
FINAL NOTICE

To: **Travis Lloyd Klein**

Reference
Number: IRN TXK54816

Date: 18 November 2024

1. ACTION

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

- a. publishes a statement of Travis Lloyd Klein's ("Mr Klein") misconduct for breaching Individual Conduct Rule 1, pursuant to section 66 of the Act; and
- b. makes an order prohibiting Mr Klein from performing any function in relation to any regulated activity carried on by an authorised person, exempt person, or exempt professional firm, pursuant to section 56 of the Act.

1.2 The Authority considers that Mr Klein's misconduct merits the imposition of a financial penalty. Had Mr Klein not provided verifiable evidence that the imposition of a financial penalty of any amount would cause him serious financial hardship, the Authority would have imposed a financial penalty of £103,700 on Mr Klein. In that event, Mr Klein would have qualified for a 30% discount (Stage 1) under the Authority's executive settlement procedure, reducing the penalty to £72,600.

2. SUMMARY OF REASONS

- 2.1. Mr Klein was a trader on the Metals and Bulks Trading Desk at Macquarie Bank Limited (“MBL”) from August 2017, initially working in Sydney Australia. From October 2018, Mr Klein worked at MBL’s London Branch. MBL operates in the UK through its London Branch and has been authorised by the Authority since 1 December 2001.
- 2.2. From 5 December 2018, Mr Klein was a Certified Employee at MBL for the purpose of client dealing and was therefore subject to the Authority’s Individual Conduct Rules, including the requirement to act with integrity (“ICR 1”).
- 2.3. From 17 June 2020 to 24 February 2022 (“the Relevant Period”), Mr Klein engaged in a course of conduct that involved recording fictitious trades on the internal systems of MBL (“Fictitious Trades”). The Fictitious Trades were designed by Mr Klein to conceal his actual loss-making positions. The Fictitious Trades were not visible externally to MBL and therefore no external exchange, client or counterparty was aware of the Fictitious Trades, or suffered loss as a result of them, and they did not impact the market. However, the Fictitious Trades appeared within MBL’s internal systems as though they were exchange-listed trades and led to incorrect positions and profits and losses being internally recorded and reported to MBL's management.
- 2.4. According to trade analysis carried out by MBL as part of the unwinding of Mr Klein’s loss-making positions, Mr Klein recorded and amended 426 Fictitious Trades during the Relevant Period. During this time, Mr Klein took deliberate steps to avoid the Fictitious Trades and the true risk position in the relevant books being detected by certain MBL systems and control processes. Mr Klein also used his working relationships with internal controls teams and Commodity Markets and Finance (“CMF”) supervisors to minimise scrutiny.
- 2.5. The Fictitious Trades were able to be recorded and go undetected for nearly two years as a result of Mr Klein’s deliberate steps, combined with deficiencies in MBL's systems and controls identified by the Authority relating to oversight and monitoring of trader positions.
- 2.6. On 23 February 2022, MBL detected what appeared to be fictitious trading activity following an internal routine risk controls report. Once discovered, the Fictitious

Trades were removed from MBL's systems and Mr Klein's loss-making positions were unwound. These remediating actions resulted in losses for MBL of approximately USD 57.8 million.

- 2.7. When the Fictitious Trades were identified, it was also found that during the Relevant Period Mr Klein had deliberately amended broker quotes to show incorrect pricing in order to avoid his trading losses being identified.
- 2.8. Mr Klein acted without integrity and therefore breached ICR 1 by recording the Fictitious Trades and by taking steps to avoid the Fictitious Trades being detected. Furthermore, his actions demonstrate that he does not meet the Fit and Proper test contained in the Authority's Handbook due to his dishonesty and lack of integrity.
- 2.9. The Authority hereby:
 - a. publishes a statement of Mr Klein's misconduct for breaching ICR 1, pursuant to section 66 of the Act; and
 - b. makes an order prohibiting Mr Klein from performing any function in relation to any regulated activity carried on by an authorised person, exempt person, or exempt professional firm pursuant to section 56 of the Act because he lacks fitness and propriety.
- 2.10. The Authority would have imposed a financial penalty of £103,700 on Mr Klein (which would have been reduced to a penalty of £72,600 after granting a 30% discount under the Authority's executive settlement procedure), had he not provided verifiable evidence that the imposition of a financial penalty of any amount would cause him serious financial hardship.

3. DEFINITIONS

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

"CAB/s" means trades that were Cancelled, Amended and Backdated and are a post-trade reporting control.

