IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, Plaintiff, v. UBS SECURITIES JAPAN CO., LTD., Defendant.	Case No. 3:12-cr-00268-RNC JOINT SENTENCING MEMORANDUM

The defendant, UBS Securities Japan Co., Ltd. ("UBSSJ"), and the Government jointly submit this memorandum in advance of the sentencing scheduled for September 18, 2013. For the reasons set forth below, the parties respectfully submit that the sentence set forth in the plea agreement, which has been presented to the Court for its consideration pursuant to Rule 11(c)(1)(C), is appropriate and in accordance with the requirements of 18 U.S.C. § 3553(a). The parties therefore request that the Court accept the plea agreement and impose a sentence that is consistent with the agreement's terms.

I. PRELIMINARY STATEMENT

UBSSJ is a Japan-based financial institution offering investment banking and wealth management services. As part of its investment banking services, UBSSJ maintains a trading desk in Tokyo that is responsible for trading various derivative products tied to the Yen London Interbank Offered Rate ("LIBOR") and the Euroyen Tokyo Interbank Offered Rate ("TIBOR"). These benchmark rates are tabulated daily based on the submissions of selected panel banks, including UBSSJ's parent corporation, UBS AG.

Between approximately 2006 and 2009, traders working on the UBSSJ trading desk sought to influence the published Yen LIBOR and Euroyen TIBOR rates to benefit their trading positions by seeking favorable adjustments to UBS AG's Yen LIBOR and Euroyen TIBOR

submissions, as well as those of other panel banks. UBSSJ accepts responsibility for the misconduct of these employees.

On December 19, 2012, UBSSJ pleaded guilty, pursuant to a Rule 11(c)(1)(C) plea agreement (the "Plea Agreement"), to an Information filed by the Criminal Division of the Department of Justice ("DOJ" or the "Criminal Division") charging UBSSJ with one count of wire fraud, 18 U.S.C. § 1343, relating to this Yen LIBOR and Euroyen TIBOR misconduct. The Plea Agreement is part of a global resolution of criminal, civil, and regulatory actions brought against UBSSJ and its parent corporation, UBS AG, by prosecutors and regulators in the United States, the United Kingdom, Switzerland, and Japan for misconduct relating to various benchmark rates. These resolutions collectively impose approximately $1.5 billion in penalties, fines, and disgorgement on UBS AG and UBSSJ, and require the adoption of stringent internal controls and compliance measures to prevent and detect any possible misconduct in the future.

A. The Plea Agreement

The parties pursued a comprehensive investigation into the Yen benchmark conduct for more than two years, during which UBS AG and UBSSJ provided extensive and highly valuable cooperation. In December 2012, DOJ proposed a resolution that included (1) a Non-Prosecution Agreement ("NPA") between the Government and UBS AG and, as a term and condition of the NPA, (2) a plea agreement, under the terms of which UBSSJ would plead guilty to one count of wire fraud, in violation of 18 U.S.C. § 1343, for its participation in a scheme to manipulate Yen benchmarks. UBS AG and UBSSJ agreed to that proposal. UBSSJ therefore accepted responsibility for its misconduct and entered into the Plea Agreement currently pending before this Court. Under the terms of the Plea Agreement, UBSSJ agrees to (i) plead guilty to the one-count criminal information filed in the District of Connecticut charging it with wire fraud in

violation of 18 U.S.C. §§ 1343 and 2; (ii) pay a criminal fine of $100 million; (iii) work with its parent corporation, UBS AG, to fulfill the compliance undertakings mandated in the agreements or orders entered in conjunction with this matter by the U.S. Commodity Futures Trading Commission ("CFTC"), the Swiss Financial Market Supervisory Authority ("FINMA"), and the Japanese Financial Services Authority ("JFSA"); and (iv) continue to cooperate fully with the Criminal Division and other U.S. and foreign law enforcement and government agencies that DOJ designates or requests.

