

**COURT OF ONTARIO
(SUPERIOR COURT OF JUSTICE)
(EAST REGION)**

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an Inquiry under section 10 of the *Competition Act*, into the purchase, sale or supply of interest rate derivatives in, to or from Canada, allegedly contrary to current and former offences under section 45 of the *Competition Act*;

AND IN THE MATTER OF an *ex parte* application by an authorized representative of the Commissioner of Competition for Orders requiring that HSBC Bank Canada, Deutsche Bank AG, J.P. Morgan Bank Canada, Royal Bank of Scotland N.V., (Canada) Branch (The), and Citibank Canada produce certain records pursuant to subsections 11(1)(b) and 11(2) of the *Competition Act*;

AND IN THE MATTER OF an *ex parte* application for Orders to seal Exhibits "I" and "II" to this Affidavit in support of the application.

AFFIDAVIT OF BRIAN ELLIOTT

**(AFFIDAVIT IN SUPPORT OF AN *EX PARTE* APPLICATION FOR ORDERS
TO PRODUCE RECORDS PURSUANT TO SECTION 11 OF THE
COMPETITION ACT AND FOR SEALING ORDERS)**

I, **BRIAN ELLIOTT**, of the city of Ottawa, in the Province of Ontario, Competition Law Officer, **MAKE OATH AND SAY:**

I. BACKGROUND OF AFFIANT

1. I am employed as a Competition Law Officer in the Criminal Matters Branch of the Competition Bureau (the "Bureau") and have been employed with the Bureau, in that capacity, since 2009.

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I. BACKGROUND OF AFFIANT

1. I am employed as a Competition Law Officer in the Criminal Matters Branch of the Competition Bureau (the "Bureau") and have been employed with the Bureau, in that capacity, since 2009.

2. I hold a Juris Doctor degree from the University of British Columbia, a Bachelor of Arts Honours degree from the University of Saskatchewan with a major in Economics and a Bachelor of Commerce degree from the University of Saskatchewan with a major in Finance. My Bachelor of Commerce studies included coursework in derivative securities and international finance. I have also completed the Canadian Securities Course offered through the Canadian Securities Institute, which is a foundational course necessary for licensing in many securities related professions.
3. I am an authorized representative of the Commissioner of Competition (the "Commissioner") for the purpose of this application for Orders to compel the production of records pursuant to subsections 11(1)(b) and 11(2) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the "Act").
4. I am one of the officers assigned to work on the Inquiry regarding the purchase, sale or supply of interest rate derivative products ("IRDs") in, to or from Canada (the "Inquiry"). This Inquiry is being made by the Commissioner pursuant to section 10 of the Act.
5. I have personal knowledge of the matters set out in this Affidavit, except that which is obtained upon information and belief and, where so stated, I believe such information to be true.

II. ORDERS SOUGHT

6. In this Application, the Commissioner seeks the following:
 - (a) Orders requiring HSBC Bank Canada; Royal Bank of Scotland N.V., (Canada) Branch (The); Deutsche Bank AG; J.P. Morgan Bank Canada; and Citibank Canada (the "Respondent Banks") to produce records pursuant to subsections 11(1)(b) and 11(2) of the Act; and

(b) Orders to seal Exhibits "I" and "II" of this Affidavit.

7. The Canadian entities Royal Bank of Scotland N.V., (Canada) Branch (The) and Deutsche Bank AG will be referred to respectively as The Royal Bank of Scotland N.V. (Canada Branch) and Deutsche Bank AG (Canada Branch) throughout this Affidavit.

8. Subsections 11(1)(b) and 11(2) provide as follows:

11. (1) If, on the *ex parte* application of the Commissioner or his or her authorized representative, a judge of a superior or county court is satisfied by information on oath or solemn affirmation that an inquiry is being made under section 10 and that a person has or is likely to have information that is relevant to the inquiry, the judge may order the person to

...

(b) produce to the Commissioner or the authorized representative of the Commissioner within a time and at a place specified in the order, a record, a copy of a record certified by affidavit to be a true copy, or any other thing, specified in the order;

...

(2) Where the person against whom an order is sought under paragraph 1(b) in relation to an inquiry is a corporation and the judge to whom the application is made under subsection (1) is satisfied by information on oath or solemn affirmation that an affiliate of the corporation, whether the affiliate is located in Canada or outside Canada, has records that are relevant to the inquiry, the judge may order the corporation to produce the records.

III. THE INQUIRY

Overview

9. Subsection 10(1)(b)(iii) of the Act provides as follows:

10. (1) The Commissioner shall

...

(b) whenever the Commissioner has reason to believe that

...

(iii) an offence under Part VI or VII has been or is about to be committed

...

cause an inquiry to be made into all such matters as the Commissioner considers necessary to inquire into with the view of determining the facts.

10. Part VI of the Act relates to offences in relation to competition, including the criminal conspiracy provision, section 45.
11. On May 4th, 2011, the Commissioner commenced this Inquiry pursuant to subsection 10(1)(b)(iii) of the Act.
12. This Inquiry is being made into conduct, from 2007 to June 25th, 2010, the exact dates being unknown, (the "Material Time") of the following persons: HSBC; Royal Bank of Scotland Group ("RBS"); Deutsche Bank AG ("Deutsche"); JP Morgan Chase ("JP Morgan"); the Cooperating Party (defined below); Citibank N.A. ("Citi"); ICAP PLC ("ICAP") and R P Martin Holdings Limited ("R P Martin") (collectively the "Participants").
13. HSBC, RBS, Deutsche, JP Morgan, the Cooperating Party and Citi are all multinational financial institutions with head offices located outside of Canada and will be collectively referred to as the "Participant Banks" throughout this Affidavit.
14. ICAP and R P Martin are cash brokers and will be collectively referred to as "Cash Brokers" throughout this Affidavit.

15. In particular, the Commissioner is inquiring into whether the Participants:
- a) Conspired to enhance unreasonably the price of interest rate derivatives from 2007 to March 11, 2010, the exact dates being unknown, contrary to the former subsection 45(1)(b) of the Act;
 - b) Conspired to prevent or lessen, unduly, competition in the purchase, sale, or supply of interest rate derivatives from 2007 to March 11, 2010, the exact dates being unknown, contrary to the former subsection 45(1)(c) of the Act;
 - c) Conspired to restrain or injure competition unduly from 2007 to March 11, 2010, the exact dates being unknown, contrary to the former subsection 45(1)(d) of the Act; and
 - d) Conspired to fix, maintain, increase or control the price for the supply of interest rate derivatives from March 12, 2010, to June 25, 2010, the exact dates being unknown, contrary to the current subsection 45(1)(a) of the Act (collectively the "Alleged Offences").
16. On March 12, 2009, Bill C-10 received royal assent and significantly amended section 45 of the Act. A principal amendment to section 45 removed the requirement to prove an undue lessening of competition as an element of the offence. The changes to section 45 came into force on March 12, 2010. Given the time frame of the alleged violations set out in this application, both the former and current versions of the offences set out in section 45 of the Act are relevant to this Inquiry.

The Immunity Program

17. A party implicated in criminal anti-competitive activity that may violate the Act may offer to cooperate with the Bureau and request immunity pursuant to the

Bureau's Immunity Program under the Competition Act (the "Immunity Program"). The Immunity Program is attached to this Affidavit and marked as Exhibit III.

18. A "marker" is the confirmation given to an immunity applicant that is the first party to approach the Bureau requesting a recommendation of immunity with respect to criminal activity involving a particular product. The marker guarantees the applicant's place at the front of the line as long as the applicant meets all other criteria of the Immunity Program.
19. The applicant then has a limited period of time to provide the Bureau with a detailed statement describing the illegal activity, its effects in Canada and the supporting evidence. This statement is known as a "proffer." Proffers are typically made orally and the immunity applicant does not provide written materials to the Bureau at this stage.
20. Based primarily on the proffer(s), the Bureau will determine whether to recommend that the Director of Public Prosecutions ("DPP") execute an immunity agreement with the immunity applicant, which will provide the applicant with full immunity from prosecution provided the applicant complies with the terms of the Immunity Program.
21. After a party enters into an immunity agreement with the DPP, the terms of that agreement include that the party must provide the Bureau with all non-privileged information, evidence and records relating to the anticompetitive conduct and cooperate with the investigation and any ensuing prosecution.

