FCA FINANCIAL CONDUCT AUTHORITY

12 Endeavour Square
London
E20 1JN

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

FINAL NOTICE

To: **Arian Financial LLP**

Firm Reference Number: **415230**

Address: **77 Coleman Street**
London
EC2R 5BJ

Date: **9 January 2025**

1. ACTION

1.1 For the reasons given in this Notice, pursuant to section 206 of the Financial Services and Markets Act 2000 ("the Act"), the Financial Conduct Authority ("the Authority") hereby imposes on Arian Financial LLP ("Arian") a financial penalty of £288,962.53.

1.2 On 5 August 2022, the RDC issued a Decision Notice to Arian, deciding to impose a financial penalty of £744,745. On 1 September 2022, Arian referred the Decision Notice to the Upper Tribunal ("the Tribunal"). The written decision of the Tribunal was issued on 11 November 2024 and can be found on the Tribunal's website:

Arian Financial LLP v The Financial Conduct Authority [2024] UKUT 00352 (TCC)

1.3 Arian accepted liability for breaching Principle 2 and Principle 3 of the FCA's Principles for Business but disputed the penalty calculation. The Tribunal

determined that the appropriate action for the Authority to take was to impose a financial penalty in the sum of £288,962.53, reflecting a reduction in disgorgement and the credible deterrence multiplier at Steps 1 and 4 of the penalty calculation. The Tribunal agreed with the level of seriousness and aggravating factors imposed by the Authority at Steps 2 and 3 of the penalty calculation. The Tribunal also agreed that there was no reason to offer Arian a settlement discount at Step 5 of the penalty calculation.

2. SUMMARY OF REASONS

2.1 Fighting financial crime is an issue of international importance, and forms part of the Authority's operational objective of protecting and enhancing the integrity of the UK financial system. Authorised firms are at risk of being abused by those seeking to conduct financial crime, such as fraudulent trading and money laundering. Therefore, it is imperative that firms have in place effective systems and controls to identify and mitigate the risk of their business being used for such purposes, and that firms will act with due skill, care and diligence to adhere to the systems and controls that they have put in place, and properly assess, monitor and manage the risk of financial crime.

2.2 Between 29 January 2015 and 29 September 2015 ("the Relevant Period"), Arian:

(a) had inadequate systems and controls to identify and mitigate the risk of being used to facilitate fraudulent trading and money laundering in relation to business introduced by four authorised entities known as the Solo Group, thereby breaching Principle 3, and

(b) breached Principle 2 as it did not exercise due skill, care and diligence in applying its AML policies and procedures, and failed properly to assess, monitor and mitigate the risk of financial crime in relation to the Solo Clients.

2.3 The Solo Clients were off-shore companies including British Virgin Islands ("BVI") and Cayman Islands incorporated entities and a number of individual US 401(k) Pension Plans previously unknown to Arian. They were introduced by the Solo Group, which purported to provide clearing and settlement services as custodians to clients within a closed network, via a custom over the counter ("OTC") trading and settlement platform known as Brokermesh. The Solo Clients had no apparent

access to funds to settle the transactions and were controlled by a small number of individuals, some of whom had worked for the Solo Group.

2.4 On behalf of the Solo Clients, Arian executed purported OTC equity trades to the value of approximately £37 billion in Danish equities and £15 billion in Belgian equities, and received commission of approximately £546,949.

2.5 The Solo Trading was characterised by a purported circular pattern of extremely high value OTC equity trading, back-to-back securities lending arrangements and forward transactions, involving EU equities on or around the last day they were cum-dividend. Following the purported Cum-Dividend Trading that took place on designated days, the same trades were subsequently purportedly reversed over several days or weeks to neutralise the apparent shareholding positions (the "Unwind Trading").

2.6 The purported OTC trades that were executed on Brokermesh did not have access to liquidity from public exchanges, yet the purported trades were filled within a matter of minutes, almost invariably, and represented up to 30% of the shares outstanding in the companies listed on the Danish stock exchange, and up to 12% of the equivalent Belgian stocks. The volumes also equated to an average of 52 times the total number of all shares traded in the Danish stocks on the European exchanges, and 24 times the Belgian stocks traded on European exchanges on the relevant last Cum-Dividend Trading date.

2.7 The Authority's investigation and conclusions in respect of the purported trading are based on a range of information including, in part, analysis of transaction reporting data, material received from Arian, the Solo Group, and five other Broker Firms that participated in the Solo Trading. The combined volume of the Cum-Dividend Trading across the six Broker Firms was between 15 and 61% of the shares outstanding in selected Danish stocks traded, and between 7 and 30% of the shares outstanding in the Belgian stocks. These volumes are considered implausible, especially in circumstances where there is an obligation to publicise holders of over 5% of Danish and Belgian listed stock.

2.8 As a broker for the equity trades, Arian executed Cum-Dividend Trading and Unwind Trading. However, the Authority has seen no evidence that Arian executed both the purported cum-dividend trades and purported unwind trades for the same

client in the same stock in the same size trades. The Authority considers it likely Arian only saw one side of the purported trading, as it considers the strategy for the Solo Trading was designed to avoid this and to give apparent legitimacy to the trading. Additionally, the Authority considers that purported stock loans and forwards linked to the Solo Trading are likely to have been used to obfuscate and/or give apparent legitimacy to the overall scheme, although there is no evidence that Arian was aware of the purported stock loans and forwards.

2.9 The purpose of the purported trading was so the Solo Group could arrange for Dividend Credit Advice Slips ("DCAS") to be created, which purported to show that the Solo Clients held the relevant shares on the record date for dividend. The DCAS were in some cases then used to make withholding tax ("WHT") reclaims from the tax agencies in Denmark and Belgium pursuant to Double Taxation Treaties. In 2014 and 2015, the value of Danish and Belgian WHT reclaims made, which are attributable to the Solo Group, was approximately £899.27 million and £188.00 million respectively. In 2014 and 2015, of the reclaims made, the Danish and Belgian tax authorities paid approximately £845.90 million and £42.33 million respectively.

2.10 The Authority refers to the trading as 'purported' as it has found no evidence of ownership of the shares by the Solo Clients, or custody of the shares and settlement of the trades by the Solo Group. This, coupled with the high volumes of shares purported to have been traded, is highly suggestive of sophisticated financial crime.

2.11 Arian had in place inadequate systems and controls to identify and mitigate the risk of being used to facilitate fraudulent trading and money laundering in relation to business introduced by the Solo Group. In addition, Arian did not exercise due skill, care and diligence in applying AML policies and procedures and failed properly to assess, monitor and mitigate the risk of financial crime in relation to the Solo Clients and the purported trading.

2.12 Arian did not have policies and procedures in place to assess properly the risks of the Solo business, and lacked an appreciation of the risks involved in the purported equity trading that the Solo Clients were engaged in. This resulted in inadequate CDD being conducted and a failure to monitor transactions adequately and to identify unusual transactions. This heightened the risk that Arian could be used for the purposes of facilitating financial crime in relation to purported equity trading

(part of the Solo Trading) executed by it between 25 February 2015 and 29 September 2015.

2.13 During the Relevant Period, Arian sought and received compliance assistance from its external retained compliance consultants, and from a second external compliance consultancy, on certain elements of the Solo business. However, Arian's incomplete instructions to and engagement with the compliance consultants, the timing of those instructions and engagement, and the nature of the assistance it sought and received from the consultants, were not adequate given the significant ongoing risks posed by the Solo business. Given that Arian did not have the requisite skills or experience to assess the risks from the Solo Trading, it was vital that Arian took effective steps to ensure it obtained, or had access to, the skills and experience it needed to ensure that it could satisfy its responsibility to assess the risks properly. Arian failed to do so.

2.14 The way these purported trades were conducted in combination with their scale and volume are highly suggestive of financial crime. These matters have given rise to additional investigation by other Tax Agencies and/or law enforcement agencies, as has been publicly reported.

2.15 The Authority considers that Arian failed to take reasonable care to organise and controls its affairs responsibly and effectively, with adequate risk management systems, as required by Principle 3, in relation to the Solo Trading and Solo Clients. Arian's policies and procedures were inadequate for identifying, assessing and mitigating the risk of financial crime as they failed to:

a) set out the circumstances where reliance could be placed on an authorised firm's CDD;

b) include a requirement for risk assessments to be documented, or to document the rationale for any due diligence measures the firm waived when compared to its standard approach, in view of its risk assessment of a particular customer;

c) set out adequate processes and procedures for EDD;

d) set out adequate processes and procedures for client categorisation; or

e) set out adequate processes and procedures for transaction monitoring including how transactions are monitored, or with what frequency, and set out adequate processes and procedures for how to identify suspicious transactions.

2.16 The Authority considers that Arian failed to act with due skill, care and diligence as required by Principle 2 to properly assess, monitor and manage the risk of financial crime associated with the Solo Clients and the purported trading activity, in that it:

(1) failed properly to conduct customer due diligence prior to onboarding, and consequently failed to identify that the Solo Clients presented a higher risk of financial crime before it started trading for them;

(2) failed to gather information to enable it to understand the purpose and intended nature of the business that the Solo Clients were going to undertake, the likely size or frequency of the purported trading intended by the Solo Clients or the source of funds for the Solo Clients. Arian relied on its retained compliance consultants becoming "comfortable" following concerns raised by the consultants, after Arian explained some information about the trading strategy. However, Arian should have ensured that it fully understood the nature of the Solo business;

(3) failed to undertake and document a risk assessment for each of the Solo Clients prior to onboarding and trading for the Solo Clients;

(4) failed adequately to complete EDD for any of the Solo Clients despite the fact that none of the Solo Clients were physically present for identification purposes and a number of other risk factors were present, and despite the fact that its retained compliance consultants advised that Arian would need to undertake EDD. Although Arian had engaged its retained compliance consultants to give some limited assistance during the onboarding process, they were not instructed to provide any substantive assistance with regard to EDD prior to onboarding;

(5) failed to assess each of the Solo Clients against the categorisation criteria set out in COBS 3.5.2R and failed to inform the Solo Clients, prior to any provision of services, of their specific client categorisation, contrary to COBS 3.3.1R;

(6) failed to conduct transaction monitoring of the Solo Clients' purported trades between 25 February 2015 and 6 May 2015 and failed to conduct adequate transaction monitoring from 6 May 2015 onwards, including assessing whether the transactions were consistent with the firm's knowledge of the customer and their risk profile. When instructing a second external compliance firm to undertake monitoring of the trades (from 6 May 2015, after Arian's participation in the Solo Trading had commenced) the remit of those instructions was limited to market abuse, albeit there may have been an overlap between such work and monitoring for wider financial crime purposes; and

(7) failed to recognise numerous "red flags" with the purported trading, including failing to consider whether it was plausible and/or realistic that sufficient liquidity was sourced within a closed network of entities for the size and volumes of trading conducted by the Solo Clients. Likewise, Arian failed to consider or recognise that the profiles of the Solo Clients meant that they were highly unlikely to meet the scale and volume of the trading purportedly being carried out, and/or failed to at least obtain sufficient evidence of the clients' source of funds to satisfy itself to the contrary.

2.17 Arian's failings merit the imposition of a significant financial penalty. The Authority considers the failings to be particularly serious because they left the firm exposed to the risk that it could be used to further financial crime. In particular:

(1) Arian onboarded over a short time period 166 clients, many of which emanated from jurisdictions which did not have AML requirements equivalent to those in the UK;

(2) Arian's AML policies and procedures were not proportionate to the risks in the Solo business that they were undertaking;

(3) Arian failed to review and analyse the KYC materials that were provided by the Solo Group properly or ask appropriate follow up questions to red flags in the KYC materials;

(4) even after a number of red flags appeared, Arian failed to conduct any ongoing monitoring, allowing these same clients purportedly to trade equities totalling more than £52 billion;

(5) given the significant ongoing risks posed by the Solo business, Arian's instructions to and engagement with both external compliance consultants were inconsistent and insufficient, and the timing of those instructions and engagement was not adequate;

(6) because Arian failed both to have and to apply appropriate AML systems and controls in relation to the Solo business, there was an unacceptable risk that Arian could be used by clients to launder the proceeds of crime; and

(7) finally, these failings were not identified by Arian.

