
FINAL NOTICE

To: **Daniel James Plunkett**

Individual
Reference
Number: **DJP01169**

D.O.B: **14 April 1976**

Date: **23 May 2014**

1. ACTION

1.1. For the reasons given in this Final Notice, the Authority hereby:

- (1) imposes on Mr Plunkett a financial penalty of £95,600; and
- (2) makes an order prohibiting Mr Plunkett from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm. This order takes effect from 23 May 2014.

1.2. Mr Plunkett agreed to settle at an early stage of the Authority's investigation and therefore qualified for a 30% (Stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £136,600 on Mr Plunkett.

2. SUMMARY OF REASONS

- 2.1. The Authority has concluded that Mr Plunkett breached Statements of Principle 1 and 3 of the Authority's Statements of Principle and Code of Practice for Approved Persons by placing orders during the 3.00 p.m. Gold Fixing on 28 June 2012 with the intention of increasing the likelihood that the price of gold would fix below a certain level. In doing so, Mr Plunkett preferred his own interests to those of a customer in respect of whom he was managing a product that was referenced to that specific Gold Fixing.
- 2.2. Mr Plunkett was a Director on the Precious Metals Desk at Barclays. He held the CF30 (customer) function and was responsible for pricing products linked to the price of precious metals and managing Barclays' risk exposure to those products.
- 2.3. One of the product types that Mr Plunkett priced for customers and risk-managed for Barclays was exotic options contracts that referenced the price of gold fixed during the Gold Fixing. If, for example, the price of gold fixed above a certain barrier price agreed in a contract, then Barclays would be obligated to make a payment to its customer. But if the price of gold fixed below that barrier price, then Barclays would not be obligated to make a payment and accordingly would profit by more than if the price of gold fixed above the Barrier.
- 2.4. On 28 June 2011, Barclays entered into a digital options contract (the Digital) with Customer A. Upon the signing of the contract, Customer A made a premium payment of approximately USD4.4m to Barclays, of which a proportion was attributed as a profit to Mr Plunkett's book.
- 2.5. Mr Plunkett was responsible for pricing and managing Barclays' risk on the Digital. He was therefore aware of the terms of the Digital. The Digital referenced the price of gold fixed during the 3:00 p.m. Gold Fixing on 28 June 2012. The terms provided that if the price fixed above USD1,558.96, the Barrier, during the 3:00 p.m. Gold Fixing on 28 June 2012, then Barclays would be required to make a payment to Customer A of 9% of the notional value (the notional value was approximately USD43m) of the Digital, *i.e.*, USD3.9m. Part of this payment would be attributed to Mr Plunkett's book. If, however, the price of gold fixed below the Barrier, then Barclays would not have to make the USD3.9m payment to Customer A and a percentage of this additional profit would be attributed to Mr Plunkett's book.

- 2.6. During the 3:00 p.m. Gold Fixing on 28 June 2012, Mr Plunkett placed certain orders with the intent of increasing the likelihood that the price of gold would fix below the Barrier, which it eventually did. As a result, Barclays was not obligated to make the USD3.9m payment to Customer A, and Mr Plunkett's book thereby profited by USD1.75m (excluding hedging), which was in addition to the initial profit that his book had received upon the sale of the Digital.
- 2.7. Very shortly after the conclusion of the 3:00 p.m. Gold Fixing on 28 June 2012, Customer A became aware that the price had fixed just below the Barrier and sought an explanation from Barclays as to what happened in the Gold Fixing. When Barclays relayed Customer A's concerns to Mr Plunkett on 28 and 29 June 2012, he failed to disclose that he had placed orders and traded during the Gold Fixing. He also failed to provide this information to Barclays' Compliance department when contacted by them on 29 June 2012. Further, during Barclays' subsequent internal investigation and the Authority's own investigation, Mr Plunkett misled both Barclays, and the Authority by providing an account of events that was untruthful.
- 2.8. In the circumstances, the Authority has concluded that Mr Plunkett:
- (1) Failed to act with integrity when carrying out his controlled function (Statement of Principle 1), because he placed orders during the Gold Fixing, and in doing so, preferred his own interests over those of Customer A. In addition, he subsequently provided information that was misleading and untruthful, so as to hide his misconduct.
 - (2) Failed to observe the proper standards of market conduct (Statement of Principle 3) during the 28 June 2012 Gold Fixing because he placed orders during the Gold Fixing which were intended to increase the likelihood that the price of gold would fix below the Barrier, and thereby secure a greater profit.
- 2.9. Further, the Authority has concluded that Mr Plunkett lacks the honesty and integrity required to perform any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm. The Authority has concluded that Mr Plunkett should be prohibited from doing so because he is not a fit and proper person.
- 2.10. Mr Plunkett's misconduct is particularly serious because:

