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FINAL NOTICE

To:	**Mako Financial Markets Partnership LLP**
Firm Reference Number:	**231157**
Address	**88 Wood Street**
	London, EC2V 7QR
Date	**17 February 2025**

1. ACTION

1.1 For the reasons given in this Final Notice, pursuant to section 206 of the Financial Services and Markets Act 2000 ("the Act"), the Financial Conduct Authority ("the Authority") hereby imposes on Mako Financial Markets Partnership LLP ("Mako" or "the Firm") a financial penalty of £1,662,700 of which £1,137,283 is by way of disgorgement.

1.2 Mako agreed to resolve this matter and qualified for a 30% (Stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £1,887,800 on Mako.

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. It is therefore imperative that firms have in place effective systems and controls to identify and mitigate the risk of their businesses being used for such purposes, and that they act with due skill, care and diligence to adhere to the systems and controls they have put in place, in order to properly assess, monitor and manage the risk of financial crime.

2.2 Between 16 December 2013 and 16 November 2015 (the "Relevant Period"), Mako:

a) breached Principle 3 as it 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 to it by the Solo Group; and

b) breached Principle 2 as it did not exercise due skill, care and diligence in applying its AML policies and procedures and in failing to properly assess, monitor and mitigate the risk of it being used to facilitate financial crime in relation to the Solo Clients, the purported Solo Trading, the Elysium Payment and the Ganymede Trades.

2.3 The Solo Clients were off-shore companies including British Virgin Islands and Cayman Islands incorporated entities and individual US 401(k) Pension Plans previously unknown to Mako. They were introduced by the Solo Group, which purported to provide clearing and settlement services as custodian to clients within a closed network, via a custom over the counter ("OTC") post-trade order matching platform in 2014 and via a trading and settlement platform known as Brokermesh in 2015. The Solo Clients were controlled by a small number of individuals, some of whom had worked for the Solo Group, without apparent access to sufficient funds to settle the transactions.

2.4 On behalf of the Solo Clients, Mako executed purported OTC equity trades to the value of approximately £68.6 billion in Danish equities and £23.6 billion in Belgian equities and received commission of approximately £1.45 million.

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 of 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 executed by Mako on behalf of the Solo Clients were conducted on platforms which did not have access to liquidity from public exchanges. Yet, the purported trades were rapidly filled within a closed network despite representing up to 30% of the shares outstanding in companies listed on the Danish stock exchange and up to 11% of the equivalent Belgian stocks. The volumes also equated to an average of 56 times the total number of all shares traded in the Danish stocks and 23 times the total number of all shares traded in the Belgian stocks 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 and material received from Mako, 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%-61% of the shares outstanding in the Danish stocks traded, and between 7%-30% of the shares outstanding in the Belgian stocks traded. These volumes are considered implausible, especially in circumstances where there is an obligation to publicise holders of over 5% of Danish and Belgian listed stocks.

2.8 As a broker for the Solo Trading, Mako executed both the purported Cum-Dividend Trading and the purported Unwind Trading. However, the Authority believes it unlikely that Mako would have executed both the purported cum-dividend trades and purported unwind trades for the same client of the same stock in the same size trades and therefore it is likely that Mako only saw one side of the purported trading. Additionally, the Authority considers that the 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, however these trades were not executed by Mako.

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, were approximately £899.27 million and £188.00 million, respectively. 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 Solo Trading as 'purported' as it has found no evidence of ownership of the shares by the Solo Clients, nor custody of the shares or 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 Mako did not have adequate policies and procedures in place to properly assess the risks of the Solo Group business and failed to appreciate the risks involved in the Solo Trading. This resulted in Mako conducting inadequate CDD, failing to adequately monitor transactions and failing to identify unusual transactions. This heightened the risk that the Firm could be used for the purposes of facilitating financial crime in relation to the Solo Trading executed by it during the Relevant Period on behalf of the Solo Clients.

2.12 The manner in which the Solo Trading was conducted, combined with its scale and volume is highly suggestive of financial crime. The Authority's findings are made in the context of this observation and in consideration that these matters have given rise to additional investigations by other tax agencies and/or law enforcement agencies, as has been publicly reported.

2.13 In addition to the Solo Trading, Mako failed to identify a number of red flags in relation to a series of trades in a German stock it executed on behalf of Solo Clients on 13 June 2014, which had no apparent economic purpose except to transfer funds from Ganymede Cayman Ltd ("Ganymede"), a private entity owned by Sanjay Shah who is also the owner of the Solo Group, to his business associates. These trades were reversed within an hour, resulting in Ganymede incurring a substantial loss of approximately EUR 2 million to the benefit of three Solo Clients who were controlled by these business associates.

2.14 On 16 November 2015, Mako also received a payment of EUR 177,699.19 from a UAE-based entity connected to the Solo Group, Elysium Global (Dubai) Limited ("Elysium"), to purchase the outstanding debts owed to the Firm by the Solo Clients,

without having heard of Elysium before and despite having conducted no due diligence or having any written agreement in place. This payment was made following the Authority having alerted Mako to possible issues surrounding the Solo Group in an unannounced visit on 3 November 2015 and several news articles announcing local and overseas investigations into the Solo Group around the same time.

2.15 The Authority considers that Mako failed to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems, as required by Principle 3, in relation to the Solo Clients, the purported Solo Trading, the Ganymede Trades and the Elysium Payment. Mako's policies and procedures were inadequate for identifying, assessing and mitigating the risk of financial crime posed by the Solo Group business as the Firm failed to:

a) Set out adequate processes and procedures for CDD, including in relation to obtaining and assessing information when onboarding new clients;

b) Set out adequate processes and procedures detailing how to conduct EDD;

c) Set out adequate processes and procedures for client categorisation;

d) Provide adequate guidance on when reliance may be placed upon the KYC documents provided by, and/or the due diligence conducted by, another authorised firm and the circumstances when it would be appropriate to do so; and

e) Design and implement effective processes and procedures for ongoing transaction monitoring, including when and how transactions were to be monitored and with what frequency.

2.16 The Authority also considers that Mako failed to act with due skill, care and diligence as required by Principle 2 in that in assessing, monitoring and managing the risk of financial crime associated with the Solo Clients, the purported Solo Trading, the Ganymede Trades and the Elysium Payment, the Firm failed to:

a) Conduct appropriate customer due diligence prior to onboarding, by failing to follow even its limited CDD procedures;

b) Gather adequate information when onboarding the Solo Clients to enable it to understand the purpose and intended nature of the business that these clients were going to undertake and the likely size or frequency of the purported trading;

c) Conduct adequate risk assessments for any of the Solo Clients;

d) Complete adequate EDD for any of the Solo Clients despite numerous risk factors being present, which ought to have included independent enquiries as to the Solo Clients' source of funds and whether they had sufficient funds to conduct the anticipated trading;

e) Assess each of the Solo Clients against the categorisation criteria set out in COBS 3.5.2R and failed to record the results of such assessments, including sufficient information to support the categorisation, contrary to COBS 3.8.2R(2)(a);

f) Conduct ongoing transaction monitoring of the Solo Clients' purported trades;

g) Recognise numerous red flags with the Solo Trading, including failing to adequately 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, Mako failed to consider or recognise that the profiles of the Solo Clients meant that they were highly unlikely to be capable of meeting the scale and volume of the trading purportedly being carried out, and failed to at least obtain sufficient evidence of the clients' source of funds to satisfy itself to the contrary;

h) Recognise numerous red flags arising from the purported Ganymede Trades and adequately consider the serious financial crime and money laundering risks they posed to the Firm; and

i) Consider adequately associated financial crime and money laundering risks posed by the Elysium Payment despite a number of red flags.

2.17 Mako'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:

a) Mako onboarded 242 Solo Clients, some of which emanated from jurisdictions which did not have AML requirements equivalent to those in the UK;

b) Mako's AML policies and procedures were not proportionate to the risks arising from the Solo Group business that it was undertaking;

c) Mako failed to properly review and conduct adequate due diligence on the KYC materials that were provided by the Solo Clients or ask appropriate follow up questions to red flags in the KYC materials;

d) Mako failed to conduct any ongoing monitoring of the Solo Trading despite a number of red flags and facilitated the Solo Clients to purportedly trade equities totalling more than £92.2 billion;

e) Mako failed to both have and apply appropriate AML systems and controls in relation to the Solo Group business thereby creating an unacceptable risk that Mako could be used by clients to launder the proceeds of crime;

f) Mako executed a series of Ganymede Trades, which resulted in a loss of approximately EUR 2 million for a client whose UBO was Sanjay Shah (who was also the UBO of the Solo Group) to the benefit of three Solo Clients in circumstances which were highly suggestive of financial crime;

g) Mako accepted a debt factoring arrangement from Elysium without having heard of that entity before, having conducted no due diligence and there being no formal agreement in place; and

h) Finally, none of these failings were identified or escalated by Mako prior to an unannounced visit by the Authority on 3 November 2015.

2.18 The Authority recognises that Mako has co-operated with it throughout the investigation and has taken steps to prevent recurrence of the matters set out in this Notice, including re-structuring, voluntarily closing down the business unit that led to the failings set out in this Notice and strengthening its Board and Executive team.

2.19 Accordingly, to further the Authority's operational objective of protecting and enhancing the integrity of the UK financial system, the Authority hereby imposes on Mako a financial penalty of £1,662,700.

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. Eligible employees may make pre-tax contributions to the plan but are taxed on withdrawals from the account. A Roth 401(k) plan is similar in nature; however, contributions are made post-tax although withdrawals are tax-free. For the 2014 tax year, the annual contribution limit was USD17,500 for an employee, plus an additional USD5,500 catch-up contribution for those aged 50 and over. For the tax year 2015, the contribution limits were USD18,000 for an employee and the catch-up contribution was USD6,000. For a more detailed analysis, please see Annex C;

"**2007 Regulations**" or "**Regulation**" means the Money Laundering Regulations 2007 or a specific regulation therein;

"**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 of the 2007 Regulations;

"**Authority**" or "**FCA**" means the Financial Conduct Authority;

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

"**Brokermesh**" means the bespoke electronic platform set up by the Solo Group for the Solo Clients to submit orders to buy or sell cash equities, and for Mako and the Broker Firms to provide or seek liquidity and execute the purported trading;

"**CDD"** means customer due diligence measures, the measures a firm must take to identify each customer and verify their identity and to obtain information on the

purpose and intended nature of the business relationship, as required by Regulation 5 of the 2007 Regulations;

"**Clearing broker**" means an intermediary with responsibility to reconcile trade orders between transacting parties. Typically, the clearing broker validates the availability of the appropriate funds, ensures the delivery of the securities in exchange for cash as agreed at the point the trade was executed, and records the transfer;

"**Client Onboarding and KYC Procedures Manual**" means Mako's Client On-boarding and KYC Procedures Manual dated July 2013, which was applicable throughout the Relevant Period;

"**COBS**" means the Authority's Conduct of Business Sourcebook Rules;

"**Compliance Manual**" means Mako's Compliance Manual dated August 2013, which was applicable throughout the Relevant Period;

"**cum-dividend**" means when a buyer of a security 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;

"**Cum-Dividend Trading**" means the purported trading that the Solo Clients conducted where the shares are 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. They 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 Withholding Taxes (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 the income is paid and the country of residence of the recipient. Double Taxation Treaties may allow 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 of the 2007 Regulations;

"Elysium" means Elysium Global (Dubai) Limited;

"Elysium Payment" means the EUR 177,699.19 payment received by Mako from Elysium on 16 November 2015 in relation to debts owed by the Solo Clients to Mako;

"**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;

"Executing broker" means a broker that merely buys and sells shares on behalf of clients. The broker does not give advice to clients on when to buy or sell shares;

"**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 April 2013, April 2014, 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 FCG 1.1.8 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;

"Ganymede" means Ganymede Cayman Ltd incorporated in the Cayman Islands, a private entity solely owned by Sanjay Shah, who is also the owner of the Solo Group;

"Ganymede Trades" means a series of trades in a German stock executed by Mako on 13 June 2014 on behalf of four Solo Clients with connections to the Solo Group;

"**Handbook**" means the collection of regulatory rules, manuals and guidance issued by the Authority;

"**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 from the versions dated 20 November 2013 and 19 November 2014 have been referred to;

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;

"Mako" or the **"Firm"** means Mako Financial Markets Partnership LLP;

"**Mako Group**" means a group of companies owned by Mako Europe Limited, including Mako; Mako Global Derivatives Partnership LLP; Mako Fixed Income Partnership LLP; Mako Global Investors LLP, Mako Futures US LP and its subsidiaries and affiliated companies;

"**Matched principal trading**" means a transaction where the facilitator interposes itself between the buyer and the seller to the transaction in such a way that it is

never exposed to market risk throughout the execution of the transaction, with both sides executed simultaneously, and where the transaction is concluded at a price where the facilitator makes no profit or loss, other than a previously disclosed commission, fee or charge for the transaction;

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

"**OPL**" means Old Park Lane Capital Ltd.

