UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10355 / May 10, 2017

SECURITIES EXCHANGE ACT OF 1934
Release No. 80639 / May 10, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4705 / May 10, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17978

In the Matter of **BARCLAYS CAPITAL INC.** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, AND SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Barclays Capital Inc. ("Barclays Capital" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-And-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Section 15(b) of the Securities Exchange Act of 1934, and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

SUMMARY

From September 2010 through December 2015, Barclays Capital, then a dually-registered investment adviser and broker-dealer, improperly charged certain advisory clients of its wealth and investment management business, overcharging them almost $50 million in advisory fees. First, from September 2010 through December 2014, Barclays Capital falsely represented to advisory clients that it was performing ongoing due diligence and monitoring of certain third-party managers who managed advisory clients' assets using certain investment strategies, when Barclays Capital was not performing such due diligence. As a result, Barclays Capital improperly charged 2,050 client accounts approximately $48 million in fees for these promised services. Second, from January 2011 through March 2015, Barclays Capital charged 22,138 client accounts excess fees of approximately $2 million. Additionally, from at least January 2010 through December 2015, Barclays Capital disadvantaged certain retirement plan and charitable organization brokerage customers ("Eligible Customers") by recommending and selling them more expensive mutual fund share classes when less expensive share classes were available, without disclosing that Barclays Capital had a material conflict of interest, *i.e.*, that it would receive greater compensation from the Eligible Customers' purchases of the more expensive share classes. In addition, Barclays Capital did not disclose that the purchase of the more expensive share classes would negatively impact the overall return on the Eligible Customers' investments, in light of the different fee structures for the different fund share classes. Barclays Capital sold its Wealth and Investment Management, Americas business ("WIMA," formerly known as Barclays Wealth Americas) in December 2015.

RESPONDENT

1. Barclays Capital, a registered broker-dealer, has its principal place of business in New York, New York. Barclays Capital has been registered with the Commission as a broker-dealer since June 1989 and, from September 2008 to December 2015, Barclays Capital also was registered with the Commission as an investment adviser. Barclays Capital is owned by Barclays Group U.S. Inc., a wholly-owned subsidiary of Barclays Bank PLC, a bank organized in England and Wales. Barclays Capital conducts a securities and commodities brokerage business, primarily for institutional clients. While it was a dually-registered broker-dealer and investment adviser, Barclays Capital's wealth management division – referred to as Wealth and Investment Management, Americas ("WIMA," formerly known as Barclays Wealth Americas) – provided high net worth and corporate clients with brokerage and investment management services. Barclays Capital provided advisory services for a fee generally based on a percentage of assets under management ("AUM") through several advisory programs, including separately managed account wrap fee programs.[1] As reported in Barclays Capital's Form ADV, as amended on December 15, 2015, Barclays Capital managed a total of approximately $12.8 billion in AUM for 2,045 discretionary accounts and 741 non-discretionary accounts. In December 2015, Barclays Capital sold WIMA. Barclays Capital filed its Form ADV-W to withdraw its registration as an investment adviser on December 28, 2015, and the withdrawal became effective the same day.

BARCLAYS CAPITAL MISREPRESENTED THE DUE DILIGENCE IT PERFORMED OF CERTAIN THIRD-PARTY MANAGERS IN ITS WRAP FEE PROGRAMS

Background

2. Barclays Capital served as adviser and fiduciary to its advisory clients in the wrap fee programs it sponsored and administered. Two Barclays Capital wrap fee programs are at issue here: the Select Advisors Program and the Accommodation Manager Program (the "Accommodation Program"). As discussed more fully below, these programs had different advisers and investment strategies associated with them.

3. From September 2010 through the fourth quarter of 2014, Barclays Capital charged a single inclusive wrap fee for each of these programs, which covered due diligence, investment advisory, custody, administrative and execution services. The wrap fee was a percentage of AUM, ranging from 0.32% to 1.75%, depending on the investment strategy.

[1] A wrap fee program is a program under which investment advisory and brokerage execution services are provided for a single, asset-based "wrapped" fee that is not based on the transactions in a client's account.

4. For certain periods between September 2010 and the fourth quarter of 2014, Barclays Capital represented to advisory clients that it was performing due diligence and monitoring of certain managers and strategies associated with these programs when it was not.

The Select Advisors Program

5. In September 2010, Barclays Capital launched the Select Advisors Program. In mid-2011, Select Advisors Program strategies had approximately $5.6 billion in AUM and, in September 2014, approximately $6.9 billion in AUM.

