

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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_____)
In the Matter of:)
)
Coöperatieve Centrale Raiffeisen-) CFTC Docket No. 14-02
Boerenleenbank B.A.,)
)
Respondent.)
_____)

ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTIONS 6(c) 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 Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. (“Rabobank” or “Respondent”) has violated Sections 6(c), 6(d) and 9(a)(2) of the Commodity Exchange Act (the “Act” or the “CEA”), 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Rabobank has 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, Rabobank 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 Rabobank admits those findings in any related action against Rabobank by, or any agreement with, the Department of Justice or any other governmental agency or office, Rabobank herein consents to the entry and acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c) 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 in this Order consented to in the Offer, by any other party in any other proceeding.

III.

The Commission finds the following:

A. Summary

The London Interbank Offered Rate (“LIBOR”) and the Euro Interbank Offered Rate (“Euribor”) are global interest rate benchmarks that are critical to the U.S. and international financial markets. Trillions of dollars of financial instruments are priced based on LIBOR and Euribor. For nearly six years, from at least mid-2005 through early 2011, Rabobank, through the acts of certain traders and managers located throughout the world, engaged in hundreds of manipulative acts that undermined the integrity of LIBOR and Euribor.

LIBOR and Euribor are fixed each day based on rates submitted by a select panel of banks. In determining what rates to submit, each bank is to make an honest assessment of the costs of borrowing funds in the relevant markets. An honest assessment of the costs of borrowing does not include factoring consideration of what rates would be beneficial to the derivatives and cash trading positions of the banks. Yet this is what certain Rabobank traders and managers did repeatedly across multiple currencies.

Rabobank derivatives and cash traders frequently asked Rabobank’s LIBOR and Euribor submitters to submit preferential rates in attempts to manipulate U.S. Dollar and Yen LIBOR, Euribor, and on occasion, Sterling LIBOR, to benefit Rabobank traders’ cash and derivatives trading positions that were tied to these benchmark interest rates. Rabobank’s submitters often accommodated those requests and made false submissions reflecting the requested rates as Rabobank’s contributions to the fixings of LIBOR for several currencies and Euribor. At times, Rabobank also aided and abetted other banks’ attempts to manipulate Yen LIBOR and Euribor. Moreover, some of the conduct occurred even after the Commission had commenced its investigation of Rabobank’s U.S. Dollar LIBOR practices in April 2010. After the Yen LIBOR submitters were told in late 2010 that it was improper to consider the rate requests of Rabobank’s traders, a Rabobank trader promptly obtained the assistance of an interdealer broker (“brokers”) to continue attempting to manipulate Yen LIBOR to benefit his trading positions through early 2011. At times, Rabobank was successful in manipulating Yen LIBOR.

Rabobank ignored the obvious inherent conflicts of interest created by assigning traders with cash and/or derivatives trading positions tied to U.S. Dollar, Yen and Sterling LIBOR and Euribor to serve as Rabobank’s LIBOR and Euribor submitters. This fostered an environment which facilitated the traders’ attempts to manipulate LIBOR and Euribor. Rabobank thus created a conflict between the submitters’ responsibility to make an honest assessment of the costs of borrowing for purposes of determining Rabobank’s daily LIBOR and Euribor submissions and the submitters’ desire to maximize the profitability of their trading positions. Rabobank’s LIBOR and Euribor submitters often resolved this conflict in favor of their trading positions and those of their colleagues to the detriment of the integrity of LIBOR and Euribor. The conflicts of interest were heightened because Rabobank also grouped the submitters on the same desks with other derivatives traders, which further facilitated the ease of coordinating on the submissions. In fact, one dominant derivatives trader simply shouted his requests across the desk to the

submitters.² This profit-driven and manipulative submission process involved traders, managers and at least one senior manager³ located in Rabobank offices in London, New York, Utrecht (Rabobank's headquarters), Tokyo, Singapore, and Hong Kong.⁴

The manipulative conduct of Rabobank's traders and submitters occurred because Rabobank lacked internal controls, procedures and policies specifically relating to its LIBOR and Euribor submission processes during the period of 2005 through early 2011, and failed to adequately supervise its trading desks and traders.

In accepting Rabobank's Offer, the Commission recognizes Rabobank's significant cooperation during the Division of Enforcement's investigation of this matter, which helped the Division efficiently and effectively undertake its investigation.

B. Respondent

Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. ("Rabobank"), is a Dutch multinational banking and financial services company headquartered in Utrecht, Netherlands, with operations in forty-four countries and territories. It is comprised of independent local Dutch Rabobank branches and a large number of specialized international offices and subsidiaries.

C. Facts

1. The Fixing of LIBOR and Euribor

a. LIBOR and its Fixing

LIBOR is the most widely used benchmark interest rate in the world and affects market participants and consumers globally, including in the United States. LIBOR is the basis for settlement of many interest rate transactions, including over-the-counter ("OTC") derivatives products, such as swaps, and exchange-traded interest rate futures and options contracts, including the three-month and one-month Eurodollar contracts on the Chicago Mercantile Exchange ("CME"). It is also used as a barometer to measure strain in money markets and as a gauge of the market's expectation of future central bank interest rates. Approximately \$350 trillion of notional swaps and \$10 trillion of loans are indexed to LIBOR. Measured by the notional value of open interest, the CME Eurodollar contract is the most liquid and largest notional futures contract traded on the CME and in the world.

² For purposes of this Order, the term "request" means a request for a preferential LIBOR or Euribor submission for a particular tenor.

³ The term "senior manager" generally references Rabobank employees with responsibilities (either formally or informally delegated) broader than management of trading desks, although their responsibilities may have at times included managing trading desks. The term "senior manager" does not include executive managers or members of Rabobank's Executive Board or Supervisory Board.

⁴ Most of the individuals involved in this conduct are no longer employed at Rabobank.

During the relevant period, daily LIBORs were issued on behalf of the British Bankers' Association ("BBA")⁵ for ten currencies, including U.S. Dollar, Yen and Sterling, with fifteen tenors (*i.e.*, durations for interest rates) ranging from overnight through twelve months. Certain currencies, including U.S. Dollar and Yen, are frequently referenced in interest rate contracts. One, three and six months are the most common tenors referenced in LIBOR-indexed transactions.

According to the BBA, LIBOR "is based on offered inter-bank deposit rates" and each panel bank is required to "contribute the rate at which it could borrow funds, were it to do so by asking for and then accepting inter-bank offers in reasonable market size just prior to [11:00 a.m. London time]."⁶

Every business day shortly before 11:00 a.m. London time, the banks on the LIBOR panels ("panel banks") submit their rates to Thomson Reuters, and a trimmed averaging process is used to exclude the top and bottom quartile of rates with the remaining rates being averaged for each tenor. That average rate becomes the official BBA daily LIBOR (the "LIBOR fixing"). The BBA then makes public the daily LIBOR fixing for each currency and tenor, as well as the daily submissions of each panel bank, through Thomson Reuters and the other data vendors licensed by the BBA. This information is made available and relied upon by market participants and others throughout the world, including in the United States.⁷

b. Euribor and its Fixing

Euribor is used internationally in derivatives contracts, including interest rate swaps and futures contracts.⁸ According to the Bank for International Settlements, OTC interest rate derivatives, such as swaps and forward rate agreements ("FRAs"), comprised contracts worth over \$187 trillion in notional value at the end of 2012.

⁵ The BBA is a trade association for the United Kingdom banking and financial services sector and is comprised of member banks. On July 9, 2013, NYSE Euronext Rate Administration Limited announced that it had been appointed as the new administrator for LIBOR. The transfer of the administration from BBA LIBOR Ltd, the subsidiary of the BBA, is expected to be completed in early 2014, once the Financial Conduct Authority's ("FCA") authorization of NYSE Euronext Rate Administration Limited is complete.

⁶ This definition of LIBOR has been used by the BBA from 1998 to the present.

⁷ In June 2008, the BBA clarified that a panel bank's submissions must be "submitted by members of staff at a bank with primary responsibility for management of a bank's cash, rather than a bank's derivative book." The BBA also clarified that "LIBOR is a pure cash fixing" and that panel banks could not contribute a rate based on the pricing of any derivative financial instrument.

⁸ In October 2011, the Chicago Mercantile Exchange launched the Euribor Futures contract, which settles based on the three-month Euribor.

During the relevant period, daily Euribors were issued on behalf of the European Banking Federation (“EBF”)⁹ for fifteen tenors, ranging from one week to twelve months. One, three and six months are the most common tenors referenced in Euribor-indexed transactions.

According to the EBF, Euribor is defined as the rate “at which Euro interbank term deposits are offered by one prime bank to another prime bank” within the Economic and Monetary Union of the European Union (“EMU”) at 11:00 a.m. Central European Time (“CET”) daily.

Euribor is determined using submissions from a panel of over 40 mostly European banks considered to be the most active in the Euro zone with the highest volume of business in the EMU. According to the EBF instructions, panel banks “must provide their quote submissions to the best of their knowledge,” based on their observations of where the Euro is trading in that market.

Like the BBA panel banks, the Euribor panel banks submit their rates electronically to Thomson Reuters, which manages the official Euribor process by collecting the submitted rates from the contributing banks, calculating the rate, and then releasing it for publication just before noon CET. Thomson Reuters computes that day’s published Euribor by eliminating the highest and lowest fifteen percent of submissions collected, and averaging the remaining submissions. That average rate becomes the official daily EBF Euribor (the “Euribor fixing”). On behalf of EBF, Thomson Reuters then issues the Euribor fixing and the submissions of each panel bank to its subscribers and other data vendors. Through these licensing agreements with third parties, such as Thomson Reuters, EBF disseminates the information throughout the world, including in the United States.

By their definitions, LIBOR and Euribor require that the submitting panel banks exercise their judgment to determine the rates at which, depending on the benchmark, they or a prime bank may obtain unsecured funds in the respective London and Euro interbank markets. These definitions require that submissions relate to funding and do not permit consideration of factors unrelated to the costs of borrowing unsecured funds, such as cash or derivatives trading positions.

2. Rabobank’s LIBOR and Euribor Submission Processes and the Embedded Conflicts of Interest

Rabobank is a member of both the BBA and the EBF, and is, or was during the period of 2005 through early 2011, one of the panel banks that submits rates for the determination of LIBOR in various currencies including U.S. Dollar, Yen and Sterling, and Euribor. Until January 2009, Rabobank made its LIBOR submissions for certain currencies, including U.S. Dollar, Yen and Sterling, out of its London office, and Euribor submissions out of its Utrecht, Netherlands headquarters office. In January 2009, Rabobank transferred the LIBOR submission

⁹ The EBF is an unregulated non-profit association of the European banking sector based in Brussels, Belgium. Among other functions, the EBF oversees the publication of Euribor.

process for all currencies, except Sterling, to its Utrecht office, as part of its efforts to centralize business operations.

Rabobank assigned responsibility for making its LIBOR and Euribor submissions to traders who traded both cash and derivatives trading products.¹⁰ These traders regularly transacted in interbank cash deposits and loans to meet the bank's funding needs each day in all currencies, and in derivatives products, including interest rate swaps, forward rate agreements, foreign exchange forwards, cross-currency swaps, overnight index swaps and tenor basis swaps. The traders engaged in derivatives transactions not only to hedge risk but also to generate profits in a proprietary fashion. The positions held by the traders were often priced off of LIBOR, particularly U.S. Dollar, Yen and Sterling LIBOR, and Euribor, and settled or reset on International Monetary Market ("IMM") dates, which are quarterly dates in March, June, September and December. LIBOR and Euribor submissions, by definition, are to relate solely to the costs of borrowing in the relevant markets, and not upon derivatives trading positions. By assigning derivative traders whose profits depended upon the fixings of LIBOR and Euribor, Rabobank created an inherent conflict of interest.

This conflict of interest was heightened by the fact that Rabobank had its LIBOR and Euribor submitters sitting next to and working with the other derivatives traders on trading desks. Rabobank managers and at least one senior manager expected the traders and submitters to communicate about relevant market conditions and individual trading positions. A senior manager in London ("Senior Manager 1"), who was Rabobank's representative to the BBA, oversaw cash and derivatives traders, which included the traders responsible for Rabobank's LIBOR submissions for all currencies and Euribor. A former LIBOR submitter himself, Senior Manager 1 encouraged communication among the traders and submitters, and even instructed one Yen LIBOR submitter to contact derivatives traders in another office to obtain the rates to submit each day. Traders, submitters and Senior Manager 1 openly discussed individual trading positions across the trading desks, and also utilized Bloomberg chat terminals and email to provide each other with instant and continuous written communication about such positions. This free flow of information increased the risk that submitters would make LIBOR and Euribor submissions which were beneficial to Rabobank traders' derivatives trading positions.

Rabobank's LIBOR and Euribor submitters considered certain market information in determining Rabobank's submissions, such as Rabobank's cost of funds, money market transactions, broker indications, Rabobank's liquidity position, Rabobank's submissions from the previous day and Rabobank's credit rating vis-à-vis other panel banks. However, due to the submitters' dual role as submitters and traders, and the open communication policy promoted by certain senior managers which encouraged the sharing of information about trading positions, several submitters routinely and improperly considered their own and other traders' trading positions when determining their LIBOR and Euribor submissions. As a result, the submitters often skewed their U.S. Dollar and Yen LIBOR and Euribor submissions, and, on occasion, Sterling LIBOR submissions, to benefit those trading positions by attempting to manipulate the fixings of LIBOR and Euribor. In addition, certain submitters and traders coordinated, at times, with brokers and traders from at least two other panel banks in their attempts to manipulate Yen

¹⁰ In 2004, Rabobank combined its money market desks (which were responsible for cash trading) with its short-term derivatives trading desks.

LIBOR. Rabobank's Euribor submitter also accommodated requests from traders at a non-panel bank for preferential Euribor submissions to benefit those traders' derivatives trading positions.

By failing to separate responsibilities for making LIBOR and Euribor submissions from its trading functions, Rabobank created an embedded conflict of interest that incentivized submitters to prioritize profit over their responsibility to make an honest assessment of the costs of borrowing unsecured funds when submitting rates to the BBA and EBF. As such, Rabobank allowed an environment to exist that yielded unfettered opportunities to attempt to manipulate LIBOR and Euribor submissions for the benefit of trading positions held by Rabobank's traders, and the traders took advantage of those opportunities. Rabobank's manipulative conduct involved over two dozen traders, some of whom were desk managers, and the knowing involvement of at least one senior manager, Senior Manager 1.

3. Rabobank's Internal Control Failures Allowed Misconduct to Occur

During the entire period at issue here, from mid-2005 through early 2011, Rabobank failed to recognize and address the conflicts of interest, and failed to adequately supervise its derivatives traders and submitters. Further, Rabobank did not have any policies, internal controls or procedures for determining, monitoring or supervising its LIBOR and Euribor submissions to ensure that Rabobank's submissions reflected an honest assessment of the costs of borrowing unsecured funds in the interbank markets.

In April 2010, Rabobank received the Commission's request that it conduct an internal investigation of its U.S. Dollar LIBOR practices. During this investigation, on November 30, 2010, a Rabobank senior manager ("Senior Manager 2") informed submitters that it was inappropriate for derivatives traders to provide the rates to submit for LIBOR or Euribor. Despite this admonishment, Rabobank failed to adequately improve its internal controls to monitor its traders, resulting in at least one trader's continued attempts to manipulate Yen LIBOR through the use of brokers into early 2011.

Rabobank's failure to provide internal training or standards addressing benchmark interest rate submissions, allowance of inappropriate communications amongst traders and submitters, and related conflicts of interest amplified the potential for misconduct and permitted it to continue for a number of years.

4. Rabobank Made False Reports and Attempted to Manipulate U.S. Dollar LIBOR to Benefit Rabobank Trading Positions

Over a period of more than three years, from at least mid-2005 through at least late 2008, Rabobank frequently attempted to manipulate U.S. Dollar LIBOR, and often made false LIBOR submissions in furtherance of those attempts. Rabobank's U.S. Dollar LIBOR submissions were made out of the London office by two traders ("U.S. Dollar Trader-Submitter 1" and "U.S. Dollar Trader-Submitter 2"), who were supervised by Senior Manager 1. Senior Manager 1 accepted and relayed requests for preferential LIBOR submissions from traders and, as noted above, encouraged the submitters and traders he supervised to speak openly about their trading

positions and make LIBOR submissions to benefit Rabobank traders' U.S. Dollar trading positions.