- (1) He placed orders during the Gold Fixing which were intended to increase the likelihood that the price of gold would fix below a certain level during the Gold Fixing, and in doing so preferred his interests over those of a customer; and
- (2) His actions had the potential to have an adverse effect on the Gold Fixing and the UK and international financial markets.

2.11. The Gold Fixing provides market users with a pricing mechanism allowing them to buy and sell gold at a single quoted price. Accordingly, any misconduct that threatens its integrity is serious because it also threatens the integrity of the UK and international financial markets.

2.12. In light of the facts and matters set out in this Final Notice, the Authority hereby imposes a financial penalty on Mr Plunkett in the amount of £95,600 pursuant to section 66 of the Act and makes a prohibition order pursuant to section 56 of the Act in the terms set out above.

3. DEFINITIONS

3.1. The definitions below are used in this Final Notice:

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

“August COMEX Gold Futures” means the futures contract expiring in August 2012 which, as at 28 June 2012, was the nearest and most liquid of the listed contract months.

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

“Authority’s Handbook” means the Authority’s Handbook of rules and guidance.

“Barclays” means Barclays Bank PLC.

“Barrier” means the price of USD1,558.96 in the 3:00 p.m. 28 June 2012 Gold Fixing.

“Chairman” means the Gold Fixing Member (one of the Gold Fixing Members) that presides over the Gold Fixing. The Chairmanship is rotated amongst the Gold Fixing Members on a yearly basis.

“COMEX Gold Futures” means the 100 troy ounces exchange-traded futures contracts traded on COMEX, a division of the New York Mercantile Exchange (NYMEX) and part of the CME group.

“Customer A” means Barclays’ counterparty to the Digital.

“DEPP” means the part of the Authority’s Handbook entitled ‘Decision Procedure and Penalties Manual’.

“Digital” means the digital options contract between Barclays and Customer A.

“EG” means the part of the Authority’s Handbook entitled ‘The Enforcement Guide’.

“EURIBOR” means the Euro Interbank Offered Rate.

“Gold Fixing” means the London Gold Fixing process which takes place between the five Gold Fixing Members twice daily, at 10:30 a.m. and 3:00 p.m. each business day.

“Gold Fixing Members” means the member banks which participate in the Gold Fixing. As at 28 June 2012, the five Gold Fixing Members were Barclays, Deutsche Bank, HSBC, Scotiabank and Société Générale.

“LIBOR” means the London Interbank Offered Rate.

“Precious Metals Desk” means the Barclays trading desk responsible for precious metals. These metals are gold, silver, platinum, palladium and rhodium.

“Relevant Period” means 28 June 2012 to 28 August 2012.

“Sales Desk” means the Barclays Emerging Market Sales Desk, which is responsible for selling multiple products to emerging market-based clients.

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

“USD” means U.S. Dollars.

4. FACTS AND MATTERS

Background

- 4.1. Mr Plunkett was employed as a precious metals options trader at Barclays. He was a Director on the Precious Metals Desk and was approved to perform the CF30 (customer) function.
- 4.2. Mr Plunkett's responsibilities included pricing products linked to precious metals and managing Barclays' risk exposure to those products. Mr Plunkett traded primarily in gold and silver.
- 4.3. Mr Plunkett specialised in trading 'exotic' options. Exotic options differ from standard 'vanilla' options in that they have non-standardised terms and offer a bespoke range of features or characteristics, which gives them greater complexity. The majority of exotic options are traded bilaterally, whereas vanilla options are often traded on exchanges.

