Financial Services Authority

FINAL NOTICE

To: **Nabeel Naqui**

D.O.B: **20 October 1973**

Individual Reference Number: **NXN01024 (inactive)**

Date: **13 December 2010**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives final notice that it has taken the following action:

1. THE ACTION

1.1. The FSA served on Nabeel Naqui ('Mr Naqui') a Decision Notice on 9 November 2010 which notified him that it had decided to impose on him:

(1) a prohibition order pursuant to section 56 of the Financial Services and Markets Act 2000 ("FSMA"), prohibiting Mr Naqui from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm on the grounds that he is not a fit and proper person; and

(2) A financial penalty of £750,000 pursuant to section 66(2)(b) of FSMA for being knowingly concerned in a contravention by the Toronto Dominion Bank (London Branch) ("Toronto Dominion") of Principle 2 (Skill, Care and Diligence) of the FSA's Principles for Businesses ("the Principles").

1.2. Mr Naqui has not referred the matter to the Upper Tribunal (Tax and Chancery Chamber).

1.3. Accordingly, for the reasons set out below, the FSA imposes a financial penalty on Mr Naqui in the amount of £750,000 and prohibits him from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm on the grounds that he is not a fit and proper person.

2. REASONS FOR THE ACTION

2.1. This notice is issued to Nabeel Naqui as a result of his conduct during the period July 2006 to June 2008 (the "Relevant Period"), during which he was employed by Toronto Dominion as Head of the Credit Products Group ("CPG"), Europe and Asia Pacific desk. During this period, Mr Naqui deliberately:

(1) mismarked his trading book; and

(2) subverted the independent process by which Toronto Dominion checked the valuation of its trading positions at the end of each month. Mr Naqui altered prices he had obtained from independent dealers to correspond to the prices at which he had marked positions in his book. Mr Naqui then provided these altered price runs to those responsible for conducting the independent valuation process, knowing that they would be used as the basis of their valuation.

2.2. On 15 December 2009 the FSA issued a Final Notice to Toronto Dominion setting out that in relation to this matter and in breach of Principle 2, Toronto Dominion failed to conduct its business with due skill, care and diligence by failing to use effectively its existing controls over Mr Naqui's book and as a result failing to price certain of his positions accurately and failing to prevent or detect his mismarking in a timely manner. By virtue of Mr Naqui's deliberate misconduct, he was knowingly

concerned in this breach of Principle 2 by Toronto Dominion. This breach continued throughout the Relevant Period.

2.3. The FSA views Mr Naqui's misconduct as particularly serious as, not only was he a senior and experienced trader fully aware of his responsibilities to mark his book in line with the market, he was also Head of Desk and responsible for other traders.

2.4. Further, on 16 November 2007 the FSA issued a Final Notice in relation to Simon Brignall, another trader at Toronto Dominion, who was sanctioned for mismarking. Mr Naqui's misconduct overlapped with Brignall's and continued after this Notice was issued. Mr Naqui would have been aware that such conduct was wrong and would not be tolerated by the FSA.

2.5. The FSA therefore considers that his conduct merits the imposition of a substantial financial penalty, of £750,000.

2.6. The FSA also considers that his actions amounted to a sustained course of deliberate and dishonest misconduct, and that as a result Mr Naqui poses a substantial risk to the FSA's statutory objective of maintaining confidence in the financial system. The FSA therefore considers that he is not fit and proper to perform controlled functions and that it is necessary and proportionate to make a prohibition order against him.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

Statutory provisions

3.1. The FSA's statutory objectives, set out in Section 2(2) of FSMA, are market confidence, public awareness, the protection of consumers, the reduction of financial crime and contributing to the stability of the UK financial system.

3.2. The FSA has the power pursuant to section 56 of FSMA to make an order prohibiting an individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specified regulated

activity, any regulated activity falling within a specified description, or all regulated activities.

3.3. Section 66 of FSMA provides that:

(1) The FSA may impose a penalty on a person of such amount as it considers appropriate if:

(a) it appears to the FSA that he is guilty of misconduct; and

(b) the FSA is satisfied that it is appropriate in the circumstances to take action against him.

