K. BV. he introduced the business to me and is registered on the accounts for which I am the Relationship Manager as the Finder (in accordance with his JB Finder agreement).'

4.35. On 1 September 2010, BJB Compliance asked C in an email if there was an agreement between Yukos Capital and Mr Merinson that he was entitled to receive Finder's fees from BJB and, noting that C had stated that he was the 'Financial Director for Yukos International', stated that this 'needs to be clarified for conflict of interest issues'. C called BJB Compliance and explained that Mr Feldman knew about BJB's Finder's agreement with Mr Merinson and the large one-off payment that was being made to him. C agreed with BJB Compliance that she would get written confirmation from Mr Feldman expressly confirming this. She informed BJB Compliance later that day that she had spoken to Mr Feldman and he was happy to provide written confirmation, but he had already left London to catch a flight. BJB Compliance confirmed that C could obtain Mr Feldman's written confirmation when she next met with him. At no point in this correspondence did C inform BJB Compliance of Mr Merinson's intention to share the commission paid to him by Julius Baer with Mr Feldman. C should have realised that this meant that Mr Feldman's confirmation would not resolve BJB Compliance's conflict of interest concerns.

4.36. On or around 1 September 2010, the First Commission Payment of approximately USD 1.75 million was paid into Mr Merinson's BJB Singapore account by BJB. This appears to have been the amount payable after deducting VAT, the gross amount being approximately USD 1.87 million. B signed a letter to Mr Merinson dated 3 September 2010 regarding the payment which stated that BJB confirmed that

'contrary to [the Finder's agreement], this represents a one-off payment and no further payments are or will become due with respect to the specific client introduced'.

4.37. On 3 September 2010, C's assistant sent an email to Mr Feldman and another Fair Oaks director, copying in C, confirming that the new Fair Oaks account was open and that JBI would proceed to make a transfer from the Yukos Capital account to the Fair Oaks account as per their instructions. On 7 September 2010, the other Fair Oaks director asked for confirmation of the credit to Fair Oaks' account. C confirmed the transfer of USD 422,144,704 the same day.

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

4.38. C met with Mr Feldman and Mr Merinson on 13 October 2010. She did not obtain the written confirmation BJB Compliance had requested from Mr Feldman at this time, although C told the Authority that she provided Mr Feldman with draft letters to be signed by himself and another director of Yukos Hydrocarbons in September or October 2010. The letters were finally signed, by Mr Feldman only, on 24 February 2011 (see paragraph 4.74 below).

4.39. During their meeting, Mr Feldman informed C that Yukos Capital was due to receive approximately USD 400 million from four successful pieces of litigation. C agreed that she would try to secure the following terms:

(1) an increase in the Finder's fee recorded in Mr Merinson's Finder's agreement from 25% to 35% of the net income generated by Julius Baer from clients introduced by Mr Merinson; and

(2) four additional 'one-off' payments to Mr Merinson, calculated as 70% of Julius Baer's commission on four large transactions to take place by October 2011.

4.40. C agreed to try to secure the above terms so long as:

(1) Julius Baer could charge Yukos 12 basis points on un-invested assets (at that time around USD 372 million); and

(2) a proposed payment of USD 50 million from Yukos Capital's account with Julius Baer would be paid into the Yukos Hydrocarbons account with BJB Singapore

rather than to an account with another bank (the funds would thus stay within Julius Baer).

4.41. From her notes of the meeting, it is clear that C's expectation was that in respect of each large inflow of funds to Yukos Capital's account Julius Baer would arrange for an FX transaction 'which would immediately earn the bank up to 15 basis points, while up to 35 basis points would be paid to [Mr Merinson]'. Those funds would then remain with Julius Baer 'for at least 3 years charging even for custody of non-invested assets'. C does not appear to have questioned the commercial rationale for Yukos agreeing to these arrangements.

4.42. On or around 13 October 2010, C met with A and discussed the proposed arrangements.

4.43. On 15 October 2010, C sought approval from A to the proposal by email, copied to B. The approval of A, as the Region Head, for the non-standard remuneration rate was required under the Co-operation with Finders Policy. The proposal put forward by C again involved Julius Baer increasing its usual fees in order to take into account both the payment of a retrocession to Mr Merinson and the commission required by Julius Baer, whilst also ensuring that Julius Baer retained the large sums already deposited with it and would receive further large inflows. A emailed B and BJB Senior Manager A stating that 'Your recommendation should be prior'.

4.44. On 22 October 2010, BJB Senior Manager A, following a discussion with B, sent an email to C (copying in B and the BJB Bahamas Senior Manager) asking her to send a short and simple business case to justify the increase in the Finder's fees for Mr Merinson, including estimating recurrent income to which the proposed 35% Finder's commission rate would apply and 'one shot transaction income' to which the proposed rate of 70% would apply. C responded, by email dated 25 October 2010 (copying in A as well as B and the BJB Bahamas Senior Manager), that she had discussed the proposal in detail with A when he was in London and he had given her 'the impression that he understood the scenario and would respond positively to my request very quickly'. She also set out her expectations of the future inflows of cash to Julius Baer from Yukos Capital and the potential revenues this would generate, which she indicated

would be in jeopardy if Mr Merinson's Finder's agreement rate was not raised to be in line with the rate he had apparently agreed with another financial institution:

(1) For 2011, she estimated gross revenues of USD 4,258,475 and net revenues of USD 1,946,950; the difference of USD 2,311,525 being the amount to be paid to Mr Merinson. Of the gross revenue for 2011, USD 2,345,000 was expected to be generated by one-off large transactions. C's email explained that there would be 'an opportunity to do one-off high revenue-yielding transactions' on each inflow and that it was proposed to pay Mr Merinson 70% of commission on four large transactions. The net income for Julius Baer from these transactions was estimated at USD 703,791.

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

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

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

4.47. On 23 November 2010, Mr Merinson signed an addendum to his Finder's agreement with BJB. This included the increased Finder's fees of 35% of the net income generated by BJB, but, contrary to usual procedure and in particular to the provisions of BJB's Co-operation with Finders Policy, did not record the four 'one-off' payments agreed based on 70% of Julius Baer's net revenues from four large transactions.

Second FX Transaction

4.48. Also on 23 November 2010, C arranged for the JBI Trader to carry out a further set of FX transactions on Fair Oaks' BJB Bahamas account at commission rates which exceeded Julius Baer's standard margin rate – the Second FX Transaction. C emailed Mr Feldman immediately before the transactions took place, to keep him informed of the approach being adopted by the JBI Trader. The funds used for the Second FX Transaction comprised a portion of the funds which had been converted into USD by the First FX Transaction; the sum of approximately USD 68 million was converted to EUR 50,040,473, generating a total commission of USD 1,062,000. The reason for the transaction was set out in a letter from Mr Feldman and another Fair Oaks director to C dated 17 November 2010, which stated that EUR 50 million was needed 'to cover potential expenses incurred by the group'.

4.49. C agreed with Mr Feldman that Mr Merinson could utilise one of the four 70% retrocession payments previously approved by B and A in relation to the Second FX Transaction. C did not inform JBI or BJB senior management of the Second FX Transaction, or of the intention to use one of the four 70% retrocession payments in relation to it, prior to the trading taking place.

4.50. The Second FX Transaction converted USD 68 million at a market rate of 1.33855. The rate charged to Fair Oaks was 1.3589, which included the total commission charged (USD 1,062,000, a rate of approximately 1.56%), 30% of which was retained by Julius Baer. Julius Baer's retained commission was equivalent to it charging Yukos a commission rate of 0.47% of the principal amount, i.e. approximately nine times Julius Baer's standard FX commission rate for transactions of this size. The total commission rate (1.56%) for the Second FX Transaction was approximately 30 times higher than Julius Baer's standard FX commission rate for transactions of this size and consequently significantly higher than a client would normally pay Julius Baer for an FX transaction.

4.51. The commission charged for the Second FX Transaction (1.56%) was much higher than that outlined by C in her email of 15 October 2010 (see paragraph 4.43 above), in which she had stated her intention to charge 0.5% for executing 'large FX deals' with Julius Baer retaining 0.15% of the principal amount in

commission and 0.35% of the principal amount being transferred to Mr Merinson. No commercial reason was given for why Mr Feldman was willing for Fair Oaks to pay significantly more commission (nearly three times more) than he had previously negotiated on behalf of Yukos Capital, namely 0.55%.

Trading approach for the Second FX Transaction

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

(1) C agreed with Mr Feldman in advance of the Second FX Transaction that an intra-day range of two cents in the USD/Euro exchange rate was required before any trading could take place. C's contemporaneous notes of her meeting with Mr Feldman on 23 November 2010 record that the use of one of the four 70% retrocession payments depended on the range being sufficiently large.

(2) C and the JBI Trader monitored the daily range (and updated Mr Feldman as to the same), commencing trading only when the two cents range had been reached.

(3) The worst rate of the day on 23 November 2010 was 1.3625. JBI executed the first and second tranches making up the Second FX Transaction at a rate of 1.33855. The rate charged to Fair Oaks was 1.3589, just over two cents more than the rate of 1.33855 and slightly better than the worst rate of the day.

(4) Anyone with cause to review Fair Oaks' records would simply see the booked rate, 1.3589 inclusive of commission, and would be unaware that the transaction had been executed at a much more favourable rate by BJB.

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

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

B's and A's knowledge of the Second FX Transaction

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

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

for JB of USD320,000. The retrocession to be transferred to Dmitri Merinson is approximately USD742,000 (70%).'

4.56. C therefore highlighted the importance of the two cent range and the option to utilise one of the 70% retrocession payments, without which no trading would have taken place. C also explained that Mr Feldman had indicated that if one of the 70% retrocessions could not be utilised he would simply convert USD to EUR as and when invoices were received, an approach that would have resulted in much lower commission payments by Fair Oaks. Her email also confirmed the substantial commission paid to Mr Merinson and retained by Julius Baer. However, despite her knowledge of these matters, C did not question the probity of Mr Feldman's instructions.

4.57. B responded (copying in A and others) the same day, stating that he did not recall agreeing to four 'one-off' payments of 70% of BJB's net revenue, although he did recall approving one, and said he did not 'support this set up'. C replied (again copying in A and others) attaching a copy of B's email of 28 October 2010, reminding him that he had previously approved the arrangement. The arrangements that B had previously approved were actually based on transactions and retrocession payments relating to new inflows of cash to Julius Baer from Yukos, whereas the Second FX Transaction involved a portion of the same funds which had been converted into USD by the First FX Transaction; however, B did not raise this with C. A emailed B separately and stated, 'your jurisdiction and judgment, let me know later'. B replied to C later that day (copying in A) stating 'I approve' and A then replied, 'No objection'. In approving this retrocession payment to Mr Merinson, neither B nor A questioned the probity of Mr Feldman's instructions to C.

4.58. On 25 November 2010, the BJB Bahamas Senior Manager raised concerns with BJB Senior Manager A about the Second FX Transaction, in an email that was not copied to C (although he spoke to her before emailing BJB Senior Manager A), and asked that they be escalated to A 'and/or' B. In this and subsequent emails, the BJB Bahamas Senior Manager raised the following concerns (amongst others):

(1) He noted that C, Mr Feldman and Mr Merinson had '[..] worked out with the dealing room in [Zurich] (by-passing Nassau) a spread of almost 1.5% on a $68 mio against Euro', questioning 'How can such a spread be negotiated from a [sic.] ethical standpoint?'. He added: 'It also seems that [C] is ready to do just about anything for these intermediaries which may put the bank at risk if/when officers of the company look at what is taking place'.

(2) He questioned A's and B's awareness of the commission generated: 'I understand that [A] and [B] authorized these 4 transactions… However, they do not know how these intermediaries are profiting from these. The spread in this case is EUR 760,766!' As noted above, A and B were in fact fully aware of the commission being charged by Julius Baer and the amount it had agreed to pay to Mr Merinson from the transaction.

(3) He noted that the Second FX Transaction could violate fundamental banking regulations, including Julius Baer's obligations of best execution, market practices and fiduciary obligations, noting also the lack of appropriate authorisation from an officer of Fair Oaks for the Second FX Transaction.

(4) He also confirmed that a google search of Mr Merinson showed that he was a manager at Yukos International. He suggested that C should explain further her relationships with Mr Feldman and Mr Merinson, and 'who are the real "forces" in the driver seat'.

(5) He also questioned the apparent lack of an investment strategy (noting that the Second FX Transaction used a portion of the funds from the First FX Transaction).

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

Second Commission Payment to Mr Merinson

4.60. On 17 December 2010, BJB Senior Manager A emailed B, copying in A and BJB Senior Manager B, stating that A had told him that B needed to 'define an acceptable framework for [C] and the bank to operate in'. BJB Senior Manager A suggested this would include (among other things):

(1) getting 'a signature from someone above [Mr Merinson] to ensure transparency of retro';

(2) transaction orders and instructions 'to be properly documented and signed by client'; and

(3) 'define acceptable spread range (based on transaction side [sic.] and product)'.

4.61. On 22 December 2010, A, on behalf of the Board of BJB, approved a payment of CHF 786,387.44 from BJB Bahamas (where the Second FX Transaction was booked) to BJB Switzerland in order to enable BJB Switzerland to pay Mr Merinson fees including a 'one-off' of 70% of the commission received by BJB on the Second FX Transaction. A and B were aware that the 'framework' A had requested, which was designed to address the concerns of the BJB Bahamas Senior Manager, had not been put in place at this time and would not be until 'early next year', but nonetheless A approved the Second Commission Payment and B took no steps to prevent it.

4.62. The Second Commission Payment totalling CHF 723,977 was paid by BJB Switzerland into Mr Merinson's personal BJB Singapore account on 31 December 2010.

Mr Merinson's request for confidentiality

4.63. On 5 January 2011, it was agreed during a conference call involving C, B, and other senior BJB staff that Mr Merinson should be offered a Finder's agreement with BJB Bahamas. Following the conference call, BJB Senior Manager A sent an email to the BJB Bahamas Senior Manager on 6 January 2011 titled 'URGENT Finder agreement to be prepared ASAP URGENT', asking him to prepare a Finder's agreement based on terms defined in an attached appendix. BJB Senior Manager A

added: 'Please note that additionally to terms defined in this appendix, it was agreed VERBALLY to accept three further 70% retrocession transactions between now and 23/11/11 […] all three of these can now only be used for **new funds** […] for transactions where the price/rate booked to the client is at least better than the worst rate/price of the day'. The requirement that the rate booked to the client had to beat the worst available price on the day, is consistent with the trading approach adopted in respect of the First and Second FX Transactions. The adoption of this trading approach for potentially three further retrocession transactions indicates that senior management within Julius Baer (including B) were aware of and supported the trading approach that had been adopted in respect of the First and Second FX Transactions.

