

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re BARCLAYS BANK PLC SECURITIES : X
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PLAINTIFF'S RESPONSE TO UNDERWRITER DEFENDANTS' LOCAL RULE 56.1
STATEMENT; FURTHER STATEMENT OF UNDISPUTED FACTS IN OPPOSITION TO
THE UNDERWRITER DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

[CONFIDENTIAL – FILED UNDER SEAL]

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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 Courts for the Southern and Eastern Districts of New York, Lead Plaintiff Dennis Askelson submits: (i) his Response to the Local Rule 56.1 Statement in Support of the Underwriter Defendants' Motion for Summary Judgment; and (ii) additional statements of material facts.

I. RESPONSE TO UNDERWRITER DEFENDANTS' RULE 56.1 STATEMENT

1. Defendant Barclays Bank Plc ("Barclays" or the "Company") is a public limited company organized under the laws of England and Wales. Musoff Ex. 3, Barclays 2007 Form 20-F at 146.¹ Barclays, together with its affiliates, is a major global financial services provider engaged in retail and commercial banking, credit cards, investment banking, wealth management and investment management services, operating through branches, offices and subsidiaries in the UK and overseas. *Id.* at 4-5, 115. As of December 31, 2007, Barclays had assets of £1.2 trillion; shareholders' equity of £32.4 billion; and total income of £23.5 billion. *Id.* at 6-9.

Response: Not disputed.

2. Barclays' common shares have been traded on the New York Stock Exchange ("NYSE") in the form of American Depositary Shares ("ADS") since September 1986. Musoff Ex. 5, Barclays 2015 Form 20-F at 312. US Dollar Preference Shares issued by Barclays in the form of ADS have traded on the NYSE since June 2005. *Id.* at 449.

Response: Not disputed.

¹ Citations to "Ex. ___" refer to the exhibits attached to the Declarations in Support of the Underwriters' Motion for Summary Judgment submitted concurrently herewith. Deposition Transcript excerpts are attached to the Declaration of Scott D. Musoff and are cited herein as "[Deponent] Dep. []."

3. Since 1982, Barclays has filed with the Securities and Exchange Commission (“SEC”) an annual Form 20-F, a year-end report detailing the Company’s business operations and financial results. Musoff Ex. 15. Barclays has also filed with the SEC, among other documents, Forms 6-K to disclose material information about the Company between annual reports. Musoff Ex. 14. Between 2006 and 2008, Barclays filed more than 3,600 documents with the SEC, including Forms 20-F, Forms 6-K, Registration Statements and Prospectuses. *Id.* Barclays was – and is – eligible to register its securities on SEC Form F-3. *Id.*

Response: Not disputed, except as to whether any of Barclays’ prior filings with the SEC contained any untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

4. Barclays conducted an offering of 100,000 US Dollar 6.278% non-cumulative callable preference shares of \$100 each in June 2005 (the “Series 1 Offering”). Musoff Ex. 6.

Response: Not disputed.

5. Barclays conducted an offering of 27 million US Dollar 6.625% non-cumulative callable preference shares of \$25 each in April 2006 (the “Series 2 Offering”). Musoff Ex. 7.

Response: Not disputed.

6. Barclays conducted an offering of 48 million US Dollar 7.1% non-cumulative callable preference shares of \$25 each in September 2007 (the “Series 3 Offering”). Musoff Ex. 8.

Response: Not disputed.

7. Barclays conducted an offering of \$2.05 billion 5.450% senior notes due 2012 in September 2007 (the “September 2007 Senior Notes Offering”). Musoff Ex. 9.

Response: Not disputed.

8. Barclays conducted a subsequent offering of \$150 million 5.45% senior notes due 2012 in September 2007 (the “Second September 2007 Senior Notes Offering”). Musoff Ex. 10.

Response: Not disputed.

9. Barclays also conducted an offering of \$700 million floating rate notes due 2009 in September 2007 (the “September 2007 Floating Rate Notes Offering”). Musoff Ex. 11.

Response: Not disputed.

10. Barclays conducted an offering of 40 million US Dollar 7.75% non-cumulative callable preference shares of \$25 each in December 2007 (the “Series 4 Offering”). Musoff Ex. 12.

Response: Disputed. The Prospectus Supplement attached as Musoff Ex. 12 is “dated November 30, 2007.” Musoff Ex. 12 at p. 1.

11. As of April 2008, PricewaterhouseCoopers LLP (“PwC”) or its predecessor firms had acted as Barclays’ independent auditors since 1896. Musoff Ex. 4, Barclays 2012 Form 20-F at 22.

Response: Not disputed.

12. PwC issued an unqualified, or “clean,” audit report on Barclays’ financial statements for 2007, stating in its report that Barclays’ financial statements “present[ed] fairly, in all material respects, the financial position of Barclays . . . in conformity with International Financial Reporting Standards.” Musoff Ex. 3, Barclays 2007 Form 20-F at 147. PwC also issued a “clean” opinion on internal controls, stating in its report that Barclays “maintained, in all material respects, effective internal control over financial reporting” as of December 31, 2007. *Id.* PwC’s audit report for Barclays’ FY 2007 financials was dated March 7, 2008. *Id.*

Response: Not disputed that PwC issued an unqualified audit report on Barclays’ 2007 consolidated financial statements only. Disputed that PwC’s unqualified audit report constituted an audit of any other portions of the 2007 Form 20-F, including without limitation, the “Management

Discussion and Analysis.” Not disputed that PwC also issued an unqualified opinion on internal controls, and stated in its report that Barclays “maintained, in all material respects, effective internal control over financial reporting” as of December 31, 2007, but respectfully state further that the PwC audit opinion does not apply to financial results or internal controls after December 31, 2007. Dispute the correct date of PwC’s audit report. Further, plaintiff respectfully refers the Court to §II, *infra*, Additional Statement of Undisputed Facts (“Plaintiff’s Counterstatement”), ¶¶238-245.

13. Barclays’ audited financial statements for 2007 did not identify any writedowns in its “[e]vents after the balance sheet date” note to its financial statement. Musoff Ex. 3, Barclays 2007 Form 20-F at 212.

Response: Not disputed that PwC issued an unqualified audit report on Barclays’ 2007 consolidated financial statements only. Disputed that PwC’s audit included the “[e]vents after the balance sheet date” note. Disputed as to whether PwC “audited” Barclays’ “writedowns” corresponding to the period after the balance sheet for the fiscal year ended December 31, 2007. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶238-245.

14. Barclays disclosed in its “[e]vents after the balance sheet date” note to its financial statements that it had entered into an agreement to acquire a Russian bank (Expobank) and expected to close the transaction in summer 2008, pending regulatory approvals. Musoff Ex. 3, Barclays 2007 Form 20-F at 212.

Response: Not disputed that this disclosure was made in the 2007 Form 20-F. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶238-245.

15. In April 2008, Barclays conducted an offering of 100 million 8.125% non-cumulative callable dollar preference shares, Series 5 (the “Series 5 Offering”). Musoff Ex. 13, April 9, 2008 Prospectus Supplement (hereinafter, the “Prospectus Supplement”). The Series 5 Offering launched

on April 7, 2008, priced on April 8, 2008, and closed on April 11, 2008. McSpadden Dep. at 110:15-16, 111:4-5, 309:7-10.

Response: Not disputed.

16. In connection with the Series 5 Offering, Barclays granted the underwriters an option to purchase, on or prior to April 22, 2008, up to an additional 15 million preference shares to cover over-allotments, if any. Musoff Ex. 13, Prospectus Supplement at S-6. This option was exercised by the Series 5 underwriters in the amount of 6 million shares at \$25 per preference share.² McSpadden Decl. ¶3 n.1. The Series 5 Greenshoe exercise settled on April 22, 2008. *See* McSpadden Ex. 28; McSpadden Dep. at 304:25-310:24.

Response: Not disputed.

17. The Series 5 Offering was made under shelf registration statement number 333-145845 and a Prospectus dated August 31, 2007 (the “Registration Statement”). Musoff Ex. 13, Prospectus Supplement at 1. The shelf registration statement was supplemented for purposes of the Series 5 Offering by the Prospectus Supplement. *Id.* at S-4.

Response: Not disputed.

18. The Prospectus Supplement incorporated by reference Barclays’ annual report on Form 20-F for the fiscal year ended December 31, 2007 (the “2007 Form 20-F”) and any documents incorporated by reference therein. *See* Musoff Ex. 13, Prospectus Supplement at S-4; *id.*, Prospectus Supplement at 1. The 2007 Form 20-F was furnished to the SEC on March 26, 2008 and included audited financial statements as of December 31, 2007. Musoff Ex. 3, Barclays 2007 Form 20-F at 147. The Registration Statement, the Prospectus Supplement, the 2007 Form 20-F and any

² The exercise of such option by the Series 5 underwriters is referred to hereinafter as the “greenshoe” exercise. An over-allotment option is commonly referred to as a “greenshoe” option. *See* McSpadden Dep. at 308:18-309:2.

documents incorporated by reference therein are collectively referred to hereinafter as the “Series 5 Offering Materials.”

Response: Not disputed that the listed documents were incorporated by reference. Not disputed that PwC issued an unqualified audit report on Barclays’ 2007 consolidated financial statements only, and that PwC’s unqualified audit report does not include any other portions of the 2007 Form 20-F. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶238-245.

19. Citi served as the lead underwriter for the Series 5 Offering. McSpadden Decl. ¶ 3; McSpadden Dep. at 121:23-122:2. Citi is referred to hereinafter as either Citi or as the “Joint Lead Manager.” Together, Citi, BCSL, Wachovia, UBS and Merrill Lynch served as the “joint bookrunners” or “joint lead underwriters” and are referred to herein as the “Joint Lead Underwriters” for the Series 5 Offering. McSpadden Ex. 11; McSpadden Dep. at 25:18-25, 29:10-16. Morgan Stanley served as, and is referred to herein as the “Senior Co-Manager” for the Series 5 Offering. McSpadden Ex. 11 at UW_Barclays_000018355. Banc of America Securities and RBC served as, and are referred to herein, as the “Co-Managers” for the Series 5 Offering. *Id.*

Response: Not disputed.

20. The Underwriters entered into an underwriting agreement with Barclays dated November 30, 2007. McSpadden Ex. 12. In that underwriting agreement, Barclays represented and warranted to the Underwriters, among other things, that:

- The Prospectus Supplement and Registration Statement did not “contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading,” *id.* at UW_Barclays_000036144;
- The 2007 Form 20-F did not “contain[] an untrue statement of a material fact or omit[] to state a material fact required to be stated therein or necessary to make the statement therein not misleading,” *id.* at UW_Barclays_000036143-6144; and

- No document incorporated by reference into the Prospectus Supplement did or will “contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statement therein not misleading.”

Id. at UW_Barclays_000036144.

Response: Not disputed that McSpadden Ex. 12 contains the quoted language. Disputed as to whether the Series 5 Offering Materials contained any untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. Disputed as to whether Barclays had a reasonable basis for making the representations referenced above on November 30, 2007 concerning the 2007 Form 20-F, which would not be filed until March 2008. Plaintiff further notes the “underwriting agreement” at McSpadden Ex. 12 is not signed by any of the Underwriters, and refers to other terms and conditions not provided in McSpadden Ex. 12.

21. The Underwriting Agreement also provided a number of conditions for the closing of the Series 5 Offering, which included the delivery of legal opinions from:

- Barclays’ United States legal counsel, Sullivan & Cromwell, LLP (“S&C”);
- Barclays’ English legal counsel, Clifford Chance LLP (“Clifford Chance”); and
- Underwriters’ counsel.

McSpadden Ex. 12 at UW_Barclays_000036153-6154. The Underwriting Agreement also provided for the delivery of a comfort letter and bring-down comfort letter from PwC. *Id.* at UW_Barclays_000036154.

Response: Not disputed that McSpadden Ex. 12 referenced certain conditions mentioned above. Disputed as to whether the Series 5 Offering Materials contained any untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. Disputed as to whether

Barclays had a reasonable basis for making the representations referenced above on November 30, 2007 concerning the 2007 Form 20-F, which would not be filed until March 2008. Plaintiff further notes the “underwriting agreement” at McSpadden Ex. 12 is not signed by any of the Underwriters, and refers to other terms and conditions not provided in McSpadden Ex. 12.

22. The Underwriters were represented in connection with the Series 5 Offering by Linklaters LLP (“Linklaters”). Ludwick Decl. ¶ 2. Barclays was represented by S&C and Clifford Chance. Musoff Ex. 13, Prospectus Supplement at S-34.

Response: Not disputed.

23. In connection with the Series 5 Offering, the Underwriters received comfort letters pursuant to SAS 72 from PwC opining that the year-end financial statements they had audited complied with the Securities Exchange Act of 1934 and certifying that appropriate procedures relating to Barclays’ interim financial statements had been performed by PwC. McSpadden Exs. 56, 59.

Response: Not disputed that on April 8, 2008 and April 11, 2008 the Underwriters received comfort letters from PwC which stated that it was PwC’s opinion that “the consolidated financial statements audited by [PwC] 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.” McSpadden Ex. 56 at UW_Barclays_000010059. Disputed that such characterization of the comfort letters is complete and state that the comfort letters further stated that PwC had “not audited any financial statements of the Group or the Issuer as of any date or for any period subsequent to 31 December 2007” and that it had “not audited the Group’s internal control over financial reporting as of any date subsequent to 31 December 2007.” *Id.* Plaintiff further states that PwC’s audit opinion with respect to Barclays’ 2007 financial statements did not

include any other portions of the 2007 Form 20-F. Disputed that the comfort letters certified that appropriate procedures relating to Barclays' interim financial statements had been performed by PwC. Rather, with respect to the Group's financial results for the period from January 1, 2008 to February 29, 2008, the comfort letters described certain limited procedures that PwC performed and stated that PwC had "read" Barclays' unaudited financial data for this period, as furnished by Barclays, made certain inquiries of management, and that Barclays officials had advised PwC that: (i) "no such financial data as of any date or for any period subsequent to 29 February 2008 were available"; (ii) "[t]he financial information for January and February of both 2008 and 2007 is incomplete in that it omits the statement of cash flows and other disclosures"; (iii) PwC's procedures do not constitute an audit and "would not necessarily reveal matters of significance with respect" to Barclays' financial results for periods subsequent to December 31, 2007; and (iv) accordingly, PwC made "no representations as to the sufficiency of [its] procedures for [the Underwriters'] purposes." *Id.* at UW_Barclays_000010059-60. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶238-245, 355-363, 365-366, 369-370.

24. PwC provided a comfort letter dated April 8, 2008, stating that it had reviewed unaudited financial data for January and February 2008; discussed with Barclays personnel changes in total assets and profit through April 3, 2008; and reviewed the minutes of meetings of the Board of Directors and Board Audit Committee. McSpadden Ex. 56 at UW_Barclays_000010058-0063. PwC's April 8, 2008, comfort letter concluded that "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 [Securities Act of 1933] and the Securities Exchange Act of 1934, as amended, and the related rules and regulations adopted by the SEC." *Id.* at UW_Barclays_000010059.

Response: Not disputed that on April 8, 2008 and April 11, 2008 the Underwriters received comfort letters from PwC which stated that it was PwC’s opinion that “the consolidated financial statements audited by [PwC] 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.” McSpadden Ex. 56 at UW_Barclays_000010059. Disputed that such characterization of the comfort letters is complete and state that the comfort letters further stated that PwC had “not audited any financial statements of the Group or the Issuer as of any date or for any period subsequent to 31 December 2007” and that it had “not audited the Group’s internal control over financial reporting as of any date subsequent to 31 December 2007.” *Id.* Plaintiff further states that PwC’s audit opinion with respect to Barclays’ 2007 financial statements did not include any other portions of the 2007 Form 20-F. Disputed that the comfort letters certified that appropriate procedures relating to Barclays’ interim financial statements had been performed by PwC. Rather, with respect to the Group’s financial results for the period from January 1, 2008 to February 29, 2008, the comfort letters described certain limited procedures that PwC performed and stated that PwC had “read” Barclays’ unaudited financial data for this period, as furnished by Barclays, made certain inquiries of management, and that Barclays officials had advised PwC that: (i) “no such financial data as of any date or for any period subsequent to 29 February 2008 were available”; (ii) “[t]he financial information for January and February of both 2008 and 2007 is incomplete in that it omits the statement of cash flows and other disclosures”; (iii) PwC’s procedures do not constitute an audit and “would not necessarily reveal matters of significance with respect” to Barclays’ financial results for periods subsequent to December 31, 2007; and (iv) accordingly, PwC made “no representations as to the sufficiency of [its] procedures for [the Underwriters’] purposes.”

Id. at UW_Barclays_000010059-60. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶238-245, 355-363, 365-366, 369-370.

25. PwC provided a bring-down comfort letter dated April 11, 2008, stating that it had reviewed unaudited financial data for January and February 2008, discussed with Barclays personnel changes in total assets and profit through April 8, 2008 and reviewed the minutes of meetings of the Board of Directors and Board Audit Committee. McSpadden Ex. 59 at UW_Barclays_000014296-4301. PwC's April 11, 2008, bring-down comfort letter concluded that "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 [Securities Act of 1933] and the Securities Exchange Act of 1934, as amended, and the related rules and regulations adopted by the SEC." *Id.* at UW_Barclays_000014297.

Response: Not disputed that on April 8, 2008 and April 11, 2008 the Underwriters received comfort letters from PwC which stated that it was PwC's opinion that "the consolidated financial statements audited by [PwC] 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." McSpadden Ex. 56 at UW_Barclays_000010059. Disputed that such characterization of the comfort letters is complete and state that the comfort letters further stated that PwC had "not audited any financial statements of the Group or the Issuer as of any date or for any period subsequent to 31 December 2007" and that it had "not audited the Group's internal control over financial reporting as of any date subsequent to 31 December 2007." *Id.* Plaintiff further states that PwC's audit opinion with respect to Barclays' 2007 financial statements did not include any other portions of the 2007 Form 20-F. Disputed that the comfort letters certified that appropriate procedures relating to Barclays' interim financial statements had been performed by

PwC. Rather, with respect to the Group's financial results for the period from January 1, 2008 to February 29, 2008, the comfort letters described certain limited procedures that PwC performed and stated that PwC had "read" Barclays' unaudited financial data for this period, as furnished by Barclays, made certain inquiries of management, and that Barclays officials had advised PwC that: (i) "no such financial data as of any date or for any period subsequent to 29 February 2008 were available"; (ii) "[t]he financial information for January and February of both 2008 and 2007 is incomplete in that it omits the statement of cash flows and other disclosures"; (iii) PwC's procedures do not constitute an audit and "would not necessarily reveal matters of significance with respect" to Barclays' financial results for periods subsequent to December 31, 2007; and (iv) accordingly, PwC made "no representations as to the sufficiency of [its] procedures for [the Underwriters'] purposes." *Id.* at UW_Barclays_000010059-60. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶238-245, 355-363, 365-366, 369-370.

26. PwC consented to the inclusion of its audit opinions in the Series Offering Materials. Musoff Ex. 13, Prospectus Supplement at 55.

Response: Not disputed that PwC issued an unqualified audit opinion as to Barclays' 2007 consolidated financial statements only. Not disputed that PwC's unqualified audit opinion does not include any other portions of the 2007 Form 20-F. Not disputed that the PwC audit opinion does not apply to financial results or internal controls after December 31, 2007. Disputed that any "audit opinions" other than the PwC audit opinion referenced in the 2007 Form 20-F at 147-48 were included in the Series 5 Offering Materials. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶238-245, 355-363, 365-366, 369-370.

27. The Underwriters received a disclosure opinion letter and a validity opinion letter from Barclays' United States Counsel, S&C, both dated April 11, 2008. McSpadden Ex. 37 at

UW_Barclays_000011353, UW_Barclays_000011361. In its disclosure opinion letter, S&C represented, among other things, that during the course of its assignment it had reviewed the Series 5 Offering Materials and determined that they did not contain “any untrue statement of a material fact or omit[] to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.” *Id.* at UW_Barclays_000011357. In its validity opinion letter, S&C noted that it had reviewed the Series 5 Offering Materials and opined that the offering was valid under United States federal and New York state law. *Id.* at UW_Barclays_000011361-1367.

Response: Not disputed that the letters referenced in this paragraph were received on April 11, 2008. Not disputed that the cited language appears in the cited document. Disputed as to whether the Series 5 Offering Materials contained any untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. Disputed as to whether the Series 5 Offering Materials complied with the federal securities laws. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶405-406.

28. The Underwriters received a bring-down validity opinion letter from S&C dated April 22, 2008. McSpadden Ex. 38 at UW_Barclays_000010506. In its bring-down validity opinion letter, S&C reaffirmed the validity of the offering under United States federal and New York state law as of April 22, 2008. *Id.* at UW_Barclays_000010507-0512.

Response: Not disputed.

29. The Underwriters received a tax opinion letter and a validity opinion letter from Barclays’ English Counsel, Clifford Chance, both dated April 11, 2008. McSpadden Ex. 37 at UW_Barclays_000011294, UW_Barclays_000011339. In its tax opinion letter, Clifford Chance

noted that it had reviewed Series 5 Offering Materials and opined that the offering was in compliance with United Kingdom tax law. *Id.* at UW_Barclays_000011296. In its validity opinion letter, Clifford Chance noted that they had reviewed Series 5 Offering Materials and opined that the offering was valid under English Law. *Id.* at UW_Barclays_000011342-1343.

Response: Not disputed.

30. The Underwriters received a bring-down validity opinion and bring-down tax opinion from Clifford Chance, both dated April 22, 2008. McSpadden Ex. 38 at UW_Barclays_000010492, UW_Barclays_000010502. In its bring-down validity opinion, Clifford Chance reaffirmed that the offering was valid under English law as of April 22, 2008. *Id.* at UW_Barclays_000010495-0497. In its bring-down tax opinion letter, Clifford Chance reaffirmed that the offering was in compliance with United Kingdom tax law as of April 22, 2008. *Id.* at UW_Barclays_000010503.

Response: Not disputed.

31. The Underwriters received a disclosure opinion letter and a validity opinion letter from underwriters' counsel, Linklaters, both dated April 11, 2008. McSpadden Ex. 37 at UW_Barclays_000011349, UW_Barclays_000011351. Linklater's disclosure opinion letter stated that Linklaters had reviewed the Series 5 Offering Materials and had engaged in discussions with representatives of Barclays, Barclays' accountants, and Barclays' US and UK counsel and engaged in further enquiries and procedures as deemed necessary. *Id.* at UW_Barclays_000011349-1350. Based on this work, and based on its understanding and experience with United States federal securities laws, including the Securities Act of 1933, Linklaters opined that, at the time of the offering, nothing had come to its attention to cause it to believe that the Series 5 Offering Materials "contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading." *Id.* at

UW_Barclays_000011350. In its validity opinion letter, Linklaters noted that it had reviewed the Series 5 Offering Materials and opined that the offering was valid under United States and New York law. *Id.* at UW_Barclays_000011351-1352.

Response: Not disputed that the letters referenced in this paragraph were received on April 11, 2008. Not disputed that the cited language appears in the cited document. Disputed as to the basis for the Linklaters opinion. Plaintiffs also object in that the cited document constitutes hearsay and speculation. Fed. R. Evid. 602, 802. Disputed as to whether at the time of the offering, nothing had come or should have come to Linklaters' attention to cause it to believe that the Series 5 Offering Materials "contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading." Disputed as to whether the Series 5 Offering Materials complied with the federal securities laws. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶407-409.

32. The Underwriters received a bring-down validity opinion letter from Linklaters dated April 22, 2008. McSpadden Ex. 38 at UW_Barclays_000010504. In its bring-down validity opinion letter, Linklaters reaffirmed its opinion that the offering was valid under United States and New York law. *Id.* at UW_Barclays_000010504-0505.

Response: Not disputed that the letter referenced in this paragraph was received on April 22, 2008. Disputed as to whether the Series 5 Offering Materials complied with the federal securities laws.

33. In connection with the Series 5 Offering, the Underwriters received a certification from Barclays' management team dated April 11, 2008. McSpadden Ex. 39. The April 11 management certification stated, among other things, that Barclays' management had "carefully

examined” the Series 5 Offering Materials and that they “did not include any untrue statement of a material fact and did not omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading.” *Id.* at UW_Barclays_000003570.

Response: Not disputed that the certification referenced in this paragraph was received on April 11, 2008. Not disputed that the cited language appears in the cited document. Disputed as to whether the Series 5 Offering Materials “include[d] any untrue statement of a material fact and did not omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading.” Further, plaintiff respectfully refers the Court generally to Plaintiff’s Opposition to the Barclays Defendants’ Motion for Summary Judgment.

34. The underwriters received a bring-down certification from Barclays’ management team dated April 22, 2008. McSpadden Ex. 40. The April 22 bring-down management certification reaffirmed, among other things, that Barclays’ management had “carefully examined” the Series 5 Offering Materials and that they “did not include any untrue statement of a material fact and did not omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading.” McSpadden Ex. 40 at UW_Barclays_000004084.

Response: Not disputed that the certification referenced in this paragraph was received on April 22, 2008. Not disputed that the cited language appears in the cited document. Disputed as to whether the Series 5 Offering Materials “include[d] any untrue statement of a material fact and did not omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading.” Further, plaintiff respectfully refers the Court generally to Plaintiff’s Opposition to the Barclays Defendants’ Motion for Summary Judgment.

35. On April 3, 2008, the Joint Lead Underwriters and Senior Co-Manager participated in a business due diligence call with representatives of Barclays’ management team (the “Business Due

Diligence Call”). McSpadden Decl. ¶ 28; McLeland Decl. ¶ 10; Doyle Decl. ¶ 15; Hurley Decl. ¶ 12; Vonta Decl. ¶ 13; Slyz Decl. ¶ 14; McSpadden Ex. 22. Linklaters also participated in the call. Ludwick Decl. ¶ 8. The questions posed to Barclays on the call were answered to the satisfaction of the participating Underwriters. McSpadden Decl. ¶ 29; McLeland Decl. ¶ 11; Doyle Decl. ¶ 16; Hurley Decl. ¶ 13; Vonta Decl. ¶ 14; Slyz Decl. ¶ 15.

Response: Not disputed that the call referenced in this paragraph took place. Disputed as to whether the “questions posed to Barclays on the call were answered to the satisfaction of the participating Underwriters” and whether such satisfaction was reasonable under the circumstances. Disputed as to the manner in which each underwriter “participated” on the call. The “questions” were prepared and provided to Barclays before the call. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶267-271, 287-322.

36. The questions posed to Barclays’ management during the Business Due Diligence call included, among others:

- Item 11: “Please discuss the current state/quality of the consolidated fixed-income securities portfolio. How is the portfolio valued, marked-to-market and/or marked-to-model? Please provide the split between the two valuation methods. Please comment on the level of writedowns in 2007, and any expectation for further writedowns in 2008.”
- Item 12: “Does this portfolio capture the Bank’s entire exposure to CDOs, CLOs, SIVs, conduits, ABS, sub-prime mortgage assets and other structured credit products? Would all of these be located on-balance sheet? If not, how much is located off-balance sheet. Are there any off-balance sheet vehicles (e.g., SIVs) that the Bank is contemplating moving on to the balance sheet?”
- Item 13: “In the near-term, does management anticipate the need to make any further writedowns for any of the other above products?”
- Item 16: “Please discuss the Group’s exposure to monolines, either direct or indirect.”
- Item 22: “Please discuss the Bank’s current BIS ratios (Tier 1 and Total Capital).”

- Item 23: “Please provide an outline of the capital requirements of the Bank.”

McSpadden Ex. 22.

Response: Disputed as to whether each of these questions was posed to Barclays’ management during the call. The “questions” were prepared and provided to Barclays before the call. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶267-271, 287-322, 414-430.

37. On April 3, 2008, the Joint Lead Underwriters and Senior Co-Manager participated in an accounting due diligence call with Barclays’ auditors, PwC (the “Accounting Due Diligence Call”). McSpadden Decl. ¶ 28; McLeland Decl. ¶ 10; Doyle Decl. ¶ 15; Hurley Decl. ¶ 12; Vonta Decl. ¶ 13; Slyz Decl. ¶ 14; McSpadden Ex. 23. Linklaters also participated in the call. Ludwick Decl. ¶ 8. The questions posed to PwC on the call were answered to the satisfaction of the participating Underwriters. McSpadden Decl. ¶ 29; McLeland Decl. ¶ 11; Doyle Decl. ¶ 16; Hurley Decl. ¶ 13; Vonta Decl. ¶ 14; Slyz Decl. ¶ 15.

Response: Not disputed that the call referenced in this paragraph took place. Disputed as to whether the “questions posed to PwC on the call were answered to the satisfaction of the participating Underwriters” and whether such satisfaction was reasonable under the circumstances. Disputed as to the manner in which each underwriter “participated” on the call. There is no evidence whatsoever of what transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶323-325.

38. The questions posed to PwC during the Accounting Due Diligence call included, among others:

- Item 12: “Describe any significant post FYE 2007 events which have or are likely to occur relating to the Group.”

- Item 13: “Please describe PwC’s involvement in the preparation of the Barclays Capital FYE 2007 financials. Can you describe the methodology used in determining the amounts of the write downs (including any netting) and whether it is in accordance with IFRS and US GAAP (to the extent applicable). Have any additional write downs been taken or contemplated since the end of December 2007?”

Item 16: “Describe anything which has come to the attention of PricewaterhouseCoopers LLP over the last five years or since the Bank’s last financial year which materially impacts on the fairness or reliability of a previous audit report or the underlying financial information or which will affect the audit report or financial statements for the current or subsequent financial years.”

McSpadden Ex. 23.

Response: Disputed as to whether each of the listed questions was posed to, or addressed by, PwC. There is no evidence whatsoever of what transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶323-325, 355-363, 365-366.

