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UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:)
)
RP Martin Holdings Limited and)
Martin Brokers (UK) Ltd.,)
)
Respondents.)
)
)

CFTC Docket No. 14 - 16

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 (the "Commission" or the "CFTC") has reason to believe that RP Martin Holdings Limited and Martin Brokers (UK) Ltd. (collectively, "Respondents" or "RP Martin"), 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). 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 RP Martin 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").¹

¹ Respondents consent to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that 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 or where Respondents have admitted findings as set forth above. Nor do Respondents consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

III.

The Commission finds the following:

A. Summary

During a period encompassing nearly twelve months, from at least September 2008 through at least August 2009 (“relevant period”), RP Martin, through certain of its brokers on the Yen desk, knowingly disseminated false and misleading information concerning Yen borrowing rates to market participants in attempts to manipulate, at times successfully, the official fixing of the daily Yen London Interbank Offered Rate (“Yen LIBOR”). RP Martin brokers engaged in this misconduct primarily to aid and abet a senior Yen derivatives trader (“Senior Yen Trader”) employed at UBS Securities Japan Co., Ltd. (“UBS”) and later at another bank, in his attempts to manipulate Yen LIBOR to benefit his derivatives trading positions that were tied to this benchmark.²

Yen LIBOR, one of the British Banker’s Association’s (“BBA”) benchmark rates, is established each day based on information submitted by banks who are members of the Yen LIBOR panel. The rates contributed by the panel banks are supposed to reflect each bank’s assessment of the costs of borrowing unsecured funds in the London interbank market. Before panel banks make their rate submissions each day, certain interdealer brokers, such as RP Martin, which intermediate over-the-counter (“OTC”) cash and LIBOR-based derivatives transactions between banks and other institutions, provide banks with their trading insight on cash pricing trends in the market and on assessments of likely LIBOR rates. Brokers provide this type of market information as a service to clients to solicit and maintain business, and are thus well-situated to influence the fixing of Yen LIBOR. During the financial crisis of late 2007 through 2009 (“2007-2009 financial crisis”), panel banks became increasingly reliant on such market information from RP Martin and other brokers to inform their LIBOR submissions. Accordingly, RP Martin brokers’ market views could and did have an impact on Yen LIBOR submissions.

As one of his many manipulative schemes, the Senior Yen Trader asked RP Martin’s Yen brokers to exploit their relationships with submitters and traders at Yen LIBOR panel banks to achieve his manipulative goals. At times, RP Martin’s Yen brokers accommodated these requests, particularly whenever the Senior Yen Trader offered to generate extra commissions for

² On December 19, 2012, the Commission issued an Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act Making Findings and Imposing Remedial Sanctions against UBS AG and UBS, finding, among other things, that UBS AG and UBS, through the Senior Yen Trader, attempted to manipulate Yen LIBOR, at times successfully, through multiple methods. The Commission’s Order against UBS AG and UBS found that one of the Senior Yen Trader’s strategies included enlisting the aid of interdealer brokers to attempt to influence the rates submitted by Yen LIBOR submitters at other panel banks. In that Order, RP Martin was identified as Brokerage B and the RP Martin broker referenced was identified as Derivatives Broker B1. *See In re UBS AG et al.*, CFTC Docket No. 13-09 (CFTC filed December 19, 2012), at <http://www.cftc.gov/ucm/groups/public/@lrenforcementactions/documents/legalpleading/enfubsorder121912.pdf>.

them through the use of high-dollar wash trades. Specifically, on a limited number of occasions, the Senior Yen Trader entered into two identical trades with a Yen Trader at another bank where each took opposing positions in each trade, thus resulting in a net zero trading position for each trader, but generating commissions for the entire RP Martin Yen desk, all in anticipation of or reward for the RP Martin brokers' assistance in the Senior Yen Trader's attempts to manipulate Yen LIBOR. These bogus wash trades generated more than \$400,000 in commissions for RP Martin's Yen desk over the relevant period.

To try to achieve the Senior Yen Trader's manipulative goals, at times, the RP Martin Yen brokers disseminated false Yen LIBOR information to Yen LIBOR submitters by providing them with misleading market information concerning Yen LIBOR borrowing rates. *First*, the RP Martin Yen desk provided misleading recommendations regarding where the Yen LIBOR submitters should set certain Yen LIBOR tenors. Market participants believed that these recommended LIBORs reflected the RP Martin brokers' assessment of how Yen LIBOR should be fixed based on their unbiased evaluations of borrowing costs in the interbank market. RP Martin brokers spoke on a daily basis with several of the panel banks' Yen LIBOR submitters. Some submitters relied on the market information RP Martin provided when making their own Yen LIBOR submissions. However, at certain times during the relevant period, RP Martin's Yen brokers skewed their Yen LIBOR recommendations to benefit the Senior Yen Trader, rather than provide an objective, unbiased assessment of this benchmark interest rate.

Second, at times, RP Martin Yen brokers contacted submitters at certain panel banks and asked them directly to move their Yen LIBOR submissions in a manner that would benefit the Senior Yen Trader. At times, some of these submitters agreed to help the brokers.

Finally, RP Martin Yen brokers occasionally offered "spoof" bids to their clients, including clients who were Yen LIBOR submitters. These nonexistent cash bids gave the false impression that a bank in the market was willing to trade Yen cash at a particular price. RP Martin Yen brokers knew that Yen LIBOR submitters might consider such market information when determining what rates to submit for Yen LIBOR, and hoped that the misleading "spoof" bids might influence their eventual Yen LIBOR submissions to the benefit of the Senior Yen Trader.

RP Martin's ineffectual supervision of the Yen desk, and its complete failure to audit the Yen derivatives desk or adequately review the Yen brokers' communications with clients, among other internal controls and supervisory deficiencies, allowed this misconduct to continue throughout the relevant period.

In accepting RP Martin's Offer, the Commission recognizes Respondents' cooperation in the final stages of the Division of Enforcement's investigation and the resolution of this matter.

B. Respondents

1. **RP Martin Holdings Ltd.** (“RP Martin Holdings”) is a privately-owned holding company, whose businesses consist of wholesale money brokers who operate in the interdealer broker market transacting business on behalf of market participants. The company’s brokers act as voice brokers, arranging deals over the telephone between buyers and sellers of bonds, currency and financial derivatives, and generating revenue from the commission earned on each trade. RP Martin Holdings is not registered with the Commission in any capacity.

2. **Martin Brokers (UK) Ltd.** (“Martin Brokers”) is a wholly owned subsidiary of Martin Brokers Group Ltd., a wholly owned subsidiary of RP Martin Holdings, and is headquartered in London, England. It manages a cash, foreign exchange, and off-balance sheet brokering business in the United Kingdom, including the brokering business conducted by Yen brokers and other brokers engaged in the unlawful conduct found herein. Martin Brokers is not registered with the Commission in any capacity.

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 with a notional value of \$500 trillion, such as OTC swaps, loans and exchange-traded interest rate futures and options contracts.

During the relevant period, under the auspices of the BBA,³ LIBORs were issued on a daily basis for ten currencies, including Yen, with fifteen tenors (*i.e.*, durations for interest rates) ranging from overnight through twelve months. Certain currencies, including 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 requires that:

[a]n individual BBA LIBOR Contributor Panel Bank will contribute the rate at which it could borrow funds, were it to do so by asking for and then accepting inter-bank offers in reasonable market size just prior to [11:00 a.m. London time].⁴

³ On February 1, 2014, the ICE Benchmark Administration Limited was appointed as the new administrator for LIBOR, following authorization by the Financial Conduct Authority (“FCA”).

⁴ This definition of LIBOR has been used by the BBA from 1998 to the present.

Every business day shortly before 11:00 a.m. London time, the banks on the LIBOR panels submit their rates to Thomson Reuters. A trimmed averaging process is used to exclude the top and bottom quartile of rates and the remaining rates are averaged for each tenor. That average rate becomes the official BBA daily LIBOR (the “LIBOR fixing”).

The BBA makes public the daily LIBOR fixing for each currency and tenor, as well as the daily submissions of each panel bank, through Thomson Reuters and the other data vendors licensed by the BBA. This information is made available and relied upon by market participants and others throughout the world, including in the United States.

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.⁵

2. RP Martin’s Role as an Interdealer Broker

RP Martin, a relatively small, United Kingdom-based cash and derivatives broker with less than 200 employees and 5 offices world-wide, intermediates cash trades in the money markets and derivatives transactions. Interdealer brokers, like RP Martin, act as intermediaries between major dealers in the money markets and the OTC derivatives markets to facilitate execution of interdealer trades. Because of their role in the financial markets, interdealer brokers, including RP Martin, have a significant impact on panel banks’ views of the interbank markets for cash deposits, and, therefore, have a potential impact on panel banks’ LIBOR submissions. Interdealer brokers assist banks in obtaining funding by facilitating the negotiation of deposits and loans, and in hedging those transactions with derivatives trades often referenced to LIBOR. Brokers match buyers and sellers in return for commissions, and provide market information for banks. Typically, broker commissions are based on a percentage of the notional value of consummated transactions. Therefore, higher commissions are generated from brokering larger trades.