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

4.65. On 19 January 2011, C requested that BJB Compliance approve the change requested by Mr Merinson, stating that, 'since this wording is very general', Mr Merinson was concerned that the information could be disclosed 'incorrectly'. C informed the BJB Bahamas Senior Manager and BJB Compliance that 'this client group is extremely sensitive about banks disclosing information and I think this is a fair request'.

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

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

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

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

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

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

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

4.70. Following BJB Compliance's email of 24 January 2011 raising concerns, B emailed a BJB manager and requested a discussion on 'next steps' arising from the concerns raised. This was followed by an email on 31 January 2011 from the JBI Line Manager to B and the BJB manager, confirming he had 'had a lengthy discussion with' C and had 'checked the correspondence and the file notes' made by C 'for the relevant meetings and discussions, which are all noted or on recorded lines – internally and externally', and could 'find no reason to believe that there is anything underhand or improper going on'. C was subsequently paid a bonus of GBP 381,300.

Mr Feldman's request for confidentiality

4.71. On 1 February 2011, C emailed BJB Compliance (copying in B and the JBI Line Manager) and stated that Mr Feldman had asked that the wording 'I sign on the understanding that you will be providing me with confirmation of Julius Baer's commitment to confidentiality' be added to the letters he was to sign confirming the payments to Mr Merinson and that his Finder's agreement with BJB was known to the relevant Yukos entities. She did so without drawing attention to the fact that she had been told on 16 August 2010, that Mr Merinson intended to share a proportion of the First Commission Payment with Mr Feldman. C did not recognise the risk that this request was an attempt to hide the payments to Mr Merinson from Julius Baer funded by the Yukos accounts.

4.72. On 7 February 2011, BJB Compliance recorded in a memo which was sent to B and a BJB manager, that Mr Feldman was making a 'commitment to confidentiality' a condition of him providing confirmation to BJB that Mr Merinson's agreement was 'known and accepted' by Yukos Capital.

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

4.74. On 24 February 2011, C provided BJB Compliance and B with copies of letters signed by Mr Feldman for Yukos Capital and Fair Oaks on that date (although the letters were dated 3 September 2010), confirming that: (i) he authorised the First Commission Payment to Mr Merinson; and (ii) Mr Merinson could

receive Finder's fees of 35% of net income generated by Julius Baer from future transactions carried out for Yukos Capital and Fair Oaks. The letters included the additional wording regarding a 'commitment to confidentiality' from Julius Baer that Mr Feldman had requested. There was a reference to Yukos Capital's approval for 'four more opportunities' for retrocessions in the letter confirming the First Commission Payment. In the letter referring to Fair Oaks, Mr Feldman confirmed approval of the 35% Finder's fees on his own behalf and on behalf of another director of Fair Oaks. However, that director did not sign the document. This does not appear to have been challenged by anyone at BJB or JBI despite Mr Merinson's contemporaneous request to limit the disclosure of his Finder's agreement to Mr Feldman (see paragraph 4.64 above) and despite the fact that it had been Mr Feldman who had approved the arrangements in the first place. The Fair Oaks letter also made no reference to one-off retrocession payments, despite the fact that the Second Commission Payment had already been funded by commission charged to Fair Oaks.

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

Onward payments from Mr Merinson to Mr Feldman

4.76. On 7 April 2011, C's assistant arranged for two cash transfers to be made from Mr Merinson's personal account for the benefit of Mr Feldman. The Authority infers that C was aware of these transfers at the time, since she was copied into the email from her assistant to BJB Singapore giving instructions for the transfers and the email refers to a discussion which C had had with BJB Singapore in which BJB Singapore had confirmed that 'the overdraft interest will be 'compressed' and [Mr Merinson] will not be charged'. The total amount transferred was USD 1,262,451, exactly 50% of the commission fees paid to Mr Merinson by Julius Baer in the First and Second Commission Payments. These payments should have raised serious concerns for C, particularly given Mr Merinson's and Mr Feldman's requests that the Finder's fees paid to Mr Merinson be kept confidential from anyone else at Yukos. The JBI Line Manager signed the

paperwork authorising the payments. C had in fact been aware of Mr Merinson's intention to transfer a portion of his commission to Mr Feldman since 16 August 2010 and had recorded the intention in a file note of her meeting with Mr Merinson and Mr Feldman on this date (see paragraph 4.31 above). However, C did not inform BJB Compliance or her senior managers of the transfers or alert them to the conflicts of interest arising from Mr Merinson, the recipient of the retrocessions, making payments to Mr Feldman, who had been responsible for approving the retrocessions.

Opening of Yukos Hydrocarbons account in Guernsey

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

Third FX Transaction

4.78. On 15 August 2011, the JBI Trader sent an email to Mr Feldman, copying in C, to confirm that a trade had been placed to sell EUR 7 million and to buy USD for Fair Oaks. Mr Feldman confirmed the trade on the same day. On 16 August 2011, a staff member at BJB Bahamas emailed C and others to confirm the trade and questioned why the bank had made such a high margin on the trade. In reply, C stated, 'The agreement with the client was that for any foreign exchanges, the rate booked to the client would always have to be at least 8 basis points above the low of the day so that the ultimate beneficial owners cannot be disadvanted (sic). This transaction complies with that agreement. In order to achieve a large margin on such FX trades, [the JBI Trader] has to exclusively monitor the rate all day (which means he can do nothing else) and our hope is that this commitment to the trade is then rewarded by the margin achieved'. C's suggestion that the arrangement was so that the ultimate beneficial owners would not be disadvantaged makes no sense in the context of seeking to achieve a large margin. Ensuring the rate was better than the worst on the day did not avoid disadvantage, but did have the effect of making it more difficult for a third party with cause to examine Fair Oaks' records to understand the nature of the arrangement.

4.79. On 17 August 2011, C emailed B and stated 'We have done an FX on the USD 7mil funds which came in to the Guernsey account and I've been asked if we can use one of the one-off 70% deals for the trade. This would leave just one more until 1st November 2011.' This conversion of USD 7 million in the Guernsey account (which was the account of Yukos Hydrocarbons) was a different transaction to the conversion of EUR 7 million for Fair Oaks that had taken place on 15 August 2011.

4.80. On 19 August 2011, C sent a further email to B and copied in the JBI Line Manager, a member of JBI's Board and others, and stated 'Even though both you and A fully pre-approved the four one-off 70% transactions already, I am writing to refresh memories and to ensure that [a member of the JBI Board] is kept fully in the loop (we will be using one of the one-off retrocessions for the conversion of EUR7mil into USD)'. She concluded her email by mentioning again the conversion of USD 7 million into EUR and that she intended to use one of the one-off 70% deals for that transaction. The member of JBI's Board responded to C's email to thank her for keeping him informed. Later that day, B emailed a BJB manager and stated 'what do you think?' The Authority does not have any further correspondence on the subject of applying a one-off retrocession to the conversion of USD 7 million to EUR on the BJB Guernsey account. The absence of a Finder's agreement between Mr Merinson and BJB Guernsey would have made such a payment extremely difficult, and the Authority has inferred that the idea was dropped as a consequence.

4.81. On 29 December 2011, a staff member at BJB Bahamas emailed C in relation to '2011's transactions' and stated 'I wanted confirmation that we are only to pay out one one-off retrocession for the conversion of EUR7mil into USD on 15th August. This is the only one that I have in my records also so I just wanted to ensure that we were on the same page'. C replied to confirm that was correct.

4.82. The calculations undertaken by the staff member at BJB Bahamas show that CHF 64,518.89 was paid to Mr Merinson in respect of the Third FX Transaction.

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

4.83. On 5 December 2011, C emailed B and copied in BJB Compliance, JBI Compliance and JBI senior management, and requested B's approval to open another account for Fair Oaks at BJB Guernsey. In the email, she explained that Mr Merinson and Mr Feldman wanted to transfer funds from BJB Bahamas on account of a leak of information. She added that Mr Merinson 'only has one "one-off" retrocession left this year and he has no intention of entering into a Finder agreement with Guernsey' although she noted that there was 'a possibility that the finder will seek to request one-off retrocessions for new inflows… but no retrocessions will be deducted from fees paid for annual custody fees or daily trading'. BJB Compliance responded that the reasons for the transfer were not 'sufficiently plausible' and that a transfer would involve making a notification in the Bahamas and the prior agreement of regulators in Guernsey. C asked what the maximum amount the client could transfer would be to avoid the notification requirements. BJB Compliance responded on 13 December 2011, stating that it viewed the request as 'highly unusual and still not sufficiently justified' and adding 'Furthermore it is not up to the bank to advise on what is acceptable rationale for the transfer, either the client can give us a plausible reason or not'. A was also aware of this request and did not seem to have any material issues with it, save for noting that the 'generous retrocession provided to the client' was conditional upon funds remaining with Julius Baer for three years. The account opening did not proceed.

Third Commission Payment to Mr Merinson and further account opening

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

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

end of the year. On 8 October 2012, B and the member of JBI's Board gave their approval.

Termination of C's employment

4.86. Over the course of the second half of 2011 and through 2012, concerns were raised about C's conduct, including her failure to follow JBI and BJB policies and procedures. On 28 November 2012, C's employment with JBI was terminated.

The JBI Line Manager notifies JBI Compliance of potentially suspicious activities

4.87. On 30 November 2012, the JBI Line Manager sent an email to JBI Compliance detailing potentially suspicious activities involving C, Mr Merinson and Mr Feldman. The email stated that C 'proposed a non-standard [Finder's] agreement for [Mr Merinson] in order to bring this business to [Julius Baer] (approx. USD400 million)'. The email referred to the FX Transactions and the payment of retrocession fees to Mr Merinson, and also explained that Mr Merinson had made a payment to Mr Feldman from his Julius Baer account.

4.88. The email concluded: 'I suspect that once DM's deal with JB is found out, we could be open to legal action from Yukos and in breach of FSA and FINMA regulations and potentially the UK Bribery Act 2010 […]'.

4.89. On 22 May 2014, JBI reported potential acts of bribery and corruption to UK law enforcement. It referred to payments made by Julius Baer to Mr Merinson in Finder's fees and stated that the payments may have been tainted by a scheme by Mr Merinson and Mr Feldman to defraud entities in the Yukos Group. JBI informed the Authority of this on 7 July 2014.

Related litigation

4.90. Mr Merinson's employment with Yukos ended on 1 January 2016. Yukos International, Yukos Capital and Yukos Hydrocarbons instituted court proceedings against Mr Merinson in England on 3 May 2017 alleging, among other things, that he had breached his employment contract by taking 'kickbacks' amounting to millions of

pounds from financial institutions with which he was charged with negotiating the Yukos Group's financial and banking arrangements and that he knew or must have known that the fee sharing arrangement with Julius Baer was in breach of his obligations under his employment contract. Yukos also instituted court proceedings in the US against Mr Feldman, alleging, among other things, that Mr Feldman breached fiduciary duties owed to companies for which he was a director and misappropriated monies for personal gain.

4.91. Julius Baer brought its concerns regarding the payments to Mr Merinson to the attention of the Yukos Group and on 31 May 2018 it provided restitution for losses incurred by the Yukos Group, plus interest.

C's remuneration

4.92. As a relationship manager at JBI, C's personal remuneration was linked to the income derived from the client relationships that she managed. She received a monthly base salary and a formula-based bonus which was determined both by the net new assets attracted into the accounts she managed and by the return achieved by investing those assets in line with the client's instructions.

4.93. In 2009, C received a bonus of GBP 34,500. In 2010, largely as a result of the inflow of money into the Yukos accounts she managed and the activities on those accounts, her bonus (which was paid in 2011) increased significantly to GBP 381,300. In 2012, she was paid a bonus of GBP 98,400.

5. FAILINGS

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

Lack of fitness and propriety

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

5.3. As a result of the facts and matters described above, C's conduct has fallen short of the minimum regulatory standards and the Authority considers she is

not fit and proper because she lacks the requisite integrity. A person may lack integrity where he or she acts recklessly.

5.4. C was reckless in relation to the overall conduct of Julius Baer's relationship with Mr Merinson and Yukos. She must have been aware of the obvious risks arising from this relationship, but failed to have regard to those risks and failed to take appropriate action in light of them.

(1) On 7 July 2010, C met Mr Feldman and Mr Merinson, and later that day reported to the JBI Line Manager and to B, to whom she had a functional reporting line, that:

a. Mr Feldman had indicated that he would arrange for Yukos Capital to deposit a sum with Julius Baer representing an inflow of funds from a successful litigation award, which he expected would be between £280 million and £430 million.

b. Mr Feldman, the sole director of and sole signatory for Yukos Capital, had also asked whether Julius Baer would be able to make a 'one-off' payment to Mr Merinson, whom she described as the introducer (or Finder) registered on the Yukos Capital account, of around 1% of the total assets on the account.

c. She had responded that Julius Baer would need a guaranteed return on assets of at least 1.2%, that the fee to Mr Merinson could be generated from a large USD/GB CoY on which Julius Baer would apply 1.4% commission and pay 70% of this to Mr Merinson, and that Mr Merinson would not receive for at least one year the standard Finder's fee of 25% of the net income generated by BJB from clients introduced by Mr Merinson (which it appears had previously been agreed in principle with him and which, contrary to the provisions of BJB's Co-operation with Finders Policy, was subsequently the only payment mentioned in Mr Merinson's written Finder's agreement that he entered into the following day).

d. On that basis, she was told that the funds would remain with Julius Baer on the Yukos Hydrocarbons account and that there would be further substantial funds to come.

(2) In negotiating these arrangements with Mr Feldman and Mr Merinson, C recklessly failed to have regard to the following obvious risks of which she must have been aware:

a. The risk that there was no proper commercial rationale for any payment to Mr Merinson or for a Finder's agreement with Mr Merinson, which related to the introduction of Yukos Capital to Julius Baer. C did not question why Yukos would wish to pay such a large sum of money to an employee and why, even if it did want to reward Mr Merinson, it would want to do so through a Finder's relationship with Julius Baer.

b. Given Mr Feldman's involvement in approving these arrangements, as the sole director of and signatory for Yukos Capital and the only person at Yukos (other than Mr Merinson) known to be aware of the arrangements, and the indication that agreeing the payment to Mr Merinson was a condition of funds remaining with Julius Baer (with more to come), the risk that the arrangements involved a breach of both Mr Merinson's and Mr Feldman's duties to the relevant Yukos Group Companies, and the improper payment of what were in effect Yukos' funds to Mr Merinson (and potentially to Mr Feldman).

