FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2011026679201

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

RE: Barclays Capital Inc., Respondent
Member Firm
CRD No. 19714

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent 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. Respondent 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 Capital Inc. ("Barclays" or the "Firm"), a FINRA member since October 1987, is the investment banking arm of Barclays PLC, the global financial services company that operates in more than 50 countries with approximately 140,000 employees worldwide. Barclays provides financing, risk management, trade solutions, and mergers and acquisitions advisory services for corporate, institutional, and government clients. Barclays has 31 branch offices in the United States and employs approximately 4,500 registered individuals.

OVERVIEW

Starting from at least 2002 to April 2012, the Firm failed to preserve electronic business-related records in non-rewritable, non-erasable format (also referred to as "Write-Once, Read-Many" or "WORM" format), as required under the

Securities Exchange Act of 1934 ("Exchange Act"). As a result of the foregoing, the Firm violated Section 17(a) of the Exchange Act, and Rule 17a-4, thereunder, NASD Rules 3110 and 2110 and FINRA Rules 4511 and 2010.[1]

Also, during the period from May 7, 2007 to May 19, 2010, the Firm failed to properly retain attachments to emails communicated through Bloomberg L.P. ("Bloomberg") that were duplicates of an attachment that had previously been processed in connection with any prior Bloomberg email. Additionally, during the period from October 28, 2008 to May 19, 2010, the Firm failed to properly retain approximately 3.3. million instant messages ("IMs") communicated through Bloomberg. These issues impacted the Firm's ability to respond to requests for electronic communications in regulatory and civil matters. As a result of the foregoing, the Firm violated Exchange Act Rule 17a-4, NASD Rules 3110 and 2110 and FINRA Rules 4511 and 2010.

As to both the WORM related issues and Bloomberg electronic communication related issues, Barclays failed to establish and maintain an adequate system and written procedures reasonably designed to: (i) achieve compliance with the requirements of Exchange Act Rule 17a-4, NASD Rule 3110 and FINRA Rule 4511; and (ii) timely detect and remedy deficiencies related to those requirements. As a result of the foregoing, the Firm violated NASD Rules 3010 and 2110 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

1. Relevant Rules

Section 17(a) of the Exchange Act and Rule 17a-3, promulgated thereunder, requires broker dealers to make certain records, including trade blotters, asset and liability ledgers, securities records, order tickets, trade confirmations, trial balances and other records of its business. Rule 17a-4 specifies the manner and length of time that these records must be maintained. Rule 17a-4(f) requires that if a firm uses electronic storage media to maintain these records, the firm must, among other things, "[p]reserve the records exclusively in a non-rewritable, non-erasable format." Firms must provide a representation to its designated examining authority that the selected storage media meets the conditions set forth in Rule 17a-4[2] and must have an audit system providing for accountability regarding inputting of records required to be maintained and preserved.[3]

[1] FINRA Rule 4511 replaced NASD Rule 3110 on December 5, 2011. Therefore, conduct occurring prior to December 5, 2011 was a violation of NASD Rule 3110 and conduct occurring on or after December 5, 2011 was a violation of FINRA Rule 4511. Additionally, FINRA Rule 2010 replaced NASD Rule 2110 on December 15, 2008. Therefore, conduct occurring prior to December 15, 2008 was a violation of NASD Rule 2110 and conduct occurring on or after December 15, 2008 was a violation of FINRA Rule 2010.

[2] Exchange Act Rule 17a-4(f)(2)(i).

[3] Exchange Act Rule 17a-4(f)(3)(v).

Additionally, every broker-dealer exclusively using electronic storage media for some or all of its record preservation is required to retain at least one third-party vendor who has access to and the ability to download information from the broker-dealer's electronic storage media to any acceptable medium under the rule.[4] In addition, Rule 17a-4(b)(4) requires that every broker dealer preserve "originals of all communications received and copies of all communications sent by such member, broker or dealer (including inter-office memoranda and communications) relating to his business as such." These requirements are an essential part of the investor protection function because the records are the "primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards."[5]

NASD Rule 3110(a) provides, in pertinent part, "[e]ach member shall make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, and statements of policy promulgated thereunder and...[t]he record keeping format, medium and retention period shall comply with SEA Rule 17a-4 under the Securities Exchange Act of 1934."

