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UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:	)	
	)	
Lloyds Banking Group plc and	)	CFTC Docket No. 14 – 18
Lloyds Bank plc,	)	
	)	
Respondents.	)	
_____	)	

**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 Lloyds Banking Group plc and its subsidiary Lloyds Bank plc (collectively, “Respondents”) have violated Sections 6(c), 6(d) and 9(a)(2) of the Commodity Exchange Act (the “Act” or the “CEA”), 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006). Lloyds Banking Group plc (“Lloyds Banking Group”) is the entity resulting from the acquisition in 2009 of HBOS plc (“HBOS”) by Lloyds TSB Group plc. Lloyds Bank plc, formerly known as Lloyds TSB Bank plc (“Lloyds TSB”), is the current parent of HBOS. Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents 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, Respondents have 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 Respondents admit those findings in any related action against Respondents by, or any agreement with, the Department of Justice or any other governmental agency or office, Respondents herein consent to the entry and acknowledge 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”).<sup>1</sup>

<sup>1</sup> Respondents consent to the entry of this Order and to the use of these findings and conclusions in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondents do 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 do Respondents consent to

### III.

The Commission finds the following:

#### A. Summary

From mid-2006 through 2009 (the “relevant period”), Respondents, by and through Lloyds TSB and HBOS,<sup>2</sup> committed certain acts of manipulation, attempted manipulation and false reporting in connection with the London Interbank Offered Rate (“LIBOR”) for Sterling, U.S. Dollar, and Yen. LIBOR is a leading global benchmark interest rate that is critical to U.S. and international financial markets. Trillions of dollars of financial instruments are priced based on LIBOR.

LIBOR, a benchmark interest rate previously owned and managed by the British Bankers’ Association (“BBA”), is fixed each day based on rates submitted by a select panel of banks. The rates contributed by the panel banks are supposed to reflect each bank’s honest assessment of the cost of borrowing unsecured funds in the London interbank market. Over the relevant period, Lloyds TSB and HBOS violated this fundamental precept and undermined the integrity of LIBOR for Sterling, U.S. Dollar, and Yen.

- Before the acquisition of HBOS in January 2009, the Sterling and U.S. Dollar LIBOR submitters at each bank individually altered LIBOR submissions on occasion to benefit the submitters’ and traders’ cash and derivatives trading positions. Upon the consolidation of the two companies, the submitters, who were located in separate offices, coordinated with one another to adjust LIBOR submissions to benefit their respective trading positions.
- From at least mid-2006 to October 2008, the Lloyds TSB Yen LIBOR submitter colluded with the Yen LIBOR Submitter at Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. (“Rabobank”) to adjust their respective Yen LIBOR submissions in order to benefit the trading positions of Lloyds TSB and Rabobank.<sup>3</sup>

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the use of the Offer or this Order, or the findings and conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

<sup>2</sup> Prior to 2009, Lloyds TSB and HBOS, through its subsidiaries, HBOS Treasury Services plc until September 2007 and, thereafter, Bank of Scotland plc, were members of LIBOR panels for several currencies. Upon their consolidation under Lloyds Banking Group in early 2009, they continued to make separate submissions for these currencies until HBOS’s removal from the LIBOR panels on February 6, 2009.

<sup>3</sup> On October 29, 2013, the Commission issued an Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions against Rabobank, finding, among other things, that the Lloyds TSB Yen Submitter — identified in the Order as the Panel Bank C Yen Submitter — and the Rabobank Yen Submitter colluded in their attempts to manipulate and falsely report Yen LIBOR. *See In re Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A.*, CFTC Docket No. 14-02 (CFTC filed October 29, 2013); at

- During the global financial crisis in the last quarter of 2008, HBOS, through the acts of its submitters and a manager, improperly altered and lowered HBOS's Sterling and U.S. Dollar LIBOR submissions to create a market perception that HBOS was relatively financially healthy and not a desperate borrower of cash. Specifically, the manager who supervised the HBOS Sterling and U.S. Dollar LIBOR submitters directed the submitters to make LIBOR submissions at the rate of the expected published LIBOR so that the bank did not stand out as a material outlier from the rest of the submitting banks. The submitters followed these instructions, making submissions through the end of the year that did not reflect their honest assessment of HBOS's cost of borrowing unsecured interbank funds, and, accordingly, were not consistent with the BBA LIBOR definition.
- In 2006, Lloyds TSB and HBOS submitters on certain occasions increased their bids for Sterling in the cash market in an attempt to manipulate the published Sterling LIBOR fixing higher, thereby benefitting specific trading positions that were tied to Sterling LIBOR.

Lloyds TSB's and HBOS's lack of specific internal controls and procedures concerning their submission processes for LIBOR, and their overall inadequate supervision of money market trading desks allowed this conduct to occur.

The profitability of a bank's trading positions or a bank's reputational concerns are not legitimate or permissible factors on which to base a bank's daily LIBOR submissions. Benchmark interest rates submissions 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. By basing their submissions, in whole or in part, on Lloyds TSB's and HBOS's trading positions and HBOS's market reputation concerns, Respondents knowingly conveyed false, misleading or knowingly inaccurate reports that their submitted rates for Sterling, U.S. Dollar and Yen LIBOR were based on and solely reflected the costs of borrowing unsecured funds in the relevant interbank markets. Accordingly, Respondents attempted to manipulate and knowingly delivered, or caused to be delivered, false, misleading or knowingly inaccurate reports concerning Sterling, U.S. Dollar and Yen LIBOR, which are all commodities in interstate commerce. In a few instances, Respondents, by and through Lloyds TSB's actions, were successful in their attempts to manipulate Sterling and Yen LIBOR.

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In accepting Respondents' Offer, the Commission recognizes Respondents' cooperation during the Division of Enforcement's investigation of this matter.

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<http://www.cftc.gov/ucm/groups/public/@lrenforcementactions/documents/legalpleading/enfrabobank102913.pdf>.

**B. Respondent**

**Lloyds Banking Group plc** is a United Kingdom-based financial services group, providing a wide range of banking and financial services. Lloyds Banking Group resulted from the January 19, 2009 acquisition by Lloyds TSB Group plc (the parent company of Lloyds TSB Bank plc) of HBOS (the parent company of Bank of Scotland plc). After the acquisition, Lloyds TSB Group plc changed its name to Lloyds Banking Group plc and became the ultimate holding company of Lloyds TSB Bank plc and HBOS.<sup>4</sup>

**Lloyds Bank plc**, formerly called Lloyds TSB Bank plc, is a United Kingdom retail and commercial bank and the principal subsidiary of Lloyds Banking Group. In 2013, it became the parent company of HBOS, which is its principal subsidiary. HBOS is the parent company of Bank of Scotland plc, which is also a United Kingdom retail and commercial bank.

**C. Facts**

**1. LIBOR and the Fixing of LIBOR**

LIBOR is 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. The products indexed to LIBOR have an approximate notional value of \$500 trillion.

During the relevant period, under the auspices of the BBA,<sup>5</sup> LIBORs were issued on a daily basis for ten currencies, including Sterling, U.S. Dollar, and Yen, with fifteen tenors (*i.e.*, durations for interest rates) ranging from overnight through twelve months. Certain currencies, such as Sterling, 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

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<sup>4</sup> The offer to acquire HBOS was announced on September 18, 2008. HBOS shareholders approved this offer on December 12, 2008 and the acquisition was consummated on January 19, 2009.

