

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the
Continued Membership
of
Barclays Capital Inc.
(CRD No. 19714)

Notice Pursuant to
Rule 19h-1 of the
Securities Exchange Act
of 1934

SD-2119

Date: March 17, 2021

I. Introduction

On June 20, 2016, Barclays Capital Inc. (“BCI” or the “Firm”) submitted a Membership Continuance Application (“Application”) to FINRA’s Credentialing Registration, Education, and Disclosure Department (“CRED”).¹ The Application seeks to permit the Firm, a FINRA member dually² subject to statutory disqualification, to continue its membership with FINRA. A hearing was not held in connection this matter. Rather, pursuant to FINRA Rule 9523(b), FINRA’s Department of Member Regulation (“FINRA” or “Member Regulation”) approves the Application and is filing this Notice pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 (“Exchange Act” or “SEA”).

II. The Statutorily Disqualifying Events

A. The 2016 SEC Order

BCI is subject to statutory disqualification, as that term is defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(D), as a result of an order issued by the U.S. Securities and Exchange Commission (“SEC” or “Commission”) dated January 31, 2016

¹ See MC-400A Application and related attachments compiled by FINRA’s CRED, f/k/a Registration and Disclosure (“RAD”), with a cover memorandum dated June 21, 2016 (attached at Exhibit 1).

² On May 8, 2018, FINRA staff notified BCI that the Firm is dually subject to statutory disqualification as a result of a January 31, 2016 Settlement Agreement between the Firm and the New York Attorney General’s Office. The Agreement was reached in conjunction with the disqualifying event noted in the Application, SEC Order, *In the Matter of Barclays Capital, Inc.*, Exchange Act Release No. 77001 (Jan. 31, 2016), (attached as Exhibit 2). FINRA staff deemed a separate MC400A application for the Agreement was not necessary and the Firm was provided an opportunity to incorporate the NYAG Agreement with the MC-400A previously submitted. See email from FINRA Staff to Firm Counsel dated May 8, 2018, (attached as Exhibit 3).

(“2016 SEC Order”), finding that the Firm willfully violated Sections 17(a)(2) of the Securities Act of 1933 (the “Securities Act”), Section 15(c)(3) of the Exchange Act, and Exchange Act Rules 15c3-5(b) and 15c3-5(c)(i), and Rules 301(b)(2) and 301(b)(10) of Regulation ATS.³

According to the 2016 SEC Order, from December 2011 through June 2014, BCI “made materially misleading statements and omitted to state certain material facts to make statements made not misleading” to current and prospective subscribers of the Firm’s proprietary alternative trading system (“ATS”), Barclays LX (“LX”).⁴ Specifically, BCI made materially misleading statements and omissions pertaining to the operation of an LX feature called “Liquidity Profiling” and the market data feeds used within LX.⁵ In addition, BCI failed to “establish adequate safeguards and procedures to protect subscribers’ confidential trading information and failed to adopt and implement adequate procedures to ensure compliance with such safeguards.”⁶

BCI submitted an Offer of Settlement to the Commission, which the Commission accepted.⁷ In determining to accept BCI’s offer, the Commission considered that the Firm had undertaken certain remedial measures to address the misconduct.⁸ BCI was: (i) ordered to cease and desist from violating the aforementioned provisions of the Securities Act, Exchange Act, and Regulation ATS; (ii) censured; and (iii) ordered to pay a civil penalty of \$35 million.⁹ The Firm was also ordered to comply with certain undertakings which included utilizing a third-party consultant to, among other things, conduct a review of its policies, procedures, and compliance surrounding the operation of LX.¹⁰

B. The 2016 NYAG Settlement Agreement

BCI is dually subject to statutory disqualification under Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(H)(ii), as a result of a January 2016 Settlement Agreement (“2016 NYAG Settlement”)¹¹ between the Firm and the New York Attorney General’s

³ See SEC Order, *In the Matter of Barclays Capital, Inc.*, Exchange Act Release No. 77001 (Jan. 31, 2016), (attached as Exhibit 2).

⁴ *Id.* at pp. 2-3, 5.

⁵ *Id.*

⁶ *Id.* at p. 3.

⁷ *Id.* at p. 1.

⁸ *Id.* at p. 14.

⁹ See Exhibit 2 at p. 17. FINRA staff confirmed and CRD records indicate that the Firm paid the \$35 million fine on February 10, 2016. See also Exhibit 1 at p. 350.

¹⁰ See Exhibit 2 at pp. 14-17. BCI initially notified the SEC and NYAG on January 31, 2018 that it would adopt and implement the recommendations set forth in the third-party consultant’s report by June 30, 2020. The Firm requested an extension from the SEC and NYAG on April 20, 2020. The SEC and NYAG granted an extension to the Firm to complete the implementation of all recommendations by June 30, 2021. See Letters between the Firm, SEC, and the NYAG dated January 31, 2018, April 20, 2020, and April 22, 2020, respectively, (collectively attached as Exhibit 4).

¹¹ See NYAG Settlement Agreement, *In the Matter of Barclays PLC and Barclays Capital Inc.* (Jan. 31, 2016), (attached as Exhibit 5).