In order to find matching counterparties, brokers provide bid or offer prices for a financial transaction. Brokers use “squawk boxes” or speakerphones which allow them to speak to numerous trading desks of their bank clients and simultaneously to disseminate broadly bid and offer prices. Brokers also frequently use Bloomberg instant message chats and other messaging platforms, email and dedicated telephone lines.

In addition to brokering transactions, as part of their client services, interdealer brokers, including RP Martin, frequently provide clients with their views and advice on market pricing and trends, often called “market color.” Clients, including LIBOR submitters and interest rate

⁵ 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.”

derivatives traders at panel banks, rely on brokers for such information. Because brokers speak to multiple clients at different financial institutions and share internally the information learned from clients, they have particular market insight about cash market prices and trends in otherwise opaque markets, offering an important price discovery function. In providing this market information, interdealer brokers are implicitly representing that such market information reflects their third-party unbiased assessment of borrowing costs and market pricing based on objective, observable data, some of which they uniquely possessed.

During the relevant period, certain interdealer brokers, including RP Martin, provided, and still provide, predictions or suggestions of where they believe key benchmark interest rates, such as LIBOR, would fix on specific days. These were known as “Suggested LIBORs”. Interdealer brokers, including RP Martin, also at times shared with some panel banks the intended LIBOR submissions of other panel banks.

During the 2007-2009 financial crisis, LIBOR submitters became increasingly reliant on interdealer brokers for their market information, including specific information about the level at which other panel banks intended to submit LIBORs, and the brokers’ Suggested LIBORs. This reliance was due to limited interbank lending occurring upon which submitters could base their LIBOR submissions. Some panel banks believed at times during the financial crisis that such market information provided by RP Martin and other interdealer brokers was possibly the only meaningful market information available to assess their ability to borrow funds in the interbank markets.⁶

3. RP Martin Brokers Disseminated False and Misleading Suggested LIBORs in an Effort to Manipulate Yen LIBOR to Benefit Panel Banks, at Times Successfully

At specific times during the relevant period, certain RP Martin Yen brokers, acting together, knowingly disseminated false and misleading market information including false Suggested LIBORs, in attempts to influence the Yen LIBOR submissions made by panel banks and thereby manipulate the official fixing of Yen LIBOR. These RP Martin Yen brokers engaged in such false reporting primarily to assist the Senior Yen Trader at UBS (and later at another bank) in his efforts to manipulate Yen LIBOR to benefit his Yen derivatives trading positions, which were valued based on the Yen LIBOR fixings. The Senior Yen Trader believed that RP Martin brokers could influence certain of the Yen panel banks’ submissions to levels favorable to the Senior Yen Trader’s positions, and thereby affect the direction and level Yen LIBOR would fix at various tenors to benefit the Senior Yen Trader’s positions. By beneficially affecting the Yen LIBOR fixings, the Senior Yen Trader could increase his profits or reduce his losses on his trading positions. At times, the collective efforts of the RP Martin Yen brokers and the Senior Yen Trader were successful in influencing Yen LIBOR submissions made by the panel banks, and thereby manipulating Yen LIBOR.

⁶ Yen LIBOR submitters’ reliance on interdealer brokers for market information was not consistent with BBA guidelines. See *supra* note 5.

a. RP Martin Brokers Provided Unlawful Assistance to the Senior Yen Trader By Providing False Suggested LIBORs to Yen LIBOR Submitters

In 2006, RP Martin assigned a RP Martin broker manager to be the new Yen forwards desk manager (“Yen Desk Head”). The new Yen Desk Head had little to no experience working in Yen products. RP Martin also merged the Yen forwards desk with the Yen money market desk to create a new foreign exchange forward Yen desk (“Yen Desk”). The Yen Desk consisted of several brokers, including Yen Broker 1, who was promoted to “Manager of Yen Money Markets” in January 2007. Yen Broker 1’s mandate was to grow both the money market business and the off-balance-sheet (“OBS”) or Yen derivatives business on the Yen Desk. Yen Broker 1 supervised another broker (“Yen Broker 2”), who was also responsible for money market and derivatives products. A third broker focused on forward Yen contracts but spent some of his time brokering derivatives products. The remaining five brokers on the Yen Desk exclusively brokered Yen forward contracts.

In the fall of 2006, shortly after joining UBS, the Senior Yen Trader requested that RP Martin assign to him one of its junior Yen brokers, whom he could mold into the type of broker he wanted. He was assigned to Yen Broker 1, who had been working as a cash broker for a number of years, but who had no experience in the derivatives market. The Senior Yen Trader, based in Tokyo, was then a relative newcomer to the Yen market but quickly became known as a high volume, aggressive and dominant Yen derivatives trader who was injecting significant liquidity into a previously illiquid market. Because he commanded a large trading volume, the Senior Yen Trader was a highly desirable and sought after client of interdealer brokers. This was especially true for Yen Broker 1.

Commencing in October 2006 and continuing throughout the relevant period, the Senior Yen Trader frequently asked Yen Broker 1 to assist him in manipulating Yen LIBOR. Specifically, the Senior Yen Trader wanted Yen Broker 1 to ask other Yen LIBOR submitters to increase or decrease their submissions for the Yen LIBOR rate. If Yen Broker 1 was out of the office, the Senior Yen Trader directed such requests to Yen Broker 2, who covered Yen Broker 1’s clients in his absence. At times during the relevant period, Yen Brokers 1 and 2 complied with the Senior Yen Trader’s requests. To accomplish this, Yen Broker 1 simply provided misleading market information to Yen LIBOR submitters, such as oral Suggested LIBORs that he skewed to benefit the Senior Yen Trader’s trading positions.

For example, on July 18, 2008, in a Bloomberg chat, the Senior Yen Trader requested that Yen Broker 1 help him lower the one-month Yen LIBOR submission:⁷

Senior Yen Trader: 1m mate *** whats it looking like need it lower
Yen Broker 1: lower

⁷ The communications quoted in this Order are from telephone calls, emails, instant messages, and the like. Some contain shorthand trader language and typographical errors. The shorthand and errors are explained in brackets within the quotations only when necessary to understand the discussion.

Senior Yen Trader: rabo⁸ moved UP to 71 they are offered at 49!
Yen Broker 1: ill have a work with rabo agn then
Senior Yen Trader: please have a word that is wrong

Senior Yen Trader: [Yen Broker 1] have you spoken to rabo re his 1m fix its a
 joke i need your help on 1m icap are suggesting 63 today
 pls do the same
Yen Broker 1: ok mate il. do tyeh same i did iyt yesterday too

Senior Yen Trader: thx its killing me mate i am losing so much cash then i
 can't pay you
Yen Broker 1: thats is not gonna help anyone [Yen Broker 2] is trying to
 pull a favour with rabo now
Senior Yen Trader: ta
Yen Broker 1: roite yu owe him a beer wednesday h [Yen Broker 2] 63
 rabo going ok?> fosters top he likes extra chilled
Senior Yen Trader: ok mate ta for that dude

During this Bloomberg chat, Yen Broker 1 telephoned the Yen LIBOR submitter at Bank 1 and provided Suggested LIBORs, including the recommendation that the one-month Yen LIBOR be set at 0.60. Similarly, Yen Broker 2 telephoned the Yen LIBOR submitter at Rabobank, and convinced him to move his one-month LIBOR down to 0.63, from 0.71 the previous day:

Rabobank Submitter: I don't know what do you reckon?
Yen Broker 2: 65?
Rabobank Submitter: I don't know. I ain't got a clue, 65. He wants me to set 98
 in the 6's.
Yen Broker 2: That low, yeah? What does he want you setting 1's then?
Rabobank Submitter: Nothing he hasn't told me.
Yen Broker 2: 65 then. That's good. Well, got someone asking here.
Rabobank Submitter: Oh ok.
Yen Broker 2: If you can?
Rabobank Submitter: Do you want me to set 65?
Yen Broker 2: Yeah, or as low as possible basically.
Rabobank Submitter: Well, why didn't you say that then? *** Well, I'll set to 63
 if you want.

⁸ This is a reference to Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. (“Rabobank”). On October 19, 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 Rabobank attempted to manipulate Yen LIBOR, at times successfully, through multiple methods. In that Order, Yen Broker 2 was identified as Derivatives Broker A1. See *In re Cooperatieve Centrale RaiffeisenBoerenleenbank B.A.*, CFTC Docket No. 14-02 (CFTC filed October 29, 2013), at <http://www.cftc.gov/ucm/groups/public/@lrenforcementactions/documents/legalpleading/enfrabobank102913.pdf>.

Yen Broker 2: Yeah? Alright then. Cool.

Rabobank Submitter: Yeah, it makes no odds to me.

Rabobank Submitter: Who's that?

Yen Broker 2: It's a geezer at UBS, [Senior Yen Trader]

Rabobank Submitter: Alright well make sure he knows *** You know, scratch my back, yeah, and all.

Yen Broker 1 issued skewed Suggested LIBORs on other occasions. For example, on October 31, 2008, the Senior Yen Trader instructed Yen Broker 1 to push Yen LIBOR submissions for the one, three and six month tenors downward (Senior Yen Trader: "Yes, or actually 3's down 12. Yes, 12 or 13 for 3's, 7 or 8 for 6's, like, 19 or 20 for 1's."). Yen Broker 1 then telephoned Yen LIBOR submitters at three different panel banks, Bank 1, Bank 2 and Bank 3. During the telephone calls to each Yen LIBOR submitter, Yen Broker 1 strongly recommended submitting a lower Yen LIBOR submission for the one-month, three-month, and six-month tenors, based on what he claimed were the prices he was hearing in the market. Yen Broker 1 stated the following to the Yen LIBOR submitter at Bank 3: "I'm calling LIBORs down maybe about 17, 18 points in 1's, 3's around 12, 6's around 8."

