



UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:)
)
Société Générale S. A.)
) CFTC Docket No. 18 -14
Respondent.)
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_____)

**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 Société Générale S.A. (“Respondent”, “the Bank”, or “Société Générale”) has violated Sections 6(c), 6(d), and 9(a)(2) of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 9, 13b, 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 Respondent engaged in the violations set forth herein, and to determine whether any order shall be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying the findings or conclusions herein, except to the extent that Respondent admits those findings in any related action against Société Générale by, or any agreement with, the Department of Justice or any other governmental agency or office, Respondent 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 use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

III.

The Commission finds the following:

A. Summary

For more than six years, from 2006 through mid-2012 (the “Relevant Period”), Société Générale, by and through its traders and management, committed acts of attempted manipulation of, and made false, misleading or knowingly inaccurate reports of market information in connection with, the London Interbank Offered Rate (“LIBOR”) for U.S. Dollar, Yen, and the Euro and the Euro Interbank Offered Rate (“Euribor”). In certain instances, Société Générale successfully manipulated LIBOR for Yen. Société Générale’s actions undermined the integrity of these critical, global benchmark interest rates and the integrity of the U.S, and global financial markets.

LIBOR and Euribor are leading short-term interest rate benchmarks intended to reflect the costs of borrowing unsecured funds in certain interbank markets. LIBOR and Euribor form the basis for the pricing of trillions of dollars of financial instruments, including U.S. based, exchange traded futures contracts and swaps transactions. The Eurodollar futures contract traded on the Chicago Mercantile Exchange (“CME”) is one of the largest futures contracts in the world based on open interest and notional volume and settles against U.S. Dollar LIBOR. Markets, investors, and consumers in the United States and around the world rely on the integrity of these benchmark interest rates.

LIBOR and Euribor are fixed each day based on rates submitted by a select panel of banks. Société Générale is a member of the panel of banks for Euribor and certain LIBOR currencies, including Yen and Euro and, formerly, U.S. Dollar. In determining what rates to submit, each panel bank is to make an honest assessment of the costs of borrowing unsecured funds in the relevant markets. Benchmark interest rate submissions thus convey market information about the costs of borrowing unsecured funds in particular currencies and tenors, the liquidity conditions and stress in the money markets, and a bank’s ability to borrow funds in the particular markets. The profitability of a bank’s trading positions or a bank’s reputational concerns are not legitimate or permissible factors on which to base, in whole or in part, a bank’s daily LIBOR or Euribor submissions. Yet, at various times throughout the Relevant Period, Société Générale based its U.S. Dollar LIBOR, Yen LIBOR, Euro LIBOR, and Euribor submissions on those improper factors.

From May 2010 through mid-2012, during a period of market strain due to the Greek sovereign debt crisis to which Société Générale had exposure, Société Générale engaged in a scheme to protect its reputation from speculation that it was having more difficulty borrowing unsecured funds than other banks. Société Générale’s London and Paris Treasury Desks were responsible for making the Bank’s LIBOR and Euribor submissions. In or about May 2010, Société Générale’s Paris Treasury Desk made U.S. Dollar LIBOR submissions that were consistently higher than the submissions of many other panel banks, reflecting to the market that Société Générale was paying higher interest rates than other banks in order to borrow unsecured funds. This garnered attention by the press and market analysts. At an executive management

meeting in May 2010, certain members of Société Générale's executive management negatively reacted to this unwanted attention. They were concerned that Société Générale's high U.S. Dollar LIBOR submissions relative to other panel banks' submissions were creating the impression that Société Générale was struggling to finance itself and thus harming Société Générale's reputation in the market. Following that meeting, Société Générale's Global Head of Treasury, who was in attendance at the meeting to report to executive management, and whose staff was responsible for the Bank's submissions, conveyed the concerns of at least certain members of executive management to the managers and traders on the Treasury desks and instructed them to lower the LIBOR submissions to ensure that there was no further scrutiny or reaction from the press or market analysts. Société Générale's practice of making LIBOR submissions at rates that were lower than its actual costs of borrowing unsecured funds for the impermissible purpose of protecting its reputation continued through mid-2012 for U.S. Dollar and July 2010 for Euro. During the end of May 2010, because Euribor tended to move in tandem with Euro LIBOR, Société Générale also knowingly submitted false and inaccurate rates for Euribor to ensure that there was not a wide spread that might separately draw unwanted attention.

In or around early 2011, as scrutiny of panel banks' LIBOR submissions practices intensified and Société Générale's fear of exposure grew, Société Générale implemented a plan to gradually raise its U.S. Dollar LIBOR submissions to better reflect its cost of borrowing funds. Société Générale's plan was to gradually increase its submissions so that the Bank might avoid any market reaction, which likely would have occurred if it immediately raised its submissions to the appropriate rates. Société Générale's submissions, however, continued to be below its borrowing costs into the spring of 2011, but as media and market regulators' focus on the LIBOR submissions practices of panel banks continued to intensify, Société Générale began to submit mostly near or above its borrowing costs. However, by mid-Summer of that year, the Bank again began to improperly depress its submissions.

Throughout this period, Société Générale initiated steps to conceal its ongoing misconduct, including considering providing fictitious borrowing costs data to the LIBOR administrator to justify its LIBOR submissions. The Heads of Paris Treasury and London Treasury discussed dissembling and justifying aberrant deals done at levels above their submissions by claiming they were special commercial relationships. At times, members of the Paris Treasury Desk, including its managers, joked about going to jail because of the Bank's specious LIBOR submissions. Finally, members of Société Générale's Paris Treasury Desk discussed attempting to mask the Bank's true costs of funding and its artificially low LIBOR submission by sending knowingly false bids for funding into the market.

At various times, from 2006 through May 2010, Société Générale, through acts of its traders and certain senior Treasury managers, also took into account the Bank's money market or derivatives trading positions when making the Bank's U.S. Dollar, Yen, and Euro LIBOR and Euribor submissions in an attempt to manipulate the fixings in order to benefit the Bank's trading positions. At times, Société Générale was successful in manipulating Yen LIBOR. Further, certain Société Générale employees made submission requests to aid and abet certain Barclays derivatives traders attempting to manipulate the Euribor fixing. The Bank's Treasury desks were profit centers for the Bank and the Treasury desks' employees' compensation was based in part

on the desks' profitability. Treasury's responsibility and motivation to stay profitable combined with its duties to make LIBOR submissions created an inherent conflict of interest to skew LIBOR submissions in favor of its cash and derivative positions tied to LIBOR.

By basing its LIBOR and Euribor submissions on improper considerations other than the cost of borrowing unsecured funds, Société Générale knowingly conveyed false, misleading, or knowingly inaccurate reports that its submitted rates for U.S. Dollar LIBOR, Yen LIBOR, Euro LIBOR, and Euribor were based on and solely reflected the costs of borrowing unsecured funds in the relevant interbank markets.

Société Générale's lack of internal controls, procedures, and policies concerning its LIBOR and Euribor submission processes and its failure to adequately supervise its money market and derivatives trading desks and traders allowed this misconduct to occur. Société Générale did not have policies, internal controls, or procedures for determining or monitoring its benchmark interest rate submissions to ensure that the Bank's LIBOR and Euribor submissions were appropriately submitted based on an assessment of the costs of borrowing unsecured funds in the relevant interbank markets. Société Générale's failure to provide internal training or implement standards around its LIBOR and Euribor submissions, to prohibit inappropriate communications between traders and submitters, and to recognize and monitor obvious conflicts of interest, all led to a culture of misconduct and permitted such misconduct to continue for a number of years.

Certain Conduct Occurred After Société Générale Was on Notice of the CFTC Investigation

Société Générale engaged in misconduct even after it knew that the Commission was investigating the Bank's Euribor and LIBOR submission practices. Société Générale received demands for documents and information regarding the bank's Euribor and LIBOR submissions from the Commission's Division of Enforcement in July and September 2011. Even though Société Générale executive management and senior Treasury managers knew of this investigation, Société Générale continued to make U.S. Dollar LIBOR submissions at rates lower than its costs of borrowing funds and thus prioritized preserving the Bank's reputation over solely and accurately reflecting Société Générale's costs of borrowing unsecured funds in the London interbank market.

In accepting Société Générale's offer, the Commission recognizes the significant cooperation Société Générale provided to the Division of Enforcement in its investigation of this matter, including identifying and disclosing additional specific misconduct in responding to the Division's requests for documents and information.

B. Respondent

Société Générale S.A. is a French multinational banking and financial services company headquartered in Paris with offices across the globe including offices in Paris, London, Tokyo, and New York. It has been provisionally registered with the Commission as a swap dealer since

December 31, 2012. Société Générale offers global transaction bank, international retail banking, corporate and investment banking, and other financial services throughout the world.

C. Facts

1. LIBOR and the Fixing of LIBOR

LIBOR has been the most widely used benchmark interest rate in the world and affects market participants and consumers throughout the world, including in the United States. LIBOR is used as a barometer to measure strain in money markets and is often a gauge of the market's expectation of future central bank interest rates. LIBOR is used in interest rate transactions, including loans, over-the-counter swaps, and exchange-traded interest rate futures and options contracts. For example, U.S. Dollar LIBOR is used as the basis for settlement of the CME's Eurodollar futures contracts. The products indexed to LIBOR have an approximate notional value of \$350 trillion.

During the Relevant Period, under the auspices of the British Bankers' Association ("BBA"),² LIBORs were issued on a daily basis for ten currencies, including Euro, U.S. Dollar, and Yen, with fifteen tenors (*i.e.*, durations for interest rates) ranging from overnight through twelve months. Certain currencies, such as Euro, U.S. Dollar, and Yen, are more widely 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 contributed in accordance with the Instructions to BBA LIBOR Contributor banks." The BBA explained that:

[a]n individual BBA LIBOR Contributor Panel Bank will 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].³

Every business day during the periods relevant herein, shortly before 11:00 a.m. London time, the banks on the LIBOR panels submitted their rates to Thomson Reuters. A trimmed averaging process excluded the top and bottom quartile of rates and the remaining rates were averaged for each tenor. That averaged rate became the official BBA daily LIBOR (the "LIBOR fixing") for each tenor.

The BBA made public the daily LIBOR fixing for each currency and tenor, as well as the daily submissions of each panel bank, through Thomson Reuters and other data vendors licensed

² On February 1, 2014, ICE Benchmark Administration Limited was appointed as the new administrator for LIBOR, following authorization by the U.K. Financial Conduct Authority ("FCA").

³ This definition of LIBOR was used beginning in 1998 and throughout the Relevant Period.

by the BBA. This information was made available and relied upon by market participants and others throughout the world, including in the United States.

2. Euribor and Its Fixing

Euribor is used internationally in derivatives contracts, including interest rate swaps and futures contracts.⁴ According to the Bank for International Settlements, over-the-counter interest rate derivatives, such as swaps and FRAs, comprised contracts worth over \$148 trillion in notional value at the end of 2012.

During the Relevant Period, Euribor was issued daily on behalf of the European Banking Federation (“EBF”)⁵ 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’s instructions, panel banks “must quote the required [E]uro rates 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 12:00 p.m. 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 interbank and European prime bank markets. These definitions require that submissions relate to funding and do not permit

⁴ In October 2011, the Chicago Mercantile Exchange launched the Euribor futures contract, which settles based on the three-month Euribor.

⁵ 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.

consideration of factors unrelated to the costs of borrowing unsecured funds, such as derivatives trading positions or concerns about reputational harm or negative media attention.

3. Société Générale's LIBOR and Euribor Submission Process

Société Générale was a member of the Yen and Euro LIBOR and Euribor panel throughout the Relevant Period, and was added to the U.S. Dollar LIBOR panel in February 2009. The Treasury desk located in Paris ("Paris Treasury Desk") had the responsibility for calculating the Bank's daily LIBOR submissions for Euro and U.S. Dollar and for the Euribor Submission. The Bank's Treasury desk located in London ("London Treasury Desk") made the LIBOR submissions for Yen. The Global Head of Treasury was responsible for the oversight and supervision of both Treasury desks and reported indirectly to the Head of Société Générale Investment Banking ("Head of SCIB") and for limited purposes to Société Générale's Chief Financial Officer ("CFO"). However, the Global Head of Treasury often discussed her concerns over the Bank's inaccurate LIBOR submissions directly with the Head of SCIB and the CFO.

Société Générale's Treasury desks were considered profit centers as well as a funding source for the Bank. Each Treasury desk was comprised of money market traders who primarily dealt in borrowing and lending transactions. This included transacting in the interbank cash market and certificate of deposit markets. The Treasury desk traders also engaged in derivatives trading to hedge risk related to the Bank's deposits and loans. Variable interest rate loans and deposits as well as derivatives positions were often tied to corresponding tenors in LIBOR and Euribor. Therefore, positive and negative fluctuations in LIBOR and Euribor affected each desk's trading book, depending upon their overall positions.

Treasury was evaluated in part on its profitability which, accordingly, was taken into account when calculating the bonuses for the desk's personnel. Treasury desk traders knew that the profitability of the desks' trades could impact their evaluations and personal compensation.

Certain members of the Treasury desks were responsible for making the Bank's U.S. Dollar LIBOR submissions, others were responsible for the Bank's Euro LIBOR and Euribor submissions, and others yet were responsible for the Bank's Yen LIBOR submissions. While one Treasury Desk trader who focused on a particular currency was usually the primary submitter for that particular currency, other traders also specializing in that corresponding currency would at times act as back-up LIBOR and Euribor submitters. On the Paris Treasury Desk in particular, the members of the desk would routinely confer in the morning prior to the LIBOR submission time to discuss what Société Générale's submissions would be on that day. This dynamic of having the same individuals whose positions were tied to LIBOR and Euribor also calculate those same submissions created an innate conflict of interest. That inherent conflict of interest resulted in the Treasury employees instilling a profit-based submission practice, prioritizing financially benefiting from the Bank's submissions over submitting proper rates on behalf of Société Générale. This was in addition to submitters taking into account the derivatives traders' preferential Yen LIBOR and Euribor requests.

Société Générale's traders and employees responsible for the LIBOR and Euribor submissions knew what factors should be considered when calculating the Bank's daily LIBOR

and Euribor submissions for their respective currencies. Furthermore, these same traders and employees knew which factors were improper to consider, such as money market and derivatives positions, when making the Bank's LIBOR and Euribor submissions. Throughout the Relevant Period, Société Générale's Head of London Treasury ("Head of London Treasury") was a member of the BBA's Foreign Currency and Money Market ("FX & MM") Committee, which oversaw LIBOR and managed the currency panels. The Head of London Treasury regularly communicated with members of the Paris Treasury Desk, the Bank's head of the Paris Treasury Desk ("Head of Paris Treasury"), and with the Global Head of Treasury in Paris on various treasury topics, including LIBOR and, occasionally, Euribor. The members of both the London and Paris Treasury desks discussed and were aware of permissible and impermissible factors to consider when making a bank's LIBOR and Euribor submissions.⁶

By allowing its Treasury Desk traders to fill dual roles as submitters and traders, Société Générale created obvious conflicts of interests for its Treasury Desk and did not otherwise establish an appropriate supervisory system and internal controls concerning the LIBOR and Euribor submission processes. Treasury managers and certain executive managers of the Bank not only failed to adequately supervise LIBOR and Euribor submitters but were, at times, encouraging, and at times requiring, the consideration of inappropriate factors by the LIBOR and Euribor submitters when making the Bank's daily LIBOR and Euribor submissions, including consideration of how Société Générale's submissions would reflect on its reputation in the market and, at other times, money market or derivatives trading positions. Due to its lack of internal controls and procedures over the LIBOR and Euribor submission processes, Société Générale failed to ensure that its submissions reflected an honest assessment of the Bank's costs of borrowing unsecured funds in the relevant interbank markets. This lack of supervision permitted the Bank's LIBOR and Euribor submitters, their supervisors, senior managers, and, at times, certain executive managers, to knowingly make or cause to be made false U.S. Dollar, and Euro LIBOR or Euribor submissions on numerous occasions over a number of years.⁷ This lack of supervision further permitted the Bank's Yen LIBOR submitters, their supervisors, and senior managers, to knowingly make or cause to be made false Yen LIBOR submissions on numerous occasions.

⁶ In June 2008, the British Bankers' Association ("BBA") clarified in guidance provided to panel banks that the basis for a bank's submission must be the rates at which bank staff members primarily responsible for management of the bank's cash, rather than the bank's derivative trading book, consider that the bank can borrow unsecured interbank funds in the London market. The BBA also clarified that panel banks could not contribute a rate based on the pricing of any derivative financial instrument.

⁷ The terms "senior manager," "senior management," and "senior Treasury managers" refer to bank employees with more responsibilities (formally or informally delegated) than the management of trading desks, although their responsibilities may have included managing trading desks. Examples would be the Head of Paris Treasury, whose subordinates include the Paris Treasury Desk, the Head of London Treasury, whose subordinates include the London Treasury Desk, and Global Head of Treasury, who oversaw all of the Bank's treasury functions. The terms "executive managers" and "executive management" include certain members of the bank's Executive Committee, which was comprised of the highest ranking individuals at Société Générale.

4. Société Générale’s Acts of Attempted Manipulation and False Reporting of U.S. Dollar LIBOR

a. Société Générale’s Attempts To Manipulate U.S. Dollar LIBOR To Benefit the Paris Treasury Desk’s Money Market and Derivatives Trading Positions

Throughout the period of February 2009 through May 2010, Société Générale, through its primary U.S. Dollar LIBOR submitter (“U.S. Dollar LIBOR Submitter”) and his predecessor (“Former U.S. Dollar LIBOR Submitter”) knowingly made false U.S. Dollar LIBOR submissions in attempts to manipulate the U.S. Dollar LIBOR fixing to benefit the Paris Treasury Desk’s trading positions. As mentioned above, the Treasury desks were profit centers for Société Générale and traders’ compensation was based in part upon the profitability of the Treasury Desk.