For the entire relevant period of mid-2005 through 2008, a senior London derivatives trader ("Senior U.S. Dollar Trader"), known by the submitters and others as the "Ambassador" or "Ambass," sitting with the U.S. Dollar Trader-Submitters at the same desk, regularly made oral requests for preferential U.S. Dollar LIBOR submissions. In a few instances, the Senior U.S. Dollar Trader made written requests as well. The Senior U.S. Dollar Trader often barked his requests across the desk and expected his requests to be followed.

Another U.S. Dollar derivatives trader and his manager located in Rabobank's New York office ("U.S. Dollar Trader" and "U.S. Dollar Desk Manager") also made preferential requests through at least June 2008 for LIBOR rates utilizing Bloomberg chats and internal emails to the U.S. Dollar Trader-Submitters.¹¹

The U.S. Dollar Trader-Submitters and Senior Manager 1 knew that the derivatives traders were making these LIBOR requests to benefit their trading positions. The U.S. Dollar Trader-Submitters improperly took the preferential LIBOR requests into account and submitted Rabobank's U.S. Dollar LIBOR in order to benefit their respective trading positions. Not surprisingly, given the transparent conflict of interest Rabobank created by having traders act as submitters, the U.S. Dollar Trader-Submitters took into account their own trading positions when making their U.S. Dollar LIBOR submissions. For example, on September 19, 2007, U.S. Dollar Trader-Submitter 1 commented to another colleague, "today i have fixing so am low on the 3mth ... I did)*3's fra over today last night so want low fixing today." Thus, the U.S. Dollar Trader-Submitters' LIBOR submissions reflected their and other traders' financial interests, rather than the costs of borrowing U.S. Dollars in the London interbank market.

Below are a few examples of the written requests from the traders to the submitters and the acceptance of those requests by the submitters:¹²

August 2, 2005: (emphasis added)

Email from U.S. Dollar Desk Manager to Senior Manager 1:

Subject: Tomorrow's 6mL

If you are indifferent, can you please set tomorrow's 6mL as high as possible?

Have a large reset here in NY. Thanks...[U.S. Dollar Desk Manager]

¹¹ Rabobank derivatives traders located in Singapore, Hong Kong and Tokyo also made a few requests for beneficial U.S. Dollar LIBOR submissions.

¹² 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.

Reply from Senior Manager 1 to U.S. Dollar Desk Manager:

Subject: RE: Tomorrow's 6mL

Ok , leave it with us , will do our best

Thx [Senior Manager 1]

Reply from U.S. Dollar Desk Manager to Senior Manager 1:

Subject: RE: Tomorrow's 6mL

Atta boy, [Senior Manager 1]...4% it is!

June 30, 2006:

U.S. Dollar Trader:

MORNING MATE, HOPE U GOT THROUGH YESTERDAY OK. USUAL REQUEST.. LOW 1S, HIGH 3S IF U CAN CHEERS [U.S. Dollar Trader-Submitter 1], CATCH U LATER

U.S. Dollar Trader-Submitter 1: will do fella...

September 1, 2006:

U.S. Dollar Trader:

HEY [U.S. Dollar Trader-Submitter 1], HIGH 3MTH LIBOR FOR UR OLD MUCKER PLS CHIEF!

U.S. Dollar Trader-Submitter 1: sure mate ..

September 15, 2006: (emphasis added)

U.S. Dollar Trader:

HEY [U.S. Dollar Trader-Submitter 1] LONG TIME NO SPEAK... **USUAL FAVOURS, CAN U KEEP 3S LIBOR AT 39 FOR THE NEXT FEW DAYS PLS MATE, CHEERS** SPK 2 U SOON, [U.S Dollar Trader]

U.S. Dollar Trader-Submitter 1: **will do mate**

U.S. Dollar Trader: CHEERS [U.S. Dollar Trader-Submitter 1]

October 13, 2006: (emphasis added)

U.S. Dollar Trader:

HOW'S IT GOING [U.S. Dollar Trader-Submitter 1]?? LOOKING FORWARD TO THE WEEKEND I BET - AM OFF ON HOLS FOR A WEEK MYSELF, CANNOT WAIT!! **IF U WOULD BE SO KIND AND KEEP 3S LOW FOR MONDAYS FIX... THINK IT'LL COME IN AT 37.5, WOULD BE A BIT PAINFUL IF WAS MUCH HIGHER...** ANYWAYS I'M BLABBING.. HOPE U R GOOD, [U.S. Dollar Trader]

U.S. Dollar Trader-Submitter 1: hallo mate .. this week has been awful . Worst for me for a long long time . what's your thoughts on this mate ..I'll sort out the 3's & where u off to on holiday .

March 16, 2007:

U.S. Dollar Trader:
Senior Manager 1:
U.S. Dollar Trader:

one last thing, high 3mth libor on monday pls
ok will tell [U.S. Dollar Trader-Submitter 1]
cheers, hv a good wknd

August 13, 2007: (emphasis added)

U.S. Dollar Trader:

**WE'VE DEALT ... GONNA NEED A
FRICKIN HIGH 6 MTH FIX TOMORROW
IF OK WITH U... 5.42?**

U.S. Dollar Trader-Submitter 1:

**send me an e mail matey for tomorrow ..my
brain can't cope !!**

U.S. Dollar Trader:

**TELL ME ABOUT IT... CANT BELIEVE
HOW THIS MARKET IS MOVING ... I'LL
SEND A MAIL , WRITE A POST IT NOT
AS WELL, ITS 750 MIO 6MTH FIX!
COULD BE RISKY!**

U.S. Dollar Trader-Submitter 1:

good luck mate

September 7, 2007: (emphasis added)

U.S. Dollar Trader:

**WOW... WHAT DO LIBORS DO NOW [U.S.
Dollar Trader-Submitter 1].. WILL U DROP
THEM TOMORROW?**

U.S. Dollar Trader-Submitter 1:

**I think banks need to keep them high mate ..
how can they drop them too much if they can't
get the cash in to cover exsposure...**

U.S. Dollar Trader:

**OK MATE, IF U CAN KEEP EM UP
THERE THAT WOULD SAVE MY ARSE A
BIT (TIL SEP ROLLS OFF!) , CHEERS
MATEY**

U.S. Dollar Trader-Submitter 1:

will do my best ..

October 17, 2007:

Email from Senior U.S. Dollar Trader to U.S. Dollar Trader-Submitter 1:

Subject: 1 month libor

A nice low 1 month for the rest of the week please matey. Cheers.

March 17, 2008: (emphasis added)

Email from U.S. Dollar Trader to U.S. Dollar Trader-Submitter 1, U.S. Dollar
Trader-Submitter 2 and Senior Manager 1:

Subject: Libors

**I know libors r gonna come off today, I hv quite a lot of fixings today, so the
higher the better for me pls**

Thanks vm

The mostly oral requests of the Senior U.S. Dollar Trader, the Ambassador, took precedence over the requests made by other U.S. Dollar derivatives traders. The other traders deferred to the Senior U.S. Dollar Trader if their requests conflicted with his requests. The Senior U.S. Dollar Trader expected the U.S. Dollar Trader-Submitters to follow his requests when making Rabobank's U.S. Dollar LIBOR submissions. If his requests were not honored, the Senior U.S. Dollar Trader complained and angrily expressed his displeasure. The following are examples of the deference given to the Senior U.S. Dollar Trader and his expectations and reaction if his requests were not followed:

August 15, 2006: (emphasis added)

U.S. Dollar Trader:

IF THE AMBASS DOESN[‘]T HV ANY PREFERENCES, CAN I HAVE LOW 1S AND 3S THE NEXT FEW DAYS PLS MATEY... CHEERS HOPE U R GOOD, [U.S. Dollar Trader]

U.S. Dollar Trader-Submitter 1: His exact word's are .."i don't give a f*ck" ..

November 29, 2006: (emphasis added)

U.S. Dollar Trader:

HI MATE, LOW 1S HIGH 3S LIBOR PLS !!! DONT TELL THE AMBASS HAA HAAAAAAA. SOLD THE MARKET TODAY DOOOOOOHHHH!

Senior Manager 1:

OK MATE , WILL DO MY BEST ...SPEAK LATER

U.S. Dollar Trader:

CHEERS GEEZ, BANG ON THE MONEY!

Senior Manager 1:

NO WORRIES , I HAD TO WORK MY WAY OUT OF AN AMBASS HEADLOCK TO GET THOSE IN !

September 26, 2007: (emphasis added)

Email from U.S. Dollar Trader to U.S. Dollar Trader-Submitter 2, a senior Yen LIBOR trader-submitter, and Senior Manager 1:

Subject: High 3s tomorrow pls gents

Subsequent email from U.S. Dollar Trader to U.S. Dollar Trader-Submitter 2:

Subject: RE: High 3s tomorrow pls gents

25 (or higher) would be great..... CHEERS[. . .]

Reply from U.S. Dollar Trader-Submitter 2 to U.S. Dollar Trader:

U do realise the ambass wants the opposite ,ill do my best mate

Reply from U.S. Dollar Trader to U.S. Dollar Trader-Submitter 2:

Subject: RE: High 3s tomorrow pls gents

Bugger.. We fixed at 24, anything higher is a bonus!

September 18, 2008: (emphasis added)

Email from Senior U.S. Dollar Trader to U.S. Dollar Trader-Submitter 2:

Subject: **I don't want to have a row about it [U.S. Dollar Trader-Submitter 2] but can't understand why you were such an arse this morning?**

[. . .]

[. . .]Before justifying from a cash perspective where the true rate should be etc, **I, and you, know that if you were short of 1 month fixing you'd have put in a mid '60's LIBOR.** P+L wise I couldn't give a fuck but I just can't get my head around why you were being such an arse. I thought we were mates!

U.S. Dollar Trader-Submitter 2 reply to Senior U.S. Dollar Trader:

Mate I had no intention to be or desire to be, **I have no upside upsetting you or setting the libor too high** , I spoke to three diffewrent brokers and was told anywhere from 2.65 to 3.30 1month.....i honestly thought and still do think 2.78 was fair , obviuosly from ur perspective nearer 2.70 would have helped and I apologise for that....i knew you trying to broke me to an extent , but as you know anything lower from me would only have helped by 1-2bp ...the libor did come it at 2.7475 , so I was actually closest top the actual number...for what its worse...I do not enjoy working here anymore , covering [U.S. Dollar Trader-Submitter 1] is a pain and doing the libors is a pain and to be honest the last few days have hardly been profitable for me . So I would rather we move on from this , and anything u need tom tell me again and ill try my best

Senior U.S. Dollar Trader reply to U.S. Dollar Trader-Submitter 2:

You were above the average when I was looking for a low settlement...[Panel Bank A] + [Panel Bank B] 2.65, [Panel Bank C], 2.63, even [Panel Bank D] 2.70. you wanted to go 2.95%. I'll move on but still can't get my head around you sometimes. As I said, it's fuck all to do with the P+L! Still, it's your prerogative. Anyway, best of luck this evening and try not to take out your vindictiveness on me, consciously or unconsciously. Life's too short.

5. Rabobank Made False Reports and Attempted to Manipulate Yen LIBOR, At Times Successfully, to Benefit Rabobank Trading Positions

For nearly six years, from at least mid-2005 through at least early 2011, Rabobank, through its submitters and traders, frequently attempted to manipulate Yen LIBOR and consistently made false submissions in furtherance of those attempts. At times, Rabobank's attempts to manipulate Yen LIBOR were successful. Several Rabobank traders transmitted hundreds of internal requests to its Yen LIBOR submitters for preferential LIBOR submissions to benefit the traders' LIBOR-based trading positions. The submitters accommodated those requests on a regular basis and certain submitters also took into account their own trading positions when making LIBOR submissions.

Additionally, at least one Rabobank submitter and one trader at times coordinated with external parties, including another panel bank's Yen LIBOR submitter and brokers, in their attempts to manipulate the Yen LIBOR fixings.

Rabobank's practice of making and accommodating Yen LIBOR requests involved numerous traders and submitters in multiple Rabobank offices, including London, Utrecht, Tokyo, Singapore, and Hong Kong.

a. Rabobank's Attempts to Manipulate Yen LIBOR Pre-2009

i. Internal Requests to Submitters by Rabobank's Traders

From at least mid-2005 through the end of 2008, the primary Rabobank Yen LIBOR submitter was a senior Yen cash and derivatives trader ("Senior Yen Trader-Submitter") based out of Rabobank's London office. The Senior Yen Trader-Submitter's supervisor, Senior Manager 1, and another Yen derivatives trader ("Yen Trader-Submitter 1") acted as back-up Yen LIBOR submitters. The Yen Trader-Submitters communicated with the Yen derivatives traders about their trading positions and received their frequent requests for beneficial Yen LIBOR submissions. These Yen Trader-Submitters regularly skewed Rabobank's Yen LIBOR submissions to benefit the traders' cash and derivatives trading positions.

The Senior Yen Trader-Submitter received requests from Yen derivatives traders and desk managers for beneficial LIBOR submissions, which he acknowledged he intended to accommodate in making Rabobank's Yen LIBOR submissions. On many occasions, he even solicited requests from the Yen derivatives traders to determine if they had Yen LIBOR-based trading positions. The Senior Yen Trader-Submitter considered the various traders' positions and, oftentimes, the sensitivity of his own cash and derivatives positions to the Yen LIBOR fixings, and then moved his Yen LIBOR submissions at least one basis point higher or lower to benefit those positions. Thus, the Senior Yen Trader-Submitter's Yen LIBOR submissions reflected his and other traders' financial interests, rather than the costs of borrowing Yen in the London interbank market. When his supervisor, Senior Manager 1, received similar requests from Rabobank's Yen traders, he agreed to forward them to the Yen Trader-Submitters for inclusion in their Yen LIBOR submissions.

Yen Trader-Submitter 1 never based Rabobank's Yen LIBOR submissions on an independent assessment of the costs of borrowing funds in the London Yen Interbank market when he acted as the Yen LIBOR submitter. Neither Senior Manager 1 nor the Senior Yen Trader-Submitter trained Yen Trader-Submitter 1 on how to properly make LIBOR submissions. Instead, Senior Manager 1 instructed Yen Trader-Submitter 1 to ask the Yen traders in Rabobank's Asia offices for their submission preferences. Yen Trader-Submitter 1 merely copied and submitted the rates he received from traders as Rabobank's Yen LIBOR submissions, thereby supporting the traders' attempts to manipulate Yen LIBOR for the benefit of their trading positions. Even on the occasion when the traders did not provide preferred rates, Senior Manager 1 further instructed Yen Trader-Submitter 1 to submit the previous day's Yen LIBOR fixings, rather than require an assessment of the costs of borrowing Yen.

Rabobank's traders made hundreds of written preferential Yen LIBOR requests from Rabobank offices in Tokyo, Singapore and Hong Kong. At times, the managers of the trading desks made requests directly or through traders to benefit their own trading positions and

facilitated similar conduct of the traders that they supervised. In making requests, the traders identified at times the specific tenor and/or direction they wanted for a particular submission (*i.e.*, high, low, or unchanged); in other instances, traders requested that a specific rate be submitted. The largest number of requests for preferential Rabobank Yen LIBOR submissions came from Rabobank's senior Yen cash and derivatives trader who was primarily based in Tokyo ("Senior Yen Trader"). The traders' requests for beneficial submissions were usually for the three key tenors: one, three and six months.

The following examples demonstrate the frequency and commonness of the traders' requests and the easy acceptance of those requests by the submitters and Senior Manager 1:

September 19, 2005:

Yen Desk Manager 1: ...IS [Senior Yen Trader-Submitter] INTODAY OR YOU DOING THE JPY AS WELL?
Senior Manager 1: NOT IN TODAY MATE , WHAT DO U NEED ?
Yen Desk Manager 1: I DONT WANT TO INFLUENCE ANYTHING BUT IF IN DOUBT DONT PUT EM DOWN AS IM LONG ABT 2000 FUTURES EQUIV, BUT YOUR CALL MATE, CHEERS

May 10, 2006: (emphasis added)

Senior Yen Trader: ...where do you think 3m libor is going to be tdy?
Senior Yen Trader-Submitter: ...**for info [Yen Desk Manager 1] asked to set a low 6m..so to make a smoother curve I will prob look low in 3m too...**
Senior Yen Trader: ...where r u going to put for 3mth libor?
Senior Yen Trader-Submitter: ...well with [Yen Desk Manager 1's] request of a 0.26 in 6m – I think I can go no higher than 18...
Senior Yen Trader: ...libor is not as high as expected...
Senior Yen Trader-Submitter: no but with 3 banks setting 11+12 its not surprising...once they see how out they are it should correct upwards mate
Senior Yen Trader: are they just trying to manipulate the libor? or they just forgot to change? what do u think?
Senior Yen Trader-Submitter: i think they are just stupid...**it must be pretty embarrassing to set such a low libor (i was very embarrassed to sey [set] my 6 mth - but wanted to help [Yen Desk Manager 1]).tomorrow it will be more like 33 from me**

May 11, 2006: (emphasis added)

Email from Yen Desk Manager 1 to Senior Yen Trader-Submitter:

Subject: 6 mth Libor

Thanks for yest mate - although nearly in vain[.] **I have one more big day where need it low so if in doubt mark it down a bit if you can[.]** Whats your thoughts at mom anyway as to what it will be 28.5-29.5 its dealt quite a bit our here today[.]