(2) A person is guilty of misconduct if, while an approved person:

(a) he has failed to comply with a statement of principle issued under section 64 of [FSMA]; or

(b) he has been knowingly concerned in a contravention by the authorised person on whose application he was approved of a requirement imposed on that authorised person by or under [FSMA].

Regulatory Provisions

Fit and Proper Test for Approved Persons

3.4. The criteria for assessing whether an individual is fit and proper are set out in part of the FSA Handbook entitled Fit and Proper Test for Approved Persons ('FIT') at the sections referred to below.

3.5. FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person, including the person's honesty and integrity. FIT 2.1.1G provides that, in determining a person's honesty and integrity, the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G.

3.6. FIT 2.1.3G refers to various matters, including: whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)); whether the person has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar (FIT 2.1.3G(11)); and whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT 2.1.3G(13)).

Principles for Businesses

3.7. Principle 2 (Skill, Care and Diligence) provides that a firm must conduct its business with due skill, care and diligence.

Enforcement Policy

3.8. The FSA's policy in relation to the decision to make a prohibition order is set out in Chapter 9 of the Enforcement Guide ("EG"). Further references to chapter 9 of EG are set out in Annex A.

3.9. The FSA's policy in relation to the imposition of financial penalties is set out in Chapter 6 of the part of the FSA Handbook entitled Decision Procedure and Penalties Manual ("DEPP"). Further references to DEPP are set out in Annex A. As this matter relates to some events prior to the introduction of EG and DEPP (28 August 2007), the previous policies on the imposition of financial penalties set out in the Enforcement Manual are also relevant.

4. FACTS AND MATTERS RELIED ON

4.1. Toronto Dominion is authorised by the FSA and is the London branch of the Toronto-Dominion Bank, a global financial group whose headquarters are in Toronto. The

CPG business was based in London with other trading operations in New York and Toronto.

4.2. The CPG Europe and Asia Pacific desk was run from London and headed by Nabeel Naqui, a Managing Director. As well as being Head of Desk and responsible for other traders, Mr Naqui was also responsible for trading credit default index and tranche products ("the Products"). In the main, Mr Naqui was the only person on the desk who traded the Products on a day to day basis. The trades which are the subject matter of this Notice were all proprietary trades carried out by Mr Naqui on behalf of Toronto Dominion and were therefore not conducted by him in the course of carrying out his CF30 (Customer) controlled function.

4.3. All CPG trading positions were subject to a month end Independent Price Verification ("IPV") process in Toronto Dominion during the Relevant Period. The IPV process required the Global Middle Office ("GMO") to revalue all positions held by the firm's traders at month end on the basis of independently sourced market price information. The objective of the IPV process was to reveal any error or bias in pricing so that this could be corrected and inaccurate marks eliminated.

4.4. On 23 June 2008 Mr Naqui was given notice of Toronto Dominion's intention to make him redundant. On 27 June 2008, Mr Naqui ceased to be an approved person. During the transition of his trading book to a new trader, pricing issues were uncovered. After conducting preliminary enquiries, Toronto Dominion made a downward valuation of CAD$96 million to his book, which was announced to the market on 4 July 2008.

4.5. An investigation of the valuation of the Products during the Relevant Period revealed that he had mismarked some of his positions in his trading book by marking them at levels which did not reflect the prices available in the market for those positions. Such mismarking has been identified at all but one quarter end and at the May 2008 month end during the Relevant Period.

4.6. In considering the extent of Mr Naqui's mismarking it is recognised that:

(1) valuation of the Products was, to a limited extent, subjective;

(2) not all of the Products in the revaluation exercise conducted by Toronto Dominion can be definitively attributed to Mr Naqui; and

(3) system issues may have had a limited impact on the valuation of his positions.

4.7. However, despite the above, the majority of the revaluation calculated by Toronto Dominion as CAD$96 million (£48 million) is attributable to his mismarking.

4.8. Mr Naqui was aware that in order to conduct the IPV, GMO used series of market price quotes, known as runs, which he provided to them every month, rather than sourcing these independently from dealers. Mr Naqui was regularly asked by GMO to provide particular runs for use in the IPV process. Mr Naqui obtained runs in electronic messages from independent dealers, and then forwarded them to the relevant individual within GMO.

