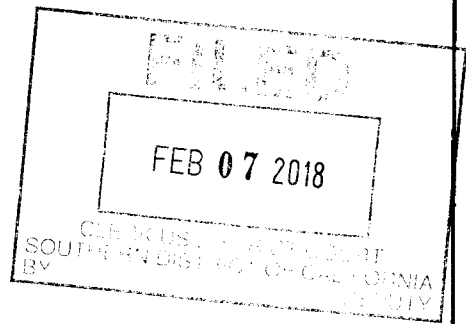




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12
13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,

16
17 v.

18 RABOBANK, NATIONAL
19 ASSOCIATION,

20
21 Defendant.

Case No. 18cr0014-JM

PLEA AGREEMENT

22
23 IT IS HEREBY AGREED between the UNITED STATES OF AMERICA, through
24 its counsel, Adam L. Braverman, United States Attorney, and Daniel C. Silva, Mark W.
25 Pletcher, and David J. Rawls, Assistant United States Attorneys, and Deborah L. Connor,
26 Acting Chief, and Kevin G. Mosley and Maria Vento, Trial Attorneys, Money Laundering
27 and Asset Recovery Section of the Criminal Division, Department of Justice, (collectively
28 the "United States") and Defendant RABOBANK, NATIONAL ASSOCIATION, with the

Plea Agreement

Def. Rep. Initials MA

advice and consent of James G. Cavoli, Esq. and Tawfiq S. Rangwala, Esq., Milbank, Tweed, Hadley & McCloy LLP, counsel for Defendant, as follows:

I
THE PLEA

Defendant agrees to waive indictment and plead guilty to a one-count Information charging Defendant with:

Beginning no later than March 2013 and continuing through April 2013, defendant RABOBANK, NATIONAL ASSOCIATION, did knowingly and intentionally conspire and agree with Executive A, Executive B, and Executive C, and others (A) to defraud the United States of and concerning its governmental functions and rights, including its right to have the affairs of the Office of the Comptroller of the Currency of the United States Department of the Treasury conducted honestly and impartially, free from deceit, craft, dishonesty, trickery, unlawful impairment, impediment, and obstruction; and (B) to commit an offense against the United States – that is, to corruptly obstruct and attempt to obstruct an examination of a financial institution by an agency of the United States with jurisdiction to conduct an examination of such financial institution, to wit the Office of the Comptroller of the Currency of the United States Department of the Treasury, in violation of 18 U.S.C. §1517;

and that Defendant and its co-conspirators took an overt act in furtherance of this conspiracy;

all in violation of Title 18, United States Code, Section 371.

In light of Defendant's acceptance of responsibility, cooperation, and remediation, as described in more detail herein, the United States agrees that it will not file additional criminal charges against Defendant or any of its direct or indirect affiliates, or Defendant's successors or assigns, for any act arising from the facts contained in, connected to, or involving the conduct described in the Statement of Facts (submitted concurrently herewith and incorporated as Attachment A), to the extent Defendant has truthfully and completely disclosed such conduct to the United States prior to the signing of this plea agreement, unless Defendant breaches the plea agreement or the guilty plea entered pursuant to this plea agreement is set aside for any reason. If Defendant breaches this plea agreement or

1 the guilty plea is set aside, Section XVI below shall apply. The United States cannot and
2 does not make any agreement relating to any potential criminal tax violations. The attached
3 Forfeiture Addendum shall govern forfeiture in this case (submitted concurrently herewith
4 and incorporated as Attachment B).

5
6 **II**
NATURE OF THE OFFENSE

7 **A. ELEMENTS EXPLAINED**

8 The offense to which Defendant is pleading guilty has the following elements:

- 9 1. Beginning no later than March 2013, and continuing up to and including
10 approximately April 2013, there was an agreement between two or more persons
11 (A) to defraud the United States by impairing, impeding and obstructing the lawful
12 functions of the Office of the Comptroller of the Currency of the United States
13 Department of the Treasury by deceitful or dishonest means and (B) to obstruct the
14 examination of Defendant by the Office of the Comptroller of the Currency of the
15 United States Department of the Treasury, in violation of 18 U.S.C. §1517;
16 2. Defendant became a member of the conspiracy knowing of at least one of its
17 objects and intending to help accomplish it; and
18 3. One of the members of the conspiracy performed at least one overt act in or
19 after March 2013 for the purpose of carrying out the conspiracy.

