

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA****CT CASE NO: CR212Feb17 and CC2015Apr0147**

In the matter between:

**THE COMPETITION COMMISSION OF SOUTH AFRICA** Applicant

and

**BANK OF AMERICA MERRILL LYNCH INTERNATIONAL  
DESIGNATED ACTIVITY COMPANY** First Respondent**BNP PARIBAS** Second Respondent**JP MORGAN CHASE AND CO.** Third Respondent**JP MORGAN CHASE BANK N.A** Fourth Respondent**AUSTRALIA AND NEW ZEALAND BANKING  
GROUP LIMITED** Fifth Respondent**STANDARD NEW YORK SECURITIES INC.** Sixth Respondent**INVESTEC LIMITED** Seventh Respondent**STANDARD BANK OF SOUTH AFRICA LIMITED** Eighth Respondent**NOMURA INTERNATIONAL PLC** Ninth Respondent**STANDARD CHARTERED BANK** Tenth Respondent**CREDIT SUISSE GROUP** Eleventh Respondent**COMMERZ BANK AG** Twelfth Respondent**MACQUARIE BANK LIMITED** Thirteenth Respondent**HSBC BANK PLC** Fourteenth Respondent**CITIBANK N.A** Fifteenth Respondent**ABSA BANK LIMITED** Sixteenth Respondent**BARCLAYS CAPITAL INC.** Seventeenth Respondent**BARCLAYS BANK PLC** Eighteenth Respondent**HSBC BANK USA,  
NATIONAL ASSOCIATION INC.** Nineteenth Respondent

<b>MERRILL LYNCH PEIRCE FENNER AND SMITH INC.</b>	Twentieth Respondent
<b>BANK OF AMERICA, N.A.</b>	Twenty First Respondent
<b>INVESTEC BANK LIMITED</b>	Twenty Second Respondent
<b>CREDIT SUISSE SECURITIES (USA) LLC</b>	Twenty Third Respondent
<b>NEDBANK GROUP LIMITED</b>	Twenty Fourth Respondent
<b>NEDBANK LIMITED</b>	Twenty Fifth Respondent
<b>RMB HOLDINGS LIMITED</b>	Twenty Sixth Respondent
<b>FIRSTRAND BANK LIMITED</b>	Twenty Seventh Respondent
<b>STANDARD AMERICAS INC</b>	Twenty Eighth Respondent

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**FILING NOTICE**

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**TAKE NOTICE** that the Competition Commission's signed referral is served and filed of record evenly herewith.

DATED AT PRETORIA ON THIS 1<sup>st</sup> DAY OF **JUNE 2020**.



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**IN THE COMPETITION TRIBUNAL**

**(HELD IN PRETORIA)**

Case No. **CR212Feb17 and CC2015Apr0147**

In the matter between:

**THE COMPETITION COMMISSION**

Applicant

and

**BANK OF AMERICA MERRILL LYNCH  
INTERNATIONAL  
DESIGNATED ACTIVITY COMPANY**

First Respondent

**BNP PARIBAS**

Second Respondent

**JP MORGAN CHASE AND CO.**

Third Respondent

**JP MORGAN CHASE BANK N.A**

Fourth Respondent

**AUSTRALIA AND NEW ZEALAND BANKING  
GROUP LIMITED**

Fifth Respondent

**STANDARD NEW YORK SECURITIES INC.**

Sixth Respondent

**INVESTEC LIMITED**

Seventh Respondent

**STANDARD BANK OF SOUTH AFRICA LIMITED**

Eight Respondent

**NOMURA INTERNATIONAL PLC**

Ninth Respondent

**STANDARD CHARTERED BANK**

Tenth Respondent

**CREDIT SUISSE GROUP**

Eleventh Respondent

**COMMERZ BANK AG**

Twelfth Respondent

**MACQUARIE BANK LIMITED**

Thirteenth Respondent

**HSBC BANK PLC**

Fourteenth Respondent

**CITIBANK N.A**

Fifteenth Respondent

**ABSA BANK LIMITED**

Sixteenth Respondent

**BARCLAYS CAPITAL INC.**

Seventeenth Respondent

**BARCLAYS BANK PLC**

Eighteenth Respondent

*D.J.S.*

<b>HSBC BANK USA, NATIONAL ASSOCIATION INC.</b>	Nineteenth Respondent
<b>MERRILL LYNCH PEIRCE FENNER AND SMITH INC.</b>	Twentieth Respondent
<b>BANK OF AMERICA, N.A.</b>	Twenty First Respondent
<b>INVESTEC BANK LIMITED</b>	Twenty Second Respondent
<b>CREDIT SUISSE SECURITIES (USA) LLC</b>	Twenty Third Respondent
<b>NEDBANK GROUP LIMITED</b>	Twenty Fourth Respondent
<b>NEDBANK LIMITED</b>	Twenty Fifth Respondent
<b>RMB HOLDINGS LIMITED</b>	Twenty Sixth Respondent
<b>FIRSTRAND BANK LIMITED</b>	Twenty Seventh Respondent
<b>STANDARD AMERICAS INC</b>	Twenty Eighth Respondent

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**AFFIDAVIT**

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*BB J.S.*

I, the undersigned,

**MFUNDO NGOBESE**

do hereby make oath and say:

1. I am an adult male employed in the Cartels Division of the Applicant ("the Commission").
2. The contents of this affidavit are within my personal knowledge, unless the context indicates otherwise, and are to the best of my belief true. Where I make legal submissions, I do so on the advice of the Commission's legal representatives.
3. I am an inspector appointed by the Commissioner of the Competition Commission in terms of section 24(1) of the Competition Act 89 of 1998 ("the Act"). A copy of my certificate of appointment is attached to the founding affidavit as annexure "MN1". I am duly authorised to depose to this affidavit.
4. I attach the two complaint initiations in respect of this matter as annexures "MN2" and "MN3" respectively.
5. I attach a glossary of terms as "Appendix 1".

J. S.  
RB

## INTRODUCTION

6. Between 2007 and 2013, at least 28 banks, from multiple jurisdictions, in Europe, South Africa, Australia and the United States of America conspired to manipulate the South African Rand through information sharing on electronic and other platforms and through various co-ordination strategies when trading in the USD/ZAR currency pair.
7. The manipulation impacted on the exchange rate of the South African Rand which in turn affected various parts of the South African economy – including imports and exports, foreign direct investment, public and private debt, companies balance sheets, with the attendant implications for the price of goods and services and financial assets.
8. This Referral is brought against the respondent banks for colluding to fix prices and divide markets in respect of the USD/ZAR currency pair, in contravention of section 4(1)(b)(i) and (ii) of the Act.
9. In accordance with the order of the Competition Appeal Court of 28 February 2020, this Referral Affidavit replaces all previous referral affidavits filed by the Commission in relation to this matter.

## THE PARTIES

10. The applicant is the **COMPETITION COMMISSION OF SOUTH AFRICA**, a statutory body established and constituted as a juristic person in terms of section 19(1) of the Act with its principal place of business as Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng Province.



11. The First Respondent is **BANK OF AMERICA MERRILL LYNCH INTERNATIONAL DESIGNATED ACTIVITY COMPANY** (“**Bank of America Merrill Lynch**”).

11.1. Bank of America Merrill Lynch is incorporated under the company laws of the Republic of Ireland with its registered offices at Two Park Place, Hatch Street, Dublin 2, Ireland.

11.2. It is a direct wholly-owned subsidiary of Bank of America National Association, the twenty-first respondent.

12. The Second Respondent is **BNP PARIBAS** (“**BNP Paribas**”).

12.1. BNP Paribas is a company registered and incorporated under the company laws of France, with its principal place of business situated at Boulevard de Italiens, Paris, France.

12.2. BNP Paribas conducts the business of a bank in South Africa through a branch as defined and authorised by section 1 and 18A of the Banks Act 94 of 1990 (“**the Banks Act**”).

12.2.1. The branch is called “BNP Paribas SA – South Africa Branch” and is situated at 2<sup>nd</sup> Floor, 11 Crescent Drive, Melrose Arch, Johannesburg.

12.2.2. BNP Paribas SA – South Africa Branch is authorised by the Minister of Finance to deal in foreign exchange in South Africa in accordance with The Exchange Control Regulations promulgated by Government Notice R.1111 of

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1 December 1961 and amended up to Government Notice No. R.445 in Government Gazette No. 35430 of 18 June 2012 ("Exchange Control Regulations").

13. The Third Respondent is **JP MORGAN CHASE & CO** ("**JP Morgan**").

13.1. JP Morgan is a company registered and incorporated under the company laws of the United States of America ("USA") with its principal place of business situated at 270 Park Avenue, New York City, United States.

14. The Fourth Respondent is **JP MORGAN CHASE BANK N.A.** ("**JP Morgan N.A.**").

14.1. JP Morgan N.A. is a company incorporated under the company laws of the USA with its principal place of business situated at 1111 Polaris Parkway Columbus, OH 43240, USA.

14.2. JP Morgan N.A. conducts the business of a bank in South Africa through a branch as defined and authorised by section 1 and 18A of the Banks Act.

14.2.1. The branch is called "JP Morgan Chase Bank N.A. – Johannesburg Branch" and is situated at 1 Fricker Road, Illovo, Sandton.

14.2.2. JP Morgan Chase Bank N.A. - Johannesburg Branch is authorised by the Minister of Finance to deal in foreign exchange in South Africa in accordance with The Exchange Control Regulations.

15. The Fifth Respondent is the **AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED ("ANZ")**.

15.1. ANZ is a company incorporated under the company laws of Australia with its principal place of business at 833 Collins Street, Docklands, Melbourne, Australian.

16. The Sixth Respondent is **STANDARD SECURITIES NEW YORK INC. ("Standard Securities")**.

16.1. Standard New York is a company registered and incorporated under the laws of the USA with its principal place of business situated at 520 Madison Avenue, 28<sup>th</sup> Floor, New York, NY 10022, USA.

16.2. Standard Securities is an affiliate of Standard Bank.

17. The Seventh Respondent is **INVESTEC LIMITED ("Investec Limited")**.

17.1. Investec Limited is a company registered and incorporated under the laws of the Republic of South Africa with its principal place of business situated at 100 Grayston Drive, Sandown, Sandton, Johannesburg, 2196, Gauteng Province.

18. The Eighth Respondent is **STANDARD BANK OF SOUTH AFRICA LIMITED ("Standard Bank")**.

18.1. Standard Bank is a company registered and incorporated under the company laws of the Republic of South Africa with its principal place of business at 9<sup>th</sup> Floor, Standard Bank Centre, 5 Simmonds Street, Johannesburg, Gauteng Province. It is part of the Standard Bank Group.



- 18.2. Standard Bank is a registered bank in terms of the Banks Act.
- 18.3. Standard Bank is authorised by the Minister of Finance to deal in foreign exchange in South Africa in accordance with The Exchange Control Regulations.
- 18.4. Standard Bank has a representative office in New York, USA.
- 18.5. The Standard Bank of South Africa Limited, Representative Office acts as an agent for the Standard Bank Group in the United States of America.
19. The Ninth Respondent is **NOMURA INTERNATIONAL PLC** (“Nomura”).
- 19.1. Nomura is a company incorporated and registered under the company laws of the United Kingdom with its principal place of business at Angel Lane, London, EC2R 3AB, United Kingdom.
20. The Tenth Respondent is **STANDARD CHARTERED BANK** (“Standard Chartered”).
- 20.1. Standard Chartered is a company registered and incorporated under the laws of the United Kingdom with its principal place of business situated at 1 Basinghall Avenue, London, EC2V 5DD, United Kingdom.
- 20.2. Standard Chartered conducts the business of a bank in South Africa through a branch as defined and authorised by section 1 and 18A of the Banks Act.

20.2.1. The branch is called “Standard Chartered – Johannesburg Branch” and is situated at 2nd Floor, 115 West Street, Sandown, Sandton.

20.2.2. Standard Chartered – Johannesburg Branch is authorised by the Minister of Finance to deal in foreign exchange in South Africa in accordance with The Exchange Control Regulations.

21. The Eleventh Respondent is **CREDIT SUISSE GROUP** (“Credit Suisse”).

21.1. Credit Suisse is a company incorporated and registered under the company laws of Switzerland with its principal place of business situated at Paradeplatz 8 CH-8001, Zurich, Switzerland.

21.2. Credit Suisse has a representative office in South Africa as defined and permitted by the Banks Act. The representative office is situated at 2<sup>nd</sup> Floor, Building 3, Inanda Greens, Sandton, Johannesburg, Gauteng Province.

22. The Twelfth Respondent is **COMMERZBANK AG** (“Commerzbank”).

22.1. Commerzbank is a company incorporated and registered under the company laws of Germany with its principal place of business at Kaiserplatz, Frankfurt am Main, Germany.

22.2. Commerzbank has a representative office in South Africa as defined and permitted by the Banks Act. The representative office is referred to as “Commerzbank AG Johannesburg” and is situated at Le Val-North Block,

es  
15  
B

Ground Floor, 45 Jan Smuts Avenue, Westcliff, Johannesburg, Gauteng Province.

23. The Thirteenth Respondent is **MACQUARIE BANK LIMITED** (“**MacQuarie**”).

23.1. MacQuarie is a company incorporated and registered under the company laws of Australia with its principal place of business at 50 Martin Place, Sydney, NSW 2000, Australia.

24. The Fourteenth Respondent is **HSBC BANK PLC** (“**HSBC Bank plc**”).

24.1. HSBC Bank plc is a company incorporated under the company laws of the United Kingdom with its principal place of business at 8 Canada Square, London United Kingdom.

24.2. HSBC Bank plc is part of the HSBC Group which comprises HSBC Holdings plc as the parent company and its subsidiaries.

24.3. HSBC Bank plc conducts the business of a bank in South Africa through a branch as defined and authorised by section 1 and 18A of the Banks Act.

24.3.1. The branch is called “HSBC Bank plc - Johannesburg Branch” and is situated at 1 Mutual Place, 107 Rivonia Road Sandton.

24.3.2. HSBC Bank plc – Johannesburg Branch is authorised by the Minister of Finance to deal in foreign exchange in South Africa in accordance with The Exchange Control Regulations.

25. The Fifteenth Respondent is **CITIBANK N.A.** ("**Citibank**").

25.1. Citibank is a subsidiary of Citigroup. Citibank is incorporated under the company law of the USA with its principal place of business at 701 East, 60<sup>th</sup> Street, North Sioux Falls SD 57104, USA.

25.2. Citibank conducts the business of a bank in South Africa through a branch as defined and authorised by section 1 and 18A of the Banks Act.

25.2.1. The branch is called Citibank N.A. – South Africa and is situated at 145 West Street, Sandown, Sandton.

25.2.2. Citibank NA - South Africa is authorised by the Minister of Finance to deal in foreign exchange in South Africa in accordance with the Exchange Control Regulations.

26. The Sixteenth Respondent is **ABSA BANK LIMITED** ("**ABSA**").

26.1. ABSA is incorporated under the company laws of South Africa, with its principal place of business situated at 7<sup>th</sup> Floor, Barclays Towers West, 15 Troye Street, Johannesburg, Gauteng Province.

26.2. ABSA is a subsidiary of Barclays Bank plc, the eighteenth respondent.

26.3. ABSA is a South African registered bank in terms of the Banks Act.

26.4. ABSA is authorised by the Minister of Finance to deal in foreign exchange in South Africa in accordance with The Exchange Control Regulations.

27. The Seventeenth Respondent is **BARCLAYS CAPITAL INC** ("**Barclays Capital**").

27.1. Barclays Capital is incorporated under the company laws of the USA, with its principal place of business situated at 745 7<sup>th</sup> Avenue, New York, USA.

27.2. Barclays Capital is a subsidiary of Barclays.

28. The Eighteenth Respondent is **BARCLAYS BANK PLC** ("**Barclays**").

28.1. Barclays is a company incorporated and registered under the company laws of the United Kingdom, with its principal place of business situated at 1 Churchill Place, London, United Kingdom.

29. The Nineteenth Respondent is **HSBC BANK, USA NATIONAL ASSOCIATION** ("**HSBC USA**").

29.1. HSBC USA is a company incorporated under the company laws of the USA, with its principal executive offices at 452 Fifth Avenue, New York City, New York, USA and its main office in Tysons, Virginia, USA.

29.2. HSBC USA the principal banking subsidiary of HSBC USA Inc and part of the HSBC Group comprising HSBC Holdings plc and its subsidiaries.

30. The Twentieth Respondent is **MERRILL LYNCH PIERCE FENNER AND SMITH INC** ("**Merrill Lynch**").



- 30.1. Merrill Lynch is a company incorporated under the company laws of the State of Delaware in the USA, with its principal place of business at 1 Bryant Park, New York City, NY 10036, USA.
- 30.2. It is a subsidiary of Bank of America Corporation North America Holding Company.
31. The Twenty-first Respondent is **BANK OF AMERICA, NATIONAL ASSOCIATION** ("Bank of America NA").
- 31.1. Bank of America NA is incorporated under the laws of the USA, with its principal place of business at 100 North Tryon Street Charlotte, NC 28255, USA.
- 31.2. It is a parent company of the First Respondent, Bank of America and a subsidiary of BANA Holding Corporation.
- 31.3. Bank of America NA has a representative office in South Africa as defined and permitted by the Banks Act. The representative office is situated at 138 West Street, Sandton, Johannesburg, Gauteng.
32. The Twenty-second Respondent is **INVESTEC BANK LIMITED** ("Investec Bank").
- 32.1. Investec Bank is a company registered and incorporated under the laws of South Africa, with its principal place of business situated at 100 Grayston Drive, Sandown, Sandton, Gauteng Province.
- 32.2. Investec Bank is a registered bank in terms of the Banks Act.

- 32.3. Investec Bank is authorised by the Minister of Finance to deal in foreign exchange in South Africa in accordance with The Exchange Control Regulations:
- 32.4. References to "Investec" in the remainder of the affidavit refers to both the twenty-fourth and twenty-fifth respondent.
33. The Twenty-third Respondent is **CREDIT SUISSE SECURITIES (USA) LLC** ("**Credit Suisse USA**").
- 33.1. Credit Suisse USA is a company registered and incorporated under the laws of the USA, with its principal place of business situated at 11 Madison Avenue, 24<sup>th</sup> Floor, New York, USA.
34. The Twenty-fourth Respondent is **NEDBANK GROUP LIMITED** ("**Nedbank Group**")
- 34.1. Nedbank Group is a company registered and incorporated under the laws of the Republic of South Africa with its principal place of business situated at 135 Rivonia Road, Sandown, Sandton, Johannesburg, 2196, Gauteng Province.
35. The Twenty-fifth Respondent is **NEDBANK LIMITED** ("**Nedbank Limited**")
- 35.1. Nedbank is a company registered and incorporated under the laws of the Republic of South Africa with its principal place of business situated at 135 Rivonia Road, Sandown, Sandton, Johannesburg, 2196, Gauteng Province.
- 35.2. Nedbank Limited is a registered bank in terms of the Banks Act.

