

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re BARCLAYS BANK PLC SECURITIES	:	Master File No. 1:09-cv-01989-PAC
LITIGATION	:	
_____	:	<u>CLASS ACTION</u>
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This Document Relates To:	:	
	:	[FILED UNDER SEAL]
ALL ACTIONS.	:	
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**PLAINTIFF'S RESPONSE TO THE BARCLAYS
DEFENDANTS' LOCAL RULE 56.1 STATEMENT AND
COUNTERSTATEMENT OF ADDITIONAL MATERIAL FACTS**

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Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 56.1 of the Local Rules of the United States District Court for the Southern and Eastern Districts of New York, Lead Plaintiff Dennis Askelson, submits his (i) Response to the Local Rule 56.1 Statement in Support of the Barclays Defendants' Motion for Summary Judgment; and (ii) Counterstatement of Additional Material Facts.

**PLAINTIFF'S RESPONSE TO THE BARCLAYS DEFENDANTS' LOCAL RULE 56.1
STATEMENT**

1. Plaintiff objects to Defendants' submission of unsubstantiated facts that are not supported by a citation to admissible evidence, as required by Federal Rule of Civil Procedure 56(e) and Local Civil Rule 56.1(d).

2. Evidence cited by Plaintiff in support or in contradiction of any particular fact or proposition should not be construed as the only evidence supporting or contradicting the fact or proposition in question, and Plaintiff specifically reserves the right to provide additional evidence as is necessary and appropriate.

2. The phrases "do not dispute" and "not disputed" shall not be construed as a concession by Plaintiff that a statement is material, complete, supports the proposition which is cited, would be admissible at trial, or is otherwise relevant.

4. Plaintiff reserves his rights to challenge the admissibility of any statement and any cited materials at trial.

5. Plaintiff's assertion that he "does not dispute" any particular fact or proposition is solely for purposes of Defendants' motion for summary judgment, and Plaintiff reserves all other objections including, but not limited to, his right to object to or contest each of Defendants' assertions of fact at the appropriate time, including the right to challenge such assertions of fact at trial.

6. Because Defendants' section headings, if any, are not statements of material undisputed facts, no response is needed or provided as to any such headings.

I. BACKGROUND

A. Barclays

1. Barclays was and is a global financial services provider engaged in retail and commercial banking, credit cards, investment banking, wealth management and investment management services, headquartered in London. (White Decl. Ex. 1 (Barclays' Annual Report for the fiscal year ended December 31, 2007 filed on Form 20-F) (the "2007 20-F") at 115.)

Response: Not disputed.

2. In 2007-2008, Barclays was organized in the following business groupings: UK Banking, UK Retail Banking, Barclays Commercial Bank, Barclaycard, International Retail and Commercial Banking, Barclays Capital, Barclays Global Investors and Barclays Wealth. (White Decl. Ex. 1 (2007 20-F) at 8-9.)

Response: Not disputed.

3. In 2007-2008, Barclays Capital was an investment bank based in New York. Barclays Capital was organized in three principal areas: Rates, Credit and Private Equity. (White Decl. Ex. 1 (2007 20-F) at 25.)

Response: Not disputed.

4. At year-end 2007, Barclays had assets of £1,227,361 million (*i.e.*, approximately £1.23 trillion), total shareholders' equity of £32,476 million (*i.e.*, approximately £32.5 billion) and total income of £23,492 million (*i.e.*, approximately £23.5 billion). (White Decl. Ex. 1 (2007 20-F) at 160-61.)

Response: Not disputed.

5. At year-end 2007, Barclays' "Tier 1 Capital ratio" was 7.8% and its "Equity Tier 1 ratio" was 5.0% under Basel I. Barclays "started managing capital ratios under Basel II" on January 1, 2008; Barclays' Tier 1 Capital ratio was 7.6% and its Equity Tier 1 ratio was 5.1% under Basel II. (White Decl. Ex. 1 (2007 20-F) at 5.)

Response: Not disputed, but Plaintiff respectfully refers the Court to ¶321¹ for Barclays' capital position at the end of each month during the period September 2007 – April 2008.

6. The Tier 1 Capital ratio is total Tier 1 capital over total risk weighted assets, and the Equity Tier 1 ratio is total equity Tier 1 capital over total risk weighted assets. (See White Decl. Ex. 27 ("The Turner Review: A Regulatory Response to the Global Banking Crisis," FSA, March 2009) at 55-56.)

Response: Not disputed.

7. In 2007 and 2008, the U.K. regulatory minimum was 4% for the Tier 1 Capital ratio and 2% for the Equity Tier 1 ratio. (White Decl. Ex. 27 ("The Turner Review: A Regulatory Response to the Global Banking Crisis," FSA, March 2009) at 56, 57.)

Response: Disputed: (i) the FSA has described these capital ratios as the "absolute minimum," and further noted that "almost all major international banks already have ratios well above these levels, and that regulators already have discretion to require higher levels" (White Decl. Ex. 27 ("The Turner Review: A Regulatory Response to the Global Banking Crisis," FSA, March 2009) at 55); (ii) Barclays maintained internal "target" Tier 1 Capital and Equity Tier 1 ratios in 2007 (7.25% and 5.25% under Basel I, respectively) and 2008 (7.25% and 5.25% under Basel II, respectively) (¶321); (iii) prior to the Series 5 offering, the FSA required Barclays to

¹ Unless otherwise noted, (i) citations to "¶__" are to Plaintiff's Counterstatement of Additional Material Facts, *infra*, (ii) citations to "Ex. __" are to exhibits to the Declaration of Sharan Nirmul, submitted herewith, and (iii) citations to "White Decl. Ex." are to exhibits to the Declaration of Thomas C. White, submitted in support of the Barclays Defendants' Motion for Summary Judgment (ECF No. 182).

meet its target Tier 1 Capital and Equity Tier 1 ratios (*e.g.*, ¶367); and (iv) Barclays' Tier 1 Capital and Equity Tier 1 ratios were below its targets at all times in 2008 prior to the Series 5 Offering (¶321).

8. At all times during 2007 and 2008, Barclays' Tier 1 Capital ratio and Equity Tier 1 ratio were above the regulatory minima. (*See* White Decl. Ex. 50 (Varley Dep.) at 199-200; White Decl. Ex. 1 (2007 20-F) at 5.)

Response: Disputed: (i) the FSA "ha[d] discretion to require higher levels" (White Decl. Ex. 27 ("The Turner Review: A Regulatory Response to the Global Banking Crisis," FSA, March 2009) at 55); (ii) Barclays maintained internal "target" Tier 1 Capital and Equity Tier 1 ratios in 2007 (7.25 and 5.25% under Basel I, respectively) and 2008 (7.25% and 5.25% under Basel II, respectively) (¶321); (iii) prior to the Series 5 offering, the FSA required Barclays to meet its target Tier 1 Capital and Equity Tier 1 ratios by year-end 2008 (*e.g.*, ¶367); and (iv) Barclays' Tier 1 Capital and Equity Tier 1 ratios were below its targets at all times in 2008 prior to the Series 5 Offering (¶321).

B. Lead Plaintiff Dennis Askelson

9. Dennis Askelson bought 2,400 shares of Barclays American Depositary Shares, Series 5 ("Series 5 ADS") on April 9, 2008 at a price of \$25 per share for \$60,000. (White Decl. Ex. 60 (Lead Plaintiff Dennis Askelson's Verified Responses and Objections to the Underwriter Defendants' First Set of Interrogatories to Lead Plaintiff) at 8.)

Response: Not disputed.

10. Mr. Askelson has received dividends of over \$41,000 on his 2,400 shares through September 2016. (*See* White Decl. Ex. 37 (Askelson Dep.) at 184; White Decl. Ex. 61 (Lead Plaintiffs' Objections and Responses to the Barclays' Defendants First Set of Interrogatories) at 30; White Decl. Ex. 16 (Series 5 ADS Dividend History).)

Response: Disputed that this information is relevant and admissible evidence. *See, e.g., Abrams v. Van Kampen Funds, Inc.*, No. 01 C 7538, 2005 WL 88973, at *13 (N.D. Ill. Jan. 13, 2005) (granting motion in limine to exclude evidence of dividends paid to class members and stating that “dividends are not relevant to calculating damages” under Section 11).

11. Mr. Askelson testified that he bought the 2,400 Series 5 shares in April 2008 as a “long-term investment.” (White Decl. Ex. 37 at 103.)

Response: Not disputed that Mr. Askelson testified that he purchased 2,400 Series 5 shares in April 2008 as a “long-term investment.”

Plaintiff further adds that Mr. Askelson purchased his Series 5 shares at \$25 a share based on “[t]he double A rating and the interest rate,” and his perception that it was “a safe investment.” Ex. 1 at 148:21-22, 258:23-259:1. Less than a year later, the price of the Series 5 ADS had collapsed to \$4.96 per share, and at the time the case was commenced was half its original price, or \$12.82 per share. *Id.* at 146:14-15; White Decl. Ex. 15. As Mr. Askelson testified, “I lost 80 percent of my value in a year. I could have used that opportune revenue to do other things with if I wanted to, but I couldn’t because the stock dumped.” Ex. 1 at 168:6-10.

12. Mr. Askelson testified that his Series 5 investment was the “best investment [he’s] made since April 2008.” (White Decl. Ex. 37 at 206, 309.)

Response: Disputed. Mr. Askelson did not state that the Series 5 investment was the “best investment [he’s] made since 2008.” Rather, it was Barclays’ counsel who asked Mr. Askelson, “So to the best of your recollection, this is the best investment you’ve made since April 2008.” Counsel for Mr. Askelson objected to the form of this question, as it was vague as to the use of the term “best” and mischaracterized Mr. Askelson’s prior testimony. As such, the testimony is inadmissible.

Plaintiff further adds that Mr. Askelson purchased his Series 5 shares at \$25 a share based on “[t]he double A rating and the interest rate,” and his perception that it was “a safe investment.” Ex. 1 at 148:21-22, 258:23-259:1. Less than a year later, the price of the Series 5 ADS had collapsed to \$4.96 per share, and at the time the case was commenced was half its original price, or \$12.82 per share. *Id.* at 146:14-15; White Decl. Ex. 15. As Mr. Askelson testified, “I lost 80 percent of my value in a year. I could have used that opportune revenue to do other things with if I wanted to, but I couldn’t because the stock dumped.” Ex. 1 at 168:6-10.

II. THE SERIES 5 ADS OFFERING

13. The offering documents for the Series 5 ADS Offering comprised the registration statement and prospectus filed on August 31, 2007 with the Securities and Exchange Commission (the “SEC”) (White Decl. Ex. 2), the prospectus supplement dated April 8, 2008 and filed on April 9, 2008 with the SEC (the “Prospectus Supplement”) (White Decl. Ex. 3), and other SEC filings incorporated by reference, including Barclays’ Annual Report for the fiscal year ended December 31, 2007 filed on Form 20-F (White Decl. Ex. 1). (*See* Ex. 3 (Prospectus Supplement) at S-4.)

Response: Not disputed.

14. Pursuant to the offering documents, Barclays offered 100 million Series 5 ADS at \$25 per share on or about April 8, 2008. (White Decl. Ex. 3 (Prospectus Supplement) at S-5.)

Response: Not disputed.

A. The Series 5 ADS; Preference Shares

15. Each Series 5 ADS represents one preference share. The preference shares are “dollar-denominated non-cumulative callable preference shares.” (White Decl. Ex. 3 (Prospectus Supplement) at S-5.)

Response: Not disputed.

16. The preference shares “rank senior to [Barclays’] ordinary shares and any other class of [Barclays’] shares ranking junior to the preference shares.” (White Decl. Ex. 3 (Prospectus Supplement) at S-6.)

Response: Not disputed.

17. The preference shares do not have voting rights. (White Decl. Ex. 3 (Prospectus Supplement) at S-8.)

Response: Not disputed.

18. The Series 5 ADS are listed and traded on the New York Stock Exchange. The underlying preference shares are not traded. (White Decl. Ex. 3 (Prospectus Supplement) at S-32.)

Response: Not disputed.

19. The closing prices for the Series 5 ADS are publicly available on Bloomberg. (*See* White Decl. Ex. 15 (Series 5 ADS Price Chart).)

Response: Not disputed.

20. The Series 5 offering documents stated that “[n]on-cumulative preferential dividends will accrue on the preference shares from and including the date of their issuance . . . at a rate of 8.125% per year on the amount of \$25 per preference share” and “[d]ividends on the preference shares may be paid only to the extent that payment can be made out of our distributable profits.” (White Decl. Ex. 3 (Prospectus Supplement) at S-6.)

Response: Not disputed.

21. The preference shares pay quarterly dividends. (White Decl. Ex. 3 (Prospectus Supplement) at S-6.)

Response: Not disputed.

22. Barclays has paid this dividend on every quarterly dividend date since the issuance of the Series 5 ADS. (White Decl. Ex. 16 (Series 5 ADS Dividend History).)

Response: Disputed that this information is relevant and admissible evidence. *See, e.g., Abrams v. Van Kampen Funds, Inc.*, No. 01 C 7538, 2005 WL 88973, at *13 (N.D. Ill. Jan. 13, 2005) (granting motion in limine to exclude evidence of dividends paid to class members and stating that “dividends are not relevant to calculating damages” under Section 11).

B. Events Leading Up to the Series 5 ADS Offering

1. November 15, 2007 Update and Conference Call

23. Barclays publicly issued an “update” on November 15, 2007 (the “11/15/07 Update”). (White Decl. Ex. 4.)

Response: Not disputed, but Plaintiff respectfully refers the Court to ¶¶203-233 for additional facts concerning the 11/15/07 Update. Plaintiff further notes that the 11/15/07 Update was not incorporated by reference in the Series 5 offering documents. (White Decl. Ex. 3 (Prospectus Supplement) at p. S-4.)

24. The 11/15/07 Update described certain “capital markets trading performance and exposures” and included a “[s]ummary of Barclays Capital net charges and write downs” for the third quarter (July-September) of 2007 and October of 2007. (White Decl. Ex. 4 at 1, 4.)

Response: Not disputed, but Plaintiff respectfully refers the Court to ¶¶203-233 for additional facts concerning the 11/15/07 Update. Plaintiff further notes that the 11/15/07 Update was not incorporated by reference in the Series 5 offering documents. (White Decl. Ex. 3 (Prospectus Supplement) at p. S-4.)

25. Barclays hosted a “Trading Update Conference Call” on November 15, 2007 (the “11/15/07 Call”). A transcript of the 11/15/07 Call was published by Thomson Financial on or about November 15, 2007. (White Decl. Ex. 5.)

Response: Not disputed, but Plaintiff respectfully refers the Court to ¶¶203-233 for additional facts concerning the 11/15/07 Update. Plaintiff further notes that the Trading Update Conference Call was not incorporated by reference in the Series 5 offering documents. (White Decl. Ex. 3 (Prospectus Supplement) at p. S-4.)

26. The 11/15/07 Call transcript includes the following quotation, attributed to Robert Diamond of Barclays: “There’s certain sectors of the market that will be very, very difficult in ‘08. Our sub-prime is the poster child for that.” (White Decl. Ex. 5 at 14.)

Response: Not disputed that the quote in paragraph 26 is attributed to Diamond. Plaintiff respectfully refers the Court to ¶¶137-233, 295-320, 420 for additional facts concerning the 11/15/07 Update and Barclays’ subprime and Alt-A exposure. Plaintiff further notes that the Trading Update Conference Call was not incorporated by reference in the Series 5 offering documents. (White Decl. Ex. 3 (Prospectus Supplement) at p. S-4.)

27. The 11/15/07 Call transcript includes the following quotation, attributed to Robert Diamond of Barclays: “Sub-prime will be in workout for a couple of years, there’s no question about it. That sector of the market is troubled and difficult and will get worked out.” (White Decl. Ex. 5 at 12.)

Response: Not disputed that the quote in paragraph 26 is attributed to Diamond. Plaintiff respectfully refers the Court to ¶¶137-233, 295-320, 420 for additional facts concerning the 11/15/07 Update and Barclays’ subprime and Alt-A exposure. Plaintiff further notes that the Trading Update Conference Call was not incorporated by reference in the Series 5 offering documents. (White Decl. Ex. 3 (Prospectus Supplement) at p. S-4.)

2. February 19, 2008 Results Announcement and Conference Call

28. On February 19, 2008, Barclays publicly issued its results announcement for the year ended December 31, 2007. Barclays hosted an investor conference call on February 19,

2008 (the “2/19/08 Call”). A transcript of the 2/19/08 Call was published by Thomson Financial on or about February 19, 2008. (White Decl. Ex. 6.)

Response: Not disputed, but Plaintiff adds that the 2/19/08 Call was not incorporated by reference into the Series 5 offering documents. (White Decl. Ex. 3 (Prospectus Supplement) at p. S-4.)

29. The 2/19/08 Call transcript includes the following quotation, attributed to Christopher Lucas of Barclays, concerning valuations:

In terms of page 60 we’ve, for each asset class, been through a rigorous process in terms of marking these to market. They are the December 31 marks. We draw the line there and take those market prices and inputs that are available to us on the 31st. We of course in the few days following that look for information that may tell us there was something wrong about those marks but what we do not do is update the marks in the absence of finding anything that is materially different from what we’ve found at the end of the year. In terms of the process, they go through an independent product control process, independent of the desks, they run through a challenge process up to and including Bob and the senior management at Barclays Capital and there are a series of adjustments that are made reflected in here following that process. Finally, they’re subject to year end audits, and these have been through that and are the products of that.
(White Decl. Ex. 6 at 13.)

Response: Not disputed that the quote in paragraph 29 is attributed to Lucas, but otherwise disputed. Disputed that Barclays had a “challenging,” “rigorous” and/or “independent” process in place for valuing its assets in 2007 and 2008. ¶¶137-202, 389-396. Plaintiff further disputes that the state of affairs on February 19, 2008 was not “materially different” from that at year end 2007. By February 19, 2008, Barclays had already suffered large losses and taken significant writedowns on, for instance, its subprime whole loans and Alt-A related assets, causing its capital and equity ratios to decline. ¶¶295-372, 405. These negative downward trends, moreover, would continue through the time of the Series 5 offering. *Id.* Plaintiff further adds that the 2/19/08 Call was not incorporated by reference into the Series 5 offering documents. (White

Decl. Ex. 3 (Prospectus Supplement) at p. S-4.)

30. The 2/19/08 Call transcript includes the following quotation, attributed to Christopher Lucas of Barclays, concerning valuations:

We continually mark the positions as we do across the whole business, on a daily, weekly, monthly basis. And if we had something that we felt significantly changed the comments that we've made about the outlook and something that had a significant effect on the market position of our equity, we'd make a statement and we do not feel we have to make one.

(White Decl. Ex. 6 at 22.)

Response: Not disputed that the quote in paragraph 30 is attributed to Lucas, otherwise disputed. The full question and answer excerpted in paragraph 30 is as follows:

Steven Andrews – UBS – Analyst: Thanks John it's Stephen Andrews from UBS, two questions, one on note 18 and one on note 17. Just firstly, just putting everything together, as Bob was saying in his four points, obviously the mark taken on these at risk assets are taken at December 31. Based on Bob's comments, there's obviously been a bit more turmoil in the first six or seven weeks of the year, can I assume that where you stand today that you don't think there is a need for any further significant write-downs on these positions --?

Lucas: Yes, and you're absolutely right, these were taken as at the end of the year. We continually mark the positions as we do across the whole business, on a daily, weekly, monthly basis. And if we had something that we felt significantly changed the comments that we've made about the outlook and something that had a significant effect on the market position of our equity, we'd make a statement and we do not feel we have to make one.

(White Decl. Ex. 6 at 22.)

Further, contrary to Lucas's assurances, by February 19, 2008, Barclays had already suffered large losses and taken significant writedowns on, for instance, its subprime whole loans and Alt-A related assets, causing its capital and equity ratios to decline. ¶¶295-372, 405. These negative downward trends, moreover, would continue through the time of the Series 5 offering. *Id.* Plaintiff further adds that the 2/19/08 Call was not incorporated by reference into the Series 5 offering documents. (White Decl. Ex. 3 (Prospectus Supplement) at p. S-4.)

31. The 2/19/08 Call transcript includes the following quotation, attributed to Robert Diamond of Barclays: “[W]e expect the first half [of 2008], no mistake, to be extremely challenging” and “[2007] was a very tough environment.” (White Decl. Ex. 6 at 9, 15.)

Response: Not disputed that the quotes in paragraph 31 are attributed to Diamond, otherwise disputed. Diamond’s boilerplate warning that “[W]e expect the first half [of 2008], no mistake, to be extremely challenging,” failed to disclose that by February 19, 2008, Barclays had already suffered large losses and taken significant writedowns on, for instance, its subprime whole loans and Alt-A related assets, causing its capital and equity ratios to decline. ¶¶295-372, 405. These negative downward trends, moreover, would continue through the time of the Series 5 offering. *Id.* Plaintiff further adds that the 2/19/08 Call was not incorporated by reference into the Series 5 offering documents. (White Decl. Ex. 3 (Prospectus Supplement) at p. S-4.)

32. The 2/19/08 Call transcript includes the following quotation, attributed to Robert Diamond of Barclays: “[W]e think for all the reasons we’ve said about difficult market conditions in the first six months [of 2008], it’s unlikely that that market’s going to be really moving, we think, before the second half of this year, if earlier, maybe at the very end of the second quarter.” (White Decl. Ex. 6 at 27.)

Response: Not disputed that the quote in paragraph 32 is attributed to Diamond, otherwise disputed. Plaintiff adds that the full question and answer referenced in paragraph 32 is as follows:

Leigh Goodwin - Fox-Pitt Kelton – Analyst: Good morning, it's Leigh Goodwin from Fox-Pitt Kelton. Just a question on your leveraged finance positions and that market in fact. And I notice your position is essentially unchanged now for six months or more and I wonder whether these are the same assets that are essentially sitting on your balance sheet as were there six months ago and what the prospects are for that market sort of opening up again?

And also, if I can just ask about the impairments that you've taken against those, it doesn't seem as if those have changed at all either since October and I just wondered what your view is on those as well?

Diamond: You're correct to say that the market is moving slowly, we think for all the reasons we've said about difficult market conditions in the first six months, it's unlikely that that market's going to be really moving, we think, before the second half of this year, if earlier, maybe at the very end of the second quarter. There has been some movement, but not great in and out. One example would be when we talked to you before, we had GBP60 million in bridge equity exposure which was at the very low end of the industry, that's down to GBP2 million now, so it has been possible to move some things. But it comes back to John's earlier point, at this time corporate credit remains very strong and the exposures we have to the clients we have, we're not uncomfortable managing that risk and continuing to manage as we have.

White Decl. Ex. 6 at 27.

Plaintiff further states that Diamond's boilerplate warning that "[W]e think for all the reasons we've said about difficult market conditions in the first six months [of 2008], it's unlikely that that market's going to be really moving, we think, before the second half of this year, if earlier, maybe at the very end of the second quarter," failed to disclose that by February 19, 2008, Barclays had already suffered large losses and taken significant writedowns on, for instance, its subprime whole loans and Alt-A related assets, causing its capital and equity ratios to decline. ¶¶295-372, 405. These negative downward trends, moreover, would continue through the time of the Series 5 offering. *Id.* Plaintiff further adds that the 2/19/08 Call was not incorporated by reference into the Series 5 offering documents. (White Decl. Ex. 3 (Prospectus Supplement) at p. S-4.)

33. The 2/19/08 Call transcript includes the following quotation, attributed to John Varley of Barclays, concerning capital:

[W]e've had cause to reflect quite carefully on that. And of course I like the fact that in the Tier 1 we're running well ahead of our target, that seems to me to be a good and a comfortable position to be in. In terms of the equity ratio, I made some

remarks consciously about that because it is—the 5.1% is just below our target of 5.25%.

(White Decl. Ex. 6 at 13.)

Response: Not disputed that the quote in paragraph 33 is attributed to Varley, otherwise disputed. Varley’s statement regarding Barclays’ capital and equity ratios at year end 2007 did not reflect the state of affairs at February 19, 2008, or at the time of the Series 5 Offering. Varley failed to disclose that by February 19, 2008, Barclays had already suffered large losses and taken significant writedowns on, for instance, its subprime whole loans and Alt-A related assets, causing its capital and equity ratios to decline. ¶¶295-372, 405. These negative downward trends, moreover, would continue through the time of the Series 5 offering. *Id.*

Plaintiff further disputes that Barclays’ “target” Tier 1 Equity ratio was 5.25%: (i) the FSA “ha[d] discretion to require higher levels” (White Decl. Ex. 27 (“The Turner Review: A Regulatory Response to the Global Banking Crisis,” FSA, March 2009) at 55); (ii) Barclays maintained internal “target” Tier 1 Capital and Equity Tier 1 ratios in 2007 (7.25 and 5.25% under Basel I, respectively) and 2008 (7.25% and 5.25% under Basel II, respectively) (¶321); (iii) prior to the Series 5 offering, the FSA required Barclays to meet its target Tier 1 Capital and Equity Tier 1 ratios by year-end 2008 (¶367); and (iv) Barclays’ Tier 1 Capital and Equity Tier 1 ratios were below its targets at all times in 2008 prior to the Series 5 Offering (¶321)

Plaintiff further adds that the 2/19/08 Call was not incorporated by reference into the Series 5 offering documents. (White Decl. Ex. 3 (Prospectus Supplement) at p. S-4.)

C. Barclays’ 2007 20-F

34. Barclays filed its 2007 Annual Report on Form 20-F, for the year ended December 31, 2007, on March 26, 2008. (White Decl. Ex. 1.)

Response: Not disputed.

35. The 2007 20-F stated: “The results of severe disruption in the US sub-prime mortgage market were felt across many wholesale credit markets in the second half of 2007, and were reflected in wider credit spreads, higher volatility, tight liquidity in interbank and commercial paper markets, more constrained debt issuance and lower investor risk appetite.” (White Decl. Ex. 1 at 65.)

Response: Not disputed that the quote in paragraph 35 appears in the 2007 20-F, otherwise disputed. Barclays’ boilerplate warning at page 65 of the 2007 20-F failed to disclose that by March 26, 2008, the date the 2007 20-F was filed, Barclays had already suffered large losses and taken significant writedowns on, for instance, its subprime whole loans and Alt-A related assets, causing its capital and equity ratios to decline. ¶¶295-372, 405. These negative downward trends, moreover, would continue through the time of the Series 5 offering. *Id.* Plaintiff further disputes that the language contained in paragraph 35 discharged Defendants’ disclosure obligations under Item 303.

36. The 2007 20-F also stated:

Going into 2008, the credit environment reflects concern about weakening economic conditions in our major markets. Credit spreads and other indicators signal that the credit cycle has changed after a long period of stability. We expect some deterioration in credit metrics as default probabilities move toward their medium-term averages. The environment has led to a more cautious approach to credit assessment, pricing and ongoing control in the financial industry, which we believe will continue through the year.

(White Decl. Ex. 1 at 65.)

Response: Not disputed that the quote in paragraph 35 appears in the 2007 20-F, otherwise disputed. Barclays’ boilerplate warning at page 65 of the 2007 20-F failed to disclose that by March 26, 2008, the date the 2007 20-F was filed, Barclays had already suffered large losses and taken significant writedowns on, for instance, its subprime whole loans and Alt-A

related assets, causing its capital and equity ratios to decline. ¶¶295-372, 405. These negative downward trends, moreover, would continue through the time of the Series 5 offering. *Id.* Plaintiff further disputes that the language contained in paragraph 36 discharged Defendants' disclosure obligations under Item 303. Plaintiff further disputes that at year end 2007 and prior to the Series 5 offering, Barclays employed a "more cautious approach to credit assessment, pricing and ongoing control." ¶¶137-202, 389-96.

37. The 2007 20-F included the following table concerning Barclays Capital credit market positions:

Financial review
Barclays Capital credit market positions

Barclays Capital credit market positions

Barclays Capital credit market exposures resulted in net losses of £1,635m in 2007, due to dislocations in the credit markets. The net losses primarily related to ABS CDO super senior exposures, with additional losses from other credit market exposures partially offset by gains from the general widening of credit spreads on issued notes held at fair value.

Credit market exposures in this note are stated relative to comparatives as at 30th June 2007, being the reporting date immediately prior to the credit market dislocations.

	As at	
	31st December 2007 £m	30th June 2007 £m
ABS CDO Super Senior		
High Grade	4,959	6,151
Mezzanine	1,149	1,629
Exposure before hedging	6,018	7,780
Hedges	(1,347)	(348)
Net ABS CDO Super Senior	4,671	7,432
Other US sub-prime		
Whole loans	3,205	2,900
Other direct and indirect exposures	1,832	3,146
Other US sub-prime	5,037	6,046
Alt-A	4,916	3,760
Monoline insurers	1,335	140
Commercial mortgages	12,399	8,282
SIV-lite liquidity facilities	152	692
Structured investment vehicles	590	925

(White Decl. Ex. 1 at 53.)

Response: Not disputed that the chart in paragraph 37 appears at page 53 of Barclays' 2007 20-F, otherwise disputed. The chart on page 53 of the 2007 20-F failed to disclose that by March 26, 2008, the date the 2007 20-F was filed, Barclays had already suffered large losses and taken significant writedowns on, for instance, its subprime whole loans and Alt-A related assets, causing its capital and equity ratios to decline. ¶¶295-372, 405. These negative downward trends,

moreover, would continue through the time of the Series 5 offering. *Id.* Plaintiff also notes that, at year end 2007, Barclays held additional assets wrapped by highly risky monoline insurers with a notional value of approximately £21 billion (including CDOs, CLOs, and CMBS) that were not disclosed in Barclays' 2007 20-F or to investors prior to the Series 5 Offering. ¶¶237-261. Plaintiff further notes that Barclays' disclosure of "net losses of £1,635 million" was misleading and incomplete. ¶¶373-89.

38. On the same page as the above table, the 2007 20-F stated that 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 £1,335m (30th June 2007: £140m). There were no claims due under these contracts as none of the underlying assets were in default." (White Decl. Ex. 1 at 53.)

Response: Not disputed that the language quoted in paragraph 38 appears on page 53 of the 2007 20-F, otherwise disputed. Barclays' disclosure regarding "assets with insurance protection or other credit enhancement from monoline insurers" and the "value of exposure to monoline insurers" was misleading and incomplete because at year end 2007, and at the time of the Series 5 offering, Barclays held additional assets wrapped by highly risky monoline insurers with a notional value of approximately £21 billion (including CDOs, CLOs, and CMBS) that were not disclosed in Barclays' 2007 20-F or to investors prior to the Series 5 Offering. ¶¶234-88. Moreover, unbeknownst to investors, by the time of the Series 5 offering, Barclays' asserted "value of exposure to monolines" had grown to £2,784. ¶406.

39. The credit valuation adjustment on Barclays Capital's monoline exposure was £59 million as of December 31, 2007. (White Decl. Ex. 45 (O'Driscoll Dep.) at 177, 182, 223.)

Response: Not disputed that Barclays wrote down approximately £59 on its net monoline exposure, but Plaintiff adds that this writedown was not disclosed to investors prior to the Series 5 offering.

III. BARCLAYS' VALUATION PROCESSES; PWC'S AUDIT WORK

40. Mr. Varley testified that Barclays had “a very extensive and rigorous process for securities valuation. It started at the trading desk. It involved the product control group, who were separate from the trading desk. It involved [] Barclays Capital finance. It then went to central Barclays Capital finance. It then went to central group finance. It then as appropriate went to auditors, underwriters, external advisers. So what I am describing here is an extensive system that was designed to ensure that our valuations were hard-headed and rigorous.” (White Decl. Ex. 50 at 23-24.)

Response: Not disputed that the quotes in paragraph 40 are attributed to Varley, otherwise disputed. Disputed that Barclays had a “very extensive and rigorous process for securities valuations” in place during 2007 and 2008. ¶¶137-202, 389-96.

41. Mr. Varley testified: “[V]ery considerable care was taken as a result of the processes that I have described to you before, very considerable care was taken to ensure that these assets were appropriately mark to market or were, absent market activity, marked to model.” (White Decl. Ex. 50 at 187.)

Response: Not disputed that the quotes in paragraph 40 are attributed to Varley, otherwise disputed. Disputed that “very considerable care was taken to ensure that these assets were appropriately mark to market or were, absent market activity, marked to model” during 2007 and 2008. ¶¶137-202, 389-96.

42. The Product Control Group (“PCG”) reported through the Chief Financial Officer of Barclays Capital, who was Patrick Clackson in 2007 and 2008. (*See* Ex. 39 (Clackson Dep.) at 16-18.)

Response: Not disputed.

43. Mr. Clackson’s “responsibilities were to ensure [Barclays] had complete[,] accurate results of the investment bank reflected in our management accounts, our reports to the Board and our external filings; and providing forecasts and budgets both to an investment banking management and to Barclays group.” (White Decl. Ex. 39 (Clackson Dep.) at 16.)

Response: Not disputed that Mr. Clackson described his responsibilities, as quoted in paragraph 43, at his deposition. Plaintiff disputes that these responsibilities were discharged. ¶¶137-202, 389-96.

44. Among other things, PCG was responsible for “preparing the daily P&L and doing the valuation testing on the trading books.” (White Decl. Ex. 39 (Clackson Dep.) at 16.)

Response: Not disputed that these were the responsibilities of PCG. Plaintiff disputes that these responsibilities were discharged. ¶¶137-202, 389-96.

45. Barclays Capital traders were responsible for “marking” (valuing) positions they oversaw on a daily basis, based on information from market sources. (*See, e.g.*, Ex. 42 (Hamilton Dep.) at 94-95; White Decl. Ex. 43 (Kvalheim Dep.) at 181-82).)

Response: Not disputed that this was a responsibility of traders. Plaintiff disputes that this responsibility was discharged. ¶¶137-202, 389-96.

46. Traders’ marks were subject to review and adjustment by the head of the relevant trading desk. (*See, e.g.*, Ex. 43 (Kvalheim Dep.) at 202.)

Response: Not disputed that traders' marks were subject to review and adjustment by the respective head of the relevant trading desk. Plaintiff disputes that the respective head of the relevant trading desk discharged this responsibility. ¶¶137-202, 389-96.

47. PCG was responsible for "price testing" the traders' marks. The price testing process "check[ed] that all trades which were done were booked correctly, recorded correctly, and they liaised with the Technical Accounting Group . . . to ensure that we were following all the appropriate accounting policies." (White Decl. Ex. 39 (Clackson Dep.) at 21.)

Response: Not disputed that price testing was among the responsibilities of PCG. Plaintiff disputes that this responsibility was discharged. ¶¶137-202, 389-96.

