

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2009017479101**

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

RE: Barclays Capital Inc.  
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 consent, 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**

The Firm currently has approximately 30 branches and approximately 4,500 registered employees (4,000 registered representatives and 500 investment advisors) and approximately 12,600 non-registered employees. During 2009, the Firm's net capital requirement each month averaged approximately \$670 million and the Firm maintained approximately \$5 billion in excess net capital each month. Annual revenues were approximately \$12 billion and profits were approximately \$1 billion.

FINRA's Risk Oversight and Operational Regulation ("ROOR") Department conducted examinations of the Firm in 2008 and 2009 and referred to FINRA's Department of Enforcement ("Enforcement") certain findings contained in reports, dated December 31, 2008 (the "2008 Report") and December 21, 2009 (the "2009 Report").

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## **RELEVANT DISCIPLINARY HISTORY**

Barclays has no prior relevant disciplinary history.

## **OVERVIEW**

During 2008 and 2009, Barclays had several errors in its monthly computations of its net capital and customer reserve bank account requirements in violation of Rules 15c3-1 and 15c3-3 of the Securities Exchange Act of 1934 ("Exchange Act"). In addition, the Firm violated NASD Rule 3010(a) in that it failed to have adequate supervision to detect and prevent these errors and also violated NASD Conduct Rule 3110 in that it failed to maintain books and records required by Exchange Act Rule 17a-3 in the manner prescribed by Exchange Act Rule 17a-4. Specifically:

- (a) the Firm failed to reconcile its various balance sheets and ledgers. Although the accounting errors were large, most were overstatement of credits and/or understatement of debits, none of which resulted in a net capital deficiency under Exchange Act Rule 15c3-1 and only one of which resulted in a customer reserve account hindsight deficiency under Exchange Act Rule 15c3-3 (see (b) below);
- (b) during a two-month period (March and April 2009), due to a recurring error in which Barclays failed to treat an affiliate account as a customer account, the Firm had a customer reserve account hindsight deficiency under Exchange Act Rule 15c3-3;
- (c) the Firm did not have adequate supervision to detect discrepancies between its various internal records, in violation of NASD Rule 3010(a); and
- (d) the Firm violated NASD Conduct Rule 3110 in that it failed to maintain and keep current as well as preserve certain books and records required by Exchange Act Rule 17a-3 in the manner prescribed by Exchange Act Rule 17a-4.

The aforementioned exceptions that occurred in 2008 also violated NASD Rule 2110 and the exceptions that occurred in 2009 also violated FINRA Rule 2010, which superseded NASD Rule 2110 on December 15, 2008.

## **FACTS AND VIOLATIVE CONDUCT**

### **APPLICABLE RULES**

Exchange Act Rule 15c3-1 is designed to ensure liquidity in the event that a broker-dealer encounters financial difficulty. The rule requires that a broker-dealer (a) have sufficient assets that are readily convertible to cash to cover its indebtedness to customers and other broker-dealers; (b) maintain a certain level of net capital relative to the firm's aggregate indebtedness; and (c) compute its net capital in accordance with a specified formula.

Exchange Act Rule 15c3-1(c)(2) defines net capital as the net worth of a broker-dealer, with certain adjustments. Exchange Act Rule 15c3-1(c)(2)(iv) requires that when calculating its net capital, a broker-dealer must deduct fixed assets and assets that cannot be converted into cash, including, among other things, net overall unfavorable bank reconciliation differences.

Exchange Act Rule 15c3-1(c)(2)(iv)/02 requires a broker-dealer, when computing its net capital, to ignore the value of suspense accounts, which are security positions and money balances whose ultimate disposition is unknown.

Exchange Act Rule 15c3-3 is designed to ensure protection of customer funds by requiring a separate bank account to be maintained for customer funds.

Violations of Exchange Act rules are considered violations of NASD Conduct Rule 2110 and FINRA Rule 2010.

