

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE BARCLAYS BANK PLC SECURITIES : Master File No. 1:09-cv-01989-PAC  
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**THE UNDERWRITER DEFENDANTS'  
REPLY TO PLAINTIFF'S RESPONSES TO THEIR LOCAL RULE 56.1 STATEMENT  
AND RESPONSE TO PLAINTIFF'S ADDITIONAL STATEMENT OF FACTS**

**[FILED UNDER SEAL – CONTAINS CONFIDENTIAL DISCOVERY INFORMATION]**

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Pursuant to Local Civil Rules 56.1(a)-(b) of the Local Rules of the United States District Court for the Southern and Eastern Districts of New York, Defendants Merrill Lynch, Pierce, Fenner & Smith Incorporated (as successor-by-merger to Defendant Banc of America Securities LLC) ("Banc of America Securities"), Barclays Capital Securities Limited ("BCSL"), Citigroup Global Markets Inc. ("Citi"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), Morgan Stanley & Co., Incorporated (n/k/a Morgan Stanley & Co. LLC) ("Morgan Stanley"), RBC Dain Rauscher Incorporated (n/k/a RBC Capital Markets LLC) ("RBC"), UBS Securities LLC ("UBS") and Wachovia Capital Markets, LLC (n/k/a Wells Fargo Securities, LLC) ("Wachovia") (collectively, the "Underwriters") submit this Reply to Plaintiff's Responses to Their Local Rule 56.1 Statement and Response to Plaintiff's Additional Statement of Facts.

**REPLY TO PLAINTIFF'S RESPONSES TO THE  
UNDERWRITERS DEFENDANTS' LOCAL RULE 56.1 STATEMENT**

In response to the Underwriters Defendants' Local Rule 56.1 Statement setting forth the undisputed facts of the case, Plaintiff fails to dispute any facts with citations to admissible evidence. Instead, Plaintiff responds to each of the 237 paragraphs in the Underwriters Defendants' Local Rule 56.1 Statement with unsupported statements, conjecture, and inappropriate legal arguments. Plaintiff's attempts to dispute the Underwriters' factual statements without identifying even a scintilla of controverting evidence is insufficient as a matter of law and should be rejected by this Court. *See U.S. Info. Sys., Inc. v. Int'l Bhd. of Elec. Workers Local Union No. 3*, 2006 WL 2136249, at \*3 (S.D.N.Y. Aug. 1, 2006) ("A non-moving party cannot create a factual dispute merely by denying a movant party's factual statement; rather, the non-moving party must identify controverting evidence for the court."); *see also Risco v. McHugh*, 868 F.Supp.2d 75, 85 n.2 (S.D.N.Y. 2012) ("[T]he [Rule 56.1] Statement improperly interjects arguments and/or immaterial facts in response to facts asserted by Defendant, without

specifically controverting those facts."); Local Civil Rule 56.1(d) ("Each statement by the movant or opponent pursuant to Rule 56.1(a) and (b), including each statement controverting any statement of material fact, must be followed by citation to evidence which would be admissible, set forth as required by Fed. R. Civ. P. 56(c)."). To the extent Plaintiff attempts to controvert the Underwriters Defendants' Local Rule 56.1 Statement by referring to certain of his own purported undisputed facts, the Underwriters' response to each of those "facts" is set forth below.

### **RESPONSE TO PLAINTIFF'S STATEMENT OF ADDITIONAL FACTS**

#### **A. General Responses**

For the avoidance of doubt, it is the Underwriter Defendants' position that none of the facts appearing in Plaintiff's Further Statement of Undisputed Facts are "material facts" for purposes of the Underwriter Defendants' Motion for Summary Judgment ("Motion") under Fed. R. Civ. P. 56 or Local Rule 56.1, except insofar as they already appear in the Local Rule 56.1 Statement in Support of the Underwriter Defendants' Motion. As a result, Plaintiff's purported facts are immaterial to the Underwriter Defendants' motion for summary judgment, and thus, regardless of whether true or disputed, do not preclude summary judgment in favor of the Underwriter Defendants. To the extent the Underwriter Defendants nonetheless provide substantive responses, these responses are not intended to be, and should not be considered as, a concession that any of the "facts" contained in those paragraphs are material to the Motion or are otherwise in any way relevant to its resolution.

Furthermore, the Underwriter Defendants' responses are made without prejudice, and the Underwriter Defendants reserve all rights to: (a) contest the facts contained in any paragraph in any further proceedings in this or in any other litigation matter; (b) cite, submit, or rely upon additional and further facts, evidence, circumstances, documents or testimony with respect to the

subject matter of any paragraph in any further proceedings in this or any other litigation matter; (c) challenge the admissibility or authenticity of any of the putative evidence cited by Plaintiff at the time it is actually offered; and (d) contest whether the factual assertions in Plaintiff's "statements" are supported by the particular documents and testimony cited therein.

**B. Specific Responses**

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.

**Response to No. 238: Not disputed.**

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.

**Response to No. 239: Not disputed.**

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.

**Response to No. 240: Not disputed.**

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.

**Response to No. 241: Not disputed.**

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.

**Response to No. 242: Not disputed.**

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

**Response to No. 243: Not disputed.**

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.

**Response to No. 244: Not disputed.**

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.