<sup>5</sup> 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").

inter-bank offers in reasonable market size just prior to [11:00 a.m. London time].<sup>6</sup>

Every business day 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 the other data vendors licensed by the BBA. This information was made available and relied upon by market participants and others throughout the world, including in the United States.

By its definition, LIBOR requires that the submitting panel banks exercise their judgment to determine the rates at which they may obtain unsecured funds in the London interbank market. These definitions require that submissions relate to funding and do not permit consideration of factors unrelated to the costs of borrowing unsecured funds, such as the benefit to a bank’s derivatives or money market trading positions.<sup>7</sup>

## **2. Lloyds TSB’s and HBOS’s LIBOR Submission Process**

During the relevant period, Lloyds TSB was a member of the BBA and one of the panel banks that submitted rates for the determination of LIBOR in Sterling, U.S. Dollar, Yen, and other currencies.<sup>8</sup> Until its acquisition in January 2009, HBOS, through its subsidiaries HBOS Treasury Services plc until September 2007 and thereafter Bank of Scotland plc, was likewise a member of the BBA and was one of the panel banks that submitted rates for the determination of LIBOR in Sterling, U.S. Dollar, and other currencies.<sup>9</sup> Following the acquisition, Lloyds TSB and HBOS continued to make their respective LIBOR submissions until February 2009, when HBOS ceased to be a LIBOR panel member. Lloyds TSB continued to make LIBOR submissions on behalf of Lloyds Banking Group, who became the representative member on the BBA LIBOR panels.

Lloyds TSB and HBOS made their money market traders in London responsible for making the banks’ LIBOR submissions. The money market traders at each bank were organized

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<sup>6</sup> This definition of LIBOR has been used since 1998 to the present.

<sup>7</sup> In June 2008, the BBA clarified that panel banks could not contribute a rate based on the pricing of any derivative financial instrument. BBA guidelines issued in October 2009 further clarified that LIBOR submitters “should not ask intermediaries where they believe LIBOR rates will set on a given day and use this as a basis for submissions. This misses the point of the benchmark, and is a circular process that would rapidly lead to inaccurate rates.”

<sup>8</sup> During the relevant period, Lloyds TSB also submitted rates for the determination of LIBOR in other currencies such as Euro, Canadian Dollar, Australian Dollar, and Swiss Franc.

<sup>9</sup> During the relevant period before its acquisition, HBOS also submitted rates for the determination of LIBOR in other currencies such as Euro, Canadian Dollar, and Australian Dollar.

on trading desks by currency within the banks' respective Treasury departments. These traders transacted in interbank cash deposits and loans, certificates of deposit and commercial paper to raise wholesale funds for the bank in the currency for which the desk was responsible. The traders also transacted in derivatives trading products primarily to hedge risk, but generally did not trade derivatives trading products to generate profits in a proprietary fashion. A trader on each bank's currency desk made that bank's LIBOR submission for that currency. Another trader acted as the back-up LIBOR submitter and made the LIBOR submissions when the primary submitter was out of the office or otherwise unavailable.

During the relevant period, Lloyds TSB and HBOS failed to adequately supervise their LIBOR submitters and the LIBOR submission process and did not have any specific policies, internal controls or procedures for determining or monitoring their LIBOR submissions to ensure that their submissions reflected an honest assessment of the costs of borrowing unsecured funds in the London interbank market. This lack of supervision and training permitted Lloyds TSB and HBOS LIBOR submitters to attempt to manipulate and knowingly make false Sterling, U.S. Dollar, and Yen LIBOR submissions on several occasions over a number of years.

### **3. Lloyds TSB and HBOS Made False Reports, Attempted to Manipulate and Manipulated Sterling LIBOR to Benefit Their Cash and Derivatives Trading Positions**

On numerous occasions, from at least 2007 through at least 2009, the Lloyds TSB Sterling LIBOR Submitter made false submissions and attempted to manipulate Sterling LIBOR in order to benefit his cash and derivatives trading positions. In a few instances, the Lloyds TSB Sterling LIBOR Submitter was successful in his attempts to manipulate Sterling LIBOR.

The Lloyds TSB Sterling LIBOR Submitter held cash and derivatives trading positions that were priced off of Sterling LIBOR, and these positions frequently settled or reset at the end of each month or on International Monetary Market ("IMM") dates, which are quarterly dates in March, June, September, and December. The Submitter knew how movements in Sterling LIBOR would affect his trading positions. On a number of occasions, the Submitter altered his Sterling LIBOR submissions to benefit his trading positions. Thus, on those occasions, the Sterling LIBOR submissions for Lloyds TSB reflected the Submitter's financial interests, rather than the costs of borrowing Sterling in the London interbank market.

In contemporaneous communications with an interdealer broker, the Lloyds TSB Sterling LIBOR Submitter commented on how he was improperly taking his trading positions into account when making LIBOR submissions. In one telephone exchange on June 28, 2007, the Lloyds TSB Sterling LIBOR Submitter explained how he depended on his Sterling LIBOR submissions to profit from his trading positions.<sup>10</sup>

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<sup>10</sup> 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.

**June 28, 2007:** (emphasis added)

Lloyds TSB Sterling Submitter: No, no, because my book predominantly is fucking one month.

[. . .]

Broker 1: No, you're very much tied to 1 month, totally.

[. . .] Yeah, because all your assets are 1s, yeah.

Lloyds TSB Sterling Submitter: **If I didn't have my LIBOR slightly higher than I usually did**, we wouldn't even make-- if I have my LIBORs where LIBORs are, in 1s, **I wouldn't make anything.**

In another telephone call made in August 2007, he stated that, because he had no positions resetting that day, he could submit his LIBORs "wherever I fucking want to put them, mate."

Prior to the acquisition of HBOS in January 2009, the HBOS Sterling LIBOR Submitter occasionally made false submissions and also attempted to manipulate Sterling LIBOR in order to benefit his cash and derivatives trading positions. After the acquisition until the summer of 2009, the Lloyds TSB Sterling LIBOR Submitter and the former HBOS Sterling LIBOR Submitter were located in different offices, and communicated regularly regarding their respective trading positions. During certain of these telephone conversations, the submitters discussed the sensitivity of their trading positions to the Sterling LIBOR fixings, and then coordinated to adjust the Sterling LIBOR submissions to benefit those positions. At times, the former HBOS Sterling LIBOR Submitter requested that the Lloyds TSB Sterling LIBOR Submitter adjust the submissions for the one and three-month tenors in order to benefit his trading positions. Often, the Lloyds TSB Sterling LIBOR Submitter accommodated his requests and made the Sterling LIBOR submission based on the rate that benefited the former HBOS Sterling LIBOR Submitter's trading positions, unless the Lloyds TSB Sterling LIBOR Submitter had a trading position that might benefit from a different rate being submitted. Examples of such communications are as follows:

**March 6, 2009:** (emphasis added)

Former HBOS Sterling Submitter: **I am paying on 12 yards of 1s today; a re-fix against Group, so if is there any way of making 1s relatively low, it would be helpful for us all.** [. . .] I think it is going to be about 126 or something, maybe 128, it is a tricky one at the moment.

