

Jorge Lopez Gonzalez has referred this Decision Notice to the Upper Tribunal to determine: (a) in relation to the FCA's decision to impose a financial penalty, what (if any) is the appropriate action for the FCA to take, and remit the matter to the FCA with such directions as the Tribunal considers appropriate; and (b) in relation to the prohibition order, whether to dismiss the reference or remit it to the FCA with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal.

Therefore, the findings outlined in this Decision Notice reflect the FCA's belief as to what occurred and how it considers the behaviour of Jorge Lopez Gonzalez should be characterised. The proposed action outlined in the Decision Notice will have no effect pending the determination of the case by the Tribunal. The Tribunal's decision will be made public on its website.

DECISION NOTICE

To: Jorge Lopez Gonzalez

Reference
Number: JXL01641

Date: 31 October 2022

1. ACTION

1.1. For the reasons given in this Notice, the Authority has decided to:

- (1) impose on Mr Lopez a financial penalty of £100,000 pursuant to section 123(1) of the Act; and
- (2) make an order prohibiting Mr Lopez from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm pursuant to section 56 of the Act.

2. SUMMARY OF REASONS

2.1. During the Relevant Period Mr Lopez was a market-making trader in European Government Bonds ("EGBs") and held the position of Director and Senior Rates Trader in Fixed Income Government Bond Trading at Mizuho International Plc ("MHI"). He was an experienced trader and had worked in Fixed Income Sales and Trading roles for 10 years.

- 2.2. Mr Lopez worked on the EGB desk with other traders including Diego Urrea, who was a Managing Director, and Poojan Sheth, who was an Associate (together with Mr Lopez, "the Traders"). Mr Urrea managed the EGB desk. The Traders traded EGBs and related instruments and shared their trading books with one another. The desk's key role was to provide prices and liquidity in EGBs to MHI clients and the Traders would often hedge their trades with clients through EGB futures on the EUREX Exchange.
- 2.3. During the period 1 June to 29 July 2016, Mr Lopez utilised an abusive trading strategy in EGB futures on the EUREX Exchange in Italian Government Bond futures ("BTP Futures"). He would place a large sized order on one side of the order book for the purpose of creating the impression of increased supply or demand, with the objective of assisting the execution of a smaller genuine order he wished to trade on the opposite side of the order book. For example, if Mr Lopez wanted to buy bond futures, as well as placing a bid for those futures, he would place a large order to sell bond futures. The purpose of this was to create the impression that there was additional supply in the market with the aim of encouraging other market participants to sell (thereby increasing the chances of his buy order being executed). Once the smaller genuine order had been executed, he would cancel the large order.
- 2.4. Furthermore, this same pattern of abusive conduct through the placement of large orders on the opposite side of the book was also carried out by Mr Lopez in concert with Mr Urrea and Mr Sheth. For example, Mr Lopez would place an order he genuinely wished to trade and Mr Urrea or Mr Sheth would place a much larger order on the opposite side of the book for the purpose of creating the impression of additional supply or demand, thus assisting the execution of the genuine order.
- 2.5. Through the placement of these large misleading orders, Mr Lopez and the other Traders falsely represented to the market an intention to buy or sell when their actual intention was the opposite. The only purpose of the large orders was to assist the execution of the smaller genuine orders that the Traders wanted to trade. The abusive trading strategy was such that it was unlikely the large misleading orders would themselves trade; notably, they were placed away from the touch (that is, the highest price to buy and the lowest price to sell) and were quickly cancelled.

- 2.6. This conduct gave false and misleading signals to the market as to demand and supply. It amounted to market manipulation which since 3 July 2016 has been prohibited by Article 15 of the Market Abuse Regulation, and until 2 July 2016 was prohibited by section 118(5) of the Act (the Relevant Period straddles the date on which the Market Abuse Regulation came into effect in the UK). Article 15 of the Market Abuse Regulation and section 118(5) of the Act are equivalent provisions; section 118(5) refers to “a false and misleading impression” rather than “false and misleading signals”, but the Authority considers that there is no material difference between those concepts for the purposes of this Notice.
- 2.7. This market manipulation was serious and directly undermined the integrity of the market. Other market participants would likely have altered their trading strategies as a result of the false and misleading signals given by the large orders. For example, when Mr Lopez placed a large buy order it gave a false signal that there was a material buyer in the market and other buyers, anticipating that the market was likely to move higher, would likely act with more urgency in order to secure the execution of their buy orders. The same is true in the opposite direction when he placed large sell orders.
- 2.8. Mr Lopez frequently repeated this pattern of abusive conduct during the Relevant Period. The Authority has identified 40 occasions on which he carried it out by himself, and 92 occasions when he did so acting in concert with Mr Urra and/or Mr Sheth. Irrespective of which of the Traders placed the orders on specific occasions, they were each individually responsible for participating in the abusive trading strategy, which was collaborative and undertaken for a common purpose.
- 2.9. Mr Lopez knew that placing large orders on the opposite side of the book to assist the execution of other orders he or another Trader genuinely wanted to trade would result in false and misleading signals to the market. Furthermore, he knew that this would be likely to impact the trading activities of other market participants. His conduct constituted deliberate, intentional and repeated market manipulation and was dishonest.
- 2.10. The Authority has therefore decided to:
- (1) impose on Mr Lopez a financial penalty of £100,000 pursuant to section 123(1) of the Act; and

- (2) make an order prohibiting Mr Lopez from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm pursuant to section 56 of the Act.

3. DEFINITIONS

3.1. The definitions below are used in this Notice:

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

“the Authority” means the Financial Conduct Authority;

“Best Bid” means the highest price at which a person was willing to buy the bond;

“Best Offer” means the lowest price at which a person was willing to sell the bond;

“BTP” means Italian Government Bonds, Buoni del Tesoro Poliannuali;

“BTP Future” means an interest-rate futures contract (i.e. an agreement to buy or sell at a fixed price), based on a notional BTP with a remaining term of between 2 years and 11 years. References to BTP Futures in this notice are to contracts with a remaining term of between 8.5 and 11 years and a 6% coupon. A BTP Future has a standard €100,000 nominal contract value. One individual contract is often called a “lot”;

“Certified Person” means a person who is not a Senior Manager but performs a role which could pose a risk of significant harm to the firm or its customers. The Certification Functions are defined in the Handbook, but a Certified Person is not approved by the Authority;

“Core EGBs” are the most commonly traded and most liquid EGBs. The term usually comprises EGBs from Germany, Finland, and Netherlands, sometimes also including the “semi-core” countries France, Austria and Belgium;

“DEPP” means the Authority’s Decision Procedure and Penalties Manual, part of the Handbook;

“the Desk” means MHI’s EGB desk as described in paragraph 4.1;

“EGBs” are European Government Bonds;

"the Exchange" is the EUREX Exchange through which the Traders executed BTP Futures;

"Handbook" means the Authority's Handbook of Rules and Guidance;

"Iceberg Order" means an order to buy or sell a bond where the total amount of the order is divided into a visible section, which is visible to other market participants, and a hidden section which is not. When the visible part of the order is filled, a further part of the hidden section of the same size becomes visible;

"the Mandate" means the written mandate referred to in paragraph 4.3;

"the Market Abuse Regulation" means Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse;

"MAR" means the part of the Handbook entitled "Market Conduct";

"Market-Maker" means a firm (or trader within the firm) that quotes bid and offer prices in a range of instruments and can act as principal in supplying liquidity by buying or selling from their own inventory;

"MHI" means Mizuho International Plc, a subsidiary of Mizuho Securities Co. Ltd. and member of Mizuho Financial Group;

"Peripheral EGBs" are Italian Government Bonds, Spanish Government Bonds, Irish Government Bonds and Portuguese Government Bonds;

"RDC" means the Regulatory Decisions Committee of the Authority (see further at paragraph 8.3 below);

"the Relevant Period" means the period from 1 June 2016 to 29 July 2016;

"RFQ" means "request for quote", as referred to in paragraph 4.5;

"the Spread" means the difference between the Best Bid and Best Offer;

"the touch" means the highest price to buy and the lowest price to sell;

"the Traders" means Mr Lopez, Diego Urra and Poojan Sheth; and

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

4. FACTS AND MATTERS

Background

The EGB desk

- 4.1. During the Relevant Period, Mr Lopez worked as a Director and Senior Rates Trader on the EGB desk which comprised himself and four other traders (“the Desk”), including Mr Urra (Managing Director of Fixed Income Government Bond Trading at MHI and Head of the EGB desk) and Mr Sheth (Associate trader). Mr Lopez and Mr Sheth were supervised by Mr Urra. Mr Lopez joined MHI in February 2016 and had worked in the financial services industry for ten years in Fixed Income Sales and Trading roles, including over four years’ experience of trading EGBs.
- 4.2. Mr Lopez first held a controlled function in 2006 and subsequently held a number of roles as an approved person. He later became a Certified Person and, during the Relevant Period, held the Certified Role of working in a Client Dealing Function.¹
- 4.3. The Desk existed as a market-making desk, its role being to facilitate clients’ trading by providing liquidity, and the Traders focused on trading Peripheral EGBs. The Desk operated according to a written mandate specifying which instruments it could trade and in what circumstances (“the Mandate”). Mr Urra was responsible for the Desk’s adherence to the Mandate as well as the managerial and regulatory supervision of the other traders on the Desk, including Mr Lopez and Mr Sheth. As part of this role, Mr Urra, as Desk Head, along with senior management, had responsibility for evaluating and approving overall trading and hedging strategies, monitoring the performance of the Desk, and monitoring adherence by the Traders to risk limits.

¹ An approved person is an individual to whom the Authority has given its approval under section 59 of the Act for the performance of a controlled function. The approved persons regime was replaced by the Senior Managers and Certification Regime pursuant to which certain individuals became Certified Persons instead of approved persons. In the banking sector, this change took place in March 2016.

