The findings in this notice are those of the Authority and are not the subject of any judicial finding. It includes criticisms of A, B and C, who each received Decision Notices in relation to such criticisms. They referred their Decision Notices to the Upper Tribunal, which issued its decision on 13 June 2023. It found that none of them acted with a lack of integrity and rejected all of the Authority's findings to that effect. The Tribunal remitted their Decision Notices to the Authority with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal. The Authority has decided to take no further action against them.

The Decision Notices against A, B and C no longer apply.

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FINAL NOTICE

To: **Julius Baer International Limited**

Reference Number: **139179**

Address: **1 St Martins Le Grand, London, EC1A 4AS**

Date: **10 February 2022**

1. ACTION

1.1. For the reasons given in this Final Notice, the Authority hereby imposes on Julius Baer International Limited ("JBI") a financial penalty of £18,022,500 pursuant to section 206 of the Act.

1.2. JBI agreed at an early stage to settle all issues of fact and partially agreed liability (but not penalty). JBI therefore qualified for a 15% to 30% (stage 1) discount under the Authority's executive settlement procedures. The financial penalty imposed on JBI is the total of three separate penalty calculations, and the Authority has decided to apply a 30% discount to two of those penalties and a 25% discount to the other penalty. Were it not for this discount, the Authority would have imposed a financial penalty of £24,496,700 on JBI.

2. SUMMARY OF REASONS

2.1. Between 1 March 2007 and 7 July 2014 (the "Relevant Period") JBI breached the Authority's Principles for Businesses (the "Principles") as follows:

1) Between 7 July 2010 and 22 May 2014 (the "Principle 1 Relevant Period"), JBI breached Principle 1;

2) Between 1 March 2007 and 20 May 2014 (the "Principle 3 Relevant Period"), JBI breached Principle 3; and

3) Between 30 November 2012 and 7 July 2014, JBI breached Principle 11.

Breach of Principle 1 and Principle 11

2.2. From July 2010, JBI facilitated Finder's arrangements between Bank Julius Baer ("BJB") and an employee of a number of Yukos Group Companies, Mr Dimitri Merinson. Under these arrangements, BJB agreed to pay fees (known as 'Finders fees') to Mr Merinson for introducing Yukos Group Companies to the Julius Baer Group. This was done on the understanding that if those fees were paid to Mr Merinson, a director of various Yukos Group Companies, Mr Daniel Feldman, would ensure that Yukos Group Companies placed large cash sums with Julius Baer from which Julius Baer could generate significant revenues. Pursuant to these Finder's arrangements (which were initially agreed in July 2010 and amended in October 2010), Mr Merinson received three commission payments: in September 2010, December 2010 and February 2012. The rates of commission paid to Mr Merinson by Julius Baer were far in excess of the standard rates paid to Finders for introducing business. In the course of the Finder's relationship, Julius Baer paid Mr Merinson commission of approximately USD 3 million.

2.3. In order to generate large sums of money for Mr Merinson, JBI facilitated arrangements by which Julius Baer charged the Yukos Group Companies unusually high levels of commission for executing large foreign exchange ("FX") transactions. These FX transactions took place in August 2010, November 2010 and August 2011. The majority of the commission generated was then transferred to Mr Merinson, on Mr Feldman's instructions and in accordance with the Finder's arrangements facilitated by JBI; although the Julius Baer Group also benefited significantly from the transactions. JBI also facilitated Mr Merinson's transfer of 50% of the First and Second Commission Payments he received from Julius Baer, as a result of the first two FX transactions, to Mr Feldman.

2.4. Julius Baer's relationship with the Yukos Group Companies, Mr Feldman and Mr Merinson was managed on a day-to-day basis by a relationship manager on JBI's Russian and Eastern European Desk called C. C was also responsible for introducing Mr Feldman and Mr Merinson to the Julius Baer Group.

2.5. On 30 November 2012, concerns that JBI's arrangement with the Yukos Group Companies might involve elements of bribery and corruption were raised internally to JBI senior management. Prior to this, there were several other instances where serious concerns had been raised internally within both JBI and BJB. Despite these concerns being raised, JBI failed to report them to the Authority and continued to discuss doing further business with Mr Merinson and other Yukos representatives until March 2014.

2.6. On 22 May 2014, JBI reported potential acts of bribery and corruption to UK law enforcement. It referred to payments made by BJB to Mr Merinson in Finder's fees and stated that the payments may have been tainted by a 'scheme' by Mr Merinson and Mr Feldman, to defraud the Yukos Group Companies of money. JBI informed the Authority of this on 7 July 2014. The Authority expects to be notified of allegations of financial crime immediately and should have been promptly informed about the concerns raised on 30 November 2012.

2.7. JBI's conduct in its relationship with the Yukos Group Companies demonstrated a lack of integrity. JBI must have appreciated the clear risk that by entering into Finder's arrangements with Mr Merinson, in the circumstances and on the terms explained in this Notice, it might be facilitating or participating in financial crime. C negotiated and implemented the key arrangements and transactions relating to Julius Baer's relationship with the Yukos Group Companies, Mr Feldman and Mr Merinson, including negotiating the payment of large retrocession payments to Mr Merinson and arranging and overseeing the conduct of the FX transactions used to generate commission payments. There were numerous suspicious features of these arrangements, all of which were known to C. In particular, C was fully aware of the relationship between Mr Merinson and Yukos, and also aware that Mr Merinson had transferred 50% of the First and Second Commission Payments he received from Julius Baer to Mr Feldman. C had responsibility for managing the relationships with Yukos, Mr Feldman and Mr Merinson on behalf of JBI and was approved by the Authority to perform the CF30 (customer) approved function. In the circumstances, her knowledge of and relating to these relationships is to be attributed to JBI.

2.8. Further, the Authority considers the close involvement of a member of the Board of JBI in the misconduct to be particularly serious. At all relevant times, B was employed by BJB as the Sub-Regional (Market) Head for Russia and Eastern Europe and had functional line management responsibility for JBI's Russian and Eastern European Desk within Julius Baer's matrix management structure. He and his superior at BJB, A, approved of the key steps of the Yukos relationship on behalf of BJB and liaised extensively with C. B approved of these arrangements despite being aware of a number of matters which should have caused him to question the propriety of the arrangements put in place. These included Mr Merinson's links to Yukos, the unusual nature of Mr Feldman's requests to generate monies intended for Mr Merinson, the suspiciously high rates of commission that Mr Feldman was prepared to pay Julius Baer from Yukos' funds to facilitate those arrangements, the trading strategy adopted for FX transactions, and various attempts made by Mr Feldman and Mr Merinson to obfuscate the true nature of the arrangements in order to conceal the commission charged to the Yukos Group Companies.

2.9. On 30 March 2011, B joined the Board of Directors of JBI as a non-executive director. From this point, B's knowledge of the arrangements with Mr Merinson and the various suspicious features of those arrangements is to be attributed to JBI. In the period following his appointment to the Board, B permitted the Finder's arrangements with Mr Merinson to continue without taking any meaningful steps to address the risks arising from Julius Baer's relationship with Yukos and Mr Merinson. B approved the opening of a further account for a Yukos Group Company and allowed the payment of a third substantial commission payment to Mr Merinson. He did so notwithstanding concerns that had been raised internally regarding the arrangements with Mr Merinson (which were not adequately addressed) and further suspicious matters which arose in connection with the relationship with Mr Merinson.

2.10. Moreover, despite the concerns raised to JBI Compliance on 30 November 2012, JBI recklessly permitted its relationship with Mr Merinson and Yukos to continue until March 2014, when Yukos transferred its funds from BJB to another bank.

Breach of Principle 3

2.11. The matters arising from the Yukos relationship highlighted serious issues with JBI's governance and its control environment in relation to the management and oversight of Finder's arrangements during the Principle 3 Relevant Period.

2.12. Principle 3 requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. This includes the management of risks generally and in particular financial crime risks arising from the engagement by firms of third parties to refer, assist or facilitate the introduction of new clients.

2.13. JBI failed to ensure that it had adequate policies and procedures in place to identify and manage the risks arising in relation to Finders relationships connected to its clients. Prior to 11 June 2010, there were no policies which defined the rules and guidelines to be adopted in respect of the use of Finders within the Julius Baer Group or JBI. After that date, JBI relied on BJB policies and procedures in relation to Finders which were inadequate and other entities within the Julius Baer Group were responsible for managing and overseeing key aspects of Finder relationships, including the contractual terms and payment of fees. JBI failed to ensure that it identified and managed potential conflicts of interests, both between Finders and its clients and between the Julius Baer Group and its clients (which in relation to Yukos led to the client paying inflated levels of commission in order to fund the Finder's commission and to generate non-standard levels of commission for the Julius Baer Group). JBI also failed to ensure that clients were properly informed of its arrangements with Finders and consented to any payments made to Finders. As a result, JBI failed to adequately manage the serious financial crime risks posed by its use of Finders.

2.14. The Authority considers that inadequate policies and procedures in respect of JBI's use of Finders permitted JBI to engage with Mr Merinson, Mr Feldman and the Yukos Group Companies in a way which meant there was a serious risk of JBI facilitating and/or itself engaging in financial crime. This was exacerbated by the control that functional line management within BJB exerted over the business conducted by JBI, and contributed to members of staff not keeping JBI senior management and JBI Compliance informed about business they were undertaking.

2.15. JBI's failings are particularly serious because:

(1) there were numerous suspicious matters or 'red flags' arising from the Yukos relationship from July 2010 onward, including internal escalations, that at the very least gave rise to serious questions as to the propriety of the relationship with Mr Merinson and the probity of Mr Feldman's instructions. Despite concerns being raised, the involvement of senior individuals within BJB and JBI allowed the relationship to continue;

(2) potential weaknesses in JBI's governance and control environment were identified prior to and in the early part of the Principle 3 Relevant Period in a number of Audit Reports. However, these deficiencies remained unresolved for a number of years and contributed to the risk of JBI facilitating financial crime;

(3) the weaknesses in JBI's controls in relation to Finders were serious and systemic, creating a risk, which eventuated, that the Firm would become involved in potential financial crime. This risk and the failings that created it were so serious in nature that there was never a time during the Principle 3 Relevant Period when the business generated through Finders was appropriate for the Firm to conduct;

(4) JBI took an unacceptable amount of time to notify the Authority of the concerns it had identified;

(5) this type of misconduct undermines the integrity of the UK financial market.

2.16. In this Notice the Authority makes no criticism of any person other than JBI, BJB, C, B and A. Any facts or findings in this Notice relating to any function, committee or group of persons should not be read as relating to all the members of that function, committee or group, or even necessarily to any particular individual.

2.17. On 29 November 2017, JBI took the decision to no longer accept clients in the UK that are introduced by Finders. JBI has also taken steps to review its historical Finders' business and has provided redress to all clients, including Yukos, who confirmed they had not approved the Finder's arrangements connected with their accounts and who suffered loss as a result.

3. DEFINITIONS

3.1. The definitions below are used in this Notice:

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

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

"BJB" means Bank Julius Baer & Co. Ltd., a company incorporated in Switzerland;

“BJB Bahamas” means Julius Baer Bank (Bahamas) Limited, a company incorporated in the Bahamas;

“the BJB Bahamas Senior Manager” means the senior manager at BJB Bahamas who raised concerns about the Second FX Transaction;

“BJB Compliance” means BJB’s compliance department and collectively members of that department, which was based in Switzerland;

“BJB Guernsey” means BJB’s Guernsey branch;

“BJB Legal” means BJB’s legal department and collectively members of that department, which was based in Switzerland;

“BJB Senior Manager A” means one of the senior managers at BJB;

“BJB Senior Manager B” means another of the senior managers at BJB;

“BJB Germany” means Bank Julius Bär Deutschland AG;

“BJB Singapore” means BJB’s Singapore branch;

“BJB Switzerland” means BJB’s office in Zurich;

“Booking Centre” means an entity of the Julius Baer Group which had permission to provide clients with banking, dealing and custody services. The Julius Baer Booking Centres were all located in countries outside of the UK (including in Switzerland, Guernsey, Bahamas, and Singapore);

“Commission Payments” means payments made to Mr Merinson by Julius Baer following the execution of the First FX Transaction, the Second FX Transaction and the Third FX Transaction;

“the First Commission Payment” means the payment made to Mr Merinson on or around 1 September 2010;

“the Second Commission Payment” means the payment made to Mr Merinson on 31 December 2010;

“the Third Commission Payment” means the payment made to Mr Merinson on 1 February 2012;

“Co-operation with Finders Policy” means BJB’s policy document titled “Cooperation with Finders” which was effective from 11 June 2010;

“CoY” means a derivate instrument combining an FX linked deposit with a currency option, with the aim of providing a higher yield or return than that available for a standard deposit. The FX linked deposit is higher risk than a normal deposit as it is exposed to FX rate movements;

“DEPP” means the section of the Handbook entitled Decision Procedure and Penalties Manual;

“Fair Oaks” means Fair Oaks Trade and Investment Limited;

“Finder” means an external third party engaged by Julius Baer with the sole task of introducing potential clients to Julius Baer in return for commission, also referred to by Julius Baer as an introducer;

“FX” means forex or foreign exchange;

“FX Transactions” means the First FX Transaction, the Second FX Transaction and the Third FX Transaction;

“First FX Transaction” means collectively the series of FX transactions conducted by Julius Baer for Yukos Capital between 11 and 13 August 2010;

“Second FX Transaction” means collectively the series of FX transactions conducted by Julius Baer for Fair Oaks on 23 November 2010;

“Third FX Transaction” means the FX transaction converting EUR 7,000,000 into USD conducted by Julius Baer for Fair Oaks pursuant to an order placed on 15 August 2011;

"Handbook" means the Authority's Handbook of rules and guidance;

"JBI" or "the Firm" means Julius Baer International Limited;

"JBI Compliance" means JBI's compliance department and collectively members of that department, based in London;

"the JBI Line Manager" means C's line manager at JBI;

"the JBI Trader" means the trader at JBI who was involved in the FX Transactions;

"Julius Baer Group" or "Julius Baer" means the Julius Baer Group of companies which includes: BJB, BJB Bahamas, BJB Singapore, BJB Guernsey, BJB Switzerland and JBI;

"PRIN" means the Principles for Businesses part of the Handbook;

"Principle 1 Relevant Period" means the period between 7 July 2010 and 22 May 2014;

"Principle 3 Relevant Period" means the period between 1 March 2007 and 20 May 2014;

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

"the Warning Notice" means the warning notice given to JBI dated 22 April 2020;

"Yukos", "Yukos Group" or "Yukos Group Companies" means the Yukos group of companies which includes "Yukos Capital", "Yukos International", "Yukos Hydrocarbons" and "Fair Oaks";

"Yukos Capital" means Yukos Capital S.a.R.L.;

"Yukos Hydrocarbons" means Yukos Hydrocarbons Investments Limited; and

"Yukos International" means Yukos International UK BV.

4. FACTS AND MATTERS

Background

JBI corporate structure

4.1. JBI is a UK incorporated company and wholly owned subsidiary, together with BJB, of the Julius Baer Group. The Julius Baer Group undertakes private banking and is based in Switzerland. JBI has been authorised since 2001 to provide investment advisory and management services, but it is not authorised as a bank in the UK. Consequently, JBI's clients are also clients of BJB and it is BJB which provides clients with custodian, dealing and banking services via its Booking Centres. JBI's revenues are therefore dependent on the amounts that BJB determines should be allocated to it, as it is BJB that earns revenue from the activities generated from clients introduced by JBI, and JBI does not charge its clients directly.

JBI's Russian and Eastern European Desk

4.2. JBI's Russian and Eastern European Desk reported to the JBI Management Committee. It also had a functional reporting line to B, the Sub-Regional (Market) Head for Russia and Eastern Europe from 2008 to 2014, who was an employee of BJB. B reported to A, Regional Head for Latin America, Spain, Russia, CEE and Israel, from January 2010 until March 2011. A was an employee of BJB and a member of BJB's Executive Board, where he held the position of non-executive director. After March 2011, B reported to another Senior Executive at BJB who also held a position on the Board of JBI. From 30 March 2011 until 18 June 2014, B was also a non-executive director of JBI and approved by the Authority as a CF2 (Non-Executive Director) controlled function holder.

4.3. C was employed by JBI as a Relationship Manager on JBI's Russian and Eastern European Desk from 1 January 2009 until 28 November 2012, reporting to the JBI Line Manager. During that period, C held the CF30 (customer) controlled function. Prior to joining JBI, C had held the CF21 (investment adviser) controlled function at a wealth and asset management firm from 12 April 2005 to 31 October 2007; and the CF30 controlled function at the same firm from 1 November 2007 to 12 December 2008. JBI's Russian and Eastern European Desk reported to JBI's Management Committee. It

also had a functional reporting line to B, as the Sub-Regional (Market) Head, who therefore had functional line management responsibility for C.

Yukos Group accounts with Julius Baer

4.4. The Yukos Group comprises a number of holding companies incorporated in various jurisdictions which own the residual non-Russian assets of the Russian oil group of the same name. The Yukos Group was declared bankrupt in disputed circumstances in 2006 and a number of companies in the group have been and continue to be involved in litigation in an effort to recover monies to distribute to shareholders and creditors.

4.5. Between November 2009 and 28 November 2012, C acted as a JBI relationship manager for certain of the Yukos Group Companies. During the Relevant Period, the Yukos Group Companies held the following accounts with Julius Baer:

(1) Yukos Hydrocarbons, a company incorporated in the British Virgin Islands, opened an account with BJB Singapore in 2008 (in respect of which the JBI Line Manager was the relationship manager) and an account with BJB Guernsey in July 2011 (in respect of which C was the relationship manager);

(2) Yukos Capital, a company incorporated in Luxemburg, opened an account with BJB Switzerland in November 2009 and an account with BJB Bahamas in July 2010 (C was the relationship manager for both accounts); and

(3) Fair Oaks, a company incorporated in the British Virgin Islands and the wholly owned subsidiary of Yukos Hydrocarbons, opened an account with BJB Bahamas in September 2010 (with C as the relationship manager).

4.6. C dealt principally with two individuals, Mr Feldman and Mr Merinson, in relation to the Yukos Group Companies' accounts. In June 2009, C recorded that Mr Merinson, a Russian citizen residing in the Netherlands, was employed as the Financial Controller and Treasurer for Yukos International (the parent company of Yukos Capital). She described him in an email dated 9 October

2009 to B as the Chief Financial Officer of both Yukos Capital and Yukos International, and in an email dated 13 November 2009 to BJB Compliance, copying B, as the Chief Financial Officer of Yukos Capital. In so describing Mr Merinson, irrespective of his precise job title, C conveyed her understanding that Mr Merinson had responsibility for oversight and control of financial operations at Yukos International and Yukos Capital. He was a Yukos employee throughout the period of JBI's relationship with the Yukos Group Companies. Mr Feldman was a lawyer, practising in the United States of America. He was also the sole director of Yukos Capital, and a director of Yukos Hydrocarbons and Fair Oaks.

4.7. Figure 1 below illustrates the above information regarding the Yukos Group and its accounts at Julius Baer:

Figure 1

Yukos Group

Yukos Finance B.V.

Stichting Administratiekantoor Financial Performance Holdings

Yukos International UK B.V.

Merinson as Financial Controller & Treasurer (according to C records in 2009)

Financial Performance Holdings BV

Yukos Capital S.a.R.L.

Sole director - Feldman

CFO - Merinson (according to C emails in 2009)

JB accounts opened: (1) Nov 2009 (Zurich) and (2) July 2010 (Bahamas)

[Relates to First FX Transaction of 11 & 13 Aug 2010]

Yukos Hydrocarbons Investments Limited

Directors - Feldman + 3 others

JB accounts opened: (1) Dec 2008 (Singapore) and (2) July 2011 (Guernsey)

Fair Oaks Trade and Investment Limited

Directors - Feldman + 3 others

JB account opened 7 Sept 2010 (Bahamas)

[Relates to Second FX Transaction of 23 Nov 2010 and Third FX Transaction of 15 August 2011]

Companies with accounts with Julius Baer

Finders at JBI

4.8. One of the ways that JBI obtained new business was through 'Finders'. BJB defined Finders (also called 'introducers') in its Co-operation with Finders Policy as 'natural and legal persons … who introduce potential clients to [BJB] in return for remuneration. The sole task of the finder is to introduce clients to [BJB]'.

4.9. During the period from 1 March 2007 (the start of the Principle 3 Relevant Period) to 11 June 2010, there were no policies which defined the rules and guidelines to be adopted in respect of the use of Finders within the Julius Baer Group or JBI. After that date and until the end of the Relevant Period, relationship managers were required to follow BJB policies and procedures for the assessment of Finders which were inadequate and JBI had a limited role in approving particular arrangements with Finders or managing Finders' relationships.

