

ENFORCEABLE UNDERTAKING
Australian Securities and Investments Commission Act 2001
Section 93AA

The commitments in this undertaking are offered to the Australian Securities and Investments Commission (**ASIC**) by:

BNP Paribas
ARBN 000 000 117
Level 6, BNP Paribas Centre
60 Castlereagh Street
Sydney NSW 2000

(BNP)

1 DEFINITIONS

1.1 In addition to terms defined elsewhere in this undertaking, the following definitions are used:

AFMA means the Australian Financial Markets Association.

ALM-T Sydney means the Representatives of BNP's treasury desk responsible for submitting BNP's BBSW Submission to AFMA.

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth).

ASIC's Concerns means the matters referred to and set out in paragraph 3.6.

Australian Benchmark Interest Rate means an interest rate for Australian currency and a maturity/tenor that is calculated based on data received from market participants and published to the market in Australia on a regular, periodic basis from time to time, including but not necessarily limited to the BBSW and the Interbank Overnight Cash Rate.

BBSW means the bank bill swap reference rate.

BBSW Submission means the mid-rates for Reference Bank Bills of varying maturities contributed to AFMA by Panel Banks prior to 27 September 2013, by 10:05AM Sydney time, in accordance with the "Bank Bill Swap (BBSW) Reference Rate Procedures" as published by AFMA.

Benchmark Publisher means a banking or markets association or other entity that is responsible for or oversees the calculation and publication of an Australian Benchmark Interest Rate, including but not necessarily limited to, AFMA and the Reserve Bank of Australia.

BNP means BNP Paribas, ARBN 000 000 117, the Australian branch which is the entity offering this enforceable undertaking, and that holds Australian Financial Services Licence No 238043

Corporations Act means the *Corporations Act 2001* (Cth)

Derivative has the meaning given by s761D of the Corporations Act.

Derivative Trader means any Representative or former Representative of BNP who dealt in Derivatives on behalf of BNP.

Expert Review Period means the period from 1 January 2007 to 31 December 2010 inclusive.

Financial Product has the meaning given by Division 3 of Part 7 1 of the Corporations Act

Interbank Overnight Cash Rate means the rate at which banks transact in the domestic interbank market for overnight unsecured funds.

LIBOR means the London Interbank Offered Rate.

Panel Bank means a bank which contributed BBSW Submissions to AFMA for the BBSW rate setting process, prior to 27 September 2013.

Publishers' Rules means any rules, guidelines, instructions, policies or definitions issued by a Benchmark Publisher in relation to the Submission Process.

Reference Bank Bills means bank accepted bills and negotiable certificates of deposit issued by banks that are designated as AFMA 'Prime Banks'.

Representative means any employee, director or any other person acting on behalf of BNP.

Review Period means the period from 1 January 2007 to 31 December 2012 inclusive.

Submission(s) means the interest rate(s) for each Australian Benchmark Interest Rate submitted to a Benchmark Publisher.

Submission Process means the process of determining Submission(s).

Submitter(s) means any Representative or former Representative of BNP who was responsible for submitting BNP's BBSW Submissions to AFMA.

Submitter Influence means the attempted influencing (successful or otherwise) of Submitters by Singapore based Derivative Traders by expressing preferences in relation to the direction (i.e. high or low) of BNP's BBSW Submission to AFMA.

Supervisor(s) means the person(s) immediately and directly responsible for supervising any portion of the Submission Process and/or any of the Submitter(s).

- 1.2 Except so far as the contrary intention appears in this enforceable undertaking the interpretation provisions in Part 1.2 of the Corporations Act and Part 2 Division 4 of the ASIC Act apply for the purposes of this enforceable undertaking as if those provisions were provisions of this enforceable undertaking.

2 BACKGROUND

ASIC's role

- 2.1 Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system

Bank Bill Swap Reference Rate (BBSW)

- 2.2 The BBSW is the benchmark interbank interest rate used for pricing many financial contracts in Australia. It is published by the Australian Financial Markets Association (AFMA), which is also responsible for overseeing the integrity of the rate-setting process
- 2.3 Prior to 27 September 2013, to determine the BBSW, up to 14 Panel Banks were asked to submit to AFMA, by no later than 10:05AM on each Sydney business day, their views of the mid-rate for Reference Bank Bills of varying maturities as at 10:00AM on that day. After eliminating the highest and lowest submissions for each tenor, AFMA calculated and published BBSW as the mean of the remaining mid-rates submitted by the Panel Banks. The Reference Bank Bills are comprised of bank-accepted bills and negotiable certificates of deposit of similar credit standing issued by institutions which are designated as prime banks by AFMA, and which are traded as a homogenous pool by participants in the market

