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## FINAL NOTICE

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**To:** Alexis Stenfors  
**Date of Birth:** 03 August 1970  
**Date:** 16 March 2010

**TAKE NOTICE:** The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice that it has taken the following action:

### 1 ACTION

- 1.1 The FSA gave Alexis Stenfors (“Mr Stenfors”) a Decision Notice dated 15 February 2010 which notified him that the FSA had decided to impose on him a prohibition order pursuant to section 56 of the Financial Services and Markets Act 2000 (“the Act”), prohibiting him from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm on the grounds that Mr Stenfors is not a fit and proper person.
- 1.2 Mr Stenfors has confirmed that he will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3 Accordingly, for the reasons set out below, the FSA imposes a prohibition order on Mr Stenfors.
- 1.4 The prohibition order has effect from the date of this Final Notice and the FSA is minded to revoke the prohibition order, on Mr Stenfors’ application, at any time after five years from the date of this Final Notice, in the absence of any new evidence that Mr Stenfors is not fit and proper.

1.5 Mr Stenfors agreed to settle at an early stage of the FSA's investigation.

## **2 REASONS FOR THE ACTION**

2.1 This Notice is issued to Mr Stenfors in light of his conduct during the period from mid-January 2009 to mid-February 2009 ("the relevant period") when Mr Stenfors was a trader on the Short Term Interest Rate Trading ("STIRT") desk of the London branch of Merrill Lynch International Bank Limited ("MLIB") and the head of Scandi Swaps Trading at Merrill Lynch.

2.2 During the relevant period, Mr Stenfors deliberately mis-marked positions on his trading books ("his positions"). Mr Stenfors estimates that his positions were overvalued by approximately \$100 million (see also paragraph 4.5 below). Mr Stenfors' conduct demonstrated a lack of integrity and he is therefore considered not fit and proper to perform any function in relation to regulated activities.

2.3 In the FSA's view, Mr Stenfors' misconduct is serious because he was a senior and experienced trader who was fully aware of his responsibilities to mark to market his positions and of the consequences of failing to do so.

2.4 While the FSA believes that a prohibition order is necessary and proportionate in order to achieve the FSA's regulatory objective of market confidence and to deter Mr Stenfors and others from similar conduct, the FSA is minded to revoke the prohibition order, on Mr Stenfors' application, at any time after five years from the date of this Final Notice, in the absence of any new evidence that Mr Stenfors is not fit and proper.

2.5 The FSA has decided to take the action set out above having considered the mitigating factors set out in paragraph 7.4 below.

## **3 RELEVANT STATUTORY AND REGULATORY PROVISIONS**

### **Statutory provisions**

3.1 The FSA's regulatory objectives, set out in section 2(2) of the Act, are market confidence, public awareness, the protection of consumers and the reduction of financial crime.

3.2 The FSA has the power, pursuant to section 56 of the Act, to make an order prohibiting an individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

## **Fit and Proper Test for Approved Persons**

- 3.3 The purpose of the part of the FSA Handbook entitled *The Fit and Proper Test for Approved Persons (FIT)* is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. In this instance the criteria set out in FIT are relevant in considering whether the FSA will exercise its powers to make a prohibition order in respect of an individual in accordance with *The Enforcement Guide (EG)* paragraph 9.9.
- 3.4 FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person, including the person's integrity. FIT 2.1.1G provides that, in determining a person's integrity, the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G.
- 3.5 FIT 2.1.3G refers to various matters, including: whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)); whether the person has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar (FIT 2.1.3G(11)); or whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT 2.1.3G(13)).

## **Enforcement Policy**

- 3.6 The FSA's policy in relation to the decision to make a prohibition order is set out in chapter 9 of EG. Extracts from chapter 9 of EG are set out in Annex A of this notice.

## **4 FACTS AND MATTERS RELIED ON**

- 4.1 On or about 7 March 2009 Merrill Lynch informed the press that "*During a recent evaluation of certain trading positions, [Merrill Lynch] discovered an irregularity. [Merrill Lynch] informed regulators immediately and are working closely with authorities to thoroughly investigate the matter.*"
- 4.2 The "*irregularity*" referred to by Merrill Lynch was Mr Stenfors' suspected mis-marking.
- 4.3 During the relevant period:
- (1) Mr Stenfors was approved under section 59 of the Act to perform controlled function 30 (Customer Function) at the London branch of MLIB; and
  - (2) Mr Stenfors was the head of Scandi Swaps Trading at Merrill Lynch, trading mainly interest rate swaps (NOK and SEK), cross-currency swaps (NOK, SEK and JPY) and Forward Rate Agreements ("FRAs") (NOK, SEK and JPY) (all short term).

