

**This Final Notice has not been the subject of any judicial finding. It includes criticisms of Craig Donaldson and David Arden. These individuals have each received Decision Notices in relation to such criticisms and have referred those Decision Notices to the Upper Tribunal for determination. The Upper Tribunal will determine whether to dismiss the respective references or remit them to the Authority with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal. The Tribunal's decision in respect of the individuals' references will be made public on its website.**



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## FINAL NOTICE

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To: **Metro Bank PLC**

Reference  
Number: **488982**

Address: **1 Southampton Row, London WC1B 5HA**

Date: **8 December 2022**

### **1. ACTION**

- 1.1. For the reasons given in this Notice, the Authority hereby imposes on Metro Bank a financial penalty of £10,002,300 pursuant to section 91 of the Financial Services and Markets Act 2000, for its contravention of Listing Rule 1.3.3R (misleading information not to be published).

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

- 2.1. The UK listing regime relies on disclosure and transparency to allow investors to make fully informed decisions. It is of fundamental importance that market

disclosures by listed companies are not false, misleading or deceptive and do not omit anything likely to affect the import of the information that is disclosed. This ensures that they can be relied on by investors in making investment decisions to hold, buy or sell an investment. Disclosure and transparency serve to advance the Authority's strategic objective of ensuring the relevant markets function well and its operational objective of protecting and enhancing the integrity of the UK financial system.

2.2. Metro Bank was established in 2010. It is often described as a "challenger bank" on the basis that it is a more recently created retail bank which seeks to compete directly with older, more established banks. Its shares are admitted to the Official List of the London Stock Exchange.

2.3. In breach of LR 1.3.3R, Metro Bank published inaccurate information concerning the figure for Risk Weighted Assets ("RWA") in its Q3 trading update on 24 October 2018 (the "October Announcement"). In particular, Metro Bank failed to take reasonable care to ensure that the October Announcement was not false or misleading and did not omit anything likely to affect the import of the information:

- (1) The October Announcement stated that Metro Bank's RWA totalled £7,398 million as at 30 September 2018. This was inaccurate. This figure included Metro Bank's incorrect application of risk weights to certain of its commercial loan portfolios, including its commercial loans secured on immovable property (CLIP Loans) where an incorrect risk weighting of 50% had been applied.
- (2) By no later than 11 September 2018, two external consultants had independently confirmed to Metro Bank that the correct risk weighting for CLIP Loans was 100% and not 50%.
- (3) Metro Bank had itself acknowledged this error internally and recognised that it should be remediated.

2.4. Metro Bank was aware by the time of the October Announcement that the size of the necessary adjustment to correct this error would be substantial:

- (1) David Arden (Chief Financial Officer) and Craig Donaldson (Chief Executive Officer) were provided with an initial estimate and supporting calculation on 24 August 2018 which estimated an RWA increase of £640 million as a result of correcting this error.
- (2) Subsequent review and investigation carried out by Metro Bank provided further detail in advance of the October Announcement. Metro Bank's Credit Risk Policy and Appetite Committee and its Risk Operating Committee both received a paper for their meetings on 22 October 2018 and 23 October 2018 respectively (both of which were attended by Messrs. Arden and Donaldson)

which stated that: (a) correcting the Bank's error in respect of CLIP Loans would lead to an estimated increase in RWA of £574 million; and (b) while the Bank continued to review its data and processes, any change to this estimated increase was not expected to be material.

2.5. Metro Bank was aware of the market significance of its RWA figures, which had been the subject of both analyst commentary and specific questioning at an analyst meeting prior to the October Announcement. However, when publishing the inaccurate RWA figure of £7,398 million in the October Announcement, Metro Bank failed to explain that:

- (1) The total RWA figure of £7,398 million included Metro Bank's application of a risk weighting of 50% for CLIP Loans.
- (2) This risk weighting was incorrect.
- (3) Metro Bank had recognised that it needed to correct this error.
- (4) Metro Bank was carrying out an ongoing review to determine the quantum of the correction.
- (5) The quantum of the necessary correction would be substantial.

2.6. Metro Bank failed to consider whether any of the matters specified in paragraph 2.5 above ought to have been included in the October Announcement by way of qualification, or to seek legal advice or input from its professional advisers on this question. Instead, Metro Bank assumed that it did not need to say anything publicly about these matters whilst its review was ongoing and that it was appropriate to publish the inaccurate RWA figure in the October Announcement. Metro Bank made this incorrect and unreasonable assumption in the light of two strands of discussion neither of which addressed the October Announcement: first, the Bank's discussions with the PRA in the context of a separate stream of regulatory reporting; and second, legal advice that the Bank was not required to make a proactive market announcement about its miscalculation of the risk weighting but which did not address the October Announcement (still less whether Metro Bank could publish an RWA figure in the October Announcement that it knew was inaccurate).

2.7. Further, Messrs. Donaldson and Arden failed to ensure that the Audit Committee and the Board considered whether the inclusion of the inaccurate RWA figure in the October Announcement without any qualification was appropriate.

2.8. Shortly after the October Announcement, at an investor call on 2 November 2018, Mr Arden was specifically asked the following question: *"the risk weight on the commercial real estate portfolio, if my math is right, it is 60.4%, which just seems low, given where those standardised risk weights should be. Do you mind just*

*helping me understand the disparity there?". Mr Arden replied as follows: "I have not got the details to hand, so I will probably get back to you. But just rest assured, we continuously look at all the risk weightings we have, and we are constantly reviewing that. I am afraid I have not got the math to hand".*

2.9. Notwithstanding that Mr Arden was specifically asked the above question regarding standardised risk weighting, Metro Bank did not consider the need to qualify or correct the inaccurate RWA figure contained in the October Announcement. It was not until 23 January 2019, after its review had concluded, that Metro Bank corrected the RWA figure:

- (1) On this date Metro Bank issued its full year 2018 Results Preview and Trading Update announcing an expected increase in RWA to "approximately £8.9bn" and a softening in its underlying profit before tax in the last quarter. Later the same day, Mr Arden explained on an analyst presentation call that this estimated increase in RWA included adjustments of "around £900 million" due to errors in Metro Bank's risk weighting of certain commercial loan portfolios.
- (2) £563 million of this RWA increase was attributable to Metro Bank's error in respect of CLIP Loans. This corresponds closely with the estimated impact which Metro Bank had already calculated prior to the October Announcement (which was £574 million: see paragraph 2.4(2) above).
- (3) Following the January 2019 announcement, Metro Bank's share price dropped by 39% on the day of the announcement, which was the largest single price drop experienced by a UK bank since 2009.

2.10. The Authority has therefore decided to impose on Metro Bank a financial penalty of £10,002,300 pursuant to section 91 of the Act.

### **3. DEFINITIONS**

3.1. The definitions below are used in this Notice:

"the Act" means the Financial Services and Markets Act 2000.

"the Authority" means the Financial Conduct Authority.

"CEO" means Chief Executive Officer.

"CFO" means Chief Financial Officer.

"CLIP Loans" means loans which are fully and completely secured by mortgages on commercial immovable property within the meaning of Article 126 of the CRR.

"COREP" means the Common Reporting framework, described in paragraph 4.7(4) of this Notice.

"CRD" means Directive 2013/36/EU (the Capital Requirements Directive).

"CRPAC" means Metro Bank's Credit Risk Policy and Appetite Committee, which is the management committee responsible for oversight of credit risk policies; reviewing proposals on risk appetite; and monitoring portfolio performance against risk appetite.

"CRR" means Regulation (EU) No 575/2013 (the Capital Requirements Regulation) which governed Metro Bank's approach to risk weighting credit risk exposures during the Relevant Period.

"DEPP" means the Decision Procedure and Penalties manual, part of the Handbook.

"First Consultant" means the external consultant engaged by Metro Bank in April 2018.

"FRA" means focused resolution agreement.

"the Handbook" means the Authority's Handbook of rules and guidance.

"the Listing Rules" means those rules contained in the part of the Handbook entitled 'Listing Rules'.

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

"Metro Bank" or "the Bank" means Metro Bank Plc.

"October Announcement" means Metro Bank's Q3 trading update on 24 October 2018.

"PRA" means the Prudential Regulation Authority.

"PBTL Loans" means professional buy-to-let loans.

"RDC" means the Regulatory Decisions Committee of the Authority (see further under Procedural Matters below).

“ROC” means the Risk Oversight Committee, a sub-committee of the Board responsible for ICAAP, ILAAP and Pillar 3 disclosures and recommending risk appetite statements to the Board.

“RWA” means risk weighted assets.

“the Relevant Period” means the period between 23 and 24 October 2018.