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

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

"**Relevant Period**" means the period from 16 December 2013 to 16 November 2015;

"SCP" means Solo Capital Partners LLP;

"**Solo Clients**" means the entities introduced by the Solo Group to Mako on whose behalf Mako executed purported equity trades for some of the clients during the Relevant Period;

"**Solo Group**" or **"Solo"** means the four authorised firms owned by Sanjay Shah, a British national residing in Dubai, details of which are set out in paragraph 4.3;

"Solo Group business" means the purported Solo Trading, the Ganymede Trades and the Elysium Payment;

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

"**TML**" means Telesto Markets LLP;

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

"**UBO**" means ultimate beneficial owner with "beneficial owner" being defined in Regulation 6 of the 2007 Regulations;

"**Unwind Trading**" means the purported trading that took place over several days or weeks to reverse the purported Cum-Dividend Trading to neutralise the apparent shareholding positions;

"**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;

"Withholding Tax Reclaims" means in certain cases where WHT is levied on payments to a foreign entity, 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 may allow for a reduction or rebate of the applicable WHT; and

"WPD" means West Point Derivatives Ltd.

4. FACTS AND MATTERS

Background

Mako

4.1 During the Relevant Period, Mako was a UK based interdealer brokerage firm. It closed its client-facing interdealer broker business in 2020. During the Relevant Period, Mako offered clients a range of execution and advisory services in respect of equity, fixed income and derivative products, trading both OTC and via exchange. These services were typically provided to large financial institutions such as banks, other brokerage firms and investment management companies. Mako's cash equity desk, which was responsible for carrying out the Solo Trading, was established in late 2012, though the firm's primary activity remained fixed income trading.

4.2 Throughout the Relevant Period, Mako was authorised to trade for and advise eligible counterparties and professional clients in a range of investment types. It did not have the required permissions to hold client monies.

The Solo Group

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

a) Solo Capital Partners LLP ("SCP") was first authorised in March 2012 and provided brokerage services.

b) West Point Derivatives Ltd ("WPD") was first authorised in July 2005 and provided brokerage services in the derivatives market.

c) Old Park Lane Capital Ltd ("OPL") was first authorised in April 2008 and was an agency stockbroker and corporate broker.

d) Telesto Markets LLP ("TML") was first authorised in August 2014 and was a wholesale custody bank and fund administrator.

4.4 During the Relevant Period, SCP, and others in the Solo Group at various stages, held regulatory permissions to provide brokerage and related services. The Solo Group has not been permitted to carry out any activities regulated by the Authority since December 2015 and SCP formally entered special administration insolvency proceedings in September 2016. The other three entities in the Solo Group are also in administrative proceedings.

Statutory and Regulatory Provisions

4.5 The statutory and regulatory provisions relevant to this Notice are set out in Annex B.

4.6 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 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.

4.7 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 operate those systems and controls with due skill, care and diligence as required by Principle 2 to protect itself, and to properly assess, monitor and manage the risk of financial crime.

4.8 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.

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

4.10 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.

4.11 Substantial guidance for firms has also been published by the Authority regarding the importance of AML controls, including 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 to Dividend Arbitrage and the Purported Solo Trading

Dividend Arbitrage Trading

4.12 The aim of Dividend Arbitrage is to place shares in certain 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 dividend payments made to shareholders.

4.13 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 relevant treaty (a "Double Taxation Treaty") with the country of residence of the beneficial owner. Accordingly, Dividend Arbitrage aims at transferring the beneficial ownership of shares temporarily overseas, in sync with the dates upon which dividends become payable, in order that the criteria for making a WHT reclaim are fulfilled.

4.14 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 supply equivalent shares to the lender at a specified future date.

4.15 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.

4.16 A key role of the share 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. This is sometimes known as a 'Dividend Credit Advice Slip' or 'Credit Advice Note'. 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 Withholding Tax. The voucher generally certifies that; (1) the shareholder was the beneficial owner of the share at the relevant time, (2) the shareholder had received the dividend, (3) the amount of the dividend, and (4) the amount of tax withheld from the dividend.

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

The Purported Solo Trading

4.18 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 Mako, the Solo Group, and the five other Broker Firms that participated in the

Solo Trading. The Solo Trading was characterised by a circular pattern of extremely large-scale purported OTC equity trading, back-to-back securities lending arrangements and forward transactions.

4.19 The Solo Trading can be broken into two phases:

a) 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

b) 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 Clients during Cum-Dividend Trading ("Unwind Trading").

4.20 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.

4.21 As a broker for the Solo Trading, Mako executed both the purported Cum-Dividend Trading and the purported Unwind Trading. However, the Authority believes it unlikely that Mako would have executed both the purported cum-dividend trades and purported unwind trades for the same client of the same stock in the same size trades and therefore it is likely that Mako only saw one side of the purported 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, however these trades were not executed by Mako.

4.22 The purpose of the purported Solo Trading was to enable the Solo Group to 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 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.

Of the reclaims made, the Danish and Belgian tax authorities paid approximately £845.90 million and £42.33 million, respectively.

4.23 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.

Mako's introduction to the Solo Group business

4.24 Prior to the Relevant Period, between November 2011 and November 2013, Mako had a pre-existing relationship with Solo Capital Limited, and subsequently SCP, to provide execution brokerage services in listed options. At the relevant time, SCP was a trading client of Mako, and not yet acting as a custodian with underlying clients it could introduce to Mako for brokerage services.

4.25 In November 2013, Mako approached SCP with a view to obtaining additional business for a new trading desk it had established which was comprised of individuals that had former relationships with the Solo Group. Mako was successful in securing an arrangement with SCP which involved the Firm acting as an executing broker to facilitate matched principal trading in equities for clients introduced to it by SCP, with SCP acting as the clients' custodian and providing clearing services for the trades. The Firm understood that it would locate trading counterparties amongst a closed group of clients sourced by SCP.

4.26 On 27 November 2013, Mako attended a meeting with SCP about the new line of work. During the initial meetings with Mako, SCP provided limited information about the type of clients it would be introducing and the trading strategy that would be employed, although certain individuals at Mako were made aware that the clients would be looking to trade in Danish, Belgian, Norwegian and German stocks, and the trading related to a Dividend Arbitrage strategy.

4.27 Mako was unaware of the expected sizes of the trades, save that they would be "*fairly large*" and would likely generate revenue for the Firm "*in the hundreds of thousands*" per annum. The Solo Trading was considered a significant opportunity for Mako and, ultimately, it formed "*95-100%*" of the work generated by the relevant trading desk and approximately 12% of the Firm's revenue during the Relevant Period.

4.28 Despite the lack of details provided regarding the trading strategy of the Solo Clients, following the meeting held on 27 November 2013, Mako informed SCP that it was keen to expedite the further steps necessary to take on the potential new business. Additionally, completing the onboarding process to enable the Solo Trading was flagged internally as "*the number one priority*" for Mako. By 11 December 2013, Mako's onboarding with SCP had been completed and Mako was notified that the Solo Clients would start to send through onboarding requests.

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 of the 2007 Regulations, a firm must conduct Customer Due Diligence ("CDD") when it establishes a business relationship or carries out an occasional transaction.

4.31 As part of the CDD process, a firm must first 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.

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. The firm must also document its risk assessments and keep its risk assessments up to date.

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 Enhanced Due Diligence ("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. Additional information gathered 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 firms can effectively detect the use of their products for money laundering and/or terrorist financing.

Chronology of the onboarding

4.34 On 16 December 2013, Mako received onboarding requests from 14 Solo Clients. These consisted of 10 US 401(k) Pension Plans, four of which had a common ultimate beneficial owner ("UBO"); a company incorporated in the British Virgin Islands; two companies incorporated in the Cayman Islands; and one in the UK. Mako continued to receive further onboarding requests thereafter, such that by 18 February 2014 the Firm was in the process of onboarding 54 Solo Clients.

4.35 Once a Solo Client requested to be onboarded, SCP would supply Mako with KYC documents on their behalf, which usually comprised of photocopies of company or trust formation documents, notarised copies of identity documents and (occasionally) CVs of the UBO or the client's authorised representative. Mako had also initially believed it would be relying upon AML certificates provided by SCP for each Solo Client, confirming that SCP had checked and approved the client's KYC documents. However, by 20 December 2013, it became clear that SCP would not be issuing AML certificates and Mako would therefore need to collect and review all of the KYC documents in respect of each Solo Client. Mako was required to commit more resources to the onboarding process than it had anticipated, and it expected the pace at which onboarding could be completed would be slow as a result. At this time there were also concerns around the level of specialist resource available to handle the onboarding process in a period where redundancies were being made.

4.36 On 20 February 2014, Mako met with SCP to discuss the arrangements for onboarding clients introduced to it by SCP. Around the same time the parties also negotiated amendments to a custody agreement proposed by SCP. The purpose of which was to ensure that settlement of any matched trades brokered by Mako on behalf of Solo Clients, and then approved by SCP, would be guaranteed by SCP. A revised custody agreement and a deed of guarantee were executed by them on 25 February 2014. Mako also entered into similar agreements with the other three Solo Group entities during the Relevant Period.

4.37 The onboarding process continued thereafter, with clients being referred from each of the Solo Group entities. As of 24 February 2015, Mako's records show that it had

onboarded 108 clients custodied at SCP and 40 custodied at OPL, and was in the process of onboarding a further 89 clients. By 9 April 2015, Mako had onboarded a total of 242 Solo Clients, 112 out of which were active and participated in the Solo Trading.

4.38 The onboarding requests of 165 out of these 242 onboarded Solo Clients used materially similar wording stating, "[*I /* Name of the Solo Client] *would like to be onboarded for brokerage services. I authorise* [Name of Solo Group entity] *to release any KYC you require*." The only difference between these onboarding requests being the identity of the relevant Solo Group entity which was authorised to release the KYC information to Mako. Yet Mako never questioned why purportedly distinct and, in many cases, unconnected entities sent near identical requests to be onboarded.

4.39 Before onboarding commenced, none of the Solo Clients had any prior business relationship with Mako and, as discussed at paragraphs 4.26 to 4.28, Mako had been provided limited information regarding the type of clients the Solo Group would be introducing to it, as well as the trading strategy they would be engaged in. Accordingly, it was at the time the Solo Clients were onboarded that the Firm first became aware of the name, structure and jurisdiction of each client, and that these new clients were a significant departure from its usual regulated institutional client base, who were typically domiciled in the EU. None of the 242 Solo Clients onboarded by Mako were regulated firms, 92% had only recently been incorporated and 26% were based in non-EU/EEA jurisdictions without equivalent AML requirements, such as the British Virgin Islands, the Cayman Islands and the UAE.

4.40 They also consisted of 177 US 401(k) Pension Plans; at least 166 of which had been incorporated or set up shortly before or during the Relevant Period, between 2013 to 2015. The value of the purported trades performed by these types of client far exceeded the investment amounts which could reasonably have accrued given the annual contribution limits applying to 401(k) Pension Plans, low number of beneficial owners and short period of incorporation, which should have alerted Mako as to the unrealistic nature of the trades and warranted closer monitoring of their trading activities.

