

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____	X	
In re BARCLAYS BANK PLC SECURITIES	:	Master File No. 1:09-cv-01989-PAC
LITIGATION	:	
_____	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	
	:	
ALL ACTIONS.	:	
_____	X	

DECLARATION OF ANDREW J. BROWN IN SUPPORT OF PLAINTIFF'S OPPOSITION
TO UNDERWRITER DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

[CONFIDENTIAL – FILED UNDER SEAL]
[EXHIBITS 5-70]

I, ANDREW J. BROWN, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California and am admitted *pro hac vice* before this Court. I am a member of the law firm of Robbins Geller Rudman & Dowd LLP, co-counsel of record for Lead Plaintiff in the above-entitled action. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. Attached are true and correct copies of the following exhibits:

Exhibit No.	Description	Pltf's Depo. Ex. No.
1	Lead Plaintiffs' Notice of Defendant Deposition of Citigroup Global Markets Inc. Pursuant to Fed R. Civ. P. 30(b)(6), dated June 5, 2015	9
2	Plaintiffs' First Request for Production of Documents to the Underwriter Defendants, dated July 29, 2014	N/A
3	Underwriter Defendants' Responses and Objections to Plaintiffs' First Request for the Production of Documents, dated August 28, 2014	N/A
4	Letter from Gary Hacker to Christopher Stewart, dated October 17, 2014	N/A
5	Deposition Transcript of Jack D. McSpadden, dated August 13, 2015 [Confidential – Filed Under Seal]	N/A
6	Deposition Transcript of Keith Harding, dated October 28, 2015 [Confidential – Filed Under Seal]	N/A
7	Rebuttal of Report by Professor Gary M. Lawrence on Behalf of the Underwriter Defendants, prepared by Professor Richard Puntillo, dated February 2, 2016 [Confidential – Filed Under Seal]	N/A
8	Rebuttal Report of Professor Gary M. Lawrence on Behalf of the Underwriter Defendants in Response to Report of Professor Puntillo, dated March 18, 2016 [Confidential – Filed Under Seal]	N/A
9	E-mail from Bogdan Ciobanu to Ross Aucutt et al. (cc: Kathryn McLeland et al.) re Project Rimu – draft due diligence lists, dated March 20, 2008 [Confidential – Filed Under Seal]	20
10	E-mail from Bogdan Ciobanu to Ross Aucutt et al. re Project Rimu Due Diligence Thursday, April 3 @ 11:30 AM ET / 16:30 UK, dated April 1, 2008 [Confidential – Filed Under Seal]	21

Exhibit No.	Description	Pltf's Depo. Ex. No.
11	Certified Transcript of April 3, 2008 Due Diligence Call [Confidential – Filed Under Seal]	23
12	E-mail from Drew Haigh to David Ludwick (cc: Belinda Vickery et al.) re Line item comfort for Rimu and US Shelf, dated April 7, 2008 [Confidential – Filed Under Seal]	27
13	E-mail from David Ludwick to Jack McSpadden, Darrell Bridgers, Richard Johnson (cc: David Ludwick, Sara Whittington) re US comfort letter – addresses, dated April 8, 2008 [Confidential – Filed Under Seal]	28
14	E-mail from Sarah Whittington to Kathryn McLeland et al. (cc: David Ludwick, Joost van Amelsfort re Project Rimu – Executed US comfort letter, dated April 9, 2008 [Confidential – Filed Under Seal]	31
15	E-mail from Bogdan Ciobanu to Ross Aucutt et al. re Project Rimu – Pre-Pricing due diligence call today @ 10:30 AM NY / 15:30 UK, dated April 8, 2008 [Confidential – Filed Under Seal]	33
16	E-mail from Raj Cheema to Mark Wrafter (cc: Lucy Fyfe) re Project Rimu – Pre-Settlement due diligence call Friday, April 11 @ 7:30 AM NY / 12:30 UK, dated April 11, 2008 [Confidential – Filed Under Seal]	34
17	E-mail from Bogdan Ciobanu to Ross Aucutt et al. re Project Rimu – Greenshoe pre-settlement bring down call Tuesday 4/22 @ 9:00 AM NY / 14:00 UK, dated April 21, 2008 [Confidential – Filed Under Seal]	37
18	E-mail from Nick Lambert to Victoria Hardy and Todd Forman re Circle-up amendment on 20-F, dated April 22, 2008 [Confidential – Filed Under Seal]	125
19	E-mail from Eric Yoss to NY Market Risk re Formal P&L Apr 2nd – US Portfolio Book, dated April 3, 2008 [Confidential – Filed Under Seal]	187
20	E-mail from Stephen King to Jerry del Missier et al. re Notational Risk by Product, dated November 19, 2007 [Confidential – Filed Under Seal]	356
21	E-mail from Nick Hill to Keith Harding (cc: Ross Aucutt, Nick Lambert, Leigh Meyer) re Confidential – Project Rimu, dated March 28, 2008 [Confidential – Filed Under Seal]	365
22	E-mail from Keith Harding to Drew Haigh (cc: Chris Taylor, Sophie Shi, Victoria Hardy, Todd Foreman) re PwC Executed US Engagement Letter, dated April 8, 2008 [Confidential – Filed Under Seal]	369
23	E-mail from Drew Haigh to Keith Harding (cc: Chris Taylor et al.) re PwC Executed US Engagement Letter, dated April 8, 2008 [Confidential – Filed Under Seal]	370

Exhibit No.	Description	Pltf's Depo. Ex. No.
24	E-mail from Keith Harding to Nick Hill (cc: Ross Aucutt, Nick Lambert, Leigh Meyer) re Confidential – Project Rimu, dated April 18, 2008 [Confidential – Filed Under Seal]	371
25	Paper for Board Meeting on Thursday 17 April 2008 re Approval of Minutes of Previous Meeting – 20 March 2008, Mini Board Meeting on 7 March 2008 and Finance Committee Meeting on 17 March 2008, dated April 11, 2008 [Confidential – Filed Under Seal]	389
26	E-mail from Amanda Rose to DG Booth et al. (cc: Marcus Agius, Lawrence Dickinson, Patrick Gonsalves) re FSA, dated March 10, 2008, with attached Memo from Marcus Agius to Directors re Meeting with Callum McCarthy [Confidential – Filed Under Seal]	391
27	Paper for Board Meeting on Thursday 6 December 2007 re Report of the Board Risk Committee Meeting on 5 December 2007, dated December 6, 2007 [Confidential – Filed Under Seal]	407
28	Paper for Board Meeting on Thursday 11 April 2008 re Approval of Minutes of Previous Meeting – 20 March 2008, Mini Board Meeting on 7 March 2008 and Finance Committee Meeting on 17 March 2008, dated April 11, 2008 [Confidential – Filed Under Seal]	416
29	E-mail from Lawrence Dickinson to Danie Cronje, Steve Russell, A. Likierman (cc: R. Broadbent, Chris Lucas, Robert Le Blanc) re Update on Credit Markets, dated November 6, 2007 [Confidential – Filed Under Seal]	448
30	E-mail from Bob Diamond to Jerry del Missier, Rich Ricci re Lower Tier Issue, dated November 21, 2007 [Confidential – Filed Under Seal]	483
31	E-mail from John Varley to Robert Le Blanc, Marcus Agius, Chris Lucas, Bob Diamond (re Em to callum), dated March 20, 2008 [Confidential – Filed Under Seal]	486
32	Paper for Board Meeting on Thursday 17 April 2008 re Approval of Minutes of Previous Meeting – 20 March 2008, Mini Board Meeting on 7 March 2008 and Finance Committee Meeting on 17 March 2008, dated April 11, 2008 [Confidential – Filed Under Seal]	487
33	UW_Barclays_000005527 [Confidential – Filed Under Seal]	N/A
34	UW_Barclays_000036366 [Confidential – Filed Under Seal]	N/A
35	UW_Barclays_000036368 [Confidential – Filed Under Seal]	N/A

Exhibit No.	Description	Pltf's Depo. Ex. No.
36	UW_Barclays_000012002 [Confidential – Filed Under Seal]	N/A
37	UW_Barclays_000011529 [Confidential – Filed Under Seal]	N/A
38	UW_Barclays_000072529 [Confidential – Filed Under Seal]	N/A
39	UW_Barclays_000012716 [Confidential – Filed Under Seal]	N/A
40	UW_Barclays_000061582 [Confidential – Filed Under Seal]	N/A
41	BARC-ADS-01626223 [Confidential – Filed Under Seal]	N/A
42	UW_Barclays_000054005 [Confidential – Filed Under Seal]	N/A
43	UW_Barclays_000072684 [Confidential – Filed Under Seal]	N/A
44	UW_Barclays_0000001244 [Confidential – Filed Under Seal]	N/A
45	BARC-ADS-00819841 [Confidential – Filed Under Seal]	N/A
46	BARC-ADS-01573585 [Confidential – Filed Under Seal]	N/A
47	BARC-ADS-01573588 [Confidential – Filed Under Seal]	N/A
48	UW_Barclays_000039259 [Confidential – Filed Under Seal]	N/A
49	UW_Barclays_000058697 [Confidential – Filed Under Seal]	N/A
50	UW_Barclays_000058695 [Confidential – Filed Under Seal]	N/A
51	UW_Barclays_000058696 [Confidential – Filed Under Seal]	N/A
52	BARC-ADS-00002941 (audio recording) [Confidential – Filed Under Seal]	N/A
53	BARC-ADS-00927803 [Confidential – Filed Under Seal]	N/A
54	BARC-ADS-01017015 [Confidential – Filed Under Seal]	N/A
55	BARC-ADS-01022272 [Confidential – Filed Under Seal]	N/A
56	BARC-ADS-00780002 [Confidential – Filed Under Seal]	N/A
57	UW_Barclays_000017937 [Confidential – Filed Under Seal]	N/A
58	UW_Barclays_000054512 [Confidential – Filed Under Seal]	N/A
59	UW_Barclays_000054531 [Confidential – Filed Under Seal]	N/A
60	UW_Barclays_000054526 [Confidential – Filed Under Seal]	N/A

Exhibit No.	Description	Pltf's Depo. Ex. No.
61	UW_Barclays_000071764 [Confidential – Filed Under Seal]	N/A
62	UW_Barclays_000053568 [Confidential – Filed Under Seal]	N/A
63	BARC-ADS-0928336-37 [Confidential – Filed Under Seal]	N/A
64	BARC-ADS-01551745 [Confidential – Filed Under Seal]	N/A
65	UW_Barclays_000032702 [Confidential – Filed Under Seal]	N/A
66	BARC-ADS-00792587 [Confidential – Filed Under Seal]	N/A
67	BARC-ADS-00792620 [Confidential – Filed Under Seal]	N/A
68	BARC-ADS-00792630 [Confidential – Filed Under Seal]	N/A
69	BARC-ADS-00833240 [Confidential – Filed Under Seal]	N/A
70	BARC-ADS-0154442 [Confidential – Filed Under Seal]	N/A

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 14, 2016, at San Diego, California.

ANDREW J. BROWN

CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2016, true and correct copies of Memorandum of Law In Support of Plaintiff's Opposition to Underwriter Defendants' Motion for Summary Judgment, dated December 14, 2016, along with all exhibits referenced therein, were served via electronic mail on all counsel of record.

ANDREW J. BROWN

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re BARCLAYS BANK PLC SECURITIES : Master File No. 1:09-cv-01989-PAC
LITIGATION :
: CLASS ACTION

This Document Relates To:

ALL ACTIONS.

LEAD PLAINTIFFS' NOTICE OF DEFENDANT DEPOSITION OF CITIGROUP GLOBAL
MARKETS INC. PURSUANT TO FED. R. CIV. P. 30(b)(6)

1028382_1

EXHIBIT NO. 9
DATE: 8/13/15
Reporter - Laurie A. Collins

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Lead Plaintiffs; by and through their counsel, will take the deposition upon oral examination of defendant Citigroup Global Markets Inc., at the offices of Robbins Geller Rudman & Dowd LLP, 30 Vesey Street, Suite 200, New York, New York 10007, on June 22, 2015 at 9:00 a.m., unless a different date and time is agreed upon by the parties, and will continue from day to day, excluding Sundays and holidays, until the examination is completed. The deposition shall be taken before a notary public or other officer authorized to administer oaths, and will be stenographically recorded, transcribed in LiveNote and videotaped.

Pursuant to Rule 30(b)(6), Citigroup Global Markets Inc. shall designate and produce for deposition one or more of its officers, directors, employees or other persons who consent to testify on its behalf at deposition(s) upon oral examination with respect to the deposition subject matters set forth below.

I. DEFINITIONS AND INSTRUCTIONS

The definitions and rules of construction set forth in Rules 26 and 30 of the Federal Rules of Civil Procedure and Rule 26.3 of the Local Civil Rules of the United States District Courts for the Southern and Eastern Districts of New York ("Local Rule 26.3") are hereby incorporated and apply to this schedule of topics for examination. Unless otherwise stated, the terms set forth below are defined as follows:

1. "Citigroup" means Citigroup Global Markets Inc., and its predecessors, successors, parents, subsidiaries, divisions or affiliates (foreign or domestic), and their respective current and former officers, directors, agents, attorneys, accountants, employees, partners, or other persons occupying similar positions or performing similar functions, and all other persons acting or purporting to act on their behalf.

2. “Barclays” means Barclays Bank Plc and Barclays Plc (collectively, the “Barclays Defendants”), and any of their predecessors, successors, parents, subsidiaries, divisions or affiliates (foreign or domestic), and their respective current and former officers, directors, agents, attorneys, accountants, employees, partners, or other persons occupying similar positions or performing similar functions, and all other persons acting or purporting to act on their behalf.

3. “Underwriter Defendants” means Barclays Capital Securities Limited, Citigroup Global Markets Inc., Wachovia Capital Markets, LLC, Morgan Stanley & Co. Incorporated, UBS Securities LLC, Banc of America Securities LLC, RBC Dain Rauscher Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, and their agents, attorneys, advisors, accountants, and all other persons acting or purporting to act on their behalf.

4. “You” and “your” refers to Citigroup and any person designated to provide testimony in response to this Notice on Citigroup’s behalf.

5. Pursuant to Local Civil Rule 26.3(d)(1), the terms “all,” “any” and “each” shall each be construed as encompassing any and all.

6. Pursuant to Local Civil Rule 26.3(d)(2), the connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

7. Pursuant to Local Civil Rule 26.3(d)(3), the singular of any term includes the plural, and vice versa.

8. Pursuant to Local Civil Rule 26.3(c)(7), “concerning” means relating to, referring to, describing, evidencing or constituting. Requests for “documents concerning” any subject matter include documents reflecting communications regarding that subject matter and documents provided to others or received from others because of the subject matter.

9. Pursuant to Local Civil Rule 26.3(c)(2), “document” or “documents” is defined to be synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information” in Fed. R. Civ. P. 34(a)(1)(A). A draft or non-identical copy is a separate document within the meaning of this term.

10. Pursuant to Local Civil Rule 26.3(c)(6), “person” means any natural person or any legal entity, including, without limitation, any business or governmental entity or association.

11. Pursuant to Local Civil Rule 26.3(c)(1), “communication” or “communications” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

12. “Series 5 Offering” refers to the offering of 100,000,000 American Depositary Shares, Series 5, representing 100,000,000 non-cumulative callable dollar preference shares, bearing an 8.125% coupon rate, commenced by Barclays on or about April 8, 2008.

13. “Series 5 Securities” refers to the 8.125% non-cumulative callable dollar preference securities issued pursuant or traceable to the Series 5 Offering.

14. “Series 5 Offering Materials” means the annual report on Form 20-F filed by Barclays with the U.S. Securities and Exchange Commission (“SEC”) on or about March 26, 2008 (the “2007 Form 20-F”), the Registration Statement and Prospectus filed by Barclays with the SEC on or about August 31, 2007, on Form F-3ASR, the Preliminary Prospectus Supplement filed by Barclays with the SEC on or about April 7, 2008, on Form 424B5, and the Final Prospectus Supplement filed by Barclays with the SEC on or about April 8, 2008, on Form 424B5.

15. “PwC” refers to PricewaterhouseCoopers LLP and any of its members (as defined by ET 92.06 and 92.09 of the American Institute of Certified Public Accountants Code of Professional Conduct as of June 1, 2002) and any of PwC’s predecessors, successors, parents, subsidiaries, divisions, partnerships, and branches; its international, foreign, national, regional and local offices;

all present or former officers, directors, partners, employees, agents, attorneys, advisors, accountants, consultants, and all other persons acting or purporting to act on its behalf.

16. Unless specified otherwise, the relevant time period for the deposition subject matters is the period from January 1, 2007 through December 31, 2008.

II. EXAMINATION SUBJECT MATTER

1. The nature, scope and terms of the engagement between and/or among the Barclays Defendants, Citigroup and the other Underwriter Defendants.

2. The due diligence and other professional services performed by Citigroup concerning the Series 5 Offering and the Series 5 Offering Materials.

3. The due diligence and other professional services performed by anyone other than Citigroup concerning the Series 5 Offering and the Series 5 Offering Materials.

4. All documents, communications and representations upon which Citigroup relied in connection with the Series 5 Offering.

5. The identities of all persons, agents or entities who performed due diligence services on behalf of Citigroup, or upon whom Citigroup relied, concerning the Series 5 Offering and the Series 5 Offering Materials.

6. The marketing of the Series 5 Offering and Series 5 Securities to any purchaser or prospective purchaser.

7. The allocation among Citigroup and the other Underwriter Defendants of Series 5 Securities issued pursuant or traceable to the Series 5 Offering.

8. The process, method and basis for determining the price of the Series 5 Securities.

9. The process, method and basis for determining the rate at which dividends would be paid with respect to Barclays Series 5 preference shares.

10. The process, method and basis for determining the number or amount of Series 5 Securities offered in in the Series 5 Offering.

11. Your communications with any of the other Underwriter Defendants concerning the Series 5 Offering and the Series 5 Offering Materials.

12. Your communications with PwC concerning the Series 5 Offering and the Series 5 Offering Materials.

13. Your communications with any credit ratings agency concerning Barclays or the Series 5 Offering.

14. Documents created, received or reviewed by you concerning each of the above topics.

15. Citigroup's document retention, maintenance, preservation and destruction policies.

16. All efforts undertaken by Citigroup to preserve documents and data after this lawsuit commenced.

17. All efforts undertaken by Citigroup to identify, collect, and produce documents and data in this lawsuit.

DATED: June 5, 2015

ROBBINS GELLER RUDMAN
& DOWD LLP
DARREN J. ROBBINS
ANDREW J. BROWN
LUCAS F. OLTS
ERIC I. NIEHAUS
CHRISTOPHER D. STEWART
KEVIN S. SCIARANI

A handwritten signature in black ink, appearing to read 'Chris Stewart', is written over a horizontal line.

CHRISTOPHER D. STEWART

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Co-Lead Counsel for Plaintiffs

DECLARATION OF SERVICE BY MAIL

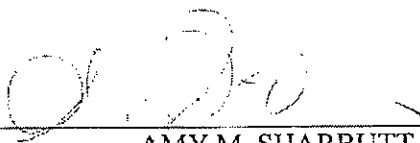
I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway, Suite 1900, San Diego, California 92101.

2. That on June 5, 2015, declarant served the **LEAD PLAINTIFFS' NOTICE OF DEFENDANT DEPOSITION OF CITIGROUP GLOBAL MARKETS INC. PURSUANT TO FED. R. CIV. P. 30(b)(6)** by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List as well as all parties served via e-mail.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 5, 2015, at San Diego, California.



AMY M. SHARBUTT

BARCLAYS PFD SERIES 2 (LEAD)

Service List - 6/5/2015 (09-0054)

Page 1 of 1

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EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____	X	
In re BARCLAYS BANK PLC SECURITIES	:	Master File No. 1:09-cv-01989-PAC
LITIGATION	:	
_____	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	
	:	
ALL ACTIONS.	:	
_____	X	

PLAINTIFFS’ FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO THE
UNDERWRITER DEFENDANTS

I. INTRODUCTION

Plaintiffs, by their counsel, pursuant to Federal Rules of Civil Procedure 26 and 34, and the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, including Local Civil Rule 26.3, request that defendants Barclays Capital Securities Limited, Citigroup Global Markets Inc., Wachovia Capital Markets, LLC, Morgan Stanley & Co. Incorporated, UBS Securities LLC, Banc of America Securities LLC, RBC Dain Rauscher Inc., and Merrill Lynch, Pierce, Fenner & Smith Incorporated (collectively, the “Underwriter Defendants”), serve written responses and produce the documents described below for inspection and copying within 30 days after service of these requests, at the law offices of Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, California 92101, or at such other time and place as the parties mutually agree.

The responding parties are required to produce all requested documents that are in their actual or constructive possession, custody or control, or in the actual or constructive possession, custody or control of their officers, employees, agents, representatives or attorneys. The responding parties shall identify and produce said documents as they are kept in the usual course of business, or shall organize and label said documents to correspond with the categories in the request.

Plaintiffs request that such production be made in accordance with the “DEFINITIONS” and “INSTRUCTIONS” set forth below.

II. DEFINITIONS

Unless otherwise stated, the terms set forth below are defined as follows:

1. “Barclays” or the “Company” means Barclays Bank Plc and Barclays Plc (collectively, the “Barclays Defendants”), and their predecessors, successors, parents, subsidiaries, divisions or affiliates (foreign or domestic), and their respective current and former officers,

I. INTRODUCTION

Plaintiffs, by their counsel, pursuant to Federal Rules of Civil Procedure 26, 33 and 34 and the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, including Local Civil Rule 26.3, request that defendants Barclays Capital Securities Limited, Citigroup Global Markets Inc., Wachovia Capital Markets, LLC, Morgan Stanley & Co. Incorporated, UBS Securities LLC, Banc of America Securities LLC, RBC Dain Rauscher Inc., and Merrill Lynch, Pierce, Fenner & Smith Incorporated (collectively, the “Underwriter Defendants”), serve written responses and produce the documents described below for inspection and copying within 30 days after service of these requests, at the law offices of Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, California 92101, or at such other time and place as the parties mutually agree.

The responding parties are required to produce all requested documents that are in their actual or constructive possession, custody or control, or in the actual or constructive possession, custody or control of their officers, employees, agents, representatives or attorneys. The responding parties shall identify and produce said documents as they are kept in the usual course of business, or shall organize and label said documents to correspond with the categories in the request.

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1. “Barclays” or the “Company” means Barclays Bank Plc and Barclays Plc (collectively, the “Barclays Defendants”), and their predecessors, successors, parents, subsidiaries, divisions or affiliates (foreign or domestic), and their respective current and former officers,

directors, agents, attorneys, accountants, employees, partners, or other persons occupying similar positions or performing similar functions, and all other persons acting or purporting to act on their behalf.

2. “Individual Defendants” means John Silvester Varley, Robert Edward Diamond, Jr., Sir Richard Broadbent, Richard Leigh Clifford, Dame Sandra J.N. Dawson, Sir Andrew Likierman, Sir Nigel Rudd, Stephen George Russell, John Michael Sunderland, Marcus Agius, Christopher Lucas, Gary A. Hoffman, Frederik Seegers, David G. Booth, Fulvio Conti and Daniel Cronje, and their agents, attorneys, advisors, accountants, and all other persons acting or purporting to act on their behalf.

3. “Underwriter Defendants” means Barclays Capital Securities Limited, Citigroup Global Markets Inc., Wachovia Capital Markets, LLC, Morgan Stanley & Co. Incorporated, UBS Securities LLC, Banc of America Securities LLC, RBC Dain Rauscher Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, and their agents, attorneys, advisors, accountants, and all other persons acting or purporting to act on their behalf.

4. “You” and “your” refer to the person or entity responding to these document requests, and includes any of its direct or indirect subsidiaries, divisions or affiliates (foreign and domestic), predecessors, successors, present and former officers, directors, employees, agents, attorneys, accountants, advisors and all other persons acting or purporting to act on their behalf.

5. Pursuant to Local Civil Rule 26.3(d)(1), the terms “all,” “any” and “each” shall each be construed as encompassing any and all.

6. Pursuant to Local Civil Rule 26.3(d)(2), the connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

7. Pursuant to Local Civil Rule 26.3(d)(3), the singular of any term includes the plural, and vice versa.

8. Pursuant to Local Civil Rule 26.3(c)(7), “concerning” means relating to, referring to, describing, evidencing or constituting. Requests for “documents concerning” any subject matter include documents reflecting communications regarding that subject matter and documents provided to others or received from others because of the subject matter.

9. Pursuant to Local Civil Rule 26.3(c)(2), “document” or “documents” is defined to be synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information” in Fed. R. Civ. P. 34(a)(1)(A). A draft or non-identical copy is a separate document within the meaning of this term.

10. “Person” means any individual, corporation, partnership, limited partnership, joint venture, sole proprietorship, corporation, trust, governmental agency or other organization recognizable at law, and all other entities and their respective agents and employees.

11. Pursuant to Local Civil Rule 26.3(c)(4), “identify,” when referring to a document, shall mean to provide the: (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

12. Pursuant to Local Civil Rule 26.3(c)(3), “identify” when referring to a natural person, shall mean to provide the person’s full name, present or last known address, and additionally, the present or last known place of employment.

13. Pursuant to Local Civil Rule 26.3(c)(1), “communication” or “communications” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

14. “Meeting” means any assembly, convocation, encounter, or contemporaneous presence of two or more persons for any purpose, whether or not planned, arranged or scheduled in advance,

and whether or not occurring face-to-face, telephonically, via videoconference, and whether or not the meeting was formal or informal or occurred in connection with some other activity.

15. “Security” or “securities” means any note, stock, treasury stock, bond, debenture, certificate or other evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement in any oil, gas or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit or any certificate of interest or participation in, receipt for, option, warrant or right to subscribe to or purchase any of the foregoing.

16. “Series 5 Offering” refers to the offering of 8.125% non-cumulative callable dollar preference securities issued on or about April 8, 2008 by Barclays.

17. “Series 5 Offering Materials” means Barclays’ 2007 Form 20-F filed with the U.S. Securities and Exchange Commission (“SEC”) on or about March 26, 2008 and Form 424B5 filed with the SEC on or about April 8, 2008.

18. “Asset-backed security,” “asset-backed securities” or “ABS” refers to any debt security collateralized by specific assets, including, but not limited to, securities backed by credit-card receivables, car loans, home-equity loans, mobile home loans, and student loans. This definition includes, without limitation, collateralized debt obligations (“CDO”), structured investment vehicles (“SIV”), credit default swaps (“CDS”), mortgage-backed securities (“MBS”), residential mortgage-backed securities (“RMBS”), commercial mortgage-backed securities (“CMBS”), collateralized loan obligations (“CLO”), collateralized bond obligations, as well as any tranche of an asset-backed security.

19. The term “Alt-A” refers to a mortgage that is considered riskier than a prime mortgage and less risky than a subprime mortgage. This definition includes, without limitation,

loans made with reduced borrower income and asset documentation (*i.e.*, stated income, stated asset and no income verification loans), loans with greater debt-to-income ratios, greater loan-to-value ratios and lower FICO scores than those required on loans guaranteed by Government-Sponsored Enterprises (GSEs) Fannie Mae and Freddie Mac, and loans with silent seconds where the down payment was in reality another loan and adjustable rate mortgages.

20. The term “government agency” refers to any agency, committee, commission, panel, regulatory body, quasi-judicial body, or law enforcement agency of the United States, England, the United Kingdom, the European Union, or any other government, including, but not limited to, the SEC, the United States Department of Justice (“DOJ”), any United States Attorney’s Office, the Federal Bureau of Investigation, any Attorney General’s office, or the Financial Services Authority.

III. INSTRUCTIONS

1. In responding to these requests, you shall produce all responsive documents which are in your possession, custody or control, or in the possession, custody or control of your predecessors, successors, parents, subsidiaries, divisions or affiliates, or any of your respective directors, executives, officers, partners, managing agents, agents, employees, attorneys, accountants or any other representative. A document shall be deemed to be within your control if you have the ability or right to secure the document or a copy of the document from another person having possession or custody of the document.

2. Pursuant to the Federal Rules of Civil Procedure, you are to produce for inspection and copying by plaintiffs original documents as they are kept in the usual course of business and you shall organize and label them to correspond with the categories in these requests.

3. In responding to these requests, you shall produce all responsive documents available at the time of production and you shall supplement your responses as required by Rule 26(e) of the Federal Rules of Civil Procedure.

4. If any responsive document was, but no longer is, in your possession or subject to your control, state whether the document is: (a) missing or lost; (b) destroyed; (c) transferred voluntarily or involuntarily to others; or (d) otherwise disposed of, and in each instance identify the name and address of its current or last known custodian, and the circumstances surrounding such disposition.

5. If you claim any form of privilege or any other objection, whether based on statute, common law or otherwise, as a ground for not producing any requested document, please furnish a list identifying each document for which the privilege or other objection is claimed together with the following information:

- (a) the privilege being asserted;
- (b) the person on whose behalf the privilege is asserted;
- (c) a precise statement of the facts upon which the claim of privilege is based; and
- (d) identify the purported privileged document including:
 - (e) its nature, *e.g.*, letter, memorandum, tape, etc.;
 - (f) the date it was prepared;
 - (g) the date the document bears;
 - (h) the date the document was sent;
 - (i) the date it was received;
 - (j) the name of the person who prepared the document;
 - (k) the name(s) of the person(s) who received the document;

(l) the name of each person to whom it was sent or was intended to be sent, including all addressees and all recipients of copies; and

(m) a statement of whom each identified person represented or purported to represent at all relevant times.

6. If a portion of any document responsive to these requests is withheld under claim of privilege pursuant to Instruction 5, any non-privileged portion of such document must be produced with the portion claimed to be privileged redacted.

7. You are to produce each document requested herein in its entirety, without deletion, redaction or excision (except as qualified by Instructions 4 and 5 above), regardless of whether you consider the entire document to be relevant or responsive to the requests.

8. Provide a source list that clearly identifies who maintained the document and identifies the person or location it was collected from.

IV. FORM OF PRODUCTION – HARD COPY

Hardcopy documents should be scanned as single-page, Group IV, 300 DPI TIFF images with an .opt image cross-reference file and a delimited database load file (*i.e.*, .dat). The database load file should contain the following fields: “BEGNO,” “ENDNO,” “BEGATTACH,” “ENDATTACH,” “PAGES” and “CUSTODIAN.” The documents should be logically unitized (*i.e.*, distinct documents should not be merged into a single record, and a single document should not be split into multiple records) and should be produced in the order in which they are kept in the usual course of business. If an original document contains color necessary to understand the meaning or content of the document, the document should be produced as single-page, 300 DPI, color JPG images. Multi-page Optical Character Recognition (“OCR”) text for each document should also be

provided. The OCR software should maximize text quality over process speed. Settings such as “auto-skewing” and “auto-rotation” should be turned on during the OCR process.

V. FORM OF PRODUCTION – ELECTRONICALLY STORED INFORMATION

Electronically stored information (“ESI”) should be produced as single-page, Group IV, 300 DPI TIFF images with the exception of source code, audio, video, and spreadsheet-type files, including, but not limited to, Microsoft Excel, CSV – which should be produced in native format. All ESI should be produced with a delimited, database load file that contains the metadata fields listed in Table 1, attached hereto. An .opt image cross-reference file should also be provided for all TIFF images.

TIFF images should show any and all text and images which would be visible to the reader using the native software that created the document. For example, TIFF images of e-mail messages should include the BCC line. PowerPoint documents should be processed with hidden slides and all speaker notes unhidden, and should be processed to show both the slide and the speaker’s notes on the TIFF image. If an original document contains color, the document should be produced as single-page, 300 DPI, color JPG images.

If a document is produced in native format, a single-page Bates-stamped TIFF image slip-sheet containing the confidential designation and text stating the document has been produced in native format should also be provided. If documents requested in native format require redactions, the parties should meet and confer regarding how to implement redactions while ensuring that proper formatting and usability are maintained. Each native file should be named according to the Bates number it has been assigned, and should be linked directly to its corresponding record in the load file using the NATIVELINK field. To the extent that either party believes that native files should be produced for a specific document or class of documents not required to be produced in native format

pursuant to this paragraph or to the extent records do not easily conform to native or TIFF format (*i.e.*, structured data), the parties should meet and confer in good faith.

Removal of duplicate documents should only be done on exact duplicate documents (based on MD5 or SHA-1 hash values, at the family level). Attachments should not be eliminated as duplicates for purposes of production, unless the parent e-mail and all attachments are also duplicates. An e-mail that includes content in the BCC or other blind copy field should not be treated as a duplicate of an e-mail that does not include content in those fields, even if all remaining content in the e-mail is identical. Removal of near-duplicate documents is not acceptable. De-duplication should be done across the entire collection (*i.e.*, global level) and the CUSTODIAN field should list each Custodian, separated by a semicolon, who was a source of that document. To accommodate for rolling productions, for ESI that is removed as duplicate from earlier productions, the producing party should provide an overlay file no later than three days after the date of each rolling production that includes the duplicate custodian names.

Prior to use, the parties should meet and confer to disclose and discuss any proposed use of technologies to reduce the number of documents to be reviewed or produced (*i.e.*, file type culling, near de-duplication, e-mail thread suppression or technology assisted review). Use of these technologies to reduce the reviewable collection or production, other than as described within this document, requires the consent of the receiving party.

VI. RELEVANT TIME PERIOD

Unless otherwise specifically indicated, all requests herein refer to the period from September 1, 2006 to December 31, 2009. If a document prepared before or after this period is necessary for a correct or complete understanding of any document covered by a request, you must produce the earlier or subsequent document as well. If any document is undated and the date of its

preparation cannot be determined, the document shall be produced if otherwise responsive to the production request.

VII. REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All documents concerning the Series 5 Offering, including, without limitation:

(a) all communications between or among you and Barclays, any Individual Defendants, any auditor, accountant or advisor, any of the other Underwriter Defendants, any governmental agency, any credit rating agency or any stock exchange concerning the Series 5 Offering;

(b) all documents concerning any meetings or communications between or among you and Barclays, any Individual Defendants, any auditor or accountant, any of the other Underwriter Defendants or any other person concerning the Series 5 Offering;

(c) all documents concerning any communication, conference call, presentation or meeting concerning the Series 5 Offering with any of Barclays' current or former security holders, potential and actual purchasers of Barclays' securities, securities analysts, financial analysts, institutional investors, financial investors, news media, journalists or investment bankers, brokerage firms, market makers, money managers, commercial banks, credit rating agencies, or stock markets or securities exchanges; and

(d) all documents concerning any road show conducted in connection with the Series 5 Offering.

REQUEST FOR PRODUCTION NO. 2:

All documents concerning any meeting of the Barclays Board of Directors, or any committees thereof, including ad hoc committees, wherein matters concerning the Series 5 Offering

were reviewed, discussed or considered, including, but not limited to, any agendas, minutes, packages, notes, board books, presentation materials, transparencies, or other documents created or distributed in connection with any such meeting.

REQUEST FOR PRODUCTION NO. 3:

All documents identifying any investors in, or purchasers in, the Series 5 Offering, including any lists, trading records, or other documents identifying any person or entity that purchased or received Barclays securities pursuant to the Series 5 Offering.

REQUEST FOR PRODUCTION NO. 4:

All documents concerning the Series 5 Offering Materials or other filings and communications with the SEC concerning the Series 5 Offering, and all documents discussing whether any disclosure concerning Barclays should or should not be made in connection with the Series 5 Offering.

REQUEST FOR PRODUCTION NO. 5:

All documents concerning any due diligence performed in connection with the Series 5 Offering, including, without limitation:

- (a) all due diligence request lists, working group lists and follow up lists;
 - (b) all documents concerning your practices and procedures for conducting due diligence;
 - (c) all equity or fixed income due diligence checklists and procedure manuals;
- and
- (d) all documents provided to you in connection with your due diligence.

REQUEST FOR PRODUCTION NO. 6:

Any comfort letters concerning the Series 5 Offering.

REQUEST FOR PRODUCTION NO. 7:

All documents concerning any committee meeting regarding the Series 5 Offering, including all minutes, agendas, notes and memoranda created in connection with any committee meeting.

REQUEST FOR PRODUCTION NO. 8:

All documents concerning any financial models, forecasts or analyses regarding Barclays.

REQUEST FOR PRODUCTION NO. 9:

All documents concerning any action (whether or not taken) to correct, amend or supplement:

- (a) any document previously filed with the SEC concerning Barclays; or
- (b) any public statement concerning Barclays.

REQUEST FOR PRODUCTION NO. 10:

All documents concerning Barclays' accounting policies.

REQUEST FOR PRODUCTION NO. 11:

All documents concerning Barclays' valuation of its asset-backed securities, subprime and Alt-A holdings, or other assets.

REQUEST FOR PRODUCTION NO. 12:

All documents concerning any reports, findings, comments, suggestions, recommendations or conclusions concerning the operations, performance or liquidity of Barclays.

REQUEST FOR PRODUCTION NO. 13:

All personal files, expense reports, logs, diaries, notebooks, date books, calendars, appointment books and address books maintained by you concerning the Series 5 Offering.

REQUEST FOR PRODUCTION NO. 14:

All documents concerning any press release, article, analyst report or rating agency report concerning Barclays.

REQUEST FOR PRODUCTION NO. 15:

All documents concerning any indemnification or hold-harmless agreements between or among you and any defendant.

REQUEST FOR PRODUCTION NO. 16:

All documents concerning any actual or proposed changes in the terms of the Series 5 Offering or the right or option to terminate, amend or modify the terms of the Series 5 Offering.

REQUEST FOR PRODUCTION NO. 17:

All documents concerning any capital raise by Barclays after April 8, 2008, including, without limitation, any issuance of any securities by Barclays to investors in 2008 and 2009.

REQUEST FOR PRODUCTION NO. 18:

All documents concerning any affirmative defense(s), and any other defense(s) you assert or may assert in this action.

REQUEST FOR PRODUCTION NO. 19:

All documents concerning your document preservation, retention or destruction policies, including, without limitation, any policies concerning your retention or destruction of electronically stored information, documents and e-mails in connection with this action, as well as any modifications to such policies.

REQUEST FOR PRODUCTION NO. 20:

Documents sufficient to show the total amount of fees earned by you from Barclays during calendar years 2006, 2007 and 2008.

DATED: July 29, 2014

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& DOWD LLP
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Co-Lead Counsel for Plaintiffs

TABLE 1: METADATA FIELDS

Field Name	Example / Format	Description
BEGNO	ABC0000001 (Unique ID)	The Document ID number associated with the first page of a document.
ENDNO	ABC0000003 (Unique ID)	The Document ID number associated with the last page of a document.
BEGATTACH	ABC0000001 (Unique ID Parent-Child Relationships)	The Document ID number associated with the first page of the parent document.
ENDATTACH	ABC0000008 (Unique ID Parent-Child Relationships)	The Document associated with the last page of the last attachment.
VOLUME	VOL001	The name of CD, DVD or Hard Drive.
RECORDTYPE	Options: eMail, Attachment, Hard Copy, Loose eFile	The record type of a document.
TIMEZONE PROCESSED	PST, CST, EST, etc	The time zone the document was processed in. NOTE: This should be the time zone where the documents were located at time of collection.
SENTDATE	MM/DD/YYYY	The date the email was sent.
SENTTIME	HH:MM	The time the email was sent.
RECEIVEDDATE	MM/DD/YYYY	The date the document was received.
RECEIVEDTIME	HH:MM	The time the document was received.
CREATEDATE	MM/DD/YYYY	The date the document was created.
CREATETIME	HH:MM	The time the document was created.
LASTMODDATE	MM/DD/YYYY	The date the document was last modified.
LASTMODTIME	HH:MM	The time the document was last modified.
DATEAPPSTART	MM/DD/YYYY	Start date of calendar entry
TIMEAPPSTART	HH:MM	Start time of calendar entry
DATEAPPEND	MM/DD/YYYY	End date of calendar entry
TIMEAPPEND	HH:MM	End time of calendar entry
FILEPATH	i.e. /JSmith.pst/Inbox /JSmith.pst/Deleted Items /Network Share/Accounting/... /JSmithPC/Users/JSmith/My Documents/...	The file path from the location from which the item was stored in the usual course of business. This field should be populated for both e-mail and e-files.
AUTHOR	jsmith	The author of a document from extracted metadata.
LASTEDITEDBY	jsmith	The name of the last person to edit the document from extracted metadata.
FROM	Joe Smith <jsmith@email.com>	The display name and e-mail of the author of an e-mail. If only e-mail is given, then just list the e-mail address. An e-mail address should always be provided for every document.
TO	Joe Smith <jsmith@email.com>; tjones@email.com	The display name and e-mail of the recipient(s) of an e-mail. If only e-mail is given, then just list the e-mail address. An e-mail address should always be provided for every document.
CC	Joe Smith <jsmith@email.com>; tjones@email.com	The display name and e-mail of the copyee(s) of an e-mail. If only e-mail is given, then just list the e-mail address. An e-mail address should always be provided for every document.
BCC	Joe Smith <jsmith@email.com>; tjones@email.com	The display name and e-mail of the blind copyee(s) of an e-mail. If only e-mail is given, then just list the e-mail address. An e-mail address should always be provided for every document.
SUBJECT		The subject line of the e-mail.
TITLE		The extracted document title of a document.
IMPORTANCE	Normal, Low, High	E-mail Importance Flag
CUSTODIAN	Smith, Joe; Doe, Jane	All of the custodians / sources of a document from which the document originated, separated by semicolons.
ATTACH COUNT	Numeric	The number of attachments to a document.
FILEEXT	XLS	The file extension of a document.
MD5HASH		The MD5 Hash value or "de-duplication key" assigned to a document.
NATIVELINK	D:\NATIVES\ABC000001.xls	The full path to a native copy of a document.
FULLTEXT	D:\TEXT\ABC000001.txt	The path to the full extracted text of the document. There should be a folder on the deliverable, containing a separate text file per document. These text files should be named with their corresponding bates numbers. Note: E-mails should include header information: author, recipient, cc, bcc, date, subject, etc. If the attachment or e-file does not extract any text, then OCR for the document should be provided.

DECLARATION OF SERVICE BY MAIL AND E-MAIL

I, the undersigned, declare:

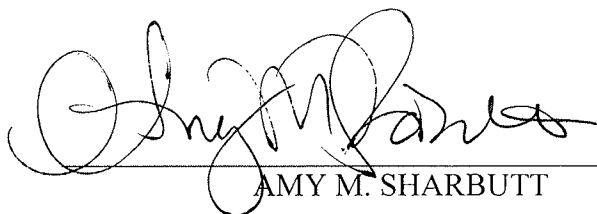
1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway, Suite 1900, San Diego, California 92101.

2. That on July 29, 2014, declarant served the **PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO THE UNDERWRITER DEFENDANTS** by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

4. That on July 29, 2014, declarant served via e-mail to the parties listed on the attached Service List.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July , at San Diego, California.



AMY M. SHARBUTT

BARCLAYS PFD SERIES 2 (LEAD)

Service List - 7/29/2014 (09-0054)

Page 1 of 1

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EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

**UNDERWRITER DEFENDANTS' RESPONSES AND OBJECTIONS TO
PLAINTIFFS' FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendants Barclays Capital Securities Limited, Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated (on behalf of itself and as successor to defendant Banc of America Securities LLC), Morgan Stanley & Co. Inc., RBC Dain Rauscher Inc., UBS Securities LLC and Wachovia Capital Markets, LLC (n/k/a Wells Fargo Securities, LLC) (collectively, the "Underwriter Defendants"), respond to the First Request for the Production of Documents Directed to the Underwriter Defendants, including the Definitions, Instructions, and Relevant Time Period referenced therein (collectively, the "Requests," and each specific request, a "Request") subject to the General Objections, Objections to the Definitions, Objections to the Instructions, and Objections to the Relevant Time Period set forth below. These limitations and objections, which form a part of the response to each Request, are set forth here to avoid the duplication and repetition of restating them for each individual response. These limitations and objections may also be specifically referred to in the responses to certain of the Requests for purposes of clarity. Failure to make a specific reference, however, should not be construed as a waiver of any of the General Objections, Objections to the Definitions, Objections to the Instructions, or Objections to the Relevant Time Period.

GENERAL OBJECTIONS

1. The Underwriter Defendants object to the Requests to the extent they purport to impose greater obligations than those imposed by the Federal Rules of Civil Procedure, the Local Rules of United States District Courts for the Southern and Eastern Districts of New York, and applicable law. The Underwriter Defendants will construe and respond to the Requests in accordance with the requirements of the Federal Rules of Civil Procedure, the Local Rules of United States District Courts for the Southern and Eastern Districts of New York, and applicable law.

2. The Underwriter Defendants object to the Requests to the extent they seek documents relating to the claims dismissed by the Court in its Opinion and Order dated January 5, 2012.

3. The Underwriter Defendants object to the Requests to the extent they seek information protected from disclosure by the attorney-client privilege, work product doctrine, common interest privilege and/or any other applicable privilege, doctrine or immunity.

4. Any inadvertent disclosure of any privileged information to Plaintiffs shall not be deemed or constitute a waiver of any privilege, any other doctrine against disclosure or the Underwriter Defendants' right to object to the use of any document inadvertently disclosed. The Underwriter Defendants reserve the right to demand that Plaintiffs return to them any document inadvertently produced. None of the Underwriter Defendants has previously waived any applicable privilege and each specifically states that it does not intend to do so through the production of any documents and information in response to the Requests.

5. The Underwriter Defendants object to the Requests to the extent they seek the production of documents that are not in the Underwriter Defendants' possession, custody or control.

6. The Underwriter Defendants object to the Requests to the extent that they are vague, ambiguous, duplicative, overly broad and/or unduly burdensome, including to the extent they seek "all" documents concerning the subject matters referenced herein.

7. The Underwriter Defendants object to the Requests to the extent they seek documents that are neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

8. The Underwriter Defendants object to the Requests to the extent they call for the production of documents that are equally accessible to Plaintiffs from another source that is more convenient and less burdensome.

9. The Underwriter Defendants object to the Requests to the extent they seek documents reasonably believed to be within Plaintiffs' possession, custody or control.

10. The Underwriter Defendants object to the Requests to the extent they seek documents containing any confidential, proprietary or commercially sensitive information, including personal or customer information, that is not otherwise privileged. Any such document will be produced only under a confidentiality agreement executed by all parties to the action and so ordered by the Court.

11. To the extent that the Requests purport to seek discovery from the Underwriter Defendants' offices or those of their parents, affiliates or subsidiaries located outside of the United States, the Underwriter Defendants object on the grounds that such discovery (i) is beyond the scope of Federal Rules of Civil Procedure and the Local Rules; (ii)

would violate the secrecy and privacy laws of foreign sovereigns; and (iii) seeks to circumvent the provisions of the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters and/or any other applicable convention or treaty by calling for discovery of documents without utilizing the Convention and/or any other applicable convention or treaty with respect to documents that may be located in countries that are signatories to the Convention and/or any other applicable convention or treaty.

12. The Underwriter Defendants object to the Requests to the extent that they purport to require the Underwriter Defendants to create or generate documents that do not currently exist.

13. The Underwriter Defendants object to the Requests to the extent that they seek documents that are not readily accessible. Subject to the objection stated, the Underwriter Defendants will search the centrally maintained archives for the transaction at issue and any documents maintained by core deal team members. Any Request that seeks to require the Underwriter Defendants to go beyond such a search are overbroad and unduly burdensome.

14. By objecting and responding to a particular Request, the Underwriter Defendants do not accept, adopt or concede the truth or validity of any characterization made in that Request.

15. The Underwriter Defendants' objections and responses to a particular Request do not constitute an admission that any documents exist that are responsive to that Request.

16. To the extent that any Underwriter Defendant produces documents in response to a particular Request, such production shall not constitute an admission that any such documents are relevant to the subject matter of the lawsuit. Production of any document should

not be construed as a waiver of any evidentiary or relevance objection to the use of such document in this or any other proceeding.

17. The Underwriter Defendants object to the definitions constituting the Rules of Construction to the extent they are broader than the rules of construction set out in Local Civil Rule 26.3(d). In responding to the Requests, the Underwriter Defendants shall apply the rules of construction provided in Local Civil Rule 26.3(d).

18. The Underwriter Defendants expressly condition their responses to the Requests upon completion of further discovery and reserve the right to correct, amend, modify and supplement these responses and objections.

OBJECTIONS TO THE DEFINITIONS

The Underwriter Defendants object to the definition of “You” and “Your” to the extent that it would require the production of documents subject to the attorney-client privilege, work product doctrine or any other applicable privilege or protection. In responding to the Requests, the Underwriter Defendants shall construe the definition of “You” and “Your” so as to exclude a request for documents subject to the attorney-client privilege, work product doctrine or any other applicable privilege or protection.

OBJECTIONS TO THE INSTRUCTIONS

1. The Underwriter Defendants object to Instruction No. 1 to the extent that it would require the production of documents subject to the attorney-client privilege, work product doctrine or any other applicable privilege or protection. In responding to the Requests, the Underwriter Defendants shall construe Instruction No. 1 so as to exclude a request for documents subject to the attorney-client privilege, work product doctrine or any other applicable privilege or protection. The Underwriter Defendants further object to Instruction No. 1 to the

extent it purports to require the production of documents from entities other than the Underwriter Defendants, including but not limited to their parent companies, affiliates, and/or subsidiaries.

2. The Underwriter Defendants object to Instruction No. 5 to the extent that it purports to impose a requirement of producing a privilege log more detailed than required under the Federal Rules of Civil Procedure.

OBJECTIONS TO THE RELEVANT TIME PERIOD

The Underwriter Defendants object to Plaintiffs' definition of the "Relevant Time Period" on the grounds that Plaintiffs' definition exceeds the time period of the alleged events forming the basis of the Complaint. The Underwriter Defendants are willing to meet and confer with Plaintiffs concerning an appropriate date range to cover the Underwriter Defendants' search for and production of documents in response to the Requests.

OBJECTIONS TO FORM OF PRODUCTION

The Underwriter Defendants object to Plaintiffs' "Form of Production" instructions for hard copy documents and electronically stored information ("ESI") as unduly burdensome. The Underwriter Defendants will produce hard copy documents and ESI pursuant to a mutually-agreed discovery protocol.

* * *

Subject to the General Objections, Objections to the Definitions, Objections to the Instructions, each of which the Underwriter Defendants hereby incorporate into each specific response below, the Underwriter Defendants respond to the Requests as follows:

SPECIFIC OBJECTIONS AND RESPONSES

REQUEST FOR PRODUCTION NO. 1

All documents concerning the Series 5 Offering, including, without limitation:

- (a) all communications between or among you and Barclays, any Individual Defendants, any auditor, accountant or advisor, any of the other Underwriter Defendants, any governmental agency, any credit rating agency or any stock exchange concerning the Series 5 Offering;
- (b) all documents concerning any meetings or communications between or among you and Barclays, any Individual Defendants, any auditor or accountant, any of the other Underwriter Defendants or any other person concerning the Series 5 Offering;
- (c) all documents concerning any communication, conference call, presentation or meeting concerning the Series 5 Offering with any of Barclays' current or former security holders, potential and actual purchasers of Barclays' securities, securities analysts, financial analysts, institutional investors, financial investors, news media, journalists or investment bankers, brokerage firms, market makers, money managers, commercial banks, credit rating agencies, or stock markets or securities exchanges; and
- (d) all documents concerning any road show conducted in connection with the Series 5 Offering.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1

The Underwriter Defendants incorporate by reference the General Objections, Objections to the Definitions, Objections to the Instructions and Objections to the Relevant Time Period. In addition, the Underwriter Defendants object to Request No. 1 on the grounds that it (i) is overly broad, unduly burdensome and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and (ii) calls for the production of documents protected by the attorney-client privilege, work product doctrine, common interest privilege and/or any other applicable privilege, doctrine or immunity. Subject to, and without waiving, these objections, the Underwriter Defendants will produce readily accessible, non-privileged, non-objectionable documents, if any, in their possession, custody or control that are responsive to this Request.

REQUEST FOR PRODUCTION NO. 2

All documents concerning any meeting of the Barclays Board of Directors, or any committees thereof, including ad hoc committees, wherein matters concerning the Series 5 Offering were reviewed, discussed or considered, including, but not limited to, any agendas, minutes, packages, notes, board books, presentation materials, transparencies, or other documents created or distributed in connection with any such meeting.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2

The Underwriter Defendants incorporate by reference the General Objections, Objections to the Definitions, Objections to the Instructions and Objections to the Relevant Time Period. In addition, the Underwriter Defendants object to Request No. 2 on the grounds that it (i) seeks documents not in the possession, custody or control of the Underwriter Defendants; (ii) seeks documents that are cumulative or duplicative of documents sought from other defendants in this action; (iii) is overly broad, unduly burdensome and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; and (iv) calls for the production of documents protected by the attorney-client privilege, work product doctrine, common interest privilege and/or any other applicable privilege, doctrine or immunity.

REQUEST FOR PRODUCTION NO. 3

All documents identifying any investors in, or purchasers in, the Series 5 Offering, including any lists, trading records, or other documents identifying any person or entity that purchased or received Barclays securities pursuant to the Series 5 Offering.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3

The Underwriter Defendants incorporate by reference the General Objections, Objections to the Definitions, Objections to the Instructions and Objections to the Relevant Time Period. In addition, the Underwriter Defendants object to Request No. 3 on the grounds that it is overly broad and unduly burdensome. Subject to, and without waiving, these objections, the Underwriter Defendants will produce readily accessible, non-privileged, non-objectionable

documents, if any, in their possession, custody, or control sufficient to identify investors or purchasers in the Series 5 Offering.

REQUEST FOR PRODUCTION NO. 4

All documents concerning the Series 5 Offering Materials or other filings and communications with the SEC concerning the Series 5 Offering, and all documents discussing whether any disclosure concerning Barclays should or should not be made in connection with the Series 5 Offering.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4

The Underwriter Defendants incorporate by reference the General Objections, Objections to the Definitions, Objections to the Instructions and Objections to the Relevant Time Period. In addition, the Underwriter Defendants object to Request No. 4 on the grounds that it is (i) overly broad and unduly burdensome and (ii) duplicative of Request No. 1. Subject to, and without waiving, these objections, the Underwriter Defendants will produce readily accessible, non-privileged, non-objectionable documents, if any, in their possession, custody or control that are responsive to this Request.

REQUEST FOR PRODUCTION NO. 5

All documents concerning any due diligence performed in connection with the Series 5 Offering, including, without limitation:

- (a) all due diligence request lists, working group lists and follow up lists;
- (b) all documents concerning your practices and procedures for conducting due diligence;
- (c) all equity or fixed income due diligence checklists and procedure manuals; and
- (d) all documents provided to you in connection with your due diligence.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5

The Underwriter Defendants incorporate by reference the General Objections, Objections to the Definitions, Objections to the Instructions and Objections to the Relevant Time Period. In addition, the Underwriter Defendants object to Request No. 5 on the grounds that it (i) is overly broad and unduly burdensome; (ii) calls for the production of documents protected by the attorney-client privilege, work product doctrine, common interest privilege and/or any other applicable privilege, doctrine or immunity, and (iii) calls for the production of proprietary, confidential and/or commercially sensitive information. Subject to, and without waiving, these objections, the Underwriter Defendants will produce readily accessible, non-privileged, non-objectionable documents, if any, in their possession, custody, or control that are responsive to this Request.

REQUEST FOR PRODUCTION NO. 6

Any comfort letters concerning the Series 5 Offering.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6

The Underwriter Defendants incorporate by reference the General Objections, Objections to the Definitions, Objections to the Instructions and Objections to the Relevant Time Period. In addition, the Underwriter Defendants object to Request No. 6 on the grounds that it (i) is vague and ambiguous and (ii) calls for the production of materials protected by the attorney-client privilege, work product doctrine, common interest privilege and/or any other applicable privilege, doctrine or immunity. Subject to, and without waiving, these objections, the Underwriter Defendants will produce readily accessible, non-privileged, non-objectionable documents, if any, in their possession, custody, or control that are responsive to this Request.

REQUEST FOR PRODUCTION NO. 7

All documents concerning any committee meeting regarding the Series 5 Offering, including all minutes, agendas, notes and memoranda created in connection with any committee meeting.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7

The Underwriter Defendants incorporate by reference the General Objections, Objections to the Definitions, Objections to the Instructions and Objections to the Relevant Time Period. In addition, the Underwriter Defendants object to Request No. 7 on the grounds that it (i) vague and ambiguous; (ii) calls for the production of documents protected by the attorney-client privilege, work product doctrine, common interest privilege and/or any other applicable privilege, doctrine or immunity; and (iii) calls for the production of documents not in the possession, custody or control of the Underwriter Defendants.

REQUEST FOR PRODUCTION NO. 8

All documents concerning any financial models, forecasts or analyses regarding Barclays.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8

The Underwriter Defendants incorporate by reference the General Objections, Objections to the Definitions, Objections to the Instructions and Objections to the Relevant Time Period. In addition, the Underwriter Defendants object to Request No. 8 on the grounds that it (i) is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; (ii) is vague and ambiguous; and (iii) calls for the production of documents not in the possession, custody or control of the Underwriter Defendants. Subject to, and without waiving, these objections, the Underwriter Defendants are prepared to meet and confer with Plaintiffs concerning the scope and timing of the production of non-privileged documents, if any, responsive to this Request.

REQUEST FOR PRODUCTION NO. 9

All documents concerning any action (whether taken or not taken) to correct, amend or supplement:

- (a) any document previously filed with the SEC concerning Barclays; or
- (b) any public statement concerning Barclays.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9

The Underwriter Defendants incorporate by reference the General Objections, Objections to the Definitions, Objections to the Instructions and Objections to the Relevant Time Period. In addition, the Underwriter Defendants object to Request No. 9 on the grounds that it (i) is overly broad, unduly burdensome and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; (ii) is vague and ambiguous; (iii) calls for the production of documents protected by the attorney-client privilege, work product doctrine, common interest privilege and/or any other applicable privilege, doctrine or immunity; (iv) seeks information that is cumulative or duplicative of information sought from other defendants in this action, or is obtainable from some other more convenient, less burdensome or less expensive source; and (v) calls for the production of documents outside the possession, custody or control of the Underwriter Defendants.

REQUEST FOR PRODUCTION NO. 10

All documents concerning Barclays' accounting policies.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10

The Underwriter Defendants incorporate by reference the General Objections, Objections to the Definitions, Objections to the Instructions and Objections to the Relevant Time Period. In addition, the Underwriter Defendants object to Request No. 10 on the grounds that it (i) calls for the production of documents not in the possession, custody or control of the Underwriter

Defendants; (ii) seeks documents that are cumulative or duplicative of documents sought from other defendants in this action; (iii) is overly broad, unduly burdensome and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; and (iv) is vague and ambiguous. Subject to, and without waiving, these objections, the Underwriter Defendants are prepared to meet and confer with Plaintiffs concerning the scope and timing of the production of non-privileged documents, if any, responsive to this Request.

REQUEST FOR PRODUCTION NO. 11

All documents concerning Barclays' valuation of its asset-backed securities, subprime and Alt-A holdings, or other assets.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11

The Underwriter Defendants incorporate by reference the General Objections, Objections to the Definitions, Objections to the Instructions and Objections to the Relevant Time Period. In addition, the Underwriter Defendants object to Request No. 11 on the grounds that it (i) calls for the production of documents not in the possession, custody or control of the Underwriter Defendants; (ii) seeks documents that are cumulative or duplicative of documents sought from other defendants in this action; (iii) is overly broad, unduly burdensome and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; and (iv) is vague and ambiguous. Subject to, and without waiving, these objections, the Underwriter Defendants are prepared to meet and confer with Plaintiffs concerning the scope and timing of the production of non-privileged documents, if any, responsive to this Request.

REQUEST FOR PRODUCTION NO. 12

All documents concerning any reports, findings, comments, suggestions, recommendations or conclusions concerning the operations, performance or liquidity of Barclays.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12

The Underwriter Defendants incorporate by reference the General Objections, Objections to the Definitions, Objections to the Instructions and Objections to the Relevant Time Period. In addition, the Underwriter Defendants object to Request No. 12 on the grounds that it (i) calls for the production of documents not in the possession, custody or control of the Underwriter Defendants; (ii) seeks documents that are cumulative or duplicative of documents sought from other defendants in this action; (iii) is overly broad, unduly burdensome and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; and (iv) is vague and ambiguous. Subject to, and without waiving, these objections, the Underwriter Defendants are prepared to meet and confer with Plaintiffs concerning the scope and timing of the production of non-privileged documents, if any, responsive to this Request.

REQUEST FOR PRODUCTION NO. 13

All personal files, expense reports, logs, diaries, notebooks, date books, calendars, appointment books and address books maintained by you concerning the Series 5 Offering.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13

The Underwriter Defendants incorporate by reference the General Objections, Objections to the Definitions, Objections to the Instructions and Objections to the Relevant Time Period. In addition, the Underwriter Defendants object to Request No. 13 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving, these objections, the Underwriter Defendants are prepared to meet and confer with Plaintiffs concerning the scope and timing of the production of non-privileged documents, if any, responsive to this Request.

REQUEST FOR PRODUCTION NO. 14

All documents concerning any press release, article, analyst report or rating agency report concerning Barclays.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14

The Underwriter Defendants incorporate by reference the General Objections, Objections to the Definitions, Objections to the Instructions and Objections to the Relevant Time Period. In addition, the Underwriter Defendants object to Request No. 14 on the grounds that it (i) is overly broad and unduly burdensome; (ii) is vague and ambiguous; (iii) seeks information that is cumulative or duplicative of information sought from other defendants in this action, or is obtainable from some other more convenient, less burdensome or less expensive source; and (iv) calls for the production of documents outside the possession, custody or control of the Underwriter Defendants.

REQUEST FOR PRODUCTION NO. 15

All documents concerning any indemnification or hold-harmless agreements between or among you and any defendant.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15

The Underwriter Defendants incorporate by reference the General Objections, Objections to the Definitions, Objections to the Instructions and Objections to the Relevant Time Period. In addition, the Underwriter Defendants object to Request No. 15 on the grounds that it is overly broad, vague and ambiguous. Subject to, and without waiving, these objections, the Underwriter Defendants are prepared to meet and confer with Plaintiffs concerning the scope and timing of the production of non-privileged documents, if any, responsive to this Request.

REQUEST FOR PRODUCTION NO. 16

All documents concerning any actual or proposed changes in the terms of the Series 5 Offering or the right or option to terminate, amend or modify the terms of the Series 5 Offering.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16

The Underwriter Defendants incorporate by reference the General Objections, Objections to the Definitions, Objections to the Instructions and Objections to the Relevant Time Period. In addition, the Underwriter Defendants object to Request No. 16 on the grounds that it (i) is overly broad and unduly burdensome; (ii) is vague and ambiguous; and (iii) calls for the production of materials protected by the attorney-client privilege, work product doctrine, common interest privilege and/or any other applicable privilege, doctrine or immunity. Subject to, and without waiving, these objections, the Underwriter Defendants are prepared to meet and confer with Plaintiffs concerning the scope and timing of the production of non-privileged documents, if any, responsive to this Request.

REQUEST FOR PRODUCTION NO. 17

All documents concerning any capital raise by Barclays after April 8, 2008, including, without limitation, any issuance of any securities by Barclays to investors in 2008 and 2009.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17

The Underwriter Defendants incorporate by reference the General Objections, Objections to the Definitions, Objections to the Instructions and Objections to the Relevant Time Period. In addition, the Underwriter Defendants object to Request No. 17 on the grounds that it (i) is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; (ii) seeks information that is cumulative or duplicative of information sought from other defendants in this action, or is

obtainable from some other more convenient, less burdensome or less expensive source; and (iii) calls for the production of documents dated or prepared outside of the time period of the alleged events forming the basis of the Complaint.

REQUEST FOR PRODUCTION NO. 18

All documents concerning any affirmative defense(s), and any other defense(s) you assert or may assert in this action.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18

The Underwriter Defendants incorporate by reference the General Objections, Objections to the Definitions, Objections to the Instructions and Objections to the Relevant Time Period. In addition, the Underwriter Defendants object to Request No. 18 on the grounds that it is overly broad and unduly burdensome. Subject to, and without waiving, these objections, the Underwriter Defendants are prepared to meet and confer with Plaintiffs concerning the scope and timing of the production of non-privileged documents, if any, responsive to this Request.

REQUEST FOR PRODUCTION NO. 19

All documents concerning your document preservation, retention or destruction policies, including, without limitation, any policies concerning your retention or destruction of electronically stored information, documents and e-mails in connection with this action, as well as any modification of such policies.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19

The Underwriter Defendants incorporate by reference the General Objections, Objections to the Definitions, Objections to the Instructions and Objections to the Relevant Time Period. In addition, the Underwriter Defendants object to Request No. 19 on the grounds that it (i) is overly broad; (ii) calls for the production of materials protected by the attorney-client privilege, work product doctrine, common interest privilege and/or any other applicable privilege, doctrine or

immunity; and (iii) calls for the production of proprietary, confidential, and/or commercially sensitive information.

REQUEST FOR PRODUCTION NO. 20

Documents sufficient to show the total amount of fees earned by you from Barclays during the calendar years 2006, 2007 and 2008.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20

The Underwriter Defendants incorporate by reference the General Objections, Objections to the Definitions, Objections to the Instructions and Objections to the Relevant Time Period. In addition, the Underwriter Defendants object to Request No. 20 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Dated: New York, New York
August 28, 2014

/s/ Scott D. Musoff

Jay B. Kasner

Scott D. Musoff

Gary J. Hacker

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP

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New York, New York 10036-6522

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Attorneys for the Underwriter Defendants

EXHIBIT 4

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October 17, 2014

Christopher D. Stewart
Robbins Geller Rudman & Dowd LLP
655 West Broadway, Suite 1900
San Diego, CA 92101

Re: *In re Barclays Bank PLC Securities Litigation*, 09-cv-1989 (PAC)

Dear Christopher:

We write in response to your October 16, 2014 letter and to correct certain inaccuracies.

As an initial matter, your assertion that the Underwriter Defendants agreed to “produce documents relevant to the Series 2-4 Offerings” is simply false. We never agreed to produce such documents. Significantly, plaintiffs’ own document requests to the Underwriter Defendants are, for the most part, *limited to the Series 5 Offering*. (See Request Nos. 1, 2, 3, 4, 5, 6, 7, 13, 16.) Moreover, to the extent they are not, the Underwriter Defendants specifically objected to producing documents relating to the Series 2, 3 and 4 Offerings. (See General Objection No. 2 (“The Underwriter Defendants object to the Requests to the extent they seek documents relating to the claims dismissed by the Court in its Opinion and Order dated January 5, 2012.”).

Accordingly, your statement that “[n]otwithstanding their agreement to produce documents relevant to the Series 2-4 Offerings, the Underwriter Defendants contend the default relevant time period of the Requests directed to the Underwriter Defendants should begin on August 1, 2007 and end on the date of the Series 5 Offering” is based on a false premise. Our position that the relevant time period should be August 2007 through April 2008 was premised on the fact that the Shelf Registration Statement for the Series 5 Offering was filed in August 2007 and

Christopher D. Stewart
October 17, 2014
Page 2

the Series 5 Offering took place in April 2008, as I explained during the parties' first meet and confer. We continue to believe that such a time period is reasonable.

We likewise never agreed at this time to produce "deal files" for the Series 2, 3 and 4 Offerings. During our call on October 9, 2014, I stated that the Underwriter Defendants would consider producing stand-alone files and promised to provide our position by October 10, 2014. My understanding was that we were discussing only those files relating to the Series 5 Offering. Thereafter, on October 10, I left a voicemail for Eric Niehaus stating that we would agree to produce such stand-alone files and would endeavor to do so in the next few weeks. Again, I never said that the Underwriter Defendants would produce stand-alone files for the Series 2, 3 or 4 Offerings.

Accordingly, subject to a privilege review, we will agree to produce by November 7 documents located in stand-alone files that specifically relate to the Series 5 Offering, as well as any working group lists for the Series 5 Offering. In addition, we will let you know whether we intend to collect documents from Linklaters LLP.

Finally, during the October 9 call, counsel for plaintiffs argued that the Underwriter Defendants should produce these stand-alone files because, among other things, the Underwriter Defendants have had "months" to collect the files. This reasoning applies with equal force to plaintiffs. Therefore, we ask that plaintiffs likewise produce by November 7 any stand-alone documents relating to the Series 5 Offering, including documents relating to plaintiffs' purchases and/or sales of the Series 5 securities, that do not require the use of electronic search terms to collect.

We are happy to discuss any of the foregoing.

Very truly yours,



Gary J. Hacker

EXHIBIT 5
[Filed Under Seal]

* * * 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 2</p> <p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3</p> <p>4 KESSLER TOPAZ MELTZER CHECK LLP</p> <p>5 Attorneys for Plaintiffs</p> <p>6 280 King of Prussia Road</p> <p>7 Radnor, Pennsylvania 19087</p> <p>8 BY: MICHELLE M. NEWCOMER, ESQ.</p> <p>9 mnewcomer@ktmc.com</p> <p>10 JONATHAN F. NEUMANN, ESQ.</p> <p>11 jneumann@ktmc.com</p> <p>12 - and -</p> <p>13 ROBBINS GELLER RUDMAN & DOWD LLP</p> <p>14 655 West Broadway, Suite 1900</p> <p>15 San Diego, California 92101</p> <p>16 BY: CHRISTOPHER D. STEWART, ESQ.</p> <p>17 cstewart@rgrdlaw.com</p> <p>18</p> <p>19 SULLIVAN & CROMWELL LLP</p> <p>20 Attorneys for Barclays Defendants</p> <p>21 125 Broad Street</p> <p>22 New York, New York 10004-2498</p> <p>23 BY: MATTHEW A. PELLER, ESQ.</p> <p>24 peller@sullcrom.com</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 THE VIDEOGRAPHER: Good morning. We're</p> <p>3 now on the record.</p> <p>4 Please note that the microphones are</p> <p>5 sensitive and may pick up whispering and</p> <p>6 private conversations.</p> <p>7 Please turn off all cell phones or</p> <p>8 place them away from the microphones, as they</p> <p>9 can interfere with the deposition audio.</p> <p>10 Recording will continue until all</p> <p>11 parties agree to go off the record.</p> <p>12 My name is Jim Roberts, representing</p> <p>13 Veritext Mid-Atlantic. Today's date is August</p> <p>14 13th, 2015. The time is approximately 8:30</p> <p>15 a.m. The deposition is being held at Skadden,</p> <p>16 Arps, located at Four Times Square, New York</p> <p>17 City, New York.</p> <p>18 The caption of the case is In Re</p> <p>19 Barclays Bank Plc Securities Litigation, in</p> <p>20 the U.S. District Court, Southern District of</p> <p>21 New York, Case Number 1:09-CV-01989-PAC. The</p> <p>22 name of the witness is Jack McSpadden.</p> <p>23 Counsel please state their appearances</p> <p>24 for the record.</p> <p>25 MS. NEWCOMER: Michelle Newcomer from</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 A P P E A R A N C E S (continued):</p> <p>3</p> <p>4 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP</p> <p>5 Attorneys for Citi Defendants</p> <p>6 Four Times Square</p> <p>7 New York, New York 10036</p> <p>8 BY: GARY J. HACKER, ESQ.</p> <p>9 gary.hacker@skadden.com</p> <p>10 ADAM C. LUDEMANN, ESQ.</p> <p>11 adam.ludemann@skadden.com</p> <p>12 SCOTT D. MUSOFF, ESQ. (where noted)</p> <p>13 scott.musoff@skadden.com</p> <p>14</p> <p>15 ALSO PRESENT:</p> <p>16 JAMES ROBERTS, Videographer</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1</p> <p>2 Kessler Topaz Meltzer Check on behalf of</p> <p>3 plaintiffs.</p> <p>4 MR. NEUMANN: Jonathan Neumann from</p> <p>5 Kessler Topaz Meltzer Check on behalf of lead</p> <p>6 plaintiffs.</p> <p>7 MR. STEWART: Christopher Stewart,</p> <p>8 Robbins, Geller, Rudman & Dowd, on behalf of</p> <p>9 plaintiffs.</p> <p>10 MR. HACKER: Gary Hacker's, Skadden,</p> <p>11 Arps, Slate, Meagher & Flom LLP, on behalf of</p> <p>12 the underwriter defendants and Mr. McSpadden.</p> <p>13 MR. LUDEMANN: Adam Ludemann on behalf</p> <p>14 of Jack McSpadden, Skadden, Arps, Slate,</p> <p>15 Meagher & Flom LLP.</p> <p>16 MR. PELLER: Matthew Peller, Sullivan &</p> <p>17 Cromwell, for the Barclays defendants.</p> <p>18 THE VIDEOGRAPHER: Our court reporter,</p> <p>19 Laurie Collins, also of Veritext, will please</p> <p>20 swear in the witness.</p> <p>21 J A C K D. M c S P A D D E N ,</p> <p>22 called as a witness, having been duly sworn</p> <p>23 by the notary public, was examined and</p> <p>24 testified as follows:</p> <p>25 THE VIDEOGRAPHER: I'm sorry, counsel,</p>

<p style="text-align: right;">Page 6</p> <p>1 McSpadden - Confidential</p> <p>2 we just need to go off the record one moment.</p> <p>3 Off the record 8:35 a.m.</p> <p>4 (Pause.)</p> <p>5 THE VIDEOGRAPHER: Back on the record</p> <p>6 8:38 a.m. You may proceed.</p> <p>7 MS. NEWCOMER: Thank you.</p> <p>8 EXAMINATION BY</p> <p>9 MS. NEWCOMER:</p> <p>10 Q. Good morning.</p> <p>11 A. Good morning. How are you?</p> <p>12 Q. I'm very well. Thank you.</p> <p>13 My name is Michelle Newcomer. I'm one</p> <p>14 of the lawyers representing the plaintiffs in a</p> <p>15 class action against Barclays Bank, certain of its</p> <p>16 officers and directors, and certain underwriters</p> <p>17 predicated on alleged misstatements made in</p> <p>18 connection with the April 2008 public securities</p> <p>19 offering of American depository shares of Barclays</p> <p>20 Series 5 preferred shares.</p> <p>21 Could you please state your name and</p> <p>22 address for the record?</p> <p>23 A. Jack D. McSpadden, Jr., 655 Park</p> <p>24 Avenue, Apartment 2D, New York, New York 10065.</p> <p>25 Q. Thank you. I apologize if these</p>	<p style="text-align: right;">Page 8</p> <p>1 McSpadden - Confidential</p> <p>2 A. Five, plus or minus.</p> <p>3 Q. When was the last time you were</p> <p>4 deposed?</p> <p>5 A. Ten years ago.</p> <p>6 Q. Was that related to a matter regarding</p> <p>7 Barclays Bank?</p> <p>8 A. No.</p> <p>9 Q. Let me just run through a few ground</p> <p>10 rules about the deposition today.</p> <p>11 In order for the court reporter to be</p> <p>12 able to transcribe your testimony, I ask that you</p> <p>13 please make sure your answers are verbal and not</p> <p>14 head nods or gestures, because she cannot</p> <p>15 transcribe those.</p> <p>16 A. Understood.</p> <p>17 Q. I also would like -- request that you</p> <p>18 wait for me to completely finish my question</p> <p>19 before you answer so that she can write everything</p> <p>20 down clearly, and I will likewise do the same. I</p> <p>21 will wait for you to finish answering before I ask</p> <p>22 another question.</p> <p>23 A. Understood.</p> <p>24 Q. If you didn't hear a question I asked,</p> <p>25 feel free to ask me to repeat it. And if you</p>
<p style="text-align: right;">Page 7</p> <p>1 McSpadden - Confidential</p> <p>2 questions seem a little weird, but I have to ask</p> <p>3 them.</p> <p>4 A. No, totally fine.</p> <p>5 Q. Is there any reason you cannot give</p> <p>6 truthful and honest testimony today?</p> <p>7 A. No.</p> <p>8 Q. Do you have any medical conditions that</p> <p>9 might impair your ability to give honest testimony</p> <p>10 today?</p> <p>11 A. No.</p> <p>12 Q. Are you on any medications or drugs of</p> <p>13 any kind at the moment that might impair your</p> <p>14 ability to give truthful and honest testimony</p> <p>15 today?</p> <p>16 A. No.</p> <p>17 Q. Do you understand that you're</p> <p>18 testifying under oath?</p> <p>19 A. Yes.</p> <p>20 Q. And do you understand that that</p> <p>21 testimony can be used in the trial of this action?</p> <p>22 A. Yes.</p> <p>23 Q. Have you ever been deposed before?</p> <p>24 A. Yes.</p> <p>25 Q. How many times?</p>	<p style="text-align: right;">Page 9</p> <p>1 McSpadden - Confidential</p> <p>2 don't quite understand a question, please feel</p> <p>3 free to ask me to clarify. I will do the best</p> <p>4 that I can. But if you do answer a question, I</p> <p>5 will have assumed that you have heard it and</p> <p>6 understood it. Is that fair?</p> <p>7 A. That's fair.</p> <p>8 Q. Your counsel may make objections today.</p> <p>9 That's perfectly fine. You do need to answer the</p> <p>10 question even after he's made an objection unless</p> <p>11 the objection is on the basis of a privilege, and</p> <p>12 he may instruct you not to answer on that point.</p> <p>13 If you need a break at any time, please</p> <p>14 tell me. I'm happy to oblige. I would just ask</p> <p>15 that it not be during a pending question. I would</p> <p>16 like you to answer the question first.</p> <p>17 A. Okay.</p> <p>18 Q. Are all these rules okay for you?</p> <p>19 A. Great.</p> <p>20 Q. Okay. Let's get started.</p> <p>21 MS. NEWCOMER: I'd like to mark this as</p> <p>22 Exhibit 9 and this one as Exhibit 10.</p> <p>23 (Exhibit 9, 30(b)(6) deposition notice</p> <p>24 of Citigroup Global Markets, marked for</p> <p>25 identification.)</p>

<p style="text-align: right;">Page 10</p> <p>1 McSpadden - Confidential</p> <p>2 (Exhibit 10, amended 30(b)(6)</p> <p>3 deposition notice of Citigroup Global Markets,</p> <p>4 marked for identification.)</p> <p>5 Q. Mr. McSpadden, I've handed you two</p> <p>6 documents, Exhibits 9 and 10. Exhibit 9 is a</p> <p>7 notice of deposition of Citigroup Global Markets,</p> <p>8 Inc., pursuant to Federal Rule of Civil Procedure</p> <p>9 30(b)(6), and Exhibit 10 is an amended notice of</p> <p>10 deposition of Citigroup Global Markets, Inc.,</p> <p>11 pursuant to Federal Rule of Civil Procedure</p> <p>12 30(b)(6).</p> <p>13 Do you recognize these documents?</p> <p>14 A. I recognize Exhibit 9. I do not</p> <p>15 recognize Exhibit 10.</p> <p>16 Q. We can focus on Exhibit 9.</p> <p>17 Have those documents previously been</p> <p>18 provided to you?</p> <p>19 A. Exhibit 9 I've seen before.</p> <p>20 Q. And not Exhibit 10?</p> <p>21 A. I don't recall seeing Exhibit 10</p> <p>22 before.</p> <p>23 Q. Do you understand that Citigroup Global</p> <p>24 Markets, Inc., has been named as a defendant in</p> <p>25 this action?</p>	<p style="text-align: right;">Page 12</p> <p>1 McSpadden - Confidential</p> <p>2 know, the prospectuses, various documents involved</p> <p>3 in, some of the e-mails.</p> <p>4 Q. When you mentioned your internal</p> <p>5 electronic files, what documents or files were you</p> <p>6 looking at?</p> <p>7 A. Files related to this deal.</p> <p>8 Q. And what deal are you referring to?</p> <p>9 A. The April 8th 100 million share</p> <p>10 offering that we're talking about here. Series 5</p> <p>11 I believe it's called.</p> <p>12 Q. Thank you.</p> <p>13 How long did you meet with your</p> <p>14 counsel?</p> <p>15 A. A couple hours.</p> <p>16 Q. Did you review any documents with your</p> <p>17 counsel in preparation for this deposition?</p> <p>18 A. We looked at some documents.</p> <p>19 Q. Were any of those documents memos</p> <p>20 prepared by your counsel?</p> <p>21 A. No.</p> <p>22 Q. Did any of the documents that you</p> <p>23 reviewed help inform your ability to testify about</p> <p>24 the topics set forth in the notice today?</p> <p>25 A. Say again.</p>
<p style="text-align: right;">Page 11</p> <p>1 McSpadden - Confidential</p> <p>2 A. Yes.</p> <p>3 Q. And do you understand that Citigroup</p> <p>4 has designated you as its corporate representative</p> <p>5 today to testify about the matter set forth in the</p> <p>6 notice?</p> <p>7 A. Yes.</p> <p>8 Q. Are you prepared to testify as to all</p> <p>9 of the topics in the notice today?</p> <p>10 A. No.</p> <p>11 Q. Are you prepared to testify about</p> <p>12 Topics 1 through 14?</p> <p>13 (Pause.)</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Great.</p> <p>16 What, if anything, did you do to</p> <p>17 prepare for your testimony today?</p> <p>18 A. When I got notified about maybe a month</p> <p>19 ago that I probably was going to be deposed, I</p> <p>20 went back and looked at my own internal files I</p> <p>21 had retained on -- electronic files I retained on</p> <p>22 these issues just to refresh myself on the</p> <p>23 timeline.</p> <p>24 And then I had a meeting with my</p> <p>25 counsel and went over some of the documents, you</p>	<p style="text-align: right;">Page 13</p> <p>1 McSpadden - Confidential</p> <p>2 Q. Did any of the documents that you</p> <p>3 reviewed in preparation for this deposition assist</p> <p>4 in your ability or inform your ability to testify</p> <p>5 about the matters set forth in the notice?</p> <p>6 A. Yes.</p> <p>7 Q. Which documents assisted or informed</p> <p>8 your ability to testify today?</p> <p>9 A. The various deal-related documents, you</p> <p>10 know, the prospectus, the underwriting agreement,</p> <p>11 some of the e-mails with regard to the</p> <p>12 transaction.</p> <p>13 Q. Can you recall any specific e-mails?</p> <p>14 A. Just various e-mails about the -- I</p> <p>15 didn't reread many of them, just kind of getting a</p> <p>16 flow of the deal, just remembering what had</p> <p>17 occurred, when it occurred. Nothing in particular</p> <p>18 leaps to mind.</p> <p>19 Q. Did you review any transcripts of</p> <p>20 deposition or other testimony in preparation for</p> <p>21 your deposition today?</p> <p>22 A. No.</p> <p>23 Q. What was your position at Citigroup?</p> <p>24 A. Managing director in charge of the --</p> <p>25 what's called a transaction execution group. The</p>

<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 34</p> <p>1 McSpadden - Confidential</p> <p>2 A. I know we participated. I've seen a</p> <p>3 document that lists everyone who was given the</p> <p>4 opportunity to participate. I don't immediately</p> <p>5 remember the names of those.</p> <p>6 Q. Why were certain underwriters not given</p> <p>7 the opportunity to participate in that call?</p> <p>8 A. It was done in a fairly fast-paced</p> <p>9 environment shortly before the pricing of the</p> <p>10 deal. If recollection serves me, it was given to</p> <p>11 the larger firms -- the firms with the larger</p> <p>12 number of underwriting commitment on page S-31.</p> <p>13 You have that document. I'm sure you've seen it.</p> <p>14 Q. Who determines how many shares each</p> <p>15 underwriter will be required to underwrite in</p> <p>16 connection with an offering? And this is</p> <p>17 generally speaking.</p> <p>18 A. The issuer.</p> <p>19 Q. Do any of the underwriters typically</p> <p>20 play a role in that determination?</p> <p>21 A. There are situations -- it varies from</p> <p>22 deal to deal -- as to whether there would be</p> <p>23 conversations between the issuer and either one</p> <p>24 member of the joint lead manager group or several</p> <p>25 of the joint lead managers: How do you think we</p>	<p style="text-align: right;">Page 36</p> <p>1 McSpadden - Confidential</p> <p>2 to that?</p> <p>3 A. Barclays.</p> <p>4 Q. Is there anyone at Citigroup who would</p> <p>5 know the answer to that?</p> <p>6 A. That I know would know the answer to</p> <p>7 that? I don't know anyone for certain who would</p> <p>8 know the answer to that.</p> <p>9 Q. Is there any document that might</p> <p>10 indicate that?</p> <p>11 A. Not a document I've seen.</p> <p>12 Q. Do you know if Citigroup, in connection</p> <p>13 with the Series 5 offering, advised or consulted</p> <p>14 with Barclays at all as to what the commitments of</p> <p>15 each underwriter would be with respect to the</p> <p>16 Series 5 offering?</p> <p>17 A. Say again, please.</p> <p>18 Q. Did Citigroup, in connection with the</p> <p>19 Series 5 offering, advise or consult with Barclays</p> <p>20 as to what the underwriting commitment of each</p> <p>21 writer would be?</p> <p>22 A. Let me answer that another way. I</p> <p>23 don't know specifically whether Citigroup did or</p> <p>24 didn't advise them, but I'm not the least bit</p> <p>25 surprised to see Citigroup, Merrill Lynch, UBS,</p>
<p style="text-align: right;">Page 35</p> <p>1 McSpadden - Confidential</p> <p>2 should structure the syndicate for this</p> <p>3 transaction. That is a typically discussion that</p> <p>4 comes up in virtually all transactions.</p> <p>5 There could have been some</p> <p>6 back-and-forth that occurred. I was not part of</p> <p>7 that.</p> <p>8 Q. Who made the determination with respect</p> <p>9 to the Series 5 offering how many shares each</p> <p>10 underwriter would be committed to underwrite?</p> <p>11 A. Again, it's -- as I said, it's</p> <p>12 typically left up -- the issuer makes the final</p> <p>13 determination as to who is going to work on a</p> <p>14 securities transaction. So they should have</p> <p>15 established it.</p> <p>16 Again, there may have been some</p> <p>17 back-and-forth as to who to put in, what's the</p> <p>18 syndicate structure, discussions that were held.</p> <p>19 I was not part of those.</p> <p>20 Q. So do you not know who made the</p> <p>21 determination with respect to the Series 5</p> <p>22 offering of how many shares each underwriter would</p> <p>23 be committed to underwrite?</p> <p>24 A. I don't know.</p> <p>25 Q. Do you know who might know the answer</p>	<p style="text-align: right;">Page 37</p> <p>1 McSpadden - Confidential</p> <p>2 and Wachovia have the same number of shares to</p> <p>3 underwrite.</p> <p>4 Q. Why does that not surprise you?</p> <p>5 A. Because all four of those firms had</p> <p>6 very large retail distribution capabilities. By</p> <p>7 "retail distribution" I mean we have people called</p> <p>8 financial consultants who have clients. And those</p> <p>9 are the four firms that have the largest group of</p> <p>10 financial consultants, just physical, you know,</p> <p>11 brokers.</p> <p>12 I'm not sure what phrase y'all are</p> <p>13 familiar with what you call a financial</p> <p>14 consultant, financial advisor, consultant, broker,</p> <p>15 whatever.</p> <p>16 Those four firms were routinely in all</p> <p>17 \$25 par securities that are going to retail just</p> <p>18 because of their distribution capabilities.</p> <p>19 Barclays Capital Securities is obviously in a</p> <p>20 unique position in this transaction just because</p> <p>21 of who they are. Barclays Capital, to my</p> <p>22 knowledge, does not have a particularly broad</p> <p>23 retail distribution capability.</p> <p>24 That's not exactly an answer to your</p> <p>25 question, but it's -- if you looked at 25 or 50</p>

<p style="text-align: right;">Page 38</p> <p>1 McSpadden - Confidential</p> <p>2 other \$25 par debt pieces of paper, you would see</p> <p>3 those same four names again and again and again</p> <p>4 come up with the exact same underwriting</p> <p>5 commitment for each of those four firms.</p> <p>6 (Exhibit 12, Barclays registration</p> <p>7 statement, marked for identification.)</p> <p>8 (Exhibit 13, Barclays preliminary</p> <p>9 prospectus supplement, marked for</p> <p>10 identification.)</p> <p>11 (Exhibit 14, Barclays annual report</p> <p>12 dated 12/31/07, marked for identification.)</p> <p>13 Q. Mr. McSpadden, you've been handed -- if</p> <p>14 you could look at Exhibit 12 -- a copy of the</p> <p>15 registration statement filed with the SEC by</p> <p>16 Barclays Bank on Form F-3ASR dated August 31st,</p> <p>17 2007.</p> <p>18 Do you recognize the document?</p> <p>19 A. I know what it is.</p> <p>20 Q. Is it the shelf registration statement</p> <p>21 pursuant to which Barclays conducted the Series 5</p> <p>22 offering?</p> <p>23 A. It is.</p> <p>24 Q. And then if you could look at Exhibit</p> <p>25 13, please. Exhibit 13 is a preliminary</p>	<p style="text-align: right;">Page 40</p> <p>1 McSpadden - Confidential</p> <p>2 supplement pursuant to which Barclays conducted</p> <p>3 the Series 5 offering?</p> <p>4 A. It is.</p> <p>5 Q. Did each of the managing underwriters</p> <p>6 have an opportunity --</p> <p>7 A. Excuse me. Can I make an observation?</p> <p>8 Q. Certainly.</p> <p>9 A. This is only the supplement. The base</p> <p>10 prospectus would have been attached behind it.</p> <p>11 That's not presented in your Exhibit 13. There</p> <p>12 would have been the base prospectus, which is from</p> <p>13 here (indicating).</p> <p>14 Q. Which is a part of the final prospectus</p> <p>15 supplement that we looked at earlier; correct?</p> <p>16 A. Yes. But the red herring would have</p> <p>17 included that base -- the prospectus would have</p> <p>18 been part of this document. So this is an</p> <p>19 incomplete red herring.</p> <p>20 Q. Okay. Thank you.</p> <p>21 A. Just to be clear, this document right</p> <p>22 here (indicating), this one right here --</p> <p>23 MR. HACKER: Pointing to Exhibit 12.</p> <p>24 A. -- pointing to Exhibit 12, the base,</p> <p>25 this would have been part of this document that</p>
<p style="text-align: right;">Page 39</p> <p>1 McSpadden - Confidential</p> <p>2 prospectus supplement filed --</p> <p>3 A. Oh, sorry, I was looking at Exhibit 13</p> <p>4 here, Exhibit 13 here.</p> <p>5 MR. HACKER: That's 12.</p> <p>6 THE WITNESS: No, this has exhibits in</p> <p>7 the back.</p> <p>8 MR. HACKER: I'm sorry.</p> <p>9 Q. I apologize. You can put that Exhibit</p> <p>10 13 to the side -- I'm sorry, that Exhibit 12.</p> <p>11 A. This Exhibit 13. Okay.</p> <p>12 Q. Look at this Exhibit 13. This is a</p> <p>13 copy of a preliminary prospectus supplement filed</p> <p>14 with the SEC --</p> <p>15 MR. HACKER: I think we have the wrong</p> <p>16 document.</p> <p>17 (Discussion off the record.)</p> <p>18 Q. Exhibit 13 is a copy of a preliminary</p> <p>19 prospectus supplement filed with the SEC by</p> <p>20 Barclays Bank PLC on Form 424B5 dated April 7th,</p> <p>21 2008; correct?</p> <p>22 A. Correct.</p> <p>23 Q. Do you recognize this document?</p> <p>24 A. I do.</p> <p>25 Q. Is this the preliminary prospectus</p>	<p style="text-align: right;">Page 41</p> <p>1 McSpadden - Confidential</p> <p>2 every investor would have gotten. In addition to</p> <p>3 that, part of that document would also be all the</p> <p>4 documents incorporated by reference from the SEC</p> <p>5 Web site.</p> <p>6 Q. Of course.</p> <p>7 A. That totality is the disclosure</p> <p>8 package, the preliminary disclosure package, they</p> <p>9 were given to make a decision.</p> <p>10 Q. And then if I would just have you turn</p> <p>11 to Exhibit 14, please.</p> <p>12 A. Sure. Yep.</p> <p>13 Q. Actually, before we do Exhibit 14, did</p> <p>14 each of the managing underwriters have an</p> <p>15 opportunity to review a copy of the preliminary</p> <p>16 prospectus supplement before it was filed with the</p> <p>17 SEC?</p> <p>18 A. The ordinary process is preliminary</p> <p>19 documents were circulated to everyone who was part</p> <p>20 of -- on the working group that would have been</p> <p>21 provided, so it would be normal for anyone who was</p> <p>22 on the cover, the first page of the red herring,</p> <p>23 to have been provided the opportunity to see this</p> <p>24 in advance and review it.</p> <p>25 Q. Were each of the underwriters on the</p>

<p style="text-align: right;">Page 42</p> <p>1 McSpadden - Confidential</p> <p>2 cover of the preliminary prospectus supplement for</p> <p>3 the Series 5 offering provided an opportunity to</p> <p>4 review that document before it was filed with the</p> <p>5 SEC?</p> <p>6 MR. HACKER: Object to form.</p> <p>7 A. Citi was provided an opportunity. We</p> <p>8 reviewed it. I can't tell if every other person</p> <p>9 who was given the opportunity reviewed it as well.</p> <p>10 Q. Did anyone within Citi make any</p> <p>11 comments or edits to the preliminary prospectus</p> <p>12 supplement before it was filed with the SEC?</p> <p>13 A. People within Citi were given the</p> <p>14 opportunity to make comments. I can't recall</p> <p>15 whether I personally did or didn't make comments.</p> <p>16 I know we were given an opportunity over a period</p> <p>17 of weeks to make comments on documents that were</p> <p>18 circulated as part of the process.</p> <p>19 Q. And with respect to the final</p> <p>20 prospectus supplement that was issued in</p> <p>21 connection with the Series 5 offering --</p> <p>22 A. Exhibit --</p> <p>23 MR. HACKER: 11.</p> <p>24 A. -- 11.</p> <p>25 Q. -- 11, did Citi also have an</p>	<p style="text-align: right;">Page 44</p> <p>1 McSpadden - Confidential</p> <p>2 you --</p> <p>3 A. Sure.</p> <p>4 Q. -- which is Exhibit 14, which is a copy</p> <p>5 of Barclays annual report on Form 20-F for the</p> <p>6 year ended December 31st, 2007.</p> <p>7 Is this one of the documents that was</p> <p>8 incorporated by reference into the registration</p> <p>9 statement and prospectus and prospectus</p> <p>10 supplements for the Series 5 offering?</p> <p>11 A. It is, as noted on page S-3.</p> <p>12 Q. You can actually put all those --</p> <p>13 MR. HACKER: You're pointing to S-3 on</p> <p>14 Exhibit 13?</p> <p>15 THE WITNESS: I'm pointing to S-3 on</p> <p>16 Exhibit 13, which is the red herring. And</p> <p>17 Exhibit S-4, excuse me. Page S-4 is the</p> <p>18 better page. It's referred to several pages</p> <p>19 in the red herring, but S-4 is a specific page</p> <p>20 that says incorporation of certain documents</p> <p>21 by reference.</p> <p>22 Q. You're referring to the preliminary</p> <p>23 prospectus supplement as the red herring; correct?</p> <p>24 A. Correct.</p> <p>25 Q. What does that mean? Strike that.</p>
<p style="text-align: right;">Page 43</p> <p>1 McSpadden - Confidential</p> <p>2 opportunity to review that document before it was</p> <p>3 filed -- a copy of that document before it was</p> <p>4 filed with the SEC?</p> <p>5 A. We did.</p> <p>6 Q. And did Citi review a copy of that</p> <p>7 document?</p> <p>8 A. We did.</p> <p>9 Q. And did Citi make any edits or comments</p> <p>10 to that document before it was filed?</p> <p>11 A. I can't remember if we made any</p> <p>12 comments. But if nothing else, you have to fill</p> <p>13 in all the particulars of the offering. The</p> <p>14 particulars of the offering are blank here. And</p> <p>15 the particulars of the offering in the final now</p> <p>16 say 100 million shares. Everything -- all of that</p> <p>17 would have been filled in.</p> <p>18 What's called a black line of that</p> <p>19 document would have been circulated to the entire</p> <p>20 management group for their comment and sign-off.</p> <p>21 So we would have been given the opportunity -- I</p> <p>22 can't recall if we did have any comments. It</p> <p>23 depends on how good the lawyers were that filled</p> <p>24 in the numbers.</p> <p>25 Q. And then just one final document I gave</p>	<p style="text-align: right;">Page 45</p> <p>1 McSpadden - Confidential</p> <p>2 Why is the preliminary prospectus</p> <p>3 supplement referred to as a red herring?</p> <p>4 A. It's -- if you -- if you -- the</p> <p>5 document is not in color. If you see it in color,</p> <p>6 a lot of the language in it is in red. It goes</p> <p>7 with the vernacular. I started doing this in</p> <p>8 1974. By the time I got here in '74, it was</p> <p>9 called a red herring then. There's some anecdotal</p> <p>10 meaning for that, but it's just industry parlance.</p> <p>11 Q. You can put those exhibits to the side.</p> <p>12 (Exhibit 15, completed deal checklist,</p> <p>13 Bates-stamped UW_Barclays_0000001121 through</p> <p>14 1143, marked for identification.)</p> <p>15 Q. Mr. McSpadden, I've handed you Exhibit</p> <p>16 15, which is Bates-numbered UW_Barclays_0000001121</p> <p>17 through 1143.</p> <p>18 MR. HACKER: I think you actually got</p> <p>19 that wrong. Sorry, it's 1211.</p> <p>20 MS. NEWCOMER: Oh, I apologize.</p> <p>21 A. Through 1243, correct.</p> <p>22 Q. 1243.</p> <p>23 This is a completed deal checklist; is</p> <p>24 that correct?</p> <p>25 A. Correct.</p>

<p style="text-align: right;">Page 46</p> <p>1 McSpadden - Confidential</p> <p>2 Q. Do you recognize this document?</p> <p>3 A. I do.</p> <p>4 Q. What is it?</p> <p>5 A. Whenever Citi -- Citigroup is involved</p> <p>6 in a transaction, we have a document-retention</p> <p>7 policy, and this is the form of the completed deal</p> <p>8 checklist. It's a list of the items that can or</p> <p>9 may or may not apply to a given underwriting</p> <p>10 transaction we're involved in. And we're required</p> <p>11 to keep it for retention purposes.</p> <p>12 Q. And this is a completed deal checklist</p> <p>13 that was generated with respect to the Series 5</p> <p>14 offering; is that correct?</p> <p>15 A. Correct.</p> <p>16 Q. And if I could just direct your</p> <p>17 attention down to the bottom of the page. Is that</p> <p>18 your signature?</p> <p>19 A. It is.</p> <p>20 Q. And it's dated June 11th, the 2008;</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. You testified that this was a form of</p> <p>24 documentation that Citi was required to make at</p> <p>25 the end of an offering; is that correct?</p>	<p style="text-align: right;">Page 48</p> <p>1 McSpadden - Confidential</p> <p>2 Q. On the cover page of this working group</p> <p>3 list, it says Project Rimu. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Does Project Rimu refer to the Series 5</p> <p>6 offering?</p> <p>7 A. It does.</p> <p>8 Q. How did the Series 5 offering come to</p> <p>9 be called Project Rimu?</p> <p>10 A. By the time I got involved, it was</p> <p>11 called Project Rimu.</p> <p>12 Q. Do you know what Project Rimu stands</p> <p>13 for?</p> <p>14 A. Rimu is a New Zealand tree, if I recall</p> <p>15 correctly. As I know you were involved in Series</p> <p>16 4, 3, 2, and 1, there were a bunch of trees in</p> <p>17 there. So someone is an arborist. I'm not sure</p> <p>18 who, but someone at Barclays liked trees. Have</p> <p>19 you ever heard of a rimu?</p> <p>20 Q. I have not.</p> <p>21 A. Okay.</p> <p>22 Q. Was the Series 2 offering referred to</p> <p>23 as Project Oak?</p> <p>24 MR. PELLER: Objection.</p> <p>25 A. I recall there was a Project Oak. I</p>
<p style="text-align: right;">Page 47</p> <p>1 McSpadden - Confidential</p> <p>2 A. It is.</p> <p>3 Q. If I could just direct your attention</p> <p>4 under the first section that says internal</p> <p>5 documents, the very last document identified is</p> <p>6 working group list?</p> <p>7 A. Correct.</p> <p>8 Q. I'd like to take a look at that</p> <p>9 document which I believe begins on the page with</p> <p>10 the little Bates stamp ending in 1126.</p> <p>11 A. You mean 122 -- 1226, correct.</p> <p>12 Q. 1226. Was this the working group list</p> <p>13 that was created with respect to the Series 5</p> <p>14 offering?</p> <p>15 A. It's the updated working group list as</p> <p>16 of April 4th.</p> <p>17 Q. Is this the final working group list</p> <p>18 that was created with respect to the Series 5</p> <p>19 offering?</p> <p>20 A. Typically speaking, when we retain</p> <p>21 documents, we like to retain the final copy. I</p> <p>22 can't certify this is the final copy. But</p> <p>23 typically speaking, when we put in retention,</p> <p>24 we've got to give the latest and greatest and most</p> <p>25 complete.</p>	<p style="text-align: right;">Page 49</p> <p>1 McSpadden - Confidential</p> <p>2 don't know what project it was.</p> <p>3 Q. And if we could turn to pages 5 through</p> <p>4 7 of this working group list. At the top of this</p> <p>5 page, Citi is identified. Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. And if you can just flip through pages</p> <p>8 5 through 7, to the best of your knowledge does</p> <p>9 this working group list identify each of the</p> <p>10 individuals at Citi that were involved in the</p> <p>11 Series 5 offering?</p> <p>12 A. I believe it does, yes, fulsome list.</p> <p>13 Q. Just taking a step back for a moment,</p> <p>14 is a working group list -- strike that.</p> <p>15 Is the working group list a document</p> <p>16 that purports to identify all of the individuals</p> <p>17 involved in the offering?</p> <p>18 A. It identifies the majority of the</p> <p>19 people involved in the offering, correct.</p> <p>20 Q. And then with respect to Citigroup</p> <p>21 here, from the fixed-income capital markets group,</p> <p>22 Peter Aherne, Leo-Hendrik Greve, Peter Mason, and</p> <p>23 Laura Drumm, Chris White, and Derrick Deese are</p> <p>24 identified; correct?</p> <p>25 A. They are.</p>

<p style="text-align: right;">Page 50</p> <p>1 McSpadden - Confidential</p> <p>2 Q. What was their role with respect to the</p> <p>3 Series 5 offering?</p> <p>4 MR. HACKER: Object to form.</p> <p>5 MS. NEWCOMER: I'm happy to break it</p> <p>6 out and go into it individually if that's</p> <p>7 easier for you.</p> <p>8 MR. HACKER: Up to you.</p> <p>9 Q. We'll start with Peter Aherne. What</p> <p>10 was Peter Aherne's role with respect to the Series</p> <p>11 5 offering?</p> <p>12 A. Collectively all these people were in</p> <p>13 the fixed-income capital markets. They have</p> <p>14 responsibility for liaising with the company and</p> <p>15 then with internal syndicate and with their</p> <p>16 counterparts across the street.</p> <p>17 Peter Ahearn is a managing director in</p> <p>18 the U.S. who oversees the investment grade debt</p> <p>19 desk in the U.S. and also has responsibility for</p> <p>20 financial institutions. Barclays is a financial</p> <p>21 institution.</p> <p>22 Leo Greve is his counterpart in London,</p> <p>23 would have more the day-to-day calling effort on</p> <p>24 Barclays because of the location where he is,</p> <p>25 i.e., London, versus New York.</p>	<p style="text-align: right;">Page 52</p> <p>1 McSpadden - Confidential</p> <p>2 Q. And then turning to the next page,</p> <p>3 under the heading "new products group," there is</p> <p>4 Jonathan Dickey, Simon McGeary, Stanley Louie,</p> <p>5 Deborah Anne Keat, Anastasia Letina, Laura</p> <p>6 Stephenson, and Jakob Midander identified; is that</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. What was the role of the new products</p> <p>10 group with respect to the Series 5 offering?</p> <p>11 A. This is a preferred stock offering. It</p> <p>12 is a form of capital for banking institutions.</p> <p>13 Any time we're involved with an industrial or</p> <p>14 financial institution that's selling a debt</p> <p>15 instrument that's viewed as some form of capital</p> <p>16 by either themselves or the regulators, there are</p> <p>17 certain quirks involved in all those transactions</p> <p>18 for them to count as capital.</p> <p>19 We have experts in capital issues.</p> <p>20 They are the new products group. In other words,</p> <p>21 among other things they have to understand the</p> <p>22 requirements for a type of instrument to be</p> <p>23 counted as capital, which this preferred stock</p> <p>24 issue was capital for Barclays.</p> <p>25 They would have them involved in the</p>
<p style="text-align: right;">Page 51</p> <p>1 McSpadden - Confidential</p> <p>2 Peter Mason was Leo's colleague that</p> <p>3 covered financial institutions in northern Europe.</p> <p>4 Laura Drumm was a vice president on</p> <p>5 Peter Aherne's desk and worked with Peter in the</p> <p>6 coverage effort for what we called Yankee banks,</p> <p>7 among other things, for coverage.</p> <p>8 Chris White and Derrick Deese were</p> <p>9 respective analysts in London and New York whose</p> <p>10 job is to support their seniors in their capacity</p> <p>11 in working the fixed-income capital markets.</p> <p>12 Q. Just for the sake of clarifying the</p> <p>13 record, when you referred to Yankee banks, are</p> <p>14 those banks domiciled in the United States?</p> <p>15 A. No, they are banks that are domiciled</p> <p>16 overseas who sell bonds in the U.S. market. And</p> <p>17 so therefore they're called Yankee banks.</p> <p>18 Again, why is something called a red</p> <p>19 herring? Just a phrase that has grown up over the</p> <p>20 years. So they're non-U.S -- non-U.S. banking</p> <p>21 institutions who are selling securities in the</p> <p>22 U.S.</p> <p>23 Q. Such as Barclays?</p> <p>24 A. Such as Barclays or any other non-U.S.</p> <p>25 bank selling securities here.</p>	<p style="text-align: right;">Page 53</p> <p>1 McSpadden - Confidential</p> <p>2 transaction for -- to be sure we dotted the Is and</p> <p>3 crossed the Ts and had everything done correctly.</p> <p>4 There's a mix of people -- as you can see by their</p> <p>5 addresses and phone numbers, a mix of people in</p> <p>6 Europe and United States, which would be logical</p> <p>7 because we have a European issuer accessing the</p> <p>8 U.S. market.</p> <p>9 Q. Underneath that there's a syndicate or</p> <p>10 heading for syndicate, and then in parentheses it</p> <p>11 says New York. And two individuals are</p> <p>12 identified: Melissa Motherway and Matt Land.</p> <p>13 A. Correct.</p> <p>14 Q. What was their responsibility with</p> <p>15 respect to the Series 5 offering?</p> <p>16 A. Syndicate responsibility with an</p> <p>17 investment banking firm is one that liaises with</p> <p>18 the sales force. In other words, their</p> <p>19 responsibility is to marshal the selling effort</p> <p>20 internally within a firm like Citigroup or to</p> <p>21 coordinate with their syndicate colleagues across</p> <p>22 the street when we're doing a collective issue</p> <p>23 like this, joint lead managers.</p> <p>24 So Melissa would have had</p> <p>25 responsibility in working with Merrill Lynch, UBS,</p>

<p style="text-align: right;">Page 54</p> <p>1 McSpadden - Confidential</p> <p>2 Wachovia, Morgan Stanley, since their interest</p> <p>3 from their sales force.</p> <p>4 So whereas the fixed-income capital</p> <p>5 markets focuses on the market but calling on the</p> <p>6 client, syndicate focuses on the market, calling</p> <p>7 on the investor side of the house.</p> <p>8 In other words, if you think about the</p> <p>9 process of underwriting securities, you have</p> <p>10 people who want to issue securities and people who</p> <p>11 have the money, and the idea is to put them</p> <p>12 together.</p> <p>13 Syndicate focuses on the side that</p> <p>14 has -- focuses on the selling effort for the</p> <p>15 people who have the money, sales force and the</p> <p>16 investors. Capital markets focuses on the issuers</p> <p>17 who need the money. And syndicate and capital</p> <p>18 markets work together to be sure there's a</p> <p>19 seamless connect between the two.</p> <p>20 Q. And just walking through the next group</p> <p>21 on the following page, page 7, under "corporate</p> <p>22 bank London," there are two individuals</p> <p>23 identified: David Walker and James Reid?</p> <p>24 A. Correct.</p> <p>25 Q. What role did those individuals have</p>	<p style="text-align: right;">Page 56</p> <p>1 McSpadden - Confidential</p> <p>2 knowledgeable of the transaction in the same time</p> <p>3 zone as the issuer. So if something comes up at 8</p> <p>4 a.m. in the morning, I'm spared the call at 3.</p> <p>5 Q. And the individuals from the</p> <p>6 transaction group -- transaction execution group</p> <p>7 in London were Alastair Rose-Smith and Peter</p> <p>8 Siekel; is that correct?</p> <p>9 A. That's correct.</p> <p>10 Q. And the last two individuals from Citi</p> <p>11 that are listed here are with legal, and they're</p> <p>12 Darrell Bridgers and Jane Pakenham; is that</p> <p>13 correct?</p> <p>14 A. Pakenham.</p> <p>15 Q. And they were involved in the Series 5</p> <p>16 offering as well?</p> <p>17 A. They were.</p> <p>18 Q. If I could just take you back for a</p> <p>19 moment to the fixed-income capital markets group</p> <p>20 we discussed a moment ago. I believe you</p> <p>21 testified they were responsible for liaising with</p> <p>22 the company; is that correct?</p> <p>23 A. Correct.</p> <p>24 Q. Who at Barclays did they liaise with in</p> <p>25 connection with the Series 5 offering?</p>
<p style="text-align: right;">Page 55</p> <p>1 McSpadden - Confidential</p> <p>2 with respect to the Series 5 offering?</p> <p>3 A. Their primary responsibility for the</p> <p>4 client relationship, i.e. the partners. David</p> <p>5 Walker is a managing director in the firm and has</p> <p>6 responsibility for the coverage of Barclays, from</p> <p>7 the debt issuance point of view.</p> <p>8 Q. And then there is the transaction</p> <p>9 execution group in New York; correct?</p> <p>10 A. Correct.</p> <p>11 Q. And you are listed under that group</p> <p>12 along with Chandru Harjani and Bogdan Ciobanu;</p> <p>13 correct?</p> <p>14 A. I am.</p> <p>15 Q. And there is also another transaction</p> <p>16 execution group in London. Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Were the roles of the transaction</p> <p>19 execution groups in New York and London the same</p> <p>20 with respect to the Series 5 offering?</p> <p>21 A. We all have process management</p> <p>22 responsibilities, since this was a primarily U.S.</p> <p>23 targeted deal, I would have had lead amongst the</p> <p>24 group of the five of us there. But because of the</p> <p>25 time zone, it's also appropriate to have people</p>	<p style="text-align: right;">Page 57</p> <p>1 McSpadden - Confidential</p> <p>2 A. I can't specifically recall.</p> <p>3 Q. Can you recall --</p> <p>4 A. But I'm sure those people would have</p> <p>5 been included in the list of names on pages 1, 2,</p> <p>6 and -- 1 and 2. I'm just not sure who would have</p> <p>7 been who, who would have been the principal</p> <p>8 contact. I don't remember.</p> <p>9 Q. Let's look at pages 1 and 2 for a</p> <p>10 moment. To the best of your knowledge, are the</p> <p>11 individuals at Barclays that were involved in the</p> <p>12 Series 5 offering identified in this document on</p> <p>13 these pages?</p> <p>14 A. It would have been appropriate to list</p> <p>15 the principal people involved in the transaction</p> <p>16 listed on these pages. As to whether these</p> <p>17 specific people were, I have not met any of them,</p> <p>18 and I very probably have been on a phone call with</p> <p>19 many of them if not all of them. But I haven't</p> <p>20 met them and don't know.</p> <p>21 Q. Is there anyone from Barclays that you</p> <p>22 recall being involved in the Series 5 offering</p> <p>23 that is not listed in this document?</p> <p>24 A. I mentioned earlier I had a phone call</p> <p>25 with Jonathan Britton. He's not on this list.</p>