- 35.3. Nedbank Limited is authorised by the Minister of Finance to deal in foreign exchange in South Africa in accordance with The Exchange Control Regulations.
- 35.4. Nedbank Limited is a wholly owned subsidiary of the twenty-fourth respondent.
- 35.5. References to “Nedbank” in the remainder of the affidavit refers to both the twenty-fourth and twenty-fifth respondent.
36. The Twenty-sixth Respondent is **RMB HOLDING LIMITED (“RMB”)**.
- 36.1. RMB is a company registered and incorporated under the laws of the Republic of South Africa with its principal place of business situated at 1 Merchant Place, Cnr Fredman Drive and Rivonia Road, Sandton, Johannesburg, 2196, Gauteng Province.
- 36.2. RMB is a Division of FirstRand Bank Limited which is a registered bank in terms of the Banks Act.
37. RMB is a Division of FirstRand Bank Limited which is authorised by the Minister of Finance to deal in foreign exchange in South Africa in accordance with The Exchange Control Regulations, 1961.
38. The Twenty-seventh Respondent is **FIRSTRAND BANK LIMITED (“FirstRand”)**.
- 38.1. FirstRand is a company registered and incorporated under the laws of the Republic of South Africa with its principal place of business situated

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at 4 Merchant Place, Cnr Fredman Drive and Rivonia Road, Sandton, Johannesburg, 2196, Gauteng Province.

38.2. FirstRand is a registered bank in terms of the Banks Act.

38.3. FirstRand is authorised by the Minister of Finance to deal in foreign exchange in South Africa in accordance with The Exchange Control Regulations.

38.4. RMB is a Division of FirstRand Bank Limited. Reference to RMB in the remainder of this affidavit includes reference to FirstRand.

39. The Twenty-eighth Respondent is **STANDARD AMERICAS, INC** (“**Standard Americas**”).

39.1. Standard Americas is a company registered under the laws of USA, with its registered office at 520 Madison Avenue, 28th Floor, New York, N.Y.10022, USA.

39.2. Standard Americas is an affiliate of Standard Bank of South Africa.

## **JURISDICTION**

### **Incola**

40. The South African respondents are:

40.1. The eighth respondent, Standard Bank;

40.2. The seventh respondent, Investec Limited;

- 40.3. The sixteenth respondent, ABSA Bank Ltd;
  - 40.4. The twenty-second respondent, Investec Bank;
  - 40.5. The twenty-fourth respondent, Nedbank Group Limited
  - 40.6. The twenty-fifth respondent, Nedbank Limited;
  - 40.7. The twenty-sixth respondent, RMB;
  - 40.8. The twenty-seventh respondent, FirstRand.
41. The Tribunal has jurisdiction over the South African respondents because they are:
- 41.1. companies incorporated in terms of the company laws of South Africa;
  - 41.2. resident within South Africa;
  - 41.3. registered banks and authorised dealers in South Africa in terms of the Banks Act.
42. The South African respondents were participants in a single overarching conspiracy and engaged in conduct to implement the conspiracy that constitutes economic activity within South Africa and/or having direct/immediate, substantial and foreseeable consequences upon the economy of South Africa and the welfare of South African consumers and an effect within South Africa for the purposes of section 3(1) of the Act.

**First class of local peregrini respondents**

43. The first class of local peregrini respondents are:



- 43.1. The second respondent, BNP Paribas;
  - 43.2. The fourth respondent, JP Morgan Chase Bank NA
  - 43.3. The tenth respondent, Standard Chartered;
  - 43.4. The fourteenth respondent, HSBC Bank plc;
  - 43.5. The fifteenth respondent, Citibank NA.
44. The Tribunal has jurisdiction over the first class of local peregrini because they have a presence in South Africa and by virtue of the following connecting factors:
- 44.1. The first class of local peregrini have registered branches in South African in terms of section 18A of the Banks Act 94 of 1990;
  - 44.2. The registered branches are authorised dealers in foreign currency in terms of South African Exchange Control Regulations, 1961;
  - 44.3. The first class of local peregrini carry on business in South Africa including business which assists and promotes the business of the first class of local peregrini;
  - 44.4. The first class of peregrini participated in a conspiracy involving the exchange rate of the South African Rand; and/or
  - 44.5. The first class of peregrini participated in a conspiracy together with the South African respondents.
45. The first class of local peregrini respondents were participants in a single overarching conspiracy and engaged in conduct to implement the conspiracy that constitutes economic activity having direct/immediate, substantial and

foreseeable consequences upon the economy of South Africa and the welfare of South African consumers, and an effect within South Africa for the purposes of section 3(1) of the Act.

### **Second class of local peregrini respondents**

46. The second class of local peregrini are:

46.1. The eleventh respondent, Credit Suisse Group;

46.2. The twelfth respondent, Commerzbank; and

46.3. The twenty-first respondent, Bank of America NA.

47. The Tribunal has jurisdiction over the second class of local peregrini because they have a sufficient presence in South Africa and by virtue of the following connecting factors:

47.1. The second class of local peregrini have a representative office in South Africa and a representative officer within South Africa in terms of section 34 of the Banks Act 94 of 1990;

47.2. The second class of local peregrini carry on business in South Africa through their registered office including business which assists and promotes the business of the second class of local peregrini;

47.3. The second class of peregrini participated in a conspiracy involving the exchange rate of the South African Rand; and/or

47.4. The second class of peregrini participated in a conspiracy together with the South African respondents.

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48. The second class of local peregrini were participants in a single overarching conspiracy and engaged in conduct to implement the conspiracy that constitutes economic activity having direct/immediate, substantial and foreseeable consequences upon the economy of South Africa and the welfare of South African consumers and an effect within South Africa for the purposes of section 3(1) of the Act.

### **Foreign peregrini**

49. The remaining respondents are the foreign / "pure" peregrini. They are:

49.1. The first respondent, Bank of America Merrill Lynch;

49.2. The third respondent, JP Morgan Chase & Co;

49.3. The fifth respondent, ANZ;

49.4. The sixth respondent, Standard Securities New York;

49.5. The ninth respondent, Nomura;

49.6. The thirteenth respondent, Macquarie;

49.7. The seventeenth respondent, Barclays Capital;

49.8. The eighteenth respondent, Barclays Bank plc;

49.9. The nineteenth respondent, HSBC USA;

49.10. The twentieth respondent, Merrill Lynch Pierce;

49.11. The twenty-third respondent, Credit Suisse USA: and

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- 49.12. The twenty-eighth respondent, Standard Americas Inc.
50. The Tribunal has jurisdiction over the foreign peregrini by virtue of the following connecting factors:
- 50.1. The foreign peregrini participated in a conspiracy involving the exchange rate of the South African Rand;
- 50.2. The foreign peregrini participated in a conspiracy together with the South African respondents.
51. The foreign peregrini respondent were participants in a single overarching conspiracy and engaged in conduct to implement the conspiracy, all of which constitutes economic activity having a direct/immediate, substantial and foreseeable consequences upon the economy of South Africa and the welfare of South African consumers and an effect within South Africa for the purposes of section 3(1) of the Act.

## HORIZONTAL RELATIONSHIP

52. The respondents engage in the business of trading in foreign exchange currencies.
53. The respondents trade on, among other things, the United States Dollar ("USD") and the South African Rand ("ZAR") currency pair. I refer to this as **USD/ZAR** currency pair.
54. The respondents compete, amongst other things, in the trade in USD/ZAR including but not limited to:

- 54.1. Bid-rate or offer-rate quoted to a client or potential client (“offer” and “ask” are used interchangeably in relation to trading in this Referral Affidavit.);
  - 54.2. The prices set or offered in the foreign exchange market in respect of trades in the USD/ZAR currency pair, including the bid or offer prices for certain volumes of USD/ZAR currency trades; and
  - 54.3. The price or margin charged to a client to execute a transaction at the FIX.
55. The respondents are in a horizontal relationship as defined in section 1(1) of the Act.

**THE AGREEMENT: SINGLE OVERARCHING CONSPIRACY**

56. With effect from September 2007 and until at least September 2013, the respondents reached an agreement and/or coordinated their activities to participate in a single overarching conspiracy (“**the conspiracy**”).
57. The participants of the conspiracy pursued a single anti-competitive economic objective, namely the manipulation and distortion of normal competitive conditions in the trading of the USD/ZAR currency pair through:
- 57.1. the direct or indirect fixing of prices in respect of the trade in the USD/ZAR currency pair, in relation to:
    - 57.1.1. Bids;
    - 57.1.2. Offers;
    - 57.1.3. Bid-offer spreads;

57.1.4. The spot exchange rate; and

57.1.5. The terms and/or margin of executing client orders at the  
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57.2. the division of markets through the allocation of customers in the  
USD/ZAR currency pair. (“**the overall objective**”)

58. The participants of the conspiracy sought to benefit through their participation in  
the conspiracy by receiving assistance from competing traders to profit, reduce  
risk and to avoid making losses, when engaged in foreign exchange trading with  
the USD/ZAR currency pair.

59. The terms of the conspiracy developed and evolved over time.

60. The general and consistent terms of the conspiracy were:

60.1. The respondents' traders would participate, actively and passively, in  
frequent and regular communication and contact with one or more  
traders employed by or representing competing banks (“**competing  
traders**”) when engaged in trading the USD/ZAR currency pair.

60.2. The purpose of the communication and contact between the competing  
traders was to:

60.2.1. offer and provide assistance to competing traders through  
the co-ordination of trading activities;

60.2.2. request and accept assistance from competing traders  
through the co-ordination of trading activities;

60.2.3. offer and provide information to competing traders;

60.2.4. request and accept information from competing traders;  
and

60.2.5. reach understandings on trading strategies and the co-ordination of trading activity in order to assist and be assisted by competing traders.

60.3. The respondents' traders colluded on:

60.3.1. the bid-offer spread for certain volumes of USD/ZAR currency trade;

60.3.2. the bid price, the offer price, or the mid-market average (the price level for spot exchange rate);

60.3.3. the co-ordination of trading strategies and trading activities;  
and

60.3.4. the treatment of certain customers purchasing or selling ZAR.

61. The conspiracy contravened section 4(1)(b)(i) and (ii) of the Act. It was conduct involving:

61.1. the direct or indirect fixing of prices in respect of the trade in the USD/ZAR currency pair, in relation to:

61.1.1. Bids;

61.1.2. Offers; and

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- 61.1.3. Bid-offer spreads;
- 61.1.4. The spot exchange rate; and
- 61.1.5. The terms and/or margin of executing client orders at the FIX.

61.2. the division of markets through the allocation of customers in the USD/ZAR currency pair.

62. The Commission does not know the date on which the single overarching conspiracy between the respondent banks ceased to operate, or if it has indeed ceased to operate.

63. The existence of the single overarching conspiracy, its terms and objective can be inferred from the following facts:

63.1. The conduct set out in the section of this Referral Affidavit entitled "Conduct Implementing the Agreement". In particular:

63.1.1. The extensive level of communication and contact between competing traders when engaged in trading of the USD/ZAR currency pair;

63.1.2. The lengthy period over which the frequent and regular communication and contact between competing traders persisted;



- 63.1.3. The continuity in the mode of communication between competing traders when engaged in trading of the USD/ZAR currency pair;
  - 63.1.4. The existence of numerous permanent chatrooms on the Bloomberg instant messaging platform whose participants were competing traders engaged in the trading of the USD/ZAR currency pair; and
  - 63.1.5. The frequent presence of competing traders in the Bloomberg chatrooms;
- 63.2. The unusual behaviour of the markets during 2007 to 2013 set out in the section of this Referral Affidavit entitled "The Effect of the Conduct". In particular:
- 63.2.1. Consistent prices over time and across banks and an absence of random fluctuations and volatility in the foreign exchange market prices over time and across banks;
  - 63.2.2. The use of 'round figures' for quotes;
  - 63.2.3. Lack of randomness and volatility in the spot exchange rate; and
  - 63.2.4. The consistent spread of 0.0500 and 0.1000 charged by South African local banks (except for RMB).
- 63.3. The facts set out in the section of this Referral Affidavit entitled "History of Collusive Practices in the USD/ZAR currency pair."

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64. The facts set out above can only be explained by the existence of a conspiracy as alleged in this Referral Affidavit.

#### **PARTICIPATION IN THE CONSPIRACY**

65. The following individuals engaged in conduct that implemented the terms and furthered the objective of the conspiracy:

65.1. **Nicholas Williams, Peter Taylor and Matthew Gittens** employed by and/or representing Barclays Capital, and authorised by Barclays Capital to trade in the USD/ZAR currency pair on its behalf.

65.2. **Duncan Howes and Thulani Kunene** employed by and/or representing ABSA, and authorised by ABSA to trade in the USD/ZAR currency pair on its behalf.

65.3. **David O'Shea, Christopher Cummins and Dave Madaras** employed by and/or representing Citibank and authorised by Citibank to trade in the USD/ZAR currency pair on its behalf.

65.4. **Jason Katz:**

65.4.1. employed by and/or representing Standard Americas between 2001 and June 2010, and authorised to trade in the USD/ZAR currency pair on its behalf;

65.4.2. employed by and/or representing Barclays Capital from July 2010 to June 2011 and authorised to trade in the USD/ZAR currency pair on its behalf;

- 65.4.3. employed by and/or representing BNP Paribas from September 2011 to 2013 and authorised to trade in the USD/ZAR currency pair on its behalf; and
- 65.4.4. employed by and/or representing ANZ from 2013 onwards and authorised to trade in the USD/ZAR currency pair on its behalf.
- 65.5. **Akshay Aiyer** and **Paul Simister** employed by and/or representing JP Morgan and/or JP Morgan N.A, and authorised by JP Morgan and/or JP Morgan N.A, to trade in the USD/ZAR currency pair on its behalf.
- 65.6. **Gavin Cook** and **Mark Sheppard** employed by and/or representing Merrill Lynch alternatively Bank of America Merrill Lynch alternatively Bank of America N.A. and authorised by Merrill Lynch alternatively Bank of America Merrill Lynch alternatively Bank of America N.A to trade in the USD/ZAR currency pair on its behalf.
- 65.6.1. The Commission is unable to ascertain the entity that employed Cook during the relevant period. The Commission infers that it is one of the abovementioned companies because the Bloomberg Instant Messaging platform recorded Cook's details: during 2007 as: "GAVIN COOK MERRILL LYNCH | gavin.cook@baml.com"; and during 2010 as "GAVIN COOK MERRILL LYNCH/NY,WFC | gavin.cook@ml.com".
- 65.7. **Christopher Hatton:**



65.7.1. employed by and/or representing HSBC Bank USA, N.A from 1 September 2005 to 30 October 2010, and authorised by HSBC Bank USA, N.A alternatively HSBC Bank plc to trade in the USD/ZAR currency pair on its behalf; and

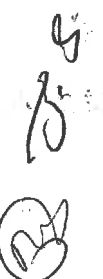
65.7.2. employed by and/or representing Credit Suisse and/or Credit Suisse USA after 30 October 2010 and authorised by Credit Suisse and/or Credit Suisse USA to trade in the USD/ZAR currency pair on its behalf.

65.7.2.1. The Commission is unable to ascertain the entity that employed Hatton after 30 October 2010. The Commission infers that it is one of the abovementioned companies because the Bloomberg Instant Messaging platform recorded Hatton's details from at least 1 December 2010 as: "CHRISTOPHER HATTON | CREDIT SUISSE SECURI | christopher.hatton@creditsuisse.com."

65.8. **Heinrich Putter** employed by and/or representing Credit Suisse and/or Credit Suisse USA and authorised by Credit Suisse and/or Credit Suisse USA to trade in the USD/ZAR currency pair on its behalf.

65.9. **Mijo Mirkovic** employed by HSBC Bank USA, N.A alternatively HSBC Bank plc and authorised by HSBC Bank USA, N.A alternatively HSBC Bank plc to trade in the USD/ZAR currency pair on its behalf.

- 65.10. **Shreyans Surana, Bernard Barisic, James Mullaney, Matthew Sweeney** and **Patrick McInerney** employed by and/or representing Standard Chartered and authorised by Standard Chartered to trade in the USD/ZAR currency pair on its behalf.
- 65.11. **Louis Friedman** employed by and/or representing Standard Americas Inc and authorised by Standard Americas to trade in the USD/ZAR currency pair on its behalf.
- 65.12. **Clint Fenton** employed by and/or representing Investec Limited and/or Investec Bank Limited and authorised by Investec Limited and/or Investec Bank Limited to trade in the USD/ZAR currency pair on its behalf.
- 65.13. **Richard de Roos** and **Robert Silverman** employed by and/or representing Standard Bank New York alternatively Standard Bank and authorised by Standard Bank New York alternatively Standard Bank to trade in the USD/ZAR currency pair on its behalf.
- 65.14. **Murat Tezel** employed by and/or representing ANZ and authorised by ANZ to trade in the USD/ZAR currency pair on its behalf.
- 65.15. **Nigel Dousie** and **Kevin Wilson** employed by and/or representing Commerzbank and authorised by Commerzbank to trade in the USD/ZAR currency pair on its behalf.
- 65.16. **Bryan Brownrigg** and **John Wood** employed by and/or representing Standard Bank and authorised by Standard Bank to trade in the USD/ZAR currency pair on its behalf.



- 65.17. **Mark Chia, Chris Harkins, Jason Atkins, Bevan Murray, Luke Fryday** and **Tim Donnelly** employed by and/or representing Macquarie Bank and authorised by Macquarie Bank to trade in the USD/ZAR currency pair on its behalf.
- 65.18. **Guido Arlan** and **Darren Dempsey** employed by and/or representing Nomura International and authorised by Nomura to trade in the USD/ZAR currency pair on its behalf.
- 65.19. The trader or traders, whose name/s is unknown to the Commission, who was/were authorised by Nedbank Group and/or Nedbank Limited to trade in the USD/ZAR currency pair on its behalf between 2007 and 2013.
- 65.20. The trader or traders, whose name/s is unknown to the Commission, who was/were authorised by RMB to trade in the USD/ZAR currency pair on its behalf between 2007 and 2013.
66. The Commission alleges that there were other individuals employed by and/or representing the respondents, or other banks, and authorised to trade in the USD/ZAR currency pair on their behalf, who implemented the terms and furthered the objective of the conspiracy, but whose details are unknown to the Commission. The respondent banks' participation in the conspiracy is therefore not limited to the participation of a named trader in this Referral Affidavit.
67. The respondents knew or ought to have known that their employees or representatives were engaged in conduct that implemented the terms or furthered the objective of the conspiracy, or that their employees or

representatives were aware that such conduct was taking place and had not dissociated themselves with the said conduct.

68. The respondents joined, or are deemed to have joined, the conspiracy at the time their employee or representative (authorised to trade in the USD/ZAR currency pair on its behalf) engaged in any conduct that implemented the terms or furthered the objective of the conspiracy, or became aware that such conduct was taking place and failed to dissociate themselves with the said conduct.

69. Alternatively, the respondents joined the conspiracy on the following dates:

69.1. Citibank, HSBC USA, HSBC Bank plc, Standard Chartered, Standard Securities, Standard Americas, Merrill Lynch alternatively Bank of America Merrill Lynch alternatively Bank of America N.A. had joined the conspiracy by at least **1 October 2007** when their employees and/or representatives Katz, Cummins, Cook, Hatton, Sweeney, Mullaney, Barisic, McInerney, Friedman and Sheppard were participants in implicated chatrooms including a permanent chatroom with ID PCHAT-0x00000000000170ca (known as "the Old Gits chatroom") alternatively the date on which the abovementioned traders became participants of the Old Gits chatroom.

69.2. Barclays Capital had joined the conspiracy by at least **July 2010** when their employee and/or representative Katz was a participant in implicated chatrooms including the Old Gits chatroom.

