



### III.

The Commission finds the following:

#### A. Summary

Beginning at least as early as January 2007 and continuing through May 2012 (the “Relevant Period”), DBSI, by and through certain of its traders, attempted to manipulate the U.S. Dollar International Swaps and Derivatives Association Fix (“USD ISDAFIX,” “ISDAFIX,” or the “benchmark”), a leading global benchmark referenced in a range of interest rate products, to benefit its derivatives positions, including positions involving cash-settled options on interest rate swaps.

ISDAFIX rates and spreads are published daily and are 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.<sup>2</sup> They are issued in several currencies. USD ISDAFIX rates and spreads are 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, are 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 is used for the cash settlement of options on interest rate swaps, or swaptions, and as a valuation tool for certain other interest rate 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. This reference point taken at 11:00 was sometimes referred to as the “fix” or “print” by traders and brokers. These reference rates and spreads (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 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 DBSI, 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.

However, on certain days in which DBSI had a trading position settling or resetting against the USD ISDAFIX, DBSI attempted to manipulate USD ISDAFIX by making false submissions for DBSI as a panel bank to Swaps Broker, skewing the rates and spreads submitted in the direction that could have moved the USD ISDAFIX setting to benefit the Bank’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 multiple occasions during the Relevant Period, certain DBSI traders caused DBSI to make USD ISDAFIX

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<sup>2</sup> 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.

submissions higher or lower for the purpose of benefitting positions priced or valued against the benchmark, including swaption and other option positions. On these occasions, DBSI's USD ISDAFIX submissions constituted false, misleading, or knowingly inaccurate reports because they purported to reflect DBSI'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 DBSI's positions. These submissions were false, misleading, or knowingly inaccurate because they did not report where DBSI would itself bid or offer 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 addition to making false submissions, DBSI attempted to manipulate the USD ISDAFIX by bidding, offering, and executing transactions in targeted interest rate products, including swap spreads and U.S. Treasuries 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 that Swaps Broker disseminated to submitting banks, and thereby to affect the published USD ISDAFIX. Communications of this type involved multiple DBSI traders on more than one DBSI trading desk and spanned several years.

During the Relevant Period, the Bank had inadequate controls and procedures in place related to the submission process and trading around the 11:00 a.m. fixing. Because of the lack of these controls and procedures, DBSI's traders and DBSI submitters ("Submitters") freely and repeatedly engaged in attempts to manipulate the USD ISDAFIX, which the Bank failed to detect and/or deter. For example, when an attempted manipulation was brought to the attention of supervisors at the Bank overseeing the submission process, no corrective or remedial action was taken.

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In accepting the Bank's offer, the Commission recognizes Respondent's cooperation with the Division of Enforcement's (the "Division") investigation in this matter. The Commission recognizes that DBSI provided important information to the Division that helped the Division undertake its investigation efficiently and effectively. The Commission also recognizes that DBSI commenced significant remedial action to strengthen the internal controls and policies relating to all benchmarks, including ISDAFIX. Accordingly, the civil monetary penalty imposed on DBSI reflects the level of cooperation DBSI provided during the course of its investigation.

**B. Respondent**

**DBSI** is a Delaware corporation with its regional headquarters located in New York, New York. DBSI is a global financial services firm and provides financial services to agencies, corporations, governments, private individuals, and institutions in the United States. DBSI is an approved swap firm with and member of the National Futures Association, and is registered with the Commission as a commodity pool operator and Futures Commission Merchant ("FCM").

## C. Facts

### 1. USD ISDAFIX Setting

ISDAFIX rates and spreads are benchmarks that indicate prevailing market rates for “plain vanilla” interest rate swaps.<sup>3</sup> The 11:00 a.m. USD ISDAFIX was set during the Relevant Period using a combination of swap spread trade data from Swaps Broker,<sup>4</sup> U.S. Treasuries electronic trade data from Swaps Broker, Eurodollar futures, and submissions from a panel of swap dealer banks, including DBSI.

The Swaps Broker’s medium-term USD swaps 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 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.

The 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 the Swaps Broker’s proprietary electronic bond trading platform (for U.S. Treasuries). 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.