The Gold Fixing

- 4.4. During the Relevant Period, Barclays was one of the five Gold Fixing Members that contributed to setting the price of gold in the Gold Fixing.
- 4.5. The Gold Fixing provides market users with the opportunity to buy and sell gold at a single quoted price. It is an important price-setting mechanism that affects both UK and international financial markets.
- 4.6. The Gold Fixing takes place twice daily (at 10:30 a.m. and 3:00 p.m. each business day) on a closed conference call between the Gold Fixing Members.
- 4.7. As described on the Gold Fixing website, the Gold Fixing takes place as follows:
 - (1) Immediately prior to the commencement of the Gold Fixing, the Chairman determines what is considered to be the then prevailing USD spot price for gold in the London market. This price will be used as the opening price for the Gold Fixing.
 - (2) Each of the Gold Fixing Members will then declare whether, at the opening price, they have buying, selling or no interest.
 - (3) If there is no buying and no selling interest at the opening price, then the Chairman may announce the price as "fixed" at that opening price.

- (4) However, if at the opening price there is only selling or buying interest, then the Chairman will ask for figures and may then either: (i) declare the price as fixed if the quantity offered or wanted is 20,000 oz. (50 bars) or less (see below regarding pro-rata fixings); or (ii) move the opening price lower or higher until there is two-way interest.
- (5) If at a price being tried there is two-way interest, then the Chairman will call for figures. Sellers will declare the number of bars they wish to sell and then the buyers will disclose the number of bars they wish to buy. Gold Fixing Members are required to declare their interest in increments of five bars, but there is no such requirement in relation to their underlying customers, *i.e.* their underlying customers can place their orders for any amount, not only in increments of five..
- (6) For example, if a seller wants to sell 40,000 oz. (100 bars) and a buyer wants to buy only 10,000 oz. (25 bars), then the Chairman will progressively move the price down and at each stage ask for expressions of buying and selling interest and then for figures. Likewise, if a buyer wants to buy 40,000 oz. (100 bars) but a seller wants to sell only 10,000 oz. (25 bars), then the Chairman will progressively move the price being tried up. This process continues until supply meets demand or the imbalance is 20,000 oz. (50 bars) or less and the Chairman decides to declare a pro-rata fixing and the price fixed.
- (7) In the event that it proves impossible to meet supply and demand exactly or the difference is 10,000 oz. (25 bars) or less, the Chairman may declare the price fixed and the Gold Fixing Members will divide pro-rata the difference between themselves. For example, if there is more buying than selling interest with two buyers and three sellers and the difference is 10,000 oz. (25 bars), both of the buyers will reduce their buying interest by five bars and each of the sellers will increase their selling interest by five bars. This pro-rata arrangement is solely between the Gold Fixing Members and will not affect their underlying customers' orders.
- (8) At any time a Gold Fixing Member, or their underlying customers, may increase or decrease or withdraw a previously declared selling or buying order or place a completely new order. In such circumstances, if a Gold Fixing Member requires a short pause in order to enable them to recalculate their overall level of interest, then the Gold Fixing Member may

call "flag", which brings the Gold Fixing to a temporary halt. The Chairman cannot fix the price while a flag prevails.

(9) When supply meets demand at a price being tried or the Chairman has declared a pro-rata fixing and the price as fixed, he will then provide equivalent Gold Fixing prices in Pounds Sterling and Euros, using the then prevailing exchange rates.

(10) The USD Gold Fixing is the price for one troy ounce of gold delivered in London in the form of LBMA Good Delivery gold bars of approximately 400 oz. each.