20 **B. ELEMENTS UNDERSTOOD AND ADMITTED – FACTUAL BASIS**

21 Defendant has fully discussed the facts of this case with defense counsel. Defendant
22 agrees that it, through certain of its officers, directors, or employees, committed each
23 element of the crime and admits that there is a factual basis for this guilty plea. Defendant
24 admits, acknowledges, accepts, and stipulates that the facts set forth in the Statement of
25 Facts are true and undisputed and establish beyond a reasonable doubt the guilt of
26 Defendant on the offense charged in the Information. Defendant further agrees that the
27 Statement of Facts constitutes a stipulation of facts for the purposes of Section 1B1.2(a) of
28 the United States Sentencing Guidelines.

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III
PENALTIES

The offense to which Defendant is pleading guilty carries the following penalties:

- A. a maximum \$500,000 fine, or twice the gross gain or gross loss resulting from the offense, whichever is greatest;
- B. a mandatory special assessment of \$400; and
- C. a term of probation of at least one year, but not more than five years.

IV
DEFENDANT'S WAIVER OF TRIAL RIGHTS AND
UNDERSTANDING OF CONSEQUENCES

This guilty plea waives (gives up) Defendant's right at trial:

- A. To continue to plead not guilty and require the United States to prove the elements of the crime beyond a reasonable doubt;
- B. To a speedy and public trial by jury;
- C. To the assistance of counsel at all stages;
- D. To confront and cross-examine adverse witnesses;
- E. To testify, present evidence, and have witnesses testify on Defendant's behalf;
- F. Not to testify or have adverse inferences drawn from the failure to testify; and
- G. To assert any legal, constitutional, statutory, regulatory, and procedural rights and defenses that it may have under any source of federal or common law, including among others, challenges to personal jurisdiction, extraterritoriality, the statute of limitations, venue, and the form and substance of the Information, including any claim of multiplicity or duplicity.

V
DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE PROVIDED
WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION

Any information establishing the factual innocence of Defendant known to the undersigned prosecutors in this case has been turned over to Defendant. The United States will continue to provide such information establishing the factual innocence of Defendant.

1 If this case proceeded to trial, the United States would be required to provide impeachment
2 information for its witnesses. In addition, if Defendant raised an affirmative defense, the
3 United States would be required to provide information in its possession that supports such
4 a defense. By pleading guilty, Defendant will not be provided this information, if any, and
5 Defendant waives (gives up) any right to this information. Defendant will not attempt to
6 withdraw the guilty plea or to file a collateral attack based on the existence of this
7 information.

8
9 **VI**
DEFENDANT'S REPRESENTATION THAT GUILTY
PLEA IS KNOWING AND VOLUNTARY

10
11 Defendant represents that:

12 A. Defendant, and certain of its executive managers and board of directors, has
13 had a full opportunity to discuss all the facts and circumstances of this case with
14 defense counsel and has a clear understanding of the charges and the consequences
15 of this plea. By pleading guilty, Defendant may be giving up, and rendered ineligible
16 to receive, valuable government benefits and civic rights. The conviction may
17 subject Defendant to collateral consequences, including but not limited to revocation
18 of probation or deferred prosecution in another case; debarment from government
19 contracting; and suspension or revocation of a professional license, none of which
20 can serve as grounds to withdraw Defendant's plea.

21 B. Other than those contained in this plea agreement, no one has made any
22 promises or offered any rewards in return for this guilty plea.

23 C. No one has threatened Defendant or Defendant's officers, managers, board of
24 directors, or agents to induce this guilty plea.