Office (“NYAG”).¹² The 2016 NYAG Settlement “concern[s] matters substantially related” to those set forth in the 2016 SEC Order.¹³ The NYAG charged that BCI violated New York General Business Law Section 352 *et seq.* (“Martin Act”) and Executive Law Section 63(12), by making false and misleading statements to clients, potential clients, and the investing public in connection with LX.¹⁴ In addition, the NYAG alleged that from 2011 through 2014 the Firm “committed fraud in connection with the marketing and operating of its [electronic trading services] algorithms, smart order router, and dark pool [LX].”¹⁵

The Firm agreed to (i) a monetary penalty of \$35 million;¹⁶ (ii) censure; and (iii) undertakings¹⁷ materially similar to those imposed by the 2016 SEC Order.¹⁸

III. Firm Background

BCI is based in New York, New York and has been a member of FINRA since 1987.¹⁹ According to the Central Registration Depository (“CRD”) record, the Firm has 14 branch offices, eight of which are Offices of Supervisory Jurisdiction (“OSJs”).²⁰ The Firm employs approximately 2,725 registered representatives, 561 of which are registered principals, and 12,010 non-registered individuals.²¹ The Firm represented, and FINRA confirmed, that it does not employ any statutorily disqualified individuals.²²

BCI is approved to engage in the following lines of business: exchange member engaged in exchange commission business other than floor activities; exchange member engaged in floor activities; broker or dealer making inter-dealer markets in corporate securities over-the-counter;

¹² FINRA staff considers the 2016 NYAG Settlement Agreement a final order based on violations of law or regulations prohibiting fraudulent, manipulative, or deceptive conduct, as described in the Exchange Act Section 15(b)(4)(H)(ii). *See also* FINRA Regulatory Notice 09-19, *Amendments to FINRA Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualification* (June 15, 2009), available at <https://www.finra.org/sites/default/files/NoticeDocument/p118466.pdf>.

¹³ *See* Exhibit 5 at Footnote 1.

¹⁴ *See* Exhibit 5 at pp. 1-7.

¹⁵ *See* Amended Complaint, *Schneiderman v. Barclays Capital, Inc. et al.*, Index No. 451391/2014 (NY Sup Ct, NY County, January 21, 2015) at pp. 15, 7-52, (attached as Exhibit 6).

¹⁶ FINRA staff confirmed and CRD records indicate that the Firm paid the \$35 million fine on February 10, 2016. *See also* Exhibit 1 at 350.

¹⁷ *See* Exhibit 4. The SEC and NYAG granted an extension to the Firm to complete the implementation of all recommendations by June 30, 2021.

¹⁸ *See* Exhibit 5 at pp. 8-14.

¹⁹ FINRA confirmed this through an analysis of the Firm’s information contained in CRD last performed December 15, 2020.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* *See also* Exhibit 1 at p. 351.

broker or dealer retailing corporate equity securities over-the-counter; broker or dealer selling corporate debt securities; underwriter or selling group participant (corporate securities other than mutual funds); mutual fund retailer; U.S. government securities dealer; U.S. government securities broker; municipal securities dealer; municipal securities broker; solicitor of time deposits in a financial institution; real estate syndicator; put and call broker or dealer or option writer; broker or dealer selling securities of non-profit organizations; broker or dealer selling tax shelters or limited partnerships in primary distributions; broker or dealer selling tax shelters or limited partnerships in the secondary market; non-exchange member arranging for transactions in listed securities by exchange member; trading securities for own account; private placements of securities; broker or dealer selling interests in mortgages or other receivables; engages in other securities business; and effect transactions in commodity futures, commodities, commodity options as broker for others or dealer for own account.²³

BCI is a member of the following self-regulatory organizations (“SROs”): BOX Options Exchange LLC (“BOX”); Chicago Board Options Exchange (“CBOE”); CBOE BYX Exchange, Inc. (“BYX”); CBOE BZX Exchange, Inc. (“BZX”); C2 Options Exchange, Incorporated (“C2”); CBOE EDGA Exchange, Inc. (“EDGA”); CBOE EDGX Exchange, Inc. (“EDGX”); Investors’ Exchange LLC (“IEX”); MIAX Emerald, LLC (“MIAX EMERALD”); MIAX Pearl, LLC (“MIAX PEARL”); Miami International Securities Exchange, LLC (“MIAX Options”); NYSE American LLC (“NYSE-AMER”); NYSE Arca, Inc. (“ARCA”); NYSE Chicago, Inc. (“NYSE-CHI”), NYSE National, Inc. (“NYSE-NAT”), NASDAQ BX, Inc. (“BX”); NASDAQ GEMX, LLC (“ISE GEMX”); NASDAQ ISE, LLC (“ISE”); NASDAQ MRX, LLC (“ISE MRX”); NASDAQ PHLX LLC (“PHLX”); NASDAQ Stock Market (“NQX”); New York Stock Exchange (“NYSE”);²⁴ Municipal Securities Rulemaking Board (“MSRB”); Depository Trust Company (“DTC”), the Fixed Income Clearing Corp. (“FICC-Gov”), and the National Securities Clearing Corp. (“NSCC”).²⁵

Recent Examinations

In the past two years, FINRA completed three routine examinations and 18 non-routine examinations of the Firm, all of which resulted in Cautionary Action Letters (“CALs”). The SEC also completed two examinations, highlighting deficiencies in the Firm’s policies, procedures, and controls.

A. FINRA Routine Examinations

The examination completed in June 2020 resulted in a Cautionary Action for nine of the ten exceptions.²⁶ These exceptions pertained to failures to: enforce Written Supervisory Procedures

²³ See CRD Excerpt: Types of Business (attached as Exhibit 7).

²⁴ See CRD Excerpt: Organization Registration Status (attached as Exhibit 8).