2.18 In light of the above, the Authority has issued this Final Notice.

3 DEFINITIONS

3.1 The following definitions are used in this Notice:

"**401(k) Pension Plan**" means an employer-sponsored retirement plan in the United States. For the 2014 tax year, the annual contribution limit was $17,500 for an employee, plus an additional $5,500 catch-up contribution for those aged 50 and over. For the tax year 2015, the contribution limits were $18,000 for an employee and the catch-up contribution was $6,000. For a more detailed analysis, please see Annex C;

"**2007 Regulations**" means the Money Laundering Regulations 2007 and "**Regulation**" means one of them;

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

"**AML**" means Anti-Money Laundering;

"**AML certificate**" means an AML introduction form which is supplied by one authorised firm to another. The form confirms that a regulated firm has carried out CDD obligations in relation to a client and authorises another regulated firm to place reliance on it in accordance with Regulation 17;

"AML Policy" means Arian's Anti-Money Laundering and Combatting Terrorist Financing Policy dated September 2013, which was applicable during the Relevant Period;

“**Arian**” means Arian Financial LLP;

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

“**Broker Firms**” means the broker firms who agreed with the Solo Group to carry out the Solo Trading;

“**Brokermesh**” means the bespoke electronic platform set up by an entity owned by Mr Shah for the Solo Clients to submit orders to buy or sell cash equities, and for the Broker Firms to provide or seek liquidity and execute the purported trading;

“**CDD”** means customer due diligence, the measures a firm must take to identify its customer and verify its identity and to obtain information on the purpose and intended nature of the business relationship, as required by Regulation 5;

“**COBS**” means the Authority’s Conduct of Business Sourcebook;

“**Compliance Manual**” means Arian’s Compliance Manual dated June 2014, which was applicable during the Relevant Period;

“**cum-dividend**”, in relation to a security, means a buyer is entitled to receive the next dividend scheduled for distribution, which has been declared but not paid. A stock trades cum-dividend up until the ex-dividend date, after which the stock trades without its dividend rights. Such trading is often referred to within the wider financial markets as ‘cum/ex trading’;

“**Cum-Dividend Trading**” means purported trading conducted, where shares were cum-dividend, in order to demonstrate apparent shareholding positions that would be entitled to receive dividends, for the purposes of submitting WHT reclaims;

“**Custodian**” means a financial institution that holds customers’ securities for safekeeping. It may also offer other services such as account administration, transaction settlements, the collection of dividends and interest payments, tax support and foreign exchange;

“**DCAS**” means Dividend Credit Advice Slips. These are completed and submitted to overseas tax authorities in order to reclaim the tax paid on dividends received;

“**DEPP**” means the Authority’s Decision Procedure and Penalties Manual;

“**Dividend Arbitrage**” means the practice of placing shares in an alternative tax jurisdiction around dividend dates with the aim of minimising WHT or generating WHT reclaims. Dividend Arbitrage may include several different activities including trading and lending equities and trading derivatives, including futures and total return swaps, designed to hedge movements in the price of the securities over the dividend dates;

“**Double Taxation Treaty**” means a treaty entered into between the country where a share dividend is paid and the country of residence of the recipient of that dividend, which allows for a reduction or rebate of the applicable WHT;

“**EDD**” means enhanced due diligence, the measures a firm must take in certain situations, as outlined in Regulation 14;

“**European exchanges**” means registered execution venues, including regulated markets, multilateral trading facilities, organised trading facilities and alternative trading systems encapsulated in Bloomberg’s European Composite;

“**Financial Crime Guide**” means the Authority’s consolidated guidance on financial crime, which is published under the name “Financial crime: a guide for firms”. In this Notice, the applicable versions for the Relevant Period were published in January 2015 (incorporating updates which came into effect on 1 June 2014) and April 2015. The Financial Crime Guide contains “general guidance” as defined in section 139B FSMA. The guidance is not binding and the Authority will not presume that a firm’s departure from the guidance indicates that it has breached the Authority’s rules. But, as stated in 1.1.8 of the Financial Crime Guide, the Authority expect firms to be aware of the Financial Crime Guide where it applies to them, and to consider applicable guidance when establishing, implementing and maintaining their anti-financial crime systems and controls;

“**Handbook**” means the Authority’s handbook of rules and guidance;

“**JMLSG**” means the Joint Money Laundering Steering Group, which is comprised of leading UK trade associations in the financial services sector;

“**JMLSG Guidance**” means the ‘Prevention of money laundering/combating terrorist finance guidance for the UK financial sector’ issued by the JMLSG, which has been approved by a Treasury Minister in compliance with the legal requirements

in the 2007 Regulations. The JMLSG Guidance sets out good practice for the UK financial services sector on the prevention of money laundering and combating terrorist financing. In this Notice, applicable provisions referred to are from the version published on 20 November 2014. The Authority has regard to whether firms have followed the relevant provisions of the JMLSG Guidance when deciding whether a breach of its rules on systems and controls against money laundering has occurred, and in considering whether to take action for a financial penalty or censure in respect of a breach of those rules (SYSC 3.2.6E and DEPP 6.2.3G);

"**KYC**" means Know Your Customer, which refers to CDD and EDD obligations;

"**KYC pack**" means the bundle of client identity information received, which usually included incorporation documents, certified copies of identity documents, utility bills and CVs;

"**MLRO**" means Money Laundering Reporting Officer;

"**OTC**" means over the counter trading, which does not take place on a regulated exchange;

"**PEP**" means politically exposed person;

"**Principles**" means the Authority's Principles for Businesses as set out in the Handbook;

"**the RDC**" means the Regulatory Decisions Committee of the Authority (see further under Procedural Matters below);

"**Relevant Period**" means the period from 29 January 2015 to 29 September 2015;

"SCP" means Solo Capital Partners LLP;

"**Solo Clients**" means entities introduced by the Solo Group to Arian and the other Broker Firms, on some of whose behalf Arian executed purported equity trades during the Relevant Period;

"**Solo Group**" or "**Solo**" means the four authorised firms, details of which are set out in paragraph 4.3;

"**Solo Trading**" means purported Cum-Dividend Trading and the purported Unwind Trading executed for Solo Clients;

"**SYSC**" means the section of the Handbook entitled "Senior Management Arrangements, Systems and Controls";

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

"**UAE**" means United Arab Emirates;

"**UBO**" means ultimate beneficial owner with "beneficial owner" being as defined in Regulation 6;

"**Unwind Trading**" means purported trading conducted when shares were ex dividend, in relation to the scheduled dividend distribution event which followed the Cum-Dividend Trading, in order to reverse the apparent shareholding positions taken by the Solo Group clients during Cum-Dividend Trading;

"**Warning Notice**" means the Warning Notice given to Arian by the Authority dated 24 August 2021;

"**Withholding Tax**" **or** "**WHT**" means a levy deducted at source from income and passed to the government by the entity paying it. Many securities pay periodic income in the form of dividends or interest, and local tax regulations often impose a WHT on such income; and

"**Withholding Tax Reclaims**" means the situation in certain cases where WHT is levied on payments to a foreign entity, and the WHT may be reclaimed if there is a Double Taxation Treaty between the country in which the income is paid and the country of residence of the recipient. Double Taxation Treaties allow for a reduction or rebate of the applicable WHT.

4 FACTS AND MATTERS

Background

Arian

4.1 Arian is an interdealer broker, primarily facilitating trades between counterparties, focussing on derivatives typically for investment banks and market makers. Arian

does not take positions, have permission to trade its own book or hold any assets or monies for clients. Further, Arian is not authorised to act for retail customers.

4.2 Arian's management function exercised a degree of oversight and held operational responsibility for client engagement, general compliance and trading with the Solo Clients throughout the Relevant Period. Arian did not have a dedicated internal compliance officer during this period, and instead had long-standing retained external compliance consultants who were contracted to provide a set number of hours a month (either onsite or offsite) of general compliance assistance. This included ensuring training was up to date, informing Arian of any compliance developments, assisting with any queries and updating the Compliance Manual. The retained compliance consultants did not provide trade monitoring services. Arian subsequently also instructed second compliance consultants in relation to the Solo Trading during the Relevant Period.

The Solo Group

4.3 Four firms authorised by the Authority, referred to as the Solo Group, were owned by Mr Sanjay Shah, a British national currently based in Dubai:

- SCP was a broker and was first authorised in March 2012.
- West Point Derivatives Ltd was first authorised in July 2005 and was a broker in the derivatives market.
- Old Park Lane Capital Ltd was first authorised in April 2008 and was an agency stockbroker and corporate broker.
- Telesto Markets LLP was first authorised on 27 August 2014 and was a wholesale custody bank and fund administrator.

4.4 During the Relevant Period, firms in the Solo Group held regulatory permissions to provide custody and clearing services. The Solo Group entities have not been permitted to carry out any activities regulated by the Authority since December 2015 and SCP formally entered Special Administration insolvency in September 2016. The other three entities are in administration.

Statutory and Regulatory Provisions

4.5 Principle 3 requires firms take reasonable care to organise and control their affairs responsibly and effectively, with adequate risk management systems. The 2007 Regulations and rules in SYSC in the Authority's Handbook further require firms to create and implement policies and procedures to prevent and detect money laundering, and to counter the risk of being used to facilitate financial crime. These include systems and controls to identify, assess and monitor money laundering risk, as well as conducting CDD and ongoing monitoring of business relationships and transactions.

4.6 Principle 2 requires firms to conduct their businesses with due skill, care and diligence. A firm merely having systems and controls as required by Principle 3 is not sufficient to avoid the ever-present financial crime risk. A firm must also carefully apply those systems and controls with due skill, care and diligence as required by Principle 2 in order to protect itself, and properly to assess, monitor and manage the risk of financial crime.

4.7 Money laundering is not a victimless crime. It is used to fund terrorists, drug dealers and people traffickers as well as numerous other crimes. If firms fail to apply money laundering systems and controls thoughtfully and diligently, they risk facilitating these crimes.

4.8 As a result, money laundering risk should be taken into account by firms as part of their day-to-day operations, including in relation to the development of new products, the taking on of new clients and changes in their business profile (SYSC 6.3.7(4)G). In doing so, firms should take account of their customer, product and activity profiles and the complexity and volume of their transactions (SYSC 6.3.6G).

4.9 The JMLSG has published detailed guidance with the aim of promoting good practice and giving practical assistance in interpreting the 2007 Regulations and evolving practice within the financial services industry. When considering whether a breach of its rules on systems and controls against money laundering has occurred, the Authority will have regard to whether a firm has followed the relevant provisions in the JMLSG guidance.

4.10 Substantial guidance for firms has also been published by the Authority regarding the importance of AML controls, in the form of its Financial Crime Guide, which cites

examples of good and bad practice, publications of AML thematic reviews and regulatory notices.

Background in relation to Dividend Arbitrage and the Solo Trading

Dividend Arbitrage

4.11 Dividend Arbitrage is the practice of placing shares in alternative tax jurisdictions around dividend dates, with the aim of minimising withholding taxes or to generate WHT reclaims. WHT is a levy deducted at source from income payments made to shareholders.

4.12 If the beneficial owner is based outside of the country of issue of the shares, they may be entitled to reclaim that tax if the country of issue has a Double Taxation Treaty with the country of residence of the beneficial owner. Accordingly, Dividend Arbitrage aims to synchronise the transfer of the beneficial ownership of shares temporarily overseas with the dates upon which dividends become payable, in order that the criteria for making a withholding tax reclaim are fulfilled.

4.13 As the strategy is one of temporary transfer only, it is often executed using 'stock lending' transactions. While such transactions are structured economically as loans, the entitlement to a tax rebate depends on actual transfer of title. The legal structure of the 'loan' is therefore a sale of the shares, on condition that the 'borrower' is obliged to sell back equivalent shares to the 'lender' at a specified future date.

4.14 Dividend Arbitrage may give rise to significant market risk for either party as the shares may rise or fall in value during the life cycle of the loan. In order to mitigate this, the strategy will often include a series of derivative transactions, which hedge this market exposure.

4.15 A key role of the Custodian, in connection with Dividend Arbitrage strategies, is to issue a voucher to the beneficial owner which certifies such ownership on the date on which the entitlement to a dividend arose. The voucher will also specify the amount of the dividend and the sum withheld at source. Such vouchers are sometimes known as DCAS. The purpose of the voucher is for the beneficial owner to produce it (assuming the existence of a relevant Double Taxation Treaty) to the relevant tax authority to reclaim the WHT. The voucher generally certifies: 1) that

the shareholder was the beneficial owner of the share at the relevant time; 2) that the shareholder had received the dividend; 3) the amount of the dividend; and 4) the amount of tax withheld from the dividend.

4.16 Given the nature of Dividend Arbitrage, the costs of executing the strategy will usually be commercially justifiable only if large quantities of shares are traded.

The Solo Trading

4.17 The Authority's investigation and understanding of the purported trading in this case is based, in part, on analysis of transaction reporting data and material received from Arian, the Solo Group, and five other Broker Firms that participated in the Solo Trading. The Solo Trading was characterised by a circular pattern of purported extremely large-scale OTC equity trading, back-to-back securities lending arrangements and forward transactions.

4.18 The Solo Trading can be broken into two phases:

(i) purported trading conducted when shares were cum-dividend, in order to demonstrate apparent shareholding positions that would be entitled to receive dividends, for the purposes of submitting WHT reclaims ("Cum-Dividend Trading"), and

(ii) the purported trading conducted when shares were ex dividend, in relation to the scheduled dividend distribution event which followed the Cum-Dividend Trading, in order to reverse the apparent shareholding positions taken by the Solo Group clients during Cum-Dividend Trading ("Unwind Trading").

4.19 The combined volume of the purported Cum-Dividend Trading across the six Broker Firms was between 15% and 61% of the shares outstanding in the Danish stocks traded, and between 7% and 30% of the shares outstanding in the Belgian stocks traded.

4.20 As a broker for the purported equity trades, Arian executed the Cum-Dividend Trading and the Unwind Trading. However, the Authority has seen no evidence that Arian executed both the purported cum-dividend trades and purported unwind trades for the same client in the same stock in the same size trades. The Authority

considers it is likely Arian only saw one side of the purported trading, as it considers the strategy for the Solo Trading was designed to avoid this and to give apparent legitimacy to the trading. Additionally, the Authority considers that purported stock loans and forwards linked to the Solo Trading are likely to have been used to obfuscate and/or give apparent legitimacy to the overall scheme, although there is no evidence that Arian was aware of the purported stock loans and forwards.

4.21 The purpose of the purported trading was to enable the Solo Group to arrange for DCAS to be created, which purported to show that the Solo Clients held the relevant shares on the record date for dividend. The DCAS were in some cases then used to make WHT reclaims from the tax agencies in Denmark and Belgium, pursuant to Double Taxation Treaties. In 2014 and 2015, the value of Danish and Belgian WHT reclaims made, which were attributable to the Solo Group, was approximately £899.27 million and £188.00 million respectively. In 2014 and 2015, of the reclaims made, the Danish and Belgian tax authorities paid approximately £845.90 million and £42.33 million respectively.

4.22 The Authority refers to the trading as 'purported' as it has found no evidence of ownership of the shares by the Solo Clients, or custody of the shares and settlement of the trades by the Solo Group.