- 69.3. BNP Paribas had joined the conspiracy by at least **16 September 2011** when their employee and/or representative Katz was a participant in implicated chatrooms including the Old Gits chatroom.
- 69.4. ANZ had joined the conspiracy by at least **October 2012** when their employee and/or representative Tezel was a participant in an implicated chatroom alternatively early 2013 when Katz was a participant in implicated chatrooms including the Old Gits chatroom.
- 69.5. Credit Suisse and Credit Suisse USA had joined the conspiracy by at least **3 November 2010** when their employee and/or representative Hatton was a participant in implicated chatrooms including the Old Gits chatroom.
- 69.6. Investec Limited and Investec Bank Ltd had joined the conspiracy by at least **30 June 2008** when their employee and/or representative Fenton was a participant in an implicated chatroom.
- 69.7. ABSA had joined the conspiracy by at least:
- 69.7.1. **1 January 2008** when Standard Bank and ABSA withheld quotes to enable Nedbank to fix the exchange rate at 7.5850; alternatively
  - 69.7.2. **30 June 2008** when their employee and/or representative Howes was a participant in an implicated chatroom.
- 69.8. JP Morgan and JP Morgan N.A. joined the conspiracy by at least **19 July 2011** when their employee and/or representative Aiyer was a participant

in implicated chatrooms including the permanent chatroom with Room ID PCHAT-0x3000001DE4B85 (known as the "ZAR chatroom").

69.9. Nomura had joined the conspiracy by at least **18 October 2012** when their employee and/or representative Dempsey was a participant in an implicated chatroom.

69.10. Commerzbank had joined the conspiracy by at least **28 July 2010** when their employee and/or representative Dousie was a participant in an implicated chatroom.

69.11. Macquarie had joined the conspiracy by at least **11 September 2013** when their employees and/or representatives Atkins, Fryday, Murray, and Chia were participants in an implicated chatroom.

69.12. Standard Bank had joined the conspiracy by at least:

69.12.1. **1 January 2008** when Standard Bank and ABSA withheld quotes to enable Nedbank to fix the exchange rate at 7.5850; alternatively

69.12.2. by at least **1 October 2012** when their employee and/or representative Brownrigg was a participant in an implicated chatroom.

69.13. Nedbank Group and/or Nedbank Limited had joined the conspiracy by at least **1 January 2008** when ABSA and Standard Bank withheld quotes to enable Nedbank Group and/or Nedbank Limited to fix the exchange rate at 7.5850.

69.14. RMB had joined the conspiracy by at least **28 May 2010** when Investec, ABSA, RMB, Nedbank Group and/or Nedbank Limited and Standard Bank affirmed a focal point of 7.5750.

70. The Commission does not know the date on which when each respondent ceased to participate in the conspiracy, or if they have ceased to participate in the conspiracy.

71. The Commission alleges that the respondents continued as participants in the conspiracy *alternatively* are deemed to have continued as participants in the conspiracy until such time as they expressly dissociated themselves with the conduct, terms and objective of the conspiracy.

72. This is so, regardless of whether a trader ceased to be employed by the particular respondent.

#### **MODE OF COMMUNICATION FOR IMPLEMENTING THE CONSPIRACY**

73. During the period 2007 to 2013, the primary mode of communication between the respondents' traders for the purposes of implementing the terms and furthering the overall objective of the conspiracy was the instant messaging platform on the Bloomberg terminal.

74. The respondents made the instant messaging platform on the Bloomberg terminal available to their employees and representatives.

75. The respondents' traders:

75.1. created; and/or

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- 75.2. joined; and/or
  - 75.3. invited competing traders to join; and/or
  - 75.4. on a regular basis entered and remained as participants in,  
  
permanent and ad hoc chatrooms on the instant messaging platform on the  
  
Bloomberg terminal ("**chatrooms**").
76. A member of a chatroom is a person who:
- 76.1. is the creator and administrator of the chatroom; or
  - 76.2. has accepted an invitation to join a chatroom.
77. A participant in a chatroom is a person who:
- 77.1. logged onto alternatively opened the instant messaging platform on the  
Bloomberg terminal;
  - 77.2. entered a chatroom to which they were a member alternatively created  
a new chatroom and invited others to join; and
  - 77.3. remained present in the chatroom as either an active or passive  
participant as defined in paragraph 80 below.
78. Participants in a chatroom were able to:
- 78.1. post their own instant messages in the chatroom;
  - 78.2. view the instant messages posted by other participants in the chatroom;  
and

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78.3. view the 'history' of the messages posted by other participants in the chatroom prior to their arrival in the chatroom.

79. The instant messages posted in a chatroom:

79.1. were visible to all participants in the chatroom regardless of whether a participant chose to actively engage in the communication or conversation by posting an instant message; and

79.2. were private in that only members of the chatroom would be able to access and view the instant messages in that chatroom.

80. For the purposes of this Referral Affidavit:

80.1. An active participant in a chatroom is a person who had entered a chatroom and, at a particular time or over a particular period, is posting instant messages in the chatroom, or receiving messages by other participants in response to an instant message they posted.

80.2. A passive participant in a chatroom is a person who had entered a chatroom and, at a particular time or over a particular period, is not posting instant messages in the chatroom, but remained present in the chatroom in that they had not exited the chatroom.

81. Each chatroom had a specific Room ID. Room ID's with the words "PCHAT" were permanent chatrooms which would open automatically when a trader opened the Bloomberg terminal on their desktop computer.

82. Other modes of communication used by the respondents' traders for the purposes of implementing the terms and furthering the overall objective of the

conspiracy were telephone, email, text messages and in-person meetings and discussions.

## **CONDUCT IMPLEMENTING THE CONSPIRACY**

83. The respondents' traders engaged in conduct that implemented the terms and furthered the overall objective of the conspiracy.

84. The forms and characteristics of the conduct undertaken by the respondents' traders to implement the terms and further the overall objective of the conspiracy varied and evolved over time.

85. The primary forms of conduct undertaken by the respondents' traders to implement the terms and further the overall objective of the conspiracy were:

85.1. Sharing information and reaching arrangements on bid-offer spreads;

85.2. Sharing information, reaching arrangements on the order of trading and giving effect to those arrangements;

85.3. Sharing information, reaching arrangements to consolidate and off-set trades at FIX, and giving effect to those arrangements;

85.4. Sharing information, reaching arrangements to manipulate bid-offer prices on the Reuters trading platform, and giving effect to those arrangements;

85.5. Sharing information, reaching arrangements to manipulate the level of the spot rate; and

- 85.6. Sharing competitively sensitive information including information on customer inquiries and orders, for the purposes of concluding the arrangements set out above.
86. This conduct took place:
- 86.1. consistently throughout the trading day alternatively occurred over a substantial period of the trading day; and
- 86.2. consistently in the period between 2007 to 2013.
87. The respondent's traders used the chatrooms to communicate with each other in respect of the conduct.
88. The respondent's traders accepted invitations to become members or created chatrooms, and entered and became participants in chatrooms, alternatively remained as participants in chatrooms, when they knew alternatively ought reasonably to have known that:
- 88.1. the chatroom had two or more participants that:
- 88.1.1. were employed by and/or representing different banks; and
- 88.1.2. who were authorised by their respective banks to trade in the USD/ZAR currency pair; and/or
- 88.2. the chatroom was used as the primary mode communication to implement the terms of the conspiracy and further the objective of the conspiracy ("**implicated chatrooms**").

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89. As members of alternatively participants in implicated chatrooms, the respondents' traders knew of the conduct planned or put into effect by the other participants of the conspiracy to implement the terms or further the objective of the conspiracy; or they could reasonably have foreseen it and were prepared to take the risk.
90. The respondents' traders accordingly acted with the intention to implement the terms or further the objective of the conspiracy when they created chatrooms or accepted invitations to become members, entered and became participants in implicated chatrooms, alternatively remained as participants in the implicated chatroom.
91. The Commission is aware of the conduct that implemented the terms and furthered the objective of the conspiracy set out below.
92. The conduct set out below is not the only conduct undertaken by the respondents' traders or other traders party to the conspiracy in order to implement the terms and further the objective of the conspiracy.
93. The Commission alleges that during the same period:
  - 93.1. The individuals named below frequently and consistently engaged in other instances of conduct that sought to implement the terms and further the objective of the conspiracy using the same or different modes of communication; and
  - 93.2. Other individuals authorised to trade in USD/ZAR currency pair engaged in the same or similar conduct while engaging in foreign exchange trading.

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94. The Commission has categorised the conduct for purposes of demonstrating the scope and form of conduct undertaken by the respondents' traders to implement the conspiracy. In many instances, a particular communication, or series of communications within a chatroom, involves multiple different (and at times overlapping) forms of conduct.

### **Sharing of information and understandings on bid-offer spreads**

95. The respondents' traders:

95.1. shared information on bid-offer spreads; and

95.2. colluded on bid-offer spreads.

96. On 15 October 2007 Sweeney, Cummins, Hatton, Cook and Mullaney were participants in the Old Gits chatroom in which the following communication took place: From 14:44 the traders shared information on spreads on USD ZAR

97. On 29 October 2007 Sweeney, Cummins, Hatton, Cook and Mullaney were participants in the Old Gits chatroom in which the following communications took place: From 15:29 Mullaney and Cook informed each other of intended trading directions. The traders agreed to meet for drinks. Cummins asks the other traders to preserve the agreed spreads as he has to support his family. Hatton makes reference to his conversations with Mijo. The traders all share information on their trading positions.

98. On 6 December 2007 Katz, Sweeney, Cummins, Hatton, Cook and Mullaney were participants in the Old Gits chatroom in which the following communication

took place: The traders exchanged information about customer inquiries and orders, and bid-offer spreads. The traders coordinated their trading.

99. On 19 December 2007 Katz, Sweeney, Cummins, Hatton, Cook and McInerney were participants in the Old Gits chatroom in which Cook and Cummins exchanged customer information and coordinated on USD ZAR price.
100. On 10 January 2008, Barisic, Katz, Sweeney, Cummins, Hatton, Cook, McInerney and Mullaney were participants in the Old Gits chatroom in which the following communication took place: The traders exchanged information about a customer's inquiries and orders, and bid-offer spreads quoted to that customer. The traders share information on their trading position.
101. On 5 June 2008, Barisic, Katz, Sweeney, Cummins, Hatton, Cook and McInerney were participants in the Old Gits chatroom in which the following communication took place: At 12:08 Katz shared information on bid-offer spreads quoted to customers. The traders discussed meeting for drinks later that evening. Cummins and Cook exchanged client information and coordinated on USD ZAR price. McInerney, Cook, Katz and Cummins exchanged competitively sensitive information on their trading positions on USD/ZAR.
102. On 12 August 2008, Barisic, Katz, Sweeney, Cummins, Hatton, Cook and McInerney were participants in the Old Gits chatroom in which the following communication took place: Cook, Katz and Cummins shared competitively sensitive information about their trading positions. Katz, McInerney, Cook and Cummins shared information on bid-offer spread.

103. On 12 August 2008, Barisic, Katz, Sweeney, Cummins, Hatton, Cook and McInerney were participants in the Old Gits chatroom in which Hatton and Cummins shared information on bid-ask spreads.
104. On 10 June 2009, Barisic, Katz, Sweeney, Cummins, Hatton, Cook and McInerney were participants in the Old Gits chatroom in which Hatton and Cummins shared information on bid-ask spreads. Hatton told the other participants the current HSBC strategy on USD/ZAR. Cook asked Katz about the current trading position of the Johannesburg office, and Katz responded. Cummins shared information on customer orders.
105. On 17 May 2011 at 13:53 to 17:58, Katz and Putter were participants in an implicated chatroom in which the following communications took place: Putter and Katz exchanged commercially sensitive information and shared information on bid-offer spreads.
106. On 6 January 2011, Barisic, Sweeney, Cummins, Cook, McInerney, Mullaney, Katz and Hatton participated in the Old Gits Chatroom in which Cummins asked the other participants what bid-offer spread they were quoting customers and Mullaney responded.
107. On 25 January 2012, Katz and Williams were participants in an implicated chatroom in which the following communication took place: Katz and Nicholas discussed the bid-offer spread for 25 million. Katz informed Williams that his bid-offer spread of 100 pips is too tight compared to New York and Williams informed Katz that he will talk to sales and tell them the bid/offer spread of 100 pips is unacceptable. Williams "copies and pastes" a portion of a communication with

Gittens from another chatroom in which Gittens agrees that a spread of 125 pips is correct.

108. On 3 March 2012, Katz, Williams, Aiyer and Cummins were participants in an implicated chatroom in which the following communication took place: Everyone noted their agreement with Katz suggestion to keep the same bid-ask spread and his suggestion for the pips or difference between the bid and ask price.

109. On 6 March 2012, Williams, Katz, Cummins, and Aiyer were participants in the ZAR chatroom in which the following communication took place: Williams and Katz suggest pips (difference between the bid and ask price). Later Williams informs the traders that Standard Chartered asked for his spread at 25 million USD/ZAR and warns them about customers. Katz suggests that Williams should suggest a specific spread to Standard Chartered and Nicholas Williams responds that this is what he relayed. Aiyer shows the other traders a 'copy and paste' portion of his discussion with Surana about the bid-offer spread of the USD/ZAR. Cummins and Aiyer shared information on their trading position in respect of the USD/ZAR

110. On 15 March 2012, Cummins, Katz, Aiyer and Williams were participants in an implicated chatroom in which the following communication took place: Cummins and Katz discussed the USD/ZAR spread and Katz emphasised that everyone should quote the same. Williams shared his trading strategy and position by asking the other participants to hit his "iceberg" trade at a particular price (an iceberg trade is a trade that masks the actual order quantity).

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111. On 6 March 2012, Surana and Aiyer were participants in an implicated chatroom in which Surana asked Aiyer for information on the bid-offer spread of the USD/ZAR and Aiyer responded.
112. On 23 February 2012, Cummins and Aiyer were participants in an implicated chatroom in which they discussed the appropriate spread for USD/ZAR.
113. On 10 January 2012, Taylor and Brownrigg were participants in an implicated chatroom in which they discussed bid-offer spread for USD/ZAR.
114. On 18 October 2012, Dempsey and Howes were participants in an implicated chatroom in which they discussed bid-offer spread for USD/ZAR.
115. On 10 April 2012, Howes, Aiyer and O'Shea were participants in an implicated chatroom in which the following communication took place: Aiyer asks the other participants for their views on the bid spread on USD/ZAR. Howes provides information on his proposed bid spread.
116. On 11 September 2013, Chia, Kunene, Murray, Atkins, Harkins, Donnelly, Fryday, Bhana, and Naidoo were participants in an implicated chatroom in which Chia and Kunene discussed bid-offer spread for USD/ZAR. Murray shared competitively sensitive information.
117. On 10 April 2012, Howes and Aiyer were participants in an implicated chatroom in which they discussed bid-offer spreads and exchanged commercially sensitive information.
118. On 22 March 2012, Cummins, Katz, Aiyer and Williams were participants in an implicated chatroom in which the following communications took place: Cummins

and Williams shared information on their quoted bid-offer spreads. Katz and Cummins shared information on their trading positions and strategies.

119. On 01 October 2012, Taylor and Brownrigg were participants in an implicated chatroom in which the following communication took place: Taylor enquired what quote Brownrigg would show a top customer in 25 and 50. Brownrigg responded by telling "50 100".

### **Sharing information and arrangements to coordinate trading**

120. The respondents' traders would:

120.1. Share information on a respondents' trader's intended future trades;

120.2. Enter into arrangements and collude on the order of transacting on the Reuters platform for particular periods;

120.3. Implement these arrangements by refraining from trading, holding or delaying placing an offer on the platform, or pulling an existing bid or offer, in order to give effect to the arrangement on the order of trading;  
and

120.4. Execute trades for each other

121. On 1 October 2007 Cummins, Hatton, Cook and Mullaney were participants in the Old Gits chatroom in which the following communication took place: Cummins and Mullaney share commercially sensitive information on their position in respect of the USD/ZAR. Cummins and Mullaney shared information and coordinated their trading.

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122. On 2 October 2007 Katz, Sweeney, Cummins, Hatton, Cook and Mullaney were participants in the Old Gits chatroom in which the following communication took place: The traders shared commercially sensitive information on their positions in respect of the USDZAR. Katz, Cook and Mullaney shared information about customer inquiries and orders, and their trading positions. The traders coordinated their trading. Mullaney and Katz shared competitively sensitive information on trading positions including information on bid-offer spreads. Cummins, Katz, Mullaney and Hatton shared competitively sensitive information on their USD ZAR trading positions.
123. On 6 May 2008, Fenton and Howes were participants in an implicated chatroom in which the following communications took place: Fenton and Howes shared information on bid-offer spreads quoted to customers including South African Reserve Bank, AngloGold and Sasol. Howes told Fenton that he had a new boss and so it would be difficult to chat about trades. He said that he may not be able to respond to a message from Fenton but that they would make a plan.
124. On 30 June 2008, Fenton and Howes were participants in an implicated chatroom in which the following communication took place: Howes requested Fenton to share an offer price which appeared on the third party platform to which Investec had access. Fenton responded with a bid-offer price and Howes requested Fenton to buy a quantity of USD. Fenton bought that quantity of USD for Howes. In addition, Fenton and Howes coordinated by posting offers on Reuters platform in order to impact pricing on the third party platform to which Investec had access.

125. On 23 July 2008, Barisic, Katz, Sweeney, Cummins, Hatton, Cook and Mullaney were participants in the Old Gits chatroom in which the following communication took place: Katz and Cummins discuss that Katz is withholding trades for Cummins.
126. On 8 January 2009, Howes and Fenton were participants in an implicated chatroom in which the following communication took place: Howes asked what the price was on the third party platform. He then proceeded to post a low fake offer on Reuters platform to try and drive the price down on the third party platform to which only Fenton had access. Fenton provided Howes with live feedback of what was happening to the price on the third party platform until a desired offer was reached. Howes then instructed Fenton to buy USD.
127. On 10 February 2009, Barisic, Katz, Sweeney, Cummins, Hatton, Cook, McInerney and Mullaney were participants in an implicated chatroom in which the following communication took place: Mullaney, Cummins and Katz shared information about their positioning and coordinated trading.
128. On 3 June 2009, Katz, Sweeney, Cummins, Hatton, Cook and Mullaney were participants in an implicated chatroom in which the following communication took place: Cummins, Mullaney and Katz shared competitively sensitive information about intended trades and coordinated trading.
129. On 16 November 2009, Barisic, Katz, Sweeney, Cummins, Hatton, Cook and Mullaney were participants in an implicated chatroom in which the following communication took place: Cummins asked if anyone can get the 3650 offer in ZAR for him. Sweeney replied saying that he took it and Cummins thanked him.

130. On 4 June 2010, Katz, Sweeney, Cummins, Hatton, McInerney and Mullaney were participants in an implicated chatroom in which the following communication took place: Hatton and Cummins coordinated their trading, and Cummins agreed to withhold trades.
131. On 29 July 2010, Mullaney, Katz and Cummins were participants in an implicated chatroom in which the following communication took place: Mullaney offered to hold his USD ZAR for Katz.
132. On 22 September 2010, Katz and Cummins were participants in an implicated chatroom in which the following communication took place: Katz asked Cummins to hold his trade.
133. On 22 September 2010, Katz, Cummins and Mullaney were participants in an implicated chatroom in which the following communication took place: The traders held and/or pulled their trades to reserve liquidity for each other.
134. On 4 October 2010, Katz, Cummins, Cook, Barisic, Sweeney and McInerney were participants in an implicated chatroom in which the following communication took place: The traders held and/or pulled their trades to reserve liquidity for each other.
135. On 20 October 2010, Katz, Cummins, Cook, Sweeney, McInerney, Mullaney and Barisic were participants in an implicated chatroom, in which the following communication took place: The traders held and/or pulled their trades to reserve liquidity for each other.
136. On 3 November 2010, Katz, Cummins, Hatton, Cook, McInerney, Sweeney, Barisic and Mullaney were participants in an implicated chatroom in which the

following communication took place: The traders co-ordinated their trading activity around the FIX and arranged to hold and/or pull their trades to reserve liquidity for each other.

