FINAL NOTICE

To: The Royal Bank of Scotland plc

Of: 36 St. Andrew Square, Edinburgh, EH2 2YB

FSA Ref. No: 121882

Date: 6 February 2013

ACTION

1. For the reasons given in this notice, the FSA proposes to impose on The Royal Bank of Scotland plc ("RBS") a financial penalty of £87.5 million in accordance with section 206 of the Financial Services and Markets Act 2000 ("the Act").

2. RBS agreed to settle at an early stage of the FSA's investigation. RBS 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 £125 million on RBS.

SUMMARY OF REASONS

3. The London Interbank Offered Rate ("LIBOR") is a benchmark reference rate fundamental to the operation of both UK and international financial markets, including markets in interest rate derivatives contracts.

4. The integrity of benchmark reference rates such as LIBOR is therefore of fundamental importance to both UK and international financial markets.

5. Between January 2006 and March 2012 ("the Relevant Period"), RBS breached Principle 3 of the FSA's Principles for Businesses and, between October 2006 and November 2010, RBS breached Principle 5. In order to benefit its derivatives trading books, RBS sought to manipulate LIBOR in connection with its own submission of rates that formed part of the calculation of Japanese yen ("JPY")

and Swiss franc ("CHF") LIBOR and also sought to influence other banks' JPY LIBOR submissions. RBS also inappropriately considered the impact of LIBOR and RBS's LIBOR submissions on the profitability of transactions in its money market trading books as a factor when making (or directing others to make) JPY, CHF and USD LIBOR submissions. RBS's misconduct undermined the integrity of LIBOR.

A. Principle 5 breaches

Manipulation of submissions to benefit derivatives trading books

6. RBS acted improperly and breached Principle 5 by failing to observe proper standards of market conduct between October 2006 and November 2010, in that RBS often took the trading positions of its interest rate derivatives traders ("Derivatives Traders") into account when making JPY and CHF LIBOR submissions. RBS also colluded with other banks who submitted LIBOR to the British Bankers' Association ("BBA") ("Panel Banks") and firms that employed interdealer brokers ("Broker Firms") in relation to JPY and CHF LIBOR submissions. In all, at least 21 RBS individuals were involved in the misconduct including Derivatives Traders, RBS's money market traders ("Money Market Traders") who acted as RBS's primary LIBOR submitters ("Primary Submitters"), and a Manager. The misconduct took a number of forms.

1. Manipulation of RBS's own submissions

7. Between October 2006 and November 2010, RBS often made JPY and CHF LIBOR submissions that took into account requests made by its Derivatives Traders. Derivatives Traders were motivated by profit and sought to benefit RBS's derivatives trading positions. Derivatives Traders made requests in person, in writing and over the phone. By way of illustration, between December 2008 and November 2010, Derivatives Traders made at least 96 written requests to Primary Submitters with respect to JPY and CHF LIBOR. Of the 96 requests, 43 related to JPY LIBOR and 53 related to CHF LIBOR. In addition, Derivatives Traders made at least 5 written requests to influence RBS's USD submissions during the Relevant Period (although it does not appear that these requests were taken into account). Further, JPY and CHF Derivatives Traders often made requests to each other to be passed on to Primary Submitters ("Non-Submitter Requests") for particular submissions. As well as in-person requests, there were at least 129 written Non-Submitter Requests relating to RBS's JPY LIBOR submissions and at least 2 written Non-Submitter Requests relating to RBS's CHF LIBOR submissions.

8. Between October 2006 and April 2009, JPY Derivatives Traders sometimes acted as substitute submitters ("Substitute Submitters"), for example when Primary Submitters were on holiday. Substitute Submitters made JPY LIBOR submissions that took into account both their own derivatives trading positions and the positions of other Derivatives Traders. As well as in-person requests, there were at least 30 written requests to Substitute Submitters from Derivatives Traders with respect to JPY LIBOR.

2. Collusion with Panel Banks and Broker Firms

9. Between February 2007 and June 2010, RBS, through two of its Derivatives Traders, colluded with Panel Banks and Broker Firms in relation to JPY and CHF LIBOR submissions in that:

   i. Two of RBS's Derivatives Traders made at least 14 requests to Panel Banks and Broker Firms in an attempt to influence Panel Banks' JPY LIBOR submissions; and

   ii. Panel Banks and Broker Firms made at least 81 written requests to influence RBS's JPY LIBOR submissions and at least 5 written requests to influence its CHF LIBOR submissions. It is unclear whether the JPY requests were taken into account, however, it appears that some of the CHF requests were taken into account.

10. On 26 June 2009, RBS, through a Derivatives Trader, entered into two "wash trades" (i.e. risk free trades that cancelled each other out and for which there was no legitimate commercial rationale) with a Panel Bank in order to make corrupt brokerage payments of over £12,000 to one Broker Firm. The FSA has concluded that the Derivatives Traders' purpose in doing the wash trades was to garner influence with Brokers for a variety of reasons. For example, on 26 June 2009, the Derivatives Trader used this influence to get a Broker to get Panel Banks to change their LIBOR rates to benefit his trading positions. Further, between September 2008 and August 2009, RBS, through the same Derivatives Trader, entered into at least 23 further wash trades with a Panel Bank and paid at least £199,000 in corrupt payments to two Broker Firms to increase its influence over the Broker Firms. In the same period, RBS also entered into five wash trades with the same Panel Bank but did not pay brokerage on the trades. The brokerage for these five wash trades was paid by the Panel Bank-counterparty as a reward for the Broker Firm's efforts to influence Panel Banks' JPY LIBOR submissions.

3. Management awareness of manipulation

11. One Manager was not only aware that inappropriate requests were made to Primary and Substitute Submitters but also conspired to influence RBS's JPY LIBOR submissions.

4. Motive

12. RBS sought to manipulate LIBOR in order to improve the profitability of its derivatives trading books.

Inappropriate submissions by Money Market Traders

13. RBS also acted improperly and breached Principle 5 by failing to observe proper standards of market conduct in that RBS, through its Primary Submitters, on occasion took into account the impact of LIBOR or RBS's LIBOR submissions on the profitability of transactions in its money market trading books as a factor when

making (or directing others to make) JPY, CHF and USD LIBOR submissions. Primary Submitters' bonuses were linked in part to the profit and loss ("P&L") of their money market trading books.

Impact of the misconduct

14. RBS's breaches of Principle 5 were extremely serious. Its misconduct gave rise to a risk that the published JPY, CHF and USD LIBOR rates would be manipulated and undermined the integrity of those rates. RBS's misconduct could have caused harm to institutional counterparties or other market participants. Where RBS, alone or acting in concert with Panel Banks and Broker Firms, sought to influence Panel Banks' LIBOR submissions, the risk that LIBOR would be manipulated increased materially.

B. Principle 3 breaches

15. RBS breached Principle 3 throughout the Relevant Period by failing to have adequate risk management systems and controls in place in relation to its LIBOR submissions process. RBS did not begin to put such systems and controls in place until March 2011 and its initial measures were inadequate because they did not address the risk that Derivatives Traders would make requests to Primary Submitters. The duration and extent of RBS's misconduct was exacerbated by its inadequate systems and controls. RBS breached Principle 3 in the following four ways.

1. Failure to identify and manage risks of inappropriate submissions

16. In October 2006, RBS established a business model that sat Derivatives Traders in close proximity to Primary Submitters and encouraged the two groups to communicate without restriction. This created an obvious risk that Derivatives Traders would seek improperly to influence Primary Submitters. This risk was not identified by RBS.

17. RBS allowed JPY Derivatives Traders to act as Substitute Submitters. This created an obvious risk that Substitute Submitters would submit rates beneficial to RBS's derivatives trading positions. RBS failed to address this risk until April 2009.

18. RBS failed to identify and mitigate the risk that Primary Submitters would take into account the effect of LIBOR or RBS's LIBOR submissions on their trading positions as a factor in determining RBS's LIBOR submissions until March 2012, when it separated the roles of Primary Submitter and Money Market Trader. The risk existed because Primary Submitters' bonuses were linked in part to the P&L of their money market trading books. While the risk was less obvious than those described above, this did not absolve RBS of the obligation to identify and manage the risks associated with such an arrangement.

2. Absence of any submissions-related systems and controls until March 2011

19. RBS had no systems, controls, training or policies governing the procedure for making LIBOR submissions until March 2011 despite (i) commentary by the Wall Street Journal in 2008 noting the risk of derivatives trader influence; (ii) the

amended BBA Guidance in 2009 which specifically noted that derivatives traders should not be involved in the submission process; and (iii) concerns raised by a regulator in 2010 relating to USD LIBOR submissions. In March 2011, RBS attested to the FSA that its systems and controls were adequate. The attestation was inaccurate. As discussed in greater detail below, the FSA has not concluded that RBS deliberately misled the FSA with respect to its attestation. RBS's systems and controls were not adequate at the time of the attestation because they did not address the risk that Derivatives Traders would make requests to Primary Submitters.

20. RBS implemented systems and controls in June 2011 which addressed the risk of inappropriate Derivatives Trader influence, however, the less obvious but nevertheless significant risk that Primary Submitters would consider the impact of LIBOR or RBS's LIBOR submissions on the profitability of transactions in their money market trading books as a factor in determining RBS's LIBOR submissions was not addressed until March 2012.