39. On April 8, 2008, the Joint Lead Underwriters, Senior Co-Manager and RBC participated in a pre-pricing bring down due diligence call with representatives of Barclays’ management team (the “Pre-Pricing Due Diligence Call”). McSpadden Decl. ¶ 28; McLeland Decl. ¶ 10; Doyle Decl. ¶ 15; Hurley Decl. ¶ 12; Vonta Decl. ¶ 13; Slyz Decl. ¶ 14; Harris Decl. ¶ 9; McSpadden Ex. 24. Linklaters also participated in the call. Ludwick Decl. ¶ 8. The questions posed to Barclays on the call were answered to the satisfaction of the participating Underwriters. McSpadden Decl. ¶ 29; McLeland Decl. ¶ 11; Doyle Decl. ¶ 16; Hurley Decl. ¶ 13; Vonta Decl. ¶ 14; Slyz Decl. ¶ 15; Harris Decl. ¶ 10.

Response: Disputed as to whether the “questions posed to Barclays on the call were answered to the satisfaction of the participating Underwriters” and whether such satisfaction was reasonable under the circumstances. Disputed as to the manner in which each underwriter “participated” on the call. There is no evidence whatsoever of what transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶326-337.

40. The questions posed to Barclays' management during the Pre-Pricing Due Diligence call included, among others:

- Item 2: "Are there any further material updates for YTD earnings, asset quality trends or asset valuation including any updates on exposures within Barclays Capital?"
- Item 3: "Have there been, or are there contemplated, any additional write-downs of assets in any division of Barclays Bank?"
- Item 4: "Have you reviewed the Prospectus Supplement (along with the Prospectus) and are there any misstatements or omissions that you believe should be addressed? Are you comfortable that the Prospectus Supplement, the Prospectus and the incorporated documents fully present the risks now applicable to Barclays Bank?"
- Item 5: "Are there any areas that we have not covered, which may be material in the context of this issuance, which you should bring to our attention?"

McSpadden Ex. 24.

Response: Disputed as to whether these questions were posed to Barclays' management during the call. There is no evidence whatsoever of what transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶296-299, 303, 326-337.

41. On April 8, 2008, the Joint Lead Underwriters participated in a financial due diligence call with Jonathan Britton, Global Controller and Head of Treasury at Barclays (the "Financial Due Diligence Call"). McSpadden Decl. ¶ 28; McLeland Decl. ¶ 10; Doyle ¶ 15; Hurley Decl. ¶ 12; Vonta Decl. ¶ 13; McSpadden Exs. 25, 26. Linklaters also participated in the call. Ludwick Decl. ¶ 8. The questions posed to Jonathan Britton on the call were answered to the satisfaction of the participating Underwriter. McSpadden Decl. ¶ 29; McLeland Decl. ¶ 11; Doyle Decl. ¶ 16; Hurley Decl. ¶ 13; Vonta Decl. ¶ 14.

Response: Disputed as to whether the "questions posed to Jonathan Britton on the call were answered to the satisfaction of the participating Underwriter" and whether such satisfaction was reasonable under the circumstances. Disputed as to the manner in which each underwriter

“participated” on the call. There is no evidence whatsoever of what transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶335-337.

42. The questions posed to Jonathan Britton during the Financial Due Diligence Call included, among others:

- “Are there any post balance sheet date events to disclose that have not already been disclosed in the Form 20-F? Are there any new acquisitions or disposals which are planned and which have not been disclosed to the market?”
- “When are March flash results or other accounts available?”
- “Are you able to comment on changes in revenue, net interest income, or profit before tax for the period since 1 January 2008 compared to the corresponding period in the prior year, as well as changes in liabilities and net assets since 31 December 2007? We are most interested in changes in profit before tax, which we understand is down 9.4% on a Group basis (and 9.9% on an issuer basis) from January/February 2008 to the same period in 2007. Can you please clarify what the trend looks like since the end of February? Can you provide a specific figure as to what the decline is, and if not why not? (PWC has said they are unable to specify a figure). If specific figures are not available, can you provide an estimate of the magnitude of any such changes? In other words, if you compare the period from 1 January 2008 to 4 April 2008 to the same period in the prior year, what is the decline in profit before tax (or what is your estimate of such decline)?”
- “What are the primary drivers of the decline in profit before tax (ie what parts of the business)? Are there adverse developments occurring that Barclays think will be regarded as a surprise by investors?”
- “Have there been any changes or expected changes in impairments and write-offs since year-end 2007? Do you expect to make any public announcements regarding additional write downs and impairments and if so when?”
- “Are there any developments or announcements which may occur or be made over the next few months of which investors should be aware, or any other facts, positive or negative, on which you wish to comment?”
- “Is there anything material that has not been disclosed which is likely to be of concern to investors, bearing in mind Barclays’ responsibility to ensure the prospectus contains all information necessary to enable investors to make an informed assessment of Barclays?”
- “Can you confirm that the prospectus supplement does not contain a material misstatement or omit to state a material fact necessary to make the statements in the prospectus not misleading?”

- “Have there been any material adverse trends in any of the following since 31 December 2007 which are not disclosed in the Form 20-F?”

McSpadden Ex. 25.

Response: Disputed as to whether each of these questions was posed to Jonathan Britton during the call. There is no evidence whatsoever of what transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶274-279, 296-299, 303, 335-337, 414-442.

43. On April 11, 2008, the Joint Lead Underwriters, Senior Co-Manager and RBC participated in a pre-settlement bring down due diligence call with representatives of Barclays’ management team (the “Pre-Settlement Due Diligence Call”). McSpadden Decl. ¶ 28; McLeland Decl. ¶ 10; Doyle Decl. ¶ 15; Hurley Decl. ¶ 12; Vonta Decl. ¶ 13; Slyz Decl. ¶ 14; Harris Decl. ¶ 9; McSpadden Ex. 27. Linklaters also participated in the call. Ludwick Decl. ¶ 8. The questions posed to Barclays on the call were answered to the satisfaction of the participating Underwriters. McSpadden Decl. ¶ 29; McLeland Decl. ¶ 11; Doyle Decl. ¶ 16; Hurley Decl. ¶ 13; Vonta Decl. ¶ 14; Slyz Decl. ¶ 15; Harris Decl. ¶ 10.

Response: Disputed as to whether the “questions posed to Barclays on the call were answered to the satisfaction of the participating Underwriters” and whether such satisfaction was reasonable under the circumstances. Disputed as to the manner in which each underwriter “participated” on the call. There is no evidence whatsoever of what exactly transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶385-393.

44. The questions posed to Barclays’ management during the Pre-Settlement Due Diligence Call included, among others:

- Item 2: “Are there any further material updates for YTD earnings, asset quality trends or asset valuation including any updates on exposures within Barclays Capital?”

- Item 3: “Have there been, or are there contemplated, any additional write-downs of assets in any division of Barclays Bank?”
- Item 4: “Have you reviewed the Prospectus Supplement (along with the Prospectus) and are there any misstatements or omissions that you believe should be addressed? Are you comfortable that the Prospectus Supplement, the Prospectus and the incorporated documents fully present the risks now applicable to Barclays Bank?”
- Item 5: “Are there any areas that we have not covered, which may be material in the context of this issuance, which you should bring to our attention?”

McSpadden Ex. 27.

Response: Disputed as to whether each of these questions was posed to Barclays’ management during the call. There is no evidence whatsoever of what exactly transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶296-299, 303, 385-393, 414-442.

45. On April 22, 2008, the Joint Lead Underwriters and Senior Co-Manager participated in a Greenshoe pre-settlement bring down due diligence call with representatives of Barclays’ management team (the “Greenshoe Pre-Settlement Due Diligence Call”). McSpadden Decl. ¶ 28; McLeland Decl. ¶ 10; Doyle Decl. ¶ 15; Hurley Decl. ¶ 12; Vonta Decl. ¶ 13; Slyz Decl. ¶ 14; McSpadden Ex. 28. Linklaters also participated in the call. Ludwick Decl. ¶ 8. The questions posed to Barclays on the call were answered to the satisfaction of the participating Underwriters. McSpadden Decl. ¶ 29; McLeland Decl. ¶ 11; Doyle Decl. ¶ 16; Hurley Decl. ¶ 13; Vonta Decl. ¶ 14; Slyz Decl. ¶ 15; Harris Decl. ¶ 10.

Response: Disputed as to whether the “questions posed to Barclays on the call were answered to the satisfaction of the participating Underwriters” and whether such satisfaction was reasonable under the circumstances. Disputed as to the manner in which each underwriter “participated” on the call. There is no evidence whatsoever of what transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶394-404.

46. The questions posed to Barclays' management during the Greenshoe Pre-Settlement Due Diligence call included, among others:

- Item 2: "Are there any further material updates for YTD earnings, asset quality trends or asset valuation including any updates on exposures within Barclays Capital?"
- Item 3: "Have there been, or are there contemplated, any additional write-downs of assets in any division of Barclays Bank?"
- Item 4: "Are there any areas that we have not covered, which may be material in the context of this issuance, which you should bring to our attention?"

McSpadden Ex. 28.

Response: Disputed as to whether each of these questions was posed to Barclays' management during the call. There is no evidence whatsoever of what transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶296-299, 394-404, 414-442.

47. The Underwriters were represented in connection with the Series 5 Offering by Linklaters. Ludwick Decl. ¶ 2. Linklaters assembled a team of attorneys to assist with its engagement by the underwriters in connection with the Series 5 Offering. Ludwick Decl. ¶ 6.

Response: Not disputed.

48. Linklaters served as underwriters' counsel in connection with the Series 1 Offering and the Series 2 Offering. Ludwick Decl. ¶ 5. As such, Linklaters was familiar with Barclays prior to its engagement as underwriters' counsel on the Series 5 Offering. *Id.*

Response: Not disputed that Linklaters served as counsel for the underwriters in connection with the Series 1 and Series 2 Offerings. Disputed as to the level of Linklaters' familiarity with Barclays prior to its engagement as underwriters' counsel in connection with the Series 5 Offering, or that Linklaters' purported familiarity with Barclays obtained in connection with the Series 1 and

Series 2 Offerings has any relevance to their role in connection with the Series 5 Offering, or reasonableness of any reliance placed on Linklaters' work by the Underwriters in connection with their obligation to perform appropriate due diligence in connection with the Series 5 Offering. Plaintiff objects to the use of this evidence because the Underwriters refused to produce in discovery documents or testimony on securities offerings other than the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶446-453.

49. Linklaters was engaged to represent the Series 5 Underwriters in early March 2008 and began conducting its due diligence shortly thereafter. Ludwick Decl. ¶ 6.

Response: Not disputed.

50. Linklaters prepared the due diligence questionnaire for the April 8, 2008 Financial Due Diligence Call. *See* McSpadden Ex 25.

Response: Disputed. McSpadden Ex. 25 is an e-mail from Barclays Capital to Citi and Linklaters, and does not establish the questions attached to the e-mail were all prepared by Linklaters. Plaintiff objects to the attachment as it lacks foundation and is hearsay for the purpose for which it is offered. Fed. R. Evid. 802, 901.

51. Linklaters participated in the Series 5 Due Diligence Calls. Ludwick Decl. ¶ 8.

Response: Not disputed.

52. Linklaters reviewed and provided comments on the draft prospectus supplement prepared by S&C. Ludwick Decl. ¶ 9.

Response: Not disputed.

53. In its role as Underwriters' counsel, Linklaters communicated with PwC regarding delivery of a comfort letter and bring-down comfort letter from PwC to the Underwriters. Ludwick Decl. ¶ 10; McSpadden Exs. 56, 59. Linklaters provided to PwC the "circled-up" items on Barclays

2007 Form 20-F on which the Underwriters sought comfort. Ludwick Decl. ¶ 11; McSpadden Exs. 41, 51. PwC “tied out” these items as an appendix to its comfort letters. Ludwick Decl. ¶ 11; McSpadden Exs. 42, 43, 51, 56, 59. Linklaters provided comments on behalf of the Underwriters to PwC concerning PwC’s comfort letters. Ludwick Decl. ¶ 10; McSpadden Exs. 42, 45, 51. Linklaters shared with the Underwriters both its comments to PwC and PwC’s responses. Ludwick Decl. ¶ 10; McSpadden Exs. 42, 45, 50, 51.

Response: Not disputed that Linklaters and PwC communicated concerning a comfort letter. Disputed as to what PwC did as it is offered as hearsay by the declarant. Fed. R. Evid. 802. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶355-363, 365-366, 369-370.

54. In connection with the Series 5 Offering, Linklaters reviewed legal opinions from Barclays’ United States counsel, S&C, and Barclays’ English counsel, Clifford Chance, addressed to the Underwriters. Ludwick Decl. ¶ 13; McSpadden Exs. 37, 38.

Response: Not disputed that legal opinions from S&C and Clifford Chance dated April 11, 2008 were issued to the Underwriters in connection with the Series 5 Offering. Disputed as to the accuracy of the findings presented in the legal opinions from Barclays’ counsel. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶405-409.

55. Linklaters issued to the Underwriters a disclosure opinion letter dated April 11, 2008, a validity opinion letter dated April 11, 2008 and a bring-down validity opinion dated April 22, 2008. Ludwick Decl. ¶ 14; McSpadden Exs. 37, 38.

Response: Not disputed.

56. Citi provides investment banking and financial advisory services, including underwriting, firm offer equity and debt financings, asset transactions, private equity, institutional

sales and trading and mergers and acquisitions advisory services, among other services. McSpadden Decl. ¶ 2.

Response: Not disputed.

57. Citi served as the lead underwriter for the Series 5 Offering, and had the primary responsibility for organizing the steps required to complete the transaction, leading the due diligence efforts of the Underwriters and serving as the physical bookrunner. McSpadden Decl. ¶ 3; McSpadden Dep. at 17:8-18:3, 19:19-21:10, 121:15-123:17. A physical bookrunner is responsible for billing and delivering the shares at the end of the offering process – the physical process of receiving money from the investors in an account and delivering the shares out to the investors. McSpadden Dep. at 18:9-19:5.

Response: Not disputed.

58. Prior to the Series 5 Offering, Citi served as an underwriter on:

- the Series 1 Offering;
- the Series 2 Offering;
- the Series 3 Offering;
- the Series 4 Offering;
- the September 2007 Senior Notes Offering;
- the Second September 2007 Senior Notes Offering;
- the September 2007 Floating Rate Notes Offering;
- an offering of by Barclays of \$750 million floating rate subordinated step-up callable notes due 2016 conducted in June 2006;
- an offering by Barclays of \$1.35 billion 5.926% step-up callable perpetual reserve capital instruments conducted in September 2006;
- an offering by Barclays of \$1.25 billion 7.434% step-up callable perpetual reserve capital instruments conducted in September 2007; and

- an offering by Barclays of \$1.25 billion 6.050% subordinated lower tier 2 debt conducted in November 2007.

McSpadden Decl. ¶ 4.

Response: Not disputed.

59. Citi assembled a team of individuals familiar with Barclays and its business to participate in the Series 5 Offering. McSpadden Decl. ¶ 18. Below are the individuals at Citi who participated in the Series 5 Offering. *Id.* The chart indicates in the columns labeled “Series 4” and “Series 3” whether each individual was also staffed on the Series 4 Offering and/or Series 3 Offering, respectively. *Id.* Citi’s staffing of the Series 5 Offering with personnel that worked on these prior offerings enhanced Citi’s due diligence in connection with the Series 5 Offering, allowing Citi to more readily build upon its prior due diligence for purposes of the Series 5 Offering. *Id.*

Name	Title	Series 4	Series 3
Fixed Income Capital Markets – FIG (New York & Europe)			
Peter Aherne	Managing Director, Head Of North American Fixed Income Capital Markets	X	X
Leo-Hendrik Greve	Managing Director, Head Of Northern European Financial Institutions	X	X
Peter J. Mason	Director, Financial Institutions Capital Markets	X	X
Laura Drumm	VP, Financial Institutions Capital Markets	X	X
Chris K. White	Analyst	X	X
Derrick Deese	Analyst, Financial Institutions North America	X	
New Products Group (New York & London)			
John Dickey	Managing Director, Head Of Global Markets	X	X
Simon McGeary	Managing Director, New Products Group Europe, Head Of Financial Institutions	X	X
Stanley Louie	Director		
Deborah Anne Keat	Vice President		

Anastasia Letina	Associate	X	X
Laura Stephenson	Analyst	X	X
Jakob Midander	Analyst		
Syndicate (New York)			
Melissa Motherway	Managing Director, Head Of US Retail Syndicate	X	X
Matt Land	Associate, US Retail Syndicate	X	X
Corporate Bank (London)			
David Walker	Managing Director		
James Reid	Analyst		
Transaction Execution Group (New York)			
Jack D. McSpadden	Managing Director, Head of Transaction Execution Group	X	X
Chandru Harjani	Vice President	X	X
Bogdan Ciobanu	Analyst	X	X
Transaction Execution Group (London)			
Alastair Rose-Smith	Vice President		
Peter Siekel	Associate		
Legal			
Darrell Bridgers	Senior Vice President	X	X
Jane Pakenham	Paralegal	X	X

Id.

Response: Disputed as to the extent of Citi’s “familiar[ity]” with “Barclays and its business.” Disputed that each of the individuals identified as having worked on the Series 5 Offering for Citi performed due diligence work in connection with the Series 5 Offering (as opposed to other work), and the adequacy and reasonableness of the due diligence performed under the circumstances. Disputed as to whether any of the individuals identified as having worked on the Series 5 Offering for Citi also worked on the Series 3 and/or Series 4 Offerings. Disputed as to what extent, if any, “Citi’s staffing of the Series 5 Offering with personnel that worked on these prior offerings enhanced Citi’s due diligence in connection with the Series 5 Offering, allowing Citi to more readily build

upon its prior due diligence for purposes of the Series 5 Offering.” Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶446-453.

60. The due diligence activities undertaken and institutional knowledge gained by one business group at Citi are often leveraged by other business groups to enhance Citi’s reservoir of knowledge on its client. McSpadden Decl. ¶ 5. In addition to acting as an underwriter on offerings of securities made by Barclays, Citi provides and provided at the time of the Series 5 Offering additional investment banking and commercial lending services to Barclays and affiliated entities. *Id.* For example, at the time of the Series 5 Offering, Citi provided numerous credit facilities to Barclays. *Id.*; McSpadden Ex. 9 at UW_Barclays_0000001255. As another example, in 2007, Citi provided advisory services to Barclays in connection with a bid made by Barclays for ABN AMRO. McSpadden Decl. ¶ 5; McSpadden Ex. 9 at UW_Barclays_0000001255. In addition, Citi performs and performed at the time of the Series 5 Offering extensive “know your customer” diligence on Barclays. McSpadden Decl. ¶ 5. These additional contact points between Citi and Barclays provided Citi with additional institutional knowledge relating to Barclays and its business. *Id.*

Response: Disputed as to whether Citi conducts, and at the time of the Series 5 Offering, conducted regular and ongoing due diligence of Barclays, and the adequacy and reasonableness of such due diligence as it relates to the Series 5 Offering. Disputed as to the extent of Citi’s “reservoir of knowledge” and “institutional knowledge relating to Barclays and its business.” Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶446-453.

61. In addition to the transactional due diligence performed in connection with the prior offerings listed above, Citi conducts, and conducted at the time of the Series 5 Offering, regular and continuous due diligence on Barclays and its business. McSpadden Decl. ¶ 6. The nature of this continuous due diligence includes, for example, examining periodic and other filings made by

Barclays with the SEC, monitoring media reports, market alerts and news reports relating to Barclays, reviewing credit agency reports covering Barclays and circulating internal updates covering Barclays. *Id.* Citi also prepares and prepared at the time of the Series 5 Offering periodic research reports covering Barclays. *Id.* As an example, Citi prepared a February 20, 2008 equity research report covering Barclays (the “February 20, 2008 Research Report”). *Id.*; *see* McSpadden Ex. 1.

Response: Disputed as to whether Citi conducted adequate due diligence in connection with the Series 5 Offering. Disputed as to the extent of Citi’s due diligence on prior offerings. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶374-377, 446-453.

62. At the time of the Series 5 Offering, David Walker in Citi’s Corporate Bank in London served as Citi’s primary relationship manager with Barclays. McSpadden ¶ 7. Mr. Walker was consulted in connection with the Series 5 Offering and was member of Citi’s Series 5 working group. *Id.* Mr. Walker’s involvement in the Series 5 Offering enhanced Citi’s diligence in connection with the Series 5 Offering by allowing Citi to more readily draw upon its reservoir of institutional knowledge relating to Barclays. *Id.*

Response: Disputed as to whether Citi conducted adequate due diligence in connection with the Series 5 Offering. Disputed regarding the extent of Citi’s “reservoir of institutional knowledge relating to Barclays.” Disputed as to what extent “Mr. Walker’s involvement in the Series 5 Offering enhanced Citi’s diligence in connection with the Series 5 Offering by allowing Citi to more readily draw upon its reservoir of institutional knowledge relating to Barclays.” Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶446-453.

63. Citi's due diligence in connection with the Series 5 Offering drew upon and was informed by Citi's ongoing due diligence of Barclays, its due diligence in connection with the prior offerings listed above and its institutional familiarity with Barclays. McSpadden Decl. ¶ 8.

Response: Disputed as to what extent, if any, Citi's due diligence in connection with the Series 5 Offering drew upon and was informed by its purported prior and ongoing due diligence and the adequacy and reasonableness of Citi's reliance on such adequate due diligence in connection with the Series 5 Offering. Disputed regarding the extent of Citi's "institutional familiarity with Barclays." Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶446-453.

64. Citi's participation in the Series 5 Offering was contingent on internal approval from Citi's commitment committee. McSpadden Decl. ¶ 16. The commitment committee review process at Citi entails consideration of risks associated with a particular securities issuance and securities issuer for purposes of determining whether or not the company should participate in a particular securities offering. *Id.* Citi's participation in the Series 5 Offering was approved by its commitment committee. *Id.*

Response: Not disputed that Citi's participation in the Series 5 Offering was contingent upon internal approval from its commitment committee, but disputed as to what the commitment committee review process at Citi entails. Disputed as to the role of the commitment committee's review in connection with the due diligence Citi performed with respect to the Series 5 Offering, and the adequacy and reasonableness of Citi's due diligence under the circumstances. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶272-273.

65. Citi actively participated in and contributed to the collective due diligence efforts in connection with the Series 5 Offering in, among others, the following ways:

- participating in a "kick-off" call and a series of update calls with representatives from Barclays, BCSL, Linklaters, S&C and Clifford Chance;

- drafting and circulating due diligence call questionnaires;
- participating in the Series 5 Due Diligence Calls;
- reviewing interim and final drafts of the Prospectus Supplement and any documents incorporated by reference therein;
- reviewing interim and final drafts of the comfort letter and bring-down comfort letter provided by PwC;
- reviewing the opinion letters reviewed by provided by Barclays' United States counsel, S&C, and Barclays' English counsel, Clifford Chance;
- reviewing the opinion letters provided by Underwriters' counsel, Linklaters; and
- reviewing the management certifications provided by Barclays' management team.

McSpadden Decl. ¶¶ 22-27, 28, 30-39, 48-50; McSpadden Exs. 13-24, 26-35, 37-40, 43-44, 49-50, 53-59.

Response: Not disputed that Citi “participated in and contributed to” the listed activities. Disputed as to whether Citi conducted adequate due diligence in connection with the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶ 287. 293-316, 414-430.

66. Citi relied on PwC’s opinions regarding Barclays’ 2007 audited financial statements and Barclays’ statements regarding effective internal control over financial reporting. McSpadden Decl. ¶ 70.

Response: Not disputed that PwC issued an unqualified audit report as to Barclays’ 2007 consolidated financial statements only. Not disputed that PwC’s unqualified audit opinion does not include any other portions of the 2007 Form 20-F. Not disputed that the statement concerning “internal control[s]” is in the PwC audit report. Not disputed that the PwC audit opinion does not apply to financial results or internal controls after December 31, 2007. Disputed that PwC offered

an opinion on statements made by Barclays regarding its internal controls over financial reporting. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶238-245.

67. Citi did not believe the expertised portions of the Series 5 Offering Materials were untrue or omitted to state a material fact. McSpadden Decl. ¶ 71.

Response: Not disputed insofar as the "expertised portions" referenced in this paragraph only refer to Barclays' 2007 consolidated financial statements in the 2007 Form 20-F on which PwC issued an unqualified audit opinion. Disputed to the extent "expertised portions" as referenced in this paragraph include anything else. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶238-245, 355-363, 365-366, 369-370.

68. Citi believed that the non-expertised portions of the Series 5 Offering Materials were true and contained no material omissions. McSpadden Decl. ¶ 71.

Response: Disputed as to whether Citi conducted adequate due diligence in connection with the Series 5 Offering. Disputed as to whether Citi believed or had reason to believe "the non-expertised portions of the Series 5 Offering Materials were true and contained no material omissions," and whether any such belief was reasonable under the circumstances. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶238-245, 355-363, 365-366, 369-370.

69. BCSL is an investment management firm and securities dealer, acting in a principal and agency capacity in UK domestic and international securities transactions and as a market maker in fixed interest securities. BCSL is based in London and operates as a subsidiary of Barclays. McLeland Decl. ¶ 3.

Response: Not disputed.

70. BCSL served as a Joint Lead Underwriter in connection with the Series 5 Offering. McLeland Decl. ¶ 2.

Response: Not disputed.

71. Prior to the Series 5 Offering, BCSL served as an underwriter on Barclays' Series 1 Offering; Series 2 Offering; Series 3 Offering; and Series 4 Offering. McLeland Decl. ¶ 4.

Response: Not disputed.

72. BCSL assembled a team of individuals familiar with Barclays to participate in the Series 5 Offering. McLeland Decl. ¶ 8. Below are the individuals at BCSL who participated in the Series 5 Offering. *Id.* The chart indicates in the columns labeled "Series 4" and "Series 3" whether each individual was also staffed on the Series 4 Offering and/or Series 3 Offering, respectively. *Id.* BCSL's staffing of the Series 5 Offering with personnel that worked on these prior offerings enhanced BCSL's due diligence in connection with the Series 5 Offering, allowing BCSL to more readily build upon its prior due diligence for purposes of the Series 5 Offering. *Id.*

Name	Title	Series 4	Series 3
London DCM			
Kathryn McLeland	Managing Director, Debt Capital Markets	X	X
Yenal Ghori	Manager, Debt Capital Markets	X	X
Tanja Gihir	Manager, Debt Capital Markets	X	X
London Legal And Documentation			
Simon Croxford	Director, Legal	X	X
Richard Johnson	Director, Legal	X	X
Belinda Vickery	Manager, Legal	X	X
New York Syndicate			
Mark Bamford	Managing Director, Head Of US Syndicate	X	X
Anne Daley-Gordon	Director, US Syndicate	X	X
Maureen O'Connor	Manager, US Syndicate	X	X
New York – Hybrid Capital Structuring			
Mark C. Graham	Managing Director, US Syndicate	X	
New York Legal And Documentation			
Bret Ganis	Assistant General Counsel, US Legal	X	X
Richard Smith	Director, US Legal	X	X

Id.

Response: Disputed as to the extent of BCSL’s “familiar[ity]” with Barclays’ business. Disputed that each of the individuals identified as having worked on the Series 5 Offering for Citi performed due diligence work in connection with the Series 5 Offering (as opposed to other work), and the adequacy and reasonableness of the due diligence performed under the circumstances. Disputed as to whether any of the individuals identified as having worked on the Series 5 Offering for BCSL also worked on the other listed offerings. Disputed as to whether BCSL conducted adequate due diligence in connection with the Series 5 Offering. Disputed as to what extent, if any, “BCSL’s staffing of the Series 5 Offering with personnel that worked on these prior offerings enhanced BCSL’s due diligence in connection with the Series 5 Offering, allowing BCSL to more readily build upon its prior due diligence for purposes of the Series 5 Offering.” Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶446-453.

73. BCSL’s due diligence in connection with the Series 5 Offering built upon its due diligence in connection with prior Barclays offerings. McLeland Decl. ¶ 5.

Response: Disputed as to whether BCSL conducted adequate due diligence in connection with the Series 5 Offering. Disputed regarding the extent of BCSL’s due diligence in connection with prior Barclays offerings. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶446-453.

74. Consistent with industry practice, Citi performed certain due diligence in connection with the Series 5 Offering on behalf of the underwriting syndicate, including BCSL. McLeland Decl. ¶ 6. BCSL monitored the due diligence performed by Citi in connection with the Series 5 Offering and at no point had any reason to believe that the due diligence performed by Citi was inadequate, nor did it have any reason to believe that additional due diligence was necessary. *Id.* In addition,

BCSL conducted its own due diligence in connection with the Series 5 Offering. McLeland Decl. ¶¶ 7.

Response: Disputed as to whether BCSL conducted adequate due diligence in connection with the Series 5 Offering. Disputed as to whether BCSL “had any reason to believe that the due diligence performed by Citi was inadequate.” Disputed as to whether BCSL had “any reason to believe that additional due diligence was necessary.” Disputed as to the extent “BCSL conducted its own due diligence in connection with the Series 5 Offering” and “BCSL monitored the due diligence performed by Citi.” Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶ 287, 293-316, 414-430.

75. BCSL actively participated in and contributed to the collective due diligence efforts in connection with the Series 5 Offering in, among others, the following ways:

- participating in a “kick-off” call and a series of update calls with representatives from Barclays, BCSL, Linklaters, S&C and Clifford Chance;
- reviewing due diligence call questionnaires;
- participating in the Series 5 Due Diligence Calls;
- reviewing interim and final drafts of the Prospectus Supplement and any documents incorporated by reference therein;
- reviewing interim and final drafts of the comfort letter and bring-down comfort letter provided by PwC;
- reviewing the opinion letters reviewed by provided by Barclays’ United States counsel, S&C, and Barclays’ English counsel, Clifford Chance;
- reviewing the opinion letters provided by Underwriters’ counsel, Linklaters; and
- reviewing the management certifications provided by Barclays’ management team.

McLeland Decl. ¶¶ 9, 10, 13, 15; McSpadden Exs. 13-19, 21-24, 26, 27, 28, 29-35, 37-40, 43-44, 49-50, 53-59.

Response: Not disputed that BCSL “participated in and contributed to” the activities listed. Disputed as to whether BCSL conducted adequate due diligence in connection with the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶287, 293-316, 405-409, 414-430.

