

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:)

ICAP CAPITAL MARKETS LLC)
n/k/a INTERCAPITAL CAPITAL)
MARKETS LLC,)

Respondent.)
_____)

CFTC Docket No.18 -33

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

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that ICAP Capital Markets LLC n/k/a Intercapital Capital Markets LLC (“ICAP” or “Respondent”) has violated the Commodity Exchange Act (the “Act” or “CEA”) and Commission Regulations (“Regulations”). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein, and to determine whether any order shall be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying the findings or conclusions herein, Respondent consents to the entry and acknowledges service of this Order Instituting Proceedings Pursuant to Section 6(c) and 6(d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”).¹

¹ Respondent consents to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondent does not consent to the use of the Offer, or the findings or conclusions in this Order, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

III.

The Commission finds the following:

A. Summary

Beginning at least as early as January 2007 and continuing through December 2012 (the “Relevant Period”), ICAP, by and through certain of its brokers, aided and abetted numerous attempts by several of its bank clients to manipulate the U.S. Dollar International Swaps and Derivatives Association Fix (“USD ISDAFIX,” or the “benchmark”), a leading global benchmark referenced in a range of interest rate products, to benefit ICAP’s bank clients’ derivatives positions.

ISDAFIX rates and spreads were published daily during the Relevant Period and were meant to indicate the prevailing mid-market rate, at a specific time of day, for the fixed leg of a standard fixed-for-floating interest rate swap.² They were issued in several currencies. U.S. Dollar (“USD”) ISDAFIX rates and spreads were published for various maturities of USD-denominated swaps, including 1-year to 10-years, 15-years, 20-years, and 30-years. The most widely used USD ISDAFIX rates and spreads, and the ones at issue in this Order, were those that were intended to indicate the prevailing market rate as of 11:00 a.m. Eastern Time (“11:00 a.m.”). The 11:00 a.m. USD ISDAFIX rate was used for the cash settlement of options on interest rate swaps, or swaptions, and as a valuation tool for certain other interest rate products. For example, USD ISDAFIX was used during the Relevant Period in settlement of interest rate swap futures contracts traded on the Chicago Mercantile Exchange (“CME”) and as a component in the calculation of various proprietary interest rate indices and structured products.

During the Relevant Period, ICAP initiated the setting of USD ISDAFIX each day by capturing and recording swap rates and spreads based on trading activity at or around 11:00 a.m. on ICAP’s trading platform for swap spreads and on an affiliate’s platform for U.S. Treasury securities (“Treasuries Platform”). Reference rates and spreads were calculated using that ICAP trading data (together with data from Eurodollar futures trading through the CME Globex platform), and ICAP disseminated the rates and spreads captured in this 11:00 a.m. “snapshot,” “fix,” or “print”—as it was referred to by bank traders and ICAP brokers—as references to a panel of banks. After receiving these reference rates and spreads, the panel banks then made submissions to ICAP, which were supposed to reflect the midpoint of where each bank would itself offer and bid a swap to a dealer of good credit as of 11:00 a.m.

As ICAP knew, contributing banks usually accepted ICAP’s reference swap rates and spreads (and in some cases authorized ICAP to make submissions on their behalf), and so—after the banks’ submissions were averaged—the reference rates and spreads indicated by ICAP would usually become the published USD ISDAFIX. Because ICAP’s reference rates and spreads were a snapshot of swaps spreads trading done through ICAP and Treasuries trading done on the Treasuries Platform, at 11:00 a.m., trading in the minutes or seconds before the crucial 11:00 a.m. time could influence USD ISDAFIX rates and spreads for that day.

² In 2014, the administration of ISDAFIX changed, and a new version of the benchmark is published under a different name by a new administrator using a different methodology.

In fact, during the Relevant Period, traders at several contributing banks often attempted to manipulate USD ISDAFIX by bidding, offering, and executing transactions in swap spreads or Treasuries just before ICAP took its 11:00 a.m. “snapshot” and posted its reference rates and spreads. These traders were motivated to do this because the profitability of certain positions that they held on their trading desks were affected by the published USD ISDAFIX. Given the large notional amounts of many of these positions, small movements in USD ISDAFIX could result in significantly larger profits or significantly smaller losses on those positions.

Neither ICAP nor its brokers had positions that could benefit from manipulating USD ISDAFIX, but many of their most important clients did. Although the brokers may not have known all the details of the positions held by their bank trader clients, these bank traders would regularly enlist ICAP brokers to assist them in their manipulative attempts involving swap spread trading. ICAP brokers would not only assist traders in their manipulative attempts, but on many occasions would suggest ways to manipulate USD ISDAFIX more effectively. ICAP brokers’ facilitation of their client banks’ manipulative trading enabled the brokers to maintain good relationships with the bank traders and to earn millions of dollars in broker commissions.