Lloyds TSB Sterling Submitter: Well I could, I mean I have left mine at 125 mate, I mean.

Former HBOS Sterling Submitter: Yeah, well I that will be perfect. As long as you—you can't go lower than 125, if you are going at 125 that is what, that is what I am hoping to shape it down to, so if you can do that, that would be great.

Lloyds TSB Sterling Submitter: **Yeah I have got a fixing small one nowhere near 12 yards, so yeah I do it at 25, alright?**

Former HBOS Sterling Submitter: **And I am a payer the 3s as well, I don't know what were you thinking of going in the 3s. [. . .] I have only 500 quid the 3s so I am not that—it's not the end of the world, but if you're the other way around don't worry about it.**

Lloyds TSB Sterling Submitter: **No, no, no, I have got a small loan going out but it is less than that, alright I will probably have to go 90- probably 96 but I will let you know before, I do 25 definitely for 1s and I will speak to you on—**

Former HBOS Sterling Submitter: Yeah don't stress mate, go 25 in the 1s and just go with what you can in the 3s. No great stress.

Lloyds TSB Sterling Submitter: Yeah, no problem.

Former HBOS Sterling Submitter: Alright thanks.

**March 31, 2009:** (emphasis added)

Former HBOS Sterling Submitter: [. . .] I was just going to say, **I am receiving on 3s LIBOR today on a couple on—on a big reset on about 2 and a half yards and I am receiving tomorrow on 5 yards, so on the LIBOR front obviously I don't know if you have got anything contrary to that, but if you haven't the firmer the better please.**

Lloyds TSB Sterling Submitter: The higher the better.

Former HBOS Sterling Submitter: Yes please.

Lloyds TSB Sterling Submitter: **Oh mate, I have always got loads of loans going out at the end of the month so I always try and fix it higher, so. Trouble is mate they keep calling it fucking lower, I can't work out why it is fucking going down all the time. [. . .] I mean we put 67 in yesterday, I will leave it at 67 and I won't go any lower, right?**

Former HBOS Sterling Submitter: Yeah.

Lloyds TSB Sterling Submitter: What do you need, and what was the other period, was it all 3s?

Former HBOS Sterling Submitter: No just 3s today and tomorrow.

Lloyds TSB Sterling Submitter: Okay, we will leave it at 67.

Former HBOS Sterling Submitter: Yeah cool, **just 1s I am small receiving today, tomorrow is a massive one in the 1s.** I am paying but we'll worry about 1s tomorrow?



Lloyds TSB Sterling Submitter: **Well luckily not today mate because I have got trillions and billions of 1s going out today, tomorrow I can set it slightly lower.**

Former HBOS Sterling Submitter: Yeah that's cool, I am receiving 1s today in the yard, tomorrow I am paying on 11.5 yards. [. . .] In the 1s but we will worry about it tomorrow, tomorrow.

Lloyds TSB Sterling Submitter: Yeah, okay mate no problem

The next day, April 1, 2009, the Lloyds TSB Sterling LIBOR Submitter had a junior trader on the desk contact the former HBOS LIBOR Submitter to confirm what he needed for the submissions for one and three-month tenors.

**April 1, 2009:**

Lloyds TSB Junior Trader: Just a quick question: do you have lots of 1s fixing today? Do you want us to keep the libor higher?

Former HBOS Sterling Submitter: Yeah, I have a big liability fix, so as low as possible, please. [. . .] But I have a massive asset fix in the 3s, so as high as you can in the 3s.

Lloyds TSB Junior Trader: Oh, right. Okay, okay. Got it.

The Lloyds Junior Trader transmitted these requests to the Lloyds TSB Sterling LIBOR Submitter.

In September 2009, the Lloyds TSB Junior Trader discussed their submission process in a chat with another Lloyds TSB employee, and explained that while the submitters paid attention to Lloyds TSB's borrowing and lending when making Sterling LIBOR submissions, they also took into account "what our [trading] position is when inputting our libors." The Lloyds TSB Sterling LIBOR Submitter continued to base his submissions at times on the benefit to his or the former HBOS Sterling LIBOR Submitter's trading positions through at least 2009.

From at least 2007 through at least 2009, the Lloyds TSB and HBOS Sterling LIBOR submitters each attempted to manipulate their respective Sterling LIBOR fixings on numerous occasions for the benefit of their own cash and derivatives trading positions. Lloyds TSB and HBOS, through their submitters, knew it was improper to consider trading positions in determining the bank's LIBOR submissions. A bank's trading positions are not legitimate or permissible factors on which to base a bank's daily LIBOR submissions. By basing its LIBOR submissions on rates that benefited submitters' trading positions, the Sterling LIBOR submissions for Lloyds TSB and HBOS were not made in accordance with the BBA definition and criteria for LIBOR submissions. To the contrary, Lloyds TSB and HBOS conveyed false, misleading or knowingly inaccurate reports that its submitted rates for Sterling LIBOR were based on and solely reflected the costs of borrowing unsecured funds in the relevant interbank markets. Accordingly, Lloyds TSB and HBOS attempted to manipulate and knowingly delivered, or caused to be delivered, false, misleading, or knowingly inaccurate reports

concerning Sterling LIBOR, which is a commodity in interstate commerce. In a few instances, Lloyds TSB was successful in manipulating Sterling LIBOR through the false and unlawful submissions.

**4. Lloyds TSB and HBOS Made False Reports and Attempted to Manipulate U.S. Dollar LIBOR to Benefit Their Cash and Derivatives Trading Positions**

The Lloyds TSB and HBOS U.S. Dollar LIBOR submitters on occasion took their cash and derivatives trading positions into account when determining their U.S. Dollar LIBOR submissions for their respective banks. Accordingly, the Lloyds TSB and HBOS U.S. Dollar LIBOR submitters occasionally made false submissions and attempted to manipulate U.S. Dollar LIBOR in order to benefit their trading positions.

On specific occasions, the submitters received and considered requests for certain U.S. Dollar LIBOR submissions from other traders. For example, on January 17, 2008, a HBOS trader contacted the HBOS U.S. Dollar LIBOR Submitter, a friend of his, and stated, "3mth higher today pls!" The HBOS U.S. Dollar LIBOR Submitter replied, "Should be 92 for guide ill put in 93 to get counted." In a 2008 telephone call, the Lloyds TSB U.S. Dollar LIBOR Submitter stated that if he received a request from a Lloyds TSB trader, and did not have any of his own trading positions fixing or resetting, he would adjust the Lloyds TSB U.S. Dollar LIBOR submissions by a basis point or two in response to that request.

Upon the 2009 acquisition, the Lloyds TSB and the former HBOS U.S. Dollar LIBOR submitters, similar to the Sterling LIBOR submitters, discussed their respective trading positions and, on occasion, coordinated on what submissions to make to benefit their trading positions. For example, on May 11, 2009, the former HBOS U.S. Dollar LIBOR Submitter stated to the trader who assisted the Lloyds TSB U.S. Dollar LIBOR Submitter, "when we have big resets as to be honest we should be coordinating the libor inputs to suit the books. for example later this month i have a 5y 3 month liability reset so we should put in a low one there ill let u know." Then, on May 19, 2009, the former HBOS U.S. Dollar LIBOR Submitter contacted the trader who assisted the Lloyds TSB U.S. Dollar LIBOR Submitter and specifically requested a lower three-month U.S. Dollar LIBOR submission to benefit his trading position. The Lloyds TSB U.S. Dollar LIBOR Submitter complied, stating on a telephone call, "we got the LIBORs down for you."

