

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:)
)

Barclays Bank PLC,)

Respondent.)
)
)

CFTC Docket No. 15 – 24

RECEIVED CFTC



Office of Proceedings
Proceedings Clerk

8:03 am, May 20, 2015

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTIONS 6(c)(4)(A) AND 6(d) OF THE COMMODITY EXCHANGE ACT,
MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Commodity Futures Trading Commission (“Commission” or “CFTC”) has reason to believe that Barclays Bank PLC (“Respondent” or “Barclays”) has violated the Commodity Exchange Act (the “Act”) and Commission Regulations (“Regulations”). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein, and to determine whether any order shall be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying the findings or conclusions herein, except to the extent Barclays admits those findings in any related action against Barclays by, or any agreement with, the Department of Justice or any other governmental agency or office, Barclays consents to the entry and acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c)(4)(A) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”).¹

¹ Respondent consents to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondent does not consent to the use of the Offer, or the findings or conclusions in this Order, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding. Neither the Offer nor the Order confers any rights to any party other than the Commission and Barclays.

III.

The Commission finds the following:

A. Summary

From 2009 through 2012 (“Relevant Period”), Barclays, by and through certain of its foreign exchange (“FX”) traders, at times, sought to benefit its own trading positions or those of FX traders at other banks by attempting to manipulate and aiding and abetting certain traders at other banks in their attempts to manipulate certain FX benchmark rates.

One of the primary FX benchmark rates that the FX traders attempted to manipulate was the World Markets/Reuters Closing Spot Rates (“WM/R Rates”). The WM/R Rates are the most widely referenced FX benchmark rates in the United States and globally. The WM/R Rates are used to establish the relative values of different currencies, and reflect the rates at which one currency is exchanged for another currency. Most of the WM/R Rates at issue here are set or fixed based on trading activity of market participants, including Barclays and other banks, at various times throughout the day. The most widely used WM/R Rate is set or fixed at 4 p.m. London time (“WM/R 4 p.m. London fix” or the “4 p.m. fix.”). Another FX benchmark rate that a Barclays FX trader attempted to manipulate is the Russian Ruble/U.S. Dollar (“RUB/USD”) Chicago Mercantile Exchange (“CME”)/EMTA, Inc.² benchmark rate (“CME/EMTA Rate”)³ that is based on indicative bids and offers submitted by banks to the CME, who calculates and issues the CME/EMTA Rate as well as publishes the submitted bids and offers of each participant.

FX benchmark rates, including the WM/R Rates and the CME/EMTA Rate, are used to price a variety of transactions including foreign exchange swaps, cross currency swaps, spot transactions, forwards, options, futures, and other financial derivative instruments. For example, the CME/EMTA Rate is the primary rate source for settling Russian Ruble non-deliverable forward transactions and the price used for calculation of the CME Russian Ruble futures final settlement price at termination.⁴

At times during the Relevant Period, certain FX traders at Barclays and other banks coordinated their trading or indicative rate submissions to attempt to manipulate certain FX benchmark rates, including the WM/R 4 p.m. London fix and the CME/EMTA Rate, to their benefit. These FX traders at Barclays and the other banks used private electronic chat rooms to communicate and plan their attempts to manipulate the FX benchmark rates for certain currency pairs.⁵ Certain FX traders at Barclays regularly participated in numerous private chat rooms. At times, in certain chat rooms, FX traders at Barclays and other banks disclosed confidential customer order information and trading positions, altered trading positions or CME/EMTA

² Formerly, the “Emerging Markets Traders Association.”

³ Also known as the CME/EMTA Russian Ruble per USD Reference Rate.

⁴ CME Submission 05-50R (April 29, 2005), available at <http://www.cftc.gov/files/submissions/rules/selfcertifications/2005/ru1042705cme001.pdf>

⁵ Some FX traders involved in certain chat rooms at issue herein were responsible for managing their respective banks’ FX desks.

submissions to accommodate the interests of the collective group, and agreed on trading strategies as part of an effort by the group to attempt to manipulate certain FX benchmark rates, in some cases downward and in some cases upward.

Barclays traders' attempts to manipulate certain FX benchmark rates involved multiple currencies, including some of the most actively traded currencies like the U.S. Dollar, Euro, and British Pound Sterling. The wrongful conduct involved desks and offices located in at least New York, London and Moscow.

This conduct occurred at various times over the course of the Relevant Period without detection by Barclays in part because of internal controls and supervisory failures at Barclays. Barclays failed to adequately assess the risks associated with its participation in the fixing of certain FX benchmark rates, including the WM/R 4 p.m. London fix and CME/EMTA rates. Barclays also lacked adequate internal controls or procedures to detect and deter possible misconduct involving certain FX benchmark rates and failed to adequately supervise its FX traders by, among other shortcomings, failing to have adequate controls and monitoring over the use of electronic chat rooms.