JBI's management of its relationships with Mr Merinson, Mr Feldman and Yukos

Agreement for Mr Merinson to act as Finder for Yukos

4.10. In June 2009, C had a meeting with Mr Merinson at which they discussed the opening of an account for Yukos International. It was also agreed that Mr Merinson would be set up as a Finder and Mr Merinson completed the documents required to open a personal account.

4.11. C subsequently arranged for a personal account for Mr Merinson to be opened with BJB Singapore in July 2009. Mr Merinson provided C with 'comprehensive background information both on himself and the company'. C compiled and signed a due diligence report on Mr Merinson (which was required in order to open his account) which stated that Mr Merinson had 'established' Yukos International and still worked there as the 'Financial Controller and Treasurer'. C also completed an account opening form which described Mr Merinson as an employee of Yukos International and his position as 'Advisor'. BJB Singapore Legal and Compliance sought approval from B, as the Sub-Regional (Market) Head for Russia, for the opening of Mr Merinson's account, and provided him with copies of due diligence information and information from Mr Merinson's account opening forms. B responded by giving his approval.

4.12. In October and November 2009, C corresponded with B and others, including BJB Compliance, regarding the opening of accounts for Yukos International and Yukos Capital. C explained to B that she had discussed the account openings with Mr Merinson, describing him as 'my Russian contact […] the Chief Financial Officer of both companies […]'. In a subsequent email to BJB Compliance regarding the opening of an account for Yukos Capital, to which B was copied, she also explained that 'When I need to communicate with the client, I will contact Dmitri Merinson, my Russian contact who is the CFO of Yukos Capital S.a.R.L. and who attends all the board meetings'.

4.13. A memorandum sent to A on 3 November 2009 by a BJB senior manager regarding the opening of the Yukos International account described it as 'not plain vanilla', due to its directors being US residents but recommended to A that it should nonetheless be approved. The memorandum was copied to B and noted that B would be happy to discuss the matter with A in more detail. In his covering email, the BJB senior manager informed A that, as A was about to go on a business trip, he would take the matter up with another BJB manager, who replied on 5 November 2009, copying in BJB Compliance but not A, that he had no objection.

4.14. An account for Yukos Capital was opened with BJB Switzerland on 13 November 2009. The account opening was approved by B and BJB Compliance. The JBI Line Manager was also aware of the account opening request. It appears that A's approval for the opening of the Yukos Capital account was not sought. The Authority has found no evidence that Mr Merinson was referenced as a Finder on any documentation relating to the opening of the Yukos Capital account.

4.15. On 7 July 2010, C met with Mr Feldman and Mr Merinson. They told her they were expecting a large payment to be made to Yukos Capital (in the region of GBP 280 million to GBP 430 million), as a result of a successful litigation award.

4.16. According to C's notes of this meeting, Mr Feldman asked if the Julius Baer Group could pay a 'one-off fee' to Mr Merinson, totalling around 1% of the total assets on the account. C told Mr Feldman that this 'could only be done if the bank has a guaranteed [return on assets] of at least 1.2% so that we still get 20 basis points'. Mr Feldman agreed to this. C's notes

also stated that existing funds would remain with, and further funds would be paid into, Yukos' accounts with Julius Baer, if the bank could arrange the 'one off retrocession payment'. This payment was to be funded by a CoY on which Julius Baer would charge commission of 1.4%, 70% of which would then be paid to Mr Merinson as a Finder's fee, a proportion far in excess of the standard rates paid to Finders by Julius Baer.

4.17. The effect of what was discussed at the meeting on 7 July 2010 was that if Julius Baer facilitated payment to Mr Merinson of a large sum of money, Mr Merinson and Mr Feldman would ensure that Yukos would place significant funds with Julius Baer. C therefore believed, as a result of what was discussed at the meeting on 7 July 2010, that Julius Baer could secure further business if it facilitated payment to Mr Merinson of a large sum of money, via a Finder's fee. In negotiating the level of fees that Julius Baer proposed to charge Yukos Capital, she was aware that Julius Baer needed to increase its usual fees in order to take into account both the commission it required and the proposed retrocession payment to Mr Merinson.

4.18. C stated to the Authority at interview that Mr Feldman told her that Yukos wished BJB to pay Mr Merinson a Finder's fee in order to incentivise him and reward him for assisting Yukos with its litigation. However, the Authority has seen no written records to confirm this; C did not record this in her contact report or in any subsequent correspondence regarding the proposed payment. C told the Authority she did not probe Mr Feldman's explanation at that time, for example, by seeking to understand why Yukos wished to remunerate Mr Merinson, an employee who received a salary from Yukos, via a Finder's fee rather than paying him directly.

4.19. In an email dated 7 July 2010, C outlined to B the arrangements she had discussed with Mr Feldman and Mr Merinson and asked for his approval. She also copied the JBI Line Manager into the email. C explained in her email:

(1) The proposed arrangement involved payment of a 'one-off fee' to Mr Merinson, whom she referred to as the 'introducer registered on the [Yukos Capital] account', equating to approximately 1% of the total assets on the Yukos Capital account. In her email C noted that 'this is just

to indicate the kind of amount that they are hoping Mr Merinson will receive although of course contractually it could not be worded like that'.

(2) She had told Mr Feldman that the payment to Mr Merinson could only be done if Julius Baer had a guaranteed return on assets of at least 1.2% so that it maintained its profit margin of 20 basis points. B was therefore aware that the proposed payment was to be funded by Yukos.

(3) The fee to be paid to Mr Merinson could be generated from a large 'USD/GBP CoY' on which Julius Baer would apply 1.4% commission and pay 70% of this to Mr Merinson. C also stated that as part of the arrangement Julius Baer would not be required to pay Mr Merinson the standard Finder's fee of 25% of Julius Baer's net revenues (which it appears had previously been agreed in principle with him) 'until at least 1 year after the credit of the funds to the [Yukos Capital] account'.

4.20. C stated, 'If we can do this for the client, the funds will stay with us […] there will be further substantial funds to come'. The non-standard one-off fee to be paid to Mr Merinson was therefore directly linked to the promise of significant future inflows from the Yukos Group. The level of funds proposed, as well as the political sensitivities to dealing with Yukos, made Yukos a significant client for Julius Baer.

4.21. The Authority has not identified any documents confirming B's approval of the arrangements set out in C's email. However, there is no evidence that B objected to the proposed arrangements and, given that his approval was expressly sought and that payment on similar terms was subsequently made to Mr Merinson, the Authority has concluded that it is highly likely that B did approve them.

4.22. Shortly after sending her email on 7 July 2010, C met with Mr Merinson and Mr Feldman again. During that meeting, after the matters outlined below were discussed, they were joined by a JBI colleague from another department. The contact report stated that at this meeting, Mr Feldman informed C that Yukos Capital was due to receive the equivalent of approximately USD 422m in GBP, that the funds would need to be converted to USD, and that the intention was that commission of up to USD 1,250,000 would be generated on the FX transaction, 80% of which would be paid to Mr Merinson. The remaining 20% of the commission (up to USD 250,000) would be retained by

BJB, giving a return to Julius Baer of six basis points. The contact report was incorrectly dated 7 August 2010, was filed on JBI's system on 19 August 2010, and appears to have been drafted after the First FX Transaction took place (see paragraph 4.28 below). The Authority considers this might account for the differences between the information recorded in this report and C's notes of the meeting earlier that day.

4.23. Later in the afternoon of 7 July 2010, C left the office to go on leave until 2 August 2010.

4.24. On 8 July 2010 C's assistant completed a 'Finder's Assessment Form' for Mr Merinson which was signed on behalf of C by the JBI Line Manager. The form did not record that a large 'one-off' payment had been agreed with Mr Merinson, even though it contained a field to be completed where a 'special model' of remuneration had been agreed.

4.25. C's assistant also emailed Mr Merinson a written Finder's agreement with BJB which provided for payment of Finder's fees equal to 25% of the net income generated by BJB from clients introduced by Mr Merinson (one of four standard remuneration models used by BJB for Finders). The agreement did not refer to the large 'one-off' payment that had been agreed but, in her covering email to Mr Merinson and Mr Feldman, C's assistant stated that the 'one off payment that [C] has discussed and confirmed with you will be organised separately from [the Finder's] agreement (in case you wonder why it is not included)'. Mr Merinson signed and returned the Finder's agreement which he dated 7 July 2010.

4.26. Contrary to usual procedure and in particular to the provisions of BJB's Co-operation with Finders Policy, the non-standard remuneration agreed with Mr Merinson was not recorded in a side-letter or an appendix to the Finder's agreement. The Authority has not seen any evidence that, at the time BJB entered into the Finder's agreement with Mr Merinson, compliance staff at JBI or BJB were aware that a large 'one-off' payment had been separately agreed with Mr Merinson.

4.27. On 16 July 2010, a BJB senior manager sent an email to the JBI Line Manager requesting details of the proposed Finder's arrangement with Mr Merinson so that BJB Senior Manager B could 'quickly discuss' it with A, whose approval of

the non-standard terms of the agreement was required under BJB's Co-operation with Finder's Policy. The email added that B 'already supports the case'.

First FX Transaction

4.28. On 11 August 2010, approximately GBP 271 million was received into Yukos Capital's account with BJB Switzerland.

4.29. Between 11 and 13 August 2010, on the instructions of Mr Feldman who confirmed in a handwritten note dated 12 August 2010 his awareness of the rates used for the transactions, C and the JBI Trader arranged for currency trades to be executed by BJB on behalf of Yukos Capital, converting GBP 271,233,490 to USD 422,419,038. The transactions were executed by BJB at an average market rate of 1.566051, but Yukos Capital was charged the rate of 1.5574. The difference between the two rates was taken by BJB as commission, generating commission in excess of USD 2.34 million from the transaction and resulting in a commission rate of approximately 0.55% of the principal sum converted, which with Mr Feldman's agreement was to fund both the one-off payment to Mr Merinson and the commission required by BJB. At the time, Julius Baer usually applied an FX commission rate of 0.15% for amounts over CHF 1 million and 0.05% for conversions over CHF 5 million. The commission rate charged on this transaction was therefore approximately 11 times the standard commission rate for a transaction of this size. A informed the Authority that this high level of commission did not reflect the costs of executing this specific transaction, but rather what Julius Baer required to cover the overall costs of servicing a private banking relationship with Yukos, including the payment of a Finder's fee to secure that business. This was also C's understanding. However, the Authority does not consider that there was a proper commercial rationale for making a payment to Mr Merinson in this way; if Yukos had wished to pay Mr Merinson it could have done so directly, rather than through such an arrangement.

4.30. C, Mr Feldman and Mr Merinson were present while the JBI Trader instructed BJB to carry out the trades, including while trading was conducted overnight. C's contact report and a subsequent email dated 16 August 2010 to BJB Compliance, B and A, copying in the JBI Line Manager, stated that Mr Feldman and Mr Merinson had remained in JBI's offices from 8am on Thursday morning until 9am on Friday morning and the JBI Trader had guided them in order 'to get the best possible rate and thereby maximise the

commission'. C informed the Authority at interview that there was 'a pre-agreed commission level that was going to have to be charged for the foreign exchange', and that ideally that level should not result in the rate charged to Yukos Capital being worse than the worst rate over those two days. The Authority considers that the trading approach used was intended to ensure that the overall rate achieved, after the addition of a commission rate which was to fund BJB's commission and Mr Merinson's retrocession payment, would be no worse than the worst rate available on the market on the day, with the consequence that any third party with cause to review Yukos Capital's records would simply see the booked rate (1.5574), and would be unaware that the transaction had been executed at a much more favourable rate by BJB and that the commission was of an unusual size.

4.31. C met with a member of JBI's Board shortly after the trades had been executed. The Board member then emailed B on 13 August 2010, copying in the JBI Line Manager, to 'share [his] excitement' about C's 'success'. In his email, he noted that 'assets in excess of 300mUSD have arrived and that an FX transaction to convert them from GBP into USD has yielded about USD 500,000 in commission for JB'. In fact, as noted above, Julius Baer had generated commission of approximately USD 2.34 million from the transaction but it retained approximately USD 500,000 after payment of the Finder's fee to Mr Merinson. This was twice the amount that had been anticipated when the FX transaction had been discussed at C's second meeting with Mr Merinson and Mr Feldman on 7 July 2010.

First Commission Payment to Mr Merinson

4.32. As mentioned in paragraph 4.30 above, on 16 August 2010, C emailed BJB Compliance, B and A, copying in the JBI Line Manager, providing details of the First FX Transaction. C's email confirmed the amount of total commission, the amount earned in commission by Julius Baer (11 basis points) and that 80% of the commission, equal to USD 1,877,152.74, should be transferred to Mr Merinson as the Finder on the account. The Authority considers that both B and A would have appreciated that the amount of commission which Julius Baer had generated from the First FX Transaction was significantly in excess of the amount that would normally be associated with a large FX trade.

4.33. B forwarded C’s email to the JBI Line Manager and stated ‘Between our discussion and the situation we have now I am missing an update. In the meantime I could talk to C.’ B and A subsequently verbally confirmed to C their approval of the First Commission Payment to be made to Mr Merinson. The Authority has not seen any evidence that either B or A questioned the commercial rationale of Yukos Capital in agreeing the First FX Transaction and what interest Yukos Capital would have in maximising the commission payable. B was also aware that the JBI Trader made use of the volatility of the FX trading to maximise the commission, rather than securing best execution for Yukos Capital, Julius Baer’s client, and charging the standard commission rate for a transaction of this size.

4.34. Earlier on 16 August 2010, C met with Mr Merinson, with Mr Feldman attending by telephone. According to C’s note of the meeting, Mr Merinson asked that the payment of commission be made to him with the payment reference ‘Investment Capital Gain’. Mr Merinson also informed C that he was ‘going to transfer a proportion of the commission received following the First FX Transaction away to Daniel Feldman’s Julius Baer account’. C did not raise any concerns or take any other steps in relation to Mr Merinson having informed her of his intention to share the commission paid to him by Julius Baer with Mr Feldman. Although recorded in her file note, it seems that, except for her assistant (who entered the file note on JBI’s system) and possibly the JBI Line Manager (who in April 2011 authorised two cash transfers from Mr Merinson’s personal account for the benefit of Mr Feldman (see paragraph 4.87 below)), C did not at any time share this information with anyone else at Julius Baer, despite having the opportunity to do so. In particular, C did not mention this information in the email that she sent to BJB Compliance, B and A later that day (see paragraph 4.32 above) which updated them on the current situation with Yukos Capital, including matters that had been raised by Mr Feldman in the meeting.

4.35. On 19 August 2010, C requested, copying in B and A, that the First Commission Payment be paid to Mr Merinson and that payment be made ‘preferably with the payment reference ‘Investment Capital Gain’, ([…] to ensure that it is not classified as employment income which is taxed differently in the Netherlands)’. BJB Legal refused to agree to this request but did agree it could be stated that the payment was not employment income. It was obvious that if the payment was referenced as an ‘Investment Capital Gain’ this would be

an untrue statement. This should have raised suspicions for B and A.

4.36. BJB Compliance raised concerns about the proposed payment to Mr Merinson, noting that payment of 80% commission on an FX trade was not in line with Mr Merinson's Finder's agreement with BJB and that A's approval would be required as the payment of an 80% Finder's fee exceeded BJB's 'maximum standards'. A responded on 20 August 2010, copying in B (amongst others) stating 'We are in front of a "fait accompli" so not much room for objection, unless we wish to transfer the relationship to another financial institution'. This suggests that A considered that Julius Baer's banking relationship with Yukos Capital depended on Mr Merinson receiving the First Commission Payment.

4.37. At interview, A recalled a conference call taking place at his behest between himself, B and C prior to any fees being paid to Mr Merinson, so that A could ask C about the connection between Mr Merinson and Yukos. He said that C told him during that call that Mr Merinson was a former employee of Yukos and was currently acting as a consultant to Yukos. A said that during that call he approved the payment of a large retrocession to Mr Merinson after satisfying himself that the transaction was commercially beneficial to the Julius Baer Group. A said he could not recall the precise date of the call, but that it was definitely prior to any payment being made to Mr Merinson. A also stated that "it was he who insisted on a one-off payment for Merinson's Finders fee." C told the Authority that she was open about Mr Merinson's employment relationship with Yukos. B did not refer to the call at interview and the Authority has seen no evidence to confirm whether a call took place at this time or the contents of any discussions, but C had previously told B and others that Mr Merinson was an employee of Yukos (see paragraphs 4.6 & 4.12 above) and also told BJB Compliance this on 19 August 2010 (see paragraph 4.38 below).

4.38. Also, on 19 August 2010, a member of BJB's Business & Operational Risk Division emailed BJB Compliance and stated that their attention had been drawn to the First FX Transaction. They explained that they had taken a closer look at the relationship with Yukos and the transaction documentation and had a number of questions, including in respect of the role of Mr Merinson. Later that day, at BJB Compliance's request, C emailed BJB Compliance 'a little background on the recent inflow to the JB Zurich account of Yukos Capital SaRL'. In respect of

Mr Merinson's role, C stated: 'The finder registered on these accounts is Dmitry Merinson who works as the Financial Director for Yukos International U.K. BV. This is a Dutch company within the Yukos group structure and it is indirectly the ultimate 100% shareholder of Yukos Capital SaRL. He does not have signing power on any of the group's companies or bank accounts but he is heavily involved in choosing which banks should hold funds awarded to subsidiary companies of Yukos International U.K. BV. he introduced the business to me and is registered on the accounts for which I am the Relationship Manager as the Finder (in accordance with his JB Finder agreement).'

4.39. On 1 September 2010, BJB Compliance asked C in an email if there was an agreement between Yukos Capital and Mr Merinson that he was entitled to receive Finder's fees from BJB and, noting that C had stated that he was the 'Financial Director for Yukos International', stated that this needed to be clarified for conflict of interest reasons. C called BJB Compliance and explained that Mr Feldman knew about BJB's Finder's agreement with Mr Merinson and the large one-off payment that was being made to him. C agreed with BJB Compliance that she would get written confirmation from Mr Feldman expressly confirming this. She informed BJB Compliance later that day that she had spoken to Mr Feldman and he was happy to provide written confirmation but he had already left London to catch a flight. BJB Compliance confirmed that C could obtain Mr Feldman's written confirmation when she next met with him. At no point in this correspondence did C inform BJB Compliance of Mr Merinson's intention to share the commission paid to him by Julius Baer with Mr Feldman. C should have realised that this meant that Mr Feldman's confirmation would not resolve BJB Compliance's conflict of interest concerns.

4.40. On or around 1 September 2010, the First Commission Payment of approximately USD 1.75 million was paid into Mr Merinson's BJB Singapore account by BJB. This appears to have been the amount payable after deducting VAT, the gross amount being approximately USD 1.87 million. B signed a letter to Mr Merinson dated 3 September 2010 regarding the payment which stated that BJB confirmed that 'contrary to [the Finder's agreement], this represents a one-off payment and no further payments are or will become due with respect to the specific client introduced'.

4.41. On 3 September 2010, C's assistant sent an email to Mr Feldman and another Fair Oaks director, copying in C, confirming that the new

Fair Oaks account was open and that JBI would proceed to make a transfer from the Yukos Capital account to Fair Oaks account as per their instructions. On 7 September 2010, the other Fair Oaks director asked for confirmation of the credit to Fair Oaks' account. C confirmed the transfer of USD 422,144,704 the same day.

Amendment to Mr Merinson's Finder's agreement with BJB

4.42. C met with Mr Feldman and Mr Merinson on 13 October 2010. She did not obtain the written confirmation BJB Compliance had requested from Mr Feldman at this time, although C told the Authority that she provided Mr Feldman with draft letters to be signed by himself and another director of Yukos Hydrocarbons in September or October 2010. The letters were finally signed, by Mr Feldman only, on 24 February 2011 (see paragraph 4.84 below).

4.43. During their meeting on 13 October 2010, Mr Feldman informed C that Yukos Capital was due to receive approximately USD 400 million from four successful pieces of litigation. C agreed that she would try to secure the following terms:

(1) an increase in the Finder's fee recorded in Mr Merinson's Finder's agreement from 25% to 35% of the net income generated by Julius Baer from clients introduced by Mr Merinson; and

(2) four additional 'one-off' payments to Mr Merinson, calculated as 70% of Julius Baer's commission on four large transactions to take place by October 2011.

4.44. C agreed to try to secure the above terms so long as:

(1) Julius Baer could charge Yukos 12 basis points on un-invested assets (at that time around USD 372 million); and

(2) a proposed payment of USD 50 million from Yukos Capital's account with Julius Baer would be paid into the Yukos Hydrocarbons account with BJB Singapore rather than to an account with another bank (the funds would thus stay within Julius Baer).

4.45. From her notes of the meeting, it is clear that C's expectation was that in respect of each large inflow of funds to Yukos Capital's account Julius Baer would arrange an FX transaction 'which would immediately earn the bank up to 15 basis points, while up to 35 basis points would be paid to [Mr Merinson]'. Those funds would then remain with Julius Baer 'for at least 3 years charging even for custody of non-invested assets'.