Arian's introduction to the Solo Group business

4.23 In August 2014, Mr Shah, on behalf of the Solo Group, contacted Arian with a business proposal after he had been given Arian's contact details through a mutual friend. It was explained that the Solo Group and the Solo Clients needed additional brokers to service its growing business relating to dividend yield arbitrage and Arian could act as an executing broker (that is, a broker that merely buys and sells shares on behalf of clients without giving advice to clients on when to do so). Arian would execute this business as and when it received orders via an online portal called Brokermesh.

4.24 Arian had no prior experience in Dividend Arbitrage trading and mostly focussed on derivatives trading. Further, the only individual that Arian intended should execute the trading had no prior experience in cash equity trading.

4.25 The introduction of the Solo Group business came at a time when work was diminishing in that individual's desk and there was a need for new business to avoid

Arian losing revenue. The business proposed by the Solo Group would resolve this issue by providing a source of revenue and commission and was the first significant new account taken on by Arian at the time.

4.26 Arian and the Solo Group representatives met to discuss the proposal briefly on 6 August 2014 and 12 September 2014. Prior to this introduction, Arian did not have any business relationship with any entities in the Solo Group, although the management function at Arian were aware of the Solo Group.

4.27 Before trading commenced, the Solo Group had not informed Arian of the expected size or volume of the anticipated trading, although Arian understood that due to the trading strategy, which they were aware targeted the cash dividend aspect of the trade rather than the stock price, trade sizes would be large.

4.28 After accepting the proposal, Arian signed and returned a service agreement on 11 December 2014. A further service agreement was signed by Arian with the Solo Group on 18 February 2015.

Onboarding of the Solo Clients

Introduction to onboarding requirements

4.29 The 2007 Regulations required authorised firms to use their onboarding process to obtain and review information about a potential customer to satisfy their KYC obligations.

4.30 As set out in Regulation 7, a firm must conduct CDD when it establishes a business relationship or carries out an occasional transaction.

4.31 As part of the CDD process, first a firm must identify the customer and verify their identity. Second, a firm must identify the beneficial owner, if relevant, and verify their identity. Finally, a firm must obtain information on the purpose and intended nature of the business relationship (paragraph 5.1.5 JMLSG Guidance).

4.32 To confirm the appropriate level of CDD that a firm must apply, a firm must perform a risk assessment, taking into account the type of customer, business relationship, product or transaction (Regulation 7(3)(a) and (b) and paragraphs 4.22 and 4.45 JMLSG Guidance). The firm must also document its risk assessments and keep its

risk assessments up to date (paragraph 4.61 JMLSG Guidance and SYSC 6.3.7G and SYSC 9.1.1R).

4.33 If the firm determines through its risk assessment that the customer poses a higher risk of money laundering or terrorist financing then it must apply EDD. This may mean that the firm should obtain additional information regarding the customer, the beneficial owner to the extent there is one, and the purpose and intended nature of the business relationship (paragraph 5.5.1 JMLSG Guidance). Additional information gained during EDD should then be used to inform its risk assessment process in order to manage its money laundering/terrorist financing risks effectively. The information firms are required to obtain about the circumstances and business of their customers is necessary to provide a basis for monitoring customer activity and transactions, so the firm can effectively detect the use of its products for money laundering and/or terrorist financing (paragraph 5.5.2 JMLSG Guidance).

Chronology of the onboarding

4.34 On 29 January 2015, the onboarding process commenced for the Solo Clients, none of which had any prior relationship with Arian.

4.35 To start the process, Arian received an identical email from each of the Solo Clients stating, "*I would like to be onboarded for brokerage services. I authorise [name of Solo Group entity] to release any KYC you require*." The only difference in the emails from the Solo Clients was which one of the four Solo entities was authorised to release the information to Arian.

4.36 It appears that Arian did not question why 166 purportedly separate and independent entities sent identical emails requesting to be a client.

4.37 As Arian had not obtained any specific information about any of the individual Solo Clients prior to onboarding, it was only after it received these initial requests to be onboarded that Arian started to receive information about the names and sizes of the Solo Clients, and the jurisdictions in which they were based. This indicated that they were a significant departure from Arian's usual institutional client base, since Arian has confirmed that the "*vast majority of [its clients]… would be categorised eligible counterparties (sic)*" and comprised of large international investment banks.

4.38 Between 10 February 2015 and 25 March 2015, Arian received onboarding documents, consisting of 164 KYC packs and AML certificates for 166 Solo Clients. Of the 166 clients, 118 were based in the US, 12 in the BVI, 11 in the Cayman Islands, 24 companies in Labuan (Malaysia) and 1 in the UAE.

4.39 Despite having no prior experience in conducting KYC checks beyond simple due diligence, Arian chose to review all the KYC packs received from the Solo Clients in-house with limited guidance from its retained compliance consultants. Arian had asked its retained compliance consultants what it needed to look for in the KYC packs to ensure that it was compliant in onboarding the Solo Clients. Arian sent an example KYC pack for each type of client based on type of entity or jurisdiction to its retained compliance consultants. Its retained compliance consultants then advised Arian as to what documentation should be included in the KYC packs.

4.40 The KYC packs indicated that the Solo Clients comprised corporate entities in non-EEA jurisdictions and personal pension plans, the vast majority of which only had a single beneficial owner or shareholder. Arian did not meet any of the Solo Clients.

4.41 Additionally, the KYC materials showed that some of the client representatives were former Solo employees – for example, two ex-Solo employees were the ultimate beneficial owners of eight of the Malaysian companies. Their CVs were included in the KYC materials showing that they were ex-employees of Solo.

4.42 The trading on Brokermesh commenced on 25 February 2015, around two weeks after receiving the first KYC packs. On that date, Arian traded for 20 Solo Clients, for three of which Arian only received KYC packs two days or fewer before trading and which were not reviewed by the compliance consultants.

4.43 By 16 March 2015, Arian had concluded its review of 166 of a total of 169 clients introduced by the Solo Group and onboarded them by sending its Terms of Business and bank account details to these 166 clients. By the end of the Relevant Period, Arian executed cum-dividend and unwind trades for 24 of the Solo Clients.

CDD

4.44 CDD is an essential part of the onboarding process, which must be conducted when onboarding a new client. Firms must obtain and hold sufficient information about

their clients to inform the risk assessment process and manage the money laundering risks effectively (paragraph 5.5.2 JMLSG Guidance).

4.45 As part of the CDD process, under Regulation 5, first a firm must identify the customer and verify their identity. Second, a firm must identify the beneficial owner, if relevant, and verify their identity. Finally, a firm must obtain information on the purpose and intended nature of the business relationship (paragraph 5.1.5 JMLSG Guidance).

A. Customer Identification and Verification

4.46 Regulation 20 requires that firms establish and maintain appropriate and risk-sensitive policies and procedures related to customer due diligence, and SYSC 6.3.1 requires that the policies must be comprehensive and proportionate to the nature, scale and complexity of its activities.

4.47 The Compliance Manual during the Relevant Period contained a CDD policy, which required that CDD measures that must be carried out involved: "*identifying the customer, and verifying his identity; identifying the beneficial owner, where relevant, and verifying his identity;* […]*"*.

4.48 The AML Policy also required Arian to obtain "*[c]onfirmation of checks undertaken on investors and thus an understanding of the source of funds*" where the client was an unregulated fund.

4.49 The 164 KYC documents received from the Solo Group included basic corporate documents for the Solo Clients. Arian had sight of identification documents for the clients, including, for some clients, resumés of the UBO. Arian reviewed the KYC documents to ensure the company name matched all the details provided and that the right identification documents and proof of address were included in the packs.

4.50 Despite having written procedures for conducting due diligence, Arian decided to rely upon CDD carried out by the Solo Group with regard to verifying the Solo Clients' source of funds and did not require any further information on source of funds prior to commencing trading.

4.51 Regulation 17 permits firms to place reliance on CDD conducted by other authorised firms, providing that those firms have consented to being relied upon (Regulation

17(1) and 17(2)(a) and paragraph 5.6.31 JMLSG Guidance); however, the firm placing reliance remains responsible for any failure to apply adequate CDD. The JMLSG Guidance contains a pro-forma document, also known as an AML certificate (paragraph 5.6.32 and Annex 5-1/4, JMLSG Guidance).

4.52 The JMLSG Guidance also sets out that an assessment as to whether or not a firm should accept confirmation from a third party that appropriate CDD had been carried out on a customer would be risk-based, and "*cannot be based simply on a single factor*" (paragraph 5.6.15 JMLSG Guidance). It also lists some matters which may be considered in addition to confirming the third party's regulated status (paragraph 5.6.14 JMLSG Guidance). Further, the JMLSG Guidance also states that "*the firm's AML policy statement should address the circumstances where reliance may be placed on other firms*" (paragraph 5.6.25 JMLSG Guidance).

4.53 Such reliance on a third party's CDD was not a procedure set out in Arian's policies or referenced in its annual MLRO report compliance monitoring programme document or its risk-based compliance monitoring programme document. Arian's policies also failed to set out that Arian should document the rationale for any due diligence measures it waived when compared to its standard approach, in view of its risk assessment of a particular customer. As such, Arian did not have any documentation of its rationale for relying on the CDD conducted by the Solo Group.

4.54 Even if Arian did consider that it might be able to rely upon due diligence conducted by the Solo Group, it ought to have carried out a risk-based assessment regarding whether it was appropriate to do so, taking into consideration factors such as the nature of the customers and products and sums involved (paragraph 5.6.14 JMLSG Guidance).

4.55 Further, JMLSG Guidance states that queries as to a new customer's source of wealth should be done prior to accepting them as a client (paragraph 5.5.6 JMLSG Guidance). This was echoed in the AML Policy, which required Arian to obtain "*[c]onfirmation of checks undertaken on investors and thus an understanding of the source of funds*" where the client is an unregulated fund. It was also echoed in the Compliance Manual, which stated that any new account must have been subject to, and have successfully met, Arian's KYC and money laundering requirements; and that the CDD measures should be applied "*before commencing a business relationship*".

4.56 Arian began trading before it understood whether these AML certificates were sufficient for CDD purposes. For some of the Solo Clients, although Arian received their KYC packs, Arian began trading for them before receiving their AML certificates. When chasing the Solo Group for the AML certificates, Arian stated to the Solo Group, "*Obviously we're trading for [the Solo Clients] without those checks, so sooner the better really*." This demonstrated a willingness to cut corners, as Arian decided to trade despite being aware that it did not have all the information (particularly, information relating to source of funds) it was aware was required to complete CDD.

4.57 Accordingly, Arian failed to gain a sufficient understanding of the source of funds and wealth of the Solo Clients.

B. Purpose and intended nature of a business relationship

4.58 As part of CDD, Regulation 5(c) requires firms to obtain information on the purpose and intended nature of the business relationship. The firm should use this information to assess whether the transactions are in line with expectations, whether or not the clients are likely to be engaged in criminal activity, and to provide it with a meaningful basis for ongoing monitoring of the relationship (paragraphs 4.13 and 5.3.125 JMLSG Guidance).

4.59 Regulation 20 requires that firms establish and maintain appropriate and risk-sensitive policies and procedures related to customer due diligence, and SYSC 6.3.1R requires that the policies must be comprehensive and proportionate to the nature, scale and complexity of a firm's activities.

4.60 The Compliance Manual during the Relevant Period required that CDD measures that must be carried out should involve: "[…] *obtaining information on the purpose and intended nature of the business relationship*".

4.61 There is no evidence that Arian sought to comply with its policies by taking steps to understand the nature and purpose of the intended trading by the individual Solo Clients prior to trading commencing. This was despite its retained compliance consultants advising, on several occasions, that Arian needed to understand the business the Solo Clients conducted, especially since the Solo Clients appeared to be "'shells' with no funds" and that Arian was being "asked to trade significant volumes of shares for shells". However, Arian expressed a reluctance to follow up

on this on the basis that it was 'none of their business' and that that it would 'never ask'. Arian did not consider that it was their position as broker to ask the reason why clients were investing.

4.62 In interview, Arian stated as an example that it would never ask one of its large institutional investment bank clients the purpose behind a particular trade. However, with its usual institutional investor client base, Arian would have had a better understanding of the purpose of the business relationship while onboarding, and the trade sizes of such investment banks would have more likely reflected the size of the institution, which is in stark contrast to the size of the Solo Clients and their subsequent trade sizes. As the Solo Clients were a significant departure from its usual client base (see paragraph 4.37), it was particularly important for Arian to understand the nature and purpose of the intended trading.

4.63 Arian has told the Authority that it "*considered [the Solo Clients'] business model and the rationale for using Arian*" and "*concluded that their business model made sense. Dividend yield enhancing strategies are common and in fact even advertised to retail clients by brokers. Arian did not believe at any stage that executing such trades would be considered inappropriate*". However, it was not enough for Arian to consider only the business model of dividend yield enhancing strategies and the rationale for using an interdealer broker for such strategies. Arian was required to understand the nature and purpose of each of the Solo Clients' trading and engagement in such strategies. Only then would Arian have been in a position to assess whether such trades would be appropriate for the client profiles (see paragraphs 4.106 below onwards).

4.64 When its retained compliance consultants raised concerns over the nature of the Solo Clients, Arian asked them to contact the Solo Group to get the information required to make them feel comfortable. Although the retained compliance consultants had raised issues with the Solo Clients, Arian appeared to focus more on delegating to its retained compliance consultants to "*allay any fears*", rather than attempting to understand the Solo Clients and their business for the purposes of CDD. Although Arian states that its retained compliance consultants eventually became "*more comfortable*" with the trading strategy following a call with Arian, there is no evidence that Arian gained an actual understanding of the nature and purpose of the Solo Clients' trading beyond simply "*investing*" and engaging in

Dividend Arbitrage with large dividend yielding stocks. The evidence only suggests that its compliance consultants stopped raising it as an issue.