The Digital

- 4.8. On 28 June 2011, Barclays entered into an exotic options contract (the Digital) with Customer A. The Digital was a 'digital' option, meaning it had only two potential values: (i) a fixed pay-out to Customer A if the option finished 'in the money'; or (ii) no pay-out if the option finished 'out of the money'. In order to determine whether a digital option finishes in or out of the money, reference is usually given to the price or level of an agreed investment or benchmark on a specified date, known as the observation date.
- 4.9. The Digital had a notional amount of approximately USD43m and upon the signing of the contract, Customer A paid a premium of 8.18% of the notional value, USD4.4m, to Barclays, of which a proportion was attributed as a profit to Mr Plunkett's book. The Digital had two observation dates, 28 June 2012 and 20 June 2013, and referenced the price fixed during the 3:00 p.m. Gold Fixing on each of these dates.
- 4.10. Under the terms of the Digital, if the price fixed in the 28 June 2012 Gold Fixing exceeded USD1,558.96, the Barrier, a payment of 9% of the notional amount, or approximately USD3.9m, would accrue to Customer A. If the price fixed during the 20 June 2013 Gold Fixing exceeded USD1,633.91, a payment of 18% of the notional amount would accrue to Customer A, less any accrued percentage payment related to the 28 June 2012 Gold Fixing.
- 4.11. The Digital was sold to Customer A by Barclays' Sales Desk. Mr Plunkett was responsible for pricing and managing Barclays' risk on the Digital. He was therefore aware of the terms of the Digital. The Digital referenced the price of gold fixed in the 3:00 p.m. Gold Fixing on 28 June 2012. As described in paragraph 4.10 above, the terms provided that if the price fixed above

USD1,558.96 (the Barrier) then Barclays would be required to make a USD3.9m payment to Customer A. Part of this payment would be attributed to Mr Plunkett's book. If, however, the price of gold fixed below the Barrier, then Barclays would not have to make the USD3.9m payment to Customer A and a percentage of this additional profit would be attributed to Mr Plunkett's book.

Mr Plunkett's trading during the 28 June 2012 Gold Fixing

- 4.12. Mr Plunkett was aware that the Digital was the main risk exposure he had to manage on 28 June 2012. On the evening of 27 June 2012, Mr Plunkett sent an email summarising his risk exposures to other members of the Commodities business area, including members of the Precious Metals Desk, stating that the Digital was his "*main event*" for 28 June 2012 and that he was hoping for "*a mini puke to 1558 for fixing*". The Authority understands the phrase "*mini-puke*" used by Mr Plunkett to have meant a drop in the price of gold ahead of the 28 June 2012 Gold Fixing – the price in the 3:00 p.m. 27 June 2012 Gold Fixing had fixed at USD1,573.50 and COMEX Gold futures were trading at approximately USD1,577.50 at the time of his email. Mr Plunkett repeated this sentiment on the morning of 28 June 2012, stating to a colleague "*hopefully we fix 1558, or 1558.75 ideal*".
- 4.13. At the start of the 28 June 2012 Gold Fixing at 3:00 p.m., the Chairman proposed an opening price of USD1,562.00. However, the proposed price quickly dropped to USD1,556.00, following a drop in the price of August COMEX Gold Futures (which was caused by significant selling in the August COMEX Gold Futures market, independent of Barclays and Mr Plunkett). The proposed price in the 28 June 2012 Gold Fixing then rose, eventually fixing at USD1,558.50 at 3:10 p.m.
- 4.14. At 3:06 p.m., shortly after the Chairman had increased the proposed price to USD1,558.50, Mr Plunkett, who had not placed any previous orders during the Gold Fixing, placed a large sell order of between 40,000 oz. (100 bars) and 60,000 oz. (150 bars), with Barclays' representative on the Gold Fixing. This order was incorporated by Barclays' representative into Barclays' net position, which led to Barclays declaring itself to be a seller of 52,000 oz. (130 bars).
- 4.15. The purpose of Mr Plunkett's order was to decrease the likelihood of the proposed price rising further (above the Barrier) and to increase the likelihood that the price would fix at USD1,558.50 (below the Barrier).

