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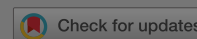
On arbitration, arbitrage and arbitrariness in financial markets and their governance: unpacking LIBOR and the LIBOR scandal

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Disclosure statement

No potential conflict of interest was reported by the authors.

Notes

1. It is not the only internationally relevant interest rate benchmark; there are several others, of which the Euro Interbank Offered Rate (EURIBOR) provides a comparable example. The paper focuses on the dollar- and dollar-denominated LIBOR, but the same arguments could be made if we examine the EURIBOR. The paper also focuses on the 3-month rate, but the same arguments could be made if we examine the 1-month rate. The paper also focuses on the London interbank market, but the same arguments could be made if we examine the New York interbank market.

2. Here, the paper focuses on the 3-month rate, but the same arguments could be made if we examine the 1-month rate. The paper also focuses on the London interbank market, but the same arguments could be made if we examine the New York interbank market. The paper also focuses on the 3-month rate, but the same arguments could be made if we examine the 1-month rate. The paper also focuses on the London interbank market, but the same arguments could be made if we examine the New York interbank market.

3. Note that the paper focuses on the 3-month rate, but the same arguments could be made if we examine the 1-month rate. The paper also focuses on the London interbank market, but the same arguments could be made if we examine the New York interbank market. The paper also focuses on the 3-month rate, but the same arguments could be made if we examine the 1-month rate. The paper also focuses on the London interbank market, but the same arguments could be made if we examine the New York interbank market.

4. Transferring the benchmark to the wider market is set up following the revelations of attempts to manipulate LIBOR.



5. Up until 1998, submissions were based on a different question: 'At what rate do you think interbank term deposits will be offered by one prime bank to another prime bank for a reasonable market size today at 11 am?'

6. <http://www.bbalibor.com/explained/the-basics>(retrieved August 2013).

7. https://www.theice.com/iba_calculation.jhtml (emphasis added) (retrieved March 2014).

8. <http://www.global-rates.com/interest-rates/libor/libor-information.aspx> (retrieved August 2013).

9. IntercontinentalExchange acquired the right to administer LIBOR when it purchased NYSE Euronext in November 2013; the latter, through its own subsidiary Euronext Rate Administration Limited, had been appointed as the new administrator in July 2013 by the independent Hogg Tendering Advisory Committee.

10. <http://trademarks.justia.com/861/83/ice-86183638.html> (retrieved March 2014).

11. One way this is expressed is as a correlation between banks' liquidity risk premiums (measured as the spread between LIBOR and US Treasury rates) and sovereign default risk premiums (measured by sovereign bond yield or credit default swap spreads)

13. The first actions against the bank were brought privately by an Austrian hedge fund (Aldrick, [2012](#)).

14. Furthermore, comparable investigations have been launched into alleged manipulation of benchmark rates in the (even bigger) international foreign exchange (currency) markets, as opposed to the credit markets that LIBOR and kindred rates underpin. Here, the rates in question are the pivotal spot exchange rates such as those compiled and published by WM/Reuters, whose benchmarks for 160 currencies are determined by trades occurring in the 60-second period known, in a glorious irony, as 'the fix', and where the central allegation is of manipulation collectively to concentrate trades within this window to maximize the impact on the published benchmarks. See, e.g., Schäfer and Shotter ([2014](#)).

15. Of course, given LIBOR's widespread use as a pricing benchmark, the direct targets represent just one small group of actors potentially impacted by LIBOR arbitrage. We will return to this in the final section of the paper.

16. There is evidence that there was some informal co-ordination among traders and Barclays, which was not admitted by the former until 2012 (FSA, 2012, para. 22-23).

17. The FSA investigation found that the bank had been manipulating the benchmark for nine months after the publication of the report.

18. For instance, the FSA found that the bank had been manipulating the benchmark, which states that 'a firm must take effective steps to ensure that the benchmark is not manipulated' (FSA, 2012, para. 23: 'a firm must take effective steps to ensure that the benchmark is not manipulated').

19. The FSA also found that the bank had been manipulating the benchmark, which states that 'a firm must take effective steps to ensure that the benchmark is not manipulated' (FSA, 2012, para. 23: 'a firm must take effective steps to ensure that the benchmark is not manipulated').

20. These findings were confirmed by the FSA investigation with the FSA investigation.

21. Which is not to say that individual parties to contracts cannot pursue the bank for alleged damages. A list of plaintiffs seeking compensation for allegedly higher debt service payments due to LIBOR manipulation includes the University of California and the cities of Baltimore (MD), New Britain (CT), Richmond (CA), Riverside (CA) and San Mateo (CA) (Cotchett & McCarthy, [2013](#); The New York Times, [2013](#)).
22. According to revised DOJ prosecution guidelines ‘... where the collateral consequences of a corporate conviction for innocent third parties would be significant, it may be appropriate to consider a non-prosecution or deferred prosecution agreement with conditions designed, among other things, to promote compliance with applicable law and to prevent recidivism’ (DOJ, [2008](#)).
23. The Wheatley Review of Barclays’ LIBOR transgressions, commissioned by the Chancellor of the Exchequer, concluded ‘LIBOR manipulation and attempted manipulation is unlikely to constitute a criminal offence which falls under the prosecutorial responsibility of the FSA’ (HM Treasury, [2012](#), p. 18).
24. For instance, ‘a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems ... The extent of Barclays’ misconduct throughout the Relevant Period was exacerbated by these inadequate systems and controls ... Compliance’s failures meant that other issues at Barclays ... continued to ...’
25. For example, the UK’s Financial Conduct Authority (FCA) has issued a warning that the jurisdiction’s investigation of the organization of the demand ... of the United Kingdom ...
26. On ... mediation ... and proposed ... Dorn ... and Levi ... chs.



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Notes on contributors

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Phil Ashton is Associate Professor of Urban Planning & Policy at the University of Illinois at Chicago. Phil's research focuses on banking, consumer credit and the governance of finance. He has applied these concerns within written work on sub-prime mortgage lending, risk and infrastructure privatization. He is now working on a book on the juridical dimensions of the sub-prime mortgage crisis, including recent legal settlements with large sub-prime lenders over lending and servicing abuses.

Brett Christophers

Brett Christophers, Associate Professor at Uppsala University, and is an economic geographer who has written widely on the political and cultural economies of capitalism in both historical and contemporary perspectives, with a particular emphasis on finance and financial capital. He is the author of three monographs – most recently *Banking across Boundaries* (Wiley-Blackwell, 2013) – and numerous journal papers.



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