48. If PCG and desk personnel were unable to resolve differing valuation judgments, the issue would be escalated to senior managers, including the CFO. (White Decl. Ex. 43 (Kvalheim Dep.) at 196-98); *see also* Ex. 49 (Teague Dep.) at 59-61, 65-67, 82-83; White Decl. Ex. 42 (Hamilton Dep.) at 99- 100; White Decl. Ex. 44 (Landreman Dep.) at 84-85; White Decl. Ex. 39 (Clackson Dep.) at 31, 40, 191-92.)

Response: Not disputed.

49. As Sean Teague, a PCG director responsible for "document[ing], understand[ing], and help[ing to] determine [] the appropriate valuation range" for Barclays' assets, testified, "[t]he responsibility of the product control valuations team is to work closely with the P&L line team, ensuring that the books are properly marked, basically the guardians of the balance sheet to working under the CFO to ensure when the CFO is signing off on the financials that the values are correct." (White Decl. Ex. 49 (Teague Dep.) at 21, 65.)

Response: Not disputed that Mr. Teague’s and PCG’s responsibilities were as described in paragraph 49. Plaintiff disputes that these responsibilities were discharged. ¶¶137-202, 389-96.

50. As Mr. Teague testified, PCG’s valuations were performed independently from the traders; they worked “separate from the desk” at which the traders worked, and they would “talk straight to the brokers” for pricing information used in their valuations. PCG came “up with [its] own marks to ensure the integrity of the balance sheet” and would “challenge a trader [] if there was a price discrepancy creating a material variance between where product control believed that a position should be priced versus where trading had marked it.” (White Decl. Ex. 49 (Teague Dep.) at 67, 70.)

Response: Not disputed that PCG’s responsibilities were as described in paragraph 50. Plaintiff disputes that these responsibilities were discharged. ¶¶137-202, 389-96.

51. As Richard Landreman, another PCG Director, testified, for assets for which prices were “less observable,” PCG was “more involved in modeling and making sure the assumptions that we had in our models were consistent with what was being published out in the secondary market.” (White Decl. Ex. 44 (Landreman Dep.) at 57.)

Response: Not disputed that PCG’s responsibilities were as described in paragraph 51. Plaintiff disputes that these responsibilities were discharged. ¶¶137-202, 389-96.

52. Mr. Landreman testified: “We believed that the assumptions we were using were credible, and they were defensible; that we could point to other observable trades that had occurred or other published publications at that time that would support our use of those assumptions.” (White Decl. Ex. 44 (Landreman Dep.) at 79-80.)

Response: Not disputed that the quotes in paragraph 52 are attributed to Landreman,

otherwise disputed. Plaintiff disputes that the models used to value Barclays' credit market assets at year-end 2007, or prior to the Series 5 offering, were "credible" and/or "defendable." ¶¶137-202, 389-96.

53. PwC audited Barclays' 2007 financial statements. As part of PwC's audit, PwC reviewed the valuations of Barclays Capital's credit market exposures. (See White Decl. Ex. 1 (2007 20-F) at 147-48; White Decl. Ex. 52 (Barclays Capital Credit Valuation at December 31, 2007, Critical Matter, dated February 7, 2008) (the "February 7 Critical Matter Memo").)

Response: Not disputed that PwC audited Barclay' 2007 financial statements. Plaintiff disputes that the material cited in support of the fact that "PwC reviewed the valuations of Barclays Capital's credit market exposures" can be presented in a form that would be admissible in evidence. See FRE 401, 802, 901, 602.

54. As reflected in a PwC document dated January 25, 2008, entitled Barclays Capital U.S. – Analysis of CDO, ABS, & CDS Pricing (the "PwC Pricing Memo"):

The Financial Analytics group "we," "us," or "Financial Analytics" within PricewaterhouseCoopers LLP "PwC" Advisory performed an analysis of financial instruments selected and provided to us by the BarCap Capital U.S. ("BarCap") assurance engagement team. The selection consists of Collateralized Debt Obligations "CDOs", ["Collateralized Synthetic Obligations CSOs" and Asset-Backed Securities "ABS" with subprime or Alt-A exposure, Negative Basis Trades wrapped with a CDS on monoline counterparty insurers, single name CDS on reference bonds that are included in the ABX indices and Commercial Loans priced to the Lehman commercial loan index. We were specifically asked to assist the BarCap engagement team in the audit of the valuation assertion of the selected financial instruments as of 12/31/07.

(White Decl. Ex. 51 (PwC Pricing Memo) at PwC000540.)

Response: Not disputed that the language quoted in paragraph 54 appears in the PwC Pricing Memo. Plaintiff disputes the relevance of these facts to Plaintiff's claims at issue in this litigation. See FRE 401.

55. As reflected in the PwC Pricing Memo, PwC reached the following conclusions on the referenced asset classes:

Asset Class	PwC Conclusion
Home Equity Loans	"[W]e are satisfied that [the] direction and magnitude of the movement in BarCap's prices is consistent with the ABX within a reasonable range of fair value. In addition, outliers we identified were appropriately explained by management and no individually material outliers or systematic bias was detected from our benchmarking procedures."
Negative Basis Trades	"[W]e are satisfied that [the] direction and magnitude of the movement in BarCap's prices is not inconsistent with the referenced indices index within a reasonable range of fair value. In addition, outliers we identified were appropriately explained by management and no individually material outliers or systematic bias was detected from our benchmarking process."
CDOs	"[W]e are satisfied that [the] direction and magnitude of the movement in BarCap's prices is consistent with the referenced indices index within a reasonable range of fair value. In addition, outliers we identified were appropriately explained by management and no individually material outliers or systematic bias was detected from our benchmarking procedures."
Super senior liquidity facilities	"[W]e are comfortable with the overall price level of the super senior High-Grade positions. For the mezzanine CDOs . . . the pricing levels are not inconsistent with the referenced indices index within a reasonable range of fair value. No systematic bias was detected from our benchmarking procedure."
Collateralized Synthetic Obligations	"[A] value near the deal notional . . . for these CSO does not appear unreasonable. No systematic bias was detected from our review."
CDS	"[W]e are satisfied that [the] direction and magnitude of the movement in BarCap's spread is consistent with the referenced indices index within a reasonable range of fair value. In addition, we are satisfied that the relationship between the CDS spreads holds across rating buckets and change in spreads over time does not appear unreasonable. No systematic bias was detected from our benchmarking procedures."
European CLOs	"[W]e are satisfied that [the] direction and magnitude of the movement in BarCap's price is not inconsistent with the referenced spreads. From our review no systematic bias was detected from our benchmarking procedures."
CMBS	"[W]e are satisfied that [the] direction and magnitude of the movement in BarCap's price is not inconsistent with the referenced index. From our review no systematic bias was detected from our benchmarking procedures."

(White Decl. Ex. 51 at PwC000556, 562, 570, 576, 581, 583-84, 586.)

Response: Not disputed that the language quoted in paragraph 55 appears in the PwC Pricing Memo. Plaintiff disputes the relevance of these facts to Plaintiff's claims at issue in this litigation. *See* FRE 401.

56. Mr. Summa, the specialist who led PwC's Financial Analytics group in 2007 and 2008, testified that the Pricing Memo accurately reflects PwC's conclusions and that he "stand[s] by" each of them. (White Decl. Ex. 48 (Summa Dep.) at 202-05, 211-12, 215-20.)

Response: Not disputed that Mr. Summa answered affirmatively to questions posed by Barclays' counsel regarding whether he "stands by" conclusions expressed in the PwC Pricing Memo, otherwise disputed. Plaintiff disputes the relevance of these facts to Plaintiff's claims at issue in this litigation. *See* FRE 401.

Plaintiff further disputes Mr. Summa's credibility. For instance, Mr. Summa was a partner employed by PwC, which served as Barclays' auditor at the time of Mr. Summa's deposition. (Ex. 2 at 9:21-25.) Further, in preparation for his deposition, Mr. Summa met with Barclays' litigation counsel, Sullivan & Cromwell ("S&C"), in which he was provided with questions and documents (including the PwC Pricing Memo) that S&C intended to ask him about at his deposition, and reviewed the answers that he would provide. (Ex. 2 at 11:13-25; 12:24-13:17; 16:16-19:21.) Plaintiff is entitled to present these and other facts at trial in order to undermine Mr. Summa's credibility as a witness.

57. In addition, as reflected in the February 7 Critical Matter Memo, PwC's "engagement team recommended to the Barclays Capital Global engagement team in PwC London that we, assisted by PwC valuation experts, would perform additional audit procedures over the products within the U.S. credit business that have a material exposure to sub-prime. The purpose of the deep-dive was two-fold:

1 Develop a deeper understanding of the U.S. credit business so we could understand all the exposures to sub prime sufficient to allow us to scope our year-end audit effectively; and

2 Perform interim procedures over the product areas with material exposure to sub prime to identify any issues in advance of our year end audit.”

(White Decl. Ex. 52 at PwC000520.)

Response: Disputed that the facts presented in paragraph 57 can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 57. *See* FRE 401.

58. As also reflected in PwC’s February 7 Critical Matter Memo, PwC met with PCG and “discussed each product are to gain an understanding of the exposure to subprime assets” and “perform[ed] substantive audit procedures over the valuation” of the following asset classes: ABS Secondary (ABS Home Equity), CDO Agency London (CDO), CDO Agency New York (ABS CDO, CDO, CDO CDS, CDS Indices, Home Equity, CDO Super Senior), GCD U.S. (Negative Basis Trades), Risk Finance (CDO) and U.S. Workout Group (Bonds). (White Decl. Ex. 52 at PwC000521-22.)

Response: Disputed that the facts presented in paragraph 58 can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 58. *See* FRE 401.

59. PwC stated in the February 7 Critical Matter Memo that the “credit markets in 2007 have experienced significant disruption due to [various] factors in the residential mortgage loan markets.” (White Decl. Ex. 52 at PwC000515.)

Response: Disputed that the facts presented in paragraph 59 can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 59. *See* FRE 401.

60. As reflected in the February 7 Critical Matter Memo, PwC also noted that “[b]ased on the state of the current markets . . . , [their] cumulative audit knowledge, [their] management update inquiries during the year and additional review procedures performed over losses reported in press releases in August (for the half-year) and in November (addressing rumours in the press that over \$10bn of write-downs at Barclays Capital were imminent), the engagement team was aware that BarCap (defined above to mean BarCap U.S.) had significant exposure to the sub prime markets.” (White Decl. Ex. 52 at PwC000519-20.)

Response: Disputed that the facts presented in paragraph 60 can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 60. *See* FRE 401.

61. As reflected in the February 7 Critical Matter Memo, PwC found “[k]ey controls over the existence, completeness, accuracy and valuation of credit financial instruments carried at fair value.” These controls included:

PCG Price Testing Group – Price testing group (PT) verifies internal desk prices against external sources on a monthly basis. PT obtains the position inventory from the front office systems and perform[s] a completeness reconciliation, which has been tested by the assurance team with no exceptions. Price testing results are aggregated and reported to senior management, the completeness and accuracy of which has been tested by the assurance team without exception.

(White Decl. Ex. 52 at PwC000518 (internal “control ref” numbers omitted).)

Response: Disputed that the facts presented in paragraph 61 can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 61. *See* FRE 401. Plaintiff further disputes that “[k]ey controls over the existence, completeness, accuracy and valuation of credit financial instruments carried at fair value.” ¶¶137-202, 389-96.

62. As reflected in the February 7 Critical Matter Memo, PwC also found that “interaction with [Barclays] Finance, PCG and the front-office has demonstrated the individuals involved in the valuation of these instruments are competent and experienced.” (White Decl. Ex. 52 at PwC000530.)

Response: Disputed that the facts presented in paragraph 62 can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 62. *See* FRE 401. Plaintiff further disputes that “the individuals involved in the valuation of these instruments are competent and experienced.” ¶¶137-202, 389-96.

63. As reflected in the February 7 Critical Matter Memo, PwC also found that “[t]here has been significant involvement from senior management, especially the global Barclays Capital CFO, Patrick Clackson and the global Head of PCG, Paul Copson. In addition, the global Barclays PLC CFO, Chris Lucas and global Barclays PLC Head of Risk, Robert LeBlanc, attended an all day meeting in the US to discuss the valuation process and results.” (White Decl. Ex. 52 at PwC000530.)

Response: Disputed that the facts presented in paragraph 63 can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 63. *See* FRE 401. Plaintiff further disputes that senior management discharged its responsibilities with respect to “the valuation process and results.” ¶¶137-202, 389-96.

64. As reflected in the February 7 Critical Matter Memo, with respect to “credit financial instruments carried at fair value with sub prime exposure,” PwC concluded “the magnitude and direction of the price changes were consistent with benchmark indices, there was

no systematic bias in pricing detected and there was consistency in pricing within and among the various books.” (White Decl. Ex. 52 at PwC000530-31.)

Response: Disputed that the facts presented in paragraph 64 can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 64. *See* FRE 401. Plaintiff further disputes that “the magnitude and direction of the price changes were consistent with benchmark indices, there was no systematic bias in pricing detected and there was consistency in pricing within and among the various books.” ¶¶137-202, 389-96.

65. As reflected in the February 7 Critical Matter Memo, with respect to “super senior [CDO] liquidity facilities,” PwC concluded “[t]he cumulative loss rates used in the calculation of expected losses were in the middle of the range of loss rates published by market participants. The other assumptions are subjective but through [PwC’s] audit procedures are believed to be reasonable,” and that PwC “reviewed the accounting judgments made and believe the conclusions reached by management are appropriate.” (White Decl. Ex. 52 at PwC000531.)

Response: Disputed that the facts presented in paragraph 65 can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 65. *See* FRE 401. Plaintiff further disputes that “the conclusions reached by management are appropriate” or “reasonable.” ¶¶137-202, 389-96.

66. As reflected in the February 7 Critical Matter Memo, with respect to “other credit financial instruments,” PwC concluded that “[n]o material errors were detected in valuation from the results of [PwC’s] cash and derivative independent price testing” and “[t]he overall price variations between front-office and PCG [were] immaterial.” (White Decl. Ex. 52 at PwC000531.)

Response: Disputed that the facts presented in paragraph 66 can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 66. *See* FRE 401. Plaintiff further disputes that “[t]he overall price variations between front-office and PCG [were] immaterial.” ¶¶137-202, 389-96.

67. PwC concluded overall that “[t]he fair value of credit financial instruments is within a range of acceptable fair values” and that “the impairment methodology appears reasonable.” (White Decl. Ex. 52 (February 7 Critical Matter Memo) at PwC000531-32.) Mr. Summa testified that he “stand[s] by” this conclusion. (White Decl. Ex. 48 (Summa Dep.) at 241.)

Response: Disputed that the facts presented in paragraph 67 can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 67. *See* FRE 401. Plaintiff further disputes that “[t]he fair value of credit financial instruments is within a range of acceptable fair values” and that “the impairment methodology appears reasonable.” ¶¶137-202, 389-96.

Plaintiff further objects to Mr. Summa’s ability to testify as to the February 7 Critical Matter Memo or the facts contained therein. Ex. 2 at 85:6-88:15.

68. PwC also prepared a memorandum dated February 12, 2008 (the “February 12 Critical Matter Memo”) concerning the valuation of the following asset classes: “Sub prime residuals,” “Sub prime whole loans,” “Alt-A residuals and securities” and “Alt-A whole loans.” (White Decl. Ex. 53 at PwC005605.)

Response: Disputed that the facts presented in paragraph 68 can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 68. *See* FRE 401.

69. In addition, as reflected in the February 12 Critical Matter Memo, PwC's "engagement team recommended to the Barclays Capital Global engagement team in PwC London that we, assisted by PwC valuation experts, would perform additional audit procedures over the products within the U.S. mortgages business that have material exposure to sub prime and Alt-A. The purpose of the deep-dive was two-fold:

1 Develop a deeper understanding of the U.S. mortgages businesses so we could understand all the exposures to sub prime and Alt-A sufficient to allow us to scope our audit effectively; and

2 Perform interim procedures over the product areas with material exposure to sub prime and Alt-A to identify any issues in advance of our year end audit."

(White Decl. Ex. 53 at PwC005604.)

Response: Disputed that the facts presented in paragraph 69 can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 69. *See* FRE 401.

70. PwC concluded: "the fair value for all product areas [described in the memorandum] is reasonable and supportable." (White Decl. Ex. 53 (Feb. 12 Critical Matter Memo) at PwC005618.)

Response: Disputed that the facts presented in paragraph 70 can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 70. *See* FRE 401. Plaintiff further disputes that "the fair value for all product areas [described in the memorandum] is reasonable and supportable." ¶¶137-202, 389-96.

71. As reflected in the minutes of the February 13, 2008 meeting of the Audit Committee of Barclays' Board of Directors (the "February 13, 2008 Board Audit Committee Minutes"), Phil Rivett, a PwC audit partner, attended the meeting and presented PwC's Board

Audit Committee Report, dated February 13, 2008 (the “February 13, 2008 PwC Board Audit Committee Report”). (White Decl. Ex. 54 (February 13, 2008 Board Audit Committee Minutes) at BARCADS-01602659-61); White Decl. Ex. 55 (February 13, 2008 PwC Board Audit Committee Report) at BARC-ADS-1600171.)

Response: Not disputed, but Plaintiff respectfully refers the Court to ¶¶166-67 for additional facts regarding the February 13, 2008 Board Audit Committee meeting. Plaintiff further disputes the relevance of the facts presented in paragraph 71. *See* FRE 401.

72. As reflected in the February 13, 2008 Board Audit Committee Minutes, “PwC have carried out a significant amount of work in recent months on [ABS CDO Super Senior Liquidity Facilities] and have concluded that the Group’s fair value estimates are in the mid range for such facilities. Management are considered to have implemented a reasonable and consistent methodology to determine the estimated fair value and impairment of the super senior positions.” (White Decl. Ex. 54 at BARC-ADS-01602659.)

Response: Not disputed that the quotes excerpted in paragraph 72 appear in the February 13, 2008 Board Audit Committee Minutes, but Plaintiff respectfully refers the Court to ¶¶166-67 for additional facts regarding the February 13, 2008 Board Audit Committee meeting. Plaintiff further disputes that the facts presented in paragraph 72 can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 72. *See* FRE 401. Plaintiff further disputes that management “implemented a reasonable and consistent methodology to determine the estimated fair value and impairment of the super senior positions.” ¶¶137-202, 389-96.

73. As reflected in the February 13, 2008 Board Audit Committee Minutes, “Mr Rivett confirmed that PwC were now comfortable that they had a good understanding of the

underlying portfolios” of “U.S. Sub-prime/Alt-A Whole Loans and Residuals.” (White Decl. Ex. 54 at BARC-ADS-01602659.)

Response: Not disputed that the quotes excerpted in paragraph 73 appear in the February 13, 2008 Board Audit Committee Minutes, but Plaintiff respectfully refers the Court to full text of that paragraph:

US Sub -prime /Alt-A Whole Loans and Residuals - Mr Rivett confirmed that PwC were now comfortable that they had a good understanding of the underlying portfolios. Given the limited market data available, evaluation processes are necessarily highly subjective but it would be helpful to communicate to investors the quality of the loan vintages held by Barclays Capital.

(White Decl. Ex. 54 at BARC-ADS-01602659.); *see also* ¶¶166-67.

Plaintiff further disputes that the facts presented in paragraph 73 can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 73. *See* FRE 401. Plaintiff further disputes that PwC had a “had a good understanding of the underlying portfolios” of “U.S. Sub-prime/Alt-A Whole Loans and Residuals.” ¶¶137-202, 295-320, 389-96, 405.

74. PwC also “comment[ed] on matters arising from [their] financial statement audit including the impact of sub-prime on performance, impairment, fair value adjustments, provisions and [their] assessment of the appropriateness of accounting policies, significant estimates and judgements made by management.” (White Decl. Ex. 55 (February 13, 2008 PwC Board Audit Committee Report) at BARC-ADS-01600173.)

Response: Not disputed that the quotes excerpted in paragraph 74 appear in the February 13, 2008 Board Audit Committee Report, but Plaintiff respectfully refers the Court to ¶¶166-67 for additional facts regarding the February 13, 2008 Board Audit Committee meeting. Plaintiff further disputes that the facts presented in paragraph 74 can be presented in a form that would be

admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 74. *See* FRE 401. Plaintiff further disputes “the appropriateness of accounting policies, significant estimates and judgements made by management.” ¶¶137-202, 295-320, 389-96, 405.

75. As reflected in the February 13, 2008 Board Audit Committee Minutes, the Committee was “overall satisfied that the Results Announcement [for 2007], subject to the revisions that had been discussed, presented a true and fair view and disclosed all material matters for investors.” (White Decl. Ex. 54 at BARC-ADS-01602665.) As also reflected in those minutes, PwC’s Mr. Rivett “commented that the key issues had all been discussed at the meeting. The level of write-downs and impairment was large but the process had been thorough and was well documented.” (*Id.*)

Response: Not disputed that the quotes excerpted in paragraph 75 appear in the February 13, 2008 Board Audit Committee Minutes, but Plaintiff respectfully refers the Court to ¶¶166-67 for additional facts regarding the February 13, 2008 Board Audit Committee meeting. Plaintiff further disputes that the facts presented in paragraph 75 can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 75. *See* FRE 401. Plaintiff further disputes that “the Results Announcement [for 2007] . . . presented a true and fair view and disclosed all material matters for investor” and that “the process had been thorough and was well documented.” ¶¶137-202, 234-400, 405.

76. As part of its 2007 audit, PwC analyzed whether disclosure of events after the December 31, 2007 balance sheet date was required under International Financial Reporting Standards. As part of this work, PwC U.S. performed a “subsequent events review” and issued a

letter to PwC U.K. stating: “We confirm that we have performed a subsequent events review for Group [Barclays PLC] reporting purposes for BarCap U.S.* which has been audited by us. We confirm that we have not identified any subsequent events material to the Group.” (White Decl. Ex. 56 (Subsequent Events Letter) at PwC007241.)

Response: Disputed that the fact presented in paragraph 76 is a fact that can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes that there were no subsequent events required to be reported under IFRS or GAAP prior to the Series 5 offering. ¶¶234-372. Plaintiff further adds that PwC’s “review” consisted only of “enquiries with senior management,” not the review of any financial information. ¶297.

77. Sir Richard Broadbent, Chairman of the Risk Committee of Barclays’ Board of Directors, testified that PwC partner Mr. Rivett attended Risk Committee meetings. (White Decl. Ex. 38 at 47-48.)

Response: Disputed that Mr. Rivett always attended Risk Committee meetings. (White Decl. Ex. 38 at 47-48.)

78. PwC also prepared a March 18, 2008 presentation for the Barclays USA Governance & Control Committee (the “PwC Governance Presentation”), which stated that “[Barclays] [m]anagement possessed the necessary resources and expertise to react appropriately to the current credit market in terms of designing new controls processes e.g. valuation of ABS CDO Super Senior liquidity facilities and valuation of sub prime whole loans.” (White Decl. Ex. 58 at BARC-ADS-01644890, at 8).)

Response: Disputed that the fact presented in paragraph 78 is a fact that can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 78. *See* FRE 401. Plaintiff further disputes that

“[Barclays] [m]anagement possessed the necessary resources and expertise to react appropriately to the current credit market in terms of designing new controls processes e.g. valuation of ABS CDO Super Senior liquidity facilities and valuation of sub prime whole loans.” ¶¶137-202, 389-96.

79. The PwC Governance Presentation also stated that “the integrated audit for 2007 was successful and progressed largely to plan. This was a challenge given the issues in the credit markets, which required considerable attention from management and PwC.” (White Decl. Ex. 58 at BARC-ADS-01644890, at 8).)

Response: Disputed that the fact presented in paragraph 79 is a fact that can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 79. *See* FRE 401. Plaintiff further disputes that the “integrated audit for 2007 was successful and progressed largely to plan.” ¶¶137-202, 389-96.

80. As reflected in the PwC Governance Presentation, PwC performed “detailed work” and concluded that Barclays’ “provisions are adequate” for “US Sub prime and alt-a whole loans and residuals.” (White Decl. Ex. 58 at BARC-ADS-01644890, at 3.)

Response: Disputed that the fact presented in paragraph 80 is a fact that can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 80. *See* FRE 401. Plaintiff further disputes that Barclays’ “provisions [were] adequate” for “US Sub prime and alt-a whole loans and residuals.” ¶¶137-202; 295-320, 405.

81. The 2007 20-F, filed on March 26, 2008, included PwC’s Report of Independent Registered Public Accounting Firm to the Board of Directors and Shareholders of Barclays PLC (the “PwC Report”). (White Decl. Ex. 1 at 147-48.)

Response: Not disputed that the 2007 20-F included the PwC Report. Plaintiff disputes the relevance of the facts presented in paragraph 81. *See* FRE 401.

82. The PwC Report stated:

In our opinion, the accompanying Consolidated income statements and the related Consolidated balance sheets, Consolidated statements of recognised income and expense and, Consolidated statements of cash flows present fairly, in all material respects, the financial position of Barclays PLC (the ‘Company’) and its subsidiaries at 31st December 2007 and 31st December 2006 and the results of their operations and cash flows for each of the three years in the period ended 31st December 2007, in conformity with International Financial Reporting Standards (IFRSs) as issued by the International Accounting Standards Board. Also, in our opinion the Company maintained, in all material respects, effective internal control over financial reporting as of 31st December 2007, based on criteria established in Internal Control – Integrated Framework issued by the COSO.

(White Decl. Ex. 1 (2007 20-F) at 147.)

Response: Not disputed that the PwC Report contained the language excerpted in paragraph 82. Plaintiff disputes that the facts presented in paragraph 82 are facts that can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the fact presented in paragraph 82. *See* FRE 401. Plaintiff further disputes that the 2007 20-F “present[s] fairly, in all material respects, the financial position of Barclays PLC (the ‘Company’) and its subsidiaries at 31st December 2007 and 31st December 2006 and the results of their operations and cash flows for each of the three years in the period ended 31st December 2007, in conformity with International Financial Reporting Standards (IFRSs) as issued by the International Accounting Standards Board.” ¶¶137-202, 389-96. Plaintiff further disputes that Barclays maintained “effective internal control over financial reporting as of 31st December 2007.” ¶¶137-202, 389-96.

83. The PwC Report also stated:

We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those

standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

(White Decl. Ex. 1 (2007 20-F) at 148.)

Response: Not disputed that the PwC Report contained the language excerpted in paragraph 83. Plaintiff disputes that the fact presented in paragraph 83 is a fact that can be presented in a form that would be admissible at trial. *See* FRE 802, 901, 602. Plaintiff further disputes the relevance of the facts presented in paragraph 83. *See* FRE 401. Plaintiff further disputes that Barclays' financial statements, and in particular its 2007 20-F, were "free of material misstatements." ¶¶234-400. Plaintiff has alleged that the Barclays Defendants and the Underwriter Defendants each violated the Securities Act by issuing false and misleading statements in the 2007 20-F and the Series 5 offering documents, and failing to make disclosures required by, *inter alia*, Items 303 and 503 of Regulation S-K, IAS 10 and AU 560.

84. In connection with the Series 5 ADS offering, PwC provided a "comfort letter" dated April 8, 2008 to Barclays and the underwriters of the offering. (White Decl. Ex. 59 (Comfort Letter) at BARC-ADS-00804209-4214.)

Response: Not disputed.

85. PwC's April 8, 2008 comfort letter stated:

Nothing came to our attention as a result of the foregoing procedures, however, that caused us to believe that: (i) At 29 February 2008, there was any change in share capital and decrease in shareholders' equity and minority interests and total assets, or increase in subordinated liabilities and total liabilities of the Issuer as compared with amounts shown in the 31 December 2007 audited consolidated balance sheet incorporated by reference in the Registration Statement; or (ii) for the period from 1 January 2008 to 29 February 2008, there were any decrease, as compared with the corresponding period in the preceding year, in profit before

taxation and net interest income, except in all instances for changes, increases or decreases which the Registration Statement discloses have occurred or may occur and except that the unaudited consolidated balance sheet as of 29 February 2008, which we were furnished by the Issuer showed that share capital increased by 0.04% and total subordinated liabilities increased by 15.94% and total liabilities increased by 29.74% when compared with balances as at 31 December 2007. Profit before tax for the period from 1 January 2008 to 29 February 2008 decreased by 9.93% compared with the corresponding period in the previous year.

(White Decl. Ex. 59 at BARC-ADS-00804212.)

Response: Not disputed.

86. PwC's April 8, 2008 comfort letter also stated: "In our opinion, the consolidated financial statements audited by us and incorporated by reference in the Registration Statement comply as to form in all material respects with the applicable accounting requirements of the Act and the Securities Exchange Act of 1934, as amended, and the related rules and regulations adopted by the SEC." (White Decl. Ex. 59 at BARC-ADS-00804210.)

Response: Not disputed that the April 8, 2008 comfort letter contains the quote excerpted in paragraph 86, otherwise disputed. Plaintiff has alleged that the Barclays Defendants and the Underwriter Defendants each violated the Securities Act by issuing false and misleading statements in the 2007 20-F and the Series 5 offering documents, and failing to make disclosures required by, *inter alia*, Items 303 and 503 of Regulation S-K, IAS 10 and AU 560.

IV. POST-OFFERING EVENTS

87. Dr. Allan Kleidon, one of Barclays' experts, performed an event study analyzing publicly available information and Series 5 ADS price changes during the period April 8, 2008 (the date of the Series 5 ADS offering) through March 24, 2009 (the filing date of Barclays' Form 20-F for the year-ended December 31, 2008). (White Decl. Ex. 31 (12/15/15 Kleidon Report) ¶ 3.) Dr. Kleidon's event study used a 95% confidence interval (equivalently, a 5% significance level) which is standard for event studies. (Id. ¶ 44.)

Response: For the reasons set forth in Plaintiff's Motion to Exclude the Expert Opinions and Testimony of Allan W. Kleidon, Ph.D. (ECF No. 175) ("Motion to Exclude"), it is disputed that the facts set forth in this paragraph can be presented in a form that would be admissible at trial. Plaintiff further disputes the claims in this paragraph, including that Dr. Kleidon "analyz[ed] publicly available information" during the period from April 8, 2008 through March 24, 2009. Dr. Kleidon only reviewed publicly available information disclosed on 10 days during the period between April 8, 2008 and March 24, 2009 where his event study identified a statistically significant movement in the Series 5 ADS price. *See generally* Ex. 175. Dr. Kleidon "did not look at news reports for days where the residual was statistically" insignificant. Ex. 3 at 86:19-22. As a result, Dr. Kleidon did not review the news that was disclosed on 107 of the 114 days during his analysis period where his event study identified a residual price decline in the price of the Series 5 ADS. *See generally* Ex. 175.

Plaintiff further disputes that "Dr. Kleidon's event study used a 95% confidence interval . . . which is standard for event studies." A 95% confidence interval, which measures the likelihood of committing a Type I error, is not relevant to Dr. Kleidon's opinions. Ex. 4 ¶¶16-25.

88. As summarized in the chart below, there were 10 days during Dr. Kleidon's event study analysis period on which the residual returns of the Series 5 ADS were statistically significant at a 95% confidence interval; a residual return is the price movement after controlling for factors unrelated to market and industry effects. (White Decl. Ex. 31 (12/15/15 Kleidon Report) ¶¶ 43-44, 50.)

Date	Previous Day Closing Price	Closing Price	Change	Statistically Significant?
7/14/2008	\$23.35	\$20.85	(\$2.50)	Yes
7/18/2008	\$22.90	\$22.31	(\$0.59)	Yes
7/21/2008	\$22.31	\$22.12	(\$0.19)	Yes
9/11/2008	\$21.72	\$20.06	(\$1.66)	Yes
9/12/2008	\$20.06	\$20.90	\$0.84	Yes
10/13/2008	\$9.10	\$13.87	\$4.77	Yes
1/21/2009	\$13.23	\$10.35	(\$2.88)	Yes
1/23/2009	\$9.52	\$8.02	(\$1.50)	Yes
1/26/2009	\$8.02	\$12.60	\$4.58	Yes
3/9/2009	\$6.11	\$4.95	(\$1.16)	Yes

(White Decl. Ex. 31 (12/15/15 Kleidon Report) ¶¶ 5, 62-64, 69-74, 91-93, 102; White Decl. Ex. 15 (Series 5 ADS Price Chart).)

Response: Plaintiff does not dispute that a residual return is the portion of a stock price movement that cannot be explained by market and industry effects, but otherwise disputes the allegations in this paragraph. For the reasons set forth in Plaintiff’s Motion to Exclude, it is disputed that the facts set forth in this paragraph can be presented in a form that would be admissible at trial. Dr. Kleidon’s analysis of statistical significance is flawed because he mis-measured the volatility in the Series 5 shares, which caused him to misidentify statistically significant price movements. Ex. 4 ¶¶106-123. Plaintiff also disputes the relevance of statistical significance to Dr. Kleidon’s negative causation opinions. *Id.* ¶¶15-27.

89. Dr. Kleidon’s event study also analyzed events described in the section of the Second Consolidated Amended Complaint (“SCAC”) entitled “Post-Offering Events.” For purposes of this analysis, Dr. Kleidon analyzed residual returns on the dates of these events, as well as on March 24, 2009 (the filing date of Barclays’ 2008 Form 20-F)—11 dates in total. As summarized in the chart below, none of these 11 dates had statistically significant residual returns at a 95% confidence interval, except for October 13, 2008, on which (as shown in the

chart above) the Series 5 ADS price *increased* from the previous day. (White Decl. Ex. 31 (12/15/15 Kleidon Report) ¶¶ 43-44, 50.)

Date	Previous Day Closing Price	Closing Price	Change	Statistically Significant?
5/15/2008	\$25.17	\$25.23	\$0.06	No
6/25/2008	\$24.80	\$24.96	\$0.16	No
8/7/2008	\$24.69	\$24.46	(\$0.23)	No
10/13/2008	\$9.10	\$13.87	\$4.77	Yes
10/31/2008	\$16.25	\$16.12	(\$0.13)	No
11/18/2008	\$16.99	\$15.56	(\$1.43)	No
11/24/2008	\$12.50	\$13.44	\$0.94	No
1/13/2009	\$19.23	\$18.29	(\$0.94)	No
2/9/2009	\$11.69	\$13.45	\$1.76	No
2/17/2009	\$11.95	\$10.00	(\$1.95)	No
3/24/2009	\$11.13	\$11.38	\$0.25	No

(White Decl. Ex. 31 (12/15/15 Kleidon Report) ¶¶ 5, 52-61, 65-68, 71-90, 94-101, 103-06; White Decl. Ex. 15 (Series 5 ADS Price Chart).)