4.46. On or around 13 October 2010, C met with A and discussed the proposed arrangements.

4.47. On 15 October 2010, C sought approval from A to the proposal by email, copied to B. The approval of A, as the Region Head, for the non-standard remuneration rate was required under the Co- operation with Finders Policy. The proposal put forward by C again involved Julius Baer increasing its usual fees in order to take into account both the payment of the retrocession to Mr Merinson and the commission required by Julius Baer, whilst also ensuring that Julius Baer retained the large sums already deposited with it, and would receive further large inflows. A emailed B and BJB Senior Manager A stating that 'Your recommendation should be prior'.

4.48. On 22 October 2010, BJB Senior Manager A, following a discussion with B, sent an email to C (copying in B and the BJB Bahamas Senior Manager) asking her to send a short and simple business case to justify the increase in the Finders fees for Mr Merinson, including estimating recurrent income to which the proposed 35% Finder's commission rate would apply and 'one shot transaction income' to which the proposed rate of 70% would apply. C responded by email dated 25 October 2010 (copying in A as well as B and the BJB Bahamas Senior Manager), that she had discussed the proposal in detail with A when he was in London and he had given her 'the impression that he understood the scenario and would respond positively to my request very quickly'. She also set out her expectations of the future inflows of cash to Julius Baer from Yukos Capital and the potential revenues this would generate, which she indicated would be in jeopardy if Mr Merinson's Finder's agreement rate was not raised to be in line with the rate he had apparently agreed with another financial institution:

(1) For 2011, she estimated gross revenues of USD 4,258,475 and net revenues of USD 1,946,950; the difference of USD 2,311,525 being the amount to be

paid to Mr Merinson. Of the gross revenue for 2011, USD 2,345,000 was expected to be generated by one-off large transactions. C's email explained that there would be 'an opportunity to do one-off high revenue-yielding transactions' on each inflow and that it was proposed to pay Mr Merinson 70% of commission on four large transactions. The net income for Julius Baer from these transactions was estimated as USD 703,791.

(2) For 2012, she estimated gross revenues of USD 987,600 and net revenues of USD 641,340; again, the difference being the amount to be paid to Mr Merinson.

4.49. On 25 October 2010, A emailed BJB Senior Manager A and C to say that he was on vacation but had 'discussed the issue with [B] prior to giving my no objection'. C and B subsequently had a meeting to discuss the proposal and, on 28 October 2010, B emailed BJB Senior Manager A and C, copying in A, stating that he approved the 'next steps of the relationship'. The Authority has seen no evidence that C, A, B or BJB Senior Manager A queried why Mr Feldman wished to ensure that Mr Merinson received further non-standard retrocessions of this size, despite the fact such payments would significantly drive up Yukos' transaction costs.

4.50. The Authority has seen no evidence that JBI Compliance or BJB Compliance were informed or consulted about the proposal at this time.

4.51. On 23 November 2010, Mr Merinson signed an addendum to his Finder's agreement with BJB. This included the increased Finder's fees of 35% of the net income generated by BJB, but, contrary to usual procedure and in particular to the provisions of BJB's Co-operation with Finders Policy, did not record the four 'one-off' payments agreed based on 70% of Julius Baer's net revenues from four large transactions. B and A should have been aware of this as C sent an email to B and A the following day which attached the addendum signed by Mr Merinson. In addition, prior to this, on 28 October 2010, C copied B and A into an email asking for a new Finder's agreement for Mr Merinson to be prepared giving him 35% of BJB's net revenues rather than 25%, but which made no reference to the four 'one-off payments' that had been agreed.

Second FX Transaction

4.52. Also on 23 November 2010, C arranged for the JBI Trader to carry out a further set of FX transactions on Fair Oaks' BJB Bahamas account at commission rates which exceeded Julius Baer's standard margin rate – the Second FX Transaction. C emailed Mr Feldman immediately before the transaction took place, to keep him informed of the approach being adopted by the JBI Trader. The funds used for the Second FX Transaction comprised a portion of the funds which had been converted into USD by the First FX Transaction; the sum of approximately USD 68 million was converted to EUR 50,040,473, generating a total commission of USD 1,062,000. The reason for the transaction was set out in a letter from Mr Feldman and another Fair Oaks director to C dated 17 November 2010, which stated that EUR 50 million was needed 'to cover potential expenses incurred by the group'.

4.53. C agreed with Mr Feldman that Mr Merinson could utilise one of the four 70% retrocession payments previously approved by B and A in relation to the Second FX Transaction. C did not inform JBI or BJB senior management of the Second FX Transaction, or of the intention to use one of the four 70% retrocession payments in relation to it, prior to the trading taking place.

4.54. The Second FX Transaction converted USD 68 million at a market rate of 1.33855. The rate charged to Fair Oaks was 1.3589, which included the total commission charged (USD 1,062,000, a rate of approximately 1.56%), 30% of which was retained by Julius Baer. Julius Baer's retained commission was equivalent to it charging Yukos a commission rate of 0.47% of the principal amount, i.e. approximately nine times Julius Baer's standard FX commission rate for transactions of this size. The total commission rate (1.56%) for the Second FX Transaction was approximately 30 times higher than Julius Baer's standard FX commission rate for transactions of this size and consequently significantly higher than a client would normally pay Julius Baer for an FX transaction.

4.55. The commission charged for the Second FX Transaction (1.56%) was much higher than that outlined by C in her email of 15 October 2010 (see paragraph 4.47 above) in which she had stated her intention to charge 0.5% for executing 'large FX deals' with Julius Baer retaining 0.15% of the principal amount

in commission and 0.35% of the principal amount being transferred to Mr Merinson. No commercial reason was given for why Mr Feldman was willing for Fair Oaks to pay significantly more commission (nearly three times more) than he had previously negotiated on behalf of Yukos Capital, namely 0.55%.

Trading approach for the Second FX Transaction

4.56. As for the First FX Transaction, the trading approach used in relation to the Second FX Transaction had the effect of maximising the commission achieved, and thereby the revenue of Julius Baer and the commission payable to Mr Merinson, in a way that the Authority considers would not be readily apparent to an auditor or anyone else inspecting the records of Fair Oaks. C and the JBI Trader were responsible for JBI's use of this trading approach and Mr Feldman approved of it:

(1) C agreed with Mr Feldman in advance of the Second FX Transaction that an intra-day range of two cents in the USD/Euro exchange rate was required before any trading could take place. C's contemporaneous notes of her meeting with Mr Feldman on 23 November 2010 record that the use of one of the four 70% retrocession payments depended on the range being sufficiently large.

(2) C and the JBI Trader monitored the daily range (and updated Mr Feldman as to the same), commencing trading only when the two cents range had been reached.

(3) The worst rate of the day on 23 November 2010 was 1.3625. JBI executed the first and second tranches making up the Second FX Transaction at a rate of 1.33855. The rate charged to Fair Oaks was 1.3589, just over two cents more than the rate of 1.33855 and slightly better than the worst rate of the day.

(4) Anyone with cause to review Fair Oaks' records would simply see the booked rate, 1.3589 inclusive of commission, and would be unaware that the transaction had been executed at a much more favourable rate by BJB.

4.57. The Authority has not seen any evidence of there being any commercial rationale for Mr Feldman requiring a range of two cents in order to trade and does not consider there to be any such rationale. Fair Oaks did not benefit from what should

have been a favourable move in the direction of the USD / Euro price during the afternoon of 23 November 2010. However, making use of the volatility of the FX trading and the '2 cent range' would, and in fact did, generate a very significant level of commission for Julius Baer and Mr Merinson.

4.58. Moreover, trading within the daily range also had the effect that the commission charged was effectively obfuscated within the booked rate, limiting the possibility that the large commission payment to Julius Baer would be identified and examined by Yukos or its auditors. Scrutiny of the payments to BJB and subsequently to Mr Merinson would also have been hindered by the absence of any written agreement relating to the 70% payment to Mr Merinson and the lack of written client instructions in relation to the Second FX Transaction. The driving factor in the trading was therefore not to secure best execution for Fair Oaks, but to generate commission for Julius Baer and Mr Merinson; and there was a clear risk that the arrangements were being structured in this way to limit the possibility of the commission being detected. In fact, it is clear that if the range had been too narrow, no trading would have taken place (see paragraph 4.59 below).

B's and A's knowledge of the Second FX Transaction

4.59. On 24 November 2010, C emailed B and A and requested approval for a payment of USD 742,000 to Mr Merinson, being 70% of the commission generated by BJB for executing the Second FX Transaction. C's email stated:

> 'Daniel Feldman asked me if they could utilise one of the four 70% retrocession transactions for the conversion of USD68mil into EUR. Otherwise, they would simply convert the USD into EUR as and when invoices are received. This also depended on the range of the EUR:USD rate being large (around 2 cents) over the course of our meeting today (i.e. from 8am to 6pm UK time). I agreed to this confirming that this would then leave them with just three 70% retrocession transactions between now and November 2011 … The range was such that we were able to execute the FOREX yesterday, gaining net revenues for JB of USD320,000. The retrocession to be transferred to Dimitri Merinson is approximately USD742,000 (70%).'

4.60. C therefore highlighted the importance of the two cent range and the option to utilise one of the 70% retrocession payments, without which no trading would have taken place. C also explained that Mr Feldman had indicated that if one of the 70% retrocessions could not be utilised he would simply convert USD to EUR as and when invoices were received, an approach that would have resulted in much lower commission payments by Fair Oaks. Her email also confirmed the substantial commission paid to Mr Merinson and retained by Julius Baer.

4.61. B responded (copying in A and others) the same day, stating that he did not recall agreeing to four 'one-off' payments of 70% of BJB's net revenue, although he did recall approving one, and said he did not 'support this set up'. C replied (again copying in A and others) attaching a copy of B's email of 28 October 2010, reminding him that he had previously approved the arrangement. The arrangements that B had previously approved were actually based on transactions and retrocession payments relating to new inflows of cash to Julius Baer from Yukos, whereas the Second FX Transaction involved a portion of the same funds which had been converted into USD by the First FX Transaction; however, B did not raise this with C. A emailed B separately and stated, 'your jurisdiction and judgment, let me know later'. B replied to C later that day (copying in A) stating 'I approve' and A then replied, 'No objection'. In approving this retrocession payment to Mr Merinson, neither B nor A questioned the probity of Mr Feldman's instructions to C.

4.62. On 25 November 2010, the BJB Bahamas Senior Manager raised concerns with BJB Senior Manager A about the Second FX Transaction, in an email that was not copied to C, and asked that they be escalated to A 'and/or' B. In this and subsequent emails, the BJB Bahamas Senior Manager raised the following concerns (amongst others):

(1) He noted that C, Mr Feldman and Mr Merinson had '[..] worked out with the dealing room in [Zurich] (by-passing Nassau) a spread of almost 1.5% on a $68 mio against Euro', questioning 'How can such a spread be negotiated from a [sic.] ethical standpoint?'. He added: 'It also seems that [C] is ready to do just about anything for these

intermediaries which may put the bank at risk if/when officers of the company look at what is taking place'.

(2) He questioned A's and B's awareness of the commission generated: 'I understand that [A] and [B] authorized these 4 transactions… However, they do not know how these intermediaries are profiting from these. The spread in this case is EUR 760,766!' As noted above, A and B were in fact fully aware of the commission being charged by Julius Baer and the amount it had agreed to pay to Mr Merinson from the transaction.

(3) He noted that the Second FX Transaction could violate fundamental banking regulations, including Julius Baer's obligations of best execution, market practices and fiduciary obligations, noting also the lack of appropriate authorisation from an officer of Fair Oaks for the Second FX Transaction.

(4) He also confirmed that a google search of Mr Merinson showed that he was a manager at Yukos International. He suggested that C should explain further her relationships with Mr Feldman and Mr Merinson, and 'who are the real "forces" in the driver seat'.

(5) He also questioned the apparent lack of an investment strategy (noting that the Second FX Transaction used a portion of the funds from the First FX Transaction).

4.63. The BJB Bahamas Senior Manager stated that the proposed payment to Mr Merinson would be withheld until discussions with B 'and/or' A had taken place and that he required the relationship to be 'validated by hierarchy' prior to taking any further steps to effect payment. It appears that the BJB Bahamas Senior Manager's concerns were escalated to A and, as a result, A asked B to put in place a 'framework' for C to operate within in the future, without making any further enquiry into the concerns which had been expressed.

Second Commission Payment to Mr Merinson

4.64. On 17 December 2010, BJB Senior Manager A emailed B, copying in A, and BJB Senior Manager B, stating that A had told him that B needed to 'define an acceptable framework for [C] and the

bank to operate in'. BJB Senior Manager A suggested this would include (among other things):

(1) getting 'a signature from someone above [Mr Merinson] to ensure transparency of retro';

(2) transaction orders and instructions 'to be properly documented and signed by client'; and

(3) 'defined acceptable spread range (based on transaction side [sic.] and product)'.

4.65. On 21 December 2010, BJB Senior Manager A emailed a memorandum to A for his 'review and approval' (copying in B). BJB Senior Manager A stated 'please note that as per your request, I've asked B to provide us and C with an acceptable framework to operate this particular relationship in the future. B being on holiday we can expect this framework early next year.' He also stated that C is 'pushing for at least a payment before Christmas to the finder, rest of payment is due on a yearly basis as per frequency of payment defined in finder agreement. Therefore, in order to proceed I need your approval as Chairman of the Board'. A replied to B and BJB Senior Manager A on 22 December 2010, 'No objection for payment. Please regularise pending issues and set up correct framework. Last time it comes to my approval without Market Head [i.e. B] approval'.

4.66. B was not copied in to the correspondence from the BJB Bahamas Senior Manager, but given that he was tasked by A with putting in place an acceptable framework to address the concerns raised and was liaising with BJB Senior Manager A who was in contact with the BJB Bahamas Senior Manager, the Authority has inferred that he must have been aware of the concerns raised concerning the size of the retrocession payment to Mr Merinson, the lack of appropriate client authorisation for the Second FX Transaction and Mr Merinson's links to Yukos.

4.67. The Authority has identified an unsigned memorandum titled 'Information Memorandum to the Board related to Russian business introduced to Julius Baer Bank and Trust Nassau thereafter "the Bank" 17th day of December 2010' which states:

‘WHEREAS, it was noted that the Bank Julius Baer & Co. AG, Zurich (Julius Baer Zurich) entered into a finder agreement (agreement) dated July 8th, 2010 with new conditions signed on 23.11.2010 with D.M., for the introduction of accounts to the Julius Baer Group.

WHEREAS, it was further noted that the Bank has benefited from this agreement, by way of accounts opened in its books.

NOW, THEREFORE, BE IT RESOLVED that a payment in the amount of CHF 786,387.44 for Q3 and Q4.2010 be made to Julius Baer Zurich so that they can meet their obligations under said agreement. This payment being based on the calculation attached, which forms part of this Memorandum and being pre-approved by B, Market Head CEE, Russia’

4.68. The memorandum included a signature block for A (as Chairman of the Board) under the words ‘Reviewed with no objections’. The memo attached four calculations showing the 25% and 35% retrocessions due to Mr Merinson in Q3 and Q4 2010 and the 70% retrocession payable in relation to the Second FX Transaction. We consider it reasonable to infer that this is the memorandum that was attached to the email from the BJB Senior Manager A to A asking for his approval on 21 December 2010.

4.69. B stated that he discussed the payment of the Second Commission Payment with BJB Senior Manager A and A and they ‘resolved that as a group of three’. BJB Senior Manager A stated that A took over responsibility for the issue. A’s evidence was that B and BJB Senior Manager A approved the payment of the second Finder’s fee to Mr Merinson before he gave his approval. The evidence suggests that all three were involved in discussions relating to the payment of the fee and that A’s final approval was required before the payment to Mr Merinson could be made.

4.70. On 22 December 2010 A, on behalf of the Board of BJB, approved a payment of CHF 786,387.44 from BJB Bahamas (where the Second FX Transaction was booked) to BJB Switzerland in order to enable BJB Switzerland to pay Mr Merinson fees including a ‘one-off’ of 70% of the commission received by BJB on the Second FX Transaction. A and B were aware that the ‘framework’ A had requested, which was designed to address the concerns of the BJB Bahamas Senior Manager, had not been put in place at this

time and would not be 'until early next year', but nonetheless A approved the Second Commission Payment and B took no steps to prevent it.

4.71. The Second Commission Payment totalling CHF 723,977 was paid by BJB Switzerland into Mr Merinson's personal BJB Singapore account on 31 December 2010.

Mr Merinson's request for confidentiality

4.72. On 5 January 2011 it was agreed during a conference call involving C, B, and other senior BJB staff that Mr Merinson should be offered a Finder's agreement with BJB Bahamas. Following the conference call, BJB Senior Manager A sent an email to the BJB Bahamas Senior Manager on 6 January 2011 titled 'URGENT Finder agreement to be prepared ASAP URGENT': 'asking him to prepare a Finder's agreement based on terms defined in an attached appendix. BJB Senior Manager A added: 'Please note that additionally to terms defined in this appendix, it agreed VERBALLY to accept three further 70% retrocession transactions between now and 23/11/11 […] all three of these can now only be used for **new funds** […] for transactions where the price/rate booked to the client is at least better than the worst rate/price of the day'. The requirement that the rate booked to the client had to beat the worst available price on the day, is consistent with the trading approach adopted in respect of the First and Second FX Transactions. The adoption of this trading approach for potentially three further retrocession transactions indicates that senior management within Julius Baer (including B) were aware of and supported the trading approach that had been adopted in respect of the First and Second FX Transactions.

4.73. On 7 January 2011, C met with Mr Merinson and discussed, among other things, Mr Merinson entering into a Finder's agreement with BJB Bahamas. During the meeting, Mr Merinson requested that the agreement should include restrictions limiting Julius Baer's ability to disclose his role as Finder on the Yukos accounts to anyone other than Mr Feldman. This request should have caused C (and subsequently B when it was brought to his attention) to be suspicious, but she (and subsequently B) did not recognise the risk that an attempt was potentially being made to hide the fees that had been paid to Mr Merinson.

4.74. On 19 January 2011, C requested that BJB Compliance approve the change requested by Mr Merinson, stating that, 'since the wording is very general',

Mr Merinson was concerned that the information could be disclosed 'incorrectly'. C informed the BJB Bahamas Senior Manager and BJB Compliance that 'this client group is extremely sensitive about banks disclosing information and I think this is a fair request'.

4.75. On 24 January 2011, BJB Compliance responded to C to inform her that BJB would not agree to this request, explaining 'complete transparency of any finders' agreement should be ensured within the Yukos Group structure'. BJB Compliance said that it could consent to wording limiting disclosure of the Finder's agreement only to clients introduced by Mr Merinson. BJB Compliance also asked C to provide confirmation that the terms of Mr Merinson's Finder's agreement with BJB were known to Mr Feldman and 'ideally' also to another Yukos director.

4.76. On the same date, BJB Compliance emailed the JBI Line Manager and B to draw their attention to:

(1) Mr Merinson's request that his Finder's agreement should not be disclosed to anyone at Yukos other than Mr Feldman;

(2) the fact that written confirmation had not yet been received from Mr Feldman to confirm he was aware of the payments which had been made to Mr Merinson and of his Finder's agreement with BJB (which had been outstanding since the time of the First FX Transaction); and

(3) the amount of commission charged by BJB and paid to Mr Merinson in connection with the First and Second FX Transactions.

4.77. BJB Compliance suggested that payment of C's 2010 bonus should be conditional on her obtaining (i) Mr Merinson's signature to a copy of the Finder's agreement with BJB Bahamas which did not limit BJB's right to disclose the agreement only to Mr Feldman and (ii) Mr Feldman's written confirmation that Yukos was aware of and consented to Mr Merinson receiving Finder's fees from BJB.

4.78. On 31 January 2011, C emailed BJB Compliance, copying in the JBI Line Manager, stating that she would inform Mr Merinson that the restriction on disclosure that he had requested could not be agreed and that she had previously

told BJB Compliance on 6 December 2010 that she would obtain confirmation from Mr Feldman in February 2011.

4.79. Following BJB Compliance's email on 24 January 2011 raising concerns, B emailed a BJB manager and requested a discussion on 'next steps' arising from the concerns raised. This followed an email on 31 January 2011 from the JBI Line Manager to B and the BJB manager, confirming he had 'had a lengthy discussion with' C and had 'checked the correspondence and the file notes' made by C 'for the relevant meetings and discussions, which are all noted or on recorded lines – internally and externally' and could 'find no reason to believe that there is anything underhand or improper going on'. C was subsequently paid a bonus of GBP 381,300.