137. On 2 February 2011, Mullaney, Hatton and Cummins were participants in an implicated chatroom in which the following communication took place: Mullaney offered to reserve liquidity firstly for Hatton and later Cummins. Cummins agreed.

138. On 13 April 2011, Katz and Howes were participants in an implicated chatroom in which the following communication took place: Katz told Howes about how his contacts at Citibank, Standard Chartered and Standard Securities pulled their offers in order to allow him to go first and put his offer. I understand that the contacts of Katz at Standard Securities alternatively Standard Americas included Silverman, de Roos and Friedman.

139. On 26 April 2011 Williams and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders held and/or pulled their trades to reserve liquidity for each other.

140. On 2 November 2011, Howes and Fenton were participants in an implicated chatroom in which the following communication took place: Howes agreed not to touch the market until Fenton was finished trading. Howes offered to skew his Barx machine in order to attract offers which he could then pass on to Fenton to improve Fenton's position.

141. On 7 December 2011, Williams and Simister were participants in an implicated chatroom in which the following communication took place: Williams and Simister discussed letting each other take turns at trading on the Reuters platform.

142. On 27 February 2012, Katz, Williams, Cummins and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders held and/or pulled their trades to reserve liquidity for each other.
143. On 15 March 2012, Cummins, Katz, Aiyer and Williams were participants in an implicated chatroom in which the following communication took place: Cummins and Katz discussed the USDZAR spread and Katz emphasised that everyone should quote the same. Williams shared his trading strategy and position by asking the other participants to hit his "iceberg" trade at a particular price (an iceberg trade is a trade that masks the actual order quantity).
144. On 19 March 2012, Katz, Williams and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders held and/or pulled their trades to reserve liquidity for each other.
145. On 18 April 2012, Katz, Williams, Cummins and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders held and/or pulled their trades to reserve liquidity for each other.
146. On 2 May 2012, Katz, Williams and Cummins were participants in an implicated chatroom in which the following communication took place: The traders held and/or pulled their trades to reserve liquidity for each other.
147. On 18 May 2012, Katz, Williams, Cummins and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders held and/or pulled their trades to reserve liquidity for each other.
148. On 28 June 2012, Aiyer, Williams and Katz were participants in an implicated chatroom in which Aiyer offered to make trades at the FIX for Katz.

149. On 12 July 2012, Katz, Williams, Cummins and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders held and/or pulled their trades to reserve liquidity for each other.
150. On 1 August 2012, Katz and Cummins were participants in an implicated chatroom in which the following communication took place: Katz announced to other traders that he had to sell at a customer level. Cummins ceased his own trading and started pulling out his offers from Reuters platform and transacted instead with Katz. Cummins also offered Katz assistance to manipulate third party trading platforms into quoting at a more favourable price.
151. On 15 August 2012, Katz, Williams, and Cummins were participants in an implicated chatroom in which the following communication took place: The traders held and/or pulled their trades to reserve liquidity for each other.
152. On 20 August 2012, Aiyer, Williams, Katz and Cummins were participants in an implicated chatroom in which the following communication took place: Aiyer requested Williams to stop buying USD as he, Aiyer, was trying to move the price down. Aiyer requested Williams to stop his activity on Reuters and hold a position.
153. On 21 August 2012, Katz, Williams, Cummins and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders agree to pull bids to allow others to trade first.
154. On 6 September 2012, Katz and Aiyer were participants in an implicated chatroom in which the following communication took place: Aiyer asks Katz if a



bid on Reuters is a bid placed by Katz. Katz confirmed that it was his bid and asked if Aiyer wants him to pull it.

155. On 11 September 2012 Katz, Williams and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders held and/or pulled their trades to reserve liquidity for each other:

156. On 19 September 2012, Katz, Aiyer, Williams and Cummins were participants in an implicated chatroom in which the following communication took place: Katz asked Aiyer if Aiyer wants Katz to pull his bid.

157. On 20 September 2012, Katz, Williams, Cummins and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders agreed to pull bids to allow others to trade first.

158. On 9 October 2012 Katz, Williams, Cummins and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders agreed to pull bids to allow others to trade first.

159. On 16 October 2012, Katz, Williams, Cummins, and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders held and/or pulled their trades to reserve liquidity for each other.

### **Sharing information and arrangements to consolidate and off-set trades at FIX**

160. The respondents' traders would:

160.1. Share information on their anticipated position at the FIX;

- 160.2. Enter into arrangements to co-ordinate client orders and make off-setting trades with each other. This enabled the traders to avoid going to market to trade at the FIX;
- 160.3. Enter into arrangements to consolidate their common positions at the FIX by agreeing that one trader would make a single trade at the FIX instead of each trader individually making their own trades.
161. On 4 October 2007 Katz, Sweeney, Cummins, Hatton, Cook and Mullaney were participants in the Old Gits chatroom in which the following communication took place: Cummins and Hatton shared competitively sensitive information on their positions on USD/ZAR. Cummins, Katz and Mullaney shared information on bid-offer spread. Cummins shares information and arrangements regarding his trades at FIX and asks the other participants to pull their bids temporarily to secure his favoured position at FIX.
162. On 8 January 2008 Barisic, Katz, Sweeney, Cummins, Hatton, Cook, McInerney and Mullaney were participants in the Old Gits chatroom in which the following communication took place: The traders exchange competitively sensitive information including their current trading positions and trading strategy. Katz and Cook agree to coordinate their trading at the FIX.
163. On 2 December 2010, Katz, Cummins, Hatton, Cook, Barisic, Mullaney and McInerney were participants in an implicated chatroom in which the following communication took place: The traders consolidated common FIX positions, Katz notified everyone that he had USD ZAR to sell at the FIX and Cummins said he hoped he had the same.

164. On 2 December 2010, Mullaney, Cummins, Katz, Hatton, Mullaney, Barisic and Cook were participants in an implicated chatroom in which the following communication took place: Mullaney and Cummins coordinated by consolidating similar FIX positions such that only one of them will undertake the trade at the FIX.
165. On 6 January 2011, Barisic, Sweeney, Cummins, Cook, McInerney, Mullaney, Katz and Hatton were participants in the Old Gits chatroom in which the following communication took place: Between 13:45-13:50 Cummins and Mullaney shared competitively sensitive information about customer trades. From 14:40 Cummins and Mullaney shared information on bid-ask spreads.
166. On 11 March 2011, Katz, Hatton, Cook, Mullaney, Cummins, McInerney, and Sweeney were participants in the Old Gits chatroom in which the following communication took place: Katz and Hatton consolidated their USD/ZAR common buy positions at the FIX.
167. On 18 March 2011, Katz, Cummins, Hatton, Cook, McInerney, Mullaney and Sweeney were participants in the Old Gits chatroom in which the following communication took place: Katz told the participants that he had to purchase ZAR at the FIX and intended to manipulate the price at the FIX. Katz asked other traders to tell him if they needed his assistance with the ZAR at the FIX. Hatton offered assistance to manipulate the price at the FIX.
168. On 5 April 2011, Katz, Cummins, Hatton, Mullaney, Sweeney and McInerney were participants in the Old Gits chatroom in which the following communication took place: The traders off-set their respective FIX positions.

169. On 29 February 2012, Katz, Williams, Cummins and Aiyer were participants in an implicated chatroom in which the following communication took place: Katz informed Aiyer that he had to buy USD 250 million at the fix. Katz informed other participants that he had to buy USD 11 million. The traders off-set their respective FIX positions.
170. On 7 March 2012, Williams, Katz, Cummins, and Aiyer were participants in an implicated chatroom in which the following communication took place: Katz stated that if all the traders keep the same bid-offer spread then that spread would become the norm. Katz and Cummins proposed prices on the bid-offer spread for certain volumes of USDZAR. Aiyer agreed.
171. On 13 March 2012, Katz, Cummins, Aiyer and Williams were participants in an implicated chatroom in which the following communications took place Aiyer shared information about customer orders. Williams, Aiyer and Cummins shared information about their trading positions. Cummins says he had 19 million ZAR to sell. Aiyer and Williams said they could take 8 and 5 million respectively. Cummins told them to wait as he wanted to whack it first. The traders concluded the trades on J&P.
172. On 16 March 2012, Katz, Aiyer Williams and Cummins were participants in an implicated chatroom in which the following communication took place: Katz and Aiyer communicated with each other and the rest of the chat room participants to find out if any of them wanted to consolidate the purchases they must make at the FIX such that only one of them does the trade. Aiyer "copied and pasted" a portion of a chatroom communication between Aiyer, Surana and Brook.

173. On 19 March 2012, Katz, Williams and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders consolidated common FIX positions.
174. On 23 March 2012, Katz, Williams, Cummins and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders consolidated common FIX positions.
175. On 23 March 2012, Katz, Williams, Cummins and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders consolidated common FIX positions.
176. On 18 June 2012, Katz, Williams, Cummins, and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders off-set their respective FIX positions.
177. On 19 June 2012, Katz, Williams, Cummins and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders consolidated common FIX positions.
178. On 20 June 2012, Katz, Williams, Cummins and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders consolidated common FIX positions.
179. On 29 June 2012, Katz, Williams and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders consolidated common FIX positions.

180. On 20-21 June 2012, Williams, Katz, Cummins and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders off-set their respective FIX positions.

181. On 3 July 2012, Katz, Williams, Cummins and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders off-set their respective FIX positions.

182. On 5 September 2012, Aiyer, Katz and Williams were participants in an implicated chatroom in which the following communication took place: Aiyer and Katz discussed off-setting their respective FIX position.

183. On 8 October 2012, Aiyer, Katz, Williams and Cummins were participants in an implicated chatroom in which the following communication took place: The traders off-set their respective FIX positions. Aiyer solicited matching.

184. On 18 October 2012 Katz, Aiyer, Williams and Cummins were participants in an implicated chatroom in which the following communication took place: Katz and Aiyer matched each other's opposite FIX positions in order to off-set their respective exposure at the upcoming FIX. Aiyer "copied and pasted" a portion of a communication between Madras and Tezel from another chatroom.

### **Manipulation of USD/ZAR FX Rate**

185. The respondents' traders would:

185.1. Coordinate with each other to manipulate the price which appears on a third party platform in order to profit from transactions implemented at the increased or decreased in rate;

- 185.2. Enter into arrangements to post fake bids or offers on the Reuters platform;
- 185.3. Inform competing traders when engaged in posting 'fake' bids or offers;
- 185.4. Coordinate in putting up bid and ask prices in order to generate identical average spot exchange rates or create "focal points" of spot exchange rates;
- 185.5. Withholding or withdrawing quotes in order to allow a single bank to dominate the market with its quotations, thereby setting the exchange rate for the period, also known as "flat-lining".
186. On 1 January 2008 between 20:14:46 and 05:13:27 UTC and on Reuters trading platform, ABSA and Standard Bank withheld quotes to enable Nedbank to fix the exchange rate at 7.5850.
187. On 7 July 2008 between 18:47:08 and 19:28:19 UTC and on Reuters trading platform ABSA, Nedbank and Standard Bank set focal points, which are levels of the spot rate at which coordination takes place, in succession which shifted the exchange rate up.
188. On 6 February 2008, Cummins and Chang were participants in an implicated chatroom in which the following communication took place: Dealers exchanged information about their positioning and co-ordinated pricing.
189. On 8 May 2008, Katz, Cook, Cummins, and McNerney were participants in an implicated chatroom in which the following communication took place. McNerney proposed to manipulate the USD/ZAR rate by 'whacking' quotes in

order to increase the rate. Katz warned other traders to be cautious and check that there are no other trades that could interfere with the manipulation. He asked another trader to withdraw his offer quotes so that they can all profit from the manipulation. Hatton encouraged other traders by suggesting the profitability of the proposed manipulation and trades could be significant.

190. On 11 January 2009, between 20:59:07 – 21:48:23 pm UTC and on Reuters trading platform the following banks engaged in a pattern of price formation taking place over 48 minutes:

190.1. Standard Securities alternatively Standard Americas and UBS quoted the same ask and bid prices of 9.8100 and 9.7800 respectively. The result is the generation of an identical spot exchange rate and spread of 0.03.

190.2. RMB and Nedbank thereafter also quote identical bid prices, the ask price only differs by a pip leading to identical spot exchange rates and spreads.

190.3. RMB matches Standard Securities alternatively Standard Americas at the bid prices of 9.7600, and the ask price of 9.8599.

191. On 11 January 2009, between 23:20:21 – 00:07:12 UTC and on Reuters trading platform, Nedbank and Standard Securities alternatively Standard Americas put up matching bid and ask quotes in succession. The ask and bid quotes are the same (9.8600 and 9.7699 respectively), resulting in a consistent average being posted of 9.8100. The pattern of price formation taking place over 47 minutes

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192. On 12 January 2009, between 00:16:21 – 07:07:26 UTC and on Reuters trading platform, ABSA and Standard Americas or Standard Securities posted the same ask and bid quotes in succession starting at 9.900 and 9.800 respectively, rising to 9.9100 and 9.8100 respectively, rising again to 9.9200 and 9,8200 respectively and reaching 9.9300 and 9.8300 respectively, before reducing in turn in matched amounts. In addition, over the same period:

192.1. Standard Americas or Standard Securities, Nedbank and ABSA posted the same ask and bid prices of 9.9100 and 9.8100.

192.2. ABSA, Nedbank and Standard Americas or Standard Securities posted the same ask and bid prices of 9.9200 and 9.8200. Nedbank and Standard Americas or Standard New York posted the same ask and bid price of 9.9000 and 9.8000.

192.3. ABSA and Standard Bank posted the same ask and bid prices of 9.9400 and 9.8400.

192.4. Nedbank, Standard Americas or Standard Securities, ABSA and Standard Bank posted the same ask and bid prices of 9.9300 and 9.8300.

192.5. Standard Bank and Standard Americas or Standard Securities posted the same ask and bid prices of 9.9500 and 9.8500.

192.6. ABSA and Standard Americas or Standard Securities posted the same ask and bid prices of 9.9590 and 9.8590.

- 192.7. Standard Bank and Standard Americas or Standard Securities posted the same ask and bid prices 9.9770 and 9.8770.
- 192.8. Standard Bank, Standard Americas or Standard Securities and ABSA posted the same ask and bid prices of 9.9700 and 9.8700.
- 192.9. Standard Bank and Standard Americas or Standard Securities posted the same ask and bid prices of 9.9550 and 9.8550.
- 192.10. By posting the same ask and bid quote these banks fixed the spread at 0.100.
- 192.11. On 19 September 2012, between 18:57:14 and 02:37:03 UTC and on Reuters trading platform, Standard Bank, represented by Brownrigg provides an unusually high spread in the market, in line with a conversation he held on the Bloomberg chatroom with Taylor. Standard Bank provides bid and ask prices of 8.2096 and 8.2597 creating a spread of 0.1001. This spread is unusually high, and was in force for quite some time, so that the chat between Brownrigg and Taylor confirmed what was already long agreed between the participants of the conspiracy. The spread is unusually high considering the fact that, although spreads depend on market conditions and on order sizes, the data shows that banks normally do not charge a spread that exceeds 0.06. The spread of 0.1000 is associated with Standard Bank, ABSA and Nedbank.
- 192.12. ABSA and Standard Bank then post the same bid and ask price of 8.2097 and 8.3097.

- 192.13. Standard Bank and ABSA later post the same bid and ask price of 8.2077 and 8.3077.
- 192.14. ABSA and Standard Bank again post identical bid and ask prices of 8.2017 and 8.3078.
- 192.15. In all the above prices the spread of both banks remains constant at 0.1000.
193. On 7 May 2009, Katz and Howes were participants in an implicated chatroom in which the following communication took place: Katz and Howes coordinated with each other to elicit a response from the automated trader machines to prompt a downward or upward movement in bids or offers.
194. On 27 May 2010, between 16:30:57 and 16:49:10 UTC and on Reuters trading platform a group of banks in which Standard Bank and ABSA, together with Barclays, Nomura and other banks held the USD/ZAR around the focal point of 7.5760. Standard Bank and ABSA together with HSBC Bank Plc or HSBC USA and other banks pushed the exchange rate to 7.5600. Standard Bank and ABSA together with Barclays and HSBC Bank Plc or HSBC USA and other banks then returned the exchange rate to a focal point of 7.560.
195. On 28 May 2010 07:23:10 and 07:24:03 UTC and on Reuters trading platform RMB, Standard Bank, ABSA, and Investec colluded in posting quotes in succession which had the effect of reducing volatility in the exchange rate. They maintained a spot exchange rate of between 7.5750 and 7.5765.

196. On 28 May 2010 07:41:50 and 07:44:13 UTC and on Reuters trading platform] banks including Investec, ABSA, RMB, Nedbank and Standard Bank affirmed a focal point of 7.5750.
197. On 15 September 2010, Katz, Cummins, Mullaney and McInerney were participants in an implicated chatroom in which the following communication took place: Katz told Cummins that he sold USD on his machine and then signalled to Cummins that he, Katz, will go to the market on the Reuters platform to bid for USD. Cummins recognised that a machine has just posted a bid for USD and he matched Katz's bid.
198. On 4 October 2010, Katz, Cummins, Cook, Barisic, Sweeney and McInerney were participants in the Old Gits chatroom in which the following communication took place: The traders held and/or pulled their trades to reserve liquidity for each other.
199. On 20 October 2010, Katz, Cummins, Cook, Sweeney, McInerney, Mullaney and Barisic were participants in the Old Gits chatroom, in which the following communication took place: The traders held and/or pulled their trades to reserve liquidity for each other.
200. On 3 November 2010, Katz, Cummins, Hatton, Cook, McInerney, Sweeney, Barisic and Mullaney were participants in the Old Gits chatroom in which the following communication took place: The traders arranged to hold and/or pull their trades to reserve liquidity for each other.
201. On 7 November 2011, Katz and Williams were participants in an implicated chatroom in which the following communication took place: Katz had been given

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USD ZAR and asked Nicholas Williams if he had lost any and would want to buy. Williams offered his assistance by offering to skew the Barclays machine to prefer to pay him, Williams.

202. On 14 March 2012, Katz, Aiyer, Cummins and Williams were participants in an implicated chatroom in which the following communication took place: The traders discussed skewing bids to assist each other.

203. On 19 March 2012, Katz, Williams and Aiyer were participants in the ZAR chatroom in which the following communication took place: The traders consolidated common FIX positions.

204. On 28 March 2012 Williams, Katz, Cummins and Aiyer were participants in an implicated chatroom in which the trader participated in a communication about skewing.

205. On 23 March 2012, Katz, Williams, Cummins and Aiyer were participants in the ZAR chatroom in which the following communication took place: The traders consolidated common FIX positions.

206. On 18 June 2012, Katz, Williams, Cummins, and Aiyer were participants in the ZAR chatroom in which the following communication took place: The traders offset their respective FIX positions.

207. On 20-21 June 2012, Williams, Katz, Cummins and Aiyer were participants in the ZAR chatroom in which the following communication took place: The traders offset their respective FIX positions.

