
FINAL NOTICE

To: BGC Brokers LP
GFI Securities Limited
GFI Brokers Limited

Reference
Numbers: 454814
184801
184786

Address: BGC Brokers LP, 5 Churchill Place, London, E14 5RD
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2DQ
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Date: 7 December 2022

1. ACTION

- 1.1. For the reasons given in this Final Notice, the Authority imposes on BGC Brokers LP, GFI Securities Limited and GFI Brokers Limited ("BGC/GFI") financial penalties totalling £4,775,200 pursuant to section 206 of the Act.
- 1.2 BGC/GFI agreed to resolve this matter and qualified for a 30% (Stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed financial penalties totalling £6,821,800 on BGC/GFI.

2. SUMMARY OF REASONS

- 2.1. BGC/GFI are inter-dealer brokers specialising in broking exchange listed and over-the-counter financial products and related derivative products. Brokers have an important role in a global market, dealing with international participants, and provide a brokerage service to clients as an intermediary to transactions and execute and facilitate customer orders.
- 2.2. It is of fundamental importance to the integrity of the market that brokers such as BGC/GFI have effective market abuse surveillance systems in place. Market abuse in any form is serious and may undermine confidence in the integrity of the UK financial services sector and preventing, detecting and punishing market abuse is a high priority for the Authority. Operators of UK trading venues, such as BGC/GFI, are required to report Suspicious Transaction and Order Reports where they have 'reasonable suspicion' that an order or transaction could constitute market abuse. In order to do so, the Authority expects firms such as BGC/GFI to have the appropriate systems and controls in place to identify suspicions of market abuse through effective surveillance of trading activities.
- 2.3. BGC/GFI failed to take reasonable care to organise their affairs responsibly and effectively with adequate risk management surveillance systems for the purposes of detecting and identifying orders and transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, of all orders received and transmitted and all transactions executed. BGC/GFI had manual surveillance, automatic surveillance and communications surveillance processes, yet these were deficient and therefore collectively inadequate in identifying potential market abuse by market participants.
- 2.4. BGC/GFI thereby breached Article 16(2) of the Market Abuse Regulations and Principle 3 of the Authority's Principles for Businesses.
- 2.5. The breaches are a legacy matter for the Firms, who have enhanced their systems and controls since the Relevant Period.

Breach of MAR

- 2.6. Article 16(2) of MAR obligates a firm that professionally arranges or executes transactions to establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions.

- 2.7. BGC/GFI's systems for monitoring market abuse did not have proper coverage over all of the asset classes which were subject to MAR in which BGC/GFI undertook business. Gaps in the systems were not adequately mitigated and persisted without remediation throughout the Relevant Period. In particular:
- a. At BGC, the automated surveillance system only covered trading in equities (0.14% of its total trades by value over the Relevant Period) and fixed income (99.522% of its total trades by value over the Relevant Period);
 - b. At GFI, the automated surveillance system only covered fixed income trading (92.46% of its total trades by value over the Relevant Period);
 - c. Accordingly, the automated surveillance system did not cover equity derivatives, futures and options or commodities (at both BGC and GFI), nor equities (at GFI). Given the size of the business conducted by BGC and GFI, comprehensive automatic surveillance was a necessity;
 - d. Many of the manual tests were not consistently performed throughout the Relevant Period with an absence of compensatory controls which left BGC/GFI's business exposed to a risk that it may fail to identify suspicions of market abuse by market participants. Indeed, both BGC and GFI had inadequate manual surveillance in place, with equities being the only asset class that had some form of monitoring being conducted throughout the whole Relevant Period. As such, the manual surveillance was deficient and gaps persisted throughout the Relevant Period; and
 - e. Additionally, given that 80% of the business of BGC/GFI was conducted through voice brokerage, communications surveillance was a key control that BGC/GFI should have used to appropriately monitor for market abuse risks. However the communications surveillance undertaken by BGC/GFI had a limited, sample-focused design that was not sufficient to provide adequate monitoring. Furthermore, at BGC, such monitoring did not take place throughout the Relevant Period.
- 2.8. As a consequence of these gaps in monitoring, BGC/GFI were exposed to a risk that it may fail to identify suspicions of market abuse by market participants. MAR sets out six risk behaviours; BGC had very limited monitoring in place to cover three (unlawful disclosure of inside information, dissemination, and misleading behaviour and distortion) and had deficient procedures in respect of the remaining three (insider dealing, manipulating transactions and manipulating devices). GFI's

systems had greater shortcomings, with all six risks being inadequately addressed. As such, BGC/GFI's monitoring gave rise to an unacceptable risk that it may fail to identify suspicions of market abuse by market participants.

Breach of Principle 3

- 2.9. Principle 3 requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- 2.10. To conduct effective monitoring for market abuse, firms need to have monitoring systems which are appropriate relative to the nature, scale and complexity of the business they are undertaking and to the market abuse risks to which that business is exposed. Firms should have adequate systems in place so that they are able to comply with their regulatory obligations at all times, including where the business model changes.
- 2.11. BGC/GFI failed to ensure that they had the necessary market abuse surveillance systems for each of the relevant asset classes that they undertook business in. The combination of the manual and automated surveillance controls that were in place during the Relevant Period were not adequate or effective for detecting and reporting potential instances of market abuse and thereby discharging their regulatory obligations. Moreover, BGC/GFI were aware of the limitations of the automated surveillance system, yet failed to ensure additional systems and controls were implemented to compensate for the limitations, such as enhancing or extending manual surveillance procedures. In addition, the boards and committees in place at BGC/GFI during the Relevant Period also failed to record any adequate challenge or probing as to how key risks were being addressed.
- 2.12. Although there were committees to whom reports on compliance with the market abuse regime were escalated, there were no clearly designated individuals within the Compliance Department with responsibilities for BGC/GFI's market abuse surveillance functions meaning that there was no effective oversight.
- 2.13. As a result of the above, during the Relevant Period, BGC/GFI failed to ensure they had the appropriate systems and controls in place to ensure that they could effectively conduct market abuse surveillance, which increased the risk that potentially suspicious trading would go undetected and thereby resulting in STORs not being made to the Authority.

- 2.14. Confidence in the integrity of markets is a key foundation of markets working well. Assurance that the market is clean, orderly and transparent helps issuers access finance and the buy-side to fulfil their investment mandates. Market abuse erodes this trust. It may increase the costs of trading and distorts the playing field, undermining fair competition and reducing confidence in UK securities. The Authority expects market participants to be proactive in preventing and responding to market abuse.
- 2.15. Tackling market abuse remains a high priority for the Authority and it views BGC/GFI's failings as serious.
- 2.16. The Authority hereby imposes on BGC Brokers LP, GFI Securities Limited and GFI Brokers Limited ("BGC/GFI") financial penalties totalling £4,775,200 pursuant to section 206 of the Act.