(3) Between 11 and 13 August 2010, on the instructions of Mr Feldman, C and the JBI Trader facilitated the First FX Transaction, in which approximately GBP 271 million received from Yukos Capital was converted into USD. It was agreed with Mr Feldman that the commission charged by Julius Baer would be used to fund the 'one-off' payment to Mr Merinson and Julius Baer's own commission, as had been discussed and agreed on 7 July 2010. The trading took place at rates 11 times Julius Baer's standard commission rate for FX transactions of this size, and resulted in commission totalling in excess of USD 2.3 million being charged to Yukos Capital; 80% of the commission was paid to Mr Merinson, and the remaining 20% (approximately USD 469,000) was

retained by Julius Baer. This constituted a return to Julius Baer of 0.11%, which was itself more than double its standard commission on an FX transaction of this size. There was no proper commercial rationale for the payment to Mr Merinson. Furthermore, the trading approach used to execute the First FX Transaction had the effect that the amount charged for the combination of Julius Baer's commission and the retrocession payment that was to be made to Mr Merinson would not be obvious; and by ensuring that the rate charged to Yukos Capital was above the worst rate for the day, had the effect that anyone with cause to examine Yukos Capital's records would not be put on notice that the commission was of an unusual size. C recklessly failed to have regard to the obvious risk, of which she must have been aware, that the First FX Transaction was undertaken in breach of Mr Merinson's and Mr Feldman's duties to Yukos Capital, was not in the interests of that company, and was made in order to facilitate the improper diversion of funds from Yukos Capital to Mr Merinson (and potentially to Mr Feldman), in a way which would not be obvious to someone other than Mr Feldman and Mr Merinson.

(4) On 16 August 2010, Mr Merinson informed C that he intended to transfer a proportion of the First Commission Payment to Mr Feldman's Julius Baer account, but although she made a record of Mr Merinson's intention she did not inform her senior managers or Compliance. Thereafter, she facilitated the First Commission Payment. In doing so, C recklessly failed to have regard to the obvious risk, of which she must have been aware, that the arrangements which she had set up at Mr Merinson's and Mr Feldman's request were improper, were in breach of their duties to the relevant Yukos Group Companies, were not in the interests of those companies, and amounted to an improper diversion of funds from Yukos Capital to Mr Merinson and Mr Feldman. She also recklessly failed to have regard to the obvious risk, of which she must have been aware, that, by omitting to inform Compliance and her senior managers about Mr Merinson's stated intention to transfer a proportion of his commission to Mr Feldman, they would be deprived of significant information about the risks posed by the arrangements.

(5) In October 2010, C negotiated and agreed with Mr Feldman and Mr Merinson amendments to the original Finder's arrangements, under which Mr Merinson's Finder's fee was increased from 25% to 35% of net income

generated by Julius Baer, and under which he was permitted to receive four additional 'one-off' payments, calculated as 70% of Julius Baer's commission on four large transactions, relating to new inflows of funds, to take place by October 2011. Only the increase in Mr Merinson's share of net income was documented. In return, among other things, Yukos' funds were to remain with Julius Baer for at least three years. These arrangements were approved by B and A. There was no proper commercial rationale for these arrangements and C recklessly failed to have regard to the obvious risk, of which she must have been aware, that these arrangements were in breach of Mr Merinson's and Mr Feldman's duties to the relevant Yukos Group Companies, were not in the interests of those companies, and were designed to divert funds improperly from the Yukos Group Companies to Mr Merinson and potentially to Mr Feldman.

(6) On 23 November 2010, C, with help from the JBI Trader, facilitated the Second FX Transaction, in which approximately USD 68 million of Yukos funds (which formed a portion of the funds converted into USD by the First FX Transaction) was converted into EUR. The trading approach (which mirrored that adopted in the First FX Transaction and was agreed with Mr Feldman) involved a large daily rate range and Fair Oaks paying just above the worst rate available in the market, so that the spread between that and the rate at which Julius Baer transacted would cover both the commission required by Julius Baer and a further commission payment which would be made to Mr Merinson as Finder. There was no proper commercial rationale for Yukos to adopt such an arrangement. As with the First FX Transaction, the trading approach had the effect that the amount charged for the combination of Julius Baer's commission and the retrocession payment that was to be made to Mr Merinson would not be obvious; and by ensuring that the rate charged to Fair Oaks was above the worst rate for the day, had the effect that anyone with cause to examine Fair Oaks' records would not be put on notice that the commission was of an unusual size. The Second FX Transaction took place at a rate approximately 30 times higher than Julius Baer's standard commission rate for transactions of this size, and resulted in commission in excess of USD 1 million being charged to Fair Oaks; 70% of this sum was paid to Mr Merinson, and the remaining 30% (approximately USD 320,000) was retained by Julius Baer and constituted a

return of 0.47%. This was itself far in excess of Julius Baer's standard commission on an FX transaction of this size. C nonetheless recklessly failed to have regard to the obvious risk, of which she must have been aware, that the transaction was executed in a way which meant that the level of commission would not be obvious to someone other than Mr Feldman and Mr Merinson, and that it formed part of an improper scheme to divert funds to Mr Merinson and potentially to Mr Feldman in breach of their duties to the relevant Yukos Group Companies.

(7) In late November 2010, C requested approval for the payment of the Second Commission Payment to Mr Merinson. In doing so, she recklessly failed to have regard to the obvious risks identified above of which she must have been aware.

(8) On 7 April 2011, C's assistant arranged for half of the commission received by Mr Merinson to be paid to Mr Feldman. C was aware of this payment, as was the JBI Line Manager. The payment itself reflected Mr Merinson's intention, made known by him to C on 16 August 2010, to transfer a proportion of his commission to Mr Feldman, and was a crystallisation of the risk that the arrangements which she had set up at Mr Merinson's and Mr Feldman's request amounted to an improper diversion of funds from Yukos to Mr Feldman as well as to Mr Merinson. C did not inform Compliance or her senior managers of the payment and recklessly failed to have regard to the obvious risk, of which she must have been aware, that they would be unaware of the conflicts of interest arising from Mr Merinson transferring a proportion of the commission he received to Mr Feldman, who had been responsible for approving the commission

(9) C was aware of and helped to facilitate the Third FX Transaction, which was executed in August 2011 by the JBI Trader and in which EUR 7 million was converted into USD for Fair Oaks. The transaction used the same trading approach as for the First and Second FX Transactions and was executed with a high margin, to allow Julius Baer to fund both its commission and a commission payment to Mr Merinson, which on this transaction amounted to CHF 64,518.89 and was paid (together with other commission due to Mr Merinson) on 1 February 2012. There was no proper commercial rationale for the commission

payable to Mr Merinson. C failed to have regard to the obvious risk, of which she must have been aware, that the Third FX Transaction was undertaken in breach of Mr Merinson's and Mr Feldman's duties to the relevant Yukos Group Companies, was not in the interests of those companies, and was undertaken to divert funds improperly to Mr Merinson (and potentially to Mr Feldman).

5.5. C's reckless conduct occurred in the context of a number of further occasions where Mr Merinson and/or Mr Feldman made requests which ought to have caused C, given the matters cumulatively known to her at the time of the requests, to have questioned the arrangements with Mr Merinson and the Yukos Group Companies and to have raised concerns about them with senior managers at Julius Baer or with Compliance:

(1) On 16 August 2010, C sought approval (which was refused by BJB Legal) for Mr Merinson's request that the First Commission Payment be referenced as "Investment Capital Gain". C should have recognised the risk that this could have been an attempt by Mr Merinson to disguise the true nature of the payment and, in light of the other suspicious elements of the arrangements, it ought to have caused her concern.

(2) In January 2011, tasked to negotiate a new Finder's agreement with Mr Merinson that would record his entitlement to receive 70% of commission earned in transactions in respect of new inflows of funds, generated through a trading approach that was not commercially beneficial to Yukos Capital or Fair Oaks, C sought approval for Mr Merinson's request that a term be included that the agreement should not be disclosed to anyone other than Mr Feldman. Mr Merinson's request should have caused C to be suspicious, and she should have recognised the risk that it was an attempt to hide the fees that had been paid to Mr Merinson.

(3) On 1 February 2011, C sought BJB Compliance's approval for Mr Feldman's request that draft letters he had been asked to sign confirming that the payments to Mr Merinson were approved, be amended to include the wording 'I sign on the understanding that you will be providing me with confirmation of Julius Baer's commitment to confidentiality'. She did so

without drawing attention to the fact that she had been told on 16 August 2010, that Mr Merinson intended to share a proportion of the First Commission Payment with Mr Feldman. C should have recognised the risk that Mr Feldman's request was an attempt to hide the payments to Mr Merinson.

5.6. An annual staff training programme was in operation throughout the 2009 to 2012 period when C worked as a relationship manager on the Yukos accounts. The scope of the annual staff training was expanded in 2009 to include sanctions, fraud and market conduct as well as anti-money laundering. Financial crime alerts and regulatory updates were also issued regularly in 2009 and 2010 covering topics including fraud and anti-money laundering. JBI also introduced an anti-fraud policy in 2009. In July 2011, JBI introduced an anti-bribery and corruption policy and all staff were provided with anti-bribery and corruption training. In addition, from July 2011, a Julius Baer Group policy combatting fraudulent and improper activities required staff to report such matters to management and to raise any potential issues they became aware of in the control environment. Despite these measures, all of which sought to highlight the risks of financial crime, C failed to question the appropriateness of the Finder's arrangements.

5.7. There was no proper commercial rationale for the unusual and elaborate steps requested by Mr Feldman and implemented by C and Julius Baer to generate funds for the benefit of Mr Merinson. C had a key role in negotiating the Finder's arrangements with Mr Merinson and Mr Feldman, and in managing the relationship with Mr Merinson and Yukos. As C was aware of the numerous suspicious features to this relationship, she must have been aware of the obvious risks arising from it, including that Mr Feldman and Mr Merinson were acting contrary to the interests of Yukos and using Finder's arrangements and commission payments on FX transactions to obscure the payments to Mr Merinson (and after 16 August 2010, onwards to Mr Feldman) of very large sums of money. Although the Authority recognises that C recorded and made the JBI Line Manager, B, A, Compliance and others at Julius Baer aware of much of her conduct of this relationship, she did not disclose to her senior managers or to Compliance the fact that Mr Merinson intended to, and later did, transfer a proportion of his commission to Mr Feldman, which was an obvious sign that the

arrangements which she had set up at Mr Merinson's and Mr Feldman's request were improper. By failing to have regard to the obvious risks arising from the relationship with Mr Merinson and Yukos, and the payment of commission pursuant to that relationship, and by failing to take appropriate action in light of those risks, C acted recklessly. As a result, C breached Statement of Principle 1 of the Authority's Statements of Principle for Approved Persons, which at the relevant times required approved persons to act with integrity in carrying out their controlled functions.

6. SANCTION

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

6.2. In deciding to impose a prohibition order on C, the Authority has had regard to the guidance in Chapter 9 of EG. The Authority has, in particular, taken account of the fact that C's misconduct occurred several years ago and that, at the relevant times, she was junior to B and A, both of whom approved many of her actions. However, the Authority considers that the seriousness of C's misconduct, which involved her recklessly failing to have regard to the obvious risks arising from Julius Baer's relationship with Mr Merinson and Yukos, and the payment of significant amounts of commission pursuant to that relationship, and failing to take appropriate action in light of those risks, over a period of more than two years, in breach of Statement of Principle 1, is such that C poses a serious risk to confidence in the UK financial system. The Authority considers that it is appropriate to impose a prohibition order on C in order to advance the Authority's operational objectives of securing an appropriate degree of protection for consumers and of protecting and enhancing the integrity of the UK financial system.

7. REPRESENTATIONS

7.1. Annex B contains a brief summary of the key representations made by C and by Mr Merinson and Mr Feldman (as persons with third party rights in respect of the Warning Notice) and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by C, Mr Merinson and Mr Feldman, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

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

8.2. The following statutory rights are important.

Decision maker

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

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

The Tribunal

8.4. C 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, C has 28 days from the date on which this Notice is given to her to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email:

fs@hmcts.gsi.gov.uk). Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website:

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

8.5. A copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Nicholas Hills at the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.

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

Access to evidence

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

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

(1) the material upon which the Authority has relied in deciding to give this Notice; and

(2) the secondary material which, in the opinion of the Authority, might undermine that decision.

Third party rights

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

(1) Dmitri Merinson

(2) Daniel Feldman

(3) Bank Julius Baer & Co. Ltd

(4) Julius Baer International Ltd

Confidentiality and publicity

8.10. This Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). In accordance with section 391 of the Act, a person to whom this Notice is given or copied may not publish the Notice or any details concerning it unless the Authority has published the Notice or those details.

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

Authority contacts

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

Tim Parkes
Chair, Regulatory Decisions Committee

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

RELEVANT STATUTORY PROVISIONS

1.1. The Authority's statutory objectives are set out in Part 1A of the Act, and include the operational objectives of securing an appropriate degree of protection for consumers and of protecting and enhancing the integrity of the UK financial system (set out in sections 1C and 1D of the Act).

1.2. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

RELEVANT REGULATORY PROVISIONS

The Fit and Proper Test for Approved Persons

1.3. The part of the Authority's Handbook entitled "The Fit and Proper Test for Employees and Senior Personnel" ("FIT") sets out the criteria that the Authority will consider when assessing the fitness and propriety of an individual to perform a controlled function.

1.4. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.

1.5. FIT 2.1.1G provides that in determining a person's honesty and integrity the Authority will have regard to all relevant matters.

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

1.6. The Authority's policy in relation to prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG").

1.7. EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he or she may perform.

1.8. EG 9.2.2 sets out the general scope of the Authority's powers in respect of prohibition orders, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.

1.9. EG 9.2.3 provides that the scope of a prohibition order will depend on the range of functions that the individual performs in relation to regulated activities, the reasons why he is not fit and proper, and the severity of risk which he poses to consumers or the market generally.

1.10. EG 9.3.2 provides that, when deciding whether to make a prohibition order against an approved person, the Authority will consider all the relevant circumstances of the case which may include, but are not limited to, the following factors (among others):

(1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of an approved person are contained in FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);

(2) whether, and to what extent the approved person has failed to comply with the Statements of Principle;

(3) the relevance and materiality of any matters indicating unfitness;

(4) the length of time since the occurrence of any matters indicating unfitness;

(5) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates;

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

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

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

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

The Authority's Statements of Principle for Approved Persons

1.13. At the relevant times (between July 2010 and December 2011), the Statements of Principle issued by the Authority under section 64(1) of the Act with respect to the conduct of approved persons were set out in the part of the Handbook entitled "Statements of Principle and Code of Practice for Approved Persons" ("APER").

