UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re BARCLAYS BANK PLC SECURITIES LITIGATION	:	Master File No. 1:09-cv-01989-PAC
This Document Relates to: ALL ACTIONS	:	ECF Case
	:	**ORAL ARGUMENT REQUESTED**

REPLY MEMORANDUM IN FURTHER SUPPORT OF THE BARCLAYS DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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1933 Act	Securities Act of 1933, 15 U.S.C. §§ 77a *et seq*.
2007 20-F	Barclays' 2007 Annual Report on Form 20-F, filed with the SEC on March 26, 2008, including financial statements for the year ended December 31, 2007
56.1 ¶ __	The Barclays Defendants' Local Rule 56.1 Statement of Material Facts as to Which There Is No Genuine Issue To Be Tried, dated October 21, 2016
ADS	American Depositary Shares
Barclays	Barclays Bank PLC and Barclays PLC
Barclays Defendants	Barclays Bank PLC, Barclays PLC, Marcus Agius, David G. Booth, Sir Richard Broadbent, Richard Leigh Clifford, Fulvio Conti, Daniel Cronje, Dame Sandra J.N. Dawson, Robert Edward Diamond, Jr., Gary A. Hoffman, Sir Andrew Likierman, Dr. Christopher Lucas, Sir Nigel Rudd, Stephen George Russell, Frederik Seegers, John Michael Sunderland and John Silvester Varley
CDO	Collateralized debt obligation
CDS	Credit default swap
FSA	U.K. Financial Services Authority
IFRS	International Financial Reporting Standards
Kleidon Opp.	The Barclays Defendants' Memorandum of Law in Opposition to Lead Plaintiff's Motion To Exclude Expert Opinions and Testimony of Allan W. Kleidon, Ph.D., dated December 14, 2016
Nirmul Ex. __	Exhibits to the Declaration of Sharan Nirmul, dated December 14, 2016, submitted with Plaintiff's Opposition to the Barclays Defendants' Motion for Summary Judgment, dated October 21, 2016
NYSE	New York Stock Exchange
Opp.	Plaintiff's Memorandum of Law in Opposition to the Barclays Defendants' Motion for Summary Judgment, dated December 14, 2016

Peller Ex. __	Exhibits to the Declaration of Matthew A. Peller, dated January 11, 2017, submitted herewith
PwC	PricewaterhouseCoopers LLP
RMBS	Residential mortgage-backed securities
SCAC	Second Consolidated Amended Complaint in this action, filed on September 16, 2013 (ECF No. 66)
SEC	U.S. Securities and Exchange Commission
Series 5 ADS	Barclays' ADS, Series 5, representing U.S. dollar-denominated non-cumulative callable preference shares of Barclays
SJ Br.	Memorandum of Law in Support of the Barclays Defendants' Motion for Summary Judgment, dated October 21, 2016
White Ex. __	Exhibits to the Declaration of Thomas C. White, dated October 21, 2016, submitted with the Barclays Defendants' Motion for Summary Judgment

Plaintiff's Opposition does not identify any *disputed* issues of *material* fact that preclude summary judgment, and ignores key arguments and authorities from our opening brief. It does not even try to save the "misstatement" claims as to Barclays' 12/31/07 asset valuations; it merely states (at 17 n.9) that plaintiff did not "undertake to prove the 'correct' valuations of these assets in discovery." But to survive summary judgment, plaintiff needs *evidence* that the valuations were *objectively and subjectively false* (SJ Br. at 12-13), and there is none. It also ignores completely, or tries unsuccessfully to distinguish, controlling cases demonstrating that the "omissions" theories are unsustainable as a matter of law on the undisputed record.[1]

I. THERE WAS NO DUTY TO DISCLOSE THE PURPORTED OMISSIONS.

Barclays was under no generalized duty to disclose all information—even if material—about its business in the Series 5 offering materials. Instead, the 1933 Act requires disclosure only where (i) "a statute or regulation requir[ed] disclosure" or (ii) another statement would otherwise be "inaccurate, incomplete, or misleading." *Stratte-McClure* v. *Morgan Stanley*, 776 F.3d 94, 101 (2d Cir. 2015). There was no duty to disclose here.