<p style="text-align: right;">Page 58</p> <p>1 McSpadden - Confidential</p> <p>2 And another person that we were</p> <p>3 involved with in the due diligence call, there was</p> <p>4 a gentleman Chris Lucas who ran the due diligence</p> <p>5 call. I think he was what I would call the chief</p> <p>6 financial officer. They have a different phrase</p> <p>7 in England for it, but -- financial director. I</p> <p>8 remember him being involved on the due diligence</p> <p>9 call.</p> <p>10 Q. How about a gentleman named Andrew</p> <p>11 Bruce or Andy Bruce, do you recall him being</p> <p>12 involved in the Series 5 offering at all?</p> <p>13 A. Does not ring a bell.</p> <p>14 Q. You don't recall an individual with --</p> <p>15 A. Andy Bruce?</p> <p>16 Q. Correct.</p> <p>17 A. I don't recall that name.</p> <p>18 Q. Let's just flip through the rest of the</p> <p>19 document while we're here. If you can look at</p> <p>20 pages 3 and 4. Barclays Capital is listed at the</p> <p>21 top of those pages. Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. To the best of your knowledge, are the</p> <p>24 individuals identified on pages 3 and 4 of this</p> <p>25 working group list those persons from Barclays</p>	<p style="text-align: right;">Page 60</p> <p>1 McSpadden - Confidential</p> <p>2 working group list. The purpose of the list is to</p> <p>3 capture the correct people. I recognize some of</p> <p>4 these names. I'm assuming that they've captured</p> <p>5 their people correctly. And that would be the</p> <p>6 same answer for UBS and Wachovia.</p> <p>7 Q. Are there any individuals from Merrill</p> <p>8 Lynch that you recall being involved in the Series</p> <p>9 5 offering that are not identified in this working</p> <p>10 group list?</p> <p>11 A. No.</p> <p>12 Q. And are there any individuals from UBS</p> <p>13 that you recall being involved in the Series 5</p> <p>14 offering that are not identified in this working</p> <p>15 group list?</p> <p>16 A. No.</p> <p>17 Q. UBS Securities, LLC, was also one of</p> <p>18 the joint book running managing underwriters for</p> <p>19 the Series 5 offering; correct?</p> <p>20 A. Correct.</p> <p>21 Q. And the same is true with respect to</p> <p>22 Wachovia?</p> <p>23 A. Correct.</p> <p>24 Q. And are there any individuals from</p> <p>25 Wachovia that you recall being involved in the</p>
<p style="text-align: right;">Page 59</p> <p>1 McSpadden - Confidential</p> <p>2 Capital that were involved in the Series 5</p> <p>3 offering?</p> <p>4 A. Again, the purpose of the working group</p> <p>5 list is to capture the people involved in the</p> <p>6 offering. I didn't prepare the names. These were</p> <p>7 the parties given for the Barclays contacts.</p> <p>8 Q. Are there any individuals from Barclays</p> <p>9 Capital that you recall being involved in the</p> <p>10 Series 5 offering that are not involved in this</p> <p>11 working group list?</p> <p>12 A. No.</p> <p>13 Q. If you could turn to page 8 and 9,</p> <p>14 please. Merrill Lynch is listed at the top of</p> <p>15 this page. Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. And Merrill Lynch was one of the</p> <p>18 managing underwriters and joint book runners for</p> <p>19 the Series 5 offering; correct?</p> <p>20 A. Correct.</p> <p>21 Q. To the best of your knowledge, are all</p> <p>22 the individuals from Merrill Lynch that were</p> <p>23 involved in the Series 5 offering identified on</p> <p>24 pages 8 and 9 of this working group list?</p> <p>25 A. Again, I didn't prepare Merrill Lynch</p>	<p style="text-align: right;">Page 61</p> <p>1 McSpadden - Confidential</p> <p>2 Series 5 offering that are not listed in this</p> <p>3 document?</p> <p>4 A. No.</p> <p>5 Q. One more. There's Morgan Stanley</p> <p>6 listed on page 13; is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. And Morgan Stanley was one of the</p> <p>9 managers of the Series 5 offering; correct?</p> <p>10 A. They were.</p> <p>11 Q. Are there any individuals from Morgan</p> <p>12 Stanley that you recall being involved in the</p> <p>13 Series 5 offering that are not listed in this</p> <p>14 document?</p> <p>15 A. No.</p> <p>16 Q. To the best of your knowledge --</p> <p>17 A. To the best of my knowledge, I know of</p> <p>18 no one that was involved that's not on this list.</p> <p>19 Q. On page 14 there are two law firms</p> <p>20 identified: Clifford Chance and Sullivan &</p> <p>21 Cromwell. Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. There's a notation on this page that</p> <p>24 says Clifford Chance was Barclays U.K. counsel.</p> <p>25 A. Correct.</p>

<p style="text-align: right;">Page 62</p> <p>1 McSpadden - Confidential</p> <p>2 Q. Is that true with respect to the Series</p> <p>3 5 offering?</p> <p>4 A. That was their role, yes.</p> <p>5 Q. And the notation with respect to</p> <p>6 Sullivan & Cromwell says that Barclays -- says</p> <p>7 that they were Barclays' U.K. counsel. Was that</p> <p>8 correct with respect to the Series 5 offering?</p> <p>9 MR. PELLER: Objection.</p> <p>10 MR. HACKER: I think you misspoke. You</p> <p>11 said U.K. counsel.</p> <p>12 MS. NEWCOMER: I'll strike that.</p> <p>13 Q. Was Barclays' Sullivan & Cromwell's</p> <p>14 U.S. counsel with respect to the Series 5</p> <p>15 offering?</p> <p>16 A. Sullivan & Cromwell was U.S. -- was</p> <p>17 Barclays' U.S. counsel with respect to the</p> <p>18 offering, correct.</p> <p>19 Q. Thank you.</p> <p>20 To the best of your knowledge, are all</p> <p>21 the individuals from Clifford Chance and</p> <p>22 Sullivan & Cromwell that were involved in the</p> <p>23 Series 5 offering identified in this working group</p> <p>24 list?</p> <p>25 MR. HACKER: Object to form.</p>	<p style="text-align: right;">Page 64</p> <p>1 McSpadden - Confidential</p> <p>2 because, as you can imagine, Barclays is an</p> <p>3 extremely large organization, and the legal review</p> <p>4 process is very detailed and very deep.</p> <p>5 So Sullivan & Cromwell would have had a</p> <p>6 number of other people. In all likelihood</p> <p>7 Clifford Chance as well as Linklaters would all</p> <p>8 have a broader group of people that would have not</p> <p>9 been necessarily reproduced on a working group</p> <p>10 list because it would not have been appropriate</p> <p>11 given the function they were doing for the job.</p> <p>12 Q. On page 15 Linklaters is listed as the</p> <p>13 underwriters counsel; correct?</p> <p>14 A. Correct.</p> <p>15 Q. And that was true with respect to the</p> <p>16 Series 5 offering?</p> <p>17 A. It was.</p> <p>18 Q. To the best of your knowledge, are the</p> <p>19 individuals listed on page 15 of this working</p> <p>20 group list the principal people from Linklaters</p> <p>21 that were involved in the Series 5 offering?</p> <p>22 A. To the best of my knowledge, they would</p> <p>23 have been the principal people. But as I</p> <p>24 mentioned, there would have been other people we</p> <p>25 wouldn't have seen nor should we have been</p>
<p style="text-align: right;">Page 63</p> <p>1 McSpadden - Confidential</p> <p>2 A. No.</p> <p>3 Q. With respect to Clifford Chance, are</p> <p>4 there any individuals that you recall being</p> <p>5 involved in the Series 5 offering that are not</p> <p>6 listed in this document?</p> <p>7 A. There are no names I know that were not</p> <p>8 listed on this document.</p> <p>9 Q. And then with respect to Sullivan &</p> <p>10 Cromwell, to the best of your knowledge, everyone</p> <p>11 that was involved in the Series 5 offering is</p> <p>12 listed in this working group list?</p> <p>13 A. No, they will not be. There were other</p> <p>14 people who would have been involved. The legal</p> <p>15 due diligence process, the legal review that's</p> <p>16 gone through, is an extremely detailed, lengthy</p> <p>17 process, reviewing of a lot of legal documents.</p> <p>18 It's not typical for a law firm to list</p> <p>19 everyone of their firm that would have been</p> <p>20 involved in the entire legal review process.</p> <p>21 These would have been the principal people that</p> <p>22 one would have contacted on a given transaction.</p> <p>23 As you can see by the double stars,</p> <p>24 they're the people who get documents. There will</p> <p>25 be a lot of other people that we never see,</p>	<p style="text-align: right;">Page 65</p> <p>1 McSpadden - Confidential</p> <p>2 involved with to do a lot of the detailed work for</p> <p>3 a transaction of this size and magnitude.</p> <p>4 Q. And then on the last page of this</p> <p>5 document PricewaterhouseCoopers is listed.</p> <p>6 A. Correct.</p> <p>7 Q. What was their role with respect to the</p> <p>8 Series 5 offering?</p> <p>9 A. PricewaterhouseCoopers is the auditor</p> <p>10 for Barclays or the auditors for the 2007 fiscal</p> <p>11 year. They provided a comfort letter, both</p> <p>12 initial and bring-down comfort letter, for the</p> <p>13 transaction.</p> <p>14 Earlier I mentioned one of the types of</p> <p>15 documents involved in securities underwriting.</p> <p>16 One of the key documents is what we call a comfort</p> <p>17 letter. That's, again, industry parlance that's</p> <p>18 grown up over the years as part of one of the</p> <p>19 principal documents that supports the entire</p> <p>20 transaction.</p> <p>21 MR. HACKER: Can we take a break when</p> <p>22 you get a chance?</p> <p>23 MS. NEWCOMER: Okay. We can go off the</p> <p>24 record.</p> <p>25 MR. HACKER: Are you done with the</p>

<p style="text-align: right;">Page 66</p> <p>1 McSpadden - Confidential</p> <p>2 document?</p> <p>3 MS. NEWCOMER: I'm done with the</p> <p>4 document.</p> <p>5 A. You want to finish? Do you want to go</p> <p>6 to page 17?</p> <p>7 Q. Sure. Let's stay on the record.</p> <p>8 On page 17 Bank of New York Mellon is</p> <p>9 identified; correct?</p> <p>10 A. Correct.</p> <p>11 Q. And what was their role with respect to</p> <p>12 the Series 5 offering?</p> <p>13 A. They were the depository recipient, in</p> <p>14 other words. American depository receipts were</p> <p>15 put in. That's where they were locked. They were</p> <p>16 the recipient -- the receipt holder and recipient.</p> <p>17 MS. NEWCOMER: We're all done with that</p> <p>18 document, and we can go off the record.</p> <p>19 THE VIDEOGRAPHER: Going off the record</p> <p>20 9:49 a.m. This is the end of Disk 1 in the</p> <p>21 deposition of Jack McSpadden.</p> <p>22 (Recess taken from 9:49 to 10:05.)</p> <p>23 THE VIDEOGRAPHER: Going back on the</p> <p>24 record 10:05 a.m. This is the beginning of</p> <p>25 Disk 2 in the deposition of Jack McSpadden.</p>	<p style="text-align: right;">Page 68</p> <p>1 McSpadden - Confidential</p> <p>2 roles will be played. You have the issuer, you</p> <p>3 have the underwriters, which could be just a</p> <p>4 management group or a management and underwriting</p> <p>5 syndicate. Very typical to have underwriter's</p> <p>6 company, company counsel, consultants involved,</p> <p>7 all the parties you saw on the working group list.</p> <p>8 These were discussed earlier.</p> <p>9 You put together a timeline. You</p> <p>10 ascertain what you want to do, when you want to do</p> <p>11 it, what steps to be taken. Like any work flow</p> <p>12 process, you say here are the steps to be taken,</p> <p>13 here's the critical path, here's what needs to be</p> <p>14 done from the start of the transaction to a</p> <p>15 successful close.</p> <p>16 Q. With respect to the Series 5 offering</p> <p>17 in particular, what documents were required to be</p> <p>18 prepared in connection with that offering?</p> <p>19 A. There's an extremely long list of</p> <p>20 documents that are required for a given offering.</p> <p>21 They are called for and contemplated by an</p> <p>22 underwriting agreement. I'm quite confident in</p> <p>23 your package of information there you will have</p> <p>24 something called a closing memorandum, which</p> <p>25 details all of the documents which were involved</p>
<p style="text-align: right;">Page 67</p> <p>1 McSpadden - Confidential</p> <p>2 Q. Welcome back, Mr. McSpadden.</p> <p>3 A. Thank you.</p> <p>4 Q. Do you understand that you're still</p> <p>5 under oath?</p> <p>6 A. Yes, ma'am.</p> <p>7 Q. Okay. Great. Thank you.</p> <p>8 I believe earlier today you mentioned a</p> <p>9 process with respect to securities offerings. Do</p> <p>10 you recall that testimony?</p> <p>11 A. I do.</p> <p>12 Q. What is the typical process for</p> <p>13 underwriting a securities offering?</p> <p>14 MR. HACKER: Object to form.</p> <p>15 A. It's a very broad question, but</p> <p>16 streamlining it, basically an underwriting firm or</p> <p>17 firms are retained by an issuer that say we would</p> <p>18 like to access the capital markets, here's the</p> <p>19 form of security that we would like to access.</p> <p>20 Then there's discussions about the</p> <p>21 process, what type of documents need to be</p> <p>22 required, what type of diligence needs to be done,</p> <p>23 the expected time frame for a transaction.</p> <p>24 One determines the, quote, players that</p> <p>25 are needed for it, you know, what the various</p>	<p style="text-align: right;">Page 69</p> <p>1 McSpadden - Confidential</p> <p>2 in a given transaction.</p> <p>3 You can easily go into the tens or in</p> <p>4 some cases hundreds of documents depending on the</p> <p>5 type of securities involved. A lot of the major</p> <p>6 ones from an underwriting point of view we've</p> <p>7 already touched on. We've seen what we called the</p> <p>8 red herring, the preliminary offering circular.</p> <p>9 We have seen the final offering circular.</p> <p>10 The other principal documents would be</p> <p>11 an underwriting agreement, a contract where a</p> <p>12 company agrees to sell, underwriters agree to buy.</p> <p>13 There will be comfort letters, as we mentioned,</p> <p>14 from the accountants, both at pricing and closing,</p> <p>15 a series of legal opinions, what we call</p> <p>16 disclosure letters, and officers certificates are</p> <p>17 oftentimes involved.</p> <p>18 And then there's a whole host of</p> <p>19 supporting documents that go behind all the reps</p> <p>20 and warranties that are required to be made by the</p> <p>21 company as part of an offering transaction.</p> <p>22 Q. I believe you said that the complete</p> <p>23 list of documents that were required with respect</p> <p>24 to the offering would be identified in the closing</p> <p>25 memorandum; is that correct?</p>

<p style="text-align: right;">Page 70</p> <p>1 McSpadden - Confidential</p> <p>2 A. That is a location where most people</p> <p>3 try to codify all the documents that are required</p> <p>4 in a given underwriting.</p> <p>5 Q. And then the other -- you also</p> <p>6 mentioned a closing -- strike that -- a comfort</p> <p>7 letter as a key document; correct?</p> <p>8 A. Correct.</p> <p>9 Q. What is a comfort letter?</p> <p>10 A. Again, the phrase "comfort letter" is</p> <p>11 just street vernacular for a letter that is</p> <p>12 prepared by the auditors where they talk about --</p> <p>13 they set out their role with regard to the</p> <p>14 company, statutory auditors talk about their</p> <p>15 independence.</p> <p>16 The purpose of the comfort letter is</p> <p>17 the lawyers in their -- none of us are experts in</p> <p>18 the financial matter. The accountants have</p> <p>19 audited the company's annual results, and they've</p> <p>20 oftentimes reviewed the interim results of a</p> <p>21 company. So they're intimately familiar with the</p> <p>22 financials of the company.</p> <p>23 What we -- what the lawyers ask them to</p> <p>24 do is circle up a lot of the financial information</p> <p>25 that's included in the document and track that</p>	<p style="text-align: right;">Page 72</p> <p>1 McSpadden - Confidential</p> <p>2 back into the books and records of the company.</p> <p>3 They'll say, We compared it back to the books and</p> <p>4 records, found it to be in agreement; we compared</p> <p>5 it to a schedule prepared by the company and found</p> <p>6 it to be in agreement with that schedule.</p> <p>7 The purpose of the circle-up is to</p> <p>8 hopefully ensure that all the financial</p> <p>9 information in the disclosure package, i.e., the</p> <p>10 prospectus supplement, the prospectus, and the</p> <p>11 documents incorporated by reference, are accurate.</p> <p>12 There's a lot of numbers involved in</p> <p>13 financial institutions. There's opportunity for</p> <p>14 rounding errors or transpositions. The purpose is</p> <p>15 to double-check all that to ensure it's as</p> <p>16 accurate as possible and track it back to the</p> <p>17 books and records so we can have some independent</p> <p>18 verification that those numbers purport to be --</p> <p>19 are what they purport to be.</p> <p>20 Q. When you say "track it back," for</p> <p>21 example, if an auditor is considering circled-up</p> <p>22 numbers that are for a period that ends let's say</p> <p>23 December 31st, 2007, what books and records are</p> <p>24 they tracking those numbers back to?</p> <p>25 MR. HACKER: Object to form.</p>
<p style="text-align: right;">Page 71</p> <p>1 McSpadden - Confidential</p> <p>2 back to the various books and records of the</p> <p>3 company to ensure that it's accurately reproduced</p> <p>4 in the offering document that we're selling and</p> <p>5 then to talk about in some cases interim financial</p> <p>6 data that may not be publicly available but they</p> <p>7 may have access to just because they have access</p> <p>8 to the company's books and records.</p> <p>9 Q. With respect to I believe you said the</p> <p>10 circle-up work, what is that exactly? Strike</p> <p>11 that.</p> <p>12 What does the -- what is the role of a</p> <p>13 circle-up in connection with a securities</p> <p>14 offering?</p> <p>15 A. As I mentioned, the lawyers on behalf</p> <p>16 of the underwriters ask the accountant to track</p> <p>17 back financial data that is indicated in the</p> <p>18 prospectus, the prospectus supplement, or many of</p> <p>19 the documents incorporated by reference.</p> <p>20 And the purpose -- what they do is they</p> <p>21 circle up that information. They put a circle</p> <p>22 around it, often attach a numerical or</p> <p>23 alphabetical designation as to what type of</p> <p>24 circle-up that is.</p> <p>25 And then they, as I said, track that</p>	<p style="text-align: right;">Page 73</p> <p>1 McSpadden - Confidential</p> <p>2 A. Based on my experience, they're</p> <p>3 tracking it back first and foremost to the general</p> <p>4 ledger of the company. In some cases the numbers</p> <p>5 involved are not ones that are on the face of the</p> <p>6 general ledger and perforce they are prepared --</p> <p>7 put in schedules or some combinations thereof.</p> <p>8 So in the case where they can't track</p> <p>9 straight to the general ledger they will track</p> <p>10 back to the schedules prepared by the company.</p> <p>11 Q. Are they tracking back for financial</p> <p>12 metrics covering the same time period as the</p> <p>13 numbers that are circled?</p> <p>14 A. Correct. The purpose is to track that</p> <p>15 number back to the financial records as they --</p> <p>16 whichever record they can go to for that period of</p> <p>17 time. And these would be the financial numbers</p> <p>18 that are in the disclosure package.</p> <p>19 Q. I believe you testified that sometimes</p> <p>20 the circle-up work may consist of looking at</p> <p>21 interim financial results; is that correct?</p> <p>22 A. If by "interim financial results" you</p> <p>23 mean March 30, June 30, September 30, the reported</p> <p>24 interim financial data that's reported by the</p> <p>25 company, then yes.</p>

<p style="text-align: right;">Page 74</p> <p>1 McSpadden - Confidential</p> <p>2 Q. I believe you used the word "interim</p> <p>3 financial data."</p> <p>4 A. I did.</p> <p>5 Q. So what did you mean when you said</p> <p>6 that?</p> <p>7 A. Quarterly or half-year financial</p> <p>8 information that's produced by the company and</p> <p>9 given to its investors or filed with the SEC, as</p> <p>10 the case may be.</p> <p>11 Q. When would an auditor look to that data</p> <p>12 in connection with a circle-up?</p> <p>13 MR. HACKER: Object to form.</p> <p>14 A. Once the data is available.</p> <p>15 Q. Does the data have to be publicly</p> <p>16 reported for it to be considered available for the</p> <p>17 purposes of an auditor's circle-up work?</p> <p>18 MR. HACKER: Object to form.</p> <p>19 A. For an auditor review information, it</p> <p>20 may not be publicly available, but typically</p> <p>21 speaking the only publicly available information</p> <p>22 that would be in a document is stuff that has been</p> <p>23 publicly reported, which would be -- coincide with</p> <p>24 an annual financial data or interim financial data</p> <p>25 that's made publicly available.</p>	<p style="text-align: right;">Page 76</p> <p>1 McSpadden - Confidential</p> <p>2 collective decision. One will have -- in a</p> <p>3 typical transaction, you will have an</p> <p>4 organizational meeting where you get everyone in</p> <p>5 person or telephonically.</p> <p>6 You basically say -- the client will</p> <p>7 say, Here's what I'm trying to accomplish, here's</p> <p>8 when I'm trying to accomplish it, what are the</p> <p>9 steps that need to be done. Usually collectively</p> <p>10 you will have either the underwriting group or a</p> <p>11 representative of the underwriting group, company</p> <p>12 counsel, underwriter's counsel, the issuer,</p> <p>13 sometimes but not always the accountant would be</p> <p>14 involved in that.</p> <p>15 The purpose of that is to assign</p> <p>16 duties: Here's what we have to do, when we have</p> <p>17 to do it, to be sure everybody is on the same page</p> <p>18 and working to agreed purposes together</p> <p>19 collectively.</p> <p>20 Q. Do you know who determined what needed</p> <p>21 to be done with respect to the underwriting of the</p> <p>22 Series 5 offering?</p> <p>23 A. In this case there was an organization</p> <p>24 call that was held. You have a very sophisticated</p> <p>25 issuer and a frequent issuer who knows exactly</p>
<p style="text-align: right;">Page 75</p> <p>1 McSpadden - Confidential</p> <p>2 There are certain circumstances in</p> <p>3 offering circulars. It was not the case in this</p> <p>4 offering circular -- where for whatever reasons</p> <p>5 they chose to put information in those documents</p> <p>6 which do not coincide with quarterly, because for</p> <p>7 whatever reason the company did not do that.</p> <p>8 And that would be information that you</p> <p>9 would ask an auditor to look at. Whether they</p> <p>10 could or could not look at that depends on a</p> <p>11 case-by-case situation.</p> <p>12 (Exhibit 16, e-mail dated 3/11/08 from</p> <p>13 Ciobanu to McSpadden, et al., Bates-stamped</p> <p>14 UW_Barclays_000006275 to 6291, marked for</p> <p>15 identification.)</p> <p>16 Q. Before we get to that document, I just</p> <p>17 have a couple more questions regarding the process</p> <p>18 of underwriting that you described earlier.</p> <p>19 I believe you said that there's a</p> <p>20 determination made as to what steps need to get</p> <p>21 done; is that correct?</p> <p>22 A. Correct.</p> <p>23 Q. Who makes that determination?</p> <p>24 A. Depending on the sophistication of the</p> <p>25 issuer or the people involved, but usually it's a</p>	<p style="text-align: right;">Page 77</p> <p>1 McSpadden - Confidential</p> <p>2 what the process is. You have, in the case of</p> <p>3 company and underwriter's counsel, in the case of</p> <p>4 ourselves, if I can be modest, say we actually</p> <p>5 know what we're doing.</p> <p>6 So you had four or five very</p> <p>7 sophisticated groups getting together to say,</p> <p>8 Okay, folks, here's what we need to do, here's</p> <p>9 when we need to do it, let's assign roles, let's</p> <p>10 get to it.</p> <p>11 This wasn't the first time we've been</p> <p>12 involved in a transaction with Barclays, or the</p> <p>13 first time we have ever done a transaction.</p> <p>14 Q. If you can take a look at what has been</p> <p>15 marked as Exhibit 16. It's a document bearing the</p> <p>16 Bates numbers UW_Barclays_000006275 to 6291. For</p> <p>17 the record, it is an e-mail sent from Bogdan</p> <p>18 Ciobanu on March 11th, 2008.</p> <p>19 Mr. McSpadden, I'll note that you are a</p> <p>20 recipient of this e-mail.</p> <p>21 Do you recognize this document?</p> <p>22 A. I do.</p> <p>23 Q. Do you recall receiving this e-mail?</p> <p>24 A. I don't recall receiving this e-mail.</p> <p>25 I receive a few every day. It's been some time</p>

<p style="text-align: right;">Page 78</p> <p>1 McSpadden - Confidential</p> <p>2 ago. But I'm listed on here.</p> <p>3 Q. Mr. Ciobanu states in his e-mail:</p> <p>4 Attached please find the timeline and revised</p> <p>5 working group list for Project Rimu. Please</p> <p>6 forward any changes or additions to my attention.</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. If we can turn to the timeline that is</p> <p>10 attached to this document.</p> <p>11 A. Of course.</p> <p>12 Q. I believe it's page ending 6288.</p> <p>13 A. Correct.</p> <p>14 Q. Does this timeline set forth all of the</p> <p>15 documentation and other actions or procedures that</p> <p>16 were required to be completed in order for the</p> <p>17 Series 5 offering to take place?</p> <p>18 A. It doesn't set forth everything that</p> <p>19 has to be taking place, but it talks about the</p> <p>20 principal milestones of a given transaction.</p> <p>21 Q. So all of the action items that are</p> <p>22 listed in this timeline are principal milestones</p> <p>23 associated with the Series 5 transaction?</p> <p>24 A. These are all the principal documents,</p> <p>25 correct, but far from all the documents that you</p>	<p style="text-align: right;">Page 80</p> <p>1 McSpadden - Confidential</p> <p>2 pen on this. We would have prepared a draft,</p> <p>3 circulated it to everybody on the working team.</p> <p>4 We would -- highly likely we would also have</p> <p>5 circulated it to our counsel and very possibly</p> <p>6 issuer counsel.</p> <p>7 And when everyone collectively agreed</p> <p>8 as to what it was, then we would have presented,</p> <p>9 quote, a final document. We possibly may have</p> <p>10 also had input from people -- you can see the</p> <p>11 names on the cover. It's from -- if you look at</p> <p>12 the first page, you see us, see the logos of</p> <p>13 ourselves and Barclays Capital. We would have</p> <p>14 clearly consulted with Barclays Capital on this to</p> <p>15 get their input as well.</p> <p>16 So this is a consultative document.</p> <p>17 This is the sum collective judgments of probably</p> <p>18 most if not all of the people involved in the</p> <p>19 transaction.</p> <p>20 Q. Are there any other principal</p> <p>21 milestones or action items with respect to the</p> <p>22 Series 5 offering that needed to occur in order</p> <p>23 for the offering to go forward that are not listed</p> <p>24 in this timeline?</p> <p>25 A. Well, as I mentioned earlier, this</p>
<p style="text-align: right;">Page 79</p> <p>1 McSpadden - Confidential</p> <p>2 would see listed on the earlier document that</p> <p>3 referred to closing list or closing memorandum,</p> <p>4 more appropriate.</p> <p>5 Q. Who prepared this timeline?</p> <p>6 A. Bogdan, who is part of my group</p> <p>7 transaction, we would have worked closely with his</p> <p>8 colleagues and probably debt capital markets. I</p> <p>9 don't know exactly who prepared everything. But</p> <p>10 this is a very typical document that we would be</p> <p>11 involved in preparing.</p> <p>12 Oftentimes we'll take -- oftentimes my</p> <p>13 group will take the lead. Sometimes another group</p> <p>14 will take the lead. We would comment. This is a</p> <p>15 team sport. We work collectively depending on</p> <p>16 people's time frames.</p> <p>17 Q. So is it fair to say that you or the</p> <p>18 other individuals in your group, and possibly in</p> <p>19 consultation with folks from debt capital markets,</p> <p>20 would have been making the determinations as to</p> <p>21 what these action items would be that were listed</p> <p>22 in the timeline?</p> <p>23 A. We would have taken a draft. We would</p> <p>24 have started with a draft. Maybe one other group</p> <p>25 depending. I don't remember specifically who held</p>	<p style="text-align: right;">Page 81</p> <p>1 McSpadden - Confidential</p> <p>2 doesn't capture every document that needs to be</p> <p>3 done. There's a vast myriad of documents that are</p> <p>4 involved. In addition to these, there -- as you</p> <p>5 can see, one of the items is file 20-F. 20-F is</p> <p>6 an important document. You showed it to me</p> <p>7 earlier. There would have been a large number of</p> <p>8 people involved in the preparation of the 20-F.</p> <p>9 So there are a lot of documents that</p> <p>10 feed into this that are not specifically touched</p> <p>11 on but we tried to capture and highlight here.</p> <p>12 Q. There's a column on this timeline with</p> <p>13 the heading "responsibility," and there are some</p> <p>14 letters or initials underneath that. Do you see</p> <p>15 that?</p> <p>16 A. I do.</p> <p>17 Q. And then do those initials correspond</p> <p>18 to the legend at the bottom of the page?</p> <p>19 A. That's the intent.</p> <p>20 Q. And the intent is that those letters</p> <p>21 identify the parties responsible for each of the</p> <p>22 action items listed -- is that correct? -- to</p> <p>23 which they correspond?</p> <p>24 A. Usually the responsibility of --</p> <p>25 primary responsibility. Primary responsibility is</p>

<p style="text-align: right;">Page 82</p> <p>1 McSpadden - Confidential</p> <p>2 like -- for example, let's just pick one, third</p> <p>3 item down: distribute list of required closing</p> <p>4 documents, i.e., the closing memorandum I referred</p> <p>5 to.</p> <p>6 Issuer's counsel -- well, obviously</p> <p>7 that's going to be in consultation with issuer's</p> <p>8 counsel, underwriter's counsel, the issuer, a</p> <p>9 whole broad host of people who will then say,</p> <p>10 Okay, who is the first person who is going to hold</p> <p>11 a pen on that, who's the person who is going to</p> <p>12 send it out. We try to capture the person that's</p> <p>13 principally responsible.</p> <p>14 Q. Thank you.</p> <p>15 A. But, again, it's a collective process.</p> <p>16 Everyone is responsible for it.</p> <p>17 Q. There's a time frame listed for each of</p> <p>18 the different action items. Do you see that on</p> <p>19 the left-hand column?</p> <p>20 A. I do.</p> <p>21 Q. What would happen if an action item did</p> <p>22 not get completed within that time frame, that</p> <p>23 specified time frame?</p> <p>24 A. It would be next week.</p> <p>25 Q. For the week of March 10th -- is that</p>	<p style="text-align: right;">Page 84</p> <p>1 McSpadden - Confidential</p> <p>2 was issued in connection with the Series 5</p> <p>3 offering?</p> <p>4 A. It was one comfort letter issued on the</p> <p>5 day of pricing, which was August 8th. There was a</p> <p>6 second, quote, bring-down comfort letter which was</p> <p>7 issued on the closing date, August 11th. That's</p> <p>8 typical to have two comfort letters, i.e., an</p> <p>9 initial and a bring-down, in every transaction.</p> <p>10 Q. What does bring-down mean in the</p> <p>11 context of a securities offering?</p> <p>12 A. In this case what they do, the</p> <p>13 accountants do certain procedures, and they bring</p> <p>14 down those procedures from the day in the first</p> <p>15 letter to the day of the second letter.</p> <p>16 Q. In the context of the Series 5</p> <p>17 offering, did the underwriters rely on the bring-</p> <p>18 down comfort letter in connection with their --</p> <p>19 performing their duties with respect to their</p> <p>20 underwriting engagement?</p> <p>21 MR. HACKER: Object to form.</p> <p>22 A. Again, it was part of a broad host of</p> <p>23 documents that we -- that were an important part</p> <p>24 of the work we did to support our underwriting.</p> <p>25 Q. If I could turn your attention back to</p>
<p style="text-align: right;">Page 83</p> <p>1 McSpadden - Confidential</p> <p>2 March 10th, 2008?</p> <p>3 A. Correct.</p> <p>4 Q. One of the action items listed is</p> <p>5 discuss comfort letter requirements with auditors.</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Okay. And we discussed what a comfort</p> <p>9 letter is earlier. Do the underwriters typically</p> <p>10 rely on a comfort letter in performing their</p> <p>11 due -- their underwriting duties in connection</p> <p>12 with a securities offering?</p> <p>13 MR. HACKER: Object to form.</p> <p>14 A. It's one of the many documents we look</p> <p>15 at that is part of a host of things we consider</p> <p>16 when doing a deal. It's an important document,</p> <p>17 far from the only one.</p> <p>18 Q. I believe you testified earlier that a</p> <p>19 comfort letter was issued in connection with the</p> <p>20 Series 5 offering; is that correct?</p> <p>21 A. Correct.</p> <p>22 Q. You mentioned a second comfort letter</p> <p>23 as well earlier. Do you recall that testimony?</p> <p>24 A. Correct.</p> <p>25 Q. What was the second comfort letter that</p>	<p style="text-align: right;">Page 85</p> <p>1 McSpadden - Confidential</p> <p>2 the agenda. For the week of March 17th, the first</p> <p>3 action item listed says, update and circulate</p> <p>4 business and accounting legal due diligence</p> <p>5 questionnaires.</p> <p>6 Do you see that?</p> <p>7 A. I do see that.</p> <p>8 Q. And that is designated as the</p> <p>9 responsibility of Citi, Barclays Capital, and the</p> <p>10 underwriter's counsel; is that correct?</p> <p>11 A. Correct.</p> <p>12 Q. You mentioned due diligence earlier</p> <p>13 today. What is the role of due diligence in the</p> <p>14 context of a securities offering?</p> <p>15 A. The purpose of due diligence is to --</p> <p>16 for the company, first and foremost, i.e., the</p> <p>17 issuer, to be sure that it's properly described</p> <p>18 itself and circumstances in its disclosure</p> <p>19 document, which is the preliminary prospectus, the</p> <p>20 final prospectus, and the base prospectus, plus</p> <p>21 all the documents incorporated by reference.</p> <p>22 So the principal responsible is to</p> <p>23 describe accurately and completely, with no</p> <p>24 misstatements or no omissions, what their</p> <p>25 circumstances are.</p>

<p style="text-align: right;">Page 86</p> <p>1 McSpadden - Confidential</p> <p>2 So first and foremost, Barclays did its</p> <p>3 own due diligence on itself. Secondly, the</p> <p>4 purpose of the underwriters is to basically do</p> <p>5 similar due diligence, review company documents,</p> <p>6 meet with the company, participate in due</p> <p>7 diligence calls, bring-down due diligence calls,</p> <p>8 other discussions, in conjunction with our counsel</p> <p>9 and with company counsel.</p> <p>10 So company counsel, underwriter's</p> <p>11 counsel independently would issue something called</p> <p>12 a disclosure letter, which talks to this about</p> <p>13 appropriate disclosure and any material</p> <p>14 misstatements or material omissions.</p> <p>15 And then the underwriters as a group</p> <p>16 collectively do similar things to do as best we</p> <p>17 can to be sure that there's nothing that's missing</p> <p>18 that needs to be given to investors with regard to</p> <p>19 their investment decision.</p> <p>20 Over the years that has come up with</p> <p>21 the phrase it's collectively called due diligence.</p> <p>22 Q. Referring back to the timeline for the</p> <p>23 week of March 17th where it references update and</p> <p>24 circulate business accounting and legal due</p> <p>25 diligence questionnaires, what are those due</p>	<p style="text-align: right;">Page 88</p> <p>1 McSpadden - Confidential</p> <p>2 committees, correspondence with regulators,</p> <p>3 correspondence with accountants, principal</p> <p>4 contracts, publications they've been involved in.</p> <p>5 There's a whole host of things.</p> <p>6 I'll defer to the lawyers to provide</p> <p>7 you the list of legal requests that they made of</p> <p>8 the company so...</p> <p>9 Q. Who within Citi was responsible for</p> <p>10 updating or circulating the business and</p> <p>11 accounting due diligence questionnaires?</p> <p>12 A. I can't remember precisely who. It</p> <p>13 could have been a combination of someone from the</p> <p>14 banking team or someone from my team or someone.</p> <p>15 We would have worked up a list. I can't remember</p> <p>16 who specifically.</p> <p>17 What the typical process is, you get a</p> <p>18 starting list. In this case we had some history</p> <p>19 with Barclays and that they were a public company,</p> <p>20 participated in other things. We would have taken</p> <p>21 that list. Someone would have taken a first mark</p> <p>22 of it. We would have sent it around internally to</p> <p>23 all the people on the team.</p> <p>24 We would have sent it around to</p> <p>25 Barclays Capital for their thoughts, underwriter's</p>
<p style="text-align: right;">Page 87</p> <p>1 McSpadden - Confidential</p> <p>2 diligence questionnaires that are referred to</p> <p>3 here?</p> <p>4 A. For the business and accounting, they</p> <p>5 would have been physical lists. They would have</p> <p>6 said, Here are the types of questions we would</p> <p>7 like to address to management, we would like to</p> <p>8 have them address in some form of the meeting or</p> <p>9 telephonic call.</p> <p>10 It discusses the business, discusses</p> <p>11 their prospects, discusses historical financial,</p> <p>12 discusses future financials, but also a broad host</p> <p>13 of things: regulatory issues, legal issues,</p> <p>14 compliance issues, things that are impacting their</p> <p>15 business, economic factors, this and that.</p> <p>16 The legal due diligence questionnaire</p> <p>17 would have been a list that would have been</p> <p>18 prepared by underwriter's counsel and company</p> <p>19 counsel saying, Here are the internal documents</p> <p>20 that we would like to review as part of our</p> <p>21 process to issue the disclosure letters I referred</p> <p>22 to earlier.</p> <p>23 They'll have a broad list of documents.</p> <p>24 Very broad examples of that would be minutes to</p> <p>25 the board of directors, minutes of the executive</p>	<p style="text-align: right;">Page 89</p> <p>1 McSpadden - Confidential</p> <p>2 counsel, company counsel. And then at some point</p> <p>3 we would send to the company.</p> <p>4 Collectively we would have a collective</p> <p>5 set of questions and issues we think need to be</p> <p>6 addressed in a due diligence call in the business</p> <p>7 or accounting due diligence.</p> <p>8 There would have been a similar process</p> <p>9 from the lawyers that worked up a set of legal</p> <p>10 documents that they would like to review, and they</p> <p>11 would have sent around a preliminary list amongst</p> <p>12 themselves, see what that was, and sent a final</p> <p>13 list to the company.</p> <p>14 That list, once you get it, is also a</p> <p>15 static point in time. Developments occur over a</p> <p>16 week or month or something like that, things come</p> <p>17 up, and you augment it as needed.</p> <p>18 Q. On what daily basis -- strike that.</p> <p>19 How did Citi go about determining what</p> <p>20 questions it wanted to ask of management in</p> <p>21 connection with preparing these due diligence</p> <p>22 questionnaires?</p> <p>23 A. As I said, we looked at prior lists</p> <p>24 that we had used. We circulated them around to</p> <p>25 people who are knowledgeable about the company and</p>

<p style="text-align: right;">Page 90</p> <p>1 McSpadden - Confidential</p> <p>2 are cognizant on the issues we were facing, you</p> <p>3 know, the marks, the passage of time, the company.</p> <p>4 And that's the purpose of sending the</p> <p>5 list around to everyone to say, okay, ladies and</p> <p>6 gentlemen, what are the questions we should be</p> <p>7 asking, which of these no longer apply, what are</p> <p>8 some new questions we should be addressing.</p> <p>9 That's the purpose of circulating it.</p> <p>10 Like I say, it's a collective -- it's a collective</p> <p>11 document.</p> <p>12 Q. If I could just draw your attention</p> <p>13 back to the timeline again to the week of March</p> <p>14 17th. About halfway down the list, one of the</p> <p>15 action items says, contact rating agencies and</p> <p>16 send draft offering documents. Do you see that</p> <p>17 action item?</p> <p>18 A. I do.</p> <p>19 Q. What is that action item referring to?</p> <p>20 A. It's referring to the fact that, as I</p> <p>21 mentioned earlier -- one of the things we do in a</p> <p>22 securities offering if it was a debt security, we</p> <p>23 ask for the rating agencies. There are a number</p> <p>24 of rating agencies involved with rating debt</p> <p>25 securities. The principal two are Moody's and</p>	<p style="text-align: right;">Page 92</p> <p>1 McSpadden - Confidential</p> <p>2 timeline, one of the other action items for the</p> <p>3 week of March 17th is -- and it's the last one --</p> <p>4 to shelf circle-up of preliminary pro-supp and</p> <p>5 base chef to auditors. Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. Is that referring to the circle-up</p> <p>8 procedure that you described earlier today?</p> <p>9 A. It is.</p> <p>10 Q. Turn your attention to the next page of</p> <p>11 the timeline. One of the action items is for the</p> <p>12 week of March 31st. It says, circulate circled</p> <p>13 comfort letter with tick and tie. Do you see</p> <p>14 that?</p> <p>15 A. Yes.</p> <p>16 Q. What does the tick and tie refer to</p> <p>17 with respect to this?</p> <p>18 A. Remember when I described -- remember</p> <p>19 when I described the circle-up I said the purpose</p> <p>20 of the circle-up is to ask the auditors to track</p> <p>21 the information that has been circled back to the</p> <p>22 books and records. That tracking process is</p> <p>23 called the tick and tie. That's their supporting</p> <p>24 information that says we found this here, there,</p> <p>25 and it's complete.</p>
<p style="text-align: right;">Page 91</p> <p>1 McSpadden - Confidential</p> <p>2 S&P, but you also have Fitch and DBRS as well as</p> <p>3 some others.</p> <p>4 And the purpose of this action item is</p> <p>5 to basically say -- remind the company, A, we're</p> <p>6 going to want this security rated. We think it's</p> <p>7 appropriate for them to alert the rating agencies</p> <p>8 early about the anticipated transaction so that</p> <p>9 they have sufficient time to do whatever review</p> <p>10 rating agencies need in order to issue a rating at</p> <p>11 the time we plan to go to the market.</p> <p>12 Q. In performing your underwriting</p> <p>13 procedures with respect to the Series 5 offering,</p> <p>14 did you have any discussions with rating agencies</p> <p>15 regarding their assessment of Barclays from a</p> <p>16 ratings perspective?</p> <p>17 A. No.</p> <p>18 Q. Did anyone else at Citi have any</p> <p>19 discussion like that?</p> <p>20 A. I don't know who else at Citi would</p> <p>21 have, but it would be not normal for us to have</p> <p>22 contact with rating agencies. As noted there, the</p> <p>23 principal responsible of the rating agency</p> <p>24 relationships is the issuer.</p> <p>25 Q. Drawing your attention back to the</p>	<p style="text-align: right;">Page 93</p> <p>1 McSpadden - Confidential</p> <p>2 Said another way, the circle-up is the</p> <p>3 ask; the tick and tie is the answer.</p> <p>4 Q. Thank you.</p> <p>5 Also on the timeline for the week of</p> <p>6 March 31st, the last action item listed is to</p> <p>7 complete business and accounting due diligence.</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. What's the difference between business</p> <p>11 due diligence and the accounting due diligence?</p> <p>12 A. Business due diligence are the</p> <p>13 questions we would address to the issuer about</p> <p>14 their business. Accounting due diligence would be</p> <p>15 questions we address to the accounting firm, in</p> <p>16 this case PwC, who's their auditor, about their</p> <p>17 audit of in this case the Barclays process,</p> <p>18 discussing their audit relationship, the audit</p> <p>19 aspects of it.</p> <p>20 Q. What were Citi's business due diligence</p> <p>21 obligations with respect to the Series 5 offering?</p> <p>22 MR. HACKER: Object to form.</p> <p>23 A. We would participate in the business</p> <p>24 due diligence process, which is a process that was</p> <p>25 specific for this transaction but obviously build</p>

<p style="text-align: right;">Page 94</p> <p>1 McSpadden - Confidential</p> <p>2 on a long-standing and deep relationship we have</p> <p>3 with Barclays built up over a number of years or</p> <p>4 possibly decades.</p> <p>5 Q. Could you describe for me each step of</p> <p>6 the business due diligence process with respect to</p> <p>7 the Series 5 offering?</p> <p>8 A. From whose perspective?</p> <p>9 Q. From Citi's perspective.</p> <p>10 A. We would have participated. We would</p> <p>11 have -- first, we're aware of the transaction.</p> <p>12 All the business team's aware of it. We would</p> <p>13 have reviewed the due diligence questions we</p> <p>14 talked about, prepared them.</p> <p>15 In anticipation of the due diligence</p> <p>16 call, we would have reviewed documents that we</p> <p>17 deemed appropriate given our respective roles</p> <p>18 within the firm for a securities offering.</p> <p>19 Q. Are there any other steps in the</p> <p>20 business due diligence process -- strike that.</p> <p>21 Were there any other steps in the</p> <p>22 business due diligence process for the Series 5</p> <p>23 offering that you did not already describe?</p> <p>24 A. Part of the process that we do, as I</p> <p>25 mentioned earlier, you said what does the</p>	<p style="text-align: right;">Page 96</p> <p>1 McSpadden - Confidential</p> <p>2 what issues, the steps that had been taken to get</p> <p>3 approval from the commitment committee to proceed</p> <p>4 with the transaction.</p> <p>5 That's an internal process.</p> <p>6 Q. And is that part of Citi's due</p> <p>7 diligence requirements with respect to the Series</p> <p>8 5 offering?</p> <p>9 A. Correct.</p> <p>10 Q. And I believe you testified that part</p> <p>11 of the purpose of going to the commitment</p> <p>12 committee within Citi was for them to vet the</p> <p>13 issue -- correct? --</p> <p>14 A. Correct.</p> <p>15 Q. -- and the issuer?</p> <p>16 A. Yes.</p> <p>17 Q. How would the committee go about</p> <p>18 vetting the issue and the issuer in connection</p> <p>19 with the security -- strike that.</p> <p>20 Let's take a step back.</p> <p>21 What was the role of the commitment</p> <p>22 committee within Citigroup?</p> <p>23 A. The purpose of the -- well, first, I'm</p> <p>24 not here to testify what our commitment committee</p> <p>25 process is. That's a complete testimony in and of</p>
<p style="text-align: right;">Page 95</p> <p>1 McSpadden - Confidential</p> <p>2 transaction execution group do. Part of our -- in</p> <p>3 addition to handling the overall process of the</p> <p>4 management of the actual execution of the</p> <p>5 securities, i.e., all the documents we were</p> <p>6 discussing, we have internal processes with regard</p> <p>7 to the issuance of securities, be they debt or</p> <p>8 equity or mergers, whatever.</p> <p>9 We have an internal group called the</p> <p>10 internal commitment committee. Part of our</p> <p>11 process is we would take transactions to the</p> <p>12 commitment committee when we're fairly close to</p> <p>13 the issuance there.</p> <p>14 If it was a first-time issue we had</p> <p>15 never done work before, it would be very early on</p> <p>16 in the process. If it was an issuer like Barclays</p> <p>17 we were very familiar with it, it would have been</p> <p>18 closer to the offering date.</p> <p>19 We take all the appropriate people or</p> <p>20 meaningful cross section of the people involved</p> <p>21 and prepare a committee, a committee memo. We</p> <p>22 collectively get together -- given the time zones</p> <p>23 involved here, it would have been a telephonic</p> <p>24 meeting for some people, physical meeting for</p> <p>25 others -- where we vet the issue, the issuer, and</p>	<p style="text-align: right;">Page 97</p> <p>1 McSpadden - Confidential</p> <p>2 itself.</p> <p>3 But the purpose from my perspective in</p> <p>4 doing a transaction is either we need approval</p> <p>5 from or a waiver -- or an existing waiver that's</p> <p>6 in place to do a debt issue for an issuer. So it</p> <p>7 is an approval that we need in order to do a</p> <p>8 transaction.</p> <p>9 So the process is basically to present</p> <p>10 the issuer, the issued contemplated, the time</p> <p>11 frame, the underwriting group, the -- counsel's</p> <p>12 involved, who we do, and then present it to them</p> <p>13 and give everyone that's involved of a senior</p> <p>14 nature within the company a chance to review</p> <p>15 whether we do or don't want to participate in</p> <p>16 this; and if so, in what capacity.</p> <p>17 Q. Among the information that's provided</p> <p>18 to the commitment committee in order to facilitate</p> <p>19 a determination of whether Citi would participate</p> <p>20 in an offering or not are the relevant risks</p> <p>21 associated with the companies included within that</p> <p>22 package?</p> <p>23 A. Absolutely.</p> <p>24 Q. With respect to the Series 5 offering,</p> <p>25 what risks were presented to the commitment</p>

<p style="text-align: right;">Page 98</p> <p>1 McSpadden - Confidential</p> <p>2 committee with respect to Barclays?</p> <p>3 A. There's a broad host of risks that go</p> <p>4 to the process, but one of the items that was in</p> <p>5 the commitment committee memo, which I'm sure you</p> <p>6 reviewed, is in fact the red herring or draft of</p> <p>7 the red herring you saw. Many of those risk</p> <p>8 factors are listed there, but they also refer back</p> <p>9 to the risk factors of the 20-F. So there's a</p> <p>10 broad cross section of what those risks are that</p> <p>11 are articulated.</p> <p>12 Q. With respect to Barclays in the Series</p> <p>13 5 offering, were risks associated with the credit</p> <p>14 markets identified to the commitment committee as</p> <p>15 a factor for consideration in determining whether</p> <p>16 to proceed with the Series 5 offering?</p> <p>17 A. Yes.</p> <p>18 Q. What specific risks associated with the</p> <p>19 credit markets were identified to the commitment</p> <p>20 committee for their consideration?</p> <p>21 A. Banking institution, one of the</p> <p>22 principal reasons a banking institution would have</p> <p>23 difficulty is extension of credit. It's easy to</p> <p>24 extend; it's harder to get back. So that's a</p> <p>25 critical component of any banking institution.</p>	<p style="text-align: right;">Page 100</p> <p>1 McSpadden - Confidential</p> <p>2 identified to the commitment committee for their</p> <p>3 consideration?</p> <p>4 A. Yes.</p> <p>5 Q. What risks were those?</p> <p>6 A. I'd have to review the whole document</p> <p>7 to see what's in there, but the bulk of it is in</p> <p>8 the 20-F which you provided earlier, which is</p> <p>9 Exhibit 14.</p> <p>10 Q. At the time of the Series 5 offering --</p> <p>11 strike that.</p> <p>12 Going back to the due diligence</p> <p>13 procedures that you described a few moments ago, I</p> <p>14 believe you testified that in preparation for the</p> <p>15 due diligence call Citi would have reviewed</p> <p>16 documents that they deemed to be appropriate; is</p> <p>17 that correct?</p> <p>18 A. Correct.</p> <p>19 Q. What documents did Citi deem to be</p> <p>20 appropriate to review in advance of the due</p> <p>21 diligence call that took place with respect to the</p> <p>22 Series 5 offering?</p> <p>23 MR. HACKER: Object to form.</p> <p>24 A. Every individual that is on the team</p> <p>25 may view different documents as appropriate, but</p>
<p style="text-align: right;">Page 99</p> <p>1 McSpadden - Confidential</p> <p>2 The documents I mentioned, the red</p> <p>3 herring, the incorporated documents by reference,</p> <p>4 there's a lot of detail in all those documents</p> <p>5 about the credit profile at Barclays, their</p> <p>6 portfolio, how it performed over time. All that</p> <p>7 information is in there, and all that would have</p> <p>8 been considered.</p> <p>9 Q. Was information presented to the</p> <p>10 commitment committee regarding the nature or</p> <p>11 volume of Barclays exposure to the credit markets?</p> <p>12 A. You gave me a copy of the 20-F earlier.</p> <p>13 That's a principal disclosure document for the</p> <p>14 company. That was -- all of that information</p> <p>15 there, that's their disclosure document, the</p> <p>16 credit profile broken down by various categories,</p> <p>17 geographies.</p> <p>18 There's also -- if you look at the SEC,</p> <p>19 there's required disclosure on -- in order to file</p> <p>20 with the SEC, there's required disclosure about</p> <p>21 your credit portfolio and credit profile, and</p> <p>22 that's reflected in the 20-F.</p> <p>23 Q. Were specific risks regarding Barclays'</p> <p>24 exposure to asset-backed securities and other</p> <p>25 credit market-related assets specifically</p>	<p style="text-align: right;">Page 101</p> <p>1 McSpadden - Confidential</p> <p>2 the principal documents one would review typically</p> <p>3 would be what we call the documents in the</p> <p>4 disclosure package: preliminary prospectus,</p> <p>5 prospectus, documents quoted by reference 20-F,</p> <p>6 i.e., the public documents available by Barclays:</p> <p>7 here's who we are, here's what we do.</p> <p>8 Other documents that one would have</p> <p>9 turned to, one could have looked at rating agency</p> <p>10 reports, equity research reports, what other</p> <p>11 people thought, independent people thought about</p> <p>12 the company, a lot of potential sources that we</p> <p>13 make available to people on the team as well as</p> <p>14 the commitment committee, not only internal or</p> <p>15 company documents but also documents from third</p> <p>16 parties.</p> <p>17 Q. When you reference equity research</p> <p>18 reports, would those be prepared by analysts</p> <p>19 external to Citi or -- strike that -- or did Citi</p> <p>20 consider its own research reports as well?</p> <p>21 A. Typically speaking when we prepare a</p> <p>22 commitment committee memo we'll use Citi equity</p> <p>23 research but also reach out and get third-party</p> <p>24 equity research, because equity research there are</p> <p>25 multiple people who have multiple opinions about</p>

<p style="text-align: right;">Page 102</p> <p>1 McSpadden - Confidential</p> <p>2 companies and it's good to get a general view of</p> <p>3 an issuer.</p> <p>4 Q. Looking back to the timeline that we've</p> <p>5 been discussing, for the week of April -- I'm</p> <p>6 sorry, the date April 7th -- I believe it's on the</p> <p>7 next page -- the action item or one of the action</p> <p>8 items listed is to conduct a green light call. Do</p> <p>9 you see that?</p> <p>10 A. I do.</p> <p>11 Q. What is a green light call in the</p> <p>12 context of the Series 5 offering securities</p> <p>13 offering?</p> <p>14 A. We would have gotten on the phone with</p> <p>15 the issuer and said -- we would have given an</p> <p>16 overview of what the debt markets were doing that</p> <p>17 day, the market for our securities, to see if we</p> <p>18 thought it was an appropriate day to launch a</p> <p>19 transaction for the debt securities.</p> <p>20 Some days are good to launch; some days</p> <p>21 are not so good to launch. So the purpose is to</p> <p>22 not just be on auto pilot, we're going to launch a</p> <p>23 deal on Monday regardless what the market -- not</p> <p>24 to be on auto pilot as to when we launch a deal</p> <p>25 but have a concerted decision on the morning of</p>	<p style="text-align: right;">Page 104</p> <p>1 McSpadden - Confidential</p> <p>2 topic of great interest to Barclays from the</p> <p>3 outset. There would have been multiple</p> <p>4 conversations over the period of a month or prior</p> <p>5 to the launch of the arrangement.</p> <p>6 And one of the topics very easily could</p> <p>7 have been -- I don't recall the call</p> <p>8 specifically -- could have been, well, what do you</p> <p>9 think we're going to have to start with is kind of</p> <p>10 a whispered indication of what our coupon is going</p> <p>11 to be and where you think we'll end up depending</p> <p>12 on whether there's sufficient demand.</p> <p>13 That would be a very typical thing to</p> <p>14 be on the call. As to whether it was on this one,</p> <p>15 I don't recall. But highly likely that was a</p> <p>16 purpose of the conversation.</p> <p>17 Q. Did you participate in the green light</p> <p>18 call for the Series 5 offering?</p> <p>19 A. I actually can't remember.</p> <p>20 Q. Would someone from Citi have been on</p> <p>21 that call?</p> <p>22 A. Oh, yes, Citi would have been a</p> <p>23 principal person. The key people on that call</p> <p>24 would have been the people from debt capital</p> <p>25 markets as well as syndicate, and that would have</p>
<p style="text-align: right;">Page 103</p> <p>1 McSpadden - Confidential</p> <p>2 the offering do we think today is a good day, yes</p> <p>3 or no, to launch a transaction.</p> <p>4 So that's a green light. Now we call</p> <p>5 it a go/no go.</p> <p>6 Q. Who makes the decision to green light</p> <p>7 or not green light an offering?</p> <p>8 A. Collectively you would have had all the</p> <p>9 syndicates on the phone. By "all" I mean the</p> <p>10 joint lead managers collectively, not just Citi.</p> <p>11 You have the other people on the cover, the top</p> <p>12 line of the cover.</p> <p>13 We would have all been on the phone.</p> <p>14 And we would have collectively said here's what</p> <p>15 the market's like, and the issuer -- we would give</p> <p>16 the issuer our -- here's our update on the market,</p> <p>17 here's our recommendation, would you like to</p> <p>18 proceed, yes or no. And the issuer ultimately</p> <p>19 makes the decision and decides whether to go or</p> <p>20 not go.</p> <p>21 Q. Are there any determinations made</p> <p>22 during a green light call regarding what the price</p> <p>23 will be for the securities to be issued?</p> <p>24 A. The discussions as to what the dividend</p> <p>25 level would have been on this would have been a</p>	<p style="text-align: right;">Page 105</p> <p>1 McSpadden - Confidential</p> <p>2 been true for our brethren across the street that</p> <p>3 would have been part of the transaction.</p> <p>4 Whether I was personally available, I</p> <p>5 don't recall what my day looked like. This could</p> <p>6 have been the only thing on my calendar or it</p> <p>7 could have been one of ten things.</p> <p>8 Q. How would the coupon rate have been</p> <p>9 determined with respect to the preference shares</p> <p>10 that were issued in the Series 5 offering, the</p> <p>11 ADSs of the Series 5 preference shares?</p> <p>12 A. When one does a debt transaction -- or</p> <p>13 for that matter former transaction -- one looks at</p> <p>14 what it views to be existing securities of the</p> <p>15 issuer that might be trading that are of a similar</p> <p>16 nature.</p> <p>17 You look for comparable securities of</p> <p>18 comparable institutions -- in other words, in the</p> <p>19 case of Barclays you might look at Royal Bank of</p> <p>20 Scotland, Lloyd's, Citigroup, JPMorgan, Bank of</p> <p>21 America -- as to what their similarly rated and</p> <p>22 similarly structured securities were, \$25 retail</p> <p>23 security.</p> <p>24 You would have had a range of what</p> <p>25 existing securities looked like. We would have</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 114</p> <p>1 McSpadden - Confidential</p> <p>2 as well as all of its underwriters have legal</p> <p>3 liability is at the time of sale is when we say,</p> <p>4 Okay, Barclays, you have 100 million shares sold</p> <p>5 at 8 1/8 coupon. That's when liability</p> <p>6 crystallizes.</p> <p>7 Liability also rolls forward to the</p> <p>8 time of closing. So basically we always update</p> <p>9 our due diligence. Due diligence is fully priced.</p> <p>10 Anything we need to know -- when we roll forward</p> <p>11 to closing, anything we need to know before</p> <p>12 closing.</p> <p>13 In this case there was also a green</p> <p>14 shoe that was exercised sometime after that. We</p> <p>15 brought forward all the due diligence process down</p> <p>16 to the exercise of the green shoe closing as well.</p> <p>17 So due diligence is a constant process</p> <p>18 from day one.</p> <p>19 Q. Did the prepricing due diligence</p> <p>20 bring-down call occur on April 8th with respect to</p> <p>21 the -- April 8th, 2008, with respect to the Series</p> <p>22 5 offering?</p> <p>23 A. I can't specifically recall, but I</p> <p>24 would be quite sure it did.</p> <p>25 Q. Just for the record, a moment ago you</p>	<p style="text-align: right;">Page 116</p> <p>1 McSpadden - Confidential</p> <p>2 A. The purpose of those calls is to be</p> <p>3 sure at the moment of sale of the shares, the</p> <p>4 moment of closing the shares, you have the most</p> <p>5 up-to-date information as to whether everything</p> <p>6 has been properly disclosed.</p> <p>7 And then similarly, as I mentioned, a</p> <p>8 number of the critical documents we get in this</p> <p>9 process, two of the more critical documents we get</p> <p>10 are called 10(b)(5) disclosure letters from</p> <p>11 Sullivan & Cromwell and Linklaters.</p> <p>12 The way those letters are crafted, they</p> <p>13 speak to two points in time: at the pricing and</p> <p>14 closing of the document. So in order for the</p> <p>15 lawyers and, to be honest, all the underwriters</p> <p>16 that are involved in the deal, you want to be</p> <p>17 certain that those two critical points in time</p> <p>18 everything that investors need to know at -- when</p> <p>19 they make their investment decision and when they</p> <p>20 finally give you their money is all -- everything</p> <p>21 that they need to know is available to them.</p> <p>22 There's a specific reason for those two</p> <p>23 points in time. The bigger reason is the fact</p> <p>24 that it's important to know because you're asking</p> <p>25 the investors to give you their money. More</p>
<p style="text-align: right;">Page 115</p> <p>1 McSpadden - Confidential</p> <p>2 mentioned green shoe. Is that referring to the</p> <p>3 exercise of an overallotment option?</p> <p>4 A. Correct. Again, sorry, street jargon.</p> <p>5 Q. Also on this timeline for -- if I could</p> <p>6 direct your attention for the week of April 14th</p> <p>7 there is another bring-down due diligence</p> <p>8 conference call listed. Do you know what that is</p> <p>9 referring to?</p> <p>10 A. This is what I said we do the call</p> <p>11 before closing as well. Due diligence is never</p> <p>12 over.</p> <p>13 Q. Are there distinct requirements with</p> <p>14 respect to the prepricing due diligence call</p> <p>15 versus the bring-down due diligence conference</p> <p>16 call?</p> <p>17 A. By "distinct requirements," what do you</p> <p>18 mean, please?</p> <p>19 Q. I'm sorry, are there any distinct due</p> <p>20 diligence requirements that must be performed and</p> <p>21 that were required to be performed with respect to</p> <p>22 the Series 5 offering in connection with the</p> <p>23 prepricing due diligence call versus the bring-</p> <p>24 down due diligence call?</p> <p>25 MR. HACKER: Object to form.</p>	<p style="text-align: right;">Page 117</p> <p>1 McSpadden - Confidential</p> <p>2 importantly, from a documentation point of view,</p> <p>3 they crystallize the time of the 10(b)(5)</p> <p>4 disclosures we get from the company and</p> <p>5 underwriter counsel.</p> <p>6 And also the company, most importantly,</p> <p>7 gives us a rep and warranty on the 10(b)(5) rep</p> <p>8 with regard to sufficiency of disclosure as an</p> <p>9 internal check to be sure they told you everything</p> <p>10 as well.</p> <p>11 So very critical points in time.</p> <p>12 Q. Are there any specific questions that</p> <p>13 are required to be asked in connection with a</p> <p>14 prepricing due diligence call versus a bring-down</p> <p>15 due diligence call? This is generally speaking.</p> <p>16 MR. HACKER: Object to form.</p> <p>17 A. Due diligence is not a science; it's an</p> <p>18 art. You have to tailor due diligence -- the</p> <p>19 questions you might ask of a company that's in the</p> <p>20 retailing business is one thing, what you'd ask a</p> <p>21 bank is different, what you'd ask a high-tech</p> <p>22 company is completely different from what you</p> <p>23 might ask a utility.</p> <p>24 So what you have to do is you have to</p> <p>25 say, Who am I working with, what are the issues</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 126</p> <p>1 McSpadden - Confidential</p> <p>2 on the agenda?</p> <p>3 MR. PELLER: Objection.</p> <p>4 A. Again, I can't recall if I was --</p> <p>5 attended this call or not, so I can't remember</p> <p>6 what was or wasn't discussed on the call.</p> <p>7 Q. And you don't know who attended the</p> <p>8 call; is that correct?</p> <p>9 A. I do not.</p> <p>10 Q. Is there any record of the attendees of</p> <p>11 this call that exists anywhere within Citigroup?</p> <p>12 A. Of who attended?</p> <p>13 Q. Or participated.</p> <p>14 A. There will be a record as to who was</p> <p>15 invited; but as to who attended, I'm not aware of</p> <p>16 any record that would have been kept.</p> <p>17 Q. And with respect to agenda item number</p> <p>18 2, the due diligence updates, do you know what was</p> <p>19 discussed during this call regarding agenda item</p> <p>20 number 2?</p> <p>21 A. I don't recall whether I was or wasn't</p> <p>22 on the call, but it says, due diligence update,</p> <p>23 call tentatively scheduled for April 2nd, 2008.</p> <p>24 You recall earlier we talked about a business due</p> <p>25 diligence call. This could possibly have been a</p>	<p style="text-align: right;">Page 128</p> <p>1 McSpadden - Confidential</p> <p>2 transaction and closing. There's a lot of work</p> <p>3 involved in the tick and tie.</p> <p>4 So it was just a check to be sure that</p> <p>5 the work was progressing at an appropriate pace</p> <p>6 given the scheduled time for launch of the pricing</p> <p>7 of the deal. Again, this is a process-oriented</p> <p>8 document. It's a work flow from A to Z. The</p> <p>9 purpose of this is process.</p> <p>10 Q. With respect to agenda item number 1,</p> <p>11 the key documents status updates, there's an</p> <p>12 open -- open items, I guess, under consideration</p> <p>13 for update underneath that. Do you see what I'm</p> <p>14 referring to?</p> <p>15 A. I do.</p> <p>16 Q. And the second bullet underneath that</p> <p>17 heading states risk factors. Do you know what</p> <p>18 that is referring to?</p> <p>19 A. Not specifically, no.</p> <p>20 Q. Do you recall any discussion in</p> <p>21 connection with Citi's underwriting of the Series</p> <p>22 5 offering regarding the disclosures of risk</p> <p>23 factors affecting Barclays in the offering</p> <p>24 materials?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 127</p> <p>1 McSpadden - Confidential</p> <p>2 business and/or an auditor due diligence call that</p> <p>3 they were trying to establish a date for.</p> <p>4 Q. Were there any other updates with</p> <p>5 respect to due diligence procedures that were</p> <p>6 being performed with respect to the Series 5</p> <p>7 offering made during this call?</p> <p>8 MR. HACKER: Object to form.</p> <p>9 A. Nothing specifically articulated here.</p> <p>10 But as I mentioned earlier, legal opinions as used</p> <p>11 above would refer to form of legal and disclosure</p> <p>12 opinions. So the various -- that's a lot of the</p> <p>13 major documents that are involved in the</p> <p>14 transaction. So they all encompass various</p> <p>15 aspects of due diligence.</p> <p>16 Q. With respect to agenda item number 3,</p> <p>17 the comfort letter updates, do you know what was</p> <p>18 discussed with respect to this agenda item during</p> <p>19 the call?</p> <p>20 MR. HACKER: Object to form.</p> <p>21 A. I don't recall whether I was or wasn't</p> <p>22 on the call, but the purpose of that item would be</p> <p>23 to query as to where we stood with the comfort</p> <p>24 letters. As I mentioned, those are documents that</p> <p>25 needed to be delivered at the pricing of the</p>	<p style="text-align: right;">Page 129</p> <p>1 McSpadden - Confidential</p> <p>2 Q. What were --</p> <p>3 A. If you look at the offering material,</p> <p>4 there's a section called risk factors. It's in</p> <p>5 the offering materials in the prospectus, the red</p> <p>6 herring, as well as also part of the 20-F. And</p> <p>7 the phrase "risk factors" is how generally one</p> <p>8 describes those risk factors.</p> <p>9 Q. Let me make sure you understood my</p> <p>10 question. Do you recall any discussions in</p> <p>11 connection with Citi's underwriting of the Series</p> <p>12 5 offering regarding the disclosures of risk</p> <p>13 factors that were to be made in the offering</p> <p>14 materials?</p> <p>15 A. Specific discussion about the risk</p> <p>16 factors that were in the offering material? No.</p> <p>17 Q. At the time of the Series 5 offering,</p> <p>18 what did Citi understand to be the significant</p> <p>19 risks facing Barclays?</p> <p>20 A. I think the significant risk facing</p> <p>21 Barclays were -- they're pretty well articulated</p> <p>22 in their 20-F and in their prospectus supplements.</p> <p>23 There's a series of risk factors that relate to</p> <p>24 the industry, the issuer, and the notes. And</p> <p>25 that's as good a calculation as the risk factors I</p>

<p style="text-align: right;">Page 130</p> <p>1 McSpadden - Confidential</p> <p>2 think you can get for any situation. If you just</p> <p>3 refer to their disclosure documents, I think</p> <p>4 they're pretty well listed.</p> <p>5 Q. At the time of the Series 5 offering,</p> <p>6 did Citi have any understanding that Barclays</p> <p>7 faced the risk of additional breakdowns associated</p> <p>8 with its credit market assets?</p> <p>9 A. In 2008 if you'll recall the particular</p> <p>10 period in time, there began to be some stresses</p> <p>11 with regard to the financial institutions, all</p> <p>12 financial institutions. It became in evidence in</p> <p>13 probably mid 2007.</p> <p>14 So the economy, when you look at the</p> <p>15 overall economy, as I mentioned earlier, one of</p> <p>16 the principal risk factors facing any financial</p> <p>17 institution that lends money is can you get the</p> <p>18 money back. So it's a critical factor when one</p> <p>19 thinks about any financial institution that's in</p> <p>20 the lending business you say how is their loan</p> <p>21 portfolio standing up.</p> <p>22 The markets had begun to deteriorate</p> <p>23 for financial institutions, and everyone within</p> <p>24 Citi was very focused on financial institutions</p> <p>25 and the concerns around them.</p>	<p style="text-align: right;">Page 132</p> <p>1 McSpadden - Confidential</p> <p>2 did Citi have any understanding regarding the risk</p> <p>3 exposure that Barclays faced with respect to</p> <p>4 monoline insurers?</p> <p>5 A. Again, I refer to their disclosure and</p> <p>6 their 20-F and their various documents. But the</p> <p>7 disclosure to monolines was a topic that was</p> <p>8 common to every financial institution on the</p> <p>9 street at the time. So it was an area of general</p> <p>10 focus for everyone.</p> <p>11 Q. Why was the topic of monolines a common</p> <p>12 one to every financial institution at the time of</p> <p>13 the Series 5 offering?</p> <p>14 A. As I mentioned, there began to be</p> <p>15 stresses in the financial institutions starting in</p> <p>16 the summer of 2007, which manifested itself in a</p> <p>17 number of ways, and that was one of the ways it</p> <p>18 manifested itself.</p> <p>19 Q. Would you agree that at the time of the</p> <p>20 Series 5 offering concerns had arisen in the</p> <p>21 marketplace about the financial stability of</p> <p>22 monoline insurers?</p> <p>23 MR. HACKER: Object to form.</p> <p>24 A. There was a heightened concern in the</p> <p>25 street with regard to mortgage-related matters as</p>
<p style="text-align: right;">Page 131</p> <p>1 McSpadden - Confidential</p> <p>2 So that's a long answer for yes, we</p> <p>3 were very well aware of the facts that banks, when</p> <p>4 you lend money, you have to worry about getting it</p> <p>5 back.</p> <p>6 Q. At the time of the Series 5 offering,</p> <p>7 did Citi have an understanding about the nature</p> <p>8 and composition of Barclays' exposure to asset-</p> <p>9 backed securities -- let me withdraw the question.</p> <p>10 At the time of the Series 5 offering,</p> <p>11 did Citi have an understanding about the nature or</p> <p>12 composition of Barclays' ABS CDO securities</p> <p>13 portfolio?</p> <p>14 A. Their ABS CDOs securities portfolio is</p> <p>15 discussed in the 20-F, and it was a topic of</p> <p>16 conversation that would have been on the business</p> <p>17 due diligence call that was held.</p> <p>18 Q. What was discussed with respect to</p> <p>19 Barclays ABS CDO securities exposure during the</p> <p>20 business due diligence call that occurred in</p> <p>21 connection with the Series 5 offering?</p> <p>22 MR. HACKER: Object to form.</p> <p>23 A. I don't specifically recall the</p> <p>24 details.</p> <p>25 Q. At the time of the Series 5 offering,</p>	<p style="text-align: right;">Page 133</p> <p>1 McSpadden - Confidential</p> <p>2 well as monoline-related matters.</p> <p>3 Q. Did Citi share that concern with the</p> <p>4 street?</p> <p>5 A. It was something that Citi from a</p> <p>6 process point of view, things I'm involved in,</p> <p>7 commitment committee point of view, we were</p> <p>8 focused on.</p> <p>9 Q. At the time of the Series 5 offering,</p> <p>10 did Citi have any understanding about monoline</p> <p>11 insurers were facing potential rating agency</p> <p>12 downgrades?</p> <p>13 A. Any time when a financial institution</p> <p>14 and when there's stress in the economy in general</p> <p>15 or with a group of industries in specific, there's</p> <p>16 always a risk of downgrades from rating agencies.</p> <p>17 And as I mentioned earlier, lending institutions</p> <p>18 are particularly sensitive to changes in the</p> <p>19 economy.</p> <p>20 And so it is a logical outcome that if</p> <p>21 there's weakness in the economy and investors are</p> <p>22 having difficulty paying back any borrowings</p> <p>23 they've made, that's going to put potential stress</p> <p>24 on ratings.</p> <p>25 So ratings are a by-product of what's</p>

<p style="text-align: right;">Page 134</p> <p>1 McSpadden - Confidential</p> <p>2 going on in the economy and with companies.</p> <p>3 (Exhibit 18, e-mail dated 2/4/08 from</p> <p>4 Hong with attachment, Bates-stamped</p> <p>5 BARC-ADS-00648213 through 8222, marked for</p> <p>6 identification.)</p> <p>7 Q. I just marked as Exhibit 18 a document</p> <p>8 bearing the Bates number BARC-ADS-00648213 through</p> <p>9 8222. And for the record, this is a document</p> <p>10 reflecting an e-mail sent on February 4th, 2008,</p> <p>11 by Victor Hong with the subject monoline insurer</p> <p>12 losses.</p> <p>13 And there is an attachment to this</p> <p>14 document which appears to be a research report</p> <p>15 issued by Citi dated February 1st, 2008, with the</p> <p>16 title fixed-income quantitative research</p> <p>17 structured credit strategy.</p> <p>18 Mr. McSpadden, do you recognize the</p> <p>19 research report that's attached to this document?</p> <p>20 A. No.</p> <p>21 Q. Would this have been something --</p> <p>22 strike that.</p> <p>23 In performing its due diligence with</p> <p>24 respect to the Series 5 offering, did Citi review</p> <p>25 its own research reports regarding the company or</p>	<p style="text-align: right;">Page 136</p> <p>1 McSpadden - Confidential</p> <p>2 create nasty headlines and further write-downs for</p> <p>3 dealers. Broader forced selling in municipals and</p> <p>4 elsewhere should, however, be limited.</p> <p>5 Do you see what I was just reading</p> <p>6 there?</p> <p>7 A. Actually, I didn't.</p> <p>8 Q. It's on the very first page.</p> <p>9 A. Okay.</p> <p>10 Q. I apologize, under "summary points."</p> <p>11 A. Sure.</p> <p>12 Q. We can focus on the first three.</p> <p>13 A. Sure.</p> <p>14 Q. Is it is it fair to say that at the</p> <p>15 time of the Series 5 offering Citi believed that</p> <p>16 monoline downgrades still looked quite likely?</p> <p>17 MR. HACKER: Objection.</p> <p>18 A. Citi's pretty big. I'm one person. I</p> <p>19 mentioned I haven't seen this. So clearly four</p> <p>20 people who authored this had an opinion.</p> <p>21 Q. If I could turn your attention just</p> <p>22 briefly to page 8221.</p> <p>23 A. A 2?</p> <p>24 Q. 8221.</p> <p>25 A. Oh, 8221. Got it.</p>
<p style="text-align: right;">Page 135</p> <p>1 McSpadden - Confidential</p> <p>2 the market or industry in which the issuer</p> <p>3 operated?</p> <p>4 A. I know in the commitment committee memo</p> <p>5 we sent, which you have a copy of, we include an</p> <p>6 equity research report in there. So to the extent</p> <p>7 that is at least one for sure I am. As to what</p> <p>8 other research might or might not have been read</p> <p>9 by other people at Citi, I can't speak.</p> <p>10 Q. Did you personally consider any</p> <p>11 research reports issue by Citi concerning Barclays</p> <p>12 or the credit markets in which it was operating in</p> <p>13 performing due diligence work on behalf of Citi</p> <p>14 with respect to the Series 5 offering?</p> <p>15 A. I don't recall doing that.</p> <p>16 Q. If I could just direct you to the</p> <p>17 research report here.</p> <p>18 A. Sure.</p> <p>19 Q. Under the heading assessing the impact</p> <p>20 of monoline downgrades and under the subheading</p> <p>21 summary points, there's four items noted. And it</p> <p>22 states, Despite bailout efforts, monoline</p> <p>23 downgrades still look quite likely. The main</p> <p>24 problem is a potential 34 billion in losses,</p> <p>25 primarily on CDOs of ABS. This would likely</p>	<p style="text-align: right;">Page 137</p> <p>1 McSpadden - Confidential</p> <p>2 Q. There's a -- under "other disclosures,"</p> <p>3 the third one down is other general disclosures.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. It says, This research report was</p> <p>7 prepared by Citigroup Global Markets, Inc.;</p> <p>8 correct?</p> <p>9 A. That's what it says.</p> <p>10 Q. And then --</p> <p>11 MR. HACKER: Objection.</p> <p>12 Q. If I could direct your attention back</p> <p>13 to the first page of the research report. The</p> <p>14 first paragraph under the summary points says, All</p> <p>15 of a sudden the world has been gripped by monoline</p> <p>16 fever. Are they indeed the next example of the</p> <p>17 glue which holds together the world financial</p> <p>18 system and prevents it coming apart? A potential</p> <p>19 bank consortium for bailing out the monolines</p> <p>20 reported today on Bloomberg underlines their</p> <p>21 importance.</p> <p>22 At the time of the Series 5 offering</p> <p>23 was Citi aware -- strike that.</p> <p>24 Was Citi aware that efforts had been</p> <p>25 undertaken by banks to inject capital into</p>

<p style="text-align: right;">Page 138</p> <p>1 McSpadden - Confidential</p> <p>2 monoline insurers?</p> <p>3 MR. HACKER: Objection.</p> <p>4 A. I can't speak for all of Citi; I can</p> <p>5 speak for myself. I remember there being</p> <p>6 conversations about monolines and issues that were</p> <p>7 occurring. I don't remember the exact time frame.</p> <p>8 But, like I said, financial</p> <p>9 institutions were under stress, and monolines were</p> <p>10 a topic of conversation because monolines provide</p> <p>11 a line of defense in a lot of different</p> <p>12 securities, whether it's municipal securities,</p> <p>13 mortgage securities, a whole long list that they</p> <p>14 are participants of. I am generally aware</p> <p>15 February, November, May.</p> <p>16 Q. The conversations that you recall</p> <p>17 regarding monoline insurers, do you recall any</p> <p>18 specific matters that were discussed regarding the</p> <p>19 monolines?</p> <p>20 A. Specific matters? No. General</p> <p>21 matters, concerns about the monoline, how big</p> <p>22 could the losses possibly be, what impacts might</p> <p>23 or might not have, who might or might not come in</p> <p>24 to assist them, whether they could or couldn't</p> <p>25 raise capital securities, typical ones you would</p>	<p style="text-align: right;">Page 140</p> <p>1 McSpadden - Confidential</p> <p>2 financial institutions industry for my entire</p> <p>3 career, for the most part. So they expect people</p> <p>4 to be sentient, intelligent. They expect people</p> <p>5 that are senior and been around to use their</p> <p>6 judgment, and if you've got knowledge of financial</p> <p>7 institutions, to apply that to situations you were</p> <p>8 work on. I am a FIG guy, have been, so yes, I</p> <p>9 would have taken that into consideration.</p> <p>10 Q. Just one more.</p> <p>11 A. I think sentient actually means</p> <p>12 awake -- I'm not sure -- as opposed to</p> <p>13 intelligent.</p> <p>14 Q. One more matter with respect to this</p> <p>15 research report. If I could direct your attention</p> <p>16 to the page ending 8218. And looking at Figure 3,</p> <p>17 there is a chart presented in here by Citi that is</p> <p>18 titled estimates of different banks CDO of ABS</p> <p>19 super senior exposure and potential write-down</p> <p>20 sizes assuming similar loss and proportions</p> <p>21 retained across all banks, dollars in billions,</p> <p>22 Citi.</p> <p>23 Do you see what chart I'm referring to?</p> <p>24 A. I do.</p> <p>25 Q. Do you see about halfway down the chart</p>
<p style="text-align: right;">Page 139</p> <p>1 McSpadden - Confidential</p> <p>2 expect for any financial institutions facing</p> <p>3 stress. Again, time frame unclear because it was</p> <p>4 eight years ago, seven, eight years ago.</p> <p>5 Q. Were these discussions that you recall</p> <p>6 regarding concerns about monoline insurers, did</p> <p>7 they take place in connection with Citi's</p> <p>8 underwriting of the Series 5 offering?</p> <p>9 A. I don't recall any conversations that</p> <p>10 were connected to the Barclays transaction. It</p> <p>11 was more connected to other potential</p> <p>12 underwritings we might or might not have done or</p> <p>13 general industry concerns.</p> <p>14 Q. Did those conversations that you recall</p> <p>15 regarding concerns about monoline insurers inform</p> <p>16 in any way the due diligence procedures that Citi</p> <p>17 conducted with respect to the Series 5 offering?</p> <p>18 A. As I mentioned earlier, due diligence</p> <p>19 is an art; it's not a science. You have to be</p> <p>20 alert in the process. First, my primary function</p> <p>21 is process. I'm not a credit person. I'm not a</p> <p>22 client person. I'm a process person. My title is</p> <p>23 officially transactor. That's what I do: I</p> <p>24 transact deal.</p> <p>25 Having said that, I've covered the</p>	<p style="text-align: right;">Page 141</p> <p>1 McSpadden - Confidential</p> <p>2 Barclays is listed?</p> <p>3 A. I do.</p> <p>4 Q. And if you follow that line -- if you</p> <p>5 follow that line all the way across, you can see</p> <p>6 Citi is estimating between 2.8 billion and 4.7</p> <p>7 billion of additional write-downs at Barclays</p> <p>8 regarding it's monoline-wrapped assets.</p> <p>9 Do you see that?</p> <p>10 MR. HACKER: Objection.</p> <p>11 A. I see those numbers, and I'm assuming</p> <p>12 these projections are made on a series of</p> <p>13 assumptions that are articulated in this document.</p> <p>14 Q. And those are estimates that Citi is</p> <p>15 putting forth regarding Barclays' exposure to</p> <p>16 monoline assets; correct?</p> <p>17 MR. HACKER: Objection.</p> <p>18 A. These are estimates that are put forth</p> <p>19 in a research document from people in our fixed-</p> <p>20 income quantitative research group.</p> <p>21 Q. In performing its due diligence with</p> <p>22 respect to the Series 5 offering, did any members</p> <p>23 of the Citi deal team consult with any members of</p> <p>24 the fixed-income quantitative research group?</p> <p>25 A. I can speak for myself, and I did not.</p>

<p style="text-align: right;">Page 142</p> <p>1 McSpadden - Confidential</p> <p>2 Q. Do you know if anyone else on the Citi</p> <p>3 deal team did?</p> <p>4 A. I don't know.</p> <p>5 Q. In conducting its due diligence with</p> <p>6 respect to the Series 5 offering, did Citi make</p> <p>7 any specific inquiries of Barclays management</p> <p>8 regarding the company's exposure to monoline</p> <p>9 insurers?</p> <p>10 A. There's a due diligence question list,</p> <p>11 which you have. My recollection is there are a</p> <p>12 series of questions on there with regard to the</p> <p>13 overall credit quality and the loan portfolio of</p> <p>14 Barclays. And within that list of questions, I</p> <p>15 think there's conversations with regard to</p> <p>16 securities of the type you're referring to: CDOs,</p> <p>17 CLOs, ABSs, all that type of stuff.</p> <p>18 Q. Do you recall any specific inquiries</p> <p>19 that Citi made of Barclays regarding its exposure</p> <p>20 to monoline insurers?</p> <p>21 MR. HACKER: Object to form.</p> <p>22 A. I thought I just answered that. The</p> <p>23 questions are there.</p> <p>24 Q. Is it fair to say that any questions</p> <p>25 Citi would have asked of Barclays' management</p>	<p style="text-align: right;">Page 144</p> <p>1 McSpadden - Confidential</p> <p>2 questions from the due diligence list that may</p> <p>3 have been asked there, did Citi take on any other</p> <p>4 actions to assess the credit market risks facing</p> <p>5 Barclays at the time of the Series 5 offering?</p> <p>6 MR. HACKER: Objection.</p> <p>7 A. I don't recall any specific actions</p> <p>8 with regard to Barclays as a unique institution,</p> <p>9 but this is not the only underwriting we were</p> <p>10 involved in at that point in time. There would</p> <p>11 have been numerous other underwritings of</p> <p>12 financial institutions where, in the process of</p> <p>13 those, you participate in calls, you listen, you</p> <p>14 read the newspaper. I read daily rags about</p> <p>15 financial institutions.</p> <p>16 So going to my earlier comment, it's</p> <p>17 the job of people on the team to be knowledgeable</p> <p>18 about the industry and the companies they cover.</p> <p>19 So you gain information about that in not only</p> <p>20 working with a specific company but everyone else</p> <p>21 you work with as well.</p> <p>22 This was a very active time for</p> <p>23 financial institutions; it had been for a number</p> <p>24 of years -- 2006, '7, '8 -- to finance. So you</p> <p>25 build up a body of knowledge of the industry you</p>
<p style="text-align: right;">Page 143</p> <p>1 McSpadden - Confidential</p> <p>2 regarding the company's exposure to monoline</p> <p>3 insurers would be set forth in the due diligence</p> <p>4 questions for the Series 5 business due diligence</p> <p>5 call?</p> <p>6 A. The question list for the due diligence</p> <p>7 securities offering is set forth there. As to</p> <p>8 what other conversations might have been held by,</p> <p>9 for example, my colleagues in London who have</p> <p>10 countless responsibility for coverage of Barclays,</p> <p>11 I can't speak to what conversations they might or</p> <p>12 might not have done.</p> <p>13 We went through the working group list</p> <p>14 earlier. We identified some people that are on</p> <p>15 the London calling team. I don't know what</p> <p>16 conversations they may or may not have had with</p> <p>17 regard to that specific topic. But for the</p> <p>18 purpose of the due diligence questions, I'm sure</p> <p>19 you have a copy of those questions in there.</p> <p>20 Q. In preparation for your deposition</p> <p>21 today, did you speak with any members of the</p> <p>22 London deal team?</p> <p>23 A. No.</p> <p>24 Q. And aside from the -- Citi's</p> <p>25 participation in the due diligence call and any</p>	<p style="text-align: right;">Page 145</p> <p>1 McSpadden - Confidential</p> <p>2 cover and the issues that your industry faces.</p> <p>3 So were they Barclays specific? No.</p> <p>4 There could have been other Barclays-specific</p> <p>5 things we did, but just in executing one's duties,</p> <p>6 one learns about things, and you bring that</p> <p>7 knowledge to bear.</p> <p>8 Q. Do you recall any specific information</p> <p>9 that you learned regarding Barclays' credit market</p> <p>10 exposures in executing your duties with respect to</p> <p>11 other securities offerings?</p> <p>12 A. I don't recall any specific</p> <p>13 information.</p> <p>14 Q. Is there any specific information that</p> <p>15 you learned in connection with Citi's underwriting</p> <p>16 of other securities offerings that you deemed</p> <p>17 relevant with respect to Citi's underwriting of</p> <p>18 the Series 5 offering?</p> <p>19 A. Specific information? Data point X?</p> <p>20 Factoid Y? No. Trends, developments, listening</p> <p>21 to people sophisticated in the industry, be they</p> <p>22 company presenters or others talking about the</p> <p>23 trends they see in the industry and where they see</p> <p>24 things going, reading the newspapers, seeing</p> <p>25 what's happening in the world around you, you pick</p>

<p style="text-align: right;">Page 146</p> <p>1 McSpadden - Confidential</p> <p>2 up information.</p> <p>3 Trends are important in this business,</p> <p>4 and you can learn them from a number of sources,</p> <p>5 be they public or in participation of other</p> <p>6 transactions that are of similar nature for</p> <p>7 similar companies.</p> <p>8 Q. What trends in the industry did you</p> <p>9 become aware of in connection with reading the</p> <p>10 newspapers or other securities offerings that Citi</p> <p>11 was involved in that were relevant to Citi's</p> <p>12 underwriting of the Series 5 offering?</p> <p>13 A. The biggest principal change is</p> <p>14 probably the asset quality concerns were growing.</p> <p>15 People's levels of nonperforming assets were</p> <p>16 rising. Credit charge-offs were rising. So,</p> <p>17 again, critical factor with any financial</p> <p>18 institution that lends money is getting it back.</p> <p>19 So that's a critical thing that you monitor.</p> <p>20 Also, in general most financial</p> <p>21 institutions were improving their capital ratios.</p> <p>22 Financial institutions improve their capital</p> <p>23 ratios in anticipation of needing the capital.</p> <p>24 Q. At the time of the Series 5 offering,</p> <p>25 how did Barclays' capital ratio compare to that of</p>	<p style="text-align: right;">Page 148</p> <p>1 McSpadden - Confidential</p> <p>2 had comparable companies that you would have</p> <p>3 looked at to see how Barclays performance compared</p> <p>4 to other institutions.</p> <p>5 That would be -- again, earlier</p> <p>6 remember I said when investors look at securities</p> <p>7 they say who are comparable companies. So one</p> <p>8 looks at comparable companies to assess that.</p> <p>9 (Pause.)</p> <p>10 (Exhibit 19, e-mail dated 3/31/08 from</p> <p>11 Clemente to McSpadden, et al., with</p> <p>12 attachments Bates-stamped</p> <p>13 UW_Barclays_0000001244 through 1437, marked</p> <p>14 for identification.)</p> <p>15 Q. I have marked as Exhibit 19 a document</p> <p>16 bearing the Bates number UW_Barclays_0000001244</p> <p>17 through 1437.</p> <p>18 Mr. McSpadden, for the record, this is</p> <p>19 an e-mail sent from Michele Clemente on March</p> <p>20 31st, 2008, to a number of individuals, including</p> <p>21 yourself, with the subject comcom full screening</p> <p>22 scheduled April 2nd, 2008, for Barclays PLC, head</p> <p>23 office/Project Rimu.</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>
<p style="text-align: right;">Page 147</p> <p>1 McSpadden - Confidential</p> <p>2 other financial institutions?</p> <p>3 MR. HACKER: Object to form.</p> <p>4 A. I don't specifically recall. I'd have</p> <p>5 to look at charts or information. I don't recall</p> <p>6 one way or the other.</p> <p>7 Q. Was Barclays' capital ratio a financial</p> <p>8 measure that was relevant to Citi's underwriting</p> <p>9 of the Series 5 offering?</p> <p>10 A. Of course. Capital is basically a</p> <p>11 cushion between capital and loan loss reserves or</p> <p>12 a cushions between problems. It's a critical</p> <p>13 measure you look at for any financial institution:</p> <p>14 how much capital do you have, how much reserves do</p> <p>15 you have, how much earnings power you have to deal</p> <p>16 with issues, either foreseen or unforeseen.</p> <p>17 Q. And as part of Citi's underwriting --</p> <p>18 strike that.</p> <p>19 In connection with Citi's underwriting</p> <p>20 of the Series 5 offering, did it undertake any</p> <p>21 analysis to compare Barclays' capital ratio to</p> <p>22 that of other financial institutions?</p> <p>23 A. It would be typical in a -- certainly</p> <p>24 in a commitment committee memo or conceivably even</p> <p>25 in an institutional sales memo that you would have</p>	<p style="text-align: right;">Page 149</p> <p>1 McSpadden - Confidential</p> <p>2 Q. There appears to be an attachment or</p> <p>3 several attachment to this e-mail. Is this the</p> <p>4 commitment or the attachments reflecting the</p> <p>5 commitment committee memo that you have referenced</p> <p>6 today?</p> <p>7 A. It is.</p> <p>8 Q. If I could direct your attention to</p> <p>9 page 1268.</p> <p>10 A. Okay.</p> <p>11 Q. There's a subject heading negative</p> <p>12 investment consideration/key risk factors. Do you</p> <p>13 see that?</p> <p>14 A. I do.</p> <p>15 Q. And one of the negative investment</p> <p>16 considerations and key risk factors identified in</p> <p>17 this memo to Citi commitment committee is credit</p> <p>18 risk. Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. And it states, Credit risk is the full</p> <p>21 risk of suffering financial loss should any of the</p> <p>22 group's customers, clients, market counterparties</p> <p>23 or market counterparties fail to fulfill their</p> <p>24 contractual obligations to the group.</p> <p>25 Do you see that?</p>

<p style="text-align: right;">Page 150</p> <p>1 McSpadden - Confidential</p> <p>2 A. I do.</p> <p>3 Q. Then it goes on to state, Credit risk</p> <p>4 may also arise where the downgrading of an</p> <p>5 entity's credit rating causes the fair value of</p> <p>6 the group's investment in that entity's financial</p> <p>7 instruments to fall.</p> <p>8 The credit risk that the group faces</p> <p>9 arises mainly from commercial and consumer loans</p> <p>10 and advances, including credit card lending.</p> <p>11 Furthermore, credit risk is manifested as country</p> <p>12 risk where difficulties may arise in the country</p> <p>13 in which the exposure is domiciled, thus impeding</p> <p>14 or reducing the value of the asset or where the</p> <p>15 counterparty may be the country itself.</p> <p>16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Was this a key consideration in</p> <p>19 assessing Citi's underwriting of Barclays Series 5</p> <p>20 preferred shares?</p> <p>21 A. First, there's a long list of credit</p> <p>22 risks here. And in quickly looking at the</p> <p>23 headlines, without reading all of them, all of</p> <p>24 those risks are very important for a banking</p> <p>25 institution.</p>	<p style="text-align: right;">Page 152</p> <p>1 McSpadden - Confidential</p> <p>2 Barclays currently has one of the European bank</p> <p>3 sector's lowest tangible equity-to-assets ratios.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. And it goes on to state, While</p> <p>7 regulatory ratio tier 1 ratio is 7.8 percent is at</p> <p>8 target levels, the capital markets are also</p> <p>9 looking at a broader range of ratios, including</p> <p>10 leverage-based ratio.</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Why was this identified as an unusual</p> <p>14 circumstance, concern, or risk in the commitment</p> <p>15 committee memo?</p> <p>16 A. As I mentioned earlier, capital along</p> <p>17 with reserves are your cushion that a bank has as</p> <p>18 protection against loan losses. And so it's a</p> <p>19 combination of the two.</p> <p>20 As a note, they have a regulatory ratio</p> <p>21 of 7.8. I won't bore you with all the discussions</p> <p>22 of regulatory relations of capital and all this</p> <p>23 stuff. It's an ever-changing feast. They said</p> <p>24 they had appropriate regulatory capital, what was</p> <p>25 then called tangible equity. That's actual common</p>
<p style="text-align: right;">Page 151</p> <p>1 McSpadden - Confidential</p> <p>2 As I mentioned earlier, credit risk, in</p> <p>3 my opinion, is one of the more important risks.</p> <p>4 Basically if you lend money and can't get it back,</p> <p>5 that is a negative. But it is one risk among</p> <p>6 many.</p> <p>7 Q. And this was identified as a key risk</p> <p>8 factor in the commitment committee memo; is that</p> <p>9 correct?</p> <p>10 A. Key risk factor along with all the</p> <p>11 others.</p> <p>12 Q. This memo Citi's commitment committee</p> <p>13 also identifies as a negative investment</p> <p>14 consideration and a key risk factor in connection</p> <p>15 with the potential underwriting market risk; is</p> <p>16 that correct?</p> <p>17 A. Correct.</p> <p>18 Q. If I could turn your attention to page</p> <p>19 1270.</p> <p>20 A. Okay.</p> <p>21 Q. There's a heading towards the bottom of</p> <p>22 the page. It says other unusual circumstances,</p> <p>23 concerns, and risks. Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. And under that heading it states,</p>	<p style="text-align: right;">Page 153</p> <p>1 McSpadden - Confidential</p> <p>2 stock, the equity component of a balance sheet</p> <p>3 less intangibles.</p> <p>4 So they're highlighting that as</p> <p>5 negative. It goes back to your question earlier</p> <p>6 is capital important for a bank, and the answer is</p> <p>7 yes.</p> <p>8 And I may draw your attention to page</p> <p>9 69, one of the big risks there is capital risk, at</p> <p>10 the top of the page, page 21 of my memo, of the</p> <p>11 memo. The page before. It says capital risk.</p> <p>12 Again, capital is an important</p> <p>13 component for any financial institution,</p> <p>14 particularly a bank. We're highlighting the team</p> <p>15 thought it was appropriate to mention that while</p> <p>16 their regulatory capital was in line that their</p> <p>17 tangible equity capital was low.</p> <p>18 Q. How, if at all, did the fact that</p> <p>19 Barclays currently had one of the European bank</p> <p>20 sector's lowest tangible equity-to-assets ratios</p> <p>21 factor into the underwriting and due diligence</p> <p>22 procedures that Citi performed in connection with</p> <p>23 the Series 5 offering?</p> <p>24 A. Again, when one does due diligence, you</p> <p>25 look at the entirety of a company, what their</p>

<p style="text-align: right;">Page 154</p> <p>1 McSpadden - Confidential</p> <p>2 earnings power is, what their balance sheet is,</p> <p>3 what their loan composition is, what their capital</p> <p>4 makeup is. It's a factor you take into it.</p> <p>5 It's a factor also in the market's</p> <p>6 opinion of the company. It's a factor in the</p> <p>7 rating agency's opinion of the company. It's a</p> <p>8 factor in the equity analyst's opinion of the</p> <p>9 company. So all of those factors are taken into</p> <p>10 account when looking at any given institution.</p> <p>11 And going back to your earlier question</p> <p>12 how does the market price risk, they look at all</p> <p>13 of this. So that's one of the many factors you</p> <p>14 would look at.</p> <p>15 Q. In performing its due diligence and</p> <p>16 underwriting procedures in connection with the</p> <p>17 Series 5 offering, did Citi perform any analyses</p> <p>18 to test the capital adequacy of Barclays' assets?</p> <p>19 A. I do not recall doing those personally.</p> <p>20 Q. And in performing its due diligence and</p> <p>21 other underwriting procedures in connection with</p> <p>22 the Series 5 offering, did Citi review any</p> <p>23 internal Barclays Capital adequacy reports?</p> <p>24 A. I don't recall reviewing any internal</p> <p>25 Barclays Capital asset capital reports.</p>	<p style="text-align: right;">Page 156</p> <p>1 McSpadden - Confidential</p> <p>2 A. Yep, I do.</p> <p>3 Q. RWAs, do you know what that stands for?</p> <p>4 A. Risk-weighted assets.</p> <p>5 Q. Thank you.</p> <p>6 And how did the fact that Barclays'</p> <p>7 risk-weighted assets may be vulnerable to sharp</p> <p>8 increases and impairments in delinquencies if</p> <p>9 economic conditions worsen inform the due</p> <p>10 diligence or other underwriting procedures that</p> <p>11 Citi performed with respect to this Series 5</p> <p>12 offering?</p> <p>13 A. Risk-weighted assets are a by-product,</p> <p>14 therefore, of the regulatory capital. They go to</p> <p>15 that number right above it, 7.8 percent. If the</p> <p>16 risk of a given asset changes, its category</p> <p>17 changes. So that can have a negative impact on</p> <p>18 the overall capital ratio.</p> <p>19 As I mentioned earlier, capital ratios</p> <p>20 are something we clearly focused on and the</p> <p>21 appropriate levels of capital ratios. So that's a</p> <p>22 by-product of the same conversation, i.e., capital</p> <p>23 discussion of the overall credit quality as well</p> <p>24 as the capital adequacy; and again, identified as</p> <p>25 key risk factors, capital.</p>
<p style="text-align: right;">Page 155</p> <p>1 McSpadden - Confidential</p> <p>2 Q. Did Citi ask to review any capital</p> <p>3 adequacy reports that Barclays may have prepared</p> <p>4 in connection with its underwriting and other --</p> <p>5 let me start that over.</p> <p>6 Did Citi ask to review any capital</p> <p>7 adequacy reports that Barclays may have prepared</p> <p>8 in connection with its due diligence and other</p> <p>9 underwriting procedures performed with respect to</p> <p>10 the Series 5 offering?</p> <p>11 MR. HACKER: Objection.</p> <p>12 A. I do not recall asking for any capital</p> <p>13 analysis that had been prepared. But again, I'm</p> <p>14 one person.</p> <p>15 Q. Just one more item in the commitment</p> <p>16 committee memo if I could bring your attention to.</p> <p>17 Also identified as an other unusual circumstance,</p> <p>18 concern, and risk, the second bullet point there</p> <p>19 states, Barclays has RWAs of 353 billion pounds</p> <p>20 sterling, around 700 billion U.S. dollars, and</p> <p>21 thus may be vulnerable to any sharp increases in</p> <p>22 impairments and delinquencies if economic</p> <p>23 conditions worsen. Large book exposures are to</p> <p>24 consumer property and construction.</p> <p>25 Do you see that? It was on page 1270.</p>	<p style="text-align: right;">Page 157</p> <p>1 McSpadden - Confidential</p> <p>2 Q. Did Citi review any financial reports</p> <p>3 or schedules concerning Barclays' capital ratios</p> <p>4 in performing its due diligence and other</p> <p>5 underwriting procedures with respect to the Series</p> <p>6 5 offering?</p> <p>7 A. I would have reviewed the 20-F which</p> <p>8 had details of all their capital ratios.</p> <p>9 Q. Besides the 20-F, did Citi review any</p> <p>10 other financial reports or schedules concerning</p> <p>11 Barclays' capital ratios -- capital adequacy</p> <p>12 ratios?</p> <p>13 A. Specifically from data -- I'm not aware</p> <p>14 of any that we've gotten from Barclays.</p> <p>15 Q. If I could turn your attention to the</p> <p>16 page of the commitment committee memo with the</p> <p>17 Bates ending in 1396.</p> <p>18 A. Got it.</p> <p>19 Q. At the beginning of this page, there</p> <p>20 appears to be a Citi research report on Barclays</p> <p>21 PLC dated February 20th, 2008. Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. Is this the research report that you</p> <p>24 were referring to earlier that you testified was</p> <p>25 included in the commitment committee memo?</p>

<p style="text-align: right;">Page 158</p> <p>1 McSpadden - Confidential</p> <p>2 A. Yes, it is.</p> <p>3 Q. And if I could direct your attention to</p> <p>4 page -- to the page of this research report that</p> <p>5 ends in 1400.</p> <p>6 A. I'm there.</p> <p>7 Q. At the bottom of this page, there is a</p> <p>8 chart titled Figure 4 credit market downturns. Do</p> <p>9 you see that?</p> <p>10 A. You mean credit market write-downs?</p> <p>11 Q. Yes. Thank you.</p> <p>12 And with respect to Barclays' credit</p> <p>13 market assets, if you follow all the way over to</p> <p>14 the end, there's a section 2008 SE cumulative</p> <p>15 write-downs. Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. And then the total number that Citi</p> <p>18 estimates for Barclays write-downs in 2008 is 3.8</p> <p>19 billion; is that correct?</p> <p>20 A. 3.811, correct.</p> <p>21 Q. Correct.</p> <p>22 Was this information in this research</p> <p>23 report regarding Citi's estimated write-downs --</p> <p>24 regarding the estimated write-downs that Barclays</p> <p>25 would take in 2008 with respect to its credit</p>	<p style="text-align: right;">Page 160</p> <p>1</p> <p>2 AFTERNOON SESSION</p> <p>3 (Time noted: 1:11 p.m.)</p> <p>4 (Mr. Musoff joins proceedings.)</p> <p>5 THE VIDEOGRAPHER: Going back on the</p> <p>6 record 1:11 p.m. This is the beginning of</p> <p>7 Disk 4 in the deposition of Jack McSpadden.</p> <p>8 JACK D. McSPADDEN,</p> <p>9 resumed as a witness, having been previously</p> <p>10 sworn by the notary public, was examined and</p> <p>11 testified further as follows:</p> <p>12 EXAMINATION CONTINUED BY</p> <p>13 MS. NEWCOMER:</p> <p>14 Q. Welcome back, Mr. McSpadden.</p> <p>15 A. Thank you, ma'am.</p> <p>16 (Exhibit 20, e-mail dated 3/20/08 from</p> <p>17 Ciobanu to McSpadden, et al., with attachments</p> <p>18 Bates-stamped UW_Barclays_000018881 through</p> <p>19 8888, marked for identification.)</p> <p>20 Q. I have marked as Exhibit 20 --</p> <p>21 A. And yes, I know I'm still under oath.</p> <p>22 Q. I didn't think I needed to ask again.</p> <p>23 A. For the record.</p> <p>24 Q. This document marked Exhibit 20 bears a</p> <p>25 Bates number UW_Barclays_000018881 through 8888.</p>
<p style="text-align: right;">Page 159</p> <p>1 McSpadden - Confidential</p> <p>2 market portfolio a fact that was relevant to the</p> <p>3 commitment committee's review of the Series 5</p> <p>4 offering?</p> <p>5 MR. HACKER: Object to form.</p> <p>6 A. We obviously included the equity</p> <p>7 research in the commitment committee memo, so we</p> <p>8 viewed it as one of the important factoids. There</p> <p>9 are a number of other attachments that go with</p> <p>10 this here as well. But yes, that's why we</p> <p>11 included it.</p> <p>12 MS. NEWCOMER: Can we go off the</p> <p>13 record.</p> <p>14 THE VIDEOGRAPHER: Off the record</p> <p>15 p.m.</p> <p>16 (Time noted: 12:26 p.m.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 161</p> <p>1 McSpadden - Confidential</p> <p>2 It's an e-mail sent on March 20th, 2008, from</p> <p>3 Bogdan Ciobanu to a number of individuals,</p> <p>4 including yourself, with the subject Project</p> <p>5 Rimu - draft due diligence lists.</p> <p>6 Do you recognize this document?</p> <p>7 A. I do.</p> <p>8 Q. Do you recall receiving this e-mail?</p> <p>9 A. I do not recall receiving it, but I</p> <p>10 know that I am listed there, so I'm certain I</p> <p>11 received it.</p> <p>12 Q. Did Mr. Ciobanu send --</p> <p>13 A. Ciobanu.</p> <p>14 Q. How do you say it?</p> <p>15 A. Ciobanu, like "ciao-banu."</p> <p>16 Q. Did Mr. Ciobanu send this e-mail and</p> <p>17 the attached documents in the normal course of his</p> <p>18 work at Citi with respect to the Series 5</p> <p>19 offering?</p> <p>20 A. He would have.</p> <p>21 Q. And there are two documents attached</p> <p>22 here. The first is accounting due diligence, and</p> <p>23 the second is Project Rimu business due diligence.</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>

<p style="text-align: right;">Page 162</p> <p>1 McSpadden - Confidential</p> <p>2 Q. And we can just look at his e-mail real</p> <p>3 quickly. It says, Barclays Team: Please find the</p> <p>4 draft business and accounting due diligence lists</p> <p>5 for the proposed offering. Please note we are</p> <p>6 collecting comments from the joint book runners</p> <p>7 and will update these lists as appropriate.</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Was Citi involved in preparing the</p> <p>11 accounting due diligence lists that are attached</p> <p>12 to this e-mail?</p> <p>13 A. Yes.</p> <p>14 Q. Who at Citi was involved in the</p> <p>15 preparation of this document?</p> <p>16 A. If you recall earlier, I mentioned the</p> <p>17 whole due diligence process. Someone would draft</p> <p>18 it, we would have sent it around to the whole</p> <p>19 team, we would also send it around to Linklaters,</p> <p>20 and in all likelihood we would have also sent it</p> <p>21 to Sullivan & Cromwell and very possibly the</p> <p>22 client as well to get input to be sure we were</p> <p>23 capturing all the correct questions.</p> <p>24 Q. So the whole deal team at Citi was</p> <p>25 involved in preparing this document? Is that your</p>	<p style="text-align: right;">Page 164</p> <p>1 McSpadden - Confidential</p> <p>2 Bates-stamped UW_Barclays_000012708 through</p> <p>3 12713, marked for identification.)</p> <p>4 Q. This is a document bearing the Bates</p> <p>5 number UW_Barclays_000012708 through 12713. And</p> <p>6 this is an e-mail sent from Bogdan Ciobanu on</p> <p>7 April 1st, 2008, to a number of individuals,</p> <p>8 including yourself, with the subject Project Rimu</p> <p>9 business due diligence, Thursday, April 3rd, at</p> <p>10 11:30 a.m. ET/1630 U.K.</p> <p>11 Do you recognize this document?</p> <p>12 A. I do recognize it.</p> <p>13 Q. And did Mr. Ciobanu send this e-mail in</p> <p>14 the normal course of his work at Citi with respect</p> <p>15 to the Series 5 offering?</p> <p>16 A. He would have.</p> <p>17 Q. In his e-mail he states, Dear Project</p> <p>18 Rimu team: Attached please find the due diligence</p> <p>19 questionnaires and dial-in information for</p> <p>20 Thursday's April 3rd, 11:30 a.m. ET/1600 U.K. due</p> <p>21 diligence conference call.</p> <p>22 Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. The -- well, the business -- excuse me.</p> <p>25 Strike that.</p>
<p style="text-align: right;">Page 163</p> <p>1 McSpadden - Confidential</p> <p>2 testimony?</p> <p>3 A. From the looks of it, it didn't go to</p> <p>4 the entire team, just a subset of this. But</p> <p>5 independent of this we would have gotten inputs</p> <p>6 from other people, just looking at the addressees</p> <p>7 here.</p> <p>8 Q. Is it fair to say that the Citi</p> <p>9 addressees that are listed on this e-mail are the</p> <p>10 individuals who were involved in preparing this</p> <p>11 draft document?</p> <p>12 A. Additional people who would have been</p> <p>13 involved was the business team, David Walker and</p> <p>14 his colleague, our banking team in London that we</p> <p>15 identified earlier on the working group list.</p> <p>16 Q. Okay. Thank you.</p> <p>17 And is the same true with respect to</p> <p>18 the business due diligence questions?</p> <p>19 A. Correct.</p> <p>20 Q. If you can keep that out. I'm going to</p> <p>21 show you another document.</p> <p>22 A. Sure.</p> <p>23 MS. NEWCOMER: This is Exhibit 21.</p> <p>24 (Exhibit 21, e-mail dated 4/1/08 from</p> <p>25 Ciobanu to McSpadden, et al., with attachment,</p>	<p style="text-align: right;">Page 165</p> <p>1 McSpadden - Confidential</p> <p>2 Attached to this e-mail is a document</p> <p>3 titled business due diligence, April 2008. Do you</p> <p>4 see that?</p> <p>5 A. I do.</p> <p>6 Q. Is this the final list of questions for</p> <p>7 the business due diligence call conducted in</p> <p>8 connection with this Series 5 offering?</p> <p>9 A. I believe it would be. I don't know</p> <p>10 for absolute certainty. But this is Tuesday,</p> <p>11 April 1. It follows the earlier draft that you</p> <p>12 had given me. It's one day before the due</p> <p>13 diligence call -- two days before the due</p> <p>14 diligence call was due to take place.</p> <p>15 So I have every reason to believe -- I</p> <p>16 also note it includes a broader list of</p> <p>17 addressees, i.e., it includes all the joint lead</p> <p>18 managers, which Mr. Ciobanu had said in the</p> <p>19 earlier e-mail that he was getting their opinions</p> <p>20 as well.</p> <p>21 So I can't say for certain, but it</p> <p>22 would purport to. This is the logical.</p> <p>23 Q. Thank you.</p> <p>24 If I could just direct you back to</p> <p>25 Mr. Ciobanu's original e-mail, he states in the</p>