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 Financial Conduct Authority

"BGC" means BGC Brokers LP

"BGC/GFI" means BGC Brokers LP, GFI Securities Limited and GFI Brokers Limited collectively

"CME" means CME Group Inc

"GFI" means GFI Securities Limited and GFI Brokers Limited

"ICE" means Intercontinental Exchange

"LME" means London Metal Exchange

"MAR" means Market Abuse Regulation (EU) No 596/2014 which came into effect on 3 July 2016 and was onshored into UK law on 31 December 2020 by the EU (Withdrawal) Act 2020

"MAR business" means the business carried out by BGC and GFI in asset classes that the provisions of MAR applied to. This encompassed fixed income, equities, equity derivatives, futures and options, and commodities

"Off market BBO" means off market best bid or offer

"Principles" means the Authority's Principles for Businesses

"Relevant Period" means the period from 3 July 2016 until 3 January 2018

“STORs” means suspicious transaction and order reports provided to the Authority by UK trading venues where there is reasonable suspicion of market abuse

“STR” means Suspicious Transaction Report and

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber)

4. FACTS AND MATTERS

Background and structure of BGC/GFI

- 4.1. BGC is a full service, full scope licence inter-dealer broker which specialises in broking exchange listed and over-the-counter financial products and related derivative products through voice and electronic means. It is a member of the London Stock Exchange; a category two member of the London Metal Exchange and LME Clearing member and a non-clearing member of NASDAQ OMX, Eurex, ECC, ICE, Turquoise and EURONEXT.
- 4.2. BGC provides broking services to broker-dealers, banks and a range of institutional investors and other sophisticated institutional wholesale market participants acting as brokerage intermediary or arranger of transactions and the execution and facilitation of customer orders on a matched principal basis. BGC operated an MTF venue until 3 January 2018.
- 4.3. BGC provides brokerage services in three capacities:
 - a. “Exchange Give Up” Capacity
 - b. “Matched Principal Capacity”
 - c. “Name Give-up” (Arranging Capacity)
- 4.4. GFI are limited license and activity firms which operate as interdealer brokers for exchange listed and over-the-counter financial products and related derivative products through voice and electronic means. GFI offer brokerage services to their clients acting as an intermediary or arranger of transactions and the execution and facilitation of customer orders on a matched principal basis. GFI are members of Eurex, Euronext, ICE, LME, LSE, NASDAQ OMX, EEX, CME and CBOT.
- 4.5. GFI were acquired by BGC Partners Inc (the ultimate parent of BGC) in January 2016. GFI provide brokerage services in the same capacity as BGC as set out at paragraph 4.3 (a) to (c). Although GFI are run separately from BGC, the three firms share the same Compliance Department, which was provided by an internal service entity.

- 4.6. BGC/GFI's clients are banks and other authorised firms. Over the Relevant Period, BGC/GFI conducted 80% of their business through voice brokerage whereby the Firms' brokers would communicate with clients concerning orders and transactions by phone, email and instant messaging (Bloomberg). The remaining 20% of trades which were not voice brokered took place through the Firms' electronic platforms, including BGC/GFI's multilateral trading facilities.
- 4.7. Of the voice brokered trades, around 80% were conducted on a "Name Give Up" basis where BGC/GFI would arrange the transactions between buyers and sellers who would then conduct the trade between themselves with BGC/GFI charging brokerage for the services provided, and around 20% of the trades were conducted on a "Matched" or "Riskless Principal" basis whereby BGC/GFI would arrange trades between buyers and sellers but with each buyer and seller settling a transaction with BGC or GFI as its counterpart or principal.
- 4.8. During the Relevant Period, BGC/GFI executed over 2.5 million trades, with a notional value of over \$100 billion.

Market Abuse Regulation

- 4.9. The Market Abuse Regulation (MAR) was published in April 2014 and took effect on 3 July 2016 (MAR Effective Date). MAR repealed the Market Abuse Directive (MAD), which had taken effect on 12 April 2003 and established a European Union-wide regime for tackling insider dealing and market manipulation. MAD required firms to monitor for potential market abuse and to notify the Authority of suspicious trading by submitting Suspicious Transaction Reports (STRs).
- 4.10. Article 16(2) of MAR sets out the requirements for the detection and reporting of potential market abuse, requires, amongst other things, that:
- Any person professionally arranging or executing transactions shall establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions.*
- 4.11. BGC/GFI, as interdealer brokers, were therefore subject to the requirements of Article 16(2).
- 4.12. On 9 March 2016, the European Commission supplemented Article 16 of MAR by publishing Delegated Regulation 2016/957 (DR 2016/957). Article 2(5) states firms are to ensure that their arrangements, systems, and procedures for detecting and reporting potential market abuse are appropriate and proportionate in relation to the scale, size, and nature of their business activity.

- 4.13. Article 3 of DR 2016/957 sets out the requirements for prevention, monitoring and detection of market abuse:

Article 3(1) the arrangements, systems and procedures referred to in Article 2(1) and (3) shall:

- (a) allow for the analysis, individually and comparatively, of each and every transaction executed and order placed, modified, cancelled or rejected in the systems of the trading venue and, in the case of persons professionally arranging or executing transactions, also outside a trading venue;*
- (b) produce alerts indicating activities requiring further analysis for the purposes of detecting potential insider dealing or market manipulation or attempted insider dealing or market manipulation;*
- (c) cover the full range of trading activities undertaken by the persons concerned.*

The Authority's statements on compliance with Article 16 of MAR

- 4.14. The Authority's Market Watch newsletter provides advice on market conduct issues such as market abuse risks and suspicious transaction and order reporting.
- 4.15. The Market Watch 48 newsletter, which was published in June 2015, included observations from STR supervisory visits. The newsletter advised firms to consider undertaking a detailed market abuse risk assessment before designing a surveillance programme because, for a number of firms, such an assessment had enabled the design of proportionate and appropriate surveillance.
- 4.16. The Authority's Market Watch 50 newsletter, which was published on 1 April 2016, noted that it was "*the responsibility of firms to ensure that they understand the new requirements [of MAR] and are fully compliant by 3 July 2016.*" Market Watch 50 specifically referred to Article 16 and confirmed that the Authority intended "*to supervise the STOR regime in much the same that [it] currently supervise[s] the STR regime*".
- 4.17. The Market Watch 58 newsletter, which was published after the Relevant Period in December 2018, described the Authority's industry-wide review of MAR implementation. The Authority's review identified that the most effective compliance was achieved where firms could demonstrate that their risk assessments were calibrated to the markets and asset classes they operate in.

The review also identified that there were some areas where firms were encountering difficulties in compliance, including in relation to surveillance. The newsletter also referred to the Authority's flexible approach to supervision in relation to quote surveillance, which was a recognition of the significant technological changes that were required by Article 16(2).

- 4.18. Prior to the MAR Effective Date, the Authority published an article on its website regarding its supervisory priorities for the new STOR regime. The article stated that the Authority would *"continue to take a risk-based approach, taking into account the position of particular market participants and the markets in which they operate."* The article also noted that MAR includes a list of indicators of market manipulation that firms *"must be mindful of in ensuring their systems and procedures are effective."*
- 4.19. With respect to the challenges in implementing the requirements of Article 16(2), the article acknowledged that MAR *"may require a number of significant technology changes...particularly in relation to surveillance of quotes"*, and, in relation to MAR implementation, *"some notifiers may not be in a position to deploy fully effective surveillance across all types of quotes as required by MAR by 3 July 2016."* Despite these challenges, the article stated that *"[a] level of surveillance on quotes, which may include manual elements to the process, is expected from [the MAR Effective Date]."* The Authority also emphasised that it expected firms to have in place *"detailed and realistic plans"*.
- 4.20. In July 2017, a year after the MAR Effective Date, the Authority expected firms to be compliant with the requirements of Article 16(2), including the surveillance of quotes. As a result, it updated the article on its website by deleting the section that referred to technological challenges and the Authority's flexible supervisory approach with respect to the surveillance of quotes.

The Firms' market abuse control framework

- 4.21. BGC/GFI identified the asset classes to be captured by Article 2 of MAR. In the case of BGC, this encompassed:
 - a. Fixed income (bonds, credit derivatives, money markets - certificates of deposit, money markets - commercial paper, repos), which comprised 99.52% of its total trades by value over the Relevant Period;

- b. Equities (EEA regulated market listed and dual listed on EEA regulated market) which comprised 0.14% of its total trades by value over the Relevant Period;
 - c. Equity derivatives (non-EEA regulated market listed and non-dual listed on EEA regulated market) which comprised 0.29% of its total trades by value over the Relevant Period;
 - d. Futures and Options (interest rate futures – exchange traded (financials) and exchange traded (commodities)) which comprised 0.001% of its total trades by value over the Relevant Period; and
 - e. Commodities (listed derivatives) which comprised 0.05% of its total trades by value over the Relevant Period.
- 4.22. Similarly, the asset classes dealt in by GFI identified as being subject to MAR were:
- a. Fixed income (bonds, credit derivatives, money markets - certificates of deposit, money markets – commercial paper, repos) which comprised 92.46% of its total trades by value over the Relevant Period;
 - b. Equities which comprised 7.11% of its total trades by value over the Relevant Period;
 - c. Equity Derivatives which comprised 0.001% of its total trades by value over the Relevant Period;
 - d. Futures and Options (interest rate futures – exchange traded (financials) and exchange traded (commodities)). However, GFI did not carry out any business in this asset class during the Relevant Period; and
 - e. Commodities (listed derivatives), which comprised 0.04% of its total trades by value over the Relevant Period.