* * * * *

In accepting Respondent’s offer, the Commission recognizes ICAP’s cooperation during the investigation of this matter by the CFTC’s Division of Enforcement (“Division”). The Commission recognizes that ICAP provided important information to the Division that helped the Division undertake its investigation efficiently and effectively. Accordingly, the civil monetary penalty imposed on ICAP reflects the level of cooperation ICAP provided during the course of the investigation.

B. Respondent

Respondent **ICAP Capital Markets LLC (“ICAP”)** is a Delaware limited liability company which, during the Relevant Period, was headquartered in Jersey City, New Jersey. Now known as Intercapital Capital Markets LLC, ICAP is a subsidiary of NEX Group plc. Together with two other firms—the International Swaps and Derivatives Association, Inc. and a financial information firm—an ICAP affiliate (Intercapital Group Limited) established ISDAFIX in 1998. ICAP has been registered with the Commission as an introducing broker since September 27, 2013.

C. Facts

1. USD ISDAFIX Setting

USD ISDAFIX rates and spreads were benchmarks that indicated prevailing market rates for “plain-vanilla” interest rate swaps.³ The 11:00 a.m. USD ISDAFIX was set during the

³ The term “swap” is defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47) (2012). Here, a “plain-vanilla” interest rate swap is generally an exchange of fixed payments for floating payments, wherein one party to a swap pays a fixed rate on a set notional amount (the party who “pays fixed” is said to have “bought” the swap, or is “long” the swap) and the other party pays a floating rate generally tied to three-month LIBOR (the party who “receives fixed”

Relevant Period using a combination of swap spread trade data from ICAP,⁴ Treasuries trade data from the Treasuries Platform, electronic trading in Eurodollar futures (1-year tenor only), and submissions from a panel of swap dealer banks.

The swap spread trade data for all tenors except the 1-year came from ICAP's medium-term USD swap desk ("MTS Desk"). The MTS Desk functioned much like a traditional futures trading pit. Brokers on the desk sat (or stood) together and each serviced a number of major swap dealer banks, to whom they were connected throughout the trading day by direct phone lines and speaker boxes. The brokers communicated their clients' bids and offers by open outcry to the entire MTS Desk and all of the brokers simultaneously. Any client could accept a bid or offer. Once a broker confirmed that a client was "hitting" a bid, "lifting" an offer, or was otherwise "done" in a designated notional amount (either a minimum default amount or a greater amount), the trade between the counterparties was executed and the counterparties received a confirmation of the trade.

ICAP published a live feed of transaction data for USD interest rate swap spreads, calculated swap rates, and the Treasuries Platform's Treasury yields and prices to an electronic screen, known as the "19901 screen," accessible through a subscription-based market news service. The 19901 screen reflected the levels at which those products were trading through the MTS Desk (for swap spreads and corresponding swap rates) and through the Treasuries Platform (for U.S. Treasuries). The levels displayed on the 19901 screen for swap spreads were manually controlled by an employee of ICAP, known colloquially as the "screen guy" or "screen operator," who would toggle the levels up or down based on the swap spread trading activity that occurred before him on the MTS Desk. The 19901 screen is a reference used widely throughout the financial industry by swap dealer banks, hedge funds, asset managers, businesses, and other participants in interest rate markets. During the Relevant Period, levels displayed on the 19901 screen at precisely 11:00 a.m. were critical because they were used to set USD ISDAFIX.

To assist with the setting of USD ISDAFIX rates for the 2-year through 30-year maturities, ICAP first generated reference rates and spreads from the snapshot of 11:00 a.m. 19901 screen prices, reflecting either the last traded spread or the mid-point between the most recent executable bid and offer. ICAP's reference rates, for all maturities except the 1-year, were the sum of the reference spread rate and the Treasuries Platform's U.S. Treasury yield in the corresponding maturity. To generate the 1-year reference rate (for which there was no associated swap spread), ICAP utilized a combination of Eurodollar futures yields (based on trading on CME's Globex platform) and broker "sentiment," which was intended to reflect prevailing rates for 1-year swaps based on trading through ICAP's short-term swaps desk.

is said to have "sold" the swap, or is "short" the swap). The "maturity" or "tenor" of a swap refers to the number of years over which counterparties exchange payments.

⁴ An interest rate swap spread trade consists of a fixed-for-floating interest rate swap and an offsetting trade in U.S. Treasuries of the same tenor, which allows a party to hedge part of the interest rate risk associated with the fixed-for-floating swap. The difference in basis points between the U.S. Treasury yield and the swap rate constitutes the "spread" quoted in a spread trade. The party who "receives fixed" in a swap and sells U.S. Treasuries to hedge is "short" spreads or has "sold" spreads, while a party who "pays fixed" in a swap and buys Treasuries to hedge is "long" spreads or has "bought" spreads.

