
FINAL NOTICE

To: **Merrill Lynch International**

Firm Reference Number: **147150**

Address: **2 King Edward Street
London
EC1A 1HQ**

Date: **18 October 2017**

1. ACTION

- 1.1. For the reasons given in this notice the Authority hereby imposes on Merrill Lynch International ("MLI") a financial penalty of £34,524,000 for breaches of Principle 3 (management and control) of the Authority's Principles for Businesses and Article 9 of the European Markets Infrastructure Regulation ("EMIR") between 12 February 2014 and 6 February 2016 ("the relevant period").
- 1.2. MLI agreed to settle at an early stage of the Authority's investigation. MLI 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 £49,320,000 on MLI.

2. SUMMARY OF REASONS

- 2.1. The Authority has decided to take this action because during the relevant period MLI contravened:
 - 2.1.1. Article 9 of EMIR, as it applies to exchange traded derivatives, by failing to report 68.5 million transactions which were required to be reported under that Article; and
 - 2.1.2. Principle 3 of the Authority's Principles for Businesses by:

- 2.1.2.1. failing to have in place adequate oversight arrangements for the reporting of trading in exchange traded derivatives under EMIR;
 - 2.1.2.2. failing to undertake testing to ensure the completeness and accuracy of the reports it was submitting for the purposes of its obligations to report trading in exchange traded derivatives under EMIR;
 - 2.1.2.3. failing to allocate adequate and sufficient human resource to undertake its obligations to report trading in exchange traded derivatives under EMIR. This resulted in significant under-resource between February 2014 and October 2014 and a lack of appropriately experienced resource between February 2014 and July 2015; and
 - 2.1.2.4. failing to address issues it had identified within the risk management systems applying to the reporting requirement in a timely manner.
- 2.2. The requirement to report trading in exchange traded derivatives was introduced following the financial crisis in 2008 to improve transparency within financial markets. Derivatives lack transparency as they create a complex web of interdependence which can make it difficult to identify the nature of the risks involved. EMIR required details of trading in such instruments to be centrally reported and available to central authorities. This enabled such authorities to take account of this information when assessing and addressing the risk inherent in financial systems.
- 2.3. The Authority considers MLI's failings to be particularly serious given that:
 - 2.3.1. MLI has been subject to two previous Final Notices for transaction reporting breaches;
 - 2.3.2. the reporting requirements introduced under EMIR were an important component in addressing uncertainty around systemic financial risk, caused by a lack of transparency. The FCA directly communicated the importance of EMIR reporting requirements to firms in a variety of ways including FCA website updates, the creation of an EMIR mailing list for firms to sign up to and through which regular updates were circulated, the implementation of roundtables with the main trade associations (ISDA, FIA), seminars hosted by the FCA and seminars hosted by third parties at which the FCA spoke; and
 - 2.3.3. the Authority has publicised a number of Enforcement actions taken in relation to similar failings by other firms in relation to other categories of transaction reporting.
- 2.4. In determining an appropriate penalty the Authority also took account of:
 - 2.4.1. the resource MLI was targeting at addressing a crystallised risk in relation to other forms of transaction reporting; and
 - 2.4.2. the issues faced by the trade repositories from a technology perspective in the initial months following the introduction of EMIR.

3. DEFINITIONS

3.1. The definitions below are used in this Final 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

“DEPP” means the part of the Authority’s handbook entitled Decision, Procedures and Penalties Manual

“Derivative” means a financial instrument as set out in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC as implemented by Article 38 and 39 of Regulation (EC) No 1287/2006

“Details Standards” means Commission Implementing Regulations EU No 148/2012 of 19 December 2012 supplementing EMIR with regard to the regulatory standards on the minimum details of the data to be reported to trade repositories

“EEA” means the European Economic Area

“ESMA” means the European Securities and Markets Authority

“EMIR” means the European Markets Infrastructure Regulation (EU Regulation 648/2012 of the European Parliament and Council on over the counter derivatives, central counterparties and trade repositories)

“ETD Reporting Requirement” means the reporting requirement set out in Article 9 of EMIR as it applies to exchange traded derivatives

“Exchange traded derivative” or “ETD” means a derivative, the execution of which takes place on a regulated market

“Format and Frequency Standards” means Commission Implementing Regulations EU No 1247/2012 of 19 December 2012 laying down the implementing technical standards with regard to the format and frequency of trade reports to trade repositories, according to EMIR