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<sup>3</sup> The term “swap” is defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47) (2012). An interest rate swap is generally an exchange of fixed payments for floating payments, wherein one party to a swap pays a fixed rate on a set notional amount (the party who “pays fixed” is said to have “bought” the swap, or is “long” the swap) and the other party pays a floating rate generally tied to three-month LIBOR (the party who “receives fixed” is said to have “sold” the swap, or is “short” the swap). The “maturity” or “tenor” of a swap refers to the number of years over which counterparties exchange payments.

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

To set USD ISDAFIX rates for the 2-year through 30-year maturities, the Swaps Broker first generated reference rates and spreads from the snapshot of 11:00 a.m. screen prices, reflecting either the last traded spread or the mid-point between the most recent executable bid and offer. The 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), the 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 through the Swaps Broker's short-term swaps desk.

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

In practice, most panel banks, often including DBSI, accepted the Swaps Broker's reference rates and spreads as their default submissions. Thus after "topping and tailing," the Swaps Broker's reference rates and spreads usually became the final published USD ISDAFIX benchmarks. However, as noted below, on multiple occasions during the Relevant Period, DBSI submitted a rate or spread higher or lower than Swaps Broker's reference rates or spreads or traded at 11:00 a.m. on certain days that DBSI had a derivatives position settling or resetting against USD ISDAFIX in an attempt to benefit that derivatives position.

## **2. DBSI's Role in USD ISDAFIX Setting**

Throughout the Relevant Period, DBSI was one of the panel banks that submitted rates and spreads for the determination of USD ISDAFIX. DBSI's Interest Rates Swaps Desk ("Swaps Desk") employees made DBSI's daily USD ISDAFIX submissions. The Swaps Desk was a market-making desk that traded, among other products, fixed-for-floating interest rate swaps. The Swaps Desk acted as counterparty to external clients as well as internal DBSI desks in a variety of interest rate swap transactions. Other DBSI desks (such as the Options Desk and Exotics Desk) also transacted and held, among other products, swaption positions. The Swaps Desk was located in close proximity to the Options Desk.

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<sup>5</sup> See ISDAFIX, ISDA, <https://web.archive.org/web/20140209180148/http://www2.isda.org/asset-classes/interest-rates-derivatives/isdafix> (last accessed Nov. 22, 2017).

During the Relevant Period, DBSI either had no or inadequate internal controls or procedures, written or otherwise, regarding how USD ISDAFIX should be determined or monitored. ISDAFIX Submitters, for example, received no formal training on making ISDAFIX submissions, and the Bank did not require submissions to be documented during the Relevant Period.

### **3. DBSI's Positions with Exposure to USD ISDAFIX**

Throughout the Relevant Period, DBSI traders, attempted to manipulate USD ISDAFIX, as discussed more fully below, to maximize profit (or minimize loss) for the DBSI desks trading cash-settling swaptions and other related financial products in connection with periodic payments (referred to as "resets") associated with certain interest rate options. The DBSI's Options Desk, in coordination with the Swaps Desk, attempted to manipulate USD ISDAFIX in order to benefit derivatives positions, by increasing their payments from counterparties or decreasing payments to counterparties in cash-settled interest rate swaptions.

A swaption can be exercised by "physical" delivery of the underlying swap or by cash settlement. A swaption that expired "in-the-money" would usually physically settle. Swaption cash settlements denominated in U.S. Dollars are typically calculated based on USD ISDAFIX rates according to a formula which measures the difference between the relevant USD ISDAFIX rate on the expiry date and the strike rate of the swaption. Attempts to move USD ISDAFIX rates in DBSI's favor, if successful, would hurt the Bank's counterparties in cash settlement, as well as any other market participants who had positions referencing USD ISDAFIX on a given day that were directionally equivalent to DBSI's counterparty 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 the Bank on its swaption cash settlements.

In any cash-settling swaption, the Options Desk's incentive to push the USD ISDAFIX higher or lower depended on (1) whether DBSI 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.

### **4. Means Employed in Attempts to Manipulate USD ISDAFIX**

Certain DBSI options and/or swaps traders understood and employed two primary means in their attempts to manipulate USD ISDAFIX rates:

- First, the relevant DBSI Swaps Desk employees responsible for making USD ISDAFIX submissions (the "Submitter" or "Submitters") attempted to manipulate the final published USD ISDAFIX rates by submitting rates that deviated from Swaps Broker's reference rates in order to benefit positions held by the Bank.
- Second, certain DBSI traders bid, offered, and/or executed swap spreads and/or U.S. Treasuries, (at times in one or both of these products) at or around 11:00 a.m. to affect rates on the 19901 screen and thereby increase or decrease Swaps Broker's reference rates and spreads and influence the final published USD ISDAFIX.