3. Inadequate transaction monitoring systems and controls

21. Throughout the Relevant Period RBS failed to have adequate transaction monitoring systems and controls in place. RBS did not detect at least 30 wash trades between September 2008 and August 2009. In connection with these trades, RBS paid at least £211,000 to at least two Broker Firms.

4. Failures of management oversight

22. RBS failed to manage the relevant business areas appropriately. The Manager with direct supervisory responsibility for the Derivatives Traders (who acted as Substitute Submitters) claimed not to be aware that the Derivatives Traders he supervised were submitting LIBOR. At least two other Managers were also aware that Derivatives Traders were acting as Substitute Submitters but did not take any adequate steps to address the situation. Indeed, one Manager, by himself making inappropriate submission requests condoned the practice of Substitute Submitters taking account of Derivatives Traders' requests when making submissions. Taken together, these facts evidence a failure of management oversight.

23. Further, the manipulation of submissions was not detected by RBS until after it had been asked to investigate potential issues in 2010.

C. Penalty

24. The integrity of LIBOR is of fundamental importance to both the UK and international financial markets. RBS's misconduct risked causing serious harm to institutional counterparties or other market participants. RBS's misconduct also undermined the integrity of LIBOR and threatened confidence in and the stability of the UK financial system. The misconduct relating to RBS's JPY and CHF LIBOR submissions was common and condoned by one Manager with direct responsibility for the relevant business area.

25. RBS engaged in this serious misconduct in order to serve its own interests. There was a wholesale absence of effective controls for most of the Relevant Period.

26. The FSA therefore considers it appropriate to impose a very significant financial penalty of £87.5 million on RBS in relation to its misconduct during the Relevant Period.

27. In determining the appropriate level of penalty, the FSA acknowledges the cooperation provided by RBS during the course of the FSA's investigation.

DEFINITIONS

28. The following principal definitions are used in this Notice:

"Broker" means interdealer broker who acted as intermediary in, amongst other things, deals for funding in the cash markets and interest rate derivatives contracts. Brokers A and B are specifically referred to in this notice.

"Broker Firm" means firm that employed Brokers. Three Broker Firms are specifically referred to in this notice, from Broker Firm 1 to 3.

"CHF" means Swiss franc.

"Derivatives Trader" means a RBS employee trading interest rate derivatives. Six Derivatives Traders are specifically referred to in this notice, from Derivatives Trader A to F.

"External Trader" means an employee of a Panel Bank trading interest rate derivatives. External Traders A and B are specifically referred to in this notice.

"JPY" means Japanese yen.

"Manager" means a RBS employee with direct line management responsibility over Derivatives Traders and/or Primary Submitters and/or Substitute Submitters (e.g., a head of desk). One Manager is specifically referred to in this notice as Manager A.

"Money Market Trader" means a RBS employee with primary responsibility for trading cash and managing the funding needs of the bank. Money Market Traders A and B are specifically referred to in this notice.

"Panel Bank" means a contributing bank, other than RBS, who submitted LIBOR to the BBA in one or more currencies. Six Panel Banks are specifically referred to in this notice, from Panel Bank 1 to 6.

"Primary Submitter" means a Money Market Trader who had responsibility for making RBS's LIBOR submissions. Four Primary Submitters are specifically referred to in this notice, from Primary Submitter A to D.

"Senior Manager" means an individual within RBS who is more senior than a Manager, for example, one with responsibility to oversee a business area.

"Substitute Submitter" means a Derivatives Trader who on occasion made RBS's LIBOR submissions.

"USD" means US dollar.

29. The following further definitions below are used in this Notice:

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

"BBA" means the British Bankers' Association.

"BBA Guidelines" means the additional guidelines circulated by the BBA's FX & MM Committee to Panel Banks on 2 November 2009.

"DEPP" means the FSA's Decision Procedure & Penalties Manual.

"FSA" means the Financial Services Authority.

"FSA Handbook" means the FSA Handbook of rules and guidance.

"FX&MM Committee" means Foreign Exchange and Money Markets Committee, which has the sole responsibility for all aspects of the functioning and development of LIBOR.

"GIA" means Group Internal Audit.

"LIBOR" means London Interbank Offered Rate.

"March 2011 Guidance" means the document entitled "BBA LIBOR Rate Setting Procedures" provided by RBS to Money Market Traders in March 2011.

"Non-Submitter Request" means a LIBOR-related request by one Derivatives Trader to another Derivatives Trader.

"OTC" means over the counter.

"P&L" means profit and loss.

"RBS" means Royal Bank of Scotland plc.

"SIBOR" means the Singapore Interbank Offered Rate.

"SOR" means the Singapore Swap Offered Rate.

"STM" means short term markets.

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

FACTS AND MATTERS

30. This section sets out facts and matters relevant to the following:

A. Background (*see* paragraphs 31 to 45).

1. LIBOR and interest rate derivatives contracts
2. Definition of LIBOR
3. LIBOR setting at RBS
4. Creation of the STM desk in London
5. LIBOR's relevance to Derivatives and Money Market Traders

B. Manipulation of submissions to benefit derivatives trading books (*see* paragraphs 46 to 68).

1. Manipulation of RBS's own submissions
2. Collusion with Panel Banks and Broker Firms
3. Management awareness of manipulation

C. Inappropriate submissions by Money Market Traders (*see* paragraphs 69 to 74).

D. Failures in RBS's systems and controls (*see* paragraphs 75 to 102).

1. Failure to identify and manage risks of inappropriate submissions
2. Absence of any submissions-related systems and controls until March 2011
3. Inadequate transaction monitoring systems and controls
4. Failures of management oversight

A. Background

1. LIBOR and interest rate derivatives contracts

31. LIBOR is the most frequently used benchmark for interest rates globally, referenced in transactions with a notional outstanding value of at least USD 500 trillion.

32. LIBOR is currently published for ten currencies and fifteen maturities. However, the large majority of financial contracts use only a small number of currencies and maturities. For example, JPY and USD LIBOR are widely used currencies and three month and six month are commonly used maturities.

33. LIBOR is published on behalf of the BBA. LIBOR (in each relevant currency) is set by reference to the assessment of the interbank market made by a number of banks, referred to as contributing banks. The contributing banks are selected by the BBA and each bank contributes rate submissions each business day. These submissions are not averages of the relevant banks' transacted rates on a given day. Rather, LIBOR requires contributing banks to exercise their judgement in

evaluating the rates at which money may be available to them in the interbank market when determining their submissions.

34. Interest rate derivatives contracts typically contain payment terms that refer to benchmark rates. LIBOR is by far the most prevalent benchmark rate used in the over the counter ("OTC") interest rate derivatives contracts and exchange traded interest rate contracts.

2. Definition of LIBOR

35. The definition of LIBOR sets out the precise nature of the judgement required from contributing banks when determining their submissions. Since 1998, the LIBOR definition published by the BBA has been as follows: "*The rate at which an individual contributor panel bank could borrow funds, were it to do so by asking for and then accepting interbank offers in reasonable market size, just prior to 11:00 am London time.*"

36. The definition requires submissions related to funding from the contributing banks. The definition does not allow for consideration of factors unrelated to borrowing or lending in the interbank market.

3. LIBOR setting at RBS

37. In the Relevant Period, RBS contributed to the calculation of LIBOR rates for several currencies, including JPY, CHF and USD by making daily rate submissions. RBS assigned primary responsibility for making its LIBOR rate submissions to certain of its Money Markets Traders based in London, who were therefore also Primary Submitters. At RBS the Money Market Traders' primary responsibility was managing the funding needs of the bank and, in that context, they executed intrabank and interbank borrowing and lending transactions (in contrast to Derivatives Traders who executed derivatives transactions to service their clients and generate profit for the bank's derivatives books). While all Primary Submitters were Money Market Traders, not all Money Market Traders were Primary Submitters.

38. For part of the Relevant Period, RBS allowed Derivatives Traders to act as Substitute Submitters and to make its JPY LIBOR submissions.

4. Creation of the STM desk in London

39. Prior to October 2006, RBS's money markets and derivatives desks were separate business units, and the traders working on these desks were seated separately and had little interaction. Beginning in January 2006, Managers at RBS began discussing the business benefits of combining the two desks to create a unified short term markets ("STM") desk. Specifically, Managers considered that merging the two groups would allow the traders to share information about currencies and markets more easily and would provide an opportunity for Money Market Traders to learn how to manage risk more effectively. As increased communication between the Money Market Traders (including the Primary Submitters) and the

Derivatives Traders was one of the primary objectives of the STM configuration, it was conceived that these two groups of traders would be co-seated upon formation of the STM desk.

40. Managers debated the formation of the STM desk internally for several months and, in October 2006, its structure was approved by various RBS management committees, which comprised Senior Managers. At no point in the process were the compliance risks of combining the two desks discussed or considered. As a result, the inherent potential conflict of interest relating to RBS's LIBOR submissions was not identified.

41. Following the creation of the STM desk in London, the Money Market Traders (including the Primary Submitters) were co-seated with the Derivatives Traders and the two groups were actively encouraged by Managers to share information about currencies and markets. Managers placed no limitations on what the traders could or should discuss regarding LIBOR.