25 D. Defendant is pleading guilty because Defendant is guilty and for no other
26 reason.

27 //

28 //

VII
AGREEMENT LIMITED TO UNITED STATES

This plea agreement is limited to the United States Attorney's Office for the Southern District of California and the Department of Justice, Criminal Division, Money Laundering and Asset Recovery Section and cannot bind any other authorities in any type of matter, although the United States will bring this plea agreement to the attention of other authorities if requested by Defendant.

VIII
APPLICABILITY OF SENTENCING GUIDELINES

The sentence imposed will be based on the factors set forth in 18 U.S.C. § 3553. In imposing the sentence, the sentencing judge must consult the United States Sentencing Guidelines ("Guidelines" or "USSG") and take them into account. Defendant has discussed the Guidelines with defense counsel and understands that the Guidelines are only advisory. The Court may impose a sentence more severe or less severe than otherwise applicable under the Guidelines, up to the maximum in the statute of conviction. The sentence cannot be determined until a presentence report is prepared by the U.S. Probation Office and defense counsel and the United States have an opportunity to review and challenge the presentence report. Nothing in this plea agreement limits the United States' duty to provide complete and accurate facts to the District Court and the U.S. Probation Office.

Defendant agrees that the facts set forth in the Statement of Facts filed concurrently herewith are true and may be considered as to the nature and circumstances of the offense under 18 U.S.C. § 3553(a)(1) and as to "relevant conduct" under USSG § 1B1.3. Nothing in this plea agreement limits the rights of the parties to present to the Probation Office or the Court any additional facts relevant to sentencing.

IX
SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

This plea agreement is made pursuant to Federal Rule of Criminal

[Handwritten Signature]

1 Procedure 11(c)(1)(B). The sentence is within the sole discretion of the sentencing judge
2 who may impose the maximum sentence provided by statute. It is uncertain at this time
3 what Defendant's sentence will be. The United States has not made and will not make any
4 representation about what sentence Defendant will receive. Any estimate of the probable
5 sentence by defense counsel is not a promise and is not binding on the Court. Any
6 recommendation by the United States at sentencing also is not binding on the Court. If the
7 sentencing judge does not follow any or all of the parties' sentencing recommendations,
8 and irrespective of the sentence imposed, Defendant will not withdraw its plea.

9
10 **X**

11 **PARTIES' SENTENCING RECOMMENDATIONS**

12 **A. SENTENCING GUIDELINES CALCULATIONS**

13 Although the Guidelines are only advisory and just one factor the Court will consider
14 under 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly recommend the
15 following Base Offense Level, Base Fine Calculation, Specific Offense Characteristics,
16 Culpability Score, and Multiplier pursuant to Chapter 8 of the Sentencing Guidelines:

17 **Base Fine Calculation**

- | | | |
|----|---|----|
| 18 | 1. Base Offense Level [§§ 8C2.3/2C1.1(c)(2)/2J1.2(a)] | 14 |
| 19 | 2. Substantial Interference [§ 2J1.2(b)(2)] | 3 |
| 20 | 3. Extensive in Scope [§ 2J1.2(b)(3)(C)] | 2 |

21 **Culpability Score**

- | | | |
|----|--|----|
| 22 | 4. Base Level [§ 8C2.5(a)] | 5 |
| 23 | 5. > 1,000 Employees [§ 8C2.5(b)(2)(A)(i)] | 4 |
| 24 | 6. Prior Adjudications [§ 8C2.5(c)(1)] | 1 |
| 25 | 7. Corporate Cooperation and | |
| 26 | Acceptance of Responsibility [§ 8C2.5(g)(2)] | -2 |

27 The total Base Fine Calculation of 19 results in a base fine for Defendant of
28 \$500,000. USSG §§ 8C2.4(e)(1) (employing the Guidelines in effect on November 1, 2014
for offenses committed prior to November 1, 2015) and 8C2.4(d) (Nov. 1, 2014
Guidelines). Defendant's Minimum and Maximum Multipliers, based on the foregoing

1 aggregate Culpability Score of 8, are 1.60 and 3.20, respectively, resulting in a total Fine
2 Range of \$800,000 and \$1,600,000.