FINRA Rule 4511 provides, in pertinent part, that "(a) [m]embers shall make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules; (b) [m]embers shall preserve for a period of at least six years those FINRA books and records for which there is no specified period under the FINRA rules or applicable Exchange Act rules; [and] (c) [a]ll books and records required to be made pursuant to the FINRA rules shall be preserved in a format and media that complies with SEA Rule 17a-4."

NASD Rule 2110 and FINRA Rule 2010 state in relevant part that "[a] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade."

2. Barclays' Failure to Preserve Electronic Records in WORM Format

Between at least 2002 and April 2012, the Firm failed to properly preserve certain business-related records it maintained pursuant to Exchange Act Rule 17a-3 ("books and records") in WORM-compliant format (the "WORM Compliance Issues"). The WORM Compliance Issues affected certain of the books and records related to many of the Firm's lines of business and the respective sub-groups of those lines of business, including the Equities (Cash and Derivatives), Futures, Commodities (Oil and Gas), Securitized Products, and Finance divisions.

---

[4]Exchange Act Rule 17a-4(f)(3)(vii).

[5] Commission Guidance to Broker Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f), SEC Interpretation Release No. 34-44238, 17 CFR Part 241, at p. 3 of 15 (May 1, 2001).

The electronic books and records that were required to be but were not maintained in WORM-compliant format included order and trade ticket data, trade confirmations, blotters, settlements, account debits and credits, account records and ledgers, exceptions reports, and records supporting FOCUS reports and annual financial statements and schedules. These and other electronic books and records across the Firm were neither maintained in nor sent to WORM-compliant repositories.

The failure to maintain documents in WORM-compliant format affected 43 repositories. Of the 43 repositories, at least 24 repositories failed to store records in WORM format or send records to a WORM-compliant repository; 18 repositories were non-WORM-compliant because only some of the records were sent to a WORM-compliant repository or stored in WORM format; and one depository could not be validated by the Firm's IT Department that it was storing in WORM format. The 43 non-WORM-compliant repositories included 11 document management systems, 14 transactional management systems, and 18 other systems.

A central purpose of Rule 17a-4(f) is to ensure the integrity, accuracy, and accessibility of the Firm's electronic documents and communications that are required to be retained. Although there is no evidence that any documents or communicatons the Firm was required to but did not retain in a WORM-compliant format were lost or altered, Barclays has been unable to verify that those materials were maintained in an unaltered condition.

Although the Firm performed conformance testing and validation in connection with its records management program since 2004 in efforts to ensure that its records were properly retained, the testing focused on the ability of the Firm to retain records for the regulatory retention periods and to retrieve necessary records within the required period of time. However, the Firm did not focus on the format in which the records were being stored, including whether they were being stored in a WORM compliant format. The Firm had no formal policies and procedures prior to the discovery of the WORM Compliance Issues that were designed to verify that the electronic documents stored in non-WORM-compliant repositories had not been lost or altered. As a result, the Firm had no alerts, exceptions reports or other similar mechanisms to indicate whether those repositories containing records required to be stored in a WORM-compliant format were so stored.

Based on the foregoing, the Firm violated Exchange Act Rule 17a-4, NASD Rules 3110 and 2110 and FINRA Rules 4511 and 2010.

3. Barclays' Failure to Properly Retain Bloomberg Emails and Instant Messages

Between May 7, 2007 to May 19, 2010, Barclays used various forms of electronic communications to communicate internally and externally, including Microsoft

Exchange email, emails from Bloomberg ("Bloomberg email"), and IMs from Bloomberg ("Bloomberg IMs"). The Firm used a central repository to store all electronic communications sent or received in the United States called the Barclays Capital Vault (the "Vault"). Since January 1, 2007, the Firm generates approximately 2.8 million electronic communications on a daily basis. Of those communications, approximately 500,000 (or 18%) are Bloomberg emails, and approximately 20,000 (or 0.7%) are Bloomberg IMs.