4.41 Furthermore, a number of the Solo Clients onboarded had only one UBO and many of them were owned and controlled by the same individuals, including in many

instances former employees of the Solo Group. 182 out of the 242 Solo Clients onboarded by Mako had just one shareholder or ultimate beneficial owner, with the remainder having a maximum of four. Many of them were owned and controlled by the same individuals; one individual owned as many as 27 clients and 28 individuals were listed as UBOs of 5 clients or more. There were also only three individuals specified as the account contact for a total of over 122 of these clients. Mako did not question why many individuals were trading through several different entities, all of which were incorporated around the same time, though the Authority considers this ought to have indicated a possible attempt to disguise the significant volumes being traded by a single UBO.

Customer Due Diligence

4.42 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 risk of money laundering effectively.

4.43 Under Regulation 5 of the 2007 Regulations, the CDD process has three parts:

a) First, a firm must identify the customer and verify their identity.

b) Second, a firm must identify the beneficial owner, if relevant, and verify their identity.

c) Finally, a firm must obtain information on the purpose and intended nature of the business relationship.

A. Customer Identification and Verification

4.44 Regulation 20 of the 2007 Regulations requires that firms establish and maintain appropriate and risk-sensitive policies and procedures related to customer due diligence. SYSC 6.3.1R also requires that the policies must be comprehensive and proportionate to the nature, scale and complexity of its activities.

4.45 Mako's Compliance Manual documented the CDD policy which was applicable throughout the Relevant Period. This prohibited the Firm from entering any client relationship until identification had been carried out in accordance with its '*risk-based approach*'. The risk-based approach of the Firm specified that before acting

for any client a KYC procedure must be followed, necessary due diligence must be undertaken to verify the identity of the client in accordance with AML standards and the Authority's client categorisation requirements, and final authorisation to trade must be given by the compliance department.

4.46 Further details of the approach were set out in Mako's Client Onboarding and KYC Procedures Manual. This manual was prepared before the commencement of the Solo Trading and had not been updated to account for the substantial differences in profile between Mako's typical client base and the Solo Clients. For example, an appendix of the manual applying specifically to the trading desk carrying out the Solo Trading referred to clients being subject to the onboarding processes of an entity which acted as clearer to Mako's pre-existing, institutional client base. No changes had been made to account for this clearer not being involved in the Solo Trading, nor to address the heightened AML risks posed by the Solo Clients. More generally, the manual provided very little guidance on the types of red flags that may have warranted further enquiries being made.

4.47 For unregulated entities specifically, such as the Solo Clients, the first step in Mako's documented procedure was to inform the compliance team of the full name and contact details of the client's legal or compliance department, before compliance would then send a KYC questionnaire to the client or its authorised representative to complete. This form requested contact details for the client and its clearer, plus details pertaining to client categorisation, such as the client's view of their own level of investment expertise, previous trading levels and their financial resources. Once completed, the forms would be reviewed by the compliance team to decide whether any further information was needed. Mako departed from this procedure by failing to send a KYC questionnaire to any of the Solo Clients. As noted at paragraph 4.35 above, Mako instead relied upon the KYC documents supplied by the Solo Group, even though there was a possibility of a conflict of interest as a number of UBOs were former employees of SCP. Nor did the KYC documents contain the same level of information as was required by the KYC questionnaire, neither touching on the financial resources of the Solo Clients or their previous trading levels.

B. Purpose and Intended Nature of a Business Relationship

4.48 As part of the CDD process, Regulation 5(c) of the 2007 Regulations requires firms to obtain information on the purpose and intended nature of the business

relationship. Firms should use this information to assess whether a customer's financial behaviour over time is in line with its expectations, whether or not the client is likely to be engaged in criminal activity, and to provide it with a meaningful basis for ongoing monitoring of the relationship.

4.49 Regulation 20 of the 2007 Regulations 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 its activities.

4.50 In addition, the JMLSG Guideline states: "*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.*"

4.51 Mako's policies and procedures were silent regarding how to determine the purpose and intended nature of the business relationship. The only aspect of Mako's policies which alluded to this requirement was a section in its Compliance Manual which stated that the Firm would not "*participate in a transaction without an understanding of its economic context*". Whilst the relevant front office staff were trained to identify and report suspicious transactions, the Compliance Manual provided no guidance on how the 'economic context' of the trading was to be assessed, or what might constitute a sufficient understanding of the purpose and intended nature of the business relationship.

4.52 In the circumstances, prior to the commencement of trading, Mako did not request or receive sufficient information from the Solo Clients about the purpose and intended nature of the proposed trading relationship, or sufficient details of the trading activity which was to align with that purpose. The information Mako did receive was on an ad hoc basis and varied between staff members. For instance, staff at Mako have said the following in this regard:

a) "*I wouldn't say that there was… mention of specific sizes [of transactions]… [o]nly that they would be fairly large*" and "*I don't recall them going into any detail about the strategy*" except that it was in relation to "*European equities*".

b) "*We didn't actually speak about any trading strategies at [the] time"*. Solo did say, however, that its clients would be looking to execute Danish, Belgium, Norwegian and German equities.

c) Nothing specific was discussed, such as trading "*certain geographic areas or stock*", and "*I didn't have any conversation... on how [Solo] manage[s] their flow or volume*".

d) The trading was understood to be on a matched principal basis and it was mentioned that the clients were going to be 401(k) Pension Plans.

e) "*I'm not sure at what point... that I sort of gained full understanding*". I do recall, however, that "*it was... effectively a dividend arbitrage strategy*".

f) Mako was "*under pressure to get things done quickly because the whole point of this was that you had to get people on board for dividend season*", but the first time I became aware of the strategy involving Withholding Tax was in May 2014 which came "*as a bit of a surprise*".

4.53 Accordingly, the Firm did not possess a clear understanding of the purpose and intended nature of the business relationship, and information regarding the trading strategy was received in an incremental and piecemeal fashion.

4.54 As the Solo Clients were a significant departure from Mako's typical client base (see paragraph 4.39 above), the Authority considers it was particularly important for the Firm to understand the nature and purpose of the intended trading. By failing to obtain specific details regarding the nature and expected volumes of the intended trading, Mako exposed itself to the risk of facilitating financial crime, notwithstanding that it did not hold any client money. This failure to conduct appropriate CDD also resulted in Mako having insufficient information on which to adequately evaluate whether the purported trading by the Solo Clients was in line with expectations. Mako therefore lacked a meaningful basis for ongoing monitoring and for identifying transactions that were abnormal within the context of the relationship.

4.55 Despite the lack of information available to Mako about the nature and scale of the intended trading, it onboarded 242 Solo Clients.

Risk Assessment

4.56 As part of the onboarding and due diligence process, firms must undertake and document risk assessments for every client. Such assessments should be based on information contained in the clients' KYC documents.

4.57 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. 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.

4.58 Under Regulation 20 of the 2007 Regulations, firms are required to maintain appropriate and risk-sensitive policies and procedures related to risk assessments and management.

4.59 Mako's 2014 and 2015 Money Laundering Risk Assessments categorised its overall risk of money laundering as being low to medium on the basis that most of its clients were regulated companies, or located in a geographic location subject to AML requirements equivalent to the UK. In the case of unregulated entities, such as the Solo Clients, Mako's Compliance Manual stated that they would typically be regarded as medium risk in the absence of any higher risk indicators.

4.60 Mako's MLRO Annual Report for 2013 specifically acknowledged that the Solo Trading presented "*an increased AML risk due to the number of unregulated entities that have been recently on-boarded for the purpose of equity matched principal trading*". It was further noted that the Solo Clients were from "*a number of new jurisdictions*" which presented a higher AML risk and that the firm would need to "*ensure their ongoing suitability and the assessed AML risk remains the same*".

4.61 Having acknowledged the Solo Clients presented an increased AML risk, Mako chose to classify all of them as medium risk, despite notable differences between each in terms of jurisdiction, structure and connections with the Solo Group. There is no evidence that Mako assessed the risks posed by each client on an individual basis or that it documented the risk factors presented by each client; instead treating all of the clients as being the same in terms of the AML risks they posed.

4.62 Mako claims to have mitigated the increased AML risks presented by the Solo Clients by requesting 'KYC and AML Introductory Forms' from Solo, who was itself regulated by the FCA. In practice, however, Solo did not provide these for a vast majority of the Solo Clients. While the limited number of forms provided by Solo would confirm a client's identity by reference to ID verification documents, no information would be given on the clients' trading strategy or, for example, their source of funds; both of which are crucial to properly assessing the AML risk posed by a client presenting higher risk indicators. Mako did not question the appropriateness of relying on these forms in circumstances in which UBOs of certain Solo Clients were former employees of SCP and individuals on the relevant trading desk at Mako had former relationships with the Solo Group.

4.63 Another mitigant set out in Mako's Compliance Manual was that the Firm would likely meet medium risks clients and/or their third-party administrators on a face-to-face basis, but this does not appear to have occurred in respect of any of the Solo Clients. The Compliance Manual also stated that, for medium risk clients, information should be obtained from an independent source such as Companies House or reliance could be placed on another regulated financial institution, such as the client's clearing broker. However, no guidance was provided as to the kind of information that should be obtained, or process around placing reliance on a third party, such as what would be required and in what circumstances it would and would not be appropriate.

4.64 Although Mako did categorise the Solo Clients as medium risk due to their unregulated status, the Authority considers that had Mako conducted adequate due diligence of the KYC documentation provided, it would have identified a number of other risk factors indicating that the Solo Clients posed a higher risk of financial crime which ought to have prompted the Firm to undertake further enquiries. These risk factors include the following:

a) Mako had no former business relationship with the Solo Clients and lacked sufficient information regarding the nature and purpose of the intended trading by them. Therefore, Mako did not have a profile against which to base an assessment of their trading for the purposes of ongoing monitoring;

b) the Solo Clients were a significant departure from Mako's typical institutional client base. For instance, the KYC material showed that a substantial number

of the Solo Clients had just a single director, shareholder and/or UBO and many of these were owned and managed by the same individuals;

c) the Solo Clients were introduced by the Solo Group which gave rise to the possibility of a conflict of interest as some UBOs were former employees of SCP. In the case of Ganymede (see paragraphs 4.124 to 4.143), it was owned and controlled by Sanjay Shah, who was also the UBO of the Solo Group. Because of the Solo Group's relationship with their former employees, they were not in a position to provide an unbiased view in onboarding and assessing the Solo Clients for due diligence purposes;

d) around 73% of the Solo Clients were US 401(K) Pension Plans, the beneficiaries of which were trusts. In this regard, the JMLSG Guidance states "*some trusts established in jurisdictions with favourable tax regimes have in the past been associated with tax evasion and money laundering*". Additionally, having not previously encountered 401(k) Pension Plans, Mako did not make enquiries as to how they operated, the rules for their establishment, or the amounts which could be invested in them;

e) as the majority of the 401(k) Pension Plans had only recently been incorporated at the time of the Solo Trading, the value of the purported trades far exceeded the investment amounts which could reasonably have accrued in light of the annual contribution limits and limited number of beneficial owners. This should have alerted Mako as to the unrealistic nature of the trades;

f) 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 such clients; and

g) the Solo Clients purportedly sought to conduct OTC equity trading. In such cases, the JMLSG Guidance requires firms to take a more considered risk-based approach and assessment.

4.65 As a result of failing to conduct adequate risk assessments, Mako did not identify many of the risk factors presented by the Solo Clients. Mako therefore lacked a

meaningful basis to determine the appropriate EDD measures to be applied to the Solo Clients or whether it was appropriate to onboard them.

Enhanced Due Diligence

4.66 Firms must conduct EDD on customers who present a higher risk of money laundering, so they are able to assess whether or not the higher risk is likely to materialise.

4.67 Regulation 14(1)(b) of the 2007 Regulations 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*." The 2007 Regulations further require firms to implement EDD measures for any client that was not physically present for identification purposes.

4.68 Regulation 20 of the 2007 Regulations requires firms to maintain appropriate and risk-sensitive policies and procedures related to customer due diligence measures, which includes enhanced due diligence. SYSC 6.3.1R further requires that the policies must be comprehensive and proportionate to the nature, scale and complexity of its activities.

4.69 The JMLSG has also provided guidance on the types of additional information that may form part of EDD, including obtaining an understanding as to the clients' source of wealth and funds.