- 4.16. Once all the Gold Fixing Members had declared their respective positions at USD1,558.50, the level of selling in the 28 June 2012 Gold Fixing exceeded the level of buying by 190 bars (155 bars buying/345 bars selling). This suggested that the proposed price in the 28 June 2012 Gold Fixing was likely to move lower.
- 4.17. At 3:07 p.m. Mr Plunkett withdrew his entire sell order, which resulted in Barclays' representative withdrawing Barclays' position (selling 130 bars). This reduced the imbalance in the 28 June 2012 Gold Fixing from 190 bars to 60 bars (155 bars buying/215 bars selling).
- 4.18. By withdrawing his entire sell order, Mr Plunkett intended to bring the difference between buying and selling interests within the 50 bar margin required for the price to fix. This would also increase the likelihood of the price fixing at USD1,558.50 (below the Barrier).
- 4.19. Following Mr Plunkett's withdrawal of his order, one of the Gold Fixing Members reduced its selling position by 10 bars, bringing the imbalance in the 28 June 2012 Gold Fixing to 50 bars. However, before the price was fixed, there were a number of further changes in the levels of buying and selling in the 28 June 2012 Gold Fixing, which coincided with an increase in the price of August COMEX Gold Futures.
- 4.20. As a result of these changes, the level of buying at USD1,558.50 exceeded the level of selling (155 buying/45 selling), and the proposed price was likely to move higher. Given that the price of August COMEX Gold Futures was trading around USD1,560.00 at this time, if the Chairman did move the proposed price in the 28 June 2012 Gold Fixing higher, it was likely to be to a similar price level (which was higher than the Barrier).
- 4.21. At 3:09 p.m., Mr Plunkett again placed a large sell order, 60,000 oz. (150 bars), with Barclays' representative, who, also taking into account changes in customers' orders, declared Barclays' net position in the 28 June 2012 Gold Fixing to be selling 40,000 oz. (100 bars).
- 4.22. By placing his sell order, Mr Plunkett intended to increase the likelihood of the price fixing at USD1,558.50 (below the Barrier).
- 4.23. Barclays' sell order, of which Mr Plunkett's order was a significant component, had the effect of bringing the level of buying and selling in the 28 June 2012 Gold Fixing to a point where the imbalance was 10 bars (155 buying/145 selling) and

the price could be fixed. Indeed, shortly after Mr Plunkett placed this order, two of the Gold Fixing members adjusted their orders and at 3:10 p.m. the Chairman declared the price to be fixed at USD1,558.50 (below the Barrier). As a result, Barclays was not obligated to make the USD3.9m payment to Customer A and Mr Plunkett's book thereby profited by USD1.75m (excluding hedging), which was in addition to the initial profit that his book had received upon the sale of the Digital.

Events after the 28 June 2012 Gold Fixing

- 4.24. Shortly after the conclusion of the 28 June 2012 Gold Fixing, Mr Plunkett repurchased 60,000 oz. (150 bars) of gold by executing an internal trade with Barclays' Gold Spot Book. The purpose of executing this order was to unwind the 60,000 oz. (150 bars) position he had taken during the 28 June 2012 Gold Fixing.
- 4.25. Mr Plunkett's trade was executed at a higher price than that at which he had sold during the 28 June 2012 Gold Fixing, and his trading book suffered an immediate loss of approximately USD114,000.

Customer A's enquiry and Barclays' and the Authority's investigations

- 4.26. Very shortly after the conclusion of the 28 June 2012 Gold Fixing, Customer A became aware that the price had fixed just below the Barrier and sought an explanation from Barclays as to what happened in the Gold Fixing. Customer A's enquiry was relayed to Mr Plunkett. Mr Plunkett provided an explanation that referred only to the significant selling in August COMEX Gold Futures. Mr Plunkett did not disclose his trading activity during the 28 June 2012 Gold Fixing, which was a material fact that ought to have been disclosed.
- 4.27. Later on 28 June 2012, and again on 29 June 2012, Mr Plunkett had further communications within Barclays regarding Customer A's concerns. Again, Mr Plunkett did not disclose his trading activities during the 28 June 2012 Gold Fixing.
- 4.28. After the weekend, on the morning of Monday 2 July 2012, Mr Plunkett sought out his line manager and informed him that he had traded during the 28 June 2012 Gold Fixing. He also subsequently reported his trading to Barclays' Compliance.
- 4.29. During Barclays' internal investigation, Mr Plunkett provided an account of his trading during the Gold Fixing that was untruthful, in that he did not disclose the true rationale for his trading, or the reasons why he failed to disclose his trading

to the Sales Desk on 28 June 2012. In giving this account, Mr Plunkett intended to give the impression that he placed orders in the 28 June 2012 Gold Fixing for reasons other than to increase the likelihood that the price of gold would fix below the Barrier.