4.65 Arian confirmed that its review of the KYC packs was solely for the purpose of identification verification. This meant that Arian had insufficient information on which to evaluate adequately whether the purported trading was in line with expectations and to identify unusually large transaction for particular clients.

4.66 Regulation 11 stipulates that where a firm is unable to apply customer due diligence measures, it must not establish a business relationship with the customer. The JMLSG Guidance also states, "*if a firm cannot satisfy itself as to the identity of a customer; verify that identity; or obtain sufficient information on the nature and intended purpose of the business relationship, it must not enter into a new relationship and must terminate an existing one*" (paragraph 4.21 JMLSG Guidance).

4.67 Despite the lack of information available to Arian about the nature and intended purpose of the business relationship, an issue already raised by its retained compliance consultants, Arian onboarded every Solo Client for which it received AML certificates. This was because Arian incorrectly considered that an understanding of such matters was beyond what it was required to do to meet its AML obligations.

Risk assessment

4.68 As part of the onboarding and due diligence process, firms must undertake and document risk assessments for every client (SYSC 6.3.7(3) G and paragraphs 4.22, 4.61, 4.62 and 4.63 JMLSG Guidance). Such assessments should be based on information contained in the clients' KYC documents.

4.69 Conducting a thorough risk assessment for each client assists firms in determining the correct level of CDD to be applied, including whether EDD is warranted (paragraph 4.45 JMLSG Guidance). If a customer is not properly assessed, firms are unlikely to be fully apprised of the risks posed by each client, which increases the risk of financial crime.

4.70 Under Regulation 20, firms are required to maintain appropriate and risk-sensitive policies and procedures related to risk assessment and management.

4.71 The AML Policy set out Arian's risk-based approach to managing money laundering risks, which was focussed on the risks presented by the firm's customer base, products, delivery channels and geographical areas of operation.

4.72 Arian failed to include in its policies and procedures a requirement for risk assessments to be documented. Documentation of risk assessments is necessary to demonstrate the basis upon which they are being made, to keep these assessments up to date and to provide appropriate risk assessment information to authorities. Arian's policies also failed to set out that Arian should document the rationale for any due diligence measures it waived when compared to its standard approach, in view of its risk assessment of a particular customer.

4.73 Arian has told the Authority that it conducted risk assessments for all the Solo Clients in an ad hoc and informal manner, determining that they were all high risk due to the jurisdictions where they were domiciled. However, the Authority has seen no evidence of this as Arian did not document any risk assessments prior to onboarding. The Authority does not consider the later review and risk assessments conducted by Arian's second compliance consultants as relevant, as Arian did not complete this prior to onboarding and trading for the Solo Clients. As a result, Arian was not able effectively to monitor the Solo Clients' transactions once it started trading, and Arian only had risk assessments following three months of trading. Further Arian's second compliance consultants had understood that the Solo Clients were already onboarded following a review by Arian's retained compliance consultants, and that they were being engaged only to "double check" the files.

4.74 Arian did not conduct sufficient analysis to determine whether the Solo Clients posed a higher risk of financial crime. Even a brief analysis shows the following risk factors:

- Arian had no former relationship with the Solo Clients, and failed to obtain information regarding the nature of the business the Solo Clients were to undertake. Therefore, Arian did not have a profile against which to base an assessment of their purported trading for the purposes of ongoing monitoring.

- The Solo Clients' KYC material showed that almost all of the clients had just a single director, shareholder and/or beneficiary.

- None of the Solo Clients were regulated, and the vast majority of them were based in countries outside the EU with no assumed regulatory equivalence.

- The Solo Clients were introduced by the Solo Group, where there was a possibility of a conflict of interest as some UBOs were former employees of SCP. Arian relied on the AML certificates that were given by Solo for their ex-employees. Because of Solo Group's relationship with their former employees and former directors, Solo Group was not in a position to provide an unbiased or arm's length view.

- Over half of the Solo Clients were US 401(k) pension plans, linked to trusts, which were referred to in the AML Policy, and reiterated by its retained compliance consultants, as high risk for money laundering, especially if set up in a non-EEA country. The JMSLG has noted that "*some trusts established in jurisdictions with favourable tax regimes have in the past been associated with tax evasion and money laundering*." Arian did not have any kind of pension fund client in the rest of its business.

- None of the Solo Clients were physically present for identification purposes as the onboarding process was conducted via email. This is identified in the 2007 Regulations as being indicative of higher risk, and therefore firms are required to take measures to compensate for the higher risk associated with these clients.

- As described above, all the clients, despite purportedly being separate entities controlled by different beneficial owners, presented themselves with identical emails.

- The Solo Clients purportedly sought to do OTC equity trading which the JMSLG Guidance states needs a more considered risk-based approach and assessment (paragraph 18.14 JMLSG Guidance).

- Many of the Solo Clients were very recently incorporated, and some were incorporated after the onboarding process began (see paragraph 4.85 below). This should have led to further scrutiny including as to the source of funds for such clients.

- Arian understood that, due to the trading strategy, the trading sizes would be large. However, there was no information in the KYC packs indicating the source of wealth to enable these clients to fund such large trades.

4.75 Such factors should have been obvious to Arian and, with this context, it would not have been reasonable to rely only on assurances which it has told the Authority were given by the Solo Group, simply due to the latter's Authority-authorised status. The heightened risks made it particularly important that Arian should appropriately consider these factors and ensure that it took appropriate care when deciding whether to onboard clients. In any event, Arian could not delegate its responsibility to its retained compliance consultants.

EDD

4.76 Firms must conduct EDD on customers which present a higher risk of money laundering, so they are able to judge whether or not the higher risk is likely to materialise (Regulation 14 (1)(b) and 4.50 JMLSG Guidance).

4.77 Regulation 14(1)(b) states that firms "*must apply on a risk-sensitive basis enhanced customer due diligence and enhanced ongoing monitoring in any…situation which by its nature can present a higher risk of money laundering or terrorist financing*." Firms are further required to implement EDD measures for any client that was not physically present for identification purposes (Regulation 14(2) and 5.5.9 JMLSG Guidance).

4.78 Regulation 20(1)(a) requires firms to maintain appropriate and risk-sensitive policies and procedures related to customer due diligence measures, which includes EDD. SYSC 6.3.1R further requires that the policies must be comprehensive and proportionate to the nature, scale and complexity of its activities.

4.79 The AML Policy required Arian to conduct "*enhanced levels of customer, product, geographical location and transaction due diligence*" for all higher risk customers. The Compliance Manual required it to apply "*Enhanced Due Diligence measures on a risk-sensitive basis in a situation which can present a higher risk of money laundering or terrorist financing. Therefore, the standard evidence of identity is insufficient, and the firm must obtain additional information about a particular customer*". The Compliance Manual continued to state the specific types of relationship in respect of which EDD measures must be applied. These included

"*where the customer has not been physically present for identification purposes*". The Compliance Manual also set out guidance on non face-to-face identification and verification, explaining that an additional verification check to manage the risk of impersonation fraud should be applied, and provided a list of measures that can be taken to carry out these checks.

4.80 The AML Policy set out what standard evidence was needed to identify directors, beneficial owners and signatories for private companies, beneficial owners of trusts and private individuals. However, with regard to EDD of higher risk entities, the AML Policy only described that "*enhanced due diligence to that described above should be undertaken.*" Arian's policies were deficient in that they did not provide sufficient guidance to staff on the types of information required to satisfy the EDD process, including examples of what further evidence would be required. Nor did they provide a documented process which explained step-by-step how to handle higher risk clients and how to undertake EDD in order to be satisfied that Arian had countered the risk of money laundering in each occasion.

4.81 Arian relied on the broker that would be executing the trades for the Solo Clients to run the EDD process, rather than its CF10 (the holder of the compliance oversight function). This broker had no experience of conducting EDD. Although this broker was expecting to earn commission from the Solo Trading once trading started, Arian did not identify as a risk the conflict presented by the fact that the same individual onboarding the Solo Clients would be conducting EDD.

4.82 Because Arian did not meet any of the Solo Clients, Arian was required to implement EDD for them (Regulation 14(2) and paragraph 5.5.9 JMLSG Guidance). However, even if a client had been present, for the reasons set out in paragraph 4.74 above, a number of risk factors indicated that the Solo Clients may have presented a higher risk of money laundering, and therefore Arian ought to have applied EDD by obtaining additional information about the clients and the proposed trading. In view of the connections between some of the Solo Clients and the Solo Group, this should have included independent enquiries on the sources of funds for the Solo Clients to ensure that their UBOs were not still financially connected to the Solo Group as employees (paragraph 4.51 JMLSG Guidance).

4.83 In any event, Arian's EDD only consisted of ensuring that all the details corresponded with the company name and that the relevant identification documents and proof of address were provided.

4.84 Some of the Solo Clients were controlled or owned by former employees of the Solo Group – a fact that would have been clear from a review of the KYC packs sent for some of the Solo Clients, or a search of the UBO on the Financial Services Register. Two of the Solo Clients had Mr Shah as a former Director. Arian was not aware at the onboarding stage of any of the Solo Clients' connection to the Solo Group. This is despite Arian purporting to have reviewed all the documents of the KYC packs received and purporting to have reviewed and relied on CVs included in some of the KYC packs to determine client categorisation. The connections between some Solo Clients and the Solo Group should have been cause for concern as to potential conflicts of interest, given Arian relied on the AML certificates that were given by Solo. Because of Solo Group's relationship with their former employees and former directors, Solo Group was not in a position to provide an independent, unbiased view.

4.85 Further, of the 164 Solo Clients for which Arian received KYC packs, 107 had only been incorporated within six months prior to the beginning of the onboarding process, and some had only been incorporated two to three months prior to onboarding. Three were only incorporated after the start of the onboarding process. Arian was not concerned that some Solo Clients were very recently incorporated, even though it had no knowledge of their source of funds (see paragraphs 4.46 to 4.57).

4.86 Arian failed to apply an appropriate level of scrutiny as to the plausibility of the Solo Clients being able to conduct professional trading, particularly in relation to the level of funds that they would need to hold. An example of a client that was onboarded by Arian was a 401(k) pension plan where an identity document showed that the sole beneficiary was a 19-year-old college student. The individual was also the sole beneficiary of four other pension plans onboarded by Arian.

4.87 Instead of making enquiries as to how the beneficiary had sufficient funds given the contribution limits for 401(k)s; how they had sufficient experience to conduct purported trading as a per se professional client; the purpose of such trading; or their reason for having five 401(k) pension plans, the Authority has not seen any

evidence of anyone at Arian considering the implications of the information provided in the documents or giving any consideration to the client's age.

4.88 Arian's retained compliance consultants indicated early on, before receiving any of the KYC packs for the Solo Clients, that Arian would need to do EDD on these firms, their shareholders and directors. Although Arian's retained compliance consultants provided some guidance on the EDD process, Arian was not absolved of its ultimate responsibility for its compliance with regulatory obligations.

4.89 The JMLSG Guidance states that ultimate managerial responsibility for AML tasks cannot be delegated away (paragraph 3.17 JMLSG Guidance). Arian could not simply delegate its entire responsibility to consider and act on AML risks to its retained compliance consultants without appropriate consideration of the information revealed by all the KYC packs that only Arian itself reviewed or of the issues raised by its retained compliance consultants. Despite the responsibility for compliance with the onboarding requirements resting with Arian, it indicated to the Authority that it was only if its retained compliance consultants told it to stop onboarding the Solo Clients that it would do so. Arian should have been making its own decisions regarding onboarding rather than relinquishing responsibility to a third party.

4.90 In any case, the EDD measures taken were inadequate, leading to Arian not being fully apprised of the risks posed by each client when it began trading, increasing the risk of the firm being used to facilitate financial crime.

Client categorisation

4.91 Part of the onboarding process also includes categorising clients according to the COBS rules, which is a requirement additional and separate to carrying out risk assessments. Pursuant to COBS 3.3.1R, firms must notify customers of their categorisation as a retail client, professional client, or eligible counterparty. Authorised firms must assess and categorise clients based on their level of trading experience, risk knowledge, and access to funds, in order to ensure suitable products are offered (COBS 3.5). Proper application of the rules also ensures that firms only act for clients within the scope of their permissions. Firms are required to notify clients as to the categorisation made by them prior to the provision of services (COBS 3.3.1R). Pursuant to COBS 3.8.2R, firms must also keep records in

relation to each client of the categorisation, including sufficient information to support that categorisation.

4.92 Arian is authorised to deal as an agent for professional clients and eligible counterparties, which are types of clients that are considered to have experience, knowledge, and expertise to make their own investment decisions. Arian was aware that it could not accept clients unless they were in one of these categories and that unless the Solo Clients were professional clients, it would not have permission to deal.

4.93 There are two types of professional clients: per se professionals and elective professionals (COBS 3.5.2R and 3.5.3R). Each of these categories has prescriptive criteria, as listed in the COBS rules.

4.94 The Compliance Manual contained Arian's policy regarding client categorisation. The policy required Arian to assess, and document its assessment of, prospective and current clients.

4.95 Arian's policies did not set out or explain a clear procedure that should be used when categorising clients, setting out the types of information and evidence Arian was required to obtain to verify the status of clients. Further, there was no procedure requiring Arian to document the categorisation given to clients, including the basis upon which the decision was made, with reference to the appropriate information gathered and reviewed.

4.96 Further, Arian failed to assess each of the Solo Clients against the categorisation criteria set out in COBS 3.5.2R.

