

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090169994-01**

TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: **Barclays Capital Inc., Respondent**
Broker-Dealer
CRD No. 19714

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Barclays Capital Inc. ("Barclays" or the "firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Barclays has been a member of FINRA since October 19, 1987, and its registration remains in effect. The firm has no relevant disciplinary history.

SUMMARY

In connection with matter 20090169994, the staff of FINRA's Department of Market Regulation (the "staff") conducted Barclays' Trading and Market Making Surveillance ("TMMS") Examination for 2009 (under the firm's main MPID, "BCAP"), evaluating the firm's compliance with various NASD rules relating to its trading of equity orders and its market-making activities, and specifically reviewing the items listed in Appendix 1 for trade dates February 18 and 19, 2009 (the "2009 TMMS Exam review period").

In connection with matter 20090173227, the staff conducted a review of Barclays' compliance with rules and regulations relating to the reporting and publishing of order execution data (under one of the firm's alternate MPIDs, "LATS") pursuant to SEC Rule 605 of Regulation NMS, for the months of November 2008 and January 2009.

FACTS AND VIOLATIVE CONDUCT

1. During the 2009 TMMS Exam review period, BCAP transmitted to the Order Audit Trail System ("OATS") 14 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the firm: (a) failed to submit required Route ("RT") reports in six instances; (b) failed to submit required Cancel Replace ("CR") reports in two instances; (c) submitted a CR report with the incorrect quantity in two instances; (d) submitted an unnecessary Combined Order Execution ("OE") report in one instance; (e) failed to submit an OATS report in one instance; (f) submitted a duplicate Execution ("EX") report in one instance; and (g) submitted an extraneous Desk ("DS") report in one instance. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.
2. During the 2009 TMMS Exam review period, BCAP: (a) in 38 instances, failed to provide written notification disclosing to its customer the correct capacity or all capacities in which it served when filling a customer order, and in three of these instances also incorrectly disclosing its compensation type as "commission" when acting in a principal or riskless principal capacity; and (b) in 13 instances, failed to provide written notification disclosing accurate compensation type, by incorrectly disclosing its compensation type as "commission" when acting in a principal or riskless principal capacity. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.
3. During the 2009 TMMS Exam review period, BCAP: (a) in 262 instances, failed to properly mark principal short sales on the firm's securities record or trading ledger as "short;" (b) in one instance, failed to properly mark a principal long sale on the firm's securities record or trading ledger as "long;" (c) in three instances, failed to show the terms and conditions (Held vs. Not Held) on the memorandum of the firm's brokerage orders; and (d) in one instance, failed to record accurate long or short order marking on the memorandum of a brokerage order, instead marking such memorandum as both "long" and "short." The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 17a-3 and NASD Rule 3110.
4. For the month of February 2009, BCAP firm made available a report on the covered orders in national market system securities that it received for execution from any person. This report included incorrect information as to the number of Total Covered Orders, insofar as four Marketable Limit Orders were mistakenly classified as Inside-the-Quote Limit Orders. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 605 of Regulation NMS.
5. For the month of November 2008, LATS made available a report on the covered orders in national market system securities that it received for execution from any person. This report included incorrect information as to Total Covered Orders, Total Covered Shares and Total Canceled Shares, insofar as numerous Marketable Limit Orders, At-the-Quote Limit Orders and/or Inside-the-Quote Limit Orders were mistakenly classified as Market

Orders. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 605 of Regulation NMS.

6. For the month of January 2009, LATS made available a report on the covered orders in national market system securities that it received for execution from any person. This report included incorrect information as to Total Covered Orders, Total Covered Shares and Total Canceled Shares, insofar as the firm reported 17 Total Covered Orders for Market Orders of 100-499 shares in one particular security when the firm had in fact executed 19 such orders. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 605 of Regulation NMS.
7. During November 2008, LATS failed to report to the FINRA/Nasdaq Trade Reporting Facility: (a) the correct symbol indicating the capacity in which the firm executed 32 transactions in Reportable Securities; and (b) the correct symbol indicating whether the transaction was a buy, sell or cross in one last sale report of a transaction in a Reportable Security. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 4632.