The Cooperating Party

22. The Bureau became aware of this matter after one of the Participant Banks in the Alleged Offences (the "Cooperating Party") approached the Bureau pursuant to the Immunity Program.
23. On January 5, 2011, the Bureau granted the Cooperating Party a "first-in marker" under the Immunity Program in relation to the Alleged Offences. Additional details with respect to the Cooperating Party's identity and its involvement in the Immunity Program are set out in Exhibit I.
24. Pursuant to its immunity application, counsel for the Cooperating Party orally proffered information on the Alleged Offences to Bureau officers, on a without prejudice basis, on April 12, 21, 26, 27 and 28, and May 9, 10, and 12, 2011. I believe the information to be accurate and reliable. Counsel providing the information have stated that they have conducted an internal investigation of the Cooperating Party that included interviews of employees of the Cooperating Party who had knowledge of or participated in the conduct in question, as well as a review of relevant internal documents. Counsel proffering information are aware that the Immunity Program requires that an immunity applicant provide full, complete, frank and truthful disclosure throughout the process. If the information proffered is later found to be inaccurate or misleading or if it contains intentional omissions, any immunity provided to a party as a result of the proffered information can be revoked.
25. Counsel for the Cooperating Party has provided the Bureau with information that, during the Material Time, the Participant Banks, at times facilitated by the Cash Brokers, entered into agreements to submit artificially high or artificially low London Inter-Bank Offered Rate ("LIBOR") submissions in order to impact the Yen LIBOR interest rates published by the British Bankers Association (the "BBA"). This was done for the purpose of adjusting the prices of financial instruments that use Yen LIBOR rates as a basis. Counsel for the Cooperating Party indicated that the Participant Banks submitted rates consistent with the

agreements and were able to move Yen LIBOR rates to the overall net benefit of the Participants. Additional detail is provided below.

26. Until May 16, 2011, the Cooperating Party had only provided orally proffered information through its counsel. On May 17, 2011 counsel for the Cooperating Party provided the Bureau with electronic records, I believe these records to be records of some of the communications involving the Cooperating Party that were read out as part of the orally proffered information provided by counsel for the Cooperating Party. These records are currently being processed by the Bureau's Electronic Evidence Unit and I have not been able to review them.
27. I believe the information provided by counsel for the Cooperating Party is reliable because the Immunity Program requires that an immunity applicant provide full, complete, frank and truthful disclosure throughout the process.

Sources of Information

28. In connection with the Inquiry, I have:
 - (a) participated in oral proffers given by counsel for the Cooperating Party and, when not present at those proffers, have reviewed notes of proffers taken by my colleagues: Kristin Pinhey ("Ms. Pinhey"), a Bureau Paralegal and Kristin McMahon ("Ms. McMahon"), a Competition Law Officer. I believe the notes of the proffers created by Ms. Pinhey and Ms. McMahon to be reliable as both individuals are under a professional and legal obligation to conduct themselves in an honest manner as Bureau employees and understand that any information that they provide may be used in legal proceedings. Ms. Pinhey and Ms. McMahon were also designated to take accurate and complete notes of the information proffered;

(b) reviewed notes of additional information orally proffered by counsel for the Cooperating Party to my colleague, Chris Cook ("Ms. Cook"), a Senior Competition Law Officer, on April 21 and May 12, 2011. Ms. Cook also recorded this information. I believe the notes created by Ms. Cook to be reliable as she is under a professional and legal obligation to conduct herself in an honest manner as a Bureau employee and understands that any information that she provides may be used in legal proceedings, and as an investigator, Ms. Cook was attempting to take accurate and complete notes.

(c) reviewed public sources of information on: the Participants and their subsidiaries and affiliates; the interest rate derivative market in Canada and globally; and LIBOR. I believe these sources to be reliable as the sources consulted are in the business of providing such information and have a commercial interest in the accuracy of the information provided;

(d) consulted with Paul Redman ("Mr. Redman"), Principal Economist, Strategy and Operations, Ontario Securities Commission ("OSC"), on the structure and nature of the interest rate derivative market in Canada and worldwide. I believe the information provided by Mr. Redman to be reliable as he is under a professional obligation to conduct himself in an honest manner as an OSC employee.

29. Based on the orally proffered information, the above-mentioned public sources, the individual consulted at the OSC, and my own personal knowledge, I believe the following information to be true.

The Product

30. Derivatives, including interest rate derivatives (previously defined as "IRDs"), are financial products used by businesses, including banks, investment banks and

other financial businesses, to hedge their financial position and used by banks, investment banks and other financial businesses for speculative purposes.

31. Two types of derivatives, including IRDs, are traded. Exchange-traded derivatives trade on exchanges, such as the Montreal Exchange, and are in standard forms. Over-the-counter ("OTC") derivatives do not trade on exchanges and need not follow any standard form.
32. There are 4 main types of IRDs: exchange-traded interest rate futures; OTC forward rate agreements ("FRAs"); OTC interest rate swaps ("Swaps"); and OTC interest rate options ("Options"). Some Options are also traded on exchanges.
33. The Alleged Offences relate to the OTC IRDs that use Yen LIBOR as a component of their price.
34. LIBOR interest rates are reference interest rates compiled by the BBA. They are compiled for ten currencies over 15 maturity periods ranging from overnight to one year. Every morning, panels of 8 to 16 banks (depending on the currency) submit rates to the calculation agent for the BBA (Thomson Reuters), answering the question, "At what rate could you borrow funds, were you to do so by asking for and then accepting inter-bank offers in a reasonable market size just prior to 11:00 am (London time)?" The panel banks are not supposed to know the other panel banks' submissions until the LIBOR rates are released. The LIBOR rates are calculated using a trimmed arithmetic mean in which the highest 25% and lowest 25% are dropped and the remaining submissions are averaged. The rates are set and publicly released each day at about 11:30 a.m.
35. The LIBOR for the Japanese Yen has a 16 bank panel. All of the Participant Banks were members of this panel during the Material Time.

36. IRDs are often used as a hedge against uncertainty in future interest rates. These derivatives have the effect of locking in a fixed interest rate for use in a future transaction. The parties to the derivative contract make (or lose) money based on how the floating interest rate, which is usually set in relation to LIBOR, changes over the period of the contract.

The Conspiracy to Enhance the Value of IRDs through Manipulating Yen LIBOR

37. Counsel for the Cooperating Party has proffered that, during the Material Time, the Participant Banks communicated with each other and through the Cash Brokers to form agreements to fix the setting of Yen LIBOR. Counsel for the Cooperating Party proffered that this was done for the purpose of benefiting trading positions, held by the Participant Banks, on IRDs. By manipulating Yen LIBOR, the Participant Banks affected all IRDs that use Yen LIBOR as a basis for their price, including IRDs with Canadian counterparties.
38. Counsel for the Cooperating Party has proffered that the alleged communications and agreements in relation to Yen LIBOR occurred outside Canada but affected IRDs based on Yen LIBOR on a worldwide basis, including in Canada.
39. The Alleged Offences were carried out through e-mails and Bloomberg instant messages between IRD traders at the Participant Banks and employees of Cash Brokers (who had influence in the setting of Yen LIBOR rates).
40. Bloomberg Terminals allow the user to access Bloomberg Professional financial data. A feature of this service is instant messaging using the Bloomberg Terminal. These terminals and the service are in use at most large financial firms.
41. IRD traders at the Participant Banks communicated with each other their desire to see a higher or lower Yen LIBOR to aid their trading position(s). These requests for changes in Yen LIBOR were often initiated by one trader and subsequently

acknowledged by the trader to whom the communication was sent. The information provided by counsel for the Cooperating Party showed that the traders at Participant Banks would indicate their intention to, or that they had already done so, communicate internally to their colleagues who were involved in submitting rates for Yen LIBOR. The traders would then communicate to each other confirming that the agreed upon rates were submitted. However not all attempts to affect LIBOR submissions were successful.

42. The Cash Brokers were asked by IRD traders at the Participant Banks to use their influence with Yen LIBOR submitters to affect what rates were submitted by other Yen LIBOR panel banks, including the Participant Banks.

