RECEIVED CFTC
Office of Proceedings
Proceedings Clerk
1:16 pm, Aug 29, 2018

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of: BNP Paribas Securities Corp., Respondent.	CFTC Docket No. 18–19

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") has reason to believe that BNP Paribas Securities Corp. ("Respondent," "BNPP," or the "firm") has violated the Commodity Exchange Act (the "Act" or "CEA") and Commission Regulations ("Regulations"). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein, and to determine whether any order shall be issued imposing remedial sanctions.

II.

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

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

III.

The Commission finds the following:

A. Summary

Beginning in or about May 2007 and continuing through at least August 2012 (the "Relevant Period"), BNPP, by and through certain of its traders, attempted to manipulate the U.S. Dollar International Swaps and Derivatives Association Fix ("USD ISDAFIX" or the "benchmark"), a leading global benchmark referenced in a range of interest rate products, to benefit BNPP's derivatives positions in instruments such as cash-settled options on interest rate swaps and certain exotic structured products.[2]

ISDAFIX rates and spreads were published daily and were meant to indicate the prevailing mid-market rate, at a specific time of day, for the fixed leg of a standard fixed-for-floating interest rate swap.[3] They were issued in several currencies. USD ISDAFIX rates and spreads were published for various maturities of U.S. Dollar-denominated swaps, including 1-year to 10-years, 15-years, 20-years, and 30-years. The most widely used USD ISDAFIX rates and spreads, and the ones at issue in this Order, were those that are intended to indicate the prevailing market rate as of 11:00 a.m. Eastern Time. The 11:00 a.m. USD ISDAFIX rate was used for cash settlement of options on interest rate swaps, or swaptions, and as a valuation tool for certain other interest rate products, including, for example, various proprietary interest rate indices and structured products.

During the Relevant Period, USD ISDAFIX was set each day in a process that began at 11:00 a.m. Eastern Time with the capture and recording of swap rates and spreads from a U.S. based unit of a leading interest rate swaps broking firm ("Swaps Broker"). Swaps Broker disseminated rates and spreads captured in this snapshot as references to a panel of banks. These reference points taken at 11:00 a.m. (which were calculated using swap spread trade data from Swaps Broker, U.S. Treasuries electronic trade data from Swaps Broker, and Eurodollar futures data at or around 11:00 a.m.) were sometimes referred to as the "fix" or "print" by traders and brokers. After the 11:00 a.m. reference rates and spreads were disseminated by Swaps Broker to the panel banks, the panel banks then made submissions to Swaps Broker. Each bank's submission was supposed to reflect the midpoint of where that dealer would itself offer and bid a swap to a dealer of good credit as of 11:00 a.m. Eastern Time. Most banks on the panel, including BNPP, usually submitted Swaps Broker's reference rates and spreads as captured in the snapshot. As a result, after an averaging of the submissions, the reference rates and spreads became the published USD ISDAFIX almost every day.

---

[2] While the Relevant Period extends from in or about May 2007 through at least August 2012, a substantial majority of the violations occurred before 2011, of which most were in 2008.

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

On certain days on which BNPP had a derivatives position settling or resetting against USD ISDAFIX, certain individuals at BNPP attempted to manipulate USD ISDAFIX rates through trading at the 11:00 a.m. fixing and, on occasion, by making false submissions to Swaps Broker that were skewed to benefit derivatives positions held by BNPP. BNPP's unlawful conduct involved multiple traders, including supervisors such as the then-heads of the relevant BNPP swaps and options desks in the United States.

First, certain BNPP traders bid, offered, and executed transactions in targeted interest rate products, including swap spreads, at or near the critical 11:00 a.m. fixing time with the intent to affect the reference rates and spreads captured by Swaps Broker and sent to submitting banks, and thereby to affect the published USD ISDAFIX. As captured in contemporaneous communications, on some occasions when BNPP had derivatives positions settling or pricing against USD ISDAFIX, its traders discussed, both among themselves and with Swaps Broker employees, their intent to move USD ISDAFIX rates in whichever direction benefitted their positions. Certain BNPP traders on occasion described such attempts to manipulate USD ISDAFIX as ways to "play the fixing," "push the screen," and "play[] the screen game."[4] On one occasion, BNPP options and swaps traders likened their illegal efforts to manipulate USD ISDAFIX to lyrics of popular songs:

BNPP Options Trader:	that's a great fixing
BNPP Swaps Trader:	this is how we do it here :-P[5]
BNPP Options Trader:	push it real good[6]

Second, on occasion, certain traders at BNPP attempted to manipulate USD ISDAFIX by making false submissions to Swaps Broker for BNPP as a panel bank, skewing the rates and spreads submitted in the direction that could have moved the USD ISDAFIX setting to benefit BNPP's trading positions. A bank's derivatives trading positions or profitability are not legitimate or permissible factors on which to base submissions in connection with a benchmark. Yet on occasion within the Relevant Period, BNPP traders made USD ISDAFIX submissions higher or lower than the reference values disseminated by Swaps Broker for the purpose of benefitting derivatives positions priced or valued against the benchmark. On these occasions, BNPP's USD ISDAFIX submissions constituted false, misleading, or knowingly inaccurate reports because they purported to reflect BNPP's honest view of the true costs of entering into a standard fixed-for-floating interest rate swap in a particular tenor with another dealer of good credit in the interdealer market, but in fact reflected traders' desire to move USD ISDAFIX higher or lower in order to benefit BNPP's positions. These submissions were false, misleading, or knowingly inaccurate because they did not report where BNPP would itself bid or offer

[4] Unless otherwise indicated, quotations in this Order are drawn from communications, typically emails and instant messages, between and among traders and brokers during the Relevant Period.

[5] Montell Jordan, "This Is How We Do It," on *This Is How We Do It* (Def Jam Recordings 1995).

[6] Salt-n-Pepa, "Push It," on *Hot, Cool & Vicious* (Next Plateau Records 1987) (reissue).

interest rate swaps to a dealer of good credit absent a desire to manipulate USD ISDAFIX, but rather reflected prices that were more favorable to the Bank on specific positions.

* * *

In accepting BNPP's Offer, the Commission recognizes Respondent's significant cooperation during the Division of Enforcement's investigation of this matter. The Commission recognizes that BNPP provided important information to the Division that helped the Division efficiently and effectively to undertake its investigation. The Commission further recognizes that BNPP commenced significant remedial action to improve internal controls and policies related to all benchmarks, including ISDAFIX and its successor benchmark, independent of the Commission's investigation.