Prevention and detection of market abuse

- 4.23. BGC/GFI operated a model with multiple lines of defence. The first line of defence was the Firms' brokers, alongside the automated and the manual trade surveillance systems. The Market Conduct and Surveillance team had primary responsibility for these systems. BGC/GFI placed particular significance on the role of brokers in their approach to preventing and detecting market abuse on the basis that 80% of its business was voice brokered, and brokers were therefore communicating directly with clients. BGC/GFI considered that, as they primarily carried out voice brokerage, brokers were well placed to detect suspicious conduct and, indeed, were the most effective way for BGC/GFI to identify suspicious orders and transactions. During the Relevant Period, there were five escalations from

brokers to Compliance in respect of suspicious trades. The Market Conduct and Surveillance team and/or the Regulatory Affairs and Assurance Advisory Team engaged with the brokers on these occasions. The Regulatory Affairs and Assurance Advisory Team, as part of its investigations of suspicious trading, may also reach out to brokers for information. However, such a reliance on brokers to conduct proper market abuse surveillance, particularly considering the Firms' trading volumes, is inadequate as a control measure, and unrealistic as a reliable approach when being carried out in parallel with broking business.

- 4.24. The Market Conduct and Surveillance team, within the Compliance Department, were responsible for the Firms' trade surveillance as a second line of defence. During the period from July 2016 to December 2017, the team comprised between two to three surveillance staff and a manager. The manager held the title in name only and did not have any responsibilities related to trade surveillance, instead the manager merely had HR oversight of the team members. A more junior member of the team assumed de facto responsibility for the team's work and trade surveillance escalations; yet these were directed to another individual rather than the manager. Although efforts were made in January 2017 to recruit a new manager for the Market Conduct and Surveillance team, an appointment was not made until late January 2018. This gave rise to the risk of a lack of leadership and oversight over BGC/GFI's market abuse surveillance systems.
- 4.25. The activities carried out by the Market Conduct and Surveillance team were divided amongst the members of the team according to regulated entity and not by asset class. In addition, the role of the Regulatory Affairs and Assurance Advisory Team was to conduct monitoring and oversight activities, including ad hoc or thematic based communications monitoring on electronic communications and voice communications. However, from 3 July 2016 no communications monitoring was performed at BGC, meaning that potential market abuse activity may not have been properly identified from this date, and this was not rectified until 3 January 2018.

Governance structure

- 4.26. BGC had two committees with oversight of market abuse surveillance. The Operational Risk and Compliance Committee ("ORCC"), a committee of the Board of BGC Brokers LP and the Risk Oversight Committee, a committee of the Board of BGC European LP. During the Relevant Period, the ORCC met on a quarterly basis. Management information concerning STORs and market abuse surveillance was presented to the ORCC by the Operational Risk and Compliance functions. The

Risk Oversight Committee met on a quarterly basis. Quarterly profile reports, produced for the ORCC, contained data in relation to the automated surveillance alerts and escalated issues to the Board committees.

- 4.27. GFI's governance structure was separate to BGC's. GFI's Operational Risk Committee reported to GFI Group Inc's Board. There was also an Operational Risk and Compliance Committee, Dubai Branch, which reported to GFI Securities Limited's Board, which in turn reported to GFI Markets Limited's Board. As at April 2017, until the end of the Relevant Period, the Operational Risk Committee reported to GFI Markets Limited's Board. The Operational Risk Committee was responsible for ensuring staff were proactive against behaviour which was considered to be indicative of financial crime, including market abuse and for ensuring front office staff only initiated transactions which were compliant with internal policies. The Operational Risk Committee met just twice during the Relevant Period and Operational Risk and Compliance Committee, Dubai Branch, met on a quarterly basis.
- 4.28. Each quarter, Compliance reported to the Audit Committee so that the Board could be briefed on the key issues impacting the business, including the operation of the automated surveillance.
- 4.29. The boards and committees of the Firms and their senior managers were aware that the Firms were moving to a fully automated system of market abuse surveillance through the development of the Firms' system being built for MiFID 2 compliance.

Policies and procedures

- 4.30. BGC/GFI's market abuse policy in place at July 2016, was contained within its Market Conduct Policy. The Market Conduct Policy set out guidance to identify behaviour which constituted market abuse and actions to be taken when suspicions of market abuse arose.
- 4.31. In addition to the Market Conduct Policy, BGC had a Market Surveillance & Conduct Monitoring Procedure, which set out BGC's manual surveillance procedures. This procedure was in place at 3 July 2016.
- 4.32. GFI had its own procedure in relation to market abuse surveillance, the 'Monitoring procedure' which was in place at 3 July 2016 and set out the manual surveillance procedures for GFI Securities Limited.

- 4.33. BGC/GFI's procedures remained unchanged until August 2017 at which point the Firms' procedures were merged into the 'Market Surveillance and Conduct monitoring procedure'. Towards the end of the Relevant Period, as a result of a review by an external consultancy firm, further policies were introduced by BGC/GFI. The UK Trade Surveillance and Guidance Overview, Market Abuse Policy, Suspicious Transactions and Near Miss Escalation Procedure were all introduced at BGC/GFI in the latter half of 2017.

Market abuse monitoring

Key business carried out by BGC/GFI

- 4.34. The vast majority of BGC's MAR business by value was that of broking in fixed income products. For example, in April 2017, BGC carried out 59,126 trades with a total value of \$994,345,742,448. Fixed income trades represented 99.7% of this total by value (\$991,438,979,652). Fixed income was therefore a key business line for BGC and a major part of its MAR activity.
- 4.35. Similarly, the majority of GFI's MAR business by value was also that of broking in fixed income products. For example, in April 2017, GFI carried out 48,054 trades with a total value of \$393,100,648,026. Fixed income trades represented 84% (\$331,500,032,500) of this total.
- 4.36. Equity trades for GFI, whilst fewer in number at 2,896 trades, represented \$59,126,546,109 in value in April 2017 (which was the second largest traded MAR asset class by value that month, behind fixed income bonds). Accordingly, fixed income and equity trading were highly significant business areas for GFI.

Market abuse risks faced by BGC/GFI

- 4.37. The provisions of MAR set out six market abuse risk behaviours, all of which are relevant to BGC/GFI. These risks are:
- Insider dealing
 - Unlawful disclosure of inside information
 - Manipulating transactions
 - Manipulating devices
 - Dissemination
 - Misleading behaviour and distortion

Identification of key risks by BGC/GFI

- 4.38. Insider dealing is defined in MAR Article 8 as arising “*where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates.*”
- 4.39. Manipulating transactions is a form of market manipulation defined under MAR Article 12(1)(b) as including the activity of “*entering into a transaction, placing an order to trade or any other activity or behaviour which affects or is likely to affect the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances, which employs a fictitious device or any other form of deception or contrivance.*”
- 4.40. As early as March 2015, BGC/GFI had identified insider dealing and market manipulation to be notable risks that applied to its business. An internal risk assessment at this time noted that insider dealing and market manipulation (in the form of misleading behaviour and distortion) both represented a medium high risk to its client activities in fixed income products at both BGC and GFI. Market abuse taking the form of manipulation of transactions was noted as representing a medium risk at both firms.
- 4.41. In respect of equities at GFI, insider dealing was identified as also being a medium high risk.

