

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:)
)
Citibank, N.A.; Citibank Japan Ltd.;)
and Citigroup Global Markets Japan) CFTC Docket No. 16 – 17
Inc.)
)
Respondents.)
_____)

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

I.

The Commodity Futures Trading Commission (“Commission” or “CFTC”) has reason to believe that Citibank, N.A. (“Citi”); Citibank Japan Ltd. (“CJL”); and Citigroup Global Markets Japan Inc. (“CGMJ”) (collectively, “Respondents”) have violated Sections 6(c), 6(d) and 9(a)(2) of the Commodity Exchange Act (the “Act” or the “CEA”), 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006). 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, 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

III.

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

The Commission finds the following:

A. Summary

Over certain periods from the spring of 2008 through August 2010, as set forth below, Respondents, by and through their employees, committed acts of attempted manipulation of two benchmark interest rates, namely, the London Interbank Offered Rate (“LIBOR”) for Yen and the Euroyen Tokyo Interbank Offered Rate (“Euroyen TIBOR”), and committed acts of false reporting of market information with respect to Euroyen TIBOR and LIBOR for U.S. Dollar. Those actions undermined the integrity of these global rates, all of which are critical to U.S. and international financial markets. Trillions of dollars of financial instruments are priced based on LIBOR and Euroyen TIBOR.

LIBOR and Euroyen TIBOR are fixed each day based on rates submitted by a select panel of banks. In determining what rates to submit, each bank is to make an honest assessment of the costs of borrowing funds in the relevant markets. An honest assessment of the costs of borrowing does not include factoring in consideration of what rates would be beneficial to the derivatives trading positions of the banks, or concerns by the banks about reputational harm or negative media attention. Yet certain employees of Respondents attempted to influence Yen LIBOR and Euroyen TIBOR to benefit their derivatives trading positions, and, at times, certain employees took into account improper factors, such as the bank’s derivatives trading positions, or the bank’s reputation in determining the bank’s contributions to Euroyen TIBOR and U.S. Dollar LIBOR, respectively.

First, CGMJ, by and through the acts of certain of its traders, attempted to manipulate Yen LIBOR on multiple occasions from at least February 2010 through August 2010, and Euroyen TIBOR, at times, from April 2010 through June 2010, to benefit the derivatives trading positions of those traders. Specifically, a Tokyo-based senior Yen derivatives trader (“Senior Yen Trader”), hired by CGMJ to enhance the bank’s reputation in the Tokyo derivatives market, attempted to manipulate the benchmark fixings by using his contacts at other Yen LIBOR panel banks and at interdealer brokers to influence the Yen LIBOR submissions of other Yen panel banks. In addition, a senior manager who ran CGMJ’s Tokyo interest rates derivatives trading desk (“Senior Yen Manager”) pressured CJL’s Euroyen TIBOR submitters to adjust their submissions on behalf of the bank to benefit the Senior Yen Trader’s derivatives trading positions. CJL’s Euroyen TIBOR submitters, on a few occasions, took the Senior Yen Manager’s requests into account when making the bank’s Euroyen TIBOR submissions.

Separately, at times from the spring of 2008 through the summer of 2009, Citi’s U.S. Dollar LIBOR submitters in London based the bank’s U.S. Dollar LIBOR submissions on a desire to avoid generating negative media attention and to protect the bank’s reputation in the market. As the financial crisis progressed through 2008, Citi experienced financial challenges that included liquidity concerns. During this same time, Citi received a significant infusion of funds from the U.S. Government to alleviate the stresses on its funding. Citi, at times, had difficulty securing funding in the London interbank market at or below Citi’s LIBOR submissions, particularly in the longer tenors. Citi’s U.S. Dollar LIBOR submitters became

concerned about the signaling effect the bank's U.S. Dollar LIBOR submissions could have in the market. The submitters realized that the bank's submissions could draw negative media attention and raise questions about the stability of the bank. Accordingly, during this period, Citi's submitters, at times, made U.S. Dollar LIBOR submissions based in whole or in part on a desire to avoid that negative scrutiny, rather than based on the fact that Citi, at times, would have had to pay above LIBOR in the London interbank market, particularly in the longer tenors, when securing funding for the bank. As a result, Citi's U.S. Dollar LIBOR submissions, at times, did not accurately or solely reflect Citi's assessment of the costs of borrowing unsecured funds in the London interbank market.

The profitability of a bank's derivatives trading positions or a bank's reputational concerns are not legitimate or permissible factors on which to base, in whole or in part, a bank's daily LIBOR or Euroyen TIBOR submissions. Benchmark interest rate submissions convey market information about the costs of borrowing unsecured funds in particular currencies and tenors, the liquidity conditions and stress in the money markets, and a bank's ability to borrow funds in the particular markets. By basing their Euroyen TIBOR submissions, in whole or in part, on traders' derivatives trading positions, and their U.S. Dollar LIBOR submissions, in whole or in part, on market reputation concerns, Respondents knowingly conveyed false, misleading or knowingly inaccurate reports that their submitted rates for Euroyen TIBOR and U.S. Dollar LIBOR were based on and solely reflected the costs of borrowing unsecured funds in the relevant interbank markets.

Accordingly, Respondents attempted to manipulate Yen LIBOR and Euroyen TIBOR, and knowingly delivered, or caused to be delivered, false, misleading or knowingly inaccurate reports concerning Euroyen TIBOR and U.S. Dollar LIBOR. All three benchmark interest rates, Yen LIBOR, Euroyen TIBOR and U.S. Dollar LIBOR, are commodities in interstate commerce.

The Conduct Occurred After Citi Was on Notice of the CFTC Investigation

Respondents engaged in this conduct after they knew that the CFTC was investigating its U.S. Dollar LIBOR submission practices. Citi received a demand for documents and information regarding the bank's U.S. Dollar LIBOR submissions from the CFTC's Division of Enforcement in October 2008. Despite the submitters' knowledge of this inquiry, Citi's U.S. Dollar LIBOR submitters, at times, made submissions that did not solely and accurately reflect Citi's assessment of the costs of borrowing unsecured funds in the London interbank market. Moreover, during late 2009, in meetings with Citi senior managers after he was hired but before he started working, the Senior Yen Trader talked openly about how he had tried to manipulate Yen LIBOR at his prior place of employment. Even though they were aware of the Commission's ongoing investigation at that time, those senior managers did not notify anyone in the legal and compliance departments about the Senior Yen Trader's admissions. As a result, the Senior Yen Trader was able to continue his efforts to manipulate the benchmarks for several months once he started trading at CGMJ, before Respondents discovered his conduct.

In accepting Respondents' Offer, the Commission recognizes Respondents' cooperation with the Division of Enforcement's investigation of this matter. The Commission notes that in the summer of 2010, Respondents identified the misconduct with respect to Yen LIBOR and Euroyen TIBOR, and promptly self-reported the misconduct by its Yen traders to the Commission.

B. Respondents

Citibank, N.A. is a national banking association with its main office in Sioux Falls, South Dakota, and offices in New York City, New York. Citi provides consumer finance, investment banking, commercial banking, and other services through branch offices across the globe, including in London, where Citi's LIBOR submitters worked. Citi is provisionally registered with the Commission as a Swap Dealer.

Citibank Japan Ltd. is a Japanese corporation with its head office in Tokyo. Prior to November 2015 and during all relevant periods herein, CJL provided banking services through its retail and corporate banking divisions.² Respondents' Euroyen TIBOR submitters worked in CJL's head office. CJL is not registered with the Commission in any capacity.

Citigroup Global Markets Japan Inc.³ is a Japanese corporation with its head office in Tokyo, where it provides investment banking and broker dealer services. It is also where the Senior Yen Trader and his manager worked. CGMJ 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, including loans, over-the-counter swaps, and exchange-traded interest rate futures and options contracts. The products indexed to LIBOR have an approximate notional value of \$500 trillion.

During the relevant period, under the auspices of the British Bankers' Association ("BBA"),⁴ LIBORs were issued on a daily basis for ten currencies, including Sterling, U.S. Dollar, and Yen, with fifteen tenors (*i.e.*, durations for interest rates) ranging from overnight through twelve months. Certain currencies, such as Sterling, U.S. Dollar and Yen, are more

² On November 1, 2015, CJL sold its retail banking business to another institution. Today it continues to provide corporate banking services to institutional clients in Japan.

³ CGMJ was known as Nikko Citigroup Limited until September 2009.

