

NEW YORK STATE DEPARTMENT  
OF FINANCIAL SERVICES

In the Matter of

BNP PARIBAS S.A. and  
BNP PARIBAS S.A., NEW YORK BRANCH.

**CONSENT ORDER UNDER  
NEW YORK BANKING LAW §§ 39, 44 and 44-a**

The New York State Department of Financial Services (“DFS” or the “Department”), BNP Paribas S.A., and BNP Paribas S.A. New York Branch (together, “BNPP” or the “Bank”), are willing to resolve the matters described herein without further proceedings.

WHEREAS, BNPP is a global financial institution headquartered in Paris, France that employs nearly 190,000 people worldwide, with total assets of more than €2.1 trillion, and is licensed by the Department to operate a foreign bank branch in New York State;

WHEREAS, the Department has been investigating BNPP’s foreign exchange business. The Department finds as follows:

**THE DEPARTMENT’S FINDINGS**

**Introduction**

1. The Department has been investigating BNPP’s foreign exchange (“FX”) trading business (the “DFS or Department Investigation”), including obtaining over 120,000 pages of documents from BNPP; conducting interviews of BNPP employees; and obtaining additional information from third-party sources.

2. The Department’s Investigation conclusively determined that BNPP repeatedly engaged in improper, unsafe and unsound conduct, in violation of New York laws and regulations.

The conduct arose from a significant and material failure of BNPP to implement effective controls over its FX trading business.

3. Collusive and manipulative FX trading conduct resulted in market harm by distorting competition and depriving injured customers of the benefit of the bargain they sought when trading with BNPP and other banks involved.

4. The misconduct engaged in by more than a dozen BNPP traders and salespersons was broad; sometimes very deep; involved employees located in both New York and other BNPP locations across the globe; and occurred over an extended period of time.

5. By these illicit efforts, BNPP traders and salespersons intended to benefit the Bank (and themselves) by maximizing profits or minimizing losses, usually to the detriment of BNPP customers and customers of other banks that became involved in the misconduct. Improper activity that was attempted includes:

- Collusive conduct carried out through on-line chat rooms that involved fake trades designed to manipulate prices; and collusion in setting spreads for customers trading in certain currencies, in order to widen the spreads and artificially increase profits.
- Improperly exchanging information about past and impending customer trades in order to maximize profits at customers' expense. Conduct encompassed improper sharing of confidential customer information via personal e-mail – including through use of a sophisticated codebook that helped identify dozens of clients, central banks or other important market participants and specified trading volumes.
- Manipulation of the price at which daily benchmark rates were set – both from collusive market activity, as well via improper submissions to benchmark-fixing bodies.
- Misleading customers by hiding markups on executed trades, including by using secretive hand signals when customers were on the phone; or by deliberately “underfilling” customer trades, in order to keep part of a profitable trade for the Bank’s own book.

6. BNPP’s failure to effectively police its FX business extended to its electronic trading platforms as well. Its electronic trading offerings were deficient because certain elements,

including a “last look” functionality, operated in a manner that disadvantaged customers, without sufficiently disclosing to them how the Bank’s trading was conducted.

**The Foreign Exchange (“FX”) Market and BNPP’s FX Business**

7. **The FX Market:** The foreign exchange (“FX”) market is one of the largest and most liquid markets in the world. The FX market is centered on “spot” transactions, *i.e.*, the exchange of national currencies between two counterparties typically settled within two business days. A spot dealer quotes its customer a “bid” (the price at which it will buy a currency) and an “ask” (the price at which it will sell). Dealers profit on the difference between bid and asking prices, known as the “spread.”

8. The spread quoted plays a central role in the customer’s decision whether to place an order with the particular dealer. Dealers want a wider spread, *i.e.*, to buy low and sell high, while customers want a narrower spread. The narrower the spread offered, the more competitive the price; if a spread is too wide, a customer may choose to go to a different bank offering tighter spreads. By quoting narrower spreads than competitors, dealers can gain customers and market share.

9. Large banks such as BNPP serve as dealers or “market-makers,” quoting prices to and trading with customers. Dealers also trade for their own account.

10. **BNPP’s FX Business:** BNPP does business in the United States through BNP Paribas S.A., New York Branch (“BNPP New York”), as well as through other affiliates. The Department supervises and regulates BNPP New York as a licensed foreign bank branch in New York State.

11. BNPP conducts FX trading operations in New York, London, and several other global FX hubs. For the relevant period through the present, all FX trades involving U.S. dollars

traded by BNPP clear through BNPP New York. During the approximate period 2008 through 2013, BNPP's average share in the global FX market approximated 2.5 percent – on par with a number of other large global banks.

#### **BNPP's Improper, Unsafe and Unsound Conduct**

12. For many years, several BNPP FX traders participated in multi-party online chat rooms where participants discussed coordinating trading activity, and attempted to manipulate FX currency prices or benchmark rates. The purpose of this collusive activity was to diminish competition among banks, allowing these institutions and the traders involved to wring higher profits from the execution of FX trades at the expense of customers.

#### **Collusive Conduct Intended to Manipulate FX Prices – “ZAR Domination”**

13. For example, in 2011 and early 2012, a trader located in BNPP's New York FX desk (“**Trader 1**”), employed a variety of schemes intended to manipulate prices and spreads in several CEEMEA currencies, including the South African rand, Hungarian forint and Turkish lira.

14. As a result of this illegal conduct, on January 4, 2017, **Trader 1** pled guilty in the U.S. District Court for the Southern District of New York (the “Southern District”) to a one-count information charging him with conspiracy to restrain trade, in violation of the Sherman Act, 15 U.S.C. § 1.<sup>1</sup> Certain of the manipulative schemes employed or discussed by **Trader 1** and others are described more fully below.

15. Scheme One – “Firepower”: In one scheme, **Trader 1** and certain colleagues at other global banks, who also traded in South African Rand (known by its symbol “ZAR”), sought to manipulate FX prices by directly coordinating trading activity. **Trader 1**, explicitly referring to this group as a “cartel,” labeled it “**ZAR Domination.**”

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<sup>1</sup> See *U.S. v. Jason Katz*, 17-CR-003 (S.D.N.Y.) (<https://www.justice.gov/atr/case-document/file/946726/download>).