B. Respondent

BNP Paribas Securities Corp. is a financial services firm organized under the laws of Delaware with its principal office located in New York, New York. It is an approved swap firm with and member of the National Futures Association, and is registered with the Commission as a Futures Commission Merchant ("FCM").

C. Facts

1. USD ISDAFIX Setting

USD ISDAFIX rates and spreads were benchmarks that indicated prevailing market rates for "plain-vanilla" interest rate swaps.[7] The 11:00 a.m. USD ISDAFIX was set during the Relevant Period using a combination of swap spread trade data from Swaps Broker,[8] electronic trading in U.S. Treasuries and Eurodollar futures, and submissions from a panel of swap dealer banks, including BNPP.

Swaps Broker's medium-term USD swap desk ("MTS Desk") functioned much like a traditional futures trading pit. Brokers on the desk sat (or stood) together and each serviced a number of major swap dealer banks, to whom they were connected throughout the trading day by direct phone lines and speaker boxes. The brokers communicated their clients' bids and offers

---

[7] The term "swap" is defined in CEA Section 1a(47), 7 U.S.C. § 1a(47) (2012). Here, a "plain-vanilla" interest rate swap is generally an ongoing exchange of fixed payments for floating payments, wherein one party to a swap pays a fixed rate on a set notional amount (the party who "pays fixed" is said to have "bought" the swap, or to be "long" the swap) and the other party pays a floating rate generally tied to three-month LIBOR (the party who "receives fixed" is said to have "sold" the swap, or to be "short" the swap). The "maturity" or "tenor" of a swap refers to the number of years over which counterparties exchange payments.

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

by open outcry to the entire MTS Desk and all of the brokers simultaneously. Any client could accept a bid or offer. Once a broker confirmed that a client was "hitting" a bid, "lifting" an offer, or was otherwise "done" in a designated notional amount (either a minimum default amount or a greater amount), the trade between the counterparties was executed and the counterparties received a confirmation of the trade.

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

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

Minutes after the 11:00 a.m. snapshot of the 19901 was taken, Swaps Broker distributed its reference rates and spreads to a panel of fourteen or more contributing banks, which either accepted and submitted the reference rates and spreads as their own or submitted adjusted levels. Each bank, including BNPP, was expected to submit "the mean of where that dealer would itself offer and bid a swap in the relevant maturity for a notional equivalent amount of USD $50 million or whatever amount is deemed market size in that currency for that maturity to an acknowledged dealer of good credit in the swap market."[9] In making their submissions, banks could change the prices for all rates and spreads across all maturities in their submissions; change any subset, including any single rate or spread; or change none at all and simply submit the reference rates and spreads. Alternatively, a panel bank could make no submission at all. After a quorum of contributing banks made their submissions, a calculation agent eliminated the highest and lowest submissions (known as "topping and tailing") and averaged the remaining

[9] *See* ISDA, *ISDAFIX*, https://web.archive.org/web/20140209180148/http:/www2.isda.org/asset-classes/interest-rates-derivatives/isdafix/.

submissions. The submission and calculation process was generally completed in the half hour following 11:00 a.m., after which the results were accessible to the public through a subscription-based news service.

In practice, most panel banks accepted Swaps Broker's reference rates and spreads as their default submissions. Thus, as traders at panel banks knew, after "topping and tailing," Swaps Broker's reference rates and spreads usually became the final published USD ISDAFIX benchmarks. BNPP traders at times communicated with Swaps Broker's MTS Desk just after 11:00 a.m. to find out where the "print" came out, because the traders understood that the 11:00 a.m. levels usually became the final published USD ISDAFIX benchmarks.

2. BNPP's Trading Groups

Through the Interest Rate Trading group of BNPP's Fixed Income division, BNPP traded interest rate swaps, swaptions, exotic interest-rate derivatives, U.S. Treasuries, and a variety of other products. Within that trading group, BNPP's U.S. Dollar Long Term Interest Rate desk (the "Swaps Desk") transacted and held, among other products, swaps positions. Another desk within that trading group, BNPP's USD Interest Rates Options trading desk (the "Options Desk"), transacted and held, among other products, vanilla swaption and exotics option positions. A third desk within the group, BNPP's U.S. Treasuries trading desk (the "Treasuries Desk") transacted and held, among other products, U.S. Treasuries positions. In New York, these desks were generally located in close proximity.

3. BNPP's Role in USD ISDAFIX Setting

Throughout the Relevant Period, BNPP was one of the panel banks that submitted rates and spreads for the determination of USD ISDAFIX. The Swaps Desk had primary responsibility for the U.S. Dollar swaps business, and an individual on the Swaps Desk, typically the most junior trader, was responsible for BNPP's USD ISDAFIX submissions.

Before January 2011, when BNPP made a submission to the ISDAFIX dealer poll, the Swaps Desk typically, though not always, ratified the reference rates and spreads disseminated by Swaps Broker based on the 11:00 a.m. "snapshot." Between January 2011 and June 2012, BNPP generally made no submissions at all.

Before early 2013, BNPP either had no, or did not have adequate, specific internal controls or procedures, written or otherwise, in place regarding how USD ISDAFIX submissions should be determined or monitored. BNPP ISDAFIX submitters received no formal training on making USD ISDAFIX submissions, and BNPP did not require submissions to be documented.

4. BNPP's Positions with Exposure to USD ISDAFIX

As described in more detail below, BNPP traders engaged in attempts to manipulate USD ISDAFIX for two primary reasons: (1) to maximize profit (or minimize loss) for the Options Desk in connection with the desk's swaption cash settlements; and (2) to maximize profit (or minimize loss) for the Options Desk in connection with exotics positions, including various constant maturity swap ("CMS") products.

BNPP traders' attempts to move USD ISDAFIX rates in BNPP's favor, if successful, would hurt the firm's counterparties in cash settlements and resets, as well as any other market participants who had positions referencing USD ISDAFIX on a given day that were directionally equivalent to BNPP's counterparties' in the same maturity. A small movement of the benchmark higher or lower (e.g., one basis point or less) could result in meaningful gain for BNPP on its cash settlements, resets, and accruals.

a. Vanilla Swaption Positions Held by the Options Desk

During the Relevant Period, certain traders on BNPP's Options Desk, in coordination with certain traders on the Swaps Desk, attempted to manipulate USD ISDAFIX in order to benefit the Options Desk's derivatives positions, such as by increasing their payments from counterparties, or decreasing payments to counterparties, in swaption cash settlements.

