

LIBOR bulletin



LIBOR manipulation press coverage

Investigations and regulator action

UBS has been fined USD 1.5 billion (approx. GBP 940 million) by US, UK and Swiss regulators for seeking to manipulate certain LIBOR currencies and EURIBOR. The fine is comprised of a USD 400 million penalty by the US Department of Justice, a GBP 160 million fine from the FSA and 59 million francs payable in disgorgement to the Swiss Financial Market Supervisory Authority. UBS will also pay USD 700 million in fines to the US Commodity Futures Trading Commission. A US Department of Justice news release indicated that UBS Securities Japan Co Ltd, a subsidiary of UBS AG, has agreed to plead guilty to one count of wire fraud in relation to the manipulation of benchmark rates. UBS Japan has signed a plea agreement and has agreed to pay a USD 100 million fine. UBS cooperated with law enforcement agencies in relation to the probe and UBS AG entered into a non-prosecution agreement with the US government. The FSA indicated that it would have imposed a penalty of GBP 200 million were it not for fact that UBS agreed to settle at an early stage in the investigation.

The FSA Final Notice indicates that breaches by UBS covered a number of issues including: UBS traders routinely making requests to individuals at UBS responsible for determining its LIBOR and EURIBOR submissions to adjust their submissions to benefit trading positions; colluding with interdealer brokers in co-ordinated attempts to influence Japanese Yen (JPY) LIBOR submissions made by other panel banks; corrupt brokerage payments being made to reward brokers for their efforts to manipulate the LIBOR submissions of panel banks; and colluding with individuals at other panel banks to get them to make JPY LIBOR submissions that benefitted UBS's trading position. The FSA Notice indicates that more than 40 individuals were involved in the internal requests to adjust submissions. UBS has stated that it has been proactive in improving its processes and procedures in order to ensure that the misconduct identified in its core markets does not occur again.

On 9 January, Andrea Orcel, the Chief Executive of UBS Investment Bank gave evidence to the Banking Standards Commission, as did Philip Lofts, the Group Chief Risk Officer and Andrew Williams, the Global Head of Compliance. The Telegraph reports that Orcel confirmed that there had been 18 sackings of traders guilty of "reprehensible behaviour" and that the scandal had stemmed from a small sub-set of traders. On 10 January evidence was given by a number of former UBS Investment Bank Chief Executive Officers who, according to reports, accepted that there had been a failing in systems and controls.

The Hong Kong Monetary Authority has announced that it is investigating possible misconduct by UBS in its rate submissions for the Hong Kong Interbank Offered Rate (HIBOR). The HKMA is working closely with other regulatory authorities.

Two former traders at UBS have been charged by US authorities with conspiracy to commit fraud and, in addition, one has been charged with wire fraud and a price-fixing violation. It is thought by commentators that the charges brought by US authorities may also lead to an extradition battle between the US and UK. The SFO announced that it had arrested three individuals in connection with the investigation into LIBOR manipulation in December.

Following the UBS fine of USD 1.2 billion, nine banks across Europe have now incurred fines totalling over USD 6 billion. It has been widely reported that RBS is likely to be the next lender to settle with regulators over allegations of rate-fixing and that RBS is nearing a deal with regulators from the UK, US, Japan and Singapore to settle claims that it manipulated benchmark rates.

It has been reported that RBS has successfully applied for the dismissal of a lawsuit filed in New York by South Korean bank Woori. Woori had claimed RBS had sold it USD 80 million worth of collateralised debt obligations secured by mortgage-backed securities, which it alleged RBS knew were risky investments. Woori had also alleged that the CDO investments and the returns on those investments were linked to LIBOR, and claimed that RBS had concealed its role in a scheme to manipulate LIBOR. US District Judge Harold Baer found however that RBS had made sufficiently robust disclosures about the risks associated with the securities and also that Woori, as a bank in its own right, had its own expertise to properly assess the risks involved. Woori has other lawsuits pending before the Manhattan federal courts against Citigroup and Bank of America.

The Financial Services Bill has received Royal Assent. As well as replacing the old tripartite regulatory system, the new Financial Services Act will bring LIBOR into regulation. It will make it a criminal offence to publish misleading statements in relation to benchmark rates such as LIBOR. The Act will come into force on 1 April 2013.