16. This group also included a trader who sat in the New York offices of another global bank that held a large share the FX market (“Trader 2”). On January 11, 2017, Trader 2, who colluded extensively with **Trader 1**, also pled guilty in the Southern District to a nearly identical one-count information charging him with conspiracy to restrain trade in violation of the Sherman Act, 15 U.S.C. § 1.<sup>2</sup>

17. **Trader 1** sought to recruit more members to the *ZAR Domination* cartel. In January 2012, for example, Trader 1 sent messages with a former colleague, who then served as Head of FX Spot Trading at a large African bank (“Trader 3”), saying: “*a couple of us here [in New York] are going to probably make a run at zar in this [Eastern] time zone.*” Trader 1 sought to enlist Trader 3 to join the group, proposing “some coordination with you guys ... let you know what we are doing and what we have ... do some execution in the overnight hours.”

18. Trader 1 explained “*there are about 3 or 4 of us with good size limits here [and] 200 bucks [\$200 million] or so in ny time zone can have an effect. . . . [The] “main thing” . . . is just not running into big local orders so between the ones i get plus yours . . . we should have good idea what is out there.*” Trader 1 emphasized that this group consisted of traders he trusted based on two years of relationships, “so we could alternate names . . . so no one would get an idea of where the selling or buying is really coming from,” and noted, “*thats a lot of firepower i think in ny. . . [and to] just keep that quiet.*”

19. **Trader 1** sought to recruit another colleague at a global bank that also was a major FX market participant (“Trader 4”), telling him:

*[W]e got a little cartel really brewing . . . really try and move zar . . . wont take much to push it . . . we will know where all the orders are . . . we got like 200 bucks of firepower . . . occasional blow up but we win . . . make one chat room . . . call it Zar domination*

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<sup>2</sup> See *U.S. v. Christopher Cummins*, 17-CR-0026 (S.D.N.Y.) (<https://www.justice.gov/atr/case-document/file/930521/download>).

*. . . i think it is a million dollar plan . . . we have to be proactive on it though. couple times a week for it to pay off.*

20. As noted one of strategies explored by this group involved building up “firepower” in Rand currency during New York trading hours. Because the Rand is a relatively illiquid currency (trading represents approximately 1.1 percent of the global FX market), its price is more susceptible to coordinated manipulation than more liquid currencies.

21. Relatedly, interest in Rand trading is limited to certain regions. A significant percentage of this trading takes place in South Africa during business hours in that time zone. Trading during business hours in New York (off-hours in the South African market) can have an outsized effect.

22. Accumulation of “firepower” would enable the cartel to push the price of the Rand in one direction or another during New York hours, as desired. During a chat with co-conspirators, **Trader 1** stated: It *“just seems to me that zar [is] one of the few ripe mkts out there for people with some stick behind em so why not. not going to make our budgets off flow or nickel and diming euro around.”* In other words, when profits from legitimate trading or “flow” would not satisfy these traders, profits from collusive conduct would.

23. Scheme Two – Spread Collusion: Another strategy employed by the “**ZAR Domination**” group involved collusion in setting spreads for trading in Rand. Competition between global banks helps keep spreads tight and prices competitive. Group members, however, repeatedly colluded to widen spreads for orders in Rand to limit competition, thereby boosting the banks’ ability to profit at customer expense.

24. In January 2012, for example, **Trader No. 2** informed the group that he had received an order to buy \$50 million of Rand, asking, “250 pips? 300?” **Trader 2** also shared the fact that

he had shown his customers a spread of 125 basis points for a \$20 million order and 250 basis points for a \$50 million order.

25. **Trader 1** responded, “ill match . . . *lets widen this out on people . . . if we all consistent...it becomes standard ahah.*” **Trader 2** “*agreed,*” as did a trader from another global bank with large FX market share (“**Trader 5**” and “**Bank 2**”), noting “*tht way 250 is the new 200.*” In other words, members of this group explicitly colluded in an effort to force upon customers an increase in the standard spread for a \$50 million order -- from 200 pips to 250 pips.

26. **Trader 5** also asked **Trader 1** to solicit **Trader 4** to join this illegal arrangement. **Trader 1** agreed, writing to **Trader 4** in a different chat room:

*hey dude we all agreed the new price in 50 bucks ny time is 250 and 125 for 20 we going to try and get this wider ... if we all consistent they have to except [sic] it.*”

**Trader 4** also agreed to the scheme.

27. **Trader 1** returned to the first chat room to inform the other co-conspirators that **Trader 4** was on board with this leg of their scheme, bragging: “*i have one word for BNP . . . guarantee.*” **Trader 5** congratulated the group, saying “*salute to first coordinated zar effort.*” **Trader 1** responded, “*yep many more to come.*”

28. **Trader 1** also attempted to recruit into the conspiracy a former colleague who traded currency at **Bank 4** (“**Trader 6**”), saying:

*“a bunch of us have decided to widen spreads a bit in ny afternoon . . . we making 125 in 20 and 250 in 50 . . . going to get custys to except [sic] wider . . . figure if we all consistent they [customers] have to accept it . . . [Bank 2, Bank 1 and Bank 3] all in for it.”*

Seeking to extend the reach of the cartel further, **Trader 1** asked **Trader 6** to let yet another trader at **Bank 4** know about the “new” collusion-based price.