<p style="text-align: right;">Page 166</p> <p>1 McSpadden - Confidential</p> <p>2 second paragraph -- and it's all underlined --</p> <p>3 Please note there will be other parties on the</p> <p>4 conference call (dealers on the Barclays MTN</p> <p>5 program) that are not aware of Project Rimu.</p> <p>6 Therefore please do not make any comments that</p> <p>7 relate directly to Project Rimu/retail preferred</p> <p>8 transaction.</p> <p>9 Please redirect any additional</p> <p>10 questions that you want to ask through the UBS or</p> <p>11 ML teams, as they are participating in both the</p> <p>12 proposed transaction and the company's MTN</p> <p>13 program.</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. Did due diligence -- did -- strike</p> <p>17 that.</p> <p>18 Did the business due diligence call for</p> <p>19 the Series 5 offering in fact occur on April 3rd,</p> <p>20 2008, at 11:30 a.m. eastern time?</p> <p>21 A. I have no reason to believe it didn't,</p> <p>22 but I'd have to independently confirm that.</p> <p>23 Q. Were there other underwriters that</p> <p>24 participated in that business due diligence call?</p> <p>25 A. The implication from the underlying</p>	<p style="text-align: right;">Page 168</p> <p>1 McSpadden - Confidential</p> <p>2 likelihood no.</p> <p>3 Q. Did the fact that other underwriters</p> <p>4 were also participating in the April 3rd, 2008,</p> <p>5 business due diligence call for the Series 5</p> <p>6 offering restrict Citi's ability in any way to</p> <p>7 perform appropriate due diligence procedures with</p> <p>8 respect to the offering?</p> <p>9 MR. HACKER: Object to form.</p> <p>10 A. No, no.</p> <p>11 Q. How long was the April 3rd, 2008,</p> <p>12 business due diligence call?</p> <p>13 A. I don't recall.</p> <p>14 Q. I'd like to kind of look at these two</p> <p>15 documents together, the draft and the final</p> <p>16 questions.</p> <p>17 A. Sure.</p> <p>18 Q. If you could turn to Question 28 on the</p> <p>19 draft.</p> <p>20 A. Okay.</p> <p>21 Q. Question Number 28 on the draft under</p> <p>22 the heading risk capital liquidity and funding</p> <p>23 states, Please discuss the intended use of</p> <p>24 proceeds from the current issue of capital</p> <p>25 securities.</p>
<p style="text-align: right;">Page 167</p> <p>1 McSpadden - Confidential</p> <p>2 portion is it is very typical when issuers --</p> <p>3 frequent issuers like Barclays are doing</p> <p>4 transactions and they have previously scheduled</p> <p>5 due diligence calls, sometimes they combine, allow</p> <p>6 one call, because it's a very intense certainly</p> <p>7 process for them to get all the answers to all the</p> <p>8 questions. They're very detailed and do internal</p> <p>9 due diligence to be sure they have proper answers.</p> <p>10 So it's an effective use to have one</p> <p>11 call cover multiple potential transactions, either</p> <p>12 several medium-term note programs where they're</p> <p>13 doing a periodic due diligence or in this case</p> <p>14 where they were apparently doing a medium-term</p> <p>15 note due diligence call in conjunction of</p> <p>16 anticipation of doing the Project Rimu at the same</p> <p>17 time. So it's very typical.</p> <p>18 Q. Are the other underwriters that were on</p> <p>19 this April 3rd business due diligence call with</p> <p>20 respect to the Series 5 offering, did those</p> <p>21 underwriters review or comment on the business due</p> <p>22 diligence questions that were prepared?</p> <p>23 A. I do not know specifically who those</p> <p>24 other underwriters might or might not have been,</p> <p>25 but I would make -- I would hazard that in all</p>	<p style="text-align: right;">Page 169</p> <p>1 McSpadden - Confidential</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. And if you could just glance at the</p> <p>5 final set of due diligence questions, would you</p> <p>6 agree that that question appears to have been</p> <p>7 removed?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know why that question was</p> <p>10 removed from the --</p> <p>11 A. As it should have been.</p> <p>12 Q. -- final set of due diligence</p> <p>13 questions?</p> <p>14 A. Of course. Please discuss the intended</p> <p>15 use of the proceeds from the current issue of</p> <p>16 capital securities. That's specifically saying</p> <p>17 we're going to be doing a current issue of capital</p> <p>18 securities.</p> <p>19 The whole purpose of Mr. Ciobanu's</p> <p>20 underlying paragraph there was to say don't tell</p> <p>21 people that don't know about Project Rimu that a</p> <p>22 project is coming. So to fail to remove that</p> <p>23 paragraph would have tipped other people not</p> <p>24 involved in the transaction of potentially</p> <p>25 material, nonpublic information. So you have to</p>

<p style="text-align: right;">Page 170</p> <p>1 McSpadden - Confidential</p> <p>2 remove that.</p> <p>3 Q. In performing its due diligence with</p> <p>4 respect to the Series 5 offering, did Citi pose</p> <p>5 this question to Barclays in any other capacity</p> <p>6 outside of the April 3rd, 2008, business due</p> <p>7 diligence call?</p> <p>8 A. First, it would have been ascertained</p> <p>9 up front what the use of proceeds were. And</p> <p>10 secondly, I refer you to Exhibit 11, which you</p> <p>11 don't have to refer to. I'll save you the</p> <p>12 trouble, at least I think I will. The one where</p> <p>13 it says use of proceeds: general corporate</p> <p>14 purposes, stated purposes in the prospectus.</p> <p>15 Q. And if you look at Question Number 36</p> <p>16 on the draft list, there is a question there that</p> <p>17 says, Please provide an update regarding event</p> <p>18 discussions with and any reports issued by the</p> <p>19 rating agencies with respect to Barclays,</p> <p>20 including those in connection with the Barclays</p> <p>21 trading statement of November 7th, 2007; correct?</p> <p>22 A. Uh-huh.</p> <p>23 Q. And if you look for Question Number</p> <p>24 35 -- or for that Question Number 35 on the final</p> <p>25 set, it also appears to have been removed; is that</p>	<p style="text-align: right;">Page 172</p> <p>1 McSpadden - Confidential</p> <p>2 due diligence and other underwriting obligations</p> <p>3 with respect to the Series 5 offering Citi did not</p> <p>4 make any other inquiries to rating agencies</p> <p>5 regarding Barclays; is that correct?</p> <p>6 MR. HACKER: Objection.</p> <p>7 A. We did not make any specific inquiries</p> <p>8 directly to rating agencies with regard to</p> <p>9 Barclays.</p> <p>10 I would point out in the commitment</p> <p>11 committee memo we have attached rating agency</p> <p>12 reports in the back to the commitment committee</p> <p>13 memo.</p> <p>14 Q. Thank you.</p> <p>15 With respect to the rating agency</p> <p>16 reports that you just pointed out in the</p> <p>17 commitment committee memo, were those relevant to</p> <p>18 Citi's assessment of the Series 5 offering?</p> <p>19 A. I mentioned earlier we take a whole</p> <p>20 bunch of things in consideration. Ratings, if you</p> <p>21 will recall, I said were conditions precedent on</p> <p>22 doing a transaction. They were a required</p> <p>23 deliverable. We had to have them for both the</p> <p>24 issuer and the issue. So yes.</p> <p>25 Q. If we could look at the draft document</p>
<p style="text-align: right;">Page 171</p> <p>1 McSpadden - Confidential</p> <p>2 correct?</p> <p>3 MR. HACKER: Object to form.</p> <p>4 A. It appears to have been removed,</p> <p>5 correct.</p> <p>6 Q. If I can clarify, since there was an</p> <p>7 objection, specifically the portion that says --</p> <p>8 of the question that said including those in</p> <p>9 connection with the Barclays Capital trading</p> <p>10 statement of November 7th, 2007, is the portion of</p> <p>11 the question that has been removed; is that</p> <p>12 correct?</p> <p>13 MR. HACKER: It says November 15th.</p> <p>14 MS. NEWCOMER: November 15th. Thank</p> <p>15 you, not the entire question.</p> <p>16 A. It appears to be the case, correct.</p> <p>17 It's a parenthetical.</p> <p>18 Q. Do you know why that portion of this</p> <p>19 question was removed from the final due diligence</p> <p>20 questions?</p> <p>21 A. No.</p> <p>22 Q. Do you know who made the decision to</p> <p>23 delete that statement from the final set?</p> <p>24 A. No.</p> <p>25 Q. You testified that in performing its</p>	<p style="text-align: right;">Page 173</p> <p>1 McSpadden - Confidential</p> <p>2 of the due diligence questions again. Question</p> <p>3 Number 43 on the draft set asks, Does the</p> <p>4 prospectus supplement, including the documents</p> <p>5 incorporated by reference therein, contain all</p> <p>6 information which is necessary to enable investors</p> <p>7 to make an informed assessment of the assets,</p> <p>8 liabilities, financial position, profit, loss, and</p> <p>9 prospects of the issuer?</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. And that question also does not appear</p> <p>13 to exist in the final draft; correct?</p> <p>14 A. Correct.</p> <p>15 Q. Do you know who made the decision to</p> <p>16 delete that question from the final draft?</p> <p>17 A. Same comment as earlier. Remember,</p> <p>18 this is a due diligence question for a broad set</p> <p>19 of people, including people who were not aware of</p> <p>20 the transaction. Question 43 specifically talks</p> <p>21 about a specific transaction that is coming and</p> <p>22 contemplated.</p> <p>23 So given how this was -- ended up being</p> <p>24 done, that would have been -- had to have been</p> <p>25 deleted without tipping the market that something</p>

<p style="text-align: right;">Page 174</p> <p>1 McSpadden - Confidential</p> <p>2 was coming.</p> <p>3 Q. Did Citi ever ask Barclays this</p> <p>4 Question Number 43 outside of the context of the</p> <p>5 April 3rd, 2008, business due diligence call in</p> <p>6 connection with its underwriting procedures for</p> <p>7 the Series 5 offering?</p> <p>8 MR. HACKER: Object to form.</p> <p>9 A. I haven't seen all the due diligence</p> <p>10 lists that were done there, but this Question 43</p> <p>11 is essentially what a 10(b)(5) disclosure letter</p> <p>12 is. The company has to give a representation and</p> <p>13 warranty to that effect, and we have two</p> <p>14 disclosure letters from Sullivan & Cromwell and</p> <p>15 Linklaters to the same effect.</p> <p>16 Q. And then one last one. If you look at</p> <p>17 Question Number 45 from the draft list, it states,</p> <p>18 Are there any developments or announcements which</p> <p>19 may occur or be made over the next few months of</p> <p>20 which investors should be made aware or any other</p> <p>21 facts, positive or negative, on which management</p> <p>22 wishes to comment.</p> <p>23 Do you see that question?</p> <p>24 A. I do.</p> <p>25 Q. And if you look at the final set of due</p>	<p style="text-align: right;">Page 176</p> <p>1 McSpadden - Confidential</p> <p>2 A. You mean the final one, Exhibit 21?</p> <p>3 Q. Yeah, the final one, Exhibit 21.</p> <p>4 Was Barclays provided a copy of these</p> <p>5 questions in advance of the April 3rd call?</p> <p>6 A. Yes.</p> <p>7 Q. Did Barclays provide written responses</p> <p>8 to any of these questions in advance of the April</p> <p>9 3rd call?</p> <p>10 A. No.</p> <p>11 Q. Did Barclays at any time provide</p> <p>12 written responses to these questions in connection</p> <p>13 with the Series 5 offering?</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. You can put those to the side.</p> <p>16 I believe you testified earlier that</p> <p>17 one of the things Citi did in performing its due</p> <p>18 diligence and other underwriting procedures with</p> <p>19 respect to the Series 5 offering was to consult</p> <p>20 with and coordinate with other underwriters</p> <p>21 regarding the scope of due diligence questions to</p> <p>22 be posed to Barclays management; is that correct?</p> <p>23 A. That's correct.</p> <p>24 (Exhibit 22, e-mails dated 4/3 between</p> <p>25 McSpadden and Merrill Lynch with attachment,</p>
<p style="text-align: right;">Page 175</p> <p>1 McSpadden - Confidential</p> <p>2 diligence questions for the April 3rd, 2008,</p> <p>3 business due diligence call for the Series 5</p> <p>4 offering, would you agree that that question does</p> <p>5 not appear?</p> <p>6 A. It doesn't, I agree.</p> <p>7 Q. Who made the decision to delete this</p> <p>8 question from the final draft?</p> <p>9 A. In my profession, that is a question</p> <p>10 that asks when a deal is coming. Again, that's a</p> <p>11 question that anybody who is listening on the call</p> <p>12 and saw that question asked and answered, that</p> <p>13 would mean they knew a deal was coming.</p> <p>14 If you look at Question 42 on the</p> <p>15 revised list: Is there any anything material that</p> <p>16 management would like to highlight that has not</p> <p>17 been already covered in this call, in a quick look</p> <p>18 I don't see Question 42 on the draft list. That's</p> <p>19 the redrafting of Question 45 to make it more</p> <p>20 generic to ensure you don't tip the market that</p> <p>21 something is being contemplated by management.</p> <p>22 Q. Thank you.</p> <p>23 With respect to this final list of</p> <p>24 business due diligence questions for the Series 5</p> <p>25 offering, was Barclays --</p>	<p style="text-align: right;">Page 177</p> <p>1 McSpadden - Confidential</p> <p>2 Bates-stamped UW_Barclays_000019123 through</p> <p>3 19143, marked for identification.)</p> <p>4 Q. I'm marking as Exhibit 22 a document</p> <p>5 bearing Bates number UW_Barclays_000019123 through</p> <p>6 19143. And this is an e-mail chain sent on April</p> <p>7 3rd between yourself and some individuals from</p> <p>8 Merrill Lynch; is that correct?</p> <p>9 A. Correct. I only received this one page</p> <p>10 of e-mail, one e-mail between myself and Rick</p> <p>11 Doyle, Richard Doyle.</p> <p>12 Q. I believe there's two e-mails on this</p> <p>13 one page -- is that correct? -- an initial e-mail</p> <p>14 and then a response?</p> <p>15 A. Correct.</p> <p>16 Q. In your original e-mail to Mr. Doyle,</p> <p>17 you write, Rick: Attached is the research report</p> <p>18 we were discussing. Table in question is on the</p> <p>19 bottom of page 5. Thanks for acting as point on</p> <p>20 these questions. Let's hope they give a bit of</p> <p>21 clarity.</p> <p>22 Do you see that?</p> <p>23 A. Uh-huh.</p> <p>24 Q. Do you recall this discussion with</p> <p>25 Mr. Doyle?</p>

<p style="text-align: right;">Page 178</p> <p>1 McSpadden - Confidential</p> <p>2 A. Actually I don't.</p> <p>3 Q. If we could turn to the attached</p> <p>4 document, it's a copy of the February 20th, 2008,</p> <p>5 Barclays research report that we discussed earlier</p> <p>6 today; correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And then if you can look, the</p> <p>9 table in question that you reference in your</p> <p>10 e-mail on the bottom of page 5, is that the Figure</p> <p>11 4 table that we discussed earlier today?</p> <p>12 A. It looks to be identical.</p> <p>13 Q. Do you recall what you were discussing</p> <p>14 with Mr. Doyle about this table?</p> <p>15 A. Obviously -- I don't recall, short</p> <p>16 answer.</p> <p>17 Q. Did you discuss with Mr. Doyle Citi's</p> <p>18 estimate of the additional write-downs that</p> <p>19 Barclays may be required to take in its credit</p> <p>20 market portfolio in 2008?</p> <p>21 MR. HACKER: Objection.</p> <p>22 A. I'm pointing out to Rick this table.</p> <p>23 It must have been in response to either an e-mail</p> <p>24 or a phone call. And he may possibly have had a</p> <p>25 question about it, and I said here's -- look at</p>	<p style="text-align: right;">Page 180</p> <p>1 McSpadden - Confidential</p> <p>2 We were.</p> <p>3 Q. And then Mr. Doyle concludes by</p> <p>4 stating, A.J. Davidson with our bankers will be on</p> <p>5 the call and will ask.</p> <p>6 Do you know what call he's referring</p> <p>7 to?</p> <p>8 A. The short answer is no. But I would</p> <p>9 note that this e-mail is 21 minutes before the</p> <p>10 scheduled start of the due diligence call to</p> <p>11 discuss the topics. So I think it's fair for me</p> <p>12 to presume that that was the call in question.</p> <p>13 Q. Thank you.</p> <p>14 You participated in the April 3rd,</p> <p>15 2008, business due diligence call in connection</p> <p>16 with the Series 5 offering; correct?</p> <p>17 A. I did.</p> <p>18 Q. I believe you testified earlier today</p> <p>19 that that call was recorded; is that correct?</p> <p>20 A. I've been shown a transcript of that</p> <p>21 call, so I presume that means it was recorded.</p> <p>22 Q. Were you shown a written transcript of</p> <p>23 this call?</p> <p>24 A. I was.</p> <p>25 (Exhibit 23, transcript of call dated</p>
<p style="text-align: right;">Page 179</p> <p>1 McSpadden - Confidential</p> <p>2 this.</p> <p>3 Q. In your e-mail you also say, Thanks for</p> <p>4 acting as point on these questions.</p> <p>5 Do you know what that's in regards to?</p> <p>6 A. No.</p> <p>7 Q. And then if you look at Mr. Doyle's</p> <p>8 response, he says Jack: Thanks. We also were</p> <p>9 just looking at a similar analysis put together</p> <p>10 for Matt King's November 6 report, obviously been</p> <p>11 before the full storm.</p> <p>12 Do you know what he meant by "the full</p> <p>13 storm" here?</p> <p>14 A. I mentioned earlier this is a time when</p> <p>15 financial institutions were getting more and more</p> <p>16 stressed with regard to asset quality and various</p> <p>17 things, one of which is obviously ABS CDOs,</p> <p>18 structured credits, some of this things that were</p> <p>19 highlighted here. It continued to escalate, which</p> <p>20 is why people were focused on them.</p> <p>21 Q. And Citi was focused on these market</p> <p>22 risks as well; correct?</p> <p>23 MR. HACKER: Objection.</p> <p>24 A. They were.</p> <p>25 THE WITNESS: Sorry.</p>	<p style="text-align: right;">Page 181</p> <p>1 McSpadden - Confidential</p> <p>2 4/3/08, marked for identification.)</p> <p>3 Q. I'm handing you a transcript of -- that</p> <p>4 we had prepared and certified of a recording of</p> <p>5 the April 3rd, 2008, business due diligence call</p> <p>6 that was produced to us in the litigation.</p> <p>7 A. Okay.</p> <p>8 MR. PELLER: Object to the exhibit.</p> <p>9 Q. I will also note for the record that</p> <p>10 the audio file produced to us appears to restart</p> <p>11 at one point. So that's reflected in our</p> <p>12 transcript.</p> <p>13 MR. STEWART: A question: Has the</p> <p>14 written transcript --</p> <p>15 MS. NEWCOMER: Can we go off the</p> <p>16 record?</p> <p>17 MR. STEWART: Yeah, we can go off the</p> <p>18 record.</p> <p>19 THE VIDEOGRAPHER: Off the record</p> <p>20 p.m.</p> <p>21 (Discussion off the record.)</p> <p>22 THE VIDEOGRAPHER: Back on the record</p> <p>23 1:40 p.m.</p> <p>24 MR. HACKER: Just before you ask any</p> <p>25 questions, we would -- I want to state my</p>

<p style="text-align: right;">Page 182</p> <p>1 McSpadden - Confidential</p> <p>2 objection on the record we haven't seen this</p> <p>3 document before, and we reserve all rights</p> <p>4 with regard to this document.</p> <p>5 MS. NEWCOMER: Certainly.</p> <p>6 MR. PELLER: Barclays defendants</p> <p>7 reserves rights.</p> <p>8 Q. Mr. McSpadden, if you could take out</p> <p>9 Exhibit 21 again, which was the final set of due</p> <p>10 diligence questions.</p> <p>11 A. I have it here.</p> <p>12 Q. If we can look back at Question 6 of</p> <p>13 Exhibit 21.</p> <p>14 A. Okay.</p> <p>15 Q. Question 6 states, Please comment</p> <p>16 briefly on the trading performance for the first</p> <p>17 two months of 2008 when compared to the same</p> <p>18 period in 2007. Are such results above or below</p> <p>19 the comparative 2007 result. Please comment on</p> <p>20 any specific line items in the P&L and balance</p> <p>21 sheet that experienced material or substantial</p> <p>22 movements with respect specific reference to such</p> <p>23 movements in net profit, net interest income,</p> <p>24 total assets, and total debt. Please comment on</p> <p>25 your outlook for first half 2008 and full-year</p>	<p style="text-align: right;">Page 184</p> <p>1 McSpadden - Confidential</p> <p>2 numbers at the bottom. There's one, for example,</p> <p>3 that says page 3 and then in brackets 6 through 9.</p> <p>4 Which ones are you referring to?</p> <p>5 Q. You can look at the top right corner of</p> <p>6 each of the boxes.</p> <p>7 A. So the little pages?</p> <p>8 Q. The little pages.</p> <p>9 A. Page what?</p> <p>10 Q. Page 22.</p> <p>11 A. 22. Okay.</p> <p>12 Q. And beginning with line 5. It appears</p> <p>13 that Barclays is responding to Question 6 of the</p> <p>14 due diligence questions; is that correct?</p> <p>15 A. The first two months of 2008 -- I'm</p> <p>16 just saying it talks about for the first two</p> <p>17 months of 2008, et cetera, et cetera. So that</p> <p>18 appears to be responsive to the question, but I</p> <p>19 haven't read the whole paragraph.</p> <p>20 Q. Thank you.</p> <p>21 And if you flip a couple pages prior to</p> <p>22 this, you'll see that Mr. Lucas is the speaker;</p> <p>23 correct? That's I think going back to page 17.</p> <p>24 MR. HACKER: Objection.</p> <p>25 A. I note that on little page 17, line</p>
<p style="text-align: right;">Page 183</p> <p>1 McSpadden - Confidential</p> <p>2 2008 results.</p> <p>3 Do you see that question?</p> <p>4 A. I do.</p> <p>5 Q. Did Barclays management respond to this</p> <p>6 question during the April 3rd, 2008, business due</p> <p>7 diligence call?</p> <p>8 MR. HACKER: Objection.</p> <p>9 A. I don't recall whether they did or</p> <p>10 didn't, but I haven't seen this fulsome</p> <p>11 transcript.</p> <p>12 Q. Do you recall who participated in this</p> <p>13 due diligence call on behalf of Barclays?</p> <p>14 A. I recall that Chris Lucas was the name</p> <p>15 that was on a lot of our comments. I'm assuming</p> <p>16 that there will be other named speakers in here</p> <p>17 that may or may not show up.</p> <p>18 I note fairly quickly I see a</p> <p>19 gentleman's name that is Chris Lucas I mentioned</p> <p>20 earlier. He was one of the people that was not on</p> <p>21 the working group list who I knew participated in</p> <p>22 the transaction.</p> <p>23 Q. If we could turn to page 22 of the</p> <p>24 transcript, line 5, or starting on line 5.</p> <p>25 A. When you say -- there are two page</p>	<p style="text-align: right;">Page 185</p> <p>1 McSpadden - Confidential</p> <p>2 item 17, it says Mr. Lucas. And quickly scanning</p> <p>3 pages 18 to 22, I see no one else's name in big</p> <p>4 caps. But I haven't read all of those little</p> <p>5 pages.</p> <p>6 Q. Thank you.</p> <p>7 Focusing back on Mr. Lucas's response</p> <p>8 to Question Number 6, if I could draw your</p> <p>9 attention to page 22, line 18.</p> <p>10 MR. HACKER: Objection. I'm sorry.</p> <p>11 Q. He states, In terms of March, as you</p> <p>12 can imagine, March has been a very tough month.</p> <p>13 I'm not saying anything you guys don't already</p> <p>14 know. We are still in the process of completing</p> <p>15 the results process. We get an early look at them</p> <p>16 tomorrow. But I think the signs that I got would</p> <p>17 tell me that the stock conditions have had an</p> <p>18 impact.</p> <p>19 But I think the group will be</p> <p>20 profitable in March on stand-alone numbers. I</p> <p>21 think that that is the best I can give you. We</p> <p>22 still have quite a wide big offer in terms of some</p> <p>23 of the decisions we have to make around asset</p> <p>24 marks as we close the books.</p> <p>25 Do you see that?</p>

<p style="text-align: right;">Page 186</p> <p>1 McSpadden - Confidential</p> <p>2 A. I do.</p> <p>3 Q. Did Mr. Lucas provide any further</p> <p>4 commentary in regards to Question 6 --</p> <p>5 MR. HACKER: Objection.</p> <p>6 Q. -- during this due diligence call?</p> <p>7 A. I don't recall any other commentary.</p> <p>8 Possibly if I had time to read all 40 or so pages</p> <p>9 of this there would be more commentary in here.</p> <p>10 But I don't recall any other commentary.</p> <p>11 Q. Did Mr. Lucas comment specifically on</p> <p>12 the magnitude of movements and specific balance</p> <p>13 sheet and P&L line items for the first two months</p> <p>14 of 2008 compared to the prior year period?</p> <p>15 MR. HACKER: Objection.</p> <p>16 A. In reading the text you've put in front</p> <p>17 of me, I would point you to lines 9 through 14 or</p> <p>18 15.</p> <p>19 Q. What specific balance sheet and P&L</p> <p>20 line items is he commenting on?</p> <p>21 A. P&L. He talks about take a consensus 7</p> <p>22 billion pounds is a monthly run rate without</p> <p>23 looking for any formal seasonality you get about</p> <p>24 580 million pounds a month, and for January and</p> <p>25 February that is very, very close to our run rate.</p>	<p style="text-align: right;">Page 188</p> <p>1 McSpadden - Confidential</p> <p>2 read the first half of 2008.</p> <p>3 If you read all of this, there very</p> <p>4 possibly is more comments in there about what his</p> <p>5 anticipation is going forward. But again, I'm</p> <p>6 just seeing this now.</p> <p>7 Q. Aside from the transcript, do you</p> <p>8 recall any discussion during this April 3rd, 2008,</p> <p>9 business due diligence call regarding a specific</p> <p>10 amount of write-downs that Barclays anticipated</p> <p>11 taking?</p> <p>12 A. I do not recall any specific amount.</p> <p>13 Q. Following this call did Citi take any</p> <p>14 further actions or perform any additional</p> <p>15 procedures to investigate the magnitude of</p> <p>16 write-downs that could be expected from Barclays</p> <p>17 in light of Mr. Lucas's comment regarding the</p> <p>18 write-downs during this call?</p> <p>19 MR. HACKER: Objection.</p> <p>20 A. I do recall subsequent. I mentioned</p> <p>21 earlier we had a call with a gentleman named</p> <p>22 Britton, the purpose of which was to talk about</p> <p>23 the first two or three months of the quarter. I'm</p> <p>24 not sure exactly when that occurred, whether that</p> <p>25 was before or after. But my strong recollection</p>
<p style="text-align: right;">Page 187</p> <p>1 McSpadden - Confidential</p> <p>2 Again, I'm reading what is -- I don't</p> <p>3 recall this. I'm reading what you gave me.</p> <p>4 Q. Did Mr. Lucas comment further regarding</p> <p>5 the magnitude of the write-downs that Barclays</p> <p>6 anticipated making as it closed its books for the</p> <p>7 quarter?</p> <p>8 A. In reading what you've given me, which</p> <p>9 I haven't seen before, he said in the terms of</p> <p>10 March, he talks about it being a very tough month.</p> <p>11 He says, but I'll give the group will be</p> <p>12 profitable in the month of March on a stand-alone</p> <p>13 basis. And he talks specifically about we still</p> <p>14 have a quite wide, big offer in terms of decision</p> <p>15 we make around asset marks as we close the books.</p> <p>16 Q. And did Mr. Lucas or anyone else from</p> <p>17 Barclays provide any additional comments regarding</p> <p>18 the magnitude of the anticipated write-downs that</p> <p>19 Barclays was going to be taking?</p> <p>20 MR. HACKER: Objection.</p> <p>21 A. I haven't -- I don't recall him making</p> <p>22 these statements. In looking at what you've given</p> <p>23 me right here, this seems to be responsive to the</p> <p>24 question that talks about results for the first</p> <p>25 two or three months. It continues on. I haven't</p>	<p style="text-align: right;">Page 189</p> <p>1 McSpadden - Confidential</p> <p>2 was that was sometimes on either April 7th or</p> <p>3 April 8th. That would have been following this</p> <p>4 call.</p> <p>5 Q. Did you talk about write-downs in the</p> <p>6 first two months of 2008 with Mr. Britton in</p> <p>7 connection with the Series 5 offering?</p> <p>8 MR. HACKER: Object to form.</p> <p>9 A. I don't recall now whether we did or</p> <p>10 didn't. I will say I have seen a list of</p> <p>11 questions that were discussed on that call. I</p> <p>12 don't recall as to whether that was one of the</p> <p>13 questions.</p> <p>14 Q. And besides making inquiries of</p> <p>15 Barclays management, did Citi undertake any</p> <p>16 additional procedures to assess or determine the</p> <p>17 magnitude of write-downs that Barclays may take in</p> <p>18 2008?</p> <p>19 MR. HACKER: Objection.</p> <p>20 A. I don't recall anything specific. The</p> <p>21 purpose of the due diligence call and the bring-</p> <p>22 down due diligence calls and whole series of calls</p> <p>23 is to ascertain items just like this. That's the</p> <p>24 whole purpose of the ongoing series of calls we</p> <p>25 discussed earlier.</p>

<p style="text-align: right;">Page 190</p> <p>1 McSpadden - Confidential</p> <p>2 Q. In light of Mr. Lucas's comments</p> <p>3 regarding anticipated write-downs during this</p> <p>4 April 3rd, 2008, due diligence call, did Citi ask</p> <p>5 Barclays to see any impairment analyses that</p> <p>6 Barclays prepared?</p> <p>7 A. I don't recall.</p> <p>8 MR. HACKER: Objection.</p> <p>9 Sorry, go ahead.</p> <p>10 Q. Go ahead.</p> <p>11 A. You first.</p> <p>12 Q. Were you done answering?</p> <p>13 A. My answer was I don't recall seeing</p> <p>14 any.</p> <p>15 Q. Thank you.</p> <p>16 Did Citi ask Barclays to see any risk</p> <p>17 reports that it prepared -- can I withdraw that?</p> <p>18 Following this April 3rd, 2008, call</p> <p>19 and Mr. Lucas's comments regarding anticipated</p> <p>20 write-downs, did Citi ask Barclays to see any risk</p> <p>21 reports that Barclays had prepared regarding its</p> <p>22 asset?</p> <p>23 MR. HACKER: Objection.</p> <p>24 Q. Assets.</p> <p>25 A. I don't recall asking for any.</p>	<p style="text-align: right;">Page 192</p> <p>1 McSpadden - Confidential</p> <p>2 Any bank will also have a wide variety of</p> <p>3 management reports, for lack of a better phrase.</p> <p>4 And this would be a topic that would have been one</p> <p>5 of -- a topic of one of the management reports.</p> <p>6 That's just being a good bank.</p> <p>7 Q. At any point in performing its due</p> <p>8 diligence and other underwriting procedures with</p> <p>9 respect to the Series 5 offering, did Citi ask to</p> <p>10 see any of Barclays' P&L reports regarding its</p> <p>11 credit market positions?</p> <p>12 MR. HACKER: Objection.</p> <p>13 A. Not to my knowledge. But remember</p> <p>14 we're talking to the chief financial officer of</p> <p>15 Barclays, and he's answering the questions in a</p> <p>16 fairly fulsome manner.</p> <p>17 Q. I am marking as Exhibit 24 a document</p> <p>18 bearing the Bates number BARC-ADS-00089495 to 496.</p> <p>19 (Exhibit 24, e-mail dated 4/7/08,</p> <p>20 Bates-stamped BARC-ADS-00089495 to 496, marked</p> <p>21 for identification.)</p> <p>22 MR. HACKER: I object to this document.</p> <p>23 I don't believe this is a Citi document. I</p> <p>24 don't believe Mr. McSpadden appears in this</p> <p>25 document.</p>
<p style="text-align: right;">Page 191</p> <p>1 McSpadden - Confidential</p> <p>2 Q. And is your answer the same if I ask</p> <p>3 you whether Citi asked to see any risk reports or</p> <p>4 summary risk reports?</p> <p>5 MR. HACKER: Objection.</p> <p>6 A. The same.</p> <p>7 Q. Following this April 3rd, 2008,</p> <p>8 business due diligence call, did Citi ask to see</p> <p>9 any price testing reports that Barclays</p> <p>10 prepared --</p> <p>11 MR. HACKER: Objection.</p> <p>12 Q. -- regarding its assets?</p> <p>13 A. I don't recall asking for any.</p> <p>14 Q. Following this April 3rd, 2008,</p> <p>15 business due diligence call, did Citi ask to see</p> <p>16 any P&L reports that Barclays may have prepared?</p> <p>17 MR. HACKER: Objection.</p> <p>18 A. I don't recall asking for any.</p> <p>19 Q. Did Citi have any understanding, in</p> <p>20 connection with its due diligence, for the Series</p> <p>21 5 offering that Barclays generated regular P&L</p> <p>22 reports regarding its credit market exposures?</p> <p>23 MR. HACKER: Objection.</p> <p>24 A. I know that a typical large bank has</p> <p>25 monthly internal reports, you know, each month.</p>	<p style="text-align: right;">Page 193</p> <p>1 McSpadden - Confidential</p> <p>2 Q. Mr. McSpadden, I'm showing you an</p> <p>3 e-mail that was sent on April 7th, 2008, to a</p> <p>4 number of individuals within Barclays with the</p> <p>5 subject flash P&L April 7th U.S. portfolio asset</p> <p>6 back. Do you see that? That was the subject</p> <p>7 line.</p> <p>8 A. Oh, sorry. Yes.</p> <p>9 Q. And this e-mail appears to reflect a</p> <p>10 flash profit and loss for Barclays U.S. ABS</p> <p>11 portfolio; is that correct?</p> <p>12 MR. PELLER: Objection.</p> <p>13 MR. HACKER: Objection.</p> <p>14 A. I'm not sure what it purports to be.</p> <p>15 I'm not familiar with this report.</p> <p>16 Q. Would you agree with me that the report</p> <p>17 provides a flash daily formal MTD and formal YTD</p> <p>18 report of the daily losses in various asset</p> <p>19 classes within this portfolio for Barclays?</p> <p>20 MR. HACKER: Objection.</p> <p>21 MR. PELLER: Objection.</p> <p>22 A. I would read the columns at the top on</p> <p>23 the right. One says flash daily. One says formal</p> <p>24 MTD. One has formal YTD.</p> <p>25 Q. Is month to date commonly abbreviated</p>

<p style="text-align: right;">Page 194</p> <p>1 McSpadden - Confidential</p> <p>2 as MTD?</p> <p>3 A. I would assume that MTD means month to</p> <p>4 date.</p> <p>5 Q. And do you assume YTD means year to</p> <p>6 date?</p> <p>7 A. I do.</p> <p>8 Q. Just looking at this report, would you</p> <p>9 agree with me that it reflects that Barclays had</p> <p>10 incurred 1.9 billion in losses in its U.S. ABS</p> <p>11 portfolio from January 1st, 2008, through April</p> <p>12 7th, 2008?</p> <p>13 MR. HACKER: Objection. I also object</p> <p>14 to the extent that this goes beyond the</p> <p>15 examination topics in the 30(b)(6) notice.</p> <p>16 MS. NEWCOMER: It will not. I'm</p> <p>17 getting there.</p> <p>18 MR. PELLER: Objection.</p> <p>19 A. In looking at the zeros and the balance</p> <p>20 at the top, I see a number in the YTD column for</p> <p>21 U.S. ABS portfolio total that would be 1 million</p> <p>22 1.09.</p> <p>23 Q. Thank you.</p> <p>24 And if you could flip to the second</p> <p>25 page, would you agree that those losses had a net</p>	<p style="text-align: right;">Page 196</p> <p>1 McSpadden - Confidential</p> <p>2 Q. The formal year-to-date P&L losses in</p> <p>3 Barclays' U.S. ABS portfolio that are reported in</p> <p>4 this flash report --</p> <p>5 A. Sorry, I see a revenue line. Where do</p> <p>6 you see a net profit line? I don't see a net</p> <p>7 profit line.</p> <p>8 Q. I'm looking at the U.S. ABS portfolio</p> <p>9 on the first page, the negative 1.019 billion that</p> <p>10 we looked at earlier.</p> <p>11 A. Yeah, but if you look at the bottom of</p> <p>12 the second page, it says net revenue total.</p> <p>13 Q. And it's a negative number; correct?</p> <p>14 A. It's negative, but it's a revenue</p> <p>15 number, not a profit number. Profit is after</p> <p>16 expenses. Revenue is before expenses.</p> <p>17 Q. Looking at the line item that says U.S.</p> <p>18 ABS portfolio total and the 0.019 figure that is</p> <p>19 being reported, is that information that would</p> <p>20 have been helpful to Citi's due diligence</p> <p>21 procedures in connection with the Series 5</p> <p>22 offering?</p> <p>23 MR. HACKER: Objection.</p> <p>24 A. You have to look at this number in the</p> <p>25 context of the entire balance sheet at the time it</p>
<p style="text-align: right;">Page 195</p> <p>1 McSpadden - Confidential</p> <p>2 revenue impact of 1.7 billion?</p> <p>3 MR. HACKER: Objection.</p> <p>4 Q. Approximately 1.7 billion.</p> <p>5 MR. PELLER: Objection.</p> <p>6 A. I'll agree the bottom line says net</p> <p>7 revenue total, and the line that would appear to</p> <p>8 be the one under the formal YTD is 1.7 million,</p> <p>9 yes.</p> <p>10 Q. If I could just direct you to the</p> <p>11 commentary on this P&L flash report referencing</p> <p>12 the CDOs on the left, there's a comment that 3.6</p> <p>13 million is primarily from ratings downgrades, and</p> <p>14 CRE CDO plus 4.3 million on significant CMBX</p> <p>15 spread tightening.</p> <p>16 Do you see that?</p> <p>17 A. Can you say that again?</p> <p>18 Q. It's underneath the commentary on the</p> <p>19 second page.</p> <p>20 A. Which line was it, please?</p> <p>21 Q. The CDO line.</p> <p>22 A. I see it says 3.6 million negative</p> <p>23 primarily from ratings downgrades, CDO plus 4.3</p> <p>24 million on significant CMBX spread tightening. I</p> <p>25 see those lines, yes.</p>	<p style="text-align: right;">Page 197</p> <p>1 McSpadden - Confidential</p> <p>2 was produced. Barclays is an extremely large</p> <p>3 organization --</p> <p>4 Q. Given that --</p> <p>5 A. -- and this is one little subset of</p> <p>6 that. And if you look at some of the commentary</p> <p>7 on the back and the wordage, some numbers are</p> <p>8 negative, some numbers are positive. So taking</p> <p>9 one number out of context and say, gee, what's the</p> <p>10 impact of this...</p> <p>11 Q. Would information provided by these P&L</p> <p>12 reports -- strike that.</p> <p>13 Given the market conditions we</p> <p>14 discussed earlier between the second half of 2007</p> <p>15 and 2008, would information concerning Barclays'</p> <p>16 daily profits and losses with respect to its U.S.</p> <p>17 ABS portfolio be relevant to Citi's underwriting</p> <p>18 due diligence with respect to the Series 5</p> <p>19 offering?</p> <p>20 MR. HACKER: Objection.</p> <p>21 A. When you look at a company, you have to</p> <p>22 look at a company in its totality. If you look at</p> <p>23 any one part, looking at A, looking at B, you have</p> <p>24 to look at the totality.</p> <p>25 I'd refer you back to Mr. Lucas's</p>

<p style="text-align: right;">Page 198</p> <p>1 McSpadden - Confidential</p> <p>2 testimony where he talked about profitability for</p> <p>3 the first and second month, his thoughts about the</p> <p>4 third month of the year. You have to take that --</p> <p>5 that's an overall picture of someone from the top</p> <p>6 looking at the entire company.</p> <p>7 To look at one little segment of a</p> <p>8 portfolio or one little segment of a business</p> <p>9 is -- is -- yes, it's important, but there's a</p> <p>10 question of the forest versus the trees. This is</p> <p>11 a tree. Mr. Lucas was talking about the forest.</p> <p>12 That's what's germane when you do due diligence</p> <p>13 and what investors invest on. They look at the</p> <p>14 totality of the picture.</p> <p>15 Q. If I could draw your attention back to</p> <p>16 the due diligence question on 21, Number 12.</p> <p>17 A. Okay. Got it.</p> <p>18 Q. The question is does this portfolio</p> <p>19 capture the bank's entire exposure to CDOs, CLOs,</p> <p>20 SIVs, conduits, ADS, subprime mortgage assets and</p> <p>21 other structured credit products. Would all these</p> <p>22 be located on the balance sheet; if not, how much</p> <p>23 is located off balance sheet?</p> <p>24 Do you see that question?</p> <p>25 A. I do.</p>	<p style="text-align: right;">Page 200</p> <p>1 McSpadden - Confidential</p> <p>2 20-F and if I looked at 1 and 18 and different</p> <p>3 financial statements, I have a feeling that would</p> <p>4 discuss their exposure to credit and possibly in</p> <p>5 particular their disclosure to CDOs, CLOs, SIVs,</p> <p>6 et cetera, et cetera.</p> <p>7 Very common to do due diligence</p> <p>8 support, particularly right on the heels of filing</p> <p>9 a May report when there's a detailed question for</p> <p>10 the speaker to refer you to specific public</p> <p>11 information that's available.</p> <p>12 Q. Is there anything in the 20-F that</p> <p>13 you're referring to that would have disclosed</p> <p>14 Barclays exposures to these various assets</p> <p>15 mentioned: The CDOs, the CLOs, the SIVs -- as of</p> <p>16 April 2008?</p> <p>17 MR. HACKER: Objection.</p> <p>18 A. I'm looking for the date when the 20-F</p> <p>19 was filed. I always have a hard time finding the</p> <p>20 date on this thing. But I'm certain it was filed</p> <p>21 before April 8th. It was called for being filed</p> <p>22 earlier. The 20-F would talk about as of the end</p> <p>23 of the year.</p> <p>24 Q. So nothing in the disclosures that</p> <p>25 Mr. Lucas is pointing to would have provided any</p>
<p style="text-align: right;">Page 199</p> <p>1 McSpadden - Confidential</p> <p>2 Q. Did Barclays management respond to this</p> <p>3 question during the April 3rd, 2008, business due</p> <p>4 diligence question?</p> <p>5 A. I don't recall the answer.</p> <p>6 Q. Do you know whether they responded to</p> <p>7 this question or not or --</p> <p>8 A. I don't recall whether they did or</p> <p>9 didn't.</p> <p>10 Q. If I could direct your attention to the</p> <p>11 transcript, on the bottom of page 31 --</p> <p>12 A. This is little page 31?</p> <p>13 Q. Yes.</p> <p>14 A. Okay.</p> <p>15 Q. Beginning around line 20 Mr. Lucas is</p> <p>16 speaking, and in line 23 --</p> <p>17 A. Okay. I see Questions 11 and 12.</p> <p>18 Q. Correct, he addresses Questions 11 and</p> <p>19 12. Do you see Mr. Lucas points to the results</p> <p>20 announcements, in particular notes 17 and 18?</p> <p>21 MR. HACKER: Objection.</p> <p>22 A. I see.</p> <p>23 Q. Do you know what that's referring to?</p> <p>24 MR. HACKER: Objection.</p> <p>25 A. Specifically, no. But if I looked at</p>	<p style="text-align: right;">Page 201</p> <p>1 McSpadden - Confidential</p> <p>2 information regarding Barclays' current exposures</p> <p>3 as of the time of the April 2008 call with regards</p> <p>4 to those various assets; correct?</p> <p>5 MR. HACKER: Objection.</p> <p>6 A. Without reading the entire 20-F, I</p> <p>7 don't know if there's a recent development section</p> <p>8 in it, and I don't recall if there's one. But I</p> <p>9 would anticipate that the 20-F, as I said, speaks</p> <p>10 of as of December 31, 2007.</p> <p>11 Q. Did Citi perform any procedures or</p> <p>12 analyses to investigate what Barclays' exposures</p> <p>13 were to these CDOs, CLOs, SIVs, ADSs, subprime</p> <p>14 mortgage assets as of April 2008 in connection</p> <p>15 with the Series 5 offering?</p> <p>16 MR. HACKER: Objection.</p> <p>17 A. We conducted a due diligence call, we</p> <p>18 participated in, and then we did a number of</p> <p>19 questions. I don't recall any specific thing</p> <p>20 asking at the levels of these assets in 2008 other</p> <p>21 than in April 2008 other than asking professionals</p> <p>22 at the company how were they doing, which they</p> <p>23 answered fairly fulsomely.</p> <p>24 (Mr. Musoff leaves proceedings.)</p> <p>25 Q. Is it your testimony that Barclays made</p>

<p style="text-align: right;">Page 202</p> <p>1 McSpadden - Confidential</p> <p>2 disclosures regarding its exposures to CDOs and</p> <p>3 CLOs and SIVs and other structured credit products</p> <p>4 as of April 2008 during this conference call?</p> <p>5 MR. HACKER: Objection.</p> <p>6 A. Without reading the whole transcript,</p> <p>7 they talked directionally about what was happening</p> <p>8 with asset marks. He specifically said they had</p> <p>9 asset marks that had not been performed yet. In</p> <p>10 the ordinary course of the timing of how</p> <p>11 financials were done, I would be surprised if</p> <p>12 those asset marks would have been completed by</p> <p>13 April 8th as well, just because of the cycle of</p> <p>14 when financials are available and how quickly you</p> <p>15 have them available.</p> <p>16 So I think Mr. Lucas basically</p> <p>17 commented and was responsive to the question that</p> <p>18 was asked about how the quarter was coming.</p> <p>19 Q. Was there any commentary during the</p> <p>20 April 3rd business due diligence call regarding</p> <p>21 the specific value of Barclays' exposures to these</p> <p>22 various structured credit products as of April</p> <p>23 2008?</p> <p>24 MR. HACKER: Objection.</p> <p>25 A. Again, I haven't read the entire</p>	<p style="text-align: right;">Page 204</p> <p>1 McSpadden - Confidential</p> <p>2 books of March tomorrow, that being April 4th,</p> <p>3 2008, did Citi undertake any further inquiry</p> <p>4 following this call to determine what Barclays'</p> <p>5 books showed after management was able to get a</p> <p>6 look at them?</p> <p>7 MR. HACKER: Objection.</p> <p>8 A. I note we had a prelaunch due diligence</p> <p>9 call after the go/no go call. We had a prepricing</p> <p>10 call, we had preclosing call. In the middle of</p> <p>11 that, we had a special call with Jonathan Britton.</p> <p>12 So following this call we had four calls in the</p> <p>13 space of seven days. This is the type of topic we</p> <p>14 would have addressed on those calls.</p> <p>15 Q. And during any of those calls did</p> <p>16 Barclays inform Citi of the amount of anticipated</p> <p>17 write-downs that it expected to take in regards to</p> <p>18 the first quarter of 2008?</p> <p>19 A. I don't recall if they did or didn't.</p> <p>20 Q. If I could direct you to Question 13 of</p> <p>21 Exhibit 21 again.</p> <p>22 A. Okay. 13?</p> <p>23 Q. Yes.</p> <p>24 A. Got it.</p> <p>25 Q. The question is, In the near term does</p>
<p style="text-align: right;">Page 203</p> <p>1 McSpadden - Confidential</p> <p>2 transcript, but I specifically mentioned he</p> <p>3 talked -- he says we still have quite a wide -- he</p> <p>4 says big offer -- that will be bid/offer, as</p> <p>5 opposed to big -- in terms of the some of the</p> <p>6 decisions we have to make around asset marks we</p> <p>7 close the books.</p> <p>8 So he basically highlighted to</p> <p>9 everyone, A, there's a big bid and offer as to</p> <p>10 what the assets are valued; and, B, he told you up</p> <p>11 above -- again, reading your transcript -- they</p> <p>12 had a run rate that he said was plus or minus a</p> <p>13 little under \$600 million a month and that he</p> <p>14 thought the month of March would be profitable.</p> <p>15 Profitable is a lot lower when I hear it than 580</p> <p>16 pounds a month.</p> <p>17 Q. If I could direct you back to page 22</p> <p>18 of the transcript. Do you recall Mr. Lucas was</p> <p>19 recorded as having said that they get an early</p> <p>20 look at the books from March tomorrow, that would</p> <p>21 be the day after the call?</p> <p>22 A. I do remember that. I don't remember</p> <p>23 him saying it, but I see it right here in writing.</p> <p>24 Q. In light of Mr. Lucas's comments that</p> <p>25 Barclays was going to get an early look at the</p>	<p style="text-align: right;">Page 205</p> <p>1 McSpadden - Confidential</p> <p>2 management anticipate the need to make any further</p> <p>3 write-downs for any of the other above products?</p> <p>4 Do you see that question?</p> <p>5 A. I do.</p> <p>6 Q. And then if we can turn back to the</p> <p>7 transcript, let's look at the response to Question</p> <p>8 13 beginning on page 33, line 22.</p> <p>9 A. 33, line 22?</p> <p>10 Q. I'm sorry, line 12.</p> <p>11 A. Line 12.</p> <p>12 Q. Do you see Mr. Lucas addresses Question</p> <p>13 13 beginning on line 12?</p> <p>14 MR. HACKER: Objection.</p> <p>15 A. In reading the paragraph from lines 12</p> <p>16 through 21 and then continuing on further down?</p> <p>17 Q. Focusing on line 22, Mr. Lucas states,</p> <p>18 The numbers I gave you for January and February</p> <p>19 were after the write-downs that we have taken.</p> <p>20 Do you see that statement?</p> <p>21 A. I have -- I do.</p> <p>22 Q. Did Citi make any inquiry of Barclays</p> <p>23 in light of Mr. Lucas's comments regarding write-</p> <p>24 downs in January and February having already been</p> <p>25 taken to determine what the magnitude of those</p>

<p style="text-align: right;">Page 206</p> <p>1 McSpadden - Confidential</p> <p>2 write-downs was?</p> <p>3 MR. HACKER: Objection.</p> <p>4 A. This answer is responsive to the</p> <p>5 question. Because March isn't over yet, when he's</p> <p>6 answering the question, he's basically saying</p> <p>7 here's what they were in January and February, and</p> <p>8 we're going to take more write-downs in March. So</p> <p>9 I view that as basically responsive to the</p> <p>10 question as asked.</p> <p>11 Q. With respect to his comment -- the</p> <p>12 numbers I gave you for January and February were</p> <p>13 after the write-downs that we had taken -- either</p> <p>14 during or following this call did Citi take any</p> <p>15 steps to inquire of Barclays what the amount of</p> <p>16 those write-downs were that were taken in January</p> <p>17 and February that Mr. Lucas is referring to?</p> <p>18 MR. PELLER: Objection.</p> <p>19 A. Specifically that question. But again</p> <p>20 I reiterate we had calls on Monday the 7th,</p> <p>21 Tuesday the 8th, prepricing Tuesday the 8th, and</p> <p>22 whatever the Friday the 11th is, and the one that</p> <p>23 occurred when we did the exercise of the green</p> <p>24 shoe. So a whole series of calls.</p> <p>25 As I've mentioned several times, credit</p>	<p style="text-align: right;">Page 208</p> <p>1 McSpadden - Confidential</p> <p>2 A. Not to my knowledge, but independent</p> <p>3 analysis implies access to information, by</p> <p>4 definition. This was internal information. The</p> <p>5 next opportunity for one to review information</p> <p>6 would have been when the first-quarter earnings</p> <p>7 were released, without cooperation from Barclays.</p> <p>8 Q. And Citi did not ask for any reports or</p> <p>9 schedules -- Citi did not -- strike that.</p> <p>10 Citi did not ask to review any reports</p> <p>11 or schedules that might have reflected this</p> <p>12 information; correct?</p> <p>13 A. Not to --</p> <p>14 MR. PELLER: Objection.</p> <p>15 MR. HACKER: Objection.</p> <p>16 A. Not to my knowledge.</p> <p>17 Q. If I could direct you back to Exhibit</p> <p>18 21, Question 16. It says, Please discuss the</p> <p>19 group's exposure to monolines, either direct or</p> <p>20 indirect.</p> <p>21 Do you see that question?</p> <p>22 A. I do.</p> <p>23 Q. Did management -- Barclays management</p> <p>24 respond to this question during the April 3rd,</p> <p>25 2008, call?</p>
<p style="text-align: right;">Page 207</p> <p>1 McSpadden - Confidential</p> <p>2 quality is a big issue. This would have been a</p> <p>3 big issue at the time too. This was a topic that</p> <p>4 was discussed, and everyone was focused on it.</p> <p>5 Q. And during any of those subsequent</p> <p>6 calls did Citi learn the magnitude of the write-</p> <p>7 downs that Barclays has already taken in January</p> <p>8 and February of 2008 that Mr. Lucas is referring</p> <p>9 to during this April 3rd call?</p> <p>10 MR. HACKER: Objection.</p> <p>11 A. I don't recall there being any future</p> <p>12 calls that we were on, any specific numbers, no.</p> <p>13 Q. Following this April 3rd, 2008, call,</p> <p>14 did Citi request to review any financial reports</p> <p>15 or schedules of Barclays that may reflect the</p> <p>16 amount of write-downs that Barclays had taken in</p> <p>17 January and February, 2008, as Mr. Lucas stated</p> <p>18 during the April 3rd call?</p> <p>19 A. Not to my knowledge.</p> <p>20 Q. Did Citi perform any independent</p> <p>21 analyses of its own to determine what the amount</p> <p>22 of the write-downs were that Barclays took in</p> <p>23 January and February 2008 that Mr. Lucas commented</p> <p>24 on during the April 3rd, 2008, call?</p> <p>25 MR. HACKER: Objection.</p>	<p style="text-align: right;">Page 209</p> <p>1 McSpadden - Confidential</p> <p>2 MR. HACKER: Objection.</p> <p>3 A. I don't recall the answer there, but</p> <p>4 are you going to take me to your transcript?</p> <p>5 Q. Sure. We can look at page 35 beginning</p> <p>6 on line 25 and continuing to 36. Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Is that discussion referring to</p> <p>9 Barclays' monoline -- exposure to monoline</p> <p>10 insurers?</p> <p>11 MR. HACKER: Objection.</p> <p>12 A. I haven't gone back and tried to figure</p> <p>13 out exactly what question, because it just says</p> <p>14 the next question is our exposure to monoline,</p> <p>15 direct or indirect. So will you tell me that I</p> <p>16 should assume that that's the question that's</p> <p>17 responsive, because it doesn't have a number by</p> <p>18 it?</p> <p>19 Q. Sure. If I could direct you to page</p> <p>20 37, line 10. It starts with the Question 17.</p> <p>21 Would you agree, in light of that, that the</p> <p>22 comments above that relate to Question 16?</p> <p>23 MR. HACKER: Objection.</p> <p>24 A. Would you agree?</p> <p>25 Q. I would.</p>

<p style="text-align: right;">Page 210</p> <p>1 McSpadden - Confidential</p> <p>2 A. Okay. I'll take your agreement as --</p> <p>3 okay.</p> <p>4 Q. I think we can track it here --</p> <p>5 A. I would say from 25 up to the word</p> <p>6 "Question 17," that whole series, if we assume,</p> <p>7 per your instructions, that 25 is starting with 16</p> <p>8 and it talks about monolines, direct or indirect,</p> <p>9 that seems to be a response to the Question 16.</p> <p>10 Q. Thank you.</p> <p>11 I can also direct you on page 33, line</p> <p>12 12, there's a reference to Question 13, and then</p> <p>13 the next reference --</p> <p>14 A. Okay, cool. Okay.</p> <p>15 Q. Do you see that?</p> <p>16 A. Yep.</p> <p>17 Q. And then the next reference to the next</p> <p>18 question is on page 35, line 13. So that would</p> <p>19 take us to --</p> <p>20 A. The next question.</p> <p>21 Q. -- Question 14.</p> <p>22 A. Yeah, but Question 14 is about leverage</p> <p>23 loans. You're talking about Question 16. But we</p> <p>24 can go back and forth. But I agree with your</p> <p>25 conclusion that starting on line 25 there on down</p>	<p style="text-align: right;">Page 212</p> <p>1 McSpadden - Confidential</p> <p>2 perform any other procedures to determine what</p> <p>3 Barclays' notional exposure to monoline insurers</p> <p>4 was at the time of the offering?</p> <p>5 A. I don't recall of any additional</p> <p>6 exposure other than the questions we addressed.</p> <p>7 Q. And in performing its due diligence</p> <p>8 with respect to the Series 5 offering, did Citi</p> <p>9 make any inquiries of management or perform any</p> <p>10 other procedures to determine who Barclays'</p> <p>11 monoline insurers were?</p> <p>12 MR. PELLER: Objection.</p> <p>13 A. I don't recall asking the breakdown of</p> <p>14 who the relative exposures for were. 1.3 billion</p> <p>15 is the aggregate number, which is the more germane</p> <p>16 number.</p> <p>17 Q. In performing its due diligence</p> <p>18 procedures with respect to the Series 5 offering,</p> <p>19 did Citi make any inquiries of management or</p> <p>20 perform any other procedures to determine what the</p> <p>21 credit ratings were of the monoline insurers that</p> <p>22 wrapped its assets?</p> <p>23 MR. HACKER: Objection.</p> <p>24 MR. PELLER: Objection.</p> <p>25 A. I'm not aware of any independent ask on</p>
<p style="text-align: right;">Page 211</p> <p>1 McSpadden - Confidential</p> <p>2 is talking about monolines, because the lead-in</p> <p>3 says our next question is about exposure to</p> <p>4 monoline, direct or indirect. Question 16 says</p> <p>5 exposure to monoline, either direct or indirect.</p> <p>6 Q. Thank you.</p> <p>7 The comments that Mr. Bruce made</p> <p>8 regarding Barclays' monoline exposure that we are</p> <p>9 looking at, he states, Value of exposure to</p> <p>10 monoline insurance under these contracts as of</p> <p>11 31st of December 2000 was 1.335 billion pounds.</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 MR. HACKER: Objection.</p> <p>15 Q. Do you know if that number represented</p> <p>16 Barclays' net exposure to monoline insurers?</p> <p>17 A. I do not know.</p> <p>18 Q. Do you know if it represented its</p> <p>19 notional exposure to monoline insurers --</p> <p>20 MR. HACKER: Objection.</p> <p>21 Q. -- as of December 31st, 2007?</p> <p>22 A. Do not know.</p> <p>23 Q. In performing its due diligence</p> <p>24 procedures with respect to the Series 5 offering,</p> <p>25 did Citi undertake any inquiries of management or</p>	<p style="text-align: right;">Page 213</p> <p>1 McSpadden - Confidential</p> <p>2 that.</p> <p>3 Q. In performing its due diligence</p> <p>4 procedures with respect to the Series 5 offering,</p> <p>5 did Citi make any inquiries of management or</p> <p>6 perform any additional procedures to determine</p> <p>7 what Barclays' exposure to monoline insurers was</p> <p>8 based on the credit ratings of the underlying</p> <p>9 asset classes?</p> <p>10 MR. HACKER: Objection.</p> <p>11 A. I don't recall of any.</p> <p>12 Q. If I could refer you to page 56 of the</p> <p>13 transcript we've been looking at.</p> <p>14 A. Okay.</p> <p>15 Q. Beginning around line 13, Matthew Pass</p> <p>16 of Merrill Lynch asks a question. Do you see</p> <p>17 that?</p> <p>18 A. I do.</p> <p>19 Q. And I'm summarizing here, but</p> <p>20 essentially he asks Barclays how frequently it</p> <p>21 monitors its asset valuations to determine whether</p> <p>22 it is obligated to report a write-down of the</p> <p>23 portfolio; is that correct?</p> <p>24 MR. HACKER: Objection.</p> <p>25 A. From reading Mr. Pass's question, that</p>

<p style="text-align: right;">Page 214</p> <p>1 McSpadden - Confidential</p> <p>2 appears to be what he's asking.</p> <p>3 Q. Thank you.</p> <p>4 And Mr. Lucas from Barclays responds --</p> <p>5 correct? -- beginning at line 7 on page 57?</p> <p>6 MR. HACKER: Objection.</p> <p>7 Q. Do you see that?</p> <p>8 A. I do see Mr. Lucas's name.</p> <p>9 Q. In response to Mr. Pass's question,</p> <p>10 Mr. Lucas states, I think the information we</p> <p>11 presented is clearly as of the year end and</p> <p>12 reflected year-end valuations. We monitor and</p> <p>13 update valuations on a daily, weekly, and monthly</p> <p>14 basis depending on the complexity of the valuation</p> <p>15 and the level of facility.</p> <p>16 I think in terms of announcements we</p> <p>17 would expect only to make an announcement outside</p> <p>18 of our -- and then there's a break -- usual cycle</p> <p>19 if there was something that we believed to be</p> <p>20 material and price sensitive. And those are the</p> <p>21 guidelines that we would use to form a view as to</p> <p>22 whether we should make an announcement or not.</p> <p>23 I referred you to the difficulty and</p> <p>24 the market positions as of today. I have no plans</p> <p>25 to make an announcement. I follow our usual</p>	<p style="text-align: right;">Page 216</p> <p>1 McSpadden - Confidential</p> <p>2 million pounds January and February or plus or</p> <p>3 minus that or approximately the same, and then</p> <p>4 we're going to be profitable in March. Profitable</p> <p>5 is not 580 million pounds. Profitable is more</p> <p>6 than 1 million pounds -- or 1 million or 1 pound.</p> <p>7 So he is doing everything he can before</p> <p>8 seeing final numbers to tell you there are more</p> <p>9 write-downs to come and anticipate them.</p> <p>10 And I would make the observation that</p> <p>11 this call was on April 2nd, and they put out</p> <p>12 quarterly numbers as of March 31. So his comment</p> <p>13 about making no comment, I'm not going to go out</p> <p>14 of the ordinary course about when we do it, he's</p> <p>15 going to have a quarterly earnings release coming</p> <p>16 in weeks. And he's already repeatedly said we've</p> <p>17 got to come quarter in mark to market, here's what</p> <p>18 we're going to do. He is absolutely alerting</p> <p>19 everybody that more write-downs are going to come.</p> <p>20 I'm not going to change my normal reporting</p> <p>21 pattern. By the way, everybody knows the next</p> <p>22 reporting pattern is three weeks away.</p> <p>23 So he's telling people that there's</p> <p>24 going to be issues in March and it's going to be</p> <p>25 more than it's been in the prior month, period --</p>
<p style="text-align: right;">Page 215</p> <p>1 McSpadden - Confidential</p> <p>2 updates for the market.</p> <p>3 Do you see that?</p> <p>4 A. I do, and I heard you too.</p> <p>5 Q. Thank you.</p> <p>6 Would you agree with me that as of</p> <p>7 April 3rd, 2008, the date of this call, Mr. Lucas</p> <p>8 knew that Barclays would be taking additional</p> <p>9 write-downs of its portfolio?</p> <p>10 MR. HACKER: Objection.</p> <p>11 MR. PELLER: Objection.</p> <p>12 A. If we go back earlier, he said that</p> <p>13 there were additional write-downs to come. He</p> <p>14 talked about in some of the earlier language. I</p> <p>15 can go find the page. But he specifically said</p> <p>16 there were more write-downs to come, and he said</p> <p>17 there was a wide bid/offer gap between mark to</p> <p>18 market.</p> <p>19 He telegraphed as much as he possibly</p> <p>20 could without having final numbers in front of him</p> <p>21 that, yes, more write-downs were going to come,</p> <p>22 and the implication was they were going to be</p> <p>23 bigger, because you could look back at the monthly</p> <p>24 numbers.</p> <p>25 He said, You have a run rate of 550</p>	<p style="text-align: right;">Page 217</p> <p>1 McSpadden - Confidential</p> <p>2 Q. He is telling the participants of this</p> <p>3 April 3rd, 2008, due diligence conference call</p> <p>4 that there's going to be additional write-downs</p> <p>5 coming; correct?</p> <p>6 MR. PELLER: Objection.</p> <p>7 A. Pardon me?</p> <p>8 Q. He is telling the participants of this</p> <p>9 April 3rd, 2008, conference call that additional</p> <p>10 write-downs are going to be coming; correct?</p> <p>11 MR. HACKER: Objection.</p> <p>12 Q. Is that your testimony?</p> <p>13 A. I don't know exactly what was in his</p> <p>14 mind when he said it. When I read what he said,</p> <p>15 he's telling people to expect more write-downs</p> <p>16 this quarter.</p> <p>17 Q. And he's telling specifically the</p> <p>18 people on this April 3rd, 2008, conference call --</p> <p>19 A. This is --</p> <p>20 Q. -- correct?</p> <p>21 A. This is addressed to the people</p> <p>22 listening to the call, that's correct.</p> <p>23 Q. Correct.</p> <p>24 Did Barclays ever say anything to</p> <p>25 investors in the Series 5 offering about the</p>

<p style="text-align: right;">Page 218</p> <p>1 McSpadden - Confidential</p> <p>2 anticipated write-downs that were coming?</p> <p>3 MR. PELLER: Objection.</p> <p>4 MR. HACKER: Objection.</p> <p>5 A. To my knowledge there was no investor</p> <p>6 conference call that was ever held in this</p> <p>7 process, so this was no direct communication with</p> <p>8 investors in this.</p> <p>9 Q. Did Barclays make any additional</p> <p>10 disclosure statement in the offering materials</p> <p>11 regarding the additional write-downs that it knew</p> <p>12 were coming?</p> <p>13 MR. PELLER: Objection.</p> <p>14 MR. HACKER: Objection.</p> <p>15 A. I'd have to reread it to see if that's</p> <p>16 mentioned, but I don't recall a recent development</p> <p>17 section in there, which would have been a logical</p> <p>18 place for that to have occurred if they thought</p> <p>19 that disclosure was necessary.</p> <p>20 Q. And just to clarify my question, did</p> <p>21 Barclays make any additional disclosure statements</p> <p>22 in the Series 5 offering materials regarding the</p> <p>23 additional write-downs that Mr. Lucas reported</p> <p>24 were coming?</p> <p>25 MR. PELLER: Objection.</p>	<p style="text-align: right;">Page 220</p> <p>1 McSpadden - Confidential</p> <p>2 deposition of Jack McSpadden.</p> <p>3 (Recess taken from 2:31 to 2:45.)</p> <p>4 THE VIDEOGRAPHER: Going back on the</p> <p>5 record 2:45 p.m. This is the beginning of</p> <p>6 Disk 5 in the deposition of Jack McSpadden.</p> <p>7 MS. NEWCOMER: I'd like to mark as</p> <p>8 Exhibit 25 --</p> <p>9 THE WITNESS: Hang on a second. Sorry.</p> <p>10 Strike that.</p> <p>11 (Exhibit 25, e-mail dated 4/2/08 from</p> <p>12 Ciobanu to McSpadden, et al., with attachment,</p> <p>13 Bates-stamped UW_Barclays_000052692 through</p> <p>14 53696, marked for identification.)</p> <p>15 Q. Mr. McSpadden, I've just handed you a</p> <p>16 document marked as Exhibit 25 --</p> <p>17 MR. HACKER: Can we get copies?</p> <p>18 MR. NEUMANN: They're in your hand.</p> <p>19 MS. NEWCOMER: (Handing.)</p> <p>20 Q. A document bearing Bates numbers</p> <p>21 UW_Barclays_000052692 through 53696.</p> <p>22 A. Got it.</p> <p>23 Q. This is a document reflecting an e-mail</p> <p>24 from Bogdan Ciobanu sent on April 2nd, 2008, to a</p> <p>25 number of people, including yourself, with the</p>
<p style="text-align: right;">Page 219</p> <p>1 McSpadden - Confidential</p> <p>2 MR. HACKER: Objection.</p> <p>3 A. I should answer that? To my knowledge,</p> <p>4 there's nothing in there. But Mr. Lucas did not</p> <p>5 report that they were coming. He said it was</p> <p>6 highly likely they were coming. There's a</p> <p>7 difference.</p> <p>8 Q. In the context of the Series 5</p> <p>9 offering, did Citi ever inquire of Barclays</p> <p>10 whether it could inspect any of the daily, weekly,</p> <p>11 or monthly reports that Mr. Lucas referenced</p> <p>12 during this April 3rd, 2008, call?</p> <p>13 MR. HACKER: Objection.</p> <p>14 A. To my knowledge, no.</p> <p>15 Q. Do you know if any of the other</p> <p>16 underwriters requested this information from</p> <p>17 Barclays?</p> <p>18 MR. HACKER: Objection.</p> <p>19 A. You'd have to ask them.</p> <p>20 Q. You can put this document to the side.</p> <p>21 MR. HACKER: Is now a good time for a</p> <p>22 break?</p> <p>23 MS. NEWCOMER: Sure.</p> <p>24 THE VIDEOGRAPHER: Off the record</p> <p>25 p.m. This is the end of Disk 4 in the</p>	<p style="text-align: right;">Page 221</p> <p>1 McSpadden - Confidential</p> <p>2 subject Project Rimu accounting due diligence</p> <p>3 Thursday, April 3rd, at 1 p.m. ET/1800 U.K.</p> <p>4 Do you recognize this e-mail?</p> <p>5 A. I do.</p> <p>6 Q. Mr. Ciobanu states, Attached please</p> <p>7 find the accounting due diligence questionnaire</p> <p>8 and dial-in information for Thursday's April 3rd,</p> <p>9 1 p.m. eastern standard/1800 U.K. accounting due</p> <p>10 diligence conference call.</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Did Mr. Ciobanu send this e-mail in the</p> <p>14 normal course of his work at Citi with respect to</p> <p>15 the Series 5 offering?</p> <p>16 A. Yes.</p> <p>17 Q. And is this referencing the accounting</p> <p>18 due diligence that we discussed earlier today?</p> <p>19 A. It is.</p> <p>20 Q. And is this the attachment to this</p> <p>21 e-mail reflecting the final set of questions for</p> <p>22 the accounting due diligence call that we've been</p> <p>23 discussing today?</p> <p>24 A. I believe it to be.</p> <p>25 Q. And that's the accounting due diligence</p>

<p style="text-align: right;">Page 222</p> <p>1 McSpadden - Confidential</p> <p>2 that was conducted with respect to the Series 5</p> <p>3 offering; correct?</p> <p>4 A. Correct.</p> <p>5 Q. To the best of your knowledge, did an</p> <p>6 accounting due diligence call take place with</p> <p>7 respect to the Series 5 offering on April 3rd,</p> <p>8 2008, at 1 p.m. eastern time?</p> <p>9 A. Yes.</p> <p>10 Q. Did you participate in that accounting</p> <p>11 due diligence call?</p> <p>12 A. I don't recall. In all likelihood I</p> <p>13 did.</p> <p>14 Q. Did anyone else from Citi participate</p> <p>15 in that accounting due diligence call?</p> <p>16 A. There would have been people from Citi</p> <p>17 on the call.</p> <p>18 Q. Do you recall whether any of the other</p> <p>19 underwriters participated in this accounting due</p> <p>20 diligence call on April 3rd, 2008?</p> <p>21 A. I don't recall. Typically at the</p> <p>22 beginning of the call you call off the people that</p> <p>23 are -- that have been invited on the call. I note</p> <p>24 by the e-mail list on the front that a broad cross</p> <p>25 section of people were involved. From a quick</p>	<p style="text-align: right;">Page 224</p> <p>1 McSpadden - Confidential</p> <p>2 diligence call?</p> <p>3 A. The presenter principally on here was</p> <p>4 PwC, the accounting firm. It's not impossible</p> <p>5 they could have referred one or two questions to</p> <p>6 management, who would have responded to those</p> <p>7 questions. I don't specifically recall. But the</p> <p>8 presenter was primarily the accounting firm.</p> <p>9 Q. To the best of your knowledge, are</p> <p>10 there any questions set forth in this due</p> <p>11 diligence list that PwC or Barclays management did</p> <p>12 not respond to during the accounting due diligence</p> <p>13 call?</p> <p>14 A. To the best of my recollection, no.</p> <p>15 Q. Did Citi undertake any additional due</p> <p>16 diligence procedures with respect to the Series 5</p> <p>17 offering as a follow-up to any comments or</p> <p>18 responses made by PwC or Barclays management</p> <p>19 during this call?</p> <p>20 A. Not in response to comments from PwC on</p> <p>21 this call. I mentioned earlier we had a prelaunch</p> <p>22 call with Mr. Britton, we had a prepricing call,</p> <p>23 we a closing call. So four additional calls with</p> <p>24 regard to due diligence in general following this.</p> <p>25 And the call with Mr. Britton was</p>
<p style="text-align: right;">Page 223</p> <p>1 McSpadden - Confidential</p> <p>2 read, it was all the joint managing firms as well</p> <p>3 as a number of people from Barclays.</p> <p>4 Q. The process that you just described a</p> <p>5 moment ago about calling off the names of people</p> <p>6 that were present on the call, were those names</p> <p>7 recorded or memorialized in any document?</p> <p>8 A. Not names of individuals; firms: Citi,</p> <p>9 Barclays, Merrill Lynch. They're recorded.</p> <p>10 Q. And where would those names be</p> <p>11 recorded?</p> <p>12 A. Don't typically record them. It's just</p> <p>13 a check at the front to be sure everybody's on.</p> <p>14 Q. Was this accounting due diligence call</p> <p>15 recorded?</p> <p>16 A. To my knowledge, no.</p> <p>17 Q. Did Citi help to prepare these final</p> <p>18 questions for the accounting due diligence call?</p> <p>19 A. We would have circulated draft,</p> <p>20 selected comments from various people; same</p> <p>21 process I discussed earlier, same thing.</p> <p>22 Q. Did Barclays management respond to</p> <p>23 these questions set forth in the attached</p> <p>24 document -- the document attached to this e-mail</p> <p>25 during the April 3rd, 2008, accounting due</p>	<p style="text-align: right;">Page 225</p> <p>1 McSpadden - Confidential</p> <p>2 specifically triggered by the information provided</p> <p>3 in the PwC draft comfort letter which we got.</p> <p>4 (Exhibit 26, e-mails, Bates-stamped</p> <p>5 UW_Barclays_000054512 through 54535, marked</p> <p>6 for identification.)</p> <p>7 Q. I've marked as Exhibit 26 a document</p> <p>8 bearing the Bates numbers UW_Barclays_000054512</p> <p>9 through 54535. And this document reflects an</p> <p>10 e-mail -- well, it's a chain of e-mails, the last</p> <p>11 of which is sent by Sarah Whittington on April</p> <p>12 3rd, 2008, to a number of individuals, including</p> <p>13 yourself, Mr. McSpadden, with the subject Project</p> <p>14 Rimu comfort letters.</p> <p>15 Do you see your name as a recipient</p> <p>16 here?</p> <p>17 A. I do see my name.</p> <p>18 Q. Do you recall receiving this e-mail?</p> <p>19 A. I don't recall receiving it, but it's</p> <p>20 addressed to me.</p> <p>21 Q. Did Ms. Whittington send this document</p> <p>22 in the normal course of her work at Linklaters</p> <p>23 with respect to the Series 5 offering?</p> <p>24 MR. HACKER: Objection.</p> <p>25 Q. If you know.</p>

<p style="text-align: right;">Page 226</p> <p>1 McSpadden - Confidential</p> <p>2 A. My answer would be yes.</p> <p>3 Q. Did you receive this document in the</p> <p>4 normal course of your work at Citi with respect to</p> <p>5 the Series 5 offering?</p> <p>6 A. Yes.</p> <p>7 Q. Ms. Whittington states in her e-mail,</p> <p>8 Dear all: Please find attached the revised U.S.</p> <p>9 comfort letter and draft global comfort letter</p> <p>10 circulated by PwC last night which we are</p> <p>11 reviewing. Please let us know if you have any</p> <p>12 comments.</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Was this comfort letter or a draft of</p> <p>16 this comfort letter discussed during the April</p> <p>17 3rd, 2008, accounting due diligence call for the</p> <p>18 Series 5 offering?</p> <p>19 A. To my knowledge, no. I don't recall it</p> <p>20 being done but...</p> <p>21 Q. Did Citi rely upon the comfort letter</p> <p>22 issued by PwC with respect to the Series 5</p> <p>23 offering in connection with its underwriting and</p> <p>24 other due diligence procedures?</p> <p>25 A. Yes, as I mentioned earlier, it's one</p>	<p style="text-align: right;">Page 228</p> <p>1 McSpadden - Confidential</p> <p>2 comfort on the line items in a separate paragraph.</p> <p>3 Please circulate and provide comment.</p> <p>4 Do you see that statement by Mr. Drew?</p> <p>5 A. I do.</p> <p>6 Q. Do you know what items Mr. Drew -- or</p> <p>7 what line items Mr. Drew is referring to here that</p> <p>8 management could not provide comfort on with</p> <p>9 respect to the Series 5 offering?</p> <p>10 A. I do not.</p> <p>11 Q. Is it fair to say that PwC was making</p> <p>12 certain inquiries of Barclays management and</p> <p>13 looking to Barclays management to provide comfort</p> <p>14 with respect to certain line items in the -- in</p> <p>15 Barclays financial statements that it would --</p> <p>16 that PwC would then provide comfort with respect</p> <p>17 to in connection with its comfort letter for the</p> <p>18 Series 5 offering?</p> <p>19 MR. HACKER: Objection.</p> <p>20 A. That's a fair assumption in my opinion.</p> <p>21 Q. Why was PwC looking to Barclays</p> <p>22 management to provide comfort with respect to</p> <p>23 certain line items in its financial disclosures in</p> <p>24 connection with PwC's issuance of a comfort letter</p> <p>25 with respect to the Series 5 offering?</p>
<p style="text-align: right;">Page 227</p> <p>1 McSpadden - Confidential</p> <p>2 of the broader array of documents we used. It's</p> <p>3 part of the fabric of the backup information we do</p> <p>4 in doing due diligence.</p> <p>5 Q. Did Citi have an opportunity to review</p> <p>6 or comment upon the comfort letter that was going</p> <p>7 to be issued by PwC with respect to the Series 5</p> <p>8 offering?</p> <p>9 A. Yes.</p> <p>10 Q. I'm going to direct your attention to</p> <p>11 the e-mail underneath the one sent by</p> <p>12 Ms. Whittington. It starts at the bottom of the</p> <p>13 first page of this document.</p> <p>14 A. Okay.</p> <p>15 Q. Okay? And it's sent from Drew Haigh at</p> <p>16 PwC; is that correct?</p> <p>17 A. I see that.</p> <p>18 Q. If I could just turn to the next page.</p> <p>19 A portion of Mr. Haigh's e-mail states, please</p> <p>20 note that I have communicated to Bar Cap earlier</p> <p>21 today that we wish to reduce the number of line</p> <p>22 items comforted in the stub period. This has been</p> <p>23 reflected in the latest draft of the above</p> <p>24 documents, thereby reducing the potential wording</p> <p>25 expressing the fact that management cannot provide</p>	<p style="text-align: right;">Page 229</p> <p>1 McSpadden - Confidential</p> <p>2 MR. HACKER: Objection.</p> <p>3 A. Please say the question again.</p> <p>4 Q. Why was PwC looking to Barclays</p> <p>5 management to provide comfort with respect to</p> <p>6 certain line items in its financial disclosures in</p> <p>7 connection with PwC's issuance of a comfort letter</p> <p>8 with respect to the Series 5 offering?</p> <p>9 MR. HACKER: Objection.</p> <p>10 A. In all likelihood it would have been an</p> <p>11 inquiry from Ms. Whittington from Linklaters</p> <p>12 saying here are the line items you want covered.</p> <p>13 There is always a back-and-forth about what can</p> <p>14 and cannot be covered in a comfort letter, because</p> <p>15 no one from the outside knows exactly what items</p> <p>16 are available within a company's records. So one</p> <p>17 asks, and the accountants say, Here's what we can</p> <p>18 do; here's what we can't do.</p> <p>19 Q. Do you know what specific line items</p> <p>20 Mr. Drew is referring to with respect to the stub</p> <p>21 period that he wishes not to provide comfort on in</p> <p>22 connection with PwC's issuance of the comfort</p> <p>23 letter for the Series 5 offering?</p> <p>24 A. No.</p> <p>25 MR. HACKER: Objection.</p>

<p style="text-align: right;">Page 230</p> <p>1 McSpadden - Confidential</p> <p>2 A. No.</p> <p>3 (Exhibit 27, e-mails, Bates-stamped</p> <p>4 LINKLATERS 0000003862 through 867, marked for</p> <p>5 identification.)</p> <p>6 Q. I've marked as Exhibit 27 a document</p> <p>7 bearing the Bates numbers LINKLATERS 0000003862</p> <p>8 through 867. And this is another e-mail chain,</p> <p>9 and the subject line is line item comfort for Rimu</p> <p>10 and U.S. shelf. Do you see that?</p> <p>11 A. I see that.</p> <p>12 Q. And I believe you are a recipient of at</p> <p>13 least several of these e-mails within the chain,</p> <p>14 including the very last one that includes them</p> <p>15 all. Do you see your name up at the top?</p> <p>16 A. I do.</p> <p>17 Q. If you can direct your attention back</p> <p>18 to page ending in 865.</p> <p>19 A. Okay.</p> <p>20 Q. There's an e-mail sent from Mr. Haigh</p> <p>21 again at PwC, and in his e-mail he states,</p> <p>22 Following our meeting a couple of weeks ago, it</p> <p>23 would be good to rationalize the line item comfort</p> <p>24 provided. And under Roman numeral i he says, All</p> <p>25 seven line items should remain for the month-end</p>	<p style="text-align: right;">Page 232</p> <p>1 McSpadden - Confidential</p> <p>2 items in Romanette two are less than the number of</p> <p>3 items in Romanette i.</p> <p>4 Q. If I could just draw your attention to</p> <p>5 one further statement in Exhibit 27, the e-mail we</p> <p>6 were just looking at from Mr. Haigh. In the next</p> <p>7 paragraph he states, As we have seen in previous</p> <p>8 issues, it is not possible to comfort NII mid</p> <p>9 month in the current environment and due to the</p> <p>10 lack of consolidation and our proximity to</p> <p>11 year-end January 1, 2008, management does not have</p> <p>12 information on total assets, total liability</p> <p>13 shareholders equity, although they do have a no</p> <p>14 material adverse change statement. This is not</p> <p>15 relevant due to the lack of definition over</p> <p>16 materiality for the comfort letters.</p> <p>17 Do you see that paragraph?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Do you have any understanding of what</p> <p>20 Mr. Drew meant here when he wrote, It is not</p> <p>21 possible to comfort NII mid month in the current</p> <p>22 environment?</p> <p>23 MR. HACKER: Objection.</p> <p>24 A. With the phrase "in the current</p> <p>25 environment," no.</p>
<p style="text-align: right;">Page 231</p> <p>1 McSpadden - Confidential</p> <p>2 period: share capital, sub liabilities, total</p> <p>3 liabilities, total assets, shareholders equity,</p> <p>4 NII, and PBT.</p> <p>5 Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. And under number ii he says, However, I</p> <p>8 propose that we have three line items to comfort</p> <p>9 in sub periods due to the lack of consolidation</p> <p>10 mid month, these being sub liabilities, share</p> <p>11 capital, and PBT, i.e., the numbers that</p> <p>12 management have greater comfort over.</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Do you believe that the line item</p> <p>16 numbers that we were looking at or that Mr. Haigh</p> <p>17 was referencing in the last e-mail that management</p> <p>18 could not provide comfort over were these line</p> <p>19 items that we just saw here in Exhibit 27?</p> <p>20 MR. HACKER: Objection.</p> <p>21 MR. PELLER: Objection.</p> <p>22 A. I purport that in Romanette i they talk</p> <p>23 about seven items and Romanette ii they talk about</p> <p>24 three items. He's talking about his ability to</p> <p>25 give mid-month comfort and that the number of</p>	<p style="text-align: right;">Page 233</p> <p>1 McSpadden - Confidential</p> <p>2 Q. And what does NII stand for?</p> <p>3 A. Net interest income.</p> <p>4 Q. You can put Exhibit 27 to the side.</p> <p>5 Let's turn back to Exhibit 26. If I</p> <p>6 could direct your attention to the page with the</p> <p>7 numbers ending in 54516. It's one of the</p> <p>8 attachments to the e-mail.</p> <p>9 A. Got it.</p> <p>10 Q. This attachment at the top right says,</p> <p>11 Linklaters comments 4/1/08; correct?</p> <p>12 A. It does.</p> <p>13 Q. Or 1/4/08.</p> <p>14 So -- and if you could turn to page</p> <p>15 5451.</p> <p>16 A. Got it.</p> <p>17 Q. There's a handwritten note up at the</p> <p>18 top right corner that states, This should be</p> <p>19 expressed as negative assurance, as per SAS 72,</p> <p>20 given that you are within 135 days of period end.</p> <p>21 Do you see that?</p> <p>22 A. On 54519.</p> <p>23 MR. HACKER: I don't see that.</p> <p>24 A. I don't see it either.</p> <p>25 MR. PELLER: I think it's on the</p>

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2 previous page.

3 Q. Okay. We'll get to that one next.

4 Looking at 54518 up in the top right

5 corner, do you see the handwritten note there?

6 A. I do.

7 Q. It reads, This should be expressed as

8 negative experience, as per SAS 72, given that you

9 are within 130 days of period end -- and then

10 there's a hyphen -- similarly negative assurance

11 for -- I'm having a tough time reading that.

12 A. This period was provided in the Series

13 2.

14 Q. -- comfort letter, which was also

15 delivered inside the 135-day window; is that

16 correct?

17 MR. HACKER: Objection.

18 Q. Is that --

19 A. That's what it reads.

20 Q. Thank you.

21 Do you know what the negative assurance

22 is that Linklaters is referring to here?

23 MR. HACKER: Objection.

24 A. Yes.

25 Q. And what are they referring to with

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2 respect to negative assurance?

3 A. Negative assurance as opposed where the

4 accountants say, Nothing has come to our

5 attention, as opposed to main management has

6 informed us, the comment on the left.

7 Q. I see. Thank you.

8 We can put that to the side.

9 (Exhibit 28, e-mails, Bates-stamped

10 LINKLATERS_0000000881 through 85, marked for

11 identification.)

12 Q. Exhibit 28 is being marked, and it is a

13 document bearing the Bates number LINKLATERS_

14 0000000881 through 891.

15 MR. HACKER: Michelle, I want to point

16 out this was a clawed-back document. There

17 was one with further redactions.

18 MS. NEWCOMER: I thought this was the

19 version with further redactions.

20 MR. HACKER: No. There's more

21 redactions in the first paragraph.

22 MS. NEWCOMER: Okay. Then we cannot

23 mark it.

24 MR. HACKER: Or we can get you a

25 copy -- do you want us to get you a copy of

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2 the one with the further redactions?

3 MS. NEWCOMER: Sure. Off the record.

4 THE VIDEOGRAPHER: Off the record

5 p.m.

6 (Recess taken from 3:09 to 3:25.)

7 THE VIDEOGRAPHER: Going back on the

8 record 3:25 p.m.

9 Q. Mr. McSpadden, you are looking at a

10 document that has been marked Exhibit 28 bearing

11 the Bates numbers LINKLATERS_0000000881 through

12 85. And if I could direct you to the first e-mail

13 on the bottom page, which ultimately gets

14 forwarded to you. You can see your name up at the

15 top. Do you see that?

16 A. I can see name up at the top.

17 Q. You can?

18 A. I can.

19 Q. And then looking at the e-mail from

20 Drew Haigh on April 8, 2008, that was forwarded to

21 you with the subject U.S. comfort letter

22 addressees, Mr. Haigh states, Please find the

23 draft U.S. comfort letter. Then please note we

24 are still outstanding information from group

25 finance are on stub period PBT.

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2 Does PBT refer to profit before tax?

3 A. That's what I would assume it refers

4 to.

5 Q. And then underneath that he states,

6 Please distribute to the relevant managers. I

7 suppose the key considerations are Roman numeral

8 I, given the PBT performance (and the fact we will

9 only give directional comfort on the stub period),

10 the managers may wish to set up a due diligence

11 call.

12 Do you know what he is referring to

13 here with respect to PBT performance?

14 MR. HACKER: Objection.

15 A. I don't know what he's referring to,

16 but I know what I interpret it.

17 Q. How do you interpret that statement?

18 A. Profit-before-tax performance for the

19 stub period? And then Mr. Haigh's statement that

20 PwC will only give directional comfort on the stub

21 period, do you know what that means?

22 MR. HACKER: Objection.

23 A. I take it as written.

24 Q. What does directional comfort mean in

25 the context of a comfort letter?

<p style="text-align: right;">Page 238</p> <p>1 McSpadden - Confidential</p> <p>2 A. The direction which profits are going,</p> <p>3 or direction which something is going, like up or</p> <p>4 down.</p> <p>5 Q. And do you know which direction</p> <p>6 Barclays' PBT was going such that the managers may</p> <p>7 wish to set up a due diligence call?</p> <p>8 MR. HACKER: Objection.</p> <p>9 Q. Excuse me, such that Mr. Haigh</p> <p>10 suggested that the managers may wish to set up a</p> <p>11 due diligence call?</p> <p>12 A. Yes.</p> <p>13 Q. In which direction was PBT performance</p> <p>14 going?</p> <p>15 A. Going down.</p> <p>16 Q. Looking at Roman numeral number 2,</p> <p>17 Mr. Haigh states, Barclays and the manager group</p> <p>18 need to consider whether the information provided</p> <p>19 in the private comfort letter needs to be</p> <p>20 disclosed in the prospectuses appending the</p> <p>21 registration statement. Therefore this may change</p> <p>22 the wording in the comfort letter.</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. What information provided in PwC's</p>	<p style="text-align: right;">Page 240</p> <p>1 McSpadden - Confidential</p> <p>2 firms and the law firms.</p> <p>3 Q. Someone from Citi participated in that</p> <p>4 call?</p> <p>5 A. Yes.</p> <p>6 Q. Did you participate on behalf of Citi</p> <p>7 on that call?</p> <p>8 A. I don't recall, but I know someone from</p> <p>9 Citi participated.</p> <p>10 Q. On this call with Jonathan Britton, I</p> <p>11 believe you referred to it earlier as additional</p> <p>12 due diligence that Citi and the other underwriters</p> <p>13 performed in connection with the Series 5</p> <p>14 offering; is that correct?</p> <p>15 A. Correct.</p> <p>16 Q. Were due diligence questions prepared</p> <p>17 in connection with this due diligence call with</p> <p>18 Mr. Britton?</p> <p>19 A. Yes.</p> <p>20 Q. Did Citi draft those questions?</p> <p>21 A. I don't recall if we did or didn't.</p> <p>22 Q. Did Citi play a role in determining</p> <p>23 what questions would be asked of Mr. Britton</p> <p>24 during this call?</p> <p>25 A. To be honest, I can't recall.</p>
<p style="text-align: right;">Page 239</p> <p>1 McSpadden - Confidential</p> <p>2 comfort letter with respect to the Series 5</p> <p>3 offering is Mr. Haigh suggesting may need to be</p> <p>4 disclosed in the prospectuses amending the</p> <p>5 registration statement?</p> <p>6 A. He's referring to the information that</p> <p>7 that he's going to be providing in the private</p> <p>8 comfort letter.</p> <p>9 Q. What specific information from the</p> <p>10 comfort letter is he referring to?</p> <p>11 MR. HACKER: Objection.</p> <p>12 A. I don't have a copy of the final</p> <p>13 comfort letter in front of me.</p> <p>14 Q. Regarding Mr. Haigh's comment that the</p> <p>15 managers may wish to set up a due diligence call,</p> <p>16 do you know if that call was ever set up?</p> <p>17 A. It was.</p> <p>18 Q. Is that the call with Jonathan Britton</p> <p>19 that you referred to earlier today?</p> <p>20 A. It is.</p> <p>21 Q. Do you know what day that call took</p> <p>22 place on?</p> <p>23 A. I believe it was April 8th.</p> <p>24 Q. Who participated in that call?</p> <p>25 A. Various people from the management</p>	<p style="text-align: right;">Page 241</p> <p>1 McSpadden - Confidential</p> <p>2 (Exhibit 29, e-mails dated 4/8/08 from</p> <p>3 Johnson to McSpadden with attachment,</p> <p>4 Bates-stamped UW_Barclays_000018832 to 33,</p> <p>5 marked for identification.)</p> <p>6 Q. And what about the fact that Barclays'</p> <p>7 PBT performance was going in a downward direction</p> <p>8 would lead the managers to set up another due</p> <p>9 diligence call with Barclays?</p> <p>10 MR. HACKER: Objection.</p> <p>11 A. The purpose of the comfort letter is to</p> <p>12 get as close as we can near-term information about</p> <p>13 what's going on. Others help provide that.</p> <p>14 That's the purpose of having a comfort letter, so</p> <p>15 you can get as recent development from an</p> <p>16 independent source as you can. That's why the</p> <p>17 comfort letter is part of the whole package of</p> <p>18 documents we had.</p> <p>19 Q. Mr. McSpadden, I have marked as Exhibit</p> <p>20 29 a document bearing the Bates number</p> <p>21 UW_Barclays_000018832 to 33, and this is an e-mail</p> <p>22 that was sent to you -- it's actually two</p> <p>23 e-mails -- the document reflects two e-mails sent</p> <p>24 to you by Richard Johnson on April 8th, 2008. Do</p> <p>25 you see that?</p>

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2 A. I do.

3 Q. Do you recall receiving these e-mails?

4 A. I don't recall receiving it, but I see

5 it's addressed to me.

6 Q. And the subject matter of these e-mails

7 is Rimu financial DD; is that correct?

8 A. Correct.

9 Q. Do you know what Rimu financial DD

10 Mr. Johnson is referring to here in the subject

11 line of his e-mail?

12 A. DD is an abbreviation for due

13 diligence.

14 Q. And is that referring to the financial

15 due diligence to be conducted with Jonathan

16 Britton?

17 A. Correct.

18 Q. And did you receive these e-mails in

19 the normal course of your work at Citi with

20 respect to the Series 5 offering?

21 A. I did.

22 Q. Mr. Johnson states in his first e-mail,

23 which is the second one on the page: Attached are

24 some questions that David has very kindly put

25 together to ask Jonathan Britton or Chris Lucas re

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2 what we know from the comfort letter and the stub

3 period. Let me know if you have any comments.

4 Do you see that?

5 A. I do.

6 Q. Okay. And then in his following --

7 follow-up e-mail Mr. Johnson states, Jack:

8 Further to this, we've spoken to Victoria, who has

9 confirmed they're happy to allow Links, S&C, Citi,

10 UBS, and Wachovia to hear what Jonathan Britton

11 has to say.

12 Therefore, we'll have the 3:30 p.m.

13 call with Chris Lucas on normal bring-down

14 questions (with everyone) and a 4 p.m. comfort

15 letter call with Jonathan Britton with those

16 attendees above.

17 Do you see that?

18 A. I do.

19 Q. With respect to the first paragraph,

20 does that paragraph purport to identify all of the

21 individuals who -- or management firms and counsel

22 who participated in this due diligence call with

23 Jonathan Britton?

24 A. It is a list of those that would be

25 invited to participate.

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2 Q. Okay. And in the second paragraph, the

3 3:30 call with Chris Lucas that Mr. Johnson is

4 referring to, do you know what call that is?

5 A. Remember I told you that we had a

6 prelaunch due diligence call, a prepricing due

7 diligence call, preclosing due diligence call.

8 This would have been the prepricing due diligence

9 call, because we priced the issue on April 8th.

10 Q. Okay. Thank you.

11 You may want to keep that out, but I'm

12 not necessarily going to do anymore.

13 (Exhibit 30, e-mail dated 4/8/08 from

14 Johnson to McSpadden, Bates-stamped

15 UW_Barclays_00008137 through 39, marked for

16 identification.)

17 Q. I'm marking as Exhibit 30 a document

18 bearing the Bates numbers UW_Barclays_00008137

19 through 39, and it reflects an e-mail sent from

20 Richard Johnson on April 8th, 2008, to yourself,

21 copying David Ludwick. Do you see that?

22 A. I do.

23 Q. If you can just compare it to the prior

24 document, it's the same e-mail that was the first

25 e-mail we looked at; is that correct?

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2 A. Yes, but if you look at the timeline,

3 it says 1358 when it's buried in the first e-mail,

4 but it says 12:58 p.m. when it's a stand-alone.

5 That's a little weird. But this was a time when

6 the London/U.S. time zone gap was four hours

7 versus the typical five.

8 So I assume the difference is because

9 of the way e-mail stamps times. I don't know if

10 you noticed that earlier, but it was only a

11 four-hour time gap. It's normally a five-hour

12 time gap.

13 Q. And with respect to Exhibit 30, Exhibit

14 30 has the attached document that Mr. Johnson

15 references in his April 8th, 2008, e-mail of

16 p.m.

17 Are these the due diligence questions

18 that were prepared in connection with the

19 additional due diligence call that was held with

20 Jonathan Britton on April 8th with respect to the

21 Series 5 offering?

22 A. Yes. Sorry, yes.

23 Q. I believe you testified earlier that

24 Citi would have been involved in some way in the

25 preparation of these questions; is that correct?