4.9. Before Mr Naqui sent the runs on to GMO, however, he altered particular prices within the runs to correspond to the prices at which he had mismarked his front office positions. He did not alter all prices in which he held positions on his trading book. Mr Naqui did not mark or highlight the altered figures, or provide any indication within the message that some of the figures it contained were not figures supplied by the independent dealer. As a result of this method of circumvention Mr Naqui's mismarking remained undetected for a period of approximately two years, until after he was informed that Toronto Dominion proposed to make him redundant.

4.10. When interviewed by the FSA he contended that his actions were transparent and that his marks were appropriate. Furthermore Mr Naqui denied that he had mismarked his book.

5. REPRESENTATIONS, FINDINGS AND CONCLUSION

Representations

5.1. Mr Naqui stated that he did not dispute that he had amended some of the quotes that he forwarded to GMO. Indeed he apologised for this and said that he recognised, with the benefit of hindsight, that he should not have done this and therefore he

deeply regretted his actions. However Mr Naqui made clear that he did not accept that he had acted improperly.

5.2. Mr Naqui asserted that he had amended the quotes for a number of valid reasons. Mr Naqui claimed that one of the principal reasons why he had been obliged to amend the forwarded quotes was so that he was able to negate the impact of what he characterised as systems issues. Mr Naqui explained that there were flaws within the systems used by Toronto Dominion and that these resulted in inaccurate valuations. Mr Naqui relied on evidence which tended to show that he had raised these issues with others within the bank; however Mr Naqui complained that he had not received a satisfactory response to the document he had drafted. Mr Naqui claimed that thereafter he had only ever escalated his concerns about the systems difficulties during the course of face to face meetings with his immediate superior. Mr Naqui accepted that there was no record of any of these attempts to complain about the systems issues, though he did complain that his immediate superior was not a credible witness. Therefore and notwithstanding his reservations about the systems Mr Naqui had been obliged to forward quotes to GMO and thus he had decided to amend certain quotes.

5.3. Mr Naqui claimed that the differences in value ascribed to his book were explicable in large part as being a consequence of the systems difficulties. Mr Naqui further complained that the two reports prepared for Toronto Dominion as a result of his mismarking were; flawed in their methodology; misguided in their analysis; and wrong in their conclusions. In the process of criticising the two reports Mr Naqui also sought to elaborate on how the systems issues could have contributed to the problems with his book. Mr Naqui stated that a proper investigation of Toronto Dominion's system would have revealed the extent of the anomalies inherent within it. Mr Naqui highlighted the fact that neither report had been prepared independently and thus the report writers were not in a position to judge the accuracy of the system. Had the reports been prepared independently, Mr Naqui asserted that it would have revealed the extent of the inaccuracies of the system which would have had a considerable impact on Mr Naqui's very large book. Mr Naqui submitted that because neither report constituted an independent assessment of the systems, it had not been possible

to asses the nature and extent of the systems difficulties. Mr Naqui relied on various electronic communications between him and some of his former colleagues which he asserted provided support for his contentions both about the scope of the systems issues and also about the widespread knowledge of these difficulties.

5.4. Mr Naqui submitted that as the systems produced inaccurate figures he was obliged to amend some quotes to produce an accurate output. Mr Naqui observed that this process of amending quotes, so that his positions were marked to a position closer to where he believed the market would ultimately clear or transact, required an element of subjectivity on his behalf. Mr Naqui explained that, unfortunately, he traded in products which were illiquid and for which it was difficult to get market price transparency. Mr Naqui claimed that despite his best endeavours, some of his marks may have been inaccurate. Mr Naqui additionally observed, when commenting on the subjectivity involved in marking such products, that the writer of the most recent expert report provided for Toronto Dominion, had demonstrated a lack of understanding of the market in such products

