
FINAL NOTICE

To: Jeremy Kraft
Date of birth: 24 April 1965
Individual Reference Number: JDK01054
Date: 22 January 2015

ACTION

1. For the reasons given in this Notice, the Authority hereby:
 - (1) imposes on Jeremy Kraft ("Mr Kraft") a financial penalty of £105,000; and
 - (2) makes an order prohibiting Mr Kraft from performing any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person, or exempt professional firm. This order takes effect from 22 January 2015.
2. Mr Kraft agreed to settle at an early stage of the Authority's investigation. Mr Kraft therefore qualified for a 30 percent (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £150,000 on Mr Kraft.

SUMMARY OF REASONS

3. On 15 May 2014, the Authority issued Mr Kraft's previous employer, Martins, with a final notice disciplining the firm for its role in the manipulation of LIBOR. Martins' misconduct included its inadequate systems and controls. Mr Kraft, who held various significant influence functions including CF10 (amongst other responsibilities within the Martins Group), had particular responsibility for ensuring the adequacy of the firm's systems and controls.
4. Mr Kraft's failings, described in this Notice, contributed to allowing Martins to engage in the manipulation of LIBOR. Specifically, in performing the CF1, CF10 and CF28 significant influence functions amongst his other responsibilities at Martins during the Relevant Period, Mr Kraft breached:

- (1) Statement of Principle 6 - failure to act with due skill, care and diligence in managing the business of the firm for which he was responsible. In particular, Mr Kraft:
 - a. inadequately assessed the compliance risks of Martins' broking activities, was pre-occupied with compliance risks of the other parts of the Martins Group and with strategic and operational responsibilities and failed to give due attention to his responsibilities for Martins' systems and controls;
 - b. delegated compliance responsibilities to unqualified members of staff and provided inadequate training;
 - c. failed to challenge Martins' chief executive, David Caplin, ("Mr Caplin") on compliance matters and abdicated responsibility for monitoring and supervising Brokers in favour of Mr Caplin;
 - d. failed to seek appropriate compliance advice or support; and
 - e. failed to keep the Authority appropriately informed of compliance issues at Martins.

- (2) Statement of Principle 7 - failure to take reasonable steps to ensure that Martins complied with the relevant requirements and standards of the regulatory regime. In particular, Mr Kraft failed to act adequately on all the recommendations of the Compliance Consultancy to:
 - a. carry out an adequate compliance risk review for Martins' business, including an assessment of the risk that Brokers would engage in market abuse or give or accept inducements;
 - b. oversee the timely preparation of an adequate compliance manual; and
 - c. introduce training and competence programmes for Brokers and approved persons.

5. The Authority views Mr Kraft's failures as serious because:
 - (1) the Authority places great emphasis on the responsibilities of senior management, because senior managers are responsible for the standards and conduct of the businesses they run; and
 - (2) they facilitated Martins' misconduct in respect of LIBOR and risked compromising the integrity of the financial market within which Martins operated.

6. The Authority has therefore decided to impose a financial penalty on Mr Kraft in the amount of £105,000, pursuant to section 66 of the Act.

7. Furthermore, Mr Kraft paid insufficient regard to the material requirements of the regulatory regime, thereby demonstrating his lack of competence and capability as an approved person. Overall, his conduct was well below the standards reasonably expected of a significant influence function holder. In all the circumstances, the Authority considers that Mr Kraft is not fit and proper to perform any significant

influence function and that he should be prohibited from doing so because he lacks sufficient competence and capability. Therefore, the Authority has decided to make an order prohibiting Mr Kraft from performing any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person, or exempt professional firm, pursuant to section 56 of the Act.

8. The Authority however acknowledges that Mr Kraft had no knowledge of, and did not benefit from, Martins' LIBOR misconduct. The Authority also acknowledges that Mr Kraft contributed to improvements in the firm's compliance framework from 2010 (prior to the detection of Martins' LIBOR misconduct) and that Mr Kraft took steps to ensure that the firm provided the Authority with all relevant information regarding the LIBOR misconduct at the firm.

DEFINITIONS

9. The definitions below are used in this Notice.

"2005 Review" means a review of the compliance arrangements at Martins carried out by the Compliance Consultancy in 2005;

"2006 Review" means a review of the compliance arrangements at Martins carried out by the Compliance Consultancy in 2006;

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

"Audit Committee" means a sub-committee of the Board, which from May 2005 was responsible for the reviewing the effectiveness of Martins' internal control policies and procedures for the identification, assessment and reporting of financial risks;

"Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

"Board" means the Board of Directors of RP Martin Holdings;

"Broker(s)" means an interdealer broker employed by Martins acting as intermediary in, amongst other things, deals for funding in the cash markets and interest rate derivatives contracts;

"BBA" means the British Bankers Association, which until 31 January 2014 was the administrator of LIBOR;

"Compliance Consultancy" means a firm of external compliance consultants commissioned by Martins to carry out the 2005 and 2006 Reviews;

"DEPP" means the Authority's Decisions Procedures and Penalties Guide;

"ENF" means the Authority's Enforcement Manual;

"FIT" means the Authority's Fit and Proper test for Approved Persons;

"IPC" means the Inter-professionals Code, part of the Authority's handbook until 31 October 2007;

"JPY" mean Japanese Yen;

"LIBOR" means the London Interbank Offered Rate;

“Manager” means a Martins employee with direct line management responsibility over Brokers during the Relevant Period;

“Martins” means Martin Brokers UK Ltd;

“Martins Group” means the group of companies of which Martins was a part;

“Martins Final Notice” means the Final Notice dated 15 May 2014 issued by the Authority against Martins for misconduct relating to LIBOR;

“MBO” means the management buy-out in May 2005 in which the Martins Group was taken from public to private ownership;

“NIPs Code” means the Non-Investment Products Code, for Principals and broking firms in the Wholesale Markets, as in force from time to time over the Relevant Period;

“Operations Committee” means a sub-committee of the Board, which was responsible for the day-to-day running of Martins.

“Panel Bank” means a bank with a place on the administrator of LIBOR’s panel (the BBA’s panel during the Relevant Period) for contributing LIBOR submissions in one or more currencies;

“Principle(s)” means the Authority’s Principles for Businesses;

“Relevant Period” means 13 May 2005 to 27 July 2011, inclusive;

“RP Martin Holdings” means RP Martin Holdings Ltd, the ultimate parent company of the Martins Group;

“Statement of Principle(s)” means the Authority’s Statements of Principle for Approved Persons;

“SUP” means the Supervisions Sourcebook, part of the Authority’s handbook;

“SYSC” means the Senior Management Arrangements, Systems and Controls Sourcebook rules, part of the Authority’s handbook;

“TED” means Trio Equity Derivatives, the other UK regulated entity within the Martins Group and which operates as an executing broker in over the counter equity options for its clients;

“Trader” means a person trading interest rate derivatives or trading in the money markets;

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

“UBS” means UBS AG.