29. Subsequently, in March 2012, **Trader 1** complained to the group about other, “*silly*” banks that were undermining the cartel by offering narrower spreads. **Trader 1** encouraged the cartel that, by maintaining solidarity on wider spreads, the group eventually would broadly impact the market: “*my spread is my spread ... if we all in ny keep the same spread that will become the norm ... we set the spreads ... and we stand by them ... 50 in ny is 200 ... 25 in ny is 125 ... you guys agree or am i off.*” Others in the group agreed to adhere to the agreed-upon quotes. Concisely summarizing the deeply pernicious nature of the cartel he helped craft, **Trader 1** stated: “*that is what we show in ny ... custys dont like oh well ... where they going to go?*”

30. Scheme Three – Fake Trades: Another illegal scheme involved **Trader 1** pairing with colleagues at least two other large banks to deploy fake trades directed at improperly moving prices of emerging market currencies. The group focused their illicit efforts on currencies with low liquidity, executing during the off-hours for the primary markets in those currencies when trading activity would be low, in order to maximize the scheme’s impact.

31. The co-conspirators first would conduct a currency trade on a public and transparent trading platform, such as “Reuters Matching,” so that publicly-available market data showed a completed trade at a certain price. Shortly afterwards, **Trader 1** and a co-conspirator would unwind the same trade on a non-public, non-transparent dealing platform, such as “Reuters Dealing,” or cancel the original trade altogether by mutual agreement.

32. In many instances, fake trades between **Trader 1** and a counterparty were unwound or canceled within seconds of placement. Sometimes the fake order was the only trading activity visible on the public trading platform for several minutes. Because the co-conspirators used these tactics during periods of relative market inactivity, prevailing market prices moved upward or downward immediately after publication of the fake trade on repeated occasions.

33. **Trader 1** and co-conspirators coordinated tactics in chats and phone calls. In December 2011, for example, Trader 2 stated to **Trader 1** by chat that he was “*trying to stuff it higher*” in the U.S. dollar/rand exchange rate. Minutes later, the two traders executed a publicly-visible U.S. dollar/rand trade, which they immediately canceled privately.

34. The unwinding or canceling of trades served no legitimate economic purpose -- these were fabricated transactions designed to mislead and improperly influence other market participants. The Department’s investigation has determined that **Trader 1** engaged in more than two dozen improper canceled trades during 2011 and 2012, involving traders from at least two other major financial institutions.

*Illegal Coordination to Enhance Profits at Customer’s Expense*

35. BNPP traders also engaged in other illegal coordination of their trading to disadvantage customers by maximizing the profits or minimizing the losses to the Bank following a trade. In May 2013, for example, **Trader 1** and Trader 2 expressly discussed coordinating prices offered to a customer to boost Trader 2’s profits:

*I’m going to walk this guy up in the Rand. . . . I want to get him . . . let me cancel my other stuff. Get that out . . . fall back. . . . When it goes 0 . . . let’s see, I don’t want to get too greedy. Alright, when it goes 050 bid, would you give it the two there?*

36. After Trader 1 agreed to assist, and the customer apparently made a trade, Trader 2 said: “Lets sit back for a sec. Maybe he needs more.” **Trader 1** agreed. Trader 2 then instructed **Trader 1**, “*bid four and just pull that for a second . . . Ah, that’s fine. So I got one at 78.*” Trader 1 and 2 thus appeared to successfully “walk up” the price paid by the customer.

37. In another instance, Trader 5 enlisted **Trader 1** to “*pull ur bids in il,*” apparently referring to publicly-visible bids in Israeli shekels. **Trader 1** responded, “*ok.*” Trader 5 then told **Trader 1** he would compensate him for the help in a later trade.

38. **Trader 1's** efforts at manipulation were far-reaching. For example, in January 2012, **Trader 1** and Trader 5 discussed illegally coordinating with other traders to quote specific customers a specific price. **Trader 1** listed two possible price quotes, and Trader 5 responded, "*no, lower.*" Five minutes later, after apparently quoting prices to the customer even lower than the coordinated one, **Trader 1** mocked the customer: "*this guy [the customer] is going to sell the bottom.*" **Trader 1** subsequently reported to Trader 5 that he succeeded in buying from the customer at several basis points lower.

39. In another example, a BNPP salesperson based in Seoul, South Korea ("**Salesperson 1**"), colluded with a counterpart at another global bank to secretly coordinate bids for a customer's business. Between April 2011 and November 2014, **Salesperson 1** and salespeople at the other bank improperly coordinated when responding to a certain customer's regular requests for competitive bids for a certain U.S. dollar/Korean Won forward transaction. The salespeople at each bank agreed that one or the other of the banks would significantly overbid for the transaction by a certain amount. This permitted the bank that had not overbid to that extent to "win" the bid with a nevertheless higher markup on the price – *i.e.*, the "winning" bank already knew through collusion that its "competitor's" bid would be substantially higher.

40. BNPP and the other global bank rigged at least 44 bids in this manner for the targeted customer, dividing the "wins" evenly and charging the customer margins that were double the typical margins they had been able to charge before they hatched their scheme.

**Improper Sharing of Confidential Customer Information**

41. Explicit Sharing to Customers' Detriment: BNPP traders also harmed FX customers on repeated occasions by exchanging information in chat rooms with traders from other banks to trade advantageously against BNPP customers -- adjusting prices in light of additional

information gleaned from putative competitors about the prices they offered such customers. Typically, specific information about customer identity and the type and size of customer orders, is considered confidential and proprietary to a bank, and is not permitted to be shared outside of the financial institution.

42. BNPP traders ignored this requirement repeatedly for their own benefit. For example, in April 2011, a London-based BNPP trader (“**Trader 7**”) asked a trader at another bank (“**Trader 8**” and “**Bank 5**”): “*Need a quick favour pls . . . . Where do u have 18m and 2y chfjpy [Swiss franc/Japanese yen futures]?*” **Trader 7** sought the information because a BNPP customer, expressly identified in the chat, was “*looking to pick me off.*”

43. Shortly after **Trader 8** shared **Bank 5**’s current prices for those futures, **Trader 7** boasted about the successful misuse of confidential client information: “*So after I asked u the chfjpy, I shifted my price by like .4 higher . . [and the customer] still paid me . . . oh maaaaaaaaan.*” **Trader 8** replied, “*haha.*”<sup>3</sup>

44. The “We Reign” Codebook: BNPP traders used other ingenious schemes to disadvantage customers. For example, a BNPP FX trader located in Tokyo (“**Trader 10**”) joined with seven other Japanese yen traders at various global banks and corporations to improperly share customer information. The group regularly shared the identity and orders of specific customers for trading occurring in Tokyo, Hong Kong and Singapore. This improper, unsafe and unsound practice expressly violated BNPP’s confidentiality policies and potentially depressed competition in the FX markets.