Notional Amount of Monoline Insurance. In *RBS*, the Second Circuit expressly rejected the same argument that plaintiff advances (Opp. at 10-14)—that Barclays "hid" its "exposure" to certain wrapped CDOs by disclosing the fair value of its monoline insurance contracts instead of the "notional" amount of the insurance (*i.e.*, the value of the insured assets) (SJ Br. at 14). *RBS* controls here; the Second Circuit held that the "notional" amount of monoline-insured assets was not the company's "exposure" and there was no duty to disclose it. 783 F.3d at 391-92. Plaintiff nowhere addresses *RBS* on this point, which should end the issue.

[1] *See*, *e.g.*, *IBEW Local Union No. 58 Pension Trust Fund & Annuity Fund* v. *Royal Bank of Scot. Grp., PLC*, 783 F.3d 383, 391-92 (2d Cir. 2015) ("*RBS*"); *In re N2K Inc. Sec. Litig.*, 82 F. Supp. 2d 204, 208 (S.D.N.Y. 2000), *aff'd on opinion below*, 202 F.3d 81 (2d Cir. 2000) (per curiam) ("*N2K Inc.*").

But even without *RBS*, plaintiff has no answer to the following dispositive facts:

- Barclays' financial statements disclosed the notional amount of its derivatives, including monoline CDS. (SJ Br. at 14.) Plaintiff concedes this but asserts (without citation) that Barclays had a further obligation to "separately identify" the notional amount of the monoline CDS (Opp. at 14 n.4); and

- Barclays disclosed that it was *not* reporting its exposure to monolines as the notional amount of insured assets—"notional amounts . . . do not indicate the Group's exposure to credit or price risks" (2007 20-F at 172)—but rather the amount it would lose if the monolines defaulted, i.e., the fair value of the insurance contracts. (SJ Br. at 15.)

Although plaintiff's expert Mr. O'Driscoll posits that the notional amount "would have provided a more complete assessment of Barclays' exposure to monoline insurers" (Opp. at 13), Barclays was "not required to disclose a fact merely because a reasonable investor would very much like to know that." *Dalberth* v. *Xerox Corp.*, 766 F.3d 172, 183 (2d Cir. 2014). O'Driscoll also conceded: (i) he is *not* opining that the notional amount of monoline contracts or the value of the insured assets were "left out of the financial statements or notes" (White Ex. 45 (O'Driscoll Dep.) at 210-15); and (ii) there are many ways to express monoline exposure, including the one used by Barclays (which he does *not* claim was incorrect), and the "notional" amount is a metric used by *risk managers* (White Ex. 33 (O'Driscoll Report) ¶¶ 118-23).[2]

Interim 1Q08 Write-downs. Consistent with SEC Reg. S-X, Barclays' 12/31/07 financial statements were less than 135 days old on the effective date of the Series 5 registration statement. (SJ Br. at 17-19.) Thus, because the interim 1Q08 write-downs were not an "extreme departure" from the range of results that could be expected from prior results, there was no duty

[2] The Opposition (at 11) says the statement that "none of the ABS CDO hedges 'were held with monoline insurer counterparties,' ¶ 127, was simply false." In fact, page 53 of the 20-F listed, under the heading of ABS CDO Super Senior positions, both "exposure before hedging" and "hedges." Referring *to that line item*, the note says: "*None of the above hedges* of ABS CDO Super Senior exposures as at 31st December 2007 were held with monoline insurer counterparties" (emphasis added). That statement was true; the £1.3 billion in "above hedges" clearly referred to the line item for ABS CDO positions being discussed in that section of page 53, and not to the separate line item and section addressing "monoline insurers," which addressed as the risk of default by monolines.