5.5. Mr Naqui also complained that the FSA had adopted an 'inappropriate' methodology, to illustrate the effect of his mismarking. Mr Naqui submitted that the resulting calculation of the size of the necessary re-valuation was not accurate. Additionally Mr Naqui refuted the FSA's use of the Value at Risk Level (VAR), for his book, as a measure against which the seriousness of his mismarking could be assessed. Mr Naqui stated that there was ample evidence to demonstrate that, as others at Toronto Dominion were aware, the VAR was both calculated inaccurately and was a poor measure in the light of the turbulent market conditions of mid-2008. In fact the VAR was not actively used as it was exceeded so often and was therefore merely a guide. Mr Naqui further stated that the VAR was something which he regularly exceeded due to the size of his book and the positions he held. Mr Naqui therefore said that the extent of the loss attributed to his mismarking should not be judged against the CAD$10 million VAR.

5.6. In addition to criticising the methodology used for calculating the losses, which Toronto Dominion and the FSA attributed to Mr Naqui, he also questioned the

materiality of these losses. Mr Naqui noted that losses were crystallized at a time of severe market stress which would have compounded any losses that may have already accrued. However he also sought to compare the size of these losses when compared to the size of his book. Mr Naqui stated that the CAD$96million of losses attributed to him, albeit disputed by him, still only reflected a small percentage of his book. In addition to submitting that only minor systems errors on a book such as his, could result in such losses, he also questioned whether such losses were in fact actually material.

5.7. Mr Naqui further contended that not only had it been appropriate for him to have amended the quotes but he claimed that he had been transparent throughout. He asserted that GMO was aware that he had amended certain quotes and that therefore he can not have been engaged in mismarking. Mr Naqui went on to assert that those figures that he had provided had been for information purposes only. Indeed he claimed that he had informed GMO that they should use other sources of pricing information. However because of the evident weaknesses and failings of GMO they went on to rely on the figures he had given to them. Mr Naqui further complained that the FSA had failed to properly elicit and then test the accounts of the individuals from GMO who the FSA had contacted. Notwithstanding the foregoing Mr Naqui did concede that he had become aware that GMO were using his quotes, which he claimed had been forwarded for information purposes only, and yet he had continued to forward amended quotes to them.

5.8. Mr Naqui also submitted that it was evident that he had not engaged in mismarking as he had no motive to do so. Mr Naqui submitted that whether or not it was possible to identify a motive was highly relevant to the determination of this case. Mr Naqui asserted that as no such motive could be identified it could safely be assumed that he would not have engaged in mismarking.

5.9. Mr Naqui commented that the FSA's willingness to disregard something as fundamental as a motive was indicative of the unfair approach that the FSA had taken throughout these proceedings. Mr Naqui claimed that the FSA had pre-judged the case against him and that any fact which ran counter to the FSA's view of the case

was therefore disregarded. Moreover, Mr Naqui claimed, the FSA was not interested in investigating any evidence which might demonstrate that others had been guilty of some misconduct. Instead the FSA has remained focussed on Mr Naqui alone. This was something which he thought was extremely unfair.

5.10. Having submitted that he had not engaged in deliberate misconduct and that he was not therefore knowingly concerned in the breach of Principle 2 by Toronto Dominion Mr Naqui suggested that the proposed financial penalty was too high. Mr Naqui sought to draw comparisons with other financial penalties imposed on individuals who were found to have engaged in mismarking. Mr Naqui submitted that it would be inappropriate to impose a financial penalty which was considerably higher than that imposed on others when his conduct, if he was found to have engaged in misconduct, was indistinguishable from others. In particular Mr Naqui highlighted the fact that the size of his alleged mismarking was less than with one other, and he noted that he had been engaged in proprietary trading and therefore no client money was at risk.

5.11. Mr Naqui further submitted that if the FSA were to find that he had engaged in misconduct the financial penalty proposed in the Warning Notice would cause him severe financial hardship. Indeed Mr Naqui contended that the imposition of the proposed financial penalty upon him would result in him being made bankrupt. Mr Naqui added that beyond the financial hardship that would result from any such financial penalty it would also cause him considerable stress and that this would thereby impact severely upon his health.

Findings

5.12. The FSA finds that Mr Naqui engaged in misconduct by amending quotes and forwarding these on. The FSA finds that Mr Naqui acted improperly in mismarking his book and subverting the IPV process and that he was therefore knowingly concerned in a breach of Principle 2 by Toronto Dominion.

