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## **FINAL NOTICE**

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**To:** **Carlo Palombo**  
**Individual Reference Number:** **CFP01019**  
**Date:** **24 November 2022**

### **1. ACTION**

1.1 For the reasons given in this Notice and pursuant to section 56 of the Act, the Authority hereby makes an order prohibiting Carlo Palombo from performing any function in relation to any regulated activity carried on by an authorised or exempt person, or exempt professional firm.

1.2 This order takes effect from the date of this Notice.

### **2. SUMMARY OF REASONS**

2.1 As set out in more detail in the facts and matters described below, Mr Palombo:

(1) was convicted on 26 March 2019 of one count of conspiracy to defraud relating to EURIBOR submissions made at Barclays under his supervision; and

(2) was sentenced on 1 April 2019 to 4 years' imprisonment.

2.2 In view of the facts and matters set out below, it appears to the Authority that Mr Palombo is not a fit and proper person to perform any function in relation to any

regulated activity carried on by an authorised person, exempt person or exempt professional firm. His conviction demonstrates a clear and serious lack of honesty and integrity such that he is not fit and proper to perform functions in relation to regulated activities.

- 2.3 In reaching this decision, the Authority has had regard to all relevant circumstances, including: the relevance and materiality of the offence; the fact that Mr Palombo has been convicted of an offence of dishonesty concerning financial crime and market manipulation; the passage of time since the facts underlying the conviction; the fact that the offence was committed whilst he was approved as an individual by the Authority; and the severity of the risk posed by Mr Palombo to consumers and financial institutions, and to confidence in the market generally.
- 2.4 The Authority considers that it is appropriate to impose the prohibition order set out in paragraph 1 to advance its consumer protection and integrity objectives (sections 1C and 1D of the Act, respectively).

### **3. DEFINITIONS**

- 3.1 The definitions below are used in this Notice:

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

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

“Barclays” means Barclays Bank Plc and its associated entities;

“EG” means the Authority’s Enforcement Guide;

“EURIBOR” means the Euro Interbank Offered Rate;

“FIT” means the Authority’s Fit and Proper test for Employees and Senior Personnel, part of the Authority’s Handbook of rules and guidance;

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

“SFO” means the Serious Fraud Office;

“Tribunal” means the Upper Tribunal (Tax and Chancery Chamber); and

“the Warning Notice” means the warning notice given to Mr Palombo dated 17 January 2022.

### **4. RELEVANT STATUTORY AND REGULATORY PROVISIONS**

- 4.1 The statutory and regulatory provisions relevant to this Notice are set out in Annex A.

## 5. FACTS AND MATTERS

5.1 Mr Palombo was previously approved by the Authority to perform the following controlled functions:

- (1) CF21 (Investment Adviser) from 17 August 2002 to 31 October 2007; and
- (2) CF30 (Customer) from 1 November 2007 to 27 September 2012.

5.2 Mr Palombo was charged by the SFO with the offence described in paragraph 5.4 below.

5.3 On 26 March 2019 Mr Palombo was convicted at Southwark Crown Court of one count of conspiracy to defraud in respect of fixing EURIBOR.

5.4 The single count upon which Mr Palombo was convicted involved him, between 1 January 2005 and 31 December 2009, whilst an employee of Barclays, conspiring with others to defraud in that:

- (1) knowing or believing that Barclays was party to trading referenced to the EURIBOR,
- (2) they dishonestly agreed to procure or make submissions of rates into the EURIBOR setting process by Barclays which were false or misleading in that they:
  - (a) were intended to create an advantage to the trading positions of employees of Barclays, and
  - (b) deliberately disregarded the proper basis for the submission of those rates,

thereby intending that the economic interests of others may be prejudiced.

5.5 On 1 April 2019, Mr Palombo was sentenced to four years' imprisonment. In the sentencing remarks, the judge noted:

*"[...] it could not have been long before you knew exactly what [Colleague A] was doing and that what you were doing on his instruction was illegal and dishonest. [...] Your motive was greed and your inhibitions were suppressed as you thought you would not be found out."*

5.6 An application by Mr Palombo for leave to appeal his conviction was refused by the Court of Appeal on all but one ground, and the appeal on the ground allowed was dismissed on 9 December 2020. He did not appeal to the Supreme Court.