Minutes after the 11:00 a.m. snapshot of the 19901 screen was taken, ICAP distributed its reference rates and spreads to a panel of fourteen or more contributing banks, which either accepted and submitted the reference rates and spreads as their own or submitted adjusted levels. Each bank was expected to submit “the mean of where that dealer would itself offer and bid a swap in the relevant maturity for a notional equivalent amount of US \$50 million or whatever amount is deemed market size in that currency for that tenor to an acknowledged dealer of good credit in the swap market.”⁵ Panel banks could change the prices for all rates and spreads across all maturities in their submissions, or change any subset, including any single rate or spread. Alternatively, a panel bank could make no submission at all. After a quorum of contributing banks made their submissions, a calculation agent eliminated the highest and lowest submissions (known as “topping and tailing”) and averaged the remaining submissions. The submission and calculation process was generally completed in the half hour following 11:00 a.m., after which the results and the submissions were accessible to the public through a subscription-based news service.

In practice, most panel banks accepted ICAP’s reference rates and spreads as their default submissions. Thus, as traders at panel banks and brokers on the MTS Desk knew, after “topping and tailing,” ICAP’s reference rates and spreads usually became the final published USD ISDAFIX benchmarks.

2. Panel Banks’ Attempted Manipulation of USD ISDAFIX

During the Relevant Period, most of the panel banks traded in financial products that would settle using the USD ISDAFIX benchmark. Some examples of these financial products are: interest rate swaps, swap futures, swaptions, and exotic interest-rate derivatives.

Throughout the Relevant Period, traders at several of the panel banks attempted to manipulate USD ISDAFIX for one primary reason: to maximize profit or minimize loss by increasing their payments from counterparties, or decreasing payments to counterparties, in cash settlements.⁶ A small movement of the benchmark higher or lower (e.g., one basis point or less) could result in meaningful gain for a bank on its cash settlements. If successful, this movement would hurt that bank’s counterparties to the cash settlements, as well as any other market participants who had positions referencing USD ISDAFIX on that day that were directionally equivalent to that bank’s counterparties’ in the same maturity.

As an example, a common financial product that would typically cash-settle using the USD ISDAFIX benchmark was a swaption. A swaption can be exercised by “physical” delivery

⁵ See *ISDAFIX*, ISDA, <https://web.archive.org/web/20140209180148/http://www2.isda.org/asset-classes/interest-rates-derivatives/isdafix> (last accessed August 1, 2018).

⁶ To date, the Commission has issued a number of Orders regarding these activities. See *In re Barclays PLC, Barclays Bank PLC, and Barclays Capital Inc.*, CFTC No. 15-25, 2015 WL 2445060 (May 20, 2015); *In re Citibank, N.A.*, CFTC No. 16-16, 2016 WL 3035030 (May 25, 2016); *In re Goldman Sachs Group, Inc., and Goldman, Sachs & Co.*, CFTC No. 17-03, 2016 WL 7429257 (Dec. 21, 2016); *In re The Royal Bank of Scotland plc*, CFTC No. 17-08, 2017 WL 511925 (Feb. 3, 2017); *In re Deutsche Bank Securities Inc.*, CFTC No. 18-09, 2018 WL 776240 (Feb. 1, 2018); *In re JPMorgan Chase Bank, N.A.*, CFTC No. 18-15, 2018 WL 3046998 (June 18, 2018).

of the underlying swap, or by cash settlement in reference to a benchmark rate. A swaption that expired “in the money” would usually cash-settle. Swaption cash settlements denominated in U.S. Dollars were typically calculated based on USD ISDAFIX rates according to a formula which measures the difference between the relevant USD ISDAFIX rate on the expiry date and the strike rate of the swaption. By pushing USD ISDAFIX higher or lower, a bank trader could increase the bank’s profit or minimize the bank’s loss in the cash settlement.

One of bank traders’ primary means of attempting to manipulate USD ISDAFIX was to bid, offer, and trade swap spreads at and/or just prior to ICAP’s 11:00 a.m. print, in a manner designed to move USD ISDAFIX rates in a direction that would benefit their bank. Bank traders frequently attempted to move ICAP’s reference rates and spreads by a quarter basis point or more with a single bid, offer, or trade of minimum market size (which varied by maturity) or with a series of bids, offers, or trades. An options trader once explained to an ICAP broker why a trader would “spend” some trades for the benefit of a large cash settlement:

If I’ve got ten billion 1-years . . . and I trade two and a half billion and I move it a quarter [basis point] in my favor, how do you think that works out? I’m willing to spend a quarter of the, of the risk to get the print for the other three quarters, okay?