“Second Consultant” means the external consultant formally engaged by Metro Bank in October 2018.

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

“the Warning Notice” means the warning notice given to Metro Bank dated 17 January 2022.

## **4. FACTS AND MATTERS**

### **SECTION A: METRO BANK’S BUSINESS MODEL AND GROWTH STRATEGY**

- 4.1. Metro Bank was established in 2010 and is an authorised firm that is regulated by the Authority and the PRA. It is a listed company and is admitted to trading on the premium segment of the main market of the London Stock Exchange.
- 4.2. Metro Bank is a challenger bank in the sense that it is a more recently created retail bank which seeks to compete directly with older, more established banks. It offers retail, business, commercial and private banking services. Around 2018, it had a business model that focused heavily on branches and was expecting to grow its branch network with significant investment.
- 4.3. Metro Bank achieved its first annual profit in 2017. Metro Bank’s strategy in 2017-18 was to rapidly expand its footprint and scale of operations. This involved substantial year-on-year increases in Metro Bank’s deposits from customers: in particular, an increase of 47% (2016 to 2017) and 34% (2017 to 2018).
- 4.4. The failings addressed in this Notice relate to Metro Bank’s commercial lending portfolio (as distinct from Metro Bank’s retail lending portfolio). In 2018 this amounted to a total of £4.4 billion and represented 31% of Metro Bank’s overall lending. As set out in Section B immediately below, Metro Bank’s RWA figures were important for its business and strategy because (among other things) an increase in RWA could increase its regulatory capital requirements and require further capital raising in order to support its intended growth.

### **SECTION B: CAPITAL REQUIREMENTS AND RISK WEIGHTED ASSETS**

- 4.5. A bank's capital requirement is the amount of capital that it must hold and is set by both objective calculations and discretionary components determined by its financial regulator. Capital requirements are important to ensure that firms are managed prudently and are able to withstand adverse trading or economic conditions. They aim to protect firms, customers, the Financial Services Compensation Scheme (which compensates certain customers in the event of a bank failure) and the markets. The financial regulator establishes rules to make sure that institutions hold enough capital to ensure continuation of a safe and efficient market and are able to withstand any foreseeable problems.
- 4.6. The applicable rules governing capital requirements during the Relevant Period were set out in the CRD and the CRR as supplemented / varied by the PRA Rulebook. Under this regulatory regime, the level of capital requirements depended on an institution's total risk exposure as assessed by reference to certain factual tests.
- 4.7. The concept of RWA is a regulatory tool that is used to determine the riskiness of a bank's assets and consequently how much capital a bank must hold against them. More fully:
- (1) RWA is a concept used to calculate the total risk exposure of the institution. The higher the amount of RWA that an institution has, all else equal, the more capital it is required to hold.
  - (2) There are both standardised and advanced models for calculating risk components. At the relevant time, Metro Bank used (as it was required to do) the standardised model, under which there is much less discretion than with the more advanced models.
  - (3) The standardised model for calculating RWA involves taking the value of the bank's assets, classifying them into a number of categories, and then applying a prescribed percentage to each of those categories to reflect the risks associated with assets of that type.
  - (4) Firms are required to submit regular reports to their relevant financial regulator regarding their compliance with regulatory capital requirements. This reporting forms part of the Common Reporting framework (COREP) which is a standardised reporting framework originally defined and implemented by the European Banking Authority.
- 4.8. Metro Bank had at all times held sufficient capital to comply with regulatory requirements. However, the Bank's strategy of growing its balance sheet by means of increased deposits and lending was dependent on generating further

capital to support its growth. To achieve this, Metro Bank completed a £278 million capital raise in July 2017 and a further £303 million capital raise and £250 million debt issuance in 2018.

4.9. Metro Bank's RWA figure had important consequences for its growth strategy and whether it would be required to raise additional capital:

- (1) RWA is significant because it is a key factor in determining how much capital a bank is required to hold, it impacts on the bank's potential for future growth, and it affects when it will need to raise additional capital.
- (2) The RWA figure is therefore a key indicator of the amount of capital that a bank needs to raise in order to hold sufficient capital and sustain future growth.
- (3) The need to raise additional capital has potentially significant implications for a bank and its investors. This includes its existing shareholders if done by means of the bank issuing additional shares to raise the required capital, which can lead to a dilution in existing shareholders' interest in the company.
- (4) The RWA is therefore an important key performance indicator for banks and commonly features in announcements and analyst comments.

4.10. The RWA figure had particular significance for Metro Bank given its business model and intended growth strategy: an increase in RWA could lead to an increased regulatory capital requirement and the need to raise further capital, with the potential consequent risks of dilution of existing shareholders' holdings and a restriction of the rate of Metro Bank's future growth.

4.11. The inaccuracy in the RWA figure that Metro Bank published in the October Announcement resulted from its incorrect treatment of two categories of loans:

- (1) CLIP Loans: these are loans which are fully and completely secured by mortgages on commercial immovable property within the meaning of Article 126 of the CRR. Metro Bank ought to have applied a risk weighting of 100% to CLIP Loans but, as set out below, wrongly applied a percentage of 50%.
- (2) PBTL Loans: these are professional buy-to-let mortgages which, depending on the circumstances of the particular loan, may amount to: (a) residential mortgages under Article 125 CRR with a risk weighting of 35%; or (b) CLIP Loans under Article 126 CRR with a risk weighting of 100%. If a PBTL Loan does not fall within either of these specific categories, then by default it is subject to a risk weighting of 100% under Article 124 CRR.

- 4.12. The failings addressed in this Notice concern the first of these errors (i.e. the error in respect of CLIP Loans). As set out below, this was a fundamental error of regulatory interpretation of which Metro Bank was aware in advance of the October Announcement. Metro Bank nonetheless published an inaccurate RWA figure in the October Announcement based on the application of a 50% risk weighting to CLIP Loans, which Metro Bank knew to be materially incorrect. This error in regulatory interpretation accounted for £563 million of the approximately £900 million increase in RWA that was later announced by Metro Bank in January 2019.

### **SECTION C: EVENTS LEADING TO THE OCTOBER ANNOUNCEMENT**

#### Metro Bank's discovery of its error

- 4.13. Metro Bank's discovery of its error regarding the risk weighting of CLIP Loans arose out of an internal audit of its COREP reporting which concluded in June 2017. The internal audit was part of a thematic review of firms' COREP reporting and Metro Bank had been selected by the PRA to participate. The audit identified a *"lack of documented policies and procedures"*, a *"lack of skilled and experienced resources to interpret the rules"*, *"data inaccuracies"* and a number of errors and omissions in the Bank's interpretation of the rules on capital requirements. It did not, however, identify the specific error regarding the risk weighting applied to CLIP Loans. Following this internal audit, Metro Bank carried out a programme of ongoing work relating to its risk weights. In early 2018, in the course of this programme of work, some individuals within Metro Bank's Risk and Finance functions explored concerns that the risk weights used by Metro Bank in relation to CLIP Loans may be incorrect.
- 4.14. In April 2018, Metro Bank engaged the First Consultant to conduct a review of the commercial loan classifications used by the Bank in its RWA calculations. The First Consultant was asked to prepare flow diagrams setting out a structured series of questions (referred to by Metro Bank and the First Consultant as *"decision trees"*) to assist the Bank in classifying loans correctly for the purposes of (among other things) calculating RWA under the standardised model applied by Metro Bank.
- 4.15. By 31 May 2018, based on its work with the First Consultant, Metro Bank had identified that its risk weighting classifications were incorrect and that all loans secured on commercial property should have a risk weighting of 100%.
- 4.16. On 18 June 2018, Metro Bank's Credit Risk Policy and Appetite Committee (CRPAC) was provided with copies of the draft *"decision trees"* prepared by the First Consultant, which displayed a risk weighting of 100% for CLIP Loans.

- 4.17. By 16 July 2018, the First Consultant had confirmed that Metro Bank's use of the 50% risk weighting for CLIP Loans was incorrect, and Metro Bank was of the view that such use of the 50% risk weighting was incorrect and needed to be changed.
- 4.18. On or around 16 August 2018, the First Consultant signed off internally on the "decision trees" that it had prepared.