Trading BTPs and BTP Futures on the Exchange

- 4.4. EGB Market-Makers can be either Primary Dealers or Secondary Dealers. Primary Dealers are banks or other financial institutions approved to trade securities with a national government. A Primary Dealer may underwrite new government debt and act as a Market-Maker for the existing debt. Primary Dealers usually have a larger market share than Secondary Dealers, which have fewer rights and fewer obligations. Secondary Dealers are firms that have not been appointed to purchase, and subsequently distribute, bonds directly from a government, but that are still able to trade the bonds in the secondary market with other dealers, on behalf of clients or their own firms.
- 4.5. MHI was a Secondary Dealer in BTPs and the Traders' main role was to facilitate clients' trading by providing liquidity in BTP bonds. The way in which they would achieve this was by responding to requests for quotes ("RFQs"). Clients sent RFQs asking the Traders for the price at which the Traders would buy or sell a specified amount of BTPs. The Traders could choose whether or not to respond with a price, and if so, at what level. The client could then choose to accept or reject the price. If the client accepted the price, the Traders would trade with the client as agreed and would then position their book accordingly, for example by buying bonds to replace the bonds sold to the client.
- 4.6. The Traders would receive RFQs either directly from a client via an electronic platform or Bloomberg message, or via a salesperson who would relay clients' requests either orally or via a Bloomberg message. When a salesperson communicated an RFQ to the Traders, this would typically take place within less than a minute of receiving the RFQ and the Traders would relay a price to the salesperson. If the client then accepted the price, the salesperson would send the details to the Traders within around 5 minutes or less and the Traders would then confirm the trade in the system. When the Traders received an RFQ directly via the electronic trading platform, a pop-up notification would appear on each of the Trader's screens. If the client order was traded via the RFQ pop-up notification, this trade would be visible to all Traders instantaneously via a pop-up notification.
- 4.7. The Traders had their own books and they were supposed to take responsibility for different-sized RFQs, in terms of the volume of bonds requested. Mr Urrea was supposed to deal with the largest RFQs in addition to his management role. Mr Sheth was supposed to manage the smallest RFQs and Mr Lopez was supposed to

manage the remainder. However, in reality, the Traders could book trades onto each other's books and they worked together to manage the risk on the Desk. When an RFQ was received by the Traders, it would often be allocated between them. Mr Urra would be involved in most RFQs and Mr Lopez and Mr Sheth would not undertake their trading in isolation. As the Traders sat next to each other, they were able to communicate orally about client orders that they were seeing and orders that they were placing on the Exchange. They could also see each other's executed trades and positions to ensure that they were appropriately managing the risk on the Desk.

- 4.8. The Mandate specified that the Desk took orders for BTPs and other government bonds only from a selection of approved institutional clients and counterparties and it could buy or sell hedging instruments, including BTP Futures, to mitigate risks. BTP Futures could be used for hedging, but not generally for market-making. However, the Desk could execute BTP Futures block trades (as designated by the EUREX Exchange, orders of 250 lots and above in BTP Futures which may impact the market if shown in their full size) in response to client demand, but this was rare and BTP Futures were primarily traded to hedge trades in BTPs.
- 4.9. The Mandate also allowed the Desk to execute transactions in hedging instruments, such as BTP Futures, in anticipation of a highly likely near-term exposure to risk, where a sound risk management rationale for such anticipatory hedging existed. However, it also specified that the size of the Desk's market-making inventory must be designed not to exceed, on an ongoing basis, the reasonably expected near-term demand of customers.
- 4.10. When the Traders placed BTP Futures orders, they were sent to the Exchange through MSUSA (another subsidiary of Mizuho Securities Co. Ltd), as MHI was not a member of the Exchange. The Traders undertook their trading manually, without the use of algorithms (that is, the practice of trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission and there is limited, or no, human intervention).
- 4.11. The price of an instrument, including BTP Futures, may move in response to an order being placed on the market as other market participants react to the

increase in demand or supply, and this is particularly true of a large order. A trader can split a large order into multiple smaller orders, using an Iceberg Order. This hides the actual size of the order and the price of the instrument is therefore less likely to move as substantially as it would have done had the full size of the order been visible.

- 4.12. Market participants can place orders on the Exchange at the Best Bid or Best Offer price, or a number of "ticks" from the Best Bid or Best Offer. A tick is the smallest increment permitted in quoting or trading a security. A tick on the Exchange in BTP Futures was equivalent to 1 Euro cent. The Traders were able to see the ten most competitive bids and the ten most competitive offers on screen when choosing at what price to place their order. Generally, the further the price of an order is away from the Best Bid or Best Offer, the less likely it is that such an order will execute on a timely basis, or at all. Most BTP Futures orders on the Exchange were placed at, or near, the Best Bid or Best Offer. Although market participants could see the quantity and price of the orders that were placed on the Exchange, they would not have been able to see the identity of the firms or traders placing orders.
- 4.13. During the Relevant Period, aside from MHI, there were on average 109 market participants who placed BTP Futures orders on the Exchange each day.

Trader remuneration and performance of the Desk

- 4.14. The Mandate stated that the Desk must facilitate client trading; however, as MHI was not a Primary Dealer in BTPs, it was limited in its possibilities to deal with clients, and it had a limited product range, and a small market share in BTP trading.
- 4.15. The Desk often lost money as a result of trading with clients; however, it was strategically important for MHI to offer EGBs to clients of other MHI services. Senior Management had increased the "hit ratio" for the Desk in April 2016, requiring the Traders to execute a higher proportion of client orders than previously.
- 4.16. In order for the Desk to be successful, and to achieve the increased hit ratio, it was necessary to respond to clients quickly and with as competitive a price as possible. Through the use of the abusive trading strategy, the Traders aimed to

respond to clients' RFQs more quickly, and make more competitive prices with increased certainty, in order to increase their hit ratios.

- 4.17. While the Traders were remunerated based on a range of weighted factors, the performance of the Desk was a significant factor when calculating the Traders' bonuses.

Training and awareness of market abuse

- 4.18. Mr Lopez was familiar with behaviours constituting market abuse and the regulations that prohibit them, due to his experience in the industry. In addition, as part of his role Mr Lopez undertook training in behaviours constituting market abuse while at MHI during, and shortly prior to, the Relevant Period. He undertook specific training in relation to the Market Abuse Regulation which came into force during the Relevant Period. The training materials gave examples of market abuse, including placing orders into an electronic trading system at prices which are higher than the previous offer, or lower than the previous bid, and withdrawing them before they are executed, to give a misleading impression that there is demand or supply at that price. They also gave an example of inputting orders to buy when the genuine intention is to sell and advised that all trading must have a legitimate rationale.

Market manipulation

Abusive trading strategy

- 4.19. Mr Lopez undertook an abusive trading strategy, both alone and in collaboration with Mr Urra and/or Mr Sheth. The abusive trading strategy involved the following:
- i. Large orders (relative to other orders on the Exchange at the time) were placed for the purpose of giving an impression that the Traders wanted to buy or sell a specified number of BTP Futures lots. The Traders did not intend to trade these orders. These misleading orders were not placed as Iceberg Orders; they were placed to facilitate the execution of smaller genuine orders on the opposite side of the order book. The genuine orders were sometimes placed as Iceberg Orders;

- ii. The misleading orders were placed on the opposite side of the book either shortly before, or shortly after, the genuine orders were placed;
 - iii. The misleading orders were placed away from the touch, whereas the genuine orders were placed at, or close to, the touch;
 - iv. The misleading orders were cancelled shortly after the genuine orders had fully, or at least 50%, traded; and
 - v. Sometimes this abusive trading strategy was carried out in relation to a number of orders simultaneously, such that there could be more than one genuine order and/or more than one misleading order on the Exchange at the same time.
- 4.20. When Mr Lopez undertook the abusive trading strategy in collaboration with Mr Urra and/or Mr Sheth, sometimes one Trader would place the smaller genuine order and another Trader would place the larger misleading order; and sometimes all three Traders would place a range of genuine orders and misleading orders between them.
- 4.21. It is clear from the multiple occasions that Mr Lopez undertook this pattern of trading that he deliberately engaged in a repeated strategy, both individually and with Mr Urra and Mr Sheth.

Abusive trading by Mr Lopez alone

- 4.22. The Authority has identified 40 occasions in the Relevant Period on which Mr Lopez manipulated the BTP Futures market by undertaking the abusive trading strategy alone.
- 4.23. An example of this took place on 25 July 2016. Mr Lopez placed a genuine order to buy 12 lots of BTP Futures at the Best Bid. Six seconds later, Mr Lopez placed a large order to sell 200 lots at a price 3 ticks away from the Best Offer. Two seconds later, he amended the large sell order to be one tick closer to the Best Offer. Two seconds after amending the price of the large sell order, another market participant hit Mr Lopez's smaller buy order. Four seconds after the smaller buy order traded, Mr Lopez cancelled his large sell order without it having traded. This abusive trading took place over approximately 14 seconds.

4.24. The large sell order in this example gave an impression to other market participants that there was genuine material supply of BTP Futures when, in fact, Mr Lopez did not intend to trade this sell order. Instead, Mr Lopez's genuine interest at that time was in buying a smaller quantity of BTP Futures on the opposite side of the book. That Mr Lopez did not intend to trade his large sell order is demonstrated by the following:

- i. He initially placed the sell order three ticks away from the Best Offer so that other market participants would be less likely to trade with the order; and
- ii. He cancelled the sell order 8 seconds after he placed it, 4 seconds after the smaller buy order traded.

4.25. At the time of placing the large sell order, there were no executed BTP trades or RFQs in BTPs or BTP Futures that the Traders could have wanted to hedge with an order in BTP Futures of the large size of the misleading order.

4.26. Mr Lopez used his large sell order to assist the execution of his smaller buy order so that he could trade the buy order more efficiently than he would otherwise have been able to do. Other market participants likely changed their trading strategy as a result of his misleading order. Mr Lopez increased the impression of genuine material supply which was given to other market participants by:

- i. placing the misleading order at a size significantly larger than any other order on the Exchange at the time and creating an imbalance between the volume of orders on the bid and offer sides of the order book;
- ii. not placing the misleading order as an Iceberg Order with the result that all 200 lots were visible to the market as soon as the order was placed; and
- iii. placing the misleading order near enough to the Best Offer to be visible to other market participants and moving it closer to the Best Offer to increase the pressure on the order book, but not so close that it was likely to be lifted, i.e. bought.

4.27. The size of the misleading order compared to other orders on the order book can be seen as follows:²



4.28. In contrast, Mr Lopez placed his small genuine buy order, which he intended to, and subsequently did, trade, at the Best Bid, giving an improved chance of execution.