In fact, some of this conduct occurred during the same period that Barclays was on notice that the CFTC and other regulators were investigating attempts by certain banks to manipulate the London Interbank Offered Rate ("LIBOR") and other interest rate benchmarks.⁶

In accepting Barclays' Offer, the Commission recognizes Respondent's significant cooperation during the CFTC's Division of Enforcement's ("Division") investigation of this matter, which included self-reporting preliminary findings of questionable conduct by Barclays employees to the CFTC and by providing important information and analysis to the Division that helped the Division efficiently and effectively undertake its investigation. In addition, the Commission acknowledges that Barclays initiated its own internal investigation into FX trading prior to the Division's investigation. The Commission also recognizes that Barclays has commenced significant remedial action to strengthen the internal controls and policies relating to foreign exchange benchmarks and internal and external communications by traders.

The Commission notes, however, the civil monetary penalty imposed reflects, in part, that Barclays did not settle this matter at an earlier stage of the investigation.

B. Respondent

Barclays Bank PLC is a global banking and financial services company based in the U.K. that is engaged in retail and commercial banking, credit cards, investment banking, wealth

⁶ The CFTC issued an order filing and settling charges that Barclays engaged in certain acts of attempted manipulation and false reporting of the LIBOR for certain currencies and the Euro Interbank Offered Rate ("Euribor"). *In the Matter of Barclays PLC, Barclays Bank PLC, and Barclays Capital Inc.*, CFTC Docket No. 12-25 (June 27, 2012) (the relevant period of this action was from at least 2005 to at least 2009).

management and investment management services. It is wholly owned by Barclays PLC, and has offices in New York, New York. It became provisionally registered with the Commission as a swap dealer on December 31, 2012.

C. Facts

1. The FX Market

The FX market, in which traders are able to buy, sell, exchange and speculate on currencies, is one of the world's largest and most actively traded financial markets. According to the Bank of International Settlements, trading in global foreign exchange markets averaged \$5.3 trillion per day in April 2013. Currencies are traded in pairs and the transacted rate represents the rate to exchange one currency for another currency. The U.S. Dollar is the dominant currency in the foreign exchange market. The exchange of the U.S. Dollar for another currency accounts for an estimated 87% of global foreign exchange market activity. The most actively traded currency pairs are the Euro/U.S. Dollar (EUR/USD), U.S. Dollar/Japanese Yen (USD/JPY), and British Pound Sterling/U.S. Dollar (GBP/USD). Participants in the FX market include banks, investment firms, commercial companies, central banks, hedge funds and retail customers.

The foreign exchange market is comprised of many instruments including spot, forwards, swaps, futures and option contracts.

2. WM/R Rates and CME/EMTA Rate Overview

The WM/R Rates, some of the leading and most widely referenced foreign exchange benchmark rates, are calculated multiple times daily, including at 4 p.m. London time, which is commonly referred to as the "WM/R 4 p.m. London fix" or the "4 p.m. fix."⁷ For twenty-one of the most liquid currencies (the "trade currencies"), the 4 p.m. fix is based on actual trades, using bids and offers extracted from a certain electronic trading system during a one-minute window ("fix period"). WM/Reuters determines the bid and offer rates based on the captured transacted rate and the bid-offer spread. WM/Reuters then calculates the median of these bid and offer rates and from these medians determines a "mid trade rate." If there are not enough trades, WM/Reuters calculates a "mid order rate." All orders and transactions are weighted equally, regardless of their notional sizes.

The WM/R Rates for the other 139 less liquid currencies (the "non-trade currencies") are set by similar methodology. Because these currencies are less liquid, WM/Reuters relies on indicative quotes (submissions) derived from a Reuters computer feed that solicits "indications of interest" from market participants as part of its fixing methodology. WM/Reuters captures independent snapshots of indicative quotes for bids and offers, and selects the median rate from these quotes as the "WM/R 4 p.m. London fix."

⁷ Another important benchmark is the European Central Bank ("ECB") rate set by the ECB at 1:15 p.m. London time. Though less widely referenced than the WM/R Rate, the ECB Rates are also used by a wide range of participants, specifically non-financial corporates and are important for the non-deliverable forwards market. See Financial Stability Board Foreign Exchange Benchmarks Final Report at 1. (September 30, 2014).

WM/Reuters also provides fix rates for forward and non-deliverable forward contracts using methodology similar to that used for non-trade currencies. Fix rates for forward and non-deliverable forward contracts are published using a premium or discount to the spot rate for the relevant currency pair.

Other FX benchmark rates are priced through the use of indicative rates. The Russian Ruble/U.S. Dollar CME/EMTA Rate is derived from a daily telephonic survey of participating banks⁸ that the CME conducts at a random time between 12:00 p.m. and 12:30 p.m. Moscow time. If a bank responds to the daily survey, it provides the bid and offer at which it could execute a \$100,000 RUB/USD spot transaction for next-day value in the Moscow marketplace. Survey participants' responses are then confirmed in writing, recorded telephone message or other secure electronic communication.⁹ If more than ten survey responses are received, the CME randomly selects ten responses. The CME then determines the midpoint of each bid-offer pair and eliminates the two lowest and the two highest midpoints.¹⁰ The mean of the remaining six midpoints results in the CME/EMTA Rate for that day. The responding bank names and their indicative responses are published by the CME and EMTA on their respective websites as well as the calculated CME/EMTA Rate. The bids and offers submitted by the survey participants should reflect their honest assessment of the current prevailing market rate. Taking into account the benefit to the survey participants' trading positions is not a legitimate or permissible factor in assessing the currently prevailing market rate.