NASD Conduct Rule 3110 requires member firms to maintain and keep current as well as preserve certain books and records required by Exchange Act Rule 17a-3. Exchange Act Rule 17a-4 describes the manner in which the records required by Rule 17a-3 must be maintained.

NASD Conduct Rule 3010(a) (Supervisory System) requires that each member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. Final responsibility for proper supervision shall rest with the member. The Firm did not have adequate supervision to detect discrepancies between its various internal records.

#### **A. 2008 Report**

##### **Exchange Act Rule 15c3-3 and NASD Conduct Rules 3010(a) and 2110**

##### **Fail to Deliver and Fail to Receive Balances**

The 2008 Report noted that the "Fail to Deliver" and "Fail to Receive" balances on the Firm's Financial and Operational Combined Uniform Single Report (FOCUS) for March 31, 2008 reflected an overstatement of approximately \$348 million when compared to the sub-ledger Fail Report. The sub-ledger Fail Report was correct, however, the FOCUS Report did not reflect the numbers from the sub-ledger Fail Report. As a result, the Firm did not have adequate procedures to detect discrepancies between its various records. . The incorrect balance, however, did not result in a customer reserve account hindsight deficiency under SEC Rule 15c3-3.

### **Customer Reserve Account Formula Computation**

- a. Information contained in the March 31, 2008 FOCUS Balance Sheet reflected inconsistencies when compared to the Firm's customer reserve account formula computation. The inconsistencies, however, did not adversely affect Barclays' customer reserve account computation because the miscalculations resulted in an overstatement of credits and an understatement of debits. Credits were overstated on the customer reserve account formula computation by approximately \$648 million. Debits were understated on the customer reserve formula computation by approximately \$446 million. By understating debits, Barclays segregated in its special reserve account an additional \$446 million. Had Barclays made the correct computation, the Firm would not have been required to segregate \$446 million in the special customer reserve account.
- b. A review of the weekly customer reserve account formula computation disclosed that customer credits in the Monthly Customer Reserve Account Computation as of March 31, 2008 were understated by approximately \$51 million. A customer account reflected approximately \$51 million more credits in the customer statement than in the March 31, 2008 general ledger. The customer closed a "reverse repo" position on March 31, 2008 in the amount of approximately \$51 million. The \$51 million due to the customer on March 31, 2008, however, was not reflected on the Automatic Data Processing ("ADP") Customer Trial Balance until April 1, 2008. As a result, the ADP Customer Trial Balance as of March 31, 2008 was incorrectly listed. This additional balance was not accounted for in the monthly computation. The customer's balance was properly reflected on the customer's statement. This incorrect posting did not result in a customer reserve account deficiency under Exchange Act Rule 15c3-3.
- c. Two ADP Trial Balance Stock Loan Accounts with a total customer credit balance of \$851,400 were incorrectly reported as customer payables on the FOCUS Report Balance Sheet but were not segregated and included in the 15c3-3 computation performed on March 31, 2008. Although no customer reserve account deficiency under Exchange Act Rule 15c3-3 occurred, the balances were incorrectly booked to the two ADP Trial Balance Stock Loan Accounts and therefore did not have to be reflected in the customer reserve account computation as customer credits as these were not considered customer payables for 15c3-3 purposes.

By reason of the foregoing, the Firm violated Exchange Act Rule 15c3-3 and NASD Conduct Rules 3010(a) and 2110.

