

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2008012808801**

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Barclays Capital Inc., ("BCI" 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. BCI 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**

BCI has been a registered broker-dealer since 1987. The Firm is a full-service broker-dealer with headquarters in New York, NY. Barclays Capital Inc. is a subsidiary of Barclays Group US Inc., which is a subsidiary of Barclays Bank plc, which is a subsidiary of Barclays plc. BCI is an investment banking and multi-service brokerage firm.

**RELEVANT DISCIPLINARY HISTORY**

On December 10, 2010, BCI entered into an AWC with FINRA in which the Firm was fined \$42,500 in connection with record-keeping matters, including its transmission of inaccurate or incomplete reports to the Order Audit Trail System (OATS) and failure to notify customers of capacities in which it served when filling customer orders.

On November 8, 2010, BCI entered into an AWC with FINRA in which the Firm was censured and fined \$60,000 for its failure to reconcile various balance sheets and ledgers and its supervisory failure to detect discrepancies between its various internal records.

On November 16, 2007, BCI entered into an AWC with FINRA in which the Firm was censured and fined \$125,000 related to its failure to report accurate trading information through the submission of electronic blue sheets in response to FINRA requests for information.

## OVERVIEW

During the period from March 2007 through December 2010, due to operational and supervisory failures, Barclays displayed inaccurate delinquency rates for three subprime securitizations posted on the website that it maintained pursuant to SEC Regulation AB.

During the period from 2004 through 2007, BCI underwrote subprime residential mortgage-backed securitizations (“RMBS” or “securitizations”). Regulation AB is the source of various disclosure items and requirements for “asset-backed securities” filings under the Securities Act of 1933 and the Securities Exchange Act of 1934. Regulation AB requires the Firm to maintain a website for each newly-issued RMBS (the “Reg AB” website) that presented static pool information, also known as historical delinquency data, for prior similar securitizations to illustrate the past performance of securitizations that contained similar collateral.

In March 2007, BCI re-configured its Reg AB website. However, after the Reg AB website was re-configured, BCI did not review the delinquency data posted on that website. As a result, BCI did not detect that inaccurate delinquency information for three RMBS securitizations had been posted to the website.

BCI did not correct its Reg AB website until December 2010, after FINRA inquired about the information. Thus, from March 2007 through December 2010, the Firm’s Reg AB website contained inaccurate information on the performance of the three subprime RMBS during the period.

The delinquency data for these three RMBS, which were referenced as historical information in five subsequent subprime securitizations, contained errors that may have affected an investor’s assessment of subsequent securitizations. This misreporting of historical delinquency data violated NASD Rule 2110.

BCI also failed to establish a reasonable system to supervise the maintenance and updating of its Reg AB website and did not act reasonably to prevent, identify and correct inaccuracies in the historical delinquency data for subprime RMBS on the Reg AB website. As a result, the Firm violated NASD Rules 3010 and 2110 and FINRA Rule 2010.<sup>1</sup>

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<sup>1</sup> With regard to the Firm’s failure to observe high standards of commercial honor and just and equitable principles of trade, NASD Rule 2110 applies to all conduct on or before December 14, 2008 and FINRA Rule 2010 applies to all conduct on or subsequent to December 15, 2008.

## **FACTS AND VIOLATIVE CONDUCT**

### **Background**

Subprime RMBS securities are created when pools of subprime mortgages are collected and the cash flows are redistributed to different bond classes called tranches. In order of seniority, the tranches typically include senior, mezzanine and subordinate levels of debt. Each tranche represents a different beneficial ownership interest in the particular securitization and carries a correspondingly different level of risk. The tranche classification depends on its priority in receiving payments from the collateral pool.

As underwriter, BCI was both involved in the preparation of the offering documents for each RMBS and sold these securities to institutional investors. Among the offering documents that BCI assisted in preparing for the RMBS was a prospectus supplement, which describes in detail the characteristics of the mortgage pool, including the percentage of delinquent mortgage loans in the underlying collateral of the particular offering as of the cut-off date. The prospectus supplement also refers the reader to the Firm's Reg AB website, which provides the public with static pool information, including delinquency rates. This sets forth, for each new securitization, how prior securitizations performed that were similar in structure, characteristics and make-up. The delinquency data for the Reg AB website may be compiled from loan level information and/or information provided by servicers, trustees or other parties. Prospectus supplements containing this and other information were prepared for each RMBS offering and filed with the Securities and Exchange Commission as each securitization was completed.

