Poojan Sheth 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 Poojan Sheth 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.

FCA FINANCIAL CONDUCT AUTHORITY

12 Endeavour Square
London
E20 1JN

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

DECISION NOTICE

To: Poojan Sheth

Reference Number: PXS02369

Date: 31 October 2022

1. ACTION

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

(1) impose on Mr Sheth a financial penalty of £100,000 pursuant to section 123(1) of the Act; and

(2) make an order prohibiting Mr Sheth 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 Sheth was a market-making trader in European Government Bonds ("EGBs") and held the position of Associate in Fixed Income Government Bond Trading at Mizuho International Plc ("MHI"). Mr Sheth had four and a half years' trading experience.

2.2. Mr Sheth worked on the EGB desk with other traders including Diego Urra, who was a Managing Director, and Jorge Lopez Gonzalez, who was a Director (together with Mr Sheth, "the Traders"). Mr Urra managed Mr Lopez and Mr Sheth. 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 Sheth 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 Sheth 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 Sheth in concert with Mr Urra and Mr Lopez. For example, Mr Sheth would place an order he genuinely wished to trade and Mr Lopez or Mr Urra 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 Sheth 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 Sheth 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 Sheth frequently repeated this pattern of abusive conduct during the Relevant Period. The Authority has identified 42 occasions on which he carried it out by himself, and 66 occasions when he did so acting in concert with Mr Urra and/or Mr Lopez. 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 Sheth 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 Sheth a financial penalty of £100,000 pursuant to section 123(1) of the Act; and

(2) make an order prohibiting Mr Sheth 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 Sheth, Diego Urra, and Jorge Lopez Gonzalez; 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 Sheth worked as an Associate 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 Lopez (Director of Fixed Income European Government Bond Trading). Mr Sheth was the least experienced trader on the Desk and he and Mr Lopez were supervised by Mr Urra. Mr Sheth joined MHI in September 2014. Prior to joining MHI, Mr Sheth had three years' experience working as an interest rate trader at a proprietary trading firm.

4.2. Mr Sheth was an approved person at MHI, holding a controlled function, from October 2014. He later became a Certified Person and, during the Relevant Period, he 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.

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

[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.

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 five 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 Urra 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.

<u>Trader remuneration and performance of the Desk</u>

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 Sheth 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 Sheth 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 Sheth undertook an abusive trading strategy, both alone and in collaboration with Mr Urra and/or Mr Lopez. 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 Sheth undertook the abusive trading strategy in collaboration with Mr Urra and/or Mr Lopez, 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 Sheth undertook this pattern of trading that he deliberately engaged in a repeated strategy, both individually and with Mr Urra and Mr Lopez.

Abusive trading by Mr Sheth alone

4.22. The Authority has identified 42 occasions in the Relevant Period on which Mr Sheth manipulated the BTP Futures market by undertaking the abusive trading strategy alone.

4.23. An example of this took place on 15 June 2016. Mr Sheth placed a genuine order to buy five lots of BTP Futures at the Best Bid. This buy order remained untraded until Mr Sheth placed a large order to sell 500 lots at a price 2 ticks away from the Best Offer, at which point another market participant immediately hit the smaller buy order. Mr Sheth then cancelled his large sell order without it having traded. This abusive trading took place over approximately 11 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 Sheth did not intend to trade this sell order. Instead, Mr Sheth's genuine interest at that time was in buying a smaller quantity of BTP Futures on the opposite side of the book. That Mr Sheth did not intend to trade his large sell order is demonstrated by the following:

i. He placed the sell order two 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 2 seconds after he placed it, which was only 2 seconds after the smaller buy order traded (given the smaller buy order traded immediately after the placement of the larger sell order).

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 Sheth 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 Sheth 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 500 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 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]

---

[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.

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

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

i. He placed 26 large misleading orders across the set of 10 occasions, ranging in size between 300 and 500 lots, totalling 12,311 lots. All of the orders were significantly large compared to the other orders on the Exchange at the time and would therefore have given an impression of significant demand/supply to other market participants;

ii. He placed 11 genuine orders ranging in size between 5 and 80 lots, with an average of 19 lots. The genuine orders totalled 211 lots;

iii. He did not iceberg any of the large misleading orders, despite deciding to iceberg one of the significantly smaller genuine orders that he placed. This iceberging meant that on average the greatest quantity visible to other market participants from the genuine orders in each example was 16 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 11 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 (with one exception), his misleading orders were placed further from the Spread than his genuine orders;

vi. He did not execute any of the 12,311 lots he indicated that he wanted to execute through the placement of his 26 misleading orders. By contrast, he fully executed all 11 genuine orders totalling 211 lots;

vii. He always placed his first misleading orders after his first genuine orders, on average 24 seconds later, and with the majority less than 10 seconds later. He cancelled any remaining misleading orders on the order book on average 4 seconds after his final genuine order 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 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 Sheth 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 26 misleading orders he placed, 22 orders were of 500 lots, 3 orders were of 300 lots, and 1 order was of 411 lots.