²⁵ Membership in these organizations was verified by FINRA staff through a search of public member directories, last performed on December 15, 2020.

²⁶ See Disposition Letter for Examination No. 20190606440 dated June 29, 2020, Examination Report dated May 18, 2020, and Firm Response dated June 24, 2020 (collectively attached as Exhibit 9).

(“WSPs”) surrounding evidencing options related complaints; evidence Qualified Institutional Buyer (“QIB”) representation for two customers; enforce WSPs and register the Chief Compliance Officer in the required category pursuant to various exchange rules; and establish WSPs requiring Form U5 submissions to be filed within 30 days of employment termination pursuant to various exchange rules. The Firm’s failure to enforce WSPs and register the Chief Compliance Officer in the required category pursuant to C2 and Cboe Exchange Rules was referred to FINRA’s Department of Enforcement.²⁷

The examination completed in June 2019 resulted in a Cautionary Action for four exceptions.²⁸ These exceptions related to inaccurate validation of NMS securities, inability to validate OTC securities within the Firm’s sales system, failure to maintain procedures reasonably designed to ensure the Firm does not display rank, or accept orders in any NMS or OTC Equity Securities in certain increments, and failure to have written supervisory procedures regarding Nasdaq Rule 7015(j).²⁹ FINRA’s Department of Enforcement is further reviewing the exceptions pertaining to failures to submit riskless principal transactions to the Order Audit Trail System (“OATS”), failure to report the non-media riskless leg of a principal transaction, failures to maintain adequate supervisory procedures to ensure accurate customer confirmations, and failure to maintain adequate written supervisory procedures in connection with customer disclosures.³⁰

The examination completed in February 2019 resulted in a Cautionary Action for all exceptions.³¹ These exceptions related to failure to establish and maintain an adequate supervisory system to monitor certain communications through the Firm’s internal broadcast systems network and incorrect aging of deficits.³²

B. FINRA Non-Routine Examinations

The Firm was issued Cautionary Action Letters in connection with 19 non-routine examinations.³³

²⁷ *Id.* Exception 4 in the Examination report is currently under review by FINRA’s Department of Enforcement under FINRA Matter No. 20190606442.

²⁸ *See* Disposition Letter for Examination Nos. 20180571613, 20180571693, 20180571827, dated June 17, 2019, Examination Report dated May 9, 2019, and Firm Response dated May 30, 2019 (collectively attached as Exhibit 10).

²⁹ *Id.* FINRA issued a Cautionary Action with respect to Exceptions 6, 7, 8, and 9 in the Examination Report.

³⁰ *Id.* Exceptions 1,2,3,4 and 5 in the Examination Report are currently under review by FINRA’s Department of Enforcement under FINRA Matter No. 20150442272.

³¹ *See* Disposition Letter for Examination No. 20180563308 dated February 13, 2019, Examination Report dated December 17, 2018, and Firm Response dated January 16, 2019 (collectively attached as Exhibit 11).

³² *Id.*

³³ *See* Non-Routine Examination CALs, Dispositions (where applicable), Examination Reports (where applicable), and Firm Responses for Examination Nos.: 20180605142 & 20190630937 (One CAL was issued for both matter numbers), 2018056884, 20200673893, 20190635237 & 20200673423 (One CAL was issued for both matter numbers), 20190649325, 20180579950, 20180609677, 20180602780, 20180579968, 20190612986, 20170538153 (The Firm did not provide a response to this CAL), 20140417206 (The Firm did not provide a response to this CAL), 20190619746, 20180581440, 20180587128, 20160514302 (The Firm did not provide a response to this CAL), 20140402613 (The Firm did not provide a response to this CAL), and 20170538500, (collectively attached as Exhibit

Collectively, the CALs identified deficiencies pertaining to: failure to establish, maintain and enforce written policies and procedures that are reasonably designed to assure compliance with the terms of outbound intermarket sweep order (“ISO”) exception; inaccurate reporting to the Nasdaq Trade Reporting Facility (“NQ TRF”); late blue sheet transmissions; failure to establish, maintain, and enforcement procedures to ensure compliance with the Stopped Order exception in SEC Rule 611(b)(9); inability to monitor, encrypt, search certain Firm emails; failure to have procedures surrounding Short Interest Reporting; failure to request Letters of Free Funds from certain broker-dealers where the traders were settled and custodied to ensure that funds were available; improper reporting to OATS; failure to preserve records in connection with internal chat messages; failure to retain chat messages and attachments in WORM format; failure to properly register associated persons as proprietary traders with the C2 Exchange and Cboe Exchange; failure to comply with Regulation SHO; failure to timely report statistical and summary information regarding written customer complaints; failure to provide confirmations to customers; failure to comply with FINRA best execution and supervisory obligations; failure to establish and implement an anti-money laundering compliance program (“AMLCP”) reasonably designed to detect, and cause the reporting of, suspicious activity; and failure to adequately address compliance with Municipal Advisor rules in the Firm’s U.S. Municipal Advisory Standard dated May 2016 in the context of its secondary market sales and trading relationships with municipal entity accounts.³⁴

C. SEC Examinations

The SEC examination concluded in March 2020, identified the Firm’s failure to properly disclose the Firm’s capacity on trade confirmations, and failures to document and supervise unregistered security distributions pursuant to FINRA Rule 6380A.³⁵

The SEC examination concluded in January 2020, identified the Firm’s failure to maintain accurate books and records related to customer reserve computation, failure to enforce written supervisory procedures in connection with the Firm’s anti-money laundering program, and failure to establish written supervisory procedures to ensure the completeness of the daily tasks outsourced to Broadridge Business Process Outstanding, LLC (“Broadridge”).³⁶

Regulatory Actions

BCI has been the subject of recent disciplinary matters resulting in five Letters of Acceptance, Waiver and Consent (“AWCs”) entered into with FINRA; two AWCs entered into with NYSE; four Offers of Settlement and Consent entered into with NYSE Arca; one Minor Rule Violation (“MRV”) issued by FINRA on behalf of CBOE, one AWC entered into with CBOE, one AWC entered into with Cboe BZX; one Letter of Consent entered into with MIAX; one AWC entered into with Bats BYX; and two orders issued by the SEC.