Summary of BGC/GFI’s market abuse monitoring systems

- 4.42. To identify potential instances of market abuse BGC/GFI used a combination of manual and automated surveillance, using trade and/or order data and the manual review of some voice and electronic message communications during the Relevant Period. These tests varied between BGC/GFI and were not consistently applied throughout the Relevant Period.
- 4.43. At BGC, automated surveillance was only in place in respect of equities and fixed income (see paragraph 4.50 below).
- 4.44. As such, at BGC, in relation to equity derivatives, commodities and futures and options:
- a. There was no automated surveillance for these asset classes during the Relevant Period;
 - b. There was limited manual surveillance (see paragraphs 4.62 to 4.80 below);
and

- c. Communication surveillance was only conducted from December 2017.
- 4.45. At GFI, automated surveillance was only in place in respect of fixed income (see paragraph 4.54 below).
- 4.46. However, at GFI, in relation to equities, equity derivatives, and commodities:
- a. There was no automated surveillance for these asset classes during the Relevant Period; and
 - b. There was limited manual surveillance (see paragraphs 4.81 to 4.88 below).

The automated surveillance system

- 4.47. BGC/GFI used the same automated surveillance system. Its function was to generate alerts which were then reviewed by the Firms' Market Conduct and Surveillance team. Upon review, any suspicious trades were then to be escalated to the relevant SMF. Over the Relevant Period, the system generated 23,218 alerts in respect of BGC's trades and orders in the asset classes of fixed income and equities and 2,947 alerts in respect of GFI's trades and orders in the asset class of fixed income products. 23,178 of BGC's alerts and all of GFI's alerts were considered by the Market Conduct and Surveillance team.
- 4.48. The automated surveillance system provided limited coverage over the financial instruments traded by BGC/GFI.

BGC

- 4.49. The purpose of the automated system was to generate alerts using the following alert scenarios: (1) insider trading profit potential, (2) insider trading growth in volume, (3) cross trade exchange traded, (4) layering orders, (5) off market pricing, (6) painting the tape, (7) price ramping during continuous trading, (8) pump and dump, (9) spoofing and (10) wash trades by a single counterparty.
- 4.50. As at 3 July 2016, and throughout the Relevant Period, this system was implemented daily and applied to the asset classes of fixed income and equities only.
- 4.51. BGC also had a separate automated wash trades procedure, the aim of which was to identify any unusual trading activity which would give the market a false impression of volume through trades where the buyer and seller were the same and there was no transfer of market risk. This procedure was supposed to detect potential market abuse in the form of manipulating transactions, manipulating devices and misleading behaviour. It was designed to cover all asset classes.

- 4.52. However, as at 3 July 2016, this procedure was not being undertaken at all nor did it take place throughout the Relevant Period.

GFI

- 4.53. The same automated system was designed to generate alerts in respect of the same trading activities that might indicate market abuse as at BGC and was implemented daily.
- 4.54. However, as at 3 July 2016 and throughout the Relevant Period, the system only applied to fixed income products.

Deterioration of the automated system

- 4.55. During the Relevant Period, BGC/GFI experienced technological challenges with the automated system. As order and trade data from additional products were fed into the automated surveillance system, and the range of market abuse scenarios were refined, the system faced difficulties ingesting the data and as a result was slower in producing market abuse alerts for review by the Compliance team.
- 4.56. Given the automated system software was owned by a third party vendor over the Relevant Period, the work developing new scenarios needed to be undertaken by their technicians. The Firms' own technology team was not itself permitted to develop new scenarios for the automated system and so the Firms were dependent on the service provided by the third party vendor.
- 4.57. As explained above, prior to the start of the Relevant Period, the Firms had begun to develop a data strategy. The Firms decided to create a data lake which would create a unified data set for the Firms' products and trading data so it could be reviewed more efficiently. Whilst the data lake was being created for the purpose of MiFID 2 compliance, as the data lake coded all the Firms' asset classes so that they could be read consistently, the Firms decided to use this for trade surveillance scenarios to be run through. As a result, once implemented the Firms could then conduct surveillance on a more fully automated basis.
- 4.58. Issues around the effectiveness of the automated system as well as enhancements and improvements to it were suggested during the Operational Risk & Compliance Committee meetings. In particular, as financial instruments were added to the system its functionality declined. A lack of maintenance of the system meant that it frequently failed and ultimately ceased to function

effectively. By late 2016, BGC/GFI determined that the automated system should be replaced.

- 4.59. In March 2017, a senior manager at BGC/GFI stated that the systems were “*not currently fully fit for purpose*” and that a new automated system would replace the existing one. Despite this, the due date for implementation of the new automated system was not until 31 December 2017. By early December 2017 it was clear that implementation of the new automated system would take substantially longer than BGC/GFI had anticipated, around another 12 months, and the two automated systems would need to run in parallel for a period.
- 4.60. Once the new automated system was purchased, there was delay in its implementation. BGC/GFI lacked an understanding of the work required to make the system operational and effective. As a result, the new automated surveillance system remained in its testing phase and was not fully implemented during the Relevant Period.
- 4.61. Despite acknowledged concerns around the alerting capability of the automated surveillance system, its general deterioration and the delay in implementation of the new system, additional interim manual controls were not put in place to mitigate the risk of market abuse, as outlined below.

Manual surveillance

- 4.62. BGC/GFI relied on a limited set of manual controls as well as the automated surveillance system. The Market Surveillance and Conduct team were responsible for carrying out these procedures, with any issues being escalated to the relevant SMF.
- 4.63. The manual surveillance procedures that were designed to be in place at BGC/GFI throughout the Relevant Period consisted of reviewing reports concerning market announcements, risers and fallers, trading at sensitive times, reviewing of London Metal Exchange Stock Movements, the production of insider lists, trade idea monitoring, CME/ICE block monitoring and personal account dealing, and are set out and explained further below.

BGC

a) Market announcements

- 4.64. This procedure was designed to identify any suspicious trading activity which occurred in advance of a significant market announcement. It monitored trading

activity at the firm against significant market events in order to establish whether insider dealing may have occurred.

- 4.65. The procedure was conducted daily throughout the Relevant Period by way of a sample-based review of all equity trades executed in the top five most traded ISINs on the previous day.
- 4.66. However, this procedure was limited in its scope because trading which occurred before a price sensitive announcement was not assessed if it was not one of the top five traded securities (by ISIN). Announcements in respect of less traded stocks would therefore not be assessed. Moreover, if trading took place further away from an announcement this test would not identify it, meaning that potential insider dealing might not be detected as the trading might fall outside the period considered. It also looked at equities only and did not monitor related instruments, for example corporate bonds and options. The methodology of this procedure was therefore limited and not properly calibrated to risk, in particular as a fixed sample does not properly assess risk.

b) Risers and fallers

- 4.67. The stated purpose of this procedure was to identify potential insider dealing, misuse of information, manipulation of transactions or manipulation of devices by comparing price movements with trading activity at BGC.
- 4.68. This procedure covered trades in STOXX 500 Index securities and was conducted daily throughout the Relevant Period as a sample-based review, identifying the top ten leading risers and fallers for ten different security codes based on information from Bloomberg. It did not look at related instruments such as corporate bonds.
- 4.69. However, this meant that only a small proportion of equities might be assessed given the sample-based approach, and the fact that the ten leading risers and fallers might vary considerably each day, and it did not allow for a consistent risk-based approach to the monitoring. The risk of insider dealing was therefore not adequately mitigated, given those stocks outside of the top ten risers and fallers were not considered. Accordingly, this procedure was insufficiently robust to be effective as it was not properly risk focused through its limited sample-based methodology.

c) Trading at sensitive times

- 4.70. This examined trading activity at specific times to establish whether there had been market manipulation through the placing of strategic orders, with particular attention to be paid to potential manipulation of transactions. Trades were reviewed five minutes prior and following the ECB Euro Exchange Rate, the WM Reuters fix and the EUR/IRS ICE Benchmark ICE Swap Rate fix. The purpose was to review all trades within the relevant sensitive time periods.
- 4.71. This procedure was conducted daily, and covered interest rate products only from the start of the Relevant Period to January 2017. However, in the period January to July 2017, this procedure was not carried out by BGC.
- 4.72. This procedure was inadequate given that there was a six-month period during the Relevant Period where it was not carried out but, notwithstanding that, it was too narrow a test in its scope. Only interest rate products were covered, yet commodities, options and futures were also important asset classes to be included (as they had a fix) yet were not. Accordingly, this procedure was inadequate in its scope to be effective.