**Response to No. 245: Not disputed.**

246. On August 30, 2007, Lynn Mconnell [sic] 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.

**Response to No. 246: Not disputed.**

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.

**Response to No. 247: Not disputed.**

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.

**Response to No. 248: Not disputed.**

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).

**Response to No. 249: Not disputed.**

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).

**Response to No. 250: Not disputed.**

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).

**Response to No. 251: Not disputed.**

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).

**Response to No. 252: Not disputed.**

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).

**Response to No. 253: Not disputed.**

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).

**Response to No. 254: Not disputed.**

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.*

**Response to No. 255: Not disputed.**

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.*

**Response to No. 256: Disputed insofar as "Barclays forwarded this e-mail to Citi" is a mischaracterization of the document cited, which is an e-mail from an individual employee of Barclays to an individual employee of Citi sent outside the context of the Series 5 Offering.**



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.

**Response to No. 257: Not disputed.**

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

**Response to No. 258: Not disputed.**

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.*

**Response to No. 259: Disputed as to the characterization of the cited document as an e-mail from Citi to Barclays. The author of the e-mail in question, Laura Drumm, as well as the recipients of the e-mail, Derrick Deese and Bogdan Ciobanu, were employees of Citi at the time of the Series 5 Offering. See UW 56.1 ¶ 59; McSpadden Decl. ¶ 18.**

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.

**Response to No. 260: Not disputed.**

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.*

**Response to No. 261: Not disputed.**

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.

**Response to No. 262: Not disputed.**

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.*

**Response to No. 263: Not disputed.**

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.

**Response to No. 264: Not disputed.**

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.

**Response to No. 265: Not disputed.**

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.

**Response to No. 266: Not disputed.**

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.

**Response to No. 267: Not disputed.**

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).

**Response to No. 268: Disputed as an incomplete and misleading characterization of the deposition testimony cited. The Underwriter Defendants respectfully refer the Court to the deposition testimony of Jack D. McSpadden, in which he explains that certain questions were removed from the final questionnaire in order to avoid tipping off non-Series 5 call participants as to material, non-public information concerning the Series 5 Offering. *See* Brown Ex. 5, McSpadden Dep. Tr. at 168:14-175:22.**

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).

**Response to No. 269: Disputed as an incomplete and misleading characterization of the deposition testimony cited. The Underwriter Defendants respectfully refer the Court to the deposition testimony of Jack D. McSpadden, in which he explains that certain questions were removed from the final questionnaire in order to avoid tipping off non-Series 5 call participants as to material, non-public information**

**concerning the Series 5 Offering. See Brown Ex. 5, McSpadden Dep. Tr. at 168:14-175:22.**

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).

**Response to No. 270: Disputed as an incomplete and misleading characterization of the deposition testimony cited. The Underwriter Defendants respectfully refer the Court to the deposition testimony of Jack D. McSpadden, in which he explains that certain questions were removed from the final questionnaire in order to avoid tipping off non-Series 5 call participants as to material, non-public information concerning the Series 5 Offering. See Brown Ex. 5, McSpadden Dep. Tr. at 168:14-175:22.**

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 he [sic] 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).

**Response to No. 271: Disputed as an incomplete and misleading characterization of the deposition testimony cited. The Underwriter Defendants respectfully refer the Court to the deposition testimony of Jack D. McSpadden, in which he explains that certain questions were removed from the final questionnaire in order to avoid tipping off non-Series 5 call participants as to material, non-public information concerning the Series 5 Offering. See Brown Ex. 5, McSpadden Dep. Tr. at 168:14-175:22. By way of further response, the Underwriter Defendants note that Mr. McSpadden testified that this question was re-drafted for inclusion in the final**

**questionnaire so as not to tip off non-Series 5 call participants as to material non-public information concerning the Series 5 Offering. *See id.* at 175:9-21.**

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.

**Response to No. 272: Disputed insofar as the statement selectively quotes the document cited. The full portion of the passage selectively quoted by Plaintiff includes the following language: "Barclays currently has one of the European bank sector's lowest 'tangible equity/assets' ratios. Whilst regulatory ratio (tier 1 ratio is 7.8%) is at target levels, the capital markets are also looking at a broader range of ratios including leverage based ratios. Barclays has RWA's of 353bn (c.\$700bn) and thus 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)."**

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

**Response to No. 273: Not disputed.**

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.

**Response to No. 274: Not disputed.**

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

**Response to No. 275: Not disputed.**

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.

**Response to No. 276: Not disputed.**

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

**Response to No. 277: Not disputed.**

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

**Response to No. 278: The Underwriter Defendants object to this statement pursuant to Fed. R. Civ. P. 56(c)(2) and Local Civil Rule 56.1(d) on the ground that it is not supported by admissible evidence.**

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.

**Response to No. 279: Disputed to the extent references to "the information" and "this information" are unclear. Disputed insofar as the cited document does not include admissible evidence, or indicate in any way, that "Barclays planned to disclose to Temasek" any "information," including but not limited to "a notational amount of Barclays' exposure to monoline insurers totaling £20.990B" or "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." By way of further response, disputed insofar as the portion of the statement referencing "information Barclays planned to disclose to Temasek as part of this presentation" is directly at odds with Plaintiff's Statement of Additional Facts in response to the Barclays Defendants' Motion for Summary Judgment. *See* Plaintiff SOF in response to the Barclays Defendants' Motion for Summary Judgment ¶ 260 (indicating that, due to selective disclosure concerns, Barclays never planned to send Temasek any written information and planned to limit their response to Temasek to a "broad discussion" of Barclays' exposures). By way of additional response, the Underwriter Defendants object to Brown Ex. 47, a stand-alone document bearing no bates numbers and presented without a parent e-mail or any other additional context, as lacking foundation. Fed. R. Evid. 901.**

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.