Collaborative abusive trading by the Traders

4.30. The Authority has identified 66 occasions in the Relevant Period on which Mr Sheth manipulated the BTP Futures market in collaboration with Mr Urra, Mr Lopez, 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 Sheth undertaking the abusive trading strategy in collaboration with Mr Urra and Mr Lopez 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 Urra 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 Urra 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 Urra's First Misleading Order. Less than a second after Mr Urra 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 Urra'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 Urra'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 Urra 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 Urra 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 Urra 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 intention to buy 700 lots through buy orders Mr Urra and Mr Sheth placed opposite Mr Lopez's sell orders.

---

[3] In the same second as Mr Urra cancelling the First Misleading Order, Mr Lopez placed a buy order of one 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.

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 6 occasions on which Mr Sheth undertook the collaborative trading with Mr Urra and/or Mr Lopez, it is evident that the trading was abusive from the following features:

i. The Traders placed 18 misleading orders across the set of 7 occasions, ranging in size between 200 and 500 lots, totalling 7,660 lots. All of the 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 12 genuine orders ranging in size between 4 and 160 lots, with an average of around 29 lots. These genuine orders totalled 342 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 six 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 14 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 12 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 one exception), 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 (three 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 9 seconds after the first genuine order. With the exception of 2 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 Sheth'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.

<u>Recurring characteristics of the Traders' strategy</u>

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 Sheth 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 Sheth executed 69.69% 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 220 Large Orders Mr Sheth placed over the Relevant Period, he 'iceberged' 18 of them (8.18%), placing 202 of them with their full size visible to other market participants on the Exchange. By contrast, Mr Sheth 'iceberged' 47.83% 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 Sheth'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 Sheth undertook the abusive trading alone 38 times and in concert with Mr Urra and/or Mr Lopez 50 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 Sheth's misleading orders (and those of the other Traders when acting in concert with Mr Sheth) were not placed for legitimate reasons; nor did they conform with an accepted market practice.

5.7. Mr Sheth 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 Sheth) 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 Sheth undertook the abusive trading alone 4 times and in concert with Mr Urra and/or Mr Lopez 16 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 Sheth's misleading orders (and those of the other Traders when acting in concert with Mr Sheth) 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 Sheth 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 Sheth) 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 Sheth'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 Sheth 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 Sheth 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 Sheth 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. Therefore, the relevant period for calculating Mr Sheth's relevant income is the 12-month period ending on 29 July 2016. Mr Sheth's relevant income in the 12-month period ending on 29 July 2016 was £82,478.

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 Sheth 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 Urra, and Mr Lopez's genuine orders. He knew that the 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 Sheth's market abuse was repeated on multiple occasions during the Relevant Period, both alone and in concert with Mr Urra and Mr Lopez.

6.14. The Authority considers that Mr Sheth 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 Sheth's market abuse, either directly or indirectly (DEPP 6.5C.2G(16)(a)). However, the Authority notes that Mr Sheth 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 Sheth). 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 Sheth is an experienced industry professional (DEPP 6.5C.2G(12)(e)). Mr Sheth held the Certified Role of working in a Client Dealing Function. Prior to becoming a Certified Person, Mr Sheth was an Approved Person at MHI, holding a Controlled Function since October 2014 (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 Sheth's relevant income of £82,478, a sum of £24,743;

(b) a profit multiple of 3 applied to Mr Sheth'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 Sheth 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 Sheth 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 Sheth. 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 Sheth 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 Sheth, 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 Sheth, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

8.1. This Notice is given to Mr Sheth 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 Sheth 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 Sheth 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 Sheth 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 Sheth, and the Authority's conclusions in respect of them (in bold type), is set out below.

Mr Sheth's explanation for the trading in question

2 Mr Sheth's principal reason for placing the large orders was to pursue a trading technique shown to him by Mr Urra, whereby he would effect "price discovery", a term he adopted from Mr Urra. He understood this to be a blanket term used to describe the process of gauging market depth or liquidity. By deploying the price discovery technique, he could test theories about the market and particular counterparties by placing large, genuine orders. Specifically, the purpose behind many of the orders placed was to test a theory that a particular counterparty was only showing (to MHI) a small part of its overall position. Based on the Desk's theory that some counterparties would split up their large cash orders between multiple Market-Makers, Mr Sheth anticipated a significant increase in futures orders placed on EUREX, representing hedging trades for further similar bond trades between those counterparties and other dealers. If the theory was correct, he expected to see an uptick in futures orders on one side of the book, which would trade with the orders he had placed, typically at a price away from the market touch. Therefore, the orders operated as a mechanism to test theories about the market and gather information. In turn, that information could be used to price cash trades in the future, making the Desk more competitive.

3 At the same time as testing these theories, placing these orders also presented opportunities for the Desk to build profitable inventory positions for clients and the Desk at favourable prices.