FACTS AND MATTERS

Martins

10. Martins, part of the Martins Group, is a voice broking firm, acting for institutional clients transacting in the wholesale financial markets. The firm is organised into various "desks" of Brokers, with each desk specialising in facilitating trades in different currencies and financial products on behalf of its clients.
11. Martins' main role was to bring together counterparties to execute trades in return for commissions and where necessary to provide information to clients. The information Martins provided to its clients included advice as to where it believed the published LIBOR rates would be set on particular days.
12. During the Relevant Period, all significant decisions concerning Martins were made by the Board and a number of sub-committees, including the Audit Committee and the Operations Committee. Legal and regulatory matters such as risk management policies and internal control arrangements were reserved for consideration by the full Board.

Martins Final Notice

13. The Martins Final Notice described Martins' breaches of the Principles in relation to LIBOR. Martins breached Principle 5 (Market Conduct) and Principle 3 (Systems and Controls).
14. In respect of Principle 5, the Martins Final Notice described how Brokers at Martins colluded with a Trader at UBS as part of a coordinated attempt to influence JPY LIBOR submissions made by Panel Banks. Martins entered into nine "wash trades" (i.e. risk free trades that cancelled each other out and which had no legitimate commercial rationale), in order to facilitate corrupt brokerage payments to Brokers as a reward for their attempts to influence the JPY LIBOR submissions at Panel Banks. These wash trades were executed with UBS between 19 September 2008 and 25 August 2009 and resulted in fees of £258,151.09. Three Brokers (one of whom was a Manager) participated in this manipulative scheme.
15. In respect of Principle 3, the Martins Final Notice concluded that:
 - (1) Martins had minimal policies and procedures in place to govern individual Broker behaviour and those that were in place were inadequately designed and easily circumvented;
 - (2) Martins had no effective compliance function with limited training for Brokers and no effective compliance monitoring to detect Broker misconduct. There was an absence of effective transaction monitoring procedures, such as might reasonably have detected the wash trades; and
 - (3) Martins' reporting lines and responsibilities were unclear at every level, including amongst senior management, meaning that responsibility for compliance oversight of individual Brokers was unclear and effectively uncontrolled as a result.

Mr Kraft

16. Mr Kraft entered the financial services industry in 2001. He started at Martins in May 2005 as part of the buy-out team for the MBO. As part of the MBO, Mr Kraft received a 2.3 percent shareholding in the Martins Group.
17. From 13 May 2005 until the end of the Relevant Period, Mr Kraft was approved to perform the CF1 (Director), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting) functions at Martins. He also held the CF13 (Finance) function until 31 October 2007 when that function was changed into the CF28 (Systems and Controls) function which he held until the end of the Relevant Period.
18. Over the Relevant Period, Mr Kraft also held the same significant influence functions at TED. He was also approved to perform the CF3 (Chief Executive) function at TED until January 2009. Mr Kraft left the Martins Group in August 2013.

Compliance arrangements at Martins

The Authority's concerns in 2005

19. Before joining Martins in 2005, Mr Kraft did not have extensive compliance experience or any experience of the wholesale broking industry. Upon joining the firm he therefore relied on discussions with the outgoing compliance officer, the Compliance Consultancy and Mr Caplin, when determining the risk profile of Martins and what his compliance responsibilities entailed. On the basis of these discussions Mr Kraft formed the view that Martins was low-risk from a compliance perspective. This view was also shared by Board members at the time. Mr Kraft also placed reliance on reassurances from the Compliance Consultancy that the Authority had *"recently reduced its risk rating on MB (Martins) transferring them to its low risk Regulatory Events Department"*.
20. The Authority had previously expressed concerns to the firm regarding a lack of depth in its compliance resources. Mr Kraft was aware of these concerns. In June 2005, the Authority contacted Mr Kraft to find out whether he had *"encountered any issues with the changeover of responsibilities"*, how Mr Kraft was dividing his time between *"the roles of CF10, CF11 and CF13"* and whether any other staff would be assisting him in discharging his compliance responsibilities.
21. At this time, Mr Kraft had no staff to assist him with compliance matters. However, a decision had been taken within the firm to engage the Compliance Consultancy to outsource aspects of its compliance function and support Mr Kraft. When responding to the Authority therefore, Mr Kraft stated that Martins had appointed the Compliance Consultancy *"...to provide continuing advice when required, [and they would] also conduct a [quarterly] monitoring service to ensure effective segregation of compliance and monitoring of that function."*
22. Mr Kraft's response to the Authority on 24 June 2005 attached a copy of the Compliance Consultancy's engagement letter with Martins dated 12 May 2005. The engagement letter specified that, amongst other things, Martins needed assistance to document its compliance procedures, apply the senior management arrangements systems and controls rules, implement a compliance monitoring programme and put in place a training and competence programme.
23. The engagement letter stated that the work would be delivered in two stages: first, by assisting the firm to update its procedures and controls; and, thereafter, to assist the firm to conduct its compliance monitoring programme.

2005 Review

24. Following the MBO in May 2005, Mr Caplin suggested that the Compliance Consultancy undertake a review of the compliance arrangements at Martins in order to assess gaps in its compliance systems and controls. In September 2005, at Mr Kraft's instruction, the Compliance Consultancy conducted this work. The review revealed severe deficiencies. The findings from the 2005 Review were documented in a memo sent to Mr Kraft by the Compliance Consultancy on 28 September 2005. The key findings were as follows:
- (1) no compliance manual existed;
 - (2) no formal compliance monitoring programme existed;
 - (3) there was no record of any formal training and competence process; and
 - (4) there was no record of a risk review or apportionment of responsibility exercise having been conducted. The firm was required to undertake both as a matter of urgency in order to comply with SYSC.
25. The 2005 Review concluded that:
- "Both Martins and TED are fully aware of their regulatory status and are committed to conducting their business in a compliant manner. While this commitment is evident in talking to individuals, it has not been supported by any consistent documentation setting out policies and procedures required to inform the process or addressing the various ongoing requirements in detail. It would be difficult for either or both companies [i.e. Martins and/or TED] to demonstrate to the [Authority] that the business is compliant in a number of areas. This is a matter of concern currently and makes it difficult to convert to the new requirements imposed by MiFid. Management should be setting out to put in place a risk review and the processes necessary to demonstrate compliance with the SYSC rules as a matter of urgency."*
26. The 2005 Review was presented to the Board on 24 October 2005. Mr Kraft subsequently responded to the Compliance Consultancy on 4 November 2005 stating:
- (1) as regards the compliance manual, compliance documentation had now been filed in one single source file;
 - (2) Martins had already agreed with the Compliance Consultancy that it (i.e. the Compliance Consultancy) would perform a compliance monitoring service on a quarterly basis; and
 - (3) Martins believed that the current apportionment of responsibilities was appropriate.
27. However, in the months following, the only substantial compliance work that Mr Kraft undertook at Martins was the introduction of an anti-money laundering (AML) policy. Mr Kraft did not engage the Compliance Consultancy to conduct any further compliance monitoring following the 2005 Review.