As noted above, the Plea Agreement was negotiated within the larger context of the global benchmark rate investigation and the cumulative penalties and undertakings imposed on UBS AG and its subsidiaries, including those provided for in the Plea Agreement. Thus, the Plea Agreement is just one of the multiple resolutions to follow from a long-term, international investigation into the manipulation of various benchmark rates by employees of UBS AG and UBSSJ. This investigation culminated in a series of coordinated resolutions in December 2012 with law enforcement and government agencies in the United States, the United Kingdom, and Switzerland; regulatory authorities in Japan also participated in the investigation and took action in late 2011, resulting in the imposition of sanctions and remedial measures in 2012. Because the Plea Agreement is part of this larger context, the parties respectfully ask the Court to consider the related resolutions that have been implemented in order to understand and evaluate the proposed sentence and other terms contained in the Agreement. Accordingly, the following sections provide a brief summary of the investigation and its outcomes.

B. Non-Prosecution Agreement with the Department of Justice, Criminal Division (UBS AG)

In addition to the Yen LIBOR and Euroyen TIBOR misconduct, the investigation also identified efforts to manipulate at least four other LIBOR currencies. (NPA, App'x A at Part II).

In each instance, UBS traders sought to influence UBS's submissions to these benchmark rates to benefit their trading positions.

On December 18, 2012, the Criminal Division and UBS AG entered into an NPA for conduct related to UBS's submissions of benchmark interest rates. In the NPA, the Criminal Division agreed not to criminally prosecute UBS AG or its subsidiaries and affiliates, other than the present action against UBSSJ. In exchange, UBS AG agreed to (i) admit, accept, and acknowledge responsibility for certain misconduct related to the benchmark rates; (ii) pay a monetary fine of $500 million, with a deduction for any criminal fines paid by UBSSJ in connection with the present matter; (iii) strengthen its compliance and internal controls standards and procedures as required by agreements with or orders by the CFTC, the United Kingdom Financial Services Authority ("FSA"), FINMA, and the JFSA; and (iv) cooperate fully with the DOJ Fraud Section's ongoing investigation. Additionally, for a two-year period, UBS AG agreed (i) to commit no further violations of United States criminal law and (ii) to disclose to the Fraud Section certain criminal or regulatory violations, investigations, or proceedings. As stated above, as a term and condition of the NPA, UBS AG further agreed that UBSSJ would enter a plea of guilty in accordance with the terms of the Plea Agreement.

C. The CFTC Order Imposing Remedial Sanctions (UBS AG and UBSSJ)

The CFTC also participated in the investigation, in coordination with other agencies in the United States and in other nations. Based upon the results of the investigation, the CFTC concluded that UBS AG and UBSSJ violated Sections 6(c), 6(d) and 9(a)(2) of the Commodity Exchange Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2).

UBS AG and UBSSJ submitted an Offer of Settlement to the CFTC on December 18, 2012, to resolve the ongoing investigation; the CFTC adopted an Order accepting the Offer of

Settlement the following day. Pursuant to the CFTC's Order, UBS AG and UBSSJ agreed (i) to pay a $700 million civil penalty and (ii) to implement a detailed, 14-page compliance program to ensure the integrity and reliability of UBS's future benchmark interest rate submissions. (*See* Plea Agmt., Ex. 2). The mandated compliance program required substantial procedures for and oversight of benchmark rate submissions, including (i) a detailed methodology for determining UBS's submissions; (ii) supervisory review of benchmark rate submissions; (iii) qualifications required for UBS's submitters and their supervisors; (iv) limitations on the compensation of UBS's submitters and their supervisors; (v) firewalls to prevent UBS's submitters and traders from discussing UBS's benchmark submissions; (vi) extensive recordkeeping relating to UBS's benchmark rate submissions; (vii) implementation of an aggressive auditing and monitoring program to ensure the integrity of UBS's submissions; (viii) adoption of revised policies, procedures, and controls relating to UBS's benchmark rate submissions; (ix) development of a training program about UBS's policies for benchmark rate submissions; and (x) periodic reporting to the CFTC regarding UBS's progress in adopting the required compliance measures. UBS AG and UBSSJ have already made substantial progress in complying with the CFTC undertakings, including the adoption of a global benchmark submissions policy and the implementation of new submission and oversight processes.