d) London Metal Exchange stock movements

- 4.73. This was a procedure conducted daily, whereby London Metal Exchange warrant and cancelled stock figures for metal contracts were reviewed. This procedure was focused on trading around the opening of the market at 8am only. It would show the supply and demand in a metal, which has a short-term impact on price; specifically, whether there had been trading the night before and whether there had been trading out of positions around the open. It only applied to trading at the market open, and did not cover the rest of the day, and was therefore very limited by only focusing on a specific time.
- 4.74. This was carried out in the period between April 2016 and August 2016, and between January 2017 and December 2017. As such, this procedure was not in place throughout the entirety of the Relevant Period.
- 4.75. The procedure only covered a specific element of insider dealing risk regarding a London Metal Exchange dealing announcement around the market open and close, and yet did not cover wider possibilities of insider dealing throughout the vast majority of the trading day. Furthermore, by only covering trading at the open, the remainder of a day was ignored, with the result that only a fraction of total

business traded was assessed. As such, only a fraction of potential market abuse risks were therefore monitored for through this procedure given the limited scope.

e) Insider lists

- 4.76. The purpose of this procedure was to identify suspicions of potential insider dealing. The Market Surveillance and Conduct Team at BGC would examine trading undertaken by each of those named on the insider list to seek to identify any potential insider dealing.
- 4.77. This covered all asset classes and the procedure would look to review the personal account dealing activity and trading activity on behalf of BGC by any individuals on the insider list, or those in close proximity to those on the insider list.
- 4.78. It was only undertaken as and when required by the Central Compliance team and the procedure was not conducted as part of BGC's regular surveillance testing. As at the end of the Relevant Period, this procedure was not being carried out. This was an important procedure in respect of insider dealing, yet BGC did not apply it throughout the entirety of the Relevant Period thereby undermining its effectiveness.

f) Trade idea monitoring

- 4.79. This procedure used a tool called the Trade Idea Platform to review the stocks included in a download of trade ideas and investment recommendations against the news. Any significant news that may affect the stock was to be investigated further.
- 4.80. This procedure was conducted over equities and took place on a daily basis. As at the end of the Relevant Period, this procedure was not being carried out.

GFI

a) Market announcements

- 4.81. This procedure was designed to identify any unusual transactions which could be the result of market abuse. It focused on trading activity which occurred in advance of a significant market announcement to seek to identify any suspicious trading and whether potential insider dealing may have occurred.

4.82. This was a procedure carried out daily, covering equities and bonds. Its scope was that the top five traded instruments (by number of trades) were reviewed alongside the news items from Oracle Business Intelligence. As at the end of the Relevant Period, this was only carried out in respect of equities.

4.83. However, this procedure was limited in its scope as a major announcement would not be assessed if it was not in respect of the top five trades. Announcements in respect of smaller stocks would therefore not be assessed. Moreover, if an announcement was made later this test would not identify that fact, meaning that potential insider dealing might not be detected. The methodology of this procedure was therefore arbitrary and not properly calibrated to risk. Insider dealing was a significant risk in respect of equities and fixed income, yet this manual test was inadequate in dealing with that risk, not least as by the end of the Relevant Period only equities were being assessed.

b) CME/ICE block monitoring

4.84. The purpose of this was to identify breaches in CME/ICE block reporting time requirements. The procedure would seek to identify whether differences between the trade execution time and the trade submission time were within the relevant time requirements. Any trades outside the relevant time period were to be flagged to Compliance by middle office; Compliance were then to review and address the issue with the relevant desk.

4.85. This was a procedure carried out weekly and was designed to cover ICE and CME block traded instruments. All trades that fell outside of the relevant reporting time requirements were to be reviewed. However, by 3 April 2017, this procedure was not being implemented.

c) Personal account dealing

4.86. This procedure was designed to ensure that all GFI employees were in compliance with the GFI personal account dealing policy. Trading activity and communication devices were monitored for any potential signs of misuse of information, or advising or procuring another person to enter into a personal account transaction involving the misuse of information.

4.87. The scope of this procedure was that it covered all transactions undertaken by London based GFI brokers and employees in a personal account capacity. The

procedure was carried out monthly, from the start of the Relevant Period until January 2017. Following this time, it was no longer being implemented.

- 4.88. This was an important procedure in addressing the risk of GFI employees carrying out market abuse, yet for a period of 12 months (the majority of the Relevant Period) it was not carried out.

Summary

- 4.89. The manual controls were not applied across all financial instruments at BGC, with equities the only asset class that had some form of testing carried out throughout the Relevant Period. Insider lists were maintained across all financial instruments but did not take place throughout the whole Relevant Period.
- 4.90. GFI only conducted market announcements surveillance over its equity trades and there was no other market abuse related manual surveillance over equities (in addition to there being no automated surveillance over equities either). There was no manual surveillance over equity derivatives besides checks around PA Dealing (until January 2017).
- 4.91. Some manual procedures were not consistent as they were not performed at all times throughout the Relevant Period and there were no compensatory procedures introduced, meaning that BGC/GFI could be exposed to market abuse risk. In particular, insider lists were not used consistently throughout the Relevant Period. The only surveillance of commodities by BGC was the review of LME Stock Movements, but this was not conducted between September 2016 and December 2016, as set out at paragraph 4.75. At GFI, CME/ICE Block Monitoring was conducted on a weekly basis as at 3 July 2016, yet by 3 April 2017 this monitoring was no longer being performed. Moreover, by the end of the Relevant Period the market announcements manual test was no longer being applied to fixed income (see paragraph 4.83). These gaps in monitoring were significant given the limited coverage of automated surveillance meaning that BGC/GFI were exposed to an unacceptable market abuse risk, notably in the asset classes of equity derivatives, futures and options, commodities and, at GFI, equities.
- 4.92. It was only after the Authority's visit in October 2017 that BGC/GFI engaged an external consultant (in November 2017) to conduct a thorough review of their market abuse controls that additional or enhanced controls were introduced. For example, as at 3 January 2018, BGC had introduced a 'suspicious transactions and near miss escalation' procedure across all its asset classes. Similarly, a new

monitoring procedure was implemented at GFI to review daily brokerage/extreme brokerage by 3 April 2017 across all asset classes and trades on a daily basis. The purpose of this procedure was to detect any unusual transactions that could be indicative or lead to market abuse, suspicious activity and/or a failure to treat customers fairly. The necessity of introducing new procedures such as these highlights the deficiencies of BGC/GFI's manual surveillance prior to their introduction.

Communications surveillance

- 4.93. The majority, around 80%, of BGC/GFI's trades were voice brokered with the orders not ingested into the automated trading system. Given the nature of this business model, there was a heightened need for adequate communications surveillance, particularly for orders which would not otherwise be capable of being monitored. This meant the order data was incomplete for the purpose of surveillance and alerts which monitored for attempted market abuse, and was therefore not wholly effective given they did not cover voice orders. For example, alerts in relation to layering orders, spoofing, ramping and reference price manipulation require accurate order data to be effective and this was not reliably captured.
- 4.94. At BGC, the procedures outlined a limited sample review of communications monitoring for both telephone and Bloomberg messages to be reviewed on a weekly basis. A sample of the communications of three brokers, chosen at random from a specific desk on a rotational basis, would be monitored per week. However, from the start of the Relevant Period to 3 April 2017, no communications surveillance was being conducted. Moreover, not only were communications not being reviewed, the collation of those to be assessed was highly inadequate; in the month of April 2017, 2,277,265 calls were recorded at BGC yet only 38 were captured by the communications monitoring.
- 4.95. As at 3 July 2016, GFI conducted communications monitoring across all asset classes on a monthly basis. The monitoring adopted a sample-based approach, and a sample of at least 15 individuals' communications were reviewed from a range of desks. By 3 April 2017, this had reduced to 8 individuals and was carried out on a weekly basis. As at BGC, this surveillance was deficient; in April 2017 1,318,450 calls were recorded at GFI in total, yet only 267 calls were captured by the monitoring.