Response: For the reasons set forth in Plaintiff’s Motion to Exclude, it is disputed that the facts set forth in this paragraph can be presented in a form that would be admissible at trial. Further, Dr. Kleidon’s findings with respect to the statistical significance of the price reactions set forth in this paragraph are incorrect because his analysis of statistical significance is flawed, as he mis-measured the volatility in the Series 5 shares, which caused him to misidentify statistically significant price movements. Ex. 4 ¶¶106-123. Additionally, Dr. Kleidon has not attempted to establish that the dates set forth in the “Post-Offering Events” section of the SCAC corrected the facts that were misstated in or omitted from the Offering Documents. Ex. 4 ¶¶ 44-104. Plaintiff also disputes the relevance of statistical significance to Dr. Kleidon’s opinions concerning negative causation. *Id.* ¶¶15-27.

90. On three of these dates—May 15, June 25 and August 7, 2008—Barclays disclosed information that the SCAC asserts had been misstated in or omitted from the Series 5

ADS offering materials. The residual returns were not statistically significant at a 95% confidence interval on any of these three dates; on two of the dates, the Series 5 ADS closed at a higher price than on the prior day, and on the third date, it closed 23 cents lower. (SCAC ¶¶ 211, 214-15; White Decl. Ex. 31 (12/15/15 Kleidon Report) ¶¶ 44, 50, 52-61, 65-68; White Decl. Ex. 15 (Series 5 ADS Price Chart).)

Response: Not disputed that Dr. Kleidon's event study identified a 23 cent residual decline on August 7 that cannot be explained by his event study, otherwise disputed. For the reasons set forth in Plaintiff's Motion to Exclude, it is disputed that the facts set forth in this paragraph can be presented in a form that would be admissible at trial. Plaintiff also disputes that the returns on May 15, June 25 and August 7 were not statistically significant because Dr. Kleidon's analysis of statistical significance is flawed, as he mis-measured the volatility in the Series 5 shares, which caused him to misidentify statistically significant price movements. Ex. 4 ¶¶106-123. Further, Dr. Kleidon made no attempt to establish that information disclosed on May 15, June 25 and August 7, 2008 fully corrected the facts that were misstated in or omitted from the Offering Documents. Ex. 4 ¶¶44-104. Plaintiff also disputes the relevance of statistical significance to Dr. Kleidon's negative causation opinions. *Id.* ¶¶15-27.

91. **5/15/08 Disclosure.** On May 15, 2008, Barclays filed a Form 6-K with the SEC containing an Interim Management Statement (the "5/15/08 Disclosure"). (White Decl. Ex. 7.)

Response: Not disputed.

92. The 5/15/08 Disclosure reported, for Barclays Capital, net losses of £1 billion "relating to credit market turbulence." (White Decl. Ex. 7 at 3.)

Response: Not disputed that the 5/15/08 Disclosure reported net losses of £1 billion, otherwise disputed. The 5/15/08 Disclosure failed to disclose, among other things: (i) Barclays'

gross credit market writedowns; (ii) that the £1 billion writedown was the result of significant deterioration in the quality and value of Barclays' whole loan and Alt-A positions; (iii) Barclays' RWAs or capital ratios as of the end of the first quarter of 2008; (iv) the fact that Barclays' RWAs had dramatically increased and, as a result, its capital ratios had materially decreased, during the first quarter of 2008; (v) Barclays' notional exposure to monoline insurers, or the writedowns that Barclays had recorded on its exposure to monoline insurers; and (vi) that the credit market positions that Barclays insured with the monolines were not reflected in the credit market positions that the Company disclosed in the Appendix to the 5/15/08 disclosure.

93. The Series 5 ADS closing price on May 15, 2008 was \$25.23, an increase of \$0.06 over the closing price of \$25.17 on May 14, 2008. (White Decl. Ex. 15 (Series 5 ADS Price Chart).) This price change was not statistically significant at a 95% confidence interval. (See Ex. 31 (12/15/15 Kleidon Report) ¶¶ 44, 50, 52-55.)

Response: Not disputed that the Series 5 ADS closing price on May 15, 2008 was \$25.23, an increase of \$0.06 over the closing price of \$25.17 on May 14, 2008. For the reasons set forth in Plaintiff's Motion to Exclude, it is disputed that the facts set forth in this paragraph can be presented in a form that would be admissible at trial. Plaintiff also disputes the relevance of statistical significance to Dr. Kleidon's negative causation opinions. Ex. 4 ¶¶15-27. Plaintiff further disputes that the May 15, 2008 disclosure fully corrected any of the Offering Documents' alleged misstatements or omissions. ¶¶406-478.

94. Barclays' profit before tax for the first quarter of 2008 was £1.194 billion. (White Decl. Ex. 14 (Barclays Form 6-K, dated May 7, 2009) at 4.)

Response: Not disputed that Barclays' Form 6-K dated May 7, 2009 stated that its profit before tax for the first quarter of 2008 was £1.194 billion, but disputed that this figure was

disclosed in the 5/15/08 Disclosure.

95. **6/25/08 Disclosure.** On June 25, 2008, Barclays filed a 6-K with the SEC announcing “a Share Issue to raise approximately £4.5 billion through the issue of 1,577 million New Ordinary Shares.” (White Decl. Ex. 8 at 2.)

Response: Not disputed. Plaintiff further states that, before the market opened on Friday, July 18, 2008, Barclays issued a press release announcing, with respect to this £4.5 billion share issuance, an acceptance rate of only 19% by existing shareholders. ¶¶416-418; Ex. 4 ¶86. In addition, on October 8, the U.K. government announced that it was injecting £50 billion into U.K. banks to replenish their depleted capital levels. ¶¶430-435; Ex. 4 ¶53. On October 10, 2008, Barclays announced that it was “considering a variety of options” to increase its capital levels, and analysts commented that “Barclays may need to raise £5 billion to sufficiently bolster its balance sheet.” ¶¶437-439; Ex. 4 ¶57. On December 22, 2008, it was disclosed that Barclays was planning to sell part of Barclays Capital in order to bolster its capital position. ¶¶445-449; Ex. 4 ¶¶63-65.

96. The Series 5 ADS closing price on June 25 was \$24.96, an increase of \$0.16 over the closing price of \$24.80 on June 24. (White Decl. Ex. 15 (Series 5 ADS Price Chart).) This change was not statistically significant at a 95% confidence interval. (See White Decl. Ex. 31 (12/15/15 Kleidon Report) ¶¶ 44, 50, 56-61.)

Response: Not disputed that the Series 5 ADS closing price on June 25 was \$24.96, an increase of \$0.16 over the closing price of \$24.80 on June 24, otherwise disputed. For the reasons set forth in Plaintiff’s Motion to Exclude, it is disputed that the facts set forth in this paragraph can be presented in a form that would be admissible at trial. Plaintiff further states that Dr. Kleidon identified a 5.14% price decline in the Series 5 shares on July 18, 2008, which

he found to be statistically significant at the 95% confidence level. ¶419; Ex. 4 ¶¶86-87. On October 8, Dr. Kleidon found a residual decline in the price of the Series 5 shares of 6.21%. ¶¶436; Ex. 4 ¶56. On October 10, Dr. Kleidon found a residual decline in the price of the Series 5 shares of 14.80%. ¶440; Ex. 4 ¶58. On December 22, 2008, Dr. Kleidon found a 1.73% residual decline in the price of the Series 5 shares. ¶450; Ex. 4 ¶66. Plaintiff also disputes the relevance of statistical significance to Dr. Kleidon's negative causation opinions. Ex. 4 ¶¶15-27.

97. **8/7/08 Disclosure.** On August 7, 2008, Barclays filed a Form 6-K with the SEC containing its Interim Results for the period ended June 30, 2008 (the "8/7/08 Disclosure"). (White Decl. Ex. 9.)

Response: Not disputed.

98. The 8/7/08 Disclosure reported, for Barclays Capital, "a further £1bn of net losses in the second quarter due to credit market dislocation, in addition to the £1bn already announced in the first quarter"—net losses £1.979 billion for the first half of 2008. (White Decl. Ex. 9 at 6.)

Response: Not disputed. Plaintiff further states that the 8/7/08 Disclosure failed to disclose Barclays' gross writedowns on Barclays' credit market positions, and failed to disclose the significant deterioration in the quality and value of Barclays' whole loan and Alt-A positions.

99. The 8/7/08 Disclosure also reported the notional amount of monoline insurance as of June 30, 2008 as follows:

As at 30.06.2008					
Exposure by Credit Rating of Monoline Insurer	Notional	Fair Value of Underlying Asset	Gross Exposure	Total Write-downs	Net Exposure
	£m	£m	£m	£m	£m
AAA/AA	10,738	9,587	1,151	(98)	1,053
A/BBB	5,592	4,193	1,399	(242)	1,157
Non-investment grade	5,151	4,684	467	(93)	374
Total	21,481	18,464	3,017	(433)	2,584

As at 31.12.07					
Exposure by Credit Rating of Monoline Insurer	Notional	Fair Value of Underlying Asset	Gross Exposure	Total Write-downs	Net Exposure
	£m	£m	£m	£m	£m
AAA/AA	21,573	20,179	1,394	(59)	1,335

(White Decl. Ex. 9 at 26.)

Response: Not disputed that the chart in paragraph 99 appears in the 8/7/08 Disclosure, otherwise disputed. Disputed that the 8/7/08 disclosure fully corrected any of the Offering Documents' alleged misstatements or omissions. ¶¶406-478. The 8/7/08 disclosure did not disclose that the £21 billion in assets it insured with monoline counterparties were not reflected in the credit market positions disclosed on page 53 of the 2007 Form 20-F, nor were they reflected in the disclosure of Barclays' credit market positions that appeared on page 35 of the 8/7/08 Disclosure.

100. The Series 5 ADS closing price on August 7, 2008 was \$24.46, a decrease of \$0.23 from the closing price of \$24.69 on August 6, 2008; this change was *not* statistically significant at a 95% confidence interval. (White Decl. Ex. 15 (Series 5 ADS Price Chart); White Decl. Ex. 31 (12/15/15 Kleidon Report) ¶¶ 44, 50, 65-68.)

Response: Not disputed that the Series 5 ADS closing price on August 7, 2008 was \$24.46, a decrease of \$0.23 from the closing price of \$24.69 on August 6, 2008. For the reasons set forth in Plaintiff's Motion to Exclude, it is disputed that the facts set forth in this paragraph can be presented in a form that would be admissible at trial. Plaintiff also disputes that this change was not statistically significant. Dr. Kleidon's analysis of statistical significance is

flawed, as he mis-measured the volatility in the Series 5 shares, which caused him to misidentify statistically significant price movements. Ex. 4 ¶¶106-123. Plaintiff also disputes the relevance of statistical significance to Dr. Kleidon's negative causation opinions. Ex. 4 at ¶¶15-27.

101. The Series 5 ADS closing price was above \$24 for the remainder of August and into September 2008. During the period from September 2008 to March 2009, Series 5 ADS closing prices declined and reached a low of \$4.95 on March 9, 2009. (White Decl. Ex. 15 (Series 5 ADS Price Chart).)

Response: Disputed that the full truth regarding the Offering Documents' alleged misstatements and omissions had been disclosed by August 7, 2008. Plaintiff further states that the disclosures related to Plaintiff's claims were made on numerous dates between September 2008 and March 2009 and corresponded to residual price declines under Dr. Kleidon's event study. These dates include:

- September 3, 2008
- October 8, 2008
- October 10, 2008
- December 19, 2008
- December 22, 2008
- January 20, 2009
- January 21, 2009
- January 23, 2009
- February 2, 2009
- February 17, 2009
- March 9, 2009

¶¶406-478; Ex. 4 ¶¶21-22, 44-104.

102. On September 7, 2008, the Federal Housing Finance Agency placed Fannie Mae and Freddie Mac into government conservatorship. (White Decl. Ex. 18 ("U.S. Seizes Fannie and Freddie," *CNN Money*, Sept. 7, 2008).)

Response: Not disputed.

103. On September 15, 2008, Lehman Brothers filed for Chapter 11 bankruptcy protection. Also on September 15, 2008, Bank of America announced that it would purchase Merrill Lynch for \$29 per share “to avert a deepening financial crisis.” (White Decl. Ex. 19 (“Lehman Brothers collapse stuns global markets,” *CNN*, Sept. 15, 2008); White Decl. Ex. 20 (“Bids To Halt Financial Crisis Reshape Landscape of Wall St.,” *New York Times*, Sept. 15, 2008).)

Response: Not disputed.

104. On September 25, 2008, the Office of Thrift Supervision seized Washington Mutual Bank and placed it into FDIC receivership. On the same day, J.P. Morgan purchased the assets of Washington Mutual from the FDIC. (White Decl. Ex. 21 (“Government Seizes WaMu and Sells Some Assets,” *New York Times*, Sept. 25, 2008).)

Response: Not disputed.

105. On October 3, 2008, rather than complete the transaction with Citigroup, Wachovia announced that it had agreed to be acquired by Wells Fargo. (White Decl. Ex. 22 (“Wells Fargo Swoops In,” *New York Times*, Oct. 3, 2008).)

Response: Not disputed.

106. On October 8, 2008 (before market opening), the U.K. government announced that it was planning to inject approximately £50 billion into the U.K. banking system. Barclays’ CEO announced that the Company had not requested capital from the U.K. government and had no reason to do so. (White Decl. Ex. 23 (“U.K. to Inject about \$87 Billion in Country’s Banks (Update1),” *Bloomberg*, Oct. 8, 2008.) Also on October 8, 2008, the U.K. government introduced higher capital requirements as part of the government’s attempt to stabilize the

financial system. (White Decl. Ex. 24 (“Rescue Plan for UK Banks Unveiled,” *BBC*, Oct. 8, 2008).)

Response: Not disputed. Plaintiff also states that Dr. Kleidon’s event study identified a 6.21% residual stock price decline on October 8, 2008. ¶430; Ex. 4 ¶ 56. Plaintiff further states that Barclays was aware, prior to the Series 5 offering, that the FSA had increased the Company’s Equity Tier 1 capital ratio requirement to 5.25%, but that fact was not disclosed in the Offering Documents. ¶367.

107. On October 13, 2008, Barclays issued a press release announcing that, rather than accept U.K. government funds, it would seek to raise over £6.5 billion of Tier 1 capital through the issuance of new shares to investors, and that it would not pay a final dividend for its ordinary shares in 2008. (White Decl. Ex. 10 (“Update on Capital, Dividend and Current Trading,” Barclays Press Release, Oct. 13, 2008).) There were also reports on October 13 that the U.K. government would make capital investments, totaling £37 billion, in a number of U.K. financial institutions including RBS, HBOS, and Lloyds (White Decl. Ex. 25 (“UK banks receive £37bn bail-out,” *BBC News*, October 13, 2008).) That same day, the U.S. Treasury Department also announced that it was finalizing plans to inject capital into banks as part of TARP. (White Decl. Ex. 26 (“Europe Raises Stakes in Bank Bailout Race,” *Wall Street Journal*, Oct. 13, 2008).)

Response: Not disputed that on October 13, 2008, Barclays issued a press release announcing that, rather than accept U.K. government funds, it would seek to raise over £6.5 billion of Tier 1 capital through the issuance of new shares to certain Qatari investors. Plaintiff further states that the full truth regarding the Offering Documents’ alleged misstatements and omissions had not been disclosed by this date. ¶¶406-478. Plaintiff further states that Barclays did not disclose to the market that it secretly paid \$3 billion in kickbacks to those Qatari

investors in order to induce them to purchase Barclays shares, and to avoid accepting government funds. ¶¶479-482. Plaintiff further states that Barclays' conduct in this regard is currently the subject of a criminal investigation by the U.K.'s Serious Fraud Office. *Id.*

108. The Series 5 ADS closing price on October 13 was \$13.87, an increase of \$4.77 from the closing price of \$9.10 on October 10 (the previous trading day); this change was statistically significant at a 95% confidence interval. (White Decl. Ex. 15 (Series 5 ADS Price Chart); White Decl. Ex. 31 (12/15/15 Kleidon Report) ¶¶ 44, 50, 71-74).)

Response: Not disputed that the Series 5 ADS closing price on October 13 was \$13.87, an increase of \$4.77 from the closing price of \$9.10 on October 10, otherwise disputed. For the reasons set forth in Plaintiff's Motion to Exclude, it is disputed that the facts set forth in this paragraph can be presented in a form that would be admissible at trial.

109. On January 26, 2009, a joint open letter by Barclays' Chairman (Mr. Agius) and CEO (Mr. Varley) stated that Barclays would report a positive pre-tax profit for 2008 (net of write-downs) and that gross write-downs would be approximately £8 billion (£5 billion net) for 2008 for various assets classes. The open letter stated: "Also included in the 2008 results are some £8bn of gross write downs (£5bn net of own credit, hedging and attributable income) relating to credit market exposures in Barclays Capital. This amount is arrived at by applying year end valuations and marks to market. It is derived on a consistent basis with, and includes, the comparable numbers for the first half of 2008 which were £3.3bn gross and £2bn net. In the interests of clarity and transparency, we are reporting these numbers on a gross and net basis. We will provide extensive details as to the level of write downs and marks by asset class when we report our results on 9th February 2009." (White Decl. Ex. 11 ("Open Letter from Marcus Agius and John Varley," Barclays Press Release, Jan. 26, 2009).)

Response: Not disputed. Plaintiff further states that the full truth regarding the Offering Documents' alleged misstatements and omissions had not been disclosed by this date. ¶¶406-478.

110. On February 9, 2009, Barclays released its financial results for the year ended December 31, 2008, which disclosed Barclays Capital's 2008 gross write-downs in the amount of £8.053 billion and provided 2007 gross write-downs (£2.999 billion) on a comparative basis: "Net income included gross losses of £8,053m (2007: £2,999m) due to continuing dislocation in the credit markets." (White Decl. Ex. 12 at 22.)

Response: Not disputed. Plaintiff further states that the full truth regarding the Offering Documents' alleged misstatements and omissions had not been disclosed by this date. ¶¶406-478.

111. The Series 5 ADS closing price on February 9, 2009 was \$13.45, an increase of \$1.76 from the closing price of \$11.69 on February 6 (the previous trading day); this change was not statistically significant at a 95% confidence interval. (White Decl. Ex. 15 (Series 5 ADS Price Chart); White Decl. Ex. 31 (12/15/15 Kleidon Report) ¶¶ 44, 50, 94-97.)

Response: Not disputed that the price increased by \$1.76 on February 9, 2009, otherwise disputed. For the reasons set forth in Plaintiff's Motion to Exclude, it is disputed that the facts set forth in this paragraph can be presented in a form that would be admissible at trial.

112. On March 24, 2009, Barclays filed its 2008 Annual Report on Form 20-F (the "2008 20-F"). Like the February 9, 2009 results announcement, Barclays' 2008 20-F also disclosed Barclays Capital's 2008 gross write-downs in the amount of £8.053 billion and provided 2007 gross write-downs (£2.999 billion) on a comparative basis: "Net income included

gross losses of £8,053m (2007: £2,999m) due to continuing dislocation of the credit markets.” (White Decl. Ex. 13 (2008 20-F) at 45.)

Response: Not disputed.

113. The Series 5 ADS closing price on March 24, 2009 was \$11.38, an increase of \$0.20 from the closing price of \$11.13 on March 23; this change was not statistically significant at a 95% confidence interval. (White Decl. Ex. 15 (Series 5 ADS Price Chart); White Decl. Ex. 31 (12/15/15 Kleidon Report) ¶¶ 44, 50, 103-06.)

Response: Not disputed that the price increased by \$0.20 on March 24, 2009, otherwise disputed. For the reasons set forth in Plaintiff’s Motion to Exclude, it is disputed that the facts set forth in this paragraph can be presented in a form that would be admissible at trial.

114. Series 5 ADS closing prices increased thereafter and returned to the original offering price of \$25 on January 14, 2010. (White Decl. Ex. 15 (Series 5 ADS Price Chart).)

Response: Disputed that the Series 5 ADS closing price increased on every day between March 24 and April 8, 2009, the date of suit. Ex. 175 at Exhibit 4. Plaintiff further disputes the admissibility of any evidence of Series 5 ADS prices after April 8, 2009, the date of suit. *See, e.g., Beecher v. Able*, 435 F. Supp. 397, 409-410 (S.D.N.Y. 1975); *Voegel v. Ackerman*, 364 F. Supp. 72, 73 (S.D.N.Y. 1973) (“[T]he fortuitous rise in the market” did not “immunize defendants’ alleged wrongdoing and eliminate the possibility of recovering damages.”).

PLAINTIFF'S COUNTERSTATEMENT OF ADDITIONAL MATERIAL FACTS

I. 2007 20-F

115. Barclays filed its 2007 Annual Report on Form 20-F for the year ended December 31, 2007, on March 26, 2008. Ex. 5.

116. The 2007 20-F stated at page 4:

Barclays delivered profit before tax of £7,076m. Earnings per share were 68.9p and we increased the full year dividend payout to 34p, a rise of 10%. Income grew 7% to £23,000m. Growth was well spread by business, with strong contributions from International Retail and Commercial Banking, Barclays Global Investors and Barclays Wealth. Net income, after impairment charges, grew 4% and included net losses of £1,635m relating to credit market turbulence, net of £658m of gains arising from the fair valuation of notes issued by Barclays Capital and settlements on overdraft fees in relation to prior years of £116m in UK Retail Banking. Impairment charges and other credit provisions rose 30% to £2,795m. Impairment charges relating to US sub-prime mortgages and other credit market exposures were £782m.

117. The 2007 20-F stated at page 5:

At 31st December 2007, our Basel I Tier 1 Capital ratio was 7.8% (2006: 7.7%). We started managing capital ratios under Basel II from 1st January 2008. Our Basel II Tier 1 Capital ratio was 7.6%. Our Equity Tier 1 ratio was 5.0% under Basel I (2006: 5.3%) and 5.1% under Basel II.

118. The 2007 20-F also stated at page 5:

Barclays Capital delivered a 5% increase in profit before tax to £2,335m. Net income was ahead of last year, reflecting very strong performances in most asset classes including interest rates, currencies, equity products and commodities. Results also included net losses arising from credit market turbulence of £1,635m net of gains from the fair valuation of issued notes of £658m.

119. The 2007 20-F disclosed at page 7: total RWAs of £353.476 billion.

120. The 2007 20-F stated at page 25:

The US sub-prime driven market dislocation affected performance in the second half of 2007. Exposures relating to US sub-prime were actively managed and declined over the period. Barclays Capital's 2007 results reflected net losses related to the credit market turbulence of £1,635m, of which £795m was included in income, net of £658m gains arising from the fair valuation of notes issued by Barclays Capital. Impairment charges included £840m against ABS CDO Super

Senior exposures, other credit market exposures and drawn leveraged finance underwriting positions.

121. The 2007 20-F stated at page 40:

Barclays Capital total assets rose 28% to £839.7bn (2006: £657.9bn). Derivative assets increased £109.3bn primarily due to movements across a range of market indices. This was accompanied by a corresponding increase in derivative liabilities. The increase in non-derivative assets reflects an expansion of the business across a number of asset classes, combined with an increase in drawn leveraged loan positions and mortgage-related assets. Risk weighted assets increased 23% to £169.1bn (2006: £137.6bn) reflecting growth in fixed income, equities and credit derivatives.

122. The 2007 20-F stated at page 43:

At 31st December 2007, the Tier 1 capital ratio was 7.8% and the risk asset ratio was 12.1%. From 31st December 2006, total net capital resources rose £7.9bn and risk weighted assets increased £55.6bn. Tier 1 capital rose £4.4bn, including £2.3bn arising from profits attributable to equity holders of the parent net of dividends paid.

123. The 2007 20-F stated at page 53:

Other US sub-prime whole loan and net trading book exposure was £5,037m (30th June 2007: £6,046m). Whole loans included £2,843m (30th June 2007: £1,886m) acquired since the acquisition of EquiFirst in March 2007, all of which were subject to Barclays underwriting criteria. As at 31st December 2007 the average loan to value of these EquiFirst loans was 80% with less than 3% at above 95% loan to value. 99% of the EquiFirst inventory was first lien.

124. The 2007 20-F stated at page 51:

Upon an event of default or other triggering event, the Group may acquire control of a CDO and, therefore, be required to fully consolidate the vehicle for accounting purposes. The potential for transactions to hit default triggers before the end of 2008 has been assessed and included in the determination of impairment charges and other credit provisions (£782m in relation to ABS CDO Super Senior and other credit market exposures for the year ended 31st December 2007).

125. Page 53 of the 2007 20-F was titled “Barclays Capital credit market positions,”

and contained the following chart and information:

Financial review

Barclays Capital credit market positions

Barclays Capital credit market positions

Barclays Capital credit market exposures resulted in net losses of £1,635m in 2007, due to dislocations in the credit markets. The net losses primarily related to ABS CDO super senior exposures, with additional losses from other credit market exposures partially offset by gains from the general widening of credit spreads on issued notes held at fair value.

Credit market exposures in this note are stated relative to comparatives as at 30th June 2007, being the reporting date immediately prior to the credit market dislocations.

	As at	
	31st December 2007	30th June 2007
	£m	£m
ABS CDO Super Senior		
High Grade	4,869	6,151
Mezzanine	1,149	1,629
Exposure before hedging	6,018	7,780
Hedges	(1,347)	(348)
Net ABS CDO Super Senior	4,671	7,432
Other US sub-prime		
Whole loans	3,205	2,900
Other direct and indirect exposures	1,832	3,146
Other US sub-prime	5,037	6,046
Alt-A	4,916	3,760
Monoline insurers	1,335	140
Commercial mortgages	12,399	6,282
SIV-like liquidity facilities	152	692
Structured investment vehicles	590	925

ABS CDO Super Senior exposure

ABS CDO Super Senior net exposure was £4,671m (30th June 2007: £7,432m). Exposures are stated net of writedowns and charges of £1,412m (30th June 2007: £56m) and hedges of £1,347m (30th June 2007: £348m).

The collateral for the ABS CDO Super Senior exposures primarily comprised Residential Mortgage Backed Securities. 79% of the RMBS sub-prime collateral comprised 2005 or earlier vintage mortgages. On ABS CDO super senior exposures, the combination of subordination, hedging and writedowns provide protection against loss levels to 72% on US sub-prime collateral as at 31st December 2007. None of the above hedges of ABS CDO Super Senior exposures as at 31st December 2007 were held with monoline insurer counterparties.

Other credit market exposures

Barclays Capital held other exposures impacted by the turbulence in credit markets, including: whole loans and other direct and indirect exposures to US sub-prime and Alt-A borrowers; exposures to monoline insurers; and commercial mortgage backed securities. The net losses in 2007 from these exposures were £823m.

Other US sub-prime whole loan and net trading book exposure was £5,037m (30th June 2007: £6,046m). Whole loans included £2,843m (30th June 2007: £1,886m) acquired since the acquisition of EquiFirst in March 2007, all of which were subject to Barclays underwriting criteria. As at 31st December 2007 the average loan to value of these EquiFirst loans was 80% with less than 3% at above 95% loan to value. 99% of the EquiFirst inventory was first lien.

Net exposure to the Alt-A market was £4,916m (30th June 2007: £3,760m), through a combination of securities held on the balance sheet including those held in consolidated conduits and residuals. Alt-A exposure is generally to borrowers of a higher credit quality than sub-prime borrowers. As at 31st December 2007, 99% of the Alt-A whole loan exposure was performing, and the average loan to value ratio was 81%. 98% of the Alt-A securities held were rated AAA or AA.

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 £1,335m (30th June 2007: £140m). There were no claims due under these contracts as none of the underlying assets were in default.

Exposures in our commercial mortgage backed securities business comprised commercial real estate loans of £11,103m (30th June 2007: £7,653m) and commercial mortgage backed securities of £1,296m (30th June 2007: £629m). The loan exposures were 54% US and 43% European. The US exposures had an average loan to value of 65% and the European exposures had an average loan to value of 71%. 87% of the commercial mortgage backed securities held as at 31st December 2007 were AAA or AA rated.

Loans and advances to customers included £152m (30th June 2007: £692m) of drawn liquidity facilities in respect of SIV-like. Total exposure to other structured investment vehicles, including derivatives, undrawn commercial paper backstop facilities and bonds held in trading portfolio assets was £590m (30th June 2007: £925m).

Leveraged Finance

At 31st December 2007, drawn leveraged finance positions were £7,368m (30th June 2007: £7,317m). The positions were stated net of fees of £130m and impairment of £5m driven by widening of corporate credit spreads.

Own Credit

At 31st December 2007, Barclays Capital had issued notes held at fair value of £57,162m (30th June 2007: £44,622m). The general widening of credit spreads affected the carrying value of these notes and as a result revaluation gains of £658m were recognised in trading income.

126. The 2007 20-F stated at page 53:

Net exposure to the Alt-A market was £4,916m (30th June 2007: £3,760m), through a combination of securities held on the balance sheet including those held in consolidated conduits and residuals.

127. The 2007 20-F stated at page 53:

ABS CDO Super Senior net exposure was £4,671m (30th June 2007: £7,432m). Exposures are stated net of writedowns and charges of £1,412m (30th June 2007:

£56m) and hedges of £1,347m (30th June 2007: £348m). The collateral for the ABS CDO Super Senior exposures primarily comprised Residential Mortgage Backed Securities. 79% of the RMBS sub-prime collateral comprised 2005 or earlier vintage mortgages. On ABS CDO super senior exposures, the combination of subordination, hedging and writedowns provide protection against loss levels to 72% on US sub-prime collateral as at 31st December 2007. None of the above hedges of ABS CDO Super Senior exposures as at 31st December 2007 were held with monoline insurer counterparties.

128. The 2007 20-F stated at page 53:

Exposures in our commercial mortgage backed securities business comprised commercial real estate loans of £11,103m (30th June 2007: £7,653m) and commercial mortgage backed securities of £1,296m (30th June 2007: £629m).

129. The 2007 20-F stated at page 53:

At 31st December 2007, drawn leveraged finance positions were £7,368m (30th June 2007: £7,317m). The positions were stated net of fees of £130m and impairment of £58m driven by widening of corporate credit spreads.

130. The 2007 20-F stated at page 53:

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 £1,335m (30th June 2007: £140m). There were no claims due under these contracts as none of the underlying assets were in default.

131. The 2007 20-F stated at page 53:

Barclays Capital credit market exposures resulted in net losses of £1,635m in 2007, due to dislocations in the credit markets. The net losses primarily related to ABS CDO super senior exposures, with additional losses from other credit market exposures partially offset by gains from the general widening of credit spreads on issued notes held at fair value.

132. The 2007 20-F stated at page 53:

Barclays Capital held other exposures impacted by the turbulence in credit markets, including: whole loans and other direct and indirect exposures to US sub-prime and Alt-A borrowers; exposures to monoline insurers; and commercial mortgage backed securities. The net losses in 2007 from these exposures were £823m.

133. The 2007 20-F stated at page 53:

Loans and advances to customers included £152m (30th June 2007: £692m) of drawn liquidity facilities in respect of SIV-lites. Total exposure to other structured investment vehicles, including derivatives, undrawn commercial paper backstop facilities and bonds held in trading portfolio assets was £590m (30th June 2007: £925m).

134. The 2007 20-F stated at page 65:

The results of severe disruption in the US sub-prime mortgage market were felt across many wholesale credit markets in the second half of 2007, and were reflected in wider credit spreads, higher volatility, tight liquidity in interbank and commercial paper markets, more constrained debt issuance and lower investor risk appetite. Although impairment and other credit provisions in Barclays Capital rose as a consequence of these difficult sub-prime market conditions, our risks in these portfolios were identified in the first half and management actions were taken to reduce limits and positions. Further reductions and increased hedging through the rest of the year continued to bring net positions down and limited the financial effect of the significant decline in market conditions. Our ABS CDO Super Senior positions were reduced during the year and our remaining exposure reflected netting against writedowns, hedges, and subordination. At the end of the year, market conditions remained difficult with reduced liquidity in cash and securitised products, and reflected stress at some counterparties such as the monoline insurers.

135. The 2007 20-F stated at page 78:

The Group actively manages its credit exposures and when weaknesses in exposures are detected – either in individual exposures or in groups of exposures – action is taken to mitigate the risks. These include steps to reduce the amounts outstanding (in discussion with the customers, clients or counterparties if appropriate), the use of credit derivatives and, sometimes, the sale of the loan assets.

136. The 2007 20-F stated at page 212:

43 Events after the balance sheet date

On 3rd March 2008, Barclays entered into an agreement with Petropavlovsk Finance (Limited Liability Society) to acquire 100% of the Russian Bank, Expobank, for a consideration of approximately \$745m (£373m). The transaction is expected to close in summer 2008 after receipt of appropriate regulatory approvals. Expobank focuses principally on Western Russia, with a substantial presence in Moscow and St Petersburg. Founded in 1994, it has grown rapidly and comprises a blend of retail and commercial banking, operating 32 branches and dealing with a range of corporate and wholesale clients. As at 31st December 2007, Expobank had net assets of \$186m (£93m).

II. BACKGROUND

A. EquiFirst Acquisition, ASG, and Deterioration of Barclays' Whole Loan Portfolio

137. In 2004, Barclays' Asset Servicing Group ("ASG") began acquiring residential mortgage whole loans for the purpose of securitization. Ex. 6 at 27:1-28:25.

138. On January 19, 2007, Barclays announced that it had agreed to purchase the subprime mortgage originator EquiFirst Financial Corporation ("EquiFirst") for \$225 million in cash. At the time of this announcement, EquiFirst originated approximately \$1.3 trillion loans annually, comprising approximately one tenth of the overall mortgage market. Ex. 7.

139. Barclays intended to securitize and sell EquiFirst-originated loans on an ongoing basis, after an average holding period of two to three months. Ex. 7. As the Wall Street Journal reported in a January 19, 2007 article: "banks that have capital-markets divisions, such as Barclays' Barclays Capital business, have been on the prowl for subprime originators and mortgage-servicing firms in order to build up volumes of loans that can be pooled and then sold to investors in a business known as securitization." Ex. 7.

140. On or around April 3, 2007, Barclays announced that it had completed the EquiFirst purchase for a reduced price of \$76 million. The reduced price was due in large part to the "subprime mortgage collapse in the U.S." Ex. 8.