Foreign exchange futures contracts are connected to FX benchmark rates. The CME Russian Ruble/U.S. Dollar (RUB/USD) futures contract, for instance, is a cash settled futures contract for which the final settlement rate, a component of the contract's price, is equal to the reciprocal of the CME/EMTA Rate. Exchange rates in many actively traded CME foreign exchange futures contracts, including the Euro/U.S. Dollar (EUR/USD) futures, the U.S. Dollar/Japanese Yen (USD/JPY) futures, and British Pound Sterling/U.S. Dollar (GBP/USD) futures, track rates in spot foreign exchange markets at near parity after adjusting for the forward differential, or adding or subtracting "forward points." Speculative traders employ strategies that seek to capture short-lived arbitrage opportunities between foreign exchange futures and spot contracts. Since 2012, the CME provides clearing and other services for cash-settled Over the Counter FX Spot, Forward, Swaps, and Non-Deliverable Forward (NDF) contracts. The contracts cover 26 currency pairs, including EUR/USD, USD/JPY, and GBP/USD, and are cash-settled based on the WM/R 4 p.m. London fix.

3. Barclays Traders' Attempts to Manipulate Trading Based FX Benchmark Rates

In late 2008, as the financial crisis began to wane, liquidity and volume in the FX market increased as many financial institutions and other market participants sought to exchange

⁸ All participating banks are inside the Russian federation and are active participants in the RUB/USD and/or Russian Ruble non-deliverable forward markets.

⁹ See CME Rulebook, Chapter 260 (26002 Settlement Procedures).

¹⁰ If fewer than ten responses are received (but more than five) the CME eliminates the high and low midpoint. If fewer than five responses are received no rate will be published for that day.

currencies. The increase in volume and liquidity allowed Barclays FX traders and traders at other banks to take advantage of this trading opportunity, specifically during the FX benchmark rate fixing periods.

At the same time, certain FX traders at Barclays and other banks had and/or developed relationships with certain FX traders at other banks, and they increasingly used private chat rooms to communicate and share information with each other. Certain FX traders at Barclays and other banks routinely participated in the chat rooms. Often, these FX traders had multiple chat rooms open simultaneously on their trading terminals, and within a chat, the traders often focused on a particular currency pair. Being a member of certain chat rooms was sometimes exclusive and by invitation only.

For example, when inviting in a new member, traders in one chat room tried to ensure that a new member agreed to put the interests of the group first. In one chat, traders from three other banks discussed¹¹ whether to invite a Barclays trader into a chat room:

Bank Z Trader:	7:49:55	are we ok with keeping this as is.. ie the info lvls & risk sharing?
Bank X Trader:	7:50:27	well...
Bank Z Trader:	7:50:30	that is the qu[estion]
Bank X Trader:	7:50:32	you know him best obv...
	7:50:39	if you think we need to adjust it
	7:50:43	then he shouldn't be[] in chat
Bank Y Trader:	7:50:54	yeah that is key
	7:51:00	simple question [Bank Z Trader]
	7:51:08	I trust you implicitly [Bank Z Trader]
	7:51:13	and your judgement
	7:51:16	you know him
	7:51:21	will he tell rest of desk stuff
	7:51:26	or god forbin his nyk...
Bank X Trader:	7:51:46	yes
	7:51:51	that's really imp[ortant] q[uestion]
	7:52:01	dont want other numpty's in mkt to know
	7:52:17	but not only that
	7:52:21	is he gonna protect us
	7:52:33	like we protect each other against our own branches
	7:52:46	ie if you guys are rhs.. and my nyk is lhs..ill say my nyk lhs in few
Bank Z Trader:	7:53:52	what concerns me is that i know he'll never tell us when at risk...

After further discussion of whether the Barclays trader would “add huge value to this cartell,” the traders decided to invite the trader into the chat room for a “1 month trial,” with the Bank X

¹¹ The communications quoted in this Order contain shorthand trader language and many typographical errors. The shorthand and errors are explained in brackets within the quotations only when deemed necessary to assist with understanding the discussion.

Trader warning him, presumably facetiously, “mess this up and sleep with one eye open at night.”

These chat rooms were the vehicles through which certain Barclays FX traders and traders at other banks coordinated attempts to manipulate certain FX benchmark rates, including the WM/R 4 p.m. London fix. Certain chat room participants used code words to evade detection by their banks’ compliance monitoring systems.

At times during the Relevant Period, in their attempts to manipulate certain benchmarks (up or down), Barclays FX traders exchanged the size and direction of the bank’s net orders with FX traders at other banks and used this information to attempt to coordinate trading strategies. The traders at times then used this information to enable one or more traders to attempt to manipulate the FX benchmark rates prior to and during the relevant fixing period.