Mr Feldman's request for confidentiality

4.80. On 1 February 2011, C emailed BJB Compliance (copying in B and the JBI Line Manager) and stated that Mr Feldman had asked that the wording 'I sign on the understanding that you will be providing me with confirmation of Julius Baer's commitment to confidentiality' be added to the letters he was to sign confirming the payments to Mr Merinson and that his Finder's agreement with BJB was known to the relevant Yukos entities. She did so without drawing attention to the fact that she had been told on 16 August 2010, that Mr Merinson intended to share a proportion of the First Commission Payment with Mr Feldman. C and B did not recognise the risk that this request was an attempt to hide the payments made to Mr Merinson from Julius Baer funded by the Yukos accounts.

4.81. On 7 February 2011, BJB Compliance recorded in a memo which was sent to B and a BJB manager, that Mr Feldman was making a 'commitment to confidentiality' a condition of him providing confirmation to BJB that Mr Merinson's agreement was 'known and accepted' by Yukos Capital. The memo provided B with an overview of the Yukos accounts at BJB, the commercial terms agreed in relation to the Yukos business, the Finder's agreement and retrocession arrangements with Mr Merinson, and the compliance issues arising. According to the memo, C provided information that Mr Merinson was the Financial Director at Yukos International and was heavily involved in choosing which banks should hold funds awarded to subsidiary companies of Yukos International. It set out payments into/out of the accounts of Yukos Capital and

Fair Oaks. It also noted that Yukos International was indirectly the 100% shareholder of Yukos Capital.

4.82. The memo raised three main compliance issues connected to all of the above: (i) conflict of interests; (ii) cross border payment retrocessions and; (iii) reputational risk. In relation to the conflict of interests, it stated: 'The business [Mr Merinson] introduces to the bank is related to his professional activity within the Yukos corporate structure. We have requested that we receive written confirmation from […] Feldman, that this agreement is known and accepted by Yukos Capital. [Mr Feldman] is now making it conditional for his signature on this confirmation that he obtains a "commitment to confidentiality" from BJB […] In any case it should be considered whether to obtain additional comfort from a superior group entity should also confirm its awareness of these arrangements, e.g. the Stichting Yukos (Dutch foundation)'.

4.83. On 14 February 2011, B and a BJB manager had a conference call with C. Following this call, the BJB manager sent an email to BJB Compliance copying in B. The email explained that their current understanding was that Mr Merinson did not hold any official position at Yukos Capital and did not receive a salary but could be considered an 'external employee' akin to a consultant. The Authority notes that C had previously identified Mr Merinson as the Chief Financial Officer of both Yukos International and Yukos Capital (see paragraphs 4.6 and 4.12 above). The BJB manager's email also suggested that, due to the way in which Yukos was structured and the nature of Mr Feldman's role, seeking additional confirmation regarding the payments to Mr Merinson from someone at Yukos other than Mr Feldman 'would not add any value but rather irritate further'. The email also stated that B and C would meet with Mr Feldman and Mr Merinson at the next opportunity in London.

4.84. On 24 February 2011, C provided BJB Compliance and B with copies of letters signed by Mr Feldman for Yukos Capital and Fair Oaks on that date (although the letters were dated 3 September 2010) confirming that (i) he authorised the First Commission Payment to Mr Merinson and (ii) Mr Merinson could receive Finder's fees of 35% of net income generated by Julius Baer from future transactions carried out for Yukos Capital and Fair Oaks. The letters included the additional wording regarding a 'commitment to confidentiality' from Julius Baer that Mr Feldman had requested. There was a reference to Yukos Capital's approval for 'four more opportunities' for retrocessions in the letter

confirming the First Commission Payment. In the letter referring to Fair Oaks, Mr Feldman confirmed approval of the 35% Finders fees on his own behalf and on behalf of another director of Fair Oaks. However, that director did not sign the document. This does not appear to have been challenged by anyone at BJB or JBI despite Mr Merinson's contemporaneous request to limit the disclosure of his Finder's agreement to Mr Feldman (see paragraph 4.73 above) and despite the fact that it had been Mr Feldman who had approved the arrangements in the first place. The Fair Oaks letter also made no reference to one-off retrocession payments, despite the fact that the Second Commission Payment had already been funded by commission charged to Fair Oaks.

4.85. On 24 February 2011, Mr Merinson annotated a copy of the Finder's agreement he had with BJB Zurich, requesting C terminate it with immediate effect. However, this was not actioned until later in July 2011. It appears from C's email on 1 February 2011 that Mr Merinson was content with the amended wording of the Finder's agreement with BJB Bahamas and the agreement was completed on 24 February 2011.

B becomes a non-executive director of JBI

4.86. On 30 March 2011, B became a non-executive director of JBI and was approved by the Authority to perform the CF2 (Non-executive director) controlled function.

Onward payments from Mr Merinson to Mr Feldman

4.87. On 7 April 2011, C's assistant arranged for two cash transfers to be made from Mr Merinson's personal account for the benefit of Mr Feldman. C was copied into her assistant's email to BJB Singapore giving instructions for the transfers and the Authority infers that she was aware of them. The total amount transferred was USD 1,262,451, exactly 50% of the commission fees paid to Mr Merinson by Julius Baer in the First and Second Commission Payments. These payments should have raised serious concerns for C, particularly given Mr Merinson's and Mr Feldman's requests that the Finder's fees paid to Mr Merinson be kept confidential from anyone else at Yukos. The JBI Line Manager signed the paperwork authorising the payments. C had in fact been aware of Mr Merinson's intention to transfer a portion of his commission to Mr Feldman since 16 August 2010 and had recorded the intention in a file note (see paragraph 4.34 above). However, C did

not inform BJB Compliance or her senior managers of the transfers or alert them to the conflicts of interest arising from Mr Merinson - the recipient of the retrocessions - making payments to Mr Feldman, who had been responsible for approving the retrocessions.

Concerns raised in July 2011

4.88. On 18 July 2011, C emailed B, copying in the JBI Line Manager and members of JBI's senior management, seeking approval to open an account for Yukos Hydrocarbons in Guernsey.

4.89. On the same date, the JBI Line Manager emailed B stating he had been 'consistently left out of the loop on all matters arising from this client relationship' and he did not support the Yukos relationship being managed by C. In his email to B, the JBI Line Manager stated that he was not sure if issues raised by BJB Compliance about the Yukos relationship had been resolved and stated that 'also purely based in the size of the retro paid to [Mr Merinson]; I think it is unethical and that it sets a bad example for doing business in this market, especially with such a high risk relationship.' It does not appear that B did anything as a result of this email. The account opening for Yukos Hydrocarbons in Guernsey was subsequently approved by B the following day.

4.90. On 21 July 2011, the JBI Line Manager forwarded the email he had sent to B to his own line manager at JBI and JBI's human resources department. It does not appear that any action was taken by JBI with regard to the Yukos relationship as a result of these concerns being raised.

Third FX Transaction

4.91. On 15 August 2011, a JBI staff member sent an email to Mr Feldman and copied C to confirm that a trade had been placed to sell EUR 7 million and to buy USD for Fair Oaks. Mr Feldman confirmed the trade on the same day. On 16 August 2011, a staff member at BJB Bahamas emailed C and others to confirm the trade and questioned why the bank had made such a high margin on the trade. C replied and stated 'The agreement with the client was that for any FX's, the rate booked to the client would always have to be at least 8 basis points above the low of the day so that the ultimate beneficial

owners cannot be disadvanted (sic). This transaction complies with that agreement. In order to achieve a large margin on such FX trades, [our trader] has to exclusively monitor the rate all day (which means he can do nothing else) and our hope is that this commitment to the trade is then rewarded by the margin achieved' (sic). C's suggestion that the arrangement was so that the beneficial owner would not be disadvantaged makes no sense in the context of seeking to achieve a large margin. Ensuring the rate was better than the worst on the day did not avoid disadvantage but did have the effect of making it more difficult for a third party, with cause to examine Fair Oaks' records, to understand the nature of the arrangement.

4.92. On 17 August 2011, C emailed B and stated 'We have done an FX on the USD 7mil funds which came into the Guernsey account and I've been asked if we can use one of the one-off 70% deals for the trade. This would leave just one more until 1st November 2011.' This conversion of USD 7 million in the Guernsey account (which was the account of Yukos Hydrocarbons) was a different transaction to the conversion of EUR 7 million for Fair Oaks that had taken place on 15 August 2011. C asked B to call her 'to discuss the potential one-off deal and other matters'. The Authority has not seen any evidence of any response to that request from B, however a BJB manager replied on his behalf to say that B might be able to call C later, adding 'we are irritated that they're just fishing for reasons to leave now that they have what they wanted (i.e. the FX deals)…'.

4.93. On 19 August 2011, C sent a further email to B and copied the JBI Line Manager, a member of JBI's Board and others, and stated 'Even though both you and A fully pre-approved the four one-off 70% transactions already, I am writing to refresh memories and to ensure that [a member of the JBI Board] is kept fully in the loop (we will be using one of the one-off retrocessions for the conversion of EUR7mil into USD)'. She concluded her email by mentioning again the conversion of USD 7 million into EUR and that she intended to use one of the one-off 70% deals for that transaction. The member of JBI's Board responded to C's email to thank her for keeping him informed. Later that day, B emailed a BJB manager and stated 'what do you think?' The Authority does not have any further correspondence on the subject of applying a one-off retrocession to the conversion of USD 7 million to EUR on the BJB Guernsey account. The absence of a finder agreement between Mr Merinson and BJB Guernsey would have made

such a payment extremely difficult, and the Authority has inferred that the idea was dropped as a consequence.

4.94. On 29 December 2011, a staff member at BJB Bahamas emailed C in relation to the '2011's transactions' and stated 'I wanted confirmation that we are only to pay out one one-off retrocession for the conversion of EUR7mil into USD on 15th August. This is the only one that I have in my records also so I just wanted to ensure that we were on the same page'. C replied to confirm that was correct.

4.95. The calculations undertaken by the staff member at BJB Bahamas show that CHF 64,518.89 was paid to Mr Merinson in respect of the Third FX Transaction.

Request by C to open a Fair Oaks account at BJB Guernsey in order to transfer Fair Oaks assets from BJB Bahamas

4.96. On 5 December 2011, C emailed B and copied in BJB Compliance, JBI Compliance and JBI senior management, and requested B's approval to open another account for Fair Oaks at BJB Guernsey. In the email, she explained that Mr Merinson and Mr Feldman wanted to transfer funds from BJB Bahamas on account of a leak of information. She added that Mr Merinson 'only has one "one-off" retrocession left this year and he has no intention of entering into a Finder agreement with Guernsey' although she noted that there was 'a possibility that the finder will seek to request one-off retrocessions for new inflows… but no retrocessions will be deducted from fees paid for annual custody fees or daily trading'. BJB Compliance responded that the reasons for the transfer were not 'sufficiently plausible' and that a transfer would involve making a notification in the Bahamas and the prior agreement of regulators in Guernsey. C asked what the maximum amount the client could transfer would be to avoid the notification requirements. BJB Compliance responded on 13 December 2011, stating that it viewed the request as 'highly unusual and still not sufficiently justified' adding 'Furthermore it is not up to the bank to advise on what is acceptable rationale for the transfer, either the client can give us a plausible reason or not'. A was also aware of this request and did not seem to have any material issues with it, save for noting that the 'generous retrocession provided to the client' was conditional upon funds remaining with Julius Baer for three years. The account opening did not proceed.

Third Commission Payment to Mr Merinson and further account opening

4.97. On 1 February 2012, the Third Commission Payment was paid into Mr Merinson's personal BJB Singapore account in the sum of CHF 373,256 (USD 407,782). The Third Commission Payment was made up of two sums. The first sum was paid under Mr Merinson's Finder's agreement with BJB being 35% of the income generated from the Yukos Capital and Fair Oaks accounts during 2011. The second sum was from commission earned on the Third FX transaction. This brought the total amount of the three commission payments to Mr Merinson to approximately USD 3 million.

4.98. On 2 October 2012, C emailed B, another member of JBI's Board and BJB Compliance seeking approval to open a BJB Switzerland account for another Yukos company which was due to receive approximately USD 100 million before the end of the year. On 8 October 2012, B and the member of JBI's Board gave their approval.

Termination of C's employment

4.99. Over the course of the second half of 2011 and through 2012, concerns were raised about C's conduct, including her failure to follow JBI and BJB policies and procedures. On 28 November 2012, C's employment with JBI was terminated.

Conclusions on the relationships with Yukos and Mr Merinson

4.100. There were numerous matters which should have highlighted the obvious risk that JBI's arrangements with Mr Merinson could be facilitating a fraud on Yukos and that JBI was profiting from that fraud, including the following:

(1) It was known that Mr Merinson was an employee of Yukos Group Companies at the time of setting up his personal account and discussing the possibility of him becoming a Finder.

(2) The initial proposal put forward by Mr Feldman in July 2010 was highly suspicious in that it involved BJB making a large payment to an employee of Yukos, which was to be funded entirely by Yukos, but structured so that it came from BJB and would appear to be funded by BJB; and that the payment of such sum was a condition of Yukos placing large sums of money with BJB.

(3) The First FX Transaction involved Mr Feldman and Mr Merinson remaining in JBI's offices overnight in order to direct the trading activity in an effort to 'maximise the commission'. Mr Merinson asked that the First Commission Payment be effected with a payment reference of 'investment capital gain'. This was suspicious because it would serve to obscure the true nature of the payment;

(4) The proposal discussed with Mr Feldman in October 2010 for Julius Baer to make up to four additional significant payments to Mr Merinson, to be funded by Julius Baer charging Yukos Group Companies inflated rates of commission;

(5) The trading strategy for the Second FX Transaction involved waiting for volatile trading conditions involving a large intra-day trading range and then trading at close to the best possible day rate while booking the trade to the client at close to the worst possible day rate. This strategy lacked an obvious commercial rationale and instead served to maximise the resulting commission for Julius Baer and Mr Merinson at Yukos's expense, in a way that would not easily be detected by Yukos or its auditors.

(6) The Second FX Transaction resulted in Julius Baer charging Yukos 30 times the amount of commission it would usually charge for FX transactions of this size. There is no proper commercial rationale to explain why Mr Feldman agreed to Yukos paying such a sum or to the trading strategy.

(7) Mr Merinson's request to restrict disclosure of his remuneration to only Mr Feldman was suspicious, particularly given Mr Feldman was the person authorising payment of large sums to Mr Merinson funded by the Yukos Group.

(8) Mr Feldman's request for confidentiality in February 2011 and the fact he was the sole signatory authorising payments to Mr Merinson, in circumstances where BJB Compliance had suggested that another member of the Yukos Group should also provide confirmation that the arrangements were known with the Yukos Group.

(9) The payments made from Mr Merinson's account to Mr Feldman's totalled 50% of the First and Second Commission Payments received by Mr Merinson.

(10) There was no proper commercial rationale for the Third FX Transaction which involved the same trading strategy as the Second FX Transaction. There was an obvious risk that this transaction served no purpose other than to generate commission for the benefit of Mr Merinson. Julius Baer also benefited from this commission.

The JBI Line Manager notifies JBI Compliance of potentially suspicious activities

4.101. On 30 November 2012, the JBI Line Manager sent an email to JBI Compliance detailing potentially suspicious activities involving C, Mr Merinson and Mr Feldman. The email stated that C 'proposed a non-standard [Finder's] agreement for [Mr Merinson] in order to bring this business to [Julius Baer] (approx. USD400 million)'.

4.102. The email explained that:

(1) the agreement with Mr Merinson involved Julius Baer paying 80% of its revenues from profits on introduced accounts to Mr Merinson when 'our and industry standard is 25%';

(2) Mr Merinson had been paid around USD 2 million 'on the back of a series of large, one-off FX transactions for which [Julius Baer] took non-standard commission';

(3) Mr Feldman (as opposed to anyone else within Yukos) had signed letters requested by BJB Compliance confirming that Yukos had no objections to Mr Merinson receiving Finder's fees;

(4) Mr Feldman had subsequently received a USD 500,000 loan payment from Mr Merinson from his personal account at Julius Baer;

(5) Mr Merinson had alleged to the JBI Line Manager 'that inside his company there are suspicions that he received a retro payment from [Julius Baer] and that this is a serious problem'.

4.103. The JBI Line Manager stated in his email that he suspected that:

(1) the payments to Mr Merinson and his Finder’s agreement with BJB were ‘in conflict with our, Yukos's rules and legal requirements in the UK and [Switzerland]’;

(2) Mr Feldman had a conflict of interest in the matter and his authorisation of Julius Baer’s arrangements with Mr Merinson was ‘invalid’; and

(3) the payment to Mr Merinson and his Finder’s agreement with BJB were not known to Yukos and that Mr Merinson was taking steps to attempt to hide the arrangements.

4.104. The email concluded: ‘I suspect that once DM's deal with JB is found out, we could be open to legal action from Yukos and in breach of FSA and FINMA regulations and potentially the UK Bribery Act 2010 […]’.

4.105. The email was immediately forwarded to senior management at both JBI and BJB, who instituted steps to investigate the concerns that had been raised (including the appointment of an external firm).

JBI failure to report

4.106. Firms are required to notify the Authority of significant concerns of this nature immediately. However, JBI did not inform UK law enforcement until 22 May 2014 and did not provide the details to the Authority until 7 July 2014, some 19 months after receiving notification of the significant concerns. This is despite the seriousness of the matters addressed in the JBI Line Manager’s email and the fact that JBI was quickly able to substantiate some of these matters.

4.107. By 6 December 2012, JBI senior management had established that Mr Merinson had paid significant sums to Mr Feldman from his personal account with BJB Singapore. Senior JBI and BJB management were also aware that Mr Merinson wanted either to move management of the Yukos relationship to BJB Switzerland or to a relationship manager other than the JBI Line Manager. A member of JBI’s Board met with Mr Merinson on 11 December 2012 and recorded in contemporaneous notes that Mr Merinson was concerned about the confidentiality of his Finder’s agreement and that Mr Merinson had said that Mr Feldman was the only person at Yukos with whom the Finder’s agreement should be discussed. This is consistent with the account given by the JBI Line Manager in his email

stating that Mr Merinson was concerned about disclosure of his Finder's agreement.

4.108. JBI therefore possessed sufficient facts in December 2012 to establish that a serious fraud might well have been committed against its Yukos clients and that JBI and BJB might well have facilitated this fraud and profited from it.

4.109. However, JBI did not at this point report its concerns to UK law enforcement or to the Authority. JBI senior management took the decision to investigate the allegations first (a process that took approximately 18 months), despite understanding that the Authority would have expected such suspicions to be reported, even where not fully verified.

4.110. JBI's senior management decided to appoint a third party to conduct an investigation into the matters. The third party was jointly appointed by JBI and BJB on 24 January 2013, almost two months after the suspicions had initially been raised. The third party shared the initial findings from its report with JBI in April 2013 and these were then reviewed by a member of JBI Compliance with recommendations made in January 2014.

4.111. Despite some of the key suspicious elements raised in the 30 November 2012 email being reconfirmed by the third party's initial findings in April 2013, JBI again failed to notify either UK law enforcement or the Authority at this stage (despite being aware of its obligations to report such matters):

(1) In June 2013, the third party highlighted to JBI the importance of completing the investigation as soon as practicable from an anti-money laundering reporting perspective.

(2) In August 2013, a new member of JBI's risk reporting function raised the issue of reporting in an email to other JBI Compliance staff, stating: 'the key immediate question for me is whether anyone has considered whether we need to inform the FCA or not yet'.

(3) In January 2014, JBI Compliance provided recommendations to senior compliance members at JBI and BJB on the basis of the report received from the third party in April 2013. JBI Compliance noted that, while JBI could potentially avoid enforcement action by the Authority or prosecution by not

reporting the suspicions, there might also be consequences of failing to disclose voluntarily. It was noted that nine months had passed since the third party's interim report and JBI might be criticised for failing to report adverse findings immediately, 'even on a preliminary basis'. The recommendations included the consideration of various options for the timing of disclosures to the Authority and the SFO, including the possibility of making those disclosures before the third party's final report was due to be published.

4.112. On or around 27 February 2014, Yukos informed JBI that it wished to close its accounts with BJB and that JBI should arrange the liquidation of the assets BJB was holding in its accounts. Up until this point, the new relationship manager for the Yukos accounts (who was unaware of JBI's ongoing investigation into the possible fraud on Yukos), and B, had continued to discuss additional business opportunities with Mr Merinson and Mr Feldman. For example, shortly before Yukos ended the business relationship on 27 February 2014, on 17 February 2014 B and a member of JBI's Board were still having meetings with Mr Merinson and were discussing opening accounts for clients introduced by him. B stated in relation to one of these accounts, 'Push…we have to open this account. Otherwise we will lose 100m'. No further accounts were opened during this period and no new funds were received from the Yukos Group Companies.