**Response to No. 280: Not disputed.**

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.

**Response to No. 281: Not disputed.**

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."

**Response to No. 282: Not disputed.**

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).

**Response to No. 283: Not disputed.**

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.

**Response to No. 284: Not disputed.**

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 [sic]. *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.

**Response to No. 285: Not disputed.**

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.*

**Response to No. 286: Not disputed.**

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).

**Response to No. 287: Not disputed.**

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

**Response to No. 288:** Disputed that the transcript prepared at the request of Plaintiff is an accurate transcription of the April 3, 2008 business due diligence call. The Underwriter Defendants object to Brown Ex. 11, a purported transcript of the April 3, 2008 business due diligence call offered without an accompanying affidavit, as lacking foundation. Fed. R. Evid. 901.

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.

**Response to No. 289:** Not disputed.

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.").

**Response to No. 290:** Not disputed.

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

**Response to No. 291:** Not disputed.

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

**Response to No. 292:** Not disputed.

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.

**Response to No. 293: Not disputed.**

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.

**Response to No. 294: The Underwriter Defendants object to Brown Ex. 11, a purported transcript of the April 3, 2008 business due diligence call offered without an accompanying affidavit, as lacking foundation. Fed. R. Evid. 901. Additionally, disputed as an incomplete excerpt of the purported transcript cited.**

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.

**Response to No. 295: The Underwriter Defendants object to Brown Ex. 11, a purported transcript of the April 3, 2008 business due diligence call offered without an accompanying affidavit, as lacking foundation. Fed. R. Evid. 901. Additionally, disputed as an incomplete excerpt of the purported transcript cited.**

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.

**Response to No. 296: Not disputed.**

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.

**Response to No. 297: The Underwriter Defendants object to Brown Ex. 11, a purported transcript of the April 3, 2008 business due diligence call offered without an accompanying affidavit, as lacking foundation. Fed. R. Evid. 901. Additionally, disputed as an incomplete excerpt of the purported transcript cited.**

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.

**Response to No. 298:** The Underwriter Defendants object to Brown Ex. 11, a purported transcript of the April 3, 2008 business due diligence call offered without an accompanying affidavit, as lacking foundation. Fed. R. Evid. 901. Additionally, disputed as an incomplete excerpt of the purported transcript cited.

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.

**Response to No. 299:** Disputed as a mischaracterization of the deposition testimony cited. The Underwriter Defendants respectfully refer the Court to the deposition testimony cited, which speaks for itself.

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.

**Response to No. 300:** Not disputed.

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.

**Response to No. 301:** Not disputed.

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.

**Response to No. 302:** Not disputed, however the Underwriter Defendants object to Brown Ex. 11, a purported transcript of the April 3, 2008 business due diligence call offered without an accompanying affidavit, as lacking foundation. Fed. R. Evid. 901.

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).

**Response to No. 303: Not disputed.**

304. McSpadden relied on Barclays to decide whether a specific disclosure was necessary. McSpadden Depo. Tr. (Brown Decl., Ex. 5) at 218:15-19.

**Response to No. 304: Disputed as a mischaracterization of the deposition testimony cited. The Underwriter Defendants respectfully refer the Court to the deposition testimony cited, in which Mr. 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." Brown Ex. 5, McSpadden Tr. at 218:9-19.**

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.

**Response to No. 305: Not disputed.**

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.").

**Response to No. 306: Not disputed.**

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).

**Response to No. 307: Disputed to the extent that the statement "Citi knew from the April 3, 2008 business due diligence call that Barclays would take additional writedowns in 1Q 2008" is a mischaracterization of the cited deposition testimony and is inconsistent with Mr. McSpadden's full testimony. See Brown Ex. 5, McSpadden Dep. Tr. at 219:4-7 ("Mr. Lucas did not report that [writedowns] were coming. He said it was highly likely they were coming. There's a difference.").**



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

**Response to No. 308: The Underwriter Defendants object to this statement pursuant to Fed. R. Civ. P. 56(c)(2) and Local Civil Rule 56.1(d) on the ground that it is not supported by admissible evidence.**

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.

**Response to No. 309: Not disputed.**

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.

**Response to No. 310: Not disputed.**

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."

**Response to No. 311: Not disputed.**

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.

**Response to No. 312:** The Underwriter Defendants object to this statement pursuant to Fed. R. Civ. P. 56(c)(2) and Local Civil Rule 56.1(d) on the ground that it is not supported by admissible evidence. The Underwriter Defendants respectfully note that Brown Ex. 55 includes a table of contents page but does not include any of the pages referenced in Statement No. 312.

313. An [sic] 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" [sic] of negative \$1,006,160,00 [sic] and a "Formal YTD" "Net Revenue Total" of negative \$1,679,949,000. Brown Decl., Ex. 19 at 038-39.