4.30. Mr Plunkett continued to provide this untruthful account of events when he was interviewed by the Authority.

4.31. The circumstances of Mr Plunkett's trading in the 28 June 2012 Gold Fixing were formally investigated by Barclays. Barclays subsequently repaid Customer A the full amount that Customer A would have been due had the price of gold in the 28 June 2012 Gold Fixing fixed above the Barrier.

5. FAILINGS

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

Breach of Statement of Principle 1

5.2. Statement of Principle 1 states:

An approved person must act with integrity in carrying out his controlled function¹.

5.3. By reason of the facts and matters set out in paragraphs 4.12 to 4.29 above, the Authority has concluded that Mr Plunkett failed to act with integrity in carrying out his controlled function, in breach of Statement of Principle 1 because:

- (1) Mr Plunkett placed orders during the Gold Fixing and in doing so preferred his interests over those of Customer A;
- (2) Mr Plunkett did not disclose his orders during the Gold Fixing from 28 June 2012 until 2 July 2012 even though he knew that it was information that Customer A was likely to consider material when seeking to understand why the price of gold fixed below the Barrier; and
- (3) Mr Plunkett provided an untruthful account of events to Barclays during its internal investigation.

¹ As at 28 June 2012; amended 1 April 2013

Breach of Statement of Principle 3

5.4. Statement of Principle 3 states:

An approved person must observe proper standards of market conduct in carrying out his controlled function².

5.5. By reason of the facts and matters set out in paragraphs 4.12 to 4.23 above, the Authority has concluded that Mr Plunkett failed to observe proper standards of market conduct in carrying out his controlled function, in breach of Statement of Principle 3 because:

- (1) Mr Plunkett placed orders during the 28 June 2012 Gold Fixing which were intended to increase the likelihood that the price of gold would fix below the Barrier; and
- (2) that in placing these orders, Mr Plunkett attempted to avoid the potential payment of USD3.9m due under the terms of Digital, and thereby secured a greater profit.

Fitness and Propriety

5.6. In assessing Mr Plunkett's honesty and integrity, the Authority has concluded that Mr Plunkett's conduct falls below the standards expected of those working in the financial services industry. By reason of the facts and matters set out above, Mr Plunkett has failed to demonstrate the degree of honesty and integrity required by the regulatory system, because he:

- (1) placed orders during the Gold Fixing that preferred his interests over that of Customer A and did not consider whether his actions could have had an adverse effect on the Gold Fixing and the integrity of the UK and international financial markets;
- (2) did not disclose his orders during the Gold Fixing even when he knew that it was material information that Customer A was seeking in order to understand why the price of gold had fixed just below the Barrier;
- (3) provided an untruthful account of events to Barclays during its internal investigation; and
- (4) provided an untruthful account of events to the Authority during its investigation.

² As at 28 June 2012; amended 1 April 2013

- 5.7. The Authority has concluded that Mr Plunkett is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm as he lacks the requisite honesty and integrity.

6. SANCTION

- 6.1. The Authority has considered the disciplinary and other options available to it and has concluded that a financial penalty and a prohibition are the appropriate sanctions in the circumstances of this particular case.

Financial Penalty

- 6.2. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. For this period the Authority applies a five-step framework, as set out in DEPP 6.5B, to determine the appropriate level of financial penalty imposed on individuals in non-market abuse cases.
- 6.3. The Authority considers that Mr Plunkett's breaches of Statements of Principle 1 and 3 relate to the same underlying matter (*i.e.*, Mr Plunkett's trading during the 28 June 2012 Gold Fixing). As such, and in the particular circumstances of this case, the Authority has concluded that it is appropriate to impose a combined penalty in respect of these breaches.

Step 1 – disgorgement

- 6.4. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.5. The Authority has not identified any financial benefit that Mr Plunkett derived directly from the breaches. Customer A was repaid the full amount due under the Digital and Mr Plunkett's employment was terminated with no bonus paid to him.
- 6.6. Step 1 is therefore £0.