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<sup>3</sup> Later, in 2012, **Trader 7** discussed with a trader at another global bank (“**Trader 9**” and “**Bank 6**”), a specific client request regarding an FX futures product, and improperly shared information about the prices BNPP planned to offer. After sharing the information, **Trader 9** cautioned **Trader 7**, “*don’t make it too obvious that we talk.*”

45. To effectuate this elaborate scheme, the group periodically circulated a list of codes -- usually one or two letters, punctuation marks or symbols -- used to identify dozens of clients, central banks or other important market participants. The group also agreed upon a set of neutral-sounding words to represent specified trading volumes. Fittingly, the group named the chat room where they conducted their coded conversations as the "*We Reign*" chat room.

46. To avoid detection, "*We Reign*" circulated the codebook using participants' personal e-mail addresses. They periodically updated the codebook with new market participants and retired unused codes. To maximize its effectiveness, when the group circulated a revision of the codebook in March 2008, it employed a one-week training period to learn the new codes and agreed to use old codes to permit a ramp-up to the updated version.

47. Also to evade surveillance, the group buried code words or symbols within other words, effectively creating rules of grammar. This fostered the impression that coded communications were actually stray keystrokes, as one group member explained: "*It might be confusing at first, but . . . it will look more like a typo, also it will be much better than using stuff . . . which actually look like codes. . . . [this way] we can protect ourselves.*"

48. "*We Reign*" participants improperly shared client and trade information often in real time, from at least 2007 through 2011. Examples abound: in October 2008, **Trader 10** told the group about certain trading activity that occurred "*right before bought vsmall usdvchf.*" The term "vsmall" referred to a specific trade volume, while the letter "v" buried in the middle of the currency pair identified the particular BNPP client that traded. **Trader 10** reminded the group, "*please keep your lips sealed thx.*"<sup>4</sup>

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<sup>4</sup> An analysis of **Trader 10's** order book demonstrated that, in virtually every instance when **Trader 10** improperly disclosed client and order information to *We Reign*, **Trader 10** had made the actual trade reflected in that disclosure.

*Improper Efforts to Manipulate Trading Around Daily Benchmark Fixes*

49. BNPP traders also attempted improper coordination of trading activity around daily benchmark fixing windows. The purpose of this manipulation was garner sufficient market power so as to push the fix price in a direction benefitting all the traders involved, often at the expense of the customers.

50. A “fix order” is a customer order for the bank to deliver the requested currency at the designated “fix” rate, which is determined at a later time based on trading in the interdealer market. By taking these orders to transact at a rate that will only be determined later, banks take on risk by exposing themselves to exchange rate movements.<sup>5</sup>

51. The DFS Investigation has identified more than a dozen instances when traders engaged in this type of manipulative conduct involving the fix. One manipulative practice, known as “building ammo,” involved an agreement among traders at different banks to allow a single, designated trader to take on multiple orders from the other participants. This ensured that multiple traders minimized risks by staying out of each other’s way during the potentially chaotic trading around the fixing window. By allowing the designated trader to build and then deploy the “ammo,” the coordination provided the designated trader sufficient market power so as to push the fix price in a direction benefitting all the traders involved.

52. For example, in October 2012 a trader at Bank 1 (“Trader 12”) asked a London-based BNPP trader (“Trader 13”) by chat, “*u want a Christmas present,*” and offered a fix order

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<sup>5</sup> One type of fix is calculated each day based on a sampling of real trading activity completed during a predetermined and usually short window of time. For spot trading, the most widely used benchmarks are the WM/Reuters fix (“WM/R” fix, occurring every business day at 4:00 p.m. London time) and the European Central Bank fix (“ECB” fix, occurring every business day at 1:15 p.m. London time). FX traders may buy or sell currency close to the “fix window” in order to manage their exposure to this risk and obtain a currency position large enough to complete the client’s order.

to Trader 13. **Trader 13** replied, “*u don’t wanna wollop it?*” When Trader 12 declined, **Trader 13** proceeded to trade the order during the minutes around the fixing window. After later seeing the fix rate announced, **Trader 13** replied to Trader 12, “*schweeeeet! Thks bra extra helped . . . extra ammo helped loads.*”

53. In another chat from February 2011, a BNPP trader based in London (“**Trader 14**”) asked a trader at Bank 2 (“**Trader 15**”) if he had any interest in the upcoming ECB fix, saying “*any huge interest ecb?*” After **Trader 14** informed Trader 15 of the direction of his own orders and which way he would be trading, Trader 15 responded, “*I am the same way . . . u want some ammo . . . see what u made off?]*” **Trader 14** told him he “agreed,” and Trader 15 replied, “*good luck amigo.*”

54. Another instance of manipulation around the fix involved a BNPP London trader (“**Trader 21**”) and a trader at a London-based global bank (“**Trader 22**” and “**Bank 7**”). After the two traders colluded to manipulate the fix to profit against each one’s client order, the two traders reveled in their success. After **Trader 21** concluded, rhetorically, “*how easy was that to bully?*” **Trader 22** responded:

*[M]ate it worked lovely, in these markets when we have the ball, we need to make it count, as you were scaring the voice market, I was putting stupid bids in.<sup>6</sup>*

*Attempts to Manipulate Orders by Triggering or Defending Options Barriers*

55. BNPP traders also acted improperly on multiple occasions by seeking to disadvantage customers by triggering, or defending, a barrier option that had been purchased by the customer.

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<sup>6</sup> On or about January 10, 2017, Traders 12 and 15, both alleged members of the chat room known as “The Cartel” (and neither of whom were ever employed at BNPP) were charged by indictment in the Southern District with participating in a conspiracy to suppress and eliminate competition for the purchase and sale of euro/U.S. dollar in the United States and elsewhere. The charges are currently pending. See *U.S. v. Richard Usher et al.*, 17-CR-019 (S.D.N.Y.) (<https://www.justice.gov/opa/press-release/file/924206/download>).