Yen Broker 1 also spoke with other brokers on the RP Martin Yen Desk and the Arbitrage Desk, to ensure that the Yen LIBOR submitters at RBS⁹ and Bank 4 received a similar directive to lower their LIBORs based on "market information". However, the RBS Yen LIBOR submitter admonished an Arbitrage Desk broker that his Yen LIBOR recommendations were "much too much too [low]. I reckon about between three and five off, across the board".

These telephone conversations demonstrate that submitters at panel banks often sought advice from brokers such as RP Martin when attempting to make benchmark interest rate submissions that reflected an assessment of the costs of borrowing funds in the interbank Yen market. However, such submitters may have passed on false or misleading submissions because they used RP Martin brokers' purported unbiased assessments of Yen borrowing rates and Suggested LIBORs to inform their submissions. Their reliance on RP Martin brokers meant that their submissions did not actually reflect borrowing costs, but rather the Senior Yen Trader's desired rates.

⁹ On February 6, 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 The Royal Bank of Scotland plc and RBS Securities Japan Ltd. (collectively "RBS"), finding, among other things, that RBS, through its Yen LIBOR submitters and other yen traders, attempted to manipulate Yen LIBOR, at times successfully, through multiple methods. In the Commission's Order, RP Martin is identified as Interdealer Broker B. See *In re The Royal Bank of Scotland plc et al.*, CFTC Docket No. 13-14 (CFTC filed February 6, 2013), at <http://www.cftc.gov/ucm/groups/public/@lrenforcementactions/documents/legalpleading/enfrbsorder020613.pdf>.

b. RP Martin Contacted Submitters Directly and Coordinated with Other Brokers on the Yen Desk to Ensure the Senior Yen Trader's Demands Were Met

At times, Yen Broker 1 and Yen Broker 2 also contacted their Yen LIBOR submitter clients directly and asked them to move their Yen LIBOR submissions as a "favor" to the Senior Yen Trader. Yen Broker 1 also enlisted the help of certain other brokers at RP Martin, including managers of certain trading desks, to reach out to additional Yen LIBOR submitters, in an effort to further manipulate the daily Yen LIBOR fixing. For example, on February 25, 2009, Yen Broker 1 contacted several Yen LIBOR submitters directly and through his colleagues when the Senior Yen Trader offered to "pay" Yen Broker 1 if he helped lower the three-month Yen LIBOR fixing. They first spoke via Bloomberg chat:

Yen Broker 1: anything cooking i can try desperate for a decent trade gone pear shaped this month
Senior Yen Trader: we can switch 2yrs today i'll talk later in mean time low 1m and 3m we must keep 3m down and high 6m act 6m unchanged today try for low on all of em from tomorrow need 6m high as a drug addict
Yen Broker 1: ok ill do my best for those tday hahahha like it ok

Next, Yen Broker 1 and Senior Yen Trader further discussed their scheme by telephone:

Yen Broker 1: Yes, I know, you need the LIBOR stuff. I know that's really important. I know how important it is, you know how it is so

Senior Yen Trader: I mean I'm just trying to think who you might be able to f*cking lean on a bit today.
Yen Broker 1: yes, go on give me some names.
Senior Yen Trader: it's really important to get the 3's down for me.
Yen Broker 1: 3's more than anything else.
Senior Yen Trader: Yes. Really, well, I mean today I need them all low but, I mean, 3's particularly. *** Right [Bank 5] put his at 64, mate. Can you get him down?
Yen Broker 1: 64 [Bank 5]. Okay, I'll have a word with him.
Senior Yen Trader: [inaudible] up to 65
Yen Broker 1: Who's that? [Bank 2]?
Senior Yen Trader: Yes.
Yen Broker 1: Right, I'll go and ask him for a – [Yen Broker 2] off today but I'll go in and I'll get a favor.
Senior Yen Trader: Yes, ask him if he can move it to 63 for the day or something. *** Who else is [inaudible]?
Yen Broker 1: Rabo is all done out of Utrecht now, even though it's still under London.
Senior Yen Trader: RBS is 64 *** you don't talk to RBS, do you?

Yen Broker 1: No but the guy in the arbi does, I'll see if he can, sort of, see if he can have a word with him for us *** So [Bank 2], [Bank 5] and RBS, yes? See if I can get that down some, yes?

Senior Yen Trader: Yes, if you could mate. *** And you don't speak to [Bank 6], do you?

Yen Broker 1: He's on the arbi so I could have a word with the guy that speaks to him and see if he can have a word. See if he can drop his LIBOR a couple of pips today ...

Senior Yen Trader: He's at f*cking 68 dude *** if he went to 60 that would be f*cking massive.

Yen Broker 1: Okay, I'll have a word with that as well, mate, alright?

Yen Broker 1 next ensured that he or another RP Martin broker made contact with multiple Yen LIBOR submitters to ensure that their Yen LIBOR submissions were consistent with the Senior Yen trader's needs. That same day, Yen Broker 1 personally contacted submitters at Bank 1 and Bank 2. Yen Broker 1 enlisted the assistance of a desk head from RP Martin's Arbitrage Desk ("Arbitrage Desk Head"), who had a relationship with the Yen LIBOR submitter at Bank 6. The Arbitrage Desk Head agreed to make the call, although he expressed concern about "auditors" listening in on calls.

Telephone call between Yen Broker 1 and Yen LIBOR submitter at Bank 1:

Yen Broker 1: I need a favor.

Bank 1 Submitter: yes.

Yen Broker 1: *** basically I got stuffed in something earlier in an IRS and it would have cost me about 40,000 to get out of it, yes. Geezer [referring to the Senior Yen Trader] dug me out, as a favor back to him he's asked me, for one day today, he's got a couple of fixings coming. He wants to see if he can get LIBORs down a little bit. I've said I'll try and do what I can. Is there any way you might be able to set them a little bit lower today just to return the favor? ***

Bank 1 Submitter: Yeah, well cash is a little bit easier, isn't it so I'll

Yen Broker 1: Yes, if you could get them down a couple of ticks or something today that would be f*cking, like the 3's *** I mean if you could do that for me mate that would be a personal favor to you.

Bank 1 Submitter: Yes, yes, but yes cash is easier so I'll fix a couple up.

Telephone call between Yen Broker 1 and Yen LIBOR submitter at Bank 2:

Yen Broker 1: Can I ask you a small favor?

Bank 2 Submitter: Yeah.

Yen Broker 1: What are you going to set in your LIBOR 3's today?

Bank 2 Submitter: Ah, same, 65.

Yen Broker 1: Is there any way you might be able to set them down a pip 'cause I'm getting a big trade out of it?
Bank 2 Submitter: Sorry?
Yen Broker 1: I'm getting someone do me a big trade if they said if I help them sort of get LIBORs down a tick today.
Bank 2 Submitter: Yeah, okay. ***
Yen Broker 1: Ah, mate, I appreciate that.

Telephone calls related to contacting Yen LIBOR submitter at Bank 6:

1st telephone call:

Yen Broker 1: Can you do me a favor?
Arbitrage Desk Head: Only if you tick the arbi box on that deal.
Yen Broker 1: We've got a f*cking, yes, we've got a f*cking huge deal but on the back of it he's asked me to do him a favor and see if I can have a word with a couple of people, see if LIBOR, see if I could get it down a pip. Would you - Bank 6 is setting his at 68 at the moment, do you reckon he might, ask him if he might be able to set it at 67 just today for us?

Arbitrage Desk Head: 3's LIBOR at 67?
Yen Broker 1: Yes, instead of 68. It would be a big favor. ***
Arbitrage Desk Head: All right, all right.

2nd telephone call:

Arbitrage Desk Head: Where you setting 3's Yen LIBOR? Today. Do you set the LIBOR?
Bank 6 Submitter: Yes.
Arbitrage Desk Head: Where are you setting it?
Bank 6 Submitter: Actually f*cking can't even remember what I set it yesterday.
Arbitrage Desk Head: 68, I think.

Arbitrage Desk Head: So you wouldn't be setting it at 67?
Bank 6 Submitter: Why is that a request or?
Arbitrage Desk Head: Well sort of an underlying -
Bank 6 Submitter: Yes. Potentially. I don't know, it's not going to be a lot different. If anything, yes, I mean, it's not going to go higher, let's put it that way.

Arbitrage Desk Head: No, someone just said where are people setting the LIBORs today. I think they got some big fixing, they just wondered.
Bank 6 Submitter: Ah, yes, month end isn't it.
Arbitrage Desk Head: Set at 67 by any chance, would it be?

Bank 6 Submitter: Month end doo dah, isn't it? I think, though, that just looking – I've got a funny feeling ours is quite high in the 3's at the moment so it almost gets knocked out of the calculation.

Arbitrage Desk Head: *** Alright, well okay, as I said nothing shifty or anything but just wondered whether you was setting it at 67 today.

Bank 6 Submitter: We'll see.