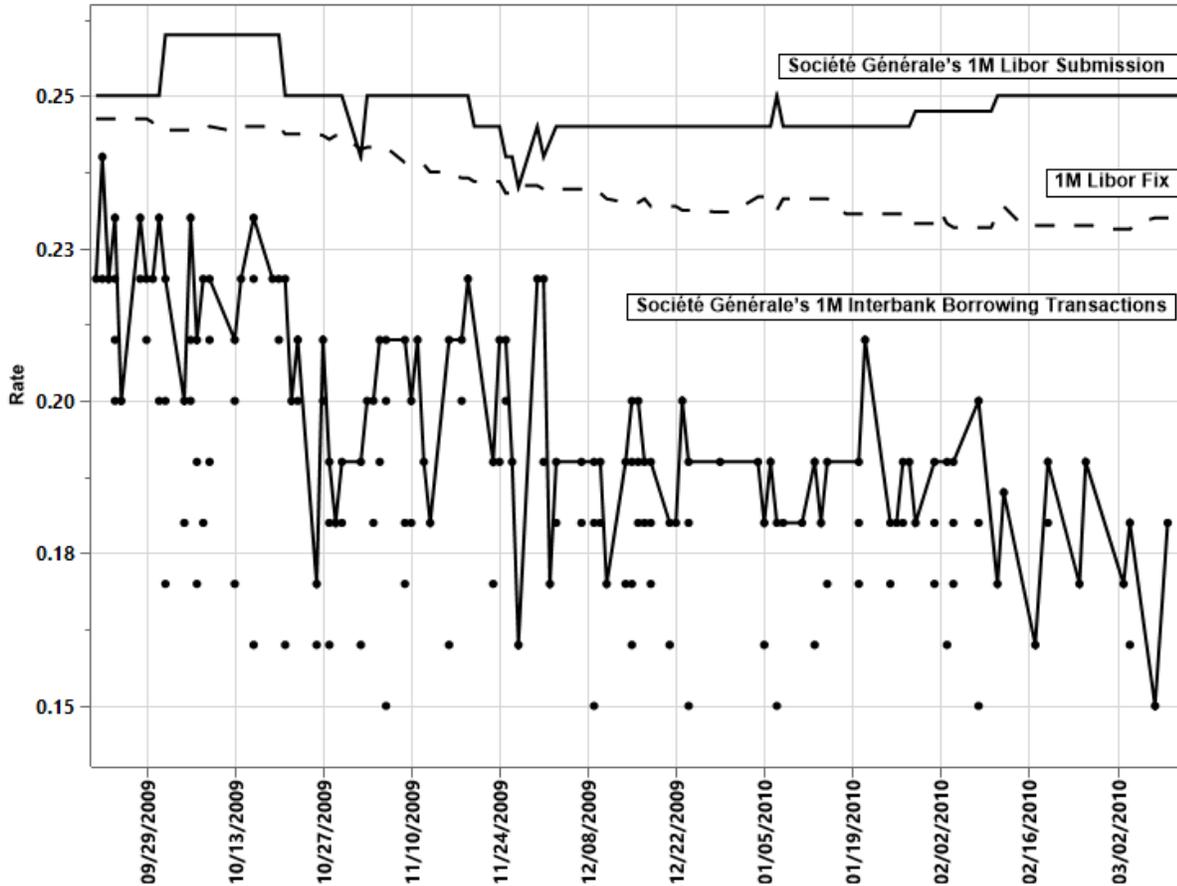
During this period, Société Générale’s U.S. Dollar LIBOR Submitter would identify upcoming and daily reset dates⁸ for the Bank’s various transactions to assess whether the Paris Treasury Desk would benefit from a higher or a lower fixing and would adjust the Bank’s submissions, as necessary. If successful in affecting the fixing, Société Générale would profit on certain money market and derivatives trading positions placed by the Paris Treasury Desk, by increasing payments from counterparties on assets or decreasing payments to counterparties on liabilities. The U.S. Dollar LIBOR Submitter learned this improper practice from his predecessor, the Former U.S. Dollar LIBOR Submitter. The U.S. Dollar LIBOR Submitter and others at the Paris Treasury Desk knew that it was improper for the Bank to consider benefits and losses from trading positions when determining and submitting the Bank’s daily LIBORs.⁹

⁸ The term “reset dates” is used to refer to the day a cash and/or derivatives transaction priced off of LIBOR or Euribor would be repriced depending on the respective fixing on that day. The reset dates vary depending on the underlying benchmark and duration. These dates are determined at the outset of each transaction.

⁹ The Paris Treasury Desk also improperly considered trading positions in October 2007 with respect to Euribor submissions, as discussed infra, when the Paris Treasury Desk had high levels of exposure to the Euribor fixing.

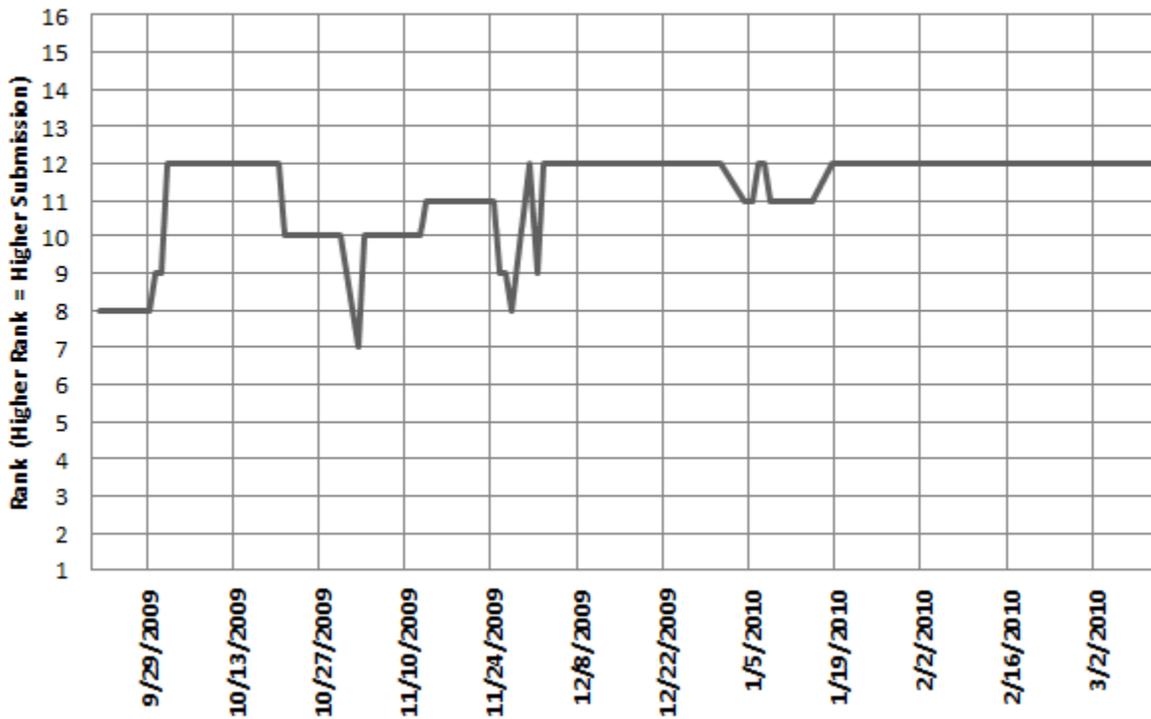
Often, during this period, the Bank's Paris Treasury Desk concluded that it would benefit from higher U.S. Dollar LIBOR fixings, and improperly adjusted the Bank's LIBOR submissions on that basis. As an example of this improper position-based submission practice, from at least September 2009 to at least March 2010, the Paris Treasury Desk saw itself as generally long in positions tied to U.S. Dollar LIBOR in the one-month tenor. As depicted in the chart below, during this six-month period, Société Générale's submissions for the one-month tenor were consistently above both the Bank's relevant one-month U.S. Dollar borrowings as well as the one-month U.S. Dollar LIBOR fixing.

Société Générale's U.S. Dollar LIBOR Submissions and Interbank Borrowing Transactions in the One-Month Tenor



As part of the strategy to push the U.S. Dollar LIBOR fixing higher during this time, Société Générale’s Paris Treasury Desk attempted to make the highest submission that would be included in the calculation for the final U.S. Dollar LIBOR fixing (*i.e.* highest of the middle eight submissions, meaning the twelfth highest submission in the panel). From mid-September 2009 to mid-March 2010, 88% of the Bank’s U.S. Dollar LIBOR submissions in the one-month tenor were ranked as one of the three highest submissions in the calculation (*i.e.* the tenth to twelfth highest submission in the panel) for the final fixing. The chart below depicts Société Générale’s consistent attempts to have its submission be as high as possible while still be taken into account as part of the final U.S. Dollar LIBOR fixing.

Société Générale’s Rank on the U.S. Dollar LIBOR Panel in the One-Month Tenor



Both the Head of Paris Treasury and the Senior U.S. Dollar Money Market Trader on the Paris Treasury Desk (“Senior U.S. Dollar Money Market Trader”) supported this practice. The Head of Paris Treasury supervised the U.S. Dollar LIBOR Submitter. At the Paris Treasury Desk’s daily morning meetings, the group would decide what level to set the Bank’s U.S. Dollar LIBOR submissions and the decision was impacted by certain of the Paris Treasury Desk’s borrowing or lending exposure. It was commonplace for the Bank’s U.S. Dollar LIBOR submitters to take resets of loan positions into account when making submissions.

For example, as evidenced in the recorded external audio communications set forth below,¹⁰ in the spring of 2010, Société Générale's U.S. Dollar LIBOR Submitter made high submissions based on the potential benefit to the Paris Treasury Desk's lending exposure to U.S. Dollar LIBOR. The Paris Treasury Desk had a strategy to maximize the possibility that not only would Société Générale's submission be one of the eight submissions that formed the basis of the daily fixing of U.S. Dollar LIBOR but also that its submission would be one of highest of the middle eight banks in terms of rankings. The U.S. Dollar LIBOR submitter and managers believed this strategy would have the greatest impact on the fixing of U.S. Dollar LIBOR and, accordingly, the greatest benefit to the Paris Treasury Desk's trading positions.

April 22, 2010

U.S. Dollar LIBOR Submitter: So, **today I'll post the 1 Month at 28.5 [. . .] considering that the LIBOR is set at 26-25.**

[. . .] between you and me, the LIBOR is extremely manipulated [. . .] Each contributor has their own interests. If you look at my submissions today [. . . and . . .] SocGen submissions over the last month . . . they are actually a little higher than the LIBOR [. . .] **everyone submits with respect to their interests.**

Other Caller: Ok. **And what's your interest now?**

U.S. Dollar LIBOR Submitter: **Our interest is to raise it [. . .] Because we have positions indexed against 1 Month and we have an interest** You see, the bank is globally a lender against 1 Month.

Other Caller: Right. Yes. Because you loan

U.S. Dollar LIBOR Submitter: [. . .] we, the treasury, [are] generally a lender of 1 Month[. . .]. **So, we have open positions [. . .]**

May 10, 2010¹¹

Former U.S. Dollar LIBOR Submitter: [. . .] **Are you going to reduce the LIBOR [. . .]?**

U.S. Dollar LIBOR Submitter: **No, I want to still submit to increase [. . .] that's what we decided to do.** The strategy is going to be the same [. . .].

Former U.S. Dollar LIBOR Submitter: You're always the one who's the highest.

U.S. Dollar LIBOR Submitter: [. . .] I'm on the increase marginally. I'm the first [in] the panel.

Former U.S. Dollar LIBOR Submitter: **Why are you doing that, just for my information?**

[. . .].

¹⁰ 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.

¹¹ Société Générale LIBOR and Euribor traders and submitters would often use terms such as "reset," "open position," and "fixings" interchangeably to indicate repricing occurring on a certain date based off of LIBOR or Euribor.

U.S. Dollar LIBOR Submitter: **Because we have very large fixings, that's why.**
Former U.S. Dollar LIBOR Submitter: **You have large fixings?**
U.S. Dollar LIBOR Submitter: **Yeah [. . .]. That's been for the last two months.**

Later in the same conversation, the U.S. Dollar LIBOR Submitter described his intent to stay in the middle eight submissions so that Société Générale's submission is factored into the day's final U.S. Dollar LIBOR fix in the three-month tenor.

May 10, 2010 [continued]

U.S. Dollar LIBOR Submitter: [. . .] **I'm still going to contribute [. . .] between 2 bps and 2.5 bps higher than estimated [. . .] to be selected for the panel. I do a little historical analysis. You have to submit between 2 bp higher and 2.5 bps higher [. . .] that's my strategy [. . .].**
Former U.S. Dollar LIBOR Submitter: Yeah.

Accordingly, as evidenced by these communications, witness testimony, and other information, from February 2009 through May 2010, Société Générale, through the actions of its Paris Treasury Desk, knowingly made false, misleading or knowingly inaccurate U.S. Dollar LIBOR submissions in an attempt to manipulate the U.S. Dollar LIBOR fixing to benefit the Paris Treasury Desk's money market and derivatives trading positions.

b. Société Générale's False Reporting of U.S. Dollar LIBOR, Euro LIBOR, and Euribor To Protect Its Reputation Against Negative Market Perception

From May 2010 through July 2012, Société Générale, through the actions of certain executive managers, senior Treasury managers and traders, made false, misleading, or knowingly inaccurate U.S. Dollar LIBOR submissions, but the motivation for the false reporting shifted from a profit driven one to an effort driven by executive and senior management to protect the reputation of Société Générale and avoid negative market perceptions during a period of uncertainty and strain in the financial markets. As a result of this directive from certain members of executive management, Société Générale prioritized protecting its reputation over making honest and accurate U.S. Dollar LIBOR submissions through July 2012. Likewise, Société Générale lowered its Euro LIBOR submissions for the same reason. To keep its Euribor submissions in line with its Euro LIBOR submissions, the Bank then altered its Euribor submissions. The Bank's false reporting of Euro LIBOR lasted from May 2010 through July 2010 while its false reporting of Euribor occurred during the end of May 2010.

i. Société Générale's Senior Treasury Managers Recognized the Potential Negative Effect of Benchmark Submissions on Société Générale's Reputation

Upon joining the U.S. Dollar LIBOR panel in February 2009, the Heads of the Paris and London Treasury Desks discussed how being a member of the U.S. Dollar LIBOR panel was a reflection of Société Générale's market standing and immediately focused on whether they should quote LIBOR to ensure that Société Générale's submissions were within the eight bank

submissions that are used to calculate the final LIBOR fixing. As reflected in the following communications between the Heads of the Paris and London Treasury, the senior Treasury managers also well understood the impropriety of submitting low LIBORs that did not reflect Société Générale's cost of borrowing unsecured funds and were relieved that Société Générale's cost of borrowing at the moment was at the market or at LIBOR so they did not have to consider submitting at a level lower than the costs of borrowing, as high submissions could reflect negatively on the Bank's market reputation for stability and health.¹²

February 4, 2009

Head of London Treasury: I am pleased to announce that [. . . Société Générale] has been chosen to contribute USD libor's from Monday 9 th Feb. Obviously, this is a great privilege and sign of our market standing [. . .] **now you have the difficult part in quoting the libors!!! good luck!!!!**

Head of Paris Treasury: [. . .] I will call you back tomorrow in order to have your point of view on **the way we have to quote this Libor (to target to be always within the 8 banks panel**, or to accept to be out of the panel [. . .]

February 5, 2009

Head of Paris Treasury: [. . .] about our contribution [. . .] Do you think we have to be [. . .] always in the panel. So on the eight bank's that have been chosen?

Head of London Treasury: [. . .] as long as you can justify them [. . .] **what we can't be seen to do is post a LIBOR say at [. . .], hypothetically at 1%, and then be in the market [. . .] that morning paying 110 [. . .]. That is completely unacceptable.**

Head of Paris Treasury: [. . .] OK [. . .] **we [will] put our LIBOR, or, just over where . . . the level we pay in the market [. . .] We will see when we will have to pay LIBOR plus again**

Head of London Treasury: [. . .] **the minute you have to pay LIBOR plus, you raise your LIBORs to where you perceive that you can raise funds [. . .] it's good that the market is favorable to us at this moment in time to be on it [. . .] it would have been worse if they had wanted us on at the time of stress, when we [. . .] would be showing [. . .] we could have been above the market [. . .] which is difficult.**

The Paris Treasury Desk closely monitored its benchmark submissions. At certain times in early 2010, the U.S. Dollar LIBOR Submitter circulated spreadsheets tracking Société Générale's U.S. Dollar LIBOR submissions against other panel banks. The Global Head of Treasury and Head of Paris Treasury discussed the Global Head of Treasury's directive to not submit above Euribor and the need to monitor all of Société Générale's benchmark submissions for fear of the potential negative impact on the Bank's reputation. The Global Head of Treasury directed that Société Générale's Euribor submission be submitted below another French bank's submissions.

¹² However, as found above, during this time, the Paris Treasury Desk instead skewed Société Générale's submissions in attempts to manipulate the U.S. Dollar LIBOR fixing to benefit its trading positions.

May 10, 2010

Head of Paris Treasury: [. . .] Concerning the **EURIBORs, it looks like you've sent out a message that we shouldn't contribute above EURIBOR**. Why's that?

Global Head of Treasury: [. . .] **yes [. . .]. We shouldn't show that we are . . . that we are a problem, ok? [. . .] you all should be careful [. . .] make sure to check [. . .] that it's not higher than [French Bank A . . .]** monitor Keep a close watch If you monitor it well, even if you just keep one [basis point] lower than [French Bank A], it won't be a problem. All right? Because [. . .] we are [. . .] being watched

Head of Paris Treasury: Yes.