<p style="text-align: right;">Page 246</p> <p>1 McSpadden - Confidential</p> <p>2 A. The way the e-mail is drafted, it says,</p> <p>3 Here are some questions David has kindly put</p> <p>4 together to ask Jonathan Britton. So Richard is</p> <p>5 calling David Ludwick, the author.</p> <p>6 Q. Did Citi review or comment on these</p> <p>7 questions?</p> <p>8 A. I don't recall reviewing or commenting</p> <p>9 on the question.</p> <p>10 Q. And Mr. Ludwick is an attorney with</p> <p>11 Linklaters; correct?</p> <p>12 A. Correct.</p> <p>13 Q. And Linklaters served as counsel to the</p> <p>14 underwriters for the Series 5 offering; correct?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. If we can look at the attached</p> <p>17 memo of questions that were prepared for the</p> <p>18 additional due diligence call with Jonathan</p> <p>19 Britton on April 8th, 2008. The memo states, the</p> <p>20 following is a list of questions that we would</p> <p>21 like to discuss briefly with a representative of</p> <p>22 Barclays PLC.</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. Okay. I'd like to just walk through</p>	<p style="text-align: right;">Page 248</p> <p>1 McSpadden - Confidential</p> <p>2 discussed during the April 8th, 2008, call with</p> <p>3 Jonathan Britton?</p> <p>4 A. It was on the list. Barclays</p> <p>5 historically has been very thorough in responding</p> <p>6 to all questions. I have no reason to believe it</p> <p>7 was not responded to. But as to who could certify</p> <p>8 it was answered, I can't answer.</p> <p>9 Q. Is there anyone who could testify</p> <p>10 regarding the specific statements that Mr. Britton</p> <p>11 made in response to this question during the call?</p> <p>12 MR. PELLER: Objection.</p> <p>13 A. I can't testify to that.</p> <p>14 Q. Focusing on the second question, it</p> <p>15 says, post December 31, 2007, financial position</p> <p>16 and condition.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Then it says, When are March flash</p> <p>20 results or other accounts available?</p> <p>21 Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. What are the March flash results that</p> <p>24 are referred to here in this memo?</p> <p>25 A. I'm not familiar with Barclays</p>
<p style="text-align: right;">Page 247</p> <p>1 McSpadden - Confidential</p> <p>2 each of the questions.</p> <p>3 The first question asks, Are there any</p> <p>4 post balance sheet date events to disclose that</p> <p>5 have not already been disclosed in the Form 20-F?</p> <p>6 Are there any new acquisitions or disposals which</p> <p>7 are planned and which have not been disclosed to</p> <p>8 the market?</p> <p>9 Do you see that question?</p> <p>10 A. I do.</p> <p>11 Q. Did you discuss this question with</p> <p>12 Jonathan Britton during the April 8th due</p> <p>13 diligence call?</p> <p>14 A. It's on the question list. I don't</p> <p>15 recall the answers to those questions. But it's</p> <p>16 on the question list.</p> <p>17 Q. Who were the other attendees of the</p> <p>18 April 8th due diligence meeting with Jonathan</p> <p>19 Britton?</p> <p>20 A. I don't recall who all the other</p> <p>21 attendees were, but, as you pointed out in the</p> <p>22 earlier one, there was a list of people who would</p> <p>23 have been invited.</p> <p>24 Q. Who would know if this matter was</p> <p>25 discussed -- this question in particular was</p>	<p style="text-align: right;">Page 249</p> <p>1 McSpadden - Confidential</p> <p>2 accounting, but I'm assuming they're exactly what</p> <p>3 they say they are: flash results.</p> <p>4 Q. Flash results of what accounts at</p> <p>5 Barclays?</p> <p>6 MR. HACKER: Objection.</p> <p>7 A. Don't know. I'm not -- don't know.</p> <p>8 Q. Do you understand that to be referring</p> <p>9 to flash profit-and-loss results at Barclays?</p> <p>10 MR. HACKER: Objection.</p> <p>11 MR. PELLER: Objection.</p> <p>12 Q. For the month of March?</p> <p>13 A. I think that would be a reasonable</p> <p>14 answer but not the only possible answer.</p> <p>15 Q. What are the other possible answers?</p> <p>16 A. A whole host of potential.</p> <p>17 Q. Can you identify any of them for me?</p> <p>18 A. Asset valuations, lots of things.</p> <p>19 Q. Can you identify any particular flash</p> <p>20 reports that you understand this statement about</p> <p>21 March flash reports in the memo could be related</p> <p>22 to?</p> <p>23 MR. HACKER: Objection.</p> <p>24 A. The second bullet point talks about</p> <p>25 profit before tax.</p>

<p style="text-align: right;">Page 250</p> <p>1 McSpadden - Confidential</p> <p>2 Q. So the March flash results you believe</p> <p>3 could be referring to flash results of Barclays</p> <p>4 profit before tax for the month of March?</p> <p>5 MR. HACKER: Objection.</p> <p>6 A. That's one reading.</p> <p>7 Q. What are the other reasonable readings</p> <p>8 of that statement?</p> <p>9 MR. HACKER: Objection.</p> <p>10 A. I'm not going to guess.</p> <p>11 Q. Based on your experience with Barclays,</p> <p>12 what could be referred to here by the words "March</p> <p>13 flash results"?</p> <p>14 MR. HACKER: Objection.</p> <p>15 A. Based on my experience in the context</p> <p>16 of this paragraph right here, I would take it to</p> <p>17 be profit before tax.</p> <p>18 Q. And then the next bullet underneath --</p> <p>19 I'm sorry, before we leave that, did -- what was</p> <p>20 Jonathan Britton's response as to when the March</p> <p>21 flash results or other accounts would be</p> <p>22 available?</p> <p>23 A. I don't recall.</p> <p>24 Q. And do you know what other accounts the</p> <p>25 underwriters were inquiring about here?</p>	<p style="text-align: right;">Page 252</p> <p>1 McSpadden - Confidential</p> <p>2 Q. Is there anyone at Citi that would know</p> <p>3 the answer to this question?</p> <p>4 A. I don't know the answer to it.</p> <p>5 Possibly someone else has a better memory.</p> <p>6 Q. Is there any way to identify who the</p> <p>7 participants of this call were?</p> <p>8 MR. PELLER: Objection.</p> <p>9 MR. HACKER: Objection.</p> <p>10 A. I don't have any way of identifying who</p> <p>11 participated.</p> <p>12 Q. To the best of your knowledge, are</p> <p>13 there any documents that recorded the identities</p> <p>14 of the participants on this call?</p> <p>15 A. To the best of my knowledge, no.</p> <p>16 Q. To the best of your knowledge, were any</p> <p>17 minutes of this call recorded?</p> <p>18 A. To the best of my knowledge, no.</p> <p>19 Q. To the best of your knowledge, were any</p> <p>20 notes from this call taken?</p> <p>21 A. I don't recall taking any notes to it.</p> <p>22 I don't know what anybody else did.</p> <p>23 Q. Okay. And the question goes on to</p> <p>24 state, We are most interested in changes in profit</p> <p>25 before tax, which we understand is down 9.4</p>
<p style="text-align: right;">Page 251</p> <p>1 McSpadden - Confidential</p> <p>2 MR. PELLER: Objection.</p> <p>3 A. Mr. Ludwick was the drafter of this, so</p> <p>4 you would probably have to ask him.</p> <p>5 Q. Did you ever have or anyone -- strike</p> <p>6 that.</p> <p>7 Did you ever have any discussions with</p> <p>8 Mr. Ludwick as to what accounts and flash results</p> <p>9 at Citi would inquire about the availability of</p> <p>10 from Barclays with respect to the Series 5</p> <p>11 offering?</p> <p>12 A. I don't recall having any conversation</p> <p>13 with Mr. Ludwick about these questions.</p> <p>14 Q. And then the second bullet point under</p> <p>15 this states, Are you able to comment on changes in</p> <p>16 revenue, net interest income, or profit before tax</p> <p>17 for the period since January 1, 2008, compared to</p> <p>18 the corresponding period in the prior year as well</p> <p>19 as changes in liabilities and net assets since</p> <p>20 December 31, 2007?</p> <p>21 Do you see that question?</p> <p>22 A. Yes, I do.</p> <p>23 Q. Do you know what Mr. Britton's response</p> <p>24 to that question was during this call?</p> <p>25 A. I don't.</p>	<p style="text-align: right;">Page 253</p> <p>1 McSpadden - Confidential</p> <p>2 percent on a group basis and 9.9 percent on an</p> <p>3 issuer basis from January/February 2008 to the</p> <p>4 same period in 2007.</p> <p>5 Can you please clarify figures as to</p> <p>6 what the decline is; and if not, why not? PwC has</p> <p>7 said they are unable to specify a figure. The</p> <p>8 specific figures are not available. Can you</p> <p>9 provide an estimate of the magnitude of any such</p> <p>10 changes?</p> <p>11 In other words, if you compare the</p> <p>12 period from January 1, 2008, to April 4, 2008, to</p> <p>13 the same period in the prior year, what is the</p> <p>14 decline in profit before tax or what is your</p> <p>15 estimate of such decline?</p> <p>16 Do you see those questions?</p> <p>17 Did Mr. Britton provide any response to</p> <p>18 these questions during the April 8th, 2008, due</p> <p>19 diligence call?</p> <p>20 A. Again, I don't recall a specific</p> <p>21 answer, but Barclays was always very forthcoming</p> <p>22 in answering questions when asked.</p> <p>23 Q. Do you know what the trend in Barclays'</p> <p>24 profit before tax was looking like since the end</p> <p>25 of February?</p>

<p style="text-align: right;">Page 254</p> <p>1 McSpadden - Confidential</p> <p>2 A. Since the -- following the end of</p> <p>3 February?</p> <p>4 Q. Yes.</p> <p>5 A. Specific numbers, no. If you refer</p> <p>6 back to the answer that Chris Lucas gave earlier,</p> <p>7 he said March was going to be profitable whereas</p> <p>8 in January and February he cited a number.</p> <p>9 So the short answer is we would have</p> <p>10 expected March to be further down from where</p> <p>11 January and February were, based on the testimony,</p> <p>12 based on his -- Mr. Lucas's comments in the</p> <p>13 earlier document we referred to.</p> <p>14 Q. Do you recall any further comments from</p> <p>15 Mr. Britton during this call --</p> <p>16 A. I don't.</p> <p>17 Q. -- regarding that trend?</p> <p>18 A. I don't.</p> <p>19 Q. Looking at the third bullet, it states,</p> <p>20 What are the primary drivers of the decline in</p> <p>21 profit before tax, i.e., what parts of the</p> <p>22 business? Are there any adverse developments</p> <p>23 occurring that Barclays think will be regarded as</p> <p>24 a surprise by investors?</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 256</p> <p>1 McSpadden - Confidential</p> <p>2 Do you see that statement?</p> <p>3 A. I do.</p> <p>4 Q. Or question.</p> <p>5 Did Mr. Britton provide a response to</p> <p>6 this question during the April 8, 2008, due</p> <p>7 diligence call?</p> <p>8 A. I don't remember the specific</p> <p>9 statement, but Barclays was always good about</p> <p>10 answering questions when asked.</p> <p>11 Q. And based on Mr. Lucas's statements</p> <p>12 during the April 3rd, 2008, due diligence call</p> <p>13 that we looked at earlier, did you understand that</p> <p>14 there were changes in impairments and write-offs</p> <p>15 since year-end 2007 at Barclays?</p> <p>16 A. He specifically said there was a wide</p> <p>17 bid/offer. They were looking at what the values</p> <p>18 were. That was a topic of a lot of questions. So</p> <p>19 the possibility or probability of write-downs in</p> <p>20 assets was very real, and we had been alerted to</p> <p>21 that.</p> <p>22 Q. Did Barclays make any public</p> <p>23 announcements regarding additional write-downs and</p> <p>24 impairments that it incurred in the first quarter</p> <p>25 of 2008?</p>
<p style="text-align: right;">Page 255</p> <p>1 McSpadden - Confidential</p> <p>2 A. I do.</p> <p>3 Q. Did Mr. Britton identify the primary</p> <p>4 drivers of the decline in profit before tax that</p> <p>5 is the subject of this inquiry?</p> <p>6 A. I don't recall his answer to the</p> <p>7 question.</p> <p>8 Q. Do you have any independent</p> <p>9 understanding of what the primarily drivers of</p> <p>10 Barclays' decline in profit before tax was at the</p> <p>11 time of this due diligence conference call?</p> <p>12 A. As I mentioned earlier, financial</p> <p>13 institutions in general were under pressure from a</p> <p>14 financial point of view. There were a lots of</p> <p>15 trends industry-wide. Whether those were the same</p> <p>16 ones Barclays was experiencing, it's hard to say.</p> <p>17 But we did look at their financials for 2007, and</p> <p>18 we heard Mr. -- we saw Mr. Lucas's testimony about</p> <p>19 the first two months so...</p> <p>20 Q. Moving on to the next page, the next</p> <p>21 question asks, Have there been any changes or</p> <p>22 expected changes in impairments and write-offs</p> <p>23 since year-end 2000? Do you expect to make any</p> <p>24 public announcements regarding additional write-</p> <p>25 downs and impairments; and if so, when?</p>	<p style="text-align: right;">Page 257</p> <p>1 McSpadden - Confidential</p> <p>2 MR. HACKER: Objection.</p> <p>3 A. Barclays had a regularly scheduled</p> <p>4 earnings release that came in the first quarter</p> <p>5 sometime in April or May. I'm sure that was a</p> <p>6 topic of conversation in that earnings release.</p> <p>7 Q. Did Barclays make any additional</p> <p>8 announcements regarding impairments or write-downs</p> <p>9 that were taken in the first qualify of 2008 prior</p> <p>10 to the release of its first-quarter financial</p> <p>11 results?</p> <p>12 A. I don't recall any being made. I don't</p> <p>13 recall any being made.</p> <p>14 Q. Did Barclays make any public</p> <p>15 announcements regarding additional write-downs and</p> <p>16 impairments that it experienced in the first</p> <p>17 quarter of 2008 prior to or in connection with the</p> <p>18 Series 5 offering?</p> <p>19 MR. HACKER: Objection.</p> <p>20 MR. PELLER: Objection.</p> <p>21 A. I don't recall any.</p> <p>22 Q. Looking under the general bullet, the</p> <p>23 first question asks, Are there any new</p> <p>24 developments or announcements which may occur or</p> <p>25 be made over the next few months of which</p>

<p style="text-align: right;">Page 258</p> <p>1 McSpadden - Confidential</p> <p>2 investors should be aware; or any other facts,</p> <p>3 positive or negative, on which you wish to</p> <p>4 comment?</p> <p>5 Do you see that economy?</p> <p>6 A. I do.</p> <p>7 MR. HACKER: Objection.</p> <p>8 Q. Did Mr. Britton provide a response to</p> <p>9 that question during this April 8th, 2008, due</p> <p>10 diligence call?</p> <p>11 A. I don't recall his answer.</p> <p>12 Q. And is there anyone at Citi that would</p> <p>13 know what his answer was?</p> <p>14 A. I don't know the answer. I haven't</p> <p>15 asked my colleagues.</p> <p>16 Q. In preparation for your deposition</p> <p>17 today, did you have any discussions with any other</p> <p>18 members of the deal team for the Series 5 offering</p> <p>19 at Citi regarding the substance of the discussions</p> <p>20 that were had at any of the due diligence calls</p> <p>21 that were conducted with regards to this offering?</p> <p>22 A. No.</p> <p>23 Q. Did you, in preparation for this</p> <p>24 deposition, search for any notes or minutes that</p> <p>25 reflected the identities of any individuals who</p>	<p style="text-align: right;">Page 260</p> <p>1 McSpadden - Confidential</p> <p>2 A. I do.</p> <p>3 Q. Do you know what Jonathan Britton's</p> <p>4 response was to that question during this call?</p> <p>5 A. I don't recall the answer.</p> <p>6 Q. The next question asks, Can you confirm</p> <p>7 that the prospectus supplement does not contain a</p> <p>8 material misstatement or omit to state a material</p> <p>9 fact necessary to make the statements in the</p> <p>10 prospectus not misleading?</p> <p>11 Do you see that question?</p> <p>12 A. I do.</p> <p>13 Q. Do you recall what Jonathan Britton's</p> <p>14 response was to this question during the April</p> <p>15 8th, 2008, due diligence call?</p> <p>16 A. No.</p> <p>17 Q. Okay. Last one. Have there been any</p> <p>18 material adverse trends in any of the following</p> <p>19 since December 31st, 2007, which are not disclosed</p> <p>20 in the Form 20-F? And it identifies commitments</p> <p>21 to provide liquidity to specific inquiries, an</p> <p>22 impairment provision/charge ratios.</p> <p>23 Do you see that question?</p> <p>24 A. I do.</p> <p>25 Q. Do you know what Mr. Britton's response</p>
<p style="text-align: right;">Page 259</p> <p>1 McSpadden - Confidential</p> <p>2 may have been present at any of the due diligence</p> <p>3 calls conducted with respect to the Series 5</p> <p>4 offering?</p> <p>5 A. No.</p> <p>6 Q. Did you search for any notes or minutes</p> <p>7 that reflected any of the statements that were</p> <p>8 made during the -- any due diligence meeting</p> <p>9 conducted with respect to the Series 5 offering?</p> <p>10 A. No.</p> <p>11 Q. Is there any other individual at Citi</p> <p>12 that would have knowledge of these statements or</p> <p>13 responses provided by Barclays management during</p> <p>14 the due diligence calls that were conducted with</p> <p>15 respect to the Series 5 offering?</p> <p>16 A. I don't know who attended the calls, so</p> <p>17 I don't know the answer to that.</p> <p>18 Q. The next question on this list asks, Is</p> <p>19 there anything material which has not been</p> <p>20 disclosed which is likely to be of concern to</p> <p>21 investors, bearing in mind Barclays'</p> <p>22 responsibility to ensure the prospectus contains</p> <p>23 all information necessary to enable investors to</p> <p>24 make an informed assessment of Barclays?</p> <p>25 Do you see that question?</p>	<p style="text-align: right;">Page 261</p> <p>1 McSpadden - Confidential</p> <p>2 was to that question during the April 8th, 2008,</p> <p>3 due diligence call?</p> <p>4 A. I don't remember.</p> <p>5 Q. One last question. If we could go back</p> <p>6 to I think it's Exhibit 29.</p> <p>7 A. That's just the e-mail from Richard</p> <p>8 saying he had questions.</p> <p>9 MR. NEUMANN: It's the one that has the</p> <p>10 redacted on it.</p> <p>11 A. 28.</p> <p>12 Q. Back to Roman numeral number II from</p> <p>13 Mr. Haigh's April 8th, 2008, e-mail on the front</p> <p>14 page where he stated that Barclays and the</p> <p>15 management group need to consider whether the</p> <p>16 information provided in the private comfort letter</p> <p>17 needs to be disclosed in the prospectus appending</p> <p>18 the registration statement.</p> <p>19 Do you see that question?</p> <p>20 A. I do.</p> <p>21 Q. And did Barclays and the manager</p> <p>22 consider whether any of the information provided</p> <p>23 in PwC's comfort letter needed to be disclosed in</p> <p>24 the prospectuses in connection with the Series 5</p> <p>25 offering?</p>

<p style="text-align: right;">Page 262</p> <p>1 McSpadden - Confidential</p> <p>2 MR. HACKER: Objection.</p> <p>3 A. You have to ask Barclays and their</p> <p>4 lawyer whether they thought about that.</p> <p>5 Q. Well, Mr. Haigh's comment says Barclays</p> <p>6 and the manager group. Did Citi, as part of the</p> <p>7 manager group, consider whether any information</p> <p>8 provided by PwC -- provided in PwC's comfort</p> <p>9 letter needed to be disclosed in the prospectuses</p> <p>10 appending the registration statement?</p> <p>11 A. If we get a question like that from the</p> <p>12 auditor, of course we do. We had a due diligence</p> <p>13 call to address it, which is the purpose of the</p> <p>14 call.</p> <p>15 Q. And that due diligence call that you</p> <p>16 had to address Mr. Haigh's comment that Barclays</p> <p>17 and the manager group need to consider whether the</p> <p>18 information provided in the private comfort letter</p> <p>19 needs to be disclosed in the prospectuses amending</p> <p>20 the prospectus supplement, is that the call with</p> <p>21 Jonathan Britton that we've been discussing?</p> <p>22 A. Exhibit 30.</p> <p>23 MS. NEWCOMER: Can we mark as 31.</p> <p>24 (Exhibit 31, e-mail dated 4/9/08 from</p> <p>25 Whittington to McSpadden, et al., with</p>	<p style="text-align: right;">Page 264</p> <p>1 McSpadden - Confidential</p> <p>2 the comfort letter that Mr. Haigh was referring to</p> <p>3 in the April 8th e-mail that we looked at in</p> <p>4 Exhibit 28?</p> <p>5 A. There were two comfort letters</p> <p>6 delivered: one of April 8th and one of April</p> <p>7 11th. This is the first of the two.</p> <p>8 Q. And is this the one that Mr. Haigh is</p> <p>9 referring to in his April 8th, 2008, e-mail at</p> <p>10 Exhibit 28?</p> <p>11 MR. HACKER: Objection.</p> <p>12 A. I don't have all the attachments to</p> <p>13 Exhibit 30, but given the time frame involved,</p> <p>14 which was -- this was early in the morning on the</p> <p>15 8th -- this is -- this is in all likelihood the</p> <p>16 letter in question.</p> <p>17 Q. And referring back again to his comment</p> <p>18 about Barclays and the manager group needing to</p> <p>19 consider whether the information provided in the</p> <p>20 private comfort letter needed to be disclosed,</p> <p>21 what information is he referring to in the private</p> <p>22 comfort letter?</p> <p>23 MR. HACKER: Objection that might need</p> <p>24 to be disclosed.</p> <p>25 A. He didn't articulate exactly what</p>
<p style="text-align: right;">Page 263</p> <p>1 McSpadden - Confidential</p> <p>2 attachments, Bates-stamped</p> <p>3 UW_Barclays_000017071 through 17155, marked</p> <p>4 for identification.)</p> <p>5 Q. Mr. McSpadden, I've marked as Exhibit</p> <p>6 31 a document bearing the Bates number</p> <p>7 UW_Barclays_000017071 through 72 -- I'm sorry,</p> <p>8 through 7 -- 17155.</p> <p>9 And this is a document reflecting an</p> <p>10 e-mail sent by Sarah Whittington on April 9th,</p> <p>11 2008, to a number of individuals, including</p> <p>12 yourself. And the subject of her e-mail is</p> <p>13 Project Rimu executed U.S. comfort letter.</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. And I'll represent that we have not</p> <p>17 included all of the exhibits, to save some paper</p> <p>18 here, but we have attached some of them.</p> <p>19 Ms. Whittington states in her e-mail:</p> <p>20 Dear Managers: Please find attached for your</p> <p>21 records the executed U.S. comfort letter with</p> <p>22 relevant appendices.</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. This attached comfort letter, is that</p>	<p style="text-align: right;">Page 265</p> <p>1 McSpadden - Confidential</p> <p>2 information he's referring to but...</p> <p>3 Q. I believe you testified earlier when I</p> <p>4 asked this question that you needed to see the</p> <p>5 comfort letter?</p> <p>6 A. But it's in the stump period, the</p> <p>7 information that's post 12/31.</p> <p>8 Q. So looking at the comfort letter, would</p> <p>9 that be the information disclosed in paragraph 5</p> <p>10 of the comfort letter?</p> <p>11 MR. HACKER: Objection.</p> <p>12 A. There are two places in the letter</p> <p>13 where they talk about information that is post</p> <p>14 year end. I don't know what information he's</p> <p>15 referring to, but there are two places in this</p> <p>16 letter where there's information that's post year</p> <p>17 end: paragraph 5 and, in a quick read, paragraph</p> <p>18 8.</p> <p>19 Q. And is there also information</p> <p>20 concerning the period post year end in paragraphs</p> <p>21 6 and 9 as well?</p> <p>22 A. There appears to be information in 6,</p> <p>23 and 9 as well, correct.</p> <p>24 Q. With respect to the information in</p> <p>25 paragraphs 5, 6, 8, and 9, is there any particular</p>

<p style="text-align: right;">Page 266</p> <p>1 McSpadden - Confidential</p> <p>2 number or statement that Mr. Haigh is suggesting</p> <p>3 may need to be disclosed in the prospectuses</p> <p>4 amending the registration statement?</p> <p>5 MR. HACKER: Objection.</p> <p>6 A. You'll have to ask Mr. Haigh.</p> <p>7 Q. You received a copy of Mr. Haigh's</p> <p>8 original e-mail; correct?</p> <p>9 A. Which exhibit are you referring to?</p> <p>10 Q. 28. Mr. Haigh's April 8, 2008, e-mail</p> <p>11 was forwarded to you on April 8th at 6:42 a.m.;</p> <p>12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. What did you understand Mr. Haigh to be</p> <p>15 referring to when you received this e-mail from</p> <p>16 him?</p> <p>17 A. He was talking about the information</p> <p>18 that was posed herein that would be disclosed in</p> <p>19 his letter, and he was querying whether or not</p> <p>20 that should or should not be disclosed.</p> <p>21 Q. And looking at paragraphs 5, 6, 8, and</p> <p>22 9, that information post year end, is that</p> <p>23 referring to the statements in paragraph 5, for</p> <p>24 example, that share capital decreased by 0.48</p> <p>25 percent and total subordinated liabilities</p>	<p style="text-align: right;">Page 268</p> <p>1 McSpadden - Confidential</p> <p>2 information in paragraphs 6, 8, and 9 as well?</p> <p>3 MR. HACKER: Objection.</p> <p>4 A. You said paragraphs 6, which, and</p> <p>5 which?</p> <p>6 Q. 5, 6, 8, and 9.</p> <p>7 A. 5 we discussed. 6...</p> <p>8 (Pause.)</p> <p>9 A. 5, 6, 8, and 9, to the extent those</p> <p>10 numbers were post herein, those could be the</p> <p>11 numbers he was referring to because they were not</p> <p>12 yet public.</p> <p>13 Q. Did Citi ever discuss with Barclays</p> <p>14 whether any of the financial information set forth</p> <p>15 in paragraphs 5, 6, 8, or 9 of this comfort letter</p> <p>16 needed to be disclosed in the prospectuses</p> <p>17 appending the registration statement for the</p> <p>18 Series 5 offering?</p> <p>19 MR. HACKER: Objection.</p> <p>20 A. I don't recall the specific</p> <p>21 conversation. The purpose of the due diligence</p> <p>22 call was to diligence that.</p> <p>23 Q. Who would have made -- strike that.</p> <p>24 Do you know if this information was</p> <p>25 disclosed in the prospectuses appending --</p>
<p style="text-align: right;">Page 267</p> <p>1 McSpadden - Confidential</p> <p>2 increased by 15.94 percent and total liabilities</p> <p>3 increased by 29.74 percent when compared with</p> <p>4 balances as at December 31st, 2007? Is that one</p> <p>5 of the statements that Mr. Haigh -- or one of the</p> <p>6 pieces of information that Mr. Haigh is indicating</p> <p>7 Barclays and the manager group need to consider --</p> <p>8 MR. HACKER: Objection.</p> <p>9 Q. -- whether it should be disclosed in</p> <p>10 the prospectuses?</p> <p>11 A. I don't know what Mr. Haigh was</p> <p>12 thinking about information, but that is</p> <p>13 information that is post herein and therefore was</p> <p>14 not public.</p> <p>15 Q. And is the profit-before-tax</p> <p>16 information provided in paragraph 5 another piece</p> <p>17 of information that Mr. Haigh is suggesting maybe</p> <p>18 the managers and Barclays may need to consider</p> <p>19 whether it should be disclosed?</p> <p>20 MR. HACKER: Objection.</p> <p>21 A. Again I would point out that</p> <p>22 information was post herein and therefore was not</p> <p>23 public. Whether this is what he's referring to,</p> <p>24 check with him, ask him.</p> <p>25 Q. Is that true with respect to the</p>	<p style="text-align: right;">Page 269</p> <p>1 McSpadden - Confidential</p> <p>2 amending the registration statement for the Series</p> <p>3 5 offering?</p> <p>4 MR. PELLER: Objection.</p> <p>5 A. I do not know.</p> <p>6 Q. If we could turn to page 5 of this</p> <p>7 letter. Under paragraph 10 under -- the paragraph</p> <p>8 underneath the Roman numerals states, We have</p> <p>9 performed the following procedures which --</p> <p>10 A. Tell me where you are, please.</p> <p>11 Q. I'm sorry, I'm on paragraph 10, which</p> <p>12 is on page 17079. Do you see that?</p> <p>13 A. Okay.</p> <p>14 Q. And --</p> <p>15 A. Oh, I see it, yeah.</p> <p>16 Q. It's the paragraph right above where</p> <p>17 the letters start.</p> <p>18 A. Got it.</p> <p>19 Q. It says, We have performed the</p> <p>20 following procedures, which were applied as</p> <p>21 indicated, with respect to the letters explained</p> <p>22 below. We make no comment as to whether the SEC</p> <p>23 would view any non-GAAP financial information</p> <p>24 included or incorporated by reference in this</p> <p>25 document as being compliant with the requirements</p>

<p style="text-align: right;">Page 270</p> <p>1 McSpadden - Confidential</p> <p>2 of Regulation G or item 10 of Regulation SK.</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. And then there's, you know, a legend of</p> <p>6 letters: A, B, C, D, and E, and they correspond</p> <p>7 to certain paragraphs to the right; is that</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. And is this setting forth the tick mark</p> <p>11 legend for PwC's circle-up work in connection with</p> <p>12 this comfort letter?</p> <p>13 A. It is.</p> <p>14 Q. Let's look at letter E, please. It</p> <p>15 states, We compared the amount to the</p> <p>16 corresponding amount in schedules or reports</p> <p>17 prepared by the group and the issuer as</p> <p>18 appropriate from their records and found them to</p> <p>19 be in agreement. We compared the amounts on the</p> <p>20 schedules or reports corresponding to amounts</p> <p>21 appearing in the records and found such amounts to</p> <p>22 be in agreement and, 2, determined that the</p> <p>23 schedules or reports were mathematically correct.</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>	<p style="text-align: right;">Page 272</p> <p>1 McSpadden - Confidential</p> <p>2 schedules or reports prepared by Barclays or</p> <p>3 Barclays Bank did PwC consider in ticking off this</p> <p>4 circle-up in the context of this comfort letter</p> <p>5 for the Series 5 offering?</p> <p>6 MR. HACKER: Objection.</p> <p>7 MR. PELLER: Objection.</p> <p>8 A. I don't know what PwC looked at.</p> <p>9 Q. Would your answer be the same with</p> <p>10 respect to any of the numbers in the circle-up:</p> <p>11 You don't know what schedules PwC looked at?</p> <p>12 A. Specific schedules? No. The code up</p> <p>13 front describes the work they did and what they</p> <p>14 referred to. As to what schedule they</p> <p>15 specifically looked at, that would have been</p> <p>16 between them and Barclays.</p> <p>17 Q. Citi relied, I believe you testified on</p> <p>18 this comfort letter in the context of its work</p> <p>19 with respect to the Series 5 offering; correct?</p> <p>20 MR. HACKER: Objection.</p> <p>21 A. This is one of the many documents</p> <p>22 relied on, an important one.</p> <p>23 Q. Did Citi ever ask PwC what schedules --</p> <p>24 schedules or spreadsheets it was reviewing in</p> <p>25 connection with its circle-up work for the</p>
<p style="text-align: right;">Page 271</p> <p>1 McSpadden - Confidential</p> <p>2 Q. What schedules or reports prepared by</p> <p>3 the group or issuer did PwC consider in the</p> <p>4 context of issuing this comfort letter?</p> <p>5 MR. HACKER: Objection.</p> <p>6 A. I would note that the pages following</p> <p>7 this all have circles around various financial</p> <p>8 numbers and they all have -- many of them have an</p> <p>9 A through an E attached to them so...</p> <p>10 Q. Let's turn to one of them, then.</p> <p>11 A. Okay.</p> <p>12 Q. Let's look at page 53 of the 20-F.</p> <p>13 A. Okay.</p> <p>14 Q. You'll see on this page there's a</p> <p>15 circle, like you said, around a lot of numbers.</p> <p>16 And with respect to many of those numbers, the</p> <p>17 letter E is tied to it; is that correct?</p> <p>18 A. I see E in a number of circles -- near</p> <p>19 a number of circles, yes.</p> <p>20 Q. There's a tick mark E around -- around</p> <p>21 the chart setting forth Barclays' ABS CDO super</p> <p>22 senior exposure as of December 31st, 2007, and</p> <p>23 June 30th, 2007. Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. What number -- I'm sorry, what</p>	<p style="text-align: right;">Page 273</p> <p>1 McSpadden - Confidential</p> <p>2 purposes of issuing a comfort letter in connection</p> <p>3 with the Series 5 offering?</p> <p>4 A. No.</p> <p>5 Q. Did Citi ever ask Barclays to see any</p> <p>6 of these schedules or spreadsheets that were</p> <p>7 provided to PwC for purposes of their circle-up</p> <p>8 work?</p> <p>9 MR. HACKER: Objection.</p> <p>10 A. No.</p> <p>11 Q. Are you aware if --</p> <p>12 MS. NEWCOMER: I'm marking as Exhibit</p> <p>13 32.</p> <p>14 (Exhibit 32, e-mail with attachment,</p> <p>15 Bates-stamped UW_Barclays_000008204 through</p> <p>16 8385, marked for identification.)</p> <p>17 Q. It's a document bearing Bates numbers</p> <p>18 UW_Barclays_000008204 through 8385. And I'll draw</p> <p>19 your attention to the extracted text which is on</p> <p>20 the second page of the document that reflects the</p> <p>21 full recipient list of this e-mail. And your name</p> <p>22 is listed as one of those recipients.</p> <p>23 MR. HACKER: Can you just point out</p> <p>24 where?</p> <p>25 A. This is a document from 2006.</p>

<p style="text-align: right;">Page 274</p> <p>1 McSpadden - Confidential</p> <p>2 MR. HACKER: I found it.</p> <p>3 Q. That's correct. I have a quick --</p> <p>4 A. This is a document from 2006?</p> <p>5 Q. Yes.</p> <p>6 A. Okay.</p> <p>7 MR. HACKER: Right here (indicating).</p> <p>8 A. Yeah, found it.</p> <p>9 Q. This is an e-mail attaching the -- a</p> <p>10 comfort letter issued by PwC in the context of the</p> <p>11 project securities offering -- or Series 2</p> <p>12 offering; is that correct?</p> <p>13 MR. PELLER: Objection.</p> <p>14 Q. If I could just direct your attention</p> <p>15 to page -- the page with the Bates ending 8377,</p> <p>16 which is part of the comfort letter.</p> <p>17 A. Oh, 8377. Sorry.</p> <p>18 Q. Yeah, it's pretty close to the end.</p> <p>19 A. In the middle of the letter?</p> <p>20 Q. Yes.</p> <p>21 A. Okay.</p> <p>22 Q. Let me show you where PwC's comfort</p> <p>23 letter starts. But referring to paragraph 7 of</p> <p>24 this comfort letter, also tied to tick mark E,</p> <p>25 PwC, in the middle of the paragraph, identifies</p>	<p style="text-align: right;">Page 276</p> <p>1 McSpadden - Confidential</p> <p>2 A. I did.</p> <p>3 MR. PELLER: Objection.</p> <p>4 Q. That stated certain -- or specifically</p> <p>5 identified certain schedules that PwC considered</p> <p>6 in performing its circle-up work; correct?</p> <p>7 MR. PELLER: Objection.</p> <p>8 A. I did receive this comfort letter.</p> <p>9 Q. Do you have any reason to believe that</p> <p>10 PwC would not have considered similar reports in</p> <p>11 connection with issuing the comfort letter for the</p> <p>12 Series 5 offering?</p> <p>13 MR. PELLER: Objection.</p> <p>14 MR. HACKER: Objection.</p> <p>15 A. I don't know which ones PwC did or</p> <p>16 didn't consider. That's a matter between them and</p> <p>17 Barclays. I'm not their client.</p> <p>18 Q. I'm all done with that document.</p> <p>19 MS. NEWCOMER: Can we go off the</p> <p>20 record, please.</p> <p>21 THE VIDEOGRAPHER: Off the record</p> <p>22 p.m.</p> <p>23 (Recess taken from 4:24 to 4:32.)</p> <p>24 THE VIDEOGRAPHER: Going back on the</p> <p>25 record 4:32 p.m. This is the beginning of</p>
<p style="text-align: right;">Page 275</p> <p>1 McSpadden - Confidential</p> <p>2 certain schedules that it considered in performing</p> <p>3 this circle-up work.</p> <p>4 And it states, These schedules included</p> <p>5 the group credit risk report, average balance</p> <p>6 sheet reports and spreadsheets, the yields,</p> <p>7 spreads, and margins spreadsheets, commodity</p> <p>8 disclosure spreadsheets, relationship with banking</p> <p>9 groups, and capital adequacy reports and</p> <p>10 spreadsheets, and reports on remuneration and</p> <p>11 spreadsheets.</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 MR. PELLER: Objection. What topic of</p> <p>15 the notice is this referring to?</p> <p>16 MS. NEWCOMER: I'm just asking. It's</p> <p>17 related to the due diligence.</p> <p>18 MR. PELLER: But this is due diligence</p> <p>19 on a different deal.</p> <p>20 MS. NEWCOMER: And I just want to know</p> <p>21 if he was aware that PwC had considered these</p> <p>22 reports in the past and it...</p> <p>23 Q. Mr. McSpadden, you received a copy of</p> <p>24 this comfort letter related to the Series 2</p> <p>25 offering; correct?</p>	<p style="text-align: right;">Page 277</p> <p>1 McSpadden - Confidential</p> <p>2 Disk 6 in the deposition of Jack McSpadden.</p> <p>3 Q. Mr. McSpadden, I believe you testified</p> <p>4 earlier today about a green light call that was</p> <p>5 conducted with respect to the Series 5 offering.</p> <p>6 Do you recall that testimony?</p> <p>7 A. I do.</p> <p>8 Q. What was discussed during that green</p> <p>9 light call?</p> <p>10 A. The purpose of a green light call is</p> <p>11 with regard to whether to move ahead and launch a</p> <p>12 transaction or not. It's a market-related call</p> <p>13 that what's going on in the market today is an</p> <p>14 appropriate day to move ahead with the issue.</p> <p>15 Q. Were those matters discussed with</p> <p>16 respect to the green light call with respect to</p> <p>17 the Series 5 offering?</p> <p>18 A. The call was on the agenda. We</p> <p>19 launched the deal. We priced the deal. I don't</p> <p>20 recall if there was a specific call that morning,</p> <p>21 but very typical to have one in that morning.</p> <p>22 Q. Was any discussion had during the green</p> <p>23 light call about the price or coupon rate at which</p> <p>24 the security -- the Series 5 shares would be</p> <p>25 offered?</p>

<p style="text-align: right;">Page 278</p> <p>1 McSpadden - Confidential</p> <p>2 A. I don't recall any specific</p> <p>3 conversations, even whether I was able to</p> <p>4 participate in the call. But the purpose of the</p> <p>5 call is to review the market, and typical things</p> <p>6 are where would you anticipate the coupon would</p> <p>7 be.</p> <p>8 We had conversations for, like I said,</p> <p>9 over a month. So that would have been one of the</p> <p>10 paramount questions is what do you think the</p> <p>11 opportunity is for today if we launch the deal</p> <p>12 today.</p> <p>13 Q. Was the price and coupon rate for the</p> <p>14 Series 5 -- at which the Series 5 shares would be</p> <p>15 offered determined during the green light call?</p> <p>16 A. You asked two questions: one about</p> <p>17 price and one about dividend as opposed to coupon.</p> <p>18 That's the proper phraseology. The price for this</p> <p>19 type of instrument is \$25. The price is</p> <p>20 predetermined at \$25 par industry preferred stock.</p> <p>21 So price is never the question. What's the</p> <p>22 question is the level of the dividend.</p> <p>23 Q. Was the level of the dividend to be</p> <p>24 applied to the Series 5 shares issued in</p> <p>25 connection with the Series 5 offering determined</p>	<p style="text-align: right;">Page 280</p> <p>1 McSpadden - Confidential</p> <p>2 price, issue, and size, and --</p> <p>3 A. Dividend.</p> <p>4 Q. Dividend.</p> <p>5 A. Correct.</p> <p>6 Q. When was that call held?</p> <p>7 A. The afternoon of April 8th.</p> <p>8 Q. Did you participate in that call?</p> <p>9 A. I would hope I would have. I would</p> <p>10 like to have, depending what my work schedule was.</p> <p>11 But I'm not a -- I'm a listener on that call, a</p> <p>12 transactor. I don't set the price.</p> <p>13 Q. How was the dividend rate for the</p> <p>14 Series 5 shares offered in the Series 5 offering</p> <p>15 determined?</p> <p>16 A. Basically what you do is you asked the</p> <p>17 question earlier about book build, if you remember</p> <p>18 that. What you do is you announce the transaction</p> <p>19 on the morning of the 7th. You went out to a</p> <p>20 broad cross section of managers and underwriters.</p> <p>21 They go to all of their constituent</p> <p>22 clients and say, Do you have interest of this? We</p> <p>23 solicit interest from both retail, i.e.,</p> <p>24 individuals as well as for institutions. We built</p> <p>25 a range of people who were willing to purchase the</p>
<p style="text-align: right;">Page 279</p> <p>1 McSpadden - Confidential</p> <p>2 during the green light call?</p> <p>3 A. Determined the green light call?</p> <p>4 Q. Yes.</p> <p>5 A. No.</p> <p>6 Q. When was the price at which the Series</p> <p>7 5 shares would be offered determined?</p> <p>8 A. During the pricing call.</p> <p>9 Q. Is that the prepricing bring-down due</p> <p>10 diligence call?</p> <p>11 A. Due diligence and transaction are</p> <p>12 completely different. Due diligence is what you</p> <p>13 do as we've been discussing about understanding</p> <p>14 the client, making sure you've got appropriate</p> <p>15 disclosure.</p> <p>16 Pricing call has to do with</p> <p>17 establishing the price, in this case \$25 par,</p> <p>18 establishing the dividend for the coupon, how</p> <p>19 large an initiative it's going to be and what the</p> <p>20 dividend rate is going to be. That's completely</p> <p>21 independent from the due diligence -- from the due</p> <p>22 diligence process.</p> <p>23 Q. So there was a separate -- strike that.</p> <p>24 Was a separate pricing call held with</p> <p>25 respect to the Series 5 offering to determine</p>	<p style="text-align: right;">Page 281</p> <p>1 McSpadden - Confidential</p> <p>2 stock.</p> <p>3 Part of that process, we would try to</p> <p>4 ascertain what level they would be interested in</p> <p>5 purchasing that stock -- and by "level" I mean the</p> <p>6 price is predetermined at \$25 -- so what level of</p> <p>7 dividend would be attractive to them. We full</p> <p>8 fashion economics 1, 2, supply and demand. You</p> <p>9 develop a book of business, and then you price</p> <p>10 accordingly.</p> <p>11 Q. I believe earlier today we talked about</p> <p>12 a prepricing bring-down due diligence call.</p> <p>13 A. Correct.</p> <p>14 Q. Do you remember that?</p> <p>15 (Exhibit 33, e-mail dated 4/8/08 from</p> <p>16 Ciobanu to McSpadden with attachment.</p> <p>17 , Bates-stamped UW_Barclays_000006292</p> <p>18 through 94, marked for identification.)</p> <p>19 Q. I'm marking as Exhibit 33 a document</p> <p>20 bearing the Bates number UW_Barclays_000006292</p> <p>21 through 94. This is an e-mail sent from Bogdan</p> <p>22 Ciobanu on April 8th, 2008, with the subject</p> <p>23 Project Rimu prepricing due diligence call today</p> <p>24 at 10:30 a.m. New York/1530 U.K.</p> <p>25 Do you see that?</p>

<p style="text-align: right;">Page 282</p> <p>1 McSpadden - Confidential</p> <p>2 A. I do.</p> <p>3 Q. And you are a recipient -- yes, you are</p> <p>4 a recipient of this e-mail.</p> <p>5 Mr. Ciobanu states, Project Rimu Team:</p> <p>6 Please join us for a brief prepricing bring-down</p> <p>7 due diligence conference call today, April 8th, at</p> <p>8 10:30/ET 1530 U.K. Please find below the agenda</p> <p>9 and dial-in information.</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Did Mr. Ciobanu send this e-mail in the</p> <p>13 normal course of his work at Citi with respect to</p> <p>14 the Series 5 offering?</p> <p>15 A. He did.</p> <p>16 Q. Did a prepricing due diligence call in</p> <p>17 fact occur on April 8th, 2008, at 10:30 a.m. New</p> <p>18 York time?</p> <p>19 A. Yes, it did.</p> <p>20 Q. Did you participate in that call?</p> <p>21 A. If I had been available, I would have</p> <p>22 participated. I don't recall participating.</p> <p>23 Q. Do you know of anyone else from Citi</p> <p>24 who participated in that call?</p> <p>25 A. I can't name any specific people, but</p>	<p style="text-align: right;">Page 284</p> <p>1 McSpadden - Confidential</p> <p>2 Q. To the best of your knowledge, do these</p> <p>3 questions accurately -- strike that.</p> <p>4 To the best of your knowledge, does</p> <p>5 this list accurately reflect the questions that</p> <p>6 were asked of Barclays management during this</p> <p>7 prepricing bring-down due diligence call?</p> <p>8 A. It does.</p> <p>9 Q. And let's just run through them all</p> <p>10 quickly. Are there any material updates or issues</p> <p>11 that have arisen since our last due diligence call</p> <p>12 with regard to funding or liquidity, rating agency</p> <p>13 actions, anticipated changes in senior management</p> <p>14 or the board of directors, organizational charts,</p> <p>15 corporate governance, tax matters, changes in</p> <p>16 accounting policy or practice, internal controls,</p> <p>17 acquisitions and dispositions, share buybacks,</p> <p>18 litigation, antimoney laundering or the Foreign</p> <p>19 Corrupt Practices Act, or regulatory actions,</p> <p>20 investigations, or other government actions.</p> <p>21 Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. Do you recall the response that</p> <p>24 Barclays provided with respect to Question Number</p> <p>25 1 during this due diligence call?</p>
<p style="text-align: right;">Page 283</p> <p>1 McSpadden - Confidential</p> <p>2 there would have been a number of people who</p> <p>3 participated.</p> <p>4 Q. And then turning to the agenda that is</p> <p>5 attached to this e-mail, is this a list of the due</p> <p>6 diligence questions that were presented during</p> <p>7 this call?</p> <p>8 A. It is.</p> <p>9 Q. And did Citi help to prepare these</p> <p>10 questions?</p> <p>11 A. We did.</p> <p>12 Q. Did Citi prepare these questions in</p> <p>13 conjunction with any discussions with any other</p> <p>14 underwriters?</p> <p>15 A. We would have circulated this list to</p> <p>16 all the other underwriters, as well as company</p> <p>17 counsel, underwriter counsel, and the company,</p> <p>18 saying here is a proposed list of questions.</p> <p>19 Q. Were these questions provided to</p> <p>20 Barclays in advance of this call?</p> <p>21 A. They were.</p> <p>22 Q. And did Barclays ever provide a written</p> <p>23 response to any of these questions?</p> <p>24 A. This was a due diligence call. To my</p> <p>25 knowledge, no written response was prepared.</p>	<p style="text-align: right;">Page 285</p> <p>1 McSpadden - Confidential</p> <p>2 A. I don't recall the response, but</p> <p>3 Barclays is fulsome in responding to all questions</p> <p>4 asked.</p> <p>5 Q. Question Number 2 asks, Are there any</p> <p>6 material updates for year-to-date earnings, asset</p> <p>7 quality trends, or asset valuation, including any</p> <p>8 updates on exposures within Barclays Capital?</p> <p>9 Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. Do you recall what Barclays' response</p> <p>12 was to Question Number 2 during this due diligence</p> <p>13 call?</p> <p>14 A. I don't recall their specific response.</p> <p>15 Q. This call was on April 8th; correct?</p> <p>16 A. Yes, it was.</p> <p>17 Q. Do you know if Barclays had its March</p> <p>18 financial results by the time of this call?</p> <p>19 A. I do not know.</p> <p>20 Q. Did anyone on the call ask Barclays if</p> <p>21 they had their March financial results as of April</p> <p>22 8th now?</p> <p>23 MR. HACKER: Objection.</p> <p>24 A. I don't recall the questions on the</p> <p>25 call, but -- I don't recall anyone asking the</p>

<p style="text-align: right;">Page 286</p> <p>1 McSpadden - Confidential</p> <p>2 question on the call.</p> <p>3 Q. Question Number 3 asks, Have there been</p> <p>4 or are there contemplated an additional write-</p> <p>5 downs of assets in any division of Barclays Bank?</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Do you recall what Barclays' responses</p> <p>9 were to Question Number 3?</p> <p>10 A. I don't.</p> <p>11 Q. Question Number 4 asks, Have you</p> <p>12 reviewed the prospectus supplement along with the</p> <p>13 prospectus and are there any statements or</p> <p>14 omissions that you believe should be addressed?</p> <p>15 Are you comfortable that the prospectus</p> <p>16 supplement, the prospectus, and the incorporated</p> <p>17 documents fully present the risks now applicable</p> <p>18 to Barclays Bank?</p> <p>19 Do you see that question?</p> <p>20 A. I do.</p> <p>21 Q. Do you recall what Barclays' response</p> <p>22 was to that question during this call?</p> <p>23 A. I do not.</p> <p>24 Q. Number 5 asks, Are there any areas</p> <p>25 which we have not covered which may be material in</p>	<p style="text-align: right;">Page 288</p> <p>1 McSpadden - Confidential</p> <p>2 Q. What additional procedures did Citi</p> <p>3 undertake?</p> <p>4 A. We've already reviewed the information</p> <p>5 on the call with Mr. Britton, which if you</p> <p>6 remember specifically we said was going to come</p> <p>7 after this call.</p> <p>8 Q. Okay.</p> <p>9 A. And then we did preclosing bring-down</p> <p>10 due diligence, and then we did due diligence with</p> <p>11 regard to the exercise of the overallotment</p> <p>12 option.</p> <p>13 Q. I believe you just mentioned the</p> <p>14 presettlement due diligence that Citi conducted</p> <p>15 with respect to the Series 5 offering.</p> <p>16 (Exhibit 34, e-mails, Bates-stamped</p> <p>17 BARC-ADS-00824503 through 505, marked for</p> <p>18 identification.)</p> <p>19 Q. I've marked as Exhibit 34 a document</p> <p>20 bearing the Bates number BARC-ADS-00824503 through</p> <p>21 505. The second e-mail on the front page reflects</p> <p>22 an e-mail from Bogdan Ciobanu to a number of</p> <p>23 individuals, including yourself, with the subject</p> <p>24 Project Rimu presettlement due diligence call</p> <p>25 Friday, April 11th, at 7:30 a.m. New York/</p>
<p style="text-align: right;">Page 287</p> <p>1 McSpadden - Confidential</p> <p>2 the context of this issuance which you should</p> <p>3 bring to our attention?</p> <p>4 Do you see that question?</p> <p>5 A. I do.</p> <p>6 Q. Do you recall what Barclays' response</p> <p>7 was to that question?</p> <p>8 A. No, ma'am.</p> <p>9 Q. Is there anyone at Citi that would know</p> <p>10 what Barclays' response were to these questions --</p> <p>11 MR. HACKER: Objection.</p> <p>12 Q. -- during the April 8th, 2008,</p> <p>13 prepricing due diligence call?</p> <p>14 A. I don't know what anybody else would</p> <p>15 remember about this call.</p> <p>16 Q. And is there any document that would</p> <p>17 reflect who attended this April 8th, 2008,</p> <p>18 prepricing due diligence call on behalf of Citi?</p> <p>19 A. I do not have a list of the attendees.</p> <p>20 Q. And did Citi undertake any additional</p> <p>21 due diligence procedures following this April 8th,</p> <p>22 2008, prepricing bring-down due diligence call in</p> <p>23 connection with its underwriting of the Series 5</p> <p>24 offering?</p> <p>25 A. We did.</p>	<p style="text-align: right;">Page 289</p> <p>1 McSpadden - Confidential</p> <p>2 U.K.</p> <p>3 And then Mr. Ciobanu states in his</p> <p>4 e-mail: Please join us for a brief presettlement</p> <p>5 bring-down due diligence conference call Friday,</p> <p>6 April 11th, at 7:30 a.m. New York time/12:30 U.K.</p> <p>7 time. Please find below the agenda and dial-in</p> <p>8 information.</p> <p>9 Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. Did Mr. Ciobanu send this e-mail in the</p> <p>12 normal course of his work at Citi with respect to</p> <p>13 the Series 5 offering?</p> <p>14 A. He did.</p> <p>15 Q. And the agenda that is attached to this</p> <p>16 e-mail, are those the due diligence questions that</p> <p>17 were asked during the presettlement bring-down due</p> <p>18 diligence call for the Series 5 offering?</p> <p>19 A. They were.</p> <p>20 Q. And I'm not going to read them again,</p> <p>21 but if you want to compare back to the prior</p> <p>22 exhibit we were just looking at, would you agree</p> <p>23 the questions are all the same?</p> <p>24 (Pause.)</p> <p>25 A. I agree.</p>

<p style="text-align: right;">Page 290</p> <p>1 McSpadden - Confidential</p> <p>2 Q. Did you participate in this call?</p> <p>3 A. I don't recall participating in it, but</p> <p>4 I normally get in the office about 7:15 in the</p> <p>5 morning. So in all likelihood I would have</p> <p>6 participated.</p> <p>7 Q. Do you know anyone else from Citi who</p> <p>8 participated in this call?</p> <p>9 A. No, but I'm sure someone would have.</p> <p>10 Q. Do you know who from Barclays</p> <p>11 participated in this call?</p> <p>12 A. I see from the cover e-mail there's a</p> <p>13 gentleman named Jon Stone.</p> <p>14 Q. Do you know who Jon Stone is?</p> <p>15 A. I can't recall. And whoever the sender</p> <p>16 of the e-mail, Raj Cheema, appears to be a</p> <p>17 Barclays person.</p> <p>18 Q. We could look at Mr. Cheema's e-mail</p> <p>19 for a moment. He provides a summary -- back up.</p> <p>20 It's sent on April 11th, 2008, and he</p> <p>21 states, A quick summary of the call, which was</p> <p>22 very short, involved Jon Stone confirming the</p> <p>23 following answers to the points listed in the</p> <p>24 attached document.</p> <p>25 Do you see that e-mail?</p>	<p style="text-align: right;">Page 292</p> <p>1 McSpadden - Confidential</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. Did any prior version of the prospectus</p> <p>5 supplement, the prospectus, or the incorporated</p> <p>6 documents issued in connection with the Series 5</p> <p>7 offering not fully present the risks applicable to</p> <p>8 Barclays Bank?</p> <p>9 MR. HACKER: Objection.</p> <p>10 MR. PELLER: Objection.</p> <p>11 A. To my knowledge, no.</p> <p>12 Q. Do you recall any discussions regarding</p> <p>13 whether the prospectus, prospectus supplement, and</p> <p>14 any incorporated documents issued in connection</p> <p>15 with the Series 5 offering fully presented the</p> <p>16 risks applicable to Barclays Bank?</p> <p>17 A. As we noted earlier, there are</p> <p>18 extensive risks in both the 20-F and prospectus</p> <p>19 supplement and prospectus. Those were very broad</p> <p>20 section of risks. So I'm comfortable they were</p> <p>21 appropriate.</p> <p>22 Q. And in connection with Citi's</p> <p>23 underwriting and other due diligence procedures</p> <p>24 performed with respect to the Series 5 offering,</p> <p>25 do you recall any discussions regarding whether</p>
<p style="text-align: right;">Page 291</p> <p>1 McSpadden - Confidential</p> <p>2 A. I do.</p> <p>3 Q. And the attached document is the agenda</p> <p>4 that we've just been discussing for the</p> <p>5 preinvestment bring-down due diligence call;</p> <p>6 correct?</p> <p>7 A. Correct.</p> <p>8 Q. And according to Mr. Cheema, Barclays'</p> <p>9 response to Question Number 1 was no material</p> <p>10 update. Barclays' response to Question Number 2</p> <p>11 was -- which is the question? Which is there are</p> <p>12 none. Barclays' response to Question Number 3 is</p> <p>13 no. Barclays' response to Question Number 4 says,</p> <p>14 no misstatements; and yes, Barclays now applicable</p> <p>15 to the risks.</p> <p>16 Do you have any understanding what that</p> <p>17 means?</p> <p>18 MR. HACKER: Objection.</p> <p>19 MR. PELLER: Objection.</p> <p>20 A. No.</p> <p>21 Q. Looking again at Question Number 4, the</p> <p>22 second question asks, Are you comfortable that the</p> <p>23 prospectus supplement, the prospectus, and the</p> <p>24 incorporated documents fully present the risks now</p> <p>25 applicable to Barclays Bank?</p>	<p style="text-align: right;">Page 293</p> <p>1 McSpadden - Confidential</p> <p>2 the risks applicable to Barclays Bank were fully</p> <p>3 presented in the offering documents for the Series</p> <p>4 5 offering?</p> <p>5 A. As I mentioned earlier, the whole</p> <p>6 purpose of due diligence is to be sure there is</p> <p>7 appropriate description to the issuer, that all of</p> <p>8 the issues are fully vetted, there's no material</p> <p>9 misstatement or omission of something that's</p> <p>10 material in order to make the information</p> <p>11 complete.</p> <p>12 So that's the whole purpose of the due</p> <p>13 diligence exercise is to address that question.</p> <p>14 Q. Do you recall any specific discussions</p> <p>15 about specific risk information applicable to</p> <p>16 Barclays Bank that was not fully presented in the</p> <p>17 context of the offering documents for the Series 5</p> <p>18 offering?</p> <p>19 MR. PELLER: Objection.</p> <p>20 A. I believe all the risks of Barclays</p> <p>21 were properly presented, so the whole purpose of</p> <p>22 the exercise is to be sure that they are all</p> <p>23 properly in. That's the whole purpose.</p> <p>24 Q. And then just for Question Number 5,</p> <p>25 Mr. Cheema states that Jon Stone's response to</p>

<p style="text-align: right;">Page 294</p> <p>1 McSpadden - Confidential</p> <p>2 that question during the call was none.</p> <p>3 Do you have any reason to believe</p> <p>4 that's inaccurate?</p> <p>5 MR. HACKER: Objection.</p> <p>6 A. This is Mr. Cheema's summary, so I</p> <p>7 refer to Mr. Cheema.</p> <p>8 MS. NEWCOMER: I am marking as Exhibit</p> <p>9 35 a document bearing the Bates number</p> <p>10 UW_Barclays_000016948 through 17040.</p> <p>11 (Exhibit 35, e-mail dated 4/11/08 from</p> <p>12 Whittington to McSpadden, et al.,</p> <p>13 Bates-stamped UW_Barclays_000016948 through</p> <p>14 17040, marked for identification.)</p> <p>15 Q. Mr. McSpadden, this is an e-mail sent</p> <p>16 on -- this document reflects an e-mail sent on</p> <p>17 April 11th, 2008, by Sarah Whittington to a number</p> <p>18 of individuals, including yourself, with the</p> <p>19 subject Project Rimu executed bring-down comfort</p> <p>20 letters. And she states, Dear Managers: Please</p> <p>21 find attached the executed U.S. and non-U.S.</p> <p>22 bring-down letters from PwC.</p> <p>23 Do you recall receiving this document?</p> <p>24 A. I don't recall receiving it, but I note</p> <p>25 that I am an addressee.</p>	<p style="text-align: right;">Page 296</p> <p>1 McSpadden - Confidential</p> <p>2 it does.</p> <p>3 Q. What is the additional time period that</p> <p>4 the bring-down comfort letter addresses?</p> <p>5 A. If you look at paragraph 6, you'll see</p> <p>6 the stub period in the middle of it talks about at</p> <p>7 April 8. If you look at the prior comfort letter,</p> <p>8 the prior comfort letter, that is April 3.</p> <p>9 The purpose is for the accountants to</p> <p>10 bring down procedures close to the event in</p> <p>11 question.</p> <p>12 Q. Did Citi rely on this bring-down</p> <p>13 comfort letter issued by PwC in performing its due</p> <p>14 diligence and other underwriting obligations in</p> <p>15 connection with the Series 5 offering?</p> <p>16 MR. HACKER: Objection.</p> <p>17 A. The comfort letters are part of the</p> <p>18 package of information, the whole long list of</p> <p>19 documents is part of the panoply that are reviewed</p> <p>20 and used and relied on.</p> <p>21 Q. Focusing on paragraphs 6 and 9 of the</p> <p>22 bring-down comfort letter, did Citi ever discuss</p> <p>23 with Barclays whether the financial information</p> <p>24 disclosed in paragraphs 6 or 9 should be disclosed</p> <p>25 to investors in connection with the Series 5</p>
<p style="text-align: right;">Page 295</p> <p>1 McSpadden - Confidential</p> <p>2 Q. What is the purpose of a bring-down</p> <p>3 comfort letter?</p> <p>4 A. As I mentioned earlier, there are two</p> <p>5 points in time when liability attaches: one when</p> <p>6 you price a transaction, one when you close a</p> <p>7 transaction. When you price a transaction, an</p> <p>8 investor is committing to purchase the security.</p> <p>9 When you close the transaction, the investor</p> <p>10 actually gives you the money.</p> <p>11 The 10(b)(5) disclosure letters we get</p> <p>12 we ask that the company -- and all the 10(b)(5)</p> <p>13 letters speak as of the pricing of closing in</p> <p>14 order for everyone to be comfortable that you have</p> <p>15 done as much due diligence as you can around the</p> <p>16 issue. We ask the accountants to give us a</p> <p>17 comfort letter at pricing and closing.</p> <p>18 Q. And does the bring-down comfort letter</p> <p>19 address a different time period than the initial</p> <p>20 comfort letter? Let me withdraw that question.</p> <p>21 Did the bring-down comfort letter for</p> <p>22 the Series 5 offering address a different time</p> <p>23 period than the comfort letter that was originally</p> <p>24 issued for the Series 5 offering?</p> <p>25 A. Can you give me a moment, please? Yes,</p>	<p style="text-align: right;">Page 297</p> <p>1 McSpadden - Confidential</p> <p>2 offering?</p> <p>3 A. I don't recall any conversations.</p> <p>4 Q. Did Citi ever discuss with PwC whether</p> <p>5 the financial information in paragraphs 6 or 9</p> <p>6 should be disclosed to investors in connection</p> <p>7 with the Series 5 offering?</p> <p>8 A. No.</p> <p>9 Q. If you could look at paragraph 10, does</p> <p>10 that reflect the circle-up work that was performed</p> <p>11 with respect to this bring-down comfort letter</p> <p>12 that was issued in connection with the Series 5</p> <p>13 offering?</p> <p>14 A. It does.</p> <p>15 Q. If I could draw your attention to tick</p> <p>16 mark E again. Do you see the last two paragraphs</p> <p>17 associated with that tick mark? The first one</p> <p>18 states, We make no comment as to the</p> <p>19 appropriateness of the groups or the issuers as</p> <p>20 appropriate, computation of, or determination of</p> <p>21 what constitutes capital requirements, capital</p> <p>22 ratios, weighted risk assets, off balance sheet</p> <p>23 arrangements, directors, remunerations, share</p> <p>24 capital, assets under management, and other</p> <p>25 information?</p>

<p style="text-align: right;">Page 298</p> <p>1 McSpadden - Confidential</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. What does that mean, that PwC is making</p> <p>5 no comment as to the appropriateness of these</p> <p>6 financial metrics?</p> <p>7 MR. HACKER: Objection.</p> <p>8 A. First, that's PwC's comment.</p> <p>9 Q. Yes. But what do they mean by that?</p> <p>10 MR. HACKER: Objection.</p> <p>11 A. Take it as read.</p> <p>12 Q. Does that mean that they haven't</p> <p>13 performed any procedures with respect to those</p> <p>14 financial line items?</p> <p>15 A. These items here are not accounting</p> <p>16 matters. They're not accounting numbers.</p> <p>17 MR. PELLER: Objection.</p> <p>18 Q. Does that mean that PwC did not assess</p> <p>19 or evaluate those numbers in any way?</p> <p>20 MR. PELLER: Objection, asked and</p> <p>21 answered.</p> <p>22 Q. You can answer.</p> <p>23 THE WITNESS: How do I respond to that?</p> <p>24 Q. You can answer.</p> <p>25 A. Okay. Phrase it -- say the question</p>	<p style="text-align: right;">Page 300</p> <p>1 McSpadden - Confidential</p> <p>2 A. The only difference is going to be</p> <p>3 there's only one additional capitalization page</p> <p>4 that's covered, because all the other items are</p> <p>5 frozen in time.</p> <p>6 Q. Thank you.</p> <p>7 (Exhibit 36, e-mails, Bates-stamped</p> <p>8 BARC-ADS -0803900 through 3919, marked for</p> <p>9 identification.)</p> <p>10 Q. Ivor marked as Exhibit 36 a document</p> <p>11 bearing the Bates numbers BARC-ADS -0803900</p> <p>12 through 3919. And I'd like to just focus your</p> <p>13 attention on the e-mail at the top, which was sent</p> <p>14 by David Ludwick on April 22nd, 2008.</p> <p>15 Mr. McSpadden, Mr. Ludwick in his</p> <p>16 e-mail states -- and the subject of his e-mail is</p> <p>17 circle-up amendment on 20-F. And then he states,</p> <p>18 The attached summarizes the types of numbers that</p> <p>19 PwC previously agreed to give comfort on in Rimu,</p> <p>20 which they are now declining to give. I've also</p> <p>21 attached their markup if you have access to PDFs.</p> <p>22 It's the items in red that they are</p> <p>23 declining to give. They are now saying that due</p> <p>24 to the applicable U.S. standards as to what may be</p> <p>25 comforted, which they argue is more restrictive</p>
<p style="text-align: right;">Page 299</p> <p>1 McSpadden - Confidential</p> <p>2 again.</p> <p>3 Q. Does that mean that PwC did not assess</p> <p>4 or evaluate those numbers in any way?</p> <p>5 MR. HACKER: Objection.</p> <p>6 A. I don't know what PwC did or didn't do</p> <p>7 with those numbers. I see the paragraph as it's</p> <p>8 written.</p> <p>9 Q. With respect to the procedures that PwC</p> <p>10 performed as set forth in paragraph 10 of this</p> <p>11 comfort letter, do you know if those procedures</p> <p>12 were any different than the procedures PwC</p> <p>13 performed with respect to the circle-up work for</p> <p>14 the original comfort letter?</p> <p>15 MR. HACKER: Objection.</p> <p>16 A. I would note that the circle-up</p> <p>17 attachment in this letter, which is Exhibit 35,</p> <p>18 has relation to 20-F. It's the same document.</p> <p>19 The document would not have changed the time,</p> <p>20 because that's a document that's dated December</p> <p>21 31st. I would note that they have in this letter</p> <p>22 markup of page S-26 and S-29, whereas the letter</p> <p>23 on April 8th only has S-26. And I could go</p> <p>24 through every single page, if you'd like me to.</p> <p>25 Q. We don't need to do that.</p>	<p style="text-align: right;">Page 301</p> <p>1 McSpadden - Confidential</p> <p>2 than in the U.K., they are unable to do so. In</p> <p>3 effect they are saying that it was a mistake to</p> <p>4 circle them in Rimu. Page references are to the</p> <p>5 20-F.</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Did Citi ever become aware of any</p> <p>9 issues or concerns raised with respect to the</p> <p>10 circle-up that PwC conducted with respect to the</p> <p>11 Series 5 offering?</p> <p>12 MR. HACKER: Objection.</p> <p>13 A. I note I'm not an addressee on this</p> <p>14 e-mail. I don't recall being aware of this.</p> <p>15 Q. Did Mr. Ludwick ever make you or anyone</p> <p>16 else at Citi aware of any issues or comments that</p> <p>17 were raised with respect to the circle-up work</p> <p>18 that PwC performed in the context of the Series 5</p> <p>19 offering?</p> <p>20 A. I don't recall.</p> <p>21 Q. Did you ever hear that PwC believed it</p> <p>22 was a mistake to circle up the financial statement</p> <p>23 items in connection with their issuance of the</p> <p>24 comfort letters in the Series 5 offering?</p> <p>25 MR. HACKER: Objection.</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 overalloc 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>

<div>Page 314</div> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div> <div>McSpadden - Confidential</div> <div>THE VIDEOGRAPHER: Off the record</div> <div>p.m.</div> <div>(Recess taken from 5:23 to 5:27.)</div> <div>THE VIDEOGRAPHER: Going back on the</div> <div>record 5:27 p.m.</div> <div>MS. NEWCOMER: I have no further</div> <div>questions. Thank you, Mr. McSpadden.</div> <div>MR. HACKER: I have no questions.</div> <div>MR. PELLER: No questions.</div> <div>MS. NEWCOMER: Off the record.</div> <div>THE VIDEOGRAPHER: Going off the record</div> <div>5:28 p.m. This is the end of Disk 6 and</div> <div>concludes the deposition of Jack McSpadden.</div> <div>(Time noted: 5:28 p.m.)</div> <div></div> <div>JACK D. 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COLLINS, RPR</div>	<div>Page 317</div> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div> <div>Exhibit 16, e-mail dated 3/11/08 from 75</div> <div>Ciobanu to McSpadden, et al.,</div> <div>Bates-stamped UW_Barclays_000006275 to</div> <div>6291</div> <div>Exhibit 17, e-mail dated 3/19/08 from 123</div> <div>Ciobanu to McSpadden, et al.,</div> <div>Bates-stamped UW_BARCLAYS_00001272 to</div> <div>25</div> <div>Exhibit 18, e-mail dated 2/4/08 from 134</div> <div>Hong with attachment, Bates-stamped</div> <div>BARC-ADS-00648213 through 8222</div> <div>Exhibit 19, e-mail dated 3/31/08 from 148</div> <div>Clemente to McSpadden, et al., with</div> <div>attachments Bates-stamped</div> <div>UW_Barclays_0000001244 through 1437</div> <div>Exhibit 20, e-mail dated 3/20/08 from 160</div> <div>Ciobanu to McSpadden, et al., with</div> <div>attachments Bates-stamped</div> <div>UW_Barclays_000018881 through 8888</div> <div>Exhibit 21, e-mail dated 4/1/08 from 163</div> <div>Ciobanu to McSpadden, et al., with</div> <div>attachment, Bates-stamped</div> <div>UW_Barclays_000012708 through 12713</div> <div>Exhibit 22, e-mails dated 4/3 between 176</div>	
<div>Page 315</div> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div> <div>C E R T I F I C A T E</div> <div>STATE OF NEW YORK)</div> <div>: ss.</div> <div>COUNTY OF NEW YORK)</div> <div>I, LAURIE A. COLLINS, a Registered</div> <div>Professional Reporter and Notary Public</div> <div>within and for the State of New York, do</div> <div>hereby certify:</div> <div>That JACK D. MCSPADDEN, the witness</div> <div>whose deposition is hereinbefore set forth,</div> <div>was duly sworn by me and that such</div> <div>deposition is a true record of the</div> <div>testimony given by the witness.</div> <div>I further certify that I am not</div> <div>related to any of the parties to this</div> <div>action by blood or marriage and that I am</div> <div>in no way interested in the outcome of this</div> <div>matter.</div> <div>IN WITNESS WHEREOF, I have hereunto</div> <div>set my hand this 25th day of August 2015.</div> <div></div> <div>Laurie A. Collins</div> <div>LAURIE A. COLLINS, RPR</div>	<div>Page 317</div> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div> <div>Exhibit 16, e-mail dated 3/11/08 from 75</div> <div>Ciobanu to McSpadden, et al.,</div> <div>Bates-stamped UW_Barclays_000006275 to</div> <div>6291</div> <div>Exhibit 17, e-mail dated 3/19/08 from 123</div> <div>Ciobanu to McSpadden, et al.,</div> <div>Bates-stamped UW_BARCLAYS_00001272 to</div> <div>25</div> <div>Exhibit 18, e-mail dated 2/4/08 from 134</div> <div>Hong with attachment, Bates-stamped</div> <div>BARC-ADS-00648213 through 8222</div> <div>Exhibit 19, e-mail dated 3/31/08 from 148</div> <div>Clemente to McSpadden, et al., with</div> <div>attachments Bates-stamped</div> <div>UW_Barclays_0000001244 through 1437</div> <div>Exhibit 20, e-mail dated 3/20/08 from 160</div> <div>Ciobanu to McSpadden, et al., with</div> <div>attachments Bates-stamped</div> <div>UW_Barclays_000018881 through 8888</div> <div>Exhibit 21, e-mail dated 4/1/08 from 163</div> <div>Ciobanu to McSpadden, et al., with</div> <div>attachment, Bates-stamped</div> <div>UW_Barclays_000012708 through 12713</div> <div>Exhibit 22, e-mails dated 4/3 between 176</div>		

<p style="text-align: right;">Page 318</p> <p>1 2 McSpadden and Merrill Lynch with 3 attachment, Bates-stamped 4 UW_Barclays_000019123 through 19143 5 Exhibit 23, transcript of call dated 180 6 4/3/08 7 Exhibit 24, e-mail dated 4/7/08, 192 8 Bates-stamped BARC-ADS-00089495 to 496 9 Exhibit 25, e-mail dated 4/2/08 from 220 10 Ciobanu to McSpadden, et al., with 11 attachment, Bates-stamped 12 UW_Barclays_000052692 through 53696 13 Exhibit 26, e-mails, Bates-stamped 225 14 UW_Barclays_000054512 through 54535 15 Exhibit 27, e-mails, Bates-stamped 230 16 LINKLATERS 0000003862 through 867 17 Exhibit 28, e-mails, Bates-stamped 235 18 LINKLATERS_0000000881 through 85 19 Exhibit 29, e-mails dated 4/8/08 from 241 20 Johnson to McSpadden with attachment, 21 Bates-stamped UW_Barclays_000018832 to 22 33 23 Exhibit 30, e-mail dated 4/8/08 from 244 24 Johnson to McSpadden, Bates-stamped 25 UW_Barclays_00008137 through 39</p>	<p style="text-align: right;">Page 320</p> <p>1 In Re Barclays Bank PLC Securities Litigation v. 2 Jack McSpadden 3 INSTRUCTIONS TO THE WITNESS 4 Please read your deposition over 5 carefully and make any necessary corrections. 6 You should state the reason in the 7 appropriate space on the errata sheet for any 8 corrections that are made. 9 After doing so, please sign the errata 10 sheet and date it. 11 You are signing same subject to the 12 changes you have noted on the errata sheet, 13 which will be attached to your deposition. 14 It is imperative that you return the 15 original errata sheet to the deposing 16 attorney within thirty (30) days of receipt 17 of the deposition transcript by you. If you 18 fail to do so, the deposition transcript may 19 be deemed to be accurate and may be used in 20 court. 21 22 23 24 25 2120589</p>
<p style="text-align: right;">Page 319</p> <p>1 2 Exhibit 31, e-mail dated 4/9/08 from 262 3 Whittington to McSpadden, et al., with 4 attachments, Bates-stamped 5 UW_Barclays_000017071 through 17155 6 Exhibit 32, e-mail with attachment, 273 7 Bates-stamped UW_Barclays_000008204 8 through 8385 9 Exhibit 33, e-mail dated 4/8/08 from 281 10 Ciobanu to McSpadden with attachment. 11 , Bates-stamped UW_Barclays_000006292 12 through 94 13 Exhibit 34, e-mails, Bates-stamped 288 14 BARC-ADS-00824503 through 505 15 Exhibit 35, e-mail dated 4/11/08 from 294 16 Whittington to McSpadden, et al., 17 Bates-stamped UW_Barclays_000016948 18 through 17040 19 Exhibit 36, e-mails, Bates-stamped 300 20 BARC-ADS -0803900 through 3919 21 Exhibit 37, e-mail dated 4/21/08 from 309 22 Ciobanu to McSpadden, et al., 23 Bates-stamped UW_Barclays_000017041 24 through 43 25</p>	<p style="text-align: right;">Page 321</p> <p>1 In Re Barclays Bank PLC Securities Litigation v. 2 Jack McSpadden 3 E R R A T A 4 ----- 5 PAGE LINE CHANGE 6 ----- 7 Reason: _____ 8 ----- 9 Reason: _____ 10 ----- 11 Reason: _____ 12 ----- 13 Reason: _____ 14 ----- 15 Reason: _____ 16 ----- 17 Reason: _____ 18 ----- 19 Reason: _____ 20 ----- 21 Reason: _____ 22 ----- 23 Reason: _____ 24 ----- 25 2120589</p>

1 In Re Barclays Bank PLC Securities Litigation v.

2 Jack McSpadden

3 ACKNOWLEDGMENT OF DEPONENT

4 I, _____, do

5 hereby certify that I have read the foregoing

6 pages and that the same is a correct

7 transcription of the answers given by

8 me to the questions therein propounded,

9 except for the corrections or changes in form

10 or substance, if any, noted in the attached

11 Errata Sheet.

12

13 _____

14 DATE

SIGNATURE

15

16 Subscribed and sworn to before me this

17 _____ day of _____, 20__.

18

19 My commission expires: _____

20

21 _____

22 Notary Public

23

24

25 2120589

EXHIBIT 6
[Filed Under Seal]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Master File No.:
1:09-cv-01989-PAC

IN RE BARCLAYS BANK PLC:
SECURITIES LITIGATION

This Document Relates to:

ALL ACTIONS.

Deposition of Mr. Keith Harding
London, England
Wednesday, October 28, 2015

** CONFIDENTIAL UNDER PROTECTIVE ORDER **

Court Reporter:
Rhiannon Mason-Edwards (Veritext Legal Solutions)
Accredited Realtime Reporter

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

Page 2	Page 4
<p>1</p> <p>2 -----</p> <p>3 Master File No.:</p> <p>4 1:09-cv-01989-PAC</p> <p>5</p> <p>6</p> <p>7 IN RE BARCLAYS BANK PLC:</p> <p>8 SECURITIES LITIGATION</p> <p>9 -----</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 Videotaped deposition of Keith Harding, Volume I,</p> <p>16 taken by Plaintiffs, at the offices of Sullivan & Cromwell</p> <p>17 LLP, 1 New Fetter Lane, London, EC4A 1AN, beginning at</p> <p>18 9:34 a.m. and ending at 3:19 p.m., on Wednesday, October 28,</p> <p>19 2015, before Rhiannon Mason-Edwards, Accredited Realtime</p> <p>20 Reporter.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 INDEX</p> <p>3 MR. KEITH HARDING (sworn)8</p> <p>4</p> <p>5 Examination by Mr. Niehaus8</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 Exhibit 363 Email from David Ludwick to70</p> <p>9 Drew Haigh, David Mayland and</p> <p>10 Vassos Vrachimis dated March</p> <p>11 20, 2008 re "Project Rimu -</p> <p>12 Circle Up", with attachment.</p> <p>13 Bates stamp:</p> <p>14 UW_Barclays_000006380-462</p> <p>15 Exhibit 364 Email chain; top email from75</p> <p>16 Sophie Shi to Keith Harding</p> <p>17 and Victoria Hardy dated March</p> <p>18 28, 2008 re "Project Rimu",</p> <p>19 with attachment. Bates stamp:</p> <p>20 BARC-ADS-00812693-699</p> <p>21</p> <p>22 Exhibit 365 Email chain; top email from88</p> <p>23 Nick Hill to Keith Harding</p> <p>24 dated March 28, 2008 re</p> <p>25 "Confidential - Project Rimu",</p> <p>with attachment. Bates stamp:</p> <p>BARC-ADS-00814273</p> <p>Exhibit 366 Email from Drew Haigh to94</p> <p>various individuals dated</p> <p>April 1, 2008 re "Project Rimu</p> <p>Non-US Engagement Letter",</p> <p>with attachment. Bates stamp:</p> <p>BARC-ADS-00799279-291</p> <p>Exhibit 367 Email chain, top email from103</p> <p>Drew Haigh to Keith Harding</p> <p>dated April 1, 2008 re</p> <p>"Timings for Project Rimu".</p> <p>Bates stamp:</p> <p>BARC-ADS-00809490-491</p>
Page 3	Page 5
<p>1</p> <p>2 A P P E A R A N C E S</p> <p>3</p> <p>4 Appearing for the lead plaintiffs and the class:</p> <p>5 ROBBINS GELLER RUDMAN & DOWD LLP</p> <p>6 655 West Broadway, Suite 1900</p> <p>7 San Diego, CA 92101</p> <p>8 Telephone: 619.231.1058</p> <p>9 BY: ERIC I. NIEHAUS, ESQ.</p> <p>10 ericn@rgrdlaw.com</p> <p>11 CHRISTOPHER YURCEK, CPA, CFF</p> <p>12 cyurcek@rgrdlaw.com</p> <p>13</p> <p>14 Appearing for Barclays PLC, Barclays Bank PLC, the</p> <p>15 individual defendants and the witness:</p> <p>16</p> <p>17 SULLIVAN & CROMWELL LLP</p> <p>18 125 Broad Street</p> <p>19 New York, NY 10004</p> <p>20 Telephone: 212.558.4715</p> <p>21 BY: MICHAEL T. TOMAINO, ESQ.</p> <p>22 tomainom@sullcrom.com</p> <p>23</p> <p>24 Appearing for the underwriter defendants:</p> <p>25</p> <p>SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP</p> <p>4 Times Square</p> <p>New York, NY 10036</p> <p>Telephone: 212.735.3000</p> <p>BY: MICHAEL W. RESTEY, ESQ.</p> <p>michael.reste@skadden.com</p> <p>Also present:</p> <p>Linda Fleet, Videographer (Veritext Legal</p> <p>Solutions)</p>	<p>1 Exhibit 368 Email chain; top email from126</p> <p>2 Keith Harding to Victoria</p> <p>3 Hardy and Nick Lambert dated</p> <p>4 April 8, 2008 re "US comfort</p> <p>5 letter - addresses". Bates</p> <p>6 stamp: BARC-ADS-00803424-433</p> <p>7</p> <p>8 Exhibit 369 Email chain; top email from133</p> <p>9 Keith Harding to Drew Haigh</p> <p>10 dated April 8, 2008 re "PwC</p> <p>11 Executed US Eng Letter", with</p> <p>12 attachment. Bates stamp:</p> <p>13 00804118-128</p> <p>14 Exhibit 370 Email chain; top email from136</p> <p>15 Drew Haigh to Keith Harding</p> <p>16 dated April 8, 2008 re "PwC</p> <p>17 Executed US Eng Letter", with</p> <p>18 attachments. Bates stamp:</p> <p>19 BARC-ADS-00804129-214</p> <p>20</p> <p>21 Exhibit 371 Email chain; top email from153</p> <p>22 Keith Harding to Nick Hill</p> <p>23 dated April 18, 2008 re</p> <p>24 "Confidential - Project Rimu".</p> <p>25 Bates stamp:</p> <p>BARC-ADS-01624241-243</p> <p>PREVIOUSLY MARKED EXHIBITS</p> <p>Exhibit 16 Email from Bogdan Ciobanu to21</p> <p>various individuals dated</p> <p>March 11, 2008 re "Project</p> <p>Rimu - Timeline and WGL", with</p> <p>attachments. Bates stamp:</p> <p>UW_Barclays_000006275-291</p> <p>Exhibit 20 Email from Bogdan Ciobanu to57</p> <p>various individuals dated</p> <p>March 20, 2008 re "Project</p> <p>Rimu - draft due diligence</p> <p>lists", with attachments.</p> <p>Bates stamp:</p> <p>UW_Barclays_000018881-888</p> <p>Exhibit 117 Email from Keith Harding to109</p> <p>Miles Storey dated April 3,</p> <p>2008 re "Project Rimu Due</p>

<p style="text-align: right;">Page 6</p> <p>1 Diligence Requirements", with attachment. Bates stamp: 2 BARC-ADS-00799277-278 3 Exhibit 119 Email chain; top email from115 Keith Harding to Drew Haigh 4 dated April 4, 2008 re "Line item comfort for Rimu and US 5 Shelf". Bates stamp: BARC-ADS-00814307-310 6 Exhibit 27 Email chain; top email from122 7 Drew Haigh to David Ludwick dated April 7, 2008 re "Line 8 item comfort for Rimu and US Shelf". Bates stamp: 9 LINKLATERS_0000000862-867 10 Exhibit 125 Email chain; top email from144 Nick Lambert to Victoria Hardy 11 and Todd Foreman dated April 22, 2008 re "Circle-up 12 amendment on 20-F", with attachment. Bates stamp: 13 BARC-ADS-01616042-061 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 8</p> <p>1 MR. KEITH HARDING, 2 having been duly sworn, 3 testified as follows: 4 EXAMINATION BY MR. NIEHAUS: 5 Q. Good morning, Mr. Harding. 6 A. Good morning. 7 Q. Thank you for appearing today. Can you 8 please state your current business address for the record? 9 A. Yes, my business address is Barclays Plc, 10 1 Churchill Place, Canary Wharf, London, E14 5HP, 11 United Kingdom. 12 Q. Thank you. Mr. Harding, have you ever been 13 deposed before? 14 A. No. 15 Q. Okay. I'm just going to go over a few ground 16 rules for today. Even though we're in an informal setting 17 here and you're giving testimony under oath, that testimony 18 has the same weight as if given in a court of law. 19 The court reporter will be transcribing my 20 questions and your answers, so in order to create a clear 21 record it's important that we not speak over each other. 22 Throughout the day, as I ask you questions, please refrain 23 from any head nods or hand gestures, so the record is clear 24 as to what your response is to my questions. 25 Your attorney or other attorneys present here</p>
<p style="text-align: right;">Page 7</p> <p>1 (9:34 a.m.) 2 THE VIDEOGRAPHER: We are now on the record. My 3 name is Linda Fleet representing Veritext. The date today 4 is October 28, 2015 and the time is approximately 9:34 a.m. 5 This deposition is being held at Sullivan & Cromwell, 1 New 6 Fetter Lane, located in London, United Kingdom. The caption 7 of this case is In Re: Barclays Bank Plc Securities 8 Litigation. This case is being held in the United States 9 District Court, Southern District of New York, master file 10 number 1:09-cv-10989-PAC. The name of the witness is 11 Keith Harding. 12 At this time the attorneys present in the room 13 will identify themselves and the parties they represent. 14 Our court reporter, Rhiannon Mason, will then swear in the 15 witness and we can proceed. 16 MR. NIEHAUS: Eric Niehaus from Robbins Geller 17 Rudman & Dowd LLP, on behalf of the lead plaintiffs and 18 class. 19 MR. YURCEK: Chris Yurcek from Robbins Geller, 20 also on behalf of plaintiffs. 21 MR. TOMAINO: Michael Tomaino of Sullivan 22 & Cromwell, on behalf of Barclays Plc, Barclays Bank Plc, 23 the individual defendants and the witness. 24 MR. RESTEY: Michael Restey from Skadden Arps, on 25 behalf of the underwriter defendants.</p>	<p style="text-align: right;">Page 9</p> <p>1 today may be making certain objections. Unless your 2 attorney specifically instructs you not to answer 3 a question, you may answer after each attorney has finished 4 or has completed their respective objection. 5 A. Okay. 6 Q. And finally, if at any point you want to take 7 a break, I'm happy to accommodate that. I just ask, if 8 a question is pending, you finish answering the question 9 before we take a break. 10 A. Okay. 11 Q. Mr. Harding, do you have a general 12 understanding as to what this matter is about? 13 A. Yes, I do. 14 Q. Okay. Do you understand that this matter 15 relates to a series 5 preferred shares offering at Barclays 16 on or around the April 2008 time period? 17 A. Yes. 18 Q. Okay. Do you understand that there were 19 certain documents that were produced from Barclays in 20 connection with this matter? 21 A. Yes. 22 Q. And did you personally search for any of 23 those documents in your own custodial files? 24 A. Yes. 25 Q. Okay. And what types of documents were you</p>

<p style="text-align: right;">Page 10</p> <p>1 asked to retrieve?</p> <p>2 MR. TOMAINO: I object. I think that calls for</p> <p>3 privileged information and instruct the witness not to</p> <p>4 answer.</p> <p>5 BY MR. NIEHAUS:</p> <p>6 Q. Okay. Were you instructed by counsel at</p> <p>7 Barclays to retrieve documents in the custodial files?</p> <p>8 A. I was requested by our New York legal</p> <p>9 department.</p> <p>10 Q. Okay. And when did that occur?</p> <p>11 A. When production of documents -- earlier this</p> <p>12 year, so I think round about February time --</p> <p>13 Q. Okay.</p> <p>14 A. -- 2015.</p> <p>15 Q. And were you -- were you able to locate</p> <p>16 certain documents?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Were there any documents that you</p> <p>19 weren't able to locate?</p> <p>20 A. I produced documents that I had for -- for</p> <p>21 that purpose. I'm not aware that I -- I wasn't requested to</p> <p>22 produce specific documents.</p> <p>23 Q. Do you main -- did you maintain any documents</p> <p>24 outside of your Barclays custodial files, in any personal</p> <p>25 files?</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Okay. What did you do?</p> <p>2 A. I had discussions with my -- my counsel.</p> <p>3 Q. Who do you understand to be representing you</p> <p>4 today?</p> <p>5 A. Sullivan & Cromwell.</p> <p>6 Q. Okay. Did you meet with anyone other than</p> <p>7 Sullivan & Cromwell in preparation for today?</p> <p>8 A. No.</p> <p>9 Q. Okay. How long did you meet for,</p> <p>10 approximately?</p> <p>11 A. Approximately four hours.</p> <p>12 Q. Did you review any documents?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And without disclosing the specific</p> <p>15 documents, what categories of documents did you review:</p> <p>16 emails, presentations, memorandum?</p> <p>17 A. Emails and various documents that were</p> <p>18 produced during the offering.</p> <p>19 Q. Okay. And when you say "the offering",</p> <p>20 you're referring to the series 5 preferred shares offering</p> <p>21 in the April 2008 time period; is that correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And for the purposes of today, if</p> <p>24 I refer to "the series 5 offering" in short form, I'm</p> <p>25 referring to the series 5 preferred shares offering that</p>
<p style="text-align: right;">Page 11</p> <p>1 A. No.</p> <p>2 Q. Okay.</p> <p>3 A. Apart from emails, yes. But within the</p> <p>4 Barclays system, but in my folders. But I gave</p> <p>5 notifications of that at that time.</p> <p>6 THE COURT REPORTER: Sorry, "I gave..."?</p> <p>7 THE WITNESS: Sorry, notification of that.</p> <p>8 BY MR NIEHAUS:</p> <p>9 Q. You had an email address at Barclays during</p> <p>10 the 2007 and 2008 time period; is that correct?</p> <p>11 A. It is, yes.</p> <p>12 Q. Okay. And that -- that email address is</p> <p>13 Keith.Harding@barclaysgt.com; is that correct?</p> <p>14 A. That's an old email address, but emails still</p> <p>15 come through to me if that address is used.</p> <p>16 Q. Okay. What email address did you use during</p> <p>17 the 2007 and 2008 time period?</p> <p>18 A. I believe it was</p> <p>19 Keith.Harding@barclaystreasury.com.</p> <p>20 Q. Okay. Did you use any other email address</p> <p>21 during the 2007/2008 time period for work-related purposes?</p> <p>22 A. No.</p> <p>23 Q. Did you do anything to prepare for your</p> <p>24 deposition today?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 13</p> <p>1 took place on or around April of 2008.</p> <p>2 A. Okay.</p> <p>3 Q. Mr. Harding, I want to ask you a few</p> <p>4 questions about your background. I don't want to spend too</p> <p>5 much time here, but just want to gain a general</p> <p>6 understanding as to your educational background and</p> <p>7 professional background prior to joining Barclays.</p> <p>8 Starting with university, where did you begin</p> <p>9 studying -- withdraw the question.</p> <p>10 Can you please provide your educational</p> <p>11 background, beginning with when you began university?</p> <p>12 A. I didn't go to university. I joined</p> <p>13 Barclays Bank International, the international arm of</p> <p>14 Barclays, straight from school, after A-levels.</p> <p>15 Q. Okay, great. And approximately what year was</p> <p>16 that?</p> <p>17 A. 1972.</p> <p>18 Q. Okay. And in 1972 you joined Barclays; what</p> <p>19 was your initial position or title?</p> <p>20 A. It was a clerical role within the bills</p> <p>21 finance department of Barclays Bank International.</p> <p>22 Q. And were you based here in London?</p> <p>23 A. Yes, I was.</p> <p>24 Q. Okay. And you've had quite a lengthy career</p> <p>25 at Barclays. From 1972 up until 2007, did you work for any</p>

<p style="text-align: right;">Page 14</p> <p>1 other banks or did you work for any other entities or firms 2 other than Barclays? 3 A. I worked for a subsidiary of Barclays for 4 a short time. But apart from that, no, it's continuous 5 Barclays employment. 6 Q. What was the name of the subsidiary that you 7 worked for? 8 A. Barclays Bank ZARL. 9 THE COURT REPORTER: What kind of bank? 10 THE WITNESS: Sorry, Barclays Bank ZARL. 11 BY MR. NIEHAUS: 12 Q. How do you spell that? 13 A. ZARL, I believe. 14 Q. Okay. And what was Barclays -- ZARL, is 15 that? 16 A. It was an African subsidiary of Barclays. 17 Q. Okay. And where in Africa was Barclays ZARL 18 based? 19 A. What is now the Democratic Republic of Congo; 20 what was at that time Zaire. 21 Q. Okay. And approximately what year did you -- 22 did you work there? 23 A. Late 1980 to early 1981. 24 Q. Okay. What was your title at Barclays ZARL? 25 A. Head of the foreign exchange department.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. -- is that correct? 2 A. Yes. 3 Q. And how would you summarize your general 4 duties and responsibilities as the director -- or assistant 5 director of Capital Issuance & Securitisation? 6 A. Primarily involved with the issuance on 7 behalf of Barclays Treasury of new securities and the 8 ongoing administration of any existing securities that 9 Barclays Treasury had issued. 10 Q. Okay. In performing those responsibilities 11 during the 2007 and 2008 timeframe, did you report to 12 anyone? 13 A. Yes, my direct line manager was Nick Lambert. 14 Q. Okay. Did you report to anybody else? 15 A. No, not directly. 16 Q. Okay. Did anyone report to you? 17 A. No. 18 Q. Okay. In what context would you report to 19 Mr. Lambert? 20 A. I mean, primarily it would be to do with my 21 job, as to how I was proceeding with my job, whether I was 22 meeting objectives. If certain things came -- came up, 23 I may discuss that with him. That's primarily how it went. 24 THE COURT REPORTER: "That's..."? 25 THE WITNESS: Sorry, primarily how it went.</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. Okay. At what point in time did you join 2 Barclays Treasury? 3 A. June 1981. 4 Q. Okay. And what was your title when you began 5 at Barclays Treasury? 6 A. I can't recall. 7 Q. Okay. Prior to 2007, do you recall any 8 titles that you held at Barclays Treasury? 9 A. Principal, euro currency funding. Assistant 10 director, Capital Issuance & Securitisation. Not any other 11 titles. 12 Q. Okay. And prior to 2007, did you say you 13 held the title of director of Capital Securitisation? 14 A. Assistant director -- 15 Q. Assistant director. 16 A. -- Capital Issuance & Securitisation, yes. 17 Q. Okay. During your employment at Barclays, 18 did you obtain any professional licenses or certifications? 19 A. No. 20 Q. Okay. So let's move forward to 2007. In 21 2007, what was your title at Barclays Treasury? 22 A. I believe it was assistant director. 23 Q. Okay. And assistant director of Capital 24 Issuance & Securitisation -- 25 A. Yes.</p>	<p style="text-align: right;">Page 17</p> <p>1 BY MR. NIEHAUS: 2 Q. Now, during the 2007 timeframe and leading up 3 to the 2008 timeframe, Barclays was engaging in a fair 4 amount of capital issuance and securitization; is that 5 correct? 6 A. Certainly capital issuance. I am not sure on 7 the securitization because that's a separate -- separate 8 section within Treasury. 9 Q. Prior to Barclays issuing its series 5 10 preferred shares, were there other series shares that were 11 issued similar to the series 5 shares that were preferred 12 shares and I guess had similar characteristics as the 13 series 5 offer? 14 MR. TOMAINO: Objection to form. I think they 15 actually refer to them as "preference shares". Not a big 16 deal, but I just wanted to clarify on the record. 17 BY MR. NIEHAUS: 18 Q. Okay. If that helps clarify the question, 19 Mr. Tomaino has pointed out that these shares are referred 20 to as "preference shares", and that actually leads to my 21 next question. During the 2007 timeframe, were preference 22 shares Barclays' preferred method for raising core tier 1 23 capital? 24 MR. TOMAINO: Objection to form. 25 BY MR. NIEHAUS:</p>

<p style="text-align: right;">Page 18</p> <p>1 Q. Let me back up a second. Do you understand 2 what I mean by "core tier 1 capital"?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. What's -- what's core tier 1 capital?</p> <p>5 A. It's a tier of capital to which certain 6 securities are -- are regarded, as opposed to, for example, 7 upper tier 2 securities or lower tier 2 securities. So 8 those are the three main types of capital instrument that 9 aren't ordinary shares.</p> <p>10 Q. In the 2007 and 2008 timeframe, did Barclays 11 have an interest in raising the core tier 1 capital?</p> <p>12 MR. TOMAINO: Objection to form.</p> <p>13 THE WITNESS: Tier 1 issues were made in that 14 timeframe, yes.</p> <p>15 BY MR. NIEHAUS:</p> <p>16 Q. And why were they made?</p> <p>17 A. I don't know.</p> <p>18 Q. Okay. Was it your understanding at the time 19 that preference shares were Barclays' preferred method for 20 raising core tier 1 capital?</p> <p>21 MR. TOMAINO: Objection to form.</p> <p>22 THE WITNESS: It wasn't Barclays' only method of 23 raising capital, so I don't know whether that was 24 specifically their preferred method or not.</p> <p>25 BY MR. NIEHAUS:</p>	<p style="text-align: right;">Page 20</p> <p>1 needed to issue a -- the series 5 offering at issue in this 2 case?</p> <p>3 MR. TOMAINO: Objection to form, lack of 4 foundation.</p> <p>5 THE WITNESS: That wasn't my decision.</p> <p>6 BY MR. NIEHAUS:</p> <p>7 Q. Okay. Are you familiar with a capital 8 committee at Barclays?</p> <p>9 A. Not as described, no.</p> <p>10 Q. Okay. Did you prepare any memoranda that 11 would be reviewed by any capital committee at Barclays 12 during the 2007 or 2008 time period?</p> <p>13 A. Not to my knowledge.</p> <p>14 Q. Okay. Did you make any presentation to any 15 capital committee at Barclays during the 2007 or 2008 time 16 period?</p> <p>17 A. No.</p> <p>18 Q. Okay. Were you kept apprized of any 19 discussions or formal meetings with any capital committee at 20 Barclays during the 2007 and 2008 time period?</p> <p>21 A. No.</p> <p>22 Q. Okay.</p> <p>23 Let's take a look at the first exhibit. This 24 document has been previously marked as exhibit 16 in this 25 matter, and we have a copy for you and your counsel.</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. Okay. What other ways were they raising core 2 tier 1 capital during this timeframe?</p> <p>3 A. Reserve capital instruments.</p> <p>4 Q. Okay. Prior to issuing the series 5 5 preference shares, had other preference shares been issued 6 by Barclays Treasury?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Do you recall the names of the other 9 offerings?</p> <p>10 A. There were three, three series of preference 11 shares: shortened title, basically series 2, series 3 and 12 series 4.</p> <p>13 Q. Okay. And those all preceded the series 5 14 offering; is that correct?</p> <p>15 A. Yes, correct.</p> <p>16 Q. Okay. And did those all have the same 17 characteristics as the series 5 offering?</p> <p>18 MR. TOMAINO: Objection to form.</p> <p>19 THE WITNESS: They had, to my knowledge, similar 20 characteristics.</p> <p>21 MR. NIEHAUS: Okay.</p> <p>22 THE COURT REPORTER: "... similar..."?</p> <p>23 THE WITNESS: Similar characteristics.</p> <p>24 BY MR. NIEHAUS:</p> <p>25 Q. How did Barclays Treasury determine that they</p>	<p style="text-align: right;">Page 21</p> <p>1 MR. TOMAINO: 1-6, 16?</p> <p>2 MR. NIEHAUS: 1-6, 16, correct.</p> <p>3 MR. TOMAINO: Thanks.</p> <p>4 (Exhibit 16, previously marked, referred to.)</p> <p>5 BY MR. NIEHAUS:</p> <p>6 Just for the record, exhibit 16 is a one-page 7 email Bates-ed UW_Barcays_000006275. It contains two 8 attachments that run to 62[91].</p> <p>9 And, Mr. Harding, throughout the day we'll be 10 looking at documents which will be marked as exhibits for 11 the purposes of this deposition. With all exhibits, feel 12 free to read the entire exhibit. Where exhibits are a bit 13 lengthier than others, I will be directing you to certain 14 pages but, as always, feel free to read the surrounding 15 pages for context.</p> <p>16 A. Okay.</p> <p>17 Q. And again, Mr. Harding, you'll see the 18 attachment is a working group -- what is entitled as a "US 19 Retail Tier I Offering Working Party List". I'm not going 20 to be going through every page of that list; I'm going to 21 ask you about certain individuals in that list. And the 22 second attachment is entitled "Detailed Retail Timing 23 & Responsibilities", "Project Rimu", and again I'm just 24 going to be asking about certain bullet points within that 25 timeline. But let me know when you're ready and I can begin</p>

<p style="text-align: right;">Page 22</p> <p>1 my question.</p> <p>2 A. Okay, I'm ready.</p> <p>3 Q. Okay, good. Okay, Mr. Harding, do you</p> <p>4 recognize this email and/or the attachments contained in</p> <p>5 this exhibit?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And what do you understand this to be,</p> <p>8 this exhibit to be?</p> <p>9 A. The first one is a working party list of the</p> <p>10 personnel involved in the Project Rimu.</p> <p>11 Q. And does "Project Rimu" refer to the series 5</p> <p>12 offer?</p> <p>13 A. Yes, it does.</p> <p>14 Q. Okay. All right. You'll see the email is</p> <p>15 dated March 11, 2008 and the author is a Bogdan Ciobanu?</p> <p>16 A. Mm-hmm.</p> <p>17 Q. Do you know who Bogdan Ciobanu is?</p> <p>18 A. He's an employee working for Citigroup.</p> <p>19 Q. Okay. And was Citigroup the lead underwriter</p> <p>20 in the series 5 offering?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. You'll also see in the "To" line on</p> <p>23 this exhibit the first three individuals: Mr. Ross Aucutt</p> <p>24 and Mr. Nick Lambert, and then yourself follows. Who was</p> <p>25 Mr. Aucutt during this timeframe?</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Okay. You've identified a comfort letter.</p> <p>2 What is a comfort letter?</p> <p>3 A. It's a letter give -- in any securities</p> <p>4 issuance, it's a letter given by our auditors to the</p> <p>5 underwriters.</p> <p>6 Q. Okay. Who were the auditors on the series 5</p> <p>7 offering?</p> <p>8 A. PwC.</p> <p>9 Q. Okay. And who were the auditors on the</p> <p>10 series 2 offering?</p> <p>11 A. PwC.</p> <p>12 Q. Okay. PwC was the auditor on the series 3</p> <p>13 and series 4 offering; is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. Was a comfort letter issued by PwC for</p> <p>16 the series 2, series 3 and series 4 offering?</p> <p>17 A. Yes.</p> <p>18 Q. Did you review those comfort letters?</p> <p>19 A. I would have seen them, yes.</p> <p>20 Q. Okay.</p> <p>21 THE COURT REPORTER: "I would have seen them"?</p> <p>22 THE WITNESS: Sorry, yes.</p> <p>23 BY MR. NIEHAUS:</p> <p>24 Q. And a comfort letter was ultimately issued</p> <p>25 for the series 5 offering as well; is that correct?</p>
<p style="text-align: right;">Page 23</p> <p>1 A. He was the head of Capital Issuance</p> <p>2 & Securitisation, so Nick Lambert's boss.</p> <p>3 Q. Okay. And we've identified Mr. Lambert as</p> <p>4 your boss; is that correct?</p> <p>5 A. That's correct, yes.</p> <p>6 Q. And he was your boss during the March 2008</p> <p>7 timeframe?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Mr. Harding, what were your</p> <p>10 responsibilities with respect to the Project Rimu, which</p> <p>11 we've identified as the series 5 offering?</p> <p>12 A. Primarily my role would have been to review</p> <p>13 certain documents in connection with other people and</p> <p>14 basically ensuring that from the issuance side of things,</p> <p>15 that various documents were proceeding within the required</p> <p>16 timeframe, and when signing or closing came, to ensure that</p> <p>17 the appropriate documents were signed by an authorized</p> <p>18 person.</p> <p>19 Q. Okay. What types of documents would you</p> <p>20 review?</p> <p>21 A. It would have been the, I think, preliminary</p> <p>22 prospectus supplement, the final prospectus supplement, any</p> <p>23 underwriter agreement, comfort letters; basically most of</p> <p>24 the documents that would have been required in connection</p> <p>25 with a preference share offering.</p>	<p style="text-align: right;">Page 25</p> <p>1 A. Correct.</p> <p>2 Q. Okay. And again, we'll be looking at</p> <p>3 documentation today that relates to that comfort letter.</p> <p>4 You reviewed the comfort letter that was issued by PwC in</p> <p>5 connection with the series 5 offering; is that correct?</p> <p>6 A. I would have -- certain parts of it I would</p> <p>7 have reviewed, yes. Primarily my -- my concern would have</p> <p>8 been more with the engagement letter that had to be</p> <p>9 produced.</p> <p>10 Q. Okay. And what -- what is an engagement</p> <p>11 letter?</p> <p>12 A. It's an agreement between either Barclays and</p> <p>13 PwC or between Barclays and the underwriters, or one</p> <p>14 underwriter on behalf of the other underwriters and Barclays</p> <p>15 with PwC, to produce a comfort letter in connection with</p> <p>16 a particular securities offering.</p> <p>17 Q. Okay. And again, we'll look at exhibits that</p> <p>18 deal with engagement letters later on today, but I want to</p> <p>19 stick with this exhibit which I've introduced, which was</p> <p>20 previously marked as exhibit number 16. You'll see there's</p> <p>21 a -- the first attachment is identified as the "US Retail</p> <p>22 Tier I Offering Working Party List". Do you see that, sir?</p> <p>23 A. Yes, I do.</p> <p>24 Q. Okay. And what is the purpose of this</p> <p>25 document? Does this identify every individual that is --</p>

<p style="text-align: right;">Page 26</p> <p>1 that is working on the series 5 offer?</p> <p>2 A. Not necessarily every individual, but the</p> <p>3 main individuals that would be -- would be with -- in</p> <p>4 connection with the issue.</p> <p>5 Q. Okay. Let's take a look at page 1, which is</p> <p>6 Bates-ed UW_Barclays_00000 -- I might have included one</p> <p>7 extra zero, I'm not certain -- 6277. You'll see at the top</p> <p>8 there's a heading of "Barclays Treasury". And I know this</p> <p>9 is a very general question, but is Barclays Treasury</p> <p>10 a separate entity from Barclays Plc?</p> <p>11 A. It is just a named division within Barclays</p> <p>12 Bank Plc.</p> <p>13 Q. Okay. And you worked within Barclays</p> <p>14 Treasury during the 2008 time period; is that --</p> <p>15 A. Correct.</p> <p>16 Q. Okay. And you'll see directly below the</p> <p>17 heading "Barclays Treasury", there's the name "Jon Stone".</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And under "Jon Stone", you'll see "Barclays</p> <p>21 Treasurer". Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Does that correctly identify Mr. Stone as the</p> <p>24 Barclays treasurer during the 2008 time period?</p> <p>25 A. Yes, it does.</p>	<p style="text-align: right;">Page 28</p> <p>1 THE WITNESS: We would have -- or Ms. Hardy would</p> <p>2 have reviewed certain documents as well. There were</p> <p>3 occasions when I received an email communication or, well,</p> <p>4 part of a distribution group email communication, for</p> <p>5 example, and Ms. Hardy's name may not have been on that</p> <p>6 circulation, so I would have forwarded her such an email.</p> <p>7 BY MR. NIEHAUS:</p> <p>8 Q. Okay. And what was the purpose for</p> <p>9 forwarding her that email; just to keep her apprized?</p> <p>10 A. To keep her apprized of the situation,</p> <p>11 because she was our internal legal.</p> <p>12 Q. Okay. If you look at page 2, there are more</p> <p>13 individuals identified for Barclays, and I specifically want</p> <p>14 to focus on the "Barclays Bank PLC - Finance" group. You'll</p> <p>15 see the first name is Andrew West. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Who was Andrew West during the 2008 time</p> <p>18 period?</p> <p>19 A. I can't recall.</p> <p>20 Q. Okay. Did you have any interaction with</p> <p>21 Mr. West in connection with the series 5 offer?</p> <p>22 A. Not to my recollection.</p> <p>23 Q. Okay. You'll see directly beneath Mr. West's</p> <p>24 name is a Meen Adams, who is identified from "Barclays Bank</p> <p>25 PLC - Finance", the head of financial reporting. And then</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. Okay. And we've identified Mr. Aucutt and</p> <p>2 Mr. Lambert, and you'll see beneath their names there is</p> <p>3 a title. Do those titles -- are those titles correctly</p> <p>4 identified in this document?</p> <p>5 A. I believe they are correct, yes.</p> <p>6 Q. Okay. If you look beneath your name, there's</p> <p>7 an individual by the name of Victoria Harding -- Hardy. Do</p> <p>8 you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Who was Ms. Hardy during the 2008 time</p> <p>11 period?</p> <p>12 A. She was our internal legal, working in our</p> <p>13 group general counsel's office.</p> <p>14 Q. Okay. And did you have interaction with</p> <p>15 Ms. Hardy in connection with the series 5 offer?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And how would you -- well, I guess</p> <p>18 that's an improper question but...</p> <p>19 What types of interactions would you have with</p> <p>20 Ms. Hardy in connection with the series 5 offering?</p> <p>21 MR. TOMAINO: So I need to caution you that your</p> <p>22 communications with counsel, including Ms. Hardy, are</p> <p>23 privileged. So if you can answer that question without</p> <p>24 revealing the contents of your communications, then go</p> <p>25 ahead. If you can't, then you can just say that.</p>	<p style="text-align: right;">Page 29</p> <p>1 in parens underneath Mr. Adams' title, or Ms. Adams' title,</p> <p>2 is "prospectus documentation only", which is also underneath</p> <p>3 Mr. West's title.</p> <p>4 Did you have any interaction with Mr./Ms. Adams</p> <p>5 during the -- in connection with the series 5 offer?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And what types of interaction would</p> <p>8 you have with Mr./Ms. Adams, and if you can identify the</p> <p>9 gender.</p> <p>10 A. It's Ms. Adams.</p> <p>11 Q. Okay.</p> <p>12 A. I recall sending a -- or sending an email to</p> <p>13 her, possibly a couple of emails to her.</p> <p>14 Q. Okay. What did those emails relate to?</p> <p>15 A. I can't recall specifically in relation to</p> <p>16 the series 5 offering.</p> <p>17 Q. Okay. What role did Barclays Finance have</p> <p>18 with respect to the series 5 offer? Were they involved in</p> <p>19 the diligence process?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And how would they be involved in the</p> <p>22 diligence process?</p> <p>23 A. They would have been involved in answering</p> <p>24 certain questions in connection with the due diligence</p> <p>25 process.</p>

<p style="text-align: right;">Page 30</p> <p>1 Q. Okay. And are you referring to the business 2 due diligence process? 3 A. Yes. 4 Q. Okay. When you refer to "certain questions", 5 are you referring to certain questionnaires that were 6 created by the underwriters that were directed at Barclays 7 in connection with the series 5 offering? 8 A. Yes. 9 Q. Okay. And what process did Barclays have in 10 place to gather such information? 11 A. I'm not aware of -- of that information. 12 Q. Did you have any involvement in the process 13 of gathering information that was requested in the diligence 14 process? 15 A. Not to my knowledge. 16 Q. Okay. Do you know who was primarily 17 responsible from Barclays Finance in gathering that 18 information in connection with the series 5 offering? 19 A. Not specifically in relation to that, no. 20 Q. Did Ms. Adams have a role in gathering 21 certain diligence information that was requested by the 22 underwriters? 23 A. I don't know. 24 Q. Okay. Why did you reach out to Ms. Adams 25 during the 2008 time period to discuss the series 5 offer?</p>	<p style="text-align: right;">Page 32</p> <p>1 call, that there was going to be a due diligence call on 2 a specific date and time and what that due diligence call 3 was in relation to. And it probably also included 4 a questionnaire of questions that we had been provided by 5 the underwriters or the underwriters' counsel, and that list 6 that I provided would have had -- would have had annotated 7 against the names -- sorry, annotated against the questions 8 the initials of who we thought was the best person to answer 9 that particular question. 10 Q. Okay. And I don't want to jump too far, 11 because we'll be looking at those documents later on today. 12 But I generally want to understand what Barclays Treasury -- 13 what the role of Barclays Treasury -- well, I'll withdrawal 14 that. 15 How would Barclays Treasury interact with 16 Barclays Finance in connection with the series 5 offer, 17 other than simply providing details of the call? 18 A. We may have had correspondence with them in 19 relation to the comfort letter, for example, to ensure that 20 things were going according to plan. As far as the due 21 diligence is concerned, there were some phone calls with 22 Jonathan Britton, who I believe at that time was head of 23 finance. So there would have been some communication with 24 him, primarily around, again, setting up various calls when 25 they were required.</p>
<p style="text-align: right;">Page 31</p> <p>1 MR. TOMAINO: Objection, form. 2 THE WITNESS: I can't specifically recall. 3 BY MR. NIEHAUS: 4 Q. Okay. Did you reach out to anyone else -- 5 let me withdraw that. 6 Did you have any discussions with anyone at 7 Barclays Finance, anyone other than Ms. Adams, relating to 8 the series 5 offering? 9 A. Not specifically, as I can recall. 10 Q. Okay. Did you know of an individual by the 11 name of Chris Lucas at Barclays during the 2008 time period? 12 A. Yes. 13 Q. Did you have any discussions with Mr. Lucas 14 relating to the series 5 offering? 15 A. Not discussions, no. 16 Q. Okay. Did you have any communications with 17 Mr. Lucas relating to the series 5 offering? 18 A. Inasmuch as I would have emailed him, along 19 with other parties, in relation to a due diligence 20 conference call. 21 Q. Okay. And when you emailed Mr. Lucas, what 22 information did you provide him, other than the details of 23 the call, timing, location, if applicable? 24 A. I would have told him, along with various 25 other speakers who were going to be on the due diligence</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. And did you -- were you primarily responsible 2 for making those communications in relation to the series 5 3 offer? 4 A. I was involved in arranging some of the due 5 diligence conference calls that took place, I believe along 6 with Victoria Hardy. 7 Q. Okay. You also mentioned that you would have 8 discussions relating to the comfort letter process, is that 9 correct, with Barclays Finance? 10 A. Yes, inasmuch as we would keep them updated, 11 for example, of the timing when the comfort letter would be 12 required, provide them with any updates to the -- or latest 13 drafts of the prospectus supplement, if they weren't already 14 on a circulation list for that. 15 Q. Okay. And other than Mr. Britton and 16 Mr. Lucas, who else would you contact at Barclays Finance 17 concerning these subject areas? 18 A. I can't recall. 19 Q. Okay. If you take a look at page 7 of the -- 20 of exhibit 16, or the attach -- first attachment to 21 exhibit 16, there's a page that identifies or purports to 22 identify certain individuals from Citi. And Citi was the 23 lead underwriter on the series 5 offer; is that correct? 24 A. Yes. 25 Q. Okay. And the first name under the</p>

<p style="text-align: right;">Page 34</p> <p>1 Transaction Execution Group based in New York is 2 a Jack McSpadden or McSpadden. Do you see that? 3 A. Yes. 4 Q. And who was Mr. McSpadden in connection with 5 the series 5 offer? 6 A. To my knowledge, as described on the working 7 parties list. 8 Q. Okay. Did you have discussions with 9 Mr. McSpadden in connection with the series 5 offer? 10 A. I don't recall having any direct 11 communication with him, no. 12 Q. Okay. Did you understand Mr. Spadden to 13 be -- Mr. McSpadden to be the primary representative of 14 Citi -- of Citigroup in connection with the series 5 offer? 15 A. He was certainly one of the more senior 16 people at Citi involved in the transaction, yes. 17 Q. Okay. Let's take a look at page 9 of the 18 same attachment and you see in the upper left-hand corner 19 there's an entity by the name of Linklaters. Do you see 20 that? 21 A. Yes. 22 Q. And are they correctly identified on this 23 document as the underwriters' counsel? 24 A. Yes. 25 Q. Okay. Had you worked with -- or had Barclays</p>	<p style="text-align: right;">Page 36</p> <p>1 name of David Ludwick. Do you see that? 2 A. Yes. 3 Q. Okay. And Mr. Ludwick, is he correctly 4 identified here on this document as the US partner at 5 Linklaters? 6 A. I can't say that that title is correct. 7 Q. Okay. 8 THE COURT REPORTER: "... can't say..."? 9 THE WITNESS: Sorry, that that title, or his 10 title, is correct. 11 BY MR. NIEHAUS: 12 Q. Did Mr. Ludwick work on the series 5 13 offering? 14 A. Yes. 15 Q. Okay. And what was Mr. Ludwick's role with 16 respect to the series 5 offer? 17 A. He was the -- to my knowledge, the main -- 18 the main Linklaters representative as regards the 19 underwriters' counsel. 20 Q. Okay. Did you have discussions with 21 Mr. Ludwick in connection with the series 5 offering? 22 A. I don't recall having any direct 23 conversations with him. Obviously there were -- there was 24 correspondence in connection with the issue in general and 25 his name and my name may have been on that, or he may have</p>
<p style="text-align: right;">Page 35</p> <p>1 worked with Linklaters in the past, prior to the series 5 2 offering? 3 A. Linklaters have been the underwriters' 4 counsel on other transactions, yes. 5 Q. Okay. And were Linklaters the underwriters' 6 counsel on the series 2, series 3 and series 4 transaction? 7 A. I can't be certain. I think they were on 8 a couple of them, possibly 2 and 3, but I'm not sure about 9 2. 10 Q. Okay. Do you have any reason to believe that 11 they were not on the series 5 offering? Do you have any 12 recollection that Linklaters was not retained for the 13 series 5 offering? 14 A. Series -- 15 MR. TOMAINO: Series 5? 16 BY MR. NIEHAUS: 17 Q. Or the series 4, did you -- 18 A. Series 2 I said I wasn't certain on. 19 Q. Oh, you weren't certain on series 2, I'm 20 sorry. Do you have any recollection that Linklaters was not 21 retained for the series 2 offering by Barclays? 22 A. They -- they may have been, but I can't -- 23 can't recall with certainty. 24 Q. You'll see the first individual named under 25 the Linklaters working group list is an individual by the</p>	<p style="text-align: right;">Page 37</p> <p>1 been, you know, on an email that I sent. 2 Q. Okay. Outside of the email correspondence, 3 did you have any direct correspondence with Mr. Ludwick by 4 telephone or personal interaction? 5 A. I do not believe so, no. 6 Q. Okay. And if you turn to the next page, you 7 see there's an entity by the name of PricewaterhouseCoopers 8 on the upper left-hand corner. Earlier this morning you've 9 identified PricewaterhouseCoopers as an auditor on the 10 series 5 transaction; is that correct? 11 A. Yes. 12 Q. Okay. And there's a number of names below 13 PricewaterhouseCoopers. Do you recognize any of those names 14 in conn -- let me ask it this way. Out of the names that 15 appear under the PricewaterhouseCoopers working group list, 16 did you have any direct interaction with any of the 17 individuals that are named on this -- on this page? 18 A. Primarily Drew Haigh. 19 Q. And who was Mr. Haigh? 20 A. He was one of the PwC personnel working on 21 the comfort letter -- 22 Q. Okay. 23 A. -- in connection with the series 5. 24 Q. And if you were to reach out to Mr. -- if you 25 were to reach out to PwC in connection with the series 5</p>

<p style="text-align: right;">Page 38</p> <p>1 offering, would you contact Mr. Haigh?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. You understand Mr. Haigh to be the</p> <p>4 individual at PwC to be primarily responsible for the</p> <p>5 series 5 offering?</p> <p>6 MR. TOMAINO: Objection to form.</p> <p>7 THE WITNESS: He was one of the people, one of the</p> <p>8 people you see involved in that.</p> <p>9 BY MR. NIEHAUS:</p> <p>10 Q. Who else was involved?</p> <p>11 A. I believe Yu-liang Ooi was copied in on some</p> <p>12 of the correspondence. I recognize the name Chris Taylor,</p> <p>13 the partner. I don't recognize the other two personnel</p> <p>14 listed.</p> <p>15 Q. Okay. And again, we'll look at some</p> <p>16 documentation with Mr. Haigh later on today. But moving on</p> <p>17 to the second exhibit or second attachment to exhibit 16,</p> <p>18 you'll see there's a timeline. Do you recognize this</p> <p>19 attachment?</p> <p>20 A. I can't recall it.</p> <p>21 Q. Does this appear to be a timeline for the</p> <p>22 Project Rimu?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And Project Rimu refers to the</p> <p>25 series 5 offering; is that correct?</p>	<p style="text-align: right;">Page 40</p> <p>1 the timeline, or the first page of the timeline, you'll see</p> <p>2 on the bottom there's a -- what appears to be a key, is that</p> <p>3 correct, with abbreviations?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And those abbreviations correspond to</p> <p>6 the entity that's responsible for a certain task; is that</p> <p>7 right?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And if you look at the third bullet</p> <p>10 point on -- in the week of March 10, you'll see it reads:</p> <p>11 "Discuss comfort letter requirements with</p> <p>12 Auditors".</p> <p>13 And then to the right-hand side there's</p> <p>14 a "Responsibility" column. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And then you'll see the abbreviation of "UC"</p> <p>17 and "A", and "UC" refers to underwriters' counsel and "A"</p> <p>18 refers to auditors; is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. Omitted from that "Responsibility" column is</p> <p>21 "BC", which would refer to Barclays Capital. Did Barclays</p> <p>22 Capital have any role with discussing the comfort letter</p> <p>23 requirements with the auditors?</p> <p>24 MR. TOMAINO: Objection, form.</p> <p>25 THE WITNESS: I don't know what the initial</p>
<p style="text-align: right;">Page 39</p> <p>1 A. Correct.</p> <p>2 Q. Okay. And you'll see -- I'll withdraw that.</p> <p>3 What's the purpose of creating a timeline for</p> <p>4 an offer?</p> <p>5 A. Primarily because there are a lot of</p> <p>6 documents that need to be produced and other processes that</p> <p>7 we need to go through, and the timeline is basically to try</p> <p>8 and set out exactly what needs to be done by when, so that</p> <p>9 if you have a specific issue date in mind, all of the</p> <p>10 relevant documentation et cetera is in an agreed format and</p> <p>11 ready for signing by the time you come to -- to the issue.</p> <p>12 Q. Who is primarily responsible for creating the</p> <p>13 timeline?</p> <p>14 A. I'm not sure.</p> <p>15 Q. Okay. Does this document appear to be</p> <p>16 created by Citi or do you understand this document to be</p> <p>17 created by Barclays Capital?</p> <p>18 MR. TOMAINO: Objection, foundation.</p> <p>19 THE WITNESS: I'm not sure who would have produced</p> <p>20 it. I -- I can't recall who produced it.</p> <p>21 BY MR. NIEHAUS:</p> <p>22 Q. Okay. But you receive this document on or</p> <p>23 around March 11, 2008; is that correct?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. All right. So if we take a look at</p>	<p style="text-align: right;">Page 41</p> <p>1 request was to the auditors.</p> <p>2 BY MR. NIEHAUS:</p> <p>3 Q. Okay. Did you participate in any discussions</p> <p>4 in the week of March 10 relating to the comfort letter</p> <p>5 requirements with the auditors in connection with the</p> <p>6 series 5 offering?</p> <p>7 A. I can't recall having done so.</p> <p>8 Q. Okay. Did anyone else from Barclays Treasury</p> <p>9 participate in any discussions relating to the requirements</p> <p>10 of the comfort letter?</p> <p>11 A. I don't know.</p> <p>12 Q. Okay. You'll see at the top page, the</p> <p>13 heading is "Project Rimu US Retail Timeline"?</p> <p>14 A. Mm-hmm.</p> <p>15 Q. Do you know what "US Retail" refers to?</p> <p>16 A. Yes, it refers to a US offering of \$25</p> <p>17 repayment value preference shares.</p> <p>18 Q. Okay. And specifically the word "Retail",</p> <p>19 does that indicate what type of investor will be purchasing</p> <p>20 the offering?</p> <p>21 MR. TOMAINO: Objection to form.</p> <p>22 THE WITNESS: I think it refers to an issue with</p> <p>23 a \$25 par value transaction.</p> <p>24 BY MR. NIEHAUS:</p> <p>25 Q. Okay. Do you know why \$25 was chosen as the</p>

<p style="text-align: right;">Page 42</p> <p>1 par value?</p> <p>2 A. Because this particular transaction was</p> <p>3 following the previous series, 2, 3 and 4, which were all</p> <p>4 \$25 par value.</p> <p>5 Q. Okay. Do you understand -- did you</p> <p>6 understand that this series 5 transaction was going to be</p> <p>7 marketed to retail investors?</p> <p>8 MR. TOMAINO: Objection to form.</p> <p>9 THE WITNESS: I'm trying to... I can't recall.</p> <p>10 Sorry, I can't recall specifically.</p> <p>11 BY MR. NIEHAUS:</p> <p>12 Q. Okay. In your role as the assistant director</p> <p>13 of Capital Issuance & Securitisation, when you're putting</p> <p>14 together a potential transaction, do you consider whether</p> <p>15 you're going to target retail or institutional investors?</p> <p>16 MR. TOMAINO: Objection to form.</p> <p>17 BY MR. NIEHAUS:</p> <p>18 Q. Is that one of your considerations?</p> <p>19 A. It's one of the considerations, yes.</p> <p>20 Q. And the series 5 transaction, did you make</p> <p>21 a determination -- when I say "you", I'm referring to</p> <p>22 Barclays -- that the transaction should be targeted at</p> <p>23 retail investors?</p> <p>24 MR. TOMAINO: Objection to form.</p> <p>25 THE WITNESS: I can't recall exact discussions</p>	<p style="text-align: right;">Page 44</p> <p>1 value of each security in the transactions or the overall</p> <p>2 offering amount?</p> <p>3 MR. NIEHAUS: The par value of each security in</p> <p>4 those transactions.</p> <p>5 THE WITNESS: They would have been higher than</p> <p>6 \$1,000.</p> <p>7 BY MR. NIEHAUS:</p> <p>8 Q. And why would the par value be higher in</p> <p>9 an institutional transaction than a retail transaction?</p> <p>10 MR. TOMAINO: Objection, form.</p> <p>11 THE WITNESS: Because that is the way the market</p> <p>12 works.</p> <p>13 BY MR. NIEHAUS:</p> <p>14 Q. Okay. And how did you form the understanding</p> <p>15 as to why that -- that's how the market works? Is that</p> <p>16 something that's communicated to you by the underwriters?</p> <p>17 A. We would do a number of issues, not</p> <p>18 necessarily just -- just in the US market, and for</p> <p>19 a security it would be usual to have a higher -- higher par</p> <p>20 value. So nominal value, there is normally a sort of</p> <p>21 minimum size that is termed. To my -- to my understanding,</p> <p>22 US retail normally has a par value of \$25.</p> <p>23 Q. Okay. Did the series 5 offering also have</p> <p>24 a coupon rate?</p> <p>25 MR. TOMAINO: Objection --</p>
<p style="text-align: right;">Page 43</p> <p>1 that took place regarding --</p> <p>2 BY MR. NIEHAUS:</p> <p>3 Q. Do you recall any discussions that took place</p> <p>4 relating to retail investors in connection with the series 5</p> <p>5 offering?</p> <p>6 A. No.</p> <p>7 Q. Prior to 2007 -- I'll withdraw that.</p> <p>8 Prior to 2008, had you participated in any</p> <p>9 transactions that were targeted at institutional investors?</p> <p>10 MR. TOMAINO: Objection to form.</p> <p>11 THE WITNESS: Previous Barclays issuances, and</p> <p>12 we're talking about issues in general, have been targeted at</p> <p>13 institutional investors, yes.</p> <p>14 BY MR. NIEHAUS:</p> <p>15 Q. Okay. Can you recall any specific</p> <p>16 transactions that you participated on in the 2007 time</p> <p>17 period that were targeted at institutional investors?</p> <p>18 MR. TOMAINO: Objection to form.</p> <p>19 THE WITNESS: There were a number of transactions</p> <p>20 that took place. I can't recall the specifics of them</p> <p>21 offhand.</p> <p>22 BY MR. NIEHAUS:</p> <p>23 Q. Can you recall the par value of any of those</p> <p>24 transactions?</p> <p>25 MR. TOMAINO: I'm sorry to interrupt. The par</p>	<p style="text-align: right;">Page 45</p> <p>1 THE WITNESS: Yes.</p> <p>2 MR. TOMAINO: Again, objection to form.</p> <p>3 BY MR. NIEHAUS:</p> <p>4 Q. What was the coupon rate on this series 5</p> <p>5 offering?</p> <p>6 A. 8.125, I believe.</p> <p>7 Q. Okay. And was that coupon rate higher than</p> <p>8 the series 4 offering?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And was that coupon rate higher than</p> <p>11 the series 3 and series 2 offering?</p> <p>12 A. Was the series 5 higher than the series 2 and</p> <p>13 3? Yes.</p> <p>14 Q. Okay. And why -- how was that determined?</p> <p>15 How was that coupon rate determined?</p> <p>16 A. I don't know.</p> <p>17 Q. Why was it determined to use a higher coupon</p> <p>18 rate?</p> <p>19 MR. TOMAINO: Objection to form.</p> <p>20 THE WITNESS: I wasn't involved in the setting of</p> <p>21 the price of the coupon.</p> <p>22 BY MR. NIEHAUS:</p> <p>23 Q. Who -- who was involved?</p> <p>24 A. It would have been a discussion, I believe,</p> <p>25 between the lead underwriters or lead underwriter and</p>