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

ANNEX B

REPRESENTATIONS

C's Representations

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

Recklessness and lack of integrity

2. *C does not accept that she acted recklessly or with a lack of integrity. Although the Tribunal in* Keydata[1] *stated that, where recklessness is alleged, the standard to be applied is an objective one, that is not the appropriate test. Instead, the correct test for recklessness is that which was applied by the Tribunal in* Tinney[2]*, and provides that the key issues when defining recklessness are: (i) awareness of a risk that exists or will exist; and (ii) that it is unreasonable to take that risk having regard to the circumstances as the person in question believes them to be.*

3. *A consideration of whether C acted recklessly must therefore be fact specific and should be made on an* ex ante *basis, by considering what were the circumstances existing at the time as she knew or believed them to be, rather than with the benefit of hindsight. That is particularly important in this case, as the Authority has viewed it on the basis that a fraud was perpetrated on the Yukos Group by Mr Feldman and Mr Merinson and has applied that hindsight on the basis that C must have known of the risk that this was the case.*

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

5. Given its conclusion that C must have been aware of the risks, which supports a finding of recklessness whichever test applies, the Authority does not consider it necessary to respond to C's submissions regarding the correct test for recklessness.

6. The Authority agrees that a consideration of whether C acted recklessly should not be made with the benefit of hindsight, and the Authority has sought to avoid doing so in reaching its decision.

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

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

The Authority's investigation

Delays

7. *This case has been characterised by significant, unjustifiable and unexplained delays, none of which have been caused or contributed to by C. There was a delay of five years from the end of the events in question to the start of the investigation and a further delay of over three years until the Warning Notice was given to C. These delays have resulted in a situation where the limitation period for taking disciplinary action has expired and C's culpability has been exaggerated in order to justify a prohibition order.*

8. *The stress on C of these proceedings and in particular the length of time the investigation has taken has been considerable. In addition, the lengthy delays have caused unfairness in terms of C's ability to recall relevant events and give instructions.*

9. The Authority acknowledges that delays occurred in the investigation into C and that it would have been preferable for the investigation to have concluded at an earlier date, in particular if that would have alleviated any stress caused to C by these proceedings. Notwithstanding the delays, the Authority does not agree that C's culpability has been exaggerated in order to justify a prohibition order. The decisions to issue the Warning Notice and this Decision Notice were taken by members of the RDC, who are separate to the Authority staff involved in conducting the investigation into C and recommending that a prohibition order be imposed.

10. The Authority also considers that the time taken to conclude the investigation does not diminish the seriousness of the misconduct set out in this Notice, which the Authority considers justifies the imposition of a prohibition order. The Authority has taken into account C's concern that the delays have unfairly affected her ability to recall relevant events and to give instructions, but considers that its conclusions are supported by the contemporaneous evidence.

Quality of evidence

11. *The nature and quality of the evidence in this case gives rise to concern. A number of documents have been redacted and are difficult to follow. C and her legal representatives also identified obvious deficiencies and gaps in the evidence produced, and that there were missing documents which the Authority had not identified or obtained from JBI or BJB. As a result of C's legal representatives pointing this out after the Warning Notice had been given to C, the Authority made further enquiries which led to the discovery of further evidential documents. In the circumstances, C has no confidence that JBI has taken a fair and even- handed approach to its disclosure obligations, and similarly has no confidence that the Authority has satisfied itself about this.*

12. *The evidence of the JBI Line Manager is also of concern. At times his evidence has been presented by the Authority's Enforcement team as unreliable, whilst at other times they have relied heavily on statements made by him. In many significant respects, his account*

of events is provably untrue, characterised by self-interest and contradicted by other evidence. His evidence and motives must therefore be treated with caution.

13. *It appears that the JBI Line Manager may have been deriving income from the Yukos Hydrocarbons relationship in respect of which he was the relationship manager, via a Finder which was an offshore nominee company operated by the father of another relationship manager at JBI who worked closely with the JBI Line Manager. This matter goes directly to the honesty, integrity and credibility of the JBI Line Manager, but the Authority has declined to investigate it and has not provided appropriate disclosure.*

14. The case against C is based primarily on contemporaneous documentation, much of which was written by C herself. C's correspondence and file notes recording meetings with Mr Feldman and Mr Merinson are not redacted. The vast majority of the documents containing redactions were already redacted when obtained by the Authority from BJB's regulator in Switzerland, and the Authority understands that they were redacted pursuant to Swiss Banking Secrecy laws. Some of these documents were subsequently provided unredacted, pursuant to the Authority's enquiries after the Warning Notice was given to C. The Authority considers that the limited redactions that remain, when read in context with the unredacted material, are unlikely to contain information that would be materially relevant to the case against C.

15. The Authority acknowledges that the further enquiries made after the issue of the Warning Notice, which led to the discovery of further evidential documents, should have been made at an earlier date, and that it was questions raised by C's legal representatives which led to these documents being obtained. However, the Authority does not consider that there are any reasonable grounds to believe that JBI has not taken a proper approach to its disclosure obligations.

16. The Authority recognises that the reliability of the JBI Line Manager's evidence is questionable and so has only accepted statements made by him where there is other corroborating evidence. The conclusions it has reached regarding the conduct of C are not reliant on the JBI Line Manager's evidence.

17. The Authority does not consider C's submission regarding the JBI Line Manager's relationship with the Finder for the Yukos Hydrocarbons account to be relevant to the question of whether C acted recklessly in respect of the conduct of Julius Baer's relationship with Mr Merinson and Yukos. As mentioned above, the Authority has not relied on the JBI Line Manager's evidence in reaching its conclusions regarding C's conduct.

Background

C's background

18. *Hard work and integrity are central to C and her family's ethos and way of life. C embodies those qualities in her approach to her studies, her commitment to her family's charitable endeavours and her determination to fund her studies by working in catering and administrative roles, rather than relying solely on her*

family for financial support. There is nothing in her background to suggest she is a person who lacks integrity or who takes unreasonable risks.

19. *Testimonials provided by people who know C in a personal capacity or have worked with her demonstrate that an allegation that she acted with a reckless lack of integrity is wholly inconsistent with her character.*

20. *C's background and upbringing did, however, leave her ill equipped to recognise and cope with the toxic work environment and culture that she encountered at JBI. At the time of the relevant events, she did not have the professional or life experience to recognise the warning signs in the relationship with Mr Merinson and Mr Feldman which, with the benefit of hindsight, were there. In this, she accepts that she was naïve. This led her to rely heavily on the experience of, and approvals from, B, A and others within JBI and BJB who were involved in the relevant matters.*

21. *In hindsight, C recognises that she derived too much comfort from the approvals of her senior managers within Julius Baer and from the assurances she was given by Mr Feldman and Mr Merinson, as well as from the image of integrity that they both consistently portrayed to her. She also recognises that she was out of her depth in respect of Yukos as a client and the various transactions under consideration; she did not have the professional or life experience to deal with a case which involved such large sums of money and such complexities. This should have been recognised by JBI/BJB and in particular the JBI Line Manager, B and A, and steps should have been taken to provide her with support and oversight. Instead, they were concerned only with fee generation and did not themselves recognise or take steps to deal with any potential conflict of interest issues or possible fraud. In addition, JBI was institutionally unaware of the relevant legal and regulatory issues that arose and so was unable to provide a stable control environment to support its employees. For someone in C's position at the relevant time, given all these factors, to characterise her conduct as a reckless lack of integrity is unfair and wrong.*

22. The Authority notes C's submissions that her background does not suggest she is a person who lacks integrity, and has had regard to the testimonials provided in support of C, but considers that the evidence relating to her conduct at the material times supports its conclusion that she acted recklessly and without integrity.

23. The Authority also considers that, even if the work environment at JBI was very different to the environment in which C was brought up, that does not explain or excuse her failure to have regard to the obvious risks arising from the relationship with Mr Merinson and Yukos, of which she must have been aware, and to take appropriate action in light of them, as outlined in section 5 of this Notice.

24. Although the Authority recognises that C sought approvals from senior managers within Julius Baer, in particular B and/or A, in relation to the Finder's arrangements with Mr Merinson, the FX Transactions and the Commission Payments, and made them and others at Julius Baer aware of much of her conduct of the bank's relationship with Mr Merinson and Yukos, she did not disclose to her senior managers or to Compliance the fact that Mr Merinson intended to, and later did, transfer a proportion of his commission to Mr Feldman, which was an obvious sign that the

arrangements were or might be improper. Further, any failures on the part of her senior managers in giving approvals, and on the part of JBI in not ensuring that there was an adequate governance and control environment in relation to the management and oversight of Finder's arrangements at the relevant times, do not absolve C of responsibility for her own reckless failings.

C's early employment

25. *C performed extremely well in her previous roles before joining JBI, but her experience in banking and as a relationship manager was relatively limited. Before joining JBI, she worked at another Swiss bank in London, initially in an administrative role as an assistant to two relationship managers, before being promoted to a junior relationship manager position in 2007. Her clients were small in terms of numbers and monetary value. She only had limited involvement with Finders' arrangements and no previous experience with managing or undertaking FX transactions before the Yukos FX transactions.*

26. The Authority notes that C held more junior roles before joining JBI and that her previous experience as a relationship manager was not extensive. However, it also notes that C was an approved person from April 2005 and that, by the time that C was negotiating the arrangements with Mr Feldman and Mr Merinson, she had been an approved person for over five years. She also received training at JBI, and JBI had relevant policies in place, that highlighted the risks of financial crime. The Authority considers that the risks that C failed to have regard to were obvious and that she must have been aware of them, and that it was not necessary to have any experience of Finders' relationships or of FX transactions to realise that the arrangements that she negotiated or facilitated were suspicious, had no proper commercial rationale and were likely to be improper. In the circumstances, C's failure to question the appropriateness of the Finder's arrangements was reckless.

C's employment at JBI

27. *C was a junior relationship manager at JBI. When she joined JBI in November 2008 she made clear her limited previous experience. From the outset, she was not offered any training, appropriate management support or professional development. Instead, she was put under pressure by the JBI Line Manager to start marketing to clients on the basis that JBI would not tolerate her generating insufficient revenues. She nevertheless attempted to comply with the instructions of her seniors and to do her job well. She always made contact reports or records of meetings with clients, save where a conversation took place on a recorded line and no dealing instructions or similar were given.*

28. *C did not receive any adequate training in respect of the matters that arose in this case. To be effective, it was important that training addressed the main risks in the business, including risks associated with Finders. However, the training did not deal with these risks, and indeed could not effectively do so as it is clear that JBI/BJB was institutionally unaware of many of these risks.*

29. *At JBI/BJB there was almost a complete lack of knowledge of any of the legal and regulatory issues relating to Finders, conflicts of interest, inducements or breach of*

fiduciary duty, and Finders' relationships with employees, officers and fiduciaries were common. The Co-operation with Finders Policy was deficient and there was a lack of adequate policies and procedures on the relevant issues, no relevant or adequate training, and no clear management guidance. In addition, the culture was toxic, fostered by the JBI Line Manager. It was an environment in which mistakes would inevitably be made by anyone.

30. *C took steps to ensure that both her line management and functional reporting lines were kept informed about matters relating to the Yukos accounts. Although C was keen to ensure that all relevant personnel were kept informed, JBI's matrix management structure created confusion and uncertainty as to who had ultimate responsibility for decision-making and who C was meant to be reporting to at any given time.*

31. *The JBI Line Manager had a central role in events and was aware of all the salient issues. He was a difficult line manager to work for and was disinclined to manage his team properly. He did not provide any mentoring or guidance for C, an inexperienced relationship manager, but instead waged a long-running campaign to take over C's Yukos relationships or obtain a share of her bonus from the FX Transactions.*

32. *It is apparent from JBI's conduct throughout this matter that its intention has been to minimise its responsibility by seeking to place the blame on C. In addition, B and A have attempted to minimise their own culpability and involvement by laying the blame for the relevant events on C.*

33. As mentioned in paragraph 5.6 of this Notice, an annual staff training programme was in operation when C was a relationship manager on the Yukos accounts, and this programme included training on sanctions, fraud, market conduct and anti-money laundering. Comprehensive details of attendees at many of the training events are not available, but there is clear evidence that C attended training on client due diligence and anti-money laundering around December 2010. Relevant training materials also made it clear that, where there is no clear proper commercial rationale for a transaction, it should be escalated. In any event, even if the training she received did not cover risks associated with Finders and other risks which arose in relation to the relationship with Mr Merinson, the Authority considers that the risks were obvious to a person in C's position and that she must have been aware of them.

34. The Authority agrees that, at the relevant times, there were deficiencies in JBI's governance and its control environment in relation to the management and oversight of Finder's arrangements, and that JBI failed to ensure that it had adequate policies and procedures in place to identify and manage the risks arising in relation to Finder's relationships connected to its clients. However, it is not the case that there were no relevant controls or policies in place. For example, the Co-operation with Finders Policy set out the procedure that was required to be followed in respect of agreeing and recording the payment of non-standard remuneration to Finders. Further, the Authority considers that these failures do not relieve C of her responsibility for her own failings. A relationship manager in C's position should not have allowed the relationship to proceed in the way that it did. However, at no point did C

question the situation or raise any concerns to anyone at JBI or BJB, despite being aware of all the suspicious elements of the relationship with Mr Merinson and Yukos.

35. The Authority has taken into account the fact that C took steps to ensure that her line management and her functional reporting lines were made aware of much of her conduct of the relationship with Mr Merinson and Yukos. Although the Authority accepts that JBI's matrix management structure had the potential to cause some confusion, it is clear that B and A were more important than the JBI Line Manager in the management structure, and that C appreciated that fact. Whilst the JBI Line Manager was aware of the broad terms of the arrangements, he was not included in much of the correspondence between C, B and A. However, despite reporting primarily to B and A with respect to Yukos and Mr Merinson as Finder, C did not disclose to them that Mr Merinson intended to, and later did, transfer a proportion of his commission to Mr Feldman, which was an obvious sign that the arrangements were or might be improper and which omission undermines her contention that she acted with integrity. The Authority does not consider that JBI's matrix management structure, or the fact that B and A themselves acted recklessly in giving approval to the Finder's arrangements, FX transactions and payments of commission, excuses C's reckless conduct in relation to Julius Baer's relationship with Mr Merinson and Yukos.