Global Head of Treasury: [. . .] Use [French Bank A] as a [benchmark].

ii. An Analyst Inquiry About Société Générale's High LIBOR Submissions Solidified Existing Concerns About Benchmark Submissions' Negative Affect on Société Générale's Reputation

In the spring of 2010, Société Générale was very dependent on short-term funding sources for U.S. Dollars as it had no retail U.S. Dollar operation. The Bank had a large short-term funding program with the bulk of its funding portfolio on a term of less than three months. As a result, Société Générale's viability was greatly dependent on access to short-term funding. Around this same time, as a result of the Greek debt crisis, liquidity in the interbank market was extremely restricted.¹³ News coverage focused on several banks' exposure to sovereign debt, with one article citing analyst speculation that Société Générale was one of two banks which had "the largest sovereign debt holdings."¹⁴ Société Générale's executive management was aware of the public scrutiny and concern about the health of the banking industry.

Around this time, Société Générale's LIBOR submissions were consistently above the LIBOR fixing and one of the highest of the included submissions on several tenors. Further fueling management's concerns about the Bank's reputation, the Head of Société Générale's Investor Relations Department ("Head of Investor Relations") received a market analyst inquiry about Société Générale's high U.S. Dollar and Euro LIBOR submissions. The analyst asked the Head of Investor Relations whether this meant that Société Générale was having difficulty raising funds in the interbank market.

May 20, 2010 (email from Analyst to Head of Investor Relations)

Analyst: Good evening, I see on Bloomberg that **SG is offering one of the best payouts on pretty much all the maturities USD and EUR**. How should I interpret this? **Doesn't this mean that SG has more difficulty [raising funds] than her fellow banks with the interbank [market]?**

¹³ "Greece announced in October 2009 that it had been understating its deficit figures for years, raising alarms about the soundness of Greek finances. . . . By spring of 2010, it was veering toward bankruptcy." Holders of Greek debt, which had been downgraded, were left vulnerable and interbank lending dried up. *See, e.g.,* Alderman Liz, et al *Explaining the Greek Debt Crisis*, The New York Times (June 17, 2016)

¹⁴ *See, e.g.,* Richard Wachman, *Is Greece the Eurozone's Canary in the Coalmine?*, Guardian (May 1, 2010)

Realizing the potential reputational impact from Société Générale's high LIBOR submissions, the Head of Investor Relations immediately forwarded this inquiry to the Global Head of Treasury, copied Société Générale's CFO, and referenced a related discussion about the Bank's reputation from the previous day. In reply, the Global Head of Treasury explained that Société Générale's LIBOR submissions compared to other banks' submissions, not its issuance prices, were creating a negative impression that Société Générale is having difficulty raising funds.

May 20, 2010 (email from Head of Investor Relations to Global Head of Treasury)

Head of Investor Relations: [. . .] **on the subject we were discussing** together yesterday, **I've just received a question from a shares analyst**. What should I answer to make him understand that Bloomberg's indications are not indicative?

The Global Head of Treasury: [. . .] it's not about our issuance prices. **It's about our contributions for Libor fixing**. I will get back to you with more detail on our contribution vis-à-vis those of other contributors but it has nothing to do with our levels for raising funds.

To the Global Head of Treasury, this analyst inquiry was the manifestation of the long-held fear that Société Générale's benchmark submissions could negatively impact Société Générale's reputation in the market. The issue became magnified by the fact that the analyst inquiry drew the ire of certain members of executive management with respect to the Bank's LIBOR and Euribor submissions.

May 20, 2010

The Global Head of Treasury: Yeah, **I have a problem here because I received an email** [. . .] **written by investors** saying, [. . .] *"I see on Bloomberg that [. . .] SG is offering among the best [payments] on pretty much all the dollar and euro maturities. How should I interpret that?"*

Head of Paris Treasury: **That's LIBOR** [. . .] **it's . . . Our LIBOR submission**

The Global Head of Treasury: [continuing to read the analyst email] *"Doesn't that mean that SG is having a harder time than its peers on interbanking?"* [. . .] is that our LIBOR submission? **Are we the highest in dollar and euro?**

Head of Paris Treasury: We're not the highest, we're in the five highest [. . .] .

The Global Head of Treasury: **you see, this is what I was saying to you. It's what I was saying to the guys . . . on the LIBOR and EURIBOR. We must not appear too high because of course they're going to start wondering things, you see, and that gets transmitted to investors They [ask . . .] why is SG putting a LIBOR so high? [. . .] This is the stuff that gets around [. . .]**

The combination of ongoing media scrutiny of European banks' exposure to sovereign debt, coupled with the analyst inquiry into Société Générale's LIBOR submissions indicating a difficulty in raising unsecured funds, heightened the concerns of the Global Head of Treasury and elevated the reputational concern to certain members of executive management. The next

day, Société Générale executives addressed the problem of Société Générale's LIBOR submissions with the Global Head of Treasury at a meeting in which certain members of the executive management participated – *The Point Marché Meeting*.

iii. The Point Marché Meeting and the Directive To Depress LIBOR Submissions To Avoid Negative Perception by the Market

In the spring and summer of 2010, Société Générale executive management held market update meetings, known as “Point Marché” meetings, to discuss liquidity and funding issues during this period of strain in the financial markets. At the May 21, 2010 Point Marché Meeting (the “Point Marché Meeting”), certain members of executive management raised the topic of LIBOR submissions and their negative impact on Société Générale's reputation. The Société Générale executive management attending this meeting included a Deputy Chief Executive Officer (“Deputy CEO”), the CFO, and the Head of Société Générale Corporate Investment Banking (“Head of SCIB”). The Bank's Deputy Head of Global Markets, the Head of Investor Relations, and the Global Head of Treasury also attended the meeting. The Global Head of Treasury discussed LIBOR rates, the Bank's rates compared to the market, and how long the Bank could operate absent funding. Certain members of the executive management were concerned with funding rates compared to competitors, particularly French banks, because the Bank would look bad if it posted comparatively higher rates. This would make Société Générale look less financially healthy than its competitors. The Head of SCIB angrily expressed his displeasure over the negative impact the submissions were having on the Bank's reputation. He criticized the Global Head of Treasury, asserting that the Bank is shooting itself in the foot by submitting rates that looked high compared to the rest of the panel. He further stated that if the Bank was already having difficulty funding itself, it was stupid to send a message to the market that would make it more difficult to obtain funding. He instructed the Global Head of Treasury that Société Générale should not be the highest of the non-eliminated submitters (meaning the middle eight banks) nor should the LIBOR submissions raise questions about the Bank's financial stability in the market. The Deputy CEO also stated that the Global Head of Treasury needed to be careful with the Bank's LIBOR contributions, thereby reinforcing the guidance given by the Head of SCIB.

As set out below, soon after this meeting, the Global Head of Treasury sent an email to the Head of SCIB and others defending the desk and attempting to assuage management's concerns by indicating that contributions will be “closely monitored to avoid questions or negative interpretations.” The Head of SCIB responded, “Duly noted.”

May 21, 2010 (email from the Global Head of Treasury to the Head of SCIB, the Deputy Head of Global Markets, and the Head of Global Markets)

Global Head of Treasury: **We are not the highest of the contributors to Libor. This indicator has been followed by the desk which contributes to Libor since we have belonged to the panel [. . .] we will closely monitor to avoid questions or negative interpretations.**

Head of SCIB: **Duly noted.**

The Global Head of Treasury repeatedly reassured the Head of SCIB, the CFO, and the Head of Investor Relations that she would lower Société Générale's submissions to avoid scrutiny. She also explained that in lowering U.S. Dollar LIBOR and Euro LIBOR, Société Générale would also have to lower its Euribor submission to avoid a variance between Euro LIBOR and Euribor, which could also raise scrutiny.

May 21, 2010 (email from the Global Head of Treasury to the Head of Investor Relations, the CFO, and the Deputy CFO)

Global Head of Treasury: . . . SG submits the same quotation on EUR for Euribor and EUR Libor. That's why **our Euribor contributions need to be analyzed (even if the analyst who questioned you only referred to Libor) [. . .]** [With respect to U.S. Dollar LIBOR] **we are displaying a rate of [LIBOR 3 month] flat but we are paying up to [LIBOR 3 month]+5bps to raise funds [. . .] we are going to see if we can . . . lower our submissions a bit to avoid these questionable interpretations**, keeping in mind that we joined the USD panel last year and that we already monitor our submissions very closely.

Head of Investor Relations: Thanks a lot.

At the same time, the Global Head of Treasury instructed LIBOR and Euribor submitters and their supervisors to lower Société Générale's submissions, in order to curtail further negative stigma attaching to the Bank's reputation, and to assuage the concerns of at least certain members of executive management, who had been receiving negative feedback from external sources about Société Générale's LIBOR submissions. The Head of Paris Treasury responded that they would do what was asked, but noted that it was "a total charade."

May 21-23, 2010 (email from the Global Head of Treasury to the Paris Treasury Desk)

Global Head of Treasury: Last night (in front of [Executive Committee], I had to explain the fact that SG is the highest contributor on the USD and Euro Libor and the negative image that it gave of the capacity of SG to refinance on the market. Perhaps we are the highest amongst the non-eliminated banks. **We have to calm everything down and stop giving fodder to all the analysts or commentators** who are watching [. . .] **the financial Directorate had already gotten a few comments before [the Head of Investor Relations] even questioned me. We must try not to be amongst the highest non-eliminated banks.**

Head of Paris Treasury: I don't understand [. . .] we are *not* the highest Yet you conclude that we have to change our way of contributing. Doing that would mean that we are [. . .] **having a role in making the fixings inconsistent**

Global Head of Treasury: **We mustn't be the highest bank after the elimination of the extremes [. . .] what counts is that [the CFO] has already received three instances of negative feedback on our contributions to whom they have [had] to send denials/refutations regarding the difficulties we have refinancing in the market. We therefore have to put an immediate end to these negative comments from the market that lead people to assume that SG is paying a lot and has trouble financing itself. I think it's clear to everyone that we must react fast [. . .].**

Head of Paris Treasury: **We'll do what [the Executive Committee] asks us to do, but you must admit that it's a total charade**

To ensure the directive was followed, the Global Head of Treasury also spoke in person to the Paris Treasury Desk to give a specific in person instruction that the LIBOR and Euribor submitters were to change the way Société Générale made its submissions. The Global Head of Treasury specifically informed the desk that executive management received negative analyst feedback based on the submissions. She told the desk that, as a result of the concerns and instructions of certain members of executive management, Société Générale submitters must lower the Bank's LIBOR submissions such that its submissions would rank in the middle of the eight banks' submissions included in the calculation for the final fixing rather than near the top of the middle eight submissions. The Global Head of Treasury made it clear that she wanted to avoid additional negative feedback from management about LIBOR submissions creating reputational problems.

Persistent in ensuring her guidance to the Paris Treasury Desk was followed, the next business day, the Global Head of Treasury held a conference call with members of the Paris Treasury Desk. She explained that the Euribor submissions also needed to be lowered because she believed Euro LIBOR submissions must track Euribor submissions as they both track the costs of borrowing Euros. She again emphasized that she did not want Société Générale's CFO to hear any more negative comments.

May 24, 2010 (conference call with the Global Head of Treasury and the Paris Treasury Desk)

Head of Global Treasury: **Friday night I was attacked by [the Head of SCIB] going into the meeting [. . .] he attacked me saying "Hey, your LIBOR submissions are too high. There's been feedback from analysts." And actually . . . [the CFO] had already had [investors question our submissions] 3 times . . . and ask questions at the investor thing, saying "Your LIBOR submission is high. Does that mean you have refi[nancing] problems? Why are you the highest, etc.?" [. . .] it's annoying because it means that we actually have to lower our EURIBOR contribution as well [. . .] We can't make [Euro] LIBOR and EURIBOR submissions that are different. So we're going to be forced to lower our EURIBOR submission as well [. . .] we have to really monitor [. . .] all the maturities [. . .] everyone is watching [. . .] market commentators and analysts [. . . the CFO] saw two [negative comments based on the submissions . . .] I personally am not going to continue to have [the CFO] get attacked for questions like that. it's not very easy, but it still has to be done just the same? [Do] you understand?**

Euribor Submitter: **Yes, I understand.**

Head of Global Treasury: **So you understand it well?**

Euribor Submitter: **I understand the thing.**

Head of Global Treasury: [. . .] as a result **the EURIBOR has to be lowered [. . .]**. On the euro we're high. So that means [Euribor Submitter] that **you will also have to watch how to lower the EURIBOR [with the Euro LIBOR. They are] the same thing. [B]efore leaving [. . .] call me if I haven't called you first. Alright?**

Euribor Submitter: **Alright.**

The Paris Treasury Desk obeyed the direction to lower LIBOR and Euribor submissions based on the desire to avoid negative scrutiny. LIBOR and Euribor submitters' submitted rates then began reflecting the intent to protect Société Générale's reputation above all other factors. The Paris Treasury Desk and the Head of Paris Treasury openly discussed their submissions on a daily basis, making sure to keep Société Générale's U.S. Dollar and Euro LIBOR submissions at a desired ranking position within their respective panels, meaning well in the middle of the panel banks. In addition, to avoid scrutiny the Paris Treasury Desk made sure the Bank's Euribor submissions tracked the Bank's Euro LIBOR submissions.

In the following communication, the Euribor Submitter on the Paris Treasury Desk explained to the Head of London Treasury, who was the Bank's liaison to the BBA, the decrease in the Euro LIBOR submissions being based on avoiding a negative impact on Société Générale's reputation concerning their ability to obtain funding.

May 24, 2010 (call between Euribor Submitter and Head of London Treasury)

Euribor Submitter: . . . we have sent you . . . the contributions for the LIBOR and [. . .] **We decrease[d] all the curve by 3 bp in euro [. . .] On . . . instruction of . . . [the Global Head of Treasury], because apparently there was some . . . analysts who have watched [. . .] the different contribution of the different banks. And that [. . .] we are one of the highest . . . contribution[s . . .] and they say that it is perhaps because of French banks hav[ing] some problem [. . .] to fund [. . .] themselves [. . .] So, just . . . to be sure that there are no misunderstanding . . . by the different analysts [. . .] we decreased the . . . the contribution. Ok? [. . .] it is because we don't want [. . .] to send a negative comment to the market about [. . .] about [. . .] a problem of funding [. . .] and that's why.**

Head of London Treasury: Okay.

In the next communications, the U.S. Dollar LIBOR Submitter informed current and former members of the Paris Treasury Desk about the instruction from certain members of the executive management to lower submissions and that he has, in fact, lowered Société Générale's U.S. Dollar LIBOR submissions. The U.S. Dollar LIBOR Submitter also stated that he understood that there was some scrutiny from the administrator of LIBOR, then the BBA, about how low Société Générale was submitting relative to the cost of funds and acknowledged that Société Générale was not submitting appropriately.

May 24, 2010 (call between U.S. Dollar LIBOR Submitter and Back-up U.S. Dollar LIBOR Submitter)

U.S. Dollar LIBOR Submitter: You've surely seen the email[s] about LIBOR [. . .] from [the Head of Paris Treasury] and [the Global Head of Treasury]. **[The Global Head of Treasury] asked [us] to lower the EURIBOR contributions, and consequently the [Euro] LIBOR contributions as well. And with the Dollar [LIBOR] too we have to be careful. Basically, we are not to be the highest of the non-excluded [banks] . . . So, I lowered it a little. We're going to lower it again [. . .]**

June 23, 2010 (call between the U.S. Dollar LIBOR Submitter and the Former U.S. Dollar LIBOR Submitter)

U.S. Dollar LIBOR Submitter: [in response to a question about Société Générale's U.S. Dollar LIBOR submission] . . . Am I on speaker or am I on the phone?

Former U.S. Dollar LIBOR Submitter: No you're just on my telephone.

U.S. Dollar LIBOR Submitter: OK, in fact at the beginning **the strategy was to be in the heart of the panel** [. . .] between you and me [. . .] four weeks [ago], [the Global Head of Treasury] got approached by [the Head of SCIB saying], "Yes, we have an investor saying that your LIBOR submissions are actually high and [. . .] that means that you're have funding problems." [. . .] [Then] . . . a week ago, the Head of London Treasury said, "Yes, but **the BBA is beginning to worry because we're posting prices on the 3 Months . . .**" **At the time it was 60, [. . .] 58 and we submitted 53 [. . .]**" So it wasn't consistent. And **I completely agree**. It's a mess [. . .] I believe [the Head of London Treasury is] right. **The BBA is right. You see, it's not consistent to contribute 53 and three quarters when you're [cost of funds is] 63.** [. . .] it's highly between you and me.

During this time, the Global Head of Treasury and the Head of Paris Treasury kept the Head of SCIB and the CFO informed about the status of Société Générale's LIBOR and Euribor submissions. Below, the Global Head of Treasury spoke with the Head of SCIB about how lowering the Bank's Euro LIBOR submissions to avoid scrutiny, while keeping Euribor in line with Euro LIBOR, resulted in Société Générale's exclusion from the Euribor fixing calculation.

May 26, 2010 (call between the Global Head of Treasury and Head of SCIB).

Global Head of Treasury: [. . .] **we have reviewed our fixings in order to avoid [. . .] being questioned about them again**. But in fact [. . .] by lowering our fixings to avoid being the highest on the Euro LIBOR; we have been excluded from EURIBOR. Because we're too low on the EURIBOR.

In anticipation of a BBA meeting, the Head of London Treasury spoke with the Head of Paris Treasury about Société Générale's submission levels. Upon hearing about variances between Société Générale's costs of funding and its LIBOR submissions, the Head of London Treasury expressed concerns about the impropriety of depressing LIBOR submissions below the Bank's costs of funding and if it continued Société Générale would be in a difficult situation.