2006 Review

28. Prior to the firm's external audit in December 2006, the Board agreed to engage the same Compliance Consultancy to prepare a follow-up review of Martins' systems and controls (the 2006 Review).
29. In October 2006, the Compliance Consultancy provided Mr Kraft with a draft planning memorandum confirming the proposed scope of the review and its objectives. The risks to be assessed included:
 - (1) possible inadequacies in compliance monitoring;
 - (2) possibly insufficient procedures for apportionment of responsibility in accordance with Authority rules;
 - (3) that the environment at Martins was not adequate to identify and prevent market abuse; and
 - (4) possibly insufficient procedures for ensuring that employees do not accept or give inducements.
30. The proposed scope of the 2006 Review also included the production of a "*risk profile matrix to support senior management*". However at Mr Kraft's instruction, this objective was removed from the 2006 Review. Mr Kraft considered that by late 2006, he and Martins' senior executives understood sufficiently the risks that Martins faced to make this proposed aspect of the review unnecessary.
31. On 6 November 2006, the Compliance Consultancy provided Mr Kraft with a draft report. The draft report criticised Martins' systems and controls in strong terms, noting that Martins still had no compliance manual, no training and competence programme or procedure for ongoing compliance monitoring. Furthermore, the review revealed no documentation recording the production of a risk review or the apportionment of responsibility. Due to Mr Kraft's instruction not to include a risk profile matrix, systems and controls relating to market abuse and inducements were not addressed in the draft report.
32. The draft report concluded that "*with the exception of significant steps made with the enhancement of the AML procedure manual, the firm's commitment to compliance has not been supported by the continuing lack of consistent documentation*".
33. The draft Report also found that "*all other matters raised in our previous review remain outstanding. It would therefore be difficult for either or both companies to demonstrate to [the] FSA that the business is compliant in a number of areas and without clearly documented reasons the lack of action to date may count against it should an FSA supervisory visit take place. Management should put in place a risk review and the process necessary to demonstrate compliance with the SYSC rules as a matter of urgency*".
34. However, Mr Kraft did not submit the draft 2006 Review to the Board. Mr Kraft believed that the Compliance Consultancy was proposing formality and additional documentation that was not required for the scale and complexity of Martins'

business. Without consulting his fellow Board members, Mr Kraft asked the Compliance Consultancy to make changes to the draft review.

35. On 15 November 2006 the Compliance Consultancy issued a revised draft of the 2006 Review to Mr Kraft, which he subsequently accepted and which was issued in final form on 17 November 2006. The findings of the final version of the 2006 Review were substantially softer in tone and content than the draft review. However, even the final version of the 2006 Review described weaknesses in Martins' systems and controls. It made recommendations for the production of a compliance manual, the introduction of a compliance monitoring programme and the formalisation of the training and competence programme.
36. On 11 January 2007 Mr Kraft responded to the Compliance Consultancy stating:
 - (1) Martins would incorporate AML documentation into its "newly created" compliance manual;
 - (2) that to address compliance monitoring, Martins would continue with an annual external review; and
 - (3) the Board would be presented with a proposal to introduce a web-based training tool to address training and competence issues.
37. The final version of the 2006 Review and Mr Kraft's response were subsequently submitted to the Board on 23 January 2007. Mr Kraft failed to inform the Board of existence of the draft report.

Compliance from 2007 to 2011

38. Despite the recommendations in the 2005 and 2006 Reviews, and the assurances he gave to the Compliance Consultancy in response to them, between 2007 and 2010 Mr Kraft introduced no significant improvements to Martins' systems and controls.
39. During this period, Mr Kraft presented quarterly updates to the board on compliance matters. These updates tended to focus on compliance requirements which applied to other regulated entities in the Group or the Group's capital requirements, issues which preoccupied Mr Kraft throughout the Relevant Period. The compliance updates to the Board contained little or no discussion of potential risks for Martins or consideration of appropriateness of Martins' systems and controls.

Risk review and apportionment

40. During this period, no formal risk review was carried out and no formal attempt was made to apportion responsibility within Martins. Mr Kraft considered that this was not necessary because, in his and other members of the Board's view, there had been no material change in the size, complexity or scope of Martins.
41. Mr Kraft also considered that compliance risks at Martins would be assessed as part of an ongoing capital adequacy review of the Martins Group (even though such a review would not focus on conduct risk). Mr Kraft also considered that Martins' senior executives had a sufficient understanding of the compliance risks that the business faced and trusted their assessment that the business was low-risk.

Compliance Manual

42. In April 2007, Mr Kraft delegated the production of Martins' compliance manual to a junior colleague with no regulatory qualifications or experience. This junior colleague prepared Martins' compliance manual using a bank's compliance manual as a precedent. No advice was sought from any compliance consultant or external lawyer. The compliance manual did not mention key industry guidance such as the NIPs code and it did not address key issues for Brokers such as inducements.
43. The compliance manual was finalised in February 2008, 15 months after the completion of the 2006 Review. Furthermore, the compliance manual was not distributed within Martins until, at the earliest, September 2009, when it was added to Martins' intranet site. The compliance manual was not added to induction packs for Martins' new joiners until 2011.

Training and competence

44. With the exception of the introduction of online AML training for staff members in late 2008, Mr Kraft introduced no training of substance after the 2006 Review.
45. Mr Kraft introduced no formal assessment of the competence of Brokers or Martins' approved persons. During the Relevant Period Broker performance was judged on revenue alone and matters of Broker training and competence were left to Managers to deal with on the job in an *ad hoc* manner.
46. As a consequence there was no means whereby Martins could ensure that those holding controlled functions fully appreciated their responsibilities. For example:
 - (1) there was no formal assessment of the competence of Martins' approved persons and there was no training or no job descriptions for approved persons; and
 - (2) board members who should have been appointed as significant influence function holders in 2009, as a result of changes to the Authority's approved persons regime, were never appointed and as a result had no appreciation of their regulatory obligations. Mr Kraft was aware of this change to the approved persons regime but failed to act on it; and
 - (3) there were no job descriptions for approved persons.