208. On 29 June 2012, Katz, Williams and Aiyer were participants in the ZAR chatroom in which the following communication took place: The traders consolidated common FIX positions.
209. On 3 July 2012, Katz, Williams, Cummins and Aiyer were participants in the ZAR chatroom in which the following communication took place: The traders off-set their respective FIX positions.
210. On 10 September 2012, Aiyer was a participant in an implicated chatroom informed the other trader chat participants not to touch the ZAR to allow him to “walk it lower.”
211. On 20 August 2012, Aiyer, Katz, Williams and Cummins were participants in an implicated chatroom in which Katz offered to “walk down” the price. Aiyer told Williams to stop purchasing ZAR because was trying to walk down the price.
212. On 8 October 2012, Aiyer, Katz, Williams and Cummins were participants in the ZAR chatroom in which the following communication took place: The traders off-set their respective FIX positions. Aiyer solicited matching.
213. On 29 March 2012, Williams and Aiyer were participants in an implicated chatroom and coordinated their actions to withhold the execution of orders and engage in a simultaneous move to sell the USD.
214. On 29 March 2012, Williams, Cummins and Katz were participants in an implicated chatroom. They discussed targeting to sell USD/ZAR at 7.7400.
215. On 19 July 2012, Katz, Cummins, Aiyer, and Williams were participants in an implicated chatroom in which Katz proposed to skew his system higher

(manipulate the price that appears on his system) so that he could source USD/ZAR sales for Aiyer.

216. On 13 August 2012, Katz, Cummins, Aiyer, and Williams were participants in an implicated chatroom in which Williams communicated that he needs 10 [million] and Katz responded that he was skewing on his ecom [platform] and that Williams could have if Katz gets.

217. On 25 and 26 July 2012, Katz, Aiyer, Cummins and Williams were participants in an implicated chatroom in which the following communication took place: At Katz shared information about customer inquiries. Aiyer said he needs to sell 25 million and requires everyone to post offers so as to drive the price down. Katz indicated that he is skewing lower on his ecom [platform] and if he gets paid Aiyer can have. Aiyer said that "Mijo" had taken 15.

218. On 14 March 2012, Katz, Aiyer, Cummins and Williams were participants in an implicated chatroom in which the following communication took place: The traders discussed skewing bids to assist each other. Katz shared information on his customer orders.

219. On 21-22 March 2012, Williams, Katz, Cummins, and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders discussed skewing bids to assist each other.

220. On 27 March 2012, Katz, Williams, Cummins and Aiyer were participants in an implicated chatroom in which the following communication took place: Katz told everyone he needed some USD ZAR and Nicholas Williams offered to skew the Barclay machine to assist Katz.

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221. On 10 April 2012, Katz and Howes were participants in an implicated chatroom in which the following communication took place: Katz offered to skew his ecom platform to assist Howes. Katz suggests to Howes that he call John Wood.
222. On 26 April 2013, Williams and Aiyer were participants in an implicated chatroom in which Williams assisted Aiyer by skewing his bid-offer trades [to the Barx platform].
223. On 29 May 2012, Williams, Cummins, Katz and Aiyer were participants in an implicated chatroom in which the following communication took place: Williams informed the traders that he had an offer on the Reuters platform and Cummins asked if this was a real offer or whether Williams had put in a fake offer to manipulate the offer price on the Reuters platform, the understanding being that they would not act on a fake bid.
224. On 18 June 2012, Katz, Williams, Cummins, and Aiyer were participants in an implicated chatroom in which the following communication took place: The traders off-set their respective FIX positions.
225. On 10 July 2012, Cummins, Aiyer, Katz and Williams were participants in an implicated chatroom in which the following communication took place: Cummins offered to assist Aiyer by spoofing the third party platform.
226. On 20 August 2012, Katz, Aiyer, Williams and Cummins were participants in an implicated chatroom in which the following communication took place: Katz offered assistance to Aiyer to post fake bids and/or offers to affect prices on the Reuters platform and then to buy from the third party platform to which he, Katz, had access.



227. On 10 October 2012, Katz, Williams, Cumming and Aiyer were participants in an implicated chatroom in which the following communication took place: Katz referred to a trader placing fake bids for his benefit.
228. On 22 October 2012, Cummins, Williams and Aiyer were participants in an implicated chatroom in which the following communication took place: Cummins offered to have a fake bid put up on the Reuters platform and Williams took him up on the offer.
229. On 16 August 2011 between 04:10:33 and 05:54:39 UTC and on Reuters trading platform Nedbank increased the spot exchange to create a focal point affirmed by Investec, ABSA and Nedbank at 7.1100. Another jump then occurs to create a focal point for Standard Bank, ABSA and Investec at 7.1000. Finally, Investec and Nedbank join other banks to create a focal point at 7.1050.
230. On 7 March 2012, at around 10h13 UTC and on Reuters trading platform banks engaged in "flat-lining" and RMB was allowed to dominate the market with its quotations while other traders withheld bids and offers.
231. On 29 March 2012, between 21:33:07 and 23:18:54 UTC and on Reuters trading platform a focal point was initiated by Commerzbank at 7.7170.
232. On 28 September 2012, between 18:32:45 and 18:39:14 UTC and on Reuters trading platform RMB, ABSA, Investec and Nedbank through a pattern consecutive quotes coordinated their bid and ask prices generate a sequence of the same spot exchange rates.
233. On 20 September 2012, between 02:46:09 – 04:17:13 UTC and on Reuters trading platform a number of foreign banks (not referred in this present referral)

posted the same bid and ask prices over the above period. Of relevance to the present complaint, Investec JHB and Tatra Banka both post the same bid and ask prices of 8.3027 and 8.3527 respectively, each resulting in posting an average of 8.3277. Commerzbank FFT posts different bid and ask prices (8.3227 and 8.3327 respectively) these prices nonetheless result in Commerzbank matching the average of Investec JHB at 8.3277.

234. On 20 September 2012, between 06:45:04 and 06:47:29 UTC and on Reuters trading platform RMB paired its bid and ask prices with various banks in succession. This occurs at least 24 times and includes pairings with:

234.1. HSBC Bank Plc or HSBC USA, "HSBC LON" (twice): at a bid and ask price of 8.3276 / 8.3371 and 8.3263 / 8.3358 respectively;

234.2. Commerzbank FFT (twice): at a bid and ask price of 8.3277 / 8.3377 and 8.3294 / 8.3302 respectively;

234.3. Barclays GFX (three times): at a bid and ask price of 8.3251 / 8.3401; 8.3243 / 8.3393; and 8.3227 / 8.3377 respectively;

234.4. Investec JHB (once): at a bid and ask price of 8.3067 / 8.3567;

234.5. Nedbank (once): at a bid and ask price of 8.3300 / 8.3321.

235. On 21 October 2012, between 18:39:11 and 19:43:47 UTC and on Reuters trading platform the local banks, with the exception of Standard Bank, withheld quotes and enabled Standard Bank to dominate the market and determine a focal point of the exchange rate of close to 8.6700.

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236. On 07 March 2012, between 10:12:31: and 10:16:45 UTC and on Reuters trading platform local banks withheld quotes and enabled RMB to dominate the market. RMB thereafter dropped the price from 7.6425 to 7.6390 thereby creating a newer lower focal point above which the other banks quote.

237. On 26 April 2013, Williams and Aiyer were participants in an implicated chatroom in which Williams proposed to Aiyer that he (Williams) show (likely fake) offers on the Reuters platform. Williams proceeded to communicate that he had placed certain trades at certain rates. He said that he skewed his "pricer" and it worked well. Later, Williams asked Aiyer to stop buying because he needed the price to be lower and Aiyer responded that he needed it higher.

### **Sharing competitively sensitive information**

238. The respondents' traders shared competitively sensitive information including:

238.1. Information on their position on the USD/ZAR;

238.2. Information on their trading position;

238.3. Information on customers including customer inquiries and intended trading direction.

239. On 28 September 2007, Cummins, Hatton, and Cook were participants in the Old Gits chatroom in which the following communication took place: At 12:03 Hatton says that he has purchased ZAR and it was very easy. Cummins and Mullaney shared commercially sensitive information on their positions in respect of the USD/ZAR. At 13:32, Mullaney told Cummins that he is purchasing 15 million ZAR for a fund. Cummins and Mullaney agree on the order of trading. At

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17:41, Cummins shares information on his trading position and agrees to a private trade with Cook. At 19:15 Hatton informs the traders he needs USD ZAR if any of the traders are able to assist. Mullaney told Hatton that he has USD ZAR and offers to hold it.

240. On 3 October 2007 Katz, Sweeney, Cummins, Hatton and Cook were participants in the Old Gits chatroom in which the following communication took place: Katz, Cummins, Cook and Hatton shared competitively sensitive information, including tradition positions on USD/ZAR, and information on customer inquiries and orders. Between 13:11 and 13:41 Katz shared competitively sensitive information on USD/ZAR trades. At 15:09 and again at 18:01, Hatton shares commercially on customer inquiries, orders and quotes. Cummins shares information on his trading position. At 19:16 Katz shares information on customer inquiries, orders and quotes. Katz thanks the other traders for their help.

241. On 9 October 2007 Katz, Sweeney, Cummins, Hatton, Cook and Mullaney were participants in the Old Gits chatroom in which the following communication took place: The traders shared competitively sensitive information such as customers who were asking for and selling USD ZAR and their positions on USD ZAR trades.

242. On 4 December 2007 Katz, Sweeney, Cummins, Hatton, Cook and Mullaney were participants in the Old Gits chatroom in which the following communication took place: From 14:48 Katz, Mullaney and Cummins shared competitively sensitive information on USD/ZAR trades. At 15:48 Katz shared information about customer inquiries and orders.

243. On 7 January 2008, Barisic, Katz, Sweeney, Cummins, Cook, McInerney and Mullaney were participants in an implicated chatroom in which the following communication took place: Katz, McInerney and Cummins shared competitively sensitive information on client enquiries and intended trading directions.
244. On 28 January 2008, Cummins and Chang were participants in an implicated chatroom in which the traders shared information on their trading positions.
245. On 1 February 2008, Hatton, Cummins, Cook and Mulvaney were participants in an implicated chat room and informed each other of client inquiries and intended trading direction.
246. On 21 February 2008, Cummins and Chang were participants in an implicated chatroom in which the following communication took place: Chang asked Cummins if he has a stop in ZAR to go. Cummins replied that he is short, to which Chang asked whether 700 ZAR is a big amount.
247. On 17 November 2008 Barisic, Sweeney, Cummins, Hatton, Cook, McInerney and Mullaney were participants in the Old Gits chatroom in which Cummins shared competitively sensitive information stating that he had some bids on the way down in ZAR.
248. On 7 January 2009, Barisic, Katz, Sweeney, Cummins, Hatton, Cook, McInerney and Mullaney were participants in an implicated chatroom in which the following communication took place: Hatton, Mullaney, Katz and Cummins exchanged information on their trading positions.
249. On 28 April 2009, Barisic, Katz, Sweeney, Cummins, Hatton, Cook, McInerney and Mullaney were participants in the Old Gits chatroom in which Hatton,

Cummins, Mullaney and Katz shared competitively sensitive information on their trading positions.

250. On 29 July 2009 Barisic, Katz, Sweeney, Cummins, Hatton, Cook and McInerney were participants in the Old Gits chatroom in which Cummins shared competitively sensitive information on customer orders.

251. On 28 July 2010, Katz and Dousie were participants in an implicated chatroom in which Dousie shared information with Katz about a potential customer in the market.

252. On 30 November 2010 Friedman, Cummins and Mullaney were participants in a Bloomberg Chatroom with RoomID: PCHAT-0x40000017B76BB in which the following communication took place: Between 13:50 -14:18 Cummins and Friedman shared competitively sensitive information on their USD/ZAR positions.

253. From at least 9 December 2010, Friedman, Cummins and Mullaney were participants in a permanent implicated chatroom PCHAT-0x4000001401566 in which commercially sensitive information was exchanged.

254. On 2 March 2012, Williams, Katz, Cummins, Aiyer and Arlan were participants in an implicated chatroom in which the following communication took place: Williams informed the traders that [a customer] was asking three people for a price and the traders should be aware of this.

255. On 14 June 2012, using the telephone Jason Katz and Nicholas Williams engaged in a communication regarding a customer that is splitting its order between two to three banks at the same time.

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256. On 2 March 2012, Katz, Aiyer, Cummins, Williams and Arlan were participants in an implicated chatroom in which Aiyer shared information about customer quotes.
257. On 13 March 2012, Katz, Cummins, Aiyer and Williams were participants the ZAR chatroom in which the following communications took place Aiyer shared information about customer orders. Williams, Aiyer and Cummins shared information about their trading positions. Cummins said he had 19 million ZAR to sell. Aiyer and Williams said they could take 8 and 5 million respectively. Cummins told them to wait as he wanted to whack it first. The traders concluded the trades on J&P.
258. On 26 April 2013, Williams and Aiyer were participants in an implicated chatroom in which Williams offered to assist Aiyer in increasing his USD portfolio. Aiyer told Williams he still had a lot of USD to lose as he was still long (buying) 150 million USD.

## **THE EFFECT OF THE CONDUCT**

259. The conspiracy had a direct or immediate, and substantial effect in the Republic and it was foreseeable that the impugned conduct would, or had the potential to, have such an effect.
260. The common manner in which the effects of the impugned conduct are felt is that buyers of ZAR pay artificially inflated prices for buying the currency and sell at artificially reduced prices when selling the currency.

261. The bid and offer spread of USD/ZAR pairing creates the exchange rate of the currency, the exchange rate being the average of the bid and ask price. Any change in either the bid or the ask prices will affect the average and thus the exchange rate. The bid and offer price effects a number of FX transactions as follows:

261.1. **Spot FX:** FX rates are the prices of the FX spot transactions, being the price at which currency is bought or sold. An average USD 2 trillion equivalent worth of currencies are exchanged through Spot FX on a daily basis. An increase in price has a direct effect and will benefit the seller and harm the buyer, while the reverse is true for a decrease in price. The manipulation of the Spot FX rate also has an immediate effect on transactions which depend on the spot rates at a given time.

261.2. **FX Futures and FX Forwards:** FX Futures and FX Forwards transactions are agreements between two parties to exchange two currencies at a specified point of time in the future at an exchange rate agreed when entering into the agreement. An average of USD 1 trillion equivalent worth of forwards and futures is traded each day worldwide. Forwards and futures are impacted by the spot rates both at their inception (the date at which the contract is entered into) and at their maturity (the date at which the transaction settles). If two parties enter into a forward contract while FX rates are distorted, this will cause them to set the forward rate incorrectly. For example, an inflated FX rate today will cause the two parties to inflate the rate at which the transaction will be settled in the future. This will harm the buyer and benefit the seller,

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while the reverse will be true for suppressed FX rates. At maturity, a higher rate would benefit the buyer and harm the seller, while the opposite is true for depressed FX rates.

261.3. **FX Swaps:** FX Swaps are agreements between two parties to exchange amounts of two different currencies for a period of time. FX Swaps have the highest trading volumes of any financial products with more than USD 3 trillion equivalent trades on average each day. FX Swaps allow parties to enter simultaneously a spot and a forward transaction, i.e. exchanging a currency today and committing to selling it back in the future at a given rate. Being composed of a spot purchase/sale and a forward sale/purchase the impact of FX manipulation on FX swaps will be inferred directly from those two products. If the manipulation happens on the day of the settlement of the contract, damages will be the same as for futures/forwards, i.e. a decrease in rates will benefit the buyers and harm the sellers.

261.4. **FX Options:** FX Options are instruments which give the holder the right (but not the obligation) to buy or sell a specified currency at a pre-established rate against another currency, on (or before) an agreed future date. Similar to forwards/futures, options are impacted by manipulation of FX rates both at their inception and at their maturity/exercise date.

262. It is apparent that the rate of Spot FX will impact spot transactions as well as transactions which are dependent on Spot FX rates either at their inception or maturation/exercise. The transactions set out above amount to cumulatively over

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USD 6 trillion equivalent daily. The daily ZAR foreign exchange turnover on the spot market amounts to USD 26.8 billion, with USD 6.6 billion daily on the outright forwards market.

263. The ZAR is traded globally and it is one of the most liquid emerging market currencies. It is traded both offshore and onshore. The net average daily turnover on the South African domestic forex markets increased from \$10.797 billion in January 2007 to \$18.017 billion in June 2013. The share of the net average daily turnover on the South African market in the global turnover declined from 42% in 2007 to 28% in 2013. A substantial amount of rand trading occurred in South African markets over the 2007 and 2013. Due to the nature of the globalized nature of forex markets, off-shore transactions have the same effects on the spot rate and the valuation of other financial instruments in South Africa as on-shore transactions.

264. ZAR is most commonly traded against the USD. Other foreign currency exchanges from or into ZAR are often carried out indirectly through the USD/ZAR pairing. For this reason, the USD/ZAR exchange rate is the most important rate for the South African economy. A manipulation of the USD/ZAR pairing therefore impacts on the value of the subsequent currency exchange. If a customer acquires fewer USD than they ought to due to the conspiracy's manipulation of FX rates this will impact on the amount of other currency they are able to transact in.

265. Any government, business, investor or individual which transacts with parties from other countries, e.g. purchasing or selling goods and services, borrowing or lending in foreign currencies, or traveling, will have to exchange amounts of local

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or domestic currency into the appropriate currency of the transaction. This exchange typically happens in the Spot FX market. Manipulating the FX rate / exchange rate therefore has significant effects on a country's economic activity, especially its international trade and international financial transactions, which are also linked to domestic economic indicators.

266. The conspiracy's conduct had a direct impact on the exchange rate of USD/ZAR. The exchange rate in turn impacts on various parts of the South African economy – including imports and exports, foreign direct investment, public and private debt, and companies balance sheets, with the attendant implications for the pricing of goods, services and financial assets. I deal briefly with each of these in turn:

#### Import and Export

266.1. South Africa is a globally integrated open economy, transacting with most countries around the world. As such, its companies buy and sell a substantial amount of goods and services abroad. In 2018 imported goods and services and exported goods and services amounted to over 29.6% and 29.9% respectively of South Africa's GDP for that year. Consequently, even a 1% change in the fair value of the USD/ZAR exchange rate may result in a USD 1 billion change of the value of imported or exported goods and services.

266.2. Imports and exports take place on a daily basis therefore currency movements, no matter how small, aggregate into very large economic gains and losses.

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## Foreign Direct Investment Flows

266.3. Another way through which currency movements affect the economy is through the valuation of assets. Investors move large funds in and out of economies in search of better returns. These returns are valued in a common currency through exchange rate adjustments. Therefore, by affecting the exchange rate the dealers affect the valuation of investment opportunities and performance and therefore they distort resource allocation. A foreign investor in South Africa earns returns in ZAR, but to declare the return as income in their own currency they use the exchange rate to convert, either at the FIX interval or some other interval at which they order the dealer to convert.

266.4. In 2010, inwards and outwards FDI in South Africa totalled around USD 262.814 billion, being USD 179.565 billion and USD 84.249 billion respectively. In 2018 inwards and outwards FDI amounted to USD 366.785 billion. FDI is highly dependent on FX rates, because the rates determine how cheap or expensive it will be for a given party to invest in another country. The change in the fair value of the USD/ZAR exchange rate impacted the viability of investments into and out of South Africa.

266.5. The FX rate also impacted Foreign Portfolio Investments, as well as individual savers, asset managers or pension funds who invested in global equities or bonds.

## Foreign Borrowing

266.6. Both the South African government's and South African companies', including state-owned companies, principal payments and payments of interest on USD denominated debts are substantially dependent on the USD/ZAR exchange rate. Around 10% of government debt is denominated in foreign currency (dollar denominated) and a significant portion of SOE debt is dollar denominated. When the South African government borrows in the international capital market, this borrowing (in the form of loans or bonds) is usually denominated in USD. An increase in the value of South African debt has high public relevance as in order to repay it, the South African government must either divert funds that were allotted for other purposes or increase taxes.