- 4.4 The trades which are the subject matter of this Notice were all proprietary trades carried out by Mr Stenfors on behalf of Merrill Lynch and were not conducted by Mr Stenfors in the course of carrying out his controlled function.
- 4.5 On 17 February 2009, when Mr Stenfors was on holiday, Mr Stenfors became aware that his managers were asking questions regarding the value of his positions. Later the same day, Mr Stenfors contacted his managers and admitted that he had been mis-marking his positions by around \$100 million.<sup>1</sup> As a result, on or about 17 February 2009, Mr Stenfors was suspended by Merrill Lynch.
- 4.6 On 24 June 2009, following an internal investigation, Mr Stenfors was dismissed by Merrill Lynch. Mr Stenfors is no longer an approved person.
- 4.7 Mr Stenfors admits that he deliberately mis-marked his positions during the relevant period. He knew that the market was moving against him and he deliberately mis-marked his positions to avoid showing increasing losses in those positions.
- 4.8 Mr Stenfors mis-marked his positions primarily by adjusting the interest rate swap price points, cross-currency basis price points and the FRA price points that were used to discount the cashflows associated with his positions.
- 4.9 Mr Stenfors accepts that he is a very experienced trader and was fully aware of his responsibilities to mark to market his positions and of the consequences of failing to do so. He accepts that his mis-marking during the relevant period was wrong.

## **5 OTHER MATTERS**

- 5.1 The Irish Financial Regulator (the “IFR”) entered into a Settlement Agreement with effect from 22 October 2009 with MLIB in relation to matters that included the circumstances surrounding Mr Stenfors’ mis-marking. The IFR reprimanded MLIB, requiring MLIB to pay a monetary penalty in the sum of €2.75 million, for:
- (1) failing to have in place a well-defined and transparent line of supervisory responsibility;
  - (2) failing to supervise the traders’ (including Mr Stenfors) activity;
  - (3) having an inadequate month-end independent price verification process; and
  - (4) failing to manage effectively market risk limits in respect of the trader’s activities.

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<sup>1</sup> Merrill Lynch made a negative adjustment of \$456 million to Mr Stenfors’ marks. This adjustment includes losses of \$144 million incurred as a result of risk reduction trades and market movements.

## **6 ANALYSIS OF BREACHES**

- 6.1 Mr Stenfors' misconduct during the relevant period, in deliberately mis-marking his positions to avoid showing increasing losses, demonstrated a lack of integrity on his part. For the reasons set out in this Notice, the FSA is of the view that Mr Stenfors is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm.

## **7 ANALYSIS OF THE SANCTION**

- 7.1 The FSA's effective use of the power to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities helps the FSA to work towards its regulatory objectives of market confidence, public awareness, the protection of consumers and the reduction of financial crime.

- 7.2 In deciding to take the action, the FSA has considered, amongst other things, the seriousness, nature and duration of Mr Stenfors' misconduct and the likely effect of the action on him.

- 7.3 The FSA considers the following to be aggravating factors:

- (1) Mr Stenfors was a senior and experienced trader in a position of trust (as head of Scandi Swaps Trading at Merrill Lynch) who was fully aware of his responsibilities to mark to market his positions and of the consequences of failing to do so; and
- (2) Mr Stenfors' misconduct was deliberate, frequent and repeated, taking place over approximately a one-month period.

- 7.4 The FSA considers the following to be mitigating factors:

- (1) shortly after his managers at Merrill Lynch started to ask questions regarding the value of his positions, Mr Stenfors admitted his misconduct; co-operated fully with investigations by Merrill Lynch and the FSA; and, in particular, made full admissions to the FSA;
- (2) Mr Stenfors accepts that his conduct was improper and has expressed remorse for his conduct; and
- (3) Mr Stenfors has not in the past been the subject of regulatory action taken by the FSA.

