

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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: Master File No. 1:09-cv-01989-PAC
IN RE BARCLAYS BANK PLC SECURITIES :
LITIGATION : ECF Case
:
This Document Relates to: All Actions :
:
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DECLARATION OF SCOTT D. MUSOFF

I, Scott D. Musoff, declare under penalty of perjury that the following is true and correct:

1. I am a member of Skadden, Arps, Slate, Meagher & Flom LLP, attorneys for the Underwriter Defendants in the above captioned action. I am an attorney duly admitted to practice before this Court.

2. I respectfully submit this declaration in support of the Underwriters Defendants' Motion for Summary Judgment and to transmit true and correct copies of the following documents relevant thereto.

3. Attached hereto as Exhibit 1 is a true and correct copy of extracts from the February 2, 2016 Rebuttal of Report by Professor Gary M. Lawrence on Behalf of the Underwriters Defendants, served by Plaintiff's counsel the same day and prepared by Plaintiff's underwriter due diligence expert, Professor Richard Puntillo.

4. Attached hereto as Exhibit 2 is a true and correct copy of extracts from the transcript of the deposition of Jack D. McSpadden taken on August 13, 2015.

5. Attached hereto as Exhibit 3 is a true and correct copy of extracts from Barclays Bank PLC's 2007 Form 20-F that were obtained from the SEC's website. This document is

publicly available in its entirety on the on the SEC's website at:
<https://www.sec.gov/Archives/edgar/data/312069/000119312508065551/d20f.htm>.

6. Attached hereto as Exhibit 4 is a true and correct copy of extracts from Barclays Bank PLC's 2012 Form 20-F that were obtained from the SEC's website. This document is publicly available in its entirety on the on the SEC's website at:
<https://www.sec.gov/Archives/edgar/data/312069/000119312513105055/d497934d20f.htm>.

7. Attached hereto as Exhibit 5 is a true and correct copy of extracts from Barclays Bank PLC's 2015 Form 20-F that were obtained from the SEC's website. This document is publicly available in its entirety on the on the SEC's website at:
<https://www.sec.gov/Archives/edgar/data/312069/000119312516487425/d109098d20f.htm>.

8. Attached hereto as Exhibit 6 is a true and correct copy of extracts from Barclays Bank PLC's Prospectus Supplement dated June 2, 2005 that were obtained from the SEC's website. This document is publicly available on the SEC's website at:
<https://www.sec.gov/Archives/edgar/data/312070/000119312505119283/d424b5.htm>.

9. Attached hereto as Exhibit 7 is a true and correct copy of extracts from Barclays Bank PLC's Prospectus Supplement dated April 21, 2006 that were obtained from the SEC's website. This document is publicly available on the SEC's website at:
<https://www.sec.gov/Archives/edgar/data/312070/000119312506085669/d424b2.htm>.

10. Attached hereto as Exhibit 8 is a true and correct copy of extracts from Barclays Bank PLC's Prospectus Supplement dated September 10, 2007 that were obtained from the SEC's website. This document is publicly available on the SEC's website at:
<https://www.sec.gov/Archives/edgar/data/312070/000119312507198240/d424b5.htm>.

11. Attached hereto as Exhibit 09 is a true and correct copy of extracts from Barclays Bank PLC's Prospectus Supplement dated September 10, 2007 that were obtained from the SEC's website. This document is publicly available on the SEC's website at: <https://www.sec.gov/Archives/edgar/data/312070/000119312507198336/d424b5.htm>.

12. Attached hereto as Exhibit 10 is a true and correct copy of extracts from Barclays Bank PLC's Prospectus Supplement dated September 25, 2007 that were obtained from the SEC's website. This document is publicly available on the SEC's website at: <https://www.sec.gov/Archives/edgar/data/312070/000119312507207238/d424b5.htm>.

13. Attached hereto as Exhibit 11 is a true and correct copy of extracts from Barclays Bank PLC's Prospectus Supplement dated September 20, 2007 that were obtained from the SEC's website. This document is publicly available on the SEC's website at: <https://www.sec.gov/Archives/edgar/data/312070/000119312507204599/d424b5.htm>.

14. Attached hereto as Exhibit 12 is a true and correct copy of extracts from Barclays Bank PLC's Prospectus Supplement dated December 4, 2007 that were obtained from the SEC's website. This document is publicly available on the SEC's website at: <https://www.sec.gov/Archives/edgar/data/312070/000119312507258376/d424b5.htm>.

15. Attached hereto as Exhibit 13 is a true and correct copy of Barclays Bank PLC's Prospectus Supplement dated April 9, 2008 that was obtained from the SEC's website. This document is publicly available on the SEC's website at: <https://www.sec.gov/Archives/edgar/data/312070/000119312508078079/d424b5.htm>.

16. Attached hereto as Exhibit 14 is a true and correct copy of a printout that was obtained from the SEC's website showing all filings by Barclays Bank PLC from 2006 through 2008. This document is publicly available on the SEC's website at: <https://www.sec.gov/cgi->

bin/browse-edgar?action=getcompany&CIK=0000312070&type=&dateb=20090101&owner=exclude&count=100.

17. Attached hereto as Exhibit 15 is a true and correct copy of a printout that was obtained from the SEC's website showing all Form 20-F filings by Barclays Bank PLC from 1982 through the present. This document is publicly available on the SEC's website at: <https://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0000312070&type=20-F&dateb=&owner=exclude&count=100>.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on: New York, New York
October 21, 2016

/s/ Scott D. Musoff
Scott D. Musoff

Underwriter Defendants' Motion for Summary Judgment

**Musoff Declaration:
Exhibit 1**

**IN RE BARCLAYS BANK PLC
SECURITIES LITIGATION**

**REBUTTAL OF REPORT BY PROFESSOR GARY M. LAWRENCE
ON BEHALF OF UNDERWRITER DEFENDANTS**

February 2, 2016

Richard Puntillo

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I. SCOPE OF ENGAGEMENT

A. Overview

This is a Rebuttal to the Expert Report of Professor Gary Lawrence (“Professor Lawrence”) on behalf of Underwriter Defendants (the “Lawrence Underwriter Report”) dated December 15, 2015 and focuses on the inadequacy of the Underwriters’ due diligence in connection with the offering of Series 5 preference shares (the “Series 5 Offering”) by Barclays Bank PLC (“Barclays”) in April 2008. In the Series 5 Offering, Citigroup Global Markets Inc. (“Citi”) acted as lead underwriter, and was joined by other non-lead underwriters including Barclays Capital Securities Limited, Wachovia Capital Markets, LLC, UBS Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”), Morgan Stanley & Co. Incorporated, Banc of America Securities LLC and RBC Dain Rauscher Inc. (collectively, the “Underwriters”).

B. Compensation

I am being compensated at a rate of \$700 per hour. My compensation is not contingent upon the opinions I have formed.

C. Materials Considered

My opinions in this matter are stated as of the date of this Rebuttal and are based on the materials reviewed as of the date of this Rebuttal, including the materials referenced in the body of this Rebuttal and listed on **Exhibit A** hereto.

D. Related Rebuttal

This Rebuttal Report should be read in conjunction with the Rebuttal Report dated February 2, 2016, which is in response to the Lawrence Directors Report dated December 15, 2015.

II. QUALIFICATIONS

I received an MBA from the University of California at Berkeley in 1969. In 1967 and 1968, before attending graduate school, I worked as a public accountant for Ernst &

C. Underwriters Failed to Reasonably Investigate and Resolve Red Flags

As described in Section III(B)(2), the custom and practice in underwriter due diligence in connection with a securities offering is for underwriters to, among other things, follow up and reasonably investigate and resolve red flags. A **red flag** is information encountered in the course of a due diligence investigation that (i) is inconsistent with the underwriters' understanding of the issuer's businesses, executives, operations, accounting or finances; or (ii) is potentially indicative of wrongdoing and, therefore, requires the underwriters to investigate further in order to arrive at a reasonably informed understanding or resolution. Reasonable resolution of a material red flag is fact specific but could mean, among other things, that financial or other information contained within the offering documents is restated or clarified, or that additional disclosures are made in the offering documents. However, without resolution of all material red flags that are known or should be known to the underwriters, the underwriters cannot form a reasonable basis to rely on the accuracy and completeness of the offering documents.

Here, the Underwriters failed to reasonably investigate and resolve the following red flags in performing their due diligence in connection with the Series 5 Offering: (1) comments made by members of Barclays' senior management during an April 3, 2008 due diligence call held in connection with the Series 5 Offering; (2) the inconsistency between the disclosures in the Offering Documents and Barclays' internal reporting and analysis practices; (3) concerns regarding Barclays' capital adequacy raised by regulators; (4) information contained in the comfort letters provided by PricewaterhouseCoopers' ("PwC") in connection with the Series 5 Offering; and (5) Citi's own research projecting £1.518B of Write-Downs for the entire year 2008, of which £800M had been incurred in January and February 2008.