August 2018: CFO and CEO informed of estimated quantum of RWA errors

- 4.19. In August 2018, personnel within Metro Bank's Credit Risk and Commercial Banking departments discussed and sought to quantify the impact of the Bank's error regarding the risk weighting of CLIP Loans.
- 4.20. On 17 August 2018, Mr Arden was updated by email as to the ongoing work on RWA: in particular, he was informed that Metro Bank had arrived at a "joined up understanding" of the proper interpretation of the applicable rules and that the outcome was "at the higher end of the impact ranges" that had been discussed, in that almost every commercial loan (other than PBTL Loans) should have carried a risk weighting of 100%.
- 4.21. On 24 August 2018, an email was sent to Messrs. Arden and Donaldson attaching a note which "details the RWA impacts" of "two key changes" which were "required to bring our RWA calculation into compliance". The email described the estimated impact of the RWA adjustments as follows (emphasis added):

*"The impact is a **circa £900m increase in RWA** across Commercial and PBTL books. This represents a circa £70m increase in T1 capital."*

- 4.22. The attached note explained the following:
- (1) £640 million of this estimated increase in RWA was attributable to the incorrect risk weighting applied to CLIP Loans:

*"There are two key drivers of the increase (All RW are quoted before potential SME factors):*

*1. Assets backed by commercial real-estate are currently in Metro allocated a standardised risk weight of 50%. This is based on a simplistic interpretation of the European CRR rules. Following detailed PRA statements and reviewing BIPRU confirms that the PRA have used their permitted*

*powers of derogation to ensure that relevant assets in the UK backed by commercial Real Estate should receive a 100% RW.*

*This interpretation has been confirmed by a full [First Consultant] review.*

*As a result of this reclassification we estimate that RWAs increase by £640 million (June month end)."*

- (2) The remainder of the estimated RWA increase (being approximately £269 million) was attributable to errors in the classification of PBTL Loans, as a result of Metro Bank having incorrectly applied a risk weighting of 35% instead of 100% to those loans.
- (3) As to the methodology used by Metro Bank to reach these estimates:
  - (a) The estimated £640 million increase in respect of CLIP Loans was calculated using the existing asset classifications as recorded in Metro Bank's systems, by applying the correct risk weighting of 100% to those categories of assets which constituted CLIP Loans.
  - (b) The estimated £269 million increase in respect of PBTL Loans was calculated by using random sampling to estimate how many PBTL Loans had been incorrectly classified, and then applying the correct risk weighting of 100% to the estimated total value of the incorrectly classified loans.

4.23. Messrs. Arden and Donaldson discussed the issues raised in the 24 August 2018 note with Metro Bank's Credit Risk department in advance of the next monthly meeting of the CRPAC (which took place on 17 September 2018, as addressed in paragraph 4.27 below).

#### September 2018: Meeting with the PRA and engagement of the Second Consultant

- 4.24. On 6 September 2018, Metro Bank attended a meeting with the PRA at which the PRA raised concerns regarding the Bank's miscalculation of risk weightings for certain types of commercial loans. In response, Metro Bank told the PRA that the miscalculation was "*clearly an error on our part and was being fixed*".
- 4.25. The concerns raised at this meeting were reflected in a letter sent by the PRA to Metro Bank on 10 September 2018 which required (among other things) that the Bank submit the results of its commercial risk weighting exercise to the PRA together with an attestation from the CFO confirming the accuracy of the Bank's financial reporting.

- 4.26. In the light of this letter from the PRA, Metro Bank decided to engage the Second Consultant to provide external assurance regarding the Bank's approach to risk weighting for its commercial loan portfolios. By 11 September 2018, the Second Consultant had confirmed that 100% was the correct percentage risk weighting to be applied to CLIP Loans. By this date at the latest, Metro Bank knew that the application of the 50% risk weighting to CLIP Loans was wrong.
- 4.27. On 17 September 2018, at a meeting of the CRPAC, the committee members were presented with a paper informing them of "*inconsistencies in current RWA calculations that will result in a significant increase in RWs*" and explaining the "*driver of the increase*" as follows:
- "Commercial mortgages (i.e. owner occupier loans) are currently in Metro allocated a standardised risk weight of 50%. This is based on a simplistic interpretation of the European CRR rules. Reviewing detailed PRA statements confirms that the PRA have used their permitted powers of derogation to ensure that all assets in the UK backed by commercial property should receive a 100% RW. This interpretation has been confirmed by a full [First Consultant] review.*
- As a result of this reclassification we estimate that RWs (pre potential SME factor) increase by £640 million (June month end)."*
- 4.28. At the same meeting on 17 September 2018, the CRPAC was presented with final versions of the decision trees prepared by the First Consultant (as to which see paragraph 4.14 above). The final versions were consistent with the earlier draft of the decision trees presented in June 2018 (as to which see paragraph 4.16 above) in that they displayed the risk weighting for CLIP Loans as 100%. The CRPAC approved the implementation of these decision trees.
- 4.29. At a meeting on 18 September 2018, Metro Bank's Audit Committee was told that the Bank now accepted that its application of the 50% risk weighting to commercial loans was an error which should be remediated. The Audit Committee was informed that Metro Bank had "*taken what it believed to be the correct approach at the time*". The Audit Committee meeting minutes noted that "*the impact of incorrect reporting on the balance sheet was not insignificant*".
- 4.30. At a further meeting on 18 September 2018, Metro Bank's Board was provided with a credit risk update which referred to the fact that standardised RWA "*exceeded appetite*" and that this was primarily due to the "*reclassification of CRE assets, the review of which is still ongoing*" and that "*[t]his metric could increase by circa 10% (c.£40m of capital) upon completion of the asset classification project*". Metro Bank's error as to the risk weighting of CLIP Loans was not mentioned at this meeting.

- 4.31. On 5 October 2018, Metro Bank sought and obtained external legal advice. At a meeting attended by Mr Arden, Metro Bank informed its external lawyers that it *"had identified a problem with the risk weight classification of some commercial assets; that current estimates based on sampling was c.£600m and the impact on core equity capital of c.£50m but further work was being undertaken (with the help of [the Second Consultant]) to finalise the amount; that the PRA had agreed that there were no immediate changes necessary for our [COREP] reporting; and the intention was to notify the market once finalised and resolved in line with our usual full year and Pillar 3 disclosures"*, and sought advice as to whether a proactive market announcement was required at that point in time. Metro Bank's external lawyers advised that a proactive market announcement was not required, agreeing with Metro Bank's view that it was *"neither specific or material information"* at that point. As set out below, Metro Bank did not return to its external lawyers thereafter to seek any legal advice specifically in relation to the October Announcement, and whether that announcement could properly give an RWA figure that was based on an incorrect risk weighting.
- 4.32. On 9 October 2018, having informed the PRA about its miscalculation of risk weightings in early September 2018, Metro Bank agreed with the PRA that its COREP reporting to the PRA for Q3 2018 would be materially unchanged pending completion of the review by the Second Consultant.
- 4.33. At a meeting on 16 October 2018, having been informed of the legal advice received, Metro Bank's Disclosure Committee decided that no proactive market announcement was required at this stage to reflect the problem regarding risk weight classification of commercial assets. The Disclosure Committee consisted of three members, including Messrs. Arden and Donaldson, although Mr Donaldson did not attend that meeting. The minutes of the meeting record that the potential impact of the error based on sampling was approximately £600 million of RWA with an impact on core equity capital of approximately £50 million, and that further work would be carried out to finalise the amount. The minutes also record that the Disclosure Committee *"understood that, once fixed, further consideration would need [to] be given to whether a market announcement was required"*.
- 4.34. Also on 16 October 2018, the Second Consultant was formally engaged to review and remediate Metro Bank's current policies, procedures and controls in relation to the calculation of RWA and COREP reporting. This review was to be conducted in three phases that spanned a period of nine to ten weeks in total.
- 4.35. On 17 October 2018, Mr Arden met with an analyst to discuss questions regarding Metro Bank's approach to risk weighting (among other issues) in the light of analyst reports observing that the risk density of Metro Bank's non-residential mortgage lending seemed low relative to expectations.

- 4.36. At a meeting on 22 October 2018 attended by Messrs. Arden and Donaldson, the CRPAC was presented with a paper on RWA reclassification which stated that *“the correction to Standardised RWAs, primarily for commercial mortgages, leads to a significant increase in RWA of £642 million”* of which £574 million was attributable to the increase from 50% to 100% for commercial mortgages. The paper further stated that *“Finance and Credit Risk and Analytics will continue to review RWA calculations as data and processes improve, but any further adjustments to calculations are not expected to be material”*. The further review ultimately led to the overall RWA adjustment of approximately £900 million (see paragraph 4.49 below), of which £563 million was attributable to Metro Bank’s error in respect of CLIP Loans (a difference of only £11 million compared to this estimate).