4.113. By March 2014, JBI and BJB had received the third party's draft report. JBI's money laundering reporting function noted on 12 March 2014 that JBI needed 'to determine and finalise any reporting obligations to potentially the FCA' and UK law enforcement. The third party's final report was produced on 2 April 2014. A summary of the final report was presented to management in BJB Switzerland on 11 April 2014. This identified various 'unusual elements' in relation to the Yukos relationship, including that Mr Merinson was the financial director of Yukos International, that Mr Merinson shared commission with Mr Feldman and that Mr Feldman instructed JBI to apply inflated margins to transactions to the disadvantage of the clients. The summary included the recommendation that 'the background of the above facts must be analysed further to verify whether there is a reporting obligation to MROS [Money Laundering Reporting Office Switzerland] or any other relevant authority at the involved booking centre'.

4.114. Only after Yukos had ended its business relationship with JBI, and the third party had completed its investigation and issued its final report, did JBI finally take steps to notify the relevant authorities. However, this was done in a delayed and piecemeal manner.

(1) On 6 May 2014, during a call between JBI Compliance and FCA Supervision, JBI informed the Authority that it was reviewing 'historic deficiencies in introducer agreements and an ongoing investigation into one particular client relationship'. This notification did not reflect the fact that the third party investigation was complete, nor did it reflect the seriousness of the concerns that JBI had.

(2) On 22 May 2014, JBI reported potential acts of bribery and corruption to UK law enforcement. It referred to payments made by Julius Baer to Mr Merinson in Finder's fees and stated that the payments may be tainted by a scheme by Mr Merinson and Mr Feldman to defraud entities in the Yukos Group.

(3) On 7 July 2014, JBI provided details of its suspicions to the Authority. This was only disclosed some 19 months after the JBI Line Manager reported his suspicions to JBI's MLRO on 30 November 2012, and over a period in which JBI's senior management and JBI Compliance had been in close and on-going communication with the Authority in relation to various other aspects of JBI's business.

Related litigation

4.115. Mr Merinson's employment with Yukos ended on 1 January 2016. Yukos International, Yukos Capital and Yukos Hydrocarbons instituted court proceedings against Mr Merinson in England on 3 May 2017 alleging, among other things, that he had breached his employment contract by taking 'kickbacks' amounting to millions of pounds from financial institutions with which he was charged with negotiating the Yukos Group's financial and banking arrangements and that he knew or must have known that the fee sharing arrangement with Julius Baer was in breach of his obligations under his employment contract. Yukos also instituted court proceedings in the US against Mr Feldman, alleging, among other things, that Mr Feldman breached fiduciary duties owed to companies for which he was a director and misappropriated monies for personal gain.

4.116. Julius Baer brought its concerns regarding the payments to Mr Merinson to the attention of the Yukos Group and on 31 May 2018, it provided restitution for losses incurred by the Yukos Group plus interest.

Systems and Controls relating to Finders

4.117. Principle 3 requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. The conduct of the relationship with Yukos highlighted serious issues with JBI's governance and its control environment in relation to the management and oversight of Finder's arrangements during the Principle 3 Relevant Period.

4.118. The engagement of third parties to refer, assist or facilitate the introduction of new clients, and the remuneration of third parties for these services, gives rise to various financial crime risks. There is a risk (which is increased for higher risk industries and countries) that a proportion of monies paid to third party Finders might be used by them in furtherance of financial crime. For instance, third party Finders might pay bribes to persons connected with prospective clients or use Finder's fees as cover for bribes to Politically Exposed Persons. Moreover, there will always be a potential conflict of interests between a Finder and the client introduced where the Finder is remunerated for the introduction.

4.119. Where the Finder is a director or employee of the client, or otherwise involved in decision making in relation to the client's account, there is an obvious risk that the Finder will act in their own self interest and in conflict to the interests of the client, by for instance agreeing to payment of inflated fees and charges and/or the 'churning' of transactions on the client's account in order to generate transaction revenue which might in turn result in remuneration for the Finder. In some circumstances, in particular where the client is not aware of the existence of the Finder's relationship or the remuneration of the Finder, there is also a heightened risk that the Finder might be engaged in committing a fraud against the client. There is a risk for a firm that enters into Finders relationships, accepts instructions from Finders in relation to client accounts and/or remunerates Finders for their services that they might, as a result, facilitate fraud or financial crime.

4.120. A firm must have effective processes to identify, manage, monitor and report the risks to which it is or might be exposed. If a firm uses Finders to facilitate client

introductions, it must ensure that it has effective policies and procedures in order to identify the risks arising from a particular Finder's relationship and to control adequately those risks identified. The financial crime risks presented by firms' use of Finders have been highlighted by the Authority in publications and enforcement action against firms including Aon (6 January 2009), Willis (21 July 2011) and Besso (17 March 2014).

JBI's policies and procedures regarding Finders

4.121. From 2007 JBI embarked on a strategy of growing its business by targeting clients from higher risk jurisdictions, including Russia and Eastern Europe. In 2009, 50% of the 170 new accounts opened related to high risk jurisdictions; this percentage decreased by 4% in 2010 and then increased again in 2011 and by July 2012, 63.1% of JBI's client base was classed as "high risk". In the same period, JBI's use of Finders to help it win business increased substantially: in 2007 only 0.4% of JBI's revenue was generated from business connected to a Finder; this increased to 10.1% in 2009; 16.7% in 2010; and peaked at 32.4% in 2012.

4.122. JBI recognised that its strategy of targeting clients from higher risk jurisdictions meant it had high exposure to financial crime risks and that JBI needed to strongly manage those risks. However, JBI did not give similar consideration to the risks from its increasing use of Finders. In fact, JBI had a very limited role in the management and oversight of the Finders' relationships relevant to JBI's clients and consequently JBI Compliance and JBI senior management were not in a position to identify and control adequately the risks arising from those relationships.

Reliance on Group policies and procedures

4.123. Prior to 11 June 2010, there were no policies which defined the rules and guidelines to be adopted in respect of the use of Finders within the Julius Baer Group or JBI. From 11 June 2010, Relationship Managers at JBI were required to follow a BJB policy, the Co-operation with Finders Policy. It was not until 20 May 2014 that JBI put in place its own specific policies and procedures in relation to the on-boarding and on-going management of Finders.

4.124. The Co-operation with Finders Policy attributed responsibility for management and oversight of all Finders relationships, including those relevant to business

conducted by JBI on behalf of its clients, to other entities within the Julius Baer Group:

(1) JBI's relationship managers submitted proposed Finders' arrangements to BJB's finance department for approval. No approval was required from JBI Compliance or Senior Management prior to proposals being submitted to BJB's Finance department or subsequently. Approvals for Finder relationships were provided by the Booking Centres, BJB's Finance department and the Regional Heads;

(2) All Finders remuneration had to be paid to an account held with Julius Baer and consequently Finders had to open an account with a Booking Centre, into which their commission would be paid. The opening of the Finders' account was subject to the usual authorisation process, which included review and approval of account opening by JBI Compliance and Senior Management.

(3) Finders were required to enter into a written contract with the relevant Booking Centre. BJB's Finance department was responsible for drawing up the Finder's agreement, based on certain standard forms. Any divergence from the standard form required approval from BJB (BJB Compliance, BJB's Finance department and Regional Head) but not JBI Compliance or Senior Management.

(4) BJB's Finance department had responsibility for defining standard models of remuneration. Any divergence from the standard remuneration models required approval from BJB's Finance department and any exceptions in terms of remuneration rates required approval from the appropriate Regional Head. Payments to Finders were approved by BJB and effected by the Booking Centres. BJB Finance had oversight and control over payments to Finders and along with relationship managers, had responsibility for ongoing monitoring of Finders' relationships. JBI had some visibility over payments to Finders, but it did not routinely review or monitor the arrangements, leaving it to relationship managers and BJB.

4.125. Under the terms of the Co-operation with Finders Policy, aside from the involvement of individual relationship managers, JBI had a limited role in relation to the management and control of Finders' relationships. JBI also did not give appropriate consideration as to whether the Co-operation with Finders Policy and the reliance on other entities within the Julius Baer Group enabled JBI to meet the

regulatory standards applicable to it as an authorised firm. This was despite an incident occurring in January 2011 involving a Finder with an apparent conflict of interests. BJB Compliance asked JBI Compliance to conduct a review of a Finder's agreement and the Julius Baer account set up by the relationship manager at the request of the Finder in the name of the Finder's wife, it seems so as to conceal matters from the Finder's employer. Following a review of the Finder relationship, JBI Compliance highlighted the following matters:

(1) Finders were set up with Booking Centres, with no involvement from JBI's perspective in the process; and

(2) there was no JBI policy containing guidance or procedure governing the setting up and management of Finders.

4.126. JBI Compliance recommended that JBI senior management consider introducing stricter controls within JBI for pre-vetting Finders prior to the commencement of relationships with any client introduced by a Finder. There do not appear to have been any changes to policy as a result of these issues having been identified.

4.127. In relation to the onboarding of Finders, the Co-operation with Finders Policy contained no rules or guidance as to the circumstances in which it might be inappropriate for a Finder relationship to be established (as a result of conflict of interests or otherwise). JBI introduced an Anti-Fraud Policy in October 2009, which explained the risks of fraud being committed by those within and external to JBI and the risks to clients; but it did not expressly address the risks arising from Finders. JBI also introduced an Anti-bribery and Corruption Policy in July 2011, which identified Finders as a possible area for financial crime, albeit this was limited to the risk of bribery and corruption. The Julius Baer Group also introduced a Policy on 1 July 2011 aimed at 'Combating fraudulent and improper activities' which outlined the role of a central fraud prevention and detection functional unit within the Julius Baer Group and required employees to report findings of fraudulent or improper activities.

4.128. JBI lacked effective processes to ensure that it sufficiently understood the risks and relationships between Finders and JBI's clients. Reliance was placed on relationship managers to connect the Finder to the relevant client account(s), with no documented process or checks in place. In accordance with account opening procedures, JBI Compliance and Senior Management were required to approve due diligence relating to a Finder in the context of the Finder opening an account with Julius Baer. JBI relied on the account opening processes to identify any issues

arising from a Finder relationship. This, however, was not sufficient to enable JBI to effectively identify the risks and therefore to enable JBI to identity and manage any potential conflicts of interest and financial crime risks. The account opening procedures would not, for instance, accommodate situations in which an account was opened with JBI and then only later the account holder became a Finder or introduced a client, as in fact happened with Mr Merinson. Although Group Client Acceptance policies were in place during the Relevant Period, they did not consider a prospective client's links to Finders or JBI's relationship with such Finders during a linked client's onboarding process or on an ongoing basis. There were also Julius Baer Group Conflicts of Interest policies in place during the Relevant Period, and from 1 September 2010, a JBI specific policy was introduced. Although these policies acknowledged some of the risks arising from JBI's relationships with third parties, they failed to specifically consider the risks arising from JBI's use of Finders.

4.129. In practice, the account opening processes were not sufficient in identifying risks from Finders' relationships. JBI conducted a review of arrangements with Finders connected to JBI's clients that were put in place between 1 January 2007 and 31 December 2014. This review identified a number of cases in which all day-to-day contact in relation to the management of client accounts was routed through Finders, in which Finders were directors or employees, and in which Finders owed fiduciary obligations to the client.

4.130. As to the ongoing monitoring of Finders' relationships, the Co-operation with Finders Policy contained limited provisions, stipulating only that every two years the relationship manager should review relationships with Finders and (a) confirm whether the continuation of the relationship is economically viable and (b) assess the information provided in the Finders assessment form. Consistent with this, the Authority has identified no evidence that Finders' relationships were systematically reviewed by JBI.

4.131. As to the mitigation of risks arising from particular Finders relationships, the terms of the standard agreement (which was included as an appendix to the Co-operation with Finders Policy) for Finders includes an undertaking on the part of the Finder that the Finder will notify potential clients of the existence and content of the Finders agreement and in particular the remuneration received by the Finder. The standard agreement also allowed JBI to provide a client with information as to the Finder's remuneration, but only at the client's request. These provisions did not provide a means by which JBI could ensure that clients had in

fact been informed of and consented to the arrangements with Finders or any payments being made.

4.132. The effective disclosure of Finders relationships and remuneration to clients is critical to a firm's management of the financial crime risks arising from Finders relationships, in that it provides the client with the opportunity to give its informed consent to the arrangements before doing business with the firm and to notify the firm if it has any concerns about the firm's arrangements with the Finder.

4.133. In its review of historical Finders' arrangements, JBI found that, with one exception, it had no records that indicated clients had been properly informed about the arrangements. JBI conducted a client contact exercise which confirmed that, of those clients who responded, over 50% were not aware of the arrangements and 37%, having been made aware of them, did not agree or consent to them. Where clients reported that they had not approved such arrangements, and where JBI concluded that they had suffered loss as a result, JBI provided redress.

4.134. In relation to JBI's relationship with Yukos, in accordance with the Co-operation with Finders Policy JBI had very limited involvement in approving or monitoring the relationship with Mr Merinson and specifically JBI failed to:

(1) identify the obvious conflict of interests in Mr Merinson, an employee of Yukos, being paid by acting as a Finder on the Yukos accounts and, as such, the risk that the arrangements proposed by Mr Feldman and Mr Merinson could involve a fraud on Yukos;

(2) ensure that there was a reasonable rationale for the arrangements proposed by Mr Feldman and Mr Merinson (in terms of the inflated fees to be charged to Yukos and the significant payments made to Mr Merinson);

(3) identify the obvious conflict of interests between Julius Baer and Yukos in entering into the arrangements proposed by Mr Feldman and Mr Merinson, which involved (a) an undocumented agreement allowing Mr Feldman and Mr Merinson to choose transactions on which they would receive a Finder's fee well in excess of the Julius Baer Group's standard levels of remuneration, and (b) Julius Baer inflating the fees charged to Yukos in order to compensate it for the deduction of the fees paid to Mr Merinson;

(4) identify the other red flags that occurred during the course of the relationship, including Mr Merinson's requests for the confidentiality of his Finder's agreement;

(5) identify the payment by Mr Merinson to Mr Feldman of 50% of the First and Second Commission Payments;

(6) ensure that in allowing payments to be made to Mr Merinson further to transactions conducted on JBI's clients accounts, it was not facilitating financial crime.

Matrix management

4.135. The limited involvement of JBI in the approval, management and monitoring of Finders relationships under the Co-operation with Finders Policy reflected and was reinforced by the fact that, from 2007, JBI operated a 'matrix management' structure. Under this structure, JBI's employees had a reporting line to local line management at JBI, as well as a functional reporting line to a regional head at BJB. JBI's Board was composed of a mixture of JBI senior management and BJB Regional Heads who acted as non-executive directors. In this structure the Management Committee of JBI also reported to a BJB Regional Head and required in relation to some matters approval from BJB Regional Heads who also sat on JBI's Board as non-executive directors and were superior within the JB Group structure.

4.136. In the matrix management structure, as it existed at that time, JBI senior management had responsibility for, amongst other things, ensuring compliance with UK regulatory requirements and providing oversight of JBI's business activities; BJB Regional Heads had responsibility for, amongst other things, business units meeting quantitative targets (for example, amount of 'net new money' (NNM), 'assets under management' (AUM) and revenue generated by the business units within their region) and determined the remuneration of JBI staff within their region. This separation of responsibilities meant that the functional reporting line might make decisions regarding JBI's business without giving proper regard to UK regulatory standards.

4.137. The matrix management system also created the potential for JBI staff to view one management line as more important than the other, particularly where BJB Regional Heads determined remuneration for staff within their regions and, within

the structure of the JB Group, were senior to JBI senior management. This could, and in fact did, result in JBI staff not keeping JBI senior management informed about business they were undertaking.

4.138. These were known issues within JBI and BJB. In November 2009, JBI recorded in its 'Index of Conflicts of Interest' that the dual reporting lines meant one reporting line may not receive adequate management information 'compromising [their] ability to meet their responsibilities' and 'may be viewed as "lesser" reducing their ability to meet responsibilities'. In a BJB memo dated 7 June 2010 it was noted that JBI relationship managers 'report primarily to their Region Heads and only secondly to the local management […] This set-up might lead to a conflict of interest between the adherence to local regulations and the achievement of quantitative objectives'. The recommendation was that local line management's authority in enforcing relevant compliance regulations should be strengthened. Issues were also specifically highlighted in an email from JBI senior management in September 2010, an audit report in January 2011 and a compliance report in May 2011.

4.139. JBI did not, however, take steps to address the governance and control issues inherent in the matrix management system or specifically give consideration to the impact of these matters in terms of the control environment governing the relationships with Finders relevant to JBI's business.

4.140. In relation to the Yukos relationship, the matrix management structure contributed to an environment in which C was able to obtain approvals from B and A (the functional line management for her business area) without seeking prior approval from JBI line management, JBI Compliance and/or JBI senior management. This meant that C had responsibility on behalf of JBI for the management of the relationships with Yukos, Mr Merinson and Mr Feldman. The JBI Line Manager was aware that C was reporting directly to B and raised this as an issue in July 2011. Even then, no firm steps appear to have been taken to enhance local reporting lines to JBI senior management. JBI senior management therefore appears to have exercised little oversight of JBI's relationships with Mr Merinson and Yukos. A member of JBI's Board told the Authority that Yukos was one of the largest clients at JBI. Despite this, he told the Authority that:

(1) he did not remember that Mr Merinson was the Finder for Yukos; and

(2) he was unaware that Mr Merinson had an arrangement to be paid 80% of Julius Baer's net revenues (which he described as 'exorbitant').

Remediation of P3 issues

4.141. Since 2014, JBI has committed resources to improve its governance framework and embed JBI specific policies, procedures and controls relating to the management of JBI's relationships with Finders. A number of internal and external reviews were carried out, with programmes of work rolled out to implement the recommendations coming out of those reviews. A new JBI senior management team has been appointed and Independent non-executive directors have also been appointed to the Board of Directors in an effort to improve oversight and challenge.

4.142. On 20 May 2014 JBI introduced a new policy and related controls to manage its relationships with Finders. Although further remedial work continued after this date, the Authority considers that from 20 May 2014, sufficient steps had been taken to improve the control environment that the Principle 3 Relevant Period should end at this date. From 29 November 2017, the JBI Board agreed to cease any new Finders' business and unwind all existing arrangements. As stated in paragraph 4.133 above, JBI also conducted a review of historical Finders' arrangements and compensated any customers that suffered loss, in circumstances where the Finder relationship was unapproved.

5. FAILINGS

5.1. The regulatory provisions relevant to this Notive are referred to in Annex A.

5.2. The Authority considers that there were serious failings in relation to JBI's conduct of its relationships with Mr Merinson, Mr Feldman and Yukos and that the Firm breached Principle 1, Principle 3 and Principle 11.

Principle 1 breach

5.3. By reason of the facts and matters stated, the Authority considers that the Firm has failed to act with integrity and was in breach of Principle 1 between 7 July 2010 and 22 May 2014.

5.4. C was the JBI relationship manager for Yukos and also central to managing the relationships with Mr Feldman and Mr Merinson. B, as the

Sub-Regional (Market) Head for Russia and Eastern Europe, was involved from the outset in the conduct of Julius Baer's relationships with Mr Merinson, Mr Feldman and Yukos.

5.5. C and B were aware of the following facts and matters:

(1) Mr Merinson was an employee of Yukos Group Companies. There was therefore a conflict of interest as the business introduced by Mr Merinson related to his professional activity on behalf of Yukos.

(2) Given the jurisdiction and the nature of the client's business, Yukos was a high-risk client.

(3) In July 2010, Mr Feldman suggested that substantial funds would be placed with Julius Baer, if Julius Baer could arrange a large one-off payment to Mr Merinson funded by commission charged to Yukos Capital. Julius Baer's commercial relationship with Yukos was contingent on Julius Baer putting in place Finder's arrangements with Mr Merinson and making a large payment to Mr Merinson.

(4) Mr Feldman's request was effected by means of the First FX Transaction which was conducted at above standard commission rates and which involved trading with the clients through the night. Julius Baer agreed to pay 80% of this commission (USD 1,877,152.74) to Mr Merinson, a rate well in excess of usual Finder's remuneration. C was aware that the trading approach used to execute the First FX Transaction had the effect that the amount charged for the combination of Julius Baer's commission and the retrocession payment that was to be made to Mr Merinson would not be obvious; and by ensuring that the rate charged to Yukos Capital was above the worst rate of the day, had the effect that anyone with cause to examine Yukos Capital's records would not be put on notice that the commission was of an unusual size.

(5) Mr Merinson requested the payment reference for the First Commission Payment to be "investment capital gain". This payment reference would not reflect the true nature of the payment.

(6) The commercial terms agreed by C with Mr Feldman in October 2010 involved increased fees for Julius Baer in exchange for an increased

Finder’s fee for Mr Merinson plus the option of four large one-off payments, funded by commission paid to Julius Baer by Yukos Capital.