A European swaption, one of the products traded by the Options Desk, is an option to enter into a plain-vanilla fixed-for-floating interest rate swap, which may be exercised at 11:00 a.m. on a specified "expiry" date in the future at a pre-agreed fixed "strike" rate. A swaption can be exercised by "physical" delivery of the underlying swap, or by cash settlement in reference to a benchmark rate. Swaption cash settlements denominated in U.S. Dollars are typically calculated based on USD ISDAFIX rates according to a formula that measures the difference between the relevant USD ISDAFIX rate on the expiry date and the strike rate of the swaption. In any cash-settling swaption, the Options Desk's incentive to push USD ISDAFIX higher or lower depended on (1) whether BNPP was the owner (buyer) or seller of the swaption and (2) whether the swaption conferred the right to pay or receive the fixed rate in the underlying swap. The Options Desk also traded products consisting of combinations of swaptions, such as straddles, and other products for which cash settlements were similarly calculated based on the relevant USD ISDAFIX rate at expiry and therefore created similar incentives for BNPP traders to attempt to push USD ISDAFIX rates in the firm's favor.

b. Exotics Positions Held by the Options Desk

During the Relevant Period, traders on BNPP's Options Desk, in coordination with the Swaps Desk, also attempted to manipulate USD ISDAFIX in order to benefit the desks' derivatives positions in connection with various exotic derivatives instruments, such as the periodic resets and settlements of CMS products.[10]

[10] A "constant maturity swap," or "CMS," is a swap in which the rate of one leg of the swap is periodically reset (or "fixed") with reference to a long-term interest rate. The BNPP Options Desk held numerous CMS positions during the Relevant Period that periodically reset with reference to USD ISDAFIX. The BNPP Options Desk's positions included not only vanilla or "building block" positions, but also more sophisticated exotic products such as CMS spread swaps, various path-dependent and range-accrual products, and volatility or correlation products. On reset or "fixing" days, depending on the terms of a given CMS product, the BNPP Options Desk could benefit from causing the relevant USD ISDAFIX rate to set higher or lower. BNPP traders were sensitive to their profits and losses in connection with CMS resets.

BNPP options traders managed exotics positions priced or fixed based on the 11:00 a.m. USD ISDAFIX, including tracking what traders called "fixing P&L," i.e., the profit or loss of certain exotics positions attributable to the day's USD ISDAFIX. At times during the Relevant Period, BNPP's exposure in connection with the 10-year, 30-year 11:00 a.m. USD ISDAFIX curve—meaning the difference, or spread, between the 10-year and 30-year levels—could be substantial. For example, a communication among BNPP options traders reflects that certain of BNPP's exotics positions in 2008 benefited in the amount of roughly $700,000 each day that the 10-year, 30-year fixing was below zero (i.e., when the 10-year USD ISDAFIX level exceeded the 30-year USD ISDAFIX level, sometimes described as when the 10-year, 30-year curve was "inverted").

5. Means Employed in BNPP's Attempts To Manipulate USD ISDAFIX

Given these financial incentives, certain BNPP traders understood and employed two primary means to attempt to manipulate USD ISDAFIX rates. One method was to bid, offer, and trade the instruments that could influence Swaps Broker's reference rates—such as swap spreads traded through Swaps Broker—at and around Swaps Broker's 11:00 a.m. print, in a manner designed to push USD ISDAFIX rates in a favorable direction. Another method employed on some occasions by certain BNPP traders in attempts to manipulate USD ISDAFIX rates was making false submissions.

Using each of these means, at times independently and at times in combination, BNPP traders sought the same illicit goal: to move USD ISDAFIX in the direction that was best for BNPP at the expense of its counterparties, including at times other dealers.

a. BNPP's Improper Trading Conduct

As described below, BNPP traders attempted to manipulate USD ISDAFIX through improper trading conduct relating to the inputs to Swaps Broker's 11:00 a.m. reference values. Such trading strategies at times were a regular practice at BNPP, and some supervisors were not only aware of subordinates executing such trading strategies, but at times executed them directly.

During the Relevant Period, in order to benefit the Options Desk's related positions, BNPP traders bid, offered, and/or executed swap spread trades[11] at or around 11:00 a.m. to affect prices on the 19901 screen and thereby increase or decrease Swaps Broker's reference rates and spreads and influence the final published USD ISDAFIX.[12]

---

[11] There is also evidence that, on occasion, certain BNPP traders also bid, offered, and/or executed trades in U.S. Treasuries on Swaps Broker's proprietary electronic bond trading platform (for 2-year through 30-year maturities) in attempts to increase or decrease Swaps Broker's reference rates and spreads and thereby to influence the final published USD ISDAFIX.

[12] BNPP traders referred to trades that they made around 11:00 a.m. for risk management purposes as hedging. When BNPP's derivatives products cash-settled, reset, or otherwise fixed to a benchmark, changes in the desks' risk positions could potentially cause traders to seek hedging trades, depending on a variety of factors, including the risk profile of other positions and whether the desk wanted to keep any resulting risk. Likewise, with internal USD

Internally, BNPP traders recognized that "11am print manipulation" could present both risks and opportunities for the bank, including for sophisticated exotics positions that the Options Desk held, such as correlation and volatility swaps. BNPP traders explicitly coordinated their efforts to influence the 11:00 a.m. USD ISDAFIX in accordance with the preferences expressed by BNPP options traders. For example, in group chats among BNPP options traders, swaps traders, and Treasuries traders, in reference to the fixing of the 10-year and 30-year 11:00 a.m. USD ISDAFIX curve,[13] BNPP options traders stated:

- "for 11 am . . . I'd like the 10s30s to be as steep as possibl[e]"
- "we're going to have 250k on the 11am today . . . we want the finxing [sic] to be as steep as possible"
- "at 11am we want to fix as low as possible"

To move USD ISDAFIX in the direction or directions desired by the Options Desk, BNPP swaps traders at times strategized with Swaps Broker employees, whose help the traders enlisted to accomplish their goals. For example, on various occasions, BNPP swaps traders discussed with Swaps Broker employees the traders' intention to achieve certain swap spread screen prints or directional moves at 11:00 a.m., rather than a desire to buy or sell a specific amount of swap spreads. For instance, one Swaps Broker employee and a BNPP swaps trader discussed how "the easiest way to accomplish the screen print is by hitting the bid and keeping offered at the hit price." To affect the USD ISDAFIX print more effectively and at minimal cost, BNPP swaps traders also typically timed their trading activity to try to be the last screen-moving event before the 11:00 a.m. print. For example, at various times during the Relevant Period, BNPP swaps traders discussed with their broker how to achieve the desired screen moves for the 11:00 a.m. print through careful timing:

Swaps Broker employee:	The fixing is set at 11:00:00 not before . . . if u want to move the screen, [BNPP's primary broker at Swaps Broker] was probably suggesting u start at 10:59:50
BNPP swaps trader:	I see. thanks

ISDAFIX-related trades between desks, the desk taking on new risk, depending on a variety of factors, might have a reason or desire to hedge. Irrespective of whether the BNPP traders had an interest in hedging, the traders engaged in attempted manipulation when they placed bids and offers or executed trades around 11:00 a.m. with the improper intent to move the USD ISDAFIX rate in BNPP's favor.