5.7 Mr Palombo lodged an application with the European Court of Human Rights alleging a violation of Article 7 of the European Convention on Human Rights. His case was declared inadmissible by a single Judge of the Court on 2 September 2021.

## **6. FITNESS AND PROPRIETY**

- 6.1. The facts and nature of Mr Palombo's offence show that he lacks honesty and integrity and is therefore not fit and proper to perform functions in relation to regulated activities.

## **7. PROHIBITION**

- 7.1. In light of Mr Palombo's lack of fitness and propriety, the Authority considers it is appropriate to prohibit Mr Palombo from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional person to advance the Authority's consumer protection and integrity objectives.

## **8. REPRESENTATIONS**

- 8.1. Mr Palombo made representations in response to the Warning Notice. Annex B contains a brief summary of the key representations made by Mr Palombo 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, whether or not set out in Annex B.

## **7. PROCEDURAL MATTERS**

- 7.1 This Notice is given to Mr Palombo under, and in accordance with, section 390 of the Act.

### **Decision maker**

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

<https://www.fca.org.uk/about/who-we-are/committees/regulatory-decisions-committee>

### **Confidentiality and publicity**

- 7.3 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- 7.4 The Authority intends to publish such information about the matter to which this Notice relates as it considers appropriate.

## **Contact**

- 7.9 For more information concerning this matter generally, Mr Palombo should contact Kerri Scott (direct line: 020 7066 4620) at the Authority.

**Mario Theodosiou**  
**Head of Department, Wholesale 2**  
**Enforcement and Market Oversight Division**  
**Financial Conduct Authority**

## **ANNEX A**

### **RELEVANT STATUTORY AND REGULATORY PROVISIONS**

1. The Authority's operational objectives include securing an appropriate degree of protection for consumers (section 1C of the Act) and protecting and enhancing the integrity of the UK financial system (section 1D of the Act).
2. The Authority has the power, pursuant to section 56 of the Act, to make a prohibition order if it appears to the Authority that an 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 exempt professional firm. Pursuant to section 56(2) of the Act, such an order may relate to a specified function, any function falling within a specified description or any function.
3. In exercising its power to make a prohibition order, the Authority must have regard to guidance published in the Handbook and in Regulatory Guides, such as EG. The relevant main considerations in relation to the action specified above are set out below.

#### **The Fit and Proper test for Approved Persons ("FIT")**

4. FIT sets out the criteria for assessing a person's fitness and propriety.
5. FIT 1.3.1BG(1) states that the Authority will have regard to, among other things, a person's honesty and integrity when assessing the fitness and propriety of a person to perform a particular controlled function.
6. FIT 1.3.3G states that the criteria listed in FIT 2.1 to FIT 2.3 are guidance and will be applied in general terms where the Authority is determining a person's fitness and propriety, and that it would be impossible to produce a definitive list of all the matters which would be relevant to a particular determination.
7. FIT 2.1.1G states that, in determining a person's honesty, integrity and reputation, the Authority will have regard to all relevant matters including, but not limited to, those set out in FIT 2.1.3G which may have arisen either in the United Kingdom or elsewhere. The Authority should be informed of these matters, but will consider the circumstances only where relevant to the requirements and standards of the regulatory system. For example, under FIT 2.1.3G(1), conviction for a criminal offence will not automatically mean an application will be rejected. The Authority treats each candidate's application on a case-by-case basis, taking into account the seriousness of, and circumstances surrounding, the offence, the explanation offered by the convicted person, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the

individual's rehabilitation.

8. FIT 2.1.3G states that the matters referred to in FIT 2.1.1G to which the Authority will have regard, include (but are not limited to) whether the person has been convicted of any criminal offence, with particular consideration being given to (among others) offences of dishonesty, financial crime and market manipulation.