42. There was a further restructuring in late 2008 and the money markets desk and the derivatives desk became separate business units once again. The majority of Money Markets Traders (including the Primary Submitters) were therefore no longer physically located next to the Derivatives Traders. As before, however, no limitations were placed on communication and information sharing between Primary Submitters and Derivatives Traders. Importantly, one Primary Submitter remained embedded with the Derivatives Traders until as late as April 2009.

5. LIBOR's relevance to Derivatives and Money Market Traders

43. LIBOR was important to Derivatives Traders and Money Market Traders because it impacted transactions within their trading books. The P&L of Derivatives and Money Market Traders' books was a factor in the determination of the size of their bonuses and opportunities for advancement.

44. LIBOR affected Derivatives Traders' payment obligations pursuant to certain contracts underlying the derivatives transactions within their derivatives trading books. The Derivatives Traders therefore stood to profit or avoid losses in respect of certain trades as a result of movements in LIBOR. Derivatives Traders monitored the exposure of their trading books to a one basis point (0.01%) movement in LIBOR on a daily basis. Derivatives Traders commonly referred to the determination of floating rate contractual amounts referenced to LIBOR on a particular day as a "fixing."

45. LIBOR and RBS's LIBOR submissions affected the P&L of RBS's money market books in at least three ways. First, large new cash transactions were referenced to LIBOR such that where LIBOR set determined the cost of these transactions to the money market books. Primary Submitters were sometimes told in advance the details (including amount and tenor) of these large forthcoming cash transactions. In addition, a large proportion of existing borrowing and lending facilities within the money market books also reset and/or rolled over on terms referenced to LIBOR or RBS's LIBOR submission such that where LIBOR set (or what RBS's submission was) determined the cost of these transactions to the money market book. Primary Submitters had access to information which allowed them to

predict in advance the details of these forthcoming reset/rollover transactions. Second, Primary Submitters, like money market traders at all banks, borrowed or lent money across various LIBOR tenors and developed strategies to profit from differences in LIBOR rates. For example, a Primary Submitter could choose to lend money at a high 6 month LIBOR rate and then borrow money at a low 1 month LIBOR rate to fund that transaction in order to make a profit. Third, Primary Submitters, like most money market traders, entered into derivatives transactions to hedge positions within their money market trading books. As discussed above, LIBOR affected payment obligations on these derivatives transactions. In using derivatives trades to hedge their money market risk, Primary Submitters had the ability to profit by over-hedging or under-hedging their risk.

B. Manipulation of submissions to benefit derivatives trading books

1. Manipulation of RBS's own submissions

a. <u>Inappropriate submissions on behalf of Derivatives Traders</u>

46. Derivatives Traders often made requests to Primary Submitters with the goal of influencing RBS's JPY and CHF LIBOR submissions between October 2006 and November 2010.

47. The Derivatives Traders were motivated by profit and sought to benefit their (and thus RBS's) derivatives trading positions by influencing the final benchmark LIBOR rates. The final benchmark rates affected the Derivatives Traders' payment obligations pursuant to the contracts underlying their derivatives transactions such that the Derivatives Traders stood to profit or avoid losses as a consequence of movements in the final benchmark rates resulting from RBS's submissions. On one occasion, one JPY Derivatives Trader boasted to another JPY Derivatives Trader "*…our 6m fixing move* [sic] *the entire fixing, hahaha.*"

48. Improper requests took place over a number of years, were widespread, and involved three benchmark rates and at least 21 Derivatives Traders and Primary Submitters located primarily in London and Tokyo but also in the United States and Singapore. By way of illustration Derivatives Traders made at least 96 written requests to Primary Submitters relating to RBS's JPY and CHF LIBOR submissions between December 2008 and November 2010. Of the 96, 43 related to RBS's JPY LIBOR submissions and 53 related to its CHF LIBOR submissions. In addition, Derivatives Traders made at least 5 written requests to Primary Submitters with respect to RBS's USD LIBOR submissions.[1]

49. In addition to written requests, JPY and CHF Derivatives Traders in London often made in-person requests whilst sitting in close proximity to Primary Submitters on the STM desk. Such in-person requests were openly communicated and commonplace, however, because of their nature, they were not written and it is therefore not possible to document the exact number of requests that occurred.

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[1] Note that one communication may contain more than one request e.g., an email containing a request for high 3 month JPY LIBOR and low 6 month JPY LIBOR.

50. RBS's Primary Submitters often took these requests into account when making RBS's JPY and CHF LIBOR submissions. In respect of the 5 written USD requests identified, it does not appear that the requests were taken into account, although it is difficult to be certain.

51. The following are examples of Derivatives Traders' requests.

i. On 11 February 2009, Primary Submitter A solicited CHF LIBOR requests from Derivatives Trader A, "*CHF LIBORs, anything special.*" Derivatives Trader A responded, *"High 3m pls…6m neutral. Thanks.*"

ii. On 16 March 2009, Derivatives Trader A asked Primary Submitter B, "*can we pls get a very very very low 3m and 6m fix today pls, we have rather large fixings!*" Primary Submitter B responded, "*Perfect, if that's what you want.*" Derivatives Trader A then responded with a thank you and further instructions, "*tks* [Primary Submitter B]*, and then from tomorrow, we need them thru the roof!!!!:)*" Primary Submitter B then wrote back, "*:-)*" RBS's 3 month LIBOR submissions were consistent with Derivatives Trader A's requests on these days. In this exchange, Derivatives Trader A's motivation for making requests to Primary Submitter B is clearly stated.

iii. On 21 April 2009, Derivatives Trader B asked to "*bump up*" RBS's 6 month JPY LIBOR submission to 0.755. Because RBS only submitted to two decimal places, the Primary Submitter rounded up to 0.76. The next day, 22 April 2009, the following exchange took place between the two with respect to RBS's JPY LIBOR submission:

Derivatives Trader B: *can we push up 6m again pls?*

Primary Submitter B: *ok will try*

Derivatives Trader B: *what do you think we can go for?*

Primary Submitter B: *77, today*

Derivatives Trader B: *ok, thks, that's what you think it will be or what we will go with?*

Primary Submitter B: *what I will go, don't see much change from yesterday really, problem being that there was some cash traded longer end 6m and 1yr at libor levels yesterday so market will be* [loath] *to move, first time we seen cash trades that far out for a long long time*

Derivatives Trader B: *ok thanks*

RBS's 6 month JPY LIBOR submission on 21 April 2009 was 0.76. On 22 April 2009, RBS's 6 month JPY submission rose to 0.77, consistent with Derivatives Trader B's request to "*push up 6m again pls*," notwithstanding Primary Submitter B's expressed view that there was no change compared with the day before.

iv. On 30 January 2009, Derivatives Trader A requested "*high 3m* [CHF] *libors pls!!!!!!*" Derivatives Trader A then specified that he wanted "*0.54, and low*

6m" to which Primary Submitter B replied, "*…libors as requested.*" RBS's 3 month CHF submission was 0.54 and its 6 month submission was lower than the previous day, consistent with Derivatives Trader A's request.

v. On 14 September 2009, with respect to RBS's JPY LIBOR submission, Derivatives Trader B requested "*high 3 and 6s please*," and on 15 September 2009, the following exchange occurred:

Derivatives Trader B: *can we lower our fixings today please* [Primary Submitter B]

Primary Submitter B: *make your mind up, haha, yes no probs*

Derivatives Trader B: *im like a whores drawers*

RBS's submissions were consistent with Derivatives Trader B's requests on these days. Further, this exchange illustrates the speed with which the Derivatives Traders' requests could change direction to suit their trading positions. This resulted in requests and consequential submissions that could be erratic and were unrelated to activity in the interbank money market.

52. The improper requests continued well into 2010, even after RBS was made aware of potential misconduct in relation to LIBOR submissions.

i. On 24 September 2010, after Derivatives Trader C made a request to Derivatives Trader B to "*push 6 month JPY LIBOR up 2 bps to 44,*" Derivatives Trader B responded, "*will mention it, no emails anymore, after tom.*"

ii. Almost two months later, on 22 November 2010, Derivatives Trader C told Derivatives Trader B in a Bloomberg chat, "*need to drop 3m LIBOR and hike 6m LIBOR….*" Derivatives Trader B responded, "*at the moment the FED are all over us about libors.*" Derivatives Trader C then asked, "*that's for USD…*[don't] *think anyone cares the* [sic] *JPY LIBOR.*" Derivatives Trader B then responded, "*not yet, I will walk it over to them.*"

iii. On 24 November 2010, Derivatives Trader C wrote to Primary Submitter B, "*was wondering if it suits you guys on hiking up 1bp on the 6mth Libor in JPY… it will help our position tremendously....*" Primary Submitter B responded, "*to be honest happy with levels we see at the moment.*" Derivatives Trader C then wrote back, "*ok no prob…wouldnt* [sic] *want to cause any problem...thanks mate.*"

iv. Directly following this exchange, however, Primary Submitter B called Derivatives Trader C and told him, "W*e're just not allowed to have those conversations over Bloomberg anymore.* [Laughing]." Derivatives Trader C then apologised, said he "*didn't know*" and asked (with a laugh) whether it was because of the "*BBA thing*."[2] Primary Submitter B responded, "*Yes, exactly.*" Primary Submitter B then told Derivatives Trader C, "*leave it with me and it won't be a problem….*" Later in the conversation, Primary Submitter B told Derivatives Trader C that he didn't want to put anything on Bloomberg and reiterated that Derivatives Trader C should leave it with him.

v. These communications indicate that Primary Submitter B and Derivatives Trader C were aware that such requests were improper.