- 2.4 The calculation of BBSW substantially differs from the method that is used to calculate the LIBOR, in that BBSW Submissions were required to be based on the Panel Bank's view of the average mid-rate for Reference Bank Bills, which are of similarly high credit standing, at a particular point in time each day. Contributing banks to LIBOR are asked to submit their own subjective view of the bank's cost of obtaining unsecured funding from other banks, which can differ between banks based on their own credit standing, and which are not based on observable transactions in the market.
- 2.5 As at 27 September 2013, as a result of AFMA incorporating principles contained in the International Organisation of Securities Commissions (IOSCO) *Principles for Financial Benchmarks*, BBSW is now calculated using an electronic compilation of the midpoint of the National Best Bid and Offer (NBBO) in the locally traded market for Reference Bank Bills. This new methodology removes the need for BBSW Submissions by Panel Banks. Additionally, as the calculation methodology is mechanical in operation, it does not require expert judgment or discretion.
- 2.6 BNP is a member of AFMA, and was a Panel Bank for the AFMA BBSW.
- 2.7 Prior to 27 September 2013, BNP's ALM-T Sydney desk made BBSW Submissions on behalf of BNP.
- 2.8 As an AFMA member, BNP was for the period for which it made BBSW Submissions, subject to AFMA's BBSW guidelines and procedures. BNP did not prior to 2013 have in place any specific internal policies and procedures regarding BBSW Submissions.

3 DETAILS OF CONDUCT

- 3.1 During the course of an internal audit review in late 2012 conducted at the request of the Monetary Authority of Singapore, BNP identified communications from 2007 between Singapore based Derivative Traders and Submitters on the ALM-T Sydney desk relating to BNP's BBSW Submissions, which were indicative of Submitter Influence.
- 3.2 In November 2012, BNP reported to ASIC that Submitter Influence conduct may have occurred during the period between 2007 and 2010. At this time, ASIC requested that BNP conduct a detailed review of its BBSW Submissions, including a review of the records of communication of relevant staff involved.
- 3.3 A special investigation was launched by BNP's independent Inspection Générale function in early 2013. This involved a review of records of communication (internal and external) of all BNP staff involved in making BBSW Submissions during the Review Period, to ascertain whether there had been any attempt to influence BBSW and, if so, to verify whether a material impact on published prices could be observed as a consequence of any such attempts.
- 3.4 In July 2013, the report of BNP's Inspection Générale was provided to ASIC. The report identified communications dating from 2007 to 2010 in which Singapore based Derivative Traders were involved in expressing preferences as to the direction or level of BBSW Submissions to Submitters on the ALM-T Sydney desk. The communications also evidenced that some Submitters had at times asked Singapore based Derivative Traders if they had any fixing interests. Inspection Générale did not identify any similar communications after 2010, but identified that preferences could have been taken into account by ALM-T Sydney, although the Submitters maintained that this never resulted in contributions that were outside their view of the traded market. No inappropriate exchanges with external counterparties were identified for the Review Period. The statistical analysis conducted by Inspection Générale in relation to the daily contributions of Submitters identified they had remained close to the published BBSW rate and could not establish any impact on external published prices. At ASIC's request, BNP engaged an independent expert to conduct a review of BNP's BBSW Submissions over the Expert Review Period to assess
- (a) the maximum potential benefit that BNP could have obtained, as a result of potential influence, as a result of Submitter Influence conduct; and

(b) the maximum potential impact of the Submitter Influence conduct on the market as a whole, in relation to those Financial Products referenced to the BBSW.

3.5 For the purposes of the analysis, the independent expert made an assumption that the Submitter Influence conduct had influenced BNP's BBSW Submissions. However, the independent expert noted that the methods and tests which it undertook involved a number of assumptions and hypotheses which may not reflect actual events or outcomes. In this context the expert, based on its methods and tests, and if it were assumed (even though it was not established) that the Submitter Influence conduct had influenced BNP's BBSW Submissions, calculated that:

(a) the maximum potential benefit BNP received during the Expert Review Period was approximately \$0.76 million;

(b) to the extent that there may have been any impact on the market as a whole, including Financial Products referenced to BBSW, over the Expert Review Period (and no such impact had been established), it would have been insignificant

ASIC's concerns

3.6 ASIC is concerned that, having regard to the matters referred to in paragraphs 2 and 3 above, BNP may not have complied with its obligations under section 912A of the Corporations Act.