141. Thereafter in 2007, liquidity for residential mortgage whole loans dried up and the securitization markets for such assets effectively closed. As Barclays explained in a January 2008 memo to its independent auditor PricewaterhouseCoopers:

The market for subprime mortgage securitizations has experienced extreme disruption during 2007 which has significantly curtailed issuance volumes. In the third and fourth quarters of 2006 over \$300bn of subprime mortgage securitizations were executed; by contrast, during the same period in 2007 less than \$40bn of transactions were completed (see Appendix A). Since entering the subprime whole loan business in mid-2004, Barclays Capital traditionally

securitized, on average, one subprime mortgage transaction per month of an average size of \$750mn. This pace of issuance continued through June 2007 after which the market for securitized mortgage product deteriorated significantly. As a result of the limited liquidity, Barclays Capital has not securitized subprime mortgages since SABR 2007-BR5 in June 2007. Similarly, Barclays Capital has not managed a mortgage securitization for a third-party client since March 2007 after managing \$14bn of such transactions in 2006.

Ex. 9 at BARC-ADS-00860721.

142. As a result, Barclays was left with a large amount of whole loans on its balance sheet that it was not able to securitize or sell. Paul Menefee, a Barclays Capital (“BarCap”) Managing Director and member of ASG, testified: “We had a large book of whole loans and the business had not been set up to acquire loans to hold on the bank's balance sheet.” Ex. 6 at 38:9-38:18; 40:8-41:10; *see also* Ex. 10 at p. 14-15.

143. At June 30, 2007, Barclays’ exposure to subprime, EquiFirst-originated whole loans was £1.886 billion. At December 31, 2007, this exposure had risen to £2.843 billion. Ex. 5 at p. 53. Barclays’ total exposure to subprime whole loans as of December 31, 2007 was £3.205 billion. *Id.*

144. Beginning in September 2007, Barclays executives embarked upon a plan to move newly-originated Equifirst loans onto the Company’s banking book rather than its trading book. For example, on September 13, 2007, Adam Godden, COO of Barclays’ Asset Securitization Group, circulated a presentation titled “Whole Loan Portfolio Investment,” which stated, among other things:

- “Recent market events in both the ABS and ABCP markets have heightened the attractiveness of balance sheet financing of subprime whole loan inventory.”
- “Existing owned inventory was assigned the accounting classification of Fair Value at inception of ownership,” and “[a]ccounting policies do not allow for the reclassification of loans into Available-For-Sale.”

- “Newly Originated Inventory” can be classified as “Available-For-Sale” securities rather than “Fair Value” assets, meaning that fair value changes are “[t]aken as reserve through equity” rather than “[f]lowing through business P&L”

Ex. 11.

145. In a September 11, 2007 e-mail discussing the Asset Securitization Group’s 2007 budget projections, Godden stated that the move to “portfolio” Barclays’ Equifirst loans would “change the composition of [ASG’s] projections materially.” Ex. 12.

146. By October 2007, Barclays was arranging for “Equifirst . . . to sell whole loans to BarCap Portfolio Management” rather than transferring them to Barclays’ trading book, where they would be subject to mark-to-market accounting with writedowns flowing through to Barclays’ income statement. Ex. 13.

147. On October 4, 2007, Godden stated in an email to several members of the Portfolio Management group that “the EquiFirst production from August . . . through the rest of 2007 and then the first 6 months of 2008 will go to portfolio (Keith Ho’s book).” Ex. 14.

148. Godden explained the decision to “portfolio” Barclays’ new Equifirst mortgages in an October 19, 2007 e-mail, stating:

Existing EquiFirst production that is currently sitting in their 3d party financing lines pending refinancing by BBplc (representing August, Sept and Oct month to date [Equifirst] production) is also recorded at Fair Value. Upon transfer to BBplc, this too will accrue to John Carroll.

Future EquiFirst production will be classified as Loans and Receivables (rather than AFS) at the direction of Mike Keegan and upon transfer to BBplc will then accrue to Portfolio.

Ex. 15 at BARC-ADS-00851493.

149. Mike Keegan, COO of Global Credit Trading, and Mr. Ho’s boss, testified that he was not aware of a decision to “portfolio” Barclays’ new EquiFirst originated mortgages in Mr. Ho’s book and that, had he known about it, he would have “fired his ass.” Ex. 16 at 164:21-23;

see also id. at 165:3-9 (stating, “Without my authority, without my permission, he should not have done it.”).

150. In response, Charles Utley, a Director in BarCap’s Product Control Group (“PCG”), noted that the “designation of the loans as Loans and Receivables is driven by management intent and strategy,” and that “this is a change from the existing business model.” He also stated that because “loans and receivables typically arise when an entity provides money, goods or services directly to debtor with no intention of trading the receivable . . . if the loans are sold/securitised within a short period after making this election it would call in question the appropriateness of this original classification decision with a potential outcome that it should be restated to fair value.” Ex. 15 at BARC-ADS-00851492.

151. Godden testified: “Fundamentally, I believe it was the case that certain whole loan positions were decided to be held by the business on the bank’s balance sheet, in the absence of [securitizing] them, as would normally be the case.” Ex. 17 at 92:9-15. He further testified that he “recalled the debate at the time around different accounting treatments for the [EquiFirst whole loan] positions” and that “the debate was around whether they were held at fair value or held as available for sale.” *Id.* at 98:3-11.

152. On October 5, 2007, Godden, Head of BarCap’s Asset Servicing Group (“ASG”), emailed James Walker, BarCap’s CFO for the Americas, and Mike Wade, BarCap Managing Director and US Head of ASG, regarding a “model approach for calculating premium payable to EquiFirst [by Barclays Capital (“BarCap”)] for ongoing production.” In the email, Godden notes Walker’s “approval to the 150 discount rate used in the portfolio calculations.” Ex. 13.

153. Godden’s October 5, 2007 email also states:

Clearly, EquiFirst will be loss making if it sells production for less than its cost to produce and on the BarCap side, portfolio (Keith Ho's book) will be hugely

profitable if it is paying nominally over par for such high quality loan pools. We will need to devise a way of paying EquiFirst as high a price as possible without reversal on consolidation.

Ex. 13.

154. Joe Kaczka, a Director in PCG responsible for price testing BarCap's CMBS and RMBS positions, testified that it was "unbelievable" that Barclays employees like Godden would characterize the EquiFirst subprime originations as "high quality" in October 2007:

Q. In your opinion, was Equifirst subprime product better than other subprime product?

A. Okay. You know, I'm speaking to this document as October 2007, at which point in time I think it's unbelievable that Adam Godden is saying such high quality assets and stuff like that. I don't remember when we acquired Equifirst. I never particularly liked the product. But early on, when we acquired them, I don't remember exactly, I had no reason to believe they were any better or worse than anybody else.

Ex. 18 at 214:3-214:22.

155. Kaczka also testified:

Q. Were there certain characteristics about the loans that you considered risky?

A. At what point in time?

Q. October 2007.

A. Well, by this point I've seen them underperform; I've seen delinquencies, losses; probably down -- significant downgrades. I started to think that there was fraud in the space potentially. I saw companies go out of business. You know, it's just, if I can - Adam Godden's front office sending this to James Walker and Mike Wade has cut Landreman and myself out of this. He suggests a meeting with Walker, Mike and I, meaning him. Landreman and I are not part of it. His bullet No. 4 I think is laughable. "Equifirst will be loss making if it sells production at less than its cost." Well, it has to sell it at fair value. For them to then say "on the BarCap side . . . (Keith Ho's book) will be hugely profitable if it is paying nominally over par for such high quality loan pools." I completely disagree with that statement. I just think that's laughable at that point in time that he can be representing that that -- these were high quality loan pools. So, Walker, I think is onboard at this point and he's now reaching out to Landreman and myself and Utley to discuss this. He's -- he's not going to meet with them without discussing

it with us. But Adam Godden, again, is a front office guy. It's amazing. I don't remember this email, but the fact that it is October of 2007 and he's saying such high quality loan pools is, I just think, disregarding what was happening in the marketplace.

Ex. 18 at 210:20-212:13.

156. Kaczka also testified that he received significant "pushback" from, and had "many heated meeting and disagreements" with, senior management regarding PCG's recommendation that Barclays record additional subprime-related writedowns. These member of senior management included Rich Ricci, BarCap's COO, Wade, Godden, and Menefee. Ex. 18 at 81:-85:4. Kaczka testified: "I felt pressure, sure. When a guy like Rich Ricci questions you, yes, that's a lot of pressure for someone at my level. This is a guy whom I understood to make, you know, 20 million or something like that. It's not somebody to be treated lightly." *Id.* at 171:20-172:8.

157. Kaczka further testified that at times his valuations were "revised at my management's instruction." Ex. 18 at 172:19-173:25.

158. Barclays' Board Audit and Accounts Committee ("Board Audit Committee") met on November 14, 2007. The minutes from that meeting "noted that BarCap and PwC were still discussing the valuation of the whole loans portfolio." Ex. 19.

159. A November 15, 2007 email chain forwarded from Wade to Peter Goettler, BarCap's US Head of Investment Banking, states:

Big issues convincing PwC on marking this book, need some really good evidence to support values. Ideally you need to sell c10% before year end to demonstrate marks. PwC pushing very hard for firesale mark of up to \$300m down.

Ex. 20.

160. A November 16, 2007 email from Rich Landreman, PCG Director responsible for price testing RMBS-related assets, subprime whole loans, and Alt-A related assets, to Kaczka notes, “Based on our meetings with PwC, they do not agree that a static discount rate of ‘Libor + 150’ is defensible.” Ex. 21.

161. Landreman’s November 16, 2007 email also states:

The \$ 4B Equifirst originated portfolio (older stuff on the branch) was observed by PwC to be quite aggressvie [sic] in relation to comparable portfolios which they have seen. The guidance provided for this portolio [sic] was in the 85-92 range. This level would indicate an incremental 400 to 600M writedown.

Ex. 21.

162. Also on November 16, 2007, Kaczka emailed Godden that: “The firm is losing the battle with PwC. PwC is looking for much more substantial writedowns on the \$4billion Equifirst originated loans on PLC’s B/S.” Ex. 22. Kaczka’s email also said: “The \$ 4B Equifirst originated portfolio (older stuff on the branch) was observed by PwC to be quite aggressive [sic] in relation to comparable portfolios which they have seen.” *Id.*

163. On December 10, 2007, PwC asked Barclays to provide “[d]ocumentation evidencing Barclays’ compliance with the CAQ [Center for Audit Quality] Valuation White Paper” with respect to its whole loan valuations. Ex. 23.

164. In response to PwC’s request, Barclays prepared a memorandum laying out Barclays’ subprime whole loan methodology (“PwC White Paper”). Ex. 24. Barclays’ PwC White Paper stated that Barclays was using a discount rate of LIBOR + 225 to value its EquiFirst originated whole loans. *Id.* at BARC-ADS-00408731.

165. A final version of the PwC White Paper notes that Barclays was applying two different discount rates in valuing EquiFirst originated whole loans, depending on whether the loan was originated prior to or after August 2007:

EquiFirst origination produced during and after August 2007 is valued using a discount rate of LIBOR plus 225bps. To account for the difference in collateral characteristics across our portfolio, an additional 33% stress was applied to collateral originated by EquiFirst prior to August 2007. As a result, the discount spread over LIBOR used for EquiFirst inventory produced between March and July is 300 basis points. The additional stress was applied to account for the liquidity premium that exists in the market for older collateral.

Ex. 9 at BARC-ADS-00860727.

166. The Board Audit Committee met on February 13, 2008. The minutes from that meeting state:

US Sub-prime/Alt-A Whole Loans and Residuals - Mr Rivett confirmed that PwC were now comfortable that they had a good understanding of the underlying portfolios. Given the limited market data available, evaluation processes are necessarily highly subjective but it would be helpful to communicate to investors the quality of the loan vintages held by Barclays Capital.

Ex. 25 at BARC-ADS-01602578.

167. A presentation prepared for the February 13, 2008 Board Audit Committee meeting titled “Review of mark to market valuations (including ABS and leveraged Credit valuations)” shows that Barclays recorded a writedown of £116 million on its subprime whole loans for year-end 2007. Ex. 26 at p.2.

Net exposure & write down summary

Net Exposure (£bn)			2007 Writedowns and Impairment (£m)			
Oct 2007	Dec 2007		Jul-Oct	Nov-Dec	H2	FY
5.0	4.7	ABS CDO Super Senior	(1,150)	(207)	(1,356)	(1,412)
3.0	3.0	Sub-prime whole loans	(31)	(51)	(83)	(116)
0.5	0.2	Sub-prime residuals	(121)	(310)	(431)	(431)
1.9	1.5	Other Sub-prime	(244)	(253)	(496)	(496)
		Subprime income	100	87	187	310
10.4	9.4	US subprime writedowns gross of own credit	(1,445)	(733)	(2,179)	(2,145)
54.7	57.2	Own credit	420	238	658	658
		Net US subprime related write-downs	(1,025)	(495)	(1,521)	(1,487)
-	-	BSAM	(85)	-	(85)	(205)
0.9	0.8	SIVs & SIV-lites	(70)	-	(70)	(70)
		Net US subprime related write-downs Incl SIV-lites and BSAM	(1,180)	(495)	(1,675)	(1,761)
7.3	7.4	Leveraged Finance	(82)	-	(82)	(82)
		Net writedowns consistent with Nov Trading Update	(1,262)	(495)	(1,757)	(1,843)
		Other writedowns (Alt A, ABS, CMBS, Monolines)	(88)	(185)	(272)	(272)



Barclays Capital are still reviewing external disclosure options & definition of sub-prime

168. Barclays recorded losses of £111 million on its Alt-A related positions for year-end 2007. Ex. 223 at Losses Summary Tab.

169. The credit quality of BarCap’s whole loan portfolio continued to deteriorate into 2008. A February 28, 2008 “Independent Valuation Review” performed by PCG for month-end January 2008 stated that “[t]he credit performance [of the March and April Equifirst production pools] continues to deteriorate. Although March and April production[s] have seasoning less than a year, both pools now have total delinquencies over 25%.” Ex. 27 at 17.

170. An “Independent Valuation Review” performed by PCG for month-end March 2008 also showed writedowns on its subprime whole loan positions of approximately \$795

million for the month of March. The same Independent Valuation Review also noted “[t]he writedown is attributable to considerable credit quality deterioration in the actual Whole Loan portfolio.” Ex. 28 at 16; *see also* Ex. 29 (PCG recommended writedown of \$796,900,000 on whole loan portfolio for March 2008).

171. The Independent Valuation Review performed by PCG for month-end March 2008 also showed that Barclays had written down approximately \$955 million on its Alt-A portfolio as of March 31, 2008. Ex. 28 at 9.

172. On March 11, 2008, Mike Wade emailed Peter Goettler regarding “the valuation of the whole loan book.” Wades email states:

Just got word that Patrick Clackson is flying over to US to discuss the valuation of the whole loan book with David Martin and Stephen King. Paul Menefee has attempted to insert himself in the process given that he has been instrumental to the PWC discussions, all sales done to date and ongoing sale negotiations. He has been told his assistance is not required.

I am attempting to talk to Hamilton and David Martin about this upcoming discussion and how I feel we can be useful to the discussion.

I am worried that given the incentives at work here and the lack of the right people being involved in the process that the results of this discussion will be incorrect and severe. At a minimum I wanted to make you aware as Clackson will likely speak to Ricci next.

Ex. 30.

173. On March 19, 2008, Anthony Piperno, a BarCap Associate in Debt Capital Markets—US ABS, emailed Wade, Menefee, Godden and others regarding “[r]evaluation of \$6bn [whole loan] portfolio.” Piperno’s email states: “[w]e updated our whole loan valuation based upon the principles within the existing PWC approved methodology to incorporate February month-end data. Current mark on the portfolio as of January month-end was 94.51%.”

Ex. 31.

174. Piperno's email further states:

The total writedowns and prices for the \$6.7bn pool are as follows:

L +250 = \$133m writedown and price of 92.52% (this writedown is driven entirely by the \$133 writedown on 60+ S&D with performing loans maintained at their current cost basis).

L+300 = \$142m writedown and price of 92.40%

L+400 = \$213m writedown and price of 91.33%

L+500 = \$311m writedown and price of 89.89%

L+600 = \$435m writedown and price of 88.04%

L+700 = \$557m writedown and price of 86.24%

L+800 = \$674m writedown and price of 84.51%

L+900 = \$785m writedown and price of 82.86%

L+1000 = \$892m writedown and price of 81.27%

A \$1Bn writedown on the pool implies a discount rate of L+1105 on the performing population and price of 79.67% on the entire portfolio.

Ex. 32.

175. On March 20, 2008 Wade forwarded Piperno's March 19, 2008 email to Ricci and Patrick Clackson, BarCap's CFO:

Below is re-freshed valuation for the entire whole loan Inventory based on PWC methodology used at year -end. There are various new conservative assumptions imbedded in the analysis as detailed below particularly with regard for 60+ delinquent loans.

Ex. 31.

176. BarCap Finance Committee ("Finance Committee") meeting materials dated April 2, 2008 similarly note that "90 day delinquency rates have been increasing steadily since October," and that "the current Run Rate methodology used for calculating our expected losses assumes that 90 delinquency rates are the most relevant proxy." Ex. 33 at 7.

177. In or around February 2008, Barclays commissioned an analysis called "Project Topcat" to evaluate its "Options for US Residential Mortgage Business." Project Topcat

examined whether Barclays should close EquiFirst altogether in light of the securitization market which had “virtually disappeared.” Ex. 34 at slide 2.

178. Tom Hamilton, a BarCap Managing Director and head of RMBS trading, testified that members of senior management, including Bob Diamond, Barclays’ President and BarCap’s CEO; Jerry del Missier, BarCap’s Co-President; and Eric Bommensath, Managing Director of Rates and Credit Trading, were “steering” project Topcat. Ex. 35 at 367:13-369:10.

179. A Presentation titled “Project Topcat: Options for US Residential Mortgage Business,” and prepared for BarCap’s Executive Committee (“BarCap ExCo”), notes “[m]onthly default rates of sub-prime mortgages have risen to 6.5% by end 07 (up from 4.1% at start 07 and 3% in early 06).” The Presentation also asks, “Will the business model come back in some form? (if answer is a categorical no, exit is the only viable option).” Ex. 34 at slide 1.

180. The Project Topcat presentation also notes that “an exit of EquiFirst would probably result in a shutdown of the subprime mortgage whole loan/securitization business” as (i) “Virtually all subprime lenders remaining are controlled by competitors -- very difficult to find volume to securitize,” and (ii) “If Barclays cannot be confident in [its own] strictly controlled originations, no justification to trust in the originations of others.” Ex. 34 at slide 13.

181. Hamilton further testified that “The outcome of Top Cat was we should just close Equifirst.” Ex. 35 at 365:21-366:25.

182. As of April 22, 2008, Barclays suspended all subprime mortgage origination at Equifirst. It was further directed that EquiFirst’s future loan production would consist of “FHA-insured loan programs that can be readily sold in the form of GNMA securities.” Ex. 36 at BARC-ADS-01385163.

B. Barclays' Exposure to NIMs and Post-NIMS

183. At year-end 2007, Barclays had £233 million in exposure to subprime-backed net interest margin securities ("NIMs") and post-NIM residuals, which it had marked at 24% of par. Ex. 37 at 97; *see also* Ex. 26 at BARC-ADS-00783189.

184. On November 8, 2007, Gavin Chapman of BarCap's Credit Trading group, emailed Joe Kaczka and other members of PCG a "Workout Group" which was tasked with valuing Barclays' post-NIM residuals. Chapman's email states: "Joe, we cannot be sure of the value of the PNRs for year end and we cannot afford to take capital deductions in 2008, so with this uncertainty, we need to continue to push forward with this effort." Ex. 38.

185. In response to Chapman's email, Kaczka wrote: "I disagree. The 'value is obvious. No need to worry about the capital deduction in 2008 if 'valued' properly now." Ex. 38.

186. Kaczka testified that the post-NIMs were "were fairly near worthless or very, very low, if any, value." Ex. 18 at 196:10-11.

187. As of March 31, 2008, Barclays had written down its NIMs and post-NIM exposure by £132 million. Ex. 39 at 8.

188. As of June 30, 2008, Barclays had written down its NIMs and post-NIM exposure by an additional £102 million, and had marked the securities at 3% of par. Ex. 40 at 7.

189. As of September 30, 2008, Barclays had written down its NIMs and post-NIM exposure to zero. Ex. 40 at 7.

C. Barclays' "Workout Portfolio"

190. In mid-November 2007, Barclays demoted John Kreidler, Global Head and Managing Director of Credit Trading and Vince Balducci, US Head of Credit Derivative Trading. Ex. 41 at 14:9-11; 16:19-18:3. Kreidler subsequently left Barclays on or around

December 2, 2007. Ex. 41 at 16:19-22. Prior to that time, Kreitler managed John Carroll, Global Head of Securitized Asset Trading. Ex. 41 at 50:6-7.

191. Kreitler testified that “I don’t know what an Alt-A asset is, and I don’t recall whether we had positions.” Ex. 41 at 35:9-36:8.

192. Kreitler also testified that he didn’t know what made a mortgage “subprime” or what a “FICO score” was. Ex. 41 at 56:13-58:8.

193. In January 2008, Barclays fired John Carroll, who, at the time of his firing, was responsible for managing trading positions related to subprime whole loans, subprime ABS, NIMs, post-NIMs, and Alt-A related positions. Ex. 42 at 47:8-16); Ex. 35 at 266:9-14.

194. Hamilton testified that Barclays did not have a succession plan in place for who would be responsible for Carroll’s business after his departure. Ex. 35 at 260:12-17. Hamilton also testified, “He [Carroll] had other traders, but I don’t think they were ready to step into management shoes.” Ex. 35 at 260:23-25.

195. As of year-end 2007, there was no trader responsible for Barclays’ subprime whole loan positions. Ex. 43 (1/4/08 e-mail stating “we really need to decide who owns these damn things”); *see also* Ex. 44 (1/8/08 e-mail asking, “Any luck figuring out who owns/prices the subprime whole loans?”); Ex. 35 at 315:6-15.

196. On or around January 15, 2008, Barclays attempted to transfer responsibility for Carroll’s “Subprime” and “Nim / Post Nims” to Hamilton. Ex. 45; Ex. 35 at 259:24-260:11.

197. Also on January 15, 2008, Hamilton told Christopher Richards, of PCG, that Carroll’s business “does [roll up to me] but im not going to be responsible for wherever these [‘Subprime’ and ‘Nim / Post Nims’] losses are coming from.” Ex. 45 at BARC-ADS-01139563.

198. Hamilton testified that it was his expectation that Carroll's losses would flow "[t]o someone else. To Eric [Bommensath]. I wasn't going to -- you know, I was taking over his business on a go-forward basis. And my responsibility was to run the client-facing businesses. If John Carroll or people he worked with in credit had positions or things that were none of my doing, I certainly wasn't going to inherit that." Ex. 35 at 265:18-266:2.

199. A February 28, 2008 "Independent Valuation Review" performed by PCG notes that "Snr Mgmt is currently in discussions as to the proper owner of [Barclays' subprime] positions since Head Trader [Carroll] is no longer with the firm as of January 31st." Ex. 27 at 7.

200. In January 2008, Barclays transferred its subprime and Alt-A related assets (including whole loans, ABS, CDOs, NIMs and Post NIMs, and CMBS) into a "workout" portfolio under Bommensath. Ex. 35 at 267:22-268:4; 334:4-14; *see also* Ex. 46 at 262:20-263:2 ("at some point in 2008 along -- as -- as I said, the bank was trying to consolidate all of its mortgage exposure. It had increasingly said -- we've got subprime exposure and Alt-A exposure and loan exposure and super seniors, let's try and get it all together"); Ex. 47(showing assets in workout portfolio); Ex. 48 (showing assets in workout portfolio).

201. Stephen King testified that at some point "in the second quarter, maybe midyear" the assets in the "workout" portfolio were transferred to his group, the Principal Mortgage Trading Group. Ex. 46. at 262:15-263:21.

202. As of March 24, 2008, the assets in the "workout" portfolio had not been transferred to Mr. King's group. Ex. 49; Ex. 35 at 326:10-18.

D. Barclays' Competitors Suffer Large Losses in 3Q07 and 4Q07

203. By October of 2007, the credit markets were beginning to show signs of severe distress, and many of Barclays' competitors announced large writedowns and losses, driven in large part by their exposure to subprime assets.

204. For the third quarter 2007, Merrill Lynch wrote down \$8.4 billion on its credit market exposures, including \$7.9 billion on its CDO and subprime mortgage positions alone, and reported net losses of \$2.24 billion. Exs. 50-51; *see also* Ex. 52 at BARC-ADS-00927830 (showing gross losses of \$8.36 billion on its credit market positions). On October 24, 2007, *The New York Times* reported that most of the losses and writedowns suffered by Merrill Lynch “were tied to the decline in value of complex debt instruments called collateralized debt obligations, or CDOs, whose value has diminished in recent months as credit markets have been hit by a collapse in the subprime mortgage market.” Ex. 50.

205. For the third quarter 2007, UBS “reported its first quarterly loss in almost five years after declines in the U.S. subprime mortgage market led to \$4.4 billion in losses and writedowns on fixed-income securities,” including subprime asset backed securities and CDOs. Ex. 53; *see also* Ex. 52 at BARC-ADS-00927830 (showing gross losses of \$5.78 billion on its credit market positions).

206. Following UBS’s third quarter 2007 announcement, *The New York Times* reported that additional writedowns at UBS may still be forthcoming: “the slumping U.S. housing market, which cost the world’s biggest securities firms and banks more than \$30 billion in bad loans and trading losses in the quarter, may lead to further writedowns, UBS reiterated today.” Ex. 53.

207. In December 2007, UBS announced a further writedown of \$10 billion in connection with losses suffered on its investments tied to the U.S. subprime market. UBS also announced that the Government of Singapore Investment Corporation, a sovereign wealth fund, and an “undisclosed strategic investors in the Middle East” were investing a combined \$11.52 billion to shore up the bank’s capital base. Ex. 54.

208. For the third quarter 2007, Citigroup announced writedowns and losses totaling \$6.8 billion in connection with losses suffered on its investments tied to the U.S. subprime market. Ex. 55. On November 4, 2007, Citigroup announced that it expected further writedowns of \$8 to \$11 billion in the fourth quarter of 2007 and that its CEO, Charles Prince, was resigning. Then, on November 27, 2007, *Reuters* reported that Citigroup was “selling up to 4.9 percent of itself for \$7.5 billion to the investment arm of the Abu Dhabi government, giving the largest U.S. bank fresh capital as it wrestles with the subprime mortgage crisis and the resignation of its chief executive.” Ex. 55.

209. Following these announcements by Citigroup, investors expressed concern over Citigroup’s Tier 1 capital levels. As the Wall Street Journal reported:

Investors have increasingly expressed concerns about Citigroup’s “tier 1” capital levels -- a common measure of a bank’s capital adequacy -- which for the first time in years fell below its 7.5% target in the third quarter. Although the bank is still considered to be well capitalized, investors worried that Citigroup would be forced to cut its dividend.

Ex. 56.

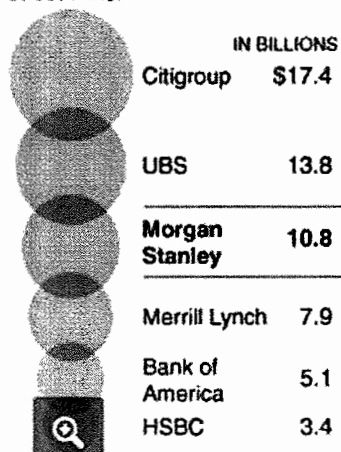
210. For the fourth quarter 2007, Morgan Stanley announced an additional \$9.4 billion writedown on its “subprime-linked investments” and that it was selling a “\$5 billion stake to a Chinese investment fund to shore up its capital.” Ex. 57.

211. On November 13, 2007, Bank of America announced that it expected to write down \$3 billion in its fourth quarter “as fallout from the nation’s housing slump deepens.” Ex. 58.

212. As of November 13, 2007, industry wide write-downs stemming from the collapse of the U.S. housing industry totaled “well over \$40 billion.” Ex. 58.

213. By December 20, 2007, according to *The New York Times*, the “[l]argest subprime and mortgage related losses by banks and Wall Street firm” combined to exceed \$58 billion:

Largest subprime and mortgage-related losses by banks and Wall Street firms.









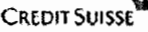






Source: *CIBC World Markets*,
the companies THE NEW YORK TIMES

Ex. 57

214. On November 21, 2007, the Finance Committee met. A presentation prepared for that meeting titled “Competitor Analysis Q3 review” contains the following chart:

Q3 Announced Credit Losses (£m)*

	Leveraged loans	MBS/ ABS/ Credit Derivatives	Sub Total	Credit Spread Gains**	Quant losses	Total	Commentary - Q3 losses
HSBC 	(30)	(260)	(470)	630		180	Write-downs of \$1.75m (net of fees) in respect of non-syndicated committed facilities in the leveraged acquisition finance business and \$7.5m in securities including whole sale purchased sub-prime mortgages and structured credit trading positions held on balance sheet. The Group has very little direct exposure to US sub-prime mortgage-backed CDOs. Own credit gains of \$1.3m mainly accounted for within Table 2
 BNP PARIBAS	(130)	(70)	(700)	30		(170)	Write-downs of €194m on LBO underwriting commitments, €36m on securitisation and CDOs, €50m increase in the general provision related to the homebuilders sector in the US and a €1.8m specific provision for defaulted mortgage originators. One-off net gains on own securities of €44m was held centrally
 SOCIETE GENERALE	(70)	(150)	(230)			(230)	Write-downs of €250m on different instruments exposed to US residential mortgages and €28m on a €2m portfolio of non-investment grade transactions in underwriting, including €1.3bn LBOs
 BEAR STEARNS	(120)	(220)	(340)	110		(230)	Write-downs of \$250m pipeline of leveraged finance commitments and loans and \$450m on residential mortgages. \$300m of Q4 losses due to write-downs in CDO positions, \$250m on net marks and \$150m on other subprime losses
GLD SMITH BARNEY	(350)		(350)			(350)	Valuation reduction mostly on leveraged loan commitments and residential mortgage-related positions, net of economic hedges and other liabilities
Goldman Sachs	(470)		(470)	200	(240)	(510)	Write-downs of \$940m on loans and closed and pipeline commitments
 BARCLAYS CAPITAL	(30)	(720)	(750)	210		(540)	
 CITIGROUP		(740)	(740)	150		(590)	Loss of \$1.48bn net of hedges related to non-investment grade credit origination activities. Own credit gains were a little bit under \$300m
 JPMorganChase	(550)	(170)	(820)	230		(590)	Write-downs of \$1.3bn on leveraged lending and \$335m net of hedges on CDO warehouses and unsold positions
 Bank of America	(120)	(570)	(690)			(690)	Write-downs of \$247m on leveraged and non leveraged loans and commitments, \$607m trading revenue loss due to the breakdown in traditional pricing relationships. Net revenue loss of \$527m in structured products which includes asset-backed and residential mortgage-backed securities, commercial mortgages, CDOs and structured credit trading
 CREDIT SUISSE	(450)	(450)	(900)	260	(120)	(760)	Write-downs of CHF3.2bn are net of fees and hedges
 Deutsche Bank	(410)	(1,060)	(1,470)	15		(1,475)	Write-downs of €603m (net of fees) on leveraged loans and loan commitments and €1,550m on relative value trading in both debt and equity, structured credit products and residential mortgage backed securities
 Citi	(580)	(1,470)	(2,150)	230		(1,920)	Write-downs of \$1.332m on highly leveraged finance commitments, \$1.561m on the value of warehouse assets for future CDO and CLO securitisations and CDO positions, losses of \$635m in credit trading. A further \$270m was recognised in the 10Q on the continued discount rates across all the super seniors
 UBS	(200)	(2,200)	(2,400)			(2,400)	
 Merrill Lynch	(730)	(1,970)	(4,700)	300		(3,900)	Write-downs of \$7.9bn on CDOs and US sub-prime mortgages (increase from \$4.5bn at time of earnings pre-release) and \$463m (net of fees) related to all corporate and financial sponsor, non-investment grade lending commitments

* For losses in local currency, please see Appendix IV

** Bear Stearns, Goldman Sachs, JP Morgan and Citi disclosed gains on own credit in their conference calls but not their results announcements

Ex. 52 at BARC-ADS-00927830.

E. Barclays Decides to Issue an “Off Cycle” Trading Update

215. Amid this market turmoil, Barclays decided to publish an “off cycle” trading update that discussed the performance of BarCap only (“BarCap Trading Update”). Barclays’ CEO, John Varley, testified:

Q. Why did you believe it was appropriate to provide this off cycle information to the market in November 2007?

A. From recollection, October was a savage month for the market, and from recollection also there was a lot of chatter in the marketplace about how banks had fared in these conditions. I don't recall precisely the deliberations we went through but we came to a conclusion with all the various advisory inputs that I have referred to earlier that it would be appropriate to update the market, and that is what we decided to do.

Ex. 59 at 161:16-162:5.

216. Varley further testified that “there was a lot of volatility, and across the street, and by that I mean across the investment banking industry particularly, it was clear that there was a lot of pain being suffered.” Ex. 59 at 162:9-11.

217. The Board Audit Committee met on November 14, 2007. The minutes from that meeting state:

The Committee discussed whether the timing of the announcement was appropriate, particularly as the statement related only to BarCap. The Committee debated whether it would be possible to bring forward the date of the Group Trading Statement. It was also felt to be important that the statement should include if possible, some third-party assurance as to its accuracy as well as being conservative and open in its nature. John Varley explained that the major driver for making this statement ahead of the Group Trading Statement, which was due towards the end of the month, was to reassure particularly retail investors and depositors in the light of the huge volatility in the Group's share price. Although these pressures had eased a little in recent days the market was still struggling to know how to value the Group's shares. It was acknowledged that issuing a statement in this way was unusual and that it was a finely balanced judgement given that there was a danger that some in the media could describe it as a profits warning. However, it was not yet feasible to publish the Group's Trading Update. The Committee noted that David Mayhew of JP Morgan Cazenove had been consulted and he was supportive of the need to make an announcement. It was agreed that it would be helpful to include an explanation in the text of why the statement was being made outside of the usual cycle. A quotation from Mr. Varley would be added for that purpose.

Ex. 19 at BARC-ADS-01537965.

218. The November 14, 2007 Board Audit Committee minutes also state:

Phil Rivett advised the Committee that it would not be possible to include any reference to PricewaterhouseCoopers (“PwC”) having reviewed the statement If the statement were to be made public within the next 24 hours. It would not be

possible to achieve the required level of comfort in the time available. It was noted that there was no consistent approach in other banks' statements as to whether they were reviewed by their auditors or not

Ex. 19 at BARC-ADS-01537965.

