DECISION NOTICE

To: **Turkish Bank (UK) Ltd**

FSA ref. no.: **204566**

Date: 26 July 2012

TAKE NOTICE that the Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS has decided to take the following action:

1. ACTION

1.1. For the reasons given in this Notice and pursuant to regulation 42 of the Money Laundering Regulations 2007 (the ML Regulations), the FSA has decided to impose on Turkish Bank (UK) Ltd (TBUK or the Firm) a civil penalty of £294,000 for breaches of the ML Regulations in relation to the Firm's anti-money laundering and counter terrorist financing (AML) controls over its correspondent banking activities in the period between 15 December 2007 and 3 July 2010 (the Relevant Period).

1.2. TBUK agreed to settle at an early stage of the FSA's investigation. It therefore qualified for a 30% (Stage 1) discount under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £420,000 on TBUK.

2. SUMMARY OF REASONS

2.1. For more than two and a half years, TBUK breached the ML Regulations by failing to:

(1) establish and maintain appropriate and risk-sensitive AML policies and procedures for its correspondent banking relationships;

(2) carry out adequate due diligence on and ongoing monitoring of the Firm's

customers acting as respondent banks in TBUK's correspondent banking relationships (the Respondent(s)) and reconsider these relationships when this was not possible; and

(3) maintain adequate records relating to the above.

2.2. These breaches gave rise to an unacceptable risk that TBUK could have been used to further money laundering. The Firm's Respondents were from jurisdictions (Turkey and Northern Cyprus) which did not have UK-equivalent AML requirements in place in the Relevant Period. In addition, correspondent banking poses a high risk of money laundering and £114.48m flowed through TBUK's correspondent banking accounts in the Relevant Period to which TBUK did not apply the AML controls required by the ML Regulations. It is accepted that of the total £114.48m figure, approximately £21m derived from TBUK's pre-existing customers for whom appropriate due diligence had previously been conducted by TBUK.

2.3. Any references in this Notice to breaches of the ML Regulations by TBUK only concern the Firm's activities as a correspondent bank in the Relevant Period.

2.4. A failure to take steps to prevent the laundering of money through UK institutions undermines the UK financial services sector. It is the responsibility of UK firms to ensure that they are not used for criminal purposes and, in particular, that they do not handle the proceeds of crime. Unless firms have in place robust AML systems and controls, particularly with regard to high risk customers and transactions, they risk leaving themselves open to money laundering. This action supports the FSA's statutory objectives of reducing financial crime and maintaining market confidence.

Summary of breaches

2.5. In the Relevant Period, TBUK breached regulations 7(1), (2) and (3), 8, 11(1), 14(1) and 14(3), 19(1) and 20(1) of the ML Regulations. In particular, TBUK failed to:

(1) establish and maintain appropriate and risk-sensitive policies and procedures for assessing and managing the level of money laundering risk posed by its Respondents;

(2) establish and maintain appropriate and risk-sensitive procedures for carrying out the required level of due diligence on and ongoing monitoring of its existing Respondents;

(3) establish and maintain appropriate and risk-sensitive procedures for keeping records of risk assessments, required due diligence and ongoing monitoring carried out in relation to its Respondents;

(4) carry out required due diligence and enhanced due diligence in relation to its Respondents;

(5) conduct required enhanced ongoing monitoring of its Respondents;

(6) keep adequate records on the files of its Respondents of due diligence and ongoing monitoring conducted; and

(7) cease the business relationship or cease carrying out transactions for TBUK's Respondents in relation to whom TBUK was unable to conduct required due diligence and/or enhanced due diligence.

2.6. The FSA notes that TBUK admitted the breaches at an early stage.

2.7. TBUK's failings merit the imposition of a significant financial penalty. The FSA considers the failings to be particularly serious because:

(1) FSA Supervisors had warned TBUK in June 2007 of deficiencies in its approach to money laundering controls. TBUK took some measures to address these deficiencies and subsequently assured FSA Supervisors in August 2007 that it was in a position to comply with relevant AML requirements. However, the measures taken by TBUK failed to satisfy these AML requirements;

(2) all of TBUK's Respondents were based in Turkey and Northern Cyprus (non-EEA jurisdictions) which the Firm should have been aware did not have UK-equivalent AML systems in the Relevant Period. Considering information available to TBUK in the Relevant Period, the Firm could not have reasonably assessed Turkey to pose a low, or Northern Cyprus to pose a medium to higher, money laundering risk; and

(3) every correspondent banking relationship presented a high risk of money laundering because of the non face-to-face nature of correspondent banking and the non UK-equivalent jurisdictions involved.

3. DEFINITIONS

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

"**AML**" means anti-money laundering and counter terrorist financing.

"**AML Handbook**" means TBUK's "*anti-money laundering and counter terrorist financing Handbook for management and Staff*" dated January 2008 which contained the Firm's "*prevention of money laundering, fraud and terrorist financing policies, standards and high level procedures*".

"**beneficial owner**" means the term as defined in regulation 6 of the ML Regulations.

"**Correspondent banking**" means the term as used in regulation 6 of the ML Regulations and defined in JMLSG Guidance, Part II, paragraph 16.1 as the provision of banking-related services by one bank (correspondent) to an overseas bank (respondent) to enable the respondent to provide its own customers with cross-border products and services that it cannot provide them with itself,

typically due to a lack of an international network.

"**CTF**" means counter terrorist financing.

"**DEPP**" means the FSA's Decision Procedures and Penalties manual as at 15 December 2007, which forms part of the FSA Handbook.

"**EG**" means the FSA Enforcement Guide which contains "general guidance" given by the FSA pursuant to s. 158(5) of the Financial Services and Markets Act 2000.

"**FATF**" means the Financial Action Task Force which is an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing. FATF has established a set of Recommendations that set out the basic framework for anti-money laundering efforts and are intended to be of universal application. The mutual evaluation programme is the primary instrument by which the FATF monitors progress made by member governments in implementing the FATF Recommendations.

"**Firm**" means Turkish Bank (UK) Ltd.

"**FSA**" means the Financial Services Authority.

"**JMLSG**" means the Joint Money Laundering Steering Group.

"**JMLSG Guidance**" means Part I and Part II of the guidance published by the JMLSG in December 2007 as approved by the Treasury titled "*Prevention of money laundering/combating terrorist financing: Guidance for the UK Financial Sector*" on compliance with relevant AML law and regulations, including the ML Regulations, regulatory requirements in the FSA Handbook and evolving practice within the financial services industry. Similar provisions were contained in the subsequent version of the JMLSG Guidance, published December 2009. The JMLSG Guidance sets out what is expected of firms and their staff in relation to the prevention of money laundering.

"**ML Regulations**" means the Money Laundering Regulations 2007 which came into force on 15 December 2007 and implement the third money laundering directive. The ML Regulations impose requirements on relevant persons (including credit institutions) to establish, maintain and apply appropriate AML controls over their customers.

"**money laundering**" means the term as defined in regulation 2(1) of the ML Regulations and for purposes of this Notice includes the term "terrorist financing" as defined in regulation 2(1) of the ML Regulations.

"**PEP**" means a politically exposed person. A PEP is defined in regulation 14(5) of the ML Regulations as "*an individual who is or has, at any time in the preceding year, been entrusted with a prominent public function by – (i) a state other than the United Kingdom; (ii) a Community institution; or (iii) an*

international body". The definition includes immediate family members and known close associates of such a person.

"**Relevant Period**" refers to the period between 15 December 2007 and 3 July 2010.

"**Respondent**" refers to TBUK's customers acting as respondent banks in TBUK's correspondent banking relationships in the Relevant Period.

"**SARs**" refers to Suspicious Activity Reports which are used to report known or suspected money laundering or suspicious activity observed by credit and financial institutions to SOCA under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

"**SOCA**" refers to the Serious Organised Crime Authority.

"**TBUK**" means Turkish Bank (UK) Ltd.

"**Tribunal**" means the Upper Tribunal (Tax and Chancery Chamber).

4. FACTS AND MATTERS

Background

TBUK

4.1. TBUK is a wholly owned subsidiary of Turkish Bank Limited which is incorporated in Northern Cyprus. TBUK has a UK head office and six branches in London. The firm's customers are mainly from the Turkish (including Turkish Cypriot) community in London. TBUK's UK customer base is mainly retail. The Firm offers a range of financial services, including correspondent banking. In the Relevant Period, TBUK had 15 correspondent banking relationships where the Firm acted as the correspondent bank. Nine of these relationships were with Respondents in Turkey; six were with Respondents in Northern Cyprus.