#### **SECTION D: THE OCTOBER ANNOUNCEMENT**

- 4.37. On 23 October 2018, at a meeting attended by Messrs. Arden and Donaldson, the Audit Committee was presented with a draft of the October Announcement and approved the draft subject only to minor amendments. The Audit Committee was provided with a supporting paper which served to identify *“significant matters that we would like to bring to the Committee’s attention”* in relation to the draft trading update. This paper noted that Metro Bank had commenced a review of *“our calculation of Risk Weighted Asset reporting to the regulator”*, supported by the Second Consultant. The paper further stated that *“(w)e expect to complete this work by year end, and we will update the Committee on any corrections which will be reported to the regulator and any revisions required to our reporting methodologies”*. The Audit Committee was not asked to consider whether the inclusion of the inaccurate RWA figure in the October Announcement without any qualification was appropriate.
- 4.38. On 23 October 2018, following the Audit Committee meeting, the ROC (at a meeting attended by Messrs. Arden and Donaldson) received versions of the paper previously presented to the CRPAC on 17 September 2018 (see paragraph 4.27 above) and the paper on RWA reclassification presented to the CRPAC on 22 October 2018 (see paragraph 4.36 above). There was some overlap between the membership of the ROC and that of the Board and the Audit Committee, but the ROC was not involved in reviewing or approving the October Announcement.
- 4.39. At a further meeting on 23 October 2018, the Board was presented with a draft of the October Announcement and approved the announcement for release at 7.00am the following morning. The Board was informed of the estimated quantum of the Bank’s error regarding RWA with respect to CLIP Loans at this meeting, but was not asked to consider whether the inclusion of the inaccurate RWA figure in the October Announcement without any qualification was appropriate.

- 4.40. The October Announcement was duly released on 24 October 2018. It included the following statement:

*"Capital ratios remain robust. Common Equity Tier 1 Capital ("CET1") of £1,164m as at 30 September 2018 is 15.7% as a percentage of risk weighted assets, currently exceeding our Tier 1 regulatory minimum of 9.7%. This was supported by the completion of a £303m equity raise in July. Risk weighted assets at 30 September 2018 were £7,398m. The Regulatory Leverage ratio is 5.7%. Our total capital as a percentage of risk weighted assets is 19.1%."*

- 4.41. The figure for RWA in the October Announcement (£7,398 million) was incorrect because, amongst other things, it was based on the erroneous application of 50% risk weighting to CLIP Loans. The figures for CET1 capital as a percentage of RWA (15.7%) and total capital as a percentage of RWA (19.1%) were correspondingly inaccurate, because they were based on an understated figure for RWA.

- 4.42. On 24 October 2018, after the release of the October Announcement, Messrs. Arden and Donaldson attended a Q3 2018 Earnings Call with brokers and made the following statements:

- (1) Mr Arden said: *"we are very comfortable with our capital plans for 2019"*.
- (2) Mr Donaldson said: *"I think our capital planning we're comfortable with for next year. And we're very comfortable that the £2.5 billion you've raised are not numbers that we would recognize over the course of our growth. So, our view is very simple. That's, one, we are anticipating fulfilling, of course, all of our regulatory requirements next year. Our capital planning and scenario planning certainly can do that and we will. And I do foresee that by the end of 2021, we will start to see a closing because we won't be needing to raise £2.5 billion of CET1, AT1 and MREL. That's not the numbers we have in our long-term planning horizon"*.

#### **SECTION E: EVENTS FOLLOWING THE OCTOBER ANNOUNCEMENT**

- 4.43. On 1 November 2018 the Second Consultant, having performed an initial two-week review of the RWA calculation and COREP reporting process, concluded that *"(t)he most significant mis-statement in the RWA calculation is due to the incorrect risk weighting of commercial property at 50% rather than 100%. Impact c. £600m RWA"* and *"currently it is virtually impossible to evidence the integrity of the RWA calculation or the COREP reports. This is because there are multiple gaps in the controls framework at every stage of the process, from data sourcing through to report generation"*.

- 4.44. On an investor call on 2 November 2018, Mr Arden was specifically asked about the risk weights Metro Bank had applied to its commercial real estate portfolio. Mr Arden was asked the following question: *"the risk weight on the commercial real estate portfolio, if my math is right, it is 60.4%, which just seems low, given where those standardised risk weights should be. Do you mind just helping me understand the disparity there?"*. He replied as follows: *"I have not got the details to hand, so I will probably get back to you. But just rest assured, we continuously look at all the risk weightings we have, and we are constantly reviewing that. I am afraid I have not got the math to hand"*.
- 4.45. Notwithstanding that Mr Arden was specifically asked the above question, Metro Bank did not consider at that point whether the inaccurate RWA figure contained in the October Announcement needed to be qualified or corrected.
- 4.46. A significant portion of the Second Consultant's work was completed within the expected 10-week timeframe, culminating in an email from the Second Consultant to Mr Arden on 20 December 2018 stating that *"it is estimated that, in aggregate, the issues identified in the RWA calculation will increase RWA by £0.9-1.0bn, and an increase in capital requirements of c.£100m, at a target capital ratio of 12.5%"*.
- 4.47. In early January 2019, further work was undertaken by Metro Bank to finalise the figures initially provided by the Second Consultant on 20 December 2018 and consult with its advisers as to whether an announcement was required in respect of this information.
- 4.48. On 23 January 2019, Metro Bank issued its FY18 Results Preview and Trading Update. The announcement itself did not give specific details regarding the re-categorisation and RWA adjustment. Instead, it provided a revised approximation of £8.9 billion for its RWA:

*"Risk weighted assets at full year are expected to be approximately £8.9bn with the increase driven by both net loan growth and an adjustment in the risk weighting of certain commercial loans secured on property and certain specialist BTL loans to large portfolio landlords. Total capital ratio is expected to be approximately 15.8% as at December 31 2018."*

In addition, the announcement mentioned a softening in Metro Bank's underlying profit before tax in the last quarter.

- 4.49. The error regarding the risk weights applied to CLIP Loans was first mentioned during the analyst presentation call which took place hours after the announcement. In the same call, Mr Arden stated that the estimated increase in RWA included adjustments of *"around £900 million"*.

- 4.50. Following the January 2019 announcement there was a drop in Metro Bank's share price of 39% on the day of the announcement, which was the largest single price drop experienced by a UK bank since 2009.
- 4.51. Commentary from analysts in the days and weeks following the January 2019 announcement emphasised the significance of Metro Bank's RWA error to its future growth and strategy. The issue of the RWA error has continued to be reflected in more recent market commentary concerning Metro Bank.
- 4.52. In light of the findings of the Second Consultant's review, Metro Bank undertook a programme to remediate the RWA errors, and identify and address root causes. A summary of this remediation exercise can be found at paragraphs 3.42 to 3.44 of Annex A in the Final Notice given to Metro Bank by the PRA dated 21 December 2021.

## **5. FAILINGS**

- 5.1. The facts and matters above resulted in Metro Bank breaching LR 1.3.3R (misleading information not to be published) during the period from 23 October 2018 (being the date on which the October Announcement was approved by the Audit Committee and the Board) to 24 October 2018 (being the date on which the October Announcement was published).
- 5.2. The regulatory provisions relevant to this Notice are referred to in Annex A.

### Metro Bank's obligations

- 5.3. Listing Rule 1.3.3R requires an issuer to take reasonable care to ensure that any information it notifies to a RIS or makes available through the Authority is not misleading, false or deceptive and does not omit anything likely to affect the import of the information.

### Metro Bank's failings

- 5.4. The October Announcement contained inaccurate information:
- (1) The figure for RWA (£7,398 million) was incorrect because it included Metro Bank's incorrect application of a 50% risk weighting to CLIP Loans.
  - (2) The figures for CET1 capital as a percentage of RWA (15.7%) and total capital as a percentage of RWA (19.1%) were correspondingly inaccurate, because they were based on that understated figure for RWA.
- 5.5. When publishing this inaccurate information, Metro Bank failed to explain that:

- (1) The total RWA figure of £7,398 million included Metro Bank's application of a risk weighting of 50% for CLIP Loans.
- (2) This risk weighting was incorrect.
- (3) Metro Bank had recognised that it needed to correct this error.
- (4) Metro Bank was carrying out an ongoing review to determine the quantum of the correction.
- (5) The quantum of the necessary correction would be substantial.

5.6. Metro Bank, including its senior management (Messrs. Donaldson and Arden), was aware that the October Announcement contained inaccurate information. However, despite being aware of the market significance of its RWA figures, which had been the subject of analyst commentary and specific questioning at an analyst meeting, Metro Bank failed to consider whether any of the matters specified in paragraph 5.5(1) to (5) above ought to have been included in the October Announcement by way of qualification, or to seek legal advice or input from its professional advisers on this question. Instead, Metro Bank incorrectly and unreasonably assumed that it did not need to say anything publicly about these matters whilst its review was ongoing and that it was appropriate to publish the inaccurate RWA figure in the October Announcement.