4.29. Taking a sample of 10 occasions on which Mr Lopez carried out this trading strategy on his own, it is evident that the trading was abusive from the following features:

- i. He placed 10 misleading orders across the set of 10 occasions, ranging in size between 200 and 300 lots, and totalling 2,100 lots. All of the misleading orders were significantly large compared to other orders on the Exchange at

² In this illustration, and the other similar ones which appear in this Notice, each shaded section of a bar represents a different order with the size of the bars representing the size of orders at different prices. The green bars represent the bid side of the order book (i.e. those who are looking to buy), and the red bars represent the offer side (i.e. those who are looking to sell). The grey bars represent orders that are inactive and would not have been visible to market participants viewing the order book.

the time and would therefore have given an impression of significant demand/supply to other market participants;

- ii. He placed 10 genuine orders ranging in size between 8 and 30 lots, with an average of around 16 lots. The 10 genuine orders totalled 162 lots;
- iii. He did not iceberg any of the 10 misleading orders, despite deciding to iceberg seven of the significantly smaller ten genuine orders that he placed. This iceberging meant that on average the greatest quantity visible to other market participants from the genuine orders was less than 7 lots. However, showing the full size of the misleading orders increased the impression of supply/demand which was given to other market participants;
- iv. When placing his 10 genuine orders, he placed the majority either at, or more competitively than, the Best Bid or Best Offer at the time;
- v. When placing his misleading orders, he did not place any at, or more competitively than, the Best Bid or Best Offer. Instead, in each instance, his misleading orders were always placed further from the Spread than his genuine orders;
- vi. He did not execute any of the 2,100 lots he indicated that he wanted to execute through the placement of his 10 misleading orders. By contrast, he fully executed all 10 genuine orders totalling 162 lots;
- vii. He always placed his first misleading orders after his first genuine orders, on average 14 seconds later. With the exception of 1 order, he always cancelled any remaining misleading orders on the order book, on average 11 seconds after his final genuine order had filled; and
- viii. At the time of placing the 10 misleading orders, there were no executed BTP trades or RFQs that the Traders could have wanted to hedge through placing orders of this size in the BTP Futures market. When placing orders with a genuine market-making intention, Market-Makers will ordinarily hedge their risk precisely, and the sizes of orders that they place in the market should therefore reflect this. If these orders were genuine hedges, it would be extremely unlikely for the volume to be frequently round numbers and for the same sized large orders to be repeated in a short space of time. Mr

Lopez regularly repeated the same sized orders when placing misleading orders, and these were also often round numbers, both of which indicated that he did not have a legitimate market-making rationale for placing the orders, such as a client order or an executed BTP bond trade that he was trying to hedge; the purpose of the misleading orders was to facilitate the execution of the smaller genuine orders. Of the 10 misleading orders he placed, 9 orders were of 200 lots, and 1 order was of 300 lots.

Collaborative abusive trading by the Traders

- 4.30. The Authority has identified 92 occasions in the Relevant Period on which Mr Lopez manipulated the BTP Futures market in collaboration with Mr Urrea, Mr Sheth, or both.
- 4.31. The Traders worked together to manipulate the market by placing the large misleading orders on the opposite side of the book to genuine orders, for the purpose of facilitating the execution of the genuine orders. The Traders aimed to execute their genuine orders more efficiently and manage better the risk on their books as a result of the placement of the misleading orders.

Collaborative abusive trading on 22 July 2016

- 4.32. An example of Mr Lopez undertaking the abusive trading strategy in collaboration with Mr Urrea and Mr Sheth took place on 22 July 2016 and involved Mr Lopez placing (and subsequently executing) two genuine orders on the opposite side of the order book to large misleading orders placed by Mr Urrea and Mr Sheth, which were cancelled without trading.
- 4.33. Mr Lopez placed a genuine order ("First Genuine Order") to sell 35 lots of BTP Futures at a price which improved the existing Best Offer by one tick and so became the new Best Offer. He placed the order as an Iceberg Order to show only 6 lots at a time on the order book. 7 seconds later, Mr Urrea placed a large buy order ("First Misleading Order") to buy 450 lots at a price 2 ticks away from the Best Bid. The Best Bid moved one tick further away from Mr Urrea's First Misleading Order. Less than a second after Mr Urrea placed the First Misleading Order, Mr Sheth placed another large buy order ("Second Misleading Order") to buy 250 lots at the same price as Mr Urrea's First Misleading Order (now 3 ticks away from the

Best Bid), at which point the First Genuine Order started to trade (another market participant lifted, i.e. bought, the first 2 sections of the First Genuine Order).

- 4.34. 5 seconds later, Mr Lopez placed another sell order ("Second Genuine Order") for 4 lots at a price one tick away from the Best Offer. He placed the order as an Iceberg Order to only initially show 3 lots, followed by 1 lot. Sections of Mr Lopez's First Genuine Order and Second Genuine Order remained on the Exchange without trading. Mr Sheth cancelled the Second Misleading Order and Mr Urrea's First Misleading Order remained on the Exchange. Mr Lopez amended the prices of the First Genuine Order and the Second Genuine Order to the Best Offer price, however sections of Mr Lopez's First Genuine Order and Second Genuine Order continued to remain on the Exchange without trading for a few more seconds.
- 4.35. Mr Urrea amended the price of the First Misleading Order to only one tick away from the Best Bid, increasing the pressure on the order book, and in the same second, Mr Lopez's First Genuine Order started trading again and the Second Genuine Order started to trade (another market participant lifted the third section of the First Genuine Order and the first section of the Second Genuine Order). Over the next two seconds, the Second Genuine Order finished trading and the fourth section of the First Genuine Order was traded, both having been lifted by another market participant.
- 4.36. Mr Urrea again amended the price of the First Misleading Order to become three ticks away from the Best Bid, and the First Genuine Order continued to trade: firstly Mr Lopez hit another market participant's bid and the final section was lifted by another market participant. 5 seconds after Mr Lopez's final section of the First Genuine Order traded, Mr Urrea cancelled the First Misleading Order.
- 4.37. This collaborative abusive trading activity took place over approximately 37 seconds. During this time, the Traders together sold 39 lots, filling all of the genuine sell orders that Mr Lopez had placed during this time. The Traders bought 1 lot (in a separate order)³ after placing buy orders indicating that it was their

³ In the same second as Mr Urrea cancelling the First Misleading Order, Mr Lopez placed a buy order of 1 lot at one tick away from the Best Bid and traded when he lifted another market participant's offer. The order is not believed to have had a connection to the abusive trading.

intention to buy 700 lots through buy orders Mr Urra and Mr Sheth placed opposite Mr Lopez's sell orders.

4.38. The First and Second Misleading Orders placed by Mr Urra and Mr Sheth gave an impression to other market participants that there was genuine material demand for buying BTP Futures when in fact Mr Urra and Mr Sheth did not intend to trade at all. Instead, the Traders' genuine interest at that time was in selling a smaller quantity of BTP Futures through Mr Lopez's sell orders. That Mr Urra and Mr Sheth did not intend to trade the First and Second Misleading Orders and that they were working in collaboration with each other and Mr Lopez is demonstrated by the following:

- i. Mr Urra placed the First Misleading Order after Mr Lopez's First Genuine Order had remained untraded on the Exchange for 7 seconds, despite Mr Lopez having placed the First Genuine Order at the Best Offer;
- ii. Mr Urra initially placed the First Misleading Order two ticks away from the Best Bid so that other market participants would be less likely to trade with the order;
- iii. Mr Sheth placed the Second Misleading Order milliseconds after Mr Urra placed the First Misleading Order;
- iv. Mr Sheth placed the Second Misleading Order three ticks away from the Best Bid so that other market participants would be less likely to trade with the order;
- v. Within a second of Mr Urra placing the First Misleading Order and Mr Sheth placing the Second Misleading Order, Mr Lopez's First Genuine Order began to trade;
- vi. Mr Sheth cancelled the Second Misleading Order 14 seconds after he placed it. He cancelled the Second Misleading Order after the Best Bid had moved closer to it so that it became at more risk of being traded;
- vii. When Mr Sheth cancelled the Second Misleading Order, Mr Lopez amended the prices of the First and Second Genuine Orders to bring them back to Best Offer, however they remained on the Exchange without trading for

around 6 seconds. Mr Urra amended the price of the First Misleading Order, moving it closer to the Best Bid to increase pressure on the market and make it more likely that other market participants would trade with Mr Lopez's Genuine Orders. Within a second of Mr Urra making this price amendment, Mr Lopez's Genuine Orders began trading again;

- viii. Mr Urra made a further price amendment to the First Misleading Order. Two seconds after bringing it to within one tick of the Best Bid, he amended the price to be three ticks away from the Best Bid, to reduce the risk of the First Misleading Order being traded;
- ix. Mr Urra cancelled the First Misleading Order 30 seconds after placing it and 5 seconds after Mr Lopez's Genuine Orders had finished trading; and
- x. Mr Urra did not place the First Misleading Order as an Iceberg Order, with the result that all 450 lots were visible to the market and Mr Sheth did not place the Second Misleading Order as an Iceberg Order, with the result that all 250 lots were visible to the market. This is in contrast to the Genuine Orders which Mr Lopez placed as Iceberg Orders.

4.39. At the time of Mr Urra and Mr Sheth placing the First and Second Misleading Orders, there were no executed BTP trades or RFQs in BTPs or BTP Futures that the Traders could have wanted to hedge with an order in BTP Futures of the large size of the First and Second Misleading Orders.

4.40. Mr Urra and Mr Sheth used the First and Second Misleading Orders to execute Mr Lopez's Genuine Orders more efficiently than would otherwise have been possible. Other market participants likely changed their trading strategy as a result of the misleading orders. Mr Urra and Mr Sheth increased the impression of genuine material demand which was given to other market participants by the following:

- i. The First and Second Misleading Orders were placed at sizes significantly larger than any other order on the Exchange at the time and increasing the imbalance between the volume of orders on the bid and offer sides of the order book;
- ii. Mr Urra did not place the First Misleading Order as an Iceberg Order, with the result that all 450 lots were visible to the market and Mr Sheth did not

place the Second Misleading Order as an Iceberg Order, with the result that all 250 lots were visible to the market. While both of these orders were on the Exchange, they falsely indicated a combined demand for 700 lots. It is implausible that Mr Urra and Mr Sheth would consider orders of this size to be incapable of impacting the market at the same time as Mr Lopez considered it necessary to enter his considerably smaller orders as Iceberg Orders; and

- iii. The First and Second Misleading Orders were placed near enough to the Best Bid to be visible to other market participants and to increase the pressure on the order book.