4 At all times, Mr Sheth believed that were a large order, placed to effect price discovery, to execute in whole or in part, it could be advantageous to the order book and a desirable outcome for the Desk.

5 Mr Sheth's trading during the Relevant Period often involves his placement of multiple, overlapping large orders. In each instance of this pattern occurring, Mr Sheth was pursuing his trading strategy. The multiple large orders were alterations to the same order: he placed fresh orders at different prices, instead of amending the price of the existing orders. Mr Sheth, reacting to the market and other external sources, would often decide to amend the price of the large order. At the time, the only way he knew how to amend an order was to right click on it, manually amend the price, and then resubmit the order. This was a comparatively slow and cumbersome process. By contrast, he could place a further order, at an amended price, simply by clicking at that price on the market display on his screen, the order size having already been set.

6 After EUREX and MHI Compliance raised concerns about the orders, Mr Sheth discovered that there was a preferable way to amend the orders. He accepts that in placing multiple orders, and in failing to cancel the original order immediately after placing the new one (at the amended price), he made a mistake. He now knows that this was poor order management.

7 **The Authority does not accept Mr Sheth's explanation for the trading patterns.**

8 **Placing such speculative large orders in reaction to client RFQs or trades based on a guess that the client might have placed larger cash orders with other market participants would be a high-risk strategy. It is implausible that, on the one hand being careful to hedge the risk arising from relatively small client cash orders, Mr Sheth would on the other hand, and at the same time, look to trade much larger orders on a reactive basis to possible but unknown liquidity in the market.**

9 **With regard to the asserted price discovery benefit of the large orders, even if the orders had filled this would not have provided Mr Sheth with much information, since he would not know who had traded as the market is anonymous, and nor would it indicate why they had traded: he would only be able to guess that the trade was driven by an underlying large cash order from his client.**

10 **The Authority finds it implausible that Mr Sheth would have persisted with a strategy, the success of which was premised on the large orders trading and which had completely failed despite many attempts to use it, since none of his large orders traded. Even if the strategy had been one he was following at the instigation and with the encouragement of Mr Urra, the same factor makes it unlikely that Mr Urra himself would have wished Mr Sheth to persist with the strategy.**

11 **The Authority has not reached a conclusion as to whether or not Mr Sheth's multiple large orders were a result of error as he states, although it notes that there are some instances of his amending the large orders, and of his cancelling large orders before placing new large orders, and that he amended his small orders on a number of occasions. However, if the multiple large orders were the result of error, this does not affect the Authority's assessment of the purpose of the placement of a large order on the opposite side of the order book to a small order.**

<u>The Authority relies on an evidentially flawed data set</u>

12 The Authority relies on a restricted pool of trading events, the criteria for which are self-supporting. No account has been taken of trading events which do not accord with the Authority's case theory.

13 The trading episodes relied upon were selected based on specific criteria and characteristics, which the Authority alleges represent a pattern of market manipulation. Given how significant the criteria are to the Authority's case, it is surprising that they are not informed by expert evidence. One of the criteria is that

the large orders were cancelled shortly after at least 50% of the opposite small order traded, yet there is no objective assessment of what is "shortly after" or why 50% is the appropriate figure. Moreover, the Authority was prompted to amend (to 50%) the criterion in respect of the proportion of the small order being traded after Mr Sheth enquired about their precise terms, which reduced the number of instances said to be market manipulation.

14 The Authority has not analysed each instance, and simply relies on their fulfilment of the selection criteria. The instances relied on by the Authority include a number of episodes which, on further scrutiny, are inconsistent with the Authority's case theory. In some examples the following may be seen:

- There is a significant time delay between the placement of the small order and the placement of the large order on the opposite side of the book. This is inconsistent with the alleged purpose of the abusive scheme which was that the small order should be traded quickly.

- The price of the large order is adjusted after the small order has been filled, which is inconsistent with the theory that the purpose of the large orders was to assist the execution of the small orders.

- Mr Sheth's large order is cancelled before the small order has traded. If the intention in placing the large order been to assist the execution of the small order, it is difficult to understand why Mr Sheth would cancel the large order without it having achieved its purpose.

- The large order is cancelled before the small order has fully traded, which again is inconsistent with the intention behind the large order being to assist the execution of the small order.

- The small order trades immediately prior to the large order being placed, which is inconsistent with the large order being placed to assist in the execution of the large order, as such assistance was clearly not required.

- Price adjustments to the small order after the entry of the large order appear to have prompted its fill rather than the entry of a large order.

- The placement of the large order does not have any correlation with the fill of the small order; the price of the small order has been amended prior to the entry of the large order, so it is impossible to prove a correlation.

- Mr Sheth simply appears to be in the market at the same time as the other Traders and is not part of the allegedly abusive trading pattern. His small order does not overlap with a large order.