## **B. 2009 Report**

### **Exchange Act Rules 15c3-1 and 15c3-3; NASD Conduct Rule 3010(a) and FINRA Conduct Rule 2010**

- a. During a two-month period (March and April 2009), due to a recurring error in which the Firm failed to treat an affiliate account as a customer account, the Firm had a customer reserve account deficiency under Exchange Act Rule 15c3-3. The customer reserve account deficiency averaged \$28 million in March 2009 and \$118 million in April 2009. The Firm failed to treat as a customer related balance the interest earned and principal maturities from fixed income securities carried on behalf of an affiliate. Prior to March 2009, these balances were reported in the wrong legal entity and thus recorded as Firm inventory rather than inventory owned by the affiliate, which was purchased from another broker-dealer. The inclusion in the customer reserve account formula of the payable attributable to an affiliate resulted in eight customer reserve account hindsight deficiencies as computed each week during March and April of 2009. The Firm made the proper notification to FINRA and the Securities and Exchange Commission ("SEC").
- b. Barclays had transactions with affiliates including its parent company. Balances of the Firm's parent organization were improperly netted with unrelated entries, which understated non-allowable assets. The entries on the general ledger that remained unreconciled at month end were offset with other entries that had to do with other intercompany activity. This resulted in an improper reduction of intercompany receivables by approximately \$178 million as of January 30, 2009. As a result, the non-allowable amount should have been larger than what the Firm reflected on the FOCUS Report. Although this resulted in a reduction of net capital of \$178 million, there was no net capital deficiency under Exchange Act Rule 15c3-1
- c. The Firm utilized an inadequate methodology to offset suspense related items. Barclays improperly offset various debit (receivables) and credit (payables) balances. This resulted in a reduction of aged suspense debit balances by approximately \$114 million for non-allowable assets in the customer reserve account computation. The Firm also failed to include aged suspense credits of approximately \$29 million in the customer reserve account computation. The adjustments noted were not greater than the excess net capital balance and the excess deposit in the customer reserve bank account as of January 30, 2009 so there was no net capital deficiency under Exchange Act Rule 15c3-1 or customer reserve account deficiency under Exchange Act Rule 15c3-3.

By reason of the foregoing, the Firm violated Exchange Act Rules 15c3-1 and 15c3-3, NASD Conduct Rule 3010(a) and FINRA Conduct Rule 2010

**Exchange Rules 17a-3 and 17a-4; NASD Conduct Rule 3110 and FINRA  
Conduct Rule 2010**

- a. The Firm had unresolved differences based on its reconciliation that compares the borrow and loan sub-ledger balances to the amounts on the January 30, 2009 Focus report. The review disclosed an additional \$2 million in net capital charges for stock borrow differences, and a credit of \$949,000 for stock loan differences, which the Firm failed to include in its customer reserve computation. The failure to include these in the reserve computation and take a capital charge did not result in a deficiency.
- b. The Firm failed to take a deduction of \$43.7 million for aged unfavorable differences (discrepancies between the Firm's records and the bank's records as to account balances) when calculating for aged unfavorable differences in its bank account used for clearance activity as of January 30, 2009. Differences were identified and reconciled, but were not properly treated for capital purposes. Although the Firm did not take a capital charge for these unfavorable balances, and therefore had less funds in the bank than it reported, there was no deficiency with respect to the Firm's operational net capital.

By reason of the foregoing, the Firm violated Exchange Act Rules 17a-3 and 17a-4, NASD Conduct Rule 3110 and FINRA Conduct Rule 2010.

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

A Censure and a fine of \$60,000.

Barclays agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable.

The sanctions imposed herein shall be effective on a date set by FINRA staff. Barclays agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable.

Barclays has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

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

## **II.**

### **WAIVER OF PROCEDURAL RIGHTS**

Barclays 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, Barclays 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.

Barclays 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**

Barclays 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 Barclay's disciplinary record;
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
4. Barclays 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. Barclays 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 Barclay's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. Barclays may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Barclays 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 I am 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 I have agreed to its

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.

10/26/10  
Date

Barclays Capital Inc.  
By:   
Tom McManus  
Chief Compliance Officer  
Chief Executive Officer  
Barclays Capital Inc.  
745 7<sup>th</sup> Avenue 29<sup>th</sup> Floor  
New York, N.Y. 10019

Accepted by FINRA:

11/8/2010  
Date

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

  
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Director  
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