"CMF" means Commodity Markets and Finance

"DEPP" means the Authority's Decision Procedure and Penalties Manual.

"EOD" means End of Day.

"Fictitious Trades" means the recording and amending of fictitious trades, in the manner described in this Notice, by Mr Klein from 17 June 2020 to 23 February 2022.

"GCS" means the Global Clearing System.

"ICR 1" means Rule 1 of the Authority's Individual Conduct Rules.

"Individual Conduct Rules" means the rules set out on Chapter 2 of the Code of Conduct Sourcebook (COCON) issued under section 64A of the Act.

"IVT" means Independent Valuation Team.

"MBL" means Macquarie Bank Limited which is incorporated in Australia and has a branch registered in the UK.

"MGL" means Macquarie Group Limited, listed in Australia.

"MOD" means the Market Operations team within the Operations Division.

"MTS" means Macquarie Treasury System.

"P&L" means Profit and Loss.

"Relevant Period" means between 17 June 2020 and 24 February 2022.

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

"the Authority" means the Financial Conduct Authority.

"the Bulks Desk" means the Bulks trading desk within the Metals and Bulks Trading Desk.

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

“the Metals and Bulks Trading Desk” is divided into three trading areas: Precious Metals, Base Metals and Bulks.

“the PC Team” means the Product Control Team.

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

4. FACTS AND MATTERS

Background

MGL and MBL

- 4.1. Macquarie Bank Limited is a subsidiary of Macquarie Group Limited (“MGL”) which is a global financial services group listed in Australia operating in 34 markets in asset management, retail and business banking, wealth management, leasing and asset financing, market access, commodity trading, renewables development, specialist advice, access to capital and principal investment. MBL is incorporated in Australia and is regulated by the Australian Prudential Regulation Authority. MBL operates in the UK through its London branch and has been authorised by the Authority since 1 December 2001.
- 4.2. MBL is organised globally into a number of operating groups including Commodities and Global Markets, which includes the CMF division. The CMF division incorporates different trading areas, including the Metals and Bulks Trading Desk.

Mr Klein

- 4.3. Mr Klein was employed by MBL from August 2017, starting as a graduate, and was initially based in Sydney. In October 2018, Mr Klein moved to MBL’s London branch on an international assignment. Mr Klein was registered with the Authority as a Certified Employee for the purpose of client dealing between 5 December 2018 and 24 February 2022. Mr Klein was therefore subject to the Certification Regime.

- 4.4. Throughout his employment at MBL, Mr Klein worked on the Metals and Bulks Trading Desk, which is divided into three trading areas: Precious Metals, Base Metals and Bulks. Mr Klein worked on the Bulks Desk during the Relevant Period. As part of his role in London, Mr Klein traded both as an agent for customers, and as principal on behalf of MBL itself. Trading as principal involved him managing the risk of the book. Within the Metals and Bulks Trading Desk, Mr Klein primarily traded Freight, Iron Ore, Steel and Coal derivatives (not the underlying physical commodities).
- 4.5. Mr Klein resigned from MBL on 24 February 2022.

The Fictitious Trades

- 4.6. In June 2020, Mr Klein was asked to de-risk his Freight book as a result of an escalation of losses in his book, and to step back from taking on new risks for a period of two weeks. This was referred to on the desk as being 'benched', a strategy used by some CMF supervisors for traders making losses to take time out from their positions to observe the market and revisit their positions.
- 4.7. Mr Klein formed the view that he would not be able to comply with the de-risking instruction in a matter of days based on a lack of liquidity in the Freight market. Despite accepting that it would have been possible to de-risk in a matter of weeks, Mr Klein has admitted to the Authority that instead he started to book Fictitious Trades with the effect of making it appear that the relevant risk in his book had been lowered. He then continued to book Fictitious Trades for the purpose of concealing his trading losses.
- 4.8. Mr Klein told the Authority that his rationale for not waiting to de-risk his book as he had been instructed to do, was that he felt he could not disappoint CMF supervisors. The initial Fictitious Trades gave the appearance that Mr Klein's loss position had been lowered, appearing to show on internal records that the risk had been minimised as requested. However, those Fictitious Trades in fact had no external impact or economic reality and only existed on MBL's systems.
- 4.9. Mr Klein then proceeded to engage in recording the Fictitious Trades, during the Relevant Period, to continue to conceal his trading losses. In doing so, he deployed two strategies:

- a. Strategy 1 - From around mid-June 2020 to late-July 2020, Mr Klein entered the Fictitious Trades into MBL's risk management system, Macquarie Treasury System ("MTS"). He would leave those Fictitious Trades open for several days before cancelling them. The Authority refers to this as Strategy 1, or the 'Book/Amend/Cancel' strategy. The Fictitious Trades appeared as "breaks" in the End of Day ("EOD") futures reconciliation carried out by the Market Operations team within the Operations Division ("MOD") at MBL. The relevant area within the back office responsible for the reconciliations would initially seek the trader, in this case Mr Klein, to resolve the breaks before seeking an explanation if not resolved. To prevent the Fictitious Trades continuing to appear as breaks at the EOD futures reconciliation, Mr Klein changed strategy and started changing the clearing date i.e. Strategy 2.
 - b. Strategy 2 - From late-July 2020 to 23 February 2022, Mr Klein entered the Fictitious Trades into MTS with a clearing date of one (or more) day/s in the future to avoid appearing in the EOD futures reconciliation. Trades recorded on MTS were susceptible to being modified directly by traders in order to cancel, backdate or make any other amendments to a trade. Mr Klein used this direct access to MTS to amend the Fictitious Trades on an ongoing basis to continually change the clearing date to a future date. The Authority refers to this as Strategy 2, or the 'clearing date roll' strategy. These amendments in MTS generated a significant amount of Cancellations, Amendments and Backdates ("CABs") in respect of the relevant Fictitious Trades. Each CAB showed as an entry on MTS for each of the respective trades.
- 4.10. Mr Klein recorded Fictitious Trades in books sitting on the Bulks Desk within the Metals and Bulks Trading Desk from around mid-June 2020 to 23 February 2022. During this time, Mr Klein was trading from London but booking trades to an MBL Sydney trading book.
 - 4.11. According to the trade analysis carried out by MBL as part of the unwinding of Mr Klein's loss-making positions, Mr Klein recorded 426 Fictitious Trades. 22 trades were in Strategy 1, and 420 trades in Strategy 2. 16 trades of the total 426 were both Strategy 1 and 2 and these 16 are therefore accounted for in each strategy.
 - 4.12. Between June 2020 and December 2021, according to MBL's analysis, Mr Klein was responsible for 9,269 CABs out of 13,311 total CABs for the entire Bulks Desk, between CABs generated by his legitimate trading and CABs generated by the

Fictitious Trades. The Authority has found that Mr Klein was a significant outlier in terms of the number of CABs generated, compared to the other traders on the Bulks Desk, and accounted for 70% of the Bulks Desk's total CABs during this period.

- 4.13. On 23 February 2022, MBL detected the fictitious trading following an internal routine risk controls report which indicated a limit breach caused by one of Mr Klein's Fictitious Trades. This activity comprised a Fictitious Trade which showed as initially having been recorded by Mr Klein and closed-out by him on 23 February 2022, but was also unclosed by him again later that same day. On the same day, concerns were escalated internally and a meeting with Mr Klein was arranged for the following day. During that meeting, Mr Klein admitted to having engaged in recording the Fictitious Trades and taking steps to avoid their detection. Later that day, Mr Klein resigned with immediate effect. Mr Klein agreed to assist, and subsequently did assist, MBL with its internal investigation of the misconduct.
- 4.14. Mr Klein's Fictitious Trades enabled him to conceal his loss-making positions which, when identified, were unwound on 24 and 25 February 2022. These remediating actions resulted in losses for MBL of approximately USD 57.8 million. No clients or counterparties were impacted by the Fictitious Trades and they did not directly impact the market.

Actions Taken to Avoid Detection

- 4.15. During the Relevant Period, Mr Klein deliberately circumvented three of MBL's controls in order to avoid the Fictitious Trades being detected.

End of Day futures reconciliations

- 4.16. MBL's MOD was responsible for the daily performance of EOD futures reconciliations between trades in the MTS (which was populated with data by MBL traders) and the Global Clearing System ("GCS") (which contained data direct from the relevant exchanges). The EOD futures reconciliation identified instances in which details of trades in MTS did not match those in GCS, with these mismatches called 'breaks'. MOD was also responsible for reverting to a trader to resolve any breaks in the data and/or for escalating the breaks to the relevant team depending on the nature and/or duration (in days) of the break.