D. The Final Notice Adopted by the United Kingdom Financial Services Authority (UBS AG)

Based on the investigation, the FSA ultimately concluded that UBS AG's conduct breached Principle 3 (reasonable care to organize and control affairs responsibly and effectively, with adequate risk management systems) and Principle 5 (proper standards of market conduct) of

the FSA's Principles for Business.[1] UBS AG agreed to the terms of a settlement with the FSA in mid-December 2012 and, on December 19, 2012, the FSA adopted a Final Notice imposing a financial penalty of £160 million (approximately $260.3 million) on UBS AG. The FCA continues to exercise regulatory oversight over the benchmark submission process of UBS and its affiliates in the U.K.

E. The Order Adopted by the Swiss Financial Market Supervisory Authority (UBS AG)

Based on the investigation, and working in coordination with other agencies, FINMA initiated supervisory proceedings against UBS AG and concluded that UBS AG (i) inappropriately assigned responsibility for its benchmark rate submissions; (ii) employed deficient risk identification processes and inadequate risk mitigation measures; (iii) maintained inadequate supervision of benchmark rate submissions; and (iv) violated proper business conduct requirements. On December 14, 2012, FINMA closed its proceedings with an Order that (i) admonished UBS for its violations of Swiss financial market laws; (ii) required supervisory measures intended to strengthen UBS's benchmark rate submissions process; and (iii) imposed disgorgement totaling CHF 59 million (approximately $64.7 million).

F. Administrative Actions by the Japanese Financial Services Authority (UBS AG and UBSSJ)

Based on information discovered during the investigation revealing misconduct with respect to Yen LIBOR and Euroyen TIBOR, the Japanese Securities and Exchange Surveillance Commission ("JSESC") conducted an inspection of UBSSJ. The JSESC determined that UBSSJ violated the Financial Instruments and Exchanges Act and recommended that the JFSA take

[1] On April 1, 2013, the U.K. FSA was reorganized and divided into two agencies. The component of the FSA that participated in the investigation and adopted the Final Notice is now part of the Financial Conduct Authority (the "FCA").

administrative actions. On December 16, 2011, the JFSA issued administrative actions against UBSSJ that (i) ordered it to cease engaging in derivatives transactions related to LIBOR and Euroyen TIBOR from January 10–16, 2012; (ii) imposed a business improvement order requiring UBSSJ to implement compliance and preventive measures to prevent future misconduct related to benchmark submissions; and (iii) required UBSSJ to provide periodic reports to the JFSA about its implementation of the business improvement order. On the same day, the JFSA issued separate administrative actions against the Japanese bank branch of UBS AG that required it (i) to adopt compliance and internal control system to ensure sound and appropriate business operations; (ii) to develop and submit a business improvement plan; (iii) and to provide periodic reports to the JFSA about the implementation of the business improvement plan.

Following the JFSA's actions, the Tokyo Financial Futures Exchange and the Financial Futures Association also imposed monetary penalties on UBSSJ of JPY 10 million (approximately $100,000) and JPY 3 million (approximately $30,000), respectively.

G. Related Civil Actions

Private plaintiffs have filed more than 50 civil actions against UBS AG in state and federal courts in the United States alleging misconduct with respect to various benchmark rates. *See, e.g., In re LIBOR-Based Financial Instruments Antitrust Litigation*, No. 1:11-md-002262-NRB (S.D.N.Y. transferred Aug. 21, 2011); *Salix Capital US Inc. v. Bank of America Securities LLC*, No. 1:13-cv-04018-NRB (S.D.N.Y. filed June 12, 2013) (removed from Supreme Court of New York, County of New York, Case No. 651823-13). The damages sought by these actions are significant and include claims under the Sherman Act and RICO, which allow plaintiffs to seek treble damages. Additionally, UBSSJ and UBS AG have been named in a class-action

complaint filed in the Southern District of New York, *Laydon v. Mizuho Bank, Ltd.*, Case No. 12-cv-3419 (S.D.N.Y. April 15, 2013), for alleged misconduct relating to Yen LIBOR and Euroyen TIBOR.

H. Related Criminal Actions

In addition to the panoply of criminal, civil, and regulatory actions against UBS AG and UBSSJ, law enforcement agencies in the United States and the United Kingdom are pursuing criminal charges against former UBS employees allegedly involved in the misconduct.