3. ICAP’s Assistance in Banks’ Attempts To Manipulate USD ISDAFIX

Bank traders would regularly enlist brokers on the MTS Desk, and occasionally other ICAP desks, to assist them in their manipulative attempts. Throughout the Relevant Period, numerous ICAP brokers from the MTS Desk (“MTS Brokers”), and occasionally brokers on other ICAP desks, would willfully and knowingly assist their bank trader clients in these manipulative attempts, and in some cases instruct their clients as to how best to accomplish the intended manipulation.⁷

During the Relevant Period, MTS Brokers and their bank trader clients regularly referred to trades or notional amounts executed for the purpose of influencing USD ISDAFIX as “ammo,” or amounts the traders were willing to “spend,” “burn,” “waste,” or “use” to “get the print” or “affect” the “fix.” In May 2007, one of the MTS Brokers (“MTS Broker 1”) described typical communications with a trader from one of ICAP’s bank clients (“Bank A”): “every time that I, we try to get a fix, I say to him, what do you need, and how much do you have to burn? Because it’s only how much do you have to burn is the, is the real point.”

Early in the Relevant Period, MTS Brokers and their bank trader clients sometimes explicitly discussed traders’ intent to manipulate USD ISDAFIX. For example, in 2007, MTS Broker 1 told a trader from Bank A: “If you want to affect it at eleven, you tell me which way

⁷ When derivative products cash-settled, reset, or otherwise fixed to a benchmark, changes in banks’ risk positions could potentially cause traders to seek hedging trades, depending on a variety of factors, including the risk profile of other positions and whether a given trading desk wanted to keep any resulting risk. Irrespective of whether ICAP’s bank clients had an interest in hedging, they each engaged in attempted manipulation when they placed bids and offers or executed trades around 11:00 a.m. with the improper intent to move the USD ISDAFIX rate in their own favor, as described fully in each of the Orders listed in note 6, *supra*.

you want to affect it, we'll, we'll attempt to affect it that way.” In November 2008, another trader from Bank A told MTS Broker 1: “I want a low ISDAFIX in 2s,” and “I don't want to burn anything.” Over time, an understanding developed between many of the MTS Brokers and their bank trader clients, and their communications became less explicit. By April 2011, a third Bank A trader needed only to bid swap spreads in the moments before 11:00 a.m., and MTS Broker 1 immediately understood the intent, asking: “You want the screen up? Is that the idea?” “Yes,” the trader replied.

On some occasions throughout the Relevant Period, MTS Brokers would not only willfully and knowingly assist their bank trader clients, but would also advise them how to accomplish the intended manipulation. In December 2009, for example, a trader from one of ICAP's bank clients (“Bank B”) at 10:11 a.m. wrote to a supervisor of the MTS Desk (“MTS Broker 2”), that at 11:00 a.m. he “will need: 5yr, 7yr & 30yr lower & 10s higher.” MTS Broker 2 responded: “will come down to timing and amount to spend pon [sic] keeping it there.” To execute the Bank B trader's plan, MTS Broker 2 first informed the screen operator at 10:34 a.m.: “5, 7 AND 30 LOWER 10'S HIGHER.” And then, at 10:44 a.m., he informed Bank B's back-up broker (“MTS Broker 3”): “WE HAVE 11 AM S [sic] [Bank B] WILL BE IN 5 7 10 AND 30.” MTS Broker 3 responded: “FK me . . . Ok pal . . . 4 corners.” Just before the crucial 11:00 a.m. time, MTS Broker 2 assisted the trader from Bank B in trading 5-year, 7-year and 10-year spreads in a manner designed to accomplish these objectives.

Throughout the Relevant Period, MTS Brokers worked together with bank traders to formulate the strategy in the traders' attempts to manipulate USD ISDAFIX. On one such occasion, in April 2008, a trader at one of ICAP's bank clients (“Bank C”) and a co-supervisor of the MTS Desk (“MTS Broker 4”), had the following conversation starting at 10:58 a.m.:

Bank C trader:	I'm gonna want to get 2s down.
MTS Broker 4:	. . . so do you have ammo or no?
Bank C trader:	I have like, I can do 400 [\$400 million] or something like that.
MTS Broker 4:	OK. So I'm going to hit 2 [\$200 million] down, and I'll just put a 1/2 offer in to follow, unless you want to do all 4 [\$400 million].
Bank C trader:	No, no, if I only do 2 that will be fine, but if I have to use them, I'll use them.
MTS Broker 4:	OK, cool
Bank C trader:	What do you think we'll do?
MTS Broker 4:	Right at 11 o'clock, we'll say nothing, and then just hit 'em down.