<p style="text-align: right;">Page 46</p> <p>1 probably our investment bank and personnel within Treasury.</p> <p>2 Q. Okay. If we turn back to the timeline,</p> <p>3 specifically the week of March 17, you'll see the first</p> <p>4 bullet point reads:</p> <p>5 "Update and circulate business, accounting & legal</p> <p>6 due diligence questionnaires".</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And did you have a general</p> <p>10 understanding as to what a -- or which due diligence</p> <p>11 questionnaires are being referred to here by the "business,</p> <p>12 accounting & legal"?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And were you involved in drafting the</p> <p>15 business, accounting and legal due diligence questionnaires?</p> <p>16 A. No.</p> <p>17 Q. Okay. You'll see under the "Responsibility"</p> <p>18 category or column, Barclays Capital is included. Do you</p> <p>19 see that as "BC"?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know who from Barclays Capital was</p> <p>22 involved in updating and circulating the business,</p> <p>23 accounting and legal due diligence questionnaires?</p> <p>24 A. The area within Barclays Capital would have</p> <p>25 been the legal personnel involved in the transaction.</p>	<p style="text-align: right;">Page 48</p> <p>1 THE WITNESS: Barclays as issuer.</p> <p>2 BY MR. NIEHAUS:</p> <p>3 Q. Okay. All right. And Barclays as issue --</p> <p>4 issuer would also include yourself, right, Mr. Harding?</p> <p>5 MR. TOMAINO: Objection to form.</p> <p>6 THE WITNESS: I would have been involved in some</p> <p>7 of the process --</p> <p>8 MR. NIEHAUS: Okay.</p> <p>9 THE WITNESS: -- not necessarily all.</p> <p>10 BY MR. NIEHAUS:</p> <p>11 Q. Within the groups identified in the key on</p> <p>12 the bottom of page 1 of the "Project Rimu US Retail</p> <p>13 Timeline", which group would you have been included in?</p> <p>14 A. B in here.</p> <p>15 Q. Okay. Now, after the business, accounting</p> <p>16 and legal due diligence questionnaires were created, as</p> <p>17 referred to in the second bullet point here of the week of</p> <p>18 March 17, a meeting would be scheduled to discuss those</p> <p>19 questionnaires; is that right?</p> <p>20 MR. TOMAINO: Objection to form.</p> <p>21 THE WITNESS: I'm not aware of a meeting to</p> <p>22 discuss those questionnaires.</p> <p>23 BY MR. NIEHAUS:</p> <p>24 Q. Okay. Are you aware of a telephonic</p> <p>25 conference scheduled to discuss those questionnaires?</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. Would that have been Victoria Hardy?</p> <p>2 A. No. Victoria Hardy was in group legal, so</p> <p>3 the -- she was working within the issuer legal team, as</p> <p>4 opposed to the Barclays Capital investment</p> <p>5 banking/underwriting legal team.</p> <p>6 Q. Okay. The auditors wouldn't have been</p> <p>7 involved in updating and circulating the business,</p> <p>8 accounting and legal due diligence questionnaires, right?</p> <p>9 A. That's correct.</p> <p>10 Q. Okay. And directly below that bullet point,</p> <p>11 we see:</p> <p>12 "Schedule business & legal due diligence</p> <p>13 sessions".</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And again, on the right-hand side you'll see</p> <p>17 "B", which refers to Rimu. And "Rimu" refers to the working</p> <p>18 group on Project Rimu; is that right?</p> <p>19 MR. TOMAINO: Objection to form.</p> <p>20 THE WITNESS: Rimu was the name for --</p> <p>21 MR. NIEHAUS: Okay.</p> <p>22 THE WITNESS: -- Barclays as issuer.</p> <p>23 BY MR. NIEHAUS:</p> <p>24 Q. We can move forward. So --</p> <p>25 THE COURT REPORTER: "... was the name for..."?</p>	<p style="text-align: right;">Page 49</p> <p>1 A. I'm aware of certain telephone conference</p> <p>2 calls that were set up in connection with some of them.</p> <p>3 Q. Okay. And you'll see next to the --</p> <p>4 THE COURT REPORTER: Sorry?</p> <p>5 THE WITNESS: Sorry, in connection with some of</p> <p>6 them.</p> <p>7 BY MR. NIEHAUS:</p> <p>8 Q. Okay. When you say "some of them", which</p> <p>9 questionnaires are you specifically referring to?</p> <p>10 A. The business due diligence, the accounting</p> <p>11 due diligence, and I'm not aware of the legal due</p> <p>12 diligence -- due diligence questionnaire.</p> <p>13 Q. Okay. And again, we'll take a look at some</p> <p>14 of those questionnaires later on today. But just to gain</p> <p>15 a general understanding, next to the bullet point "Schedule</p> <p>16 business & legal due diligence sessions", there are a number</p> <p>17 of parties that are identified under the "Responsibility"</p> <p>18 category. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And the auditors, PwC, wouldn't have</p> <p>21 participated in the business and legal due diligence</p> <p>22 sessions; is that right?</p> <p>23 A. They wouldn't have participated in the</p> <p>24 business due diligence. I'm not familiar with the legal due</p> <p>25 diligence process.</p>

<p style="text-align: right;">Page 50</p> <p>1 Q. Okay, fair enough.</p> <p>2 Let's take a look at the fifth bullet point down</p> <p>3 under the week of March 17. You'll see it reads:</p> <p>4 "Contact Rating Agencies & send draft offering</p> <p>5 documents".</p> <p>6 And under the "Responsibility" column, Barclays</p> <p>7 and the ratings agencies are identified.</p> <p>8 A. Yes.</p> <p>9 Q. And, Mr. Harding, was this one of your</p> <p>10 responsibilities in connection with the series 5 offering?</p> <p>11 A. I believe I contacted the rating agencies,</p> <p>12 yes.</p> <p>13 Q. Okay. And what was the purpose of contacting</p> <p>14 the ratings agencies in connection with the series 5</p> <p>15 offering?</p> <p>16 A. To obtain a rating for the potential --</p> <p>17 potential issuance that was coming up, to --</p> <p>18 Q. Did you -- oh, I'm sorry.</p> <p>19 A. So to get an indicative rating from them</p> <p>20 first of all, and subsequently a formal rating once the</p> <p>21 actual issue has taken place.</p> <p>22 Q. Did you have a particular rating in mind that</p> <p>23 you were seeking?</p> <p>24 MR. TOMAINO: Objection to form.</p> <p>25 THE WITNESS: That wouldn't fall within my</p>	<p style="text-align: right;">Page 52</p> <p>1 MR. TOMAINO: Objection to form, lack of</p> <p>2 foundation.</p> <p>3 THE WITNESS: Well, that's for the underwriters'</p> <p>4 counsel to advise on.</p> <p>5 BY MR. NIEHAUS:</p> <p>6 Q. Okay. Did you have an understanding at the</p> <p>7 time as to why the underwriters' counsel would be seeking</p> <p>8 this type of information?</p> <p>9 A. I believe it was fairly standard in the</p> <p>10 production of comfort letters.</p> <p>11 Q. Okay. Had similar requests been made by the</p> <p>12 underwriters' counsel in connection with the series 2,</p> <p>13 series 3 and series 4 offerings?</p> <p>14 A. I can't be certain of that.</p> <p>15 Q. Okay. If we turn to the week of March 24,</p> <p>16 which begins on the next page, page 2, the first bullet</p> <p>17 point -- or the second bullet point, I'm sorry, reads:</p> <p>18 "Distribute first draft of Comfort Letter".</p> <p>19 A. Yes.</p> <p>20 Q. Does this identify approximately the timing</p> <p>21 of when the parties working on the series 5 offering</p> <p>22 expected to receive the first draft of the comfort letter?</p> <p>23 A. Yes, according to the timetable.</p> <p>24 Q. And would that draft be sent to you,</p> <p>25 Mr. Harding, among others?</p>
<p style="text-align: right;">Page 51</p> <p>1 responsibilities. My role was just purely to contact the</p> <p>2 agencies, provide them with the documentation, and then</p> <p>3 await the response from the rating agency as to what rating</p> <p>4 they were prepared to give.</p> <p>5 BY MR. NIEHAUS:</p> <p>6 Q. Did anyone at Barclays instruct you to seek</p> <p>7 a certain rating from the ratings agencies?</p> <p>8 A. No.</p> <p>9 Q. Okay. And again, we'll take a look at that</p> <p>10 documentation later on today.</p> <p>11 A. Okay.</p> <p>12 Q. You'll see on the last bullet point under</p> <p>13 week March 17, there is reference to a "Circle up", in</p> <p>14 quotations. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Do you have a general understanding as to</p> <p>17 what is being referred to as a "Circle up"?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. What is a "Circle up"?</p> <p>20 A. It is a request by underwriters' counsel to</p> <p>21 effectively put circles around or circle up various</p> <p>22 financial figures in our annual report and accounts which</p> <p>23 was filed with the SEC as a 20-F.</p> <p>24 Q. Okay. And why would the underwriters'</p> <p>25 counsel make this request?</p>	<p style="text-align: right;">Page 53</p> <p>1 A. I believe it would, yes.</p> <p>2 Q. And did you indeed receive a draft of the</p> <p>3 comfort letter in connection to the series 5 offering during</p> <p>4 the week of March 24?</p> <p>5 A. I have received -- I received drafts of the</p> <p>6 comfort letter. I can't recall specifically when that was</p> <p>7 first received.</p> <p>8 Q. Okay. We'll take a look at some documents</p> <p>9 later today.</p> <p>10 You'll see the last bullet point under week of</p> <p>11 March 24 reads:</p> <p>12 "Provide comments on Comfort Letter".</p> <p>13 The "Responsibilities" -- I'm sorry, the</p> <p>14 "Responsibility" column identifies "C", Citi, "BC", Barclays</p> <p>15 Capital, and "UC", underwriters' counsel.</p> <p>16 Mr. Harding, did you provide any comments on the</p> <p>17 draft comfort letter in connection with the series 5</p> <p>18 offering?</p> <p>19 A. Not to my knowledge, no.</p> <p>20 Q. Okay. But you received a draft of the</p> <p>21 comfort letter that was sent by PwC in connection with</p> <p>22 the --</p> <p>23 A. As you have described, I would have</p> <p>24 received -- sorry, I would have received a draft, but I'm</p> <p>25 not sure exactly when.</p>

<p style="text-align: right;">Page 54</p> <p>1 Q. Who from Barclays Capital provided comments</p> <p>2 to the comfort letter in connection with the series 5</p> <p>3 offering?</p> <p>4 THE COURT REPORTER: "... the series 5 offering"?</p> <p>5 MR. NIEHAUS: The series 5 offering, yeah.</p> <p>6 THE WITNESS: I can't recall who specifically</p> <p>7 would have sent any comments.</p> <p>8 BY MR. NIEHAUS:</p> <p>9 Q. Do you know who from Citi provided comments</p> <p>10 to the draft comfort letter?</p> <p>11 A. No.</p> <p>12 Q. Do you know who from the underwriters'</p> <p>13 counsel provided comments to the draft comfort letter?</p> <p>14 A. Not specifically on the first comfort letter,</p> <p>15 no.</p> <p>16 Q. Okay. Do you recall any edits or comments by</p> <p>17 Mr. Ludwick related to the series 5 comfort letter?</p> <p>18 A. I recall there was some correspondence from</p> <p>19 Mr. Ludwick, but I can't recall either when and on what</p> <p>20 version of draft that was.</p> <p>21 Q. Okay. We'll take a look at that document</p> <p>22 later to refresh your recollection.</p> <p>23 Turning to the week of March 31, the first bullet</p> <p>24 point reads:</p> <p>25 "Circulate 'circled up' Comfort Letter with tic &</p>	<p style="text-align: right;">Page 56</p> <p>1 procedures have been -- have been undertaken in relation to</p> <p>2 the tick and tie process, yes.</p> <p>3 Q. What's the purpose of the tick and tie</p> <p>4 process?</p> <p>5 MR. TOMAINO: Objection to form.</p> <p>6 BY MR. NIEHAUS:</p> <p>7 Q. Your understanding.</p> <p>8 A. For PwC to provide the underwriters with</p> <p>9 details of what procedures they have undertaken in respect</p> <p>10 of those various sections within the 20-F.</p> <p>11 Q. Okay. Would that information always -- also</p> <p>12 be provided to Barclays?</p> <p>13 A. I mean, Barclays would ultimately receive</p> <p>14 the -- a copy of the comfort letter, or the comfort letter</p> <p>15 would also be addressed to -- to Barclays. So therefore</p> <p>16 within the comfort letter there would be -- there would be</p> <p>17 the tick and tie designations and a copy of the circle-up.</p> <p>18 Q. Would investors see a copy of the comfort</p> <p>19 letter, generally?</p> <p>20 MR. TOMAINO: Objection to form.</p> <p>21 THE WITNESS: The comfort letter is not addressed</p> <p>22 to the investors.</p> <p>23 BY MR. NIEHAUS:</p> <p>24 Q. Okay. Did investors in the series 5 offering</p> <p>25 see a copy of the comfort letter?</p>
<p style="text-align: right;">Page 55</p> <p>1 tie".</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. We've identified "circle-up" -- or</p> <p>5 we've identified the meaning of "circle-up" already. But do</p> <p>6 you see a reference to a "tic & tie" in that sentence?</p> <p>7 A. Yes.</p> <p>8 Q. Do you know what that refers to?</p> <p>9 A. Yes.</p> <p>10 Q. What is a "tic & tie", or a tick and tie</p> <p>11 process?</p> <p>12 A. It's where, in a comfort letter, the auditor</p> <p>13 describes certain procedures that it has undertaken in</p> <p>14 connection with the circle-up. So -- so there would usually</p> <p>15 be alpha -- alpha marks within the comfort letter with</p> <p>16 a description, so A, B, C, D, E, for example, with specific</p> <p>17 reference to -- as to exactly what procedures have been</p> <p>18 undertaken against that particular category; and then in the</p> <p>19 circle-up of the financial information in the 20-F, various</p> <p>20 information would be allocated those alpha symbols.</p> <p>21 Q. And then in the comfort letter -- I'm sorry,</p> <p>22 withdraw that.</p> <p>23 Is the tick and tie process explained or</p> <p>24 identified in the comfort letter?</p> <p>25 A. I believe the comfort letter states what</p>	<p style="text-align: right;">Page 57</p> <p>1 MR. TOMAINO: Objection to form.</p> <p>2 THE WITNESS: I wouldn't know that information.</p> <p>3 BY MR. NIEHAUS:</p> <p>4 Q. Was the comfort letter part of the offering</p> <p>5 materials in connection with the series 5 offer?</p> <p>6 MR. TOMAINO: Objection to form.</p> <p>7 THE WITNESS: I don't know.</p> <p>8 MR. NIEHAUS: Why don't we take a break and go off</p> <p>9 the record?</p> <p>10 MR. TOMAINO: Yeah.</p> <p>11 THE VIDEOGRAPHER: Going off the record. The time</p> <p>12 is 10:51.</p> <p>13 (10:51 a.m.)</p> <p>14 (Break taken.)</p> <p>15 (11:09 a.m.)</p> <p>16 THE VIDEOGRAPHER: Back on the record. The time</p> <p>17 is 11:09.</p> <p>18 BY MR. NIEHAUS:</p> <p>19 Q. Mr. Harding, why don't we take a look at the</p> <p>20 next exhibit today, which has been previously marked as</p> <p>21 exhibit [20].</p> <p>22 (Exhibit 20, previously marked, referred to.)</p> <p>23 For the record, exhibit 20 --</p> <p>24 MR. TOMAINO: I'm sorry, I don't have one.</p> <p>25 MR. NIEHAUS: Oh, sorry.</p>

<p style="text-align: right;">Page 58</p> <p>1 MR. TOMAINO: I thought you had two. It was the</p> <p>2 prior exhibit. Thank you. Okay, great. Thanks.</p> <p>3 BY MR. NIEHAUS:</p> <p>4 Q. For the record, exhibit 20 is a one-page</p> <p>5 email with two attachments. The exhibit is Bates-ed</p> <p>6 UW_Barclays_000018881 and runs to 888.</p> <p>7 As I mentioned earlier, Mr. Harding, I realize</p> <p>8 this document contains multiple pages. I'm just going to</p> <p>9 have a few questions relating to certain pages of this -- of</p> <p>10 each attachment but, as always, feel free to read the entire</p> <p>11 document for context if you need to.</p> <p>12 A. Okay.</p> <p>13 Q. Mr. Harding, do you recognize the email that</p> <p>14 is on the cover page of this exhibit 20?</p> <p>15 A. Yes, I do.</p> <p>16 Q. Okay. And what is this -- did you receive</p> <p>17 this email on or around March 20, 2008?</p> <p>18 A. I assume so, from the date, yes.</p> <p>19 Q. Okay. Does this email contain -- or relate</p> <p>20 to the series 5 offering?</p> <p>21 A. Yes, it does.</p> <p>22 Q. Okay. And does this email attach what's been</p> <p>23 identified as the business due diligence and accounting due</p> <p>24 diligence questionnaires?</p> <p>25 A. Yes, it does.</p>	<p style="text-align: right;">Page 60</p> <p>1 right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Mr. Ciobanu goes on to write:</p> <p>4 "Please note that we are collecting comments from</p> <p>5 the joint bookrunners and will update these lists as</p> <p>6 appropriate."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And did you have an understanding as to who</p> <p>10 was being referred to by Mr. Ciobanu as the "joint</p> <p>11 bookrunners"?</p> <p>12 A. Yes, the other investment banks who had been</p> <p>13 appointed or were to be appointed in a joint bookrunner</p> <p>14 position.</p> <p>15 Q. Okay. Would those also be referred to as</p> <p>16 "the underwriters"?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So let's take a look at the first</p> <p>19 attachment, which is entitled "ACCOUNTING DUE DILIGENCE".</p> <p>20 Mr. Harding, who created this document?</p> <p>21 A. I wouldn't know.</p> <p>22 Q. Okay. What's the purpose of an accounting</p> <p>23 due diligence questionnaire?</p> <p>24 MR. TOMAINO: Objection to form.</p> <p>25 BY MR. NIEHAUS:</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. Okay. Is this one of the documents you</p> <p>2 reviewed in preparation for today?</p> <p>3 MR. TOMAINO: Objection to -- I don't think that</p> <p>4 you're entitled to know what he reviewed in preparation for</p> <p>5 today. That reflects counsel's selection of documents. So</p> <p>6 I instruct you not to answer.</p> <p>7 BY MR. NIEHAUS:</p> <p>8 Q. Mr. Harding, are you familiar with this</p> <p>9 document?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. So let's take a look at the email from</p> <p>12 Mr. Bogdan Ciobanu. Mr. Ciobanu was from Citi -- Citigroup;</p> <p>13 is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Mr. Ciobanu writes:</p> <p>16 "Barclays Team: ..."</p> <p>17 I'm going to stop there. Mr. Harding, did you</p> <p>18 understand yourself to be part of the Barclays team in</p> <p>19 connection with the Project Rimu?</p> <p>20 A. Yes.</p> <p>21 Q. Okay.</p> <p>22 "Attached please find the draft business and</p> <p>23 accounting due diligence lists for the proposed offering."</p> <p>24 And these were the draft business and accounting</p> <p>25 due diligence lists for the series 5 offering; is that</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. Let me ask it this way: what was the purpose</p> <p>2 of the accounting due diligence questionnaire in connection</p> <p>3 with the series 5 offer?</p> <p>4 MR. TOMAINO: Objection to form.</p> <p>5 THE WITNESS: My understanding from looking at the</p> <p>6 form is that it's a set of questions to be asked of PwC by</p> <p>7 the underwriting group.</p> <p>8 BY MR. NIEHAUS:</p> <p>9 Q. So PwC would provide answers to the questions</p> <p>10 identified in the accounting due diligence questionnaire; is</p> <p>11 that right?</p> <p>12 A. Yes.</p> <p>13 Q. How would those answers be disseminated to</p> <p>14 the underwriters?</p> <p>15 A. My understanding is that there was</p> <p>16 a conference call set up with PwC.</p> <p>17 Q. Okay. Would PwC provide any written draft</p> <p>18 answers to the underwriters?</p> <p>19 A. I wouldn't know.</p> <p>20 Q. Okay. Did you provide any comments to the</p> <p>21 draft accounting due diligence questionnaire upon being</p> <p>22 provided by Mr. Bogdan Ciobanu?</p> <p>23 A. No.</p> <p>24 Q. Did anyone from Barclays provide any</p> <p>25 comments?</p>

<p style="text-align: right;">Page 62</p> <p>1 A. I don't recall having seen any comments.</p> <p>2 Q. Okay.</p> <p>3 A. But I think it was mostly provided to us for</p> <p>4 information purposes.</p> <p>5 Q. Did you participate in any way in gathering</p> <p>6 information that was requested in the accounting due</p> <p>7 diligence questionnaire?</p> <p>8 A. No.</p> <p>9 Q. Did you participate on the conference call</p> <p>10 that discussed the accounting due diligence questionnaire?</p> <p>11 A. I believe I did.</p> <p>12 Q. Okay. And did you speak during that</p> <p>13 conference call?</p> <p>14 A. No.</p> <p>15 Q. Okay. What did your -- other than listening,</p> <p>16 what did your participation consist of?</p> <p>17 THE COURT REPORTER: "... other than</p> <p>18 listening..."?</p> <p>19 BY MR. NIEHAUS:</p> <p>20 Q. ... what did your participation consist of?</p> <p>21 A. I think I was just listening in to the -- to</p> <p>22 the sort of question-and-answer session.</p> <p>23 Q. Okay. You'll see there's several headings</p> <p>24 here. If we look at page 1 of the accounting due diligence</p> <p>25 questionnaire, the third heading reads "FINANCIAL</p>	<p style="text-align: right;">Page 64</p> <p>1 A. I can't recall.</p> <p>2 Q. Okay. And when I -- when I say "present",</p> <p>3 I mean either listening or speaking on the call.</p> <p>4 A. I can't recall.</p> <p>5 Q. Okay. When you were listening to the call,</p> <p>6 were you with anyone else from Barclays?</p> <p>7 A. I don't -- sorry, I don't recall who may have</p> <p>8 been on the -- on the conference call.</p> <p>9 Q. Okay. When you dialed into the call, did you</p> <p>10 dial in from your office?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Did you dial in from a conference room</p> <p>13 or your personal office space?</p> <p>14 A. I can't recall.</p> <p>15 Q. Okay. If you turn to question 8 on page 1,</p> <p>16 you'll see a reference to "IFRS". Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know what that refers to?</p> <p>19 A. My understanding is -- is that it's an</p> <p>20 accounting standard.</p> <p>21 Q. Did PwC perform any -- any audits in</p> <p>22 connection with the series 5 offering that applied the IFRS</p> <p>23 accounting standard?</p> <p>24 MR. TOMAINO: Objection to form.</p> <p>25 THE WITNESS: I would not have any involvement in</p>
<p style="text-align: right;">Page 63</p> <p>1 STATEMENTS". Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And then number 9 reads:</p> <p>4 "Describe any current or past material</p> <p>5 disagreements between the Company's auditor and the Group</p> <p>6 relating to the financial statements or accounting policies</p> <p>7 of the Group, and describe how they were resolved."</p> <p>8 Do you see that, Mr. Harding?</p> <p>9 A. Yes.</p> <p>10 Q. How did PwC respond to this question on the</p> <p>11 conference call?</p> <p>12 A. I can't recall the individual -- individual</p> <p>13 responses to the questions.</p> <p>14 Q. Okay. If you see number 10, the question</p> <p>15 reads:</p> <p>16 "List any areas identified as requiring particular</p> <p>17 attention and audit issues discussed with management."</p> <p>18 Mr. Harding, how did PwC respond to question 10?</p> <p>19 A. I can't recall.</p> <p>20 Q. Okay. Can you recall any responses by PwC</p> <p>21 during the accounting due diligence call?</p> <p>22 A. No, I can't.</p> <p>23 Q. Okay. Do you recall any -- withdraw that.</p> <p>24 Who else from Barclays was present during the</p> <p>25 accounting due diligence call?</p>	<p style="text-align: right;">Page 65</p> <p>1 the work undertaken by PwC in connection with any auditing</p> <p>2 process.</p> <p>3 BY MR. NIEHAUS:</p> <p>4 Q. Okay. You would -- you would have received</p> <p>5 a draft of the comfort letter, right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. In the draft of the comfort letter,</p> <p>8 would PwC identify which standard they're applying in</p> <p>9 providing comfort?</p> <p>10 MR. TOMAINO: Objection to form.</p> <p>11 BY MR. NIEHAUS:</p> <p>12 Q. Which accounting standard?</p> <p>13 A. I can't recall the specifics of the comfort</p> <p>14 letter or what was contained within it.</p> <p>15 Q. Okay. We'll take a look at that later.</p> <p>16 Let's take a look at the second attachment that is</p> <p>17 identified as the "BUSINESS DUE DILIGENCE" questionnaire.</p> <p>18 Mr. Harding, you're familiar with this document, right?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And what was the purpose of this</p> <p>21 document?</p> <p>22 A. It is a due diligence process of senior</p> <p>23 management of Barclays undertaken by the underwriters and</p> <p>24 the underwriters' counsel, and also in connection with</p> <p>25 Barclays' US counsel, to enable a -- or to enable 10b-5 due</p>

<p style="text-align: right;">Page 66</p> <p>1 diligence letters to be issued, ultimately.</p> <p>2 Q. What do you mean by "annotated" [sic]?</p> <p>3 Did -- who drafted the questions contained in this document?</p> <p>4 A. I --</p> <p>5 MR. TOMAINO: I don't think he used the word</p> <p>6 "annotated".</p> <p>7 BY MR. NIEHAUS:</p> <p>8 Q. Did you? I thought you did, I'm sorry.</p> <p>9 I thought you might have used the word "annotated", I'm</p> <p>10 sorry. Who drafted the questions contained in this</p> <p>11 document?</p> <p>12 A. I don't know for certain. I assume the first</p> <p>13 draft may have come from Citigroup, as it came from -- as it</p> <p>14 was an email circulation from them, but I don't know</p> <p>15 specifically.</p> <p>16 Q. Okay. And these -- and these questions were</p> <p>17 directed at Barclays' senior management; is that correct?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. And who from Barclays' senior</p> <p>20 management responded to these questions or was involved in</p> <p>21 responding to these questions?</p> <p>22 A. I think this was an early draft of the</p> <p>23 document and they would have been questions in relation to</p> <p>24 a due diligence meeting/conference call that would have been</p> <p>25 set up at which various members of senior management would</p>	<p style="text-align: right;">Page 68</p> <p>1 specifically answered those questions.</p> <p>2 Q. How was this information determined by</p> <p>3 Barclays?</p> <p>4 MR. TOMAINO: Objection to form.</p> <p>5 THE WITNESS: I was not involved in the process</p> <p>6 for obtaining answers to these questions. So I don't know</p> <p>7 what -- the various speakers who answered these questions,</p> <p>8 I don't know how they went about procuring their answers to</p> <p>9 those questions.</p> <p>10 BY MR. NIEHAUS:</p> <p>11 Q. Was Mr. Aucutt involved in procuring answers</p> <p>12 to the questions listed in this "ASSET VALUATION/ASSET MIX</p> <p>13 QUALITY"?</p> <p>14 A. I don't believe he would have been, no. He</p> <p>15 would have been responsible for answering some of the</p> <p>16 questions relating to Treasury, so things like the bank --</p> <p>17 so more to do with the -- the sort of capital position.</p> <p>18 Q. Okay. Were you involved in any process to</p> <p>19 determine the answers for the questions identified in 11 to</p> <p>20 20?</p> <p>21 A. No.</p> <p>22 Q. Okay. Did you have any involvement in</p> <p>23 determining answers for the questions identified in 21 to</p> <p>24 29?</p> <p>25 A. Not to my knowledge, no.</p>
<p style="text-align: right;">Page 67</p> <p>1 answer the specific questions.</p> <p>2 Q. Okay. And Mr. Britton was involved in that</p> <p>3 process, is that correct, in responding to the business due</p> <p>4 diligence questions?</p> <p>5 A. I don't believe he was involved in the</p> <p>6 initial due diligence meeting/conference call that took</p> <p>7 place.</p> <p>8 Q. Okay. Who was involved? Mr. Lucas?</p> <p>9 A. When the meeting was -- when the meeting was</p> <p>10 set up, Mr. Lucas, Mark Harding, the Barclays general</p> <p>11 counsel, Andy Bruce, who I think was the credit risk</p> <p>12 director, Miles Storey, who was head -- excuse me -- head of</p> <p>13 group balance sheet in Barclays Treasury, and Ross Aucutt,</p> <p>14 also from Barclays Treasury.</p> <p>15 Q. Okay. If you turn to page 2, you'll see</p> <p>16 a heading "ASSET VALUATION/ASSET MIX QUALITY". Do you see</p> <p>17 that?</p> <p>18 A. Yes.</p> <p>19 Q. And then beneath that heading, there are</p> <p>20 questions numbered 11 to 20. Do you see that, Mr. Harding?</p> <p>21 A. Yes.</p> <p>22 Q. Who provided answers to those questions on</p> <p>23 the business due diligence call?</p> <p>24 A. I can't recall offhand. It may have been</p> <p>25 a mix of people. But I can't say for certain from this who</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Okay. That would have been Mr. Aucutt and</p> <p>2 Mr. Storey?</p> <p>3 A. Yes, that's correct.</p> <p>4 Q. Okay. On the last page of this document</p> <p>5 you'll see there's a heading "GENERAL", and then there's</p> <p>6 questions numbered 37 to 45.</p> <p>7 A. Mm-hmm, yes.</p> <p>8 Q. Mr. Harding, did you have any involvement in</p> <p>9 determining the answers to questions 37 to 45?</p> <p>10 A. No, I did not.</p> <p>11 Q. Okay. Do you know who from Barclays was</p> <p>12 tasked to respond to the questions identified on this</p> <p>13 document as 37 to 45?</p> <p>14 A. I can't recall who -- who was specifically</p> <p>15 allocated to answer those questions from the information</p> <p>16 here.</p> <p>17 Q. You can put that aside. Let's take a look at</p> <p>18 the next exhibit -- actually, Mr. Harding, before we leave</p> <p>19 that exhibit, you identified there was a call that took</p> <p>20 place on or around April of 2008 relating to business due</p> <p>21 diligence questions; is that right?</p> <p>22 A. Correct, yes.</p> <p>23 Q. And did you -- did you call in during that</p> <p>24 timeframe to participate in that call?</p> <p>25 A. I was present at the -- the due diligence</p>

<p style="text-align: right;">Page 70</p> <p>1 call, which I think took place on April 3, 2008, I was 2 present at that meeting/conference call. 3 Q. Okay. PwC would not have participated or 4 called in for the business due diligence call, right? 5 A. That's correct. 6 Q. Okay. Let's take a look at the next exhibit 7 which has been marked -- which I will mark today as 8 exhibit 363. 9 (Exhibit 363 marked for identification.) 10 Again, Mr. Harding, this is a -- this document is 11 quite voluminous. You'll see that it contains an attachment 12 which has been identified as a form 20-F. I just have some 13 general questions about the email and the attachment, and 14 specifically pages 48 through -- I'm sorry, 51 through 53 of 15 the attachment. 16 Just for the record, this document or this exhibit 17 contains a one-page -- a two-page email and a lengthy 18 exhibit. The Bates range of this exhibit is 19 UW_Barclays_000006380 and runs to 6462. 20 Okay. Mr. Harding, do you understand this to be 21 an email -- I'm sorry. Do you understand the cover page of 22 this exhibit to be an email sent to you on or around 23 March 20, 2008 by a Mr. Ludwick? 24 A. No, it was sent by Mr. Ludwick to PwC and 25 I was one of the cc'ed parties --</p>	<p style="text-align: right;">Page 72</p> <p>1 A. That's what -- yes, that's what the face of 2 the email would imply, yes. 3 Q. And do you understand "circle up" to be 4 referring to the same circle-up process that we identified 5 earlier today? 6 A. Yes, correct. 7 Q. If we turn to pages 51 through 53, and 51 is 8 entitled "Financial review", "Off-balance sheet 9 arrangements", and then if we take a look at the subheading 10 of "Collateralised Debt Obligations", Mr. Harding, did you 11 have an understanding as to what "Collateralised Debt 12 Obligations" are? 13 A. I have a very sort of vague understanding, 14 but not specific. 15 Q. Do you understand those to be referring to 16 CDOs, in short form? 17 A. Yes. 18 Q. Okay. And you'll see that there's a number 19 of circles underneath that subheading. Do you see that? 20 A. Yes. 21 Q. And is Linklaters requesting that the 22 auditor, PwC, review those numbers that have been circled? 23 MR. TOMAINO: Objection to form. 24 THE WITNESS: My understanding is that the 25 circle-up comprises a number of circles which the</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. Okay. 2 A. -- on that email. 3 Q. Okay. Mr. Harding, you were one of the 4 recipients of this email sent by Mr. Ludwick -- 5 A. Correct, yes. 6 Q. -- on or around March 20, 2008? 7 A. Correct, yes. 8 Q. Okay. The email was sent to a Drew Haigh 9 from PwC in addition to a David Mayland and Vassos Vrachimis 10 at PwC? 11 A. Yes, sorry. 12 Q. You'll see this email contains an attachment, 13 and that attachment is a -- does that appear to be 14 a circle-up of the -- of the 20-F filed by Barclays in 2007? 15 MR. TOMAINO: This is actually a draft of the 16 20-F. The 20-F was not filed by -- it was filed after 17 March 20. 18 BY MR. NIEHAUS: 19 Q. That's correct. This appears to be a draft 20 of the 20-F filed by Barclays, the 2007 20-F? 21 A. Yeah. 22 Q. Okay. And is Mr. Ludwick from Linklaters, 23 which was the underwriters' counsel in connection with the 24 series 5 offering, requesting a circle-up of the draft 20-F 25 in this email?</p>	<p style="text-align: right;">Page 73</p> <p>1 underwriters' counsel would like an explanation of. So as 2 part of the comfort letter, the annotations given to those 3 individual items would explain as to what procedures PwC had 4 undertaken in respect of those items. 5 BY MR. NIEHAUS: 6 Q. Okay. And earlier today we spoke about 7 a tick and tie process; do you recall that? 8 A. Yes. 9 Q. Okay. And by circling these numbers, is that 10 part of the tick and tie process -- 11 MR. TOMAINO: Objection to form. 12 BY MR. NIEHAUS: 13 Q. -- that the auditors are performing? 14 MR. TOMAINO: Objection to form. 15 THE WITNESS: That's my understanding. 16 BY MR. NIEHAUS: 17 Q. Okay. And if you take a look at the next 18 page, which is marked page 52, and there is a subheading of 19 "Structured Investment Vehicles", also referred to as 20 "SIVs". Do you see that, Mr. Harding? 21 A. I do, yes. 22 Q. Okay. And then there's numbers that are 23 circled. And here, is Linklaters, the underwriters' 24 counsel, requesting that these numbers be part of the tick 25 and tie process --</p>

<p style="text-align: right;">Page 74</p> <p>1 MR. TOMAINO: Objection to form.</p> <p>2 BY MR. NIEHAUS:</p> <p>3 Q. -- in connection with the series 5 offer?</p> <p>4 A. My understanding is that anything circled</p> <p>5 within that document would form part of the circle-up</p> <p>6 process.</p> <p>7 Q. Okay. And that would include the circles</p> <p>8 contained on page 53 of this draft 20-F as well, right?</p> <p>9 A. I would assume so, yes.</p> <p>10 Q. Okay. And Linklaters, the underwriters'</p> <p>11 counsel, is requesting comfort on the items circled on</p> <p>12 pages 51 to 53; is that right?</p> <p>13 MR. TOMAINO: Objection to form.</p> <p>14 THE WITNESS: They are providing PwC with the</p> <p>15 circle-up of various items within that document.</p> <p>16 BY MR. NIEHAUS:</p> <p>17 Q. Okay. And by requesting that certain items</p> <p>18 be circled up, Linklaters, the underwriters' counsel, is</p> <p>19 also requesting that comfort be given on those items circled</p> <p>20 up; is that right?</p> <p>21 MR. TOMAINO: Objection to form, lack of</p> <p>22 foundation, mischaracterizes the document.</p> <p>23 THE WITNESS: At this stage they just appear to be</p> <p>24 providing PwC with a -- sorry, at this stage they just</p> <p>25 appear to be providing PwC with a circle-up of the draft</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Okay. And, Mr. Harding, you'll see the first</p> <p>2 email in this document is dated March 20, 2008. It appears</p> <p>3 to be sent by you using your barclaystreasury.com account.</p> <p>4 Do you see that?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. And you send an email to Mr. Haigh,</p> <p>7 among others, cc'ing Ms. Hardy, on or around March 20, 2008,</p> <p>8 writing:</p> <p>9 "Drew / Vassos,</p> <p>10 "I understand that a draft of the comfort letter</p> <p>11 has been circulated. Please could you forward a copy to</p> <p>12 Victoria and myself as we don't appear to have been included</p> <p>13 in the distribution of it."</p> <p>14 Do you see that, Mr. Harding?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And you wrote this email on or around</p> <p>17 March 20, 2008; is that right?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. And at this time, why were you</p> <p>20 requesting a draft of the comfort letter?</p> <p>21 A. Because it would be usual for our legal to</p> <p>22 see both the drafts -- sorry, both the drafts of the</p> <p>23 arrangement/engagement letter and the comfort letter for any</p> <p>24 transaction. So, having noticed that our legal appear to</p> <p>25 have been omitted -- omitted from the original circulation,</p>
<p style="text-align: right;">Page 75</p> <p>1 20-F.</p> <p>2 BY MR. NIEHAUS:</p> <p>3 Q. Okay. And by providing PwC with a circle-up</p> <p>4 of the draft 20-F, Linklaters is requesting that PwC perform</p> <p>5 procedures on the items that have been circled; is that</p> <p>6 right?</p> <p>7 MR. TOMAINO: Objection to form, foundation,</p> <p>8 mischaracterizes the document.</p> <p>9 THE WITNESS: At this stage, they -- at this</p> <p>10 stage, Linklaters just appear to be asking PwC if they have</p> <p>11 any questions or items that they want to discuss in</p> <p>12 connection with the circle-up of a draft document.</p> <p>13 BY MR. NIEHAUS:</p> <p>14 Q. Okay. Why don't we move on to the next</p> <p>15 exhibit? We'll touch on this area a little bit further as</p> <p>16 we look at documents later.</p> <p>17 A. Okay.</p> <p>18 Q. I'll introduce the next exhibit, which will</p> <p>19 be marked exhibit 364.</p> <p>20 (Exhibit 364 marked for identification.)</p> <p>21 For the record, this document or this exhibit</p> <p>22 contains a two-page email -- three-page email with an</p> <p>23 attachment. The document is Bates BARC-ADS-000812693 and</p> <p>24 runs to 699.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 77</p> <p>1 I requested that a copy be forwarded to ourselves.</p> <p>2 Q. Okay. Did you have an understanding as to</p> <p>3 why Mr. Haigh didn't originally include yourself and</p> <p>4 Ms. Harding on the draft comfort letter?</p> <p>5 MR. TOMAINO: Objection to form.</p> <p>6 THE WITNESS: No.</p> <p>7 BY MR. NIEHAUS:</p> <p>8 Q. Okay. And you'll see on or around March 20,</p> <p>9 2008 at 3:08 p.m., Ms. Sophie Shi from PwC responds to your</p> <p>10 email and attaches a draft comfort letter that was sent to</p> <p>11 Linklaters the night before. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Who was Ms. Shi?</p> <p>14 A. She was one of the PwC personnel who worked</p> <p>15 in the team that included Drew Haigh and Vassos Vrachimis.</p> <p>16 Q. Okay. And has she worked on the series 5</p> <p>17 offering, sorry?</p> <p>18 A. She worked in that team, so she distributed</p> <p>19 this comfort letter. To what extent she actually was</p> <p>20 involved in it, I can't recall from -- from this document.</p> <p>21 Q. Okay. She also writes:</p> <p>22 "If you have any questions, please don't hesitate</p> <p>23 to contact Vassos or me."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 78</p> <p>1 Q. And did you have any questions for Ms. Shi?</p> <p>2 A. I don't recall.</p> <p>3 Q. Okay. Let's take a look at the draft comfort</p> <p>4 letter which is attached to Ms. Shi's email and begins on</p> <p>5 Bates BARC-ADS-00812616 -- I'm sorry, BARC-ADS-00812696.</p> <p>6 Mr. Harding, does this draft appear to be</p> <p>7 a template of a prior comfort letter issued by PwC?</p> <p>8 MR. TOMAINO: Objection to form.</p> <p>9 THE WITNESS: It appears to be in a format for --</p> <p>10 for comfort letters, but to what extent it actually mirrored</p> <p>11 any previous comfort letters, I couldn't say.</p> <p>12 BY MR. NIEHAUS:</p> <p>13 Q. Okay. Let's take a look at page 2 of the</p> <p>14 draft comfort letter, which is Bates-ed BARC-ADS-00812697,</p> <p>15 and specifically, Mr. Harding, let's take a look at</p> <p>16 number 4. In the last sentence before (i), this comfort</p> <p>17 letter reads, as drafted:</p> <p>18 "With respect to the Group for the period from</p> <p>19 1 January 2008 to 29 February 2008, we have: ..."</p> <p>20 And then you see two roman numerals. Do you</p> <p>21 understand -- as to the time period that's being referred</p> <p>22 to, do you understand that that's referring to a stub</p> <p>23 period?</p> <p>24 MR. TOMAINO: Objection to form, foundation.</p> <p>25 THE WITNESS: It's referring to a two-month period</p>	<p style="text-align: right;">Page 80</p> <p>1 of the 20-F so I can't say -- state specifically.</p> <p>2 BY MR. NIEHAUS:</p> <p>3 Q. Have you heard of a -- do you have</p> <p>4 an understanding as to what a "stub period" refers to?</p> <p>5 A. My understanding is that it is a -- an</p> <p>6 incomplete period.</p> <p>7 Q. Okay. And in connection with the series 5</p> <p>8 offering, were the auditors, PwC, reviewing a stub period in</p> <p>9 connection with your audit procedures?</p> <p>10 MR. TOMAINO: Objection to form.</p> <p>11 THE COURT REPORTER: "... in connection with</p> <p>12 the..."?</p> <p>13 MR. NIEHAUS: Their audit procedures.</p> <p>14 THE WITNESS: I wasn't involved in any of the work</p> <p>15 that PwC did in connection with -- with the offering of the</p> <p>16 series 5 preference shares.</p> <p>17 BY MR. NIEHAUS:</p> <p>18 Q. Okay. Mr. Harding, you've identified your</p> <p>19 title as the assistant director of Capital Issuance</p> <p>20 & Securitisation during the 2007 time period, right?</p> <p>21 A. Yes, correct.</p> <p>22 Q. And that was your title during the 2008 time</p> <p>23 period as well?</p> <p>24 A. I believe so, yes.</p> <p>25 Q. Okay. During this two-year time period, how</p>
<p style="text-align: right;">Page 79</p> <p>1 from the beginning of January to the end of February 2008.</p> <p>2 BY MR. NIEHAUS</p> <p>3 Q. Do you know why that period was chosen?</p> <p>4 MR. TOMAINO: Objection to form.</p> <p>5 THE WITNESS: Not specifically, no.</p> <p>6 BY MR. NIEHAUS:</p> <p>7 Q. Does that appear that it postdates the 2007</p> <p>8 20-F?</p> <p>9 MR. TOMAINO: Postdates the period covered by the</p> <p>10 200 --</p> <p>11 MR. NIEHAUS: The period covered by the 2007 20-F.</p> <p>12 MR. TOMAINO: So the question is: does</p> <p>13 January 2008 come after 12/31/07?</p> <p>14 MR. NIEHAUS: No, because we haven't identified</p> <p>15 the fiscal year. That's why I asked. So...</p> <p>16 MR. TOMAINO: Okay. Why don't we do that?</p> <p>17 BY MR. NIEHAUS:</p> <p>18 Q. Do you have an understanding as to what</p> <p>19 period the 20-F -- 2007 20-F covers?</p> <p>20 A. It covers the year up to December 31, 2007.</p> <p>21 Q. Okay. And ... okay. So logically,</p> <p>22 January 1, 2008 to February 29, 2008 would not be covered in</p> <p>23 the 2007 20F, right?</p> <p>24 MR. TOMAINO: Object to form.</p> <p>25 THE WITNESS: I'm not involved in the production</p>	<p style="text-align: right;">Page 81</p> <p>1 many -- approximately -- draft comfort letters did you</p> <p>2 review?</p> <p>3 MR. TOMAINO: Can I just clarify? How many drafts</p> <p>4 of the series 5 comfort letter or how many drafts of comfort</p> <p>5 letters across all offerings by Barclays?</p> <p>6 BY MR. NIEHAUS:</p> <p>7 Q. Across all offerings by Barclays that you</p> <p>8 personally worked on.</p> <p>9 A. In that particular period, I can't recall.</p> <p>10 Q. More than 25?</p> <p>11 A. If -- I mean, in the period from 2008, I'd</p> <p>12 probably been involved in the production of round about 50,</p> <p>13 possibly.</p> <p>14 Q. Okay. And when you review those comfort</p> <p>15 letters, what are you reviewing them for?</p> <p>16 A. My main role is to ensure that the engagement</p> <p>17 or arrangement letter for those comfort letters meets the</p> <p>18 Barclays policy for the engagement of its auditor in the</p> <p>19 production of non-audit services and to ensure that the work</p> <p>20 being undertaken in connection with the comfort letter is</p> <p>21 done in a sufficient timeframe so that the comfort letter is</p> <p>22 ready to be issued by the date it's required. My role does</p> <p>23 not encompass looking at any of the financial information or</p> <p>24 figures in relation to the comfort letter itself. So that</p> <p>25 would be something between -- between the underwriters'</p>

<p style="text-align: right;">Page 82</p> <p>1 legal counsel, PwC and our finance department.</p> <p>2 Q. In your previous response you identified</p> <p>3 a "Barclays policy for ... engagement of its auditor". What</p> <p>4 policy are you specifically referring to?</p> <p>5 A. It's a Barclays policy on the engagement</p> <p>6 of -- of Barclays' auditor.</p> <p>7 Q. Okay. And how do you determine whether the</p> <p>8 engagement of an auditor meets that policy?</p> <p>9 MR. TOMAINO: He testified that the engagement</p> <p>10 letter.</p> <p>11 BY MR. NIEHAUS:</p> <p>12 Q. How do you determine whether the engagement</p> <p>13 letter meets that policy?</p> <p>14 A. The policy lays out certain criteria for</p> <p>15 allowable or non-allowable services. One of the allowable</p> <p>16 services is the production of comfort letters in connection</p> <p>17 with a securities offering. But there is a specific section</p> <p>18 which talks about the independence of the auditor, and one</p> <p>19 section is that the engagement of the auditor will not</p> <p>20 breach SEC regulations. There's another section on: it</p> <p>21 won't affect any accounting regulations. And there's</p> <p>22 a third one: Barclays had a policy that anything over -- any</p> <p>23 costs of any securities -- sorry, any cost of PwC in</p> <p>24 connection with the services they provide that's over</p> <p>25 £100,000 has to be provided -- has to be pre-approved by the</p>	<p style="text-align: right;">Page 84</p> <p>1 affect its ability, and therefore its independence, if it's</p> <p>2 also acting as an auditor for a company. So it's my</p> <p>3 understanding.</p> <p>4 BY MR. NIEHAUS:</p> <p>5 Q. Why is it important for the auditor to be</p> <p>6 independent, as you put it?</p> <p>7 MR. TOMAINO: Objection to form.</p> <p>8 THE WITNESS: My understanding is that an auditor</p> <p>9 has to be seen to be independent.</p> <p>10 BY MR. NIEHAUS:</p> <p>11 Q. Okay. If you look at number 4(ii), the draft</p> <p>12 comfort letter states that there was -- and I'll read the</p> <p>13 exact language:</p> <p>14 "... inquired of certain officials of the Group</p> <p>15 who have responsibility for financial and accounting matters</p> <p>16 as to whether the unaudited consolidated financial data</p> <p>17 referred to in 4a(i) above are stated on a basis</p> <p>18 substantially consistent with that of the audited</p> <p>19 consolidated financial statements incorporated by reference</p> <p>20 in the Registration Statement."</p> <p>21 Do you see that, Mr. Harding?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know who from Barclays was contacted</p> <p>24 by the auditors in connection with this provision of the</p> <p>25 comfort letter?</p>
<p style="text-align: right;">Page 83</p> <p>1 board audit committee.</p> <p>2 Q. Okay.</p> <p>3 A. So our comfort letters fall under that</p> <p>4 £100,000 limit, so there is a specific section within the</p> <p>5 engagement letter on independence. And one of my roles</p> <p>6 effectively is to ensure that that section is included with</p> <p>7 any engagement/arrangement letter, and also that there is an</p> <p>8 arrangement/engagement letter that is signed in connection</p> <p>9 with any comfort letter that has to be produced by PwC.</p> <p>10 Q. Okay.</p> <p>11 THE COURT REPORTER: Did you say "FOC</p> <p>12 regulations"?</p> <p>13 THE WITNESS: Sorry, SEC.</p> <p>14 BY MR. NIEHAUS:</p> <p>15 Q. Sorry, I'm just -- I'm still processing your</p> <p>16 response. You mentioned the independence of the auditor in</p> <p>17 connection with the series 5 offer; is that right?</p> <p>18 A. I mentioned it in -- generally.</p> <p>19 Q. Okay. And what do you mean by "independence"</p> <p>20 of an auditor? An auditor is acting independently when</p> <p>21 they're reviewing certain information in connection with the</p> <p>22 offering?</p> <p>23 MR. TOMAINO: Objection, form.</p> <p>24 THE WITNESS: The -- or any auditor can't</p> <p>25 undertake work or transactions or services which could</p>	<p style="text-align: right;">Page 85</p> <p>1 A. It would normally be somebody senior within</p> <p>2 Barclays Finance. But who specifically it was on this</p> <p>3 occasion, no, I can't -- can't recall.</p> <p>4 Q. Okay. Still on page 2, number 6, the first</p> <p>5 sentence reads:</p> <p>6 "As mentioned in paragraph 4, Group officials have</p> <p>7 advised us that no consolidated financial data as of any</p> <p>8 date or for any period subsequent to 29 February 2008 are</p> <p>9 available..."</p> <p>10 Who from Barclays advised PwC that no consolidated</p> <p>11 financial data as of any date or for any period subsequent</p> <p>12 to 29 February 2008 was available?</p> <p>13 A. I don't know who that was.</p> <p>14 Q. Okay. Take a look at page 3. In brackets of</p> <p>15 the first paragraph that's continued from page 2, the draft</p> <p>16 comfort letter states:</p> <p>17 "[On the basis of these inquiries described in 4,</p> <p>18 management have informed us that -- TBC..."</p> <p>19 "TBC", is that -- do you understand that to be "to</p> <p>20 be continued"?</p> <p>21 MR. TOMAINO: Objection to form.</p> <p>22 THE WITNESS: I'm not sure specifically what that</p> <p>23 means.</p> <p>24 BY MR. NIEHAUS:</p> <p>25 Q. Okay.</p>

<p style="text-align: right;">Page 86</p> <p>1 "... have informed us that -- TBC and subject to 2 the Management being able to provide back-up for all line 3 items as at cut-off date -- we are unable to confirm at this 4 stage that we will be able to provide comfort in relation to 5 profit and loss items as at the cut-off date]". 6 Do you see that, Mr. Harding? 7 A. Yes. 8 Q. Okay. Do you know who at management is being 9 referred to here in this provision? 10 A. No, I don't. 11 Q. Okay. If you take a look at page 4 of the 12 draft comfort letter, under number 10 in bold you see: 13 "We will finalize the tickmarks by the end of 14 tomorrow when we finish the review of the 20-F." 15 Do you see that, Mr. Harding? 16 MR. TOMAINO: I'm sorry, Eric, to interrupt. 17 I didn't see where you were. 18 MR. NIEHAUS: It's the bolded portion under 19 number 10 -- 20 MR. TOMAINO: I see. I got it. 21 BY MR. NIEHAUS: 22 Q. And it states -- okay: 23 "We will finalize the tickmarks by the end of 24 tomorrow when we finish the review of the 20-F." 25 Do you see that, Mr. Harding?</p>	<p style="text-align: right;">Page 88</p> <p>1 correspond to the circle-up with an explanation as to what 2 procedures PwC has undertaken. 3 BY MR. NIEHAUS: 4 Q. Okay. Why don't we put that aside and take 5 a look at the next exhibit, which will be marked 6 exhibit 365. 7 (Exhibit 365 marked for identification.) 8 Just for the record, exhibit 365 is a three-page 9 cover email with a one-page attachment. The document is 10 Bates-ed BARC-ADS-00814273. The email exchange is between 11 Mr. Harding and Mr. Hill, Nick Hill, among others. 12 A. Okay. 13 Q. Okay. And, Mr. Harding, you wrote Mr. Hill 14 from Standard & Poor's an email on or around March 17, 2008; 15 is that correct? 16 A. Yes. 17 Q. Okay. And this email related to the series 5 18 offering; is that right? 19 A. Yes, correct. 20 Q. Okay. And what were you seeking from 21 Mr. Hill? 22 MR. TOMAINO: Objection to form. 23 THE WITNESS: I was requesting an indicative 24 rating on -- sorry. 25 THE COURT REPORTER: "I was requesting..."?</p>
<p style="text-align: right;">Page 87</p> <p>1 A. Yes. 2 Q. And does the "tickmarks" refers to the tick 3 and tie process that we identified earlier today? 4 MR. TOMAINO: Objection to form. 5 THE WITNESS: That's what the document implies. 6 BY MR. NIEHAUS: 7 Q. Okay. And are these "tickmarks" the 8 tickmarks that we looked at earlier on exhibit 363 that were 9 circled in the 20-F? 10 MR. TOMAINO: Objection to form. 11 BY MR. NIEHAUS: 12 Q. As requested by the underwriters' counsel? 13 MR. TOMAINO: Objection to form. 14 THE WITNESS: I can't say, as the previous answer 15 referred to or obviously referred to was a draft document, 16 and I don't know what subsequent discussions took place as 17 regards any amendments to -- to that circle-up and the -- to 18 the tickmark process. 19 BY MR. NIEHAUS: 20 Q. Okay. Do tickmarks explain what procedures 21 PwC performed to the 20-F? 22 MR. TOMAINO: Objection to form. 23 THE WITNESS: My understanding is that the 24 circle-ups contain a tickmark annotated to them, and within 25 the comfort letter is an explanation of those letters that</p>	<p style="text-align: right;">Page 89</p> <p>1 THE WITNESS: Requesting an indicative rating -- 2 BY MR. NIEHAUS: 3 Q. Okay. What is a -- oh, sorry. 4 A. -- on a proposed issue. 5 Q. Sorry. And what is an indicative rating? 6 A. It is a rating that -- it is a preliminary 7 rating based on preliminary documentation, which we would 8 expect to be followed up by a formal rating once they have 9 seen the final documentation. 10 Q. Okay. And what documentation is this rating 11 based on? 12 A. It appears to be based on the latest draft 13 that we have. We may have followed up with subsequent 14 drafts. 15 Q. Okay. And you're referring to drafts of 16 the -- 17 A. But I think it's based on the preliminary 18 prospectus supplement. 19 Q. Okay. 20 THE COURT REPORTER: Sorry, "I think..."? 21 THE WITNESS: Sorry, it's based on the preliminary 22 prospectus supplement. 23 BY MR. NIEHAUS: 24 Q. Okay. And you write to Mr. Hill on or around 25 March 17, 2008:</p>

<p style="text-align: right;">Page 90</p> <p>1 "In this connection please find attached the 2 current draft of the Prospectus Supplement which has been 3 marked up with the minor changes from the Series 4 issue." 4 Do you see that, Mr. Harding? 5 A. Yes. 6 Q. And what "minor changes" are you referring 7 to? 8 A. I can't recall offhand. I'm not sure -- I'm 9 not sure what may have been agreed in connection with the 10 issue at that time, so I -- 11 THE COURT REPORTER: "I'm not sure what may have 12 been agreed..."? 13 THE WITNESS: Sorry. I'm not sure what changes 14 may have been made at that time. 15 BY MR. NIEHAUS: 16 Q. Did you provide Mr. Hill with any other 17 documentation? 18 A. I can't recall. 19 Q. Okay. You also write to Mr. Hill, in the 20 preceding sentence: 21 "As this is a retail transaction, it would be 22 appreciated if we could have an indicative rating by close 23 of business on 28 March 2008." 24 Do you see that, Mr. Harding? 25 A. Yes.</p>	<p style="text-align: right;">Page 92</p> <p>1 a potential investor with a rating? 2 MR. TOMAINO: Objection to form. 3 THE WITNESS: Some investors like to know what the 4 rating of a specific issue is, and some investors can only 5 invest in a particular security if it has a specific rating. 6 BY MR. NIEHAUS: 7 Q. Okay. You conclude in your email to 8 Mr. Hill: 9 "Please let Ross Aucutt, Nick Lambert or me know 10 if you have any questions." 11 Did Mr. Hill follow up with you with any 12 questions -- 13 A. I can't -- 14 Q. -- in connection with your request? 15 A. I can't recall. 16 Q. Okay. You'll see less -- or approximately 17 11 days later, on March 28, 2008, Mr. Hill writes back to 18 you: 19 "Dear Keith 20 "Please find attached the indicative rating letter 21 for this Core Tier 1 issue. Hard copy follows in the mail. 22 "As usual, grateful for final documents when 23 available in order that we can issue the final rating 24 letter." 25 Did you send Mr. Hill the final documents?</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Okay. Why do you point out the fact that 2 this transaction is a retail transaction? 3 A. Because some of the documents were referring 4 to Rimu as a retail transaction. 5 Q. Okay. Indicative ratings are more important 6 to retail investors than they are to institutional 7 investors; is that right? 8 MR. TOMAINO: Objection, lack of foundation. 9 THE WITNESS: We have also requested indicative 10 ratings for institutional transactions as well, so not 11 specifically for -- just for retail. 12 BY MR. NIEHAUS: 13 Q. Why is it important to seek -- withdraw that. 14 Why do you request a rating from a ratings agency 15 in connection with the offering? 16 MR. TOMAINO: Objection to form. 17 THE WITNESS: It is standard -- standard practice 18 of Barclays for all the issuances that we do to obtain 19 a rating for them. 20 MR. NIEHAUS: Okay. 21 THE COURT REPORTER: Did you say, "It is standard 22 practice"? 23 THE WITNESS: I did, yes. 24 BY MR. NIEHAUS: 25 Q. And what's the purpose of providing</p>	<p style="text-align: right;">Page 93</p> <p>1 A. Probably, but I couldn't state that 2 categorically. 3 Q. Okay. And other -- 4 A. It would be normal -- sorry. It would be 5 normal practice to send final documents to the rating 6 agencies. 7 Q. And other than the preliminary prospectus, 8 you don't recall sending Mr. Hill any other documents -- 9 MR. TOMAINO: Objection -- 10 BY MR. NIEHAUS: 11 Q. -- is that right? 12 MR. TOMAINO: Objection to form. 13 THE WITNESS: I wouldn't normally send any -- any 14 document other than a prospectus to a rating agency, or 15 possibly an updated draft, if one became available. But 16 I would only send the -- either a preliminary pro supp -- 17 MR. NIEHAUS: Okay. 18 THE COURT REPORTER: "... preliminary..."? 19 THE WITNESS: Preliminary prospectus supplement or 20 a prospectus supplement. 21 BY MR. NIEHAUS: 22 Q. Okay. If we look at the attachment to this 23 email sent by Mr. Hill on or around March 28, 2008, you'll 24 see that the indicative rating he gives is an "A+". Do you 25 see that?</p>

<p style="text-align: right;">Page 94</p> <p>1 A. Yes.</p> <p>2 Q. Is that a good rating?</p> <p>3 MR. TOMAINO: Objection to form.</p> <p>4 THE WITNESS: It's one of the rating -- one of the</p> <p>5 ratings that can -- can be given.</p> <p>6 BY MR. NIEHAUS:</p> <p>7 Q. Is that considered an investment-grade</p> <p>8 rating?</p> <p>9 A. I believe it is, yes.</p> <p>10 Q. Okay. Is that the same rating that was given</p> <p>11 on the series 2, series 3 and series 4 offering?</p> <p>12 MR. TOMAINO: As an indicative or as a final?</p> <p>13 BY MR. NIEHAUS:</p> <p>14 Q. On a fin -- as a final.</p> <p>15 A. I would be surprised if the rating was</p> <p>16 different.</p> <p>17 Q. Did the A+ rating change when Mr. Hill gave</p> <p>18 you his final rating in connection with the series 5</p> <p>19 offering?</p> <p>20 A. I don't believe so.</p> <p>21 Q. Okay. During the -- I'll withdraw that.</p> <p>22 Let's take a look at the next exhibit. This will</p> <p>23 be marked exhibit 366.</p> <p>24 (Exhibit 366 marked for identification.)</p> <p>25 Just for the record, this document marked as</p>	<p style="text-align: right;">Page 96</p> <p>1 letter?</p> <p>2 A. There are two engagement letters normally</p> <p>3 entered into in connection with a securities issue. One is</p> <p>4 a US engagement letter, and that is primarily for use by</p> <p>5 underwriters who are selling into the US, and that</p> <p>6 engagement letter is usually signed by PwC and by Barclays,</p> <p>7 but not the underwriters. And then there is a separate</p> <p>8 what's called a non-US engagement letter, which is in</p> <p>9 respect to those underwriters who may be selling securities</p> <p>10 outside of the US, and that is signed by Barclays, by PwC</p> <p>11 and by the underwriter or lead underwriter on behalf of any</p> <p>12 other underwriters who are participating in a selling of</p> <p>13 securities outside of the US.</p> <p>14 Q. Was the series 5 offering sold outside of the</p> <p>15 US?</p> <p>16 MR. TOMAINO: Objection to form.</p> <p>17 THE WITNESS: Engagement and comfort letters were</p> <p>18 provided for a US and non-US eventuality.</p> <p>19 BY MR. NIEHAUS:</p> <p>20 Q. Okay. Did you consider the series 5 offering</p> <p>21 to be a US transaction?</p> <p>22 MR. TOMAINO: Objection to form.</p> <p>23 THE WITNESS: It was an SEC-registered transaction</p> <p>24 but I did not know what the make-up would be as to exactly</p> <p>25 where those securities would be sold.</p>
<p style="text-align: right;">Page 95</p> <p>1 exhibit 366 contains a one-page email with a multi-page --</p> <p>2 with two multi-page attachments. The document is Bates-ed</p> <p>3 BARC-ADS-00799279 and runs to 303.</p> <p>4 THE WITNESS: Actually, before we begin -- you</p> <p>5 begin your questioning on this, could I take a break,</p> <p>6 please?</p> <p>7 MR. NIEHAUS: Oh, yes, definitely.</p> <p>8 THE WITNESS: Thank you.</p> <p>9 THE VIDEOGRAPHER: Going off the record. The time</p> <p>10 is 12:16.</p> <p>11 (12:16 p.m.)</p> <p>12 (Break taken.)</p> <p>13 (12:23 p.m.)</p> <p>14 THE VIDEOGRAPHER: Back on the record. The time</p> <p>15 is 12:23.</p> <p>16 BY MR. NIEHAUS:</p> <p>17 Q. Okay. Mr. Harding, turning back to what's</p> <p>18 been marked as exhibit 366, and if you see, the cover email</p> <p>19 of this exhibit is from Mr. Haigh from PwC written to you,</p> <p>20 among others, on or around April 1, 2008?</p> <p>21 A. Yes.</p> <p>22 Q. Does this email appear to contain a --</p> <p>23 an attachment of a non-US engagement letter?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And what is a non-US engagement</p>	<p style="text-align: right;">Page 97</p> <p>1 BY MR. NIEHAUS:</p> <p>2 Q. In your letter to -- I'm sorry, in your email</p> <p>3 to Mr. Hill on or around March 17, 2008, when you use -- I'm</p> <p>4 sorry, I'm referring to what's been Bates-ed</p> <p>5 BARC-ADS-00814273, when you write to Mr. Hill:</p> <p>6 "Barclays is planning on making a benchmark issue</p> <p>7 of US\$ denominated Non-Cumulative Callable Dollar Preference</p> <p>8 Shares ..."</p> <p>9 When you use the abbreviation of "US", are you</p> <p>10 referring to the fact that the par value is going to be</p> <p>11 stated in US dollars?</p> <p>12 A. On that -- sorry, "US\$ denominated": yes,</p> <p>13 that it would be -- yes.</p> <p>14 Q. And in your experience as the assistant</p> <p>15 director of Securitisation and Cap -- assistant director of</p> <p>16 Capital Issuance & Securitisation, did you typically -- did</p> <p>17 US retail transactions typically involve US dollar</p> <p>18 denominated par values?</p> <p>19 MR. TOMAINO: Objection, form.</p> <p>20 THE WITNESS: We have also issued US dollar</p> <p>21 denominated institutional preference shares.</p> <p>22 BY MR. NIEHAUS:</p> <p>23 Q. Okay. Just very quickly, if you turn back to</p> <p>24 exhibit number 16.</p> <p>25 MR. TOMAINO: That was the first one from today.</p>

<p style="text-align: right;">Page 98</p> <p>1 BY MR. NIEHAUS:</p> <p>2 Q. The first exhibit I introduced today, which</p> <p>3 was previously marked as exhibit 16. In the timeline</p> <p>4 document, page 1, do you see the heading is "Project Rimu US</p> <p>5 Retail Timeline"?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. What -- what do you understand that to</p> <p>8 mean, as far as just the "Project Rimu US Retail"?</p> <p>9 MR. TOMAINO: Objection to form.</p> <p>10 BY MR. NIEHAUS:</p> <p>11 Q. Is that referring to the series 5</p> <p>12 transaction?</p> <p>13 THE WITNESS: Rimu was the project name for</p> <p>14 series 5.</p> <p>15 BY MR. NIEHAUS:</p> <p>16 Q. Okay. You can put that aside.</p> <p>17 Okay. Turning to the draft engagement letter</p> <p>18 that's included as an attachment to the April 1 email by</p> <p>19 Mr. Haigh, if you turn to page 4, which is Bates-ed</p> <p>20 BARC-ADS-00799283, specifically number 17, the engagement</p> <p>21 letter reads:</p> <p>22 "The procedures we will carry out will not</p> <p>23 constitute an audit or review in accordance with any</p> <p>24 generally accepted auditing standards. Further the</p> <p>25 procedures will not provide assurance that, with respect to</p>	<p style="text-align: right;">Page 100</p> <p>1 engagement letter, right, not a comfort letter? Based on</p> <p>2 the attachment --</p> <p>3 A. I'm sorry.</p> <p>4 Q. You would have --</p> <p>5 A. I'm sorry, again, so that -- that is not the</p> <p>6 type of section on which I would make a comment as I don't</p> <p>7 have the relevant information to -- to make a meaningful</p> <p>8 comment.</p> <p>9 Q. Are you aware of any comments or edits made</p> <p>10 to that specific provision?</p> <p>11 A. I'm not aware of any, no.</p> <p>12 Q. Okay. Let's take a look at 18, the first</p> <p>13 sentence of 18. The engagement letter states:</p> <p>14 "Our work to provide the International Comfort</p> <p>15 Letter will be carried out on the assumption that</p> <p>16 information provided to us by the management of the Issuer</p> <p>17 and the Group is reliable, accurate and complete."</p> <p>18 Mr. Harding, does that appear to be standard</p> <p>19 language in an engagement letter by PwC?</p> <p>20 MR. TOMAINO: Objection to form, foundation.</p> <p>21 THE WITNESS: Possibly, but again I haven't got</p> <p>22 a direct document to compare that against.</p> <p>23 BY MR. NIEHAUS:</p> <p>24 Q. Are you aware of any edits or comments made</p> <p>25 to that provision?</p>
<p style="text-align: right;">Page 99</p> <p>1 interim financial periods, there are no inconsistencies in</p> <p>2 the application of accounting principles or that the interim</p> <p>3 financial statements are reliable, nor will they provide</p> <p>4 assurance on any other matters requested. Accordingly the</p> <p>5 procedures may not reveal any misstatement of the amounts or</p> <p>6 percentages indicated in the International Comfort Letter."</p> <p>7 Do you see that, Mr. Harding?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Does that appear to be standard</p> <p>10 language in -- in the engagement letter?</p> <p>11 MR. TOMAINO: Objection to form, foundation.</p> <p>12 THE WITNESS: I don't have any to directly compare</p> <p>13 with any other comfort letters, but in general --</p> <p>14 THE COURT REPORTER: "I don't have it to</p> <p>15 compare..."?</p> <p>16 THE WITNESS: Sorry. I don't have any other</p> <p>17 comfort letters to specifically compare that paragraph</p> <p>18 against, but I think in general the comfort letter is as one</p> <p>19 would expect to see one.</p> <p>20 BY MR. NIEHAUS:</p> <p>21 Q. Did you have any edits to this provision</p> <p>22 outlined in number 17?</p> <p>23 A. I wouldn't have any involvement in the</p> <p>24 specific wording used in sections of the comfort letter.</p> <p>25 Q. As you've noticed, we're looking at an</p>	<p style="text-align: right;">Page 101</p> <p>1 A. No.</p> <p>2 Q. Okay. There was also a section in the</p> <p>3 engagement letter that's entitled "Directors'</p> <p>4 responsibilities", beginning on page 5. It's been Bates-ed</p> <p>5 in this document as BARC-ADS-00799284.</p> <p>6 I'm not going to read all of that language into</p> <p>7 the record but I'm going to ask you, Mr. Harding: does this</p> <p>8 appear to be standard language used in an engagement letter</p> <p>9 by PwC?</p> <p>10 MR. TOMAINO: The language in all of the</p> <p>11 paragraphs under that section?</p> <p>12 MR. NIEHAUS: 24 to 20 -- 24 to 30.</p> <p>13 MR. TOMAINO: Objection to form, foundation.</p> <p>14 THE WITNESS: I'm -- I'm not certain as to, you</p> <p>15 know, how similar that is to -- to previous -- previous</p> <p>16 engagement letters.</p> <p>17 BY MR. NIEHAUS:</p> <p>18 Q. Okay. Let's specifically look at number 28,</p> <p>19 which is on page 6. 28 reads:</p> <p>20 "The Directors are responsible for the level of</p> <p>21 disclosure in the Registration Statement. The Directors</p> <p>22 acknowledge and understand the potential liability under</p> <p>23 Section 10(b) of the United States Securities Exchange Act</p> <p>24 of 1934 and Rule 10b-5 thereunder of those entities or</p> <p>25 persons who make use of materially misleading information or</p>

<p style="text-align: right;">Page 102</p> <p>1 omissions in connection with the purchase or sale of 2 securities." 3 Do you see that, Mr. Harding? 4 A. Yes. 5 Q. Okay. And does that appear to be standard 6 language used in an engagement letter by PwC? 7 MR. TOMAINO: Objection to form, foundation. 8 THE WITNESS: I'm not able to comment. 9 BY MR. NIEHAUS: 10 Q. Okay. Did you review this engagement letter 11 when it was sent to you? 12 A. I can't recall. I would have -- I would have 13 reviewed certain parts of it. So, for example, I would 14 have -- on page number 7 of the document, there is a section 15 there numbered 36, "Independence", so I would have made sure 16 that section was contained, which was the -- the section 17 I explained to you earlier on about the Barclays policy. 18 But there was a mark-up of this document sent 19 through as well which was blacklined against the document 20 used in series 4, so it may have been a quick review of that 21 and there may just have been minor changes. But I, you 22 know, can't say at this point in time what -- you know, what 23 changes there may have been and to what extent I may or may 24 not have actually reviewed the whole of the engagement 25 letter.</p>	<p style="text-align: right;">Page 104</p> <p>1 just asking for proximity -- that would be six days from 2 when you wrote this email; is that right? 3 A. Yes. 4 Q. Okay. And that's a pretty tight timeline, 5 right? 6 MR. TOMAINO: Objection to form. 7 BY MR. NIEHAUS: 8 Q. It's less than a week? 9 A. Yes, it is less than a week. 10 Q. Mr. Haigh responds to you on the same day: 11 "Keith, 12 "Has a cut-off date been set and line-items been 13 agreed with Finance?" 14 Do you know what Mr. Haigh meant by "cut-off 15 date"? 16 MR. TOMAINO: Objection to form. 17 THE WITNESS: It is a date that would be 18 stipulated in the comfort letter. 19 BY MR. NIEHAUS: 20 Q. Okay. Is Mr. Haigh referring to a stub 21 period? 22 MR. TOMAINO: Objection to form. 23 THE WITNESS: He's referring to a specific date. 24 BY MR. NIEHAUS: 25 Q. Okay. What's the significance of that date?</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. Are you aware of any changes or edits made to 2 number 28, the language I read -- previously read into the 3 record? 4 A. I can't comment, to be honest, regarding that 5 section. I -- I'm not sure. 6 Q. You can put that aside. Let's take a look at 7 the next document, which will be marked exhibit 367. 8 (Exhibit 367 marked for identification.) 9 For the record, this document is a two-page email 10 Bates-ed BARC-ADS-00809490 and runs to 491. It's an email 11 exchange between Mr. Haigh and Mr. Harding, among others, on 12 or around April 1, 2008. 13 A. Okay. 14 Q. Okay. Mr. Harding, you wrote to Mr. Haigh on 15 or around April 1, 2008: 16 "Drew, 17 "Current timings are that we still plan to launch 18 this transaction (market conditions permitting) on Monday 19 7 April 2008." 20 Do you see that? 21 A. Yes. 22 Q. And you're referring to the series 5 23 transaction, right? 24 A. Correct. 25 Q. Okay. And that's six days -- and again, I'm</p>	<p style="text-align: right;">Page 105</p> <p>1 MR. TOMAINO: Objection to form. 2 THE WITNESS: It is a date usually set a couple of 3 days before a comfort letter is required. 4 BY MR. NIEHAUS: 5 Q. Okay. In connection with the series 5 6 offering, did you understand that PwC was performing a tick 7 and tie process on the 20-F which covered year-end 2007? 8 MR. TOMAINO: Objection to form. 9 THE WITNESS: Underwriters' counsel had provided 10 PwC with the draft of the 20-F document which had 11 a circle-up on it. 12 BY MR. NIEHAUS: 13 Q. Okay. And did you understand that PwC was 14 performing a circle-up on the 2007 20F? 15 MR. TOMAINO: Objection to form. 16 THE WITNESS: The circle-up was being -- sorry, 17 the circle-up was being done at the request of the 18 underwriters' counsel. 19 BY MR. NIEHAUS: 20 Q. Okay. And that circle-up covered the 2007 21 20F, right? 22 MR. TOMAINO: Objection to form. The only one 23 we've looked at so far, as you established, was a draft of 24 the 20-F. 25 THE WITNESS: Yes, sorry, on -- sorry, on that</p>

<p style="text-align: right;">Page 106</p> <p>1 draft, yes.</p> <p>2 BY MR. NIEHAUS:</p> <p>3 Q. Did you also understand that PwC was</p> <p>4 performing additional procedures to cover a period of time</p> <p>5 subsequent to that -- subsequent to 2007, fiscal 2007?</p> <p>6 MR. TOMAINO: Objection to form.</p> <p>7 THE WITNESS: There were periods stipulated in the</p> <p>8 engagement/comfort letter that covered a period in 2008.</p> <p>9 BY MR. NIEHAUS:</p> <p>10 Q. Okay. And did you understand that period to</p> <p>11 be referring to the stub period?</p> <p>12 MR. TOMAINO: Objection to form.</p> <p>13 THE WITNESS: I haven't heard it referred to as</p> <p>14 "stub period" before.</p> <p>15 BY MR. NIEHAUS:</p> <p>16 Q. Okay. Have you heard -- what have you heard</p> <p>17 that period being referred to?</p> <p>18 MR. TOMAINO: Objection to form.</p> <p>19 THE WITNESS: I believe normally to a specific</p> <p>20 date that is specified.</p> <p>21 BY MR. NIEHAUS:</p> <p>22 Q. Okay. I'm just trying to understand if</p> <p>23 there's a disconnect on nomenclature. When I use "stub</p> <p>24 period", I've seen that in documents. Whether you at</p> <p>25 Barclays have seen --</p>	<p style="text-align: right;">Page 108</p> <p>1 A. Oh, possibly -- possibly because I wrote to</p> <p>2 him giving him an update of the transaction, therefore he</p> <p>3 came back to -- therefore in connection with that</p> <p>4 transaction he was looking for a bit more information and</p> <p>5 therefore came back to me to ask if I knew that additional</p> <p>6 information.</p> <p>7 Q. And did you gather that additional</p> <p>8 information for Mr. Haigh on or around April 1, 2008?</p> <p>9 A. I can't recall whether I went back to him or</p> <p>10 possibly got somebody else to update him on the -- on the</p> <p>11 position.</p> <p>12 Q. Coming back to your initial email,</p> <p>13 Mr. Harding, in the last line of the second sentence you</p> <p>14 refer to a "bring-down letter". Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. What is a "bring-down letter"?</p> <p>17 A. It's a comfort letter subsequent to the</p> <p>18 initial comfort letter. So the comfort letter would</p> <p>19 normally be given on pricing of the transaction and</p> <p>20 bringdown letter would usually be given on closing of the</p> <p>21 transaction, and it usually just updates the comfort letter</p> <p>22 from the period from the initial -- from when it was first</p> <p>23 issued to the closing date.</p> <p>24 Q. Okay. And was a bringdown letter issued by</p> <p>25 PwC in connection with the series 5 offering?</p>
<p style="text-align: right;">Page 107</p> <p>1 A. I'm -- I mean, I'm used to the word "stub</p> <p>2 period", say, in connection with a bond issue or an interest</p> <p>3 period where, if it's not for the full period, that is often</p> <p>4 referred to as a "stub period". I don't think I've actually</p> <p>5 come across it in connection with an engagement or comfort</p> <p>6 letter. But yeah, I appreciate what you're meaning by -- by</p> <p>7 "stub period".</p> <p>8 Q. Okay. Well, Mr. Haigh wrote to you on</p> <p>9 April 1, 2008:</p> <p>10 "Has a cut-off date been set and line-items been</p> <p>11 agreed with Finance?"</p> <p>12 Who from Finance were you dealing with to</p> <p>13 determine whether a cut-off date had been set and line items</p> <p>14 had been agreed to?</p> <p>15 A. I can't recall specifically.</p> <p>16 Q. Okay. Was there a reason Mr. Haigh was</p> <p>17 contacting you, as opposed to somebody from Barclays</p> <p>18 Finance?</p> <p>19 A. I think he was just --</p> <p>20 MR. TOMAINO: I'll just object to the form, note</p> <p>21 my objection. I mean, there are people from Barclays</p> <p>22 Finance on this email, so ...</p> <p>23 BY MR. NIEHAUS:</p> <p>24 Q. He's asking you, Mr. Harding, to</p> <p>25 facilitate --</p>	<p style="text-align: right;">Page 109</p> <p>1 A. It would have been, yes.</p> <p>2 Q. Let's do one more exhibit and then we can</p> <p>3 break for lunch. Let's introduce what's been previously</p> <p>4 marked as exhibit 117.</p> <p>5 (Exhibit 117, previously marked, referred to.)</p> <p>6 Just for the record, this document is a one-page</p> <p>7 email and it contains a one-page attachment.</p> <p>8 Mr. Harding, as always, feel free to read the</p> <p>9 entire document or entire exhibit. Some of the events that</p> <p>10 are identified in the chart we've already identified earlier</p> <p>11 this morning, I just have a few questions generally about</p> <p>12 them.</p> <p>13 A. Okay.</p> <p>14 Q. Okay. You wrote to Mr. Storey on or around</p> <p>15 April 3, 2008. At the time Mr. Storey was the treasurer of</p> <p>16 Barclays?</p> <p>17 A. No, Miles Storey was --</p> <p>18 Q. Oh, I'm sorry.</p> <p>19 A. -- sorry, head of I think it was balance</p> <p>20 sheet management within Group Treasury or within Barclays</p> <p>21 Treasury.</p> <p>22 Q. That's right. Mr. Stone was the treasurer of</p> <p>23 Barclays at this time, right?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. And then there's a reference to -- you</p>

<p style="text-align: right;">Page 110</p> <p>1 write to Miles: 2 "Miles, 3 "Please see attached as requested by Rupert." 4 And then Rupert is in the "CC" line, 5 Rupert Fowden. Who was Rupert Fowden? 6 A. Rupert was head of Capital Management -- 7 Q. Okay. 8 A. -- within Barclays Treasury. 9 Q. Okay. And on the second page we see a chart 10 and the chart heading is "Project Rimu Due Diligence 11 Requirements". Do you see that? 12 A. Yes. 13 Q. Okay. And who would have put this chart 14 together? 15 A. I can't recall. 16 Q. Okay. But you -- you sent it to Mr. Storey. 17 Did this chart come from your custodial files? 18 MR. TOMAINO: Objection to form. 19 THE WITNESS: I don't recall where this document 20 originated. 21 BY MR. NIEHAUS: 22 Q. Okay. Okay, if we take a look at this chart, 23 there's several -- there's a column of dates and then 24 types -- and "Stage", "Type of Diligence" and then 25 "Details". Do you see that, Mr. Harding?</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. Correct. 2 A. The first item on there, yes. 3 Q. Yes. You'll see: 4 "Full DD meeting [and then] conference call with 5 dealer/underwriter group and external lawyers..." 6 And then: 7 "... (Barclays participants: Chris Lucas, Mark 8 Harding, Andy Bruce, Miles Storey and Ross Aucutt)". 9 Do you see that? 10 A. Yes. 11 Q. Does that appear to be accurate as far as 12 indicating which Barclays participants were on -- were at 13 that meeting? 14 MR. TOMAINO: Objection, form. 15 THE WITNESS: Those participants were at the 16 meeting or dialing in, but they weren't the only Barclays 17 personnel at that meeting. 18 BY MR. NIEHAUS: 19 Q. Okay. Do you know why those particular 20 individuals were highlighted here in this chart? 21 A. Yes, because on the document you -- you 22 showed me earlier on, which is the management due diligence 23 questions, they were the personnel who had been allocated to 24 answer the various questions in that questionnaire. 25 Q. Okay. And the questionnaire you're referring</p>
<p style="text-align: right;">Page 111</p> <p>1 A. Yes. 2 Q. Do you recognize this chart? 3 A. I don't recognize it because I don't recall 4 having previously sent this document. But I am -- am aware 5 of what is on the document, yes. 6 Q. Okay. Does this chart accurately identify 7 the types of due diligence that were performed in connection 8 with the series 5 offering? 9 MR. TOMAINO: Objection, form. 10 THE WITNESS: I think it gives an indication of 11 what was expected at the time the document was produced. 12 I can't go further than that, as to whether there were any 13 additional DD requirements et cetera that may have taken 14 place. 15 MR. NIEHAUS: Okay. 16 MR. TOMAINO: You said "DD"? 17 THE WITNESS: Sorry, due diligence. Sorry. 18 MR. TOMAINO: Thank you. 19 BY MR. NIEHAUS: 20 Q. I want to focus on just the full management 21 due diligence or DD, which -- is that short -- short form 22 for "due diligence"? 23 A. Yes. 24 Q. Okay. Under the "Details" column -- 25 A. Sorry, this is the 3 April --</p>	<p style="text-align: right;">Page 113</p> <p>1 to is the business due diligence questionnaire, right? 2 A. Correct. 3 Q. Okay. And just -- I think we've confirmed 4 this earlier this morning, but there was no -- no one from 5 PwC present on -- during this meeting; is that right? 6 MR. TOMAINO: During the business due diligence 7 call? 8 MR. NIEHAUS: Correct. 9 THE WITNESS: There wasn't to my knowledge, no. 10 BY MR. NIEHAUS: 11 Q. Okay. Did you have any communications with 12 PwC after the April 3, 2008 business due diligence call 13 regarding what was discussed on that call? 14 A. No, I wouldn't have done. 15 Q. Okay. And then turning to April 15 and 16, 16 2008, the stage is "Closing", and the type of due diligence 17 is "Bringdown Management [Due Diligence]". Do you see that? 18 A. Yes. 19 Q. Okay. And then there -- under "Details" in 20 this chart, there's: 21 "Underwriter group and external lawyers conference 22 call with Barclays Representatives..." 23 And here we see Jonathan Britton, and Victoria 24 Hardy with a question mark. Do you know if Ms. Hardy was 25 present on that call?</p>

<p style="text-align: right;">Page 114</p> <p>1 A. Not specifically.</p> <p>2 Q. Okay. And under the "Details" column, it</p> <p>3 goes on to read:</p> <p>4 "... to request information on any changes since</p> <p>5 8 or 9 April pre-pricing [due diligence]."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And just to confirm, no one from PwC would</p> <p>9 have been present during that call; is that right?</p> <p>10 MR. TOMAINO: On the April 15 or 16?</p> <p>11 MR. NIEHAUS: That's correct.</p> <p>12 MR. TOMAINO: The call that's referred to as</p> <p>13 "Bringdown Management DD"?</p> <p>14 MR. NIEHAUS: Correct, yes.</p> <p>15 THE WITNESS: I wouldn't normally expect PwC to be</p> <p>16 on that call -- that type of call.</p> <p>17 BY MR. NIEHAUS:</p> <p>18 Q. Okay. Did you have any discussions with PwC</p> <p>19 concerning anything that was discussed on the bringdown</p> <p>20 management due diligence call?</p> <p>21 MR. TOMAINO: Objection to form.</p> <p>22 THE WITNESS: I wouldn't discuss with PwC items</p> <p>23 discussed in a management due diligence session.</p> <p>24 MR. NIEHAUS: Okay. All right, you can put that</p> <p>25 aside. Why don't we take a break for lunch now?</p>	<p style="text-align: right;">Page 116</p> <p>1 Mr. Johnson, Mr. Croxford, Mr. Vickery and others from PwC:</p> <p>2 "Simon, Richard, Belinda,</p> <p>3 "Following our meeting a couple of weeks ago it</p> <p>4 would be good to rationalise the line item comfort</p> <p>5 provided:..."</p> <p>6 Mr. Harding, do you have an understanding as to</p> <p>7 what Mr. Haigh is referring to by "line item comfort"?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And would this be line -- line item</p> <p>10 comfort for the series 5 offer?</p> <p>11 A. Yes, it would.</p> <p>12 Q. Okay. What is he referring to here as "line</p> <p>13 item comfort"?</p> <p>14 A. He is referring to which -- which balance</p> <p>15 sheet or P& -- P&L, profit and loss items that should be</p> <p>16 included within the comfort letter.</p> <p>17 Q. Okay. Mr. Haigh goes on to write in (ii):</p> <p>18 "However I propose that we have 3 line items to</p> <p>19 comfort in the stub period, due to the lack of consolidation</p> <p>20 mid-month, these being Sub liabilities, Share Capital and</p> <p>21 PBT (i.e. numbers that management have a greater comfort</p> <p>22 over)...."</p> <p>23 MR. TOMAINO: I'm sorry, Eric, where are you</p> <p>24 reading from?</p> <p>25 MR. NIEHAUS: I'm reading from Mr. Haigh's email</p>
<p style="text-align: right;">Page 115</p> <p>1 THE VIDEOGRAPHER: Going off the record. The time</p> <p>2 is 12:56.</p> <p>3 (12:56 p.m.)</p> <p>4 (Break taken.)</p> <p>5 (1:45 p.m.)</p> <p>6 THE VIDEOGRAPHER: Back on the record. The time</p> <p>7 is 1:45.</p> <p>8 BY MR. NIEHAUS:</p> <p>9 Q. Mr. Harding, welcome back. Let's take a look</p> <p>10 at the next exhibit, which has been previously marked as</p> <p>11 exhibit 119.</p> <p>12 (Exhibit 119, previously marked, referred to.)</p> <p>13 For the record, this document is a four-page email</p> <p>14 Bates-ed BARC-ADS-00814307 and runs to 310. Mr. Harding,</p> <p>15 there's earlier emails on which you are not a recipient but</p> <p>16 it appears as if you were included on the chain later on,</p> <p>17 which would have given you visibility into some of the prior</p> <p>18 emails.</p> <p>19 A. Yes.</p> <p>20 Okay.</p> <p>21 Q. Okay. And Mr. Harding, you received this --</p> <p>22 these emails on or around April 4, 2008; is that correct?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. And Mr. Haigh -- turning to</p> <p>25 Mr. Haigh's email on or around April 2, 2008, he writes to</p>	<p style="text-align: right;">Page 117</p> <p>1 on April 2, 2008, which is the first email in the chain.</p> <p>2 MR. TOMAINO: I see it, thank you.</p> <p>3 BY MR. NIEHAUS:</p> <p>4 Q. Mr. Harding, what does "PBT" refer to?</p> <p>5 A. Profit before tax.</p> <p>6 Q. Okay. Mr. Haigh went on to write:</p> <p>7 "As we have seen in previous issues it is not</p> <p>8 possible to comfort NII mid-month..."</p> <p>9 Does "NII" refer to net interest income?</p> <p>10 A. I believe it does, yes.</p> <p>11 Q. "... NII mid-month in the current</p> <p>12 environment..."</p> <p>13 Do you know what Mr. Haigh meant by "current</p> <p>14 environment"?</p> <p>15 MR. TOMAINO: Objection to form.</p> <p>16 THE WITNESS: No, I don't.</p> <p>17 BY MR. NIEHAUS:</p> <p>18 Q. Okay. Was this a particularly turbulent time</p> <p>19 in the credit markets?</p> <p>20 MR. TOMAINO: Objection to form, foundation.</p> <p>21 THE WITNESS: I wouldn't say that markets were</p> <p>22 stable necessarily at that time.</p> <p>23 BY MR. NIEHAUS:</p> <p>24 Q. Okay:</p> <p>25 "... and due to the lack of consolidation and our</p>

<p style="text-align: right;">Page 118</p> <p>1 proximity to year-end 1 January 2008 management does not 2 have information on Total Assets, Total Liabilities, Share 3 holders equity, although they do have a 'No material adverse 4 change statement', this is not... relevant (due to the lack 5 of definition over materiality) for the comfort letters..."</p> <p>6 MR. TOMAINO: Sorry, just to correct you, it says: 7 "... this is not that relevant..."</p> <p>8 BY MR. NIEHAUS: 9 Q. "... this is not that relevant ..." 10 Thank you. 11 "Therefore I propose in the next draft of the 12 comfort letter, that we have the above approach, thereby 13 avoiding including the line-items and then have to write 14 statements that management cannot provide the information."</p> <p>15 Okay. Do you see that, Mr. Harding? 16 A. Yes. 17 Q. Okay. And then on April 3, Mr. Johnson 18 replies to the group. And Mr. Johnson was an in-house 19 lawyer at Barclays during this time period? 20 A. At Barclays Investment Bank, yes. 21 Q. Apologies. Mr. Johnson replies: 22 "Drew, 23 "We need to ensure that it is not feasible for you 24 to make the determinations as to the other four line items 25 in the period after month end. PwC should only be able to</p>	<p style="text-align: right;">Page 120</p> <p>1 "in the stub period, for us to be able to make 2 a statement in the comfort letter".</p> <p>3 Mr. Harding, were you part of the discussions that 4 PwC had with Barclays Finance concerning these line items? 5 A. I don't believe I would have been, no. 6 Q. Okay. Did you understand that there was only 7 directional comfort given on those line items? 8 MR. TOMAINO: Objection, form. 9 THE WITNESS: I would not normally have 10 involvement in what specifically, or what specific line 11 items, is to be included within a comfort letter. That is 12 something that I would normally leave for the underwriters' 13 counsel to discuss with PwC and/or Finance to agree on what 14 could or couldn't be included. 15 BY MR. NIEHAUS: 16 Q. For this particular offering, who from 17 Finance would have made those determinations? 18 A. I don't recall specifically. 19 Q. Was Mr. Britton involved? 20 MR. TOMAINO: Objection, form. 21 THE WITNESS: Mr. Britton was the head of Barclays 22 Finance, I believe, at that time. Meen Adams was also 23 a senior finance person at that time. But apart from that, 24 I'm not sure who, you know, may have been involved in the 25 internal discussions with -- within Barclays Finance as to</p>
<p style="text-align: right;">Page 119</p> <p>1 take this position because it is not possible for you to 2 give the 'usual' comfort." 3 And "usual" is in quotations. 4 "Can you and Barclays therefore please confirm 5 that it is simply impracticable to provide sufficient data 6 to enable PwC to provide comfort on these items? 7 "If this is the case, we will want to have 8 a further [due] diligence call with Barclays to enable us 9 all to test the situation since the end of February, as a 10 substitute for getting this coverage in the comfort letter." 11 Mr. Harding, did you indeed have a further due 12 diligence call to discuss these line items? 13 A. I can't recall specifically in relation to 14 that, no. 15 Q. Okay. Mr. Haigh responds on April 4, 2008: 16 "Richard, 17 "Just to confirm the conversations that we have 18 had with Barclays Finance... the conclusion on line-item 19 comfort was that they should be able to give us appropriate 20 comfort on: ..." 21 And then he lists in roman numerals: 22 "Share Cap 23 "Sub Liabilities 24 "PBT; and 25 "Shareholders' Equity</p>	<p style="text-align: right;">Page 121</p> <p>1 what could or couldn't be produced around about that time. 2 BY MR. NIEHAUS: 3 Q. You responded to Mr. Haigh on or around 4 April 4, 2008 and cc'ed Ms. Hardy and your colleagues in the 5 Treasury department, Mr. Aucutt, Mr. Lambert, and you 6 responded stating: 7 "I am slightly confused by something and would be 8 grateful if you could clarify. Has there been a recent 9 change in policy by PwC on the provision of draft detailed 10 comfort letters?" 11 What policy are you referring to? 12 A. It's not a policy in the sense of a policy. 13 The -- excuse me -- normal practice as I understood it up 14 until that time was that PwC would provide drafts of their 15 engagement and comfort letters, and very shortly or even on 16 the same day as the transaction was promised, the engagement 17 letters would be signed and PwC would then produce their 18 comfort letter. 19 And what they appeared to me to be saying from 20 here, from reading the early email from Drew Haigh, was that 21 they wanted to have signed engagement letters before the 22 transaction had even been officially launched in order for 23 them to provide detailed -- detailed draft comfort letters. 24 And so that's what I meant by "Has there been a change?" 25 I think that would have been the first time I had come</p>

<p style="text-align: right;">Page 122</p> <p>1 across this particular requirement from PwC.</p> <p>2 Q. So it was standard practice for PwC to</p> <p>3 provide Barclays and the underwriters a draft detailed</p> <p>4 comfort letter before Barclays and the underwriters would</p> <p>5 sign the engagement letter; is that right?</p> <p>6 A. That was my understanding at that time, yes.</p> <p>7 Q. So essentially the underwriters and Barclays</p> <p>8 wanted to see precisely what PwC would give comfort on</p> <p>9 before they agreed to pay them; is that right?</p> <p>10 MR. TOMAINO: Objection to form, foundation.</p> <p>11 THE WITNESS: They preferred to see a detailed</p> <p>12 cover letter, yes.</p> <p>13 BY MR. NIEHAUS:</p> <p>14 Q. Okay, you can put that aside. Let's take</p> <p>15 a look at the next exhibit, which was previously marked as</p> <p>16 exhibit number 27.</p> <p>17 (Exhibit 27, previously marked, referred to.)</p> <p>18 Just for the record, this document is a six-page</p> <p>19 email produced by Linklaters. It's Bates-ed Linklaters</p> <p>20 0000000862 and runs to 867.</p> <p>21 Mr. Harding, I'll represent that you are not on</p> <p>22 this -- or you are on the earlier portion of this email</p> <p>23 chain, which is a stem of what we looked at in the prior</p> <p>24 exhibit. I just have a couple of questions regarding</p> <p>25 Mr. Ludwick's response on LINKLATERS_0000000863, which was</p>	<p style="text-align: right;">Page 124</p> <p>1 BY MR. NIEHAUS:</p> <p>2 Q. And when Mr. Ludwick refers to a "Project</p> <p>3 Sycamore", is he referring to the series 4 offering?</p> <p>4 A. I believe Sycamore was a previous preference</p> <p>5 share issue, but I can't at this point definitively state</p> <p>6 which specific one it was.</p> <p>7 Q. Okay. Mr. Haigh responds to the group on the</p> <p>8 first email on what's been Bates-ed LINKLATERS_0000000862:</p> <p>9 "Hello,</p> <p>10 "We have been informed by Barclays Group Finance</p> <p>11 that they will not be able to provide us with any PBT</p> <p>12 comfort in the stub period (to 3 April 2008) this evening."</p> <p>13 Mr. Harding, were you aware at the time that</p> <p>14 Barclays Group Finance could not provide this information to</p> <p>15 PwC?</p> <p>16 MR. TOMAINO: Objection, mischaracterizes the</p> <p>17 document.</p> <p>18 THE WITNESS: I don't believe I would normally be</p> <p>19 involved in those types of discussions. That would</p> <p>20 primarily be between underwriters' counsel, Barclays Finance</p> <p>21 and -- and PwC, to discuss what could or couldn't be</p> <p>22 included in any particular document.</p> <p>23 BY MR. NIEHAUS:</p> <p>24 Q. Were you aware of any delay by Barclays</p> <p>25 Finance in providing certain information to PwC?</p>
<p style="text-align: right;">Page 123</p> <p>1 drafted on or about April 7, 2008.</p> <p>2 A. Okay.</p> <p>3 Q. Okay. And again, I'm just focusing --</p> <p>4 focusing on right now Mr. Ludwick's response on April 7,</p> <p>5 2008, specifically the fourth paragraph beginning with</p> <p>6 "Lastly". Mr. Ludwick writes:</p> <p>7 "Lastly, I understand that we will be having</p> <p>8 a call with one of your colleagues on Monday regarding the</p> <p>9 scope of the circle up. In our view, there are a number of</p> <p>10 items which were covered in the circle up in Project</p> <p>11 Sycamore, but which are not covered by the current circle</p> <p>12 up -- PWC has indicated that, in most cases, this is on the</p> <p>13 basis that the numbers are not extracted from accounting</p> <p>14 records. We need to understand this better -- have the</p> <p>15 accounting systems changed from last year, when you were</p> <p>16 able to provide comfort on similar figures? We look forward</p> <p>17 to discussing this with PWC at its earliest convenience on</p> <p>18 Monday."</p> <p>19 And, Mr. Harding, a couple of questions. Did you</p> <p>20 participate or did you have any discussions relating to</p> <p>21 a call on Monday, on or around April 7, 2008, regarding the</p> <p>22 circle-up process by PwC and the underwriters?</p> <p>23 MR. TOMAINO: Objection to form.</p> <p>24 THE WITNESS: I can't recall having had such</p> <p>25 a call.</p>	<p style="text-align: right;">Page 125</p> <p>1 MR. TOMAINO: Objection to form.</p> <p>2 THE WITNESS: I can't really recall from that</p> <p>3 time, I'm afraid.</p> <p>4 BY MR. NIEHAUS:</p> <p>5 Q. Do you see that the date of this email is</p> <p>6 April 7, 2008?</p> <p>7 A. Yes.</p> <p>8 Q. And is it your recollection that the series 5</p> <p>9 offering closed on April 8, 2008?</p> <p>10 MR. TOMAINO: Objection to form.</p> <p>11 THE WITNESS: I believe the transaction was due to</p> <p>12 close -- sorry, due to launch around about that time, but</p> <p>13 closing was --</p> <p>14 BY MR. NIEHAUS:</p> <p>15 Q. What do you mean by "launch"?</p> <p>16 MR. TOMAINO: He was not finished with his answer.</p> <p>17 THE WITNESS: Launch is when the -- when the issue</p> <p>18 is, if you like, officially launched and then goes on to</p> <p>19 price, and then you normally have settlement, which I think</p> <p>20 in the case of the series 5 was what's called T plus 5, so</p> <p>21 trade date plus five days. So I believe, from memory,</p> <p>22 pricing took place on 8 April.</p> <p>23 BY MR. NIEHAUS:</p> <p>24 Q. And on 8 April, that's when the offering is</p> <p>25 announced to potential investors, right?</p>

<p style="text-align: right;">Page 126</p> <p>1 A. That's when it is officially priced, yes.</p> <p>2 Q. And is that also when it's syndicated?</p> <p>3 MR. TOMAINO: Objection to form.</p> <p>4 THE WITNESS: The pricing documents would be --</p> <p>5 would be signed on the -- on the pricing date, or as of the</p> <p>6 pricing date.</p> <p>7 BY MR. NIEHAUS:</p> <p>8 Q. Okay. And then when the pricing document is</p> <p>9 signed, is the pricing document disseminated to potential</p> <p>10 investors?</p> <p>11 MR. TOMAINO: Objection to form.</p> <p>12 THE WITNESS: Various filings would be made with</p> <p>13 the SEC in accordance with SEC requirements. I'm not aware</p> <p>14 of what specific dissemination of the offering documents</p> <p>15 would -- would be made to individual investors or -- or</p> <p>16 when.</p> <p>17 BY MR. NIEHAUS:</p> <p>18 Q. Let's take a look at the next exhibit, which</p> <p>19 we'll mark as exhibit 368.</p> <p>20 (Exhibit 368 marked for identification.)</p> <p>21 Just for the record, this document is a four-page</p> <p>22 email with an attachment. It appears to be a draft US</p> <p>23 comfort letter on or around April 8, 2008. The email</p> <p>24 exchange is between Mr. Haigh, Mr. Harding and others.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 128</p> <p>1 only give directional comfort on the stub period), the</p> <p>2 Managers may wish to set up a due diligence call."</p> <p>3 Do you see that, Mr. Harding?</p> <p>4 A. Yes.</p> <p>5 Q. And did the managers set up a due diligence</p> <p>6 call?</p> <p>7 A. There were a number of due diligence calls</p> <p>8 set up around that period, but I can't specifically recall</p> <p>9 whether there was a -- a specific one in relation to item 1.</p> <p>10 Q. Okay. And then (ii) goes on to read:</p> <p>11 "Barclays and the Manager group need to consider</p> <p>12 whether the information provided in the private comfort</p> <p>13 letter needs to be disclosed in the Prospectuses appending</p> <p>14 the registration Statement, therefore this may change the</p> <p>15 wording in the comfort letter."</p> <p>16 Do you see that, Mr. Harding?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And do you see how the comfort letter</p> <p>19 is referred to as the "private comfort letter"?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And as you testified earlier today,</p> <p>22 the private comfort letter is not part of the offering</p> <p>23 materials, right?</p> <p>24 MR. TOMAINO: Objection to form.</p> <p>25 THE WITNESS: I believe I said that the comfort</p>
<p style="text-align: right;">Page 127</p> <p>1 Q. Okay. And, Mr. Harding, since this document</p> <p>2 hasn't been previously introduced, do you -- you received</p> <p>3 this email from Mr. Haigh on or around April 8, 2008; is</p> <p>4 that correct?</p> <p>5 A. Yes.</p> <p>6 Q. Including the attachment, right?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And this email was sent to your</p> <p>9 Barclays Treasury email account; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Mr. Haigh writes to you on April 8,</p> <p>12 2008 -- or, I'm sorry, Mr. Haigh writes to Sarah</p> <p>13 Whitting[ton] from Linklaters and cc's you --</p> <p>14 A. Yes.</p> <p>15 Q. -- on April 8, 2008:</p> <p>16 "Sarah,</p> <p>17 "Please find the draft US Comfort Letter..."</p> <p>18 And attaches the draft. And then goes on to</p> <p>19 write:</p> <p>20 "Please note we are still outstanding information</p> <p>21 from Group Finance around Stub Period PBT.</p> <p>22 "Please distribute to the relevant managers.</p> <p>23 I suppose the key considerations are: ..."</p> <p>24 And then there's (i):</p> <p>25 "Given the PBT performance (and the fact we will</p>	<p style="text-align: right;">Page 129</p> <p>1 letter is addressed to the underwriters, or to one or two</p> <p>2 underwriters on behalf of the remaining underwriter group,</p> <p>3 and is -- is provided to -- to them, yeah. So I -- I'm</p> <p>4 not --</p> <p>5 BY MR. NIEHAUS:</p> <p>6 Q. In the series 5 transaction --</p> <p>7 MR. TOMAINO: I don't think he's finished with his</p> <p>8 answer.</p> <p>9 MR. NIEHAUS: Okay, sorry.</p> <p>10 THE WITNESS: Yeah, so I'm not sure in that</p> <p>11 context exactly what "private comfort letter" means. I'm</p> <p>12 only aware of there being a comfort letter, or one or two</p> <p>13 comfort letters, in connection with a securities offering</p> <p>14 which is addressed to the various underwriters for that</p> <p>15 transaction.</p> <p>16 BY MR. NIEHAUS:</p> <p>17 Q. Okay. Are you finished now?</p> <p>18 A. Sorry, yes.</p> <p>19 Q. Okay. In the series 5 offering, was the</p> <p>20 comfort letter included in the offering materials?</p> <p>21 MR. TOMAINO: Objection to form.</p> <p>22 THE WITNESS: I can't recall exactly what -- what</p> <p>23 documents form part of -- part of that.</p> <p>24 BY MR. NIEHAUS:</p> <p>25 Q. You reviewed the offering materials in</p>

<p style="text-align: right;">Page 130</p> <p>1 connection with the series 5 offering, right?</p> <p>2 A. I reviewed, yeah, certain -- certain of the</p> <p>3 offering materials, yes.</p> <p>4 Q. Was any information provided --</p> <p>5 THE COURT REPORTER: "... certain..."?</p> <p>6 THE WITNESS: Sorry, certain of the offering</p> <p>7 materials.</p> <p>8 BY MR. NIEHAUS:</p> <p>9 Q. Was any information provided in the comfort</p> <p>10 letter disclosed in the prospectuses appending the</p> <p>11 registration statement?</p> <p>12 MR. TOMAINO: Objection to form, foundation.</p> <p>13 THE WITNESS: Sorry, could you repeat the</p> <p>14 question, please?</p> <p>15 BY MR. NIEHAUS:</p> <p>16 Q. Was any information provided in the private</p> <p>17 comfort letter disclosed in the prospectuses appending the</p> <p>18 registration statement of the series 5 offering?</p> <p>19 MR. TOMAINO: Objection to form, lack of</p> <p>20 foundation.</p> <p>21 THE WITNESS: I don't -- don't know what may or</p> <p>22 may not have been included.</p> <p>23 BY MR. NIEHAUS:</p> <p>24 Q. Okay. Let me ask it a different way. If you</p> <p>25 look and turn to page 3433, which is the last page of this</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. Okay. Turning back to Mr. Haigh's email,</p> <p>2 (iii), he writes:</p> <p>3 "Tickmark E is currently being discussed but</p> <p>4 should be resolved with final circle-up early afternoon (and</p> <p>5 of a lengthy debate I understand)."</p> <p>6 If you turn to the attached comfort letter on</p> <p>7 page 5, and you'll see under provision 10 there's A, B, C, D</p> <p>8 and E?</p> <p>9 A. Yes.</p> <p>10 Q. And that E is referring to tickmark E, is</p> <p>11 that correct, with the language "We will finalize this one</p> <p>12 soon"?</p> <p>13 A. That would appear so, yes.</p> <p>14 Q. Okay. And at the time there was a lengthy</p> <p>15 debate concerning this tickmark E; is that right?</p> <p>16 MR. TOMAINO: Objection to form.</p> <p>17 THE WITNESS: PwC's email states that's the case.</p> <p>18 I wasn't necessarily aware of that.</p> <p>19 BY MR. NIEHAUS:</p> <p>20 Q. Okay. Okay, you can put that aside.</p> <p>21 Did you participate on a call on or around</p> <p>22 April 8, 2008 discussing the comfort letter with Jonathan</p> <p>23 Britton?</p> <p>24 A. It may have been one of the many calls that</p> <p>25 I -- I was on, but I can't recall specifically.</p>
<p style="text-align: right;">Page 131</p> <p>1 document, and specifically provision number 13, number 13</p> <p>2 reads:</p> <p>3 "This letter is solely for the information of the</p> <p>4 addressees and to assist the underwriters in conducting and</p> <p>5 documenting their investigation of the affairs of the Group</p> <p>6 and the Issuer in connection with the offering of the</p> <p>7 securities covered by the Registration Statement, and is not</p> <p>8 to be used, circulated, quoted or otherwise referred to</p> <p>9 within or without the underwriting group for any other</p> <p>10 purpose, including but not limited to the registration,</p> <p>11 purchase or sale of securities, nor is it to be filed with</p> <p>12 or referred to in whole or in part in the Registration</p> <p>13 Statement or any other document, except that reference may</p> <p>14 be made to it in the underwriting agreement or in any list</p> <p>15 of closing documents pertaining to the offering of the</p> <p>16 securities covered by the Registration Statement."</p> <p>17 My question with respect to provision number 13,</p> <p>18 Mr. Harding: are you aware of any changes or edits to the</p> <p>19 language included here in provision number 13?</p> <p>20 MR. TOMAINO: Objection to form.</p> <p>21 THE WITNESS: That section is vaguely familiar but</p> <p>22 I -- I couldn't say whether there is any specific wording</p> <p>23 changes compared with any other comfort letters that are</p> <p>24 issued.</p> <p>25 BY MR. NIEHAUS:</p>	<p style="text-align: right;">Page 133</p> <p>1 Q. Okay. Was tickmark E discussed on that call?</p> <p>2 A. I can't recall.</p> <p>3 Q. Do you know when the engagement letter was</p> <p>4 signed by Barclays and the underwriters in connection with</p> <p>5 the series 5 offering?</p> <p>6 MR. TOMAINO: Objection, form. I think he</p> <p>7 testified that the underwriters only signed a non-US</p> <p>8 engagement letter, if there was one in this deal. But you</p> <p>9 can ask him that question.</p> <p>10 THE WITNESS: The US engagement letter I believe</p> <p>11 was signed on 8 April.</p> <p>12 BY MR. NIEHAUS:</p> <p>13 Q. And was that engagement letter signed after</p> <p>14 Pw -- PwC provided you with a draft US comfort letter?</p> <p>15 A. I can't recall the timing when -- when that</p> <p>16 took place.</p> <p>17 Q. Okay. Let's take a look at the next exhibit.</p> <p>18 This will be marked as exhibit 369.</p> <p>19 (Exhibit 369 marked for identification.)</p> <p>20 Just for the record, this document contains</p> <p>21 a one-page email on or around April 8, 2008 between</p> <p>22 Mr. Harding and Mr. Haigh, among others, and an attachment</p> <p>23 which appears to be a signed US engagement letter, based on</p> <p>24 the description of the attachment on the document.</p> <p>25 A. Okay.</p>