4.70 Mako's policies specified the types of clients that EDD should be applied to, including medium risk clients, which the Solo Clients had all been classified as. Mako's Client Onboarding and KYC Procedures Manual also contained a high-level overview of the kind of EDD measures the JMLSG Guidance provided for by stating that it could "*include more stringent verification requirements and a source of funds check*". However, Mako's policies failed to set out a clear procedure for conducting EDD and instead instructed staff to seek further information from the MLRO where EDD was required. There is no evidence of any of Mako's staff taking this step of contacting the MLRO where EDD was required.

4.71 Due to the Solo Clients' unregulated status, Mako has said it conducted EDD on each of them. This involved requesting additional evidence of identification, including identifying the client's ultimate beneficial owner or owners, and running checks against an online database that revealed politically exposed persons and

heightened risk individuals (although those checks also formed part of Mako's standard customer due diligence process). Additionally, as already mentioned at paragraph 4.62, the Firm considered that obtaining 'KYC and AML Introductory Forms' from the FCA regulated intermediary, where possible, was a way of mitigating the additional risks the Solo Clients posed. However, these forms were only obtained in relation to 66 out of a total of 242 onboarded Solo Clients and SCP declined to provide such forms after June 2014 where it had provided the underlying KYC documents. This is said to have been because some of the Broker Firms had been relying on the forms as quasi-AML certificates, which was not SCP's intention.

4.72 As none of the Solo Clients were physically present for identification purposes, Mako was required to conduct EDD. In any case, even if the Solo Clients had been present during the CDD process, for the reasons set out at paragraph 4.64 above, they presented a higher risk of money laundering and therefore Mako ought to have applied EDD in respect of each of them by obtaining additional information about them and the proposed trading, however failed to do so. Given the connections between some of the Solo Clients and the Solo Group, this should have included independent enquiries as to the Solo Clients' sources of funds to ensure that they were not still financially connected to the Solo Group as employees and had sufficient funds to conduct the anticipated trading.

4.73 Mako also failed to apply any scrutiny as to the plausibility of the Solo Clients being able to conduct the purported trading, particularly in relation to the level of funds that they would need to hold. For example, in the case of an 18-year-old college student who was the sole beneficiary of five 401(k) Pension Plans that had been onboarded. Instead of making enquiries as how an 18-year-old college student had sufficient funds and experience to conduct trading as a professional client, the purpose of such trading, or their reason for having five 401(k) Pension Plans, Mako simply relied on the standard KYC documentation provided which did not contain any details of the size of past transactions undertaken by the client nor the level of financial resources available to them.

4.74 This is but one example of Mako failing to seek any information from the Solo Clients regarding how they had acquired sufficient financial resources to fund the anticipated trading. The Firm should have done this, particularly in view of its decision to categorise the Solo Clients as elective professional clients, the criteria for which ought to have provided Mako with an expectation that they intended to

conduct high value trading. Furthermore, Mako had an expectation that the trades would be "*fairly large*" and that they would generate annual revenue in the "*hundreds of thousands*" per annum, which also indicated that the Solo Trading was to be high value. Without independent and verifiable evidence of the financial resources available to the Solo Clients, Mako was not able to assess whether the size of the intended trading was realistic and plausible for each client and whether the subsequent transactions were out of the ordinary or not. Mako did not take any steps to obtain this information, even after trading had commenced and the volumes involved had become apparent.

Reliance on Solo for due diligence

4.75 The 2007 Regulations allow firms such as Mako to rely on another authorised firm's due diligence provided they consent to being relied on. However, the 2007 Regulations emphasise that liability remains on firms such as Mako for any failure to conduct appropriate due diligence measures.

4.76 The JMLSG Guidance states that firms should take a risk-based approach when deciding whether to accept confirmation from a third party that appropriate CDD measures have been carried out on a customer and this "*cannot be based on a single factor".* They also state that if reliance is placed on a third party, the firm still needs to know the identity of the beneficial owner whose identity is being verified; the level of CDD carried out; and have confirmation of the third party's understanding of his obligation to make available on request copies of the verification data, documents or other information.

4.77 JMLSG Guidance further notes that arrangements for the outsourcing of clearing and settlement processes also exist in securities markets. In this context, emphasis is placed on the execution-only broker's obligation to conduct CDD and EDD as the first point of contact to clients and their transactions. Similarly JMLSG Guidance emphasises that OTC business in wholesale markets exhibit very different AML risks as it may be less regulated than exchange-traded products and therefore require more detailed risk-based assessment.

4.78 Mako departed from the procedure set out in its Client Onboarding and KYC Procedures Manual by not sending KYC questionnaires to any of the Solo Clients, instead relying upon the KYC documents supplied by the Solo Group. However, as noted at paragraph 4.64(c) above, Mako failed to consider the apparent conflict

of interest arising from significant numbers of the Solo Clients having connections with the Solo Group, including UBOs being former employees. Neither of Mako's Compliance Manual nor its Client Onboarding and KYC Procedures Manual detail the circumstances in which it would be appropriate (or not) to place reliance on a third party nor the considerations relevant to becoming satisfied that the information provided could be relied on.

4.79 Mako ought to have queried whether the Solo Group was sufficiently independent to enable Mako to place reliance on (or take comfort from) their representations as to the CDD conducted on the Solo Clients. The Authority has not located any evidence of Mako querying the risk that the Solo Group might not have adequately conducted CDD, or of Mako assessing the appropriateness of relying on their due diligence or of Mako ever challenging or questioning the Solo Group's representations in relation to the Solo Clients. On the contrary, as Mako was an execution only broker with no direct relationship with any of the Solo Clients, and, having considered the JMLSG Guidance at the time, it concluded that this was a sufficient basis on which to place reliance on the Solo Group, as a collection of third-party regulated firms.

4.80 There is also no evidence that Mako made any enquiries as to the level of due diligence conducted by the Solo Group on the Solo Clients, or the extent of measures the Solo Group might have implemented to mitigate any perceived AML risks. Nor of Mako conducting a risk-based assessment of whether it could rely on the Solo Group's due diligence, or that it sought to satisfy itself the 2007 Regulations and JMLSG Guidance had been complied with despite the fact that the Firm remained liable for any failure to apply adequate measures.

4.81 Mako's reliance on the Solo Group in relation to AML and due diligence checks was all the more unreasonable given the limited due diligence it had initially carried out regarding Solo Group's business proposal as detailed at paragraphs 4.25 to 4.28 above.

4.82 As a consequence of relying on the KYC documentation provided by, and the due diligence of, the Solo Group, Mako did not obtain sufficient information in respect of the Solo Clients regarding their level of expertise, financial resources and trading history which would support an assessment by Mako of: (a) the level of AML risk posed by the Solo Clients; and (b) the correct client categorisation for

the purposes of complying with Chapter 3 of COBS. In fact, staff at Mako conducting the onboarding process told the Authority that they would simply make sure they had all the relevant KYC documents (as set out at paragraph 4.35 above), none of which provided details regarding the trading strategy of the client, how much they were expecting to trade and the previous trading history of the client against which this could be compared. And, by relying on the Solo Group for KYC purposes, Mako did not have a direct relationship with any of the Solo Clients and does not seem to have asked for additional information or documents from them as a result.

Client Categorisation

4.83 Part of the onboarding process also includes categorising clients according to the COBS rules, which is an additional and separate requirement 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. 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 the firm. Pursuant to COBS 3.8.2R, firms must also keep records in relation to each client's categorisation, including sufficient information to support that categorisation.

4.84 During the Relevant Period, Mako was 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. Mako was aware that it could not accept clients unless they fell within one of these categories. There are two types of professional clients; per se professionals and elective professionals. Each category has prescriptive criteria as described in the COBS rules.

4.85 Based on the information Mako had received about the Solo Clients, it recognised that they would not qualify as per se professional clients or as eligible counterparties. Mako would therefore only be able to act for the Solo Clients if they could be categorised as elective professional clients.

4.86 Mako's policies provided for what constitutes each category of client and with regards to elective professional clients, it stated that the firm would be able to categorise a retail client as one of these "*if the firm has taken reasonable care to determine that the client has sufficient expertise, experience and knowledge that gives reasonable assurance, in the light of the nature of the transactions or services envisaged, that the [client is] capable of making their own investment decisions and understand the risks involved and the [client is] able … to meet the Quantitative Test laid out in COBS 3.5.3 R (2)*".

4.87 Mako's policies did not outline any process for how the Firm would make an assessment of the expertise, experience and knowledge of clients; the evidence that would be required; or all of the steps that it would need to take before categorising the clients as elective professional clients.

4.88 Contrary to the requirements in COBS and its own Compliance Manual, Mako did not obtain sufficient information to individually assess whether the Solo Clients were being appropriately classified as elective professional clients, nor to assure itself the Solo Clients had sufficient experience and knowledge to be so classified. The standard KYC documentation provided for each of the Solo Clients did not include details about their trading history or of their source of funds from which to determine whether the financial thresholds in relation to the 'Quantitative Test' had been met. For instance, as per the example set out at paragraph 4.73 above, Mako did not question the plausibility of an 18-year-old college student amassing sufficient funds and experience to conduct trading as an elective professional client. The KYC documentation provided for such client did not contain any details of the size of past transactions undertaken, or the level of financial resources available to them. The KYC questionnaire that ought to have been sent to the Solo Clients in accordance with Mako's policies, as they were unregulated entities, would elicit information relevant to determining a client's categorisation, but these were not sent to or completed by any of the Solo Clients.

4.89 Instead of obtaining any evidence that would enable Mako to assess whether the Solo Clients met the relevant criteria to constitute an elective professional client, a letter was sent to each which stated that the relevant client could be categorised as such provided they made a self-declaration that the necessary criteria was fulfilled. The Solo Clients merely signed and returned the letter declaring they were elective professional clients and Mako did not conduct any checks regarding their level and

source of funds or transaction history to satisfy itself that this was the appropriate categorisation.

4.90 The Solo Clients did not ultimately provide any evidence (beyond self-declaration through completion of the letter referred to at paragraph 4.89) that they met the criteria to be categorised as elective professionals. There was also no attempt by Mako to determine if the Solo Clients actually met the rules set out in COBS to be classified as elective professionals. Consequently, Mako could not reasonably have formed a view that any of the Solo Clients met the criteria set out in COBS to be elective professional clients.

Ongoing monitoring

4.91 Regulation 8(1) of the 2007 Regulations requires firms to conduct ongoing monitoring of the business relationship with their customers. Ongoing monitoring of a business relationship includes:

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 firm's knowledge of the customer, his business and risk profile; and

b) ensuring that the documents or information obtained for the purposes of applying customer due diligence are kept up to date.

4.92 Monitoring customer activity helps identify unusual activity. If unusual activities cannot be rationally explained, it 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.

4.93 Higher risk clients require enhanced ongoing monitoring, which will generally mean more frequent or intensive monitoring. Indeed, for clients classified as medium or high risk, as well as unregulated elective professionals, Mako's policies specified that risk assessments would be conducted annually. Such assessments would include a review of existing information, obtaining updated information where there

had been changes and determining and recording a client's classification, suitability requirements and AML risk.

4.94 This process ought to have been followed for the Solo Clients; each of which was an unregulated elective professional and had been classified as medium risk. Mako's MLRO Annual Report for 2013 even stated that it had "*on-boarded clients who are either unregulated and/or from a number of new jurisdictions which in some cases required enhanced due diligence. We will need to keep a close track on the number of clients of this nature we onboard to ensure their ongoing suitability and the assessed AML risk remains the same*".

4.95 Contrary to these policies, only two out of the 242 onboarded Solo Clients' files were selected for review during the Relevant Period. The reviews conducted focused on whether relevant information was already kept on file regarding the clients and whether the Firm had complied with its disclosure and reporting obligations. Mako did not obtain further information from these clients, examine the transactions undertaken by them since onboarding or re-assess the AML risk posed in light of this. Accordingly, Mako was not in a position to determine when trading activity fell outside of a client's risk profile or the expected remits of the business relationship, thereby indicating a heightened risk of financial crime.