4.41. The size of the First Misleading Order compared to other orders on the order book can be seen as follows:



4.42. The combined size of the First and Second Misleading Orders compared to other orders on the order book can be seen as follows:



4.43. In contrast, Mr Lopez acted differently to Mr Urra and Mr Sheth when he was placing the two sell orders, which he intended to, and subsequently did, trade:

- i. Mr Lopez placed the First Genuine Order at the Best Offer, giving an improved chance of execution;
- ii. Mr Lopez placed the Second Genuine Order one tick away from the Best Offer;
- iii. When the Spread moved, Mr Lopez amended the prices of both of the Genuine Orders to the Best Offer so that other market participants would be more likely to trade with the orders; and

- iv. Mr Lopez iceberged the First Genuine Order, showing 6 lots of the 35 lot order at a time. He iceberged the Second Genuine Order, showing 3 lots of the 4 lot order, followed by 1 lot.
- 4.44. It is clear that the First and Second Misleading Orders and the First and Second Genuine Orders were related, given: the absence of a legitimate rationale to execute orders of this size at this time; the timing of the placement and trading of the Genuine Orders and the placement and cancellation of the misleading orders; the Traders' close working relationship and collaborative approach to risk management; and the multiple occasions on which the Traders followed the same pattern of trading. This collaborative abusive trading was a strategy by the Traders to facilitate the execution of the Genuine Orders.
- 4.45. Taking a sample of 7 occasions on which Mr Lopez undertook the collaborative trading with Mr Urra and/or Mr Sheth, it is evident that the trading was abusive from the following features:
- i. The Traders placed 16 misleading orders across the set of 7 occasions, ranging in size between 250 and 500 lots, totalling 6,603 lots. All of the misleading orders were significantly large compared to the other orders on the Exchange at the time and would therefore have given a significant impression of demand/supply to other market participants;
 - ii. The Traders placed 11 genuine orders, ranging in size between 4 and 160 lots, with an average of around 32 lots. These genuine orders totalled 347 lots;
 - iii. The Traders did not iceberg any of the misleading orders, showing the full size of the orders to increase the impression of demand/supply, despite deciding to iceberg 8 of the significantly smaller genuine orders that they placed. This iceberging meant that on average the greatest quantity visible to other market participants from the genuine orders in each example was eight lots. However, showing the full size of the misleading orders increased the impression of supply/demand which was given to other market participants;
 - iv. When placing the 11 genuine orders, the Traders placed the majority either at, or more competitively than, the Best Bid or Best Offer at the time;

- v. When placing the misleading orders, the Traders did not place any at, or more competitively than, the Best Bid or Best Offer. Instead, in each instance (with two exceptions), their misleading orders were placed further from the Spread than their genuine orders;
- vi. The Traders did not execute any of the 7,660 lots that they indicated that they wanted to execute through the placement of their misleading orders. They executed 288 of the 342 lots of the genuine orders that they placed (3 orders were not executed in full);
- vii. The Traders always placed their first misleading orders after their first genuine orders; excluding one order, the first misleading order was placed on average nine seconds later. With the exception of three orders, they cancelled any remaining misleading orders on the order book on average 3 seconds after their final genuine orders had filled; and
- viii. At the time of placing the misleading orders, there were no executed BTP trades or RFQs that the Traders could have wanted to hedge with large BTP Futures trades. As with Mr Lopez's individual abusive trading, a number of the large misleading orders that the Traders placed were round numbers; for example, 200 and 500 lots. It would be highly unlikely that these orders were frequently round numbers based on a specific calculation of the risk to be hedged. The Traders also regularly repeated the same sized orders, which would not be likely to occur frequently if the orders were placed following a specific calculation of the risk to be hedged.

Recurring characteristics of the Traders' strategy

- 4.46. The Traders' trading and order placement in BTP Futures on the Exchange was markedly different to the trading and order placement of other market participants, including the sizes of orders that they placed, the pricing of their orders and their use of Iceberg Orders.
- 4.47. A central feature of the abusive trading was that the misleading orders were large volume orders, exceeding 200 lots ("Large Orders"). Large Orders of BTP Futures were rarely placed on the Exchange. Including MHI, 47 market participants placed

Large Orders, accounting for 0.02% of the total number of orders placed on the Exchange during the Relevant Period.

- 4.48. Despite MHI being a small market player, trading less than 0.43% of the total traded volume of BTP Futures, the Traders placed more Large Orders than any of the other market participants and accounted for 23.24% of the total volume of Large Orders placed across the Relevant Period. On one day in the Relevant Period, the Traders accounted for 75.5% of the number of Large Orders placed. However, the Traders rarely executed BTP trades or received client orders in BTPs that they could have wanted to hedge with these Large Orders.
- 4.49. While the Traders placed significantly more Large Orders than other market participants, they had much lower execution rates of their Large Orders. The Traders partially, or fully executed only 1.5% of their Large Orders, cancelling 98.5% without them having begun to execute (Mr Lopez himself executed none of the Large Orders that he placed). By comparison, other market participants partially or fully executed 72.28% of their Large Orders, cancelling only 27.72% of their Large Orders without them having begun to execute. It would likely have been possible for the Traders to execute a larger proportion of their Large Orders if it had been their intention for them to execute.
- 4.50. In comparison to their low execution rates when placing Large Orders, the Traders executed 74.1% of their orders under 200 lots by volume (Mr Lopez executed 69.68% of the volume of orders he placed under 200 lots).
- 4.51. When the Traders placed Large Orders, they rarely priced them competitively, placing only 1.93% of them at the Best Bid or Best Offer price. In contrast, other market participants placed 80.34% of their Large Orders at Best Bid or Best Offer prices, or at improved prices. By placing their Large Orders away from the Best Bid or Best Offer price, the Traders were less likely to execute them.
- 4.52. Of the 92 Large Orders Mr Lopez placed over the Relevant Period, he 'iceberged' 4 of them (4.35%), placing 88 of them with their full size visible to other market participants on the Exchange. By contrast, Mr Lopez 'iceberged' 50% of smaller orders that he placed (between 50 and 199 lots), even though these were less likely to impact the market than the Large Orders. Showing these orders in their full size would likely have encouraged other market participants to act with more

urgency, assisting the Traders to execute a higher proportion of their smaller orders.

5. FAILINGS

- 5.1. The regulatory provisions relevant to this Notice are referred to in Annex A.
- 5.2. Mr Lopez's abusive trading took place in the Relevant Period of 1 June 2016 to 29 July 2016. Section 118 of the Act was in place until 2 July 2016. The Market Abuse Regulation came into force on 3 July 2016.

Section 118 of the Act

- 5.3. The Authority has identified that, between 1 June 2016 and 2 July 2016, Mr Lopez undertook the abusive trading alone 34 times and in concert with Mr Urra and/or Mr Sheth 69 times.
- 5.4. Section 118(1)(a) of the Act (as in force at that time) provides the scope of market abuse under the Act as engaging in behaviour in relation to qualifying investments admitted to trading on a prescribed market. BTP Futures are qualifying investments and the EUREX Exchange is a prescribed market (see further at Annex A). Section 118(1) also provides that market abuse can be committed by one person alone or by two or more persons jointly or in concert.
- 5.5. Section 118(5) of the Act (as in force at that time) provides (so far as relevant to this Notice) that market abuse occurs where:

"...the behaviour consists of effecting transactions or orders to trade (otherwise than for legitimate reasons and in conformity with accepted market practices on the relevant market) which –

(a) give, or are likely to give, a false or misleading impression as to the supply of, or demand for, or as to the price of, one or more qualifying investments, or

(b) secure the price of one or more such investments at an abnormal or artificial level."

- 5.6. Mr Lopez's misleading orders (and those of the other Traders when acting in concert with Mr Lopez) were not placed for legitimate reasons; nor did they conform with an accepted market practice.
- 5.7. Mr Lopez engaged in market abuse as defined by section 118(5) of the Act and in contravention of section 118(1) of the Act, as in placing the misleading orders he (and the other Traders when acting in concert with Mr Lopez) gave a false or misleading impression as to the supply of, or demand for, the BTP Futures to which the misleading orders related. This was because in placing the misleading orders, the Traders signalled that they wanted to buy or sell a specified number of BTP Futures. In fact, they did not wish to trade in that manner and the purpose of placing the misleading orders was to facilitate the execution of genuine orders at a more advantageous price, or on a more timely basis, than would otherwise have been achieved but for their having misled other market participants by the misleading orders.

Articles 12 and 15 of the Market Abuse Regulation

- 5.8. The Authority has identified that, between 3 July 2016 and 29 July 2016, Mr Lopez undertook the abusive trading alone 6 times and in concert with Mr Urrea and/or Mr Sheth 23 times.
- 5.9. Article (2)(1)(a) of the Market Abuse Regulation provides that it applies to financial instruments admitted to trading on a regulated market. BTP Futures are financial instruments and the EUREX Exchange is a regulated market (see further at Annex A).
- 5.10. Article 15 of the Market Abuse Regulation, as a result of Article 12(1)(a), prohibits the placing of an order to trade which gives, or is likely to give, a false or misleading signal as to the supply of or demand for a future.
- 5.11. Article 12(1)(a) provides that market manipulation shall comprise the following activities (so far as relevant to this Notice):

“entering into a transaction, placing an order to trade or any other behaviour which:

- (i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, [...];

unless the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or

behaviour have been carried out for legitimate reasons, and conform with an accepted market practice as established in accordance with Article 13.”

- 5.12. Section 131AE of the Act states that Article 15 of the Market Abuse Regulation may be contravened by a person alone or a person and one or more other persons jointly or in concert.
- 5.13. Mr Lopez’s misleading orders (and those of the other Traders when acting in concert with Mr Lopez) were not placed for legitimate reasons, nor did they conform with an accepted market practice as established in accordance with Article 13 of the Market Abuse Regulation.
- 5.14. Mr Lopez engaged in market manipulation as defined by Article 12(1)(a) of the Market Abuse Regulation and in contravention of Article 15, as in placing the misleading orders he and the other Traders when acting in concert with Mr Lopez) gave a false or misleading impression as to the supply of, or demand for, the BTP Futures to which the misleading orders related. This was because in placing the misleading orders the Traders signalled that they wanted to buy or sell a specified number of BTP Futures. In fact, they did not wish to trade in that manner and the purpose of placing the misleading orders was to facilitate the execution of the genuine orders at a more advantageous price, or on a more timely basis, than would otherwise have been achieved but for their having misled other market participants by the misleading orders.

Fitness and propriety

- 5.15. The Authority considers that Mr Lopez’s conduct in deliberately engaging in market manipulation was dishonest and lacked integrity. This dishonest conduct was highly likely adversely to impact other market participants and was repeated many times over a period of two months. As a result, he is not a fit and proper person to perform any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm.

6. SANCTION

Financial penalty

- 6.1. The Authority’s policy for imposing a financial penalty is set out in Chapter 6 of DEPP. The Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5C sets out the details of the five-step

framework that applies in respect of financial penalties imposed on individuals in market abuse cases.

Step 1: disgorgement

- 6.2. Pursuant to DEPP 6.5C.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the market abuse where it is practicable to quantify this.
- 6.3. The Authority has not identified any financial benefit that Mr Lopez derived directly from the market abuse.
- 6.4. Step 1 is therefore £0.