Whichever the means employed, the goal was the same—to move USD ISDAFIX in the direction that favored DBSI on specific trading positions at the expense of its counterparties.

**a. DBSI's False, Misleading, or Knowingly Inaccurate Submissions**

DBSI attempted to manipulate USD ISDAFIX by making false, misleading, or knowingly inaccurate submissions to Swaps Broker concerning swap rates and spreads.

On multiple occasions during the Relevant Period, DBSI submitted a rate or spread higher or lower than Swaps Broker's reference rates or spreads. DBSI would change its submissions from the prepopulated numbers when it had a special motive to do so.

During the Relevant Period, DBSI Submitters knew about the positions of DBSI traders from three sources: first, the Submitters were able to see the swaption positions of the Options traders on their computers; second, Submitters learned about the positions of the Options traders directly from the Options traders; and third, the Submitters sat close enough to the Options Desk to hear the Options traders talk about their positions. With this knowledge, the Submitters on the Swaps Desk at DBSI attempted to manipulate the ISDAFIX.

On October 29, 2010, for example, an Options trader acknowledged on a recorded phone line that the Submitters at DBSI knew about the positions of the DBSI Options traders. This was further corroborated by a Submitter, a DBSI Swaps trader, who confirmed that on October 29, 2010, he knew about an Options trader's position, understood how he could manipulate the ISDAFIX to benefit that position, and then changed DBSI's ISDAFIX submission to benefit that position. The Submitter in fact lowered DBSI's rates submission to attempt to benefit DBSI's cash-settled swaption on this date.

During the Relevant Period, DBSI memorialized its manipulative conduct of making false, misleading, or knowingly inaccurate submissions through a Swap Desk Guide (the "Guide"), which was authored by a Submitter. The Guide states the following:

***Swap dealer desks submit 11 a.m. levels of rate and spreads for option striking purposes. The options desk may ask for specific levels.***

The language in the Guide instructs the Submitters to submit rates and spreads at a targeted level or price sought by the Options traders. This instruction is both improper and illegal because the prices sought by the Options traders were sought to benefit their positions. The then-Head of the Swaps Desk at DBSI, for example, confirmed that if an Options trader asked the Swaps Desk for specific levels and the Submitter complied with that request, that would be wrong because that would be "fixing the rate."

As reflected in the Guide and the conduct of DBSI's traders and Submitters, DBSI's changes in its USD ISDAFIX submissions were not made to reflect the mean of where DBSI would itself bid or offer the swap in the relevant maturity, but rather the changes were made in many instances to benefit certain derivatives positions held by DBSI. Indeed, DBSI traders requested submissions that deviated from Swaps Broker's reference rates and spreads on certain days when they had an interest (i.e., if DBSI had a cash-settling swaption or other derivatives position tied to USD ISDAFIX).

As stated above, a Submitter confirmed that on October 29, 2010, he lowered DBSI's ISDAFIX submission to attempt to benefit DBSI's cash-settled swaption on this date. This was not an isolated or one-off attempt to manipulate the ISDAFIX to benefit a DBSI position. Another example occurred on June 7, 2010, a day when DBSI was cash settling a 2-year \$4 billion swaption. DBSI would receive higher payments from its counterparty if the 2-year ISDAFIX benchmark set lower. On that same day, the DBSI Submitter lowered DBSI's rates submission by 0.5 basis points to attempt to benefit that cash-settled swaption to the detriment of DBSI's client and counterparty.

There is no doubt that DBSI Submitters understood that when a request was made to change a submission the request was to benefit an underlying position of the Bank. For example, then-Head of the Swaps Desk confirmed that he understood that when an Options trader asked a Submitter to make submissions that were different than what the Submitter would otherwise normally do, that the Options trader was "trying to influence something" because of his "economic interest" in the submission.