53. In addition to requests made directly to Primary Submitters, Derivatives Traders often made Non-Submitter Requests to each other for particular submissions, the idea being that the Derivatives Trader on the receiving end of the requests would pass the requests along to the Primary Submitters. As well as in-person requests, there were at least 129 written Non-Submitter Requests relating to RBS's JPY LIBOR submissions and at least 2 written Non-Submitter Requests relating to RBS's CHF LIBOR.

54. Finally, it should be noted that Derivatives Traders outside the UK also made requests in relation to other benchmark rates. Specifically, at least 34 written requests were made with respect to SIBOR and SOR.[3] The existence of SIBOR and SOR requests, which put at risk the integrity of those benchmark rates, demonstrates that the misconduct was not confined to the UK and was not related solely to LIBOR.

b. <u>Inappropriate submissions by Substitute Submitters</u>

55. Between October 2006 and April 2009, Substitute Submitters often took their own and other Derivatives Traders' positions into account when making RBS's JPY LIBOR submissions. As well as in-person requests, Derivatives Traders made at least 30 written requests to Substitute Submitters with respect to JPY LIBOR. Substitute Submitters also took into account their own derivatives trading positions when making submissions.

56. The following examples illustrate how Substitute Submitters took their own and other Derivatives Traders' positions into account when making RBS's JPY LIBOR submissions.

i. On the afternoon of Friday 17 August 2007, Derivatives Trader C told Derivatives Trader B (who was acting as a Substitute Submitter) that he thought that 3m JPY would only go down 1 basis point. Derivatives Trader B responded, "*Oh no, not if I have anything to do with it, and I do have something to do with it! Lol.*" Derivatives Trader B acted as a Substitute Submitter for JPY LIBOR in the 10 day period between 20 August 2007 and 31 August 2007. During this time period, RBS made highly anomalous 3 month JPY LIBOR submissions on the majority of days.

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[2] By "BBA thing" Derivatives Trader C was referring to RBS's internal LIBOR investigation referred to above.

[3] RBS's SIBOR and SOR submissions were made by RBS NV in Singapore.

ii. On 21 August 2007, Manager A, asked Derivatives Trader B via Bloomberg chat where he was calling LIBOR. In response, Derivatives Trader B stated, "*Where would you like it? LIBOR that is…Same as yesterday is call*." The chat continued with multiple Derivatives Traders expressing their LIBOR preferences. Derivatives Trader B then told the chat participants that he would go the "*same as yesterday*" and "*maybe a touch higher tomorrow*."

iii. Further, on 12 December 2007, the following exchange occurred between various Derivatives Traders:

Derivatives Trader D:	*they r calling libors a bit lower here at* [moment]*, 1.03 and 1.0675*
Derivatives Trader B:	*i will keep ours higher though fyg* [for your guide]
Derivatives Trader E:	*lower the better as usual, oh good*
Derivatives Trader D:	[Derivatives Trader B] *wants high*
Derivatives Trader B:	*sry*
Derivatives Trader E:	[Derivatives Trader B] *you need high ongoing or just today?*
Derivatives Trader B:	*for the next week or so*

iv. On 28 August 2008, Derivatives Trader B (who was acting as a Substitute Submitter) asked Derivatives Trader C, "*where shall we put* [JPY] *libors?*" Derivatives Trader C responded, "*high 3m…low 6m.*" Derivatives Trader B proceeded to ask whether Derivatives Trader C had any preferences with respect to 1 month LIBOR and Derivatives Trader C responded, "*low, so we don't need to change 1s today, pretend we forgot, we can change it tomorrow, assuming no one else in bank has any position in 1s.*" Derivatives Trader B replied, "*that's fine*." RBS submitted a low 6 month and high 3 month rate on this day while its 1 month submission remained the same.

2. Collusion with Panel Banks and Broker Firms

57. Between February 2007 and June 2010, RBS's Derivatives Traders attempted to influence the JPY LIBOR submissions of Panel Banks either directly or through Broker Firms. Derivatives Traders and a Primary Submitter also received requests from External Traders and a Broker that sought to influence RBS's JPY and CHF LIBOR submissions. RBS's Derivatives Traders were also aware that other Panel Banks in the market were trying to manipulate JPY LIBOR rates, however, they did not report the improper conduct.

a. <u>Requests from and to Panel Banks and Broker Firms</u>

58. Two RBS Derivatives Traders sought to influence Panel Banks' JPY submissions. They went about this in two ways. First, a Derivatives Trader made requests directly to External Traders. Second, another Derivatives Trader made requests to Brokers who then made requests to Panel Banks.

59. More specifically, Derivatives Trader D made at least 8 written requests to a Panel

Bank in an attempt to influence its JPY LIBOR submissions. The following example illustrates the nature of such requests:

i. On 2 March 2007, Derivatives Trader D told External Trader A at Panel Bank 1, "*please please low 6m fix on Monday…I have got a big fix*." External Trader A then said, "*No worries.*"

60. In addition, Derivatives Trader B made at least 6 requests to Broker A at Broker Firm 1 to influence Panel Banks' JPY LIBOR submissions. For example:

i. On 26 June 2009, Derivatives Trader B called Broker A at Broker Firm 1 and asked, "*Has* [External Trader A] *been asking you to put LIBOR's up today?*" Broker A responded, "*He wants … ones and threes a little bit lower and sixes probably about the same as where they are now. He wants them to stay the same.*" Derivatives Trader B replied, "*I want them lower…*" Broker A then stated, *Alright, well, alright, alright, we'll work on it*."

Later on that day, Derivatives Trader B spoke with Broker A again:

Broker A:	*Alright okay, alright listen, we've had a couple words with them. You want them lower, right?*
Derivatives Trader B:	*Yeah.*
Broker A:	*Alright okay, alright, no we've okay just confirming it. We've, so far we've spoke to* [Panel Bank 3]. *We've spoke to a couple of people so we'll see where they come in alright. We've spoke, basically… basically we spoke to* [Panel Bank 3], [Panel Bank 4], [Panel Bank 5], *who else did I speak to?* [Panel Bank 6]. *There's a couple of other people that the boys have a spoke to but as a team we've basically said we want a bit lower so we'll see where they come in alright?*
Derivatives Trader B:	*Cheers.*
Broker A:	*No worries mate.*

61. Panel Banks and Brokers also made requests to two Derivatives Traders, one Money Market Trader, and one Primary Submitter. Derivatives Traders passed these requests on to the relevant Primary Submitter, who then made LIBOR submissions that took into account those requests. Specifically, there were at least 3 written requests to influence RBS's JPY LIBOR submissions and 5 requests to influence its CHF LIBOR submissions made by an External Trader and a Broker that RBS took into account. In addition, External Trader A made at least a further 91 written requests to influence RBS's JPY LIBOR submissions to Derivatives Trader D and Derivatives Trader F. Derivatives Trader D relayed some of these requests to Primary Submitter B, however, it is unclear whether Primary Submitter B took these requests into account.

62. The following are examples of requests made by Panel Banks and Brokers to influence RBS's submissions:

i. On 13 December 2007, External Trader B, a CHF derivatives trader at Panel Bank 2, told Derivatives Trader A, "*make sure you tell your guy to set low LIBOR….*" Derivatives Trader A then responded, "*I have told him but not* *sure how low he will go.*" External Trader B was Derivatives Trader A's predecessor at RBS who now traded CHF at Panel Bank 2. Derivatives Trader A kept in close touch with External Trader B after he left RBS and the two traders participated in Bloomberg chats during which they compared their respective trading positions (which were often the same) and discussed strategies for trading products that fixed off of CHF LIBOR and for influencing CHF LIBOR rates to benefit their positions.

ii. On 3 March 2010, the following exchange took place between Broker B at Broker Firm 2, and Primary Submitter B:

Broker B:	*u see 3m jpy libor going anywhere btween* [sic] *now and IMM?*[4]
Primary Submitter B:	*looks fairly static to be honest, poss more pressure on upside, but not a lot*
Broker B:	*Oh. we hve a mutual friend who'd love to see it go down, no chance at all?*
Primary Submitter B:	*haha* [External Trader A] *by chance*
Broker B:	*shhh*
Primary Submitter B:	*hehehe, mine should remain flat, always suits me if anything to go lower as I rcve funds*
Broker B:	*gotcha, thanks, and, if u cud see ur* [sic] *way to a small drop there might be a steak in it for ya, haha*
Primary Submitter B:	*noted ;-)*

Broker B was a former RBS employee (referred to herein as Derivatives Trader F) and, as noted above, made similar requests to Primary Submitter B to influence the JPY LIBOR rate on behalf of External Trader A. This is also an example of Primary Submitter B confirming how RBS's LIBOR submissions affected his money market book.

b. <u>Wash trades</u>

63. Between September 2008 and August 2009 a JPY Derivatives Trader knowingly engaged in at least 30 wash trades in order to facilitate corrupt brokerage payments to Broker Firms.