Correspondent banking

4.2. Correspondent banking involves non face-to-face business. As a correspondent bank, TBUK acted as an agent for its Respondents in Turkey and Northern Cyprus in the Relevant Period. It provided its Respondents' underlying customers with services that these Respondents could not provide themselves, such as payment or clearing related services in the United Kingdom. To that end, TBUK relied on its Respondents' AML controls over their underlying customers to prevent these customers access to the UK financial system for purposes of money laundering.

4.3. The ML Regulations acknowledge that the nature of correspondent banking with a respondent institution in a non-EEA state (such as Turkey and Northern Cyprus) presents a high risk of money laundering requiring enhanced customer due diligence and ongoing monitoring of the relationship. The JMLSG Guidance

considers the highest risk respondents to be those in jurisdictions with weak regulatory or AML controls or other significant reputational risk factors, including corruption. In the Relevant Period, Turkey and Northern Cyprus did not have UK-equivalent AML requirements, as discussed in paragraphs 4.23-24 below.

Due diligence requirements

4.4. Due diligence and monitoring requirements are designed to make it more difficult for the financial services industry to be used for money laundering.

4.5. Customer due diligence obligations require a firm to gather and adequately consider documents, data or other information about a customer. This ensures that a firm identifies and verifies the identity of the customer, including that of a corporate entity's beneficial owner. Where the customer is a corporate entity, a trust or other legal entity or arrangement, the firm must take measures to understand the ownership and control structure of the customer. A firm must also obtain from the customer information about the purpose and intended nature of the proposed business relationship.

4.6. The purpose of due diligence requirements is that a firm will gather and consider enough information to allow it to make an informed decision on whether to commence or maintain a business relationship. It is also meant to allow a firm to gauge what level of due diligence and ongoing monitoring the relationship requires. Therefore, it does not suffice to merely collect information without consideration because this will not allow for an informed risk-based AML approach towards the relationship.

4.7. If a firm has assessed that the business relationship with the customer is high risk, it must conduct enhanced due diligence in addition to meeting the basic customer due diligence requirements. The ML Regulations prescribe that enhanced due diligence is undertaken on correspondent banking relationships involving non-EEA jurisdictions. Specifically, the correspondent must:

(1) gather sufficient information about the Respondent to understand fully the nature of its relationship;

(2) determine the Respondent's reputation and the quality of its supervision from publicly available information;

(3) assess the Respondent's AML controls;

(4) obtain senior management approval before establishing a new correspondent banking relationship;

(5) document the respective responsibilities of the respondent and correspondent; and

(6) satisfy itself that the Respondent has identified and verified its underlying customers who have direct access to the correspondent's accounts, conducts ongoing monitoring of those underlying customers and is able to

provide the correspondent relevant documents and information about them.

4.8. The information gathered through customer due diligence and enhanced due diligence forms the basis for the firm's understanding of the money laundering risks posed by a customer. This allows the firm to conduct appropriate ongoing monitoring of that customer's transactions and the overall relationship. It increases the likelihood that a firm will detect the use of its products and services for the purpose of money laundering.

Ongoing monitoring requirements

4.9. A firm must conduct ongoing monitoring of all business relationships. Ongoing monitoring is a separate, but related, obligation from the requirement to carry out customer due diligence or enhanced due diligence. Where the customer is considered to be a high risk customer, such as for respondents in correspondent banking relationships with non-EEA countries, that monitoring must be enhanced. This means more frequent or intensive monitoring. Enhanced ongoing monitoring is important to understand any changes to money laundering risks posed by the customer.

4.10. Ongoing monitoring includes keeping relevant customer information up to date through regular reviews of the customer relationship and monitoring of customer transactions to ensure that they are consistent with the firm's knowledge of the customer, its business and risk profile. A firm must scrutinise a customer's transactions on a risk-sensitive basis to identify any unusual or suspicious activity that may be related to money laundering.

The FSA thematic review and investigation

4.11. The FSA conducted a thematic review of how banks operating in the UK were managing money laundering risk in high risk situations. One area of focus for the review was how banks manage the risks arising from correspondent banking. The FSA's thematic review findings were reported in June 2011.

4.12. In the course of the thematic review, the FSA visited TBUK in July 2010 to assess its AML systems and controls over high risk customers, wire transfers and correspondent banking. The results of this visit gave serious cause for concern in relation to the Firm's AML controls over correspondent banking.

4.13. After further investigation, including a review of TBUK's relevant policies and procedures and all 15 of TBUK's relevant Respondent files, the FSA identified failings in respect of TBUK's AML controls over correspondent banking. These failings are described below.

Inappropriate AML policies and procedures

4.14. During the Relevant Period, TBUK had in place an AML Handbook dated January 2008. The AML Handbook contained inappropriate policies and procedures for the prevention of money laundering.

4.15. TBUK's AML Handbook purported to reflect the requirements imposed by the ML Regulations (which came into effect on 15 December 2007) and the JMLSG Guidance (which was approved by the Treasury in December 2007). In reality, the AML Handbook did not establish policies and procedures that appropriately reflected the high risk of money laundering posed by TBUK's correspondent banking relationships with Respondents in Turkey and Northern Cyprus.

4.16. As with any regulated firm conducting correspondent banking, the FSA required TBUK to update its AML Handbook to reflect the requirements of the ML Regulations.

4.17. In the Relevant Period, TBUK's AML Handbook should have contained policies and procedures requiring that the risk assessment, due diligence and ongoing monitoring in relation to existing Respondent accounts were up to date and consistent with the ML Regulations.

4.18. TBUK did not update its AML Handbook until after the FSA's 2010 thematic review and the resulting investigation.

Inappropriate policies and procedures in relation to risk-assessment

4.19. TBUK's AML Handbook contained erroneous and inconsistent policies concerning the risk assessment of the Firm's correspondent banking relationships.

4.20. Nine of TBUK's 15 correspondent banking relationships in the Relevant Period were with Respondents in Turkey. TBUK's AML Handbook incorrectly classified all correspondent banking relationships with Respondents in Turkey as low risk. However, this risk designation should have been expressly limited to correspondent banking relationships in EU member states. The risk section of TBUK's AML Handbook acknowledged that Turkey was not a member of the EU, but wrongly considered Turkey's AML regime equivalent to the UK on the basis that Turkey was a member of FATF. In the same passage, the AML Handbook mentioned Turkey's vulnerabilities due to its status as a transit and production country for drugs.

4.21. As a result, TBUK's high-level procedures erroneously stated that simplified due diligence may be applied to Turkey, thereby instructing that certain due diligence and enhanced due diligence measures were unlikely to be necessary.

4.22. Six of TBUK's 15 correspondent banking relationships in the Relevant Period were with Respondents in Northern Cyprus. While TBUK's AML policies acknowledged that Northern Cyprus was not an equivalent jurisdiction to the UK for purposes of AML controls, the Firm's AML Handbook erroneously suggested that a risk classification of medium to higher risk applied in relation to correspondent banking. At the same time, TBUK's AML Handbook designated all countries other than the EU member states as medium risk.

4.23. Turkey is a FATF member, but it was not a jurisdiction with UK-equivalent AML requirements in the Relevant Period. More specifically:

(1) On 23 February 2007, FATF published the Summary of its Third Mutual Evaluation Report for Turkey. The Report identified multiple areas where Turkey was non-compliant with the FATF Recommendations, including as relevant here, that it had no AML requirements for the application of enhanced due diligence, the verification of legal persons (including ownership and control and beneficial owners) or dealing with PEPs; and

(2) On 8 August 2008, the JMLSG issued specific guidance confirming that Turkey was not included in the list of EU-equivalent jurisdictions and advised that firms will need to carry out their own risk assessment of non-equivalent countries and pay particular attention to Mutual Evaluation Reports undertaken by FATF.

4.24. Northern Cyprus is only recognised by Turkey, is not a FATF member and had not been assessed as having UK-equivalent AML requirements in the Relevant Period.