36. The Authority accepts that the JBI Line Manager was less than diligent in his management of C and provided little oversight of the way in which she conducted the relationship with Mr Merinson and Yukos. However, the contemporaneous records do not suggest that she felt out of her depth. Rather, they give the impression that C was a confident relationship manager, and that the JBI Line Manager was supportive of her in respect of the relationship, at least until early 2011.

37. The Authority has taken into account all relevant evidence in reaching its conclusions regarding who should be held responsible for the misconduct which occurred in respect of Julius Baer's relationship with Mr Merinson and Yukos. Irrespective of any submissions made by JBI, B and A, the Authority considers that the contemporaneous records clearly support its conclusion that C acted recklessly and with a lack of integrity in respect of her conduct of this relationship.

<u>The Yukos Group</u>

38. *C's understanding of the Yukos Group was informed by its portrayal in the press as having a reputation for fighting the corruption of the Russian State. Her overall impression was that Yukos officers were making significant personal sacrifices to expose corruption and embezzlement and get justice for the shareholders.*

39. *In C's early conversations with Mr Merinson, he explained the broad background of the Yukos Group structure, and the ultimate beneficiaries of the assets held therein, which was consistent with the impression she had gained from press sources. C trusted both Mr Merinson and Mr Feldman and believed the explanations that they gave to her. With the benefit of hindsight, she now realises that she was taken in by both of them and used by them in order to effect what now appears to have been a fraud. She accepts she was naïve and that she made mistakes in accepting their explanations*

without sufficiently questioning the underlying rationale for the arrangements put in place. However, she denies she was reckless; at no stage did she consider there was a risk that the arrangements were not legitimate.

40. The Authority notes C's submissions regarding her initial understanding of the Yukos Group, but also that the contemporaneous documents do not contain any evidence in support of these submissions.

41. The Authority considers that C did not need the benefit of hindsight to appreciate that there were numerous suspicious features to the relationship with Mr Merinson and Yukos. The Authority considers that the risks arising from the relationship were so obvious that C must have been aware of them and that it was reckless of C not to have regard to the risks or to take appropriate action in light of them.

C's early meetings with Mr Merinson and Mr Feldman

42. *After C's move to JBI, she first spoke to Mr Merinson by telephone in May 2009, and first met him face-to-face in June 2009. They discussed the opening of a personal account for Mr Merinson and for him to be set up as a Finder with a view at that stage to introducing some of the original shareholders of one of the Yukos Group companies before assets held within the Yukos Group structure were distributed to them. The possibility of opening an account for Yukos International was also discussed, but they did not discuss the possibility of Mr Merinson becoming a Finder for any Yukos company. She accepts that she was aware at that stage of Mr Merinson's employment by a Yukos Group company.*

43. *During an early meeting, Mr Merinson told C that Yukos Hydrocarbons already had an account at JBI with the JBI Line Manager as the relationship manager, and that Mr Feldman, a Yukos Hydrocarbons director, had previously met the JBI Line Manager. Mr Merinson said that he could provide whatever additional information and documentation was required by Julius Baer. This gave C comfort that the sole director of Yukos Capital had already been through JBI Compliance and that Mr Merinson was trusted by the other Yukos officers.*

44. *At no stage did C hide information from her colleagues regarding the identity and roles of Mr Merinson and Mr Feldman and the source of funds that it was proposed would be received on the Yukos Capital account, which was plainly legitimate.*

45. C's contemporaneous note of her meeting with Mr Merinson in June 2009 states: "*We will also set him up on a Finder's agreement*." There is no mention in that note or in any of the other contemporaneous records that this was with a view to introducing some of the original Yukos shareholders. However, the Authority acknowledges that there are also no records which explicitly state that the intention at that stage was to set up Mr Merinson as a Finder for a Yukos company.

46. The Authority accepts that C would have been aware that Yukos Hydrocarbons already had an account at JBI, with the JBI Line Manager as the relationship manager, but does not consider that that excuses C's failure to have regard

to the obvious risks arising from the Finder's arrangements for Mr Merinson, which she negotiated with Mr Merinson and Mr Feldman in July 2010.

47. The Authority acknowledges that C informed certain colleagues of the identity and roles of Mr Merinson and Mr Feldman, and that the source of the funds was not in question. However, the Authority notes that she did not share all relevant information; in particular, she failed to disclose to her senior managers or to Compliance that Mr Merinson intended to, and later did, transfer a proportion of his commission to Mr Feldman.

Relevant Events

July 2010 – Julius Baer's entry into Finder's arrangements with Mr Merinson

48. *The Finder's arrangements that C negotiated with Mr Feldman and Mr Merinson were based on an explanation provided by Mr Feldman and Mr Merinson which appeared to be plausible. They explained that Yukos officers were incentivised in respect of their role in the success of the Yukos litigation and the personal risk inherent in being associated with Yukos, that Yukos officers and shareholders were keen to incentivise people such as Mr Merinson to help recoup assets for the shareholders, that Mr Merinson was not able to participate in a bonus pool and that it was therefore decided that the preferred way to remunerate him was through him becoming an introducer of Yukos business to a bank, and that he should liaise with the chosen bank to determine if they would accommodate such an arrangement. C was under the impression that, if JBI had refused the request, Yukos would have found another way to remunerate Mr Merinson.*

49. *C questioned the Finder's arrangements and the explanations she was given appeared to tally with information previously provided by Mr Feldman and Mr Merinson, her own research into Yukos and the fact that no concerns were expressed by Compliance or the senior managers to whom she appropriately referred the proposals.*

50. *Mr Feldman was the sole director of Yukos Capital, a director of other Yukos Group Companies, had worked for Yukos for many years and was clearly trusted by the other Yukos officers. He is a practising US attorney, which added to the picture of him being a man of integrity. Mr Feldman said that he would be remunerated for his part in the successful litigation, so his and Mr Merinson's interests seemed to be aligned with the interests of the beneficiaries of the assets to be held at JBI.*

51. *As the sole director of Yukos Capital, Mr Feldman was in a position to approve and consent to the arrangements. The fact that he was a full party to all relevant discussions and the approval of the arrangements gave C comfort that he and Yukos considered the Finder's arrangements to be in Yukos' interests. Therefore, his involvement in negotiating the arrangements appeared to C at the time to be a positive factor, as it demonstrated that the ultimate client was aware of and approved the arrangements.*

52. *C appropriately escalated the issue of Mr Merinson becoming a Finder to Compliance, the JBI Line Manager and B. None of these raised any concerns regarding the commercial rationale of the arrangements, whether they were in Yukos' best*

interests, whether there was a conflict of interest or any other matters. As a junior relationship manager and largely inexperienced in terms of a relationship of this size and in terms of Finder's arrangements generally, C relied heavily on their considerable experience and their advice.

53. *It was B who first raised the issue of Mr Merinson being remunerated on the basis of one-off retrocessions on specific transactions, rather than paying Mr Merinson a high ongoing percentage, and it was he who suggested that Mr Merinson receive 70% of JBI's commission and that it was not unusual for the bank to pay 1-1.5% on net new money. It was also B who informed her that the pricing of any business would have to reflect a minimum return for JBI as well as accommodating the retrocession to Mr Merinson, and that JBI would need to generate 40-50 basis points by the end of the year and 20 basis points per annum thereafter if the funds stayed more than six months, in order to justify the high risks of dealing with Yukos. The primary concerns of B and the JBI Line Manager were the potential return on assets and the promise of significant inflows in the future. Such arrangements as regards Finders was totally outside C's previous experience and she was not in a position to suggest such arrangements herself. Mr Merinson's request for a Finder's fee of 1% of the total assets on the account therefore appeared to be consistent with what B had told her and appeared to be an attempt by Mr Merinson to achieve Yukos Capital's objective, using what B had proposed.*

54. *The JBI colleague from another department who joined C at the second of the meetings on 7 July 2010 would have been aware of what was being proposed. He had considerable experience and so should have been perfectly placed to assess Mr Merinson and Mr Feldman and identify any concerns with what was being proposed. The note of that meeting, which was wrongly dated 7 August 2010, was written retrospectively and probably no earlier than 16 August 2010, after the First FX Transaction had taken place and over a month after the meeting took place. It is likely that, in writing the note of the later meeting, C conflated information that she was aware of at the time of writing, which would account for certain of the differences in the information recorded in the two notes. The increase in Mr Merinson's commission from 70% to 80% must have been agreed when C was on wedding leave, which is also consistent with the note of the second meeting of 7 July 2010 reflecting in part what was agreed following that meeting.*

55. *Detailed discussions took place between C and B following her email of 7 July 2010. B was aware of all the details, including that Mr Merinson was a Yukos employee.*

56. *As the JBI Line Manager was handling the relationship whilst C was on wedding leave, was C's line manager and had access to the notes that C had stored on JBI's system, he would also have been aware of all the details. The signing of the Finder's agreement and the fact that no written agreement appears to have been obtained regarding the one-off retrocession occurred whilst C was on wedding leave and was dealt with by the JBI Line Manager, so C should not be blamed for his failures in this regard.*

57. *As far as C was concerned, the banking relationship between Yukos Capital and BJB was not dependent upon the retrocession to Mr Merinson. Discussions regarding the funds generated from the Yukos litigation being kept in accounts opened with BJB had commenced and had been ongoing for many months before the issue of Mr Merinson becoming a Finder or receiving a retrocession had ever been raised.*

58. *With the benefit of hindsight, these matters may be seen as indications of fraud, but it is not appropriate to judge C's conduct and whether she was reckless on the basis of hindsight. C did not at the time appreciate a risk that all was not as it seemed, and nor did any of Compliance or senior management to whom she appropriately referred and escalated the proposed arrangements.*

59. The Authority has not seen any supporting evidence for C's submission regarding her understanding of why Mr Merinson could not be remunerated directly by Yukos. C did not record at the time that Mr Feldman and Mr Merinson gave her such an explanation or pass the details on to senior management, and in interview she was unable to answer questions regarding why Yukos sought to pay Mr Merinson through the Finder's arrangements. Mr Merinson was, and was understood by C to be, an officer of Yukos, so even if this was the explanation provided by Mr Feldman and Mr Merinson, the Authority considers that it should not have appeared plausible to C.

60. The Authority has not seen any contemporaneous evidence that C questioned the Finder's arrangements. There was an obvious risk that there was no proper commercial rationale for the arrangements, yet there is no contemporaneous evidence that C questioned why Yukos would wish to pay such a large sum of money to an employee or why it would wish to do so through a Finder's agreement. Instead, her email of 7 July 2010 to B, copying in the JBI Line Manager, simply outlined the arrangements that she had discussed with Mr Feldman and Mr Merinson and asked for his approval.

61. The Authority considers that the suspicious nature of the Finder's arrangements, and Mr Feldman's involvement in approving them, as the sole director of and signatory for Yukos Capital, meant that there was an obvious risk that Mr Feldman, despite being a practising US attorney, was or might have been acting in breach of his duties to the company and that he might also personally stand to benefit from them (which subsequently happened).

62. The Authority does not agree that C appropriately escalated the issue of Mr Merinson becoming a Finder to Compliance. The Authority has not seen any evidence that, at the time BJB entered into the Finder's agreement with Mr Merinson, Compliance staff at JBI or BJB were aware that a large 'one-off' payment had been agreed with Mr Merinson. The fact that the arrangements were known by the JBI Line Manager, and approved by B, does not excuse C's own reckless behaviour in negotiating them.

63. Although there is no evidence in support of C's contention that it was B who had the idea of the amount and way to pay Mr Merinson, the Authority acknowledges that it is unlikely that C suggested such arrangements. C's note and email of 7 July 2010 regarding her meeting with Mr Feldman and

Mr Merinson suggest that the idea was Mr Feldman's. The Authority accepts that B was interested in the arrangements and was concerned to ensure the returns that BJB could earn from the relationship merited the risk.

64. The Authority has not seen any evidence that the JBI colleague who joined C at the second meeting of 7 July 2010 understood at the time that a large part of Julius Baer's profit on the FX transaction would be paid to Mr Merinson. C's contact report for the meeting suggests that he only joined it after the payments of commission to Julius Baer and Mr Merinson had been discussed. The Authority considers it is plausible that the apparent drafting of C's contact report after the First FX Transaction had taken place could account for differences between the information recorded in this report and C's notes of the meeting earlier that day. However, it does not necessarily follow that the increase in Mr Merinson's commission from 70% to 80% must have been agreed when C was on wedding leave, and there is no contemporaneous evidence that either the JBI Line Manager or B negotiated the proposed arrangements when she was away from the office.

65. The Authority has not seen any contemporaneous evidence of discussions between C and B after 7 July 2010 and before the First FX Transaction, although it considers it possible that they took place. The Authority notes, however, that on 16 August 2010 B forwarded C's email of that date to the JBI Line Manager, saying "*Between our discussion and the situation we have now I am missing an update*." This suggests that B was not aware of all of the details of the arrangements that C agreed with Mr Feldman and Mr Merinson, although the Authority considers that, at least as a result of C's email of 7 July 2010 to him, he would have been aware of the key aspects of the arrangements and agrees that he would have been aware that Mr Merinson was an employee.

66. Although the JBI Line Manager signed the 'Finder's Assessment Form' for Mr Merinson on behalf of C on 8 July 2010, and should have known as a result of being copied into C's email of 7 July 2010 to B that the form did not reflect the reality of the arrangements that were contemplated, the Authority does not agree that C bears no responsibility for the fact that the written Finder's agreement did not refer to the large 'one-off' payment that had been agreed. The Authority considers it most likely that C's assistant was implementing C's instructions, in particular as other internal Julius Baer correspondence regarding the agreement at that time involving C's assistant copied in C to relevant communications and did not refer to the JBI Line Manager. In any event, C was provided with a copy of the signed Finder's agreement, but at no point did she suggest that it should be amended to document the 'one-off' payment or question why this did not cover all elements of what had been agreed.

67. The Authority considers it unlikely that C would have believed that the banking relationship between Yukos Capital and BJB was not dependent upon the payment of the retrocession to Mr Merinson. Her own note and email regarding the 7 July 2010 meeting made it clear that she understood that these arrangements were being proposed in return for the funds coming to BJB.

68. The Authority agrees that these matters should not be viewed with the benefit of hindsight. The Authority has reached its conclusion that C acted recklessly in negotiating these arrangements having regard to the information known to C at the time, which is apparent from the matters that she recorded in her notes and correspondence. The arrangements gave rise to obvious risks which C must have been aware of and failed to have regard to. The support of her senior managers for the arrangements does not mean that these risks were not obvious and does not excuse her conduct.