12).

³⁴ *Id.*

³⁵ See SEC Examination Letter dated March 4, 2020 and Firm Response dated April 3, 2020 (attached as Exhibit 13).

³⁶ See SEC Examination Letter dated January 30, 2020 (attached as Exhibit 14).

A. FINRA Actions³⁷

The FINRA disciplinary actions addressed misconduct in connection with systematic TRACE reporting issues,³⁸ failures to fully and accurately report short interest positions in certain foreign-listed securities,³⁹ the improper reporting of options positions to the Large Options Position (“LOPR”) system,⁴⁰ firm failures to properly route intermarket sweep orders to execution against protected quotations in violation of SEC Regulation NMS Rules,⁴¹ failure to use reasonable diligence to ascertain best market value for subject securities,⁴² failure to buy or sell in such markets so that customers could receive favorable pricing and failure to enforce written supervisory procedures to prevent potential best execution violations.⁴³ BCI consented to censures in all these matters, fines ranging from \$40,000 - \$650,000 (two collectively with other exchanges) and ordered to comply with certain undertakings to address the noted deficiencies.⁴⁴

³⁷ See AWC No. 20170540545-01 dated December 1, 2020; Remediation Letters in connection with AWC No. 20170540545-01 dated January 27, 2021 and February 25, 2021; AWC No. 20150441333101 dated August 25, 2020; AWC No. 20130364720-01 dated May 9, 2018; Remediation Letter in connection with FINRA Matter No. 20130364720 dated August 9, 2018; AWC No. 20140437874-02 dated October 11, 2017; Remediation Letter in connection with FINRA Matter No. 20140437874-02 dated November 11, 2017; AWC No. 20150469894-01 dated October 9, 2017; and Remediation Letter in connection with FINRA Matter No. 20150469894-01 dated November 10, 2017 (attached collectively as Exhibit 15).

³⁸ See AWC No. 20170540545-01 dated December 1, 2020 at Exhibit 15. See also Remediation Letters in connection with AWC No. 20170540545-01 dated January 27, 2021 and February 25, 2021. The Firm completed all undertakings in connection with this matter and paid the fine in full on December 21, 2020.

³⁹ See AWC No. 201504413331-01 dated August 24, 2020 at Exhibit 15. The Firm paid the fine in full in connection with this matter.

⁴⁰ See AWC No. 20130364720-01 and Cover Letter dated May 9, 2018 at Exhibit 15. See also Remediation Letter in connection with FINRA Matter No. 20130364720 dated August 9, 2018 at Exhibit 15. The Firm complied with all undertakings in connection with this matter.

⁴¹ See AWC No. 20140437874-02 dated October 11, 2017 at Exhibit 15. See also Remediation Letter in connection with FINRA Matter No. 20140437874-02 dated August 9, 2018 at Exhibit 15. The Firm complied with all undertakings in connection with this matter.

⁴² See AWC No. 20150469894-01 dated October 9, 2017 at Exhibit 15. See also Remediation Letter in connection with FINRA Matter No. 20150469894-01 dated November 10, 2017 at Exhibit 15. The Firm complied with all undertakings in connection with this matter.

⁴³ *Id.*

⁴⁴ See Exhibit 15. The Firm paid all fines owed to FINRA in full October 13, 2017 and on June 2, 2018.

B. NYSE Actions⁴⁵

The NYSE actions addressed improper cancelling of Market on Close and Limit on Close Orders⁴⁶ and the Firm's failure to submit trading reports for off-hours transactions and failure to establish and maintain a reasonably designed supervisory system and written supervisory procedures to achieve compliance with NYSE Rule 905.⁴⁷ The Firm consented to censures fines in the amounts of \$120,000 and \$175,000 respectively.⁴⁸

C. NYSE Arca Actions⁴⁹

The NYSE Arca actions involved misconduct in connection with the same conduct addressed in the aforementioned FINRA AWC, Firm failures to properly route intermarket sweep orders to execution against protected quotations in violation of SEC Regulation NMS Rules.⁵⁰ The actions also addressed violations of NYSE Arca Option Rules involving failures to obtain customer agreements before busting and adjusting a trade and adjusting the trade in a manner that circumvented other Exchange rules, busting a trade that resulted in an inferior price for its customer, failing to create, maintain, and preserve records of adjustments to customer orders and documentation of customer instructions/agreements to modify trades, effecting equity transactions after gaining knowledge of undisclosed terms and conditions of orders in related option series, and failure to establish and maintain adequate supervisory systems that were reasonably designed to ensure compliance with NYSE Arca Options Rules.⁵¹ The Firm consented to censures in all matters and fines ranging from \$60,000 - \$275,000 and, in the collective action, undertakings to address the noted deficiencies.⁵²

⁴⁵ See NYSE LLC AWC Nos. 2019-12-00042 and 2019-07-0026 dated November 2, 2020, NYSE LLC AWC No. 2019-01-00015 dated April 30, 2020 and confirmation of Firm's payment of the corresponding fines (attached collectively as Exhibit 16).