1. Red Flag: Barclays Comments on Due Diligence Conference Call

a. Nature of the Red Flag

On April 3, 2008, Barclays held a business due diligence conference call that included, among others, Citi in its capacity of Lead Underwriter and certain of the non-lead

**Underwriter Defendants'
Motion for Summary Judgment**

**Musoff Declaration:
Exhibit 2**

* * * C O N F I D E N T I A L * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BARCLAYS BANK PLC)
SECURITIES LITIGATION)
-----) No. 1:09-cv-01989-
This Document Relates to:) PAC
All Actions)
-----)

August 13, 2015
8:33 a.m.

Deposition of JACK D. MCSPADDEN, held
at the offices of Skadden, Arps, Slate,
Meagher & Flom LLP, Four Times Square, New
York, New York, pursuant to Rule 30(b)(6)
notice, before Laurie A. Collins, a Registered
Professional Reporter and Notary Public of the
State of New York.

VERITEXT LEGAL SOLUTIONS
MID-ATLANTIC REGION
1801 Market Street - Suite 1800
Philadelphia, PA 19103

<p style="text-align: right;">Page 14</p> <p>1 McSpadden - Confidential</p> <p>2 group I run is responsible for overseeing the</p> <p>3 process of executing debt transactions that are</p> <p>4 executed by Citigroup Global Markets, Inc. --</p> <p>5 investment grade debt transactions that are</p> <p>6 executed in the New York market.</p> <p>7 So it's a process-oriented job</p> <p>8 overseeing the flow of documentation, timing,</p> <p>9 documents involved, coordinating the internal</p> <p>10 process -- the internal execution process from a</p> <p>11 process point of view.</p> <p>12 Q. Thank you.</p> <p>13 How long have you held that position?</p> <p>14 A. Since January 1, 2006.</p> <p>15 Q. Can you describe more specifically what</p> <p>16 your job responsibilities were as managing</p> <p>17 director of the transaction execution group?</p> <p>18 A. We have a group of now about maybe</p> <p>19 seven or eight professionals. Our job</p> <p>20 collectively -- I've got myself, three officers,</p> <p>21 now four officers, a group of associates and</p> <p>22 analysts.</p> <p>23 We're involved, as I said, in the</p> <p>24 process of overseeing the execution of investment-</p> <p>25 grade debt transactions that are executed in the</p>	<p style="text-align: right;">Page 16</p> <p>1 McSpadden - Confidential</p> <p>2 Series 5 offering during the deposition so that we</p> <p>3 don't have to deal with that for the rest of the</p> <p>4 day.</p> <p>5 And if I refer to American depository</p> <p>6 shares today, I'll just say ADSs. Is that all</p> <p>7 right?</p> <p>8 A. ADRs, actually.</p> <p>9 Q. American depository receipts. Okay.</p> <p>10 And I'll refer to Barclays Bank as</p> <p>11 Barclays in most instances.</p> <p>12 Approximately how many securities</p> <p>13 offerings have you been involved in the</p> <p>14 underwriting of at Citigroup?</p> <p>15 A. At Citigroup? I've only been at</p> <p>16 Citigroup since '99, so probably three or four</p> <p>17 thousand.</p> <p>18 Q. Thank you.</p> <p>19 Barclays engaged Cindy -- excuse me,</p> <p>20 Citi as an underwriter of the Series 5 offering;</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. When did Barclays do that?</p> <p>24 A. If recollection is correct, I think it</p> <p>25 was sometime about month before the offering,</p>
<p style="text-align: right;">Page 15</p> <p>1 McSpadden - Confidential</p> <p>2 New York market, whether we're a joint lead</p> <p>3 manager, active, or passive, or whether we're a</p> <p>4 comanager.</p> <p>5 We're involved in just a whole process:</p> <p>6 execution, whether it's the internal approval</p> <p>7 process, oversight of mundane things like working</p> <p>8 group lists, timing, getting details out for calls</p> <p>9 that have to occur, reviewing some of the</p> <p>10 documentation from a process point of view,</p> <p>11 understanding the flow of the documents, just</p> <p>12 coordinating internally, being sure everybody is</p> <p>13 at the right place at the right time, anticipating</p> <p>14 issues that might or might not come up in the</p> <p>15 execution process to assure it goes in as smooth a</p> <p>16 process as possible.</p> <p>17 Q. Thank you.</p> <p>18 In your position as managing director</p> <p>19 of the transaction execution group at Citi, were</p> <p>20 you involved in the underwriting of Barclays'</p> <p>21 April 2008 public securities offering of 100</p> <p>22 million American depository shares of its Series 5</p> <p>23 preferred stock?</p> <p>24 A. Yes.</p> <p>25 Q. I'm going to refer to that as the</p>	<p style="text-align: right;">Page 17</p> <p>1 McSpadden - Confidential</p> <p>2 sometime early in the month of March.</p> <p>3 Q. Do you know how Citi came to be engaged</p> <p>4 as an underwriter with respect to the Series 5</p> <p>5 offering?</p> <p>6 A. I was not involved in the selection</p> <p>7 process.</p> <p>8 Q. What were Citi's duties and</p> <p>9 responsibilities generally as an underwriter of</p> <p>10 the Series 5 offering?</p> <p>11 A. To be one of the joint lead managers of</p> <p>12 the transaction. We were the first one that was</p> <p>13 invited in, so early on in the process we were</p> <p>14 responsible for working closely with the issuer,</p> <p>15 with -- and also in their case Barclays</p> <p>16 Securities, they had their own underwriting</p> <p>17 affiliate early on, with underwriting counsel,</p> <p>18 company counsel, to structure all the documents,</p> <p>19 to get all the documents prepared and ready in</p> <p>20 anticipation of doing the offering early in the</p> <p>21 week of April, which ended up being April 7th,</p> <p>22 launch April 8th price.</p> <p>23 So there's a process involved. As I</p> <p>24 mentioned, my job is process oriented, to ensure</p> <p>25 all the documents are in the right place at the</p>

<p style="text-align: right;">Page 18</p> <p>1 McSpadden - Confidential</p> <p>2 right time given the company's desired timing for</p> <p>3 execution of the deal.</p> <p>4 Q. I believe you testified Citi was one of</p> <p>5 the joint leads and the first one invited into the</p> <p>6 deal; correct?</p> <p>7 A. Correct, along with Barclays</p> <p>8 Securities.</p> <p>9 Q. As joint lead and one of the first ones</p> <p>10 invited in, was Citi referred to as the physical</p> <p>11 book runner for the offering?</p> <p>12 A. That's a phrase that can be used. I</p> <p>13 don't remember if we applied it here. But in</p> <p>14 principle we were first among equals, so in</p> <p>15 principle we would be viewed as principal; so the,</p> <p>16 quote, book runner.</p> <p>17 Q. What does it mean in the context of a</p> <p>18 securities offering to be the physical book</p> <p>19 runner?</p> <p>20 A. Usually it ends up meaning you are the</p> <p>21 bill and deliver bank. You are responsible for</p> <p>22 billing and delivering the shares in the end.</p> <p>23 That's the physical process and closing of</p> <p>24 receiving the money from the investors in your</p> <p>25 account, getting the shares out to the investors</p>	<p style="text-align: right;">Page 20</p> <p>1 McSpadden - Confidential</p> <p>2 certain meetings that have to be held at certain</p> <p>3 points in time, how do we want to organize it.</p> <p>4 As to whether we physically organized</p> <p>5 meeting A or meeting B, it was a function of we</p> <p>6 understood the process. We outlined what needed</p> <p>7 to be done in working with the company. We set a</p> <p>8 series of meetings that was where -- needed to be</p> <p>9 done, and they were -- we had them as needed.</p> <p>10 Q. What steps need to be completed in</p> <p>11 order for an offering to take place?</p> <p>12 A. The major steps are you have to create</p> <p>13 what's called the disclosure package. You have to</p> <p>14 come up with a prospectus, preliminary prospectus,</p> <p>15 a final prospectus. You need to come up with an</p> <p>16 underwriting agreement, a contract between the</p> <p>17 company and the joint lead managers. There are</p> <p>18 documents that flow from that as well.</p> <p>19 You have to do due diligence, business</p> <p>20 auditor, legal due diligence. There are various</p> <p>21 opinions from law firms, legal opinions. There</p> <p>22 are disclosure letters that have to be prepared by</p> <p>23 law firms. There are comfort letters that have to</p> <p>24 be delivered by accounting firms. Part of the</p> <p>25 process also is you have to ensure that the</p>
<p style="text-align: right;">Page 19</p> <p>1 McSpadden - Confidential</p> <p>2 when it's delivered.</p> <p>3 There has to be one person responsible</p> <p>4 for all the mechanics of closing, and that's</p> <p>5 usually deemed to be the physical book runner.</p> <p>6 Q. And I believe you said that Citi and</p> <p>7 Barclays Capital were joint leads in this</p> <p>8 offering; is that correct?</p> <p>9 A. We were, and there were some other</p> <p>10 firms as well.</p> <p>11 Q. Did Citi and Barclays have the same</p> <p>12 role with respect to their underwriting of the</p> <p>13 offering?</p> <p>14 A. We were the physical book runner;</p> <p>15 Barclays Securities was not. But given the close</p> <p>16 relationship between Barclays Securities and the</p> <p>17 issuer, we viewed them as an equal partner.</p> <p>18 Q. Thank you.</p> <p>19 As physical book runner of this</p> <p>20 offering, was Citi responsible for organizing</p> <p>21 meetings related to various tasks that needed to</p> <p>22 be completed?</p> <p>23 A. We were a participant in setting up the</p> <p>24 organization process. As to whether we were the</p> <p>25 physical organizers -- we would say there are</p>	<p style="text-align: right;">Page 21</p> <p>1 McSpadden - Confidential</p> <p>2 securities are going to be rated. You need a</p> <p>3 rating for investors.</p> <p>4 So there's a whole series of documents</p> <p>5 that are needed, and so you have to get those</p> <p>6 series -- you know, all of them form a part of the</p> <p>7 whole underwriting package. There's a very long</p> <p>8 list of them, which I'm certain that you have.</p> <p>9 And so all of that process is the process of</p> <p>10 getting an underwritten deal completed.</p> <p>11 Q. I think we discussed a few moments ago</p> <p>12 that Citi was not the only underwriter of the</p> <p>13 securities offering; correct?</p> <p>14 A. Correct.</p> <p>15 MS. NEWCOMER: Let me mark this as 11.</p> <p>16 (Discussion off the record.)</p> <p>17 (Exhibit 11, Barclays final prospectus</p> <p>18 supplement, marked for identification.)</p> <p>19 Q. Mr. McSpadden, I've handed you a copy</p> <p>20 of a final prospectus supplement filed with the</p> <p>21 SEC by Barclays Bank PLC on Form 424B5 dated April</p> <p>22 8th, 2008. Do you recognize this document?</p> <p>23 A. I do.</p> <p>24 Q. Is this the final prospectus supplement</p> <p>25 pursuant to which Barclays conducted the Series 5</p>