*Transaction monito*ring

4.96 As part of a firm's ongoing monitoring of a client relationship, Regulation 8 of the 2007 Regulations requires that firms must scrutinise 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, their business and risk profile. For some clients, a comprehensive risk profile may only become evident once they have begun transacting through an account.

4.97 Furthermore, Regulation 14(1) states that enhanced ongoing monitoring must be applied in situations which can present a higher risk of money laundering or terrorist financing.

4.98 Regulation 20 requires firms to have appropriate risk-sensitive policies and procedures relating to ongoing monitoring. These policies must include procedures to identify and scrutinise:

a) complex or unusually large transactions;

b) unusual patterns of activities which have no apparent economic or visible lawful purpose; and

c) any other activity which the relevant person regards as likely by its nature to be related to money laundering or terrorist financing.

4.99 Firms should know who their clients are and what their expected level of activity will be as a result of the onboarding process. As part of the ongoing monitoring process, the firm should then consider its client's behaviour over time, including whether it is in line with expected levels of activity, to enable the firm to identify transactions or activity that may be suspicious. This may be particularly important for some clients as their risk profile may evolve over time.

4.100 Mako's suite of compliance materials failed to set out any policies and/or procedures regarding: (i) whether, how, or the frequency with which ongoing monitoring should have been performed; (ii) whether staff ought to have reviewed transactions undertaken throughout the course of the customer relationship to ensure they were consistent with the customer's business and risk profile; or (iii) whether these obligations should have been enhanced for higher risk clients. This created a risk that client and transaction monitoring would not be conducted consistently or at all.

4.101 Notwithstanding a lack of relevant policies and procedures, Mako used an in-house proprietary trade reporting system to record trade volumes and sizes in respect of the Solo Trading. This system did not, however, contain any mechanism by which to alert the Firm to suspicious or potentially abusive trading.

4.102 For the majority of Mako's non-Solo Clients, it also used an automated system, the 'SMARTS system', to conduct trade monitoring. Although this automated system was used for approximately 94% of the Mako's trades during the Relevant Period, it was not used to monitor trades conducted by the Solo Clients because it did not cover OTC business and the Firm had already met what it set as its minimum surveillance threshold of 80%. Mako also considered that it was unnecessary to have any controls in place to limit or monitor the size of the trade orders of the Solo Clients on the basis these were subject to clearer approval and the risks were sufficiently controlled under contractual settlement arrangements with the Solo Group.

4.103 These considerations do not exempt a firm from complying with its legal obligations under the 2007 Regulations and JMLSG Guidance as regards trade monitoring. Although execution-only or matched principal broking may have reduced counterparty risk, all regulated firms must monitor their transactions on an ongoing basis to mitigate the risk that they could be used to facilitate financial crime, even if client monies do not flow through the firm.

4.104 JMLSG Guidance makes clear that firms do not necessarily require sophisticated electronic trade monitoring systems, however the "*the key elements of any system are having up-to-date customer information, on the basis of which is will be possible to spot the unusual, and asking pertinent questions to elicit the reasons for unusual transactions or activities in order to judge whether they may represent something suspicious*".

4.105 In the absence of automated monitoring of transactions in relation to the Solo Trading, Mako relied on its front office staff to detect and escalate unusual and suspicious behaviour to compliance, with whom the responsibility for trade surveillance was shared. However, despite being trained to identify and report suspicious transactions, the relevant front office staff did not review transactions nor analyse the trade volumes of the Solo Clients. Front office staff incorrectly believed that transaction monitoring was only the responsibility of compliance and risk. Consequently, the purported Solo Trading was not adequately monitored.

4.106 An informal, rather than documented, framework for transaction monitoring was said to apply at Mako, involving three lines of defence. These were to comprise of; (1) front office staff monitoring transactions and alerting compliance to suspicious trading; (2) automated market surveillance occurring with use of the SMARTS system; and (3) compliance and risk scrutinising trades which had been escalated for review. As noted above, the first line of defence failed by reason of front office staff not understanding they had any responsibility for monitoring the Solo Trading and reporting suspicious transactions, and the second line of defence failed because the SMARTS system did not cover OTC trades. These failures resulted in suspicious trading not being reported to compliance and risk for further investigation to be conducted. The Authority has not been provided any evidence of compliance or risk performing any transaction monitoring, independent of being alerted to red flags by front office staff or market surveillance. As a result, Mako did not identify any

concerning patterns of trading in respect of the Solo Clients during the Relevant Period.

4.107 Indeed, the Authority has not seen any evidence that Mako substantively and/or systematically monitored any Solo Client's trading activities, nor of Mako assessing whether the trading was consistent with its (limited) knowledge and understanding of each of the Solo Clients, their risk profile, or potential financial crime risk indicators. Even if Mako had appropriate policies for transaction monitoring and sought to systematically monitor the Solo Trading with reference to these policies, the inadequate onboarding process carried out, namely the lack of understanding gained regarding the trading history and the purpose and intended nature of the business relationship, would have rendered effective monitoring difficult, if not impossible.

4.108 These factors, combined with the Firm's failure to recognise or act upon obvious risks, meant that Mako did not comply with its obligations to undertake appropriate ongoing monitoring, including trade monitoring, which heightened the risk that financial crime would go undetected.

The Purported Solo Trading

4.109 During the Relevant Period, Mako purportedly executed high volume Cum-Dividend Trading for the Solo Clients to the value of approximately £92.22 billion in Danish and Belgian equities. Mako received commissions of approximately £1.45 million from the Solo Trading, which made up around 12% of Mako's total revenue during the Relevant Period.

4.110 Mako purportedly started executing trades on behalf of the Solo Clients on 26 February 2014. These were initially purportedly cleared by SCP, although this was extended to other members of the Solo Group from November 2014 onwards. From February 2014, Mako purportedly executed trades in 16 Danish securities and 15 Belgian securities on or around the last day of Cum-Dividend Trading. In addition, Mako purportedly executed Unwind Trades in those same Danish securities between June 2014 to September 2015.

4.111 The Firm understood that the trading would be in "*fairly large*" volumes and had an expectation that it would likely generate revenue "*in the hundreds of thousands*" per annum. However, the Firm did not know the specific size and volumes of trades

the Solo Clients intended, nor did it have any knowledge of the Solo Clients' trading histories from which it could compare the Solo Trading with in order to uncover anything unusual. It was therefore only when the purported trading commenced that a comprehensive AML risk profile could have been assessed and would have become evident.

4.112 Initially, from 26 February 2014 until February 2015, orders were placed via email. Mako would approach other potential counterparties (known to it through Solo), either on Bloomberg or email, to identify any potential matches for a trade. Once a match had been identified, Mako would inform the relevant client and submit a trade approval request to Solo and, if approved, the trade would be confirmed at the end of the day. Alternatively, Mako would be approached by another counterparty and would confirm whether or not it could match a particular trade.

4.113 This process was discontinued with the implementation of Brokermesh in February 2015. Brokermesh was an automated process on an electronic platform, developed by an entity associated with the Solo Group, which generated trade orders from clients which were transmitted to brokers, including Mako. Mako did not carry out any specific due diligence on this system.

4.114 Brokermesh was a closed network matching trades between the Solo Clients only with no access to liquidity from public exchanges. Despite this, in one instance Mako was purportedly able to source liquidity on this closed platform within ten minutes for an order to buy 6,549,939 shares of a Danish stock, representing approximately 1.5 times the volume of shares traded in that stock on European exchanges on that specific trading date. Mako did not question how the liquidity could be met so quickly, even though all of the orders were only matched between the Solo Clients and none of the trades ever needed to be executed on public exchanges.

4.115 On that day, Mako purportedly traded for that same client approximately 8.5 times the number of shares traded in that same Danish stock across European exchanges, and purportedly executed trades for the Solo Clients of approximately 102 times the number of shares traded in that same Danish stock across European exchanges.

A. Trade sizes

4.116 During the Relevant Period, Mako purportedly executed Cum-Dividend Trading to the total value of approximately £68.6 billion in Danish equities and £23.6 billion in Belgian equities.

4.117 Analysis of the purported Cum-Dividend Trading has revealed the following:

a) Mako purportedly executed orders on behalf of Solo Clients in 16 Danish stocks over 22 cum-dividend dates. An average of 20% of the outstanding shares in each stock was traded, which were cumulatively worth a total of £68.6 billion. The volumes also equated to an average of 56 times the total number of all shares traded in those stocks on European exchanges.

b) Mako purportedly executed orders on behalf of Solo Clients in 15 Belgian stocks over 14 cum-dividend dates. An average of 6.21% of the outstanding shares in each stock was traded, which were cumulatively worth a total of £23.6 billion. The volumes also equated to an average of 23 times the total number of all shares traded in those stocks on European exchanges.

c) The aggregate value of cum-dividend trades purportedly executed by Mako on behalf of the Solo Clients in each stock were in a range of approximately £91.5 million to £14.96 billion in Danish stocks and approximately £49.6 million to £9.1 billion in Belgian stocks.

4.118 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'* 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.

4.119 Furthermore, the Firm failed to recognise the implausibility that liquidity for such high volumes could be found within a closed network of clients, of which Mako onboarded 242. The closed network did not have access to liquidity from public exchanges, yet the purported trades were rapidly filled and represented up to 30% (and an average of 20%) of the shares outstanding in the companies listed on the

Danish stock exchange, and up to 11% (and an average of 6%) of the shares outstanding in the companies listed on the Belgian stock exchange.

B. Awareness and review of Solo Trading

4.120 Once the purported Solo Trading commenced, Mako did not undertake a review of the sizes and volumes of the transactions executed to ensure the level of trading was consistent with its understanding of the Solo Clients' risk profile. As a result, Mako failed to consider a number of key facts relevant to ongoing monitoring and financial crime risk. These included but were not limited to the total sizes that were being traded, the number of shares outstanding in the relevant stocks and any applicable disclosure thresholds for major shareholders (which, had Mako done so, would have indicated that the volumes of Solo Trading were implausible). An awareness of these red flags ought to have prompted Mako to obtain explanations from the Solo Group and/or the Solo Clients, and to decline to execute particular trades or cease its trading relationship with the Solo Clients should these explanations have not been forthcoming.

4.121 Mako would have been aware of the high volume and size of trades it purportedly executed on behalf of the Solo Clients across the Relevant Period, as details of their trading activity were made available through the Firm's in-house proprietary trade reporting system, which set out trade volumes, sizes, client details, counterparties and revenue. However, the Firm never raised any concerns with the Solo Group in this respect, nor questioned whether seemingly small clients would have sufficient funds to settle the trades.

4.122 Mako appears to have taken comfort in this regard as the trades were approved and guaranteed by the Solo Group, and the entities making up this group were all regulated by the FCA. It took the view that because it was the executing broker, and the trades were subject to clearer approval, the size of trades was not something that it needed to consider or take responsibility for. As Mako believed it bore no risk of loss, it failed to take the necessary steps to mitigate the risk that it might be facilitating financial crime or used for the purposes of money laundering, such as by scrutinising the size and value of trades, and querying whether the Solo Clients had sufficient funds to perform the purported Solo Trading.

4.123 All regulated firms (including execution-only brokers) must consider and mitigate the risk that they could be used to facilitate financial crime, even if client monies do

not flow directly 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 Mako ought to have been aware of.

The Ganymede Trades

4.124 Firms must have adequate policies and procedures which provide for the identification, scrutiny and reporting of complex or large transactions; unusual patterns of transactions which have no apparent economic or visible lawful purpose; and any other activity which may be related to money laundering. Firms are required to monitor customer transactions to assess risk and ensure that they are not being used for the purpose of financial crime. There is an expectation that a firm's monitoring systems are sufficiently granular to identify any strategies or individual trades that are potentially abusive or unlawful.

4.125 On 30 June 2014, Mako executed a series of circular trades in a German stock ("Stock A") on behalf of four Solo Clients. The first leg of the trades involved Mako executing 'buy' orders on behalf of three of these clients ("Clients A, B and C"), each owned by associates of Sanjay Shah, in Stock A at a specified price of EUR 121.65 to the total value of EUR 420,359,750. These orders were shortly filled by a recently onboarded client which was owned by Sanjay Shah, Ganymede Cayman Ltd ("Ganymede"). The second leg of the trades involved Mako executing a 'buy' order on behalf of Ganymede in the same German stock for the same quantity at a higher price of EUR 122.25 to the value of EUR 422,433,041, which was all sourced from the same three Solo Clients. Together, these circular trades resulted in Ganymede making a loss of EUR 2,073,291 to the benefit of Clients A, B and C. The trades also generated a total commission of EUR 10,534.91 for Mako.