76. BCSL relied on PwC’s opinions regarding Barclays’ 2007 audited financial statements and Barclays’ statements regarding effective internal control over financial reporting. McLeland Decl. ¶ 18.

Response: Not disputed that PwC issued an unqualified audit report as to Barclays’ 2007 consolidated financial statements only. Not disputed that PwC’s unqualified audit report does not include any other portions of the 2007 Form 20-F. Not disputed that the statement concerning “internal control[s]” is in the PwC audit report. Disputed that PwC offered an opinion on statements made by Barclays’ regarding its internal controls over financial reporting. Not disputed that the referenced “opinions” are as of December 31, 2007. Not disputed that the PwC audit report does not apply to financial results or internal controls after December 31, 2007. Disputed as to whether BCSL conducted adequate due diligence in connection with the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶238-245.

77. BCSL did not believe the expertised portions of the Series 5 Offering Materials were untrue or omitted to state a material fact. McLeland Decl. ¶ 19.

Response: Not disputed insofar as the “expertised portions” referenced in this paragraph only refer to Barclays’ 2007 consolidated financial statements in the 2007 Form 20-F on which PwC issued an unqualified audit opinion. Disputed to the extent “expertised portions” as referenced in this paragraph include anything else. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶238-245, 355-363, 365-366, 369-370.

78. BCSL believed that the non-expertised portions of the Series 5 Offering Materials were true and contained no material omissions. McLeland Decl. ¶ 19.

Response: Disputed as to whether BCSL conducted adequate due diligence in connection with the Series 5 Offering. Disputed as to whether BCSL believed or had reason to believe “the non-expertised portions of the Series 5 Offering Materials were true and contained no material omissions,” and whether any such belief was reasonable under the circumstances. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶238-245, 355-363, 365-366, 369-370.

79. Merrill Lynch served as a Joint Lead Underwriter in connection with the Series 5 Offering. Doyle Decl. ¶ 2.

Response: Not disputed.

80. Prior to the Series 5 Offering, Merrill Lynch served as an underwriter on Barclays’ Series 1 Offering; Series 2 Offering; and Series 4 Offering. Doyle Decl. ¶ 3.

Response: Not disputed.

81. Merrill Lynch assembled a team of individuals familiar with Barclays and its business to participate in the Series 5 Offering. Doyle Decl. ¶ 14. Below are the individuals at Merrill Lynch who participated in the Series 5 Offering. *Id.* The chart indicates in the columns labeled “Series 4” and “Series 2” whether each individual was also staffed on the Series 4 Offering and/or Series 2 Offering, respectively. *Id.* Merrill Lynch’s staffing of the Series 5 Offering with personnel that worked on these prior offerings enhanced Merrill Lynch’s due diligence in connection with the Series 5 Offering, allowing Merrill Lynch to more readily build upon its prior due diligence for purposes of the Series 5 Offering. *Id.*

Name	Title	Series 4	Series 3
FIG CM&F Europe			
Siddharth Prasad	Managing Director, Head of EMEA CM&F FIG		X

Matthew Pass	Managing Director	X	X
Julien Roman	Vice President	X	X
Robin Palmer	Senior Analyst	X	
FIG CM&F US			
Eric Wilson	Managing Director, Joint Head of US CM&F FIG	X	X
Christine MacDonald	Analyst, FIG CM&F Americas	X	
Lisa Grennon	Director, US Retail Syndicate	X	X
Ed Eighmey	Associate, US Retail Syndicate		
Chris Cote	Analyst, US Retail Syndicate		
New Product Development			
Alvaro Camara	Director		X
Sarah Davis	Vice President		
Global Transaction Management			
Rick Doyle	Managing Director	X	X
AJ Davidson	Director		
Office Of General Counsel			
Joseph DiCapua	Vice President, Senior Counsel		

Id.

Response: Disputed as to whether Merrill Lynch conducted adequate due diligence in connection with the Series 5 Offering. Disputed that each of the individuals identified as having worked on the Series 5 Offering for Citi performed due diligence work in connection with the Series 5 Offering (as opposed to other work), and the adequacy and reasonableness of the due diligence performed under the circumstances. Disputed as to whether any of the individuals identified as having worked on the Series 5 Offering for Merrill Lynch also worked on the other listed offerings. Disputed as to the extent of Merrill Lynch’s “familiar[ity]” with “Barclays and its business.” Disputed as to what extent “Merrill Lynch’s staffing of the Series 5 Offering with personnel that worked on these prior offerings enhanced Merrill Lynch’s due diligence in connection with the Series 5 Offering, allowing Merrill Lynch to more readily build upon its prior due diligence for purposes of the Series 5 Offering.” Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶446-453.

82. In addition to the due diligence performed in connection with the transactions listed above, Merrill Lynch conducts, and conducted at the time of the Series 5 Offering, regular and continuous due diligence on Barclays and its business. Doyle Decl. ¶ 4. The nature of this continuous due diligence includes, for example, publishing and reviewing analyst reports covering Barclays, examining periodic and other filings made by Barclays with the SEC, monitoring media reports, market alerts and news reports relating to Barclays, reviewing credit agency reports covering Barclays and circulating internal updates covering Barclays and the financial services industry. *Id.*

Response: Disputed as to whether Merrill Lynch conducts, and at the time of the Series 5 Offering, conducted regular and continuous due diligence of Barclays, and the adequacy and reasonableness of such due diligence as it relates to the Series 5 Offering. Disputed as to whether Merrill Lynch conducted adequate due diligence in connection with the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶446-453.

83. Merrill Lynch's due diligence in connection with the Series 5 Offering built upon its continuous due diligence of Barclays and its due diligence in connection with prior Barclays offerings. Doyle Decl. ¶ 5.

Response: Disputed as to whether Merrill Lynch conducts, and at the time of the Series 5 Offering, conducted regular and continuous due diligence of Barclays, and the adequacy and reasonableness of such due diligence as it relates to the Series 5 Offering. Disputed as to whether Merrill Lynch conducted adequate due diligence in connection with the Series 5 Offering. Disputed regarding the extent of Merrill Lynch's due diligence in connection with prior Barclays offerings. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶446-453.

84. Consistent with industry practice, Citi performed certain due diligence in connection with the Series 5 Offering on behalf of the underwriting syndicate, including Merrill Lynch. Doyle

Decl. ¶ 12. Merrill Lynch monitored the due diligence performed by Citi in connection with the Series 5 Offering and at no point had any reason to believe that the due diligence performed by Citi was inadequate, nor did it have any reason to believe that additional due diligence was necessary. *Id.* In addition, Merrill Lynch independently undertook its own due diligence efforts in connection with the Series 5 Offering. *Id.*

Response: Disputed as to whether Merrill Lynch conducted adequate due diligence in connection with the Series 5 Offering. Disputed as to whether Merrill Lynch “had any reason to believe that the due diligence performed by Citi was inadequate.” Disputed as to whether Merrill Lynch had “any reason to believe that additional due diligence was necessary.” Disputed as to the extent “Merrill Lynch independently undertook its own due diligence efforts in connection with the Series 5 Offering” and “monitored the due diligence performed by Citi.” Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶287, 293-316, 414-430.

85. Merrill Lynch actively participated in and contributed to the collective due diligence efforts in connection with the Series 5 Offering in, among others, the following ways:

- reviewing due diligence call questionnaires;
- participating in the Series 5 Due Diligence Calls;
- reviewing interim and final drafts of the Prospectus Supplement and any documents incorporated by reference therein;
- reviewing interim and final drafts of the comfort letter and bring-down comfort letter provided by PwC;
- reviewing the opinion letters reviewed by provided by Barclays’ United States counsel, S&C, and Barclays’ English counsel, Clifford Chance;
- reviewing the opinion letters provided by Underwriters’ counsel, Linklaters; and
- reviewing the management certifications provided by Barclays’ management team.

Doyle Decl. ¶¶ 16, 18, 19, 26; McSpadden Exs. 21-24, 26-28, 33-34, 37-40, 49-50, 53-59.

Response: Not disputed that Merrill Lynch “participated in and contributed to” the activities listed. Disputed as to whether Merrill Lynch conducted adequate due diligence in connection with the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶287, 293-316, 405-409, 414-430.

86. Merrill Lynch relied on PwC’s opinions regarding Barclays’ 2007 audited financial statements and Barclays’ statements regarding effective internal control over financial reporting. Doyle Decl. ¶ 21.

Response: Not disputed that PwC issued an unqualified audit report as to Barclays’ 2007 consolidated financial statements only. Not disputed that PwC’s unqualified audit report does not include any other portions of the 2007 Form 20-F. Not disputed that the statement concerning “internal control[s]” is in the PwC audit report. Not disputed that the referenced “opinions” are as of December 31, 2007. Not disputed that the PwC audit report does not apply to financial results or internal controls after December 31, 2007. Disputed that PwC offered an opinion on statements made by Barclays regarding its internal controls over financial reporting. Disputed as to whether Merrill Lynch conducted adequate due diligence in connection with the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶238-245.

87. Merrill Lynch did not believe the expertised portions of the Series 5 Offering Materials were untrue or omitted to state a material fact. Doyle Decl. ¶ 22.

Response: Not disputed insofar as the “expertised portions” referenced in this paragraph only refer to Barclays’ 2007 consolidated financial statements in the 2007 Form 20-F on which PwC issued an unqualified audit opinion. Disputed to the extent “expertised portions” as referenced in this paragraph include anything else. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶238-245, 355-363, 365-366, 369-370.

88. Merrill Lynch believed that the non-expertised portions of the Series 5 Offering Materials were true and contained no material omissions. Doyle Decl. ¶ 22.

Response: Disputed as to whether Merrill Lynch conducted adequate due diligence in connection with the Series 5 Offering. Disputed as to whether Merrill Lynch believed or had reason to believe “the non-expertised portions of the Series 5 Offering Materials were true and contained no material omissions,” and whether any such belief was reasonable under the circumstances. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶238-245, 355-363, 365-366, 369-370.

89. Wachovia Capital Markets, LLC (n/k/a Wells Fargo Securities, LLC) is an investment bank that offers financial advisory services concerning mergers and acquisitions, private placements and debt and equity capital raising. Hurley Decl. ¶ 3. It also offers loan syndication, market analysis and research and equity trading services. *Id.*

Response: Not disputed.

90. Wachovia served as a Joint Lead Underwriter in connection with the Series 5 Offering. Hurley Decl. ¶ 2.

Response: Not disputed.

91. Prior to the Series 5 Offering, Wachovia served as an underwriter on Barclays’ Series 1 Offering; Series 2 Offering; Series 3 Offering; Series 4 Offering; September 2007 Senior Notes Offering; Second September 2007 Senior Notes Offering; and September 2007 Floating Rate Notes Offering. Hurley Decl. ¶ 4.

Response: Not disputed.

92. Wachovia employed an internal approval process in connection with both the Series 2 Offering and Series 3 Offering. Hurley Decl. ¶ 5; Hurley Exs. 1-2. Wachovia’s participation in

those offerings was contingent on approval from Wachovia’s Fixed Income Commitment Committee (“FICC”). Hurley Decl. ¶ 5. Wachovia’s participation in the Series 2 Offering and Series 3 Offering was approved by its FICC. *Id.*

Response: Not disputed that Wachovia “employed an internal approval process” with regard to the prior offerings listed. Disputed as to what the approval process entails. Disputed as to the role of the FICC’s review in connection with Wachovia’s due diligence, and the adequacy and reasonableness of Wachovia’s due diligence under the circumstances. Plaintiff objects to the use of this evidence because the Underwriters refused to produce in discovery, documents or testimony on securities offerings other than the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶446-453.

93. Wachovia assembled a team of individuals familiar with Barclays and its business to participate in the Series 5 Offering. Hurley Decl. ¶ 11. Below are the individuals at Wachovia who participated in the Series 5 Offering. *Id.* The chart indicates in the columns labeled “Series 4” and “Series 3” whether each individual was also staffed on the Series 4 Offering and/or Series 3 Offering, respectively. *Id.* Wachovia’s staffing of the Series 5 Offering with personnel that worked on these prior offerings enhanced Wachovia’s due diligence in connection with the Series 5 Offering, allowing Wachovia to more readily build upon its prior due diligence for purposes of the Series 5 Offering. *Id.*

Name	Title	Series 4	Series 3
Debt Capital Markets			
Bryant Owens	Managing Director	X	X
Stuart Aylward	Director	X	X
Faye Thorogood	Vice President	X	X
Ken Greer	Associate		
Edward Boulderstone	Analyst	X	X
Preferred Syndicate			
Jeff Gass	Managing Director	X	X

Nancy Andes	Vice President	X	X
Brian E. Smith	Associate	X	X
Investment Banking			
John Papadopoulos	Managing Director		
Kristina “Krick” Clark	Managing Director		
Relationship Management			
Jill Enzman	Managing Director		
Fleur Twohig	Director		
Syndicate Middle Office			
Kiley Knepp		X	X
Transaction Management			
Carolyn Coan	Vice President	X	
Legal			
Laurie Watts	Vice President	X	X
Melanie Panzone	Vice President		

Id.

Response: Disputed as to whether Wachovia conducted adequate due diligence in connection with the Series 5 Offering. Disputed that each of the individuals identified as having worked on the Series 5 Offering for Citi performed due diligence work in connection with the Series 5 Offering (as opposed to other work), and the adequacy and reasonableness of the due diligence performed under the circumstances. Disputed as to whether any of the individuals identified as having worked on the Series 5 Offering for Wachovia also worked on the other listed offerings. Disputed as to the extent of Wachovia’s “familiar[ity]” with “Barclays and its business.” Disputed as to the extent “Wachovia’s staffing of the Series 5 Offering with personnel that worked on these prior offerings enhanced Wachovia’s due diligence in connection with the Series 5 Offering, allowing Wachovia to more readily build upon its prior due diligence for purposes of the Series 5 Offering.” Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶446-453.

94. In addition to the due diligence performed in connection with the transactions listed above, Wachovia conducted at the time of the Series 5 Offering regular and continuous due diligence on Barclays and its business. Hurley Decl. ¶ 6. The nature of this continuous due diligence

included, for example, examining periodic and other filings made by Barclays with the SEC, monitoring media reports, market alerts and news reports relating to Barclays and reviewing credit agency reports covering Barclays. *Id.*

Response: Disputed as to whether Wachovia conducted adequate due diligence in connection with the Series 5 Offering. Disputed regarding the extent of Wachovia's due diligence in connection with prior Barclays offerings. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶246-255, 446-453.

95. Wachovia's due diligence in connection with the Series 5 Offering built upon its continuous due diligence of Barclays and its due diligence in connection with prior Barclays offerings. Hurley Decl. ¶ 7.

Response: Disputed as to whether Wachovia conducted adequate due diligence in connection with the Series 5 Offering. Disputed regarding the extent of Wachovia's due diligence in connection with prior Barclays offerings. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶246-255, 446-453.

96. Consistent with industry practice, Citi performed certain due diligence in connection with the Series 5 Offering on behalf of the underwriting syndicate, including Wachovia. Hurley Decl. ¶ 9. Wachovia paid careful attention to the due diligence performed by Citi in connection with the Series 5 Offering and at no point had any reason to believe that the due diligence performed by Citi was inadequate, nor did it have any reason to believe that additional due diligence was necessary. *Id.* In addition, Wachovia independently undertook its own due diligence efforts in connection with the Series 5 Offering. *Id.*

Response: Disputed as to whether Wachovia conducted adequate due diligence in connection with the Series 5 Offering. Disputed as to whether Wachovia "had any reason to believe

that the due diligence performed by Citi was inadequate.” Disputed as to whether Wachovia had “any reason to believe that additional due diligence was necessary.” Disputed as to the extent “Wachovia independently undertook its own due diligence efforts in connection with the Series 5 Offering” and “paid careful attention to the due diligence performed by Citi.” Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶287, 293-316, 414-430.

97. Wachovia actively participated in and contributed to the collective due diligence efforts in connection with the Series 5 Offering in, among others, the following ways:

- reviewing due diligence call questionnaires;
- participating in the Series 5 Due Diligence Calls;
- reviewing interim and final drafts of the Prospectus Supplement and any documents incorporated by reference therein;
- reviewing interim and final drafts of the comfort letter and bring-down comfort letter provided by PwC;
- reviewing the opinion letters reviewed by provided by Barclays’ United States counsel, S&C, and Barclays’ English counsel, Clifford Chance;
- reviewing the opinion letters provided by Underwriters’ counsel, Linklaters; and
- reviewing the management certifications provided by Barclays’ management team.

Hurley Decl. ¶¶ 12, 14, 15, 16, 21; McSpadden Exs. 21-24, 26-28, 33-34, 37-40, 49-50, 53-59.

Response: Not disputed that Wachovia “participated in and contributed to” the activities listed. Disputed as to whether Wachovia conducted adequate due diligence in connection with the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶287, 293-316, 405-409, 414-430.

98. Wachovia relied on PwC’s opinions regarding Barclays’ 2007 audited financial statements and Barclays’ statements regarding effective internal control over financial reporting. Hurley Decl. ¶ 18.

Response: Not disputed that PwC issued an unqualified audit report as to the consolidated financial statements only. Not disputed that PwC’s unqualified audit report does not include any other portions of the 2007 Form 20-F. Not disputed that the statement concerning “internal control[s]” is in the PwC audit report. Not disputed that the referenced “opinions” are as of December 31, 2007. Not disputed that the PwC audit report does not apply to financial results or internal controls after December 31, 2007. Disputed that PwC offered an opinion on statements made by Barclays regarding its internal controls over financial reporting. Disputed as to whether Wachovia conducted adequate due diligence in connection with the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶238-245.

99. Wachovia did not believe the expertised portions of the Series 5 Offering Materials were untrue or omitted to state a material fact. Hurley Decl. ¶ 19.

Response: Not disputed insofar as the “expertised portions” referenced in this paragraph only refer to Barclays’ 2007 consolidated financial statements in the 2007 Form 20-F on which PwC issued an unqualified audit opinion. Disputed to the extent “expertised portions” as referenced in this paragraph include anything else. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶238-245, 355-363, 365-366, 369-370.

100. Wachovia believed that the non-expertised portions of the Series 5 Offering Materials were true and contained no material omissions. Hurley Decl. ¶ 19.

Response: Disputed as to whether Wachovia conducted adequate due diligence in connection with the Series 5 Offering. Disputed as to whether Wachovia believed or had reason to believe “the non-expertised portions of the Series 5 Offering Materials were true and contained no material omissions,” and whether any such belief was reasonable under the circumstances. Further,

plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶238-245, 355-363, 365-366, 369-370.

101. UBS provides investment banking services. The Company offers equity and debt private placements, corporate financing, and valuation advisory services. Vonta Decl. ¶ 3.

Response: Not disputed.

102. UBS served as a Joint Lead Underwriter in connection with the Series 5 Offering. Vonta Decl. ¶ 2.

Response: Not disputed.

103. Prior to the Series 5 Offering, UBS served as an underwriter on Barclays' Series 1 Offering; Series 2 Offering; Series 3 Offering; and Series 4 Offering. Vonta Decl. ¶ 4.

Response: Not disputed.

104. UBS employed an internal approval process in connection with both the Series 3 Offering and Series 4 Offering. Vonta Decl. ¶ 5; Vonta Exs. 1-2. UBS's participation in those offerings was contingent on approval from its Debt Capital Markets New Business Committee ("DCM NBC"). Vonta Decl. ¶ 5. UBS received approval from its DCM NBC to participate in the Series 3 Offering and Series 4 Offering. *Id.*

Response: Not disputed that UBS "employed an internal approval process" with regard to the prior offerings listed. Disputed as to what the approval process entails. Disputed as to the role of the DCM NBC's review in connection with UBS's due diligence, and the adequacy and reasonableness of UBS's due diligence under the circumstances. Plaintiff objects to the use of this evidence because the Underwriters refused to produce in discovery documents or testimony on securities offerings other than the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶446-453.

105. UBS assembled a team of individuals familiar with Barclays and its business to participate in the Series 5 Offering. Vonta Decl. ¶ 11. Below are the individuals at UBS who participated in the Series 5 Offering. *Id.* The chart indicates in the columns labeled “Series 4” and “Series 3” whether each individual was also staffed on the Series 4 Offering and/or Series 3 Offering, respectively. *Id.* UBS’s staffing of the Series 5 Offering with personnel that worked on these prior offerings enhanced UBS’s due diligence in connection with the Series 5 Offering, allowing UBS to more readily build upon its prior due diligence for purposes of the Series 5 Offering. *Id.*

Name	Title	Series 4	Series 3
Debt Capital Markets			
Gary Abrahams	Managing Director	X	X
Ron Yanagi	Executive Director	X	X
Sophia Vonta	Director	X	X
Andrew Templeton	Analyst	X	X
US Syndicate			
John Corcoran	Managing Director	X	X
Shameika Wade	Associate Director	X	X
Capital Securities			
Vinod Vasani	Managing Director	X	X
Transactions Legal			
Glenn Goggins	Executive Director	X	X
Jason R. Norton	Director and Counsel		
Monica Meo	Director	X	X
Michael Altschuler	Director	X	X

Id.

Response: Disputed as to whether UBS conducted adequate due diligence in connection with the Series 5 Offering. Disputed that each of the individuals identified as having worked on the Series 5 Offering for Citi performed due diligence work in connection with the Series 5 Offering (as opposed to other work), and the adequacy and reasonableness of the due diligence performed under the circumstances. Disputed as to whether any of the individuals identified as having worked on the

Series 5 Offering for UBS also worked on the other listed offerings. Disputed as to the extent of UBS’ “familiar[ity]” with “Barclays and its business.” Disputed as to the extent “UBS’s staffing of the Series 5 Offering with personnel that worked on these prior offerings enhanced UBS’s due diligence in connection with the Series 5 Offering, allowing UBS to more readily build upon its prior due diligence for purposes of the Series 5 Offering.” Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶446-453.

106. In addition to the due diligence performed in connection with the transactions listed above, UBS conducts, and conducted at the time of the Series 5 Offering, regular and continuous due diligence on Barclays and its business. Vonta Decl. ¶ 6. The nature of this continuous due diligence includes, for example, examining periodic and other filings made by Barclays with the SEC, monitoring media reports, market alerts and news reports relating to Barclays and reviewing credit agency reports covering Barclays. *Id.*

Response: Disputed as to whether UBS conducted adequate due diligence in connection with the Series 5 Offering. Disputed as to the extent of the “due diligence performed in connection with the transactions listed above.” Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶446-453.

107. UBS’s due diligence in connection with the Series 5 Offering built upon its continuous due diligence of Barclays and its due diligence in connection with prior Barclays offerings. Vonta Decl. ¶ 7.

Response: Disputed as to whether UBS conducted adequate due diligence in connection with the Series 5 Offering. Disputed regarding the extent of UBS’ due diligence in connection with prior Barclays offerings. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶446-453.

108. Consistent with industry practice, Citi certain performed due diligence in connection with the Series 5 Offering on behalf of the underwriting syndicate, including UBS. Vonta Decl. ¶ 9. UBS paid careful attention to the due diligence performed by Citi in connection with the Series 5 Offering and at no point had any reason to believe that the due diligence performed by Citi was inadequate, nor did it have any reason to believe that additional due diligence was necessary. *Id.* In addition, UBS independently undertook its own due diligence efforts in connection with the Series 5 Offering. *Id.*

Response: Disputed as to whether UBS conducted adequate due diligence in connection with the Series 5 Offering. Disputed as to whether UBS “had any reason to believe that the due diligence performed by Citi was inadequate.” Disputed as to whether UBS had “any reason to believe that additional due diligence was necessary.” Disputed as to the extent “UBS independently undertook its own due diligence efforts in connection with the Series 5 Offering” and “paid careful attention to the due diligence performed by Citi.” Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶287, 293-316, 414-430.

109. UBS employed an internal approval process in connection with the Series 5 Offering. Vonta Decl. ¶ 12; Vonta Ex. 4. UBS’s participation in the Series 5 Offering was contingent on approval from its DCM NBC. Vonta Decl. ¶ 12. UBS’s participation in the Series 5 Offering was approved by its DCM NBC. *Id.*

Response: Not disputed that UBS “employed an internal approval process” with regard to its participation in the Series 5 Offering. Disputed as to what the approval process entails. Disputed as to the role of the DCM NBC’s review in connection with UBS’s due diligence, and the adequacy and reasonableness of UBS’s due diligence under the circumstances. Disputed as to whether UBS conducted adequate due diligence in connection with the Series 5 Offering.

110. UBS actively participated in and contributed to the collective due diligence efforts in connection with the Series 5 Offering in, among others, the following ways:

- reviewing due diligence call questionnaires;
- participating in the Series 5 Due Diligence Calls;
- reviewing interim and final drafts of the Prospectus Supplement and any documents incorporated by reference therein;
- reviewing interim and final drafts of the comfort letter and bring-down comfort letter provided by PwC;
- reviewing the opinion letters reviewed by provided by Barclays' United States counsel, S&C, and Barclays' English counsel, Clifford Chance;
- reviewing the opinion letters provided by Underwriters' counsel, Linklaters; and
- reviewing the management certifications provided by Barclays' management team.

Vonta Decl. ¶¶ 13, 15, 16, 17, 21; McSpadden Exs. 21-24, 26-28, 33-35, 37-40, 49-50, 53-59.

Response: Not disputed that UBS “participated in and contributed to” the activities listed. Disputed as to whether UBS conducted adequate due diligence in connection with the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶ 287, 293-316, 405-409, 414-430.

111. UBS relied on PwC’s opinions regarding Barclays’ 2007 audited financial statements and Barclays’ statements regarding effective internal control over financial reporting. Vonta Decl. ¶ 19.

Response: Not disputed that PwC issued an unqualified audit report as to Barclays’ 2007 consolidated financial statements only. Not disputed that PwC’s unqualified audit report does not include any other portions of the 2007 Form 20-F. Not disputed that the statement concerning “internal control[s]” is in the PwC audit report. Not disputed that the referenced “opinions” is as of December 31, 2007. Not disputed that the PwC audit report does not apply to financial results or

internal controls after December 31, 2007. Disputed that PwC offered an opinion on statements made by Barclays' regarding its internal controls over financial reporting. Disputed as to whether UBS conducted adequate due diligence in connection with the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶238-245.

112. UBS did not believe the expertised portions of the Series 5 Offering Materials were untrue or omitted to state a material fact. Vonta Decl. ¶ 20.

Response: Not disputed insofar as the "expertised portions" referenced in this paragraph only refers to Barclays' 2007 consolidated financial statements in the 2007 Form 20-F on which PwC issued an unqualified audit opinion. Disputed to the extent "expertised portions" as referenced in this paragraph includes anything else. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶238-245, 355-363, 365-366, 369-370.

113. UBS believed that the non-expertised portions of the Series 5 Offering Materials were true and contained no material omissions. Vonta Decl. ¶ 20.

Response: Disputed as to whether UBS conducted adequate due diligence in connection with the Series 5 Offering. Disputed as to whether UBS believed or had reason to believe "the non-expertised portions of the Series 5 Offering Materials were true and contained no material omissions," and whether any such belief was reasonable under the circumstances. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶238-245, 355-363, 365-366, 369-370.

114. Morgan Stanley & Co., Inc. (n/k/a) Morgan Stanley & Co. LLC is an investment banking firm that offers financial advisory and securities brokerage services. Slyz Decl. ¶ 3.

Response: Not disputed.

115. Morgan Stanley served as a Senior Co-Manager in connection with the Series 5 Offering. Slyz Decl. ¶ 2.

Response: Not disputed.

116. Prior to the Series 5 Offering, Morgan Stanley served as an underwriter on Barclays' Series 1 Offering; Series 2 Offering; Series 3 Offering; and Series 4 Offering. Slyz Decl. ¶ 4.

Response: Not disputed.

117. Morgan Stanley assembled a team of individuals familiar with Barclays and its business to participate in the Series 5 Offering. Slyz Decl. ¶ 13. Below are the individuals at Morgan Stanley who participated in the Series 5 Offering. *Id.* The chart indicates in the columns labeled "Series 4" and "Series 3" whether each individual was also staffed on the Series 4 Offering and/or Series 3 Offering, respectively. *Id.* Morgan Stanley's staffing of the Series 5 Offering with personnel that worked on these prior offerings enhanced Morgan Stanley's due diligence in connection with the Series 5 Offering, allowing Morgan Stanley to more readily build upon its prior due diligence for purposes of the Series 5 Offering.

Name	Title	Series 4	Series 3
Syndicate			
Michael Borut	Executive Director	X	X
Victoria Ortiz	Vice President		X
Global Capital Markets			
Alexandra MacMahon	Managing Director		
Dominic Trusted	Executive Director	X	X
Transaction Management (Legal/Documentation)			
Yurij Slyz	Vice President	X	
Jennifer Moreland	Managing Director		X

Id.

Response: Disputed as to whether Morgan Stanley conducted adequate due diligence in connection with the Series 5 Offering. Disputed that each of the individuals identified as having worked on the Series 5 Offering for Citi performed due diligence work in connection with the Series 5 Offering (as opposed to other work), and the adequacy and reasonableness of the due diligence

performed under the circumstances. Disputed as to whether any of the individuals identified as having worked on the Series 5 Offering for Morgan Stanley also worked on the other listed offerings. Disputed as to the extent of Morgan Stanley’s “familiar[ity]” with “Barclays and its business.” Disputed as to the extent “Morgan Stanley’s staffing of the Series 5 Offering with personnel that worked on these prior offerings enhanced Morgan Stanley’s due diligence in connection with the Series 5 Offering, allowing Morgan Stanley to more readily build upon its prior due diligence for purposes of the Series 5 Offering.” Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶446-453.