<p style="text-align: right;">Page 22</p> <p>1 McSpadden - Confidential</p> <p>2 offering?</p> <p>3 A. It's a final prospectus supplement with</p> <p>4 the prospectus attached thereto, correct, plus all</p> <p>5 the documents incorporated by reference.</p> <p>6 Q. Of course.</p> <p>7 A. Which are not reproduced.</p> <p>8 Q. Correct.</p> <p>9 What is a prospectus?</p> <p>10 A. People sort of call it an offering</p> <p>11 document. It's a document that together with</p> <p>12 what's written in here plus what's incorporated in</p> <p>13 this case from the Securities and Exchange</p> <p>14 Commission's Web site it provides a body of</p> <p>15 information about the company that an investor is</p> <p>16 supposed to use to make an investment decision</p> <p>17 about whether he or she would like to purchase or</p> <p>18 not purchase the securities being offered.</p> <p>19 Q. What specific role does it serve in the</p> <p>20 context of a securities offering?</p> <p>21 A. It's -- it's the disclosure package</p> <p>22 which an investor uses to make its decision to</p> <p>23 invest or not to invest in a security. It's the</p> <p>24 primary document that says would you like to</p> <p>25 invest in the security, yes or no, here's the</p>	<p style="text-align: right;">Page 24</p> <p>1 McSpadden - Confidential</p> <p>2 Q. Can you explain the difference to me,</p> <p>3 please?</p> <p>4 A. Underwriting you have an underwriting</p> <p>5 commitment that you have to take or pay, and</p> <p>6 you'll agree to underwrite those and own those</p> <p>7 securities for the purposes of the transaction.</p> <p>8 Allocations are what you actually might be given</p> <p>9 to sell to investors.</p> <p>10 So this is a legal commitment to</p> <p>11 underwrite, and you agree to give the company \$25</p> <p>12 a share times, in the case of William Blair,</p> <p>13 208,333 shares. That's your legal underwriting</p> <p>14 commitment, which is different from what William</p> <p>15 Blair might or might not have sold -- might or</p> <p>16 might not have been given to sell.</p> <p>17 Q. Thank you.</p> <p>18 According to this prospectus, Citi was</p> <p>19 committed to underwrite 13,500,004 shares in</p> <p>20 connection with the Series 5 offering; correct?</p> <p>21 A. Correct.</p> <p>22 Q. Were they committed to underwrite --</p> <p>23 strike that.</p> <p>24 The number of shares that Citi</p> <p>25 committed to underwrite was greater than any of</p>
<p style="text-align: right;">Page 23</p> <p>1 McSpadden - Confidential</p> <p>2 facts you need to know.</p> <p>3 Q. I'd like to direct your attention to</p> <p>4 page S-31 of this exhibit.</p> <p>5 A. I'm there.</p> <p>6 Q. There are a number of companies</p> <p>7 identified on this page; correct?</p> <p>8 A. There are.</p> <p>9 Q. Are those all of the companies who were</p> <p>10 underwriters of the Series 5 offering?</p> <p>11 A. Yes.</p> <p>12 Q. And set forth to the right</p> <p>13 corresponding to each of the underwriters' names</p> <p>14 is a number; correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Does that number represent the number</p> <p>17 of shares allocated to each underwriter in</p> <p>18 connection with this Series 5 offering?</p> <p>19 A. No.</p> <p>20 Q. What number does this -- excuse me.</p> <p>21 What does this number represent?</p> <p>22 A. It represents the securities that they</p> <p>23 were obliged to underwrite from an underwriting</p> <p>24 point of view, which is different from</p> <p>25 allocations.</p>	<p style="text-align: right;">Page 25</p> <p>1 McSpadden - Confidential</p> <p>2 the other underwriters listed on this page;</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. And is Citi's underwriting commitment</p> <p>6 greater because of its role as the primary</p> <p>7 physical book runner for this offering?</p> <p>8 A. I make an observation: The fact that</p> <p>9 we've got four more shares than anyone else is a</p> <p>10 function of the rounding numbers. You can't have</p> <p>11 partial shares when you sell. For all practical</p> <p>12 purposes, if you look at the numbers, 13,500,000</p> <p>13 shares was for six firms total. We were all</p> <p>14 viewed as equally liable. The four shares is</p> <p>15 math, because you can't have a half share to</p> <p>16 underwrite.</p> <p>17 Q. Thank you.</p> <p>18 Just looking at this document, the</p> <p>19 first four underwriters listed underneath</p> <p>20 Citigroup: -- Barclays Capital Securities</p> <p>21 Limited; Merrill Lynch, Pierce, Fenner & Smith;</p> <p>22 UBS Securities; and Wachovia Capital Markets --</p> <p>23 were those the other joint book runners of the</p> <p>24 Series 5 offering?</p> <p>25 A. They were. But Morgan Stanley, if you</p>