- 4.17. Mr Klein recorded the Fictitious Trades in MTS. These appeared within MBL's internal systems as exchange-listed trades, but they had no corresponding external exchange position. This would trigger a break appearing in the EOD futures reconciliations and cause MOD to contact Mr Klein to action and resolve. This control was triggered, in particular, under Strategy 1.
- 4.18. To avoid the Fictitious Trades being detected in the EOD futures reconciliations, Mr Klein relied upon his good working relationship with MOD, and the lack of challenge to his breaks from MOD and CMF supervisors.
- 4.19. For example, on 27 July 2020, Mr Klein discussed a number of breaks with a MOD member during a one-to-one chat. MOD asked about the clearing of a number of duplicate trades which had been discussed previously. Mr Klein confirmed those had been cancelled without further detail. Similarly, on 3 May 2021, a CMF supervisor asked Mr Klein why a trade was booked, then closed 12 days later to be unclosed the following day and then amended to a future trade date. Mr Klein's response was that he had cleared it from the EOD futures reconciliations report. On another instance, on 5 August 2020, MOD flagged a break to Mr Klein to seek confirmation that a trade was a good deal, in addition to requesting that it be followed up with the broker, as it appeared to be missing from the exchange. In this way, when a trade that kept appearing on the EOD reconciliation reports was followed up, Mr Klein would eventually cancel it without any further explanation being sought from him or him facing any consequences.
- 4.20. In a one-on-one electronic chat with Mr Klein on 16 June 2020 discussing the timing of trades, a member of MOD suggested to Mr Klein that entering trades with a clearing date in the future, when he was aware that the trade would be entered on the exchange at a later date, would avoid breaks in the EOD Futures reconciliation. From that point in time, Mr Klein used that technique to prevent the Fictitious Trades from appearing as breaks as he moved to Strategy 2.

Profit and loss daily reconciliation

- 4.21. MBL's Product Control team ("the PC Team") was responsible for ensuring all trading book positions are subject to checks of daily profit and loss ("P&L") and reconciling it with an estimate P&L that each trader provided at the end of each trading day to check on P&L discrepancies, and to mitigate the risk that P&L

generated from errors and/or unauthorised trading is not detected, investigated or escalated.

- 4.22. The PC Team was required to request an explanation from the business for any backdated trades greater than the threshold amount set at USD 50,000. As a result, multiple material backdated trades that netted to a P&L amount below investigation thresholds were not required to be analysed. In an exchange with the PC Team on 3 June 2020, just weeks before using Strategy 1, Mr Klein queried what the threshold variance amount was and he was informed of the USD 50,000 threshold.
- 4.23. During the use of Strategy 1, Mr Klein netted-off his positions by cancelling and rebooking the Fictitious Trades. In the course of using Strategy 2, Mr Klein used the information about the threshold variance amount and created offsetting Fictitious Trades that appeared within MBL's internal systems as real exchange-listed trades to generate false P&L and keep his desk below the threshold thus facing very little scrutiny.
- 4.24. Mr Klein used his working relationship with the PC team, in addition to the fact that feedback would then be requested from him by the PC Team, to minimise the PC Team's scrutiny of the discrepancies that appeared in his P&L as a result of the Fictitious Trades. If explanations were requested by the PC team, Mr Klein often provided superficial and, where they related to Fictitious Trades, untrue explanations, since the only reason that could explain P&L divergencies for a trade that was fictitious would be that such trade only existed within MBL's internal systems.
- 4.25. Mr Klein developed a pattern of conduct to deal with the PC Team:
 - a. Mr Klein contacted junior members of the PC Team individually with an estimate of his figures and requested a breakdown of the PC Team's figures;
 - b. he alerted the PC Team to backdates and provided a brief superficial explanation/justification (which the PC Team accepted with insufficient scrutiny or follow up);

- c. Mr Klein requested a holdout or adjustment to P&L for a day whilst he made an amendment signposted at the explanation, or requested an adjustment to prevent the variance exceeding the USD 50,000 threshold; and
- d. having agreed the course of action with a member of the PC Team on an individual chat, he would also on occasion agree for a clean email to be sent to the wider PC Team distribution list confirming the holdout and subsequent amendment.

4.26. Examples of the above conduct include the following:

- a. On 1 September 2021, in an instant message chat between Mr Klein and the PC Team, a variance of USD 700,000 is discussed and Mr Klein asks for an email be sent to him to approve without anybody being copied in.
- b. On 23 November 2021, Mr Klein incurred a significant backdate of over USD 50 million when he cancelled a number of Fictitious Trades and booked 23 new Fictitious Trades. He proactively contacted the PC Team on 23 November 2021 requesting a holdout of USD 579,000 due to a trade for which he purportedly entered "*the wrong price*" and explaining that the over USD 50 million in backdates and new trades was "*due to error in close out date.*" The PC Team did not challenge that explanation or seek greater detail. Mr Klein then provided his P&L estimate of USD 272,000 which, after the USD 579,000 adjustment, was in line with the PC Team's number.
- c. Prior to the 23 November 2021 email exchange discussed above, Mr Klein had contacted a PC Team member in a private chat. With respect to the unusually large backdates and new trade amounts, Mr Klein stated that he "*had to rebook a few deals*" and "*screwed up the close out date*".