15 There are a significant number of large orders which do not meet the criteria for being relied on. There are 14 large orders with no small order on the opposite side of the book while they are live, and 14 which overlap with a small order, but where the small order does not execute while the large order is live. It is not reasonable to suggest that these 28 orders were placed for the purpose of prompting the execution of corresponding small orders. Accordingly, these orders undermine the

Authority's case that Mr Sheth placed other (similarly sized and unfilled) large orders for that purpose.

16 **The Authority has analysed in detail 17 instances relating to Mr Sheth. It had identified a large number of other instances which share the same key characteristics. If the instances examined in detail are determined to be manipulative, it is reasonable to infer that the manipulation took place widely based on the instance pool showing that the same pattern of trading was repeated multiple times.**

17 **Given the striking trading pattern present in relation to the 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 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.**

18 **The Authority does not consider it is inappropriate to describe the large order in the instances relied on as being cancelled "shortly after" the small orders were at least 50% filled. In the ten individual instances relied on in relation to Mr Sheth, the average time of cancellation of the last large order was 4 seconds after the genuine order had at least 50% traded. Across the 39 multi-Trader instances, in 30 of these, the large orders were cancelled in under 5 seconds and only one was cancelled after 30 seconds. Across the pool of 233 instances identified by the Authority, 179 were cancelled in 5 seconds or less and only 5 were cancelled after 30 seconds (the longest time to cancel being 1 minute and 14 seconds). The Authority considers that expert evidence is not required on this point, and it is it indisputable that the large orders were cancelled "shortly after" the small orders fully or at least 50% traded – the timing correlation between execution of genuine orders and cancellation of large orders is strong. Further, while a threshold of more or less could have been chosen, the 50% criterion for the trading of the small orders is adequate to demonstrate the correlation between the cancellation of the large orders and the trading of the small orders. Again, expert evidence is not required to determine which threshold should be chosen.**

19 **The Authority does not agree with Mr Sheth's conclusions as to the examples which he says are inconsistent with the Authority's view of the purpose of the large orders being to assist the execution of the small orders. It should be noted that while the Authority considers that the large orders in each case relied on were placed for that purpose, it does not say that each such large order had the effect of causing a small order to trade. Dealing with Mr Sheth's scenarios in turn:**

- **The placement of a large order opposite a small order where the small order has been live for some time: in the example mentioned by Mr Sheth, the small order had been live on the order book for five minutes**

when he placed a large order opposite, and for almost 13 minutes when he placed a second and third large order opposite. He had twice changed its price to make it more competitive, suggesting difficulty in executing it. It traded immediately on the entry of the third order.

- **The adjustment of the price of the large order after the small order has been filled: in each of the two examples referred to by Mr Sheth, he moved the large order away from the touch immediately the small order had finished trading, making it less attractive, and cancelled it very shortly thereafter.**

- **The cancellation of a large order before the small order has traded: in the example cited by Mr Sheth, he cancelled the large order after the spread had moved towards it, increasing its risk of execution. Mr Lopez similarly cancelled a large order he had placed, and then placed a further large order further from the touch, which he cancelled within three seconds of the small order trading.**

- **The large order is cancelled before the small order has fully traded: the Authority agrees that this occurred in the two examples given by Mr Sheth, but disagrees that this means the purpose of placing the large orders cannot have been to facilitate the small order trading.**

- **Price adjustments to the small order (before or after the entry of the large order): in each of the examples cited by Mr Sheth, the outstanding large orders were cancelled after the filling of the small order. The Authority does not say that the Traders did not take any steps to assist the execution of their small orders, in addition to entering large orders opposite them.**

- **Mr Sheth's small order does not overlap with a large order: the example given by Mr Sheth is of an instance involving all the Traders. Mr Sheth and Mr Lopez placed orders to sell the same total number of lots and almost at the same time. Mr Sheth quickly cancelled his order, and Mr Lopez then quickly moved his order to the same price that Mr Sheth's had been placed at before Mr Urra placed a large buy order. The Authority considers that in this case it is clear the Traders were collectively trying to sell a small number of futures while Mr Urra's large order to buy was not intended to execute.**

- **The Authority does not consider that the presence on the order book during the Relevant Period of: (a) 14 large orders placed by Mr Sheth which did not overlap with a small order on the opposite side of the book; or (b) 14 further large orders opposite small orders which did not execute undermines the case against Mr Sheth. This does not weaken the distinctive pattern of abusive trading identified involving the vast majority of large orders placed by him. The Authority does not contend that every large order placed by Mr Sheth during the Relevant Period involved market abuse.**

<u>The features relied on are equally consistent with Mr Sheth's explanation</u>

20 The Authority's case is entirely circumstantial. It is based on inferences drawn from the data on which the Authority relies. Mr Sheth disputes these inferences. In fact, the evidence that the Authority relies upon is consistent with the execution of Mr Sheth's trading strategy.