⁴ On February 1, 2014, ICE Benchmark Administration Limited was appointed as the new administrator for LIBOR, following authorization by the U.K. Financial Conduct Authority ("FCA").

widely referenced in interest rate contracts. One, three and six-months are the most common tenors referenced in LIBOR-indexed transactions.

According to the BBA, LIBOR “is based on offered inter-bank deposit rates contributed in accordance with the Instructions to BBA LIBOR Contributor banks.” The BBA explained that:

[a]n individual BBA LIBOR Contributor Panel Bank will contribute the rate at which it could borrow funds, were it to do so by asking for and then accepting inter-bank offers in reasonable market size just prior to [11:00 a.m. London time].⁵

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

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

2. Euroyen TIBOR and its Fixing

Euroyen TIBOR is used internationally in derivatives contracts, including interest rate swaps and futures contracts on exchanges around the world, including the Chicago Mercantile Exchange’s (“CME”) Euroyen TIBOR futures contract.⁶ Yen traded in a money market outside of Japan is referred to as Euroyen. Euroyen TIBOR reflects the prevailing money market rates in the Japan offshore market. At the end of 2011, according to the BIS, over-the-counter interest rate derivatives in the Yen currency, such as swaps and FRAs, comprised contracts worth over \$66 trillion in notional value referenced to Yen rates. Euroyen TIBOR is fixed daily for thirteen tenors.

According to the Japanese Bankers Association’s (“JBA”) instructions during the relevant period,⁷ the contributing panel banks quoted rates where they believed a prime bank

⁵ This definition of LIBOR has been used since 1998 to the present.

⁶ The CME Euroyen TIBOR futures contract had active trading volumes during the relevant periods discussed *infra* (see pp. 10-13); at present, it has no trading volume.

⁷ JBA is an industry banking association and oversees the publication of Euroyen TIBOR.

would transact in the Japan offshore market as of 11:00 a.m. Tokyo time.⁸ These quotes were not to be representative of the banks' own positions in the marketplace. Further, the rates quoted by reference banks were not intended for use in trading by the reference banks. Like U.S. Dollar LIBOR, the daily fixing of JBA Euroyen TIBOR ("Euroyen TIBOR fixing") was and still is calculated based on the trimmed averaging methodology. Through licensing agreements, this information has been and continues to be made available and relied upon by market participants and others around the world, including in the United States.⁹

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

3. CGMJ's Attempts to Manipulate Yen LIBOR and Euroyen TIBOR and CJL's False Reporting of Euroyen TIBOR

In an effort to enhance its market prominence in Japan, CGMJ hired two senior traders with a mission to boost profits: the Senior Yen Manager and the Senior Yen Trader, a high-profile, Yen interest rates derivatives trader from UBS Securities Japan Co., Ltd. ("UBS").¹⁰ Together, the Senior Yen Trader and his supervisor, the Senior Yen Manager, attempted to

⁸ On April 1, 2014, the JBA TIBOR Administration was established and, since that day to the present, is responsible for the calculation and publication of JBA Euroyen TIBOR based on panel banks' submissions.

⁹ In June 2008, the BBA clarified that panel banks could not contribute a rate based on the pricing of any derivatives 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."

¹⁰ On December 19, 2012, the Commission issued an Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act Making Findings and Imposing Remedial Sanctions against UBS AG and UBS, finding, among other things, that the Senior Yen Trader attempted to manipulate Yen LIBOR, at times successfully, through multiple methods. The Commission's Order found that one of the Senior Yen Trader's strategies included coordinating with traders at other Yen panel banks to attempt to manipulate Yen LIBOR by making false Yen LIBOR submissions beneficial to their respective derivatives trading positions. The Senior Yen Trader also enlisted the aid of interdealer brokers to attempt to influence the rates submitted by Yen LIBOR submitters at other panel banks. To support the Senior Yen Trader, the brokers would, at times, contact Yen LIBOR submitters at certain panel banks to request them to skew their LIBOR submissions for the benefit of the Senior Yen Trader. See *In re UBS AG et al.*, CFTC Docket No. 13-09 (CFTC filed December 19, 2012), available at <http://www.cftc.gov/PressRoom/PressReleases/pr6472-12>.

manipulate both the Yen LIBOR and Euroyen TIBOR fixings on multiple occasions from at least February 2010 through August 2010. In his efforts to manipulate Yen LIBOR, the Senior Yen Trader used the same tactics and contacts he had employed at UBS: 1) requests to interdealer brokers positioned to influence Yen LIBOR panel banks;¹¹ 2) requests to traders at other panel banks; and 3) internal requests to Citi's Yen LIBOR submitters. Citi's Yen LIBOR submitters did not accommodate these internal requests. From April 2010 through June 2010, the Senior Yen Manager at times worked to manipulate Euroyen TIBOR by requesting the CJL Euroyen TIBOR submitters to alter Citi's rate submissions for the benefit of the Senior Yen Trader's derivatives trading positions. On a few occasions, the submitters took the Senior Yen Manager's requests into account when making the bank's Euroyen TIBOR submissions.

In April 2009, the bank embarked on a strategic initiative of improving the performance of certain Asia units and raising its profile in the derivatives markets in Japan. CGMJ enlisted the Senior Yen Trader and the Senior Yen Manager to turn around its flagging Tokyo-based derivatives trading, amplify market share, and increase customer flow in Japan. CGMJ's Tokyo rates unit was targeted as a "growth area of the business," and the Senior Yen Trader was "one of the 2009 strategic hires required to continue to build out the business." Shortly after the Senior Yen Manager started working in the spring of 2009, he began to recruit the Senior Yen Trader over to CGMJ. At that time, the Senior Yen Trader was known as a high profile derivatives trader at UBS in Tokyo. As part of the hiring process, several senior managers at CGMJ and Citi met with the Senior Yen Trader.¹² CGMJ hired the Senior Yen Trader in the fall of 2009, with a goal of generating profits between \$50 and \$150 million from his interest rates derivatives trading.

In meetings with Citi senior managers after his hiring but before he started working, the Senior Yen Trader talked openly about how he had tried to manipulate the Yen LIBOR fixings while at UBS. For example, the Senior Yen Trader told one senior manager that "he [the Senior Yen Trader] just calls his cash guys and asks them to move the LIBORs up or down, depending on how his fixings were, as long as it stayed in the middle eight." The Senior Yen Trader was described to other Citi senior managers as "this guy has forty percent of the market, and he knows where all the fixes are, he knows everybody on the street, he's a real fucking animal, this guy owns it." However, these senior managers did not convey the Senior Yen Trader's revelations of his illicit practices to anyone in the compliance or legal departments. The Senior Yen Trader began working under the Senior Yen Manager's direct supervision in Tokyo on or about December 3, 2009.

¹¹ Interdealer brokers ("brokers") act as intermediaries between major dealers in the cash and derivatives markets to facilitate execution of interdealer trades. Brokers assist banks in obtaining funding by facilitating the negotiation of deposits and loans, and in engaging in derivatives trades often referenced to LIBOR or Euroyen TIBOR.

¹² The term "senior manager" refers to bank employees with responsibilities (formally or informally delegated) broader than the management of trading desks, although their responsibilities may have at times included managing trading desks. The term "senior manager" does not include executive managers or members of Respondents' Management Board or Group Executive Committee.

a. The Senior Yen Trader Attempts to Manipulate Yen LIBOR Through Brokers and Other Panel Banks from at Least February 2010 Through August 2010

As soon as he began trading in February 2010, the Senior Yen Trader began his attempts to manipulate Yen LIBOR, using the same brokers and Yen LIBOR panel bank contacts that he employed at UBS. Over an approximately seven month period, the Senior Yen Trader regularly requested brokers to influence other Yen LIBOR panel bank members to make Yen LIBOR submissions favorable to the Senior Yen Trader's derivatives trading positions.¹³ The Senior Yen Trader typically sought on-going assistance from the brokers to influence the Yen LIBOR fixings over several days. The Senior Yen Trader wanted to gradually skew the Yen LIBOR fixings to achieve a certain rate or level at critical times, particularly around specified dates when his contracts tied to Yen LIBOR would fix.¹⁴ On some occasions, the Senior Yen Trader flagged for the brokers his intent to manipulate fixings that would occur as far as half a year away. The Senior Yen Trader and the brokers sometimes discussed targeting their requests to specific Yen LIBOR panel members – including Citi – to optimize the Senior Yen Trader's chances of manipulating the Yen LIBOR fixing. Well-versed in the Senior Yen Trader's schemes from his time at UBS, the brokers frequently acknowledged the Senior Yen Trader's requests and reported to him on their efforts to accommodate him.