### **Prohibition order**

9. The Authority's approach to deciding whether to impose a prohibition order, and the scope of any such prohibition order, is set out in Chapter 9 of EG.
10. EG 9.1.1 sets out how the Authority's power to make a prohibition order under section 56 of the Act helps it work towards achieving its statutory objectives. The Authority may exercise this power where it considers that, to achieve any of those 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.
11. EG 9.2.1 states that, in deciding whether to make a prohibition order, the Authority will consider all the relevant circumstances including whether other enforcement action should be taken or has been taken already against that individual by the Authority.
12. EG 9.2.2 states that the Authority has the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. Depending on the circumstances of each case, the Authority may seek to: prohibit individuals from performing any class of function in relation to any class of regulated activity; limit the prohibition order to specific functions in relation to specific regulated activities; or make an order prohibiting an individual from being employed by a particular firm, type of firm or any firm.
13. EG 9.2.3 states that the scope of a prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of the risk which he poses to consumers or the market generally.
14. EG 9.5.1 states that, where the Authority is considering making a prohibition order against an individual who is not an approved person, the Authority will consider the severity of the risk posed by the individual, and may prohibit the individual where it considers this is appropriate to achieve one or more of its statutory objectives.
15. EG 9.5.2 states that, when considering whether to exercise its power to make

a prohibition order against such an individual, the Authority will consider all the relevant circumstances of the case, which may include (but are not limited to), where appropriate, the factors set out in paragraph 9.3.2. Those factors include: whether the individual is fit and proper to perform functions in relation to regulated activities (noting the criteria set out in FIT 2.1, 2.2 and 2.3); the relevance and materiality of any matters indicating unfitness; the length of time since the occurrence of any matters indicating unfitness; the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates, and the severity of the risk which the individual poses to consumers and to confidence in the financial system.



## **Annex B**

### **REPRESENTATIONS**

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

#### The Authority's previous approach to Mr Palombo's conduct and the submission that the conviction alone is not a sufficient basis for a prohibition order

2. The Authority stated, in a letter dated 22 September 2015, that it was minded to issue a private warning to Mr Palombo. The letter further stated that it set out the preliminary views of the Authority, and that the decision was without prejudice to any investigations being undertaken by other agencies such as the SFO. The Authority wrote to Mr Palombo again on 26 February 2016 indicating that, following the SFO's involvement, it would not proceed with the private warning.
3. It is to be inferred that the Authority had concluded at the time of its letter of 22 September 2015 that Mr Palombo had not acted dishonestly in relation to EURIBOR. In the circumstances, it is clear that the decision to issue the Warning Notice in respect of Mr Palombo was solely based on the fact of Mr Palombo's criminal conviction for conspiracy to defraud.
4. That conviction is an insufficient reason for the Authority to issue a prohibition order. As the Authority had previously come to the decision that Mr Palombo's case could be resolved by a private warning, a prohibition order should not now be made based on the same set of facts merely because of Mr Palombo's conviction. The underlying facts have not changed since the Authority's earlier investigation that resulted in the Authority's letter of 22 September 2015. The Authority should follow its own, expert assessment of the evidence in the period prior to the issue of the 22 September 2015 letter rather than relying on the fact of the criminal conviction.
5. Further, Mr Palombo's criminal conviction is not in itself a sufficient ground for the Authority to make a prohibition order: FIT 2.1.1G states that a conviction for a criminal offence will not automatically mean an individual will be found not to be fit and proper.
6. The Authority appears to rely on Mr Palombo's denial of guilt in relation to his criminal conviction as a reason why he should be prohibited. The case of *Oyston*<sup>1</sup> established that it was an error of law for the Parole Board to deny a recommendation for parole solely on the basis of a prisoner denying his guilt. The same principles should apply in this case.
7. The Authority also ignores:
  - a. the fact that the conduct which was the basis for Mr Palombo's conviction occurred when he was a young man; and

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<sup>1</sup> *R (Oyston) v Parole Board* [2000] EWCA Crim 3552