Bank C trader: Right. Make sure the guy's on with you to get 'em down [referring to the screen operator].

MTS Broker 4: Yeah. Don't worry.

MTS Broker 4 then assisted the trader in selling \$200 million 2-year spreads just prior to 11:00 a.m. in order to accomplish this objective.

The above example also illustrates a repeated occurrence in the trading just prior to 11:00 a.m. that was done for the purpose of manipulating USD ISDAFIX: while the trader would tell the MTS Broker that he had a certain amount of "ammo," he would also tell the MTS Broker that he would rather not trade all of the amount discussed. As the MTS Brokers understood, the reason for this was that the trader's main interest was manipulating USD ISDAFIX, not executing a certain volume of trades.

In each of the following examples, a bank trader communicated to an MTS Broker the direction he wanted to move the 11:00 a.m. snapshot. The MTS Broker then traded swap spreads on behalf of the bank trader in a manner designed to move the snapshot, and thus affect USD ISDAFIX:

- In August 2008, at about 10:59 a.m., a trader from one of ICAP's bank clients ("Bank D") told his MTS Broker ("MTS Broker 5") that he wanted "a lower print ... at the fixing," and that he could "sell 200 [million notional in the 5 year tenor] at 1/2 to get the print." MTS Broker 5 responded, "OK." After trading in the seconds leading up to 11 a.m., MTS Broker 5 said to the trader, "after he lifted me at 3/4, it was just before [11 a.m.]; I hit it back down again to 1/2 to get the print . . . we've done a total of 300 [million] 5s . . . and you got the 1/2 print." Even though the trader had only authorized MTS Broker 5 to trade \$200 million notional in the 5-year tenor, MTS Broker 5 traded \$300 million in order to get the "print." It was understood by MTS Broker 5 that the object of the trades was not a certain notional volume of trading, but to obtain the desired "print."
- In November 2008, a trader at Bank A told MTS Broker 1, "at eleven I'm going to try to hit the 5-year spreads down, but I have no ammo . . . I'm just going to try to hit it down." To which MTS Broker 1 responded, "then right at eleven, I'm just gonna scream out; do you have like a hundred [\$100 million] at least?" The trader told MTS Broker 1, "Yeah, I have a hundred, yeah." MTS Broker 1 responded, "then right at eleven, I'll just try to knock it." After assisting the trader in selling \$100 million 5-year spreads just before 11 a.m., MTS Broker 1 stated just after 11 a.m., "you did a hundred at seven and three-quarters, I think, let's hope you got the print."
- In January 2009, at about 10:36 a.m., an ICAP options broker ("Options Broker 1") wrote to an MTS Broker ("MTS Broker 6"), "just to give you a heads up. [An options trader] at [one of ICAP's bank clients ("Bank E")] has an 11 oclock [sic] in 10 years. he is a payer and i dont [sic] think he has a lot of ammo." MTS

Broker 6 responded, “okay.” Then at about 10:43 a.m., another MTS Broker (“MTS Broker 7”) told MTS Broker 1 that Options Broker 1 “said [Bank E] going to buy 10 up at 11am.” MTS Broker 6 then assisted the Bank E options trader in trading 10-year swaps in the moments before 11 a.m. in order to influence USD ISDAFIX. Shortly after 11 a.m., the Bank E options trader thanked MTS Broker 6 for his help.

- In July 2011, at about 10:59 a.m., a trader at Bank A told MTS Broker 1 that another trader at Bank A “wants to keep 10 year spreads down at 11. So if you can, we don’t have much ammo, like a hundred [\$100 million]; don’t let it go up to 9, hit it down.” MTS Broker 1 replied, “Okay.” MTS Broker 1 then assisted the trader in selling \$50 million 10-year spreads in the seconds prior to 11 a.m. in order to get the ISDAFIX print that the trader wanted. Just after 11 a.m., the Bank A trader asked MTS Broker 1, “We got the eight and a half print, right?” MTS Broker 1 responded, “God, I hope so.”
- In February 2012, at about 10:56 a.m., a trader from Bank A told MTS Broker 6, “At 11 o’clock, I have to get low print in 10-year spreads.” MTS Broker 6 responded, “Okay.” The trader then said, “When I say ‘hit it,’ right, you can spend 250 [\$250 million] 10-years in ammunition. I really don’t want to spend it. But if I can keep it at 8, it will be perfect.” MTS Broker 6 responded, “Yep.” The trader then told MTS Broker 6, “And then 2-years, I need to, you know, put it up.” MTS Broker 6 responded, “Okay.” Then, at about 10:57 a.m., MTS Broker 6 told the trader, “the best thing I would do right now is say nothing until right before 11 and whack 8’s.” The trader responded, “[y]ou forget about how to trade with me; I know all this . . . you are not talking to [another Bank A trader] right now.” MTS Broker 6 then responded, “I know.” MTS Broker 6 then assisted the trader in selling \$100 million 10-year spreads and buying \$700 million 2-year spreads just before 11 a.m. in order to accomplish the trader’s objectives.