(7) The Second FX Transaction was effected at Mr Feldman’s request and generated in excess of USD 1 million in commission, of which 70% was paid to Mr Merinson. This rate was well in excess of usual Finder’s remuneration. Mr Feldman was prepared to proceed with the Second FX Transaction only if Mr Merinson could be paid 70% of the commission generated and agreed to Yukos Capital paying above standard commission rates. The trading approach (which mirrored that adopted in the First FX Transaction and was agreed with Mr Feldman) involved a large daily rate range and Fair Oaks paying just above the worst rate available in the market, so that the spread between that and the rate at which Julius Baer transacted would cover both the commission required by Julius Baer and a further commission payment which would be made to Mr Merinson as the Finder. There was no proper commercial rationale for Yukos to adopt such an arrangement. The trading approach had the effect that the amount charged for the combination of Julius Baer’s commission and the retrocession payment that was to be made to Mr Merinson would not be obvious; and by ensuring that the rate charged to Fair Oaks was above the worst rate for the day, had the effect that anyone with cause to examine Fair Oaks’ records would not be put on notice that the commission was of an unusual size.

(8) Mr Merinson requested the wording of the Finder’s agreement with BJB Bahamas be amended so as to limit the disclosure of his remuneration only to Mr Feldman.

(9) When asked by JBI to confirm Yukos Capital’s and Fair Oaks’ agreement to the Finder’s arrangements, Mr Feldman made as a condition of this approval Julius Baer’s commitment to confidentiality.

(10) The Third FX Transaction involved the same trading strategy as the Second FX Transaction, resulting in an unusually high rate of commission, without any proper commercial rationale. There was an obvious risk that the Third FX Transaction was undertaken in breach of Mr Merinson’s and Mr Feldman’s duties to Fair Oaks, was not legitimate, and was undertaken to divert funds improperly to Mr Merinson and potentially Mr Feldman.

5.6. In addition, C was aware of the following:

(1) Mr Merinson intended to and subsequently did transfer half of the First and Second Commission Payments he received from Julius Baer to Mr Feldman.

5.7. There was no proper rationale for the unusual and elaborate steps requested by Mr Feldman and implemented by C and Julius Baer to generate funds for the benefit of Mr Merinson. C had a key role in negotiating the Finder's arrangements with Mr Merinson and Mr Feldman and in managing the relationship with Mr Merinson and Yukos. As C was aware of the numerous suspicious features to this relationship, she must have been aware of the obvious risks arising from it, including that Mr Feldman and Mr Merinson were acting contrary to the interests of Yukos and using Finder's arrangements and commission payments on FX transactions to obscure the payments to Mr Merinson (and after 16 August 2010, onwards to Mr Feldman) of very large sums of money. Although the Authority recognises that C recorded and made the JBI Line Manager, B, A, Compliance and others at Julius Baer aware of much of her conduct of this relationship, she did not disclose to her senior managers or to Compliance the fact that Mr Merinson intended to and later did, transfer a proportion of his commission to Mr Feldman, which was an obvious sign that the arrangements which she had set up at Mr Merinson's and Mr Feldman's request were improper. By failing to have regard to the obvious risk arising from the relationship with Mr Merinson and Yukos, and the payment of commission pursuant to that relationship, and by failing to take appropriate action in light of those risks, C acted recklessly.

5.8. As the JBI relationship manager, C negotiated and implemented the arrangements with Mr Merinson and Mr Feldman, and until November 2012 she had responsibility on behalf of JBI for managing the relationships with Mr Merinson, Mr Feldman and Yukos. JBI senior management were aware that C was managing these relationships and, due in part to the matrix management structure, C had responsibility on behalf of JBI with limited involvement from JBI senior management. C was approved by the Authority to perform the CF30 (customer) function. C's knowledge of the matters set out above is therefore to be attributed to JBI.

5.9. B was an experienced financial services professional and held a senior position with BJB and from 30 March 2011 with JBI. B must have been aware, given his experience and in light of the matters set out above, of the obvious risks arising from Julius Baer's relationship with Mr Merinson and Yukos. However, B who had functional line management responsibility for C in

respect of her conduct of Julius Baer's relationship with Mr Merinson and Yukos, approved of the terms of the Finder's arrangements with Mr Merinson and continued to support these arrangements as the relationship progressed. He also approved and/or failed to prevent the payment of the Commission Payments, and thereby approved the arrangements by which the commission was generated in the FX Transactions. In doing so, he acted recklessly and with a lack of integrity.

5.10. B joined JBI's Board of Directors on 30 March 2011 and accordingly from that date B's knowledge is to be attributed to JBI. Following B's appointment to the JBI Board:

(1) Despite B's knowledge of the matters identified in paragraph 5.4 above, B permitted the Finder's arrangements with Mr Merinson to continue without having taken any meaningful steps to address the risks arising from Julius Baer's relationship with Mr Merinson.

(2) In July 2011, the JBI Line Manager emailed B and questioned the ethics of the payments to Mr Merinson, the size of the commission charged and the high-risk nature of the Yukos relationship and raised doubts about whether sufficient assurances had been obtained relating to the transparency of the payments. B took no action in response and proceeded to approve the opening of an account for Yukos Hydrocarbons with BJB Guernsey.

(3) B had line management responsibility for C, and in December 2010 and January 2011, notwithstanding that he was tasked with setting up an "acceptable framework" to 'regularise pending issues' for the relationship with Mr Merinson and Mr Feldman (see paragraphs 4.63 to 4.66 above), B agreed that C should negotiate new Finder's arrangements with Mr Merinson, including that Mr Merinson would be entitled to receive 70% of the commission earned on transactions in respect of new inflows of funds, generated through a trading approach that was consistent with that adopted for the First and Second FX Transactions.

(4) The Third FX Transaction took place, without C requiring approval from senior management or anyone else, and Mr Merinson received the Third Commission Payment in accordance with the arrangement for which C had previously obtained the approval of B and A in January 2011 (see paragraph 4.72).

(5) On 30 November 2012, the JBI Line Manager reported his concerns to JBI Compliance, including that Mr Feldman had been paid USD 500,000 by Mr Merinson (a fact that was subsequently verified by BJB Compliance). Even following this email and the initial investigatory work that followed, JBI continued the relationships with Yukos until February 2014 and continued to discuss further business with Yukos representatives. It did not disclose the suspicious arrangements to Yukos or otherwise take any meaningful steps to address the wrongdoing that had been identified until May 2014.

5.11. For the reasons set out above, JBI acted recklessly and with a lack of integrity in enabling the conduct of the Finder's relationship with Mr Merinson and the payment of commission pursuant to that relationship.

Principle 3 breach

5.12. JBI breached Principle 3 between 1 March 2007 and 20 May 2014 by failing to ensure that it organised its affairs effectively in relation to the management of Finders relationships.

(1) JBI failed to put in place adequate policies and procedures to manage the risks presented by its use of Finders.

(2) Until 11 June 2010, JBI had no policies or procedures in place governing the establishment, monitoring or management of Finders relationships. From 11 June 2010, JBI relied on the BJB Co-operation with Finders Policy in place, but did not give sufficient regard to whether this policy enabled it to meet UK regulatory standards given the terms of the policy and the very limited role of JBI in relation to the approval or oversight of Finders' relationships.

(3) In fact, the Co-operation with Finders Policy was inadequate; JBI was not able effectively to identify or manage the risks arising from Finders relationships connected to JBI's clients. As a result of the inadequacies of the Co-operation with Finders Policy and the absence of any other processes or systems, JBI:

(a) did not have a sufficient understanding of the relationships between Finders and introduced clients to enable it to identify potential conflicts of interests and did not have sufficient information or oversight to identify any other risks that might arise from Finders relationships;

(b) was not able to take steps adequately to monitor or control the risks arising from any Finders relationships, or to assess whether it was appropriate for Julius Baer to maintain a Finders' relationship at all;

(c) in particular, was not able to and did not control the disclosure of Finders' relationships to clients;

(d) failed to identify and address the obvious risks arising from the Finders relationship with Mr Merinson and the remuneration of Mr Merinson.

(4) JBI's 'matrix management' structure contributed to a control environment in which JBI had a limited role in approving Finders relationships relevant to JBI's regulated business and in which it was unable to maintain adequate oversight and control of those relationships. Despite JBI's awareness of the risks, JBI failed to address the governance and control issues inherent in the matrix management system or specifically give consideration to the impact of these matters in terms of the control environment governing the relationships with Finders relevant to JBI's business.

5.13. These failings permitted JBI to engage with Mr Merinson, Mr Feldman and Yukos in a way which meant there was a serious risk of JBI facilitating and/or engaging in financial crime.

Principle 11 breach

5.14. JBI breached Principle 11 between 30 November 2012 and 7 July 2014 by failing to report to the Authority in a timely manner that it suspected a potential fraud had been committed against one of its clients and that it had informed UK law enforcement on 22 May 2014.

5.15. The Authority notes that JBI did not report the potential acts of bribery and corruption until after Yukos had given instructions to close its account with BJB in February 2014 and after the third party appointed to investigate the allegations had completed its investigation.

6. SANCTION

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

6.2. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring persons who have breached regulatory requirements from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour.

6.3. For the reasons set out above, the Authority considers that JBI breached Principle 1, Principle 3 and Principle 11. In determining that a financial penalty is appropriate and proportionate in this case, the Authority has considered all the relevant circumstances.

6.4. Changes to the penalty policy set out in DEPP were introduced on 6 March 2010. As the conduct in respect of the Principle 3 breach occurred both before and after 6 March 2010, the Authority has had regard to the provisions of DEPP in force prior to 6 March 2010 (the "old penalty regime") in respect of the breaches that took place before 6 March 2010, and the provisions of DEPP in force from 6 March 2010 (the "current penalty regime") for the later breaches, in calculating the appropriate penalty in respect of the Principle 3 breach.

6.5. Given the nature of the breaches, the Authority considers it appropriate to impose a single financial penalty in respect of the Principle 1 and Principle 3 breaches, and a separate financial penalty in respect of the Principle 11 breach.

6.6. The Authority has adopted the following approach:

(1) calculated the financial penalty for the Principle 3 breach from 1 March 2007 to 5 March 2010 under the old penalty regime;

(2) calculated the financial penalty for the Principle 3 breach from 6 March 2010 to 20 May 2014, and for the Principle 1 breach from 7 July 2010 to 22 May 2014, under the current penalty regime;

(3) calculated the financial penalty for the Principle 11 breach under the current penalty regime; and

(4) added the penalties calculated under (1), (2) and (3) together to produce the total financial penalty.

Principle 3 breach: financial penalty under the old penalty regime

6.7. References to DEPP in this section are to the version in force prior to 6 March 2010. The Authority has also had regard to the relevant sections of the Enforcement

Manual ("ENF"), which applied to the Principle 3 relevant period from 1 March 2007 to 28 August 2007.

6.8. In determining the financial penalty to be attributed to the Principle 3 breach in the period prior to 6 March 2010, the Authority has had particular regard to the following:

(1) The principal purpose of a financial penalty is, as set out at paragraph 6.2 above, to promote high standards of regulatory conduct through deterrence and by demonstrating generally the benefits of compliant behaviour (DEPP 6.5.2G(1)).

(2) The nature, seriousness and impact of the breach (DEPP 6.5.2G(2)), in particular:

(a) The breach during the old penalty regime period lasted for over three years;

(b) The breach revealed the most serious systemic weaknesses in JBI's procedures and internal controls;

(c) The breach involved a substantial risk of loss to customers of JBI; and

(d) The breach created a risk that JBI would facilitate or become involved in financial crime.

(3) The size, financial resources and other circumstances of JBI (DEPP 6.5.2(5)).

(4) The fact that JBI has undertaken remedial work (DEPP 6.2.5(8)).

6.9. The Authority considers that JBI's breach of Principle 3 in the period prior to 6 March 2010 merits a financial penalty of £3,000,000.

6.10. JBI agreed to resolve this matter and qualified for a 15% to 30% (stage 1) discount under the Authority's executive settlement procedures. JBI did not contest the calculation of this financial penalty or any issues relating to it and so, in the circumstances, the Authority has decided that a 30% discount should be applied. The financial penalty for JBI's breach of Principle 3 in the period prior to 6 March 2010 is therefore £2,100,000.

Principle 3 and Principle 1 breach: financial penalty under the current penalty regime

6.11. All references to DEPP in this section are references to the version of DEPP implemented on 6 March 2010 and currently in force. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.

6.12. In the particular circumstances of this case, the Authority has concluded that it is appropriate to impose a combined penalty in respect of the breaches of Principles 3 and 1 occurring after 6 March 2010.

<u>Step 1: disgorgement</u>

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

6.14. The Authority notes that JBI brought these concerns to the attention of the Yukos Group and provided restitution for losses incurred by Yukos plus interest. It has therefore provided compensation for that part of its breaches which caused loss to the Yukos Group. The Authority does not consider that it is practicable to quantify any further financial benefit derived from the breaches in this case.

6.15. The Step 1 figure is therefore £0.

<u>Step 2: the seriousness of the breach</u>

6.16. 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 revenue from the relevant products or business area.

6.17. The Authority considers that the revenue generated by the Julius Baer Group arising from all client accounts managed by JBI during the period from 6 March 2010 to 22 May 2014 is indicative of the harm or potential harm caused by JBI's breaches. The Authority considers JBI's relevant revenue for these breaches to be £83,317,940.

6.18. In determining 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%

6.19. 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. The factors that the Authority considers to be relevant to the Firm's breaches are set out below.

Impact of the breach

6.20. BJB earned USD 3,458,839.41 from the FX Transactions, at the expense of its and JBI's client.

6.21. The breaches caused very substantial loss and risk of loss to JBI's clients.

6.22. The breaches presented a risk to the Authority's objectives of securing protection for consumers and of protecting and enhancing the integrity of the UK financial system.

Nature of the breach

6.23. The breaches included a failure by JBI to conduct its business with integrity in breach of Principle 1.

6.24. The breaches occurred under the current penalty regime for over four years, having commenced beforehand (in the case of the Principle 3 breach), and for a little under four years (in the case of the Principle 1 breach).

6.25. The breaches demonstrate very serious systemic weaknesses in JBI's procedures and internal controls in relation to Finders.

6.26. JBI's senior management were aware of the breaches.

6.27. The breaches exposed JBI to the risk of facilitating financial crime through bribery and participation in fraud. In the case of the FX Transactions, JBI should have been aware that it was participating in defrauding its client of USD 3,458,839.41.

Recklessness

6.28. JBI acted recklessly for the reasons given in paragraphs 5.2 to 5.10 above.

Level of seriousness

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

(1) The breaches caused significant loss and risk of loss to JBI's clients;

(2) The breaches revealed serious weaknesses in JBI's procedures and internal controls relating to its use of Finders;

(3) The breaches created a significant risk that financial crime would be facilitated, occasioned or otherwise occur, and in fact do appear to have facilitated financial crime;

(4) JBI failed to conduct its business with integrity;

(5) JBI acted recklessly.

6.30. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 1, 2 or 3 factors'. The Authority does not consider any of these to be relevant.

6.31. Taking all of the above factors into account, the Authority considers the overall seriousness of the breaches to be level 5, and so the Step 2 figure is 20% of £83,317,940.

6.32. The figure at Step 2 is therefore £16,663,588.

Step 3: mitigating and aggravating factors

6.33. 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.

6.34. The Authority considers that the following factors aggravate the breach:

(1) Before or during the Principle 3 and Principle 1 Relevant Periods, the Authority published final notices that raised concerns relevant to the breaches, including final notices given to Aon Limited (6 January 2009), UBS AG (5 August 2009), Willis Limited (21 July 2011), JLT Specialty (19 December 2013), and State Street Bank (30 January 2014).

(2) The Authority's Guidance ('Financial Crime: a guide for firms' published in December 2011) and other published materials (including the Ministry of Justice's Guidance on the Bribery Act 2010 published in 2011 and the Joint Money Laundering Steering Group guidance for the UK Financial Sector with various versions published during the Principle 3 and Principle 1 Relevant Periods) raised concerns relevant to the breaches.

6.35. The Authority considers that the following factor has the effect of mitigating the breaches:

(1) JBI conducted a review of historical Finders' arrangements, as a result of which it paid redress to clients of approximately £396,000. JBI also took steps to improve its governance framework and policies, procedures and controls around Finders as referenced in this Notice.

6.36. Having considered these factors, the Authority considers that the Step 2 figure should be subject to a 5% uplift.

6.37. The Step 3 figure is therefore £17,496,767.

Step 4: adjustment for deterrence

6.38. The Authority considers that the figure at Step 3 of £17,496,767 represents a sufficient deterrent to JBI and others, and so has not increased the penalty at Step 4. The Step 4 figure is therefore £17,496,767.

Step 5: settlement discount

6.39. The Authority and JBI reached agreement to resolve this matter. Therefore, pursuant to DEPP 6.5A.5G and 6.7.3AG(2), a 15% to 30% discount applies to the Step 4 figure. JBI contested the calculation of this financial penalty and issues relating to it. In the circumstances, the Authority has decided that a 25% discount should be applied.

6.40. The figure at Step 5, in respect of the Principle 1 breach and the Principle 3 breach after 6 March 2010, is therefore £13,122,500. It is the Authority's usual practice to round down the Step 5 penalty figure to the nearest £100.

Principle 11 breach: financial penalty

6.41. The Authority has also applied the five-step framework that applies in respect of financial penalties imposed on firms to JBI's breach of Principle 11.

Step 1: disgorgement

6.42. The Authority does not consider it practicable to identify the financial benefit that the Firm derived directly from the breach.

6.43. The figure at Step 1 is therefore £0.

Step 2: seriousness of the breach

6.44. The Authority considers that the revenue generated by JBI is not an appropriate indicator of the harm or potential harm caused by the breach.

6.45. The Authority has determined the Step 2 amount by taking into account those factors relevant to an assessment of the level of seriousness of the breach.

6.46. The Authority considers that the following factors are relevant:

(1) The level of benefit gained or loss avoided, or intended to be gained or avoided, by the firm from the breach. JBI was made aware at the latest by 30 November 2012 that it may have participated in a fraud against one of its clients. It did not notify any authority about this until after Yukos had closed its accounts in 2014. The Authority considers that JBI recklessly permitted its relationship with Mr Merinson and Yukos to continue until March 2014 when Yukos transferred its funds from BJB to another bank.

(2) The frequency of the breach. The breach took place over approximately 19 months. During that period JBI continuously failed to give the notice that it should have given to the Authority.

(3) JBI's senior management were aware of the breach, in that they were aware of the material facts that gave rise to the need to give notice to the Authority.

(4) JBI's failure to give prompt notice to the Authority meant that there was a serious risk that further potential financial crime could be facilitated, occasioned or otherwise occur.

(5) JBI's senior management were aware that failure to make disclosure to the Authority could result in a breach, but closed their eyes to this risk, and as a result took no action to make disclosure for 19 months. The Authority therefore considers the breach was committed recklessly.

6.47. Taking the above factors into account, the Authority considers the seriousness of the Principle 11 breach to be level 5.

6.48. Having regard to the above factors and the seriousness level, the figure at Step 2 is £4,000,000.

Step 3: mitigating and aggravating factors

6.49. The Authority does not consider that there are any relevant mitigating or aggravating factors.

6.50. The figure at Step 3 therefore remains £4,000,000.

Step 4: adjustment for deterrence

6.51. The Authority considers that the figure at Step 3 of £4,000,000 represents a sufficient deterrent to JBI and others, and so has not increased the penalty at Step 4.

6.52. The figure at Step 4 therefore remains £4,000,000.

Step 5: settlement discount

6.53. The Authority and JBI reached agreement to resolve this matter. Therefore, pursuant to DEPP 6.5A.5G and 6.7.3AG (2), a 15% to 30% discount applies to the Step 4 figure. JBI did not contest the calculation of this financial penalty or any issues relating to it and so, in the circumstances, the Authority has decided that a 30% discount should be applied.

6.54. The figure at Step 5, in respect of the Principle 11 breach is therefore £2,800,000.

Total Penalty

6.55. The Authority hereby imposes on JBI a financial penalty of £18,022,500 comprising:

(1) A penalty of £2,100,000 relating to the Firm's breach of Principle 3 prior to 6 March 2010;

(2) A penalty of £13,122,500 relating to JBI's breach of Principles 3 and 1 in the period on or after 6 March 2010; and

(3) A penalty of £2,800,000 relating to the Firm's breach of Principle 11.

7. REPRESENTATIONS

7.1. Annex B contains a brief summary of the key representations made by JBI, and by Mr Merinson and Mr Feldman (as persons with third party rights in respect of the Warning Notice), and how they have been dealt with. As JBI agreed to settle all issues of fact and partially agreed liability, it only made representations in respect of the limited matters which it was contesting. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

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

8.2. The following statutory rights are important.

Decision maker

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

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

Manner and time for payment

8.4. The financial penalty must be paid in full by JBI to the Authority no later than 2 March 2022.

If the financial penalty is not paid

8.5. If all or any of the financial penalty is outstanding on 3 March 2021, the Authority may recover the outstanding amount as a debt owed by JBI and due ot the Authority.