Below are examples of requests that the Senior Yen Trader issued to brokers while trading on behalf of CGMJ.

February 16, 2010: (emphasis added)

Senior Yen Trader: **But I could do the high 6 month LIBOR...like...right now I don't have any fixes or anything, but just generally my position.**

Broker 1: **High, yeah [. . .] Alright, okay.** Well, Broker 2 seems to think there's bugger all he can do, uh, is fix things at the moment. He says it doesn't seem to matter where he puts it. It just...RBS moves it up or down 2 points when he's got a fix in. That's the only thing that seems to move it [. . .] your boys are sort of middle of the range [. . .] so maybe you ought to-

¹³ The CFTC took action against certain brokers who accommodated the Senior Yen Trader's attempts to manipulate Yen LIBOR. The Senior Yen Trader used the brokers in his manipulative schemes because as brokers, they had access to submitters at Yen LIBOR panel banks, which relied on the brokers for market color and information. The brokers could skew their market color by providing Yen LIBOR fixing predictions or other information tailored to benefit the Senior Yen Trader's derivatives trading positions. See *In re ICAP Europe Limited*, CFTC Docket No. 13-38 (CFTC filed September 25, 2013); and *In re RP Martin Holdings Limited et al.*, CFTC Docket No. 14-16 (CFTC filed May 15, 2014).

¹⁴ The cash and derivatives positions held by the Senior Yen Trader that were priced off of Yen LIBOR and Euroyen TIBOR often settled or reset on International Monetary Market ("IMM") dates, which are quarterly dates in March, June, September, and December, or at half year intervals, such as the six month "turn" at the end of June 2010.

Senior Yen Trader: Yeah, yeah...I have spoken to them. I mean I'm...how much influence am I going to have in inverted commas? [. . .]

Broker 1: [. . .] I'll try to have a chat with, uh, Broker 2, but I've uh I've had this conversation with him recently, he reckons "if you want them down I can't move them. If you want them up, I can't move them. Gonna ask RBS what he's sitting today since he is the only one who seems to want to fuck around with it." [. . .] **I will try and...have a go for you mate.**

June 18, 2010:

Senior Yen Trader: You need to next week, start talking to people about the turn, about the 6 month turn

Broker 1: I've got an alarm set in my iPhone to remind me to start doing it next week.

The Senior Yen Trader tried to build on his prior relationships with derivatives traders at UBS¹⁵ and Deutsche Bank¹⁶ to further his attempts to manipulate Yen LIBOR at CGMJ. The Senior Yen Trader worked to prime these relationships by providing to the other traders key market color and information about movements in Yen LIBOR and Euroyen TIBOR fixings, including information about his intent to manipulate these fixings in his favor. The Senior Yen Trader sought to leverage these relationships and obtain information regarding the Yen LIBOR and Euroyen TIBOR submissions of UBS and Deutsche Bank. The Senior Yen Trader requested the other traders to convince their respective Yen LIBOR submitters to make submissions in a manner beneficial to his derivatives trading positions. The following are examples of the requests the Senior Yen Trader made to the derivatives traders at other banks.

March 19, 2010: (emphasis added)

Senior Yen Trader: **i think after june I will push for higher libors and lower tibors after june imm we are joining fixing panel in tiber and will keep it high [. . .]**

Deutsche Yen Trader: **after june coolio**

Senior Yen Trader: after june higher lib is ok for you? [. . .] I selling june ey will keep tiber high at least till june for year end I will need low tiber and high l;ibor

March 26, 2010:

Senior Yen Trader: you got much in 3m libor in dec ?

Deutsche Yen Trader: nothing

¹⁵ See *In re UBS AG et al.*, CFTC Docket No. 13-09 (CFTC filed December 19, 2012). In the UBS Order, the UBS yen trader is referenced as Yen Trader 2.

¹⁶ See *In re UBS AG et al.*, CFTC Docket No. 13-09 (CFTC filed December 19, 2012). In the UBS Order, the Deutsche Bank yen trader is referenced as Yen Bank F Trader-Submitter. See also *In re Deutsche Bank AG*, CFTC Docket No. 15-20 (CFTC filed April 23, 2015). In this Order, the Deutsche Bank yen trader is referenced as Senior Yen Trader-Submitter.

Senior Yen Trader: ok I really gonna need 3m lib up a bit in dec have massive imm fix vs [another bank]

Deutsche Yen Trader: hum np [. . .] we have time by then

Senior Yen Trader: anything i can help with let me know

May 19, 2010: (emphasis added)

Senior Yen Trader: if you need mar low i won't bid it i have nothing in it

UBS Yen Trader: i wont it at a constant spread to dec as i told you before. absolute levels i dont mind

Senior Yen Trader: oh ok **i just need dec low**

UBS Yen Trader: **i know, and that's ok**

The Senior Yen Trader sometimes exerted pressure through both the brokers and derivatives traders at other banks in tandem to maximize his influence on the Yen LIBOR fixing. For example, on June 1, 2010, the Senior Yen Trader engaged in phone calls with two different brokers, just minutes apart, seeking their assistance in obtaining a higher six-month Yen LIBOR fixing at the end of the month. On the same day, using electronic communications, the Senior Yen Trader informed a trader at another Yen LIBOR panel bank that "after june will push for higher esp 6m over the turn." Two days later, he wrote to a trader at another bank, "next month we cross the turn for 6m any chance 6m libor cld go higher then?" The Senior Yen Trader's frequent attempts to manipulate Yen LIBOR at CGMJ continued through August 2010.

b. The Senior Yen Manager's Efforts to Manipulate CJL's Euroyen TIBOR Submissions for the Benefit of the Senior Yen Trader from April 2010 Through June 2010

The Senior Yen Manager attempted to manipulate the Euroyen TIBOR fixing for the benefit of the Senior Yen Trader's derivatives trading positions. The bank sought to join the Euroyen TIBOR panel in order to raise the bank's profile in the Tokyo financial market.¹⁷ CJL, its Japanese banking arm in Tokyo, was responsible for the bank's Euroyen TIBOR submissions. At times, between April 2010 and June 2010, the Senior Yen Manager requested CJL's Euroyen TIBOR submitters and their manager to adjust the bank's submissions in a manner to benefit the Senior Yen Trader's derivatives trading positions. On a few occasions from April 2010 through June 2010, CJL's Euroyen TIBOR submitters took the Senior Yen Manager's requests into account when making the bank's Euroyen TIBOR submissions.

¹⁷ The bank's application to rejoin the Euroyen TIBOR panel coincided with a strategic push by Respondents to raise the bank's profile in the Japanese derivatives market and boost its relatively poor performance in Japan, noted *supra*, pp. 6-7. At the time, the bank was a relatively small player in the Tokyo Yen derivatives market; despite it being one of the largest foreign banks in Japan, it engaged in few Yen derivatives transactions referencing Euroyen TIBOR. Many Yen-based derivatives are valued using Euroyen TIBOR, and Euroyen TIBOR panel membership was viewed as a sign of prestige that would build the bank's Japanese "franchise," show commitment to the local market, and impress present or prospective clients. The Senior Yen Manager pushed for the bank to join the panel, noting "[f]or obvious reasons this is important to the bank and to trading."

The Senior Yen Trader and the Senior Yen Manager communicated regularly with each other concerning the Senior Yen Trader's positions and position settlement and reset dates. The Senior Yen Manager understood the risk that changes in Euroyen TIBOR posed to those derivatives trading positions. The Senior Yen Manager believed that CJL could influence the Euroyen TIBOR fixing by creating what he called a "snowball" effect. According to the Senior Yen Manager, a slight change in CJL's submissions would produce a psychological effect amongst other key panelists who would follow CJL's changes, even incrementally. The overall effect by the panelists would be to magnify alterations in the official Euroyen TIBOR fixing. The Senior Yen Trader, who had the same understanding of the potential impact, explained the effect as follows: "[W]e're on the fixing panel, we're going to come in at 45 [. . .] we'll be in the fixing mix, so we can move it...nineteen divided by thirteen...we can move it one and a half points, so that's two and a half points, and then the net effect of moving it one and a half points [. . .]."