<p style="text-align: right;">Page 26</p> <p>1 McSpadden - Confidential</p> <p>2 look, has the same dollar amount, so we would view</p> <p>3 them as a joint lead manager working -- number of</p> <p>4 shares, I mean, so...</p> <p>5 Q. Could you --</p> <p>6 A. That's a numerical observation.</p> <p>7 Q. Do you recall if Morgan Stanley was a</p> <p>8 senior manager of the offering instead of a joint</p> <p>9 book runner?</p> <p>10 A. From their positioning on the cover of</p> <p>11 the prospectus, I would assume that they would</p> <p>12 have been a senior manager. But I see by the</p> <p>13 number of shares they were given for the purposes</p> <p>14 of allocation, they had a similar dollar amount.</p> <p>15 By looking at where they're positioned on the</p> <p>16 cover, they're out of alphabetical order and</p> <p>17 they're on a separate line.</p> <p>18 Q. Do you know what Morgan Stanley's role</p> <p>19 was within the underwriting syndicate for the</p> <p>20 Series 5 offering?</p> <p>21 A. Their role specifically?</p> <p>22 Q. Whether they were a senior manager or a</p> <p>23 joint book runner.</p> <p>24 A. Based on what I have in front of me, I</p> <p>25 don't know the answer specifically, no.</p>	<p style="text-align: right;">Page 28</p> <p>1 McSpadden - Confidential</p> <p>2 senior manager in a securities offering differ</p> <p>3 from that of a joint book runner?</p> <p>4 A. You all have your underwriting</p> <p>5 liability pursuant to the shares you were supposed</p> <p>6 to underwrite. You are all supposed to be part of</p> <p>7 the process to sell securities. The managers on</p> <p>8 the cover and many, if not all, of the</p> <p>9 underwriters would have been shares for \$25 par</p> <p>10 issue or retail target issue. They would actually</p> <p>11 have been given shares to sell.</p> <p>12 Your job is to, since you participate</p> <p>13 in the offering, do your best to sell shares to</p> <p>14 investors that you think are appropriate to</p> <p>15 purchase the shares.</p> <p>16 Q. Do the other joint book runners have</p> <p>17 the same response -- strike that.</p> <p>18 Do the other joint book runners have</p> <p>19 the same responsibility as Citi with respect to</p> <p>20 ensuring that the process of completing the</p> <p>21 offering occurred?</p> <p>22 MR. HACKER: Object to form.</p> <p>23 Go ahead and answer.</p> <p>24 A. In my opinion, yes.</p> <p>25 Q. So is it your testimony that each of</p>
<p style="text-align: right;">Page 27</p> <p>1 McSpadden - Confidential</p> <p>2 Q. Is there anyone at Citigroup that would</p> <p>3 know the answer to that?</p> <p>4 A. Yes. They'd have to refresh</p> <p>5 themselves, as I would have to refresh myself,</p> <p>6 though.</p> <p>7 Q. Who would know the answer to that if</p> <p>8 it's not you?</p> <p>9 A. Why don't we continue with the</p> <p>10 deposition and see if we can figure it out.</p> <p>11 Q. If we could turn back to page S-31</p> <p>12 again.</p> <p>13 A. But I'll go back. As I noted, their</p> <p>14 positioning on the cover tells me they're not a</p> <p>15 joint lead manager. The fact that they got the</p> <p>16 same shares underwritten would indicate that they</p> <p>17 could be considered that.</p> <p>18 But, again, note that they're also out</p> <p>19 of alphabetical order. So that tells me that I</p> <p>20 would view them as not exactly equal with joint</p> <p>21 lead manager status, notwithstanding the fact they</p> <p>22 had similar shares underwritten, just because of</p> <p>23 the physical position of where their name is.</p> <p>24 Q. Thank you.</p> <p>25 How, if at all, does the role of a</p>	<p style="text-align: right;">Page 29</p> <p>1 McSpadden - Confidential</p> <p>2 the other joint book runners had the same</p> <p>3 responsibility that Citi did with respect to</p> <p>4 ensuring that certain documentation was completed</p> <p>5 with respect to the offering?</p> <p>6 MR. HACKER: Object to form.</p> <p>7 A. When you say "each of the other joint</p> <p>8 lead managers," can you articulate who you're</p> <p>9 referring to?</p> <p>10 Q. Why don't we do it this way: Who were</p> <p>11 the other joint book runners for the Series 5</p> <p>12 offering?</p> <p>13 A. Based on the prospectus and the</p> <p>14 underwriting table, I would have viewed the joint</p> <p>15 lead managers as Citigroup, Barclays Capital,</p> <p>16 Merrill Lynch, UBS, Wachovia. I would view Morgan</p> <p>17 Stanley as a senior role.</p> <p>18 I would have viewed the other managers</p> <p>19 who are on the cover of the red herring as some</p> <p>20 designation, some form of manager for the deal.</p> <p>21 You can call them senior, junior, whatever, but</p> <p>22 they were manager because they were listed on the</p> <p>23 cover of the red herring.</p> <p>24 Q. And would the managers be Bank of</p> <p>25 America and RBC Capital who were committed to</p>

<p style="text-align: right;">Page 30</p> <p>1 McSpadden - Confidential</p> <p>2 underwrite more shares than Bank, SunTrust, and</p> <p>3 Wells Fargo?</p> <p>4 A. They're -- all the managers are on the</p> <p>5 cover in one form or another. The people who</p> <p>6 underwrite it are the people who are not on the</p> <p>7 cover but are listed on page S-31.</p> <p>8 Q. And do you view the role of Deutsche</p> <p>9 Bank, SunTrust, and Wells Fargo as junior</p> <p>10 managers, being that they're listed under the last</p> <p>11 line on the cover?</p> <p>12 A. There's a lot of different</p> <p>13 phraseologies for where you fit, but yes, they're</p> <p>14 less senior than the people on the top line.</p> <p>15 Q. And is there any difference in the</p> <p>16 responsibilities of the different managing</p> <p>17 underwriters with respect to their management</p> <p>18 responsibilities in connection with the Series 5</p> <p>19 offering?</p> <p>20 A. If you're involved in a transaction,</p> <p>21 everyone has responsibility for that transaction.</p> <p>22 But there are oftentimes people who have more</p> <p>23 involvement in the transaction, and so they're --</p> <p>24 everyone is equally responsible, but there are</p> <p>25 people who have first-line duties, so to speak.</p>	<p style="text-align: right;">Page 32</p> <p>1 McSpadden - Confidential</p> <p>2 their roles are, that's for them to say.</p> <p>3 But if I'm involved in a deal, if I'm</p> <p>4 on the cover or on the underwriting group in the</p> <p>5 back, I take my responsibilities very seriously</p> <p>6 and execute accordingly.</p> <p>7 Q. Would all of the managing underwriters</p> <p>8 have been responsible for conducting due diligence</p> <p>9 procedures in connection with the Series 5</p> <p>10 offering?</p> <p>11 MR. HACKER: Object to form.</p> <p>12 A. All the managers have been responsible</p> <p>13 for participating in due diligence. They were</p> <p>14 given the opportunity to participate in various</p> <p>15 calls that would have occurred in and around the</p> <p>16 time of the offering. So they would have had the</p> <p>17 opportunity to participate. It's up to them to</p> <p>18 decide whether they did or didn't participate.</p> <p>19 But, as I said, if Citigroup is</p> <p>20 involved in a deal and I'm working on it, our</p> <p>21 people on my team would participate on those</p> <p>22 calls, or meetings, as the case may be.</p> <p>23 Q. I just want to clarify your testimony.</p> <p>24 Did each of the managers -- under -- managing</p> <p>25 underwriters for the Series 5 offering have the</p>
<p style="text-align: right;">Page 31</p> <p>1 McSpadden - Confidential</p> <p>2 But everyone's responsible.</p> <p>3 Q. I believe earlier today you mentioned</p> <p>4 certain due diligence procedures that were</p> <p>5 required to be completed in connection with the</p> <p>6 Series 5 offering; is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. Would all of the managers have the same</p> <p>9 responsibilities with respect to completing the</p> <p>10 due diligence procedures in connection with the</p> <p>11 Series 5 offering?</p> <p>12 MR. HACKER: Object to form.</p> <p>13 Q. I'll rephrase the question.</p> <p>14 Did all of the managers have the same</p> <p>15 responsibilities with respect to the due diligence</p> <p>16 procedures that were conducted in connection with</p> <p>17 the Series 5 offering?</p> <p>18 MR. HACKER: Object to form.</p> <p>19 Go ahead.</p> <p>20 A. If Citigroup is involved in a</p> <p>21 transaction, I view it our responsibility to do</p> <p>22 appropriate steps from a due diligence point of</p> <p>23 view, process point of view, to ensure everything</p> <p>24 is properly done. So that's the way I do it for</p> <p>25 Citigroup. As to what the other managers view</p>	<p style="text-align: right;">Page 33</p> <p>1 McSpadden - Confidential</p> <p>2 same opportunity to participate in due diligence</p> <p>3 meetings that occurred with respect to the Series</p> <p>4 5 offering?</p> <p>5 A. I believe they did, yeah.</p> <p>6 Q. And did they also have the same</p> <p>7 opportunity to participate in any due diligence</p> <p>8 calls that were conducted in connection with the</p> <p>9 Series 5 offering?</p> <p>10 A. They had the opportunity to participate</p> <p>11 in most of all the calls. There was one call that</p> <p>12 not every manager would have involved in that I'm</p> <p>13 aware of.</p> <p>14 Q. Which call was that?</p> <p>15 A. That was a specific call that was held</p> <p>16 in regard to the comfort letter where there was a</p> <p>17 group of six or seven firms participated with a</p> <p>18 discussion about certain aspects of the earnings</p> <p>19 that were discussed in the comfort letter for the</p> <p>20 first and second months of 2008.</p> <p>21 Q. And who was that call with?</p> <p>22 A. A gentleman by the name of Jonathan</p> <p>23 Britton.</p> <p>24 Q. And which of the underwriting firms</p> <p>25 participated in that call?</p>