[13] The 10-year, 30-year swap curve—the line between those two points—is said to "steepen" if the slope of the line between the 10-year and 30-year points increases, and to "flatten" if the slope of between the 10-year and 30-year points decreases. Relatedly, a "steepener" position profits when the swap curve steepens, and a "flattener" position profits when the swap curve flattens.

Similarly, another of BNPP's brokers at Swaps Broker wrote to a BNPP Swaps Desk trader advising on how to best time trades to achieve a desired swap spread level at 11:00 a.m.: "U MIGHT HAVE TO HIT OR LIFT AT 10.59 -55 SEC TO MAKE SURE NO ONE HAS TIME TO C[O]UNTER IT."

When BNPP's brokers failed to achieve the desired effects on the 11:00 a.m. print level, BNPP traders occasionally were forgiving. For example, on a day where the Swaps Broker employee at the BNPP swaps trader's direction had attempted to push up the 11:00 a.m. print in order to benefit BNPP's related positions, but failed to do so, the BNPP swaps trader graciously accepted an apology:

Swaps Broker employee:	SRY MAN , I TRIED TO PUSH IT UP
BNPP swaps trader:	that's ok - as long as you do your max it's all good

On other occasions, BNPP swaps traders made their sharp disapproval clear. For example, a BNPP trader terminated all dealings with a Swaps Broker employee in large part because, according to the BNPP trader, the broker "missed the screen game." On another occasion, a BNPP swaps trader angrily complained to primary broker at Swaps Broker that the trader was being mocked by traders at other dealers for not being able to play the screen game successfully. As a consequence, the trader wrote to the broker at Swaps Broker threatening to penalize the broker by not trading at all with the broker for a period of time: "my short term guy got a bloomberg from his friend at [another dealer] teasing him about me saying about us and our inability to play screen games. very flattering . . . . You're out!" Reflecting on the heated interactions that often surrounded the critical 11:00 a.m. fixing time, a BNPP trader remarked to a Swaps Broker employee: "the infamous 11 o'clock! [T]here should be a book about it."

In attempts to push USD ISDAFIX higher or lower, BNPP traders were even willing at times to buy higher or sell lower than the market required because they expected to benefit the Options Desk's cash settlements or resets to an extent that would likely exceed, but at least cover, any resulting trading losses incurred through such trading. Similarly, BNPP traders at times were willing to enter into positions that increased rather than decreased their risk exposure—i.e., the opposite of hedging—because the anticipated benefits of moving the USD ISDAFIX rate or rates in BNPP's favor exceeded any likely downside to BNPP. BNPP traders at times were explicit about the fact that risk mitigation played little or no role in their decision to trade at or around 11:00 a.m. The following exchange reflects (1) BNPP traders' understanding that the bank would benefit from a "flatter" 11:00 a.m. USD ISDAFIX curve (i.e., a higher 10-year fixing relative to the 30-year fixing); (2) the fact that the Options Desk already held a flattener position, and so risk would be increased, not mitigated, by entering into further flattener positions; and (3) the intent to engage in additional trading, not for the purpose of risk mitigation, but rather for the purpose of moving the relevant USD ISDAFIX levels in the desired direction:

BNPP swaps trader:	what about 11am ? obviously you need it flatter right ?
BNPP options trader:	Yes . . . .
BNPP swaps trader:	ok
BNPP options trader:	but we have little risk to trade
BNPP swaps trader:	yeah bad day today, you need it flatter but you already have the flattener
BNPP options trader:	exactly
BNPP swaps trader:	we'll try to make it happen for you . . . will try to use the smallest amount for 11[.]

Within the bank, certain BNPP traders openly discussed the practice of trying to move market levels in order to benefit the Options Desk's positions. For example, in widely distributed end-of-day e-mails sent to numerous BNPP traders and supervisors including heads of desks, a BNPP options trader explicitly reported the BNPP options and swaps desks' coordinated efforts to move 10-year and 30-year USD ISDAFIX rates for the benefit of the options desk's positions. One such e-mail stated: "We did well on the 11am fixing, cooperating with the swaps desk to push the screen substantially towards yesterday fixing." In another broadly distributed e-mail, a BNPP options trader wrote: "Swaps did a good job of pushing the 10-30 fixing to the high of the day with little ammo."[14]

b. BNPP's False, Misleading, or Knowingly Inaccurate Submissions

During the Relevant Period, on occasion before December 2010, certain BNPP traders also attempted to manipulate USD ISDAFIX by causing the firm to make false, misleading, or knowingly inaccurate submissions to Swaps Broker concerning swap rates and spreads.

For example, in July 2009, on a day when a BNPP options trader stood to benefit from a favorable one-year USD ISDAFIX move, the options trader wrote to the BNPP swaps trader who would make the submission to confirm the trader was "contributing the 1y swap rate ISA DIX [sic] at 11am" and to request an improper submission in that tenor in order to benefit a related swaption cash settlement:

> just have a cash settlement today on an option, if it does not hurt you, do you mind sending a high number ? (I mean high rate) . . . .

[14] The words "ammo" and "ammunition" on occasion were used by BNPP traders to refer to the amount they were willing to trade in order to influence the fixing at 11:00 a.m.

> if you can do anything, would rather see a high fixing on the 1y swap rate at 11am[.]

After confirming details with the BNPP options trader making the request, the BNPP swaps trader changed BNPP's submission in order to favor the Options Desk's related position. The options trader replied, "ok cool, thanks a lot !" The swaps trader responded, "np," an abbreviation of "no problem."

Multiple BNPP Options Desk traders engaged in communications about USD ISDAFIX submissions with BNPP Swaps Desk traders, and supervisors on the Swaps Desk and Options Desk were aware of such requests and their connection to swaption cash settlements and/or CMS resets. When a request from the Options Desk for a high or low submission occurred before 11:00 a.m., the timing in itself revealed that the submission requested could not have been an accurate reflection of where BNPP saw the swap market at 11:00 a.m.