August 2010 – the First FX Transaction and First Commission Payment

69. *There is no clear evidence that there was a "standard" commission rate, or what such a rate was, of if there was, whether relevant personnel at JBI/BJB, in particular C, were aware of it. In any event, C had no experience of conducting FX trades and was not aware of any "standard" commission.*

70. *The charging of higher one-off transaction fees on the FX Transactions should be seen in the context of significant discounts on ongoing custody, advisory and transaction fees. C believed that commission rates were in practice set commercially in the context of the whole relationship with a client and this is what happened in this case.*

71. *The First FX Transaction took place in tranches over a period of time to get the best market rate possible so that the commission did not make the client's price worse, and so C regarded the fact that the JBI Trader acted '*to get the best possible rate and thereby maximise the commission*' as being in both JBI's and the client's best interests. The fact that this trading approach also had the effect that anyone reviewing Yukos Capital's books would not have been able to detect the commission rate is the application of hindsight. This was not considered by anyone at JBI at the time.*

72. *Mr Feldman was involved in every stage of the discussions, was present during the trades and provided written confirmation that the rates achieved were in accordance with his instructions. As Mr Feldman was the sole director of Yukos Capital with ultimate authority to agree and sign off on the arrangements, this provided reassurance that the client considered the proposals to be in Yukos Capital's interests. The fact that his agreement to the commission charged was to facilitate the improper diversion of funds from Yukos Capital to Mr Merinson, and potentially to Mr Feldman, was not apparent to anyone at the relevant time.*

73. *C appropriately escalated the discussions and proposals to Compliance and senior management who gave their support. It must have been apparent to at least B and the JBI Line Manager that the commission was substantially in excess of the normal rate and had been agreed in order to pay the large one-off Finder's fee to Mr Merinson, but at no stage were any concerns raised regarding the arrangements or the commission rates being charged. The issue of whether the transaction was being conducted in breach of Mr Merinson's and Mr Feldman's duties to Yukos Capital was also not raised by anyone from whom she sought approval and guidance during the discussions and then execution of the First FX Transaction. As a junior relationship manager with limited experience of Finder's agreements and transactions of this type, C relied heavily on her superiors for advice and guidance.*

74. *BJB Compliance was aware prior to the First Commission Payment being paid that Mr Merinson was employed by Yukos. BJB Compliance asked C to obtain written confirmation from Mr Feldman regarding the one-off payment to Mr Merinson and the ongoing 25% retrocession. C readily agreed to this but was not able to obtain it straightaway due to Mr Feldman being about to board a flight to the US. BJB Compliance therefore told her she could give the letters to Mr Feldman to sign when she next saw him. She provided him with the letters in September 2010, but forgot to ask him for the signed versions when she met him in October and November 2010. BJB Compliance subsequently confirmed in December 2010 that it was acceptable for C to obtain the signed letters, when she next met with Mr Feldman in February 2011.*

75. *This is not a case of C having appreciated a risk that all was not as it seemed but nevertheless recklessly having gone on to take the risk. There is no evidence that C at the time appreciated any risk and was therefore reckless.*

76. The Authority considers that the evidence supports its conclusion that, at the time, Julius Baer usually applied an FX commission rate of 0.15% for amounts over CHF 1 million and 0.05% for conversions over CHF 5 million. In any event, it is clear that the commission for the transaction was far in excess of the usual rate achieved. Regardless of whether C was aware of the standard commission rates, as a result of the matters that she was aware of at the time, she must have been aware of the obvious risk that the First FX Transaction was, or at least might be, improper.

77. C's understanding that the high level of commission did not reflect the costs of executing this specific transaction, but rather what Julius Baer required to cover the overall costs of servicing a private banking relationship with Yukos (which included the payment of a Finder's fee to Mr Merinson approved solely by Mr Feldman, so as to secure the business), does not mean that it was reasonable for her to consider that there was a proper commercial rationale for making a payment to Mr Merinson in this way. If Yukos had wished to pay Mr Merinson it could have done so directly, rather than through such an arrangement using a third party.

78. The Authority considers that the trading approach used was not intended to ensure best execution for the client, but rather to ensure that the overall rate achieved, after the addition of a commission rate which was to fund BJB's commission and Mr Merinson's retrocession payment, would be no worse than the worst rate available on the market on the day. This had the consequence that any third party with cause to review Yukos Capital's records would simply see the booked rate, and would be unaware that the transaction had been executed at a much more favourable rate by BJB and that the commission was of an unusual size. The Authority considers that C must have been aware that there was therefore an obvious risk that the FX Transaction was undertaken in order to facilitate the improper diversion of funds from Yukos Capital to Mr Merinson (and potentially to Mr Feldman), in a way which would not be obvious to someone other than Mr Feldman and Mr Merinson; however, C did not have regard to this risk or challenge the trading approach.

79. The Authority considers that it was not appropriate for C to be reassured by Mr Feldman's involvement in the First FX Transaction, in circumstances where there was no proper commercial rationale for the transaction and, as far as she was aware, nobody else at Yukos was aware of the relevant details, and considers that C acted recklessly in not having regard to the obvious risks arising from the transaction.

80. Whilst the Authority recognises that neither B nor the JBI Line Manager raised concerns regarding the First FX Transaction and the First Commission Payment, the Authority considers that, notwithstanding that C was a more junior employee, she was sufficiently experienced that she must have been aware of the obvious risks relating to the transaction.

81. The Authority acknowledges that, following the First FX Transaction and prior to the payment of the First Commission Payment, C provided details of the transaction to BJB Compliance and also informed BJB Compliance that Mr Merinson was both the Finder registered on the Yukos accounts and a Yukos employee. However, C did not inform BJB Compliance or her senior managers that Mr Merinson intended to share the commission paid to him by Julius Baer with Mr Feldman. Accordingly, she must have realised that BJB Compliance's request that Mr Feldman provide written confirmation that he was aware of the Finder's agreement and the retrocession payment would not resolve the conflict of interest concerns.

82. The Authority considers that C must have appreciated the risks relating to the First FX Transaction and that she acted recklessly in not having regard to them.

<u>16 August 2010 – C's awareness of Mr Merinson's intention to share his commission with Mr Feldman</u>

83. *C questions the authenticity of the file note of the 16 August 2010 meeting, including whether it has been edited at any point after 17 August 2010. There are two versions of this file note and they contain material differences. JBI's legal representatives' explanation of these differences, in particular that it is likely due to one version being printed before an upgrade to JBI's systems, and the other version afterwards, makes little sense; it is believable that a migration may change some formatting issues, but it would not change fundamental content.*

84. *C does not recall being informed that Mr Merinson was intending to pay part of his commission to Mr Feldman. She did not at the time question Mr Merinson's motives or whether he was acting in Yukos' best interests. With the benefit of hindsight, if she was told this, it should have caused her to question this and whether it gave rise to any conflict of interest issues, but she did not appreciate the potential significance at the time.*

85. *C accepts that if she was given this information, the better course would have been to escalate it to Compliance and senior management. However, her understanding was that Compliance and her senior managers, in particular the JBI Line Manager, had access to her contact reports and were monitoring them on a regular basis. This is supported by the JBI Line Manager's claim that he reviewed her records thoroughly. Further, JBI's annual client review process involved printing out every meeting report from the previous 12 months in relation to the relevant client. C therefore*

expected that any concerns or issues would be picked up and flagged with her as part of this regular review process. However, neither the JBI Line Manager nor anyone else ever raised this issue with her.

86. *If C was given this information, she did not make a deliberate decision to withhold it from Compliance and senior management. If that was the case, it would make no sense for her to openly enter this information in a note which was saved on JBI's system, in circumstances in which it appears that she was the only JBI employee informed of Mr Merinson's intention. In addition, if the commission-sharing arrangement was part of a pre-arranged plan by Mr Merinson and Mr Feldman to share in illicit gains, it makes no sense for them to have told anyone at JBI about this. Mr Merinson allegedly telling C about the commission-sharing which she then recorded in a file note is therefore totally inconsistent with this being a "red flag".*

87. The Authority does not consider there are any reasonable grounds for questioning the authenticity of the 16 August 2010 meeting note or for believing that it is anything other than an accurate record of the note that C took. Whilst there are minor formatting differences between the two versions of the note, there are no material differences in the substantive content. The Authority considers there is no reason to doubt JBI's legal representatives' explanation that the minor formatting differences are as a result of a system upgrade and considers this is supported by the fact that similar formatting differences can be seen between the old and new versions of C's note of her second meeting with Mr Merinson and Mr Feldman on 7 July 2010.

88. The fact that Mr Merinson intended to share his commission with Mr Feldman was very significant information and a clear 'red flag' which must have caused C to be aware of the risk that the Finder's arrangements were set up for the benefit of Mr Feldman and Mr Merinson, not C's client.

89. The Authority acknowledges that C recorded Mr Merinson's intention to share the commission with Mr Feldman in her file note and that it could be questioned why she would do so, if she deliberately decided that the information should not be shared with colleagues. However, the fact that C did not inform Compliance or her senior managers of the commission sharing proposal, in circumstances where she informed them of other matters that had been raised by Mr Feldman in the same meeting, leads the Authority to conclude that she recklessly failed to have regard to the obvious risk that Compliance and her senior managers would thereby by deprived of significant information about the risks posed by the arrangements.

90. Although there is no contemporaneous evidence that the JBI Line Manager was aware in August 2010 of Mr Merinson's intention, he signed off the actual transfer to Mr Feldman in April 2011. However, even if he was aware, this does not excuse C's failure to inform Compliance and her senior managers, given the significance of the information.

16 August 2010 – Mr Merinson's request that the First Commission Payment be made with the reference 'Investment Capital Gain'

91. *C understood that Mr Merinson's request was to ensure that the First Commission Payment was not classified as employment income in the Netherlands, where Mr Merinson was resident. Mr Merinson was not employed by Yukos Capital and the purpose of the retrocession as she understood it, although linked to his role within the Yukos Group, was not employment income in any traditional sense. Combined with her knowledge of the wording of Finder's agreements, the request at the time appeared to have a plausible rationale.*

92. *C escalated the issue appropriately and the initial reaction of an experienced BJB senior manager was that the request might be possible. There was no suggestion from him, A or anyone else that the request was improper or that this called into question Mr Merinson's integrity. C relied upon the advice and guidance of those senior to her.*

93. *Although with the benefit of hindsight it can be seen that this request may have been suspicious, the risk of this was not apparent to C at the time.*

94. The Authority considers that there was no plausible acceptable rationale for Mr Merinson's request. It was obvious that referencing the payment as an 'Investment Capital Gain' would be an untrue statement. However, rather than questioning the request, C sought approval for it and did not recognise the risk that this could have been an attempt by Mr Merinson to disguise the true nature of the payment. Further, as she had described Mr Merinson in November 2009 as the Chief Financial Officer of Yukos Capital, it appears that C's understanding was that Mr Merinson was an employee of Yukos Capital, and, as is explained above, her case is that the Finder's arrangements were a way of remunerating Mr Merinson. This therefore raises the question of why she would believe that it was appropriate for the payment not to be classified as employment income.

95. C did not escalate the issue, but instead asked for the reference to be included because she could not insert the reference herself. It was a BJB senior manager who referred the request to BJB Legal, which resulted in different wording being used. In the circumstances, in particular given the matters cumulatively known to her at the time, Mr Merinson's request should have caused C concern.

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

96. *The increase in Finder's fees for Mr Merinson from 25% to 35% and the proposal for Mr Merinson to receive up to four one-off retrocessions involved a corresponding reduction in custody fees from 0.20% to 0.12%, so should be seen in the context of the total pricing for the client.*

97. *Mr Feldman was a director of both Yukos Capital and Fair Oaks, was plainly supportive of the proposed revised arrangements and had the power to authorise them. There was nothing about the demeanour of either Mr Feldman or Mr Merinson that caused C to have any concern about their commitment to the best interests of the relevant Yukos companies.*

98. *C escalated the matter appropriately to all relevant senior management, who gave*

approvals and did not raise any concerns about the proposals or the commercial rationale behind them.

99. *C believes that BJB Senior Manager A told her that one-off retrocessions were agreed on a verbal basis and, given his seniority and the fact that she had no involvement in drafting Finder's agreements, she did not question this.*

100. *With the benefit of hindsight it appears that these arrangements facilitated the diversion of funds from the Yukos companies to Mr Merinson, but this was a risk that was not apparent to C at the time and nor it appears to the significantly more experienced and senior persons to whom she appropriately referred the matter for approval.*

101. It appears from the email sent by C to A on 15 October 2010 that the custody fees were already 12 basis points at the time the amendments were negotiated by C, but in any event the Authority considers that there was an obvious risk that the amendments, even if they included the reduction in custody fees, were to the detriment of the relevant Yukos Group Companies, and to the benefit of Mr Merinson and Mr Feldman.

102. Given that C was aware at the time that Mr Merinson intended to share the commission he received from the First FX Transaction with Mr Feldman, she should have been suspicious of, rather than reassured by, Mr Feldman's support for the revised arrangements.

103. The fact that C sought the approval of senior managers does not excuse her own reckless behaviour in respect of the revised arrangements, in particular given that she had not informed any of them of Mr Merinson's intention share his commission with Mr Feldman. There is no evidence that any of C, A, B or BJB Senior Manager A queried why Mr Feldman wished to ensure that Mr Merinson received further non-standard retrocessions of such a size, despite the fact such payments would significantly drive up Yukos' transaction costs for no obvious benefit to Yukos. C did not raise the matter with Compliance, despite the obviously suspicious nature of the arrangements.

104. The Authority has not seen any evidence that C discussed the amended Finder's agreement with BJB Senior Manager A. It was C who asked for the amended Finder's agreement to be put together, in an email dated 28 October 2010 to a BJB colleague, and her email made no reference to the four additional 70% retrocessions which had been approved by B and A. The failure to document the retrocessions was contrary to the provisions of the Co-operation with Finders Policy and only A, not BJB Senior Manager A, had the authority to sanction it.

105. The Authority considers that the risks pertaining to the revised arrangements must have been obvious at the time to C, as well as to A and B, and that C acted recklessly in negotiating and seeking approval for the changes.