3 B. PARTIES' RECOMMENDATIONS REGARDING PROBATION

4 The parties agree to jointly recommend that the Court impose a term of probation of
5 two years on Defendant (the "Stipulated Probation Term"). The parties further stipulate
6 that the terms of probation shall include the applicable mandatory conditions of probation
7 described in 18 U.S.C. § 3563(a)(1) and USSG § 8D1.3(a).

8 C. SPECIAL ASSESSMENT/FINE/FORFEITURE

9 1. Special Assessment

10 The parties will jointly recommend Defendant pay a special assessment in the
11 amount of \$400 to be paid forthwith at time of sentencing. The special assessment shall
12 be paid through the office of the Clerk of the District Court by bank or cashier's check or
13 money order referencing the criminal case number and made payable to the "Clerk, United
14 States District Court."

15 2. Fine

16 In light of the \$500,000 statutory maximum, the parties will jointly recommend that
17 Defendant pay a fine in the amount of \$500,000. The fine shall be paid through the Office
18 of the Clerk of the District Court by bank or cashier's check or money order referencing
19 the criminal case number and made payable to the "Clerk, United States District Court."

20 3. Forfeiture

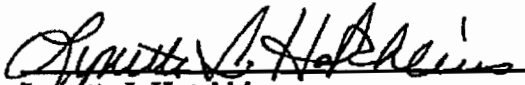
21 As set forth in the attached Forfeiture Addendum, Defendant agrees to forfeit
22 \$368,701,259 U.S. dollars to the United States.

23 XI
24 FACTUAL ADHERENCE

25 Defendant agrees that it shall not, through its present or future attorneys, board of
26 directors, executive management, or any other person authorized to speak for Defendant,
27 or any present or future attorneys, board of directors, executive management, or any other
28 person authorized to speak for any parent company or other entity related to Defendant,

1 Association's behalf, in any way to enter into this agreement. I am satisfied with outside
2 counsel's representation in this matter.

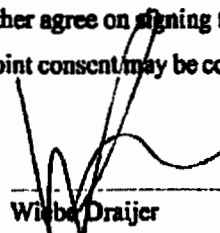
3 DATED: February 5, 2018


Lynette I. Hotchkiss
Acting General Counsel
RABOBANK, NATIONAL
ASSOCIATION

1 transfer, or otherwise effectively ceases to do business as RNA, whether or not the RNA
2 entity remains in existence) to any entity except CRUA, any of its subsidiaries, affiliated
3 entities, assignees, or its successor corporation, if any, CRUA shall immediately thereupon
4 assume, with the exception of the obligations set forth in Sections X.B., XII.G., and XVI.K
5 of this plea agreement, each and every one of RNA's obligations under this plea agreement,
6 as its successor in interest, including, but not limited to, the forfeiture obligation, to pay
7 the prescribed monetary penalty, and to cooperate fully with the DOJ.

8 6. All of the Delegates must together agree on signing this Successor In Interest
9 Agreement, and all have done so, and such joint consent may be confirmed by the signature
10 of at least two Delegates.

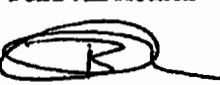
11 DATED: February 5, 2018


Wilber Draijer

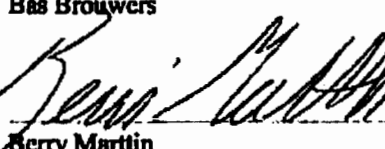
14 DATED: February 5, 2018


Petra van Hoeken

17 DATED: February 5, 2018

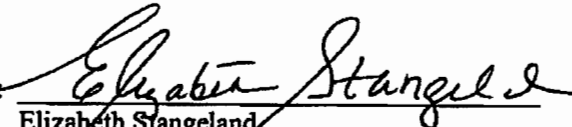

Bas Brouwers

20 DATED: February 5, 2018


Berry Martin

4. Any actions of Lynette Hotchkiss, which actions would have been authorized by the foregoing resolutions except that such actions were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved, and adopted as actions on behalf of RNA.

Date: February 5, 2018

By: 
Elizabeth Stangeland
Assistant Corporate Secretary
Rabobank, National Association