<p style="text-align: right;">Page 134</p> <p>1 Q. Okay. Mr. Harding, did you receive -- did</p> <p>2 you write and receive the emails contained on what's been</p> <p>3 marked exhibit 369?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And you wrote to Mr. Haigh on or</p> <p>6 around April 8, 2008:</p> <p>7 "Drew,</p> <p>8 "Please find attached the signed US engagement</p> <p>9 letter."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And does the attachment appear to be the</p> <p>13 signed US engagement letter?</p> <p>14 A. It does, yes.</p> <p>15 Q. Okay. And does that -- does this email</p> <p>16 appear to have been sent on or around 7:04 p.m. on April 8?</p> <p>17 A. Yes, it does.</p> <p>18 Q. Okay. And if you turn back to what's been</p> <p>19 marked exhibit 368, you'll see that Mr. Haigh writes an</p> <p>20 email attaching the US comfort letter on or around April 8,</p> <p>21 2008 at 11:21 a.m.?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Does it appear, based on your review</p> <p>24 of these two documents, that the US comfort letter was sent</p> <p>25 to you prior to U -- the US -- signed US engagement</p>	<p style="text-align: right;">Page 136</p> <p>1 next -- I'm sorry, Mr. Harding, let me introduce the next</p> <p>2 exhibit, which we'll mark as exhibit 370.</p> <p>3 (Exhibit 370 marked for identification.)</p> <p>4 And again, Mr. Harding, I realize this is quite</p> <p>5 voluminous. I'm just going to have a few questions and more</p> <p>6 or less authenticate certain exhibits that are attached to</p> <p>7 this email -- certain attachments, I should say.</p> <p>8 And just for the record, exhibit 370 is</p> <p>9 a three-page email, it contains exhibits. The Bates range</p> <p>10 of this document is BARC-ADS-00804129 and it runs to 214.</p> <p>11 A. Okay.</p> <p>12 Q. Okay. And, Mr. Harding, you'll see in this</p> <p>13 email it's from Mr. Haigh from PwC. It was written to you,</p> <p>14 and cc'ing others, on or around April 8, 2008. Do you see</p> <p>15 that?</p> <p>16 A. Yes.</p> <p>17 Q. And you would have received this email on or</p> <p>18 around that time; is that right?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. And Mr. Haigh writes to you:</p> <p>21 "Keith,</p> <p>22 "Now we have received the signed US engagement</p> <p>23 letter and the signed management representation letter we</p> <p>24 are now able to release the Executed US comfort letter..."</p> <p>25 And he attaches what begins on Bates</p>
<p style="text-align: right;">Page 135</p> <p>1 letter -- I'm sorry, let me withdraw the question.</p> <p>2 Based on your review of these two exhibits, does</p> <p>3 it appear that the US comfort letter was sent before</p> <p>4 Barclays sent PwC the -- let me withdraw that question and</p> <p>5 make it even more clear.</p> <p>6 Based on your review of exhibits 368 and 369, does</p> <p>7 it appear that PwC sent Barclays a draft of the US comfort</p> <p>8 letter before Barclays sent PwC a signed US engagement</p> <p>9 letter?</p> <p>10 MR. TOMAINO: Objection to form.</p> <p>11 THE WITNESS: Based on the timings of the emails,</p> <p>12 it would appear so.</p> <p>13 MR. NIEHAUS: Okay. You can put that aside.</p> <p>14 Why don't we take a quick break? I just want to</p> <p>15 get organized here and try to -- we'll go off the record for</p> <p>16 a second.</p> <p>17 THE VIDEOGRAPHER: Going off the record. The time</p> <p>18 is 2:27.</p> <p>19 (2:27 p.m.)</p> <p>20 (Break taken.)</p> <p>21 (2:40 p.m.)</p> <p>22 THE VIDEOGRAPHER: Back on the record. The time</p> <p>23 is 2:40.</p> <p>24 BY MR. NIEHAUS:</p> <p>25 Q. Okay. Mr. Lambert, let me introduce the</p>	<p style="text-align: right;">Page 137</p> <p>1 BARC-ADS-00804209, a comfort letter. Does that appear to be</p> <p>2 the executed US comfort letter for the series 5 offer?</p> <p>3 A. It does, yes.</p> <p>4 Q. Okay. And you'll see that he also attaches</p> <p>5 a 20-F, which begins on BARC-ADS-00804134 --</p> <p>6 A. Yes.</p> <p>7 Q. -- and runs to 208. Does that appear to be</p> <p>8 the final 20-F circle-up for the series 5 offer?</p> <p>9 A. I believe so, yes.</p> <p>10 Q. Okay. And we spoke earlier about tickmarks</p> <p>11 in relation to the circle-up process; do you recall that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And you also identified that the</p> <p>14 tickmarks often are assigned letters. In this case --</p> <p>15 A. Correct.</p> <p>16 Q. -- does it appear to -- the final 20-F appear</p> <p>17 to include letters next to the circles?</p> <p>18 MR. TOMAINO: This exhibit is just selected pages</p> <p>19 of the 20-F, right?</p> <p>20 MR. NIEHAUS: It's whatever was produced with</p> <p>21 Mr. Haigh's email.</p> <p>22 THE WITNESS: I think it was just extracts.</p> <p>23 MR. NIEHAUS: Okay.</p> <p>24 THE WITNESS: And yes, there are alpha markings</p> <p>25 against various sections.</p>

<p style="text-align: right;">Page 138</p> <p>1 BY MR. NIEHAUS:</p> <p>2 Q. Okay. And if you look at the -- page 5 of</p> <p>3 the attached executed comfort letter, do those alpha</p> <p>4 markings in the circle-up of the 20-F correspond to A, B, C,</p> <p>5 D and E in the executed comfort letter on page 5?</p> <p>6 A. On the basis that the 20-F, or the extracts</p> <p>7 of -- extracted pages from the 20-F, was provided along with</p> <p>8 the comfort letter here, then yes, those letters would</p> <p>9 appear to correspond to letters in the circled-up 20-F.</p> <p>10 Q. Okay. And if we turn to page 51 of the</p> <p>11 attached 20-F, which is Bates-ed BARC-ADS-00804181, and if</p> <p>12 we look at the subheading which we've looked at earlier</p> <p>13 today of "Collateralised Debt Obligations". Do you see</p> <p>14 that?</p> <p>15 A. Yes.</p> <p>16 Q. And you'll see that there are circles within</p> <p>17 that -- those -- that category, and the circles -- it's</p> <p>18 unclear on one of the circles, but would you say that all of</p> <p>19 the circles include the tickmark E?</p> <p>20 MR. TOMAINO: Well, there's one that's clearly</p> <p>21 a D.</p> <p>22 MR. NIEHAUS: Is that a D?</p> <p>23 MR. TOMAINO: I mean, I don't know. It looks like</p> <p>24 a D to me. I guess you could ask the witness what he thinks</p> <p>25 it is.</p>	<p style="text-align: right;">Page 140</p> <p>1 MR. TOMAINO: In that -- in that whole section or</p> <p>2 just on that left-hand column?</p> <p>3 MR. NIEHAUS: On the left-hand column.</p> <p>4 MR. TOMAINO: So not in the -- not in the chart?</p> <p>5 MR. NIEHAUS: Not in the chart.</p> <p>6 THE WITNESS: In relation to those two paragraphs,</p> <p>7 yes.</p> <p>8 BY MR. NIEHAUS:</p> <p>9 Q. Okay. And would you say the majority of</p> <p>10 tickmarks on all of page 53 appear to be tickmark Es?</p> <p>11 MR. TOMAINO: Objection to form.</p> <p>12 BY MR. NIEHAUS:</p> <p>13 Q. And again --</p> <p>14 MR. TOMAINO: They are what they are. There's</p> <p>15 some Es, there's some Cs, and there's some that look like --</p> <p>16 you can't tell.</p> <p>17 THE WITNESS: I'd say the majority would appear to</p> <p>18 be E.</p> <p>19 BY MR. NIEHAUS:</p> <p>20 Q. Okay. And if we turn back --</p> <p>21 A. That's what was --</p> <p>22 Q. I'm sorry.</p> <p>23 A. Sorry.</p> <p>24 Q. If we turn back to the comfort letter,</p> <p>25 executed comfort letter, and we -- specifically page 5,</p>
<p style="text-align: right;">Page 139</p> <p>1 BY MR. NIEHAUS:</p> <p>2 Q. Is that -- is that a D or an E, or do you</p> <p>3 have an understanding as to what that -- that tickmark</p> <p>4 refers to?</p> <p>5 MR. TOMAINO: Objection to form.</p> <p>6 THE WITNESS: Based on just -- just looking at --</p> <p>7 at that, it looks as if it could be a D, but I -- I couldn't</p> <p>8 be -- couldn't be sure.</p> <p>9 BY MR. NIEHAUS:</p> <p>10 Q. Okay. Besides that --</p> <p>11 A. The --</p> <p>12 Q. I'm sorry.</p> <p>13 A. Sorry. Yes, the -- the majority did have</p> <p>14 an E mark -- E tickmark beside them.</p> <p>15 Q. Okay. Now, if you turn to the next page,</p> <p>16 which has been Bates-ed 804182, and there's subheadings</p> <p>17 "Structured Investment Vehicles", or "SIVs", and</p> <p>18 "SIV-Lites". Do all of the tickmarks that are identified</p> <p>19 here on page 52 appear to be tickmark E?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And again, if you turn to the next</p> <p>22 page, which is 804183, page 53 of the 20-F, and again --</p> <p>23 well, let's first take a look at "ABS CDO Super Senior</p> <p>24 exposure". Do the circles that are beneath the "ABS CDO</p> <p>25 Super Senior exposure" appear to be tickmark Es?</p>	<p style="text-align: right;">Page 141</p> <p>1 which is Bates-ed with a suffix 213, and we take a look at</p> <p>2 the provision E, that language corresponds to what's been</p> <p>3 marked in the 20-F tickmark E; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And that language reads:</p> <p>6 "We compared the amount to the corresponding</p> <p>7 amount and schedules or reports prepared by the Group and</p> <p>8 the Issuer, as appropriate, from their records and found</p> <p>9 them to be in agreement. We (i) compared the amounts on the</p> <p>10 schedules or reports to corresponding amounts appearing in</p> <p>11 the records and found such amounts to be in agreement, and</p> <p>12 (ii) determined that the schedules or reports were</p> <p>13 mathematically correct."</p> <p>14 The second paragraph reads:</p> <p>15 "The schedules and supporting spreadsheets and</p> <p>16 statutory records cover capital requirements, capital</p> <p>17 ratios, risk weighted assets, off balance sheet</p> <p>18 arrangements, share capital information, Directors'</p> <p>19 Remunerations and other management information as required.</p> <p>20 We did not confirm the extraction and manipulation of the</p> <p>21 data underlying the various spreadsheets."</p> <p>22 He goes on:</p> <p>23 "We make no comment as to the appropriateness of</p> <p>24 the Group's or the Issuer's, as appropriate, computation of,</p> <p>25 or determination of what constitutes capital requirements,</p>

<p style="text-align: right;">Page 142</p> <p>1 capital ratios, weighted risk assets, off balance sheet 2 arrangements, directors' remunerations, share capital, 3 assets under management and other information." 4 The next paragraph finally reads: 5 "We make no comment as to the appropriateness of 6 the Group's or the Issuer's, as appropriate, computation of, 7 or determination of what constitutes liquidity and capital 8 resources, including off-balance sheet arrangements; certain 9 trading activities involving non-exchange traded contracts 10 accounted for at fair value; and relationships and 11 transactions with persons or entities that derive benefits 12 from their non-independent relationship with the registrant 13 or the registrant's related parties as mandated by FR61..." 14 And I'll just stop there. 15 Mr. Harding, does this describe the amount of 16 comfort that was given to the tickmark E in the 17 corresponding 20-F? 18 MR. TOMAINO: Objection, form. 19 THE WITNESS: I couldn't say from this whether -- 20 whether number E is just relating to the single paragraph 21 alongside it and the remaining paragraphs relate to the 22 whole section. So... 23 BY MR. NIEHAUS: 24 Q. So which paragraphs are you referring to that 25 you believe to be outside of --</p>	<p style="text-align: right;">Page 144</p> <p>1 THE WITNESS: It's not something -- I mean, this 2 is -- it's not something that was produced for my benefit as 3 such, so I am not really able to, you know, say, you know, 4 with any -- any sort of definitive response. 5 BY MR. NIEHAUS: 6 Q. For the record, there's no letters after 7 letter E, is that right, on this comfort letter? 8 A. That's correct. 9 Q. Okay. And there's no tickmarks in the 20-F 10 that follow E; is that right? 11 A. From a quick scan of the document, I haven't 12 seen any -- any tickmarks greater than E, correct. 13 Q. Okay. You can put that aside for now. 14 Why don't we take a look at what's been -- I'm 15 going to introduce two exhibits. One has previously been 16 introduced as exhibit 125; the other exhibit is 17 substantially similar but was produced in a different 18 format, but they relate to the same subject matter. 19 MR. TOMAINO: So is the second one going to be 20 370 -- 371, rather? 21 MR. NIEHAUS: Yes, so the second one will be 22 marked as 371. 23 (Exhibit 125, previously marked, referred to.) 24 For the record, I've handed Mr. Harding what was 25 previously marked as exhibit 125. This exhibit is</p>
<p style="text-align: right;">Page 143</p> <p>1 A. Well -- well, me looking at it now, 2 paragraph E or, sorry, section E in the cover letter, I'm 3 not sure whether the wording -- so, one, two, three -- 4 whether the four paragraphs there relate specifically to 5 item E or whether it's only the first paragraph under item E 6 that is actually item E and everything else could relate to 7 the whole section. 8 Q. Okay. And at what point do you believe -- so 9 you -- it's your testimony that -- 10 A. I -- 11 Q. -- you can't decipher whether the first 12 paragraph directly next to E relates -- I'm sorry, the 13 subsequent paragraphs after the first paragraph -- 14 A. Yeah. 15 Q. -- relate to the level of comfort given to 16 tickmark E? 17 A. To -- to item E, yes. 18 MR. TOMAINO: He's saying he cannot tell. 19 THE WITNESS: I can't tell. 20 BY MR. NIEHAUS: 21 Q. Do you have any -- do you have any reason to 22 believe that the paragraphs that follow that first 23 paragraph, which are indented similar -- similarly, do not 24 pertain to tickmark E? 25 MR. TOMAINO: He testified he can't tell.</p>	<p style="text-align: right;">Page 145</p> <p>1 a four-page email, which Mr. Harding is recipient on some of 2 the later emails, and the document contains an attachment or 3 the email contains an attachment. The document is Bates-ed 4 BARC-ADS-01616042 and runs to 061. 5 The second exhibit I've given Mr. Harding is the 6 same email exchange, excluding one email, as exhibit 125, 7 but it contains a portion of the email exchange that was 8 omitted on exhibit 125 for Mr. Lambert. That document, 9 which has been marked 371, is Bates-ed BARC-ADS-00803900 and 10 runs to 903. 11 MR. TOMAINO: Right, so what you've marked as 371 12 I think is a document that's been clawed back. 13 MR. NIEHAUS: It has been clawed back? 14 MR. TOMAINO: I believe so, because it's got -- 15 the material that was redacted from exhibit 125 is not 16 redacted here, and that appears to be inadvertent. So if it 17 hasn't been clawed back -- 18 MR. NIEHAUS: If it has been clawed back, we 19 can -- we can strike it from -- from the record. 20 MR. TOMAINO: Or if it hasn't, I would claw it 21 back now, because it's clearly something that should have 22 been, you know, redacted. I could investigate a little 23 more, you know, after the deposition. But it appears, you 24 know, to be, you know, a request from a Barclays person to 25 a person in Barclays Legal, and I would -- I would ask that</p>

<p style="text-align: right;">Page 146</p> <p>1 this exhibit be removed from the record.</p> <p>2 MR. NIEHAUS: Okay. On its face to me it wasn't</p> <p>3 as clear, but obviously you're entitled to your</p> <p>4 interpretation. That's fine.</p> <p>5 MR. TOMAINO: Yeah, I would say -- yeah, I would</p> <p>6 ask that this PX371 be expunged from the record. I have</p> <p>7 a list of our -- you know, I could determine readily --</p> <p>8 fairly readily whether or not it has in fact been clawed</p> <p>9 back. But that's really not the issue because if it hasn't</p> <p>10 been yet, it will be now.</p> <p>11 MR. NIEHAUS: So if it hasn't been, just for the</p> <p>12 record, you're insisting that it -- that it be clawed back</p> <p>13 at this time?</p> <p>14 MR. TOMAINO: Correct. It's inadvertently</p> <p>15 produced privileged information with -- Barclays did not</p> <p>16 intend to waive privilege or to have this go out unredacted,</p> <p>17 as evidenced by the fact that it was redacted on</p> <p>18 exhibit 125.</p> <p>19 MR. NIEHAUS: Pursuant to the protective order,</p> <p>20 we'll reserve our rights to challenge that. But</p> <p>21 procedurally you are entitled to claw it back.</p> <p>22 MR. TOMAINO: I appreciate it, thank you.</p> <p>23 BY MR. NIEHAUS:</p> <p>24 Q. Okay. So let's focus on what's been</p> <p>25 previously marked as exhibit 125.</p>	<p style="text-align: right;">Page 148</p> <p>1 Ms. Shi worked on the series 5 offering; is that right?</p> <p>2 A. I believe she did, yes.</p> <p>3 Q. Okay. Ms. Shi writes to Mr. Ludwick and</p> <p>4 Mr. Johnson -- and, Mr. Harding, you're not a recipient of</p> <p>5 this particular email but you are a recipient of this chain</p> <p>6 as it progresses.</p> <p>7 A. Yes.</p> <p>8 Q. "Hi David,</p> <p>9 "As discussed between Yu-liang and you, please</p> <p>10 find our revised circle up on the 20F below. All the</p> <p>11 figures circled in red mean we are not going to give comfort</p> <p>12 on in accordance with the guidance in US from the US Shelf</p> <p>13 and the DIP UT2 issuance."</p> <p>14 This email is ultimately forwarded to you,</p> <p>15 Mr. Harding, on or around April 22, 2008 and Mr. Johnson</p> <p>16 writes, cc'ing you:</p> <p>17 "As David's spoken to PwC on this, he'll get back</p> <p>18 to you shortly."</p> <p>19 And then Mr. Ludwick writes to you and others from</p> <p>20 Barclays Treasury on or around April 22, 2008:</p> <p>21 "The attached summarises the types of numbers that</p> <p>22 PwC previously agreed to give comfort on in Rimu..."</p> <p>23 And again, Rimu refers to the series 5 offering,</p> <p>24 right?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 147</p> <p>1 A. Okay.</p> <p>2 Q. And, Mr. Harding, if we focus on the --</p> <p>3 what's been Bates-ed BARC-ADS-01616044, the email from</p> <p>4 Mr. Ludwick on or around April 22, 2008. Mr. Ludwick is</p> <p>5 writing to a Yu-liang from PwC. Did Ms. Liang [sic] work on</p> <p>6 the series 5 offering? And I'm just asking that independent</p> <p>7 of the document.</p> <p>8 A. He -- he may have had some involvement, yes.</p> <p>9 Q. Okay. Mr. Ludwick writes:</p> <p>10 "As discussed, here are a couple of points that we</p> <p>11 would want to have circled up on the comfort letter for this</p> <p>12 DIP USD2b issuance, in addition to the circle up of the</p> <p>13 20-F."</p> <p>14 Do you see that, Mr. Harding?</p> <p>15 A. Yes.</p> <p>16 Q. And does the "DIP USD2b" refer to</p> <p>17 a transaction by Barclays?</p> <p>18 A. It would appear to, yes.</p> <p>19 Q. Okay. And this was a transaction that</p> <p>20 occurred after the series 5 offering; is that right?</p> <p>21 A. From the date of the correspondence, yes.</p> <p>22 Q. Okay. And would "2b" refer to 2 billion?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And let's turn to the email from</p> <p>25 Ms. Sophie Shi on April 22, 2008, which is on 01616043.</p>	<p style="text-align: right;">Page 149</p> <p>1 Q. "... which they are now declining to give</p> <p>2 (i've also attached their markup if you have access to</p> <p>3 PDFs -- it is the items in red that they are declining to</p> <p>4 give) ..."</p> <p>5 And he goes on to write:</p> <p>6 "... they are now saying that due [to] the</p> <p>7 applicable US standards as to what may be comforted (which</p> <p>8 they argue is more restrictive than in the UK) they are</p> <p>9 unable to do so ..."</p> <p>10 Mr. Ludwick goes on to write:</p> <p>11 "... in effect they are saying that it was</p> <p>12 a mistake to circle them in Rimu (page references are to the</p> <p>13 20-F): ..."</p> <p>14 And attached to -- and then below that is a number</p> <p>15 of bullet points. And if you look at the sixth -- sixth</p> <p>16 bullet point down, you see:</p> <p>17 "unobservable inputs in respect of total financial</p> <p>18 instruments stated at fair value (48)".</p> <p>19 And that 48 would correspond to the 20-F; is that</p> <p>20 right?</p> <p>21 A. Yes, it was.</p> <p>22 Q. Okay. And then that next bullet point reads:</p> <p>23 "all data in discussion of CDOs, collateral,</p> <p>24 funding, interests in third party CDOs, (ie SIVs, SIV lites,</p> <p>25 CP and MTN Conduits) ..."</p>

<p style="text-align: right;">Page 150</p> <p>1 Do you know what Mr. Ludwick meant by "CP" or "MTN</p> <p>2 Conduits"?</p> <p>3 MR. TOMAINO: Objection to form.</p> <p>4 THE WITNESS: I've always understood "CP" to mean</p> <p>5 commercial paper and "MTN" to mean the medium-term note,</p> <p>6 but --</p> <p>7 THE COURT REPORTER: Sorry, "to mean the</p> <p>8 medium..."?</p> <p>9 THE WITNESS: Sorry, medium-term note.</p> <p>10 BY MR. NIEHAUS:</p> <p>11 Q. Okay. Mr. Ludwick goes on to write:</p> <p>12 "... under 'Financial Review - Off Balance Sheet</p> <p>13 Arrangements' ..."</p> <p>14 And "Financial Review - Off Balance Sheet</p> <p>15 Arrangements" is in quotations. Next to that bullet point</p> <p>16 or at the end of that bullet point is again page references</p> <p>17 to the corresponding 20-F; is that right?</p> <p>18 A. It would appear to be, yes.</p> <p>19 Q. Okay. And then -- those page references</p> <p>20 would be 51 and 52. The next bullet point reads:</p> <p>21 "All data under 'Barclays capital credit market</p> <p>22 positions) -- ie credit exposures ..."</p> <p>23 And that page reference of 53 corresponds to</p> <p>24 the -- page 53 of the 20-F; is that right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. Okay. And based on your review of these two</p> <p>2 documents, do these additional circles appear to be the</p> <p>3 circles that Ms. Shi is referring to that were made in red?</p> <p>4 MR. TOMAINO: Objection to form, foundation.</p> <p>5 BY MR. NIEHAUS:</p> <p>6 Q. In Ms. Shi's email on or around April 22,</p> <p>7 2008 of exhibit 125?</p> <p>8 A. I can't say who made those additional</p> <p>9 circles.</p> <p>10 MR. NIEHAUS: Okay. For the record, we would ask</p> <p>11 that to the extent a color copy is available and in the</p> <p>12 possession of Barclays reflecting these circles in color, we</p> <p>13 would ask that that be produced.</p> <p>14 MR. TOMAINO: We will look into it.</p> <p>15 MR. NIEHAUS: And that same request would be made</p> <p>16 of the underwriters.</p> <p>17 BY MR. NIEHAUS:</p> <p>18 Q. Mr. Harding, did you have any discussions</p> <p>19 relating to the contents or substance of Mr. Ludwick's email</p> <p>20 sent to you and others on or around April 22, 2008?</p> <p>21 A. Not to my knowledge.</p> <p>22 Q. Okay. I'll introduce the last exhibit, which</p> <p>23 will be marked exhibit 372 --</p> <p>24 MR. TOMAINO: Can we just mark it 371?</p> <p>25 MR. NIEHAUS: Oh, 371.</p>
<p style="text-align: right;">Page 151</p> <p>1 Q. Okay. Now, if you can take a look at the</p> <p>2 attachment, which appears to be excerpts of the 20-F, and</p> <p>3 specifically if we look at pages 48 to 53 and we compare</p> <p>4 those to what was previously marked as exhibit 370, which</p> <p>5 contained the 20-F that accompanied the executed comfort</p> <p>6 letter.</p> <p>7 If we take a look at page 48 first, comparing what</p> <p>8 was previously marked as exhibit [1]25 to what was marked</p> <p>9 today as exhibit 370, do you see that there are circles</p> <p>10 around the "Unobservable inputs" column of page 42 -- or 48</p> <p>11 on the 20-F in exhibit 125?</p> <p>12 A. There is some additional circling on page 48</p> <p>13 in relation to the exhibit 125.</p> <p>14 THE COURT REPORTER: Sorry, "... circling on</p> <p>15 page 48..."?</p> <p>16 THE WITNESS: Of the -- of the 20-F in</p> <p>17 exhibit 125.</p> <p>18 BY MR NIEHAUS:</p> <p>19 Q. And if you turn to page 51 and compare that</p> <p>20 to the -- page 51 of exhibit 370, do you see additional</p> <p>21 circles?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And the same question for pages 52 and</p> <p>24 53.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 153</p> <p>1 MR. TOMAINO: Because we expunged the prior 371.</p> <p>2 MR. NIEHAUS: That's right. We can mark it 371.</p> <p>3 MR. TOMAINO: That's great. That will remove any</p> <p>4 lingering confusion about the numbers. Thank you.</p> <p>5 I appreciate that, Eric.</p> <p>6 MR. NIEHAUS: Yeah, no problem.</p> <p>7 (Exhibit 371 marked for identification.)</p> <p>8 BY MR. NIEHAUS:</p> <p>9 Q. Okay. And just for the record, exhibit 371</p> <p>10 is a three-page email dated on or around -- or beginning</p> <p>11 with an email from Mr. Harding on or around March 17,</p> <p>12 followed by a response by Mr. Hill on or around March 28,</p> <p>13 and then followed by an email by Mr. Harding on or around</p> <p>14 April 18, 2008. The document is Bates-ed BARC-ADS-01624241.</p> <p>15 Okay. And, Mr. Harding, you wrote this email on</p> <p>16 or around April 18, 2008 to Mr. Hill, right?</p> <p>17 A. Correct.</p> <p>18 Q. And this is the same Mr. Hill that we</p> <p>19 identified earlier from Standard & Poor's?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. In this email, are you requesting that</p> <p>22 Mr. Hill provide you with the final rating letter?</p> <p>23 A. Yes.</p> <p>24 Q. And did Mr. Hill provide you with the final</p> <p>25 rating letter in connection with the series 5 offering?</p>

<p style="text-align: right;">Page 154</p> <p>1 A. We would have received one, yes.</p> <p>2 Q. Okay. And was that rating an A+ rating?</p> <p>3 A. I can't recall offhand what -- what that</p> <p>4 rating was.</p> <p>5 Q. Okay. Other than providing Mr. Hill with the</p> <p>6 final prospectus supplement, did you provide Mr. Hill with</p> <p>7 any other documentation?</p> <p>8 MR. TOMAINO: At this time?</p> <p>9 MR. NIEHAUS: At this time.</p> <p>10 THE WITNESS: No, I believe I would just have sent</p> <p>11 him the final prospectus supplement.</p> <p>12 BY MR. NIEHAUS:</p> <p>13 Q. Okay. And just so we're clear, prior to</p> <p>14 receiving the final rating from Mr. Hill, did you provide</p> <p>15 him with any other documentation, other than the final</p> <p>16 prospectus supplement?</p> <p>17 A. I can't recall having provided any additional</p> <p>18 documentation.</p> <p>19 Q. Okay. Would it have been your standard</p> <p>20 practice to provide Mr. Hill with any documentation other</p> <p>21 than the prospectus supplement?</p> <p>22 A. No.</p> <p>23 MR. NIEHAUS: No further questions.</p> <p>24 MR. TOMAINO: We don't have any questions, and we</p> <p>25 designate the transcript and the exhibits as confidential.</p>	<p style="text-align: right;">Page 156</p> <p>1</p> <p>2 CERTIFICATE OF COURT REPORTER</p> <p>3</p> <p>4 I, Rhiannon Mason-Edwards, an Accredited Realtime Reporter,</p> <p>5 hereby certify that the testimony of the witness Keith</p> <p>6 Harding in the foregoing transcript, numbered pages 7</p> <p>7 through 155, taken on Wednesday, October 28, 2015, was</p> <p>8 recorded by me in machine shorthand and was thereafter</p> <p>9 transcribed by me; and that the foregoing transcript is a</p> <p>10 true and accurate verbatim record of the said testimony.</p> <p>11 I further certify that I am not a relative, employee,</p> <p>12 counsel or financially involved with any of the parties to</p> <p>13 the within cause, nor am I an employee or relative of any</p> <p>14 counsel for the parties, nor am I in any way interested in</p> <p>15 the outcome of the within cause.</p> <p>16 Signed on the 2nd day of November, 2015.</p> <p>17 _____</p> <p>18 RHIANNON MASON-EDWARDS</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 155</p> <p>1 THE VIDEOGRAPHER: Thank you. Going off the</p> <p>2 record. The time is 3:19.</p> <p>3 (3:19 p.m.)</p> <p>4 (Whereupon the deposition concluded.)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 157</p> <p>1 In Re Barclays Bank PLC Securities Litigation v.</p> <p>2 Keith Harding</p> <p>3 INSTRUCTIONS TO THE WITNESS</p> <p>4 Please read your deposition over</p> <p>5 carefully and make any necessary corrections.</p> <p>6 You should state the reason in the</p> <p>7 appropriate space on the errata sheet for any</p> <p>8 corrections that are made.</p> <p>9 After doing so, please sign the errata</p> <p>10 sheet and date it.</p> <p>11 You are signing same subject to the</p> <p>12 changes you have noted on the errata sheet,</p> <p>13 which will be attached to your deposition.</p> <p>14 It is imperative that you return the</p> <p>15 original errata sheet to the deposing</p> <p>16 attorney within thirty (30) days of receipt</p> <p>17 of the deposition transcript by you. If you</p> <p>18 fail to do so, the deposition transcript may</p> <p>19 be deemed to be accurate and may be used in</p> <p>20 court.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 2160047</p>

<div style="text-align: right;">Page 158</div> <p>1 In Re Barclays Bank PLC Securities Litigation v. 2 Keith Harding 3 E R R A T A 4 ----- 5 PAGE LINE CHANGE 6 ----- 7 Reason: _____ 8 ----- 9 Reason: _____ 10 ----- 11 Reason: _____ 12 ----- 13 Reason: _____ 14 ----- 15 Reason: _____ 16 ----- 17 Reason: _____ 18 ----- 19 Reason: _____ 20 ----- 21 Reason: _____ 22 ----- 23 Reason: _____ 24 ----- 25 2160047</p>	
<div style="text-align: right;">Page 159</div> <p>1 In Re Barclays Bank PLC Securities Litigation v. 2 Keith Harding 3 ACKNOWLEDGMENT OF DEPONENT 4 I, _____, do 5 hereby certify that I have read the foregoing 6 pages and that the same is a correct 7 transcription of the answers given by 8 me to the questions therein propounded, 9 except for the corrections or changes in form 10 or substance, if any, noted in the attached 11 Errata Sheet. 12 _____ 13 _____ 14 DATE SIGNATURE 15 _____ 16 Subscribed and sworn to before me this 17 _____ day of _____, 20__. 18 _____ 19 My commission expires: _____ 20 _____ 21 Notary Public 22 _____ 23 _____ 24 _____ 25 2160047</p>	

EXHIBIT 7
[Filed Under Seal]

**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 &

Young. I worked from 1969 until 1980 at Redwood Bancorp (“Redwood”), a San Francisco-based commercial banking firm. My title was Vice Chairman & Chief Operating Officer. After Redwood, I formed my own investment banking firm, concentrating my practice in mergers and acquisitions (“M&A”). I then spent over two years (1982-1984) as CFO of the investment banking firm of Sutro & Co. Incorporated (“Sutro”). I was involved in numerous securities offerings as well as M&A and leveraged buyout transactions sponsored by Sutro’s Corporate Finance Department, including the assessment of due diligence investigations conducted.

In 1985, I again formed my own investment banking firm. However, I also continued to serve as a special consultant on retainer to Sutro where I worked as an investment banker on various M&A and private equity transactions and helped build Sutro’s specialty practice aimed at financial institutions. In addition, I was an adjunct professor in the School of Management at the University of San Francisco (“USF”) from 1986 to 1990. In 1990, I joined the faculty as a full time associate professor.

From 1998, I was a tenured, full professor in the School of Management at USF. After over 25 years at USF, I transitioned to Emeritus Professor in 2014. **Exhibit B** is a copy of my *curriculum vitae*, which lists pertinent educational and professional experience as well as publications. I regularly taught graduate, upper division MBA finance courses, including “Capital Markets and Investment Banking” and “Private Equity and Venture Capital.” One of the hallmarks of these courses was interactive case studies presented in person by a cadre of professionals from investment and commercial banking, the private equity business, institutional investors, and entrepreneurs, as well as CEOs and CFOs of public and private companies.

My scholarly interests include custom and practice in corporate finance (e.g., capital markets, initial public offerings (“IPOs”) and follow-on offerings, investment banking and underwriting, commercial banking and lending, private placements, private equity transactions, mergers and acquisitions (“M&A”), due diligence and corporate governance). Moreover, I have given lectures and presentations on various corporate finance subjects in the United States, France, Japan, Poland, and the United Kingdom,

as well as Russia and China, (e.g., Beijing, Hong Kong and Xi'an), including presentations on the following: (1) capital markets, IPOs, follow on equity offerings, preferred share offerings, high yield notes, convertible securities, private investments in public entities ("PIPEs"), various types of commercial and construction loans, including loan syndications; and (2) the required due diligence on such equity and debt transactions.

During my career, I have served on the boards of directors of three publicly owned companies for a combined total of more than 30 years of Boards of Directors experience. I also have more than 20 years of experience with SEC-reporting companies. I have been directly involved as a corporate officer or director in negotiating, structuring and/or approving numerous public and private securities offerings, credit facilities and M&A transactions, including performing, managing, reviewing and/or approving the applicable due diligence investigations.

I have been retained on numerous occasions to provide expert testimony and consultation in cases involving equity and debt financing transactions for public and private firms. As an Expert Witness and Expert Consultant, I have relied on my academic and practical experience to address a wide range of corporate finance issues, including the following: (1) how capital markets work and the types of securities that are created and traded in such capital markets, including mortgage-related securities; (2) the distinct roles investment banks often play as both financial advisors to issuers and as underwriters in connection with securities offerings;¹ and (3) the standard of care and custom and practice of underwriter due diligence in connection with securities offerings. **See Exhibit B.**

¹ It is my experience as a finance professor and investment banker that investment banks, drawing on their collective expertise and up-to-date knowledge of capital markets, often first act as a financial advisor to an issuer – on matters related to the nature of securities to be issued, the terms and conditions related to size, structure, pricing and market conditions – and then as an underwriter or placement agent, including conducting a reasonable due diligence investigation that culminates in materially accurate and complete offering documents.

III. DUE DILIGENCE STANDARDS AND PRACTICES

A. Due Diligence in a Securities Offering

Broadly speaking, due diligence in a securities offering is the evolving and iterative investigation process used to ensure that investors are aware of potentially material information regarding the securities being offered and the issuer's businesses, executives, operations, accounting and finances. In an underwritten securities offering, underwriters conduct their own due diligence investigations. The specific nature of due diligence investigations is fact-specific: what is reasonable in one situation may not be reasonable in another.

Underwriter due diligence is the investigation process performed by underwriters to reasonably understand, among other things, the securities being offered and the accounting, financial, business and legal aspects of the issuer in order for the underwriters to have a reasonable basis to believe in the accuracy and completeness of material disclosures in the offering documents.

Bring-down due diligence is the process by which results of earlier diligence must be reasonably re-examined and confirmed on a timely basis to assure that earlier information obtained in due diligence has not materially changed and that disclosures the offering documents remain materially accurate and complete.

B. Standard of Care and Custom and Practice

Due diligence must be performed in accordance with the standard of care and custom and practice applicable in the context of securities offerings and under the circumstances.

The following discussion of the standard of care and custom and practice in due diligence for a securities offering draws on and is informed by my extensive background and experience as an academic, a corporate executive in investment and commercial banking, a director on public Boards and as an Expert Witness and Expert Consultant in numerous cases involving due diligence, including cases involving common and

preferred stock offerings. For example, as a tenured finance professor, and in preparation for teaching graduate courses covering such topics as securities underwritings, investment transactions, and M&A transactions, I have researched hundreds of scholarly articles and books on due diligence matters, including the following: (1) articles from finance and legal journals regarding due diligence procedures and practices for various types of transactions; and (2) court decisions regarding due diligence standards, customs and practices, or synopses thereof, including such seminal due diligence cases as BarChris and WorldCom. I am also a faculty member at the Practising Law Institute, which recently published a research piece I wrote entitled, "A Primer on Buyer's Due Diligence."

As a commercial banker, I oversaw, reviewed and/or performed due diligence on hundreds of commercial and construction loan transactions. In addition, my investment and commercial banking experience includes leading the due diligence investigations of the numerous acquisitions and investments made by Redwood and Sutro during my stewardship of these companies. I was also a member of Sutro's Commitment Committee, which reviewed and approved all securities underwritings Sutro participated in, including evaluating the reasonableness of the due diligence performed. As Chairman of the Board of Harding and as Chair of the Audit Committee, I oversaw the due diligence investigations for numerous investment and acquisition transactions in which Harding was involved.

My experience as an Expert Witness involves providing written reports and testimony in numerous due diligence cases, including the following: (1) IPOs; (2) follow on offerings of common shares; (3) preferred share offerings; (4) commercial and construction loan transactions; (5) investments by private equity and venture capital funds; (6) and cases involving due diligence for M&A and LBO transactions. In a number of such cases, I had access to and reviewed numerous due diligence manuals or excerpts thereof published by large investment and commercial banking firms to guide their bankers on performing reasonable diligence on transactions.

1. Standard of Care

The applicable standard of care for performing due diligence in the context of a securities offering is the performance of a reasonable investigation of potentially material information to ensure that there is a reasonable basis to believe in the accuracy and completeness of the information set forth in the offering documents. The reasonableness standard is that applied by the prudent person in the management of his/her affairs. Information is considered material if there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision, or if the fact would meaningfully alter the total mix of information available.

2. Custom and Practice for Underwriters

The custom and practice in underwriter due diligence in connection with a securities offering is for underwriters to (i) make inquiries reflecting a reasonable level of skepticism (that is, acting as the devil's advocate); (ii) follow up and reasonably understand and resolve red flags (that is, information encountered in the course of a due diligence investigation that is inconsistent with the underwriters' understanding of the issuer's businesses, executives, operations, accounting and finances, or that is potentially indicative of wrongdoing and, therefore, requires the underwriters to investigate further in order to arrive at a reasonably informed understanding or resolution) and to investigate and resolve issues encountered during due diligence that may not rise to the level of red flags but which warrant investigation under the circumstances;² and (iii) independently verify material information supplied by executives and advisors of the issuer (or other parties with potential conflicts of interest) on which the underwriters intend to rely.³

² If the results of the follow up investigation are not satisfactory to the underwriters, the alternatives faced are either withdrawing from the transaction or accepting the risks of not conducting due diligence with reasonable care.

³ In an underwritten offering, underwriters invariably engage legal counsel to act as Underwriters' Counsel.

3. Shelf Registrations

Underwriter due diligence in a shelf registration differs from underwriter due diligence in a standard offering, in part because issuing securities under the shelf registration process telescopes the time to diligence information in the offering documents, which already incorporate previously-filed information by reference. In contrast, there is more time available for diligence in a standard registration statement and the offering documents are typically more comprehensive and reiterate or summarize previously disclosed information. Professor Lawrence opines that, given the compressed time line in a shelf registration, underwriters rely on accumulated knowledge of continuous due diligence (or what Professor Lawrence calls the “reservoir of knowledge”) regarding the issuer’s business, financial, legal and other matters subject to due diligence. However, notwithstanding the compressed timeline of shelf registration, underwriters do not escape the requirement to meet the standard of care of performing a reasonable investigation to ensure there is a reasonable basis to believe in the accuracy and completeness of material information in the offering documents. Nor do underwriters escape the custom and practice associated with such reasonable investigations—namely, acting as a devil’s advocate, reasonably following-up and resolving red flags and independently confirming material information received from conflicted or potentially conflicted parties to the offering.

IV. REBUTTAL OF PROFESSOR LAWRENCE’S OPINIONS

A. Definitions

This Rebuttal includes references to certain charges recognized by Barclays at various times that lowered the “market” or “fair” value of its credit market positions. These charges are referred to using a variety of terms in the case record, including, among others, “impairments,” “impairment charges,” “write-downs,” “write-offs,” and “credit market losses.” For the purposes of this Rebuttal, charges related to the reduction in the carrying value of Barclays’ credit-market positions are hereinafter referred to as a “Write-Down.”

B. Summary of Opinions

Professor Lawrence's Opinion #1 reads as follows: *"The Record I Have Reviewed Reflects a Comprehensive and Robust Due Diligence Investigation by the Underwriters that Was Fully Consistent with Customary Standards and Practice and Was Appropriate in the Context of a Shelf Takedown by a Well-Known, Seasoned Issuer and Frequent Comer to the Market Such as Barclays."*⁴

In my opinion, Professor Lawrence has no reasonable basis for this opinion. *First*, he ignores a wealth of information in the case record indicating that the Underwriters repeatedly violated the standard of care and custom and practice applicable to due diligence performed in the context of a securities offering, in part, by failing to reasonably investigate and resolve multiple **red flags** of which the Underwriters were aware or should have been aware prior to the date of the Offering Documents.⁵ *Second*, Professor Lawrence unreasonably relies on the reputation and purported accumulated knowledge and expertise of the Underwriters' team and fails to address the Underwriters' fundamental diligence flaws reflected in the case record, and opined on in this Rebuttal. *Third*, given the total mix of information available, Professor Lawrence unreasonably relies on representations made by Barclays management ("Management") in certifications to the Underwriters as a substitute for customary Underwriter due diligence. *Fourth*, given the total mix of information available, Professor Lawrence unreasonably relies on representations of counsel in certifications to the Underwriters as a substitute for customary Underwriter due diligence.

⁴ See Lawrence Underwriter Report, p. 26. Professor Lawrence's Opinion #1 addresses the Underwriters as a group. Professor Lawrence also offers a brief Opinion #2 that "the non-primary lead underwriters' due diligence involved elements of reliance on the primary Lead Underwriter and a degree of independent investigation, and in my opinion, met or exceeded customary standards and practice." Except where noted, this Rebuttal addresses due diligence investigation of the Underwriters as a whole.

⁵ The "Offering Documents" are comprised of the Shelf Registration Statement filed on Form F-3 on August 31, 2007, the Prospectus Supplement on Form 424B5 dated April 8, 2009, and any documents incorporated by reference therein.

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

Underwriters.⁶ The call was contemporaneously recorded (and transcribed by a court reporting service at the request of Lead Plaintiffs' counsel in connection with this litigation) and was led by members of Barclays Management, including Defendant Christopher Lucas ("Lucas"), Barclays Group Finance Director. Prior to the call, on April 1, 2008, Citi submitted a list of questions to Barclays to be addressed by Barclays on the call.⁷

Item 6 on the list of due diligence questions read as follows: *"Please comment briefly on the trading performance for the first two months of 2008. When compared to the same period in 2007, are such results above or below the comparative 2007 result. Please comment on any specific line items in the P&L and balance sheet that experienced material or substantial movements with specific reference to such movements in net profit, net interest income, total assets and total debt. Please comment on your outlook for 1H 2008 and full year 2008 results."*⁸ In responding to the question, Lucas stated that, *"March has been a very tough month ... I think it's fair to say that the conditions we have seen in March specifically, will have dented our first half numbers."*⁹ Lucas stopped short of quantifying the results for any periods in the first quarter of 2008, stating that *"we are still in the process of completing the results process, we get an early look at [March results] tomorrow [April 4, 2008]."*¹⁰ Lucas also clearly noted that *"we still have quite a wide [bid] offer in terms of some of the decisions we have to make around asset marks as we close the books."*¹¹

⁶ See, e.g., UW_Barclays_000017463-65 (April 3, 2008 e-mail attaching Due Diligence Attendees list); BARC-ADS-00002941 (audio recording of due diligence call reflecting participation by Jack McSpadden of Citi and Matt Pass of Merrill Lynch); Exhibit 23 (transcript of same); see also Exhibit 21 (April 1, 2008 e-mail inviting all lead Underwriters to participate in due diligence call and directing that any questions they wanted addressed be made through UBS and Merrill Lynch).

⁷ See Exhibit 21.

⁸ See *id.*, at UW_Barclays_000012713.

⁹ See BARC-ADS-00002941 (audio recording of April 3, 2008 due diligence call); see also Exhibit 23 (transcript of April 3, 2008 due diligence conference call) at pp. 22-23.

¹⁰ See BARC-ADS-00002941; see also Exhibit 23 at p. 22.

¹¹ See BARC-ADS-00002941; see also Exhibit 23 at p. 23.

Item 13 on the list of due diligence questions asked: *“In the near-term, does management anticipate the need to make any further writedowns for any of the other above products?”*¹² Lucas responded as follows: *“We wrote off 1.6 -- or we provided 1.6 billion up to the 31st of December, and that is net of 658 million of earned credit. We would expect, when you look at the market conditions in January and February and March, that we will be taking further write downs, that will be reflecting market conditions ... I think the evidence will be in March, we will be taking further write downs.”*¹³

After Barclays addressed each prepared question, the floor was opened for questions. A Merrill Lynch representative asked if Barclays expected to make an announcement outside of its regularly scheduled financial announcements regarding Write-Downs. Lucas responded: *“I referred you to the difficulty and the market positions, as of today I have no plans to make an announcement. I follow our usual updates to the market.”*¹⁴

The responses provided by Barclays’ Management to the Underwriters’ questions regarding Barclays’ financial results and Write-Downs subsequent to year-end 2007 represented a glaring **red flag** that the Underwriters were required to reasonably investigate and resolve because, among other things, (i) the Underwriters received information during the April 3, 2008 due diligence call indicating that January and February 2008 interim financial results were already complete, and that an “early look” at the March 2008 financial results would be available on or about April 4, 2008, prior to the date of the Offering Documents; (ii) Lucas explicitly stated during the April 3, 2008

¹² See BARC-ADS-00002941; see also Exhibit 21 at UW_Barclays_000012712.

¹³ See BARC-ADS-00002941; see also Exhibit 23 at p. 33.

¹⁴ See BARC-ADS-00002941; see also Exhibit 23 at pp. 56-57. Indeed, Barclays did not make any public disclosure regarding Write-Downs recognized in 2008 prior to the date of the Prospectus Supplement on April 8, 2008. Barclays’ first 2008 disclosure regarding its Write-Downs taken since year-end 2007 came on May 15, 2008, in its “Interim Management Statement” Filed on Form 6-K which disclosed *net* losses from “continuing dislocation in the credit markets” in first quarter 2008 of £1.006B, comprised of £495M Write-Downs against ABS CDO Super Senior positions, and £1.214B Write-Downs against other credit market exposures, which were offset by gains of £703M “from the general widening of credit spreads on issued notes held at fair value.” See Form 6-K filed May 15, 2008. Excluding the gain component of £703M, gross Write-Downs were £1.7809B. See *id.*

due diligence call that market conditions in March 2008 would result in Barclays “taking further write downs”; (iii) Lucas informed the Underwriters during the April 3, 2008 due diligence call that Barclays had no plans to make an announcement regarding post-2007 Write-Downs prior to the date of the Offering Documents; and (iv) credit markets were in a state of extreme volatility and market participants were particularly concerned with the exposure that financial companies had to these assets.¹⁵

Testimony from Jack McSpadden (“McSpadden”), Managing Director of Citi’s Transaction Execution Group,¹⁶ makes clear that the Underwriters were aware of this red flag:

- Q.** Thank you. Would you agree with me that as of April 3rd, 2008, the date of this call, Mr. Lucas knew that Barclays would be taking additional write-downs of its portfolio?
- A.** If we go back earlier, he said that there were additional write-downs to come. He talked about in some of the earlier language. I can go find the page. But he specifically said there were more write-downs to come, and he said there was a wide bid/offer gap between mark to market. He telegraphed as much as he possibly could without having final numbers in front of him that, yes, more write-downs were going to come, and the implication was they were going to be bigger, because you could look back at the monthly numbers ... So he is doing everything he can before seeing final numbers to tell you there are more write-downs to come and anticipate them ... He is absolutely alerting everybody that more write-downs are going to come ... So he’s telling people that there’s going to be issues in March and it’s going to be more than it’s been in the prior month, period.¹⁷

¹⁵ See, e.g., McSpadden Tr. at pp.130:5-25 (“The markets had begun to deteriorate for financial institutions, and everyone within Citi was very focused on financial institutions and the concerns around them.”).

¹⁶ McSpadden was Citi’s authorized representative and provided testimony on Citi’s behalf at deposition in this action. See McSpadden Tr. at 11:3-7.

¹⁷ See McSpadden Tr. at 215:5-216-25; see also UW_Barclays_000017463-65 (4/3/08 e-mail attaching Due Diligence Attendees list); BARC-ADS-00002941 (audio recording of due diligence call reflecting participation by Jack McSpadden of Citi and Matt Pass of Merrill Lynch); Exhibit 23 (transcript of same).

b. Applicable Standard of Care and Custom and Practice

In order to ensure that the Offering Documents were accurate and complete, the Underwriters had an obligation to (i) reasonably investigate the size and scope of both actual (for January and February 2008) and expected (for March 2008) Write-Downs referenced by Barclays during the April 3, 2008 due diligence call; and (ii) make a reasonable determination, based on its investigation, whether, for example, the Offering Documents contained material statements and omissions, or whether additional disclosure, including regarding Barclays' actual or anticipated Write-Downs experienced subsequent to year-end 2007, was required in order for the Offering Documents to be accurate and complete. Further, it is customary under these circumstances for underwriters to request relevant internal financial information from the issuer, inspect internal financial reports, and perform their own independent analyses of financial and other data.

As discussed below, had the Underwriters made a reasonable investigation into Barclays' post year-end 2007 Write-Downs, they would have learned the following: (1) a substantial amount of the Write-Downs had already been recorded in January and February 2008; (2) a substantial amount of preliminary Write-Downs had been recorded for March 2008; and (3) additional Write-Downs were likely in March 2008 prior to closing of the books for first quarter 2008.

January and February 2008 Write-Downs: There was considerable documentation in the case record readily available to the Underwriters prior to the date of the Offering Documents that showed substantial Write-Downs in January and February 2008, including the following:

- Agenda materials for a February 29, 2008 Barclays Capital ("Barcap") Finance Committee Meeting estimating that Barcap "Impairment and potential losses" for January and February 2008 would be £608M.¹⁸

¹⁸ See BARC-ADS-00927803-14, at 807. The Barcap Finance Committee was an internal (i.e., non-Board) committee comprised of the following individuals: Robert Diamond, Richard Ricci, Patrick Clackson, Paul Copson, Anthony Spinale and Vivek Syal.

- At a meeting of the Barclays Board of Directors (the “Board”) on March 20, 2008, Lucas reported to the Board that, for January and February 2008, Barcap had recognized Write-Downs of £800M.¹⁹ This meant that, through just two months of 2008, Barcap had already recognized nearly half of the £1.635B Write-Downs that the Barclays group had recognized for all of 2007.²⁰
- A Barcap worksheet showing “Net income impact of dislocation in credit markets in Q1 2008” reflects that year-to-date gross Write-Downs as of February 2008 were £878M.²¹

March 2008 Preliminary Write-Downs: Agenda materials prepared for an April 2, 2008 Barcap Finance Committee Meeting show that the “best” case scenario included additional Write-Downs of £749M in March 2008.²² This same document showed that Barcap’s profit before tax was projected to be between £379M (the “core” estimate) and just £228M in first quarter 2008 (the “low” estimate) – a whopping decline of 54-72% compared with 1Q07.²³ Further, as Lucas stated during the April 3, 2008 due diligence call, preliminary estimates of Barclays’ first quarter 2008 financial results, which would have included results for March, would be available on April 4, 2008.²⁴

March 2008 Additional Write-Downs: Assuming Lawrence is correct that the Underwriters had accumulated knowledge of Barclays’ financial reporting process, the Underwriters would have understood that, as of the first week of April 2008, Barclays was applying a substantial degree of Management judgment in determining the fair value of its credit market positions and related Write-Downs, which methodologies and

¹⁹ See Exhibit 416 at BARC-ADS-01601054.

²⁰ See Exhibit 14 (2007 20-F), p. 25.

²¹ See BARC-ADS-01017015 at tab “Losses Summary.” Gross Write-Downs exclude income from notes held by Barclays and related assets. Because January and February books had been closed prior to the completion of the Offering Documents, February YTD data would have been available prior to the filing of the Offering Documents.

²² See BARC-ADS-01022272, p. 5. The total Write-Downs of £749M is equal to the total “Monthly Remarks and Exposures” of £741M, plus “Expected Writedowns” of £8M.

²³ *Id.*, at p. 2. The materials also included a “best” case scenario that reflected lower Write-Downs of whole loans in March 2008. The “low” case reflected whole loan Write-Downs of \$1.2B, or £603M, while the best case reflected whole loan Write-Downs of \$800M, or £402M. This resulted in a projected “best” case profit before tax of £379M, which still represented a 54% decline from 1Q07.

²⁴ See BARC-ADS-00002941; see also Exhibit 23 at 22-23.

calculations would be subject to the scrutiny of Barclays' auditors before any consolidated financial results could be released to the public. On the April 3, 2008 Conference Call (one day after the preliminary Barcap Finance Committee agenda materials reflecting March preliminary Write-Downs were prepared), Lucas made reference to the fact that *"we still have quite a wide [bid] offer in terms of some of the decisions we have to make around asset marks as we close the books."*²⁵ In other words, it was made clear to the Underwriters by Barclays that turbulence in the market created a wide range of potential first quarter 2008 Write-Downs that could increase beyond what was already known or knowable at the time the Offering Documents were prepared.²⁶ Customary due diligence required the Underwriters to investigate and resolve this red flag by obtaining an understanding of the potential impact of such uncertainty on the then known but preliminary first quarter losses so as to determine whether additional disclosure was necessary.

c. Underwriters' Failure to Reasonably Investigate and Resolve This Red Flag

The Underwriters violated the custom and practice associated with underwriter due diligence by failing to reasonably investigate and resolve the red flags raised during the April 3, 2008 due diligence call by Lucas' statements concerning poor market conditions in the first quarter of 2008 and the significant Write-Downs taken and expected to be taken by Barclays since year-end 2007. For example, I found no evidence in the record that the Underwriters requested to review any financial reports or schedules in response to Lucas' statements during the April 3, 2008 due diligence call. Rather, when asked about what steps the Underwriters took to investigate and understand the nature and

²⁵ See BARC-ADS-00002941; see also Exhibit 23 at p. 23.

²⁶ In fact, actual net Write-Downs ended up at £1.006B for first quarter 2008 (or £1.7809B gross, excluding the gain component of £703M). On May 15, 2008, Barclays filed an "Interim Management Statement" on Form 6-K, which disclosed net losses from "continuing dislocation in the credit markets" of £1.006B, comprised of £495M Write-Downs against ABS CDO Super Senior positions, and £1.214B Write-Downs against other credit market exposures, and which were offset by gains of £703M "from the general widening of credit spreads on issued notes held at fair value." Excluding the gain component of £703M, gross Write-Downs were £1.7809B.

extent of the additional Write-Downs that Lucas revealed Barclays had taken since year-end, McSpadden testified as follows:

Q. In the context of the Series 5 offering, did Citi ever inquire of Barclays whether it could inspect any of the daily, weekly, or monthly reports that Mr. Lucas referenced during this April 3rd, 2008, call?

A. To my knowledge, no.²⁷

Q. Following this April 3rd, 2008, call, did Citi request to review any financial reports or schedules of Barclays that may reflect the amount of write-downs that Barclays had taken in January and February, 2008, as Mr. Lucas stated during the April 3rd call?

A. Not to my knowledge.

Q. Did Citi perform any independent analyses of its own to determine what the amount of the write-downs were that Barclays took in January and February 2008 that Mr. Lucas commented on during the April 3rd, 2008, call?

A. Not to my knowledge, but independent analysis implies access to information, by definition. This was internal information. The next opportunity for one to review information would have been when the first-quarter earnings were released, without cooperation from Barclays.

Q. And Citi did not ask for any reports or schedules -- Citi did not -- strike that. Citi did not ask to review any reports or schedules that might have reflected this information; correct?

A. Not to my knowledge.²⁸

d. Professor Lawrence Provides No Reasonable Basis for His Opinion

Professor Lawrence opines that “*the Underwriters conducted substantial due diligence related to the issues of asset impairments and write-downs. For example, the due diligence questionnaires prepared by the Underwriters included various questions about the issues of impairments and write-downs. Furthermore, according to the transcript of the business due diligence call that took place on April 3, 2008, Barclays discussed write-downs.*”²⁹ I disagree with Professor Lawrence’s opinion. *First*, asking questions of the issuer and receiving answers does not demonstrate “substantial due diligence” by

²⁷ See McSpadden Tr. at 219:8-14 (Objections removed).

²⁸ See McSpadden Tr. at 207:13-208:16 (Objections removed).

²⁹ See Lawrence Underwriter Report, ¶172.

the Underwriters. Where red flags are raised, the applicable custom and practice requires more than management inquiries in order to discharge an underwriters' obligation to reasonably investigate and resolve the red flag. Rather, customary practices required the Underwriters to request, inspect, and analyze relevant internal financial data on post-2007 Write-Downs that were readily available prior to the date of the Offering Documents.

Second, Professor Lawrence pays no attention to the substance of the troubling answers Barclays provided regarding its post-2007 Write-Downs—namely that (i) Barclays had taken significant Write-Downs in January and February 2008; (ii) March had been a tough month and the company expected to take significant additional Write-Downs; and (iii) Barclays had no intention of making any additional disclosure of these Write-Downs prior to reporting its first quarter 2008 financial results in May 2008. Insofar as the credit markets were in a state of extreme volatility and market participants were particularly concerned with the exposure that financial companies had to these assets, Barclays' responses to the Underwriters' initial inquiries only underscore the need to reasonably investigate beyond Management's responses to reach a reasonable resolution of the red flag.

Third, Professor Lawrence fails to discuss the readily available facts regarding Barclays' post-2007 Write-Downs that the Underwriters should have uncovered had they performed a reasonable investigation. Notwithstanding Professor Lawrence's assertions of substantial due diligence in this area, the case record provides no evidence that the Underwriters met this obligation.

2. Red Flag: Disclosures in the Offering Documents Regarding Credit Market Exposure Were Inconsistent with Barclays' Internal Reporting and Analysis Practices, Barclays' Communications with Regulators, and Barclays' Contemporaneous Disclosures to Other Potential Investors

a. Nature of the Red Flag

In my experience, it is customary for underwriters, when considering due diligence procedures in connection with a securities offering, to understand the manner in which

management analyzes and evaluates key components of its business and then design the due diligence procedures accordingly. This is a reasonable and practical approach that allows the underwriters to (i) view the business through the same lens as management in order to identify key components of the business that should be diligenced;³⁰ and (ii) tailor due diligence procedures accordingly to most effectively investigate and understand those key components.

Based on the combination of accumulated knowledge that the Underwriters should have accrued regarding Barclays' business as well as current and cumulative due diligence that the Underwriters should have reasonably performed in connection with the Series 5 Offering, the Underwriters knew or should have known that (i) there was a material discrepancy between the manner in which Barclays' Management and Board internally reported and analyzed information regarding monolines and other credit market exposures and the way that such credit market exposures were disclosed externally in the Offering Documents; (ii) Barclays' reporting and analyses of its monoline and other credit market exposures in the Offering Documents was inconsistent with the manner in which it presented these exposures to its regulators; and (iii) prior to the Series 5 Offering, Barclays made important selective disclosures based in part on the requests of sophisticated potential investors regarding, among other things, notional exposure to monoline insurers and interim 2008 exposures to other credit market instruments, and importantly, such detailed disclosures were not made to investors in the Series 5 Offering via disclosure in the Offering Documents.

i. Barclays Internal Reporting and Analysis

The Underwriters were aware, or should have been aware, of several material discrepancies between Barclays' internal reporting and analysis of credit market exposure and the manner in which such credit market exposures were disclosed in the Offering Documents. *First*, Barclays internally reported and analyzed its credit market

³⁰ As discussed in this Rebuttal, it is customary that Underwriters review key management reports, as well as Board and Committee Materials, including agendas, presentations, and minutes.

exposures on both a gross and net basis. Yet, as described more fully below, the disclosures included in the Offering Documents reflected Barclays' net exposure, at just a fraction of the gross amount.³¹ This substantial difference between Barclays' internal reporting and analysis and the Offering Document disclosures should have been a **red flag** to the Underwriters requiring investigation. Examples in the case record include the following:

- A September 19, 2007 e-mail attaching a report from Director Richard Broadbent to be tabled at a meeting of Barclays' full Board the following day and noting that Barclays had "debated whether the gross exposure numbers should be included," and that Defendant Lucas and other members of Barclays management "preferred them not to have been included-but [Broadbent] [wa]s keen to present a full picture to the Board."³²
- An October 30, 2007 "Update on Sub Prime ABS and Leveraged Credit Markets" that was provided to Director Richard Broadbent, and circulated to other members of the Board Risk Committee, reflecting Barclays' gross exposure to Asset Backed Securities, broken down by: (i) US Sub-Prime Residential Mortgage Exposure (with line items for Financing of US Sub-prime Residential Mortgages, Whole Loans Purchase and Securitisation, and Post-NIM Residuals); (ii) CDO Warehousing; (iii) Backstop/Liquidity (with line items for Barclays sponsored conduits, Third party conduits, Super senior tranches of CDOs, and Synthetic liquidity facilities); and (iv) SIV/SIV-Lites (with line items for Drawn Backstop liquidity and SIV Derivative exposure).³³
- The Report of the Board Risk Committee Meeting on December 5, 2007, prepared for the December 6, 2007 meeting of Barclays' full Board, reflecting Barclays' gross exposure to Asset Backed Securities, broken down by US Sub-Prime Residential Mortgage Exposure (including Financing of US Sub-

³¹ See Barclays 2007 20-F, p. 53. For example, in the 2007 20-F, Barclays presented credit market exposures related to ABS CDO Super Seniors as follows: ABS CDO Super Senior (£m); High grade 4,869; Mezzanine 1,149; Hedges (1,347); and Net ABS CDO Super Senior 4,671. Barclays also made the following disclosure: "Barclays Capital held assets with insurance protection or other credit enhancement from monoline insurers. The value of exposure to monoline insurers under these contracts was £1,335 [million] (30th June 2007: £140m). There were no claims due under these contracts as none of the underlying assets were in default."

³² See Exhibit 396; see *also* Exhibit 466. The debate over whether to disclose gross versus net exposures and Write-Downs did not abate throughout 2008. See Exhibit 482 (August 2, 2008 e-mail from Defendant Bob Diamond to Defendant John Varley stating that Director "Steve Russell is pushing hard around disclosure of gross vs net" but that Diamond had "a strong feeling here that media needs to be treated differently than investors, and that net is the only appropriate 'headline' number based on peers, etc for media").

³³ See Exhibit 448.

prime Residential Mortgages, Whole Loans Purchase and Securitisation, and Post-NIM Residuals), CDO Warehousing exposure, Backstop/Liquidity exposure (including Barclays sponsored conduits, Third party conduits, Super senior tranches of CDOs, and Synthetic liquidity facilities), and SIV/SIV-lite exposure.³⁴

Second, Barclays regularly analyzed and reported its exposure to NBTs³⁵ (including gross exposure to monoline wraps) to Management and the Board, as well as the underlying stability of the monoline insurers. Examples in the case record of the ways in which Barclays internally reported and analyzed NBTs and monoline exposure include the following:

- A November 1, 2007 analysis entitled “Negative Basis Exposure by Counterparty” was distributed on November 19, 2007 by Stephen King (Managing Director for the Synthetic ABS CDO Group) to, among others, Eric Yoss (Global Head of Market Risk for Securitized Products and Credit Trading) and Michael Keegan (Head of Principal Credit).³⁶ This analysis included notional exposure to NBTs of some £24.354B, of which £20.013B was insured by monolines and £4.341B was insured by other financial institutions.³⁷ It also showed that 82% of Barclays’ NBTs were insured by monolines, and 18% by other financial institutions including, among others, Goldman Sachs, Merrill Lynch, Dresdner Bank, Dexia Bank, and Canadian Imperial Bank.³⁸
- Materials dated March 12, 2008, prepared in connection with a March 19, 2008 Risk Committee meeting included a slide entitled “Other Areas of Concern – Exposure to Monoline Insurers” showing NBT notional exposure of £20.977B.³⁹

³⁴ See Exhibit 407 at BARC-ADS-01537265.

³⁵ A negative basis trade, or “NBT,” is a risk management strategy where, for a fee, counter-parties guarantee payments on an underlying financial instrument, such as a collateralized debt obligation (“CDO”) or collateralized loan obligation (“CLO”). NBTs ostensibly lower the risk of nonpayment to the buyer of protection on the underlying instruments. Here, the guarantors in these transactions were typically monoline insurers but also included other financial institutions.

³⁶ See Exhibit 356.

³⁷ See Exhibit 356. Amounts in the analysis are expressed in USD, and are converted for the purpose of this rebuttal at the daily rate on November 1, 2007 of 2.08 USD/GBP as reported on oanda.com.

³⁸ See Exhibit 356.

³⁹ See BARC-ADS-01544425. Amounts in the Risk Committee Materials are expressed in USD (notional exposure of \$42.245B), and are converted for the purpose of this Rebuttal at the daily rate on March 12, 2008 of 2.0139 USD/GBP as reported on oanda.com. The table in the presentation states that the

- Materials prepared for an April 2, 2008 internal Barcap Finance Committee meeting reflect gross notional exposure to monolines of £21.607B.⁴⁰

The Offering Documents make no mention of Barclays' notional exposure to NBTs or monolines.⁴¹ These substantial discrepancies between Barclays' internal reporting practices and disclosures included in the Offering Documents should have been a **red flag** to the Underwriters that required reasonable resolution.

Third, Barclays internally evaluated its exposure to monoline insurers in terms of its "credit equivalent exposure," whereas the Offering Documents only disclosed its "net" exposure to monoline insurers. This discrepancy was a **red flag**. For example, on December 6, 2007, Sir Richard Broadbent, a Barclays Director and Chair of the Risk Committee, sent to the Barclays Board the "Report of the Board Risk Committee Meeting on 5 December 2007," which included the following Risk Committee analysis: "A potential new area of concern is the exposure to monoline insurers...Credit equivalent exposure to these monolines is \$7.8bn."⁴² The methodology used by the Risk Committee and presented to the Board to quantify its "credit equivalent" exposure to monoline insurers arrived at a figure of "\$7.8bn" (approximately £3.848B)⁴³ – nearly three times Barclays' £1.335B net exposure reported in the Offering Documents as of the year-end 2007.⁴⁴

amounts are expressed in GBP, but the heading appears to be incorrect as all other amounts are expressed in USD, and the notional exposure amounts in USD are comparable to other notional exposure amounts discussed herein.

⁴⁰ See BARC-ADS-01022272, p 8. Amounts in the Finance Committee Materials are expressed in USD (notional exposure of \$42.790B), and are converted for the purpose of this Rebuttal at the daily rate on April 2, 2008 of 1.9804 USD/GBP as reported on oanda.com.

⁴¹ The primary disclosures regarding credit market exposure in the Offering Documents were from the 2007 audited financial statements filed by Barclays on Form 20-F on March 26, 2008, which were incorporated by reference into the Offering Documents.

⁴² See Exhibit 385 at 026.

⁴³ See Exhibit 385 at 026.

⁴⁴ See Barclays 2007 20-F, p. 53. The monoline exposure of £1.335B is also included in tabular format on the same page of the 20-F along with other credit market exposures.

Fourth, Barclays' reporting and analyses of its monoline exposures in the Offering Documents was also inconsistent with the manner Barclays presented these exposures to its regulators. It is customary in underwriter due diligence to include inquiries regarding potential issues raised by regulators. For example, in November 2007, Barclays provided to its principal regulator, the United Kingdom's Financial Services Authority (the "FSA"), a summary of its outstanding exposure to monoline insurers.⁴⁵ The summary included the statement that the notional value of Barclays' exposure to monoline insurers was "c\$40bn" (approximately £19.3B).⁴⁶ Moreover, Barclays disclosed its net exposure to monoline insurers as "c\$7.3bn" (approximately £3.5B),⁴⁷ which reflected a December 31, 2007 net exposure of just £1.335B at the end of 2007.⁴⁸ The net exposure of approximately £3.5B disclosed to the FSA was more than two-and-a-half times the £1.335B disclosed to investors in the Offering Documents, which should have been a **red flag** to the Underwriters. By way of further example, a March 10, 2008 report from Chairman Marcus Agius to the other Barclays Directors regarding a meeting he had with the FSA states that Barclays met with the FSA "weekly or fortnightly . . . to keep the FSA briefed on [its] exposures gross and net."⁴⁹

Fifth, Barclays internally reported and understood the *qualitative risks* surrounding its exposure to monolines – particularly that the monoline downgrades could continue to escalate and threaten the stability of the monoline industry. For example, materials prepared in connection with a January 22, 2008 Finance Committee meeting discuss the substantial downside to monoline exposure, including the following analyses of the monoline industry:

⁴⁵ See BARC-ADS-00833239-40, dated November 27, 2007.

⁴⁶ Converted for the purpose of this Rebuttal at the daily rate on November 27, 2007 of 2.07 USD/GBP as reported on oanda.com.

⁴⁷ *Id.*

⁴⁸ See Barclays 2007 20-F, p. 53.

⁴⁹ Exhibit 436.

“Barring an equity injection or an outright purchase from a private investor, downgrades will continue”⁵⁰

“Repercussions are many and may be extreme beginning with the monolines no longer having a viable franchise and ending with money market and pension funds being forced sellers of municipal bonds because of investment rating limitations.”⁵¹

The combination of the content of the January 22, 2008 Finance Committee meeting regarding monolines and discussions in a Citi February 1, 2008 research report regarding risk to monoline insurance companies⁵² should have been a **red flag** to the Underwriters requiring further investigation to ensure accurate and complete disclosure in the Offering Documents.

Sixth, Barclays’ credit market risk disclosures regarding its asset backed CDO (“ABS CDO Super Senior”) positions should have also raised a **red flag** to the Underwriters because Barclays had disclosed ABS CDO hedges of £1.347B⁵³ against £6,018B of ABS CDO Super Senior exposure as of December 31, 2007, and that amount was substantially different than what Barclays analyzed and reported internally. For example, as discussed in further detail in the following section, a Barclays’ internal analysis as of November 1, 2007 showed that Barclays had an additional £5.783B of ABS CDO Super Senior exposure hedged against NBTs that was not disclosed in the Offering Documents.⁵⁴

⁵⁰ See January 22, 2008 cover email attaching the presentation at BARC-ADS-00930358, and presentation at BARC-ADS-00930371 at 373.

⁵¹ *Id.*

⁵² For example, the Citi research report included statements such as: “Despite bailout efforts, monoline downgrades still look quite likely...The main problem is a potential \$34 billion in losses, primarily on CDOs of ABS” and “In the event even of downgrades [of monoline insurance companies], and definitely of bankruptcies, the parties most directly affected are the banks who own protection on CDOs of ABS.” See Exhibit 18.

⁵³ See Barclays 2007 20-F, p. 53.

⁵⁴ See Exhibit 356. Total exposure on Exhibit 356 was expressed in USD, and converted for the purpose of this Rebuttal at the daily rate on November 1, 2007 of 2.08 USD/GBP as reported on oanda.com.

Seventh, Barclays faced an emerging risk with respect to money market funds managed by its asset management group, BGI. Specifically, in order to protect the reputation of BGI's money market funds and avoid their net asset values falling below par due to the deterioration of the assets in which these funds invested, Barclays agreed to either acquire or provide backstop liquidity for illiquid assets held by BGI's money market funds, which resulted in Barclay's holding these assets on its balance sheet.⁵⁵ Minutes from the March 20, 2008 Board meeting noted that BGI's money market funds were exposed to \$1.8B in commercial paper issued by a SIV called Whistlejacket, and that Barclays had acquired \$900M of the commercial paper in an effort to prevent BGI's money market funds from falling below par.⁵⁶ A March 11, 2008 presentation to the Board Risk Committee showed that, in addition to Whistlejacket, BGI had acquired \$450M of additional commercial paper from other funds and entered into support agreements covering \$412M more.⁵⁷ The market risk from these SIVs' commercial paper therefore belonged entirely to Barclays, yet these SIV investments were not reflected in the SIV positions disclosed in the Offering Documents. The failure to disclose this risk should have raised a **red flag** to the Underwriters.

ii. Barclays' Contemporaneous Disclosures to Other Potential Investors

As early as mid-February 2008, Barclays began investigating various alternatives for raising equity in 2008.⁵⁸ The Underwriters were aware or should have been aware that Barclays was pursuing additional equity capital from Asian investors. For example, at the March 20, 2008 Board meeting Lucas reported that "*Discussions are under way with a Japanese bank and a Korean insurance company to enter into strategic partnerships*

⁵⁵ See BARC-ADS-01020326 at 336 (March 11, 2008 Risk Committee presentation titled "Updated on ABS and Leveraged Credit Market" stating "In the current climate...several competitors...have taken steps to prevent their funds from 'breaking the buck.'" and that "Selected funds have experienced [net asset value] and/or ratings pressure from defaulted or illiquid securities, and as such a series of support actions have been taken, incl. asset purchases from funds, credit support agreements, and investor payments.")

⁵⁶ See Exhibit 416 at BARC-ADS-01601050.

⁵⁷ See BARC-ADS-01020326 at 336.

⁵⁸ See BARC-ADS-00819841-842 (March 7, 2008 email from Anthony Spinale stating: "About a month ago, group exco asked a small team...to investigate how we could raise equity...").

*which would include them taking equity stakes amounting to between £1 billion and £2 billion.”*⁵⁹

The Underwriters should have connected the dots and investigated the progress or lack thereof of Barclays’ efforts to raise equity capital. Had the Underwriters performed such an investigation, they would have seen that, among the alternatives being considered by Barclays, was a potential investment from “Asian strategic investors” including China Development Bank (“CDB”) and Temasek Holdings (Private) Limited (“Tamasek”).⁶⁰ For example, on March 18, 2008, Barclays internally distributed a presentation in preparation for a due diligence call with Temasek regarding such a strategic investment.⁶¹ The presentation was prepared in order to respond to due diligence questions raised by Temasek, including specific inquiries about the notional amount of Barclays’ exposure to individual monoline insurers, as well as credit market exposure to other instruments.⁶² The responses from Barclays included, among other things, the following important information regarding its credit market exposures that was not included in the Offering Documents: (1) the notional amount of exposure to monoline insurers was disclosed at £20.990B;⁶³ and (2) exposure to instruments such as ABS CDO Super Seniors, Alt-A whole loans and securities, commercial mortgage backed securities, and others was shown as of the interim period ending February 2008.

The fact that discussions were underway with investors separate from the Series 5 Offering was important because the Underwriters should have understood that these new investors would likely be performing their own due diligence on Barclays, and given recent developments such as the credit market turmoil, the Write-Downs taken and

⁵⁹ See Exhibit 487 at BARC-ADS-01601059. In accordance with customary underwriter due diligence practices, the Underwriters should have reviewed Board and Committee materials, including agendas, presentations and minutes.

⁶⁰ See BARC-ADS-00819841 at 842.

⁶¹ See BARC-ADS-01573580 to 583.

⁶² See BARC-ADS-01573580.

⁶³ See BARC-ADS-01573583 at p. 6. Notional exposure in this presentation was expressed in USD, and converted for the purpose of this Rebuttal at the daily rate on March 18, 2008 of 2.008 USD/GBP as reported on oanda.com.

expected in first quarter 2008, and the FSA's Equity Ratio mandate,⁶⁴ the Series 5 Offering Documents needed to reflect information that investors considered important. In my experience, the due diligence investigation by potential new investors would have focused on items that those potential investors considered material, including recent developments.⁶⁵ Moreover, Barclays' selective disclosure to Temasek of important information, which was not disclosed to the Series 5 investors in the Offering Documents, should have been a **red flag** to the Underwriters.

iii. Barclays Offering Documents Disclosures

Disclosures in the Offering Documents regarding credit market exposure did not comport with how Barclays Management and the Board internally reported and analyzed such information. The Offering Document disclosures regarding Barclays' exposure to monoline insurers came from Barclays' 2007 Form 20-F, which was incorporated by reference into the Offering Documents. The 20-F includes the following disclosure regarding monoline insurers: "*Barclays Capital held assets with insurance protection or other credit enhancement from monoline insurers. The value of exposure to monoline insurers under these contracts was £1,335 [million] (30th June 2007: £140m). There were no claims due under these contracts as none of the underlying assets were in default.*"⁶⁶ Notably, and inconsistent with Barclays' internal reporting and analysis practices, Barclays' disclosure did not include any discussion of the notional amount of assets insured by monolines. In these circumstances, a customary underwriter due diligence procedure would have been to reasonably investigate and evaluate not only the nature of Barclays' gross exposure of credit market positions but also the nature and effectiveness of any risk management strategies used to purportedly reduce its exposure in such positions. This type of information was readily available to the Underwriters, but as discussed more fully below, there is no evidence

⁶⁴ See Section IV(C)(3) for a discussion of the Equity Ratio mandate.

⁶⁵ As discussed in Section II(B)(1), the materiality standard is that disclosure is required if there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision, or if the fact would meaningfully alter the total mix of information available.

⁶⁶ See Barclays 2007 20-F, p. 53. The monoline exposure of £1.335B is also included in tabular format on the same page of the 20-F along with other credit market exposures.

that the Underwriters reasonably performed such customary due diligence. Moreover, the inconsistent information reported internally versus externally regarding Barclays' monoline exposure...namely, the exposure formats disclosed to Management, the Board, the FSA, and select Asian investors, versus the net exposure format disclosed to the market in the Offering Documents...should have been a **red flag** to the Underwriters, requiring further investigation and reasonable resolution.

Barclays' credit market risk disclosures regarding its ABS CDO Super Senior positions should have also raised a **red flag** to the Underwriters because such disclosures did not follow Barclays' customary internal practices for reporting and analyzing credit market risk. For example, in the 2007 20-F, Barclays presented credit market exposures related to ABS CDO Super Seniors as follows:⁶⁷

	31st December 2007 £m
<i>ABS CDO Super Senior</i>	
High grade	4,869
Mezzanine	1,149
Exposure Before Hedges	6,018
Hedges	(1,347)
Net ABS CDO Super Senior	4,671

The 20-F only disclosed an ABS CDO Super Senior position of £6.018B before hedges of £1.347B,⁶⁸ yet the Underwriters knew or should have known, among other things, that Barclays' internal analysis as of November 1, 2007 showed that Barclays' exposure to ABS Super Senior positions was £5.783B larger on account of undisclosed hedges,

⁶⁷ See Barclays 2007 20-F, p. 53.

⁶⁸ The disclosure on p. 53 of Barclays 2007 20-F states that "None of the above hedges of ABS CDO Super Senior exposures as at 31st December 2007 were held with monoline insurer counterparties." In my experience, customary underwriter due diligence would call for the Underwriters to understand the nature of all hedges, including monolines and these separately disclosed ABS CDO hedges. Such an investigation would entail understanding detail of these hedges such as the type of hedge, the counterparty, security, and duration, among other details.

of which £4.795B was insured by monolines and £0.988B by other undisclosed financial institutions.⁶⁹

Disclosures in the Offering Documents regarding credit market exposure also did not comport with information given by Barclays to other potential strategic investors in March 2008. Specifically, Barclays provided material information to Temasek in March 2008 regarding its notional exposure to monoline insurers and post-2007 credit market exposures, but such disclosures were not made to investors in the Series 5 Offering via disclosure in the Offering Documents. The inconsistent disclosure of material information to separate sets of investors should have been a **red flag** to the Underwriters, requiring further investigation and reasonable resolution. Reasonable resolution of this material red flag could mean, among other things, that financial or other information contained within the Offering Documents needed restatement or clarification, or that additional disclosures were required in the Offering Documents to make them accurate and complete in all materials respects.

b. Applicable Standard of Care and Custom and Practice

In these circumstances, customary underwriter due diligence would include a reasonable investigation to understand and evaluate not only the nature and risk profile of the gross credit market positions but also the nature and risk profile of the counterparties providing protection. Detailed information on which monolines were providing wraps to Barclays' CDOs, CLOs and other products was readily available,⁷⁰ and as discussed further below, testimony from Citi's McSpadden is that such a reasonable due diligence investigation was not performed.

⁶⁹ See Exhibit 356. Total exposure on Exhibit 356 was expressed in USD, and converted for the purpose of this Rebuttal at the daily rate on November 1, 2007 of 2.08 USD/GBP as reported on oanda.com.

⁷⁰ See, e.g., Exhibit 356, BARC-ADS-01022272, and BARC-ADS-01544425, which provide detail of notional exposure by credit product and by monoline insurer.

Customary due diligence also would have uncovered that the actual gross exposure before hedges to ABS CDOs was some £11.8B,⁷¹ or 153% larger than the £4.671B net exposure disclosed in the Offering Documents. This information was especially important given the risk profile of ABS CDOs.⁷² In addition, customary due diligence would have revealed that, prior to the filing of the Offering Documents, Barclays selectively disclosed critical information regarding its notional exposure to monoline insurers and other post-2007 credit market exposures to potential strategic investors, but omitted this information from the Offering Documents.

c. Underwriters' Failure to Reasonably Investigate and Resolve This Red Flag

Despite the Underwriters' combination of accumulated knowledge and current due diligence, which should have made it clear that there was a discrepancy between the manner in which Barclays Management and Board internally reported and analyzed information regarding its credit market exposures related to monoline insurers and the way that such credit market exposures were disclosed externally in the Offering Documents, the Underwriters failed to reasonably investigate and resolve this red flag. Specifically, there is no evidence in the record that the Underwriters made any inquiries of Management regarding any of these discrepancies or did anything else to reasonably investigate and resolve this red flag.

For example, McSpadden testified as follows:

Q. In performing its due diligence procedures with respect to the Series 5 offering, did Citi undertake any inquiries of management or perform any other

⁷¹ See Exhibit 356. Calculated as: £4.869B exposure to High Grade + £1.149B disclosed exposure to Mezzanine + £4.795B insured by monolines + £0.988B insured by other financial institutions.

⁷² For example, as noted in the following section, Citi's February 1, 2008 research report included statements such as: "Despite bailout efforts, monoline downgrades still look quite likely... The main problem is a potential \$34 billion in losses, primarily on CDOs of ABS" and "In the event even of downgrades [of monoline insurance companies], and definitely of bankruptcies, the parties most directly affected are the banks who own protection on CDOs of ABS." See Exhibit 18.

procedures to determine what Barclays' notional exposure to monoline insurers was at the time of the offering?

A. I don't recall of any additional exposure other than the questions we addressed [in the April 3, 2008 due diligence call with Barclays].⁷³

Q. And in performing its due diligence with respect to the Series 5 offering, did Citi make any inquiries of management or perform any other procedures to determine who Barclays' monoline insurers were?

A. I don't recall asking the breakdown of who the relative exposures for were. 1.3 billion is the aggregate number, which is the more germane number.⁷⁴

Q. In performing its due diligence procedures with respect to the Series 5 offering, did Citi make any inquiries of management or perform any other procedures to determine what the credit ratings were of the monoline insurers that wrapped its assets?

A. I'm not aware of any independent ask on that.⁷⁵

Q. In performing its due diligence procedures with respect to the Series 5 offering, did Citi make any inquiries of management or perform any additional procedures to determine what Barclays' exposure to monoline insurers was based on the credit ratings of the underlying asset classes?

A. I don't recall of any.⁷⁶

When asked whether the Underwriters performed any investigation to determine what Barclays' notional exposure to monoline insurers was, McSpadden referred to references to monolines in the April 3, 2008 due diligence call. However, a review of the transcript shows that discussion of monolines on the call was cursory. The due diligence request being addressed by Barclays on the call was "Please discuss the Group's exposure to monolines, either direct or indirect."⁷⁷ The response by Barclays was as follows:

"Barclays Capital holds assets with insurance protection or other credit enhancements for monoline insurers, the negative basis trade book. Value of

⁷³ See McSpadden Tr. at 211:23-212:6.

⁷⁴ See McSpadden Tr. at 212:7-16 (Objections removed).

⁷⁵ See McSpadden Tr. at 212:17-213:1 (Objections removed).

⁷⁶ See McSpadden Tr. at 213:3-11.

⁷⁷ See Exhibit 21, list of "Business Due Diligence" questions, Item 16.

exposure to monoline insurance under these contracts as of the 31st of December 2007 was 1.335 billion pounds. It was 140 million at the 30th of June 2007. There were no claims up due under these contracts, and none of the underlying assets were in default...In order for loss to occur in the negative basis, both with defaulting both the underlying security and the monoline is required. The nature of the policy supporting the negative basis, will obligate the insurers continue to make payments of principal and interest according to the original contract of any of the properly referenced obligation. There is no marked to market settlement of the obligation at default but a continuing pay as you go obligation from the financial guarantor. This protects the monolines from any credit crunch in the event of a high level of default of the securities they guarantee.”⁷⁸

This discussion reiterated the £1.335B net exposure disclosed in Barclays’ 2007 20-F,⁷⁹ but made no mention of (i) Barclays’ notional exposure to monoline insurers or the nature of its credit market positions wrapped by monolines; (ii) other measures of net exposure to monoline insurers considered by Barclays, such as the “c\$7.3bn” (approximately £3.5B) net exposure reported to the FSA in November 2007 or the “\$7.8bn” (approximately £3.8B) presented by the Risk Committee to the Board on December 6, 2007; (iii) the risks associated with continued downgrades of monolines or the monolines’ creditworthiness; or (iv) the possibility of monoline bankruptcies. The Underwriters made no effort to investigate beyond the perfunctory comments made by Barclays on the call, despite Citi having issued a research report on February 1, 2008 detailing those risks and recognizing “the heightened concern in the street with regard to . . . monoline-related matters,”⁸⁰ and that “the disclosure to monolines . . . was an area of general focus for everyone”⁸¹ at the time of the Offering. Indeed, Citi’s February 1, 2008 research report makes the following observations:

“Despite bailout efforts, monoline downgrades still look quite likely...The main problem is a potential \$34 billion in losses, primarily on CDOs of ABS”⁸²

⁷⁸ See BARC-ADS-00002941 (audio recording of due diligence call); see also Exhibit 23, p. 36 (transcription of audio recording).

⁷⁹ See Barclays 2007 20-F, p. 53.

⁸⁰ See McSpadden Tr. at 132:24-133:2.

⁸¹ See McSpadden Tr. at 132:6-10.

⁸² See Exhibit 18, at 214.

*“The greater the downgrade, the larger the collateral payment required on existing contracts - and the greater the likelihood that existing policyholders would try to find some way out of paying future premiums. Even though we cannot see an easy way in which this would happen...things remain quite finely balanced. If either the agencies or the insurance regulators were to look at the total losses and to take a sterner line, it might not take too much to push them over the edge to a point where they could not make collateral payments, and into bankruptcy... In the event even of downgrades, and definitely of bankruptcies, the parties most directly affected are the banks who own protection on CDOs of ABS.”*⁸³

d. Professor Lawrence Provides No Reasonable Basis for His Opinion

Professor Lawrence’s support for his opinion that the Underwriters’ performance of current due diligence on monolines was part of a comprehensive and robust due diligence investigation is that “the Underwriters made inquiries regarding, among other things, Barclays’ exposure (direct or indirect) to monolines” and that “Barclays provided detailed responses to these and other questions.”⁸⁴ Once again, I disagree. As noted above, asking questions of the issuer and receiving answers without giving any regard to the substance of the answer and the total mix of information available does not constitute “comprehensive and robust due diligence” by an underwriter. The standard of care of underwriter due diligence in a securities offering is a reasonable investigation of material information in order to provide the underwriters with a reasonable basis to believe in the accuracy and completeness of the offering documents. Professor Lawrence ignores entirely the portion of the case record that reflects how the Underwriters failed to perform a reasonable investigation into Barclays’ credit market exposure, including monoline risks. Moreover, the custom and practice in underwriter due diligence is to reasonably investigate and resolve **red flags** that arise during the due diligence process. Professor Lawrence ignores the fact that the Underwriters failed to reasonably investigate and resolve the red flags discussed throughout this Rebuttal.

⁸³ *Id.*, at 217.

⁸⁴ See Lawrence Underwriter Report, ¶131.

3. Red Flag: Capital Adequacy

a. Nature of the Red Flag

Barclays regularly reported certain customary measurements of capital adequacy, including its Equity Tier 1 Ratio (the “Equity Ratio”).⁸⁵ The Equity Ratio is equal to equity divided by risk weighted assets (“RWAs”) – the bank’s assets adjusted for weights applied to different types of assets, applying calculations developed by the Basel Committee on Banking Supervision.⁸⁶ The Equity Ratio can be negatively impacted – that is, decreased – by a reduction to equity, an increase to RWAs, or both.

As credit markets continued to deteriorate in 2007 and into the first quarter of 2008, the markets and regulators began to focus on the capital adequacy of major financial institutions like Barclays, including as measured by their Tier 1 Equity Ratio. The Underwriters knew or should have known of the heightened concern that market participants placed on Barclays’ Tier 1 Equity Ratio.

The record demonstrates that Citi appreciated the importance of Barclays’ Equity Ratio and the impact that its RWAs had on its capital position and ability to meet regulatory capital ratio requirements. For example, Citi noted in its Committee Commitment Memorandum, prepared for purposes of obtaining internal authorization to proceed with the offering,⁸⁷ that Barclays’ tangible equity/assets ratio and RWAs were “Key Issues” and presented “Unusual Circumstances/Concerns/Risks to its investment.”⁸⁸ Citi explained these issues, stating that “*Barclays currently has one of the European bank sector’s lowest ‘tangible equity / assets’ ratios. Whilst regulatory ratio (tier 1 ratio is 7.8 %) is at target levels, the capital markets are also looking at a broader range of ratios including leverage based ratios. Barclays has RWA’s of £353bn (c.\$700bn) and thus*

⁸⁵ See 2007 20-F, p. 5.

⁸⁶ See 2007 20-F, p. 43.

⁸⁷ See McSpadden Tr. at 94:24-96:9.

⁸⁸ See Exhibit 19 at UW_Barclays_0000001247, 1270; see also *id.* at 1269 (identifying “Capital Risk” as a “Negative Investment Consideration/Key Risk Factor”); McSpadden Tr. at 147:7-148:8 (testifying that Barclays’ capital ratio was financial metric relevant to its underwriting of the Series 5 Offering).

may be vulnerable to any sharp increases in impairments and delinquencies if economic conditions worsen (large loan book exposures are to consumer, property and construction)."⁸⁹ A February 20, 2008 Citi research report also shows that Citi had reduced its projections of Barclays' Equity Ratio for each of 2008, 2009 and 2010, and that Citi's projection for Barclays' Equity Ratio at the end of 2008 was just 5.1%.⁹⁰

Had the Underwriters performed reasonable due diligence, they would have discovered that Barclays was approached by the FSA regarding Barclays' Equity Ratio. In a summary of two meetings held in early March 2008, Barclays CEO, Varley, wrote in a March 10, 2008 memo to the Board that "[FSA Chairman Callum McCarthy] expressed particular concern that our Tier 1 equity ratio is only 4.6 per cent (as compared with our own figure of 5 percent.) and, he believes, is only forecast to be at or above our target of 5.25 per cent. in 2 of the next 24 months."⁹¹ Varley further explained that "He referred to our equity ratio profile as being 'alarming' and said that he needed to know 'as a matter of urgency' what our contingency plans were in order to decide 'whether we would need to take any action'."⁹² In a subsequent mid-March 2008 meeting with Chairman of the Board Marcus Agius, the FSA instructed Barclays that it would need to increase its Equity Ratio to 5.25% by year-end 2008.⁹³

To increase the Equity Ratio to 5.25% by the end of 2008, Barclays would need to either (i) reduce its RWAs in the denominator, which would likely trigger further Write-Downs and exacerbate the problem; (ii) increase its equity in the numerator, which meant raising equity in the existing turbulent market conditions; or (iii) do both. Of

⁸⁹ See Exhibit 19, at UW_Barclays_0000001270; see also McSpadden Tr. at 151:18-157:14.

⁹⁰ See Exhibit 22 at UW_Barclays_000019124. Citi's projections of the Equity Ratio were reduced from 5.4% in the "old" projection to 5.1% in the "new" projection for 2008, from 5.7% to 5.2% for 2009, and from 6.1% to 5.3% for 2010.

⁹¹ See Exhibit 391 at BARC-ADS-01551751. Typos in original.

⁹² *Id.*

⁹³ See Exhibit 486 ("the [FSA] will be expecting us to be moving toward our target of 5.25"); see also Exhibit 487 (March 20, 2008 Board Minutes), at BARC-ADS-01601058 (stating, "The indications were that the FSA would wish the Group to achieve its own target equity ratio before the end of 2008."); Exhibit 389 at BARC-ADS-01601058.

course, the turbulent market conditions also meant that Barclays' RWAs were likely to rise.

This FSA mandate constituted a **red flag** that the Underwriters should have reasonably investigated further and resolved. Specifically, the Underwriters should have investigated and understood the means and consequences by which Barclays could meet the FSA's mandated 5.25% Equity Ratio by year-end 2008, and the likelihood of doing so.

i. Reduction of RWAs

Given the market turbulence at the time, the Underwriters knew or should have known that Barclays could not reasonably reduce its RWAs by a material amount without serious deterioration in its Equity Ratio. For example, internal documents, to which the Underwriters had ready access, show that Barclays' own projections of the RWA reductions required to meet its Equity Ratio targets were substantial.⁹⁴ Specifically, a March 11, 2008 Capital Plan Update presentation to the Barclays Executive Committee showed that Barclays needed to "*reduce RWA's by £23bn or increase equity by £1.2bn*" in order to meet a target Equity Ratio target of 5.0% by June 30, 2008, *after* raising capital⁹⁵ -- which ratio, notably, was no different than the 5.0% that Barclays reported at year-end 2007 and still less than the 5.25% target required for year-end 2008. Projections at the March 20, 2008 Board meeting showed that "*the accelerated growth of RWAs, both planned and as a result of market conditions, means that the revised capital plan shows the equity ratio at 4.5% in June 2008 ... To achieve an equity ratio of 5% by June 2008 the Group would need to reduce RWAs by £38 billion or increase equity by £1.9 billion.*"⁹⁶ Barclays' total RWAs at December 31, 2007 were £353.5B,⁹⁷ meaning that a £38B decrease in RWAs represented a reduction of 11%.

⁹⁴ In my experience, customary underwriting due diligence in a securities offering includes review of Board and Committee materials, especially those dealing with financial matters. The documents reviewed include agendas, presentations and minutes.

⁹⁵ See BARC-ADS-01551745, p. 8.

⁹⁶ See Exhibit 487 at BARC-ADS-01601059.

⁹⁷ See, e.g., 2007 20-F, p. 7.

The Underwriters knew or should have known that the size of the RWA reduction required to meet both interim and 2008 Equity Ratio targets, coupled with the turbulent credit market conditions, made reducing RWAs even more difficult for the following three reasons.

First, deterioration of the market value of underlying instruments meant that the risk associated with RWAs increased, thereby increasing the measured denominator value of RWAs held by Barclays. For example, a Board presentation prepared on April 8, 2008 showed that “[d]ifficult market conditions have had negative impact on our RWA and capital position” and noted that RWAs were reduced by, among other things, “downgrades of securities/credit deterioration.”⁹⁸ The presentation identified a “£42bn increase [to RWAs] as a result of market conditions.”⁹⁹

Second, volatile credit market conditions meant it would be inherently more difficult to sell assets because buyers were either unwilling to acquire troubled assets or were willing to do so only at distressed prices. This problem was evident as early as November 2007, when Barclays’ Management was discussing RWA reductions prior to year-end 2007. For example, Global Retail and Commercial Banking CEO, Frits Seegers, stated that: “[w]ith securitization markets shut, [Global Retail and Commercial Banking] has virtually no way to reduce its [RWAs] by year-end (or early next year for that matter).”¹⁰⁰ Moreover, Barclays PLC President Robert Diamond¹⁰¹ testified as follows regarding the difficulty in selling illiquid assets in early 2008: “it would be wonderful to sell positions, but the liquidity in the market was less.”¹⁰² In addition, the Board presentation circulated on April 8, 2008 further reiterated liquidity difficulties by

⁹⁸ See BARC-ADS-00928336-37, p. 4. This presentation was prepared and sent on April 8, 2008 in advance of an April 17, 2008 Board meeting.

⁹⁹ *Id.*

¹⁰⁰ See Exhibit 483.

¹⁰¹ See Diamond Tr. at 22:16-24:19.

¹⁰² See Diamond Tr. at 194:23-25.

identifying the “*inability to syndicate, securitise or sell down loans and warehoused assets*” as a substantial contributing factor to reducing RWAs.¹⁰³

Third, even if Barclays were able to sell troubled assets at reduced prices, the losses likely to be incurred as a result of distressed sales values would have serious financial implications. For example, on November 27, 2007, Corporate M&A executive Anthony Spinale wrote the following to Diamond and Barcap CFO Patrick Clackson regarding a proposed reduction of RWAs of £12.5 billion in the 2008 projections: “*we recognize there’s a group WRA [a/k/a RWA] problem but we’ve already come down 10bn [in 2007] and continued our commitment to a [profit before tax] target. You’re asking for another 12.5 [in 2008], but you’re not recognising that here has to be a [profit before tax] impact if we do this. Can’t have it both ways.*”¹⁰⁴

ii. Increase in Equity

As discussed in the previous section, Barclays could not reasonably expect to meet the Equity Ratio target mandated by the FSA through reduction of RWAs alone. The case record indicates that Barclays understood the impending need to raise additional capital was an important matter. For example, a March 7, 2008 summary of questions from Director Richard Broadbent concerning Risk Committee issues included the following: (1) “*Is the current level of capital adequate and should we consider de-gearing the balance sheet and raising capital?*” and (2) “*Are the targets for capital still appropriate in the current environment?*”¹⁰⁵

Shortly thereafter, the Capital Plan Update presentation (circulated on March 11, 2008) identified the need to “*reduce RWA’s by £23bn or increase equity by £1.2bn*” in order to meet an interim Equity Ratio target of 5.0% by June 30, 2008.¹⁰⁶ This presentation

¹⁰³ See BARC-ADS-00928337, p. 4.

¹⁰⁴ See Exhibit 484.

¹⁰⁵ See Exhibit 411.

¹⁰⁶ See BARC-ADS-01551745, p. 8.

included a discussion of options to bridge the Equity Ratio gap, and under the option, “Issue Equity,” it was noted that “Up to £1.5bn of equity can be issued for cash without shareholder approval” with a “Timescale” of “H1 2008.”¹⁰⁷ At the March 20, 2008 Board meeting, Lucas’ “Capital Management Update” to the Board included the following statements: “To achieve an equity ratio of 5% by June 2008 the Group would need to reduce RWAs by £38 billion or increase equity by £1.9 billion. Discussions are under way with a Japanese bank and a Korean insurance company to enter into strategic partnerships which would include them taking equity stakes amounting to between £1 billion and £2 billion.”¹⁰⁸

b. Applicable Standard of Care and Custom and Practice

Customary practice would have been for the Underwriters to reasonably investigate and resolve the **red flag** raised by Barclays internal analyses in the months leading up to the Series 5 Offering regarding its ability to meet the 5.25% FSA-mandated Equity Ratio levels by the end of 2008 as well as the potential material financial consequences related to doing so.¹⁰⁹

Had the Underwriters performed customary due diligence of Barclays’ various Board discussions, regulatory communications, and internal capital plans, the Underwriters would have understood that Barclays needed to take a combination of the following actions in order to comply with the Equity Ratio target mandated by its regulators: (1) reduce RWAs at distressed prices which, given the volatile market conditions, would have had a substantial negative impact on Barclays’ earnings from the losses incurred on the sale of such assets; and (2) issue material amounts of additional equity. In fact, just three months after the Series 5 Offering was completed, Barclays went back to the

¹⁰⁷ *Id.*, p. 9

¹⁰⁸ See Exhibit 487 at BARC-ADS-01601059.

¹⁰⁹ In accordance with customary underwriter due diligence practices, the Underwriters should have reviewed Board and Committee materials, including agendas, presentations and minutes. The March 20, 2008 Board meeting included discussion of the target Equity Ratio of 5.25% and the statement that: “The indications were that the FSA would wish the Group to achieve its own target equity ratio before the end of 2008.” See Exhibit 487 at BARC-ADS-01601058.

market and issued additional equity. On July 4, 2008, Barclays raised £500M through the sale of 168.9 million ordinary shares at £2.96 per share via private placement to Sumitomo Mitsui Banking Corp.¹¹⁰ On July 22, 2008, Barclays PLC raised a whopping £3.969B through sale of 1,407.4 million ordinary shares at £2.82 per share via private placement to investors from Qatar, China, and others.¹¹¹

A reasonable due diligence investigation into Barclays' capital adequacy also would have revealed that compliance with the Equity Ratio mandate would have been important information because Barclays could have been exposing itself to substantial losses, in part from the sale of existing RWAs.

c. Underwriters' Failure to Reasonably Investigate and Resolve This Red Flag

The Underwriters' combination of accumulated knowledge and customary current due diligence should have allowed them to reasonably determine the accuracy and completeness of the disclosures in the Offering Documents regarding capital adequacy. However, there is no evidence that a reasonable due diligence investigation was performed by the Underwriters regarding this **red flag**, despite the fact that the case record shows that Citi was aware of issues with Barclays' Equity Ratio.

McSpadden testified as follows regarding the Underwriters' due diligence regarding capital adequacy:

Q. In performing its due diligence and underwriting procedures in connection with the Series 5 offering, did Citi perform any analyses to test the capital adequacy of Barclays' assets?

A. I do not recall doing those personally.

Q. And in performing its due diligence and other underwriting procedures in connection with the Series 5 offering, did Citi review any internal Barclays Capital adequacy reports?

¹¹⁰ See Barclays 2008 20-F, p. 227.

¹¹¹ See Barclays 2008 20-F, p. 227.

- A. I don't recall reviewing any internal Barclays Capital asset capital reports.
- Q. Did Citi ask to review any capital adequacy reports that Barclays may have prepared in connection with its underwriting and other -- let me start that over. Did Citi ask to review any capital adequacy reports that Barclays may have prepared in connection with its due diligence and other underwriting procedures performed with respect to the Series 5 offering?
- A. I do not recall asking for any capital analysis that had been prepared. But again, I'm one person.¹¹²
- Q. Did Citi review any financial reports or schedules concerning Barclays' capital ratios in performing its due diligence and other underwriting procedures with respect to the Series 5 offering?
- A. I would have reviewed the 20-F which had details of all their capital ratios.
- Q. Besides the 20-F, did Citi review any other financial reports or schedules concerning Barclays' capital ratios -- capital adequacy ratios?
- A. Specifically from data -- I'm not aware of any that we've gotten from Barclays.¹¹³

d. Professor Lawrence Provides No Reasonable Basis for His Opinion

Professor Lawrence fails to even address the reasonableness of the Underwriters' due diligence with respect to capital adequacy issues. In addition, Professor Lawrence ignores the evidence in the case record that indicates the Underwriters failed to make even a cursory investigation into the **red flag** of the potential consequences of Barclays meeting the FSA's mandated 5.25% Equity Ratio by year-end 2008. Moreover, Professor Lawrence ignored that the Underwriters violated customary practices by failing to request, inspect, and analyze communications with regulators, Board materials, capital plans, and other information that was readily available prior to the date of the Offering Documents. Contrary to Professor Lawrence's assertions that the Underwriters performed a "comprehensive and robust due diligence investigation," the case record provides no evidence that the Underwriters met the due diligence standard of care and custom and practice.

¹¹² See McSpadden Tr. at 154:15-155:14.

¹¹³ See McSpadden Tr. at 157:2-14.

4. Red Flag: Exceptions in PwC Comfort Letter

a. Nature of the Red Flag

On April 8, 2008, Barclays' independent auditor, PriceWaterhouseCoopers LLP ("PwC"), issued a comfort letter addressed to Barclays and Barcap, lead Underwriter Citi, and the non-lead Underwriters (the "Comfort Letter").¹¹⁴ In my experience, the purpose of a comfort letter in a securities offering is to, among other things, provide an added layer of financial and accounting due diligence performed by the auditors. The types of procedures performed in connection with the issuance of a comfort letter are fact-specific, but typically include the following: (1) reviewing the offering documents and opining on whether the issuer's financial statements included or incorporated by reference in the offering documents are prepared in accordance with applicable accounting principles; (2) verifying the accuracy of financial disclosures made in the offering documents; and (3) reviewing interim unaudited financial data to identify items such as material changes compared to prior audited financial statements.

Here, the PwC April 8, 2008 Comfort Letter explained that, with respect to the review of interim financial statements, PwC reviewed completed Management financial packages for the months of January and February 2008. However, PwC also noted that a completed financial package was not available for the period from March 1, 2008 through the cut-off date for PwC's review of April 3, 2008, and that PwC's procedures were therefore limited to Management inquiries for this period.¹¹⁵

PwC's review of January and February 2008 financial data noted that, among other things, *"Profit before tax for the period from 1 January 2008 to 29 February 2008 decreased by 9.48% compared with the corresponding period in the previous year."*¹¹⁶ In the absence of detailed financial information for March and April 2008, PwC also

¹¹⁴ See Exhibit 31.

¹¹⁵ *Id.*, at paragraph 6.

¹¹⁶ *Id.*, at paragraph 5.

concluded, based on Management inquiries, that “*Profit before tax for the period from 1 January 2008 to 4 April 2008 decreased compared with the corresponding period in the previous year.*”¹¹⁷

b. Applicable Standard of Care and Custom and Practice

It is customary practice for the Underwriters to have reasonably investigated and understood the nature of the substantial year-over-year decrease in profits in the interim periods since year-end 2007. Such an investigation was especially important given the context. Barclays had recognized Write-Downs of £1.635B in 2007.¹¹⁸ Moreover, the comfort letter was issued on the heels of comments made by Lucas on the April 3, 2008 due diligence conference call indicating that March 2008 “has been a very tough month”¹¹⁹ and that “in March, we will be taking further write downs.”¹²⁰

Thus, customary practice would have been for the Underwriters to have investigated and understood the reasons for declining profits, including the nature and amount of any Write-Downs contributing to such declines. Had the Underwriters conducted a reasonable investigation they would have discovered January and February 2008 financial data reflecting that hundreds of millions in Write-Downs had already been taken. Moreover, given that Lucas indicated on the April 3, 2008 due diligence conference call that preliminary March results would be available on April 4, 2008, even if such Write-Downs were not yet in final form, it is customary due diligence practice for the Underwriters to have reasonably investigated and understood the size and scope of potential Write-Downs to be taken in March 2008. The Underwriters should have recognized the substantial decreases in first quarter 2008 profit before tax identified by PwC in the Comfort Letter as a **red flag** and investigated and resolved it accordingly.

¹¹⁷ *Id.*, at paragraph 6.

¹¹⁸ See Exhibit 14 (2007 20-F), p. 25.

¹¹⁹ See BARC-ADS-00002941; see also Exhibit 23 at p. 22.

¹²⁰ See BARC-ADS-00002941; see also Exhibit 23 at p. 33.

c. Underwriters' Failure to Reasonably Investigate and Resolve This Red Flag

The following testimony from McSpadden indicates that the Underwriters failed to follow customary practice to reasonably investigate and resolve the red flag of deteriorating earnings in the first quarter of 2008 that had been identified by PwC in its Comfort Letter:

Q. Did Citi ever ask PwC what schedules -- schedules or spreadsheets it was reviewing in connection with its circle-up work for the purposes of issuing a comfort letter in connection with the Series 5 offering?

A. No.

Q. Did Citi ever ask Barclays to see any of these schedules or spreadsheets that were provided to PwC for purposes of their circle-up work?

A. No.¹²¹

The purpose of a comfort letter is not to replace due diligence required to be performed by underwriters. In fact, PwC's engagement letter for the preparation of the Comfort Letter stated that the Comfort Letter "will be provided on the presumption that, in connection with the [Series 5 Offering], the due diligence review process that the [Underwriters] will perform will be appropriate for a placement of securities subject to registration pursuant to the United States Securities Act of 1922."¹²²

d. Professor Lawrence Provides No Reasonable Basis for His Opinion

Professor Lawrence fails to acknowledge the red flags raised by PwC in the Comfort Letter when he states that "*the Underwriters did obtain typical comfort letters from Barclays' independent accountants that discussed work the accountants had done to assure themselves of Barclays' financial performance and position **subsequent** to*

¹²¹ See McSpadden Tr. at 272:23-273-10 (Objections removed).

¹²² See BARC-ADS-00001697 at Item 9.

December 31, 2007.”¹²³ Indeed, the Lawrence Underwriter Report makes no mention of the important diligence issues raised by the Comfort Letter regarding financial performance and the Underwriters’ failure to reasonably follow up, in part, to assure that any material negative trend was accurately and completely disclosed. For example, there was nearly a 10% decline in profit before tax in the first 2 months of 2008 versus 2007. While PwC did not review March’s performance, Management had indicated to PwC that profit before tax also fell from January 2008 to 4 April 2008 versus the same period for 2007. Given the acknowledged turbulent market conditions and the likely prospect of further Write-Downs in March 2008, it was especially important for the Underwriters to have thoroughly investigated Barclays’ 1Q08 financial performance.

5. Red Flag: Citi Research Report

a. Nature of the Red Flag

Professor Lawrence cites a February 20, 2008 Citi research report on Barclays¹²⁴ as support for his assertion that the Underwriters conducted appropriate current due diligence that built upon their existing base of cumulative due diligence. However, Professor Lawrence ignores that this report includes a section entitled “Further credit market write-downs expected,” which projected that Barclays would recognize £1.518B in Write-Downs during 2008.¹²⁵ The February 20, 2008 Citi research report was included in Citi’s Commitment Committee materials that Citi used as part of its approval process for the Series 5 Offering, and constitutes a **red flag** for the Underwriters that required reasonable investigation and resolution.¹²⁶

b. Applicable Standard of Care and Custom and Practice

Given this red flag, customary due diligence required that the Underwriters reasonably investigate Barclays’ Write-Downs taken or anticipated to be in January, February and

¹²³ See Lawrence Underwriter Report, ¶171. Emphasis in original.

¹²⁴ See Exhibit 22.

¹²⁵ *Id.*, at 128.

¹²⁶ See Exhibit 19 at 1396.

March 2008. Had the Underwriters performed customary due diligence, they would have confirmed from readily available information that a substantial portion of these projected Write-Downs had already been recognized by Barclays in the first quarter of 2008. For example, Lucas reported to the Board on March 20, 2008 that Barcap had already recognized Write-Downs of £800M for January and February 2008.¹²⁷ Moreover, agenda materials prepared for an April 2, 2008 Barcap Finance Committee Meeting show that the “best” case scenario included expected additional Write-Downs in March of £749M.¹²⁸ Thus, the total expected *first quarter 2008* Write-Downs based on information available at April 2, 2008 were £1.549B, which exceeded the £1.518B Write-Downs that Citi projected for the *entire year 2008*, and represented some 22% of both Barclays’ consolidated profit before tax for the *entire year 2007*¹²⁹ and Barclays’ projected consolidated profit before tax for the *entire year 2008*.¹³⁰

c. Underwriters’ Failure to Reasonably Investigate and Resolve This Red Flag

The Underwriters simply failed in their obligation to reasonably investigate and determine whether the size and scope of the expected Write-Downs represented material information necessary to disclose to render the Offering Documents accurate and complete. As previously described in Section IV(C)(1)(c), McSpadden testified that the Underwriters failed to follow customary practices. Specifically, the Underwriters (i) did not ask to inspect any of first quarter 2008 interim financial reports that Lucas referenced during this April 3, 2008 conference call; (ii) did not ask to inspect any financial reports or schedules of Barclays that may reflect the amount of Write-Downs that Barclays had taken in January and February 2008; or (iii) did not perform any independent analyses to determine what the amount of the Write-Downs were that Barclays took in January and February 2008.