Entertainment and inducements

47. Mr Kraft appreciated that there was a risk that, principally through the provision of entertainment, Brokers may offer improper inducements to clients to win or retain business. Industry standards over the Relevant Period (the NIPs Code and the IPC) required broking firms to adopt policies in respect of inducements. Due to the commission-based relationship between Brokers and their clients, the risk of inducement was particularly high in this industry.
48. However, Mr Kraft failed to introduce a coherent policy in respect of inducements until 2011. Martins' compliance manual (finalised in February 2008 but not distributed until September 2009) provided that gifts over the value of £100 required management sign-off. This was inconsistent with Martins' staff handbook which provided that sign-off was required for corporate events of over £1000. After a visit from HMRC, a further amendment to the staff handbook was made in 2009 requiring the itemisation and evidencing of expenses. This amendment was

aimed at ensuring appropriate tax treatment of expenses. Ultimately a coherent policy on gifts and inducements was not introduced until 2011.

49. The risk that Brokers would offer inducements in breach of industry guidance did crystallise over the Relevant Period. Improper inducements were offered as part of Martins' role in the manipulation of LIBOR. As described at paragraphs 4.65 to 4.71 of the Martins Final Notice, a UBS Trader (identified as Trader A) entered into wash trades in return for Brokers assisting him to manipulate JPY LIBOR. On occasion counterparties to these wash trades were Traders at other banks who participated in the trades upon the promise of entertainment funded by Martins, such as trips to Las Vegas.

Compliance resources and Mr Kraft's other responsibilities

50. Until 2010, Mr Kraft had no qualified compliance support at Martins. He delegated some compliance tasks to persons with little or no appropriate experience, such as the junior colleague who he instructed to draft the compliance manual in 2007.
51. After the 2006 Review Mr Kraft did not engage the Compliance Consultancy to carry out any further substantial work at Martins. Critically, the majority of the work itemised in the Compliance Consultancy's 2005 engagement letter that was provided to the Authority was never started. Mr Kraft did not inform the Authority of this. Furthermore he did not inform the Authority that, contrary to the assurances he had given to the Authority in 2005, the Compliance Consultancy was neither providing Martins with continuing advice nor conducting a quarterly monitoring service for Martins.
52. In addition to his compliance role at Martins, Mr Kraft had significant operational and strategic responsibilities at Martins and within the Martins Group. For example:
 - (1) Mr Kraft, along with other senior executives, was significantly engaged over the Relevant Period with positioning the group for a sale;
 - (2) the Martins Group grew substantially over the Relevant Period and Mr Kraft took on responsibility for new product lines such as the growing futures and fixed income business within the Martins Group;
 - (3) Mr Kraft managed several international acquisitions and sat on the boards of a number of newly acquired overseas businesses; and
 - (4) until June 2009, Mr Kraft was Chief Executive of TED.
53. Mr Kraft's compliance responsibilities within the Martins Group were equally onerous. He held the CF10 function at TED and was also head of compliance at group level throughout the Relevant Period. In this role, he had numerous responsibilities, including:
 - (1) monitoring the Martins Group's passports and permissions;
 - (2) monitoring capital adequacy within the Martins Group and implementing the ICAAP process;
 - (3) implementing procedures within Martins Group companies to ensure compliance with MiFID best execution requirements; and

- (4) monitoring individual fixed income transactions for other Martins Group companies.

54. As a result of these numerous other responsibilities, Mr Kraft did not devote sufficient time to compliance oversight at Martins.

Resistance from Mr Caplin and interaction with Brokers

55. During the Relevant Period, Mr Kraft encountered resistance from Mr Caplin when trying to implement compliance interaction with Brokers. For example, Mr Caplin did not accept that any formal training was necessary.

56. Mr Caplin was generally resistant to any interference in the day-to-day activities of the broking floor and was protective of the close personal relationships he had cultivated with the Brokers. He considered that Martins' business was low risk from a compliance perspective and he resisted efforts by Mr Kraft to involve himself directly in communicating with the Brokers.

57. Mr Caplin's reasoning for resisting Mr Kraft's involvement with the Brokers was that he felt that Mr Kraft did not understand Martins' business and told Mr Kraft that any interventions from him may "*destabilise*" the desks. Mr Caplin thought that compliance added little value to the business and saw it as unnecessary administration. For example, a senior Manager stated that the compliance department had: "*nothing to do with that front office*" and he said that any issue with Broker conduct was sorted out amongst the Brokers themselves.

58. In practice, by resisting any meaningful interaction between Martins' broking desks and its compliance function, Mr Caplin assumed personal responsibility for all aspects of desk oversight, including monitoring for Broker misconduct. Mr Kraft deferred to Mr Caplin's industry experience and trusted that Mr Caplin was sufficiently close to the Brokers to detect any misconduct on the broking desks.

59. As a consequence, the majority of the firm's Brokers had no interaction with Martins' compliance function during the Relevant Period. However, having assumed responsibility for monitoring and overseeing Martins' Brokers, Mr Caplin took no steps to ensure that Brokers and Managers were aware of, or complied with, their conduct responsibilities.

60. Oversight of Brokers was therefore left almost entirely to Managers, on the assumption that they were senior and experienced. The lack of compliance monitoring combined with the lack of formal training, resulted in an environment whereby Brokers operated with no regard to the NIPs Code or regulatory requirements. There was widespread ignorance amongst Brokers of regulatory requirements and a large proportion had never heard of the NIPs Code. A number of Brokers did not know that Martins had a compliance department.

Compliance improvements

61. From 2008, Mr Kraft sought and relied upon legal advisors for regulatory advice affecting the Martins Group, including on compliance issues. In late 2009, Kraft sought advice from these legal advisors on compliance resources.

62. On advice received, Mr Kraft was involved in a decision to recruit a dedicated compliance professional who was eventually appointed in early 2010. Following this appointment, certain compliance improvements were made at the firm

including the establishment of a Risk Committee in October 2010. However, these changes were piecemeal and did not address the absence of Broker oversight.

63. It was only when the firm experienced regulatory scrutiny in 2011 as a result of suspected LIBOR misconduct that the approach to compliance changed. From about July 2011, the new compliance professional was allowed to effect improvements without significant restriction. Thereafter detailed controls were introduced at Martins along with a compliance monitoring programme and a compliance training programme for all Brokers and Managers at Martins.
64. Martins' lack of adequate compliance controls prior to July 2011 is attributable, in part, to Mr Kraft's failure to challenge Mr Caplin on his stance in relation to compliance. Mr Kraft was free to raise this issue with the Board, but failed to do so.