On December 12, 2012, the Criminal and Antitrust Divisions of the Department of Justice filed a criminal complaint against Tom Alexander William Hayes and Roger Darin in the Southern District of New York. *United States v. Hayes*, No. 1:12-mj-03229 (S.D.N.Y. filed Dec. 12, 2012). UBSSJ previously employed both individuals on its Yen trading desk in Tokyo. The complaint charges Mr. Hayes with wire fraud and conspiracy to commit wire fraud, in violation of 18 U.S.C. §§ 1343, 2, and 1349, as well as an antitrust violation under 15 U.S.C. § 1. Mr. Darin is charged with one-count of conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349.

On June 18, 2013, the U.K. Serious Fraud Office ("SFO") also charged Mr. Hayes with eight counts of conspiracy to defraud. Mr. Hayes is currently released on bail and is expected to enter a plea to the charges in October 2013.

II. LEGAL STANDARD

Rule 11(c)(1)(C) authorizes the government to enter into plea agreements with defendants in which the parties agree that a particular sentence is the appropriate disposition of the case. *See* Fed R. Crim. P. 11(c)(1)(C). The Court, however, "retains absolute discretion

whether to accept a plea agreement." Fed. R. Crm. P. 11, Advisory Committee notes to 1999 Amendments. As a plurality of the Supreme Court has observed:

> Federal sentencing law requires the district judge in every case to impose a sentence sufficient, but not greater than necessary, to comply with the purposes of federal sentencing, in light of the Guidelines and other § 3553(a) factors. The Guidelines provide a framework or starting point--a basis, in the commonsense meaning of the term--for the judge's exercise of discretion. Rule 11(c)(1)(C) permits the defendant and the prosecutor to agree that a specific sentence is appropriate, but the agreement does not discharge the district court's independent obligation to exercise its discretion.

Freeman v. United States, 131 S. Ct. 2685, 2692 (2011) (plurality opinion). In exercising that discretion, while the district court may accept or reject the proposed Rule 11(c)(1)(C) plea agreement, it may not modify the agreement's terms. *Id.*; *United States v. Cunavelis*, 969 F.2d 1419, 1422 (2d Cir. 1992).

III. THE RELEVANT CONSIERATIONS UNDER SECTION 3553(a), INCLUDING THE SENTENCING GUIDELINES

A. The Applicable Sentencing Guidelines Range

As set forth in the PSR (PSR ¶¶ 37–51), the Probation Office has determined that the Sentencing Guidelines provide for a fine range of $72.5 to $145 million, based upon the following calculation: a base offense level of 7, pursuant to U.S.S.G. 2B1.1(a)(1) (*id.* ¶ 38); an increase of 24 levels, pursuant to U.S.S.G. § 2B1.1(b)(1)(M), based on a loss amount of more than $50 million (*id.* ¶ 39); an increase of 6 levels, pursuant to U.S.S.G. § 2B(b)(2)(C), because the conduct harmed 250 or more victims (*id.* ¶ 40); an increase of 2 levels, pursuant to U.S.S.G. § 2B1.1(b)(10); a base fine amount of $72.5 million, corresponding to an offense level of 38 or more, pursuant to the fine table set forth in U.S.S.G. 8C2.4(d) (*id.* ¶ 51);[2] a total culpability score of 5, based on the provisions of U.S.S.G. § 8C2.5 (*id.* ¶¶ 43-50); and a resulting multiplier range

[2] Under the fine table, a higher offense level would not produce a higher base fine, because the highest offense level listed is "38 or more," which corresponds to the highest listed fine amount of $72.5 million.

of 1.00 to 2.00, pursuant to U.S.S.G. § 8C2.6 (*id.* ¶ 51). That multiplier, applied to the base fine range set forth in the fine table, produces a fine range of $72.5 million to $143 million. The agreed upon fine amount of $100 million, as set forth in the Plea Agreement, falls squarely within the guideline range calculated in the PSR.