Cheers

[Yen Desk Manager 1]

Senior Yen Trader-Submitter reply to Yen Desk Manager 1:

Subject: RE: 6 mth Libor

Hi mate think 3m sets at 18 and 6m sets at 31 today mate ... **will put in something rediculously low again tho - no probs [. . .]**

Yen Desk Manager 1 reply to Senior Yen Trader-Submitter:

Subject: RE: 6 mth Libor

Thx mate

I was actually shocked (and rogered as well...) when it was up there.. Was thinking 28 as well I guess with the demand for cash its being pushed up...

May 30, 2006: (emphasis added)

Senior Yen Trader:

...what do u think todays 1m , 3m and 6m libor are going to be?

Senior Yen Trader-Submitter:

well [**Yen Desk Manager 1**] wants a low 1+6 mth...was going to set 1m .14 3m .28 6m .38

Senior Yen Trader:

yep that is because i have the opposit posy [opposite position] of him.

Senior Yen Trader-Submitter:

oh dear - ok i try to be neutral [. . .]

Senior Yen Trader:

ok mate cheers.... abt the libor... i am happy as long as 1m libor is not too low tdy. c cheers amte...

July 27, 2006: (emphasis added)

Senior Yen Trader:

...today if possible,,,, **i wud like higher 1m libor.**

Senior Yen Trader-Submitter:

ok mate – what lvl u want set?...i actually meant **what lvl do u want me to set for the 1m libor fix...i will set anything you need**

Senior Yen Trader:

if u can be the same at yday or a bit higher than yesterday, im fine mate

Senior Yen Trader-Submitter:

i'll set 37 ;)

Senior Yen Trader:

ok mate cheers

October 25, 2006: (emphasis in original)

Yen Desk Manager 1 email to Yen Trader-Submitter 1:

Subject: libors

Hi mate

I have a few chunky rolls in the 3 mth yen libors in the next few days.

I don't want to compromise your integrity.. but if you've got ntg in it maybe a smidge lower today (actually shud be anyway as futures are a abt 1 higher anyway) and then high for Thurs and Fri would be great then I will be back in my box for another 2 weeks

Cheers

[Yen Desk Manager 1]

Yen Trader-Submitter 1 reply to Yen Desk Manager 1:

Subject: RE: libors

sure no problem mate if you have a sec can i have the lvls pls
regards [Yen Trader-Submitter 1]

Yen Desk Manager 1 reply to Yen Trader-Submitter 1:

Subject: RE: libors

Hi mate

Think you would get away with what you put in yesterday, except from **1m-6m maybe 1 bp lower** as dec future has had a little rally today. and the other futures pretty much unchanged, maybe even 0.5 lower.

From 7 mth outwards you would be fine leaving same as yesterday as the futures from March outwards are pretty much unchanged, maybe even 0.5 lower. I have your libors from yesterday if you don't have a record – just let me know and I will bosh them over

Cheers

[Yen Desk Manager 1]

Yen Trader-Submitter 1 reply to Yen Desk Manager 1:

Subject: RE: libors

ok sure yes if you have them thxs that would be great would be easier
thxs mate

November 8 – 9, 2006: (emphasis added)

Yen Desk Manager 1 email to Senior Yen Trader-Submitter:

Subject: mng skip

Hi mate

Got a few big 3mth fixings in next 2 days, any chance you cud bump it up a couple?

Senior Yen Trader-Submitter reply to Yen Desk Manager 1:

Subject: RE: mng skip

will set them high and dry skip!

Yen Desk Manager 1 reply to Senior Yen Trader-Submitter:

Subject: RE: mng skip

Thx skip, 1 more today – only has to be 3mths, others do as you pls, then im relatively square for a while..

Cheers

Senior Yen Trader-Submitter reply to Yen Desk Manager 1:

Subject: RE: mng skip

no prob mate will set it high again...is 46 lvl ok or higher?

February 9, 2007: (emphasis added)

Yen Desk Manager 1 email to Senior Yen Trader-Submitter:

Subject: 3 mth libors

Mate, be great if you could keep your 3 mth libor unchanged today if you can get away with it and its ok with your posy [position].

Senior Yen Trader-Submitter reply to Yen Desk Manager 1:

Subject: RE: 3 mth libors

you need a high one?.....no prob skip

Yen Desk Manager 1 reply to Senior Yen Trader-Submitter:

Subject: RE: 3 mth libors

Yes pls mate, my only major fixing for a while, cheers

Good cut and reverse posy [position] on yen a few weeks ago mate

Ive been swimming against the tide for the last few days. But the more I think I should cut even at these crap risk /reward levels

seeya

Senior Yen Trader-Submitter reply to Yen Desk Manager 1:

Subject: RE: 3 mth libors

yep market got itself in right pickle againto be honest i'm pretty flat on

book now - cut my losses and given up ! off next week mate so if u need any libor

requests next week - give [Yen Trader-Submitter 1] a shout

cheers skipper

February 14, 2007:

Yen Desk Manager 1:

Can you keep your 6m yen libor at 0.62 today if poss as have a large fixing today?

Yen Trader-Submitter 1:

sure will do mate

March 14, 2007:

Yen Desk Manager 1:

IS [Yen Trader-Submitter 1] IN MATE?

Senior Manager 1:

NOT YET , HAD AN APPOINTMENT THIS MORNING , SO WILL BE IN AROUND 30 MINS , CAN I HELP ?

Yen Desk Manager 1:

NO WORRIES MATE, I THINK [Senior Yen Trader-Submitter] JUST WANTED HIM TO NUDGE UP A FEW OF THE LIBORS.. WILL SEND HIM A MAIL

Senior Manager 1:

OK CC [Senior Euro Trader] AND [U.S. Dollar Trader-Submitter 1] ON IT ASWELL MATE , JUST IN CASE

August 21, 2007: (emphasis added)

Senior Yen Trader:

Hi mate If you can make 1 month LIBOR higher today, that would be a help mate.

Yen Trader-Submitter 1:

Ok what level you looking at ?

Senior Yen Trader:

If possible, woud prefer it to be 0.82%

Yen Trader-Submitter 1:

Ok mate will do...

Senior Yen Trader:

... **Where are you setting 3mth and 6mth libor today?**

Yen Trader-Submitter 1:

You tell me what you want mate he has no fixing at mom

Senior Yen Trader:

Hi mate 1m 0.82 2m 0.92 3m 1.00 6m 1.06 **If you can put those rates ,,,, would be nice mate**

Yen Trader-Submitter 1:

Great will do **if you want to give me them each day ill input whatever you want mate**
ok cheers

March 18, 2008: (emphasis added)

Yen Desk Manager 2:

Because there will be 1650 fixings today please make the LIBOR as high as possible Understood... [Senior Yen Trader-Submitter] set it on 1.02 yesterday, so I request to put it on 1.10. This change will have an impact of +0.1 bp

Senior Yen Trader:

Splendid

Yen Desk Manager 2:

March 19, 2008: (emphasis added)

Senior Yen Trader:

We have loads of 6mth fixings today. If possible, could you set 6m libor to 1.10% please? We don't have particular interest in other libors.

Senior Yen Trader-Submitter:

Sry just to confirm 6m you want at 1.10??? **Ok will do that but I will prob get a phone call at I set 02 yesterday and brokers reckon everything a little lower today...**

Senior Yen Trader:

Actually,,, [Yen Desk Manager 2] would like 6m to be higher today.... If it is not appropriate,

Senior Yen Trader-Submitter: it is fine mate, I will explain the situation to him. He will understand the situation... Well its no prob mate - **I can set it that high....it will be quite funny to see the reaction!...**

July 31, 2008:

Yen Desk Manager 2: [Senior Yen Trader] MUST BE IN LONDON NOW. COULD YOU SET 6M LIBOR AT 0.96 TODAY? I HAVE CHUNKY FIXING TILL NEXT MONDAY... THANKS FOR YOUR HELP

Senior Yen Trader-Submitter: SURE MATE NO PROB - HAD A CALL FROM HIM THIS MARNING - JUST LANDED ...TOLD HIM TO TAKE IT EASY AND HAVE A BIG BREAKFAST - AS WE' RE TAKING HIM STRAIGHT TO THE PUB!

August 6, 2008:

Yen Desk Manager 2: GOOD MORNING. I HAVE ANOTHER SIDE OF FIXING TODAY AND TOMORROW CAN WE MAKE 6MTH LIBOR AT 0.98? THANKS A LOT

Senior Yen Trader-Submitter: OK HIGHER?...SURE THING

Yen Desk Manager 2: YES, ONLY TODAY AND TOMORROW...THANKS

August 14, 2008:

Yen Trader-Submitter 1: ...How's things?

Yen Desk Manager 2: ...Uh, actually I have a quite large fixing today, so ...

Yen Trader-Submitter 1: Yeah sure

Yen Desk Manager 2: Uh, could you please set like a 6 month's LIBOR at, like 94 or something?

Yen Trader-Submitter 1: 1.94, yeah? 6 months...OK yeah no problem. Any other ones?...

October 7, 2008: (emphasis added)

Yen Desk Manager 1: Morning, mate, aright?...**LIBORs today, LIBORs, LIBORs, same?...**

Senior Manager 1: **Where do you want 'em?**

Yen Desk Manager 1: ...**Smidgen lower?...**

October 17, 2008:

Senior Yen Trader email to Senior Yen Trader-Submitter:

Subject: 6m libor

Hi mate

If possible, could you keep setting 6m libor at 0.80% for a while please?

Regards

Senior Yen Trader

Senior Yen Trader-Submitter reply to Senior Yen Trader:

Subject: RE: 6m libor

Hi mate - oh yes - we are now setting all libors significantly under the market levels cheers

Senior Yen Trader reply to Senior Yen Trader-Submitter:

Subject: RE: 6m libor

Actually as long as they are low, we are happy mate. cheers

November 4, 2008:

Senior Yen Trader email to Senior Manager 1, U.S. Dollar Trader-Submitter 1, and Yen Trader-Submitter 1:

Subject: 6m libor

Hi

Could you set 6m libor at 0.98% today if possible please?

Regards

Senior Yen Trader

Yen Trader-Submitter 1 reply to Senior Yen Trader, Senior Manager 1 and U.S. Dollar Trader-Submitter 1:

Subject: RE: 6m libor

SURE

ii. Senior Yen Trader-Submitter's Coordination with External Parties

Along with accommodating Rabobank traders' internal requests for preferential Yen LIBOR submissions, the Senior Yen Trader-Submitter coordinated, at times, with a broker at a London brokerage ("Brokerage A"), and a Yen LIBOR submitter at another panel bank ("Panel Bank C Yen Submitter") on the submission of Yen LIBOR. The Senior Yen Trader-Submitter colluded with these parties by (1) entertaining requests from the broker to alter Rabobank's Yen LIBOR submissions for the benefit of a Yen derivatives trader at UBS ("UBS Senior Yen Trader");¹³ and (2) coordinating Yen LIBOR submissions with the Panel Bank C Yen Submitter to benefit the trading positions of both Rabobank and Panel Bank C.

¹³ On December 19, 2012, the Commission issued an Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act Making Findings and Imposing Remedial Sanctions against UBS AG and UBS, finding, among other things, that the UBS Senior Yen Trader enlisted the aid

1. *Collusion with a Broker to Assist the UBS Senior Yen Trader*

The Senior Yen Trader-Submitter communicated with a London Yen broker (“Derivatives Broker A1”) to discuss the Yen market generally and Yen LIBOR fixings in particular.¹⁴ From at least May 2008 through at least September 2008, Derivatives Broker A1 asked the Senior Yen Trader-Submitter at times to make particular Yen LIBOR submissions, and on at least one occasion stated that the request was intended to benefit the derivatives trading positions of the UBS Senior Yen Trader, who was also a client of Derivatives Broker A1. During the same period, the Senior Yen Trader-Submitter also informed Derivatives Broker A1 that he received requests for particular Yen LIBOR submissions for certain tenors from the Senior Yen Trader. On at least one occasion, the Senior Yen Trader-Submitter indicated he would accommodate Derivatives Broker A1’s Yen LIBOR request on behalf of the UBS Senior Yen Trader along with the rate preference of the Senior Yen Trader when making Rabobank’s Yen LIBOR submissions on that particular day.

Some examples of these communications appear below:

May 29, 2008: (via telephone)

Senior Yen Trader-Submitter: ...I’m gonna set at 71...unless [Senior Yen Trader] wants something higher

July 18, 2008: (via telephone) (emphasis added)

Derivatives Broker A1: [. . .]**What you going to set your 1 month LIBOR today?**

Senior Yen Trader-Submitter: I don’t know, what do you reckon?

Derivatives Broker A1: 65?

Senior Yen Trader-Submitter: Er...I don’t know. I ain’t got a clue, 65. **He wants me to set 98 in the 6s**

Derivatives Broker A1: That low, yeah? **What does he want you setting 1’s then?**

Senior Yen Trader-Submitter: **Nothing, he hasn’t told me.**

Derivatives Broker A1: **65, then.** That’s good. **Got someone asking here...If you can?**

Senior Yen Trader-Submitter: Do you want me to set 65?

Derivatives Broker A1: Yeah, or as low as possible basically...

Senior Yen Trader-Submitter: ... **Who’s that?**

of brokers to attempt to influence the rates submitted by Yen LIBOR submitters at other panel banks. To support the UBS Senior Yen Trader, the brokers would, at times, contact Yen LIBOR submitters at certain panel banks, including Rabobank, to request them to skew their LIBOR submissions for the benefit of the UBS Senior Yen Trader. *See* <http://www.cftc.gov/PressRoom/PressReleases/pr6472-12>.

¹⁴ Brokers act as intermediaries between major dealers in the cash and derivatives markets to facilitate execution of interdealer trades. Brokers assist banks in obtaining funding by facilitating the negotiation of deposits and loans, and in hedging those transactions with derivatives trades often referenced to LIBOR.

Derivatives Broker A1: **It's a geezer at UBS, [UBS Senior Yen Trader]**
Senior Yen Trader-Submitter: **Alright well make sure he knows.**
Derivatives Broker A1: **Yeah, he will now mate.** Definitely, definitely, definitely.
Senior Yen Trader-Submitter: **You know, scratch my back, yeah, and all**
Derivatives Broker A1: **Yeah oh definitely, yeah, play the rules**

September 22, 2008: (emphasis added)

Derivatives Broker A1: LIBORs?
Senior Yen Trader-Submitter: I was gonna ask you...
Derivatives Broker A1: ...**Low 1s 3s and 6s if possible**...76, 89 and 88. 98 rather 6s.
Senior Yen Trader-Submitter: Yeah alright – I'll see what I can do...**If you want me to set them I'll set them...** [Senior Yen Trader] **wants them low...**

2. *Collusion with the Panel Bank C Yen Submitter to Attempt to Manipulate Yen LIBOR*

From at least mid-2006 through at least October 2008, the Senior Yen Trader-Submitter communicated with a submitter at another panel bank, the Panel Bank C Yen Submitter, regarding Yen LIBOR submissions. The Senior Yen Trader-Submitter coordinated with and aided and abetted the Panel Bank C Yen Submitter in attempts to manipulate Yen LIBOR, and as a result, submitted false reports concerning Yen LIBOR on occasion.

The Senior Yen Trader-Submitter and the Panel Bank C Yen Submitter regularly communicated about the rates each would submit for Yen LIBOR. In these communications the Senior Yen Trader-Submitter sometimes informed the Panel Bank C Yen Submitter of the skewed Yen LIBOR submissions he was making on behalf of Rabobank traders, and at times requested the Panel Bank C Yen Submitter to make a similarly skewed submission for Panel Bank C, all to benefit the derivatives trading positions of the Rabobank traders. The Senior Yen Trader-Submitter admitted to the Panel Bank C Yen Submitter that he obliged such requests from Rabobank's traders by making Yen LIBOR submissions that were "ridiculous," "incredibly high," or "obseently [sic] high."