Step 2: the seriousness of the breach

- 6.5. Pursuant to DEPP 6.5C.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the market abuse. That figure is dependent on whether or not the market abuse was referable to the individual's employment. The market abuse committed by Mr Lopez was referable to his employment. In such cases, pursuant to DEPP 6.5C.2G(2), the Step 2 figure will be the greater of:

(a) a figure based on the percentage of the individual's "relevant income";

(b) a multiple of the profit made or loss avoided by the individual for their own benefit, or for the benefit of other individuals where the individual has been instrumental in achieving that benefit, as a direct result of the market abuse (the "profit multiple"); and

(c) for market abuse cases which the Authority assesses to be seriousness level 4 or 5, £100,000. The Authority usually expects to assess market abuse committed deliberately as seriousness level 4 or 5.

- 6.6. Pursuant to DEPP 6.5C.2G(4), an individual's relevant income is the gross amount of all benefits they received from the employment in connection with which the market abuse occurred for the period of the market abuse.
- 6.7. The period of the market abuse committed by Mr Lopez was from 1 June 2016 to 29 July 2016. Pursuant to DEPP 6.5C.2G(5), where the market abuse lasted fewer than 12 months, the relevant income will be that earned by the individual in the

12 months preceding the final market abuse, and where the individual was in the relevant employment for less than 12 months, his relevant income will be calculated on a pro rata basis to the equivalent of 12 months' relevant income. Therefore, the relevant period for calculating Mr Lopez's relevant income is the 12-month period ending on 29 July 2016. Mr Lopez's relevant income, calculated on a pro rata basis to the equivalent of 12 months' relevant income, in the 12-month period ending on 29 July 2016 was £143,089.

6.8. In cases where the market abuse was referable to the individual's employment, pursuant to DEPP 6.5C.2G(6):

(a) the Authority determines the percentage of relevant income which applies by considering the seriousness of the market abuse and choosing a percentage between 0% and 40%; and

(b) the Authority determines the profit multiple which applies by considering the seriousness of the market abuse and choosing a multiple between 0 and 4.

6.9. DEPP 6.5C.2G(8) provides that the percentage range and profit multiple range are divided into five fixed levels which reflect, on a sliding scale, the seriousness of the market abuse; the more serious the market abuse, the higher the level. For penalties imposed on individuals for market abuse there are the following five levels:

Level 1 – 0%; profit multiple of 0

Level 2 – 10%; profit multiple of 1

Level 3 – 20%; profit multiple of 2

Level 4 – 30%; profit multiple of 3

Level 5 – 40%; profit multiple of 4

6.10. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the market abuse, and whether it was committed deliberately or recklessly.

6.11. DEPP 6.5C.2G(13) lists factors tending to show the market abuse was committed deliberately and includes, amongst other factors, that the market abuse was intentional, in that the individual intended or foresaw that the likely or actual consequences of his actions would result in market abuse (DEPP 6.5C.2G(13)(a)) and the individual's actions were repeated (DEPP 6.5C.2G(13)(g)).

- 6.12. Mr Lopez intended to mislead other market participants by placing misleading orders and acting in concert with the other Traders in order to facilitate the efficient execution of his, Mr Urrea, and Mr Sheth's genuine orders. He knew that his misleading orders would give false or misleading signals to other market participants as to the supply of, or demand for, BTP Futures. He knew that the placement of misleading orders constituted market abuse as a result of his experience in the market and the training that he had undertaken.
- 6.13. Mr Lopez's market abuse was repeated on multiple occasions during the Relevant Period, both alone and in concert with Mr Urrea and Mr Sheth.
- 6.14. The Authority considers that Mr Lopez deliberately committed market abuse.
- 6.15. DEPP 6.5C.2G(15) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:
- i. The market abuse was committed on multiple occasions during the Relevant Period (DEPP 6.5C.2G(15)(c)).
 - ii. The market abuse was committed deliberately or recklessly (DEPP 6.5C.2G(15)(f)).
- 6.16. DEPP 6.5C.2G(16) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers the following factor to be relevant:
- i. Limited profits were made or losses avoided as a result of Mr Lopez's market abuse, either directly or indirectly (DEPP 6.5C.2G(16)(a)). However, the Authority notes that Mr Lopez aimed to execute his genuine orders more efficiently and manage better the risk on his book as a result of the placement of his misleading orders (or those of the other Traders when acting in concert with Mr Lopez). This would have improved the performance of the Desk which was a factor taken into account in determining the bonus he was to receive.
- 6.17. The Authority has also taken into account that:
- i. Mr Lopez is an experienced industry professional (DEPP 6.5C.2G(12)(e)). Mr Lopez held the Certified Role of working in a Client Dealing Function. Prior to becoming a Certified Person, Mr Lopez held a number of roles as an

Approved Person, first holding a Controlled Function in 2006 (see footnote 1 above).

- ii. The Authority usually expects to assess deliberate market abuse as seriousness level 4 or 5 (DEPP 6.5C.2G(2)(c)).

6.18. Taking all of these factors into account, the Authority considers the seriousness of the market abuse to be level 4. This means the Step 2 figure is the higher of:

(a) 30% of Mr Lopez's relevant income of £143,089, a sum of £42,926;

(b) a profit multiple of 3 applied to Mr Lopez's financial benefit of £0, a sum of £0; and

(c) £100,000.

6.19. Step 2 is therefore £100,000.

Step 3: mitigating and aggravating factors

6.20. Pursuant to DEPP 6.5C.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the market abuse. Having considered each of the factors listed in DEPP 6.5C3.G, the Authority has concluded that there are no aggravating or mitigating factors such as to justify an adjustment to the Step 2 figure.

6.21. Step 3 is therefore £100,000.

Step 4: adjustment for deterrence

6.22. Pursuant to DEPP 6.5C.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the market abuse, or others, from committing further or similar market abuse, then the Authority may increase the penalty.

6.23. The Authority considers that the Step 3 figure of £100,000 represents a sufficient deterrent to Mr Lopez and others, and so has not increased the penalty at Step 4.

6.24. Step 4 is therefore £100,000.

Step 5: settlement discount

- 6.25. Pursuant to DEPP 6.5C.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement. No such agreement was reached in this case.
- 6.26. Step 5 is therefore £100,000.

Penalty

- 6.27. The Authority has therefore decided to impose a total financial penalty of £100,000 on Mr Lopez for market abuse.

Prohibition

- 6.28. The Authority has had regard to the guidance in Chapter 9 of EG in considering whether to impose a prohibition order on Mr Lopez. The Authority has the power to prohibit individuals under section 56 of the Act.
- 6.29. The Authority considers that, due to his dishonesty and the fact that he has engaged in deliberate market abuse, Mr Lopez is not a fit and proper person to perform any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm, and that a prohibition order should be imposed on him under section 56 of the Act.

7. REPRESENTATIONS

- 7.1. Annex B contains a brief summary of the key representations made by Mr Lopez, 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 Mr Lopez, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

- 8.1. This Notice is given to Mr Lopez under sections 57 and 127 and in accordance with section 388 of the Act.
- 8.2. The following paragraphs 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 from 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. Mr Lopez 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, Mr Lopez has 28 days from the date on which this Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email fs@hmcts.gsi.gov.uk). Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website:

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

- 8.5. A copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Stephen Robinson at the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.
- 8.6. Once any 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.
- 8.7. If the person to whom this Decision Notice is given refers the matter to the Tribunal, they may be eligible for legal assistance under section 134 of the Act.

Access to evidence

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

- 8.9. 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) any secondary material which, in the opinion of the Authority, might undermine that decision. There is no such material.

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). Section 391 of the Act provides that 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. Mr Lopez should be aware, therefore, that the facts and matters contained in this Notice may be made public.

Authority contact

- 8.12. For more information concerning this matter generally, contact Stephen Robinson (direct line: 020 7066 1338) or Danielle Turek (direct line: 020 7066 7156) at the Authority.

Elizabeth France

Deputy Chair, Regulatory Decisions Committee

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT LEGISLATIVE PROVISIONS

The Financial Services and Markets Act 2000 (“the Act”)

The Authority’s statutory objectives

The Authority’s statutory objectives, set out in section 1B(3) of the Act, include the integrity objective, which is protecting and enhancing the integrity of the UK financial system and includes (amongst other matters) its not being affected by contraventions by persons of Article 15 (prohibition of market manipulation) of the market abuse regulation.

Section 123 of the Act

123.— Power to impose penalties or issue censure

(1) The Authority may exercise its power under subsection (2) if it is satisfied that—

(a) a person has contravened [...] Article 15 (prohibition of market manipulation) of the market abuse regulation; [...]

(2) The Authority's power under this subsection is a power to impose a penalty of such amount as it considers appropriate on the person.

Section 56 of the Act

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.

Market abuse provision in the Act (as in force 1 June – 2 July 2016)

Section 118(1)(a) of the Act

For the purposes of this Act, market abuse is behaviour (whether by one person alone or by two or more persons jointly or in concert) which -

(a) occurs in relation to -

(i) qualifying investments admitted to trading on a prescribed market,

(ii) qualifying investments in respect of which a request for admission to trading on such a market has been made, or

(iii) in the case of subsection (2) or (3) behaviour, investments which are related investments in relation to such qualifying investments, and

(b) falls within any one or more of the types of behaviour set out in subsections (2) to (8).

[...]

Section 130A of the Act

Qualifying investments and prescribed markets will be defined by Treasury Order. That order is FSMA 2000 (Prescribed Markets and Qualifying Investments) Order 2001 SI 2001/996 ("the Order"), which was updated in 2005.

The Order (as amended) states that qualifying investments are all financial instruments within the meaning of Article 1(3) of Directive 2003/6/EC (Market Abuse Directive – MAD). Article 1(3) lists "financial futures contracts" which includes BTP Futures.

The Order (as amended) states that prescribed markets includes regulated markets and that regulated markets are those with the meaning given in Article 1(13) of Directive 93/22/EEC (the Investment Services Directive). The EUREX Exchange was a regulated market.

Section 118(5): Market manipulation

(5) The fourth [type of behaviour] is where the behaviour consists of effecting transactions or orders to trade (otherwise than for legitimate reasons and in conformity with accepted market practices on the relevant market) which -

(a) give, or are likely to give, a false or misleading impression as to the supply of, or demand for, or as to the price of, one or more qualifying investments, or

(b) secure the price of one or more such investments at an abnormal or artificial level.

Section 131AE of the Act (as currently in force)

For the purposes of any enactment a person contravenes Article 14 [of the Market Abuse Regulation] (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 [of the Market Abuse Regulation] (prohibition of market manipulation) whether the contravention is by that person alone or by that person and one or more other persons jointly or in concert.