- b. the decisions by the RDC and the Upper Tribunal respectively in the cases of *Koutsogiannis* and *Hussein*<sup>2</sup> where individuals in a similar position to Mr Palombo were found not to have acted dishonestly in relation to the alleged manipulation of the London Interbank Offered Rate ("LIBOR"). Mr Palombo's case should be treated consistently with those cases.
8. **The Authority's letter of 22 September 2015 to Mr Palombo indicated it was minded to give him a private warning, but made it clear that the views expressed in it were preliminary. Its subsequent letter of 26 February 2016 stated that the Authority would not be issuing Mr Palombo with a private warning in light of the decision by the Serious Fraud Office to charge him with conspiracy to defraud in connection with manipulation of EURIBOR. Accordingly, no final decision was taken by the Authority that a private warning should be issued to Mr Palombo. Further, the letter of 22 September 2015, which set out concerns that Mr Palombo might not be fit and proper, does not support a conclusion that the Authority must at that time have concluded that Mr Palombo had not acted dishonestly.**
  9. **It is not the mere fact of a criminal conviction that has led the Authority to conclude that Mr Palombo is not fit and proper. The Authority considers that the nature of Mr Palombo's criminal conviction demonstrates a clear and serious lack of honesty and integrity, such that he is not fit and proper to perform functions in relation to regulated activities.**
  10. **Mr Palombo's age at the relevant time, and his views as to the similarity of his case with the others mentioned by him, do not detract from the materiality of his conviction.**
  11. **Mr Palombo's conviction was for a serious offence of dishonesty which related to financial crime (FIT 2.1.3G(1)). The Authority also notes that the offence was committed over a sustained period of time which the sentencing Judge characterised as a "*manipulation [that] continued over at least 3 years.*" The Judge further stated that, "*as far as harm is concerned, you fall into the highest category, Category 1, as the loss or intended loss in the conspiracy is well over £500,000.*" The sentencing Judge also considered it an aggravating feature that, "*even after [Colleague A] left Barclays in May 2007, [Mr Palombo] continued to make requests of the submitters, and did so after [he] became an associate director and the senior trader on the swaps desk in 2008.*" He also stated that Mr Palombo had assumed a leading role in the offending after Colleague A had left Barclays, and an important role while that colleague was still in post. The offence was committed while Mr Palombo was an approved person at Barclays. In addition, the sentencing Judge noted that Mr Palombo "*influenced the submitters, ...[he] abused [his] position of trust and responsibility, the offending was sophisticated and involved significant planning.*"**

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<sup>2</sup> [2016] UKUT 0549

12. **The offence was so serious as to cross the custody threshold and attract an immediate custodial sentence.**
13. **As set out in paragraph 2.3 of this Notice, and as explained further below, the Authority has considered all relevant circumstances in coming to the conclusion that it is appropriate to make a prohibition order. The Authority does not rely on Mr Palombo's denial of guilt as a reason in itself for imposing a prohibition. However, the Authority considers it relevant that there is no evidence of Mr Palombo having shown any insight into his offending and the events underlying his conviction.**

Factors arising since the events giving rise to the conviction

*Passage of time*

14. EG 9.3.2(6) states that the Authority will consider the length of time since the occurrence of any matters indicating unfitness.
15. A significant period of time has passed since the relevant misconduct; the facts underlying the conviction took place many years ago, and Mr Palombo was convicted in 2019, yet the Warning Notice was not issued until January 2022. The lengthy passage of time undermines the need for a prohibition order to be made.
16. **As set out in EG 9.3.2, the passage of time is only one factor to be taken into account by the Authority.**
17. **In this case, while it is correct that the wrongdoing for which Mr Palombo was convicted occurred a number of years ago, the criminal procedure only came to an end at the end of 2020, when Mr Palombo's appeal was rejected by the Court of Appeal. The Authority usually commences regulatory proceedings with a view to prohibition on the basis of a criminal conviction only after the appeal process has been exhausted. Accordingly, the Authority initiated correspondence with Mr Palombo in this matter in June 2021 and the Warning Notice was issued in January 2022.**
18. **In the circumstances of this case, the Authority does not consider that the passage of time is a factor weighing against the making of a prohibition order.**