Acknowledgment of concerns

3.7 BNP acknowledges ASIC's Concerns and that they are reasonably held, and has offered an enforceable undertaking in the terms of paragraphs 4.2 to 4.7 below.

4 UNDERTAKINGS

4.1 Under section 93AA of the ASIC Act, BNP has offered the following undertakings, and ASIC has agreed to accept those undertakings as an alternative to pursuing administrative action against BNP in respect of the matters referred to in paragraphs 2 and 3 above.

Integrity and reliability of Australian Benchmark Interest Rate Submissions

4.2 Unless otherwise agreed with ASIC in writing, BNP undertakes to comply with the obligations in relation to the Australian Benchmark Interest Rates set out in the Annexure to this enforceable undertaking and the Publishers' Rules (which prevail over the Annexure in the case of an inconsistency).

4.3 BNP undertakes to ensure that its participation in the setting of any Australian Benchmark Interest Rate upholds the integrity and reliability of that Australian Benchmark Interest Rate.

Contribution to services directed at enhancing financial literacy

4.4 BNP undertakes to make, by 31 March 2014, or such other date as agreed by ASIC, a voluntary contribution of \$1 million to, or as directed by, Financial Literacy Australia Limited towards the advancing of financial literacy in Australia, with a priority to issues relating to investment in financial markets.

Other Undertakings

4.5 BNP undertakes that it will pay the costs of its compliance with this enforceable undertaking

4.6 BNP will, within a reasonable period after receiving a request from ASIC, provide all documents and information requested by ASIC from time to time for the purpose of assessing BNP's compliance with the terms of this enforceable undertaking. For the avoidance of doubt, BNP is not required to provide ASIC with documents or information that is the subject of legal professional privilege.

4.7 BNP undertakes that it is not aware of any Representative having engaged in collusive conduct with other banks in respect of BBSW Submissions.

5 ACKNOWLEDGMENTS

5.1 BNP acknowledges that ASIC:

- (a) may issue a media release on execution of this enforceable undertaking referring to its terms and to the concerns of ASIC which led to its execution;
- (b) may from time to time publicly refer to this enforceable undertaking; and
- (c) will make this enforceable undertaking available for public inspection

5.2 Further, BNP acknowledges that:

- (a) ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges in relation to any contravention by either BNP or its Representatives, whether the subject of ASIC's Concerns in this enforceable undertaking or arising from separate or future conduct; and
- (b) while it is not aware of any Representative having engaged in collusive conduct with other banks in respect of BBSW Submissions, should conduct of a collusive nature involving BNP be identified in respect of BBSW Submissions or the setting of an Australian Benchmark Interest Rate, ASIC's rights to pursue civil proceedings or administrative licensing action against BNP under sections 914A and 915C of the Corporations Act are reinstated in respect of that conduct; and
- (c) this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.

5.3 ASIC acknowledges that:

- (a) BNP self-reported this matter to ASIC; and
- (b) BNP has fully cooperated and worked constructively with ASIC in its investigation.

5.4 ASIC also acknowledges the remedial measures that have been taken by BNP including

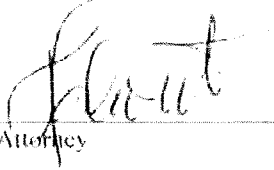
- (a) enhancements of the internal control framework which applies to each Australian Benchmark Interest Rate to which BNP contributes; and
- (b) disciplinary action being taken with respect to staff members involved in Submitter Influence

5.5 Nothing in this enforceable undertaking constitutes an admission by BNP or its Representatives.

5.6 BNP acknowledges that this undertaking has no operative force until accepted by ASIC and BNP and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

5.7 ASIC and BNP acknowledge that this enforceable undertaking ends five (5) years after the date on which the undertaking is accepted by ASIC.