“Implementation date” means 12 February 2014, the date on which the obligations under the ETD Reporting Requirement came into effect

“Implementation project” means the work undertaken by MLI between late November 2013 and the implementation date to design the policies, procedures, systems and controls to enable it to comply with its obligations under the ETD Reporting Requirement

“MiFID” means the Markets in Financial Instruments Directive 2004/39/EC

“Regulated market” means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in

a contract, in respect of financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly

“relevant period” means the period from 12 February 2014 to 6 February 2016

“SIAI” means a self-identified audit issue, which is an issue identified by business units within MLI which are addressed through a formal internal process for resolution

“Trade repository” means a legal entity which is registered with ESMA as able to receive reports including those required under the ETD Reporting Requirement for the purposes of EMIR Article 55 or 77

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

4. FACTS AND MATTERS

- 4.1. EMIR was signed on 4 July 2012. Under Article 9 of EMIR there was a requirement to report specified details about derivative transactions to a trade repository. This reporting requirement applied to a variety of derivative contracts, including exchange traded derivatives. The implementation date for the ETD Reporting Requirement was 12 February 2014.
- 4.2. On 6 August 2013 ESMA submitted a recommendation to the European Commission to delay the implementation date for the ETD Reporting Requirement until January 2015. On 7 November 2013, the European Commission confirmed that no delay would happen.
- 4.3. The specification within Article 9 of EMIR meant that one ETD transaction might trigger a requirement for multiple reports. For example, where MLI acted as an intermediary for a client to transact on an exchange, MLI was required to make separate reports for:
 - 4.3.1. its transaction with the client (“the client leg”); and
 - 4.3.2. its transaction with the exchange (“the market leg”).

Pre-implementation period at MLI

- 4.4. EMIR and the obligations it imposed were under consideration at MLI from 2012 and throughout 2013. During this period, work on the ETD Reporting Requirement comprised initial consideration of the systems which could be used to undertake such reporting and the scenarios in which reporting might be necessary. Representatives of MLI also attended meetings of industry bodies at which there were discussions about preparations for compliance with the ETD Reporting Requirement, and conducted gap analyses around the fields that were required for reporting. However, MLI did not fully resource the project to implement and comply with the ETD Reporting Requirement until late November 2013, when it was confirmed the implementation date would not be delayed.
- 4.5. As a result MLI’s implementation project for the ETD Reporting Requirement was undertaken in a very short timescale. Of particular note:

- 4.5.1. ESMA Q&A Guidance on the ETD Reporting Requirement was published on 20 December 2013 and was used by MLI to inform its compliance with the ETD Reporting Requirement;
 - 4.5.2. external resource was brought in to work on the design of the policies, procedures, systems and controls, in part because there was a general shortage of subject matter expertise. Knowledge of the specific MLI environment was provided by 'subject matter experts' sourced from MLI's clearing operations team;
 - 4.5.3. the configuration of the trading data system used by MLI meant that the market leg of ETD transactions was not recorded as a separate trade. It therefore had to be artificially generated by MLI's EMIR reporting system. This required additional coding within the system and embedded data to identify transactions which were subject to the ETD Reporting Requirement and would require such synthetic generation; and
 - 4.5.4. the testing of the systems pre-implementation was conducted over a shorter timescale than would usually be expected in projects of this nature. It was undertaken primarily by the external project management team, with support from business subject matter experts, and comprised accuracy testing over samples of transaction data but did not include front to back completeness testing.
- 4.6. At the end of the pre-implementation period, the project management team had:
- 4.6.1. designed a new joiners pack;
 - 4.6.2. produced task lists and allocated those to individuals; and
 - 4.6.3. produced an ongoing testing plan for the months immediately following implementation.

The post implementation period

- 4.7. The ETD Reporting Requirement took effect on 12 February 2014. MLI began making reports to a trade repository on that date using the system that had been designed during the pre-implementation period.
- 4.8. At the date of implementation there was an error with a static data table within MLI's ETD reporting system. This meant that ETD transactions involving some non-EU third party brokers were not being identified as requiring the generation of a synthetic market side. As a result reports were not made to the trade repository for that market side leg from the date of implementation, until the error was identified and corrected in February 2016. This error resulted in 68.5 million reports not being submitted over the two year period.