The Panel Bank C Yen Submitter acknowledged the Senior Yen Trader-Submitter's requests and agreed to assist him. The Panel Bank C Yen Submitter also transmitted to the Senior Yen Trader-Submitter reciprocal requests for the adjustment of Yen LIBOR for the benefit of Panel Bank C's trading positions. The Senior Yen Trader-Submitter in turn acknowledged and indicated his intent to provide mutual assistance to the Panel Bank C Yen Submitter. Some examples of these communications follow:

May 10, 2006: (emphasis added)

Senior Yen Trader-Submitter:

re our conversation yesterday about libors...for info i've been asked by my singapore man to help him out with a silly low 6m fixing today.....just for your info

June 27, 2006: (emphasis added)

Senior Yen Trader-Submitter:

just for your info skip...i need a high 1mth today - so i will be setting an obseently high 1 mth (6)

Panel Bank C Yen Submitter:

sure mate no worries...give us an idea where and I'll try n oblige...;)

[. . .]

Panel Bank C Yen Submitter:

mrng mate...my turn today...what u going 3s libor...hoping for a higher one....0.35 or u think that is pushing it a bit?

Senior Yen Trader-Submitter:

nope - fine with me mate - will set 35 for you (b)

Panel Bank C Yen Submitter:

(K) cheers dude

Senior Yen Trader-Submitter:

no prob at all mate;)

July 6, 2006: (emphasis added)

Senior Yen Trader-Submitter:

for info i need a high 1mth set today - i will be setting something ridiclous like 28 or 29 for info

Panel Bank C Yen Submitter:

cool suits me too to be honest...

July 27, 2006: (emphasis added)

Senior Yen Trader-Submitter:

morning skip....my little ...[racial epithet redacted] friend in tokyo wants a high 1m fix from me today....am going to set .37 - just for your info sir

Panel Bank C Yen Submitter:

that suits mate as got some month end fixings so happy to ablige..rubbery jubbery..:-O

Senior Yen Trader-Submitter:

'ansome cheers skip

July 19, 2007:

Panel Bank C Yen Submitter:

mrng beautiful.....if u can would love a low fixing in 3s libor today....(y)

Senior Yen Trader-Submitter:

ok skip - what u need? no prob

Panel Bank C Yen Submitter:

.77 if poss but just no higher than yest!!

January 7, 2008:

Senior Yen Trader-Submitter: yes nice and toasty....what would you like me to set for 1m mate? i've gone 70 so far....or hogher?

Panel Bank C Yen Submitter: thats fine..thx lad xx

March 28, 2008: (emphasis added)

Senior Yen Trader-Submitter: morning skip – **[Senior Yen Trader] has asked me to set high libors today** – gave me levels of 1m 82 , 3m 94....6m 1.02

Panel Bank C Yen Submitter: **sry mate cant oblige today...i need em lowe!!!**

Senior Yen Trader-Submitter: yes was told by [Derivatives Broker A1]...**just thought i'd let you know why mine will be higher ...and you don't get cross with me**

September 25, 2008: (emphasis added)

Panel Bank C Yen Submitter: prob stupid ques and tell me to go away....**where r u pitching 6 s libor....got a fixing...**

Senior Yen Trader-Submitter: hmmm – i have no idea skip!.....not even sure of big figure!...**where would you like me to set it mate?**

Panel Bank C Yen Submitter: u n me both....**i need a low one... anything arnd 1 pc would be ok....but i doubt it**

October 8, 2008:

Senior Yen Trader-Submitter: am lower today fyg... [Senior Yen Trader] wanted 1.10 in 6's ok skip

Panel Bank C Yen Submitter: oh buggar wished u told me ealier.... i set same i'll see if i can chnage

Senior Yen Trader-Submitter: sry mate – he just got onto me

b. Rabobank's Attempts to Manipulate Yen LIBOR From 2009 Through Early 2011

i. Rabobank's Senior Yen Trader Becomes Yen LIBOR Submitter

After Rabobank centralized its LIBOR submission process in Utrecht in January 2009, several Rabobank traders had responsibility for making Yen LIBOR submissions. Each of the Yen LIBOR submitters knew of the entrenched practice of receiving, acknowledging and following requests for beneficial rates from Rabobank traders in making Rabobank's Yen LIBOR submissions. As each trader assumed the role of Yen LIBOR submitter, their predecessors instructed them to take into account and submit as Rabobank's Yen LIBOR submissions the rates provided by the Yen traders; if the traders failed to provide their submission preferences, the submitters were instructed to submit the prior day's submissions.

The newly promoted senior manager and supervisor of the cash and derivatives traders, Senior Manager 2, confirmed those instructions to at least one submitter.

The Yen LIBOR submitters knew that the traders in Asia were frequently requesting Yen LIBOR submissions based on their trading positions, and knew that submitting rates to benefit the traders' cash and/or derivatives trading positions was inappropriate. Regardless, they continued to routinely make Yen LIBOR submissions using the traders' skewed rates. In addition, at least one of the Yen LIBOR submitters ("Yen Trader-Submitter 2") at times skewed his Yen LIBOR submissions to benefit his own trading book.

By early February 2009, the Senior Yen Trader began sending daily the rates for the Yen LIBOR submissions, usually for the one through six month tenors, rather than just for the one, three and six months as he had previously done. The submitters copied his rates into their Yen LIBOR submissions. The Senior Yen Trader in effect became the Yen LIBOR submitter for Rabobank. The submitters became so dependent on the rates from the Senior Yen Trader for their submissions that they regularly solicited rates from the Senior Yen Trader. On days the Senior Yen Trader did not send requests or the submitters did not reach him, the submitters continued the practice of submitting the rates the Senior Yen Trader provided on the previous day.

The Senior Yen Trader frequently accounted for his own cash and derivatives positions, and the trading positions of his colleagues, including his desk manager, Yen Desk Manager 2, when determining the daily submissions for Rabobank's Yen LIBOR. By submitting the rates provided by the Senior Yen Trader, the Yen LIBOR submitters as a result made Rabobank's Yen LIBOR submissions based on the benefit to the cash and derivatives trading positions of the Senior Yen Trader and his colleagues, and not based on the costs of borrowing funds in the London Yen cash market. If the submitters failed to input the rates the Senior Yen Trader sent, he aggressively berated the submitters. In response, the submitters quickly apologized, noted their errors and subsequently assured the Senior Yen Trader that they would not deviate from his directives in the future.

The following are examples of the improper rate requests from traders in Rabobank's Asia offices, the solicitation of requests by submitters, and the communications by the Senior Yen Trader when he became the *de facto* Yen LIBOR submitter.

December 9, 2008: (emphasis added)

Senior Manager 2 email to Yen Trader-Submitter 1 and Senior Manager 1:

Hi [Yen Trader-Submitter 1], [Senior Manager 1],

How are you?

Good to hear that [Yen Trader-Submitter 3] is up and running.

Short question: only question mark for me is him sending out the daily Rabo Libor fixings.

He told me that he will just "copy, paste" the previous days Libors. Don't blame [Yen Trader-Submitter 3] of course, but he has got no clue on this yet.

What you think, is this going ok? Want to prevent that we get questions from BBA on this?

[Senior Manager 2]

Yen Trader-Submitter 1 reply to Senior Manager 2:

Hi [Senior Manager 2] ,

I'm all fine , thanks . Yes [Yen Trader-Submitter 3] is doing fine , regarding the libors[. . .] **I generally use the libors from the day before so that there is no real debate from bba[. . .]the yen libors sometimes [Senior Yen Trader] will email from Tokyo to ask for any special requests** I have never had a problem so far regarding the libors ...so I think they (bba) seem to know where we set our libors in comparison to the others and as we are happy to lend at that level (libor) to corporates its fine[. . .]

Cheers mate

Regards [Yen Trader-Submitter 1]

January 16, 2009: (emphasis added)

Senior Yen Trader email to Yen Trader-Submitter 2

Subject: RE: 3m LIBOR

Hey mate

Yesterday I asked you to put 3m yen libor at 0.73% but you actually put it at 0.78%... something happened?

Today,, could you put 3m libor at 0.70% please? Is it ok?

Yen Trader-Submitter 2 reply to Senior Yen Trader

Subject: RE: 3m LIBOR

Something must have went wrong with the feeds there, just testing the sheets here on our pcs, after some probs with the migration to office 2007. Will put in 0.70% today for sure.

Nice day

[Yen Trader-Submitter 2]

Yen Trader-Submitter 2 email to Senior Yen Trader later that same day:

Subject: RE: 3m LIBOR

Hi [Senior Yen Trader] San,

Your 3 month fixing went in wrong, due to again error on error in our publishing sheets [. . .] although I put ur 3m rate in at 0.70 two times it still was overwritten by someone in the end [. . .] the publish activity was a big mess[. . .] Sorry for hassle.

[Yen Trader-Submitter 2]

Senior Yen Trader reply on January 19, 2009 to Yen Trader-Submitter 2:
Subject: RE: 3m LIBOR
Hi [Yen Trader-Submitter 2]
I hope you will succeed to put 3m LIBOR at 0.70% today
Regards
[Senior Yen Trader]

January 26, 2009:

Senior Yen Trader email to Yen Trader-Submitter 2:
Subject: libors
Hi mate
Could you set
3m at 0.67%
6m at 0.90% for today please?
Regards
[Senior Yen Trader]

Yen Trader-Submitter 2 reply to Senior Yen Trader:
Subject: RE: libors
Will do cheers

January 30, 2009: (emphasis added)

<u>Yen Trader-Submitter 2:</u>	tibor-libor is going more in ur favour...if u still have postion
<u>Senior Yen Trader:</u>	i will have fixings on 12th feb for 200 bio. hope at least till them libor will keep going down
<u>Yen Trader-Submitter 2:</u>	any preferences in fixings today?
<u>Senior Yen Trader:</u>	2m at 0.63% 6m 0.82% pls
<u>Yen Trader-Submitter 2:</u>	will do

February 25, 2009:

Senior Yen Trader email to Yen Trader-Submitter 2:
Subject: libors
Hi mate
Could you set libors for today as below please?
1m 0.39
2m 0.60
3m 0.65
4m 0.71
5m 0.76
6m 0.80
Regards
[Senior Yen Trader]

Yen Trader-Submitter 2 reply to Senior Yen Trader:

Will do
cheers

March 9, 2009: (emphasis added)

Senior Yen Trader email to Yen Trader-Submitter 2:

Subject: Libors

Hi

Could you put the below numbers for todays libor please?

1m 0.52

2m 0.57

3m 0.60

4m 0.67

5m 0.75

6m 0.81

Regards

[Senior Yen Trader]

Accompanying Bloomberg on the same date:

Senior Yen Trader:

hihi i sent libors for today... hope they will be correctly fed in thorough today

Yen Trader-Submitter 2:

yes friday friday u didnt send me the libors

Senior Yen Trader:

uh,,, understood... i sent for todays one now mate

Yen Trader-Submitter 2:

is no prob , **u want me to send a reminder if by accident libors are not coming in here?**

Senior Yen Trader:

thanks for a kind offer... **if you can pop a msg up in here, it would be a help.** but no need to send me a reminder email. thanks

May 25, 2009: (emphasis added)

Yen Trader-Submitter 2 email to Yen Trader 1:

Hi frds,

Normally [Senior Yen Trader] San sends us his preferences for the JPY libors.

If you have any let me know.

Cheers

Yen Trader 1 reply to Yen Trader-Submitter 2:

We don't have any special requests for libors today.

Many thanks,

[Yen Trader 1]

Yen Trader 1 follow up email to Yen Trader-Submitter 2 the next day:

Good morning [Yen Trader-Submitter 2],

About libors..

Same as last Friday pls. if no particular int from others.

We pay 0.04% in S/N(28-29th May) up to 70yards.

Thanks,

[Yen Trader 1]

October 5, 2009:

Senior Yen Trader email to Yen Trader-Submitter 2:

Subject: libors

Hi

Could you put the below for todays libors please?

SN 0.10%

1w 0.13%

2w 0.14%

1m 0.16%

2m 0.24%

3m 0.32%

4m 0.42%

5m 0.48%

6m 0.53%

Regards

[Senior Yen Trader]

Yen Trader-Submitter 2 reply to Senior Yen Trader:

Subject: RE: libors

Is done cheers

February 22, 2010: (emphasis added)

Yen Trader-Submitter 2:

same libors?

Senior Yen Trader:

yes pls mate

[...]

Senior Yen Trader:

if possible. pls but 6m libor at 0.42 pls?

Yen Trader-Submitter 2:

will do

Yen Trader-Submitter 2:

is adjusted cheers

Senior Yen Trader:

thank you

April 19, 2010:

Yen Trader 2 email to Yen Trader-Submitter 4: (translated from Dutch)

[Yen Trader-Submitter 4] ,

Can maybe put the 6m JPY LIBOR up 1 bp. He says it will have no direct effect on LIBOR, but wants to see the psychological impact it has on "other accounts that the market continuously spoof," that is, [Panel Bank E] and [Panel Bank C].

greetings,

[Yen Trader 2]

August 4, 2010:

Senior Yen Trader email to Yen Trader-Submitter 3:

Subject: yen libors

Hi

Could you put libors like below today, please?

s/n 0.10

1w 0.11

2w 0.11

1m 0.12

2m 0.16

3m 0.21

4m 0.30

5m 0.35

6m 0.40

Thank you

Yen Trader-Submitter 3 reply to Senior Yen Trader:

Subject: Re: yen libors

Hi [Senior Yen Trader]-san,

Will do sir!

Cheers

September 28, 2010:

Senior Yen Trader email to Yen Trader-Submitter 3 and Yen Trader-Submitter 4:

Subject: libor for yen

Hi

Can you put 0.19% for 3mth and 0.39% for 6mth yen libor pls?

Regards

[Senior Yen Trader]

Yen Trader-Submitter 3 reply to Senior Yen Trader and Yen Trader-Submitter 4:

Subject: RE: libor for yen

Hi [Senior Yen Trader],

That's done

Cheers

October 6, 2010: (emphasis added)

Senior Yen Trader email to Yen Trader-Submitter 3 and Yen Trader-Submitter 4:

Subject: yen libors

Hi

Can you change yen libors as belwo?

1m 0.11

2m 0.14

3m 0.18

4m 0.27

5m 0.33
6m 0.38
Thank you
[Senior Yen Trader]

Senior Yen Trader follow-up email to Yen Trader-Submitter 3 and Yen Trader-Submitter 4:

Subject: RE: yen libors

Hi

**It seems that our libors didn't change.
Can you change libors down to the below please?**

Regards

[Senior Yen Trader]

October 18, 2010: (emphasis added)

Senior Yen Trader email to Yen Trader-Submitter 3:

Subject: question

**WHY DID YOU PUT ALL THE YEN LIBORS HIGHER FOR TODAY
WITHOUT TELLING ME?**

WHERE IS THE TEAM PLAY?

**YOU KNOW MY POSITION IS? I CANT BELIEVE YOU DID THIS
WITHOUT TELLING ME.**

IF YOU HAD TO PUT THEM HIGHER FOR SOME REASON BUT AT
LEAST YOU COULD HAVE TOLD

ME IN BEFORE HAND.

IM REALLY FUKKED.

[Senior Yen Trader]

Senior Yen Trader Bloomberg chat with Yen Trader-Submitter 3 later the same day:

Senior Yen Trader:

Yen Trader-Submitter 3:

hey mate why did you put libors all higher?

Hi mate I just saw your email and replied.. I
fukked up.. you gave [Yen Trader-Submitter 4]

new libors last week.. didn't save the sheet and
today I used my own computer for libors.. I

fukked up, my mistake.. not on perpose mate

...I am really sorry...And I would never

change libors without consulting you.

i got so surprised when i saw rabos number.

you know my position then put libors higher.

I understand,

some ppl react in this way so i worried as well if
you were this kind of a guy **hope this rabo**

move doesnt affect to other banks LIBOR

numbers for tomorrwo onward

Senior Yen Trader:

Yen Trader-Submitter 3:

Senior Yen Trader:

Yen Trader-Submitter 3: I hope so 2. I have put them now back to following levels: 1m 0.11 2m 0.13 3m 0.17 4m 0.26 5m 0.32 6m 0.37. Will not change them without you telling me to do.