Over this period, the submitters and traders for Lloyds TSB and HBOS on occasion attempted to manipulate the U.S. Dollar LIBOR fixings at times for the benefit of their own cash and derivatives trading positions. Lloyds TSB and HBOS, through their submitters and traders, knew it was improper to consider trading positions in determining their banks' LIBOR submissions. A panel bank's trading positions are not legitimate or permissible factors on which to base a bank's daily LIBOR submissions. By basing its LIBOR submissions on rates that benefited traders' trading positions, the submissions for Lloyds TSB and HBOS were not made in accordance with the BBA definition and criteria for LIBOR submissions. To the contrary, Lloyds TSB and HBOS conveyed false, misleading or knowingly inaccurate reports that its submitted rates for U.S. Dollar LIBOR were based on and solely reflected the costs of borrowing unsecured funds in the relevant interbank markets. Accordingly, Lloyds TSB and HBOS

attempted to manipulate and knowingly delivered, or caused to be delivered, false, misleading, or knowingly inaccurate reports concerning U.S. Dollar LIBOR, which is a commodity in interstate commerce.

**5. Lloyds TSB Colluded with Rabobank to Make False Reports, to Attempt to Manipulate and to Manipulate Yen LIBOR for the Benefit of Lloyds TSB's and Rabobank's Trading Positions**

From at least mid-2006 through at least October 2008, the Lloyds TSB Yen LIBOR Submitter at times coordinated with and aided and abetted a senior Yen LIBOR submitter at Rabobank in attempts to manipulate and falsely report Yen LIBOR in order to benefit Lloyds TSB and Rabobank trading positions. Through this collusion, the Lloyds TSB Yen LIBOR Submitter sought to accommodate the Rabobank Yen LIBOR Submitter's requests for submissions that would benefit the derivative trading positions of Rabobank traders. The Lloyds Yen LIBOR Submitter also on occasion made his own requests to the Rabobank Yen LIBOR Submitter for submissions that would benefit Lloyds TSB's trading positions. In a few instances, the Lloyds TSB Yen LIBOR Submitter was successful in his attempts to manipulate Yen LIBOR. The Lloyds TSB Yen LIBOR Submitter also occasionally made submissions that would benefit his own trading positions.

Over this period, the two Yen LIBOR submitters regularly communicated with each other about the rates each would submit for Yen LIBOR. In some of these communications, the Rabobank Yen LIBOR Submitter asked the Lloyds TSB Yen LIBOR Submitter to adjust his Yen LIBOR submissions in a direction that benefited Rabobank traders' positions. The Lloyds TSB Yen LIBOR Submitter frequently acknowledged these requests and agreed to assist him, unless the Rabobank Yen LIBOR Submitter's requests conflicted with the Lloyds TSB Yen LIBOR Submitter's own trading positions. The following are examples of these communications.

**June 27, 2006:** (emphasis added)

Rabobank Yen Submitter:

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

Lloyds TSB Yen Submitter:

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

**July 27, 2006:** (emphasis added)

Rabobank Yen Submitter:

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

Lloyds TSB Yen Submitter:

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

**January 5, 2007:**

Rabobank Yen Submitter:

need a high 1mth fix today mate - just for info ;)

Lloyds TSB Yen Submitter:

suits (bu)

Rabobank Yen Submitter: (b)  
Lloyds TSB Yen Submitter: just b4 you beat me up....I was in meeting so didn't do me libors today...thk they put .52 for 1s....

**March 19, 2008:** (emphasis added)

Rabobank Yen Submitter: **[Rabobank Senior Yen Trader] needs a high 6m libor if u can help skip - asked me to set 1.10**

Lloyds TSB Yen Submitter: **oops my 6s is 1.15!!! he'll love me**

Rabobank Yen Submitter: hahaha so di i!

Lloyds TSB Yen Submitter: send him my regards the lovely fella....

**March 28, 2008:** (emphasis added)

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

Lloyds TSB Yen Submitter: **sry mate can't oblige today...I need em lower!!!**

Rabobank Yen Submitter: yes was told by jimbo...just thought i'd let you know why mine will be higher ...and you don't get cross with me

Lloyds TSB Yen Submitter: never get cross wiv yer mate

The Lloyds TSB Yen LIBOR Submitter maintained his relationship with and sought to accommodate the Rabobank Yen LIBOR Submitter's requests, even when he was on assignment in Tokyo during a brief period in early 2007 and was no longer making the Lloyds TSB Yen LIBOR submissions. For example, on March 22, 2007, the Rabobank Yen LIBOR Submitter emailed the Lloyds TSB Yen Submitter requesting, "I need a high 1mth jpy libor set tomorrow please (val 27th) if you can ask your man to set a nice high one like today pls?...hugs skip." The Lloyds TSB Yen LIBOR Submitter forwarded the email to the two Lloyds TSB employees who were making the Lloyds TSB Yen LIBOR submissions in his absence and stated, "We **usually try and help each other out**...but only if it suits...I think this will be OK for us anyway as we may have some month end Loans Admin roll overs?" (emphasis added)

Upon his return to London and resumption of his LIBOR submission duties, the Lloyds TSB Yen LIBOR Submitter received an internal request for a submission from a Lloyds TSB trader in Tokyo. The trader asked the Lloyds TSB Yen LIBOR Submitter on July 19, 2007 for a low three-month Yen LIBOR submission, observing that he had a position worth ¥83 billion that could benefit from an altered Yen LIBOR fixing. The Lloyds TSB Yen LIBOR Submitter agreed to assist him and even offered to ask the Rabobank Yen LIBOR Submitter to assist as well.

On other occasions, the Lloyds TSB Yen LIBOR Submitter asked the Rabobank Yen LIBOR Submitter to adjust Rabobank's Yen LIBOR submissions to benefit the trading positions of the Lloyds TSB Yen LIBOR Submitter. The Rabobank Yen LIBOR Submitter typically

agreed to these requests. The following are examples of these coordinating communications with the Rabobank Yen LIBOR Submitter.