118. In addition to the due diligence performed in connection with the transactions listed above, Morgan Stanley conducts, and conducted at the time of the Series 5 Offering, regular and continuous due diligence on Barclays and its business. Slyz Decl. ¶ 5. The nature of this continuous due diligence includes, for example, examining periodic and other filings made by Barclays with the SEC, monitoring media reports, market alerts and news reports relating to Barclays and reviewing credit agency reports covering Barclays. *Id.* In addition, Morgan Stanley actively monitors the broader financial services industry, including financial institutions in the United Kingdom, Europe and the United States. *Id.*

Response: Disputed as to whether Morgan Stanley conducted adequate due diligence in connection with the Series 5 Offering. Disputed regarding the extent of Morgan Stanley’ due diligence in connection with prior offerings. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶281-286, 446-453.

119. Morgan Stanley’s due diligence in connection with the Series 5 Offering built upon its continuous due diligence of Barclays and its due diligence in connection with prior Barclays offerings. Slyz Decl. ¶ 6.

Response: Disputed as to whether Morgan Stanley conducted adequate due diligence in connection with the Series 5 Offering. Disputed regarding the extent of Morgan Stanley’ due diligence in connection with prior Barclays offerings. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶281-286, 446-453.

120. Consistent with industry practice, Citi performed certain due diligence in connection with the Series 5 Offering on behalf of the underwriting syndicate, including Morgan Stanley. Slyz Decl. ¶ 11. Morgan Stanley paid careful attention to the due diligence performed by Citi in connection with the Series 5 Offering and at no point had any reason to believe that the due diligence performed by Citi was inadequate, nor did it have any reason to believe that additional due diligence was necessary. *Id.* In addition, Morgan Stanley independently undertook its own due diligence efforts in connection with the Series 5 Offering. *Id.*

Response: Disputed as to whether Morgan Stanley conducted adequate due diligence in connection with the Series 5 Offering. Disputed as to whether Morgan Stanley “had any reason to believe that the due diligence performed by Citi was inadequate.” Disputed as to whether Morgan Stanley had “any reason to believe that additional due diligence was necessary.” Disputed as to the extent “Morgan Stanley independently undertook its own due diligence efforts in connection with the Series 5 Offering” and “paid careful attention to the due diligence performed by Citi.” Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶287, 293-316, 414-430.

121. Morgan Stanley actively participated in and contributed to the collective due diligence efforts in connection with the Series 5 Offering in, among others, the following ways:

- reviewing due diligence call questionnaires;
- participating in the Business Due Diligence Call, Accounting Due Diligence Call, Pre-Pricing Due Diligence Call, Pre-Settlement Due Diligence Call and Greenshoe Pre-Settlement Due Diligence Call;

- reviewing interim and final drafts of the Prospectus Supplement and any documents incorporated by reference therein;
- reviewing interim and final drafts of the comfort letter and bring-down comfort letter provided by PwC;
- reviewing the opinion letters reviewed by provided by Barclays' United States counsel, S&C, and Barclays' English counsel, Clifford Chance;
- reviewing the opinion letters provided by Underwriters' counsel, Linklaters; and
- reviewing the management certifications provided by Barclays' management team.

Slyz Decl. ¶¶ 14, 16, 17, 18, 21; McSpadden Exs. 24, 27-28, 33-35, 37-40, 49-50, 53-59.

Response: Not disputed that Morgan Stanley “participated in and contributed to” the activities listed. Disputed as to whether Morgan Stanley conducted adequate due diligence in connection with the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶287, 293-316, 405-409, 414-430.

122. Morgan Stanley relied on PwC’s opinions regarding Barclays’ 2007 audited financial statements and Barclays’ statements regarding effective internal control over financial reporting. Slyz Decl. ¶ 19.

Response: Not disputed that PwC issued an unqualified audit report as to the 2007 consolidated financial statements only. Not disputed that PwC’s unqualified audit report does not include any other portions of the 2007 Form 20-F. Not disputed that the statement concerning “internal control[s]” is in the PwC audit report. Not disputed that the referenced “opinions” is as of December 31, 2007. Not disputed that the PwC audit report does not apply to financial results or internal controls after December 31, 2007. Disputed that PwC offered an opinion on statements made by Barclays’ regarding its internal controls over financial reporting. Disputed as to whether Morgan Stanley conducted adequate due diligence in connection with the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶238-245.

123. Morgan Stanley did not believe the expertised portions of the Series 5 Offering Materials were untrue or omitted to state a material fact. Slyz Decl. ¶ 20.

Response: Not disputed insofar as the “expertised portions” referenced in this paragraph only refers to Barclays’ 2007 consolidated financial statements in the 2007 Form 20-F on which PwC issued an unqualified audit opinion. Disputed to the extent “expertised portions” as referenced in this paragraph includes anything else. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶238-245, 355-363, 365-366, 369-370.

124. Morgan Stanley believed that the non-expertised portions of the Series 5 Offering Materials were true and contained no material omissions. Slyz Decl. ¶ 20.

Response: Disputed as to whether Morgan Stanley conducted adequate due diligence in connection with the Series 5 Offering. Disputed as to whether Morgan Stanley believed or had reason to believe “the non-expertised portions of the Series 5 Offering Materials were true and contained no material omissions,” and whether any such belief was reasonable under the circumstances. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶238-245, 355-363, 365-366, 369-370.

125. RBC is now part of a merged entity known as RBC Capital Markets LLC, which offers corporate and investment banking services including public and private placement of debt and equity securities, mergers and acquisitions advice, corporate finance, equity and debt underwriting, and structured and project finance. Harris Decl. ¶ 3. It also offers corporate credit, real estate advisory services, syndicated loans, equity research, sales and trading, risk management, asset securitization, fixed income, money market, and foreign exchange services. *Id.*

Response: Not disputed.

126. RBC served as a Co-Manager in connection with the Series 5 Offering. Harris Decl. ¶ 2.

Response: Not disputed.

127. Prior to the Series 5 Offering, RBC served as an underwriter on Barclays' Series 2 Offering; Series 3 Offering; and Series 4 Offering. Harris Decl. ¶ 4.

Response: Not disputed.

128. RBC assembled a team of individuals familiar with Barclays and its business to participate in the Series 5 Offering. Harris Decl. ¶ 8. Below are the individuals at RBC who participated in the Series 5 Offering. *Id.* The chart indicates in the columns labeled "Series 4" and "Series 3" whether each individual was also staffed on the Series 4 Offering and/or Series 3 Offering, respectively. *Id.* RBC's staffing of the Series 5 Offering with personnel that worked on these prior offerings enhanced RBC's due diligence in connection with the Series 5 Offering, allowing RBC to more readily build upon its prior due diligence for purposes of the Series 5 Offering. *Id.*

Name	Title	Series 4	Series 3
Ken Harris	Director	X	X
Shannon Dahl	Vice President	X	X
Richard Bansa	Associate Vice President	X	X

Id.

Response: Disputed as to whether RBC conducted adequate due diligence in connection with the Series 5 Offering. Disputed that each of the individuals identified as having worked on the Series 5 Offering for Citi performed due diligence work in connection with the Series 5 Offering (as opposed to other work), and the adequacy and reasonableness of the due diligence performed under the circumstances. Disputed as to whether any of the individuals identified as having worked on the Series 5 Offering for RBC also worked on the other listed offerings. Disputed as to the extent of

RBC's "familiar[ity]" with "Barclays and its business." Disputed as to the extent "RBC's staffing of the Series 5 Offering with personnel that worked on these prior offerings enhanced RBC's due diligence in connection with the Series 5 Offering, allowing RBC to more readily build upon its prior due diligence for purposes of the Series 5 Offering." Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶446-453.

129. RBC's due diligence in connection with the Series 5 Offering built upon its due diligence in connection with prior Barclays offerings. Harris Decl. ¶ 5.

Response: Disputed as to whether RBC conducted adequate due diligence in connection with the Series 5 Offering. Disputed regarding the extent of RBC's due diligence in connection with prior Barclays offerings. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶446-453.

130. Consistent with industry practice, Citi performed certain due diligence in connection with the Series 5 Offering on behalf of the underwriting syndicate, including RBC. Harris Decl. ¶ 6. RBC paid careful attention to the due diligence performed by Citi in connection with the Series 5 Offering and at no point had any reason to believe that the due diligence performed by Citi was inadequate, nor did it have any reason to believe that additional due diligence was necessary. *Id.* In addition, RBC independently undertook its own due diligence efforts in connection with the Series 5 Offering. *Id.*

Response: Disputed as to whether RBC conducted adequate due diligence in connection with the Series 5 Offering. Disputed as to whether RBC "had any reason to believe that the due diligence performed by Citi was inadequate." Disputed as to whether RBC had "any reason to believe that additional due diligence was necessary." Disputed as to the extent "RBC independently undertook its own due diligence efforts in connection with the Series 5 Offering" and "paid careful

attention to the due diligence performed by Citi.” Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶287, 293-316, 414-430.

131. RBC actively participated in and contributed to the collective due diligence efforts in connection with the Series 5 Offering in, among others, the following ways:

- reviewing due diligence call questionnaires;
- participating in the Pre-Pricing Due Diligence Call, Pre-Settlement Due Diligence Call and Greenshoe Pre-Settlement Due Diligence Call;
- reviewing the Prospectus Supplement and any documents incorporated by reference therein;
- reviewing interim and final drafts of the comfort letter and bring-down comfort letter provided by PwC;
- reviewing the opinion letters reviewed by provided by Barclays’ United States counsel, S&C, and Barclays’ English counsel, Clifford Chance;
- reviewing the opinion letters provided by Underwriters’ counsel, Linklaters; and
- reviewing the management certifications provided by Barclays’ management team.

Harris Decl. ¶¶ 9, 11, 12, 13, 16; McSpadden Exs. 24, 27, 33-35, 37-40, 53-59.

Response: Not disputed that RBC “participated in and contributed to” the activities listed. Disputed as to whether RBC conducted adequate due diligence in connection with the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶287, 293-316, 405-409, 414-430.

132. RBC relied on PwC’s opinions regarding Barclays’ 2007 audited financial statements and Barclays’ statements regarding effective internal control over financial reporting. Harris Decl. ¶ 14.

Response: Not disputed that PwC issued an unqualified audit report as to Barclays’ 2007 consolidated financial statements only. Not disputed that PwC’s unqualified audit report does not include any other portions of the 2007 Form 20-F. Not disputed that the statement concerning

“internal control[s]” is in the PwC audit report. Not disputed that the referenced “opinions” is as of December 31, 2007. Not disputed that the PwC audit report does not apply to financial results or internal controls after December 31, 2007. Disputed as to whether RBC conducted adequate due diligence in connection with the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶284-245.

133. RBC did not believe the expertised portions of the Series 5 Offering Materials were untrue or omitted to state a material fact. Harris Decl. ¶ 15.

Response: Not disputed insofar as the “expertised portions” referenced in this paragraph only refers to Barclays’ 2007 consolidated financial statements in the 2007 Form 20-F on which PwC issued an unqualified audit opinion. Disputed to the extent “expertised portions” as referenced in this paragraph includes anything else. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶238-245, 355-363, 365-366, 369-370.

134. RBC believed that the non-expertised portions of the Series 5 Offering Materials were true and contained no material omissions. Harris Decl. ¶ 15.

Response: Disputed as to whether RBC conducted adequate due diligence in connection with the Series 5 Offering. Disputed as to whether RBC believed or had reason to believe “the non-expertised portions of the Series 5 Offering Materials were true and contained no material omissions,” and whether any such belief was reasonable under the circumstances. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶238-245, 355-363, 365-366, 369-370.

135. On November 1, 2010, Banc of America Securities merged with and into Merrill Lynch, Pierce, Fenner & Smith Incorporated. Karp Decl. ¶ 3. Prior to this merger, Banc of America Securities had operated as the investment banking subsidiary of Bank of America Corporation,

offering securities brokerage and dealership services, investment banking and financial advisory services, among other services. *Id.*

Response: Not disputed.

136. Banc of America Securities served as a Co-Manager in connection with the Series 5 Offering. Karp Decl. ¶ 2.

Response: Not disputed.

137. Prior to the Series 5 Offering, Banc of America Securities served as an underwriter on Barclays' Series 3 Offering and Series 4 Offering. Karp Decl. ¶ 4.

Response: Not disputed.

138. Banc of America Securities' due diligence in connection with the Series 5 Offering built upon its due diligence in connection with prior Barclays offerings. Karp Decl. ¶ 5.

Response: Disputed as to whether Banc of America conducted adequate due diligence in connection with the Series 5 Offering. Disputed regarding the extent of Banc of America's due diligence in connection with prior Barclays offerings. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶446-453.

139. Consistent with industry practice, Citi performed certain due diligence in connection with the Series 5 Offering on behalf of the underwriting syndicate, including Banc of America Securities. Karp Decl. ¶ 6. Banc of America Securities paid careful attention to the due diligence performed by Citi in connection with the Series 5 Offering and at no point had any reason to believe that the due diligence performed by Citi was inadequate, nor did it have any reason to believe that additional due diligence was necessary. *Id.* In addition, Banc of America Securities independently undertook its own due diligence efforts in connection with the Series 5 Offering. *Id.*

Response: Disputed as to whether Banc of America conducted adequate due diligence in connection with the Series 5 Offering. Disputed as to whether Banc of America “had any reason to believe that the due diligence performed by Citi was inadequate.” Disputed as to whether Banc of America had “any reason to believe that additional due diligence was necessary.” Disputed as to the extent “Banc of America independently undertook its own due diligence efforts in connection with the Series 5 Offering” and “paid careful attention to the due diligence performed by Citi.” Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶287, 293-316, 414-430.

140. Banc of America Securities actively participated in and contributed to the collective due diligence efforts in connection with the Series 5 Offering in, among others, the following ways:

- reviewing due diligence call questionnaires;
- reviewing the Prospectus Supplement and any documents incorporated by reference therein;
- reviewing interim and final drafts of the comfort letter and bring-down comfort letter provided by PwC;
- reviewing the opinion letters reviewed by provided by Barclays’ United States counsel, S&C, and Barclays’ English counsel, Clifford Chance;
- reviewing the opinion letters provided by Underwriters’ counsel, Linklaters; and
- reviewing the management certifications provided by Barclays’ management team.

Karp Decl. ¶¶ 8, 9, 10, 13; McSpadden Exs. 24, 27, 33-35, 37-40, 53-59.

Response: Not disputed that Banc of America “participated in and contributed to” the activities listed. Disputed as to whether Banc of America conducted adequate due diligence in connection with the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶287, 293-316, 414-430.

141. Banc of America Securities relied on PwC's opinions regarding Barclays' 2007 audited financial statements and Barclays' statements regarding effective internal control over financial reporting. Karp Decl. ¶ 11.

Response: Not disputed that PwC issued an unqualified audit report as to Barclays' 2007 consolidated financial statements only. Not disputed that PwC's unqualified audit report does not include any other portions of the 2007 Form 20-F. Not disputed that the statement concerning "internal control[s]" is in the PwC audit report. Not disputed that the referenced "opinions" is as of December 31, 2007. Not disputed that the PwC audit report does not apply to financial results or internal controls after December 31, 2007. Disputed as to whether Banc of America conducted adequate due diligence in connection with the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶238-245.

142. Banc of America Securities did not believe the expertised portions of the Series 5 Offering Materials were untrue or omitted to state a material fact. Karp Decl. ¶ 12.

Response: Not disputed insofar as the "expertised portions" referenced in this paragraph only refers to Barclays' 2007 consolidated financial statements in the 2007 Form 20-F on which PwC issued an unqualified audit opinion. Disputed to the extent "expertised portions" as referenced in this paragraph includes anything else. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶238-245, 355-363, 365-366, 369-370.

143. Banc of America Securities believed that the non-expertised portions of the Series 5 Offering Materials were true and contained no material omissions. Karp Decl. ¶ 12.

Response: Disputed as to whether Banc of America conducted adequate due diligence in connection with the Series 5 Offering. Disputed as to whether Banc of America believed or had reason to believe "the non-expertised portions of the Series 5 Offering Materials were true and

contained no material omissions,” and whether any such belief was reasonable under the circumstances. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶238-245, 355-363, 365-366, 369-370.

144. On February 2, 2016, counsel for Lead Plaintiff served the rebuttal report of Professor Richard Puntillo (the “Due Diligence Expert Rebuttal Report”) (Declaration of Andrew J. Brown in Support of Plaintiff’s Opposition to Underwriter Defendants’ Motion for Summary Judgment (“Brown Decl.”), Ex. 7) in response to the report of Professor Gary M. Lawrence on behalf of the Underwriters. Musoff Decl. ¶ 3; Brown Decl., Ex. 8. The Due Diligence Expert Rebuttal Report defines a “red flag” as “information encountered in the course of a due diligence investigation that (i) is inconsistent with the underwriters’ understanding of the issuer’s businesses, executives, operations, accounting or finances; or (ii) is potentially indicative of wrongdoing and, therefore, requires the underwriters to investigate further in order to arrive at a reasonably informed understanding or resolution.” Musoff Ex. 1 at 9.

Response: Not disputed.

145. In connection with the Series 3 Offering, Citi prepared a due diligence questionnaire for a business due diligence call with Barclays. McSpadden Decl. ¶ 11; McSpadden Ex. 3. That due diligence questionnaire included, among others, the following questions:

- Item 5: “Are there any particular business areas that the Bank expects to be adversely and significantly affected by the current economic and political climate?
 - Discuss expected impact from the recent developments in the sub-prime and non-prime mortgage markets”
- Item 8: “Can Barclays comment on steps the bank has taken to mitigate the effects of a serious economic downturn [on profitability]?”
- Item 12: “Can the bank comment on the impairment charges and other provisions during first half 2007? What is your expectation for full year 2007? Any specific trends of concern that you see developing during the second half of 2007”

- Item 14: “Does Barclays have any exposure concentrations that the bank wishes to reduce, and if so what steps are being taken to achieve this? Please comment on:
 - Exposure if any to sub-prime and non-prime mortgage markets (e.g., EquiFirst in the U.S.)
 - Steps taken recently in light of current market[] conditions to mitigate such risk.”

McSpadden Ex. 3.

Response: Disputed regarding the extent of Citi’s due diligence in connection with the Series 3 Offering. Plaintiff objects to the use of this evidence because the Underwriters refused to produce in discovery documents or testimony on securities offerings other than the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶446-453.

146. On August 31, 2007 Stuart Aylward from Wachovia circulated coverage of Barclays in the Financial Times and noted that Standard and Poor’s had expressed the view that any losses by Barclays as a result of the sub-prime crisis would be limited. Hurley Decl. ¶ 8; Hurley Ex. 4.

Response: Not disputed that the e-mail at Hurley Ex. 4 purported to quote a *Financial Times* article, which according to the e-mail, states: “Standard & Poor’s, the rating agency, reaffirmed Barclays’ credit ratings after concluding that the bank’s exposure to potential losses as a result of the US subprime mortgage meltdown was limited.”

147. On November 12, 2007, Jack McSpadden at Citi circulated an internal e-mail attaching an article from *The Times* titled “Barclays and auditor fight fears over credit-crunch exposure,” which discussed the extent Barclays’ sub-prime exposure and Barclays’ collaboration with PwC to provide clarity to investors regarding rumors of a coming writedown. McSpadden Decl. ¶ 13; McSpadden Ex. 4.

Response: Not disputed that the article was circulated. Disputed that the article discussed the “extent [of] Barclays’ sub-prime exposure and Barclays’ collaboration with PwC to provide clarity to investors regarding rumors of a coming writedown.”

148. On November 12, 2007, Merrill Lynch personnel circulated an internal update discussing speculation that Barclays may provide disclosure to investors about potential writedowns the same week. Doyle Decl. ¶ 7; Doyle Ex. 1.

Response: Not disputed.

149. On November 15, 2007, Merrill Lynch personnel circulated an internal e-mail distribution announcing a writedown taken by Barclays the same day on sub-prime related assets. Doyle Decl. ¶ 8; Doyle Ex. 2.

Response: Not disputed.

150. On November 16, 2007, Morgan Stanley circulated an internal update regarding Standard and Poor’s ratings and outlook for Barclays in light Barclays’ November 15, 2007, writedown. Slyz Decl. ¶ 7; Slyz Ex. 1. The update noted that Standard and Poor’s rating of Barclays would be unaffected by Barclays’ announcement of sub-prime related writedowns. Slyz Ex. 1.

Response: Not disputed.

151. On November 19, 2007, Julien Roman at Merrill Lynch circulated by e-mail an article from the publication *Credit Sights* addressing of the exposure of European financial institutions, including Barclays, to CDOs. Doyle Decl. ¶ 9; Doyle Ex. 3. That article noted that Barclays’ November 2007 writedown and the CDO exposures disclosed by Barclays were consistent with *Credit Sights*’ own modeling. Doyle Ex. 3 at UW_Barclays_000032836.

Response: Not disputed that the article was circulated, although plaintiff notes that *Credit Sights* admits its modeling is based on its own “estimate[s]” and “assum[ptions]” of banks’ exposures rather than the banks’ actual exposures.

152. Barclays’ sub-prime exposure and a November 2007 writedown taken by Barclays on sub-prime related assets were considered by Citi’s commitment committee in advance of the Series 4 Offering. McSpadden Decl. ¶ 15; McSpadden Exs. 6-8. On November 20, 2007, Bogdan Ciobanu from Citi circulated a commitment committee transaction summary for the Series 4 Offering. McSpadden Decl. ¶ 15; McSpadden Ex. 6. Noted as a “key issue” in the transaction summary was Barclays’ November 15, 2007 writedown. McSpadden Ex. 6 at UW_Barclays_000006493. Also attached to Mr. Ciobanu’s e-mail was a copy of Barclays’ November 15, 2007 trading update announcing this writedown. *Id.* at UW_Barclays_000006487-6491.

Response: Disputed as to the extent to which Barclays’ sub-prime exposure was considered by Citi’s commitment committee in advance of the Series 4 Offering. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶303, 446-453.

153. On November 21, 2007, Bogdan Ciobanu from Citi e-mailed David Walker, Citi’s relationship manager for Barclays, requesting that Mr. Walker participate in a call with the commitment committee to discuss Citi’s participation in the Series 4 Offering in light of the recent market environment and Barclays’ writedown. McSpadden Decl. ¶ 15; McSpadden Ex. 7. The conference call contemplated in Mr. Ciobanu’s e-mail took place on November 26, 2007. McSpadden Decl. ¶ 15. Mr. Walker, members of the commitment committee and representatives from Citi’s Transaction Execution Group participated in the call. McSpadden Decl. ¶ 15; McSpadden Ex. 8.

Response: Not disputed, although plaintiff notes that McSpadden Ex. 7 also states “Within this disclosure, [Barclays] revealed a GBP 1.3 billion (\$2.67 billion) writedown/charge related to CDO and subprime mortgage losses. This announcement alleviated market concerns that the charge would be much greater (street rumors had been in the realm of \$10bn).” McSpadden Ex. 7 at 381. Plaintiff objects to the use of this evidence because the Underwriters refused to produce in discovery documents or testimony on securities offerings other than the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶446-453.

154. On November 21, 2007, Alexandra MacMahon at Morgan Stanley e-mailed recipients in Morgan Stanley’s Debt Capital Markets group requesting updates on Morgan Stanley’s debt capital markets clients relating to each client’s: (i) sub-prime exposure (including CDOs and leveraged loans); (ii) total writedowns since last balance sheet date; and (iii) outstanding SIV conduits. Slyz Decl. ¶ 8; Slyz Ex. 2.

Response: Not disputed.

155. On November 22, 2007, Alexandra MacMahon at Morgan Stanley received an e-mail attaching a report prepared by Morgan Stanley listing the sub-prime exposure, SIV exposure and sub-prime related writedowns taken by various financial institutions in the United Kingdom and Ireland, including Barclays, as of that date. Slyz Decl. ¶ 8; Slyz Ex. 3.

Response: Disputed as to whether the Morgan Stanley report attached as Slyz Ex. 3 accurately reflected Barclays’ actual sub-prime exposure and SIV exposure. Plaintiffs object to the report attached as Slyz Ex. 3 as hearsay. Fed. R. Evid. 802. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶414-430.

156. On November 27, 2007, Lisa Grennon from Merrill Lynch circulated by e-mail: (i) a trading update published by Barclays PLC on November 27, 2007; (ii) an October 8, 2007, report

prepared by Merrill Lynch covering Barclays; (iii) a November 2, 2007, report prepared by Merrill Lynch covering Barclays; (iv) two November 15, 2007, reports prepared by Merrill Lynch covering Barclays; (v) a November 27, 2007, report prepared by Merrill Lynch covering Barclays; (vi) a November 16, 2007, comment published by Moody's Investors Service discussing Barclays' November 15, 2007, writedown; (vii) an October 23, 2007, credit opinion prepared by Moody's Investors Service covering Barclays; (viii) a November 12, 2007, report prepared by Standard and Poor's covering Barclays; (ix) a November 16, 2007, report prepared by Standard and Poor's covering Barclays' November 15, 2007, writedown; (x) an October 10, 2007, credit analysis prepared by Fitch Ratings covering Barclays; and (xi) a November 15, 2007, report prepared by Fitch Ratings covering Barclays' November 15, 2007, writedown. Doyle Decl. ¶ 10; Doyle Ex. 4.

Response: Not disputed, however plaintiff objects to the contents of each report listed as hearsay and without foundation. Fed. R. Evid. 802, 901.

157. On November 27, 2007, Richard Doyle from Merrill Lynch circulated an internal e-mail discussing, among other things, remarks made by Robert E. Diamond Jr., then-President of Barclays PLC, at a financial services conference. Doyle Decl. ¶ 11; Doyle Ex. 5. At the conference in question, Mr. Diamond discussed Barclays' exposure to sub-prime assets and steps taken by Barclays to mitigate this exposure. Doyle Ex. 5 at UW_Barclays_000051134-1159.

Response: Disputed as to what material in the BarCap presentation attached as part of Doyle Ex. 5 (*i.e.*, Doyle Ex. 5 at UW_Barclays_000051134-1159) was specifically stated by Mr. Diamond at the Lehman Brothers conference. Plaintiff objects to the contents of the presentation listed and Mr. Diamond's testimony as hearsay. Fed. R. Evid. 802. Disputed as to the whether Mr. Diamond's remarks at the Lehman Brothers conference in question accurately reflected Barclays' actual sub-prime exposure.

158. On November 27, 2007, Sophia Vonta from UBS circulated an internal e-mail attaching Barclays' November 15, 2007 announcement of writedowns on sub-prime related assets. Vonta Decl. ¶ 8; Vonta Ex. 3.

Response: Not disputed.

159. In connection with the Series 4 Offering, Citi prepared a business due diligence questionnaire for a business due diligence call with Barclays. McSpadden Decl. ¶ 14; McSpadden Ex. 5. The business due diligence questionnaire for the Series 4 Offering included, among others, the following questions:

- Item 4: “Are there any particular business areas that the Bank expects to be adversely and significantly affected by the current economic or political climate?
 - Discuss expected impact from the recent developments in the sub-prime and non-prime mortgage markets.”
- Item 7: “Please discuss the Barclays Capital trading statement released on November 15, 2007. In particular, what methodology was used in determining the amounts of the write downs (including any netting)? Have any additional write downs been taken or contemplated since the end of October?”
- Item 8: “Has Barclays written down a greater or lesser percentage of its assets than other U.S. and European banks? Why?”
- Item 15: “Can the Bank comment further on the impairment charges and other provisions during the first three quarters of 2007? What is your expectation for full year 2007? Any specific trends of concern that you see developing during the remainder of 2007? Do you expect the results to be in line with internal targets/market expectations?”
- Item 17: “Does Barclays have any exposure concentrations that the Bank wishes to reduce, and if so what steps are being taken to achieve this? Please comment on:
 - exposure to sub-prime and non-prime mortgage markets (e.g., EquiFirst in the U.S.)
 - steps taken recently in light of current market conditions to mitigate such risk.”

McSpadden Ex. 5.

Response: Disputed as to what extent these or other questions listed on the questionnaire were actually discussed during the call. Plaintiff objects to the contents of the call as unauthenticated hearsay. Fed. R. Evid. 802, 901. Plaintiff objects to the use of this evidence because the Underwriters refused to produce in discovery documents or testimony on securities offerings other than the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶446-453.

160. On January 30, 2008, Dominic Trusted at Morgan Stanley circulated a January 30, 2008 Standard and Poor's ratings report for Barclays. Slyz Decl. ¶ 9; Slyz Ex. 4. The ratings report discussed the possibility that Barclays may need to take additional writedowns in its investment bank. Slyz Ex. 4.

Response: Not disputed.

161. On March 13, 2008, Bogdan Ciobanu at Citi circulated an e-mail to members of Citi's Series 5 transaction team and commitment committee members. McSpadden Decl. ¶ 17; McSpadden Ex. 10. In that e-mail, Mr. Ciobanu announced that Citi had been mandated to serve as Primary Lead Underwriter in connection with the Series 5 Offering. McSpadden Ex. 10. Mr. Ciobanu highlighted a negative outlook concerning Barclays that had been published by the Fitch ratings agency. *Id.* This negative outlook explained that Fitch had changed its ratings outlook on Barclays from stable to negative based on Barclays' writedown of £1.3 Billion with respect to ABS CDOs, other US sub-prime loans, SIVs and leveraged finance positions on November 15, 2007. *Id.* at UW_Barclays_000052996. Richard Trask responded to Mr. Ciobanu's e-mail and noted that "[g]iven the current turmoil in the financial markets (and with financial institutions in particular) . . . we should screen [Barclays]." Mr. Trask added further that, "[his] general feeling [was] that Barclay's [sic] [was] a big bank which [was] moving to deal with its problems" and that Citi should

be able to participate in the Series 5 Offering, however Citi needed to “fully understand the story.”
Id. at UW_Barclays_000052995.

Response: Not disputed, however plaintiff objects that the contents of the e-mail are being offered for a hearsay purpose. Fed. R. Evid. 802.

162. Merrill Lynch circulated a research report on April 3, 2008, that provided an overview of the UK bank industry and examined Barclays and its valuation of structured finance products in the context of ongoing turmoil in financial markets. Doyle Decl. ¶ 23; Doyle Ex. 7.

Response: Not disputed.

163. Wachovia prepared an internal memorandum in connection with the Series 5 Offering that addressed, among other things, writedowns taken by Barclays. Hurley Decl. ¶ 20; Hurley Ex. 9.