FAILINGS

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

Breach of Statement of Principle 6

66. Mr Kraft failed to exercise due skill, care and diligence in managing the business of Martins for which he was responsible.
67. Throughout the Relevant Period Mr Kraft was pre-occupied with strategic and operational responsibilities in the Martins Group and with his compliance responsibilities at TED and the rest of the Martins Group. As a consequence, he failed to give due attention to his responsibilities as a significant influence function holder at Martins.
68. Mr Kraft's assessment of the compliance risks at Martins was inadequate. When assessing these risks, Mr Kraft placed too much weight on the practical judgment of other senior executives such as Mr Caplin. Consequently, his approach to the instruction of the Compliance Consultancy, the implementation of the Compliance Consultancy's recommendations, and to Martins' other compliance risks was cursory and seriously incompetent.
69. Mr Kraft's response to resistance from Mr Caplin regarding Broker monitoring was inappropriate. Rather than exercising independent judgement and challenging this resistance, he wrongly deferred his judgment to this individual. This approach and attitude led to Mr Kraft's improper abdication of his responsibility to monitor Brokers.
70. When faced with increasing duties and time pressures in his responsibilities, Mr Kraft did not ensure that he had sufficient compliance support until 2010. Instead of relying on the advice and expertise of the Compliance Consultancy or other compliance professionals, Mr Kraft delegated compliance responsibilities to individuals within Martins who lacked compliance experience. Moreover, he failed to give these individuals adequate training to ensure that they had the necessary competence, knowledge or skill to deal with these responsibilities.
71. Mr Kraft failed to keep the Authority informed of basic and important regulatory matters, such that the Authority's ability to properly regulate Martins was frustrated. In failing to inform the Authority that the firm no longer had the support of the Compliance Consultancy and that the Compliance Consultancy had never completed a plan of compliance improvements at the firm, the Authority was

unable to establish whether appropriate management and compliance arrangements had been made for Martins' regulated activities.

Breach of Statement of Principle 7

72. Mr Kraft failed to take reasonable steps to ensure that Martins' business for which he was responsible in his controlled functions complied with the relevant requirements and standards of the regulatory system.
73. Mr Kraft had compliance responsibility in a firm which had no effective compliance function. Over the Relevant Period, Martins' policies or procedures to control individual Brokers were minimal and easily circumvented.
74. Despite receiving recommendations that he should do so from the Compliance Consultancy in the 2005 and 2006 Reviews, Mr Kraft failed to:
 - (1) carry out an adequate compliance risk review for Martins' business or apportion compliance responsibility effectively;
 - (2) oversee the timely preparation of an adequate compliance manual;
 - (3) introduce any adequate training programme for Brokers; and
 - (4) introduce any adequate assessment of competence or performance monitoring for Brokers or approved persons.
75. The Authority considers that until 2011 Mr Kraft's attitude and approach to Martins' compliance with regulatory requirements was seriously inadequate. He failed to inform himself adequately about the obligations on Martins as an authorised firm and failed to seek appropriate compliance advice or support when he should have done so. When he did receive compliance advice from the Compliance Consultancy, he did not pay adequate regard to it.

Impact of Mr Kraft's failings

76. Mr Kraft's failings contributed to creating the culture at Martins that permitted LIBOR manipulation to take place and permitted the misconduct described in the Martins Final Notice to go undetected and continue unabated over a prolonged period. For example:
 - (1) there were no controls that may have reasonably detected unusual transactions, such as the wash trades described at paragraphs 4.63 to 4.71 of the Martins Final Notice;
 - (2) the lack of a coherent inducements policy also created risks that crystallised in the wash trades related to LIBOR. As described above and at paragraphs 4.70 and 4.71 of the Martins Final Notice, counterparties to the wash trades sometimes participated in those improper trades upon the promise of entertainment funded by Martins; and
 - (3) Brokers (and their Managers) were not trained in matters of market conduct and their competence was not assessed. For most of the Relevant Period there was no compliance manual and, even when it was introduced,

it did not cover key industry guidance on matters of market conduct. This created a clear risk that Brokers would not follow legitimate market practice and regulatory requirements in their day-to-day activities.

77. The Authority's regulatory objectives include protecting and enhancing the integrity of the UK financial system. Mr Kraft's breaches of Statements of Principle 6 and 7 jeopardise that objective. Having regard to the facts and matters, the Authority considers it appropriate and proportionate in all the circumstances to take disciplinary action against Mr Kraft.

Lack of fitness and propriety

78. The relevant sections of FIT are set out in the Annex to this Notice. FIT 1.3.1G states that the Authority will have regard to, among other things, a person's competence and capability when assessing the fitness and propriety of a person to perform a particular controlled function. As result of the failings described above, the Authority considers that Mr Kraft's conduct has fallen short of minimum regulatory standards. He is not a fit and proper person to perform any significant influence function.

SANCTION

Financial penalty

79. The Authority imposes on Mr Kraft a financial penalty of £105,000.
80. The Authority's policy on the imposition of financial penalties and public censures is set out in DEPP. The detailed provisions of DEPP are set out in Annex A.
81. In determining the financial penalty, the Authority has had regard to this policy as it was in force at the time of the misconduct. On 6 March 2010, the Authority adopted a new penalty-setting regime. Since the gravamen of Mr Kraft's failings falls before 6 March 2010, the Authority has applied the provisions that were in place before that date. References to paragraphs of DEPP below are references to DEPP as it stood between November 2007 and March 2010.
82. The Authority has also had regard to the provisions of Chapter 7 of EG, and to Chapter 13 of ENF relevant to the pre-28 August 2007 part of the Relevant Period.
83. DEPP 6.5.2 lists factors which may be relevant when the Authority determines the level of financial penalty for a person under the Act. Relevant factors are analysed below. DEPP 6.5.1 provides that the list of criteria in DEPP 6.5.2 is not exhaustive and all the relevant circumstances of the case will be taken into consideration.
84. The Authority considers the following DEPP factors to be particularly important in assessing the sanction.

Deterrence – DEPP 6.5.2G(1)

85. DEPP 6.5.2(1) states that when determining the appropriate level of penalty, the Authority 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. The Authority considers that the need for deterrence means that a significant financial penalty on Mr Kraft is appropriate.

Nature, seriousness and impact of the breach – DEPP 6.5.2G(2)

86. Mr Kraft's breaches were extremely serious. His failure to discharge his compliance responsibilities at Martins contributed to creating a culture that facilitated the manipulative behaviour described in the Martins Final Notice which, in turn, risked undermining the integrity of a key benchmark for the UK and international financial systems.

Mr Kraft's failures continued over a period of several years and contributed to the creation of systemic weaknesses in Martins' internal controls. Furthermore, Mr Kraft held significant influence functions and was a senior and experienced professional.