266.7. About 37% of South African government debt is foreign-owned, which exposes foreign investors in South Africa to exchange rate risks. Distortions to the exchange rate unfairly affect the dollar returns of the investors in ZAR denominated government debt. In addition, about 10% of government debt is denominated in USD.

266.8. South African companies with USD denominated debt are also affected by manipulated FX rates. South African companies currently have more than USD 45 billion of USD denominated debt outstanding. The cost of servicing debt, especially debt that is denominated in foreign currency is affected by currency movements.

#### FX Derivative Positions

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266.9. FX derivatives are held by South African companies, including state-owned companies, these include forward contracts. They can add or subtract from the value of the company depending on the FX rate.

#### Foreign Currency Exposure

266.10. South African companies, including state-owned companies, that have both assets and liabilities in a foreign currency have foreign currency exposure. The Public Investment Corporation has assets offshore as do other South African insurance companies through which individuals save. As of 2013, 6% of total assets of the PIC were held offshore, which amounted to R84 billion. A single change in currency rates affects multiple line items in a company's balance sheet.

#### Travel and tourism

266.11. Individual travellers leaving from or returning to South Africa who exchange money into or out of ZAR based on the USD/ZAR exchange rate are also affected. Between January 2008 and June 2013 the number of travellers to and out of South Africa ranged between 800 000 and 1 million per month, which is approximately 30 000 travellers per day.

267. The manipulation of the spot exchange rate directly affects the Spot FX market and all transactions dependent on spot exchange rates at inception or maturation. More generally, the manipulation of the spot rates is a manipulation of the exchange rate and therefore affects the value of the currency held by any person, entity or government including within South Africa. I go on to consider

the direct and / or immediate effect of the various forms of collusive conduct which the conspiracy engaged in.

### **The direct and /or immediate effect of the conduct**

268. In a competitive FX market:

268.1. Price should fluctuate as and when new information about actual or potential demand and supply becomes available; this news flow is random and not predictable.

268.2. The bid-offer spread should vary between the dealers as they are dependent on the following: the order processing costs, the inventory costs and the adverse selection costs. All these costs vary over time and would ordinarily be factored differently across the dealers.

268.3. The continuum of the spread of quotes posted by the different dealers should vary to reflect the differences in the sizes of orders, or batches of orders, and the flow of those orders.

269. The effect of the traders collusive behaviour was to reduce random fluctuation of prices and/or to reduce the continuum of the spread of quotes for periods of the trading day. The degree of volatility in market prices fell as a result traders' withholding orders and quotes, and agreeing to set bid and ask prices. In so doing the degree of competition within the market was reduced.

270. By manipulating the bid and offer spreads, the behaviour of the traders had direct and / or immediate impact on the exchange rate and therefore had direct and / or immediate effects on international trade and international asset valuation that involved ZAR assets. In so doing they had a direct and / or immediate effect on the South African economy. Below I set out the various forms of manipulation implemented by the conspiracy and how it was foreseeable that the manipulation would have an effect on the exchange rate and therefore would, or could, have a direct or immediate, and substantial effect within South Africa:

#### Fixing of bid/ask spread

270.1. In a competitive market, banks and traders should try to capture business by offering the best possible rates to their clients. This means they must compete with each other to offer a higher bid-rate or a lower offer rate to win business. When traders and banks agree to fix bid/ask spreads at an uncompetitive, higher level, all customers who are selling or buying currency are harmed, as they pay more ZAR for buying USD or receive less ZAR when selling USD. In fixing the bid/ask spread traders colluded to either (a) set the bid price, (b) set the ask price and / or (c) to set the exchange rate, being the average of the bid/ask spread. Like any market, deviations from competitive behaviour caused the market price of foreign exchange to deviate from its competitive level. The effects on the exchange rate is at the level of pips, with variations in at least the last three digits of the price after the decimal point, because of the large amounts of funds that are traded in the forex market.



270.2. One manner in which the conspiracy was implemented was through agreements between traders to increase and fix the bid-offer spreads they would be showing to their clients. The respondent banks' traders fixed the bid-offer spread charged to clients between 0.0125 and 0.0200 (125 and 200 pips). The average of this range is 0.01625 (162.5 pips).

270.3. The effect that fixing the bid/ask price can have on the exchange rate is illustrated by the following example:

270.3.1. As set out in paragraph 214 above, on 29 March 2012 at around 13h39 UTC and in a Bloomberg chatroom, Williams, Cummins and Katz discussed targeting to sell USD/ZAR at 7.7400. At the time the ZAR was 22 pips lower at 7.7378. Following the discussion, the bid price started trending upwards reaching a maximum of 7.7420. This also had a direct impact on the ask price because the dealers sought to maintain a steady bid-ask spread. Since the spot is the average of the bid and ask prices. The ZAR stayed up for a period of almost 2 and half minutes during which traders could offload USD at this higher price. The effect of this simultaneous sale was a sharp appreciation of the ZAR against the USD.

270.3.2. On 20 September 2012 at around 12h00 to 12h13 UTC the bid price of USD/ZAR was set across a number of banks at 8.3375. Ask prices of 8.3400 and 8.325 were posted by the same banks resulting in a near uniform exchange rate set by these banks for 13 minutes.

270.4. Damages from bid/ask manipulation are incurred in every transaction conducted by South African business and individuals. This impacts every import, export, the provision or receiving of service, or travel spending etc, where ZAR are exchanged into foreign currency. Taking the aggregate amount of imports and exports for the period between 2004 and 2014 of around USD 2 trillion, the damage caused by the bid/ask inflation was substantial. Once other foreign exchange transactions from business, individual travel, investment, borrowing and lending are included, the damage suffered by the South African government and individuals is even larger.

#### Price Manipulation

270.5. Spot prices were manipulated jointly by the local and foreign banks. In some cases with both local and foreign banks quoting identical prices. In this way random fluctuations of spot prices gave way to periods of constant prices over time and across banks.

270.6. The traders engaged in instances of coordinated price manipulation when implementing the conspiracy, which affected the USD/ZAR exchange rate. The banks and traders as market makers were central to the exchange of price relevant information. The prices disseminated by the traders in the form of bid and offer quotes provided important guidance for the price formation. Traders would inform each other of client inquiries, customer information and intended trading direction. They would coordinate trades by withholding trades or coordinating order flows, withholding posting

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quotes, and / or posting fake bids and asks prices. The coordination was done in order for the market to move in a desired direction by moving the price up or down.

270.7. When the traders engaged in coordinated price manipulation to benefit their own trading positions, the resulting impact on the price was permanent, resulting in prices deviating from their true (fair) value. The price movement was thereafter reflected in the price going forward, leading to a long-term deviation of the market price from its fair value. Since the manipulation is reflected in the price going forward it affected any customers buying after the manipulation occurred and was not limited in effect to the customer in that specific transaction.

270.8. Price manipulation therefore had an immediate negative effect on customers, including South African customers, who transacted on the FX market at or after the occurrence of manipulation, when they were transacting opposite to the manipulation. For example, South African entities buying USD had to pay more (in ZAR) to purchase the same amount of USD. Given the permanence of price manipulation on future prices, customers who transacted after the occurrence of manipulation were also harmed when their transaction was opposite to the cumulative effect of prior manipulations.

270.9. The effect that price manipulation can have on the exchange rate is illustrated by the following examples:

270.9.1. As set out in paragraph 245 above, on 1 February 2008 at around 19h23 to 19h45 UTC, Hatton, Cummins, Cook and Mulvaney

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informed each other of client inquiries and intended trading direction and coordinated to move the price lower. The USD/ZAR rate fell following the discussion by around 0.5%. The client discussed seems to have been a seller and was damaged by getting a lower price. The price decline was reflected in the price going forward. In addition, there was a decline in the quotes of EUR/ZAR after the traders manipulation of the USD/ZAR.

270.9.2. As set out in paragraph above 188, on 6 February 2008, Cummins and Chang exchanged information about their positioning and coordinated pricing. As a result the USD/ZAR rate increased by around 0.2%, meaning USD strengthened against ZAR.

270.9.3. As set out in paragraph 187 above, on 7 July 2008 ABSA, Nedbank and Standard Bank set focal points of coordination in succession which shifted the exchange rate up. Between 18:47:08 and 19:28:19 Brown Brothers and ABSA set a focal point at 7.7600. This focal point was subsequently replaced by another one at 7.7400, initiated by Radar Forex and Nedbank, among others. The total shift amounted to 0.02. The 7.7400 focal point was later replaced by another one at 7.7550, driven by Nedbank, Standard Bank, Lehman and Brown Brothers, which resulted in a 0.015 upward shift in the exchange rate.

270.9.4. As set out in paragraph 194 above, on 27 May 2010, Standard Bank and ABSA, together with Barclays, Nomura and other banks held the USD/ZAR around various focal points. Between 16:30:57

and 16:49:10 UTC the banks held the USD/ZAR around the focal point of 7.5760. Standard Bank and ABSA together with HSBC Bank Plc or HSBC USA and other banks pushed the exchange rate to 7.5600. Standard Bank and ABSA together with Barclays and HSBC Bank Plc or HSBC USA and other banks then returned the exchange rate to a focal point of 7.5600. The whole shift was 0.0160. It can be inferred that in this period the banks held ZAR in their accounts, while collecting orders to buy the ZAR from customers. When the time came, they simultaneously bought the ZAR, strengthening it to the focal point. At this point, they offloaded the ZAR to gain USD profits. The reverse process was then coordinated, weakening the ZAR, from which they gained ZAR profits.

270.9.5. As set out in paragraph 192 on 12 January 2009, ABSA, Standard Securities alternatively Standard Americas, Nedbank and Standard Bank repeatedly matched their ask and bid quotes in succession. By posting the same ask and bid quote these banks fixed the spread at 0.100, a spread mentioned by Brownrigg in conversation with Taylor.

270.9.6. As set out in paragraph 230 on 7 March 2012 at around 10h13 UTC traders engaged in "flat-lining" and RMB was allowed to dominate the market with its quotations, at what must be inferred to be an agreed price, while other traders withheld bids and offers.

This had the effect of fixing the exchange rate at a constant level of 7.6424/5 for around 30 seconds (10:13:10 to 10:13:39).

270.9.7. As set out in paragraph 213 above, on 29 March 2012 at around 15h06 and 15h07 UTC, Williams and Aiyer coordinated their action to withhold the execution of orders and engage in a simultaneous move to sell USD. As a result, the exchange rate shifted at around 15h08 appreciating by 91 pips from 7.7526 to 7.7435.

270.9.8. As set out in paragraph 210 above, on 10 September 2012 at around 19h15 UTC Aiyer informed the other trader chat participants not to touch the ZAR to allow him to "walk it lower." There followed a weakening of the ZAR until around 19:17:30 at which point there was a sharp spike which strengthened the ZAR. This spike was explained in the chatroom by Katz who apologised for not having seen the previous message. After this mistaken spike, the ZAR continued to weaken.

270.9.9. On 19 September 2012 between around 00h26 and 00h34 UTC and on Reuters, banks including Investec, RMB, ABSA, HSBC USA or HSBC Bank plc, ("HSBC LON"), alternated in posting quotations in a manner that enabled them to set the exchange rate at various levels for nearly eight minutes.

270.9.10. As set out in paragraph 119, on 01 October 2012 Taylor and Brownrigg were participants in an implicated chatroom in which the following communication took place: Peter Taylor enquired what quote Brownrigg would show a top customer in 25 and 50.

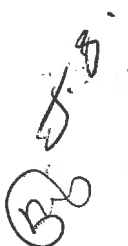
Brownrigg responded by telling "50 100". Following this exchange the spreads quoted by local banks were 0.0500 and 0.1000 in line with what Brownrigg had indicated, despite the fact that at other times local banks charged at lower spreads with non-round figures.

270.10. The coordination between traders to manipulate the USD/ZAR either by manipulating the bid or ask price, or by manipulating the bid/ask spread, at a given moment in time, was able to affect South African consumers, who were transacting at that time. Even when a South African consumer transacted later at a different price and/or in respect of a bid/ask spread that was not identical to the manipulated spread, the prior manipulation affected the price going forward, for example by moving the price upwards. Therefore, the impugned conduct continued to have immediate effect for the South African consumer and an impact of the South African economy.

270.11. It is likely that based on the volume of import and exports transaction and / or borrowing by the South African government or institutions and companies, damages could be substantial.

#### Fixing the fix

270.12. During at least 2007 to 2013, the WM/ Reuters Fixing was administered and calculated by World Markets and published by Reuters. The WM/Reuters Fixing is one of the most important benchmarks in the financial markets which many transactions, derivatives and investment funds using this benchmark to determine the value of their foreign exchange positions. As stated previously, the exchange rate of ZAR to other currencies is often tied to the USD/ZAR exchange rate. For this reason, the manipulation of



the USD/ZAR rate at the WM/Reuters Fixing impacts the exchange rate of ZAR against other currencies. For example, the EUR/USD combined with the USD/ZAR produces the EUR/ZAR pair. Therefore, distorting the USD/ZAR distorts the EUR/ZAR.

270.13. Fixing the fix is a manipulative behaviour by traders and dealers to influence the value at which a benchmark rate is set on a particular day. Many investors are effectively obligated to transact at the fixing rate and dealers who are able to move the fixing rate in their favour are able to profit from these transactions. Consequently, manipulation of the WM/Reuters Fixing affects customers who give instructions to their bank/dealer to buy or sell currencies at the fixing rate or customers who have traded in derivatives which use the WM/Reuters Fixing as reference rate, for example to determine the payments due or owed under the derivative contract (eg options of cash-settled forwards/futures).

270.14. The effect that manipulation of the WM/Reuters Fixing can have on the exchange rate is illustrated by the following examples:

270.14.1. As set out in paragraph 169 above, on 29 February 2012 at around 15h30 to 15h53 UTC and in a Bloomberg chatroom, one trader announced the purchases of USD against ZAR he had to make at the WM/Reuters Fixing. Following this discussion, the USD/ZAR rate decreased sharply to a lower level at the fixing time, before rebounding after the WM/Reuters Fixing was determined. The trader purchasing USD was therefore able to pay less ZAR for the USD amount. The EUR/ZAR exchange rate also showed a brief

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downward spike at the same time as the WM/Reuters Fixing as the USD/ZAR rate is reflected in the exchange rate of the EUR/ZAR pairing.

270.14.2. As set out in paragraph 178 above, on 20 June 2012 at around 14h47 to 14h51 UTC and in a Bloomberg chatroom, traders coordinated on price and order of selling in order to maximize profits. A trader Katz informed the group that he had to sell at the Fixing. Another trader Aiyer responded that he would sell USD against ZAR just before WM/Reuters Fixing time (15h00 UTC). Following this discussion, just before 15h00 UTC, the USD/ZAR rate declined about 0.24%. The trader transacting at the Fixing could then do so at a lower price. As in the example above, a corresponding decline was also visible in the EUR/ZAR exchange rate at the same time.

270.14.3. As set out in paragraph 207 above, on 21 June 2012 at around 16h53 UTC and in a Bloomberg chatroom, Katz informed other traders that he would have to buy USD/ZAR at the WM/Reuters Fixing the following day. On 22 June 2012 there was a jump in the exchange rate, with the ZAR depreciating seconds before the Fixing time of 15h00 UTC in the trader's favour. A customer acquiring USD at the rate determined by the Fixing would then have had to do so at a higher rate.



270.15. Given the significant size of the FX market and the use of derivative transactions by investment managers and corporations manipulating the Fix could result in substantial damages.

**The effect of the conduct was cumulatively substantial**

271. The collusion between the conspiracy took place consistently throughout the day or covered a substantial period of the day. It took place over a number of years. As such it was able to have an impact on the currency.

272. When considered over a period of time and taking into account their persistence, cumulatively the effects of currency movements induced by the traders are large. Therefore the conspiracy's conduct had substantial consequences in South Africa.

273. The manipulation of the exchange rate took place largely through variations in at least the last three digits of the price, after the point (the pips). The large amounts traded translate into significant profits and losses to customers collectively.

274. Furthermore, the conspiracy included at least five *incola* South African banks and four authorised dealers. This accounts for 9 out of the 25 authorised dealers in South Africa. The influence of the global conspiracy therefore also had the potential to effect competition within the local inter-bank market. As such the potential effects of the conspiracy's conduct should be regarded as substantial on account of the potential effect it has on the competition structure within South Africa.

**It was foreseeable to the cartelists that the conduct would have a direct or immediate and substantial effect**

275. The ZAR is an internationally traded currency. As of 2019, the volume traded on the South African local forex markets was 16% of the global turnover. Both on-shore and off-shore trading of the Rand has direct impact on domestic markets, since all traders post their quotes in a shared platform. Therefore, regardless of where it is quoted, the posting of the quote contributes to the time-series that market participants use to make economic decisions worldwide. The quotes form part of the information that traders use to take a view of where the market goes. The banks' quotes become the real-time global market price of the currency. Therefore, the ZAR is affected regardless of where the quote comes from, as long as the quote is posted on the international trading platforms, e.g. Thomson-Reuters or Bloomberg. The traders were aware of this when they engaged in the collusive conduct and posted quotes, or in some cases withheld quotes, on international trading platforms with the aim of manipulating the USD/ZAR FX rate and moving the market in desired directions.

276. The valuation of imports and exports depends on the exchange rate. The traders knew this. The traders would have known that South Africa exporters are affected by the FX rate, because exporters, say who are exporting from the US to South Africa, will be having ZAR in their possession after having sold their goods and services in the South African market, and require their money to be exchanged into USD.

277. Despite the manipulations manifesting at the level of pips, the traders would be aware that given the large volume of currency traded the effect of the

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manipulations could be substantial. Similarly, given the extended period over which the conspiracy operated the traders would be aware that the cumulative effect of their conduct would have substantial consequences.

278. The traders could see in real time the effect of their manipulation on the currency exchange and the lasting impact on the bid/ask spread.

279. It is sufficiently probable that the conspiracy was capable of having a more than insignificant influence in South Africa. It was therefore foreseeable that the conduct would have a direct or immediate and substantial effect in the Republic.

#### **INITIATION AND THE LASTING EFFECT OF THE CONDUCT**

280. It is alleged that the conduct occurred from 2007.

281. The Commission alleges that the conspiracy continued to operate using different modes of communication after September 2013, *alternatively* after the implicated chatrooms were closed *alternatively* after the respondents' traders no longer had access to the Bloomberg electronic messaging system.

282. The Commission does not know the date on which the single overarching conspiracy between the respondent banks ceased to operate, if it has indeed ceased to operate.

283. The Commission invites the respondent banks to explain:

283.1. if and when the conspiracy ceased to operate; and

283.2. the date on which the respondent's participation in the conspiracy ceased.


284. The Commission's complaint falls within the three-year period required under section 67(1) of the Act.

285. The express and/or tacit date for the initiation of the complaint into the prohibited practice described in this Referral Affidavit and/or against the individual respondents engaged in the prohibited practice is 1 April 2015.

286. Alternatively, the conduct of the conspiracy had lasting effects for the purposes of section 67(1) irrespective of the date of initiation applied to any individual respondent.

286.1. The conduct had a lasting impact on the FX market, extending beyond the dates on which various discrete instances of conduct took place. This is due to the fact that price manipulation has both transitory and lasting impacts on bid/ask spreads and the exchange rate.

286.2. The lasting price impact must be considered cumulatively as multiple manipulative acts were committed as part of the single overarching conspiracy and were implemented consistently over a number of years. Each manipulated trade or quote had a lasting impact on the price. It is observed by other market participants and affects their thinking around / estimation of the true value and appropriate valuation. As a consequence, while individual price manipulation may be small, their aggregate effect is material over time. The individual manipulations accumulating over a period of time result in long term deviation of the exchange rate from the true value. Every person trading after the deviation commences is thereby impacted going forward.