Response: Not disputed that Wachovia prepared an “internal memorandum” in connection with the Series 5 Offering that only discusses “writedowns taken by Barclays” in 2007, and does not discuss or specify, *inter alia*, the amount of actual or potential writedowns internally recognized by Barclays in 2008. Hurley Ex. 9 at 553.

164. In April 2008, Morgan Stanley prepared a capital markets sales pitch to Barclays. Slyz Decl. ¶ 10. In connection with this sales pitch, Morgan Stanley researched and presented information concerning, among other things, the magnitude of sub-prime related writedowns taken by Barclays and other financial institutions. Slyz Decl. ¶ 10; Slyz Ex. 5.

Response: Not disputed, although plaintiff also notes the “sales pitch,” referenced in the cover e-mail is described as a “skeleton version,” Slyz Ex. 5 at 468, contains multiple blank and incomplete slides, only indicates certain amounts of “sub-prime related writedowns taken by Barclays” in 2007, and does not specify the amount of actual or potential writedowns internally recognized by Barclays in 2008. Slyz Decl., Ex. 5 at 28.

165. On April 3, 2008, Bogdan Ciobanu at Citi e-mailed Jack McSpadden at Citi attaching a copy of Citi's February 20, 2008 Research Report. McSpadden Decl. ¶ 6, McSpadden Ex. 1. The report included a discussion of the possibility that Barclays may need to take additional writedowns on sub-prime assets and included an estimate prepared by Citi of the writedowns Barclays may need to take in FY 2008. McSpadden Ex. 1 at UW_Barclays_000018196.

Response: Not disputed. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶374-377.

166. On April 3, 2008, personnel from Citi and Merrill Lynch exchanged e-mails concerning writedowns taken by Barclays on sub-prime related assets and the possibility that Barclays may need to take additional writedowns. McSpadden Decl. ¶ 47; McSpadden Ex. 36; Doyle Decl. ¶ 24; Doyle Ex. 8. During this exchange, Jack McSpadden at Citi sent the February 20, 2008 Research Report to Merrill, highlighting Citi's estimate of Barclays' potential writedowns for 2008, and noting that he hoped that Barclays would provide clarity on the issue. McSpadden Ex. 36. Richard Doyle at Merrill Lynch responded indicating that Merrill Lynch had been investigating the issue as well and planned to pose a question to Barclays on the subject during the Business Due Diligence Call. Doyle Ex. 8.

Response: Not disputed, however plaintiff objects to the contents of Doyle's response as hearsay. Fed. R. Evid. 802. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶374-377.

167. On the April 3, 2008 Business Due Diligence Call, Matthew Pass of Merrill Lynch asked Chris Lucas whether Barclays intended to make any announcements regarding writedowns outside of its normal reporting cycle and how frequently Barclays updated its product valuations. Doyle Decl. ¶ 25. Chris Lucas responded that, depending on the complexity of the valuation

process, Barclays updated its valuations on a daily, weekly or monthly basis, and that Barclays did not, at that point, plan to make any off-cycle announcements regarding writedowns. *Id.* In his response, Chris Lucas also made clear, however, that Barclays would make an off-cycle announcement regarding writedowns if such writedowns were determined to be material. *Id.*

Response: Disputed as to whether “announcements regarding writedowns” were “off-cycle.” Disputed as to whether “Barclays would make an off-cycle announcement regarding writedowns if such writedowns were determined to be material.” Disputed as to whether Barclays’ writedowns in 1Q 2008 were “material” and should have been disclosed in the Offering Materials. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶298.

168. Additional questions posed to Barclays’ management during the Business Due Diligence call included, among others:

- Item 11: “Please discuss the current state/quality of the consolidated fixed-income securities portfolio. How is the portfolio valued, marked-to-market and/or marked-to-model? Please provide the split between the two valuation methods. Please comment on the level of writedowns in 2007, and any expectation for further writedowns in 2008.”
- Item 12: “Does this portfolio capture the Bank’s entire exposure to CDOs, CLOs, SIVs, conduits, ABS, sub-prime mortgage assets and other structured credit products? Would all of these be located on-balance sheet? If not, how much is located off-balance sheet. Are there any off-balance sheet vehicles (e.g., SIVs) that the Bank is contemplating moving on to the balance sheet?”
- Item 13: “In the near-term, does management anticipate the need to make any further writedowns for any of the other above products?”

McSpadden Ex. 22.

Response: Disputed as to whether these questions were posed to Barclays’ management during the call. The “questions” were prepared and provided to Barclays before the call.

169. The questions posed to PwC during the Accounting Due Diligence call included, among others:

- Item 12: “Describe any significant post FYE 2007 events which have or are likely to occur relating to the Group.”
- Item 13: “Please describe PwC’s involvement in the preparation of the Barclays Capital FYE 2007 financials. Can you describe the methodology used in determining the amounts of the write downs (including any netting) and whether it is in accordance with IFRS and US GAAP (to the extent applicable). Have any additional write downs been taken or contemplated since the end of December 2007?”
- Item 16: “Describe anything which has come to the attention of PricewaterhouseCoopers LLP over the last five years or since the Bank’s last financial year which materially impacts on the fairness or reliability of a previous audit report or the underlying financial information or which will affect the audit report or financial statements for the current or subsequent financial years.”

McSpadden Ex. 23.

Response: Disputed as to whether these questions were posed to PwC during the call. There is no evidence whatsoever of what transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶323-325.

170. The questions posed to Barclays’ management during the Pre-Pricing Due Diligence call included, among others:

- Item 2: “Are there any further material updates for YTD earnings, asset quality trends or asset valuation including any updates on exposures within Barclays Capital?”
- Item 3: “Have there been, or are there contemplated, any additional write-downs of assets in any division of Barclays Bank?”
- Item 4: “Have you reviewed the Prospectus Supplement (along with the Prospectus) and are there any misstatements or omissions that you believe should be addressed? Are you comfortable that the Prospectus Supplement, the Prospectus and the incorporated documents fully present the risks now applicable to Barclays Bank?”
- Item 5: “Are there any areas that we have not covered, which may be material in the context of this issuance, which you should bring to our attention?”

McSpadden Ex. 24.

Response: Disputed as to whether these questions were posed to Barclays’ management during the call. There is no evidence whatsoever of what transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶326-337.

171. The questions posed to Barclays’ management during the Pre-Settlement Due Diligence Call included, among others:

- Item 2: “Are there any further material updates for YTD earnings, asset quality trends or asset valuation including any updates on exposures within Barclays Capital?”
- Item 3: “Have there been, or are there contemplated, any additional write-downs of assets in any division of Barclays Bank?”
- Item 4: “Have you reviewed the Prospectus Supplement (along with the Prospectus) and are there any misstatements or omissions that you believe should be addressed? Are you comfortable that the Prospectus Supplement, the Prospectus and the incorporated documents fully present the risks now applicable to Barclays Bank?”
- Item 5: “Are there any areas that we have not covered, which may be material in the context of this issuance, which you should bring to our attention?”

McSpadden Ex. 27.

Response: Disputed as to whether these questions were posed to Barclays’ management during the call. There is no evidence whatsoever of what transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶385-393.

172. The questions posed to Barclays’ management during the Greenshoe Pre-Settlement Due Diligence call included, among others:

- Item 2: “Are there any further material updates for YTD earnings, asset quality trends or asset valuation including any updates on exposures within Barclays Capital?”
- Item 3: “Have there been, or are there contemplated, any additional write-downs of assets in any division of Barclays Bank?”
- Item 4: “Are there any areas that we have not covered, which may be material in the context of this issuance, which you should bring to our attention?”

McSpadden Ex. 28.

Response: Disputed as to whether these questions were posed to Barclays' management during the call. There is no evidence whatsoever of what transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶394-404.

173. The comfort letters issued by PwC in connection with the Series 5 Offering did not express any concern with any writedowns or potential writedowns by Barclays. McSpadden Exs. 56, 59.

Response: Disputed as to whether the comfort letters issued by PwC in connection with the Series 5 Offering did or should have "express[ed] any concern with any writedowns or potential writedowns by Barclays." Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶355-363, 365-366, 369-370.

174. On September 1, 2007, Chandru Harjani at Citi circulated an internal e-mail discussing coverage in the *Financial Times* of Barclays' exposure to SIVs. McSpadden Decl. ¶ 10; McSpadden Ex. 2.

Response: Not disputed.

175. In connection with the Series 3 Offering, Citi prepared a due diligence questionnaire for a business due diligence call with Barclays. McSpadden Decl. ¶ 11; McSpadden Ex. 3. That due diligence questionnaire included, among others, the following questions:

- Item 5: "Are there any particular business areas that the Bank expects to be adversely and significantly affected by the current economic and political climate?"
 - Discuss expected impact from the recent developments in the sub-prime and non-prime mortgage markets"
- Item 8: "Can Barclays comment on steps the bank has taken to mitigate the effects of a serious economic downturn [on profitability]?"

- Item 12: “Can the bank comment on the impairment charges and other provisions during first half 2007? What is your expectation for full year 2007? Any specific trends of concern that you see developing during the second half of 2007?”
- Item 14: “Does Barclays have any exposure concentrations that the bank wishes to reduce, and if so what steps are being taken to achieve this? Please comment on:
 - exposure if any to sub-prime and non-prime mortgage markets (e.g., EquiFirst in the U.S.)
 - steps taken recently in light of current market[] conditions to mitigate such risk.”

McSpadden Ex. 3.

Response: Disputed as to what extent these or other questions listed on the questionnaire were actually discussed during the call. Plaintiff objects to the use of this evidence because the Underwriters refused to produce in discovery documents or testimony on securities offerings other than the Series 5 Offering. There is no evidence whatsoever of what transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶446-453.

176. On August 31, 2007, Ken Greer from Wachovia circulated by e-mail a Standard and Poor’s report covering Barclays’ SIV exposure. Hurley Decl. ¶ 8; Hurley Ex. 3. The report noted that Standard and Poor’s ratings of Barclays were not affected by Barclays’ SIV exposure. Hurley Ex. 3 at UW_Barclays_000005094.

Response: Not disputed that the report was circulated.

177. Also on August 31, 2007 Stuart Aylward from Wachovia circulated coverage of Barclays in the *Financial Times* and noted that Standard and Poor’s had expressed the view that any losses by Barclays as a result of the sub-prime crisis would be limited. Hurley Decl. ¶ 8; Hurley Ex. 4.

Response: Not disputed that the report was circulated.

178. Wachovia's FICC approval process in connection with the Series 3 Offering involved Wachovia's consideration of, among other issues, Barclays' exposure to sub-prime related assets. Hurley Decl. ¶ 8; Hurley Ex. 2. In connection with the Series 3 Offering, Wachovia internally discussed Barclays' SIV exposure and followed up with Barclays to address the issue, at the request of its FICC. Hurley Decl. ¶ 8. On September 1, 2007, Lynn McConnell circulated internally by e-mail a set of additional due diligence questions prepared by Wachovia to pose to Barclays regarding Barclays' SIV exposure. Hurley Decl. ¶ 8; Hurley Ex. 5. These additional due diligence questions were sent to Barclays on September 3, 2007. Hurley Decl. ¶ 8; Hurley Ex. 6. On September 4, 2007, Barclays responded to Wachovia with additional information regarding its SIV exposure in response to Wachovia's supplemental due diligence questions. Hurley Decl. ¶ 8; Hurley Ex. 7.

Response: Disputed as to extent of the FICC approval process. Disputed as to the role of the FICC's review in connection with Wachovia's due diligence, and the adequacy and reasonableness of Wachovia's due diligence under the circumstances. Plaintiff objects to the use of this evidence because the Underwriters refused to produce in discovery documents or testimony on securities offerings other than the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶246-255, 446-453.

179. On November 16, 2007, Morgan Stanley circulated an internal update regarding Standard and Poor's ratings and outlook for Barclays in light of Barclays' November 15, 2007 writedown. Slyz Decl. ¶ 7; Slyz Ex. 1. The update discussed Barclays' exposure to various sub-prime assets. Slyz Ex. 1.

Response: Not disputed that the update was circulated.

180. On November 19, 2007, Julien Roman at Merrill Lynch circulated by e-mail an article from the publication *Credit Sights* addressing of the exposure of European financial institutions,

including Barclays, to CDOs. Doyle Decl. ¶ 19; Doyle Ex. 3. That article noted that Barclays' November 2007 writedown and the CDO exposures disclosed by Barclays were consistent with *Credit Sights'* own modeling. Doyle Ex. 3 at UW_Barclays_000032836.

Response: Not disputed that the article was circulated, although plaintiff notes *Credit Sights'* admits its modeling was based on its own “estimate[s]” and “assum[ptions]” of banks' exposures rather than the banks' actual exposures.

181. On November 21, 2007, Bogdan Ciobanu from Citi e-mailed David Walker, Citi's relationship manager for Barclays, requesting that Mr. Walker participate in a call with the commitment committee to discuss Citi's participation in the Series 4 Offering in light of the recent market environment and Barclays' writedown. McSpadden Decl. ¶ 15; McSpadden Ex. 7. The conference call contemplated in Mr. Ciobanu's e-mail took place on November 26, 2007. McSpadden Decl. ¶ 15. Mr. Walker, members of the commitment committee and representatives from Citi's Transaction Execution Group participated in the call. *Id.*; McSpadden Ex. 8.

Response: Not disputed, although plaintiff notes the e-mail (McSpadden Ex. 7) also states: “Within this disclosure, [Barclays] revealed a GBP 1.3 billion (\$2.67 billion) writedown/charge related to CDO and subprime mortgage losses. This announcement alleviated market concerns that the charge would be much greater (street rumors had been in the realm of \$10bn).” McSpadden Ex. 7 at 381. Plaintiff objects to the use of this evidence because the Underwriters refused to produce in discovery documents or testimony on securities offerings other than the Series 5 Offering. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶446-453.

182. On November 21, 2007, Alexandra MacMahon at Morgan Stanley e-mailed recipients in Morgan Stanley's Debt Capital Markets group requesting updates on Morgan Stanley's debt capital markets clients relating to each client's: (i) sub-prime exposure (including CDOs and

leveraged loans); (ii) total writedowns since last balance sheet date; and (iii) outstanding SIV conduits. Slyz Decl. ¶ 8; Slyz Ex. 2.

Response: Not disputed.

183. On November 22, 2007, Alexandra MacMahon at Morgan Stanley received an e-mail attaching a report prepared by Morgan Stanley listing the sub-prime exposure, SIV exposure and sub-prime related writedowns taken by various financial institutions in the United Kingdom and Ireland, including Barclays, as of that date. Slyz Decl. ¶ 8; Slyz Ex. 3.

Response: Disputed as to whether the Morgan Stanley report attached as Slyz Decl., Ex. 3 accurately reflected Barclays' actual sub-prime exposure and SIV exposure as of November 22, 2007. Plaintiff objects to the report attached as Slyz Decl., Ex. 3 as hearsay. Fed. R. Evid. 802. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶414-430.

184. On November 27, 2007, Richard Doyle from Merrill Lynch circulated an internal e-mail discussing, among other things, remarks made by Robert E. Diamond Jr., then-President of Barclays PLC, at a financial services conference. Doyle Decl. ¶ 11; Doyle Ex. 5. At the conference in question, Mr. Diamond discussed Barclays' exposure to sub-prime assets and steps taken by Barclays to mitigate this exposure. Doyle Ex. 5 at UW_Barclays_000051134-1159.

Response: Disputed as to what material in the BarCap presentation attached as part of Doyle Ex. 5 (*i.e.*, Doyle Ex. 5 at UW_Barclays_000051134-1159) was specifically stated by Mr. Diamond at the Lehman Brothers conference. Disputed as to whether Mr. Diamond's remarks at the Lehman Brothers conference in question accurately reflected Barclays' actual sub-prime exposure. Plaintiff objects to the contents of the presentation listed and Mr. Diamond's testimony as hearsay. Fed. R. Evid. 802.

185. On November 27, 2007, Sophia Vonta from UBS circulated an internal e-mail attaching Barclays' November 15, 2007, announcement of writedowns on sub-prime related assets. Vonta Decl. ¶ 8; Vonta Ex. 3.

Response: Not disputed.

186. In connection with the Series 4 Offering, Citi prepared a business due diligence questionnaire for the business due diligence call with Barclays. McSpadden Decl. ¶ 14; McSpadden Ex. 5. The business due diligence questionnaire for the Series 4 Offering included, among others, the following questions:

- Item 4: “Are there any particular business areas that the Bank expects to be adversely and significantly affected by the current economic or political climate? Discuss expected impact from the recent developments in the sub-prime and non-prime mortgage markets.”
- Item 7: “Please discuss the Barclays Capital trading statement released on November 15, 2007. In particular, what methodology was used in determining the amounts of the write downs (including any netting)? Have any additional write downs been taken or contemplated since the end of October?”
- Item 8: “Has Barclays written down a greater or lesser percentage of its assets than other U.S. and European banks? Why?”
- Item 15: “Can the Bank comment further on the impairment charges and other provisions during the first three quarters of 2007? What is your expectation for full year 2007? Any specific trends of concern that you see developing during the remainder of 2007? Do you expect the results to be in line with internal targets/market expectations?”
- Item 17: “Does Barclays have any exposure concentrations that the Bank wishes to reduce, and if so what steps are being taken to achieve this? Please comment on:
 - exposure to sub-prime and non-prime mortgage markets (e.g., EquiFirst in the U.S.)
 - steps taken recently in light of current market conditions to mitigate such risk.”

McSpadden Ex. 5.

Response: Disputed as to what extent these or other questions listed on the questionnaire were actually discussed during the call. Plaintiff objects to the use of this evidence because the Underwriters refused to produce in discovery documents or testimony on securities offerings other than the Series 5 Offering. There is no evidence whatsoever of what transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶446-453.

187. On March 13, 2008, Bogdan Ciobanu at Citi circulated an e-mail to members of Citi's Series 5 transaction team and commitment committee members. McSpadden Decl. ¶ 17; McSpadden Ex. 10. In that e-mail, Mr. Ciobanu announced that Citi had been mandated to serve as Primary Lead Underwriter in connection with the Series 5 Offering. McSpadden Ex. 10. In the same e-mail, Mr. Ciobanu highlighted a negative outlook concerning Barclays that had been published by the Fitch ratings agency. *Id.* This negative outlook explained that Fitch had changed its ratings outlook on Barclays from stable to negative based on Barclays' writedown of £1.3 billion with respect to ABS CDOs, other US sub-prime loans, SIVs and leveraged finance positions on November 15, 2007. *Id.* at UW_Barclays_000052996. Mr. Ciobanu's e-mail highlighted certain of Barclays credit market exposures discussed in the Fitch's outlook report, including Barclays' ABS Super Senior CDO exposure, monoline exposure, Alt-A exposure and other sub-prime credit market exposure. *Id.* Richard Trask responded to Mr. Ciobanu's e-mail and noted that "[g]iven the current turmoil in the financial markets (and with financial institutions in particular) . . . we should screen [Barclays]." Mr. Trask added further that, "[his] general feeling [was] that Barclay's [sic] [was] a big bank which [was] moving to deal with its problems" and that Citi should be able to participate in the Series 5 Offering, however Citi needed to "fully understand the story." *Id.*

Response: Not disputed, however plaintiff objects that the contents of the e-mail are being offered for a hearsay purpose. Fed. R. Evid. 802.

188. Merrill Lynch circulated a research report on April 3, 2008, that provided an overview of the UK bank industry and examined Barclays and its valuation of structured finance products in the context of ongoing turmoil in financial markets. Doyle Decl. ¶ 23; Doyle Ex. 7.

Response: Not disputed.

189. Wachovia prepared an internal memorandum in connection with the Series 5 Offering that addressed, among other things, Barclays' credit market exposures, including Barclays' ABS CDO Super Senior exposure, monoline exposure and other subprime exposures. Hurly Decl. ¶ 20; Hurley Ex. 9.

Response: Not disputed that the "internal memorandum" only discusses "writedowns taken by Barclays" in 2007, and does not discuss or specify the amount of actual or potential writedowns internally recognized by Barclays in 2008. Hurley ¶ 20; Hurley Ex. 9 at 553.

190. The questions posed to Barclays' management during the Business Due Diligence call included, among others:

- Item 11: "Please discuss the current state/quality of the consolidated fixed-income securities portfolio. How is the portfolio valued, marked-to-market and/or marked-to-model? Please provide the split between the two valuation methods. Please comment on the level of writedowns in 2007, and any expectation for further writedowns in 2008."
- Item 12: "Does this portfolio capture the Bank's entire exposure to CDOs, CLOs, SIVs, conduits, ABS, sub-prime mortgage assets and other structured credit products? Would all of these be located on-balance sheet? If not, how much is located off-balance sheet. Are there any off-balance sheet vehicles (e.g., SIVs) that the Bank is contemplating moving on to the balance sheet?"
- Item 16: "Please discuss the Group's exposure to monolines, either direct or indirect."

McSpadden Ex. 22.

Response: Disputed as to whether these questions were posed to Barclays' management during the call. The "questions" were prepared and provided to Barclays before the call. Further,

plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶261-262, 264, 267-271, 287-292.

191. The questions posed to PwC during the Accounting Due Diligence call included, among others:

- Item 12: "Describe any significant post FYE 2007 events which have or are likely to occur relating to the Group."
- Item 13: "Please describe PwC's involvement in the preparation of the Barclays Capital FYE 2007 financials. Can you describe the methodology used in determining the amounts of the write downs (including any netting) and whether it is in accordance with IFRS and US GAAP (to the extent applicable). Have any additional write downs been taken or contemplated since the end of December 2007?"
- Item 16: "Describe anything which has come to the attention of PricewaterhouseCoopers LLP over the last five years or since the Bank's last financial year which materially impacts on the fairness or reliability of a previous audit report or the underlying financial information or which will affect the audit report or financial statements for the current or subsequent financial years."

McSpadden Ex. 23.

Response: Disputed as to whether these questions were posed to PwC during the call. There is no evidence whatsoever of what transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶323-325.

192. The questions posed to Barclays' management during the Pre-Pricing Due Diligence call included, among others:

- Item 2: "Are there any further material updates for YTD earnings, asset quality trends or asset valuation including any updates on exposures within Barclays Capital?"
- Item 3: "Have there been, or are there contemplated, any additional write-downs of assets in any division of Barclays Bank?"
- Item 4: "Have you reviewed the Prospectus Supplement (along with the Prospectus) and are there any misstatements or omissions that you believe should be addressed?"

Are you comfortable that the Prospectus Supplement, the Prospectus and the incorporated documents fully present the risks now applicable to Barclays Bank?"

- Item 5: "Are there any areas that we have not covered, which may be material in the context of this issuance, which you should bring to our attention?"

McSpadden Ex. 24.

Response: Disputed as to whether these questions were posed to Barclays' management during the call. There is no evidence whatsoever of what transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶326-337.

193. The questions posed to Jonathan Britton during the Financial Due Diligence Call included, among others:

- "Are there any post balance sheet date events to disclose that have not already been disclosed in the Form 20-F? Are there any new acquisitions or disposals which are planned and which have not been disclosed to the market?"
- "Are you able to comment on changes in revenue, net interest income, or profit before tax for the period since 1 January 2008 compared to the corresponding period in the prior year, as well as changes in liabilities and net assets since 31 December 2007? We are most interested in changes in profit before tax, which we understand is down 9.4% on a Group basis (and 9.9% on an issuer basis) from January/February 2008 to the same period in 2007. Can you please clarify what the trend looks like since the end of February? Can you provide a specific figure as to what the decline is, and if not why not? (PWC has said they are unable to specify a figure). If specific figures are not available, can you provide an estimate of the magnitude of any such changes? In other words, if you compare the period from 1 January 2008 to 4 April 2008 to the same period in the prior year, what is the decline in profit before tax (or what is your estimate of such decline)?"
- "Have there been any changes or expected changes in impairments and write-offs since year-end 2007? Do you expect to make any public announcements regarding additional write downs and impairments and if so when?"
- "Are there any developments or announcements which may occur or be made over the next few months of which investors should be aware, or any other facts, positive or negative, on which you wish to comment?"
- "Is there anything material that has not been disclosed which is likely to be of concern to investors, bearing in mind Barclays' responsibility to ensure the prospectus contains all information necessary to enable investors to make an informed assessment of Barclays?"

- “Can you confirm that the prospectus supplement does not contain a material misstatement or omit to state a material fact necessary to make the statements in the prospectus not misleading?”
- “Have there been any material adverse trends in any of the following since 31 December 2007 which are not disclosed in the Form 20-F?”

McSpadden Ex. 25.

Response: Disputed as to whether these questions were posed to Jonathan Britton during the call. There is no evidence whatsoever of what transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶335-337.

194. The questions posed to Barclays’ management during the Pre-Settlement Due Diligence Call included, among others:

- Item 2: “Are there any further material updates for YTD earnings, asset quality trends or asset valuation including any updates on exposures within Barclays Capital?”
- Item 3: “Have there been, or are there contemplated, any additional write-downs of assets in any division of Barclays Bank?”
- Item 4: “Have you reviewed the Prospectus Supplement (along with the Prospectus) and are there any misstatements or omissions that you believe should be addressed? Are you comfortable that the Prospectus Supplement, the Prospectus and the incorporated documents fully present the risks now applicable to Barclays Bank?”
- Item 5: “Are there any areas that we have not covered, which may be material in the context of this issuance, which you should bring to our attention?”

McSpadden Ex. 27.

Response: Disputed as to whether these questions were posed to Barclays’ management during the call. There is no evidence whatsoever of what transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶385-393.

195. The questions posed to Barclays’ management during the Greenshoe Pre-Settlement Due Diligence call included, among others:

- Item 2: “Are there any further material updates for YTD earnings, asset quality trends or asset valuation including any updates on exposures within Barclays Capital?”
- Item 3: “Have there been, or are there contemplated, any additional write-downs of assets in any division of Barclays Bank?”
- Item 4: “Are there any areas that we have not covered, which may be material in the context of this issuance, which you should bring to our attention?”

McSpadden Ex. 28.

Response: Disputed as to whether these questions were posed to Barclays’ management during the call. There is no evidence whatsoever of what transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶394-404.

196. The comfort letters issued by PwC in connection with the Series 5 Offering did not express any concern with Barclays’ credit market exposures or the presentation of such exposures in the Series 5 Offering Materials. McSpadden Exs. 56, 59.

Response: Disputed as to whether the comfort letters issued by PwC in connection with the Series 5 Offering did or should have “express[ed] any concern with Barclays’ credit market exposures or the presentation of such exposures in the Series 5 Offering Materials.” Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶355-363, 365-366.

197. On November 27, 2007, Sophia Vonta from UBS circulated an internal e-mail discussing Barclays’ capital adequacy. Vonta Decl. ¶ 8; Vonta Ex. 3.

Response: Not disputed.

198. In connection with the Series 4 Offering, Citi prepared a business due diligence questionnaire for the business due diligence call with Barclays. McSpadden Decl. ¶ 14; McSpadden Ex. 5. The business due diligence questionnaire for the Series 4 Offering included, among others, the following questions:

- Item 20: “Please discuss the Bank’s current BIS ratios (Tier 1 and Total Capital).”
- Item 21: “Please provide an outline of the capital requirements of the Bank.

McSpadden Ex. 5.

Response: Disputed as to what extent these or other questions listed on the questionnaire were actually discussed during the call. Plaintiff objects to the use of this evidence because the Underwriters refused to produce in discovery documents or testimony on securities offerings other than the Series 5 Offering. There is no evidence whatsoever of what transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶446-453.

199. On January 30, 2008, Dominic Trusted at Morgan Stanley circulated a January 30, 2008 Standard and Poor’s ratings report for Barclays. Slyz Decl. ¶ 9; Slyz Ex. 4. The ratings report discussed Barclays’ capitalization. Slyz Ex. 4 at UW_Barclays_000061983.

Response: Not disputed.

200. In April 2008, Morgan Stanley prepared a capital markets sales pitch to Barclays. Slyz Decl. ¶ 10. In connection with this sales pitch, Morgan Stanley researched and presented information concerning, among other things, Barclays’ capital adequacy. Slyz Ex. 5.

Response: Disputed as to the extent to which this “sales pitch,” described in the cover e-mail as a “skeleton version,” Slyz Decl., Ex. 5 at 468, and containing multiple blank and incomplete slides, accurately presents information reflecting Barclays’ capital adequacy profile. For example, the slide titled “Perceptions of Barclays: Capital Position” only presents limited data for the period 1995-2000.

201. Barclays’ capital adequacy was flagged as a “key issue” in connection with Citi’s commitment committee screening process for the Series 5 Offering. McSpadden Ex. 9 at UW_Barclays_0000001247. The transaction summary included in Citi’s commitment committee

memo noted that Barclays' regulatory capital ratio was currently at target levels, however it noted that Barclays' risk weighted assets may be "vulnerable to any sharp increases in impairments and delinquencies if economic conditions worsen." *Id.* Citi's commitment committee memo included a consolidated balance sheet summary for Barclays' risk weighted assets and capital ratios as of December 31, 2007. McSpadden. Ex. 9 at UW_Barclays_0000001264.

Response: Disputed as to whether Citi's "commitment committee memo" accurately reflected the true amounts of Barclays' "risk weighted assets." Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶272-273, 414-430.