to disclose them. (*Id.*) Plaintiff erroneously asserts that "*Litwin* and *Panther Partners*" applied Reg. S-K Item 303 and "superseded" the 135-day rule and "extreme departure" test. (Opp. at 15.) But the Second Circuit said no such thing in *Litwin* v. *Blackstone Grp., L.P.*, 634 F.3d 706 (2d Cir. 2011) or *Panther Partners, Inc.* v. *Ikanos Commc'ns, Inc.*, 681 F.3d 114 (2d Cir. 2012), and plaintiff only cites for its assertion Judge Sweet's decision denying a § 1292(b) motion in *In re Facebook, Inc. IPO Sec. & Deriv. Litig.*, 986 F. Supp. 2d 524, 542 (S.D.N.Y. 2014). Plaintiff nowhere addresses *N2K Inc.*—where, as discussed in our opening brief (at 18-19), the Second Circuit adopted Judge Baer's opinion applying the "extreme departure" test—and it remains the law of the Circuit. Indeed, courts in this District still apply the test even after *Facebook* (*see* SJ Br. at 18-19), as plaintiff admits (Opp. at 15 n.6). Moreover, Judge Sweet distinguished *N2K Inc.* and other "extreme departure" cases because they involved "financial data" (986 F. Supp. 2d at 541) and *Facebook* involved an undisclosed *consumer* trend—the growing use of Facebook on mobile devices (986 F. Supp. 2d 487, 491 (S.D.N.Y. 2013)). Our case involves financial data.[3]

Plaintiff also tries to pass the "extreme departure" test by cherry-picking two asset classes (subprime and Alt-A loans) from Barclays' overall credit market exposures and claiming

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[3] Plaintiff's expert Mr. Regan opined that IFRS accounting rules required disclosure of interim 1Q08 losses. (Opp. at 20 n.13.) Even if there was an IFRS violation (there was not), it would not establish a 1933 Act violation—*Stratte-McClure* v. *Morgan Stanley*, 2013 WL 297954, at *6 (S.D.N.Y. Jan. 18, 2013) (AU560 did not "creat[e] a disclosure obligation")—especially where there is an SEC regulation (the 135-day rule) on the same subject. Also, Regan has no experience with the relevant accounting rule (IAS 10) or advising on IFRS compliance (Peller Ex. C at 55); he has *U.S. GAAP* experience and asserts that IFRS is similar, but this *ipse dixit* cannot defeat summary judgment. *In re Puda Coal Sec. Litig.*, 30 F. Supp. 3d 230, 254 (S.D.N.Y. 2014), *aff'd*, 649 F. App'x 55 (2d Cir. 2016). Regan "has not supported his opinion with references to his experience and explained how the specifics of that experience led to his conclusions." *LinkCo, Inc.* v. *Fujitsu Ltd.*, 2002 WL 1585551, at *4 (S.D.N.Y. Jul. 16, 2002). Further, even if Regan's opinion is admissible (which we will challenge under *Daubert* if the case survives summary judgment), it cannot overcome PwC's *contemporaneous conclusion* that no "subsequent events" disclosure of interim 1Q08 losses was required. (56.1 ¶ 76.) Contrary to plaintiff's assertion (Opp. at 20 n.13), Regan admitted he is *not* challenging the adequacy of PwC's audit. (Peller Ex. C at 98-101.) Similarly, Regan's conclusory views about the notional amount of monoline insurance (Opp. 13 n.3) are not based on any disputed fact issues, and his opinion that the "omission" of the notional amount "violated the SEC Rules" (Nirmul Ex. 228 ¶ 95) is an inadmissible legal conclusion. *See Hygh* v. *Jacobs*, 961 F.2d 359, 363 (2d Cir. 1992).

that the 1Q08 write-downs on *just those* loans were larger than in prior quarters. (Opp. at 14-17.) Courts, however, look to the issuer *as a whole* to assess whether interim disclosure is required (SJ Br. at 19 n.11), and here the 1Q08 write-downs on the credit market assets as a whole were well in line with prior quarters, and Barclays as a whole reported a *profit* for 1Q08 (*id.* at 19-20).