Arbitrage Desk Head: If you catch my drift. Okay.

3rd telephone call (emphasis added):

Arbitrage Desk Head: Did he ask for [Bank 6] in particular?

Yen Broker 1: He's just given me some names whose LIBORs are quite high at the moment to see if I can get them down a bit. No, not him, not that one bank, just a group of banks.

Arbitrage Desk Head: He thinks that I'll be - he thinks that he's out of the equation anyway.

Yen Broker 1: Right, okay. Well it just makes a difference if everyone's putting theirs down a bit because I've got a couple of people to put them ... [Bank 2]'s putting his down a pip; [Bank 1]'s putting his down a couple of pips. I mean, if there's a few people putting them down it should set the average better.

Arbitrage Desk Head: He's- I've asked him and he's said we'll see.

Yen Broker 1: Alright, that's fine.

Arbitrage Desk Head: If I set out on a line then f*cking

Yen Broker 1: Don't push it, no don't ever push it.

Arbitrage Desk Head: Not that, **it's the old auditors as well.**

Yen Broker 1: Absolutely, no problem mate, no problem at all.

Yen Broker 1 kept the Senior Yen Trader informed throughout the day of February 25, 2009, updating him regarding whether Yen LIBOR submitters had agreed to manipulate their Yen LIBOR submissions in a manner that would benefit the Senior Yen Trader.

1st telephone call between Yen Broker 1 and the Senior Yen Trader:

Yen Broker 1: I think I've got [Bank 1] down 2, I've got [Bank 2] down 1.

Senior Yen Trader: Yes.

Yen Broker 1: I think Bank 6's going to come down 1. I'm working on Bank 5.

Senior Yen Trader: Brilliant. Alright mate, I appreciate that.

Yen Broker 1: Alright, so it should definitely have an impact, alright.

2nd telephone call between Yen Broker 1 and the Senior Yen Trader:

Yen Broker 1: Yes, I've done it. I've tried to call in some favors, mate, and I think I'll be alright.

Senior Yen Trader: What like the 1's 3's and 6's though?

Yen Broker 1: Yes. Especially 3's mate, I've made an extra effort on the 3's, alright. I think [Bank 1] will put his down a couple of points for the whole lot. Alright?

Senior Yen Trader: Alright, great. You're a star [Yen Broker 1], mate.

RP Martin's efforts on February 25, 2009 on behalf of the Senior Yen Trader were successful. All three banks submitted lower three-month Yen LIBOR submissions, resulting in a lower Yen LIBOR fixing for February 25, 2009.

c. RP Martin Yen Broker 1 Also Used "Spoof Bids" to Unlawfully Assist the Senior Yen Trader

On occasion, Yen Broker 1 also attempted to influence Yen LIBOR submitters by providing "spoof" bids over the Yen Desk squawk box. As previously noted, squawk boxes permit brokers to speak to multiple bank traders and disseminate broadly bid and offer prices.

Yen Broker 1, acting on behalf of the Senior Yen Trader, disseminated false bid prices that he called "fictitious" or "spoof" bids. The Senior Yen Trader encouraged such spoof bids, believing that if Yen LIBOR submitters heard over the squawk box that banks were willing to trade Yen cash at the fictitious price, they might factor that information into their determination of their LIBOR submissions and as a result be more likely to move their Yen LIBOR submissions that day in a manner that could benefit the Senior Yen Trader.

For example, during several telephone calls on September 3, 2008, Yen Broker 1 and the Senior Yen Trader discussed presenting spoof bids to Bank 1 and Bank 5. Almost immediately after these calls, Yen Broker 1 was overheard shouting on the squawk box to Bank 1's Yen LIBOR Submitter that he has a bid at the same false price he discussed with the Senior Yen Trader:

1st telephone call:

Yen Broker 1: I mean I'm still offered at 91 – I mean the reason I think Rabo did put his up he can't get cash anywhere near 88 I mean he's going to be like – the only offers I'm seeing really are 91 for non-Japanese but I'm blagging an offer at 88. RBS is already paying 88 maybe 89 alright. I's he's offered at like 70 maybe 68, me and [Yen Broker 2] are offering it at 67. OK *** Alright and the 6's is nothing I'm offering at 95 which is a complete spoof alright.

Senior Yen Trader: OK alright thanks mate.

2nd telephone call:

Yen Broker 1: Yeah I'm offering 3's at 88 where it ain't offered virtually. I'm only offered at 91.

Senior Yen Trader: To [Bank 1] and [Bank 5]?

Yen Broker 1: All of those yeah I mean when I give him a LIBOR run through I'm going to go the 1's I'm going to go 66.

Senior Yen Trader: Yeah.

Yen Broker 1: He won't set it there but I'll try. 3's I'm going to go 88, which I doubt he will but I'll have a go anyway right and the 6's I'm going to go 95.

Senior Yen Trader: OK.

Yen Broker 1: [shouting over squawk box] I got 88 choice here 3's Yen [Bank 1 Yen LIBOR Submitter] at the moment, 88 either way

d. RP Martin Brokers Accepted Bribes from the UBS Senior Yen Trader, in the Form of Wash Trades, in Return for Their Assisting His Manipulative Scheme

RP Martin Yen brokers were highly incentivized to facilitate the Senior Yen Trader's manipulative schemes. The Senior Yen Trader guaranteed the RP Martin brokers' loyalty and cooperation with his manipulative schemes by making payments to them via wash trades. In such trades, the Senior Yen Trader was the opposing counterparty on identical trades with other traders, resulting in a financial nullity for the counterparties, while generating significant commissions to RP Martin Yen brokers, who brokered both sides of the wash trades. Such commissions were shared by the entire Yen Desk, giving other Yen brokers incentives to assist Yen Broker 1 and Yen Broker 2 in the Senior Yen Trader's manipulative schemes. These wash trades made UBS the second largest client of the Yen Desk during 2008 and 2009, accounting for nearly 9% of the Yen Desk's revenue during that time.

Yen Broker 1 brokered at least nine wash trades between September 2008 and August 2009 on behalf of the Senior Yen Trader. These trades generated more than \$412,000 in commission revenue for the Yen Desk. Accordingly, Yen Broker 1 solicited the assistance of multiple members of the Yen Desk, who found counterparties for the wash trades and telephoned additional Yen LIBOR submitters to ensure their Yen LIBOR submissions were consistent with the Senior Yen Trader's wishes.

The telephone calls between the Senior Yen Trader and Yen Broker 1 make clear that the wash trades, referenced in the calls as "switch trades", were a *quid pro quo* for RP Martin's assistance in manipulating Yen LIBOR:

September 18, 2008:

1st telephone call:

Senior Yen Trader: Mate, right, listen. I don't care right just get me any f*cking trade which pays you basically today, mate. If if you keep 6's unchanged today, yeah. *** I will f*cking do one humongous deal with you. All right? *** Like a 50,000 buck deal, whatever. *** I need you to keep it as low as possible. All right? If you do that, then I'll cross the spread and I'll pay you, you know, \$50,000, \$100,000 whatever it whatever you want. All right?

Yen Broker 1: All right.

2nd telephone call:

Senior Yen Trader: *** have you got any mates, mate, who'll do you like a net trade and I could like, you know, basically give you like f*cking, I don't know, a trillion 3-month LIBOR/TIBOR and take back a trillion 3-month LIBOR/TIBOR and, obviously, you're net it with the other guy.

Yen Broker 1: Right.

Senior Yen Trader: Do you know what I mean? I was thinking we could do something like that. That's probably the easiest thing. *** what I'm saying is, look, that if you've got a mate who will like do a flat switch basically. *** I'd go in and out with him, yeah? So I'll pay them in two years or whatever and I'll receive from them in two years. The coupon's the same. *** I'll get charged bro both sides obviously.

Yen Broker 1: all right. That's excellent.

October 31, 2008:

Senior Yen Trader: Listen what I need - this is what I need, I need 1's to come off the most because if they are off 20 for 1's which is what they [inaudible]

Yen Broker 1: Right, yes. That's the one thats f*cking up at the moment as well, isn't it, so you need definitely.

Senior Yen Trader: Yes and then say 3's are - I don't need it to come off quite so much, like, I don't know down 13 or something.

Yen Broker 1: Right.

Senior Yen Trader: And then 6's go well, there's still term and you can't get hold of it so say, like, down 8 or something.

Yen Broker 1: Right, okay

Senior Yen Trader: Alright mate, if you could sort this out for me, if you can get 1's down - if you could get like a staggered downward move like that then we'll do a f*cking massive ticket next week.

February 25, 2009:

Yen Broker 1: anything cooking i can try desperate for a decent trade gone pear shaped this month

Senior Yen Trader: we can switch 2yrs *** we can do 150b 2yrs bro both sides ask [RBS Yen Trader] will that help?

Yen Broker 1: ok mate that will make us make3 budget for the month so massive yes.