Regulation (EU) No 596/2014 (“the Market Abuse Regulation”)

Article 2: Scope

1. This Regulation applies to the following:

(a) financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made; ...

Financial instruments are those defined by Article 4(1)(15) of MiFID II (Directive 2014/65/EU) which refers to those instruments listed in Annex I Section C. Annex I Section C lists “Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivative instruments, financial indices or financial measures which may be settled physically or in cash” which includes BTP Futures.

Regulated markets are those defined by Article 4(1)(21) of MiFID II (Directive 2014/65/EU). The EUREX Exchange is a regulated market.

Article 12: Market manipulation

1. For the purposes of this Regulation, market manipulation shall comprise the following activities:

(a) entering into a transaction, placing an order to trade or any other behaviour which:

(i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, [...];

unless the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice as established in accordance with Article 13.

2. The following behaviour shall, inter alia, be considered as market manipulation:

[...]

(c) the placing of orders to a trading venue, including any cancellation or modification thereof, by any available means of trading, including by electronic means, [...], and which has one of the effects referred to in paragraph 1(a) above or [...] by:

[...]

(iii) creating or being likely to create a false or misleading signal about the supply of, or demand for, or price of, a financial instrument, in particular by entering orders to initiate or exacerbate a trend; [...]

Article 13: Accepted market practices

1. The prohibition in Article 15 shall not apply to the activities referred to in Article 12(1)(a), provided that the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice as established in accordance with this Article.

Article 15: Prohibition of market manipulation

A person shall not engage in or attempt to engage in market manipulation.

Annex I

A. Indicators of manipulative behaviour relating to false or misleading signals and to price securing

For the purposes of applying point (a) of Article 12(1) of this Regulation, and without prejudice to the forms of behaviour set out in paragraph 2 of that Article, the following non-exhaustive indicators, which shall not necessarily be deemed, in themselves, to constitute market manipulation, shall be taken into account when transactions or orders to trade are examined by market participants and competent authorities:

(f) the extent to which orders to trade given change the representation of the best bid or offer prices in a financial instrument, [...] or more generally

the representation of the order book available to market participants, and are removed before they are executed; ...

Commission Delegated Regulation (EU) 2016/522

Article 1: Subject matter and scope

This Regulation lays down detailed rules with regard to:

[...]

(2) the indicators of market manipulation laid down in Annex I to Regulation (EU) No 596/2014; ...

Article 4: Indicators of manipulative behaviour

1. In relation to indicators of manipulative behaviour relating to false or misleading signals and to price securing referred to in Section A of Annex I to Regulation (EU) No 596/2014, the practices set out in Indicators A(a) to A(g) of Annex I to Regulation (EU) No 596/2014 are laid down in Section I of Annex II to this Regulation.

Section I of Annex II of Regulation (EU) 2016/522

6. Practices specifying Indicator A(f) of Annex I to Regulation (EU) No 596/2014:

(a) Entering of orders which are withdrawn before execution, thus having the effect, or which are likely to have the effect, of giving a misleading impression that there is demand for or supply of a financial instrument, [...] – usually known as ‘placing orders with no intention of executing them’. ...

2. THE AUTHORITY’S HANDBOOK OF RULES AND GUIDANCE

Market Conduct

The part of the Authority’s Handbook of rules and guidance entitled “Market Conduct” (“MAR”) provides guidance on the Market Abuse Regulation (EU) No 596/2014 (see MAR 1.1.2G).

Chapter 1.6 of MAR is headed “Manipulating transactions”.

MAR 1.6.5G states that the following factors are to be taken into account when considering whether behaviour is for legitimate reasons in relation to article 12(1)(a) of the Market Abuse Regulation, and are indications that it is not:

- (1) if the person has an actuating purpose behind the transaction to induce others to trade in, bid for or to position or move the price of, a financial instrument;
- (2) if the person has another, illegitimate, reason behind the transactions, bid or order to trade; and
- (3) if the transaction was executed in a particular way with the purpose of creating a false or misleading impression.

MAR 1.6.6G states that the following factors are to be taken into account when considering whether behaviour is for legitimate reasons in relation to article 12(1)(a) of the Market Abuse Regulation, and are indications that it is:

- (1) if the transaction is pursuant to a prior legal or regulatory obligation owed to a third party;
- (2) if the transaction is executed in a way which takes into account the need for the market or auction platform as a whole to operate fairly and efficiently;
- (3) the extent to which the transaction generally opens a new position, so creating an exposure to market risk, rather than closes out a position and so removes market risk; and
- (4) if the transaction complied with the rules of the relevant trading venue about how transactions are to be executed in a proper way (for example, rules on reporting and executing cross-transactions).

MAR 1 Annex 2 "Accepted Market Practices" records that there are no accepted market practices as established by the Authority in accordance with Article 13 of MAR.

MAR can be accessed here: <https://www.handbook.fca.org.uk/handbook/MAR/>

The Fit and Proper Test for Approved Persons ("FIT")

The part of the Authority's Handbook entitled "The Fit and Proper Test for Approved Persons" ("FIT") sets out the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person. FIT can be accessed here:

<https://www.handbook.fca.org.uk/handbook/FIT/1/3.html>

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.

Prohibition orders

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

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

Decision Procedure and Penalties Manual ("DEPP")

Chapter 6 of DEPP sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act and can be accessed here:

<https://www.handbook.fca.org.uk/handbook/DEPP/6/?view=chapter>

The Enforcement Guide ("EG")

The Authority's approach to financial penalties and public censures is set out in Chapter 7 of EG and can be accessed here:

<https://www.handbook.fca.org.uk/handbook/EG/7/?view=chapter>

ANNEX B

REPRESENTATIONS

- 1 A summary of the key representations made by Mr Lopez, and the Authority's conclusions in respect of them (in bold type), is set out below.

The instances of alleged solo abusive trading relied on

- 2 The Authority's investigation is deeply flawed. Despite a four-year investigation, the Authority presents detailed analysis in the Notice of only one example in relation to solo trading: see paragraphs 4.23 to 4.28 of this Notice. It failed to ask Mr Lopez in interview about this trade (which has been referred to as "JL5"), so it did not have any explanation from him about its purpose, yet it has concluded that it was dishonest abusive trading. It is procedurally unfair to rely on a trade about which Mr Lopez was not asked in interview; this indicates that something went wrong with the investigation. The Authority should consider carefully the soundness of drawing an inference of dishonesty about Mr Lopez's sole trading in these circumstances. The Notice does not present in detail any of the trades about which Mr Lopez was asked in interview. The Authority does not explain this; the obvious inference is that Mr Lopez's answers did not support a conclusion of dishonest abusive trading.
- 3 The Authority alleges that Mr Lopez carried out abusive solo trading on 40 occasions and refers (at paragraph 4.29 of this Notice) to a sample of 10 solo trades. Mr Lopez was not asked by the Authority in interview about nine of these cases. The Authority does not explain why it relies on nine trades about which Mr Lopez was not questioned in interview, or why it does not rely on those he was questioned about (other than the one which is referred to as "JL1"). Again, this suggests that the conclusions the Authority seeks to draw from the nine examples ("JL2" to "JL10") are unreliable (irrespective of the procedural unfairness of inferring dishonesty from sample trades about which Mr Lopez has never been questioned). Again, the Authority's decision not to present detailed analysis of JL1, being the only one of the ten examples that it did question Mr Lopez about in interview, presumably reflects the fact that the answers given by Mr Lopez about that example make an inference of dishonesty unsustainable. When discussing JL1 in interview, the Authority did not ask Mr Lopez about his purpose in placing and cancelling this order. It has therefore not laid the evidential groundwork for any conclusion that it was dishonest abusive trading.
- 4 Further, the Authority indicated to Mr Lopez in correspondence that JL1 did not meet one of its criteria for inclusion as an example of potentially abusive solo trading as it was not cancelled shortly after the corresponding small orders fully or at least 50% traded. Yet it informed him that it still relied on that example as an instance of manipulative trading. This undermines any confidence that can be placed in the Authority's investigation, as does the fact that on the same occasion the Authority revised downwards the number of instances of solo trading on which it relied.

- 5 The Authority also relies on 30 other instances of alleged abusive solo trading which it has not analysed in detail. It is unfair to rely on these.
- 6 **To the extent Mr Lopez considers he was not asked appropriate questions in interview with the Authority (for example, as to his purpose in placing the relevant trades) he has had ample opportunity to explain his position in relation to the relevant matters, in the course of his written and oral representations in these proceedings. The Authority has carefully considered all Mr Lopez's representations in reaching the decision set out in this Notice.**
- 7 **The Authority notes that Mr Lopez does not assert that his explanation for the trading in the examples relied upon that were not put to him in interview is any different from his explanation for those that were. While their details are not included in this Notice, the Authority provided Mr Lopez with its full analysis of each of the 10 examples of solo abusive trading referred to in the Notice including JL1, about which he was asked in interview; accordingly, Mr Lopez has been provided with the Authority's reasons for considering them to have been abusive.**
- 8 **In relation to JL1, this met all the criteria for selection (see below) other than one. The fact that in this instance the small order was not at least 50% executed at the time of cancellation of the large order (three of its ten lots having traded) does not undermine the Authority's conclusion that it was abusive in all the circumstances (see paragraph 9 below). There was a striking coincidence between the timing of partial execution of the small order and the cancellation of the large order (the large order was cancelled one second after the partial fill of the small order).**
- 9 **Given the striking trading pattern present in relation to the other 30 instances of solo trading relied on by the Authority, the criteria for selection of which were conservative and restrictive, the Authority is satisfied that it is appropriate to conclude that they provide strong evidence of solo abusive behaviour. The downward revision by the Authority of the number of cases relied on was due to a conservative approach to the selection of instances. As such, the Authority is satisfied that the remaining instances provide good evidence of abusive behaviour.**

The instances of alleged collaborative abusive trading relied on

- 10 The Authority relies on 92 occasions of alleged manipulation by Mr Lopez in conjunction with one or both of the other Traders. However, it has only conducted a detailed analysis of 7 multi-Trader trades. Thus it relies on 85 trades for which no detailed analysis has been conducted.
- 11 The Authority presents detailed analysis of only one alleged collaborative abusive trade (see paragraphs 4.32 to 4.44 of this Notice). Mr Lopez was not asked about this in interview. No explanation has been given by the Authority for relying on this trade, although he was asked about three other such trades in interview. It is reasonable to infer that his answers in interview made the Authority's case theory untenable.