## HISTORY OF COLLUSIVE PRACTICES IN THE USD/ZAR CURRENCY PAIR

287. On or about 2014 the New York State Department of Financial Services instituted proceedings against Standard Chartered Bank in relation to their foreign exchange trading business in emerging markets currency prices including the South African Rand.
288. In 2019, Standard Chartered entered into a plea agreement with the New York State Department of Financial Services in respect of the charges.
289. The Plea Agreement records that the Department's Investigation determined that Standard Chartered engaged in unsafe, unsound and improper conduct in violation of New York laws and regulations.
290. The improper conduct was accomplished using chatrooms, e-mail communications, phone calls, and in person meetings, and included:
- 290.1. coordinating trading and spreads with colleagues at Standard Chartered and other international banks to disadvantage customers;
  - 290.2. seeking to manipulate submission-based and trading-based benchmarks;
  - 290.3. sharing confidential customer information (including customer stop-loss orders) with competitors;
  - 290.4. trading intended to move prices in certain emerging market currencies, to the Bank's benefit and the customers' detriment; and

- 290.5. engaging in non-competitive agreements among traders on prices and spreads offered on a variety of FX-related products.
291. The Department's Investigation demonstrated that Standard Chartered traders based at the New York Branch and in other major trading hubs engaged in these actions repeatedly during the period from approximately 2007 through 2013.
292. One of the key charges set out in the Plea Agreement was that in January 2008 Standard Chartered Bank's traders were participants in an existing chatroom where one of the traders suggested that the South African Rand was susceptible to manipulation by the group and the traders discussed a scheme to quote wider-than-usual spreads in ZAR during off-hours when the South African banks were closed and market activity slowed.
293. Standard Chartered Bank admitted its guilt to engaging in "unsafe, unsound and improper conduct" in violation with Banking Law §44 and paid a penalty of \$40 million.
294. The Standard Chartered Plea Agreement is relevant to the current matter because:
- 294.1. It relates to improper conduct and schemes in the trading of the USD/ZAR currency pair.
- 294.2. It relates to the manipulation of the USD/ZAR by traders employed by Standard Chartered, the tenth respondent in these proceedings.
- 294.3. It relates to the period 2007 to 2013;

294.4. Bloomberg chatrooms were the primary mode of communication to implement the scheme, as is the case in the present case.

294.5. The conduct taken to implement the schemes is substantially similar to the conduct alleged in the present case.

295. The United States Department of Justice laid criminal charges against Cummins, Katz and Aiyer in respect of their participation in the conspiracy.

296. Katz and Cummins entered into plea agreements with the US Department of Justice in which they pleaded guilty.

297. In November 2019, Aiyer was found guilty in the New York Southern District Court of the charge of knowingly entering into and participating in a combination and conspiracy to suppress and eliminate competition by fixing prices of and rigging bids and offers for Central and Eastern European, Middle Eastern and African emerging market currencies.

## **DEFERRED JOINDER APPLICATION**

298. On 12 January 2018 the Commission brought a joinder application in respect of the nineteenth to twenty-third respondents, in terms of Rule 45 of the Tribunal rules. With the exception of the twenty-second respondent, this joinder application remains pending before the Tribunal ("**the joinder application**").

299. The joinder application relates to previous complaint referrals filed by the Commission in this matter. The complaint, as contained in this new referral affidavit, substitutes and replaces the previous complaint referrals in accordance with the Competition Appeal Court's order.



300. The Commission submits that the filing of the new referral, and citation of all the parties herein, disposes of the necessity for a joinder application. However, the Commission notes that the Competition Appeal Court's order at paragraph 4 states as follows:

“4. In respect of the application for joinder brought by the Competition Commission on 12 January 2018 read with the supplementary affidavit in December 2018.

[...]

4.2 Leave to join HB US (19); MLPFS (20); BANA (21) and Credit Suisse Securities (23) is deferred for consideration pending the Competition Commission's compliance with the requirements of paragraph 3 of this order.”

301. In the event the joinder application still requires determination by the Tribunal, which the Commission denies is the case, the Commission submits as follows:

302. To the extent that the Commission's averments in the joinder application are inconsistent with the new referral affidavit, the contents of the new referral affidavit should be taken to apply.

### **HSBC Bank USA, National Association**

303. Between 1 September 2005 and 30 October 2010 the nineteenth respondent was represented, *inter alia*, by Christopher Hatton acting within the course of his employment with the fourteenth and/or nineteenth respondents.

304. At certain material times the nineteenth respondent was represented, *inter alia*, by Mijo Mirkovic acting within the course of his employment with the fourteenth and/or nineteenth respondents.

305. The fourteenth and the nineteenth respondents are members of the same group of companies and are therefore directly or indirectly linked to one another

306. The nineteenth respondent is being joined as a respondent to the complaint of a single overarching conspiracy ("**the conspiracy**") as defined in paragraph 56 above, which contravened sections 4(1)(b)(i) and (ii) of the Act as set out in paragraph 61 above.

307. The nineteenth respondent is joined to averments applicable to all the respondents in the complaint referral, including averments in which the nineteenth respondent, and/or its representatives, is expressly cited or directly referred to by name.

**Bank of America N.A and Merrill Lynch Pierce Fenner and Smith INC**

307.1. At certain material times, from at least 1 October 2007, the first and/or twentieth and/or twenty-first respondents were represented, *inter alia*, by Gavin Cook, acting within the course of his employment.

307.2. At certain material times, from at least 1 October 2007, the first and/or twentieth and/or twenty-first respondents were represented, *inter alia*, by Mark Sheppard, acting within the course of his employment

- 307.3. The first, twentieth and twenty-first respondents are members of the same group of companies and are therefore directly or indirectly linked to one another.
- 307.4. The twentieth and twenty-first respondents are being joined in the complaint referral as respondents to the complaint of a single overarching conspiracy (“**the conspiracy**”) as defined in paragraph 56 above, which contravened sections 4(1)(b)(i) and (ii) of the Act as set out in paragraph 61 above.
- 307.5. The twentieth and/or twenty-first respondent are joined to averments applicable to all the respondents in the complaint referral in addition to averments in which twentieth and/or twenty-first respondents, respectively, and/or their representatives are expressly cited or directly referred to by name.

### **Credit Suisse Securities (USA) LLC**

- 307.6. After 30 October 2010 the eleventh and/or twenty third respondent was represented, *inter alia*, by Chris Hatton acting within the course of his employment with the eleventh and/or twenty third respondents.
- 307.7. At certain material times the eleventh and/or twenty third respondent was represented, *inter alia*, by Heinrich Putter acting within the course of his employment with the eleventh and/or twenty third respondents.
- 307.8. The twenty-third respondent is being joined in the complaint referral as a respondent to the complaint of a single overarching conspiracy (“**the**

conspiracy”) as defined in paragraph 56 above, which contravened sections 4(1)(b)(i) and (ii) of the Act as set out in paragraph 61 above.

307.9. The twenty-third respondent is joined in averments applicable to all the respondents in the complaint referral, in addition to averments in which the twenty-third respondent and / or its representatives are expressly cited or directly referred to by name.

308. The Commission maintains that it remains both convenient and appropriate to include the nineteenth, twentieth, twenty-first and twenty-third respondents to the present referral. The questions of law and facts that would arise in a separate referral of these respondents are substantially the same as those already before the Tribunal in the present referral.

### **No prejudice to any party**

309. The Commission submits that in addition to the reasons provided in the joinder application, the joinder of the additional respondents will not be to the prejudice of any of the parties to these proceedings because:

309.1. This new referral affidavit substitutes for and replaces all the previous complaint referral affidavits and will be served on all the respondents.

309.2. The respondents who are party to the joinder applications of 12 January 2018 are entitled to file answers to this referral affidavit in accordance with the Competition Appeal Court’s order along with the respondents already referred against.

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**RELIEF**

310. In the premises, the Commission seeks the following relief:

310.1. An order declaring that the respondent/s has contravened section 4(1)(b)(i) and (ii) of the Act and prohibiting such respondent/s from engaging in the abovementioned prohibited conduct;

310.2. An order declaring that the respondent/s is liable for payment of an administrative penalty equal to 10% of its annual turn-over in the Republic and its export from the Republic in the preceding financial year in terms of section 58(1)(a)(iii) read with section 59 of the Act;

310.3. Insofar as it is necessary, an order granting leave to join the nineteenth, twentieth, twenty-first and twenty-third respondents to this matter

310.4. Further and or alternative relief.

311. The Commission does not seek any penalty against the fifteenth, sixteenth, seventeenth and eighteenth respondents.

**CONCLUSION**

312. In the circumstances, the Commission seeks the orders in the new Referral.



DEPONENT

The Deponent has acknowledged that he/she knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Brooklyn Pretoria on this the 01<sup>st</sup> day of June 2020, the regulations contained in Government Notice No. R1258 of 21 July 1972, as

amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

<b>SUID-AFRIKAANSE POLISIEDIENS</b>
STASIE BEVELVOERDER
<b>2020 -06- 0 1</b>
BROOKLYN STATION COMMANDER
<b>SOUTH AFRICAN POLICE SERVICE</b>

*J. S. S. S. S.*  
**COMMISSIONER OF OATHS**  
Full Names: *JERRY SIBHO SHABANE*  
Capacity: *WTO*  
Designation: *Police Official*  
Address: *119 De Witt Rd*  
*HILWCREST*  
*PRETORIA*  
*(012) 366 1735*

*J.S.S.*  
*(B)*

**competition commission**  
**south africa**

**Appointment of Inspector**

**Date:** 02 March 2015

**To:**

**Name of Inspector:** Mfundo Ngobese

I hereby appoint you as an inspector to perform functions in terms of the Competition Act 1998, effective for the duration of your employment at the Competition Commission.

**Name and Title of the person authorized to sign on behalf of the Competition Commission:**

**Tembinkosi Bonakele**  
**Commissioner**

**Authorized Signature:**







# competition commission south africa

## Complaint

(Name of person submitting complaint)

The Competition Commissioner: Mr Tembinkosi Bonakele

(Name of person whose conduct is the subject of this complaint)

Barclays Bank Plc; Barclays Africa Group Ltd; BNP Paribas ; BNP Paribas South Africa; Citigroup Inc. Citigroup Global Markets (Pty) Ltd; JP Morgan Chase & Co; and JP Morgan South Africa, Investec Ltd, Standard New York Securities Inc. Standard Chartered Bank "Respondents".

(Provide a concise statement of the conduct that is the subject of this complaint)

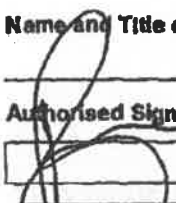
The Respondents being competitors in the foreign currency exchange market have entered into an arrangement and/or agreement and/or a concerted practice to directly or indirectly fix prices in relation to bids, offers and bid-offer spreads in respect of spot trades, forward trades and futures trading in contravention of section 4(1)(b)(i) of the Competition Act, 89 of 1998, as amended.

THE COMPETITION COMMISSION  
2015 -04- 01  
Private Bag X23 Lynnwood Ridge 0040

Name and Title of Person authorised to sign:

Authorised Signature:

Date:



01-04-2015

S.P.  
D



## AMENDED INITIATION STATEMENT

### 1. INTRODUCTION

- 1.1. This is an amendment of initiation of a complaint by the Commissioner of the Competition Commission ("Commissioner") against eleven foreign currency traders.
- 1.2. The purpose of the amendment is to add new respondents as well as the new conduct.
- 1.3. The amendment of the original complaint is based on information received by the Competition Commission ("Commission") during the investigation of the original complaint.
- 1.4. The information indicated that the respondents in the original complaint and the respondents in the amended complaint may have engaged in price fixing and/or fixing of trading conditions in possible contravention of section 4(1)(b)(i) of the Competition Act no 89 of 1998, as amended ("the Act").
- 1.5. Further, the information indicates that the respondents in the original complaint and the respondents in the amended complaint may have engaged in market division by allocating customers in possible contravention of section 4(1)(b)(ii) of the Act.
- 1.6. The information indicates that the above conduct may have commenced around 2007 and may be on-going.

## 2. BACKGROUND

2.1. On 1 April 2015, the Commissioner initiated a complaint against eleven foreign currency traders for being involved direct or indirect fixing of prices in relation to bids, offers and bid-offer spreads in respect of spot trades<sup>1</sup>, forward trading<sup>2</sup> and future trades<sup>3</sup> in the forex market in contravention of section 4(1)(b)(i) of the Competition Act no 89 of 1998, as amended ("the Act"). This complaint is investigated under case number 2015April0147 ("the original complaint").

2.2. The following are the respondents in the original complaint:

2.2.1 The *First Respondent* is Barclays, a company registered and incorporated under the company laws of the United Kingdom, with its principal place of business situated at 1 Churchill Place, London, United Kingdom.

2.2.2 The *Second Respondent* is Barclays Africa, a subsidiary of Barclays. Barclays Africa is a company registered and incorporated under the company laws of South Africa, with its principal place of business situated at 7th floor, Barclays Towers West, 15 Troye Street, Johannesburg.

2.2.3 The *Third Respondent* is BNP, a company registered and incorporated under the company laws of France, with its principal place of business situated at Boulevard de Italiens, Paris, France.

2.2.4 The *Fourth Respondent* is BNP SA, a subsidiary of BNP. BNP SA is a company registered and incorporated under the company laws of the Republic

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<sup>1</sup>The spot transaction is where a trade is done immediately and executed at the current spot rate at that specific point in time.

<sup>2</sup>A forwards transaction is between traders and relates to where rates and quantity of currency being bought or sold are agreed ahead of time at a price set now and the sale is concluded at the point of agreement. The transaction takes place at a date in the future but at prices agreed upon today.

<sup>3</sup>A futures transaction is between traders and involves a clearing house. It relates to transactions that give the investor the right to buy or sell an underlying currency at a fixed exchange rate at a specified date in the future.

of South Africa with its principal place of business situated at 2nd Floor, 11 Crescent Drive, Melrose Arch, Johannesburg.

2.2.5 The Fifth Respondent is Citigroup, a company registered and incorporated under the company laws of the United States with its principal place of business situated at 339 Park Avenue, New York City.

2.2.6 The Sixth Respondent is Citigroup Global, a subsidiary of Citigroup. Citigroup Global is a company registered and incorporated under the company laws of the Republic of South Africa with its principal place of business situated at 145 West Street, Sandown, Sandton, Johannesburg, 2196.

2.2.7 The Seventh Respondent is JP Morgan, a company registered and incorporated under the company laws of the United States with its principal place of business situated at 270 Park Avenue, New York City.

2.2.8 The Eighth Respondent is JP Morgan SA, a subsidiary of JP Morgan. JP Morgan SA is a company registered and incorporated under the company laws of the Republic of South Africa with its principal place of business situated at 1 Fricker Rd, Sandton, Johannesburg, 2196.

2.2.9 The Ninth Respondent is Investec, a company registered and incorporated under the company laws of the Republic of South Africa with its principal place of business situated at 100 Grayston Drive, Sandown, Sandton, Johannesburg, 2196

2.2.10 The Tenth Respondent is Standard NY, a company registered and incorporated under the company laws of United States of America; with its principal place of business situated at 520 Madison Avenue, 28th Floor New York NY 10022

2.2.11 The Eleventh Respondent is Standard Chartered, a company registered and incorporated under the company laws of the United States of America; with its

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principal place of business situated at 1095 Avenue of America, 37 New York NY 10036.

2.3. The amendment seeks to add twelve more firms as the respondents:

2.3.1 The *Twelfth Respondent* is ABSA, a subsidiary of Barclays. ABSA is incorporated and registered under the company laws of South Africa, with its principal place of business situated at 7th floor, Barclays Towers West, 15 Troye Street, Johannesburg.

2.3.2 The *Thirteenth Respondent* is Barclays Capital, a subsidiary of Barclays. Barclays Capital is incorporated and registered under the company laws of the United States of America, with its principal place of business situated at 745 7th Avenue, New York, USA.

2.3.3 The *Fourteenth Respondent* is Credit Suisse a company incorporated and registered under the company laws of Switzerland, with its principal place of business situated at Paradeplatz 8 CH-8001 Zurich.

2.3.4 The *Fifteenth Respondent* is Commerzbank, a company incorporated and registered under the company laws of Germany with its principal place of business at Kaiserplatz, Frankfurt am Main.

2.3.5 The *Sixteenth Respondent* is Merrill Lynch operates as a subsidiary of Bank of America. Merrill Lynch is incorporated and registered under the company laws of United Kingdom, with its principal place of business at 2 King Edward Street, EC1A 1HQ London.

2.3.6 The *Seventeenth Respondent* is HSBC, a company incorporated and registered under the company laws of United Kingdom with its principal place of business at 8 Canada Square, London, United Kingdom.

2.3.7 The *Eighteenth Respondent* is ANZ, a company incorporated and registered under the company laws of Australia with its principal place of business at 833 Collins Street Docklands, Melbourne.

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2.3.8 The *Nineteenth Respondent* is Citibank, a subsidiary of Citigroup. Citibank is a company incorporated and registered under the company laws of United States with its principal place of business at 701 East, 60th Street, North Sioux Falls SD 57104, United States.

2.3.9 The *Twentieth Respondent* is JP Morgan Bank a company incorporated and registered under the company laws of the United States with its principal place of business situated at 1111 Polaris Parkway Columbus, OH 43240 USA.

2.3.10 The *Twenty First Respondent* is Standard Bank, a company incorporated and registered under the company laws of the Republic of South Africa with its principal place of business at 9th Floor, Standard Bank Centre, 5 Simmonds Street Johannesburg, Gauteng Province.

2.3.11 The *Twenty Second Respondent* is Nomura, a company incorporated and registered under the company laws of the United Kingdom with its principal place of business at Angel Lane, London EC2R 3AB, United Kingdom.

2.3.12 The *Twenty Third Respondent* is Macquarie, a company incorporated and registered under the company laws of Australia with its principal of business at 50 Martin Place, Sydney, NSW 2000, Australia."

2.4. These firms shall be referred to as the "respondents in the amended complaint". The respondents in the amended complaint as well as the respondents in the original complaint shall be referred to collectively as the "respondents".

2.5. The amendment further seeks to add a new conduct of market division.

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### 3. THE AMENDMENT

3.1. The amendment to add new respondents is in respect of their involvement in the conduct being investigated under the original complaint as well as the conduct in the amended complaint.

3.2. The conduct in the original complaint relates to price fixing arrangement. In the original complaint, the Respondents are alleged to have entered into an arrangement and/or agreement and/or a concerted practice to directly or indirectly fix prices in relation to bids, offers and bid-offer spreads in respect of spot trades, forward trades and futures trading through, inter alia, coordination/alignment of the bids, offers and bid-offer spreads that they quote to customers who buy and sell certain foreign currency pairs involving the ZAR."

~~3.3. All the respondents in the amended complaint are alleged to have engaged in the conduct described in 3.2 above. This conduct amount to price fixing which contravene section 4(1)(b)(i) of the Act.~~

3.4. The amendment in respect of the new conduct relates to market division and involves the respondents in the original complaint as well as in the respondents in the amended complaint.