**Response to No. 313:** Not disputed.

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.

**Response to No. 314:** Not disputed.

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.

**Response to No. 315:** The Underwriter Defendants object to Brown Ex. 11, a purported transcript of the April 3, 2008 business due diligence call offered without an accompanying affidavit, as lacking foundation. Fed. R. Evid. 901.

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

**Response to No. 316:** Not disputed.

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.

**Response to No. 317:** The Underwriter Defendants object to Brown Ex. 11, a purported transcript of the April 3, 2008 business due diligence call offered without an accompanying affidavit, as lacking foundation. Fed. R. Evid. 901. Additionally, disputed as an incomplete excerpt of the purported transcript cited.

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.

**Response to No. 318:** The Underwriter Defendants object to Brown Ex. 11, a purported transcript of the April 3, 2008 business due diligence call offered without an accompanying affidavit, as lacking foundation. Fed. R. Evid. 901. Additionally, disputed as an incomplete excerpt of the purported transcript cited.

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.

**Response to No. 319:** The Underwriter Defendants object to Brown Ex. 11, a purported transcript of the April 3, 2008 business due diligence call offered without an accompanying affidavit, as lacking foundation. Fed. R. Evid. 901. Additionally, disputed as an incomplete excerpt of the purported transcript cited.

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.

**Response to No. 320:** Not disputed.

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.*

**Response to No. 321:** The Underwriter Defendants object to Brown Ex. 11, a purported transcript of the April 3, 2008 business due diligence call offered without an accompanying affidavit, as lacking foundation. Fed. R. Evid. 901. Additionally, disputed as an incomplete excerpt of the purported transcript cited.

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.*

**Response to No. 322:** The Underwriter Defendants object to Brown Ex. 11, a purported transcript of the April 3, 2008 business due diligence call offered without an accompanying affidavit, as lacking foundation. Fed. R. Evid. 901. Additionally, disputed as an incomplete excerpt of the purported transcript cited.

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.

**Response to No. 323:** Not disputed.

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

**Response to No. 324: Not disputed.**

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.

**Response to No. 325: Disputed that there is no evidence whatsoever of what took place on this call. See UW 56.1 ¶¶ 37-38, 169, 191.**

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.

**Response to No. 326: Not disputed.**

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.

**Response to No. 327: Disputed as incomplete and misleading. Mr. McSpadden testified that, "[i]f [he] had been available, [he] would have participated" in the call. Brown Ex. 5, McSpadden Dep. Tr. at 282:21-22. Mr. McSpadden testified further that "there would have been a number of people [from Citi] who participated" in the call. *Id.* at 283:2-3. By way of further response, disputed as misleading and unclear because Plaintiff fails to identify the time frame in which Mr. McSpadden could not recall participating or the identity of additional participants. Plaintiff is referencing Mr. McSpadden's responses to questions at his August 13, 2015 deposition, which took place more than seven years after the Series 5 Offering.**

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 . . . .").

**Response to No. 328:** Disputed as incomplete. Mr. McSpadden testified that "Barclays is fulsome in responding to all questions asked" on due diligence calls. Brown Ex. 5, McSpadden Dep. Tr. at 285:3-4. By way of further response, disputed as misleading and unclear because Plaintiff fails to identify the time frame in which Mr. McSpadden could not remember the response. Plaintiff is referencing Mr. McSpadden's responses to questions at his August 13, 2015 deposition, which took place more than seven years after the Series 5 Offering.

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.").

**Response to No. 329:** Disputed as incomplete. Mr. McSpadden testified that "Barclays is fulsome in responding to all questions asked" on due diligence calls. Brown Ex. 5, McSpadden Dep. Tr. at 285:3-4. By way of further response, disputed as misleading and unclear because Plaintiff fails to identify the time frame in which Mr. McSpadden could not remember the response. Plaintiff is referencing Mr. McSpadden's responses to questions at his August 13, 2015 deposition, which took place more than seven years after the Series 5 Offering.

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.").

**Response to No. 330:** Disputed as incomplete. Mr. McSpadden testified that "Barclays is fulsome in responding to all questions asked" on due diligence calls. Brown Ex. 5, McSpadden Dep. Tr. at 285:3-4. By way of further response, disputed as misleading and unclear because Plaintiff fails to identify the time frame in which Mr. McSpadden could not remember the response. Plaintiff is referencing Mr. McSpadden's responses to questions at his August 13, 2015 deposition, which took place more than seven years after the Series 5 Offering.

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.").

**Response to No. 331:** Disputed as incomplete. Mr. McSpadden testified that "Barclays is fulsome in responding to all questions asked" on due diligence calls. Brown Ex. 5, McSpadden Dep. Tr. at 285:3-4. By way of further response, disputed as misleading and unclear because Plaintiff fails to identify the time frame in which Mr. McSpadden could not remember the response. Plaintiff is referencing Mr. McSpadden's responses to questions at his August 13, 2015 deposition, which took place more than seven years after the Series 5 Offering.

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.").

**Response to No. 332:** Disputed as incomplete. Mr. McSpadden testified that "Barclays is fulsome in responding to all questions asked" on due diligence calls. Brown Ex. 5, McSpadden Dep. Tr. at 285:3-4. By way of further response, disputed as misleading and unclear because Plaintiff fails to identify the time frame in which Mr. McSpadden could not remember the response. Plaintiff is referencing Mr. McSpadden's responses to questions at his August 13, 2015 deposition, which took place more than seven years after the Series 5 Offering.