Executed for and on behalf of **BNP PARIBAS**
under a Power of Attorney dated 11 May
2012. Each Attorney certifies that he/she has
not received notice of revocation of that
Power

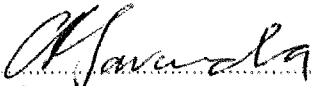


Signature of Attorney



Signature of Attorney

**Accepted by the Australian Securities and Investments Commission under s93AA of the ASIC Act
by its duly authorised delegate:**



Chris Savundra
Delegate of Australian Securities and Investments Commission

Date: 28 JANUARY 2014

Annexure

OBLIGATIONS TO ENSURE INTEGRITY AND RELIABILITY OF AUSTRALIAN BENCHMARK INTEREST RATE SUBMISSIONS

1. Each Australian Benchmark Interest Rate Submission by BNP shall be based upon a rigorous and honest assessment of information, and shall not be influenced by internal or external conflicts of interest, or other factors or information extraneous to any Publishers' Rules.
2. BNP shall identify, construct and promote effective methodologies and processes of setting Australian Benchmark Interest Rates, in coordination with efforts by Benchmark Publishers, in order to ensure the integrity and reliability of Australian Benchmark Interest Rates in the future.
3. To the extent BNP is or remains a contributor to any Australian Benchmark Interest Rate, BNP agrees to make its best efforts to participate in efforts by current and future Benchmark Publishers, other price reporting entities and/or regulators to ensure the reliability of Australian Benchmark Interest Rates
4. SUPERVISOR(S)' REVIEW: Each daily Submission shall be reviewed by a Supervisor on a daily basis after the Submission(s) are made to the Benchmark Publisher.
5. QUALIFICATIONS OF SUBMITTER(S) AND SUPERVISOR(S): All Submitter(s) shall have a suitable level of experience to provide the relevant Submission(s), but may designate less experienced parties, who routinely work under their supervision, to make Submission(s) during limited periods of absence. All Supervisors shall have a suitable level of experience in the markets for the relevant Australian Benchmark Interest Rate or a comparable market. Submitters, Supervisors and any parties designated to make Submission(s) when the Submitter(s) are absent shall not be assigned to any Derivatives trading desk, unit or division within BNP, or participate in Derivatives trading other than that associated with BNP's liquidity and liability management. The compensation of Submitter(s) and Supervisor(s) also shall not be directly based upon Derivatives trading other than that associated with BNP's liquidity and liability management.
6. FIREWALLS: INTERNAL CONTROLS REGARDING IMPROPER COMMUNICATIONS AND SUBMISSION(S): BNP shall implement and maintain internal controls and procedures to prevent improper communications with Submitter(s) and Supervisor(s) regarding Submission(s) or prospective Submission(s) to ensure the integrity and reliability of its Submission(s). Such internal controls and procedures shall include, but not be limited to:
 - (a) "Firewalls" implemented through written policies and procedures that delineate proper and improper communications with Submitter(s) and Supervisor(s), whether internal or external to BNP. For these purposes, improper communications shall be any attempt to influence BNP's Submission(s) for the benefit of any Derivatives trading position (whether of BNP or any third party) or any attempt to cause BNP's Submitter(s) to violate any applicable Publishers' Rules; and
 - (b) A requirement that the Submitter(s) shall not be located in close proximity to traders who primarily deal in Financial Products that reference an Australian Benchmark Interest Rate to which BNP contributes any Submission(s). The two groups should be separated such that neither can hear the other.
7. DOCUMENTATION: BNP shall provide the documents set out below promptly and directly to ASIC upon request, regardless of whether the records are held outside of Australia, to the extent permitted by law.

- (a) For each Submission, BNP shall contemporaneously record, and retain in an easily accessible format for a period of five (5) years after the date of each Submission, the following information:
 - (i) the Submission;
 - (ii) all relevant data and workings that BNP used to determine the Submission, including, but not limited to, transaction records of any transactions by BNP or other entities upon which its Submissions are, in whole or part, based, all applicable models and methods, and relevant data and information received from third parties (including interdealer brokers) including the name of each organisation and person from whom the data or information is received;
 - (iii) the identity of the Submitter(s) who made, and the Supervisor(s) who reviewed, the Submissions(s); and
 - (iv) where applicable, trade transaction records and daily position and risk reports, including (without limitation) monthly and quarterly position and risk reports, related to the trading activities of Submitter(s) and traders who primarily deal in Financial Products that reference an Australian Benchmark Interest Rate
- (b) Requirement To Record Communications: BNP shall (if it is making Submissions) record and retain to the greatest extent practicable all communications concerning the determination and review of the Submission(s). These communications shall not be conducted in a manner to prevent BNP from recording such communications. All communications including audio communications shall be retained for a period of five (5) years