4.27. In summary, to avoid detection of the discrepancies between Mr Klein's P&L estimates and the PC Team's independent P&L summary, and therefore avoid detection of the Fictitious Trades, Mr Klein:

- a. recorded, cancelled or amended Fictitious Trades;
- b. recorded and amended offsetting Fictitious Trades to keep his desk below the threshold variance amount USD 50,000;

- c. omitted large backdates from his P&L estimates;
- d. took conversations about backdates and holdouts (amount of money held back for trades being investigated) 'offline' and kept other PC Team members or traders away from those discussions; and
- e. provided superficial and, where they related to Fictitious Trades, untrue explanations in respect of his P&L discrepancies.

Submission of false market quotes to IVT

- 4.28. In addition to recording and amending the Fictitious Trades, Mr Klein submitted false market quotes of volatility curves to MBL's Independent Valuation Team ("IVT") in order to make his positions appear more profitable than they were and further conceal his loss-making positions and detection of the Fictitious Trades.
- 4.29. IVT conducted independent rates testing to ensure the integrity of production marks used for the official valuation and risk calculations of trading and banking book positions where they are carried at fair value. The relevant MBL policies set out that the rates needed to be independently sourced, or independently tested where these were not independently sourced by IVT. Throughout the Relevant Period, Mr Klein provided quotes from three brokers to IVT for independent testing.
- 4.30. From June 2020 to January 2022, Mr Klein provided 73 quotes to IVT. On analysis carried out by the Authority, of these, Mr Klein falsified at least 46, which equates to 63% of the quotes provided.
- 4.31. Mr Klein falsified the content of the quotes in a range of ways, alone or in combination. He altered the figures to give a false impression of the market prices for that period of time and, on occasion, he also changed the date the quote had been received from the broker and removed months of data received from the broker quote manually before forwarding on to IVT.
- 4.32. For example, at the beginning of December 2020, Mr Klein received an email from a broker containing the Capes quote, shown in the table on the left of the picture below and labelled as "Quote from Broker" for illustration purposes. The table on

the right is what Mr Klein sent to IVT the day after, labelled “Quote to IVT”. As can be seen in the tables below, Mr Klein falsified the quote in each category and, in other brokers’ quotes, he edited or removed entire sections of the quote.

Quote from Broker						Quote to IVT					
Capes						Capes					
	10DP	25DP	50D	25DC	10DC		10DP	25DP	50D	25DC	10DC
Dec-20	3.00	2.00	105.00	0.00	1.00	Dec-20	2.00	0.00	100.00	2.00	3.00

- 4.33. Mr Klein falsified the quotes provided by the brokers before sending them to IVT to conceal loss-making positions on his book. As a direct result of falsifying the quotes, Mr Klein’s book was incorrectly valued and when the Fictitious Trades were detected and his positions were closed out in February 2022, the differences between some recorded marks and the actual market rates resulted in a further loss to MBL of USD 1.3 million. Mr Klein’s conduct in falsifying broker quotes and passing them off as genuine quotes to IVT was dishonest and lacked integrity.

Post-discovery of the Fictitious Trades

- 4.34. When Mr Klein was confronted directly by CMF supervisors on 24 February 2022, following the detection of the Fictitious Trades, he admitted what he had done.
- 4.35. Mr Klein resigned immediately and in the two weeks following his resignation, he attended two meetings with MBL to assist with its internal investigation into the misconduct. He explained how he had acted to record the Fictitious Trades and avoid detection. As a result of Mr Klein's activities during the Relevant Period, MBL incurred total losses of approximately USD 57.8 million after completing remediating actions on 24 and 25 February 2022.
- 4.36. Mr Klein then co-operated with the Authority in its investigation. Mr Klein admitted to the Authority without delay that his activity in recording the Fictitious Trades and in taking steps to avoid detection was wrong, and he acted dishonestly and without integrity. Mr Klein stated in interview with the Authority that during the Relevant Period, he was working from home as a result of the Covid-19 pandemic and his role had evolved to provide extensive support to other staff in offices of MBL in other time zones. Mr Klein described his acts as an initial mistake made in response to being asked to de-risk the book, which he thought would only last for a day, but which then spiralled out of his control. Mr Klein

nevertheless accepted before the Authority at an early stage in its investigation that in starting his activity to record Fictitious Trades and then taking steps to avoid detection in this way, he made a serious error and engaged in a course of conduct that was dishonest and lacked integrity.