¹²⁷ See Exhibit 389 at BARC-ADS-01601054.

¹²⁸ See BARC-ADS-01022272, p. 5.

¹²⁹ Barclays profit before tax for fiscal year 2007 was £7.076B (see, e.g., p. 160 of Barclays 2007 20-F).

¹³⁰ According to comments made by Lucas on the April 3, 2008 due diligence call, Barclays’ consensus projected profit before tax was £7B for 2008. See Exhibit 23 at p. 22

It was unreasonable for Citi to fail to request and analyze the most up-to-date information available regarding Barclays first quarter 2008 Write-Downs and compare this information to the facts on which the February 20, 2008 Citi research report was based. In my experience, this type of bring-down due diligence is customary, especially since the February 20, 2008 Citi research report was incorporated in the Commitment Committee Memo used in part by Citi to decide whether to commit to underwriting the Series 5 Offering.

d. Professor Lawrence Provides No Reasonable Basis for His Opinion

In citing the February 20, 2008 Citi research report on Barclays as support for his assertion that the Underwriters conducted appropriate current due diligence, Professor Lawrence touts form over substance. In this instance, Professor Lawrence stresses the importance of the existence of the Citi research report in his evaluation of the appropriateness of Underwriter due diligence but fails to address the **red flag** raised by information contained in the report. Specifically, Professor Lawrence selectively ignores the Underwriters failure to connect the dots of the potential disclosure implications that, at the time of the Series 5 Offering, Barclays already incurred some 80% of the Write-Downs Citi had projected for all of 2008.

D. Testimony from Citi's Authorized Representative Calls into Question the Underwriters' Understanding of Their Responsibility in the Due Diligence Investigation

Professor Lawrence asserts that “the lead Underwriter’s team was staffed and led in accordance with customary standards and practices”¹³¹ citing, among other things, (i) McSpadden’s approximately 10 years with Citi in which time he had worked on “three or four thousand” securities offerings;¹³² and (ii) the involvement of other groups at Citi, such as the Fixed Income Capital Markets group, New Products Group, Corporate Bank Group, Syndicate Group, and Legal Group.¹³³

¹³¹ See Lawrence Underwriter Report, Section VIII(A)(4)(a).

¹³² See Lawrence Underwriter Report, ¶110.

¹³³ See Lawrence Underwriter Report, ¶111.

Professor Lawrence unreasonably relies on McSpadden's years of prior experience over the total mix of information in the case record, which demonstrates the repeated failures of the Underwriters in performing reasonable due diligence on the Series 5 Offering. Specifically, Professor Lawrence not only ignores the numerous **red flags** missed by the Underwriters, but fails to address or acknowledge the below portions of McSpadden's testimony, which I believe exposes a fundamental misunderstanding of the due diligence role Citi played in the Series 5 Offering and undermines the credibility of the entire Underwriter due diligence process:

Q. Did Citi perform any independent analyses of its own to determine what the amount of the write-downs were that Barclays took in January and February 2008 that Mr. Lucas commented on during the April 3rd, 2008, call?

A. Not to my knowledge, but independent analysis implies access to information, by definition. This was internal information. The next opportunity for one to review information would have been when the first-quarter earnings were released, without cooperation from Barclays.¹³⁴

McSpadden's position that information regarding Write-Downs after year-end 2007 but prior to the issuance of the Offering Documents "*was internal information*" and that "[t]he next opportunity for one to review information would have been when the first-quarter earnings were released, without cooperation from Barclays" is simply incorrect and calls into question the foundation of the Underwriter's entire due diligence investigation. In my experience, Citi, as the lead Underwriter, should have had unfettered access to any information that it reasonably considered relevant to meet its obligation to ensure that the Offering Documents were accurate and complete, particularly information that constitutes a red flag. Citi was not required to wait until information was publicly available to consider and analyze such information. To the contrary, Citi had a responsibility to reasonably investigate and resolve material information, whether internal to Barclays or known to the public. Such an investigation would assure that Citi had a reasonable basis to believe in the accuracy and completeness of material disclosures in the Offering Documents.

¹³⁴ See McSpadden Tr. at 207:20-208:7 (Objections removed).

McSpadden's testimony indicates that, not only did Citi make virtually no effort to reasonably investigate the substantial Write-Downs in the period from January 1, 2008 to April 8, 2008, beyond making a few inquiries of Management, but that Citi somehow had no right to investigate such information before it was made public. This is simply false and completely inconsistent with custom and practice for underwriter due diligence. Indeed, the Underwriters had an affirmative obligation to conduct a reasonable investigation in connection with the Series 5 Offering. In my experience, if an issuer fails or refuses to provide information reasonably requested by an underwriter as part of the underwriter's due diligence, the underwriter has two choices: withdraw as underwriter, or assume the risk of issuing the offering documents without resolving the red flag in question. The Underwriters' unreasonable failure to insist on investigating non-public information to reasonably understand, among other things, the size and nature of post-2007 Write-Downs and the risk associated with Barclays' credit market exposure does not meet the standard of care and custom and practice of reasonable underwriter due diligence.

McSpadden also offered the following testimony:

- Q.** Did Barclays make any additional disclosure statement in the offering materials regarding the additional write-downs that it knew were coming?
- A.** I'd have to reread it to see if that's mentioned, but I don't recall a recent development section in there, which would have been a logical place for that to have occurred if they thought that disclosure was necessary.¹³⁵

I find that the above testimony essentially "passes the buck" from the Underwriters and attempts to blame Barclays for the lack of disclosure about critical recent developments by implying that a disclosure would appear in the Offering Documents only "if they [Barclays] thought that disclosure was necessary." McSpadden's testimony demonstrates, however, that Citi failed to acknowledge that the Underwriters had an obligation to perform a reasonable due diligence investigation in part to ensure that the

¹³⁵ See McSpadden Tr. at 218:15-19.

Underwriters had a reasonable basis to believe that the disclosures in the Offering Document were accurate and complete.

The Lawrence Underwriter Report also devotes an entire section to describing the many ways the Underwriters participated in the preparation of the Prospectus Supplement for the Series 5 Offering,¹³⁶ including the statement that “[t]he record demonstrates that Citi took an active role in document preparation by reviewing and commenting on the Prospectus Supplement.”¹³⁷ Yet, McSpadden’s testimony indicates that the Underwriters did not even acknowledge their obligation to perform a reasonable due diligence investigation to ensure the accuracy and completeness of the Offering Documents.

E. Professor Lawrence Unreasonably Relies on Management Certifications as Evidence of Underwriter Due Diligence

1. Professor Lawrence’s Assertion

The Lawrence Underwriter Report states that “*the Underwriters secured certifications from Barclays*” and that “*such certifications are part of the customary process followed by underwriters in their efforts to confirm the accuracy of the statements made in offering documents.*”¹³⁸ The referenced certifications, which were addressed to the Underwriters, were dated April 11 and April 22, 2008 (the “Certifications”).¹³⁹ A key representation made by Barclays to the Underwriters in the Certifications is that after carefully examining the registration statement, the ADS registration statement, and the prospectus, none of them contained any untrue statement or omitted material facts required or necessary to make the statements not misleading.¹⁴⁰ Professor Lawrence’s reliance on the Certifications is supportive of my opinion that Professor Lawrence has no reasonable basis for his opinion that the Underwriters “*performed a comprehensive*

¹³⁶ See Lawrence Underwriter Report, Section VIII(A)(4)(c), p. 40.

¹³⁷ See Lawrence Underwriter Report, ¶120.

¹³⁸ See Lawrence Underwriter Report, ¶145.

¹³⁹ See UW_Barclays_0000003569 (April 11, 2008 certification) and UW_Barclays_0000004083 (April 22, 2008 certification).

¹⁴⁰ *Id.*

and robust due diligence investigation...that was fully consistent with customary standards and practice” for two reasons.

First, a certification from management does not supersede an underwriters’ requirement to perform a reasonable due diligence investigation to ensure the accuracy and completeness of the offering documents. As described in Section IV(C) of this Rebuttal, Underwriters knew or should have known of multiple red flags, yet failed to reasonably investigate and resolve each of them. In my experience, it is not reasonable nor is it customary underwriter due diligence practice for red flags to be resolved through unverified management certifications. Here the Underwriters already had knowledge that the boiler-plate statements in the Management Certification regarding the accuracy and completeness of the Offering Documents were not correct and therefore could not be reasonably relied on.¹⁴¹ This fact is not addressed by Professor Lawrence.

Second, the Certifications are dated April 11, 2008 and April 22, 2008 – after the April 8, 2008 date of the Offering Documents.¹⁴² In my experience, custom and practice would be for the Underwriters to require the Certifications prior to or coincident with the filing to the Offering Documents, in order to provide the Underwriters with additional comfort that the disclosures in the Offering Documents are accurate and complete. I have seen no evidence of any such Certifications dated on or before April 8, 2008.

2. Professor Lawrence Provides No Reasonable Basis for His Opinion

Professor Lawrence again relies on form over substance when he cites the mere receipt of Management Certifications as support for his assertion that the Underwriters conducted appropriate current due diligence. Here Professor Lawrence ignores, among other things, the Underwriters’ missed **red flags** regarding Write-Downs, credit market exposure, capital adequacy, the Comfort Letters and the Citi research report and

¹⁴¹ Management represented that the Offering Documents “did not include any untrue statement of a material fact and did not omit to state any material fact required to be stated therein for necessary to make the statements therein not misleading.”

¹⁴² The Management Certifications dated April 11, 2008 stand in contrast to the Comfort Letter, which was dated April 8, 2008.

focuses instead on Management Certifications that claim no knowledge of misstatements or omissions. Management certifications are not a substitute for an underwriter's responsibility to undertake a reasonable investigation and, among other things, reasonably follow up and resolve material red flags.

F. Professor Lawrence Unreasonably Relies on the Representations of Counsel as Evidence of Underwriter Due Diligence

1. Professor Lawrence's Assertion

The Lawrence Underwriter Report states that *"the Underwriters received customary opinions and representations from counsel" and that "such opinions and representations are part of the customary process followed by underwriters in their efforts to confirm the accuracy of the statements made in the offering documents."*¹⁴³ The opinions in question were provided by the Underwriters' Counsel, Linklaters LLP ("Linklaters"), and Barclays' counsel, Sullivan & Cromwell, LLP ("S&C"), and are dated April 11, 2008 (the "Lawyer Certifications").¹⁴⁴ A key representation made to the Underwriters by Linklaters and S&C in the Legal Opinions is that after examining the Offering Documents, none of them contained any untrue statement or omitted material facts required or necessary to make the statements not misleading.¹⁴⁵ As set forth below, Professor Lawrence's reliance on these Lawyer Certifications is supportive of my opinion that he has no reasonable basis for his opinion that the Underwriters *"performed a comprehensive and robust due diligence investigation...that was fully consistent with customary standards and practice."*

First, in my experience, custom and practice is that such lawyer certifications are issued prior to, or coincident with, the filings of the offering documents in order to provide comfort that the disclosure in offering documents are accurate and complete. The April 11, 2008 Lawyer Certifications post-date the Series 5 prospectus, which was dated April 8, 2008. In my experience, custom and practice would be for the Underwriters to

¹⁴³ See Lawrence Underwriter Report, ¶148.

¹⁴⁴ See UW_Barclays_0000000723-30; UW_Barclays_0000000733-34.

¹⁴⁵ See UW_Barclays_0000000723-30; UW_Barclays_0000000733-34.

require the Lawyer Certifications prior to or coincident with the filing to the Offering Documents, in order to provide the Underwriters with additional comfort that the disclosures in the Offering Documents are accurate and complete. This fact is not addressed by Professor Lawrence. Moreover, I have seen no evidence of any such representations dated on or before April 8, 2008.

Second, a letter from counsel does not supersede an underwriter's requirement to perform a reasonable due diligence investigation to have a reasonable basis to believe in the accuracy and completeness of the offering documents. As described in Section IV(C) of this Rebuttal, Underwriters were aware of, yet failed to reasonably investigate and resolve, multiple red flags. In my experience, it is not reasonable nor is it customary underwriter due diligence practice for the type of **red flags** at issue here to be resolved through counsel representations. Here, as discussed above, the Underwriters knew or should have known that the boiler-plate statements in the Lawyer Certifications regarding the accuracy and completeness of the Offering Documents were not correct and therefore could not be reasonably relied on. This fact is not addressed by Professor Lawrence.

Third, despite their representations, the Lawyer Certifications disclaimed "any responsibility for the accuracy, completeness or fairness of the statements in the Offering Documents."¹⁴⁶ Such a disclaimer also undermines the reasonableness of the Underwriters' reliance on the Lawyer Certifications and is not addressed by Professor Lawrence.

Fourth, the Lawyer Certifications were based, in part, on discussions with the Underwriters and Barclays. This kind of circular reliance further undermines the reasonableness of the Underwriters' reliance on the Legal Opinions in lieu of performing a reasonable investigation and is not addressed by Professor Lawrence.

¹⁴⁶ See UW_Barclays_0000000723-30; UW_Barclays_0000000733-34.

2. Professor Lawrence Provides No Reasonable Basis for His Opinion

Professor Lawrence again relies on form over substance when he cites the mere receipt of Lawyer Certifications as support for his assertion that the Underwriters conducted appropriate current due diligence. Here Professor Lawrence ignores, among other things, the Underwriters' missed **red flags** regarding Write-Downs, credit market exposure, capital adequacy, the Comfort Letters and the Citi research report discussed throughout this Rebuttal. Instead, Professor Lawrence focuses on perfunctory Lawyer Certifications that claim no knowledge of misstatements or omissions. Lawyer Certifications are not a substitute for an underwriter's responsibility to undertake a reasonable investigation and, among other things, reasonably follow up and resolve material red flags.

EXHIBIT A: MATERIALS CONSIDERED

Deposition Transcripts and Exhibits:

Marcus Aguis Deposition Transcript and Exhibits, dated November 5, 2015
Sir Richard Broadbent Deposition Transcript and Exhibits, dated October 30, 2015
Patrick Clackson Deposition Transcript and Exhibits, dated December 10, 2015
Robert E. Diamond, Jr. Deposition Transcript and Exhibits, dated November 13, 2015
Adam Godden Deposition Transcript and Exhibits, dated September 17, 2015
Thomas Hamilton Deposition Transcript and Exhibits, dated October 6, 2015
Keith Harding Deposition Transcript and Exhibits, dated October 28, 2015
Joseph C. Kaczka Deposition Transcript and Exhibits, dated September 22, 2015
Michael J. Keegan Deposition Transcript and Exhibits, dated October 23, 2015
Stephen J. King Deposition Transcript and Exhibits, dated October 1, 2015
Kristofer R. Kraus Deposition Transcript and Exhibits, dated September 24, 2015
John Kreitler Deposition Transcript and Exhibits, dated August 19, 2015
Grant Kvalheim Deposition Transcript and Exhibits, dated October 19, 2015
Nick Lambert Deposition Transcript and Exhibits, dated September 15, 2015
Richard Landreman Deposition Transcript and Exhibits, dated October 22, 2015
Thomas J. McCosker Deposition Transcript and Exhibits, dated October 14, 2015
Jack McSpadden 30(b)(6) Deposition Transcript and Exhibits, dated August 13, 2015
Paul Menefee Deposition Transcript and Exhibits, dated July 11, 2015
Stephen George Russell Deposition Transcript and Exhibits, dated November 6, 2015
Sean Teague Deposition Transcript and Exhibits, dated September 29, 2015
John Varley Deposition Transcript and Exhibits, dated October 29, 2015
Michael Wade Deposition Transcript and Exhibits, dated August 20, 2015
Eric Yoss Deposition Transcript and Exhibits, dated August 28, 2015

Expert Reports:

Expert Report of Chad Coffman, dated December 15, 2015
Expert Report of D. Paul Regan, dated December 15, 2015
Expert Report of Dr. Joseph R. Mason, dated December 15, 2015
Expert Report of Fiachra O' Driscoll, dated December 15, 2015
Expert Report of Gary M. Lawrence on Behalf of the Director Defendants, dated December 15, 2015
Expert Report of Gary M. Lawrence on Behalf of the Underwriter Defendants, dated December 15, 2015

SEC Filings:

Barclays Bank PLC Registration Statement on Form F-3ASR, dated August 31, 2007
Barclays PLC Annual Report on Form 20-F, dated March 26, 2008
Barclays PLC Report on Form 6-K, dated February 19, 2008
Barclays Bank PLC Prospectus Supplement on Form 424B5, dated April 9, 2008
Barclays PLC Report on Form 6-K, dated April 11, 2008

Barclays PLC Report on Form 6-K, dated April 22, 2008
Barclays PLC Report on Form 6-K, dated May 15, 2008
Barclays PLC Report on Form 6-K, dated August 7, 2008
Barclays PLC Annual Report on Form 20-F, dated March 24, 2009
Barclays PLC Report on Form 6-K, dated January 10, 2009

Conference Call Transcripts:

Barclays Bank PLC 2007 Interim Earnings Conference Call Transcript, dated August 2, 2007
Barclays Bank PLC (Barclays Capital) Trading Update Conference Call Transcript, dated November 15, 2007
Barclays Bank PLC Preliminary 2007 Earnings Conference Call Transcript, dated February 19, 2008
Barclays Bank PLC Interim Management Statement Conference Call Transcript, dated May 15, 2008
Barclays PLC 2008 Interim Earnings Conference Call Transcript, dated August 7, 2008

Produced Documents:

BARC-ADS-00001697-1710
BARC-ADS-00002941
BARC-ADS-00063510-64
BARC-ADS-00063574-682
BARC-ADS-00700510-18
BARC-ADS-00734344-62
BARC-ADS-00792555
BARC-ADS-00804129-208
BARC-ADS-00819841-42
BARC-ADS-00821173-77
BARC-ADS-00823185-96
BARC-ADS-00833239-40
BARC-ADS-00927803-14
BARC-ADS-00927910-66
BARC-ADS-00928336-37
BARC-ADS-00930358-80
BARC-ADS-00931065-69
BARC-ADS-01017015
BARC-ADS-01020326-36
BARC-ADS-01022272
BARC-ADS-01024010-27
BARC-ADS-01288543-44
BARC-ADS-01291494-95
BARC-ADS-01305133-40
BARC-ADS-01534583-85
BARC-ADS-01535309-10

BARC-ADS-01544425-37
BARC-ADS-01544698
BARC-ADS-01544948-59
BARC-ADS-01551744-45
BARC-ADS-01551750-52
BARC-ADS-01573580-81
BARC-ADS-01601834-43
BARC-ADS-01602621-54
BARC-ADS-01612307-34
UW_Barclays_0000000723-30
UW_Barclays_0000000733-34
UW_Barclays_0000003569-70
UW_Barclays_0000004083-84
UW_Barclays_000017463-65
UW_Barclays_000024836
UW_Barclays_000047257-62
UW_Barclays_000049945-50
UW_Barclays_000049951-56

EXHIBIT B

RICHARD D. PUNTILLO

C. V. as of December 2015

ACADEMIC EXPERIENCE

University of San Francisco

2014-present	Emeritus Professor of Finance
1998-2013	Full Professor, tenured
1990-98	Associate Professor
1986-90	Instructor

Academic Honors at University of San Francisco

2005-06	Outstanding Teaching Award
1998-99	Executive MBA Teaching Excellence Award
1995-96	Outstanding Research Award
1991-92	Outstanding Teaching Award
1991-92	Executive MBA Teaching Excellence Award
1990-91	Outstanding Teaching Award
1990-91	Outstanding Service Award
1989-90	Outstanding Teaching Award

TEACHING

Selected MBA Courses Taught at University of San Francisco

Capital Markets & Investment Banking
Private Equity & Venture Capital

Selected MBA Courses Taught as Visiting Professor

Venture Capital, Sorbonne (Paris II, Panthéon-Assas), 2012, 2013
Venture Capital, Sorbonne (Paris IV, CELSA), 2011, 2012

PUBLISHED WORKS

Articles in Peer Reviewed Journals

Ipsen, Dirk and Richard Puntillo, An Institutional Analysis of Poland's Mass Privatization Programme, *Osteuropa Wirtschaft* (Eastern European Economies).
Volume 42, Number 2, June, 1998, pp. 144-161.

Puntillo, Richard, Mass Privatization in Poland and Russia: The Case of the Tortoise and the Hare?, *Journal of Emerging Markets*, Volume 1, Number 1, Spring 1996, pp. 7-28.

EXHIBIT B

Puntillo, Richard, Dirk Ipsen and Mikolaj Dietrich, Poland's Mass Privatization Program, *The European Journal of Finance*, Volume 2, 1996, pp. 41-55.

Puntillo, Richard, Marina Schneiderman and Matthew Keehn, Russian Privatization: Analysis of Financial Structure and Initial Cash Endowments, *Managerial Finance: Issues in Emerging Markets*, Volume 22, Number 10, 1996, pp. 40-54.

BUSINESS EXPERIENCE

Expert Witness Experience (1999-present)

2015 Expert witness on **customary practices for investment and commercial banking** regarding loan syndications related to financing strategies to pay construction costs for multi-billion dollar master-planned developments; **plaintiff side; ROBBINS GELLER; expert report prepared; deposition testimony given.** (Frank J. Fosbre, Jr. vs Las Vegas Sands Corp.; No. 2:10-cv-00765-APG-GWF)

2015 Expert witness on **customary practice regarding minority equity investments** by a multi-billion dollar technology firm in \$120+ million investment in unregistered common shares of a public company; **defendant side; Attorney General of California; deposition testimony given; trial testimony given.** (Fidelity National Information Services, Inc. v. California Franchise Tax Board; No. 34-2013-00148015, California Superior Court, County of Sacramento)

2015 Expert witness on **customary practice regarding investor due diligence** procedures involving a disputed \$71.0 million share purchase transaction by the trustee of an employee stock ownership plan; **plaintiff side; United States Department of Labor, Office of the Solicitor; expert report prepared; deposition testimony given.** (Thomas E. Perez, Secretary of Labor, US Department of Labor vs. First Bankers Trust Services, Inc., et al.; No. 1: 12-cv-08648-GBD, US District Court for the Southern District of New York)

2015 Expert witness on **customary practice regarding investor due diligence** procedures involving a disputed \$15.5 million share purchase transaction by the trustee of an employee stock ownership plan; **plaintiff side; United States Department of Labor, Office of the Solicitor; expert report prepared; deposition testimony given.** (Seth Harris, Acting Secretary of Labor, US Department of Labor vs. First Bankers Services, Inc., et al.; No. 12 CIV 8649 US District Court for the Southern District of New York)

2015 Expert witness on **customary IPO due diligence practices** related to reasonable disclosure in a disputed \$3.8 billion IPO transaction; **plaintiff side; ROBBINS GELLER; expert report prepared; deposition testimony given.** (Karsten Schuh vs HCA Holdings, Inc. et al.; United States District Court, Middle District of Tennessee, Nashville Division, Civil Action File No. 3:11-CV-01033)

EXHIBIT B

2014 Expert witness on **customary practice regarding valuation analyses** and fairness opinions in a disputed recapitalization transaction and a subsequent \$1.0+ billion M&A transaction involving a strategic buyer; **defendant side; PILLSBURY WINTHROP; deposition testimony given.** (Srikanth Seshadri, et al. v. Keane International, Inc.; No. CGC11-516412, California Superior Court, County of San Francisco)

2014 Expert witness on **customary practice regarding investor due diligence** procedures involving a disputed \$16.0 million share purchase transaction by the trustee of an employee stock ownership plan; **plaintiff side; United States Department of Labor, Office of the Solicitor; expert report prepared; deposition testimony given.** (Thomas E. Perez, Secretary of Labor, US Department of Labor vs. First Bankers Trust Services, Inc., et al.; No. 3: 12-cv-04450-MAS-DEA, US District Court for the District of New Jersey)

2014 Expert witness on **customary practice regarding due diligence** procedures for private equity firms, commercial lenders and landlords in a disputed recapitalization transaction involving multiple subsidiaries of a private company; **plaintiff side; WILKES & McHUGH; expert report prepared; deposition testimony given.** (In Re: Fundamental Long Term Care, Inc.; No. 8:11-bk-22258-MGW, Chapter 7, US Bankruptcy Court, Middle District of Florida, Tampa Division)

2014 Expert witness on **customary practice for buyer due diligence** in \$100.0+ million failed M&A transaction by a special purpose acquisition company. The case involved the seller's auditor; **defendant side; KEKER VAN NEST; expert report prepared.**

2014 Expert witness on **customary practice for buyer due diligence** in \$100.0+ million failed M&A transaction by a special purpose acquisition company. The case involved the buyer's due diligence advisor; **defendant side; GUNSTER YOAKLEY & STEWART; expert report prepared.**

2014 Expert witness on **customary practice regarding investments in partnerships; defendant side; DLA PIPER; expert report prepared; deposition testimony given.** (James Bryan Garrett et al. v. Deron Robertson et al.; No. 112-cv-238292, California Superior Court, County of Santa Clara)

2013 Expert witness on **customary practice for buyer due diligence** in a securities class action case involving a failed \$400.0 million acquisition of a Chinese reverse merger company by a special purpose acquisition company; **plaintiff side; KESSLER TOPAZ; expert report prepared.**

2013 Expert witness on **customary practice for buyer due diligence** in a shareholder derivative case involving a failed \$400.0 million acquisition of a Chinese reverse merger

EXHIBIT B

company by a special purpose acquisition company; **plaintiff side; ROBBINS UMEDA; expert report prepared.**

2012 Expert witness on **customary practices for issuer due diligence** in a case involving a \$1.6 billion follow-on equity offering; **plaintiff side; ROBBINS GELLER et al.; expert report prepared, deposition testimony given.** (United Food and Commercial Workers Union v. Chesapeake Energy Corp. et al.; Civil Action No. 5-09-cv-1114-D, US District Court, Northern District of California)

2012 Expert witness on **custom and practice in corporate governance for financially conflicted board members** (e.g., role of special committees, fair price/fair process, use of financial advisors) in a case involving a multi-million dollar dispute between board factions of private financial services firm; **plaintiff side; FARELLA, BRAUN, MARTEL; expert report prepared.**

2012 Expert witness on **customary practices for investment banking firms in sell-side M&A transactions** (e.g., M&A due diligence role; engagement fees, terms & conditions) in a case involving dispute arising out of a multi-million dollar LBO by a private equity firm; **plaintiff side; CALDWELL LESLIE & PROCTOR; jury trial demonstratives prepared.**

2012 Expert witness on **venture capital industry custom and practice** (e.g., rebuttal of opposing Expert's opinions, reasonableness of general partner's actions) in a case involving a multi-million dollar dispute between the general partner and a limited partner investor in a venture capital fund; **defendant side; LAW OFFICES OF MICHAEL Q. EAGAN; expert report prepared.**

2011 Expert Witness on **customary practices for institutional placement agents and investment banking industry custom and practice in private placements** in a case involving securities totaling some \$400.0 million; **defendant side; SKADDEN ARPS; deposition testimony given.** (Jerome F. Sheldon, et al. v. UBS Securities, LLC, et al.; No. CGC-08481229; California Superior Court, County of San Francisco)

2011 Expert witness on **custom and practice in corporate governance, M&A, public offerings and private equity** in a wrongful death case involving a publicly-traded coal company formed by M&A transactions sponsored by a private equity firm; **defendant side; ALLEN, GUTHRIE & THOMAS; expert report prepared.**

2011 Expert witness on **venture capital industry custom and practice** (e.g., preferred share rights) in a case involving a \$20.0 million dispute between founder and venture capital investors; **plaintiff side; DLA PIPER and GOODIN MacBRIDE; expert report prepared; deposition testimony given; testified at arbitration hearing.** (IronPlanet, Inc., Claimant v. Reza Bundy Saadlou, Respondent/Counterclaimant; No. 74 166 00330 10 ANRO; American Arbitration Association, San Francisco)

EXHIBIT B

2011 Expert witness on **M&A custom and practice** (e.g., post acquisition purchase price adjustments, data room procedures) in a case involving a \$20.0 million dispute in a \$1.5 billion M&A transaction; **plaintiff side; FRIED FRANK; expert report prepared.**

2011 Expert witness on **customary practices for underwriter due diligence and investment banking industry custom and practice** in a \$150.0 million equity carve out IPO; **plaintiff side; ROBBINS GELLER et al.; expert report prepared; deposition testimony given.** (In Re Constar International Inc. Securities Litigation; Master File No. 03-5020; US District Court, Eastern District of Pennsylvania)

2010 Expert witness on **customary practices for underwriter due diligence and investment banking industry custom and practice** in a \$33.0 million municipal debt offering; **plaintiff side; MINTZ LEVIN; expert report prepared; deposition testimony given.** (Vectren Communications Services, Inc. v. City of Alameda; No. C 08-3137 SI; US District Court, Northern District of California, San Francisco Division)

2010 Expert witness on **M&A custom and practice** for boards of directors in public companies (e.g., fair price/fair process); **plaintiff side; PEARSON, SIMON et al.; expert report prepared; deposition testimony given.** (In Re Tripath-Technology, Inc., Debtor, and Richard C. Hermerding, Disbursing Agent v. Adaya S. Tripathy, et al.; No. 07-50358 (CN) and Adv No. 09-5004, Chapter 11; US Bankruptcy Court, Northern District of California, San Jose Division)

2010 Expert witness on **customary practices for M&A due diligence and private equity industry custom and practice** in a failed \$2.0+ billion LBO transaction; **defendant side; WILLIAMS & CONNOLLY; expert report prepared.**

2010 Expert witness on **venture capital industry custom and practice** (e.g., pre-money value, preferred share rights, fair price/fair process) in a case involving a \$50.0 million venture financing transaction; **defendant side; DLA PIPER; deposition testimony given; trial testimony given in California Superior Court, Orange County.** (Mike Alexandros, et al. v. KOR Electronics, et al.; Case No. 06CC07881; California Superior Court, County of Orange, Central Justice Center)

2009 Expert witness on **customary practices for underwriter due diligence and investment banking industry custom and practice** in a \$100.0+ million equity offering for a public company; **plaintiff side; COUGHLIN, STOIA et al.; expert report prepared.**

2009 Expert witness on **customary practices for issuer due diligence** in a case involving a \$100.0 million+ follow-on equity offering; **plaintiff side; COUGHLIN STOIA, et al.; expert report prepared.**

2009 Expert witness on **standard of care and custom and practice for reasonable reliance** by an executive in an SEC case involving a claim of inadequate disclosure; **defendant side; BIRD MARELLA et al.; expert report prepared.**

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2009 Expert witness on **customary practices for investor due diligence** (e.g., suitability) in a case involving alleged negligence and fraud in a defined benefit plan sold by a broker-dealer; **defendant side; NIXON PEABODY and FOLEY & LARDNER; expert report prepared.**

2008 Expert witness on **customary practices for M&A due diligence and private equity industry custom and practice** in a \$30.0+ million LBO transaction alleging fraudulent disclosure; **defendant side; FINESTONE & RICHTER; deposition testimony given; jury trial testimony given in California Superior Court, Orange County. (PHC Sharp Holdings, Inc. et al. v. Robert Wendt et al.; Case no. 07CC09285, Orange Count Superior Court)**

2008 Expert witness on **customary practices for investor due diligence and securities brokerage industry custom and practice** (e.g., know your customer and suitability securities industry rules) in a multi-million dollar fraud case; **plaintiff side; HOLLAND & HART; expert report prepared; deposition testimony given.**

2008 Expert witness on **limited partnership custom and practice** in a case alleging general partner conflict of interest and inadequate disclosure in a \$2.0+ billion fund of funds hedge fund; **plaintiff side; GONZALEZ & LEIGH; deposition testimony given.**

2008 Expert witness on **limited partnership custom and practice** (e.g., fairness opinions, use of special committees; limited partnership financing) in a case involving a disputed investment analysis of a \$100.0 million asset sale; **defendant side; MORRISON & FOERSTER; deposition testimony given.**

2007 Expert witness on **investment banking industry custom and practice** (e.g., financial advice on 144 A offerings, use of proceeds from asset sales to cure debt covenant violations) in a case alleging deepening insolvency of a public company; **defendant side; SKADDEN ARPS et al.; expert report prepared; deposition testimony given.**

2007 Expert witness on **customary practices for underwriter due diligence and investment banking industry custom and practice** in a \$400 million follow-on offering of a public company; **plaintiff side; LERACH COUGHLIN et al.; expert report prepared; deposition testimony given.**

2007 Expert witness on **customary practices for M&A due diligence and private equity industry custom and practice** in a \$1.0 billion acquisition transaction; **plaintiff side; BERNSTEIN LITOWITZ BERGER & GROSSMAN; expert report prepared.**

2007 Expert witness on **customary practices for M&A due diligence** in an M&A transaction valued at \$0.5 billion; **plaintiff side; BOIES SCHILLER & FLEXNER; expert report prepared; deposition testimony given.**

2007 Expert witness on **customary practices for M&A due diligence** in an M&A

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transaction valued at \$0.5 billion; **plaintiff side; GREGORY P JOSEPH Law Offices; expert report prepared.**

2007 Expert witness on **customary practices for lender due diligence and commercial and mortgage banking industry custom and practice** in a disputed sub-prime mortgage transaction; **defendant side; PILLSBURY WINTHROP SHAW PITTMAN; deposition testimony given.**

2006 Expert witness on **investment banking industry custom and practice** (e.g., valuation techniques, fairness opinions, conflicts of interest of research analysts) in a multi-billion dollar M&A transaction; **plaintiff side; LERACH COUGHLIN *et al.*; expert report prepared.**

2006 Expert witness on **customary practices for underwriter due diligence and investment banking industry custom and practice** (e.g., structured financing and derivatives) in two follow-on debt securities offerings totaling over \$1.5 billion; **defendant side; SULLIVAN & CROMWELL; expert report prepared; deposition testimony given.**

2006 Expert witness on **customary practices for lender due diligence and commercial banking industry custom and practice** (e.g., loan structuring, terms and conditions; solvency) in a failed \$275.0 million leveraged buyout transaction; **plaintiff side; PILLSBURY WINTHROP SHAW PITTMAN; expert report prepared; deposition testimony given.**

2006 Expert witness on **investment and commercial banking industry custom and practice** (e.g., investment agreement terms and conditions, including performance milestones and material adverse events considerations; solvency) in an aborted \$1.0+ billion investment in an affiliated company; **defendant side; SHEARMAN & STERLING; expert report prepared.**

2006 Expert witness on **commercial banking industry custom and practice** (e.g., corporate trust department responsibilities regarding debt issues, reputation considerations in settlement negotiations) involving a disputed indemnity agreement of nearly \$200.0 million; **defendant side; STEVENS & O'CONNELL; deposition testimony given.**

2006 Expert witness on **customary practices for investor due diligence and venture capital industry custom and practice** in a venture capital fund investment of some \$125.0 million in a start-up firm involving allegations of stolen trade secrets and patent infringements; **defendant side; KEKER & VAN NEST; expert report prepared; deposition testimony given.**

2005 Expert witness on **customary practices for investor due diligence and venture capital industry custom and practice** in a failed \$10.0 million venture capital

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investment in start up; **defendant side; O'LEARY & O'LEARY; expert report prepared.**

2005 Expert witness on **customary practices for investor due diligence and venture capital industry custom and practice** (e.g., private placement memorandum disclosure) in a \$375 million venture capital fund; **plaintiff side; KEKER & VAN NEST and DLA PIPER RUDNICK GRAY CARY; expert report prepared; deposition testimony given.**

2005 Expert witness on **customary practices for underwriter due diligence and investment banking industry custom and practice** (e.g., disclosure, overview of public offering process) in a \$400 million follow-on offering of a public company; **plaintiff side; LERACH COUGHLIN et al.; expert report prepared.**

2005 Expert witness on **customary practices for M&A due diligence** (e.g., S-4 disclosure, overview of merger process and procedures) in a \$0.5 billion merger transaction involving two publicly traded companies; **plaintiff side; ABBEY GARDY; expert report prepared; deposition testimony given.**

2005 Expert witness on **private equity and venture capital industry custom and practice** as well as custom and practice of Boards of Directors in a disputed investment in a private company; **defendant side; ARCHER NORRIS; expert report prepared; deposition testimony given; jury trial testimony given in Federal Court. (Michael Sitrick vs. Northwestern Pacific Indemnity Company et al.)**

2004 Expert witness on **private equity, commercial banking and investment banking industry custom and practice** regarding M&A financing (e.g., terms & conditions, credit underwriting, letters of credit, character and capacity) in a failed, multi-billion dollar acquisition transaction of an insolvent firm; **plaintiff side; BINGHAM & McCUTCHEN; expert report prepared; deposition testimony given.**

2004 Expert witness on **customary practices for underwriter due diligence and investment banking industry custom and practice** (e.g., IPO procedures, disclosure, Road Shows, valuation, corporate governance) in a \$100+ million IPO transaction; **plaintiff side; MILBERG WEISS et al.; expert report prepared; deposition testimony given.**

2004 Expert witness on **venture capital industry custom and practice** as well as **custom and practice of Boards of Directors** in a disputed \$30.0+ million Series E venture capital investment in a private company; **defendant side; DLA PIPER RUDNICK GRAY CARY; expert report prepared.**

2003 Expert witness on **customary practices for underwriter due diligence and investment banking industry custom and practice** (e.g., IPO procedures, disclosure, Road Shows, pricing, allocations) in a \$150 million IPO transaction; **defendant side; PAUL HASTINGS JANOFKY & WALKER; expert report prepared.**

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2003 Expert witness on **customary practices for lender due diligence and commercial banking and investment banking industry custom and practice** (e.g., loan underwriting, syndications, financial advisory services) in disputed funding transactions of some \$1.0 billion in a case alleging deepening insolvency of a public company; **defendant side; PERKINS COIE BROWN & BAIN; expert report prepared; deposition testimony given.**

2003 Expert witness on **customary practices for M&A due diligence** (e.g., corporate governance and duty of care, S-4 disclosure, overview of merger process and procedures) in a \$1.9 billion high tech merger transaction; **defendant side; SIDLEY AUSTIN BROWN & WOOD; expert report prepared; deposition testimony given.**

2002 Expert witness on **venture capital industry custom and practice; plaintiff side; BROBECK PHLEGER & HARRISON; expert report prepared.**

2002 Expert witness on **corporate governance and financial disclosure custom and practice** (e.g., S-1, prospectus, 10K, 10Qs; due diligence) in \$75+ million IPO transaction; **plaintiff side; LOCKRIDGE GRINDAL NAUEN; expert report prepared.**

2002 Expert witness on **customary practices for M&A due diligence** (e.g., corporate governance, stock lock up provisions, derivative securities) in a \$225+ million acquisition transaction; **defendant side; PRESTON GATES ELLIS; expert report prepared; deposition testimony given; testified at arbitration hearing. (Richard D. Harroch et al. v. NBC Internet, Inc.)**

2002 Expert witness on **M&A custom and practice** (e.g., valuation, required disclosure, empirical stock price performance after merger announcement) in a \$150+ million acquisition transaction; **defendant side; THE FIORE LAW GROUP; expert report prepared.**

2001 Expert witness on **M&A custom and practice** (e.g., fairness opinion/valuation, statutory mergers versus tender offers procedures, corporate governance) in a \$100+ million high tech merger transaction; **defendant side; BROBECK PHLEGER & HARRISON; expert report prepared.**

2000 Expert witness on **customary practices for underwriter due diligence and investment banking industry custom and practice** (e.g., IPO underwriting procedures) in a \$100+ million IPO transaction; **plaintiff side; WOLF POPPER; expert report prepared; deposition testimony given.**

2000 Expert witness on **customary practices for underwriter due diligence and investment banking industry custom and practice** (e.g., IPO underwriting procedures, valuation) in a \$100+ million IPO transaction; **plaintiff side; BROBECK PHLEGER & HARRISON; expert report prepared; deposition testimony given; testified at arbitration hearing. (Dennis M. Hart v. Peter T. Paul et al.)**

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1999 Expert witness on **customary practices for lender due diligence** and **commercial banking industry custom and practice** (e.g., loan underwriting, regulatory oversight, corporate governance) in a securities fraud case; **plaintiff side**; **HOWARD RICE, et al.**; expert report prepared; deposition testimony given.

Board of Directors Experience (1969-2000)

- 1989-2000** **Chairman of Board, Harding Lawson Associates:** environmental engineering and transportation infrastructure firm; 1,000+ employees; \$150 million revenue; SEC reporting. **Also served as Chairman of Audit Committee.**
- 1988-1997** **Director, Surety Bank:** regional commercial bank. **Served as Chairman of Audit Committee.**
- 1982-1984** **Director, Sutro & Co, Inc.:** regional investment bank.
- 1969-1980** **Vice Chairman, Redwood Bancorp:** SEC reporting; regional commercial bank.
- 1985-1987** **Director, TeleWatch:** venture capital-backed telecommunication firm.

Work Experience (1967-1989)

Richard Puntillo 1999-present	Expert Witness Consulting
Puntillo & Associates 1985-1989 San Francisco	Investment banking and corporate turnaround consulting
Sutro & Co. 1982-1984 San Francisco	Executive Vice President & Chief Financial Officer; Board and Executive Committee member; investment bank; 800 employees
Puntillo & Associates 1981 San Francisco	Investment banking and merger & acquisition consulting
Redwood Bancorp 1969-1980	Vice Chairman & Chief Operating Officer; San Francisco-based commercial and

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San Francisco

mortgage banking company;
listed on NASDAQ; 150 employees

Arthur Young & Company
1967-1968
San Francisco

Junior accountant, audit department

Professional Affiliations

1991-2011

National Association of Corporate Directors

1993-2013

Financial Management Association

EDUCATION

1969, **University of California at Berkeley**
(MBA: Emphasis in Finance and Economics)

1967, **State University of New York at Buffalo**
(BS in Business Administration: Emphasis in Economics and Mathematics)

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EXHIBIT 8
[Filed Under Seal]

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re BARCLAYS BANK PLC SECURITIES	:	
LITIGATION	:	Master File No. 1:09-cv-01989 (PAC)
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This Document Relates To:	:	
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**REBUTTAL EXPERT REPORT OF PROFESSOR GARY M. LAWRENCE
ON BEHALF OF THE UNDERWRITER DEFENDANTS
IN RESPONSE TO REPORT OF PROFESSOR PUNTILLO**

March 18, 2016

CONFIDENTIAL

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I. INTRODUCTION AND SCOPE OF CURRENT ENGAGEMENT

1. I have previously submitted an expert report dated December 15, 2015 in this matter on behalf of the Underwriter Defendants (the “Lawrence Report” or “my Initial Report”). All of the information and opinions contained in that report are incorporated herein by reference.¹

2. Since submitting my Initial Report, Skadden Arps Slate Meagher & Flom LLP, counsel to Citigroup Global Markets Inc. (“Citi” or the “Primary Lead Underwriter”), Barclays Capital Securities Limited (“BCSL”), Wachovia Capital Markets, LLC (“Wachovia”), UBS Securities LLC (“UBS”), Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”), Morgan Stanley & Co. (“Morgan Stanley”), Banc of America Securities LLC (“Banc of America”) and RBC Dain Rauscher Inc. (“RBC”) (together, the “Non-Primary Lead Underwriters”) in connection with their roles as underwriters (collectively, the “Underwriters”) of the Series 5 Offering,² has asked me to evaluate the opinions expressed by Plaintiffs’ due diligence expert Professor Richard Puntillo in his report dated February, 2, 2016 (the “Puntillo Report”).

II. MATERIALS CONSIDERED

3. In addition to my education and experience, the sources identified in my Initial Report, the footnotes to this report, and Appendix I generally comprise the documents and other information that I have considered in forming my opinions set forth herein and preparing this report. My opinions and analysis are based on currently available documents and information. If additional documents and information become available, I may supplement and/or amend the opinions in this report prior to trial. I also understand that I may be asked to supplement the opinions in this report in response to opinions offered by others in this matter.

III. BRIEF SUMMARY OF PROFESSOR PUNTILLO’S CONCLUSIONS

4. Professor Puntillo criticizes various aspects of my analysis concerning the Underwriters’ due diligence, and also appears to suggest – without opining or asserting that he is qualified to opine – that a number of the disclosures made in the Offering Materials for the Series 5 Offering contained material misstatements or omissions.³ Indeed, much of his report focuses on the disclosures themselves as opposed to the due diligence process and practices of the Underwriters.

¹ Capitalized terms not defined herein have the meanings given in my Initial Report.

² In connection with the Series 5 Offering, Citi, BCSL, Wachovia, UBS and Merrill Lynch served as, and are referred to herein, as the “Joint Lead Underwriters.” Morgan Stanley served as, and is referred to herein, as the “Senior Co-Manager.” Banc of America and RBC served as, and are referred to herein, as the “Co-Managers.” Together, the Joint Lead Underwriters, the Senior Co-Manager and the Co-Managers are referred to herein as the “Underwriters.” See Email from Bogdan Ciobanu to oconnorj@sullcrom.com et al., “Project Rimu – Management Group Info,” April 4, 2008, UW_Barclays_000018354–5.

³ For example, Professor Puntillo challenges the allegedly inconsistent internal reporting and analysis practices, stating that there was a “substantial difference between Barclays’ internal reporting and analysis and the Offering Document disclosures.” (Puntillo Report, p. 19) He later notes purported “substantial discrepancies between Barclays’ internal reporting practices and disclosures included in the Offering Documents....” (Puntillo Report, p. 21) Professor Puntillo also concluded, “The Underwriters simply failed in their obligation to reasonably investigate and determine whether the size and scope of the expected Write-Downs represented material information necessary to disclose to render the Offering Documents accurate and complete.” (Puntillo Report, p. 45) Professor Puntillo refers to Offering Documents while, in my Initial Report and in this report, I refer to Offering Materials.

Because the issue before the respective due diligence experts is not the adequacy of the issuer's disclosures in the offering documents, but rather whether the due diligence conducted by the Underwriters was consistent with customary standards and practices in light of those disclosures, I focus in this report on the latter.

5. Among other things, Professor Puntillo purports to identify items that he alleges were or should have been "red flags" to the Underwriters that the Offering Materials for the Series 5 Offering (a shelf takedown by a well-known seasoned issuer who was a frequent comer to the market and an Exchange Act reporting company) contained material misstatements or omissions. Professor Puntillo expresses the opinion that these items should have triggered further investigative activities by the Underwriters beyond those reflected in the record. These are: (i) information disclosed by Barclays on the April 3, 2008 due diligence call, (ii) certain alleged inconsistencies between the character of disclosures in the Offering Materials and in internal Barclays' communications, (iii) certain communications between Barclays and the Financial Services Authority ("FSA") of the United Kingdom concerning capital issues, (iv) certain statements made by Barclays' auditor in the comfort letters it issued in connection with the Series 5 Offering, and (v) the writedowns taken (or anticipated to be taken) by Barclays in January and February of 2008 relative to potential writedowns discussed in a Citi research report for the entire year 2008.

6. Overall, I read Professor Puntillo's report to assert that had the Underwriters conducted the additional due diligence investigation he advocates, the disclosures in the Offering Materials related to these matters would have been different.

IV. BRIEF SUMMARY OF MY RESPONSES TO PROFESSOR PUNTILLO'S REPORT

7. After carefully and respectfully considering Professor Puntillo's report, it remains my opinion that the due diligence investigation conducted by the Primary Lead Underwriter in connection with the Series 5 Offering was fully consistent with the customary standards and practices in a shelf takedown by a seasoned issuer and publicly reporting company such as Barclays, and appropriate in the context. While Professor Puntillo's report in many ways focuses on the Primary Lead Underwriter, the record makes clear that the Underwriters participated in the due diligence process and conducted various forms of due diligence themselves in connection with the Series 5 Offering. While as I explained in my Initial Report, customary standards and practices contemplate that syndicate members rely on the primary lead underwriter, this additional level of engagement by the other Underwriters should not be ignored and is itself indicative of a sound and appropriate approach to the investigation.

8. Among the shortcomings I find in Professor Puntillo's report and his approach is his failure to consider and apply various elements of context that are highly relevant to the issue of whether the due diligence conducted by the Underwriters was appropriate. Most notably among these is his failure to consider in formulating his opinions the relevance of the transactional context—a shelf takedown by a well-known seasoned issuer and publicly reporting company. It is widely acknowledged by all authoritative and informative sources with which I am familiar that the character of the investigation conducted by an underwriter in such a shelf takedown is quite different from that associated with a traditional offering such as an IPO. While the legal

standard by which the due diligence is judged remains the same, the SEC and other authoritative sources have plainly acknowledged that the investigatory methods used in a shelf takedown are and must be different. This derives from a number of factors including the much shorter time period for the conduct of current due diligence (conducted at the time of the offering) and the corresponding need for a much greater degree of reliance on cumulative due diligence (conducted prior to the offering) and the reservoir of knowledge possessed by other parties such as designated underwriters' counsel. Among the logical underpinnings behind the regulatory thinking in this regard are the facts that issuers such as Barclays are widely followed by analysts, rating agencies, and others, and that they make continuous public filings of financial and other information with the SEC. This logic is further bolstered by the fact that shelf takedowns by well-known seasoned issuers such as Barclays also involve independent auditors and outside law firms that typically have extensive prior experience with the issuer. All of these are highly relevant elements of context that must consider prominently in a fair and objective assessment regarding the appropriateness of a party's due diligence in such a setting. It is my respectful opinion that Professor Puntillo fails to afford these essential elements of context the weight they require, and therefore reaches flawed conclusions regarding the Underwriters' due diligence for the Series 5 Offering.

9. As described more fully in my Initial Report, shelf offering investigations involve both current due diligence and cumulative due diligence, as well as reliance on persons "whose duties should have given them knowledge of the particular facts (in the light of the functions and responsibilities of the particular person with respect to the issuer and the filing)."⁴ Cumulative due diligence and a reasonable degree of reliance on others that fit the quoted language above, are well-established concepts, especially in shelf takedowns. Professor Puntillo ignores both concepts in his report. As an example in the context of shelf takedowns, it is increasingly common for the underwriters to retain and rely on outside counsel that possesses what is commonly described as a "reservoir of knowledge"⁵ regarding the issuer and its securities, such as Linklaters (Underwriters' counsel in the Series 5 Offering), who had participated in prior securities offerings for Barclays.⁶ Furthermore, underwriters themselves may have a "reservoir of knowledge" that benefits the due diligence performed in any given offering. In this case, the Underwriters did benefit from such reservoirs of knowledge, because they had participated in prior Barclays' Offerings.⁷ It is my respectful opinion that Professor Puntillo fails to properly

⁴ "Circumstances Affecting the Determination of What Constitutes Reasonable Investigation and Reasonable Grounds for Belief Under Section 11 of the Securities Act," Securities Act Release No. 33-6335, 1981 WL 31062, (August 6, 1981) (hereinafter "Securities Act Release No. 33-6335"), p. 7. Note that citations in this report to SEC releases, statutes, legal cases, and similar sources are included to assist the reader in understanding some of the origins and rationale behind customary due diligence standards and practices since they commonly incorporate or build upon these materials. Nothing in this report, including these citations, is offered as a legal opinion.

⁵ *Id.*, p. 11.

⁶ Deposition of Jack McSpadden, August 13, 2015 ("McSpadden Deposition"), p. 64:12-17; *see also*, Barclays Bank PLC Form 424B5, Prospectus Supplement to Prospectus dated July 1, 2002, filed June 2, 2005, p. S-24; Barclays Bank PLC Form 424B2, Prospectus Supplement to Prospectus dated September 21, 2005, filed April 21, 2006; p. S-32; Barclays Bank PLC Form 424B5, Prospectus Supplement to Prospectus dated August 31, 2007, filed April 9, 2008, p. S-32. Linklaters was the Underwriter's counsel in Barclays' Series 1 and 2 Offerings.

⁷ Citi (Underwriter in Series 1, 2, 3, and 4 Offerings), BCSL (Underwriter in Series 1, 2, 3, and 4 Offerings), Morgan Stanley (Underwriter in Series 1, 2, 3, and 4 Offerings), Merrill Lynch (Underwriter in Series 1, 2, and 4 Offerings), UBS

consider each of these factors and therefore reached flawed conclusions regarding the Underwriters' due diligence for the Series 5 Offering.

10. With respect to the five alleged red flags cited in Professor Puntillo's report, it is my opinion that the Professor has not demonstrated either that these were red flags or (regardless of the label used to describe the matters) that they were not handled by the Underwriters in a manner consistent with customary standards and practices in a shelf takedown by a well-known seasoned issuer. I discuss each of these matters in more detail below, explaining what I believe are shortcomings in Professor Puntillo's analysis and why I reach a different conclusion. I remain of the opinion that the Underwriters performed appropriate due diligence in connection with the Series 5 Offering. Moreover, the fact that Professor Puntillo may believe that the disclosures in the Offering Materials were somehow deficient says nothing about the appropriateness of the due diligence that the Underwriters conducted.

VI. DETAILED RESPONSES TO PROFESSOR PUNTILLO'S REPORT

A. Professor Puntillo Ignores Large Portions of my Initial Report and Offers no Rebuttal or Objection to Them.⁸

11. Professor Puntillo's report fails to rebut or even address much of my Initial Report, including each of the process and execution elements of customary underwriter due diligence in the context of a shelf takedown by an issuer such as Barclays. Moreover, as briefly summarized above, the report fails to consider the significant differences in underwriter due diligence for a shelf takedown and a traditional offering of securities. As a result, it is my respectful opinion that Professor Puntillo reaches inaccurate conclusions regarding the Underwriters' due diligence in this shelf offering context.

12. Among other things, Professor Puntillo fails to properly consider:

- The "different investigatory methods" that apply in shelf offerings. For example, the SEC has acknowledged that "techniques of conducting due diligence investigations of registrants qualified to use short form registration...differ from due diligence investigations under other circumstances,"⁹ and that "different investigatory methods [are] needed 'in view of the compressed preparation time and the volatile nature of the capital markets.'"¹⁰

(Underwriter in Series 1, 2, 3, and 4 Offerings), Wachovia (Underwriter in Series 1, 2, 3, and 4 Offerings), Banc of America (Underwriter in Series 3 and 4 Offerings), and RBC (Underwriter in Series 2, 3, and 4 Offerings) were all underwriters on Barclays' Series 5 Offering.

⁸ Moreover, he fails to offer authoritative support for his opinions. While I primarily focus this report on those points of objection expressed in Professor Puntillo's rebuttal report, the entirety of my Initial Report is incorporated herein by reference and remains an accurate expression of my opinions and the authoritative and informative sources that support them.

⁹ "Shelf Registration," Securities Act Release No. 33-6499, November 17, 1983 ("Securities Act Release No. 33-6499"), p. 6.

¹⁰ Opinion and Order, In re WorldCom, Inc. Securities Litigation, 346 F. Supp. 2d 628, 670.

- Prior to the Series 5 Offering, Barclays was a well-known, seasoned issuer, frequent comer to the markets, and a publicly reporting company. Therefore, as is contemplated in a shelf takedown, the Series 5 Offering Materials incorporated by reference a number of the Company's prior public filings. These included, but were not limited to, Barclays' Form 20-F for the year ended December 31, 2007.¹¹
- The Primary Lead Underwriter staffed its team with capable personnel in a manner consistent with customary standards and practices. The team included Jack McSpadden, the Managing Director in charge of Citi's Transaction Execution Group and the others noted in my Initial Report.¹² Mr. McSpadden testified extensively regarding the due diligence process and practices followed by Citi in connection with the Series 5 Offering, and that testimony taken as a whole supports my opinion regarding the appropriateness of the due diligence conducted by the Underwriters in this context.¹³ However, instead of considering the full range of Mr. McSpadden's testimony and the other elements of the record, Professor Puntillo chooses to reference only two excerpts from Mr. McSpadden's testimony and then to use them to assert (inappropriately, in my view) that the Underwriters did not understand their responsibility in due diligence investigations. Furthermore, I note that the Non-Primary Lead Underwriters assembled due diligence teams consisting of numerous personnel from various business groups within their respective firms¹⁴ who in some cases themselves possessed a "reservoir of knowledge" based on their experience working on prior Barclays offerings.¹⁵
- The Underwriters followed the customary and SEC-endorsed practice of retaining as Underwriters' counsel for the Series 5 Offering a firm (Linklaters) possessing a reservoir of knowledge about Barclays and its securities, derived in part from its prior involvement in Barclays' securities offerings.¹⁶
- The Underwriters and Underwriters' Counsel conducted a number of meetings and other diligence sessions, again consistent with customary standards and practices in the context. For example, as discussed in detail in my Initial Report, on March 5, 2008, a "kick-off call" involving Barclays, Underwriters, and counsel took place.¹⁷ On March

¹¹ Barclays Bank PLC Form 424B5, Prospectus Supplement to Prospectus dated August 31, 2007, filed April 9, 2008, p. S-4.

¹² McSpadden Deposition, pp. 13:23–14:14.

¹³ *See generally, Id.*

¹⁴ McSpadden Deposition, Exhibit 15, UW_Barclays_0000001226-1243 (Project Rimu Working Party List).

¹⁵ *See*, Email to UBS Underwriting team for Barclays Series 4 Offering, UW_Barclays_000045151–2; *See also*, Email to UBS Underwriting team for Barclays Series 3 Offering, UW_Barclays_000044399.

¹⁶ McSpadden Deposition, p. 64:12–17; *see also*, Barclays Bank PLC Form 424B5, Prospectus Supplement to Prospectus dated July 1, 2002, filed June 2, 2005, p. S-24; Barclays Bank PLC Form 424B2, Prospectus Supplement to Prospectus dated September 21, 2005, filed April 21, 2006; p. S-32; Barclays Bank PLC Form 424B5, Prospectus Supplement to Prospectus dated August 31, 2007, filed April 9, 2008, p. S-32.

¹⁷ Email chain from Laura Drumm to Leigh Meyer et al., "RE: Project Rimu – Kick Off Call at 14:00 Today (LDN Time) – Dial in Details," March 5, 2008, UW_Barclays_000012728—30 with attachment "Project Rimu Organizational Conference Call Agenda," UW_Barclays_000012731.

17, 2008, an update call involving Barclays, underwriters, and counsel took place.¹⁸ On April 3, 2008, a business due diligence call¹⁹ and an accounting due diligence call²⁰ took place. Both due diligence calls included the Joint Lead Underwriters and the Senior Co-Manager.²¹ Prior to these calls, on March 20, 2008, Citi circulated accounting and business due diligence question lists to BCSL, the Issuer's counsel, and the Underwriters' counsel.²² On April 8, 2008, the Primary Lead Underwriter organized a financial due diligence call with Jonathan Britton of Barclays and the Joint Lead Underwriters, Underwriters' counsel, Issuer's counsel, and the Issuer.²³ On April 8, 2008 there was a pre-pricing bring-down call.²⁴ On April 11, 2008 there was a pre-settlement bring-down call.²⁵ On April 22, 2008, there was a "Greenshoe" pre-settlement bring-down call.²⁶

- In connection with the Series 5 Offering, several Underwriters made presentations to their respective internal approval committees, yet another element of process and execution that is consistent with customary standards and practices. For example, a "Full Screening" package dated April 3, 2008 was prepared for the Primary Lead Underwriter's Global FI Euro Commitment Committee (the "Commitment Committee Memo").²⁷ The Commitment Committee Memo contained multiple documents evidencing due diligence performed by the Primary Lead Underwriter, and the final approval memorandum contained background information regarding Barclays' business, risks, and summaries of credit rating agency views.²⁸ UBS similarly held an internal meeting to discuss the Series 5 Offering, and due diligence documents, rating agency reports, and other materials were reviewed at this meeting.²⁹ Additionally, Wachovia created a final draft memo for management approval, and RBC requested and received internal approval for participating in the Series 5 Offering.³⁰

¹⁸ Email from Bogdan Ciobanu to Ross Aucutt et al., "Project Rimu – Update Call Today @ 10:00 AM NY/14:00 London," March 17, 2008, UW_Barclays_000006297.

¹⁹ McSpadden Deposition, Exhibit 21, UW_Barclays_000012708–13.

²⁰ McSpadden Deposition, Exhibit 25, UW_Barclays_000053692–6.

²¹ Email chain from AJ Davidson to Robin Palmer, "RE: Project Rimu Accounting Due Diligence Thursday, April 3 @ 1:00 PM ET / 18:00 UK," UW_Barclays_000024836; *see also*, Email chain from Ander Michelena to Shyam Parekh et al., "RE: Barclays / Diamond," April 3, 2008, UW_Barclays_000039259–62; Email from Alex Smith to Shyam Parekh et al., "Barclays," April 2, 2008, UW_Barclays_000057466; Email chain from Dominic Trusted to Alexandra MacMahon, "Re: Project Rimu Accounting Due Diligence Thursday, April 3 @ 1:00 PM ET / 18:00 UK," April 3, 2008, UW_Barclays_000061975–6.

²² McSpadden Deposition, Exhibit 20, UW_Barclays_000018881–8.

²³ Lawrence Report at ¶ 134.

²⁴ *Id.* at ¶ 135.

²⁵ *Id.* at ¶ 136.

²⁶ *Id.* at ¶ 137.

²⁷ McSpadden Deposition, Exhibit 19, UW_Barclays_0000001244–437.

²⁸ Lawrence Report at ¶ 140.

²⁹ *Id.* at ¶ 142.

³⁰ *Id.* at ¶¶ 143–144.

- The Underwriters secured management certifications, legal opinions, and comfort letters, again consistent with customary standards and practices. For example, as part of the Series 5 Offering, Barclays’ management provided certifications to the Underwriters through the following four statements: (i) Barclays certified that the representations and warranties it made in the Underwriting Agreement were still valid, (ii) Barclays certified that all conditions were satisfied and all obligations were performed as required in the Underwriting Agreement, (iii) Barclays certified that it filed all of the appropriate documents with the SEC, and that all of the SEC requests had been met, and (iv) Barclays certified that, after carefully examining the Offering Materials, none of them contained any untrue statement or omitted material facts required or necessary to make the statements not misleading.³¹ Additionally, the Underwriters received “negative assurances” from both Linklaters, their counsel, and Sullivan & Cromwell LLP, Barclays’ counsel. The opinion letters provided by both sets of counsel noted the independent review of documents and discussions with Barclays’ management to provide such negative assurances.³² Finally, the Underwriters received comfort letters from PriceWaterhouseCoopers LLP (“PwC”), Barclays’ outside auditor, in which PwC communicated the results of its own due diligence on both audited and unaudited financial information, and provided negative assurances regarding Barclays’ financial performance and position.³³ (I discuss Professor Puntillo’s assertions regarding management certifications, lawyer certifications, and accountants’ letter in more detail later in this report.)

13. Each of these aspects of context and the Underwriters’ due diligence is a relevant consideration in forming an objective opinion regarding whether the Underwriters’ due diligence conformed to customary standards and practices, yet Professor Puntillo fails to address these matters or to offer any rebuttal or any authoritative or informative support for a differing view.

B. Professor Puntillo Fails to Properly Consider the Contextual Factors that Affect the Character of Due Diligence in a Shelf Takedown.

14. Professor Puntillo’s report fails to consider elements of context that are highly relevant to the issue of whether the due diligence conducted by the Underwriters was appropriate. Primary among these is that the Series 5 Offering was a shelf takedown by a well-known seasoned issuer and publicly reporting company. As I read Professor Puntillo’s report, he appears to approach the Underwriters’ due diligence as if it were a traditional offering of securities involving many months of current due diligence, as opposed to a shelf takedown involving only a matter of weeks and the investigatory practices appropriate in that context.³⁴ As recognized by the SEC and the other authoritative and informative sources cited in my Initial

³¹ *Id.* at ¶ 146.

³² *Id.* at ¶¶ 148–152.

³³ *Id.* at ¶¶ 162–163.

³⁴ *Id.* at ¶¶ 25–30.

Report, and which Professor Puntillo does not address, this distinction is a central consideration if assessing underwriter due diligence.

15. For example, the SEC has identified a number of non-exclusive contextual elements that should be considered in assessing an Underwriter's investigation. These factors include: "(i) type of issuer, (ii) type of security, (iii) type of person, (iv) the presence or absence of another relationship to the issuer, (v) reasonable reliance on officers, employees, and others whose duties should have given them knowledge of the particular facts (in light of the functions and responsibilities of the particular person with respect to the issue and filings), (vi) when the person is an underwriter, the type of underwriting arrangement, the role of the particular person as an underwriter and the availability of information with respect to the registrant; and (vii) whether, with respect to a fact or document incorporated by reference, the particular person had any responsibility for the fact or document at the time of the filing from which it was incorporated."³⁵

16. These sentiments regarding the central importance of context have also been embraced by the self-regulatory organization for underwriters (the Financial Industry Regulatory Authority or "FINRA") when it observed that the "type of due diligence investigation that is appropriate will vary."³⁶

17. Moreover, the SEC has recognized the relevance of a "reservoir of knowledge"³⁷ in connection with due diligence, including that possessed by an underwriter³⁸ or underwriter's counsel, and embracing the practice of designating a single law firm to act as designated underwriters' counsel in the context of shelf takedowns.³⁹

18. In failing to consider these elements of context, Professor Puntillo ignores an essential aspect of the record. In so doing, it is my respectful opinion that he reaches flawed and inappropriate conclusions regarding the due diligence conducted by the Underwriters.

C. An Additional Flaw of Professor Puntillo's Report is that it Focuses Heavily on his Objections to the Adequacy of Disclosures in the Offering Materials.

19. Professor Puntillo's report focuses heavily on his objections to the adequacy of disclosures in the Offering Materials as opposed to the specific elements of process and practice

³⁵ Securities Act Release No. 33-6335, p. 13.

³⁶ "Non-Conventional Investments: NASD Reminds Members of Obligations When Selling Non-Conventional Investments," FINRA Manual, Notice to Members 03-71, November 2003, pp. 765-770 at p. 767.

³⁷ "The Regulation of Securities Offerings," Securities Act Release No. 33-7606A, 1998 WL 792508 (Nov. 17, 1998) (proposed rules) [hereinafter, "Aircraft Carrier Release"], p. 173.

³⁸ See Securities Act Release No. 33-6335, p. 9; "Report of Task Force on Sellers' Due Diligence and Similar Defenses Under the Federal Securities Laws," American Bar Association, May 1993, p. 1204.

³⁹ Securities Act Release No. 33-6499, p. 6.

employed by the Underwriters in the conduct of their due diligence. In so doing, he obscures the standard applicable to the Underwriters' due diligence.⁴⁰

20. The issue before the respective due diligence experts is not the adequacy of the disclosures in the Offering Materials, but rather whether the due diligence conducted by the Underwriters was consistent with customary standards and practices.

21. To challenge the statutory adequacy of the contents of the disclosure documents is to attempt to answer a question that is not for a due diligence expert. The sole focus of the respective due diligence experts must be on the diligence that was actually conducted, and whether in the context presented, it was consistent with customary standards and practices applicable to that context. This is the matter I have addressed in my Initial Report and again in this report.

22. Instead of focusing on disclosures, then, I respectfully submit that Professor Puntillo should have considered the various elements of the due diligence investigation that the Underwriters actually conducted. In my opinion, such an analysis shows that the Underwriters followed the customary procedures and practices for conducting due diligence on a shelf offering by a well-known seasoned issuer. Prior to the Series 5 Offering, Barclays was a frequent comer to the markets and a publicly reporting company. Therefore, there was a substantial pre-existing reservoir of knowledge about the company (and the Series 5 Offering Materials incorporated by reference a number of the Company's prior public filings and the related information that was already in the public domain and available to investors). Importantly, the Underwriters possessed a reservoir of knowledge about the Issuer given their prior experience with Barclays' offerings, and the Primary Lead Underwriter took tangible steps to enhance its access to this reservoir of knowledge. These included staffing its team with capable personnel and following the customary and SEC endorsed practice of retaining as Underwriters' counsel for the Series 5 Offering a firm (Linklaters) possessing its own reservoir of knowledge about Barclays and its securities (derived in part from its prior involvement in Barclays' securities offerings). The Underwriters and Underwriters' Counsel conducted a number of meetings and other diligence

⁴⁰ The Conference Report accompanying the Securities Act notes that reliance, if "reasonable in the light of all circumstances, is a full discharge of his responsibilities." H.R. Rep. No. 152, 73d Cong., 1st Sess. 26 (1933) as cited in Arthur G Spence, "The Expanding Liability of Securities Underwriters: From Barchris to Globus," Duke Law Journal, Volume 1969, pp. 1191-1246 at p. 1211. The House committee report accompanying the bill declared that "[t]he duty of care to discover varies in its demands upon participants in security distribution [1] with the importance of their place in the scheme of distribution and [2] with the degree of protection that the public has a right to expect." H.R. REP. No. 85, 73d Cong., 1st Sess. 9 (1933) as cited in Arthur G Spence, "The Expanding Liability of Securities Underwriters: From Barchris to Globus," Duke Law Journal, Volume 1969, pp. 1191-1246 at p. 1201. The legislative history of the Act is also instructive in that the Conference Report accompanying the bill stated that an "insurer's" liability was specifically rejected for all section 11 parties other than the issuer. Securities Act of 1933 15 USC § 77k(b)(3) as cited in Arthur G Spence, "The Expanding Liability of Securities Underwriters: From Barchris to Globus," Duke Law Journal, Volume 1969, pp. 1191-1246 at p. 1194. Therefore, requiring underwriter's to guarantee the accuracy of each statement made in the offering documents would be contrary to the Congressional intent. The goal of the Act is to impose a "duty of competence as well as innocence," not an obligation to insure accuracy. H.R. REP. No. 85, 73d Cong., 1st Sess. 9 (1933) as cited in Arthur G Spence, "The Expanding Liability of Securities Underwriters: From Barchris to Globus," Duke Law Journal, Volume 1969, pp. 1191-1246 at p. 1201. Another relevant guideline is embodied within President Roosevelt's message to Congress on the bill: "The purpose of the legislation I suggest is to protect the public with the least possible interference to honest business." H.R. Rep. No. 152, 73d Cong., 1st Sess. 26 (1933) at 1-2 as cited in Arthur G Spence, "The Expanding Liability of Securities Underwriters: From Barchris to Globus," Duke Law Journal, Volume 1969, pp. 1191-1246 at p. 1191.

sessions, again consistent with customary standards and practices in the context. In connection with the Series 5 Offering, several Underwriters made presentations to their respective internal approval committees, yet another element of process and execution that is consistent with customary standards and practices. Finally, the Underwriters secured management certifications, legal opinions, and comfort letters, again consistent with customary standards and practices. All of these activities, which Professor Puntillo has ignored in his report, are appropriate considerations for a due diligence expert and lead me to conclude that the Underwriters conducted an investigation that was consistent with customary practices and standards and appropriate in the context.

D. Professor Puntillo's Assumption that a "Reasonable Man" Would Never Rely on Information Provided by Others is Another Flaw in his Report.

23. Professor Puntillo assumes that a "reasonable man" would never rely on information provided by others, and that all information learned by an underwriter or other person in the course of due diligence must be independently verified. I respectfully disagree with this assertion, joining the company of other scholars and practitioners in this regard.⁴¹

24. A frequent issue with respect to reliance in the context of due diligence is to what extent non-expertised information provided by others may be relied upon and to what extent it must be independently verified. This situation is especially common in the context of a shelf takedown and often arises in the contexts of: (i) management statements that are not inconsistent with the investigator's findings in the course of its independent investigation and (ii) unaudited financial information provided by the issuer's outside auditor and addressed in that firm's comfort letters.

25. In the course of a due diligence investigation, various parties rely on each other's information and investigations. Such reliance is typical and relevant to the question of whether the investigation itself was reasonable.⁴² It is important to note that reliance in a due diligence investigation may relate to either "expertised" or "non-expertised material," and with regards to both types of material, reliance can be appropriate. With respect to the reasonable investigation defense (that is, with respect to non-expertised material), the SEC has acknowledged that reasonable reliance is an appropriate consideration. Specifically, in the proposing and adopting releases for Rule 176, and in the Rule itself, the Commission expressly stated that diligencing parties may rely on persons "whose duties should have given them knowledge of the particular facts (in the light of the functions and responsibilities of the particular person with respect to the issuer and the filing)."⁴³ Thus, while the extent of such reliance is "a matter of judgment in each

⁴¹ See, e.g., Joseph K. Leahy, "The Irrepressible Myths of BarChris," Delaware Journal of Corporate Law 37, 2012, pp. 411-500 at pp. 417-418.

⁴² In *Worldcom*, the court held that an underwriter's reliance "may not be blind," and that "red flags" concerning the reliability of audited financial statements or unaudited financial information impose on the underwriter certain investigative obligations. ("Nevertheless, underwriters' reliance on audited financial statements may not be blind. Rather, where 'red flags' regarding the reliability of an audited financial statement emerge, mere reliance on an audit will not be sufficient to ward off liability."). Opinion and Order, *In Re Worldcom, Inc. Securities Litigation*, December 15, 2004, 346 F. Supp. 2d 628, 672.

⁴³ Securities Act Release No. 33-6335, pp. 4, 17.

case,”⁴⁴ its relevance to the issue of a reasonable investigation is clear. For example, in the case of financial and accounting information contained in the offering documents, the defendants may assert the reliance defense with respect to expertised material such as audited financials, but may also assert a reasonable investigation defense built in part on reasonable reliance on non-expertised unaudited financial information such as that addressed in an accountant’s comfort letter.⁴⁵

26. Importantly in this regard, one respected commentator, Professor Leahy, has expressed the view that there are instances in which a reasonable prudent person might not undertake independent verification.⁴⁶ Following is a brief extract from one of his law review articles:

“[A] little probing suggests that there are situations where the prudent person probably would not bother to independently verify a material statement of fact in the registration statement. Most likely, a prudent investor would not bother to perform her own investigation of the issuer’s statements if (1) there were good, objective reasons for the investor to trust the issuer’s statements in question; or (2) the issuer had effectively warranted the statements. Under such circumstances, a prudent investor probably would either simply (1) make sure that the issuer was objectively trustworthy; or (2) independently verify whether the issuer could likely make good on its express warranty.

These two conditions are present in many securities offerings today, because (1) underwriters often rely on an established relationship of trust with the issuer or the issuer’s past history of truthful disclosure to the market (if the issuer is a public company), in deciding whether to participate in an offering in the first place; and (2) an issuer effectively warrants its statements to investors because it is strictly liable under Section 11 for material misstatements or omissions in the registration statement and has no due diligence defense.

Thus, if we take the prudent person standard seriously, BarChris’s admonition is overbroad: sometimes independent verification is unnecessary, either because a prudent investor would trust the issuer or because (so long as the issuer reasonably seems to be solvent) the issuer insures the accuracy of the registration statement.

For this reason, contrary to BarChris’s teaching, in many securities offerings, an underwriter ought not be required to independently verify all of the issuer’s

⁴⁴ Motion and Order, *Escott et al. v. BarChris Construction Corporation et al.*, March 29, 1968, 283 F. Supp. 643, 697.

⁴⁵ Opinion and Order, *John Nuveen & Co. v. Sanders*, March 23, 1981, 619 F.2d 1222, 1228 (7th Cir.1980), *cert. denied*, 450 U.S. 1005, 101 S. Ct. 1719, 68 L.Ed.2d 210 (1981), Justice Powell observed that reliance on certified financial statements “is essential to the proper functioning of securities marketing, to the trading in securities, to the lending of money by banks and financial institutions, and to the reliance by stockholders on the reports of their corporations.” *Id.*, 450 U.S. 1005 at 1010, note 4. He also stated that “where breaches by accountants occur, it is the accountants themselves — not those who rely in good faith on their professional expertise — who are at fault and who should be held responsible.” *Id.*

⁴⁶ Joseph K. Leahy, “The Irrepressible Myths of BarChris,” *Delaware Journal of Corporate Law* 37, 2012, pp. 411–500 at pp. 417–418.

material statements in the registration statement, because a prudent person would not do so. Rather, for many of the issuer's statements, all that an underwriter should be required to do is: (1) confirm that the issuer is objectively trustworthy rather than just subjectively trusted (i.e., to confirm that its trust in the issuer is broadly shared by reasonable investors and investment professionals); or (2) make a reasonable, independent investigation of whether the issuer can satisfy a judgment under Section 11."⁴⁷ (internal citations omitted)

27. In this case, the record reflects that the Underwriters, as part of their investigation, relied on a number of parties whose duties and status they believed (appropriately in my opinion) put them in a position to merit reliance, especially in the context of a shelf takedown offering by an established issuer such as Barclays. For example, they relied to a degree which I believe was appropriate on PwC as Barclays' outside auditor, and the comfort letters it provided, regarding the accuracy and sufficiency of the financial and accounting information contained in the Offering Materials for the Series 5 Offering. As I noted in my Initial Report, PwC is one of world's leading professional services firms, with a presence in over 150 countries and staff of more than 208,000 people, and has been auditing Barclays for over 100 years. Moreover, PwC was involved in the due diligence of and provided the accounting needs related to the Series 1 through 4 transactions that occurred prior to the Series 5 Offering.⁴⁸ In those prior offerings, PwC issued comfort letters⁴⁹ and performed independent due diligence on the offering documents and Registration Statement, consistent with customary standards and practices. Given PwC's longstanding relationship with Barclays, its reservoir of knowledge, and its expertise as a leading auditing firm, the opinions and expertise it provided to the Underwriters for the Series 5 Offering was appropriate in this context.

28. Additionally, the Underwriters, as part of their investigation, relied to a degree on Linklaters, a firm with a global banking practice and experience with complex transactions, as Underwriters' counsel for the Series 5 Offering that was appropriate in this context. Specifically, Linklaters had been designated Underwriters' counsel in the Series 1 and Series 2 Offerings, providing them with a reservoir of knowledge. Moreover, Linklaters performed its own review and investigation and possessed the knowledge and expertise to work on drafting the Offering Materials and providing negative assurances in connection with this transaction.

29. In my opinion, Professor Puntillo errs when he suggests that an underwriter may not rely on some information if it is provided in the course of its due diligence investigation. While I

⁴⁷ *Id.*

⁴⁸ Lawrence Report at ¶ 158.

⁴⁹ See Letter from PricewaterhouseCoopers LLP to Barclays Capital Securities Limited et al., June 1, 2005, BARC-ADS-GL-00000008-13; Letter from PricewaterhouseCoopers LLP to Barclays Capital Securities Limited et al., June 8, 2005, BARC-ADS-GL-00000014-19; Letter from PricewaterhouseCoopers LLP to Barclays Capital Securities Limited et al., September 6, 2007, BARC-ADS-GL-00000059-65; Letter from PricewaterhouseCoopers LLP to Barclays Capital Securities Limited et al., September 6, 2007, BARC-ADS-GL-00000066-73; Letter from PricewaterhouseCoopers LLP to Barclays Capital Securities Limited et al., September 13, 2007, BARC-ADS-GL-00000074-81; Letter from PricewaterhouseCoopers LLP to Barclays Capital Securities Limited et al., November 30, 2007, BARC-ADS-GL-00000090-96; Letter from PricewaterhouseCoopers LLP to Barclays Capital Securities Limited et al., November 30, 2007, BARC-ADS-GL-00000097-103.

agree that such reliance must not be blind,⁵⁰ it is clear from the record that the Underwriters did not rely blindly. Thus it is my opinion that when the Underwriters relied on selected elements of information (such as that contained in management certifications, auditor comfort letters, and legal opinions) they did so in the context of more fulsome investigation. Therefore, their reliance was appropriate in the context presented here and consistent with customary standards and practices. Among the factors influencing my views are the nature of the issuer (a seasoned frequent comer to the public markets and an Exchange Act filing company), the nature of the transaction (a shelf takedown that was part of a series of offerings), the fact that those relied upon were persons or firms “whose duties should have given them knowledge of the particular facts (in the light of the functions and responsibilities of the particular person with respect to the issuer and the filing),”⁵¹ and the extent of the other activities undertaken by the Underwriters which are described throughout my reports.

E. Professor Puntillo Misstates My Views Regarding the Role of Management Certifications and Legal Opinions in the Conduct of Due Diligence, and Wrongly Diminishes Their Importance.

1. Management Certificates

30. Professor Puntillo asserts that the Underwriters’ reliance on the management certifications issued dated April 11 and April 22, 2008 was inappropriate. Professor Puntillo tries to support this assertion by relying on his own experience but offers no authoritative support. Specifically, he opines that management certifications do not obviate the need for reasonable investigation. In addition, he takes issue with the execution dates of the certifications.

31. While I agree with Professor Puntillo that management certifications do not by themselves take the place of a reasonable investigation, he fails to recognize that management certifications are an important part of an underwriter’s due diligence and contribute to the reasonableness of its investigation. Underwriters are not operators of the issuer’s business and do not take part in its management, nor in the context of shelf takedown do they conduct the kind of current due diligence associated with a traditional offering (thus the SEC’s recognition noted above that shelf offerings involve alternative investigative techniques). Thus, in shelf takedowns, it is customary and appropriate for underwriters to secure representations and certifications from the issuer’s management as part of their process to endeavor to confirm the accuracy of the statements made in the offering documents. By requiring individual officers to certify the accuracy of certain disclosures, the underwriters impose an enhanced level of formality and weight on the process, and further enhance the basis for their reliance on these statements. Thus, securing certifications from the issuer’s management team is part of the process of endeavoring to confirm the accuracy of statements made in the offering documents.

32. Professor Puntillo appears to make two types of assertions regarding the Underwriters’ reliance on management certifications, both of which are erroneous. First, he asserts that, given

⁵⁰ See FN 40.

⁵¹ Securities Act Release No. 33-6335, p. 16.

the purported “red flags” he has identified (which, as I explain below, I do not consider red flags and in any event which I believe were appropriately diligenced), it was unreasonable for me to have relied on the Underwriters’ receipt of management certifications as a component of my opinion on the appropriateness of the Underwriters’ due diligence.⁵² Second, he asserts that “custom and practice would be for...” a Certification to be issued prior to finalizing the Series 5 Offering, “...in order to provide the recipients with additional comfort that the disclosures in the Offering Documents are accurate and complete,” but the first certification was dated April 11, 2008, three days after the Series 5 Offering Materials.⁵³ I address each of these issues in turn.

33. *First*, as I previously stated, I agree with Professor Puntillo that a management certification is not expertised material and therefore does not diminish an underwriter’s requirement to perform a reasonable due diligence investigation. However, the record in this matter does not demonstrate that the Underwriters relied on these certifications to absolve themselves of their duties in this regard. Nor does the record reflect that they attempted to resolve red flags by relying on management certifications. (Indeed, as I describe below, it is my view that the “red flags” identified by Professor Puntillo are in fact not red flags, and that the Underwriters conducted an appropriate amount of due diligence related to asset writedowns, capital adequacy, and other issues that he has identified.) As I stated in my Initial Report, “Based on my review of the record, the Underwriters’ receipt of certifications from ‘officers, employees, and others whose duties should have given them knowledge of the particular facts...’ conformed to customary standards and practice and was appropriate in the context.”⁵⁴

34. With respect to the date of the management certifications, here it is Professor Puntillo who relies on form over substance (an assertion he makes with respect to some of my opinions). Professor Puntillo claims that, in his experience, and without citing any supporting sources, Barclays should have signed the management certifications on April 8, 2008 in order to provide the Underwriters with additional comfort. First, I note that the record demonstrates that the *close* of Series 5 Offering was April 11, 2008,⁵⁵ the date of the management certifications and the date customarily used for such certifications. Additionally, the close of Series 5 Offering “Greenshoe” was April 22, 2008,⁵⁶ the date of the later management certifications. Furthermore, I note that the Underwriting Agreement for the Series 5 Offering stated that management would provide the Underwriters with management certifications in connection with the Offering’s close.⁵⁷ Accordingly, prior to the date of the Offering Materials, it was clear that management certifications would be provided in connection with the close of the Offering, which was April 11, 2008. As noted above and supported by informative sources, it is customary for a management certification (sometimes called an Officer’s certificate) to be provided to

⁵² Puntillo Report, pp. 49—50.

⁵³ *Id.*, p. 50.

⁵⁴ Lawrence Report at ¶ 147.

⁵⁵ Barclays Bank PLC Form 424B5, Prospectus Supplement to Prospectus dated August 31, 2007, filed April 9, 2008, p. S-5.

⁵⁶ *Id.*, p. S-6.

⁵⁷ Barclays Bank PLC Underwriting Agreement, November 30, 2007, BARC-ADS-00000411–32 at 426 § (j).

underwriters as a condition of closing.⁵⁸ For all these reasons, I disagree with Professor Puntillo's conclusions about management certifications, because providing management certifications as of the date of the close of an offering is a highly customary practice and does not in any way affect the relevance of the certifications to the issue of the Underwriters' due diligence.

2. Legal Opinions

35. In much the same way, Professor Puntillo asserts that the Underwriters' reliance on the legal opinions issued by Linklaters, Clifford Chance, and Sullivan and Cromwell, each dated, April 11, 2008, was inappropriate. Specifically, he opines that legal opinions do not obviate the need for reasonable investigation. Professor Puntillo also takes issue with the specific dates of the opinions, as well as the nature of the negative assurances provided in these opinion letters. Once again, to support this assertion Professor Puntillo relies on his own experience and offers no authoritative support.

36. While I agree with Professor Puntillo that legal opinions that are not expertised material do not obviate a reasonable investigation, he fails to recognize that such legal opinions are an important part of an underwriter's due diligence and contribute to the reasonableness of the investigation, especially in the context of a shelf takedown. Insofar as Professor Puntillo is suggesting that the Underwriters' reliance on legal opinions is evidence of a poor due diligence process, I respectfully disagree. In my opinion, such reliance, if appropriate, instead demonstrates that the Underwriters were following longstanding and well accepted practices. The record reflects that the legal opinions the Underwriters received and relied upon were consistent with customary standards and practices, were an important part of the Underwriters' efforts to confirm the accuracy of the statements made in the Offering Materials, and were appropriate in the context.⁵⁹ Additionally, while Professor Puntillo appears to take issue with the "negative assurances" formulation used in these opinions, these formulations are fully consistent with customary standards and practices.

37. Professor Puntillo asserts that my reliance on legal opinions fails to provide a reasonable basis for my opinion that the Underwriters performed an appropriate due diligence investigation that was consistent with customary standards and practices.⁶⁰ However, in my view, Professor Puntillo misunderstands the role of legal opinion letters, and therefore, in my opinion, his conclusion is incorrect. Nothing in Professor Puntillo's report has caused me to alter my opinion.

38. Professor Puntillo makes several specific assertions in this regard, which I respond to below.

⁵⁸ "Underwriting Agreement Commentary" Practical Law Corporate & Securities, 2016, p. 21. This Note provides commentary on the typical provisions of an underwriting agreement for an SEC-registered public offering of securities. It describes the key sections, including representations and warranties, covenants, closing conditions, termination rights, and indemnification and contribution provisions.

⁵⁹ Email from Sarah Whittington to Kathryn McLeland et al., "Project Rimu - opinions," April 11, 2008, UW_Barclays_000011292-3.

⁶⁰ Puntillo Report, p. 51.

39. *First*, Professor Puntillo claims that the custom and practice is that legal opinions are, in his view, issued prior to, or coincident with, the filings of offering documents.⁶¹ As with the management certifications, I respectfully believe that Professor Puntillo relies on form over substance in this regard. Again, I note that the record demonstrates that the *close* of the Series 5 Offering was April 11, 2008,⁶² the date of the legal opinions in this case and the customary date of such opinions. Additionally, the close of the Series 5 Offering “Greenshoe” was April 22, 2008,⁶³ the date of legal opinions related to the Greenshoe. The same Underwriting Agreement I described above stated that legal counsel would provide the Underwriters with legal opinions prior to close.⁶⁴ Accordingly, the parties had executed an agreement dated prior to the date of the Offering Materials stating that receipt of legal opinions was a condition to closing. This contractual obligation, along with the fact that legal opinions that were identical in relevant substance had been received in connection with prior offerings, including offerings under the same Registration Statement as the Series 5 Offering, make clear that the Underwriters had a proper basis to expect that similar letters would be issued in connection with the Series 5 Offering.⁶⁵ In addition, the same informative source cited above notes that receiving such a legal opinion is typically part of closing conditions.⁶⁶ As with management certifications, as I described above, the fact that the legal opinions for the Series 5 Offering were dated April 11, 2008 does not affect the relevance of such opinions to the issue of the Underwriters’ due diligence.

40. *Second*, Professor Puntillo states that “a letter from counsel does not supersede an underwriter’s requirement to perform a reasonable due diligence investigation to have a reasonable basis to believe in the accuracy and completeness of the offering documents.”⁶⁷ I agree with Professor Puntillo that such a letter from counsel is not expertised material and therefore does not absolve an underwriter of its investigative duties, but that fact does not diminish their important role in an underwriter’s due diligence. The fact that the Underwriters retained designated Underwriters’ counsel that possessed a reservoir of knowledge regarding Barclays and its securities, and relied on Issuer’s counsel with a similar reservoir of knowledge, supports my opinion that the Underwriters’ due diligence investigation was consistent with customary standards and practices and appropriate in this context.⁶⁸ And, as I described in my

⁶¹ *Id.*, p. 51.

⁶² Barclays Bank PLC Form 424B5, Prospectus Supplement to Prospectus dated August 31, 2007, filed April 9, 2008, p. S-5

⁶³ *Id.*, p. S-6.

⁶⁴ Barclays PLC Underwriting Agreement dated November 30, 2007, BARC-ADS-00000411–432 at 425 §§ (b)(c)(d).

⁶⁵ See Letter from Sullivan & Cromwell LLP to Barclays Capital Securities Limited et al., June 8, 2005, BARC-ADS-GL-00000001–7; Letter from Sullivan & Cromwell LLP to Barclays Capital Securities Limited et al., April 25, 2006, BARC-ADS-GL-00000020–28; Letter from Sullivan & Cromwell LLP to Barclays Capital Securities Limited et al., September 13, 2007, BARC-ADS-GL-00000050–58; Letter from Sullivan & Cromwell LLP to Barclays Capital Securities Limited et al., December 7, 2007, BARC-ADS-GL-00000082–89.

⁶⁶ This Note provides commentary on the typical provisions of an underwriting agreement for an SEC-registered public offering of securities. It describes the key sections, including representations and warranties, covenants, closing conditions, termination rights, and indemnification and contribution provisions. “Underwriting Agreement Commentary,” Practical Law Corporate & Securities, March 6, 2016, p. 21.

⁶⁷ Puntillo Report, p. 52.

⁶⁸ Lawrence Report at ¶ 118.

Initial Report, the case record demonstrates that the Underwriters did, in fact, perform a substantial amount of work in connection with the Series 5 Offering. The record is diametrically at odds with Professor Puntillo's contention that receiving such legal opinion letters was the sum total of due diligence that was actually performed. Indeed, as I described in my Initial Report, important elements of the Underwriters' due diligence efforts included, among other things, the facts that they participated in the preparation of the Series 5 Offering Materials and other SEC filings incorporated by reference therein; their teams were appropriately led and staffed; and they conducted current due diligence into financial, accounting, operational, and other matters. Moreover, they both possessed and actively availed themselves of the reservoir of knowledge, including retaining as counsel a firm that had extensive prior dealing with Barclays.⁶⁹

41. *Third*, Professor Puntillo claims that disclaimer language in the legal opinion letters “undermines the reasonableness of the Underwriters’ reliance on the Lawyer Certifications.”⁷⁰ As a threshold matter, I note that the SEC, among others, has noted the relevance of such letters, especially when provided by firms with a reservoir of knowledge, to the determination of reasonableness in due diligence.⁷¹ It appears that Professor Puntillo takes issue with law firms’ “negative assurance,” wherein the firms state that nothing came to their attention that caused them to doubt the accuracy of the offering documents. Providing negative assurance is a longstanding practice and well-established formulation, as recognized by the SEC, among others.⁷² For example, Linklaters, counsel to the Underwriters, provided an opinion commensurate with longstanding standards and practices for opinion letters from counsel in public offerings of securities. The fact that these letters did not (as they never in my experience do) vouchsafe all of the disclosures, but rather noted that nothing had come to their attention to suggest that the Offering Materials contained material misstatements or omissions, is neither remarkable nor at odds with the typical formulation of such opinions. The fact that such opinions do not purport to guarantee every aspect of the disclosures being made diminishes neither the importance of the opinions and the law firm’s due diligence that stands behind them, nor the appropriateness of an underwriter’s reliance on them.

42. *Furthermore*, I respectfully note that I find Professor Puntillo’s criticism of the language contained in these letters curious. The precise formulation of the statements made in the legal opinions in this case is entirely consistent with the language used in similar offerings and has been for many decades. Over many decades of experience, I have never encountered a public offering legal opinion in which a law firm “guarantees” the accuracy of the disclosures made in the offering documents. Indeed, as the SEC had noted, the law was not intended to impose such a standard even on the underwriters. In any event, the fact that such letters do not (nor under customary standards and practices would not) guarantee the accuracy of the disclosures in the offering documents does not in any way minimize their importance to the court’s assessment of

⁶⁹ *Id.* at ¶¶ 110–138.

⁷⁰ Puntillo Report, p. 52.

⁷¹ *See, e.g.*, The Regulation of Securities Offerings, Release No. 33-7606A, Fed. Sec. L. Rep. (CCH), (Nov. 13, 1998 [63 FR 67174]) at 173–5.

⁷² *See, e.g.*, The Regulation of Securities Offerings, Release No. 33-7606A, Fed. Sec. L. Rep. (CCH), (Nov. 13, 1998 [63 FR 67174]) at 173–5.

reasonableness, nor does it undermine the reasonableness of the Underwriters' reliance on such letters, as Professor Puntillo claims, and he cites no support for that view.⁷³

43. *Moreover*, Professor Puntillo misses the point that letters in this form (independent of the specific language contained therein) are customary in the industry and have been for many decades. The fact that law firms issued letters of this type is an important and customary part of underwriter due diligence and a relevant consideration for the court or trier of fact. Indeed, the inclusion by the Underwriters of such letters as part of their investigative process is consistent with customary standards and practices. Unsurprisingly, law firms do not take lightly the issuance of opinions under their letterhead. Making such statements typically involves conducting a separate investigation (beyond that conducted by the underwriters) by the law firms themselves. Therefore, it is important to highlight that the formal statement of these opinions and representations by Linklaters, Sullivan & Cromwell, and Clifford Chance in connection with the Series 5 Offering required these firms to conduct their own, separate due diligence. Therefore, this separate level of due diligence further enhanced the overall due diligence investigation upon which the Underwriters appropriately relied, especially given that the reservoir of knowledge possessed by these firms and the fact that their duties in connection with the offering placed them in a position to have an informed opinion regarding these matters.

44. Furthermore, it is relevant to note that law firms have strong incentives to maintain their reputations by not providing comfort letters or legal opinions without conducting independent due diligence to confirm the accuracy of the statements they make.

45. *Finally*, Professor Puntillo claims that there was an inappropriate "circular reliance" because the lawyer certifications were based on discussions with the Underwriters and Barclays. He states that this purported circular reliance undermines the reasonableness of the Underwriters' reliance on the legal opinions in lieu, in his opinion, of performing a reasonable investigation.⁷⁴ First of all, I disagree with Professor Puntillo's assertion that the Underwriters' reliance on such letters was *in lieu* of a reasonable investigation. The record demonstrates that the Underwriters did perform a contextually appropriate due diligence in connection with the Series 5 Offering, and the receipt of legal opinions as part of that investigation was entirely appropriate. As I noted above, important elements of the Underwriters' due diligence efforts included, among other things, the facts that they participated in various due diligence calls and secured approvals from internal committees.⁷⁵ Moreover, Professor Puntillo ignores the fact that Underwriters' counsel having discussions with the Underwriters and Barclays was not only typical of a due diligence investigation, but also served to enhance the overall due diligence process. This is because the process of counsel having discussions with the Underwriters and the Issuer allowed the Underwriters to access the "reservoir of knowledge" possessed both by the Underwriters and the Issuer, and to compare that to their own findings in the course of their independent investigation, all as I described in detail in my Initial Report.

⁷³ Puntillo Report, p. 52.

⁷⁴ *Id.*, p. 52.

⁷⁵ Lawrence Report at ¶¶ 139–169.

F. Professor Puntillo Finds Red Flags where, in my Opinion, They do not Exist, Sometimes Adopting Novel Approaches in His Endeavor.

46. Professor Puntillo claims there are five alleged red flags that were not addressed by the Underwriters in a manner consistent with customary standards and practices in a shelf takedown by a well-known seasoned issuer. It is my opinion that whether or not one treats the five matters cited by Professor Puntillo in his report as red flags, the due diligence conducted by the Underwriters was consistent with customary standards and practices in the context of a shelf takedown by a well-known seasoned issuer. I discuss each of the five matters in more detail below, explaining what I believe are shortcomings in Professor Puntillo's analysis and why I reach a different conclusion.

1. Barclays' Comments on the April 3, 2008 Due Diligence Call

47. Professor Puntillo asserts that "[t]he Underwriters violated the custom and practice associated with underwriter due diligence by failing to reasonably investigate and resolve the red flags raised during the April 3, 2008 due diligence call by [Chris] Lucas' statements concerning poor market conditions in the first quarter of 2008 and the significant Write-Downs taken and expected to be taken by Barclays since year-end 2007."⁷⁶ I disagree with Professor Puntillo's conclusion for several reasons, which I describe below. In sum, my opinion remains that the Underwriters performed an appropriate due diligence investigation that conformed to customary standards and practices.

48. *First*, Professor Puntillo concludes that "it is customary under these circumstances for underwriters to request relevant internal financial information from the issuer, inspect internal financial reports, and perform their own independent analyses of financial and other data."⁷⁷ In my opinion, this assertion by Professor Puntillo is unsupported. Professor Puntillo provides no authoritative support or guidance for what he opines is "customary." Rather, without putting forth an authoritative or informative foundation for this view, he simply states that my conclusions are incorrect. But as I described both above and in my Initial Report, my conclusion that the Underwriters performed a due diligence investigation that was consistent with customary standards and practices is based on the relevant authoritative and scholarly literature and application of the case record.

49. *Second*, Professor Puntillo concludes, without offering sources of support, that the information provided during the business due diligence call should have caused the Underwriters to take different actions and perform additional investigation into Barclays' financial position. He further claims that if the Underwriters had taken different actions and performed additional investigations, they would have required Barclays to make additional disclosures in the Offering Materials. However, in my opinion, his conclusion is hypothetical and is based on hindsight. Professor Puntillo has presented no evidence, and I have seen none, that suggest to me that the Underwriters should have taken different actions in their due diligence investigation or insist on

⁷⁶ Puntillo Report, p. 15.

⁷⁷ *Id.*, p. 13.

different disclosures. Moreover, as I discuss earlier in this report, the issue for a due diligence expert is *not* whether the Offering Materials contained any material misstatements or omissions in violation of Section 11 of the Securities Act of 1933. Instead, the sole focus of the respective due diligence experts must be on the diligence that was actually conducted, and whether in context, it was consistent with customary standards and practices applicable to that context. This is the matter I have addressed in my Initial Report and again in this report. In my opinion, the due diligence performed by the Underwriters was appropriate in the context.

50. *Third*, Professor Puntillo ignores the fact that the Underwriters appropriately relied on Barclays' outside auditors, PwC, and that PwC had reviewed information regarding Barclays' performance in early 2008. Indeed, PwC was involved throughout the Series 5 Offering due diligence effort, including participation in the accounting due diligence call on April 3, 2008 with Barclays and the Underwriters. During that call, the parties discussed writedowns and other financial metrics. I am not aware that PwC advised that any additional disclosures needed to be included in the Offering Materials. Moreover, as I discussed above, PwC provided negative assurances in connection with the Offering Materials for the Series 5 Offering, which is a customary element of due diligence in an offering of this type. Moreover, PwC's duties placed it in a position to be informed about these matters.

51. *Fourth*, Professor Puntillo tries to support his opinion that the Underwriters' due diligence efforts did not comport with customary standards or practices by noting that because he found no evidence of follow-up to the due diligence calls on April 3, 2008. However, Professor Puntillo is incorrect, because his conclusion is inconsistent with the record. In fact, as I described in my Initial Report,⁷⁸ the Underwriters did conduct follow-up investigation and due diligence subsequent to the April 3, 2008 calls. Specifically, as I discussed in my Initial Report, on April 8, 2008, the Primary Lead Underwriter organized a financial due diligence call with Jonathan Britton of Barclays and the Joint Lead Underwriters, Underwriters' counsel, Issuer's counsel, and the Issuer. The topics for the call included any material updates since the prior due diligence calls. The Underwriters asked about any post-balance sheet date events that had not already been disclosed in the Form 20-F, and whether there were acquisitions or disposals which were planned but not yet disclosed. Jonathan Britton responded to inquiries about Barclays' financial position and condition since December 31, 2007.

52. *Furthermore*, I note that Professor Puntillo has ignored certain statements that Mr. Lucas made on the April 3, 2008 call. For example, Mr. Lucas noted that in terms of trading performance for January and February, it was "very, very close to our run rate" and, with respect to Barclays' plan, January and February performance "represented a good start to the year."⁷⁹ Regarding March 2008, Mr. Lucas stated that "the group will be profitable in March on standalone numbers" and that while conditions in March certainly impacted Barclays' financial performance, Barclays had "a good first half of March, [and the] second half of March was up."⁸⁰

⁷⁸ Lawrence Report at ¶ 134.

⁷⁹ McSpadden Deposition, Exhibit 23, p. 22:5-17.

⁸⁰ *Id.*, pp. 22:18-23:19.

53. The Underwriters also asked questions about any changes or expected changes in impairments and write-offs since the end of 2007. The call ended with the Underwriters asking Barclays to “confirm that the prospectus supplement does not contain a material misstatement or omit to state a material fact necessary to make statements in the prospectus not misleading.” In addition to the due diligence call with Jonathan Britton, there was a pre-pricing bring-down call on April 8, 2008, a pre-settlement bring-down call on April 11, 2008, and a “Greenshoe” pre-settlement bring-down call on April 22, 2008.⁸¹

54. *Finally*, I note that during this time period prior to the close of the Series 5 Offering, the Underwriters continued their due diligence efforts. For example, the Underwriters prepared internal presentations and reviewed drafts of the Offering Materials, among other things. Specifically, I note that Morgan Stanley created discussion materials on April 4, 2008 for an internal meeting to discuss Barclays.⁸² Furthermore, the Underwriters reviewed and edited the Prospectus Supplement.⁸³ Combined with the other elements of the Underwriters’ due diligence investigation, these additional activities demonstrate the Underwriters’ ongoing due diligence efforts and investigation into changes, updates, or other information that could be important in the context of the Series 5 Offering.

2. Internal Reporting and Analysis of Credit Market Exposures

55. Professor Puntillo asserts that detailed disclosures related to monoline insurers, and credit market exposures, were not provided to investors in the Series 5 Offering Materials. Specifically, he claims that “[b]ased on the combination of accumulated knowledge that the Underwriters should have accrued regarding Barclays’ business as well as current and cumulative due diligence that the Underwriters should have reasonably performed in connection with the Series 5 Offering, the Underwriters knew or should have known that (i) there was a material discrepancy between the manner in which Barclays’ Management and Board internally reported and analyzed information regarding monolines and other credit market exposures and the way that such credit market exposures were disclosed externally in the Offering Documents; (ii) Barclays’ reporting and analyses of its monoline and other credit market exposures in the Offering Documents was inconsistent with the manner in which it presented these exposures to its regulators; and (iii) prior to the Series 5 Offering, Barclays made important selective disclosures based in part on the requests of sophisticated potential investors regarding, among other things, notional exposure to monoline insurers and interim 2008 exposures to other credit market instruments, and importantly, such detailed disclosures were not made to investors in the

⁸¹ Lawrence Report at ¶¶ 135–137.

⁸² Email from Renato Rodrigues to Shyam Parekh et al., “Barclays,” April 4, 2008, UW_Barclays_000057468 with attachment UW_Barclays_000057469.

⁸³ *See, e.g.*, Email chain from Alastair Rose-Smith to Peter Siekel, “FW: Project Rimu: 20-F Comments & Responses,” April 4, 2008, UW_Barclays_000060914–5; *see also*, Email chain from Bogdan Ciobanu to Emily M. Densley-Faber and Sarah Whittington, “RE: Rimu – Prospectus Supplement,” April 7, 2008, UW_Barclays_000070355–60 at 56–59, Email from Jeff Lynn to Jonathan Stone et al., “Rimu – Prospectus Supplement,” April 5, 2008, UW_Barclays_000061743–4; *see also*, Email chain from Jeff A. Lynn to Siddharth Prasad et al., “RE: Rimu – Prospectus Supplement,” April 6, 2008, UW_Barclays_000065038–40 at 38–39; Email from Laura Drumm to Jonathan Stone et al., “Rimu Go-No Go Call – Monday 07 April (10:00 NY / 15:00 London),” April 4, 2008, UW_Barclays_000006463–4; Email from Sarah Whittington to Bogdan Ciobanu et al., “Project Rimu – Deal Doc distribution,” April 3, 2008, UW_Barclays_000036138–9; Email chain from Laura Drumm to Sarah Whittington et al., “RE: Project Rimu – Deal Doc distribution,” April 4, 2008, UW_Barclays_000018823–5.

Series 5 Offering via disclosure in the Offering Documents.”⁸⁴ In my view, there are a number of flaws in Professor Puntillo’s conclusions.

56. *First*, Professor Puntillo’s conclusion appears to be based solely upon his experience, rather than the case record or reference to longstanding customary standards and practices. For example, he states that “[i]n my experience, it is customary for underwriters, when considering due diligence procedures in connection with a securities offering, to understand the manner in which management analyzes and evaluates key components of its business and then design the due diligence procedures accordingly.”⁸⁵ However, as I explained in my Initial Report, an abundance of authoritative and informative sources agree that there is no “one size fits all” approach to determining the reasonableness of a due diligence investigation and that different contexts (such as a shelf takedown by a well-known seasoned issuer who is a frequent comer to the public markets and an Exchange Act reporter vs. an initial public offering by new entrant, for example) involve different investigative processes and practices. The fact that Barclays may have utilized, for internal purposes, certain financial information on a notional (or gross) basis, while communicating to the market the same information on a net basis is not a red flag because there is no “one size fits all” approach to communicating information. Nor is it evidence that the Underwriters failed to perform an appropriate due diligence investigation. In my opinion, the due diligence investigation performed by the Underwriters in this case was appropriate and consistent with customary standards and practices. In my opinion, the mere fact that different communication methodologies are used in one context and not in another is not a red flag that the disclosures in the Offering Materials contain a material misstatement or omission.

57. *Moreover*, it is my respectful opinion that Professor Puntillo’s analysis is further flawed because he assumes that information that was “readily available” to Barclays internally (e.g., gross or notional credit market exposure) should have been disclosed externally to investors in the Offering Materials without acknowledging or considering that businesses regularly utilize information for internal purposes that is not necessarily disclosed to external audiences. Indeed, as authoritative sources have made clear, “managerial” accounting involves financial information typically used by those inside a firm (e.g., directors, employees, etc.), while “financial” accounting involves financial information typically used by those outside a firm (e.g., investors, analysts, etc.).⁸⁶ Therefore, Professor Puntillo’s conclusions are inconsistent with authoritative sources and my experiences regarding typical business practices.

58. Professor Puntillo points to various discussions Barclays had both internally and with regulators regarding Barclays’ “gross” and “net” credit market exposures, exposure to monoline insurers, and risks related to money market funds.⁸⁷ However, he fails to point to any evidence that the Underwriters were aware of any such discussions or should have become aware of them in the course of their investigation of a shelf takedown. Instead, he refers only to his

⁸⁴ Puntillo Report, p. 18.

⁸⁵ *Id.*, pp. 17–18.

⁸⁶ *See, e.g.*, Michael W. Maher et al., *Managerial Accounting: An Introduction to Concepts, Methods, and Uses*, (Ft. Worth: The Dryden Press, 1997), p. 4.

⁸⁷ Puntillo Report, pp. 18–24.

“experience,” which allows him to conclude that it is customary for underwriters to understand the manner in which management analyzes and evaluates key components of its business. In my view, this is an inappropriate basis from which to draw the conclusion that the Underwriters were aware, or should have been aware, of such discussions. Indeed, authoritative sources acknowledge that there are many elements of information in the possession of an issuer and that with respect to that information, the underwriters rely on the issuer to decide which elements of that expansive pool of information merit disclosure to the underwriters or rely on the issuer’s public filings.⁸⁸ This is not to say that underwriters can, in all cases, simply trust that they have been provided with all of the information that should be provided. Nor can underwriters blindly assume that all of the information that they have been provided is accurate, because underwriters do have an obligation to reasonably investigate and resolve red flags. But in the instant matter, as I described in my Initial Report and reiterate herein, the record demonstrates that there was extensive due diligence performed by the Underwriters on the issues of writedowns and monoline insurers.

59. Professor Puntillo also asserts that the Underwriters should have performed an investigation that would have led them to discover that Barclays was contemplating raising funds from strategic investors who were receiving information that other investors should have received. In my respectful opinion, there are a number of flaws in Professor Puntillo’s conclusions. For example, I am aware of no requirement that different investors in different offering contexts must receive the same information or information presented in the same fashion. Indeed, as I noted in my Initial Report, different situational contexts (e.g., those involving different offerings and different investors) can imply different types of due diligence. Moreover, Professor Puntillo’s conclusion on this point is based on a number of assumptions that I do not believe are merited. For example, he begins by assuming that the Underwriters should have “connected the dots” and investigated Barclays’ efforts to raise capital.⁸⁹ He further asserts that this assumed requirement would have led the Underwriters to discover that Barclays was in discussions with “Asian strategic investors.”⁹⁰ Next, he asserts that the “Underwriters should have understood that these new investors would likely be performing their own due diligence on Barclays.”⁹¹ Thereafter, based only on his experience, Professor Puntillo concludes that the

⁸⁸ See, e.g., Joseph K. Leahy, “The Irrepressible Myths of BarChris”, Delaware Journal of Corporate Law 37, 2012, 2012, pp. 411–500 at pp. 417–418. (“...underwriters often rely on an established relationship of trust with the issuer or the issuer’s past history of truthful disclosure to the market (if the issuer is a public company)... Most likely, a prudent investor would not bother to perform her own investigation of the issuer’s statements if (1) there were good, objective reasons for the investor to trust the issuer’s statements in question; or (2) the issuer had effectively warranted the statements. Under such circumstances, a prudent investor probably would either simply (1) make sure that the issuer was objectively trustworthy; or (2) independently verify whether the issuer could likely make good on its express warranty.... [F]or many of the issuer’s statements, all that an underwriter should be required to do is: (1) confirm that the issuer is objectively trustworthy rather than just subjectively trusted (i.e., to confirm that its trust in the issuer is broadly shared by reasonable investors and investment professionals); or (2) make a reasonable, independent investigation of whether the issuer can satisfy a judgment under Section 11.”); Samuel L. Hayes III, “The Impact of Recombining Commercial and Investment Banking,” Brooklyn Law Review 70, no. 1, 2004, pp. 39–51 at pp. 45–46 (noting that, for shelf registered offerings, “[u]nderwriters might not undertake due diligence, instead relying completely on the issuers’ periodic SEC filings”); William K. Sjostrom, Jr., “The Due Diligence Defense under Section 11 of the Securities Act of 1933,” Brandeis Law Journal 44, 2006, pp. 1–62 at p. 15 (noting that, for a shelf takedown, typically an issuer “holds a due diligence conference call with the underwriters” that will “simply update them as to the . . . latest developments”).

⁸⁹ Puntillo Report, p. 25.

⁹⁰ *Id.*, p. 25.