Plaintiff relies on cases under Item 303 of Reg. S-K (Opp. at 7-8, 14-15, 17-19), but they are unavailing. "The Second Circuit has noted that the aim of Item 303 is to explain irregularities in offering documents and prevent a company's last reported financial results from misleading potential investors." *In re Noah Educ. Holdings, Ltd. Sec. Litig.*, 2010 WL 1372709, at *6 (S.D.N.Y. Mar. 31, 2010). Thus, for example, courts have found Item 303 violations when an issuer did not disclose (i) a "downward trend in the real estate market" that jeopardized the issuer's "flagship segment," *Litwin*, 634 F.3d at 716, and (ii) "an increasing number of calls . . . alerting [management] to the fact that its chips were defective," *Panther Partners,* 681 F.3d at 121. In such cases, the "trend" indicated that the issuer's historical results would no longer be "indicative of future operating results." *Id.* at 120; *Vaccaro* v. *New Source Energy Partners, L.P.*, 2016 WL 7373799, at *6-7 (S.D.N.Y. Dec. 19, 2016) (distinguishing *Litwin* and *Panther Partners*). There is no such evidence here. Further, even assuming the market dislocation was a "trend" under Item 303, Barclays' duty would be "to disclose only that it faced deteriorating real estate, credit, and subprime mortgage markets, that it had significant exposure to those markets, and that if the trends came to fruition, [it] faced trading losses that could materially affect its financial condition." *Stratte-McClure*, 776 F.3d at 105. But that is precisely what Barclays disclosed in the Series 5 offering materials (*see* SJ Br. at 9 n.4, 17), when it discussed "dislocations in the credit markets" and specifically identified (2007 20-F at 53) the types and remaining amounts of its assets that were vulnerable to additional write-downs, allowing readers

to assess how continued dislocation "might reasonably be expected to have a material impact on future revenues." *Panther Partners*, 681 F.3d at 120.[4]

Capital Ratios. Plaintiff's claim that Barclays "materially overstat[ed] its capital position and materially understat[ed] its need for capital" (Opp. at 20) is predicated on the assertion—demonstrably false as shown by the undisputed evidence—that, in March 2008, the FSA imposed a "requirement" or "mandate" that Barclays raise its Tier 1 equity ratio to 5.25% (from 5.1% at 12/31/07) by the end of 2008; plaintiff goes so far as to say that the FSA established a "new *de facto* regulatory minimum" on Barclays. (Opp. at 21, 22, 30.) But all of that is flatly refuted by the contemporaneous document recording the FSA's inquiry—quoted in Barclays' opening brief (at 22) but never addressed in the Opposition—which clearly shows that the FSA did not "require" or "mandate" anything; it merely asked Barclays about its contingency plans for raising capital "in order to decide '*whether* we would need to take any action.'" (SJ Br. at 22.) "Plaintiff cannot raise a genuine issue of fact by asserting that the contents of a document are other than what they are." *Ofudu* v. *Barr Labs., Inc.*, 98 F. Supp. 2d. 510, 512 (S.D.N.Y. 2000). In any event, the Second Circuit held in *RBS* that there was no duty to disclose an *actual FSA mandate* to raise capital, even where RBS had inaccurately denied it to investors. 783 F.3d at 388-89, 393; SJ Br. at 22. Here, *a fortiori*, Barclays had no duty to disclose an FSA inquiry into contingency plans for raising capital if needed.[5] Also, Barclays (a) publicly announced on

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[4] Plaintiff half-heartedly invokes Item 503 (Opp. at 17-18), which requires "[w]here appropriate . . . a discussion of the most significant factors that make the offering speculative or risky." 17 CFR § 229.503(c). But Plaintiff never explains how (if at all) 1Q08 write-downs made the *Series 5 offering* especially "speculative" or "risky" to Series 5 investors. *See Hutchinson* v. *Deutsche Bank Sec., Inc.*, 647 F.3d 479, 484 n.4 (2d Cir. 2011); *Christine Asia Co.* v. *Alibaba Grp. Holding Ltd.*, 2016 WL 3648965, at *17 (S.D.N.Y. June 24, 2016).

[5] Plaintiff attempts to distinguish *RBS* by arguing that it was a misstatement, not omission, case, and that RBS had already "initiated the capital raise at issue before the FSA required it" and disclosed that the FSA had "encouraged" it to raise capital. (Opp. at 21 n.17.) Those "distinctions" are of no moment. The point is that the plaintiff's claim

(*footnote continued*)

an earnings call before the Series 5 offering that it was below its Tier 1 equity target (SJ Br. at 21), which was part of the total mix of information, *Litwin*, 634 F.3d at 718, and (b) the offering documents disclosed that Barclays might be raising additional capital (White Ex. 3 at S-9).[6]