4.25. Based on the ML Regulations, JMLSG Guidance and other information available to TBUK (from e.g. FATF and the EU, and more specifically, TBUK's own view of Turkey's vulnerable status as a country where drug transit and production were prevalent) at the time it drafted its AML Handbook, the Firm ought to have put in place policies and procedures that reflected that correspondent banking relationships in Turkey and Northern Cyprus represented a high risk of money laundering requiring enhanced due diligence and enhanced ongoing monitoring of Respondents.

Inappropriate procedures in relation to customer due diligence, ongoing monitoring and record-keeping

4.26. TBUK's AML procedures for customer due diligence and ongoing monitoring applicable to existing Respondents did not require the Firm's customer information to be brought up to the standard required by the ML Regulations.

4.27. TBUK's AML Handbook contained some high-level procedures for the monitoring of specific activity and transactions, but correspondent banking was not included.

4.28. The AML Handbook made reference to TBUK's detailed account opening procedures contained in the Firm's Procedures Manual. That document suggested that the detailed procedures did not apply to correspondent banking because that activity was exceptional and subject to individually specified documentary evidence and due diligence to be agreed by the MLRO and General Management on a case-by-case basis.

4.29. In addition, TBUK's AML procedures for record-keeping did not provide sufficient detail for day-to-day application and compliance by TBUK's staff.

Failure to conduct appropriate due diligence on existing Respondents

4.30. After the ML Regulations took effect on 15 December 2007, TBUK was required to update the due diligence information relating to identification and verification

of its existing correspondent banking relationships to ensure compliance. The FSA paper titled "The FSA's new role under the Money Laundering Regulations 2007: Our Approach" dated September 2007, specifically sets out that "*Authorised Firms should consult the Money Laundering Regulations and the [JMLSG] guidance to understand what they will need to consider and what changes to their procedures will need to be made*" once the ML Regulations take effect on 15 December 2007. The FSA's publication reinforced the introduction of the ML Regulations and supported their requirements.

4.31. The consideration of the money laundering risk posed by a customer and the recording of that risk classification on the file is essential. As AML controls are applied on a risk-sensitive basis, the risk rating of a correspondent banking relationship determines the level of due diligence and ongoing monitoring to be conducted on that account. Each of the Firm's correspondent banking relationships with Respondents in Turkey and Northern Cyprus (both non-EEA jurisdictions) should have been assessed as posing a high risk of money laundering requiring the application, on a risk-sensitive basis, of enhanced due diligence in addition to basic due diligence. However, none of the files reviewed by the FSA contained a risk rating.

4.32. In relation to basic due diligence performed by TBUK on the files reviewed, the Firm did not satisfactorily identify and verify the identity of its Respondents and their beneficial owners. TBUK did not seek to understand the ownership and control structure of its Respondents (who were all corporate entities). Because of this failing, TBUK was not in a position to conduct and did not conduct PEP and sanction screening on relevant persons linked to its Respondents.

4.33. In relation to six active Respondent files maintained during the Relevant Period, identification and verification information held was in a foreign language. While some staff at TBUK may have been able to understand this information, TBUK did not adequately review these documents and consider whether they provided evidence of the Respondents' respective identities.

4.34. In addition, TBUK did not conduct the enhanced due diligence required by the ML Regulations, including assessing its Respondents' AML controls over their underlying customers who benefited from the correspondent banking services provided by TBUK. The importance of the enhanced due diligence measures are underscored by the conclusions in the 2007 FATF Summary Report on Turkey that the country had not implemented AML measures requiring e.g. the establishment of PEPs, identification and verification of beneficial owners, and other due diligence measures. In its correspondent banking relationships, TBUK relied on the Turkish Respondents' AML controls over their underlying customers, despite FATF's assessment that Turkey's AML regime was deficient. Further, as set out above, the EU member states did not consider Turkey and Northern Cyprus to be jurisdictions with AML requirements equivalent to the EU.

4.35. These failings had serious consequences and were confirmed by TBUK's review of its correspondent banking relationships as part of its remedial work. TBUK found that six of its 15 Respondents had PEPs or former PEPs associated with them. TBUK should have conducted sufficient due diligence on these

relationships to consider the money laundering risks posed by each such relationship.

4.36. In relation to each of the 15 correspondent banking files reviewed, TBUK did not conduct the customer due diligence and enhanced due diligence required by the ML Regulations. Under regulation 11 of the ML Regulations, TBUK should not have carried out transactions for any of its Respondents until the required due diligence had been conducted or alternatively should have terminated its relationship with its Respondents at issue.

4.37. Only after the FSA's 2010 thematic review and subsequent FSA investigation did TBUK update the due diligence information held on its Respondents to the standard required by the ML Regulations. As a result of the information gathered, TBUK assessed the money laundering risks posed by two of the 15 Respondents as unacceptable and terminated these relationships.

Failure to conduct enhanced ongoing monitoring

4.38. Ongoing monitoring has two components. One requires regular review of the customer relationship in order to keep the information held about the customer up to date. The other requires the scrutiny of transactions undertaken throughout the course of the relationship to ensure that they are consistent with the knowledge held about the customer. The ML Regulations require enhanced ongoing monitoring of high risk customer relationships, which means more frequent or intensive monitoring.

4.39. TBUK's ongoing monitoring of its correspondent banking relationships did not meet the requirements of the ML Regulations.

4.40. TBUK's AML questionnaires were used for ongoing monitoring purposes. However, TBUK's ongoing monitoring of Respondents was inadequate because the Firm did not send the AML questionnaires to each Respondent on a regular basis. In 2007, five of the 15 Respondents returned TBUK's AML questionnaire. In 2008, only one of the 15 Respondents returned TBUK's AML questionnaire. In 2009 and 2010, 12 of the 15 Respondents returned an AML questionnaire. The FSA's review found that the responses provided by Respondents were often not considered by TBUK, were incomplete or did not provide sufficient detail. Further, TBUK did not challenge unanswered questions.

4.41. For instance, certain Respondents merely confirmed that they had AML controls over their underlying customers in place without detailing what these controls were. As TBUK did not seek to clarify the nature of these AML controls, the Firm cannot be said to have conducted an assessment as required by the ML Regulations.

4.42. Also, one Respondent informed TBUK that it did not monitor its underlying customers' transactions. TBUK should have been aware that the ML Regulations require the ongoing monitoring of customers' transactions. TBUK should not have relied on its Respondent's AML controls over their underlying customers if it was evident that these controls did not meet internationally recognised

standards as reflected in the ML Regulations. Once the Respondent informed TBUK that it did not monitor its underlying customers' transactions, TBUK should have taken appropriate action, such as considering whether to cease conducting further transactions or terminate the relationship.

4.43. TBUK engaged in limited transaction monitoring of its Respondents' accounts. For this purpose, every time a Respondent used TBUK as the correspondent on a transaction, TBUK knew the name of the Respondent's underlying customer. TBUK checked the underlying customer's name against its own watch list. TBUK's watch list only contained Turkish appearing names from various sources, including warning lists published by the British Bankers' Association and HM Treasury, local (Turkish) media publications, TBUK's internal reports, and police production orders. TBUK's PEP and sanctions screening, especially of its Respondents (and not just of their underlying customers) should have included the use of an appropriate official database, such as the Consolidated Sanctions lists maintained and published by HM Treasury.

4.44. Only after the FSA's 2010 thematic review and subsequent implementation of a Risk Mitigation Programme did TBUK conduct a review of transactions in the Relevant Period by checking the names of Respondents' underlying customers against comprehensive PEP and sanctions lists.

4.45. The investigation compared the results of TBUK's remedial review over ten months within the Relevant Period (1 October 2009 to 1 July 2010) against the results of the original watch list screening performed by TBUK in the Relevant Period. The original screening had flagged 42 transactions. TBUK's retrospective review identified 21 additional transactions that should have been flagged for approval. Instead, TBUK processed these 21 transactions without any query.

Failure to keep adequate records

4.46. None of the correspondent banking files reviewed contained a risk assessment of the relevant Respondent.

4.47. To the extent TBUK conducted any due diligence and ongoing monitoring of its 15 Respondents in the Relevant Period, it did not keep appropriate records of the evidence of the Respondents' identities obtained and supporting records in respect of the correspondent banking relationships.

4.48. Also, TBUK did not document the respective responsibilities of its Respondents and TBUK as the correspondent as required by the ML Regulations.