4.126 The Ganymede Trades had no apparent economic purpose except to transfer funds from a Sanjay Shah controlled entity to his associates and individuals connected with the Solo Group. The Ganymede Trades materially differed from the Solo Trading for the following reasons:

a) the trades were of a German, instead of Danish or Belgian, stock;

b) the trades were not executed on the cum-dividend date;

c) previous Solo Trading was carried out as 'market-on-close' (end of day price) but these were limit orders (at market);

d) Mako was the only broker executing both the 'buy' and 'sell' orders;

e) Clients A, B and C were urgently onboarded at the request of the Solo Group shortly before the trades took place;

f) the trades were reversed within the same group of clients at a different price shortly after, at a loss of approximately EUR 2 million to Ganymede; and

g) this was the first time the trades were closed on the same day, whereas usually the Solo Clients involved in the Solo Trading had positions open for weeks or months.

Chronology of the Ganymede Trades

4.127 At 13:19 on 13 June 2014, Client A contacted Mako to request onboarding for brokerage services. Client A was a private entity that was incorporated in the British Virgin Islands shortly before the onboarding request was received, on 3 June 2014. The sole director and shareholder of Client A was a Dubai based individual who had recently held a senior position at SCP. At 15:42 later that day, an email from Solo to Mako attaching the KYC documents on behalf of Client A stated that it was an "*urgent onboarding"*.

4.128 At 15:46 and 15:49 on 16 June 2014, Mako was contacted by Clients B and C, respectively, requesting to be onboarded for brokerage services. Similar to the onboarding of Client A, shortly thereafter Solo emailed Mako stating that the onboarding of these two clients was "*urgent*".

4.129 Client B was a private entity that was incorporated in the British Virgin Islands 11 days prior to the onboarding request, on 5 June 2014. Client B's UBO and sole director was a current employee of Solo.

4.130 Client C was a private entity that was incorporated in the Cayman Islands on 18 February 2013. As per the KYC documentation provided, one of the two directors of Client C was a 21-year-old individual who had a total of four months' experience working at a financial services firm that was subsequently acquired by the Solo Group on 20 May 2015.

4.131 On 17 June 2014, Mako received an onboarding request from Ganymede. Ganymede was a private entity incorporated in the Cayman Islands on 16 June 2010. At the time of which the onboarding request was received, the sole director and shareholder of Ganymede was Sanjay Shah.

4.132 On 23 June 2014, Mako confirmed to SCP that each of Ganymede and Clients A, B and C had been onboarded.

4.133 On 30 June 2014, a week after onboarding had been confirmed, these four clients executed trades with Mako for the first time. Mako received a series of orders via email from Clients A, B and C between 13:15:57 and 13:17:02 to buy shares in varying volumes of Stock A. Each order specified an identical intraday purchase price of EUR 121.65, which was similar to the market opening price of EUR 121.62 but below the then current market price of EUR 122.10.

4.134 Later that day, at 14:18, Mako received identical emails from Ganymede in response to its three requests for liquidity for the differing volumes of 'buy' orders of Clients A, B and C to the value of 3,455,485 shares, stating "*Ganymede Cayman Ltd can sell those*".

4.135 Approximately ten minutes after the trades had been agreed, at 14:29, Ganymede emailed Mako stating that it wanted to buy back an equivalent quantity of 3,455,485 shares of Stock A at a limit price of EUR 122.25, which was close to the then current market price but EUR 0.60 above the price at which Ganymede had sold the shares.

4.136 Shortly thereafter, Clients A, B and C agreed to sell the entirety of their earlier purchases back to Ganymede at the higher price.

4.137 The timing of the orders was as follows:

Time of order	Buyer	Time of confirmation to buy/sell	Seller	Quantity	Unit Price (EUR)	Consideration (EUR)
13:15:57	Client C	14:18:43	Ganymede	1,485,263	121.65	180,682,244
13:16:24	Client A	14:18:57	Ganymede	463,157	121.65	56,343,049
13:17:02	Client B	14:18:32	Ganymede	1,507,065	121.65	183,334,457

14:28:59	Ganymede	14:46:16	Client B	1,507,065	122.25	184,238,696
14:28:59	Ganymede	14:47:23	Client A	463,157	122.25	56,620,943
14:28:59	Ganymede	14:52:43	Client C	1,485,263	122.25	181,573,402

Analysis of the Ganymede Trades

4.138 These trades involved Ganymede selling 3,455,485 shares in Stock A to the value of EUR 420,359,750 to three newly onboarded counterparties incorporated in the British Virgin Islands and Cayman Islands. Ganymede then re-purchased the same number of shares in Stock A within the hour to the value of EUR 422,433,041, thereby resulting in a net loss of EUR 2,073,291. As the sole broker, Mako had sight of each leg of the Ganymede Trades and therefore ought to have been aware that they resulted in a significant loss to Ganymede.

4.139 When onboarding the Solo Clients involved in the Ganymede Trades, Mako failed to conduct a risk assessment for any of them, and did not query the purpose of the trading, expected volumes or why the onboarding was urgent. Compliance did raise internal queries as to whether the trading would be the same as the Solo Trading; in response to which front office staff told compliance that Mako would be acting as an agent for direct market access execution which would be settled via the Firm's existing clearer, independent of the Solo Group. In practice, however, the trades were settled via the Solo Group in the same way as the Solo trading.

4.140 Had Mako sufficiently scrutinised the identity of the underlying beneficiaries of the Solo Clients involved in the Ganymede Trades, the Firm would have appreciated that Ganymede was owned by Sanjay Shah and that each of Clients A and B had a beneficiary who was connected to the Solo Group; these being current or former employees of SCP. Given the nature of the trading and the close associations between the Solo Group and the clients involved, Mako ought to have realised that there was a possibility that the Ganymede Trades were a method by which money could be transferred from Sanjay Shah to his associates.

4.141 Furthermore, if Mako had scrutinised the trade orders prior to execution or for the purpose of transaction monitoring and post-trade surveillance, it would have observed that the volume of shares traded (3,455,485) was double the Average

Daily Volume (ADV) of Stock A traded on regulated exchanges in that security by all other market participants on that day.

4.142 Mako failed to identify or consider a number of the unusual features of the Ganymede Trades:

a) each of Clients A and B had a beneficiary who was connected to the Solo Group and Ganymede was owned by Sanjay Shah;

b) why Clients A, B and C had to be urgently onboarded shortly before the trades took place;

c) how Clients A, B and C or Ganymede would have been able to source such sizeable liquidity in such short order, and whether this was in line with the trading levels which could be expected from these clients, given the information previously obtained through CDD;

d) whether the liquidity was plausible in the market, given that the volume of shares purportedly executed by Mako was double the ADV of Stock A traded on regulated exchanges in that security by all other market participants on the same day;

e) the correspondence surrounding the Ganymede Trades exhibited numerous indicators of a predetermined set of transactions with no economic purpose, which was highly indicative of potential financial crime. For example:

(i) 'buy' orders of three separate clients were made within five minutes of one another for the same stock, at identical prices, which were below the intraday market prices;

(ii) liquidity was matched for such a large volume of shares (3,455,485) in approximately one hour;

(iii) within ten minutes of having sold the shares, Ganymede offered to reverse the positions by buying back all of the shares at a higher price;

(iv) this offer was filled by the same group of clients shortly thereafter and their offers were within seven minutes of one another; and

(v) as a consequence of this pattern of trading, Ganymede incurred a loss of EUR 2,073,291.

4.143 At a minimum, the red flags identified above ought to have prompted Mako to question each of Ganymede and Clients A, B and C about the purpose and intended nature of the trading, but Mako did not make any enquiries in this regard. Mako therefore did not consider associated financial crime and money laundering risk posed to the Firm in relation to the Ganymede Trades. This was in spite of the fact that it would have been apparent to Mako that the trading formed part of a premeditated scheme by which to transfer considerable sums from Ganymede to Clients A, B and C with no clear economic purpose, namely by reason of the coordinated nature of the orders and short timeframe within which Ganymede sought to reverse its position at a significant loss.

End of the purported Solo Trading and the Elysium Payment

4.144 Mako executed its last purported cum-dividend trade for a Solo Client on 7 August 2015. However, it continued to execute Unwind Trades until 29 September 2015. After this, the Firm ceased to receive client instructions and all communications with Solo ended.

4.145 On 29 October 2015, Mako was approached by Elysium Global (Dubai) Limited ("Elysium") with an unsolicited offer to purchase 95% of outstanding debts owed to Mako by the Solo Clients. Mako had no prior contact or business relationship with Elysium, which was an entity associated with the Solo Group (Sanjay Shah was a director of the company until 24 November 2021).

4.146 The following day Mako sent copies of outstanding invoices owed by the Solo Clients to Elysium to the value of EUR 188,284.22. Later that day, Elysium informed Mako via email that it had made a payment of EUR 178,870.01, although Mako did not receive those funds. A payment of EUR 177,699.19 from Elysium was subsequently received by Mako on 16 November 2015. Mako attributed such payment to its then outstanding invoices, copies of which it had forwarded to Elysium on 30 October 2015.

4.147 In the meantime, on 3 November 2015, the Authority made unannounced visits to the offices of Mako, the Solo Group entities and the other Broker Firms, which is

when the Firm became aware of wider concerns by local and overseas regulators regarding the Solo Group business.

4.148 Mako's Compliance Manual directed staff to report suspicions to the Firm's MLRO, but the manual did not provide any detail on the types of behaviour that could be indicative of suspicious activity. The Firm did not conduct any due diligence in relation to Elysium or the debt factoring facility during which suspicions are likely to have been formed, including as a result of Elysium's connection with the Solo Group. Indeed, Mako first formed a suspicion that the Solo Trading and Elysium Payment may have involved money laundering after the trading had taken place and the payment had been made, and after several news articles announcing local and overseas investigations into the Solo Group and the Authority's unannounced visit.

4.149 The circumstances in which Mako was presented with a debt factoring offer from a company it had not heard of before, which was an entity based in the UAE with no assumed regulatory equivalence, together with the Firm's acceptance of the offer and receipt of funds without any due diligence being conducted and agreement in place, is striking and suggests that Mako failed to adequately consider associated financial crime and money laundering risks. This is particularly concerning as '*cross border transactions*' and '*products with reduced paper trails*' are specifically listed in the JMLSG Guidance as factors that will generally increase the risk of money laundering for invoice finance products.

Failure to identify and escalate the above issues

4.150 Prior to the Authority's unannounced visit on 3 November 2015, Mako failed to identify and escalate any of the above issues. With respect to anti-money laundering and financial crime risk, Mako did not identify any transactions raising any suspicions and no breaches were reported or observed.

5. FAILINGS

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

5.2 The 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 to whether Mako 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 Mako breached this requirement in relation to the Solo Clients and the purported Solo Trading, the Ganymede Trades and the Elysium Payment, as its policies and procedures were inadequate for identifying, assessing and mitigating the risk of financial crime, as the Firm failed to:

a) Set out adequate processes and procedures for CDD, including in relation to obtaining and assessing information when onboarding new clients;

b) Set out adequate processes or procedures detailing how to conduct EDD;

c) Set out adequate process and procedures for client categorisation;

d) Provide adequate guidance on when reliance may be placed upon the KYC documents provided by, and/or the due diligence conducted by, another authorised firm and the circumstances when it would be appropriate to do so; and

e) Design and implement effective processes and procedures for ongoing transaction monitoring, including when and how transactions were to be monitored and with what frequency.