⁴⁶ See NYSE LLC AWC Nos. at 2019-12-00042 and 2019-07-0026 dated November 2, 2020 at Exhibit 16.

⁴⁷ See NYSE LLC AWC No. 2019-01-00015 dated April 30, 2020 at Exhibit 16

⁴⁸ The Firm paid both fines in full. See Exhibit 16.

⁴⁹ See Decision, *NYSE Regulation v. Barclays Capital Inc.*, FINRA Proceeding No. 20140437874 (Oct.11, 2017); Decision, *NYSE Regulation v. Barclay's Capital, Inc.*, Proceeding No. 2017-05000011 (Dec.12, 2018); Decision, *NYSE Regulation v. Barclay's Capital, Inc.*, Proceeding No. 2017-05000014 (Dec.11, 2018); and Decision, *NYSE Regulation v. Barclay's Capital, Inc.*, Proceeding No. 2016-07-01314 (Aug. 15, 2017), (attached collectively as Exhibit 17). The Firm has complied with undertakings instituted by NYSE Regulation in connection with these matters. See Exhibit 16.

⁵⁰ See Decision, *NYSE Regulation v. Barclays Capital Inc.*, FINRA Proceeding No. 20140437874 (Oct.11, 2017), at Exhibit 17.

⁵¹ See Decision, *NYSE Regulation v. Barclay's Capital, Inc.*, Proceeding No. 2017-05000011 (Dec.12, 2018); Decision, *NYSE Regulation v. Barclay's Capital, Inc.*, Proceeding No. 2017-05000014 (Dec.11, 2018); and Decision, *NYSE Regulation v. Barclay's Capital, Inc.*, Proceeding No. 2016-07-01314 (Aug. 15, 2017) at Exhibit 17.

⁵² See Exhibit 17. See also Remediation Letter in connection with FINRA Matter No. 20140437874-02 dated November 10, 2017 at Exhibit 15.

D. Cboe Actions⁵³

The Cboe actions involved the Firm's misconduct in connection with exceeding the maximum allowable bid/ask width differentials prescribed by Cboe⁵⁴ and failure to establish, maintain, and apply written supervisory procedures surrounding tender shares of a partial tender offer in excess of a net long position.⁵⁵ The Firm consented to a censure and fines of \$2,500⁵⁶ and \$25,000 respectively and a disgorgement in the amount of \$42,040.⁵⁷

E. Cboe BZX Action⁵⁸

The Cboe BZX ("BZX") action involved misconduct in connection with the same conduct addressed in the aforementioned FINRA AWC, the improper reporting of options positions to the Large Options Position ("LOPR") system.⁵⁹ The Firm consented to a censure, and a collective fine of \$400,000 (collectively, of which \$90,000 payable to BZX) and undertakings to address the LOPR deficiencies.⁶⁰

F. MIA X Action⁶¹

The MIA X action involved misconduct in connection with the same conduct addressed in the aforementioned FINRA AWC, the improper reporting of options positions to the Large Options Position ("LOPR") system.⁶² The Firm consented to a censure and fine of \$400,000 (collectively, of which \$60,000 was payable to MIA X), and an undertaking to address the LOPR deficiencies.⁶³

⁵³ See Disciplinary Notice Minor Rule Violation Plan No. 20180608228 dated March 12, 2020; Decision Accepting Letter of Consent, *In the Matter of Barclays Capital Inc.*, File No. 17-0053 (Dec. 29, 2017) and evidence of payment of the fine and disgorgement dated January 15, 2018 (attached as collectively as Exhibit 18).

⁵⁴ See Disciplinary Notice Minor Rule Violation Plan No. 20180608228 dated March 12, 2020 at Exhibit 18.

⁵⁵ See Decision Accepting Letter of Consent, *In the Matter of Barclays Capital Inc.*, File No. 17-0053 (Dec. 29, 2017) at Exhibit 18.

⁵⁶ CRD Records confirm the Firm paid the fine in full to Cboe on June 4, 2020.

⁵⁷ See evidence of payment of the fine and disgorgement dated January 15, 2018 at Exhibit 18.

⁵⁸ See AWC No. 20130364720-02, Cover Letter dated May 9, 2018, and evidence of payment to Cboe BZX dated May 31, 2018 (collectively attached as Exhibit 19).

⁵⁹ *Id.*

⁶⁰ *Id.* at pp. 4-5. See also Remediation Letter in connection with FINRA Matter No. 20130364720 dated August 9, 2018 at Exhibit 15. The Firm complied with all undertakings in connection with this matter.

⁶¹ See Letter of Consent No. 20130364720-03 and Cover Letter dated May 9, 2018, (attached collectively as Exhibit 20).

⁶² *Id.*

⁶³ *Id.* at pp. 5-6. See also Remediation Letter in connection with FINRA Matter No. 20130364720 dated August 9, 2018 at Exhibit 15. The Firm complied with all undertakings in connection with this matter. FINRA staff confirmed the portion of the fine payable to MIA X was paid in full.