**June 27, 2006:** (emphasis added)

Lloyds TSB Yen Submitter:

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

Rabobank Yen Submitter:

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

Lloyds TSB Yen Submitter:

**(K) cheers dude**

Rabobank Yen Submitter:

**no prob at all mate ;)**

**July 19, 2007:**

Lloyds TSB Yen Submitter:

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

Rabobank Yen Submitter:

**ok skip - what u need? no prob**

Lloyds TSB Yen Submitter:

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

**January 7, 2008:** (emphasis added)

Lloyds TSB Yen Submitter:

**plse may i have a nice high 1m libby  
today..grovel grovel...(k). [. . .]**

Rabobank Yen Submitter:

**yes nice and toasty....what would you like me to  
set for 1m mate? i've gone 70 so far....or  
hogher?**

Lloyds TSB Yen Submitter:

**thats fine..thx lad xx**

From at least mid-2006 to at least October 2008, the Lloyds TSB Yen LIBOR Submitter attempted to manipulate Yen LIBOR fixings at times for the benefit of his own trading positions, Rabobank's trading positions, and the trading positions of a fellow Lloyds TSB trader. Lloyds TSB, through its submitter and trader, knew it was improper to consider its own or another panel bank's trading positions in determining the bank's LIBOR submissions. A panel bank's trading positions are not legitimate or permissible factors on which to base a bank's daily LIBOR submissions. By basing its LIBOR submissions on rates that benefited traders' trading positions, Lloyds TSB's submissions were not made in accordance with the BBA definition and criteria for LIBOR submissions. To the contrary, Lloyds TSB conveyed false, misleading or knowingly inaccurate reports that its submitted rates for Yen LIBOR were based on and solely reflected the costs of borrowing unsecured funds in the relevant interbank markets. Accordingly, Lloyds TSB attempted to manipulate and knowingly delivered, or caused to be delivered, false, misleading, or knowingly inaccurate reports concerning Yen LIBOR, which is a commodity in interstate commerce. In a few instances, Lloyds TSB was successful in manipulating Yen LIBOR through the false and unlawful submissions.

**6. Prior to Its Acquisition, HBOS Lowered Its U.S. Dollar and Sterling LIBOR Submissions to Protect Its Market Reputation**

During the global financial crisis in 2008, HBOS experienced serious funding and liquidity issues and was perceived by the market to be in financial trouble. By the middle of 2008, certain HBOS managers recognized that market participants viewed LIBOR submissions as a reflection of a panel bank's liquidity and financial viability. In response, the supervisor of the HBOS LIBOR submitters directed the submitters to make the bank's U.S. Dollar and Sterling LIBOR submissions at rates that ensured it would not be an outlier relative to the other panel banks' LIBOR submissions. Accordingly, from late 2008 through the end of the year, HBOS's U.S. Dollar and Sterling LIBOR submissions did not accurately or solely reflect or relate to HBOS's assessment of the costs of borrowing funds in the relevant interbank markets.

On April 16, 2008, the *Wall Street Journal* published an article questioning whether LIBOR panel banks were making LIBOR submissions lower than what they were actually paying for funds in the money markets to prevent the market from concluding that the banks were desperate for cash. The BBA, in response to this article, began an inquiry into the integrity of the LIBOR fixing. On May 6, 2008, an HBOS senior manager in an email to two other HBOS senior managers and other HBOS personnel, including the senior manager of the LIBOR submitters, reported that "it will be readily apparent that in the current environment no bank can be seen to be an outlier. The submissions of all banks are published and we could not afford to be significantly away from the pack." Later, on August 8, 2008, the same HBOS Senior Manager circulated to HBOS managers and senior managers a presentation in which he stated, *inter alia*, that:

As a bank we are extremely careful about the rates we pay in different markets for different types of funds as paying too much risks not only causing a re-pricing of all short term borrowing but, more importantly in this climate, **may give the impression of HBOS being a desperate borrower and so lead to a general withdrawal of wholesale lines.**  
(emphasis added)

The HBOS LIBOR submitters' supervisor ("HBOS LIBOR Supervisor") understood the importance of not being an outlier in LIBOR submissions. He noted in an August 29, 2008 email to several HBOS LIBOR submitters that HBOS should not be a "material outlier," at least with respect to its Sterling and Euro LIBOR submissions.

By the middle of September 2008, after Lehman Brothers collapsed, HBOS's financial difficulties worsened, and its share price plummeted. On September 18, 2008, Lloyds TSB announced the terms of an offer to acquire the struggling HBOS. This offer was generally understood by the market and by the HBOS LIBOR submitters and their supervisor to be a rescue of HBOS.

Due to the financial crisis conditions and HBOS's worsening financial status, the HBOS U.S. Dollar LIBOR Submitter began to increase his U.S. Dollar LIBOR submissions because he believed his submitted rates represented a reasonable attempt to approximate the rates at which

HBOS would be able to borrow such funds. For example, on September 24, 2008, the HBOS U.S. Dollar LIBOR Submitter increased the three-month submission by 1.2% or 120 basis points, and on September 25, 2008, he increased it again by 35 basis points. HBOS's three-month submission on September 25, 2008 was higher than any other panel bank's submission for that tenor. While the official U.S. Dollar LIBOR fixing was increasing over this period as well, HBOS's U.S. Dollar LIBOR submissions placed the bank at the top of the panel of submitting banks and made HBOS a clear outlier on the U.S. Dollar LIBOR panel.

On September 26, 2008, after discussing the HBOS LIBOR submissions with more senior HBOS managers, the HBOS LIBOR Supervisor told the U.S. Dollar LIBOR Submitter that the U.S. Dollar LIBOR submissions should be lower relative to the other panel members and directed him to reduce the spread between the HBOS U.S. Dollar LIBOR submissions and the submissions of the other panel members.

That same day, the HBOS U.S. Dollar LIBOR Submitter, in a chat with an employee of another financial institution, stated, "you'll like this I've been pressured by senior management to bring my rates down into line with everyone else." Consistent with this directive from the HBOS LIBOR Supervisor, the HBOS U.S. Dollar LIBOR Submitter substantially reduced his three-month U.S. Dollar LIBOR submissions by 55 basis points on September 26, 2008.

As the financial crisis for the market — and for HBOS specifically — deepened through the last quarter of 2008, the HBOS Sterling LIBOR Submitter also began increasing his submissions, until on October 21, 2008, the HBOS Sterling LIBOR submissions became the highest submissions of all other panel bank members in the one through six-month tenors. That day, the HBOS LIBOR Supervisor transmitted a directive to the HBOS Sterling LIBOR submitters, stating "I do not want to be an outlier in BBA submissions - this could potentially create an issue with buyers of our paper." Accordingly, he instructed the submitters to submit "3-6 month" Sterling LIBOR "at the expected BBA level for the time being." He copied his supervisor, the senior manager of the LIBOR submitters, on this email, and, later that day, his supervisor replied stating, "Agree with this."

By this directive, the HBOS LIBOR Supervisor intended the Sterling LIBOR submitters to make submissions based on where they believed most other banks would make their submissions or where Sterling LIBOR would be fixed. This was inconsistent with the BBA definition that required submissions based on the rates at which HBOS had been able to borrow or believed it could borrow Sterling at 11 a.m. in London. HBOS wanted its LIBOR submissions to be at or around the Sterling LIBOR fixing to avoid frightening away potential "buyers of [HBOS] paper." Such buyers might not have been willing to lend money to HBOS — or might have demanded higher rates — had HBOS's Sterling LIBOR submissions reflected the actual rate at which HBOS believed it could borrow.

The HBOS Sterling LIBOR submitters followed this directive by reducing HBOS Sterling LIBOR submissions significantly over a period of several days. For example, on October 22, 2008, the day after the HBOS LIBOR Supervisor issued the directive, the HBOS Sterling LIBOR submissions for one-month through six-month tenors declined substantially,

specifically by 18 basis points in the one, two and six-month tenors, and 20 to 25 basis points in the three, four and five-month tenors.