- 4.96. As the primary front office contact for conducting reviews and investigations as well as providing compliance advisory services, the Regulatory Affairs & Assurance/Advisory team would also monitor communications and identify potential instances of market abuse.
- 4.97. As such, the communications monitoring was inadequate at both BGC and GFI as the sample-based approach was too limited in scope and so did not provide proper mitigation for the gaps in the automatic and manual testing procedures. Only following the review of BGC and GFI controls by an external consultancy firm did the firms introduce significantly enhanced communications monitoring. Accordingly, both BGC and GFI implemented a review of e-communications on a weekly basis from December 2017, carried out by the external consultant.

Market abuse risks and monitoring

- 4.98. The purpose of the monitoring procedures at BGC/GFI was to properly identify suspicions of market abuse by those dealing through the Firms, specifically in relation to the six risk behaviours set out in MAR.

Summary

- 4.99. It is of critical importance that the monitoring systems in place at firms such as BGC/GFI cover market abuse risks adequately. This entails ensuring that there is a testing regime in place that has both appropriate scope (that is, over relevant asset classes a firm conducts business in) and depth (through monitoring activity comprehensively and using robust techniques). Accordingly, any gaps in a firm's monitoring framework can be potentially significant in that a market abuse risk might not be properly identified and any resulting suspicion reported in a STOR.
- 4.100. Indeed, the deficiencies in BGC/GFI's automated, manual and communications monitoring systems meant that some market abuse behaviours for certain asset classes were not properly surveilled for. Both firms had significant shortcomings in surveilling for market abuse risks. The design of the tests in place were not sufficient to ensure that all of the risks were addressed in the surveillance regime for all asset classes. Moreover, the different aspects of market abuse monitoring (automated, manual and communications) were inadequate overall and as such the surveillance systems could not be relied upon to provide comprehensive surveillance of all asset classes subject to MAR across all six market abuse risk behaviours.

Governance and senior management oversight

Awareness of senior management and the escalation of red flags

- 4.101. Throughout the Relevant Period, multiple red flags were raised to the senior management bodies of both BGC and GFI. Such issues were frequently striking in the level of the risk articulated and the need for immediate assessment, yet were not properly discussed nor were actions recorded by BGC/GFI's boards and committees. Moreover, such matters frequently lacked proper evaluation or detailed action plans when presented.

BGC

- 4.102. Throughout the Relevant Period, BGC's Operational Risk and Compliance Committee received information in respect of gaps and deficiencies in BGC's monitoring arrangements. In September 2016, it was noted that not all the instruments traded at that point were currently captured for the commodities desk. Further, in March 2017 it was stressed to the committee that, in respect of trade surveillance, the systems in place were not currently fit for purpose, particularly for the derivatives business. By August 2017, it was reported to the committee that the automated system was at that point unable to generate a statistical output of automated trade alerts that were generated; as such, BGC's ability to monitor alerts relating to potential market abuse was degraded.
- 4.103. Similar deficiencies were escalated to the Risk Oversight Committee, with the committee being informed in September 2016 that gaps in BGC's market surveillance had been identified, and that a new system for both BGC and GFI covering all trades and orders had been identified as an action. At the December 2016 meeting of the committee, it was stated that the automated system was an area of concern. Furthermore, deficiencies relating to certain asset classes were highlighted to the Risk Oversight Committee in February 2017, when it was stated that BGC's equity business had outgrown the automated system and that the system was also not appropriate for derivatives. By June, the committee were told that the implementation of a new automated monitoring system should be expedited as the current system "*continued to be a problem.*" In December 2017, information presented to the Risk Oversight Committee stated that "*enhancements*" were an action point in respect of the automated system, noting that it "*cannot cope with the number of orders and is "falling over" 2/3 times per week.*"

- 4.104. BGC's senior management also received reports of potential high-risk regulatory breaches. For instance, in November 2016 the Operational Risk and Compliance Committee were told that breaches relating to market abuse and trade surveillance were part of BGC's "Top 10 Risks", representing a very high frequency and very high impact risk. Indeed, at the end of the Relevant Period, it was noted at a meeting of the committee on 22 November 2017 that BGC's highest conduct risk related to regulatory breaches in trade surveillance and market abuse.
- 4.105. In November and December 2016, BGC European Holdings LP Board and the Risk Oversight Committee received reports of the risk of systemic regulatory breaches in respect of market abuse and trade surveillance that gave rise to the risk of prosecution, civil action and major liability claims. The issues outlined included key risks being overlooked due to high volumes of trades and a shortage of staff, a lack of policies and procedures regarding market abuse, monitoring not being performed on a timely basis and no adequate escalation process. This matter was highlighted as being a "Top 10 Risk", yet the action points for addressing it were limited to the implementation of the existing automated system, which was already completed, and no further explanation or evaluation was provided. These issues were reported again to the BGC Risk Oversight Committee in December 2017, in respect of the first half year period of 2017, without any substantive progress on remediation or emergency measures being specified.
- 4.106. Throughout the Relevant Period, market abuse and trade surveillance were repeatedly highlighted as red conduct risks in BGC's senior management reporting. Indeed, the Operational Risk and Compliance Committee received this assessment in November 2016, April 2017 and November 2017; the Board of BGC European Holdings LP received it in September 2016, December 2016, February 2017 and December 2017; and the Risk Oversight Committee received it in September 2016, November 2016, December 2016, February 2017, October 2017 and December 2017. Despite this, there was limited explanation around the assessments or detailed action plans (other than upgrading the automated monitoring system, which had a lengthy lead-in time), nor was there any recorded discussion at board or committee level of what was being flagged.

GFI

- 4.107. GFI's Operational Risk Committee was informed in August 2016 that, as with BGC, the risk of systemic regulatory breaches in market abuse and trade surveillance had been rated as a red risk. In April 2017, the committee was informed that this risk should remain red until the new automated system was implemented,

indicating that the existing system was not adequate to properly address market abuse. At the end of the Relevant Period, in November 2017, the risk was rated as red again and deficiencies in the robustness of the automated system were highlighted. This followed earlier information put forward to the November 2016 GFI Audit Committee Meeting, where it was noted that neither GFI nor BGC had the capability to meet necessary requirements for automated surveillance and that it was an area requiring focus and attention. Accordingly, red flags were raised at GFI across the Relevant Period on deficiencies in the surveillance yet there was a failure to record actions at board and committee level that might mitigate these risks.

Inadequate response

- 4.108. By October 2017, BGC/GFI still did not have adequate systems and controls in place, in respect of both automated and manual testing for trading activity covering all of its asset classes. The replacement of the automated surveillance system had not been implemented by the end of the Relevant Period, and both BGC and GFI had failed to engage properly with the repeated red flags raised as inadequate action was taken in the face of immediate risks and clear deficiencies. There were key deficiencies in BGC/GFI's surveillance which persisted throughout the Relevant Period. Despite red flags in market abuse risks and shortcomings in the automated system being escalated at BGC/GFI, manual procedures were not implemented as interim controls to cover obvious gaps in automated monitoring coverage, in particular over asset classes which did not have proper surveillance in place (specifically, equity derivatives, futures and options and commodities at BGC; and equities, equity derivatives and commodities at GFI). As a consequence, key market abuse risks were allowed to persist without proper monitoring in place.

5. FAILINGS

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

BREACH OF MAR ARTICLE 16(2)

- 5.2. Article 16(2) of MAR provides that persons professionally arranging or executing transactions shall establish and maintain arrangements, systems and procedures that ensure effective and ongoing monitoring, for the purpose of detecting and identifying orders and transactions that could constitute insider dealing or market manipulation, or attempted insider dealing or market manipulation, of all orders received and transmitted and all transactions executed.