RP Martin Yen brokers made great efforts to earn the commissions generated from these wash trades, with the assistance of other brokers, including brokers on the Arbitrage Desk. For example, on October 31, 2008, as noted above, RP Martin brokers contacted four Yen LIBOR submitters to convince them to move their LIBORs in a direction that benefitted the Senior Yen Trader's trading position. Similar examples can be found around dates of the other wash trades, during which Yen Broker 1 asked multiple Yen LIBOR submitters for additional favors. A few examples follow:

September 18, 2008 (emphasis added):

Yen Broker 1: ***** if you could get 6's a little lower today, I've got, um, someone that's going to do a huge trade with me today if the 6's don't go up too much.** So if you

Bank 3 Submitter: We're going for 1% fix I think today. I think these are all going to edge up just marginally so *** what I'll do is I'll go 103 for 6's it's not too high but it's going to be higher anyway so I can't go too far away from there.

June 29, 2009:

Yen Broker 1: Ummm Mr. [Bank 3 Yen LIBOR Submitter] I just need to ask you a small favor actually. *** I just got completely f*cking buried there in a 3-year anti money freeze. F*cking I got dug out basically. Let off. If there's any way you can stick your LIBOR up to 71 in 6 today it would help me out a great deal because that was going to cost me 50 grand. So yeah I know what you do but if you can get 71 today mate I would appreciate it.

Bank 3 Submitter: Umm I think we were 69; I can probably go to 70 on it.

Yen Broker 1: Yeah? Well, anything, anything.

Bank 3 Submitter: I'll have a look on it. I'll have another look mate.

Yen Broker 1: Thank you very much mate I'm asking a couple of people, thank you mate. Cheers.

e. RP Martin Brokers Persuaded Traders at Other Panel Banks to Participate as Counterparties to the Wash Trades, in Return for Other "Favors" Such as Free Travel and Entertainment

In order to execute the wash trades with the Senior Yen Trader, RP Martin Yen brokers needed to find counterparties at other banks. The Yen Desk brokers contacted many of their cash, OBS and forwards clients, asking for their assistance. For the first set of wash trades that was executed on September 18 and 19, 2008, traders from RBS and Bank 7 both agreed to serve as counterparties. For all of the remaining wash trades executed for UBS, RBS served as the sole counterparty.¹⁰ To ensure the traders' agreement to serve as the counterparty, RP Martin brokers promised free meals, free travel and free entertainment.

September 19, 2008 (emphasis added):

Yen Broker 3: Right, geez, can you do me a favor? You, um, what – **you're not going to get paid any bro for this and we'll send you lunch around for the whole desk. Can you flat – can you switch, er, two years semi at 5 3/4, 100 yards, are you – between UBS. Just get – take it from UBS, give it back to UBS.** He wants to pay some bro. We won't bro you but he wants to put – he wants to give us some bro.

RBS Yen Trader: Yeah, Yeah.

Yen Broker 3: 100 yards, right?

RBS Yen Trader: Yeah. Yeah. UBS on UBS? Right.

Yen Broker 3: Yeah, Yeah. 100 yards – actually can you make it 150 and I'll send lunch around for everybody?

RBS Yen Trader: Yeah.

March 26, 2009:

Yen Broker 3: All right listen. I need you, mate.

RBS Yen Trader: Yeah.

Yen Broker 3: **I need your money. I – oh, you'll be looked after in Vegas. I promise you. It's only a month away. Is there any chance you'll be able to wash this switch through today?**

RBS Yen Trader: Yeah, but I can't do that size. I have to [inaudible]

Yen Broker 3: Yeah that's fine. Mate, listen. I'm – would be grateful mate. I'm – I'll be grateful for anything, mate.

RBS Yen Trader: All right, I'll do 80.

Yen Broker 3: Okay, mate, listen. That's perfectly fine and er, I won't – it's not going to be f*cking every month occurrence. It's –

¹⁰ See RBS Order, *supra* note 9, at pages 22-24.

it's just like it's the end of our quarter now, so I won't pester you with that every month, no way, I appreciate what you're doing anyway, right? You'll be looked after, mate. Don't worry about that. All right. So, um, so do I just – we'll do it today or tomorrow. I'll do it – try and put it through today?

Yen Broker 3: Yeah, I'll put [inaudible].

RBS Yen Trader: 80, yeah?

Yen Broker 3: Yeah, 80, yeah. Same rules as the last one, yeah?

RBS Yen Trader: Yeah.

Yen Broker 3: Oh, mate you're a superstar. Cheers, dude, ta.

On at least one occasion when the RBS Yen Trader agreed to pay the brokerage commissions for the wash trades, the RP Martin brokers attempted to assist the RBS Yen Trader in manipulating Yen LIBOR to benefit his trading position.

June 26, 2009:

RBS Yen Trader: Has [Senior Yen Trader] been asking you to put Libors up today?

Yen Broker 3: [speaking to someone else] What's [Senior Yen Trader] want on Libors today? Is he fixing anything about Libors? What does he want? What way does he want it? [inaudible]

Yen Broker 3: He wants ones, ones and threes a little bit lower and sixes probably about the same where they are now. He wants them to stay the same.

RBS Yen Trader: I want them lower.

Yen Broker 3: You want them lower? What the sixes?

RBS Yen Trader: Yeah.

Yen Broker 3: Alright, well, alright, alright, we'll work on it.

June 26, 2009:

Yen Broker 3: Hello mate, [RBS Yen Trader]? You all set?

RBS Yen Trader: Yeah.

Yen Broker 3: Right listen, we've had a couple words with them. You want them lower right?

RBS Yen Trader: Yeah.

Yen Broker 3: Alright okay, alright, no we've okay just confirming it. We've, so far we've spoke to [Bank 3]. We've spoke to a couple of people so we'll see where they come in alright. We've spoke, basically *** we spoke to [Bank 3], [Bank 8], [Bank 1], who else did I speak to? [Bank 9]. There's a

couple of other people that the boys have a spoke to but as a team we've basically said we want a bit lower so we'll see where they come in alright?

RBS Yen Trader: Cheers.

Yen Broker 3: Cheers no worries mate.

f. RP Martin Brokers and the UBS Senior Yen Trader Attempted to Conceal Their Improper Conduct Surrounding the Wash Trades

The Senior Yen Trader and Yen Broker 1 were well aware of the improper nature of their conduct. First, they made an effort to avoid any written communications confirming the wash trades, choosing primarily to communicate via telephone. Second, as noted by a UBS trader (“UBS Yen Trader”) that assisted the Senior Yen Trader, they tried to hide the wash trades by “staggering” their execution, as noted in the example below, to avoid any “questions” about the trades:

December 3, 2008:

Senior Yen Trader: **What I’m doing mate, don’t f*cking put it on chat.**

Yen Broker 1: All right. Okay.

Senior Yen Trader: All right. Okay. 90 and three-eighths.

Yen Broker 1: Oh, thank you very much, mate. I love you.

Senior Yen Trader: **I just want it but don’t put it on f*cking chat, all right.**

February 25, 2009:

UBS Yen Trader: That's alright. **I thought it’d be – raise less questions, than if I did them at the same time.**

Yen Broker 1: Yeah, I understand that, thank you very much.

UBS Yen Trader: What I even did, I even, put on their, do a [inaudible] like me, [Senior Yen Trader], [UBS Senior Yen Trader’s Supervisor] and stuff. That people would actually, I would always put traded it on there anyway.

Yen Broker 1: Ah, right.

UBS Yen Trader: **I do it for the people, I even just stagger that. Just so if anyone ever questions it.**

Yen Broker 1: Yeah. [inaudible] “geezer did us a favor, couple of times, da da da.” ***

4. Inadequate Controls and Supervision Allowed Broker Misconduct to Continue for Years

During the relevant period, RP Martin failed to establish an adequate compliance function, failed to adequately supervise and oversee its Yen brokers and the Yen Desk, and failed to implement adequate internal controls and procedures to govern its Yen brokers’ communications and interactions with clients and prospective clients.

During the relevant period, and continuing until February 2010, RP Martin had not established a compliance office. Instead, RP Martin assigned employees from other departments to handle compliance issues on a part-time basis. For example, its head of compliance consisted of an inexperienced officer who had other responsibilities that created a conflict of interest with his compliance duties.

RP Martin also failed to ensure that staff were adequately trained and supervised. Staff received little compliance training. Further, desk heads were given almost no instruction regarding their roles and responsibilities in supervising the brokers on their desks. Instead, brokers routinely raised concerns and issues directly with senior management, who had earned reputations for prioritizing the happiness of profitable brokers over ensuring a compliant environment. Within RP Martin, the currency desks, including the Yen Desk, were inadequately supervised. The Yen brokers, including the Yen Desk Head, worked with minimal supervision from senior RP Martin management, who dealt with broker complaints as they arose rather than ensuring pro-active supervision of brokers and desk heads supported by a robust compliance department.

As part of this insufficient system of compliance, RP Martin did not have adequate internal controls, policies and procedures to guide and monitor Yen brokers in their communications with clients, or the provision of market information or market color to clients and others. RP Martin had no procedures for approval of the dissemination of market information, or for review and verification of the basis for the market information being disseminated by RP Martin brokers. Accordingly, although the improper communications between Senior Yen Trader and Yen brokers were well-known by most, if not all, of the brokers on the Yen Desk, and could be heard by all (or nearly all) of the Yen brokers, during the relevant time period no one informed compliance or senior management that such improper conversations were taking place.