64. Specifically, on 26 June 2009, Derivatives Trader B knowingly entered into two wash trades in order to make corrupt brokerage payments of over £12,000 to Broker Firm 1. The FSA has concluded that Derivatives Trader B's purpose in doing the wash trades was to garner influence with Brokers for a variety of reasons. For example, on 26 June 2009, Derivatives Trader B used this influence

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4 IMM used here refers to the International Monetary Market date. IMM dates are the four quarterly dates each year which most futures and options contracts use as their scheduled maturity date or termination date.

to get a Broker to get Panel Banks to change their LIBOR rates to benefit his trading positions.

65. Further, between September 2008 and August 2009, Derivatives Trader B knowingly entered into at least 23 wash trades with Panel Bank 1 and paid at least £199,000 in order to facilitate corrupt payments to Broker Firm 1 and Broker Firm 3 to increase his influence over the Broker Firms. In the same period, Derivatives Trader B also knowingly entered into five wash trades with Panel Bank 1 on which it made no brokerage payments. The brokerage for these five wash trades was paid by Panel Bank 1 to Broker Firm 1 as a reward to the Broker Firm for efforts to influence Panel Banks' JPY LIBOR submissions.

66. Derivatives Trader B knowingly executed these wash trades with Panel Bank 1 and was also aware at the time that External Trader A at Panel Bank 1 made requests to Brokers to influence Panel Banks' JPY LIBOR submissions.

67. The following are examples of discussions regarding the execution of wash trades:

i. On 19 September 2008, in a series of telephone communications, Broker A and Derivatives Trader B discussed and arranged wash trades. Broker A asked Derivatives Trader B: *"can you do me a favour ... you're not going to get paid any bro*[5] *for this and we'll send you lunch around for the whole desk. Can you flat…can you switch two years semi at 5 ¾, 100 yards*[6]*…between* [Panel Bank 1]. *Just get …take it from* [Panel Bank 1], *give it back to* [Panel Bank 1]. *He wants to pay some bro. We won't bro you but he wants to put …he wants to give us some bro."* Derivatives Trader B replied *"yeah, yeah."* Seconds later, Broker A asked Derivatives Trader B to increase the value of the trade and Derivatives Trader B agreed. In addition, Derivatives Trader B agreed that RBS would pay Broker Firm 1 brokerage on one leg of the transaction.

Later the same day, Broker A asked Derivatives Trader B if he could, *"do another 100 yards? Flat switch…I know I'm pushing my luck."* The two then discussed why Broker A was making the request and Broker A responded that it was to enable a derivatives trader at another bank to pay Broker Firm 1 brokerage. Broker A then informed Derivatives Trader B that the total commission to Broker Firm 1 on these particular trades would be approximately £20,000.

ii. On 3 December 2008, another series of calls took place between Broker A and Derivatives Trader B. Broker A said to Derivatives Trader B, *"I need a massive, massive favour…Can you flat switch me something? Won't cost you any money. …It's going to make our week mate…I obviously won't bro it on it …but* [External Trader A] *is going to bro on both sides.* Derivatives Trader B executed the wash trades on this day and RBS did not pay any brokerage.

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[5] References to "bro" here mean the brokerage fee (or commission) earned by Broker Firms as compensation for the transactions they execute.

[6] As used here, "100 yards" means 100 billion.

When the two discussed how to book the trade, Derivatives Trader B said, *"I'm not going to book them 'til this afternoon. I'd take them out of SwapsWire[7] if I were you."* Broker A replied, *"I'll take it out of SwapsWire, okay."*

Later in the day, the two had a follow up conversation regarding whether the trade was or should be booked in the SwapsWire. Derivatives Trader B informed Broker A, *"Next time I don't want to do it on the SwapsWire."* He further stated, "*I've got to book SwapsWires within ten minutes of someone else booking"* and then went on, *"I'm now going to get into all sorts of things about what happened."* Derivatives Trader B explained the situation further:

Derivatives Trader B:	*…it's going to be highlighted as two identical trades* [going in and out of SwapsWire].
Broker A:	*Oh, right. Fuck.*
Derivatives Trader B:	*So now they're going to say, 'Why have we got…* [Panel Bank 1] *in and out on SwapsWire and not booked it?' So now the whole bank's going to see the trade.*
Broker A:	*Yeah, shit. I don't…there's no way we can get this out and put back in again is there…*
Derivatives Trader B:	*I'm gonna…I'm going…I'm going to book mine not as SwapsWire.*
Broker A:	*Okay. So it's not going to matter on mine, is it?*
Derivatives Trader B:	*I don't…I've got no idea, mate. This will be a fucking disaster now.*
Broker A:	*Oh fuck. Okay.*

The above example illustrates how concerned Derivatives Trader B was that someone at RBS would find out that he had executed the wash trades. In fact, RBS never did notice the wash trades (*see* Section D Failures in RBS's systems and controls).

3. *Management awareness of manipulation*

68. One Manager was aware of JPY Derivatives Traders' inappropriate requests to Primary and Substitute Submitters and at times conspired to influence RBS's LIBOR submissions. In addition, that same Manager and another Manager were also aware that Derivatives Traders acted as Substitute Submitters for JPY LIBOR:

i. On 22 August 2007, Derivatives Trader B, acting as a Substitute Submitter, told Manager A that he "*put in 1.05 and 1.15*" because he "*wanted high fixes* [JPY] *today*." Later in the chat Derivatives Trader B advised Manager A to let

7 The term SwapsWire used here refers to an electronic trade confirmation network for the OTC derivatives markets that enables market participants to complete trade date confirmation immediately upon execution.

him know if he has any preferences each day and Manager A responded, "*will do*." Rather than advise Derivatives Trader B that such conduct was inappropriate, Manager A sent the clear message that he approved of such conduct by agreeing to pass Derivatives Trader B any preferences. Manager A took no steps to raise the inappropriate conduct with anyone at RBS.

ii. On 3 December 2007, Manager A made the following direct request to Derivatives Trader D who was acting as a Substitute Submitter on this day:

Manager A:	*for choice we want lower libors…let the MM* [i.e., money market] *guys know please*
Derivatives Trader D:	*sure I am setting today as* [Derivatives Trader B] *and cash guy off*
Manager A:	*great, set it nice and low*
Derivatives Trader D:	*1.02 in 6m, or lower*
Manager A:	*yeh lower*
Derivatives Trader D:	*1.01 then can't really go much lower than that*
Manager A:	*Ok*
Derivatives Trader D:	*u care for 1m and 3m too, looks to me like fra map pretty flat*
Manager A:	*lower generally dude*
Derivatives Trader D:	*cool*
Manager A:	*within the acceptable bounds.*

iii. Later the same month, on 13 December 2007, Manager A asked Derivatives Trader D if he would speak with Derivatives Trader B, the Substitute Submitter on the day, regarding Derivatives Trader B's plan to make a high submission. Manager A made it clear that a low submission would suit his positions. Derivatives Trader D responded that he thought it would be better if Manager A spoke directly to Derivatives Trader B, "*Do u want to speak with him…u r the boss, he will not listen to me….*" Manager A next confirmed that he would speak with Derivatives Trader B.

iv. On 29 February 2008, Manager A told Derivatives Trader D, "*get our boys to put higher libors*" and Derivatives Trader D responded "*ok.*" Later Manager A reiterated his request, "*higher libor will be nice*."

C. Inappropriate submissions by Money Market Traders

69. Primary Submitters on occasion considered the impact of LIBOR or RBS's LIBOR submissions on the profitability of transactions in its money market trading books as a factor when making (or directing others to make) JPY, CHF and USD LIBOR submissions. Primary Submitters were motivated by profit as the performance of the money market books was a factor in the determination of the size of their bonuses.

70. As discussed in greater detail in the Background section above, LIBOR and RBS's LIBOR submissions were relevant to the P&L of the money market books because (i) large new cash transactions as well as a proportion of existing facilities were referenced to them; (ii) in managing their borrowing and lending transactions, Primary Submitters, amongst other things, sought to profit from differences in LIBOR rates in different tenors or different currencies; and (iii) Primary Submitters traded derivatives products referenced to LIBOR. In addition, Primary Submitters were made aware of or could predict the details (including size and tenor) of cash transactions referenced to LIBOR or RBS's LIBOR submissions. This created a risk that, in making RBS's LIBOR submissions, Primary Submitters would submit a rate that took into account the pricing of forthcoming floating rate transactions and, ultimately, the P&L of their money market books. Where forthcoming transactions were referenced to RBS's LIBOR submissions as was the case for transactions with RBS's Treasury which tended to include larger transactions, Primary Submitters were able to directly impact the rate applicable to such transactions. Because Primary Submitters may also have taken other factors into account when making their LIBOR submissions, it is impossible to determine what RBS's LIBOR submissions would have been in those circumstances but for the inappropriate consideration of these forthcoming transactions.

71. This above-described risk crystallised with respect to RBS's JPY, CHF and USD LIBOR submissions. Indeed, Primary Submitter B acknowledged internally, "*…I set a rate to benefit my interest as a Money Market Trader*;" while Primary Submitter C observed to a Broker during the financial crisis that, in the absence of liquidity, "*people are just setting LIBORs to suit their books*" and "*it's just where you've got your fixings really….*"

72. Between January 2006 and May 2011, Primary Submitter B on occasion took into account, among other things, forthcoming JPY and CHF transactions when making RBS's JPY and CHF LIBOR submissions.