May 26, 2010 (call between the Head of Paris Treasury and the Head of London Treasury)

Head of Paris Treasury: I don't know if [the Global Head of Treasury spoke] to you about this issue, but **we had[. . .] some pressure from the top management [. . .] to decrease our LIBOR [. . .]** The top management, [. . .] **had some feedback from some investor that . . . we were the highest bank contributing in the LIBOR**. So, they're talking about **both Dollar, I think, and Euro [. . .]**. **We try . . . to be within the panel of the calculation [. . .] [The Global Head of Treasury] asked us [. . .] to lower . . . our contribution [. . .] in order to be within [. . .] the middle of the panel,**

but on the Euro side [. . .] if we lower our contribution, [. . .] we have also to decrease the EURIBOR [. . .] **we are paying over LIBOR . . . LIBOR plus five, plus six [. . .].** Head of London Treasury: This is where it puts us in a dangerous territory. I mean you can do it a few times, but [. . .] **if we start to get a real blow out in terms of LIBOR, and [our submission] does move away substantially from where the market prices are[,] it puts us in a very very difficult situation [. . .].**

As the weeks passed, the Head of London Treasury's concerns about accusations of "market manipulation" by Société Générale heightened his personal discomfort with the situation.

June 10, 2010 (call with the Head of Paris Treasury to the Head of London Treasury)

Head of London Treasury: How much are you intending to move your [LIBOR] up today?

Head of Paris Treasury: Normally, we should increase a little bit, but [. . .] We are cautious because we have . . . I have to discuss this subject again with [the Global Head of Treasury], because [. . .] she has been attacked on the [subject by management]

Head of London Treasury: [. . .] Is that your decision to [. . .] always be inside the [middle] 8?

Head of Paris Treasury: [. . .] It's the decision taken by [the Global Head of Treasury . . .] in order not to have stigma on SG, we decided [. . .] to be within [the middle eight . . .]

Head of London Treasury: [. . .] **I'll be perfectly honest with you If it continues that we are posting LIBORs at X and we are in the market, and everyone knows that we are in the market at X plus . . . that's going to have more of an impact [. . .] for us, and the BBA. Because we'll get called into the BBA and we'll have to explain ourselves [. . .] And we'll have no recourse to them at all [. . .] if they say 'Look, you're manipulating it. You're not doing it correctly.'**

June 16, 2010 (email from Head of London Treasury to Global Head of Treasury and Head of Paris Treasury)

Head of London Treasury (Subject: Libor USD Contribution): **I dont think posting 3m libor at 0.5525 is anyway realistic . . . given we are posting 63 issue levels to the broker/dealers, and we are actively looking to source funds. We have increased our market funding levels without moving our Libor contribution I think we are leaving ourselves exposed to a possible claim of market manipulation [. . .] I am extremely uncomfortable with this situation.**

In a call with the Head of London Treasury and other senior Treasury managers and desk members, the Global Head of Treasury acknowledged the potential fallout from the Bank submitting low LIBORs that did not reflect the cost of funds and the need to correct the situation while still protecting the Bank from negative "stigma" if necessary.

June 17, 2010 (call between the Global Head of Treasury, the Head of London Treasury, the Head of Paris Treasury, and others)

Head of London Treasury: my true concern at this moment in time is the fact there's been more and more emphasis put on the dollar LIBOR. Now **I appreciate as a bank we have to try protect our name as much as possible, but I do think that you know when we are structurally changing the levels that we're paying in the market we're gonna have to start tweaking our LIBOR [submissions]**

Global Head of Treasury: I discuss[ed] this yesterday [. . .] **I had a word with [the CFO]. I will send a mail to [the CFO], [the Head of Investor Relations] and [the Head of SCIB] . . . that we are uncomfortable with the position [of] putting the LIBOR which is eight or ten basis points below what we pay in the market, just in order not to be pointed out by investors [. . .]. We cannot increase [our LIBOR submission] by twenty basis points [at once . . .] we know that[. . .] but what we will do[. . .] is to increase gradually our contribution, by one, two [. . . basis] points. But [. . .] as soon as [executive management is] question[ed] of [why we are submitting high LIBORs], in terms of complaint or question [. . .] we [can respond].**

Head of Paris Treasury: **Because of stigma**

Global Head of Treasury: [. . .] yes.

The Global Head of Treasury relayed the senior Treasury managers' concerns to certain executive managers—the CFO and Head of SCIB, along with the Head of Investor Relations that Société Générale's low reputation-based LIBOR submissions could give rise to accusations of "market manipulation." She expressly stated that Société Générale's LIBOR submissions were outside the rules of the BBA governing how LIBOR submissions should be made and what they should reflect. The Global Head of Treasury suggested a gradual increase to align Société Générale's submissions with its actual costs of funding to avoid drawing negative attention that might arise from a rapid correction of its submissions. She further expressed her willingness to lower submissions again if executive management received any additional negative market feedback.

June 17, 2010 (email from Global Head of Treasury to the CFO, the Head of SCIB, and the Head of Investor Relations)

Global Head of Treasury (Subject: Libor USD Contribution): As we discussed 3 weeks ago at the liquidity [a/k/a Pointe Marché] meeting, **we are continuing to adjust our contribution to the USD Libor in order not to be the highest contributing bank amongst those that are taken into account. [. . .] Libor contributions have hardly followed the market increase at all. We thus end up contributing –on the 3-month, for instance—a rate 8 bps below the one we are showing in the market (and therefore at least 10 bps below the one we really pay). The situation is becoming critical because we are far outside the BBA rules and we are taking the risk of being accused of market manipulation.** As discussed last night with [the CFO], we suggest progressively increasing our contribution to get back to our real market level [. . .]. However, **we can return to the current method if the feedback [. . .] is once again too negative.**

However, as reflected in the communications below, despite elevating their concerns and devising a strategy to correct their submissions, Société Générale continued to make Euro LIBOR submissions at levels designed to keep the submissions within the fixing calculations through, at least, July 2010 and Euribor submissions to track Euro LIBOR submissions through, at least, the end of May 2010. With respect to U.S. Dollar LIBOR, Société Générale's U.S. Dollar LIBOR submissions for certain tenors remained below the costs of funding for the vast majority of time through at least July 2012.

July 27, 2010 (the Global Head of Treasury forwards an email to the Head of Paris Treasury, the Senior U.S. Dollar Money Market Trader, and the Back-up U.S. Dollar LIBOR Submitter).

In response to negative market commentary suggesting Société Générale's high 3 month U.S. Dollar LIBOR submission could indicate French banks are paying premiums for dollars, the Global Head of Treasury instructs the Paris Treasury Desk that the commentary is "**To be watched and [the submission is to be] adjusted if you think it's necessary.**"

August 24, 2010 (call between U.S. Dollar LIBOR Submitter and Former U.S. Dollar LIBOR Submitter discussing need to make submissions that are in the panel of banks calculated in the U.S. Dollar LIBOR fix)

U.S. Dollar LIBOR Submitter: [. . .] **I think that I'm going to lower the submission at least at 1.5 bps, or even 2 bps [. . .] knowing that I have to lower my spread again in keeping with . . . what can I say? . . . with the consensus for the fixing, otherwise I'll be excluded again from the panel.** Because here, I was excluded on the short. From 1 Week up to 4 Month, I was the first of those excluded. So, **I absolutely have to be part of the panel.**

November 23, 2010 (the Head of Paris Treasury acknowledges borrowing above LIBOR in the 3-month tenor to an unknown party)

Head of Paris Treasury: Yup. You see now, the **LIBOR is worth 28. On the 3 Months we refinanced actually at 32-33.**

Unknown Party 1: Okay. And historically, since we've been like that how have our additional costs fluctuated, let's say?

Head of Paris Treasury: **At the worst of the crisis it was 60 [basis points].**

iv. Société Générale Created Fictitious Trading Data To Provide to the BBA To Conceal Its False LIBOR Submissions

In January of 2011, the BBA, as part of an overall study and evaluation of the LIBOR panel, began to make inquiries into panel banks' costs of funding as they related to each bank's respective submissions and was asking banks, including Société Générale, to provide their costs of funding data. The Head of Paris Treasury realized that providing the BBA with the data would reveal that Société Générale's U.S. Dollar LIBOR submissions did not reflect the Bank's true costs of funding in the interbank market as required by BBA guidelines. The Heads of Paris

and London Treasury believed that they needed a story or explanation to justify such discrepancies.

January 18, 2011(The Head of London Treasury and Paris Treasury discuss the BBA’s requests to see costs of funding data will reveal Société Générale is submitting artificially low)

Head of London Treasury: [. . . the BBA has . . .] been asking for this [funding data] for a while [. . .].

Head of Paris Treasury: **But you know the problem is if we provide some information, so[me] hard data of what we raise, they will also discover today that our Libor is lower than the levels we pay [. . .].**

Head of London Treasury: Well [. . .] it’s a difficult one [. . .] we can always say that we pay for special relationships [. . .]¹⁵

In an effort to respond to the BBA inquiry without arousing suspicion about Société Générale’s low LIBOR submission strategy, the Head of Paris Treasury devised a plan to provide the BBA with misleading costs of funding data. She tasked the U.S. Dollar LIBOR Submitter with creating a data chart that intentionally included funding from sources outside the definition of LIBOR in an effort to hide Société Générale’s true costs of funding in the interbank market. The Head of Paris Treasury further instructed the U.S. Dollar LIBOR Submitter to purposefully hand-select a period of time when Société Générale’s submissions most closely matched the misleading costs of funding data. The reflected spread between the two remained too large. The Head of Paris Treasury then instructed the U.S. Dollar LIBOR Submitter to further decrease the spread between the submissions and reflected costs of funding. Based on this instruction, the U.S. Dollar LIBOR Submitter determined what would constitute acceptable spreads between Société Générale’s costs of funding and its LIBOR submissions, fabricated lower funding rates based on the predetermined spreads and then inserted the fictitious costs of funding data into a new dummy chart, which Société Générale’s Head of London Treasury and liaison to the BBA then instructed a subordinate Treasury member to provide to the BBA. In other words, Société Générale created false data to provide to the BBA to justify its submissions.

January 25, 2011 (Head of Paris Treasury forwarding to Head of London Treasury, and copying U.S. Dollar LIBOR Submitter, an email from U.S. Dollar LIBOR Submitter attaching altered costs of funding data to provide BBA)

U.S. Dollar LIBOR Submitter: Here are (at [last] !) the **data to provide to BBA**. I send you the whole file, where you can **see our real cost of fund against our own Libor contribution. The data to provide to BBA are the “yellow” ones [. . .]**. Here’s the explanation of the methodology in English (if you ever need it..).

¹⁵ The term “special relationship” is used to describe a counterparty whom the Bank deems is worthy of a favorable rate. The “special relationship” is often the result of a long-term history of transacting with a counter-party or the Bank’s desire to transact with a particular counter-party because of that counterparty’s credibility, location, or other factors deemed worthy by the Bank.

The “yellow” chart, pictured below on the right titled “TO SHOW TO BBA”, contained falsified costs of funding data and included a note “**data to provide to BBA**”. Another attached chart, also pictured below, included a note stating “=**real data (not [to] be shown to BBA)**.” The USD LIBOR Submitter also attached charts to his emails which illustrated: the new fake spreads he created; the Bank’s LIBOR submissions for the desired period; and the original costs of funding chart which was misleading because he had intentionally included irrelevant products in an effort to mislead the BBA.

SPREAD cost of fund - LIBOR CONTRIBUTION							TO SHOW TO BBA						
		13-Dec	14-Dec	15-Dec	16-Dec	17-Dec			13-Dec	14-Dec	15-Dec	16-Dec	17-Dec
USD	O/N	-0.02	-0.02	0.01	0.01	0.00	USD	O/N	0.2400	0.2300	0.2300	0.2300	0.2300
USD	1 Month	0.01	0.02	0.01	0.01	0.02	USD	1 Month	0.2845	0.2900	0.2973	0.2967	0.2925
USD	3 Month	0.05	0.04	0.05	0.03		USD	3 Month	0.3375	0.3300	0.3425	0.3250	0.3150
USD	6 Month						USD	6 Month	0.4850	0.4825	0.4800	0.4825	0.4825
		20-Dec	21-Dec	22-Dec	23-Dec	24-Dec			20-Dec	21-Dec	22-Dec	23-Dec	24-Dec
USD	O/N	-0.02	-0.01	-0.01	-0.01	-0.02	USD	O/N	0.2450	0.2450	0.2450	0.2450	0.2450
USD	1 Month	0.02	0.02	0.02	0.03	0.01	USD	1 Month	0.2900	0.2900	0.2900	0.3000	0.2800
USD	3 Month	0.06		0.06	0.10		USD	3 Month	0.3475	0.3075	0.3475	0.3575	0.3575
USD	6 Month						USD	6 Month	0.4945	0.4945	0.4945	0.4925	0.4925
		27-Dec	28-Dec	29-Dec	30-Dec	31-Dec			27-Dec	28-Dec	29-Dec	30-Dec	31-Dec
USD	O/N			-0.01	-0.01	-0.08	USD	O/N			0.2450	0.2450	0.2450
USD	1 Month			0.04	0.01	0.04	USD	1 Month			0.3000	0.2800	0.3000
USD	3 Month			0.07	0.11		USD	3 Month			0.3475	0.3575	0.3575
USD	6 Month						USD	6 Month			0.4875	0.4875	0.4875
		3-Jan	= real data (not be shown to BBA)						3-Jan	= data to provide to BBA			
USD	O/N	-0.01					USD	O/N	0.2450				
USD	1 Month	0.02					USD	1 Month	0.2900				
USD	3 Month	0.08					USD	3 Month	0.3475				
USD	6 Month						USD	6 Month	0.4850				

In March of 2011, the BBA again requested costs of funding data from the panel banks. The Head of London Treasury specifically requested the U.S. Dollar LIBOR Submitter to provide a data set excluding Central Bank funding from the costs of funding analysis.¹⁶ After speaking with the Head of Paris Treasury, the U.S. Dollar LIBOR Submitter again falsified data that Société Générale planned to submit to the BBA. The U.S. Dollar LIBOR Submitter informed the Head of Paris Treasury that when needed, he would simply list Société Générale’s LIBOR contribution as Société Générale’s costs of funding for the corresponding date, thus eliminating any questions as to whether Société Générale’s LIBOR submissions appropriately reflected its costs of funding. Société Générale’s falsification of data and plan to conceal from the BBA its true costs of funds definitively evidences that Société Générale knew that it was wrong to base LIBOR submissions on factors other than its true costs of funds.

Société Générale’s concerns had further intensified when, in early February, the Bank received a request from a market regulator asking Société Générale, as one of the LIBOR panel banks, to provide an attestation as to the adequacy of the systems and controls overseeing Société

¹⁶ The BBA specifically requested Central Bank funding transactions be excluded from the costs of funding calculation as such transactions are not to be included when calculating a bank’s LIBOR submissions.

Générale's LIBOR submission process. The regulator requested the attestation to provide assurances from each bank's management about the integrity and accuracy of its LIBOR submissions. Upon receiving this request, the senior Treasury managers expressed their fears over attesting to the accuracy of the LIBOR submissions, because they knew the submissions were not accurate.

February 3, 2011 (call between Heads of London and Paris Treasury)

Head of Paris Treasury: So they want our guarantee of what, exactly?

Head of London Treasury: That the Libor submissions are correct.

Head of Paris Treasury: [. . .] **it's not correct because [. . .] our real Libor should be the levels of our real cost of funds, so it should be 5 basis points higher.**

February 4, 2011 (call between Head of London Treasury and Global Head of Treasury)

Head of London Treasury: [. . .] an ongoing issue is that letter from the [market regulator . . .]they actually talk about [. . .] Libor submissions [. . .] in terms of the definitions [. . .] **tread very carefully because the [market regulator] can come in and look at our books.** [. . .] they're just asking that the senior management are comfortable with the processes and the systems and controls [. . . and that] our Libor basic submission[s . . .] are [. . .] reflective of our funding conditions[. . .].

Global Head of Treasury: [. . .] **The point is we do not contribute our real funding. So, what do you want?** [. . .] can you send me a quick e-mail where you explain: **As you know, today, in order not to be the highest contributor of the Libor we put contributions which are below our funding level [. . .] and I will send it to [the Head of SCIB . . .],** and we need to have a decision if we strongly increase our price that will mean we'll be the highest contributor on the panel [. . .] explain [. . .] the way the contribution today is done [. . .] **Paris is quoting in order to be [in the middle].** The issue now is that there is more scrutiny from the [market regulator . . .] And we [will] put that to [the Head of SCIB, the Head of U.K. Group Compliance, and the Group Head for the U.K.]

The Head of London Treasury drafted an email highlighting the issue of the regulator request for an attestation by Société Générale's top-level London management about the integrity of the LIBOR submissions and the "increased level of scrutiny of SG's LIBOR rate setting process."¹⁷ The Global Head of Treasury forwarded this email to the Head of SCIB and the CFO, highlighting the brewing external interest in the validity of LIBOR submissions and senior Treasury managers' concerns about Société Générale's artificially depressed submissions and making clear to certain executive managers that Société Générale faced a stark choice—either continue submitting below the costs of funding and risk exposure or gradually increase the level of submission to LIBOR. The CFO directed that Société Générale should raise its U.S. Dollar

¹⁷ Eventually, over his objections and concerns, the Head of London Treasury was pressured by Société Générale's management in its London office into signing the attestation guaranteeing the integrity of the LIBOR submissions and Société Générale's LIBOR submission process.

LIBOR contribution gradually. As with the plan from the summer, this strategy would allow Société Générale to raise its submissions while minimizing the chance of a market reaction that a sudden increase would garner.