For example, in one of the chat rooms, if a trader determined that he had fix orders in the opposite direction to the chat room group’s overall net fixing position approaching the fixing window, that trader may have transacted before the fix period with traders outside the private chat room, a practice known by market participants as “netting off,” rather than transact with other traders within the chat room.¹² In certain cases, the goal of this trading strategy was to maintain the volume of orders held by chat room members in the direction favored by the majority of the private chat room members and limit orders being executed in the opposite direction during the fix window.

If traders in the chat room had net orders in the same direction as what they desired rate movement at the fix to be, then the traders would at times either (1) match off these orders with traders outside of the chat room in an attempt to reduce the volume of orders in the opposite direction transacted during the fix period; (2) transfer their orders to a single trader within the chat room who could then execute a single order during the fix period; or (3) transact with traders outside of the chat room to increase the volume traded by chat room members during the fix window in the direction favored by the private chat room traders. At times, traders also increased the volume traded by them at the fix in the direction favored by the chat room traders in excess of the volume necessary to manage the risk associated with their banks’ net buy or sell orders at the fix. At times, these actions were undertaken in order to attempt to manipulate the benchmark rate set during the fix period.

Some examples of Barclays FX traders’ misconduct include:

In one chat, a Bank Y Trader and a Barclays trader coordinated their trading in an attempt to manipulate a WM/R 4 p.m. London fix. At 3:43:50, the Barclays trader asked the Bank Y trader whether he needed to buy Euros in the market in the forthcoming fix. The Bank Y trader responded that he had a net buy order for the fix, which he subsequently confirmed as totaling 105 million. At 3:44:04, the Bank Y trader offered to transfer that net buy order to the Barclays trader. The Barclays trader replied “maybe” and then stated that he had a net buy order for 150 million.

¹² The Commission does not consider that the netting off of orders (or the decision not to net off) ahead of fixes is inappropriate in all circumstances.

The traders had the following exchange:

Barclays Trader:	3:46:53	i'd prefer we join forces
Bank Y Trader:	3:46:56	perfick
	3:46:59	lets do this...
Bank Y Trader:	3:47:11	lets double team them
Barclays Trader:	3:47:12	YESssssssssss

Immediately after the fixing window, the traders congratulated themselves:

Barclays Trader:	4:03:25	sml rumour we haven't lost it
Bank Y Trader:	4:03:45	we
	4:03:46	do
	4:03:48	dollarr

In another chat, traders for Barclays and three other banks exchanged positions in a chat room leading into the WM/R 4 p.m. fix. The Bank Y trader said "it cant be a good day to be [right hand side]." ¹³ Once the four traders determined they were all the same direction, the Barclays trader asked if "we gonna be able to get it to 05" to which the Bank Y trader responded "is that the troyal fkn we." After the fixing window closed the Bank X trader said "nice call" and the chat room members gave their "scores" or profits from the fix. The chat room members each claimed they made between \$60,000 and \$220,000.

4. Barclays Traders' Attempts to Manipulate the Submission Based CME/EMTA Rate through False Reports

Barclays provided indicative bids and offers to the CME for the fixing of the CME/EMTA Rate on certain days between August 2009 until August 2011. On at least a few occasions, a Barclays FX trader attempted to manipulate the CME/EMTA Rate by providing false reports concerning his view of the current prevailing bids and offers to the CME in order to move the CME/EMTA Rate up or down in whatever direction would benefit his trading positions or the trading positions of other banks. The Barclays FX trader coordinated, through an electronic chat room, with traders from other banks who also made submissions to skew their indicative bids and offers to try to move the CME/EMTA Rate in the direction they desired.

For example, in one chat including a Barclays FX trader, one RUB/USD trader suggested "we should all lower fix by several kopecks" to which another trader replied "yes."¹⁴ A third trader agreed that "it is a right idea to lower the fix by a few kopecks." The Barclays FX trader responded "so what, 5 kopecks and all/everyone is splendid." After that conversation, the Barclays trader submitted an artificially low indicative bid and offer to the CME, consistent with

¹³ If an FX trader has orders to sell of the first currency listed in any currency pair, it is often referred to as being on the left-hand side, or "lhs." If an FX trader references right hand side, or "rhs," it indicates that the FX trader is a buyer of the first currency listed in a currency pair.

¹⁴ RUB/USD chatroom language is in Russian and quotations come from an unofficial translation.

his conversation with the other traders, that was used by the CME to calculate the final CME/EMTA Rate.

A bank's trading positions are not legitimate or permissible factors on which to base a bank's submission of bids and offers for purposes of determining the CME/EMTA Rate.

5. Respondent Lacked Adequate Internal Controls

During the Relevant Period, Barclays failed to adequately assess the risks associated with its FX traders participating in the fixing of certain FX benchmark rates. Barclays also lacked adequate internal controls in order to prevent its FX traders from engaging in improper communications with certain FX traders at other banks. Barclays lacked sufficient policies, procedures and training specifically governing participation in trading around the FX benchmarks rates and had inadequate policies pertaining to, or insufficient oversight of, its FX traders' use of chat rooms or other electronic messaging.