Step 2: the seriousness of the breach

- 6.7. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred.

- 6.8. Mr Plunkett's breaches occurred during the following periods:
- (1) Statement of Principle 1 (integrity): From 28 June 2012 until 28 August 2012, when Barclays' disciplinary process for Mr Plunkett was completed.
 - (2) Statement of Principle 3 (proper standards of market conduct): On 28 June 2012, the day on which Mr Plunkett placed orders in the Gold Fixing with the intent to increase the likelihood that the price of gold would fix below the Barrier on the Digital.
- 6.9. As stated in DEPP 6.5B.2G (2), where the period of a breach lasts less than 12 months, the relevant income will be the amount earned by the individual in the 12 months preceding the end of the breach. In this case, Mr Plunkett's breaches ended on 28 August 2012, and therefore the relevant period for calculating Mr Plunkett's relevant income is 29 August 2011 to 28 August 2012. Mr Plunkett's relevant income in this period was £284,766.
- 6.10. In deciding on the percentage of the relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:
- Level 1 – 0%
- Level 2 – 10%
- Level 3 – 20%
- Level 4 – 30%
- Level 5 – 40%
- 6.11. A non-exhaustive list of factors which are likely to be considered level 4 factors or level 5 factors are set out at DEPP 6.5B.2G (12). In the circumstances of this case, the Authority considers the following factors to be relevant:
- (1) Mr Plunkett's breaches caused a significant loss, or risk of loss, to individual consumers, investors and other market users;
 - (2) Mr Plunkett failed to act with integrity; and

(3) Mr Plunkett's conduct, which resulted in the breaches, was deliberate. It was intended to increase the likelihood that the price of gold would fix at a certain level, and thereby benefit his own book. His conduct after the 28 June 2012 Gold Fixing was intended to conceal the true nature of that trading.

6.12. Taking all of these factors into account, the Authority has concluded the seriousness of the breach to be Level 5. As such, the Step 2 figure is 40% of £284,766.

6.13. Step 2 is therefore £113,906.

Step 3: mitigating and aggravating factors

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

6.15. The Authority considers the following as factors which aggravate the breaches:

(1) Mr Plunkett's conduct in misleading the Authority during the course of its investigation (as set out in paragraph 4.30); and

(2) Mr Plunkett's conduct on 28 June 2012 occurred the day after the Authority's public announcement on 27 June 2012 of Barclays' £59.5m fine for misconduct relating to its submission of rates which formed part of the LIBOR and EURIBOR benchmarks during the period 2005 to 2009. On 27 June 2012 a communication was also made internally within Barclays about the seriousness of that misconduct. Despite this, Mr Plunkett placed orders in the Gold Fixing on 28 June 2012 in the manner set out above in paragraphs 4.12 to 4.23.

6.16. The Authority considers that there are no factors that mitigate the breaches.

6.17. Having taken into account the aggravating factors at paragraph 6.15, the Authority has concluded that the Step 2 figure of £113,906 should be increased by 20%.

6.18. Step 3 is therefore £136,688.

Step 4: adjustment for deterrence

- 6.19. Pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.
- 6.20. The Authority has concluded that the Step 3 figure of £136,688 represents a sufficient deterrent to Mr Plunkett and others.
- 6.21. Step 4 is therefore £136,688.

Step 5: settlement discount

- 6.22. Pursuant to DEPP 6.5B.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.
- 6.23. The Authority and Mr Plunkett reached agreement at Stage 1; therefore, a 30% discount applies to the Step 4 figure (of £136,688).
- 6.24. Step 5 is therefore £95,600, rounded down to the nearest £100.

Prohibition Order

- 6.25. For the reasons set out in paragraphs 5.6 to 5.7, the Authority has concluded that it is both necessary and appropriate to prohibit Mr Plunkett from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm to secure an appropriate degree of protection for consumers and to protect and enhance the integrity of the UK financial system.
- 6.26. The Authority has had regard to the guidance in Chapter 9 of EG in deciding that it is appropriate to make a prohibition order in this case.
- 6.27. The Authority therefore makes a prohibition order pursuant to section 56 of the Act prohibiting Mr Plunkett from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm. This order takes effect from 23 May 2014.