February 15, 2011 (email from Global Head of Treasury to Head of SCIB and CFO)

Global Head of Treasury: The BBA—and now [market regulator] which has asked senior management for a validation of the Libor contribution procedure—is putting on more and more pressure regarding the validity of the contributions submitted by the banks that are members of the fixing [. . .] And **currently, our contribution to the 3-month USD libor is between 3 and 5 bps below our real prices.** [. . .] We [. . .] **[therefore have to choose between continuing to risk BBA audits or bringing our contribution into line with our real funding level and risking questions about our liquidity** [. . .] We suggest that we increase our contribution level in order to be in line with our real funding cost but to pay attention to whether the two other French banks [. . .] follow us.

[The following replies were sent on February 16, 2011]

CFO (to Global Head of Treasury and Head of SCIB): Do you get the feeling that Anglo-Saxon panel banks are less at risk than us?

Global Head of Treasury: [. . .] **we pay much more than many other banks on the panel and this hasn't been fully translated into our contribution** which has a consistent spread between it and our real funding deals[. . .] .

CFO (to Global Head of Treasury, Head of SCIB, Deputy CFO, and the Head of Group Treasury and ALM): OK. **Let's start to converge beep by beep**

The Global Head of Treasury then instructed the Head of Paris Treasury to have the U.S. Dollar LIBOR Submitter gradually raise the Bank's submission so as not to arouse suspicion about the Bank's inaccurate submissions. Even after this increase, the Bank's submissions remained below its true costs of funding and were, therefore, still inaccurate.

- v. ***Société Générale Continued To Artificially Depress Its U.S. Dollar LIBOR Submissions To Avoid Negative Perception by the Market as External Inquiries Begin To Mount and Pressure Builds on Management and Submitters***

Despite external chatter about the validity of LIBOR submissions, inquiries from the BBA and the market regulator, and concerns and conversations within the Bank itself about raising the LIBOR submissions to more accurately reflect Société Générale's true costs of funding, Société Générale, through its Paris Treasury Desk continued to make its U.S. Dollar LIBOR submissions below its costs of funding. While Société Générale was raising its submissions, the Global Head of Treasury instructed the submitters to increase submissions only by a few basis points, with the result that the submissions were still below levels that would have accurately reflected Société Générale's true costs of funding, reflecting that the risk of stigma still governed how Société Générale made their submissions.

February 17, 2011 (email string between Global Head of Treasury and Head of Paris Treasury)

Global Head of Treasury: I think we can [increase our LIBOR submissions] 1 bp every other day? The aim is to be at our real funding level in 2 or 3 weeks.

Head of Paris Treasury: **I would be more careful [. . .] Don't you think we risk stigma if we go above 35?**

February 18, 2011 (call between Global Head of Treasury and Head of Paris Treasury)

Global Head of Treasury: we're easily 8 bps higher on average [. . .] in theory **we should be contributing at 39** [. . .]. **We'll go up to 35** [. . .].

February 18, 2011 (the Head of Paris Treasury forwards an email to the Global Head of Treasury and the Senior U.S. Dollar Money Market Trader)

The Head of Paris Treasury discusses market commentary stating that a French bank is finding it "*impossible to find USD funding at Libor with premiums being paid on short tenors at above Libor + 10 bps.*")

Head of Paris Treasury (Subject: One French bank is flagging up caution in the USD): [. . .] I don't want to be paranoid because it might not be us . . . but **this** [. . .] **information** [. . .] was circulating in the market [. . .] which **reinforces my belief that we must be very careful when raising our USD Libor contributions. I passed the message on to [the U.S. Dollar LIBOR Submitter] that he should go up very progressively to 0.3490/0.35 next week [. . .] we're far below the levels we pay.**

March 8, 2011

Head of Paris Treasury: **that's exactly the problem with Dollar LIBOR [. . .] we're paying above LIBOR**

On or about this time, the senior Treasury managers and certain executive managers began to monitor additional inquiries into the LIBOR submission process. In March of 2011, the CFO asked the Global Head of Treasury and the Head of SCIB about media attention surrounding investigations into LIBOR submission activities at other panel banks and wondered why they were not being questioned. The Global Head of Treasury initially appeared to minimize news of the investigations of other banks relating to LIBOR on the basis that the investigations concerned a period before Société Générale joined the U.S. Dollar LIBOR panel.

March 17, 2011 (email between CFO, Global Head of Treasury, and Head of SCIB)

CFO: [. . .] Have you seen this news? [attached commentary about LIBOR-related investigations]

Global Head of Treasury: [. . .] the investigations relate to the 2006-2008 period (and SG wasn't on the USD Libor until February 2009) [. . .] **we have raised our contributions a bit** since our email exchanges [. . .]. **Every day we monitor our**

contributions relative to our level posted in the market, relative to the panel members [. . .].”

CFO: Why do you think that we’re not being questioned?

Global Head of Treasury: We only joined the USD Libor panel in February 2009 [. . .].

The CFO made no further inquiry as to why the submissions were only increased “a bit” or why Treasury was still considering Société Générale’s relative ranking in the panel when making LIBOR submissions. The Head of SCIB, the CFO, and the Deputy Head of Global Markets were repeatedly told about Treasury’s concerns about the impropriety of making submissions to avoid stigma. They were therefore well aware Société Générale’s positioning in the panel ranking was not an appropriate consideration for Société Générale to take into account when making its LIBOR submissions.

Following the requests from the market regulator, from March to June 2011 the Bank began to mostly make submissions that reflected its true costs of funds. However, in July, Société Générale once again became concerned with its relative position in the daily panel ranking and restarted the practice of basing its U.S. Dollar LIBOR submissions, in whole or in part, on avoiding negative market reactions.

July 5, 2011

Head of London Treasury: [. . .] I’ve just got a quick question about how you do your Libor quotes.

Back-up U.S. Dollar LIBOR Submitter: [. . .] it’s compared with the estimated Libor, the second point **it’s against our competitors[. . .] we try to be the sixth bank [. . .]** we do statistics every day and we check where we are on the quotation compared with the highest and, you know, it's **the first in quote it's the sixth bank, [. . .]** as you know, big brother checking us, watching us and [. . .] **if I’m changing a small basis point everybody is checking on the U.S. market for this moment it’s really touchy [. . .] that’s the reason why we decided to don't move to increase our Libor rates these times, because the American investors are really sensitive on our Libor and the . . . third point we try to be the first inside who contribute the Libor, the number six [. . .]** because we push the Libor higher, but we are inside [. . .] **try to be the first one and the highest.**

July 28, 2011

Unknown Party 2: [. . .] what are we gonna do now when we start paying much higher rates with respect to how we set our Libors?

Senior U.S. Dollar Money Market Trader: Well that's a big issue [. . .]. We try not to be the highest [. . .]

As seen below, Société Générale's LIBOR submissions continued to garner scrutiny by the press, which did not go unnoticed by the Global Head of Treasury.

August 31, 2011

Global Head of Treasury: [. . .] I'm calling about [. . .]. **These problems about the LIBOR are starting up again.** [. . .] So, once again **there's a newspaper here that just leaked the info that "SG submits higher rates for" ... for the 15th time in August, and that its 3 Month LIBOR has increased.** [. . .]

Head of Paris Treasury: Well, I have to go hunt for the information. But I think that normally, they are increasing all in line.

Around this time, Société Générale began to implement another strategy to hide its true costs of funding by sending false bids into the market. By now, the Bank had a new U.S. Dollar LIBOR Submitter ("U.S. Dollar LIBOR Submitter 2"). In the following communication, a Société Générale trader asked the new submitter how much the trader should pay for a funding deal, using LIBOR as a reference. The new submitter explained that he was instructed not to refer to LIBOR when quoting deals using LIBOR as a reference. He then suggested that the Société Générale trader price the deal face-to-face as opposed to in writing if the counterparty asks for LIBOR to be used as a reference. This was an effort to hide the fact that the Bank's costs of funding were higher than its LIBOR submissions, or, in the words of a submitter, "a permanent game of bluff."

September 7, 2011 (call)

U.S. Dollar LIBOR Submitter 2: Yes, indeed. I just spoke with [Head of Paris Treasury]. She told me it's not a good idea [to reference a funding bid] increase against [. . .] LIBOR or against EURIBOR[. . .]. It's so "touchy" right now [. . .] we are a contributor. Keeping in mind that there is a lawsuit ongoing in the United States on the LIBOR contributors.

Global Head of Liquidity Solutions: So, neither LIBOR nor EURIBOR to be [quoted]
U.S. Dollar LIBOR Submitter 2: Hey, [your counterparty] can calculate it as he wants [. . . .] Or **we can tell him face to face, but not in writing [. . .] it's a permanent game of bluff [. . . .] That is why we must avoid comparing what we contribute with what we pay [. . . .]**

In the following communication, U.S. Dollar LIBOR Submitter 2 informed an external party that Société Générale paid higher on individual funding transactions than they showed the market to mask the fact that their costs of funding were higher than their LIBOR submissions.

September 13, 2011 (call)

U.S. Dollar LIBOR Submitter 2: [. . .] we are paying better right now because there is a huge competition between French banks [. . .] **in one-to-one in front of a corporate we are paying a really good price. But not in the market [. . . .] Because[. . .] we are contributor on the LIBORs, and all Big Brother is watching us [. . .].** And you see

where the LIBOR is fixing, really low, okay [. . .] it's bullshit. It's only bullshit. But [. . .] all our competitors are doing it like that. That's the problem. That's why we decide, **we didn't show in the market an aggressive price. We see a normal price in the market, but in one-to-one, in front [. . .] we overpay.**

vi. Société Générale's Senior Treasury Managers Attempted to Insulate Themselves from Legal Ramifications

Eventually, senior Treasury managers and LIBOR submitters became concerned about their roles and exposure in Société Générale's scheme of falsifying LIBOR submissions. They knew their longstanding practice of making LIBOR submissions based in whole or in part on reputational concerns was improper. Because of their exposure, they attempted to insulate both the Bank and themselves personally from any potential liability. As shown below, to avoid scrutiny from regulators, they discussed intentionally avoiding discussing management's directive to lower submissions when answering inquiries into Société Générale's artificial depression of its LIBOR submissions. They also sought protection in the form of indemnification letters from the Bank, otherwise they would refuse to talk.

September 7, 2011

Head of London Treasury: [. . .] We have a [. . .] spreadsheet [. . .] **that will [not] tell [what our true] Libor is**

Head of Paris Treasury: [. . .] for the dollar [. . .] **we had some feedbacks [to lower LIBORs] from [the Head of SCIB], and the top management [. . . after] we increased rates** [and received] bad feedbacks from investors [. . .]. So **clearly we don't speak about that, no?**

Head of London Treasury: [. . .] no . . . well . . . I think you need to discuss that with [the Global Head of Treasury] [. . .] **I would clarify with [her] how you want to discuss about the management bad pressure on you because [. . .] that could be tricky** for you

Head of Paris Treasury: [. . .] it's very difficult because we have been attacked everyday by every department [. . .] telling us [You] cannot pay to corporate levels so high [. . .] and the other **side my contribution on Libor, you know what it is [. . .]. One time you are going to meet me in jail.** You see the point?

September 8, 2011 (call)

Global Head of Treasury: [. . .] I need to talk to you about the LIBOR stuff because we're getting calls from lawyers, the guys are being interviewed etc [. . .]. And we're beginning to wonder [. . .]. "Have we protected [the Paris Treasury Desk] enough because things are getting a bit crazy?" [. . .] they already interviewed London, you see it's starting to get a bit . . .

Unknown Party 3: . . . a bit heated.

Global Head of Treasury: [. . .] **we need some [. . .] guarantee [. . .] or else we'll refuse to talk.** You see, we need to think about how we're going to keep the guys from being pushed up against a wall just because they're in Treasury, you know.

Beginning in late summer of 2011 and continuing into mid-summer of 2012, Société Générale had serious challenges raising funds and again, determined that it could not risk sending a signal to the market that could create reluctance in counterparties to lend to the Bank. Société Générale experienced a significant tightening of U.S. Dollar funding markets. The funding situation in August 2011 for Société Générale was sufficiently dire that it outweighed any concerns over the Bank's inaccurate LIBOR contributions. Therefore, despite their ongoing fears about their deception being discovered, and in the face of elevating scrutiny, Société Générale continued to make its U.S. Dollar LIBOR submissions below its costs of funding to protect its reputation.

In the following communications, the Global Head of Treasury discussed the matter internally with the Secretariat of Société Générale, bluntly stating that Société Générale is in "complete breach" with its LIBOR submissions and worrying about protecting people from prison.

September 8, 2011 (call)

Global Head of Treasury: [. . .] about LIBOR investigations [. . .] I'm starting to worry [. . .] because now [investigators] who came to London [. . .] are now coming to Paris [. . .] And **we are in a situation where we are in complete breach as to the way we do LIBOR right now because every time we submit it . . . if we submitted it at the true price we're paying, we would get a whole lot of comments. It's always the same story: we contribute LIBOR much lower than what we're willing to pay. And so I . . . I don't really know.** [. . .] [Regulators are] going to do what they did with the commodity traders who have now ended up in prison [. . .] I don't know what we should do in order to protect the people [. . .] who are all specifically named [. . .] **For instance today we're submitting LIBOR 40 bps below what we really pay** [. . .] there are quite a few elements that suggest that in fact our submission is false since nobody actually wants to show that he's paying more for dollars than the guy next to him [. . .] clearly there are elements which are [. . .] very damaging.

Secretariat: [. . .] we'll have to explain why that's the case but [. . .] **I fear that . . . in the end, facts are facts, right, so umm . . . we're not going to obstruct them. We're not going to remake the facts.**

Global Head of Treasury: Yes but it's now, **today** [. . .] **at the moment right now we're in a LIBOR investigation [. . .] people are putting themselves at risk right now by continuing to submit in this way [. . .] what do I get them to say, the guys who are being questioned whilst we're asking them to submit in such a way that we stay in the middle of the range when they're paying 20 or 30 or 40 bps more? [. . .] on dollar LIBOR [. . .] we're in total breach [. . .]** . What do I do to protect the guys? [. . .] we can't [. . .] keep asking people to submit like this [. . .] we do need to have backup even internally if ever it goes too badly wrong, [. . .] .

Around this time, a member of executive management once again showed his sensitivity to outside inquiries about the Bank's LIBOR submissions. Reacting to a journalist inquiry into Société Générale's LIBOR submissions and its costs of funding, the CFO, reached out to the Global Head of Treasury to seek an appropriate response. The Global Head of Treasury once

again discussed Société Générale's artificially low LIBOR submissions, describing in detail how far the submissions have deviated from Société Générale's true costs of funding. In fact, during the most heightened period of external scrutiny, Société Générale's LIBOR submissions had the widest deviations yet from its costs of funding. She described it as being in "cloud cuckoo land." She also emphasized the increasing pressure on the members of the Paris Treasury Desk and the need to protect them from regulatory action and prison for manipulation done "at the request of the bank" to avoid showing that the Bank no longer can obtain funding. The Global Head of Treasury warned that "future attacks are coming" and they need to cover themselves. The CFO got the message.

September 9, 2011 (call)

CFO: Did you see [the email questioning . . .] our basis points for [funding] over Libor compared to what we're showing in our official Libor contribution? [The email] said "Yesterday our [funding] rate was 43 [. . .] when we're sending 35 to the BBA."

Global Head of Treasury: Well yes, **that's what I was telling you yesterday [. . .] We've never been this wide. You know [. . .] we're very far away from reality [. . .] we're in cloud cuckoo land with our contributions.** [. . .] What do we do?

CFO: Well if you add 8 basis points you become the widest [. . .].

Global Head of Treasury: [. . .] You see everyone puts 35, if we start putting 45[. . .]. I mean you saw the article 2 days ago when the said we had moved [our submissions up . . .] the guys who contribute, including me, in the end we're responsible for this. So I have to, **the bank has to, you see, guarantee that it's normal that we submit that in order to protect SG's name** against . . . all the . . . stupid articles coming out you know . . .] **I'm really paying LIBOR+20, even LIBOR +30 [. . .] the LIBOR that's published, I'm contributing LIBOR + 1 or 2 bp. [. . .] the gap has never ever been this big. [. . .] right now we're way off the mark [. . . The submitters have not] refused to contribute but if I were in their position, I would refuse to contribute.**

CFO: What do we reply to this [email]? Do we do nothing? **Or off the record do we say "Listen" Best to shut up, right?**

Global Head of Treasury: We can answer "*CP is only one source of funding on the US investor not our global funding base*", something like that [. . .]. we really do have to decide on what we're going to do. Meaning **whether we remain in breach, and [. . .] how we cover ourselves from future attacks** because they're coming [. . .]. And once again they are targeting people personally, with [. . .] traders going to prison [. . .] **for us [. . .] there is manipulation [. . .] at the request of the bank to avoid showing that we're no longer able to get funding.**

CFO: **I hear you. OK.**

In a later email chain with the Head of SCIB and others, the Global Head of Treasury also raised again the media inquiry, the need to protect the LIBOR submitters and possible responses to mitigate any suspicion related to Société Générale's LIBOR submission practices. Separately in an email with the Head of SCIB, she reiterated that Société Générale's submissions had the greatest deviation from their costs or from "reality" in the effort to avoid stigma.

September 9, 2011 (email)

Global Head of Treasury: [Global Head of SCIB . . .] . We have to discuss how we're going to protect the contributors, especially after the latest legal developments.

Head of SCIB: I'll try to call you [. . .].

Global Head of Treasury: For information, **we have never been so far removed from reality in order to avoid inappropriate interpretations from commentators.**

In the following communication, the Global Head of Treasury attempted to coordinate with the Head of Paris Treasury about how to respond to internal Société Générale investigators looking into Société Générale's LIBOR practices in response to and in anticipation of both current and potential inquiries from the CFTC. The Head of Paris Treasury discussed her responses to the investigators and explained that because of her fear of exposure, she gave the investigators intentionally vague and potentially misleading answers and left out relevant information such as Société Générale's ongoing improper submission strategy, or, in her words, she "played dumb."