4.97 Arian forwarded the initial KYC packs it received from the Solo Group to its retained compliance consultants. It sought general advice on the onboarding process of the Solo Clients, which it has explained to the Authority was because it had "*rarely dealt with clients that were not eligible counterparties before and wanted to ensure it understood its obligations*". The advice received stated that the Solo Clients should be categorised as 'per se professional' as they were "*set up purely to make investments*". Following this advice, Arian reviewed the AML certificates, KYC packs, its Compliance Manual and the Handbook, and determined all the Solo Clients to be per se professional as they were "*another institutional investor whose main activity was to invest in financial instruments*".

4.98 Arian also took into account the fact that the Solo Clients were introduced by firms of the Solo Group who were only permitted under their Authority authorisation to deal with professional clients and/or eligible counterparties and therefore considered it reasonable, in the absence of any information to the contrary, that they were professional clients. Arian did not request any further information directly from these clients.

4.99 From the information Arian held at the time for the Solo Clients, the Authority considers that Arian had insufficient evidence to categorise the Solo Clients reasonably as per se professionals, as being "another institutional investor". The only independent evidence Arian relied upon consisted of the AML certificates and KYC packs for each of the Solo Clients.

4.100 Not only was this evidence insufficient; it was also incomplete. For two of the Solo Clients, Arian only received AML certificates, and no further information about the client. The AML certificates did not provide any indication of the nature of the Solo Client, nor any information which Arian could have reasonably used to assess the appropriate client categorisation.

4.101 Further, many of the KYC packs relied on by Arian for its client categorisation only contained corporate information for the Solo Clients. The Authority considers that this did not contain sufficient information for Arian to determine reasonably that they should be treated as professional clients. Further, the Authority considers that Arian did not apply a consistent approach and scrutiny to its assessment of Solo Clients. This is demonstrated by its approach in relying on detailed information in some of the KYC packs received to inform its classification of the Solo Clients as per se professional clients, but not seeking the same information for its remaining Solo Clients.

4.102 The Authority also considers that Arian placed significant reliance on the Solo Group's own categorisation of all the Solo Clients without undertaking sufficient work to establish and satisfy itself that this categorisation was correct. This was demonstrated by Arian's inaction after receiving the AML certificates and KYC packs. There was no further communication between Arian and the Solo Clients before Arian sent out its Terms of Business informing the Solo Clients of their client classification. The lack of communication with the Solo Clients demonstrates that Arian did not seek to verify that it had correctly categorised the Solo Clients. The

lack of follow-up with specific Solo Clients where information was lacking also indicates that the client categorisation process was not supported by evidence, as the clients were categorised as a group, despite the variety of the types of entities and level of information received for each client.

4.103 Further, Arian failed to consider, based on the information it held, whether the Solo Clients could reasonably fit within the definition of a professional client. The Authority considers that Arian relied on a low threshold of market knowledge and experience which is not reflected in COBS. Assessed against the category of professional client as a whole, it is clear that the Solo Clients, which included corporates entities in non-EEA jurisdictions and personal pension plans, the vast majority of which only had a single beneficial owner or shareholder, could not reasonably be considered per se professional clients simply because they were "*set up purely to make investments*".

4.104 In addition to failing correctly to carry out the process of classifying the Solo Clients, Arian also did not follow the procedure required at the time of categorisation under COBS. Firms are expected to notify clients of their categorisation prior to any provision of services (COBS 3.3.1B(R)). Arian did not inform the Solo Clients of their client categorisation until a number of weeks after the categorisation should have taken place. In some cases, it only informed the Solo Clients after it had started executing trades for those clients.

4.105 Further, firms are also expected to inform clients of their precise client categorisation. When informing the Solo Clients of their categorisation through its Terms of Business, Arian did not provide an exact client category but instead presented two potential client categories the Solo Clients could fall under. This is despite the fact that its retained compliance consultants had provided, ahead of trading, client categorisation letter templates for each of the two professional client categorisations Arian was seeking to relying on, and that Arian already had separate template letters for each professional client categorisation in its Compliance Manual.

Ongoing monitoring

4.106 Regulation 8(1) requires firms to conduct ongoing monitoring of the business relationship with their customers. Ongoing monitoring of a business relationship

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

4.107 Monitoring customer activity helps identify unusual activity. If unusual activities cannot be rationally explained, they may involve money laundering or terrorist financing. Monitoring customer activity and transactions that take place throughout a relationship helps firms know their customers, assists them to assess risk and provides greater assurance that the firm is not being used for the purpose of financial crime (paragraph 5.7.2 JMLSG Guidance).

Transaction monitoring

4.108 As part of a firm's ongoing monitoring of a client relationship, Regulation 8 requires that firms must undertake scrutiny of transactions undertaken throughout the course of the relationship (including, where necessary, the source of funds) to ensure that the transactions are consistent with the relevant person's knowledge of the customer, his business and risk profile (Regulation 8.2 and 5.7.1 JMLSG Guidance).

4.109 Furthermore, Regulation 14(1) states that enhanced ongoing monitoring must be applied in situations which can present a high risk of money laundering or terrorist financing. The JMLSG guidance states: *"High risk accounts and customer relationships require enhanced ongoing monitoring. This will generally mean more frequent or intensive monitoring."* (paragraph 5.7.12 JMLSG guidance).

4.110 Regulation 20(1)(a) and (2) require firms to have appropriate risk-sensitive policies and procedures relating to ongoing monitoring. These policies must include procedures to identify and scrutinise: 1) complex or unusually large transactions; 2) unusual patterns of activities which have no apparent economic or visible lawful purpose; and 3) any other activity which the relevant person regards as likely by its nature to be related to money laundering or terrorist financing.

4.111 The AML Policy required Arian to monitor customer activity by "*reviewing transactions undertaken throughout the course of the customer relationship to ensure that transactions are consistent with the customer's business and risk profile"*. It also explained that one factor that could affect the level of risk a

particular client represents was "*unusually large transactions compared to what might reasonably be expected of customers with a similar profile*". The AML Policy also required that "*transactions which may alert suspicion*" should be reported to the MLRO.

4.112 However, Arian's policy regarding transaction monitoring failed to set out any procedures regarding how, or the frequency with which, client activity should have been monitored, even for higher risk clients, which created a risk that transaction monitoring would not be conducted consistently or at all. It also did not provide adequate detail on the types of behaviour (other than unusually large transactions) that could be indicative of suspicious activity.

4.113 Shortly after the Solo Trading commenced, Arian noticed the trades involved very large volumes and commissioned an external review of the KYC documents. This was conducted by different advisers to those who had advised at the time of onboarding, namely the second compliance consultants. The purpose of commissioning this review was so that at the end of it Arian was "*100% compliant*" – indicating that Arian had clear reasons to doubt that it was compliant while engaged with trading, but it has stated to the Authority that it did not want to cease trading and "*cut off a revenue stream*".

4.114 Between 25 February and 6 May 2015, no transaction monitoring in relation to the Solo Trading took place. After the second compliance consultants were engaged from 6 May 2015 onwards, some manual transaction monitoring was undertaken by Arian in relation to the Solo Clients' activities, supervised by the second compliance consultants. Although the second compliance consultants were only instructed to monitor for market abuse, there could have been an overlap between such work and monitoring for wider financial crime purposes. For example, the second compliance consultants could have identified suspicious transactions where the suspicions went wider than market abuse and, if it did so, would have reported them to Arian. Therefore, from 6 May 2015 onwards, some transaction monitoring did take place but it was inadequate.

4.115 Arian's retained compliance consultants had raised the importance of establishing the source of client funds as part of the EDD process. Although Arian eventually sought source of wealth information (from the Solo Group, and not the Solo Clients themselves), it only did so on 13 April 2015, almost a month and a half after trading

had already commenced and a number of weeks after the Solo Clients had been onboarded. This information was never provided by the Solo Group, and the Authority has seen no evidence of Arian following up on this information.

4.116 Upon completion of the full review of the KYC documentation by its second compliance consultants on 2 June 2015, a number of defects and issues were raised, including, as raised previously, the lack of information concerning source of funds. However, in their advice as to remedial action, Arian's second compliance consultants suggested that most defects were "*not so critical that they could not be obtained after the fact*", and that Arian should follow-up with each of the clients around October 2015. Arian took no further action.

4.117 As Arian did not have:

1) knowledge of the Solo Clients' source of funds;

2) the Solo Clients' nature and purpose of the intended trading; nor

3) risk assessments for each of the Solo Clients prior to onboarding and trading,

Arian was not in a position to monitor trades properly once trading commenced or assess whether the volumes of the orders were appropriate for each relevant client. This therefore increased the risk that Arian might be facilitating financial crime.

The Solo Trading

4.118 During the Relevant Period, Arian purportedly executed high volume Cum-Dividend Trades for the Solo Clients worth approximately £52 billion, of which £37 billion was in Danish equities and £15 billion in Belgian equities, and received commission of £546,949 which made up approximately 16% of Arian's total revenue for the period.

4.119 As Arian did not make any enquiries regarding the expected level of trading during the client onboarding process (although it expected the trading volumes to be large due to the nature of the trading strategy), it was particularly important that Arian should assess the risks the Solo Clients presented once trading commenced. The Authority has seen no evidence of Arian questioning the individual clients either

before or after the trading started regarding their level of trading or their financial capacity and characteristics.

4.120 All the purported trading that Arian executed for the Solo Clients was done on the Solo Group's Brokermesh system. Brokermesh was an electronic platform, developed by an entity associated with the Solo Group, which generated trade orders from clients which transmitted to brokers, including to Arian. The purported trading on the platform was conducted via an automated process whereby, once an order appeared on the system, a broker would click to approve or reject liquidity. Arian understood that the system would match trades between clients of all the Broker Firms. Arian had not dealt with a closed platform before.

4.121 Although not all trade orders Arian sought to execute using Brokermesh were fulfilled, for those that were, liquidity was typically sourced within minutes.

4.122 In one instance, on 18 March 2015, Arian was attempting to buy 3.5 million shares of an OMX Copenhagen 20 company worth approximately £58.8 million for a Solo Client. Within two minutes, they received an email from another Solo Client trading on the Brokermesh platform that they could fill the entire order. Arian did not consider it unusual that liquidity for such a large trade, comprising 76% of the total volume of shares traded on the European exchanges on that same date, could be found so quickly within a closed network like Brokermesh. This was only one trade to buy from one Solo Client that day. The total volumes traded by Arian in an OMX Copenhagen 20 company on this date for all the Solo Clients were approximately 52 times the volume of shares traded on European exchanges on 18 March 2015.

4.123 Between February and August 2015, Arian used Brokermesh to execute Cum-Dividend Trading to the value of £37.16 billion in Danish equities and £14.89 billion in Belgian equities.

4.124 Analysis of the Cum-Dividend Trading reveals the following:

- Between February and August 2015, Arian purportedly executed only 'buy' orders on behalf of all 24 BVI, Cayman Islands and UAE companies in 16 Danish stocks over 11 cum-dividend dates. An average of 21.48% of the available shares in each stock were traded, which were cumulatively worth a total of

£37.16 billion. The volumes also equated to an average of 52 times the total number of all shares traded in those stocks on the European exchanges.

- Between April and June 2015, Arian purportedly executed orders within Belgian trading in 15 stocks over 10 cum-dividend dates. An average of 6.86% of the available shares in each stock were traded, which were cumulatively worth a total of £14.89 billion. The volumes also equated to an average of 24 times the total number of all shares traded on European exchanges.

4.125 The Authority considers that it is significant for market surveillance and visibility that individual trades were below the applicable disclosable thresholds. For example, Section 29 of the Danish Securities Trading Act required shareholders holding over 5% of Danish-listed stock to be publicised. Similarly Belgian law requires pursuant to Article 6 of the 'Law of 2 May 2007 on disclosure of major holdings in issues whose shares are admitted to trading on a regulated market and laying down miscellaneous provisions' requires holders of more than 5% of the existing voting rights to notify the issuer and the Belgian Financial Services Markets Authority of the number and proportion of voting rights that he/she holds.

4.126 Arian did not monitor and therefore was not aware at the time that cumulative daily trades per security regularly exceeded 10% - in fact, the majority of the trades were between 20-30% of the shares outstanding. The broker executing the trades for Arian was also indifferent to the fact that the trading represented many multiples of the volume of shares traded on exchange, despite the fact that Arian's CF10 stated that "*10% seems like quite a high number*" and that percentages of around 20 to 30% would be "*a high percentage*".

4.127 The Solo Clients' trading sizes were around £60 million worth of shares or more, sizes which Arian considered "*fairly usual*" for their trading. Arian has stated that it was comfortable with the size of transactions purportedly being traded by the Solo Clients via itself as Arian was "*given assurances by [the] Solo [Group] that nobody was trading in excess of their holding limits or their collateral* […]". However Arian never received any evidence of such assurances, beyond the Solo Group's word.

4.128 Further, although Arian was expecting the trade volumes to be large, Arian has stated that it did not consider the trade volumes to be suspicious as it had no benchmark to assess the trade volumes against, due to its lack of experience in

Dividend Arbitrage trading. Arian stated that it was not "*sure […] what the business was"* as it was its first year of the business, and that *"[i]f it had survived and gone to another year and if the volumes had gone up again by […] a factor of four, maybe […] this is a bit unusual. But […] we had nothing unusual to benchmark it against*". Arian ought to have been assessing whether the trade volumes of the Solo Clients were in line with their profiles.