**b. DBSI's Improper Trading Conduct**

In addition to making false submissions in an effort to influence the final setting of USD ISDAFIX benchmarks, DBSI on multiple occasions attempted to manipulate USD ISDAFIX by bidding, offering, or trading swap spreads and U.S. Treasuries at and around Swaps Broker's 11:00 a.m. snapshot, in a manner designed to move USD ISDAFIX rates in a direction that would benefit the Bank.<sup>6</sup> DBSI traders told the Swaps Broker the direction they wanted the Swaps Broker to move the ISDAFIX to benefit their positions tied to the ISDAFIX.

As evidenced in a series of recorded calls and electronic communications between a DBSI trader and the Swaps Broker trading on behalf of DBSI, DBSI traders talked about "pushing" or "moving" the fix in a direction to benefit the Bank's positions or "getting the print" at a price that would benefit the Bank's position. In order to affect these strategies, DBSI Swap traders would tell the Swaps Broker their need for a certain swap level at 11:00 a.m. or their need to have the level moved up or down. For example, in the Swaps Broker's recorded words to a DBSI Swaps trader, on February 28, 2007, he stated: "I had to do what I had to do to keep 'em down, right... We got the print... 50 is not going to hold it." This conversation demonstrates that the Swaps Broker fully understood that the DBSI trader wanted to keep the price down and get the print that would benefit the position of the DBSI Swaps trader.

In another telling example of the mindset of DBSI Traders, on December 3, 2008, shortly before 11:00 a.m., in a recorded conversation between a DBSI Swaps trader and the Swaps Broker, the DBSI Swaps trader makes it clear that he understands that you push prices to benefit

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<sup>6</sup> DBSI traders referred to trades that they made around 11:00 a.m. for risk management purposes as hedging. When DBSI's derivative 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 ISDAFIX 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 DBSI 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 DBSI's favor.

your positions and only hedge when no one else is willing to “play the game.” The actual conversation is as follows:

Swaps Broker: Right, listen, if there’s no activity.

DBSI Swaps trader: Yeah?

Swaps Broker: What do you want to do there?

DBSI Swaps trader: What do you mean if there’s no activity?

Swaps Broker: If there’s no activity, you know...

DBSI Swaps trader: There will be some activity.

Swaps Broker: Ok.

DBSI Swaps trader: Yeah.

Swaps Broker: Not from you, *I’m talking about if no one else wants to play the game.* (Emphasis added.)

DBSI Swaps trader: Oh, then what? I mean I’ll be showing prices, I’ll be showing offers.

Swaps Broker: Ok but what sort of level do you want to push it to?

DBSI Swaps trader: I mean, I don’t know it depends.

Swaps Broker: *It depends who comes into play. If no one comes into play, what’s going to suit you?* (Emphasis added.)

DBSI Swaps trader: Oh, I don’t know, I mean I have risk, so I’m trying to hedge that risk, if like, I’m not going to say ‘oh I want,’ I can’t, I just have risk so I’m just going to try to hedge it.

Swaps Broker: Oh, alright.

During the Relevant Period, DBSI’s traders used various means in attempts to move USD ISDAFIX higher or lower to benefit their derivatives trading positions. For example, in order to “get 2s down” by trading, a trader must *sell* 2-year swap spreads *lower* than the current market mid-swap spread indicated on the 19901 screen. Likewise, “getting 10s higher” for example involves *buying* 10-year swap spreads *higher* than the current mid-swap spread indicated on the 19901 screen. In attempts to push the USD ISDAFIX higher or lower, DBSI traders were willing, at times, to buy higher or sell lower than the market required, or traded at times when they otherwise would not have, because they expected to benefit their cash settlements to an extent that would likely exceed, but at least cover, any resulting trading losses incurred through such trading.

The manipulative trading by DBSI traders typically involved a communication from a DBSI trader to the Swaps Broker to trade in a certain direction. These directional instructions demonstrated the DBSI trader's desire to move price levels in an attempt to manipulate USD ISDAFIX. For example, on November 10, 2008, just prior to 11:00 a.m. a DBSI Swaps trader informed the Swaps Broker he wanted the "10 yr lower" and the Swaps Broker responded "k." On this day in order to attempt to effectuate this manipulation, DBSI sold 10-year swap spreads and bought U.S. treasuries, both of which would have had a downward impact on where the 10-year rate set.