21 *The size of the large orders:* As Mr Sheth placed large orders in order to assess the depth of the futures market, and thereby test his theory about hidden liquidity in the cash market, he needed to ensure that the size of the large order was large enough to cover the liquidity which he thought could conceivably be generated by the anticipated cash event. Accordingly, Mr Sheth entered a round number order of sufficient market size, typically 500 lots, which he understood from Mr Urra was of a sufficient size for the purposes of the trading strategy.

22 *The comparative execution rates of the large orders:* The Authority relies on the fact that Mr Sheth did not execute any of his large orders, and that the Traders cancelled 98.5% of their large orders across the Relevant Period without trading; it compares this with an execution rate of 72.28% amongst other market participants. This is relied on as an indication that Mr Sheth did not intend to execute his large orders. However, given the trading strategy being deployed by Mr Sheth, one could expect execution rates for the large orders to be comparatively low. They were placed based on a theory about the market; if that theory was proven correct, there was a strong possibility that the market would move in a certain direction in a given time period. If the theory was not correct, the market movement would not occur, and so the orders could be cancelled. Such a comparison also fails to take into account myriad factors which affect execution rates, including market conditions and the reasons for placing an order. For example, if a Large Order was placed by another market participant as a hedge rather than pursuant to a price discovery strategy, it would likely have been placed at a more favourable price due to the need for urgent execution.

23 *Cancellation of the large orders:* The trading in question occurred over five years ago. It is therefore difficult, if not impossible, for Mr Sheth to reconstruct exactly what caused him to cancel any particular large order, at a given time. As a general matter, based on his assumptions about the triggering information for placing the large order, Mr Sheth would have estimated how long it would take for the liquidity to precipitate in the futures market. However, he was also reacting to market information in real time and may have cancelled large orders based on that information.

24 *Pricing of the large orders:* The Authority has pointed to the fact that the large orders were placed away from the touch as indicative of a lack of intention to trade. As explained above, the orders were principally placed for informational discovery purposes, on a theory that the market would move in a certain direction. The orders were therefore placed at a level which reflected that contingent event. Mr Sheth was seeking to capitalise on the anticipated need of counterparties trading cash in size and therefore requiring access to guaranteed liquidity in the futures market, which they would be willing to pay a premium for.

25 *Adjustment of the pricing of the large orders:* The Authority alleges that, having placed the large orders away from the touch, Mr Sheth systematically moved them closer to the touch in order to increase pressure on the other side of the order book and increase the likelihood of the smaller order trading. This betrays a fundamental lack of understanding of both Mr Sheth's trading strategy and the operation of the market more generally. The market is dynamic and therefore, having placed the orders, Mr Sheth could not ignore market movements and/or other data points which he would otherwise consider relevant – for example, RFQs received, cash trades done by the Desk, or other micro- and macro-economic data which might impact the market. These may have either prompted him to change the level of his order (for example, so that its distance from the touch remained constant) or caused him to reconsider the likelihood of his theory and the probability of the expected market movement. Alternatively, they may have led him to cancel the order, for example because the change/information was inconsistent with his theory of an increase in liquidity in the market or had impacted his ability to cover the position if the order was filled at the price inputted. For example, he may have seen changes in the cash market which limited his options to successfully cover, hedge or exit the futures position if the order was filled. Accordingly, there are many reasons why the trading strategy was not only consistent with movement of the order price, but in fact demanded such movement.

26 *Not iceberging the large orders:* The Authority's case is that by showing the full size of his large orders (rather than just an iceberg tip), Mr Sheth intended to amplify the effect of the order on other market participants, causing them to trade with more urgency than they otherwise would have. However, placing an iceberg order would have been counterproductive to Mr Sheth's trading strategy. He wanted the market to see the full size of the order so that, if the liquidity demand increased, market participants who quickly needed to trade a large amount of futures and were willing to pay what may otherwise be considered a less favourable price would be able to access the liquidity quickly.

27 *Alleged correlation between the timing of small and large orders:* As set out above, this Authority's case is based on a narrow and unrepresentative data set: its analysis fails to take any account of large orders which were placed without an opposing small order, or which were cancelled before an opposing small order was filled at all. When these instances are taken into account, the alleged correlation in timing does not occur as frequently as the Authority suggests. Nonetheless, even in the instances where the correlation does occur, such pattern is consistent with Mr Sheth's trading strategy. It was often the case that the informational trigger for placing the small and large order was the same. The cash trade or RFQ requiring the placement of a small hedge order could also have signalled to Mr Sheth the possibility of wider buying or selling in the market; this, in turn, would have prompted him to place a large futures order in the hope of absorbing that liquidity at a favourable price. This common basis between the orders could render the fill of one order, and the cancellation of another, to be temporally linked.