IV. RECORDS SOUGHT IN ORDERS REQUESTED

43. As set out above, subsections 11(1)(b) and 11(2) of the Act permit a Court to order the production of records where certain criteria have been met to the satisfaction of the Court.
44. It should be noted that these are the first section 11 Orders being requested from any Court in connection with this Inquiry. I do not believe that the Bureau has previously sought, in other inquiries, the records as described in Schedule "A" to this Affidavit.
45. The Commissioner seeks Orders, pursuant to subsections 11(1)(b) and 11(2), directing the production of records from: HSBC Bank Canada; The Royal Bank of Scotland N.V. (Canada Branch); Deutsche Bank AG (Canada Branch); J.P. Morgan Bank Canada; and Citibank Canada (previously defined as the "Respondent Banks").
46. The records sought by the Commissioner, in the requested Orders, from the Respondent Banks are set out in detail in Schedule "A" attached hereto and are

records that pertain to the Material Time. The records sought can be generally described in the following manner:

- (a) lists, charts or indices identifying the individuals responsible for determining and making the Participant Banks' Yen LIBOR submissions;
- (b) records outlining internal criteria and policies on how the Participant Banks determine and make Yen LIBOR submissions, including the procedures for submitting them and the related organizational structure;
- (c) records describing ethical walls (sometimes referred to as "Chinese walls"), other information barriers and related internal policies on communication between the Participant Banks' IRD traders and the individuals responsible for determining and making the Participant Banks' Yen LIBOR submissions;
- (d) communications concerning Yen LIBOR rates or submissions between the Participant Banks' IRD traders and the individuals responsible for determining and making the Participant Banks' Yen LIBOR submissions;
- (e) communications concerning Yen LIBOR rates or submissions between the Cash Brokers and the individuals responsible for determining and making the Participant Banks' Yen LIBOR submissions;
- (f) communications concerning Yen LIBOR rates or submissions between the Cash Brokers and the Participant Banks' IRD traders;
- (g) communications concerning Yen LIBOR rates or submissions between the individuals responsible for determining and making the Participant Banks' Yen LIBOR submissions and the individuals at other Yen LIBOR panel banks responsible for determining and making Yen LIBOR submissions;
- (h) communications concerning Yen LIBOR rates or submissions between the Participant Banks' IRD traders and IRD traders at other banks or businesses;
- (i) communications concerning OTC IRD contracts with Canadian counterparties (proposed or actual) linked to Yen LIBOR rates between

the Participant Banks' IRD traders and IRD traders at other banks or businesses;

- (j) a list or index of OTC IRD trades by the Participant Banks with Canadian counterparties;
- (k) records showing the profit or loss of the Participant Banks on the settlement of OTC IRDs linked to Yen LIBOR rates entered into by the banks with Canadian Counterparties;
- (l) lists or indices showing the identities of the Participant Banks' IRD traders;
- (m) records showing the process used and the identity of models or other methods used to price or value IRDs at the Participant Banks;
- (n) records showing the remuneration system for the Participant Banks' IRD traders who traded with Canadian counterparties; and
- (o) records showing the remuneration system for the individuals responsible for determining and making Yen LIBOR submissions at the Participant Banks.

47. These records are required by the Commissioner for purposes of this Inquiry in relation to the Alleged Offences described above.

48. The records are required to better determine and evaluate, throughout the Material Time, whether the Alleged Offences occurred, the specific information of the alleged conduct, the extent and magnitude of the alleged conspiracy, the relevant market and to determine if the alleged conspiracy resulted in an undue lessening of competition. Specifically, the records are required to:

- (a) Determine the identity and role of those involved in the Alleged Offences;
- (b) Determine the scope of the Alleged Offences;
- (c) Determine the connection to and harm suffered in Canada as a result of the Alleged Offences;
- (d) Determine the incentives of persons involved in the Alleged Offences;

- (e) Evaluate how the Alleged Offences affected the price of IRDs generally and with Canadian counterparties that entered into IRDs.

V. THE RESPONDENT BANKS AND THEIR AFFILIATES

49. The Commissioner is requesting that separate Orders be made against each of the Respondent Banks to produce records in the possession of their affiliates, the Participant Banks, pursuant to subsections 11(1)(b) and 11(2) of the Act.
50. In furtherance of the subsections 11(1)(b) and 11(2) Orders sought, between April 12, 2011 and May 11, 2011, I obtained and verified information, contained in paragraphs 54 to 87, about the Respondent Banks and their affiliates. The information that I obtained and reviewed was from the following sources:
- (a) Company web pages on the internet;
 - (b) The *Bank Act* S.C. 1991, c. 46 (the "Bank Act") and its Schedules;
 - (c) Statistics Canada corporate trees;
 - (d) One Source North American Business Browser;
 - (e) The website of the Financial Services Authority (the "FSA") of the United Kingdom ("UK"); and
 - (f) The website of the Office of the Superintendent of Financial Institutions Canada ("OSFI").

I believe these sources to be reliable. Company web pages are an important tool for businesses to provide accurate information to their customers and potential customers. One Source North American Business Browser is in the business of providing corporate ownership and structure information and has a commercial interest in the accuracy of the information provided. The information obtained from Statistics Canada, the FSA and OSFI is information provided by government agencies in Canada and the United Kingdom and I believe it to be reliable.

51. On April 21, 2011, Counsel for the Cooperating Party provided my colleague, Ms. Cook, with the names, employers and locations of employees involved in the Alleged Offences. Some of these names were also included in a proffer provided by counsel for the Cooperating Party on April 21, 2011, when counsel read out excerpts of communications amongst the Participants. The names of some of the persons involved and the identity of their employers were also provided during the April 12, 2011 proffer.
52. Proffers were provided by counsel for the Cooperating Party on April 26, 27 and 28, 2011, in which they provided the most detailed information describing the role of the Participants. Counsel for the Cooperating Party did not provide the names of the employees of other Participants during the April 26, 27 and 28 proffers, citing Japanese privacy laws as preventing them from doing so. Therefore, I cannot be certain of the identity of the traders mentioned. However, I do have the April 12 and 21, 2011 proffers, which, along with the detailed proffers of April 26, 27 and 28, and registration records from the website of the FSA, which allows me to deduce and thus gives me reason to believe the identities, locations and employers of the traders at the Participant Banks as set out below.
53. Subsections 2(2), 2(3), and 2(4) of the Act define, among other things, when corporations are affiliated or when one corporation is a subsidiary of another corporation. These subsections provide as follows:
- 2(2) For the purposes of this Act,
- (a) One corporation is affiliated with another corporation if one of them is the subsidiary of the other or both subsidiaries of the same corporation or each of them is controlled by the same person;
 - (b) If two corporations are affiliated with the same corporation at the same time, they are deemed to be affiliated with each other;

2(3) For the purposes of this Act, a corporation is a subsidiary of another corporation if it is controlled by that other corporation.

2(4) For the purposes of this Act,

- (a) A corporation is controlled by a person other than Her Majesty if
 - (i) Securities of the corporation to which are attached more than fifty per cent of the votes that may be cast to elect directors of the corporation are held, directly or indirectly, whether through one or more subsidiaries or otherwise, otherwise than by way of security only, by or for the benefit of that person, and
 - (ii) The votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation;

HSBC

54. Counsel for the Cooperating Party has proffered that, during the Material Time, one of its IRD traders ("Trader A") had communications with an IRD trader at HSBC. Trader A communicated his trading positions, his desire for a certain movement in Yen LIBOR and instructions for the HSBC trader to get HSBC to make Yen LIBOR submissions consistent with his wishes. Attempts through the HSBC trader to influence Yen LIBOR were not always successful. Trader A also communicated his desire for a certain movement in the Yen LIBOR rate with the Cash Brokers. He instructed them to influence the Yen LIBOR submitters of HSBC. The Cash Brokers acknowledged making these attempts. However, not all of the attempts, by the Cash Brokers, to influence the Yen LIBOR submissions of HSBC were successful. Trader A communicated to the Cash Brokers a plan involving HSBC, Deutsche, and the Cooperating Party to change Yen LIBOR through a series of staggered submissions.
55. For the reasons stated in paragraphs 51 and 52, I believe that the HSBC trader described in the preceding paragraph is Peter O'Leary, a trader with HSBC in

London, UK. During at least a portion of the Material Time, he was registered by HSBC Bank PLC with the FSA.