Neither party objects to the PSR's calculation of the guideline range.[3] Moreover, neither party is advocating for a departure from that range, and the PSR does not identify any circumstances that would warrant a downward or upward departure. (PSR ¶ 58). Finally, the PSR indicates that the Probation Office is not aware of any factor that would warrant a sentence outside of the guideline range. (PSR ¶ 58). For the reasons discussed below, the parties take the same position.

B. The Nature and Circumstances of the Offense, the History and Characteristics of the Defendant, and the Need for the Sentence Imposed To Achieve The Purposes Set Forth in § 3553(a)(2)

In accordance with 18 U.S.C. § 3553(a), the Court's evaluation of the penalty proposed in the Plea Agreement should be based upon its consideration of, among other factors, the prior history and characteristics of UBSSJ and the nature and circumstances of the offense (§ 3553(a)(1)), along with the need for the sentence imposed to reflect the seriousness of that misconduct, to promote respect for the law, to provide for just punishment, to afford adequate

[3] As the PSR accurately states (PSR ¶ 37), while the parties do not object to the guideline calculation set forth in the report, both recognize that based on the available evidence, the relevant guideline provisions, and the applicable legal standards, the Court could calculate the guideline range in other ways. Accordingly, the Government and the defendant would each reserve the right to challenge this calculation in a contested sentencing proceeding. The parties further anticipate that in such circumstances, it is highly likely that arguments would be presented regarding the propriety of departures and variances from any range the Court calculated. The parties expect that if such litigation were necessary, it would be protracted and would consume substantial resources. The parties also agree that such proceedings would create significant litigation risk for each side and would undermine objectives of the agreed-upon dispositions that they have negotiated in this matter, which include the NPA and the Plea Agreement. While the parties therefore are not posing any objection to the guideline calculation set forth in the PSR, each acknowledges that, at this time, it is not possible to take a final and definitive position regarding how the Guidelines should or would be applied following the extensive investigation and litigation that would occur as part of a contested sentencing process.

deterrence, and to protect the public from any further crimes of the defendant. (§ 3553(a)(2)(A-C)). The parties submit that the proposed sentence contained in the Plea Agreement—as well as the provisions of the NPA between the Government and UBS AG, which incorporates the Plea Agreement—achieves those objectives.

1. The Nature and Circumstances of the Offense [§ 3553(a)(1)]

The nature and circumstances of the offense are discussed in considerable detail in the agreed-upon factual statements that form part of both the NPA and the Plea Agreement. (*See* Plea Agmt., Exs. 3 and 4; NPA, App. A). The PSR also contains a summary of the relevant facts that is fully consistent with those statements. (PSR at ¶¶ 9-27). In light of this existing record, the parties will not attempt to include yet another comprehensive recitation of the relevant facts in this submission.

The Plea Agreement provides the following overview of the defendant's offense conduct:

> From as early as 2006 through at least June 2010, certain UBSSJ derivatives traders requested and obtained benchmark interest-rate submissions which benefited their trading positions. This conduct occurred frequently beginning in 2006, in Zurich, Tokyo, and elsewhere, when several UBSSJ employees engaged in sustained, wide-ranging, and systematic efforts to manipulate Yen LIBOR and, to a lesser extent, Euroyen TIBOR, to benefit UBSSJ's trading positions. This conduct encompassed hundreds of instances in which UBS and UBSSJ employees sought to influence benchmark rates; during some periods, UBS and UBSSJ employees engaged in this activity on nearly a daily basis. In furtherance of these efforts to manipulate Yen benchmarks, UBS and UBSSJ employees used several principal and interrelated methods, including the following:
>
> (1) internal manipulation of UBS's Yen LIBOR and Euroyen TIBOR submissions;
>
> (2) use of cash brokers to influence other Contributor Panel banks' Yen LIBOR submissions by disseminating misinformation; and
>
> (3) efforts to collude directly with employees at other Contributor Panel banks, either directly or through brokers, in order to influence those banks' Yen LIBOR submissions.