Since at least July 2006, on a daily basis, Bloomberg supplied the Firm with files containing all Bloomberg emails and Bloomberg IMs (collectively referred to as "Bloomberg Messages") and their attachments. The files sent by Bloomberg were in their native format and consisted of two types of data: (1) files with the text of Bloomberg Messages and (2) files containing a copy of any attachment associated with the Bloomberg emails and Bloomberg IMs. In order for the Firm to use these files from Bloomberg, the Firm utilized a computer program to "ingest" the data into the Vault in WORM-compliant format that was more convenient for use and retrieval (the "Ingestion Program").

Bloomberg Messages are hosted by Bloomberg on an external server. In order for Barclays to archive such communications internally, Bloomberg uploaded all Bloomberg Messages generated by Barclays to the Bloomberg File Transfer Protocol ("FTP") site on a daily basis. Barclays utilized software provided by a third-party vendor to download the data feed from the Bloomberg FTP site for ingestion into the Vault. Prior to ingestion, the software would parse, convert and reconstruct the Bloomberg data files into a readable format.

Between May 7, 2007 to May 19, 2010, Barclays relied on the Vault for all Bloomberg Messages review and retrieval, including for Firm internal searches as well as for regulatory inquiries and other external information requests.

a. Barclays' Failure to Properly Preserve and Maintain Bloomberg Email Attachments

From May 7, 2007 to May 19, 2010, the Firm failed to properly preserve and maintain certain attachments to Bloomberg emails. Due to a configuration error with the Ingestion Program, the Firm failed to properly ingest attachments that were associated with more than one Bloomberg email. When an attachment was ingested in connection with a Bloomberg email, the attachment failed to be associated with subsequently processed Bloomberg emails that included the same attachment. As a result, certain Bloomberg emails were ingested into the Vault without attachments. Therefore, any resulting searches of the Vault using specified search terms would not identify emails for which a search term was contained only in its attachment if that attachment had not been ingested into the Vault along with that email.

From May 7, 2007 to May 19, 2010, the Firm has estimated that it generated an average of approximately 500,000 Bloomberg emails on a daily basis. While the

text of every Bloomberg email and one copy of every Bloomberg email attachment was ingested into the Vault, the Firm has not been able to determine the number of Bloomberg emails not properly associated with an attachment.

As a result, the Firm violated Exchange Act Rule 17a-4, NASD Rules 3110 and 2110 and FINRA Rules 4511 and 2010 by failing to preserve and maintain certain Bloomberg email attachments.

b. Barclays' Failure to Properly Preserve and Maintain Bloomberg IMs

From October 22, 2008 to May 19, 2010, the Firm failed to properly preserve and maintain certain Bloomberg IMs. With respect to Bloomberg IMs, the Ingestion Program stopped processing all Firm Bloomberg IMs for the day if it attempted to process an attachment that had already been processed as an attachment to a Bloomberg IM that same day. Put differently, when the Ingestion Program encountered an attachment to a Bloomberg IM that had been processed earlier that same day, the Ingestion Program stopped ingesting all remaining Bloomberg IMs into the Vault for that day. As a result, because those Bloomberg IMs were not ingested into the Vault, searches of the Vault for Bloomberg IMs would not produce the unprocessed IMs.

From October 22, 2008 to May 19, 2010, approximately 3.3 million Bloomberg IMs were not ingested into the Vault and therefore not properly preserved or maintained by the Firm.

Based on the foregoing, the Firm violated Exchange Act Rule 17a-4, NASD Rules 3110 and 2110 and FINRA Rules 4511 and 2010 for failing to properly preserve and maintain Bloomberg IMs.

c. Barclays' Failure to Detect the Issues Related to Emails and IMs

The Firm's systems and written procedures to ensure that electronic communications were properly retained were not designed to identify whether the Ingestion Program was properly configured. Since the Ingestion Program was functioning according to its default settings (albeit improperly configured settings), no alerts were generated indicating that the program had malfunctioned.