5.13. Mr Naqui accepted that he had continued to forward amended quotes to GMO even when he was aware that they were using them for the IPV. The FSA finds that this concession confirms that Mr Naqui was knowingly concerned in Toronto Dominion's breach of principle 2. However the FSA finds that Mr Naqui's misconduct was more serious than he had tacitly accepted with that concession and extended over the entirety of the period between July 2006 and June 2008. In particular the FSA finds that Mr Naqui had intended to mislead GMO from the time when he had commenced forwarding amended quotes to them. Mr Naqui has sought to suggest that others were aware of what he was doing. However the FSA finds as credible the evidence of Mr Naqui's former colleagues including those with whom he had dealings in GMO. The individuals at GMO make clear that they were unaware of what Mr Naqui was doing and therefore the FSA finds that Mr Naqui was not acting in a transparent manner. Instead the FSA finds that Mr Naqui altered quotes within the runs he forwarded to GMO so that he could avoid GMO detecting his mismarking. The FSA finds that his mismarking also involved entering values in his trading book which materially differed from externally sourced market quotes.

5.14. The FSA finds that there was no valid reason for Mr Naqui to amend the quotes. Instead the FSA finds that Mr Naqui did so for his own benefit as he sought to disguise the losses he had made on his book. The FSA finds that this was motive enough for Mr Naqui to have engaged in misconduct, albeit the FSA does not accept that in a case of mismarking it is necessary to demonstrate that the individual had a motive.

5.15. It is clear from the foregoing that the FSA finds that 'systems issues' do not excuse or explain Mr Naqui's conduct. The FSA does not accept the criticisms made by Mr Naqui of both the reports produced for Toronto Dominion. In particular the FSA finds that the recent expert report rebuts Mr Naqui's contention that he was obliged to amend particular quotes to negate the effects of systemic problems. The FSA finds that Mr Naqui selectively amended quotes only where it was necessary to disguise losses in his book. The FSA finds that were Mr Naqui to have been seeking to cater for systemic issues then it would have been more appropriate for Mr Naqui to have amended all of the quotes that he forwarded to GMO. The FSA finds that whilst there

may have been some problems within the systems these did not excuse his decision to amend quotes and nor did they explain the extent of the losses created by his mismarking. The FSA also rejects Mr Naqui's claim that, having attempted to highlight the systems issues to senior management through a paper on the topic, he then only ever escalated this to his immediate superior in the course of face to face discussions.

5.16. Furthermore the FSA does not accept that the difficulties in marking his book excuse Mr Naqui's conduct. Nor does the FSA accept that the subjectivity involved in marking his positions provides a valid explanation for the extent of the losses that were revealed after Mr Naqui's misconduct had come to light. The FSA finds that the majority of these losses were due to Mr Naqui's mismarking and that these losses were extremely significant. In deciding what value should be attributed to the losses incurred by Toronto Dominion, the majority of which is attributable to Mr Naqui's misconduct, the FSA finds the figure of CAD$96million to be a fair assessment. The FSA also finds that the VAR was a reasonable measure against which to judge these losses and that therefore the FSA finds that these losses were material.

5.17. The FSA does not accept that there has been any genuine unfairness to Mr Naqui in the investigation. In particular the FSA does not accept Mr Naqui's criticism that others, who have not been investigated, may also be culpable of misconduct. The FSA finds that this has no bearing either on whether Mr Naqui engaged in the misconduct as alleged or whether any sanctions should be imposed upon him and if so what they should be.

5.18. An analysis of the sanctions to be imposed upon Mr Naqui is set out below. However it should be noted that the FSA finds that Mr Naqui's misconduct was far more serious than the comparator cases. As such the FSA rejects Mr Naqui's complaint that the financial penalty is in excess of that which has been imposed on others. The FSA finds that Mr Naqui's conduct merits the financial penalty for a number of reasons not the least of which are; his seniority within the firm; the extent of the mismarking that he engaged in; the period of time over which he engaged in the

misconduct and that another Toronto Dominion employee was made subject to a regulatory penalty at the time that Mr Naqui was mismarking his book.