As the following examples illustrate, MTS Brokers had an understanding of how USD ISDAFIX was important to their client banks in connection with positions apart from the trades they were executing at 11:00 a.m. In May 2008, at about 11:27 a.m., an MTS Broker (“MTS Broker 8”) explained to a trader at one of ICAP’s bank clients (“Bank F”) why an attempt to manipulate the USD ISDAFIX had failed:

There were three other accounts buying 10s up and the print did not . . . go on time. I know how important the print is. While I was trying to push the 10s up they were lifting me in 10s but I did not see them lift me in 30s because I was concentrating on the 10s, thats [sic] the honest truth, moving 2 maturities at same time with 10 seconds to go and so many accounts involved is always been an issue and a problem.

On the next trading day, MTS Broker 8 explained to another trader at Bank F how the manipulation of the USD ISDAFIX at 11:00 a.m. was best done:

The easiest way to accomplish the screen print is by hitting the bid and keeping offered at the hit price, the only problem is what if someone has the opposit [sic] interest and is willing to spend a yard [\$1 billion notional] to push it against you. You saw 2 weeks ago [Bank A] moved the bonds a whole point and did 1.2 yards to get the print. Sometimes banks are willing to spend whatever it takes to get the print . . . there were instances where [Bank B] will do 2 yards of 5s or 10s at 11 oclock [sic] to get his print . . . I DONT [sic] THINK [Bank B] KNOWS WHAT THEY DO AT 11, THATS [sic] NOT THEIR MAIN CONCERN, ITS [sic] THE PRINT THAT MATTERS.

Some of ICAP's brokers understood that the banks' attempts to manipulate the USD ISDAFIX, if successful, could hurt the banks' counterparties in ISDAFIX-priced deals. In one taped call between a Bank C swaps trader and one of the supervisors of the MTS Desk, the broker criticized a "swing and a miss" at 11:00 a.m. by a trader at another bank who had been unsuccessful in an effort to move swap spread levels. The Bank C trader and the broker then simulated an interview (laughing throughout) in which the broker described attempts to manipulate the USD ISDAFIX to a prospective employer: the broker said, "What are the 11 o'clocks? You know, we try and . . . we f*ck with it a little bit . . . We try and like take somebody's eyes out pretty much." In another example, MTS Broker 1 said to a trader from Bank A, after an attempt to manipulate USD ISDAFIX, "[l]et me guess who was on the other side that you screwed on this thing."

IV.

LEGAL DISCUSSION

A. Jurisdiction

As set forth below, Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, 13(a)(2) (2012), have long prohibited attempted manipulation of the prices of *any* commodity in interstate commerce or for future delivery on or subject to the rules of any registered entity. An interest rate benchmark, such as USD ISDAFIX, is a commodity, *see* CEA § 1a(9) and (19), 7 U.S.C. § 1a(9), (19) (2012), and therefore may be subject to illegal attempted manipulation, whatever the manipulative means may be.

Here, the attempted manipulations by the various banks are also proscribed by the Act for the separate reason that the conduct involved swaps executed or traded on an ICAP desk that operated in practice as a "trading facility" under the Act. *See* CEA § 1a(51), 7 U.S.C. § 1a(51) (2012) (defining trading facility); *see also* former CEA § 2(d)(1)(B), and 2(g)(3), 7 U.S.C. § 2(d)(1)(B), 2(g)(3) (2006; repealed 2011) (limiting jurisdictional exclusions to agreements, contracts, or transactions not executed or traded on a trading facility).

Lastly, as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), the Commission also has authority to initiate proceedings and impose sanctions for a broader range of manipulative conduct, including in connection with any swap. *See* CEA §§ 6(c)(1), 6(c)(3), 6(d), 9(a)(2); Regulations 180.1(a) and 180.2, 17 C.F.R.

§§ 180.1(a), 180.2 (2018). The Relevant Period encompasses conduct that occurred after the passage and effective date of the Dodd-Frank Act.

Section 13(a) of the Act, 7 U.S.C. § 13c(a) (2012), states that any person who willfully aids, abets, counsels, commands, induces, or procures the commission of a violation of any of the provisions of the Act, or any of the rules, regulations or orders issued pursuant to the Act, may be held responsible for such violation as a principal.