In each of the following examples, the DBSI trader communicates to the Swaps Broker the direction he wants to move the USD ISDAFIX. The Swaps Broker then trades swap spreads and/or U.S. treasuries on behalf of the DBSI trader to move the setting of the USD ISDAFIX either higher or lower to benefit the DBSI trader's underlying cash-settled swaption:

- On July 28, 2008, DBSI was settling two 5-year swaptions with an aggregate notional value of \$350 million; DBSI's payments to its counterparty would be lower if the 5-year USD ISDAFIX benchmark settled higher. That day, DBSI Swaps trader complained to Swaps Broker on a recorded line about his buying of 5-year swap spreads not moving the 5-years so Swaps Broker told the DBSI Swaps trader that he was "trying to get this stuff, this print done." On that day, DBSI bought 5-year swap spreads through that Swaps Broker, which would have had an upward impact on where the 5-year rate set.
- On August 26, 2008, DBSI was cash settling a 5-year \$300 million swaption; DBSI would receive a higher payment from its counterparty if the 5-year USD ISDAFIX benchmark set lower. On a recorded line that day, DBSI Swaps trader told Swaps Broker that he needs "a lower print.. if I can get it at the fixing." On that day, DBSI sold 5-year swap spreads and bought 5-year U.S. treasuries before 11 a.m., which would have had a downward impact on the setting of the 5-year USD ISDAFIX rate.
- On October 2, 2008, DBSI was cash settling a 10-year \$1 billion swaption; DBSI's payment to its counterparty would be lower if the 10-year USD ISDAFIX benchmark set higher. That day, the Swaps Broker asked the DBSI trader on a recorded line: "what am I doing, lifting them up?" On that day, DBSI "lifted up" or bought 10-year swap spreads, which would have had an upward impact on where the 10-year rate set.
- On May 26, 2009, DBSI was cash settling 7-year swaptions with a combined notional value of \$500 million; DBSI's payments to its counterparties would be lower if the 7-year ISDAFIX benchmark set lower. That day, in order to prepare for the manipulative conduct, DBSI Swaps trader told Swaps Broker shortly before 11:00 a.m. in a recorded conversation, "I have a set on 7s." At approximately 11:02 a.m., the same DBSI trader asked the Swaps Broker in an electronic communication "what is going out as the suggestion for the poll?" and in a self-congratulatory response the Swaps Broker said "22.75...we did it." At approximately 11:13 a.m., a DBSI Options trader sent the following electronic

communication to the same DBSI Swaps Trader and the then-Head of the Options Desk detailing the steps taken to attempt to effectuate this manipulation: “we cash settled w/[another bank] but bot into the fix to push the rate.” Indeed, on this same day, DBSI bought 7-year U.S. treasuries before 11 a.m. and sold 7-year swap spreads through Swaps Broker, both of which would have had a downward impact on where the 7-year rate set. On April 30, 2010, DBSI was cash settling a portion of a 2-year \$2 billion swaption; DBSI would receive a higher payment from its counterparty if the 2-year USD ISDAFIX benchmark set lower. That day, Swaps Broker asked the DBSI Swaps trader on a recorded line if he wanted him to “hit” the 2-years “down” and the DBSI Swaps trader responded, “OK, yeah, yours 2.” On that day, DBSI sold 2-year swap spreads and bought 2-year U. S. Treasuries before 11 a.m., both of which would have had a downward impact on where the 2-year rate set.

On June 7, 2010, DBSI was cash settling a 2-year \$4 billion swaption; DBSI would receive higher payments from its counterparty if the 2-year ISDAFIX benchmark set lower. In an electronic communication, , DBSI Swaps trader told Swaps Broker “I’m going to be selling some 2y spreads at 11am; pls be ready.” DBSI bought 2-year U.S. Treasuries before 11 a.m. and sold 2-year swap spreads through Swaps Broker, both of which would have had a downward impact on where the 2-year rate set.

- On October 29, 2010, DBSI was cash settling 5-year swaptions it bought with a combined notional value of \$4 billion; DBSI would receive higher payments from its counterparties if the 5-year ISDAFIX benchmark set lower. That day, DBSI Swaps trader told another DBSI trader that the Options Desk had “4bn 5s with [a client] coming off at 11am (probably another 2bn away frm them). Basically means they will be selling the sh1t out of 5s at any yield below 119.” DBSI bought 5-year U.S. Treasuries before 11 a.m. and sold 5-year swap spreads through Swaps Broker, both of which would have had a downward impact on where the 5-year rate set. Also, on this same date, as explained above, a DBSI Submitter intentionally lowered DBSI’s rates submission to attempt to benefit DBSI’s 5-year cash-settled swaption.