September 9, 2011 (call)

Global Head of Treasury: What do I need to know?

Head of Paris Treasury: [. . .] they're going to grill you on [. . .] why you're [paying] above your Libor.

Global Head of Treasury: **They don't know that we contribute above**

Head of Paris Treasury: **No, they don't know [that we pay above our LIBOR submission].** I said [. . .] that Libor was [. . .] our [. . .] level at which we wanted to obtain cash, and so we could also get transactions above and [. . .] below [our submission . . .] **I played dumb** [. . .].

An executive manager continued to monitor the internal investigation during this time, proactively checking in with the Global Head of Treasury about statements to the internal investigators. Senior Treasury managers also discussed their interviews inquiring about LIBOR submission practices and expressed concern about support from executive management within Société Générale.

September 13, 2011 (call)

CFO: So there's a[n indemnification] letter underway . . . [the letter author is] looking [. . .] into all the [submitters] who [answer questions] getting this kind of cover. It goes without saying, but he told me he would formalize it.

Global Head of Treasury: OK, well that's good news.

September 14, 2011 (call)

CFO: How was your meeting yesterday [. . .] about Libor[? . . .]

Global Head of Treasury: [. . .]I explained the issues we have. And so I'm waiting for the . . . waiting for [the indemnification] letter you know [. . .] Because as for the current investigation [. . .] the [submitters . . .] already all answered [. . .] **from what I can see nobody made any mistakes** and in any case they were looking for manipulations [. .

.] Anyway, you see [. . .] **there are no digital snapshots of a fixing or of things like that so [. . .] the conclusion is that we couldn't be attacked about that [. . .] we're not involved in the "attacking excessively low Libor" because [. . .] well, they chose a time period that ended when we just were just entering the Libor panel [. . .] and in any case it was a lot easier for us to justify our contributions. But now we can't justify it at all, so I explained why we couldn't to them.**

CFO: OK.

Global Head of Treasury: So I'm waiting for [the indemnification letter . . .]

CFO: Yes, hey I'll [send a] remind[er about the indemnification letter]. OK? [. . .]

Global Head of Treasury: [. . .] **almost all the deals we're doing are above the prices we're submitting for Libor.**

CFO: Hmm hmm.

Global Head of Treasury: [. . .] we have to give them [. . .] all the deals we made during the month of August and our LIBOR contributions for the month of August.

CFO: Right now?

Global Head of Treasury: Yeah.

September 14, 2011 (call)

Global Head of Treasury: [. . . about] the LIBOR request, because I want us to be backed [by the Bank] on this [. . .] **we said we'd give them the list of the [. . .]. All the deals we made in August and our LIBOR contributions** at the same time, that way they have a month of our deals and our contributions.

Head of Paris Treasury: Ah august, that's a great idea.

Global Head of Treasury: Well no actually, **it's not good that they're seeing now how we do it.** You see? [. . .]

Head of Paris Treasury: Well **I said to the [submitters]: keep contributing amongst the high ones but not the highest.**

Global Head of Treasury: [. . .] Except that **we're not allowed to do that in theory.** [. . .] **[The CFO] asked me how it went, my call [. . .] about the LIBOR [. . .] it is the bank who should be helping you [. . .].** I don't know where we're headed

Head of Paris Treasury: Trust within companies is always limited.

Global Head of Treasury: Exactly, and you know [. . .] . **It's not as if [the Head of SCIB] will come be a witness for us.**

Head of Paris Treasury: Well no, I wouldn't count . . . **I think you're right.**

In the following communications, Société Générale Treasury members discussed attempting to mask Société Générale's true costs of funding and its artificially low LIBOR submissions by, once again, sending knowingly unrealistic bids for funding into the market. Aware of the misleading nature of this practice, Paris Treasury members independently joked about the inherent impropriety of lowballing bids, each saying they will go to prison because of the deceptive practice.

September 21, 2011 (call)

Head of Treasury for the Americas: I think our levels are too low

Head of Paris Treasury: Well **our levels are too low** [. . .] we can't show **When you contribute at 35 for LIBOR** in the morning to avoid getting crushed in the market [. . .] **you can't go up You can't display** [a higher bid for funds] **You'll have to bring us oranges when we're in prison You know**

September 22, 2011 (call)

U.S. Dollar LIBOR Submitter 2: Well [. . .] we have to pay the price, you see **I posted 60. If there are any at 65, I'll take it. We won't discuss it.**

Unknown Party 4: **What level are you posting at in the market?**

U.S. Dollar LIBOR Submitter 2: **Not on the market.** We're not posted at all. We posted LIBOR 32, okay? [. . .] **If we show something [. . .] much too far off from our LIBOR submission, I'd be going to prison tomorrow, so**

In additional communications, members of Paris Treasury discussed receipt of the indemnification letters, and anticipated being interviewed by the "Americans." The Global Head of Treasury stated that she had ensured that the indemnification letters made clear that the Bank was aware of its improper LIBOR submission practices "at the highest level." Meanwhile, Société Générale's LIBOR submissions began to deviate further from the Bank's true costs of funding with spreads between the two increasing to at least 50 basis points. As reflected below, the Global Head of Treasury and other senior managers knew that they could not deflect attention away from their "dishonesty" by claiming that the 50 basis points deviations reflected special relationships, with the Global Head of Treasury noting her "really really bad feeling" about it all.

September 27, 2011 (call)

Senior U.S. Dollar Money Market Trader: [**The indemnification letters**] **arrived this morning.** I'd put them aside.

Head of Paris Treasury: Were they addressed by name? Does everyone have one?

Senior U.S. Dollar Money Market Trader: [. . .] yes. **I put yours aside** [. . .]

Head of Paris Treasury: **Hold on to it.** [. . .]

Senior U.S. Dollar Money Market Trader: Yeah, hold on. Let me lock it up. [laughs]]

Head of Paris Treasury: Lock it up. **You're responsible for my letter. I don't want to go to prison by myself**

September 27, 2011 (call)

Global Head of Treasury: Have you heard about the letter for the LIBOR?

Senior U.S. Dollar Money Market Trader: Yes, I got it.

Global Head of Treasury: [. . .] I realize that the LIBOR [. . .] we're pretty much very far away from the [submission], so . . . well, [**the indemnification letter**] **doesn't completely protect but it shows that the bank was aware . . . so, there you go...**

Senior U.S. Dollar Money Market Trader: It won't stop us from ending up in prison,

basically. Is that it? In Guantanamo [laughs]

Global Head of Treasury: I requested it so that way, you know, **it shows that the bank was actually aware of it at the highest level because we don't have a procedure that tells us to submit like we submit**, you know [. . .] and we're going to be individually interviewed because it's coming around quickly. The Americans are going [to ask us questions about our LIBOR submissions . . .].

October 3, 2011 (call)

Head of Paris Treasury: [. . .] **we had done a real interbank deal 50 bps above . . . the level we were fixing in LIBOR, we're going to have to answer for, to be really disingenuous and say it was to maintain a commercial relationship**, you know [. . .]

Global Head of Treasury: **are we in the high ones on LIBOR or not?**

Head of Paris Treasury: **Well yes, we're trying to stay on the panel, to be 4th or 5th, you see.**

Global Head of Treasury: [. . .] you can go up. You go up 1 bp every day until you catch up [. . .] we also said to stay pretty much, without, you know, to not necessarily stay . . . you know, no one is making us avoid being eliminated, that's something we're imposing on ourselves. So I suggest you go up [. . .] Because it's true that we are indeed, more and more, more and more, you know **we're going to have more and more problems, which will get harder and harder to [justify the submissions].**

Head of Paris Treasury: [. . .] **We're screwed.**

Global Head of Treasury: [. . .] In any case if **we're 50 bp [between our cost of funding and our LIBOR submissions], they know very well that 50 bp isn't due to [special circumstances . . .].**

Head of Paris Treasury: I don't know how we're going to explain it, but

Global Head of Treasury: Me neither [. . .] I have a bad feeling. I have a really really bad feeling about this whole thing.

Head of Paris Treasury: Yeah, apart from being dishonest [about the interbank deals] and saying that [deal] was the only one [at that level]

Despite the heightened fears of being held responsible for lowballing of Société Générale's LIBOR submissions, Société Générale's submitters continued to submit LIBORs well below the Bank's cost of funds until at least July of 2012.

As described above, Société Générale contributed artificially low U.S. Dollar LIBOR submissions from May 2010 to at least July 2012, inaccurate Euro LIBOR submissions from May 2010 to at least July 2010, and inaccurate Euribor submissions through, at least, the end of May 2010. Even in periods when increased borrowing costs caused widening spreads between Société Générale's U.S. Dollar LIBOR submissions and its costs of funding, the Bank continued to falsely deflate its submissions to protect its reputation from negative market perceptions and to ensure it could obtain short-term funding. Société Générale's fixation with shielding itself from the potential negative effects that high U.S. Dollar and Euro LIBOR submissions, and disconnected Euro LIBOR and Euribor submissions, could have had on its reputation led the Bank to prioritize protecting its public standing over making accurate LIBOR and Euribor submissions – submissions which would have reflected Société Générale's true costs of funding in the relevant markets. Société Générale's LIBOR and Euribor submitters, senior members of

the Treasury desk, senior Treasury managers, and members of its executive management knew that concerns about reputation or perceived negative market or media reports were not legitimate or permissible factors on which to base its LIBOR or Euribor submissions. Thus, by basing its LIBOR and Euribor submissions, in whole or in part, on Société Générale's reputation in the market as opposed to its costs of funding, Société Générale made submissions which were not in accordance with the definitions and criteria of LIBOR and Euribor. Accordingly, Société Générale, through its U.S. Dollar LIBOR, Euro LIBOR, and Euribor submissions, knowingly delivered, or caused to be delivered, benchmark interest rate submissions that constituted false, misleading, or knowingly inaccurate reports that affected or tended to affect U.S Dollar LIBOR, Euro LIBOR, and Euribor, respectively, each a commodity in interstate commerce.

5. **Société Générale's Attempts To Manipulate Euribor and Euro LIBOR, False Reporting of Euribor and Euro LIBOR, and Aiding and Abetting in the Attempted Manipulation of Euribor**

Prior to its attempted manipulation of the U.S. Dollar LIBOR fixing from February 2009 to May 2010 and its false reporting to protect its reputation, Société Générale, through the acts of certain derivatives traders and submitters, whose desks also had trading positions, attempted to manipulate Euribor and Euro LIBOR, by making or causing to be made submissions that were set at levels to benefit trading positions. Certain Société Générale traders also aided and abetted others in their attempts to manipulate Euribor.

a. **Société Générale's Attempts To Manipulate Euribor, False Reporting of Euribor, and Coordination with Barclays' Euro Traders To Manipulate Euribor**

From 2006 to, at least, March 2007, Société Générale, through its Euro derivatives traders, attempted to manipulate Euribor by making requests to Société Générale's Euribor submitters to skew Société Générale's Euribor submissions in a direction or at a level that benefited their trading positions, which Société Générale's Euribor submitters occasionally accommodated. During this same period, Société Générale's Euro derivatives traders also coordinated submission requests with Euro derivatives traders at Barclays Bank ("Barclays"). The requests were made in order to benefit each bank's derivatives traders' trading positions.

i. ***Société Générale's Euro Derivatives Traders Request Skewed Euribor Submissions To Benefit Trading Positions***

From 2006 to at least March 2007, Société Générale's Euro derivatives traders made requests to Société Générale's Euribor submitters and the Head of Paris Treasury to skew the Bank's Euribor submissions with the intent of affecting the Euribor fixing at rate that was beneficial to the traders' Euro derivatives trading positions. The submitters occasionally accommodated those requests. On certain occasions, the submitters did not accommodate the requests of the derivatives traders because the Paris Treasury Desk itself held positions which would have benefited from an opposite movement in the fixing. If possible, at times, Société Générale's submitters and managers agreed to submit a rate toward the "middle" so as to

consider both the Paris Treasury Desk's trading positions and the derivatives traders' trading positions. Société Générale's Euribor submitters were aware that trading positions were not an appropriate or permissible factor to consider when making the Bank's Euribor submissions.

The following communications exemplify the attempted manipulation by Société Générale's Euro derivatives traders, including an admission by one Société Générale trader that he often would make requests to Société Générale's submitters as well as to other banks attempting to manipulate the Euribor fixing.

September 26, 2006 (email Euro Derivatives Trader to Senior Euro Derivatives Trader 1)

Euro Derivatives Trader: do you know who within the treasury give our [submission] for [E]uribor? If so do **want to see if he can skew a little low for tomorrow's reset!**

September 27, 2006

Senior Euro Derivatives Trader 1: [. . .] **we have a huge fixing today [. . .] on some 3 month [. . .]**

Head of Paris Treasury: [. . .] **we also** [have a fixing . . .].

Senior Euro Derivatives Trader 1: For us **it's in our interests that it fix as low as possible.** [. . .]

Head of Paris Treasury: **Not our direction**

Senior Euro Derivatives Trader 1: It's not your direction

Head of Paris Treasury: What's the amount?

Senior Euro Derivatives Trader 1: 7 billion.

Head of Paris Treasury: Yeah, you're going to be bigger than us. Do you want to know where it should fix? I think it would fix below 38.

Senior Euro Derivatives Trader 1: [. . .] do you have a lot in the other direction?

Head of Paris Treasury 1: [. . .] **it's smaller than you . . . so we're going to try to fix it**
. . . .

Senior Euro Derivatives Trader 1: **Middle of the range**

Head of Paris Treasury: **Middle . . . exactly**

Senior Euro Derivatives Trader 1: Ok excellent!

December 17, 2007 (Bloomberg chat with several Société Générale Euro derivatives traders)

Senior Euro Derivatives Trader 1: [. . .] Just had a speech with [the Head of Paris Treasury] to explain [our] pos[ition . . .] she agrees that current level is already high and risk minimum. She knows now our risk I told her like a favour to contribute high rates today and lower for the coming days, that will cost me a lunch I guess

Euro Derivatives Trader 2: if it is a lunch at [restaurant], you should be fine.

January 16, 2009

Unknown Party 7: the EURIBOR is completely manipulated [. . .]
Senior Euro Derivatives Trader 2: What? You thought it wasn't manipulated before? (laughs) [. . .] . Just to reassure you, **in the past I was regularly asking [Euribor Submitter] to submit high or low [. . .] . And, so to reassure you, well I've done it with other banks too . . .** (laughs).

ii. Société Générale's Euro Derivatives Traders Coordinated with Barclays Euro Derivatives Traders To Manipulate Euribor

From May 2006 to at least March 2007, Société Générale's Euro derivatives traders coordinated with Barclays derivatives traders on several occasions in attempts to manipulate the Euribor fixing.¹⁸ In addition to their internal requests to Société Générale's submitters, certain Société Générale Euro derivatives traders engaged in a two-way scheme of sending submission requests to, and receiving requests from, Barclays derivatives traders to relay to their respective Euribor submitters. When Barclays traders' requests did not conflict with the interests of Société Générale Euro derivatives traders' positions, the Société Générale traders would relay those requests to Société Générale's Euribor submitters to benefit either the Barclays traders' trading position, or both the Barclays traders' and the Société Générale traders' positions. On certain occasions, when the trading position did not conflict with Paris Treasury's trading positions, Société Générale's submitters would accommodate the derivative traders' requests.

The following communications reflect the coordination between Société Générale's Euro derivatives traders and Barclays' derivatives traders:

May 31, 2006 (Bloomberg chat)

Barclays Senior Euro Derivatives Trader: **can you tell the guys at the treasury to put a low fixing on the 12m?**
Senior Euro Derivatives Trader 2: **ok [. . .] it's done [. . . the Euribor Submitter] said ok [. . .]**

July 6, 2006 (Bloomberg chat)

Barclays Senior Euro Derivatives Trader: **1m really low please** if you can
Senior Euro Derivatives Trader 2: **I'll ask [. . .] 1m fix well down**
Barclays Senior Euro Derivatives Trader: [. . .] **thank you**

¹⁸ On June 27, 2012, the Commission issued an Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, As Amended, Making Findings and Imposing Remedial Sanctions against Barclays, finding, among other things, that Barclays Euro derivatives traders coordinated with other banks in their attempts to manipulate Euribor. See *Barclays PLC, Barclays Bank PLC and Barclays Capital Inc.*, CFTC Docket No. 12-25 (June 27, 2012), pp. 16-17; available at <http://www.cftc.gov/ucm/groups/public/@lrenforcementactions/documents/legalpleading/enfbarclaysorder062712.pdf>.

July 26, 2006 (Bloomberg chat)

Senior Euro Derivatives Trader 2: a **low 1m fixing if you can today and tomorrow**
Barclays Senior Euro Derivatives Trader: **this suits me well for today**

October 16, 2006 (Bloomberg chat)

Barclays Senior Euro Derivatives Trader: **1m sky high** if you can
Senior Euro Derivatives Trader 2: **ok I'll pass it on**

October 18, 2006 (Bloomberg chat)

Barclays Senior Euro Derivatives Trader: if you can **low 1m and low 3m**
Senior Euro Derivatives Trader 2: [. . .] **low as requested**

November 7, 2006 (Bloomberg chat)

Senior Euro Derivatives Trader 2: if you can **I would like an expensive fixing in 3m today**
Barclays Senior Euro Derivatives Trader: **okay and for me a 1m not expensive**
Senior Euro Derivatives Trader 2: **ok I'm asking**

December 21, 2006

Barclays Senior Euro Derivatives Trader: very important [. . .] **you have to tell tre[asury] to set a low fixing on Dec 29**, I'll do the same with mine, and **I'll use all the people I know to set it low**
Senior Euro Derivatives Trader: **you're right, I'll do the same** [. . .]