6. Additional Examples of Attempted Manipulation To Benefit the Options Desk's ISDAFIX-Related Derivatives Positions

During the Relevant Period, BNPP traders on the Swaps Desk and the Options Desk used various means in attempts to move USD ISDAFIX higher or lower, in order to get more from, or pay less to, their counterparties in cash-settled swaptions and other derivatives, such as CMS products, that referenced USD ISDAFIX. The following provide further examples and details of BNPP traders' attempts to manipulate USD ISDAFIX rates in order to benefit derivatives positions that were tied to USD ISDAFIX that day.

- In April 2008, the Options Desk stood to benefit from a steeper 10-year, 30-year 11:00 a.m. USD ISDAFIX curve (i.e., a lower 10-year level relative to a higher 30-year level) because of the desk's CMS positions. Communicating the desired effect on USD ISDAFIX, a BNPP options trader wrote in a group chat including several BNPP options, swaps, and Treasuries traders: "a heads up . . . we're probably going to have around 300k riding on the 10s30s fixing today . . . we will hope the fixing is as high as possible at 11." A BNPP swaps trader repeated with emphasis, "ok you need the fixing to be AS HIGH AS POSSIBLE," and the options trader confirmed, "correct." The swaps trader then stated, "i got you – we'll play it." BNPP traders then acted in concert to try to achieve the desired fixing. First, attempting to manipulate USD ISDAFIX, shortly before 11:00 a.m., the BNPP swaps trader traded 30-year swaps spreads through Swaps Broker, thereby putting upward pressure on the 30-year USD ISDAFIX and thus steepening pressure on the 10-year, 30-year USD ISDAFIX curve. Second, also shortly before 11:00 a.m., a BNPP Treasuries trader bought 10-year Treasuries and sold 30-year Treasuries, putting downward pressure on the 10-year USD ISDAFIX and upward pressure on the 30-year USD ISDAFIX, and thus steepening pressure on the 10-year, 30-year USD ISDAFIX curve. Finally, shortly after 11:00 a.m., the BNPP swaps desk also submitted 30-year spreads and rates that were higher than the reference values distributed by Swaps Broker in an attempt to push USD ISDAFIX in that maturity in the direction that would benefit BNPP.

- In May 2008, the Options Desk stood to benefit from a lower 30-year 11:00 a.m. USD ISDAFIX because of the desk's CMS positions. To convey the desired effect on the relevant USD ISDAFIX tenor, a BNPP options trader wrote in a group chat involving BNPP options, swaps, and Treasuries traders: "FYI, we want 30y low for the fixing." In reply, a BNPP swaps trader inquired into how much the options trader was willing to trade in order to achieve the desired lower 30-year USD ISDAFIX: "how much ammo do you have?" Then, shortly before 11:00 a.m., in order to benefit the Options Desk's position, BNPP Swaps Desk traders engaged in the selling of 30-year swap spreads through Swaps Broker, thereby putting downward pressure on the 30-year USD ISDAFIX. Shortly after 11:00 a.m., the BNPP Swaps Desk also submitted 30-year spreads and rates that were lower than the reference values distributed by Swaps Broker in an attempt to push 30-year USD ISDAFIX in the direction that would benefit BNPP. Later that day, a BNPP options trader wrote to a BNPP swaps trader to express appreciation for efforts relating to the day's "screen game": "thank you very much for your help today. [Y]ou were terrific."

- In August 2008, the Options Desk stood to benefit from a steeper 10-year, 30-year 11:00 a.m. USD ISDAFIX curve (i.e., a lower 10-year rate relative to a higher 30-year rate) because of the desk's CMS positions. Before 11:00 a.m., the Swaps Desk and Options Desk traders discussed their plan to manipulate USD ISDAFIX. First, a Swaps Desk trader confirmed with an Options Desk trader both the desired effect on the 10-year, 30-year ISDAFIX curve ("you'll need steeper") and the fact that the Options Desk wanted a steeper USD ISDAFIX but already held a 10-year, 30-year steepener position and thus had no hedging need for additional steepener positions ("you'll need steeper but you already have the steepener"). The Swaps Desk trader further confirmed with an Options Desk trader the amount available for trading ("let me know how much you're willing to spend"), and, upon learning the amount was modest, noted the greater difficulty of trying to manipulate without being willing to trade larger amounts ("it's not much - will try to play some magic"). The Options Desk trader replied, "you can do it." In execution of this plan, shortly before 11:00 a.m., BNPP Swaps Desk traders bought 30-year swap spreads through Swaps Broker.

- In October 2008, the Options Desk stood to benefit from a steeper 10-year, 30-year 11:00 a.m. USD ISDAFIX curve (i.e., a lower 10-year rate relative to a higher 30-year point) because of the desk's exotics positions. Before 11:00 a.m., Options Desk traders discussed the desk's approach to the upcoming 11:00 a.m. fixing, given the desk's significant existing exotics positions. One trader asked: "whats [sic] going on with the 11am fix, and whats [sic] the desk strategy?" In response, another Options Desk trader explained the amount and direction of anticipated trading in the 10-year, 30-year curve, as well as the purpose, namely, to accomplish a steeper 10-year, 30-year curve at the 11:00 a.m. fixing: "500k of steepening to move the screen up." To execute this strategy for the benefit of the Options Desk's positions, shortly before 11:00 a.m., the BNPP Swaps Desk submitted bids and offers and executed trades through Swaps Broker in 10-year and 30-year tenors. In addition, shortly before 11:00 a.m. BNPP traders bought 10-year Treasuries and sold 30-year Treasuries. Combined, this trading put downward pressure on the 10-year USD ISDAFIX and upward pressure on the 30-year USD ISDAFIX, and thus steepening pressure on the 10-year, 30-year USD ISDAFIX curve.

- In February 2010, the Options Desk stood to benefit from a higher 5-year 11:00 a.m. USD ISDAFIX in connection with the cash settlement of a 5-year swaption position that it held with another dealer. To benefit this position, shortly before 11:00 a.m. a BNPP Swaps Desk trader bought 5-year swap spreads that were brokered by Swaps Broker, thus putting upward pressure on the 11:00 a.m. fixing in that tenor. In addition, shortly before 11:00 a.m. BNPP traders sold 5-year Treasuries, thereby putting upward pressure on the 5-year USD ISDAFIX. Shortly after 11:00 a.m., the BNPP swaps desk also submitted a 5-year rate that was higher than the reference rate disseminated by Swaps Broker in an attempt to manipulate USD ISDAFIX higher in that maturity.

* * *

IV.