219. The November 14, 2007 Board Audit Committee minutes also “noted that BarCap and PwC were still discussing the valuation of the whole loans portfolio.” Ex. 19 at BARC-ADS-01537966.

220. Prior to issuing the BarCap Trading Update, BarCap generated a presentation titled “Q3 Trading Update – Possible disclosure options,” which surveyed disclosures provided by certain peer banks regarding their U.S. subprime related exposures. The peer disclosures reviewed by Barclays prior to the BarCap Trading Update were: (1) “UBS – Q3 Trading update presentation”; (2) “Morgan Stanley – Q3 Subprime Update Summary Slide”; (3) Merrill Lynch – Q3 Trading Update and Q3 10Q”; and (4) “Citi – Q3 10Q narrative approach”. Ex. 60.

221. Sir Richard Broadbent, Senior Independent Director and Chairman of the Board Risk Committee, testified that Barclays did not wish to provide a disclosure in the BarCap Trading Update that would be inconsistent with disclosures provided by its peer banks: “where there is volatility, market volatility, it seems to me as a board director entirely reasonable that the management would look elsewhere and just make sure that they were not materially -- significantly out of line with what other banks were doing.” Ex. 61 at 97:10-99:2.

222. On November 15, 2007, Barclays released the BarCap Trading Update, which was titled “October Year to Date Trading Performance at Barclays Capital Ahead of Record Prior Year Period.” Ex. 62. The BarCap Trading update reported on Barclays Capital’s credit market exposures which were most vulnerable to the market turmoil in the U.S. housing market as at October 31, 2007. *Id.*

223. Varley was quoted in the BarCap Trading Update as saying:

This announcement briefs stakeholders on the performance of Barclays Capital during the first ten months of the year. It continues a pattern of performance commentary that we have given during the last three months. Today's extensive disclosure demonstrates the strength and resilience of our performance during the year and in particular during the turbulent month of October.

Ex. 62.

224. The BarCap Trading Update also quoted Bob Diamond, Barclays' President and BarCap's CEO, as saying:

The diversity of our business, our strong risk management and our focus on execution and clients has allowed Barclays Capital to deliver year to date performance in 2007 ahead of last year's record October year to date profits.

Ex. 62.

225. The BarCap Trading Update also contained the following disclosure regarding BarCap's writedowns and impairment charges:

Barclays Capital's net income and profit before tax for the ten months ended 31st October 2007 exceeded the record net income and profits of the equivalent prior year period. Profit before tax of £1.9bn for the period was after booking credit, mortgage and leveraged finance related charges and write downs of £0.5bn net of hedging in the third quarter (reflected in our previous statements to the market); and an additional £0.8bn net charges and write downs in October. The charges and write downs are stated net of a gain of £0.2bn in each of the third quarter and October arising from the fair valuation of notes issued by Barclays Capital. The October charges and write downs reflected the impact of rating agency downgrades on a broad range of CDOs and the subsequent market downturn.

Ex. 62.

226. The BarCap Trading Update contained a narrative description, along with exposure amounts, of certain credit market positions held by Barclays. These positions included:

ABS CDO Super Senior Exposure	£5.0 billion exposure
Other US Subprime Exposure	£5.4 billion exposure, including £4.3 billion in whole loans
SIVs and SIV-lites	£0.7 billion exposure
Leveraged Finance and Own Credit	£7.3 billion exposure

Ex. 62.

227. With respect to “Other US Sub Prime Exposure,” the BarCap Trading Update stated in part:

Since acquiring EquiFirst, we have progressively tightened underwriting criteria, and our EquiFirst mortgage origination has been at an average LTV of 82 %, with only 4% of origination above a 95% LTV. In addition, 99% of the exposure was first lien. Whole loan inventory is held in a trading book at fair value determined with reference to current market parameters for the underlying mortgage pools.

Ex. 62.

228. The BarCap Trading Update also provided a “Summary of Barclays Capital net charges and write downs”:

Summary of Barclays Capital net charges and write downs

Ebn	Net charges and write downs		Comments
	Q3 2007	Oct 2007	
ABS CDO Super Senior High: Grade	(0.3)	(0.4)	- All RMBS CDO principal valued at zero - All second lien collateral valued at zero - Sub Prime collateral marked down 50%
Mezzanine	(0.1)	(0.3)	- As above - Used fair value with impairment horizon to 2008
Other US Subprime Whole loans and trading book positions	(0.2)	(0.2)	- Trading book assessed at fair value based on current market parameters
SIVs/SIV-lites	(0.1)	0.0	- Minimal sub prime exposure in SIVs - No undrawn SIV-lite facilities
Leveraged Finance / Own Credit	0.2	0.1	
Net Charges and Write Downs in the period	<u>(0.5)</u>	<u>(0.8)</u>	

Ex. 62.

229. Finally, the BarCap Trading Update stated that “Barclays will provide its normal scheduled trading update on 27th November 2007.” Ex. 62.

F. Analysts and Investors React Positively to the BarCap Trading Update

230. Barclays’ Board of Directors (the “Board”) met on November 15, 2007. The minutes from that meeting state: “The release of the BarCap Trading Update earlier that morning

had gone well. There had been a great deal of interest with nearly 300 participating at the Analysts' conference call. The detailed nature of the disclosure had been well received." Ex. 63 at BARC-ADS-01601504.

231. On November 21, 2007, *The Guardian* published a corrected version of an article titled "Barclays calculates £1.3bn sub-prime loss," which cited analysts from Collins Stewart as calling the BarCap Trading Update "'pretty confidence-inspiring.'" Ex. 64.

232. Credit Suisse noted that the BarCap Trading Update "'was useful; and will put a backstop, at least for now, on the speculation that much bigger losses had emerged'" but also "questioned whether Barclays has been as conservative as it claims: 'It represents about 12% of the exposure, net of tax, in line with several of the other European bank write-downs.'" Ex. 64.

233. On November 27, 2007, Barclays issued its 3Q07 Trading Update. The 3Q07 Trading Update did not discuss BarCap, and instead stated "We provided a trading update in respect of the performance of Barclays Capital for the ten months ended 31st October 2007 on 15th November 2007." Ex. 65.

III. THE SERIES 5 OFFERING MATERIALS' MATERIAL MISSTATEMENTS AND OMISSIONS

A. Barclays' Exposure to Monoline Insurers

1. Background on Monoline Insurers

234. Monoline insurance companies' sole business is to issue financial guarantee insurance policies, which guarantee the payment of principal and interest on securities and other investments. Ex. 66 ¶55. These insurance policies are typically referred to as credit default swaps, or "CDS." *Id.*

235. Monoline insurers, such as MBIA and Ambac, first opened in the 1970s as guarantors of "nice, safe municipal bonds." By the 1990s, however, monolines began insuring

so-called “structured finance” vehicles, including highly risky CDOs and other asset backed securities. Ex. 67.

236. Referring to the shift in monolines’ business practices, *The New York Times* reported in a December 1, 2007 article: “‘If you analogize it to life insurance,’ said Mr. [Sean] Egan [the co-founder of Egan-Jones, an independent bond rater] . . . ‘it is as if they once insured only 18-year-old women who didn’t smoke or drink. Now they are insuring the Evel Knievels of the world.’” Ex. 67.

2. Barclays’ Exposure to Assets Wrapped by Monolines and Non-Monoline Insurers

237. Barclays recorded its exposure to monoline insurers in its “Negative Basis Book.” *E.g.*, Ex. 68 at slide 7.

238. A negative basis trade is a two-step process whereby a bank acquires a security (such as a super senior CDO note) and simultaneously enters into a CDS contract with a financial guarantee insurer to guarantee payments on the security. Ex. 66 ¶36.

239. Barclays’ Negative Basis Book showed, among other things, the notional amount of Barclays’ exposure to monoline and non-monoline insurance by: (i) asset class, and (ii) insurance counterparty. *E.g.*, Ex. 69; Ex. 70 at 33.

240. As of December 31, 2007, the notional value of Barclays’ assets wrapped by “monoline insurers and other financial guarantors that provide credit protection” (collectively, “monolines”) was £21.573 billion. Ex. 71 at 35.

241. As of November 1, 2007, Barclays’ credit market positions wrapped by monolines included (Ex. 69):

- | | |
|-----------------------------|-----------------|
| • ABS CDOs: | £6.186 billion |
| • Leveraged Loans and CLOs: | £12.173 billion |
| • CRE CDOs and CMBS: | £2.444 billion |

242. Barclays' monoline wrapped CDO, CLO and CMBS positions were each linked to CDS with certain monoline insurers which subsequently defaulted during 2008 and 2009. Ex. 66 at Exhibit 4. All of Barclays' CDO-related negative basis trades were with monoline insurers who subsequently defaulted. *Id.* Approximately 85% of Barclays' CLO-related negative basis trades were with monoline insurers who subsequently defaulted. *Id.* And nearly all of Barclays' CRE CDO and CMBS-related negative basis trades were with monoline insurers who subsequently defaulted. *Id.*

243. Similarly, as of December 31, 2007, Barclays also held approximately \$9.028 billion in positions which were insured through banks in the form of negative basis trades. Ex. 69. More than \$2 billion (approximately £1.115 billion) of this exposure was to CDOs. *Id.* Of this exposure, approximately \$1.892 billion was to financial institutions that would default or have to be bailed out over the following year. Ex. 66 at Exhibit 4.

244. Including those assets wrapped by monoline and non-monoline insurance, Barclays' total credit market exposures for ABS CDOs, Leveraged Loans and CLOs, and CRE CDOs and CMBS were as follows:

Asset Class	Total Positions Disclosed in 2007 20-F	Monoline Wrapped Assets not Disclosed in 2007 20-F	Bank Wrapped Assets not Disclosed in 2007 20-F	Total Positions Actually Owned
ABS CDOs	£6.018 billion	£6.186 billion	£1.115 billion	£13.319 billion
Leveraged Loans and CLO	£7.368 billion	£12.173 billion		£19.541 billion
CRE CDOs and CMBS	£12.339 billion	£2.444 billion		£14.783 billion

¶¶125, 239-243, *supra*.

245. The notional amount of Barclays' exposure to monolines and other bank guarantors grew dramatically between 2003 and 2008. In August 2008, Barclays prepared a presentation for Diamond and others titled "Monolines," which showed that Barclays' monoline wrapped assets had grown from \$350 million in 2003 to more than \$42 billion at year end 2007:

Review of P&L & Balance Sheet History

NBT Revenues \$mm	2005 DEC	2006 DEC	2007 DEC	2008 JAN	2008 FEB	2008 MAR	2008 APR	2008 MAY	2008 JUNE	2008 JULY	2008 YTD
CDO (PMTG)				(86)	43	(53)	53	(11)	(497)	(94)	(645)
CLO US (FIC)	46	56	173	(15)	(1)	(10)	(43)	(16)	(7)	-	(92)
CLO EUR (FIC)	43	73	172	(16)	(5)	(15)	(17)	(35)	(9)	-	(98)
	89	129	345	(117)	37	(78)	(7)	(63)	(513)	(94)	(835)

Balance Sheet Usage (\$mm)

Year ending	2003	2004	2005	2006	2007
Bank Guaranteed	462	3,260	7,203	10,174	12,807
Monoline Guaranteed	350	3,768	12,700	25,598	42,281
	812	7,028	19,903	35,772	55,088

Ex. 72 at 29.

246. The Financial Services Authority ("FSA"), Barclays' executives, and Barclays' Board of Directors (the "Board" or "Board of Directors") expressed interest in the notional amount of Barclays' monoline exposure and in the quality and composition of the assets wrapped by monolines.

247. On November 12, 2007, David Alexander of the FSA sent a questionnaire to Miles Storey, Barclays' Head of Group Balance Sheet, titled "Questionnaire on Exposure to Monoline Financial Guaranty Insurers" ("FSA Monoline Questionnaire"). Ex. 73 at BARC-

ADS-00833233. Question 2 of the FSA Monoline Questionnaire asked Barclays specifically about underlying collateral wrapped by monoline insurance:

What inventory do you hold in respect of monoline-wrapped assets or vehicles? This would include securities such as bonds, structured products such as CDOs, and investment vehicles (such as PFI) which have been wrapped by monolines.

Please provide details of the assets, including rating. For structured products, please also provide details of the underlying assets (for example, super senior tranche of CDO of ABS, with an attachment point of 30%, on BBB RMBS underlying, 2006 H1 vintage).

Ex. 73 at BARC-ADS-00833234.

248. In response to Question 2 of the FSA Monoline Questionnaire, Barclays provided “[t]he following chart,” which “sets out in summary form the total portfolio of negative basis trades, expressed in both notional & MTM terms”:

The following chart sets out in summary form the total portfolio of negative basis trades, expressed in both notional & MTM terms. Also displayed are the reserves held against the portfolio. The aggregate notional value of the portfolio is \$39.5 bn with a current MTM value of \$38.1 bn and reserves held totalling \$93.2 mn.

Monoline	Collateral Type	Data		
		Notional (\$000)	MTM (\$000)	Total Reserves (\$000)
MBIA	US CMBS	\$ 4,544,073	\$ 4,472,310	\$ (20,344)
	US High-Grade ABS	\$ 1,875,000	\$ 1,543,993	\$ (5,672)
	US CLO	\$ 1,368,000	\$ 1,351,839	\$ (1,018)
	US Mezzanine ABS	\$ 1,058,000	\$ 880,198	\$ (1,896)
	European Mezz ABS	\$ 785,751	\$ 774,410	\$ (815)
	European CLO	\$ 660,956	\$ 653,271	\$ (593)
	CRE Loans	\$ 219,000	\$ 212,033	\$ (859)
	European IG Synthetics	\$ 35,308	\$ 35,308	\$ -
MBIA Total		\$ 10,544,088	\$ 9,923,363	\$ (31,197)
Ambac	US High-Grade ABS	\$ 961,000	\$ 816,138	\$ (2,472)
	US CLO	\$ 4,819,794	\$ 4,827,295	\$ (14,665)
	European CLO	\$ 1,472,068	\$ 1,448,735	\$ (542)
	CDO'2 (ABS)	\$ 100,000	\$ 73,267	\$ (46)
Ambac Total		\$ 7,452,863	\$ 7,165,435	\$ (17,726)
FSA	US CLO	\$ 5,996,550	\$ 5,895,170	\$ (17,080)
	Bank & Insurance TRUPs	\$ 100,000	\$ 95,139	\$ (127)
	Euro Sen Sec Leveraged Loans	\$ 215,378	\$ 210,986	\$ (175)
FSA Total		\$ 6,311,926	\$ 6,201,295	\$ (17,383)
FGIC	US CLO	\$ 3,004,300	\$ 2,941,503	\$ (7,300)
	US Mezzanine ABS	\$ 240,000	\$ 210,421	\$ (60)
	European CLO	\$ 932,118	\$ 828,141	\$ (418)
FGIC Total		\$ 4,176,418	\$ 4,080,066	\$ (7,778)
XLCA	US CMBS	\$ 620,000	\$ 604,207	\$ (3,101)
	US CLO	\$ 712,194	\$ 696,179	\$ (1,222)
	European CLO	\$ 1,411,761	\$ 1,379,541	\$ (725)
	CDO'2	\$ 120,500	\$ 116,340	\$ (74)
	Emerging Markets Gov and Corp	\$ 191,500	\$ 184,607	\$ (618)
XLCA Total		\$ 3,055,955	\$ 2,980,873	\$ (5,739)
Assured	US CLO	\$ 2,028,150	\$ 1,981,028	\$ (6,041)
	European CLO	\$ 1,177,338	\$ 1,153,210	\$ (811)
	CRE Loans	\$ 100,000	\$ 94,921	\$ (452)
	Bank & Insurance TRUPs	\$ 100,000	\$ 97,078	\$ (253)
	Euro REIT Trust Preferred and CMBS	\$ 1,341,685	\$ 1,333,896	\$ (647)
	REIT Trust Preferred	\$ 250,000	\$ 222,774	\$ (638)
Assured Total		\$ 4,997,171	\$ 4,882,907	\$ (8,842)
CIFG	US CLO	\$ 932,500	\$ 910,884	\$ (2,974)
	European CLO	\$ 1,839,662	\$ 1,815,992	\$ (1,195)
	Bank & Insurance TRUPs	\$ 147,000	\$ 136,772	\$ (434)
CIFG Total		\$ 2,919,162	\$ 2,863,648	\$ (4,603)
Grand Total		\$ 39,457,582	\$ 38,097,586	\$ (93,267)

Ex. 73 at BARC-ADS-00833234.

249. In response to the FSA Monoline Questionnaire, Barclays also disclosed its “potential future exposure”: “Barclays exposure to monolines is c\$7.3bn (plus c\$1.5bn headroom), and is largely in the form of negative basis trades (credit protection on securities held) – the notional value of these trades is c[irca] \$40 [billion].” Ex. 73 at BARC-ADS-00833240.

250. In December 2007, Barclays Capital performed an analysis of “Negative Basis Exposure (Estimated) across the Street,” which was sent to Keegan, Bommensath, and Stephen King, BarCap Managing Director and Head of Synthetic ABS CDOs. Ex. 74. Based on the analysis, Barclays’ negative basis book totaled approximately \$50 billion as of December 10, 2007, and was the third largest among its peer banks. *Id.* Barclays’ negative basis book also had the second highest exposure to counterparties that did not post collateral to protect insured parties:

Negative Basis Providers Estimated Total Exposures¹

12/10/07

USD Billions

Sources: Including Sales discussions and CDO Desk knowledge. All figures are estimates.

	Estimated Size of Negative Basis Book (USD in Billions)	Likely Monoline Counterparties Facing	Notes
Goldman Sachs	55	AIG	Very large book in US and Europe. AIG exposure is biggest CP. Also face multiple intermediaries on trades with Monolines, inc. CIBC and Swiss Re. Majority of book is CLO focused
SocGen	55	AIG, CIFG, AMBAC, FGIC	Very active through 1H 2006 in US and Europe
Barclays	50	MBIA, AIG, AMBAC, FGIC, FSA, ASSURED	
Rabobank	40	AIG, MBIA, AMBAC, CIFG	Rabobank was very active in US, Europe and Asia. Also a large underwriter to Goldman Sachs and Merrill Lynch Negative Basis desks
Deutsche Bank	35	MBIA, AIG, AMBAC, FGIC	Primary exposure through conduits run by Deutsch Bank
Merrill Lynch	30	AIG, MBIA, ACA, AMBAC, FGIC	Active on their own underwritten deals primarily
UBS	30	AIG, MBIA, CIFG	Active on their own deals and other underwriter's CDOs. Book grew significantly in 2005.
CIBC	15	ACA, XL, Radian, CIFG, MBIA	Aggressive pricing, very active through 1H 2007
Dresdner	15	Not certain	Very active through 2006 in Europe
RBS	15	Not certain	Very active through 2006 in Europe
Calyon	15	AIG, CIFG	Very active through 1H 2006 in US and Europe
ABN Amro	10	Not certain	A new entrant in 2006. Heard very aggressive levels were being discussed in 1H 2006.
HSBC	10	Not certain	A new entrant in 2006. Heard very aggressive levels were being discussed in 1H 2006. Book size uncertain
BNP Paribas	<10	CIFG, AIG, MBIA	A new entrant in 2006. Book size uncertain
Bank of Montreal	<10	Not certain	A new entrant in 2006. Book size uncertain
Lloyds	<10	Not certain	A new entrant in 2006. Book size uncertain

1. Estimate of Aggregate Global Negative Basis Book Exposure

2. CIBC announced in December total of \$9.8 B monoline exposure tied to subprime ABS CDOs

Ex. 74.

251. Prior to issuing the 2007 20-F, Barclays internally discussed various disclosure options for its credit market positions and monoline exposures. A January 2008 presentation titled “2007 Results Announcement: Possible disclosure options” asked whether the Bank’s monoline

exposure needed to be disclosed in the 2007 20-F at all: “Can we limit monoline/CMBS disclosure to Q&A or a slide in the presentation similar to approach of GS/JPM?” Ex. 75.

252. On February 4, 2008, Barclays’ Executive Committee (“Barclays ExCo”) met. Ex. 76.

253. Robert Le Blanc, Barclays’ Chief Risk Officer, prepared a “Risk Update” for the February 4, 2008 Barclays ExCo meeting. The Risk Update for that meeting described “Barclays’ Positioning & Exposure” as follows: “BarCap has exposure via a portfolio of asset-backed securities which is guaranteed by monolines (‘negative basis’ book). Exposure on a CEE basis (current mark plus potential future exposure to a 98% confidence level) is c\$6.5bn; the total notional is c\$40bn.” Ex. 68 at slide 7; *see also* Ex. 77 at slide 6 (Materials for March 12, 2008 Barclays ExCo meeting with same disclosure).

254. A February 8, 2008 draft “Credit market disclosure” for the 2007 20-F stated: the “notional of all ABS CDOs wrapped by monoline protection and credit enhancement as at 31st December 2007.” Ex. 78 at BARC-ADS-00930769.

255. The Board Risk Committee (“Board Risk Committee”) met on March 19, 2008. Ex. 70. A presentation prepared for that meeting titled “Key Risk Issue –Update on ABS and Leveraged Credit Markets” identifies Barclays’ exposure to monoline insurers as an “Area[] of Concern,” and reports that its “total direct exposure” to monolines was \$7.374 billion, reduced from \$9.568 billion as of October 31, 2007. *Id.* at 32. The presentation also reports that the notional value of the securities underlying Barclays’ negative basis book was \$42.245B. *Id.* at 33. The memo also reports that the total “net exposure” associated with Barclays’ negative basis book had increased from the £1,335 billion reported at year-end 2007 to £1,755 billion at the end of January 2008, and £1,929 as of February 26, 2008. *Id.*

256. The March 12, 2008 “Key Risk Issue –Update on ABS and Leveraged Credit Markets” presentation also contained the following table that depicting the “Negative Basis Book Notionals”²:

Negative Basis Book Notionals		
Counterparty name used	CFRM Category	Current notional (€m)
MBIA	CRE Loans	219
	European CLO	678
	European Mezz ABS	1,361
	US CLO	1,386
	US CMBS	4,541
	US High-Grade ABS	1,870
	US Mezzanine ABS	1,026
		12,081
AMBAC	CDO*2 (ABS)	79
	European CLO	2,436
	Infrastructure	868
	US CLO	4,503
	US High-Grade ABS	949
		8,835
FSA	Bank & Insurance TRUPs	95
	European CLO	216
	US CLO	5,915
		6,226
ASSURED	Bank & Insurance TRUPs	95
	CRE Loans	100
	Euro REIT Trust Preferred and CMBS	1,398
	European CLO	1,178
	REIT Trust Preferred	221
	US CLO	2,028
		5,020
FCIC	European CLO	802
	US CLO	3,004
	US Mezzanine ABS	155
		3,961
CIFC	Bank & Insurance TRUPs	147
	European CLO	2,247
	US CLO	770
		3,164
KLCA	Emerging Markets Gov and Corp	192
	European CLO	1,433
	US CLO	606
	US CMBS	620
	CDO*2	107
		2,958
TOTAL		42,245

Ex. 70 at 33.

257. On March 18, 2008, Le Blanc emailed Jean Plews, Le Blanc’s personal assistant, a presentation regarding Barclays’ credit market exposures for a due diligence conference call with Temasek Holdings (Private) Limited (“Temasek”) regarding a potential strategic investment

² The table in the presentation states that the 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 therein.

in Barclays. Ex. 79; *see also* ¶346 (describing potential investment by Temasek). The presentation was prepared in response to due diligence questions posed by Temasek. *Id.* The list of “Questions from Temasek” consisted of:

1. US Super Senior ABS CDO
 - Gross long and short position
 - MTM on long and short positions
 - Net exposure
 - Vintages
 - Mark assumptions (from Jun 07 to date)
2. Other US subprime
 - Exposure by vintages
 - Mark assumptions
3. Alt-A
 - Exposure by vintage
 - Mark assumptions
4. Monoline insurers
 - Notional amt with individual counterparties
 - Current credit exposure to each monoliner and reserves taken
 - Sensitivity of reserves to monoliner credit rating
5. CMBS
 - Exposure
 - Mark assumptions
6. CRE
 - Direct loan exposure
 - Default rates seen
 - Provision/loss assumptions
7. Leveraged finance
 - Exposure
 - Funded vs unfunded commitments

Ex. 79.

258. The March 18, 2008 presentation disclosed that Barclays’ total notional amount of exposure to monoline insurers was £21 billion. Ex. 79. The presentation also included a table listing the asset type and counterparty for each of Barclays’ negative basis trades. *Id.* at p. 18.

259. The March 18, 2008 presentation for Temasek also stated “Bonds held with guarantees in the negative basis book [were] the most significant element of direct Monoline exposure” and that “US ABS CDO bonds guaranteed by MBIA and AMBAC [were] the main source of the MTM exposure (£1,335m at 31.12.2007).” Ex. 79. The presentation also noted that “[t]otal direct monoline exposure [was] £3.5 bn (£0.3bn primary, £3.2bn trading PFE [potential future exposure basis].” *Id.* at p. 17. The presentation also stated that “[i]ndirect monoline exposure arising from securities wrapped at issue by monolines held in bond inventory and CDS trading total[led] £2.1bn.” *Id.* at 19.

260. The information contained in the March 18, 2008 presentation was communicated to Temasek orally, and was not provided in writing. In an email ahead of a March 19, 2008 call with Temasek, Ricci, Le Blanc Clackson, and Robert Morris, CEO of Barclays Asia Pacific, wrote:

Due to selective disclosure issues we are not able to provide any further written information at this stage, however we will be able to discuss broadly our exposures by vintage and mark assumptions in the meeting. You should also note relating to your monoline question, we are unable to disclose any information relating to individual counterparties, but will discuss in more detail our exposure to monolines in general.

Ex. 80 at BARC-ADS-01305137-39.

261. Morrice’s email did not attach the March 18, 2008 presentation. Ex. 80 at BARC-ADS-01305137-39.

3. Barclays’ Monoline Exposure was Material to Investors

a) Investor Concern Over Monoline Insurers Grows in 2007 and 2008

262. On December 1, 2007, *The New York Times* published an article about hedge fund manager William A. Ackman titled “Short Seller Sinks Teeth Into Insurer,” which reported that

Mr. Ackman had predicted that monoline insurer MBIA could be bankrupt by the second quarter of 2008. Ex. 67.

263. On January 29, 2008, Oppenheimer analyst Meredith Whitney published an “Industry Update” report on “US Banks” which stated that “the fate of the monoline insurers is of paramount importance” and estimated that downgrades to monoline insurers could cause large banks to write down \$40 - \$70 billion worth of assets currently insured by monolines:

We have dramatically changed our thought process with respect to the monolines and their impact on banks and the larger financial market. While we had previously believed the monoline insurers MBI and ABK were too important to fail due to the threat of systemic risk and thus would likely be bailed out, we no longer think systemic risk is even realistic or a bailout of the monolines even viable. Accordingly, herein we assess what we believe is the highly concentrated collateral damage to the banks under our coverage. We estimate that additional write-downs could be as large as \$70 billion, but would more likely be roughly \$40 billion throughout 2008.

Ex. 81 at BARC-ADS-00263823.

264. The January 29, 2008 Oppenheimer report was sent to Keegan and Stephen King by Mark Howard, head of Credit Research at Barclays, on January 30, 2008. Ex. 81.

265. On February 1, 2008, Citi published an article titled “Assessing the impact of monoline downgrades,” which noted that “[a]ll of a sudden, the world has been gripped by monoline fever,” and that “the monolines are indeed a big deal, and downgrades seem likely to cause further negative pressure on a number of financials.” Ex. 82.

266. On January 25, 2008, Barclays Capital published a research article titled “Decoding the Fed and monolines.” Among other things, the article stated:

- The key issues for the monolines are: 1) the potential downgrade of all structured securities they wrap, ranging from municipal bonds to routine ABS transactions to structured deals with the potential for forced selling and further writedowns; and 2) whether there will have to be further bank write-downs on the value of the hedges investment banks sell to them.

- Global banks could end up requiring up to \$143bn in additional capital.
- During the second half of 2007, it became increasingly clear that the monolines will need to pay cyclical claims on exposures in these this time around, whereas they have never needed to do so before.
- Bank exposures could be relatively high, on the other hand. So far, they have been reticent about giving too much detail.
- In terms of our understanding of how banks' capital may be affected by monoline downgrades, we believe it is double-edged. On the one hand, bank equity will be hit by any negative mark to market on the difference in value between the wrapped (AAA) security and the underlying. On the other, as the security credit quality (and rating falls), the risk-weighting attached to it should rise. This puts additional pressure on bank capital requirements.

Ex. 83.

267. On January 25, 2008, Market Watch published an article titled "Banks may need \$143 billion in fresh capital." The article reported:

The consequences of bond-insurer weakness are so severe that regulators and banks in the United States have strong incentives to pump more capital into the sector to avoid downgrades, according to Barclays Capital analyst Paul Fenner-Leitao.

"Meetings between regulators and U.S. banks are at an early stage; few concrete details about the structure of a bank-led recapitalisation are known," he said

The last attempted government-sponsored resolution for a financial-market problem -- the M-LEC "super-SIV" -- failed and the current bond-insurer talks could suffer a similar fate, Fenner-Leitao added.

Two bond insurers -- Ambac Financial Group **ABK**, **-1.61%** and Security Capital Assurance Ltd. **SCA**, **+0.00%** -- already have had their crucial AAA ratings cut by Fitch Ratings. Without top ratings, bond insurers' business models may be imperiled.

Downgrades also cut the value of the guarantees bond insurers have sold. Some banks have hedged complex mortgage-related securities known as collateralized debt obligations, or CDOs, by buying these monoline guarantees. That means more write-downs could come if bond insurers are downgraded.

Ex. 84.

268. On January 30, 2008, UBS wrote down “around \$12 billion in losses on positions related to the U.S. subprime mortgage market and approximately \$2 billion on other positions related to the U.S. residential mortgage market.” Industry analysts theorized that “downgrades of ‘monoline’ bond insurers in the United States had weighed on the results.” Ex. 85.

269. On February 14 and 15, 2008, Congressional hearings were held concerning “[t]he state of the bond insurance industry.” Among the witnesses were the CEO of Ambac, the CFO of MBIA, and the Hon. Eliot Spitzer, Governor of New York State, the domicile of many of the monolines. Gov. Spitzer stated that the monolines’ “expansion from monolines to dual lines [i.e. into structured finance exposure] is what has generated the crisis that we are faced with and what we must think about.” Ex. 86.

270. On February 15, 2008, The Financial Times published an article titled “Monolines explained,” which stated:

Monolines, companies that insure against the risk of a bond or other security defaulting, have in the past weeks come under fire from ratings agencies, after concerns grew over their ability to meet the obligations to the bond issuers they insure.

Some, such as ACA, Ambac and SCA, were recently downgraded, raising fears of a domino effect resulting in further downgrades and market losses for the securities they – and other monolines – guarantee.

In late January New York insurance regulator, Eric Dinallo, urged major banks to provide up to \$15bn (£7.6bn) to support the monoline industry in an effort to stem the threat of additional losses for banks and other financial institutions with exposure to some of the over \$2,400bn of debt guaranteed by bond insurers.

Ex. 87.

271. On February 19, 2008, *The Financial Times* published an article titled “All that’s missing at BarCap is a little clarity,” which stated “we can’t see what write-downs, if any,

Barclays has taken on its ballooning exposure to assets backed by a monoline guarantee – or indeed on its £5bn exposure to subprime or £4.9bn exposure to Alt-A.” Ex. 88.

272. On March 14, 2008, the New York State Assembly held public hearings regarding “[t]he state of the bond insurance industry.” The “Notice of Public Hearing” for the March 14, 2008 hearing stated:

Bond insurance is purchased to guarantee the payment of principal and interest to holders of municipal bonds. Over the past several years, many bond insurers have extended coverage to insure different financial services products, including products backed by subprime mortgages. The recent decline in the worth of the subprime mortgage market has led credit rating agencies to downgrade or threaten to downgrade the credit ratings of bond insurance companies, which in turn has caused a dangerous drop in consumer confidence. The result of this drop in consumer confidence has already led to stock market volatility, a reduced ability to offer auction rate securities, a reduced ability to finance student loans, a decrease in the value of bank holdings and insurance company reserves, and an increased cost of and reduced availability of bond insurance. The availability and affordability of bond insurance will impact municipalities, which use municipal bonds to finance key projects relating to education, transportation infrastructure, and construction. If municipalities are unable to afford bond insurance, they may be forced to abandon or delay important and necessary projects.

This hearing will examine the need for increased regulatory reform and transparency of the bond insurance industry in order to mitigate the current crisis facing the industry, prevent future crises in the market, and ensure the strength and resiliency of New York's economy, which is tied so closely to the financial markets.

Ex. 89.

273. On March 17, 2008, Time Magazine published an article titled “Credit Default Swaps: The Next Crisis?” which stated (Ex. 90.):

Monoline bond insurance companies, such as MBIA and Ambac Financial Group Inc., have been hit the hardest as they scramble to raise capital to cover possible defaults and to stave off a downgrade from the ratings agencies. It was this group's foray out of its traditional municipal bonds and into mortgage-backed securities that caused the turmoil. A rating downgrade of the monoline companies could be devastating for banks and others who bought insurance protection from them to cover their corporate bond exposure.

b) Barclays Internally Recognized the Monolines as an “Area of Concern”

274. On November 4, 2007, Steve Pearson a Director in Global Financial Risk Management, wrote to Keegan, Wade, and others:

Our credit view on the monolines is negative and we believe that the ratings could come under pressure in the next few quarters due to the exposure that they have to the ABS CDO market. This could complicate syndication efforts if the ratings go on watch. We are particularly concerned about Ambac and FGIC out of the top 4 monolines. I am not suggesting that we expect them to default, but that their AAA ratings might be difficult to sustain in the current ABS environment.

Ex. 91.

275. Barclays’ Board met on December 6, 2007. Ex. 92. A “Report of the Board Risk Committee Meeting on 5 December 2007,” which was prepared for the December 6, 2007 Board meeting, noted that monolines represented a “potential new area of concern”:

A potential new area of concern is the exposure to monoline insurers. These insurers guarantee the cash-flow associated with the underlying instruments they support, of which a small proportion comprise sub-prime assets. Credit equivalent exposure to these monolines is \$7.8bn. The primary source of risk arises from any potential downgrade of the insurers although this risk is already largely reflected in widened credit spreads.

Ex. 92 at BARC-ADS-01551026.