Publicity

8.6. 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 a 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 JBI or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

8.8. For more information concerning this matter generally, contact Rory Neary at the Authority (direct line: 020 7066 7972/email: Rory.Neary2@fca.org.uk).

Kate Tuckley

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. Relevant Statutory Provisions

1.1. The Authority's statutory objectives are set out in Part 1B of the Act, and include the operational objectives of protecting and enhancing the integrity of the UK financial system (set out in section 1D of the Act) and securing an appropriate degree of protection for consumers (as set out in section 1C of the Act).

1.2. Section 206(1) of the Act states:

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

2. Relevant Regulatory Provisions

Principles for Businesses ("Principles")

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

2.2. Principle 1 states:

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

2.3. Principle 3 states:

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

2.4. Principle 11 states:

"A firm must deal with its regulators in an open and cooperative way, and must disclose to the FCA appropriately anything relating to the firm of which that regulator would reasonably expect notice."

Decision Procedures and Penalties Manual ("DEPP")

2.5. Chapter 6 of DEPP sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.

The Enforcement Guide

2.6. The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act.

2.7. Chapter 7 of the Enforcement Guide sets out the Authority's approach to exercising its power to impose a financial a penalty.

The Enforcement Manual

2.8. The Enforcement Manual, which was in force until 28 August 2007, set out the Authority's approach to exercising its enforcement powers prior to that date.

ANNEX B

REPRESENTATIONS

JBI's Representations

1. A summary of the key representations made by JBI (in italics), and the Authority's conclusions in respect of them, is set out below.

Introduction

2. *JBI accepts and acknowledges that it breached Principles 1, 3 and 11. It regrets the breaches, accepts they are serious in nature and has taken significant steps to remedy the shortcomings identified by the Authority. JBI agreed all issues of fact and the majority of issues surrounding liability. The only matters it is contesting are: (1) the relevant period for the Principle 1 breach; and (2) the size of the proposed financial penalty.*

3. *In respect of (1), JBI contests the start date of the Principle 1 Relevant Period, arguing that only B's lack of integrity can properly be attributed to JBI, and not C's lack of integrity, and that the Principle 1 Relevant Period should therefore start when B joined the Board of JBI. Further, JBI contests the end date of the Principle 1 Relevant Period, arguing that it is inconsistent with the Authority's determination of the end date of B's lack of integrity, as set out in the Decision Notice given to B dated 23 June 2021 (the "B Decision Notice").*

4. JBI has accepted that it breached Principles 1, 3 and 11 and has agreed all issues of fact and the majority of issues relating to liability. Explanations of the Authority's conclusions regarding the relevant period for the Principle 1 breach and the size of the financial penalty are set out below.

Attribution

5. *In order for a firm to have breached Principle 1, it is necessary to decide whose actions and state of mind are to be attributed to it, which is a question of law. The fact that an employee acted without integrity does not necessarily mean that the firm itself did. Instead, applying the conventional judicial approach to attribution, it is only the actions and state of mind of those that were the firm's "directing mind and will", in relation to the relevant function, that can be attributable to the firm. JBI accepts that the actions*

and state of mind of its director, B, are matters that fall properly to be attributed to it, and so accepts that it acted with a lack of integrity between 30 March 2011 and August 2011, when, as set out in the B Decision Notice, B acted with a lack of integrity whilst a director of JBI. However, C's misconduct should not be attributable to JBI because C was not its "directing mind and will".

6. *"Directing mind and will" is the applicable legal test because of the nature of Principle 1, which requires a firm to act with integrity. It is the most serious of all regulatory breaches and, as the Authority's consultation document (CP13) published at the time of introducing Principle 1 explained, it introduces a moral concept and is intended to be reserved for the most serious of cases. As the Upper Tribunal has repeatedly explained, a finding of a lack of integrity is an allegation which connotes a lack of moral soundness and rectitude as well as a failure to adhere to an ethical code; these are not purely objective failures but require an assessment of the mental state of the person alleged to lack integrity. C acted with a lack of integrity by acting recklessly, and recklessness always connotes a mental state and requires an investigation of a person's state of mind. Therefore, C's lack of integrity can only be attributed to JBI if her mental state can be attributed to JBI.*

7. *In criminal cases where the Courts have had to determine the question of whether a company should be held criminally liable for the actions of an employee, the appropriate rule of attribution has been held to be the "directing mind and will" test. This test was referred to in Lennard's Carrying Company[1], was established in Tesco[2], and was recently applied in Barclays[3]. In the latter case, Davis LJ explained that only those with full discretion to act independently of instructions of the board (in relation to the relevant function at issue in the case) can properly be described as the "directing mind and will".*

8. *Principle 1 is a regulatory rule, but that does not mean that the approach taken in criminal cases can simply be dismissed given the similarities between criminal and disciplinary proceedings, particularly where a lack of integrity is alleged. In determining the appropriate rule of attribution for the purposes of Principle 1, the most relevant case is Meridian[4], in which Lord Hoffman explained that in cases where a law includes a mental element, there are three potential approaches to attribution: (i) the*

[1] *Lennard's Carrying Company Ltd. v Asiatic Petroleum Co. Ltd.* [1915] AC 705
[2] *Tesco v Nattrass* [1972] AC 153
[3] *Serious Fraud Office v Barclays plc* [2018] EWHC 3055 QB
[4] *Meridian Global Funds Management v Securities Commission* [1995] 2 AC 500

law could be construed as not intending to cover companies; (ii) the rule could be construed as intending to cover only acts where the primary rules of attribution are satisfied (i.e. where the acts giving rise to liability were specifically authorised by resolutions of the Board or unanimous shareholder agreements); or (iii) the law requires a special rule of attribution for the particular substantive rule.

9. *This is one of those cases where the law requires a "special rule of attribution". However, that does not require a departure from the "directing mind and will" test. Rather, Meridian illustrates how the "directing mind and will" test is sufficiently flexible to allow attribution where a failure to do so would defeat the purpose of the relevant law. This is supported by Lord Sumption in Jetivia[5], who noted that in Meridian, Lord Hoffman had in effect followed the approach of Lord Reid in Tesco, in concluding that the attribution of the state of mind of an agent to a company may be appropriate "where the agent is the directing mind and will of the company for the purpose of performing the particular function in question, without necessarily being its directing mind and will for other purposes".*

10. *Applying the "directing mind and will" test to the facts of this case, it is not tenable to suggest that C was the "directing mind and will" of JBI, whether in relation to the Yukos relationship or otherwise.*

11. *C was a relationship manager within JBI and was a relatively junior employee. She was not a member of JBI management, let alone a member of JBI senior management. She had a direct reporting line to the JBI Line Manager, who in turn reported both to JBI senior managers and BJB senior managers, and a functional reporting line to B. Therefore, far from delegating its authority to C, the JBI Board subjected her to two reporting lines.*

12. *In relation to her reporting line within JBI, C ultimately (through the JBI Line Manager) reported to JBI senior managers who had responsibility for, amongst other things, ensuring compliance with UK regulatory requirements and providing oversight of JBI's business activities.*

13. *In relation to her reporting line via BJB, whilst part of that reporting line was external to JBI, that is not significant in the case of a reporting structure within a group as it is still indicative of the subordinate nature of C's function. In any event, it*

[5] *Jetivia SA v Bilta Limited* [2016] AC 1

was a reporting line that ultimately fed back into JBI via its Board. JBI's Board therefore had a line of oversight of C through this reporting line as well.

14. *C was also subject to various policies and procedures obligating her to report to BJB Compliance, JBI Compliance and JBI senior management, and was subject to Julius Baer Group's policy on 'Combating fraudulent and improper activities', which required employees to report findings of fraudulent or improper activities.*

15. *As is set out in the Notice, C sought, and obtained, approvals and non- objections from senior management on numerous occasions, answered queries from individuals in other departments, gave updates to others and had her bonus made subject to compliance matters.*

16. *Moreover, C did not have "full discretion to act independently of instructions". For example, she did not have authority to make significant decisions without obtaining approval from more senior colleagues and from JBI Compliance, BJB Compliance and/or the BJB legal department as necessary. These conclusions are also supported by a number of agreed passages in the Notice.*

17. *Therefore, as C did not have any discretion to act independently and was not the "directing mind and will" of JBI, her lack of integrity is not attributable to JBI.*

18. *It would also be a radical departure from the approach it has taken in previous cases for the Authority to attribute C's lack of integrity to JBI. There has never been a final notice where knowledge has been attributed for the purposes of Principle 1 in any comparable circumstances. To the contrary, published final notices make clear that a firm does not breach Principle 1 merely because one of its employees does. For example, in the various LIBOR-related cases, where there were repeated instances of employees being found to have acted without integrity, firms were sanctioned for failures of systems and controls, but never for breach of Principle 1.*

19. *In addition, previous cases where the Authority has attributed a mental state to a firm are consistent with it applying a "directing mind and will" test. For example, in the final notice given to Cathay International Holdings in June 2019, the firm was held to have acted recklessly because its executive directors acted recklessly. In the case of Arch Financial Products[6] in 2015, the Tribunal similarly adopted the identification*

[6] *Arch Financial Products LLP v FCA* [2015] UKUT 13 (TCC)

principle when attributing the acts and omissions of the Chief Executive Officer and Compliance Officer to the company for the purposes of a Principle 1 breach.

20. *The regulatory regime places separate and independent obligations on regulated firms and individuals. Where an employee (who is not the "directing mind and will" of the employing firm) acts with a lack of integrity, that employee may have breached his own regulatory requirements, and if the firm's systems and controls were inadequate and permitted or facilitated the employee's misconduct, the firm may be held culpable for breaching, for example, Principle 3. If C's lack of integrity was held to be attributable to JBI, it would risk diminishing the significance of Principle 3, as ineffective systems and controls would leave a firm liable to a finding of a breach of Principle 1, on account of the actions of relatively junior individuals. Further, applying the "directing mind and will" test means that Principle 1 is reserved, as intended, for the most serious cases where the firm itself, through a sufficiently senior employee in relation to the function, has acted without integrity, as JBI accepts is the case in respect of B.*

21. *As set out at paragraph 4.134(5) of the Notice, it is an agreed fact that JBI failed to identify the payment by Mr Merinson to Mr Feldman of 50% of the First and Second Commission Payments. At paragraph 5.5(1) there is an agreed finding that C was aware that Mr Merinson intended to and subsequently did transfer half of the commission he received from Julius Baer to Mr Feldman. If C's knowledge of the transfer was attributed to JBI, then it would be inconsistent with the agreed fact at paragraph 4.134(5). This potential contradiction demonstrates that C's knowledge should not be attributed to JBI.*

22. The Authority does not agree that, in determining whether C's lack of integrity should be attributed to JBI for the purposes of Principle 1, it is necessary to determine whether she was JBI's "directing mind and will" in relation to the relevant function.

23. In Meridian, having introduced the concept of the "special rule of attribution", Lord Hoffman explained that it is "a question of construction in each case as to whether the particular rule requires that the knowledge that an act has been done, or the state of mind with which it was done, should be attributed to the company". Having regard to this, in Jetivia, Lord Mance stated that "the key to any question of attribution is ultimately always to be found in consideration of context and purpose. The question

is: whose act or knowledge or state of mind is for the purpose of the relevant rule to count as the act, knowledge or state of mind of the company?"

24. In Morris[7], a case concerning whether a bank was knowingly a party to fraudulent trading under section 213 of the Insolvency Act 1986 (which involves a lack of integrity, as does Principle 1), in summarising its conclusions on attribution, the Court of Appeal did not refer to the "directing mind and will" test, and instead stated that the proper approach to the question of attribution turns on the construction and purpose of the rule in question. The Court held that the wording of, and the policy behind, section 213 indicate that it would be inappropriate to limit attribution to the board or those specifically authorised by the board, as that would ignore reality and risk emasculating the effect of the provision. On the other hand, the Court stated that it would be wrong to attribute to a company the knowledge of any agent irrespective of the particular facts, as to do so would risk obvious injustice to a company which had acted in good faith and with care. Instead, the Court concluded that it must to some extent depend on the facts of each particular case whether an agent's knowledge should be attributed to the company for the purposes of section 213, where the circumstances are such that there would be no attribution on the application of the primary rules (i.e. those found in the company's constitution or implied by company law).

25. The Court in Morris pointed to various factors that it considered to be relevant in determining this question: (i) the agent's importance or seniority in the hierarchy of the firm (the more senior, the easier to attribute); (ii) their significance and freedom to act in the context of the particular transaction (the more they are left to get on with it, the easier to attribute); and (iii) the degree to which the board is informed and put on inquiry (the more grounds for suspicion, concern or questioning, or if questions were not raised or answers were too easily accepted by the board, the easier to attribute).

26. Having regard to these cases, the Authority considers that, in order to determine whether C's actions, knowledge and state of mind should be attributed to JBI, the appropriate approach to take is to fashion a "special rule of attribution", having regard to the purpose of the relevant rule (i.e. Principle 1) and the context in which the question of attribution arises, which requires an analysis of the facts of the case.

[7] *Bank of India v Morris* [2005] EWCA Civ 693

27. As regards the purpose of Principle 1, PRIN 1.1.7G states that for a firm to breach Principle 1, the Authority would need to demonstrate a lack of integrity in the conduct of the firm's business. Further, as mentioned by JBI (see paragraph 6 above), CP13 stated that Principle 1 introduced a "moral concept" and that breaches of it "are likely to be among the gravest breaches of the Principles".

28. Having regard to this guidance, the Authority considers that a breach of Principle 1 would not necessarily arise simply because an employee committed an act that lacked integrity. However, the Authority considers that Principle 1 is not intended to be construed narrowly, and that whether a firm should be held to be in breach of Principle 1 ultimately depends on the facts of the case and whether that would be the appropriate regulatory outcome. Therefore, the misconduct of an employee should be attributable to the firm for the purposes of Principle 1 where, in all the circumstances, it is appropriate to conclude that, as a result of the employee's misconduct, the firm has not conducted its business with integrity.

29. Applying this approach in this case, the Authority considers that the circumstances are such that, as a result of C's reckless conduct, JBI should be considered to have conducted its business without integrity, in breach of Principle 1. In reaching this conclusion, the Authority has had regard to the factors outlined in Morris.

30. With respect to C's seniority, the Authority acknowledges that she did not hold a senior position at JBI. She was, however, a "relationship manager" and, as JBI accepts, she "had responsibility for managing the relationships with Yukos, Mr Feldman and Mr Merinson" (see paragraph 2.7 of this Notice). She was the only person at JBI responsible for managing that relationship, and her functional reporting line in respect of her relationship manager was outside of JBI to an individual employed by a different group entity, B. The Authority therefore considers that she had a sufficiently important role at JBI, and that attribution should not be ruled out simply because of her relative lack of seniority.

31. With respect to C's independence, the flaws in the matrix management system meant that in practice C had a great deal of autonomy at JBI in managing the Yukos relationship. This is accepted by JBI, which has agreed, for example, that it "had a very limited role in the management and oversight of the Finders' relationships relevant to JBI's clients and consequently JBI Compliance and JBI senior management were not in a position to identify and control adequately the risks arising from those relationships" (see paragraph 4.122 of this Notice) and that in

relation to the Yukos relationship, "the matrix management structure contributed to an environment in which C was able to obtain approvals from B and A (the functional line management for her business area) without seeking prior approval from JBI line management, JBI Compliance and/or JBI senior management. This meant that C had responsibility on behalf of JBI for the management of the relationships with Yukos, Mr Merinson and Mr Feldman" (see paragraph 4.140 of this Notice). It is therefore clear that in practice C had a great deal of independence in her management of the Yukos relationship, which points towards her lack of integrity in the conduct of her management of that relationship being attributable to JBI.

32. With respect to the degree to which JBI's Board was informed and put on inquiry, the Authority notes that on 18 July 2011, the JBI Line Manager complained by email to B (who at that time was a member of the Board), that he had been "consistently left out of the loop on all matters arising from this client relationship", and that he did not support the Yukos relationship being managed by C. He also stated that he was not sure if issues raised by BJB Compliance about the Yukos relationship had been resolved, and commented that the size of the retrocession paid to Mr Merinson is "unethical" and "sets a bad example for doing business in this market". JBI has agreed that it appears that B did not do anything as a result of this email (see paragraph 4.89 of this Notice). Further, JBI has agreed that on 21 July 2011, "the JBI Line Manager forwarded the email he had sent to B to his own line manager at JBI and JBI's human resources department. It does not appear that any action was taken by JBI with regard to the Yukos relationship as a result of these concerns being raised" (see paragraph 4.90 of this Notice). The Authority considers that the fact that a member of the JBI Board had serious grounds for suspicion and concern, and failed to act on those grounds, points towards C's conduct being attributable to JBI.

33. The Authority acknowledges that in some previous cases the Authority has not sought to take action against a firm for breach of Principle 1, in circumstances where it has taken action against an employee or employees of the firm for acting with a lack of integrity. However, the Authority considers that should not prevent it from concluding that JBI breached Principle 1 as a result of C's lack of integrity. In the circumstances of this case, which include that the Yukos relationship, which was highly important to JBI, was managed by C, that the matrix management structure meant she did not need approval from JBI itself, JBI line management or JBI Compliance, and that concerns that were passed to the JBI Board by her line manager

were ignored, the Authority considers that attributing C's lack of integrity to JBI is consistent with the objectives of the regulatory regime.

34. The Authority considers that this is a proper application of the Principles and that it would not undermine the significance of Principle 3. As is clear from this Notice, the Authority considers JBI's failure to ensure that it organised its affairs effectively in relation to the management of Finders relationships in breach of Principle 3 to be a serious matter which merits a financial penalty, and this has been accepted by JBI. However, the Authority does not consider that, in the particular circumstances of this case, taking action for JBI's breach of Principle 3 alone would be an appropriate regulatory outcome.

35. The Authority acknowledges that attributing C's knowledge of the transfer of half of Mr Merinson's commission to Mr Feldman might appear to be inconsistent with the agreed fact that JBI failed to identify the payment. However, the Authority considers that attributing the knowledge of C for the purposes of Principle 1 can be distinguished from the Firm's general failure to identify the payment, and that this is not contradictory because, as explained above, attribution depends on context. This is supported by the judgment in Jetivia, which recognised the potential for apparent inconsistencies and explained how they should be dealt with. In that judgment, attribution of knowledge of an employee to a company was considered in different contexts, including (i) when a third party is pursuing a claim against the company arising from the misconduct of an employee; and (ii) when the company is pursuing a claim against the employee for breach of duty on account of their misconduct. It was held that, in the first situation, the employee's knowledge should be attributable to the company such that it should be held liable to the third party, but that in the second situation, the employee cannot argue that the company knew of the misconduct because it had his knowledge, as a defence to the company's claim.

The end date of the Principle 1 Relevant Period

36. *The Warning Notice states that the Principle 1 Relevant Period ended on 22 May 2014. This was based on the attribution of B's lack of integrity to JBI. However, the B Decision Notice states that he acted with a lack of integrity only until August 2011.*

37. *To be consistent with the B Decision Notice, and to comply with its duty to act fairly and rationally (which includes a requirement to act consistently), the Authority should amend the Principle 1 Relevant Period so that it ends in August 2011 rather*

than on 22 May 2014. The facts and matters agreed by JBI are set out in the Focused Resolution Agreement (FRA) entered into by JBI and the Authority. They do not include the dates of the Principle 1 Relevant Period, and there is nothing in the FRA which prevents this change from being made. JBI also reasonably believed that the Authority would be advancing consistent cases against all parties when it entered into the FRA.

38. *If the end-date for JBI's Principle 1 breach is not amended to reflect the findings in the B Decision Notice, the Notice will contain a finding that JBI lacked integrity at a time when there is no finding that any individual acted recklessly and without integrity. Even if the RDC were to decide on behalf of the Authority that C's conduct is attributable to JBI, she cannot be responsible for any lack of integrity by JBI until May 2014 because she has been found by the Authority to have lacked integrity between July 2010 and December 2011, and in any event her employment at JBI ended in November 2012.*

39. The findings in the B Decision Notice include that, following his appointment as a non-executive director of JBI on 30 March 2011, he permitted the Finder's arrangements with Mr Merinson to continue without taking any meaningful steps to address the obvious risks, that he must have been aware of, arising from Julius Baer's relationship with Yukos and Mr Merinson, and that in doing so he acted with a lack of integrity. As JBI accepts, and as is mentioned at paragraph 5.9 of this Notice, B's knowledge is to be attributed to JBI from the date he joined the JBI Board (i.e. 30 March 2011). Further, the Authority has concluded that C must have been aware of the risks arising from the relationship and that her knowledge is attributable to JBI. No meaningful steps were taken by JBI to address the risks until
22 May 2014, when it reported potential acts of bribery and corruption to UK law enforcement (see paragraph 4.114(2) of this Notice). The Authority considers that it would not make sense to conclude that JBI was only aware of these risks until the end of the period in which the Authority has found that B (or C) acted with a lack of integrity. Accordingly, notwithstanding that the B Decision Notice explains that the Authority decided to prohibit him on account of his acting with a lack of integrity between July 2010 and August 2011 (as well as in December 2012, when he recklessly made inaccurate and misleading comments regarding the relationship), the Authority considers that JBI continued to have the knowledge attributed to it and acted with a lack of integrity until it took meaningful steps to address the risks that it was aware of (i.e. until 22 May 2014).