II. THERE IS NO EVIDENCE OF MATERIALITY.

There is no evidence that a reasonable *Series 5 ADS* investor would have considered the "omitted" information to have significantly altered the total mix of information. (SJ Br. at 23.) Plaintiff relies on the Second Circuit's comment in our case that "in a quickly deteriorating credit market . . . the particulars about a firm's exposure to that market *could* assume a level of importance, and hence materiality, that *may* not have been the case in less economically stressful times." (Opp. at 4, 23 (emphasis added).) But this did not eliminate plaintiff's burden of proof; it merely permitted plaintiff to survive dismissal on the pleadings and proceed into discovery to look for *evidence* supporting plaintiff's claims. Now, at summary judgment, Barclays' burden "will be satisfied if [it] can point to an absence of evidence to support an essential element of the nonmoving party's claim." *Goenaga* v. *March of Dimes Birth Defects Found.*, 51 F.3d 14, 18 (2d Cir. 1995). Barclays did that (SJ Br. at 23-25), and plaintiff fails to identify "specific facts showing that there is a genuine issue for trial," *Caldarola* v. *Calabrese*, 298 F.3d 156, 160 (2d Cir. 2002). All plaintiff has mustered is the naked assertion (Opp. at 23) that *generic* "investors were intensely focused on, *inter alia*, banks' exposures to

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(*footnote continued*)

failed in *RBS* even though RBS said it was "not asked to raise capital" when the FSA had "specifically required" RBS to do so. 783 F.3d at 388-89. There is nothing remotely like that here.

[6] Defendants seek summary judgment on plaintiff's claims in their entirety. (SJ Br. at 1.) Plaintiff's assertion otherwise (Opp. at 9) is wrong. The additional "misstatements" plaintiff points to (such as "inadequate" CDO write-downs and "hidden" CDO exposure) are derivative of the issues addressed in our opening brief. And plaintiff points to no evidence that these additional statements were false or materially so. For example, plaintiff's assertion that Barclays did not reduce its CDO positions during 2007 (Opp. at 9, bullet 3) is belied by the 2007 20-F itself (at 53), which shows that net CDO exposure was reduced from £7.4 billion at 6/30/07 to £4.6 billion at 12/31/07.

subprime and Alt-A assets and monoline insurers, and the impact those exposures were having on banks' capital positions." The supposed "facts" cited for this are dozens of paragraphs from plaintiff's Rule 56.1 counterstatement (¶¶ 203-33, 262-94, 401-04) that merely discuss newspaper articles and other public reports, as well as internal Barclays discussions, about financial crisis events like the collapse of Bear Stearns and write-downs announced by other banks. That such things were all over the news and the focus of a bank's management during the crisis is utterly unremarkable; it is not evidence that the "omissions" at issue here were material to *Series 5 investors*. "[R]eliance on unsupported assertions" does not defeat summary judgment, *Goenaga*, 51 F.3d at 18, and plaintiff has pointed to no evidence that a reasonable investor *in the Series 5 preference shares w*ould have considered the allegedly omitted information to have significantly altered the total mix of information concerning Barclays and the Series 5 ADS being offered. (SJ Br. at 23-24.) Indeed, the record evidence and common sense suggest that *Series 5 investors* were—like plaintiff himself—most concerned with the payment of the 8.125% dividend, which was protected by a cushion of over £30 billion in shareholder equity (*id*. at 6).

Plaintiff's failure to come forward with any evidence of materiality makes summary judgment especially appropriate here in light of the evidence of *immateriality* shown by Barclays. (*Id.* at 23-25.) The touchstone of materiality is whether the allegedly misstated or omitted information is "reasonably certain to have a substantial effect on the market price of the security." *Elkind* v. *Ligget & Myers, Inc.*, 635 F.2d 15, 166 (2d Cir. 1980). The "usual" method of proving materiality is an event study, *In re Moody's Corp. Sec. Litig.*, 274 F.R.D. 480, 492 (S.D.N.Y. 2011), which plaintiff chose not to do here, and plaintiff has no answer to the lack of negative price reaction when the "corrective" information entered the market. *Akerman* v. *Oryx Commc'ns, Inc.*, 810 F.2d 336, 343 (2d Cir. 1987) (affirming summary judgment where "the

public failed to react adversely to" corrective disclosure); *In re Miller Indus., Inc.,* 120 F. Supp. 2d 1371, 1380-81 (N.D. Ga. 2000) ("[t]he only evidence Plaintiffs provide to show materiality is the accounting figures themselves," and "the market disregarded" the inflated sales figures).[7]

III. THERE IS NO TRIABLE ISSUE OF FACT AS TO NEGATIVE CAUSATION.

Defendants carried their initial burden of showing no genuine issues of material fact on loss causation through Dr. Kleidon's event study and the lack of price reaction to the "corrective" disclosures. (SJ Br. at 26-30). "Despite extensive discovery," the Opposition is devoid of the "specific facts" required to avoid summary judgment. *Akerman*, 810 F.2d at 343.