(Plea Agmt., Ex. 4 at ¶ 17). Various details and examples of such conduct are set forth in attachments to the Plea Agreement and the NPA, and also in the PSR. As those materials further indicate: "Because of the widespread use of LIBOR in financial markets, this rate plays a fundamentally important role in financial systems around the world." (PSR ¶ 18). Moreover, "[t]he market for derivatives and other financial products linked to benchmark interest rates for the Yen is global and is one of the largest and most active markets for such products in the world." (*Id.*). Such products are traded in the U.S. and numerous other locations. Accordingly, a scheme to manipulate Yen benchmarks has widespread and grave implications.

The parties fully recognize that the offense conduct at issue in this case is extremely serious. Indeed, that has never been in dispute during either the extensive investigative work or the negotiations that led to the disposition that has now been presented to the Court for its consideration. But for the nature and seriousness of this conduct, neither side would have entered into the resolution set forth in the NPA, nor would the parties be asking the Court to consider and accept a proposed sentence. For the Government, this factor represents one of the principal reasons for its decision to bring a criminal charge against the defendant-company. And for UBS AG and UBSSJ, the acknowledgment of this factor, along with their response to the offense conduct once it became the focus of investigative attention, is at the core of their acceptance of responsibility, as recognized in the PSR. (PSR ¶ 28). Both sides also acknowledge the significance of this factor within the Court's sentencing analysis.

2. The History and Characteristics of UBSSJ [§ 3553(a)(1)]

Before the global benchmark rate investigation, neither UBSSJ nor its predecessor entities had any prior history of criminal or civil adjudications.[4] (PSR at ¶ 29). However, as discussed above, the CFTC and the JFSA imposed sanctions against UBSSJ for the same Yen LIBOR and Euroyen TIBOR conduct addressed by the Plea Agreement; the Tokyo Financial Futures Exchange and the Financial Futures Association have similarly imposed monetary penalties. (*See supra* Parts I.C & I.F). Additionally, between 2004 and 2012, UBSSJ and its predecessor were the subject of various regulatory actions by financial industry regulators, including the JFSA, Japan Securities Dealers Association, Tokyo Financial Futures Exchange, and the Financial Futures Association. These incidents involved non-compliance with industry-specific regulations and resulted in only modest sanctions, including fines and personnel actions. (PSR at ¶ 29).

3. The Need for the Sentence To Reflect the Seriousness of the Offense, To Promote Respect for the Law, To Provide Just Punishment, To Afford Adequate Deterrence, and To Protect the Public from Further Crime [§ 3553(A)(2)]

The parties submit that the penalty proposed in the Plea Agreement, especially when viewed within the framework of the NPA, is appropriate in light of the nature and seriousness of the offense conduct and also serves the purposes outlined in § 3553(a)(2) (A-C). In support of this position, and among other features of the NPA and the Plea Agreement, we urge the Court to consider the following factors.

UBSSJ has been required to plead guilty to a felony violation of U.S. law and therefore has accepted criminal responsibility for its conduct. While this point seems obvious in the context of

[4] UBSSJ is the defendant in this case. Accordingly, the PSR addresses only the prior history of UBSSJ and its predecessors. However, the Criminal Division considered UBS AG's prior history of misconduct, as mitigated by its recent record of cooperation and compliance, in arriving at the decision to propose a resolution with UBS AG that included both the Plea Agreement and the NPA. (NPA at 2–3).

a sentencing proceeding, its significance should not be overlooked or understated. Very few financial institutions have faced criminal charges. For UBSSJ, which is a sizeable and active organization operating in heavily regulated financial markets,— as well as for UBS AG, a publicly traded, international company participating in financial markets and banking activities around the world—the entry of a guilty plea gives rise to significant risks and negative ramifications. Most notably, a criminal conviction could jeopardize a number of essential operating licenses for UBS AG and UBSSJ, along with other UBS AG subsidiaries, including the Type I Financial Instruments Business Operator registration that is required to operate in Japan. A conviction will also harm the reputation of UBS AG and UBSSJ and damage its relationships with current and future customers. The guilty plea could further lead to a reduction in investor confidence and, because UBS AG is a significant player in global financial markets, could therefore increase uncertainty regarding its ability to operate effectively in those markets.