Canada's Investment Industry Regulatory Organisation (IIROC) has published the results of its review of the Canadian Dealer Offered Rate (CDOR) and has made a number of recommendations to strengthen the integrity of CDOR including: specified documented criteria for participation in the rate-setting process, explicit documentation regarding the definition, calculation methodology and transparency of CDOR and documented regulatory expectations for participants' supervision of rate-setting activity and controls.

Industry response

Dutch bank Rabobank, German lender BayernLB and Austrian Bank Raiffeisen have announced that they are withdrawing from the EURIBOR panel. The exit of the two banks from the panel follows similar moves by Citi and Germany's Dekabank last year. Rabobank has said that it is not considering withdrawing from the LIBOR panel.

Following the regulatory fines imposed on Barclays in June 2012 and UBS, it has been reported that investors are concerned about an impending wave of civil litigation, as customers seek redress through the courts. A number of lawsuits have already been filed in the United States, and an action was commenced in the UK in early 2012. It has also been recently reported that a property developer, against whom Deutsche Bank is bringing a claim in the UK courts for missed payments under an interest-rate swap, is seeking the court's permission to add allegations that Deutsche Bank was involved in LIBOR manipulation to his counterclaim. It has also been suggested in the press that Fannie Mae and Freddie Mac may have potentially incurred losses of more than USD 3 billion as a result of investments tied to LIBOR. It also been recently reported by Bloomberg that eight California counties and public entities have filed complaints alleging losses due to manipulation of the LIBOR rate.

The Financial Times has reported that the British Bankers' Association has made plans to introduce a new, two-pronged initiative to set up a consumer panel, which will hear and address concerns from the public, and also create an advisory panel, which will bring together business and other leaders to help formulate industry policies. The BBA has also said that it supports the idea for the creation of a Banking Standards Board.

The International Organisation of Securities Commissions (IOSCO) recently published a consultation paper on financial benchmarks. The policy paper identifies concerns over the manipulation of benchmark rates and identifies policy issues including the necessity of governance structures to ensure that no conflict of interest arises in the rate-setting process.

In addition, the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) have published the results of their work on EURIBOR. They indicate that they have identified significant weaknesses in the governance of the EURIBOR rate-setting mechanism and have proposed a number of principles for the benchmark rate-setting process. Recommendations made by ESMA and the EBA include that the Steering Committee should be made more independent, that the definition of EURIBOR should be clearer, and that the EURIBOR-European Banking Federation (EEBF) should assume responsibility for the quality of data submitted by banks and its governance and code of conduct improved and reinforced

Barclays coverage

Investigations and regulator action

It has been reported that staff at Barclays who have been implicated in the suit filed by Guardian Care Homes Ltd in the UK have asked the court for anonymity. The request followed an order by the High Court that Barclays disclose the names of over 200 individuals who had made LIBOR rate submissions, as part of Barclays' general disclosure obligations. A hearing will take place in late January to determine whether the staff can remain anonymous.

Commercial

It has been reported that Barclays will rewrite its remuneration policy and reconsider its bonus scheme, following criticism that high bonuses incentivised executives to take unnecessary risks. It has been suggested in the press that pay levels will include consideration of the "social impact" of deals employees conclude. Much of the work will be done by Hector Sants, who will join Barclays later this month as its head of compliance. Mr Sants was recently knighted, in recognition of his efforts in guiding the FSA during the financial crisis in 2008.

Comment

At the end of last year the biggest news was the USD 1.5 billion fine imposed by a number of regulators on UBS in relation to its manipulation of LIBOR and EURIBOR rates. The FSA fine, which comprised GBP 160 million of this amount (and which would have been GBP 200 million had UBS not settled at an early stage), was the largest fine ever imposed by the FSA. The level of the fine, which was significantly higher than the Barclays settlement, reflected the fact that the FSA found extensive and widespread misconduct at UBS, including 2,000 requests for inappropriate submissions, an unquantifiable number of oral requests, and discussion of manipulation in chat rooms and group emails, which was not detected by Compliance or Internal Audit. All eyes will now turn to the RBS settlement with authorities, which it has been reported may be expected later this month or next. Commentators have suggested that the level of any fine is likely to lie somewhere between that of Barclays and UBS.

Further information

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