Allocation and type of personnel resource

- 4.9. A request for additional resource to meet MLI's obligations under the ETD Reporting Requirement was submitted internally, pre-implementation, in mid-January 2014 but was not approved until early March 2014. As a result, at implementation the personnel resource allocated to undertaking the ETD Reporting Requirement was less than 50% of the resource that had been projected as

required pre-implementation. Once the approval for the additional resource was received, MLI had to undertake recruitment for those positions and therefore remained under resourced for a period of time.

- 4.10. From April 2014 the personnel resource increased as MLI undertook recruitment. Vacant positions were filled in July 2014, with the internally approved resourcing levels ultimately reached in October 2014.
- 4.11. In January 2015 MLI identified that it required additional experience in transaction reporting for the team undertaking the ETD Reporting Requirement. It therefore began undertaking further recruitment, ultimately adding transaction reporting expertise to that team in July 2015.

Oversight forums

- 4.12. On implementation, oversight of the operation of the ETD Reporting Requirement resided with the business area responsible for day to day derivatives clearing. Very shortly after implementation, MLI restructured the organisational oversight lines for the ETD Reporting Requirement such that it became part of the same business area with responsibility for MiFID.
- 4.13. As part of the revised organisational structure, the ETD Reporting Requirement formed part of the standing agenda for a number of senior management and risk reporting meetings. However, those meetings were not designed specifically to assess or oversee MLI's transaction reporting requirements and did not examine MLI's compliance with such requirements in detail.
- 4.14. In addition, in the weeks immediately following implementation the team undertaking the day to day operation of the ETD Reporting Requirement were able to bring issues identified to a 'war room' at which all requirements under EMIR were considered. Further, by April 2014 a formal Operating Group had been established. The Operating Group had two main purposes: to ensure MLI understood the implications of implementing EMIR on all the MLI functions that had been impacted; and that the team worked together to demonstrate metrics and issues, or emerging issues within the EMIR obligations. A further purpose of the Operating Group was to ensure a broad understanding of MLI's obligations under EMIR. The role of the Group was not, however, to perform a compliance function. The Operating Group oversaw EMIR reporting only. It did not cover other forms of regulatory reporting and, therefore, did not constitute a cross-report oversight forum.
- 4.15. The ETD Reporting Requirement did not form part of a broader cross-regulatory reporting oversight forum until January 2016 when MLI included it within the scope of the Transaction Reporting Executive Forum, a committee with governance over all of MLI's regulatory transaction reporting requirements, including EMIR, and comprised senior representation from transaction reporting business and support groups.

Testing

- 4.16. From the implementation date there was no testing conducted in relation to the ETD Reporting Requirement other than by the team performing its day to day operation. This was something of which MLI was aware. In particular:

- 4.16.1. between 12 February 2014 to late May 2015 no pro-active testing was undertaken in relation to the ETD Reporting Requirement. The only monitoring in place during this period was:
- 4.16.1.1. a daily 'trade count' done by the team undertaking the day to day operation of the ETD Reporting Requirement;
 - 4.16.1.2. issues logs maintained on a daily basis by the team undertaking the day to day operation of the ETD Reporting Requirement recording issues identified during the conduct of that day to day operation; and
 - 4.16.1.3. investigations of issues arising from messages received from the trade repository about the compliance of MLI's submitted reports;
- 4.16.2. in late May 2015 a manual 'pilot test' was conducted of nine individual trades to assess whether a proposed manual or automated testing methodology was feasible. The test indicated that, in the very small number of trades tested, data was being transferred and accurately reported. However, given the number of trades on which the test was performed it was not designed to, and did not adequately, mitigate the risk that legs of trades were not being captured and accurately processed. It simply demonstrated that a particular form of testing approach could be applied to the ETD Reporting Requirement Processes;
- 4.16.3. no other manual or interim testing for the ETD Reporting Requirement was undertaken until October 2015;
- 4.16.4. there was no automated testing in relation to the ETD Reporting Requirement until February 2016; and
- 4.16.5. there was no adequate accuracy and completeness testing in relation to the ETD Reporting Requirement until automated testing began in February 2016.
- 4.17. Throughout the relevant period, there was no dedicated testing personnel resource allocated to the ETD Reporting Requirement by MLI. Instead the testing function for the ETD Reporting Requirement was performed by persons who also had responsibility for the day to day operation of the ETD Reporting Requirement.