Mortgage securitizations typically involve a Trust created by a Depositor, which is a separate legal entity from the underwriter, and certain of the other parties to the transaction. The Trust is administered by a Trustee. The underwriter structures an asset pool of underlying mortgages comprising the collateral for a securitization into classes of certificates that comprise the different tranches of the securitization. The Depositor then transfers to the Trust the underlying asset pool. As underwriter, BCI purchased the certificates issued by each of the Trusts and sold those to institutional investors, each of which was provided with a prospectus supplement.

The Trustee administers the trust through a Servicer. The Servicer is responsible for collecting the loan payments from the borrowers. The Trustee distributes the interest and principal from the loan payments to the investors. Based on information received from the Servicer and/or the Master Servicer, the Trustee issues monthly reports to the certificate holders that provide performance information about the underlying collateral, such as payments, delinquencies, foreclosures, and pre-payment penalties.

### **Regulation AB Requires That Broker-Dealers Supply Investors With Accurate Information For Mortgage-Backed Securitizations**

On December 5, 2005, Regulation AB became effective. Under Regulation AB, issuers of RMBS are required to disclose historical performance information, including delinquency rates, for prior securitizations that contain similar mortgage loans as collateral. Several items in Regulation AB require the presentation of historical information and data on delinquencies and

loss information, including (1) the total amount of delinquent assets as a percentage of the aggregate asset pool, (2) the present loss and cumulative loss information and (3) other material information regarding delinquencies and losses particular to the pool asset types.

Historical delinquency rates constitute material information under Reg AB because such data may affect the ability of an investor to evaluate the fair market value, the yields on the certificates and the anticipated holding periods of asset-backed securitizations. Investors may consider this information in assessing the profitability of asset-backed securitizations and determining whether future returns would be disrupted by mortgage holders who fail to make loan payments.

Thus, in order to sell a new securitization, BCI was required to post data on how similar securitizations that it had underwritten had performed in the past. This disclosure requirement could be satisfied by posting the historical delinquency data on a Reg AB website with a specific internet address, which for securitizations issued on or after January 1, 2006, is deemed to be part of the prospectus.

After January 2006, BCI's prospectus supplements for new subprime RMBS offerings informed investors that they could view static pool information for prior securitizations on its Reg AB website. The Reg AB website contained a hyperlink to each securitization. When the investors clicked onto the hyperlink for a particular securitization, they would see historical delinquency information for similar securitizations previously underwritten by the Firm.

#### **BCI Referred Investors to Inaccurate Delinquency Information In Connection with its Offer and Sale of Certain Subprime Securitizations**

In or about October 2006, BCI learned that a trustee employed on certain of its subprime securitizations ("the Trustee") had provided erroneous mortgage delinquency data in its reports. This delinquency data was used to populate BCI's Reg AB website. After BCI notified the Trustee about the erroneous mortgage delinquency data, the Trustee confirmed it had provided to BCI inaccurate data on mortgage delinquencies for four subprime RMBS for the period from March 2006 through September 2006. The Trustee subsequently advised BCI that it had resolved the problems underlying these reporting errors and had uploaded corrected data to its investor reporting website in November 2006.<sup>2</sup>

From January 2006 and through February 2007, the historical delinquency information displayed on the BCI's Reg AB website did not present the performance history of the mortgages in each individual securitization. Rather, the information on the performance of mortgages in RMBS deals securitized by BCI was provided in "master pools." Each master pool contained the historical delinquency information for numerous prior securitizations, generally all the RMBS that BCI had underwritten in a calendar year. Thus, an investor who accessed the Reg AB website would see performance figures for all mortgages issued in 2006, but would not see how mortgages were performing in each individual RMBS.

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<sup>2</sup> BCI did not upload corrected data to its Reg AB website. However, prior to March 2007, the inaccurate delinquency data posted on the BCI Reg AB website was immaterial.

In March 2007, BCI reconfigured its Reg AB website to allow investors to view historical performance information for similar subprime RMBS on a deal-by-deal basis. By error, during these changes to the website, for three subprime RMBS BCI posted the same inaccurate delinquency figures that had previously been used in the master pool data for the same securitizations for the period from March 2006 through September 2006. BCI did not ensure that the corrected trustee data was used to populate the Reg AB website, and did not detect this error. The erroneous information remained on the BCI Reg AB website until December 2010. BCI only discovered that this posted information was inaccurate after receiving FINRA's inquiry regarding this matter. In December 2010, BCI corrected the posted information that was inaccurate.