5.19. Furthermore the FSA does not consider that it should exercise its discretion to reduce the financial penalty to take account of Mr Naqui's financial circumstances. The FSA does not propose to exercise its discretion to reduce its financial penalty as the FSA does not accept Mr Naqui's statement of his means. Instead the FSA believes that Mr Naqui has access to sufficient funds to meet the financial penalty in full. The FSA therefore does not accept that Mr Naqui would suffer severe financial hardship.

Conclusions

5.20. In light of these findings the FSA concludes that Mr Naqui over a period of two years, deliberately mismarked positions on his trading book and avoided discovery of this mismarking by providing misleading information that he had deliberately altered for use in Toronto Dominion's valuation control process. Mr Naqui's actions amount to a sustained course of deliberate and dishonest misconduct, in order to overstate his trading performance. Such conduct falls far below the standards expected of a senior market professional and clearly demonstrates that Mr Naqui lacks honesty and integrity.

5.21. By virtue of his deliberate misconduct, Mr Naqui was knowingly concerned in the following failure by the firm to conduct its business with due skill care and diligence in breach of Principle 2:

(1) He deliberately provided altered quotes to those conducting the IPV process so he was knowingly concerned in the firm's failure to apply its pricing control process properly.

(2) He mismarked his book and took deliberate steps to ensure that this was not detected so he was therefore knowingly concerned in the failure to price accurately and to prevent or detect the pricing issue.

6. SANCTION

Financial penalty

6.1. The principal purpose for which the FSA imposes sanctions is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant behaviour.

6.2. The FSA has taken all the circumstances of this case into account in deciding that the imposition of a financial penalty in this case is appropriate, and that the level of the penalty proposed is proportionate. The FSA has had particular regard to the guidance set out in Chapter 6 of DEPP. The FSA has also had regard to the provisions of the Enforcement Manual, which were in force for the early part of the Relevant Period.

6.3. In determining whether a financial penalty is appropriate and proportionate, the FSA considers all the relevant circumstances of the case. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be of relevance in determining the amount of a financial penalty. In deciding the appropriate penalty, the FSA considers the factors outlined below to be particularly relevant:

Deterrence: DEPP 6.5.2G (1)

6.4. In determining the appropriate level of penalty, the FSA has had regard to the need to promote high standards of regulatory conduct by deterring those who have committed breaches from committing further breaches and to help to deter others from committing similar breaches.

6.5. On 16 November 2007, the FSA issued a Final Notice in relation to Simon Brignall, another trader at Toronto Dominion, who was sanctioned for mismarking. Mr Naqui's misconduct overlapped with Brignall's and continued after this Notice was issued to him. Mr Naqui would therefore have been aware that such conduct was wrong and would not be tolerated by the FSA.

The nature, seriousness and impact of the breach

6.6. Mr Naqui's misconduct was deliberate, frequent and repeated, taking place over a period of up to two years.

6.7. Mr Naqui was a Managing Director with considerable trading experience and was also Head of Desk and responsible for more junior traders. Mr Naqui was in a position of trust and was fully aware of his responsibilities to mark his book in line with the market.

6.8. The breach in which he was knowingly concerned revealed serious weaknesses in Toronto Dominion's procedures and controls.

6.9. By the end of the Relevant Period Mr Naqui's mismarking had a very substantial impact on the valuation of Toronto Dominion's trading book. The FSA considers that Mr Naqui' mismarking was responsible for a majority of Toronto Dominion's CAD$96 million write down.

The extent to which the breach was deliberate or reckless: DEPP 6.5.2G (3)

6.10. Mr Naqui's misconduct was deliberate: he deliberately mismarked his positions and then took deliberate and dishonest steps to avoid the mismarking being detected.

6.11. By the end of the Relevant Period, Mr Naqui's mismarking materially overstated his trading performance, and his misconduct involved the deliberate subversion of Toronto Dominion's internal procedures to prevent this exaggeration being detected. In addition to his core salary, he received substantial bonus payments from Toronto Dominion during the Relevant Period that reflected the misstated performance of his trading book and did not take account of his subversion of the IPV process.