Similarly, in connection with UBSSJ's plea and UBS AG's NPA, both the parent organization and the defendant-subsidiary have admitted the facts that constitute the offense conduct. (Plea Agmt., ¶ 11; NPA at 1).[5] These admissions reflect both the defendant's culpability and its acceptance of responsibility and amplify the potential adverse consequences of the plea, as discussed above. For example, by acknowledging the relevant facts, UBSSJ and UBS AG are exposed to heightened risks in civil litigation, regulatory proceedings, and state or federal enforcement actions. Their admissions can also form the basis for future federal prosecution in the event of a violation of either the Plea Agreement or the NPA. (Plea Agmt., ¶¶ 12, 13, 20; NPA at 4).

The financial penalty is also substantial. If the Plea Agreement is accepted, UBSSJ will be required to pay a fine of $100 million. That amount, in itself, is significant and will serve the

[5] UBS AG has also agreed not to make any public statement contradicting those facts. (NPA at 1 and 4).

goals of promoting respect for the law and providing for just punishment and effective deterrence. In this matter, however, the fine represents one part of a $500 million penalty that UBS AG agreed to pay in order to resolve this case with the Criminal Division of the Department of Justice. And that payment of $500 million, in turn, is one of several payments totaling approximately $1.5 billion that UBS AG was required to make in order to resolve a series of investigations—all focusing, essentially, on the same underlying conduct—by regulatory and law enforcement agencies based in the United States, the United Kingdom, and Switzerland. That overall amount of $1.5 billion, moreover, does not include the financial penalties that the Tokyo Financial Futures Exchange and the Financial Futures Association previously imposed in January and March 2012, respectively, or, more significantly, the financial consequences of the JFSA's suspension of UBSSJ from participating in the derivatives markets during January of 2012. (*See* Plea Agmt., Ex. 2(JFSA order)). The Government was mindful of these additional resolutions in formulating its position regarding the fine and penalty payments set forth in the Plea Agreement and the NPA, and the parties urge the Court to take all of the related dispositions into account in assessing the severity of the fine and ultimately considering whether to accept the proposed sentence in this case.

In addition, under the terms of the NPA and the Plea Agreement, UBS AG and UBSSJ are required to continue their full cooperation with the Government's investigation (Plea Agmt. at ¶ 7; NPA at 3-4). The parties submit that UBS's prior record of, and ongoing commitment to, cooperation should be considered in assessing whether the proposed penalty serves the purposes of sentencing outlined in § 3553(a)(2). In summarizing the Government's view of that record—which UBS could not have achieved without a vast and sustained commitment of resources—the NPA states:

> UBS provided highly valuable information that significantly expanded and advanced the criminal investigation. UBS's cooperation has been exceptional in many important respects. Through its internal investigation, UBS has sought to uncover and disclose evidence of misconduct without restricting the focus of its investigation to issues the government had already identified. Over the past two years, it has made substantial efforts to assist the government in obtaining access to sources of evidence located abroad, including documents and witnesses. UBS's extensive cooperation is a particularly significant and favorable consideration in the Fraud Section's decision to enter into this Agreement.

(NPA at 2, ¶ (b)(2)). For entities that provide such cooperation, and that undertake a binding obligation to continue doing so, the severity of a sentence can be reduced without compromising the important objectives set forth in § 3553(a)(2); at the very least, this factor is a favorable aspect of the defendant's history and characteristics (*see* § 3553(a)(1)), and it alleviates the need for the sentence imposed to protect the public from the risk of future criminal conduct by the defendant (*see* § 3553(a)(2)). *Cf. United States v. Fernandez*, 443 F.3d 19, 33 (2d Cir. 2006) (holding that a sentencing court may consider a defendant's efforts to cooperate as part of its analysis under § 3553(a)).

UBS AG and UBSSJ are required to comply with an extensive series of directives and undertakings, and to submit to ongoing monitoring, as required under the terms of regulatory dispositions that are attached to the Plea Agreement. (Plea Agmt., ¶ 5.g and Ex. 2).[6] These obligations further serve to reflect the nature and seriousness of the offense conduct and to achieve the purposes set forth in § 3553(a)(2).

In light of these considerations, the parties submit that the sentence proposed in the Plea Agreement is in keeping with factors set forth in § 3553(a)(1) and (a)(2).