276. Similarly, a “Quarterly Risk Update” prepared by Le Blanc for The Board in advance of the December 6, 2007 meeting notes:

Shares in monolines have fallen heavily during 2007 on speculation of significant losses on credit protection sold and potential ratings downgrades, given that Monolines depend on maintaining a AAA rating because a downgrade would require them to raise more capital or restrict underwriting. The agencies have put one of the smaller monolines (CIFG) on negative watch and have yet to confirm their ratings since the latest downturn in the sub-prime market. Barclays has approximately US\$3bn of positions relating to sub-prime that are guaranteed by the monolines. We are not exposed to CIFG and are closely monitoring our exposure to other monolines.

Ex. 93 at BARC-ADS-01556147.

277. On January 22, 2008, the Finance Committee held a meeting that was attended by Diamond, Ricci, Clackson, and Paul Copson, Global Head of PCG. Ex. 94. The agenda for the meeting highlighted certain concerns affecting the Bank's monoline exposures and the monoline industry as a whole:

Environment /Trends

- The magnitude of the monoline losses has called into question the adequacy of their current capital positions
- Frequent changes in reported exposures raise significant questions regarding the ultimate expected losses in their CDO and other mortgage related exposures and has resulted in a "No Confidence" vote from the market
- Their ability to raise capital in the public market is no longer a viable economical option; equity and debt are trading at distressed prices
- Barring an equity injection or an outright purchase from a private investor, downgrades will continue with AMBAC already downgraded to AA (Fitch) and XL/SCA, FGIC and MBIA expected to follow; XL/SCA and FGIC have potential for double downgrade to single A
- 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

Id. at BARC-ADS-00930373.

278. Diamond was asked specifically about the Finance Committee's interest in the monoline industry in January 2008:

- Q. What was the finance committee's interest in Bar Cap's monoline exposure at this time?
- A. I think in the turmoil in the markets and turbulence in the markets and the volatility, the finance committee was an information group, and they were getting information on a report that had been done on an area of increasing interest in the markets.

Ex. 95 at 162:3-10.

279. Keegan testified that he would speak with Mark Howard, head of Barclays Credit Research, "frequently" in January 2008 "about the conditions of the monolines and what people

thought about them and what they were thinking about trying to get an indication as to where they – where they thought they stood.” Ex. 16 at 277:22-278:7.

280. The Barclays ExCo met on February 4, 2008. The minutes from that meeting state:

Monolines: RED [Diamond] updated ExCo on market discussions to inject capital into major monolines (Ambac, MBIA). ExCo discussed scenarios for Barclays based on one or both monolines being downgraded or going bust. CGL [Lucas] confirmed the modelling had been completed on underlying exposures.

Ex. 76 at BARC-ADS-01553449.

281. Le Blanc prepared a “Risk Update” presentation for the February 4, 2008 Barclays ExCo meeting. That presentation identified monolines as an increasing risk “trend”:

7)	<u>Monolines</u>	Barclays has exposure mainly via guarantees provided for securities that we hold (“negative basis” trades). Losses would require significant financial deterioration of the monoline guarantors.	Active Watchlist	↑
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Ex. 68 at slide 1; *see also* Ex. 77 at slide 1 (Risk Update presentation prepared for March 12, 2008 Barclays ExCo meeting with same disclosure).

282. The February 4, 2008 Risk Update also notes concern with the state of the monoline industry as a whole:

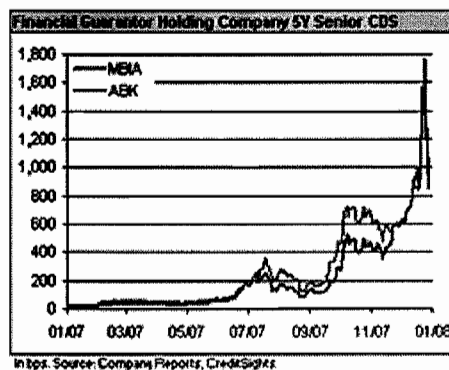
Environment/Trends

- The AAA ratings of the monoline bond insurers are under pressure because of uncertainty over their exposure to sub-prime losses. Insurance of sub-prime assets comprises about 25% of the monolines’ portfolio exposure of \$2tn. Their credit spreads have widened.
- Fitch downgraded Ambac to AA and SCA to A and with most monolines on negative watch, further downgrades are expected over the next month unless various attempts to introduce new capital (e.g. from major US banks) are successful.
- An acceleration of downgrades would threaten the monolines’ business franchise. In an extreme situation, the insurance policies sold on municipal bonds could be negated by downgrades, forcing pension funds to sell municipal debt because of investment rating restrictions.

Ex. 68 at slide 7; *see also* Ex. 77 at slide 6 (Risk Update presentation prepared for March 12, 2008 Barclays ExCo meeting with same disclosure).

283. The February 4, 2008 Risk Update also notes that monoline CDS spreads for MBIA and Ambac had widened dramatically from November 2007 to January 2008, indicating an increased probability of default by each insurer:

Monoline CDS Spreads



Ex. 68 at slide 7 *see also* Ex. 77 at slide 6 (Risk Update presentation prepared for March 12, 2008 Barclays ExCo meeting with same disclosure).

284. The Board met on February 14, 2008. In advance of that meeting, Varley prepared a memo to The Board titled “Group Chief Executive’s Monthly Report.” Varley’s memo states:

Since we last met, a number of competitors have announced significant write-downs due to the credit market dislocations. The market remains concerned about further write-downs due to the continued deterioration of the US housing market and questions about the financial stability of bond insurers (AMBAC and MBIA are two of the biggest examples). The latter weighed heavily on our, and the industry's, shares in January. As we will be the first to report audited 2007 results, we can expect significant scrutiny of our year-end positions and remaining exposures.

Ex. 96 at BARC-ADS-01601835.

285. Marcus Agius, Barclays’ Chairman, testified that the FSA was concerned about Barclays’ capital ratios which could be affected by its monoline exposure:

Q. Do those concerns that you reference here relate to the same concerns that you outlined in your letter to the directors in early March of 2008?

A. I have to interpret what I see in front of me, and I interpret it that it relates to the concerns expressed by Callum McCarthy [Chairman of the FSA] to me and noted in that earlier email in relation to our capital ratios.

Q. Would those concerns also include the monoline exposure that Barclays –

A. What it says here is, it talks about our capital plan -- the reference here is directly to capital, and the two are connected, of course, because the more capital a Bank has, the greater their ability to withstand loss or risk in any part of the portfolio.

Q. Would monoline insurance be included in the risk weighted asset ratio?

A. Yes.

Ex. 97 at 123:21-124:17.

286. A February 28, 2008 “Independent Valuation Review” performed by PCG for month-end January 2008 notes “[i]nvestor community concern[] about Monolines and Financial Insurance,” and that “[d]ue to rating downgrades across the monolines, total reserves of - \$235MM set aside in Jan for the US/Europe Negative Basis books. If monolines are downgraded then their protection could become ineffective if the appropriate collateral is not in place.” Ex. 27 at 3.

287. On March 19, 2008, a Board Risk Committee meeting was held. Ex. 98. The minutes from this meeting state: “The FSA has indicated that it would like to establish what scenario might produce a significant loss on Monoline exposure over a one-month period and the resultant impact on capital ratios. Mr Le Blanc advised the Committee that work is under way to provide that estimate for the FSA.” Ex. 98 at BARC-ADS-01535073.

288. The Board met on March 20, 2008. In advance of that meeting, Robert Le Blanc prepared a memo to The Board titled “Quarterly Risk Update.” Le Blanc’s memo states:

“Concern over the future of the major Monolines remains an important factor, and despite their recent efforts to raise new capital. Further pressure on their AAA-rating and business model is likely.” Ex. 99.

c) Barclays’ Competitors Issued Extensive Disclosures Regarding Their Monoline Exposures

289. Citigroup disclosed the notional amount of its monoline exposure in its 2007 10-K. Citigroup’s 2007 10-K contained the following table, that “summarizes the net market value of the Company’s direct exposures to and the corresponding notional amount of transactions with the various Monolines as of December 31, 2007 in Securities and Banking”:

<i>In millions of dollars at December 31, 2007</i>	Net Market Value Exposure	Notional Amount of Transactions
Direct Subprime ABS CDO Super Senior:		
AMBAC	\$ 1,815	\$ 5,485
FGIC	909	1,460
ACA	438	600
Radian	100	100
Subtotal Direct Subprime ABS CDO Super Senior	\$ 3,262	\$ 7,645
Trading Assets—Subprime:		
AMBAC	\$ 1,150	\$ 1,400
Trading Assets—Subprime	\$ 1,150	\$ 1,400
Trading Assets—Non Subprime:		
MBIA	\$ 395	\$ 5,620
FSA	121	1,126
ACA	50	1,925
Assured	7	340
Radian	5	350
AMBAC	—	1,971
Trading Assets—Non Subprime	\$ 578	\$ 11,332
Subtotal Trading Assets	\$ 1,728	\$ 12,732
Credit Market Value Adjustment	\$ (967)	
Total Net Market Value Direct Exposure	\$ 4,023	

Ex. 100 at p. 55.

290. Citigroup’s 2008 10-K also contained the following disclosure regarding monolines:

As of December 31, 2007, the Company had \$10.5 billion notional amount of hedges against its Direct Subprime ABS CDO Super Senior positions, as disclosed in the fourth quarter earnings release. Of that \$10.5 billion, \$7.5 billion was purchased from Monolines and is included in the \$7.6 billion in notional amount of transactions in the table above. The net market value of

the hedges provided by the Monolines against our Direct Subprime ABS CDO Super Senior positions was \$3.3 billion.

In addition, there was \$1.7 billion of net market value exposure to Monolines related to our trading assets. Trading assets include trading positions, both long and short, in U.S. subprime residential mortgage-backed securities (RMBS) and related products, including ABS CDOs. There were \$1.4 billion in notional amount of transactions related to subprime positions with a net market value exposure of \$1.2 billion. The notional amount of transactions related to the remaining non-subprime trading assets was \$11.3 billion with a corresponding net market value exposure of \$578 million. The \$11.3 billion notional amount of transactions comprised \$4.1 billion primarily in interest rate swaps with a corresponding net market value exposure of \$34 million. The remaining notional amount of \$7.2 billion was in the form of credit default swaps and total return swaps with a net market value exposure of \$544 million.

Id. at 55-56.

291. Merrill Lynch disclosed the notional amount of its monoline exposure in its 2007 10-K. Merrill Lynch's 2007 10-K contained the following table "summary of [its] total financial guarantor exposures for U.S. super senior ABS CDOs as of December 28, 2007.

(DOLLARS IN MILLIONS)	NOTIONAL OF CDS (1)	NOTIONAL OF CDS, NET OF GAINS PRIOR TO CREDIT VALUATION ADJUSTMENT	MARK-TO-MARKET GAINS PRIOR TO CREDIT VALUATION ADJUSTMENTS	CREDIT VALUATION ADJUSTMENTS	MARK-TO-MARKET VALUE OF CDS
Credit Default Swaps with Financial Guarantors ⁽²⁾ :					
By counterparty credit quality ⁽³⁾ :					
AAA	\$ (13,237)	\$ (9,104)	\$ 4,133	\$ (679)	\$ 3,454
AA	-	-	-	-	-
A	-	-	-	-	-
BBB	-	-	-	-	-
Non-investment grade or unrated	(6,664)	(4,735)	1,929	(1,929)	-
Total	\$ (19,901)	\$ (13,839)	\$ 6,062	\$ (2,608)	\$ 3,454

(1) Represents gross notional amount of credit default swaps purchased as protection for U.S. super senior ABS CDOs. Amounts do not include counterparty exposure with financial guarantors for other asset classes.

(2) Excludes the benefit of \$2.0 billion (notional) of credit default swaps purchased from unrelated third parties as protection for exposure to financial guarantors, as well as the related positive mark-to-market adjustments.

(3) Represents rating agency credit ratings as of December 28, 2007.

Ex. 101 at 37.

292. Merrill Lynch's 2007 10-K also contained the following disclosure:

We hedge a portion of our gross exposures to U.S. super senior ABS CDOs with various market participants, including financial guarantors. Financial guarantors are generally highly rated monoline insurance companies that provide credit support for a security either through a financial guaranty

insurance policy on a particular security or through an instrument such as a credit default swap ("CDS"). Under a CDS, the financial guarantor generally agrees to compensate the counterparty to the swap for the deterioration in the value of the underlying security upon an occurrence of a credit event, such as a failure by the underlying obligor on the security to pay principal or interest.

We hedged a portion of our gross exposures on U.S. super senior ABS CDOs with certain financial guarantors through the execution of CDS that are structured to replicate standard financial guaranty insurance policies, which provide for timely payment of interest and ultimate payment of principal at their scheduled maturity date. CDS gains and losses are based on the fair value of the referenced ABS CDOs. Depending upon the creditworthiness of the financial guarantor hedge counterparty, we may record credit valuation adjustments in estimating the fair value of the CDS.

At December 28, 2007 our short exposures from credit default swaps with financial guarantors to economically hedge certain U.S. super senior ABS CDOs was \$13.8 billion, which represented credit default swaps with a notional amount of \$19.9 billion that have been adjusted for mark-to-market gains of \$6.1 billion. The fair value of these credit default swaps at December 28, 2007 was \$3.5 billion, after taking into account a \$2.6 billion credit valuation adjustment related to certain financial guarantors. Subsequent to year-end, market conditions have deteriorated resulting in negative rating agency actions for certain financial guarantors. We continue to monitor industry and company specific developments. Further credit deterioration of the financial guarantors who are counterparties to our credit derivatives could have an adverse effect on our future financial performance.

Ex. 101 at p. 37.

293. UBS's 2007 20-F contained the following table "show[ing] the CDS protection bought from monoline insurers" and "illustrat[ing] the notional amounts of the protection originally bought, the fair value of the underlying CDOs and the fair value of the CDSs both prior to and after credit valuation adjustments taken for these contracts in 2007":

Exposure¹ to monoline insurers, by rating

	31.12.07				
	Notional amount ²	Fair value of underlying CDOs ⁴	Fair value of CDSs ⁵ prior to credit valuation adjustment	Credit valuation adjustment in 2007	Fair value of CDSs after credit valuation adjustment Column 5 (=3-4)
<i>USD billion</i>	Column 1	Column 2	Column 3 (=1-2)	Column 4	Column 5 (=3-4)
Credit protection bought from monoline insurers rated²					
A or higher					
on US sub-prime residential mortgage-backed securities (RMBS) CDOs high grade	7.1	4.7	2.4	0.2	2.2
on US sub-prime RMBS CDOs mezzanine	1.1	0.6	0.5	0.0	0.5
on other US RMBS CDO	1.0	0.8	0.2	0.0	0.2
Total	9.2	6.1	3.1	0.2	2.9
Non-investment grade or unrated					
on US sub-prime RMBS CDOs high grade	0.0	0.0	0.0	0.0	0.0
on US sub-prime RMBS CDOs mezzanine	1.6	1.1 ⁶	0.5	0.4	0.1
on other US RMBS CDO	0.8	0.6 ⁶	0.2	0.2	0.0
Total	2.4	1.7⁶	0.7	0.6	0.1
Credit protection on US RMBS CDO	11.6⁷	7.8	3.8	0.8	3.0⁷
Credit protection on other than US RMBS CDOs	12.6⁷	11.9	0.7	0.1	0.6⁷

¹ Excludes the benefit of credit protection purchased from unrelated third parties. ² Categorization based on the lowest insurance financial strength rating assigned by external rating agencies. ³ Represents gross notional amount of credit default swaps (CDSs) purchased as credit protection. ⁴ Collateralized debt obligations (CDOs). ⁵ Credit default swaps (CDSs). ⁶ Remaining credit protection from non-investment grade monoline of USD 1.2 billion on sub-prime residential mortgage-backed securities (RMBS) CDOs and USD 0.6 billion on other RMBS CDOs is considered ineffective. ⁷ As of 31 December 2006, the notional amount of CDSs on US RMBS CDOs bought from monoline insurers was USD 6.7 billion and on other exposures USD 7.8 billion. The fair values of these CDSs were zero at that date.

Ex. 102 at p. 13.

294. UBS's 2007 20-F also contained the following disclosure:

Exposure to monoline insurers

The vast majority of UBS's direct exposure to the monoline sector arises from over-the-counter (OTC) derivative contracts – mainly credit default swaps (CDSs). Across all asset classes, the total fair value of CDS protection purchased from monoline insurers on 31 December 2007 was USD 3.6 billion, after credit valuation adjustments of USD 957 million (CHF 1,091 million) in 2007, all of which were taken in fourth quarter. Of these totals, USD 2.9 billion represents CDSs bought as protection for portfolios of US RMBS CDO, after credit valuation adjustments of USD 871 million (CHF 993 million) in fourth quarter.

Direct exposure to monoline insurers is calculated as the sum of the fair values of individual CDSs. This, in turn, depends on the valuation of the instruments against which protection has been bought. A positive fair value, or a valuation

gain, on the CDS is recognized if the fair value of the instrument it is intended to hedge is reduced.

The table on the previous page shows the CDS protection bought from monoline insurers. It illustrates the notional amounts of the protection originally bought, the fair value of the underlying CDOs and the fair value of the CDSs both prior to and after credit valuation adjustments taken for these contracts in 2007.

In fourth quarter 2007, UBS took credit valuation adjustments of USD 588 million (CHF 670 million) on CDSs on US RMBS CDOs purchased from a monoline insurer whose credit rating was downgraded to “non-investment grade”. These valuation adjustments reflect the degree to which UBS considers its claims against this monoline counterparty to be impaired. For risk management purposes, the underlying US RMBS CDOs are treated as unhedged on 31 December 2007 and are included in the super senior RMBS CDO exposure in the table on page 11.

In its trading portfolio, UBS also has indirect exposure to monoline insurers through “monoline wrapped” securities issued by US states and municipalities, student loan programs and other asset-backed securities totaling approximately USD 11 billion on 31 December 2007 (approximately USD 8 billion on 31 December 2006).

Ex. 102 at p. 13-14.

B. Barclays' 1Q08 Losses and Writedowns

295. In establishing its scope for testing certain entity level internal controls to comply with the Sarbanes Oxley Act, Barclays asserted that locations considered “material in all respects” would be those that “account for greater than 5% of Group total and will contribute in excess of the £3bn/£200m materiality thresholds on multiple Balance Sheet/P&L lines.” Ex. 103, Appendix A.

296. PwC established its quantitative planning materiality threshold for purposes of its 2007 and 2008 audits of Barclays at £250 million and £350 million, respectively. Ex. 104.

297. PwC North America’s “Subsequent Events Procedures” called for the following inquiries with senior management in 2007 and 2008:

The only procedures required for PwC NY is to enquire with 1 senior management on subsequent events after year end...

For Group reporting, Jalen Tan (JT) has confirmed with PwC UK that subsequent event review only consist of enquiries with senior management and review of interim financial information will be performed in the UK. Refer to the documentation above for work done and the email from PwC UK below to confirm that only enquiries are required for subsequent event review.

Ex. 108 at 7445 and 7446.

298. PCG internally circulated daily profit and loss reports at the close of each trading day, referred to as “P&L Flash Reports.” *See, e.g.*, Exs. 48, 109-119; Ex. 105 46:2-47:2; 109:18-25; Ex. 106 at 123:8-13; Ex. 35 at 142:22-24; Ex. 107. at 149:9- 150:6; Ex. 46 at 76:13-77:2.

299. When asked about “the purpose of sending a daily P&L flash to a member of Barclays’ market risk management group,” Yoss testified: “to the extent that there was going to be a large loss or a gain, that is information that a risk manager would find useful.” Ex. 107 at 151:14-25.

300. By no later than January 22, 2008, Barclays was generating and circulating P&L Flash Reports for its “U.S. Portfolio Asset Book.” Ex. 48

301. The U.S. Portfolio Asset Book tracked Barclays’ positions and exposures which were most vulnerable to the disruptions in the U.S. housing market (*see, e.g.*, Exs. 48, 109-119.):

US ABS Portfolio

- CDO
- Alt-A
- CMBS
- Other ABS
- Relative Value
- Reserves – Trading
- Subprime

US Cash Portfolio

- Whole Loans (US)
- Impairment
- NBT
- Nims / Post Nims

302. By no later than February 21, 2008, members of PCG were attuned to the fact that P&L Flash Reports for the U.S. Portfolio Asset Book were being both widely distributed and closely watched. Ex. 109. In a February 21, 2008 email, Tom McCosker, a Managing Director in PCG responsible for CDO positions, forwarded a P&L Flash Report for the U.S. Portfolio Asset Book to the “Agency CDO PCG” team and wrote:

I know it means a little more work but these MTD and YTD numbers have to make sense every day due to the distribution and focus on the business. People are looking very closely at the current hedging relationships particularly on the subprime numbers and as such we cannot use it as a “dumping ground” for everything until we finalize the monthend.

Ex. 109; Ex. 105 at 14:7-15:8.

303. BarCap’s P&L Flash Reports for the U.S. Portfolio Asset Book depicted “formal [year to date] net revenue [(losses)]” as of the following dates:

Date	Formal YTD Net Revenue (\$)	Source
January 22, 2008	(53,977)	Ex. 48
January 30, 2008	(67,488)	Ex. 110
February 12, 2008	(400,072)	Ex. 111
February 21, 2008	(544,345)	Ex. 109
February 29, 2008	(616,232)	Ex. 112
March 5, 2008	(632,557)	Ex. 113
March 10, 2008	(681,899)	Ex. 114
March 12, 2008	(1,600,031)	Ex. 115
March 19, 2008	(1,651,346)	Ex. 116
March 26, 2008	(1,651,852)	Ex. 117
March 31, 2008	(1,680,014)	Ex. 118
April 7, 2008	(1,700,893)	Ex. 119

304. As of March 31, 2008, BarCap recognized gross losses of £2.089 billion for 1Q08. Ex. 120 at BARC-ADS-01347144.

305. On March 20, 2008, The Board met. Under the heading “Results from February,” the minutes from that meeting state: “Impairment charges of £641 million reflect the credit markets charges in Barclays Capital.” Ex. 121 at BARC-ADS-01601053.

306. The minutes from the March 20, 2008 meeting also note that Chris Lucas, Barclays’ CFO, informed the Board of gross “credit related write-downs of £800 million” at BarCap. *Id.* at BARC-ADS-01601054.

307. The Finance Committee met on March 25, 2008. Materials prepared for that meeting note that Barclays was forecasting impairments and losses of £1.769 billion for the first quarter of 2008. Ex. 122 at p. 2.

308. On March 27, 2008, Barclays disclosed to the FSA “Alt-A related reserves of £349m (\$690).” Ex. 123 at BARC-ADS-01139415.

309. The Finance Committee met on April 2, 2008. Materials from that meeting reference “Best £m” gross losses, writedowns and provisions for March 2008 of £749 million, assuming £50 million of additional losses in March related to Alt-A whole loans. Ex. 33.

310. Materials from the April 2, 2008 Finance Committee meeting also show that BarCap reviewed its “Q1 Forecast” under two circumstances: (i) whole loan writedowns of \$800 million, and (ii) whole loan writedowns of \$1.2 billion. Ex. 124.

311. Barclays also disclosed the possibility of further writedowns and losses in the first quarter of 2008 to the Series 5 Underwriters. On April 3, 2008, Barclays held a nonpublic “due diligence” call with the underwriters of the Series 5 Offering (“Due Diligence Call”). Ex. 125. During the call, Lucas stated that “March as been a very tough month.” Ex. 125 at 10:5.

312. During the Due Diligence Call, Lucas also stated:

In terms of 13, does management anticipate the need to make further write downs to eliminate any of the above projects? 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. The numbers I gave you for January and February were after the write downs that we had taken. And I think the evidence will be in March, we will be taking further write downs.

Ex. 125 at 33:12-25.

313. The following exchange also took place during the Due Diligence Call:

MATT PASS [MERRILL LYNCH]: Can you just explain over what period do you have a more formal monitoring of valuations and, you know, you are obviously obliged to state when you think that it's deteriorated, but is there a weekly, a monthly process and, you know, that gives an idea on how likely outside of the normal course of announcement you make, you would be sort of making an announcement on additional write downs or do you have any plans to make announcements outside the normal course of, you know, talking to the market on a regular basis?

MR. LUCAS: I think the information we presented is clearly as of the year end and reflected year end valuations. We monitor and update valuations on a daily, weekly and monthly basis depending on the complexity of the valuation and the level of facility. I think in terms of announcements, we would expect only to make an announcement outside of our usual cycle if there was something that we believed to be material and price sensitive. And those are the guidelines that we would use to form a view as to whether we should make an announcement or not. 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.

MR. PASS: Thanks.

Ex. 125 at 56:19-57:24.

314. Consistent with Lucas' representations during the April 3, 2008 Due Diligence Call, an "Independent Valuation Review" performed by PCG for month-end March 2008 showed that Barclays had written down approximately \$955 million on its Alt-A portfolio as of March 31, 2008. Ex. 28 at 17.

315. The Independent Valuation Review performed by PCG for month-end March 2008 also showed writedowns on its subprime whole loan positions of approximately \$795 million for the month of March. The same Independent Valuation Review also noted “[t]he writedown is attributable to considerable credit quality deterioration in the actual Whole Loan portfolio.” Ex. 28 at 16; *see also* Ex. 29 at BARC-ADS-00056419 (PCG recommended writedown of \$796,900,000 on whole loan portfolio for March 2008).

316. A May 8, 2008 “Board Audit Committee report” shows that Barclays’ subprime whole loan positions had been written down by £446 million as of March 31, 2008. Ex. 126 at BARC-ADS-01550740.

317. The same May 8, 2008 “Board Audit Committee report” shows that Barclays’ Alt-A positions had been written down by £675 million as of March 31, 2008. Ex. 126 at BARC-ADS-01550740.

318. The same May 8, 2008 “Board Audit Committee report” shows that Barclays’ gross losses and impairments as of March 31, 2008 were £2.050 billion. Ex. 126 at BARC-ADS-01550740.

319. An August 5, 2008 “Report of the Board Accounts Committee Meeting Held on 30 July 2008” notes “gross write downs on sub-prime and related items for the first half of 2008 amount to £3,505 million.” Ex. 127 at BARC-ADS-01612337. The August 5, 2008 Report also notes the “key features of the write downs taken are” (*id.* at BARC -ADS- 01612338):

- (i) Further deterioration in the value of sub -prime and sub -prime related asset continuing the trend started in the second half of 2007
- (ii) Significantly increased write downs in Alt A whole loans and securities as they have suffered contagion front the sub-prime markets;
- (iii) Increased write downs relating to Monoline insurers as a result of rating downgrades and more negative sentiment generally; and
- (iv) Some £171 million of write downs in respect of commercial mortgages from the very low level taken at the full-year stage.

320. Teague testified that the BarCap would record its P&L, including any provisions or writedowns, within three days after month-end. If provisions or writedowns were not taken during this three day period, they would not be included in P&L until the following month. Ex. 224 at 46:24-48:17.

C. Barclays' Capital Plan, Growing RWAs, Declining Capital and Equity Ratios, and Discussions with the FSA

321. Barclays' Tier 1 Capital, Tier 1 Equity, and Risk Weighted Assets under Basel I and Basel II, respectively, were as follows:

Month/Date	Tier 1 Capital Ratio (Basel I)	Tier 1 Capital Ratio (Basel II)	Tier 1 Equity Ratio (Basel I)	Tier 1 Equity Ratio (Basel II)	Risk Weighted Assets (Basel I)	Risk Weighted Assets (Basel II)	Source Date	Source
2007 TARGET RATIOS	7.25%		5.25%					
9/30/2007	7.71%		5.12%		£350.961bn		11/30/2007	Ex. 128
10/31/2007	7.42%		4.89%		£357.312bn		11/30/2007	Ex. 128
11/30/2007	7.35%		4.81%		£358.817bn		12/21/2007	Ex. 129
12/31/2007	7.80%	7.60%	5.00%	5.10%	£353.476bn	£353.878bn	3/26/2008	Ex. 5
2008 TARGET RATIOS		7.25%		5.25%				Exs. 39; 129
1/31/2008		7.33%		4.94%		£368.0bn	3/11/2008	Ex. 130
2/29/2008		6.69%		4.40%		£377.341bn	4/2/2008	Ex. 131
3/31/2008		6.65%		4.34%		£378.778bn	4/28/08	Ex. 132
4/31/2008		7.12%		4.40%		£382.70bn	6/27/2008	Ex. 133

322. Agius testified that Barclays “typically had a capital plan” that would have been “generated by the finance department” and “ultimately have come before the board at least once a year.” Ex. 97 at 63:17-64:12.

323. Broadbent testified that, with respect to capital, Barclays had “both target ratios and regulatory ratios, and sought to run its business in line with both.” Ex. 61 at 256:8-256:15.

324. Agius testified that in order for a bank to improve its capital ratio: “You would either need to have more equity or lower WRAs, and vice versa.” Ex. 97 at 104:14-105:22.

325. On November 21, 2007, Diamond forwarded an email from Frits Seegers, CEO of Global Retail and Commercial Banking, to del Missier and Ricci regarding “a need in our current capital plan to raise in the region £2.3bn of lower tier 2 capital in advance of the year end.” Ex.

134. In his email, Diamond expressed concern about the reputational risk of such an issuance and highlighted the importance of trying to reduce RWAs:

Worry very much about reputational risk here, being back in the papers as desperate, etc. Met with Jon, Jerry [del Missier], Boath, Rich [Ricci] and we all agree to hold and not issue today at these levels, and we need to

1 begin looking at private actions to shed rwa

2 begin group wide reduction as much as possible b4 year end

3 plan to execute if market better up to a £bill 11/27 and also early Jan

We will have working group on this all the way. Hugely important.

Id.

326. On November 26, 2007, Lucas provided to Clackson and others “rwa targets for Barcap we are striving for to keep us in the right place for capital purposes”:

Basle 1	31 Dec 2007	£170 bn
Basle 2	1 January 2008	£168 bn
Basle 2	31 December 2008	£176 bn

Ex. 135 at BARC-ADS-00928113-14.

327. The difficulty of achieving these RWA targets was noted by Clackson; Anthony Spinale, a BarCap Managing Director; and Diamond. Ex. 135. Clackson stated that it would be difficult to achieve the targets because the RWA targets had already been reduced significantly from previous capital plans:

1 we will try on numbers but not sure, need to be aware there are still big gaps we need to close to get to these numbers GBP8-10bn over and above the GBP15bn we've earmarked

2 Whilst I acknowledge the number, not sure of scientific basis we think more likely to be 172 compared to a b1 170. Still need to find a further c. £16bn of savings / business reductions to achieve this

3 Dec 08 This is a £12.5bn reduction from our current plan of £188.5bn, which, in itself, was a £10bn reduction from our original £198.5bn, this will have business impact which is not yet factored into plan, or implications worked thru so I don't think we can unilaterally change the capital for this amount.

Id. at BARC-ADS-00928113.

328. Diamond stated that it would be impossible to meet the targets: “I find this appalling, but also impossible to get to. Push back?” Ex. 135.

329. Spinale attempted to deflect attention from BarCap by suggesting that there was a group wide RWA issue and that reducing RWAs would impact PBT:

The push back should be we recognise there's a group WRA problem but we've already come down 10bn and continued our commitment to a pbt target. You're asking for another 12.5, but you're not recognising that there has to be a pbt

impact if we do this. Can't have it both ways. Which is what patrick has been telling him in the attached emails.

Ex. 135.

330. Barclays' ExCo met on November 27, 2007. The minutes from that meeting state: "RED assured ExCo that he recognised the Group issue and would make every effort to hit the reduced RWA targets, but given current market conditions he thought it would be heroic to hit £170bn for BarCap given their target range of £168bn-£178bn." Ex. 136 at BARC-ADS-00933842.

331. On December 1, 2007, Clackson emailed Ricci, Diamond, and Spinale regarding the "STP 2008 Board Pack." Ex. 137. Diamond forwarded Clackson's December 1, 2007 email to Lucas and stated:

I really do not want to get in a tiff between us at the Board, nor do I want to drag other exco in. But you know I cannot reduce 2008 wra's, and you cannot change the stp unless we have agreed.

I have worked really hard on this the last few days, client guys are close to panic already, we cannot continue business as usual with lower wra's, happy to give you more colour. we are already well down on original commitment for 2008, AND THE MARKETS ARE TOUGHER.

Id.

332. On December 5, 2007, there was a meeting of the Board Risk Committee. Ex. 138. The minutes from the December 5, 2007 Board Risk Committee meeting state:

The capital position is tight relative to proposed Risk Appetite, despite a sharp reduction in proposed Risk Weighted Assets (RWA) growth in 2008. Each of the businesses had been challenged to reduce RWA growth for 2008.

...

The Committee noted that growth in Risk Appetite and PBT for 2005-2007 had been very strong, although it noted that growth in Risk Appetite exceeded growth in PBT for the same period. The proposed Risk Appetite for 2008 and the constraints on RWA growth signified a new approach, which the Committee

welcomed. Mr Lucas reported that the main sensitivities for the plan are around achievement of the budgeted PBT and the RWA challenge. He noted that capital was tight in terms of the Equity Ratio, although the Tier 1 and Risk Asset Ratios were above target.

Ex. 138 at BARC-ADS-01539646.

333. The Board met on December 6, 2007. Ex. 93. In advance of that meeting, Le Blanc sent a memo to The Board titled “Quarterly Risk Update.” Le Blanc’s memo states:

The combination of sub-prime and other write-downs, taking trading assets onto the balance sheet, and the leveraged loan overhang have started to put pressure on capital ratios across the industry. Citigroup’s Tier-1 capital ratio fell from 7.9% to 7.3% between Q2 and Q3 and it has since announced a \$7.5bn capital infusion from the Abu Dhabi Investment Authority. Freddie Mac is also seeking to raise \$6bn in new capital.

While some new capital is flowing into the system, banks are responding to pressure on their ratios by reining in lending and investment activity, posing a potential threat to economic growth. This in turn creates a dilemma for central banks - particularly the Fed - as the appropriate response would be to lower rates. Against the backdrop of a weak US dollar, however, lower rates risk higher inflation. Historically, both equity and bond markets have performed poorly in this scenario.

Id.

334. In advance of the December 6, 2007 Board meeting, Lucas sent The Board Barclays’ “Short Term Capital Plan,” along with a cover memo. Ex. 129. The Short Term Capital Plan set a target Equity Ratio of 5.25% and a target Tier 1 Capital Ratio of 7.25% for year-end 2008. Ex. 129 at BARC-ADS-01537906; Ex. 139 at 2.

335. The cover memo from Lucas to The Board states:

We have been focusing on the level of RWAs and resulting capital position at end of 2007 and 2008. The current [Short Term] plan has an equity tier one ratio of 5.00% at 31 December 2007 improving to 5.16% at 31 December 2008. Corresponding tier one ratios are 7.65% at 31 December 2007 and 7.74% at 2008. While the equity tier one ratio remains below our target, further work is underway to reduce the RWA utilization.