Whether the person on whom the penalty is to be imposed is an individual: DEPP 6.5.2G (4)

6.12. The FSA has had regard to the fact that Mr Naqui is an individual and so the penalty will have a substantial impact upon him.

The size (where the person is a firm), *financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2G (5)*

6.13. The FSA does not believe that Mr Naqui will suffer serious financial hardship if this financial penalty is imposed. The FSA believes that Mr Naqui has access to adequate resources to be able to pay the financial penalty.

Difficulty of detecting the breach: DEPP 6.5.2G (7)

6.14. By altering quotes which he submitted to GMO, Mr Naqui was able to conceal his mismarking throughout the Relevant Period, until he was made redundant.

Conduct following the breach: DEPP 6.5.2G (8)

6.15. Mr Naqui did not bring his mismarking to the attention of his employer and after its discovery he denied that he had mismarked his book. Mr Naqui has continued to deny that he mismarked his book and that he subverted the IPV process throughout the course of the FSA's investigation and Mr Naqui has shown no remorse for his actions.

Disciplinary record: DEPP 6.5.2G (9)

6.16. The FSA notes that Mr Naqui has not been subject to previous regulatory action and that he is no longer employed by Toronto Dominion.

6.17. Having regard to these factors and all relevant circumstances, the FSA proposes to impose a financial penalty on Mr Naqui of £750,000.

Prohibition

6.18. The FSA's effective use of the power to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities helps the FSA to work towards its regulatory objectives of protecting consumers, promoting public awareness, maintaining confidence in the financial system and reducing financial crime.

6.19. On the basis of the facts and matters described above the FSA considers that Mr Naqui has demonstrated a lack of honesty and integrity in:

(1) mismarking his trading book so as to overstate his trading performance; and

(2) knowingly undermining the operation of Toronto Dominion's pricing controls by providing altered information for use in the price verification process.

6.20. This demonstrates that Mr Naqui is not a fit and proper person to perform regulated activities. The FSA therefore proposes to make a prohibition order under section 56 of FSMA in the terms set out above. The FSA has had regard to the guidance in EG 9 and in the Enforcement Manual in deciding that a prohibition order is appropriate in this case.

7. DECISION MAKER

7.1 The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

8. IMPORTANT

8.1. This Final Notice is given to Mr Naqui in accordance with section 390 of FSMA.

Manner and time for payment

8.2. The financial penalty must be paid in full by Mr Naqui to the FSA by no later than 28 December 2010 being 14 days after the date of the Final Notice.

If the financial penalty is not paid

8.3. If all or any of the financial penalty is outstanding on 28 December 2010 the FSA may recover the outstanding amount as a debt owed by Mr Naqui and due to the FSA.

Publicity

8.4. Sections 391(4), (6) and (7) of FSMA apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the FSA must publish such information about the matter to which this Final Notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

8.5. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

8.6. For more information concerning this matter generally, you should contact Helena Varney (direct line: 020 7066 1294) or Neil Gamble (direct line: 020 7066 1884) of the Enforcement and Financial Crime Division of the FSA.

……..

Jamie Symington
Head of Department
FSA Enforcement and Financial Crime Division

Annex A

Relevant Rules, Guidance and Other Regulatory Provisions

1. Enforcement Guide

1.1. EG 9.3-9.7 sets out the FSA's general policy in deciding whether to make a prohibition order and/or withdraw an individual's approval. The FSA will consider all the relevant circumstances including whether other enforcement action should be taken or has been taken already against that individual by the FSA. In some cases the FSA may take other enforcement action against the individual in addition to seeking a prohibition order.

1.2. EG 9.4 provides that the FSA has the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. Depending on the circumstances of each case, the FSA may seek to prohibit individuals from performing any class of function in relation to any class of regulated activity, or it may limit the prohibition order to specific functions in relation to specific regulated activities. The FSA may also make an order prohibiting an individual from being employed by a particular firm, type of firm, or any firm.

1.3. EG 9.5 provides that the scope of a prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of the risk which he poses to consumers or to the market generally.