Senior Yen Trader: of course you can change libor numbers, mate. what i would like to have is.... communication. as long as you tell me that you would like libors higher or lower for some reason then i will do what i can and most of the case i think it would be a no problem.

Yen Trader-Submitter 3: Mate, ... You understand that this an personal error from me?...And did not intentionnally put them higher?

Senior Yen Trader: totall understand... sorry that my email sounded so harsh.

Yen Trader-Submitter 3: No problem mate, I fukked up so I understand. **Lets just hope that , like you said, others banks will not be influenced tom.** Hope trust is still there between us. Will be carefull next time

Senior Yen Trader: yes still there mate.. i just felt that i was used.. yep trust is there. thank you and sorry. **u owe me a nice beer !**

Yen Trader-Submitter 3: **1 beer? More like 564 beers!...** Lat time: I will never use you, I respevt you, you, we are on the same team. Thats how I see it!... Nice eve mate!

Senior Yen Trader: i respect your eagar, too. mate cheers talk to you tmr

October 20, 2010:

Yen Trader-Submitter 3: ... your tiber/libor exposure is more in 6m than in 3's fmg?

Senior Yen Trader: 50%-50% mate

Yen Trader-Submitter 3: I see.. nice .. so whats the reason that you dont put down Rabo JPY libor numbers? just one tick to see what happens? Or is that sort of manipulation and not done? or am I saying something stupid now?

Senior Yen Trader: Rabo JPY LIBOR numbers are already one of the lowest four banks among 16 panel banks so even if we put them lower further, it wouldnt give any change on yen libors... and i think just keep libors one of the lowest four banks is the good idea because it isn't obvious so that ppl wouldnt notice. if it is too obvious, ppl could start looking at us manipulating libors

November 26, 2010:

<u>Senior Yen Trader:</u>	COULD YOU PUT 6m libor lower to 0.34 pls?
<u>Yen Trader-Submitter 4:</u>	we will do...
<u>Yen Trader-Submitter 3:</u>	Yes mate will put 6m libor to 0.34

ii. The Senior Yen Trader's Coordination with Brokers

Despite awareness of an investigation related to LIBOR, the Senior Yen Trader continued to attempt to manipulate Yen LIBOR; however, he switched to using a broker to facilitate his efforts to manipulate.¹⁵ On November 30, 2010, in the midst of the Commission's investigation of Rabobank's U.S. Dollar LIBOR submission practices, Senior Manager 2 instructed the Yen LIBOR submitters at that time, Yen Trader-Submitter 3 and Yen Trader-Submitter 4, that it was improper to consider rate requests from traders when making Rabobank's LIBOR submissions and that the practice should stop. That same day, when the Senior Yen Trader sent the daily Yen LIBOR rates to be submitted, the Yen LIBOR submitters refused to assist him. Reacting to the loss of his ability to influence the Yen LIBOR fixings directly, the very next day the Senior Yen Trader contacted a London-based broker at ICAP Europe Limited ("ICAP Cash Broker") and requested his assistance in manipulating Yen LIBOR for certain tenors to benefit the Senior Yen Trader's trading positions.¹⁶ The Senior Yen Trader continued to request the ICAP Cash Broker's assistance in his manipulative attempts throughout the end of 2010 and into early 2011.¹⁷ The Senior Yen Trader admitted to the ICAP Cash Broker that he previously acted as Rabobank's Yen LIBOR submitter and "influence[d]" the LIBOR submissions until November 30, 2010. The following are examples of the Senior Yen Trader's requests to the ICAP Cash Broker and the broker's willingness to assist him in his efforts to manipulate Yen LIBOR.

¹⁵ Clients of brokers, including LIBOR submitters and derivatives traders at panel banks, rely on brokers for views and advice on market pricing and trends; this type of information is often used by submitters in their determination of LIBOR submissions. Because brokers speak to multiple clients at numerous institutions, including LIBOR submitters, brokers are well-positioned to exert influence over Yen LIBOR submissions.

¹⁶ On September 25, 2013, the Commission issued an Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act Making Findings and Imposing Remedial Sanctions against ICAP Europe Limited ("ICAP"), finding, among other things, that ICAP, through its Yen brokers, attempted to influence Yen LIBOR submissions for the purposes of manipulating Yen LIBOR on behalf of Yen derivatives traders in the market ("ICAP Order"). In the ICAP Order, Rabobank is identified as Bank D and the Rabobank Yen derivatives trader referenced is identified as Bank D Yen Trader. See <http://www.cftc.gov/PressRoom/PressReleases/pr6708-13>, pp. 36-37.

¹⁷ On at least two occasions, the Senior Yen Trader also communicated with another broker at Brokerage A ("Derivatives Broker A2") and sought his assistance in influencing Yen LIBOR fixings. On one of these occasions, January 19, 2011, the Senior Yen Trader requested Derivatives Broker A2 to assist him in pushing the six-month tenor of the Yen LIBOR fixing in a favorable direction to benefit the Senior Yen Trader's trading position.

December 1, 2010: (emphasis added)

Senior Yen Trader:

Hope this will push libors down

ICAP Cash Broker:

ok we need lower libors tomorrow yes?

Senior Yen Trader:

Yeah...

ICAP Cash Broker:

ok ill work some magic for tomorrow:-)

Senior Yen Trader:

I want 3. And 6m libor a lot lower... ? How?

ICAP Cash Broker:

we wait and see, tomorrow lower friday a little bit more but ill do my best

Senior Yen Trader:

Yeah... I think yen libors shud be lower but ppl tend to keep them higher whereas usd libors ppl looks like manipulately put them higher ill work some magic tomorrow hopefully, 3m 19 6m 35

ICAP Cash Broker:

Senior Yen Trader:

Mate... 3mth is already below 19

ICAP Cash Broker:

mistype 18

Senior Yen Trader:

That will be nice.

ICAP Cash Broker:

ok i am on the case for u

Senior Yen Trader:

Thank u mate

December 14, 2010: (emphasis added)

Senior Yen Trader:

libors are going up? Everything very high now japanses in ldn bidding up cash so libors might go up, but if u need lower give me the nod 6mth libor going up is fine but **I would like 3mth to be stayed or lower.** Hahah this is my hope but miracle shouldn't happen

ICAP Cash Broker:

Senior Yen Trader:

ICAP Cash Broker:

Later on the same day:

ICAP Cash Broker:

Unfortunately the 3m libor went up today with [Panel Bank F] and yourself putting up 1 point. Do you set the libors for your bank? Re the 6m they also went up as [Panel Bank G] has joined the libor fixing instead of [Panel Bank H] and over last 2 days they have set there libors more around the actual fixing everyday where as [Panel Bank H] were far more arbi driven and tended to set lower. If 6m libor does creep up slowly we might get a jump in it when the Japanese move there libor up if and when the fixing goes above 3575, although Japanese banks can still get funds in market at 19 or lower so libor still not true reflection of market rates. The Japanese tend to like to set libors around the current libor rate rather than market

rate where they can get large amounts of funds.
Ill do the best for libors.

Senior Yen Trader:

Till two weeks ago I was seting libors for rabo but due to BBA investigation someone out side of europe shudnt have any influence of libors then I cudnt be involed in libors after then

ICAP Cash Broker:

So does [Senior Yen Trader-Submitter] at rabo Utrecht/ london set them? Ill check who sets them at [Panel Bank G] for you. No worries ill catch you tomorrow.

December 21, 2010:

Senior Yen Trader:

i now wud like 6m libor to go up a lot

ICAP Cash Broker:

ok tomorrow i move

December 22, 2010: (emphasis added)

ICAP Cash Broker:

3m .1875 6m 349 :-)

Senior Yen Trader:

thx mate **so 6m libor highr finally? ...**

ICAP Cash Broker:

... yes ... i amworking my magic

Senior Yen Trader:

thank you! ...

ICAP Cash Broker:

sorry [Senior Yen Trader], people slow to change but i am still working on it regarding libors

Senior Yen Trader:

Thx try

January 6, 2011:

Senior Yen Trader:

what do u think about libors today?

ICAP Cash Broker:

pretty much unchanged today, guys not sure which way to go ... but 3m same 6m higher u looking

Senior Yen Trader:

yep i love 6mth higher

ICAP Cash Broker:

OK;-)

January 27, 2011: (emphasis added)

ICAP Cash Broker:

morning [Senior Yen Trader] libors looking unchanged 3m but starnge to see 6m move down **Are you looking for anything special this morning?**

Senior Yen Trader:

im now happy that any libors to come down especially 3m and 6m...

ICAP Cash Broker:

ok . they wouldn't move up even with some guys biding 3m yen at 12 and 11 lvls **so ill work on lower 3 and 6m then**

Senior Yen Trader:

cheers!

February 24, 2011:

ICAP Cash Broker:

morning [Senior Yen Trader] you looking for higher libors? 3m going 191 and 6m 348. nj guys looking for offers and Japanese have

Senior Yen Trader:

moved the lending interest higher in 3 and 6m not higher libors at mom... but ok

ICAP Cash Broker:

ok understood

6. Rabobank Made False Reports and Attempted to Manipulate Sterling LIBOR to Benefit Rabobank Trading Positions

For over a year, from at least late 2007 through early 2009, Rabobank's Sterling LIBOR submitters on occasion took their Sterling LIBOR-based trading positions into account when making Rabobank's Sterling LIBOR submissions in order to benefit those positions. Rabobank's Sterling LIBOR submissions were made out of its London office by a Sterling cash and derivatives trader ("Senior Sterling Trader-Submitter 1"). Other Sterling traders who primarily transacted in derivatives tied to Sterling acted as back-up Sterling LIBOR submitters ("Senior Sterling Trader-Submitter 2" and "Sterling Trader-Submitter 3"), including the head of the Sterling trading desk ("Sterling Desk Manager"). The primary submitter, the back-up submitters and their supervisor, the Sterling Desk Manager, were all in constant communication with one another.

Senior Sterling Trader-Submitter 1 considered her own trading positions, and, if she was not submitting on a particular day, she, on occasion, sent requests to her back-up submitters or her manager for submissions that benefitted her own Sterling LIBOR-based derivatives trading positions. The back-up Sterling Trader-Submitters and the Sterling Desk Manager accommodated her requests, and as a result, Rabobank's Sterling LIBOR submissions on occasion were submitted in a manner which would be beneficial to its trading positions. Thus, the Sterling LIBOR Submitters' Sterling LIBOR submissions reflected their financial interests, rather than the costs of borrowing Sterling in the London interbank market. The following are examples of some of these occasions:

November 30, 2007:

Email from Senior Sterling Trader-Submitter 1 to Sterling Desk Manager:

Subject: Libors

Need high 3s wnd low 1s

Reply from Sterling Desk Manager to Senior Sterling Trader-Submitter 1:

Subject: RE: Libors

Okok

Email from Senior Sterling Trader-Submitter 1 to Sterling Desk Manager:

Subject: Re: Libors

See [Sterling Trader-Submitter 3] has to put up with my nagging usually..... He is worth his weight in gold

haha???

August 1, 2008:

Sterling Trader-Submitter 3 email to Senior Sterling Trader-Submitter 1:

Subject: Low 1's and 3's next week pls

Your risk 160,000 gbp.... 205,000 euro's, so minus 40,000 gives you 165,000 euro's....

Have a good w/e...

See you tue week

October 2, 2008: (emphasis added)

Senior Sterling Trader-Submitter 1 email to Sterling Trader-Submitter 3 and

Sterling Desk Manager:

Subject: Risk

I have a 6 mos FRA maturing tom..so I need high 6m libor...

When this matures tomorrow I will probably be just inside limit...can you check in the afternoon please and I can sell some dec futs...I will call tomorrow.

Thanks

[Senior Sterling Trader-Submitter 1]

Oh and apologies for any wrong trades It was a nitemare day!!!

December 2, 2008:

Senior Sterling Trader-Submitter 1 email to Sterling Desk Manager and Senior

Sterling Trader-Submitter 2:

Subject: Libors

Need high 1s and 6s please.....

Speak later

January 9, 2009: (emphasis added)

Senior Sterling Trader-Submitter 1 email to Sterling Desk Manager:

Subject: Libors

Need low 1m and 3m today pls

Reply from Sterling Desk Manager to Senior Sterling Trader-Submitter 1:

Subject: RE: Libors

Don't we all !!think gonna go 38 in 3's

February 12, 2009: (emphasis added)

Senior Sterling Trader-Submitter 1 email to Sterling Desk Manager and Senior Sterling Trader-Submitter 2:

Subject: Libors

**I reckon you could go as high as 2.10 in 3 mos and still be in!!
Also can you set 1m libot at 1.40 please??**

As described above, Rabobank made repeated attempts to manipulate LIBOR for U.S. Dollar, Yen and, on occasion, Sterling, in order to affect the official fixing of LIBOR in a manner that would benefit its cash and derivatives trading positions. Rabobank, through its derivatives traders and submitters, knew it was improper to consider derivatives trading positions in determining the bank's LIBOR submissions. A panel bank's financial derivatives trading positions are not legitimate or permissible factors on which to base a bank's daily LIBOR submissions. By basing its LIBOR submissions on rates that benefited traders' cash and derivatives trading positions, Rabobank's submissions were not made in accordance with the BBA definition and criteria for LIBOR submissions. Instead, certain Rabobank submitters knowingly conveyed false, misleading or knowingly inaccurate reports that its submitted rates for LIBOR for U.S. Dollar, Yen and Sterling were based on and solely reflected its assessment of the costs of borrowing unsecured funds in the relevant interbank money markets. Accordingly, Rabobank regularly attempted to manipulate the official LIBOR fixings for U.S. Dollar, Yen and Sterling in particular tenors, and knowingly delivered false, misleading or knowingly inaccurate reports concerning LIBOR for U.S. Dollar, Yen and Sterling, commodities in interstate commerce.

7. Rabobank Made False Reports and Attempted to Manipulate Euribor to Benefit Rabobank Trading Positions

For at least three years, spanning from January 2006 through 2008, Rabobank, through its submitters and traders, attempted to manipulate Euribor and frequently made submissions in furtherance of those attempts. Rabobank, a Euribor panel bank member since January 1998, assigned its Euribor submission process to a cash and derivatives trader in its Utrecht office ("Senior Euribor Trader-Submitter"). Based on instructions received from a senior manager, the Senior Euribor Trader-Submitter generally contributed Euribor submissions at levels intended to be close to the expected Euribor fixings.¹⁸ To accomplish this, the Senior Euribor Trader-Submitter reviewed data published each day by a broker that contained indications on where

¹⁸ During this period, Rabobank did not significantly lend or borrow in the Euro market and held a good credit standing relative to the other banks on the EBF's Euribor panel. However, the Euro desk's methodology of making submissions to be near the fixings or in the middle of the pack of submitting banks was not consistent with the EBF's definition of and guidance concerning Euribor.

Euribor was expected to fix each day, and used this information to make submissions that ensured Rabobank would be in the middle of the pack of the submitting panel banks.¹⁹

Rabobank's Senior Euribor Trader-Submitter was on a trading desk with other Euro cash and derivatives traders. The trading desk had consolidated profit and loss targets ("P&L"), and the environment encouraged open communication between the Senior Euribor Trader-Submitter and derivatives traders that transacted in products tied to Euribor. As a result, traders orally and in writing communicated requests for preferential Euribor submissions that could benefit their trading positions.

The Senior Euribor Trader-Submitter regularly considered traders' requests and her own trading positions when determining Rabobank's Euribor submissions. Thus, the Senior Euribor Trader-Submitter's Euribor submissions reflected her and other traders' financial interests, rather than the costs of borrowing Euro in the relevant interbank market. Additionally, at times, the Senior Euribor Trader-Submitter aided two former Rabobank employees at a non-panel bank in their attempts to manipulate Euribor by accommodating their requests to skew Rabobank's Euribor submissions in favor of their trading positions.²⁰

a. Rabobank Accommodated Requests from Former Derivatives Traders to Submit Euribor Rates Skewed to Benefit Trading Positions

Starting at least as early as January 2006 and continuing through at least 2007, the Senior Euribor Trader-Submitter received requests to skew Rabobank's Euribor submissions from two former Rabobank senior Euro derivatives traders working at another bank not on the Euribor panel. These traders, External Euro Trader 1 and External Euro Trader 2, previously worked in Rabobank's Utrecht office, where they developed relationships with the Senior Euribor Trader-Submitter.