As part of the original contract between Bloomberg and the Firm, Bloomberg retained separate copies of all Bloomberg Messages sent and received by the Firm. However, at the time of the Bloomberg email and IM issues, Barclays had not engaged Bloomberg as a third-party service provider pursuant to Exchange Act Rule 17a-4(f),[6] and, thus, Bloomberg was not obligated to maintain the emails and instant messages generated by Barclays in a format required by Exchange Act

[6] Exchange Act Rule 17a-4(f) (3)(vii).

Rule 17a-4(f).[7] In fact, Bloomberg did not begin storing Barclays' emails and IMs in a WORM-compliant format until 2011. Since March 2012, however, Barclays has used Bloomberg as its third-party service provider pursuant to Exchange Act Rule 17a-4(f) to retain in a WORM-compliant format its IMs and emails communicated through Bloomberg.

*4. **Barclays Failed to Reasonably Supervise***

NASD Rule 3010(a) provides, in pertinent part, "[e]ach 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."

NASD Rule 3010(b)(1) provides, in pertinent part, "[e]ach member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and.. that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules."

The Firm failed to ensure that its systems and written procedures related to the retention of electronic communications were reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. The Firm did not have an adequate supervisory system or written procedures to timely determine that it was not properly maintaining certain Bloomberg email attachments and Bloomberg IMs. The Firm also failed to have an adequate supervisory system or written procedures to timely determine that it was not maintaining required documents in a WORM-compliant format. Prior to the discovery of the WORM Compliance Issues, there was no individual or group at the Firm that was responsible for preparing policies and procedures aimed at WORM compliance, and no group, individual, or document could identify the categories of documents required to be stored in a WORM-compliant repository. Additionally, the Firm did not have any auditing or testing specifically designed to verify that it was complying with the WORM requirements. Further, prior to the discovery of the WORM Compliance Issues, the Firm did not have comprehensive written policies and procedures to verify that the electronic documents stored in non-WORM-compliant repositories had not been lost or altered.

Accordingly, for the period starting from least 2002 through April 2012, the Firm violated NASD Rules 3010 and 2110 and FINRA Rule 2010 by failing to establish and maintain a supervisory system, including written procedures, that was reasonably designed to: (i) achieve compliance with the requirements of

[7] Exchange Act Rule 17a-4(f)(2)(ii)(A).

Exchange Act Rule 17a-4 and NASD Rule 3110 with respect to Bloomberg Message issues and WORM Compliance Issues; (ii) achieve compliance with the requirements of Exchange Act Rule 17a-4, NASD Rule 3110 and FINRA Rule 4511; and (iii) timely detect and remedy deficiencies related to those requirements.

OTHER FACTORS

In determining the appropriate sanction, FINRA considered that Barclays self-reported the issues described herein and undertook an internal review, which included retaining an independent consultant to review its supervisory policies, procedures and systems relating to these issues.

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

- Censure; and
- a fine of $3,750,000.

The Firm 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 Firm has submitted an Election of Payment form showing the method by which it proposes to pay the fine 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 sanction(s) 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 record;

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: (i) testimonial obligations; or (ii) 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 understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that the Firm has 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.

Date (mm/dd/yyyy)

Barclays Capital Inc., Respondent

By: _____

Michael Crowl
General Counsel – Americas
Barclays Capital Inc.

Reviewed by:

Susan L. Merrill
Counsel for Respondent
Sidley Austin LLP
787 Seventh Avenue
New York, NY 10019
(212) 839-8558
smerrill@sidley.com

Accepted by FINRA:

12·26·13
Date

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

Richard R. Best
Chief Counsel
FINRA Department of Enforcement
One World Financial Center
200 Liberty Street
New York, NY 10281
(646) 315-7308 (phone)
(202) 689-3424 (facsimile)
richard.best@finra.org