Other DEPP factors

87. In determining financial penalty, the Authority has also taken into account the following factors listed in DEPP:
- (1) although Mr Kraft's actions were extremely incompetent, he did not act recklessly or deliberately (DEPP 6.5.2G(3));
 - (2) Mr Kraft has co-operated fully with the Authority's investigation and assisted with the Authority's investigation into Martins (DEPP 6.5.2G(8)); and
 - (3) penalties imposed by the Authority on other approved persons for similar behaviour (DEPP 6.5.2G(10)).

Prohibition Order

88. The Authority has had regard to the guidance in Chapter 9 of the Enforcement Guide in imposing a prohibition order on Mr Kraft. The Authority has power to prohibit individuals under section 56 of the Act. The Act states that the Authority may make a prohibition order if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.
89. Given the serious failures outlined above, the Authority considers that Mr Kraft's conduct demonstrates a serious lack of competence and capability for an individual performing controlled functions involving the exercise of significant influence, and that, if he performed such functions, he would pose a serious risk to confidence in the financial system. The Authority therefore prohibits Mr Kraft from performing any significant influence function.

PROCEDURAL MATTERS

90. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.
91. This Decision Notice is given under, and in accordance with section 390 of the Act.

Manner of and time for Payment

92. The financial penalty is to be paid over a period of one year, composed of five equal payments, each being 20 percent of the financial penalty, as follows:

1. **The first payment**, in the amount of £21,000, is payable on or before 5 February 2015, 14 days from the date of the Final Notice;
2. **The second payment**, in the amount of £21,000, is payable on or before 5 May 2015;
3. **The third payment**, in the amount of £21,000, is payable on or before 5 August 2015;
4. **The fourth payment**, in the amount of £21,000, is payable on or before 5 November 2015;
5. **The fifth payment**, in the amount of £21,000, is payable on or before 5 February 2016.

If the financial penalty is not paid

93. If all or any of the financial penalty is outstanding on the day after the due date for any of the payments, the Authority may recover the outstanding amount as a debt owed by Mr Kraft and due to the Authority.

Publicity

94. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
95. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

96. For more information concerning this matter generally contact Patrick Meaney (direct line: 020 7066 7420) or Maria O'Regan (direct line: 020 7066 7544) at the Authority.

Therese Chambers
Project Sponsor
Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

GUIDANCE AND POLICY TO STATUTORY PROVISIONS AND RULES

RELEVANT STATUTORY PROVISIONS

1. The Authority's strategic objective, set out in section 1B(2) of the Act, is ensuring that the relevant markets function well. The relevant markets include the financial markets and the markets for regulated financial services (section 1F of the Act). The Authority's operational objectives are set out in section 1B(3) of the Act, and include the integrity objective.
2. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. A person is guilty of misconduct if, while an approved person, he has failed to comply with a statement of principle issued under section 64 of the Act, or has been knowingly concerned in a contravention by a relevant authorised person of a relevant requirement imposed on that authorised person.
3. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

RELEVANT REGULATORY PROVISIONS

Statements of Principle

4. The Authority's Statements of Principle and Code of Practice for Approved Persons ("APER") have been issued under section 64 of the Act. The references to APER below are references to APER as it stood over the Relevant Period.
5. APER also contains descriptions of conduct which, in the opinion of the Authority, fails to comply with a particular Statement of Principle to which that conduct relates.
6. APER 3.1.3G states that, when establishing compliance with, or breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, the circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.
7. APER 3.1.4G states that an approved person will only be in breach of a Statement of Principle when he is personally culpable. Personal culpability arises where an approved person's conduct was deliberate or where the approved person's standard of conduct was below that which would be reasonable in all the circumstances.
8. APER 3.1.6G provides that APER (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not exhaustive of the kind of conduct that may contravene the Statements of Principle.

9. APER 3.2.1E states that in determining whether or not the particular conduct of an approved person within his controlled function complies with the Statements of Principle, the following are factors which, in the opinion of the Authority, are to be taken into account:
 - (1) whether that conduct relates to activities that are subject to other provisions of the Handbook; and
 - (2) whether that conduct is consistent with the requirements and standards of the regulatory system relevant to his firm.

Statements of Principle 6 and 7

10. Statement of Principle 6 states that an approved person performing a significant influence function must act with due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function.
11. Statement of Principle 7 states that an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.
12. APER 3.3.1 E provides that in determining whether or not the conduct of an approved person performing a significant influence function complies with Statements of Principle 5 to 7, the following are factors which, in the opinion of the Authority, are to be taken into account:
 - (1) whether he exercised reasonable care when considering the information available to him;
 - (2) whether he reached a reasonable conclusion which he acted on;
 - (3) the nature, scale and complexity of the firm's business;
 - (4) his role and responsibility as an approved person performing a significant influence function; and
 - (5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.
13. The following evidential provisions and guidance in APER 4.6 are relevant to the failure by an approved person to comply with Statement of Principle 6:
 - (1) APER 4.6.3E – Failing to take reasonable steps to adequately inform himself about the affairs of the business for which he is responsible;
 - (2) APER 4.6.5E - Delegating the authority for dealing with an issue or a part of the business to an individual or individuals (whether in-house or outside contractors) without reasonable grounds for believing that the delegate had the necessary capacity, competence, knowledge, seniority or skill to deal with the issue or to take authority for dealing with part of the business;
 - (3) APER 4.6.6E – Failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that he has delegated to an individual or individuals;

- (4) APER 4.6.8E - Failing to supervise and monitor adequately the individual or individuals (whether in-house or outside contractors) to whom responsibility for dealing with an issue or authority for dealing with a part of the business has been delegated;
 - (5) APER 4.6.9E – Behaviour of the type referred to in APER 4.6.8E includes, but is not limited to: (1) failing to take personal action where progress is unreasonably slow, or where implausible or unsatisfactory explanations are provided...;
 - (6) APER 4.6.12G – (1) It is important for the approved person performing a significant influence function to understand the business for which he is responsible. An approved person performing a significant influence function is unlikely to be an expert in all aspects of a complex financial services business. However, he should understand and inform himself about the business sufficiently to understand the risks of its trading, credit or other business activities...(4) Where the approved person performing a significant influence function is not an expert in a business area, he should consider whether he or those with whom he works have the necessary expertise to provide him with an adequate explanation of issues within that business area. If not he should seek an independent opinion from elsewhere within or outside the firm;
 - (7) APER 4.6.13G – (1) An approved person performing a significant influence function may delegate the investigation, resolution or management of an issue or authority for dealing with a part of the business to individuals who report to him or to others; (2) An approved person performing a significant influence function should have reasonable grounds for believing that the delegate has the competence, knowledge, skill and time to deal with the issue. For instance if the compliance department only has sufficient resources to deal with day-to-day issues, it would be unreasonable to delegate to it the resolution of a complex or unusual issue without ensuring it had sufficient capacity to deal with the matter adequately..(4) The [Authority] recognises that the approved person performing a significant influence function will have to exercise his own judgment in deciding how issues are dealt with, and that in some cases that judgment will, with the benefit of hindsight, be shown to have been wrong. He will not be in breach of Statement of Principle 6 unless he fails to exercise due and reasonable consideration before he delegates the resolution of an issue or authority for dealing with a part of the business and fails to reach a reasonable conclusion. If he is in doubt about how to deal with an issue or the seriousness of a particular compliance problem, then, although he cannot delegate to the [Authority], the responsibility for dealing with the problem or issue, he can speak to the [Authority].
14. The following evidential provisions and guidance in APER 4.7 are relevant to the failure by an approved person to comply with Statement of Principle 7:
- (1) APER 4.7.3E - Failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of its regulated activities, and failing to oversee the establishment and maintenance of those systems and controls;
 - (2) APER 4.7.4E – Failing to take reasonable steps to monitor (either personally or through a compliance department or other departments)

compliance with the relevant requirements and standards of the regulatory system in respect of its regulated activities;

