

In October 2013, we reported that the Financial Conduct Authority (“FCA”) had confirmed that it was to exercise its new power to publish information about certain Warning Notices in proposed disciplinary action against FCA regulated firms and individuals, to be known as a Warning Notice Statement (“WNS”).

On 3 February 2014, the FCA issued the first WNSs in respect of two individuals in the banking industry allegedly involved in LIBOR rate fixing.

The relevant Warning Notices were given by the FCA to two individuals on 28 November 2013, notifying the individuals that the FCA proposed to take disciplinary action in respect of the conduct that was summarised in the WNS.

In respect of the first individual, the FCA says in the WNS that the individual:

“Over a period of more than two years the individual, who was a submitter at a bank, was knowingly concerned in the contravention of Principle 5 [a firm must observe proper standards of market conduct] by the bank for significant failings in relation to an interest rate benchmark”.

In particular, the FCA states that it considers that the individual:

- *“Made interest rate benchmark submissions which took into account requests made by traders to benefit their positions;*
- *Colluded with an interdealer broker acting on behalf of a trader from another bank, by making interest rate benchmark submissions which took into account a request made by that broker;*
- *Colluded directly with traders at another panel bank, both by making interest rate benchmark submissions which took into account requests made by them, and by making requests to that other panel bank on behalf of traders at his bank, in an attempt to influence their interest rate benchmark submissions; and*
- *Took into account the interest rate derivative positions on the trading book for which the individual was responsible when making interest rate benchmark submissions.”*

In respect of the second individual, the FCA states that it gave the individual a Warning Notice because it considered that:

“Over a period of more than three years, the individual, who was a manager at a bank, was knowingly concerned in the contravention of Principles 3 [a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems] and 5 by the bank for significant failings in relation to an interest rate benchmark.”

In particular, the FCA states that it considers that the individual:

- *“Was personally aware of and condoned: traders making requests to submitters to manipulate interest rate benchmark submissions, and submitters, who reported to the individual, making submissions which took those requests into account;*
- *Was responsible for the oversight in supervision of the bank’s submitters and some of the bank’s traders and failed to manage appropriately the business area for which he was responsible. He instead facilitated others’ attempts to manipulate interest rate benchmark submissions;*
- *Was aware of the absence of systems, controls or policies governing the procedure for making interest rate benchmark submissions at the bank, and took no steps to address this; and*
- *Was aware of the conflict of interest in certain submitters also trading derivative products referenced to an interest rate benchmark. The individual allowed this to continue and took no steps to mitigate the risks that it posed.”*

The WNSs continue, and follow on from, the FCA’s previous enforcement activity centred on misconduct relating to LIBOR (for example, the fines imposed in 2013 on Rabobank and ICAP Europe). But more importantly they now firmly evidence the FCA’s intention to try to hold to account senior managers (in line with previously stated FCA enforcement policy) in respect of market misconduct.

The FCA has chosen not to name the two individuals in the WNSs, despite having the power to do so, in line with the policy previously outlined by the FCA in its Policy Statement PS13/9.

Also in accordance with previously outlined policy, the FCA has made clear on the face of the WNSs that a Warning Notice is not a final decision of the FCA and that the individuals have the right to make representations to the Regulatory Decisions Committee ("**RDC**") which, in the light of those representations, will then decide on the appropriate action and whether to issue a Decision Notice.

The WNSs also make clear that if a Decision Notice is issued by the RDC, the individual still has the right to refer the matter to the Upper Tribunal, and that if either of the RDC or the Upper Tribunal decide that no further action should be taken, the FCA will publish a notice of discontinuance with regard to the disciplinary action.

Finally, interested observers should note that the WNSs were not published on the news and press releases section on the front "page" of the FCA website, but rather on a newly created section of the enforcement portal of the website that is now specifically dedicated to Warning Notice Statements.

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