Market abuse monitoring

5.3. BGC/GFI breached the requirements of Article 16(2) of MAR because, for a period of over 17 months, they did not have effective and ongoing monitoring for suspected market abuse which was appropriate, proportionate and effective for the nature, scale and size of orders and transactions undertaken by them, and the potential market abuse risks to which their business was exposed. In particular:

- (1) BGC/GFI's automated surveillance system covered trading in fixed income and (for BGC) trading in equities, but did not monitor some of the financial instruments that are in scope of MAR, namely the following asset classes: equity derivatives, futures and options (at BGC), commodities (at both BGC and GFI) and equities (at GFI);
- (2) Manual surveillance testing was only employed consistently throughout the Relevant Period in respect of equities at both BGC and GFI; other asset classes either had no manual surveillance at all or testing that was not always employed;
- (3) Where manual surveillance was in place, the use of sample-based reviews was an inadequate approach as it gave rise to a significant risk that potential market abuse might not be detected as the procedure was not comprehensive enough. Specifically:
 - a. the review of market announcements and risers and fallers focused on the top five or ten traded equities, which could mean a single 'suspicious' transaction might not be detected if it did not fall within the most frequently traded stocks that day; and
 - b. similarly, the risers and fallers review procedure potentially might not cover any of the stocks traded by BGC. The procedure was designed to review the top ten and bottom ten movements in the market regardless of whether BGC clients had traded in these stocks. This could have meant none of BGC's trades were reviewed in a particular day, and as such the procedure was not extensive enough to be adequate.
- (4) Surveillance of trading at sensitive times was not in place over MAR asset classes at BGC and not in operation at all at GFI. Commodities and futures and options (for BGC only) were important asset classes to be covered by

this test yet such coverage did not take place at BGC/GFI during the Relevant Period;

- (5) The manual surveillance test of insider lists was not employed consistently throughout the Relevant Period at BGC, and was not used at all at GFI;
- (6) Further, manual surveillance was only performed consistently throughout the Relevant Period over equities and commodities at BGC and only over equities at GFI. The remaining financial instruments had no adequate manual surveillance. This meant, at BGC, equity derivatives and futures and options were not subject to any surveillance, either from the automated system or manual surveillance. At GFI, equity derivatives and commodities were not subject to any satisfactory trade surveillance, either from the automated system or manual surveillance. Equity derivatives is an asset class that may carry a heightened market abuse risk; by way of illustration, in April 2017 there were 211 such trades at BGC totalling \$1,348,256,903 by value and 13,786 at GFI totalling \$3,566,716 by value;
- (7) Given that 80% of BGC/GFI's business was conducted through voice brokerage, it failed to ensure that there was adequate communication monitoring in place that was appropriate to the nature and scale of the business. As BGC/GFI did not ingest the majority of its orders, it was imperative for there to be effective telephone monitoring, which there was not, rather than simply relying on front office staff to identify and escalate potential issues;
- (8) The number of communications monitored in proportion to the size and scale of the business was so low that it was not appropriate, proportionate or effective in detecting market abuse. At BGC, a sample of the communications of three brokers, chosen at random from a specific desk, would be monitored per week. However, from 3 July 2016 to November 2017, no communications surveillance was being conducted at all. At GFI, fifteen brokers' communications were assessed monthly, before this reduced to eight brokers per month during 2017.

Market abuse risks

- 5.4. Of the six risk behaviours set out in MAR, BGC had inadequate monitoring in place to cover three and did not have comprehensive coverage of all asset classes in respect of the remaining three. GFI's systems had greater shortcomings, with all

six risks being inadequately addressed for various asset classes. These deficiencies in the monitoring systems at the Firms were significant. The purpose of such systems is to identify suspected market abuse in trading activities, yet the failings in both design and implementation of aspects of the surveillance meant that both BGC and GFI did not appropriately carry this function out. The deficiencies in the monitoring at BGC/GFI meant that there was the potential for suspicions of market abuse not to have been identified and reported in a STOR. It is of fundamental importance to the integrity of the market that brokers such as BGC/GFI have effective market abuse systems in place.

BGC

5.5. The design of the monitoring systems at BGC was deficient in addressing market abuse risks:

- i. Insider dealing: in summary, there was no proper coverage over equity derivatives, futures and options, and commodities. Automatic surveillance only applied to fixed income and equities. In terms of manual surveillance, the sample-based tests were inadequate in their scope, being narrowly focused on the largest changes, and insider lists were not reviewed regularly or routinely.
- ii. Unlawful disclosure of inside information: in summary, there was no effective coverage at all over any asset class as there was no automatic or manual monitoring in place to address this risk.
- iii. Manipulating transactions: in summary, there was no proper coverage over equity derivatives, futures & options, and commodities. Automatic surveillance only applied to fixed income and equities. Risers and fallers manual monitoring used a limited sample-based approach and trading at sensitive times was too narrow in its scope and did not assess all relevant assets (such as commodities and futures and options). The latter was also not implemented for six months of the Relevant Period.
- iv. Manipulating devices: in summary, there was no proper coverage over equity derivatives, futures & options, and commodities. Automatic surveillance only applied to fixed income and equities.
- v. Dissemination: in summary, there was no effective coverage at all over any asset class.
- vi. Misleading behaviour and distortion: in summary, there was no proper coverage over any asset class. As noted at para 4.33 above, this was identified as a medium high risk by BGC/GFI, yet there were no

surveillance procedures in place to address it (beyond communications monitoring).

- 5.6. Moreover, communications monitoring could have acted as a mitigant to shortcomings in other aspects of surveillance, yet was fundamentally flawed in its design (with too limited a sample-based approach to be effective in properly addressing risks) and did not take place for most of the Relevant Period.

GFI

- 5.7. The design of the monitoring systems at GFI was deficient in addressing the six market abuse risk behaviours:

- i. Insider dealing: in summary, there was no proper coverage over equities, equity derivatives and commodities. The lack of automatic surveillance over equities was a key omission. In terms of manual surveillance, market announcements was limited in scope and there were no insider lists in place at all for any asset class.
- ii. Unlawful disclosure of inside information: in summary, there was no effective coverage at all over any asset class with no automatic or manual monitoring in place to address this risk.
- iii. Manipulating transactions: in summary, only fixed income had proper coverage for this risk through the automated monitoring, with manual surveillance limited (for instance, CME/ICE block monitoring was limited in scope and not conducted for half of the Relevant Period).
- iv. Manipulating devices: in summary, only fixed income had proper coverage for this risk, with no other asset classes properly covered.
- v. Dissemination: in summary, there was no proper coverage over any asset class in respect of this risk.
- vi. Misleading behaviour and distortion: in summary, there was no proper coverage over any asset class in respect of this risk. As noted at para 4.33 above, this was identified as a medium high risk by BGC/GFI, yet the only surveillance procedure in place to address it was communications monitoring, which had limited scope.

Summary

- 5.8. For the reasons set out above, the systems and controls in place for monitoring market abuse were not appropriate, proportionate and effective in light of BGC/GFI's nature, size and scale of the business. The three limbs of BGC/GFI's

market abuse surveillance systems (manual, automatic and communications monitoring) were deficient, with the overall result that BGC/GFI did not have adequate procedures in place to meet its regulatory requirements under MAR. The gaps in the surveillance coverage for certain asset classes, and manual nature of some of the controls meant BGC/GFI were not able to allow for the analysis of each and every transaction as required by the legislation (Article 3(1) of DR 2016/957) during the Relevant Period.

- 5.9. As a result of the above failings, during the Relevant Period, BGC and GFI failed to ensure they had the appropriate systems and controls in place to ensure that they could effectively conduct market abuse surveillance, which increased the risk that potentially suspicious trading would go undetected.