56. One type of barrier option, known as a “knock-out,” yields value to the purchaser only if the referenced currency price does not reach a specified point in the market during a certain time period. If the market price touches or exceeds the barrier before the option expires, the option becomes worthless, *e.g.*, it gets “knocked out,” and BNPP profits because its obligation to make payment to the customer disappears. BNPP likewise sold option barriers that worked conversely, *e.g.*, the Bank paid the customer only if the price reached or exceeded the barrier during the specified time period.

57. On several occasions, BNPP options traders enlisted colleagues within the Bank to make large trades – transactions far in excess of any reasonable hedge – for the express purpose of manipulating the spot price to “trigger” the barrier, that is, cause the market price to touch the barrier during the relevant period. For example, in July 2012, the head of BNPP’s Asia options desk (“**Trader 16**”) asked the head of BNPP’s spot FX desk in Tokyo (“**Trader 17**”) to assist in driving the U.S. dollar/Japanese yen currency pair above a certain price, in order to “knock out” a customer’s option. When **Trader 17** asked “*how much can u throw at it[?]*”, **Trader 16** replied that he had “*200mio of ammo*” available to manipulate the price higher.

58. In the seconds leading up to the expiration of the option, **Trader 16** directed **Trader 17** to “buy a bit more if necessary,” as the spot price had not moved far enough to knock out the customer’s option. Although **Trader 17** made a flurry of dollar purchases in the seconds leading up to the option’s expiration – successfully maneuvering the spot price to approach the barrier – their coordinated efforts to affect the price of the currency pair ultimately failed.

59. Reviewing their tactics for future attempts, the traders speculated they should have conducted more concentrated trading in the final seconds leading up to the expiration to push the price over the barrier at the decisive moment. **Trader 17** noted, “*[next time] we’ll try [to] really*

*concentrate the lot at the last moment to be able to keep [the spot price] above until time is over.”*<sup>7</sup>

60. And in December 2012, a New York-based BNPP options trader (“**Trader 18**”) discussed strategies regarding a customer’s Australian dollar/U.S. dollar option with a London-based BNPP trader (“**Trader 19**”). **Trader 18** reported that, based on conversations with colleagues in New York, he felt a certain amount of spot trading “should push [the market] 5 tics,” so “u may want to speak to those guys there [London spot traders],” because if the underlying spot price got close to the barrier, it would be worth trying to push it over.

61. **Trader 19** subsequently noted, “*I told the spotter we may want to trigger it if getting close [to the barrier].*” After the spot price rose sufficiently to knock out the customer’s option, the traders in New York and London congratulated one another on the trigger: “*nicely done getting that to trigger . . . well done . . . nice work on triggering the barrier.*”<sup>8</sup>

#### Misleading Sales Practices

62. BNPP’s FX sales personnel engaged in improper conduct designed to mislead customers about how prices were determined, or how successfully the Bank had filled their orders – oftentimes with cooperation of BNPP traders.

63. Hidden Markups: One such practice involved undisclosed markups added to customer orders. A markup represents the difference between the BNPP trader’s price for executing a trade in the market, which already may include profit based on the spread, and the price quoted to the customer.

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<sup>7</sup> BNPP trading data confirms that only a fraction of the more than \$200 million in trades conducted by **Trader 17** on this date had any appearance of legitimate hedging; the balance was quickly sold back to the market, corroborating that the purchases were simply an attempt to manipulate the price to benefit BNPP.

<sup>8</sup> BNPP trading data confirms that a BNPP London-based spot trader purchased AUD 370 million, an amount far in excess of the option trader’s reasonable hedges, as the market price ticked upward, helping to drive the price just above the barrier, and after which he sold it all back to the market – all at the customer’s expense.

64. While markups are not inherently improper, some BNPP FX sales employees would from time to time engage in a practice that frustrated certain customers' attempts to learn about the size of markup charged, or to obtain price transparency. For example, some customers sought to obtain more visibility into the prices offered by BNPP by asking the telephone line to remain open while a BNPP salesperson requested a quote from a BNPP trader. In theory, this practice would allow the customer to hear the price shouted from the trader to the salesperson; after the salesperson relayed a price to the customer, the customer would learn exactly what markup had been applied to the trade

65. Certain BNPP sales and trading staff created a chat room -- nicknamed the "*money printing chat room*" -- devoted to communications regarding trade requests provided by a certain active customer, who routinely requested to be kept on an open phone line when he called BNPP sales staff. Employees using the chat room referred to one another as a "voleur" -- French for "thief" -- and asserted "*we make boat loads \$\$\$\$ here.*"

66. In a March 2012 chat, for example, a New York BNPP trader ("**Trader 20**") listed two prices in the "money printing chat room": one for a euro/yen trade and another for a U.S. dollar/yen trade. A salesperson ("**Salesperson 2**") asked **Trader 20** whether "that's including 2 pips on both," to which **Trader 20** confirmed the two-pip markup. After **Salesperson 2** reported a successful sale at those enhanced prices, **Trader 20** responded "merci . . . *[tu] es un beau con artist.*"

67. Additionally, BNPP FX employees discussed in chat rooms the necessity of concealing their behavior from customers. In a June 2012 discussion about a potential order from a Japanese customer, a BNPP salesperson ("**Salesperson 3**") told **Trader 20** that her boss "*has to*

*adjust the voleur-meter.*” Trader 20 responded, “ohh that’s rite...almost forgot...*Japanese hate thieves.*”

68. Some BNPP sales employees and traders even devised hand signals, like a baseball catcher, to use while a customer remained on the open phone line. The BNPP employees would occasionally flash signs back and forth to indicate whether and to what extent an undisclosed markup should be added to the price obtained for the customer.