RP Martin's lackadaisical attitude towards compliance was evident when the company became aware of the UBS wash trading activity. A RP Martin manager who monitored back-office brokerage activity on a daily basis immediately noticed the unusually large commissions generated by the wash trades between UBS and RBS. However, when he questioned the Yen Desk about these trades, at least one Yen broker said to him, "You really don't want to know". The RP Martin manager discussed the wash trades with at least one member of RP Martin senior management. But this discussion did not generate any action, and no one at RP Martin further investigated why RBS and UBS had agreed to generate unusually large wash trade commissions for the Yen Desk.

RP Martin's lack of specific internal controls and procedures relating to external communications, and distinguishing between permissible and impermissible market information provided by its Yen brokers to clients and others, as well as its overall lax supervision of the Yen Desk, allowed the misconduct to continue unabated throughout the relevant period.

IV.

LEGAL DISCUSSION

A. RP Martin Knowingly Caused Certain Panel Banks to Make False, Misleading or Knowingly Inaccurate Reports Concerning Yen Borrowing Costs 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); *U.S. v. Brooks*, 611 F.3d 678, 691-93 (5th Cir., 2012) *cert. denied*, 2013 U.S. Lexis 434 (U.S. Jan. 7, 2013); *United States v. Valencia*, 394 F.3d 352, 354-355 (5th Cir. 2004); *see also CFTC v. Johnson*, 408 F. Supp. 2d 259, 267 (S.D. Tex. 2005) (same).

At times during the relevant period, certain RP Martin brokers knowingly caused to be delivered through the mails or interstate commerce false or misleading or knowingly inaccurate reports concerning Yen bank borrowing rates, through the form of Suggested LIBORs, which is market information that affects or tends to affect the fixing or pricing of Yen LIBOR, a commodity in interstate commerce.¹¹ Each business day, Yen panel banks, through the transmission of electronic spreadsheets to Thomson Reuters, made Yen LIBOR submissions in contribution to the daily fixing of Yen LIBOR for various tenors through the mails or interstate commerce. Yen LIBOR panel banks’ submissions were delivered through the mails or interstate commerce by the daily dissemination and publication globally, including into the United States, of the panel banks’ submissions as well as the daily official Yen LIBOR fixing by Thomson Reuters on behalf of the BBA and by other third party vendors. The panel banks’ submissions are used to determine the official published rates for Yen LIBOR, which are calculated based on a trimmed average of the submissions.

The Yen LIBOR panel banks’ submissions contain market information concerning the costs of borrowing unsecured funds in Yen in particular tenors, the liquidity conditions and stress in the money markets, and the panel banks’ ability to borrow Yen in the London interbank market. Such market information affects or tends to affect the prices of commodities in interstate commerce, including the daily rates at which Yen LIBOR is fixed.

Certain RP Martin Yen brokers understood and expected that at least some, if not many, of the Yen panel banks relied on market information from those RP Martin brokers concerning the Yen borrowing rates in the London interbank market. However, to benefit certain RP Martin clients, specifically the Senior Yen Trader and the RBS Yen Trader, and to assist their efforts to attempt to manipulate the fixing of Yen LIBOR on their behalf, RP Martin Yen brokers at times often knowingly disseminated false, misleading and knowingly inaccurate market information to

¹¹ LIBOR as a benchmark interest rate is a commodity under the Act. *See* Sections 1a(4) and 1a(13) of the Act, 7 U.S.C. §§ 1a(4) and 1a(13) (2006) (pre-Dodd Frank), Sections 1a(9) and 1a(19) of the Act, 7 U.S.C. §§ 1a(9) and 1a(19) (2012) (post-Dodd Frank).

the Yen Panel banks through three primary means: (1) Yen Broker 1 or others provided skewed Suggested LIBORs through oral communications with submitters or traders at the Yen LIBOR panel banks; (2) RP Martin brokers directly pressured Yen LIBOR submitters and traders at panel banks to submit certain rates that were skewed to reflect rates beneficial to the Senior Yen Trader and at times other traders; and (3) RP Martin brokers occasionally offered “spoofer” or nonexistent cash bids to their clients, including clients who were Yen LIBOR submitters, to give the false impression that a bank in the market was willing to trade Yen cash at a particular price. At times, certain Yen panel banks used RP Martin’s skewed Suggested LIBORs in determining and making their Yen LIBOR submissions to the BBA. As a result, those Yen LIBOR submissions were false, misleading or knowingly inaccurate because the panel banks’ submissions purported to reflect the panel banks’ perceived costs of borrowing Yen in the interbank market but in reality, reflected in whole or in part the rates that benefited the trading positions of RP Martin’s clients.

Accordingly, by certain brokers’ actions designed and intended to benefit clients and themselves, RP Martin, through these brokers and a desk manager, knowingly caused the panel banks to deliver through the mails or interstate commerce false or misleading or knowingly inaccurate market information that affects or tends to affect a commodity in interstate commerce, including Yen LIBOR and violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2006).

B. RP Martin Manipulated Yen LIBOR at Times for Certain Tenors

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

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

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

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

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

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

“[I]ntent is the essence of manipulation.” *Indiana Farm Bureau Cooperative Ass’n, Inc.*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,796, at 27,282 (CFTC Dec. 17, 1982). The manipulator’s intent separates “lawful business conduct from unlawful manipulative activity.” *Id.* at 27,283. To prove the intent element of manipulation, it must be shown that RP Martin “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*, ¶ 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 *U.S. 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.*, ¶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.” *Cox*, ¶ 23,786 at 34,064; *Indiana Farm Bureau*, ¶ 21,796 at 27,288 n. 2. As the Commission noted with approval in *DiPlacido*, ¶ 30,970 at 62,484 (quoting *Indiana Farm Bureau*, ¶ 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, ¶ 21,796 at 27,288 n. 2. *See also 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”); *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. *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 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, RP Martin brokers communicated on a daily basis with banks that participated on the Yen LIBOR panel and made submissions that purported to reflect their assessments of their respective banks’ costs of borrowing unsecured funds in the London interbank market for Yen across tenors. The official LIBOR fixings are calculated using a trimmed average methodology applied to the rates submitted by the panel banks. By virtue of this methodology, panel banks had the ability to influence or affect the rate that would become the official Yen LIBOR fixing for any tenor. Accordingly, if the RP Martin brokers could influence the rates submitted by the panel banks, then the RP Martin brokers had the ability to influence or affect the rate at which Yen LIBOR would be fixed. As evidenced above, Yen LIBOR panel banks relied upon the market information about Yen borrowing rates and Suggested LIBORs provided by RP Martin Yen brokers, and, at times, at least certain panel banks used the false rates suggested the RP Martin Yen brokers in determining and making their submissions. As a result, at times, certain Yen LIBOR panel banks made false or misleading Yen LIBOR submissions.

As evidenced by the extensive communications and other facts set forth above, in causing certain panel banks at times to make false or misleading Yen LIBOR submissions, RP Martin brokers specifically intended to affect the daily Yen LIBOR fixing for certain tenors, including the one-month, three-month and six-month tenors. Their intent is also evidenced by their expressed interest in earning commissions from the Senior Yen Trader via the wash trades, which was contingent upon their efforts to ensure that Yen LIBOR fixed at rates that benefited their Senior Yen Trader’s derivatives trading positions.

As a result of RP Martin brokers' influence on the rates submitted by panel banks, at times some of the panel banks made Yen LIBOR submissions, whether knowingly or not, that did not reflect their bank's costs of borrowing unsecured funds in the London Yen interbank market but instead reflected rates beneficial to the trading positions of the Senior Yen Trader and other traders. Accordingly, through RP Martin brokers' actions, those Yen LIBOR submissions acted as illegitimate factors in the pricing of the daily Yen LIBOR fixings for certain tenors with the result that the official Yen LIBOR for certain tenors were artificial on certain occasions. Thus, the RP Martin brokers' actions were a proximate cause of the artificial Yen LIBOR fixings.

Accordingly, on certain occasions, RP Martin, through the acts of certain brokers and a desk manager, manipulated Yen LIBOR for certain tenors, a commodity in interstate commerce, in violation of Sections 6(c), 6(d) and 9(a)(2) of the Act.

C. RP Martin Attempted to Manipulate Yen LIBOR

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 Feb. 18, 1977); *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 evidenced and found above, certain RP Martin Yen brokers each specifically intended to affect the rate at which the daily LIBOR for Yen would be fixed to benefit the derivatives trading positions of traders at panel banks, particularly the Senior Yen Trader at UBS. Each instance of the following constitutes overt acts in furtherance of RP Martin's Yen brokers' intent to affect the Yen LIBOR fixings: (1) the RP Martin brokers' coordination with the Senior Yen Trader; (2) the RP Martin brokers' dissemination of false and misleading Suggested LIBORs skewed to reflect rates beneficial to traders' derivatives trading positions; and (3) the RP Martin brokers' direct contacts with submitters and traders at certain panel banks to try to influence their LIBOR submissions. Accordingly, RP Martin, through the acts of its employees, engaged in repeated acts of attempted manipulation in violation of Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006).