202. Citi's Commitment committee memo also included as exhibits rating agency reports from S&P, Moody's and Fitch, several of which addressed Barclays' capital adequacy. McSpadden Ex. 9 at UW_Barclays_0000001303-1395. For example, a January 30, 2008, Standard and Poor's credit ratings summary noted that "[a] negative rating action could follow if . . . Barclays does not meet its capital targets, although we do not currently regard such event[] as the most likely scenario. *Id.* at UW_Barclays_0000001305. As another example, an October 23, 2007, credit opinion from Moody's covering Barclays noted that, "[W]e are reasonably comfortable with the current levels of capitalisation in view of the risks that the bank accepts and the quality of its earnings. Indeed, while these ratios are important, the level and consistency of the bank's earnings are the more significant drivers of its high ratings: capitalisation ratios and composition are more likely to become a significant factor at the margin – i.e. if the rating was under pressure (upwards or downwards) for other reasons." *Id.* at UW_Barclays_0000001311-1312. As another example, an October 10, 2007, Fitch ratings report noted that: "Barclays is adequately capitalised. Among other tools, it uses a sophisticated economic capital model to measure capital adequacy." *Id.* at UW_Barclays_0000001317. The same Fitch report noted that Barclays' Equity Tier 1 Ratio was

5.3%. *Id.* at UW_Barclays_0000001322. As another example, a November 16, 2007, comment by Moody's on Barclays November 2007 trading writedown noted that "Moody's considers that the strong earnings capabilities and solid capitalisation of Barclays mean that this current write down can be absorbed without negatively impacting the credit rating of the bank." *Id.* at UW_Barclays_0000001330.

Response: Not disputed, however plaintiff objects on hearsay grounds to the extent the Underwriters offer the contents of the cited reports. Fed. R. Evid. 802.

203. Also included as exhibits to Citi's commitment committee memo were Barclays equity research reports prepared separately by Citigroup and Deutsche Bank. McSpadden Ex. 9 at UW_Barclays_0000001396-1434. The February 20, 2008 Citi Research Report addressed Barclays' Equity Tier 1 Ratio. *Id.* at UW_Barclays_0000001396. It noted that Barclays' current Equity Tier 1 Ratio was 5.1%, but predicted that Barclays' Equity Tier 1 ratio would rise to 5.3% by 2010. *Id.* A February 19, 2008 Deutsche Bank equity report characterized Barclays' capitalization as adequate and noted that Barclays' capital ratios exceeded both Deutsche Bank's and consensus expectations. *Id.* at UW_Barclays_0000001417, UW_Barclays_0000001420.

Response: Not disputed, however plaintiff objects on hearsay grounds to the extent the Underwriters offer the contents of the cited reports. Fed. R. Evid. 802. Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶374-377.

204. On April 3, 2008, members of Merrill Lynch's team circulated research reports prepared by Merrill Lynch that addressed Barclays' capital adequacy. Doyle Ex. 7. Merrill Lynch's February 20, 2008 research report noted that: "The group also produced an opening Basle II balance sheet which led to a modest improvement (from 5.0% to 5.1%) in the equity Tier 1 ratio and a modest decline (from 7.8% to 7.6%) in the Total Tier 1 ratio. We remain comfortable with the

structure of Barclays balance sheet and do not foresee the need for substantial capital issues to recapitalize the balance sheet in the near term.” *Id.* at UW_Barclays_000052531-2532. Merrill Lynch’s November 28, 2007 research report, in a section focused on Barclays November 2007 trading update, discussed Barclays’ attention to equity to asset ratios and noted that: “We remain comfortable with overall capital ratios and suspect that a greater degree of capital tension in the business will focus [Barclays] on the capital allocation/return trade-off in 2008.” *Id.* at UW_Barclays_000052546. Merrill’s November 28, 2007 research report also included key capital metrics for Barclays and projected that Barclays Core Equity Tier 1 ratio would rise from 5.0% in 2007 to 5.4% in 2008 and 5.7% in 2009. *Id.* at UW_Barclays_000052545, UW_Barclays_000052551.

Response: Not disputed, however plaintiff objects on hearsay grounds to the extent the Underwriters offer the contents of the cited reports. Fed. R. Evid. 802. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶378-379.

205. The questions posed to Barclays’ management during the Business Due Diligence call included, among others:

- Item 22: “Please discuss the Bank’s current BIS ratios (Tier 1 and Total Capital).”
- Item 23: “Please provide an outline of the capital requirements of the Bank.”

McSpadden Ex. 22.

Response: Disputed as to whether these questions were posed to Barclays’ management during the call. The “questions” were prepared and provided to Barclays before the call. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶261-262, 264, 267-271, 287-292, 440-442.

206. On April 7, 2008, members of Wachovia’s team circulated a memorandum that addressed, among other things, Barclays’ capital adequacy. Hurley Decl. ¶ 20; Hurley Ex. 9.

Response: Not disputed.

207. On April 1, 2008, Sarah Whittington from Linklaters circulated by e-mail to Citi and BCSL Linklaters’ comments on the current draft of PwC’s comfort letter. McSpadden Ex. 43. Several of Linklaters’ comments related to the level of comfort provided by PwC for certain line items including profits before tax (“PBT”) for the unaudited period beginning on Jan 1, 2008 and preceding the Series 5 Offering (the “Stub Period”). *Id.* at UW_Barclays_000035544-5546.

Response: Not disputed.

208. The draft of the comfort letter on which Linklaters provided its April 1, 2008 comments included bracketed language from PwC at Item 6 (addressing the level of comfort to be provided by PwC for financial statement items subsequent to February 29, 2008) indicating that “subject to [Barclays’] Management being able to provide back-up for all line items as at [a cut-off date in April 2008 to later be determined] – we are unable to confirm at this stage that we will be able to provide comfort in relation to profit and loss items as at the cut-off date.” *Id.* at UW_Barclays_000035545. Linklaters commented to this notation from PwC as follows: “This should be expressed as negative assurance, as per SAS 72 given that you are within 135 days of period end – similarly, negative assurance for this period was provided in the Series 2 comfort letter, which was also delivered inside the 135 day window.” *Id.*

Response: Not disputed, however plaintiff objects to Linklaters’ legal opinion.

209. The operative draft of the comfort letter on which Linklaters provided its April 1, 2008 comments included bracketed language from PwC at Item 9 (addressing the level of comfort to be provided by PwC for financial statement items between January 1, 2008 and the cut-off date)

indicating that “subject to [Barclays’] Management being able to provide back-up for all line items as at cut-off date – we are unable to confirm at this stage that we will be able to provide comfort in relation to profit and loss items as at the cut-off date.” McSpadden Ex. 43 at UW_Barclays_000035545-5546. Linklaters commented to this notation from PwC as follows: “This should be negative assurance – if there is a decrease in [profit and loss] items, those should be noted.” *Id.* at UW_Barclays_000035546.

Response: Not disputed, however plaintiff objects to Linklaters’ legal opinion.

210. Sarah Whittington sent Linklaters’ April 1, 2008 comments on the comfort letter to PwC on April 1, 2008. McSpadden Ex. 45.

Response: Not disputed.

211. On April 2, 2008 Drew Haigh e-mailed Simon Croxford, Belinda Vickery and Richard Johnson at BCSL. McSpadden Ex. 47. This e-mail read as follows:

“Following our meeting a couple weeks ago it would be good to rationalise the line item comfort provided:

(i) All 7 line items should remain for the month-end period (share capital, sub liabilities, Total Liabilities, Total Assets, Shareholders Equity, NII[,] PBT)

(ii) However I propose that we have 3 line items to comfort in the stub period, due to lack of consolidation mid month, these being Sub liabilities, Share Capital and PBT (i.e. numbers that management have a greater comfort over)

[. . .]

Therefore I propose in the next draft of the comfort letter, that we have the above approach, thereby avoiding including the line-items and then have to write statements that the management cannot provide the information.

What are your thoughts?”

Id. at UW_Barclays_000047906_003.

Response: Not disputed.

212. Later on April 2, 2008, Drew Haigh from PwC e-mailed to Sarah Whittington a revised draft of the comfort letter incorporating Linklaters' April 1, 2008 comments (the "April 2 Draft Comfort Letter"). McSpadden Ex. 44. In Mr. Haigh's cover e-mail to Ms. Whittington, he stated: "Please note that I have communicated to [BCSL] earlier today that we wish to reduce the number of line items comforted in the stub period (this has been reflected in the latest draft of the above documents) thereby reducing the potential wording expressing the fact that management cannot provide comfort on the line items in a separate paragraph . . . please circulate and provide comment." *Id.* at UW_Barclays_000035756.

Response: Not disputed.

213. Sarah Whittington forwarded the April 2 Draft Comfort Letter to Citi and BCSL the morning of April 3, 2008. McSpadden Ex. 44 at UW_Barclays_000035755.

Response: Not disputed.

214. The April 2 Draft Comfort Letter included bracketed language from PwC at Item 6 (addressing the level of comfort to be provided by PwC for financial statement items subsequent to February 29, 2008) indicating that: "On the basis of these inquiries [with Barclays' management as described in Item 4] and [PwC's] reading of the [Barclays' board] minutes as described in [Item] 4, nothing came to our attention that caused us to believe that there was any such change, increase or decrease, except in all instances for changes, increases or decreases which the Registration Statement discloses have occurred or may occur. – TBC [to be confirmed] and subject to [Barclays'] Management being able to provide back-up for all line items as at cut-off date – we are unable to confirm at this stage that we will be able to provide comfort in relation to profit and loss items as at the cut-off date." McSpadden Ex. 44 at UW_Barclays_000035766.

Response: Not disputed that the cited language appears in the cited document, however plaintiff objects to the contents of the draft comfort letters as hearsay. Fed. R. Evid. 802.

215. The April 2 Draft Comfort Letter included bracketed language from PwC at Item 9 (addressing the level of comfort to be provided by PwC for financial statement items between January 1, 2008 and the cut-off date) indicating that: “On the basis of these inquiries [with Barclays’ management as described in Item 4] and [PwC’s] reading of the [Barclays’ board] minutes as described in [Item] 4, nothing came to our attention that caused us to believe that there was any such change, increase or decrease, except in all instances for changes, increases or decreases which the Registration Statement discloses have occurred or may occur. – TBC [to be confirmed] and subject to [Barclays’] Management being able to provide back-up for all line items as at cut-off date – we are unable to confirm at this stage that we will be able to provide comfort in relation to profit and loss items as at the cut-off date.” McSpadden Ex. 44 at UW_Barclays_000035767.

Response: Not disputed that the cited language appears in the cited document, however plaintiff objects to the contents of the draft comfort letters as hearsay. Fed. R. Evid. 802.

216. On April 3, 2008, Richard Johnson at BCSL responded to Drew Haigh of PwC’s e-mail of April 2, 2008. McSpadden Ex. 47. Mr. Johnson’s e-mail stated:

We need to ensure that it is not feasible for you to make the determinations as to the other four line items in the period after month end. PwC should only be able to take this position because it is not possible for you to give the ‘usual’ comfort. Can you and Barclays therefore please confirm that it is simply impracticable to provide sufficient data to enable PwC to provide comfort on these items?

If this is the case, we will want to have a further diligence call with Barclays to enable us to test the situation since the end of February, as a substitute for getting this coverage in the comfort letter.

I’ve copied Citi on this email for their input, should they have anything to add.

Id. at UW_Barclays_000047906_003.

Response: Not disputed.

217. On April 4, 2008, Richard Johnson at BCSL followed up on his April 3, 2008 e-mail to Drew Haigh at PwC. McSpadden Ex. 47. He requested: “Would you be able to confirm this today, so we can set up the appropriate call with Barclays next week, ahead of pricing?” *Id.* at UW_Barclays_000047906_002.

Response: Not disputed.

218. Later on April 4, 2008, Drew Haigh e-mailed Citi, BCSL and Linklaters describing a conversation with Amina Jafrabadi from Barclays Group Finance. McSpadden Ex. 46. Mr. Haigh noted, among other things, that Ms. Jafrabadi indicated she would follow up with appropriate individuals at Barclays to determine the level of comfort Barclays would be able to provide on line items during the Stub Period, and that he hoped to have a response from Barclays later that afternoon. *Id.* at UW_Barclays_000081755. He also noted that, “I will inform/email Jonathan Britton that it would be great if he can look at the PBT number today . . . therefore enabling us to communicate PBT movements earlier (as part of the draft [comfort letter]) – and therefore indicating your requirement for a due diligence call.” *Id.*

Response: Not disputed that the e-mail was sent, however plaintiff objects to the contents of the e-mail as hearsay. Fed. R. Evid. 802.

219. Drew Haigh at PwC followed up with Citi, BCSL and Linklaters later on April 4, 2008. McSpadden Ex. 47. His e-mail stated in part:

Just to confirm the conversations that we had today with Barclays Finance . . . the conclusion on line item comfort was that they should be able to give us appropriate comfort on: (i) Share Cap[;] (ii) Sub Liabilities[;] (iii) PBT; and (iv) Shareholders’ Equity in the stub period, for us to be able to make a statement in the comfort letter[.]

In terms of logistics, Jonathan Britton was on holiday today (and also on Monday), however, we have been assured that we will get our directional comfort off Jonathan

on Monday morning, therefore we should be able to get you draft letters with revised wording by the end of Monday.

We have also highlighted that, in the circumstance (post analysis), if PBT turns out to be less for the period from 1 January 2008 – 3 April 2008 as compared to the comparative period in the prior year, that Finance need to make us and the Manager's aware and as a result a further due diligence call will be required later that day.

Id. at UW_Barclays_000047906_001.

Response: Not disputed that the e-mail was sent, however plaintiff objects to the contents of the email as hearsay. Fed. R. Evid. 802.

220. Jack McSpadden at Citi forwarded Drew Haigh's April 4, 2008 e-mail to AJ Davidson at Merrill Lynch on April 4, 2008. McSpadden Ex. 47. Also on April 4, 2008, Mr. Davidson e-mailed Mr. McSpadden inquiring as to the level of comfort PwC would be able to provide during the Stub Period, asking: "Any sight of the comfort letter? Any issues there? We're getting good Q1-ish comfort or not?" McSpadden Ex. 48 at UW_Barclays_000064095. Mr. McSpadden responded the same day in part: "Getting neg assurance thru Feb 29 and a few line items still being discussed, thru cutoff which is yesterday I think. Might be today. Given T+3, March numbers will not be done but as in the past, [BCSL] and Citi will have a call with Jonathan Brittan [sic] to get range color on the month and quarter both pre pricing and pre closing." *Id.* at UW_Barclays_000064094-4095.

Response: Not disputed that the e-mail was sent.

221. On April 4, 2008, Sophie Shi from PwC e-mailed to Sarah Whittington at Linklaters a revised draft of the comfort letter (the "April 4 Draft Comfort Letter"). McSpadden Ex. 49.

Response: Not disputed that the e-mail was sent.

222. Sarah Whittington circulated the April 4 Draft Comfort Letter to Citi, BCSL, Merrill Lynch, UBS, Wachovia and Morgan Stanley on April 4, 2008. McSpadden Ex. 49.

Response: Not disputed that the e-mail was sent.

223. The April 4, 2008 Draft Comfort Letter included the same bracketed language as the April 2 Draft Comfort Letter at items 6 and 9, regarding the level of comfort to be provided during the Stub Period. McSpadden Ex. 49.

Response: Not disputed that the bracketed language appears in the cited document, however plaintiff objects to the contents of the draft comfort letter as hearsay. Fed. R. Evid. 802.

224. Later on April 4, 2008, Drew Haigh at PwC e-mailed Sarah Whittington at Linklaters the following message: “Please note that the line-item comfort has been discussed with [Barclays] Group Finance and the conclusion was that they should be able to give us appropriate comfort on: (i) Share Cap[;] (ii) Sub Liabilities[;] (iii) PBT; and (iv) Shareholders’ Equity in the stub period.” McSpadden Ex. 50 at UW_Barcalys_000045980. Ms. Whittington forwarded this message from Mr. Haigh to Citi, BCSL, Merrill Lynch, UBS, Wachovia and Morgan Stanley on April 4, 2008. *See id.*

Response: Not disputed that the e-mail was sent, however plaintiff objects to the contents of the e-mail as hearsay. Fed. R. Evid. 802.

225. On April 6, 2008, David Ludwick at Linklaters e-mailed Drew Haigh at PwC. McSpadden Ex. 52. His e-mail stated in part: “Given the tight timing, the draft letters with the results of procedures should be sent as soon as the procedures are completed, even if the engagement letter is not signed, as the underwriters need time to consider the results.” *Id.*

Response: Not disputed that the e-mail was sent.

226. On April 8, 2008, Sarah Whittington from Linklaters e-mailed an updated draft of the comfort letter to the Underwriters. McSpadden Ex. 53. In her e-mail she noted:

Please find attached the revised comfort letter from PwC. We would draw your attention in particular to the decline in Group profit before tax of 9.4% (and issuer profit before tax of 9.9%) that PwC has indicated for January/February 2008 compared to the corresponding period in the prior year. We also note that PwC has

indicated that for the stub period from January 1 2008 to April 4 2008, they expect to be able to give only directional comfort on the change, rather than a specific figure.

Id.

Response: Not disputed that the e-mail was sent.

227. Later on April 8, 2008, Sarah Whittington e-mailed a revised version of the draft comfort letter to the Underwriters. McSpadden Ex. 54. She noted: “Please find attached a revised US Comfort Letter from PwC – the only change is that they have been able to confirm that the profit before tax for the Group and Issuer during the stub period (Jan – Apr 4) decreased compared to the same period last year (affected paragraphs are 6 and 9).” *Id.*

Response: Not disputed that the e-mail was sent.

228. Sarah Whittington forwarded a further revised draft to the Underwriters later that day, reflecting an update to the “circle-up” and responses attached to the comfort letter. McSpadden Ex. 55.

Response: Not disputed that the e-mail was sent.

229. Also on April 8, 2008, Richard Johnson at BCSL e-mailed to Jack McSpadden at Citi, with a copy to David Ludwick at Linklaters, the Financial Due Diligence Questionnaire. McSpadden Ex. 25. The questions for Jonathan Britton included in the questionnaire, included, among others:

- “When are March flash results or other accounts available?”
- “Are you able to comment on changes in revenue, net interest income, or profit before tax for the period since 1 January 2008 compared to the corresponding period in the prior year, as well as changes in liabilities and net assets since 31 December 2007? We are most interested in changes in profit before tax, which we understand is down 9.4% on a Group basis (and 9.9% on an issuer basis) from January/February 2008 to the same period in 2007. Can you please clarify what the trend looks like since the end of February? Can you provide a specific figure as to what the decline is, and if not why not? (PWC has said they are unable to specify a figure). If specific figures are not available, can you provide an estimate of the magnitude of any such

changes? In other words, if you compare the period from 1 January 2008 to 4 April 2008 to the same period in the prior year, what is the decline in profit before tax (or what is your estimate of such decline)?”

- “What are the primary drivers of the decline in profit before tax (ie what parts of the business)? Are there adverse developments occurring that Barclays think will be regarded as a surprise by investors?”

Id. at UW_Barclays_000018138-8139.

Response: Not disputed that the call was held, although there is no evidence whatsoever of what transpired on the call. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶335-337.

230. The Financial Due Diligence Call was held on April 8, 2008. McSpadden Decl. ¶ 28. Citi, BCSL, Merrill Lynch, UBS, Wachovia and Linklaters participated in the Financial Due Diligence Call. McSpadden Decl. ¶ 36; McLeland Decl. ¶ 10; Doyle Decl. ¶ 15; Hurley Decl. ¶ 12; Vonta Decl. ¶ 13; Ludwick Decl. ¶ 8; McSpadden Ex. 26.

Response: Not disputed. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶335-337.

231. On April 8, 2008, Carolyn Coan from Wachovia sought clarification from Linklaters as to why PwC would only be able to provide directional comfort on PBT. Hurley Decl. ¶ 17; Hurley Ex. 8. David Ludwick from Linklaters explained in a response that information available to PwC for the relevant time period did not have “sufficient granularity” to allow PwC to provide comfort on a specific PBT figure. Hurley Ex. 8.

Response: Disputed as to whether the “information available to PwC for the relevant time period” had “‘sufficient granularity’ to allow PwC to provide comfort on a specific PBT figure.” Plaintiff also objects that the statements constitute hearsay. Fed. R. Evid. 802. Further, plaintiff respectfully refers the Court to Plaintiff’s Counterstatement, ¶¶355-363, 365-366.

232. On April 8, 2008, Merrill Lynch personnel discussed internally Barclays' decline in PBT for January and February of 2008 as compared to the same period in 2007 and concluded that they were comfortable with the magnitude of the decline in Barclays' PBT. Doyle Decl. ¶ 20; Doyle Ex. 6.

Response: Not disputed.

233. UBS discussed Barclays' decline in PBT for January and February of 2008 as compared to the same period in 2007 in advance of the Series 5 Offering and felt comfortable with the declines in Barclays' PBT in light of the fact that the decline was consistent with market expectations and appeared to be in line with declines in PBT at Barclays' peer financial institutions. Vonta Decl. ¶ 18; Vonta Ex. 5.

Response: Disputed as to whether "Barclays' decline in PBT for January and February of 2008 as compared to the same period in 2007" "was consistent with market expectations and appeared to be in line with declines in PBT at Barclays' peer financial institutions." Further, plaintiff respectfully refers the Court to Plaintiff's Counterstatement, ¶¶371-384.

234. Sarah Whittington circulated an executed copy of the comfort letter to the Underwriters on April 9, 2008. McSpadden Ex. 56. Ms. Whittington circulated an executed copy of a Non-US comfort letter to the Underwriters on April 10, 2008. McSpadden Ex. 57.

Response: Not disputed.

235. On April 10, 2008, Sarah Whittington from Linklaters circulated by e-mail to the Underwriters draft bring-down US and non-US comfort letters from PwC. McSpadden Ex. 58.

Response: Not disputed.

236. On April 11, 2008, Sarah Whittington from Linklaters circulated by e-mail to the Underwriters executed copies of PwC's bring-down US and non-US comfort letters. McSpadden Ex. 59.

Response: Not disputed.

237. On April 18, 2008, David Ludwick from Linklaters e-mailed BCSL requesting that Chris Lucas and Jonathan Britton from Barclays participate in the Greenshoe Pre-Settlement Due Diligence Call "to be sure [Linklaters] can get comfortable that no further disclosure is needed given that [Barclays] may have March numbers." McLeland Decl. ¶ 12; McLeland Ex. 1.

Response: Not disputed.

II. ADDITIONAL STATEMENT OF UNDISPUTED FACTS

A. Additional Facts Concerning Barclays' Consolidated Financial Statements in Their 2007 Form 20-F

238. On March 26, 2008, Barclays filed its annual report on Form 20-F for the fiscal year ended December 31, 2007. White Ex. 1.

239. The "Report of Independent Registered Public Accounting Firm to the Board of Directors and Shareholders of Barclays PLC" is found on page 147-48 of the 2007 Form 20-F. White Ex. 1.

240. Page 147 of the 2007 Form 20-F states: "The Company's management are responsible for these financial statements, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in 'Management's report on internal control over financial reporting' in the section headed Accountability and audit." White Ex. 1.

241. Page 147 of the 2007 Form 20-F also states: "Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements." White Ex. 1.

242. Page 148 of the 2007 Form 20-F states: “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 Bank Plc and its subsidiaries at 31st December 2007” White Ex. 1.

243. This Report on page 147-148 is signed by PwC, London, United Kingdom. White Ex. 1.

244. In connection with the Series 5 Offering, PwC did not audit any financial statements of Barclays as of any date, or for any period, subsequent to December 31, 2007. McSpadden Ex. 56 at 059.

245. In connection with the Series 5 Offering, PwC did not audit Barclays’ internal control over financial reporting as of any date subsequent to December 31, 2007. McSpadden Ex. 56 at 059.

B. Additional Undisputed Facts Concerning Events Preceding the Series 5 Offering Due Diligence Calls

246. On August 30, 2007, Lynn Mconnell of Wachovia sent an e-mail in which she stated “Please note that we are told this is a due diligence call relating to the US shelf ONLY and is not intended to be deal specific. At Barclay’s request, only dealers (which we are not) may make verbal comment on the call.” The e-mail also stated “We have requested whether there will be a DD call for the deal where Wachovia can pose additional questions, we are awaiting a response.” Hurley Ex. 2 at 225.

247. On September 3, 2007, in connection with the Series 4 Offering, Stuart Aylward of Wachovia sent a set of due diligence questions to Barclays. Hurley Ex. 6 at 156. Stuart Aylward of Wachovia stated in his e-mail to Barclays: “*For clarity we do not expect you to provide Wachovia*

with any non public information or commentary, however, to the extent that you are able to elaborate or reiterate your previous responses we would be grateful.” Hurley Ex. 6 at 156.

248. On September 4, 2007, Barclays provided responses to Wachovia’s list of questions submitted to Barclays on September 1, 2007. Barclays’ response to Wachovia consisted only of publicly available information. Hurley Ex. 7.

249. In response to Wachovia’s first question, “[p]lease comment on Barclay’s exposure to the Bear Stearns Leverage Fund” (Hurley Ex. 6 at 157), Barclays’ response was: “Please see the attached Press Release A1, which does not refer to Bear Stearns but was related to press comment made at the time.” (Hurley Ex. 7 at 405).

250. In response to Wachovia’s second question, “[p]lease comment on Barclays’ exposure to liquidity or credit backup facilities to the following SIVs: Golden Key Ltd., Mainsail I Ltd., Cairn High Grade Funding I., and Sachsen Funding I Ltd. Do you foresee any potential losses to Barclays associated with these SIVs?” (Hurley Ex. 6 at 157), Barclays’ response was: “Please see the comments made by Bob Diamond over the weekend – maximum exposure estimated at £75m.” (Hurley Ex. 7 at 405).

251. In response to Wachovia’s third question, “[p]lease comment on the amount, term and structure of the loan Barclays has committed to Cairn Capital in connection Cairn High Grade Funding I as well as any hedging done in connection with the loan commitment. Is the new loan commitment in addition to the \$442MM already committed to the fund?” (Hurley Ex. 6 at 157), Barclays’ response was: “Please see attached Press Release from Cairn – Barclays’ interest is now fully hedged and replaces any previous liquidity obligations.” (Hurley Ex. 7 at 405).

252. In response to Wachovia’s fourth question, “[d]oes Barclays foresee making additional commitments such as that made to Cairn to other similarly situated funds?” (Hurley Ex. 6

at 157), Barclays' response was: "All situations are looked at on a case by case basis." (Hurley Ex. 7 at 405).

253. In response to Wachovia's fifth question, "[d]o you foresee any potential losses to Barclays for any other SIVs that Barclays has structured or otherwise has exposure to via liquidity lines, market value swaps, hedges or via any other similar commitment?" (Hurley Ex. 6 at 157), Barclays' response was: "The only comments we have made relate to SIV-lites see answer to 2 above." (Hurley Ex. 7 at 405).

254. In response to Wachovia's sixth question, "[p]lease comment on Barclays continued commitment to Sheffield Receivables Corp, Stratford Receivables Company and Surrey Funding Corp. Does Barclays envision needing to provide actual liquidity funding to these ABCP conduits?" (Hurley Ex. 6 at 157), Barclays' response was: "Our conduits continue to be predominantly funded in the CP market – we have no reason to expect that this will not continue to be the case." (Hurley Ex. 7 at 405).

255. On November 15, 2007, Bryant Owens of Wachovia internally circulated a Bloomberg article discussing Barclays' November 15, 2007 announcement of "writedowns of about 1.3 billion pounds (\$2.7 billion) on credit-related securities tied to the U.S. subprime-mortgage market collapse." Brown Decl., Ex. 33 at 528. Another Wachovia representative replied: "As of a week ago . . . 'Chatter that that British financial giant Barclays has large a write-down in the pipeline sent its shares sliding today. Barclays denied it, saying there was 'no substance' to the rumor, or to reports of imminent resignations by senior executives.'" *Id.* at 527. The same person added: "I hear it is much larger over time" *Id.* Another person at Wachovia replied: "I hear you." *Id.*

256. On November 29, 2007, Barclays circulated an e-mail attaching a recent research note from Citi following Barclays' recent trading update disclosure. Brown Decl., Ex. 34 at 366; Brown

Decl., Ex. 35 (research note titled “The Runaway Balance Sheet”). One of the “key points” noted in the e-mail pertaining to the Citi research note was “[e]xpect BarCap to show a 2% drop in pre-tax profits in 2008, and zero growth on Group basis.” *Id.* Barclays forwarded this e-mail to Citi, stating: “Please remind me – we are paying you to sell our preference shares, when your research guys wouldn’t touch us with a barge pole.” *Id.*

257. On March 5, 2008, a “Project Rimu Organizational Conference Call” is held. The agenda for the call listed three “Due diligence requirements” – “Business,” “Accounting,” and “Legal.” Brown Decl., Ex. 36 at 002.

258. “Project Rimu” was the project name assigned to the Series 5 Offering. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 48:5-7.

259. On March 10, 2008, Citi e-mailed Barclays asking “[c]an we update the timeline assuming April 7th launch?” Brown Decl., Ex. 37 at 529. Citi attached to its e-mail the timeline that was used in connection with the Series 4 Offering. *Id.*

260. On March 13, 2008, drafts of the Series 5 “Prospectus Supplement and Document Checklist” were circulated by Sullivan & Cromwell, “in clean format and blacklined against the corresponding documents from the November 30, 2007 transaction.” Brown Decl., Ex. 38 at 529.

261. On March 18, 2008, “the draft Business and Accounting due diligence lists for Project Rimu” were circulated by Citi. Brown Decl., Ex. 39 at 716. The filenames of the two attachments to Citi’s e-mail are “Barclays – Business Due Diligence Mar 2007 v2.pdf” and “Barclays – Accounting Due Diligence Mar 2007 v2.pdf.” *Id.*

262. On March 20, 2008, Citi sent to Barclays and others a “draft” list of questions for the upcoming business due diligence call held on April 3, 2008. Brown Decl., Ex. 9 at 881.

263. On March 20, 2008, Linklaters sent an e-mail to PwC and others attaching Linklaters' "circle up of the draft 20-F" and requesting to see "drafts of your comfort letters at your earliest convenience." Brown Decl., Ex. 40 at 582. On March 26, 2008, Linklaters forwarded its original e-mail from March 20, 2008 (*see id.*) to PwC and others, stating: "Just following up on David's e-mail below – is there any indication as to when the draft comfort letters will be available?" *Id.*

264. On March 25, 2008, Barclays informed Citi that persons not involved in the Series 5 Offering would be present on the April 3, 2008 business due diligence, and asked Citi "please can you remove all reference to Project Rimu (cover page) and the Prospectus Supplement (Q. 43) and anything else that hints at a current issue." Brown Decl., Ex. 41 at 224. Citi complied with Barclays' request.