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

Principle 2

5.6 The Authority also considers that Mako failed to act with due skill, care and diligence as required by Principle 2 in assessing, monitoring and managing the risk of financial crime associated with the Solo Clients and the purported Solo Trading, the Ganymede Trades and the Elysium Payment, in that the Firm failed to:

a) Conduct appropriate customer due diligence prior to onboarding, by failing to follow even its limited CDD procedures;

b) Gather adequate information when onboarding the Solo Clients to enable it to understand the purpose and intended nature of the business that these clients were going to undertake and the likely size or frequency of the purported trading;

c) Conduct adequate risk assessments for any of the Solo Clients;

d) Complete adequate EDD for any of the Solo Clients despite numerous risk factors being present, which ought to have included independent enquiries as to the Solo Clients' source of funds and whether they had sufficient funds to conduct the anticipated trading;

e) Assess each of the Solo Clients against the categorisation criteria set out in COBS 3.5.2R and failed to record the results of such assessments, including sufficient information to support the categorisation, contrary to COBS 3.8.2R(2)(a);

f) Conduct ongoing transaction monitoring of the Solo Clients' purported trades;

g) Recognise numerous red flags with the Solo Trading, including failing to adequately 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, Mako failed to consider or recognise that the profiles of the Solo Clients meant that they were highly unlikely to be capable of meeting the scale and volume of the trading purportedly being carried out, and failed to at least obtain sufficient evidence of the clients' source of funds to satisfy itself to the contrary;

h) Recognise numerous red flags arising from the purported Ganymede Trades and adequately consider the serious financial crime and money laundering risks they posed to the Firm; and

i) Consider adequately associated financial crime and money laundering risks posed by the Elysium Payment despite a number of red flags.

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 proposed 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.

6.5 The financial benefit derived directly by Mako's from its breaches is quantifiable by reference to the revenue it received and derived from the Solo Clients' purported trading during the Relevant Period, which amounted to £1,448,345, minus custodian fees of £311,062.

6.6 The figure after Step 1 is therefore **£1,137,283.**

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

6.9 Mako's relevant revenue is the revenue derived from the purported Solo Trading and the Ganymede Trades, less the related custodian fees paid. The period of Mako's breach was from 16 December 2013 to 16 November 2015. The Authority considers Mako's relevant revenue for this period to be £1,137,283.

6.10 In deciding on the percentage of the relevant revenue that forms the basis of the step 2 figure, the 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. DEPP 6.5A.2G lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:

(1) the breaches revealed serious or systemic weaknesses in the Firm's procedures and the management systems or internal controls relating to the Firm's governance of financial crime risk; and

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

6.12 DEPP 6.5A.2G(12) lists factors likely to be considered 'level 1 factors,' 'level 2 factors' or 'level 3 factors' of which the Authority considers the following to be relevant:

- the breach was committed negligently or inadvertently.

6.13 Taking all of 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 £1,137,283.

6.14 Step 2 is therefore **£170,592.**

Step 3: mitigating and aggravating factors

6.15 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.

6.16 The Authority considers that the following factors aggravate the breach:

(1) 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 therein) 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, Mako should have been aware of the importance of appropriately assessing, managing and monitoring the risk that the Firm could be used for the purposes of financial crime.

(2) The Authority has published several notices against firms for AML weaknesses both before and during the Relevant Period, including in respect of Alpari Limited on 5 May 2010, Coutts & Company on 23 March 2012, Habib Bank AG Zurich on 4 May 2012, Turkish Bank (UK) Limited on 26 July 2012, EFG Private Bank Ltd on 28 March 2013, Guaranty Trust Bank (UK) Limited on 8 August 2013 and Standard Bank PLC on 22 January 2014. These actions stressed to the industry the Authority's view of firms with AML deficiencies, and Mako was accordingly aware of the importance of implementing and maintaining robust

AML systems and controls. In fact, Mako's MLRO Annual Report for 2013 referred to a number of the abovementioned enforcement actions.

6.17 The Authority considers that there are no mitigating factors.

6.18 Having taken into account these aggravating factors, the Authority considers that the Step 2 figure should be increased by 10%.

6.19 Step 3 is therefore **£187,651**.

Step 4: adjustment for deterrence

6.20 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 or similar breaches, then the Authority may increase the penalty.

6.21 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 £187,651. In the circumstances of this case, the Authority considers that a penalty of this size would not serve as a credible deterrent to Mako and other firms and would 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. Having taken into account the factors outlined in DEPP 6.5A.4G, the Authority considers that a multiplier of four should be applied at Step 4.

6.22 Step 4 is therefore **£750,607**.

Step 5: settlement discount

6.23 Pursuant to DEPP 6.5A.5G, if the Authority and the firm on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the firm reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.24 The Authority and Mako did reach an agreement to settle so a 30% discount applies to the Step 4 figure.

6.25 The Authority has rounded down the final penalty to the nearest £100. Step 5 is therefore **£1,662,700**.

Penalty

6.26 The Authority hereby imposes a total financial penalty of **£1,662,700**.

7 PROCEDURAL MATTERS

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

7.2 The following statutory rights are important.

Decision maker

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

Manner and time for payment

7.4 The financial penalty must be paid in full by Mako to the Authority no later than 3 March 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 Mako Financial Markets Partnership LLP to the Authority, including interest thereon.

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.

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

Authority contacts

7.8 For more information concerning this matter generally, contact Giles Harry (020 7066 8072 / giles.harry@fca.org.uk) or Denise Ip (020 7066 0237 / denise.ip@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

The Solo Trading

November 2013	Mako approached SCP with a view to obtaining business for a new trading desk
27 November 2013	One of the initial meetings between Mako and SCP to discuss the new line of business was conducted
28 November 2013	Mako emailed SCP to confirm its interest in the business and wish to expedite all the paperwork
11 December 2013	Mako's onboarding with SCP was completed and a custody agreement between the parties was executed
16 December 2013	Mako began to receive onboarding requests from the Solo Clients custodied at SCP
20 February 2014	Mako met with SCP to discuss the arrangements for onboarding the Solo Clients
25 February 2014	Mako and SCP executed a (1) revised custody agreement; and (2) deed of guarantee
26 February 2014	Mako commenced the purported Solo Trading
6 November 2014	Mako and OPL executed a (1) custody agreement and (2) deed of guarantee
4 February 2015	Mako executed services agreements with SCP, OPL, West Point and Telesto
20 February 2015	Mako signed the Brokermesh licence agreement
February 2015	Trading commenced on the Brokermesh platform
9 April 2015	Mako completed the onboarding of 242 Solo Clients
7 August 2015	Mako purportedly executed the last cum-dividend trade on behalf of the Solo Clients

28 September 2015	Mako purportedly executed the last unwind trade on behalf of the Solo Clients
22 September 2016	Each of the Solo Group entities entered into special administration

The Ganymede Trades

13 June 2014	Mako received an "urgent" onboarding request from Client A
16 June 2014	Mako received an "urgent" onboarding requests from Clients B and C
17 June 2014	Mako received an onboarding request from Ganymede
30 June 2014	Mako executed a set of trades in a German stock through which Clients A, B and C made an aggregate profit of EUR 2,073,291 at Ganymede's loss

The Elysium Payment

29 October 2015	Elysium approached Mako to offer a "*debt factoring facility*"
30 October 2015	Mako sent copies of outstanding invoices owed by the Solo Clients to Elysium
3 November 2015	The Authority conducted an unannounced visit at the Mako offices
16 November 2015	Mako received a payment of EUR 177,699.19 from Elysium

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 Money Laundering Regulations 2007

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 6 provides:

Meaning of beneficial owner

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

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

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

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

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

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

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

1.5 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."

1.6 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."

1.7 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.

(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) 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.

Principles for Business ("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."

Senior Management Arrangements, Systems and Controls ("SYSC")

2.5 SYSC 3.2.4 G provides:

"*(1) The guidance relevant to delegation within the firm is also relevant to external delegation ('outsourcing'). A firm cannot contract out its regulatory obligations. So, for example, under Principle 3 a firm should take reasonable care to supervise the discharge of outsourced functions by its contractor.*

(2) A firm should take steps to obtain sufficient information from its contractor to enable it to assess the impact of outsourcing on its systems and controls."

2.6 SYSC 3.2.6 E provides:

"The FCA, 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".

2.7 SYSC 3.2.6 R provides:

"A firm must take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime."

2.8 SYSC 6.1.1 R provides:

"A firm must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and appointed representatives (or where applicable, tied agents) with its obligations under the regulatory system and for countering the risk that the firm might be used to further financial crime."

2.9 SYSC 6.3.1 R provides:

"A firm must ensure the policies and procedures established under SYSC 6.1.1 R 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."

2.10 SYSC 6.3.2 G provides:

"Money laundering risk" is the risk that a firm may be used to further money laundering. Failure by a firm to manage this risk effectively will increase the risk to society of crime and terrorism.

2.11 SYSC 6.3.6 G 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".

2.12 SYSC 6.3.7 G 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".

2.13 SYSC 9.1.1 R 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."

Conduct of Business Sourcebook (COBS)

2.14 **COBS 3.3 General notifications**

COBS 3.3.1 R 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.

[Note: paragraph 2 of section I of annex II to MiFID and articles 28(1) and (2) and the second paragraph of article 50(2) of the MiFID implementing Directive]"

2.15 COBS 3.5.2 R 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;

(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 any1of 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) 1called 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."

2.16 COBS 3.5.3 R 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."

2.17 COBS 3.8.2 R 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")

2.18 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.

2.19 DEPP 6.2.3 G provides:

"The FCA's rules on systems and controls against money laundering are set out in SYSC 3.2 and SYSC 6.3. The FCA, 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

2.20 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.

3. JMLSG GUIDANCE–

JMLSG Guidance Part I (published 20 November 2013)

A risk-based approach

3.1 JMLSG Paragraph 4.5 provides:

"*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 its procedures and controls. There needs to be a clear communication of policies and procedures across the firm, along with robust mechanisms to ensure that they are carried out effectively, weaknesses are identified, and improvements are made wherever necessary*"

3.2 JMLSG Paragraph 4.8 provides:

"A risk-based approach takes a number of discrete steps in assessing the most cost effective and proportionate way to manage and mitigate the money laundering and terrorist financing risks faced by the firm. These steps are to:

- *identify the money laundering and terrorist financing risks that are relevant to the firm;*
- *assess the risks presented by the firm's particular*
  - *customers and any underlying beneficial owners*;*
  - *products;*
  - *delivery channels;*
  - *geographical areas of operation;*
- *design and implement controls to manage and mitigate these assessed risks, in the context of the firm's risk appetite;*
- *monitor and improve the effective operation of these controls; and*

- *record appropriately what has been done, and why.*

** In this Chapter, references to 'customer' should be taken to include beneficial owner, where appropriate."*

3.3 JMLSG Paragraph 4.9 provides:

"Whatever approach is considered 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, 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 or activity that may be suspicious."

3.4 JMLSG Paragraph 4.12 provides:

"A risk assessment will often result in a stylised categorisation of risk: e.g., high/medium/low. Criteria will be attached to each category to assist in allocating customers and products to risk categories, in order to determine the different treatments of identification, verification, additional customer information and monitoring for each category, in a way that minimises complexity."

3.5 JMLSG Paragraph 4.14 provides:

"A risk-based approach starts with the identification and assessment of the risk that has to be managed. Examples of the risks in particular industry sectors are set out in the sectoral guidance in Part II, and at www.jmlsg.org.uk."

3.6 JMLSG Paragraph 4.15 provides:

"While a risk assessment should always be performed at the inception of the customer relationship (although see paragraph 4.16 below), 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."

3.7 JMLSG Paragraph 4.34 provides:

"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."

3.8 JMLSG Paragraph 4.39 provides:

"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."

3.9 JMLSG Paragraph 4.40 provides:

"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."*

3.10 JMLSG Paragraph 4.50 provides:

"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."

3.11 JMLSG Paragraph 4.52 provides:

"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."

Customer due diligence

3.12 JMLSG Paragraph 5.1.5 provides:

"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)."

3.13 JMLSG Paragraph 5.2.6 provides:

"Where a firm is unable to apply CDD measures in relation to a customer, the firm

(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 it ought to be making a report to the NCA, in accordance with its obligations under POCA and the Terrorism Act."

3.14 JMLSG Paragraph 5.3.21 provides:

"A firm must understand the purpose and intended nature of the business relationship or transaction to assess whether the proposed business relationship is in line with the firm's expectation and to provide the firm with a meaningful basis for ongoing monitoring. In some instances this will be self-evident, but in many cases the firm may have to obtain information in this regard."