5.7. Further, Messrs. Donaldson and Arden failed to ensure that the Audit Committee and the Board considered whether the inclusion of the inaccurate RWA figure in the October Announcement without any qualification was appropriate.

5.8. Following the October Announcement, Metro Bank did not consider the need to qualify or correct the inaccurate RWA figure contained in the October Announcement notwithstanding that Mr Arden was asked a specific question regarding standardised risk weighting at the investor call on 2 November 2018.

5.9. Metro Bank did not qualify or correct the inaccurate figure for RWA contained in the October Announcement at any time prior to 23 January 2019, when the Bank issued its FY18 Results Preview and Trading Update.

5.10. For the reasons set out in paragraphs 5.4 to 5.5 above, Metro Bank breached LR 1.3.3R by failing to take reasonable care to ensure that the information it notified to a RIS was not misleading, false or deceptive and did not omit anything likely to affect the import of the information.

## **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.
- 6.2. The total financial penalty which the Authority hereby imposes on Metro Bank is £10,002,300. In summary, this penalty is calculated as follows.

### **Step 1: Disgorgement**

- 6.3. 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.
- 6.4. The Authority has not identified any financial benefit that Metro Bank derived directly from its breach. The Step 1 figure is therefore £0.

### **Step 2: Seriousness of the breach**

#### Appropriate indicator

- 6.5. Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area.
- 6.6. However, in this case, the Authority considers that the revenue generated by Metro Bank is not an appropriate indicator as it does not reflect the harm or risk of harm resulting from Metro Bank's breach.
- 6.7. The Authority considers the appropriate indicator is Metro Bank's average daily market capitalisation throughout the period of the breach as it reflects the harm or risk of harm resulting from the breach. The Authority considers that the period of the breach should be the Relevant Period. Metro Bank's average daily market capitalisation over this period was £2,353,500,000.
- 6.8. The Authority considers that a scale of 0-0.5% of Metro Bank's average daily market capitalisation (applied according to the seriousness of the breach) is

appropriate in order that the penalty properly reflects the seriousness of the breach. The range is divided into five fixed levels that represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level:

Level 1 – 0%

Level 2 – 0.125%

Level 3 – 0.25%

Level 4 – 0.375%

Level 5 – 0.5%

- 6.9. In assessing the seriousness level for the purpose of penalty, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly.

#### Impact of the breach

- 6.10. Metro Bank is a premium listed issuer that was listed on the FTSE 250 at the time of the breach. The Bank's inclusion of a total RWA figure using the incorrect CLIP Loans risk weight, without any qualification, had the potential to mislead its investors and affect the import of the information contained in the October Announcement. The fact that, following the January 2019 announcement, there was a drop in Metro Bank's share price of 39% on the day of the announcement and adverse market commentary indicates that the breach had a serious adverse effect on financial markets and risked damaging confidence in the financial markets (6.5A.2G(6)(f)).
- 6.11. The existence of the CLIP Loans error only became known to investors three months after the breach, when the January 2019 announcement was released. This delay caused a risk of loss to new and existing individual shareholders trading between the October Announcement and the January 2019 announcement (DEPP 6.5A.2G(6)(c)).

#### Nature of the breach

- 6.12. Metro Bank's senior management were aware that the October Announcement contained an inaccurate RWA figure but failed to consider, or ensure that the Audit Committee and/or the Board considered, whether publishing that inaccurate RWA figure without qualification was appropriate. Metro Bank further failed to seek legal advice or input from its professional advisers on this question. Messrs. Donaldson and Arden also failed to ensure that the Audit Committee and the Board

considered whether the inclusion of the inaccurate RWA figure in the October Announcement without any qualification was appropriate (DEPP 6.5A.2G(6)(c)).

Level of seriousness

- 6.13. DEPP 6.5A.2G(11) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factor to be relevant:
- (1) Metro Bank's publication of an inaccurate RWA figure without any qualification in the October Announcement risked causing significant loss to investors who traded between the release of the October Announcement and the January 2019 announcement, at which point the existence of the CLIP Loans error was made known to the market (DEPP 6.5A.2G(11)(a)).
- 6.14. DEPP 6.5A.2G(12) sets out the factors which are likely to be considered 'level 1 factors', 'level 2 factors' or 'level 3 factors'. Of these, the Authority considers the following factors to be relevant:
- (1) No profits were made or losses avoided by Metro Bank as a result of the breach (DEPP 6.5A.2G(12)(a)).
  - (2) The Authority considers the breach was committed negligently, as a result of a lack of competence, and did not occur as a result of deliberate or reckless behaviour (DEPP 6.5A.2G(12)(e)).
- 6.15. Having regard to the above factors, the Authority considers the seriousness of the breach to be level 3. Therefore, the Step 2 figure is 0.25% of £2,353,500,000, which is £5,883,750.

**Step 3 – Mitigating and aggravating factors**

- 6.16. 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.
- 6.17. The Authority considers that the following factor mitigates the breach:
- (1) Metro Bank has accepted that, in publishing the RWA figure within the October Announcement knowing that it was inaccurate, it did not take reasonable care to ensure that the October Announcement was not false and misleading and did not omit anything likely to affect the import of the information it contained, in breach of LR 1.3.3R (DEPP 6.5A.3G(2)(b)).
- 6.18. The Authority does not consider there to be any aggravating factors.

- 6.19. Having taken into account the above mitigating factor, the Authority considers that the Step 2 figure should be decreased by 15%. The Step 3 figure is therefore £5,001,187.

#### **Step 4 – Adjustment for deterrence**

- 6.20. Pursuant to DEPP 6.5A.4G, if the Authority 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.
- 6.21. The Authority considers that the Step 3 figure of £5,001,187 is too small to achieve its objective of credible deterrence, given the fundamental importance of full and accurate reporting by listed companies to the market. Metro Bank is a premium listed issuer and, at the time of the breach, was a constituent of the FTSE 250 index. It published an RWA figure in the October Announcement that was known by its senior management to be wrong at the time of publication and the subject of interest from market participants. This is a very serious matter, even though the misconduct was not deliberate or reckless. The correct RWA figure, when announced in January 2019, contributed to a 39% fall in Metro Bank's share price and significant adverse market commentary immediately following the announcement and thereafter. Metro Bank's failure to take reasonable care over its October Announcement therefore had significant potential repercussions for investors in circumstances where they could have been misled as a result of the incorrect RWA figure published by Metro Bank.
- 6.22. Having taken into account the factors outlined at DEPP 6.5A.4G and in particular the need for credible deterrence, the Authority considers that a multiplier of 2 should be applied at Step 4. Therefore, the Step 4 figure is £10,002,374.

#### **Step 5 – Settlement discount**

- 6.23. Pursuant to DEPP 6.5A.5G, if the Authority and the firm on which 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 that 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.
- 6.24. No settlement has been reached with Metro Bank. The Step 5 figure is therefore £10,002,300 (rounded down to the nearest £100 in accordance with the Authority's usual practice).

#### **Penalty**

- 6.25. The Authority hereby imposes a financial penalty of £10,002,300 on Metro Bank for its contravention of LR 1.3.3R.

## **7. REPRESENTATIONS**

- 7.1. Annex B contains a brief summary of the key representations made by Metro Bank 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.

## **8. PROCEDURAL MATTERS**

- 8.1. This Notice is given to Metro Bank under and in accordance with section 390 of the Act.
- 8.2. The following statutory rights are important.

### **Decision maker**

- 8.3. The decision which gave rise to the obligation to give this Notice was made by the RDC. The RDC is a committee of the Authority which takes certain decisions on behalf of the Authority. The members of the RDC are separate 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>

### **Manner and time for payment**

- 8.4. The financial penalty must be paid in full by Metro Bank to the Authority no later than 5 January 2023.

### **If the financial penalty is not paid**

- 8.5. If all or any of the financial penalty is outstanding on 6 January 2023, the Authority may recover the outstanding amount as a debt owed by Metro Bank and due to the Authority.

### **Publicity**

- 8.6. 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 Metro Bank or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- 8.7. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

**Authority contact**

- 8.8. For more information concerning this matter generally, contact Ross Murdoch at the Authority (direct line: 020 7066 3999/email: [Ross.Murdoch@fca.org.uk](mailto:Ross.Murdoch@fca.org.uk)).

**Sadaf Hussain**

**Head of Department**

**Financial Conduct Authority, Enforcement and Market Oversight Division**

## **ANNEX A**

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

The statutory and regulatory provisions set out below are the versions that were in force during the Relevant Period.