4.129 Of those of the Solo Clients for which Arian traded (being 24 in total), there were only five individual UBOs and a group varying between two and three individuals. Between the five individual UBOs and the group of joint UBOs, each owned four funds each. Each of the four funds cleared with one of each of the Solo Group clearing entities. Arian did not take notice of this factor during the onboarding process. However, on any given cum-dividend date, it was often the case that all or almost all six UBOs would be trading very large volumes of the same stock. This was not something that raised red flags according to the broker executing trades in Arian, but Arian has accepted that had the information been considered, the pattern of trading would have caused concern. This level of organisation, apparent co-ordination and ease of trading, given Arian understood the Solo Clients to be acting independently or on their own impetus, should have led Arian to ask further questions about the purpose and intention of the trading conducted, or at least escalated the situation to the CF10 or CF11 (the holder of the money laundering reporting function).

4.130 Although execution-only broking may have reduced counterparty risk, all regulated firms must consider and mitigate the risk that they could be used to facilitate financial crime, even if client monies do not flow through the firm. The Authority has published considerable guidance on managing the risk of financial crime, particularly in its Financial Crime Guide which was first published in December 2011 and of which Arian ought to have been aware.

4.131 Arian should have considered whether the size and volume of the transactions were in line with expectations for the Solo Clients and whether the clients had sufficient funds.

4.132 An additional consideration ought to have been whether it was realistic that the Solo Group had been able to source a network of clients who were of sufficiently

high net worth to be able to trade sizes in the way that they did (paragraphs 18.14 and 18.21 JMLSG Guidance).

Trading "red flags"

4.133 Once the Solo Trading commenced, a number of red flags in relation to the trading ought to have alerted Arian to the possibility that it could be used for the purposes of financial crime and prompted it either to obtain explanations immediately from the Solo Group or the Solo Clients on a number of matters, decline to execute particular trades, or cease its trading relationship with the Solo Clients (paragraph 7.26 JMLSG Guidance):

- The Solo Clients placed extremely high value trades, yet most of them had only been recently incorporated, were based in non-EU/EEA countries (making them higher risk clients) and in a number of instances, were managed or owned by individual UBOs, some of whom were former employees of the Solo Group, or had Mr Shah as a previous director.

- Arian purportedly traded an average of 21.48% of the shares outstanding in the market on major listed Danish stocks, in circumstances where share ownership over 5% required publication. This was an average of 52 times higher than were reported on the European exchanges for the same Danish stocks.

- The Solo Group purported to have sourced a custom automatic trade matching and settlement platform from an entity owned by Mr Shah. Brokermesh was able to locate liquidity for OTC trades worth over £52 billion that were executed by Arian, even though access to the platform was limited to a closed pool of clients.

4.134 Arian failed to identify any red flags arising from the Solo Trading and as a consequence of this, failed sufficiently to address the risk that it might be used for the purposes of financial crime.

End of the Solo Trading

4.135 The Solo Clients' purported Cum-Dividend Trading stopped after 7 August 2015; however, the trades continued to be unwound in various tranches. Arian executed

its last unwind trade for a Solo Client on 29 September 2015. In early October, Arian discovered that West Point Derivatives Ltd, one of the Solo Group companies, had gone into administration and subsequently the Solo Trading stopped. Arian considered issuing a suspicious transaction report, but because there was no transaction to speak of after that, it chose not to.

4.136 The Solo Clients ceased the purported trading with all the brokers after unannounced visits by the Authority to the offices of the Solo Group entities and the Broker Firms between 3 and 4 November 2015.

Arian failed to identify any of the above issues

4.137 Arian failed to identify any of the above issues. With respect to AML, in both the 2014 to 2015 and 2015 to 2016 fiscal years, Arian did not identify any transactions raising any suspicions and no breaches were reported by it.

5 FAILINGS

5.1 The statutory and regulatory provisions relevant to this Notice are referred to in Annex B.

5.2 The relevant JMLSG Guidance has also been included in Annex B, because in determining whether breaches of its rules on systems and controls against money laundering have occurred, and in determining whether to take action for a financial penalty or censure in respect of a breach of those rules, the Authority has also had regard as to whether Arian followed the JMLSG Guidance.

Principle 3

5.3 Principle 3 requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

5.4 Arian breached this requirement during the Relevant Period, in relation to the Solo Trading, as its policies and procedures were inadequate for identifying, assessing and mitigating the risk of financial crime as they failed to:

a) set out the circumstances where reliance could be placed on an authorised firm's CDD;

b) include a requirement for risk assessments to be documented, and to document the rationale for any due diligence measures the firm waived when compared to its standard approach, in view of its risk assessment of a particular customer;

c) set out adequate processes and procedures for EDD;

d) set out adequate processes and procedures for client categorisation; and

e) set out adequate processes and procedures for transaction monitoring including how transactions were to be monitored, or with what frequency, and how to identify suspicious transactions.

5.5 The breaches revealed serious or systemic weaknesses in both Arian's procedures and the management systems or internal controls relating to Arian's governance of financial crime risk.

Principle 2

5.6 Principle 2 requires a firm to conduct its business with due skill, care and diligence.

5.7 The Authority considers that Arian breached this requirement by failing properly to assess, monitor and manage the risk of financial crime associated with the Solo Clients and purported trading activity, in that it:

a) failed properly to conduct customer due diligence prior to onboarding the Solo Clients, and consequently failed to identify that they presented a higher risk of financial crime before they started trading;

b) failed to gather information to enable it to understand the purpose and intended nature of the business that the Solo Clients were going to undertake, the likely size or frequency of the purported trading intended by the Solo Clients or the source of funds for the Solo Clients. Arian relied on its retained compliance consultants becoming "comfortable" following concerns raised by the consultants, after Arian explained some information about the trading strategy. However, Arian should have ensured that it fully understood the nature of the Solo business;

c) failed to undertake and document a risk assessment for each of the Solo Clients prior to onboarding and trading for the Solo Clients;

d) failed adequately to complete EDD for any of the Solo Clients despite the fact that none of the Solo Clients were physically present for identification purposes and a number of other risk factors were present, and despite the fact that its retained compliance consultants advised that Arian would need to undertake EDD. Although Arian had engaged its retained compliance consultants to give some limited assistance during the onboarding process, they were not instructed to provide any substantive assistance with regard to EDD prior to onboarding;

e) failed to assess each of the Solo Clients against the categorisation criteria set out in COBS 3.5.2R and failed to inform the Solo Clients prior to any provision of services and of their specific client categorisation, contrary to COBS 3.3.1R;

f) failed to conduct transaction monitoring of the Solo Clients' purported trades between 25 February and 6 May 2015 and failed to conduct adequate transaction monitoring from 6 May 2015 onwards, including assessing whether the transactions were consistent with its knowledge of the customers and their risk profile. When instructing a second external compliance firm to undertake monitoring of the trades (from 6 May 2015, after the Solo Trading had commenced) the remit of those instructions was limited to market abuse, albeit there could have been an overlap between such work and monitoring for wider financial crime purposes; and

g) failed to recognise numerous "red flags" with the purported trading, including that Arian did not consider whether it was plausible and/or realistic that sufficient liquidity was sourced within a closed network of entities for the size and volumes of trading conducted by the Solo Clients. Likewise, Arian failed to consider or recognise that the profiles of the Solo Clients meant that they were highly unlikely to meet the scale and volume of the trading purportedly being carried out, and/or failed at least to obtain sufficient evidence of the clients' source of funds to satisfy itself to the contrary.

6 SANCTION

6.1 The Authority has considered the disciplinary and other options available to it and has concluded that a financial penalty is the appropriate sanction in the circumstances of this particular case.

6.2 The Authority's policy on the imposition of financial penalties is set out in Chapter 6 of DEPP. In determining the financial penalty, the Authority has had regard to this guidance.

6.3 DEPP 6.5A sets out a five-step framework to determine the appropriate level of financial penalty.

Step 1: disgorgement

6.4 Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.

6.5 The financial benefit derived directly by Arian from its breaches is quantifiable by reference to the revenue figure derived from the Solo Clients' purported trading during the Relevant Period, which amounted to £546,949.24, minus (1) custody and consultant fees of £98,303.78 paid to Solo and (2) commission paid to a self-employed broker of £307,732.93. Both of these deductions were directly referable to the trading undertaken with the Solo Group and paid out pursuant to pre-agreed contractual terms.

6.6 The figure after Step 1 is therefore **£140,912.53**.

Step 2: the seriousness of the breach

6.7 Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's relevant revenue, which is the revenue derived by the firm during the period of the breach from the products or business areas to which the breach relates.

6.8 The Authority considers that the revenue generated by Arian is indicative of the harm or potential harm caused by its breach. The Authority has therefore determined a figure based on a percentage of Arian's relevant revenue during the period of the breach.

6.9 Arian's relevant revenue is the revenue derived from the Solo Trading as it relates to the breaches identified in this Notice. The period of Arian's breach was from 29

January 2015 to 29 September 2015. The Authority considers Arian's revenue for this period to be £448,645.

6.10 In deciding on the percentage of the revenue that forms the basis of the step 2 figure, Authority considers the seriousness of the breach and chooses a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on firms there are the following five levels:

Level 1 – 0%

Level 2 – 5%

Level 3 – 10%

Level 4 – 15%

Level 5 – 20%

6.11 In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly.

6.12 The Authority does not consider that the breaches were either deliberate or reckless.

6.13 DEPP 6.5A.2(11)G lists factors likely to be considered 'Level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:

(b) The breaches revealed serious or systemic weaknesses in both the firm's procedures and the management systems or internal controls relating to all or part of the firm's business; and

(d) The breaches created a significant risk that financial crime would be facilitated, occasioned or otherwise occur.

6.14 DEPP 6.5A.2(12)G lists factors likely to be considered 'Level 1, 2 or 3 factors'. Of these, the Authority considers the following factor to be relevant:

(e) the breach was committed negligently or inadvertently.

6.15 Taking all these factors into account, the Authority considers the seriousness of the breach to be Level 4 and so the Step 2 figure is 15% of £448,645.

6.16 Step 2 is therefore **£67,296**.

Step 3: Mitigating and aggravating factors

6.17 Pursuant to DEPP 6.5A.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.

6.18 The Authority considers that it is a factor aggravating the breach that the Authority and the JMLSG have published numerous documents highlighting financial crime risks and the standards expected of firms when dealing with those risks. The most significant publications include the JMLSG Guidance and Financial Crime Guide (including the thematic reviews that are referred to in it), which was first published in December 2011. These publications set out good practice examples to assist firms, for example in managing and mitigating money laundering risk by (amongst other things) conducting appropriate customer due diligence, monitoring of customers' activity and guidance of dealing with higher-risk situations. Given the number and detailed nature of such publications, and past enforcement action taken by the Authority in respect of similar failings by other firms, Arian should have been aware of the importance of appropriately assessing, managing and monitoring the risk that it could be used for the purposes of financial crime.

6.19 The Authority does not consider there to be any mitigating factors.

6.20 The Authority considers that the Step 2 figure should be increased by 10%.

6.21 Step 3 is therefore **£74,025**.

Step 4: adjustment for deterrence

6.22 Pursuant to DEPP 6.5A.4G, if the Authority considers that the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further similar breaches, then the Authority may increase the penalty.

6.23 The Authority considers that DEPP 6.5A.4G(1)(a) is relevant in this instance and has therefore determined that this is an appropriate case where an adjustment for deterrence is necessary. Without an adjustment for deterrence, the financial penalty (excluding disgorgement) would be £74,025. In the circumstances of this case, the Authority considers that a penalty of this size would not serve as a credible deterrent to Arian and others. This small penalty does not meet the Authority's objective of credible deterrence. As a result, it is necessary for the Authority to increase the penalty to achieve credible deterrence.

6.24 Having taken into account the factor outlined in DEPP 6.5A.4G, the Authority considers that a multiplier of two should be applied at Step 4.

6.25 Step 4 is therefore **£148,050**.

Step 5: settlement discount

6.26 No settlement discount applies.

6.27 Step 5 is therefore **£148,050**.

Penalty

6.28 The Authority hereby imposes a total financial penalty of **£288,962.53**, comprised of £148,050 plus disgorgement of £140,912.53.

7 PROCEDURAL MATTERS

7.1 This Notice is given to Arian under and in accordance with section 390 of the Act.

7.2 The following statutory rights are important.

Decision maker

7.3 The decision which gave rise to the obligation to give this Notice was made by the RDC. The RDC is a committee of the Authority which takes certain decisions on behalf of the Authority. The members of the RDC are separate to the Authority staff involved in conducting investigations and recommending action against firms and individuals. Further information about the RDC can be found on the Authority's website:

https://www.fca.org.uk/about/committees/regulatory-decisions-committee-rdc

Manner and time for payment

7.4 The financial penalty must be paid in full by Arian to the Authority by no later than 23 January 2025, 14 days from the date of the Final Notice.

If the financial penalty is not paid

7.5 If any or all of the financial penalty is outstanding after its due date for payment, the full amount outstanding of the financial penalty shall then become immediately due and payable, and the Authority may recover the outstanding amount as a debt owed by Arian Financial LLP to the Authority, including interest thereon.

Confidentiality and publicity

7.6 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 the firm, prejudicial to the interests of consumers or detrimental to the stability of the UK financial system. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

7.7 For more information concerning this matter generally, contact Giles Harry (direct line: 0207 066 8072/ giles.harry@fca.org.uk) or Rosanne Hooper (direct line: 020 7066 0073 / rosanne.hooper@fca.org.uk) of the Enforcement and Market Oversight Division of the Authority.