The Senior Yen Manager began pressuring CJL's Euroyen TIBOR submitters to accommodate his requests for submissions that benefited the Senior Yen Trader's derivatives trading positions shortly after CJL's first submission as a new panelist on April 1, 2010. In communications with CJL's Euroyen TIBOR submitters and their manager that grew more and more blunt over the course of a few months, the Senior Yen Manager told the submitters to make Euroyen TIBOR submissions at steady ("sticky") or lower levels and made clear that it was to benefit the trading positions of the Senior Yen Trader. The Euroyen TIBOR Manager and submitters acknowledged the Senior Yen Manager's requests and indicated sensitivity to the Senior Yen Manager's concerns about the risk the fixings posed to the trading positions. The Euroyen TIBOR Manager even remarked, "We want to help the rates business, okay? We want to be cooperative, and we don't want to do anything to hurt their positions or harm their positions. Yeah? So we remain sensitive." On a few occasions, CJL's Euroyen TIBOR submitters made submissions that took into account the Senior Yen Manager's requests.

Below are examples of the Senior Yen Manager's requests seeking the adjustment of CJL's Euroyen TIBOR submissions for the benefit of the Senior Yen Trader:

May 17, 2010: (emphasis added)

Senior Yen Manager:

I think 3 month TIBOR comes down after the June [IMM date] [. . .] we sorta positioned accordingly, meaning we think it's coming down too, our only issue is that **we don't want to come down within the next 4 weeks [. . .] We want it to be very sticky for four weeks [. . .] our fear is like when you move it down, right, then you get another round of people who just pile on and they all start moving shit down as well.**

Euroyen TIBOR Manager:

I know everyone starts moving down, yeah.

Senior Yen Manager:

So that's the only fear we have which is why for chance **we want to keep it as high as possible for the next 3½ weeks.**

June 15, 2010: (emphasis added)

Euroyen TIBOR Submitter 1: [W]e had a discussion internally so our guys go to see BOJ this month to update them on the market. We, we think maybe today if we go by two just right after the fixing, it will be a little bit too optical. So how about we— [. . .]

Senior Yen Manager: [. . .] it's whatever you want to do, I mean obviously two is preferred for us, but if you do one then one, I mean it's fine, it doesn't matter. Um, I think [Euroyen panel bank 1] and ...will move it down eventually, [Euroyen panel bank 2] will move it down, everybody's waiting for everybody else, right? **So as soon as we move it two, other people start moving it** [. . .] what was the conversation you guys had? What are you worried about?

Euroyen TIBOR Submitter 1: So what we are thinking... **the other guys, you know we, you know, go too fast, you think they may get suspicious you know, think we have some big positions**

Senior Yen Manager: I think everybody thinks that anyway [. . .] So you're going to do minus one, and is that 6s and 3s? [. . .]

Euroyen TIBOR Submitter 1: [. . .] Yes, yes. Based on our consensus.

June 17, 2010: (emphasis added)

Euroyen TIBOR Submitter 2: Hi. Um, just a heads up, um, we are not changing 3 months today [. . .] we think that uh, only [Euroyen panel bank 3] has followed us yesterday, and we wanna see a bid [. . .] How, how other banks are reacting, like, you know, we were talking the other day that **there might be a snowball effect if one starts to move down**. But so far we have only seen [Euroyen panel bank 3] putting down the rates for 3 month.

Senior Yen Manager: Well, but remember it's because everyone's below us.

Euroyen TIBOR Submitter 2: Um, not for the mega banks yet.

Senior Yen Manager: No, but the mega banks, they are not gonna move it until the average moves, right? So the Western banks will all move together and then once the average moves a point, then the mega banks will move [. . .] **we're the highest foreign bank. So, that's the point, right? The point is the foreign banks will all move in concert with each other and we're the highest one** [. . .]

Euroyen TIBOR Submitter 2: [. . .] currently [Euroyen panel bank 4]'s rate is correct, and because your positioning, is um, the lower the rate is better, you are saying that, I think. **But just please remember like two months ago, you wanted the higher rate** [. . .] if we had quoted from the first of April, like [Euroyen panel bank 4], it would be much easier. **But you know, at the time, you guys had a position which rate is, higher rate is better, so you know we just quoted TIBOR flat.**

CJL's Euroyen TIBOR submitters and manager eventually grew tired of the Senior Yen Manager's aggressive requests to alter the bank's submissions, and the submitters elevated their concerns about the Senior Yen Manager's requests to their management. On or about June 21, 2010, Respondents erected a "firewall" between CGMJ and CJL, with the aim of limiting improper requests and exchanges of information from the Senior Yen Manager or other derivatives traders to the Euroyen TIBOR submitters.

c. The Senior Yen Trader's Internal Requests to Influence Citi's Yen LIBOR Submissions Lead to His Dismissal

The Senior Yen Trader also attempted to manipulate Citi's Yen LIBOR submissions to benefit his derivatives trading positions. After earlier unsuccessful efforts to establish relationships with Citi's Yen LIBOR submitters in London, the Senior Yen Trader tried to use a junior Yen interest rate swaps trader who sat near the Yen LIBOR submitters in his attempts to influence Citi's Yen LIBOR submissions. The Senior Yen Trader explained to the junior rates trader how the Yen LIBOR submitters could assist the Senior Yen Trader's attempts to manipulate Yen LIBOR:

I think we need good dialogue with the cash desk, they can be invaluable to us. Being in London makes you well placed to foster these relations, if you can try to have a chat and find the rational behind the move higher, usually if libor goes up after a long period of falls the whole front end goes bid in London time, if we know ahead of time we can position and scalp the market. When I am in London lets take the cash guys out to a nice dinner!

The Senior Yen Trader directed that the junior rates trader approach Citi's Yen LIBOR submitters and deliver his requests to adjust their submissions. The Senior Yen Trader not only advised him on what to request of the submitters, but also told him how to approach them. The Senior Yen Trader's directions ranged from subtle ("[. . .] just try and catch him down in the toilet or something and have a chat with him. Just say, 'oh, if you move' [. . .]) to direct ("[. . .] mention we have a big 3m libor set on the imm date so if they could move 3m lower by 1bp it would help").

The Senior Yen Trader made requests to manipulate Citi's Yen LIBOR submissions through the junior rates trader on March 3, June 1, and June 25, 2010. His efforts were not successful. On the last occasion, Citi senior managers elevated the Senior Yen Trader's misconduct to compliance and legal. Respondents thereafter commenced an internal investigation, dismissed the Senior Yen Trader, and separated from the Senior Yen Manager. Respondents alerted the CFTC to the conduct in July 2010, and gave a report of its internal investigation in early fall 2010.

As described above, CGMJ, through the Senior Yen Trader and the Senior Yen Manager, made multiple attempts to manipulate the Yen LIBOR and Euroyen TIBOR fixings, both commodities in interstate commerce, in order to benefit their derivatives trading positions. CJL, through its Euroyen TIBOR submitters, on a few occasions made false reports of the bank's Euroyen TIBOR submissions when they took into account the manipulative requests of the Senior Yen Manager. The Euroyen TIBOR submitters knew it was improper to consider traders' derivatives trading positions in determining the bank's submissions, as a panel bank's derivatives trading positions are not legitimate or permissible factors on which to base a bank's daily Euroyen TIBOR submissions. By basing its Euroyen TIBOR submissions in whole or in part upon CGMJ's derivatives traders' requests on a few occasions, CJL's Euroyen TIBOR submissions were not consistent with the JBA's definitions and criteria for Euroyen TIBOR submissions. Instead, CJL, on a few occasions, knowingly conveyed false, misleading or knowingly inaccurate reports that its submitted rates for Euroyen TIBOR, a commodity in interstate commerce, were based on and solely reflected the costs of borrowing Yen in the Japan offshore market.

4. During the Financial Crisis, Citi Made, at Times, U.S. Dollar LIBOR Submissions to Avoid Negative Publicity and to Protect Citi's Reputation

At times from the spring of 2008 through the summer of 2009, as the financial markets were in crisis, Citi's U.S. Dollar LIBOR submitters made submissions at times that were based in whole or in part on a desire to avoid unwanted media attention or questions about its financial status in the market. Citi's LIBOR submitters were concerned that Citi's U.S. Dollar LIBOR submissions might broadcast a negative perception of the health and liquidity of Citi during this period of the global financial crisis. As a result, at times, Citi's U.S. Dollar LIBOR submissions did not accurately or solely reflect Citi's assessment of the costs of borrowing unsecured funds in the London interbank market.

