



U.S. Department of Justice

Criminal Division

Washington, D.C. 20530

December 18, 2012

Gary R. Spratling, Esq.
Gibson, Dunn & Crutcher LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105

David P. Burns, Esq.
Gibson, Dunn & Crutcher LLP
1050 Connecticut Ave NW
Washington, DC 20036

Re: UBS AG

Dear Mr. Spratling and Mr. Burns:

On the understandings specified below, the United States Department of Justice, Criminal Division, Fraud Section ("Fraud Section") will not criminally prosecute UBS AG and its subsidiaries and affiliates (collectively, "UBS"), with the exception of UBS Securities Japan Co., Ltd. ("UBS Securities Japan"), for any crimes (except for criminal tax violations, as to which the Fraud Section cannot and does not make any agreement) related to UBS's submissions of benchmark interest rates, including the London InterBank Offered Rate (known as LIBOR), the Euro Interbank Offered Rate (known as EURIBOR), and the Tokyo InterBank Offered Rate (known as TIBOR), as described in the attached Appendix A, which is incorporated in this Non-Prosecution Agreement ("Agreement").¹

It is understood that UBS admits, accepts, and acknowledges responsibility for the conduct set forth in Appendix A and agrees not to make any public statement contradicting Appendix A.

The Fraud Section and UBS further agree that as a term and condition of this Agreement, UBS Securities Japan will plead guilty to one count of wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2, in accordance with the Plea Agreement that is attached as Appendix B, which is incorporated in this Agreement.

The Fraud Section enters into this Agreement based, in part, on its consideration of the following factors:

¹ Although not addressed in Appendix A, this Agreement also encompasses UBS's submissions for the additional benchmark rates listed in Appendix C, which is also incorporated in this Agreement. The rates listed in Appendix C are the focus of an ongoing investigation and, for that reason, Appendix C will be held in confidence by the parties to this Agreement and will not be made available to the public until the Department of Justice, in its sole discretion, determines that such information can and should be disclosed.

- (a) UBS has made a timely, voluntary, and complete disclosure of the facts described in Appendix A.
- (b) UBS conducted a thorough internal investigation of the misconduct described in Appendix A, reported all of its findings to the Fraud Section, cooperated fully with the Fraud Section's investigation of this matter, and sought to effectively remediate any problems it discovered.
 - 1. Although UBS was not the first bank to provide the Fraud Section with helpful information, and its self-disclosure and cooperation commenced after the Fraud Section had obtained certain evidence implicating UBS and, in particular, efforts to manipulate Yen benchmarks, UBS made its self-disclosure before the Fraud Section had contacted UBS regarding the criminal investigation.
 - 2. UBS provided highly valuable information that significantly expanded and advanced the criminal investigation. UBS's cooperation has been exceptional in many important respects. Through its internal investigation, UBS has sought to uncover and disclose evidence of misconduct without restricting the focus of its investigation to issues the government had already identified. Over the past two years, it has made substantial efforts to assist the government in obtaining access to sources of evidence located abroad, including documents and witnesses. UBS's extensive cooperation is a particularly significant and favorable consideration in the Fraud Section's decision to enter into this Agreement.
 - 3. The Fraud Section received compelling information from UBS, as well as from regulatory agencies, demonstrating that in recent years, under its new senior leadership, UBS has made important and positive changes in its compliance, training, and overall approach to ensuring its adherence to the law. Moreover, UBS appears to have substantially improved the manner in which it responds to regulatory and criminal investigations and to its discovery of potential misconduct, as the Department of Justice has observed in this matter.
 - a. In order to ensure that misconduct of this nature does not recur, UBS has implemented a modified and significantly enhanced control framework for its LIBOR submission process and has expanded that program to encompass all other benchmark interest rate submissions. UBS has also implemented significant remedial measures in response to the misconduct discovered during this investigation.