73. With respect to USD, on 16 August 2007, Primary Submitter C directed a junior Money Market Trader to make a USD LIBOR submission on his behalf that took into account the pricing of a large forthcoming floating rate transaction that would impact the USD money market book on 17 August 2007. Specifically, Primary Submitter C told a RBS colleague, "*I've got massive fixing in ones, so I said to* [Money Market Trader A, who was making RBS's USD LIBOR submissions on the day in question] *I just want the really, really low ones, in case they do fucking cut.*"[8] Primary Submitter C's reference to "massive fixings" was a reference to a repeating USD 4 billion borrowing facility that was set to fix on 17 August 2007. On 17 August 2007, RBS's 1 month LIBOR submission was two basis points lower than 16 August 2007 and seven basis points lower than 15 August 2007. However, as many Panel Banks also reduced their 1 month LIBOR submissions on 17 August 2007, RBS's submission ranking relative to the Panel Banks only fell slightly on that day. On 20 August 2007, the date of its next submission, RBS's 1

8 "They" in this context refers to the US Federal Reserve.

month submission went back up 2 basis points (and its submission ranking moved up significantly).

74. Also, in relation to USD, between 9 March 2010 and 18 March 2010, Primary Submitter D made USD submissions which took into account the pricing of large forthcoming floating rate USD transactions. A communication on 9 March 2010 illustrates the consideration that Primary Submitters, including Primary Submitter D, gave to these transactions. Specifically, on that date, Money Market Trader B, emailed Primary Submitter C whilst Primary Submitter C was on holiday and told him of a conversation he had had with Primary Submitter D who was filling in for Primary Submitter C and making RBS's USD LIBOR submissions. According to Money Market Trader B, Primary Submitter D told Money Market Trader B that even though Money Market Trader B wanted them higher, he [Primary Submitter D], "*wanted to keep them* [USD LIBORs] *down because of some fixes.*" Primary Submitter C replied to Money Market Trader B's email and confirmed to him, "*we do have some big fixes in London so suits for low libors.*" Notably, RBS's USD LIBOR submissions stayed low during this period when there were five large USD floating rate transactions (but they were unchanged from the rates submitted over the previous three weeks). RBS's USD LIBOR submissions went up after the last large transaction fixed.

D. Failures in RBS's systems and controls

1. Failure to identify and manage risks of inappropriate submissions

75. The implementation of the STM structure in October 2006, which sat Derivatives Traders in close proximity to the Primary Submitters and encouraged open communication between the two groups, created an obvious risk that Derivatives Traders would seek to influence Primary Submitters to make submissions to benefit their trading positions. The STM desk structure:

i. Encouraged the open communication between the Primary Submitters and Derivatives Traders that created a risk that misconduct would occur. While the STM desk was in place, JPY and CHF Derivatives Traders routinely made requests to the Primary Submitters to submit rates that were favourable to their derivatives trading positions. As the two groups were now sitting in close proximity, these requests were usually made in person.

ii. Resulted in a lack of supervisory oversight over the Primary Submitters. Indeed, under the STM structure, it was unclear within RBS who had day-to-day supervisory responsibility for the Primary Submitters.

iii. Created a situation where, because Primary Submitters sat next to Derivatives Traders, it was natural for Derivatives Traders to cover for Money Market Traders and act as Substitute Submitters when Primary Submitters were unable to make RBS's submissions. It is noteworthy as well that, for much of the time the STM structure was in place, one of the Primary Submitters had no money market colleague to cover for him in the event that he was unable to make RBS's LIBOR submissions.

iv. Entrenched an enduring course of conduct between the Primary Submitters and the Derivatives Traders. In fact, notwithstanding the dismantlement of the STM desk, requests from Derivatives Traders to the Primary Submitters continued until November 2010, the only difference being that, following the break up of the STM desk, Derivatives Traders' requests were more often relayed electronically or over the phone as they were no longer sitting in close proximity. Indeed, following the dissolution of the STM desk, there was a sharp rise in the number of written requests from Derivatives Traders to Primary Submitters.

76. Allowing Derivatives Traders to act as Substitute Submitters created a conflict because there was an obvious risk that Substitute Submitters would submit rates beneficial to RBS's derivatives trading positions.

77. Finally, as set out above, Money Market Traders were primarily responsible for managing the funding needs of the bank. However, LIBOR and RBS's LIBOR submissions also affected the P&L of RBS's money market books. Primary Submitters' bonuses were linked in part to the P&L of their money market trading books. There was therefore a risk that Primary Submitters would take into account the impact of LIBOR or RBS's LIBOR submissions on the profitability of transactions in their trading books as a factor in determining RBS's LIBOR submissions. This was not an appropriate factor for rate setters to take into account when setting LIBOR. RBS did not identify and mitigate this risk until March 2012 when it separated the roles of Primary Submitter and Money Market Trader. While the risk was less obvious and at the time the BBA may have considered that money market traders were well placed to set LIBOR, this did not absolve RBS of the obligation to identify and manage the risks associated with such an arrangement.

2. Absence of any submissions-related systems and controls until March 2011

78. RBS had no systems and controls relating to its rates submissions until March 2011 despite concerns raised by the BBA in 2008 and by another regulator in 2010 (on which see below). Specifically, RBS did not:

i. Conduct a review of the integrity of its processes.

ii. Have any systems, controls or policies governing the procedure for making LIBOR submissions.

iii. Provide training to (i) its Primary Submitters about the submissions process or (ii) its Primary Submitters and Derivatives Traders in relation to the appropriateness of requests for favourable submissions. Such training would have been particularly relevant given that, throughout the duration of the STM set up, sharing of market knowledge and discussion of rates was encouraged between the two groups. As it was, new submitters were simply shown how to set LIBOR by the current or outgoing submitter. This lack of training is reflected in comments made by Primary Submitter B who was unclear regarding some aspects of the definition of LIBOR.

iv. Carry out any adequate monitoring of submissions made. Indeed, there was no adequate monitoring of anomalous submissions until September 2011.

a. <u>BBA's 2008 review</u>

79. In 2008, the BBA conducted a review of the LIBOR submissions process. At several points during the review, RBS was alerted to concerns within the banking community with respect to how LIBOR was being set but failed to consider whether its general systems and controls adequately addressed the BBA's concerns.

80. On 16 April 2008, The Wall Street Journal published an article about LIBOR submissions with the headline: "*Bankers Cast Doubt on Key Rate Amid Crisis*." The subheading of the article stated that: "*One of the most important barometers of the world's financial health could be sending false signals*." The article included the statement: "*The Libor system depends on banks to tell the truth about their borrowing rates*." The article highlighted an apparent disparity between LIBOR submissions of various banks and their CP/CD[9] issuance rates. The Wall Street Journal suggested that banks had been suppressing their submissions to avoid signalling to the market that they were experiencing difficulties ("low balling"). The article also referred to an announcement by the BBA that it would ban any bank that was deliberately misquoting its submissions from contributing submissions. The article also referenced a report by the Bank for International Settlements that "*banks might have an incentive to provide false rates to profit from derivatives transactions.*"

81. Panel Banks received communications from the BBA on several occasions during the financial crisis, including communications on 17 April 2008 and 2 May 2008, which referred to concerns that had been raised with the BBA about the accuracy of LIBOR submissions and, in particular, concerns that some Panel Banks were making LIBOR submissions that did not reflect the definition of LIBOR, because they were concerned about attracting negative media attention from "high" LIBOR submissions. The BBA's communications made clear that, if true, such behaviour was unacceptable.

82. On 10 June 2008, the BBA published a consultation paper to respond to public and industry concerns about the accuracy of LIBOR rates at that time.[10] The paper amplified the LIBOR definition by prescribing that: *"The rates must be submitted by members of staff at a bank with primary responsibility for management of a bank's cash, rather than a bank's derivative book."* The paper also sought comments on certain proposals to modify LIBOR, including proposals in response to concerns about negative media perception of "high" LIBOR submissions. The BBA explained that it: "*propose*[d] *to explore options for avoiding any stigma whilst maintaining transparency*." The BBA paper also stated that the BBA

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9 As used here, CP refers to Commercial Paper and CD refers to Certificate of Deposit.

10 The paper was titled: "*Understanding the Construction and Operation of BBA LIBOR—Strengthening for the Future*."

believed that Panel Banks were correctly making submissions "*at the rate their cash desks perceive they can raise cash in the specified currency*."

83. On 5 August 2008, the BBA published a collective "Feedback Statement" which stated:

> *In conclusion, all Panel banks are confident that their submissions reflect their perception of their true costs of borrowing at the time at which they submitted their rates. They are therefore prepared to continue with their individual quotes being published with the day's LIBOR rates. As there was no real support for any of the proposals to limit stigmatisation, the FX & MM Committee has therefore decided to retain the existing process.*

84. At the same time, the BBA also published guidance that further amplified the definition of LIBOR. This amplification stated that, "*the rate at which each bank submits must be formed from that bank's perception of its cost of funds in the interbank market.*"

85. On 15 September 2008, the FX & MM Committee prepared draft procedures for LIBOR panel banks. The Committee proposed that: *"*[the rate should not be] s*et in reference to information supplied by any individual or institution outside that area of the contributing bank that has the primary responsibility for managing that bank's cash."*

86. The BBA's FX & MM Committee published a paper on 17 November 2008 setting out a proposed methodology for how enhanced LIBOR governance and scrutiny would operate in the future. The paper appended a draft document titled the "Contributor Terms of Reference" (the final version of which was circulated to all contributing banks (including RBS) on 16 July 2009). The Terms of Reference set forth: (i) how the banks were required to form their LIBOR submissions; and (ii) a requirement that the banks have internal processes in place to audit their LIBOR submissions as part of their annual compliance procedures (and, if required, provide the BBA with information to support those submissions).