56. HSBC Bank Canada is a Schedule II bank. Schedule II banks are incorporated pursuant to the *Bank Act* and are subsidiaries of foreign banks.
57. HSBC Bank Canada is a subsidiary of HSBC Canada Holdings (UK) Limited, which in turn is a subsidiary of HSBC Holdings PLC.
58. HSBC Bank PLC, one of the Participant Banks, is also a subsidiary of HSBC Holdings PLC.
59. HSBC Bank Canada is an affiliate of HSBC Bank PLC under subsection 2(2) of the Act as both are subsidiaries of the same corporation, HSBC Holdings PLC, which is located in the UK.
60. I believe that HSBC Bank PLC is in possession or control of records that are relevant to the Inquiry as I believe that HSBC Bank PLC is involved in Yen LIBOR submissions and has employees involved in the Alleged Offences. Records described in Schedule "A" are, in my experience, records that would ordinarily be kept by firms doing business in the areas set out in this Affidavit and that are in possession or control of HSBC Bank Canada's affiliate, HSBC Bank PLC, which is located outside of Canada. I set out the basis of my belief in this regard in greater detail in paragraphs 89 to 92, below.

Deutsche

61. Counsel for the Cooperating Party has proffered that, during the Material Time, Trader A had communications with an IRD trader at Deutsche regarding its Yen LIBOR submissions. Trader A communicated his trading positions, his desire for a certain movement in Yen LIBOR and asked for the Deutsche IRD trader's

assistance to get Deutsche to make Yen LIBOR submissions consistent with his wishes. The Deutsche IRD trader also shared his trading positions with Trader A. The Deutsche IRD trader acknowledged these requests. Trader A also aligned his trading positions with the Deutsche IRD trader to align their interests in respect of Yen LIBOR. The Deutsche IRD trader communicated with Trader A considerably during the period of time, mentioned previously, when Trader A told a Cash Broker of a plan involving the Cooperating Party, HSBC, and Deutsche to change Yen LIBOR in a staggered and coordinated fashion by the Cooperating Party, HSBC, and Deutsche. Not all attempts to change the LIBOR rate were successful.

62. For the reasons stated in paragraphs 51 and 52, I believe that the Deutsche IRD trader described in the preceding paragraph is Guillaume Adolph, a trader with Deutsche in London, UK. During at least a portion of the Material Time, Guillaume Adolph was registered by Deutsche Bank AG with the FSA.
63. Deutsche Bank AG (Canada Branch) is a Schedule III authorized foreign bank. Schedule III authorized foreign banks are branches of foreign banks permitted to carry on business in Canada pursuant to the *Bank Act*.
64. Deutsche Bank AG (Canada Branch) is a subsidiary of Deutsche Bank AG, a Participant Bank.
65. Deutsche Bank AG (Canada Branch) is an affiliate of Deutsche Bank AG under subsection 2(2) of the Act as it is a subsidiary of Deutsche Bank AG, which is located in Germany.
66. I believe that Deutsche Bank AG is in possession or control of records that are relevant to the Inquiry as I believe that Deutsche Bank AG is involved in Yen LIBOR submissions and has employees involved in the Alleged Offences. Records described in Schedule "A" are, in my experience, records that would

ordinarily be kept by firms doing business in the areas set out in this Affidavit and that are in possession or control of Deutsche Bank AG's (Canada Branch) affiliate, Deutsche Bank AG which is located outside of Canada. I set out the basis of my belief in this regard in greater detail in paragraphs 89 to 92, below.

RBS

67. Counsel for the Cooperating Party has proffered that, during the Material Time, Trader A had communications with IRD traders at RBS regarding its Yen LIBOR submissions. Trader A explained to one RBS IRD trader who his collusive contacts were and how he had and was going to manipulate Yen LIBOR. Trader A also communicated his trading positions, his desire for a certain movement in Yen LIBOR and gave instructions for the RBS IRD trader to get RBS to make Yen LIBOR submissions consistent with Trader A's wishes. The RBS IRD trader acknowledged these communications and confirmed that he would follow through. Trader A and the RBS IRD trader also entered into transactions that aligned their trading interests in regards to Yen LIBOR. Trader A also communicated to another IRD trader at RBS his trading positions, his desire for a certain movement in Yen LIBOR and instructions for the IRD trader to get RBS to make Yen LIBOR submissions consistent with his wishes. The second RBS IRD trader agreed to do this. Not all attempts to change the LIBOR rate were successful.
68. For the reasons stated in paragraphs 51 and 52, I believe that the RBS IRD traders described in the preceding paragraph are Brent Davies and Will Hall, both traders with RBS in London, UK. During at least a portion of the Material Time, they were registered by The Royal Bank of Scotland PLC with the FSA.
69. The Royal Bank of Scotland N.V. (Canada Branch) is a Schedule III bank.

70. The Royal Bank of Scotland N.V. (Canada Branch) is a subsidiary of The Royal Bank of Scotland N.V., which is in turn a subsidiary of RFS Holdings B.V., which in turn is a subsidiary of The Royal Bank of Scotland Group PLC, an Alleged Participant.
71. The Royal Bank of Scotland PLC is a subsidiary of The Royal Bank of Scotland Group PLC.
72. The Royal Bank of Scotland N.V. (Canada Branch) is an affiliate of The Royal Bank of Scotland PLC under subsection 2(2) of the Act as they are both subsidiaries of The Royal Bank of Scotland Group PLC. The Royal Bank of Scotland N.V. (Canada Branch) is also an affiliate of The Royal Bank of Scotland Group PLC under subsection 2(2) as it is a subsidiary of The Royal Bank of Scotland Group PLC, which is located in the UK.
73. I believe that The Royal Bank of Scotland Group PLC and The Royal Bank of Scotland PLC are in possession or control of records that are relevant to the Inquiry as I believe that The Royal Bank of Scotland Group PLC and The Royal Bank of Scotland PLC are involved in Yen LIBOR submissions and have employees involved in the Alleged Offences. Records described in Schedule "A" are, in my experience, records that would ordinarily be kept by firms doing business in the areas set out in this Affidavit and that are in possession or control of The Royal Bank of Scotland N.V. (Canada Branch)'s affiliates, The Royal Bank of Scotland Group PLC and The Royal Bank of Scotland PLC, which are located outside of Canada. I set out the basis of my belief in this regard in greater detail in paragraphs 89 to 92, below.

JP Morgan

74. Counsel for the Cooperating Party has proffered that, during the Material Time, Trader A had communications with two IRD traders at JP Morgan regarding its

Yen LIBOR submissions. Trader A communicated his trading positions, his desire for a certain movement in Yen LIBOR and gave instructions for them to get JP Morgan to make Yen LIBOR submissions consistent with his wishes. Trader A also asked if the IRD traders at JP Morgan required certain Yen LIBOR submissions to aid their trading positions. The JP Morgan IRD traders acknowledged these requests and said they would act on them. On another occasion one of the JP Morgan IRD traders asked Trader A for a certain Yen LIBOR submission, which Trader A agreed to help with. Trader A admitted to an IRD Trader at RBS that he colluded with IRD traders at JP Morgan. Not all attempts to influence Yen LIBOR submissions were successful.

75. For the reasons stated in paragraphs 51 and 52, I believe that the JP Morgan IRD traders described in the preceding paragraph are Paul Glands and Stewart Wiley, both traders with JP Morgan in London, UK. During at least a portion of the Material Time, they were registered by JP Morgan Securities Ltd. with the FSA.
76. J.P. Morgan Bank Canada is a Schedule II bank.
77. J.P. Morgan Bank Canada is a subsidiary of J P Morgan International Finance Ltd., which in turn is a subsidiary of Bank One International Holdings Corporation, which in turn is a subsidiary of J.P. Morgan International Inc., which in turn is a subsidiary of JPMorgan Chase Bank, National Association, which in turn is a subsidiary of JPMorgan Chase & Co., one of the Participant Banks.
78. J.P. Morgan Securities Ltd. is a subsidiary of J.P. Morgan Chase International Holdings, which in turn is a subsidiary of J.P. Morgan Chase (UK) Holdings Ltd., which in turn is a subsidiary of JPMorgan Chase & Co.
79. J.P. Morgan Bank Canada is an affiliate of J.P. Morgan Securities Ltd. under subsection 2(2) of the Act as they are both subsidiaries of JPMorgan Chase & Co.

J.P. Morgan Bank Canada is also an affiliate of JPMorgan Chase & Co. under subsection 2(2) of the Act as it is a subsidiary of JPMorgan Chase & Co.