4.49. Only after the FSA's 2010 thematic review and the subsequent FSA investigation did TBUK improve its record-keeping practices in relation to correspondent banking activities.

5. FAILINGS

5.1. The statutory and regulatory provisions relevant to this Decision Notice are

referred to in the Appendix.

5.2. On the basis of the facts and matters set out above, the FSA considers that TBUK breached the ML Regulations because it did not take reasonable care to establish, maintain and apply appropriate AML controls over its correspondent banking activities in the Relevant Period. This included the following specific failings.

Inappropriate AML policies and procedures

5.3. On the basis of the facts and matters set out at paragraphs 4.14 to 4.29, TBUK breached regulations 20(1)(a), (c) and (e) of the ML Regulations. In the Relevant Period, the Firm did not maintain appropriate and risk-sensitive AML policies and procedures concerning customer due diligence, ongoing monitoring, record-keeping, and risk assessment and management for correspondent banking relationships.

5.4. TBUK's high-level AML policies and procedures did not enable it to identify, assess, monitor and manage money laundering risks associated with correspondent banking in compliance with the prevailing requirements of the ML Regulations. Its AML policies and procedures were not comprehensive and proportionate to the nature, scale and complexity of TBUK's correspondent banking activities.

Risk assessment policies and procedures

5.5. TBUK's AML policies and procedures were incorrect and inconsistent in relation to the Firm's approach to the assessment and rating of money laundering risk associated with correspondent banking relationships in Turkey and Northern Cyprus.

5.6. In addition, TBUK's AML policies and procedures provided an inappropriate risk-assessment of correspondent banking activities. In contravention of the explicit provisions of the ML Regulations and despite evidence available to the Firm about money laundering risks associated with Turkey and Northern Cyprus, TBUK's AML policies and procedures deemed correspondent banking with Turkey low risk and with Northern Cyprus medium to higher risk. The Firm's AML Handbook did not provide any further guidance as to what considerations were relevant to whether a relationship was higher rather than medium risk and the relevant consequences for purposes of due diligence and ongoing monitoring

Customer due diligence and ongoing monitoring policies and procedures

5.7. The Firm's high-level procedures were wrong in stating that simplified due diligence may be applied to Respondents from Turkey.

5.8. TBUK's policies and procedures did not set out how information held in relation to an existing Respondent, including due diligence information, would be periodically reviewed and updated and thus breached regulation 20(a) of the ML Regulations.

5.9. TBUK's AML Handbook acknowledged that the foundation of any monitoring

procedure lies in the initial collection of identification and customer due diligence information and the ongoing updating of that information. But, the AML procedures did not set out how this updating of information would be achieved in practice. TBUK's procedures for review and updating of existing Respondent information were not sufficiently detailed and did not meet the requirements of the ML Regulations.

5.10. Also, in relation to ongoing monitoring, TBUK's AML procedures suggested that this should be done through periodic review, but no further instruction was given as to what frequency would be appropriate for accounts with high levels of money laundering risks associated, such as correspondent banking. Notably, while monitoring of specific types of transactions (such as cash transactions and large transactions) was set out in the procedures, no such provisions were made for correspondent banking.

5.11. In relation to record-keeping, the Firm's policies and procedures did not contain the appropriate level of detail required by regulation 20(c) of the ML Regulations.

5.12. These failings are serious because they show that at the highest policy level, the Firm inaccurately informed its staff of the money laundering risks associated with its correspondent banking activities. Failings in the application of the ML Regulations in relation to customer due diligence, ongoing monitoring and record-keeping occurred as a direct result of the Firm's inconsistent and inappropriate AML policies and procedures.

Failure to conduct appropriate due diligence and ongoing monitoring to existing Respondents

5.13. On the basis of the facts and matters set out at paragraphs 4.30 to 4.45, TBUK breached regulations 5, 7, 8 and 14(3) of the ML Regulations. All of TBUK's correspondent banking relationships should have been subjected to an appropriate level of customer due diligence and ongoing monitoring. This should have met the requirements set out in regulations 5, 7 and 8 of the ML Regulations and the enhanced due diligence and ongoing monitoring requirements set out in regulation 14(3) of the ML Regulations.

5.14. For all 15 Respondents, TBUK failed to obtain required information concerning identification and verification of each Respondent to the standards required by the ML Regulations was missing.

5.15. Where AML questionnaires were used by TBUK, the Firm did not follow up on incomplete or inadequate responses.

Failure to keep adequate records

5.16. On the basis of the facts and matters set out at paragraphs 4.46 to 4.49, TBUK failed to keep adequate records of any due diligence and ongoing monitoring it had conducted in breach of regulation 19 of the ML Regulations.

5.17. TBUK did not keep records showing it considered and challenged the responses given by Respondents to its AML questionnaires, including responses in a

foreign language (such as a Respondent's AML policy). It also did not keep records of the reason for authorising transactions flagged in the course of screening against a limited sanction watch list.

6. SANCTION

6.1. Pursuant to Regulations 2(1), 36(a) and 42(1) of the ML Regulations, the FSA is a designated authority who may impose a penalty on a relevant person for failure to comply with the ML Regulations at issue in this Notice.

6.2. TBUK (a credit institution) is a relevant person pursuant to regulations 2(1) and 3(1)(a) of the ML Regulations.

6.3. In deciding whether TBUK has failed to comply with the relevant requirements of the ML Regulations, the FSA must consider whether TBUK followed the relevant JMLSG Guidance as the JMLSG Guidance meets the requirements set out in regulation 42(3) of the ML Regulations.

6.4. Regulation 42(1) of ML Regulations states that the FSA may impose on a person who failed to comply with the requirements of the ML Regulations a penalty of such amount as it considers appropriate. The FSA has considered whether it can be satisfied that TBUK took all reasonable steps and exercised all due diligence to ensure that the requirements of the ML Regulations would be complied with and concludes that it can not for reasons set out in section 6 of this Notice above.

6.5. The FSA has regard to the factors in Chapter 6 of DEPP for the imposition of a financial penalty under the ML Regulations. As the majority of the misconduct occurred before the introduction of the FSA's new penalty regime on 6 March 2010, the FSA has applied the penalty regime that was in place as at 15 December 2007. In that regard, DEPP 6.5.2G sets out the relevant factors for determining the appropriate level of financial penalty to be imposed on TBUK. The criteria are not exhaustive and all relevant circumstances of the case have been taken into consideration. In determining the appropriate level of sanction, the FSA has had regard to the factors listed below.

Deterrence

6.6. The FSA considers that the proposed financial penalty will promote high standards of conduct by deterring firms which have breached the ML Regulations from committing further contraventions, helping to deter other firms from committing breaches of the ML Regulations, and demonstrating generally to firms the benefits of compliant behaviour. It will strengthen the message to the industry that it is vital to take proper steps to ensure that AML controls over correspondent banking relationships are adequate, even when the origins of long-standing existing relationships predate the introduction of the ML Regulations.

Seriousness and impact of the breaches

6.7. The FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the number and duration of the breaches, the seriousness or systemic character of the Firm's failings. For the reasons set out

in paragraph 2.7 above, the FSA considers TBUK's breaches, which persisted for more than two and a half years, to be particularly serious. The weaknesses in TBUK's AML controls resulted in an unacceptable risk that the Firm could have handled the proceeds of crime through its correspondent banking relationships.

The extent to which the breaches were deliberate or reckless

6.8. The FSA does not consider that the misconduct on the part of TBUK was deliberate or reckless.

The size, financial resources and other circumstances of the Firm

6.9. In determining the level of penalty, the FSA has considered TBUK's size and financial resources. There is no evidence to suggest that TBUK is unable to pay the penalty.

Conduct following the breaches

6.10. Since the commencement of the FSA's investigation, TBUK has worked in an open and cooperative manner with the FSA.

6.11. Following the FSA's visit in 2010 and the findings of the FSA investigation, the Firm, as part of an FSA remedial programme, has taken steps to establish detailed procedures in relation to correspondent banking relationships that comply with the ML Regulations.

6.12. TBUK fully accepts that it did not meet the requirements of the ML Regulations throughout the Relevant Period.

6.13. TBUK took disciplinary action against the senior managers responsible for its AML controls, including withholding their annual bonus for the year 2011.