Dr. Kleidon conducted a standard event study—"the usual method by which a party seeks to prove that a misrepresentation *did not cause a statistically significant change in price*," *Moody's*, 274 F.R.D. at 492 (emphasis added)—and showed that the Series 5 price declines "are not attributable in whole or in part to any of the alleged misrepresentations." (White Ex. 31 ¶ 107.) Plaintiff insists that this event study "cannot establish" negative causation because it analyzed dates when there were *statistically significant* price changes, supposedly "ignoring" other dates. (Opp. at 28-29, 33 & n.25.) But this erroneously assumes that the only competent evidence of negative causation in 1933 Act cases is proof *to a mathematical certainty*, when the burden is to prove negative causation by a preponderance of the evidence. (Kleidon Opp. at 14-15.) Event studies routinely rely on statistical significance thresholds, as courts and plaintiff's own expert have recognized. *See id.* at 18; *Goldkrantz* v. *Griffin*, 1999 WL 191540, at

[7] Defendants are not "shift[ing] their negative causation burden onto Plaintiff" (Opp. at 26); materiality is plaintiff's burden. While courts have held that lack of price impact is not *dispositive*, it is compelling evidence of *immateriality*. *SEC* v. *Mudd*, 2016 WL 2593980, at *2 n.6 (S.D.N.Y. May 4, 2016) (event studies are "not uncommon" method of proof in "examin[ing] the extent to which stock prices react to the release of new material information"). Plaintiff's claim (Opp. at 32 n.32) that *Mudd* supports his position fails. There, this Court held an event study inadmissible because the expert "used a nonstandard methodology" and "admitted that he has never used this methodology before and that he was not aware of any published peer-reviewed research that takes" his approach. *Mudd*, at *7. Those circumstances are not present here. (*See* Kleidon Opp. at 11-25.)

*4 (S.D.N.Y. Apr. 6, 1999), *aff'd*, 201 F.3d 431 (2d Cir. 1999). As in *Goldkrantz*, (i) Defendants here have "met their burden" with an event study that examined "statistically significant residual return[s]" and showed "a complete lack of reaction" to the alleged misrepresentations, and (ii) plaintiff's rebuttal expert "conducted no independent statistical analysis" of the Series 5 price movements. 1999 WL 191540 at *4-5.[8]

There is also no triable issue on causation based on the Series 5 price movements (or lack thereof) alone. (SJ Br. at 26-27); *Akerman*, 810 F.2d at 343. Faced with no price impact on the "corrective" dates of May 15, June 25, and August 7, 2008 (SJ Br. at 27), plaintiff is reduced to contending that somehow the "full truth" remained uncorrected for an unspecified period of time.[9] (Opp. at 29-33.) But plaintiff nowhere identifies any fact or risk that (i) was required to be disclosed at the time of the April 2008 Series 5 offering, and (ii) remained undisclosed after these three "corrective" disclosures. This is fatal because plaintiff can only recover for declines "that actually *result from* the materialization of a risk contained within a material misstatement, not to those that are somehow connected with the misstatement." *In re State Street Bank and Trust Invest Litig.*, 774 F. Supp. 2d 584, 595 (S.D.N.Y. 2011); *Salvani* v.

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[8] Plaintiff cannot manufacture a "factual dispute as to whether five of the seven statistically significant stock price declines identified by Kleidon were caused by news that revealed the truth regarding Defendants' alleged misstatements and omissions" (Opp. at 34), because his expert (Mr. Coffman) *does not opine* that the news on those dates revealed any previously misstated or omitted information. Rather, he simply asserts that the news "relates to Plaintiff's claims" and is "potentially corrective." (Opp. at 23, 26; Nirmul Ex. 4 ¶¶ 77-104.) However, news that merely "relates to Plaintiff's claims" (Opp. at 26), whatever that means, does not support loss causation. *In re Omnicom Grp., Inc. Sec. Litig.*, 597 F.3d 501, 511 (2d Cir. 2010) (corrective disclosure must reveal "some then-undisclosed fact" about the alleged misrepresentations); *Lentell* v. *Merrill Lynch & Co., Inc.*, 396 F.3d 161, 173-75 (2d Cir. 2005) (no loss causation where "corrective" disclosure did not reveal to the market the "truth" regarding the alleged misrepresentations). As the Second Circuit has explained, summary judgment is appropriate even in the face of "conflicting expert reports," because although an "expert may be entitled to his opinion, . . . he is not entitled to a conclusion that his view of the facts necessarily precludes summary judgment." *Dalberth*, 766 F.3d at 189.