- 12 The Authority refers (see paragraph 4.45 of this Notice) to a sample of 7 multi-Trader instances involving Mr Lopez and one or both of the other Traders which it says were abusive. Mr Lopez was only questioned in interview about three of these. So the Authority has had no explanation from Mr Lopez about four of these instances.
- 13 The Authority's investigation has uncovered no evidence whatsoever of the Traders "working together" in carrying out a dishonest collusive trading strategy. There is not one document, nor one sentence from any interview which supports the allegation that the Traders worked together for the dishonest manipulative purpose alleged. It is virtually inconceivable that if the Traders had worked together in the way alleged there would not have been some supporting evidence of that kind. Further, the Traders did not share a common blotter, and so they would not have known what orders the others were placing.
- 14 The Authority also ignores the fact that Mr Urra and Mr Sheth adopted a different trading strategy to Mr Lopez. The different strategies would not naturally enable a collaborative approach of the kind alleged.
- 15 The Authority should not infer that Mr Lopez was dishonest in relation to his trades because of supposedly similar trading patterns or conduct on the part of the other Traders.
- 16 **To the extent Mr Lopez considers he was not asked appropriate questions in interview with the Authority about the instances of collaborative abusive trading, the Authority refers to its comments at paragraph 6 above. The Authority also refers to paragraph 7 above: the Authority also provided Mr Lopez with its full analysis of each of the 7 examples of collaborative abusive trading referred to in the Notice. Given the striking trading pattern present in relation to the 92 instances of collaborative trading relied on by the Authority in the case of Mr Lopez, the Authority is satisfied that it is appropriate to conclude that they provide strong evidence of collaborative abusive behaviour.**
- 17 **The lack of records of communications in this case is not surprising: the Traders sat next to each other, so they had ample opportunity to communicate with one another and there is evidence that they did so (for example, from interviews with other MHI personnel). There would have been no need to write messages or telephone each other, nor to rely on written records of each other's trades to understand what the other Traders were doing at any given moment. Participants to a manipulative scheme would be likely to avoid creating records about it and would be unlikely to speak in an unguarded way when discussing their manipulative behaviour in front of colleagues.**
- 18 **The Authority does not accept the explanations offered by Mr Urra and Mr Sheth of their purpose in placing the larger trades in question in their cases. Therefore, the extent to which such strategies would enable a collaborative approach does not undermine the Authority's conclusion that the Traders did collaborate with one another. The Authority does consider**

that it is significant that all the Traders adopted similar highly unusual and distinctive, trading patterns, and in all the circumstances of this case considers that to be indicative of dishonest, collusive behaviour.

Mr Lopez's actual trading strategy

- 19 In relation to the supposedly dishonest trading pattern, Mr Lopez was engaged in anticipatory hedging, whereby he anticipated orders from clients in the light of market movements and events and would seek to acquire BTP Futures as "inventory" at an attractive price in anticipation of such orders. This is a well-known and entirely legitimate trading strategy and was part of the Mandate.
- 20 When conducting anticipatory hedging, Mr Lopez would place an order for a round number of lots, as he would not have a specific order against which to hedge at that point, and if the market moved away from the level at which the order was placed and/or market information changed his view of the likely market direction, he would cancel the order. This would occur when the market moved in a direction (or where market information changed his view of the likely market direction) that made the order either less likely to be executed or less attractive in pricing terms.
- 21 During the Relevant Period, there were 93 RFQs received by the Desk which would have required hedging with futures orders of 200 lots or more. It follows that Mr Lopez's anticipatory hedging strategy was consistent with the Mandate, aimed at orders which were being regularly received by the desk, and an exercise in precise and measured risk management.
- 22 The small orders on the opposite side of the book to the larger orders were for the purpose of hedging transactions following RFQs. They were unconnected to the larger orders.
- 23 **Although anticipatory hedging can be a reason why traders place orders, the Authority does not accept this explanation by Mr Lopez for the trades in question. It is highly improbable that Mr Lopez would have persisted with a strategy of anticipatory hedging throughout the Relevant Period which strategy, had it existed, would have been completely unsuccessful since none of his larger orders traded.**
- 24 **Further, it would be an extraordinary coincidence to find small orders on the opposite side of the book to the large orders in each of the instances identified by the Authority, with the latter in each case cancelled shortly after the filling of the former, if the two were unconnected. In the Authority's view, the repeated pattern of trading in which large orders were cancelled within seconds of the small order on the other side of the book trading, suggests a direct link between the two orders in each case, and provides compelling evidence of abusive trading.**
- 25 **Mr Lopez's actions, as explained by him, are not consistent with the Mandate. As set out at paragraph 4.9, the Mandate allowed the execution of transactions in hedging instruments, such as BTP Futures, in anticipation of a highly likely near-term exposure to risk, where a sound risk management rationale for such anticipatory hedging existed.**

However, it also specified that the size of the Desk's market-making inventory must be designed not to exceed, on an ongoing basis, the reasonably expected near-term demand of customers. Of the 93 RFQs referred to by Mr Lopez, only seven were won by the Desk, indicating that an anticipatory hedge for each such RFQ could not have represented a response to a highly likely near-term risk.

- 26 **In addition, the Authority considers it implausible that Mr Lopez would (while being careful to hedge the smaller risk arising from each small client order) take a large risk by seeking to carry out anticipatory hedging transactions in circumstances when there was no way of knowing whether any anticipated orders would materialise, nor whether the price of futures would rise or fall. This would be an inconsistent approach to risk.**
- 27 **While Mr Lopez has stated that he used a round number when placing a large order because he did not have a specific order that he was hedging, the Authority considers this does not explain why he often used the same order size, since the size of the order should reflect market conditions and anticipated client demand, which may be expected to vary from time to time.**

Evidence of trades ignored by the Authority

- 28 Within the pool of 92 large orders placed by Mr Lopez during the Relevant Period there are 38 instances which have not been analysed by the Authority on the basis they did not satisfy its criteria for selection. These include five instances where the order was cancelled without any part of it being executed. The Authority does not make any allegation that these were part of any dishonest trading strategy. These were instances of anticipatory hedges placed by Mr Lopez. It would appear the Authority does not suggest they were manipulative orders because they did not overlap with any smaller orders placed by Mr Lopez (or the other Traders) on the other side of the trading book. There is no suggestion these were other than genuine orders.
- 29 Further, within that pool, there are nine instances of orders of more than 200 lots placed by Mr Lopez during the Relevant Period where there was a small order on the other side of the book placed by Mr Urra or Mr Sheth, but these are not relied on as instances of collaborative abusive trading. Again, therefore, there is no suggestion these were other than genuine orders.
- 30 The Authority's case theory presupposes that whenever there is a small hedge on one side of the book which is executed and a larger trade on the other side of the book which is cancelled, the two are necessarily connected, with the latter being designed to influence the likelihood of the former being executed. That is a non-sequitur. Once it is apparent that Mr Lopez regularly placed entirely genuine anticipatory hedging orders of 200 lots or more and then cancelled those hedges when the market moved away from the level at which the order was placed and/or market information changed his view of the likely market direction, it follows that there is nothing inherently suspicious about a situation where Mr Lopez placed an anticipatory hedge of 200 lots or more which overlapped (in time) with a smaller

hedge order on the other side of the book (which the Authority accepts was genuine). There is no inherent reason to view these as anything other than two hedging orders placed for different trading purposes, and thus entirely unconnected.

- 31 **The Authority does not suggest that large orders in respect of which there were no opposing small orders are examples of abusive trading; nor does it suggest that every large order placed by Mr Lopez was abusive or that he always deployed an abusive trading strategy. But the fact that Mr Lopez also placed orders that are not alleged to be abusive does not undermine the Authority's position that many orders placed by him (and the other Traders) were abusive.**
- 32 **As a matter of fact, the Authority has identified only 33 orders of 200 lots or more placed by Mr Lopez during the Relevant Period on which it does not rely as instances of abusive trading. Of these, five did not overlap with any small order on the opposite side of the book; the Authority does not suggest these were other than genuine orders, although it has not reached any conclusion as to whether their purpose was anticipatory hedging. However, it does not follow from the existence of these orders (or other orders not relied on as abusive, for other reasons) that there is nothing suspicious about the many instances relied on. In all the circumstances, the Authority does consider that in those many instances, the large and small orders were connected as explained in this Notice, and that the purpose of the large orders was abusive.**

Factors relied on by the Authority

- 33 The Authority considers the larger orders would encourage participants to interact on the other side of the order book and increase the likelihood of the price moving in a direction favourable to the corresponding small order. Mr Lopez made it plain in his interview that he did not consider that an order of the size of the larger orders relied on would have this effect. Also, it is illogical to suggest that the placement of such an order which will be seen by others in the market and (so the Authority argues) increase the likelihood of a price movement is evidence of dishonesty; it is equally evidence of a desire to trade at the price of the order.
- 34 The Authority also relies on the fact that the larger orders were not iceberged, in contrast to the small orders. But when placing a trade for anticipatory hedging purposes, a trader wants to execute the trade in full at an attractive price level in order to build an inventory in anticipation of future client orders. To achieve this it is important to have priority in the queue of orders to be executed, which is achieved by placing the entire order in the market (and not placing it as an iceberg). By contrast, when hedging an order that has already been executed, a trader will often iceberg the hedging order to achieve slower and incremental execution of the hedging transaction, therefore allowing him to maintain discretion and control as to how much of the bond transaction is hedged and, consequently, how much risk to take in relation to that bond transaction.