69. Deliberate Underfills: To further benefit the Bank and its traders’ profitability at customer expense, BNPP sales employees sometimes engaged in deliberate “underfills” of executed trades. A deliberate “underfill” occurs where a trader successfully fills the entirety of a customer’s order, but holds back some of the trade for the bank’s own account -- crediting the customer with only part of the trade he or she requested without the customer’s knowledge.

70. In so doing, the trader or salesperson essentially obtains a free option at the customer’s expense: although the entire customer trade was in fact filled at a certain price, Bank employees held it back before deciding whether to credit the customer for the full amount. If subsequent price movements indicated the trade was profitable and the market was such that Bank staff could plausibly represent that it filled only part of the order, the Bank might not disclose to the customer that the whole order had indeed been filled – and that extra profit was credited to the Bank’s own account at the customer’s expense.

71. Illustrative is a November 2013 chat, where a BNPP trader informed the salesperson that the customer’s order had been filled at a certain price but that the price “*wasn’t there for long.*” Because the customer was “gone for the day” and presumably would not be checking trade confirmations until the next day, the BNPP employees credited part of the filled order to the customer – keeping the rest for their own account. Several minutes later, the

salesperson decided to “*take profit*” on the portion of the trade held back, discussing with the trader how to allocate the illicit proceeds amongst themselves.

72. In December 2013, **Trader 20** and **Salesperson 3** used chats to discuss execution of a customer trade at the requested price. **Trader 20** told **Salesperson 3**, “*u [can] give em all to custy or u [can] split . . . ur call.*” When **Salesperson 3** sought to hold back the entire order from the customer for the Bank’s profit, **Trader 20** insisted that **Salesperson 3** “*give [the customer] back something . . . pls.*” The two New York employees then discussed how they would allocate the remaining profit amongst themselves.

**Attempts to Manipulate Submission-Based Benchmarks**

73. CME/EMTA Benchmark: Yet another manipulative practice occurred where BNPP employees traded currency pairs with submission-based benchmarks. Certain traders looked to manipulate the benchmarks through the supposedly objective submission process, by making submissions that instead were premised on benefitting their own particular trading position.

74. Each day in Moscow, certain banks trading in the U.S. dollar/Russian ruble (USD/RUB) pair were “polled” for a submission that was supposed to reflect the bid and offer at which (at the moment of the poll) the bank could execute a small USD/RUB spot trade in the Moscow market. These submissions, taken from an identified group of banks, were then used to calculate a benchmark price for USD/RUB, known as the “CME/EMTA” fix.

75. A BNPP trader based in Russia (“**Trader 23**”) participated in a chat room with traders from other banks, who were also submitters to the CME/EMTA fix, to discuss their respective bank’s benchmark submissions. In at least nine instances, **Trader 23** and others made specific requests to learn the others’ benchmark submissions ahead of time, or tried to generate

agreement about what levels to submit, in contravention to the policies and purpose underlying the benchmark submission process.

76. Indeed, on one occasion, **Trader 23** requested that his counterparts skew their submissions to benefit his own trading position, saying, “*Guys, will you please put emt [bids] a bit higher please . . . if it makes no difference*”; or “*Guys, could pls you make the fix higher, if you don’t give a shit what bid [you’d otherwise make]?*” These type of requests were improper and clearly violated the rules for the CME/EMTA fix.

77. PTAX Benchmark: Another submission-based benchmark vulnerable to abuse by BNPP traders was the PTAX benchmark. This benchmark is used in the spot market for trades of the U.S. dollar against the Brazilian Real. Starting in July 2011, the PTAX benchmark was based on an average of four daily price polls from major banks trading in this currency pair.

78. On at least ten occasions after July 2011, BNPP traders based in Sao Paulo, Brazil improperly discussed PTAX submission levels with others at submitting banks. In July 2011, for example, a BNPP trader who had authority over the Bank’s submission to the benchmark’s publisher, the Brazilian Central Bank (“**Trader 11**”), told a counterpart at another bank, “*push this shit up . . . the PTAX . . . push it at least half a point.*” After the submission window closed and the Brazilian Central Bank published a lower-than-desired benchmark, **Trader 11** blamed his colleague at the other bank, saying “*this PTAX is very cruel, I bet yours [submission] was low.*”

#### Elements of BNPP’s Electronic FX Trading Platform Disadvantaged Customers

79. Control failures at BNPP were not limited to the “voice” execution side of BNPP’s FX Business. BNPP’s electronic trading platform was also deficient because elements of the platform operated in a manner that disadvantaged customers, without sufficiently disclosing how the Bank’s trading was conducted.

80. Overbroad Use of “Last Look”: On some of its electronic trading platforms, BNPP employed what is commonly known as a “last look” function to its trade acceptance process.

81. Even when conducted via high-speed internet connections, electronic trading is subject to certain inherent latencies in the process of trade offer, acceptance or rejection, and subsequent communication. Tiny delays are occasioned by the time it takes for data to travel from a customer’s server to the Bank’s server, the time for the Bank to confirm a customer’s credit is sufficient, and the time it takes the Bank to ensure there is available liquidity in the market to execute the trade. The latency period might be as short as several milliseconds or as long as several hundreds of milliseconds – even longer in the case of slower internet connectivity.

82. Certain sophisticated trading customers of BNPP might seek to take advantage of the delay to electronically detect market movement milliseconds before BNPP’s systems have properly adjusted their prices. This is a form of what is known as “toxic flow.”

83. Another type of toxic flow can occur where a sophisticated client seeks to obtain a better price from BNPP by breaking up and spreading fractions of its total order volume across a number of market makers (known as “spraying the market”). A market maker like BNPP might then execute this apparently low volume trade at a lower price than it would have, had it been aware of the total size of the customer’s order, because lower volume orders require market makers to assume less risk.

84. To protect against toxic flow BNPP incorporated a “last look” functionality into parts of its electronic trading system. This additional delay, sometimes several hundred milliseconds, added to the time between the Bank’s receipt of a customer order and communication of acceptance or rejection. During the delay, BNPP’s trading system compared the customer’s desired price for its order against the market price available at the end of the latency period. If the

market moved in the client's favor more than a certain amount during the "last look" interval, the Bank rejected the trade.