January 19, 2007

Senior Euro Derivatives Trader 2: do you have anything **on 3m fix today** ? [. . .] **low if possible**
Barclays Senior Euro Derivatives Trader: **perfect same way**

March 16, 2007

Barclays Senior Euro Derivatives Trader: kids **I need a very low fixing**
Senior Euro Derivatives Trader 3: [. . .] **I asked they're looking into it** [. . .] **yes their interest is on lower too**
Barclays Senior Euro Derivatives Trader: **ok great thanks**

Société Générale's Euro derivatives traders, by making submission requests to skew Société Générale's Euribor submissions, attempted to manipulate the Euribor fixing, a commodity in interstate commerce. Société Générale's Euribor submitters, on the occasions they accommodated these submission requests, made false reports of the Bank's Euribor submissions

by taking these manipulative requests into account when determining Société Générale's submission.

b. Société Générale's Fall 2007 Internal Attempts To Manipulate Euribor and Euro LIBOR in Order To Mitigate Losses from the Paris Treasury Desk's Trading Position

In the fall of 2007, Société Générale, through its Euro LIBOR/Euribor Submitters and the then Head of Paris Treasury¹⁹ attempted to manipulate Société Générale's Euro LIBOR and Euribor submissions to benefit a particularly large money market and derivatives trading position tied to Euribor. Société Générale was highly exposed to a large unhedged short position in the Euro derivatives market. To mitigate potential losses it might incur from this trading position, the Then Head of Paris Treasury (the eventual Global Head of Treasury) instructed the Euro LIBOR and Euribor submitters on the Paris Treasury Desk to skew the Bank's submissions to benefit the desk's overall position. Other managers, including the then equivalent to the Global Head of Treasury (the "Head of Treasury for Europe and Asia"), were aware of this conduct.

The following communications exemplify the improper direction by the Global Head of Treasury that was accommodated by Société Générale's Euro LIBOR and Euribor submitters:

September 27, 2007

Back-up Yen LIBOR Submitter: Your 3 month EURIBOR, is that correct? 4.68?
Euro LIBOR/Euribor Submitter 1: Yes [. . .] **we have some instruction from [Then Head of Paris Treasury (the eventual Global Head of Treasury)] that [. . .] she would like the EURIBOR 3 month [. . .] lower . . . on the EURIBOR.**

October 10, 2007

Unknown Party 5: [. . .] are you still going to contribute at the same levels on the 3 Month? [. . .]
Euro LIBOR/Euribor Submitter 2: Yes. [. . .] **We have been instructed to [ensure] that [the 3 Month Euribor fixing] drops [. . .] And when you're told you have to, well [. . .]. You do it.**

The attempted manipulation was made known to the Head of Treasury for Europe and Asia as well as the Head of London Treasury, neither of whom made any effort to stop this practice, despite concerns that the BBA was looking at submissions that were out of line with other panel bank submissions and Société Générale was trying to get on the U.S. Dollar LIBOR panel.

¹⁹ The Head of Paris Treasury during this period eventually was promoted to the Global Head of Treasury, referenced throughout the Order.

October 10, 2007

Head of London Treasury: [. . .] **I've noticed the LIBOR fixings for euros that SG is out of line particularly with the market. [. . .] is there a particular reason for it?**

Then Head of Paris Treasury (eventual Global Head of Treasury): Yeah [. . .] because the EURIBOR [fixings] are very high. [. . .] And [. . .] **we are long [. . .] because we had to raise all this 3 Month money [. . .]. We end[ed] up long, very cash long [. . .] we are losing half a basis point every day.**

Head of London Treasury: [. . .] the BBA are analyzing LIBOR's that are out of line shall we say [. . .] all the major banks were pretty much in line [. . .].

Then Head of Paris Treasury (eventual Global Head of Treasury): [. . .] **I will discuss with the desk. [. . .] I think [this is] one way to push the market to go a little down and to push EURIBOR also down.**

Head of London Treasury: [. . .] if it is seen that SG's actually paying equal to or higher than the LIBORs they're setting in the market, it will cause major ructions [. . .] we're trying to get onto the Dollar LIBOR and [. . .] **we're on the [. . .] LIBOR committee [. . .] Which puts us in a bit of a difficult situation if we're kind of manipulating it.** So [. . .] I'm just fearful [. . .].

Then Head of Paris Treasury (eventual Global Head of Treasury): **Well the LIBOR [. . .] is just global manipulation by everybody (laughs).**

October 10, 2007

Head of Treasury for Europe and Asia: [. . .] **The 3 Month LIBOR and EURIBOR yesterday, we submitted it at 65, is that right?**

Euro LIBOR/Euribor Submitter 1: Yes.

Head of Treasury for Europe and Asia: Damn. **Why did we do that? Was it a mistake or did we try to [meet] the objectives?**

Euro LIBOR/Euribor Submitter 1: No. **No, it was to lower the fixings.**

Head of Treasury for Europe and Asia: Oh. So we went from 79 to 65.

Euro LIBOR/Euribor Submitter 1: [. . .] that's actually how **we're trying to lower the fixings [. . .].**

Head of Treasury for Europe and Asia: And, what is our interest in lowering the fixings?

Euro LIBOR/Euribor Submitter 1: [. . .] **It's [Then Head of Paris Treasury (eventual Global Head of Treasury)] along with [Senior Euro Money Market Trader] as well who asked us to do it.**

October 11, 2007

Then Head of Paris Treasury (eventual Global Head of Treasury): Did you see, **we submitted low to EURIBOR [. . .] we're beginning to lower the 3 Month EURIBOR. [. . .] because we're fed up with liquidity being expensive. [. . .] we're going to lower [more . . .].**

Unknown Party 6: **So you've decided to lower?**

Then Head of Paris Treasury (eventual Global Head of Treasury): **Right. [. . .] did you see, the EURIBOR [fixing] has actually dropped. Cash doesn't necessarily exist anymore**

so [. . .] when you have a cash fixing [. . .]. Then [. . .] if you leave the EURIBOR expensive, at the same time people look at it as a reference, so there you go.

November 30, 2007²⁰

Head of London Treasury: I spoke to [Then Head of Paris Treasury (eventual Global Head of Treasury)] [. . .] I think [. . .] **You tried to [. . .] guide the LIBORs lower for a while there [. . .] by breaking ranks with everyone and quoting a lower price?** I think it was for a while [. . .] I think it was in the beginning to mid part of October

Head of Paris Treasury: **We have fixed once the EURIBOR lower when we were long December contracts. Yeah, it was some manipulation, we can say.**

Head of London Treasury: Yeah

By skewing Société Générale's Euribor and Euro LIBOR submissions to benefit the Paris Treasury Desk's trading position, Société Générale's Euribor and Euro LIBOR submitters and their managers attempted to manipulate the Euribor and Euro LIBOR fixing, each a commodity in interstate commerce.

* * *

Société Générale's Euribor submitters knew it was improper to consider the Paris Treasury's, or an individual trader's, derivatives trading positions when determining the Bank's Euribor submissions, as derivatives trading positions are not legitimate or permissible factors on which to base a bank's daily Euribor submissions. On the occasions Société Générale based its Euribor submissions in whole or in part on derivatives trading positions, Société Générale's submissions were not consistent with the EBF's definition and criteria for Euribor submissions. Instead, on these occasions Société Générale knowingly conveyed false, misleading, or knowingly inaccurate reports that its submitted rates for Euribor, a commodity in interstate commerce, were based on and solely reflected Société Générale's costs of borrowing Euro in the European prime bank market.

6. Société Générale's Manipulation, Attempted Manipulation, and False Reporting of Yen LIBOR To Benefit Société Générale Trading Positions

From July 2006 through August 2007, Société Générale made false Yen LIBOR submissions in an attempt to manipulate Yen LIBOR to benefit Société Générale's trading positions. This attempted manipulation was at times successful.

From July 2006 through August 2007, two Société Générale Yen traders – a senior Yen derivatives trader (“Senior Yen Derivatives Trader”) and his subordinate, a junior Yen derivatives trader – regularly sent submission requests to Société Générale's Yen LIBOR

²⁰ The individual titled the “Head of Paris Treasury” had not yet received this title. At the time of this communication, this Société Générale employee was the “Senior U.S. Dollar Money Market Trader”.

Submitter (“Yen LIBOR Submitter”).²¹ They also occasionally sent submission requests to Société Générale’s Back-up Yen LIBOR Submitter (“Back-up Yen LIBOR Submitter”).

Société Générale’s Head of Treasury for Europe and Asia was aware of these requests and ordered the Yen LIBOR submitter to accommodate them. The Yen LIBOR Submitter knew that trader positions were an inappropriate and impermissible factor to consider when making LIBOR submissions, but nonetheless complied with the Global Head of Treasury’s directive and, from July 2006 through August 2007, attempted to manipulate Yen LIBOR by making submissions to benefit the derivatives traders’ trading positions. This attempted manipulation was at times successful.

The following excerpted communications exemplify Société Générale’s manipulative conduct.

July 13, 2006 (call from Senior Yen Derivatives Trader to Yen LIBOR Submitter)

Senior Yen Derivatives Trader: Ah hello. My name is [. . .] I’m calling from Tokyo. **I don’t know if [Head of Treasury for Europe and Asia] told you he told me to call you.**

Yen LIBOR Submitter: Yeah.

Senior Yen Derivatives Trader: Yeah. Erm, basically what I want to discuss with you actually no, we have a big derivatives booking yeah.

Yen LIBOR Submitter: Yeah.

Senior Yen Derivatives Trader: Yeah, and if that if you don't mind, **we would like you to try to adjust your contribution to the LIBOR to help the fixing to go our way.**

Yen LIBOR Submitter: Er, well we can try within reason, yes certainly.

August 31, 2006 (communication between Senior Yen Derivatives Trader and Head of Treasury for Europe and Asia)

Senior Yen Derivatives Trader: say, who is replacing [Yen LIBOR Submitter]?? **Can you tell him to put the 3m JPY LIBOR as high as possible, and the 6m as low as possible and to really go to battle**, there is 400b on the two fixings . . . they're already going to cost us a lot

Head of Treasury for Europe and Asia: [Back-up Yen LIBOR Submitter], he knows what is going on

September 15, 2006

Senior Yen Derivatives Trader (to Yen LIBOR Submitter): **HELLO. CAN U MAKE BOTH 3M & 6M AS LOW AS POSSIBLE? WE HAVE A VERY BIG FIXING TODAY**

²¹ During the July 2006 through August 2007 period of alleged misconduct, these Yen derivatives traders operated out of Respondent’s Tokyo affiliate, which was at the time Société Générale Securities North Pacific Ltd, Tokyo Branch.

June 8, 2007

Senior Yen Derivatives Trader (copying Head of Treasury for Europe and Asia): hello
could you try to make 3m & 6m fixings higher today ???
Yen LIBOR Submitter: sure, I try

August 20, 2007

Senior Yen Derivatives Trader (copying Head of Treasury for Europe and Asia): hi. we
have quite a big libor 6mth fixing today could you try for us to make it a tad lower
if possible?
Yen LIBOR Submitter: . . . I will try and help.

As described above, Société Générale, through its Yen LIBOR submitters, made multiple attempts to manipulate the Yen LIBOR fixing, a commodity in interstate commerce, by making false Yen LIBOR submissions to benefit Société Générale's derivatives trading positions. The Yen LIBOR submitter knew it was improper to consider derivatives trading positions in determining the bank's submissions, as derivatives trading positions are not legitimate or permissible factors on which to base a bank's daily LIBOR submissions. By making Yen LIBOR submissions based in whole or in part on derivatives trading positions, Société Générale made false reports regarding Yen LIBOR, attempted to manipulate Yen LIBOR, and, on certain occasions, successfully manipulated Yen LIBOR.

7. Société Générale's Internal Auditor Failed To Detect Glaring Problems with the Bank's LIBOR Submission Process

Early in 2012, after having received requests for information from the CFTC in July and September of 2011, Société Générale conducted an internal audit of the LIBOR submission process in Paris and London for the preceding year (2011). The result of the audit was an anemic March 2012 report that failed to identify glaring improprieties with the LIBOR submission process and the rampant inconsistencies between the Bank's LIBOR submissions and its costs of funding. The report concluded that the "[r]ates submitted and generated by [Treasury] staff are consistent with the [BBA] guidelines," despite an abundance of evidence to the contrary. A cursory review of documents and information could have uncovered the LIBOR submission strategy implemented by Paris Treasury that strayed far outside the BBA guidelines and the definition of LIBOR. This report was not a rigorous review of the Bank's LIBOR submission practices and instead was simply a "checking the box" exercise that only created the appearance of a fulsome audit review. This audit exemplifies Société Générale's cavalier approach to maintaining integrity in its LIBOR submission process and represents an overall indifference to root out misconduct within the Bank related to LIBOR, prior to the Bank's determination to cooperate with the CFTC in its investigation.

IV.

LEGAL DISCUSSION

A. Respondent 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, 7 U.S.C. § 13(a)(2) (2006), 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.” *See also 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); *CFTC v. Johnson*, 408 F. Supp. 2d 259, 266-67 (S.D. Tex. 2005).

Respondent, through the transmission of its daily submissions to the service provider of the BBA and EBF who calculated their official fixings (e.g., Thomson Reuters), knowingly delivered or caused to be delivered its LIBOR and Euribor submissions through the mails or interstate commerce. Respondent’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, 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. Respondent’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 Respondent’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 LIBOR and Euribor are fixed.

During the periods relevant to the conduct described herein, Respondent’s submissions for U.S. Dollar LIBOR, Yen LIBOR, Euro LIBOR, and Euribor, at times, were false, misleading, or knowingly inaccurate because they were based in whole or in part on impermissible and illegitimate factors, specifically: (1) with respect to U.S. Dollar LIBOR, Yen LIBOR, Euro LIBOR, and Euribor, the money market or derivatives trading positions of Paris Treasury or derivatives traders; (2) with respect to U.S. Dollar LIBOR, Euro LIBOR, and Euribor, a desire to avoid negative market or media attention that raised questions about the Bank’s liquidity or strength; and (3) with respect to Euro LIBOR and Euribor, a desire to avoid inquiry by the BBA or EBF about a wide variance between the two submissions. By using these impermissible and illegitimate factors in making U.S. Dollar LIBOR, Yen LIBOR, Euro LIBOR, and Euribor submissions, Respondent 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. Respondent’s executive management, senior managers, traders, and submitters knew that the Bank’s U.S. Dollar LIBOR, Euro LIBOR, and Euribor submissions contained false, misleading, or knowingly inaccurate information. Further, Respondent’s senior managers, traders, and submitters knew the Bank’s Yen LIBOR submissions contained false,

misleading, or knowingly inaccurate information. Accordingly, Respondent violated Section 9(a)(2) of the Act.

B. Société Générale Manipulated Yen LIBOR at Times for Certain Tenors

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.” For conduct prior to August 15, 2011, former Section 6(c) and 6(d) of the Act authorize the Commission to serve a complaint and provide for the imposition of, among other things, civil monetary penalties and cease and desist orders if the Commission “has reason to believe that any person . . . 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, 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, CFTC No. 75-16, 1987 WL 106879, at *4 (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 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.” *Ind. Farm Bureau Coop. Ass’n, Inc.*, CFTC No. 75-14, 1982 WL 30249, at *4 (Dec. 17, 1982). The manipulator’s intent separates “lawful business conduct from unlawful manipulative activity.” *Id.* at *7. To prove the intent element of manipulation, it must be shown that Société Générale “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. Co.*, CFTC No. 75-4, 1977 WL 13562, at *7 (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.” *Ind. Farm Bureau*, 1982 WL 30249, at *7. “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. U. S. 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*, CFTC No. 01-23, 2008 WL 4831204, at *29 (Nov. 5, 2008) (citing *Hohenberg Bros.*, 1977 WL 13562, at *8)), *aff’d sub nom. DiPlacido v. CFTC*, 364 Fed. App’x 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.” *Cox*, 1987 WL 106879, at *8; *Ind. Farm Bureau*, 1982 WL 30249, at *4 n.2. As the Commission noted with approval in *DiPlacido*, 2008 WL 4831204, at *29 (quoting *Ind. Farm Bureau*, 1982 WL 30249, at * 26 (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.

Ind. Farm Bureau, 1982 WL 30249, at *4 n.2; see also *DiPlacido*, 2008 WL 4831204, at *31-32 (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”); *Cox*, 1987 WL 106879, at *12 (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. *DiPlacido*, 2008 WL 4831204, at *32. 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].” See *In re Kosuga*, 19 Agric. Dec. 603,

624 (1960); *see also Cox*, 1987 WL 106879, at *12 (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, Société Générale made daily submissions that purported to reflect its assessments of the costs of borrowing unsecured funds in the relevant interbank markets for Yen across tenors. The official LIBOR fixing is calculated using a trimmed average methodology applied to the rates submitted by the panel banks. By virtue of this methodology, Société Générale had the ability to influence or affect the rates that would become the official Yen LIBOR fixing for any tenor.

As evidenced by the extensive communications and other facts set forth above, in making the false Yen LIBOR submissions, Société Générale employees specifically intended to affect the daily Yen LIBOR for certain tenors, including one-month, three-month, and six-month. Their intent is also made clear by the evidence that the derivatives traders and submitter's motives were to benefit Société Générale's derivatives trading positions.

On certain occasions when Société Générale made false, misleading, or knowingly inaccurate Yen LIBOR submissions, they introduced illegitimate factors in the pricing of the daily Yen LIBOR fixing and affected the official Yen LIBOR for certain tenors, resulting in artificial Yen LIBOR fixings. Thus, Société Générale's actions were a proximate cause of the artificial LIBOR fixings.

Accordingly, at times, Société Générale manipulated certain tenors of Yen LIBOR, a commodity in interstate commerce, in violation of Sections 6(c), 6(d), and 9(a)(2) of the Act.