Disciplinary record and compliance history

6.14. TBUK has not been the subject of any previous disciplinary action.

Previous action taken by the FSA in relation to similar findings

6.15. The FSA has not previously imposed a penalty on a firm for failings in AML controls over correspondent banking. However, in determining whether and what financial penalty to impose on TBUK, the FSA has taken into account action taken by the FSA in relation to other authorised persons for comparable behaviour.

FSA guidance and other published material

6.16. Pursuant to regulation 42(3) of the ML Regulations, DEPP 6.2.3G and EG 19.82, the FSA has had regard to whether TBUK followed the relevant provisions of the JMLSG Guidance in deciding whether TBUK failed to comply with the ML Regulations.

7. PROCEDURAL MATTERS

Decision maker

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

7.2. This Decision Notice is given to you in accordance with regulation 42(7) of the ML Regulations.

Access to evidence

7.3. The FSA grants you access to:

(1) the material upon which the FSA has relied in deciding to give you this Notice; and

(2) any secondary material which, in the opinion of the FSA, might undermine that decision.

7.4. There is no such secondary material to which the FSA grants you access.

Manner of and time for payment

7.5. The financial penalty must be paid in full by TBUK to the FSA by no later than 9 August 2012, 14 days from the date of this Notice.

If the financial penalty is not paid

7.6. If all or any of the financial penalty is outstanding on 10 August 2012, the FSA may recover the outstanding amount as a debt owed by TBUK and due to the FSA.

Confidentiality and publicity

7.7. The FSA must such information about the matter to which this 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.

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

FSA contacts

7.9. For more information concerning this matter generally, contact Bill Sillett (direct line: 020 7066 5880/email: bill.sillett@fsa.gov.uk).

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Tracey McDermott

Acting Director of Enforcement and Financial Crime Division

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Stephen Bland

Director of Investment Banks and Overseas Banks Division

APPENDIX – REGULATORY AND STATUTORY PROVISIONS

1. DEPP (at 15 December 2007)

DEPP Chapter 6 - Penalties

DEPP 6.2.3G - The FSA's rules on systems and controls against money laundering are set out in SYSC 3.2 and SYSC 6.3. The FSA, when considering whether to take action for a financial penalty or censure in respect of a breach of those rules, will have regard to whether a firm has followed relevant provisions in the Guidance for the UK financial sector issued by the Joint Money Laundering Steering Group.

DEPP 6.5.1G(1) - The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned. The list of factors in DEPP 6.5.2G is not exhaustive: not all of these factors may be relevant in a particular case, and there may be other factors, not included below, that are relevant.

DEPP 6.5.1G(2) - The FSA does not apply a tariff of penalties for different kinds of breach. This is because there will be very few cases in which all the circumstances of the case are essentially the same and because of the wide range of different breaches in respect of which the FSA may take action. The FSA considers that, in general, the use of a tariff for particular kinds of breach would inhibit the flexible and proportionate policy which it adopts in this area.

DEPP 6.5.2G - The following factors may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act:

(1) *Deterrence* - 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.

(2) *The nature, seriousness and impact of the breach in question* - The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached. The following considerations are among those that may be relevant:

(a) the duration and frequency of the breach;

(b) whether the breach revealed serious or systemic weaknesses in the person's procedures or of the management systems or internal controls relating to all or part of a person's business;

(c) in market abuse cases, the FSA will consider whether the breach had an adverse effect on markets and, if it did, how serious that effect was, which may include having regard to whether the orderliness of, or confidence in, the markets in question has been damaged or put at risk. This factor may also be

relevant in other types of case;

(d) the loss or risk of loss caused to consumers, investors or other market users;

(e) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach; and

(f) in the context of contraventions of Part VI of the Act, the extent to which the behaviour which constitutes the contravention departs from current market practice.

(3) *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. 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;

(b) where the person has not followed a firm's internal procedures and/or FSA guidance, the reasons for not doing so;

(c) where the person has taken decisions beyond its or his field of competence, the reasons for the decisions and for them being taken by that person;

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

(e) in the context of a contravention of any rule or requirement imposed by or under Part VI of the Act, whether the person sought any professional advice before the contravention occurred and whether the person followed that professional advice. Seeking professional advice does not remove a person's responsibility for compliance with applicable rules and requirements.

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.

(5) *The size, financial resources and other circumstances of the person on whom the penalty is to be imposed –*

(a) The FSA may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the person were to pay the level of penalty appropriate for the particular breach. The FSA regards these factors as matters to be taken into account in determining the level of a penalty, but not to the extent that there is a direct correlation between those factors and the level of penalty.

(b) The purpose of a penalty is not to render a person insolvent or to threaten the person's solvency. Where this would be a material consideration, the FSA will consider, having regard to all other factors, whether a lower penalty would be appropriate. This is most likely to be relevant to a person with lower financial resources; but if a person reduces its solvency with the

purpose of reducing its ability to pay a financial penalty, for example by transferring assets to third parties, the FSA will take account of those assets when determining the amount of a penalty.

(c) The degree of seriousness of a breach may be linked to the size of the firm. For example, a systemic failure in a large firm could damage or threaten to damage a much larger number of consumers or investors than would be the case with a small firm: breaches in firms with a high volume of business over a protracted period may be more serious than breaches over similar periods in firms with a smaller volume of business.

(d) The size and resources of a person may also be relevant in relation to mitigation, in particular what steps the person took after the breach had been identified; the FSA will take into account what it is reasonable to expect from a person in relation to its size and resources, and factors such as what proportion of a person's resources were used to resolve a problem.

(e) The FSA may decide to impose a financial penalty on a mutual (such as a building society), even though this may have a direct impact on that mutual's customers. This reflects the fact that a significant proportion of a mutual's customers are shareholder-members; to that extent, their position involves an assumption of risk that is not assumed by customers of a firm that is not a mutual. Whether a firm is a mutual will not, by itself, increase or decrease the level of a financial penalty.

(8) *Conduct following the breach* - The FSA may take the following factors into account:

(a) the conduct of the person in bringing (or failing to bring) quickly, effectively and completely the breach to the FSA's attention (or the attention of other regulatory authorities, where relevant);

(b) the degree of co-operation the person showed during the investigation of the breach by the FSA, or any other regulatory authority allowed to share information with the FSA, such as an RIE or the Takeover Panel. Where a person has fully co-operated with the FSA's investigation, this will be a factor tending to reduce the level of financial penalty;

(c) any remedial steps taken since the breach was identified, including whether these were taken on the person's own initiative or that of the FSA or another regulatory authority; for example, identifying whether consumers or investors or other market users suffered loss and compensating them where they have; correcting any misleading statement or impression; taking disciplinary action against staff involved (if appropriate); and taking steps to ensure that similar problems cannot arise in the future; and

(d) whether the person concerned has complied with any requirements or rulings of another regulatory authority relating to the breach (for example, where relevant, those of the Takeover Panel).

(9) *Disciplinary record and compliance history* - The FSA may take the previous disciplinary record and general compliance history of the person into account. This will include:

(a) whether the FSA (or any previous regulator) has taken any previous disciplinary action against the person;

(b) whether the person has previously undertaken not to do a particular act or engage in particular behaviour;

(c) whether the FSA (or any previous regulator) has previously taken protective action in respect of a firm using its own initiative powers, by means of a variation of a firm's Part IV permission, or has previously requested the firm to take remedial action and the extent to which that action has been taken.

(d) the general compliance history of the person, including whether the FSA (or any previous regulator) has previously brought to the person's attention, including by way of a private warning, issues similar or related to the conduct that constitutes the breach in respect of which the penalty is imposed.

A person's disciplinary record could lead to the FSA imposing a higher penalty, for example where the person has committed similar breaches in the past.

In assessing the relevance of a person's disciplinary record and compliance history, the age of a particular matter will be taken into account, although a long-standing matter may still be relevant.

(10) *Other action taken by the FSA (or a previous regulator)* - Action that the FSA (or a previous regulator) has taken in relation to similar breaches by other persons may be taken into account. This includes previous actions in which the FSA (whether acting by the RDC or the settlement decision makers) and a person on whom a penalty is to be imposed have reached agreement as to the amount of the penalty. As stated at DEPP 6.5.1G(2), the FSA does not operate a tariff system. However, the FSA will seek to apply a consistent approach to determining the appropriate level of penalty.