5. FAILINGS

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

The Authority's expectations

5.2. The Authority's role is to ensure that the relevant markets function well which includes protecting and enhancing the integrity of the UK financial system. This integrity objective is advanced by requiring that individuals act with integrity pursuant to ICR 1. Unauthorised trading including activity of the type undertaken by Mr Klein, i.e., recording Fictitious Trades even where the effects were internal to MBL and did not have an effect on clients, counterparties or the market, risks undermining trust and confidence in the UK financial markets. Firms set internal trading policies, procedures, limits, risk tolerances and/or acceptable losses to manage financial performance and risk exposure, and to comply with legal and regulatory responsibilities. Where a trader undertakes fictitious trading and takes steps to avoid detection, it limits the ability of a firm to achieve those aims, as well as risking undermining trust and confidence in the market.

5.3. There is no room for dishonest individuals in the financial services industry. Market integrity is undermined where individuals act dishonestly and lack integrity, as Mr Klein did in respect of his activities relating to the Fictitious Trades.

Breaches

5.4. Mr Klein was a Certification Employee and was therefore required to comply with the Individual Conduct Rules. Mr Klein failed to comply with ICR 1.

5.5. In particular, Mr Klein demonstrated a lack of integrity in breach of ICR 1 and acted dishonestly as follows:

- a. Initially, Mr Klein knowingly recorded a Fictitious Trade that appeared to be a real exchange-listed trade within MBL's internal systems to give the

appearance that he had complied with an instruction by CMF supervisors to de-risk his Freight book;

- b. Thereafter and throughout the Relevant Period, Mr Klein deliberately recorded and amended Fictitious Trades that were not visible externally but appeared within MBL's internal systems as exchange-listed trades;
 - c. He took steps to conceal the Fictitious Trades from being detected by MBL's controls described in this Notice, and prevent the true risk position in the relevant books being identified by the EOD futures reconciliations process;
 - d. He knowingly misstated the P&L of his books to conceal the true risk position in the relevant books; and
 - e. He falsified broker volatility curve quotes and passed them off as genuine quotes to IVT to prevent MBL from identifying Mr Klein's P&L misstatements and conceal his loss-making positions.
- 5.6. Mr Klein resigned upon MBL detecting the Fictitious Trades and accepted to the Authority that his conduct was dishonest and lacked integrity.

Mr Klein's fitness and propriety

- 5.7. The Authority has had regard to the guidance set out in its Handbook and other relevant regulatory provisions when assessing Mr Klein's fitness and propriety.
- 5.8. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing an individual's fitness and propriety. FIT 1.3.1BG states that the most important considerations include the individual's honesty, integrity and reputation.
- 5.9. The conduct outlined above represents a lack of integrity and demonstrates dishonesty on the part of Mr Klein. The Authority considers that the lack of honesty and integrity demonstrated by Mr Klein in the Relevant Period is so serious in manner and degree such that he is not a fit and proper person. The Authority therefore considers that a prohibition order is a necessary measure to further the Authority's objectives of protecting and enhancing the integrity of the UK financial system and protecting consumers.

- 5.10. As a result, the Authority considers that Mr Klein is not a fit and proper person to perform any functions in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm, due to a lack of honesty and integrity, and as such seeks a prohibition order.

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 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.

Step 1: disgorgement

- 6.2. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.3. The Authority has not identified any financial benefit that Mr Klein derived directly from the breach.
- 6.4. Step 1 is therefore £0.

Step 2: the seriousness of the breach

- 6.5. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.
- 6.6. The period of Mr Klein's breach was from 17 July 2020 to 23 February 2022. The Authority considers Mr Klein's relevant income for this period to be £288,203.