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.").

**Response to No. 333:** Disputed as misleading and unclear because Plaintiff fails to identify the time frame in which Mr. McSpadden could not recall who might remember these responses. Plaintiff is referencing Mr. McSpadden's responses to questions at his August 13, 2015 deposition, which took place more than seven years after the Series 5 Offering.

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.

**Response to No. 334:** Not disputed.

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

**Response to No. 335: Not disputed.**

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

**Response to No. 336: Not disputed.**

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.

**Response to No. 337: Not disputed.**

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.

**Response to No. 338: Not disputed.**

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

**Response to No. 339: Not disputed.**

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.

**Response to No. 340: Not disputed.**

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.

**Response to No. 341: Not disputed.**

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.

**Response to No. 342: Not disputed.**

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.

**Response to No. 343: Disputed as a mischaracterization of the document cited. PwC's April 4, 2008 e-mail states in relevant part that "it would be very beneficial to get the engagement letters (both US and Non-US) signed on Monday morning, thereby we will be able to communicate the movements [in PBT] earlier in a draft form document." Brown Ex. 12 at Linklaters\_0000000864. Disputed that PwC's April 4, 2008 e-mail included the language quoted in this statement. *See id.* Not disputed that the quoted language was included in a subsequent e-mail from Linklaters to PwC. *Id.* at Linklaters\_0000000863. To the extent a response to the**

**quoted language is required, the Underwriter Defendants respectfully refer the Court to their response to Statement No. 346, *infra*.**

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").

**Response to No. 344: Not disputed.**

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").

**Response to No. 345: Not disputed.**

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.

**Response to No. 346: Disputed as incomplete and misleading. The full text of the portion of Linklaters' e-mail selectively quoted by Plaintiff includes the following language: "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. *In particular, there is no basis for delaying the release of the of the US comfort letter to the underwriters, as they are not even signing an engagement letter in respect thereof.* Therefore, we would please ask you to release the draft letters including the results of your procedures as early as possible on Monday." Brown Ex. 61 at UW\_Barclays\_000071764 (emphasis added).

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.*

**Response to No. 347: Not disputed.**

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.

**Response to No. 348: Not disputed.**

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.

**Response to No. 349: Not disputed.**

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.

**Response to No. 350: Not disputed.**

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.

**Response to No. 351: Not disputed.**

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.

**Response to No. 352: Not disputed.**

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 then [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.

**Response to No. 353: Not disputed.**

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.

**Response to No. 354: Not disputed.**

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.

**Response to No. 355: Not disputed.**

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.

**Response to No. 356: Not disputed.**

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.

**Response to No. 357: Not disputed.**

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.

**Response to No. 358: Not disputed.**

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.

**Response to No. 359: Disputed as a mischaracterization of the document cited (PwC's April 8, 2008 comfort letter). Nowhere does PwC's April 8, 2008 comfort letter state or otherwise indicate that PwC "did not review any financial data for any period subsequent to February 29, 2008." See Brown Ex. 14.**

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.

**Response to No. 360: Not disputed.**

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.

**Response to No. 361: Not disputed.**

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.

**Response to No. 362: Not disputed.**

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.

**Response to No. 363: Not disputed.**

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.

**Response to No. 364: Not disputed.**

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.

**Response to No. 365: Not disputed.**

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.

**Response to No. 366: Not disputed.**

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.").



**Response to No. 367: Not disputed.**

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).

**Response to No. 368: Not disputed.**

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.

**Response to No. 369: Not disputed.**

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.

**Response to No. 370: Not disputed that the text of PwC's comfort letters were not publicly disclosed in connection with the Series 5 Offering Materials. Otherwise disputed as incomplete and misleading. The full text of the paragraph cited included the following language: "This letter is solely for the information of the addressees and to assist the underwriters in conducting and documenting their investigation of the affairs of the Group and the Issuer in connection with the offering of the securities covered by the Registration Statement, 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, except that reference may be made to it in the underwriting agreement or in any list of closing documents pertaining to the offering of the securities covered by the Registration Statement." Brown Ex. 14 at UW\_Barclays\_000017080.**

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.

**Response to No. 371: Not disputed.**

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%).

**Response to No. 372: Not disputed.**

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

**Response to No. 373: The Underwriter Defendants object to this statement pursuant to Fed. R. Civ. P. 56(c)(2) and Local Civil Rule 56.1(d) on the ground that it is not supported by admissible evidence.**

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%).

**Response to No. 374: Not disputed.**

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.

**Response to No. 375: Not disputed.**

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).

**Response to No. 376: Not disputed.**

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

**Response to No. 377: Not disputed.**

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%).

**Response to No. 378: Not disputed.**

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 recapitalise the balance sheet in the near-term." Doyle Ex. 7 at 531-32.

**Response to No. 379: Not disputed.**

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.

**Response to No. 380: Not disputed.**

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.

**Response to No. 381: Not disputed.**

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.

**Response to No. 382: Disputed to the extent the statement suggests that the estimates in question were prepared by any of the Underwriter Defendants. The Underwriter Defendants object to Brown Ex. 66 as lacking foundation. Fed. R. Evid. 901.**

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.