[6] These requirements are discussed further below, in setting forth the parties' position that under the circumstances presented here, it is not necessary for the Government to impose a term of probation.

C. The Kinds of Sentences Available, and the Absence of a Need for Probation [§ 3553(a)(3)]

Although the Plea Agreement does not provide for a term of Probation, that is one type of sentence this is available and that the Court may consider in accordance with § 3553(a)(3). The Probation Office has not recommended the imposition of Probation; rather, it has concluded that that UBSSJ "has developed and affected a program to prevent and detect any violation in the future" and that, accordingly, financial penalties are adequate to achieve the goals of sentencing. (PSR ¶ 62). The parties agree with that assessment.

Section 8D1.1 of the Guidelines requires a court to impose a term of probation when various indicia of recidivism are present. Here, UBSSJ's risk of recidivism is negligible, and the Court should therefore decline to impose a term of probation. UBSSJ has effectively implemented substantial risk management and internal control systems for its benchmark rate submissions. While UBS AG and UBSSJ began the process of strengthening these controls prior to its settlements with government agencies, those agencies also required specified and robust compliance measures as part of the various resolutions and orders discussed above. Those requirements are also incorporated in the Plea Agreement and the NPA. As a result, these remedial and protective measures are not subject to the discretion of UBS AG or UBSSJ. Moreover, financial regulators—including the CFTC, the U.K. FCA, FINMA, and the JFSA—will be regularly monitoring UBS's adoption of these required safeguards. Those agencies are in the best position to carry out such a task for various reasons, including their direct and extensive involvement in the investigation of benchmark rates and their responsibility for overseeing market activity involving complex derivatives and other financial products handled by an investment bank, such as UBSSJ.

Because of the steps that have already been taken to guard against the risk of recidivism—and especially in light of the multiple levels of regulatory and law enforcement oversight that will continue to be applied to UBS's benchmark submission process—an additional mechanism for monitoring this conduct, through the Probation Office or otherwise, does not appear to be warranted. Accordingly, the parties respectfully submit that although a term of probation is one kind of sentence that is available, as a factor for the Court to consider under § 3553(a)(3), there is no need to impose probation in this case.[7]

D. Restitution [§ 3553(a)(7)]

Section 3553(a)(7) instructs the Court to consider "the need to provide restitution to any victims of the offense" in crafting an appropriate sentence. Moreover, restitution in this type of case is generally required by the Mandatory Victims Restitution Act, 18 U.S.C. § 3663A *et seq.* The parties are in agreement, however, that restitution should not be ordered in this case for the two reasons described in 18 U.S.C. § 3663A(c)(3). First, the number of potential victims in this case is so large as to make restitution impracticable. While the parties may be able to identify counterparties to certain LIBOR-based transactions affected by the offense conduct, the task of identifying additional individuals or entities that could have been adversely affected by the manipulation of Yen benchmarks would be so time-consuming as to be impracticable. Second, determining the amount of money due to each identifiable victim would significantly complicate and prolong the sentencing process, potentially by years.[8]

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[7] This position is consistent with provisions of the NPA describing UBS AG's improved compliance standards and systems, the multiple levels of regulatory oversight to which UBS AG will be subjected, and DOJ's access to information regarding the results of that oversight. (NPA at 2-3, 5). Largely for those reasons, DOJ did not seek to include, as part of the NPA, a requirement that UBS AG appoint an outside monitor.

[8] Well in advance of the sentencing proceeding, the Government provided written notice regarding this matter to every relevant UBS counterparty that it had identified during the course of its investigation. To the Government's knowledge, no victim has come forward to request restitution in this case. As noted above, however, various parties are seeking redress through civil litigation.

IV. CONCLUSION

For the reasons set forth above, the parties jointly submit that the sentence set forth in the Plea Agreement is appropriate and in accordance with the requirements set forth in 18 U.S.C. § 3553(a). The parties therefore respectfully request that the Court accept the Plea Agreement and impose a sentence that is consistent with the Agreement's terms.

Respectfully requested,

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Dated: September 12, 2013

CERTIFICATION

I hereby certify that on September 12, 2013, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's CM/ECF system.

Dated: September 12, 2013

By: /s/ Daniel A. Braun
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