- 7.5 Mr Stenfors maintains that his conduct is also mitigated by an enormous workload and a prolonged lack of holiday, that contributed to him being mentally exhausted during the relevant period, and exceptional market conditions that made it very difficult for him to obtain marks for his positions. While the FSA acknowledges that market conditions were exceptional, the FSA does not consider these factors to provide any further mitigation to Mr Stenfors who was a senior and experienced trader, and the FSA notes that Mr Stenfors did not alert his managers to the difficulties he states he was having.

7.6 The FSA is satisfied that, during the relevant period, Mr Stenfors acted without integrity by deliberately mis-marking his positions while employed by Merrill Lynch. He is, as a result, not fit and proper and should therefore be prohibited from performing any function in relation to any regulated activity. The FSA has had regard to the guidance in Chapter 9 of EG in deciding that a prohibition order is appropriate in this case.

## 8 **CONCLUSION**

8.1 The FSA considers that because of the nature and seriousness of Mr Stenfors misconduct, and the risk he poses to confidence in the market generally, it is appropriate for the FSA to exercise its powers to make the prohibition order against Mr Stenfors.

## 9 **DECISION MAKERS**

9.1 The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers on behalf of the FSA.

## 10 **IMPORTANT**

10.1 This Final Notice is given to Mr Stenfors in accordance with section 390 of the Act.

### **Publicity**

10.2 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 FSA must publish such information about the matter to which this Notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to Mr Stenfors or prejudicial to the interests of consumers.

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

### **FSA contacts**

For more information concerning this matter generally, you should contact Karen Lee (direct line: 020 7066 1316) or Samiullah Khan (direct line: 020 7066 5830) at the FSA.

Tracey McDermott  
Head of Department  
FSA Enforcement and Financial Crime Division

## Annex A

### Relevant Rules, Guidance and Other Regulatory Provisions

#### 1 Enforcement Guide

- 1.1 EG 9.3-9.7 sets out the FSA's general policy in deciding whether to make a prohibition order and/or withdraw an individual's approval. The FSA will consider all the relevant circumstances including whether other enforcement action should be taken or has been taken already against that individual by the FSA. In some cases the FSA may take other enforcement action against the individual in addition to seeking a prohibition order.
- 1.2 EG 9.4 provides that the FSA has the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.
- 1.3 EG 9.5 provides that the scope of a prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of the risk which he poses to consumers or to the market generally.
- 1.4 EG 9.8-9.14 sets out additional guidance on the FSA's approach to making prohibition orders against approved persons and/or withdrawing such persons' approvals.
- 1.5 EG 9.8 provides that when the FSA has concerns about the fitness and propriety of an approved person, it may consider whether it should prohibit the person from performing functions in relation to regulated activities, withdraw its approval, or both. In deciding whether to withdraw its approval and/or make a prohibition order, the FSA will consider in each case whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions or by issuing a private warning.
- 1.6 EG 9.9 provides that when it decides whether to make a prohibition order against an approved person and/or withdraw its approval, the FSA will consider all the relevant circumstances of the case. These may include, but are not limited to:
  - (1) The matters set out in section 61(2) of the Act.
  - (2) Whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability); and FIT 2.3 (Financial soundness).
  - (3) The relevance and materiality of any matters indicating unfitness.
  - (4) The length of time since the occurrence of any matters indicating unfitness.
  - (5) The severity of the risk which the individual poses to consumers and to confidence in the financial system.

- (6) The previous disciplinary record and general compliance history of the individual including whether the FSA, any previous regulator, designated professional body or other domestic or international regulator has previously imposed a disciplinary sanction on the individual.
- 1.7 EG 9.10 provides that the FSA may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the individual is fit and proper to continue to perform a controlled function or other function in relation to regulated activities.
- 1.8 EG 9.11 states that it is not possible to produce a definitive list of matters which the FSA may take into account when considering whether an individual is not a fit and proper person to perform a particular, or any, function in relation to a particular, or any, firm. EG 9.12 sets out a list of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person.
- 1.9 EG 9.13 provides that certain matters which do not fit squarely, or at all, within the matters referred to above may also fall to be considered and that in these circumstances the FSA will consider whether the conduct or matter in question is relevant to the individual's fitness and propriety.