B. The firm also consents to the imposition of the following sanctions:

A censure and fines totaling \$42,500 (comprised of \$7,500 for the OATS-reporting violations; \$5,000 for the SEC Rule 10b-10 violations; \$5,000 for the recordkeeping violations; \$10,000 for the trade-reporting violations and \$15,000 for the violations of SEC Rule 605 of Regulation NMS).

The firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. The firm has submitted an Election of Payment form showing the method by which it proposes to pay the fines imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the firm;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

The firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;

- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary records;
 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 4. The firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The firm may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

12/4/10
Date

Respondent
Barclays Capital Inc.

By: [Signature]

Name: THOMAS N. McMANUS

Title: MANAGING DIRECTOR
CHIEF COMPLIANCE OFFICER

Reviewed by:

Counsel for Respondent

Accepted by FINRA:

12/17/10
Date

Signed on behalf of the
Director of ODA, by delegated authority

TH R. Gira
Thomas R. Gira
Executive Vice President
Department of Market Regulation

2009 Trading and Market Making Surveillance Exam Samples
Barclays Capital Inc ("BCAP")
Exam No. 20090169994

<u>Sample Size</u>	<u>Sample Description</u>	<u>Sample Source</u>
25	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements	from trade dates February 18-19, 2009
369	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements	from trade dates February 18-19, 2009
568	Sell trades reported to a Trade Reporting Facility or Over-The-Counter Reporting Facility for compliance with sale indicator requirements, FINRA Rules 6182 or 6624	from trade dates February 18-19, 2009
91	Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4755(a)(1)(A) long/short reporting requirements	from trade dates February 18-19, 2009
91	Buy and Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4611 capacity reporting requirements	from trade dates February 18-19, 2009
81	Orders for compliance with best execution requirements of NASD Rule 2320	from trade dates February 18-19, 2009
16	Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders	from trade dates February 18-19, 2009
30	Orders for compliance with order protection requirements of NASD Rules 2110, IM-2110-2, 2111, and Nasdaq Rules 2110, IM-2110-2, and 2111	from trade dates February 18-19, 2009
100	Orders in securities required to be submitted to the Order Audit Trail System for compliance with FINRA Rules 7440 and 7450, and Nasdaq Rules 6954 and 6955 requirements	from trade dates February 18-19, 2009
89	Customer confirmations prepared and maintained in connection with select samples for compliance with SEC Rule 10b-10	from trade dates February 18-19, 2009
25	Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements	from trade dates February 18-19, 2009
25	Orders with respect to security/size/order data statistics included in Firm's published monthly order execution report, for compliance with SEC Rule 605	from the report for February 2009
N/A	data published on Firm's quarterly order routing report, for compliance with SEC Rule 606	from the report for 2nd Quarter of 2009
22	CRD registration records for persons conducting and/or supervising Firm's trading and/or market making activities for compliance with NASD Rule Series 1020, 1030, 1040; Nasdaq Rule Series 1020, 1030, 1040; and BATS Rule 11.4	from trade dates February 18-19, 2009
16	Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders	from trade dates February 18-19, 2009
2597	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4, and NASD Rule 3110	from trade dates February 18-19, 2009
1613	Trades reported to a TRF or OTCRF for compliance with FINRA Rules 6380A and 7230A or 6622 and 7330	from trade dates February 18-19, 2009
All Provided	Member's "Regular & Rigorous" review procedures regarding order execution quality for compliance with NASD Rules 2320 and 3010	WSPs in effect during February 2009

Sample Size

All Provided

Sample Description

Member's supervisory and operational policies and procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Regulation NMS Rule 611

Sample Source

WSPs in effect during February 2009

All Provided

Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010, Nasdaq Rule 3010, or BATS Rule 5.1 requirements

WSPs in effect during February 2009