Self-Identified Audit Issue

- 4.18. On 28 February 2014, a SIAI was opened by MLI ("the February SIAI") and identified that the relevant division of MLI *"does not have governance and oversight in place to determine the completeness, accuracy and timeliness of regulatory reports"*. During the course of the February SIAI the ETD Reporting Requirement was identified as one of MLI's high risk reports, which would be subject to a deep dive review of its controls. As part of the February 2014 SIAI a proposal was developed for this review and was to be taken forward as part of a second SIAI. This was the only step taken to address the issue identified by the February SIAI in relation to ETD Reporting Requirements.

- 4.19. On 19 December 2014, a further SIAI was opened by MLI consequent to the February SIAI ("the December SIAI"). The audit issue identified was that '*[The GMO&MO division of MLI] does not have a robust [quality assurance] review process in place to determine the accuracy of regulatory reports prepared by the Middle Office and Operations teams.*'
- 4.20. During the first four months of the December SIAI, the ETD Reporting Requirement was again assessed as 'high risk' by MLI due to the significance attached to the requirement. No substantive steps were taken to address this risk, however, until May 2015. At this point the manual pilot test to assess the testing methodology was conducted. This pilot test did not, however mitigate the risk that there were breaches of the ETD Reporting Requirement already occurring for the reasons described above.
- 4.21. As part of the final stage of the December SIAI a plan was formulated to roll out testing for the ETD Reporting Requirement. This plan was prepared in August 2015, nine months after commencement of the December SIAI. Under the plan:
- 4.21.1. quarterly manual testing was to begin in September 2015, 19 months after the Implementation Date; and
 - 4.21.2. automated testing would not begin until late 2015/early 2016, almost two years after the Implementation Date.

Monitoring delivery of this plan was not part of the December SIAI, which was closed in October 2015.

Discovery of the non-reports

- 4.22. In October 2015, MLI began conducting manual testing of the ETD Reporting Requirement. On 27 November 2015, the Authority raised a question with MLI about the details of the reports being submitted to the trade repository. The query resulted in MLI undertaking targeted testing over particular categories of reports. It was through this targeted testing that it identified in January 2016 that reports in relation to particular categories of transaction were not being reported as a result of the error in the static data table. MLI reported this issue to the FCA on 9 February 2016.

5. FAILINGS

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

Article 9 of EMIR

- 5.2. Article 9(1) of EMIR requires that the counterparties to a derivative contract report details related to the transaction to a trade repository. The details and types of report required by Article 9(1) are set out in accordance with Article 9(5) of EMIR in the Format and Frequency Standards and the Details Standards.
- 5.3. MLI failed to make reports of details related to derivative contracts which were required to be made under Article 9(1). Specifically, it failed to submit any report

in relation to a number of market facing transactions where those transactions took place with certain non-EU brokers between 12 February 2014 and 6 February 2016.

Principle 3

- 5.4. Principle 3 requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- 5.5. MLI breached Principle 3 because it failed to organise and control its affairs responsibly and effectively with adequate risk management systems in relation to its compliance with the ETD Reporting Requirement. This is because:
 - 5.5.1. MLI failed to allocate sufficient personnel resource to undertake the ETD Reporting Requirement between 12 February 2014 and October 2014 and was aware that there was insufficient allocated personnel resource;
 - 5.5.2. MLI failed to allocate personnel resource with the right level of EMIR transaction reporting expertise between 12 February 2014 and July 2015 and was aware that there was insufficient allocated personnel resource, although as mentioned above, there was a shortage of subject matter expertise with respect to EMIR;
 - 5.5.3. MLI failed to conduct any appropriate testing to ensure the reports being submitted in relation to the ETD Reporting Requirement between 12 February 2014 and October 2015 were complete and accurate. This was 10 months after it identified a need for testing in the December SIAI;
 - 5.5.4. the testing introduced by MLI in October 2015 was manual. It was not, and MLI was aware that it was not, adequate to address the risk that the reports submitted by MLI in relation to the Reporting Requirement were complete and accurate;
 - 5.5.5. MLI failed, and was aware that it had failed, to conduct automated testing of the completeness and accuracy of its ETD Reporting Requirement reports between 12 February 2014 and January 2016. This was 14 months after the December SIAI identified the need for automated testing. MLI, due to its previous Enforcement fine, intentionally prioritised the implementation of automated testing for MiFID requirements ahead of automated testing for the ETD Reporting Requirement. It was believed by MLI that lessons learnt through MiFID automated testing could be applied to the ETD Reporting Requirement and MLI was aware that this meant commencing automated testing for the ETD Reporting Requirement was delayed; and
 - 5.5.6. MLI implemented operating level oversight arrangements for the ETD Reporting Requirement but the respective oversight forums did not review MLI's compliance with the ETD Reporting Requirement in any detail. The forums in place only provided updates on the day to day operation of the ETD Reporting Requirement and did not review or examine MLI's compliance with the requirements in any detail. This was despite MLI identifying the deficiencies in the structure of its oversight and testing processes for the ETD Reporting Requirement in the February SIAI and again in the December SIAI.