B. Respondent Aided and Abetted Attempts To Manipulate USD ISDAFIX

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.” With respect to conduct on or after July 16, 2011, amended Section 9(a)(2) of the Act also makes it unlawful to manipulate or attempt to manipulate the price of “any swap.”

For conduct prior to August 15, 2011, former Section 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9, 13b (2006), authorized the Commission to serve a complaint and impose, among other things, civil monetary penalties and cease and desist orders if the Commission “has reason to believe that any person . . . 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.”

For conduct occurring on or after August 15, 2011, the Commission is authorized to serve a complaint and impose penalties and orders with regard to attempted manipulation in violation of the broader amended provisions of Section 6(c)(1) and 6(c)(3) of the Act and the Regulations implementing those provisions. *See* CEA § 6(c)(4)(A), 6(d).

Section 6(c)(1) of the Act and Regulation 180.1 prohibit the use or attempted use of any manipulative device in connection with any swap or contract of sale of any commodity in interstate commerce, or for future delivery, and Regulation 180.1(a) makes it:

unlawful . . . , directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to . . . (1) [u]se . . . or attempt to use . . . any manipulative device; . . . [or] (3) [e]ngage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person.

Section 6(c)(3) of the Act prohibits the attempted manipulation of the price of any commodity in interstate commerce, and Regulation 180.2 makes it “unlawful . . . directly or indirectly, to . . . attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.”

Section 13(a) of the Act states that any person who willfully aids, abets, counsels, commands, induces, or procures the commission of a violation of any of the provisions of the Act, or any of the rules, regulations or orders issued pursuant to the Act, may be held responsible

for such violation as a principal. Certain facts and law relating to the primary violations of the Act and Regulations that ICAP aided and abetted are set forth in a series of orders entered by the Commission in public administrative proceedings. *See In re Barclays PLC, Barclays Bank PLC, and Barclays Capital Inc.*, CFTC No. 15-25, 2015 WL 2445060 (May 20, 2015); *In re Citibank, N.A.*, CFTC No. 16-16, 2016 WL 3035030 (May 25, 2016); *In re Goldman Sachs Group, Inc., and Goldman, Sachs & Co.*, CFTC No. 17-03, 2016 WL 7429257 (Dec. 21, 2016); *In re The Royal Bank of Scotland plc*, CFTC No. 17-08, 2017 WL 511925 (Feb. 3, 2017); *In re Deutsche Bank Securities Inc.*, CFTC No. 18-09, 2018 WL 776240 (Feb. 1, 2018); *In re JPMorgan Chase Bank, N.A.*, CFTC No. 18-15, 2018 WL 3046998 (June 18, 2018).

Pursuant to Section 13(a) of the Act, ICAP, through its brokers, aided and abetted the attempts of its bank trader clients to manipulate USD ISDAFIX 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 Societe Generale S.A.*, CFTC No. 18-14, 2018 WL 2761752, at *45 (June 4, 2018) (citing *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 id.* (citing *In re 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. *See id.* (citing *Lincolnwood Commodities*, 1984 WL 48104, at *29).

As evidenced by the communications set forth above, ICAP's brokers willfully aided and abetted their bank trader clients' attempts to manipulate USD ISDAFIX by placing bids or offers or executing trades in the moments leading into 11:00 a.m. designed in a manner, including timing and pricing, to increase or decrease swap spreads at 11:00 a.m., with the intent to affect levels reported on the 19901 screen and USD ISDAFIX fixings.

The ICAP brokers' willful assistance of their bank trader clients in placing bids and offers and executing trades in the moments leading into 11:00 a.m., which were intended to manipulate USD ISDAFIX, as well as the ICAP brokers' communications with their bank trader clients to plan and execute this trading conduct, constituted overt acts in furtherance of their intent to aid and abet the manipulation of USD ISDAFIX. By such acts of those ICAP employees, ICAP, pursuant to Section 13(a) of the Act, aided and abetted acts of attempted manipulation by its bank trader clients in violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2012); Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9, 13b (2006), for conduct occurring prior to August 15, 2011; and Section 6(c)(1), 6(c)(3), and 6(d) of the Act, 7 U.S.C. §§ 9(1), 9(3), 13b (2012), and Regulations 180.1(a) and 180.2, 17 C.F.R. §§ 180.1(a), 180.2 (2018), for conduct occurring on or after August 15, 2011. Pursuant to Section 13(a) of the Act, ICAP is, therefore, responsible for such violations as a principal.

C. Respondent Is Liable for the Acts of Its Agents

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2018), provide that "[t]he act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual,

association, partnership, corporation, or trust.” Pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2, strict liability is imposed on principals for the actions of their agents. *See, e.g., Dohmen-Ramirez & Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988); *Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986); *CFTC v. Byrnes*, 58 F. Supp. 3d 319, 324 (S.D.N.Y. 2014).