80. I believe that JPMorgan Chase & Co. and its subsidiary J.P. Morgan Securities Ltd. are in possession or control of records that are relevant to the Inquiry as I believe that JPMorgan Chase & Co. and J.P. Morgan Securities Ltd. are involved in Yen LIBOR submissions and have employees involved in the Alleged Offences. Records described in Schedule "A" are, in my experience, records that would ordinarily be kept by firms doing business in the areas set out in this Affidavit and that are in possession or control of J.P. Morgan Bank Canada's affiliates, JPMorgan Chase & Co and JP Morgan Securities Ltd., which are located outside Canada. I set out the basis of my belief in this regard in greater detail in paragraphs 89 to 92, below.

Citi

81. Counsel for the Cooperating Party has proffered that, during the Material Time, Trader B of the Cooperating Party communicated with an IRD trader at Citi. They discussed their trading positions, advance knowledge of Yen LIBOR submissions by their banks and others, and aligned their trading positions. They also acknowledged efforts to get their banks to submit the rates they wanted. Not all of their attempts were successful.
82. For the reasons stated in paragraphs 51 and 52, I believe that the Citi IRD trader described in the preceding paragraph is a former employee of the Cooperating Party.
83. Citibank Canada is a Schedule II bank.
84. Citibank Canada is a subsidiary of Citibank Overseas Investment Corporation, which in turn is a subsidiary of Citigroup Inc., the parent of a Participant Bank.

85. Citibank N.A. is a subsidiary of Citigroup Inc.
86. Citibank Canada is an affiliate of Citibank N.A. under subsection 2(2) of the Act as they are both subsidiaries of Citigroup Inc. Citibank Canada is also an affiliate of Citigroup Inc. under subsection 2(2) of the Act as it is a subsidiary of Citigroup Inc.
87. I believe that Citigroup Inc. and its subsidiary Citibank N.A. are in possession or control of records that are relevant to the Inquiry as I believe that Citigroup Inc. and Citibank N.A. are involved in Yen LIBOR submissions and have employees involved in the Alleged Offences. Records described in **Schedule "A"** are, in my experience, records that would ordinarily be kept by firms doing business in the areas set out in this Affidavit and that are in possession or control of Citibank Canada's affiliates, Citigroup Inc. and Citibank N.A. which are located outside Canada. I set out the basis of my belief in this regard in greater detail in paragraphs 89 to 92, below.

VI. AFFILIATES OF THE RESPONDENT BANKS WILL HAVE THE RECORDS SOUGHT

88. On May 10, 2011, I participated in a conference call between Bureau employees and Kevin Fine, the Acting Director of the Derivatives Branch at the OSC ("Mr. Fine"). During this telephone call, we advised Mr. Fine of the nature of the Alleged Offences. We did not advise Mr. Fine of any of the names of the Participants. We consulted Mr. Fine on the nature of records that would be in the possession of banks, like the Participant Banks; however, I did not receive a response to our inquiries prior to swearing this Affidavit.

89. On May 12, 2011, counsel for the Cooperating Party advised Ms. Cook that the Cooperating Party would have the records, as generally described in paragraph 46 above, in its premises or the premises of its affiliates to the extent that such records exist. Therefore I believe that the Participant Banks and their affiliates will have the records generally described above.
90. As each of the Participant Banks are Yen LIBOR panel banks, I believe that for operational, accounting and legal purposes these banks will be in possession of the records described above relating to Yen LIBOR submissions and the individuals at the bank responsible for determining and making Yen LIBOR submissions, along with related internal policies and structure.
91. Furthermore, as each of the Participant Banks is involved in trading IRDs, I believe that for operational, accounting and legal purposes they will be in possession of the records described above and related to their IRD trading activity and their bank's traders, along with internal policies and methods for pricing IRDs.
92. Based on the information received and my education and experience (as set out in paragraphs 1 and 2), I believe that affiliates of the Respondent Banks will have the records generally described above and specifically set out in Schedule "A".

VII. ORDERS SOUGHT FOR THE PRODUCTION OF RECORDS

HSBC Bank Canada

93. I make this Affidavit for the purpose of obtaining an Order, pursuant to subsections 11(1)(b) and 11(2) of the Act, requiring HSBC Bank Canada, through its duly authorized representative, to:

- (a) Produce, within 60 days from the date of service of this Order, to the Commissioner or her authorized representative, the records which are in the possession or control of its affiliate, HSBC Bank PLC, as specified and described in Schedule "A" of the Order, on the terms indicated therein; and
- (b) Join to the records described in Schedule "A", a statement under oath or solemn affirmation stating that all relevant records in its affiliate's possession or control have been produced and that the records produced are either original records or certified true copies thereof.

94. The Commissioner requests that, in order to facilitate the handling and orderly maintenance of records and to ensure the accurate and expeditious return of records produced pursuant to the Order sought, HSBC Bank Canada be ordered to observe the definitions and instructions contained in Schedule "B", attached hereto.

95. The Commissioner further requests:

- (a) That HSBC Bank Canada be ordered to produce all records to the Commissioner's office at the following address:

Criminal Matters Branch
To the attention of: Brian Elliott
Place du Portage, Phase I, 20th Floor
50 Victoria Street
Gatineau, Quebec
K1A 0C9

- (b) That this order may be served on HSBC Bank Canada or its duly authorized representatives by means of facsimile machine in addition to personal service.

Deutsche Bank AG (Canada Branch)

96. I make this Affidavit for the purpose of obtaining an Order, pursuant to subsections 11(1)(b) and 11(2) of the Act, requiring Deutsche Bank AG (Canada Branch), through its duly authorized representative, to:

- (a) Produce, within 60 days from the date of service of this Order, to the Commissioner or her authorized representative, the records which are in the possession or control of its affiliate, Deutsche Bank AG, as specified and described in Schedule "A" of the Order, on the terms indicated therein; and
- (b) Join to the records described in Schedule "A", a statement under oath or solemn affirmation stating that all relevant records in its affiliate's possession or control have been produced and that the records produced are either original records or certified true copies thereof.

97. The Commissioner requests that, in order to facilitate the handling and orderly maintenance of records and to ensure the accurate and expeditious return of records produced pursuant to the Order sought, Deutsche Bank AG (Canada Branch) be ordered to observe the definitions and instructions contained in Schedule "B", attached hereto.

98. The Commissioner further requests:

- (a) That Deutsche Bank AG (Canada Branch) be ordered to produce all records to the Commissioner's office at the following address:

Criminal Matters Branch
To the attention of: Brian Elliott
Place du Portage, Phase I, 20th Floor
50 Victoria Street
Gatineau, Quebec
K1A 0C9

- (b) That this order may be served on Deutsche Bank AG (Canada Branch) or its duly authorized representatives by means of facsimile machine in addition to personal service.

The Royal Bank of Scotland N.V. (Canada Branch)

99. I make this Affidavit for the purpose of obtaining an Order, pursuant to subsections 11(1)(b) and 11(2) of the Act, requiring The Royal Bank of Scotland N.V. (Canada Branch), through its duly authorized representative, to:

(a) Produce, within 60 days from the date of service of this Order, to the Commissioner or her authorized representative, the records which are in the possession or control of its affiliates, The Royal Bank of Scotland Group PLC and The Royal Bank of Scotland PLC, as specified and described in **Schedule "A"** of the Order, on the terms indicated therein; and

(b) Join to the records described in **Schedule "A"**, a statement under oath or solemn affirmation stating that all relevant records in its affiliates' possession or control have been produced and that the records produced are either original records or certified true copies thereof.

100. The Commissioner requests that, in order to facilitate the handling and orderly maintenance of records and to ensure the accurate and expeditious return of records produced pursuant to the Order sought, The Royal Bank of Scotland N.V. (Canada Branch) be ordered to observe the definitions and instructions contained in **Schedule "B"**, attached hereto.

101. The Commissioner further requests:

(a) That The Royal Bank of Scotland N.V. (Canada Branch) be ordered to produce all records to the Commissioner's office at the following address:

Criminal Matters Branch
To the attention of: Brian Elliott
Place du Portage, Phase I, 20th Floor
50 Victoria Street
Gatineau, Quebec
K1A 0C9

- (b) That this order may be served on The Royal Bank of Scotland N.V. (Canada Branch) or its duly authorized representatives by means of facsimile machine in addition to personal service.