28 **The Authority considers that, while circumstantial, the trading data on which it relies provides strong evidence of manipulative behaviour. It does not agree that the evidence on which it relies is consistent with the execution of Mr Sheth's alleged trading strategy.**

29 ***The size of the large orders:*** **The Authority considers that placing the large orders in repeated round sizes was effective for the purposes of the abusive trading because the precise size of these orders was irrelevant, since they simply needed to put significant pressure on one side of the trading book. Mr Sheth's use of repeated sizes for his large orders is inconsistent with his asserted trading strategy. If he was placing the large orders in anticipation of demand arising from other market participants looking to hedge larger parts of a particular client cash order, the Authority would expect Mr Sheth to vary the large orders in size due to factors such as the client's order size, market conditions and the sizes of existing orders on the book. For example, in relation to client order size, it could be expected that Mr Sheth would extrapolate from the size of the client cash order won by MHI to estimate the potential size of the client's overall cash order. Logically, the smaller MHI's client cash order, the smaller the theoretical overall client cash order would likely be, leading to the placing of a smaller-sized large order. However, there is no relationship between the size of the genuine orders, which reflect the size of the client cash order won by MHI, and the large orders placed by Mr Sheth.**

30 ***The comparative execution rates of the large orders:*** **The Authority accepts that there are various factors which affect execution rates, including market conditions and the reasons for placing an order. However, the Authority considers that the fact that Mr Sheth did not execute any of the large orders in question (which compares strikingly with the market average) is inconsistent with his asserted trading strategy. As noted above, it is implausible that Mr Sheth would have persisted with a strategy, the success of which was premised on the large orders trading and which had completely failed despite many attempts to use it.**

31 ***Cancellation of the large orders:*** **The Authority notes that Mr Sheth's general comments as to the possible triggers for cancellation of the large orders are inconclusive, and do not account for the timing of the cancellations relative to the filling of the small orders. As to that, see below.**

32 ***Pricing of the large orders:*** **The Authority considers that the complete lack of execution of any the large orders placed by Mr Sheth away from the spread, but opposite small orders, is not consistent with his having any intention to trade them. Again, it is not credible that he would have repeatedly persisted with his asserted strategy despite its complete lack of success.**

33 ***Adjustment of the pricing of the large orders:*** **In the Authority's view, the pattern of amendments made by Mr Sheth to the prices of the large orders is indicative not of a desire that they should be filled but rather, according to the circumstances at any particular moment, a combination of increasing the pressure on the order book by moving them closer to the touch and moving them further away in order to reduce the risk that they might be traded.**

34 ***Not iceberging the large orders:* The Authority considers that Mr Sheth 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 iceberged. It is not plausible, in the Authority's view, that Mr Sheth 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.**

35 ***Correlation between the timing of small and large orders:* As to Mr Sheth's comments on the data set relied on by the Authority, see above. The Authority considers his explanation for the many instances where there is such a correlation is not credible. He has suggested that the informational trigger for placing the small and large order was often the same, and that this correlation between the placing of the orders could cause the fill of one order, and the cancellation of another, to be temporally linked. The Authority considers this explanation fails to account for the very striking degree of proximity in time between small orders trading and large orders on the opposite side of the book being cancelled, which is seen repeatedly during the Relevant Period. In the Authority's view, a genuine intention to trade the large orders does not fit with the repeated close timing between the trading of the genuine order (wholly or at least 50%) and the cancellation of the large order.**

The Authority has not proved that Mr Sheth was dishonest

36 During the Relevant Period, Mr Sheth was still relatively inexperienced. Prior to joining MHI his experience of trading futures was limited: he had very small personal trading limits and rarely traded more than 50 lots at a time. Moreover, he had only ever traded in markets that are very stable and much less volatile than the BTP Futures market. He had joined MHI in June 2013 as an intern. He was hired full-time as an Analyst in September 2014 and promoted to Associate in April 2016, shortly before the start of the Relevant Period. Even after his promotion he was still operating in a supportive role to the senior traders on the desk. Mr Urra was Mr Sheth's line manager. He was responsible for the Desk's adherence to the Mandate, and for evaluating and approving overall trading and hedging strategies, as well as the managerial and regulatory supervision of Mr Sheth. Mr Urra had sole responsibility for managing and overseeing Mr Sheth and was heavily involved in all of the trading carried out by the Desk under his supervision.

37 The above factors mean it is inherently unlikely that Mr Sheth would have challenged the trading strategy and more likely to continue with it despite the large orders not trading. They also mean it is inherently unlikely he would unilaterally have decided to place multiple large orders. His position is to be contrasted with the facts of the comparator cases of *Paul Walter* and *Corrado Abbattista*, where the subjects were respectively found by the Authority to have committed market abuse

negligently and recklessly, despite their much greater experience. The Final Notice in respect of Mark Stevenson, who was found to have committed market abuse deliberately, although not dishonestly, also records Mr Stevenson's significant market experience as being a factor that enabled him to act with autonomy. An assessment of the considerations relied upon in these three cases militates against a conclusion that Mr Sheth acted deliberately.

