

At A Glance

Global Banking Investigations

Overview

Since the onset of the financial crisis, large banks and other financial institutions have faced intense scrutiny of their working practices, past and present. Investigations have been carried out by multiple regulators and other agencies, in multiple jurisdictions, often concurrently. The trend has been towards increasingly large-scale investigations, leading to record-setting fine amounts. In many cases, these investigations have led to follow-on litigation by investors or clients as well as criminal prosecution of individuals in criminal courts.

In the UK, for example, eight banks and financial institutions were fined £758.4 million in respect of LIBOR and other interbank rate manipulation, and six banks and financial institutions were fined a total of £1,399.4 million in respect of FX manipulation.

Faced with such oversight, financial institutions have had to become more adept at addressing issues raised by the regulators, and to respond to those requests in a rapid but also comprehensive and accurate fashion.

Issues and Allegations

Many recent investigations (though not all) have centred on the functioning of markets and/or specific alleged misconduct by banking institutions or their employees. The allegations have focused on issues such as:

- Valuation of complex financial instruments and other positions;
- Overcharging of customer and other issues relating to fee structures or customer portfolios;
- Manipulation of markets:
 - manipulative transactions or orders (e.g., “banging the close”, “spoofing”, or “layering”);
 - biased submissions in various benchmark setting processes; and
 - collusion.

- Suitability and disclosure issues (e.g., disclosure of risks).

These allegations have been pursued under a variety of legal frameworks, for example under financial regulation or under competition laws, depending on the issue and the jurisdiction.

Our Capabilities in Investigations

Defending allegations such as the above often requires the analysis of large amounts of data stored on a range of media and in a variety of formats, and of varying quality. These data typically span several years, sometimes across multiple trading books and geographical locations. In many investigations, an important aspect of our work is collecting, cleaning, and organising the data.

The data are then used in analyses that address the regulator's concerns. These include the following:

- Valuation of complex instruments and comparison to the valuations performed by trading desks and valuation offices of financial institutions;
- Use of algorithms to detect potential market abuse (e.g., market manipulation and insider dealing) or any other possible misconduct;
- Evaluation of historical performance of the assets held in investment portfolios and comparison to benchmarks;
- Assessment of performance, assuming alternative fund assets compositions and/or alternative underlying collateral;
- Suitability assessments;
- Evaluation of the materiality of allegedly undisclosed or misrepresented information; and
- Evaluation of the extent and materiality of potentially improper conduct.

NERA economists assist at all stages of the investigation process:

- Pre-investigation: We often help clients identify potentially problematic areas. We also help assess the extent of the conduct in question.
- During an informal or formal investigation, including during the preparation for meetings with regulatory authorities, our analyses are often undertaken to answer specific queries from the regulators, or to help with the overall defence strategy. NERA can also contribute to effective coordination in responding to multiple regulators.
- During follow-on litigation and criminal proceedings, we assist clients and counsel with various lines of analysis, expert reports, and expert testimony, drawing on our extensive experience as consultants and testifying experts in financial litigation.

Selected Case Experience

We have been retained and instructed by numerous regulatory agencies, individuals, financial institutions, and other regulated entities across a number of jurisdictions. We have provided consulting advice for numerous informal and formal investigations. The high number as well as the wide scope of our past engagements (some of which are listed below) underscore our reputation for thorough, objective, and timely work. Examples of past engagements include:

- Assisting a European financial institution with an investigation by a national regulator in relation to sales of distressed sovereign debt to retail customers;
- Assisting a financial institution with allegations of market manipulation and collusion in the foreign exchange market;
- Assisting a hedge fund with a regulatory investigation concerning alleged market manipulation in the equity markets;
- Assisting a European financial institution with a regulatory investigation concerning past valuations of its subprime securities;
- Assisting a financial institution with a regulatory investigation concerning alleged manipulation of ISDAFIX;
- Assisting a financial institution with a regulatory investigation concerning alleged manipulation of various interbank lending rates (e.g., LIBOR);
- Assisting investment banks with regulatory investigations concerning valuation and suitability of structured products sold by the banks;
- Assisting a financial institution with a regulatory investigation concerning manipulation of bespoke benchmarks and the effect on structured products linked to those benchmarks;
- Advising a large investment fund on the valuation of structured finance securities held in its portfolio; and
- Assisting a trading desk on valuation and alleged manipulation of a complex interest rate derivative.

About NERA

NERA Economic Consulting (www.nera.com) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. We bring academic rigor, objectivity, and real world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA's clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world's largest economic consultancies. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

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