(12) *FSA guidance and other published materials* -

(a) A person does not commit a breach by not following FSA guidance or other published examples of compliant behaviour. However, where a breach has otherwise been established, the fact that guidance or other published materials had raised relevant concerns may inform the seriousness with which the breach is to be regarded by the FSA when determining the level of penalty.

(b) The FSA will consider the nature and accessibility of the guidance or other published materials when deciding whether they are relevant to the level of penalty and, if they are, what weight to give them in relation to other relevant factors.

(13) *The timing of any agreement as to the amount of the penalty* - The FSA and the

person on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, DEPP 6.7 provides that the amount of the penalty which might otherwise have been payable will be reduced to reflect the stage at which the FSA and the person concerned reach an agreement.

DEPP 6.7.1G - Persons subject to enforcement action may be prepared to agree the amount of any financial penalty and other conditions which the FSA seeks to impose by way of such action. Such conditions might include, for example, the amount or mechanism for the payment of compensation to consumers. The FSA recognises the benefits of such agreements, in that they offer the potential for securing earlier redress or protection for consumers and the saving of cost to the person concerned and the FSA itself in contesting the financial penalty. The penalty that might otherwise be payable in respect of a breach by the person concerned will therefore be reduced to reflect the timing of any settlement agreement.

DEPP 6.7.2G - In appropriate cases the FSA's approach will be to negotiate with the person concerned to agree in principle the amount of a financial penalty having regard to the factors set out in DEPP 6.5.2G. (This starting figure will take no account of the existence of the settlement discount scheme described in this section.) Such amount ("A") will then be reduced by a percentage of A according to the stage in the process at which agreement is reached. The resulting figure ("B") will be the amount actually payable by the person concerned in respect of the breach. However, where part of a proposed financial penalty specifically equates to the disgorgement of profit accrued or loss avoided then the percentage reduction will not apply to that part of the penalty.

DEPP 6.7.3G

(1) The FSA has identified four stages of an action for these purposes:

(a) the period from commencement of an investigation until the FSA has:

(i) a sufficient understanding of the nature and gravity of the breach to make a reasonable assessment of the appropriate penalty; and

(ii) communicated that assessment to the person concerned and allowed a reasonable opportunity to reach agreement as to the amount of the penalty ("stage 1");

(b) the period from the end of stage 1 until the expiry of the period for making written representations or, if sooner, the date on which the written representations are sent in response to the giving of a warning notice ("stage 2");

(c) the period from the end of stage 2 until the giving of a decision notice ("stage 3");

(d) the period after the end of stage 3, including proceedings before the Tribunal and any subsequent appeals ("stage 4").

(2) The communication of the FSA's assessment of the appropriate penalty for the

purposes of DEPP 6.7.3G(1)(a) need not be in a prescribed form but will include an indication of the breaches alleged by the FSA. It may include the provision of a draft warning notice.

(3) The reductions in penalty will be as follows:

Stage at which agreement reached	Percentage reduction
Stage 1	30
Stage 2	20
Stage 3	10
Stage 4	0

DEPP 6.7.4G(1) - Any settlement agreement between the FSA and the person concerned will therefore need to include a statement as to the appropriate penalty discount in accordance with this procedure.

DEPP 6.7.5G - In cases in which the settlement discount scheme is applied, the fact of settlement and the level of the discount to the financial penalty imposed by the FSA will be set out in the final notice.

2. EG

EG Chapter 19 – Non-FSMA Powers

The conduct of investigations under the Money Laundering Regulations

EG 19.79 - When the FSA proposes or decides to impose a penalty under the Money Laundering Regulations, it must give the person on whom the penalty is to be imposed a notice. These notices are akin to warning notices and decision notices given under the Act, although Part XXVI (Notices) of the Act does not apply to notices given under the Regulations.

EG 19.80 - The RDC is the FSA's decision maker for contested cases in which the FSA decides to impose a penalty under the Money Laundering Regulations. This builds a layer of separation into the process to help ensure not only that decisions are fair but that they are seen to be fair. The RDC will make its decisions following the procedure set out in DEPP 3.2 or, where appropriate, DEPP 3.3. Where the FSA imposes a penalty on a person under the Money Laundering Regulations, that person may appeal the decision to the Tribunal.

EG 19.81 - Although the Money Laundering Regulations do not require it, the FSA will involve third parties and provide access to Authority material when it gives notices under the Regulations, in a manner consistent with the provisions of sections 393 and 394 of the Act. However, there is no formal mechanism under the Money Laundering Regulations for third parties to make representations in respect of proposed money laundering actions. If a third party asks to make representations, it will be a matter for the FSA's decision makers to decide whether this is appropriate and, if so, how best to ensure that these representations are taken into consideration. In general it is expected that decision makers would agree to consider any representations made. Third parties may not refer cases to the Tribunal as the Money Laundering Regulations give the Tribunal no power to hear such referrals.

EG 19.82 - When imposing or determining the level of a financial penalty under the Regulations, the FSA's policy includes having regard, where relevant, to relevant factors in DEPP 6.2.1G and DEPP 6.5 to DEPP 6.5D. The FSA may not impose a penalty where there are reasonable grounds for it to be satisfied that the subject of the proposed action took all reasonable steps and exercised all due diligence to ensure that the relevant requirement of the Money Laundering Regulations would be met. In deciding whether a person has failed to comply with a requirement of the Money Laundering Regulations, the FSA must consider whether he followed any relevant guidance which was issued by a supervisory authority or other appropriate body; approved by the Treasury; and published in a manner approved by the Treasury. The Joint Money Laundering Steering Group Guidance satisfies this requirement.

EG 19.83 - As with cases under the Act, the FSA may settle or mediate appropriate cases involving civil breaches of the Money Laundering Regulations to assist it to exercise its functions under the Regulations in the most efficient and economic way. The settlement discount scheme set out in DEPP 6.7 applies to penalties imposed under the Money Laundering Regulations.

EG 19.84 - The FSA will apply the approach to publicity that it has outlined in EG 6. However, as the Money Laundering Regulations do not require the FSA to issue final notices, the FSA will publish such information about the matter to which the decision notice relates as it considers appropriate. This will generally involve publishing the decision notice on the FSA's website, with or without an accompanying press release, and updating the Public Register.

3. THE MONEY LAUNDERING REGULATIONS 2007

Regulation 2 - Interpretation

(1) In these Regulations-

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

"Annex I financial institution" has the meaning given by regulation 22(1);

"authorised person" means a person who is authorised for the purposes of the 2000 Act;

"the Authority" means the Financial Services Authority;

"the banking consolidation directive" means Directive 2006/48/EC of the European Parliament and of the Council of 14th June 2006 relating to the taking up and pursuit of the business of credit institutions;

"beneficial owner" has the meaning given by regulation 6;

"business relationship" means a business, professional or commercial relationship between a relevant person and a customer, which is expected by the relevant person, at the time when contact is established, to have an element of duration;

"cash" means notes, coins or travellers' cheques in any currency;

"credit institution" has the meaning given by regulation 3(2);

"customer due diligence measures" has the meaning given by regulation 5;

"financial institution" has the meaning given by regulation 3(3);

"firm" means any entity, whether or not a legal person, that is not an individual and includes a body corporate and a partnership or other unincorporated association;

"money laundering" means an act which falls within section 340(11) of the Proceeds of Crime Act 2002;

"the money laundering directive" means Directive 2005/60/EC of the European Parliament and of the Council of 26th October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;

"nominated officer" means a person who is nominated to receive disclosures under Part 7 of the Proceeds of Crime Act 2002 (money laundering) or Part 3 of the Terrorism Act 2000 (terrorist property);

"non-EEA state" means a state that is not an EEA state;

"notice" means a notice in writing;

"ongoing monitoring" has the meaning given by regulation 8(2);

[“payment services” has the meaning given by regulation 2(1) of the Payment Services Regulations 2009;]

“regulated market”—

(a) within the EEA, has the meaning given by point 14 of Article 4(1) of the markets in financial instruments directive; and

(b) outside the EEA, means a regulated financial market which subjects companies whose securities are admitted to trading to disclosure obligations which are contained in international standards and are equivalent to the specified disclosure obligations;

“relevant person” means a person to whom, in accordance with regulations 3 and 4, these Regulations apply;

“supervisory authority” in relation to any relevant person means the supervisory authority specified for such a person by regulation 23;

“terrorist financing” means an offence under—

(a) section 15 (fund-raising), 16 (use and possession), 17 (funding arrangements), 18 (money laundering) or 63 (terrorist finance: jurisdiction) of the Terrorism Act 2000;

(b) paragraph 7(2) or (3) of Schedule 3 to the Anti-Terrorism, Crime and Security Act 2001 (freezing orders);

[(d) regulation 10 of the Al-Qaida (Asset-Freezing) Regulations 2011; or]

[(e) section 11, 12, 13, 14, 15 or 18 of the Terrorist Asset-Freezing etc Act 2010 (offences relating to the freezing of funds etc of designated persons);]

“trust or company service provider” has the meaning given by regulation 3(10).