38 The Authority has not explained how acting to induce a small futures order, placed close to the touch, to trade could allow a Market-Maker to respond to an RFQ either more quickly or more competitively. The connection between an increase in the Desk's hit ratio and a material increase in Mr Sheth's bonus is so remote that it cannot credibly be advanced as a motivating factor. His objective to manage his book, adjusting activity to target specific hit ratios, was one of four objectives going to the section of his objectives concerned with financial performance, which together had a weighting of 70%, and his book handled 20% of the Desk flow so would not have materially impacted the overall hit ratio of the Desk. Absent any evidence of motivation, financial or otherwise, it is reasonable to ask why Mr Sheth would embark upon a deliberate, dishonest and repeated scheme of market abuse, knowing (on the Authority's case), the seriousness of his misconduct; he would be taking huge professional risks in the hope of negligible gains, which is patently illogical.

39 Apart from the trading data itself, the Authority has not produced any evidence of coordination between the Traders to execute the alleged abusive strategy, such as the use of chat tools. The only alternative to this was to communicate orally. However, while the floor plan provides evidence of the opportunity for coordination, this inference is rebutted by those who were in a position to overhear the Traders' conversations. In the Authority's interviews of staff who worked in relatively close proximity with the Traders, no-one recalled such coordinated activity. While acknowledging that they were not always listening to the Traders' conversation, they confirmed they did not hear anything unusual or which could be considered a "reg flag".

40 The compliance training undertaken by Mr Sheth does not undermine the credibility of his account. The relevant materials rightly stress that central to an assessment of whether one's trading is abusive, is the legitimacy of the strategy and purpose driving underlying the trading. Had Mr Sheth considered the compliance guidance at the time he would not have been deterred from placing the trades, believing that the driver for the placement of the large orders was not a desire to mislead or distort, but a legitimate strategy. The description of "spoofing" comprises a specific intention to create a false impression and an unconditional intention at the time the order was placed to cancel. Here, given that Mr Sheth believed that he was acting legitimately, he would not have believed he was creating a false impression. Furthermore, his decision to cancel some of the large orders was conditional and depended on the information he received when placing the large orders. There was not a concurrent unconditional intention to cancel at the time each large order was placed, so it was not the case that Mr Sheth had no intention of executing the large orders.

41 In applying the test for dishonesty set out in the case of *Ivey v Genting* [2017] 3 WLR 1212, the Authority must assess Mr Sheth's knowledge or belief at the relevant time. In doing so it should consider what information would have been available to Mr Sheth for the purposes of assessing whether or not seeking liquidity via order placement was a legitimate activity. His large orders plainly fell outside the guidance at paragraph 6(a) of Section I of Annex II of Regulation (EU) 2016/522 (see Annex A), as they were real, at risk orders placed with the express intent of ascertaining market information and were open for execution when placed; they were not therefore placed with "no intention" of executing them. Indeed, in the judgment in the case of *Sarao v Government of the United States of America* [2016] EWHC 2737 an important distinction was drawn between trades placed with a concurrent intention that they not be executed (which are abusive), and trades placed with the intention that they be "open to acceptance" (which are not abusive) even if they are subsequently cancelled. Moreover, neither of the above pieces of guidance was in force at the commencement of the Relevant Period and cannot be deemed to have operated retrospectively. Likewise, whatever guidance may be gleaned from market abuse cases such as *Abbattista*, and *Walter* the Final Notices in those cases post-date the Relevant Period and cannot be relied on retrospectively.

42 **The Authority accepts that Mr Sheth had a relatively junior position and was relatively less experienced than the other Traders. However, to the extent he asserts that his trading was under Mr Urra's supervision, and that he would not unilaterally have decided to place large orders, the Authority notes that this is inconsistent with his separate assertion that there was no coordination between the Traders in relation to the trading on which the Authority relies. As the Authority does not accept that Mr Sheth was engaged in an unsuccessful price discovery exercise, it does not consider that a lack of challenge to the trading strategy in the light of the failure of any of the large orders to trade is to be expected from someone in his position. The Authority does not consider that Mr Sheth's relative lack of experience and any relative lack of autonomy compared to that seen in the cases of *Walter*, *Abbattista* and *Stevenson* provides any basis for concluding that he cannot be found to have acted dishonestly; the Authority reached its conclusions in each of those cases on the basis of their particular facts and in all the circumstances. In the circumstances of this case as set out in this Notice, the Authority does consider that Mr Sheth acted dishonestly.**

43 **The Authority considers that the more efficiently Mr Sheth could implement hedges, the better he could manage the book's risk which would allow the Desk to deal better with upcoming client RFQs quickly and competitively, thus increasing the likelihood of winning more client orders (i.e. increasing the hit rate). It notes that Mr Sheth accepts that this would have been linked to some extent to the amount of bonus he was to receive.**

44 **The lack of records of chats or other 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 (as implicitly accepted by Mr Sheth's representation on this aspect) there is evidence that they**

did so. There would have been no need to write messages, 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.