LEGAL DISCUSSION

A. Jurisdiction

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

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

Lastly, as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), the Commission also has authority to initiate proceedings and impose sanctions for a broader range of manipulative conduct and false reporting, including in connection with any swap. *See* CEA §§ 6(c)(1), 6(c)(1)(A), 6(c)(3), 6(d), 9(a)(2), 7 U.S.C. §§ 9(1), 9(1)(A), 9(3), 13b, 13(a)(2) (2012); 17 C.F.R. §§ 180.1(a), 180.2 (2018). The Relevant Period encompasses conduct that occurred after the passage and effective date of the Dodd-Frank Act.

B. Respondent Attempted To Manipulate USD ISDAFIX

Section 9(a)(2) of the Act makes it unlawful for "[a]ny person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity." With respect to conduct on or after July 16, 2011, amended Section 9(a)(2) of the Act also makes it unlawful to manipulate or attempt to manipulate the price of "any swap."

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

> has reason to believe that any person . . . has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, . . . or otherwise is violating or has violated any of the provisions of [the] Act.

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

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

> unlawful . . . , directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to . . . (1) [u]se . . . or attempt to use . . . any manipulative device; (2) [m]ake, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; (3) [e]ngage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person; or, (4) [d]eliver or cause to be delivered, or attempt to deliver or cause to be delivered, for transmission through the mails or interstate commerce, . . . a false or misleading or inaccurate report concerning . . . market information or conditions that affect or tend to affect the price of any commodity in interstate commerce.

Section 6(c)(3) of the Act prohibits the attempted manipulation of the price of any commodity in interstate commerce and Regulation 180.2 makes it "unlawful . . . directly or indirectly, to . . . attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity." To prove attempted manipulation under Sections 9(a)(2) and 6(c)(3) of the Act and Commission Regulation 180.2, the following two elements are required: (1) an intent to affect market price, and (2) an overt act in furtherance of that intent. *See In re Hohenberg Bros. Co.,* CFTC No. 75-4, 1977 WL 13562, at *7 (Feb. 18, 1977). To prove the intent element of attempted manipulation, the respondent must have "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 Ind. Farm Bureau Coop. Ass'n*, CFTC No. 75-14, 1982 WL 30249, at *7 (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*.'" *Ind. Farm Bureau*, 2016 WL 7229056, at *12 (emphasis added) (quoting *United States v. U.S. Gypsum Co.*, 438 U.S. 442, 445 (1978)). A profit motive may also be evidence of intent, although profit motive is not a necessary element of an attempted manipulation. *See In re DiPlacido*, CFTC No. 01-23, 2008 WL 4831204, at *29 (Nov. 5, 2008) (citing *In re Hohenberg Bros. Co.*, CFTC No. 75-4, 1977 WL 13562, at *8), *aff'd sub. nom. DiPlacido v. CFTC*, 364 Fed. App'x 657 (2d Cir. 2009). It is also not necessary that there be an actual effect on price. *See CFTC v. Amaranth Advisors, L.L.C.*, 554 F. Supp. 2d 523, 533 (S.D.N.Y. 2008).

1. Respondent Attempted To Manipulate USD ISDAFIX Through Improper Trading Conduct

As evidenced by communications among BNPP traders and between BNPP traders and their brokers, as well as testimony and traders' actual trading conduct, BNPP traders on occasion specifically intended to manipulate USD ISDAFIX by placing bids or offers or executing trades in the moments leading into 11:00 a.m. designed in a manner, including timing and pricing, to increase or decrease swap spreads at 11:00 a.m., with the intent to affect levels reported on the 19901 screen and USD ISDAFIX fixings. Moreover, the evidence reflects that the traders intended such trading conduct to affect the fixings in order to benefit BNPP's trading positions against the firm's counterparties.

The BNPP traders' bids, offers, and executed trades in the moments leading into 11:00 a.m., which were intended to manipulate USD ISDAFIX, as well as the traders' communications with each other and with their Swaps Broker brokers to plan and execute this trading conduct, constituted overt acts in furtherance of their intent to manipulate USD ISDAFIX. By doing so, the BNPP traders engaged in acts of attempted manipulation in violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2012); Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9, 13b (2006), for conduct occurring before August 15, 2011; and Sections 6(c)(1), 6(c)(3), and 6(d) of the Act, and Regulations 180.1(a) and 180.2, for conduct occurring on or after August 15, 2011.

2. Respondent Attempted To Manipulate USD ISDAFIX Through False, Misleading, or Knowingly Inaccurate Submissions

As evidenced by communications among BNPP traders and between BNPP traders and their brokers, as well as testimony and traders' actual conduct and BNPP's USD ISDAFIX submissions themselves, before December 2010 BNPP traders on occasion specifically intended to affect the rate at which USD ISDAFIX was set by making false, misleading, or knowingly inaccurate submissions to Swaps Broker for inclusion in the calculation of the daily rates. At times during the Relevant Period, BNPP submitted market information, specifically rates that were supposed to reflect the mean of where BNPP would itself offer and bid a USD denominated swap in the relevant maturity to an acknowledged dealer of good credit, to Swaps Broker that were used as part of the process for determining the daily USD ISDAFIX rate for the various maturities. However, rather than submitting rates and spreads that reflected BNPP's honest view of the true costs of entering into a standard USD interest-rate swap in particular maturities, BNPP at times knowingly made submissions with the intent to move USD ISDAFIX rates higher or lower in order to benefit BNPP's trading positions. Through its false, misleading, or knowingly inaccurate submissions, BNPP attempted to manipulate USD ISDAFIX for numerous tenors.

The BNPP traders' oral and written requests for certain rates to be submitted that would benefit their trading positions, and the submissions resulting from those requests, constituted overt acts in furtherance of the traders' intent to affect USD ISDAFIX. By doing so, BNPP traders engaged in acts of attempted manipulation in violation of Section 9(a)(2) of the Act, 7 U.S.C. §13(a)(2) (2012), and Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9, 13b (2006), for conduct occurring before August 15, 2011.

C. Respondent Made False, Misleading, or Knowingly Inaccurate Reports Concerning USD ISDAFIX in Violation of Section 9(a)(2) of the Act

In addition to the prohibition on attempted manipulation contained in Section 9(a)(2) of the Act, that provision also 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." CEA § 13(a)(2); *see also United States v. Brooks*, 681 F.3d 678, 703-05 (5th Cir. 2012) (affirming the district court's conviction of defendants for false reporting of natural gas trades in violation of the Act and finding that "it is 'clear beyond a reasonable doubt that a rational jury' would have found that the Defendants-Appellants had knowledge that their reports affected or tended to affect the price of natural gas"); *United States v. Valencia*, 394 F.3d 352, 354-57 (5th Cir. 2004) (reversing and remanding to the district court and holding that the knowledge requirement of the reporting prong of § 9(a)(2) applies to the false or misleading character of the reports, as well as to delivery and inaccuracy); *CFTC v. Johnson*, 408 F. Supp. 2d 259, 267 (S.D. Tex. 2005) (finding that the facts alleged in the CFTC's complaint adequately stated a claim against the defendants for the delivery of knowingly inaccurate information).