Beginning as early as August 2007, Citigroup, Inc. ("Citigroup"), the parent company of Citi – the entity responsible for the bank's LIBOR submissions – faced financial challenges that included concerns about liquidity. That same month, the Federal Reserve System requested that financial institutions, including Citigroup, visit its Discount Window to obtain short term money to alleviate some of these liquidity concerns.¹⁸ Recognizing that the bank was operating net "short" of dollars, Citi embarked on a deposit gathering drive which accelerated in the fall of 2007.

As the financial crisis began to mount, liquidity in the London interbank market began to diminish dramatically and severe dislocations in the relevant unsecured cash markets developed. Citi's U.S. Dollar LIBOR submitters realized that, at times, it may be difficult for Citi to obtain deposits in the London interbank market at or below LIBOR, particularly in the longer tenors. They were concerned that if the market observed Citi "paying up" for cash or submitting higher

¹⁸ The Federal Reserve System's discount window is an instrument of central bank operations that banking institutions use to borrow money on a short term basis to meet temporary shortages of liquidity. As described by the Federal Reserve Board, "[t]he discount window helps to relieve liquidity strains for individual depository institutions and for the banking system as a whole by providing a reliable backup source of funding."

LIBORs to reflect its need to pay up for cash, it could cause speculation about Citi's financial condition and negatively impact Citi's reputation. To avoid such unwanted observations, they opted at times to forgo securing funds in the London money market rather than pay the higher rates that would be offered to Citi.

The concerns of the Citi submitters are reflected in their internal communications, as the examples below show.

November 29, 2007: (via instant message sent to U.S. Dollar Submitter 1)

U.S. Dollar Submitter 2: Just as long as we are not seen to be paying through libor. That would be damaging.

February 5, 2008: (via instant message to U.S. Dollar Submitter 1)

U.S. Dollar Submitter 3: Regarding 3M, we've really been struggling to get anything done. We've been looking for up to 400MIO for the last couple of days, both cash and CD. But simply we're unable to pick up anything by paying 8 bps under libor (today we showed 3.08). Basically dynamic lately has been for London market to push levels up during am (hence nothing gets done at our levels), and then market comes off when NYK comes in. We don't want to go above -8 libor not to get in the way of your issuance. But we are running out of time and getting to the point in which we're going to have to pay up, unfortunately

February 14, 2008: (via instant message to U.S. Dollar Submitter 1)

U.S. Dollar Submitter 3: Things are very expensive over here. We posted 2.98 initially and got nothing. Went up to 3.01 and nothing. No surprise as cash is trading higher than libor (3M Libor at 3.065, while only offer in market is at 3.10). No liquidity at all in cash market. Didn't even bother putting a cash bid out there, as not paying over libor for it. Still need to do 200 MM

Citi closed out 2007 short of its liquidity targets and facing increased funding costs.¹⁹ As the financial crisis accelerated in the spring of 2008, Citi's difficulty in securing deposits in the London money market at or below LIBOR, particularly in longer tenors, continued. One U.S. Dollar LIBOR submitter noted the difficulty in finding low cost funds in the market, stating, "[. . .] cash [market] very dry...if we want cash it is libor + at [moment]." Reflecting its inability, at times, to raise funds in the London money market at or below LIBOR, Citi's LIBOR submissions moved from among the lowest of the panel banks' submissions to among the highest of the banks' submissions by the end of March 2008. Citi submitters were cognizant of the "potential for negative publicity" Citi's higher LIBOR submissions could generate:

¹⁹ In December 2007, one senior manager warned other senior managers that Citi's liquidity concerns are "recognized by all levels of management, the board, rating agencies and regulator[. . .]"

I note that **our 1-6mths LIBORs were the highest out of all contributors. Given the potential negative publicity that this could have I would go lower (and certainly try to avoid being the highest).** [. . .] Not a big issue so I am trying to not blow it out of proportion. I know it's difficult but **just try to avoid being highest, no need to be lowest, etc.** (emphasis added)

The LIBOR fixing itself drew scrutiny in the press, including an April 16, 2008 *Wall Street Journal* ("WSJ") article that questioned whether panel banks were intentionally under-submitting U.S. Dollar LIBOR. The article speculated that panel member banks were making LIBOR submissions lower than what they were actually paying for funds to prevent the market from concluding that the banks were desperate for cash. The press scrutiny of LIBOR and panel banks' submissions increased the pressure on Citi's U.S. Dollar LIBOR submitters, who were already concerned that high LIBOR submissions by the bank could generate speculation about Citi's financial health. Now they were also aware that low submissions by Citi could garner unwanted media attention, as demonstrated by the WSJ article.²⁰

As a result, Citi, at times, made U.S. Dollar LIBOR submissions that took into account concerns about triggering "negative publicity," that allowed Citi to be "seen but not heard anywhere in the market," and that prevented Citi from being among the high end, or an outlier, of the panel banks' submissions. For example, in May 2008, a Citi submitter commented:

You know effectively, what...you know, we try to do is be the bottom-end of the quartile because, effectively, we're outside of that, we're gonna have to prove that we've actually received, in our time, cash. And we, we can't do that for the moment [. . .] I've gotta try and justify why, why I've set my LIBORs where I have. And domestically, I've got nothing on paper to show them at all. So we are, we are caught between a rock and a hard place [. . .] When I was, when I was too high on the quarter end, when basically, there was no cash and when you were desperate – we weren't getting any of our affairs done. And we would have to be realistic about it and **we were a little bit too aggressive and we were 2 basis points above the [LIBOR fixing] average, but still within the range. And then, you know, we got calls from [U.S. Dollar Submitter 2] in New York saying, "Yeah, why are you posting high LIBORs?" So you know, the internal and external push and pull was working both ways.** (emphasis added)

²⁰ In response to the WSJ article, Citi, like some other panel banks, adjusted its U.S. Dollar LIBOR submissions upwards, raising them from among the lowest to the middle of the panel banks' submissions. One Citi U.S. Dollar LIBOR submitter commented: "WSJ article on LIBOR getting a lot of attention. So under pressure to be in middle of pack so will be moving up a couple today."

Citi's U.S. Dollar LIBOR submitters knew that the bank, at times, would need to pay rates above Citi's LIBOR submissions to raise funds.²¹ However, during this period, Citi's U.S. Dollar LIBOR submitters at times made submissions that did not accurately or solely reflect where Citi borrowed or could borrow funds in the London interbank market, particularly in the longer tenors, but instead were based in whole or in part on the desire to avoid negative market perceptions of Citi's financial condition.

In the fall of 2008 and continuing through the summer of 2009, Citigroup drew upon U.S. Government financial assistance several times at the height of the global financial crisis. In October 2008, Citigroup received \$25 billion in TARP (Term Asset Relief Program) funds. In November 2008, Citigroup obtained additional financial assistance from and entered into a loss sharing agreement with the U.S. Government following a 60% drop in its share price. In December 2008 and January 2009, the U.S. Government provided further financial assistance to Citigroup. By February 2009, the U.S. Government had acquired one third of Citigroup shares in exchange for continued financial support. In March 2009, the Federal Reserve conducted a financial "stress test" on Citigroup, and in May 2009, the Federal Reserve directed that Citi raise additional capital as credit rating agencies considered further downgrading Citi's credit rating.

During this period of significant and highly public governmental assistance, as well as severe dislocations in the relevant unsecured cash markets, Citi at times had difficulty securing funding in the London interbank market at or below Citi's LIBOR submissions, particularly in the longer tenors. In order to attract clients in other markets, Citi began offering increasingly higher interest rates to these clients, who in turn expected to receive interest rates set at the LIBOR fixing or higher for their deposits.²² One senior manager declared that Citi needed to pay *above LIBOR* to compete for these deposits:

[The] market is not Libor anymore - clients expect the one month rate for overnight [. . .] As you know the price of 3rd party deposits has steadily grown. **We are no longer the flight to quality** and must convince our clients through service and price to keep money with us. (emphasis added)

The higher interest rates paid to these clients at times were different from the rates Citi submitted for some tenors of U.S. Dollar LIBOR. The submitters requested on a few occasions that the salespeople in other funding units of the bank avoid offering higher interest rates to clients to secure funding because it could force Citi to raise its LIBOR submissions, bring negative attention in the media or lead to the challenging of the bank's submissions by the BBA.

²¹ On July 3, 2008, the LIBOR Manager observed: "what's happening is the product groups and the branches etc...are all saying we can get money if you pay up [. . .] we are being told we have to borrow term cash [. . .] we're paying up on borrowing cash on all our direct relationships [. . .]."