C. Respondent Attempted To Manipulate U.S. Dollar LIBOR, Yen LIBOR, and Euribor

To prove attempted manipulation under each of these provisions, the following two elements are required to prove an attempted manipulation: (1) an intent to affect the market price; and (2) an overt act in furtherance of that intent. *See CFTC v. Parnon Energy, Inc.*, 875 F. Supp. 2d 233, 250 (S.D.N.Y. 2012); *Hohenberg Bros.*, 1977 WL 13562, at *7; *CFTC v. Bradley*, 408 F. Supp. 2d 1214 (N.D. Okla. 2005). The intent standard is the same as that for manipulation. *See Ind. Farm Bureau*, 1982 WL 30249, at *4; *Hohenberg Bros.*, 1977 WL 13562, at *7.

Here, as evidenced by the communications of Société Générale's senior Treasury managers, LIBOR and Euribor submitters, derivatives and money market traders, and the Paris and London Treasury Desk's, Respondent specifically intended to affect the rate at which the daily U.S. Dollar LIBOR, Yen LIBOR, and Euribor, all commodities in interstate commerce, would be fixed to benefit its trading positions. More specifically, the evidence shows that, from February 2009 to mid-May 2010, the U.S. Dollar LIBOR Submitter took into account the Paris Treasury Desk's trading position when determining Société Générale's submissions in attempts to manipulate the U.S. Dollar LIBOR. Further, the Bank's Yen derivatives traders and Euro derivatives traders, over varying periods of time, made requests to the respective submitters, all

in attempts to manipulate the Yen LIBOR and Euribor fixings, respectively. Moreover, the evidence reflects that the requested submissions, or in the U.S. Dollar LIBOR submitter's case and, in the fall of 2007 the Euribor submitter's case, the desk-directed submissions, were intended to affect the fixings in order to benefit Société Générale's various desk and individual trader trading positions to the detriment of the Bank's counterparties. Furthermore, Société Générale's Euribor derivatives traders engaged in numerous communications with certain Barclays' derivatives traders, seeking one another's assistance to influence each bank's Euribor submissions to have the most impact on the Euribor fixing.

Société Générale's position-based submissions by its submitters as well as the various trader requests by its Yen and Euro derivatives traders for altered rate submissions constitute overt acts in furtherance of their intent to affect the U.S. Dollar LIBOR, Yen LIBOR, and Euribor fixings. By engaging in such conduct, Respondent engaged in multiple 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, 13(a)(2) (2006).

D. Respondent Aided and Abetted the Attempts of Others To Manipulate Euribor

Pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a) (2006), Société Générale aided and abetted the attempts of traders at other banks to manipulate Euribor in violation of the Act. Liability as an aider and abettor requires proof that: (1) the Act was violated; (2) the aider and abettor had knowledge of the wrongdoing underlying the violation; and (3) the aider and abettor intentionally assisted the primary wrongdoer. See *In re Nikkhah*, CFTC No. 95-13, 2000 WL 622872, at *11 n.28 (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 *Lincolnwood Commodities, Inc.*, CFTC No. 78-48, 1984 WL 48104, at *28 (Jan. 31, 1984). Knowing assistance can be inferred from the surrounding facts and circumstances. *Id.* at *29.

As evidenced by the communications set forth above, Société Générale's Euro derivatives traders and certain derivatives traders at Barclays coordinated on several occasions to have Euribor submissions that would benefit their respective derivatives trading positions. At times, Barclays traders asked Société Générale traders to submit a certain rate, or submit a rate in a certain direction, that would benefit the trading positions of Barclays traders. Société Générale's derivatives traders agreed and passed along the requested Euribor submissions to Société Générale's Euribor submitters, who, occasionally, accommodated the requests. Accordingly, by seeking to affect the rates at which Euribor was fixed, the Barclays derivatives traders attempted to manipulate Euribor in violation of Sections 6(c), 6(d), and 9(a)(2) of the Act. Société Générale's Euro derivatives traders and its Euribor submitters all had knowledge of and intentionally assisted the attempts of the Barclays traders to manipulate the rates at which Euribor were fixed. By such acts of those Société Générale employees, Société Générale aided and abetted the attempts of traders at Barclays to manipulate Euribor in violation of Sections 6(c), 6(d), and 9(a)(2) of the Act.

E. Respondent Are Liable for the Acts of Their Agents

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17

C.F.R. § 1.2 (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 Act and 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).

Société Générale S. A. is liable for the acts, omissions, and failures of the traders, managers, and submitters who acted as its employees and/or agents or the employees and/or agents of its subsidiaries in the conduct described above and accordingly, violated Section 6(c) and 6(d) for conduct occurring prior to August 15, 2011, and Section 9(a)(2) of the Act, as set forth above.

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent violated Section 6(c) and 6(d), for conduct occurring prior to August 15, 2011, and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, 13(a)(2) (2006).

VI.

OFFER OF SETTLEMENT

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

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to 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 filing and service of a complaint and notice of hearing;
 - 2. a hearing;
 - 3. all post-hearing procedures;
 - 4. judicial review by any court;
 - 5. any and all objections to the participation by any member of the Commission's

staff in the Commission's consideration of the Offer;

6. any and all claims that Respondent may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission Regulations, 17 C.F.R. pt. 148 (2017), relating to, or arising from, this proceeding;
 7. any and all claims that Respondent may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-53, 110 Stat. 847, 857-74 (codified as amended in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
 8. any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief.
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- E. Requests, for the reasons set forth in Respondent's letter dated May 8, 2018 ("Request Letter"), that the Commission advise that, under the circumstances, disqualification under Rule 262(a) of Regulation A and Rule 506(d)(1) of Regulation D of the Securities & Exchange Commission ("SEC"), 17 C.F.R. §§ 230.262(a), 230.506(d)(1) (2017), should not arise as a consequence of this Order;
- F. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Respondent violated Section 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, 13(a)(2) (2006);
 2. Orders Respondent to cease and desist from violating Sections 6(c), 6(d), and 9(a)(2) of the Act;
 3. Orders Respondent to pay a civil monetary penalty in the amount of four hundred seventy-five million dollars (\$475,000,000), within ten (10) days of the date of entry of this Order. If the CMP Obligation is not paid in full within ten (10) days of the date of entry of the Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of the Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of the Order pursuant to 28 U.S.C. § 1961 (2012);
 4. Advises that, based on the nature of the violations; the findings made, and the sanctions, conditions, and Undertakings imposed in this Order; and the facts and representations in Respondent's Request Letter, disqualification under Rule 262(a) of Regulation A and Rule 506(d)(1) of Regulation D of the SEC should not

arise as a consequence of this Order; and

5. Orders Respondent and its successors and assigns to comply with the conditions and Undertakings consented to in the Offer and as set forth in Part VII.C of this Order.

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

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, 13(a)(2) (2006).
- B. Respondent shall pay a civil monetary penalty of four hundred seventy-five million dollars (\$475,000,000) within ten (10) days of the date of entry of this Order (the “CMP Obligation”).²² 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). Respondent shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the Respondent and the name and docket

²² Effective June 18, 2008, the Act imposes a \$1,000,000 civil monetary penalty for each act of attempted manipulation in violation of the Act. Certain of Respondent’s violations of the Act for attempted manipulation occurred after June 18, 2008.

number of this proceeding. The Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings (the “Undertakings”). Respondent represents that it has already undertaken and implemented, or is implementing certain compliance and supervisory controls or enhancements consistent with these Undertakings:²³

1. PRINCIPLES²⁴

- i. Respondent 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. Respondent represents and undertakes that each Benchmark Interest Rate Submission by Respondent 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: Respondent shall determine its Submission(s) based on the following Factors, Adjustments and

²³ For purposes of this section VII.C., Respondent agrees that it shall cause the Undertakings to be performed by Respondent, its successors and assigns, and its affiliate Société Générale Securities Japan Limited.

²⁴ 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 Respondent 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).

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. Respondent's transactions 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.²⁵

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

- Factor 1 — Respondent's Borrowing or Lending Transactions Observed by Respondent's Submitters:
 - a. Respondent's transactions in the market as defined by the Benchmark Publisher for the particular Benchmark Interest Rate;
 - b. Respondent's transactions in other markets for unsecured funds, including, but not limited to, certificates of deposit and issuances of commercial paper; and
 - c. Respondent'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 Respondent'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.

²⁵ 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.

- Factor 3 — Third Party Offers Observed by Respondent’s Submitters:
 - a. Third party offers to Respondent in the market as defined by the Benchmark Publisher relevant to each of the Submission(s);
 - 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 Respondent by interdealer brokers (*e.g.*, voice brokers); and
 - c. Third party offers provided to Respondent 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: Respondent 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 Respondent applies the above Factors, if Respondent has data for any maturity/tenor described by a Factor, then Respondent may interpolate or extrapolate the remaining maturities/tenors from the available data;
 - d. Credit Standards: As Respondent applies the above Factors, adjustments may be made to reflect Respondent’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, Respondent 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, Respondent may exclude such transactions from the 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 Respondent, or participate in derivatives trading other than that associated with Respondent'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 Respondent's liquidity and liability management.
- iv. FIREWALLS: INTERNAL CONTROLS REGARDING IMPROPER COMMUNICATIONS AND SUBMISSIONS: Respondent 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 Respondent. For these purposes, improper communications shall be any attempt to influence Respondent's Submission(s) for the benefit of any derivatives trading position (whether of Respondent or any third party) or any attempt to cause Respondent'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 Respondent contributes any Submission(s). The two groups should be separated such that neither can hear the other.
- v. DOCUMENTATION: Respondent 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, Respondent 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 Respondent 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 Respondent'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 Respondent's Submission(s) including, but not limited to, the following:
 - Identification of the specific offers and bids relied upon by Respondent when determining each Submission; and
 - The name of each company and person from whom the information or data is obtained;
 - d. Respondent'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 Respondent 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, Respondent shall retain for a period of five (5) years after the date of each Submission, the following transactional data used by Respondent 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 Respondent 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 or ddmmyyyy format);
- f. Maturity date (in mmddyyyy or ddmmyyyy format);
- g. Value date (in mmddyyyy or ddmmyyyy format);
- h. Loan effective date;
- i. Customer number/identifier;
- 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: Respondent 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: Respondent 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 Respondent 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 at least the London, Paris, and Tokyo offices of Respondent, shall be retained for a period of six (6) months. Subject to a reasonable time to implement, Respondent'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, 1.35 (2017), in effect now or in the future.

vi. MONITORING AND AUDITING:

- Monitoring: Respondent 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, Respondent 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, Respondent 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, Respondent 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 Respondent;
 - c. Obtaining written verification from the Submitter(s) and Supervisor(s), to the extent they are still employed by Respondent, that the Submission(s) were consistent with this Order, the policies and procedures in place for making Respondent's Submission(s), and the definitions applicable to the Benchmark Interest Rate for which Respondent made Submission(s); and
 - d. A written audit report to be provided to Respondent 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, Respondent 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, Respondent 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 Respondent's Submissions are reported to and investigated by Respondent'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 Respondent'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: Respondent 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 December 31, 2018, 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 Respondent'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 Respondent's Submission(s);
- The requirement to conduct all business related to Respondent's Submission(s) on Respondent'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 Respondent'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 Respondent'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, Respondent 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, Respondent shall submit a report to the Commission, through the Division, explaining how it has complied with the Undertakings set forth herein. The report shall 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 representatives of Respondent's Executive Management, after consultation with Respondent's chief compliance officer(s), that Respondent has complied with the Undertakings set forth above, and that it has established policies, procedures and controls to satisfy the Undertakings set forth in 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, but no later than August 6, 2018, Respondent 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, Respondent 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: Respondent 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 Respondent is or remains a contributor to any Benchmark Interest Rate, Respondent 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 and continuing for five (5) years from the date of this Order, Respondent 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 Respondent and Benchmark Publishers.

4. COOPERATION WITH THE COMMISSION

- i. Respondent 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, Respondent 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 Respondent's possession, custody or control;
 - Subject to applicable laws and regulations, Respondent will make its best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of Respondent, 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, Respondent 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 Respondent;
- ii. Respondent 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. Respondent 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 Respondent 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. Respondent and the Commission agree that nothing in these Undertakings shall be construed so as to compel Respondent to continue to contribute Submission(s) related to any Benchmark Interest Rate. Without prior consultation with the Commission, Respondent 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 Respondent by any presently existing, or hereinafter enacted or promulgated laws, regulations, regulatory mandates, or the rules or definitions issued by a Benchmark Publisher, then Respondent shall

promptly transmit notice to the Commission (through the Division) of such prohibition or conflict, and shall meet and confer in good faith with the Commission (through the Division) to reach an agreement regarding possible modifications to the Undertakings herein sufficient to resolve such inconsistent obligations. In the interim, Respondent will abide by the obligations imposed by the law, regulations, regulatory mandates and Benchmark Publishers' rules and definitions. Nothing in these Undertakings shall limit, restrict or narrow any obligations pursuant to the Act or the Commission Regulations promulgated thereunder, including but not limited to Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31, 1.35 (2017), in effect now or in the future.

6. PUBLIC STATEMENTS

Respondent 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 Respondent's (i) testimonial obligations, or (ii) right to take positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.

- D. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
- E. Based on the nature of the violations; the findings made, and the sanctions, conditions, and undertakings imposed in this Order; and the facts and representations in Respondent's Request Letter, the Commission advises²⁶ that, under the circumstances, disqualification under Rule 262(a) of Regulation A and Rule 506(d)(1) of Regulation D of the SEC, 17 C.F.R. §§ 230.262(a), 230.506(d)(1) (2017), should not arise as a consequence of this Order.²⁷

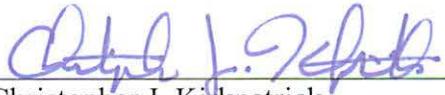
²⁶ Rule 506(d)(1)(iii)(B) disqualifies an issuer from relying on the private offering exemptions provided for in Rule 506 if they or certain related parties are "subject to a final order of . . . [*inter alia*] the U.S. Commodity Futures Trading Commission . . . that: . . . [c]onstitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct." Rule 506(d)(2)(iii), however, provides that disqualification "shall not apply" if the CFTC "advises in writing" that disqualification under Rule 506(d)(1) "should not arise as a consequence of such order." See also 17 C.F.R. §§ 262(a)(3)(ii), (b)(3) (parallel provisions under Regulation A); SEC, Exemptions to Facilitate Intrastate and Regional Securities Offerings, 81 Fed. Reg. 83,494, 83,545 (Nov. 21, 2016) (stating that disqualification under Rule 504 arises "absent a waiver or other exception provided in Rule 506(d)").

²⁷ In providing this advice, the Commission considered factors similar to those considered by the SEC when it issues waivers of disqualification under Regulation A and Regulation D. The SEC grants waivers where an

The Commission notes that if the facts are different from those represented, or Respondent fails to comply with the terms of the Order, the Commission may, in its discretion, revisit its advice that disqualification should not arise. The Commission reserves the right, in its sole discretion, to withdraw or otherwise revoke or further condition its advice under those circumstances.

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

By the Commission.



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

Dated: June 4, 2018

applicant has shown “good cause and . . . if the [SEC] determines that it is not necessary under the circumstances that the exemptions be denied,” 17 C.F.R. §§ 230.262(b)(2), 230.506(d)(2)(ii), based on its analysis of how the identified misconduct bears on the applicant’s fitness to participate in offerings exempted under Regulation A and Regulation D. See SEC, Div. of Corp. Fin., *Waivers of Disqualification Under Regulation A and Rules 505 and 506 of Regulation D*, <https://www.sec.gov/divisions/corpfin/guidance/disqualification-waivers.shtml>; SEC, Div. of Corp. Fin., *Rule 504 of Regulation D: A Small Entity Compliance Guide for Issuers*, <https://www.sec.gov/divisions/corpfin/guidance/rule504-issuer-small-entity-compliance.html>. The SEC considers the following primary factors in determining whether to grant a waiver request: (i) the nature of the violation and whether it involved the offer or sale of securities; (ii) whether the violation required scienter; (iii) who was responsible for the misconduct; (iv) what was the duration of the misconduct; (v) what remedial steps have been taken; and (vi) the impact on the party seeking a waiver and third parties if a waiver is denied. Respondent’s Request Letter addressed these factors in the context of this Order.

The Commission considers these factors in the context of the markets it regulates, and also takes into account whether it determined that a statutory disqualification under the Act should arise solely based on the misconduct found herein and leading to disqualification under Regulation A and Regulation D. The Commission is guided by waivers granted by the SEC in prior cases involving similar facts and circumstances. See, e.g., *In re JPMorgan Chase Bank, N.A.*, Securities Act Release No. 9993, 2015 WL 9256636 (Dec. 18, 2015) (SEC order determining that good cause had been shown that it was not necessary to deny reliance on the exemption under Rule 506 of Regulation D, where disqualification had been triggered by a CFTC order relating to JPMCB’s failure to adequately disclose certain conflicts of interest to clients); *In re UBS AG*, Securities Act Release No. 9787, 2015 WL 2395516 (May 20, 2015) (SEC order determining that good cause had been shown that it was not necessary to deny reliance on the exemption under Rule 506, where disqualification had been triggered by a criminal guilty plea relating to FX benchmark manipulation and noting the entry of parallel CFTC orders); *In re Barclays PLC*, Securities Act Release No. 9786, 2015 WL 2395515 (May 20, 2015) (SEC order determining that good cause had been shown that it was not necessary to deny reliance on the exemption under Rule 506 where disqualification had been triggered by a CFTC order relating to FX benchmark and ISDAFIX manipulation); see also, e.g., *Piper Jaffray & Co.*, SEC No-Action Letter, 2015 WL 4451053 (July 20, 2015) (SEC no-action letter determining that good cause had been show that it was not necessary to deny reliance on the exemptions under Regulation A and Rule 506 of Regulation D, where disqualification had been triggered by an SEC order, and applying the same factors to consideration of waiver for both exemptions).