During the Relevant Period, BNPP, through electronic and telephonic transmission of information to Swaps Broker, on multiple occasions, knowingly delivered or caused to be delivered the Bank's USD ISDAFIX submissions through the mails or interstate commerce. BNPP's submissions were also delivered through the mails or interstate commerce through daily dissemination and publication globally, including throughout the United States, of the official published rates for USD ISDAFIX, as determined by averaging the submissions of BNPP and other panel banks after "topping and tailing." Data on submissions themselves were also disseminated. BNPP's daily USD ISDAFIX submissions contained market information concerning the mean of where BNPP would itself offer and bid a swap in the relevant maturity to an acknowledged dealer of good credit in the swap market absent intent to manipulate USD

ISDAFIX. Such market information affected or tended to affect the prices of commodities in interstate commerce, including the daily fixing rates for USD ISDAFIX, as well as the on-exchange interest rate swap futures and other financial instruments that relied upon those rates.

During the Relevant Period, BNPP's USD ISDAFIX submissions on occasion constituted false, misleading, or knowingly inaccurate reports because they purported to reflect BNPP's honest view of the true costs of entering into a standard fixed-for-floating interest rate swap in particular tenors, but in fact reflected traders' desire to move USD ISDAFIX higher or lower in order to benefit their positions.

By using these impermissible factors in making its USD ISDAFIX submissions and without disclosing that it based its submissions on these impermissible factors, BNPP conveyed false, misleading, or knowingly inaccurate information that the rates it submitted were based on the prices at which BNPP would offer and bid swaps to an acknowledged dealer of good credit in the swaps market absent intent to manipulate USD ISDAFIX. Moreover, certain BNPP submitters and traders knew that BNPP's USD ISDAFIX submissions contained false, misleading, or knowingly inaccurate information. By such conduct, Respondent violated Section 9(a)(2) of the Act.

D. <u>BNPP Is Liable for the Acts of Its Agents</u>

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2017), provide that "[t]he act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust." Pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2, strict liability is imposed on principals for the actions of their agents. *See, e.g.*, *Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986); *Dohmen-Ramirez & Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988); *CFTC v. Byrnes*, 58 F. Supp. 3d 319, 324 (S.D.N.Y. 2014).

BNPP is liable for the acts, omissions, and failures of any traders, managers, and submitters who acted as its employees and/or agents in the conduct described above. Accordingly, as set forth above, BNPP violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2012); Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9, 13b (2006), for conduct occurring before August 15, 2011; and Sections 6(c)(1), 6(c)(3) and 6(d) of the Act, 7 U.S.C. §§ 9(1), 9(3), 13b (2012), and Regulations 180.1(a) and 180.2, 17 C.F.R. §§ 180.1(a), 180.2 (2018), for conduct occurring on or after August 15, 2011.

V.

<u>FINDINGS OF VIOLATIONS</u>

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

VI.

OFFER OF SETTLEMENT

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

A. Acknowledges service of this Order;

B. Admits the jurisdiction of the Commission with respect to this Order only and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;

C. Waives:

1. the filing and service of a complaint and notice of hearing;

2. a hearing;

3. all post-hearing procedures;

4. judicial review by any court;

5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;

6. any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2017), relating to, or arising from, this proceeding;

7. any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201-53, 110 Stat. 847, 857-74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and

8. any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;

D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;

E. Requests, for the reasons set forth in Respondent's letter dated July 17, 2018 ("Request Letter"), that the Commission advise that, under the circumstances, disqualification under Rule 506(d)(1) of Regulation D of the Securities and Exchange Commission ("SEC"), 17 C.F.R. § 230.506(d)(1) (2018), should not arise as a consequence of this Order;

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

1. makes findings by the Commission that Respondent violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2012); Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9, 13b (2006), for conduct occurring before August 15, 2011; and Sections 6(c)(1), 6(c)(3), and 6(d) of the Act, 7 U.S.C. §§ 9(1), 9(3), 13b (2012), and Regulations 180.1 (a) and 180.2, 17 C.F.R. §§ 180.1(a), 180.2 (2018), for conduct occurring on or after August 15, 2011;

2. orders Respondent to cease and desist from violating Sections 6(c)(1), 6(c)(1)(A), 6(c)(3), 6(d), and 9(a)(2) of the Act, and Regulations 180.1(a) and 180.2;

3. orders Respondent to pay a civil monetary penalty in the amount of ninety million U.S. dollars ($90,000,000) plus post-judgment interest;

4. orders Respondent and Respondent's successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order; and

5. advises that, under the circumstances, disqualification under Rule 506(d)(1) of Regulation D of the SEC should not arise as a consequence of this Order; and

G. Represents that it has already undertaken certain steps intended to make reasonable efforts to ensure the integrity of interest-rate swap benchmarks, including, but not limited to, the following:

1. Respondent undertook a global review of risks and best practices related to benchmark-related activities, including the procedures, processes, controls, and supervision related to its participation in benchmarks, including USD ISDAFIX;

2. Respondent enhanced policies, procedures, processes and governance relating to its participation in interest-rate swap benchmarks, including USD ISDAFIX, including, but not limited to, the following:

a. Promulgated guidance and policies relating to contributions to benchmarks;

b. Commenced a risk review of the interest-rate swap benchmark submissions process and implemented various enhancements;

- **c.** Implemented enhanced measures to identify and mitigate potential conflicts of interest relating to Respondent's trading in products that affect USD ISDAFIX;

- **d.** Implemented enhancements to policies, procedures and controls relating to trading desk supervision, including with regard to benchmarks;

- **e.** Implemented enhancements to the regular training of benchmark submitters traders, sales, heads of desk, supervisors of heads of desk, and others on benchmarks, indices and other related market activities;

3. Respondent enhanced controls and supervision relating to its participation in interest-rate swap benchmarks, including, but not limited to, the following:

- **a.** Established a Front Office conduct surveillance team to monitor trading and sales communications, trading activities, and benchmark activities;

- **b.** Established an escalation process for the Front Office conduct surveillance team to report suspected misconduct to Management and Compliance;

- **c.** Established expanded, dedicated, independent Compliance and Front Office control frameworks to monitor benchmark contributions and to provide guidance on policies, best practices, and controls design related to benchmarks;

- **d.** Established a new permanent oversight framework with a requirement for the Index Approval Committee to review the start, stop, or continuation of a contribution on an annual basis;