G. Bats BYX Action⁶⁴

The Bats BYX (“BYX”) actions involved misconduct in connection with the same conduct addressed in the aforementioned FINRA AWC, Firm failures to properly route intermarket sweep orders to execution against protected quotations in violation of SEC Regulation NMS Rules.⁶⁵ The Firm consented to a censure a fine of \$50,000 (collectively, of which \$12,500 is payable to BYX).⁶⁶

H. SEC Actions and Other Statutory Disqualification Matters

In addition to the above, the Firm was also the subject of two recent SEC orders, which also subjected the Firm to statutory disqualification.

On May 10, 2017, the SEC issued an order finding the Firm willfully violated Sections 206(2), 206(4) and Rule 206(4)-7 thereunder, along with Section 207 of the Advisers Act and Sections 17(a)(2) and 17(a)(3) of the Securities Act through overcharging its wealth and investment management business clients by nearly \$50 million in advisory fees.⁶⁷ The Firm was censured, ordered to cease and desist from committing or causing violations or future violations of the pertinent sections of the Securities Act and the Advisers Act, ordered to pay \$49,785,417 in disgorgement and \$13,752,242 in prejudgment interest to advisory clients, ordered to pay a civil monetary penalty of \$30,000,000, and ordered to pay \$3,504,285 plus interest in remediation.⁶⁸

On May 1, 2017, the SEC issued an order with findings that the Firm failed to reasonably supervise traders, within the meaning of Section 15(b)(4)(E) of the Exchange Act, to prevent and detect violations of antifraud provisions of the federal securities laws.⁶⁹ The Firm was censured, ordered to pay a civil money penalty of \$1 million, and disgorgement and prejudgment interest in the

⁶⁴ See AWC No. 20140437874-03 dated October 11, 2017 and evidence of payment to Cboe Bats dated October 31, 2018 (attached collectively as Exhibit 21).

⁶⁵ *Id.*

⁶⁶ *Id.* at pp. 4-5. See also Remediation Letter in connection with FINRA Matter No. 20140437874-02 dated November 10, 2017 at Exhibit 15. The Firm complied with all undertakings in connection with this matter.

⁶⁷ See SEC Order, *In the Matter of Barclays Capital, Inc.*, Exchange Act Release No. 80639 (May 10, 2017), (attached as Exhibit 22). The Firm is subject to a statutory disqualification as that term is defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(D), as a result of this Order. FINRA staff confirmed that the Firm complied with all undertakings in connection with the Order and deposited funds into a distribution fund as required on October 21, 2018. FINRA deems requirements related to the administration of the fund ministerial in nature rather than an ongoing sanction in effect for statutory disqualification purposes. As such, a 19h-1 Notice was not filed in connection with this event.

⁶⁸ *Id.* at pp. 14-20.

⁶⁹ SEC Order, *In the Matter of Barclays Capital, Inc.*, Exchange Act Release No. 80560 (May 1, 2017), (attached as Exhibit 23.) The Firm is subject to a statutory disqualification as that term is defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(E), as a result of this Order. FINRA staff confirmed the Firm complied with all undertakings in connection with the Order and there are no ongoing sanctions in effect. As such, a 19h-1 Notice was not filed in connection with this event.

approximate amount of \$11.71 million.⁷⁰ BCI was also ordered to comply with undertakings and ordered to make remedial payments to customers of approximately \$15,561,711.⁷¹

IV. Prior SEA Rule 19h-1 Notice

FINRA filed a Rule 19h-1 Notice approving BCI's continued membership notwithstanding the existence of its statutory disqualification on March 24, 2016.⁷² The Firm was subject to statutory disqualification as a result of a February 2, 2016 SEC Order arising out of the Commission's Municipalities Continuing Disclosure Cooperation Initiative ("MCDC").⁷³ The Firm self-reported to the SEC its inadequate due diligence in connection with underwriting certain municipal securities offerings and was ordered to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act, pay a civil penalty of \$500,000, and comply with various undertakings.⁷⁴ The Commission acknowledged FINRA's Notice on April 28, 2016.⁷⁵

V. The Firm's Proposed Continued Membership with FINRA and Proposed Supervisory Plan

The Firm seeks to continue its membership with FINRA notwithstanding its status as a disqualified member. The Firm has agreed to the following Plan of Heightened Supervision as a condition of its continued membership with FINRA:⁷⁶

1. The Firm must comply with the undertakings specified in the SEC Order, *In the Matter of Barclays Capital, Inc.*, Exchange Act Release No. 77001 (Jan. 31, 2016), and the parallel NYAG Settlement Agreement, *In the Matter of Barclays PLC and Barclays Capital Inc.* (Jan. 31, 2016);
2. The Firm will provide FINRA with copies of correspondence between the Firm and SEC and NYAG staff regarding requests to extend the procedural dates relating to the undertakings;
3. The Firm will provide FINRA with a copy of all certifications and supporting documentation provided to the SEC and NYAG upon completion of the undertakings as

⁷⁰ *Id.* at pp. 8-12.

⁷¹ *Id.* at p. 11.

⁷² See Notice Pursuant to Rule 19h-1 of the Securities Exchange Act of 1934, *In the Matter of the Continued Membership of Barclays Capital Inc.* (CRD 19714), *Hilltop Securities, Inc.* (CRD 6220), and *Jeffries LLC* (CRD No. 2347) dated March 24, 2016 and the SEC's acknowledgement dated April 28, 2016, (attached collectively as Exhibit 24).

⁷³ *Id.* at pp. 2-3.

⁷⁴ *Id.* at p. 3.

⁷⁵ *Id.* at p. 6.

