



# Singapore Sling

## How Coercion May Cure the Hangover in Financial Benchmark Governance



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# The Field of Play



- ✦ Multinational investigation, spearheaded by DOJ, CFTC (USA) and FSA/FCA/SFO (UK) has resulted in four settlements – Barclays, UBS, RBS, Rabobank
- ✦ Development of IOSCO Principles Governing Financial Benchmarks
- ✦ Monetary Authority of Singapore investigation ensnares 20 banks (including ANZ and Macquarie)
- ✦ SFO has brought criminal charges in the UK; EU cartel
- ✦ Libor redesigned in normative vacuum

# Benchmarking Corruption



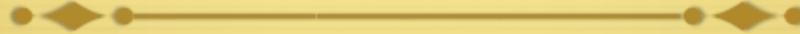
- ✦ ‘Recent investigations uncovered *systematic false reporting and manipulations* of reference rate submissions dating back many years. This *misconduct* was designed to either increase the potential profit of the submitting firms or to convey a misleading picture of the relative health of the submitting banks.’
- ✦ ‘These actions were *pervasive, occurred in multiple bank locations around the world, involved senior bank officials at several banks, and affected multiple benchmark rates and currencies...* Each of the banks that faced charges engaged in a *multi-year pattern of misconduct that involved collusion* with other banks’ – Financial Stability Oversight Council (25 April 2013)

# The Price of Collusion



- ✦ ‘Libor will prove to be one of the largest, if not the largest white-collar case in history. It goes after financial institutions, and it goes after the most major players in Wall Street’ – Lanny Breur, US Assistant Attorney General, 22 January 2013
- ✦ ‘Questions of competence have been supplanted by questions of conduct...These abuses have raised fundamental doubts about the core values of financial institutions’ – Mark Carney, Governor Bank of Canada, 25 February 2013
- ✦ ‘The revelation of the Libor manipulation scandal has highlighted some of the most irresponsible behaviour ever seen in the financial industry. The time has come to push for a real cultural change in the sector’ - Joaquín Almunia, EU Competition Commissioner, 22 February 2013
- ✦ ‘The industry must also play its part in enhancing the robustness of financial benchmarks and in cultivating high standards of professional integrity and ethics’ – Teo Swee Lian, Monetary Authority of Singapore, 14 June 2013

# EIRD Cartel



Participant	Duration	Sentence Reduction	Fine
Barclays	32 months	100	
Deutsche Bank	32 months	30	465 861 000
Societe Generale	26 months	5	445 884 000
RBS	8 month	50	131 004 000

# YIRD Cartel

Participant/Number of infringements	Duration	Sentence reduction	Fine
UBS (5)	1 month, 8 months, 5 months, 10 months, 1 month	100	0
RBS (3)	8 months, 5 months, 3 months	25 (for one infringement)	260 056 000
Deutsche Bank (2)	10 months, 2 months	35 (for one infringement); 30	
JP Morgan (1)	1 month		79 897 000
Citigroup (3)	1 month, 2 months, 3 months	35, 100, 40	70 020 000
RP Martin (1)	1 month	25	247 000

# IOSCO Principles



- ✦ Cover governance, quality of data collection, methodology and accountability
- ✦ Calls for development of code of conduct, without specifying what that should entail
- ✦ Lack of specificity troubling ('Regulators monitor, and control frameworks monitor and try to catch issues, *but the difference is made by the people who are on the front line*. They need to change their standards and abide by certain rules, not because they are imposed on them but because they believe in them' – Andrea Orcel, UBS CEO – Evidence to Parliament Commission on Banking Standards)

# Singapore Sling



- ✦ In contrast to the piecemeal evidentiary approach adopted by regulators in the United Kingdom and the United States, Singapore made a calculated decision to tackle the problem in a holistic manner.
- ✦ Critical to its reasoning is the belief that the ‘end’ of market integrity cannot be vouchsafed unless three interlinked criteria are measured and evaluated.
  - (a) First, obligation needs to be specified
  - (b) Ongoing conduct must be subject to external review
  - (c) Responsibility to protect the public interest of the benchmark must be internalized by both individuals and their institutions through a calibration of risk management systems.