#### **1. RELEVANT LEGISLATIVE PROVISIONS**

1.1. The Authority's general duties established in section 1B of the Act include the strategic objective of ensuring that the relevant markets function well and the operational objectives of protecting and enhancing the integrity of the UK financial system and securing an appropriate degree of protection for consumers.

1.2. Section 91 of the Act:

*"(1) If the [Authority] considers that—*

*(a) an issuer of listed securities, or*

*(b) an applicant for listing,*

*has contravened any provision of listing rules, it may impose on him a penalty of such amount as it considers appropriate."*

#### **2. RELEVANT REGULATORY PROVISIONS**

##### **The Listing Rules**

2.1. Listing Rule 1.3.3R – Misleading information not to be published

*"An issuer must take reasonable care to ensure that any information it notifies to a RIS or makes available through the FCA is not misleading, false or deceptive and does not omit anything likely to affect the import of the information."*

##### **Decision Procedures and Penalties Manual ("DEPP")**

2.2. 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.

##### **The Enforcement Guide**

2.3. The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act.

2.4. Chapter 7 of the Enforcement Guide sets out the Authority's approach to exercising its power to impose a financial penalty.

## **ANNEX B**

### **REPRESENTATIONS**

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

#### Settlement discount

2. Metro Bank accepted in settlement discussions at stage 1 (as defined in DEPP 6.7.3G(1)) that it had breached LR 1.3.3R and that the breach was of sufficient seriousness as to warrant disciplinary action against it. Metro Bank sought to enter into a focused resolution agreement with the Authority to contest the proposed financial penalty only. That request was refused on a procedural basis, on the ground that there were related proceedings against individuals who had not accepted that there had been a breach of the Listing Rules, and therefore for reasons entirely outside Metro Bank's control. As a result, Metro Bank has been unfairly deprived of the 30% settlement discount to which it would have been entitled had an FRA been entered into. The Authority ought to give Metro Bank an equivalent discount to rectify that unfairness.
3. As at stage 1, Metro Bank contends that the Notice should include additional facts, but it does not dispute the facts which underlie the breach or liability. Metro Bank considers that limited contextual additions should be made to the facts set out in the Notice that are relevant to the penalty calculation. DEPP 6.7.3AG(1) provides, in effect, that where agreement has been reached "*in relation to all relevant facts and all issues as to whether those facts constitute a breach*", and the agreement is concluded during stage 1, the reduction in penalty shall be 30%. Therefore, at Step 3 of the penalty calculation, the discount for mitigation should be increased to 30% to reflect the discount that Metro Bank would have received had it entered into an FRA on the basis of the factual position set out in DEPP 6.7.3AG(1).
4. It is not appropriate for the Authority to treat Metro Bank's position as analogous to the factual position set out in DEPP 6.7.3AG(3), which provides that the reduction in penalty shall be 0 to 30% where the agreement reached does not fall within either DEPP 6.7.3AG(1) or DEPP 6.7.3AG(2) (which applies where agreement is reached "*in relation to all relevant facts*"). Metro Bank's desire to introduce further, contextualising facts that explain the circumstances in which its breach occurred is consistent with its acceptance that the facts on which the Authority relies constituted a breach of LR 1.3.3R.

5. **The Authority acknowledges that, in settlement discussions at stage 1, Metro Bank accepted that it breached LR 1.3.3R and that it would have entered into an FRA had that option been open to it. As is made clear at DEPP 5.1.8DG, the decision whether to enter into an FRA and the terms on which it is entered are matters which are entirely within the discretion of the Authority's settlement decision makers. The Authority agrees that an FRA was not offered in this case because of matters outside Metro Bank's control, namely the potential for procedural complications arising out of the fact that there are related proceedings against individuals who did not accept that Metro Bank breached LR 1.3.3R.**
6. **However, the Authority does not agree that Metro Bank has been treated unfairly as a result of it not being permitted to enter into an FRA. The Authority has treated Metro Bank's acceptance that it was in breach of LR 1.3.3R as a mitigating factor at Step 3 of the penalty calculation. In deciding on the appropriate discount, although not bound by the reductions in penalty available in cases involving an FRA as set out in DEPP 6.7.3AG, the Authority has had regard to them. Metro Bank has not agreed "*all relevant facts*" and so neither DEPP 6.7.3AG(1) nor DEPP 6.7.3AG(2) would have applied had the Bank entered into an FRA. Instead, DEPP 6.7.3AG(3) would have applied, which provides that the relevant reduction in penalty if agreement is concluded during stage 1 is between 0 and 30%.**
7. **To assist its determination of the appropriate level of discount to apply, the Authority has had regard to DEPP 6.7.3CG, which provides that facts which may be relevant to the Authority's determination of the appropriate figure within a range may include: (i) "*the extent to which the position taken by the person subject to enforcement action on the disputed issues at the time the focused resolution agreement is entered into is reflected in the terms of the decision notice*", and (ii) "*any saving of time or public resources as a result of the focused resolution agreement*".**
8. **The Authority recognises that Metro Bank's admission of liability has to some extent made the conduct of the proceedings against it more efficient and that the Authority has used fewer resources than would otherwise have been the case. However, the Authority also considers the extent to which Metro Bank has contested, and continues to contest, the content of the Notice to be relevant to its decision on the appropriate discount. At stage 1, Metro Bank**

**proposed extensive changes to the draft Warning Notice, the majority of which were not accepted by the Authority and many of which cannot properly be described as relating to penalty only, and Metro Bank continues to challenge whether the Notice properly reflects the facts relating to the breach. Metro Bank's position on these matters has limited the amount of time and resource savings associated with its acceptance of liability for the breach of LR 1.3.3R. In the circumstances, the Authority has decided that it is appropriate to give Metro Bank a discount of 15% at Step 3 of the penalty calculation for accepting that it breached LR 1.3.3R.**

Additional background to Metro Bank's breach

9. Although Metro Bank accepts that, in publishing an unqualified RWA figure in the October Announcement that was likely to be inaccurate, it did not take reasonable care to ensure the announcement was not false and misleading and did not omit anything likely to affect the import of the information it contained, it is essential that the appropriate penalty is determined in light of all of the facts that were relevant to the Bank's decision-making regarding the content of the October Announcement so as to make clear: (a) why it acted negligently in publishing the October Announcement and not recklessly or deliberately; and (b) the degree of blame which should be attached to that negligent failure, which is relevant to the Authority's determination of the appropriate penalty. Accordingly, additional context for Metro Bank's decision to publish the October Announcement should be included in the Facts and Matters section of the Notice. Explaining Metro Bank's actions in context will also assist other firms to avoid breaching the Authority's rules. Any published notice must set out a sufficiently detailed, fair and accurate account of the circumstances giving rise to the breach so as to provide clear guidance that other firms can follow.
  
10. Additional context should be included in the Notice regarding the uncertainty arising from the broader RWA issues at Metro Bank. Metro Bank, its professional advisers and the PRA did not consider the CLIP Loans error as an isolated issue but as one part of the broader RWA calculation issues, including PBTL Loans, which the Bank was in the process of identifying, assessing and remediating. The complexity of these broader RWA issues was fundamental to the Bank's decision-making regarding the RWA figure in the October Announcement and partly explains (although it does not justify) why the Bank failed properly to seek separate advice on the content of the October Announcement, and why it failed to turn its mind to whether making that

announcement would breach LR 1.3.3R. This is important context that is relevant to the Authority's determination of the appropriate penalty.