1.4. EG 9.9 provides that the FSA will consider all the relevant circumstances of the case. Those relevant to this case include:

(1) Whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2.1(Honesty, integrity and reputation); FIT 2.2 (Competence and capability); and FIT 2.3 (Financial soundness).

(2) Whether, and to what extent, the approved person has

> been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under FSMA (including the Principles and other rules).

(5) The relevance and materiality of any matters indicating unfitness.

(6) The length of time since the occurrence of any matters indicating unfitness.

(7) The particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates.

(8) The severity of the risk which the individual poses to consumers and to confidence in the financial system.

(9) The previous disciplinary record and general compliance history of the individual including whether the FSA, any previous regulator, designated professional body or other domestic or international regulator has previously imposed a disciplinary sanction on the individual.

2. Decision Procedure and Penalties Manual

2.1. DEPP 6.1.2 G provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour. Financial penalties and public censures are therefore tools that the FSA may employ to help it to achieve its regulatory objectives.

DEPP 6.2 Deciding whether to take action

2.2. DEPP 6.2.4 G provides that the FSA may take disciplinary action against an approved person where there is evidence of personal culpability on the part of that approved person. Personal culpability arises where the behaviour was deliberate or where the approved person's standard of behaviour was below that which would be reasonable in all the circumstances at the time of the conduct concerned.

2.3. DEPP 6.2.6 G lists some additional considerations that may be relevant when deciding whether to take action against an approved person pursuant to section 66 of FSMA, including:

(1) The approved person's position and responsibilities. The FSA may take into account the responsibility of those exercising significant influence functions in the firm for the conduct of the firm. The more senior the approved person responsible for the misconduct, the more seriously the FSA is likely to view the misconduct, and therefore the more likely it is to take action against the approved person.

(2) Whether disciplinary action would be a proportionate response to the nature and seriousness of the breach by the approved person.

DEPP 6.5 Determining the appropriate level of financial penalty

2.4. DEPP 6.5.2 G lists a number of factors which may be relevant to determining the appropriate level of financial penalty to be imposed on a person under FSMA. The relevant factors are set out below.

2.5. When determining the appropriate level of penalty, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business (DEPP 6.5.2 G (1)).

2.6. The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached. Among the relevant considerations are the duration and frequency of the breach and the loss or risk of loss caused to consumers, investors or other market users (DEPP 6.5.2 G (2)).

2.7. The FSA will have regard to the extent to which the breach was deliberate or reckless. The FSA will regard as more serious a breach which is deliberately or recklessly committed. If the FSA decides that the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case (DEPP 6.5.2 G (3)).

2.8. The matters to which the FSA may have regard in determining whether a breach was deliberate or reckless include, but are not limited to, the following:

(a) whether the breach was intentional, in that the person intended or foresaw the potential or actual consequences of its actions; and

(b) where the person has not followed a firm's internal procedures, the reasons for not doing so.

(c) whether the person has given no apparent consideration to the consequences of the behaviour that constitutes the breach.

2.9. When determining the amount of a penalty to be imposed on an individual, the FSA will take into account that individuals will not always have the resources of a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level (DEPP 6.5.2 G (4)).

2.10. The FSA may have regard to the amount of benefit gained or loss avoided as a result of the breach, for example: the FSA will impose a penalty which is consistent with the principle that a person should not benefit from the breach; and the penalty should also act as an incentive to the person (and others) to comply with regulatory standards (DEPP 6.5.2 G (6)).

2.11. A person's incentive to commit a breach may be greater where the breach is, by its nature, harder to detect. The FSA may, therefore, impose a higher penalty where it considers that a person committed a breach in such a way as to avoid or reduce the risk that the breach would be discovered, or that the difficulty of detection (whether actual or perceived) may have affected the behaviour in question (DEPP 6.5.2 G (7)).

2.12. The FSA may take into account the conduct of the person in failing to bring quickly, effectively and completely the breach to the FSA's attention, and the degree of co-operation the person showed during the investigation of the breach by the FSA.

2.13. The FSA may take the previous disciplinary record and general compliance history of the person into account. This will include whether the FSA has taken any previous disciplinary action against the person, and the general compliance history of the person (DEPP 6.5.2 G (9)).