6. SANCTION

Financial penalty

- 6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.

Step 1: disgorgement

- 6.2. Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this. The Authority has not identified any financial benefit that MLI derived directly from its breach. Step 1 is therefore £0.

Step 2: the seriousness of the breach

- 6.3. For the purposes of Step 2, under DEPP 6.5A.2 the Authority considers that the number of misreported or non-reported transactions is an appropriate indicator of the harm or potential harm caused. In this instance the facts and matters which constitute the breach of Principle 3 resulted in the breach of Article 9 of EMIR continuing for an extended period of time. As such the Authority considers it appropriate to levy one penalty in respect of both categories of breach.
- 6.4. In addition the obligations imposed on firms in relation to EMIR are of a similar nature and importance to those imposed under MiFID. As such the Authority has considered the metric used in MiFID cases when determining what metric is appropriate in relation to breaches of EMIR and necessary to achieve credible deterrence.
- 6.5. The Authority has, therefore, determined the appropriate basis figure at Step 2 to be £102,750,000, by attributing a value of £1.50 to each of the transactions which MLI failed to report as a result of the error in the data table.
- 6.6. The Authority has determined the seriousness of MLI's breaches to be Level 4 for the purposes of Step 2 having taken into account:
- 6.6.1. DEPP 6.5A.2G (6-9) which lists the factors the Authority will generally take into account in deciding which level of penalty best indicates the seriousness of the breach;
 - 6.6.2. DEPP 6.5A.2G (11) which lists the factors likely to be considered 'level 4 or 5 factors'; and
 - 6.6.3. DEPP 6.5A.2G (12) which lists the factors likely to be considered 'level 1, 2 or 3 factors'.
- 6.7. Of these, the Authority considers the following factors to be relevant:
- 6.7.1. the breaches are considered to be serious because they revealed weaknesses in MLI's procedures, management systems and internal controls relating to the ETD Reporting Requirement;
 - 6.7.2. the breaches are considered serious as they were multiple, discrete events which continued, in some cases, for significant time periods before detection and remediation;
 - 6.7.3. senior management at MLI was aware that there was no automated testing around the ETD Reporting Requirement as a result of the February 2014 and December 2014 SIAI and there was, therefore, a risk that issues

within the reporting system were not being identified. The matters identified in the SIAIs were not progressed in a sufficiently timely manner;

- 6.7.4. MLI did not make any profit or avoid any loss as a result of the breaches;
 - 6.7.5. there was no loss to consumers, investors or other market users;
 - 6.7.6. there was no potential significant effect on market confidence; and
 - 6.7.7. there is no evidence that the breach was committed deliberately or recklessly.
- 6.8. The Authority has applied the following percentages to the seriousness factors considered at DEPP 6.5A.2(3):
- 6.8.1. Level 1 – 0%
 - 6.8.2. Level 2 – 10%
 - 6.8.3. Level 3 – 20%
 - 6.8.4. Level 4 – 30%
 - 6.8.5. Level 5 – 40%
- 6.9. The penalty calculation is therefore 30% of £102,750,000. The penalty figure after Step 2 is therefore £30,825,000.

Step 3: mitigating and aggravating factors

- 6.10. Pursuant to DEPP 6.5A.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2 to take into account factors which aggravate or mitigate the breach.
- 6.11. The Authority considers that the following factors aggravate the breach:
- 6.11.1. the Authority had previously issued MLI with two Final Notices in respect of transaction reporting failures. The breaches in each of the previous Final Notices were similar in nature to the present breaches; and
 - 6.11.2. the Authority directly communicated the importance of EMIR reporting requirements to firms in a variety of ways.
- 6.12. The Authority considers that the following factors mitigate the breach:
- 6.12.1. in the initial months following the implementation of the ETD Reporting Requirement, the ability of MLI to undertake adequate testing of the systems related to that Requirement was impacted by issues with the data it received from the trade repository;
 - 6.12.2. MLI had begun to plan for remedial work in relation to its systems and controls for the ETD Reporting Requirement. In particular it was intending to use an automated testing solution developed for a different transaction reporting obligation as a strategic solution for all its transaction reporting obligations;
 - 6.12.3. MLI self-reported the breaches of the ETD Reporting Requirement; and
 - 6.12.4. MLI has co-operated fully with the Authority.
- 6.13. The Authority considers that once MLI had identified the breaches of Article 9 of EMIR, the steps taken by MLI to rectify these breaches were taken efficiently and welcomes MLI's open and transparent approach in addressing the issues in this Notice.