- b. The Fraud Section has also received favorable reports from the Swiss Financial Market Supervisory Authority (“FINMA”) and the Japan Financial Services Authority (the “JFSA”) describing, respectively, (1) positive progress that UBS has made in its approach to compliance and enforcement, and (2) UBS Securities Japan’s effective implementation of the remedial measures previously imposed by the JFSA based on its findings relating to the attempted manipulation of Yen benchmarks.

This recent record is commendable, and partially mitigates the adverse implications of UBS’s prior history of misconduct.

This Agreement does not provide any protection against prosecution for any crimes except as set forth above, and applies only to UBS and not to any other entities or to any individuals, including but not limited to employees or officers of UBS. The protections provided to UBS shall not apply to any acquirer or successor entities unless and until such acquirer or successor formally adopts and executes this Agreement.

This Agreement shall have a term of two years from the date of this Agreement, except as specifically provided below. It is understood that for the two-year term of this Agreement, UBS shall: (a) commit no United States crime whatsoever; (b) truthfully and completely disclose non-privileged information with respect to the activities of UBS, its officers and employees, and others concerning all matters about which the Fraud Section inquires of it, which information can be used for any purpose, except as otherwise limited in this Agreement; (c) bring to the Fraud Section’s attention all potentially criminal conduct by UBS or any of its employees that relates to violations of U.S. laws (i) concerning fraud or (ii) governing securities and commodities markets; and (d) bring to the Fraud Section’s attention all criminal or regulatory investigations, administrative proceedings or civil actions brought by any governmental authority in the United States against UBS or its employees that alleges fraud or violations of the laws governing securities and commodities markets.

Until the date upon which all investigations and prosecutions arising out of the conduct described in this Agreement are concluded, including the investigations of the matters listed in Appendix C, whether or not they are concluded within the two-year term specified in the preceding paragraph, UBS shall, in connection with any investigation or prosecution arising out of the conduct described in this Agreement: (a) cooperate fully with the Fraud Section, the Federal Bureau of Investigation, and any other law enforcement or government agency designated by the Fraud Section; (b) assist the Fraud Section in any investigation or prosecution by providing logistical and technical support for any meeting, interview, grand jury proceeding, or any trial or other court proceeding; (c) use its best efforts promptly to secure the attendance and truthful statements or testimony of any officer, agent or employee at any meeting or interview or before the grand jury or at any trial or other court proceeding; and (d) provide the Fraud Section, upon request, all non-privileged information, documents, records, or other tangible evidence about which the Fraud Section or any designated law enforcement or

government agency inquires.

It is understood that, if the Fraud Section determines in its sole discretion that UBS has committed any United States crime subsequent to the date of this Agreement, or that UBS has given false, incomplete, or misleading testimony or information at any time, or that UBS has otherwise violated any provision of this Agreement, UBS shall thereafter be subject to prosecution for any federal violation of which the Fraud Section has knowledge, including perjury and obstruction of justice. Any such prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against UBS, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the expiration of the term of the Agreement plus one year. Thus, by signing this Agreement, UBS agrees that the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed shall be tolled for the term of this Agreement plus one year.

It is understood that, if the Fraud Section determines in its sole discretion that UBS has committed any United States crime after signing this Agreement, or that UBS has given false, incomplete, or misleading testimony or information at any time, or that UBS has otherwise violated any provision of this Agreement: (a) all statements made by UBS or any of its employees to the Fraud Section or other designated law enforcement agents, including Appendix A, and any testimony given by UBS or any of its employees before a grand jury or other tribunal, whether prior or subsequent to the signing of this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any criminal proceeding brought against UBS; and (b) UBS shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or any leads derived therefrom are inadmissible or should be suppressed. By signing this Agreement, UBS waives all rights in the foregoing respects.