On several occasions, External Euro Trader 1 and External Euro Trader 2 transmitted to the Senior Euribor Trader-Submitter requests to submit Euribor higher or lower with the purpose of affecting the official Euribor fixing. They communicated these requests orally and through electronic communications. They often targeted key tenors, such as the three and six month tenors, when making their requests. At times, they explicitly advised the Senior Euribor Trader-Submitter which of their positions would gain or suffer depending on the fixings.

¹⁹ As found in the ICAP Order, during the relevant period herein, certain brokers provided traders and submitters at panel banks with predictions or suggestions of where the brokers believed key benchmark interest rates, such as Euribor or LIBOR, would fix on specific days. See ICAP Order, pp. 6-8.

²⁰ The Senior Euribor Trader-Submitter's aiding and abetting the manipulative acts of the former Rabobank traders is not the same collusive conduct among various panel banks as the Commission found in its Order against Barclays Bank PLC or Barclays Capital Inc. See Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act Making Findings and Imposing Remedial Sanctions against Barclays PLC, Barclays Bank PLC and Barclays Capital Inc., <http://www.cftc.gov/PressRoom/PressReleases/pr6289-12>, pp. 15-18.

The Senior Euribor Trader-Submitter understood that both of her former colleagues worked together at the other non-panel bank, and that requests from either were attempts to manipulate certain EBF Euribor fixings to suit both of their trading positions. Upon receiving their requests, the Senior Euribor Trader-Submitter often accommodated them and, at times,²¹ adjusted her Euribor submissions by one basis point in a direction compatible with the requests. On certain days when fixings trended higher but External Euro Trader 1 or External Euro Trader 2 requested a low submission, the Senior Euribor Trader-Submitter accommodated the request by simply submitting the same rate as the day before.

The following communications are examples of requests from External Euro Trader 1 and External Euro Trader 2 and indications of accommodation by the Senior Euribor Trader-Submitter:

January 13, 2006: (translated from French)

External Euro Trader 1: where do you see the 3m fixing??
Senior Euribor Trader-Submitter: wherever you want me to put it :-D
External Euro Trader 1: lower then 2.50 that would be super!
Senior Euribor Trader-Submitter: it will be a little bit lower between 50 and 51 I believe but rather 51 but I put it at 50 lower my quote gets me kicked out
External Euro Trader 1: nice thank you very much ;-)

June 14, 2006: (translated from French)

External Euro Trader 1: for today I would like a really low one month fix and the 3 and the 6 really high.....
[. . .]
Senior Euribor Trader-Submitter: do you have fixings??
External Euro Trader 1: yes
Senior Euribor Trader-Submitter: what do you want
External Euro Trader 1: low the 1m and high the 3 and the 6 please
Senior Euribor Trader-Submitter: 2.86 2.97 and 3.12 I'm going to get myself kicked out but okay

July 27, 2006: (translated from French)

External Euro Trader 1: can the 1m fixing not be expensive madame cadbury?
Senior Euribor Trader-Submitter: hahah sure
External Euro Trader 1: thank you

August 1, 2006: (translated from French)

Senior Euribor Trader-Submitter: do you have some fixings
External Euro Trader 2: little fixing for 3m receiving
Senior Euribor Trader-Submitter: you want high fixing is that right??

²¹ The Senior Euribor Trader-Submitter did not accommodate the requests if the accommodation would have caused Rabobank to fall out of the middle of the pack of submitting banks or be too far from the anticipated Euribor fix.

External Euro Trader 2: yes if you can thank you
Senior Euribor Trader-Submitter: [Okay]

September 4, 2006: (translated from French)

External Euro Trader 1: I need another 3m fixing at the ceiling!
Senior Euribor Trader-Submitter: hahahaha OK [External Euro Trader 1]

October 4, 2006: (translated from French)

External Euro Trader 1: can the 1m fix be expensive madame cadburry?
Senior Euribor Trader-Submitter: absolutely sir...

January 25, 2007: (translated from French)

External Euro Trader 1: little request for the morning can you put the 1m
fix expensive?

Senior Euribor Trader-Submitter: ;-) euro or gbp??

External Euro Trader 1: euro
;-)

Senior Euribor Trader-Submitter: good no prob

b. Rabobank Accommodated Requests from its Traders to Manipulate Euribor

The Rabobank traders regularly communicated orally with the Senior Euribor Trader-Submitter concerning market activity and the direction of key interest rates, allowing the Senior Euribor Trader-Submitter to develop a general understanding of the trading positions taken by the Euro derivatives trading desk and, thus, their exposure to Euribor fixings for particular tenors.²² For example, the senior manager of the submitter who sat next to her in 2007, Senior Manager 2, merely had to mention how his trading positions were exposed to Euribor, and the Senior Euribor Trader-Submitter knew what submission to make to benefit his position.

In mid-2007, the broker that the Senior Euribor Trader-Submitter relied upon to determine the expected Euribor fixings ceased publishing the data. Around the same time, many Rabobank Euro derivatives traders started having difficulty hedging their positions because market liquidity was decreasing with the beginning of the financial crisis. The Senior Euribor Trader-Submitter began receiving requests from the Euro derivatives traders for specific Euribor submissions which were beneficial to their trading positions, particularly when the desk had large Euribor-based positions that it could not hedge. The traders and submitter discussed the requests openly across the desk, as well as in emails and Bloomberg chats. The Senior Euribor Trader-Submitter also developed a practice of asking members of the Euro Desk if the desk had any requests related to Euribor before she made her day's submissions. From approximately mid-2007 through late 2008, the traders made requests with a frequency of two to three times per week.

²² For example, the Senior Euribor Trader-Submitter knew that the traders always had an interest in a high six-month Euribor fixing.

The Senior Euribor Trader-Submitter took the traders' requests into account in determining Rabobank's Euribor submissions. At one point, the Senior Euribor Trader-Submitter commented to Rabobank's U.S. Dollar Trader-Submitter 1 in a November 15, 2007 Bloomberg instant message exchange: "I DO THE FIXING I ASK SWAP DESK WHAT THEY HAVE."²³

By mid-2008, the Senior Euribor Trader-Submitter started trading Euribor-based derivatives and began factoring in her own positions into her determination of Rabobank's Euribor submissions. At times during this period, the Senior Euribor Trader-Submitter had to balance requests made by other derivatives traders with her own trading positions, and, in doing so, skewed Rabobank's Euribor submissions in order to best benefit the Euro trading desk's consolidated P&L. She altered the applicable Euribor rates to the extent that it would not cause Rabobank's submissions to be outside the middle range of the panel banks' submissions, as she was instructed to do.

The following examples demonstrate the regular communications sent by Rabobank traders requesting preferential Euribor submissions and the Senior Euribor Trader-Submitter's willingness to accommodate the requests:

July 12, 2007:

Euro Desk Manager email to Euro Trader-Submitter 1:

Subject: fixings

Hi [Euro Trader-Submitter 1],

Only when it doesn't affect you in a negative way: today we'd like to see the 6M fixing as high as possible and the 3M fixing as low as possible...many thanks!

Euro Trader-Submitter 1 reply to Euro Desk Manager:

Subject: RE: fixings

Consider it done.

Cheers

March 27, 2008: (emphasis added)

Senior Euribor Trader-Submitter: WHUPPY SMURF GOOD MORNING
SAME FIXINGS ?

Euro Trader 1: **yes pls, certainly low 3m and if possible high 1m, but i believe [Senior Manager 2] wouldn't agree with that:) ty!**

²³ U.S. Dollar Trader-Submitter 1 returned the sentiment in this exchange, admitting that, "...the ambass had big fixing so we help him today .."

Senior Euribor Trader-Submitter: **AIE AIE WE HAVE CONFLICT OF INTEREST HERE BETWEEN THE OVERKANT EN DEZE KANT²⁴ ... INCIDENT DIPLOMATIQUE!!!!**

Euro Trader 1: i propose an entente amicale²⁵ ..

Senior Euribor Trader-Submitter: OK I SEND THE AMBASSADOR BACK.....
1S WILL BE 38 ANYWAY BUT I PUT THE
3S TO 4.72

April 3, 2008:

Senior Euribor Trader-Submitter: SALUT FIXES ??

Euro Trader 1: fairly small, just low 3s pls.. merci!

Senior Euribor Trader-Submitter: OK AM OFF TILL 14TH [Euro Trader-Submitter 1] WILL TAKE CARE OF THIS ...

April 15, 2008: (emphasis added)

Senior Euribor Trader-Submitter: SALUT FIXES ?? LOW 3S AND HIGH 6S ??

Euro Trader 1: bonjour mademoiselle, **just low 3s pls**, others very small. ty!

Senior Euribor Trader-Submitter: BON

April 22, 2008: (emphasis added)

Senior Euribor Trader-Submitter: **HELLO LET'S CHEAT ON THE FIXES ??**

Euro Trader 1: morning! **only biggie is really low 3s**. much appreciated, as usual:)

May 7, 2008:

Senior Euribor Trader-Submitter: HIYA FIXES ??

Euro Trader 1: just low 3s pls, the rest very small. merci!

Senior Euribor Trader-Submitter: BON

May 8, 2008: (emphasis added)

Senior Euribor Trader-Submitter: **LET ME GUESS LOW 3S REST IS SMALL ??**

Euro Trader 1: **yes indeed, merci beaucoup!**

Senior Euribor Trader-Submitter: HAHHA EXPECTED BIT LOWER I'D SAY

²⁴ As translated from Dutch this phrase means: "other side and this side."

²⁵ As translated from French this phrase means: "friendly agreement."

May 28, 2008: (partially translated from Dutch)

Senior Euribor Trader-Submitter: FIXINGS ??

Euro Trader 1: voila, a nice one again:) low 3s and high 1 and 6s pls! [friendly thanks]..

Senior Euribor Trader-Submitter: [TOMORROW'S] 1S FIXING WILL BE VERY HIGH

June 3, 2008:

Senior Euribor Trader-Submitter: SALUT FIXES PLEASE ??

Euro Trader 1: ok, hold on tight; high 3s and 6s pls!!

Senior Euribor Trader-Submitter: HIGH >?? U SURE ??

Euro Trader 1: yes indeed only 3s not soo big and prob tomorrow low again so maybe dont spoil the pattern too much? thanks either way:)

Senior Euribor Trader-Submitter: OK [Euro Trader 1]

July 15, 2008:

Senior Euribor Trader-Submitter: ... FIXINGS ??

Euro Trader 1: hello! high 3s and 6s pls.. thanks for asking me again:)

August 28, 2008: (emphasis added)

Senior Euribor Trader-Submitter: HI I AM GOING FOR HIGH 1S TODAY
WHAT DO YOU NEED IN 3S AND 6S
PLEASE ??

Euro Trader 1: **low 3s high 6s pls! btw, whenever i say low 6s pls ignore me, we always need high 6s to keep the basis as wide as possible. thanks!**

September 24, 2008: (emphasis added)

Senior Euribor Trader-Submitter: hi high 3 and 6s

Euro Trader 1: today low 1s and 3s, high 6s pls:-) merci!

Senior Euribor Trader-Submitter: u got me confused here [Euro Trader 1]

Euro Trader 1: **always high 6s, and our fixings 1s and 3s are large enough today to want lower fixings there, 1s and 3s do change daily, if e.g. 3m is small then we go for high 3s to support your high 6s. bon?**

Senior Euribor Trader-Submitter: **allons bon..... a lesson in fixings !!!!**

September 26, 2008: (emphasis added)

Senior Euribor Trader-Submitter: bon! HIGH 6S AND ?

Euro Trader 1: morning! **low 3s pls, pretty big. 1m very small.muchos!**

Senior Euribor Trader-Submitter: **HM I NEED HIGH 3S MYSELF**

Euro Trader 1:

ok, we'll have to leave tha up to you. **monday we need low 3s** for very big, about 250k fixing delta! Thanks in advance

Senior Euribor Trader-Submitter:

OK I PUT IT AT 5.13 THAT IS 3 BP LOWER THAN EXPECTED BUT STILL HIGHER THAN YESTERDAY AND MONDAY WE ALL GO FOR 6 PVC 3S FIXING

Rabobank's Euribor submitters knew it was improper to consider traders' cash and derivatives trading positions in determining the bank's Euribor submissions. A panel bank's financial derivatives trading positions are not legitimate or permissible factors on which to base a bank's daily Euribor submissions. By basing its Euribor submissions upon Rabobank's derivatives traders' requests or their own positions, and thereby on Rabobank's derivatives trading positions, Rabobank's Euribor submissions were not consistent with the EBF's definitions and criteria for Euribor submissions. Instead, Rabobank conveyed false, misleading or knowingly inaccurate reports that its submitted rates for Euribor were based on and solely reflected the costs of borrowing unsecured funds in the Euro money market. Accordingly, Rabobank regularly attempted to manipulate and knowingly delivered false, misleading or knowingly inaccurate reports concerning Euribor, a commodity in interstate commerce.

IV.

LEGAL DISCUSSION

A. Rabobank Made False, Misleading or Knowingly Inaccurate Reports Concerning the Costs of Borrowing Unsecured Funds in Violation of Section 9(a)(2) of the Act

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).

On a daily basis, Rabobank, through the transmission of an electronic spreadsheet to the service provider of the BBA and EBF, who calculates their official fixings (*i.e.*, Thomson Reuters), knowingly delivered or caused to be delivered its U.S. Dollar, Yen and Sterling LIBOR and Euribor submissions through the mails or interstate commerce. Rabobank's submissions were also caused to be delivered through the mails or interstate commerce through the daily dissemination and publication globally, including into the United States, of the panel banks' submissions as well as the daily official benchmark interest rates by at least Thomson Reuters on behalf of the BBA and EBF, and other third party vendors. The panel banks' submissions are used to determine the official published rates for LIBOR and Euribor which are calculated based

on a trimmed average of the submissions. Rabobank's daily LIBOR and Euribor submissions contained market information concerning the costs of borrowing unsecured funds in particular currencies and tenors, the liquidity conditions and stress in the money markets, and Rabobank's ability to borrow funds in the particular markets. Such market information affects or tends to affect the prices of commodities in interstate commerce, including the daily rates at which U.S. Dollar, Yen and Sterling LIBOR and Euribor are fixed.

At times, during the periods relevant to the conduct described herein, Rabobank's submissions for certain tenors of U.S. Dollar, Yen and Sterling LIBOR and Euribor were false, misleading or knowingly inaccurate because they were based in whole or in part on impermissible and illegitimate factors, specifically Rabobank traders' cash and derivatives trading positions. By using these impermissible and illegitimate factors in making its LIBOR and Euribor submissions, Rabobank conveyed false, misleading or knowingly inaccurate information that the rates it submitted were based on and related solely to the costs of borrowing unsecured funds in the relevant markets and were truthful and reliable. Moreover, Rabobank traders, submitters and managers, including at least one senior manager, knew that certain Rabobank LIBOR and Euribor submissions contained false, misleading and knowingly inaccurate information concerning the submitted rates. By such conduct, Rabobank violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2006).

B. Rabobank Manipulated Yen LIBOR at Times for Certain Tenors

Together, Sections 6(c), 6(d) and 9(a)(2) of the Act prohibit acts of manipulation or attempted manipulation. Section 9(a)(2) of the Act makes it unlawful for "[a]ny person to manipulate or 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) (2006). Section 6(c) of the Act authorizes 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 . . . is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, . . . or otherwise is violating or has violated any of the provisions of [the] Act . . ." 7 U.S.C. § 9 (2006). Section 6(d) of the Act is substantially identical to Section 6(c). *See* 7 U.S.C. § 13b (2006).

Manipulation under the Act is the "intentional exaction of a price determined by forces other than supply or demand." *Frey v. CFTC*, 931 F.2d 1171, 1175 (7th Cir. 1991). The following four elements must be met, by a preponderance of the evidence, to show a successful manipulation has occurred:

- (1) the [respondent] had the ability to influence market prices;
- (2) the [respondent] specifically intended to do so;
- (3) artificial prices existed; and
- (4) the [respondent] caused an artificial price.

In re Cox, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,786, at 34,061 (CFTC July 15, 1987). The test for manipulation, however, is a practical one:

We think the test of manipulation must largely be a practical one if the purposes of the Commodity Exchange Act are to be accomplished. The methods and techniques of manipulation are limited only by the ingenuity of man. The aim must be therefore to discover whether conduct has been intentionally engaged in which has resulted in a price which does not reflect basic forces of supply and demand.

Cargill v. Hardin, 452 F.2d 1154, 1163 (8th Cir. 1971).