<p style="text-align: right;">Page 106</p> <p>1 McSpadden - Confidential</p> <p>2 given them judgments as to what type of new issue</p> <p>3 security where the dividend level -- what's a</p> <p>4 reasonable range of dividend levels and a</p> <p>5 reasonable size expectation at the time of launch.</p> <p>6 Those would have been topics of the</p> <p>7 conversation.</p> <p>8 Q. When you say "reasonable range of</p> <p>9 dividend levels and a reasonable size</p> <p>10 expectation," what are you referring to with</p> <p>11 respect to the size expectation?</p> <p>12 A. How much money they wanted to raise.</p> <p>13 Q. Earlier you mentioned that one of the</p> <p>14 factors regarding the coupon -- the level of the</p> <p>15 coupon for the Series 5 securities may be what the</p> <p>16 whispered indications were. Do you recall that</p> <p>17 testimony?</p> <p>18 A. Whispered indications would be a</p> <p>19 function of where we would -- when investors go</p> <p>20 out to the market and say, Well, where do you</p> <p>21 think the new issue is likely to come on the</p> <p>22 dividend level?</p> <p>23 And you might say, Well, the existing</p> <p>24 dividend level for their XYZ security is trading</p> <p>25 at X or Bank of America is trading at Y, so we</p>	<p style="text-align: right;">Page 108</p> <p>1 McSpadden - Confidential</p> <p>2 to the Series 5 shares that were issued?</p> <p>3 A. Every debt security that's issued</p> <p>4 carries risk with it, in fact, every security</p> <p>5 that's issued carries risk with it. So yes, one</p> <p>6 would look at the issuer. You have ratings</p> <p>7 assigned by independent bodies, you have the</p> <p>8 markets telling you what similar securities of</p> <p>9 Barclays or others are rated, and that's a</p> <p>10 function of people's perception of the company.</p> <p>11 One of the perceptions that people have</p> <p>12 about a company is what they think their risk is.</p> <p>13 But also there's other perceptions: what's the</p> <p>14 level of markets, where are U.S. treasuries, how</p> <p>15 does this dividend fit in against U.S.</p> <p>16 treasuries.</p> <p>17 So it's a function of a whole broad</p> <p>18 range of things, but risk is a component that you</p> <p>19 take in when you buy any security.</p> <p>20 Q. Is there any discussion with</p> <p>21 Barclays -- strike that -- with rating agencies in</p> <p>22 connection with determining what the coupon rate</p> <p>23 for the Series 5 preference shares would be?</p> <p>24 A. I'll make a general observation. The</p> <p>25 purpose of the rating agencies is to make an</p>
<p style="text-align: right;">Page 107</p> <p>1 McSpadden - Confidential</p> <p>2 think somewhere in that range is a reasonable</p> <p>3 range.</p> <p>4 And that's now sort of known as</p> <p>5 whispers. So you haven't gone out with formal</p> <p>6 guidance as to what you think the dividend would</p> <p>7 be, but you are giving preliminary indication of</p> <p>8 where you think a dividend is likely to come to</p> <p>9 see if you can generate sufficient interest.</p> <p>10 Q. Was a decision made during the green</p> <p>11 light call as to what the coupon rate would be for</p> <p>12 the Series 5 offering?</p> <p>13 A. Again, I'm not sure -- I don't recall</p> <p>14 if I was on it, but it would be very typical in</p> <p>15 any go/no go green light call the issuer would</p> <p>16 say, If we go now, what do you think my dividend</p> <p>17 is likely to be or where do you think the range of</p> <p>18 my dividend from a high to a low is likely to be.</p> <p>19 That's a very common conversation. If it's not to</p> <p>20 their liking, then they won't proceed.</p> <p>21 Q. Do the risks associated with a company</p> <p>22 play any role in determining the coupon rate of</p> <p>23 the securities to be issued?</p> <p>24 A. Yes.</p> <p>25 Q. Did they play a role here with respect</p>	<p style="text-align: right;">Page 109</p> <p>1 McSpadden - Confidential</p> <p>2 assessment of what they believe a given credit is</p> <p>3 rated: senior debt, subordinated debt, preferred</p> <p>4 stock. Usually not the job of the rating agencies</p> <p>5 to opine on coupons or levels. That's -- their</p> <p>6 function is risk.</p> <p>7 But you have to talk to a rating agency</p> <p>8 as to what they look at. Basically their job is</p> <p>9 to say, Here's what we think the credit rating of</p> <p>10 this issuer and this instrument is, and they leave</p> <p>11 it to the market to say what any cost associated</p> <p>12 with debt instruments is going to be.</p> <p>13 Q. So there were no discussions with</p> <p>14 rating agencies in connection with determining the</p> <p>15 coupon rate for the Series 5 preference shares?</p> <p>16 MR. HACKER: Object to form.</p> <p>17 A. As I mentioned earlier, I didn't talk</p> <p>18 to any rating agencies. It's Barclays job to talk</p> <p>19 to them. I don't know what was or wasn't done</p> <p>20 about that but...</p> <p>21 Q. Is it part of an underwriter's due</p> <p>22 diligence requirements to know if Barclays has had</p> <p>23 any conversations with its rating agencies</p> <p>24 regarding its credit risk or the pricing at which</p> <p>25 it may offer a security?</p>

<p style="text-align: right;">Page 110</p> <p>1 McSpadden - Confidential</p> <p>2 MR. HACKER: Object to form.</p> <p>3 A. As I mentioned earlier, early on in the</p> <p>4 process we said ratings are a condition precedent</p> <p>5 during the deal. We needed the rates. We</p> <p>6 reminded Barclays early on to contact the rating</p> <p>7 agencies. They knew we needed ratings before we</p> <p>8 would launch and price a deal.</p> <p>9 So yes, ratings were important to us.</p> <p>10 And we notified them early on, and they provided</p> <p>11 us ratings for the issuer and the issue.</p> <p>12 Q. Do you know when the Series 5</p> <p>13 preference shares were actually priced in</p> <p>14 connection with the Series 5 offering?</p> <p>15 A. They were priced on August 8th --</p> <p>16 excuse me, April 8th.</p> <p>17 Q. If I could refer you back to this</p> <p>18 timeline we've been looking at.</p> <p>19 A. Sure.</p> <p>20 Q. Also for April 7th, the last item on</p> <p>21 the timeline for that day is conduct book build</p> <p>22 process. Do you see that?</p> <p>23 A. Correct.</p> <p>24 Q. What is that referring to?</p> <p>25 A. If you recall your exhibit I believe</p>	<p style="text-align: right;">Page 112</p> <p>1 McSpadden - Confidential</p> <p>2 underwriters, two layers of underwriters.</p> <p>3 Everyone is made aware of the</p> <p>4 transaction. All those firms have varying degrees</p> <p>5 of retail distribution capability. This was a</p> <p>6 retail-targeted security. So the purpose of</p> <p>7 syndicate -- i.e., the syndicates are the larger</p> <p>8 firms -- is to reach out to those firms and say,</p> <p>9 We're doing a deal. Here's a rough indication of</p> <p>10 where we think the dividend is going to be. What</p> <p>11 interest do you think your retail system might</p> <p>12 have? Please reflect us your interest. We will</p> <p>13 give you shares accordingly that you think you can</p> <p>14 sell. We will give you firm shares to sell.</p> <p>15 That is the process, distributing</p> <p>16 shares to people who would then contact investors,</p> <p>17 garner their interest for a transaction.</p> <p>18 Q. And when does that book build</p> <p>19 process -- strike that.</p> <p>20 Does that book build process happen</p> <p>21 after the preliminary prospectus is filed?</p> <p>22 A. Correct.</p> <p>23 Q. If I could direct you to the next</p> <p>24 agenda item, please.</p> <p>25 A. Please.</p>
<p style="text-align: right;">Page 111</p> <p>1 McSpadden - Confidential</p> <p>2 it's 12 or maybe 11, which is the preliminary</p> <p>3 prospectus, the red herring, that was dated</p> <p>4 August -- April 7th. We announced the transaction</p> <p>5 after the green light call on the 7th. We were</p> <p>6 targeting two-day marketing process -- this</p> <p>7 happened on the 8th -- and then priced it on the</p> <p>8 afternoon of the 8th.</p> <p>9 So the book build process -- book build</p> <p>10 means building the book of interest for the</p> <p>11 transaction. That's just a shorthand for getting</p> <p>12 investor interest, determining how much interest</p> <p>13 there is, developing interest, how big that is,</p> <p>14 who it's with, our assessment as to whether it's</p> <p>15 good -- good investors, good investors to put your</p> <p>16 stock with.</p> <p>17 So that's, quote, the book build</p> <p>18 process.</p> <p>19 Q. Who participates in the book build</p> <p>20 process?</p> <p>21 A. By definition all of the joint lead</p> <p>22 managers are heavily involved, all of the sales</p> <p>23 forces of the joint lead managers, as well as the</p> <p>24 other managers on the cover, as well as that whole</p> <p>25 long list of firms back on S-31, all those</p>	<p style="text-align: right;">Page 113</p> <p>1 McSpadden - Confidential</p> <p>2 Q. For April 8th there's a prepricing due</p> <p>3 diligence bring-down call listed here. Do you see</p> <p>4 that?</p> <p>5 A. Correct.</p> <p>6 Q. What is that referring to?</p> <p>7 A. Due diligence is an ongoing process.</p> <p>8 It starts from the moment we are retained by a</p> <p>9 company through the close of the transaction.</p> <p>10 There are major steps along the way. Obviously we</p> <p>11 have the business due diligence and the accounting</p> <p>12 due diligence calls, the lists we referred to.</p> <p>13 The lawyers have done extensive legal due</p> <p>14 diligence in response to all this.</p> <p>15 But things change over time. In the</p> <p>16 interim the company released its financial results</p> <p>17 for the full year. They filed their 20-F. So the</p> <p>18 due diligence process never ceases.</p> <p>19 So just before you price a deal, that's</p> <p>20 a critical point because the disclosure package is</p> <p>21 deemed to be live, from a liability point of view,</p> <p>22 at the moment of pricing, which would have been</p> <p>23 sometime in the afternoon of the 8th, 3 or 4</p> <p>24 o'clock, 2 or 3 o'clock, whenever it was.</p> <p>25 So the time when the issuer primarily</p>