⁹¹ *Id.*, p. 25.

information these strategic investors would have focused on were items that they considered material. After making these various leaps, Professor Puntillo concludes that Barclays' "selective disclosure" that was not included in the Offering Materials for the Series 5 Offering "should have been a red flag to the Underwriters."⁹² I respectfully believe that Professor Puntillo's method of building assumption upon assumption regarding what different sets of investors in different offerings may or may not have considered material, and using what he believes those assumptions suggest regarding the nature of the Underwriters' due diligence in the Series 5 Offering, leads to faulty conclusions and does not provide a sound basis for concluding that disclosure to certain investors of information that was not included in the Offering Materials constituted a "red flag" to the Underwriters that the Series 5 Offering Materials contained material misstatements or omissions. Further, it should again be noted that the issue before Professor Puntillo is the actual due diligence conducted by the Underwriters in light of the disclosures actually made, not the legal adequacy of those disclosures. My opinion remains that the due diligence investigation performed by the Underwriters was consistent with customary standards and practices in light of those disclosures, and appropriate in the context.

60. *Finally*, I respectfully disagree with Professor Puntillo's characterization of *differences* in the way that information was reported as *discrepancies*. Professor Puntillo presents no support for his view that the information Barclays included in the Offering Materials was incorrect – or incomplete – only that it was different. Finally, as I noted earlier in this report, the issue before the respective due diligence experts is not whether the Offering Material disclosures met the statutory standard, but rather whether the due diligence process and its execution by the Underwriters was consistent with customary standards and practices.

3. Capital Adequacy Risks

61. Professor Puntillo concludes that I have "ignore[d] the evidence in the case record that indicates the Underwriters failed to make even a cursory investigation into the red flag of the potential consequences of Barclays meeting the FSA's mandated 5.25% Equity Ratio by year-end 2008....[and] that the Underwriters violated customary practices by failing to request, inspect, and analyze communications with regulators, Board materials, capital plans, and other information that was readily available prior to the date of the Offering Documents."⁹³ In my respectful view, there are several flaws with Professor Puntillo's conclusion which I describe in detail below. For the reasons set forth below, I disagree with Professor Puntillo's conclusion and, as stated in my Initial Report and reiterate here, it is my opinion that the Underwriters performed an appropriate due diligence investigation that was consistent with customary standards and practices.

62. *First*, in my opinion, Professor Puntillo once again fails to provide support for his view of the standard of care, and custom and practice for underwriter due diligence. For example, Professor Puntillo asserts that customary underwriter due diligence in the context of a shelf takedown by a well-known seasoned issuer who is a frequent comer to the public markets and an Exchange Act reporting company would have entailed requesting regulatory communications,

⁹² *Id.*, p. 26.

⁹³ *Id.*, p. 40

capital plans, and other information. But he has provided no support for his assertion, and I am aware of none. In fact, as I noted previously, informative sources have stated that, in shelf takedowns, underwriters may rely “completely” on the issuer’s periodic filings or may hold a due diligence conference call that will update the underwriters on the issuer’s latest developments.⁹⁴ As I described in my Initial Report, the evidence makes clear that the Underwriters did much more than simply review periodic filings and have one conference call regarding Barclays’ latest developments.

63. *Second*, Professor Puntillo notes that Citi acknowledged in a Commitment Committee Memorandum Barclays’ capital adequacy as a potential risk factor and projected in an attached research report an Equity Ratio of 5.1%.⁹⁵ It appears that Professor Puntillo therefore concludes that the Equity Ratio was a red flag. My view is that Citi’s review and consideration of this document (which included Barclays’ Equity Ratio) was consistent with customary standards and practices.

64. Professor Puntillo does not consider the fact that Underwriters other than Citi also examined Barclays’ Equity Ratio. For example, Wachovia prepared a commitment committee memorandum that discussed Barclays’ capital adequacy.⁹⁶ UBS also prepared a commitment committee memorandum that reviewed Barclays’ equity ratio.⁹⁷

65. I also note that the Underwriters reviewed Moody’s, Standard and Poor’s and Fitch reports that discussed Barclays’ Equity Ratio.⁹⁸ All of these activities demonstrate that the Underwriters were actively considering the issue of capital adequacy, in contrast to Professor Puntillo’s assertion that they failed to make even a “cursory investigation” into the issue.

66. *Third*, I respectfully believe that Professor Puntillo inappropriately assumes that there is only one possible outcome from any aspect of an underwriter’s due diligence investigation—additional or more detailed disclosures. In other words, Professor Puntillo concludes that because there were no disclosures that he deems (again, in my opinion exceeding the scope of due diligence expertise) necessary, therefore the Underwriters’ due diligence investigation must

⁹⁴ See, Samuel L. Hayes III, “The Impact of Recombining Commercial and Investment Banking,” *Brooklyn Law Review* 70, no. 1, 2004, pp. 39–51 at pp. 45–46 (noting that, for shelf registered offerings, “[u]nderwriters might not undertake due diligence, instead relying completely on the issuers’ periodic SEC filings”); William K. Sjostrom, Jr., “The Due Diligence Defense under Section 11 of the Securities Act of 1933,” *Brandeis Law Journal* 44, 2006, pp. 1–62 at p. 15 (noting that, for a shelf takedown, typically an issuer “holds a due diligence conference call with the underwriters” that will “simply update them as to the . . . latest developments”).

⁹⁵ Puntillo Report, pp. 33–34.

⁹⁶ Email from Ken Greer to Kristina Clark et al., “First draft of the Company Overview, Investment Considerations, and Fin. Highlights & Key Transaction Strengths for Project Farleyside,” April 4, 2008, UW_Barclays_000005124–5.

⁹⁷ Email chain from Sophia Vonta to Jason Norton et al., “FW: Barclays DCM NBC Meeting, TODAY Mon 7 Apr 08 @ 9.15 (NY) / 14.15 (Ldn),” April 7, 2008, UW_Barclays_000045721–2; “UBS Capital Markets: New Business Committee(DCMNBC) Request,” April 4, 2008, UW_Barclays_000045723–26.

⁹⁸ Email from Lisa Grennon to Paul Mottola, “FW: Barclays,” November 27, 2007, UW_Barclays_000029205–6; see also, “Credit Opinion: Barclays Bank PLC,” Moody’s Investors Service, October 23, 2007, UW_Barclays_000029250–7 at 6; “Barclays Bank PLC Ratings Unaffected By Writedowns,” Standard & Poor’s, November 16, 2007, UW_Barclays_000029258–60; “Barclays Bank PLC,” Standard & Poor’s, November 12, 2007, UW_Barclays_000029261–87; “Barclays Bank PLC,” Fitch Ratings, October 10, 2007, UW_Barclays_000029289–98.

have been lacking. However, he fails to acknowledge that the due diligence investigation in this matter could have had a number of different potential outcomes, including that in the case of this well-known seasoned issuer in the context of shelf takedown, the disclosures made were appropriate. He does this despite noting that “[r]easonable 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.”⁹⁹ The fact that the Underwriters reached a different conclusion than Professor Puntillo may have reached regarding the adequacy of disclosure tells us nothing about the diligence conducted. For that, one must consult the record and consider the investigative activities I note both in this report and my Initial Report.

67. *Finally*, Professor Puntillo refers to the fact that Barclays raised equity capital three months after the close of the Series 5 Offering as evidence that the Underwriters knew or should have known at the time of the Series 5 Offering that Barclays might raise additional capital in the future.¹⁰⁰ By doing so, Professor Puntillo is using *ex post* information (he references nothing in the record that demonstrates that the Underwriters were aware or had reason to believe that Barclays had planned this subsequent offering at that time) to support his conclusion which, as I described in my Initial Report, is an inappropriate methodology and an indication of hindsight bias in his analysis. In any event, in my experience raising capital is an ordinary part of business operations and Professor Puntillo does not point to anything in the Series 5 Offering Materials that was allegedly misleading in light of subsequent capital raises. Thus, this factor is irrelevant to the matter at hand.

4. Exceptions in PwC Comfort Letters

68. Professor Puntillo asserts that the Underwriters’ reliance on the comfort letter issued on April 8, 2008 by Barclays’ independent auditor, PwC, was inappropriate. Specifically, he asserts that because PwC noted that a completed financial package was not available for the period from March 1, 2008 through the cut-off date for PwC’s review of April 3, 2008, and that PwC’s procedures were therefore limited to Management inquiries for this period, the reliance on the comfort letter was inappropriate and a red flag. Further, Professor Puntillo makes the assertion that the Underwriters should have recognized the “decreases in first quarter 2008 profit before tax identified by PwC in the Comfort Letter as a red flag and investigated and resolved it accordingly.”¹⁰¹

69. I respectfully find several shortcomings in Professor Puntillo’s assertion.

70. *First*, Professor Puntillo overlooks the fact that the Underwriters’ reliance on PwC as Barclays’ independent auditor was consistent with customary standards and practices. As I described in my Initial Report, underwriters are not licensed accountants and do not audit the financial statements of an issuer. Underwriters rely on both audited financial statements and the statements and procedures followed by auditors and others with respect to unaudited financial

⁹⁹ Puntillo Report, p. 9. (Emphasis added.)

¹⁰⁰ *Id.*, pp. 38–39.

¹⁰¹ *Id.*, p. 42

information. Therefore, they understandably rely on the issuer's auditors to confirm the financial and accounting information contained in the offering documents, especially where the auditor is a major global firm with established credentials and expertise. This is a longstanding and widely accepted practice, and properly reflects the roles and expertise of the parties. As part of the due diligence process, underwriters typically request and receive one or more "comfort letters" from the issuer's independent auditor. Underwriters customarily rely on this information and these procedures as part of their efforts to confirm the accuracy of the statements made in the offering documents.

71. Professor Puntillo states that the purpose of the comfort letter is to provide, among other things, an "added layer of financial and accounting due diligence performed by the auditors."¹⁰² In my opinion, this is an incorrect view of the role of comfort letters. Instead, comfort letters are an integral part of the overall due diligence process, and involve separate due diligence performed by the auditors. This separate level of due diligence undertaken by the auditors on both audited and unaudited financial information and their compliance with GAAP, IFRS, SEC, and PCAOB procedures enhances the overall investigation and supports the Underwriters' appropriate reliance on the accountants.¹⁰³

72. Comfort letters are part of the underwriters' financial and accounting due diligence and enhance the basis for their reliance on the financial information included in the offering documents.¹⁰⁴

73. In the comfort letter issued in connection with the Series 5 Offering, PwC stated that it had audited the "consolidated financial statements...incorporated by reference in the Registration Statement" and that these financial statements "comply as to form in all material respects with the applicable accounting requirements."¹⁰⁵ Further, the comfort letter stated that PwC had "read the unaudited consolidated financial data of the [Barclays] Group for January and February of both 2008 and 2007 furnished [to PwC] by the Group."¹⁰⁶ PwC also noted that it had inquired with officials of Barclays Group who had financial and accounting authority regarding the company's financial position at April 3, 2008, and its performance up to February 29, 2008.¹⁰⁷ With respect to Barclays as the issuer, PwC reviewed unaudited consolidated financial data as of the two months ended February 29, 2008 and February 28, 2007, and the amounts contained therein agreed with the Issuer's accounting records as of February 29, 2008 and February 28, 2007.¹⁰⁸ Additionally, the comfort letter noted that while no financial information was available subsequent to February 28, 2008, PwC spoke with finance and accounting officials of Barclays to inquire about certain financial balances as of April 3, 2008 and confirmed that nothing came

¹⁰² *Id.*, p. 41.

¹⁰³ 15 USC § 77k(b)(3)(B) and (C).

¹⁰⁴ See Valerie Ford Jacob and Stephanie J. Goldstein, *Conducting Due Diligence in a Securities Offering*, (New York: Practising Law Institute, 2011), § 7.06.

¹⁰⁵ McSpadden Deposition, Exhibit 31, UW_Barclays_000017071-155 at 76.

¹⁰⁶ *Id.* at 76-77.

¹⁰⁷ *Id.* at 77.

¹⁰⁸ *Id.* at 77.

to its attention that caused PwC to believe that there were any issues with the financial balances and information disclosed in the Registration Statement.¹⁰⁹

74. The formal statement of these opinions required the auditing firm issuing them to undertake its own separate due diligence and typically to go through its own internal approval protocols, much as the law firms mentioned above do. These practices are an important part of customary underwriter due diligence into the audited and unaudited financial information included in the offering documents and provide a means for underwriters to achieve a level of comfort with those statements and the reliance they place on them.

75. Based on this work, PwC provided negative assurances to Barclays and the Underwriters regarding Barclays' financial performance and position.¹¹⁰ I note that in addition to its initial comfort letter, PwC also provided a bring-down comfort letter, which further supports its due diligence efforts for the Series 5 Offering.¹¹¹

76. *Second*, as discussed in detail in my Initial Report, the Underwriters engaged in various other due diligence activities beyond simply relying on comfort letters. For example, Citi organized a financial due diligence call with Jonathan Britton of Barclays and the Joint Lead Underwriters, Underwriters' counsel, Issuer's counsel, and the Issuer on April 8, 2008. The topics for the call included any material updates since the prior due diligence calls. Specifically, Jonathan Britton responded to inquiries about Barclays' financial position and condition after December 31, 2007. The Underwriters asked questions about any changes or expected changes in impairments and writedowns since the end of 2007. The call ended with the Underwriters asking Barclays to "confirm that the prospectus supplement does not contain a material misstatement or omit to state a material fact necessary to make statements in the prospectus not misleading."¹¹² Therefore, in addition to relying on the expertise and reservoir of knowledge of Barclays' auditors, the Underwriters investigated Barclays' financial position and condition after December 31, 2007.

77. *Third*, I have found nothing in the record to suggest that PwC raised any concerns regarding Barclays' decline in profits in the first two months of 2008 as compared to 2007 or considered it a red flag of material misstatements or omissions in the Offering Materials for the Series 5 Offering. In fact, as discussed in my Initial Report, there were extensive discussions between Linklaters, the Underwriters, and PwC regarding the work that PwC was doing on the Offering Materials.¹¹³ Specifically, David Ludwick from Linklaters put together a list of

¹⁰⁹ *Id.* at 78.

¹¹⁰ *Id.*

¹¹¹ McSpadden Deposition, Exhibit 35, UW_Barclays_000016948-7040 at 6954.

¹¹² Lawrence Report at ¶ 134.

¹¹³ Email chain from Alastair Rose-Smith to Peter Siekel, "FW: Project Rimu: 20-F Comments & Responses," April 4, 2008, UW_Barclays_000060914-5 with attachment "20-F Comments & Responses.xls," undated, UW_Barclays_000060916; see also, Email from Richard Johnson to Jack McSpadden and David Ludwick, "Rimu Financial DD," April 8, 2008, UW_Barclays_000018137; Email chain from Richard Doyle to Matthew Pass et al., "FW: Rimu - Draft US Comfort Letter," April 9, 2008, UW_Barclays_000050415_001-4; Email from Sarah Whittington to Kathryn McLeland et al., "Project Rimu - LL Comments on Comfort Letter," April 1, 2008, UW_Barclays_000035542; Email chain from David Ludwick to Drew Haigh et al., "RE: Line Item Comfort for Rimu and US Shelf," April 6, 2008, UW_Barclays_000053573-6. See also, Initial Report, ¶120.

questions to ask Jonathan Britton or Chris Lucas regarding what Barclays knew from the comfort letter as well as the stub period.¹¹⁴ Additionally, Linklaters provided PwC with a list of specific comments from which they asked PwC to address.¹¹⁵ As such, I find no support for Professor Puntillo's contention that such a decline should have constituted a red flag. In effect, Professor Puntillo replaces the judgment of PwC and the Underwriters with his own. In my view, the fact that PwC did not identify the decline as such is evidence that the decline is not a red flag.

5. Size and Scope of Write-Downs and the February 20, 2008 Citi Research Report

78. Professor Puntillo claims:

“[t]he Underwriters simply failed in their obligation to reasonably investigate and determine whether the size and scope of the expected Write-Downs represented material information necessary to disclose to render the Offering Documents accurate and complete. As previously described in Section IV(C)(1)(c), Mr. McSpadden testified that the Underwriters failed to follow customary practices. Specifically, the Underwriters (i) did not ask to inspect any first quarter 2008 interim financial reports that Lucas referenced during this April 3, 2008 conference call; (ii) did not ask to inspect any financial reports or schedules of Barclays that may reflect the amount of Write-Downs that Barclays had taken in January and February 2008; or (iii) did not perform any independent analyses to determine what the amount of the Write-Downs were that Barclays took in January and February 2008.”¹¹⁶

79. I respectfully find several shortcomings in Professor Puntillo's assertion.

80. Professor Puntillo's assertion that the Underwriters did not conduct any independent investigation ignores the fact that the Citi research report was included in the package that was sent to Citi's commitment committee, as I described above. While Professor Puntillo claims Citi's report is a red flag, its inclusion as part of the broad set of information that Citi reviewed supports my opinion that Citi conducted a thorough due diligence investigation. In addition, I note that Citi's report was shared among the Underwriters, which demonstrates that other Underwriters were considering the issue of writedowns.¹¹⁷

81. The other Underwriters also looked at the issue of writedowns independent of the Citi research report. For example, Wachovia prepared its own internal memorandum related to the Series 5 Offering for approval by Wachovia's management.¹¹⁸ Professor Puntillo does not

¹¹⁴ Email from Richard Johnson to Jack McSpadden and David Ludwick, “Rimu Financial DD,” April 8, 2008, UW_Barclays_000018137.

¹¹⁵ Email chain from Alastair Rose-Smith to Peter Siekel, “FW: Project Rimu: 20-F Comments & Responses,” April 4, 2008, UW_Barclays_000060914–5 with attachment “20-F Comments & Responses.xls,” undated, UW_Barclays_000060916.

¹¹⁶ Puntillo Report, p. 45.

¹¹⁷ McSpadden Deposition, Exhibit 22, UW_Barclays_000019123–43.

¹¹⁸ Email from Ken Greer to Kristina Clark et al., “First draft of the Company Overview, Investment Considerations, and Fin. Highlights & Key Transaction Strengths for Project Farleyside,” April 4, 2008, UW_Barclays_000005124–5.

mention the other Underwriters' independent investigations, but, in my view, the nature of their investigations, described above and in my Initial Report, supports my opinion that the Underwriters conducted a thorough due diligence investigation.

82. Moreover, this is another instance where Professor Puntillo focuses on the disclosures themselves, as opposed to the due diligence process and practices of the Underwriters. As noted above, the issue before the respective due diligence experts is whether the due diligence conducted by the Underwriters was consistent with customary standards and practices in light of those disclosures, and in my opinion, the due diligence was appropriate in the context.

G. Response to Claims regarding Mr. McSpadden Understanding his Role

83. Professor Puntillo claims that I unreasonably rely on Mr. McSpadden's "years of prior experience over the total mix of information in the case record."¹¹⁹ I note that, while I do consider Mr. McSpadden's years of experience as a relevant factor in assessing the appropriateness of the Underwriters' due diligence investigation, as is evident from my reports, it is only one element of the record that I considered in forming my opinions. Furthermore, as my Initial Report described, Mr. McSpadden was part of a multi-disciplinary team that included staff from all of the Underwriters, which contrasts with Professor Puntillo's focus on Citi.

84. Professor Puntillo appears to make two points to conclude that I did not properly consider Mr. McSpadden's years of prior experience. Professor Puntillo first claims that I should not rely on Mr. McSpadden's testimony because of "the numerous red flags missed by the Underwriters."¹²⁰ I have already discussed these purported red flags above and explained why I do not interpret them as red flags and that Professor Puntillo has failed to explain why they are red flags.

85. The second point that Professor Puntillo appears to make is that I did not fully consider two excerpts of Mr. McSpadden's testimony.

86. The first excerpt from Mr. McSpadden's deposition relates to Barclays' internal information.¹²¹ Mr. McSpadden testified that, to his knowledge, Citi did not perform any independent analysis to determine the writedowns taken by Barclays in January and February 2008. Professor Puntillo claims that this excerpt of deposition testimony from Mr. McSpadden demonstrates that Citi did not have access to internal documents and that this "calls into question the foundation of the Underwriter's entire due diligence investigation."¹²² In my view, to draw such a conclusion based on one piece of deposition testimony and without reference to the totality of the record is inappropriate. Professor Puntillo also claims that this testimony demonstrates Mr. McSpadden's belief that "Citi somehow had no right to investigate such information [regarding writedowns from January 1, 2008 to April 8, 2008] before it was made

¹¹⁹ Puntillo Report, pp. 46-47.

¹²⁰ *Id.*, p. 47.

¹²¹ *Id.*, p. 47.

¹²² *Id.*, p. 47.

public” and that Citi made “virtually no effort to reasonably investigate” the writedowns.¹²³ Again, in my opinion, Professor Puntillo selectively considers the record, making an inappropriate leap from one piece of Mr. McSpadden’s testimony to the ultimate conclusion that Citi believed it did not have access to information. Furthermore, the record demonstrates that Citi and the other Underwriters did conduct due diligence into Barclays’ financial performance (including the issue of writedowns) after December 31, 2007 beyond Professor Puntillo’s claimed “few inquiries of Management.”¹²⁴ For example, the Underwriters performed due diligence reflected in emails and analysis related to both the banking industry and Barclays, and Morgan Stanley discussed Barclays’ writedowns over email on February 19, 2008.¹²⁵ Moreover, Merrill Lynch circulated a research report on April 3, 2008 that provided an overview of the UK bank industry and which examined Barclays in light of the current market environment.¹²⁶ Citi also had prepared a research report about Barclays on February 20, 2008 that was shared with other Underwriters. Furthermore, on March 13, 2008 Citi circulated an internal email brief about Barclays, which noted that, given the turmoil in the financial markets, they needed to “fully understand [Barclays’] story.”¹²⁷ The record demonstrates that Citi did take steps after this date, as I described in detail in my Initial Report. For example, due diligence calls took place on April 3 and April 8 of 2008, as described above, and Citi’s Commitment Committee memorandum was presented internally on April 3, 2008.¹²⁸ Beyond these specific investigatory activities that the Underwriters conducted themselves, the Underwriters also received a comfort letter from PwC and had multiple due diligence discussions with Barclays’ management, which I discussed above. Finally, I note that, as I described above, I do not believe, and Professor Puntillo has not demonstrated that, information about writedowns in the first quarter of 2008 rises to the level of being red flags.

87. The second excerpt of Mr. McSpadden’s testimony cited by Professor Puntillo relates to whether Barclays made any additional writedown related disclosures in the Offering Materials based on information it learned in the course of its due diligence. In that excerpt, Professor Puntillo asserts that Mr. McSpadden attempted to “pass the buck” from the Underwriters to Barclays.¹²⁹ I wish to make several points in this regard.

88. First, as I described above, underwriters are required to conduct reasonable due diligence. While their role in a public offering is an important one, they do not act as guarantors of the disclosures made in the Offering Materials. Thus the issue for the court or trier of fact is whether the Underwriters conducted reasonable due diligence, and on the point of writedowns, whether

¹²³ *Id.*, p. 48.

¹²⁴ *Id.*, p. 48.

¹²⁵ Email from Harry Harutunian, "Barc Conf Call: Not All Subprime is Equal / SS View," February 19, 2008, UW_Barclays_000061987.

¹²⁶ Email from Robin Palmer to Richard Doyle et al., "Barclays Equity Research," UW_Barclays_000052527; "UK Bank Mean Reversion Trade," Merrill Lynch, April 2, 2008, UW_Barclays_000052539-43.

¹²⁷ Email from Richard Trask to Bogdan Ciobanu et al., "Barclays Retail Deal," March 14, 2008, UW-Barclays_000052995.

¹²⁸ McSpadden Deposition, Exhibit 19, UW_Barclays_0000001244-437.

¹²⁹ Puntillo Report, p. 48.

that specific issue required investigation, and if so, whether that investigation (and any related elements of reliance) were appropriate in the context.

89. I also note that Professor Puntillo's claim hinges on the unsupported assumption that there was writedown related information omitted from the Offering Materials that should have been disclosed.

90. In any event, however, the record demonstrates that the Underwriters did look into the issue of writedowns and expected writedowns, as I described briefly above and in more detail in my Initial Report. These activities included, among other things, circulating research reports that included discussion of writedowns, discussion of Barclays' position in light of turmoil in the financial markets, and reviewing other analyses.¹³⁰

91. Finally, as I discussed above, the Underwriters appropriately received and relied upon PwC's comfort letter, which did not express any concern about writedowns or expected writedowns. As I noted previously, underwriters are not licensed accountants and do not audit the financial statements of an issuer and therefore rely on both audited financial statements and the statements and procedures followed by auditors and others with respect to unaudited financial information. Thus the inclusion of such letters as part of an Underwriter's investigation is a longstanding and widely accepted practice, and properly reflects the roles and expertise of the parties. Writedowns appropriately fall within the domain of outside auditors and as such the Underwriters relied on accountants to speak to anticipated write downs in the audited financials, unaudited interim financials, related periodic reports and/or comfort letters, and to have diligenced the point for the offering.¹³¹

92. Professor Puntillo concludes that Mr. McSpadden's testimony demonstrates that "Citi failed to acknowledge that the Underwriters had an obligation to perform a reasonable due diligence investigation in part to ensure that the Underwriters had a reasonable basis to believe that the disclosures in the Offering Materials were accurate and complete."¹³² This claim is inconsistent with the record. Mr. McSpadden testified about the entire due diligence process that is required to underwrite a securities transaction, and noted all of the various steps and documents required. Mr. McSpadden testified that such steps and documents were present in the Series 5 Offering.¹³³ In addition to his knowledge and understanding of a due diligence investigation, he noted that Citi, along with the other Underwriters, participated in specific due diligence procedures in connection with the Series 5 Offering including (but not limited to) participating in calls,¹³⁴ soliciting both an initial and bring-down comfort letter from PwC,¹³⁵

¹³⁰ See, e.g., Email from Robin Palmer to Richard Doyle et al., "Barclays Equity Research," April 3, 2008, UW_Barclays_000052527-55; see also, Email from Harry Harutunian, "BARC CONF CALL: NOT ALL SUBPRIME IS EQUAL / SS VIEW," February 19, 2008, UW_Barclays_000061987-8; Email from Jack McSpadden to Richard Doyle, "Barclays," April 3, 2008, UW_Barclays_000019102; "Relief Rally Overdone," Citi, February 20, 2008, UW_Barclays_000019103-22; Email from Derrick Deese to Justin Goldberg and David Macgown, "Writedowns," April 1, 2006, UW_Barclays_000012165-6.

¹³¹ McSpadden Deposition, Exhibit 35, UW_Barclays_000016948-7040

¹³² Puntillo Report, pp. 48-49.

¹³³ McSpadden Deposition, pp. 20:06-21:10.

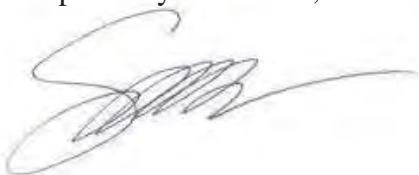
¹³⁴ *Id.*, pp. 32:12-33:5.

ensuring an “extremely detailed [and] lengthy” legal review process,¹³⁶ and preparing a closing memorandum that detailed and codified the overall due diligence process.¹³⁷ In summary, as I described above and in my Initial Report, it is my opinion that the due diligence investigation conducted by the Underwriters in connection with the Series 5 Offering was fully consistent with the customary standards and practices in a shelf takedown by a seasoned issuer and publicly reporting company such as Barclays, and appropriate in the context.

VII. SUPPLEMENTAL INFORMATION

93. This report is as of the date hereof and is a statement of my analysis and conclusions based on the information that I have reviewed to date. Should additional information arise, I reserve the right to revisit the opinions expressed herein. In addition, I reserve the right, if requested, to respond to other expert opinions submitted in this case.

Respectfully Submitted,



Gary M. Lawrence

March 18, 2016

¹³⁵ *Id.*, pp. 65:4–20.

¹³⁶ *Id.*, pp. 63:9–64:11.

¹³⁷ *Id.*, pp. 67:12–69:21.

Appendix I

Barclays Bank PLC Securities Litigation – Rebuttal Expert Report Submitted on Behalf of the Underwriter Defendants

Documents Considered by Gary M. Lawrence

Document Title, Bates Numbers	Document Date
Expert Reports	
Professor Richard Puntillo's Rebuttal of Report By Professor Gary M. Lawrence On Behalf Of Underwriter Defendants	February 2, 2016
Professor Richard Puntillo's Rebuttal of Report By Professor Gary M. Lawrence On Behalf Of Director Defendants	February 2, 2016
Academic Articles/Public Press	
Leahy, Joseph K. "The Irrepressible Myths of BarChris." Delaware Journal of Corporate Law, Vol. 37	2012
Maher, Michael W., Clyde P. Stickney, and Roman L. Weil. "Managerial Accounting - An Introduction to Concepts, Methods, and Uses." Harcourt Brace & Company	1997
Hayes III, Samuel L. "The Impact of Recombining Commercial and Investment Banking." Brooklyn Law Review, Vol. 70	2004
McNamee, Peter and John Celona. "Decision Analysis for the Professional." SmartOrg, Inc., Fourth Edition	2008
"Expanding Liability of Securities Underwriters: From Barchris to Globus." Duke Law Journal, Vol. 1969:1191	1969
Other Publically Available Documents	
15 U.S. Code § 77k - Civil Liabilities on Account of False Registration Statement, Cornell University Law School, https://www.law.cornell.edu/uscode/text/15/77k	
Opinion In Re WorldCom, Inc. Securities Litigation, 346 F. Supp. 2d 628 (S.D.N.Y. 2004)	December 15, 2004
Notice to Members, Informational - Non-Conventional Investments - NASD Reminds Members of Obligations when Selling Non-Conventional Investments, NASD NTM, 03-71	November 2003
John Nuveen & Co., Inc. v. Sanders, No. 80-299 (United States Supreme Court 1981)	March 23, 1981
Underwriting Agreement Commentary, Practical Law Corporate & Securities, Practice Note 7-380-7925	2016
Federal Supervision of Traffic in Investment Securities in Interstate Commerce, House of Representatives, 73rd Congress, Report No. 85	1933
Bates Stamped Documents: UW_Barclays	
UW_Barclays_000010056-7; UW_Barclays_000010064-138; UW_Barclays_000014536; UW_Barclays_000014538-617; UW_Barclays_000016948-7040	
Bates Stamped Documents: BARC-ADS-PO	
BARC-ADS-PO-00000001-21	

Bates Stamped Documents: BARC-ADS

BARC-ADS-00082640; BARC-ADS-00087919; BARC-ADS-00106713-4; BARC-ADS-00133088-9;
BARC-ADS-00138537; BARC-ADS-00147723-4; BARC-ADS-00228294; BARC-ADS-00260714;
BARC-ADS-00296641-2; BARC-ADS-00298336-7; BARC-ADS-00611569; BARC-ADS-00612430;
BARC-ADS-00612512; BARC-ADS-00824736; BARC-ADS-00824776; BARC-ADS-00884523;
BARC-ADS-00890071; BARC-ADS-00902337; BARC-ADS-00902341; BARC-ADS-00902376-7;
BARC-ADS-00902493-4; BARC-ADS-00903286; BARC-ADS-00904031; BARC-ADS-00905016-21;
BARC-ADS-00905106-9; BARC-ADS-00905768-70; BARC-ADS-00905773-4; BARC-ADS-
00906541; BARC-ADS-00907648; BARC-ADS-00907913-6; BARC-ADS-00997333-42; BARC-ADS-
01003138; BARC-ADS-01003140-1; BARC-ADS-01003181-90; BARC-ADS-01336792; BARC-ADS-
01391894-5; BARC-ADS-01394432-6; BARC-ADS-01396241-3; BARC-ADS-01481298-9; BARC-
ADS-01507300; BARC-ADS-01507339-40; BARC-ADS-01528868-73; BARC-ADS-01528875-80;
BARC-ADS-01545040-4; BARC-ADS-01549849-54; BARC-ADS-01571079; BARC-ADS-01584647-
8; BARC-ADS-01584650-2; BARC-ADS-01601983-2097; BARC-ADS-01602120-30; BARC-ADS-
01603880-9; BARC-ADS-01637656; BARC-ADS-01643156

Bates Stamped Documents: BARC-ADS-GL

BARC-ADS-GL-00000001-103

EXHIBIT 9
[Filed Under Seal]

From: Ciobanu, Bogdan [CMB-GBKG] [bogdan.ciobanu@citi.com]
Sent: Thursday, March 20, 2008 8:51:11 PM
To: ross.aucutt@barclaysgt.com; nick.lambert@barclaysgt.com; keith.harding@barclaysgt.com; leigh.meyer@barclaysgt.com; todd.foreman@barclays.com; victoria.hardy@barclays.com; simon.sinclair@cliffordchance.com; mabel.tay@cliffordchance.com; oconnorj@sullcrom.com; vonlanthenc@sullcrom.com; nyattai@sullcrom.com
CC: kathryn.mcleland@barcap.com; yenal.ghori@barcap.com; tanja.gihr@barcap.com; simon.croxford@barcap.com; richard.d.johnson@barcap.com; belinda.vickery@barcap.com; bret.ganis@barcap.com; richard.smith3@barcap.com; Aherne, Peter O [CMB-GFICC]; Greve, Leo-Hendrik [CMB-GFICC]; Mason, Peter James [CMB-GFICC]; Drumm, Laura [CMB-GFICC]; White, Christopher K [CMB-GFICC]; Deese, Derrick [CMB-GFICC]; Mcspadden, Jack D [CMB-GBKG]; Harjani, Chandru [CMB-GBKG]; Rose-Smith, Alastair [CMB-GBKG]; Siekel, Peter [CMB-GBKG]; david.ludwick@linklaters.com; vinay.samani@linklaters.com; joost.vanamelsfort@linklaters.com; sarah.whittington@linklaters.com; jon.gray@linklaters.com
Subject: Project Rimu - draft due diligence lists
Attachments: Barclays - Business Due Diligence Mar 2008.pdf; Barclays - Accounting Due Diligence Mar 2008.pdf

Barclays Team:

Attached please find the draft business and accounting due diligence lists for the proposed offering. Please note that we are collecting comments from the joint bookrunners and will update these lists as appropriate.

Regards,
Bogdan

<<Barclays - Business Due Diligence Mar 2008.pdf>> <<Barclays - Accounting Due Diligence Mar 2008.pdf>>

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M: +1.917.292.1184

EXHIBIT NO. 20
DATE: 8/13/15
Reporter - Laurie A. Collins

CONFIDENTIAL

UW_Barclays_000018881

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PROJECT RIMU

ACCOUNTING DUE DILIGENCE

April 2008

Please note that, as used below, when we refer to the "Group", we mean the Bank and all its subsidiaries. When we refer to an "officer", we mean any member of the administrative, supervisory or management bodies of, as well as any other person who exercises management control over, the Bank or any subsidiary.

BACKGROUND AND RELATIONSHIP WITH THE GROUP

1. How long have you been the auditors of the Group and how long has the current audit team worked with the Group. Describe how any transition of audit team members is handled.
2. Outline the scope of review of the most recent audits and the frequency of meetings with the Bank and its subsidiaries (including officers, the audit committee (or persons serving an equivalent function) and the Board). Are there any material subsidiaries within the Group that you do not audit?
3. Does any management personnel of PricewaterhouseCoopers LLP have any prior relationship with the Bank or any of its affiliates or vice versa? Does PwC perform any non-audit services for the Bank? Has any internal audit work been outsourced to by the Company to PwC?

ACCOUNTING POLICIES AND STANDARDS AND INTERNAL CONTROLS

4. Comment on the adequacy of the accounting policies and standards, internal controls and procedures and management reporting of the Group, including any major problems identified. Please discuss the identification of the Group's critical accounting policies. Please comment on the Group's anti-money laundering procedures.
5. Compare the reporting policies and accounting principles employed by the Group with those generally utilized in the banking industry.
6. Please discuss any areas that you feel can be improved in the Group's internal accounting systems or with respect to internal controls and procedures, any proposals you have made to make such improvements and the management's response to such proposals and any weaknesses that you feel are not being given adequate management attention.
7. Please comment on the effectiveness of management's controls within the meaning of Section 404 of the Sarbanes-Oxley Act. That section requires issuers to include an internal control report in their annual reports which shall state the responsibility of management for establishing and maintaining adequate internal controls, as well as management's assessment of the effectiveness of those controls and an attestation report from a registered public accounting firm as to management's evaluation.
8. Has the implementation of IFRS materially impacted the US GAAP reconciliation process? Please comment generally on the US GAAP reconciliation process and the effect of the recent SEC announcement concerning US GAAP reconciliation.

FINANCIAL STATEMENTS

9. Describe any current or past material disagreements between the Company's auditor and the Group relating to the financial statements or accounting policies of the Group, and describe how they were resolved.
10. List any areas identified as requiring particular attention and audit issues discussed with management.
11. Discuss the amount and adequacy of the Group's reserves for litigation (including any tax disputes) and other contingent liabilities.
12. Describe any significant post FYE 2007 events which have or are likely to occur relating to the Group.
13. Please describe PwC's involvement in the preparation of the Barclays Capital FYE 2007 financials. Can you describe the methodology used in determining the amounts of the write downs (including any netting) and whether it is in accordance with IFRS and US GAAP (to the extent applicable). Have any additional write downs been taken or contemplated since the end of December 2007?

14. Please describe PwC's involvement in the preparation of the Group's Financial Statements for the FYE 2007.
15. Are there any significant issues which you have brought to the attention of the Audit Committee or the Board of Directors?
16. Describe anything which has come to the attention of PricewaterhouseCoopers LLP over the last five years or since the Bank's last financial year which materially impacts on the fairness or reliability of a previous audit report or the underlying financial information or which will affect the audit report or financial statements for the current or subsequent financial years.

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PROJECT RIMU

BUSINESS DUE DILIGENCE

April 2008

Business Due Diligence

BUSINESS ENVIRONMENT AND STRATEGY

1. Please highlight the major areas for revenue growth and business expansion in Barclays' (the "Bank's") medium term strategy.
2. Please discuss the Bank's business plan for 2008. Are there any business areas that management is concentrating on, or expects will perform strongly.
3. Has Barclays any plans for significant changes in management, operating or legal structure of the Group in addition to those already disclosed?
4. Please discuss any significant acquisitions or dispositions the Bank has made in the preceding 12 months or is planning in the near future.

OPERATING RESULTS

5. Referring to the recently announced 2007 full year results please advise whether such results were below, in-line or above management's budget expectations. Were there any businesses/divisions that performed materially below or above management's planned projections for 2007?
6. Please comment briefly on the trading performance for the first two months of 2008. When compared to the same period in 2007, are such results above or below the comparative 2007 result. Please comment on any specific line items in the P&L and balance sheet that experienced material or substantial movements with specific reference to such movements in net profit, net interest income, total assets and total debt. Please comment on your outlook for 1H 2008 and full year 2008 results.

PROFITABILITY

7. Can Barclays comment on steps the Bank has taken to mitigate the effects of a serious economic downturn?
8. Please comment on the Bank's 2007 results by business segment with respect to:
 - Earnings and profitability (ROAA, ROAE, NIM)
 - Operating expenses and operating leverage
 - Special charges if any
 - Any trends of note observed within any business segment?

Are the results in line with internal targets/market expectations?
9. Is the Bank concerned about the sustainability of Barclays Capital's profitability, given the current interest rate outlook, European and US corporate de-leveraging environment or a higher reliance on dealing profits?
10. Please comment on the current valuation of the pension scheme, any shortfall and the impact of the scheme on future profitability.

ASSET VALUATION / ASSET MIX QUALITY

11. Please discuss the current state/quality of the consolidated fixed-income securities portfolio. How is the portfolio valued, marked-to-market and/or marked-to-model? Please provide the split between the two valuation methods. Please comment on the level of writedowns in 2007, and any expectation for further writedowns in 2008.
12. Does this portfolio capture the Bank's entire exposure to CDOs, CLOs, SIVs, conduits, ABS, sub-prime mortgage assets and other structured credit products? Would all of these be located on-balance sheet? If not, how much is located off-balance sheet. Are there any off-balance sheet vehicles (e.g., SIVs) that the Bank is contemplating moving on to the balance sheet?
13. In the near-term, does management anticipate the need to make any further writedowns for any of the other above products?
14. Please discuss the Group's exposure to leveraged loans and whether any further writedowns are expected.
15. Please discuss the Group's exposure to the fixed rate auction securities market, and impact, if any, that may be expected on the Group's financial statements.
16. Please discuss the Group's exposure to monolines, either direct or indirect.
17. Please discuss the breakdown of the loan book. Is this likely to change materially from FYE 2007?
18. Please discuss any concentrations in the loan book. What is the largest industry sector and how much does it account for in the total loan portfolio?
19. Please discuss the current credit quality of the loan portfolio. What is the current level of non-performing loans? Does management expect any deterioration in the loan portfolio during 2008?
20. Are there any loans that represent more than 10% of the Group's equity base? If so, how many? Are any of these loans non-performing or on a "watch list"?

RISK, CAPITAL, LIQUIDITY AND FUNDING

21. Please discuss the state of the Bank's risk management process and procedures. Did management make any significant changes to the way the Bank manages, calculates or reports risk in 2007. Are they considering making any changes in 2008?
22. Please discuss the Bank's current BIS ratios (Tier I and Total Capital).
23. Please provide an outline of the capital requirements of the Bank.
24. Please comment on Barclays' asset and liability management procedures and any significant mis-matching and management of such.
25. Please comment on recent changes, if any, in funding sources.
26. How is the overall balance sheet positioned for interest rate movements? What is your outlook for margins for 2008?
27. Please describe how you manage your overall currency exposure. How has/will the fall of the dollar impacted earnings?
28. Please discuss the intended use of proceeds from the current issue of capital securities.
29. Please comment on the Group's implementation of Basel II. What is the expected impact on capital and ratios for its implementation?

LEGAL, REGULATORY, ACCOUNTING AND RATING AGENCY ISSUES

30. Are there any material regulatory changes that the Group is experiencing difficulty implementing?
31. Are there any other actions (legal, regulatory, tax or accounting) or issues not yet discussed which could have a material impact on the Bank or Group's financial performance or condition?
32. Are you aware of any legislative or regulatory changes, planned or proposed and that are likely to be implemented, that could have a material effect on the Bank or the Group?
33. Is there any outstanding, pending or, to the knowledge of management, threatened material litigation or regulatory action involving Barclays or any of its subsidiaries or its directors or officers? If so, please provide details and the potential material impact, if any, on the Bank's financial position and ability to conduct its business. Has Barclays entered into any settlement agreement that could have a material impact on its financial condition or business?
34. Are there any outstanding material judgements, decrees or orders affecting the Group's operations?
35. Any issues we should discuss regarding Anti-Money Laundering, regulatory sanctions compliance or the Foreign Corrupt Practices Act?
36. Please provide an update regarding recent discussions with, and any reports issued by, the rating agencies with respect to Barclays (including those in connection with the Barclays Capital Trading Statement of November 15, 2007).

GENERAL

37. Please discuss any other risks or concerns to which Barclays is, or may be, exposed in the future that have not otherwise been addressed in the above questions.
38. Please discuss whether Barclays has begun the process of complying with SFAS 157, in particular whether Barclays have identified the split between level 1, level 2 and level 3.
39. Please discuss your risk management experience in the past six months in Barclays Capital.
40. What improvements would you make, if any?
41. Is the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or Affiliate of the Company or any of its subsidiaries currently included on the U.S. Treasury Department's List of Specially Designated Nationals or otherwise subject to any U.S. sanctions administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC")?
42. Please confirm that capital raised will not directly or indirectly be lent, contributed or otherwise made available to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person, entity, or government currently subject to any U.S. sanctions administered by OFAC.
43. Does the Prospectus Supplement, including the documents incorporated by reference therein contain all information which is necessary to enable investors to make an informed assessment of the assets, liabilities, financial position, profit and loss and prospects of the Issuer?
44. Please discuss any other material information that the management would like to highlight in the context of the contemplated offering.
45. Are there any developments or announcements which may occur or be made over the next few months of which investors should be made aware, or any other facts, positive or negative, on which management wishes to comment.

EXHIBIT 10
[Filed Under Seal]

From: Ciobanu, Bogdan [CMB-GBKG] [bogdan.ciobanu@citi.com]
Sent: Tuesday, April 1, 2008 5:00 PM
To: ross.aucutt@barclaysgt.com; nick.lambert@barclaysgt.com; keith.harding@barclaysgt.com; leigh.meyer@barclaysgt.com; todd.foreman@barclays.com; victoria.hardy@barclays.com; Raj.Cheema@barclayscapital.com; Mark.Wrafter@barclayscapital.com; kathryn.mcleland@barcap.com; yenal.ghori@barcap.com; tanja.gihr@barcap.com; simon.croxford@barcap.com; richard.d.johnson@barcap.com; belinda.vickery@barcap.com; mark.graham@barcap.com; bret.ganis@barcap.com; richard.smith3@barcap.com; Aherne, Peter O [CMB-GFICC]; Greve, Leo-Hendrik [CMB-GFICC]; Mason, Peter James [CMB-GFICC]; Drumm, Laura [CMB-GFICC]; Drumm, Laura [CMB-GFICC]; Deese, Derrick [CMB-GFICC]; Dickey, John W [CMB-GFICC]; Mcgeary, Simon [CMB-GFICC]; Louie, Stanley [CMB-GFICC]; Keat, Deborah [CMB-GFICC]; Letina, Anastasia [CMB-GFICC]; Stephenson, Laura [CMB-GFICC]; Midander, Jakob [CMB-GFICC]; Walker, David [CMB-GBKG]; Reid, James [CMB-GBKG]; Mcspadden, Jack D [CMB-GBKG]; Harjani, Chandru [CMB-GBKG]; Rose-Smith, Alastair [CMB-GBKG]; Slekkel, Peter [CMB-GBKG]; Bridgers, Darrell [CMB-GCO]; Pakenham, Jane [CMB-GCO]; siddharth.prasad@ml.com; matthew_pass@ml.com; julien_roman@ml.com; robin_palmer@ml.com; eric_wilson@ml.com; christine_macdonald@ml.com; alvaro_camara@ml.com; sarah_davis@ml.com; richard_doyle@ml.com; aj_davidson@ml.com; nancy_kennan@ml.com; deirdre_ryan@ml.com; karyn_lim@ml.com; gary.abrahams@ubs.com; ron.yanagi@ubs.com; sophia.vonta@ubs.com; andrew.templeton@ubs.com; glenn.goggins@ubs.com; monica.meo@ubs.com; michael.altschuler@ubs.com; bryant.h.owens@wachovia.com; stuart.aylward@wachovia.com; faye.thorogood@wachovia.com; ken.greer@wachovia.com; edward.boulderstone@wachovia.com; john.papadopoulos@wachovia.com; kristina.clark@wachovia.com; Jill.enzman@wachovia.com; fleur.twohig@wachovia.com; kiley.knepp@wachovia.com; carolyn.coan@wachovia.com; laurie.watts@wachovia.com; melanie.panzone@wachovia.com; simon.sinclair@cliffordchance.com; mabel.tay@cliffordchance.com; oconnorj@sullcrom.com; vonlanthenc@sullcrom.com; nyattai@sullcrom.com; david.ludwick@linklaters.com; vinay.samani@linklaters.com; joost.vanamelsfort@linklaters.com; sarah.whittington@linklaters.com; jon.gray@linklaters.com
Subject: Project Rimu Business Due Diligence Thursday, April 3 @ 11:30 AM ET / 16:30 UK
Attachments: Barclays - Business Due Diligence Mar 2008.pdf

Project Rimu Team:

Attached please find the due diligence questionnaires and dial-in information for Thursday's (April 3) 11:30 AM ET / 16:30 UK due diligence conference call.

Please note that there will be other parties on the conference call (dealers on the Barclays MTN programme) that are not aware of Project Rimu. therefore please do not make any comments that relate directly to Project Rimu/Retail Preferred transaction. Please re-direct any additional questions that you want to ask through the UBS or ML teams, as they are participating in both the proposed transaction and the Company's MTN programme.

Dial-in Information

Date: Thursday, April 3, 2008

Time: 11:30 AM ET / 16:30 UK

Dial-in (US) 1-866 376 5281 / (UK) +44 (0) 207 477 2 477

Passcode: 034933#

Please forward the attached lists to other parties that were not included in the current distribution. Thank you.

Regards,

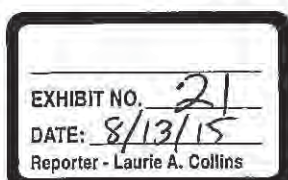
Bogdan Ciobanu

<<Barclays - Business Due Diligence Mar 2008.pdf>>

Bogdan Ciobanu

Citi Markets and Banking

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Confidential



BUSINESS DUE DILIGENCE

April 2008

Business Due Diligence

BUSINESS ENVIRONMENT AND STRATEGY

1. Please highlight the major areas for revenue growth and business expansion in Barclays' (the "Bank's") medium term strategy.
2. Please discuss the Bank's business plan for 2008. Are there any business areas that management is concentrating on, or expects will perform strongly.
3. Has Barclays any plans for significant changes in management, operating or legal structure of the Group in addition to those already disclosed?
4. Please discuss any significant acquisitions or dispositions the Bank has made in the preceding 12 months or is planning in the near future.

OPERATING RESULTS

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6. Please comment briefly on the trading performance for the first two months of 2008. When compared to the same period in 2007, are such results above or below the comparative 2007 result. Please comment on any specific line items in the P&L and balance sheet that experienced material or substantial movements with specific reference to such movements in net profit, net interest income, total assets and total debt. Please comment on your outlook for 1H 2008 and full year 2008 results.

PROFITABILITY

7. Can Barclays comment on steps the Bank has taken to mitigate the effects of a serious economic downturn?
8. Please comment on the Bank's 2007 results by business segment with respect to:
 - Earnings and profitability (ROAA, ROAE, NIM)
 - Operating expenses and operating leverage
 - Special charges if any
 - Any trends of note observed within any business segment?

Are the results in line with internal targets/market expectations?
9. Is the Bank concerned about the sustainability of Barclays Capital's profitability, given the current interest rate outlook, European and US corporate de-leveraging environment or a higher reliance on dealing profits?
10. Please comment on the current valuation of the pension scheme, any shortfall and the impact of the scheme on future profitability.

ASSET VALUATION / ASSET MIX QUALITY

11. Please discuss the current state/quality of the consolidated fixed-income securities portfolio. How is the portfolio valued, marked-to-market and/or marked-to-model? Please provide the split between the two valuation methods. Please comment on the level of writedowns in 2007, and any expectation for further writedowns in 2008.
12. Does this portfolio capture the Bank's entire exposure to CDOs, CLOs, SIVs, conduits, ABS, sub-prime mortgage assets and other structured credit products? Would all of these be located on-balance sheet? If not, how much is located off-balance sheet. Are there any off-balance sheet vehicles (e.g., SIVs) that the Bank is contemplating moving on to the balance sheet?
13. In the near-term, does management anticipate the need to make any further writedowns for any of the other above products?
14. Please discuss the Group's exposure to leveraged loans and whether any further writedowns are expected.
15. Please discuss the Group's exposure to the fixed rate auction securities market, and impact, if any, that may be expected on the Group's financial statements.
16. Please discuss the Group's exposure to monolines, either direct or indirect.
17. Please discuss the breakdown of the loan book. Is this likely to change materially from FYE 2007?
18. Please discuss any concentrations in the loan book. What is the largest industry sector and how much does it account for in the total loan portfolio?
19. Please discuss the current credit quality of the loan portfolio. What is the current level of non-performing loans? Does management expect any deterioration in the loan portfolio during 2008?
20. Are there any loans that represent more than 10% of the Group's equity base? If so, how many? Are any of these loans non-performing or on a "watch list"?

RISK, CAPITAL, LIQUIDITY AND FUNDING

21. Please discuss the state of the Bank's risk management process and procedures. Did management make any significant changes to the way the Bank manages, calculates or reports risk in 2007. Are they considering making any changes in 2008?
22. Please discuss the Bank's current BIS ratios (Tier I and Total Capital).
23. Please provide an outline of the capital requirements of the Bank.
24. Please comment on Barclays' asset and liability management procedures and any significant mis-matching and management of such.
25. Please comment on recent changes, if any, in funding sources.
26. How is the overall balance sheet positioned for interest rate movements? What is your outlook for margins for 2008?
27. Please describe how you manage your overall currency exposure. How has/will the fall of the dollar impacted earnings?
28. Please comment on the Group's implementation of Basel II. What is the expected impact on capital and ratios for its implementation?



LEGAL, REGULATORY, ACCOUNTING AND RATING AGENCY ISSUES

29. Are there any material regulatory changes that the Group is experiencing difficulty implementing?
30. Are there any other actions (legal, regulatory, tax or accounting) or issues not yet discussed which could have a material impact on the Bank or Group's financial performance or condition?
31. Are you aware of any legislative or regulatory changes, planned or proposed and that are likely to be implemented, that could have a material effect on the Bank or the Group?
32. Is there any outstanding, pending or, to the knowledge of management, threatened material litigation or regulatory action involving Barclays or any of its subsidiaries or its directors or officers? If so, please provide details and the potential material impact, if any, on the Bank's financial position and ability to conduct its business. Has Barclays entered into any settlement agreement that could have a material impact on its financial condition or business?
33. Are there any outstanding material judgements, decrees or orders affecting the Group's operations?
34. Any issues we should discuss regarding Anti-Money Laundering, regulatory sanctions compliance or the Foreign Corrupt Practices Act?
35. Please provide an update regarding recent discussions with, and any reports issued by, the rating agencies with respect to Barclays.

GENERAL

36. Please discuss any other risks or concerns to which Barclays is, or may be, exposed in the future that have not otherwise been addressed in the above questions.
37. Please discuss whether Barclays has begun the process of complying with SFAS 157, in particular whether Barclays have identified the split between level 1, level 2 and level 3.
38. Please discuss your risk management experience in the past six months in Barclays Capital.
39. What improvements would you make, if any?
40. Is the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or Affiliate of the Company or any of its subsidiaries currently included on the U.S. Treasury Department's List of Specially Designated Nationals or otherwise subject to any U.S. sanctions administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC")?
41. Please confirm that the capital that may be raised will not directly or indirectly be lent, contributed or otherwise made available to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person, entity, or government currently subject to any U.S. sanctions administered by OFAC.
42. Is there anything material that the management would like to highlight that has not been covered on this call?

EXHIBIT 11
[Filed Under Seal]

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 - - -
4

5 IN RE: BARCLAYS BANK PLC SECURITIES LITIGATION
6 Master File No. 1:09-cv-01989-PAC
7
8

9 Certified Transcript of April 3, 2008,
10 Due Diligence Call
11
12
13
14
15
16
17
18

19 VERITEXT LEGAL SOLUTIONS
MID-ATLANTIC REGION
20 1801 Market Street - Suite 1800
Philadelphia, Pennsylvania 19103
21
22
23
24
25

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2 FEMALE SPEAKER: I think we might</p> <p>3 start, if that's okay. We have most</p> <p>4 representatives from the data group on the call.</p> <p>5 So first, welcome and thank you very much for</p> <p>6 joining today's due diligence call. It's</p> <p>7 explained to you this is the annual due</p> <p>8 diligence, which is quite comprehensive and</p> <p>9 covers all Barclays' funding programs.</p> <p>10 Representing Barclays here today</p> <p>11 we have Chris Lucas, the Group Finance Director;</p> <p>12 Mark Harding from Barclays General Counsel; Andy</p> <p>13 Bruce, Group Credit Risk Officer; Miles Storey,</p> <p>14 head of Group Balance Sheet; and Russ Aucutt</p> <p>15 head of Group Capital Issuance and</p> <p>16 Securitization.</p> <p>17 I think everybody should have a</p> <p>18 list of the questions, so I just propose to hand</p> <p>19 it over to Chris Lucas and his colleagues to go</p> <p>20 through the answers.</p> <p>21 MR. LUCAS: Hi. Good afternoon</p> <p>22 everybody, and thank you for joining us. This</p> <p>23 is Chris Lucas. I was going to work down your</p> <p>24 due diligence list sort of question by question,</p> <p>25 and just respond with some comments as I go</p>	<p style="text-align: right;">Page 4</p> <p>1 see that business moving into countries and</p> <p>2 locations that it has not been. I think the</p> <p>3 other part of the business that I see as</p> <p>4 investing heavily in for growth is the wealth</p> <p>5 business --</p> <p>6 (Has joined the conference)</p> <p>7 -- and that I think will be more</p> <p>8 even paced around the world rather than any</p> <p>9 specific area. And if you look at what that</p> <p>10 translates into, we have, in 2007, opened</p> <p>11 operations in a number of locations,</p> <p>12 particularly the UA and India on the retail and</p> <p>13 commercial banking business. We have announced</p> <p>14 the acquisition of a small bank in Russia. And</p> <p>15 we have announced that we have licenses to</p> <p>16 commence operations in Pakistan. So those would</p> <p>17 be the major territories that I would see us</p> <p>18 looking to grow in terms of that medium and</p> <p>19 strategy.</p> <p>20 Now prior to that, we shouldn't</p> <p>21 ignore the rest of the business, we have growth</p> <p>22 prospects today including EGI and also UK</p> <p>23 business, Barclaycard specifically. And you</p> <p>24 will see that we acquired, very recently, a</p> <p>25 portfolio of credit card customers and loans</p>
<p style="text-align: right;">Page 3</p> <p>1 down, if that's okay. If I could just use the</p> <p>2 question numbers as a cross-reference.</p> <p>3 The first one is the highlight</p> <p>4 question one, the major areas of revenue growth</p> <p>5 and business expenses in Barclays' agents and</p> <p>6 strategies. We have been clear that our</p> <p>7 strategy remains the same, that would be to look</p> <p>8 to diversify outside of the UK, and in</p> <p>9 particular to align capital and resources with</p> <p>10 businesses and in (inaudible) they give us</p> <p>11 faster growth then we have across the business</p> <p>12 as it stands at the moment. We've also been</p> <p>13 very clear --</p> <p>14 (Has joined the conference)</p> <p>15 -- that in terms of what does that</p> <p>16 mean? It means that we will be looking, I think</p> <p>17 John used the words, east wild and west. So we</p> <p>18 will be expecting to further ingrain the</p> <p>19 business in markets that give us diversification</p> <p>20 outside of the UK and gives us access to</p> <p>21 (inaudible) and commonry. Therefore, that</p> <p>22 translates into really two businesses as far as</p> <p>23 I'm concerned. It translates into international</p> <p>24 retail and commercial banking, which is part of</p> <p>25 GRC being run by (inaudible) and we expect to</p>	<p style="text-align: right;">Page 5</p> <p>1 from Discover.</p> <p>2 Is that okay in terms of...</p> <p>3 FEMALE SPEAKER: Yes, thank you.</p> <p>4 MR. LUCAS: So sort of flows from</p> <p>5 that business plan for 2008, I should say that</p> <p>6 the business plan was put together --</p> <p>7 (Has joined the conference)</p> <p>8 -- and signed off at the end of</p> <p>9 2007, and it is set around a PBT number, which</p> <p>10 is actually very, very close to the current</p> <p>11 consensus and that, I think, was more by luck</p> <p>12 than anything specifically. And I should just</p> <p>13 give you the reference I used for consensus of</p> <p>14 2008, and I have to be honest and say this is</p> <p>15 the market's consensus is about 7 billion pounds</p> <p>16 PBT. That clearly is a number that is subject</p> <p>17 to fluctuation and in the current environment</p> <p>18 could fluctuate more significantly and rapidly</p> <p>19 than it would do in the past.</p> <p>20 (Has joined the conference)</p> <p>21 If I use that as a reference</p> <p>22 point, our plan prepared at the end of last year</p> <p>23 was retroactive in number, and I think it's fair</p> <p>24 to say that conditions have been tougher than</p> <p>25 envisioned, and I would expect both consensus</p>

<p style="text-align: right;">Page 6</p> <p>1 and our plans, as we go to our full pass, to 2 come down from that numbers. But I think as we 3 sit here today, that's the best reference point 4 I can give you. 5 In terms of question three, 6 (inaudible) significant changes in management 7 operation or legal structure degree. The answer 8 to that is no. 9 In terms of significant 10 acquisitions and disposals, I have already given 11 you the list. In terms of recently, we have 12 acquired Expobank in Russia for about \$745 13 million. We acquired -- and that is a small 14 bank, about 32 branches that are based around 15 Moscow and St. Petersburg, it is a bank that we 16 will be owning 100 percent of, and it is a 17 starting place for our business in -- our retail 18 commercial business in Russia. It will be 19 complimentary to the investment and wholesale 20 banking business we have there at the moment. 21 The second in terms of recent 22 transactions is Discover's UK card business 23 which is a small transaction, it was net assets 24 of about 120 million pounds, something like 25 that, which we acquired for 35 million. It's</p>	<p style="text-align: right;">Page 8</p> <p>1 restructuring of our outsource provider in 2 India. We are talking single millions of pounds 3 here, so quite small. 4 The only other sale, I think, that 5 was completed since year end, is we did sell 6 BGT's Japan trust and banking business, as we 7 wanted to focus there on investment management 8 wealth and trust banking. 9 That, I think, is the list of 10 significant acquisitions and disposals we made. 11 We've got nothing significant on the stocks that 12 I need to tell you about in terms of short term 13 plans. You would expect that we receive many 14 opportunities and will continue to evaluate them 15 as they cross our desk. 16 I think that covers the first 17 four. Five refers to 2007 four-year results. 18 And you have seen those, we reported profitable 19 taxes, 7076 billion profit before disposals is 20 accurate, really depends on the prior year. I 21 think those numbers were extremely close to 22 consensus, within a few million pounds, and 23 therefore came through very much as we were 24 expecting. 25 The business is -- also came in</p>
<p style="text-align: right;">Page 7</p> <p>1 1.8 billion pounds of credit card receivables. 2 It is the business that was HSC flow through 3 center, went I think for a while to Lloyds, if I 4 remember correctly, and then to Discover. It is 5 a UK business, so it is not directly in line 6 with our strategy but it meets all the -- 7 (inaudible) 8 (Has joined the conference) 9 During the year we acquired Index 10 Exchange Investments, which is the German 11 exchange traded funds business in Germany. Not 12 surprisingly we acquired EquiFirst, which was a 13 small and now even smaller sub-prime originator 14 in the United States. And we acquired Woolwich 15 Group, a small business in the (inaudible), 16 which was part of our wealth and trust business. 17 And those you can find more 18 details on them on pages 174 and 175 about the 19 former accounts. 20 In terms of disposals, we disposed 21 of most of the monumental portfolio of credit 22 card receivables. That was a business that was 23 known in terms of customer quality and credit 24 quality than we felt we wanted in the UK. We 25 sold Intelenet, which was part of a</p>	<p style="text-align: right;">Page 9</p> <p>1 very close at a business level to the plans we 2 had and had worked on. I think the only 3 business that I would highlight in terms of a 4 variance to plan, was the UK Retail Bank because 5 of the level of refunds that we have paid out up 6 until the stay in July of 2006, that was about 7 116 million pounds. That I think was the only 8 really significant (inaudible) variance. 9 I should just mention Barclays 10 Capital, it came in very, very close to our 11 plan. And you will note that it had an 12 extremely good first half, it made about 1.6 13 billion pounds of profits in the first half. 14 The second half was impacted by the market 15 conditions that you know as well as I do. 16 If I move to six, in terms of 17 trading performance in the first two months of 18 2008, I should say probably the best -- the best 19 guidance I can give you is that if you take 20 consensus at 7 billion pounds and take a monthly 21 run rate without looking at any formal 22 seasonality, you get to about 518 million pounds 23 a month. And for January and February, that is 24 very, very close to our run rate, I think that 25 is the best guidance I can give you. It was in</p>

<p style="text-align: right;">Page 10</p> <p>1 terms of our plan, within a couple of million 2 pounds of the plan, and therefore represented a 3 good start to the year.</p> <p>4 In terms of March, as you can 5 imagine, March has been a very tough month. I'm 6 not saying anything you guys don't already know, 7 we are still in the process of completing the 8 results process, we get an early look at them 9 tomorrow. But I think the signs that I've got 10 would tell me that the stock conditions have had 11 an impact, but I think that the group will be 12 profitable in March on the standalone numbers. 13 I think that is the best I can give you. We 14 still have quite a wide big offer in terms of 15 some of the decisions we have to make around 16 asset marks as we close the books.</p> <p>17 In terms of H-1, 2008, it's quite 18 difficult because there is -- the consensus 19 numbers I gave you, 7 billion pounds, have not 20 been refined by the investment community into a 21 first half, second half. We had planned, if I 22 go back to the plans, a better second half than 23 first. I think it's fair to say that the 24 conditions we have seen in March specifically, 25 will have dented our first half numbers. But I</p>	<p style="text-align: right;">Page 12</p> <p>1 action responses, each of which is quantified in 2 terms of its financial and non-financial impact 3 on the group. This would involve action plans 4 across business units, such as changing them to 5 value thresholds, score card cutoffs, sectional 6 mandate and scale adjustments, margin changes, 7 rejection of leverage appetite, haircut 8 adjustments, et cetera, all of which are 9 presented to discuss, reviews and challenges by 10 the executive committee.</p> <p>11 MR. LUCAS: Let me talk about the 12 results in a little bit more detail by business 13 segment. And I was going to do this by 14 reference to the result announcement on page 15 three, which shows the profit control tax by 16 business.</p> <p>17 If I could just run through them 18 briefly, you will see UK retail banking is up 9 19 percent. And the story there has been good 20 mortgage volume growth, if you could imagine in 21 the last quarter, good mortgage volume growth, 22 good savings growth which is important to us, 23 and a reduced level of unsecured lending. One 24 of the features of the business has been to move 25 from unsecured to secured. And that has had a</p>
<p style="text-align: right;">Page 11</p> <p>1 still feel very good that we had had a good two 2 months, we had a good first half of March, 3 second half of March was up. And to be honest 4 with you, we have to see how April and May play 5 out.</p> <p>6 I should just say that the CD 7 businesses are performing extremely well, ahead 8 of plan, and am very pleased with that. So 9 while the real focus has been on the wholesale 10 credit environment, there are parts of the 11 business that continue to show the benefits and 12 diversification that we have seen.</p> <p>13 I think that was all I was going 14 to do for six. In terms of seven, is that me?</p> <p>15 MR. BRUCE: No, that's me.</p> <p>16 MR. LUCAS: Andy, thank you.</p> <p>17 MR. BRUCE: I'm going to comment 18 on the steps the bank has taken to mitigate the 19 effects of a serious economic downturn. We 20 monitor macro markets and internal indicators of 21 economic downturn, particularly in our four 22 major markets, the UK, the U.S., the European 23 area and South Africa, and in the context of 24 both retail and wholesale businesses. We 25 continue to identify a range of management</p>	<p style="text-align: right;">Page 13</p> <p>1 significant impact in terms of the risk profile 2 and the impairment performance.</p> <p>3 So while the net income is a 4 relatively small growth in absolute terms, we 5 saw good performance on impairment, so therefore 6 it has been a combination, growth to growth.</p> <p>7 You will note that this is the business that has 8 116 million pounds refunds amount through there.</p> <p>9 The other compound of major assets 10 is that the costs were well controlled, and we 11 therefore have seen the benefit of a number of 12 reactions we have been taking on the cost front.</p> <p>13 The costs were down three percent, 14 and that was through the continued cost 15 management program we've had. I think the cost 16 income ratios, if you look at that, which we had 17 a target out to the UK Bank as a whole, is 18 reduced by 2 percentage points for 2007, which 19 meant there were 8 percentage point reaction 20 over three years, which was in excess of where 21 we have been targeting.</p> <p>22 Barclays' commercial bank was 23 flat. The story there was reasonable income 24 performance, predominantly in fees and 25 commissions, rather than net interest income.</p>

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1 And net interest income was impacted by business
 2 disposals that we made in late 2006. Impairment
 3 increased 15 percent, the result of two specific
 4 names, trust income. Commercial bank amounts on
 5 page three --
 6 -- --
 7 (AUDIO STARTS OVER)
 8 -- --
 9 FEMALE SPEAKER: I think we might
 10 start if that's okay. We have most
 11 representatives from the data group on the call
 12 --
 13 I think we might start if that's
 14 okay. We have most representatives from the
 15 data group on the --
 16 I think we might start if that's
 17 okay. We have most representatives from the
 18 data group on the call. So first, welcome and
 19 thank you very much for joining today's due
 20 diligence call. It's explained to you this is
 21 the annual due diligence, which is quite
 22 comprehensive and covers all of Barclays'
 23 funding programs.
 24 Representing Barclays here today
 25 we have Chris Lucas, the Group Finance Director;

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1 Mark Harding from Barclays General Counsel; Andy
 2 Bruce, Group Credit Risk Officer; Miles Storey,
 3 head of Group Balance Sheet; and Russ Aucutt,
 4 head of Group Capital Issuance and
 5 Securitization.
 6 I think everybody should have a
 7 list of the questions, so I just propose to hand
 8 it over to Chris Lucas and his colleagues to go
 9 through the answers.
 10 MR. LUCAS: Hi. Good afternoon
 11 everybody, and thank you for joining us. This
 12 is Chris Lucas. I was going to work down your
 13 due diligence list sort of question by question,
 14 and just respond with some comments as I go
 15 down, if that's okay. If I could just use the
 16 question numbers as a cross-reference.
 17 The first one is the highlight
 18 question one, the major areas of revenue growth
 19 and business expenses in Barclays' agents and
 20 strategy. We have been clear that our strategy
 21 remains the same, that would be to look to
 22 diversify outside of the UK, and in particular
 23 to align capital and resources with businesses
 24 and in (inaudible) they give us faster growth
 25 then we have across the business as it stands at

Page 16

1 the moment. We've also been very clear --
 2 (Has joined the conference)
 3 -- that in terms of what does that
 4 mean? It means that we will be looking, I think
 5 John used the words, east wild and west. So we
 6 will be expecting to further ingrain the
 7 business in markets that give us diversification
 8 outside of the UK and gives us access to
 9 (inaudible) and commonry. Therefore, that
 10 translates into really two businesses as far as
 11 I'm concerned. It translates into international
 12 retail and commercial banking, which is part of
 13 GRC being run by (inaudible) and we expect to
 14 see that business moving into countries and
 15 locations that it has not been. I think the
 16 other part of the business that I see as
 17 investing heavily in for growth is the wealth
 18 business --
 19 (Has joined the conference)
 20 -- and that I think will be more
 21 even paced around the world rather than any
 22 specific area. And if you look at what that
 23 translates into, we have, in 2007, opened
 24 operations in a number of locations,
 25 particularly the UA and India on the retail and

Page 17

1 commercial banking business. We have announced
 2 the acquisition of a small bank in Russia. And
 3 we have announced that we have licenses to
 4 commence operations in Pakistan. So those would
 5 be the major territories that I would see us
 6 looking to grow in terms of that mediums and
 7 strategy.
 8 Now prior to that, we shouldn't
 9 ignore the rest of the business, we have growth
 10 prospects today including EGI and also the UK
 11 business, Barclaycard specifically. And you
 12 will see that we acquired, very recently, a
 13 portfolio of credit card customers and loans
 14 from Discover.
 15 Is that okay in terms of...
 16 FEMALE SPEAKER: Yes, thank you.
 17 MR. LUCAS: So it sort of flows
 18 from that business plan for 2008, and I should
 19 say that the business plan was put together --
 20 (Has joined the conference)
 21 -- and signed off at the end of
 22 2007, and it is set around a PBT number, which
 23 is actually very, very close to the current
 24 consensus and that, I think, was more by luck
 25 than anything specifically. And I should just

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1 give you the reference I used for consensus of
 2 2008, and I have to be honest and say this is
 3 the market's consensus is about 7 billion pounds
 4 PBT. That clearly is a number that is subject
 5 to fluctuation and in the current environment
 6 could fluctuate more significantly and rapidly
 7 than it would do in the past.
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 9 If I use that as a reference
 10 point, our plan prepared at the end of last year
 11 was retroactive in number, and I think it's fair
 12 to say that conditions have been tougher than
 13 envisioned, and I would expect both consensus
 14 and our plans, as we go to our full pass, to
 15 come down from that number. But I think as we
 16 sit here today, that's the best reference point
 17 I can give you.
 18 In terms of question three,
 19 (inaudible) significant changes in management
 20 operation or legal structure degree. The answer
 21 to that is no.
 22 In terms of significant
 23 acquisitions and disposals, I have already given
 24 you the list. In terms of recently we have
 25 acquired Expobank in Russia for about \$745

Page 19

1 million. We acquired -- and that is a small
 2 bank, about 32 branches that are based around
 3 Moscow and St. Petersburg, it is a bank that we
 4 will be owning 100 percent of, and it is a
 5 starting place for our business in -- our retail
 6 commercial business in Russia. It will be
 7 complimentary to the investment and wholesale
 8 banking business that we have there at the
 9 moment.
 10 The second in terms of recent
 11 transactions is Discover's UK card business
 12 which is a small transaction, it was net assets
 13 of about 120 million pounds, something like
 14 that, which we acquired for 35 million. It is
 15 1.8 billion pounds of credit card receivables.
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 17 center, went I think for a while to Lloyds, if I
 18 remember correctly, and then to Discover. It's
 19 a UK business, so it is not directly in line
 20 with our strategy but it is, meets all the
 21 (inaudible) --
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 23 During the year we acquired Index
 24 Exchange Investments, which is the German
 25 exchange traded funds business in Germany. Not

Page 20

1 surprisingly acquired EquiFirst, which was a
 2 small and now even smaller sub-prime originator
 3 in the United States. And we acquired Woolwich
 4 Group, a small business in the (inaudible),
 5 which was part of our wealth and trust business.
 6 And those you can find more
 7 details on the pages 174 and 175 about the
 8 former accounts.
 9 In terms of disposals, we disposed
 10 of most of the monumental portfolio of credit
 11 card receivables. That was a business that was
 12 known in terms of customer quality and credit
 13 quality than we felt we wanted in the UK. We
 14 sold Intelenet, which was part of a
 15 restructuring of our outsource provider in
 16 India. We are talking single millions of pounds
 17 here, so quite small.
 18 The only other sale, I think, that
 19 is completed since year end, is we did sell
 20 BGI's Japan trust and banking business, as we
 21 wanted to focus there on investment management
 22 wealth and trust banking.
 23 That I think is the list of
 24 significant acquisitions and disposals we made.
 25 We've got nothing significant on the stocks that

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1 I need to tell you about in terms of short term
 2 plans. You would expect that we receive many
 3 opportunities and will continue to evaluate them
 4 as they cross our desk.
 5 I think that covers the first
 6 four. Five refers to 2007 four-year results.
 7 And you have seen those, we reported profitable
 8 taxes 7076 billion profit before disposal is
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 10 I think those numbers were extremely close to
 11 consensus, within a few million pounds, and
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 14 The business is -- also came in
 15 very close at a business level to the plans we
 16 had and have worked on. I think the only
 17 business that I would highlight in terms of a
 18 variance to plan, was the UK Retail Bank because
 19 of the level of refunds that we have paid out up
 20 until the stay in July of 2006, that was about
 21 116 million pounds. That I think was the only
 22 really significant (inaudible) variance.
 23 I should just mention Barclays
 24 Capital, it came in very, very close to our
 25 plan. And you will note that it had an

Page 22

1 extremely good first half, it made about 1.6
2 billion pounds of profits in the first half.
3 The second half was impacted by the market
4 conditions that you know as well as I do.
5 If I move to six, in terms of
6 trading performance of the first two months of
7 2008, I should say probably the best – the best
8 guidance I can give you is that if you take
9 consensus at 7 billion pounds and take a monthly
10 run rate without looking at any formal
11 seasonality, you get to about 580 million pounds
12 a month. And for January and February, that is
13 very, very close to our run rate, I think that
14 is the best guidance I can give you. It was in
15 terms of our plan, within a couple of million
16 pounds of the plan, and therefore represented a
17 good start to the year.
18 In terms of March, as you can
19 imagine, March has been a very tough month. I'm
20 not saying anything you guys don't already know,
21 we are still in the process of completing the
22 results process, we get an early look at them
23 tomorrow. But I think the signs that I've got
24 would tell me that the stock conditions have had
25 an impact, but I think that the group will be

Page 23

1 profitable in March on standalone numbers. I
2 think that is the best I can give you. We still
3 have quite a wide big offer in terms of some of
4 the decisions we have to make around asset marks
5 as we close the books.
6 In terms of H-1, 2008, it's quite
7 difficult because there is -- the consensus
8 numbers I gave you, 7 billion pounds, have not
9 been refined by the investment community into a
10 first half, second half. We had planned, if I
11 go back to the plans, a better second half than
12 first. And I think it's fair to say that the
13 conditions we have seen in March specifically,
14 will have dented our first half numbers. But I
15 still feel very good that we had had a good two
16 months, we had a good first half of March,
17 second half of March was up. And to be honest
18 with you, we will have to see how April and May
19 play out.
20 I should just say that the CD
21 businesses are performing extremely well, ahead
22 of plan and am very pleased with that. So while
23 the real focus has been on the wholesale credit
24 environment, there are parts of business that
25 continue to show the benefits of the

Page 24

1 diversification that we have seen.
2 I think that was all I was going
3 to do for six. In terms of seven, is that me?
4 MR. BRUCE: No, that's me.
5 MR. LUCAS: Andy, thank you.
6 MR. BRUCE: I'm going to comment
7 on the steps the bank has taken to mitigate the
8 effect of a serious economic downturn. We
9 monitor macro markets and internal indicators of
10 economic downturn, particular in our four major
11 markets, the UK, the U.S., the European area and
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13 and wholesale businesses. We continue to
14 identify a range of management action responses,
15 each of which is quantified in terms of its
16 financial and non-financial impact on the group.
17 This would involve action plans across business
18 units, such as changing them to value
19 thresholds, score card cutoffs, sectional
20 mandate and scale adjustments, margin changes,
21 rejection of leverage appetite, haircut
22 adjustments, et cetera, all of which are
23 presented to discuss, reviews and challenges by
24 the executive committee.
25 MR. LUCAS: Let me talk about the

Page 25

1 results in a little bit more detail by business
2 segment. And I was going to do this by
3 reference to the result announcement on page
4 three, which shows the profit control tax by
5 business.
6 If I could just run through them
7 briefly, you will see UK retail banking is up 9
8 percent. And the story there has been good
9 mortgage volume growth, if you could imagine in
10 the last quarter, good mortgage volume growth,
11 good savings growth which is important to us,
12 and a reduced level of unsecured lending. One
13 of the features of the business has been to move
14 from unsecured to secured. And that has had a
15 significant impact in terms of the risk profile
16 and the impairment performance.
17 So while net income is a
18 relatively small growth in absolute terms, we
19 saw good performance on impairment, so therefore
20 it has been a combination, growth to growth.
21 You will note this is the business that has 116
22 million pounds refunds amount through there.
23 The other compound of major assets
24 is that the costs were well controlled, and we
25 therefore have seen the benefit of a number of

<p style="text-align: right;">Page 26</p> <p>1 the actions we have been taking on the cost 2 front.</p> <p>3 The costs were down three percent 4 and that was through the continued cost 5 management program we have had. I think the 6 cost income ratios, if you look at that, which 7 we had a target out to the UK Bank as a whole, 8 is reduced by 2 percentage points for 2007, 9 which meant there were eight percentage point 10 reduction over three years, which was in excess 11 of where we have been targeting.</p> <p>12 Barclays' commercial bank was 13 flat. The story there was reasonable income 14 performance, predominantly in fees and 15 commissions, rather than net interest income. 16 And net interest income was impacted by business 17 disposals that we made in late 2006. Impairment 18 increased 15 percent, the result of two specific 19 names of some size as we had inherent charges 20 against.</p> <p>21 And costs were up six percent, 22 probably higher cost increase than we've seen in 23 the past, recognizing that we need to make some 24 investments in this business, because it has 25 been used very much as the generator of equity</p>	<p style="text-align: right;">Page 28</p> <p>1 Scandinavia.</p> <p>2 The risk pendency has come down 3 from 1135 to 945, reflecting the increased 4 quality of the bulk, and particularly the sale 5 of the Monumental (inaudible) I referred to 6 earlier.</p> <p>7 (Inaudible) had a good year in 8 rans, probable cash in rans were up 22 percent. 9 In 30 terms, it was about 9 percent. And most 10 of the business probability increased in 11 (inaudible) was in asset capital, which is the 12 business run by Barclays Capital, which combined 13 Barclays' investment banking product with assets 14 distribution channel.</p> <p>15 We had seen significant growth in 16 the balance sheets from seeking those in 17 advances, and we have seen a significant 18 increase in risk pendency reflecting some, I 19 think, improvement in how we measure it, and 20 also the fact that there is an element of 21 overheating in the South African economy.</p> <p>22 If I talk about IRCD (inaudible) 23 there are three things going on here. There is 24 quite significant profits growth in western 25 Europe. There is quite significant profits</p>
<p style="text-align: right;">Page 27</p> <p>1 and cash for us.</p> <p>2 I think the only other thing I 3 would say is if I look forward, risk pendency, 4 our measure of forward looking risk, it was 5 showing small upset from 2006 to 2007, from 290 6 to 305 million pounds.</p> <p>7 If I look at Barclaycard -- 8 (Has joined the conference) 9 -- Barclaycard is a strong force, 10 18 percent up, year on year. We have really 11 looked to reduce exposure in the UK. We have a 12 number of actions to improve the policy of the 13 book. We reduced -- we increased the cutoff for 14 score cards. We reduced the limits that people 15 had on their cards. We improved collections. 16 We chased after end stage delinquency. That 17 policy had a significant reduction in 18 impairment, down 21 percent. Also, because we 19 took out some of the high-risk business, we saw 20 a reduction in income.</p> <p>21 You will know that we have been 22 growing our international business of 23 Barclaycard, and that has continued to be the 24 case as we have continued to grow the business 25 in South Africa, in the U.S., in Germany and in</p>	<p style="text-align: right;">Page 29</p> <p>1 growth in emerging markets, but there is 2 similarly an investment in that growth in the 3 central part of IRCD, simply developing 4 platforms for the business. Income was up 28 5 percent, impairment was up 93 percent reflecting 6 the growth in the books, very low base, costs 7 are up 32 percent.</p> <p>8 I should just say that this 9 business, if you look at the headline numbers, 10 also has in 2006, the sale of First Caribbean, 11 which is why, on a headline basis, it looks 12 lower.</p> <p>13 Barclaycard, I think I have 14 explained the performance of the first half 15 versus the second half. You will note that we 16 took a quite significant charge, so income was 17 up 14 percent, impairment was significantly up. 18 And the costs were down reflecting our scheduled 19 cost base. We always said if the income comes 20 down after impairment, then the cost would as 21 well, and that has happened.</p> <p>22 You will note, you have seen the 23 results announcement and the references to the 24 write offs we have taken, and I'm sure we will 25 come back to that.</p>

<p style="text-align: right;">Page 30</p> <p>1 BGI had a good year, up from 714 2 to 734, income's up 17 percent. Cost is up 25 3 percent, reflecting investment in the business, 4 particularly in terms of our IShares platform, 5 and particularly in terms of alternative 6 investments and the realties platform. Head 7 (inaudible) was up from 2700 to 3400, and the 8 closing assets under management were 1044 9 billion pounds, and particularly notes were put 10 in there with that new assets under management 11 of about 42 billion pounds. 12 I think that probably covers the 13 business. Are we concerned with the status of 14 Barclays Capital's profitability? I think 15 concerned is an odd choice of words. It's 16 clearly cognizant of the markets in which it 17 operates. I have explained to you, I think that 18 the first half of last year at 1.62 was a record 19 year and we did not expect that to be within 20 that sort of range in the first half. The 21 second half is hard to predict, but with 600 22 million pounds of profits we would be expected 23 to -- continues to be further recovery to be 24 able to beat that. 25 So while I'm not concerned, we are</p>	<p style="text-align: right;">Page 32</p> <p>1 17 and 18. Note 17 covers what would be short 2 end terms called the FAS 157 level 3 3 disclosures, which putting it another way, is 4 those assets and liabilities we have taken at 5 fair value, which have unobservable inputs into 6 models. And you will see that it's about 24 7 billion pounds out of the total fair value, 8 portfolio is 632. On the liability side, it's 9 at 10 and-a-half billion out of 480. 10 If you look at the other part of 11 that, which is the amortization and release of 12 the previously unobservable P&L, that's set out 13 on note 17, page 69 of our results announcement 14 and shows about 514 million pounds of 15 amortization of previously held up profits into 16 the results (inaudible) -- 17 (Has left the conference) 18 If I go to note 18, on page 60 of 19 the results announcement, refresh our exposures 20 both (inaudible) -- 21 (Has left the conference) 22 -- (inaudible) to ABS, CDO super 23 senior, other sub-prime, AltA, monoline 24 insurers, commercial mortgages, crediting 25 facilities and exposures to structured</p>
<p style="text-align: right;">Page 31</p> <p>1 clearly cognizant of the environment in which we 2 operate and the toughness of that and I would 3 reserve some of that in terms of 2008 4 performance. 5 In terms of the pension scheme, we 6 actually have a surplus under IA (inaudible) I 7 think in funding terms. So we are working as we 8 are required to, under UK laws, to develop a 9 scheme specific funding plan with the trustees. 10 There are no signs that due to the funding 11 level, we are actually going to be advised to 12 either a (inaudible) charge or a funding charge, 13 significantly different than from what we have 14 been seeing in 2007. 15 I think that's a good place for me 16 to stop and hand over to Andy on asset 17 valuation. Do you want me to do the first one? 18 MR. BRUCE: I thought you were 19 doing up until 13. 20 MR. LUCAS: Okay. I have been 21 told I got to keep going. So I will continue to 22 do that. 23 I think the first thing in terms 24 of questions 11 and 12, are to point you to our 25 results announcements, and in particular notes</p>	<p style="text-align: right;">Page 33</p> <p>1 investment vehicles, I think in terms of which 2 of this is marked to model is -- 3 (Has left the conference) 4 -- predominately the ADS, CDO, 5 super senior, whether it be sub-prime home loans 6 and AltA, the others tend to be marked to 7 market. 8 Are there any other off balance 9 sheet vehicles that the bank is contemplating 10 moving off the balance sheet, the answer is no. 11 They are on the balance sheet as it stands. 12 In terms of 13, does management 13 anticipate the need to make further write downs 14 to eliminate any of the above projects? We 15 wrote off 1.6 -- or we provided 1.6 billion up 16 to the 31st of December, and that is net of 658 17 million of earned credit. We would expect, when 18 you look at the market conditions in January and 19 February and March, that we will be taking 20 further write downs, that will be reflecting 21 market conditions. 22 The numbers I gave you for January 23 and February were after the write downs that we 24 had taken. And I think the evidence will be in 25 March, we will be taking further write downs.</p>

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1 I think that's a good place for me
 2 to stop and hand over.
 3 MR. BRUCE: Okay. This is the
 4 exposure to leveraged loans. As of the 31st of
 5 December 2007, our draw on leveraged financed
 6 positions were 7.4 billion pounds, which
 7 actually was very close to the 30th of June 2007
 8 number. Positions were stated (inaudible) of
 9 130 million pounds and (inaudible) 68 million
 10 pounds driven by widening of corporate credit
 11 spreads.
 12 Our leveraged financed assets are
 13 housed in our banking book on an accrual
 14 accounting basis, as these assets are
 15 performing, there is no charge for indemnified
 16 impairment. However, given the degree of
 17 dislocation experience in our leveraged financed
 18 syndication markets throughout 2007, we felt it
 19 prudent to take a reserve on a portfolio basis
 20 to reflect the low pricing that may result from
 21 distributing our current underwriting book over
 22 an extended period of time.
 23 Subsequent attempt charge taken
 24 Q4, 2007 this period, as a result of prevailing
 25 syndication market conditions, barred any

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1 concerns of fundamental credit quality of the
 2 underlying transactions.
 3 While general leveraged financed
 4 markets remained uncertain, the principal
 5 assumptions used in the impairment methodology
 6 continue to be sound. Importantly the loans of
 7 performing asset construction liquidated long
 8 term positions. As such, the stance in market
 9 unidentified impairments from the absence of any
 10 new material credit concerns is viewed as a
 11 conservative approach and represents a fair
 12 value assessment of the portfolio.
 13 The next question is our exposure
 14 to the fixed rate (inaudible) securities
 15 markets. Our exposure, essentially, is minimal.
 16 Participation in this market does not
 17 necessarily assign an increased fault
 18 probability. Actually failed auction written
 19 notes often offer good balance since the failed
 20 group promise seems to be very attractive and
 21 it's usually not any different than it was
 22 previously. Given that, there is not expected
 23 to be any material impact on the group's
 24 financial statements.
 25 The next question is our exposure

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1 to monoline, direct or indirect. Barclays
 2 Capital holds assets with insurance protection
 3 or other credit enhancements for monoline
 4 insurers, the negative basis trade book. Value
 5 of exposure to monoline insurance under these
 6 contracts as of the 31st of December 2007 was
 7 1.335 billion pounds. It was 140 million at the
 8 30th of June 2007. There were no claims up due
 9 under these contracts, and none of the
 10 underlying assets were in default. The source
 11 of the rest of the -- page 67 of the accounts.
 12 In order for loss to occur in the
 13 negative basis, both with defaulting both the
 14 underlying security and the monoline is
 15 required. The nature of the policy supporting
 16 the negative basis, will obligate the insurers
 17 continue to make payments of principal and
 18 interest according to the original contract of
 19 any of the properly referenced obligation.
 20 There is no marked to market settlement of the
 21 obligation at default but a continuing pay as
 22 you go obligation from the financial guarantor.
 23 This protects the monolines from any credit
 24 crunch in the event of a high level of default
 25 of the securities they guarantee.

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1 As to indirect monoline exposure,
 2 in addition to our direct exposure, we may incur
 3 indirect exposure in the normal course of
 4 business arising from trading and bonds racked
 5 by monolines at issue in CDS trading. These
 6 bonds covered by issue and trading and that's an
 7 exposure to monoline insurers as a result of
 8 such trading activities is not terrible, they
 9 are marked to market.
 10 Question 17 is the breakdown of
 11 the loan book, and taking these statistics from
 12 page 96 of the accounts. As of the 31st of
 13 December, extending loans and advances to
 14 customers and banks of values at 389 billion, up
 15 from 317 we had previously. And of that, 349
 16 billion was granted to personal or corporate
 17 customers. The advances are well distributed
 18 across the retail and wholesale portfolios
 19 almost equally. And our distribution is not
 20 expected to change materially.
 21 18 is asking us to discuss any
 22 concentrations in the loan book in what is the
 23 largest industry section, how much does this
 24 account for in total portfolio. Loans and
 25 advances were well spread across industry

<p style="text-align: right;">Page 38</p> <p>1 classifications. Excluding financial services, 2 which is 20 percent, our largest executive 3 exposures are to home loans, 32 percent, other 4 personal, 12 percent, and business and other 5 services, 9 percent. These categories are 6 generally appraised of small loans having lowered 7 our facility credit establishment and are 8 intrinsically highly diversified. 9 Loans and advances are also 10 diversified across a number of geographical 11 regions. The majority of the exposure is in the 12 UK, 55 percent, which includes secured home 13 loans exposures, followed by the U.S. and South 14 Africa 11 percent, and the rest of the European 15 16 percent. You can see the breakdown by 16 industry sector, again, on page 96. 17 In terms of the current credit 18 quality of the portfolio, question 19, what is 19 the current level of nonperforming loans, and do 20 we expect any deterioration of the loan 21 portfolio during 2008? We actually have been 22 monitoring the risk profile of the loans and 23 advances to customers with a view to early 24 protection of any concentrations in higher risk 25 segments.</p>	<p style="text-align: right;">Page 40</p> <p>1 the accounts, these are potential problem loans 2 and credit risk loans. If the credit quality of 3 the early warning list or watch list 4 deteriorates, the highest category, 5 consideration is given for including it in the 6 potential problem loan list. CPLs to loans 7 where payments of principal and interest is up 8 to date, but where serious doubt exists of the 9 ability of the borrowers to continue to comply 10 with their payment terms, the total monitor for 11 problem loans, (inaudible) 797, up from 761 the 12 year previous. That's broken down for you on 13 page 120. 14 Of the total PPL, that's 951 15 million, which is the substantial majority of 16 the increase of ABS, CDO, super senior and 17 similar exposures. Simple credit risk loans, 18 clearly shift (inaudible) should deterioration 19 be observed. It will lose hippocratic risk 20 loans category. This would be missed payments 21 or future covenant with (inaudible) 22 We got three classes of loans 23 impaired, accrued, past due 90-days or more 24 impaired and restructured loans. Potential 25 lines of credit risk loans of 31st of December</p>
<p style="text-align: right;">Page 39</p> <p>1 The majority of the whole exposure 2 is to higher quality names, is just under 70 3 percent of our exposure to customers with a 4 default grade of ten or better. Grades 10 to 12 5 -- I'm again looking at page 97 again on your 6 account -- would approximate a weak investment 7 grade grading. So that gives you an idea of the 8 balance of the exposure in the portfolio. 9 We actively manage our credit 10 exposures. Corporate accounts that are deemed 11 to contain heightened level of risks are 12 recorded on an early warning or watch list 13 comprising three categories of increasing 14 concern. These are updated monthly and 15 circulated to the relative risk control points. 16 Once the risk has taken place, exposure is very 17 carefully monitored and when appropriate, 18 exposure reductions are effected. 19 Should an account become impaired, 20 it would normally, but not necessarily, have 21 passed through all three categories, which 22 reflect the need for having increasing caution 23 and control. 24 In terms of our categorization of 25 potential credit risk loans. Again, page 99 of</p>	<p style="text-align: right;">Page 41</p> <p>1 was 9.6 billion pounds, up from 5 billion in 2 2006. 3 Again, within these categories, 4 which you can see on page 118, there were 15 5 impaired loans including, three on 344 of ABS, 6 CDO super senior exposures, and the balance of 7 approaching another billion pounds -- is a 8 balance of a number of diverse nonperforming 9 loans through different industry sectors. 10 Question 20, are there any loans 11 that represent more than 10 percent of the 12 group's equity base, and if so, how many? Are 13 any of these loans nonperforming or on the watch 14 list? 15 None of them are nonperforming or 16 are on the watch list. As of December 31st, 17 there were four counterparties for exposure, 18 represents more than 10 percent of the group's 19 equity base. Two relates to recently priced 20 large M&A underwrites, which are being sold down 21 as we speak. And two are government-related 22 exposures. 23 21, discuss the status of the 24 bank's risk management process and procedures. 25 And did we make any significant changes to the</p>

<p style="text-align: right;">Page 42</p> <p>1 way the bank manages capital or report risks, 2 and are we considering anymore changes in 2008? 3 The approach to risk management 4 undertaken by Barclays has not changed during 5 2007, continues to involve a number of 6 fundamental efforts that drive processes across 7 the group. No material changes are anticipated 8 for 2008. 9 The risk policy covered the 10 group's main risk policy for assigning 11 responsibility for the management of specific 12 risks, setting out requirements for control 13 frame work for all the risk types, individual 14 control frame works are obstructed around five 15 discreet processes. Again, in pages 83 and 4 of 16 the accounts, direct (inaudible) control reports 17 and damage and challenge to enable a robust 18 system of review and challenge. 19 The responsibility for risk 20 management resides at all levels within the 21 group, from the executives down through the 22 organization to each business manager and risk 23 specialist. Credit risk is clearly one of the 24 group's major sources of income and is the most 25 significant risk and consider all the resources</p>	<p style="text-align: right;">Page 44</p> <p>1 ratio was 7.6 percent and our risk asset ratio 2 was 11.2 percent. 3 Question 23, outline the capital 4 requirements of the bank. Barclays operates 5 essentialized capital management model 6 considering both regulatory and economic 7 capital. Decisions on the allocation of capital 8 resources are conducted as part of the strategic 9 planning review and are based on -- 10 (Has left the conference) 11 Including returns on economic and 12 regulatory capital. The group's capital 13 management activities seek to maximize 14 shareholder value by optimizing the level and 15 maximizing capital resources. The group's 16 management objective are to support the group's 17 AA credit rating, maintain sufficient capital 18 resources to support the group's risk appetite 19 and meet the capital requirements, maintain 20 sufficient capital resources to meet the efforts 21 of a minimum regulatory capital requirements, 22 and the U.S. Federal Reserve Bank's 23 requirements, the financial holding company will 24 be capitalized and insure locally regulated 25 subsidiaries can meet their minimum capital</p>
<p style="text-align: right;">Page 43</p> <p>1 dedicated to controlling it. Within the group's 2 risk, the credit risk function provides wide 3 direction on credit risk taken. 4 Functional team manages the 5 resolution of all significant credit policy 6 issues and runs the group credit committee which 7 approves major credit decisions. Other 8 principal committees that review credit risk 9 management, formerly payroll group credit 10 policy, resolve all significant credit policy 11 issues that the wholesale credit risk management 12 committee, the group retail credit risk 13 management committee and the risk oversight 14 committee and the board risk committee. The 15 board audit committee also reviews the 16 impairment for answers as part of financial 17 plotting. 18 We also discuss other risks and 19 things, market risk and operational risk and so 20 on. I think it's you. 21 MR. AUCUTT: As of the 31st of 22 December 2007, the group's consolidated tier 1 23 capital ratio was 7.8 percent and the group's 24 risk asset ratio was 12.1 percent. As of 25 January 1st, 2008, the group's capital tier 1</p>	<p style="text-align: right;">Page 45</p> <p>1 requirements. 2 The key measurement the group uses 3 to assess its capital strength is a tier 1 4 capital ratio, which represents tier 1 capital 5 compared to risk-weighted assets. The group's 6 target of tier 1 capital ratio is 7 and a 7 quarter percent. And minimal requirements under 8 the FSA bubble are expressed as a ratio as 9 capital resources to risk-weighted assets. 10 Risk-weighted assets are a fraction of risk 11 weighted. Risk weighted applies to the group's 12 (inaudible) characterization developed by the 13 Basel committee. 14 MR. LUCAS: Question 24, 15 commenting on Barclays' asset and liability 16 management procedures. I'll look at each 17 component in turn. Market risk, risk appetite 18 that is set by board risk committee. Group risk 19 oversight committee delegate oversight to the 20 group market risk director under his team in 21 group market risk. Overall group policy is to 22 concentrate market risk in Barclays Capital. 23 Trading risk components of market risk is 24 concentrated in Barclays Capital. 25 The head of market risk in</p>

<p style="text-align: right;">Page 46</p> <p>1 Barclays Capital, the global market risk 2 management unit, and that is independent of 3 front office activities. The nontrading risk in 4 the UK, Barclays' treasury at the group level 5 met the market risk positions of the businesses 6 -- 7 (Has joined the conference) 8 -- with Barclays Capital. 9 Structured interest rate positions, such as loan 10 disparity in current accounts and capital, are 11 similarly managed by Barclays' treasury. 12 The market risk in the overseas 13 businesses is small compared to the group and is 14 managed by the local treasuries in a similar 15 manner to that in the UK. Since making these 16 acquisitions from Barclays Capital, Barclays and 17 overseas treasuries are reported daily, exclude 18 market risk, and they are used to make all 19 trading in treasury activities. Over 2007 this 20 averaged at 14 million pounds with a high of 21 59.3 million and a low of 33.1 million. 22 The liquidity risk, the short term 23 liquidity day-to-day as managed by Barclays 24 Capital, under oversight of Barclays' treasury, 25 liquidity mismatch is reported and monitored</p>	<p style="text-align: right;">Page 48</p> <p>1 of our competent vehicles. 2 Question 26, how is the overall 3 balance sheet position been straight influenced 4 and outlook for margins. Interest rate risk in 5 the balance sheets arising from the provision of 6 retail and wholesale on nontrading banking 7 products, as well as following currency 8 translation exposures within the balance sheet. 9 (Inaudible section due to 10 high-pitched humming sound on audio.) 11 In 2007, based on annual earnings 12 and risk assessment, 50 basis point change in 13 interest rates across all occurrences have 14 impacted DVT by 18 million pounds -- 15 (Has left the conference) 16 -- and this compares to 12 17 (inaudible) -- 18 (Has left the conference) 19 A detailed summary of interest 20 rate risk concentration across the balance 21 sheets which shows the spectrum is provided in 22 the annual report from pages 236 and 237. 23 On margins, I'd refer you to the 24 detail contained in the annual report on pages 25 46 and 47, the margins by business prevailing in</p>
<p style="text-align: right;">Page 47</p> <p>1 daily here. For other local businesses, they 2 are similarly required to manage their liquidity 3 requirements, and meet those liquidity limits 4 set by the group, plus any other local 5 regulatory requirements. 6 The term liquidity, Barclays' 7 treasury calculates the transfer price for the 8 generation or use of term liquidity based on 9 market rates and the behavior maturity of 10 balances. This enables the business to 11 accurately price its products to customers and 12 the group to insure that the balance sheet is 13 correctly priced. 14 On question 25, comments on any 15 changes in funding sources. Barclays has been 16 able to access its usual sources of funding over 17 the recent months. Through this period, while 18 there's been a relative lack of short and medium 19 term funding in the wholesale markets for all 20 counterparties, Barclays has continued to 21 maintain its strong liquidity position. We have 22 benefited from significant inflows of deposits, 23 consistent accounts of party lines, steady and 24 sometimes increased client flows across many 25 businesses and the continued full self-funding</p>	<p style="text-align: right;">Page 49</p> <p>1 the last couple years. There's no expectation 2 of -- 3 (Has joined the conference) 4 -- any deterioration in the 5 margins through 2007. 6 On question 27, how do we manage 7 overall currency exposure? For a transaction on 8 currency exposure, the group's risk management 9 policies prevent the holding of any significant 10 open positions outside of the trading portfolio 11 -- (inaudible) -- for translation, foreign 12 currency exposure, the group operates in a 13 number of countries which result in structural 14 foreign exchange exposures on its investments in 15 those countries. The group's policy to 16 economically hedge all such foreign currency 17 investments, where applicable, to do so. 18 In terms of impact with borrowed 19 earnings, unless specifically hedged, the fall 20 on the dollar would normally reduce fallen 21 denominated income streams when translated into 22 earnings. Nevertheless, we do not have a 23 significant underlying earnings risk to dollars 24 in the overall context of group earnings. Over 25 to you Russ.</p>

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1 MR. AUCUTT: Question 28; fluency
 2 on the group's information implementation of
 3 Basel II and what are the expected impacts on
 4 the capital ratios for its implementation. As I
 5 mentioned before, I gave you the group's tier 1
 6 and risk asset ratio on the Basel II. Under
 7 Basel II, we are effective from the 1st of
 8 January 2008, the group has been granted
 9 approval by the FSA to adopt the advanced
 10 approaches to credit and operational risk
 11 management. Pillar 1 risk-weighted assets will
 12 be generated in the group's risk models. Pillar
 13 1 minimum capital requirement in the Basel II
 14 add pillar 1 risk-weighted assets, multiplied by
 15 8 percent, internationally agreed minimum ratio.
 16 Under Basel II, total qualifying
 17 tier 1 capital has decreased by 665 million.
 18 Total net capital resources has decreased by 2.8
 19 billion. The tier 1 ratio reduced by 20 basis
 20 points. And the risk asset ratio reduced by 90
 21 basis points. Further details of this can be
 22 found on pages 57 and 58 of the 2007 annual
 23 report.
 24 MR. LUCAS: I think in relation to
 25 question 29, there are no material regulatory

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1 changes or experiences in difficulty
 2 implementing.
 3 Under 30, are there any other
 4 actions or issues not yet discussed that should
 5 impact on the group's financial performance or
 6 condition? I think I was just referencing to
 7 Mark Harding's comment when we talk about the
 8 LSE cases in the UK on refunds, I think you
 9 should be aware of that.
 10 In terms of 31, the answer is none
 11 that I'm aware of.
 12 MALE SPEAKER: Good. In reference
 13 to 32, any further pending material litigation,
 14 the answer to that is that we have in note 35 to
 15 our accounts, have given you the disclosure of
 16 any material litigation. Of course we would be
 17 obliged to disclose any other material
 18 litigation or regulatory action, and we have not
 19 disclosed anything further from what's in note
 20 35. So I refer you to that.
 21 Have we entered into any
 22 settlement agreement for material impact on
 23 international traditional business realms, that
 24 is no.
 25 Question 33, are there any

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1 outstanding declaratory judgments that effect
 2 the group's operations, the answer to that is
 3 also no. We have generally made -- I should say
 4 generally made a schedule (inaudible) in note 35
 5 and in note 36 in relation to completion of
 6 regulatory matters and a number of matters that
 7 effect us, including the current accounts test
 8 case, which is fully disclosed in there and
 9 obviously has got some period to run yet.
 10 In reference to question 34, any
 11 issues regarding any (inaudible) regulatory
 12 compliance practices to gain in relation to
 13 sanctions. We have made a disclosure about that
 14 in note 36, about the internal investigation
 15 which we are discussing with the U.S. and UK
 16 authorities regarding sanctions compliance. I
 17 can add nothing more to that. I am not aware of
 18 any other material -- (inaudible) entity issues
 19 that need to be brought to your attention.
 20 MALE SPEAKER: In terms of 35, as
 21 you would imagine we have ongoing conversations
 22 with the rating agencies. They will be
 23 continuing the dialogue and reviewing the year
 24 end, to that form of the process, stopping in
 25 the next month. The ratings are public

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1 knowledge, we have no information that would
 2 suggest anything other than what you know
 3 publicly in terms of Fitch and Standard & Poor's
 4 one negative outlook, outside of that we have
 5 our AA ratings as you're aware.
 6 In terms of other risks or
 7 concerns which we are exposed in the future, I
 8 think the only thing I would just highlight over
 9 and above everything else we've covered is that
 10 we did in 2007 provide some support to some BGI
 11 funds at a cost of 80 million pounds. That is
 12 reflected in the results I described earlier and
 13 we had disclosed -- we had provided some
 14 selective support since then. I think that
 15 would be the only thing I would have brought to
 16 your attention.
 17 In terms of whether we have
 18 process complied with (inaudible) parts 7 in
 19 levels 1, 2 and 3, that is set out in notes 17,
 20 the results announcement. I don't really have
 21 much more to say on that.
 22 MR. BRUCE: Question 38 is
 23 discussing our risk management experience in the
 24 past six months and progress capital. Clearly
 25 outside of the well documented exposures that we

<p style="text-align: right;">Page 54</p> <p>1 have outlined to sub-prime leveraged monolines.</p> <p>2 and --</p> <p>3 (Has left the conference)</p> <p>4 -- exposures, I think the group's</p> <p>5 wholesale credit risk offered in 2007 benefitted</p> <p>6 from the diversification available from the UK</p> <p>7 and international portfolios which grew by 14</p> <p>8 and 41 percent respectively. The corporate's</p> <p>9 credit risk profile remains steady with</p> <p>10 corporate credit ratings and watch list balances</p> <p>11 broadly stable.</p> <p>12 Going into 2008, the credit</p> <p>13 environment reflects concern about weakening</p> <p>14 economic conditions in our major markets, credit</p> <p>15 spread and other indicators signal credit cycle</p> <p>16 has changed for the worse after a long period of</p> <p>17 stability. We expect deterioration in credit</p> <p>18 metrics as to whole probabilities moves towards</p> <p>19 the median term averages. This environment has</p> <p>20 lead to a more cautious approach to credit</p> <p>21 assessment processing and ongoing control, which</p> <p>22 we believe will continue throughout the year.</p> <p>23 39 is what improvements would we</p> <p>24 make, if any? Market stress during 2007 was</p> <p>25 well handled, and Barclays Capital benefitted</p>	<p style="text-align: right;">Page 56</p> <p>1 not in compliance with U.S. sanctions.</p> <p>2 MALE SPEAKER: I think the final</p> <p>3 question 42, is there anything material that</p> <p>4 management would like to highlight that has not</p> <p>5 been covered on the call? I'm certainly not</p> <p>6 aware of anything that I would need to highlight</p> <p>7 to you.</p> <p>8 FEMALE SPEAKER: Great. Thank you</p> <p>9 very much. I think if we can now open it up to</p> <p>10 questions from the dealers. And if you have</p> <p>11 any, could you please introduce yourself and</p> <p>12 state the organization that you represent.</p> <p>13 MR. PASS: Hi, this is Matt Pass</p> <p>14 from Merrill Lynch, I just have a quick</p> <p>15 question. I know you were focused on valuation</p> <p>16 of assets on the balance sheet at the moment,</p> <p>17 and mindful that credit source obviously puts</p> <p>18 some results out and then very quickly came out</p> <p>19 with additional numbers on write downs. Can you</p> <p>20 just explain over what period do you have a more</p> <p>21 formal monitoring of valuations and, you know,</p> <p>22 you are obviously obliged to state when you</p> <p>23 think that it's deteriorated, but is there a</p> <p>24 weekly, a monthly process and, you know, that</p> <p>25 gives an idea on how likely outside of the</p>
<p style="text-align: right;">Page 55</p> <p>1 significantly during this period from continued</p> <p>2 business diversification, include growth risk is</p> <p>3 notable given the sale of our markets were</p> <p>4 effectively closed during the second half of the</p> <p>5 year. We continue to operate in difficult</p> <p>6 market conditions. But diversification of</p> <p>7 income in terms of region and product helps us</p> <p>8 manage through challenging conditions.</p> <p>9 We recognize that the financial</p> <p>10 world is a less predictable place, with high</p> <p>11 volatility and significant challenges to</p> <p>12 historic assumptions about correlations, and as</p> <p>13 such recalibration of our diversification</p> <p>14 benefits has been considered.</p> <p>15 MALE SPEAKER: Question 40,</p> <p>16 general (inaudible). The answer to that is no</p> <p>17 to the best of my knowledge. I don't believe</p> <p>18 anybody associated with the group is any</p> <p>19 (inaudible) sanction list for any term.</p> <p>20 Question 41, any capital raised?</p> <p>21 No, we have offered extensive procedures to</p> <p>22 insure that we check that the banks -- the</p> <p>23 groups that this is done in compliance with</p> <p>24 sanctions and we do not intend any money raised</p> <p>25 at any time will be used to -- in any way that's</p>	<p style="text-align: right;">Page 57</p> <p>1 normal course of announcement you make, you</p> <p>2 would be sort of making an announcement on</p> <p>3 additional write downs or do you have any plans</p> <p>4 to make announcements outside the normal course</p> <p>5 of, you know, talking to the market on a regular</p> <p>6 basis?</p> <p>7 MR. LUCAS: I think the</p> <p>8 information we presented is clearly as of the</p> <p>9 year end and reflected year end valuations. We</p> <p>10 monitor and update valuations on a daily, weekly</p> <p>11 and monthly basis depending on the complexity of</p> <p>12 the valuation and the level of facility. I</p> <p>13 think in terms of announcements, we would expect</p> <p>14 only to make an announcement outside of our --</p> <p>15 (Has left the conference)</p> <p>16 -- usual cycle if there was</p> <p>17 something that we believed to be material and</p> <p>18 price sensitive. And those are the guidelines</p> <p>19 that we would use to form a view as to whether</p> <p>20 we should make an announcement or not. I</p> <p>21 referred you to the difficulty and the market</p> <p>22 positions, as of today I have no plans to make</p> <p>23 an announcement. I follow our usual updates to</p> <p>24 the market.</p> <p>25 MR. PASS: Thanks.</p>

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1 FEMALE SPEAKER: Are there anymore
2 questions from the any of the dealers?
3 MR. MCSPADDEN: Yes, Citigroup
4 here, Jack McSadden. In general, sort of the
5 same area of questioning with regard to
6 leveraged loans, particularly where there is a
7 fairly active secondary market. You mentioned
8 you have a -- you touched on the size of your
9 portfolio. Similar type of question as to any
10 difference in what you might think about timing.
11 MR. LUCAS: Well, I should remind
12 you any comments about our accounting call
13 leveraged loans, which is in our banking
14 business, and therefore we account for it
15 looking at impairment rather than market value,
16 we will continue to account for on that basis.
17 And (inaudible) signs of impairment, say direct
18 read across to market indices is less relevant
19 in this asset class.
20 MALE SPEAKER: I'm going to agree,
21 it's right that we feel extremely comfortable
22 with the performance of the underlying
23 transactions at present.
24 MR. MCSPADDEN: Thank you.
25 FEMALE SPEAKER: Any other

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1 questions please? If not, I guess that
2 completes the due diligence, so thank you very
3 much to all participants.
4 - - -
5 End of recording.
6 - - -
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1 CERTIFICATE.
2 I hereby certify that the
3 aforesaid tape recording was transcribed by me to
4 the best of my ability and is a true record of the
5 content as heard by me.
6
7
8 *Michelle A. Landman*
Michelle A. Landman
9 Dated: July 21, 2015
10
11 (The foregoing certification of this transcript
12 does not apply to any reproduction of the same by
13 any means, unless under the direct control and/or
14 supervision of the certifying shorthand reporter.)
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