Regulation 3 – Application of the Regulations

(1) Subject to regulation 4, these Regulations apply to the following persons acting in the course of business carried on by them in the United Kingdom (“relevant persons”)—

(a) credit institutions;

(b) financial institutions;

(c) auditors, insolvency practitioners, external accountants and tax advisers;

(d) independent legal professionals;

(e) trust or company service providers;

(f) estate agents;

(g) high value dealers;

(h) casinos.

[(1A) Regulations 2, 20, 21, 23, 24, 35 to 42, and 44 to 48 apply to an auction platform acting in the course of business carried on by it in the United Kingdom, and such an auction platform is a relevant person for the purposes of those provisions.]

(2) "Credit institution" means—

(a) a credit institution as defined in [Article 4(1)] of the banking consolidation directive; or

(b) a branch (within the meaning of Article 4(3) of that directive) located in an EEA state of an institution falling within sub-paragraph (a) (or an equivalent institution whose head office is located in a non-EEA state) wherever its head office is located,

when it accepts deposits or other repayable funds from the public or grants credits for its own account (within the meaning of the banking consolidation directive).

(3) "Financial institution" means—

(a) an undertaking, including a money service business, when it carries out one or more of the activities listed in points 2 to 12[, 14 and 15] of Annex 1 to the banking consolidation directive (the relevant text of which is set out in Schedule 1 to these Regulations), other than—

(i) a credit institution;

(ii) an undertaking whose only listed activity is trading for own account in one or more of the products listed in point 7 of Annex 1 to the banking consolidation directive where the undertaking does not have a customer**,**

and, for this purpose, "customer" means a third party which is not a member of the same group as the undertaking;

Regulation 5 – Meaning of customer due diligence measures

"Customer due diligence measures" means:

(a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;

(b) identifying, where there is a beneficial owner who is not the customer, the beneficial owner and taking adequate measures, on a risk-sensitive basis, to verify his identity so that the relevant person is satisfied that he knows who the beneficial owner is, including, in the case of a legal person, trust or similar legal arrangement,

measures to understand the ownership and control structure of the person, trust or arrangement; and

(c) obtaining information on the purpose and intended nature of the business relationship.

Regulation 6 – Meaning of beneficial owner

(1) In the case of a body corporate, "beneficial owner" means any individual who—

(a) as respects any body other than a company whose securities are listed on a regulated market, ultimately owns or controls (whether through direct or indirect ownership or control, including through bearer share holdings) more than 25% of the shares or voting rights in the body; or

(b) as respects any body corporate, otherwise exercises control over the management of the body.

(2) In the case of a partnership (other than a limited liability partnership), "beneficial owner" means any individual who—

(a) ultimately is entitled to or controls (whether the entitlement or control is direct or indirect) more than a 25% share of the capital or profits of the partnership or more than 25% of the voting rights in the partnership; or

(b) otherwise exercises control over the management of the partnership.

(3) In the case of a trust, "beneficial owner" means—

(a) any individual who is entitled to a specified interest in at least 25% of the capital of the trust property;

(b) as respects any trust other than one which is set up or operates entirely for the benefit of individuals falling within sub-paragraph (a), the class of persons in whose main interest the trust is set up or operates;

(c) any individual who has control over the trust.

(4) In paragraph (3)—

"specified interest" means a vested interest which is—

(a) in possession or in remainder or reversion (or, in Scotland, in fee); and

(b) defeasible or indefeasible;

"control" means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument or by law to—

(a) dispose of, advance, lend, invest, pay or apply trust property;

(b) vary the trust;

(c) add or remove a person as a beneficiary or to or from a class of beneficiaries;

(d) appoint or remove trustees;

(e) direct, withhold consent to or veto the exercise of a power such as is mentioned in sub-paragraph (a), (b), (c) or (d).

(5) For the purposes of paragraph (3)—

(a) where an individual is the beneficial owner of a body corporate which is entitled to a specified interest in the capital of the trust property or which has control over the trust, the individual is to be regarded as entitled to the interest or having control over the trust; and

(b) an individual does not have control solely as a result of—

(i) his consent being required in accordance with section 32(1)(c) of the Trustee Act 1925 (power of advancement);

(ii) any discretion delegated to him under section 34 of the Pensions Act 1995 (power of investment and delegation);

(iii) the power to give a direction conferred on him by section 19(2) of the Trusts of Land and Appointment of Trustees Act 1996 (appointment and retirement of trustee at instance of beneficiaries); or

(iv) the power exercisable collectively at common law to vary or extinguish a trust where the beneficiaries under the trust are of full age and capacity and (taken together) absolutely entitled to the property subject to the trust (or, in Scotland, have a full and unqualified right to the fee).

(6) In the case of a legal entity or legal arrangement which does not fall within paragraph (1), (2) or (3), "beneficial owner" means—

(a) where the individuals who benefit from the entity or arrangement have been determined, any individual who benefits from at least 25% of the property of the entity or arrangement;

(b) where the individuals who benefit from the entity or arrangement have yet to be determined, the class of persons in whose main interest the entity or arrangement is set up or operates;

(c) any individual who exercises control over at least 25% of the property of the entity or arrangement.

(7) For the purposes of paragraph (6), where an individual is the beneficial owner of a body corporate which benefits from or exercises control over the property of the entity or arrangement, the individual is to be regarded as benefiting from or exercising control over the property of the entity or arrangement.

(8) In the case of an estate of a deceased person in the course of administration,

"beneficial owner" means—

(a) in England and Wales and Northern Ireland, the executor, original or by representation, or administrator for the time being of a deceased person;

(b) in Scotland, the executor for the purposes of the Executors (Scotland) Act 1900.

(9) In any other case, "beneficial owner" means the individual who ultimately owns or controls the customer or on whose behalf a transaction is being conducted.

(10) In this regulation—

"arrangement", "entity" and "trust" means an arrangement, entity or trust which administers and distributes funds;

"limited liability partnership" has the meaning given by the Limited Liability Partnerships Act 2000.

Regulation 7 – Application of customer due diligence measures

(1) Subject to regulations 9, 10, 12, 13, 14, 16(4) and 17, a relevant person must apply customer due diligence measures when he—

(a) establishes a business relationship;

(b) carries out an occasional transaction;

(c) suspects money laundering or terrorist financing;

(d) doubts the veracity or adequacy of documents, data or information previously obtained for the purposes of identification or verification.

(2) Subject to regulation 16(4), a relevant person must also apply customer due diligence measures at other appropriate times to existing customers on a risk-sensitive basis.

(3) A relevant person must—

(a) determine the extent of customer due diligence measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction; and

(b) be able to demonstrate to his supervisory authority that the extent of the measures is appropriate in view of the risks of money laundering and terrorist financing.

(4) Where—

(a) a relevant person is required to apply customer due diligence measures in the case of a trust, legal entity (other than a body corporate) or a legal

arrangement (other than a trust); and

(b) the class of persons in whose main interest the trust, entity or arrangement is set up or operates is identified as a beneficial owner,

(c) the relevant person is not required to identify all the members of the class.

(5) Paragraph (3)(b) does not apply to the National Savings Bank or the Director of Savings.

Regulation 8 – Ongoing monitoring

(1) A relevant person must conduct ongoing monitoring of a business relationship.

(2) "Ongoing monitoring" of a business relationship means—

(a) scrutiny of transactions undertaken throughout the course of the relationship (including, where necessary, the source of funds) to ensure that the transactions are consistent with the relevant person's knowledge of the customer, his business and risk profile; and

(b) keeping the documents, data or information obtained for the purpose of applying customer due diligence measures up-to-date.