6.7. In deciding on the percentage of the relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:

Level 1 – 0%

Level 2 – 10%

Level 3 – 20%

Level 4 – 30%

Level 5 – 40%

6.8. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. The Authority considers the following factors to be relevant:

- a. DEPP 6.5B.2G(8)(b) the loss or risk of loss, as a whole, caused to consumers, investors or other market users in general: Mr Klein’s breach caused a significant loss of approximately USD 57.8 million to his employer MBL.
- b. DEPP 6.5B.2G(8)(f) whether the breach had an adverse effect on markets and, if so, how serious that effect was: The Fictitious Trades were not visible externally to MBL. They appeared on MBL’s internal systems as exchange-listed trades but they had no corresponding external exchange position. There was no effect on the orderliness of the markets as a result of the Fictitious Trades.
- c. DEPP 6.5B.2G(9)(b) the frequency of the breach: on analysis carried out by MBL, 426 Fictitious Trades were recorded and amended by Mr Klein during the Relevant Period.
- d. DEPP 6.5B.2G(9)(e) whether the individual failed to act with integrity: Mr Klein failed to act with integrity by falsely entering the Fictitious Trades into MBL’s internal systems and falsifying broker volatility curve quotes.

- e. DEPP 6.5B.2G(10)(a) the breach was intentional: Mr Klein deliberately recorded the Fictitious Trades and deliberately falsified the broker quotes to conceal his trading losses.
- f. DEPP 6.5B.2G(10)(c) the individual knew that his actions were not in accordance with his firm's internal procedures: Mr Klein knew he was acting contrary to the firm's internal procedures.
- g. DEPP 6.5B.2G(10)(d) the individual sought to conceal his misconduct and DEPP 6.5B.2G(10)(e) the individual committed the breach in such a way as to avoid or reduce the risk that the breach would be discovered: Mr Klein attempted to avoid the Fictitious Trades and true risk position in the relevant books being detected by the EOD and P&L reconciliation processes and the IVT independent rates testing process identified earlier in this Notice.
- h. DEPP 6.5B.2G(10)(f) the individual was influenced to commit the breach by the belief that it would be difficult to detect: Mr Klein admitted to the Authority that he moved to Strategy 2 to avoid any potential queries arising from his false trades appearing in the EOD futures reconciliations.
- i. DEPP 6.5B.2G(10)(h) the individual's actions were repeated: On analysis carried out by MBL, Mr Klein recorded 426 Fictitious Trades and frequently amended those Fictitious Trades. On analysis carried out by MBL, between June 2020 and December 2021 Mr Klein was responsible for 9,269 CABs out of 13,311 total CABs for the entire Bulks Desk, between CABs generated by his legitimate trading and CABs generated by the Fictitious Trades.

6.9. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 5 and so the Step 2 figure is 40% of £288,203.

6.10. Step 2 is therefore £115,281.20.

Step 3: mitigating and aggravating factors

- 6.11. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.
- 6.12. Having considered the guidance at DEPP 6.5B.3G, the Authority concludes that there are no aggravating factors that are applicable in this case. As to mitigating factors, Mr Klein has shown a high degree of cooperation with the Authority in its investigation of this matter including making full admissions without delay in a compelled interview with the Authority and subsequently engaging with the Authority's requests in a frank and timely manner. Mr Klein's full admissions at an early stage advanced the Authority's investigation, saving the Authority time and resource. Mr Klein has no history of disciplinary action taken against him by the Authority. In the circumstances of this case, the Authority considers that only Mr Klein's cooperation with the Authority merits a reduction of the penalty.
- 6.13. Having taken into account Mr Klein's cooperation as a mitigating factor, the Authority considers that the Step 2 figure should be decreased by 10%.
- 6.14. Step 3 is therefore £103,753.08.

Step 4: adjustment for deterrence

- 6.15. Pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.
- 6.16. The Authority considers that the Step 3 figure of £103,753.08 represents a sufficient deterrent to Mr Klein and others, and so has not increased the penalty at Step 4.
- 6.17. Step 4 is therefore £103,753.08.

Serious financial hardship

- 6.18. Pursuant to DEPP 6.5D.2G, the Authority may reduce the amount of a penalty if appropriate, if an individual will suffer serious financial hardship as a result of having to pay a penalty.
- 6.19. Mr Klein has provided verifiable evidence to satisfy the Authority that the payment of a financial penalty of any amount would cause him serious financial hardship. The Authority considers it appropriate to take Mr Klein's financial position into account and the financial penalty of £103,753.08 is reduced by 100%.
- 6.20. As a result of serious financial hardship, the penalty figure at Step 4 is therefore nil, reducing the Step 5 figure to £0 for serious financial hardship.

Step 5: settlement discount

- 6.21. Pursuant to DEPP 6.5B.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.
- 6.22. In the event that a penalty had been imposed on Mr Klein, Step 5 would have been £72,600, reflecting that the Authority and Mr Klein reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure. However, in light of Mr Klein's serious financial hardship, Step 5 is nil.