BREACH OF PRINCIPLE 3

- 5.10. BGC/GFI breached Principle 3 as it failed to organise and control its affairs responsibly and effectively with adequate risk management systems for the detection and identification of potential market abuse.
- 5.11. Despite the awareness of BGC/GFI that the automated system was not operating effectively and appropriately, they failed to implement adequate interim measures or upgrade manual procedures adequately (despite red flags being escalated) whilst a more suitable surveillance system was put in place. BGC/GFI was clearly told of relevant risks to its business and of the ongoing issues with the automated system. However, its governance functions did not record challenge over what processes might be introduced to mitigate the issues at the time. Accordingly, adequate risk management systems to mitigate the risk of market abuse were not implemented and gaps in the surveillance persisted throughout the Relevant Period.
- 5.12. Additionally, BGC/GFI failed to assign clear responsibility for the Market Conduct and Surveillance team who were responsible for market abuse surveillance at the team. The manager was a nominal figure head, responsible only for HR matters of the team and not for quality assurance of the surveillance procedures and processes. Accordingly, there was no effective oversight.
- 5.13. As a result of the above, during the Relevant Period, BGC/GFI failed to ensure they had the appropriate systems and controls in place to ensure that they could effectively conduct market abuse surveillance, which increased the risk that potentially suspicious trading would go undetected.

6 SANCTION

6.1 The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. 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.

Step 1: disgorgement

6.2 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.

6.3 The Authority has not identified any financial benefit that BGC/GFI derived directly from its breach.

6.4 Step 1 is therefore £0.

Step 2: the seriousness of the breach

6.5 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.

6.6 The Authority considers that the revenue generated by BGC/GFI is indicative of the harm or potential harm caused by its breach. The Authority has therefore determined a figure based on a percentage of BGC/GFI's relevant revenue. BGC/GFI's relevant revenue is the revenue derived by BGC and GFI arising from its broking activities in asset classes that were subject to MAR during the period of the breach. The period of BGC/GFI's breach was from 3 July 2016 to 3 January 2018. The Authority considers BGC/GFI's relevant revenue for this period to be as follows:

BGC Brokers LP: £172,415,999

GFI Securities Limited: £84,962,176

GFI Brokers Limited: £83,714,488

6.7 In deciding on the percentage of the relevant revenue that forms the basis of the step 2 figure, the Authority considers the seriousness of the breach and chooses

a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on firms there are the following five levels:

Level 1 – 0%

Level 2 – 5%

Level 3 – 10%

Level 4 – 15%

Level 5 – 20%

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

6.9 DEPP 6.5A.2G(7) lists factors relating to the nature of a breach by a firm, of these the Authority considers the following factors to be relevant:

(a) the nature of the rules, requirements or provisions breached; compliance with MAR 16(2) is particularly important in deterring, detecting and enabling action to be taken against those who would otherwise engage in market abuse;

(b) the frequency of the breach; the Firms' demonstrated failings across several product lines with high volumes of daily orders and transactions, throughout the Relevant Period;

(c) whether the breach revealed serious or systemic weaknesses in the firm's procedures or in the management systems or internal controls relating to all or part of the firm's business; evidence of the Firms' serious and systemic weaknesses is set out in section 4 of this Notice;

(d) whether the firm's senior management were aware of the breach; some of the Firms' committees were aware of serious inadequacies in the Firms' surveillance systems and controls, which should have at the very least raised concerns over the Firms' ability to comply with MAR 16(2) throughout the Relevant Period; and

(f) the scope for any potential financial crime to be facilitated, occasioned or otherwise occur as a result of the breach; whilst the Authority does not allege that any actual financial crime was facilitated, etc, as a result of the Firms' breach, the extent of the inadequacies of the Firms' market abuse surveillance systems increased the scope for financial crime potentially to occur.

- 6.10 The Authority has considered the factors listed in DEPP 6.5A.2G(8) and DEPP 6.5A.2G(9) and considers that the Firms' breach was negligent, rather than deliberate or reckless.
- 6.11 DEPP 6.5A.2G(11) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factor to be relevant:
- (b) the breach revealed serious or systemic weaknesses in the firm's procedures or in the management systems or internal controls relating to all or part of the firm's business: BGC/GFI's market abuse surveillance systems were inadequate to properly address the risk of market abuse. Furthermore, the Firms saved on the costs that they would otherwise have incurred had they adequately resourced their market abuse surveillance systems and the compliance teams responsible for reviewing alerts, conducting communications and other surveillance activities.
- 6.12 DEPP 6.5A.2G(12) lists factors likely to be considered 'level 1, 2 or 3 factors'. The Authority does not consider any of these factors to be relevant to the circumstances of the Firms' breach.
- 6.13 Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 3.
- 6.14 This results in figures of £17,241,599 for BGC Brokers LP, £8,496,217 for GFI Securities Limited and £8,371,448 for GFI Brokers Limited.
- 6.15 DEPP 6.5.3G(3) provides that the Authority may decrease the level of penalty arrived at after applying Step 2 of the framework if it considers that the penalty is disproportionately high for the breach concerned. The Authority considers that the level of penalty is disproportionate, taking into account the non-deliberate nature of the breaches and the lack of any financial benefit arising from them.
- 6.16 To achieve a penalty that (at Step 2) is proportionate to the breaches, and having taken into account previous cases, the Step 2 figures are reduced to £3,448,319 for BGC Brokers LP, £1,699,243 for GFI Securities Limited and £1,674,289 for GFI Brokers Limited.

Step 3: mitigating and aggravating factors

- 6.17 Pursuant to DEPP 6.5A.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any

amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.

6.18 The Authority accepts that, after it raised concerns over the Firms' ability to comply with MAR 16(2), the Firms incurred substantial costs by engaging an external provider to enhance its market abuse surveillance capabilities. But in the Authority's opinion these costs largely reflect the extent of the remedial measures necessary to enable the Firms to comply with regulatory requirements and meet acceptable industry standards.

6.19 The Authority considers that there are no aggravating or mitigating factors and that the Step 2 figures should not be adjusted.

6.20 Step 3 is therefore as follows:

BGC Brokers LP: £3,448,319

GFI Securities Limited: £1,699,243

GFI Brokers Limited: £1,674,289

Step 4: adjustment for deterrence

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

6.22 The Authority considers that the Step 3 figures represent a sufficient deterrent to BGC/GFI and others, and so has not increased the penalty at Step 4.

6.23 Step 4 is therefore as follows:

BGC Brokers LP: £3,448,319

GFI Securities Limited: £1,699,243

GFI Brokers Limited: £1,674,289

Step 5: settlement discount

6.24 Pursuant to DEPP 6.5A.5G, if the Authority and the firm on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have

been payable will be reduced to reflect the stage at which the Authority and the firm reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.25 The Authority and BGC/GFI reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figures.

6.26 Step 5 is therefore as follows:

BGC Brokers LP: £2,413,823

GFI Securities Limited: £1,189,470

GFI Brokers Limited: £1,172,002

Penalty imposed

6.27 The Authority hereby imposes a total financial penalty of £4,775,200 (rounded down to the nearest £100) on BGC/GFI for breaching Art 16(2) MAR and Principle 3.

7 PROCEDURAL MATTERS

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

7.2 The following statutory rights are important.

Decision maker

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

Manner and time for payment

7.4 The financial penalty must be paid in full by BGC/GFI to the Authority no later than 21 December 2022.

If the financial penalty is not paid

7.5 If all or any of the financial penalty is outstanding on 22 December 2022, the Authority may recover the outstanding amount as a debt owed by BGC/GFI and due to the Authority.

Publicity

Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

- 7.7 For more information concerning this matter generally, contact Priya Dave at the Authority (direct line: 020 7066 1490/email: priya.dave@fca.org.uk).

Mario Theodosiou

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

RELEVANT STATUTORY PROVISIONS

1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include the integrity objective.
2. Section 206(1) of the Act provides:
"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."
3. MAR 16(2) provides:
"Any person professionally arranging or executing transactions shall establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions."

RELEVANT REGULATORY PROVISIONS

Principles for Businesses

4. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook. They derive their authority from the Authority's rule-making powers set out in the Act. The relevant Principles are as follows.
5. Principle 3 provides that:
A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

DEPP

6. Chapter 6 of DEPP, which forms part of the Authority's Handbook, sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.

The Enforcement Guide

7. The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act.
8. Chapter 7 of the Enforcement Guide sets out the Authority's approach to exercising its power to impose a financial a penalty.