<p style="text-align: right;">Page 118</p> <p>1 McSpadden - Confidential</p> <p>2 that relate to this company, what are the key</p> <p>3 things I need to know about the industry they're</p> <p>4 in; but more specifically what are the key issues</p> <p>5 that relate to this unique issuer, company X, or</p> <p>6 in this case Barclays PLC.</p> <p>7 So everything is tailored. There's no</p> <p>8 standard form here are the ten questions you ask;</p> <p>9 if you do those, you're okay.</p> <p>10 Q. I think we're all done with that</p> <p>11 document.</p> <p>12 Just one more housekeeping matter with</p> <p>13 respect to this document. If you look at the</p> <p>14 timeline for the prepricing due diligence bring-</p> <p>15 down call and for the settlement bring-down due</p> <p>16 diligence call, the responsibility noted is all</p> <p>17 parties; is that correct?</p> <p>18 A. Correct.</p> <p>19 Q. Did all of the managing underwriters</p> <p>20 for the Series 5 offering participate in these</p> <p>21 bring-down conference calls?</p> <p>22 A. It would have been normal that -- I</p> <p>23 can't tell specifically who was on the invitation</p> <p>24 list, but it would be very standard at any firm</p> <p>25 whose name is on the cover of the prospectus would</p>	<p style="text-align: right;">Page 120</p> <p>1 McSpadden - Confidential</p> <p>2 A. By "minutes" --</p> <p>3 Q. Let me withdraw that question.</p> <p>4 With respect to the Series 5 offering,</p> <p>5 were any minutes of the -- or notes of the due</p> <p>6 diligence calls recorded?</p> <p>7 A. I'm aware that a due diligence call was</p> <p>8 recorded that was part of the annual due diligence</p> <p>9 process that Barclays conducted for a broad number</p> <p>10 of programs they have. I'm aware that one was</p> <p>11 held, and I also know that that was recorded.</p> <p>12 That is -- I would call that the exception versus</p> <p>13 the normal.</p> <p>14 Q. Do you know if minutes were recorded</p> <p>15 for any of the due diligence calls that occurred</p> <p>16 with respect to the Series 5 offering?</p> <p>17 A. Other than the one I referred to, I'm</p> <p>18 not aware of any. That doesn't mean they weren't.</p> <p>19 I just don't know.</p> <p>20 Q. Was there a formal minute taker present</p> <p>21 with respect to any of the due diligence calls for</p> <p>22 the Series 5 offering?</p> <p>23 A. Not to my knowledge.</p> <p>24 MR. HACKER: We've been going a little</p> <p>25 more than an hour. Is now a good time for a</p>
<p style="text-align: right;">Page 119</p> <p>1 McSpadden - Confidential</p> <p>2 be offered an opportunity to participate in the</p> <p>3 prepricing and preclosing due diligence call.</p> <p>4 That's street standard.</p> <p>5 Q. Are there any circumstances that would</p> <p>6 cause an underwriter not to participate in a due</p> <p>7 diligence call if he was offered the opportunity</p> <p>8 to do so?</p> <p>9 MR. HACKER: Object to form.</p> <p>10 A. I can speak for Citigroup. For</p> <p>11 Citigroup if we're involved in a deal and we're</p> <p>12 offered the opportunity to participate in a due</p> <p>13 diligence call, we will do everything we can to be</p> <p>14 sure someone with intelligent ears listen to that</p> <p>15 call, no matter what our role, whether we're a</p> <p>16 half percent underwriter, we're a 50 percent joint</p> <p>17 lead manager. We take our due diligence</p> <p>18 obligation seriously.</p> <p>19 Q. With respect to the Series 5 offering,</p> <p>20 are you aware of any due diligence conference</p> <p>21 calls where an underwriter was invited to</p> <p>22 participate and did not participate?</p> <p>23 A. I don't recall.</p> <p>24 Q. Are minutes typically recorded of the</p> <p>25 due diligence calls?</p>	<p style="text-align: right;">Page 121</p> <p>1 McSpadden - Confidential</p> <p>2 break?</p> <p>3 MS. NEWCOMER: Sure. We can go off the</p> <p>4 record.</p> <p>5 THE VIDEOGRAPHER: Going off the record</p> <p>6 11:14 a.m. This is the end of Disk 2 in the</p> <p>7 deposition of Jack McSpadden.</p> <p>8 (Recess taken from 11:14 to 11:31.)</p> <p>9 THE VIDEOGRAPHER: Going back on the</p> <p>10 record 11:31 a.m. This is the beginning of</p> <p>11 Disk 3 in the deposition of Jack McSpadden.</p> <p>12 Q. Mr. McSpadden, do you understand that</p> <p>13 you are still under oath?</p> <p>14 A. Yes, ma'am, I do.</p> <p>15 Q. With respect to the various action</p> <p>16 items on the timeline that we were reviewing</p> <p>17 before we broke, in connection with Citi's role as</p> <p>18 the lead underwriter for the Series 5 offering,</p> <p>19 did it have any obligation to monitor or keep</p> <p>20 track of the completion of the action items on</p> <p>21 that timeline?</p> <p>22 MR. HACKER: Object to form.</p> <p>23 A. As we were the, as you mentioned, the</p> <p>24 physical book runner earlier, or the lead of</p> <p>25 leads, the company would have asked us to take</p>

<p style="text-align: right;">Page 122</p> <p>1 McSpadden - Confidential</p> <p>2 overall responsible for managing the process. But</p> <p>3 it is incumbent upon all the joint lead managers</p> <p>4 in the process to participate as well.</p> <p>5 And so we would have had assistance</p> <p>6 from all our colleagues to do -- in the process as</p> <p>7 well.</p> <p>8 Q. What did Citi do, if anything, to keep</p> <p>9 track of the action items on the timeline to</p> <p>10 ensure that they were being completed with respect</p> <p>11 to the Series 5 offering?</p> <p>12 A. We knew what the items were on there.</p> <p>13 We would monitor them as they were completed and</p> <p>14 were ticked off and done. And so you would keep</p> <p>15 track, say, Do we have the prospectus, do we have</p> <p>16 the underwriting agreement, where are we on the X,</p> <p>17 Y, Z. You just go through all that, so you</p> <p>18 monitor the process.</p> <p>19 Q. Did Citi arrange for regular calls or</p> <p>20 meetings to be held to keep track of any of these</p> <p>21 action items?</p> <p>22 A. I can't recall specifically we did</p> <p>23 here, but it is very typical, particularly you</p> <p>24 have a four-week process from early March to early</p> <p>25 April, that you would have had process update</p>	<p style="text-align: right;">Page 124</p> <p>1 McSpadden - Confidential</p> <p>2 March 19th, 2008, from Bogdan Ciobanu to a number</p> <p>3 of individuals with the subject Project Rimu</p> <p>4 update call on Thursday at 10 a.m. New York/1400</p> <p>5 U.K.</p> <p>6 Mr. McSpadden, I'll note that you are</p> <p>7 one of the recipients of this e-mail. Do you see</p> <p>8 that?</p> <p>9 A. I do.</p> <p>10 Q. Do you recall receiving this e-mail?</p> <p>11 A. I don't recall receiving it, but it's</p> <p>12 addressed to me, so highly likely I did.</p> <p>13 Q. Did Mr. Ciobanu send this e-mail as</p> <p>14 part of his work at Citi with respect to the</p> <p>15 Series 5 offering?</p> <p>16 A. Correct. It will be exactly what it</p> <p>17 says, an update on the agenda process. From the</p> <p>18 content that's what it is.</p> <p>19 Q. Mr. Ciobanu states, Team: Please</p> <p>20 attached please find an agenda for an update call</p> <p>21 on Thursday, March 20th at 10 a.m. New York/1400</p> <p>22 U.K. for Project Rimu. Dial-in details below.</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. Then the attached document is the</p>
<p style="text-align: right;">Page 123</p> <p>1 McSpadden - Confidential</p> <p>2 calls to say, Here's what we've done, here's what</p> <p>3 we're missing, here's where we are.</p> <p>4 That's just good process management,</p> <p>5 and our job was process, among other things.</p> <p>6 Q. Were there weekly update calls that</p> <p>7 took place with respect to the Series 5 offering?</p> <p>8 A. They aren't shown on Exhibit 16, but I</p> <p>9 would be -- I would think it not illogical that</p> <p>10 there would have been update calls and probably</p> <p>11 would somewhere expected it, given you had a</p> <p>12 month-long time frame.</p> <p>13 Typically once a week would be</p> <p>14 reasonable. Then when you got down closer to the</p> <p>15 transaction, it would be more frequently than</p> <p>16 that. That would a typical situation. Whether it</p> <p>17 occurred here, I don't recall.</p> <p>18 (Exhibit 17, e-mail dated 3/19/08 from</p> <p>19 Ciobanu to McSpadden, et al., Bates-stamped</p> <p>20 UW_BARCLAYS_00001272 to 25, marked for</p> <p>21 identification.)</p> <p>22 Q. I've marked as Exhibit 17 a document</p> <p>23 bearing the Bates number UW_Barclays_00001272 to</p> <p>24 25. And for the record, this is an e-mail sent</p> <p>25 on -- or a document reflecting an e-mail sent on</p>	<p style="text-align: right;">Page 125</p> <p>1 McSpadden - Confidential</p> <p>2 agenda Mr. Ciobanu references; correct?</p> <p>3 A. Correct.</p> <p>4 Q. Did you participate in this update call</p> <p>5 on March 20th, 2008?</p> <p>6 A. I don't recall whether I did or not.</p> <p>7 But had I been available that day at work, it</p> <p>8 would have been a call I participated in because,</p> <p>9 again, we were the lead of leads. So it would</p> <p>10 have been my responsibility.</p> <p>11 Q. Is it fair to say that someone from</p> <p>12 Citi would have been on this call?</p> <p>13 A. Someone with Citi could have been on</p> <p>14 this call.</p> <p>15 Q. Do you know who participated in this</p> <p>16 call?</p> <p>17 A. I do not.</p> <p>18 Q. If you could turn to the agenda. Does</p> <p>19 this agenda accurately reflect the matters</p> <p>20 discussed during this call?</p> <p>21 A. It's the agenda for the call, so I</p> <p>22 think it would -- that would be the purpose of the</p> <p>23 call would be to discuss these items.</p> <p>24 Q. Were there any items that were</p> <p>25 discussed during this call that are not reflected</p>