J.P. Morgan Bank Canada

102. I make this Affidavit for the purpose of obtaining an Order, pursuant to subsections 11(1)(b) and 11(2) of the Act, requiring J.P. Morgan Bank Canada, through its duly authorized representative, to:
- (a) Produce, within 60 days from the date of service of this Order, to the Commissioner or her authorized representative, the records which are in the possession or control of its affiliates, JPMorgan Chase & Co. and J.P. Morgan Securities Ltd., as specified and described in **Schedule "A"** of the Order, on the terms indicated therein; and
 - (b) Join to the records described in **Schedule "A"**, a statement under oath or solemn affirmation stating that all relevant records in its affiliates' possession or control have been produced and that the records produced are either original records or certified true copies thereof.
103. The Commissioner requests that, in order to facilitate the handling and orderly maintenance of records and to ensure the accurate and expeditious return of records produced pursuant to the Order sought, J.P. Morgan Bank Canada be ordered to observe the definitions and instructions contained in **Schedule "B"**, attached hereto.
104. The Commissioner further requests:
- (a) That J.P. Morgan Bank Canada be ordered to produce all records to the Commissioner's office at the following address:

Criminal Matters Branch
To the attention of: Brian Elliott
Place du Portage, Phase I, 20th Floor
50 Victoria Street
Gatineau, Quebec

- (b) That this order may be served on J.P. Morgan Bank Canada or its duly authorized representatives by means of facsimile machine in addition to personal service.

Citibank Canada

105. I make this Affidavit for the purpose of obtaining an Order, pursuant to subsections 11(1)(b) and 11(2) of the Act, requiring Citibank Canada, through its duly authorized representative, to:

- (a) Produce, within 60 days from the date of service of this Order, to the Commissioner or her authorized representative, the records which are in the possession or control of its affiliates, Citibank N.A. and Citigroup Inc., as specified and described in **Schedule "A"** of the Order, on the terms indicated therein; and
- (b) Join to the records described in **Schedule "A"**, a statement under oath or solemn affirmation stating that all relevant records in its affiliates' possession or control have been produced and that the records produced are either original records or certified true copies thereof.

106. The Commissioner requests that, in order to facilitate the handling and orderly maintenance of records and to ensure the accurate and expeditious return of records produced pursuant to the Order sought, Citibank Canada be ordered to observe the definitions and instructions contained in **Schedule "B"**, attached hereto.

107. The Commissioner further requests:

- (a) That Citibank Canada be ordered to produce all records to the Commissioner's office at the following address:
Criminal Matters Branch

To the attention of: Brian Elliott
Place du Portage, Phase I, 20th Floor
50 Victoria Street
Gatineau, Quebec
K1A 0C9

- (b) That this order may be served on Citibank Canada or its duly authorized representatives by means of facsimile machine in addition to personal service.

VIII. SERVICE OF ORDERS SOUGHT

108. As set out above, I am requesting that each of the Orders sought in this matter allow for service to be made on the Respondent Banks by facsimile machine in addition to personal service.
109. The request to permit service by facsimile is made so that the Orders sought can be served on the Respondent Banks at the earliest opportunity. As one of the Respondent Banks is located in British Columbia the personal service on that bank will be delayed.
110. I am also requesting that each of the Orders sought in this matter allow for service by facsimile so that we can serve the Orders sought in a timely fashion and as contemplated in paragraph 8 of Exhibit II.

IX. SEALING ORDERS REQUESTED

The Cooperating Party

111. I request that a Sealing Order, pursuant to the common law and consistent with the principles found in subsection 487.3(1) of the *Criminal Code*, be placed on Exhibit I, attached to this Affidavit, which contains the identities of, or information that would identify the Cooperating Party, including current and

former employees, as well as information about other Bureau investigations, on the grounds that the ends of justice would be subverted i) by the disclosure of the identity of the Cooperating Party, ii) in that the integrity of the Immunity Program would be compromised by the premature release of the identity of the Cooperating Party or iii) in that it would compromise the nature and extent of ongoing Bureau investigations.

112. Under the Immunity Program, a Cooperating Party is given assurances that its identity will remain confidential during the Bureau's investigation. The Bureau thus considers cooperating parties under the Immunity Program to have status akin to confidential informant status until charges are laid or until such time as this status is waived. The Cooperating Party has requested that its identity be kept confidential. If Exhibit I is not sealed, the identity of the Cooperating Party will be prematurely revealed.
113. The only exceptions within the Immunity Program to the policy of keeping the identity of a Cooperating Party confidential are where: disclosure is required by law; disclosure is necessary to obtain or maintain the validity of a judicial authorization for the exercise of investigative powers; disclosure is for the purpose of securing the assistance of a Canadian law enforcement agency in the exercise of investigative powers; the party has agreed to disclosure; there has been public disclosure by the party; or disclosure is necessary to prevent the commission of a serious criminal offence.
114. The Immunity Program has been successful in encouraging cartel participants to come forward and terminate the illegal conduct and report it to authorities. Premature disclosure of the information contained in the Exhibits to this Affidavit would compromise the long-term viability of the Bureau's Immunity Program and discourage other cartel participants from coming forward disclosing illegal conduct and cooperating with any ensuing prosecution. But for such self-

reporting and cooperation, the enforcement of section 45 of the Act would be substantially diminished.

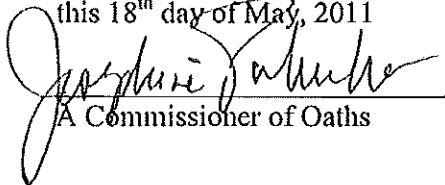
115. For the reasons outlined above, I believe that the premature disclosure of the information contained in Exhibit I would subvert the ends of justice, and that an order sealing Exhibit I would be consistent with the objectives of subsections 487.3(2)(a)(i) and 487.3(2)(a)(ii) or paragraph 487.3(2)(b) of the *Criminal Code*. Accordingly, I request that an Order be granted prohibiting access to the disclosure of Exhibit I and that Exhibit I shall be sealed and kept in a place to which the public has no access until either charges are laid, counsel for the Public Prosecution Service of Canada provides a written request to unseal Exhibit I, or by further Order of this Court.

International Investigations

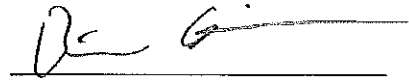
116. The alleged conspiracy is international in nature and is currently being investigated in foreign jurisdictions that are identified in Exhibit II. The Bureau is coordinating its investigation of the alleged international conspiracy and cooperating with these foreign jurisdictions.
117. As the information in Exhibit II identifies the foreign jurisdictions and contains information relating to their ongoing investigations, the Exhibit, if disclosed, could compromise the nature and extent of these investigations. As it is anticipated that some of the evidence gathered through the investigations in one or more of the foreign jurisdictions may be shared with the Bureau to further the Bureau's investigation, the information in Exhibit II, if disclosed, could also compromise the nature and extent of the Bureau's investigation into this international cartel. The Bureau has an obligation to the foreign jurisdictions to keep any information provided by them to the Bureau confidential.

118. I believe that the disclosure of the information contained in Exhibit II would compromise the nature and extent of the ongoing investigation in both Canada and in the foreign jurisdictions. As such, the ends of justice would be subverted by the disclosure. Accordingly, I believe that an order sealing Exhibit II would be consistent with the objectives of subsection 487.3(2)(a)(ii) or paragraph 487.3(2)(b) of the *Criminal Code*. I request that an Order be granted prohibiting access to the disclosure of Exhibit II, and that Exhibit II shall be sealed and kept in a place to which the public has no access until either counsel for the Public Prosecution Service of Canada provides a written request to unseal Exhibit II, or by further Order of this Court.

SWORN before me at the
City of Gatineau, in the
Province of Québec
this 18th day of May, 2011



A Commissioner of Oaths



Brian Elliott
Authorized Representative of the
Commissioner of Competition

SCHEDULE "A"

RECORDS TO BE PRODUCED PURSUANT TO PARAGRAPHS 11(1)(b) AND SUBSECTION 11(2)

Notice Concerning Obstruction

Any person who in any manner impedes or prevents or attempts to impede or prevent any inquiry or examination under the *Competition Act* (the "Act"), or who destroys or alters or causes to be destroyed or altered, any record or thing that is required to be produced under section 11 of the Act may be subject to criminal prosecution for obstruction of justice, contempt of court or other federal criminal violations. Where a corporation commits such an offence, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence may also be prosecuted. Conviction of any of these offences is punishable by fine or imprisonment or both.