85. While the use of last look in electronic trading may serve as a legitimate tool to defend against toxic flow and assist in keeping spreads tight for customers, it is best employed when (a) tailored to the risk involved, and (b) adequately disclosed to customers.

86. Here, BNPP generally did not disclose to customers using the electronic trading platforms that they were subject to the last look functionality. Nor did BNPP disclose the process by which it re-checked the market and rejected trades where they moved sufficiently in the customer's favor. BNPP merely informed customers that prices appearing on its electronic trading platforms were "indicative" – *i.e.*, the prices did not constitute concrete "offers" to trade and that the Bank could decide to accept or reject a customer offer made based on the prices posted by BNPP on its trading systems.

87. Moreover, BNPP's use of last look was overbroad. Prior to systematic changes implemented in 2013 - 2014, BNPP did not sufficiently tailor this mechanism to ensure it was used to defend against toxic flow. For example, BNPP did not conduct systematic reviews of the application of last look, or the extent of its use, with respect to particular customers or categories of customers.

88. Often, it was only after a perceptive customer noted a large number of trade rejects (one possible consequence of a long last look period) and complained to BNPP that it tailored application of last look to that customer's trading history and objectives.

89. Additionally, BNPP applied last look functionality to certain liquidity channels streamed over third-party trading platforms, meaning it applied last look delays indiscriminately

to entire groups of customers. BNPP substantially reduced its use of last look on those third-party trading platforms in 2014, seeking to reflect the actual risk of toxic flow in that arena.

90. Potential Improper Front-Running of Customer Orders: It may be proper for a bank's market-making electronic trading system to engage in hedging ahead of customer orders, sometimes called "pre-hedging," in certain circumstances. One example might be to allow the system to accept a large customer order it might otherwise have to decline given the Bank's then-existing positions.

91. However, where an electronic trading system artificially slows down its decision on a customer trade request through last look, uses that expression of customer interest to itself go into the market and trade ahead of the request while retaining the option to reject the still-pending customer request, this conduct would transform potentially proper pre-hedging into improper front-running of a customer order.

92. From approximately 2008 to 2014, one of BNPP's hedging algorithms used customer trade request information to hedge the Bank's own positions during the last look period the Bank applied to those customers' trade requests. On numerous occasions, however, BNPP's trading platform deployed an algorithm that, during the last look period, used that customer's indication of interest as a cue to potentially consider trading ahead of the customer's order.

93. BNPP's system was structured so that it began the hedging process before accepting or rejecting the customer's order at the end of the last look window, depending upon whether or how much the price had moved against BNPP in that time period. This hedging process, however, did not incorporate sufficient controls to ensure trading ahead of customer orders did not occur. In 2012, for example, BNPP applied this strategy to orders from more than 150 different electronic trading customers, creating the possibility of extensive trading ahead of customer orders. The

Bank did not disclose to customers its use of this specialized algorithm that created the opportunity to trade in front of customer orders.

#### **Significant and Material Control Failures In BNPP's FX Business**

94. The Department requires regulated financial institutions to adequately supervise their lines of business. Insufficient supervision poses serious risks to the safety and soundness of an institution. Material compliance failures may result in violations of internal policies and procedures; direct and indirect market harm to customers and other participants; and, potentially, violations of federal and state criminal and civil laws and regulations, including New York's banking and financial services laws.

95. Given that there is no single regulator for the FX market, it is all the more essential that financial institutions take an active hand in supervising this business line. Even so, as early as 2008, guidance existed that identified the need for dealers to protect client confidentiality and avoid situations involving or appearing to involve trading on nonpublic information.<sup>9</sup>

96. During the relevant period, although BNPP had some general policies and procedures in place, it lacked policies designed to adequately supervise its FX trading business and ensure compliance with applicable laws, rules and regulations. Nor did it provide proper governance over the FX business.

#### **BNPP's Generalized Efforts at Reform and Remediation**

97. In November 2014, BNPP and the Department entered into a Consent Order arising out of BNPP's violations of law and significant misconduct involving a widespread institutional effort to evade detection of more than \$190 billion in transactions it conducted for clients subject to U.S. economic sanctions during the period 2002 to 2012 (the "2014 Order"). The 2014 Order

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<sup>9</sup> See, e.g., Federal Reserve Bank of New York, *Guidelines for Foreign Exchange Trading Activities* (Foreign Exchange Committee, May 2008).

required BNPP to pay a civil monetary penalty of \$2,224,000,000 to the Department and install an independent monitor to recommend and oversee reforms to BNPP's compliance and management structure.

98. The Department recognizes that, since then, BNPP has undertaken a group-wide culture change program designed to reinforce core compliance values. According to presentations made to the Department, BNPP has strived to design an enterprise-wide compliance function that seeks to identify and properly address risks throughout its different lines of business and across all branches and subsidiaries worldwide. BNPP has represented that it has made substantial progress in implementing these reforms at every level of the institution, and the independent monitor engaged in connection with the 2014 Order has reported to the Department that favorable progress has been made in a number of areas.

99. Additionally, BNPP took remedial measures both before and after the Department began its investigation into BNPP's FX trading to address the misconduct arising in BNPP's FX Trading Business. This included reforms to the structure and oversight of the Bank's FX business, including overhauling its compliance oversight; more robustly reviewing employees to encourage compliance-oriented conduct; and automating certain types of orders to reduce structural conflicts of interest for traders.

100. The Department further recognizes and credits the manner in which BNPP performed its internal investigation, and its timely communications with the Department. The Department has given substantial weight to the commendable conduct of BNPP set forth in Paragraphs 97-100, among others factors, in agreeing to the terms and remedies of this Consent Order.