<p style="text-align: right;">Page 302</p> <p>1 McSpadden - Confidential</p> <p>2 MR. PELLER: Objection.</p> <p>3 A. No, I did not hear, but I would</p> <p>4 disagree with your characterization. These are</p> <p>5 not financial statement items.</p> <p>6 Q. Did you ever hear that PwC believed it</p> <p>7 was a mistake to circle up certain financial</p> <p>8 disclosures that Barclays had made in its 2007</p> <p>9 20-F in connection with its issuance of the</p> <p>10 comfort letters with respect to the Series 5</p> <p>11 offering?</p> <p>12 MR. HACKER: Objection.</p> <p>13 MR. PELLER: Objection.</p> <p>14 A. I do not recall hearing it.</p> <p>15 Q. Just to draw your attention to some of</p> <p>16 the matters that Mr. Ludwick in his e-mail</p> <p>17 references as items that PwC is no longer willing</p> <p>18 to give comfort on.</p> <p>19 MR. PELLER: Objection.</p> <p>20 Q. Mr. Ludwick states, BGI assets under</p> <p>21 management and total clients' assets at Barclays</p> <p>22 wealth, page 5 --</p> <p>23 MR. PELLER: Objection.</p> <p>24 Q. -- Bar Cap averaged DBAR, page 25 and</p> <p>25 26; BGI total assets under management and</p>	<p style="text-align: right;">Page 304</p> <p>1 McSpadden - Confidential</p> <p>2 it was a mistake to circle up. So I think it</p> <p>3 is well within the --</p> <p>4 MR. PELLER: No, objection. Topic 12</p> <p>5 only refers to correspondence between Citi and</p> <p>6 PwC. He's already stated that they didn't</p> <p>7 correspond with PwC about these matters.</p> <p>8 MR. HACKER: I agree. And the bullet</p> <p>9 points are with regard to whatever they're</p> <p>10 talking about now. It has nothing to do with</p> <p>11 Rimu.</p> <p>12 MS. NEWCOMER: These are the items that</p> <p>13 PwC is suggesting was a mistake to circle up</p> <p>14 in Rimu.</p> <p>15 MR. HACKER: We object to the</p> <p>16 interpretation.</p> <p>17 MS. NEWCOMER: We can debate the</p> <p>18 interpretation of the document. I think it's</p> <p>19 well within the scope of the due diligence</p> <p>20 procedures that were performed and what was</p> <p>21 relied on in conjunction with those due</p> <p>22 diligence procedures.</p> <p>23 But I have no further questions</p> <p>24 regarding the document, so we can move on.</p> <p>25 Q. I believe you testified earlier that</p>
<p style="text-align: right;">Page 303</p> <p>1 McSpadden - Confidential</p> <p>2 movements related thereto, page 27-28; Barclays</p> <p>3 wealth total client assets, page 29 and 30;</p> <p>4 called-up share capital, page 42 and 114;</p> <p>5 unobservable inputs in respect of total financial</p> <p>6 instruments stated at fair value at page 48; all</p> <p>7 data and discussion of CDOs, collateral funding,</p> <p>8 interest in third-party CDOs, i.e., SIVs, SIV</p> <p>9 lite, CT, and MTN conduits under, quote, financial</p> <p>10 review - off balance sheet arrangements on pages</p> <p>11 51 and 52; all data under, quote, Barclays Capital</p> <p>12 credit market positions, i.e., credit exposures,</p> <p>13 on page 53; and certain data re directors</p> <p>14 remuneration on pages 130 to 137.</p> <p>15 MR. PELLER: Objection.</p> <p>16 MR. HACKER: I'm just going to object</p> <p>17 too. This goes beyond the scope of the</p> <p>18 examination topics. This is not the Series 5</p> <p>19 offering.</p> <p>20 MS. NEWCOMER: This document</p> <p>21 specifically references comfort that was given</p> <p>22 in the context of the Series 5 offering and</p> <p>23 that the auditor that gave that comfort that</p> <p>24 the underwriters relied upon in performing</p> <p>25 their due diligence procedures is suggesting</p>	<p style="text-align: right;">Page 305</p> <p>1 McSpadden - Confidential</p> <p>2 there was green shoe bring-down due diligence that</p> <p>3 Citi was involved in with respect to the Series 5</p> <p>4 offering; correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And that is related to its exercise of</p> <p>7 the overallotment option in connection with the</p> <p>8 Series 5 offering; correct?</p> <p>9 A. Correct.</p> <p>10 Q. What does the term "overallotment" mean</p> <p>11 in the context of a securities offering?</p> <p>12 A. When you sell securities, it's</p> <p>13 oftentimes you sell more than you're actually</p> <p>14 going to receive from the underwriter -- from the</p> <p>15 issuer. And the method in which you -- in other</p> <p>16 words, you sell more to investors than you're</p> <p>17 actually going to get from the underwriter -- from</p> <p>18 the issuer, excuse me.</p> <p>19 The purpose of the overallotment option</p> <p>20 is it's very common in equity deals; it's also</p> <p>21 common in retail targeted transactions. It</p> <p>22 basically gives you the ability to overallocate over</p> <p>23 and above the agreed amount that is going to be</p> <p>24 purchased, sold to the underwriters by the</p> <p>25 company.</p>