- (3) APER 4.7.5E – Failing to take reasonable steps adequately to inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system in respect of its regulated activities may have arisen;
- (4) APER 4.7.7E - Failing to take reasonable steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved, following the identification of significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system relating to its regulated activities
- (5) APER 4.7.8E – Behaviour of the type referred to in APER 4.7.7E includes, but is not limited to: (1) unreasonably failing to implement recommendations for improvements in systems and procedures; (2) unreasonably failing to implement recommendations for improvements to systems and procedures in a timely manner;
- (6) APER 4.7.10E - In the case of an approved person performing a significant influence function responsible for compliance under SYSC 3.2.8 R3, failing to take reasonable steps to ensure that appropriate compliance systems and procedures are in place falls within APER 4.7.2E;¹
- (7) APER 4.7.11E - The Authority expects an approved person performing a significant influence function to take reasonable steps both to ensure his firm's compliance with the relevant requirements and standards of the regulatory system and to ensure that all staff are aware of the need for compliance;
- (8) APER 4.7.12G - An approved person performing a significant influence function need not himself put in place the systems of control in his business (APER 4.7.4E). Whether he does this depends on his role and responsibilities. He should, however, take reasonable steps to ensure that the business for which he is responsible has operating procedures and systems which include well-defined steps for complying with the detail of relevant requirements and standards of the regulatory system and for ensuring that the business is run prudently. The nature and extent of the systems of control that are required will depend upon the relevant requirements and standards of the regulatory system, and the nature, scale and complexity of the business;
- (9) APER 4.6.13G - Where the approved person performing a significant influence function becomes aware of actual or suspected problems that involve possible breaches of relevant requirements and standards of the regulatory system falling within his area of responsibility, then he should take reasonable steps to ensure that they are dealt with in a timely and appropriate manner (APER 4.7.7E). This may involve an adequate investigation to find out what systems or procedures may have failed and why. He may need to obtain expert opinion on the adequacy and efficacy of the systems and procedures; and

¹ APER 4.7.2E provides that "In the opinion of the [Authority] conduct of the type described in APER 4.7.3 E, APER 4.7.4 E, APER 4.7.5 E, APER 4.7.7 E, APER 4.7.9 E or APER 4.7.10 E does not comply with Statement of Principle 7 (APER 2.1.2 P)."

- (10) APER 4.7.14G - Where independent reviews of systems and procedures have been undertaken and result in recommendations for improvement, the approved person performing a significant influence function should ensure that, unless there are good reasons not to, any reasonable recommendations are implemented in a timely manner (APER 4.7.10E). What is reasonable will depend on the nature of the inadequacy and the cost of the improvement. It will be reasonable for the approved person performing a significant influence function to carry out a cost benefit analysis when assessing whether the recommendations are reasonable.

FIT

15. FIT sets out the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
16. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.

Prohibition order

17. The Authority's policy in relation to prohibition orders is set out in Chapter 9 of EG. The provisions of EG set out below are those which have been in force since 1 April 2013.
18. EG 9.1 sets out how the Authority's power to make a prohibition order under section 56 of the Act helps it work towards achieving its statutory objectives. The Authority may exercise this power where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.
19. EG 9.3 states:
- "In deciding whether to make a prohibition order and/or, in the case of an approved person, to withdraw its approval, the [Authority] will consider all the relevant circumstances including whether other enforcement action should be taken or has been taken already against that individual by the [Authority]. As is noted below in some cases the [Authority] may take other enforcement action against the individual in addition to seeking a prohibition order and/or withdrawing its approval. The [Authority] will also consider whether enforcement action has been taken against the individual by other enforcement agencies or designated professional bodies."*
20. EG 9.5 states:
- "The scope of a prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally."*
21. EG 9.8 to 9.14 set out guidance on the Authority's approach to making prohibition orders against approved persons.

22. EG 9.8 states that, in deciding whether to make a prohibition order, the Authority will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.
23. Specifically in relation to approved persons, EG 9.9 states that in deciding whether to make a prohibition order, the Authority will consider all the relevant circumstances of the case. These include, but are not limited to, the following:
- (2) Whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness).*
- ...
- (5) The relevance and materiality of any matters indicating unfitness.*
- (6) The length of time since the occurrence of any matters indicating unfitness.*
- (7) The particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates.*
24. EG 9.10 states:
- "The [Authority] may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the individual is not fit and proper to continue to perform a controlled function or other function in relation to regulated activities. It may also take account of the particular controlled function which an approved person is performing for a firm, the nature and activities of the firm concerned and the markets within which it operates."*
25. EG 9.11 states:
- "Due to the diverse nature of the activities and functions which the [Authority] regulates, it is not possible to produce a definitive list of matters which the [Authority] might take into account when considering whether an individual is not a fit and proper person to perform a particular, or any, function in relation to a particular, or any, firm."*
26. EG 9.13 states:
- "Certain matters that do not fit squarely, or at all, within the matters referred to above may also fall to be considered. In these circumstances the [Authority] will consider whether the conduct or matter in question is relevant to the individual's fitness and propriety."*
27. An example of the types of behaviour which have previously resulted in the Authority deciding to issue a prohibition order or withdraw the approval of an approved person, set out in EG 9.12, includes "[s]erious lack of competence" and "[s]erious breaches of the Statements of Principle".

28. Before 28 August 2007, the Authority's policy in relation to prohibition orders was set out in Chapter 8 of ENF. The provisions in ENF are substantially the same as those in EG.