In addition to directing the Swaps Broker to trade in a certain direction to benefit their positions, some DBSI swaps traders would identify DBSI’s target print and instruct the Swaps Broker to hit that print in order to maximize their profits. In order to hit the target print, the DBSI trader would be willing to spend their “ammo” to optimize their chances of getting their desired screen result. For example, on August 13, 2009, the Swaps Broker needed to know how much “ammo” he has to move the screen at 11 and stated, “*in future tho mate like we did with the 1y that time I need to have an idea of ammo as I can only close screen initially.*” (Emphasis added.) The DBSI Swaps trader responded, “ok. I will try and do a better job at that. But if I’m saying 23.75 offer, I sell keep selling 50 lots. I can’t get angry at you if you sell a bunch if I keep saying offer on... just keep me updated on how many ive done.”

DBSI traders also knew their conduct in attempting to manipulate the USD ISDAFIX was illegal. For instance, on May 11, 2011, a DBSI Swaps trader stated that “I really have no

desire to ever trade equities. It's just a field day for the feds." A broker ("Broker") from another swaps broking firm responded, "this will be over soon as well and if they ever figured out exactly how pricing happened through [the Swaps Broker] on a daily basis a lot of people would actually do jail time." Approximately fifteen months later, there is another electronic exchange between the same Broker from the swaps broking firm and a DBSI Trader who was also a former Submitter as follows:

DBSI trader: You're one of the few still there at 4:45... What happened to NY?

Broker: This market is dying dude.

DBSI trader: Na u guys have licked ur n\*\*\* and have rolled over.

Broker: Go to bed dude.

DBSI trader: Some of us need to support some of you it seem. [Swaps Broker] gone.

Broker: But don't matter cause after libor, 19901 is next.

DBSI trader: Yes.

#### 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, DBSI'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* Sections 6(c)(1), 6(c)(1)(A), 6(c)(3), 6(d), 9(a)(2) of the Act, and Regulations 180.1(a) and 180.2, 17 C.F.R. §§ 180.1(a), 180.2 (2017). 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 prior to August 15, 2011, former Section 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9, 13b (2006; amended 2011), 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.’*” *Id.* (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 False, Misleading, or Knowingly Inaccurate Submissions**

As evidenced by certain electronic communications, testimony of then-current and former DBSI employees, and DBSI’s USD ISDAFIX submissions themselves, certain DBSI traders 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. During the Relevant Period, DBSI submitted market information, specifically rates that were supposed to reflect the mean of where DBSI 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 DBSI’s honest view of the true costs of entering into a standard USD interest-rate swap in particular maturities, DBSI knowingly made submissions with the intent to move USD ISDAFIX rates higher or lower in order to benefit DBSI’s trading positions. Through its false, misleading, or knowingly inaccurate submissions, DBSI attempted to manipulate USD ISDAFIX for numerous tenors.

The DBSI traders’ requests for certain rates to be submitted which 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, the DBSI 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 prior to August 15, 2011; and Sections 6(c)(1), 6(c)(1)(A), 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 (2017), for conduct occurring on or after August 15, 2011.

**2. Respondent Attempted To Manipulate USD ISDAFIX Through Improper Trading Conduct**

As evidenced by the communications among certain DBSI employees and between certain DBSI employees and their brokers, as well as certain trading conduct, DBSI traders 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 and/or U.S. Treasuries 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 certain traders intended such trading conduct to affect the fixings in order to benefit DBSI's trading positions against its counterparties.

The DBSI 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 DBSI 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 prior to August 15, 2011; and Sections 6(c)(1), 6(c)(1)(A), 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 (2017), for conduct occurring on or after 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." *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, DBSI, 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. DBSI'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 DBSI and other panel banks after "topping and tailing." Data on submissions themselves were also disseminated. DBSI's daily USD ISDAFIX submissions contained market information concerning the mean of where DBSI 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 which relied upon those rates.