In approximately March 2012, Barclays received a customer complaint regarding potential inappropriate disclosure of customer information in an internal FX chatroom. Barclays then undertook an investigation of FX chatroom usage. Following and as a result of that investigation, in consultation with FX management and Legal and Compliance representatives, beginning in August 2012, Barclays undertook a process of instructing FX traders to cease participation in multi-bank chat rooms, and issued guidance and enhanced training with respect to the sharing of client information. On October, 22, 2012, FX traders at Barclays were formally instructed to cease participation in multi-bank chatrooms.

Furthermore, in June 2013, Barclays commenced an internal investigation of possible misconduct by its FX Traders relating to FX benchmark rates. On October 25, 2013, Barclays reported to the CFTC and other governmental authorities' preliminary findings of questionable conduct.

IV.

LEGAL DISCUSSION

A. Barclays, Through the Acts of Certain Traders, Attempted to Manipulate FX Benchmark Rates

Together, Sections 6(c),¹⁵ 6(d) and 9(a)(2) of the Act prohibit acts of attempted manipulation. 7 U.S.C. §§9, 13b and 13(a)(2) (2012). Section 9(a)(2) of the Act makes it unlawful for "[a]ny person to . . . attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity . . ." 7 U.S.C. § 13(a)(2) (2012). Sections 6(c) and 6(d) of the Act authorize the Commission to serve a complaint and provide for the imposition of, among other things, civil monetary penalties and cease and desist orders if the Commission "has reason to believe that any person" has attempted

¹⁵ Section 6(c) was amended effective August 15, 2011. For conduct occurring on or after that date, the relevant Section of the Act is now Section 6(c)(4)(A), 7 U.S.C. § 9(4)(A) (2012).

to manipulate the market price of any commodity, in interstate commerce, or otherwise is violating or has violated any of the provisions of the Act. 7 U.S.C. §§ 9 and 13b (2012).

With respect to conduct on or after August 15, 2011, in addition to Sections 6(c), 6(d) and 9(a)(2), Section 6(c)(3) of the Act prohibits the attempted manipulation of the price of any commodity in interstate commerce. 7 U.S.C. § 9(3) (2012). Commission Regulation 180.2, 17 C.F.R. §180.2 (2014), which became effective on August 15, 2011, in relevant part, makes it “unlawful to . . . directly or indirectly . . . to attempt to manipulate, the price of . . . any commodity in interstate commerce.” Regulation 180.2 codifies Section 6(c)(3).

Two elements are required to prove an attempted manipulation: (1) an intent to affect the market price, and (2) an overt act in furtherance of that intent. *See In re Hohenberg Bros. Co.*, [1975-77 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,271, at 21,477 (CFTC Feb. 18, 1977); *CFTC v. Bradley*, 408 F. Supp. 2d 1214, 1220 (N.D. Okla. 2005). To prove the intent element of attempted manipulation, it must be shown that Barclays FX traders “acted (or failed to act) with the purpose or conscious object of causing or effecting a price or price trend in the market that did not reflect the legitimate forces of supply and demand.” *In re Indiana Farm Bureau Coop. Ass’n*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,796, at 27,283 (CFTC Dec. 17, 1982). “[W]hile knowledge of relevant market conditions is probative of intent, it is not necessary to prove that the accused knew to any particular degree of certainty that his actions would create an artificial price. It is enough to present evidence from which it may reasonably be inferred that the accused ‘consciously desire[d] that result, whatever the likelihood of that result happening from his conduct.’” *Id.* (quoting *U.S. v. U.S. Gypsum Co.*, 438 U.S. 422, 445 (1978)). A profit motive may also be evidence of intent, although profit motive is not a necessary element of an attempted manipulation. *See In re DiPlacido*, [2007-2009 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,970, at 62,484 (CFTC Nov. 5, 2008) (citing *In re Hohenberg Bros. Co.*, [1975-1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 21,478)), *aff’d*, 364 Fed. Appx. 657, No. 08-5559-ag, 2009 WL 3326624 (2d Cir. 2009). It is also not necessary that there be an actual effect on price. *See CFTC v. Amaranth Advisors, L.L.C.*, 554 F. Supp.2d 523, 533 (S.D.N.Y. 2008).

Here, as evidenced by the communications and other facts set forth above, certain Barclays FX traders specifically intended to affect the fixing of certain FX benchmarks, including the WM/R Rates and CME/EMTA Rate. Their intent is also made clear by the evidence that their motive was to benefit Barclays’ trading positions or the trading positions of other banks. Barclays, through its traders, took overt acts in furtherance of intent to affect the fixings of certain FX benchmarks, including the WM/R Rates and CME/EMTA Rate. Accordingly, Barclays engaged in acts of attempted manipulation of certain FX benchmarks, commodities in interstate commerce, in violation of Sections 6(c), 6(d) and 9(a)(2), 7 U.S.C. §§ 9, 13b and 13(a)(2) (2012). Additionally, with respect to conduct occurring on or after August 15, 2011, Barclays engaged in acts of attempted manipulation in violation of Section 6(c)(3), 7 U.S.C. § 9(3) (2012), and Regulation 180.2, 17 C.F.R. § 180.2 (2014).