101. NOW THEREFORE, to resolve this matter without further proceedings pursuant to the Superintendent's authority under Sections 39, 44, and 44-a of the Banking Law, the Department and BNPP stipulate and agree to the terms and conditions below:

**VIOLATIONS OF LAW AND REGULATIONS**

102. BNPP has conducted business in an unsafe and unsound manner, in violation of Banking Law §§ 10, 44 and 44-a.

103. BNPP failed to maintain and make available true and accurate books, accounts, and records reflecting all transactions and actions, in violation of New York Banking Law § 200-c.

104. BNPP failed to submit a report to the Superintendent immediately upon discovering fraud, dishonesty, making of false entries or omission of true entries, or other misconduct, whether or not a criminal offense, in violation of 3 NYCRR § 300.1.

**SETTLEMENT PROVISIONS**

**Monetary Payment**

105. BNPP shall pay a civil monetary penalty pursuant to Banking Law § 44 to the Department in the amount of \$350,000,000. BNPP shall pay the entire amount within ten days of executing this Consent Order. BNPP agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.

**Employee Discipline**

106. As a consequence of both the Department's Investigation and BNPP's internal investigation and remediation, BNPP has terminated certain individuals involved in the misconduct detailed above, specifically: Trader 17, Trader 20 and Salesperson 1. Additionally,

certain other individuals involved in the misconduct described above resigned employment from BNPP prior to the time any disciplinary action might be taken against them, specifically: Traders 1, 10, 11, 13, 14, 21 and 23.

107. BNPP has represented that it has conducted an employee accountability review and imposed discipline on certain other employees for misconduct or supervisory failures in connection with the findings of this Order.

108. BNPP shall not in the future, directly or indirectly, re-hire or retain any of the individuals referenced in Paragraph 106 above, as either an officer, employee, agent, consultant, or contractor of BNPP, or any affiliate of BNPP, or in any other capacity. This restriction also applies to any current or former employee who is either separated from the Bank or whose employment is terminated by the Bank as a result of any future formal disciplinary action in connection with this investigation.

### **Remediation**

109. Within 90 days of this Order, BNPP shall:

- a. submit a written plan acceptable to the Department to improve senior management's oversight of BNPP's compliance with applicable New York State and federal laws and regulations, and applicable internal policies, in connection with BNPP's FX Trading Business; the Department will consider, in its sole regulatory discretion, whether this subparagraph a. has been satisfied by certain prior submissions made to the Department arising out of the 2014 Order;
- b. submit an enhanced written internal controls and compliance program acceptable to the Department to comply with applicable New York State and federal laws and regulations with respect to BNPP's FX Business;
- c. submit a written plan acceptable to the Department to improve its compliance risk management program with regard to compliance by BNPP with applicable New York and federal laws and regulations with respect to its FX Business; and
- d. submit an enhanced written internal audit program acceptable to the Department with respect to BNPP's compliance with applicable New York and federal laws

and regulations, as well as BNPP's internal policies and procedures, in its FX Trading Business.

110. BNPP shall submit the written plans and programs that are acceptable to the Department as set forth in Paragraph 109 of this Order. Each plan or program shall contain a timeline for full implementation of the plan or program with specific deadlines for the completion of each component of the plan or program. Within 10 days of approval by the Department, BNPP shall adopt the approved plans and programs. Upon adoption, BNPP shall promptly implement the approved plans and programs and thereafter fully comply with them. During the term of this Order, the approved plans and programs shall not be amended or rescinded without the prior written approval of the Department.

111. Within 30 days after the end of the first full calendar quarter following the date of this Order, and quarterly thereafter, BNPP shall submit to the Department written progress reports detailing the form and manner of all actions taken to secure compliance with the provisions of this Order and the results thereof.

**Breach of Consent Order**

112. In the event that the Department believes BNPP to be in material breach of the Consent Order, the Department will provide written notice to BNPP and BNPP must, within ten business days of receiving such notice, or on a later date if so determined in the Department's sole discretion, appear before the Department to demonstrate that no material breach has occurred or, to the extent pertinent, that the breach is not material or has been cured.

113. The parties understand and agree that BNPP's failure to make the required showing within the designated time period shall be presumptive evidence of the Bank's breach. Upon a finding that BNPP has breached this Consent Order, the Department has all the remedies available

to it under New York Banking and Financial Services Law and may use any evidence available to the Department in any ensuing hearings, notices, or orders.

**Waiver of Rights**

114. The parties understand and agree that no provision of this Consent Order is subject to review in any court or tribunal outside the Department.

**Parties Bound by the Consent Order**

115. This Consent Order is binding on the Department and BNPP, as well as any successors and assigns. This Consent Order does not bind any federal or other state agency or any law enforcement authority.

116. No further action will be taken by the Department against BNPP for the specific conduct set forth in this Consent Order, provided that the Bank complies with the terms of this Consent Order.

117. Notwithstanding any other provision contained in the Consent Order, the Department may undertake action against BNPP for transactions or conduct that BNPP did not disclose to the Department in the written materials that BNPP submitted to the Department in connection with this matter.

**Notices**

118. All notices or communications regarding this Consent Order shall be sent to:

For the Department:

For the Department:

James Caputo, Esq.  
Senior Assistant Deputy Superintendent  
for Enforcement  
One State Street  
New York, NY 10004

Megan Prendergast, Esq.  
Deputy Superintendent for Enforcement  
One State Street  
New York, NY 10004

For BNPP:

Georges Dirani  
Group General Counsel  
BNP Paribas S.A.  
12 Rue Chauchat  
75450 Paris CEDEX 09, France

Miscellaneous

119. Each provision of this Consent Order shall remain effective and enforceable until stayed, modified, suspended, or terminated by the Department.

120. No promise, assurance, representation, or understanding other than those contained in this Consent Order, has been made to induce any party to agree to the provision of the Consent Order.

IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed this 24 day of May, 2017.

BNP PARIBAS S.A.

By:   
JEAN-LAURENT-RONNAPE  
Chief Executive Officer

NEW YORK STATE DEPARTMENT OF  
FINANCIAL SERVICES

By:   
MARIA T. VULLO  
Superintendent of Financial Services

By:   
MATTHEW L. LEVINE  
Executive Deputy Superintendent for  
Enforcement