D. RP Martin Aided and Abetted the Attempts of Derivatives Traders to Cause False or Misleading Yen LIBOR Submissions to be Made and to Manipulate Yen LIBOR

Pursuant to Section 13(a) of the Act, RP Martin aided and abetted the attempts of derivatives traders at Yen LIBOR panel banks to manipulate Yen LIBOR in violation of the Act, particularly the Senior Yen Trader. 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 extensive communications set forth above, certain RP Martin Yen brokers coordinated with the Senior Yen Trader at UBS to manipulate the official Yen LIBOR fixings for certain tenors by attempting to cause and at times causing panel banks to make Yen LIBOR submissions at rates or levels that that would benefit the Senior Yen Trader's trading positions. The RP Martin brokers knew that the Senior Yen Trader was trying to manipulate Yen LIBOR to benefit his derivatives trading positions.

UBS, through the acts of the Senior Yen Trader, and other panel banks through acts of their derivatives traders, in coordination with RP Martin brokers, attempted to manipulate Yen LIBOR, at times successfully, in violation of Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006). Certain RP Martin brokers had knowledge of, and intentionally assisted, the attempts of the Senior Yen Trader and traders at the other banks to manipulate the rate at which Yen LIBOR was fixed, at times successfully. Accordingly, RP Martin, through the acts of certain brokers and a desk manager, aided and abetted the attempts of traders at panel banks to manipulate Yen LIBOR, at times successfully, 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. RP Martin Holdings and Martin Brokers are Liable for the Acts of their Agents

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), 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).

RP Martin Holdings and Martin Brokers are liable for the acts, omissions and failures of the brokers and managers who acted as their employees and/or agents in the conduct described above. Accordingly, RP Martin Holdings and Martin Brokers 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 RP Martin by, or any agreement with, the Department of Justice or any other governmental agency or office, have submitted the Offer in which Respondents:

- 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 (2012), 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 & Supp. V 2012);
3. orders Respondents, jointly and severally, to pay a civil monetary penalty in the amount of \$1,200,000, 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 & Supp. V 2012).
- B. Civil Monetary Penalty
 1. Respondents shall pay, jointly and severally, a civil monetary penalty in the amount of 1.2 Million U.S. Dollars (\$1,200,000) (“CMP Obligation”), plus post-judgment interest. Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order and on the date of each successive payment, pursuant to 28 U.S.C. § 1961 (2012). The Respondents shall satisfy their CMP Obligation by making quarterly payments with post-judgment interest as follows:
 - a. The first year, \$160,000, plus post-judgment interest, is payable, divided into four equal payments, falling due within 14 days of the date of this Order, or May 29, 2014; on or before August 29, 2014; on or before November 29, 2014; and on or before February 29, 2015.
 - b. The second year, \$410,000, plus post-judgment interest, is payable, divided into four equal payments, falling due on or before May 29, 2015; on or before August 29, 2015; on or before November 29, 2015; and on or before February 29, 2016.

- c. The third year, \$630,000, plus post-judgment interest, is payable, divided into four equal payments, falling due on or before May 29, 2016; on or before August 29, 2016; on or before November 29, 2016; and on or before February 29, 2017.
2. Payments shall be deemed made on the date they are received by the Commission. If any payment is not made by the date the payment is required by this Consent Order, the entire outstanding balance of the CMP Obligation, plus any additional post-judgment interest, shall be due and payable immediately, without further application.
3. Respondents shall pay their 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

If payment by electronic funds transfer is chosen, Respondents shall contact Nikki Gibson or her successor at the address above 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 Respondents and the name and docket number of this proceeding. Respondents shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- C. Respondents and their successors and assigns shall comply with the following conditions and undertakings. Respondents represent that they have already undertaken and implemented, or are implementing certain compliance and supervisory controls or enhancements consistent with the Undertakings.

1. **Market Publications – Policies, Procedures and Controls:**

- a. Respondents shall institute, implement and/or strengthen compliance and supervisory policies, procedures and internal controls designed to ensure the

integrity of the Respondents' Market Publications, and to detect, deter and prevent the dissemination of false or misleading market information contained therein. "Market Publication" means: (1) a written communication distributed via any media; (2) that includes predictions, suggestions or opinions regarding the levels at which a Benchmark Interest Rate¹² will set; and (3) that is published on a regular basis and is distributed to more than one customer.

- b. Such Policies, Procedures and Controls shall provide that each provision of Market Publications shall be based on upon a rigorous and honest assessment of market data and information, and shall not be influenced by internal or external conflicts of interest or any other illegitimate factors.
- c. Policies, Procedures and Controls relating to Market Publications shall include or provide for the following:
 - i. That Market Publications shall be based on all definitions, rules and guidance applicable to the relevant Benchmark Interest Rate as provided by the Benchmark Publisher;
 - ii. That Market Publications shall be based on transactions, bids and offers, market sentiment, indications of interest, and other relevant market activity information available to the Respondents in the markets relevant to Benchmark Interest Rates. An Author's reliance on and utilization of subjective market activity information should be limited only to information that the Author¹³ reasonably and in good faith believes contributes to the accuracy of any predictions, suggestions, or opinions regarding the levels at which a Benchmark Interest Rate will set as contained in the Market Publication;
 - iii. A description of the types of market circumstances that require the use of models, correlated market data or related trading instruments in making Market Publications;

¹² 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; and

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

¹³ For the purposes of these Undertakings, the term "Author" means any individual within RP Martin who is responsible for the content of Market Publications.

- iv. The contemporaneous documentation, including recording the basis for, Market Publications, and retention of the same;
- v. The review and approval of Market Publications by a supervisor prior to dissemination;
- vi. The inclusion of a supervisor and a representative from the compliance department as an identified recipient on any written Market Publications disseminated;
- vii. The disclosure of the following information for Market Publications disseminated shall include at least the following:
 - 1) A statement that any Market Publication represents the predictions, suggestions, opinions or assessments of the Author based on market data and market activity information;
 - 2) Identification of the source(s) of information or data upon which the Market Publication is based; and
 - 3) As appropriate, identification of the use of any models, correlated markets or related trading instruments in the formation of the Market Publications;
- viii. Internal controls regarding other improper communications related to Market Publications:
 - 1) Such controls shall be designed to detect, deter and prevent improper communications between and among employees, agents and supervisors of the Respondents, or with any outside party, and to ensure the integrity and reliability of the Market Publications;
 - 2) For these purposes, improper communications shall include, at a minimum: (1) any attempt to improperly influence the content of or alter the views contained in Market Publications; (2) using Market Publications for the benefit of any third party's trading position; or (3) any attempt to influence or affect any panel bank's Submission. For example, Market Publications shall not include, and employees, agents and supervisors of the Respondents shall not disclose, a bank's proposed Submissions to other market participants; and
- ix. The periodic but routine review of electronic communications and audio recordings of or relating to the Market Publications and other

related communications between and among employees, agents and supervisors of the Respondents, or with any outside party.

2. **Other Market Communications – Policies, Procedures and Controls:**

- a. The Respondents shall institute, implement and/or strengthen compliance and supervisory policies, procedures and internal controls designed to ensure the integrity of the Respondents' Other Market Communications, including provisions for supervision, monitoring, auditing, training and reporting.
- b. Other Market Communications shall include, but are not limited to: (1) predictions, suggestions or opinions regarding the levels of Benchmark Interest Rates communicated orally; (2) predictions, suggestions or opinions regarding the levels of pricing in cash deposit markets related to and derivatives markets based on Benchmark Interest Rates in G8 currencies and any LIBOR currency; and (3) communications concerning prices of transactions, bids or offers in cash deposit markets related to and derivatives markets based on Benchmark Interest Rates in G8 currencies and any LIBOR currency.
- c. These Policies, Procedures and Controls shall be designed to detect, deter and prevent improper communications between and among employees, agents and supervisors of the Respondents, or with any outside party, and to ensure the integrity and reliability of these Other Market Communications.
- d. For these purposes, improper communications shall include, at a minimum: (1) any attempt to improperly influence the content of or alter the views contained in Other Market Communications; (2) using Other Market Communications improperly for the benefit of any third party's trading position; or (3) any attempt to influence or affect any panel bank's Submission. For example, Other Market Communications shall not include, and employees, agents and supervisors of the Respondents shall not disclose, a bank's proposed Submissions to other market participants.

3. **General Policies, Procedures and Controls:** The Respondents shall institute, implement and/or strengthen the following general policies, procedures and internal controls:

- a. The supervision and management of employees, agents and supervisors of the Respondents to ensure compliance with the Respondents' Policies, Procedures and Controls, and these Undertakings;
- b. The procedure(s) for the reporting and investigation of any violations of the Undertakings, the Respondents' Policies, Procedures and Controls, or any questionable, unusual or unlawful activity concerning the Respondents' Market Publications or Other Market Communications, including notification

to the appropriate compliance or legal personnel and reporting, as necessary, to authorities;

- c. The periodic physical presence of compliance personnel on the brokering floors where Market Publications are prepared, and/or products that are the subject of Market Publications are brokered, and/or cash deposits for G8 currencies and any LIBOR currency are brokered, and/or derivatives products based on Benchmark Interest Rates in G8 currencies and any LIBOR currency are brokered, in connection with these Policies, Procedures and Controls, which shall be conducted at least monthly for main offices (including London, U.K.) and at least every six months for branch offices; and
- d. The handling of complaints concerning any improper Market Publications and improper Other Market Communications by any employee, agent or supervisor of the Respondents, including:
 - i. Memorializing all such complaints; and
 - ii. Establishing a review and follow-up by the chief compliance officer(s) or a designee of such complaints; and
 - iii. The reporting of material complaints to the Chief Executive Officer and Board of Directors of the Respondents, relevant self-regulatory organizations, the Commission, and/or other appropriate regulators.