B. Barclays Made False, Misleading or Knowingly Inaccurate Reports to the CME Relating to the Russian Ruble/ U.S. Dollar CME/EMTA Rate

Section 9(a)(2) of the Act makes it unlawful for any person “knowingly to deliver or cause to be delivered for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce” 7 U.S.C. § 13(a)(2) (2006); *United States v. Brooks*, 681 F.3d 678, 691 (5th Cir. 2012); *United States v. Valencia*, 394 F.3d 352, 354-55 (5th Cir. 2004); *see also CFTC v. Johnson*, 408 F. Supp. 2d 259, 267 (S.D. Tex. 2005).

In limited instances between August 2009 until August 2011, Barclays, acting through one of its traders, knowingly provided or caused to be provided to the CME false, misleading or knowingly inaccurate reports concerning the bids and offers at which it could execute a \$100,000 RUB/USD spot transaction for next-day value in the Moscow marketplace for purposes of the CME/EMTA Rate calculation. The Barclays trader’s reports were also caused to be delivered through the mails or interstate commerce through the daily dissemination and publication globally, including in the United States, of the results of the survey via the Reuters, CME and EMTA websites. The CME also distributes the CME/EMTA Rate through its normal distribution channels. Barclays’s CME/EMTA submissions contained market information concerning the prevailing market rates at which a \$100,000 RUB/USD spot transaction for next-day value in the Moscow marketplace could be executed. Such market information affects or tends to affect the prices of commodities in interstate commerce, including the rate at which the CME/EMTA Rate is fixed.

During the relevant period, on certain occasions, Barclays’ CME/EMTA Rate survey responses were false, misleading or inaccurate because the bids and offers it submitted were skewed to benefit trading positions held by the Barclays’ trader or traders at other banks, and thus based on illegitimate factors. The Barclays trader knowingly submitted the false bids and offers. By submitting false bids or offers in its survey responses, Barclays conveyed false, misleading or inaccurate market information that the bids and offers it submitted were based on and related solely to its reasonable judgment and honest assessment of the bids and offers at which it could execute a \$100,000 RUB/USD spot transaction for next-day value in the Moscow marketplace and were truthful and reliable.

By such conduct, Barclays violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2006).

C. Respondent Aided and Abetted the Attempts of Certain Traders at Other Banks to Manipulate FX Benchmark Rates

Pursuant to Section 13(a) of the Act, liability as an aider and abettor requires proof that: (1) the Act was violated, (2) the aider and abettor had knowledge of the wrongdoing underlying the violation, and (3) the aider and abettor intentionally assisted the primary wrongdoer. *See* 7 U.S.C. § 13c(a) (2012); *In re Sharokh Nikkhah*, [1999-2000 Transfer Binder] Comm. Fut. L.

Rep. (CCH) ¶ 28,129, at 49,888 n.28 (CFTC May 12, 2000). Although actual knowledge of the primary wrongdoer's conduct is required, knowledge of the unlawfulness of such conduct is not necessarily required to be demonstrated. *See In re Lincolnwood Commodities, Inc.*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,986, at 28,255 (CFTC Jan. 31, 1984). Knowing assistance can be inferred from the surrounding facts and circumstances. *Id.* *See also In re Buckwalter*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,995, at 37,686 (CFTC Jan. 25, 1991).

Here, as evidenced by the foregoing acts of coordination to benefit respective trading positions, FX traders at other banks attempted to manipulate the WM/R, CME/EMTA and other FX benchmark rates in violation of Sections 6(c), 6(d) and 9(a)(2), 7 U.S.C. §§ 9, 13b and 13(a)(2) (2012). Additionally, with respect to conduct occurring on or after August 15, 2011 FX traders at other banks violated Section 6(c)(3), 7 U.S.C. § 9(3), and Regulation 180.2, 17 C.F.R. § 180.2 (2014). As evidenced above, Barclays, through the acts of certain of its FX traders, aided and abetted the attempts of traders at other banks to manipulate the FX benchmark rates in violation of the Act.

D. Barclays is Liable for the Acts of its Agents

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2014), provide that “[t]he act, omission, or failure of any official, agent or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation or trust[.]” Pursuant to Section 2(a)(1)(B) of the Act and Commission Regulation 1.2, strict liability is imposed on principals for the actions of its agents. *See, e.g., Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986); *Dohmen-Ramirez & Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988).

Barclays is liable for the acts, omissions and failures of any traders who acted as its employees and/or agents in relation to the conduct described above. Accordingly, Barclays violated Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2)(2012), by engaging in attempted manipulation and aiding and abetting attempted manipulation. Additionally, with respect to conduct occurring on or after August 15, 2011, Barclays is liable for violating Section 6(c)(3), 7 U.S.C. § 9(3), 13(a)(2) (2012), and Regulation 180.2, 17 C.F.R. § 180.2 (2014), as set forth above.