During the Relevant Period, DBSI's USD ISDAFIX submissions on multiple occasions constituted false, misleading, or knowingly inaccurate reports because they purported to reflect DBSI's honest view of the true costs of entering into a standard fixed-for-floating interest rate swap in particular tenors, but in fact on multiple occasions 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, DBSI conveyed false, misleading, or knowingly inaccurate information that the rates it submitted were based on the prices at which DBSI would offer and bid swaps to an acknowledged dealer of good credit in the swaps market absent intent to manipulate USD ISDAFIX. Moreover, certain DBSI employees knew that DBSI's USD ISDAFIX submissions contained false, misleading, or knowingly inaccurate information. By such conduct, Respondent violated Section 9(a)(2) of the Act.

**D. Respondent Is Liable for the Acts of Its Agents**

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (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., Dohmen-Ramirez & Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988); *Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986); *CFTC v. Byrnes*, 58 F. Supp. 3d 319, 324 (S.D.N.Y. 2014).

DBSI 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, DBSI 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 prior to August 15, 2011; and Sections 6(c)(1), 6(c)(1)(A), 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 (2017), for conduct occurring on or after August 15, 2011.

## V.

### **FINDINGS OF VIOLATIONS**

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 prior to August 15, 2011; and Sections 6(c)(1), 6(c)(1)(A), 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 (2017), for conduct occurring on or after August 15, 2011.

## VI.

### **OFFER OF SETTLEMENT**

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

- A. Acknowledges receipt of 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, §§ 201-53, 110 Stat. 847, 857-74 (codified 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;
- 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 January 24, 2018 (“Request Letter”), that the Commission advise that, under the circumstances, disqualification under Rule 262(a) of Regulation A and Rule 506(d)(1) of Regulation D of the Securities & Exchange Commission (“SEC”), 17 C.F.R. §§ 230.262(a), §§ 230.506(d)(1), (2017), 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 prior to August 15, 2011; and Sections 6(c)(1), 6(c)(1)(A), 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 (2017), 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 seventy million U.S. dollars (\$70,000,000) plus post-judgment interest;
    4. orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order; and
    5. advises that, under the circumstances, disqualification under Rule 262(a) of Regulation A and 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 has conducted a global review of risks relating to benchmark-related activities, including the processes and controls governing its participation in benchmark rates, including USD ISDAFIX.
  2. Respondent enhanced procedures and controls relating to its participation in USD ISDAFIX, including, but not limited to, the following:
    - a. In 2011, Respondent completed a risk assessment of the USD ISDAFIX submissions process and recommended various enhancements, which were implemented shortly thereafter, including the daily recording of submissions on a network drive accessible only to those involved in the submissions process and the drafting of new operating procedures for USD ISDAFIX submissions;
    - b. In 2013, Respondent also placed USD ISDAFIX submissions under the oversight of an independent risk management group that conducted daily post-submission reviews as well as broader cross-functional management reviews to discuss submissions for ISDAFIX and other benchmark rates;
    - c. Respondent transitioned to a fully automated system for USD ISDAFIX submissions in 2013, which transmitted submissions to the benchmark collection agent based on live prices from DBSI's internal electronic systems and prohibited DBSI traders from accessing the USD ISDAFIX submissions screen; and
    - d. Respondent withdrew from USD ISDAFIX (and all other ISDAFIX benchmarks to which it still contributed) in April 2014.
  3. Further, Respondent has enhanced policies, procedures, and controls relating to participation in benchmarks as follows:
    - a. Establishment in 2014 of an expanded independent control function, the Benchmark and Index Control Group, to monitor benchmark activities and to provide guidance on policies, best practices, and controls design related to benchmarks;
    - b. Implementation of procedures designed to detect and prevent potential manipulation of benchmark rates, including daily pre- and post-submission reviews and daily monitoring of exposure to benchmark fixings by independent control functions;
    - c. Enhanced surveillance of traders' electronic and oral communications;