40. In addition, the JBI Line Manager reported his concerns regarding the relationships with Mr Merinson and Mr Feldman to JBI Compliance on 30 November 2012, and yet JBI continued its relationship with Yukos, did not disclose the suspicious arrangements to Yukos or otherwise take any meaningful steps to address the wrongdoing until May 2014. As is clear from paragraphs 5.9(5) and 5.10 of this Notice, in doing so, JBI was not acting with integrity. The Authority considers that this further demonstrates that it would be wrong to conclude that JBI only acted with a lack of integrity until August 2011.

41. The Authority also does not accept that JBI did not agree that the Principle 1 Relevant Period ended on 22 May 2014 when it entered into the FRA. The only issues that were not agreed under the FRA were the amount of the penalty and whether C's lack of integrity could be attributed to JBI for the purposes of Principle 1. The statement in the FRA that all references to the length of the Principle 1 Relevant Period remained to be determined by the RDC has to be read in the light of the definition of the "Agreed Issues" in the FRA. The Authority does not consider JBI's change of position to be justified, and also, for the reasons outlined above, does not consider it is acting inconsistently in concluding that the Principle 1 Relevant Period should end on the date that had been agreed, 22 May 2014.

The size of the financial penalty

42. *In the Warning Notice, the Authority proposed a financial penalty of £25,329,900 before any settlement discount. This figure is made up of three parts: (i) a penalty for the Principle 3 breach calculated under the old penalty regime; (ii) a penalty for the Principle 3 and Principle 1 breaches calculated under the current penalty regime; and (iii) a penalty for the Principle 11 breach calculated under the current penalty regime. JBI does not challenge either (i) or (iii), and only disputes aspects of (ii). JBI's representations regarding the size of the financial penalty therefore concern the calculation of the penalty under the current penalty regime in respect of the Principle 3 and Principle 1 breaches, which JBI submits results in an excessive penalty.*

43. The Authority acknowledges that JBI has only disputed the size of the penalty for the Principle 3 and Principle 1 breaches calculated under the current penalty regime. For the reasons summarised below, the Authority does not agree that it is excessive.

<u>Step 2: Relevant revenue</u>

44. *DEPP 6.5A.2G(2) defines "relevant revenue" as "the revenue derived by the firm during the period of the breach from the products or business areas to which the breach relates." In this case, the breach relates to JBI's governance and control environment in relation to the management and oversight of Finder's arrangements (arrangements where in return for being referred clients by a third party, JBI has agreed to a split of the revenues generated by the client with that third party). Accordingly, the "relevant revenue" must be limited to revenue arising from the following business area: business arising from, or connected to, JBI's Finder's arrangements. That is the revenue which is indicative of the harm or potential harm that the breaches may cause. JBI accepts that its relevant revenue goes beyond the revenue connected to the Yukos Finder's arrangements. However, JBI's revenue from business that does not have any connection with Finder's arrangements is not revenue that is derived from a business area to which the breaches relate and so should not be included in the calculation of "relevant revenue".*

45. *This approach is consistent with that taken by the Authority in calculating the penalty that it imposed on Standard Chartered, as set out in the Decision Notice given to Standard Chartered dated 5 February 2019. It is also consistent with the approach taken by the Authority in the Final Notice given to Lloyds Bank Plc on 11 June 2020, which showed that the Authority can act flexibly in determining relevant revenue, with the ability to tailor relevant revenue figures where it considers it appropriate to do so.*

46. *If the Authority disagrees with JBI's position on "relevant revenue", the proposed figure in the Warning Notice is still too high because it includes the sums paid to Finders by the Julius Baer Group. JBI's role in relation to Finders was effectively to introduce the Finder to the relevant Booking Centre (always located outside the UK) and thereafter facilitate the conclusion of the relevant Finder agreement. Finder payments are deducted by the Booking Centres before JBI's revenue is identified. Therefore, such payments should not be included in the "relevant revenue" figure as they were never (and could never be) received by JBI, and so cannot be described as the "revenue derived by the firm during the period of the breach". Not including these payments is consistent with the Authority's approach in the Final Notice given to Carphone Warehouse on 13 March 2019, which explained that revenue will not be included as "relevant revenue" if it is not received by the firm.*

47. The Authority does not agree with JBI's view of the "relevant revenue" because the "management and oversight of Finder's arrangements" is not a "product" or "business

area". Rather, it is a function (management and oversight) relating to dealings with a particular type of intermediary (a Finder), through whom JBI might be introduced to new clients. Taking such an approach would be inconsistent with the policy as set out in DEPP, rather than a flexible application of it.

48. The purpose of the "relevant revenue" aspect of the penalty policy is to identify, for the purposes of establishing a proportionate penalty starting point, the general size of the undertaking in which the breach occurred. In this case, as JBI received its income from BJB and did not itself receive any remuneration from clients, the Authority considers that the "relevant revenue" is, as set out in paragraph 6.16 of this Notice, "the revenue generated by the Julius Baer Group arising from all client accounts managed by JBI during the period from 6 March 2010 to 22 May 2014", amounting to £83,317,940, as this is a clearly identifiable business area "to which the breach relates" and results in a proportionate penalty.

49. The approach proposed by JBI is inconsistent with the Authority's decision in the Standard Chartered case, in which it was stated: "This definition [of Relevant Revenue] does not restrict the revenue to that derived solely from the relevant activity affected by the breach, as it encompasses all revenue derived "from the products or business areas" to which the breach relates."

50. Further, JBI has agreed that the identified flaws in its matrix management system had impacts and potential consequences which went beyond relationships that happened to involve Finders. For example, at paragraph 4.136 of this Notice it is an agreed fact that the "separation of responsibilities meant that the functional reporting line might make decisions regarding JBI's business without giving proper regard to UK regulatory standards"; and at paragraph 4.137 of this Notice it is an agreed fact that the matrix management system "could, and in fact did, result in JBI staff not keeping JBI senior management informed about business they were undertaking".

51. The Authority does not consider it appropriate for the "relevant revenue" figure to omit the sums paid to Finders by the Julius Baer Group. These sums were paid out of revenue generated from the client accounts managed by JBI and represent a cost of business to the Julius Baer Group. As the penalty policy requires the determination of a figure based on relevant revenue, rather than relevant profit, the Authority considers it is appropriate to include them. The Authority also notes that other revenue generated by the Julius Baer Group arising from client accounts managed by JBI was also retained by Booking Centres and not received by JBI, yet JBI has not disputed the

inclusion of this revenue, so it is inconsistent for JBI to argue that the sums paid to Finders should not be included for the same reason. The Authority considers the approach taken in this case can be distinguished from that taken in the Carphone Warehouse case, as the payments which were not included in the firm's "relevant revenue" in that case were certain payments to third parties that the firm did not earn or receive and to which it was not entitled.

Step 2: Seriousness level

52. *JBI accepts that the breaches are serious. However, on the basis that C's conduct is not to be attributed to JBI, the seriousness level should not be at "level 5". This is for two reasons: (1) the most serious contraventions in which C was involved would then not be treated as JBI's conduct; and (2) the relevant period for JBI's Principle 1 breach should be significantly shorter than the period which the Warning Notice proposes to treat as a "level 5" breach, i.e. from 30 March 2011 to August 2011 rather than from 6 March 2010 to 22 May 2014.*

53. *The seriousness level should therefore be assessed as "level 4" instead. Alternatively, it should be assessed as "level 5" for the period that concerned a breach of both Principles 3 and 1, and "level 3" for the period that concerned a breach of Principle 3 only. A finding of "level 3" seriousness during the Principle 3 period would fairly and appropriately reflect the serious nature of the systems and controls failure which allowed a risk to crystallise.*

54. As explained above, the Authority has concluded that C's conduct is to be attributed to JBI, so that the Principle 1 Relevant Period starts on 6 March 2010, and also that the Principle 1 Relevant Period should end on 22 May 2014. Accordingly, and having regard to the factors mentioned at paragraphs 6.19 to 6.29 of this Notice, the Authority considers that JBI's breaches of Principle 1 and Principle 3 should be assessed as seriousness level 5. This level properly reflects the fact that the Authority considers JBI's misconduct, involving a lack of integrity and a failure to ensure that it organised its affairs effectively in relation to the management of Finders relationships which permitted it to engage with Mr Merinson, Mr Feldman and Yukos in a way which meant there was a serious risk of it facilitating and/or engaging in financial crime, to be of the utmost seriousness.

Step 3: Mitigating and aggravating factors

55. *At Step 3 in the Warning Notice, the Authority has applied an uplift of 10%. JBI submits that insufficient weight has been given to the applicable mitigating factors and that no uplift should be applied.*

56. *The remediation undertaken by JBI is mentioned at Step 3 but should carry more weight. JBI has made substantial investment into addressing the issues raised in the Notice. It recognises that a significant part of the work done was to ensure that it was operating at the required standards, however the steps it has taken have been thorough and effective and, in some instances, have gone beyond the minimum standards required. These steps included a review of all Finder's arrangements relating to its clients, which included proactively going to great lengths to reach out to potentially affected former clients and the robust validation of the remediation process undertaken by a third party, and which resulted in compensation payments of almost £400,000. The Warning Notice does not sufficiently acknowledge the scope or nature of this extensive remediation review.*

57. *JBI also conducted an internal investigation into the Yukos Finder relationship in 2013, which culminated in redress being paid to Yukos. JBI also assisted Yukos with its internal investigation into the Yukos Finder relationship, which demonstrates JBI's desire to remedy previous wrongdoings.*

58. *JBI also implemented an enhanced JBI Finder Policy and Framework in May 2014. The following year it instructed an external consultant to undertake an assurance review of the policy and framework and then committed significant resources to action the proposed recommendations. JBI also reviewed all active, legacy Finder's arrangements, which resulted in it terminating all but 12 of them, and subsequently in November 2017, JBI decided to cease accepting clients in the UK that are introduced by Finders, irrespective of the potentially legitimate nature of the Finder. This decision has had a significant adverse impact on JBI's revenue, but demonstrates the lengths to which JBI has gone to ensure that the matters identified in the Notice cannot be repeated in the future.*

59. *In addition, JBI has taken significant steps to remediate the issues identified in the Notice and improve its governance through new Board appointments and changes to executive management. It also dismissed C as a result of concerns about her conduct, and in 2015 dismissed another employee after becoming aware of concerns regarding their relationship with Yukos.*

60. *Further, this is the first disciplinary action taken by the Authority against JBI, but this has not been taken into account in the Warning Notice.*

61. The Authority has had regard to JBI's representations regarding Step 3 of the penalty calculation and has concluded that the relevant aggravating and mitigating factors are those set out in paragraphs 6.33 and 6.34 of this Notice, and that overall they merit a 5% uplift to the Step 2 figure.

62. The remediation undertaken by JBI, including the reviews carried out, is described in section 4 of this Notice, and is included as a mitigating factor at paragraph 6.34. The Authority recognises that JBI has committed significant resources to its remediation work, including contacting all clients with Finder's arrangements, and considers that JBI deserves credit for it, but in considering how much weight to give to this factor, has also had regard to the seriousness of the issues identified and the fact that, despite senior management having known of issues with JBI's control environment in relation to Finders since January 2011, it was several years before the reviews commenced.

63. The Authority has taken into account that JBI paid redress to Yukos and assisted it with its investigation, but considers these are steps which it ought to have carried out in any event.

64. The Authority does not consider that JBI should get significant credit for implementing an enhanced Finder Policy and Framework, given how long it took to do so after senior management became aware of issues with JBI's control environment, including the lack of a Finder's Policy for JBI. The Authority has given credit to JBI's review of historical Finder's arrangements in deciding on the appropriate weight to give to the mitigating factors.

65. In respect of the steps taken to improve JBI's governance, the Authority considers these were clearly necessary given the dominance of functional line management and the issues that created. The Authority has taken this into account at Step 3 and has also recognised this at paragraph 4.141 of this Notice. The departure of C from JBI was largely unconnected to her management of the Yukos relationship so the Authority does not consider that JBI should get any credit for it, and nor does it consider that the dismissal of the other employee merits any reduction in the penalty.

66. The Authority acknowledges that this is the first disciplinary action taken by the Authority against JBI, but does not consider that to be a material factor that merits a reduction in the penalty, given the seriousness of the failings.

Settlement discount

67. *As a result of agreeing at an early stage to settle all issues of fact and partially agreeing liability, but not agreeing penalty, JBI qualified for a settlement discount of between 15% and 30% pursuant to DEPP 6.7.3AG(2).*

68. *JBI submits that a discount of 30% is appropriate, whether or not it succeeds with its submissions on attribution and/or penalty. This is because:*

    a. *JBI has agreed all relevant facts relating to liability.*

    b. *The only 'non-penalty' related issue which has not been agreed is a narrow question of law: whether C's lack of integrity is attributable to JBI such that JBI can also be said to have lacked integrity. The application of the rules of attribution in the financial services regulatory context is relatively novel and so this is a point which, once determined, will provide helpful clarity to the whole of the industry.*

    c. *The attribution issue is precisely the type of argument that the Authority's focused resolution agreement policy was intended to facilitate. If the settlement discount is reduced below 30%, other firms are likely to be dissuaded from using this type of agreement in future.*

69. DEPP 6.7.3CG states that, where the settlement discount is within a range, factors relevant to determining the appropriate settlement discount may include: (1) the extent to which the position taken by the person subject to enforcement action on the disputed issues at the time the FRA is entered into is reflected in the terms of the decision notice; and (2) any saving of time or public resources as a result of the FRA.

70. Having regard to DEPP 6.7.3CG(2), the Authority agrees that in principle, the extent of the issues in dispute besides penalty is a potentially relevant factor when determining the appropriate settlement discount. However, having regard to DEPP 6.7.3CG(1), the Authority also considers that the success of a subject in contesting the non-penalty issue(s) is relevant to the level of the discount. As explained above, the Authority does not agree with JBI that C's lack of integrity should not be

attributed to it. Accordingly, whilst recognising the importance of the attribution issue and the fact that it is relatively novel, the Authority does not consider it appropriate to give JBI a discount of 30% in respect of the penalty imposed under the current penalty regime for JBI's breaches of Principles 1 and 3, and has instead decided that it is appropriate to give a discount of 25%.

71. The financial penalty imposed on JBI is the total of three separate penalty calculations. As JBI has not contested the proposed penalty in respect of the Principle 3 breach under the old penalty regime or the proposed penalty in respect of the Principle 11 breach under the current penalty regime, the Authority considers it appropriate to give a discount of 30% in respect of both of those penalties.

Mr Merinson's Representations

72. *The Warning Notice misrepresents Mr Merinson's activities and relationships. He was never the Chief Financial Officer of Yukos Capital or of any other Yukos Group entity. Instead, he was employed by Yukos International, with his duties largely restricted to bookkeeping and financial control.*

73. *He was therefore not involved in determining the fees that the respective Yukos entities paid to Julius Baer. Those fees mainly reflected the difficulties that Julius Baer had with the onboarding of a group with as controversial a history as Yukos.*

74. *The Finder's fees paid to him by Julius Baer were approved by an authorised representative of the respective Yukos Group Companies on behalf of which the transactions were undertaken. Various directors within the wider Yukos Group were also aware of the arrangements, yet no objections were raised at the time.*

75. *His contractual arrangements with Julius Baer were known from the outset to those at the top level of Julius Baer, as it was concluded upon Julius Baer's own initiative.*

76. *His business relationship with Mr Feldman was limited to a loan provided to him at arm's length, on which Mr Feldman paid interest in line with the market. There was never any intention to hide this arrangement, or any of the other arrangements, from either Julius Baer or Yukos. This is apparent from the fact that the transfers to Mr Feldman involved his account at Julius Baer.*

77. There is substantial evidence that Mr Merinson was employed by Yukos and, in particular, that he had an official role at Yukos International, the parent company of

Yukos Capital. Irrespective of his precise job title, C's understanding, based on due diligence and meetings with him and Mr Feldman, was that Mr Merinson had responsibility for oversight and control of financial operations at Yukos International and Yukos Capital. This was reflected in the fact that in June 2009 she described him as the Financial Controller and Treasurer for Yukos International, in October 2009 she described him as the Chief Financial Officer of both Yukos Capital and Yukos International, and in November 2009 she described him as the Chief Financial Officer of Yukos Capital.

78. The contemporaneous documents demonstrate that Mr Merinson was involved in determining the fees paid by Yukos entities to BJB. For example, he was present at the meetings on 7 July 2010 at which the key terms of the arrangements were negotiated; he was present in JBI's offices, when the First FX Transaction took place in August 2010; and he was present at the meeting on 13 October 2010, when further retrocessions and amendments to the terms of the arrangements were discussed.

79. There is no evidence that the arrangements were known to anyone in the Yukos Group other than Mr Feldman, with whom Mr Merinson shared the commission he received from the First and Second Commission Payments.

80. The Authority acknowledges that senior individuals in the Julius Baer group were familiar with the proposed arrangements from an early stage and supported them.

81. The Authority considers that Mr Merinson's assertion that his payment of exactly half the commission he received from the First and Second FX Transactions to Mr Feldman was pursuant to a loan is not credible. The Authority has not seen any evidence of a loan agreement or of interest payments from Mr Feldman to Mr Merinson.

<u>Mr Feldman's Representations</u>

82. *Mr Merinson was never the Chief Financial Officer of Yukos Capital nor any other Yukos Group company, and had no official role at Yukos Capital nor Yukos International whilst Mr Feldman was a director of Yukos Capital.*

83. *Mr Merinson did not share his commission with Mr Feldman, nor was there any pre-arranged agreement to do so. Instead, Mr Merinson gave Mr Feldman an arms-length documented loan, on which he made interest payments from the outset. This was done transparently as Mr Merinson sent Mr Feldman the money directly from his Julius Baer account.*

84. *The conversion from GBP to USD was known throughout the Yukos Group. Yukos knew the original amount in GBP and the amount in USD that was ultimately deposited and was satisfied. FX rates are readily available so the fees paid could be determined. Others at Yukos could have also asked him about the fees, but did not do so. Instead, they lauded the arrangement with Julius Baer for the lowest custody fees being paid by the Yukos Group to any bank.*

85. *The fees paid for the FX Transaction were not exorbitant. Even if it was considered that they were higher than normal, that would reflect the politically sensitive nature of doing business with Yukos. There was tremendous pressure to bank the money and to do so quickly, but the political sensitivities meant there were few choices. To apply business norms to a far from normal business situation is unfair.*

86. *Mr Feldman's request to Julius Baer to keep details of the transactions confidential was aimed at keeping the information confidential from its adversaries in the litigation. This was Yukos' policy and a common request made to service providers that Yukos dealt with.*

87. As mentioned above, there is substantial evidence that Mr Merinson was employed by Yukos and, in particular, that he had an official role at Yukos International.

88. Mr Feldman's submission regarding Mr Merinson's sharing of the commission payments with him is not credible. The Authority has not seen any evidence of a loan agreement or of interest payments from Mr Feldman to Mr Merinson.

89. The Authority does not dispute that others in Yukos may have known about the conversion of GBP to USD. However, the Authority disagrees that they could have calculated the charges by looking at the exchange rate. Although it would have been possible to identify that the conversion was at a rate above the worst rate for the day, the actual charges, and the fact that the majority of them were being paid to Mr Merinson, and then shared with Mr Feldman, would not have been apparent. The Authority therefore considers it unlikely that the Yukos Group would have been satisfied, if they had known the real cost. Further, whilst the custody fees were transparent to the Yukos Group, the retrocession arrangements, which were not in Yukos' interests, were not transparent and there is no evidence that these were known of or approved.

90. Mr Feldman's submission that the high charges for the First FX Transaction reflected BJB's interest in being remunerated for taking the political risk of having Yukos as a client ignores the fact that 80% of the amount charged was paid to Mr Merinson and shared with Mr Feldman. In addition, the same logic does not apply to the further one-off retrocessions negotiated in October 2010. The Authority does not accept that the political sensitivities justified the arrangements agreed by Mr Feldman.

91. The Authority does not agree that disclosure of the remuneration arrangements for Mr Merinson were sensitive matters that Yukos needed to keep secret. Rather, they were sensitive for Mr Merinson and Mr Feldman, because they wished to keep them hidden from Yukos.