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent violated Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2) (2012), and for conduct occurring on or after August 15, 2011, Section 6(c)(3), 7 U.S.C. § 9(3) and Regulation 180.2, 17 C.F.R. § 180.2 (2014).

VI.

OFFER OF SETTLEMENT

Respondent, without admitting or denying the findings or conclusions herein has submitted the Offer in which it:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to this Order only and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 - 1. the filing and service of a complaint and notice of hearing;
 - 2. a hearing;
 - 3. all post-hearing procedures;
 - 4. judicial review by any court;
 - 5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 - 6. any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2014), relating to, or arising from, this proceeding;
 - 7. any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and
 - 8. any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer; and
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
 - 1. makes findings by the Commission that Respondent violated Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2) (2012), and for conduct

occurring on or after August 15, 2011, Section 6(c)(3), 7 U.S.C. § 9(3) and Regulation 180.2, 17 C.F.R. § 180.2 (2014);

2. orders Respondent to cease and desist from violating Sections 6(c)(3) and 9(a)(2) of the Act, 7 U.S.C. §§ 9(3) and 13(a)(2) (2012) and Regulation 180.2, 17 C.F.R. § 180.2 (2014);
 3. orders Respondent to pay a civil monetary penalty in the amount of \$400,000,000 plus post-judgment interest; and
 4. orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.
- F. Respondent represents that it has already undertaken certain steps intended to make reasonable efforts to ensure the integrity of the FX markets discussed above, and including, but not limited to, the following:
1. Prohibiting all FX spot traders from participating in multi-bank chat rooms;
 2. Strengthening surveillance of FX desks;
 3. Mandating at least annual training for all FX employees concerning appropriate market conduct;
 4. In October 2012, issuing GFX Market Colour Guidelines, which outlined what constituted an acceptable use of market information for communications with clients;
 5. In December 2012, issuing Guidelines on Information Exchange with Competitors, which specified that commercially sensitive information should not be shared with competitors;
 6. In June 2013, commencing an internal investigation of possible misconduct by its FX traders relating to FX benchmark rates;
 7. On October 25, 2013 reporting to the CFTC and other governmental authorities preliminary findings of questionable conduct;
 8. Reviewing Barclays' business practices and systems and controls, which included remedial efforts across the bank at the Group, Compliance and front office levels. Among other projects that Barclays undertook:
 - a. At the Group level, an independent review of Barclays' business practices was conducted, which, among other things, led to the introduction of a

new code of conduct which sets out the ethical and professional behaviors expected of employees;

- b. At the Group level and with respect to its investment banking operations, significant work to strengthen the role of Compliance. The work has included increasing Compliance's visibility on board and management committees, developing a process and reporting framework to support monitoring and verification activity undertaken by Compliance, holding standardized and structured monthly business line meetings between Compliance and the Global Head of the business they cover, formalizing a breach review process to ensure consistent and effective treatment of Compliance policy breaches, enhancing and transitioning to a centralized model for trade surveillance and e-communications surveillance and increasing Compliance's budget for staff and training;
- c. Barclays undertook work on Front Office Risks and Controls, a group that was established in December 2012 and acts as a single coordination point to focus Barclays' approach to risk and control within and across the Front Office. Barclays also undertook the development of a new Global Supervision policy, which was followed by a training program that all supervisors were required to complete by the end of Q3 2012 and the appointment of a Chief Controls Officer who is responsible for coordinating all control elements;
- d. Barclays has conducted, and continues to conduct, significant reviews of risks relating to benchmarks and conflicts of interest, including:
 - i. A project designed to evaluate all benchmark rates for which Barclays was engaged in a subjective submission process, and as a result of which Barclays exited 10 benchmark submissions, automated 7 benchmark submissions, and implemented additional supervisory procedures for 13 benchmark contributions; and
 - ii. A forward looking project to define a control framework for potential economic conflicts of interest between Barclays and third parties that arise from trading activities across products, benchmarks and client order types.

Upon consideration, the Commission has determined to accept the Offer.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Sections 6(c)(3) and 9(a)(2) of the Act, 7 U.S.C. §§ 9(3) and 13(a)(2) (2012) of the Act and Regulation 180.2, 17 C.F.R. § 180.2 (2014).
- B. Respondent shall pay a civil monetary penalty of \$400 Million Dollars (\$400,000,000), within ten (10) days of the date of entry of this Order (the "CMP Obligation"). If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012). Respondent shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables --- AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-7262

If payment is to be made by electronic funds transfer, Respondent shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the Respondent and the name and docket number of this proceeding. The Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- C. Respondent and its successors and assigns shall comply with the following undertakings set forth in the Offer:
1. REMEDIATION