“[I]ntent is the essence of manipulation.” *Indiana Farm Bureau Cooperative Ass’n, Inc.*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep (CCH) ¶ 21,796, at 27,282 (CFTC Dec. 17, 1982). The manipulator’s intent separates “lawful business conduct from unlawful manipulative activity.” *Id.* at 27,283. To prove the intent element of manipulation, it must be shown that Rabobank “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.” *Id.*

The Commission has observed that “intent must of necessity be inferred from the objective facts and may, of course, be inferred by a person’s actions and the totality of the circumstances.” *In re Hohenberg Bros.*, [1975-1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,271, at 21,477 (CFTC Feb. 18, 1977). “[O]nce it is demonstrated that the alleged manipulator sought, by act or omission, to move the market away from the equilibrium or efficient price – the price which reflects market forces of supply and demand – the mental element of manipulation may be inferred.” *Indiana Farm Bureau Cooperative Ass’n, Inc.*, ¶ 21,796, at 27,283. “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 *United States v. United States Gypsum Co.*, 438 U.S. 442, 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.*, (CCH) ¶ 20,271, at 21,478)), *aff’d*, 364 Fed. Appx. 657, (2d Cir. 2009).

An artificial price (also termed a “distorted” price) is one “that does not reflect market or economic forces of supply and demand.” *In re Cox*, ¶ 23,786, at 34,064; *Indiana Farm Bureau Cooperative Ass’n, Inc.*, ¶ 21,796, at 27,288 n. 2. As the Commission noted with approval in *DiPlacido*, ¶ 30,970, at 62,484 (quoting *Indiana Farm Bureau Cooperative Ass’n, Inc.*, ¶ 21,796, at 27,300 (Commissioner Stone concurring)), a Commissioner has commented: “[t]his is more an axiom than a test.” In determining whether an artificial price has occurred:

[O]ne must look at the aggregate forces of supply and demand and search for those factors which are extraneous to the pricing system, are not a legitimate part of the economic pricing of the commodity, or are extrinsic to that commodity market. When the aggregate forces of supply and

demand bearing down on a particular market are all legitimate, it follows that the price will not be artificial. On the other hand when a price is effected by a factor which is not legitimate, the resulting price is necessarily artificial. Thus, the focus should not be as much on the ultimate price as on the nature of the factors causing it.

Indiana Farm Bureau Cooperative Ass'n, Inc., ¶ 21,796, at 27,288 n.2. *See also In re DiPlacido*, ¶ 30,970, at 62,484 (finding that the placement of uneconomic bids or offers results in artificial prices because those prices are not determined by the free forces of supply and demand on the exchange).

Causation of artificial prices is established when it is demonstrated that artificial market prices resulted from the conduct of a trader, or group of traders acting in concert, rather than legitimate forces of supply and demand. *See Cargill, Inc. v. Hardin*, 452 F.2d 1154, 1171-72 (8th Cir. 1971) (price squeeze “intentionally brought about and exploited by Cargill”); *In re Cox*, ¶ 23,786, at 34,067 (proof of causation requires the Division to show that “the respondents’ conduct ‘resulted in’ artificial prices”).

There can be multiple causes of an artificial price. *In re DiPlacido*, ¶ 30,970, at 62,485. The manipulator’s actions need not be the sole cause of the artificial price. “It is enough for purposes of a finding of manipulation in violation of Sections 6(b) and 9 of the Act that respondents’ action contributed to the price [movement].” *In re Kosuga*, 19 A.D. 603, 624 (1960); *see also In re Cox*, ¶ 23,786, at 34,066 (recognizing there can be multiple causes of an artificial price and holding that a charge of manipulation can be sustained where respondents’ acts are a proximate cause of the artificial price).

Here, as a member of the BBA’s Yen LIBOR panel, Rabobank made daily submissions that purported to reflect its assessments of the costs of borrowing unsecured funds in the London interbank market for Yen across tenors. The official LIBOR fixings are calculated using a trimmed average methodology applied to the rates submitted by the panel banks. By virtue of this methodology, Rabobank had the ability to influence or affect the rate that would become the official Yen LIBOR for any tenor.

As evidenced by the extensive communications and other facts set forth above, in making the false Yen LIBOR submissions, several Rabobank traders and submitters specifically intended to affect the daily Yen LIBOR for certain tenors, including the one-month, three-month, and six-month tenors. Their intent is also made clear by the evidence that the derivatives traders and submitters’ motives were to benefit Rabobank traders’ derivatives and at times cash trading positions, or, at times, the derivatives trading positions of other panel banks with whom certain Rabobank derivatives traders colluded.

On certain occasions, Rabobank’s false, misleading or knowingly inaccurate Yen LIBOR submissions were illegitimate factors in the pricing of the daily Yen LIBOR fixings and affected the official Yen LIBOR for certain tenors, resulting in artificial Yen LIBOR fixings. Thus, Rabobank’s actions were a proximate cause of the artificial Yen LIBOR fixings.

Accordingly, on certain occasions, Rabobank manipulated Yen LIBOR for certain tenors, commodities in interstate commerce, in violation of Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006).

C. Rabobank Attempted to Manipulate U.S. Dollar, Yen and Sterling LIBOR and Euribor

To prove attempted manipulation, two elements are required: (1) an intent to affect the market price; and (2) an overt act in furtherance of that intent. *See In re Hohenberg Bros. Co.* ¶ 20,271, at 21,477; *CFTC v. Bradley*, 408 F. Supp. 2d 1214, 1220 (N.D. Okla. 2005). The intent standard is the same as that for manipulation. *See Indiana Farm Bureau and Hohenberg Bros., supra.*

As found above, several Rabobank derivatives traders and submitters specifically intended to affect the rate at which the daily LIBOR for U.S. Dollar, Yen and Sterling, and the daily Euribor would be fixed to benefit Rabobank traders' derivatives trading and, at times, money market positions or to benefit the derivatives trading positions of colluding traders at other banks. The Rabobank derivatives traders' requests for beneficial LIBOR and Euribor submissions, and the Rabobank submitters making submissions based on those requests constitute overt acts in furtherance of their intent to affect the fixings of LIBOR for various currencies and the fixings of Euribor. By doing so, Rabobank engaged in repeated acts of attempted manipulation in violation of Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006).

D. Rabobank Aided and Abetted the Attempts of Traders at Other Banks to Manipulate Yen LIBOR and Euribor

Pursuant to Section 13(a) of the Act, certain Rabobank submitters aided and abetted the attempts of traders at other banks to manipulate Yen LIBOR and Euribor in violation of the Act, 7 U.S.C. § 13c(a) (2006). 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 In re 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 need not 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.*

As evidenced by the communications set forth above, certain Rabobank Yen LIBOR and Euribor submitters and submitters and derivatives traders at other panel banks coordinated about Yen LIBOR and Euribor submissions that would benefit their banks' respective cash and derivatives trading positions. At times, the traders at the other panel banks or brokers on behalf of traders at other banks asked Rabobank traders to submit a certain rate, or submit a rate in a direction higher or lower, that would benefit the cash and derivatives trading positions of the traders at the other panel banks. The Rabobank Yen LIBOR and Euribor submitters agreed and

submitted the requested preferential rates on various occasions. Accordingly, by seeking to affect the rates at which Yen LIBOR and Euribor were fixed, traders at the other banks attempted to manipulate Yen LIBOR and Euribor in violation of Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006). Certain Rabobank Yen LIBOR and Euribor submitters had knowledge of and intentionally assisted the attempts of the traders at the other banks to manipulate the rates at which LIBOR and Euribor were fixed. By such acts of those Rabobank Yen LIBOR and Euribor submitters, Rabobank aided and abetted the attempts of traders at other banks to manipulate LIBOR and Euribor in violation of Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2) (2006).

E. Rabobank Is Liable for the Acts of its Agents

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2012), provide that the 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 CEA and Commission Regulation 1.2, strict liability is imposed on principals for the actions of their 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).

Rabobank is liable for the acts, omissions and failures of the traders, managers and submitters who acted as its employees and/or agents in the conduct described above and accordingly, violated Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006), as set forth above.

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Rabobank violated Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006).

VI.

OFFER OF SETTLEMENT

Rabobank, without admitting or denying the findings or conclusions herein, except to the extent Rabobank admits those findings in any related action against Rabobank by, or any agreement with, the Department of Justice or any other governmental agency or office, 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 all matters set forth in this Order 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 service and filing 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 Rabobank may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission Regulations, 17 C.F.R. §§ 148.1-30 (2012), relating to, or arising from, this proceeding;
 - 7. any and all claims that Rabobank 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 Rabobank 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 Rabobank violated Section 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006);
 - 2. orders Rabobank to cease and desist from violating Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006);
 - 3. orders Rabobank to pay a civil monetary penalty in the amount of Four Hundred Seventy-Five Million U.S. Dollars (\$475,000,000) plus post-judgment interest; and

4. orders Rabobank 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.

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

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Rabobank shall cease and desist from violating Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006) of the Act.
- B. Rabobank shall pay a civil monetary penalty of Four Hundred Seventy-Five Million U.S. Dollars (\$475,000,000) within ten (10) days of the date of entry of this Order (the "CMP Obligation").²⁶ 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 (2006). Rabobank 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) 954-5644

If payment is to be made by electronic funds transfer, Rabobank shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Rabobank shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer,

²⁶ Effective June 18, 2008, the Act imposes a \$1,000,000 civil monetary penalty for each act of attempted and completed manipulation in violation of the Act. Many of Rabobank's violations of the Act for attempted and completed manipulation occurred after June 18, 2008.

Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- C. Rabobank and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer. Rabobank represents that it has already undertaken and implemented, or are implementing certain compliance and supervisory controls or enhancements consistent with these Undertakings:

1. PRINCIPLES²⁷

- i. Rabobank agrees to undertake the following: (1) to ensure the integrity and reliability of its Benchmark Interest Rate Submission(s), presently and in the future; and (2) to identify, construct and promote effective methodologies and processes of setting Benchmark Interest Rates, in coordination with efforts by Benchmark Publishers, in order to ensure the integrity and reliability of Benchmark Interest Rates in the future.
- ii. Rabobank represents and undertakes that each Benchmark Interest Rate Submission by Rabobank shall be based upon a rigorous and honest assessment of information, and shall not be influenced by internal or external conflicts of interest, or other factors or information extraneous to any rules applicable to the setting of a Benchmark Interest Rate.

2. INTEGRITY AND RELIABILITY OF BENCHMARK INTEREST RATE SUBMISSIONS

- i. DETERMINATION OF SUBMISSIONS: Rabobank shall determine its Submission(s) based on the following Factors, Adjustments and Considerations, unless otherwise prohibited by or contrary to an affirmative obligation imposed by any law or regulation, or the rules or definitions issued by a Benchmark Publisher. Rabobank's transactions

²⁷ The following terms are defined as follows:

Benchmark Interest Rate: An interest rate for a currency and maturity/tenor that is calculated based on data received from market participants and published to the market on a regular, periodic basis, such as LIBOR and Euribor;

Benchmark Publisher: A banking association or other entity that is responsible for or oversees the calculation and publication of a Benchmark Interest Rate;

Submission(s): The interest rate(s) submitted for each currency and maturity/tenor to a Benchmark Publisher. For example, if Rabobank submits a rate for one month and three month U.S. Dollar LIBOR, that would constitute two Submissions;

Submitter(s): The person(s) responsible for determining and/or transmitting the Submission(s); and

Supervisor(s): The person(s) immediately and directly responsible for supervising any portion of the process of Submission(s) and/or any of the Submitter(s).

shall be given the greatest weight in determining its Submissions, subject to applying appropriate Adjustments and Considerations in order to reflect the market measured by the Benchmark Interest Rate.²⁸

Rabobank shall determine its Submissions as described in these Undertakings within fourteen (14) days of the entry of this Order.

- Factor 1 — Rabobank’s Borrowing or Lending Transactions Observed by Rabobank’s Submitters:
 - a. Rabobank’s transactions in the market as defined by the Benchmark Publisher for the particular Benchmark Interest Rate;
 - b. Rabobank’s transactions in other markets for unsecured funds, including, but not limited to, certificates of deposit and issuances of commercial paper; and
 - c. Rabobank’s transactions in various related markets, including, but not limited to, Overnight Index Swaps, foreign currency forwards, repurchase agreements, futures, and Fed Funds.

- Factor 2 — Third Party Transactions Observed by Rabobank’s Submitters:
 - a. Transactions in the market as defined by the Benchmark Interest Rate relevant to each of the Submission(s);
 - b. Transactions in other markets for unsecured funds, including, but not limited to, certificates of deposit and issuances of commercial paper; and
 - c. Transactions in various related markets, including, but not limited to, Overnight Index Swaps, foreign currency forwards, repurchase agreements, futures, and Fed Funds.

- Factor 3 — Third Party Offers Observed by Rabobank’s Submitters:
 - a. Third party offers to Rabobank in the market as defined by the Benchmark Publisher relevant to each of the Submission(s);

²⁸ The rules used by Benchmark Publishers to determine Benchmark Interest Rates vary, may not be consistent with each other, and provide different levels of guidance as to how to make Submissions.

- b. Third party offers in other markets for unsecured funds, including, but not limited to, certificates of deposit and issuances of commercial paper, provided to Rabobank by interdealer brokers (*e.g.*, voice brokers); and
 - c. Third party offers provided to Rabobank in various related markets, including, but not limited to, Overnight Index Swaps, foreign currency forwards, repurchase agreements, and Fed Funds.
- Adjustments and Considerations: All of the following Adjustments and Considerations may be applied with respect to each of the Factors above:
- a. Time: With respect to the Factors considered above, proximity in time to the Submission(s) increases the relevance of that Factor;
 - b. Market Events: Rabobank may adjust its Submission(s) based upon market events, including price variations in related markets, that occur prior to the time at which the Submission(s) must be made to the Benchmark Publisher. That adjustment shall reflect measurable effects on transacted rates, offers or bids;
 - c. Term Structure: As Rabobank applies the above Factors, if Rabobank has data for any maturity/tenor described by a Factor, then Rabobank may interpolate or extrapolate the remaining maturities/tenors from the available data;
 - d. Credit Standards: As Rabobank applies the above Factors, adjustments may be made to reflect Rabobank's credit standing and/or the credit spread between the market as defined by the Benchmark Publisher and transactions or offers in the related markets used in the Factors above. Additionally, Rabobank may take into account counterparties' credit standings, access to funds, and borrowing or lending requirements, and third party offers considered in connection with the above Factors; and
 - e. Non-representative Transactions: To the extent a transaction included among the Factors above significantly diverges in an objective manner from other transactions, and that divergence is not due to market events as addressed above, Rabobank may exclude such transactions from its determination of its Submission(s).

- ii. SUPERVISOR(S) REVIEW: Effective within fourteen (14) days of the entry of this Order, each daily Submission shall be reviewed by a Supervisor on a daily basis after the Submission(s) are made to the Benchmark Publisher.
- iii. QUALIFICATIONS OF SUBMITTER(S) AND SUPERVISOR(S): All Submitter(s) shall have significant experience in the markets for the Benchmark Interest Rate to which they are submitting or a comparable market, but may designate less experienced parties, who routinely work under their supervision, to make Submission(s) during limited periods of absence. All Supervisors shall have significant experience in the markets for the relevant Benchmark Interest Rate or a comparable market. Submitters, Supervisors and any parties designated to make Submission(s) when the Submitter(s) are absent shall not be assigned to any derivatives trading desk, unit or division within Rabobank, or participate in derivatives trading other than that associated with Rabobank's liquidity and liability management. The compensation of Submitter(s) and Supervisor(s) also shall not be directly based upon derivatives trading, other than that associated with Rabobank's liquidity and liability management.
- iv. FIREWALLS: INTERNAL CONTROLS REGARDING IMPROPER COMMUNICATIONS AND SUBMISSIONS: Rabobank shall implement internal controls and procedures to prevent improper communications with Submitter(s) and Supervisor(s) regarding Submission(s) or prospective Submission(s) to ensure the integrity and reliability of its Submission(s). Such internal controls and procedures shall include, but not be limited to:
- The "firewalls" contemplated herein will be implemented through written policies and procedures that delineate proper and improper communications with Submitter(s) and Supervisor(s), whether internal or external to Rabobank. For these purposes, improper communications shall be any attempt to influence Rabobank's Submission(s) for the benefit of any derivatives trading position (whether of Rabobank or any third party) or any attempt to cause Rabobank's Submitter(s) to violate any applicable Benchmark Publisher's rules or definitions, or Section 2 of these Undertakings; and
 - A requirement that the Submitter(s) shall not be located in close proximity to traders who primarily deal in derivatives products that reference a Benchmark Interest Rate to which Rabobank contributes any Submission(s). The two groups should be separated such that neither can hear the other.