### 4. THE ALLEGED CONDUCT IN CONTRAVENTION OF SECTION 4(1)(b)(i) & (ii) OF THE ACT

4.1. The respondents in the original complaint and the respondents in the amended complaint are alleged to have entered into an agreement and/or a concerted practice to directly or indirectly fix prices in relation to bids, offers and bid-offer spreads in respect of spot trades, forward trades and futures trading through, inter alia, coordination/alignment of the bids, offers and bid-offer spreads that they quote to customers who buy and sell certain foreign currency pairs involving the ZAR."

4.2. Further, the respondents in the original complaint and the amended complaint are alleged to have entered into an agreement and/or engaged in a concerted practice to divide markets by allocating customers.

4.3. In terms of the market division arrangement, one trader will withhold or pull its existing bid or offer from the market to allow the other trader to execute and complete his trade. This conduct effectively amount to temporal sharing of customers in that for a limited period of time the trader that is holding or pulling will not have his offers or bids available to customers to trade with.

4.4. The above mentioned conduct includes, but not limited, to the following currency pairs:

- i. US Dollar- Rand ("USD/ZAR")
- ii. Euro/South African Rand ("EUR/ZAR")
- iii. Turkish Lira/Rand ("TRY/ZAR")
- iv. Mexican Peso/Rand ("MXN/ZAR")

4.5. This conduct amount to price fixing and / or fixing of trading conditions and division of markets by allocating customers in contravention of section 4(1)(b) (i) & (ii) of the Act.

## 5. AMENDED INITIATION

5.1. On the basis of the above, I have reasonable grounds to believe that the Respondents have engaged in the direct and/or indirect fixing of prices and market division by allocation of customers in respect of bids, offers and bid-offer spreads for forex spot trades, future trading and forward trades in contravention of section 4(1)(b)(i) and (ii) of the Act.

5.2. I therefore amend the original complaint to add new respondents as well as the new conduct as follows:

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5.2.1. In respect of the new respondents, add the Twelfth to Twenty-Third Respondent for having an agreement and/or engaging in a concerted practice to directly or indirectly fix prices in relation to bids, offers and bid-offer spreads in respect of spot trades, forward trades and futures trading in contravention of section 4(1)(b)(i) of the Act; and

5.2.2. In respect of the new conduct, add the First to the Twenty-Third Respondent for having an agreement and/or engaging in a concerted practice to divide market by allocation customers in contravention of section 4(1)(b)(ii) of the Act.

  
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**TEMBINKOSI BONAKELE**  
**COMPETITION COMMISSIONER**  
**DATE:**

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## INITIATION STATEMENT

### 1. INTRODUCTION

- 1.1. This is an initiation of a complaint by the Competition Commissioner in terms of section 49B(1) of the Competition Act 89 of 1998, as amended ("the Act").

### 2. BACKGROUND

- 2.1. The Competition Commission of South Africa ("Commission") has received information ("the information") that indicates the existence of an agreement and/or a concerted practice in the foreign currency exchange ("forex") market in relation to Rand based currency pairs.
- 2.2. The information indicates that Barclays Bank Plc ("Barclays"); Barclays Africa Group Ltd; BNP Paribas ("BNP"); BNP Paribas South Africa ("BNP SA"); Citigroup Inc. ("Citigroup"); Citigroup Global Markets (Pty) Ltd ("Citigroup Global"); JP Morgan Chase & Co ("JP Morgan"); and JP Morgan South Africa ("JP Morgan SA"), Investec Ltd ("Investec"), Standard New York Securities Inc. ("STD NY") and Standard Chartered Bank ("STD Chartered"), (hereinafter referred to as the Respondents) are involved in direct or indirect fixing of prices in relation to bids, offers and bid-offer spreads in respect of spot trades<sup>1</sup>, forward trading<sup>2</sup> and future trades<sup>3</sup> in the forex market in contravention of section 4(1)(b)(i) of the Act.
- 2.3. The Information indicates that the above conduct may have commenced in or about 2008 and may be on-going.

<sup>1</sup>The spot transaction is where a trade is done immediately and executed at the current spot rate at that specific point in time.

<sup>2</sup>A forwards transaction is between traders and relates to where rates and quantity of currency being bought or sold are agreed ahead of time at a price set now and the sale is concluded at the point of agreement. The transaction takes place at a date in the future but at prices agreed upon today.

<sup>3</sup>A futures transaction is between traders and involves a clearing house. It relates to transactions that give the investor the right to buy or sell an underlying currency at a fixed exchange rate at a specified date in the future.

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### 3. THE RESPONDENTS

- 3.1. The *First Respondent* is Barclays, a company registered and incorporated under the company laws of the United Kingdom, with its principal place of business situated at 1 Churchill Place, London, United Kingdom.
- 3.2. The *Second Respondent* is Barclays Africa, a subsidiary of Barclays. Barclays Africa is a company registered and incorporated under the company laws of South Africa, with its principal place of business situated at 7<sup>th</sup> floor, Barclays Towers West, 15 Troye Street, Johannesburg.
- 3.3. The *Third Respondent* is BNP, a company registered and incorporated under the company laws of France, with its principal place of business situated at Boulevard de Italiens, Paris, France.
- 3.4. The *Fourth Respondent* is BNP SA, a subsidiary of BNP. BNP SA is a company registered and incorporated under the laws of the Republic of South Africa with its principal place of business situated at 2nd Floor, 11 Crescent Drive, Melrose Arch, Johannesburg.
- 3.5. The *Fifth Respondent* is Citigroup, a company registered and incorporated under the company laws of the United States with its principal place of business situated at 339 Park Avenue, New York City.
- 3.6. The *Sixth Respondent* is Citigroup Global, a subsidiary of Citigroup. Citigroup Global is a company registered and incorporated under the laws of the Republic of South Africa with its principal place of business situated at 145 West Street, Sandown, Sandton, Johannesburg, 2196.
- 3.7. The *Seventh Respondent* is JP Morgan, a company registered and incorporated under the company laws of the United States with its principal place of business situated at 270 Park Avenue, New York City.

- 3.8. The *Eighth Respondent* is JP Morgan SA, a subsidiary of JP Morgan. JP Morgan SA is a company registered and incorporated under the laws of the Republic of South Africa with its principal place of business situated at 1 Fricker Rd, Sandton, Johannesburg, 2196.
- 3.9. The *Ninth Respondent* is Investec, a company registered and incorporated under the laws of the Republic of South Africa with its principal place of business situated at 100 Grayston Drive, Sandown, Sandton, Johannesburg, 2196
- 3.10. The *Tenth Respondent* is STD Bank NY, a company registered and incorporated under the laws of United States of America; with its principal place of business situated at 520 Madison Avenue, 28<sup>th</sup> Floor New York NY 10022
- 3.11. The *Eleventh Respondent* is STD Chartered, a company registered and incorporated under the laws of the United States of America; with its principal place of business situated at 1095 Avenue of America, 37 New York NY 10036.
- 3.12. The Respondents are competitors in the forex market as contemplated in section 4(1) of the Act.

#### 4. THE FOREX MARKET

- 4.1 The forex market consists of buyers, sellers and traders who interact by exchanging one currency for another, i.e. Currency trading. Currency trading entails buying and selling of currencies of different countries. Currency trading occurs in pairs in that a currency is exchanged for another, for example exchange of Rands in Dollars.
- 4.2. The pairing is expressed, for example, as follows: USD/ZAR. A currency pair therefore consists of two currencies. The left hand side in the USD/ZAR example is known as either the buy side or bid side (BUY/SELL) (USD) while the right hand side is known as either the sell side or the offer side

(BID/OFFER) (ZAR). In this example, the USD is being bought with the ZAR. The USD becomes the buy side or the bid side while the ZAR becomes the sell side or the offer side. This therefore means the ZAR is being used to buy the USD.

**5. THE ALLEGED CONDUCT IN CONTRAVENTION OF SECTION 4(1)(b)(i) OF THE ACT**

5.1 The traders of the respondents use the Bloomberg electronic messaging platform to communicate in the course of their trading activities ("chat rooms"). This messaging platform enables the traders to communicate on an on-line and near real time basis thus enabling frequent, short and rapid exchange of information between traders, i.e. instant messaging.

5.2 The traders use this messaging platform to share information which is used to manipulate prices of foreign currencies. They log into the messaging platform and communicate about how much should be charged for a particular spread of dollar/Rands. For, instance, a trader will suggest that if there is demand or supply of US\$25 million from sellers and buyers of Rands, the spread should be maintained at 125. In response, the other traders then either suggest a different amount of spread or agree to the original suggested spread amount of 125. The purpose of this discussion is to ensure that all the traders charge a specific spread for a specific amount of currency. This eliminates competition amongst traders for the businesses of sellers and buyers of Rands who wish to exchange currencies.

5.3 The Respondents being competitors in the forex market have entered into an arrangement and/or agreement and/or a concerted practice to directly or indirectly fix prices in relation to bids, offers and bid-offer spreads in respect of spot trades, forward trades and futures trading through, *inter alia*, coordination/alignment of the bids, offers and bid-offer spreads that they quote to customers who buy and sell certain foreign currency pairs involving the ZAR.

5.4 The respondents exchanged confidential or competitively sensitive information in order to coordinate/align prices of bids, offers and bid-offer spreads for spot trades, future trading and forward trades.

5.5 The conduct includes, but not limited, to the following currency pairs:

- i. US Dollar- Rand ("USD/ZAR")
- ii. Euro/South African Rand ("EUR/ZAR")
- iii. Turkish Lira/Rand ("TRY/ZAR")
- iv. Mexican Peso/Rand ("MXN/ZAR")


5.6 The above conduct may constitute direct or indirect price fixing in contravention of section 4(1)(b)(i) of the Act.

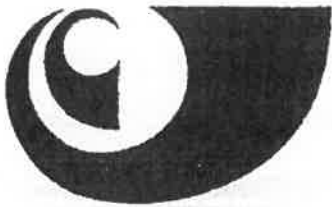
## 6. INITIATION

6.1. On the basis of the above, I have reasonable grounds to believe that the Respondents have engaged in the direct and/or indirect fixing of prices of bids, offers and bid-offer spreads for forex spot trades, future trading and forward trades in contravention of section 4(1)(b)(i) of the Act.

6.2. I therefore initiate a complaint in terms of section 49B (1) of the Act against Barclays; Barclays Africa; BNP Paribas; BNP SA; Citigroup; Citigroup Global; JP Morgan; JP Morgan SA, Investec, STD NY and STD Chartered for an alleged contravention of section 4(1)(b)(i) of the Act.

6.3. The information indicates that the above conduct may have commenced in or about 2008 and may be on-going.

  
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**TEMBINKOSI BONAKELE**  
**COMPETITION COMMISSIONER**  
DATE: 01-04-2015



# Competition commission south africa

## Complaint

### Form CC-1

#### About this form

This form is issued in terms of section 49B of the Competition Act.

This form must be completed to the best of your ability and submitted to the Competition Commission for consideration of your complaint.

If the complaint is lodged by a person other than the complainant, provide contact details of the person authorized to discuss the complaint.

This form is a public record. However, the detailed description of confidential and other information relating to this complaint is not part of the public record unless the commission refers the complaint to the Competition Tribunal. You have a right to identify information that you believe is confidential by completing form CC-2 and submitting it with the form.

#### Contacting the Commission

The Competition Commission  
Private Bag 222  
Lynnwood Ridge  
Pretoria 0040  
Republic of South Africa  
Tel: 27 012 394 3226  
fax: 27 012 394 0166  
e-mail: cesa@compcom.co.za

To: The Competition Commission

From:

Name of person submitting complaint

The Competition Commissioner: Tembinkosi Bonakele

- Barclays Bank Plc; Barclays Africa Group Ltd; BNP Paribas; BNP Paribas South Africa; Citigroup Inc; Citigroup Global Markets (Pty) Ltd; JP Morgan Chase & Co; and JP Morgan South Africa; Investec Ltd; Standard New York Securities Inc; Standard Chartered Bank; ABSA Bank Ltd; Barclays Capital Inc; Credit Suisse Group; Commerzbank AG; Bank of America Merrill Lynch International Ltd; HSBC Bank Plc; Australia and New Zealand Banking Group Ltd; Citibank N.A.; JP Morgan Chase Bank N.A.; Nomura International Plc; and Macquarie Bank Limited.

#### Description of the complaint:


The above Respondents being competitors in the foreign exchange market are alleged to have been engaged in exchange of confidential and/or sensitive information with regards to bid offer spreads, forex futures and/or forwards spreads, price fixing or fixing of trading conditions and market division by allocating customers in the foreign exchange market in possible contravention of section 4(1)(b)(i) and (ii) of the Competition Act 89 of 1998, as amended.

THE COMPETITION COMMISSION  
2016-08-31  
Private Bag 222 Lynnwood Ridge 0040

Name and title of Person authorised to sign:

Authorised Signature

Date



23 August 2016

For Office Use Only

Commission file number

Date filed

2015/APP/0147

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# "APPENDIX 1"

## APPENDIX 1

### GLOSSARY OF TERMS / DEFINITIONS:

#### 1 Bid or offer/ ask rate:

- 1.1 **Bid:** a FX rate / price at which the banker or dealer or generally the quoting party is willing to buy the base currency (against paying the quote currency);
- 1.2 **Ask:** a FX rate / price at which the banker or dealer or generally the quoting party is willing to sell ("ask" or "offer") the base currency (against receiving the quote currency).
- 1.3 **Fake bids or fake asks:** Posting a fake bid or ask rate to mislead the market towards a particular direction.

#### 2 Bid/ask spread:

- 2.1 The spread is the difference between the bid price and the ask/offer price. It represents substantially the gross profit margin of the dealer/trader.
- 2.2 **Wide spread:** A wide spread is a large difference between a bid and ask price and thus a larger profit margin.
- 2.3 **Narrow spread:** A narrow spread is a small difference between the bid and ask price and thus a smaller profit margin. A narrow spread represents a competitive market.

1 These definitions provide the common understanding of the terms in Forex Trading. The meaning of a term may differ depending on its use by specific dealers or traders and the context in which it is used.

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**3 Bloomberg instant messaging platform:**

3.1 The Bloomberg system is an online information house that provided traders with headlines and breaking news. The Bloomberg instant messaging platform was a messaging platform accessed on the Bloomberg system. Permanent and non-permanent chatrooms could be created on the instant messaging platform.

**4 FIX:**

4.1 The FIX or WM/Reuters Fixing is a financial benchmark rate used in the foreign exchange market and which is determined for a large number of foreign exchange rates, e.g. EUR/USD, GBP/USD or USD/ZAR. The benchmark rate is calculated at several times of each day but the benchmark determined at 4pm London time is the most widely used in financial markets (also referred to as the 4pm FIX). As the context requires, Fixing or the FIX may also refer to the process of determining the benchmark. The WM/Reuters Fixing or FIX for a particular currency pair (e.g. USD/ZAR) is based on the median, i.e. the most frequent exchange rates of all recorded foreign exchange transactions in the relevant currency pair just around the fixing time. The WM/Reuters Fixing or FIX is used by many institutional investors or in many derivative or other transactions linked to foreign exchange to determine a generally accepted ("official") rate for the day, e.g. for the purpose of settling transactions, calculating net asset values etc. that involve other currencies.

4.2 The trader would be required to trade at the fixing rate which is determined from transactions and quotes during the 1 minute interval – as the final FIX is

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not known until sometime later this is risky for the trader and they would normally charge a fee/cost/margin to their client for trading at the FIX.

**5 Flatlining:**

5.1 A practice of traders withholding or withdrawing quotes in order to allow a single bank to dominate the market with its quotations, thereby setting the exchange rate for the period.

**6 Focal points:**

6.1 The levels of the spot rate at which coordination takes place.

**7 Forex Market:**

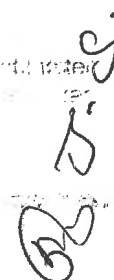
7.1 A decentralised interbank market trading in foreign currency.

**8 Forward trades:**

8.1 Trades typically for a future date – at a specified point of time and at an exchange rate agreed when entering into the agreement.

**9 Iceberg trades / hiding trades:**

9.1 A practice of consolidating trading positions by hiding or packing offers behind each other so it appears that there are fewer, or only one offer in the market.  
Can be done on your own or with other traders.



**10 Liquidity:**

10.1 Liquidity refer to the ease with which an asset, or a financial product, can be converted into cash without affecting its market price.

**11 Market makers:**

11.1 Banks and dealers that hold a key role in enabling participants to transaction as and when required, increasing the liquidity. They are committed to offer to buy and sell on a continuous basis by providing bid and ask/offer rates to their clients and the market. They are central to the exchange of price relevant information and the prices disseminated by market makers in the form of buy (bid) and sell (offer) quotes are important guidance for the price information.

**12 Mid-Market:**

12.1 The mid-market is the overall market rate / level of the currency exchange rate of two currency pairs. It is usually the mid-point between the bid and the ask/offer price.

**13 Price manipulation:**

13.1 When traders engage in coordinated activity to artificially change the true (fair) value of an asset to benefit their own trading positions and gain a profit.

13.2 When traders engage in coordinate activity to artificially change the true (fair) value of an asset to benefit their own trading positions and gain a profit.

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**14 Pulling or holding bids:**

14.1 **Holding** a bid is choosing not to put the bid in the market.

14.2 **Pulling** a bid is removing a bid that had been placed in the market.

**15 Pips:**

15.1 "Percentage in point", is the smallest unit of price or price difference used in the foreign exchange market for a particular currency pair. Most FX rates are quoted up to 4 decimal places and therefore 0.0001 is the smallest unit or change for quoted prices. Pips are often used to express the difference between two prices, e.g. the bid/ask spread being the difference between the bid and ask price.

**16 Short and long position:**

16.1 **Short** is when you sell something or are not in possession of something.

16.2 **Long** is when you buy something or have possession of it.

**17 Skewing:**

17.1 The manner in which traders offer a price (attractive offers or bad offers) in order to change or keep their position.

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**18 Spike / Spiking:**

18.1 A spike is a significantly large upward or downward movement of a price within a short period of time.

**19 Spoofing:**

19.1 Also known as "bluffing", is a type of market manipulation in which a trader places a large order or shows a bid/ask quote for a large amount to buy or sell a currency, but has no intention of actually executing the trade. The aim of the trader, or "spoofer", is to create an artificial impression of high(er) demand or supply for the currency or the impression of demand/supply for the currency at a different price. The strategy relies on other market participants adjusting their prices and their intention to buy or sell to reflect what they perceive to be a genuine order or quote. The spoofer then places smaller orders or executes small transactions for the same currency, profiting on the increase or decrease in price brought about by the large fictitious order, which is cancelled or withdrawn before it is executed.

**20 Spot exchange rate:**

20.1 The current price level in the market to directly exchange one currency for another.

**21 Spot rate:**

21.1 The spot rate, or "spot price", is the price quoted for immediate settlement on a currency, i.e. it is the current market value of the currency at the moment of

the quote. The value depends on buyers' demand and their willingness-to-pay, as well as how much sellers are willing to accept.

**22 Spot Transactions:**

22.1 Spot foreign exchange transactions are agreement between two parties to exchange two currencies at an agreed rate in a short time – two days or less.

**23 Trading platforms:**

23.1 **International platforms:** shared electronic platforms, such as Reuters / Thompson-Reuters and Bloomberg, used by banks/dealers for trading in the Forex Market.

23.2 **Third party platforms:** an internal trading platform not accessible by all dealers/traders.

23.3 **Barx:** Barclays internal electronic trading platform.

**24 Whacking:**

24.1 Selling at or below the current market bid price or buying at or above the current market ask price, which drives the price lower or higher.

**25 Walking-up / Walking-down:**

25.1 A pattern of behaviour where a trader either consecutively bids higher and higher, or lower and lower. This is done to move the market and thus the price either up or down.

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