⁷⁶ See Plan of Supervision executed by BCI on December 14, 2020 (attached as Exhibit 25).

specified in the SEC Order and NYAG Settlement, or other documentation that the undertakings have been either modified or stricken by order of the SEC or agreement with the NYAG;

4. All requested documents and certifications under this Plan of Supervision shall be sent directly to FINRA's Statutory Disqualification Group at SDMailbox@FINRA.org;
5. For the duration of the Firm's statutory disqualification the Firm must obtain written approval from Member Supervision prior to changing any provision of the Plan; and
6. The Firm will submit any proposed changes or other requested information under this Plan to FINRA's Statutory Disqualification Group at SDMailbox@FINRA.org.

VI. Discussion

After carefully reviewing the record in this matter, FINRA approves the Firm's request to continue its membership with FINRA, subject to the terms and conditions set forth herein. In evaluating the Application, FINRA assessed whether the Firm has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to investors or the markets. *See* FINRA By-Laws, Art. III, Sec. 3(d); *cf. Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (holding that FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors"). Typically, factors that bear on Member Regulation's assessment include, among other things, the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, the Firm's regulatory history, and whether there has been any intervening misconduct.

As of the date of this Notice, FINRA has determined that the Firm's continued membership is consistent with the public interest and does not create an unreasonable risk of harm. While the 2016 SEC Order and NYAG Settlement Agreement identified serious violations of securities laws, the undertakings set forth in these matters require the Firm to take appropriate remedial actions to monitor and deter future misconduct.⁷⁷

As part of the remediation efforts, BCI secured the information of LX subscribers, removed system LX system overrides, and engaged a third-party consultant to review the Firm's compliance with the Market Access Rule and Regulation ATS.⁷⁸ The Firm also hired a third-party consultant,⁷⁹ who has conducted an initial review of the Firm's policies, procedures, practices in connection with the Firm's operation of LX and issued a report with recommendations.⁸⁰ The Firm plans to

⁷⁷ *See* Exhibit 2 at pp. 14-17. *See also* Exhibit 5 at pp. 8-12.

⁷⁸ *See* Exhibit 2 at pp. 12-13.

⁷⁹ *See* Independent Third-Party Consultant engagement letter between BCI and Paredes Strategies LLC dated January 29, 2016 (attached as Exhibit 26).

⁸⁰ *See* Initial Report of the Independent Third-Party Consultant to Barclays PLC and Barclays Capital Inc. dated January 2, 2018 (attached as Exhibit 27).

implement the third-party consultant's recommendations by June 2021.⁸¹ In addition, BCI paid all monetary sanctions imposed by the SEC and NYAG on February 10, 2016.⁸²

Furthermore, the Firm was not expelled or suspended, nor were any limitations placed on BCI's securities activities because of the 2016 SEC Order or the NYAG Agreement. The Commission also granted BCI a waiver from the disqualification provision of Rule 506(d)(1)(iv)(B) under the Securities Act.⁸³

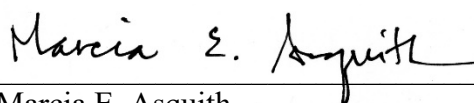
The undertakings set forth in the SEC Order and the NYAG Agreement coupled with the Firm's Plan of Supervision, will continue to provide oversight of the Firm for the duration of the Firm's statutory disqualification. Following the approval of the Firm's continued membership in FINRA, FINRA intends to utilize its examination and surveillance processes to monitor the Firm's continued compliance with the standards prescribed by Exchange Act Rule 19h-1 and FINRA Rule 9523.

In addition, FINRA conducted a review of the Firm's regulatory history and recent disciplinary actions, and found that, as of the date of this Notice, the Firm has paid all fines and is in compliance with undertakings ordered by regulators; none of these matters would prevent the continuance of the Firm as a FINRA member. Thus, FINRA is satisfied, based on the foregoing and the Firm's representations made pursuant to the Plan of Heightened Supervision that the Firm's continued membership in FINRA does not create an unreasonable risk of harm to the market or investors. Accordingly, FINRA approves BCI's Application to continue its membership with FINRA.

FINRA certifies that the Firm meets all qualification requirements and represents that the Firm is registered with several other SROs including: BOX, CBOE, BYX, BZX, C2, EDGA, EDGX, IEX, MIAX EMERALD, MIAX PEARL, MIAX Options, NYSE-AMER, ARCA, NYSE-CHI, NYSE-NAT, BX, ISE GEMX, ISE, ISE MRX, PHLX, NQX, and NYSE. The SROs have been provided with the terms and conditions of BCI's proposed continued membership and concur with FINRA.

In conformity with the provisions of Rule 19h-1 of the Exchange Act, the continued membership of the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the SEC.

On Behalf of FINRA,



Marcia E. Asquith
Executive Vice President & Corporate Secretary

⁸¹ See Extension Approvals at Exhibit 4.

⁸² FINRA staff confirmed that fines were paid in full to the NYAG and SEC on February 10, 2016. See Wire Payments to SEC and NYAG dated February 10, 2016 (account numbers redacted) (attached as Exhibit 28).

⁸³ See the SEC's Corrected Order, dated January 31, 2016, granting BCI a waiver of disqualification under Rule 506(d)(2)(ii) of Regulation D under the Securities Act (attached as Exhibit 29).