**Response to No. 383: Disputed to the extent the statement suggests that the estimates in question were prepared by any of the Underwriter Defendants. The Underwriter Defendants object to Brown Ex. 67 as lacking foundation. Fed. R. Evid. 901.**

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.

**Response to No. 384: Disputed to the extent the statement suggests that the estimates in question were prepared by any of the Underwriter Defendants. The Underwriter Defendants object to Brown Ex. 68 as lacking foundation. Fed. R. Evid. 901.**

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.

**Response to No. 385: Not disputed.**

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

**Response to No. 386: Disputed as misleading and unclear because Plaintiff fails to identify the time frame in which Mr. McSpadden could not recall participating in the call. Plaintiff is referencing Mr. McSpadden's responses to questions at his August 13, 2015 deposition, which took place more than seven years after the Series 5 Offering.**

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) [sic] 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.

**Response to No. 387: Not disputed.**

388. The second question on this list stated: "Are there any further material updates for YTD earnings, asset quality wends [sic] 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.

**Response to No. 388: Not disputed.**

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.

**Response to No. 389: Not disputed.**

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.

**Response to No. 390: Not disputed.**

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.

**Response to No. 391: Not disputed.**

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

**Response to No. 392: Not disputed.**

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

**Response to No. 393: Not disputed.**

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

**Response to No. 394: Not disputed.**

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.

**Response to No. 395: Not disputed.**

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

**Response to No. 396: Disputed as incomplete and misleading. Mr. McSpadden testified that he could not recall participating in the call, but that representatives from Citi did participate in the call. See Brown Ex. 5, McSpadden Dep. Tr. at 311:3-8. By way of further response, disputed as misleading and unclear because Plaintiff fails to identify the time frame in which Mr. McSpadden could not recall participating in the call. Plaintiff is referencing Mr. McSpadden's responses to questions at his August 13, 2015 deposition, which took place more than seven years after the Series 5 Offering.**

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.").

**Response to No. 397: Disputed as incomplete. Mr. McSpadden testified that "Barclays is fulsome in responding to all questions asked" on due diligence calls. Brown Ex. 5, McSpadden Dep. Tr. at 285:3-4. By way of further response, disputed as misleading and unclear because Plaintiff fails to identify the time frame in which Mr. McSpadden could not recall Barclays' response. Plaintiff is referencing Mr. McSpadden's responses to questions at his August 13, 2015 deposition, which took place more than seven years after the Series 5 Offering.**

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.").

**Response to No. 398: Disputed as incomplete. Mr. McSpadden testified that "Barclays is fulsome in responding to all questions asked" on due diligence calls. Brown Ex. 5, McSpadden Dep. Tr. at 285:3-4. By way of further response, disputed as misleading and unclear because Plaintiff fails to identify the time frame in which Mr. McSpadden could not recall Barclays' response. Plaintiff is referencing Mr.**

**McSpadden's responses to questions at his August 13, 2015 deposition, which took place more than seven years after the Series 5 Offering.**

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.").

**Response to No. 399: Disputed as incomplete. Mr. McSpadden testified that "Barclays is fulsome in responding to all questions asked" on due diligence calls. Brown Ex. 5, McSpadden Dep. Tr. at 285:3-4. By way of further response, disputed as misleading and unclear because Plaintiff fails to identify the time frame in which Mr. McSpadden could not recall Barclays' response. Plaintiff is referencing Mr. McSpadden's responses to questions at his August 13, 2015 deposition, which took place more than seven years after the Series 5 Offering.**

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.").

**Response to No. 400: Disputed as incomplete. Mr. McSpadden testified that "Barclays is fulsome in responding to all questions asked" on due diligence calls. Brown Ex. 5, McSpadden Dep. Tr. at 285:3-4. By way of further response, disputed as misleading and unclear because Plaintiff fails to identify the time frame in which Mr. McSpadden could not recall Barclays' response. Plaintiff is referencing Mr. McSpadden's responses to questions at his August 13, 2015 deposition, which took place more than seven years after the Series 5 Offering.**

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

**Response to No. 401: Not disputed.**

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

**Response to No. 402: Not disputed.**

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

**Response to No. 403: Not disputed.**



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.").

**Response to No. 404: Not disputed.**

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.

**Response to No. 405: Not disputed.**

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.

**Response to No. 406: Not disputed.**

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.

**Response to No. 407: Not disputed.**

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.

**Response to No. 408: Not disputed.**

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.

**Response to No. 409: Disputed as a mischaracterization of the document cited. The Underwriter Defendants respectfully refer the Court to the document cited at UW\_Barclays\_000011349-1350, which indicates that the April 11 disclosure opinion letter issued by Linklaters was based in part on discussions between Linklaters and representatives of Barclays in which representatives of certain Underwriter Defendants participated. Nowhere does the April 11 disclosure opinion state or otherwise indicate that it was "based in part on information gained through discussions with the Underwriters."**

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, hinding [sic], 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.

**Response to No. 410: Not disputed.**

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.

**Response to No. 411: Disputed because the statement is unclear.**

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, hinding [sic], interests in third party CDOs (*i.e.*, SIVs, 51V [sic] 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.

**Response to No. 412: Disputed because the statement is unclear.**

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.

**Response to No. 413: Disputed because the statement is unclear.**

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.