- 35 The Authority relies on the cancellation of the larger orders without any part of them being filled, after the execution of the corresponding smaller orders, as evidence of abusive trading. But there are many and varied reasons why an order might legitimately be cancelled before any or all of it is executed. And the fact that a trader cancels one order shortly after another order has been executed again says nothing about whether the cancelled order was genuine: if the two orders were placed for entirely different reasons and were unconnected, the cancellation of the first order would be nothing to do with the execution of the second order. Indeed, in example JL1, only three of the small order's ten lots had executed at the time of the cancellation of the larger order, thus failing to provide support for the Authority's own argument; on the Authority's logic, the larger order would only have been cancelled once all or at least 50% of the small order had been filled. The fact that this was not the case strongly supports Mr Lopez's explanation that the two orders were unconnected.
- 36 Mr Lopez's large orders, in the ten examples referred to above (JL1 to JL10), were live for an average of 28.6 seconds. This is a significant amount of time for an order to be live in the market. Evidence of any shorter periods of time or quicker cancellations applicable to others is not evidence against Mr Lopez.
- 37 The Authority also relies on the fact that the larger orders were placed away from the touch, and therefore had less chance of being traded, though in fairness it appears to rely on this factor not as by itself showing an abusive intent, but as doing so in conjunction with other factors. It is plainly wrong insofar as it implies that, whenever a trader places an order away from the touch, they are likely to have an abusive intent. The correct view is that the trader is simply identifying the price at which they would be happy to trade if a counterparty is happy to pay that price; there is nothing abusive about such trading.
- 38 Therefore, the factors relied on by the Authority do not support a conclusion of abusive trading.
- 39 **The Authority does not accept that Mr Lopez did not consider that an order of the size of the larger orders relied on would encourage participants to interact on the other side of the order book and increase the likelihood of the price moving in a direction favourable to the corresponding small order. It considers that Mr Lopez would have been well aware that placing a large order without iceberging it would have tended to make the market move away from it, making it less likely to trade; this is why large orders are frequently icebergged. It is not plausible, in the Authority's view, that Mr Lopez would have been careful to iceberg most of his small orders on the opposite side of the book for this reason, while adopting a strategy which relied on other market participants trading with a fully visible order much larger than any others on the order book at the relevant time, knowing that such an order would be unlikely to trade. The approach is, however, consistent with a strategy to impact the market, thus making the smaller orders on the other side of the order book more likely to trade, or to do so more quickly.**

- 40 **The Authority (as noted by Mr Lopez) accepts that placing an order away from the spread does not, in and of itself, negate an intention to trade. However, taken together with the other features of the trading in question, it is consistent with there being no intention to trade. By placing the large orders away from the spread, Mr Lopez made it less likely that they would be executed because other market participants would be able to obtain a more favourable price. It is not plausible that Mr Lopez would have repeatedly pursued such a strategy, which did not work as his large orders were never hit.**
- 41 **The Authority also accepts that there may be many legitimate reasons why a large order may be cancelled without being traded. However, in this case, a genuine intention to trade the large orders does not fit with the repeated close timing between the trading of the genuine order and the cancellation of the large order. The Authority notes that Mr Lopez has offered no explanation for the closeness in time, across the many examples relied on, between the trading of the small order and the cancellation of the opposite large order. The Authority does not consider that this can be credibly explained as coincidence. In relation to JL1, the Authority refers to paragraph 8 above.**
- 42 **With regard to Mr Lopez's representation that the orders referred to as JL1 to JL10 were live for an average of 28.6 seconds, the Authority notes that they were cancelled an average of just 11 seconds after the opposing small order traded (with the exception of JL1, which was cancelled one second after the opposing order traded as to 30%).**

Mr Lopez's previous good character, and absence of motive

- 43 Mr Lopez worked in the UK financial services industry for over 15 years until made redundant by MHI in 2020. For most of this period he was an approved person until MHI became subject to the Authority's Senior Managers and Certification Regime, at which point he was issued with a certificate of fitness and propriety by MHI. Other than in relation to this matter, Mr Lopez has never been subject to any internal or external investigation, whether regulatory or criminal in nature. Prior to receipt of the Notice of Appointment of Investigators in this matter, he had no direct or personal dealings with any regulator. He has never encountered any difficulty or delay in obtaining approval from the Authority or the Prudential Regulation Authority, or certification from MHI. In regulatory and disciplinary matters, Mr Lopez's career history is (save for this matter) unblemished.
- 44 Against this background, it is inherently improbable that Mr Lopez (a man with a family to support and on probation in a new job at MHI) would suddenly engage in a dishonest solo and collaborative trading strategy. Furthermore, the Authority appears to accept that Mr Lopez did not stand to make any direct identifiable gain from his supposed dishonest trading (as it states at paragraph 6.3 of this Notice that it has not identified any financial benefit derived directly from the alleged market abuse), making it even more improbable that he would have behaved in this way.

- 45 **The Authority does not dispute Mr Lopez’s previous clean disciplinary and regulatory record or his family responsibilities, and has weighed these matters in the balance in reaching its conclusion that Mr Lopez did commit market abuse. It notes that every person who commits market abuse for the first time had a clean record immediately before so doing.**
- 46 **The Authority acknowledges that it has not identified any direct financial gain to Mr Lopez from the market abuse committed by him; however, it considers that he aimed to execute his genuine orders more efficiently and manage better the risk on his book as a result of the placement of his misleading orders. This would have improved the performance of the Desk which was a factor taken into account in determining the bonus Mr Lopez was to receive.**

The MHI internal report and disciplinary process

- 47 Following receipt of a letter from EUREX regarding two episodes of trading by the Desk and, specifically, the placement of multiple orders, MHI Compliance conducted an internal investigation into those two episodes and more broadly, resulting in an 88-page report. In contrast to the other Traders, Mr Lopez was not criticised in the report. Although all three Traders were subject to a disciplinary process for lack of due skill, care and diligence, the allegations against him (in contrast to those against Mr Urrea and Mr Sheth) were determined not to be well-founded and no disciplinary action was taken against him. While Mr Lopez was instructed by MHI to “*discontinue the trading strategy used by the [Desk] for determining the depth and direction of the market*”, he was not required to cease the practice of anticipatory hedging. While the content of the MHI report and the result of the disciplinary process are not determinative of the issues in this matter, it is plainly relevant that MHI, having conducted a thorough investigation, with input from senior management with a real understanding of the relevant trading, did not consider that the trading was unlawful and/or dishonest, and thereafter (in the disciplinary process) concluded that the allegations against Mr Lopez were not well-founded.
- 48 **The views of MHI in its internal investigation and disciplinary process are not determinative. The Authority is satisfied, for the reasons set out in this Notice, that Mr Lopez engaged in market manipulation. The Authority notes, in any event, that MHI’s investigation was not conclusive. Its report stated that “*the pattern of activity could give the perception that the purpose of the large orders was to facilitate the execution of the smaller orders on the other side of the order book. [MHI has] received explanations from the traders in relation to the EGB’s desk activities from which it could be concluded that these were legitimate. However, there is sufficient doubt as to the credibility of these explanations to leave open the possibility that the trading patterns could be regarded as abusive. [MHI has] not found conclusive evidence in this regard” (emphasis added). Further, MHI did not have before it the same information as the Authority.***

Burden and standard of proof

- 49 The burden of proving dishonesty lies with the Authority. As stated by the Court of Appeal in *Angela Burns v the Financial Conduct Authority* [2017] EWCA Civ 2140, "the more serious the allegation, the more cogent the evidence must be to overcome the inherent improbability that it occurred", and "[w]here...the allegation is of a particularly serious nature, the [Authority] must well know that it will require evidence of commensurate cogency to make it good". For the Authority to discharge this standard of proof, it must show "cogent evidence" of Mr Lopez's purpose in placing the orders on which it bases its case. The Authority has failed to do so.
- 50 **The Authority notes the comments of the Court of Appeal in the case of *Burns*. In considering the evidence, including the explanations provided by Mr Lopez, the Authority has considered whether particular matters alleged are more likely to have occurred than not (having due regard to their inherent probability or otherwise). It considers the evidence of Mr Lopez's dishonesty in this matter to be cogent.**

The statutory test

- 51 In considering whether the cancellation of an order shows that the order was made without any genuine intent to trade, it is important to bear in mind the warning of the Court in *Sarao v Government of the United States of America* [2016] EWHC 2737 which "readily accept[ed]" that "many offers appear on the trading screens which are thereafter cancelled prior to acceptance – for a variety of unexceptionable reasons". It follows that the mere fact of cancellation of an order is not, without more, sinister.
- 52 Similarly, in *Burford Capital Limited v London Stock Exchange Group plc* [2020] EWHC 1183 (Comm), the Court observed that "a seller wishing to sell at £10 who offers to sell at £10 but, finding no takers at that price, withdraws his offer because he does not want to sell for less" is materially different to "a seller who has no intention to sell at £10 but who offers to sell at £10 to initiate or exacerbate a price trend, then withdraws his offer" in that "surely the former is innocent, the latter guilty, and that is because although the signals sent out were the same (e.g. their initially signalled intention to sell at £10), the truth or falsity of those signals turns on their actual intentions, which differed radically."
- 53 **The Authority agrees that the mere fact of cancellation of an order prior to acceptance is not, of itself, indicative of wrongdoing. However, in all the circumstances of this case, for the reasons set out in this Notice, it considers the cancellation of the large orders within seconds of the small order on the other side of the book trading to be indicative of abusive trading. It has concluded that, at the time he placed the large orders in question, Mr Lopez did not genuinely intend that they should be accepted; his conduct is similar to the second of the two examples set out in *Burford*, and accordingly was abusive.**

The Authority's supplemental expert report

54 The Authority's Enforcement team acted unfairly in providing a supplemental report by the expert instructed by it in relation to this matter with its reply to Mr Lopez's written representations. He has never had an opportunity to respond to that.

55 The Authority considers it reasonable for its Enforcement team's response to the written representations of Mr Lopez (which themselves included expert evidence) to have included the views of the Enforcement team's expert in response. It notes that the supplemental report was provided to Mr Lopez two months before the oral representations meeting, and that he therefore had ample opportunity to address any points made in it.

Prohibition and financial penalty

56 For the reasons given in the representations, a finding of dishonest manipulative behaviour by Mr Lopez is inappropriate. It follows that a prohibition and financial penalty would also be totally inappropriate. In addition, the Authority should also consider the following factors, which also make the imposition of a prohibition and financial penalty inappropriate:

- There was no financial benefit to Mr Lopez from the relevant trading;
- On any view, the trading behaviour relied on was very short-lived;
- There is no evidence of any collusion by Mr Lopez with the other Traders;
- Mr Lopez has been punished enough, having lost his livelihood; and
- Mr Lopez is a man of good character.

57 The Authority has considered all relevant circumstances in concluding that the prohibition and financial penalty imposed by this Notice are appropriate: see in particular section 6 of this Notice. In relation to the specific matters raised by Mr Lopez, it notes the following:

- **While the Authority has not identified any direct financial benefit to Mr Lopez from the abusive trading, it considers (as noted above) that he aimed to execute his genuine orders more efficiently and manage better the risk on his book as a result of the placement of his misleading orders. This would have improved the performance of the Desk, which was a factor taken into account in determining the bonus Mr Lopez was to receive.**
- **The abusive behaviour was repeated by Mr Lopez on multiple occasions over a period of almost two months.**
- **It considers that Mr Lopez did collude with the other Traders in the manipulative abusive behaviour, as set out in this Notice.**
- **If Mr Lopez means to imply that he has lost his livelihood as a result of the investigation into this matter, it is not apparent why he**

considers this is the case, since he told the Authority he had remained at MHI until being made redundant in 2020. Given its finding that Mr Lopez lacks fitness and propriety, the Authority considers it appropriate to prohibit him from working in financial services.

- **While the Authority has considered Mr Lopez's record in considering what action is appropriate in this case, it considers this to be a serious matter and the prohibition and financial penalty imposed by this Notice to be justified for the reasons set out in this Notice.**