Ross Murdoch
Head of Department
Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

CHRONOLOGY

25 March 2003	Arian was incorporated
11 March 2005	Arian was authorised by the Authority (it was previously an appointed representative for another Authority authorised firm)
4 August 2014	Initial discussions took place with SCP
11 December 2014	Arian signed Service Agreement with the Solo Group
10 February – March 2015	Onboarding process for 169 Solo Clients and 10 broker firms.
12 February 2015	Brokermesh simulation
18 February 2015	Arian signed further Service Agreement with the Solo Group
20 February 2015	Brokermesh licence agreement signed by Arian
25 February 2015	Purported trading commenced in Danish stocks
16 March 2015	Arian sent Terms of Business to 166 Solo Clients with client classification
31 March 2015	Arian commissioned second compliance consultants to review KYC documents and provide general compliance advice in relation to the Solo Trading
13 April 2015	Arian emailed the Solo Group to close down gaps in CDD
21 April 2015	Purported trading commenced in Belgian stocks
22 April 2015	Arian received email from Mr Shah in response to gaps in CDD information

24 April 2015	Arian received email from second compliance consultants stating that responses from Mr Shah were insufficient in closing down CDD issues
28 April 2015	Arian met with Mr Shah where he reiterated his email of 22 April
2 June 2015	Second compliance consultants provided advice based on its review
7 August 2015	Last Cum-Dividend Trading on Brokermesh
29 September	Last Unwind Trading for the Solo Clients
4 November 2015	Unannounced visit by the Authority's Enforcement team

ANNEX B

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT STATUTORY PROVISIONS

The Financial Services and Markets Act 2000

1.1 Pursuant to sections 1B and 1D of the Act, one of the Authority's operational objectives is protecting and enhancing the integrity of the UK financial system.

1.2 Pursuant to section 206 of the Act, if the Authority considers that an authorised person has contravened a requirement imposed on it by or under the Act, it may impose on that person a penalty in respect of the contravention of such amount as it considers appropriate.

The 2007 Regulations (as in force during the Relevant Period)

1.3 Regulation 5 provides:

"Meaning of customer due diligence measures

"Customer due diligence measures" means—

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

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

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

1.4 Regulation 7 provides:

"Application of customer due diligence measures

(1) …, a relevant person must apply customer due diligence measures when he—

(a) establishes a business relationship;

(b) carries out an occasional transaction;

(c) suspects money laundering or terrorist financing;

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

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

(3) A relevant person must—

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

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

1.5 Regulation 8 provides:

"Ongoing monitoring

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

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

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

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

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

1.6 Regulation 11 provides:

"***Requirement to cease transactions etc.***

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

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

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

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

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

(2) Paragraph (1) does not apply where a lawyer or other professional adviser is in the course of ascertaining the legal position for his client or performing his task of defending or representing that client in, or concerning, legal proceedings, including advice on the institution or avoidance of proceedings.

(3) In paragraph (2), "other professional adviser" means an auditor, accountant or tax adviser who is a member of a professional body which is established for any such persons and which makes provision for—

(a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and

(b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards."

1.7 Regulation 14 provides:

"Enhanced customer due diligence and ongoing monitoring

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

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

(b) in any other situation which by its nature can present a higher risk of money laundering or terrorist financing.

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

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

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

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

1.8 Regulation 17 provides:

"Reliance

(1) A relevant person may rely on a person who falls within paragraph (2) (or who the relevant person has reasonable grounds to believe falls within paragraph (2)) to apply any customer due diligence measures provided that—

(a) the other person consents to being relied on; and

(b) notwithstanding the relevant person's reliance on the other person, the relevant person remains liable for any failure to apply such measures.

(2) The persons are—

(a) a credit or financial institution which is an authorised person;

…

(4) Nothing in this regulation prevents a relevant person applying customer due diligence measures by means of an outsourcing service provider or agent provided that the relevant person remains liable for any failure to apply such measures."

1.9 Regulation 20 provides:

"Policies and Procedures

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

(a) customer due diligence measures and ongoing monitoring;

(b) reporting;

(c) record-keeping;

(d) internal control;

(e) risk assessment and management;

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

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

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

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

(i) complex or unusually large transactions;

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

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

2. RELEVANT REGULATORY PROVISIONS

2.1 In exercising its powers to impose a financial penalty, the Authority has had regard to the relevant regulatory provisions published in the Authority's Handbook. The main provisions that the Authority considers relevant are set out below. (All references to rules or guidance applicable to Arian are to those in force during the Relevant Period.)

Principles

2.2 The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook.

2.3 Principle 2 provides:

"A firm must conduct its business with due skill, care and diligence."

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."

SYSC

2.5 SYSC 3.2.6E provides:

"The [Authority], when considering whether a breach of its rules on systems and controls against money laundering has occurred, will have regard to whether a firm has followed relevant provisions in the guidance for the UK financial sector issued by the Joint Money Laundering Steering Group".

2.6 SYSC 6.3.1R provides:

"A firm must ensure the policies and procedures established under SYSC 6.1.1R include systems and controls that:

(1) enable it to identify, assess, monitor and manage money laundering risk; and

(2) are comprehensive and proportionate to the nature, scale and complexity of its activities."

2.7 SYSC 6.3.6G provides:

"In identifying its money laundering risk and in establishing the nature of these systems and controls, a firm should consider a range of factors, including:

(1) its customer, product and activity profiles;

(2) its distribution channels;

(3) the complexity and volume of its transactions;

(4) its processes and systems; and

(5) its operating environment".

2.8 SYSC 6.3.7G provides:

"A firm should ensure that the systems and controls include:

…

(3) appropriate documentation of its risk management policies and risk profile in relation to money laundering, including documentation of its application of those policies…;

(4) appropriate measures to ensure that money laundering risk is taken into account in its day-to-day operation, including in relation to:

(a) the development of new products;

(b) the taking-on of new customers; and

(c) changes in its business profile…".

2.9 SYSC 9.1.1R provides:

"A firm must arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the appropriate regulator or any other relevant competent authority under MiFID or the UCITS Directive to monitor the firm's compliance with the requirements under the regulatory system, and in particular to ascertain that the firm has complied with all obligations with respect to clients."

COBS

2.10 COBS 3.3.1R provides:

"A firm must:

(1) notify a new client of its categorisation as a retail client, professional client, or eligible counterparty in accordance with this chapter; and

(2) prior to the provision of services, inform a client in a durable medium about:

(a) any right that client has to request a different categorisation; and

(b) any limitations to the level of client protection that such a different categorisation would entail."

2.11 COBS 3.5.2R provides:

"Per Se Professional Clients

Each of the following is a per se professional client unless and to the extent it is an eligible counterparty or is given a different categorisation under this chapter:

(1) an entity required to be authorised or regulated to operate in the financial markets. The following list includes all authorised entities carrying out the characteristic activities of the entities mentioned, whether authorised by an EEA State or a third country and whether or not authorised by reference to a directive:

(a) a credit institution;

(b) an investment firm;

(c) any other authorised or regulated financial institution;

(d) an insurance company;

(e) a collective investment scheme or the management company of such a scheme;

(f) a pension fund or the management company of a pension fund;

(g) a commodity or commodity derivatives dealer;

(h) a local authority;

(i) any other institutional investor;

(2) in relation to MiFID or equivalent third country business a large undertaking meeting two of the following size requirements on a company basis:

(a) balance sheet total of EUR 20,000,000;

(b) net turnover of EUR 40,000,000;

(c) own funds of EUR 2,000,000;

(3) in relation to business that is not MiFID or equivalent third country business a large undertaking meeting any of the following conditions:

(a) a body corporate (including a limited liability partnership) which has (or any of whose holding companies or subsidiaries has) (or has had at any time during the previous two years) called up share capital or net assets of at least £51 million (or its equivalent in any other currency at the relevant time);

(b) an undertaking that meets (or any of whose holding companies or subsidiaries meets) two of the following tests:

(i) a balance sheet total of EUR 12,500,000;

(ii) a net turnover of EUR 25,000,000;

(iii) an average number of employees during the year of 250;

(c) a partnership or unincorporated association which has (or has had at any time during the previous two years) net assets of at least £5 million (or its equivalent in any other currency at the relevant time) and calculated in the case of a limited partnership without deducting loans owing to any of the partners;

(d) a trustee of a trust (other than an occupational pension scheme, SSAS, personal pension scheme or stakeholder pension scheme) which has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time) calculated by aggregating the value of the cash and designated investments forming part of the trust's assets, but before deducting its liabilities;

(e) a trustee of an occupational pension scheme or SSAS, or a trustee or operator of a personal pension scheme or stakeholder pension scheme where the scheme has (or has had at any time during the previous two years):

(i) at least 50 members; and

(ii) assets under management of at least £10 million (or its equivalent in any other currency at the relevant time);

(f) a local authority or public authority.

(4) a national or regional government, a public body that manages public debt, a central bank, an international or supranational institution (such as the World Bank, the IMF, the ECP, the EIB) or another similar international organisation;

(5) another institutional investor whose main activity is to invest in financial instruments (in relation to the firm's MiFID or equivalent third country business) or designated investments (in relation to the firm's other business). This includes entities dedicated to the securitisation of assets or other financing transactions."

2.12 COBS 3.5.3R provides:

"Elective professional clients

A firm may treat a client as an elective professional client if it complies with (1) and (3) and, where applicable, (2):

(1) the firm undertakes an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved (the "qualitative test");

(2) in relation to MiFID or equivalent third country business in the course of that assessment, at least two of the following criteria are satisfied:

(a) the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;

(b) the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500,000;

(c) the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged;

(the "quantitative test"); and

(3) the following procedure is followed:

(a) the client must state in writing to the firm that it wishes to be treated as a professional client either generally or in respect of a particular service or transaction or type of transaction or product;

(b) the firm must give the client a clear written warning of the protections and investor compensation rights the client may lose; and

(c) the client must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections."

2.13 COBS 3.8.2R provides:

"(2) A firm must make a record in relation to each client of:

(a) the categorisation established for the client under this chapter, including sufficient information to support that categorisation;…"

Decision Procedure and Penalties Manual ("DEPP")

2.14 Chapter 6 of DEPP, which forms part of the Authority's Handbook, sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act. In particular, DEPP 6.5A sets out the five steps for penalties imposed on firms.

2.15 DEPP 6.2.3G provides:

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

Enforcement Guide

2.16 The Enforcement Guide sets out the Authority's approach to taking disciplinary action. The Authority's approach to financial penalties and suspensions (including restrictions) is set out in Chapter 7 of the Enforcement Guide.

JMLSG GUIDANCE (published 19 November 2014)

PART I

Standing of the MLRO

3.17 Where AML/CTF tasks are delegated by a firm's MLRO, the [Authority] will expect the MLRO to take ultimate managerial responsibility.

A risk-based approach – governance, procedures and internal controls

4.5 A risk-based approach requires the full commitment and support of senior management, and the active co-operation of business units. The risk-based approach needs to be part of the firm's philosophy, and as such reflected in the procedures and controls. There needs to be a clear communication of policies and procedures across the firm, along with the robust mechanisms

to ensure that they are carried out effectively, weaknesses are identified, and improvements are made wherever necessary.

4.13 Whatever approach is considered the most appropriate to the firm's money laundering/terrorist financing risk, the broad objective is that the firm should know at the outset of the relationship who their customers are, where they operate, what they do, their expected level of activity with the firm and whether or not they are likely to be engaged in criminal activity. The firm then should consider how the profile of the customer's financial behaviour builds up over time, thus allowing the firm to identify transactions that may be suspicious.

4.21 However, as stated in paragraph 5.2.6, if a firm cannot satisfy itself as to the identity of the customer; verify that identity; or obtain sufficient information on the nature and intended purpose of the business relationship, it must not enter into a new relationship and must terminate an existing one.

4.22 While a risk assessment should always be performed at the inception of a customer relationship (although see paragraph 4.16 below[1]), for some customers a comprehensive risk profile may only become evident once the customer has begun transacting through an account, making the monitoring of transactions and on-going reviews a fundamental component of a reasonably designed RBA. A firm may also have to adjust its risk assessment of a particular customer based on information received from a competent authority.

General

4.45 Based on the risk assessment carried out, a firm will determine the level of CDD that should be applied in respect of each customer and beneficial owner. It is likely that there will be a standard level of CDD that will apply to the generality of customer, based on the firm's risk appetite.

Higher risk/ enhanced due diligence

4.50 Where a customer is assessed as carrying a higher risk, then depending on the product sought, it will be necessary to seek additional information in respect of the customer, to be better able to judge whether or not the higher risk that the customer is perceived to present is likely to materialise. Such additional information may include an understanding of where the customer's funds and wealth have come from. Guidance on the types of additional information that may be sought is set out in section 5.5.

[1] The Authority believes this should read "above".

4.51 Where the risks of ML/TF are higher, firms must conduct enhanced due diligence measures consistent with the risks identified. In particular, they should increase the degree and nature of monitoring of the business relationship, in order to determine whether these transactions or activities appear unusual or suspicious. Examples of EDD measures that could be applied for higher risk business relationships include:

- Obtaining, and where appropriate verifying, additional information on the customer and updating more regularly the identification of the customer and any beneficial owner
- Obtaining additional information on the intended nature of the business relationship
- Obtaining information on the source of funds or source of wealth of the customer
- Obtaining information on the reasons for intended or performed transactions
- Obtaining the approval of senior management to commence or continue the business relationship
- Conducting enhanced monitoring of the business relationship, by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination
- Requiring the first payment to be carried out through an account in the customer's name with a bank subject to similar CDD standards

A risk-based approach - Record appropriately what has been done and why

4.61 Firms must document their risk assessments in order to be able to demonstrate their basis, keep these assessments up to date, and have appropriate mechanisms to provide appropriate risk assessment information to competent authorities.

4.62 The responses to consideration of the issues set out above, or to similar issues, will enable the firm to tailor its policies and procedures on the prevention of money laundering and terrorist financing. Documentation of those responses should enable the firm to demonstrate to its regulator and/or to a court:

- how it assesses the threats/risks of being used in connection with money laundering or terrorist financing;

- how it agrees and implements the appropriate systems and procedures, including due diligence requirements, in the light of its risk assessment;

- how it monitors and, as necessary, improves the effectiveness of its systems and procedures; and

- the arrangements for reporting to senior management on the operation of its control processes.