3.15 JMLSG Paragraph 5.3.261 provides:

"For situations presenting a lower money laundering or terrorist financing risk, the standard evidence will be sufficient. However, less transparent and more complex structures, with numerous layers, may pose a higher money laundering or terrorist financing risk. Also, some trusts established in jurisdictions with favourable tax regimes have in the past been associated with tax evasion and money laundering. In respect of trusts in the latter category, the firm's risk assessment may lead it to require additional information on the purpose, funding and beneficiaries of the trust."

Enhanced due diligence

3.16 JMLSG Paragraph 5.5.1 provides:

"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."

3.17 JMLSG Paragraph 5.5.2 provides:

"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."

3.18 JMLSG Paragraph 5.5.4 provides:

"In practice, under a risk-based approach, it will not be appropriate for every product or service provider to know their customers equally well, regardless of the purpose, use, value, etc., of the product or service provided. Firms' information demands need to be proportionate, appropriate and discriminating, and to be able to be justified to customers."

3.19 JMLSG Paragraph 5.5.5 provides:

"A firm should hold a fuller set of information in respect of those business relationships it assessed as carrying a higher money laundering or terrorist financing risk, or where the customer is seeking a product or service that carries a higher risk of being used for money laundering or terrorist financing purposes."

3.20 JMLSG Paragraph 5.5.6 provides:

"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 on 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, in some circumstances, evidence of source of wealth or income should be required (for example, if from an inheritance, see a copy of the will). The firm should also 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."

3.21 JMLSG Paragraph 5.5.9 provides:

"The ML Regulations prescribe three specific types of relationship in respect of which EDD measures must be applied. These 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 paragraphs 5.5.18ff)."*

Reliance on third parties

3.22 JMLSG Paragraph 5.6.4 provides:

"The ML 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 being 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."

3.23 JMLSG Paragraph 5.6.14 provides:

"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."*

3.24 JMLSG Paragraph 5.6.16 provides:

"In practice, the firm relying on the confirmation of a third party needs to know:

- *the identity of the customer or beneficial owner whose identity is being verified;*

- *the level of CDD that has been carried out; and*

- *confirmation of the third party's understanding of his obligation to make available, on request, copies of the verification data, documents or other information.*

In order to standardise the process of firms confirming to one another that appropriate CDD measures have been carried out on customers, guidance is given in paragraphs 5.6.30 to 5.6.33 below on the use of pro-forma confirmations containing the above information."

3.25 JMLSG Paragraph 5.6.24 provides:

"A firm must also document the steps taken to confirm that the firm relied upon satisfies the requirements in Regulation 17(2). This is particularly important where the firm relied upon is situated outside the EEA."

3.26 JMLSG Paragraph 5.6.25 provides:

"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)."

Monitoring customer activity

3.27 JMLSG Paragraph 5.7.1 provides:

"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."*

3.28 JMLSG Paragraph 5.7.2 provides:

"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."

3.29 JMLSG Paragraph 5.7.3 provides:

"The essentials of any system of monitoring are that:

- *it flags up transactions and/or activities for further examination;*
- *these reports are reviewed promptly by the right person(s); and*
- *appropriate action is taken on the findings of any further examination."*

3.30 JMLSG Paragraph 5.7.4 provides:

"Monitoring can be either:

- *in real time, in that transactions and/or activities can be reviewed as they take place or are about to take place, or*
- *after the event, through some independent review of the transactions and/or activities that a customer has undertaken*

and in either case, unusual transactions or activities will be flagged for further examination."

3.31 JMLSG Paragraph 5.7.7 provides:

"In designing monitoring arrangements, it is important that appropriate account be taken of the frequency, volume and size of transactions with customers, in the context of the assessed customer and product risk."

3.32 JMLSG Paragraph 5.7.8 provides:

"Monitoring is not a mechanical process and does not necessarily require sophisticated electronic systems. The scope and complexity of the process will be influenced by the firm's business activities, and whether the firm is large or small. The key elements of any system are having up-to-date customer information, on the basis of which it will be possible to spot the unusual, and asking pertinent questions to elicit the reasons for unusual transactions or activities in order to judge whether they may represent something suspicious."

3.33 JMLSG Paragraph 5.7.12 provides:

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

JMLSG Guidance Part II – Wholesale Markets (published 20 November 2013)

Types of Risk

3.34 JMLSG Paragraph 18.14 provides:

"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... 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."

3.35 JMLSG Paragraph 18.21 provides:

"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."

JMLSG Guidance– Part I (published 19 November 2014)

A risk-based approach

3.36 JMLSG Paragraph 4.5 provides:

"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."

3.37 JMLSG Paragraph 4.6 provides:

"Although the ML/TF risks facing the firm fundamentally arise through its customers, the nature of the business and their activities, it is important that the firm considers its customer risks in the context of the wider ML/TF environment inherent in the jurisdictions in which the firm and its customers operate. Firms should bear in mind that some jurisdictions have close links with other, perhaps higher risk jurisdictions, and where appropriate and relevant regard should be had to this."

3.38 JMLSG Paragraph 4.9 provides:

"The procedures, systems and controls designed to mitigate assessed ML/TF risks should be appropriate and proportionate to these risks, and should be designed to provide an effective level of mitigation."

3.39 JMLSG Paragraph 4.12 provides:

"A risk-based approach takes a number of discrete steps in assessing the most cost effective and proportionate way to manage and mitigate the money laundering and terrorist financing risks based by the firm. These steps are to:

- *identify the money laundering and terrorist financing risks that are relevant to the firm;*
- *assess the risks presented by the firm's particular*
  - *customers and any underlying beneficial owners*;*
  - *products;*
  - *delivery channels;*
  - *geographical areas of operation;*
- *design and implement controls to manage and mitigate these assessed risks, in the context of the firm's risk appetite;*
- *monitor and improve the effective operation of these controls; and*
- *record appropriately what has been done, and why.*

** In this Chapter, references to 'customer' should be taken to include beneficial owner, where appropriate."*

3.40 JMLSG Paragraph 4.13 provides:

"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."

3.41 JMLSG Paragraph 4.20 provides:

"In reaching an appropriate level of satisfaction as to whether the customer is acceptable, requesting more and more identification is not always the right answer – it is sometimes better to reach a full and documented understanding of what the customer does, and the transactions it is likely to undertake. Some business lines carry an inherently higher risk of being used for ML/TF purposes than others."

3.42 JMLSG Paragraph 4.21 provides:

"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."

3.43 JMLSG Paragraph 4.22 provides:

"While a risk assessment should always be performed at the inception of a customer relationship (although see paragraph 4.16 below), 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."

3.44 JMLSG Paragraph 4.25 provides:

"For firms which operate internationally, or which have customers based or operating abroad, there are additional jurisdictional risk considerations relating to the position of the jurisdictions involved, and their reputation and standing as regards the inherent ML/TF risk, and the effectiveness of their AML/CTF enforcement regime."

3.45 JMLSG Paragraph 4.45 provides:

"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."

3.46 JMLSG Paragraph 4.50 provides:

"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."

3.47 JMLSG Paragraph 4.51 provides:

"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 "*

3.48 JMLSG Paragraph 4.61 provides:

"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."

3.49 JMLSG Paragraph 4.63 provides:

"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."

Customer due diligence

3.50 JMLSG Paragraph 5.1.5 provides:

"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)."

3.51 JMLSG Paragraph 5.2.6 provides:

"Where a firm is unable to apply CDD measures in relation to a customer, the firm

(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 it ought to be making a report to the NCA, in accordance with its obligations under POCA and the Terrorism Act."

3.52 JMLSG Paragraph 5.3.20 provides:

"A firm must understand the purpose and intended nature of the business relationship or transaction to assess whether the proposed business relationship is in line with the firm's expectation and to provide the firm with a meaningful basis for ongoing monitoring. In some instances this will be self-evident, but in many cases the firm may have to obtain information in this regard."

3.53 JMLSG Paragraph 5.3.253 provides:

"For situations presenting a lower money laundering or terrorist financing risk, the standard evidence will be sufficient. However, less transparent and more complex structures, with numerous layers, may pose a higher money laundering or terrorist financing risk. Also, some trusts established in jurisdictions with favourable tax regimes have in the past been associated with tax evasion and money laundering. In respect of trusts in the latter category, the firm's risk assessment may lead it to require additional information on the purpose, funding and beneficiaries of the trust."

Enhanced due diligence

3.54 JMLSG Paragraph 5.5.1 provides:

"*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."

3.55 JMLSG Paragraph 5.5.2 provides:

"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."*

3.56 JMLSG Paragraph 5.5.4 provides:

"*In practice, under a risk-based approach, it will not be appropriate for every product or service provider to know their customers equally well, regardless of the purpose, use, value, etc. of the product or service provided. Firms' information demands need to be proportionate, appropriate and discriminating, and to be able to be justified to customers."*

3.57 JMLSG Paragraph 5.5.5 provides:

"A firm should hold a fuller set of information in respect of those business relationships it assessed as carrying a higher money laundering or terrorist financing risk, or where the customer is seeking a product or service that carries a higher risk of being used for money laundering or terrorist financing purposes."

3.58 JMLSG Paragraph 5.5.6 provides:

"*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."

3.59 JMLSG Paragraph 5.5.9 provides:

"The ML 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

3.60 JMLSG Paragraph 5.6.4 provides:

"*The ML 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."*

3.61 JMLSG Paragraph 5.6.14 provides:

"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. "*

3.62 JMLSG Paragraph 5.6.16 provides:

"In practice, the firm relying on the confirmation of a third party needs to know:

- *the identity of the customer or beneficial owner whose identity is being verified; the level of CDD that has been carried out; and confirmation of the third party's understanding of his obligation to make available, on request, copies of the verification data, documents or other information.*

In order to standardise the process of firms confirming to one another that appropriate CDD measures have been carried out on customers, guidance is given in paragraphs 5.6.30 to 5.6.33 below on the use of pro-forma confirmations containing the above information."

3.63 JMLSG Paragraph 5.6.24 provides:

"A firm must also document the steps taken to confirm that the firm relied upon satisfies the requirements in Regulation 17(2). This is particularly important where the firm relied upon is situated outside the EEA."

3.64 JMLSG Paragraph 5.6.25 provides:

"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)."

Ongoing Monitoring

3.65 JMLSG Paragraph 5.7.1 provides:

"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."*

3.66 JMLSG Paragraph 5.7.2 provides:

"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."

3.67 JMLSG Paragraph 5.7.3 provides:

"The essentials of any system of monitoring are that:

- it flags up transactions and/or activities for further examination;

- these reports are reviewed promptly by the right person(s); and

- appropriate action is taken on the findings of any further examination."

3.68 JMLSG Paragraph 5.7.4 provides:

"Monitoring can be either:

- in real time, in that transactions and/or activities can be reviewed as they take place or are about to take place, or

- after the event, through some independent review of the transactions and/or activities *that a customer has undertaken*

and in either case, unusual transactions or activities will be flagged for further examination."

3.69 JMLSG Paragraph 5.7.7 provides:

"In designing monitoring arrangements, it is important that appropriate account be taken of the frequency, volume and size of transactions with customers, in the context of the assessed customer and product risk."

3.70 JMLSG Paragraph 5.7.8 provides:

"Monitoring is not a mechanical process and does not necessarily require sophisticated electronic systems. The scope and complexity of the process will be influenced by the firm's business activities, and whether the firm is large or small. The key elements of any system are having up-to-date customer information, on the basis of which it will be possible to spot the unusual, and asking pertinent questions to elicit the reasons for unusual transactions or activities in order to judge whether they may represent something suspicious."

JMLSG Part II – Wholesale Markets (dated 19 November 2014)

Types of Risk

3.71 JMLSG Paragraph 18.14 provides:

"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."

3.72 JMLSG Paragraph 18.21 provides:

"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) Pension Plans

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	$17,000	$33,500	$50,000	$5,500
2013	$17,500	$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 you are at least 21 and have been working for your employer for at least one year, your employer must allow you 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 are 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.