During this period, the HBOS LIBOR submitters also received instructions from the HBOS LIBOR Supervisor, consistent with the message delivered by the HBOS Senior Manager in August 2008, that they normally should not make bids for cash in the market above the rate of the daily LIBOR fixing. Then, on October 30, 2008, the HBOS LIBOR Supervisor told the submitters in an email (again copying his supervisor) that they should not make LIBOR submissions based on “the expectation of where funds will come” but should instead “continue to post levels at or slightly above the level we will pay for deposits or issue [certificates of deposit].” In other words, in order to avoid a market perception that HBOS was a desperate borrower of funds, the HBOS LIBOR submitters were instructed to make submissions consistent with the rate at which HBOS bid for funds in the market (*i.e.*, the rate of the LIBOR fixing) rather than at the rate HBOS was offered funds. This instruction reinforced the HBOS LIBOR Supervisor’s directive that HBOS should not be an outlier in its U.S. Dollar and Sterling LIBOR submissions.

For the remainder of 2008 through to the acquisition of HBOS in January 2009, the HBOS LIBOR Supervisor did not withdraw the directives to the HBOS U.S. Dollar and Sterling LIBOR submitters, or instruct them to begin making submissions based on the rate at which HBOS could borrow or were offered funds in the interbank money market. As a result, the HBOS U.S. Dollar and Sterling LIBOR submitters continued to follow these directives. Accordingly, from late 2008 through the end of the year, HBOS’s U.S. Dollar and Sterling LIBOR submissions did not accurately or solely reflect or relate to HBOS’s assessment of the costs of borrowing funds in the relevant interbank markets.

During the last few months of 2008, HBOS lowered its submissions for U.S. Dollar and Sterling LIBOR in order to manage market perceptions and preserve its ability to raise funds from other market participants. During this period, HBOS made U.S. Dollar and Sterling LIBOR submissions that did not reflect the rate at which HBOS could borrow in the relevant markets, but instead reflected its desire to avoid being seen as an outlier on the respective LIBOR panels. By skewing its U.S. Dollar and Sterling LIBOR submissions, HBOS conveyed false, misleading or knowingly inaccurate reports that its submitted rates for U.S. Dollar and Sterling LIBOR were based on and solely reflected the costs of borrowing unsecured funds in the relevant interbank markets. Accordingly, HBOS knowingly delivered, or caused to be delivered, false, misleading or knowingly inaccurate reports concerning U.S. Dollar and Sterling LIBOR, which are commodities in interstate commerce.

#### **7. Lloyds TSB and HBOS Attempted to Manipulate Sterling LIBOR to Benefit Their Respective Trading Positions**

In September, October, and December of 2006 Lloyds TSB Sterling LIBOR submitters engaged in a trading strategy to manipulate the one-month tenor for Sterling LIBOR in order to increase the profitability of certain Lloyds TSB forward rate agreements (“FRAs”) positions.



The Lloyds TSB Sterling LIBOR Submitter and back-up Submitter entered into one-month Sterling FRAs that would benefit if the one-month Sterling LIBOR fixing on the settlement date of the positions was higher than the fixed rate at the start of the contracts. Prior to the relevant LIBOR fixing date, the Lloyds TSB Sterling LIBOR submitters increased the price of their bids for one-month Sterling cash in the money market in an attempt to increase the one-month Sterling LIBOR fixing. The Lloyds TSB Sterling LIBOR submitters believed that other panel banks would factor in these higher-priced bids (and any resulting transactions) when making their Sterling LIBOR submissions, and, as a result, cause the Sterling LIBOR fixing to increase as well. The submitters' primary purpose and intent in making the increased bids was to drive the one-month Sterling LIBOR fixing higher in order to benefit the Lloyds TSB FRA positions and not to obtain funding for the bank.

An HBOS Sterling LIBOR Submitter also entered into a similar strategy in late 2006, and placed higher bids in the cash market for three-month Sterling in an improper attempt to manipulate the three-month Sterling LIBOR fixing to benefit an HBOS money market cash trading position.

#### IV. LEGAL DISCUSSION

A. **Respondents, by and Through Lloyds TSB and HBOS, Made False, Misleading or Knowingly Inaccurate Reports Concerning the Costs of Borrowing Unsecured Funds in Violation of Section 9(a)(2) of the Act**

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

Respondents, by and through Lloyds TSB and HBOS, through the transmission of their daily submissions to Thomson Reuters, the service provider of the BBA, who calculated their official fixings, knowingly delivered or caused to be delivered its Sterling and U.S. Dollar LIBOR submissions through the mails or interstate commerce. Lloyds TSB, also through the transmission of its daily submissions, knowingly delivered or caused to be delivered Yen LIBOR submissions through the mails or interstate commerce. The submissions of Lloyds TSB and HBOS 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 Thomson Reuters on behalf of the BBA, and other third party vendors. The panel banks' submissions are used to determine the official published rates for LIBOR which are calculated based on a trimmed average of the submissions. Lloyds TSB's and HBOS's daily LIBOR 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 Lloyds TSB's and HBOS'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 Sterling, U.S. Dollar, and Yen LIBOR are fixed.

At times, during the periods relevant to the conduct described herein, Lloyds TSB's and HBOS's submissions for certain tenors of Sterling and U.S. Dollar LIBOR, and Lloyds TSB's submissions for certain tenors of Yen LIBOR, were false, misleading or knowingly inaccurate because they were based in whole or in part on impermissible and illegitimate factors, including the trading positions of Lloyds TSB and HBOS submitters and traders and, at times, of Rabobank traders, and, for HBOS, a manager's directives regarding the levels at which the bank's Sterling and U.S. Dollar LIBOR submissions should be made. By using these impermissible and illegitimate factors in making their LIBOR submissions, Respondents, by and through Lloyds TSB and HBOS, conveyed false, misleading or knowingly inaccurate information that the rates they submitted were based on and related solely to the costs of borrowing unsecured funds in the relevant markets and were truthful and reliable. Moreover, Lloyds TSB and HBOS submitters, traders, and certain managers knew that certain Lloyds TSB and HBOS LIBOR submissions contained false, misleading and knowingly inaccurate information concerning the submitted rates. By such conduct, Respondents violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2006).

**B. Respondents, by and Through Lloyds TSB, in a Few Instances Successfully Manipulated Sterling and Yen LIBOR for Certain Tenors**

Together, Sections 6(c), 6(d) and 9(a)(2) of the Act prohibit acts of manipulation or attempted manipulation. Section 9(a)(2) of the Act makes it unlawful for "[a]ny person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity . . ." 7 U.S.C. § 13(a)(2) (2006). Section 6(c) of the Act authorizes the Commission to serve a complaint and provide for the imposition of, among other things, civil monetary penalties and cease and desist orders if the Commission "has reason to believe that any person . . . is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, . . . or otherwise is violating or has violated any of the provisions of [the] Act . . ." 7 U.S.C. § 9 (2006). Section 6(d) of the Act is substantially identical to Section 6(c). *See* 7 U.S.C. § 13b (2006).