**Response to No. 414: Disputed as a mischaracterization of the deposition testimony cited. The Underwriter Defendants respectfully refer the Court to the testimony cited, which speaks for itself. By way of further response, the Underwriter Defendants dispute any implication that Mr. McSpadden testified as a representative of any Underwriter Defendant other than Citi. By way of additional response, the Underwriter Defendants object to this statement pursuant to Fed. R. Civ. P. 56(c)(2) and Local Civil Rule 56.1(d) on the ground that it is not supported by admissible evidence.**

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.

**Response to No. 415: Disputed as a mischaracterization of the deposition testimony cited. The Underwriter Defendants respectfully refer the Court to the testimony cited, which speaks for itself. By way of further response, the Underwriter Defendants dispute any implication that Mr. McSpadden testified as a representative of any Underwriter Defendant other than Citi. By way of additional**

**response, the Underwriter Defendants object to this statement pursuant to Fed. R. Civ. P. 56(c)(2) and Local Civil Rule 56.1(d) on the ground that it is not supported by admissible evidence.**

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.

**Response to No. 416: Disputed as a mischaracterization of the deposition testimony cited. The Underwriter Defendants respectfully refer the Court to the testimony cited, which speaks for itself. By way of further response, the Underwriter Defendants dispute any implication that Mr. McSpadden testified as a representative of any Underwriter Defendant other than Citi. By way of additional response, the Underwriter Defendants object to this statement pursuant to Fed. R. Civ. P. 56(c)(2) and Local Civil Rule 56.1(d) on the ground that it is not supported by admissible evidence.**

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.*

**Response to No. 417: Not disputed.**

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.

**Response to No. 418: The Underwriter Defendants object to this statement pursuant to Fed. R. Civ. P. 56(c)(2) and Local Civil Rule 56.1(d) on the ground that it is not supported by admissible evidence. To the extent a response is required, the Underwriter Defendants respectfully refer the Court to their responses to ¶¶ 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.

**Response to No. 419: Not disputed.**

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.

**Response to No. 420: The Underwriter Defendants object to this statement pursuant to Fed. R. Civ. P. 56(c)(2) and Local Civil Rule 56.1(d) on the ground that it is not supported by admissible evidence.**

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.

**Response to No. 421: The Underwriter Defendants object to this statement pursuant to Fed. R. Civ. P. 56(c)(2) and Local Civil Rule 56.1(d) on the ground that it is not supported by admissible evidence. To the extent a response is required, the Underwriter Defendants respectfully refer the Court to their responses to ¶¶ 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.*

**Response to No. 422: Not disputed.**

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.

**Response to No. 423: Not disputed.**

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.

**Response to No. 424: Not disputed.**

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.

**Response to No. 425: The Underwriter Defendants object to this statement pursuant to Fed. R. Civ. P. 56(c)(2) and Local Civil Rule 56.1(d) on the ground that it is not supported by admissible evidence. To the extent a response is required, the Underwriter Defendants respectfully refer the Court to their responses to ¶¶ 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.*

**Response to No. 426: Not disputed.**

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

**Response to No. 427: Not disputed.**

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.

**Response to No. 428: The Underwriter Defendants object to this statement pursuant to Fed. R. Civ. P. 56(c)(2) and Local Civil Rule 56.1(d) on the ground that it is not supported by admissible evidence. To the extent a response is required, the Underwriter Defendants respectfully refer the Court to their responses to ¶¶ 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.

**Response to No. 429: Not disputed.**

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.

**Response to No. 430: Not disputed.**

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' [sic] equity ratio profile as "alarming," and wanted to know as



a matter of urgency what Barclays' [sic] contingency plans were for taking action with respect to the equity ratio profile. *See* Brown Decl., Ex. 26 at 751.

**Response to No. 431:** Disputed as a mischaracterization of the document cited. The document cited indicates that Chairman McCarthy wanted to "know 'as a matter of urgency' what [Barclays'] contingency plans were in order to decide 'whether [Barclays] would need to take any action'" with respect to its equity ratio profile. Brown Ex. 26 at BARC-ADS-01551751 (emphasis added).

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.

**Response to No. 432:** Disputed as a mischaracterization of the March 10, 2008 internal memorandum cited in Statement No. 431. That memorandum does not support in any way the statement that "the FSA had instructed Barclays it needed to increase its equity ratio to 5.25% by year-end 2008." *See* Brown Ex. 26. The Underwriter Defendants respectfully note that there are several documents cited as evidence for this statement, none of which are the March 10, 2008 internal memorandum referenced in Statement Nos. 431 and 432. Accordingly, the Underwriter Defendants object to this statement pursuant to Fed. R. Civ. P. 56(c)(2) and Local Civil Rule 56.1(d) on the ground that it is not supported by admissible evidence.

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.

**Response to No. 433:** Disputed as a mischaracterization of the document cited.

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.

**Response to No. 434:** Disputed as a mischaracterization of the document cited.

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.

**Response to No. 435: Not disputed.**

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.

**Response to No. 436: Not disputed.**

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

**Response to No. 437: The Underwriter Defendants object to this statement pursuant to Fed. R. Civ. P. 56(c)(2) and Local Civil Rule 56.1(d) on the ground that it is not supported by admissible evidence.**

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.

**Response to No. 438: Not disputed.**

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.