<p style="text-align: right;">Page 306</p> <p>1 McSpadden - Confidential</p> <p>2 The purpose is you want to create price</p> <p>3 tension after the fact to ensure that the equity-</p> <p>4 related instruments, in this case the \$25 par</p> <p>5 piece of paper, performs well in the after market.</p> <p>6 To do that it's standard practice to have the</p> <p>7 syndicate, either collectively or individually,</p> <p>8 step in to help support that price.</p> <p>9 And then the question is it's --</p> <p>10 allocation of a retail targeted deal, again, is an</p> <p>11 art, not a science. You don't know what the</p> <p>12 future market is going to be. You don't know how</p> <p>13 the market is going to react the day after you</p> <p>14 price it, the day after that.</p> <p>15 So what you oftentimes do is you sell</p> <p>16 shares in excess of what you're going to be</p> <p>17 receiving from the company.</p> <p>18 Then the question becomes there's risk</p> <p>19 involved in that and that the underwriters then --</p> <p>20 if the stock performs very well, then they have to</p> <p>21 cover their naked short in the after market. And</p> <p>22 if you have no overallotment option from the</p> <p>23 company, then you have to basically rely on just</p> <p>24 buying shares in the market. And therefore from a</p> <p>25 risk mitigation point of view, you'll take less of</p>	<p style="text-align: right;">Page 308</p> <p>1 McSpadden - Confidential</p> <p>2 So as far as the investors are</p> <p>3 concerned, they've got their shares. There's no</p> <p>4 new shares that are underwritten. In other words,</p> <p>5 all you're doing is closing an otherwise lengthy</p> <p>6 short position and you're exercising an option</p> <p>7 from the company to close part of the short</p> <p>8 position.</p> <p>9 If you had -- in addition to the</p> <p>10 overallotment option if you sold additional</p> <p>11 shares, then that would be called a naked short,</p> <p>12 which you then have to cover out of the market</p> <p>13 itself.</p> <p>14 Q. Then we talked earlier about the green</p> <p>15 shoe bring-down due diligence that Citi conducted</p> <p>16 with respect to the Series 5 offering; correct?</p> <p>17 A. We did.</p> <p>18 Q. Do you know why an overallotment is</p> <p>19 sometimes referred to as a green shoe?</p> <p>20 A. I do.</p> <p>21 Q. Why?</p> <p>22 A. 1907 there was a company called the</p> <p>23 Green Shoe Corporation in St. Louis. It was the</p> <p>24 first time it was used in an equity offering.</p> <p>25 Ever since then it's been called a green shoe</p>
<p style="text-align: right;">Page 307</p> <p>1 McSpadden - Confidential</p> <p>2 an overallocation of a transaction.</p> <p>3 By having an overallotment option, it</p> <p>4 permits the underwriters to have a fair amount of</p> <p>5 buying capacity, if needed, in other words, to</p> <p>6 support the transaction in the after market. But</p> <p>7 if the market -- the after market goes as</p> <p>8 expected, settles down fairly quickly at or around</p> <p>9 the purchase price, then the cost of covering that</p> <p>10 short position, if you have an overallotment</p> <p>11 option, allows you to mitigate that because you've</p> <p>12 got one place to buy it, i.e., you can exercise</p> <p>13 your overallotment option with the issuer and</p> <p>14 therefore mitigate the loss.</p> <p>15 Q. If the overallotment option is</p> <p>16 exercised, do all of the underwriters have to</p> <p>17 commit to purchasing additional shares in the</p> <p>18 overallotment?</p> <p>19 A. There's no additional underwriting</p> <p>20 commitment involved in the overallotment exercise.</p> <p>21 All of the shares are sold on the 8th -- in this</p> <p>22 case the 8th of April. The shares are completely</p> <p>23 sold. In other words, all of those shares are</p> <p>24 sold to investors. The investors pay all the</p> <p>25 money.</p>	<p style="text-align: right;">Page 309</p> <p>1 McSpadden - Confidential</p> <p>2 option.</p> <p>3 Q. What due diligence procedures were</p> <p>4 conducted with respect to the green shoe bring-</p> <p>5 down due diligence in connection with the Series 5</p> <p>6 offering?</p> <p>7 A. I don't specifically recall, but I</p> <p>8 would make the point that all the shares in</p> <p>9 question were sold on April 8th -- excuse me, sold</p> <p>10 on April 8th, closed and paid for on April 11th.</p> <p>11 So there's no new investment decision being made</p> <p>12 by an investor on the day of the exercise of the</p> <p>13 overallotment.</p> <p>14 (Exhibit 37, e-mail dated 4/21/08 from</p> <p>15 Ciobanu to McSpadden, et al., Bates-stamped</p> <p>16 UW_Barclays_000017041 through 43, marked for</p> <p>17 identification.)</p> <p>18 Q. Mr. McSpadden, I'm handing you a</p> <p>19 document that's been marked as Exhibit 37, and it</p> <p>20 bears a Bates number UW_Barclays_000017041 through</p> <p>21 43. And it's an e-mail sent from Bogdan Ciobanu</p> <p>22 on April 21st, 2008, with the subject Project Rimu</p> <p>23 green shoe presettlement bring-down call Tuesday</p> <p>24 4/22 at 9 a.m. New York, 4 o'clock U.K. -- 1400</p> <p>25 U.K. And you are a recipient of this e-mail.</p>

<p style="text-align: right;">Page 310</p> <p>1 McSpadden - Confidential</p> <p>2 And Mr. Ciobanu states, Please join us</p> <p>3 for a brief presettlement bring-down due diligence</p> <p>4 call April 22nd at 9 a.m. New York/1400 U.K.</p> <p>5 Please find below the agenda and dial-in</p> <p>6 information.</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. Do you recall receiving this e-mail?</p> <p>10 A. I do not recall receiving it.</p> <p>11 Q. Did Mr. Ciobanu send it in the normal</p> <p>12 course of his work at Citi with respect to the</p> <p>13 Series 5 offering?</p> <p>14 A. He did.</p> <p>15 Q. And the attached document, does that</p> <p>16 reflect the due diligence questions that were</p> <p>17 asked in connection with the green shoe bring-down</p> <p>18 due diligence call?</p> <p>19 A. It does.</p> <p>20 Q. Did this green shoe bring-down due</p> <p>21 diligence call in fact take place on April 22nd at</p> <p>22 9 a.m.?</p> <p>23 A. I can't recall if I was on it, but I'm</p> <p>24 confident it did.</p> <p>25 Q. You can't recall if you participated?</p>	<p style="text-align: right;">Page 312</p> <p>1 McSpadden - Confidential</p> <p>2 Q. I don't need to read them all into the</p> <p>3 record, but if you could take a look back at the</p> <p>4 exhibits of the prior due diligence calls on April</p> <p>5 11th and April 8th, would you agree that the</p> <p>6 questions are all the same except that one has now</p> <p>7 been removed?</p> <p>8 A. I do.</p> <p>9 Q. Do you know what Barclays' response was</p> <p>10 to Question Number 1 during this green shoe due</p> <p>11 diligence call?</p> <p>12 A. I do not.</p> <p>13 Q. Do you know what Barclays' response was</p> <p>14 to Question Number 2 during this green shoe due</p> <p>15 diligence call?</p> <p>16 A. No, ma'am.</p> <p>17 Q. Do you know what Barclays' response was</p> <p>18 to Question Number 3 during this green shoe due</p> <p>19 diligence call?</p> <p>20 A. No.</p> <p>21 Q. And do you know what Barclays' response</p> <p>22 was to Question Number 4 during this due diligence</p> <p>23 call?</p> <p>24 A. I do not.</p> <p>25 Q. Do you know of any records that would</p>
<p style="text-align: right;">Page 311</p> <p>1 McSpadden - Confidential</p> <p>2 A. Yes, I cannot recall if I participated.</p> <p>3 Q. Do you know of anyone else from Citi</p> <p>4 who participated on this call?</p> <p>5 A. I cannot specifically say who, but I</p> <p>6 know other folk from Citi would have. If nothing</p> <p>7 else, the dial-in number would have been opened by</p> <p>8 Citi. So they had to open up the dial-in.</p> <p>9 Q. Do you know who from Barclays</p> <p>10 participated on this call?</p> <p>11 A. I do not.</p> <p>12 Q. Did Citi help to prepare these</p> <p>13 questions?</p> <p>14 A. We did, and we would have circulated</p> <p>15 them to all the other participants, as we did on</p> <p>16 all the other due diligence calls.</p> <p>17 Q. And would these questions have been</p> <p>18 circulated to Barclays in advance of the April</p> <p>19 22nd, 2008, green shoe presettlement due diligence</p> <p>20 call?</p> <p>21 A. Yes.</p> <p>22 Q. Did Barclays ever provide a written</p> <p>23 response to any of these questions in connection</p> <p>24 with the Series 5 offering?</p> <p>25 A. I do not have any written responses.</p>	<p style="text-align: right;">Page 313</p> <p>1 McSpadden - Confidential</p> <p>2 reflect Barclays' response to these questions from</p> <p>3 the green shoe due diligence call?</p> <p>4 A. I'm not aware of any.</p> <p>5 Q. I have one more thing. If I could</p> <p>6 actually have you turn back to Exhibit 1.</p> <p>7 A. Exhibit 1? Okay. This is Exhibit 9.</p> <p>8 (Discussion off the record.)</p> <p>9 Q. Let's try 15.</p> <p>10 MR. HACKER: It's this (indicating).</p> <p>11 A. (Indicating.)</p> <p>12 Q. Yes.</p> <p>13 A. Number 15.</p> <p>14 Q. The completed deal checklist.</p> <p>15 Direct your attention to the page</p> <p>16 ending in 1219.</p> <p>17 A. Got it.</p> <p>18 Q. Is that the internal sales memo that</p> <p>19 was approved for purposes of Citi marketing the</p> <p>20 Series 5 offering to potential investors?</p> <p>21 A. Yes.</p> <p>22 MS. NEWCOMER: Can we just go off the</p> <p>23 record for a few minutes? I just want to make</p> <p>24 sure I don't have any follow-up.</p> <p>25 MR. HACKER: Sure.</p>