- **e.** Enhanced supervision of personnel that participate in benchmark-related activities;

- **f.** Enhanced surveillance programs to identify, investigate, and escalate misconduct or manipulation related to benchmarks, including surveillance of trading and sales activities to detect attempted manipulation and other improper conduct related to interest-rate benchmark activities;

4. Respondent also initiated broad improvements to firm-wide business practices and systems and controls, including, but not limited to, the following:

a. Promulgated a new firm-wide Code of Conduct defining a set of core values and beliefs for every employee to adhere to in their interactions with each other and external stakeholders;

b. Implemented Front-Office Principles and & Guidelines to provide guidance on how to apply the firm's Code of Conduct with respect to trading and sales practices and on expected conduct of staff;

c. Implemented enhanced policies and procedures related to prohibited conduct, and enhanced escalation processes;

d. Implemented enhanced and routine training of all sales, trading and supervisory employees on ethical standards, and appropriate market conduct to promote a culture of legal and ethical conduct; and

e. Engaged in significant efforts to strengthen the role and visibility of the bank's compliance function.

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

* * *

VII.

<u>ORDER</u>

Accordingly, IT IS HEREBY ORDERED THAT:

A. Respondent shall cease and desist from violating Sections 6(c)(1), 6(c)(1)(A), 6(c)(3), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9(1), 9(1)(A), 9(3), 13b, 13(a)(2) (2012), and Regulations 180.1(a) and 180.2, 17 C.F.R. §§ 180.1(a), 180.2 (2018).

B. Respondent shall pay a civil monetary penalty of ninety million U.S. dollars ($90,000,000), within ten (10) days of the date of entry of this Order (the "CMP Obligation"). If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

Respondent shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

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

If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies Respondent and the name and docket number of this proceeding. Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C., 20581.

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

1. REMEDIATION

As set forth above in Section VI, paragraph G, Respondent represents that it has already undertaken and continue to undertake extensive remedial measures to implement and strengthen its internal controls and procedures relating to the fixing of interest-rate swaps benchmarks and related supervision of its interest-rate swaps and options desks. With respect to its remediation efforts to the extent not already undertaken, Respondent undertakes that:

a. Respondent will implement and improve its internal controls and procedures in a manner reasonably designed to ensure the integrity of the fixing of any interest-rate swap benchmark, including measures to identify and address internal or external conflicts of interest;

b. Respondent's remediation improvements will include internal controls and procedures relating to:

i. measures designed to enhance the detection and deterrence of improper communications concerning interest-rate swap benchmarks, including the form and manner in which communications may occur;

ii. monitoring systems designed to enhance the detection and deterrence of trading or other conduct potentially intended to manipulate directly or indirectly interest-rate swap rates, including benchmarks based on interest-rate swaps;

iii. periodic audits, at least annually, of its participation in the fixing of any benchmark based on interest-rate swaps;

iv. supervision of trading desks that participate in the fixing of any benchmark based on interest-rate swaps;

v. supervision of trading desk conduct that relates to any interest-rate swap benchmark;

vi. routine and ongoing training of all traders, supervisors and others who (1) are involved in the fixing of any benchmark based on interest-rate swaps or (2) oversee supervisors or desk heads involved in the fixing of any benchmark based on interest rate swaps;

vii. routine and ongoing training of all trading desk personnel and supervisors relating to the trading of any product that references a benchmark based on interest-rate swaps;

viii. processes for the periodic review of written and oral communications of any traders, supervisors and others who are involved in the fixing of any benchmark based on interest-rate swaps with the review being documented and documentation being maintained for a period of three (3) years; and

ix. maintaining a system for reporting, handling, and investigating any suspected misconduct or questionable, unusual or unlawful activity relating to the fixing of any benchmark based on interest-rate swaps with escalation to compliance and legal, and with reporting of material matters to the executive management of Respondent and the Commission, as appropriate; and Respondent shall maintain the record basis of the handling of each such matter for a period of three (3) years.

c. Within 120 days of the entry of this Order, Respondent shall make a report to the Commission, through the Division, concerning Respondent's remediation efforts before and since the entry of this Order. Within 365 days of the entry of this Order, Respondent shall submit a report to the Commission, through the Division, explaining how Respondent has complied with the undertakings set forth herein. The report shall contain a certification from a representative of Respondent's Executive Management, after consultation with Respondent's chief compliance officer(s) and any other applicable parties, that Respondent has complied with the undertakings set forth above, and that it has established policies, procedures, and controls to satisfy the undertakings set forth in this Order.

2. COOPERATION WITH THE COMMISSION

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

a. Preserve all records relating to the subject matter of this proceeding, including, but not limited to, audio files, electronic mail, other documented communications, and trading records;

b. Comply fully, promptly, completely, and truthfully with all inquiries and requests for non-privileged information or documents;

c. Provide authentication of documents and other evidentiary material;

d. Provide copies of non-privileged documents within Respondent's possession, custody, or control;

e. Subject to applicable laws and regulations, make Respondent's best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of Respondent, regardless of the individual's location, and at such location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including, but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such proceeding, trial, or investigation; and

f. Subject to applicable laws and regulations, make Respondent's best efforts to assist in locating and contacting any prior (as of the time of the request) officer, director, employee, or agent of Respondent;

Respondent also agrees that it will not undertake any act that would limit its ability to cooperate fully with the Commission. Respondent will designate an agent located in the United States of America to receive all requests for information pursuant to these Undertakings, and shall provide notice regarding the identity of such Agent to the Division upon entry of this Order. Should Respondent seek to change the designated agent to receive such requests, notice of such intention shall be given to the Division fourteen (14) days before it occurs. Any person designated to receive such request shall be located in the United States of America.

3. PROHIBITED OR CONFLICTING UNDERTAKINGS

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

4. PUBLIC STATEMENTS

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

5. PARTIAL SATISFACTION

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

D. Based on the nature of the violations; the findings made, and the sanctions, conditions, and undertakings imposed in this Order; and the facts and representations in BNPP's Request Letter, the Commission advises[15] that, under the circumstances, disqualification under Rule 506(d)(1) of Regulation D of the SEC, 17 C.F.R. § 230.506(d)(1) (2018), should not arise as a consequence of this Order.[16]

The Commission notes that if the facts are different from those represented, or if Respondent fails to comply with the terms of this Order, the Commission may, in its sole discretion, revisit its advice that disqualification should not arise. The

---

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

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

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

Commission reserves the right, in its sole discretion, to withdraw or otherwise revoke or further condition its advice under those circumstances.

* * *

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

By the Commission.

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

Dated: August 29, 2018