SCHEDULE OF RECORDS

General Guidance on Compliance

You should refer to the Definitions and Instructions, contained in **Schedule "B"**, for guidance in responding to this Order. Unless otherwise indicated below, this Order calls for the production of records whether in handwritten, printed, typewritten, or electronically-stored form, in the possession, custody, or control of your Company or its affiliates. Unless otherwise indicated below, this Order calls for the production of original records or certified true copies.

Part I

Records to be Produced

For the Material Time (as defined in Schedule "B"), provide the following records:

1. Lists, charts or indices showing the identity of the individuals responsible for determining the Yen LIBOR submissions made by your Bank. This should include:
 - a. the name of the individual(s);
 - b. their job title at your Bank; and
 - c. the date(s) they determined your Yen LIBOR submissions.
2. Lists, charts or indices showing the identity of the individuals making Yen LIBOR submissions to the British Bankers Association (the "BBA") or its calculation agent, Thompson Reuters, on behalf of your Bank. This should include:
 - a. the name of the individual(s);
 - b. their job title at your Bank; and
 - c. the date(s) they made your Yen LIBOR submissions.
3. Records of your internal criteria and policies on Yen LIBOR submissions, and the determination of those submissions to the BBA or its calculation agent, Thompson Reuters.
4. Records that describe or demonstrate your internal procedures for making Yen LIBOR submissions to the BBA or its calculation agent, Thompson Reuters, and records that describe or demonstrate the organizational structure to carry out those procedures.
5. Records sufficient to demonstrate the nature and existence of any ethical walls (sometimes referred to as "Chinese walls") or other information barriers between interest

rate derivative traders and the individuals at your Bank responsible for determining or making your Yen LIBOR submissions.

6. Records of any internal policy on communication between interest rate derivative traders and the individuals at your Bank responsible for determining or making Yen LIBOR submissions.
7. Records of communications concerning Yen LIBOR rates or submissions between interest rate derivative traders at your Bank and the individuals at your Bank responsible for determining or making Yen LIBOR submissions, including:
 - a. Transcripts of Bloomberg chats or other instant messaging platforms;
 - b. E-mail;
 - c. A list of telephone calls with numbers and times;
 - d. Facsimiles; and
 - e. Meeting schedule records.
8. Records of communications concerning Yen LIBOR rates or submissions between Cash Brokers and the individuals responsible for determining or making your Bank's Yen LIBOR submissions, including:
 - a. Transcripts of Bloomberg chats or other instant messaging platforms;
 - b. E-mail;
 - c. A list of telephone calls with numbers and times;
 - d. Facsimiles; and
 - e. Meeting schedule records.
9. Records of communications concerning Yen LIBOR rates or submissions between the individuals responsible for determining or making your bank's Yen LIBOR submissions and the individuals at other Yen LIBOR panel Banks who are, or appear to be responsible for determining or making their Banks' Yen LIBOR submissions, including:
 - a. Transcripts of Bloomberg chats or other instant messaging platforms;

- b. E-mail;
 - c. A list of telephone calls with numbers and times;
 - d. Facsimiles; and
 - e. Meeting schedule records.
10. Records of communications concerning Yen LIBOR rates or submissions between Cash Brokers and interest rate derivative traders at your Bank, including:
- a. Transcripts of Bloomberg chats or other instant messaging platforms;
 - b. E-mail;
 - c. A list of telephone calls with numbers and times;
 - d. Facsimiles; and
 - e. Meeting schedule records.
11. Records of communications concerning Yen LIBOR rates between interest rate derivative traders at your Bank and interest rate derivative traders at other Banks or businesses, including:
- a. Transcripts of Bloomberg chats or other instant messaging platforms;
 - b. E-mail;
 - c. A list of telephone calls with numbers and times;
 - d. Facsimiles; and
 - e. Meeting schedule records.
12. Records of communications concerning over-the-counter interest rate derivative contracts (proposed or actual), linked to Yen LIBOR rates and entered into with Canadian Counterparties, between interest rate derivative traders at your Bank and interest rate derivative traders at other Banks or businesses, including:
- a. Transcripts of Bloomberg chats or other instant messaging platforms;
 - b. E-mail;
 - c. A list of telephone calls with numbers and times;
 - d. Facsimiles; and

- c. Meeting schedule records.
- 13. Lists or indices of over-the-counter interest rate derivative trades involving Yen LIBOR entered into by your Bank or your Bank's traders with Canadian Counterparties. Such lists or indices do not need to be produced unless they contain:
 - a. the name of the Canadian Counterparty;
 - b. the notional value of the contract;
 - c. the rates applicable to the contract; and
 - d. a settlement date(s) applicable to the contract (or any other date(s) on which an exchange of value related to the contract took place).
- 14. Records evidencing the profit or loss of your Bank on the settlement of over-the-counter interest rate derivatives linked to Yen LIBOR rates entered into by your Bank with Canadian Counterparties.
- 15. Lists or indices showing the identity of the interest rate derivative traders at your Bank. This list should include:
 - a. The name of the individuals;
 - b. Their job titles at your Bank;
 - c. The duration of their employment at your Bank; and
 - d. The interest rate derivatives they traded in.
- 16. Records that describe or demonstrate the process used and that identify the models or other methods used by your Bank to price or value interest rate derivatives.
- 17. Records that describe or demonstrate the remuneration system for the interest rate derivative traders at your Bank who traded over-the-counter interest rate derivatives with Canadian Counterparties.

18. Records that describe or demonstrate the remuneration system for the individuals at your Bank responsible for determining or making your Bank's Yen LIBOR submissions.
19. The records referred to in paragraphs 1 through 18 above, contained in all storage and record-keeping areas, computer systems, computer services and data-storage devices, located in and about the premises of the Company, or available to the Company's Computer Systems, Computer Services or data-storage devices.

Part II

Definitions and Instructions

For the purposes of this Order, the definitions and instructions contained in **Schedule “B”** apply.

SCHEDULE "B"

DEFINITIONS AND INSTRUCTIONS

Definitions

1. "Material Time" means the period between 2007 and June 25, 2010.
2. "Agreement" means any contract, arrangement, understanding, or other type of agreement, formal or informal, oral or written, direct or indirect, tacit or express, between two or more persons including each amendment, change, or revision and each record, addendum or schedule implicitly or explicitly referenced hereto.
3. "Bank" means any entity engaged in providing financial services, trading in securities or derivatives, providing brokerage services, engaged in investment banking, or that would (if it existed in Canada) be regulated under the *Bank Act*, S.C. 1991, c. 46, as amended or be required to register under the Securities Act (or equivalent) of any Canadian province, or any other entity that would commonly be referred to as a bank; and
4. "Bank" or "your Bank" means (a) the Canadian company, being the recipient of this Order, (b) the affiliate of the Canadian company, as defined in subsection 2(2) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, subject to this Order, and (c) present and former officers, directors, employees, attorneys, agents, or divisions, having responsibility for the areas covered by Schedule "A."
5. "Canadian Counterparty" means any Canadian-based bank, business, or other entity or person entering into derivative trades and includes their agents and authorized representatives.

6. **"Derivative"** has the meaning set out in subsection 1(1) of the Ontario *Securities Act*, R.S.O. 1990, c. S. 5, as amended.
7. **"Interest Rate Derivative"** refers to Forward Rate Agreements, Interest Rate Swaps, Interest Rate Options and any other derivative or security based on these derivatives or of the same form.
8. **"Trade" or "Trading"** has the meaning set out in subsection 1(1) of the Ontario *Securities Act*, R.S.O. 1990, c. S. 5, as amended.
9. **"Trader"** means any individual engaged in trading.
10. **"Cash Broker"** means ICAP PLC, R P Martin Holdings Limited or any employee of ICAP PLC or R P Martin Holdings Limited.
11. **"Communication"** means any disclosure, transfer, provision or exchange of information, however made, including oral, electronic, or written.
12. **"Computer Service"** has the meaning set out in subsection 342.1(2) of the *Criminal Code*, R.S.C., 1985, c. C-46, as amended.
13. **"Computer System"** has the meaning provided by section 16 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, as set out in subsection 342.1(2) of the *Criminal Code*, R.S.C., 1985, c. C-46, as amended.
14. **"Data"** has the meaning provided by section 16 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, as set out in subsection 342.1(2) of the *Criminal Code*, R.S.C., 1985, c. C-46, as amended.