11. Additional context should be included in the Notice regarding the complexity of the overlapping regulatory requirements relating to RWAs for CLIP Loans to which Metro Bank was subject and with which, in good faith, it was attempting to comply. This is relevant to understanding how Metro Bank's regulatory interpretation error came to be made and why it could not be immediately corrected, and to understanding the Authority's case that the October Announcement should have included a qualification and not simply an adjusted figure. It is therefore relevant to the Authority's determination of the appropriate penalty.
12. Additional context should be included in the Notice regarding Metro Bank's reliance on legal advice. Metro Bank sought legal advice on 5 October 2018 on whether there was an immediate obligation to make an announcement to the market regarding the RWA errors. The advice received was that no market announcement was necessary at that point, since Metro Bank was not in possession of specific or material information and was in ongoing dialogue with the PRA over a complex issue. Although Metro Bank did not subsequently seek specific advice on the contents of the October Announcement, the previous advice received regarding its immediate disclosure obligations influenced Metro Bank's decision to publish the unqualified and inaccurate RWA figure in the October Announcement. Metro Bank was not proactively advised by its external lawyers that the October Announcement would breach the Listing Rules, despite the fact that the external lawyers knew that the announcement was due to be made by the end of October 2018. Metro Bank's reliance on legal advice is an important part of the explanation for how it made the October Announcement in a form which breached LR 1.3.3R and its degree of culpability, and is therefore relevant for the calculation of penalty.
13. **Metro Bank has not identified any factual or legal errors that require correction in the Notice, and it is a matter of regulatory judgement for the Authority as to what narrative and background to include for deterrent or educational purposes. The Notice sets out the relevant facts and matters which underpin the Authority's conclusion that Metro Bank breached LR 1.3.3R. The Authority considers that the additional context that Metro Bank submits should be included in the Notice would distract from the key issues in the case and would not meaningfully add anything; on the contrary, it would downplay the seriousness of the breach and would introduce information that does not need to be included and that would risk obscuring**

**the straightforward, negligent error committed by Metro Bank in failing to take reasonable care to ensure that the October Announcement was not false or misleading and did not omit anything likely to affect the import of the information contained therein. Accordingly, the Authority has decided not to include the additional context proposed by Metro Bank.**

- 14. In respect of the uncertainty arising from the broader RWA issues at Metro Bank, the Authority considers that it is appropriate for the background context to be focused on the misconduct considered in these proceedings, namely that the CLIP Loans error gave rise to an incorrect RWA figure calculation, and that knowing of this error, Metro Bank unreasonably published an inaccurate figure in the October Announcement without any qualification or explanation. The question of what further errors Metro Bank made, and the extent of the Bank's knowledge of the materiality of those errors, is not relevant to the failings addressed in this Notice. The inclusion of matters concerning the PBTL Loans would introduce unnecessary complexity and irrelevant detail into the Notice, which would detract from the deterrent and educational value of the Notice. The Authority also notes that the broader RWA issues at Metro Bank are addressed in the Final Notice dated 21 December 2021 given by the PRA to Metro Bank and so are already in the public domain.**
- 15. The Authority does not accept that there was any complexity around the risk weightings applicable to CLIP Loans as at the date of the October Announcement. It is also clear from this Notice, and was clear from the Warning Notice, that there was ongoing work to identify the impact of all of the RWA issues on Metro Bank's RWA figures. Further, the Authority does not consider that Metro Bank's submissions regarding the complexity of the regulatory guidance relating to RWAs for CLIP Loans are concerned with penalty or the degree of Metro Bank's culpability in not including a qualifier in the October Announcement.**
- 16. The Authority considers that the legal advice sought and received by Metro Bank is reflected in the Notice to the extent appropriate and that no further additions to the Notice concerning legal advice are needed. It is Metro Bank's responsibility to take reasonable care to ensure that its announcements are not misleading, false or deceptive and do not omit anything likely to affect the import of the information, not the responsibility of its external lawyers. To frame Metro Bank's failings in the context of the fact that its external**

**lawyers did not proactively advise on the October Announcement would detract from Metro Bank's primary responsibility under the Listing Rules and its own failure to seek any specific legal advice on including the inaccurate and unqualified RWA figure in the October Announcement.**

Penalty Step 3: Mitigating and aggravating factors

17. There are mitigating factors that have not been taken into account by the Authority which merit a discount at Step 3 of the penalty calculation, in addition to the 30% discount which Metro Bank should be given for accepting that it committed the breach.
18. Metro Bank exceptionally co-operated with the Authority and the PRA's investigations, saving both regulatory bodies time and resources. Metro Bank voluntarily produced documents to the Authority, a number of which were protected by legal privilege. Metro Bank also hosted a "teach-in" presentation to the PRA to assist its investigation; this is relevant to the Authority's case as it covered matters which are relevant to understanding both the history of the RWA issue and the context in which it arose. Metro Bank also helped to secure the attendance of a former senior member of the Bank for interview at the Authority, who was residing out of the jurisdiction at the time.
19. Metro Bank has taken significant remedial steps that ought to be recognised at Step 3 of the penalty calculation. It has enhanced the Disclosure Committee's procedures to ensure greater oversight and efficiency, including enhanced meeting minutes and a separation of the CFO and Company Secretary roles. It has proactively initiated multiple in-depth third party reviews to address and remediate the issues which led to the RWA adjustment and has enacted changes to the control environment across the Bank. It has implemented extensive changes, including to its policies, procedures and governance. It has also made significant changes to its leadership since the breach, resulting in a significantly enhanced compliance culture at the Bank.
20. Metro Bank's admitted breach is mitigated by the fact that it took expert advice from its external lawyers, who did not raise any issue with the making of the unqualified October Announcement and advised that no proactive disclosure to the market of the RWA issue was required. Notwithstanding the fact that Metro Bank did not specifically seek advice on the content of the October Announcement, its external lawyers would have been aware that the Bank's Q3 trading update was due by the end of October 2018 and that the trading update would have to include RWA figures. The Bank might therefore reasonably have expected that, if there was an obligation to qualify the existing RWA figures, its external lawyers would have proactively drawn that to its

attention when giving their advice on 5 October 2018, particularly given the proximity of the date of that advice to the date of the October Announcement. The fact that Metro Bank's error took place in the context of a good faith attempt to comply with its obligations, believing that it was acting under professional advice, ought to be reflected as a mitigating factor, even if the Bank should have, but failed to, take specific advice on the wording of the October Announcement such that it cannot claim to have taken all reasonable care. Although the fact that Metro Bank sought legal advice is relevant to the seriousness of the breach at Step 2 of the penalty calculation, that should not prevent it from also being taken into account at Step 3.

21. The penalty imposed on Metro Bank by the PRA ought to be considered a mitigating factor. The disclosure issues in this case are inherently linked to the issues that were the subject of the PRA action, in that the failings identified by the PRA led directly to the erroneous information being included in the October Announcement. Whilst the breaches considered by the PRA and the Authority are conceptually different, the underlying circumstances and conduct out of which both sets of breaches arose is so closely connected that it would be both artificial and unjust for the Authority's penalty to take no account of the penalty imposed by the PRA.
22. **The Authority considers that Metro Bank's co-operation has not been exceptional or gone well beyond that expected of authorised firms and, as such, does not warrant a reduction in the financial penalty. The privileged documents that Metro Bank provided primarily relate to the legal advice it received from its external lawyers between October 2018 and January 2019. As Metro Bank submits that the advice it received from its external lawyers should be considered a mitigating factor, the Authority does not consider that Metro Bank should receive credit for seeking to act in its own interests. The "teach-in" presentation was given to the PRA only and has little relevance to the Authority's case, whilst Metro Bank's assistance in facilitating the Authority's interview of the former senior member of the Bank does not amount to exceptional co-operation.**
23. **The Authority considers that only those remedial steps taken by Metro Bank that relate to its breach of LR 1.3.3R are relevant to assessing whether the Bank should receive a mitigation discount for the remedial action it has taken. These remedial steps do not include those taken by Metro Bank that concern the Bank's underlying RWA classification errors; those steps are relevant to the PRA's enforcement action and were taken into account by the PRA in**

**determining the penalty that it imposed on Metro Bank. The potentially relevant remedial steps taken by Metro Bank are those that relate to the Bank's disclosure procedures and, to some extent, the changes it has made to its senior management. The Authority does not consider that these actions are sufficient to be considered mitigating factors that merit a discount at Step 3 of the penalty calculation.**

**24. The Authority acknowledges that Metro Bank sought and received legal advice from its external lawyers on whether it was required to make a proactive announcement in relation to the RWA error. However, Metro Bank did not seek, or obtain, legal advice on whether it could publish an RWA figure in the October Announcement that it knew was inaccurate, which was a key reason why the Bank failed to take reasonable care in breach of LR 1.3.3R. In these circumstances, the Authority considers that Metro Bank's seeking and obtaining of legal advice which did not address the relevant issue does not amount to a mitigating factor at Step 3 of the penalty calculation.**

**25. The action taken by the PRA against Metro Bank related to the Bank's deficiencies that gave rise to the RWA errors and their impact on the Bank's COREP reporting to the PRA between May 2016 and January 2019. In contrast, this case does not concern the underlying reasons for the RWA errors or their impact on COREP reporting, but instead relates to the Bank's specific communication to the market in the October Announcement once the RWA errors (and in particular the CLIP Loans error) had been identified. The actions taken by the PRA and the Authority are therefore substantially different, concerning different rules and different facts giving rise to breaches of those rules. Had Metro Bank taken appropriate steps to qualify the RWA figure in the October Announcement, there would have been no breach of LR 1.3.3R, irrespective of the existence of the underlying RWA issues that formed the basis for the PRA's action. In these circumstances, the Authority considers that the penalty imposed by the PRA on Metro Bank in the Final Notice given to Metro Bank dated 21 December 2021 does not constitute a mitigating factor meriting a reduction to the financial penalty.**

#### Penalty Step 4: Deterrence

26. There should be no increase to the financial penalty at Step 4 of the penalty calculation. It is not needed for either specific or general deterrence, and results in a penalty that is disproportionate to Metro Bank's present financial position.