45 **As set out above, the Authority does not accept Mr Sheth's explanation that his large orders were placed with the intent of ascertaining market information. Accordingly, it disagrees with Mr Sheth's premise that, when applying the test for dishonesty set out in *Ivey*, the Authority should consider what information would have been available to Mr Sheth for the purposes of assessing whether or not seeking liquidity via order placement was a legitimate activity. That the large orders were open for acceptance does not mean that it was Mr Sheth's intention when placing them that they should be accepted and, as explained above, the Authority considers that the placing of the large orders away from the touch reduced the risk that they would be traded. The Authority considers that the large trades were placed by Mr Sheth with a concurrent intention that they should not be executed, and thus that they fall within the first limb of *Sarao*, and accordingly were abusive. While neither the guidance on Regulation (EU) 2016/522 nor the cases referred to by Mr Sheth were available during the Relevant Period, the principle that orders should not be placed with the intention that they should not be traded was well established at that time and the Authority considers Mr Sheth would have been well aware of it; in particular, see paragraph 4.18 of this Notice which sets out the compliance training undertaken by Mr Sheth. The Authority does not agree that it would not have been evident to Mr Sheth from that training that his conduct was abusive.**

The trading strategy was not misleading, irrespective of intent

46 As explained by the expert that Mr Sheth instructed in relation to this matter, other market participants would not have been affected by the presence of an order of 200 to 500 lots, placed 2-3 cents from the touch, as it does not indicate the likelihood of an immediate trade. Market participants might interpret Mr Sheth's large orders for what they were: a conditional order which he believed would trade if his underlying theory about the market proved accurate. Moreover, it cannot be the case that any order away from the touch is misleading per se. That would make a nonsense of the market. It would mean stop loss orders, for example, were prohibited. The Authority has produced no evidence from any counterparties operating in the futures market at the time as to whether they were encouraged, in reaction to the large orders, to cross the spread and trade the small orders. The absence of any such material is clear evidence there was no misleading impression in fact created.

47 **Neither section 118(5) of the Act nor Article 15 of the Market Abuse Regulation includes any requirement of impact on counterparties in the market. If a trader places an order that he does not intend to trade, then provided that order is visible to market participants (as in this case), it**

indicates supply or demand that is not real and thus creates a false and misleading impression. Further, as the misleading orders were larger than the other visible orders on the book at the time they were placed, and were visible to other market participants, it is likely that other market participants would have taken them into account . In that sense, the misleading orders would likely have had an impact on counterparties.

48 **The Authority does not accept that the large orders would not affect the market if distant from the touch. Its view is supported by the evidence of the expert instructed by the Authority's Enforcement team.**

49 **The Authority 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 Sheth made it less likely that they would be executed because other market participants would be able to obtain a more favourable price.**

The Authority's expert

50 The expert relied on by the Authority's Enforcement team failed to disclose an instance of previous contact with MHI and Mr Urra himself. The expert could not credibly have concluded that this instance was irrelevant, and his credibility and reliability is therefore fundamentally undermined.

51 **The Authority's Enforcement team explained that its expert had thought the information to be irrelevant and, for that reason, not disclosed it in their report. With hindsight, the Authority considers that the information should have been disclosed and has taken the non-disclosure into account in the round. However, it does not consider that it significantly affects the weight to be afforded to the evidence of the expert in question.**

Prohibition is disproportionate

52 Full prohibition from performing any function in relation to regulated activities is disproportionate. Such a sanction disregards Mr Sheth's age, his junior position on the Desk, his comparative inexperience and the lack of any evidence that he was motivated by financial gain.

53 A full prohibition would not reflect the background to the trading behaviour, namely that, whatever conclusion is drawn about its purpose or intent, it was a technique he adopted from his line manager. Those circumstances preclude a finding that Mr Sheth's behaviour cannot be reformed or is likely to recur.

54 **The Authority does not dispute that Mr Sheth was relatively young during the Relevant Period, and the junior trader on the Desk. It notes that Mr Sheth says that Mr Urra explained to him a trading strategy that resulted in the pattern of trading seen. However, Mr Sheth has not stated that he was placing his trades on the instruction of any other person; on the contrary, he states that there is no evidence of coordination between the**

Traders. Accordingly, the Authority considers that he took part in the abusive trading of his own volition.

55 **Nor does the Authority dispute that Mr Sheth was less experienced than Mr Urra and Mr Lopez (or, indeed, Mr Abbattista, Mr Walter and Mr Stevenson). However, he was nonetheless an experienced industry professional with sufficient experience and training, including during the Relevant Period, to understand that traders should not place orders that they do not intend to trade. The Authority considers it must have been absolutely plain to Mr Sheth during the Relevant Period that such conduct was not permitted.**

56 **Mr Sheth has not provided any evidence that his behaviour has been reformed and that he is now, despite his conduct during the Relevant Period, fit and proper.**