15. **“Computer files”** includes information stored in, or accessible through computer or other information retrieval systems. Thus, your Bank should produce records that exist in machine readable form, including records stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline office, whether on or off Bank premises. Electronic mail messages should also be provided, even if only available on backup or archive tapes or disks. Computer files shall be printed and produced in hard copy or produced in machine-readable form (provided that the Commissioners representatives determine prior to submission that it would be in a format that allows them to use the computer files), together with instructions and all other material necessary to use or interpret the data.
16. **“Record”** has the meaning provided by subsection 2(1) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended and includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record (including computer data and electro-magnetic recordings in tape or disc form for use in computers or other devices for storing information), and any other documentary material, regardless of physical form or characteristics, and any copy or portion thereof.
17. **“And”** means and/or.
18. **“Any”** means one or more. The term is mutually interchangeable with “all” and each term encompasses the other.
19. **“Dollars”** means Canadian dollars. If information is only available in another currency, it can be provided in that form, but the unit of currency must be noted.
20. **“Including”** means including but not limited to. Likewise, “include” means includes, but not limited to.

21. **“Or”** means and/or.
22. **“Person”** includes your Bank and means any natural person, association, cooperative (public or private), joint venture, partnership, sole proprietorship, governmental entity, or other form of business or legal entity.
23. **“Price”** means actual, proposed, suggested, recommended monetary values, rates, or market value and include price increases or decreases, retail prices, wholesale prices, exchange prices, contract prices, markups, profit margins, discounts, rebates, promotions or promotional allowances, and all related costs, charges or rates.
24. **“Related to”** or **“relating to”** means directly or indirectly refer or pertain to, discuss, describe, reflect, contain, examine, analyse, study, report on, comment on, evidence, constitute, show, consider, recommend, concern, record, or set forth, in whole or in part.

Instructions

1. This Order calls for the production of all responsive records in the possession, custody, control of, or available to your Bank without regard to the physical location of the records, and without regard to whether they were prepared by or for your Bank.
2. All records produced shall be originals or certified true copies.
3. All references to year refer to calendar year. Unless otherwise specified, each of the paragraphs of this Order calls for records and information for each of the years from 2007 to June 25, 2010. If calendar year information is not available, supply your Bank’s fiscal year date indicating the twelve-month period covered.

4. Unless otherwise specifically provided, the records that must be produced pursuant to this Order include all responsive records prepared, sent, dated, received, used, in effect, or which otherwise existed at any time during or related to the period of 2007 through and including June 25, 2010.
5. Your Bank should identify each record it produces with its initials, and number each record it produces consecutively, beginning with number 1. Your Bank's initials and numbers should appear in the lower right hand corner of each page, in a location that does not obscure any information on the record, preferably in a colour other than black. The records should be produced by each Order paragraph or subparagraph. Records responsive to each paragraph or subparagraph should be placed in a separate folder or enclosure, which should be marked with :
 - a) the name of your Bank,
 - b) the date of the Order, and
 - c) the paragraph or subparagraph to which it is responsive

Where a record is responsive to more than one paragraph, your Bank should note, in a separate log or otherwise, all paragraphs and subparagraphs to which the record responds.

6. If any portion of any record is responsive to any other paragraph or subparagraph, then the entire record must be produced, including all supporting, underlying, or explanatory records and all attached, annexed, or appended records. If a record contains privileged material, the entire record shall be produced, with the privileged material redacted and recorded in the manner set forth the Paragraph 7, below.
7. For each record or portion thereof withheld under a claim of privilege, your Bank shall submit a sworn or certified statement from your Bank's counsel, or a corporate officer, containing a statement of the basis upon which the privilege is claimed and identifying: 1) the paragraphs, and subparagraphs in this Order to which the record is responsive; 2) the withheld record by author, addressee, date, number of pages, and subject matter; 3) each

person to whom the withheld material was sent; and 4) each person to whom the withheld material or its contents, or any part thereof, was disclosed. Identify all persons by name, title, and address. Any record or part of a record withheld under a claim of privilege must be preserved by your Bank.

8. Responsive records that in their original condition were stapled, clipped, or otherwise fastened together should be produced in such form. Records should not be shuffled or otherwise rearranged, but should be produced in the order in which they appear in your Bank's files.
9. Unless otherwise specifically provided herein, at your option you may provide responsive records in electronic form.
 - a) All electronic records (readable in a computer system) are to be produced either in their existing format or as described below:
 - (i) database records shall be provided as a flat file, in a non-relational format, exported as a comma delimited (CSV) text file;
 - (ii) spreadsheets shall be in MS Excel format;
 - (iii) word processing files shall be in either MS Word or WordPerfect format or searchable PDF;
 - (iv) email records and attachments shall be provided in a native email format such as Outlook Express (EML) or Outlook (MSG) or searchable PDF. They can also be provided in a Microsoft Outlook mail file (PST);
 - (v) maps shall be provided in either a MapPoint or MS Streets & Trips format.
 - b) In the event electronic records are delivered in their existing format and that format is not one of the formats described in section 1 above, they shall be provided along with any and all available instructions and other materials (including software) as are necessary for the retrieval and use of the records.

- c) For each database record or spreadsheet submitted in response to a paragraph or subparagraph of this request, submit any accompanying data dictionary or a definition for each field contained in such database or spreadsheet.
 - d) Notwithstanding section 1(a) above, litigation application exports may be produced by providing a cross-reference file (e.g., CSV, Dii or MDB database) and related images (e.g., single page tiffs) and/or electronic records along with additional field information (e.g., title, description, date) and OCR text if available. It is the Bureau's preference to receive the electronic records in the predefined Ringtail MDB format.
 - e) All electronic records shall be provided on portable storage media appropriate to the volume of data (e.g., USB drive, CD, DVD, hard drive) and shall be identified with a label describing the content. It is the Bureau's preference to receive batches of no more than 250,000 files (native or images or combination of both).
10. Use of the singular or the plural in this Order should not be deemed a limitation, and the use of the singular should be construed to include, where appropriate, the plural.
11. Use of a verb in the present or past tense in this Order should not be deemed a limitation, and the use of either the present or past tense should be construed to include both the present and past tense.
12. All calendars, appointment books, telephone logs, planners, diaries, and items of a similar nature that are produced in response to this Order should be marked with the name of the person or persons by whom they were used and the dates during which they were used.

13. No agreement or stipulation by the Commissioner or her representative proposing to modify, limit, or otherwise vary this Order shall be valid or binding on the Commissioner unless confirmed or acknowledged in writing or made on record in open court, by a duly authorized representative thereof.

14. All communication or inquiries relating to this Order should be addressed to:

Criminal Matters Branch
To the attention of: Brian Elliott
Place du Portage, Phase 1, 20th Floor
50 Victoria Street
Gatineau, Quebec
K1A 0C9

Court File No:

**COURT OF ONTARIO
(SUPERIOR COURT OF JUSTICE)
(EAST REGION)**

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an Inquiry under section 10 of the *Competition Act*, into the purchase, sale or supply of interest rate derivatives in, to or from Canada, allegedly contrary to current and former offences under section 45 of the *Competition Act*;

AND IN THE MATTER OF an *ex parte* application by an authorized representative of the Commissioner of Competition for Orders requiring that HSBC Bank Canada, Deutsche Bank AG, J.P. Morgan Bank Canada, Royal Bank of Scotland N.V., (Canada) Branch (The), and Citibank Canada produce certain records pursuant to subsections 11(1)(b) and 11(2) of the *Competition Act*;

AND IN THE MATTER OF an *ex parte* application for Orders to seal Exhibits "I" and "II" to this Affidavit in support of the application

AFFIDAVIT OF BRIAN ELLIOTT

**(AFFIDAVIT IN SUPPORT OF AN *EX PARTE*
APPLICATION FOR ORDERS TO PRODUCE RECORDS
PURSUANT TO SECTION 11 OF THE *COMPETITION
ACT* AND FOR SEALING ORDERS)**

Robert Morin
Public Prosecution Service of Canada
Competition Law Section
Place du Portage, Phase I
50 Victoria Street, 22nd Floor
Gatineau, Quebec K1A 0G9
Telephone: 819.956.4275
Facsimile: 819.997.5747