[9] Plaintiff's failure to specify when the "full truth" was out is also fatal. *In re Williams Sec. Litig.-WCG Subclass*, 558 F.3d 1130, 1137 (10th Cir. 2009) (rejecting amorphous loss causation theory because plaintiff must "identify when the materialization" of the allegedly concealed risk "occurred and link it to a corresponding loss").

ADVFN PLC, 50 F. Supp. 3d 459, 475 (S.D.N.Y. 2014), *aff'd*, 628 F. App'x 784 (2d Cir. 2015).

- **May 15, 2008**. Plaintiff argues that Barclays' May 15 disclosure of its actual 1Q08 write-downs (including whole loan write-downs) did not "fully" correct the "failure to disclose" interim 1Q08 write-downs before the Series 5 offering, because it "did not reveal the trend of increasing deterioration of whole loans and resultant gross writedowns" (Opp. at 29). This makes no sense. If, before the offering, there was a "concealed" risk of this "trend" on Barclays' future results or financial condition, then it was by definition disclosed when the *actual 1Q08 write-downs* were disclosed.

- **June 25, 2008**. Plaintiff's "undisclosed need for capital" theory turns on the "failure to disclose" the FSA's (non-existent) "mandate" that Barclays bring its Tier 1 equity ratio above Barclays' internal target of 5.25% by the end of 2008. (*Id.* at 20-23.) But this "omission" was fully "corrected" on June 25 when Barclays announced the £4.5 billion equity capital raise, because that capital raise brought Barclays' Tier 1 equity ratio well over of 5.25% when it was completed in July. (Peller Ex. A at 2 (equity Tier 1 ratio of 6.3% pro forma at 6/30/08 accounting for the new capital); Ex. B at 6 (equity Tier 1 ratios of 5.5% and 5.7% at Aug. and Sept. 2008).) Plaintiff argues that various events later in 2008 and 2009 were somehow "corrective" or a "materialization of a risk concealed" (Opp. at 30), but all of those indisputably resulted from circumstances arising long after the April 2008 Series 5 offering, and thus do not reflect information that was misstated or concealed before the offering. *See Coronel* v. *Quanta Capital Holdings, Ltd.*, 2009 WL 174656, at *13 (S.D.N.Y. Jan. 26, 2009) (alleged misrepresentations are judged as of time when offering documents became effective, not by hindsight).

- **August 7, 2008**. Plaintiff argues (Opp. at 32) that Barclays' August 7 disclosure of the notional amount of monoline insurance did not "fully" correct the "failure to disclose" the monoline notional amount before the offering.[10] By definition, it did.[11]

CONCLUSION

The Barclays Defendants respectfully request that the Court grant their motion for summary judgment.

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[10] Plaintiff claims the August 7 disclosure was not "fully" corrective because it did not disclose "CDO positions wrapped by bank insurance" (Opp. at 32), but plaintiff never explains why Barclays had a duty to disclose CDS with banks, as opposed to monoline insurers.

[11] If the Court is not inclined to grant summary judgment on negative causation, it should rule on partial summary judgment that plaintiff cannot recover for any price declines after August 7, 2008. *See* Fed. R. Civ. P. 56(g) (partial summary judgment on "item of damages . . . not genuinely in dispute"); *Westinghouse Elec. Corp.* v. *'21' Int'l Holdings, Inc.*, 821 F. Supp. 212 (S.D.N.Y. 1993) (partial summary judgment on negative causation with respect to certain price declines); *In re Fortune Sys. Sec. Litig.*, 680 F. Supp. 1360, 1368 (N.D. Cal. 1987) (same).

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