²² A November 20, 2008 email amongst senior managers laid out the bank's evaluation of the rates it would need to pay to attract funds: "Citigroup has determined to that to retain / attract client deposits, it needs to pay term LIBOR rates [. . .]."

The following are examples of Citi's U.S. Dollar LIBOR submitters expressing their concerns that "paying up" for cash would raise questions about the bank's health and liquidity, and the integrity of its U.S. Dollar LIBOR submissions.

August 6, 2008: (emphasis added)

LIBOR Manager: One thing that will cause a real issue is if we pay more than LIBOR because we're a LIBOR contributor, so **if we ever pay more than LIBOR, we can be up in the press** [. . .]

Sales Manager 1: [. . .] we always toe the line on that kind of stuff, we don't do stupid things

August 28, 2008: (emphasis added)

U.S. Dollar Submitter 1: the other problem we've really got is that you have to realize we are a LIBOR contributor.

Sales Manager 1: Oh, no – we understood.

U.S. Dollar Submitter 1: **If [the BBA] they find out I paid a customer LIBOR [fixing], then obviously [the BBA] could strike us off putting in our LIBOR contributions –** cause we should be saying our LIBORs are a lot higher [. . .] Obviously, the last time we put our LIBORs too high [a Citi manager in New York said] [. . .] what are you doing? [. . .] We've asked the [sales] guys as well [. . .] just so that this, this thing is always creating issues [. . .] just get them to give the desk a call [. . .] just to advise if they've put a deal through, it's at LIBOR [. . .] **for us to step up to LIBOR at 43 for 45 million dollars, I do, it does question the fact how much do we want to create pain in LIBOR fixings** [. . .]

October 15, 2008:

U.S. Dollar Submitter 1: I am a LIBOR contributor and so we put in our LIBOR rates for dollars. We submit those to the BBA [. . .] We are under some constraints because we, we, are – you know, off the record, we are not allowed to be the highest setter [. . .]

December 8, 2008:

LIBOR Manager: [E]ven paying LIBOR causes an issue because of this whole LIBOR fixing stuff, because it will cause issues for the firm if we move LIBORs up [. . .]

March 24, 2009: (emphasis added)

U.S. Dollar Submitter 1: I just wanted to try to understand the level [. . .] the level at which they were paying was quite higher than LIBOR and we as an institution have to be a little be careful about what rates we show in the market since we're LIBOR setters [. . .] we monitor quite heavily what different Citi branches pay in the interbank bank market, and the reason is here in London we set

the LIBORs, and the CFTC in the 'States have been very sharp on institutions that set LIBORs [. . .] you were paying in the market quite higher in the market than compared to where I would set LIBOR which kind of ties my hands a little bit so I'm trying to work out what you're trying to do, [. . .].

April 20, 2009:

U.S. Dollar Submitter 1: The deal was above LIBOR. It just causes questions because [. . .] they're looking at my LIBOR contributions. [. . .] do me a favor, just change them [the deal] down and then I'll owe you, um, you know three quarters of a tick on your next trade or something [. . .] And then it just kind of stays under the radar and then, then I owe you 3/4s of a basis point.

May 6, 2009:

U.S. Dollar Submitter 1: At the moment everybody who sets LIBORs just doesn't want to be noticed, that's that's the way it is but anybody who is noticed or does make the big bold move has got to have something behind it.

During this period, despite the funding challenge in the London interbank market and their knowledge that certain of the bank's fundraising activities were at times at rates above their LIBOR submissions, Citi's U.S. Dollar LIBOR submitters did not increase Citi's submissions. Instead, Citi's U.S. Dollar LIBOR submissions at times did not reflect what Citi would have had to pay in the London interbank market, particularly in the longer tenors.

Citi, at times, made U.S. Dollar LIBOR submissions that were influenced by a desire to shield the institution from negative market perceptions regarding its liquidity, strength and creditworthiness, rather than based in whole or in part on accurate estimates of what Citi paid or could expect to pay for unsecured funding in the London interbank market. Citi, through its U.S. Dollar LIBOR submitters, knew that concerns about reputation or perceived negative market or media reports were not legitimate or permissible factors on which to base its daily U.S. Dollar LIBOR submissions. Thus, their LIBOR submissions that at times were based in whole or in part on these improper considerations were knowingly false because such submissions did not accurately or solely reflect Citi's assessment of the costs of borrowing unsecured funds in the London interbank market. Accordingly, at times, Citi through its U.S. Dollar LIBOR submissions, knowingly delivered, or caused to be delivered, benchmark interest rate submissions that constituted false, misleading or knowingly inaccurate reports that affected or tended to affect U.S. Dollar LIBOR, a commodity in interstate commerce.

IV.

LEGAL DISCUSSION

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

Section 9(a)(2) of the Act makes it unlawful for any person “knowingly to deliver or cause to be delivered for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce” 7 U.S.C. § 13(a)(2) (2006); *United States v. Brooks*, 681 F.3d 678, 691 (5th Cir. 2012); *United States v. Valencia*, 394 F.3d 352, 354-55 (5th Cir. 2004); *see also CFTC v. Johnson*, 408 F. Supp. 2d 259, 266-67 (S.D. Tex. 2005).

Respondents, by and through Citi and CJL, through the transmission of their daily submissions to the service provider of the BBA and JBA who calculated their official fixings (e.g., Thomson Reuters), knowingly delivered or caused to be delivered its U.S. Dollar LIBOR and Euroyen TIBOR submissions through the mails or interstate commerce. Respondents’ submissions were also caused to be delivered through the mails or interstate commerce through the daily dissemination and publication globally, including into the United States, of the panel banks’ submissions as well as the daily official benchmark interest rates by at least Thomson Reuters on behalf of the BBA, JBA, and other third party vendors. The panel banks’ submissions are used to determine the official published rates for U.S. Dollar LIBOR and Euroyen TIBOR, which are calculated based on a trimmed average of the submissions. Respondents’ daily U.S. Dollar LIBOR and Euroyen TIBOR submissions contained market information concerning the costs of borrowing unsecured funds in particular currencies and tenors, the liquidity conditions and stress in the money markets and Respondents’ ability to borrow funds in the particular markets. Such market information affects or tends to affect the prices of commodities in interstate commerce, including the daily rates at which U.S. Dollar LIBOR and Euroyen TIBOR are fixed.

During the periods relevant to the conduct described herein, Respondents’ submissions for Euroyen TIBOR, on a few occasions, and for U.S. Dollar LIBOR, at times, were false, misleading or knowingly inaccurate because they were based in whole or in part on impermissible and illegitimate factors, specifically: (1) with respect to Euroyen TIBOR, the derivatives trading positions of CGMJ’s Yen derivatives traders; and (2) with respect to U.S. Dollar LIBOR, a desire to avoid negative market or media attention that raised questions about the bank’s liquidity or strength. By using these impermissible and illegitimate factors in making its Euroyen TIBOR and U.S. Dollar LIBOR submissions, Respondents conveyed false, misleading or knowingly inaccurate information that the rates it submitted were based on and related solely to the costs of borrowing unsecured funds in the relevant markets and were truthful and reliable. Respondents’ managers, traders and submitters knew that certain Euroyen TIBOR and U.S. Dollar LIBOR submissions contained false, misleading and knowingly inaccurate

information concerning the submitted rates. By such conduct, Respondents violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2006).

B. Respondents, by and Through CGMJ, Attempted to Manipulate Yen LIBOR and Euroyen TIBOR

Together, Sections 6(c) 6(d), and 9(a)(2) of the Act prohibit acts of 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 provides 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 . . . 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).

The following two elements are required to prove an attempted manipulation: (1) an intent to affect the market price, and (2) an overt act in furtherance of that intent. *See In re Hohenberg Bros. Co.* [1975-77 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,271, at 21,477 (CFTC Feb. 18, 1977); *CFTC v. Bradley*, 408 F. Supp. 2d 1214 (N.D. Okla. 2005). To prove the intent element of attempted manipulation, it must be shown that Respondents “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.” *In re Indiana Farm Bureau Coop. Ass’n*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,796, at 27,283 (CFTC Dec. 17, 1982). “[W]hile knowledge of relevant market conditions is probative of intent, it is not necessary to prove that the accused knew to any particular degree of certainty that his actions would create an artificial price. 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. U.S. Gypsum Co.*, 438 U.S. 442, 445 (1978). A profit motive may also be evidence of intent, although profit motive is not a necessary element of an attempted manipulation. *See In re DiPlacido* [2007-2009 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,970, at 62,484 (CFTC Nov. 5, 2008) (citing *In re Hohenberg Bros. Co.*, [1975-1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 21,478)), *aff’d*, 364 f. App’x Appx. 657.