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

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

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

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

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

“[I]ntent is the essence of manipulation.” *Indiana Farm Bureau Cooperative Ass’n, Inc.*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep (CCH) ¶ 21,796, at 27,282 (CFTC Dec. 17, 1982). The manipulator’s intent separates “lawful business conduct from unlawful manipulative activity.” *Id.* at 27,283. To prove the intent element of manipulation, it must be shown that the Respondent “acted (or failed to act) with the purpose or conscious object of causing or effecting a price or price trend in the market that did not reflect the legitimate forces of supply and demand.” *Id.*

The Commission has observed that “intent must of necessity be inferred from the objective facts and may, of course, be inferred by a person’s actions and the totality of the circumstances.” *In re Hohenberg Bros.*, [1975-1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,271, at 21,477 (CFTC Feb. 18, 1977). “[O]nce it is demonstrated that the alleged manipulator sought, by act or omission, to move the market away from the equilibrium or efficient price – the price which reflects market forces of supply and demand – the mental element of manipulation may be inferred.” *Indiana Farm Bureau Cooperative Ass’n, Inc.*, ¶ 21,796, at 27,283. “It is enough to present evidence from which it may reasonably be inferred that the accused ‘consciously desire[d] that result, whatever the likelihood of that result happening from his conduct.’” *Id.* (quoting *United States v. United States Gypsum Co.*, 438 U.S. 442, 445 (1978)). A profit motive may also be evidence of intent, although profit motive is not a necessary element of an attempted manipulation. See *In re DiPlacido* [2007-2009 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,970, at 62,484 (CFTC Nov. 5, 2008) (citing *In re Hohenberg Bros. Co.*, (CCH) ¶ 20,271, at 21,478)), *aff’d*, 364 Fed. Appx. 657 (2d Cir. 2009).

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

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

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

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

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

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

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

As evidenced by the communications and other facts set forth above, in making the false Sterling and Yen LIBOR submissions, the Lloyds TSB Sterling and Yen LIBOR submitters specifically intended to affect the daily Sterling and Yen LIBOR for certain tenors, including the one-month and three-month tenors. Their intent is also made clear by the evidence that their motives were to benefit the Lloyds TSB and Rabobank Yen LIBOR-based trading positions.

In a few instances, Lloyds TSB’s false, misleading or knowingly inaccurate Sterling and Yen LIBOR submissions were illegitimate factors in the pricing of the daily Sterling and Yen LIBOR fixings and affected the official Sterling and Yen LIBOR for certain tenors, resulting in artificial Sterling and Yen LIBOR fixings. Thus, Lloyds TSB’s actions were a proximate cause of the artificial Sterling and Yen LIBOR fixings.

Accordingly, in a few instances, Respondents, by and through Lloyds TSB, manipulated Sterling and Yen LIBOR for certain tenors, commodities in interstate commerce, in violation of Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006).

**C. Respondents, by and Through Lloyds TSB and HBOS, Attempted to Manipulate Sterling and U.S. Dollar LIBOR, and also Attempted to Manipulate Yen LIBOR by and Through Lloyds TSB**

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

As found above, Lloyds TSB and HBOS submitters specifically intended to affect the rate at which the daily LIBOR for Sterling, U.S. Dollar and Yen would be fixed to benefit their and other traders' cash and derivatives trading positions, and, at times, with respect to Yen LIBOR submissions by Lloyds TSB's submitters, to benefit the trading positions of traders at Rabobank. When the Lloyds TSB and HBOS submitters made LIBOR submissions in a manner that would benefit trading positions, those submissions constituted overt acts in furtherance of their intent to affect the fixings of LIBOR for various currencies. When the Lloyds TSB and HBOS submitters knowingly increased bids for Sterling in the money markets that were higher in price than they otherwise would have paid, the higher-priced bids constituted overt acts in furtherance their attempts to affect the fixing of Sterling LIBOR. By doing so, Respondents, by and through Lloyds TSB and HBOS, 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 and 13(a)(2) (2006).

**D. Respondents, by and Through Lloyds TSB, Aided and Abetted the Attempts of Traders at Rabobank to Manipulate Yen LIBOR**

Pursuant to Section 13(a) of the Act, the Lloyds TSB Yen LIBOR submitter aided and abetted the attempts of traders at Rabobank to manipulate Yen LIBOR. 7 U.S.C. § 13c(a) (2006). Liability as an aider and abettor requires proof that: (1) the Act was violated; (2) the aider and abettor had knowledge of the wrongdoing underlying the violation; and (3) the aider and abettor intentionally assisted the primary wrongdoer. *See In re Nikkhah*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,129, at 49,888 n.28 (CFTC May 12, 2000). Although actual knowledge of the primary wrongdoer's conduct is required, knowledge of the unlawfulness of such conduct need not be demonstrated. *See In re Lincolnwood Commodities, Inc.*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,986, at 28,255 (CFTC Jan. 31, 1984). Knowing assistance can be inferred from the surrounding facts and circumstances. *Id.*

As evidenced by the communications set forth above, the Lloyds TSB Yen LIBOR submitter coordinated with the Rabobank Yen Submitter to make Yen LIBOR submissions that would benefit their respective banks' trading positions. Accordingly, by seeking to affect the rates at which Yen LIBOR were fixed, the traders at Rabobank on these occasions attempted to

manipulate Yen LIBOR, in violation of Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006). The Lloyds TSB Yen LIBOR submitter had knowledge of and intentionally assisted these attempts to manipulate Yen LIBOR. By the acts of the Lloyds TSB Yen LIBOR submitter, Respondents, by and through Lloyds TSB and HBOS, aided and abetted the attempts of traders at Rabobank to manipulate Yen LIBOR in violation of Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2) (2006).

**E. Lloyds Banking Group plc and Lloyds Bank plc Are Liable for the Acts of Their Agents**

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

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

**V.**

**FINDINGS OF VIOLATIONS**

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

**VI.**

**OFFER OF SETTLEMENT**

Respondents, without admitting or denying the findings or conclusions herein, except to the extent Respondents admit those findings in any related action against Respondents by, or any agreement with, the Department of Justice or any other governmental agency or office, have submitted the Offer in which they:

- A. Acknowledge receipt of service of this Order;
- B. Admit 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. Waive:

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 Respondents may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission Regulations, 17 C.F.R. §§ 148.1-30 (2013), relating to, or arising from, this proceeding;
7. any and all claims that Respondents may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and
8. any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;

D. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer; and

E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:

1. makes findings by the Commission that Respondents violated Section 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006);
2. orders Respondents to cease and desist from violating Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006);
3. orders Respondents to pay a civil monetary penalty in the amount of One Hundred Five Million U.S. Dollars (\$105,000,000) plus post-judgment interest; and

4. orders Respondents and their successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

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

## VII.

### ORDER

#### **Accordingly, IT IS HEREBY ORDERED THAT:**

- A. Respondents shall cease and desist from violating Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006) of the Act.
- B. Respondents, jointly and severally, shall pay a civil monetary penalty of One Hundred Five Million Dollars (\$105,000,000) within ten (10) days of the date of entry of this Order (the "CMP Obligation").<sup>11</sup> 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). Respondents shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Accounts Receivables  
DOT/FAA/MMAC/AMZ-341  
CFTC/CPSC/SEC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
(405) 954-7262 office  
(405) 954-1620 fax  
[nikki.gibson@faa.gov](mailto:nikki.gibson@faa.gov)

If payment is to be made by electronic funds transfer, Respondents shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondents and the name and docket number of this proceeding. The paying Respondents shall simultaneously

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<sup>11</sup> Effective June 18, 2008, the Act imposes a \$1,000,000 civil monetary penalty for each act of attempted and completed manipulation in violation of the Act. Certain of Respondents' violations of the Act for attempted and completed manipulation occurred after June 18, 2008.