87. On 15 July 2009, BBA's "Terms of Reference for LIBOR Contributor Banks" prescribed that: *"…*[LIBOR] *rates must be submitted by members of staff at a bank with primary responsibility for management of a bank's cash, rather than a bank's derivative book."* It is notable that these are exactly the same terms as those set out in the BBA's amplification of the LIBOR definition (*see* paragraph 78 above) in its consultation of 10 June 2008**.**

88. On 2 November 2009, the BBA's FX & MM Committee circulated the BBA Guidelines to contributing banks (including RBS). The BBA Guidelines sought to ensure that contributing banks similarly applied the factors that influenced their respective LIBOR submissions. In particular, they covered:

    i. The requirements on contributing banks when making submissions at times of extremely restricted liquidity in particular maturities and currencies.

ii. Expectations regarding consistency in each contributing bank's submissions from one day to the next.

iii. The use of market intelligence and external indicators when forming LIBOR rates. For example, the BBA Guidance explained that "*contributors should not ask intermediaries where they believe LIBOR rates will set on a given day and use this as a basis for submissions. This misses the point of the benchmark, and is a circular process that would rapidly lead to inaccurate rates*."

iv. Identification of who at the bank should submit LIBOR. In particular, the BBA Guidelines provided, "*the basis for a bank's submission must be the rate at which members of the bank staff, with primary responsibility for management of a bank's cash rather than a bank's derivative book, consider the bank can borrow for unsecured funds, in line with the BBA LIBOR definition.*"

89. Despite the BBA's 2008 review and the proposed enhancements, RBS failed to address the adequacy of its systems and controls and account for the express guidance provided by the BBA Guidelines. For example, RBS failed to complete and return the BBA Contributor Terms of Reference, failed to complete any internal audits as required by the Contributor Terms of Reference, and failed to implement any appropriate audit or record retention policies or procedures. RBS's general failure to address the BBA's guidance is particularly troubling because it participated on the BBA's FX & MM Committee.

b. <u>RBS's internal investigation and the FSA's enquiries</u>

90. In April 2010, RBS began an investigation into potential USD LIBOR-related misconduct in the form of potential USD suppression. However, RBS's internal investigation did not trigger any substantive change to RBS's rate submissions processes because it was too narrowly focussed on potential misconduct in the form of potential low balling with respect to RBS's USD LIBOR submissions and did not consider the wider issues that had been raised by the BBA. RBS should have noticed at this time that it had in place no systems and controls at all in relation to its LIBOR submissions.

91. The FSA was increasingly concerned about the integrity of LIBOR and engaged with Panel Banks on the issue in 2010. In response to an FSA communication, RBS confirmed in November 2010 that it was reviewing a large volume of material in relation to its LIBOR submissions. This material included inappropriate USD LIBOR requests by Derivatives Traders.

92. On 16 December 2010, the BBA requested that RBS send "proof" that its LIBOR setting processes had undergone a BBA-mandated internal audit. At this point in time, however, no such audit had taken place. In January 2011, RBS Group Internal Audit ("GIA") carried out the planning stage of its audit and, on 25 January 2011, GIA issued its final "Terms of Reference" which set forth the objectives and scope of the planned audit.

93. On 10 February 2011, the FSA asked RBS (as well as other Panel Banks) to provide an attestation as to the adequacy of the systems and controls in place for the determination and agreement of its LIBOR submissions.

94. On 22 February 2011, GIA completed its initial review of RBS's LIBOR setting processes and identified four issues: (i) the mandatory "Terms of Reference for LIBOR Contributor Banks" document issued by the BBA had not been signed and submitted to the BBA; (ii) RBS's LIBOR setting procedures documentation was incomplete; (iii) RBS had insufficient oversight of its LIBOR setting; and (iv) non-Money Market Traders had access to the system from which RBS's LIBOR submissions were made.

95. Following GIA's review, RBS began addressing the four identified issues. In March 2011, RBS circulated to its Money Markets Traders a document entitled, "BBA LIBOR Rate Setting Procedures" (the "March 2011 Guidance"). It is clear that a primary impetus for the March 2011 Guidance was the FSA's 10 February 2011 request.

96. On 21 March 2011, a Senior Manager responded to the FSA's 10 February 2011 letter stating,

> *…Group Internal Audit has conducted a review of the LIBOR setting process and the issues raised are being addressed to their satisfaction. Thus, on that basis I confirm that RBS has in place adequate systems and controls for the determination and submissions of its LIBOR rates.*

97. The FSA has not concluded that RBS deliberately misled the FSA with respect to its attestation. However, as GIA had not identified the risk that Derivatives Traders would make requests to Primary Submitters it was not being addressed by RBS. As a result, its submissions-related systems and controls continued to remain inadequate. For example, no guidance was distributed to Derivatives Traders (only Money Market Traders) and the March 2011 guidance that was distributed was not accompanied by any submissions-related training.

98. RBS implemented systems and controls in June 2011 which addressed the risk of inappropriate Derivatives Trader influence, however, the less obvious but nevertheless significant risk that Money Market Traders would consider the impact of LIBOR or RBS's LIBOR submissions on the profitability of transactions in their trading books as a factor in determining RBS's LIBOR submissions was not addressed until March 2012.

99. RBS's failure to implement adequate systems and controls by this stage is very concerning in light of the BBA guidance, its own internal investigation and the FSA's enquiries. Its failure to implement submissions-related policies or guidance in a timely fashion meant that improper Derivatives Trader requests continued until November 2010.

3. Inadequate transaction monitoring systems and controls

100. Throughout the Relevant Period, RBS failed to have adequate transaction monitoring systems and controls in place. Between September 2008 and August 2009, RBS did not detect at least 30 wash trades. In connection with these trades, RBS paid at least £211,000 to at least two Broker Firms for no legitimate commercial rationale.

101. The nature of such trades made them readily detectable. Indeed, the trades were executed on the same day, in the same amount, between the same counterparties and effectively cancelled each other out. Still, it was not until the FSA raised the issue of the wash trades with RBS in the course of its investigation, that the bank was aware such trades had even occurred.

4. Failures of management oversight

102. RBS failed to manage the relevant business areas appropriately. The Manager with direct supervisory responsibility for the Derivatives Traders (who acted as Substitute Submitters) claimed not to be aware that the Derivatives Traders he supervised were submitting LIBOR. At least two other Managers were also aware that Derivatives Traders were acting as Substitute Submitters but did not take any adequate steps to address the situation. Indeed, one Manager, by himself making inappropriate submission requests, condoned the practice of Substitute Submitters taking account of Derivatives Traders' requests when making submissions. Taken together, these facts evidence a failure of management oversight.

FAILINGS

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

A. Principle 5

104. Principle 5 of the FSA's Principles for Businesses requires that a firm must observe proper standards of market conduct.

105. RBS sought to manipulate JPY and CHF LIBOR to benefit its derivatives trading books for most of the Relevant Period. RBS also acted inappropriately when JPY, CHF and USD LIBOR submitters on occasion took into account the impact of LIBOR or RBS's LIBOR submissions on the profitability of their money market trading books as a factor when making (or directing others to make) RBS's LIBOR submissions. Accordingly RBS failed to observe proper standards of market conduct.

Manipulation of submissions to benefit derivatives trading books

106. RBS often took Derivatives Traders positions into account when making JPY and CHF LIBOR submissions.

107. Derivatives Traders, either directly or through Broker Firms, made and received requests to influence JPY and/or CHF LIBOR submissions.

108. One Manager knew of and was actively involved in RBS's attempts to manipulate JPY LIBOR.

109. In total, the misconduct involved at least 21 individuals at RBS, at least one of whom was a Manager.

110. RBS sought to manipulate LIBOR in order to improve the profitability of its derivatives trading books.

Inappropriate submissions to benefit money market trading books

111. Primary Submitters took into account the impact of LIBOR or RBS's LIBOR submissions on the profitability of transactions in their money market trading books as a factor when making (or directing others to make) RBS's JPY, CHF and USD LIBOR submissions.

112. In total, the misconduct involved at least 2 individuals at RBS.

113. RBS, through the conduct of its Primary Submitters, sought to impact the profitability of transactions within its money market trading books.

B. Principle 3

114. Principle 3 of the FSA's Principles for Businesses states that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

115. RBS breached Principle 3 throughout the Relevant Period. It did not take reasonable care to organise and control its affairs responsibly and effectively. Nor did it have adequate risk management systems. The duration and extent of misconduct within the Relevant Period was exacerbated by these inadequate systems and controls.

116. Specifically, RBS breached Principle 3 by: (i) failing to identify and manage all of the risks of inappropriate submissions until March 2012; (ii) failing to have any submissions-related systems and controls until March 2011; (iii) failing to have adequate transaction monitoring systems and controls to detect wash trades until March 2012; and (iv) the failures of management oversight until April 2009 .

SANCTION

117. The FSA's policy on the imposition of financial penalties and public censures is set out in the FSA's Decision Procedure & Penalties Manual ("DEPP"). The detailed provisions of DEPP are set out in Annex A.

