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COMMENTARY

As Libor Nears its End, Deutsche Bank Traders Convictions are Overturned

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On January 27, 2022, the U.S. Court of Appeals for the Second Circuit in New York overturned the convictions of Matthew Connolly and Gavin Black, two former Deutsche bank traders.¹ Connolly and Black had been convicted in 2018 for wire fraud and conspiracy related to the London interbank offered rate (“Libor”) scandal of 2012.² Prosecutors were arguing that Connolly and Black were pressuring their peers to alter interest rates and submit false data to benefit their own positions.³

Having been the world’s most important number, an interest rate benchmark underpinning \$800 trillion in financial instruments, Libor was responsible for many transactions varying from complex derivatives to simple mortgages.⁴ Being integrated in a majority of global financial products, the rate would signal the health of a bank, hint when banks were in trouble, and create the basis for payments for trillions of dollars in debt ranging from corporations to home mortgages.⁵ Due to Libor’s critical role in the financial marketplace, member banks would report their numbers to the British Bankers Association and the European Banking Federation each morning.⁶ These institutions required that each bank use their subjective judgment in determining their submitted rates, and strictly

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¹ Jonathan Stempel, *U.S. Appeals Court Throws Out Deutsche Bank Traders’ Libor-Rigging Convictions*, REUTERS (Jan. 27, 2022, 12:50 PM), <https://www.reuters.com/business/deutsche-bank-traders-libor-rigging-convictions-are-thrown-out-new-york-2022-01-27/>.

² *Id.*

³ Chris Dolmetsch, *Ex-Deutsche Bank Traders’ Libor Convictions Tossed on Appeal*, BLOOMBERG (Jan. 27, 2022, at 8:13 AM), <https://www.bloomberg.com/news/articles/2022-01-27/ex-deutsche-bank-traders-get-libor-rigging-convictions-tossed>.

⁴ Michael R. Koblenz, Kenneth M. Labbate, & Carrie C. Turner, *Libor: Everything You Ever Wanted to Know but Were Afraid to Ask*, 6 J. BUS. ENTREPRENEURSHIP & L. 281, 284 (2013).

⁵ *Id.*

⁶ *Id.* at 285.

prohibited derivatives traders to consider their own financial positions when exercising this judgment.⁷

In 2008, Libor grabbed the headlines and soon became regarded as the world's biggest headache and the subject of late-night punchlines.⁸ International banks such as Barclays, Deutsche Bank, Rabobank, UBS, and the Royal Bank of Scotland⁹ were caught colluding to manipulate the rate so their traders could make a profit on derivatives pegged to the base rate.¹⁰ Relying only on self-reported estimates, Libor was easy to manipulate, making it possible for a bank to submit artificially high or low rates.¹¹ While these manipulations go back as early as 2003, they were spotlighted between 2005 and 2007 when Barclay's first manipulated Libor.¹² During this period, "swaps traders often asked the Barclays employees who submit the rates to provide figures that would benefit the traders, instead of submitting the rates the bank would actually pay to borrow money."¹³ Additionally, it was reported that, "certain traders at Barclays coordinated with other banks to alter their rates as well."¹⁴

A direct result of the scandal coming to light was the immediate erosion of the public's trust of the marketplace.¹⁵ Despite still being a viable source until it will be phased out at the end of the year, Libor will be replaced by the Secured Overnight Financing Rate ("SOFR"), produced by the Federal Reserve Bank of New York.¹⁶ The data provided by SOFR will be based on transaction data as opposed to estimates.¹⁷

Prior to being overturned, Connolly had been sentenced to six months of home confinement with an order to pay a \$100,000 fine.¹⁸ Similarly, Black was sentenced to nine months of home confinement with a \$300,000 fine.¹⁹ According to the Second Circuit, there was a lack of evidence that the two traders had caused Deutsche Bank to make false Libor submissions.²⁰ Specifically, the government had failed to produce any evidence that any of the Libor submissions by Deutsche Bank were influenced by the traders and were rates that Deutsche Bank was not allowed to request, receive, or accept.²¹ By failing to

⁷ *Id.*

⁸ Lanah Nguyen & Jeanna Smialek, *Libor, Long the Most Important Number in Finance, Dies at 52*, NEW YORK TIMES (Jan. 13, 2022), <https://www.nytimes.com/2022/01/12/business/libor-finance.html>.

⁹ Miranda Marquit & Benjamin Curry, *What is Libor and Why Is It Being Abandoned?*, FORBES (Dec. 21, 2021, 11:20 AM), <https://www.forbes.com/advisor/investing/what-is-libor/#:~:text=In%202012%2C%20extensive%20investigations%20into,player%20in%20this%20complicated%20scam.>

¹⁰ James McBride, *Understanding the Libor Scandal*, Council on Foreign Relations (Oct. 12, 2016, 8:00 AM), <https://www.cfr.org/background/understanding-libor-scandal>.

¹¹ Nguyen & Smialek, *supra* note 8.

¹² *Id.*

¹³ *Behind the Libor Scandal*, NEW YORK TIMES (July 10, 2012), www.nytimes.com/interactive/2012/07/10/business/dealbook/behind-the-libor-scandal.html?_r=0.

¹⁴ McBride, *supra* note 10.

¹⁵ *Id.*

¹⁶ Nguyen & Smialek, *supra* note 8.

¹⁷ *Id.*

¹⁸ Stempel, *supra* note 1.

¹⁹ *Id.*

²⁰ *U.S. v. Connolly*, No. 19-03806, 2022 BL 28693, at *55 (2d Cir. Jan. 27, 2022).

²¹ *Id.* at *54.

meet this evidentiary burden, the Court was unable to determine any false or misleading conduct that would warrant a conviction of wire fraud or conspiracy.²² While the Department of Justice has yet to speak on the matter, counsel for the traders stated, respectively, that they are “elated Matt Connolly has been fully exonerated in this contrived case”²³ and are “deeply appreciative” of the outcome.²⁴

Since 2012, federal prosecutors have been locked in a decade long battle to hold Wall Street accountable for its manipulation.²⁵ The recent decision from the Second Circuit dealt another blow to this effort, as prosecutors have previously come to terms with more than a dozen other traders have had their convictions overturned or been acquitted in both the U.S. and UK.²⁶ Regardless of the government’s failed attempts to hold the traders involved accountable, there will be no recovery for the reputation and use of Libor. While searching for a successor to Libor as the new benchmark, lawyers have already begun to prepare for its awaited demise in 2023 by writing fallback language into contracts.²⁷ As both the legal and financial world moves on from the fall of Libor, it seems that the entire ordeal may just be forgotten.

²² *Id.* at *54-55.

²³ Stempel, *supra* note 1.

²⁴ *Id.*

²⁵ Matthew Goldstein, *Two Former Deutsche Bank Traders Win Their Appeal in a Libor Manipulation Case*, NEW YORK TIMES (Jan. 27, 2022), <https://www.nytimes.com/2022/01/27/business/libor-manipulation-deutsche-bank-traders.html>.

²⁶ *Id.*

²⁷ Alec Foote Mitchell, *LIBOR: The World’s Most Important Headache*, 105 MINN. L. REV. 1485, 1486 (Feb. 2021).