265. On March 28, 2008, Laura Drumm of Citi circulated a proposed syndicate structure for the Series 5 offering. Brown Decl., Ex. 42 at 005.

266. On March 28, 2008, Inosi Nyatta of Sullivan & Cromwell ("S&C") circulated to Barclays and others drafts of the S&C opinions used in the Series 4 Offering to be used in connection with the Series 5 Offering. Brown Decl., Ex. 43 at 684.

267. On April 1, 2008, Bogdan Ciobanu of Citi submitted to Barclays and others the final version of the list of questions for the April 3 business due diligence call. McSpadden Ex. 21 at 708, 710-713. The e-mail stated: "Please note that there will be other parties on the conference call (dealers on the Barclays MTN programme) that are not aware of Project Rimu, therefore please do not make any comments that relate directly to Project Rimu/Retail Preferred transaction." *Id.* at 708.

268. Certain questions that had been included in the draft list of questions sent to Barclays and others on March 20, 2008 (*see* Brown Decl., Ex. 9 at 881) were not included in the final version of the list of questions sent to Barclays and others on April 1, 2008 (*see* Brown Decl., Ex. 10).

269. The following question was removed from the March 20, 2008 draft questionnaire sent to Barclays on March 20, 2008 (*see* Brown Decl., Ex. 9 at 881) and was not addressed during the April 3 business due diligence call: “Please discuss the intended use of proceeds from the current issue of capital securities.” McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 168:18-170:2; Brown Decl., Ex. 9 at 887 (Question 28).

270. The following question was removed from the March 20, 2008 draft questionnaire sent to Barclays on March 20, 2008 (*see* Brown Decl., Ex. 9 at 881) and was not addressed during the April 3 business due diligence call: “Does the Prospectus Supplement, including the documents incorporated by reference therein contain all information which is necessary to enable investors to make an informed assessment of the assets, liabilities, financial position, profit and loss and prospects of the Issuer?” McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 172:25-174:2; Brown Decl., Ex. 9 at 888 (Question 43).

271. The following question was removed from the March 20, 2008 draft questionnaire sent to Barclays on March 20, 2008 (*see* Brown Decl., Ex. 41) and was not addressed during the April 3 business due diligence call: “Are there any developments or announcements which may occur or be made over the next few months of which investors should be made aware, or any other facts, positive or negative, on which management wishes to comment.” McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 174:16-175:6; Brown Decl., Ex. 9 at 888 (Question 45).

272. On April 2, 2008, Citi held a Debt Commitment Committee call to discuss its participation in the Series 5 Offering. Brown Decl., Ex. 44 at 244. The memorandum used in connection with the call stated: “Barclays currently has one of the European bank sector’s lowest ‘tangible equity/assets’ ratios. . . . Barclays has RWA’s of 353bn (c.\$700bn) and thus may be

vulnerable to any sharp increases in impairments and delinquencies if economic conditions worsen (large loan book exposures are to consumer, property and construction).” *Id.* at 247.

273. The memorandum also stated: the Series 5 “[d]istribution breakdown is expected to be about 85-90% retail . . . , 10-15% institutional.” *Id.*

274. Potential investors to supply capital to Barclays being considered by Barclays prior to the Series 5 Offering included China Development Bank (“CDB”) and Temasek Holdings (Private) Limited (“Temasek”). Brown Decl., Ex. 45 at 842.

275. In March 2008, Temasek conducted due diligence of Barclays in connection with its potential equity investment in Barclays. Brown Decl., Ex. 46.

276. On March 18, 2008, Barclays sent an internal e-mail stating: “Please find attached two packs for this morning’s discussion. The first is prepared to address questions asked by Temasek (which I’ve included below). The second is data we have provided to the rating agencies.” Brown Decl., Ex. 46 at 585-86.

277. The list of “Questions from Temasek” consisted of (*see* Brown Decl., Ex. 46 at 585-86):

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

278. Temesk requested non-public information as part of its due diligence.

279. The information Barclays planned to disclose to Temasek as part of this presentation included: (1) a notional amount of Barclays' exposure to monoline insurers totaling £20.990B; and (2) Barclays' exposure to instruments such as ABS CDO Super Seniors, Alt-A whole loans and securities, commercial mortgage backed securities, and others as of the interim period ending February 2008. *See Brown Decl., Ex. 47 at 2-6.* This information was not disclosed in the Series 5 Offering Materials.

280. On March 20, 2008, Chris Lucas reported to the Board: "Discussions were under way with a Japanese bank and a Korean insurance company to enter into strategic partnerships which would include them taking equity stakes amounting to between £1 billion and £2 billion." *Brown Decl., Ex. 32 at 059.*

281. On April 3, 2008, Shyam Parekh of Morgan Stanley circulated internally an e-mail with the subject "barclays – some feedback." The e-mail stated: "this from a UK perspective Like RBS, investors are wary about the marks on their [Barclays'] positions: They understand managements' arguments, but are suspicious the 'real' reason they don't want to take more

conservative marks is because it would stretch the balance sheet and they would have to raise equity. . . . Investors are also puzzled about the stance of the FSA these days. They get the impression the FSA wants banks to rebuild their capital position, but they cannot tell what the FSA actually plans to do. 'Force' them to raise equity? Replace hybrids with common? Shrink the balance sheet? Cut dividends? Over what time frame? Putting all the above together, the consensus view in the UK is that none of the banks are likely to raise equity in the near future. If anything, raising equity (a la UBS) now would send a signal of 'distress' which managements at RBS, BARC and HBOS have been at such pains to deny they are experiencing. As such, it's not clear that 'clean up' + 'cap raising' equates to a UBS-style bounce." Brown Decl., Ex. 48 at 260-61.

282. On April 3, 2008, Morgan Stanley sent an internal e-mail chain stating it planned to meet with Barclays on April 11, 2008, after the Series 5 Offering, to discuss raising capital at Barclays. Brown Decl., Ex. 49 at 697. Attached to this e-mail was a draft slide deck for the meeting with Barclays. An earlier e-mail in the thread, dated April 2, 2008, stated: "From an S&P perspective (based on an analysis published in Jan 08), Barclays has a relatively weak capitalisation and has fully utilised its S&P capacity for hybrids in the ATE ratio (as at June 07, only 5.3 bn of a total 7.5 bn in higher quality hybrids received ATE recognition due to the '33% of ACE' limit). Therefore (assuming the capital structure hasn't undergone a major change since June 07), we're going to have to look at mandatory converts or equity to solve any capital shortfalls due to further material writedowns. In any event, this would probably not prevent a downgrade for the same reasons we saw with UBS. More difficult is the estimate of how big writedowns would have to be to cause a downgrade by S&P to 'AA-'. If they are in the region of 1 bn, I think there's a fair chance of a downgrade, but nothing like the certainty I felt with UBS. Moody's is very unlikely to downgrade in such a scenario, but could move outlook to negative."

283. On April 9, 2008, Morgan Stanley circulated internally a revised version of the slide deck attached to the earlier April 3, 2008 e-mail at Brown Decl., Ex. 49. *See* Brown Decl., Ex. 50 (attachment at Brown Decl., Ex. 51).

284. Page 5 of the deck stated: “Investor views on Barclays are polarized around the question of whether additional writedowns/capital may be needed.” Brown Decl., Ex. 51 at 5.

285. Page 9 of the deck stated: “Barclays’ ABS and real estate exposures are a source of investors’ concern – due to size of positions and expectations of writedowns.” *Id.* at 9. According to the PowerPoint, brokers (on average) expected an additional 1.4 GBP billion to be recognized by Barclays. *Id.* at 10. According to the PowerPoint, Barclays had the second-lowest Equity Tier 1 level and the second-lowest Equity-to-Tangible Assets ratio among its peer group for 2007. *Id.* at 11.

286. Page 12 of the deck stated: “S&P and Fitch have assigned negative outlooks to Barclays’ ratings owing to its exposure to structured finance assets, leveraged loans and the general difficult conditions for banks with large capital markets activities. Moody’s maintains a stable outlook. Looking at additional write-downs of up to £3 Bn, on top of the £2.3 Bn already announced, Morgan Stanley estimates that Barclays’ Tier 1 ratio falls by 0.8%-points to 7.0% and the S&P ATE ratio by 1.1%-points to 4.6% without any restorative action. This is a material reduction in the capital base and is likely not compatible with the current rating levels – Morgan Stanley estimates that Barclays’ ratings would be maintained if additional writedowns are limited to £1 Bn, even without a capital increase (but some risk to S&P rating). If write-downs exceed £1 Bn, a capital injection may be necessary to ease S&P’s concerns regarding core capital ratios. Due to the high hybrid leverage, we believe this capital injection would need to be in the form of equity or mandatory convertible instruments. If write-downs exceed £2 Bn even a capital injection may not be

sufficient to avoid a one notch S&P downgrade due to concerns about perceived risk management failures. The agencies would also note that further losses would raise questions about the efficacy of the bank's hedges and the ability to manage the workout of the exposures. Without a capital increase to cover any additional write-downs of £4 Bn or more, Barclays could suffer multiple notch downgrades." Morgan Stanley proposed two options to Barclays to raise between £2-5 billion in capital. *Id.* at 19.

C. Additional Undisputed Facts Concerning the April 3, 2008 Business and Accounting Due Diligence Calls

287. Barclays produced during discovery an audio recording of the April 3, 2008, business due diligence call. Brown Decl., Ex. 52 (audio recording of call).

288. Counsel for plaintiffs obtained a certified transcript of the audio recording produced by Barclays as Brown Decl., Exs. 52 & 11.

289. No other audio recordings of any due diligence calls, other than of the April 3, 2008, business due diligence call, were produced in discovery in this action.

290. Barclays did not provide to the Underwriters written responses to the questions addressed during the April 3, 2008, business due diligence call. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 176:7-14 ("Q. Did Barclays provide written responses to any of these questions in advance of the April 3rd call? A. No. Q. Did Barclays at any time provide written responses to these questions in connection with the Series 5 offering? A. Not to my knowledge.").

291. No video recordings of any due diligence calls were produced in discovery during this action.

292. No transcripts of any due diligence calls were produced by any defendants in this action.

293. Question 6 on the questionnaire Citi sent to Barclays and others on April 1, 2008 (Brown Decl., Ex. 10), states: “Please comment briefly on the trading performance for the first two months of 2008. When compared to the same period in 2007, are such results above or below the comparative 2007 result. Please comment on any specific line items in the P&L and balance sheet that experienced material or substantial movements with specific reference to such movements in net profit, net interest income, total assets and total debt. Please comment on your outlook for 1H 2008 and full year 2008 results.” *Id.* at 711.

294. In responding to Item 6, Lucas stated the following during the April 3 business due diligence call: “March has been a very tough month. I’m not saying anything you guys don’t already know, we are still in the process of completing the results process, we get an early look at them tomorrow. . . . I think it’s fair to say that the conditions we have seen in March specifically will have dented our first half numbers.” Brown Decl., Ex. 11 at 10:5-25; Brown Decl., Ex. 52.

295. Lucas also stated the following in responding to Item 6: “We still have quite a wide [bid] offer in terms of some of the decisions we have to make around asset marks as we close the books.” Brown Decl., Ex. 11 at 10:13-16; Brown Decl., Ex. 52.

296. Item 13 on the questionnaire Citi sent to Barclays and others on April 1, 2008 (Brown Decl., Ex. 10), states: “In the near-term, does management anticipate the need to make any further write downs for any of the other above products?” *Id.* at 712.

297. In responding to Item 13, Lucas stated the following during the April 3 business due diligence call: “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. I think the evidence will be in March, we will be taking further write downs.”
Brown Decl., Ex. 11 at 33:14-25; Brown Decl., Ex. 52.

298. During the April 3, 2008 business due diligence call, the following exchange occurred between Chris Lucas of Barclays and a representative from Merrill Lynch:

[Q:] Hi, this is Matt Pass from Merrill Lynch, I just have a quick question. I know you were focused on valuation of assets on the balance sheet at the moment, and mindful that credit source obviously puts some results out and then very quickly came out with additional numbers on write downs. 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?

[A:] 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 – 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.

Brown Decl., Ex. 11 at 56:13-57:24; Brown Decl., Ex. 52.

299. Prior to the Series 5 Offering, Barclays did not disclose to the Underwriters the amounts of the writedowns Barclays recorded or estimated internally corresponding to the months of January, February, or March of 2008. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 207:20-208:7.

300. Jack McSpadden testified as a Fed. R. Civ. P. 30(b)(6) witness on behalf of Citigroup Global Markets, on August 13, 2015. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 10:5-11:14.

301. McSpadden was provided a copy of the amended 30(b)(6) deposition notice of Citigroup Global Markets during his deposition (Brown Decl., Ex. 1), testified he had seen the

deposition notice before, and testified he was prepared to testify about Topics 1 through 14 listed in the notice. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 9:21-11:14.

302. McSpadden personally participated in the April 3, 2008 business due diligence call on behalf of Citi. Brown Decl., Ex. 11 at 58:3-4; Brown Decl., Ex. 52.

303. McSpadden testified as follows:

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

A. *To my knowledge, no.*

* * *

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

A. *Not to my knowledge.*

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

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

McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 207:13-208:7; 219:8-14 (objections removed).

304. McSpadden relied on Barclays to decide whether a specific disclosure was necessary.

McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 218:15-19.

305. McSpadden testified as follows:

Q. Did Barclays make any additional disclosure statement in the offering materials regarding the additional write-downs that it knew were coming?

A. I'd have to reread it to see if that's mentioned, but I don't recall a recent development section in there, which would have been a logical place for that to have occurred *if they thought that disclosure was necessary*.

McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 218:9-19.

306. At the time of the Series 5 Offering, Citi was very focused on financial institutions and the concerns around them. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 130:5-25 (“The markets had begun to deteriorate for financial institutions, and everyone within Citi was very focused on financial institutions and the concerns around them.”).

307. Citi knew from the April 3, 2008 business due diligence call that Barclays would take additional writedowns in 1Q 2008. (A: “Would you agree with me that as of April 3rd, 2008, the date of this call, Mr. Lucas knew that Barclays would be taking additional write-downs of its portfolio?” A: “If we go back earlier, he said that there were additional write-downs to come. He talked about in some of the earlier language. I can go find the page. But he specifically said there were more write-downs to come, and he said there was a wide bid/offer gap between mark to market. He telegraphed as much as he possibly could without having final numbers in front of him that, yes, more write-downs were going to come, and the implication was they were going to be bigger, because you could look back at the monthly numbers.”). McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 215:6-24 (objections omitted).

308. As of April 3, 2008, Barclays possessed internal documents documenting substantial writedowns in January, February and March 2008.

309. An internal Barclays document titled “Finance Committee Agenda,” regarding a February 29, 2008 Barclays Capital (“Barcap”) Finance Committee Meeting, estimated that Barcap “Impairment and potential losses” for January and February 2008 would be £608M. Brown Decl., Ex. 53 at 807.

310. The Barclays Board of Directors (the “Board”) held a meeting on March 20, 2008. *See* Brown Decl., Ex. 28 at 046. Lucas reported to the Board during this meeting that Barcap had recognized Write-Downs of £800M for January and February 2008. *See id.* at 054. The £800M figure Lucas reported to the Board during this meeting equated to approximately 48.9% of the £1.635B Write-Downs the Barclays group recognized for the total fiscal year 2007. *See* White Ex. 1 (2007 Form 20-F) at 53.

311. An internal Barclays’ document showing a “[n]et income impact of dislocation in credit markets in Q1 2008” indicated year-to-date gross Write-Downs as of February 2008 were £878M. *See* Brown Decl., Ex. 54 at tab “Losses Summary.”

312. An internal Barclays’ document prepared in connection with an April 2, 2008, Barcap Finance Committee Meeting indicated the “Best” case scenario included additional Write-Downs of £749M in March 2008. *See* Brown Decl., Ex. 55 at 5. This £749M figure consisted of total “Monthly Remarks and Exposures” of £741M, plus “Expected Writedowns” of £8M. *Id.* This same internal Barclays document showed that Barcap’s profit before tax was projected to be between £379M (the “core” estimate) and £228M in first quarter 2008 (the “low” estimate), reflecting a decline of 54% and 72%, respectively, when compared to Barcap’s profit before tax for the first quarter 2007. *Id.* at 2.

313. An April 3, 2008, an e-mail with the subject “FORMAL P&L Apr 2nd - US Portfolio Asset Book” was circulated internally at Barclays. This e-mail reported a “Formal YTD” “US ASS Portfolio Total” of negative \$1,006,160,00 and a “Formal YTD” “Net Revenue Total” of negative \$1,679,949,000. Brown Decl., Ex. 19 at 038-39.

314. On March 20, 2008, Lucas reported to the Board that Barcap had already recognized Write-Downs of approximately £800M for January and February 2008. *See* Brown Decl., Ex. 25 at

054. Agenda materials prepared for an April 2, 2008 Barcap Finance Committee Meeting showed that the “best” case scenario included expected additional Write-Downs for March 2008 of £749M. *See* Brown Decl., Ex. 55 at 5. Barclays’ documents showed the approximate total expected first quarter 2008 Write-Downs were £1.549B.

315. This amount of £1.549B represented approximately 22% of both Barclays’ consolidated profit before tax for the entire year 2007 (*see* Barclays 2007 Form 20-F, p. 160 (White Ex. 1)) and Barclays’ projected consolidated profit before tax for the entire year 2008 of approximately £7B. *See* Brown Decl., Ex. 11 at 22.

316. An April 7, 2008, Barclays’ “US Portfolio Asset Book FLASH P&L” depicted losses of \$1,700,893,000. Brown Decl., Ex. 56.

317. Item 22 of the April 3, 2008 business due diligence call questionnaire states “Please discuss the Bank’s current BIS ratios (Tier 1 and Total Capital).” Brown Decl., Ex. 10 at 712. Ross Aucutt provided a response on behalf of Barclays to Item 22 during the April 3, 2008 business due diligence call. Brown Decl., Ex. 11 at 43:21-44:2; Brown Decl., Ex. 52. In responding to Item 22, Aucutt stated: “As of the 31st of December 2007, the group’s consolidated tier 1 capital ratio was 7.8 percent and the group’s risk asset ratio was 12.1 percent. As of January 1st, 2008, the group’s capital tier 1 ratio was 7.6 percent and our risk asset ratio was 11.2 percent.” Brown Decl., Ex. 11 at 43:21-44:2; Brown Decl., Ex. 52.

318. Aucutt’s response to Item 22 did not include a disclosure of any of Barclays’ internal projections regarding its Tier 1 Equity Ratio or other capital ratios.

319. Aucutt’s response to Item 22 did not include a disclosure of the Group’s capital ratios as of the date after January 1, 2008.

320. Item 23 of the April 3, 2008 business due diligence call questionnaire states “Please provide an outline of the capital requirements of the Bank.” Brown Decl., Ex. 10 at 712.

321. Ross Aucutt provided a response on behalf of Barclays to Item 23 during the April 3, 2008 business due diligence call. Brown Decl., Ex. 11 at 44:3-45:13; Brown Decl., Ex. 52. In his response, Ross Aucutt stated the Group’s target Tier 1 Capital Ratio was 7.25 percent. *Id.*

322. Aucutt’s response to Item 23 did not include a disclosure of any of Barclays’ internal projections regarding its Tier 1 Equity Ratio or other capital ratios. *Id.*

323. On April 3, 2008, an Accounting due diligence call was held. Brown Decl., Ex. 57 at 937. The day before the call, on April 2, 2008, Citi circulated to PwC and others a list of sixteen questions.

324. PwC did not provide written responses to the questions circulated on April 2, 2008.

325. No written, audio or video recording of this April 3, 2008, accounting due diligence call was produced in this action. There is no evidence whatsoever of what took place on this call.

D. Additional Undisputed Facts Concerning April 8, 2008 Pre-Pricing and Financial Due Diligence Calls

326. On April 8, 2008, a pre-pricing due diligence call was held. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 282:16-19. An agenda for the call, including a list of five questions, was circulated on April 8, 2008. Brown Decl., Ex. 15 at 294.

327. Mr. McSpadden did not recall participating in the call on behalf of Citi. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 282:20-22. Mr. McSpadden could not identify any persons at Citi who participated in the call. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 282:23-283:3

328. McSpadden could not remember Barclays’ response to Question 1. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 284:23-285:4. (“Q. Do you recall the response that Barclays

provided with respect to Question Number 1 during this due diligence call? A. I don't recall the response").

329. McSpadden could not remember Barclays' response to Question 2. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 285:11-14 ("Q. Do you recall what Barclays' response was to Question Number 2 during this due diligence call? A. I don't recall their specific response.").

330. McSpadden could not remember Barclays' response to Question 3. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 286:8-10 ("Q. Do you recall what Barclays' responses were to Question Number 3? A. I don't.").

331. McSpadden could not remember Barclays' response to Question 4. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 286:21-23 ("Q. Do you recall what Barclays' response was to that question during this call? A. I do not.").

332. McSpadden could not remember Barclays' response to Question 5. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 287:6-8 ("Q. Do you recall what Barclays' response was to that question? A. No, ma'am.").

333. McSpadden could not provide the names of any persons that might know what Barclays' responses were to questions discussed during the April 8, 2008, a pre-pricing due diligence call. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 287:9-15 ("Q. Is there anyone at Citi that would know what Barclays' responses were to these questions . . . during the April 8th, 2008, prepricing due diligence call? A. I don't know what anybody else would remember about this call.").

334. Barclays did not provide written responses to the questions listed in the call agenda. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 283:22-25.

335. On April 8, 2008, a financial due diligence call was held.

336. No transcripts of either of the April 8, 2008 calls were produced in discovery in this action.

337. No audio or video recordings of either of the April 8, 2008 calls were produced in discovery in this action. No written responses belonging to Barclays were produced in discovery in this action.

E. Additional Undisputed Facts Concerning PricewaterhouseCoopers' April 8, 2008 U.S. and Non-U.S. Comfort Letters

338. On March 20, 2008, Linklaters sent an e-mail to PwC and others attaching Linklaters' "circle up of the draft 20-F" and requesting to see "drafts of your comfort letters at your earliest convenience." Brown Decl., Ex. 40 at 582.

339. By March 26, 2008, Linklaters had not yet received a response to its March 20, 2008, e-mail seeing drafts of PwC's comfort letters. *Id.*

340. On April 2, 2008, PwC sent to Linklaters drafts of the U.S. and Non-U.S. comfort letters. *See* Brown Decl., Ex. 58 at 512-13. Linklaters circulated the drafts to Citi and BarCap on April 3, 2008. *Id.* at 512.

341. The draft comfort letters from April 2 stated: "This draft is furnished solely for the purpose of indicating the form of letter that we would expect to be able to furnish Barclays Capital Securities Limited and Citigroup Global Markets Inc. in response to their request, the matters expected to be covered in the letter, and the nature of the procedures that we would expect to carry out with respect to such matters. Based on our discussions with Barclays Capital Securities Limited and Citigroup Global Markets Inc., it is our understanding that the procedures outlined in this draft letter are those they wish us to follow. Unless Barclays Capital Securities Limited and Citigroup Global Markets Inc. inform us otherwise, we shall assume that there are no additional procedures they wish us to follow. The text of the letter itself will depend, of course, on the results of the

procedures, which we would not expect to complete until shortly before the letter is given and in no event before the cutoff date indicated therein.” Brown Decl., Ex. 59 at 531; Brown Decl., Ex. 60 at 526.

342. PwC’s April 2 draft comfort letter stated PwC still needed to finish its review of the 20-F. Brown Decl., Ex. 60 at 530 (“We will finalize the tickmarks by the end of tomorrow when we finish the review of the 20-F.”). The letters also stated “we are unable to confirm at this stage that we will be able to provide comfort in relation to profit and loss items as at the cut-off date.” *Id.* at 529.

343. On April 4, 2008, PwC advised Barclays and Citi in an e-mail that PwC refused to provide “draft letters that include the results of [PwC’s] procedures” until the Underwriters signed an engagement letter. *See* Brown Decl., Ex. 12 at 863-64.

344. On April 4, 2008, PwC e-mailed Barclays, Linklaters and Citi stating PwC did not yet know whether PBT for the period from January 1, 2008 to April 3, 2008 had increased or decreased compared to the corresponding period in the prior year. Brown Decl., Ex. 61 at 765 (“if PBT turns out to be less for the period from 1 January 2008 - 3 April 2008 as compared to the comparative period in the prior year, that Finance need to make us and the Manager’s aware and as a result a further due diligence call will be required later that day”).

345. PwC also mentioned in its April 4 e-mail that the PwC engagement letters for the U.S. and Non-U.S. comfort letters had not yet been executed. Brown Decl., Ex. 61 at 765 (“I stress that it would be very beneficial to get the engagement letters (both US and Non-US) signed on Monday morning”).

346. On April 6, 2008, Linklaters responded to PwC: “I agree that it would be good to have the engagement letter signed as soon as practicable, but ***I don’t think PWC should hold up***

releasing the draft letters that include the results of your procedures pending signature of the engagement letter. Given the tight timing, the draft letters with the results of procedures should be sent as soon as the procedures are completed, even if the engagement letter is not signed, as the underwriters need time to consider the results. . . . we would please ask you to release the draft letters including the results of your procedures as early as possible on Monday.” Brown Decl., Ex. 61 at 764.

347. Linklaters also remarked in its April 6 e-mail to PwC “there are a number of items which were covered in the circle up in Project Sycamore [Series 4 Offering], but which are not covered by the current circle up – PwC has indicated that, in most cases, this is on the basis that the numbers are not extracted from accounting records. We need to understand this better – have the accounting systems changed from last year, when you were able to provide comfort on similar figures?” *Id.*

348. On April 7, 2008, PwC e-mailed Linklaters and others stating “the financial information required for us to do our line-item work, will be available to us from 2pm onwards.” Brown Decl., Ex. 62 at 568.

349. On April 7, 2008, Citi reported to other underwriters they “had a very productive first day of marketing on the Rimu offering” and “have allocated a total of 77.9mm shares (\$1.9475bn) to the retail side of the book” and had “indications in the institutional pot totaling approximately 30mm shares (\$750mm).” Brown Decl., Ex. 65 at 702.

350. On April 9, 2008, Linklaters sent to Barclays and the Underwriters the “executed US comfort letter” from PwC dated April 8, 2008. Brown Decl., Ex. 14 at 071.

351. On April 8, 2008, Sarah Whittington of Linklaters sent an e-mail which pointed out to the Underwriters “the decline in Group profit before tax of 9.4% (and issuer profit before tax of

9.9%) that PwC has indicated for January/February 2008 compared to the corresponding period in the prior year. We also note that PwC has indicated that for the stub period from January 1 2008 to April 4 2008, they expect to be able to give only directional comfort on the change, rather than a specific figure.” Doyle Ex. 6 at 534.

352. On April 8, 2008, Carolyn Coan of Wachovia responded to Sarah Whittington’s (of Linklaters) April 8 e-mail, asking for clarification on specific language in the PwC comfort letter, and asking whether “PwC will only note there has been an increase or decrease – but not provide an actual number?” Hurley Ex. 8 at 850.

353. On April 8, 2008, Sarah Whittington (of Linklaters) responded to Carolyn Coan’s e-mail (cc’ing David Ludwick of Linklaters), confirming PwC “will only say whether profit before tax increased or decreased, not by how much.” Hurley Ex. 8 at 849. Carolyn Coan responded: “Thank you. What is their grand reasoning for being unable to provide an amount?” Hurley Ex. 8 at 849. Ludwick responded to Coan: “We are following up with them [*sic*], but my understanding is that their [PwC] view is that the management information that is available as of April 4 does not have sufficient granularity to enable them to express a view on a specific PBT figure.” Hurley Ex. 8 at 849.

354. On April 8, 2008, Sarah Whittington (of Linklaters) sent an e-mail notifying the Underwriters that PwC “ha[d] been able to confirm that the profit before tax for the Group and Issuer during the stub period (January-April 4) decreased compared to the same period last year (affected paragraphs are 6 and 9).” McSpadden Ex. 54 at 445.

355. In the U.S. Comfort Letter at paragraph 3, PwC advised the Underwriters: “We have not audited any financial statements of the Group or the Issuer as of any date or for any period subsequent to 31 December 2007.” Brown Decl., Ex. 14 at 076.

356. The U.S. Comfort Letter was executed on, and is dated April 8, 2008. Brown Decl., Ex. 14 at 075. In the U.S. Comfort Letter at paragraph 3, PwC advised the Underwriters: “Also, we have not audited the Group’s internal control over financial reporting as of any date subsequent to 31 December 2007. Therefore, we do not express any opinion on the Group’s internal control over financial reporting as of any date subsequent to 31 December 2007.” *Id.* at 076.

357. PwC also advised in the Comfort Letter:

For purposes of this letter, we have read the minutes of the 2008 meetings of the shareholders, the Board of Directors and the Board Audit Committee of the Group and the Issuer as set forth in minute books as of 3 April 2008, officials of the Group and the Issuer having advised us that the minutes of all such meetings through that date were set forth therein, and have carried out other procedures to 3 April 2008 (our work did not extend to the period from 4 April 2008 to 9 April 2008, inclusive) as follows: With respect to the Group for the period from 1 January 2008 to 29 February 2008, we have:

(i) read the unaudited consolidated financial data of the Group for January and February of both 2008 and 2007 furnished us by the Group. Officials of the Group have advised us that no such financial data as of any date or for any period subsequent to 29 February 2008 were available. The financial information for January and February of both 2008 and 2007 is incomplete in that it omits the statement of cash flows and other disclosures;

(ii) inquired of certain officials of the Group who have responsibility for financial and accounting matters as to whether the unaudited consolidated financial data referred to in 4(i) above are stated on a basis substantially consistent with that of the audited consolidated financial statements incorporated by reference in the Registration Statement. ***The foregoing procedures do not constitute an audit made in accordance with standards of the PCAOB.*** Also, they would not necessarily reveal matters of significance with respect to the comments in the following paragraph. Accordingly, we make no representations as to the sufficiency of the foregoing procedures for your purposes.