<b>Bank</b>	<b>Additional Reserves S \$ m</b>	<b>All Face Additional Action</b>
ING Royal Bank of Scotland UBS	1,000 – 1,200	Censured for deficiencies in governance, risk management, internal control and surveillance systems
Bank of America BNP Paribas Overseas-Chinese Banking Corporation	700 – 800	Directed to adopt measures to address deficiencies
Barclays Credit Agricole Credit Suisse DBS Deutsche Bank Standard Chartered United Overseas Bank	400 – 600	Directed to appoint independent party to ensure robustness of remedial measures
ANZ Citibank JP Morgan Chase Macquarie Bank Bank of Tokyo HSBC	100 – 300	
Commerzbank	0	

# Regulatory Engineering



- ✦ Criminal and civil sanctions are to be introduced with global applicability
- ✦ Designated key benchmarks subject to formal regulation given systemic importance, susceptibility to manipulation and whether in the public interest
- ✦ Compulsion powers to force entities to contribute to the rate setting and administration process through the introduction of a licensing regime and interlocking codes of conduct
- ✦ ‘The industry will put in place measures to facilitate reference checks, so that an institution would be made aware if a potential hire had been implicated in attempts to inappropriately influence benchmarks.’

# Smart Regulation



- ✦ Action has foreclosed individual investigation and the piecemeal erosion of trust associated with periodic disclosure of individual institution misconduct
- ✦ Separate and recalibrate 'purpose' and 'ends'
- ✦ Very consciously aligned the 'end' - market integrity - with the 'purpose' of risk management - protecting the public interest
- ✦ Firms are assessed on their demonstrable capacity to protect the public interest
- ✦ MAS 'takes a serious view of the need to uphold high standards of integrity in the industry and expects banks to foster a culture of ethical conduct among all their employees'

# Fiduciary Obligation and Institutional Corruption

- ✦ Can or should it be applied to institutions that have a for profit or multiple purposes?
- ✦ If so on what basis?
- ✦ If obligations conflict, which should be privileged and why?
- ✦ Critical to ascertain how and why regulatory frameworks are created, calibrated and operate

# International Implications



- ✦ Holistic, interlocking approach breaks logjam at IOSCO
- ✦ Signals subsidiaries in Singapore not dumping ground for criminal charges (e.g. Tokyo for RBS, UBS)
- ✦ Global settlement and protection of public good chimes with SDNY and mitigates further class action risk - 'You are not entitled to massive attorneys' fees if all you do is wait for the government to act, jump on their back and say we want massive damages [for our clients] and we want one-third of them' – Judge Naomi Buchwald, 2 March 2013, SDNY
- ✦ Brings principles back to normative basis – 'The limitation of a pure principles-based regime have to be recognized. I continue to believe the majority of market participants are decent people; however a principles-based approach does not work with people who have no principles' – Hector Sants, 12 March 2009

# Restoring Trust I



- ✦ We are seeking to recreate, rebuild, restore confidence. Confidence is an outgrowth of character. We believe that character exists strongly in the financial world, so we do not have to compel virtue; we seek to prevent vice. Our whole formula is to bar wrongdoers from operating under the aegis of those who feel a sense of ethical responsibility.
- ✦ We are eager to see finance as self-contained as it deserves to be when ruled by Honor and Responsibility... When abuses occur, checks and corrections arise. But the application of these processes is not the death hand that some proclaim it to be. Instead, it is the assurance of Life and Strength when Honesty and Intelligence are present.
- ✦ We have been brought into being to help you as part of the public, which erects government for its service. But you best can help yourselves. You can make the investing of money honest. Then you will truly become brother's keeper. And to me that is to acquire merit – Joseph Kennedy (Boston, 1934)

# Restoring Trust II



- ✦ ‘The art of regulating an industry requires knowledge of the details of its operations [and the] ability to shift requirements as the condition of the industry may dictate
- ✦ Brokers are beginning to realize more clearly that their interest is tied up with the public interest. They are beginning more often to subordinate their own interest to the larger interest. People are beginning also to look upon the exchanges not so much as private institutions as public utilities’ – James M Landis, 1937
- ✦ The real tragedy here is not the misplaced optimism of Landis but the misplaced trust in financial services sector statements that through their disclosures they had recognized their obligations

# Conclusion



- ✦ ‘One grasps for shadows, the better to comprehend sunlight. One reaches into the past, more clearly to know today and tomorrow. It is the privilege of all who care about education to test the depth and quality of that shadow for there, perhaps more than anywhere, one must try to pierce the brilliance of continuing dawns – James M Landis, CUA, 20 March 1937
- ✦ No practice can lead to the sustainable achievements of desired ‘ends’ if the ‘purpose’ for holding the beliefs that animates practice differs in substance from the primary goal – Alasdair MacIntyre, CUA, 25 September 2009
- ✦ The Singapore Sling offers a dynamic responsive regime that integrates rules, principles and ends: it may save the industry from itself.