Exhibit List

SD-2119

1. MC-400A Application and related attachments compiled by FINRA's RAD, n/k/a Credentialing, Registration, Education and Disclosure (CRED) with a cover memorandum dated June 21, 2016.
2. SEC Order, *In the Matter of Barclays Capital, Inc.*, Exchange Act Release No. 77001 (Jan. 31, 2016).
3. Email from FINRA staff to Firm Counsel dated May 8, 2018.
4. Letters between the Firm, SEC, and the NYAG dated January 31, 2018, April 20, 2020, and April 22, 2020.
5. NYAG Settlement Agreement, *In the Matter of Barclays PLC and Barclays Capital Inc.* (Jan. 31, 2016).
6. Amended Complaint, *Schneiderman v. Barclays Capital, Inc. et al.*, Index No. 451391/2014 (NY Sup Ct, NY County, January 21, 2015).
7. CRD Excerpt: Types of Business.
8. CRD Excerpt: Organization Registration Status.
9. Disposition Letter for Examination No. 20190606440 dated June 29, 2020, Examination Report dated May 18, 2020, and Firm Response dated June 24, 2020.
10. Disposition Letter for Examination Nos. 20180571613, 20180571693, 20180571827, dated June 17, 2019, Examination Report dated May 9, 2019, and Firm Response dated May 30, 2019.
11. Disposition Letter for Examination No. 20180563308 dated February 13, 2019, Examination Report dated December 17, 2018, and Firm Response dated January 16, 2019.
12. Non-Routine Examination CALs, Dispositions (where applicable), Examination Reports (where applicable), and Firm Responses for Examination Nos.: 20180605142 & 20190630937 (One CAL was issued for both matter numbers), 2018056884, 20200673893, 20190635237 & 20200673423 (One CAL was issued for both matter numbers), 20190649325, 20180579950, 20180609677, 20180602780, 20180579968, 20190612986, 20170538153 (The Firm did not provide a response to this CAL), 20140417206 (The Firm did not provide a response to this CAL), 20190619746, 20180581440, 20180587128, 20160514302 (The Firm did not provide a response to this CAL), 20140402613 (The Firm did

not provide a response to this CAL), and 20170538500.

13. SEC Examination Letter dated March 4, 2020 and Firm Response dated April 3, 2020.
14. SEC Examination Letter dated January 30, 2020.
15. AWC No. 2017054054501 dated December 1, 2020; Remediation Letters in connection with AWC No. 20170540545-01 dated January 27, 2021 and February 25, 2021; AWC No. 20150441333101 dated August 25, 2020; AWC No. 20130364720-01 dated May 9, 2018; Remediation Letter in connection with FINRA Matter No. 20130364720 dated August 9, 2018; AWC No. 20140437874-02 dated October 11, 2017; Remediation Letter in connection with FINRA Matter No. 20140437874-02 dated November 11, 2017; AWC No. 20150469894-01 dated October 9, 2017; and Remediation Letter in connection with FINRA Matter No. 20150469894-01 dated November 10, 2017.
16. NYSE LLC AWC Nos. 2019-12-00042 and 2019-07-0026 dated November 2, 2020, NYSE LLC AWC No. 2019-01-00015 dated April 30, 2020 and confirmation of Firm's payment of the corresponding fines.
17. Decision, *NYSE Regulation v. Barclays Capital Inc.*, FINRA Proceeding No. 20140437874 (Oct.11, 2017); Decision, *NYSE Regulation v. Barclay's Capital, Inc.*, Proceeding No. 2017-05000011 (Dec.12, 2018); Decision, *NYSE Regulation v. Barclay's Capital, Inc.*, Proceeding No. 2017-05000014 (Dec.11, 2018); and Decision, *NYSE Regulation v. Barclay's Capital, Inc.*, Proceeding No. 2016-07-01314 (Aug. 15, 2017).
18. Disciplinary Notice Minor Rule Violation Plan No. 20180608228 dated March 12, 2020; Decision Accepting Letter of Consent, *In the Matter of Barclays Capital Inc.*, File No. 17-0053 (Dec. 29, 2017) and evidence of payment of the fine and disgorgement dated January 15, 2018.
19. AWC No. 20130364720-02, Cover Letter dated May 9, 2018, and evidence of payment to Cboe BZX dated May 31, 2018.
20. Letter of Consent No. 20130364720-03 and Cover Letter dated May 9, 2018.
21. AWC No. 20140437874-03 dated October 11, 2017 and evidence of payment to Cboe Bats dated October 31, 2018.
22. SEC Order, *In the Matter of Barclays Capital, Inc.*, Exchange Act Release No. 80639 (May 10, 2017).
23. SEC Order, *In the Matter of Barclays Capital, Inc.*, Exchange Act Release No. 80560 (May 1, 2017).

24. Notice Pursuant to Rule 19h-1 Securities Exchange Act of 1934, In the Matter of the Continued Membership of Barclays Capital Inc. (CRD 19714), Hilltop Securities, Inc. (CRD 6220), and Jeffries LLC (CRD No. 2347) dated March 24, 2016 and the SEC's acknowledgement dated April 28, 2016.
25. Plan of Supervision executed by BCI on December 14, 2020.
26. Independent Third-Party Consultant engagement letter between BCI and Paredes Strategies LLC dated January 29, 2016.
27. Initial Report of the Independent Third-Party Consultant to Barclays PLC and Barclays Capital Inc. dated January 2, 2018.
28. Wire Payments to SEC and NYAG dated February 10, 2016.
29. SEC's Corrected Order, dated January 31, 2016, granting BCI a waiver of disqualification under Rule 506(d)(2)(ii) of Regulation D under the Securities Act.