ICAP is liable for the acts, omissions, and failures of any brokers or other employees who acted as its employees and/or agents in the conduct described above. Accordingly, as set forth above, ICAP, pursuant to Section 13(a) of the Act, is responsible as a principal for these violations of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2012); Section 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9, 13b (2006), for conduct occurring prior to August 15, 2011; and Section 6(c)(1), 6(c)(3), and 6(d) of the Act, 7 U.S.C. §§ 9(1), 9(3), 13b (2012), and Regulations 180.1(a) and 180.2, 17 C.F.R. §§ 180.1(a), 180.2 (2018), for conduct occurring on or after August 15, 2011.

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent, pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a) (2012), aided and abetted violations of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2012); Section 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9, 13b (2006), for conduct occurring prior to August 15, 2011; and Section 6(c)(1), 6(c)(3), and 6(d) of the Act, 7 U.S.C. §§ 9(1), 9(3), 13b (2012), and Regulations 180.1(a) and 180.2, 17 C.F.R. §§ 180.1(a), 180.2 (2018), for conduct occurring on or after August 15, 2011.

VI.

OFFER OF SETTLEMENT

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

- A. Acknowledges 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 it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2018), relating to, or arising from, this proceeding;
 7. any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201-53, 110 Stat. 847, 857-74 (codified as amended at 28 U.S.C. § 2412 and 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, including this Order;
- 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. 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, pursuant to Section 13(a) of the Act, is responsible as a principal for aiding and abetting violations of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2012); Section 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9, 13b (2006), for conduct occurring prior to August 15, 2011; and Section 6(c)(1), 6(c)(3), and 6(d) of the Act, 7 U.S.C. §§ 9(1), 9(3), 13b (2012), and Regulations 180.1(a) and 180.2, 17 C.F.R. §§ 180.1(a), 180.2 (2018), for conduct occurring on or after August 15, 2011;
 2. orders Respondent to cease and desist from aiding and abetting violations of Sections 6(c)(1), 6(c)(3), 6(d), and 9(a)(2) of the Act, and Regulations 180.1(a) and 180.2;
 3. orders Respondent to pay a civil monetary penalty in the amount of fifty million U.S. dollars (\$50,000,000) plus post-judgment interest; and
 4. orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order; and
- F. Represents that Respondent's voice broking business that handled USD interest rate swap spreads was sold to another company on December 30, 2016.

Respondent also represents that it ceased serving as the collection agent for USD ISDAFIX submissions in January 2014.⁸

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 aiding and abetting violations of Sections 6(c)(1), 6(c)(3), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9(1), 9(3), 13b, 13(a)(2) (2012), and Regulations 180.1(a) and 180.2, 17 C.F.R. §§ 180.1(a), 180.2 (2018).
- B. Respondent shall pay a civil monetary penalty of fifty million U.S. dollars (\$50,000,000), within ten (10) days of the date of entry of this Order (the “CMP Obligation”). If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

Respondent shall pay the CMP Obligation and any post-judgment interest 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.
HQ Room 181
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

⁸ Respondent represents that when it owned the voice broking business, it undertook certain steps intended to make reasonable efforts to ensure the integrity of USD interest rate swap spreads trading that would be published on benchmark screens and/or would be used in connection with a benchmark process.

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

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

1. COOPERATION WITH THE COMMISSION

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

- a. 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 and broking records;
- b. Comply fully, promptly, completely, and truthfully with all inquiries and requests for non-privileged information or documents;
- c. Provide authentication of documents and other evidentiary material;
- d. Provide copies of non-privileged documents within ICAP's possession, custody, or control;
- e. Subject to applicable laws and regulations, make its best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of ICAP, 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
- f. Subject to applicable laws and regulations, 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 ICAP.

Respondent also agrees that it will not undertake any act that would limit its ability to cooperate fully with the Commission. ICAP 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 ICAP 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.

2. 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, rules, regulations, or regulatory mandates, 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 laws, rules, regulations, and regulatory mandates. Nothing in these Undertakings shall limit, restrict or narrow any obligations pursuant to the Act or the Commission's Regulations promulgated thereunder, including, but not limited to, Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31, 1.35 (2018), in effect now or in the future.

3. PUBLIC STATEMENTS

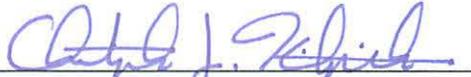
Respondent agrees that neither it nor any of its successors and assigns, agents, or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression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

4. PARTIAL SATISFACTION

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

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

By the Commission.



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

Dated: September 18, 2018