7. PROCEDURAL MATTERS

Decision maker

- 7.1. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers.
- 7.2. This Final Notice is given under, and in accordance with, section 390 of the Act.

Manner of and time for Payment

- 7.3. The financial penalty must be paid in full by Mr Plunkett to the Authority by no later than 20 June 2014, 28 days from the date of the Final Notice.

If the financial penalty is not paid

- 7.4. If all or any of the financial penalty is outstanding on 21 June 2014, the Authority may recover the outstanding amount as a debt owed by Mr Plunkett and due to the Authority.

Publicity

- 7.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Final 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.
- 7.6. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

- 7.7. For more information concerning this matter generally, contact Harsh Trivedi (direct line: 020 7066 4798), Jonathan Froome (direct line: 020 7066 5438) or David Edmunds (direct line: 020 7066 6150) of the Enforcement and Financial Crime Division of the Authority.

Jamie Symington

Financial Conduct Authority, Enforcement and Financial Crime Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1 RELEVANT STATUTORY PROVISIONS

1.1 The Authority's statutory objectives, set out in section 1B(3) of the Act, include the consumer protection and integrity objectives.

1.2 Section 1C of the Act sets out that the consumer protection objective is:

"securing an appropriate degree of protection for consumers."

1.3 Section 1D of the Act sets out that the integrity objective is:

"protecting and enhancing the integrity of the UK financial system."

1.4 Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. A person is guilty of misconduct if, while an approved person, he has failed to comply with a statement of principle issued under section 64 of the Act, or has been knowingly concerned in a contravention by a relevant authorised person of a relevant requirement imposed on that authorised person.

1.5 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.

2 RELEVANT REGULATORY PROVISIONS

Statements of Principle and Code of Practice for Approved Persons

2.1 The Authority's Statements of Principle and Code of Practice for Approved Persons ("APER") are a general statement of the fundamental obligations of individuals and are set out in the Authority's Handbook. They derive their authority from the Authority's rule-making powers set out at section 64 of the Act.

2.2 Statement of Principle 1 states³:

"An approved person must act with integrity in carrying out his controlled function".

2.3 Statement of Principle 3 states⁴:

"An approved person must observe proper standards of market conduct in carrying out his controlled function".

2.4 The Code of Practice for Approved Persons sets out descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle. It also sets out factors which, in the Authority's opinion, are to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.

The Fit and Proper Test for Approved Persons

2.5 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 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.

EG

2.6 Chapter 9 of EG, which forms part of the Authority's Handbook, sets out the Authority's statement of policy in relation to the use of its power to impose prohibition orders on individuals.

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

2.7 The Authority's approach to exercising its powers to make prohibition orders is set out in the Enforcement Guide ("EG").

³ As at 28 June 2012; amended 1 April 2013

⁴ As at 28 June 2012; amended 1 April 2013

- 2.8 EG 9.1 provides that the Authority's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out controlled functions in relation to regulated activities helps the Authority to work towards achieving its operational objectives. The Authority may exercise this power to make a prohibition order where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities, or to restrict the functions which he may perform.
- 7.8. EG 9.4 sets out the general scope of the Authority's powers in respect of prohibition orders, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant
- 7.9. EG 9.9 states that, when deciding whether to make a prohibition order against an approved person and/or withdraw his approval, the Authority will consider all the relevant circumstances of the case which may include, but are not limited to, the following factors:
- (a) the relevance and materiality of any matters indicating unfitness (EG 9.9(5));
 - (b) the length of time since the occurrence of any matters indicating unfitness (EG 9.9(6));
 - (c) the severity of the risk which the individual poses to consumers and to confidence in the financial system (EG 9.9(8)); and
 - (d) the previous disciplinary record and general compliance history of the individual including whether the FCA, any previous regulator, designated professional body or other domestic or international regulator has previously imposed a disciplinary sanction on the individual (EG 9.9(9)).

DEPP

- 2.9 Chapter 6 of DEPP, which forms part of the Authority's Handbook, sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.