For the three subprime RMBS securitizations for which mortgage delinquencies were misreported, the errors in delinquency reporting contained discrepancies that may have affected an assessment of fair market value, certificate yield, anticipated holding periods and anticipated performance of subsequent securitizations that referenced these securitizations.

At the time that inaccurate information on mortgage delinquencies was posted on the BCI Reg AB website during the site reconfiguration, the Firm was aware of the prior reporting errors by the Trustee and was responsible for populating and maintaining the website. Specifically, for each of two subprime RMBS, SABR 2006-NC1 and SABR 2006-WM1, inaccurate historical delinquency rates were reported for approximately four months each during an overall period of approximately nine months. The inaccurate information on these two RMBS was hyperlinked to five subsequent RMBS securitizations totaling \$3,968,123,000. The offering materials for these five securitizations referred investors to the BCI Reg AB website that included, among other things, the inaccurate data.<sup>3</sup>

Because of these errors, which variously underreported and overreported the extent of delinquent loans in the referenced securitizations, the fair market value, the yields on the certificates, anticipated holding periods and anticipated performance of the subsequent RMBS securitizations may have been improperly evaluated by potential investors.

By misrepresenting the historical delinquency rates for subprime RMBS on its Reg AB website, BCI violated NASD Rule 2110 and FINRA Rule 2010.

### **BCI's Failure to Supervise**

NASD Conduct Rule 3010(a) requires that a FINRA registrant "establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with the Rules of this Association."

As the underwriter and seller of subprime RMBS, BCI failed to establish a reasonable system to supervise the maintenance, updating and review of its Reg AB website—in particular, by failing

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<sup>3</sup> Similarly inaccurate information on mortgage performance was also posted on the BCI Reg AB website for SABR 2006-FR1, but for this securitization, such delinquency information was misstated for a period of only one month.

to provide for follow-up and review of supervision with regard to the accuracy of its Reg AB website.

In March 2007, when BCI reconfigured its Reg AB website to allow its investors to view historical performance information on a deal-by-deal basis, the Firm did not ensure that the information being posted was accurate. After the Reg AB website had been reconfigured, the Firm did not take reasonable steps to identify and correct the inaccurate information to ensure that subsequent RMBS offerings would be sold on the basis of accurate information. Nor, in fact, did the Firm subsequently review the Reg AB website to ensure that the revised trustee data had been posted. Indeed, it was not until late 2010, after a FINRA inquiry into the matter, that the Firm discovered its reporting errors and corrected its Reg AB website.

As a result of these failures to supervise its Reg AB website, during the period from March 2007 to December 2010, BCI failed to provide accurate information on RMBS delinquency rates.

By virtue of the foregoing, BCI violated NASD Rules 3010 and 2110 and FINRA Rule 2010.

- B. BCI also consents to the imposition of the following sanctions:
1. Censure; and
  2. A fine in the amount of \$3,000,000.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which Respondent proposes to pay the fine imposed.

Respondent 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.

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 prejudice 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:

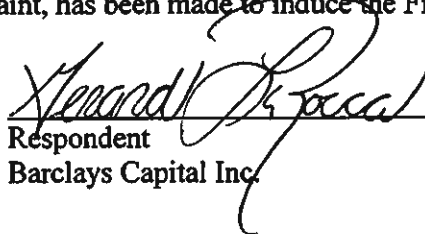
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will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

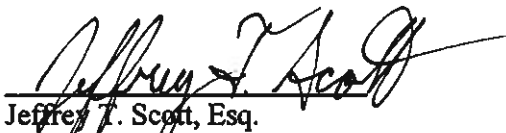
11/08/2011  
Date (mm/dd/yyyy)

  
Respondent  
Barclays Capital Inc.

**Gerard S. LaRocca**  
Chairman  
Barclays Capital, Inc.

By: \_\_\_\_\_

Reviewed by:

  
Jeffrey T. Scott, Esq.  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004  
Counsel for Respondent

Accepted by FINRA:

12/22/11  
Date

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

*Susan Light*

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