(3) Regulation 7(3) applies to the duty to conduct ongoing monitoring under paragraph (1) as it applies to customer due diligence measures.

Regulation 11 – Requirement to cease transactions etc.

(1) Where, in relation to any customer, a relevant person is unable to apply customer due diligence measures in accordance with the provisions of this Part, he—

(a) must not carry out a transaction with or for the customer through a bank account;

(b) must not establish a business relationship or carry out an occasional transaction with the customer;

(c) must terminate any existing business relationship with the customer;

(d) must consider whether he is required to make a disclosure by Part 7 of the Proceeds of Crime Act 2002 or Part 3 of the Terrorism Act 2000.

Regulation 14 – Enhanced customer due diligence and ongoing monitoring

(1) A relevant person must apply on a risk-sensitive basis enhanced customer due diligence measures and enhanced ongoing monitoring—

(a) in accordance with paragraphs (2) to (4);

(b) in any other situation which by its nature can present a higher risk of money

laundering or terrorist financing**.**

(2) Where the customer has not been physically present for identification purposes, a relevant person must take specific and adequate measures to compensate for the higher risk, for example, by applying one or more of the following measures—

(a) ensuring that the customer's identity is established by additional documents, data or information;

(b) supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by a credit or financial institution which is subject to the money laundering directive;

(c) ensuring that the first payment is carried out through an account opened in the customer's name with a credit institution.

(3) A credit institution ("the correspondent") which has or proposes to have a correspondent banking relationship with a respondent institution ("the respondent") from a non-EEA state must—

(a) gather sufficient information about the respondent to understand fully the nature of its business;

(b) determine from publicly-available information the reputation of the respondent and the quality of its supervision;

(c) assess the respondent's anti-money laundering and anti-terrorist financing controls;

(d) obtain approval from senior management before establishing a new correspondent banking relationship;

(e) document the respective responsibilities of the respondent and correspondent; and

(f) be satisfied that, in respect of those of the respondent's customers who have direct access to accounts of the correspondent, the respondent—

(i) has verified the identity of, and conducts ongoing monitoring in respect of, such customers; and

(ii) is able to provide to the correspondent, upon request, the documents, data or information obtained when applying customer due diligence measures and ongoing monitoring.

(4) A relevant person who proposes to have a business relationship or carry out an occasional transaction with a politically exposed person must—

(a) have approval from senior management for establishing the business relationship with that person;

(b) take adequate measures to establish the source of wealth and source of funds which are involved in the proposed business relationship or occasional transaction; and

(c) where the business relationship is entered into, conduct enhanced ongoing monitoring of the relationship.

(5) In paragraph (4), "a politically exposed person" means a person who is—

(a) an individual who is or has, at any time in the preceding year, been entrusted with a prominent public function by—

(i) a state other than the United Kingdom;

(ii) a Community institution; or

(iii) an international body,

including a person who falls in any of the categories listed in paragraph 4(1)(a) of Schedule 2;

(b) an immediate family member of a person referred to in sub-paragraph (a), including a person who falls in any of the categories listed in paragraph 4(1)(c) of Schedule 2; or

(c) a known close associate of a person referred to in sub-paragraph (a), including a person who falls in either of the categories listed in paragraph 4(1)(d) of Schedule 2.

(6) For the purpose of deciding whether a person is a known close associate of a person referred to in paragraph (5)(a), a relevant person need only have regard to information which is in his possession or is publicly known.

Regulation 19 – Record-keeping

(1) Subject to paragraph (4), a relevant person must keep the records specified in paragraph (2) for at least the period specified in paragraph (3).

(2) The records are—

(a) a copy of, or the references to, the evidence of the customer's identity obtained pursuant to regulation 7, 8, 10, 14 or 16(4);

(b) the supporting records (consisting of the original documents or copies) in respect of a business relationship or occasional transaction which is the subject of customer due diligence measures or ongoing monitoring.

(3) The period is five years beginning on—

(a) in the case of the records specified in paragraph (2)(a), the date on which—

(i) the occasional transaction is completed; or

(ii) the business relationship ends; or

(b) in the case of the records specified in paragraph (2)(b)—

(i) where the records relate to a particular transaction, the date on which the transaction is completed;

(ii) for all other records, the date on which the business relationship ends.

Regulation 20 – Policies and procedures

(1) A relevant person must establish and maintain appropriate and risk-sensitive policies and procedures relating to—

(a) customer due diligence measures and ongoing monitoring;

(b) reporting;

(c) record-keeping;

(d) internal control;

(e) risk assessment and management;

(f) the monitoring and management of compliance with, and the internal communication of, such policies and procedures,

in order to prevent activities related to money laundering and terrorist financing.

(2) The policies and procedures referred to in paragraph (1) include policies and procedures—

(a) which provide for the identification and scrutiny of—

(i) complex or unusually large transactions;

(ii) unusual patterns of transactions which have no apparent economic or visible lawful purpose; and

(iii) any other activity which the relevant person regards as particularly likely by its nature to be related to money laundering or terrorist financing;

(b) which specify the taking of additional measures, where appropriate, to prevent the use for money laundering or terrorist financing of products and transactions which might favour anonymity;

(c) to determine whether a customer is a politically exposed person;

(d) under which—

(i) an individual in the relevant person's organisation is a nominated officer under Part 7 of the Proceeds of Crime Act 2002 and Part 3 of the Terrorism Act 2000;

(ii) anyone in the organisation to whom information or other matter comes in the course of the business as a result of which he knows or suspects or has reasonable grounds for knowing or suspecting that a person is engaged in money laundering or terrorist financing is required to comply with Part 7 of the Proceeds of Crime Act 2002 or, as the case may be, Part 3 of the Terrorism Act 2000; and

(iii) where a disclosure is made to the nominated officer, he must consider it in the light of any relevant information which is available to the relevant person and determine whether it gives rise to knowledge or suspicion or reasonable grounds for knowledge or suspicion that a person is engaged in money laundering or terrorist financing.

(3) Paragraph (2)(d) does not apply where the relevant person is an individual who neither employs nor acts in association with any other person.

Regulation 36 - Interpretation

In this Part —

"designated authority" means:

(a) the Authority;

(b) the Commissioners; [and]

(c) the OFT;

Regulation 42 – Power to impose civil penalties

(1) A designated authority may impose a penalty of such amount as it considers appropriate on a relevant person [(except an auction platform)] who fails to comply with any requirement in regulation 7(1), (2) or (3), 8(1) or (3), 9(2), 10(1), 11(1), 14(1), 15(1) or (2), 16(1), (2), (3) or (4), 19(1), (4), (5) or (6), 20(1), (4) or (5), 21, 26, 27(4) or 33 or a direction made under regulation 18 and, for this purpose, "appropriate" means effective, proportionate and dissuasive.

(2) The designated authority must not impose a penalty on a person under paragraph (1) [or (1A)] where there are reasonable grounds for it to be satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

(3) In deciding whether a person has failed to comply with a requirement of these Regulations, the designated authority must consider whether he followed any relevant guidance which was at the time—

(a) issued by a supervisory authority or any other appropriate body;

(b) approved by the Treasury; and

(c) published in a manner approved by the Treasury as suitable in their opinion to bring the guidance to the attention of persons likely to be affected by it.

(4) In paragraph (3), an "appropriate body" means any body which regulates or is representative of any trade, profession, business or employment carried on by the [person].

(5) Where the Commissioners decide to impose a penalty under this regulation, they must give the person notice of—

(a) their decision to impose the penalty and its amount;

(b) the reasons for imposing the penalty;

(c) the right to a review under regulation [43A]; and

(d) the right to appeal under regulation [43].

(6) Where the Authority, the OFT or DETI proposes to impose a penalty under this regulation, it must give the person notice of—

(a) its proposal to impose the penalty and the proposed amount;

(b) the reasons for imposing the penalty; and

(c) the right to make representations to it within a specified period (which may not be less than 28 days).

(7) The Authority, the OFT or DETI, as the case may be, must then decide, within a reasonable period, whether to impose a penalty under this regulation and it must give the person notice of—

(a) its decision not to impose a penalty; or

(b) the following matters—

(i) its decision to impose a penalty and the amount;

(ii) the reasons for its decision; and

(iii) the right to appeal under regulation 44(1)(b).

(8) A penalty imposed under this regulation is payable to the designated authority which imposes it.