4. **Qualifications of Authors and Supervisors:** All Authors of Market Publications and their supervisors shall:

- a. Have significant experience in the markets that are the subject of his or her Market Publication, and/or in cash deposit markets related to and derivatives markets based on Benchmark Interest Rates in G8 currencies and any LIBOR currency; and
- b. Receive training on the definition, rules and guidance surrounding the applicable Benchmark Interest Rate as set by the Benchmark Publisher.

5. **Documentation:** The 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.

- a. **Requirement to Document Market Publications:** The Respondents shall contemporaneously memorialize, and retain in an easily accessible format, for a period of five (5) years after the date of each dissemination, the following:

- i. All Market Publications;
- ii. The identity of the Authors of the Market Publications disseminated;
and
- iii. The record basis for the Market Publications, including, but not limited to, the following:
 - 1) The relevant market data and information used, including specific transactions, offers and bids relied upon by in formulating the Market Publications;
 - 2) The source(s) of the information or data relied upon;
 - 3) Any models, correlated market data and data for related trading instruments used in formulating the Market Publications; and
 - 4) Any information regarding market events considered in formulating the Market Publications, including 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.
- b. Transaction Records: The Respondents shall retain for a period of five (5) years trade transaction records related to the brokering activities in the markets that are the subject of Market Publications, and/or in cash deposit markets related to and derivatives markets based on Benchmark Interest Rates in G8 currencies and any LIBOR currency. The records shall be easily accessible and convertible into the Microsoft Excel file format.
- c. Screen Data: Where an office of the Respondents maintains a screen that is utilized to display to customers bids, offers, and/or transactions in the markets that are the subject of Market Publications, and/or in cash deposit markets related to and derivatives markets based on Benchmark Interest Rates in G8 currencies and any LIBOR currency, the Respondents shall capture and retain for a period of five (5) years a screen shot of such information at the opening and close of the market for such product in the relevant time zone, as well as at the time of the deadline for submitting the Benchmark Interest Rate as imposed by the Benchmark Publisher.
- d. Requirement to Record Communications: The Respondents shall record and retain to the greatest extent practicable:
 - i. All communications of employees, agents or supervisors of the Respondents who primarily broker products in the markets that are the subject of Market Publications, and/or in cash deposit markets related

to and derivatives markets based on Benchmark Interest Rates in G8 currencies and any LIBOR currency.

- ii. The above communications shall not be conducted in a manner to prevent the Respondents from recording such communications.
- iii. Audio communications of Authors of Market Publications and their supervisors shall be retained for a period of one (1) year. Audio communications of other employees, agents or supervisors of the Respondents who primarily broker products in the markets that are the subject of Market Publications, and/or in cash deposit markets related to and derivatives markets based on Benchmark Interest Rates in G8 currencies and any LIBOR currency shall be retained for a period of six (6) months. Subject to a reasonable time to implement, the 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.
- iv. All communications except audio communications shall be retained for a period of five (5) years.
- v. Nothing in these Undertakings shall limit, restrict or narrow any obligations pursuant to the Act or the Commission's Regulations promulgated thereunder, including but not limited to Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31 and 1.35 (2012), in effect now or in the future.

6. Monitoring and Auditing:

- a. Monitoring: The Respondents shall maintain or develop monitoring systems or electronic exception reporting systems that identify possible improper or unsubstantiated Market Publications or related communications among employees, agents or supervisors of the Respondents or with any outside party.
 - i. This monitoring shall include reviews of written communications in any media and shall include supervisors. It shall also include reviews of oral communications of Authors and their supervisors.
 - ii. Such reports will be reviewed on at least a monthly basis and if any significant issues are identified, then the underlying documentation for the Market Publications shall be reviewed to determine whether the Market Publications are adequately substantiated. If it is not substantiated, the Respondents shall notify their chief compliance officer(s).

- b. 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, the Respondents shall conduct internal audits of reasonable, random samples of Market Publications being disseminated, the evidence documenting the basis for such Market Publications, and the related communications of the Market Publications Author in order to verify the integrity and reliability of the Market Publications.
- c. 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, the Respondents shall retain an independent, third-party auditor to conduct an audit of the desks brokering products in the markets that are the subject of Market Publications, and/or in cash deposit markets related to and derivatives markets based on Benchmark Interest Rates in G8 currencies and any LIBOR currency, including employees, agents, supervisors and managing directors (or similarly situated persons with responsibility for desk management or oversight), to ensure they are in compliance with the new Policies, Procedures and Controls implemented as a result of these Undertakings, and to confirm the adequate supervision of these desks. The annual audits shall include, without limitation, the following:
- i. Reviewing the clients of each desk and of the employees, agents or supervisors of the desk to determine the most significant corporate and individual clients;
 - ii. Reviewing communications of employees, agents, and supervisors on the desks, as well as managing directors (or similarly situated persons with responsibility for desk management or oversight). This review shall include the communications between and among employees, agents and supervisors on the desks and communications with the most significant corporate and individual clients of the desk;
 - iii. Interviewing the employees, agents and supervisors on the desks, to the extent they are still employed by the Respondents;
 - iv. Reviewing Market Publications being disseminated, the evidence documenting the basis for such Market Publications, and the related communications of the Market Publications Author;
 - v. Obtaining written verification from the employees, agents and supervisors on desks, to the extent they are still employed by the Respondents, that their Market Publications were consistent with this Order, and the Respondents' Policies, Procedures and Controls; and

- vi. Providing a written audit report to the Respondents and the Commission (with copies addressed to the Commission's Division of Enforcement (the "Division")).
7. **Training:** The Respondents shall develop training programs for all employees, agents and supervisors who are involved in creating and/or disseminating Market Publications. Such employees, agents and supervisors shall be provided with preliminary training regarding the Policies, Procedures and Controls developed pursuant to these Undertakings. By no later than October 31, 2014, all employees, agents and supervisors in the markets that are the subject of Market Publications, and/or in cash deposit markets related to and derivatives markets based on Benchmark Interest Rates in G8 currencies and any LIBOR currency 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, as part of the Respondents' regular training programs. The training shall be based upon the individual's position and responsibilities, and as appropriate, address the following topics:
- a. The Undertakings set forth herein;
 - b. The impropriety of: (1) any attempt to improperly influence the content of and alter the views contained in Market Publications or Other Market Communications; (2) using Market Publications or Other Market Communications improperly for the benefit of any third party's trading position; or (3) any attempt to influence or affect any panel bank's Submission(s);
 - c. The requirement to conduct all business related to Market Publications, and certain business related to the markets that are the subject of Market Publications, and/or cash deposit markets related to and derivatives markets based on Benchmark Interest Rates in G8 currencies and any LIBOR currency, on the Respondents' recorded telephone and electronic communications systems, and not on personal telephones or other electronic devices, as set forth in Section 5.iv. of these Undertakings;
 - d. The policies and procedures developed and instituted pursuant to these Undertakings; and
 - e. The employment and other potential regulatory and criminal consequences if employees act unlawfully or improperly in connection with these Undertakings.
8. **Reports to the Commission:**
- a. **Compliance with Undertakings:** Every four (4) months, starting 120 days from the entry of this Order, the Respondents shall make interim reports to the

Commission, through the Division, explaining its progress towards compliance with the Undertakings set forth herein. Within 365 days of the entry of this Order, the Respondents shall submit a report to the Commission, through the Division, explaining how it has complied with the Undertakings set forth herein. The report shall attach copies of and describe the Policies, Procedures and Controls that have been designed and implemented to satisfy the Undertakings. The report shall contain a certification from a representative of the Respondents' Executive Management, after consultation with the Respondents' chief compliance officers, that the 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;

- b. Compliance with Initial Training: Within two weeks of completing the training required in Section 7 of these Undertakings, the Respondents shall provide to the Commission, through the Division, written affirmation that all employees, agents and supervisors in the markets that are the subject of Market Publications, and/or in cash deposit markets related to and derivatives markets based on Benchmark Interest Rates in G8 currencies and any LIBOR currency have been fully trained in the application of these Undertakings to them; and
- c. Disciplinary and Other Actions: The Respondents shall promptly report to the Commission, through the Division, all improper conduct related to any Market Publication 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.

9. **Cooperation with the Commission:**

- a. The 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, the 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:
 - i. 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;
 - ii. Comply fully, promptly, completely, and truthfully with all inquiries and requests for information or documents;

- iii. Provide authentication of documents and other evidentiary material;
 - iv. Subject to applicable laws and regulations, provide copies of documents within the Respondents' possession, custody or control;
 - v. Subject to applicable laws and regulations, the Respondents will make their best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of the 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
 - vi. Subject to applicable laws and regulations, the 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 the Respondents.
- b. The Respondents also agree that they will not undertake any act that would limit its 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 the 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.

10. Prohibited Or Conflicting Undertakings:

- a. Should the Undertakings herein be prohibited by, or be contrary to the provisions of any obligations imposed on the Respondents by any presently existing, or hereinafter enacted or promulgated laws, regulations and regulatory mandates, then the 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, the Respondents will abide by the obligations imposed by the law, regulations and regulatory mandates.

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

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

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

By the Commission.


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

Dated: May 15, 2014