*Denial of guilt and appeal against conviction*

19. Mr Palombo denies his guilt and is continuing to contest his conviction. Although he has exhausted domestic remedies and his application to the European Court of Human Rights has been declared inadmissible by a single Judge of the Court, Mr Palombo is presently working towards reversing his conviction either by a Criminal Cases Review Commission ("CCRC") reference, or by making an application to the Court of Appeal to reopen its decision pursuant to the principles in *Taylor v. Lawrence*<sup>3</sup>. He is also making a judicial review application seeking disclosure in

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<sup>3</sup> (2002) EWCA Civ 90 (2003) QB 528

support of these potential applications. Whilst those applications are pending, the Authority ought not to issue a prohibition order.

20. Mr Palombo's position is supported by the successful appeal against conviction in the case of *USA v Connolly*,<sup>4</sup> where the defendants had been convicted of wire and bank fraud in connection with the LIBOR investigation, which involved a detailed analysis of how LIBOR operated. The appeal judges found that the evidence was insufficient as a matter of law to permit a finding of falsity or fraudulent intent, as the US government was not in a position to prove that the submitted rates were false, which was an essential requirement for the offence of dishonesty. The defendants' conduct was not regarded as a criminal offence. The defendants' convictions were reversed and entries of acquittals made. This is not the only conviction to have been recently overturned. The factual and legal similarities in this case cast doubt on Mr Palombo's conviction.
21. Given the similarity of the offences, the Authority ought to consider the legal position adopted in the United States in considering whether a prohibition is appropriate. The UK's legal position is a unique outlier compared to other countries.
22. Further, Mr Palombo's conduct was not regarded as criminal at the time of the relevant events, as the offence of interest rate manipulation was created after his misconduct.
23. **As noted above, the Authority will usually commence regulatory proceedings with a view to prohibition on the basis of a criminal conviction only after the appeal process has been exhausted. Mr Palombo's intended applications to the CCRC and to reopen his case at the Court of Appeal under the *Taylor v. Lawrence* principles are not part of that process, and Mr Palombo has given no firm indication of when either such application is likely to be made. The Authority notes that the Court of Appeal may only reopen cases under the *Taylor v Lawrence* principles in exceptional circumstances.**
24. **Mr Palombo is no longer in custody and the Authority considers that, without any restrictions on his ability to perform controlled functions, he presents a serious risk to consumers and financial institutions as well as confidence in the financial system.**
25. **Mr Palombo's arguments based on cases in the United States, and as to the criminality of his conduct at the relevant time, do not affect the fact that his conviction for a criminal offence in the UK remains in place and is not currently subject to appeal.**
26. **Should Mr Palombo's applications to the CCRC or Court of Appeal be successful in overturning his conviction, it is open to him to apply for the prohibition to be revoked.**

*Whistleblowing*

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<sup>4</sup> USA v Connolly No. 19-3806 (2d Cir. 2022)

27. Mr Palombo contacted the Authority in 2013 as a whistle-blower with material relating to questionable acts of market manipulation. Bearing in mind that the Authority must take into account all aspects of Mr Palombo's conduct, integrity and character when deciding whether to impose a prohibition order, his role as a whistle-blower is plainly a relevant circumstance.
28. **The Authority has taken into account the evidence that Mr Palombo contacted the Authority in 2013 in relation to matters which he considered to be possible market manipulation. However, the Authority does not consider that this outweighs Mr Palombo's clear and serious lack of honesty and integrity and the Authority's conclusion that he is not fit and proper to perform functions in relation to regulated activities.**

*No risk*

29. Mr Palombo is no longer working in financial services. He pursued an academic career after leaving Barclays, which he has resumed since his release from prison. As such, he does not present a risk to consumers or the market.
30. **Although Mr Palombo is not currently working in financial services, the Authority is mindful that there is nothing currently in place to prevent him from doing so (and in his representations to the Authority he indicated that his future plans were uncertain).**
31. **Mr Palombo is no longer in custody and the Authority considers that, without any restrictions on his ability to become involved in regulated activities, he presents a serious risk to consumers as well as to the integrity of the financial system.**