November 2010 – Second FX Transaction and Second Commission Payment

106. *C did not consider it suspicious that the Second FX Transaction related in part to the same funds that were involved in the First FX Transaction, as she believed that investment portfolios are often traded and re-traded according to the needs and requests of the client at any particular time. It had not been agreed that the one-off retrocessions should only be used for new inflows of funds. The conversion of USD to EUR was a matter that had been flagged up a few months earlier. The rationale for the conversion was explored and C was informed that it was to cover legal invoices and was provided with the evidential basis. She therefore considered there was a plausible commercial rationale for the Second FX Transaction.*

107. *C understood that the Yukos Group and its shareholders wanted to incentivise Mr Merinson, so their interests were aligned.*

108. *It did not seem to C at the time that Mr Feldman wanted the Second FX Transaction to take place in order to use one of Mr Merinson's retrocessions, as opposed to simply undertaking the conversions at a later time as and when required. C was just focused on whether the Second FX Transaction had a plausible rationale, and as it did, she therefore reported to her superiors what Mr Feldman had said.*

109. *The conversion rate must be considered in the context of the overall reduction in other rates which affected the entire portfolio and also in the context of B's view as regards the overall revenues that JBI would need to achieve. The trading was conducted by an experienced FX dealer, using the same technique as was employed with regard to the First FX Transaction and which had not been questioned. Senior management accepted the trading approach used and the amount of commission generated.*

110. *C did not recognise at the time that the 2% range had the effect of maximising the commission that could be earned by Mr Merinson and BJB while hiding the commission from an auditor or other person scrutinizing the transaction. She understood that the range was a JBI initiative to achieve a market rate which was no worse than the worst rate of the day and was therefore a way to accommodate the needs of both Mr Merinson and JBI. Mr Feldman played an active part in the arrangements and he and another Fair Oaks director had signed the investment proposal regarding the need to have EUR 50 million available to pay litigation costs, so as far as she was concerned the transaction and the retrocession were properly authorised.*

111. *C discussed the proposed transaction with Compliance and the JBI Line Manager in advance. She also obtained approvals from senior management for the payment of the retrocession, in which she set out the total commission that had been achieved. Her senior managers did not raise with her any concern regarding any of these arrangements.*

112. *C was not a party to the concerns expressed by the BJB Bahamas Senior Manager and the discussions that then ensued. However, she did have a conversation with him, following which, as far as she was concerned, he seemed comfortable with the arrangements.*

113. *With the benefit of hindsight, C now sees that Mr Merinson and Mr Feldman may in fact have been perpetrating a fraud, but this was not apparent to her at the time. The fact that no-one raised this issue with her, in particular B and A whom she had consulted at every stage of the relationship, gave her comfort in this regard. C was therefore not reckless.*

114. All of the approximately USD 68 million of Yukos funds which was converted into EUR through the Second FX Transaction had previously been converted into USD by the First FX Transaction; there had not been any further inflows that accounted for any part of the sum involved. The arrangements which had been approved by C's senior managers included 'one-off' payments that were to relate to new substantial inflows from the proceeds of litigation, and it was not agreed that they could be applied to funds that were already with BJB. There was no plausible commercial rationale for the Second FX Transaction from Yukos' point of view. Whilst there may have been a need to convert funds into EUR to pay legal fees from time to time, Yukos could simply have converted USD into EUR as and when invoices were received. Therefore, it must have been apparent to C that there was an obvious risk that the actual rationale for the transaction was to generate substantial funds for Mr Merinson and potentially to Mr Feldman, as well as to BJB, at BJB's client's expense and without a material risk of detection.

115. C cannot reasonably have believed that Yukos' interests in the transaction were aligned with those of Mr Merinson and Mr Feldman, as the arrangements were such that they were incentivised to act against Yukos' interests.

116. The commission rate for the Second FX Transaction was approximately 30 times higher than Julius Baer's standard commission rate for transactions of that size. It resulted in Yukos paying far more than it might have saved from any reduction in other rates. The lack of questioning of the trading approach used for the First FX Transaction within Julius Baer did not validate C's facilitation of the same approach for the Second FX Transaction. The driving factor in the trading was not to secure best execution for Fair Oaks, but to generate commission for Julius Baer and Mr Merinson, and by ensuring that the rate charged to Fair Oaks was above the worst rate for the day, had the effect that anyone with cause to examine Fair Oaks' records would not be put on notice that the commission was of an unusual size. There was therefore an obvious risk that the transaction was executed in a way which meant that the level of commission would not be obvious to someone other than Mr Feldman and Mr Merinson.

117. Given her knowledge of Mr Merinson's intention to share his commission from the First FX Transaction with Mr Feldman, the risk that Mr Feldman might have had ulterior motives for supporting the Second FX Transaction must have been obvious to C, and it was not reasonable for her to take comfort from his involvement in the transaction.

118. The Authority has not seen any evidence that C discussed the proposed transaction in advance with either Compliance or the JBI Line Manager. Although C subsequently sought and received approval from B and A for a payment of 70% of the commission generated by BJB for executing the Second FX Transaction to Mr Merinson, this does not excuse her conduct in facilitating the Second FX Transaction. Further, although not raised at the time by B, the Second FX Transaction was not consistent with the arrangements previously approved by B, which were based on transactions and retrocession payments relating to new inflows of cash to Julius Baer from Yukos, whereas the Second FX Transaction involved a portion of the same funds which had been converted into USD by the First FX Transaction.

119. The fact that the BJB Bahamas Senior Manager immediately raised concerns about the Second FX Transaction shows its obviously suspicious nature. His email to BJB Senior Manager A outlining his concerns, after speaking to C, indicates that his conversation with her did not make him comfortable with the arrangements. C would have been aware that he continued to have concerns from an email he sent to her on 30 November 2010, in which he explained that he considered it necessary to have a proper client instruction before he could approve the Second Commission Payment, given the unusual above-market practice fees.

120. The Authority considers that the risks arising from the Second FX Transaction and the Second Commission Payment were obvious at the time, not only with the benefit of hindsight, and that C must have been aware of them and acted recklessly in failing to have regard to them.

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

121. *The draft Finder's agreement with BJB Bahamas included the wording,* 'at the request of a client the Bank may inform them directly of the remuneration paid to the Finder'*. When Mr Merinson requested that disclosure of the Finder's agreement be limited to Mr Feldman, C thought the wording was very general and could be read as giving JBI the authority to provide this information to any client. This and the fact that Yukos was very sensitive about banks disclosing information informed her comment that it was a* 'fair request'*. However, she told Mr Merinson that she did not think that Compliance would agree to the request, based on the unlikelihood of BJB agreeing to any changes to its standard documentation.*

122. *C escalated the issue appropriately to the BJB Bahamas Senior Manager and BJB Compliance, and asked if BJB Compliance was available to meet with Mr Merinson and Mr Feldman. This demonstrates that she was keen to involve BJB Compliance in this relationship and did not suspect there was a risk that all was not as it seemed. At interview, the BJB Bahamas Senior Manager described the request as* 'a fair question'*.*

123. *BJB Compliance's response that the wording could be amended to* 'at the request of an introduced client' *shows that they recognised that the original wording was capable of a very wide interpretation. C's email of 31 January 2011 demonstrates that she agreed with this amended wording, and therefore understood Mr Feldman's and Mr Merinson's concern to be that the information should not be disclosed outside the introduced client, rather than that they did not want Yukos to be informed about the*

Finder's arrangements. This belief was reinforced by the fact that both Mr Feldman and Mr Merinson were content with the suggested wording.

124. *The fact that the JBI Line Manager informed B and a BJB manager that he had checked the correspondence and the file notes made by C means that he must have seen the 16 August 2010 file note which records that Mr Merinson intended to pass on part of his commission to Mr Feldman. The fact that he informed them that he could* 'find no reason to believe that there is anything underhand or improper going on' *supports C's view that she did not act recklessly; it is not being alleged that the JBI Line Manager acted recklessly, yet he had the same knowledge of the arrangements as C.*

125. Mr Merinson's request that the draft Finder's agreement should include amended confidentiality wording, to the effect that Julius Baer would only be permitted to disclose it to Mr Feldman, was an obvious sign that only Mr Feldman knew about the Finder's arrangements and that Mr Merinson did not want them to be revealed to others at Yukos. Given the matters cumulatively known to C at the time, including that Mr Merinson intended to share his commission with Mr Feldman, the request should therefore have caused her to be suspicious, but rather than raise any concerns when asking BJB Compliance to approve it, she presented it as '*a fair request*'. The Authority therefore does not agree that she escalated the request appropriately.

126. There was no reason to think that Julius Baer would reveal the agreement to clients who were not the ones introduced, and the fact that BJB Compliance agreed to amend the original wording does not mean that it was reasonable for C to consider that Mr Merinson's request was appropriate. Although C accepted the view of BJB Compliance, and neither Mr Feldman nor Mr Merinson challenged the new wording, C did not recognise the risk that the request was or might have been an attempt to hide the fees that had been paid to Mr Merinson.

127. The Authority considers it likely that, when the JBI Line Manager informed B and a BJB manager that he had checked the correspondence and file notes, he was referring to documents that C had sent to him as attachments to an email earlier that day. These attachments did not include the 16 August 2010 file note and the Authority considers it unlikely that the JBI Line Manager read the entirety of the file notes made by C which had been saved on JBI's systems (which are clearly extensive) before writing to B and the BJB manager.

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

128. *C informed BJB Compliance (copying in B and the JBI Line Manager) in her email of 1 February 2011, that Mr Feldman had asked that the letters he signed contain wording confirming JBI's commitment to confidentiality because he was concerned by WikiLeaks and wanted JBI to take responsibility for the leak of any information regarding the Yukos accounts. Although this request was raised in BJB Compliance's memo of 7 February 2011, no concerns were raised with C, which demonstrates that ultimately this was not something that anyone in BJB Compliance or senior management considered to be an issue.*

129. *As regards the point that C did not draw attention to the fact that she had been told on 16 August 2010, that Mr Merinson intended to share a proportion of the First Commission Payment with Mr Feldman, as mentioned above, the JBI Line Manager must have been aware of this fact as he had checked C's correspondence and file notes, yet he did not raise any concern about it.*

130. *C had drafted these letters herself and took the initiative to add the name of the other Fair Oaks director, without this having been required or requested by BJB Compliance or anyone else in JBI or BJB.*

131. The Authority considers that Mr Feldman's request for JBI to confirm its commitment to confidentiality, in circumstances where C was aware that Mr Merinson intended to share a proportion of the First Commission Payment with him, was a further ground for her to have suspicions regarding the legitimacy of the arrangements. As BJB Compliance was not aware of this request, the fact that they did not raise any concerns about it does not support C's submission that she acted properly.

132. As mentioned above, the Authority has not seen evidence demonstrating that the JBI Line Manager was aware at the time of Mr Merinson's intention, but recognises that it was the JBI Line Manager who signed off the actual transfer to Mr Feldman in April 2011. However, this does not excuse C's failure to bring this to the attention of Compliance or her senior managers and she should have recognised the risk that Mr Feldman's request was or might have been an attempt to hide the payments to Mr Merinson.

133. Although the letter referring to Fair Oaks included the name of the other Fair Oaks director, that director did not sign the letter and instead Mr Feldman signed it on behalf of both of them. This should have caused concern to C, given her knowledge of the intention for Mr Feldman to benefit personally from the Finder's arrangements.

<u>7 April 2011 – payment from Mr Merinson to Mr Feldman</u>

134. *C has no recollection of this payment or of any prior discussion that such a payment was to be made. She was abroad at the time, was not able to keep track of all the emails she was sent and had no involvement in the transactions.*

135. *The JBI Line Manager, who was fully aware of all matters relating to this client relationship and of Mr Feldman's role in the Yukos Group, signed off the transfers. He raised no concerns about the transfers and did not escalate the issue to senior management or discuss it with C.*

136. C was copied into the email from her assistant to BJB Singapore giving instructions for the transfers to Mr Feldman, and the email referred to a discussion with C. Given that C had been informed in August 2010 of Mr Merinson's intention to share his commission with Mr Feldman, and given that Yukos was a major client for C, in the circumstances the Authority infers that C was aware of the transfers at the time.

137. The fact that the JBI Line Manager signed off the transfers and did not raise any concerns about them does not excuse C's own failure to question the situation or alert her senior managers or Compliance.

August 2011 – Third FX Transaction

138. *The allegation against C in respect of the Third FX Transaction altered as a result of the additional documents obtained by the Authority after the Warning Notice was issued. It is unacceptable that it is only now, after an investigation spanning four years, that the Authority can present a coherent picture on a key aspect of its case.*

139. *Aspects of the Third FX Transaction remain unclear, for example, there are no records of the transaction or the rate at which it was booked. C considers that if she had been aware of the details of the transaction then she would have confirmed these to B and A as she had done for the First and Second FX Transactions.*

140. *C's correspondence with a staff member at BJB Bahamas on 16 August 2011 shows that she understood that the purpose of trading in that manner was to ensure that the client would not be disadvantaged and is inconsistent with her having any knowledge that the true purpose of the trading was to avoid detection. If that was the case, it is surprising that neither the JBI Trader, the BJB Bahamas staff member, nor anyone else at JBI/BJB with knowledge of the FX Transactions drew this conclusion.*

141. *No adverse findings should be made against C in respect of this allegation, which is lacking in sufficient evidential detail and has been recast in a way that is fundamentally different to the way in which the case was put in the Warning Notice.*

142. The Authority accepts that, as a result of its review of the further evidential documents obtained from Julius Baer following the issue of the Warning Notice, the descriptions of the Third FX Transaction, and of C's failings in respect of it, in the Warning Notice were inaccurate in a number of respects. Having reviewed the relevant evidence (including the new material), the Authority is of the view that it supports the conclusion that C acted recklessly in respect of the Third FX Transaction (as it is now understood by the Authority). C was given the opportunity to make, and did make, submissions regarding the Authority's revised view of the Third FX Transaction and of C's failings in respect of it. In the circumstances, the Authority does not consider it to be unfair for this Notice to include an amended description of the Third FX Transaction and a finding that C acted recklessly in respect of it.

143. The Authority considers that, notwithstanding that it is not aware of the conversion rate used, the evidence supports its view that the same trading approach was used for the Third FX Transaction as for the First and Second FX Transactions, and that it was executed with a high margin, to allow Julius Baer to fund both its commission and a commission payment to Mr Merinson. As with those earlier FX Transactions, the Authority considers there was no proper commercial rationale for the level of commission payable to Mr Merinson and that the Third FX Transaction gave rise to the same, obvious risks as the previous transactions.

144. The Authority considers that C's suggestion in her email of 16 August 2011 to a BJB Bahamas staff member that the purpose of the trading was to ensure that the ultimate beneficial owners would not be disadvantaged cannot be correct in the context of seeking to achieve a large margin on the transaction. Instead, ensuring the rate was better than the worst on the day had the effect that it was more difficult for a third party with cause to examine Fair Oaks' records to understand the nature of the arrangement. Given the matters known to C, the Authority considers that she must have been aware of the obvious risks arising from this transaction, and that she acted recklessly in failing to have regard to the risks and helping to facilitate the Third FX Transaction.