- d. Development of a trade surveillance program designed to identify and escalate potentially unusual trading patterns, including for products tied to the setting of benchmarks;
  - e. Benchmark training for traders, submitters, supervisors, and others who are involved in or rely on benchmark fixings, tailored to the employee's role and responsibilities;
  - f. Establishment of an internal audit team dedicated exclusively to auditing benchmark-related activities;
  - g. Annual risk assessments to tailor and refine individualized controls for benchmarks susceptible to manipulation and to which Respondent is exposed;
  - h. Establishment of governance bodies to oversee benchmark activities, including the Benchmark and Index Council, which is responsible for addressing global benchmark strategy and serves as the central escalation point for issues related to benchmarks; and
  - i. Promulgation of policies and procedures to guide employees in connection with benchmark contributions, including, but not limited to, a Global Benchmark Policy, issued in January 2013 and applicable to all employees, and specific guidelines for particular benchmarks.
4. Respondent has also initiated broad improvements to firm-wide business practices and systems and controls, including, but not limited to, the following:
- a. Defining a set of core values and beliefs which it embedded into various business and personnel practices, including a revised Code of Business Conduct and Ethics prescribing minimum standards of ethical business conduct for employees in their interactions with each other and external stakeholders; and
  - b. Engaging in significant efforts to strengthen the role and visibility of Compliance, including by increasing Compliance's presence on the trading floor, expanding its representation on management committees, increasing Compliance's budget and headcount, and further integrating Compliance into hiring, promotion, and compensation decisions.

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

## VII.

### ORDER

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

- A. Respondent shall cease and desist from 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), 180.2, 17 C.F.R. §§ 180.1(a), 180.2 (2017).
- B. Respondent shall pay a civil monetary penalty of seventy million U.S. dollars (\$70,000,000), 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 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

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

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

As set forth above in Section VI, paragraph F, Respondent represents that it has already undertaken and continues 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 Swaps,

Options, and Exotics 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:
  1. 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;
  2. monitoring systems designed to enhance the detection and deterrence of trading or other conduct potentially intended to manipulate directly or indirectly swap rates, including benchmarks based on interest-rate swaps;
  3. periodic audits, at least annually, of Respondent's active participation in the fixing of any benchmark based on interest-rate swaps;
  4. supervision of trading desks that participate in the fixing of any benchmark based on interest-rate swaps;
  5. supervision of trading desk conduct that relates to any interest-rate swap benchmark;
  6. routine and on-going training of all traders, supervisors, and others who are involved in the fixing of any benchmark based on interest-rate swaps;
  7. processes for the periodic but routine 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 years; and
  8. continuing to implement 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 DBSI and the Commission, as appropriate; the Respondent shall

maintain the record basis of the handling of each such matter for a period of three years.

- c. Within 120 days of the entry of this Order, the Respondent shall make a report to the Commission, through the Division, concerning its remediation efforts prior to and since the entry of this Order. Within 365 days of the entry of this Order, the Respondent shall submit a report to the Commission, through the Division, explaining how it has complied with the undertakings set forth herein. The report shall contain a certification from a representative of the Respondent's Executive Management, after consultation with the Respondent's chief compliance officer(s), that the 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 the 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 the Bank's possession, custody, or control;
- e. Subject to applicable laws and regulations, make its best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of the Bank, regardless of the individual's location, and at such location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including, but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify

completely and truthfully in any such proceeding, trial, or investigation; and

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

Respondent also agrees that it will not undertake any act that would limit its ability to cooperate fully with the Commission. The Bank will designate an agent located in the United States of America to receive all requests for information pursuant to these Undertakings, and shall provide notice regarding the identity of such Agent to the Division upon entry of this Order. Should the Bank 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 Commission's Regulations promulgated thereunder, 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 partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

- D. Based on the nature of the violations; the findings made, and the sanctions, conditions, and undertakings imposed in the Order; and the facts and representations in DBSI's Request Letter, the Commission advises<sup>7</sup> that, under the circumstances, disqualification under Rule 262(a) of Regulation A and Rule 506(d)(1) of Regulation D of the SEC, 17 C.F.R. §§ 230.262(a), 230.506(d)(1) (2017), should not arise as a consequence of this Order.<sup>8</sup>

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<sup>7</sup> 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 17 C.F.R. §§ 262(a)(3)(ii), (b)(3) (parallel provisions under Regulation A); 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)").

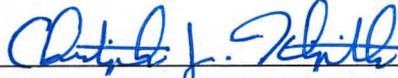
<sup>8</sup> In providing this advice, the Commission considered factors similar to those considered by the SEC when it issues waivers of disqualification under Regulation A and Regulation D. The SEC grants waivers where an applicant has shown "good cause and . . . if the [SEC] determines that it is 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

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



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

Dated: February 1, 2018

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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 shown 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).