4.63 In addition, on a case-by-case basis, firms should document the rationale for any additional due diligence measures it has undertaken (or any it has waived) compared to its standard approach, in view of its risk assessment of a particular customer.

Meaning of customer due diligence measures and ongoing monitoring

5.1.5 The CDD measures that must be carried out involve:

(a) identifying the customer, and verifying his identity (see paragraphs 5.3.2ff);

(b) identifying the beneficial owner, where relevant, and verifying his identity (see paragraphs 5.3.8ff); and

(c) obtaining information on the purpose and intended nature of the business relationship (see paragraphs 5.3.20ff).

Source of funds as evidence

5.3.85 If a firm proposing to rely on the source of funds has reasonable grounds for believing that the identity of the customer has not been verified by the firm on which the payment has been drawn, it should not permit the source of funds to be used as evidence, and should verify the customer's identity in line with the appropriate standard requirement.

Corporate customers (other than regulated firms)

5.3.125 To the extent consistent with the risk assessment carried out in accordance with the guidance in Chapter 4, the firm should ensure that it fully understands the company's legal form, structure and ownership, and must obtain sufficient additional information on the nature of the company's business, and the reasons for seeking the product or service.

Enhanced due diligence

5.5.1 A firm must apply EDD measures on a risk-sensitive basis in any situation which by its nature can present a higher risk of money laundering or terrorist financing. As part of this, a firm may conclude, under its risk-based approach, that the information it has collected as part of the customer due diligence process (see section 5.3) is insufficient in relation to the money laundering or terrorist financing risk, and that it must obtain additional information about a particular customer, the customer's beneficial owner, where applicable, and the purpose and intended nature of the business relationship.

5.5.2 As a part of a risk-based approach, therefore, firms should hold sufficient information about the circumstances and business of their customers and, where applicable, their customers' beneficial owners, for two principal reasons:

- to inform its risk assessment process, and thus manage its money laundering/terrorist financing risks effectively; and
- to provide a basis for monitoring customer activity and transactions, thus increasing the likelihood that they will detect the use of their products and services for money laundering and terrorist financing.

5.5.6 When someone becomes a new customer, or applies for a new product or service, or where there are indications that the risk associated with an existing business relationship might have increased, the firm should, depending upon the nature of the product or service for which they are applying, request information as to the customer's residential status, employment and salary details, and other sources of income or wealth (e.g., inheritance, divorce settlement, property sale), in order to decide whether to accept the application or continue with the relationship. The firm should consider whether or not there is a need to enhance its activity monitoring in respect of the relationship. A firm should have a clear policy regarding the escalation of decisions to senior management concerning the acceptance or continuation of high-risk business relationships.

5.5.9 The [2007] Regulations prescribe three specific types of relationship in respect of which EDD must be applied. They are:

- where the customer has not been physically present for identification purposes (see paragraphs 5.5.10ff);
- in respect of a correspondent banking relationship (see Part II, sector 16: Correspondent banking);
- in respect of a business relationship or occasional transaction with a PEP (see paragraph 5.5.18ff).

Reliance on third parties

5.6.4 The [2007] Regulations expressly permit a firm to rely on another person to apply any or all of the CDD measures, provided that the other person is listed in Regulation 17(2), and that consent to be relied on has been given (see paragraph 5.6.8). The relying firm, however, retains responsibility for any failure to comply with a requirement of the Regulations, as this responsibility cannot be delegated.

5.6.5 For example:

- where a firm (firm A) enters into a business relationship with, or undertakes an occasional transaction for, the underlying customer of another firm (firm B), for example by accepting instructions from the customer (given through Firm B); or

- firm A and firm B both act for the same customer in respect of a transaction (e.g., firm A as executing broker and firm B as clearing broker),

firm A may rely on firm B to carry out CDD measures, while remaining ultimately liable for compliance with the ML Regulations.

5.6.6 In this context, Firm B must be:

(1) a person who carries on business in the UK who is

(a) an [Authority]-authorised credit or financial institution (excluding a money service business) (see also paragraph 5.6.7 below); or

(b) an auditor, insolvency practitioner, external accountant, tax adviser or independent legal professional, who is supervised for the purposes of the Regulations by one of the bodies listed in Part 1 of Schedule 3 to the ML Regulations;

(2) a person who carries on business in another EEA State who is:

(a) a credit or financial institution (excluding a money service business), an auditor, insolvency practitioner, external accountant, tax adviser or other independent legal professional;

(b) subject to mandatory professional registration recognised by law; and

(c) supervised for compliance with the requirements laid down in the Money Laundering Directive in accordance with section 2 of Chapter V of that directive;

(3) a person carrying on business in a non-EEA State who is

(a) a credit or financial institution (excluding a money service business), an auditor, insolvency practitioner, external accountant, tax adviser or other independent legal professional;

(b) subject to mandatory professional registration recognised by law; and

(c) subject to requirements equivalent to those laid down in the Money Laundering Directive; and

(d) supervised for compliance with those requirements in a manner equivalent to section 2 of Chapter V of the Money Laundering Directive.

5.6.14 Whether a firm wishes to place reliance on a third party will be part of the firm's risk-based assessment, which, in addition to confirming the third party's regulated status, may include consideration of matters such as:

- its public disciplinary record, to the extent that this is available; the nature of the customer, the product/service sought and the sums involved; any adverse experience of the other firm's general efficiency in business dealings; any other knowledge, whether obtained at the outset of the relationship or subsequently, that the firm has regarding the standing of the firm to be relied upon.

5.6.15 The assessment as to whether or not a firm should accept confirmation from a third party that appropriate CDD measures have been carried out on a customer will be risk-based, and cannot be based simply on a single factor.

5.6.25 Part of the firm's AML/CTF policy statement should address the circumstances where reliance may be placed on other firms and how the firm will assess whether the other firm satisfies the definition of third party in Regulation 17(2) (see paragraph 5.6.6).

Use of pro-forma confirmations

5.6.31 The provision of a confirmation certificate implies consent to be relied upon, in accordance with paragraph 5.6.7.

5.6.32 Pro-forma confirmations for customer identification and verification are attached as Annex 5-I to this chapter.

Ongoing Monitoring

5.7.1 Firms must conduct ongoing monitoring of the business relationship with their customers. Ongoing monitoring of a business relationship includes:

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

- Ensuring that the documents, data or information held by the firm are kept up to date.

5.7.2 Monitoring customer activity helps identify unusual activity. If unusual activities cannot be rationally explained, they may involve money laundering or terrorist financing. Monitoring customer activity and transactions that take place throughout a relationship helps firms know their customers, assist them to assess risk and provides greater assurance that the firm is not being used for the purposes of financial crime.

Nature of monitoring

5.7.12 Higher risk accounts and customer relationships require enhanced ongoing monitoring. This will generally mean more frequent or intensive monitoring.

Annex 5-I/4

ANNEX 5-I/4

CONFIRMATION OF VERIFICATION OF IDENTITY

CORPORATE AND OTHER NON-PERSONAL ENTITY

INTRODUCTION BY AN FCA-REGULATED FIRM

1 DETAILS OF CUSTOMER (see explanatory notes below)

Full name of customer	
Type of entity (corporate, trust, etc)	
Location of business (full operating address)	
Registered office in country of incorporation	
Registered number, if any (or appropriate)	
Relevant company registry or regulated market listing authority	
Names* of directors (or equivalent)	
Names* of principal beneficial owners (over 25%)	

*** And dates of birth, if known**

2 CONFIRMATION

I/we confirm that

(a) the information in section 1 above was obtained by me/us in relation to the customer;

(b) the evidence I/we have obtained to verify the identity of the customer: [tick only one]

meets the guidance for standard evidence set out within the guidance for the UK Financial Sector issued by JMLSG; or	
exceeds the standard evidence (written details of the further verification evidence taken are attached to this confirmation).	

Signed:	
Name:	
Position:	
Date:	

3 DETAILS OF INTRODUCING FIRM (OR SOLE TRADER)

Full Name of Regulated Firm (or Sole Trader):	
FCA Reference Number:	

Explanatory notes

1. "Relevant company registry" includes other registers, such as those maintained by charity commissions (or equivalent) or chambers of commerce.

2. This form cannot be used to verify the identity of any customer that falls into one of the following categories:

   - those who are exempt from verification as being an existing client of the introducing firm prior to the introduction of the requirement for such verification;
   - those who have been subject to Simplified Due Diligence under the Money Laundering Regulations; or
   - those whose identity has been verified using the source of funds as evidence

What is meant by "knowledge" and "suspicion"?

6.11 Suspicion is more subjective and falls short of proof based on firm evidence. Suspicion has been defined by the courts as being beyond mere speculation and based on some foundation, for example:

"A degree of satisfaction and not necessarily amounting to belief but at least extending beyond speculation as to whether an event has occurred or not"; and

"Although the creation of suspicion requires a lesser factual basis than the creation of a belief, it must nonetheless be built upon some foundation."

Staff alertness to specific situations

7.26 The set of circumstances giving rise to an unusual transaction or arrangement, and which may provide reasonable grounds for concluding that it is suspicious (see paragraph 6.11), will depend on the customer and the product or service in question. Illustrations of the type of situation that may be unusual, and which in certain circumstances might give rise to reasonable grounds for suspicion, are:

☐ transactions which have no apparent purpose, or which make no obvious economic sense (including where a person makes a loss against tax), or which involve apparently unnecessary complexity;

…

☐ where the transaction being requested by the customer, or the size of the pattern of transactions, is, without reasonable explanation, out of the ordinary range of services normally requested or is inconsistent with the experience of the firm in relation to the particular customer;

…

PART II

Wholesale Markets

What are the money laundering risks in the wholesale markets sector?

18.14 OTC and exchange-based trading can also present very different money laundering risk profiles. Exchanges that are regulated in equivalent jurisdictions, are transparent and have a central counterparty to clear trades, can largely be seen as carrying a lower generic money laundering risk. OTC business may, generally, be less well regulated and it is not possible to make the same generalisations concerning the money laundering risk as with exchange-traded products. For example, trades that are executed as OTC but then are centrally cleared, have a different risk profile to trades that are executed and settled OTC. Hence, when dealing in the OTC markets firms will need to take a more considered risk-based approach and undertake more detailed risk-based assessment.

How to assess the elements of risk in the wholesale markets sector

18.21 Firms may also wish to carry out due diligence in respect of any introducing brokers who introduce new customers or other intermediaries and consider whether there are any red flags in relation to corruption risks.

ANNEX C
401(k) FUNDS

Employer Created 401(k) Plans

A 401(k) is a qualified profit sharing plan that allows employees to contribute a portion of their wages to individual retirement accounts. Employers can also contribute to employees' accounts. Any money that is contributed to a 401(k) below the annual contribution limit is not subject to income tax in the year the money is earned, but then is taxable at retirement. For example, if John Doe earns $100,000 in 2018, he is allowed to contribute $18,500, which is the 2018 limit, to his 401(k) plan. If he contributes the full amount that he is allowed, then although he earned $100,000, his taxable income for income tax purposes would be $81,500. Then, he would pay income tax upon any money that he withdraws from his 401(k) at retirement. If he withdraws any money prior to age 59 1/2, he would be subject to various penalties and taxes.

Contribution to a 401(k) plan must not exceed certain limits described in the Internal Revenue Code. The limits apply to the total amount of employer contributions, employee elective deferrals and forfeitures credits to the participant's account during the year. The contribution limits apply to the aggregate of all retirement plans in which the employee participates. The contribution limits have been increased over time. Below is a chart of the contribution limits:

Year	Employee Contribution Limit	Employer Contribution Limit	Total Contribution	Catch Up Contribution (only for individuals Age 50+)
1999	$10,000	$20,000	$30,000	0
2000	$10,500	$19,500	$30,000	0
2001	$10,500	$24,500	$35,000	0
2002	$11,000	$29,000	$40,000	$1,000
2003	$12,000	$28,000	$40,000	$2,000
2004	$13,000	$28,000	$41,000	$3,000
2005	$14,000	$28,000	$42,000	$4,000
2006	$15,000	$29,000	$44,000	$5,000
2007	$15,500	$29,500	$45,000	$5,000
2008	$15,500	$30,500	$46,000	$5,000
2009	$16,500	$32,500	$49,000	$5,500
2010	$16,500	$32,500	$49,000	$5,500
2011	$16,500	$32,500	$49,000	$5,500
2012	$16,500	$33,500	$50,000	$5,500

2013	$17,000	$34,000	$51,000	$5,500
2014	$17,500	$34,500	$52,000	$5,500
2015	$18,000	$35,000	$53,000	$6,000

If an individual was aged 30 in 1999, the absolute maximum that he could have contributed including the maximum employer contributions would be $746,000.

Minimum Age Requirements

In the United States, the general minimum age limit for employment is 14. Because of this, an individual may make contributions into 401(k) plans from this age if the terms of the plan allow it. The federal government does not legally require employers to include employees in their 401(k) plans until they are at least 21 years of age. If an individual is at least 21 and has been working for their employer for at least one year, the employer must allow them to participate in the company's 401(k) plan. As a result, some employers' plans will not allow individuals to invest until they are at least 18 or 21, depending upon the terms of the plan.

One-Participant 401(k) Plans

A one-participant 401(k) plan is sometimes called a solo 401(k). This plan covers a self-employed business owner, and their spouse, who has no employees. These plans have the same rules and requirements as other 401(k) plans, but the self-employed individual wears two "hats", the employer and the employee.