6.14. Having taken into account these aggravating and mitigating factors, the Authority considers that the Step 2 figure should be increased by 60%. When considering the percentage increase at Step 3, the Authority has principally had regard to MLI's failure to achieve acceptable standards of transaction reporting despite being subject to previous Enforcement Action for similar failings.

6.15. Step 3 is therefore £49,320,000.

Step 4: adjustment for deterrence

6.16. Pursuant to DEPP 6.5A.4G, if the FCA considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.17. The Authority considers that the Step 3 figure of £49,320,000 represents a sufficient deterrent to MLI and others, and so has not increased the penalty at Step 4.

6.18. Step 4 is therefore £49,320,000.

Step 5: settlement discount

6.19. Pursuant to DEPP 6.5A.5G, if the Authority and the firm 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 firm reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.20. The Authority and MLI reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.

6.21. Step 5 is therefore £34,524,000.

Financial penalty

6.22. The Authority therefore imposes a total financial penalty of £34,524,000 on MLI for breaching Principle 3 of the FCA's Principles for Businesses and Article 9 of EMIR.

7. PROCEDURAL MATTERS

Decision maker

7.1. The decision which gave rise to the obligation to give this 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. The following statutory rights are important.

Manner of and time for payment

7.3. The financial penalty must be paid in full by MLI to the Authority by no later than 1 November 2017, 14 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 2 November 2017, the Authority may recover the outstanding amount as a debt owed by MLI 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 notice relates. Under these 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 MLI or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

Authority contacts

- 7.6. For more information concerning this matter generally, contact Caroline Ryan (direct line: 020 7066 3702) of the Enforcement and Market Oversight Division of the Authority.

Mark Francis

Project Sponsor

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

1. RELEVANT STATUTORY PROVISIONS

- 1.1. The Authority's operational objectives established in section 1B of the Act include the strategic objective to ensure that the relevant markets function well and the operational objective to protect and enhance the integrity of the UK financial system.
- 1.2. Pursuant to section 206 of the Act, if the Authority considers that an authorised person has contravened a requirement imposed on it by or under the Act, it may impose on that person a penalty in respect of the contravention of such amount as it considers appropriate.

2. RELEVANT REGULATORY PROVISIONS

- 2.1. In exercising its powers to impose a financial penalty and to impose a restriction in relation to the carrying on of a regulated activity, the Authority has had regard to the relevant regulatory provisions published in the Authority's Handbook. The main provisions that the Authority considers relevant are set out below.

Principles for Businesses (PRIN)

- 2.2. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook. They derive their authority from the Authority's rule-making powers as set out in the Act and reflect the Authority's statutory objectives.

- 2.3. Principle 3 provides:

"A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems."

European Markets Infrastructure Regulation (EMIR)

- 2.4. The European Council agreed that there was a need to substantially improve the mitigation of counterparty credit risk and that it was important to improve transparency, efficiency and integrity for derivative transactions. EMIR imposes requirements on entities that enter into any form of derivative contract and requires entities that enter such contracts, amongst other things to report every derivative that they enter into to a trade repository.

- 2.5. EMIR Article 9 states:

Article 9(1)

"Counterparties and CCPs shall ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported to a trade repository registered in accordance with Article 55 or recognised in accordance with Article 77. The details shall be reported no later than the working day following the conclusion, modification or termination of the contract."

Decision Procedure and Penalties Manual (DEPP)

- 2.6. 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. In particular, DEPP 6.5A sets out the five steps for penalties imposed on firms.

RELEVANT REGULATORY GUIDANCE

The Enforcement Guide

- 2.7. The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act.
- 2.8. Chapter 7 of the Enforcement Guide sets out the Authority's approach to exercising its power to impose a financial penalty.