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. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer. Respondents represent that they have already undertaken and implemented, or are implementing certain compliance and supervisory controls or enhancements consistent with these Undertakings:

1. PRINCIPLES<sup>12</sup>

- i. Respondents agree to undertake the following: (1) to ensure the integrity and reliability of their 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. Respondents represent and undertake that each Benchmark Interest Rate Submission by Respondents 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: Respondents shall determine their Submission(s) based on the following Factors, Adjustments and Considerations, unless otherwise prohibited by or contrary to an affirmative obligation imposed by any law or regulation, or the rules or

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<sup>12</sup> 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 Respondents submit 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).

definitions issued by a Benchmark Publisher. Respondents' transactions shall be given the greatest weight in determining their Submissions, subject to applying appropriate Adjustments and Considerations in order to reflect the market measured by the Benchmark Interest Rate.<sup>13</sup>

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

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

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<sup>13</sup> 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 Respondents’ Submitters:
  - a. Third party offers to Respondents 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 Respondents by interdealer brokers (e.g., voice brokers); and
  - c. Third party offers provided to Respondents 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: Respondents may adjust their 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 Respondents apply the above Factors, if Respondents have data for any maturity/tenor described by a Factor, then Respondents may interpolate or extrapolate the remaining maturities/tenors from the available data;
  - d. Credit Standards: As Respondents apply the above Factors, adjustments may be made to reflect Respondents’ 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, Respondents 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, Respondents may exclude such transactions from the determination of their 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 Respondents, or participate in derivatives trading other than that associated with Respondents' 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 Respondents' liquidity and liability management.
- iv. FIREWALLS: INTERNAL CONTROLS REGARDING IMPROPER COMMUNICATIONS AND SUBMISSIONS: Respondents 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 their 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 Respondents. For these purposes, improper communications shall be any attempt to influence Respondents' Submission(s) for the benefit of any derivatives trading position (whether of Respondents or any third party) or any attempt to

cause Respondents' 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 Respondents contribute any Submission(s). The two groups should be separated such that neither can hear the other.
- v. DOCUMENTATION: Respondents 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, Respondents 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 Respondents used to determine their 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 Respondents' 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 Respondents' Submission(s) including, but not limited to, the following:
      - Identification of the specific offers and bids relied upon by Respondents when determining each Submission; and
      - The name of each company and person from whom the information or data is obtained;

- d. Respondents' assessment of "reasonable market size" for their 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 Respondents in connection with determining their 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, Respondents shall retain for a period of five (5) years after the date of each Submission, the following transactional data used by Respondents to determine their 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 Respondents 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: Respondents 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: Respondents 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 Respondents 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 offices of Respondents, shall be retained for a period of six (6) months. Subject to a reasonable time to implement, Respondents' audio retention requirements pursuant to these Undertakings shall commence within a reasonable period after the entry of this Order and shall continue for a period of five (5) years thereafter;

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

Nothing in these Undertakings shall limit, restrict or narrow any obligations pursuant to the Act or the Commission Regulations promulgated thereunder, including but not limited to Regulations

1.31 and 1.35, 17 C.F.R. §§ 1.31 and 1.35 (2013), in effect now or in the future.

vi. MONITORING AND AUDITING:

- Monitoring: Respondents 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, Respondents shall notify their 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, Respondents shall conduct internal audits of reasonable, random samples of their 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, Respondents shall retain an independent, third-party auditor to conduct an audit of their 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 Respondents;
  - c. Obtaining written verification from the Submitter(s) and Supervisor(s), to the extent they are still employed by Respondents, that the Submission(s) were consistent with this Order, the policies and procedures in place for making Respondents' Submission(s), and the definitions applicable to the Benchmark Interest Rate for which Respondents made Submission(s); and



- d. A written audit report to be provided to Respondents 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, Respondents 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 their Submission(s). In addition, Respondents 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' Submissions are reported to and investigated by Respondent' 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' 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: Respondents shall develop training programs for all employees who are involved in their 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 October 15, 2014, all Submitters, Supervisors, and traders who primarily deal in derivatives products that reference a Benchmark Interest Rate shall be fully trained in the application of these Undertakings to them, as set forth herein. Thereafter, such training will be provided promptly to employees newly assigned to any of the above listed responsibilities, and again to all Submitters, Supervisors and traders who primarily deal in derivatives products that reference a Benchmark Interest Rate as part of Respondents' 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 Respondents' Submission(s);
- The requirement to conduct all business related to Respondents' Submission(s) on Respondents' 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 Respondents' 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 Respondents' 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, Respondents shall make interim reports to the Commission, through the Division, explaining their progress towards compliance with the Undertakings set forth herein. Within 365 days of the entry of this

Order, Respondents shall submit a report to the Commission, through the Division, explaining how they have 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 Respondents' Executive Management, after consultation with Respondents' chief compliance officer(s), that Respondents have complied with the Undertakings set forth above, and that they have 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 September 15, 2014, Respondents 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, Respondents 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: Respondents 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 Respondents are or remain contributors to any Benchmark Interest Rate, Respondents agree to make their 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 their 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, Respondents shall report to the Commission, through the Division, either orally or in writing, on their 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 Respondents and Benchmark Publishers.

#### 4. COOPERATION WITH THE COMMISSION

- i. Respondents 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, Respondents agree 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 Respondents' possession, custody or control;
  - Subject to applicable laws and regulations, Respondents will make their best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of Respondents, 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, Respondents will make their best efforts to assist in locating and contacting any prior (as of the time of the request) officer, director, employee, or agent of Respondents;
- ii. Respondents also agree that they will not undertake any act, other than as required by applicable law, that would limit their ability to cooperate fully with the Commission. Respondents 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 Respondents 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. Respondents and the Commission agree that nothing in these Undertakings shall be construed so as to compel Respondents to continue to contribute Submission(s) related to any Benchmark Interest Rate. Without prior consultation with the Commission, Respondents remain 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 Respondents by any presently existing, or hereinafter enacted or promulgated laws, regulations, regulatory mandates, or the rules or definitions issued by a Benchmark Publisher, then Respondents 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, Respondents will abide by the obligations imposed by the law, regulations, regulatory mandates and Benchmark Publishers' rules and definitions. Nothing in these Undertakings shall limit, restrict or narrow any obligations pursuant to the Act or the Commission Regulations promulgated thereunder, including but not limited to Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31 and 1.35 (2013), in effect now or in the future.

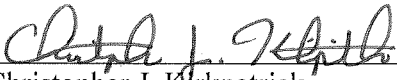
## 6. PUBLIC STATEMENTS

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

- D. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission of partial payment of Respondents' CMP Obligation shall not be deemed a waiver of their 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.

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

Dated: July 28, 2014