Prohibition Order

C's fitness and propriety

145. *C did not act recklessly and does not lack integrity. No prohibition order should therefore be made.*

146. *C's conduct occurred in the context of a very difficult and dysfunctional working environment. She failed to recognise risks in such an environment, where others also did not do so or were slow to do so, and where there was effectively no functioning management, systems or controls. C would now recognise the warning signs and deal with them appropriately.*

147. *C accepts that she was naive and may have made errors of judgment in certain respects. She relied heavily on the experience of, and approvals from, B, A and others within JBI and BJB who were involved in the relevant matters. With the benefit of hindsight and further wisdom and experience, C appreciates that she could have done more to probe Mr Feldman's and Mr Merinson's explanations for various matters, and regrets that she did not do so.*

148. *C was a junior relationship manager at the time of these events with limited experience. She is a different person now in terms of maturity and life experience and must be judged on the basis of the person that she is today.*

149. *C has obtained testimonies, including from senior professionals in the financial services industry, which show that she is thought to be a person of integrity.*

150. For the reasons set out in this Notice, the Authority considers that C acted recklessly and with a lack of integrity, and that her conduct was therefore not that of a fit and proper person. The Authority has had regard to C's submissions regarding why she should not be prohibited, and to the relevant factors in the Authority's Enforcement Guide, and has concluded that, notwithstanding mitigating factors including the passage of time and training that she has undertaken, she has not demonstrated that she is now a fit and proper person. Further, given the seriousness and nature of her misconduct, which involved having a central role in effecting significant payments to Mr Merinson pursuant to Finder's arrangements which had no proper commercial rationale, and a failure to have regard to obvious risks relating to those arrangements and to take appropriate action in light of them, the Authority considers that C poses a

serious risk to confidence in the UK financial system. The Authority therefore considers that it is appropriate to prohibit her, in order to advance the Authority's operational objectives of securing an appropriate degree of protection for consumers and of protecting and enhancing the integrity of the UK financial system.

151. The Authority acknowledges that C's conduct occurred in the context of a difficult working environment where there were serious deficiencies in JBI's governance, controls, policies and procedures in relation to the management and oversight of Finders' arrangements, and that others at Julius Baer, who were more senior than her, also failed to act appropriately in respect of the risks arising from the relationship with Mr Merinson and Yukos. However, the Authority does not agree that she was naïve; in the light of the matters known to her, she must have been aware of the obvious risks arising from the relationship, yet she failed to question the Finder's arrangements or raise concerns about them appropriately with senior managers at Julius Baer or with Compliance. The Authority considers that she thereby acted recklessly.

152. The Authority agrees that C's fitness and propriety should be judged on the basis of the person she is today and has had regard to the testimonies provided by her which support her submission that she is a person of integrity. However, the Authority considers these need to be balanced against the nature of her conduct in this case, which demonstrates recklessness and a clear lack of integrity. Overall, the Authority considers that, in considering her current fitness and propriety, it is appropriate to give most weight to her reckless conduct with regard to Julius Baer's relationship with Mr Merinson and Yukos.

Training and competence

153. *The training and guidance provided to C by JBI was either inadequate or lacking. She has since taken significant steps to undertake training on the legal and regulatory issues that arose and to improve her knowledge of such issues.*

154. The Authority has taken into account C's attendance at training courses, but does not consider that this displaces its concerns regarding her integrity.

Length of time since the events in question

155. *Even if the Authority concludes that C has acted recklessly, that does not mean that a prohibition order must be imposed, as is clear from the Tribunal's decision in the case of* Tinney. *That is particularly the case where the relevance and materiality of the historic matters indicating unfitness are outweighed by other factors. These events were very historic, occurring 9-11 years ago.*

156. *The events and the significant delay that has occurred in the Authority's investigation has had a significant impact on C's personal circumstances. The case of* Selvarajan[3] *shows that this is a relevant factor in considering whether it is necessary and proportionate to impose a prohibition order.*

[3] *Selvarajan v GMC* [2008] EWHC 182 (Admin)

157. The Authority agrees that a prohibition order does not necessarily follow from a conclusion that an individual acted recklessly. The Authority recognises that the relevant events occurred some time ago, but in the circumstances, having regard to the seriousness and nature of her misconduct, the Authority does not consider that C has demonstrated that she is now a fit and proper person.

158. Similarly, the Authority does not agree that any impact that this matter might have had on C's personal circumstances outweighs the serious risk that she poses to confidence in the UK financial system and to the Authority's consumer protection and integrity operational objectives.

Severity of risk which C poses to consumers and to confidence in the financial system

159. *C poses no risk to consumers or to confidence in the financial system. She has learned hard lessons as a result of her actions and the Authority can be confident that, faced with the same situation again, she would act differently.*

160. C recklessly failed to have regard to the obvious risks arising from the relationship with Mr Merinson and Yukos, including that in effecting significant payments to Mr Merinson pursuant to Finder's arrangements in the knowledge that he intended to share them with Mr Feldman, Julius Baer might be facilitating or even participating in financial crime, and to take appropriate action in light of them. The Authority considers that the seriousness and nature of this misconduct demonstrates that C poses a serious risk to consumers and to confidence in the financial system, and that this remains the case notwithstanding the passage of time.

Previous disciplinary history and general compliance record

161. *Apart from this matter, C has an unblemished record in every other respect and in every other aspect of her life.*

162. The Authority acknowledges that C has no other disciplinary findings against her and has taken this into account, but overall considers the seriousness of her misconduct outweighs this and other mitigating factors.

Lack of action against the JBI Line Manager

163. *The JBI Line Manager was closely involved with the events in question, including the original Finder's arrangements and the arrangements regarding the First FX Transaction, and approved the payment from Mr Merinson to Mr Feldman in April 2011. He was also kept actively updated and informed throughout the Yukos relationship and informed the Authority that he reviewed file notes and correspondence saved on JBI's system. He made various factual claims to the Authority that lack credibility. His email of 30 November 2012 contains a number of false statements and inaccuracies and is clearly a retrospective attempt to protect his own position by putting distance between himself and the events in question, whilst seeking to exculpate himself and blame C.*

164. *In the circumstances, if the Authority considers that C acted recklessly, the same allegation should be made against the JBI Line Manager, however, the Authority*

is not taking action against him. The Authority should act fairly and consistently. Therefore, if no criticism is being made of the JBI Line Manager's conduct in respect of many of the same matters, it follows that the relevance and materiality of these matters in respect of C's conduct must be limited.

165. The Authority has reached its conclusion that C acted recklessly and that it is appropriate to prohibit her, having regard to the relevant evidence in this case, including the submissions that it has received from C. The Authority's decisions on whether or not to take action against other persons, including the JBI Line Manager, are not relevant considerations in deciding on the appropriate action to take with regard to C's own conduct. The Authority also notes that C had a far greater involvement in the relevant events than the JBI Line Manager who, although aware of the broad terms of the arrangements, was not copied into much of the correspondence between C, B and A.

Alternatives to a Prohibition Order

166. *The limitation period has expired for the Authority to impose a disciplinary penalty on C, so the only alternatives to a prohibition order are for the Authority to issue a private warning or take no action. It is the fault of the Authority that it is in this position. A prohibition order should not be imposed simply because no other public sanction is available.*

167. *If the Authority considers it is appropriate to mark C's conduct, a private warning would be adequate in terms of public protection and proportionate in all the circumstances.*

168. *A full prohibition order is an extremely wide and draconian measure, which would effectively end any prospect of C ever resuming a career in financial services and would have a devastating effect on her public reputation. If the Authority nevertheless decides that a prohibition order must be made, it would be appropriate to limit the scope of such an order to specified functions and the Authority should indicate that it is minded to revoke the order on C's application after a short period of time.*

169. The Authority considers that it would not be appropriate to give C a private warning in the light of the seriousness of her misconduct. A private warning would not secure the same degree of protection for consumers or the UK financial system.

170. The Authority also considers that it would not be appropriate to impose a more limited prohibition order. In the light of C's lack of integrity, the Authority considers that there is no function which C is fit to perform and that it is therefore appropriate to impose a full prohibition order. The Authority also does not consider it is appropriate to indicate that it would be minded to revoke the prohibition order on C's application after a short period of time, given its concerns with C's conduct. However, pursuant to section 56 of the Act, it is open to C to apply for the revocation of a prohibition order. The Authority would then consider at the time, whether it is appropriate to grant that application, taking into account all relevant circumstances, including evidence relating to C's fitness and propriety since the date of this Notice.

Mr Merinson's Representations

171. *The Warning Notice misrepresents Mr Merinson's activities and relationships. He was never the Chief Financial Officer of Yukos Capital or of any other Yukos Group entity. Instead, he was employed by Yukos International, with his duties largely restricted to bookkeeping and financial control.*

172. *He was therefore not involved in determining the fees that the respective Yukos entities paid to Julius Baer. Those fees mainly reflected the difficulties that Julius Baer had with the onboarding of a group with as controversial a history as Yukos.*

173. *The Finder's fees paid to him by Julius Baer were approved by an authorised representative of the respective Yukos Group Companies on behalf of which the transactions were undertaken. The arrangements were also made aware to various directors within the wider Yukos Group, yet no objections were raised at the time.*

174. *His contractual arrangement with Julius Baer were known from the outset to those at the top level of Julius Baer, as it was concluded upon Julius Baer's own initiative.*

175. *His business relationship with Mr Feldman was limited to a loan provided to him at arm's length, on which Mr Feldman paid interest in line with the market. There was never any intention to hide this arrangement, or any of the other arrangements, from either Julius Baer or Yukos. This is apparent from the fact that the transfers to Mr Feldman involved his account at Julius Baer.*

176. There is substantial evidence that Mr Merinson was employed by Yukos and, in particular, that he had an official role at Yukos International, the parent company of Yukos Capital. Irrespective of his precise job title, C's understanding, based on due diligence and meetings with him and Mr Feldman, was that Mr Merinson had responsibility for oversight and control of financial operations at Yukos International and Yukos Capital. This was reflected in the fact that in June 2009 she described him as the Financial Controller and Treasurer for Yukos International, in October 2009 she described him as the Chief Financial Officer of both Yukos Capital and Yukos International, and in November 2009 she described him as the Chief Financial Officer of Yukos Capital.

177. The contemporaneous documents demonstrate that Mr Merinson was involved in determining the fees paid by Yukos entities to BJB. For example, he was present at the meetings on 7 July 2010 at which the key terms of the arrangements were negotiated; he was present in JBI's offices, when the First FX Transaction took place in August 2010; and he was present at the meeting on 13 October 2010, when further retrocessions and amendments to the terms of the arrangements were discussed.

178. There is no evidence that the arrangements were known to anyone in the Yukos Group other than Mr Feldman, with whom Mr Merinson shared the commission he received from the First and Second Commission Payments.

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

180. The Authority considers that Mr Merinson's assertion that his payment of exactly half the commission he received from the First and Second FX Transactions to Mr Feldman was pursuant to a loan is not credible. The Authority has not seen any evidence of a loan agreement or of interest payments from Mr Feldman to Mr Merinson.

Mr Feldman's Representations

181. *Mr Merinson was never the Chief Financial Officer of Yukos Capital nor any other Yukos Group company, and had no official role at Yukos Capital nor Yukos International whilst Mr Feldman was a director of Yukos Capital.*

182. *Mr Merinson did not share his commission with Mr Feldman, nor was there any pre-arranged agreement to do so. Instead, Mr Merinson gave Mr Feldman an arms-length documented loan, on which he made interest payments from the outset. This was done transparently as Mr Merinson sent Mr Feldman the money directly from his Julius Baer account.*

183. *The conversion from GBP to USD was known throughout the Yukos Group. Yukos knew the original amount in GBP and the amount in USD that was ultimately deposited and were satisfied. FX rates are readily available so the fees paid could be determined. Others at Yukos could have also asked him about the fees, but did not do so. Instead, they lauded the arrangement with Julius Baer for the lowest custody fees being paid by the Yukos Group to any bank.*

184. *The fees paid for the FX Transaction were not exorbitant. Even if it was considered that they were higher than normal, that would reflect the politically sensitive nature of doing business with Yukos. There was tremendous pressure to bank the money and to do so quickly, but the political sensitivities meant there were few choices. To apply business norms to a far from normal business situation is unfair.*

185. *Mr Feldman's request to Julius Baer to keep details of the transactions confidential was aimed at keeping the information confidential from Yukos' adversaries in the litigation. This was Yukos' policy and a common request made to service providers that Yukos dealt with.*

186. *It is unfair to lay the blame on C. All of her superiors were aware of the fee arrangements for the Yukos accounts and nobody objected.*

187. As mentioned above, there is substantial evidence that Mr Merinson was employed by Yukos and, in particular, that he had an official role at Yukos International.

188. Mr Feldman's submission regarding Mr Merinson's sharing of the commission payments with him is not credible. The Authority has not seen any evidence of a loan agreement or of interest payments from Mr Feldman to Mr Merinson. In any event, the payment by Mr Merinson, the recipient of the retrocessions, of exactly half of his commission, to Mr Feldman, who had been responsible for approving the retrocessions, gave rise to obvious conflicts of interest.

189. The Authority does not dispute that others in Yukos may have known about the conversion of GBP to USD. However, the Authority disagrees that they could have calculated the charges by looking at the exchange rate. Although it would have been possible to identify that the conversion was at a rate above the worst rate for the day, the actual charges, and the fact that the majority of them were being paid to Mr Merinson, and then shared with Mr Feldman, would not have been apparent. The Authority therefore considers it unlikely that the Yukos Group would have been satisfied, if they had known the real cost. Further, whilst the custody fees were transparent to the Yukos Group, the retrocession arrangements, which were not in Yukos' interests, were not transparent and there is no evidence that these were known of or approved.

190. Mr Feldman's submission that the high charges for the First FX Transaction reflected BJB's interest in being remunerated for taking the political risk of having Yukos as a client ignores the fact that 80% of the amount charged was paid to Mr Merinson and shared with Mr Feldman. In addition, the same logic does not apply to the further one-off retrocessions negotiated in October 2010. The Authority does not accept that the political sensitivities justified the arrangements agreed by Mr Feldman.

191. The Authority does not agree that disclosure of the remuneration arrangements for Mr Merinson were sensitive matters that Yukos needed to keep secret. Rather, they were sensitive for Mr Merinson and Mr Feldman, because they wished to keep them hidden from Yukos.

192. As explained in this Notice, notwithstanding the knowledge of others within Julius Baer, including senior managers, of Mr Merinson's Finder's arrangements, the Authority considers that the evidence demonstrates that C acted recklessly in relation to the overall conduct of Julius Baer's relationship with Mr Merinson and Yukos.