Financial penalty

29. The Authority's policy on the imposition of financial penalties and public censures is set out in DEPP. The provisions of DEPP set out below are those which were in force from 28 August 2007 to 31 March 2010.
30. DEPP 6.5.1(1) states that Authority 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 6.5.2 G 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.
31. DEPP 6.5.2(1) states that when determining the appropriate level of penalty, the Authority 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.
32. DEPP 6.5.2(2) states that the Authority will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached. DEPP 6.5.2(3) states that the Authority may take account of the extent to which the breach was deliberate or reckless.
33. Chapter 6 of DEPP sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.
34. Before 28 August 2007, the Authority's approach to deciding whether to impose a financial penalty, and the factors to determine the level of that penalty, are listed in chapter 13 of ENF.
35. ENF 13.3.3 G stated: "*The factors which may be relevant when the [Authority] determines the amount of a financial penalty for a firm or approved person include the following.*" Some of the relevant factors are set out below.
36. ENF 13.3.3 G (1) related to "*the seriousness of the misconduct or contravention*" and stated: "*In relation to the statutory requirement to have regard to the seriousness of the misconduct or contravention, the [Authority] recognises the need for a financial penalty to be proportionate to the nature and seriousness of the misconduct or contravention in question. The following may be relevant:*
- (a) *in the case of an approved person, the [Authority] must have regard to the seriousness of the misconduct in relation to the nature of the Statement of Principle or requirement concerned;*
 - (b) *the duration and frequency of the misconduct or contravention...;*
 - ...
 - (d) *the impact of the misconduct or contravention on the orderliness of financial markets, including whether public confidence in those markets has been damaged*

(e) the loss or risk of loss caused to consumers or other market users."

37. ENF 13.3.3 G (3) related to *"Whether the person on whom the penalty is to be imposed is an individual, and the size, financial resources and other circumstances of the firm or individual"* and stated: *"This will include having regard to whether the person is an individual, and to the size, financial resources and other circumstances of the... approved person. The [Authority] may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the... approved person were to pay the level of penalty associated with the particular contravention or misconduct. The [Authority] 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. The size and financial resources of [an] approved person may be a relevant consideration, because the purpose of a penalty is not to render [an] approved person insolvent or to threaten [his] solvency. Where this would be a material consideration, the [Authority] will consider, having regard to all other factors, whether a lower penalty would be appropriate; this is most likely to be relevant to... approved persons with lower financial resources; but if [an] individual reduces [his] solvency with the purpose of reducing [his] ability to pay a financial penalty, for example by transferring assets to third parties, the [Authority] will take account of those assets when determining the amount of a penalty."*
38. ENF 13.3.3 G (5) related to *"conduct following the contravention"* and stated:
- "The [Authority] may take into account the conduct of the... approved person in bringing (or failing to bring) quickly, effectively and completely the contravention or misconduct to the [Authority]'s attention and:*
- (a) the degree of cooperation the... approved person showed during the investigation of the contravention or misconduct (where [an] approved person has fully cooperated with the [Authority]'s investigation, this will be a factor tending to reduce the level of financial penalty);*
 - (b) any remedial steps taken since the contravention or misconduct was identified, including identifying whether consumers suffered loss, compensating them, taking disciplinary action against staff involved (if appropriate), and taking steps to ensure that similar problems cannot arise in the future."*

ANNEX B
RELEVANT CODES OF CONDUCT

IPC

1. Until being revoked on 31 October 2007, the Inter-Professionals Code (the "IPC") in the Authority's Handbook outlined acceptable market conduct for brokers and arrangers operating in the wholesale markets.
2. The IPC contained the following provision in relation to inducements:

"A firm should take reasonable steps to ensure that it, or any person acting on its behalf, does not offer, give, solicit or accept an inducement if it is likely to conflict to a material extent with any duty which a recipient firm owes to another person. Inducement can include entertainment".

NIPs Code

3. The Non-Investment Products Code ("NIPs Code") sets out rules of good market practice for market participants who trade in non-investment products in the wholesale markets. This includes the forward foreign exchange market.
4. While the products covered in the NIPs Code are not covered by the Authority's Handbook, the Authority expects firms to take due account of the NIPs code when conducting business in products covered by the Code. Importantly, non-compliance with the Code may raise issues such as the firm's integrity or competence.
5. The NIPs Code contains the following General Standards:

"II GENERAL STANDARDS

Firms and their employees should act in accordance with the spirit as well as the letter of the Code when undertaking, arranging or advising on transactions in the wholesale markets. Managers of firms should ensure that the obligations imposed on them and their staff by the general law are observed. Management and staff should also take account of any relevant rules and codes of practice of regulatory bodies, such as section 3.4 of the IPC (MAR 3).

Responsibilities of the firm

1. All firms are expected to act in a manner consistent with the Code so as to maintain the highest reputation for the wholesale markets in the United Kingdom.

2. Relevant staff should be familiar with the Code, conduct themselves at all times in a thoroughly professional manner and undertake transactions in a way that is consistent with the procedures set out in this code.

3. All firms are responsible for the actions of their staff. This responsibility includes:

- ensuring that any individual who commits the firm to a transaction has the necessary authority to do so;

- ensuring that employees are adequately trained in the practices of the markets in which they deal/broke; and are aware of their own, and their firm's responsibilities. For example, inexperienced dealers should not rely on a broker

to fill gaps in their training or experience; to do so is clearly not the broker's responsibility;

- ensuring staff are made aware of and comply with any other relevant guidance that may from time to time be issued, which supplements or replaces this code, and;

- ensuring that employees comply with any regulatory requirements that may be applicable or relevant to a firm's activities in the wholesale markets."

6. Following the revocation of the IPC, the introduction to the General Standards was updated to refer to the General Principles and SYSC in place of the IPC.
7. In order to comply with these General Standards, firms are required to implement policies and controls to ensure that staff are aware of and adhere to the NIPs Code and other regulatory requirements such as the General Principles and SYSC.
8. The NIPs Code contains the following provision in relation to inducements:

"A firm should establish a policy to ensure that neither it nor its employees should offer, give, solicit or accept any inducement from third parties. Where entertainment or gifts are offered in the ordinary course of business, management should:

- i. establish a policy towards the giving/receiving of entertainments and gifts;*
- ii. take reasonable steps to ensure that the policy is observed; and*
- iii. deal with gifts judged to be excessive but which cannot be declined without giving offence.*

Management may wish to consider the following points in formulating a policy on receiving and giving entertainment and gifts:

- i. policies should contain specific reference to the appropriate treatment for gifts (given and received). This policy should specifically preclude the giving (or receiving) of cash or gifts that are readily convertible into cash;*
- ii. in determining whether the offer of a particular gift or form of entertainment might be construed as excessive, management should bear in mind whether it could be regarded as an improper inducement, either by the employer of the recipient or the supervisory authorities. Any uncertainty should be cleared **in advance** with management at the recipient firms; and,*
- iii. firms should not normally offer entertainment if a representative of the host company will not be present at the event".*