- v. DOCUMENTATION: Rabobank shall provide the documents set forth below promptly and directly to the Commission upon request, without subpoena or other process, regardless of whether the records are held outside of the United States, to the extent permitted by law.
- For each Submission, Rabobank shall contemporaneously memorialize, and retain in an easily accessible format for a period of five (5) years after the date of each Submission, the following information:
 - a. The Factors, Adjustments and Considerations described in Section 2(i) above that Rabobank used to determine its Submission(s), including, but not limited to, identifying any non-representative transactions excluded from the determination of the Submission(s) and the basis for such exclusions, as well as identifying all transactions given the greatest weight or considered to be the most relevant, and the basis for such conclusion;
 - b. All models or other methods used in determining Rabobank's Submission(s), such as models for credit standards and/or term structure, and any adjustments made to the Submission(s) based on such models or other methods;
 - c. Relevant data and information received from interdealer brokers used in connection with determining Rabobank's Submission(s) including, but not limited to, the following:
 - Identification of the specific offers and bids relied upon by Rabobank when determining each Submission; and
 - The name of each company and person from whom the information or data is obtained;
 - d. Rabobank's assessment of "reasonable market size" for its Submission(s) (or any other such criteria for the relevancy of transactions to a Benchmark Interest Rate), to the extent that the rules for a Benchmark Interest Rate require that pertinent transactions considered in connection with Submission(s) be of "reasonable market size" (or any other such criteria);
 - e. Information regarding market events considered by Rabobank in connection with determining its Submission(s), including, without limitation, the following:

- The specific market announcement(s) or event(s); and
 - Any effect of such market event(s) on transacted rates, offers or bids in the relevant markets; and
- f. The identity of the Submitter(s) who made, and the Supervisor(s) who reviewed, the Submission(s).
- For each Submission, Rabobank shall retain for a period of five (5) years after the date of each Submission, the following transactional data used by Rabobank to determine its Submission(s); the data shall be easily accessible and convertible into Microsoft Excel file format; the data shall include, without limitation, the following to the extent known to Rabobank at the time of the Submission(s):
- a. Instrument;
 - b. Maturity/tenor;
 - c. Trade type (*i.e.*, loan/deposit, placing/taking);
 - d. Buy/sell indicator;
 - e. Transaction date (in mmddyyyy format);
 - f. Maturity date (in mmddyyyy format);
 - g. Value date (in mmddyyyy format);
 - h. Loan effective date;
 - i. Customer number;
 - j. Currency;
 - k. Ticket ID;
 - l. Timestamp;
 - m. Counterparty A (buyer/bidder);
 - n. Counterparty B (seller/offeror);
 - o. Nominal/notional size of the transaction;
 - p. Interest basis (360/365 day year);
 - q. The fixed interest rate; and
 - r. Any special or additional terms (*e.g.*, a repurchase agreement or some form of “non-vanilla agreement”).
- Transaction Records: Rabobank shall retain for a period of five (5) years trade transaction records and daily position and risk reports, including (without limitation) monthly and quarterly position and risk reports, related to the trading activities of Submitter(s) and traders who primarily deal in derivatives products that reference a Benchmark Interest Rate; the records and reports shall be easily accessible and convertible into Microsoft Excel file format.

- Requirement To Record Communications: Rabobank shall record and retain to the greatest extent practicable all of the following communications:
 - a. All communications concerning the determination and review of the Submission(s); and
 - b. All communications of traders who primarily deal in derivatives products that reference a Benchmark Interest Rate concerning trades, transactions, prices, or trading strategies pertaining to any derivative that references any Benchmark Interest Rate (or the supervision thereof).

The above communications shall not be conducted in a manner to prevent Rabobank from recording such communications;

Audio communications of Submitters and Supervisors shall be retained for a period of one (1) year. Audio communications of traders who primarily deal in derivatives products that reference a Benchmark Interest Rate, and who are located in the New York, London, Utrecht, Tokyo, Singapore, and Hong Kong offices of Rabobank, shall be retained for a period of six (6) months. Subject to a reasonable time to implement, Rabobank's audio retention requirements pursuant to these Undertakings shall commence within a reasonable period after the entry of this Order and shall continue for a period of five (5) years thereafter;

All communications except audio communications shall be retained for a period of five (5) years; and

Nothing in these Undertakings shall limit, restrict or narrow any obligations pursuant to the Act or the Commission Regulations promulgated thereunder, including but not limited to Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31 and 1.35 (2012), in effect now or in the future.

vi. MONITORING AND AUDITING:

- Monitoring: Rabobank shall maintain or develop monitoring systems or electronic exception reporting systems that identify possible improper or unsubstantiated Submissions. Such reports will be reviewed on at least a weekly basis and if there is any significant deviation or issues, the underlying documentation for the Submission shall be reviewed to determine whether the Submission is adequately substantiated. If it is not substantiated, Rabobank shall notify its chief compliance officer(s) and the Benchmark Publisher;

- Periodic Audits: Starting six (6) months from the date of the entry of this Order, and continuing every six (6) months thereafter, unless an annual audit is scheduled at the same time, Rabobank shall conduct internal audits of reasonable, random samples of its Submission(s), the factors and all other evidence documenting the basis for such Submission(s), and communications of the Submitter(s) in order to verify the integrity and reliability of the process for determining Submission(s); and
 - Annual Audits By Third Party Auditors: Starting one (1) year from the date of the entry of this Order, and continuing annually for four (4) additional years thereafter, Rabobank shall retain an independent, third-party auditor to conduct an audit of its Submission(s) and the process for determining Submission(s), which shall include, without limitation, the following:
 - a. Reviewing communications of Submitter(s) and Supervisor(s);
 - b. Interviewing the Submitter(s) and Supervisor(s), to the extent they are still employed by Rabobank;
 - c. Obtaining written verification from the Submitter(s) and Supervisor(s), to the extent they are still employed by Rabobank, that the Submission(s) were consistent with this Order, the policies and procedures in place for making Rabobank's Submission(s), and the definitions applicable to the Benchmark Interest Rate for which Rabobank made Submission(s); and
 - d. A written audit report to be provided to Rabobank and the Commission (with copies addressed to the Commission's Division of Enforcement (the "Division")).
- vii. POLICIES, PROCEDURES AND CONTROLS: Within sixty (60) days of the entry of this Order, Rabobank shall develop policies, procedures and controls to comply with each of the specific Undertakings set forth above with the goal of ensuring the integrity and reliability of its Submission(s). In addition, Rabobank shall develop policies, procedures and controls to ensure the following:
 - The supervision of the Submission process;
 - That any violations of the Undertakings or any questionable, unusual or unlawful activity concerning Rabobank's Submissions are reported to and investigated by Rabobank's compliance or

legal personnel and reported, as necessary, to authorities and the Benchmark Publishers;

- The periodic but routine review of electronic communications and audio recordings of or relating to the Submission Process;
- Not less than monthly, the periodic physical presence of compliance personnel on the trading floors of the Submitter(s) and/or traders who primarily deal in derivatives products that reference a Benchmark Interest Rate in connection with these Policies, Procedures and Controls;
- The handling of complaints concerning the accuracy or integrity of Rabobank's Submission(s) including:
 - a. Memorializing all such complaints;
 - b. Review and follow-up by the chief compliance officer(s) or his designee of such complaints; and
- The reporting of material complaints to the Chief Executive Officer and Board of Directors, relevant self-regulatory organizations, the relevant Benchmark Publisher, the Commission, and/or other appropriate regulators.

viii. TRAINING: Rabobank shall develop training programs for all employees who are involved in its Submission(s), including, without limitation, Submitters and Supervisors, and all traders who primarily deal in derivatives products that reference a Benchmark Interest Rate. Submitters and Supervisors shall be provided with preliminary training regarding the policies, and procedures and controls developed pursuant to Section 2(vii) of these Undertakings. By no later than March 30, 2014, all Submitters, Supervisors, and traders who primarily deal in derivatives products that reference a Benchmark Interest Rate shall be fully trained in the application of these Undertakings to them, as set forth herein. Thereafter, such training will be provided promptly to employees newly assigned to any of the above listed responsibilities, and again to all Submitters, Supervisors and traders who primarily deal in derivatives products that reference a Benchmark Interest Rate as part of Rabobank's regular training programs. The training shall be based upon the individual's position and responsibilities, and as appropriate, address the following topics:

- The Undertakings set forth herein;
- The process of making Submission(s);

- The impropriety of attempting to influence the determination of Rabobank's Submission(s);
- The requirement to conduct all business related to Rabobank's Submission(s) on Rabobank's recorded telephone and electronic communications systems, and not on personal telephones or other electronic devices, as set forth in Section 2(v) of these Undertakings;
- The requirement to conduct certain business related to derivatives products that reference a Benchmark Interest Rate on Rabobank's recorded telephone and electronic communications systems, and not on personal devices or systems, as set forth in Section 2(v) of these Undertakings;
- The policies and procedures developed and instituted pursuant to these Undertakings; and
- The employment and other potential consequences if employees act unlawfully or improperly in connection with Rabobank's Submission(s) or process for determining Submission(s).

ix. REPORTS TO THE COMMISSION:

- Compliance with Undertakings: Every four (4) months, starting 120 days from the entry of this Order, Rabobank shall make interim reports to the Commission, through the Division, explaining its progress towards compliance with the Undertakings set forth herein. Within 365 days of the entry of this Order, Rabobank shall submit a report to the Commission, through the Division, explaining how it has complied with the Undertakings set forth herein. The report shall attach copies of and describe the internal controls, policies and procedures that have been designed and implemented to satisfy the Undertakings. The report shall contain a certification from a representative of Rabobank's Executive Management, after consultation with Rabobank's chief compliance officer(s), that Rabobank has complied with the Undertakings set forth above, and that it has established policies, procedures and controls to satisfy the Undertakings set forth in this Order;
- Submitter(s), Supervisor(s), and Heads of Appropriate Trading Desks: Within fourteen (14) days of the entry of this Order, or as soon as practicable thereafter, Rabobank shall provide, meet with and explain these Undertakings to all Submitters, Supervisors and the head of each trading desk that primarily deals in derivatives that reference a Benchmark Interest Rate. Within that same time

frame, Rabobank shall provide to the Commission, through the Division, written or electronic affirmations signed by each Submitter, Supervisor, and head of each trading desk that primarily deals in derivatives that reference a Benchmark Interest Rate, stating that he or she has received and read the Order and Undertakings herein, and that he or she understands these Undertakings to be effective immediately; and

- Disciplinary and Other Actions: Rabobank shall promptly report to the Commission, through the Division, all improper conduct related to any Submission(s) or the attempted manipulation or manipulation of a Benchmark Interest Rate, as well as any disciplinary action, or other law enforcement or regulatory action related thereto, unless *de minimis* or otherwise prohibited by applicable laws or regulations.

3. DEVELOPMENT OF RIGOROUS STANDARDS FOR BENCHMARK INTEREST RATES

To the extent Rabobank is or remains a contributor to any Benchmark Interest Rate, Rabobank agrees to make its best efforts to participate in efforts by current and future Benchmark Publishers, other price reporting entities and/or regulators to ensure the reliability of Benchmark Interest Rates, and through its participation to encourage the following:

- i. METHODOLOGY: Creating rigorous methodologies for the contributing panel members to formulate their Submissions. The aim of such methodologies should be to result in a Benchmark Interest Rate that accurately reflects the rates at which transactions are occurring in the market being measured by that Benchmark Interest Rate;
- ii. VERIFICATION: Enforcing the use of those methodologies through an effective regime of documentation, monitoring, supervision and auditing, required by and performed by the Benchmark Publishers, and by the contributing panel members internally;
- iii. INVESTIGATION: Facilitating the reporting of complaints and concerns regarding the accuracy or integrity of Submissions to Benchmark Interest Rates or the published Benchmark Interest Rate, and investigating those complaints and concerns thoroughly;
- iv. DISCIPLINE: Taking appropriate action if, following a thorough confidential investigation, the Benchmark Publisher determines that a complaint or concern regarding the accuracy or integrity of a Submission or the published Benchmark Interest Rate has been substantiated;

- v. TRANSPARENCY: Making regular reports to the public and the markets of facts relevant to the integrity and reliability of each Benchmark Interest Rate. Such reports should include, but not be limited to, the following:
- At the time each Benchmark Interest Rate is published, the Benchmark Publisher should display prominently whether each rate is based entirely on transactions in the market the rate is supposed to reflect, or whether it instead is based, in whole or in part, on other data or information;
 - The Benchmark Publisher also should make periodic reports regarding the number and nature of complaints and concerns received regarding the accuracy or integrity of Submissions or the published Benchmark Interest Rate while maintaining the anonymity of all those who have reported or are the subject of complaints and concerns;
 - The Benchmark Publisher should additionally make periodic reports regarding the results of all investigations into such complaints and concerns while maintaining the anonymity of all those involved in investigations that have not yet been completed; and
- vi. FORMULATION: Periodically examining whether each Benchmark Interest Rate accurately reflects the rate at which transactions are occurring in the market being measured (using the statistical method prescribed by that Benchmark Interest Rate), and evaluating whether the definition and instructions should be revised, or the composition of the panel changed;

Such examinations should include a rigorous mathematical comparison of transactions in the relevant market with the published Benchmark Interest Rate on the same day over a specified period, and a determination of whether any differences are statistically or commercially significant.

Every four (4) months, starting 120 days from the entry of this Order, Rabobank shall report to the Commission, through the Division, either orally or in writing, on its participation in such efforts, to the extent that such reporting is not otherwise prohibited by law or regulations, by the rules issued by Benchmark Publishers, or by nondisclosure agreements by and between Rabobank and Benchmark Publishers.

4. COOPERATION WITH THE COMMISSION

- i. Rabobank shall cooperate fully and expeditiously with the Commission, including the Division, and any other governmental agency in this action, and in any investigation, civil litigation or administrative matter related to

the subject matter of this action or any current or future Commission investigation related thereto. As part of such cooperation, Rabobank agrees to the following for a period of five (5) years from the date of the entry of this Order, or until all related investigations and litigation are concluded, including through the appellate review process, whichever period is longer:

- 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;
 - Subject to applicable laws and regulations, comply fully, promptly, completely, and truthfully with all inquiries and requests for information or documents;
 - Provide authentication of documents and other evidentiary material;
 - Subject to applicable laws and regulations, provide copies of documents within Rabobank's possession, custody or control;
 - Subject to applicable laws and regulations, Rabobank will make its best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of Rabobank, 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
 - Subject to applicable laws and regulations, Rabobank 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 Rabobank;
- ii. Rabobank also agrees that it will not undertake any act, other than as required by applicable law, that would limit its ability to cooperate fully with the Commission. Rabobank 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 Rabobank 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; and

- iii. Rabobank and the Commission agree that nothing in these Undertakings shall be construed so as to compel Rabobank to continue to contribute Submission(s) related to any Benchmark Interest Rate. Without prior consultation with the Commission, Rabobank remains free to withdraw from the panel of contributors to any Benchmark Interest Rate.

5. PROHIBITED OR CONFLICTING UNDERTAKINGS

Should the Undertakings herein be prohibited by, or be contrary to the provisions of any obligations imposed on Rabobank by any presently existing, or hereinafter enacted or promulgated laws, regulations, regulatory mandates, or the rules or definitions issued by a Benchmark Publisher, then Rabobank 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, Rabobank 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 Regulations promulgated thereunder, including but not limited to Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31 and 1.35 (2012), in effect now or in the future.

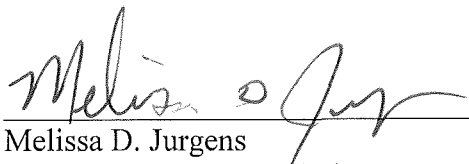
6. PUBLIC STATEMENTS

Rabobank agrees that neither it nor any of its successors and assigns, agents or employees under their 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 Rabobank's (i) testimonial obligations, or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Rabobank and its successors and assigns shall undertake all steps necessary to ensure that all of their agents and/or employees under its authority or control understand and comply with this agreement.

- D. Partial Satisfaction: Rabobank understands and agrees that any acceptance by the Commission of partial payment of Rabobank'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.

A handwritten signature in black ink, appearing to read "Melissa D. Jurgens", written over a horizontal line.

Melissa D. Jurgens
Secretary of the Commission
Commodity Futures Trading Commission

Dated: October 29, 2013