Penalty

- 6.23. The Authority therefore does not impose a financial penalty on Mr Klein for breaching ICR 1. Pursuant to DEPP 6.4.2G, the Authority hereby issues a statement of misconduct to Mr Klein in the form of this Notice.

Prohibition Order

- 6.24. The Authority has the power to prohibit individuals under section 56 of the Act. The Authority has had regard to the guidance in Chapter 9 of the Enforcement

Guide ("EG") and FIT 1.3 and 2 of the Handbook, including the criteria at EG 9.5, EG 9.3.2 and FIT 2.1.3G, in considering whether to impose a prohibition order on Mr Klein.

- 6.25. In considering whether to impose a prohibition order, the Authority has had regard to all relevant circumstances of the case. The Authority considers that the lack of honesty and integrity demonstrated by Mr Klein in the Relevant Period is so serious in manner and degree such that he is not a fit and proper person.
- 6.26. The Authority hereby prohibits Mr Klein from performing any functions in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm, as a necessary measure to further its objectives of protecting and enhancing the integrity of the UK financial system and protecting consumers.

7. PROCEDURAL MATTERS

- 7.1. This Notice is given to Mr Klein under and in accordance with section 390 of the Act.
- 7.2. The following statutory rights are important.

Decision maker

- 7.3. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

Publicity

- 7.4. 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 Mr Klein or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

- 7.5. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

- 7.6. For more information concerning this matter generally, contact Hayley England-Secker at the Authority (direct line: 020 7066 0832/email: Hayley.England-Secker@fca.org.uk).

Allegra Bell

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

RELEVANT STATUTORY PROVISIONS

- 1.1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include the integrity objective and the consumer protection objective.
- 1.2. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.
- 1.3. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him.
- 1.4. Section 66A of the Act provides that for the purposes of action by the Authority under section 66, a person is guilty of misconduct if any of conditions A to C is met in relation to the person. Section 66A(2) sets out Condition A, which during the Relevant Period stated that:

“(a) the person has at any time failed to comply with rules made by the FCA under section 64A, and

(b) at that time the person was-

 - (i) an approved person,
 - (ii) an employee of a relevant authorised person, or
 - (iii) a director of an authorised person.”
- 1.5. Section 66(3)(a) and (b) of the Act provide that if the Authority is entitled to take action against a person under section 66, it may impose a penalty on him of such amount as it considers appropriate, or publish a statement of his misconduct.

RELEVANT REGULATORY PROVISIONS

Individual Conduct Rules and Code of Conduct Sourcebook

- 1.6. The Code of Conduct Sourcebook (COCON) was issued under section 64A of the Act. COCON sets out the rules of conduct which apply to individuals within the scope of COCON, which during the Relevant Period included certification employees of an SMCR firm according to COCON 1.1.2R(4).
- 1.7. COCON 1.1.7R provides that in relation to “a person (P) subject to COCON who is not an approved person, COCON applies to the conduct of P in relation to the

performance by P of functions relating to the carrying on of activities (whether or not regulated activities) by P's employer (Firm A)".

- 1.8. Chapter 2 of COCON sets out the Individual Conduct Rules. COCON 2.1.1R (Individual Conduct Rule 1) provides that a person must act with integrity.

The Fit and Proper Test

- 1.9. The part of the Authority's Handbook titled "The Fit and Proper Test for Approved Persons" ("FIT") sets out the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an individual subject to the FCA's certification regime.
- 1.10. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.
- 1.11. FIT 2.1.3G contains a non-exhaustive list of matters which the Authority will have regard to when determining a person's honesty, integrity and reputation.

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

- 1.12. The Authority's policy in relation to prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG").
- 1.13. EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he/she may perform.
- 1.14. EG 9.5 provides that where the FCA is considering making a prohibition order, it will consider the severity of the risk posed. It also provides that the FCA will consider all the relevant circumstances of the case, which may include, but are not limited to, the factors set out in paragraph 9.3.2.
- 1.15. EG 9.3.2 states that when the Authority decides whether to make a prohibition order, the Authority will consider all relevant circumstances of the case, and sets out a non-exhaustive list of circumstances.

The Authority's policy for imposing penalties

- 1.16. Chapter 7 of EG sets out the Authority's approach to taking disciplinary action, including its approach to financial penalties.
- 1.17. Chapter 6 of DEPP sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.