As set forth above in Section VI, paragraph F, Respondent represents that it has already undertaken and continues to undertake extensive remedial measures to

implement and strengthen its internal controls and procedures relating to its participation in the fixing of FX benchmark rates and related supervision of its FX traders. With respect to its remediation efforts to the extent not already undertaken, Respondent undertakes that:

- a. Respondent will implement and improve its internal controls and procedures in a manner reasonably designed to ensure the integrity of its participation in the fixing of any FX benchmark rate, including measures to identify and address internal or external conflicts of interest;
- b. Its remediation improvements will include internal controls and procedures relating to:
 - measures designed to enhance the detection and deterrence of improper communications concerning FX benchmark rates, including the form and manner in which communications may occur;
 - monitoring systems designed to enhance the detection and deterrence of trading or other conduct potentially intended to manipulate directly or indirectly FX benchmark rates;
 - periodic audits, at least annually, of Respondent's participation in the fixing of any FX benchmark rate;
 - supervision of trading desks that participate in the fixing of any FX benchmark rate;
 - routine and on-going training of all traders, supervisors and others who are involved in the fixing of any FX benchmark rate;
 - processes for the periodic but routine review of written and oral communications of any traders, supervisors and others who are involved in the fixing of any FX benchmark rate with the review being documented and documentation being maintained for a period of three years; and
 - continuing to implement its system for reporting, handling and investigating any suspected misconduct or questionable, unusual or unlawful activity relating to the fixing of any FX benchmark rate with escalation to compliance and legal, and with reporting of material matters to the executive management of Barclays and the Commission, as appropriate; the Respondent shall maintain the record basis of the handling of each such matter for a period of three years.
- c. Within 120 days of the entry of this Order, Respondent shall make a report to the Commission, through the Division, concerning its remediation efforts,

prior to and since the entry of this Order. Within 365 days of the entry of this Order, Respondent shall submit a report to the Commission, through the Division, explaining how it has complied with the undertakings set forth herein. The report shall contain a certification from a representative of the Respondent's Executive Management, after consultation with the Respondent's chief compliance officer(s), that the Respondent has complied with the undertakings set forth above, and that it has established policies, procedures, and controls to satisfy the undertakings set forth in the Order.

2. COOPERATION WITH THE COMMISSION

In this action, and in any investigation or other action instituted by the Commission, related to the subject matter of this action, Respondent shall cooperate fully and expeditiously with the Commission, including the Division, As part of such cooperation, Respondent agrees to the following for a period of three (3) years from the date of the entry of this Order, or until all related investigations and litigations in which the Commission, including the Division, is a party, are concluded, including through the appellate review process, whichever period is longer:

1. Preserve all records relating to the subject matter of this proceeding, including, but not limited to, audio files, electronic mail, other documented communications, and trading records;
2. Comply fully, promptly, completely, and truthfully with all inquiries and requests for non-privileged information or documents;
3. Provide authentication of documents and other evidentiary material;
4. Provide copies of non-privileged documents within Barclays' possession, custody or control;
5. Subject to applicable laws and regulations, Barclays will make its best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of Barclays, regardless of the individual's location, and at such location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including, but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such proceeding, trial, or investigation; and

6. Subject to applicable laws and regulations, Barclays will make its best efforts to assist in locating and contacting any prior (as of the time of the request) officer, director, employee or agent of Barclays;

Respondent also agrees that it will not undertake any act that would limit its ability to cooperate fully with the Commission. Barclays will designate an agent located in the United States of America to receive all requests for information pursuant to these Undertakings, and shall provide notice regarding the identity of such Agent to the Division upon entry of this Order. Should Barclays seek to change the designated agent to receive such requests, notice of such intention shall be given to the Division fourteen (14) days before it occurs. Any person designated to receive such request shall be located in the United States of America.

3. PROHIBITED OR CONFLICTING UNDERTAKINGS

Should the Undertakings herein be prohibited by, or be contrary to the provisions of any obligations imposed on Respondent by any presently existing, or hereinafter enacted or promulgated laws, regulations, regulatory mandates, or the rules or definitions issued by a Benchmark Publisher, then Respondent shall promptly transmit notice to the Commission (through the Division) of such prohibition or conflict, and shall meet and confer in good faith with the Commission (through the Division) to reach an agreement regarding possible modifications to the Undertakings herein sufficient to resolve such inconsistent obligations. In the interim, Respondent will abide by the obligations imposed by the law, regulations, regulatory mandates and Benchmark Publishers' rules and definitions. Nothing in these Undertakings shall limit, restrict or narrow any obligations pursuant to the Act or the Commission's Regulations promulgated thereunder, including, but not limited to, Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31 and 1.35 (2014), in effect now or in the future.

4. PUBLIC STATEMENTS

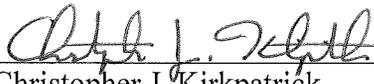
Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's (i) testimonial obligations, or (ii) right to take positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.

5. PARTIAL SATISFACTION

Respondent understands and agrees that any acceptance by the Commission of partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

The provisions of this Order shall be effective as of this date.

By the Commission,



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: May 20, 2015