Ex. 129 at BARC-ADS-01537902.

336. Barclays sought to achieve its target capital and equity ratios by reducing its RWA consumption. According to the Short Term Capital Plan, BarCap “committed to identify a £10bn RWA reduction from across the Group by December 2008.” Ex. 129 at BARC-ADS-01537922. Additionally, the Short Term Capital Plan stated “RWAs would require a £17bn reduction to meet the 5.25% target” at the end of 2007 under Basel I and a £6 billion reduction to achieve the 5.25% equity ratio target at the end of 2008 under Basel II. *Id.* at BARC-ADS-01537922.

337. Julian Adams, Rebecca King, and Mark Wharton from the FSA attended the December 6, 2007 Board meeting. Ex. 140 at BARC-ADS-01601820-21. The minutes from that meeting state: “The FSA reiterated, in view of the current liquidity crisis, the continued importance of Barclays stress testing its funding and capital position.” *Id.*

338. Broadbent testified that the FSA had concerns with Barclays’ funding and capital position at year end 2007 and leading into 2008:

Q. Was the FSA concerned that Barclays was thinly capitalized relative to its peers?

A. I mean, I’m not – I’m struggling because I don’t remember a -- you know, a specific event. I have a general recollection that increasingly over this period the FSA was getting -- was focusing more and more closely on capital. I don’t necessarily think it was particularly a Barclays-specific issue. I think -- I don’t know -- my sense is that they were doing that for all banks. But clearly we were a major bank, and I certainly have a recollection in general terms that we came under greater scrutiny; there was more concern on the part of the FSA to ensure that we were managing the business as -- as tightly as we could.

Ex. 61 at 179:23-181:1.

339. Varley testified that Barclays did take steps during 2008 to increase its capital ratios in light of the FSA’s concerns, which included having preliminary discussions with potential investors like Sumitomo:

Q. But in reaction to hearing this from Mr. McCarthy, was there anything additional that you did, or was it already within your plans and within your process to increase those capital ratios?

A. I think we saw some earlier written evidence indicating that we were managing the risk weighted assets energetically and that we were trying to ensure that our profitability levels were such as to in each case have a positive impact on the equity ratio through time. In addition to that, as this note records and an earlier email records, there was some preliminary dialogue taking place with potential investors.

Q. Did those investors end up actually investing in Barclays?

A. In one case, yes, in one case, no.

Q. In which case did --

A. In the case of Japanese investor, yes. In the case of the Korean investor, no.

Q. Who was the Japanese investor.

A. Sumitomo Mitsui Banking Corporation.

Q. When did that investment take place?

A. It took place as part of our capital raising at the end of June of 2008.

Ex. 59 at 214:6-215:4.

340. On January 11, 2008, Mark Wharton of the FSA emailed Lucas requesting to meet with him in the next three weeks “to discuss your capital position and updated plans, ahead of your full year results announcement on 19 February, and the declaration of dividend.” Ex. 141. The FSA was interested in understanding Barclays’ capital plans for 2008 because of the “potential for further deterioration” in the market:

In view of the current market environment, and the potential for further deterioration, we will want to understand in more detail the “base case” scenario for 2008 and the extent to which your capital resources are projected to provide sufficient headroom over regulatory capital requirements, so that we can have an informed discussion on what action you need to take, where necessary, to strengthen both the quantity and

quality of your capital. In particular we will want to understand how you have stressed these figures in view of ongoing market turbulence, and reassess the extent to which your capital resources in a stressed environment provide sufficient headroom over the potential capital requirements in such a scenario.

Id.

341. The Finance Committee met on February 13, 2008. Ex. 142. Materials prepared in advance of that meeting include a presentation titled, “RWAs-Current position and impact of market conditions.” *Id.* at BARC-ADS-01560846. The presentation noted that the “Basel II RWA position” for year-end 2007 was “£178bn (£2bn below target)” and that as of February 10, 2008, RWAs were estimated to be “c.£185bn- £188bn.” *Id.* at BARC-ADS-01560847.

342. The February 13, 2008 RWA presentation also states that “[t]he Basel II framework is pro-cyclical - and tends to require additional capital in times of market deterioration.” Ex. 142 at BARC-ADS-01560847.

343. The February 13, 2008 RWA presentation identified “Key RWA Risk Areas” that would contribute most to BarCap’s risk weighted asset target of £ c.£185bn- £188bn. These Key RWA Risk Areas included: “Synthetic ABS, Liquidity facilities re Super Senior tranches, ABS CDOs, RMBS warehouses,” “Alt A trading book,” “CMBS,” and “Negative Basis trades (Monolines).” Ex. 142 at BARC-ADS-015608488.

344. On March 4, 2008, Varley emailed Agius to “provide some points that I think are relevant” for Agius’s upcoming meeting with Callum McCarthy, Chairman of the FSA. Ex. 143. Varley wrote:

2007

The key ratio for the FSA is the Tier 1 ratio. Our Tier 1 ratio started 2007 at 7.7%. The Tier 1 ratio at the end of 2007 was 7.8%. This was notwithstanding unprecedented growth in WRAs during the year (the growth was £50bn, i.e. from £300bn to £350bn, or 19%). What does this tell us? First the profitability of the

Barclays portfolio generates cashflow which enables us to absorb significant balance sheet growth. Second that, notwithstanding the turbulence in the markets, we were able to raise regulatory capital during the second half of the year.

...

Planning for the future

The Board takes comfort from the fact that the stress test of 2007 was managed well. But nonetheless very considerable focus was directed by the Board at the capital plan when both the Medium Term Plan was presented (November), and when the Short Term Plan (or 2008 budget) was presented (December).

The Executive Committee is currently undertaking two separate pieces of work, one of which looks at the denominator (WRAs); one of which looks at the numerator (equity). That's because although Tier 1 ratio is strong, and the management and Board direct attention, in addition, at the equity ratio (basically, the relationship between share capital and WRAs). In the first piece of work looking at WRAs, we are addressing: what we would need to do to create additional equity ratio headroom, and thus what we would need to do in terms of shedding WRAs (including understanding the P&L consequences of doing this).

The second piece of work is looking at the subject of equity. Quite outwith [sic] the opportunities that we might have with our new Asian shareholders in this context, we have been approached separately by two new potential Asian investors, Sumitomo Mitsui in Japan and Hanwha in Korea, each of whom is expressing an interest in an investment in Barclays (new shares) of between US\$1bn and US\$2bn, coupled with a strategic partnership (particularly in the field of capital markets activity).

Id. at BARC-ADS-00937676-77.

345. On March 7, 2008, Lawrence Dickinson, Barclays' Corporate Secretary, emailed

Lucas six "questions that Richard [Broadbent] raised in reviewing the Risk Committee agenda":

1. Is the current level of capital adequate and should we consider de-gearing the balance sheet and raising capital?
2. Are the targets for capital still appropriate in the current environment?
3. What are the risks around our capital position? How does the position look under stress?
4. Is the STP forcing us to take on higher levels of risk?
5. Are higher risk RWAs displacing lower risk ones?
6. What is the impact on profitability and composition of profit of the riskier environment?

Ex. 144.

346. On March 7, 2008, Jonathan Stone, Barclays' Treasurer, forwarded an email from Spinalo to Lucas regarding the available options for raising equity capital:

1. we looked at both internal and external options to raise core tier 1 capital. The internal options we focused on are: (i) Share option plan hedging for the ESAS and PSP plans; (ii) Scrip Dividends (giving shareowners the option of receiving cash or shares); and (iii) Selling non-core assets. The external options are: (i) Cash Placing to Strategic Investors (what we did with CDB); (ii) Cashbox/Vendor Placing (Cashbox is what we did with Temasek; vendor placing is similar but the placement is targeted to fund a specific acquisition); (iii) Rights Issue; and (iv) Convertible Pref Shares.

...

4. our view is we shouldn't try to raise the equity on a m&a deal by deal basis as it'll likely get negative investor and PR play. We think we should go to strategic investors once this year, perhaps if we have a deal to fund but if not then go with a strong story as to strategic benefits of doing this. Also think we should structure it like what bofa did with countrywide - raise more than we need for the specific deal, they needed about \$6bn for the deal, but raised about \$12b.

5. as you know, we have a couple of Asian strategic investors who are interested. We should also go back to both CDB and Temasek as well as Roger's contact in the ME and the 2 or 3 other investors we approached last summer.

...

7. we felt rights issue would smack of desperation and since convertible pref shares don't count as core tier 1 equity until converted, haven't recommended this either.

Ex. 145 at BARC-ADS-00819842.

347. Agius met with the Chairman of the FSA, Callum McCarthy, on or around March 8, 2008. Exs. 146-47.

348. On March 8, 2008, Diamond forwarded an email to Ricci regarding a note to the Board of Directors that Agius had drafted, and Varley had edited (in CAPS). The note reflected Agius's account of two meetings he recently had with the Chairman of the FSA, Callum McCarthy. Exs. 146-47. The note states:

I should report of (ON) two meetings I have had recently with the Chairman of the FSA at his request, the second took place last Thursday. [Callum McCarthy was accompanied by Hector Sants for the first meeting and Clive Briault for the second.] In general, McCarthy is concerned to establish that the Board of Barclays is providing sufficient challenge to the Executive in the current difficult market conditions and, in particular, wants to be clear as to our contingency plans for raising new equity capital should there be a further precipitate fall in asset values (HE REFERENCED IN PARTICULAR FALLS IN US HOUSING - - -- SEE BELOW).

...

He told me that Barclays exposure (admittedly at the notional level) to monoline insurers is the largest in the (UK) market and he observed that our investment banking business forms a relatively large part of our business as compared to our competitors. He 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. (Interestingly, he paid (MADE) no reference at any time to our Tier 1 ratio of 7.8 per cent, (WHICH IS SURPRISING GIVEN THAT THE TIER 1 RATIO, NOT THE EQUITY RATIO, IS THE STANDARD TO WHICH THE REGULATORS PAY MOST ATTENTION.). He queries whether we have any readily realisable assets for sale and so was keen to know what our contingency arrangements would be in an emergency – “What would be the impact of another sudden 10 per cent fall in the US housing market?” While he understands that we are having no current difficulty in funding our business in either the retail or wholesale markets, McCarthy’s general concern seems to be that, in extremis, there will be a rush for support from the Sovereign Wealth Funds which will not be able to satisfy all comers. He asked specifically whether we had any “firm” second stage arrangements with CDB and Temasek.

...

While it is not surprising the the [sic] FSA is having discussions with bank chairmen in this way, I have to say that McCarthy’s tone was sharp. He wanted to know whether I and the other NEDs were “holding the Executive’s feet to the fire?” 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.” There have been meetings between Barclays and the FSA at the working level (ON A VERY REGULAR BASIS, BY WHICH I MEAN WEEKLY OR FORTNIGHTLY, THE PURPOSE OF WHICH HAS BEEN TO KEEP THE FSA BRIEFED ON OUR EXPOSURES, GROSS AND NET, AND TO TAKE THEM THROUGH THE RESULTS OF OUR STRESS TESTING, INCLUDING ANALYSING OUR LIQUIDITY. THE SCALE AND FREQUENCY OF THOSE BRIEFINGS, WHICH HAVE MOSTLY BEEN INITIATED BY US, IS UNPRECEDENTED,

BECAUSE OF COURSE WE UNDERSTAND THE REGULATOR'S NEED TO FEEL FULLY IN THE PICTURE. THERE IS TO BE FUTHER [sic] SUCH MEETING, INVOLVING JSV, CGL AND ROBERT LE BLANC , NEXT FRIDAY) recently on liquidity and risk management – “but this process is not yet complete” - and I understand there is to be a further meeting involving John Varley and Robert Leblanc next week. So far as I am concerned, he (CALLUM) wants me to report back in due course to confirm that contingency planning has been “fully and completely discussed” with the Board.

Exs. 146-48; Ex. 97 at 110:24-112:18.

349. Agius testified that “The purpose of the note was because I had been -- I had had a meeting with the Chairman of the FSA at which he had expressed a number of relevant matters, and I was clear it was my duty to inform the Board of what had transpired. I was a great believer -- am a great believer in transparency.” Ex. 97 at 111:1-7.

350. Agius also testified that Barclays did take actions to deal with its “alarming” equity ratio:

Q. The next sentence as well, “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.’

A. Yes. I think this reflects the pressure on him as a regulator at a time of market turmoil.

Q. Again, this may be what we have already discussed, but did Barclays take any action?

A. As I recall it, we did the rights issue later in the year, like in June or July [2008]. I can’t remember the precise date. But whether that was as a result of this conversation or whether it was the result of general market circumstances, I can’t recall.

Ex. 97 at 115:7-116:2.

351. On or around March 11, 2008, Barclays revised its Short Term Capital Plan for 2008 (“2008 Capital Plan Update”). Ex. 149.

352. Broadbent testified that the assumptions made in the Short Term Plan regarding capital ratios and RWAs were no longer reflective of reality:

Q. Okay. And if you look at the next page, there's a reference to an "STP Capital Plan. What does "STP" stand for?

A. I infer that's a short-term plan.

Q. Okay. And reading this paragraph here, does that reflect that with respect to the short-term capital plan that had been previously approved, the current market conditions had reduced equity ratios and the tier 1 capital ratios?

A: I mean, reading this, I think what -- what comes across is that the original plan was having a -- that the assumptions made, in particular about capital and RWAs, were -- I mean, the reality was different from the assumptions made.

Q. And that was being driven by the -- by the current credit markets; correct?

A. It was being driven by the valuation of assets and impairment of assets, which meant that balance sheet capacity was being taken up by those items.

Ex. 61 at 248:11-249:6.

353. According to the "2008 Capital Plan Update," "[t]he original STP capital plan assumed a minimum RWA capacity of GBP21bn in March and an 4.89% equity ratio [for June 2008] with flexibility to bring forward or raise further subordinated capital." Ex. 149 at 2. The "original STP" also projected a Tier 1 capital ratio of 7.39% for June 2008. *Id.* at 2.

354. The 2008 Capital Plan Update notes, however, "Adverse Capital Movements" since the original Short Term Plan, including a revised "Barclays Capital RWA flight path increased by £25 bn to June '08." Ex. 149 at 3. Such "Adverse Capital Movements" caused Barclays to update its projected Tier 1 Equity Ratio to 4.53% and Tier 1 Capital Ratio to 6.82% for June 2008. *Id.* at 3.

355. In order to combat these adverse capital movements, Barclays proposed certain changes in its 2008 Capital Plan Update:

Further subordinated capital issuance in March

- Raise £650m of Upper Tier 2 (UT2) from the US market at spreads of c370bp above mid swaps (bringing forward the £850m May issue).
- The previous Sterling UT2 in Feb '08 was issued at mid-swaps +300bp. UK investors will be concerned at raising in USD UT2 at higher levels
- Conclude on £350m of Lower Tier 2 capital

Further Equity Capital release in March

- Release £750m equity by hedging the ESAS award through derivative replacing current equity hedging

Further preference share capital issuance in April

- Upsize the US Retail preference share issue in April to \$2bn

Ex. 149 at 4.

356. The 2008 Capital Plan Update also states: "To target an Equity ratio of 5.0% for June '08 after the proposed capital raising, the Group needs to reduce RWA's by £23bn or increase Equity by £1.2bn." Ex. 149 at 8.

357. The 2008 Capital Plan Update also states: "To achieve a 50bp improvement in equity ratio requires a £36bn reduction in RWAs or £1.9bn increase to equity." Ex. 149 at 9.

358. The 2008 Capital Plan Update also states: "Through the market disruption the Group has raised £8.9bn of subordinated capital, however the continued volatility and investor appetite makes further proposed issuance difficult." Ex. 149 at 5.

359. The 2008 Capital Plan Update also states: "The Group RWA capacity through March remains tight until further capital raising is complete and profit generated." Ex. 149 at 7.

360. The 2008 Capital Plan Update also states: "While the proposed capital plan rebuilds the Group RWA capacity for June 2008 the buffers in July and August remain low. Proposed solution is to accelerate issuance in the second half." Ex. 149 at 10. This would mean

“either upsiz[ing] the April [preference share] issuance to £1bn or issue further preference share in June” and “[i]ssu[ing] Tier 2 capital in July during the close period.” Ex. 149 at 10.

361. On March 14, 2008, Barclays’ 2008 Capital Plan Update was provided to the FSA in advance of the FSA’s meeting with Lucas, Varley, Clackson, LeBlanc, and Stone. Ex. 150 at BARC-ADS-01304488; Ex. 121.

362. The Board met on March 20, 2008. In advance of that meeting, a 2008 Capital Plan Update presentation was sent to The Board. Ex. 151. According to the executive summary of the 2008 Capital Plan Update presentation:

As a result of the more demanding market environment, we are faced with a larger capital demand. Accordingly, we have increased our planned capital issuance. The current projected ratios for 30 June 2008 are 6.9% and 4.5% respectively. Additional capital raising planned via a placing to two institutions with whom we are negotiating strategic alliances would increase this to 7.4% and 5.0 %.

Our current plans indicate year end ratios of 7.4% and 4.8% respectively. As you are aware, we have been in discussion with the FSA about the level of capital ratios. Over the last week, it has become clear that their focus has moved from the tier 1 ratio to the equity tier 1 ratio and accordingly we are developing plans which seek to achieve our target equity tier 1 ratio of 5.25% by the 31 December 2008. We will discuss these plans with you in due course.

Id. at BARC-ADS-01544651.

363. Varley testified that “by this stage, as I have explained, the equity ratio was becoming a determining factor in the view of the market and in the view of the FSA, which is why we were concentrating on it.” Ex. 59 at 205:5-10.

364. Diamond testified: “traditionally the regulators in the U.K. had focused on tier 1 ratio, and they had changed to the equity ratio. You could see from our response and we knew from the other banks that that wasn’t kind of forewarned, but it was something that we now had to take into account.” Ex. 95 at 246:10-17.

365. On March 19, 2008, a Board Risk Committee meeting was held. Ex. 98. The minutes from this meeting state: “Marcus Agius advised the Committee that, in his recent meeting with the FSA, they had focused on the equity ratio and wished to be satisfied that the Board has examined potential severe scenarios and their likely impact and that the non-executive Directors have challenged management thoroughly.” *Id.* at BARC-ADS-01535073.

366. The minutes from the March 19, 2008 Board Risk Committee meeting also note that the committee discussed the results of stress testing: “Actions would be required to improve capital ratios, with the equity ratio reaching a low point of 4.6% under the severe scenario.” Ex. 98 at BARC-ADS-01535074.

367. On March 20, 2008, a Board of Directors meeting was held. Ex. 121. At the meeting, Lucas explained the FSA’s desire for Barclays to achieve its target equity ratio of 5.25%:

(a) Financial Services Authority (FSA)

The Group’s Capital Management Plan had been shared with the FSA and discussions were continuing as to the appropriate target ratios that the Group should be seeking to achieve. The indications were that the FSA would wish the Group to achieve its own target equity ratio before the end of 2008.

Id. at BARC-ADS-01601058.

368. At the March 20, 2008 Board meeting, Lucas also discussed a “Proposed Capital Issuance”:

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 were underway 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. Plans were also being formulated to release equity Tier 1 through changing the ESAS hedge from an equity holding to a derivative, which would release some £500 million on a conservative estimate. The businesses have also been challenged to reduce RWAs by £20 billion by 30 June 2008.

Ex. 121 at BARC-ADS-01601059.

369. On March 20, 2008, Varley sent an email to Agius, Lucas, Diamond, and Le Blanc, regarding “a draft note for you [Agius] to send to [C]allum [McCarthy].” The “draft note” states:

Callum

I wanted to make contact again following our last conversation. You will know that there has been much subsequent dialogue between our teams. That dialogue, and the written material supporting it, was presented to the board risk committee, and then to the full board, this week.

John indicated to hector on wednesday that our intention is to do more work ahead of our april board meeting in response to the points made by Julian adams and mark wharton to john last week, (which were reiterated by hector on wednesday). This will enable us to come back to the fsa after the april board meeting with proposals as to our capital plan that are directed at addressing your concerns.

There will be supervening discussion between the fsa and barclays teams: this will include the continuation of a briefing of hector next week that started on wednesday.

My intention would be, if you are agreeable to this, to visit you again shortly after our team has been back to yours with the revised capital plan.

Marcus

Ex. 152; *see also* Ex. 153.

370. Also on March 20, 2008, Le Blanc commented with respect to the draft note:

Only input I would add is to ask if we want to refer to the steer that Hector [Sants of the FSA] gave us at the end of the meeting; that they will be expecting us to be moving toward our target of 5.25. (Please remember that Callum also added that they are reserving judgement on whether they might ask for more.) Marcus [Agius] referring to 5.25 may be too specific for a note to Callum however it would a) show that we got the message and b) allow us to reiterate that 5.25 remains our target (and not a higher number).

Ex. 152; *see also* Ex. 153.

371. On April 8, 2008, Spinale sent Diamond, del Missier, Ricci, and Clackson the “Barclays Capital-Update” presentation for the Board Meeting to be held on April 17, 2008. Ex. 154.

372. The Barclays Capital-Update presentation noted the effect of challenging market conditions on BarCap’s RWA’s:

- Difficult market conditions continue to impact the investment banking and investment management sector
- These market conditions had a direct impact on the RWAs of a number of businesses - primarily Primary Credit, Principal Credit and Fixed Income Credit due to the following broad factors:
 - inability to syndicate, securitise or sell down loans and warehoused assets (£17bn);
 - drawings on liquidity facilities (£7bn);
 - consolidation of certain vehicles / assets (£2bn);
 - downgrades of securities/credit deterioration (£16bn).
- As a result, RWAs under Basle II expected to hit £206bn by H1-end (H1 budget £184.4bn). Q1 RWAs will be £200bn. Year end budget is £188.5bn
 - £42bn increase as a result of market conditions
- Management actions including applying collateral, model development, data remediation etc., have delivered (£26bn) of RWA savings

Ex. 154 at 4; *see also* Ex. 155 at BARC-ADS-01535036 (Paper for April 17, 2008 Board meeting noting “market conditions added £46bn RWAs to our balance sheet” since June 2007”).

D. Barclays’ Gross Losses and Exposures

373. Internally, Barclays reported and analyzed its credit market exposures, writedowns and charges on its credit market positions on both a gross and net basis, and on numerous occasions debated whether to disclose these gross figures to investors. Ex. 156-59; Ex. 127.

374. On September 19, 2007, the Board Risk Committee met. Ex. 160. A report from that meeting states that the Committee had a “lengthy discussion on the recent events in the credit markets.” Ex. 156. The minutes from that meeting state:

The main areas of volatility had been in US sub-prime residential mortgages and ABS market valuations, which had in turn had an impact on market confidence and liquidity. Concerns arising from the increase in delinquency in the US sub-prime residential mortgages market had triggered uncertainty around asset valuations, resulting in declining market prices and a general loss of confidence. One consequence was that commercial paper investors had refused to roll forward their exposures. Lack of visibility of the potential exposure faced by banks and investment funds had generated a climate of mistrust that had pushed up overnight funding rates and it had become increasingly difficult to fund for longer terms.

Ex. 160 at BARC-ADS-01530117-18.

375. The minutes from the September 19, 2007 Board Risk Committee meeting also state: “Mr Ricci advised that gross markdowns in July and August 2007 totalled around £600m across the portfolio, with the net position at £350-400m. Mr Lucas advised that impairment is approximately £20m and mark to market write downs are £580m.” Ex. 160 at BARC-ADS-01530120.

376. The Board Risk Committee “debated whether the gross exposure numbers [for Barclays’ credit market assets] should be included” in Broadbent’s report to the full Board on the September 19, 2007 Board Risk Committee meeting. Ex. 156. The minutes from that meeting state that Lucas and LeBlanc “preferred them not to have been” included. Ultimately, Broadbent decided to include BarCap’s gross credit market exposure numbers in his report, so as to “present a full picture to the Board.” Ex. 156-57.

377. In a September 19, 2007 email from Diamond to Dickinson said: “There were sound reasons to have this done verbally, and I am very disappointed that that advise was not accepted.” Ex. 157.

378. The Board met on September 20, 2007. At that meeting, Broadbent reported that “[t]he P&L impact to date of impairment and reduced Mark to Market valuations is as follows”:

	July/August
Mark to Market Writedowns	£580m
Impairment	£20m
Gross losses	£600m

Ex. 156; Ex. 161 at BARC-ADS-01602811.

379. Broadbent also included in his report the following summary of BarCap’s gross Asset Backed Securities exposure:

	\$m
<u>US Residential Mortgage Exposure</u>	
Financing of US Sub-prime Residential Mortgages	502
Whole Loans Purchase and Securitisation	7,517
Post-NIM Residuals	491
<u>CDO Warehousing</u>	1,554
<u>Backstop/Liquidity</u>	
Barclays sponsored conduits	500
Third party conduits	198
Super senior tranches of CDOs	4,942
Synthetic liquidity facilities	4,025
<u>SIV/SIV-lites</u>	
Backstop liquidity	298
Derivative exposure	362

Ex. 156; Ex. 161 at BARC-ADS-01602811.

380. Broadbent’s report was disseminated to the full Board in connection with the Board’s September 20, 2007 meeting. Ex. 156.

381. On October 30, 2007, Lucas and Le Blanc provided Broadbent with an “Update on Sub Prime ABS and Leveraged Credit Markets,” which again reflected BarCap’s gross exposures as follows:

	Sept. 19 \$m	Oct. 22 Sm
<u>US Sub-Prime Residential Mortgage Exposure</u>		
Financing of US Sub-prime Residential Mortgages	502	0
Whole Loans Purchase and Securitisation	7,517	6,333
Post-NIM Residuals		
-cost basis	1,030	803
-stress test loss basis	491	307
<u>CDO Warehousing</u>	1,554	1,319
<u>Backstop/Liquidity</u>		
Barclays sponsored conduits	500	0
Third party conduits	198	331
Super senior tranches of CDOs*	4,942	8,316
<i>*Total Liquidity facilities were \$8,316 and are now fully drawn – we own the AAA notes in full</i>		
Synthetic liquidity facilities	4,025	3,987
<u>SIV/SIV-lites</u>		
Drawn Backstop liquidity	298	298
SIV Derivative exposure	362	452

Ex. 159 at BARC-ADS-01174182.

382. Broadbent circulated this Update to other members of the Board Risk Committee the same day. Ex. 159.

383. On November 15, 2007, Barclays issued the BarCap Trading Update, which reported only its “net” credit market exposures. *See ¶¶222-29, supra.*

384. On December 5, 2007, the Board Risk Committee met again, and further discussed Barclay’s gross exposure to Asset Backed Securities. Ex. 162.

385. In his report to the full Board on the December 5, 2007 Board Risk Committee meeting, Broadbent reported Barclays’ gross exposures as follows:

	Sept. 19 \$m	Oct. 22 Sm	End Nov \$m
<u>US Sub-Prime Residential Mortgage Exposure</u>			
Financing of US Sub-prime Residential	502	0	0
<u>Mortgages</u>			
Whole Loans Purchase and Securitisation	7,517	6,333	6,267
Post-NIM Residuals			
-cost basis	1,030	803	719
-stress test loss basis	491	307	
<u>CDO Warehousing</u>	1,554	1,319	1,196
<u>Backstop/Liquidity</u>			
Barclays sponsored conduits	500	0	0
Third party conduits	198	331	545
Super senior tranches of CDOs*	4,942	8,316	8,200
<i>*Total Liquidity facilities were \$8,316 and are now fully drawn – we own the AAA notes in full</i>			
Synthetic liquidity facilities	4,025	3,987	3,575
<u>SIV/SIV-lites</u>			
Drawn Backstop liquidity	298	298	298
SIV Derivative exposure	362	452	522

Ex. 92; see also Ex. 162 at BARC-ADS-01537265.

386. Moreover, Broadbent's report stated that "the figures above reflect gross write-downs totalling \$3,458m as at end October and rising to \$4,286m as at end November." Ex. 162 at BARC-ADS-01537265.

387. Broadbent's report further stated that Barclays had taken additional gross write-downs of \$800 million since the November trading update, as follows:

NIMS / Post NIMS	\$250m
Retained /Warehouse: positions	\$300m
Super Senior ABS COOs (High Grade and Mezzanine)	\$200m
Whole Loans	\$50m

Ex. 162 at BARC-ADS-01537264.

388. On August 2, 2008, Diamond emailed Varley regarding Barclays' "2008 Half-Year Results." Diamond's email states:

Rich has kept me informed that Steve Russell [Non-Executive Director of Barclays] is pushing hard around disclosure of gross vs net. As you know, I have 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.

Ex. 127.

389. Barclays’ Disclosure Committee (“Disclosure Committee”) met on May 7, 2008.

The minutes from that meeting state:

Presentation of Write Downs

The Group had so far presented the total of credit market related write downs net of Own Credit but also net of income on the impacted books. Income on the books in the first quarter was approximately £340 million. The Group had expected others to take this approach at the year-end but it may be that most were presenting their write downs on a gross basis.

It was agreed that further thought would be given to the presentation of the write downs and whether gross numbers, excluding Own Credit and the associated income, should be presented.

Ex. 163 at BARC-ADS-01528941.

E. Barclays’ CDO Positions

1. Certain of Barclays’ CDOs had hit default triggers by the time of the Series 5 offering

390. According to the 2007 Form 20-F, Barclays CDO positions included liquidity facilities that obligated Barclays to provide support to the CDOs in the event of “funding difficulties or cash shortfalls in the vehicles.” Ex. 5 at 51.

391. With respect to valuing its CDO liquidity facilities, Barclays’ 2007 20-F state at page 49:

Collateralised debt obligations

The valuation of collateralised debt obligations (CDOs) notes is first based on an assessment of the probability of an event of default occurring due to a credit deterioration. This is determined by reference to the probability of event of default occurring and the probability of exercise of contractual rights related to event of default. The notes are then valued by determining appropriate valuation multiples to be applied to the contractual cash flows. These are based on inputs

including the prospective cash flow performance of the underlying securities, the structural features of the transaction and the net asset value of the underlying portfolio.

392. Barclays' valuation methodology required it to mark its CDO liquidities at fair value if it determined that an event of default was likely to occur within two years. Ex. 164 at BARC-ADS-00781584.

393. In January 2008, Barclays concluded that the Buckingham I, Buckingham II, Citius II, Tourmaline I, and Tourmaline II CDOs would not default within two years. Ex. 164 at BARC-ADS-00781584.

394. Barclays did not take any loss provisions for the Tourmaline I or Tourmaline II CDOs at year end 2007, nor did it mark these positions at their fair value in the 2007 Form 20-F. Ex. 164 .

395. The Tourmaline II CDO defaulted on March 31, 2008. Ex. 165.

396. The Tourmaline I CDO defaulted on April 3, 2008. Ex. 165.

2. Barclays Had Not Decreased its CDO Positions

397. BarCap did not decrease its CDO positions in 2007. Rather, BarCap added gross positions of \$5.566 billion in new ABS CDO super senior positions in 2007. Ex. 164; *see also* Ex. 166 (Negative Basis Book stating: "notional value of subprime-related CDOs insured in 2007 grew by 36% to \$97.3 Billion"); Ex. 66 ¶108 & Exhibit 5.

398. A writedown does not constitute a reduction of a position. Ex. 66 at ¶108.

F. BGI's Exposure to SIVs

399. Barclays Global Investors ("BGI"), Barclays' asset management arm, held notes issued by SIVs and monoline-wrapped asset backed commercial paper in the amount of \$3.5 billion. Ex. 167 at p.6.

400. The Board met on March 20, 2008. A “Quarterly Risk Update” prepared by Le Blanc for that meeting states, with respect to BGI:

In February Standard Chartered announced that its SIV, Whistlejacket, had breached its equity NAV trigger due to a sharp decline in asset values, putting the vehicle into receivership. BGI cash funds hold approximately \$1.8bn of Whistlejacket-issued paper, of which \$975m was purchased by Barclays to mitigate the risk of asset value falls in several money market cash funds.

Ex. 99 at BARC-ADS-01602624.

IV. BEAR STEARNS

401. On March 16, 2008, *The New York Times* reported that JPMorgan Chase announced a “shocking deal” to purchase Bear Stearns for \$2 a share (later increased to \$10 per share) in order to save the investment bank from collapse. Ex. 168. The deal to purchase Bear Stearns was brokered by the Federal Reserve, which also financed the transaction by providing “support for as much as \$30 billion of Bear Stearns’s ‘less-liquid assets.’” *Id.*

402. *The New York Times* reported that in the days leading up to JPMorgan’s purchase, Bear Stearns had “run up big losses on investments linked to mortgages,” and “was driven to the brink of bankruptcy by what amounted to a run on the bank.” Ex. 168.

403. A subsequent article published by *The New York Times* on March 23, 2008 reported that Bear Stearns’ “vast portfolio” of “complex derivative instruments, such as collateralized debt obligations and credit default swaps” was “among the main reasons for the bank’s collapse.” The same article also reported that at the time of its collapse, Bear Stearns held roughly \$30 billion in mortgage related assets. Ex. 169.

404. Keegan testified that after Bear Stearns went down “the world looked a whole lot different at that point in time and it looked a lot more riskier at that point in time, six months later.” Ex. 16 at 275:7-10.

V. POST-SERIES 5 OFFERING EVENTS

405. The Board Audit Committee met on April 16, 2008. The minutes from that meeting state:

John Varley and Chris Lucas updated the Committee on the current market conditions and reported that March 2008 had seen a particularly unhelpful set of market conditions where client activity and therefore income was reduced and the efforts of the European Central Bank and the Federal Reserve to facilitate greater liquidity in the markets had resulted in further de-leveraging. These asset disposals had created new marks forcing further write-downs of the assets held. In addition, narrower spreads had led to a negative contribution Own Credit which had, until that point provided a counter-balance to the asset write-downs.

...

The Group's discussions with the FSA on capital ratios were continuing and the difficult judgement of how far to reduce Risk Weighted Assets (RWAs) without permanently damaging customer relationships was being looked at hard.

Mr Lucas also advised that consideration had been given to whether a public statement on current Group performance should be released to the market but it had been concluded that there was no need currently to make a public statement. Mr Lucas also confirmed that the Board Accounts Committee would be involved in the forthcoming AGM Statement and the Trading Update. The expected approach for the Trading Update would be similar to the announcements made at the last quarter of 2007.

Ex. 170 at BARC-ADS-01602358.