27. The Authority's justification for adopting a multiplier takes into account matters that are properly considered at Step 2. Factors relevant to seriousness and impact may not be used as a justification for imposing an uplift at Step 4, unless there is a need for further specific or general deterrence which would not be accomplished adequately by the penalty arrived at after Step 3.
28. The potential harm to investors from the breach is a relevant factor at Step 2 of the penalty calculation, as it goes towards the seriousness of the breach, and should not be used to justify an uplift at Step 4, except insofar as that harm indicates that the penalty arrived at after Step 3 is not sufficient for deterrence. The purpose of Step 4 is not to compensate investors and deterrence should not be used as a proxy for potential investor loss.
29. The Authority's conclusion that the penalty should be increased at Step 4 because of the potential harm to investors from the breach is based on a share price analysis that it conducted. This quantified the potential harm to investors arising from the breach at a maximum of approximately £110 million, calculated by reference to the 39% share price drop after the January 2019 announcement and those investors who established a net buy position in Metro Bank's shares between 24 October 2018 and 22 January 2019. Whilst Metro Bank accepts that the RWA adjustment contributed to the 39% share price fall, it is clear that the CLIP Loans error was just one of a number of factors that together contributed to the share price drop and adverse commentary, and the Authority has offered no evidence to demonstrate what weight the RWA adjustment alone had on those matters. Accordingly, the £110 million figure is a significant overstatement of the potential investor harm caused by the breach. Further, had the October Announcement contained a qualification or explanation of the RWA figure, there is no evidence as to what effect such qualification might have had on the share price at the time or on any change to the share price that might have followed the eventual announcement of the RWA adjustment.
30. There is no reasonable basis for concluding that an increase to the penalty at Step 4 is required to deter either Metro Bank or other listed banks from committing similar breaches in the future. As Metro Bank's breach was neither deliberate nor reckless, the only practical impact of the penalty is to incentivise the Bank to improve its systems and processes so that it does not make the same mistake in the future. However, Metro Bank has clearly demonstrated that lessons have been learned from both its breach of LR 1.3.3R and the underlying RWA issues. It has engaged in a substantial remediation exercise to address issues with its governance and underlying systems

and controls which led to the RWA adjustment, including a number of in-depth third party reviews. It has also revised its Disclosure Committee procedures to ensure greater oversight and efficacy and made a number of significant leadership and cultural changes to enhance its compliance culture. There is therefore no need to increase the penalty in order to achieve specific deterrence because there is no need to incentivise further remediation.

31. As to general deterrence, that is achieved principally through the content of the published notice. The absolute size of the penalty is likely to be of limited relevance as a deterrent factor, since other market participants will know that it is dependent on the size of the entity being penalised.
32. In addition, the adverse market reaction and the widespread negative media and analyst commentary in respect of Metro Bank's reporting errors, as well as the negative reputational impact arising from the regulatory proceedings, are significant deterrents which support Metro Bank's view that no deterrence uplift is required. Further, this view is supported by the fact that the PRA did not consider an adjustment for deterrence to be necessary and imposed a financial penalty of £5,376,000 on Metro Bank for failings in relation to its regulatory reporting governance and controls arising out of the RWA issues.
33. Any Step 4 multiplier ought to be considered in the context of the size of the firm being fined, as well as the breach alleged. Metro Bank's market capitalisation is significantly lower than it was at the time of the breach and applying a multiplier at Step 4 means that the penalty will have a disproportionate impact on the Bank. In addition, if no uplift is imposed, the penalty will still be proportionately higher than other comparable cases where the penalty has been calculated by reference to the firm's market capitalisation. In these circumstances, there is no need for any deterrent uplift to remind the market of the importance of the requirements of LR 1.3.3R and of having proper systems and controls in place to ensure its observance.
34. **The Authority agrees that a Step 4 uplift should only be applied for the purposes of credible deterrence, but considers that it is appropriate to consider the seriousness and impact of the breach when assessing the deterrent effect of the penalty at Step 4, irrespective of the fact that those matters may also have been considered at Step 2. This is consistent with DEPP 6.5A.4G(1)(a) which states that circumstances where the Authority may increase the penalty include "where the [Authority] considers the absolute value of the penalty too small in relation to the breach to meet its**

*objective of credible deterrence*". Any assessment of this nature requires consideration of the seriousness of the breach in order to form a view as to whether or not the penalty is too small in that context.

35. The Authority considers that the potential harm to investors from the breach is clearly a factor that is relevant to an assessment of whether the Step 3 figure is too small in relation to the breach. Where the amount of potential harm caused by a breach is far higher than the Step 3 figure, this might indicate that the Step 3 figure is too small in relation to the breach and should be increased in order to meet the Authority's credible deterrence objective.
36. The Authority acknowledges that the share price analysis that it conducted does not offer a precise calculation of the causative impact that the announced correct RWA figure had on the January 2019 share price fall. However, it considers that the evidence indicates that the RWA adjustment was the most price sensitive aspect in the January 2019 announcement and supports the conclusion that a substantial proportion of the share price fall was attributable to the adjusted RWA figure (and by extension, the CLIP Loans error). The Step 3 figure of £5,001,187 is approximately 4.5% of the £110 million approximate maximum potential investor harm calculated by the Authority. Therefore, whatever the exact impact of the adjusted RWA figure on Metro Bank's share price, it is clear that the potential harm to investors was far higher than the Step 3 figure.
37. The Authority does not agree that, because Metro Bank's breach was negligent rather than deliberate or reckless, the relevant incentive arising from the penalty relates solely to improvements in the Bank's systems and processes. In the Authority's view, specific deterrence is achieved by ensuring that the penalty is commensurate with the misconduct, such that the Bank will take reasonable care to ensure that its future disclosures to the market comply with its disclosure obligations.
38. The Authority does not agree with Metro Bank's submission that the absolute size of the penalty is likely to be of limited relevance as a deterrent factor; although the size of the entity being penalised will generally influence the size of the penalty, other factors will also impact the final size of the penalty imposed. These factors include a possible uplift to the penalty at Step 4 for credible deterrence purposes where the penalty would not otherwise reflect the relevant misconduct and the potential harm caused by the misconduct.

**The Authority considers that this is the position in respect of the size of the penalty at Step 3 in this case and that increasing the penalty by a multiple of 2 at Step 4 would lead to greater general deterrence.**

- 39. The Authority agrees that the widespread adverse market reaction and commentary to Metro Bank’s reporting errors should in theory deter other issuers from committing similar breaches, but considers that this response also emphasises the serious nature of the breach and its potential impact on market confidence, both of which support the need for a higher penalty for deterrence purposes.**
- 40. As explained at paragraph 25 above, whilst both the PRA’s and the Authority’s actions against Metro Bank broadly relate to the Bank’s RWA figures and its errors in classifying loans within its commercial loans portfolio, the breaches are substantially different, are based on different facts and resulted in different market impacts. In these circumstances, the Authority considers that the fact that the PRA did not impose any uplift to its penalty for deterrence purposes is not relevant to whether it is appropriate for the Authority to increase the penalty at Step 4.**
- 41. The Authority recognises that, because Metro Bank’s market capitalisation is currently significantly lower than it was at the time of the breach, the financial penalty is likely to have a bigger impact on it than if it had been imposed then. However, in accordance with DEPP 6.5A.4G(1)(a), referred to in paragraph 34 above, the Authority considers that the primary consideration in assessing deterrence is to consider whether the size of the penalty is commensurate with the nature and seriousness of the breach. This is also the key consideration when assessing proportionality, as DEPP 6.5.3G(3) states that the penalty must be proportionate to the breach and that the Authority may decrease the penalty if it is disproportionately high for the breach concerned. The impact of the penalty on the firm is not identified as a relevant circumstance at Step 4 of the Authority’s penalty policy. Instead, it is taken into account within the penalty policy in the context of serious financial hardship. Metro Bank has not claimed that the imposition of a financial penalty of approximately £10 million would cause it serious financial hardship. The Authority considers that a financial penalty of that size should act as a credible deterrent, and that the Step 3 figure of approximately £5 million would have been too small a penalty in relation to the breach, given its nature and potential impact on investors. In these circumstances, the**

**Authority considers that it is proportionate and appropriate to uplift the financial penalty at Step 4 by a multiple of 2.**