The decision whether any public statement contradicts Appendix A and whether it shall be imputed to UBS for the purpose of determining whether UBS has breached this Agreement shall be in the sole discretion of the Fraud Section. If the Fraud Section determines that a public statement contradicts in whole or in part a statement contained in Appendix A, the Fraud Section shall so notify UBS, and UBS may avoid a breach of this Agreement by publicly repudiating such statement(s) within five business days after notification. This paragraph is not intended to apply to any statement made by any former UBS officers, directors, or employees. Further, nothing in this paragraph precludes UBS from taking good-faith positions in litigation involving a private party that are not inconsistent with Appendix A. In the event that the Fraud Section determines that UBS has breached this Agreement in any other way, the Fraud Section agrees to provide UBS with written notice of such breach prior to instituting any prosecution resulting from such breach. UBS shall, within 30 days of receipt of such notice, have the opportunity to respond to the Fraud Section in writing to explain the nature and circumstances of such breach, as well as the actions UBS has taken to address and remediate the situation, which explanation the Fraud Section shall consider in determining whether to institute a prosecution.

It is understood that UBS, by a branch or agency located in Connecticut, agrees to pay a monetary penalty of \$500,000,000. UBS must pay this sum to the United States Treasury within ten days of the sentencing of UBS Securities Japan, in connection with its guilty plea and plea agreement attached as Appendix B. The parties agree that any criminal penalties that might be imposed by the Court on UBS Securities Japan in connection with its guilty plea and plea agreement will be deducted from the \$500,000,000 penalty agreed to under this Agreement. UBS acknowledges that no tax deduction may be sought in connection with this payment.

It is further understood that, as noted above, UBS has strengthened its compliance and internal controls standards and procedures, and that it will further strengthen them as required by FINMA, the U.S. Commodity Futures Trading Commission, the JFSA, the United Kingdom Financial Services Authority, and any other regulatory or enforcement agencies that have addressed the misconduct set forth in Appendix A. In addition, in light of active investigations by various regulators of the conduct described in Appendix A and the role that regulators such as those listed above will continue to play in reviewing UBS's compliance standards, the Fraud Section has determined that adequate compliance measures have been and will be established. It is further understood that UBS will report to the Fraud Section, upon request, regarding its remediation and implementation of any compliance program and internal controls, policies, and procedures that relate to its submission of benchmark interest rates. Moreover, UBS agrees that it has no objection to any regulatory agencies providing to the Fraud Section any information or reports generated by such agencies or UBS relating to the submissions of benchmark interest rates. Such information and reports will likely include proprietary, financial, confidential, and competitive business information. Moreover, public disclosure of the information and reports could discourage cooperation, impede pending or potential government investigations, and thus undermine the objectives of the reporting requirement. For these reasons, among others, the information and reports and the contents thereof are intended to remain and shall remain non-public, except as otherwise agreed to by the parties in writing, or except to the extent that the Fraud Section determines in its sole discretion that disclosure would be in furtherance of the Fraud Section's discharge of its duties and responsibilities or is otherwise required by law.

It is further understood that this Agreement does not bind any federal, state, local, or foreign prosecuting authority other than the Fraud Section. The Fraud Section will, however, bring the cooperation of UBS to the attention of other prosecuting and investigative authorities, if requested by UBS.


It is further understood that UBS and the Fraud Section may disclose this Agreement to the public, except with respect to Appendix C as set forth above.

With respect to this matter, from the date of execution of this Agreement forward, this Agreement supersedes all prior, if any, understandings, promises and/or conditions between the Fraud Section and UBS. No additional promises, agreements, and conditions have been entered into other than those set forth in this Agreement and none will be entered into unless in writing and signed by all parties.

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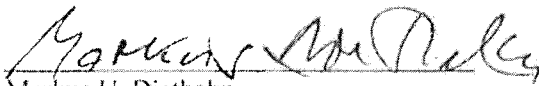
Sincerely,


DENIS J. McINERNEY
Chief, Fraud Section
Criminal Division
United States Department of Justice

By: 
Daniel A. Braun, Deputy Chief
Luke B. Marsh, Trial Attorney


AGREED AND CONSENTED TO:

UBS AG

By: 
Markus U. Diethelm
Group General Counsel, UBS AG


Date

APPROVED:

By: 
Gary R. Sprafkin, Esq.
David P. Burns, Esq.
Gibson, Dunn & Crutcher LLP
Attorneys for UBS AG


Date