Here, as evidenced by the communications of the Senior Yen Trader and the Senior Yen Manager, CGMJ specifically intended to affect the rate at which the daily Yen LIBOR and Euroyen TIBOR, both commodities in interstate commerce, would be fixed to benefit their derivatives trading positions. More specifically, the evidence shows that the Senior Yen Trader engaged in numerous communications with brokers at multiple firms, and traders at multiple Yen LIBOR panel member banks, seeking their assistance to influence the Yen LIBOR submissions of other panel banks. Parallel to the Senior Yen Trader’s attempts, the Senior Yen Manager made several requests to CJL’s Euroyen TIBOR submitters to alter submissions with the goal of manipulating the Euroyen TIBOR fixing, thereby benefitting the Senior Yen Trader’s derivatives

trading positions. The Senior Yen Trader and the Senior Yen Manager's requests for certain rates to be submitted which would benefit their derivatives trading positions constitute overt acts in furtherance of their intent to affect the Yen LIBOR and Euroyen TIBOR fixings. By doing so, CGMJ engaged in multiple acts of attempted manipulation in violation of Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006).

C. Respondents Citi, CJL and CGMJ Are Liable for the Acts of Their Agents

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2015), 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 and Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988).

Citibank, N.A., Citibank Japan Ltd. and Citigroup Global Markets Japan Inc. are liable for the acts, omissions and failures of the traders, managers and submitters who acted as their employees and/or agents or the employees and/or agents of their subsidiaries in the conduct described above and accordingly, violated Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006), as set forth above.

V.

FINDINGS OF VIOLATIONS

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

VI.

OFFER OF SETTLEMENT

Respondents, without admitting or denying the findings or conclusions herein, have submitted the Offer in which they:

- A. Acknowledge receipt of service of this Order;
- B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;

C. Waive:

1. the filing and service of a complaint and notice of hearing;
2. a hearing;
3. all post-hearing procedures;
4. judicial review by any court;
5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
6. any and all claims that Respondents may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission Regulations, 17 C.F.R. §§ 148.1-30 (2015), 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) (2012);
3. orders Respondents to pay a civil monetary penalty in the amount of One Hundred Seventy-Five Million U.S. Dollars (\$175,000,000) plus post-judgment interest; and
4. orders Respondents and their successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

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

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondents shall cease and desist from violating Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2) (2012) of the Act.
- B. Respondents, jointly and severally, shall pay a civil monetary penalty of One Hundred Seventy-Five Million U.S. Dollars (\$175,000,000) within ten (10) days of the date of entry of this Order (the "CMP Obligation").²³ If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012). Respondents shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMK-326
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 is to be made by electronic funds transfer, Respondents shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondents and the name and docket number of this proceeding. The paying Respondents shall simultaneously 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.

²³ Effective June 18, 2008, the Act imposes a \$1,000,000 civil monetary penalty for each act of attempted manipulation in violation of the Act. Respondents' violations of the Act for attempted manipulation occurred after June 18, 2008.

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

1. PRINCIPLES²⁴

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

2. INTEGRITY AND RELIABILITY OF BENCHMARK INTEREST RATE SUBMISSIONS

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

²⁴ The following terms are defined as follows:

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

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

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

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

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

subject to applying appropriate Adjustments and Considerations in order to reflect the market measured by the Benchmark Interest Rate.²⁵

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

- Factor 1 — Respondents’ Borrowing or Lending Transactions Observed by Respondents’ Submitters:
 - a. Respondents’ transactions in the market as defined by the Benchmark Publisher for the particular Benchmark Interest Rate;
 - b. Respondents’ transactions in other markets for unsecured funds, including, but not limited to, certificates of deposit and issuances of commercial paper; and
 - c. Respondents’ transactions in various related markets, including, but not limited to, Overnight Index Swaps, foreign currency forwards, repurchase agreements, futures, and Fed Funds.
- Factor 2 — Third Party Transactions Observed by Respondents’ Submitters:
 - a. Transactions in the market as defined by the Benchmark Interest Rate relevant to each of the Submission(s);
 - b. Transactions in other markets for unsecured funds, including, but not limited to, certificates of deposit and issuances of commercial paper; and
 - c. Transactions in various related markets, including, but not limited to, Overnight Index Swaps, foreign currency forwards, repurchase agreements, futures, and Fed Funds.
- Factor 3 — Third Party Offers Observed by Respondents’ Submitters:
 - a. Third party offers to Respondents in the market as defined by the Benchmark Publisher relevant to each of the Submission(s);

²⁵ The rules used by Benchmark Publishers to determine Benchmark Interest Rates vary, may not be consistent with each other, and provide different levels of guidance as to how to make Submissions.

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

addressed above, Respondents may exclude such transactions from the determination of their Submission(s).

- ii. SUPERVISOR(S) REVIEW: Effective within fourteen (14) days of the entry of this Order, each daily Submission shall be reviewed by a Supervisor on a daily basis after the Submission(s) are made to the Benchmark Publisher.
- iii. QUALIFICATIONS OF SUBMITTER(S) AND SUPERVISOR(S): All Submitter(s) shall have significant experience in the markets for the Benchmark Interest Rate to which they are submitting or a comparable market, but may designate less experienced parties, who routinely work under their supervision, to make Submission(s) during limited periods of absence. All Supervisors shall have significant experience in the markets for the relevant Benchmark Interest Rate or a comparable market. Submitters, Supervisors and any parties designated to make Submission(s) when the Submitter(s) are absent shall not be assigned to any derivatives trading desk, unit or division within Respondents, or participate in derivatives trading other than that associated with Respondents' liquidity and liability management. The compensation of Submitter(s) and Supervisor(s) also shall not be directly based upon derivatives trading, other than that associated with Respondents' liquidity and liability management.
- iv. FIREWALLS: INTERNAL CONTROLS REGARDING IMPROPER COMMUNICATIONS AND SUBMISSIONS: Respondents shall implement internal controls and procedures to prevent improper communications with Submitter(s) and Supervisor(s) regarding Submission(s) or prospective Submission(s) to ensure the integrity and reliability of their Submission(s). Such internal controls and procedures shall include, but not be limited to:
 - The "firewalls" contemplated herein will be implemented through written policies and procedures that delineate proper and improper communications with Submitter(s) and Supervisor(s), whether internal or external to Respondents. For these purposes, improper communications shall be any attempt to influence Respondents' Submission(s) for the benefit of any derivatives trading position (whether of Respondents or any third party) or any attempt to cause Respondents' Submitter(s) to violate any applicable Benchmark Publisher's rules or definitions, or Section 2 of these Undertakings; and
 - A requirement that the Submitter(s) shall not be located in close proximity to traders who primarily deal in derivatives products that reference a Benchmark Interest Rate to which Respondents

contribute any Submission(s). The two groups should be separated such that neither can hear the other.

v. DOCUMENTATION: Respondents shall provide the documents set forth below promptly and directly to the Commission upon request, without subpoena or other process, regardless of whether the records are held outside of the United States, to the extent permitted by law.

- For each Submission, Respondents shall contemporaneously memorialize, and retain in an easily accessible format for a period of five (5) years after the date of each Submission, the following information:
 - a. The Factors, Adjustments and Considerations described in Section 2(i) above that Respondents used to determine their Submission(s), including, but not limited to, identifying any non-representative transactions excluded from the determination of the Submission(s) and the basis for such exclusions, as well as identifying all transactions given the greatest weight or considered to be the most relevant, and the basis for such conclusion;
 - b. All models or other methods used in determining Respondents' Submission(s), such as models for credit standards and/or term structure, and any adjustments made to the Submission(s) based on such models or other methods;
 - c. Relevant data and information received from interdealer brokers used in connection with determining Respondents' Submission(s) including, but not limited to, the following:
 - Identification of the specific offers and bids relied upon by Respondents when determining each Submission; and
 - The name of each company and person from whom the information or data is obtained;
 - d. Respondents' assessment of "reasonable market size" for their Submission(s) (or any other such criteria for the relevancy of transactions to a Benchmark Interest Rate), to the extent that the rules for a Benchmark Interest Rate require that pertinent transactions considered in connection with Submission(s) be of "reasonable market size" (or any other such criteria);

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

Submitter(s) and traders who primarily deal in derivatives products that reference a Benchmark Interest Rate; the records and reports shall be easily accessible and convertible into Microsoft Excel file format.