A. 1Q08 Results

406. On May 15, 2008, Barclays reported its interim results for the period ending May 15, 2008 on Form 6-K ("1Q08 Results"). Ex. 39. In the 1Q08 results, Barclays disclosed that the value of its monoline exposure was £2,784 million as of March 31, 2008. *Id.* at 7.

407. With respect to Barclays Capital, the 1Q08 Results states at page 1:

There were net losses of £1.0bn relating to credit market turbulence, including £0.7bn gains on the fair valuation of notes issued by Barclays Capital.

408. The 1Q08 Results states at page 2:

We expect our Tier 1 capital and equity Tier 1 ratios under Basel II at 30th June 2008 to be slightly lower than the 7.6% and 5.1% reported as at 31st December

2007. We intend both ratios to be at least at our target levels of 7.25% and 5.25% respectively in time.

409. The 1Q08 Results states at Appendix, Section 2 (“Other US sub-prime”):

EquiFirst originated £216m of new loans in the first quarter of 2008. At 31st March 2008 the average loan to value at origination of all of the sub-prime whole loans was 79%.

B. June 2008 Capital Raise

410. On June 25, 2008, *Reuters* published an article titled “Barclays gets \$9 billion to boost capital, Qatar invests.” Ex. 171. The article reported:

British bank Barclays (BARC.L) raised 4.5 billion pounds (\$8.9 billion) from investors including Qatar and Japan's Sumitomo Mitsui (8316.T) and aims to use half the cash to rebuild capital and half to pursue growth.

Qatar's state investment firm and a member of its ruling family could become two of the biggest shareholders in Britain's third-biggest bank, with a combined stake of up to 10 percent, or over \$4 billion.

But under the structure of the deal announced on Wednesday, existing shareholders will get the chance to buy up to 4 billion pounds of shares at a discount. What they don't buy, sovereign wealth funds from Qatar, China, Singapore and other "anchor" investors will take.

Id.

411. The June 25, 2008 *Reuters* article also reported that “Barclays has lost more than \$5 billion on assets hurt by the U.S. subprime crisis and credit crunch and said last week it planned to raise billions of pounds to rebuild its capital base,” and that Barclays “has one of the thinnest capital cushions among European banks.”

C. July 14, 2008

412. On Friday, July 11, 2008, after the close of the market and through the weekend leading up to Monday, July 14, 2008, several news articles were published discussing concerns with Barclays' capital position and its need to obtain more capital. For instance, *Citywire*

published an article titled “Reader Survey: Banks could be set for second round of rights issues,” which asserted that:

A number of banks have experienced similar funding issues [to HBOS] Royal Bank of Scotland Group (RBS) completed a mammoth £12 billion rights issue earlier in the month and Barclays PLC (BARC) raised £4 billion from sovereign wealth funds and other overseas investors to shore up its capital ratios. A third of advisers expected Alliance & Leicester PLC (AL.) which has yet to place a rights issue to go to the market for cash. Of the rest, 20.8% expect Barclays to hold a further rights issue....

Ex. 172.

413. On July 12, 2008, *The Economist* published an article titled “Bank Consolidations; Under the Hammer,” which reported that “Barclays raised £4.5 billion (\$9 billion) in June, but is still more thinly capitalized than many of its peers.” Ex. 173.

414. Also on July 12, 2008, *The Observer* published an article titled “Don’t Bank on a B&B buyer,” which reported, “Barclays is seen as having rather too little capital, despite raising £4bn in a placing.” Ex. 174.

415. On July 14, 2008, the closing price of the Series 5 ADS was \$20.85, a decrease of \$2.50 from the closing price of \$23.35 on the previous trading day (July 11). According to Dr. Kleidon’s event study, the residual return for this same period was -3.33%. Ex. 175 ¶62 and Exhibit 9; White Decl. Ex. 15.

D. July 18, 2008

416. Before the market opened on Friday, July 18, 2008, Barclays issued a press release announcing an acceptance rate of only 19% by existing shareholders of new shares from the share offering that closed the prior day. Ex. 176.

417. An *Investor’s Chronicle* article published on July 18, 2008, and titled “FTSE Slips Back, Oil Declines,” acknowledged that “...Barclays fell 2.8 per cent to 282.6p after it said

less than a fifth of its existing shareholders participated in its GBHP4.5bn capital-raising issue.” Ex. 177.

418. An *Evening Standard* article published on July 18, 2008, and titled “Bank Pair Raise £8bn – But May Need More; BANKING,” reported that “T[wo] of Britain’s leading banks, HBOS and Barclays, secured a combined £8.5 billion in fresh capital today, but there was immediate concern that they may need to seek yet more money if the credit crunch worsens. Barclays today said investors took up just 19% of new shares in its recent fundraising, meaning the bulk of the money will be provided by overseas funds.” Ex. 178.

419. On July 18, 2008, the closing price of the Series 5 ADS was \$22.31, a decrease of \$0.59 from the closing price of \$22.90 on the previous trading day (July 17). According to Dr. Kleidon’s event study, the residual return for this same period was -5.14%. Ex. 175 ¶63 and Exhibit 9; White Decl. Ex. 15.

E. August 14, 2008

420. Before market hours on August 14, 2008, Goldman Sachs estimated that Barclays may potentially need to write down an additional £4.6 billion, including £1.5 billion over the subsequent 18 months, claiming that the Barclays would most likely have to cut dividends to absorb more losses. Ex. 179.

421. Also on August 14, 2008, *The Guardian* published an article title “Oil and Copper Burnish FTSE,” which reported:

[B]anks were weaker on continuing writedown fears, and the prospect of more fundraisings . . . Barclays fell 4.5p to 347p after house broker Cazenove cut its recommendation from outperform to in-line and Goldman Sachs issued a sell note and warned of further credit crunch related hits. Goldman said: “On Barclays’s credit market exposures we believe there is the potential for up to £4.6bn further writedowns. These are spread across the whole credit portfolio but some may take longer to crystallise as they sit within the loan book. We forecast £1.5bn further writedowns over the next 18 months as we believe exposures could move closer to other marks in the market.

Ex. 180.

422. Also on August 14, 2008, *Press Association* published an article titled “Market Report,” which reported:

Barclays was also in the red, after broker Goldman Sachs warned the bank may need to write down another £1.5 billion over the next year and a half. It has already suffered multi-billion pound hits this year, and shares were 5p lower at 346.5p.

Ex. 181.

423. Also on August 14, 2008, *AFX Asia* published an article titled “UPDATE 1- Barclays May Write Down 1.5 Bln Stg More, says Goldman,” which reported:

Goldman Sachs also said it remained concerned about the bank’s capital position. Barclays’ interim results were disappointing as the weak underlying performance, excluding Barclays Capital revenue, were only saved by a strong performance on costs, Goldman Sachs said...Shares of Barclays were trading down 2 percent at 345 pence by 1033 GMT.

Ex. 179.

424. On August 14, 2008, the closing price of the Series 5 ADS was \$24.02, a decrease of \$0.42 from the closing price of \$24.44 on the previous trading day (August 13, 2008). According to Dr. Kleidon’s event study, the residual return for this same period was -1.89%. Ex. 175 at Exhibit 9; White Decl. Ex. 15.

F. September 3, 2008

425. Before market hours on September 3, 2008, Royal Bank of Scotland (“RBS”) downgraded Barclays from hold to sell. Ex. 182.

426. Also on September 3, 2008, RBS published an article titled “Some of the Parts,” which cited capital ratios and the need for additional writedowns as the reason for the downgrade:

Barclays offers a clear, well-executed, long-term strategy. But benchmarking capital ratios and writedowns vs peers implies a £4.9bn-7.5bn capital shortfall at a time when credit quality and coverage ratios are weakening and core deposit momentum is disappointing. Downgrade to Sell.

Ex. 183.

427. Also on September 3, 2008, *Reuters* published an article titled “STOCKS NEWS EUROPE-ROK higher as Landsbanki initiates as buy,” which reported:

Shares in Barclays are down 2.7 percent after RBS downgrades to ‘sell’ from ‘hold’, with a reduced target price of 300 pence, cut from 475. RBS says while Barclays offers a clear, well-executed, long-term strategy, benchmarking capital ratios and writedowns versus its peers implies a 4.9-7.5 billion pounds capital shortfall for the bank at a time when credit quality and coverage ratios are weakening and its core deposit momentum is disappointing.

Ex. 184.

428. Also on September 3, 2008, *Market Watch* published an article titled “London Shares Fall as Miners, Banks Weigh; Punch Taverns Drops After Scrapping Dividend Payout,” which reported:

Shares in Barclays...fell 3.7%. The lender was downgraded to sell from hold by the Royal Bank of Scotland, which said Barclays has substantial near-term balance sheet concerns to overcome. By benchmarking capital ratios and write-downs to peers, it estimates Barclays has a capital shortfall of 4.9 billion pounds to 7.5 billion pounds.

Ex. 185.

429. On September 3, 2008, the closing price of the Series 5 ADS was \$24.50, a decrease of \$0.27 from the closing price of \$24.77 on the previous trading day (September 2, 2008). According to Dr. Kleidon’s event study, the residual return for this same period was - 2.05%. Ex. 175 at Exhibit 9; White Decl. Ex. 15.

G. October 8, 2008

430. Prior to the market open on October 8, 2008, *Bloomberg* published an article titled “U.K. to Inject about \$87 Billion in Country’s Banks (Update1),” which reported that the

U.K. government had announced that it would be injecting about £50 billion into the U.K. banking system to prevent its collapse. Ex. 186.

431. Also on October 3, 2008, *BBC News* published an article titled “Rescue Plan for UK Banks Unveiled,” which outlined the basics of the government plan:

Banks will have to increase their capital by at least £25bn and can borrow from the government to do so.

An additional £25bn in extra capital will be available in exchange for preference shares.

£100bn will be available in short-term loans from the Bank of England, on top of an existing loan facility worth £100bn.

Up to £250bn in loan guarantees will be available at commercial rates to encourage banks to lend to each other.

To participate in the scheme banks will have to sign up to an FSA agreement on executive pay and dividends.

Ex. 187.

432. Also on October 8, 2008, *Estates Gazette* Interactive published an article titled “Government Bailout Provides Little Relief for Stock Market,” which reported:

There was little immediate relief for FTSE 100 stocks this morning after the government unveiled a £50bn rescue package for the UK banking system... In response the FTSE 100 fell 7% in early trading. Of the leading banks, HBOS shares rose 15%, but Barclays fell 16% and RBS dropped 11%.

Ex. 188.

433. Also on October 8, 2008, in response to the government announcement, Varley said: “Barclays has not requested capital from the Government and has no reason to do so.” Ex. 189.

434. On October 9, 2008, *The Wall Street Journal* published an article titled “U.K. Stocks Fall Despite New Bank-Rescue Effort; Government Says It Will Buy Stakes in Banks and Guarantee Debts; Other Countries May Look to British Model,” which reported:

U.K. stocks fell amid concerns that the government's ambitious £400 billion (\$699 billion) bank rescue effort wouldn't solve the country's problems, but the plan was nonetheless gaining support as a model for other countries.

...

Bank shares gyrated wildly on Wednesday, as investors guessed which institutions would be most likely to sell stakes to the government. Such moves would dilute the stakes of existing shareholders. Royal Bank of Scotland Group PLC and Barclays PLC said they would participate in at least some of the measures, but declined to provide details.

....

While the shares of some banks shot up on news of the plan Wednesday, RBS shares rose and then fell back, to close up 1% at 90.70 pence, and Barclays shares closed down 2% at 278.25 pence, signaling that investors see both as likely to require a capital injection. HBOS jumped 24% to 117 pence. The broad FTSE 100 index slid 5.2%.

Ex. 190.

435. On October 9, 2008, *The Wall Street Journal* published an article titled “U.S. Stocks Linger in the Red,” which reported:

Traders said investors were grappling with the implications of the U.K. government's plan to prop up the country's banks and inject further liquidity into money markets. “Banking shares were mixed in London. HBOS climbed 24% and Royal Bank of Scotland Group rose 0.8%. Barclays fell 2.4%.

Ex. 191.

436. On October 8, 2008, the closing price of the Series 5 ADS was \$12.59, a decrease of \$0.91 from the closing price of \$13.50 on the previous trading day (October 7, 2008). According to Dr. Kleidon's event study, the residual return for this same period was -6.21%. Ex. 175 at Exhibit 9; White Decl. Ex. 15.

H. October 10, 2008

437. On October 10, 2008, Barclays issued a press release which officially commented on the U.K.'s announcement that it would be injecting approximately £50 billion into the U.K. banking system to prevent its collapse. Barclays stated that it was considering a variety of options to increase its Tier 1 Capital before resorting to the use of government rescue funds. Ex. 192. Barclays also confirmed that it was looking to investors for more capital to improve its finances. *Id.*

438. Also on October 10, 2008, Credit Suisse commented that "Barclays may need to raise £5 billion to sufficiently bolster its balance sheet." Ex. 193.

439. Also on October 10, 2008, *The Sun* published an article titled "Market Report," which reported that Barclays' common stock in London "led blue-chip fallers amid speculation of possible capital-raising and further write-downs." Ex. 194.

440. On October 10, 2008, the closing price of the Series 5 ADS was \$9.10, a decrease of \$2.45 from the closing price of \$11.55 on the previous trading day (October 9, 2008). According to Dr. Kleidon's event study, the residual return for this same period was -14.80%. Ex. 175 at Exhibit 9; White Decl. Ex. 15.

I. December 19, 2008

441. On the morning of December 19, 2008, S&P issued a credit downgrade across all entities of Barclays. Specifically, S&P lowered Barclays' long-term credit ratings from 'AA' to 'AA-' for all entities. The agency stated, "The downgrades and revised outlooks reflect our view of the significant pressure on large complex financial institutions' future performance due to increasing bank industry risk and the deepening global economic slowdown." Ex. 195.

442. S&P also stated:

[T]he ratings actions on Barclays reflect changes in our view of the level of risk associated with the range of activities pursued by major financial institutions. Moreover, we view the current downturn as being potentially longer and deeper than we had previously considered. Therefore, for Barclays and most of its peers, we view asset quality as likely to weaken materially more than we had previously believed.

Ex. 195.

443. S&P also stated:

[W]e believe Barclays is eligible for capital support from the U.K. government if it were required. About 4 billion of Barclays' new capital has been absorbed by cumulative credit market losses, while the recent sharp declines in equity markets may, in our view, affect our opinion of capital due to the weighing of equity in the substantial post-retirement benefit schemes.

...

"The current ratings factor in a significant reduction in profits in 2009, excluding write-downs, fair-value gains on own debt, and other exceptionals. This is driven by a significant slowdown in capital markets, and sharply rising impairment charges across the board," added Mr. Hill...A negative rating action would be triggered by the prospect of profitability falling below that expected, either due to more markdowns on credit market assets, higher impairment charges, or a greater income slowdown. The outlook could be revised to stable if credit losses fell by less than expected, and capital and liquidity remained stable.

Ex. 195.

444. On December 19, 2008, the closing price of the Series 5 ADS was \$14.64, a decrease of \$0.71 from the closing price of \$15.35 on the previous trading day (December 18, 2008). According to Dr. Kleidon's event study, the residual return for this same period was - 5.99%. Ex. 175 at Exhibit 9; White Decl. Ex. 15.

J. December 22, 2008

445. On Sunday, December 21, 2008, news broke that Barclays was planning to sell part of Barclays Capital to create a 40 percent ownership by Barclays and 60 percent ownership by management. Ex. 196. In an article titled "Barclays Looks to Sell Private Equity Empire; Billions of Vital Capital Could be Raised in Buyout," *The Mail on Sunday* reported: Barclays

proposed to “shrink its private equity holdings dramatically...possibly by divesting whole companies controlled by the various divisions of the Barclays private equity empire.” *Id.*

446. As multiple news outlets reported, each of these actions by Barclays was an attempt to raise capital. For instance, also on December 21, 2008, the *Press Association* published an article titled “Barclays May Sell Private Equity Arm,” which reported:

Banking giant Barclays is planning to sell off its private equity arm to management in a bid to strengthen its finances, it was reported today. The bank could also sell off around half of its private equity investments to raise funds, the Mail on Sunday reports. The potential move comes amid concerns that UK banks may have to bolster their balance sheets with more cash next year as the recession deepens. Barclays shunned a taxpayer bail-out, but has raised more than £7 billion through a fund-raising which leaves almost a third of the bank in the hands of Middle East investors. According to the newspaper, Barclays could spin off its various private equity businesses into a new company 40% owned by the bank and 60% owned by its management. The bank’s private equity operations sit within the Barclays Capital investment banking business, which has been a key driver of profits in recent years. But the capital-intensive nature of the division comes at a time when bad debts are set to rise as the economy turns sour. The Financial Services Authority watchdog is also keeping up the pressure on banks to maintain their balance sheet strength.

Ex. 197.

447. Also on December 21, 2008, *The Mail on Sunday* published an article titled “Barclays Looks to Sell Private Equity Empire; Billions of Vital Capital Could be Raised in Buyout,” which reported:

The plan is at an early stage and has yet to be approved by Barclays’ board, but its aim is to release capital tied up in the division, whose investments include stakes in car parking services group Parkeon, Swarfega maker Deb and mortgage company Jerrold Holdings.

Ex. 196.

448. Sources also cited industry-wide concern about capital raising as justifications for Barclays’ actions. For instance, the same *Press Association* article cited above reported:

The potential move comes amid concerns that UK banks may have to bolster their balance sheets with more cash next year as the recession deepens. Barclays shunned a taxpayer bail-out, but has raised more than £7 billion through a fund-raising which leaves almost a third of the bank in the hands of Middle East investors.

Ex. 197.

449. *The Sunday Telegraph*, in an article titled “Barclays to Review Future of Private Equity Arm,” reported that the bank was concerned with meeting the FSA’s capital requirements:

Barclays provides about 40pc of the capital for its private equity unit, and among the options likely to be on the agenda will be a reduction in that commitment to below 20pc, above which the bank has to set aside a larger capital buffer. Last week’s briefing to investors outlined a number of options for BPE’s future. A management buyout is unlikely to be on the agenda for at least a year. Barclays would be likely to retain a substantial stake in the division even if it did eventually decide to relinquish control. Capital requirements mean banks need to have reserves set against the amount of risk they face from their debt and equity exposure. Barclays is keen to conserve capital in order to keep within Financial Services Authority requirements.

Ex. 198.

450. On December 22, 2008, the closing price of the Series 5 ADS was \$14.38, a decrease of \$0.26 from the closing price of \$14.64 on the previous trading day (December 19, 2008). According to Dr. Kleidon’s event study, the residual return for this same period was - 1.73%. Ex. 175 at Exhibit 9; White Decl. Ex. 15.

K. January 20, 2009

451. On the evening of January 19, 2009, reports resurfaced about the possibility of Barclays being forced to ask for taxpayer money to address its subprime exposure and capital position. For instance, *The Evening Standard*, in an article titled “Barclays Fightback Fails to Ease Fears of Taxpayer Rescue,” reported:

Initial euphoria that Barclays had escaped the worst of the banking crisis evaporated today as City analysts queued up to predict the High Street bank will

be forced to call for a handout from the British taxpayer. After a shareprice collapse on Friday, Barclays today came back fighting, saying profits for 2008 will be higher than most City expectations. But investor fright at the extent of the Government's second banking bailout and fears Barclays does not have enough funding capital on its balance sheet saw initial gains in Barclays shares wiped out, in line with steep falls among rivals Royal Bank of Scotland, Lloyds Banking Group and HSBC.

Ex. 199.

452. The same *Evening Standard* article also cited concerns by analysts at Dresdner

Kleinwort:

Analysts at Dresdner Kleinwort were among the first to puncture investor hopes, saying: "We are concerned the profit update is insufficient to bring investor concerns down.

"A possible future shortage of capital following further asset deterioration could eventually push the bank into the arms of the Government if existing shareholders are unwilling or unable to provide yet further support and share price weakness persists."

Ex. 199.

453. On January 20, 2009, MF Global, in a report titled "Barclays PLC-A Stay of Execution," expressed concerns over whether or not the Bank had sufficiently written down its subprime assets:

The absence of large losses in H2 2008 suggests that Barclays has not written down assets sufficiently far to be able to have attracted a buyer for any substantial part of the portfolio of trouble assets.

Ex. 200.

454. On January 20, 2009, the closing price of the Series 5 ADS was \$13.23, a decrease of \$2.78 from the closing price of \$16.01 on the previous trading day (January 16, 2009). According to Dr. Kleidon's event study, the residual return for this same period was - 2.24%. Ex. 175 at Exhibit 9; White Decl. Ex. 15.

L. January 21, 2009

455. On January 21, 2009, *The Irish Examiner* published an article titled “Banking Shares Suffer in London,” which reported that “Barclays and Lloyds Banking Group suffered more heavy losses today as the bloodbath in the banking sector showed no signs of easing. The pair fell 20% and 11% respectively as fears of nationalisation and further credit write-downs continued to cloud sentiment towards the industry.” Ex. 201.

456. On January 21, 2009, *Dow Jones* published an article titled “Barclays, Lloyds Shares Tumble Again on Results Fears,” which reported:

Shares of Barclays PLC (BCS) fell heavily in early trade Wednesday, after a newspaper report said that the U.K. bank was under intense pressure to bring forward its full-year results. At 0855 GMT, the stock had fallen 27% to 54 pence, its lowest level for over 20 years. . . . The Independent newspaper said Barclays was under pressure to bring forward its full-year results after a profit forecast last week failed to prevent further big falls in the bank’s share price. The report said investors are understood to have contacted the bank and urged it to announce audited results, due Feb. 17, as soon as possible to ease fears about credit market write-downs at the Barclays Capital investment bank.

Ex. 202.

457. On January 21, 2009, *The Irish Times* published article titled “Successful or Not, the Price of Bailout Could Be Too High,” which reported:

Doubts over the latest bailout package saw banking shares hammered once again yesterday as fears grew over a wholesale nationalisation of the industry.

...

Amid the deepening crisis in the sector, the insistence by Barclays that it has no need of government help is becoming increasingly perplexing. The bank has repeatedly said in recent days that it is on course to exceed consensus forecasts of £5.3 billion for 2008, down from just over £7 billion the previous year, indicating that there are no more toxic shocks to come. It seems extraordinary that Barclays alone should be in much better shape than the rest of the industry, although it had a narrow escape when RBS outbid it in the disastrous auction for ABN Amro. The loans it has on its books must surely be as toxic as those of its peers. Its shares crashed by 25 per cent on Friday, lost another 10 per cent on Monday and ended last night a further 17 per cent down at just 69p – their lowest level in more than 17 years. At this level, the bank is valued at a mere £6 billion. Some analysts fear that the Barclays board may be in denial after the traumatic events of recent

weeks and the bombed-out share price is certainly saying that more writedowns must be on the way.

Ex. 203.

458. On January 21, 2009, the closing price of the Series 5 ADS was \$10.35, a decrease of \$2.88 from the closing price of \$13.23 on the previous trading day (January 20). According to Dr. Kleidon's event study, the residual return for this same period was -24.57%. Ex. 175 ¶¶91 and Exhibit 9; White Decl. Ex. 15.

M. January 23, 2009

459. On January 23, 2009, *Reuters* published an article titled "WRAPUP 1-Banks on back foot; state help fails to lift gloom," which reported that "Barclays remained the focal point of investor unease. Its shares fell 14 percent to 50.6 pence, tumbling for a ninth straight day as concern mounted the bank may require further capital or be nationalized." Ex. 204.

460. Also on January 23, 2009, *The Evening Standard* published an article titled "Barclays Plunges Amid New Worries Over Bailouts Bill; Economy by Bill Condie," which reported:

The bank's stock fell for the ninth day running, losing nearly 18%, or 10.4p, at 48.8p. The fall came despite an interview last night with Varley in which he declared his confidence that Monday's government bailout plan would work. However, he said there was nothing he could do to stop the rot in Barclays' shares, which have lost more than two thirds since 12 January amid fears that it would need to tap the government for more cash or possibly even be nationalised.

Ex. 205.

461. Also on January 23, 2009, *The Guardian* published an article titled "Barclays Shares Plunge 15%," which reported:

Barclays is set for its ninth consecutive day of falls with City traders refusing to believe management's protestations that the bank, which has seen its shares plunge more than 70% since last week, does not need a cash injection or full-scale nationalization.

Ex. 206.

462. Also on January 23, 2009, Barclays announced that it would report a 2008 profit even after reporting additional write-downs. Ex. 207.

463. On January 23, 2009, the closing price of the Series 5 ADS was \$8.02, a decrease of \$1.50 from the closing price of \$9.52 on the previous trading day (January 22). The Series 5 ADS residual return for the same period was -15.48%. Ex. 175 ¶92 and Exhibit 9; White Decl. Ex. 15.

N. February 2, 2009

464. On Sunday February 1, 2009, Moody's cut Barclays' credit rating due to speculation that the Bank would need government support in order to stay afloat, in part to its exposure to subprime assets. In a press release titled "Moody's Downgrades Barclays Bank (Senior to Aa3/Stable, BFSR to C/Negative)," Moody's stated:

The downgrades reflect Moody's expectation of potentially significant further losses at Barclays as a result of writedowns on credit market exposures as well as an increase in impairments in the UK, which could weaken profitability and capital ratios.

...

Moody's downgrade of the bank's long-term rating to Aa3 reflects the weaker BFSR, but also incorporates the rating agency's view on the longterm credit profile of Barclays - beyond the current government support phase - as one of the leading UK banks with a solid retail, commercial and capital market franchise. Moreover, the current rating also takes account of the very high probability of ongoing support from the Aaa-rated UK government.

...

The downgrade to C with a negative outlook reflects Moody's expectation that Barclays' profitability and capitalisation will continue to be pressured by the ongoing need to implement further writedowns and build larger loan loss reserves. Based on Moody's own stress tests, in a base stress scenario deteriorating values will lead to significant further writedowns on the bank's credit market exposures, particularly for the GBP10.3 billion (as of Q308) commercial mortgages and non-US residential mortgage securitisation exposures and on the GBP23.0 billion notional of monoline-wrapped structured exposures - an area in which the rating agency considers the bank to be exposed to a potentially sharp increase in provisioning requirements.

Ex. 208.

465. Following Moody's downgrade, reporters and analysts cited write-downs and capital concerns as reasons for the downgrade. For instance, in an article titled "Bank Bosses Face Grilling by MPs," the Guardian stated: "Although Barclays has not taken any government capital to date, Moody's considers the systemic importance of the bank and the likelihood of receiving government support in case of need to be high." Ex. 225.

466. Similarly, on February 2, 2009, in an article titled "UPDATE 1-Moody's Cuts Barclays' Ratings on Loss Expectations," *Reuters* reported:

The downgrades come after the lender last week said it could absorb a 2008 writedown of 8 billion pounds (\$11.58 billion) without seeking capital from private investors or the state. Barclays also stuck to its forecast that its 2008 pretax profit would be "well ahead" of 5.3 billion pounds, even after the expected writedowns.

Ex. 209.

467. Also on February 2, 2009, *The Guardian* published an article titled "Barclays Slips Back on Downgrade," which attributed the declines in Barclays common stock to the Moody's downgrade:

The recent recovery in Barclays' share price was snuffed out today after the bank was downgraded by the Moody's ratings agency. Barclays shares fell more than 10% as Moody's warned of "significant further losses" at the bank because of writedowns in the credit market and impairments in the UK.

Ex. 210.

468. On February 2, 2009, the closing price of the Series 5 ADS was \$12.00, a decrease of \$2.00 from the closing price of \$14.00 on the previous trading day (January 30, 2009). According to Dr. Kleidon's event study, the residual return for this same period was - 11.25%. Ex. 175 at Exhibit 9; White Decl. Ex. 15.

O. March 9, 2009

469. On March 9, 2009, *Dow Jones* published an article titled “UPDATE: Lloyds Shares Drop As Government Stake Increases,” which reported on a deal reached between Lloyds Banking Group and the U.K. government. Specifically, the article reported that “The terms of the deal, announced over the weekend, will see the government's stake in Lloyds (LYG) rise to 65% from 43%, with the potential to go higher still.” The same article also reported that “the government stake could rise as high as 77%.” Ex. 211.

470. The March 9, 2009 *Dow Jones* article also reported:

The announcement also weighed heavily on Barclays (BCS), which has reportedly considered seeking government insurance on some assets. Shares in Barclays dropped around 12%.

Deutsche Bank analyst Jason Napier said he expects other U.K. banks to take part in the scheme before a deadline at the end of the month. While Barclays may agree an insurance deal, it reportedly wants to pay cash for any support, rather than have the government as a shareholder.

Ex. 211.

471. Also on March 7, 2009, *The International Herald Tribune* published an article titled “Pressure rises on banks to participate in U.K. bailout,” which reported “Malcolm Herring, of Baring Asset Management in London, said: ““There is still concern out there about the valuation of some of Barclays’ assets. Barclays indicated it may participate, but negotiating the terms is very difficult.”” Ex. 212.

472. Also on March 9, 2009, *Citywire* published an article titled “Morning Market: Malaise in Banking Sector Casts Early Shadow,” which reported: “Barclays decline 6p to 59p following weekend reports that it is looking to place toxic assets worth up to £60 billion into a government insurance scheme....” Ex. 213.

473. Also on March 9, 2009, *The Evening Standard* published an article titled “Banks Dive after Lloyds Nationalised,” which reported: “Speculation over how much of its toxic assets Barclays could try to have guaranteed range from £50 billion to £80 billion, but some analysts say this would be far too little.” Ex. 214.

474. Also on March 9, 2009, *Derivatives Weekly* published an article titled “Barclays Loses 25% Value on Toxic-Debt Prediction,” which reported:

Sandy Chen, an analyst at Panmure Gordon, had estimated a write-down of GBP5.8 billion (USD8.174 billion) as a result of Barclays’ growing exposure to derivatives due to the fact that the fair value of some collateralized debt obligations plunged after rating agencies downgraded them.

Ex. 215.

475. On March 9, 2009, the closing price of the Series 5 ADS was \$4.95, a decrease of \$1.16 from the closing price of \$6.11 on the previous trading day (March 6). According to Dr. Kleidon’s event study, the Series 5 ADS residual return for that same period was -20.32%. Ex. 175 at ¶102 and Exhibit 9; White Decl. Ex. 15.

P. October/November Capital Raise

476. On October 31, 2008, Barclays announced “a proposal to raise up to £7.3 billion of additional capital from existing and new strategic and institutional investors.” Ex. 216. The announcement stated that “[a]s a result of the Capital Raising, Barclays expects to fully satisfy its commitment, as announced to the market on 13th October 2008, to raise new external capital as part of its overall plan to achieve the new higher capital targets set by the UK Financial Services Authority for all UK banks.” *Id.* Further, the announcement noted that the “The Capital Raising will: enable Barclays simultaneously to achieve its tier one and equity capital issuance commitments to the FSA with certainty and ahead of the previously announced timetable.” *Id.*

477. Agius testified that the October 2008 capital raising was pre-approved by the FSA in order to meet the FSA's new target ratios:

Q. Did the FSA have to approve this capital raising plan by Barclays during this time period?

A. I don't know the specific answer to that question but in effect they had pre-approved it, because they had given us a target to reach by the middle of 2009, and if by raising money in this way we hit that target earlier, that is a kind of pre-approval.

Q. Could that target have also been reached by shedding the Bank's risk weighted assets?

A. The compliance with the ratios did not involve simply raising equity. As I recall it, the dividend was cut, bonuses were cut, the balance sheet was managed in the way I discussed earlier -- there were a number of different actions that were taken, but the most substantive, without question, was the raising of £7 billion odd by this method.

Ex. 97 at 141:6-23.

Q. EquiFirst Closing

478. On February 17, 2009, *The Financial Times* reported that Barclays was shutting down EquiFirst due to "market conditions." Ex. 217. *The Financial Times* further reported that "[t]he decision to close Equifirst is embarrassing for Barclays," and "the shutdown of Equifirst also marks the latest failure in a series of bank misadventures with acquisitions of high-risk mortgage lenders." *Id.* The same *Financial Times* article noted that "[j]ust a few months ago Barclays executives were still pointing to Equifirst as providing the bank with a foothold in the market when it recovered." *Id.*

R. Barclays' Undisclosed Payments to Qatar in Connection with October 2008 Capital Raise

479. In August 2012, the U.K.'s Serious Fraud Office ("SFO") opened an investigation into Barclays' October 2008 capital raise. Specifically, the SFO began investigating whether Barclays had issued payments to Qatar Holdings LLC, part of the sovereign wealth fund Qatar

Investment Authority, in advance of Qatar's investment in the October 2008 capital raise. Ex. 218.

480. The SFO's inquiry focuses on Barclays' undisclosed payment of £322 million in "advisory fees" to Qatar Investment Authority and, specifically, whether Barclays made that payment to induce Qatar to invest in the Company "to avoid a state bailout." The SFO's investigation has included its review of over 100,000 internal Barclays documents, and interviews of current and former Barclays executives, including Varley and Diamond. The interviews of these executives were taken "under caution," which means that the executives "are read their rights." Exs. 219-20.

481. As part of the SFO investigation, a statement was taken from Richard Boath, Barclays' co-head of global finance. After Barclays received a copy of the transcript from Boath's interview, it fired him. Boath has since sued Barclays claiming protection under applicable whistleblower laws. Ex. 221.

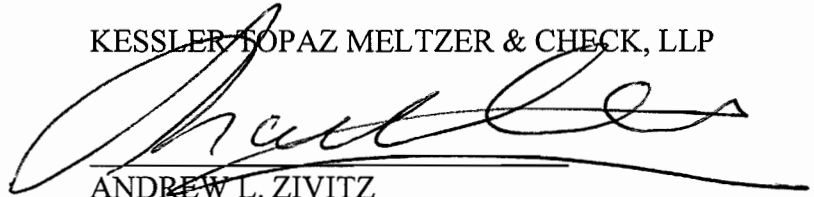
482. The SFO's investigation is ongoing and is scheduled to conclude in 2017. Ex. 220.

483. Separately, PCP Capital Partners, which advised Barclays on the October 2008 capital raise, filed suit against Barclays to recover allegedly unpaid fees. As part of the lawsuit, PCP contends that Barclays loaned Qatar \$3 billion "to help fund" Qatar's investment in the October 2008 capital raise. According to PCP, "Barclays' October 2008 Capital Raising was a fraud on its shareholders perpetrated through a series of unlawful transactions and dishonest conduct towards existing shareholders and prospective investors." Ex. 222.

Date: December 14, 2016

Respectfully submitted,

KESSLER TOPAZ MELTZER & CHECK, LLP

A large, stylized handwritten signature in black ink, which appears to read "Zivitz", is written over a horizontal line.

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