8. MONITORING AND AUDITING:

- (a) Monitoring: BNP shall (if it is making Submissions) maintain or develop and maintain monitoring systems or electronic exception reporting systems that identify possible improper or unsubstantiated Submissions. BNP shall review such reports on at least a weekly basis and, if there is any significant deviation or issues, the underlying documentation for the Submission shall be reviewed to determine whether the Submission is adequately substantiated. If it is not substantiated, BNP shall notify its chief compliance officer(s) and the Benchmark Publisher;
- (b) Periodic Audits: Starting six (6) months from the date of entry into this enforceable undertaking and continuing every six (6) months thereafter, BNP shall conduct internal audits of reasonable and random samples of its Submission(s), the factors and other evidence documenting the basis for such Submission(s), and communications of the Submitter(s) in order to verify the integrity and reliability of the Submission Process. BNP shall ensure that the dates of these internal audits do not coincide with annual audits performed by third party auditors
- (c) Annual Audits By Third Party Auditors: Within one (1) year from the date of the entry into this enforceable undertaking and continuing annually for four (4) additional years thereafter, BNP shall (if it is making Submissions) retain an independent, third-party auditor to conduct an audit of its Submission(s) and Submission Process, which shall include, without limitation, the following:
 - (i) Reviewing communications of Submitter(s) and Supervisor(s);

- (ii) Interviewing the Submitter(s) and Supervisor(s), to the extent they are still employed by BNP;
 - (iii) Obtaining written verification from the Submitter(s) and Supervisor(s), to the extent they are still employed by BNP, that the Submission(s) were consistent with this undertaking, the internal policies and procedures in place for making BNP's Submission(s), and the Publishers' Rules applicable to the Australian Benchmark Interest Rate for which BNP made Submission(s); and
 - (iv) A written audit report to be provided to BNP and to ASIC within ten (10) days of the date of the report.
9. POLICIES, PROCEDURES AND CONTROLS. If it is making Submissions, BNP shall develop, implement and maintain policies, procedures and controls to comply with each of the specific undertakings set out above with the goal of ensuring the integrity and reliability of its Submission(s). BNP shall ensure that all such policies, procedures and controls are regularly reviewed to ensure that they adequately respond to any changes in the Publishers' Rules or to any new Australian Benchmark Interest Rates to which BNP commences making Submissions. In particular, BNP shall develop, implement and maintain policies, procedures and controls to ensure the following:
- (a) The supervision of the Submission Process;
 - (b) That any violations of these undertakings or any questionable, unusual or unlawful activity concerning BNP's Submissions are reported to and investigated by BNP's compliance or legal personnel and reported, as necessary, to ASIC and the Benchmark Publisher;
 - (c) The periodic but routine review of electronic communications and audio recordings of or relating to the Submission Process;
 - (d) The handling of complaints concerning the accuracy or integrity of BNP's Submission(s) including
 - (i) recording all such complaints;
 - (ii) review and follow-up by the chief compliance officer(s) or his or her designee of such complaints; and
 - (e) The reporting of material complaints to the senior management of BNP, relevant self-regulatory organisations, the relevant Benchmark Publisher, ASIC, and other appropriate regulators.
10. TRAINING. If it is making Submissions, BNP shall develop and implement training programs for all Representatives who are involved in its Submission(s), including, without limitation, Submitters and Supervisors, and all traders who primarily deal in Financial Products that reference an Australian Benchmark Interest Rate. The training shall be promptly provided to any Representatives newly assigned to these duties, and shall be provided on a periodic basis. The training shall be based upon the individual's position and responsibilities, and as appropriate, address the following topics:
- (a) The undertakings set out in this enforceable undertaking;
 - (b) The Submission Process;
 - (c) The impropriety of attempting to influence the Submission Process;

- (d) The requirement to conduct all business related to BNP's Submission(s) on BNP's recorded telephone and electronic communications systems, and not on personal telephones or other electronic devices;
- (e) Where applicable, the requirement to conduct business related to Financial Products that reference an Australian Benchmark Interest Rate on BNP's recorded telephone and electronic communications systems, and not on personal devices or systems;
- (f) The policies and procedures developed and instituted pursuant to this enforceable undertaking; and
- (g) The employment and other potential consequences if employees act unlawfully or improperly in connection with BNP's Submission(s) or the Submission Process.

11 REPORTS TO ASIC

- (a) Within 10 days of completion of a periodic audit undertaken pursuant to clause 8(b) above, BNP shall provide to ASIC a copy of a report detailing the findings of that audit.
- (b) Within 10 days of the date of a written audit report prepared by a third party auditor pursuant to clause 8(c) above, BNP shall provide to ASIC a copy of that report.
- (c) BNP shall promptly report to ASIC all improper conduct related to any Submission(s) or the attempted manipulation or manipulation of an Australian Benchmark Interest Rate, as well as any disciplinary action or related law enforcement or regulatory action.