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

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

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

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

Nothing in these Undertakings shall limit, restrict or narrow any obligations pursuant to the Act or the Commission Regulations promulgated thereunder, including but not limited to Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31 and 1.35 (2015), in effect now or in the future.

vi. MONITORING AND AUDITING:

- Monitoring: Respondents shall maintain or develop monitoring systems or electronic exception reporting systems that identify possible improper or unsubstantiated Submissions. Such reports

will be reviewed on at least a weekly basis and if there is any significant deviation or issues, the underlying documentation for the Submission shall be reviewed to determine whether the Submission is adequately substantiated. If it is not substantiated, Respondents shall notify their chief compliance officer(s) and the Benchmark Publisher;

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

Submission(s). In addition, Respondents shall develop policies, procedures and controls to ensure the following:

- The supervision of the Submission process;
 - That any violations of the Undertakings or any questionable, unusual or unlawful activity concerning Respondent' Submissions are reported to and investigated by Respondent' compliance or legal personnel and reported, as necessary, to authorities and the Benchmark Publishers;
 - The periodic but routine review of electronic communications and audio recordings of or relating to the Submission Process;
 - Not less than monthly, the periodic physical presence of compliance personnel on the trading floors of the Submitter(s) and/or traders who primarily deal in derivatives products that reference a Benchmark Interest Rate in connection with these Policies, Procedures and Controls;
 - The handling of complaints concerning the accuracy or integrity of Respondent' Submission(s) including:
 - a. Memorializing all such complaints;
 - b. Review and follow-up by the chief compliance officer(s) or his designee of such complaints; and
 - The reporting of material complaints to the Chief Executive Officer and Board of Directors, relevant self-regulatory organizations, the relevant Benchmark Publisher, the Commission, and/or other appropriate regulators.
- viii. TRAINING: Respondents shall develop training programs for all employees who are involved in their Submission(s), including, without limitation, Submitters and Supervisors, and all traders who primarily deal in derivatives products that reference a Benchmark Interest Rate. Submitters and Supervisors shall be provided with preliminary training regarding the policies, and procedures and controls developed pursuant to Section 2(vii) of these Undertakings. By no later than December 31, 2016, all Submitters, Supervisors, and traders who primarily deal in derivatives products that reference a Benchmark Interest Rate shall be fully trained in the application of these Undertakings to them, as set forth herein. Thereafter, such training will be provided promptly to employees newly assigned to any of the above listed responsibilities, and again to all Submitters, Supervisors and traders who primarily deal in derivatives

products that reference a Benchmark Interest Rate as part of Respondents' regular training programs. The training shall be based upon the individual's position and responsibilities, and as appropriate, address the following topics:

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

ix. REPORTS TO THE COMMISSION:

- Compliance with Undertakings: Every four (4) months, starting 120 days from the entry of this Order, Respondents shall make interim reports to the Commission, through the Division, explaining their progress towards compliance with the Undertakings set forth herein. Within 365 days of the entry of this Order, Respondents shall submit a report to the Commission, through the Division, explaining how they have complied with the Undertakings set forth herein. The report shall attach copies of and describe the internal controls, policies and procedures that have been designed and implemented to satisfy the Undertakings. The report shall contain a certification from representatives of Respondents' Executive Management, after consultation with Respondents' chief compliance officer(s), that Respondents have

complied with the Undertakings set forth above, and that they have established policies, procedures and controls to satisfy the Undertakings set forth in this Order;

- Submitter(s), Supervisor(s), and Heads of Appropriate Trading Desks: Within fourteen (14) days of the entry of this Order, or as soon as practicable thereafter, but no later than July 31, 2016, Respondents shall provide, meet with and explain these Undertakings to all Submitters, Supervisors and the head of each trading desk that primarily deals in derivatives that reference a Benchmark Interest Rate. Within that same time frame, Respondents shall provide to the Commission, through the Division, written or electronic affirmations signed by each Submitter, Supervisor, and head of each trading desk that primarily deals in derivatives that reference a Benchmark Interest Rate, stating that he or she has received and read the Order and Undertakings herein, and that he or she understands these Undertakings to be effective immediately; and
- Disciplinary and Other Actions: Respondents shall promptly report to the Commission, through the Division, all improper conduct related to any Submission(s) or the attempted manipulation or manipulation of a Benchmark Interest Rate, as well as any disciplinary action, or other law enforcement or regulatory action related thereto, unless *de minimis* or otherwise prohibited by applicable laws or regulations.

3. DEVELOPMENT OF RIGOROUS STANDARDS FOR BENCHMARK INTEREST RATES

To the extent Respondents are or remain contributors to any Benchmark Interest Rate, Respondents agree to make their best efforts to participate in efforts by current and future Benchmark Publishers, other price reporting entities and/or regulators to ensure the reliability of Benchmark Interest Rates, and through their participation to encourage the following:

- i. METHODOLOGY: Creating rigorous methodologies for the contributing panel members to formulate their Submissions. The aim of such methodologies should be to result in a Benchmark Interest Rate that accurately reflects the rates at which transactions are occurring in the market being measured by that Benchmark Interest Rate;
- ii. VERIFICATION: Enforcing the use of those methodologies through an effective regime of documentation, monitoring, supervision and auditing, required by and performed by the Benchmark Publishers, and by the contributing panel members internally;

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

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

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

4. COOPERATION WITH THE COMMISSION

- i. Respondents shall cooperate fully and expeditiously with the Commission, including the Division, and any other governmental agency in this action, and in any investigation, civil litigation or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto. As part of such cooperation, Respondents agree to the following for a period of five (5) years from the date of the entry of this Order, or until all related investigations and litigation are concluded, including through the appellate review process, whichever period is longer:
 - Preserve all records relating to the subject matter of this proceeding, including, but not limited to, audio files, electronic mail, other documented communications, and trading records;
 - Subject to applicable laws and regulations, comply fully, promptly, completely, and truthfully with all inquiries and requests for information or documents;
 - Provide authentication of documents and other evidentiary material;
 - Subject to applicable laws and regulations, provide copies of documents within Respondents' possession, custody or control;
 - Subject to applicable laws and regulations, Respondents will make their best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of Respondents, regardless of the individual's location, and at such location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including, but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such proceeding, trial, or investigation; and
 - Subject to applicable laws and regulations, Respondents will make their best efforts to assist in locating and contacting any prior (as of

the time of the request) officer, director, employee, or agent of Respondents;

- ii. Respondents also agree that they will not undertake any act, other than as required by applicable law, that would limit their ability to cooperate fully with the Commission. Respondents will designate an agent located in the United States of America to receive all requests for information pursuant to these Undertakings, and shall provide notice regarding the identity of such Agent to the Division upon entry of this Order. Should Respondents seek to change the designated agent to receive such requests, notice of such intention shall be given to the Division fourteen (14) days before it occurs. Any person designated to receive such request shall be located in the United States of America; and
- iii. Respondents and the Commission agree that nothing in these Undertakings shall be construed so as to compel Respondents to continue to contribute Submission(s) related to any Benchmark Interest Rate. Without prior consultation with the Commission, Respondents remain free to withdraw from the panel of contributors to any Benchmark Interest Rate.

5. PROHIBITED OR CONFLICTING UNDERTAKINGS

Should the Undertakings herein be prohibited by, or be contrary to the provisions of any obligations imposed on Respondents by any presently existing, or hereinafter enacted or promulgated laws, regulations, regulatory mandates, or the rules or definitions issued by a Benchmark Publisher, then Respondents shall promptly transmit notice to the Commission (through the Division) of such prohibition or conflict, and shall meet and confer in good faith with the Commission (through the Division) to reach an agreement regarding possible modifications to the Undertakings herein sufficient to resolve such inconsistent obligations. In the interim, Respondents will abide by the obligations imposed by the law, regulations, regulatory mandates and Benchmark Publishers' rules and definitions. Nothing in these Undertakings shall limit, restrict or narrow any obligations pursuant to the Act or the Commission Regulations promulgated thereunder, including but not limited to Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31 and 1.35 (2015), in effect now or in the future.

6. PUBLIC STATEMENTS


Respondents agree that neither they nor any of their successors and assigns, agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondents' (i) testimonial obligations, or (ii) right to take positions in

other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.

- D. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission of partial payment of Respondents' CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

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

By the Commission.



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

Dated: May 25, 2016