Brown Decl., Ex. 14 at 076-77.

358. Any financial data post-dating December 31, 2007, that PwC reviewed in connection with the Series 5 Offering, was unaudited. Brown Decl., Ex. 14 at 077-78.

359. In connection with the Series 5 Offering, PwC did not review any financial data for any period subsequent to February 29, 2008. Brown Decl., Ex. 14 at 076-77.

360. PwC stated in paragraph 6 of the Comfort Letter: “Group officials have advised us that no consolidated financial data as of any date or for any period subsequent to 29 February 2008 are available; accordingly, the procedures carried out by us with respect to changes in financial statement items after 29 February 2008 have, of necessity, been even more limited than those with respect to the periods referred to in 4.” Brown Decl., Ex. 14 at 077.

361. Any procedures PwC performed in connection with its April 8, 2008, Comfort Letters did not constitute an audit under any generally accepted auditing standards. Brown Decl., Ex. 22 at 120.

362. PwC stated in paragraph 7 of the Comfort Letter:

With respect to the Issuer we have also carried out limited procedures from 1 January 2008 to 3 April 2008 (our work did not extend to the period from 4 April 2008 to 9 April 2008, inclusive), as follows: With respect to Issuer for the period from 1 January 2008 to 29 February 2008, we have, at your request:

(i) read the unaudited consolidated financial data of the Issuer as of and for the two months ended 29 February 2008 and 28 February 2007 furnished us by the Issuer, and agreed the amounts contained therein with the Issuers accounting records as of 29 February 2008 and 28 February 2007. Officials of the Issuer have advised us that no financial data as of any date or for any period subsequent to 29 February 2008 were available. The financial information as of and for the two months ended 29 February 2008 and 28 February 2007 is incomplete in that it omits the statement of cash flows and other disclosures.

(ii) inquired of certain officials of the Issuer who have responsibility for financial and accounting matters whether the unaudited consolidated financial data referred to in 7a(i) are stated on a basis substantially consistent with that of the audited consolidated financial statements incorporated by reference in the Registration Statement. ***The foregoing procedures do not constitute an audit conducted in accordance with standards of the PCAOB.*** Accordingly, we do not express such an opinion. The foregoing procedures would not

necessarily reveal matters of significance, accordingly, we make no representation about the sufficiency of such procedures for your purposes.

Brown Decl., Ex. 14 at 077-78.

363. PwC stated in paragraph 12 of the Comfort Letter: “It should be understood that we make no representations regarding questions of legal interpretation or regarding the sufficiency for your purposes of the procedures enumerated in the second preceding paragraph; also, such procedures would not necessarily reveal any material misstatement of the amounts or percentages listed above. Further, we have addressed ourselves solely to the foregoing data as set forth in the Registration Statement and make no representations regarding the adequacy of disclosure or regarding whether any material facts have been omitted.” Brown Decl., Ex. 14 at 080.

364. On April 8, 2008, after PwC sent Barclays a draft of the US Comfort Letter, Barclays sent PwC a “signed US engagement letter.” Brown Decl., Ex. 22 at 118; Harding Depo. Tr. (Brown Decl., Ex. 6) at 134:5-14; 135:6-12.

365. PwC stated in the April 8, 2008 engagement letter: “The procedures we will carry out will not constitute an audit or review in accordance with any generally accepted auditing standards. Accordingly, the procedures may not reveal any misstatement of the amounts or percentages indicated in the US Comfort Letter.” Brown Decl., Ex. 22 at 120.

366. PwC also stated in the April 8, 2008 engagement letter: “the US Services are not designed to and are not likely to reveal fraud or misrepresentation by the management of the Issuer or the Group.” *Id.* at 121.

367. Citi never asked PwC what schedules or spreadsheets it had reviewed in connection with its circle-up work for purposes of issuing the Comfort Letter. *See* McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 272:23-273 (“Q. Did Citi ever ask PwC what schedules – schedules or

spreadsheets it was reviewing in connection with its circle-up work for the purposes of issuing a comfort letter in connection with the Series 5 offering? A. No.”).

368. Citi never asked Barclays to see any of the schedules or spreadsheets that had been provided to PwC for purposes of its circle-up work for purposes of issuing the Comfort Letter. *See* McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 273:5-10 (“Q. Did Citi ever ask Barclays to see any of these schedules or spreadsheets that were provided to PwC for purposes of their circle-up work? A. No.”) (objection omitted).

369. PwC did not consent to the inclusion of its April 8, 2008, Comfort Letter in the Series 5 Offering Materials. Brown Decl., Ex. 14 at 080.

370. The Comfort Letters were not publicly disclosed in connection with the Series 5 Offering Materials. The Comfort Letter stated: “This letter is solely for the information of the addressees . . . and is not to be used, circulated, quoted, or otherwise referred to within or without the underwriting group for any other purpose, including but not limited to the registration, purchase, or sale of securities, nor is it to be filed with or referred to in whole or in part in the Registration Statement or any other document” Brown Decl., Ex. 14 at 080.

371. On April 8, 2008, in response to PwC’s Comfort Letter, UBS employee Jason Norton asked internally: “Given what has been disclosed in the comfort letter and that they just confirmed that March is down year-over-year please confirm that we’re ok to price given the info (cc’ing Bill). Thanks.” Vonta Ex. 5 at 165. Another UBS employee, Sophia Vonta, replied on April 8, 2008: UBS was “comfortable with this” “*market [is] expecting a 9% drop in group profitability in ‘08 yoy. Consensus is for £7.015bn PBT in ‘08 vs 7.076bn actual in ‘07.* In addition Barclays’ management communications to the market suggest that we should not expect the drop of profitability to be out of line with the rest of the industry. *Although we note current lack of*

visibility on numbers for peers (US broker Q1 ends Feb 08 and UK banks AGMs still to come).”

Vonta Ex. 5 at 165.

372. Barclays Group’s profit before tax for fiscal year 2007 was £7.076 billion. 2007 Form 20-F, White Ex. 1 at 4. Vonta (UBS) stated the “market expect[ed]” Barclays Group to earn “£7.015bn PBT in ’08” Vonta Ex. 5 at 165. This amounted to a **0.862%** decline from 2007 PBT ($(£7.076-7.015)/£7.076 = 0.00862$, or 0.862%).

373. In February 2008, analysts published reports estimating Barclays’ PBT for fiscal year 2008.

374. A Citi report dated February 20, 2008 projected Barclays’ 2008 “Pre-Tax Profit” would be £7.055 billion, an approximately -0.296% **decrease** from Barclays’ actual PBT for fiscal year 2007 (£7,076m). McSpadden Ex. 9 at 397. Barclays’ actual decline in PBT for just the first two months of 2008 (-9.48%) was approximately 32 times the rate Citi projected PBT would decline for the entire year 2008 (-0.296%).

375. The Citi report also indicated Citi had reduced its projections of Barclays’ Equity Ratio for each of 2008, 2009, and 2010, including a projection for the ratio of just 5.1% by the end of 2008. McSpadden Ex. 9 at 396.

376. The Citi report also estimated Barclays would recognize £1.518 billion in writedowns for the entire 2008 year. McSpadden Ex. 9 at 400 (“Figure 4. Credit Market Write-Downs” indicating “Total” “Annual Movement” of (£1.518) billion).

377. Citi included a copy of this analyst report with Citi’s internal Commitment Committee Memorandum. *See* McSpadden Ex. 9 at 396.

378. A Merrill Lynch report dated February 20, 2008 projected Barclays’ 2008 “profit before tax” would be £6,907, an approximately 2.388% decrease from Barclays’ actual PBT for

fiscal year 2007 (£7.076 billion). Doyle Ex. 7 at 534. Barclays' actual decline in PBT for just the first two months of 2008 (-9.48%) was approximately 3.9 times the amount Merrill Lynch projected PBT would decline for the entire year 2008 (-2.388%).

379. This Merrill Lynch report also stated: "We remain comfortable with the structure of Barclays balance sheet and do not foresee the need for substantial capital issues or recapitalize the balance sheet in the near-term." Doyle Ex. 7 at 531-32.

380. On April 3, 2008, Merrill Lynch internally circulated a copy of the February 20 Merrill Lynch report with the message "As Discussed . . .". Doyle Ex. 7 at 527.

381. On April 8, 2008, a Merrill Lynch representative (Matthew Pass) stated in an internal email: "circa 10% drop is understandable." Doyle Ex. 6 at 533.

382. A Credit Suisse dated February 20, 2008 projected "Pre-tax profit" for Barclays in fiscal 2008 would be £7.307 billion, an approximately 3.265% *increase* from Barclays' actual PBT for fiscal year 2007 (£7.076 billion). Brown Decl., Ex. 66.

383. A JP Morgan report dated February 20, 2008 projected "Pretax profit" for Barclays in fiscal 2008 of £7,086 billion, an approximately 0.141% *increase* compared to Barclays' actual PBT for fiscal year 2007 (£7,076m). Brown Decl., Ex. 67 at 620.

384. A Lehman Brothers dated February 20, 2008 projected a 2008 "Profit Before Tax" of £7.411 billion, an approximately 4.734% *increase* compared to Barclays' actual PBT for fiscal year 2007 (£7,076m). Brown Decl., Ex. 68 at 634.

F. Additional Undisputed Facts Concerning the April 11, 2008, Barclays Pre-Settlement Bring Down Due Diligence Call

385. On April 11, 2008, Barclays held a Pre-Settlement Bring Down Due Diligence Call. Brown Decl., Ex. 16 at 503-04. On April 11, 2008, Barclays internally circulated an e-mail stating: "A quick summary of the call (which was very short) involved Jon Stone confirming the following

answers to the points listed in the attached document.” *Id.* at 503. Attached to this e-mail was a “Pre-Settlement Bring Down Due Diligence Outline” consisting of a list of five questions. *Id.* at 505.

386. Mr. McSpadden did not recall participating in this call. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 290:2-6.

387. The first question on this list stated: “Are there any material updates or issues that have arisen since our last due diligence calls (a) funding or liquidity; (b) rating agency actions; (c) anticipated changes in senior management or the Board of Directors; (d) organizational changes; (e) corporate governance; (f) tax matters; (g) changes in accounting policy or practice; (h) internal controls; (i) acquisitions and dispositions; (j) share buybacks; (k) litigation; (l) anti-money laundering or the foreign corrupt practices act; (m) regulatory actions, investigations or other government actions?” Brown Decl., Ex. 16 at 505. According to Barclays, its response was “No Material update.” *Id.* at 503.

388. The second question on this list stated: “Are there any further material updates for YTD earnings, asset quality trends or asset valuation including any updates on exposures within Barclays Capital?” Brown Decl., Ex. 16 at 505. According to Barclays, its response was “There are none.” *Id.* at 503.

389. The third question on this list stated: “Have there been, or are there contemplated, any additional write-downs of assets in any division of Barclays Bank?” Brown Decl., Ex. 16 at 505. According to Barclays, its response was “No.” *Id.* at 503.

390. The fourth question on this list stated: “Have you reviewed the Prospectus Supplement (along with the Prospectus) and are there any misstatements or omissions that you believe should be addressed? Are you comfortable that the Prospectus Supplement, the Prospectus

and the incorporated documents fully present the risks now applicable to Barclays Bank?” *Id.* at 505. According to Barclays, its response was “No misstatements and yes Barclays now applicable to the risks.” *Id.* at 503.

391. The fifth question on this list stated: “Are there any areas that we have not covered, which may be material in the context of this issuance, which you should bring to our attention?” *Id.* at 505. According to Barclays, its response was “None.” *Id.* at 503.

392. No audio or video recording of this call was produced in discovery in this action.

393. No transcript of the call was produced in discovery in this action.

G. Additional Undisputed Facts Concerning April 22, 2008 Greenshoe Pre-Settlement Due Diligence Call

394. On April 22, 2008, a greenshoe pre-settlement due diligence call was held.

395. Bogdan Ciobanu of Citi circulated an agenda and list of four questions the day before the call. Brown Decl., Ex. 17 at 041-43.

396. McSpadden did not remember whether he participated on the call. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 310:20-24.

397. McSpadden did not know what Barclays’ response was to Question 1 on the call. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 312:9-11 (“Q. Do you know what Barclays’ response was to Question Number 1 during this green shoe due diligence call? A. I do not.”).

398. McSpadden did not know what Barclays’ response was to Question 2 on the call. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 312:13-16 (“Q. Do you know what Barclays’ response was to Question Number 2 during this green shoe due diligence call? A. No, ma’am.”).

399. McSpadden did not know what Barclays’ response was to Question 3 on the call. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 312:17-20 (“Q. Do you know what Barclays’ response was to Question Number 3 during this green shoe due diligence call? A. No.”).

400. McSpadden did not know what Barclays' response was to Question 4 on the call. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 312:21-24 (“Q. And do you know what Barclays’ response was to Question Number 4 during this due diligence call? A. I do not.”).

401. No audio or video recording of this call was produced in discovery in this action.

402. No transcript of the call was produced in discovery in this action.

403. No written responses belonging to Barclays were produced in discovery in this action.

404. McSpadden was not aware of written records that would reflect Barclays’ responses to the questions from this call. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 312:25-313:4 (“Q. Do you know of any records that would reflect Barclays’ response to these questions from the green shoe due diligence call? A. I’m not aware of any.”).

H. Additional Undisputed Facts Concerning Management’s and Counsel’s Certifications to the Series 5 Offering Materials

405. After the Offering, on April 11, 2008, the Underwriters received a disclosure opinion letter and a validity opinion letter from Barclays’ United States Counsel, Sullivan & Cromwell. McSpadden Ex. 37 at 353, 361.

406. The April 11 disclosure opinion letter from S&C stated the following: “The limitations inherent in the independent verification of factual matters and the character of determinations involved in the registration process are such, however, that we do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement, the Basic Prospectus, the Prospectus Supplement, the Pricing Disclosure Package or the ADS Registration Statement, except for those made under the caption “Tax Considerations U.S. Taxation” in the Basic Prospectus and under the captions “Description of American Depositary Receipts” and “Tax Considerations – United States Taxation” in the

Prospectus Supplement insofar as they relate to provisions of the Deposit Agreement or of United States federal tax law therein described.” McSpadden Ex. 37 at 358.

407. After the Offering, on April 11, 2008, the Underwriters received from its counsel, Linklaters, a disclosure opinion letter and a validity opinion letter, both dated April 11, 2008. McSpadden Ex. 37 at 349, 351.

408. The April 11 disclosure opinion letter from Linklaters stated the following: “The limitations inherent in the independent verification of factual matters and the character of determinations involved in the registration process are such, however, that we do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement, the Basic Prospectus, the Pricing Disclosure Package or the Prospectus Supplement.” McSpadden Ex. 37 at 350.

409. The April 11 disclosure opinion letter also stated it was based in part on information gained through discussions with the Underwriters. McSpadden Ex. 37 at 350.

I. Additional Undisputed Facts Concerning Linklaters’ Post-Offering E-mail Dated April 22, 2008

410. On April 22, 2008, Linklaters sent an e-mail to Barclays stating the following: “The attached summarises the types of numbers that PWC previously agreed to give comfort on in Rimu, which they are now declining to give (I’ve also attached their markup if you have access to PDFs – it is the items in red that they are declining to give) – they are now saying that due the applicable US standards as to what may be comforted (which they argue is more restrictive than in the UK) they are unable to do so – *in effect they are saying that it was a mistake to circle them in Rimu* (page references are to the 20-F):

- BGI assets under management, and total clients assets at Barclays Wealth (p. 5)
- Barcap average DVAR (pp. 25, 26)

- BGI total assets under management and movements related thereto (pp. 27, 28)
- Barclays Wealth total client assets (pp. 29, 30)
- called up share capital (pp. 42, 114)
- unobservable inputs in respect of total financial instruments stated at fair value (p. 48)
- all data in discussion of CDOs, collateral, hindings, interests in third party CDOs (*i.e.* SIVs, SIV lites, CP and MTN Conduits) under “Financial Review – Off Balance Sheet Arrangements” (pp. 51, 52)
- All data under “Barclays Capital credit market positions” – *i.e.* credit exposures (p. 53)
- Certain data re directors’ remuneration (pp. 130-137). Brown Decl., Ex. 18 at 042.

411. The “types of numbers that PWC previously agreed to give comfort on in Rimu, which they are now declining to give” and “in effect they are saying that it was a mistake to circle them in Rimu” included “unobservable inputs in respect of total financial instruments stated at fair value.” Brown Decl., Ex. 18 at 042; *compare* Brown Decl., Ex. 23 at 179 (2007 Form 20-F at 48) *with* Brown Decl., Ex. 18 at 054 (same); Harding Depo. Tr. (Brown Decl., Ex. 6) at 151:1-13.

412. The “types of numbers that PWC previously agreed to give comfort on in Rimu, which they are now declining to give” and “in effect they are saying that it was a mistake to circle them in Rimu” also included “all data in discussion of CDOs, collateral, hindings, interests in third party CDOs (*i.e.*, SIVs, SIV lites, CP and MTN Conduits) under ‘Financial Review – Off Balance Sheet Arrangements.’” Brown Decl., Ex. 18 at 042; *compare* Brown Decl., Ex. 23 at 181-82 (2007 Form 20-F at 51-52) *with* Brown Decl., Ex. 18 at 055-56 (same); Harding Depo. Tr. (Brown Decl., Ex. 6) at 151:19-25.

413. The “types of numbers that PWC previously agreed to give comfort on in Rimu, which they are now declining to give” and “in effect they are saying that it was a mistake to circle them in Rimu” also included “All data under “Barclays capital credit market positions) – *i.e.*, credit

exposures.” Brown Decl., Ex. 18 at 042; *compare* Brown Decl., Ex. 23 at 183 (2007 Form 20-F at p. 53 *with* Brown Decl., Ex. 18 at 057 (same); Harding Depo. Tr. (Brown Decl., Ex. 6) at 151:19-25.

J. Additional Undisputed Facts Concerning Barclays’ Internal, Non-Public Reporting of Its Credit Market Assets

414. In performing its due diligence with respect to the Series 5 offering, the Underwriters failed to determine Barclays’ notional exposure to monoline insurers at the time of the Offering. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 211:23-212:6.

415. In performing its due diligence with respect to the Series 5 Offering, the Underwriters did not determine who were Barclays’ monoline insurers. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 212:7-16.

416. In performing its due diligence with respect to the Series 5 offering, the Underwriters did not determine the credit ratings of the monoline insurers that insured Barclays’ assets. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 212:17-213:2.

417. The Offering Materials disclosed Barclays’ monoline exposure on a net basis. *See* Barclays 2007 Form 20-F, White Ex. 1 at 53. The Offering Materials did not disclose Barclays’ monoline exposure on a gross basis. *See id.*

418. Barclays internally reported and analyzed its monoline exposure and other credit market exposures on both a gross and net basis. *See infra* ¶¶419-427.

419. A memorandum dated October 30, 2007 titled “Update on Sub Prime ABS and Leveraged Credit Markets” was provided to Director Richard Broadbent and circulated to other members of the Board Risk Committee, which reflected Barclays’ gross exposure to Asset Backed Securities. Brown Decl., Ex. 29 at 182-83. A “Report of the Board Risk Committee Meeting on December 5, 2007,” prepared for a meeting of Barclays’ full Board, reflected Barclays’ gross exposure to Asset Backed Securities. Brown Decl., Ex. 27 at 265.

420. Barclays internally analyzed and reported on the underlying stability of monoline insurers to Barclays' management and the Board. The Offering Materials did not include disclosures stating the underlying stability of the monolines that insured Barclays' assets.

421. Barclays internally analyzed and reported its exposure to negative basis trades ("NBT) (including gross exposure to monolines) to Barclays' management and the Board. *See infra* ¶¶422-424.

422. A November 1, 2007 internal Barclays analysis titled "Negative Basis Exposure by Counterparty – Entire Global Portfolio" was distributed via e-mail on November 19, 2007 by Stephen King (Managing Director for the Synthetic ABS CDO Group) to, among others, Eric Yoss (Global Head of Market Risk for Securitized Products and Credit Trading) and Michael Keegan (Head of Principal Credit). *See* Brown Decl., Ex. 20. This analysis included notional exposure to NBTs of approximately £24.354B, of which approximately £20.013B was insured by monolines and approximately £4.341B was insured by other financial institutions. *See id.* This analysis also showed that approximately 82% of Barclays' NBTs were insured by monolines, and approximately 18% were insured by other financial institutions including, among others, Goldman Sachs, Merrill Lynch, Dresdner Bank, Dexia Bank, and Canadian Imperial Bank. *See id.*

423. An internal Barclays' document titled "Paper for Board Risk Committee Meeting on Wednesday 19 March 2008" included a slide titled "Other Areas of Concern – Exposure to Monoline Insurers." This slide showed a "Negative Basis Book Notionals" total of \$42,245,000,000. *See* Brown Decl., Ex. 70 at 443.

424. An internal Barclays document titled "Finance Committee Agenda," concerning a April 2, 2008 Barcap Finance Committee Meeting, reflected a gross "Current Notional" exposure to monolines of \$42,790,000,000. Brown Decl., Ex. 55 at 8.

425. The manner in which Barclays reported its monoline exposures in the Offering Documents was different from the manner in which Barclays reported these exposures to its regulators. *See infra* ¶¶426-427.

426. For example, in November 2007, Barclays provided to the United Kingdom's Financial Services Authority (the "FSA") a summary of Barclays' exposure to monoline insurers on a notional basis. *See Brown Decl., Ex. 69.* The summary stated Barclays' notional exposure to monoline insurers was "c\$40bn." *See id.* The summary also stated Barclays' net exposure to monoline insurers was "c\$7.3bn." *See id.*

427. The 2007 Form 20-F stated Barclays' net exposure to monolines at year-end 2007 was £1.335B. White Ex. 1.

428. The manner in which Barclays disclosed its ABS CDO Super Senior positions in the Offering Materials was different from the manner in which Barclays internally reported its ABS CDO Super Senior positions. *See infra* ¶¶429-430.

429. The 2007 Form 20-F disclosed an ABS CDO Super Senior "Exposure Before Hedges" of £6.018B, with Hedges of £1.347B. *See Barclays' 2007 Form 20-F, White Ex. 1 at 53.*

430. Barclays' November 1, 2007 analysis entitled "Negative Basis Exposure by Counterparty – Entire Global Portfolio" indicated Barclays' actual gross exposure before hedges to ABS CDOs was approximately £11.8B, or about 153% larger than the £4.671B net exposure disclosed in the Offering Documents. *See Brown Decl., Ex. 20.*

K. Additional Undisputed Facts Concerning Barclays' Capital Ratios and Capital Requirements

431. In a March 10, 2008 internal memorandum addressed to the Board, Varley informed the Board he had a meeting in early March 2008 with the FSA. According to Varley's memorandum, the FSA Chairman Callum McCarthy expressed concern with Barclays' Tier 1 equity

ratio, referred to Barclays' equity ratio profile as "alarming," and wanted to know as a matter of urgency what Barclays' contingency plans were for taking action with respect to the equity ratio profile. *See* Brown Decl., Ex. 26 at 751.

432. Varley also informed the Board in this March 10, 2008 internal memorandum that the FSA had instructed Barclays it needed to increase its equity ratio to 5.25% by year-end 2008. *See* Brown Decl., Ex. 31; Brown Decl., Ex. 32 at 058; Brown Decl., Ex. 25 at 058.

433. In early March 2008, Barclays needed to reduce its RWA by £23bn, or increase its equity by £1.2bn, in order to meet a target equity ratio target of 5.0% by June 30, 2008, after raising capital. Brown Decl., Ex. 64 at 8.

434. Around mid-March 2008, Barclays knew that to achieve an equity ratio of 5.0% by June 2008, Barclays would need to reduce its RWAs by £38 billion, or increase its equity by £1.9 billion. *See* Brown Decl., Ex. 32 at 059.

435. Barclays' total RWAs at December 31, 2007 were £353.5B. A £38B decrease in RWAs represented a reduction of 11% of Barclays' total RWA. *See* 2007 Form 20-F, White Ex. 1 at 7.

436. By the time of the Offering, market conditions had had a negative impact on Barclays' RWA and capital position, and Barclays' RWAs had been reduced in value by, among other things, downgrades of securities and credit deterioration. *See* Brown Decl., Ex. 63 at 4.

437. The Offering Materials did not disclose the concerns raised by the FSA regarding Barclays' Tier 1 equity ratio.

438. At the time of the Offering, Barclays had identified a £42bn increase to its RWAs as a result of market conditions. *See* Brown Decl., Ex. 63 at 4.

439. At the time of the Offering, Barclays identified an inability to syndicate, securitize or sell down loans and warehoused assets, as a contributing factor to reducing its RWAs. *See* Brown Decl., Ex. 63 at 4.

440. In performing its due diligence with respect to the Series 5 Offering, the Underwriters did not perform any analyses to test the capital adequacy of Barclays' assets. *See* McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 154:15-155:14.

441. In performing its due diligence with respect to the Series 5 Offering, the Underwriters did not review any internal Barclays' reports that analyzed Barclays' capital adequacy. *See* McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 154:15-155:14.

442. In performing its due diligence with respect to the Series 5 Offering, the Underwriters did not review any internal Barclays' reports or schedules concerning Barclays' capital ratios. *See* McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 157:2-14.

L. Additional Undisputed Facts Concerning Standard & Poor's Rating of the Series 5 Securities

443. On March 17, 2008, Barclays e-mailed Standard & Poor's in connection with seeking an "indicative rating" by March 28, 2008 on the Series 5 shares. Brown Decl., Ex. 21 at 273-74. An "indicative rating" is a "preliminary rating based on preliminary documentation" provided by the issuer to the rating agency. Harding Depo. Tr. (Brown Decl., Ex. 6) at 89:5-9. A "preliminary rating" is followed by a "formal rating" of the security. *Id.* The "preliminary documentation" Barclays provided to Standard & Poor's consisted of the Series 5 "preliminary prospectus supplement." *Id.* at 89:10-22.

444. On March 28, 2008, Nick Hill of Standard & Poor's responded to Barclays, providing an "indicative rating" of "A+." Brown Decl., Ex. 21 at 273, 276; Harding Depo. Tr. (Brown Decl., Ex. 6) at 93:22-94:9. On April 18, 2008, Keith Harding of Barclays e-mailed Standard & Poor's

attaching a copy of the “final Prospectus Supplement” for the Series 5 Offering and requesting a “final rating” of the Series 5 securities. Brown Decl., Ex. 24 at 241; Harding Depo. Tr. (Brown Decl., Ex. 6) at 153:9-23. Standard & Poor’s issued a final rating of A+ to the Series 5 shares.

445. Citi did not have any discussions with anyone of Standard & Poor’s as part of their Series 5 due diligence investigation. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 91:12-24.

M. Additional Undisputed Facts Concerning Documents Relating to Offerings Preceding the Series 5 Offering

446. The Underwriters refused to produce in discovery documents and information that related to the Series 2, 3 and 4 Offerings, to the extent those documents and information did not also relate to the Series 5 Offering. *Infra* ¶¶449-453.

447. The Underwriters refused to produce in discovery documents and information that related to their due diligence on the Series 2 Offering, to the extent those documents and information did not also relate to the Series 5 Offering. *Infra* ¶¶449-453.

448. The Underwriters refused to produce in discovery documents and information that related to their due diligence on the Series 3 Offering, to the extent those documents and information did not also relate to the Series 5 Offering. *Infra* ¶¶449-453.

449. The Underwriters refused to produce in discovery documents and information that related to their due diligence on the Series 4 Offering, to the extent those documents and information did not also relate to the Series 5 Offering. *Infra* ¶¶449-453.

450. On July 21, 2014, the Underwriters filed The Underwriter Defendants’ Answer, Defenses and Affirmative Defenses to the Second Consolidated Amended Complaint (the “Answer”). Dkt. No. 92. The Answer stated the claims relating to the Series 2, 3 and 4 Offerings had been dismissed. Answer, ¶1 & n.2. The Answer purported to assert the “due diligence” and “reliance” affirmative defenses under Securities Act §11(b)(3). Answer at 85-86.

451. On July 29, 2014, plaintiff requested from the Underwriters “[a]ll documents concerning any affirmative defense(s), and any other defense(s) you assert or may assert in this action.” *See* Brown Decl., Ex. 2 at 13. On August 28, 2014, the Underwriters made the following objection to plaintiff’s First Request: “The Underwriter Defendants object to the Requests to the extent they seek documents relating to the claims dismissed by the Court in its Opinion and Order dated January 5, 2012.” *See* Brown Decl., Ex. 3 at 2.

452. During meet and confer on discovery, counsel for the Underwriter Defendants sent a letter to plaintiff dated October 17, 2014. *See* Brown Decl., Ex. 4. Underwriters’ counsel stated in the letter: “[Y]our assertion that the Underwriter Defendants agreed to ‘produce documents relevant to the Series 2-4 Offerings’ is simply false. We never agreed to produce such documents.” *Id.* at 1. Underwriters’ counsel also stated in the letter: “[T]he Underwriter Defendants specifically objected to producing documents relating to the Series 2, 3 and 4 Offerings. (*See* General Objection No. 2 (‘The Underwriter Defendants object to the Requests to the extent they seek documents relating to the claims dismissed by the Court in its Opinion and Order dated January 5, 2012.’).” *Id.* at 2. Underwriters’ counsel also stated in the letter: “I never said that the Underwriter Defendants would produce stand-alone files for the Series 2, 3 or 4 Offerings.” *Id.*

453. During the deposition of Jack McSpadden, Underwriters’ counsel made the following objection to an attempt to elicit testimony regarding a document produced in discovery: “I’m just going to object too. This goes beyond the scope of the examination topics. This is not the Series 5 offering.” McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 303:16-19.

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CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2016, true and correct copies of Plaintiff's Response to Underwriter Defendants' Local Rule 56.1 Statement; Further Statement of Undisputed Facts In Opposition to the Underwriter Defendants' Motion for Summary Judgment, dated December 14, 2016, along with all exhibits referenced therein, were served via electronic mail on all counsel of record.

ANDREW J. BROWN