118. In determining the financial penalty, the FSA has had regard to this guidance. The FSA's current penalty regime applies to breaches which take place on or after 6 March 2010. However, most of the conduct at issue falls under the previous

penalty regime, so DEPP in its pre-6 March 2010 form has been applied. The FSA has also had regard to the provisions of the FSA's Enforcement Manual relevant to the pre-28 August 2007 part of the Relevant Period.

119. The FSA considers the following DEPP factors to be particularly important in assessing the sanction.

A. Deterrence - DEPP 6.5.2G(1)

120. The principal purpose of a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business. The FSA considers that the need for deterrence means that a very significant fine on RBS is appropriate.

B. Nature, seriousness and impact of the breach - DEPP 6.5.2G(2)

121. RBS's breaches were extremely serious. The misconduct, which occurred over a number of years, involved a significant number of employees located primarily in London and Tokyo but also in the United States and Singapore. The FSA has had regard to the frequency and duration of the misconduct. While the requests were, in most cases, for movements of between 1 and 2 basis points, this was still an attempt by RBS to manipulate LIBOR for profit.

122. RBS's misconduct extended beyond its own internal submission processes to attempts to influence the submissions of Panel Banks by colluding with Panel Banks and Broker Firms. RBS, through a Derivatives Trader, also colluded with Broker Firms in serious market misconduct by executing wash trades.

123. There were serious systemic weaknesses in the RBS's systems and controls and supervisory oversight. RBS did not respond diligently to the BBA's 2008 review, the BBA's proposed enhancements or its own and the FSA's enquiries into potential issues with its submissions. The result is that RBS's misconduct endured long after it should have.

124. LIBOR is the prevalent benchmark reference rate in a number of relevant markets including markets in OTC derivatives contracts and futures contracts traded on exchanges such as LIFFE in London. LIBOR also has a wider impact on other markets. The integrity of benchmark reference rates such as LIBOR is of fundamental importance to both UK and international financial markets. RBS's misconduct threatened the integrity of LIBOR and confidence in or the stability of the UK financial system.

125. RBS could have caused harm to institutional counterparties or other market participants.

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

126. The FSA does not conclude that RBS as a firm engaged in deliberate misconduct. Nevertheless the improper actions of a number of RBS employees involved in the misconduct were at least reckless and frequently deliberate. RBS, because of a poor culture in its interest rate derivatives trading business and weak systems and controls, failed to prevent the deliberate, reckless and frequently blatant actions of its employees.

D. The size, financial resources and other circumstances of the firm - DEPP 6.5.2G(5)

127. RBS, and in particular its investment bank, is one of the biggest, most sophisticated and well-resourced financial services institution in the UK. Serious breaches committed by a firm such as RBS merit a high penalty.

E. The amount of benefit gained or loss avoided - DEPP 6.5.2G(6)

128. RBS sought to manipulate LIBOR submissions in order to improve its profitability. The FSA has not determined the amount of benefit gained.

F. Conduct following the breach - DEPP 6.5.2G(8)

129. Following an internal investigation, RBS self reported misconduct to the FSA. In determining the appropriate penalty, the FSA acknowledges the cooperation provided by RBS during the course of the FSA's investigation.

G. Disciplinary record and compliance history - DEPP 6.5.2G(9)

130. The FSA has previously issued four Final Notices and one Decision Notice against members of RBS Group plc:

i. The FSA issued a Final Notice, dated 12 December 2002, to RBS for contravening the Anti-Money Laundering Regulations 1993 and FSA Money Laundering Rules. In particular, RBS demonstrated failings when opening client accounts between January 2002 and May 2002 by having a lack of regard to client identification procedures. This took place against a background of increased regulatory scrutiny on the importance of effective anti-money laundering controls.

ii. The FSA issued a Decision Notice, dated 2 August 2010, to four member firms of RBS Group plc (including RBS) for breaching Regulation 20(1) of the Money Laundering Regulations 2007 between December 2007 and December 2008 by failing to establish and maintain appropriate and risk-sensitive policies and procedures to prevent breaches of the HM Treasury financial sanctions list.

iii. The FSA issued a Final Notice, dated 11 January 2011, to RBS for its breaches of Principle 3 (Management and Control) and Principle 6 (Customers' Interests) of the FSA's Principles for Business and Rules in the Dispute Resolution: Complaints sourcebook (DISP) for the period between 1 December 2008 and 25 March 2012.

iv. The FSA issued a Final Notice, dated 17 January 2012, to UK Insurance Limited ("UKI") for the failings of Direct Line Insurance plc ("Direct Line") and Churchill Insurance Company Limited ("Churchill") for breach of Principle 2 (Skill, Care and Diligence) of the FSA's Principles for Businesses which occurred between 8 April 2010 and 16 April 2010. All three firms operated at the relevant time within RBS Insurance, which is a division of RBS Group plc. Direct Line and Churchill breached Principle 2 by failing to take adequate steps to ensure that closed complaint files would not be altered improperly before being provided to the FSA.

v. The FSA issued a Final Notice, dated 23 March 2012, to Coutts & Company for breaching Principle 3 (Management and Control) of the FSA's Principles for Businesses for the period between 15 December 2007 and 15 November 2010. Coutts & Company, being a member firm of RBS Group plc, breached Principle 3 by failing to take reasonable care to establish and maintain effective anti-money laundering systems and controls in relation to customers that posed a higher money laundering risk than standard customers.

131. The failure of RBS to establish and maintain adequate systems and controls in the above cases is not wholly similar to this case. However, there are similarities in the sense that all five cases and the current RBS investigation highlight the inadequacies of members of RBS Group plc to implement adequate systems and controls for their different business areas. In particular, RBS's initial efforts in terms of design and implementation to improve its systems and controls around its: (i) LIBOR submission processes; and (ii) transaction monitoring were inadequate. This is an aggravating feature especially considering RBS's disciplinary record and compliance history.

H. Other action taken by the FSA - DEPP 6.5.2G(10)

132. On 27 June 2012 and 19 December 2012 respectively, the FSA issued Final Notices against Barclays Bank plc and UBS AG in respect of misconduct similar in some ways to RBS's misconduct described in this notice. The FSA has considered RBS's misconduct relative to other firms in determining the penalty.

PROCEDURAL MATTERS

A. Decision maker

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

134. This Final Notice is given under, and in accordance with, section 390 of the Act.

B. Manner of and time for payment

135. The financial penalty must be paid in full by RBS to the FSA by no later than 20 February 2013, 14 days from the date of the Final Notice.

C. If the financial penalty is not paid

136. If all or any of the financial penalty is outstanding on 20 February 2013, the FSA may recover the outstanding amount as a debt owed by RBS and due to the FSA.

D. Publicity

137. 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 FSA must publish 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.

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

E. FSA contacts

139. For more information concerning this matter generally, please contact Patrick Meaney (+44 (0)20 7066 7420) or Rebecca Reilly (+44 (0)20 7066 7952) at the FSA.

Matthew Nunan

Project Sponsor

FSA Enforcement and Financial Crime Division

ANNEX A

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FSA GUIDANCE

1. STATUTORY PROVISIONS

1.1. The FSA's statutory objectives, set out in Section 2(2) of the Act, are market confidence, financial stability, consumer protection and the reduction of financial crime.

1.2. Section 206 of the Act provides:

"*If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act… it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.*"

1.3. RBS is an authorised person for the purposes of Section 206 of the Act. The requirements imposed on authorised persons include those set out in the FSA's rules made under Section 138 of the Act.

2. REGULATORY PROVISIONS

2.1. In exercising its power to issue a financial penalty, the FSA must have regard to the relevant provisions in the FSA Handbook of rules and guidance.

2.2. In deciding on the action proposed, the FSA has also had regard to guidance published in the FSA Handbook and set out in the Regulatory Guides, in particular the Decision Procedure and Penalties Manual.

Principles for Businesses

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

2.4. Principle 3 provides:

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

Principle 5 provides:

"*A firm must observe proper standards of market conduct*.

Decision Procedure and Penalties Manual ("DEPP")

2.5. Guidance on the imposition and amount of penalties is set out in Chapter 6 of DEPP. Changes to DEPP were introduced on 6 March 2010. Given that the majority of the misconduct occurred prior to that date, the FSA has had regard to the provisions of DEPP in force prior to that date.

2.6. DEPP 6.1.2 provides that the principal purpose of imposing a financial penalty is to "*promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour.*"

2.7. DEPP 6.5.2 sets out some of the factors that might be taken into account when the FSA determines the level of a financial penalty that is appropriate and proportionate to the misconduct as follows:

(1) deterrence;

(2) the nature, seriousness and impact of the breach in question;

(3) the extent to which the breach was deliberate and reckless;

(4) whether the person on who the penalty is to be imposed is an individual;

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

(6) the amount of benefit gained or loss avoided;

(7) difficulty of detecting the breach;

(8) conduct following the breach;

(9) disciplinary record and compliance history;

(10) other action taken by the FSA;

(11) action taken by other domestic or international regulatory authorities;

(12) FSA guidance or other published materials; and

(13) the timing of any agreement as to the amount of the penalty.

2.8. The FSA has also had regard to the provisions of the Enforcement Manual in force prior to 28 August 2007, in relation to misconduct which occurred prior to that date.