**Response to No. 439: Disputed as a mischaracterization of the document cited. Disputed insofar as "as a contributing factor to reducing its RWAs" is unclear and not supported by the document cited.**

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.

**Response to No. 440:** Disputed as a mischaracterization of the deposition testimony cited, in which Mr. McSpadden testified that he did not personally recall performing any analyses to test the capital adequacy of Barclays' assets. *See* Brown Ex. 5, McSpadden Dep. Tr. at 154:15-155:14. By way of further response, the Underwriter Defendants dispute this statement as inconsistent with the record evidence, which shows that Citi, Merrill Lynch and Morgan Stanley each modeled and considered Barclays' capital adequacy concurrently with or in connection with the Series 5 Offering. *See* UW 56.1 ¶¶ 200-201, 204. By way of additional response, the Underwriter Defendants dispute any implication that Mr. McSpadden testified as a representative of any Underwriter Defendant other than Citi. The Underwriter Defendants also object to this statement pursuant to Fed. R. Civ. P. 56(c)(2) and Local Civil Rule 56.1(d) on the ground that it is not supported by admissible evidence.

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.

**Response to No. 441:** Disputed as a mischaracterization of the deposition testimony cited, in which Mr. McSpadden testified that he did not recall personally asking Barclays for any capital analysis prepared by Barclays. *See* Brown Ex. 5, McSpadden Dep. Tr. at 154:15-155:14. By way of further response, the Underwriter Defendants dispute any implication that Mr. McSpadden testified as a representative of any Underwriter Defendant other than Citi. By way of additional response, the Underwriter Defendants object to this statement pursuant to Fed. R. Civ. P. 56(c)(2) and Local Civil Rule 56.1(d) on the ground that it is not supported by admissible evidence.

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

**Response to No. 442:** Disputed as a mischaracterization of the deposition testimony cited. The Underwriter Defendants respectfully refer the Court to the testimony cited, which speaks for itself. By way of further response, the Underwriter Defendants dispute any implication that Mr. McSpadden testified as a representative of any Underwriter Defendant other than Citi. By way of additional response, the Underwriter Defendants object to this statement pursuant to Fed. R. Civ. P. 56(c)(2) and Local Civil Rule 56.1(d) on the ground that it is not supported by admissible evidence.

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.

**Response to No. 443: Not disputed.**

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.

**Response to No. 444: Not disputed.**

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.

**Response to No. 445: Not disputed.**

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.

**Response to No. 446:** The Underwriter Defendants object to this statement pursuant to Fed. R. Civ. P. 56(c)(2) and Local Civil Rule 56.1(d) on the ground that it is not supported by admissible evidence. To the extent a response is required, the Underwriter Defendants respectfully refer the Court to their responses to ¶¶ 450-453.

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.

**Response to No. 447:** The Underwriter Defendants object to this statement pursuant to Fed. R. Civ. P. 56(c)(2) and Local Civil Rule 56.1(d) on the ground that it is not supported by admissible evidence. To the extent a response is required, the Underwriter Defendants respectfully refer the Court to their responses to ¶¶ 450-453.

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.

**Response to No. 448:** The Underwriter Defendants object to this statement pursuant to Fed. R. Civ. P. 56(c)(2) and Local Civil Rule 56.1(d) on the ground that it is not supported by admissible evidence. To the extent a response is required, the Underwriter Defendants respectfully refer the Court to their responses to ¶¶ 450-453.

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.

**Response to No. 449:** The Underwriter Defendants object to this statement pursuant to Fed. R. Civ. P. 56(c)(2) and Local Civil Rule 56.1(d) on the ground that it is not supported by admissible evidence. To the extent a response is required, the Underwriter Defendants respectfully refer the Court to their responses to ¶¶ 450-453.

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.

**Response to No. 450: Not disputed.**

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.

**Response to No. 451: Not disputed.**

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.*

**Response to No. 452: Disputed as a selective and misleading quotation of the document cited. The Underwriter Defendants respectfully refer the Court to the**

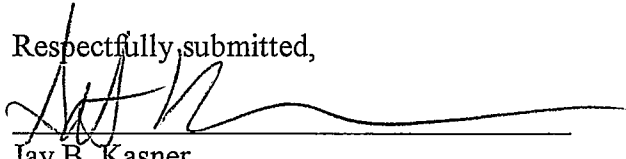
**document cited in its entirety, which shows that Underwriters' counsel: (1) agreed to produce certain documents relating to the Series 2, 3 and 4 Offerings insofar as those documents related to the Series 5 Offering; and (2) only objected to the production of certain documents relating to the Series 2, 3 and 4 Offerings to the extent they did not also relate to the Series 5 Offering.**

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.

**Response to No. 453: Disputed insofar as the statement misleadingly and selectively quotes the deposition testimony cited and implies that the objection related in any way to any documents relating to any offerings preceding the Series 5 Offering. The Underwriter Defendants respectfully refer the Court to the relevant portion of the deposition transcript, which shows that Underwriters' counsel objected to the introduction of the document in question as *post-dating* the Series 5 Offering and being outside the scope of the agreed-upon deposition topics. See Brown Ex. 5, McSpadden Dep. Tr. at 300:10-304:24.**

Dated: New York, New York  
January 11, 2017

Respectfully submitted,



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