6. With respect to the Select Advisors Program, Barclays Capital represented to its advisory clients that it identified and selected third-party managers it recommended to manage and invest Barclays Capital's clients' assets in specific investment strategies. Barclays Capital also represented that it performed ongoing monitoring of each strategy's performance, adherence to investment strategy, and ongoing monitoring of any material business changes at each third-party manager. Thus, Barclays Capital had represented to its clients that it would perform initial evaluations and continual monitoring of the third-party managers and their investment strategies. The third-party managers managed Barclays Capital's clients' assets in these strategies and acted as sub-advisers to those clients.

7. From September 2010 to the end of 2014, Barclays Capital represented in client agreements and in its Forms ADV, Part 2A (the "brochures") for the Select Advisors Program that Barclays Capital performed initial due diligence and ongoing monitoring of third-party managers it recommended to manage its clients' assets using specific investment strategies. The third-party managers managed Barclays Capital's advisory clients' assets using these strategies and acted as sub-advisers to those clients. The brochures stated that Barclays Capital used a variety of qualitative and quantitative factors to determine if a third-party manager met Barclays Capital's minimum standards for inclusion in the program. Beginning in September 2010, the brochure further stated that Barclays Capital would review managers and their respective investment strategies "on an ongoing basis based on various quantitative and qualitative factors, including performance, adherence to investment strategies and investment objectives, and material business changes, to determine whether they continue to remain suitable to be recommended to Barclays Wealth clients." The Select Advisors Program client agreement represented that Barclays Capital would perform "[i]nitial diligence and ongoing monitoring" of investment managers and investment strategies recommended to clients. Barclays Capital also represented in the brochures and client agreements that when it determined that an investment manager or strategy was no longer "suitable to be recommended," it would notify clients invested in that manager or strategy in writing and recommend a suitable replacement investment strategy. In March 2013 and March 2014, Barclays Capital updated the brochures, but the substance of the representations regarding due diligence and ongoing monitoring generally remained the same. In particular, the due diligence representations contained in the Select Advisors Program client agreements generally remained the same.

8. Barclays Capital internally classified third-party managers' strategies in the Select Advisors Program into tiers based upon the strength of Barclays Capital's conviction with respect to each strategy. The "Elite" tier was comprised primarily of strategies for which Barclays Capital had the highest conviction in terms of a strategy's ability to outperform market performance benchmarks. These strategies were to receive Barclays Capital's highest level of due diligence. The "Select" tier was comprised of fixed income and equity strategies that, in Barclays Capital's view, added potential value to clients by providing for efficiency and customization in investment portfolios, rather than outperformance of market benchmarks. Barclays Capital provided a less robust level of due diligence for the Select tier. The third tier, called "Quant Select," was comprised of equity strategies selected by Barclays Capital that were to be monitored on a quarterly basis using an algorithm that assigned a pass/fail score for each strategy based on historical performance.

9. In or around June 2011, Barclays Capital began marketing to prospective clients its manager research and selection practices that it purportedly applied to the Select Advisors Program. The marketing materials stated that Barclays Capital selected third-party managers using "a stringent due diligence process, where candidates are evaluated using both quantitative and qualitative criteria," and subjected them to ongoing due diligence.

The Accommodation Program

10. At the same time Barclays Capital launched the Select Advisors Program, it also launched the Accommodation Program. The Accommodation Program was a wrap fee program created primarily to allow advisory clients to maintain legacy investments in third-party managers and strategies that were not otherwise available on Barclays Capital's platform. For example, sales representatives (called "Investment Representatives" or "IRs") Barclays Capital recruited typically had existing clients who held legacy investments with third-party managers and strategies that were not otherwise included on Barclays Capital's platform. These investments could be transferred to the Accommodation Program. In mid-2011, the Accommodation Program strategies had approximately $621 million in AUM and, in September 2014, approximately $363 million in AUM.

11. From September 2010 to May 2011, the Accommodation Program client agreement and brochure stated that Barclays Capital performed no due diligence on the Accommodation Program strategies and did not recommend or assist clients in selecting such strategies.

12. In May 2011, Barclays Capital added to the Accommodation Program platform approximately twenty investment strategies managed by a certain third-party manager ("Manager A") pursuant to a pre-existing agreement between Manager A and Barclays Capital. These strategies either were too customized or did not meet Barclays Capital's due diligence criteria in other respects to be included in the Select Advisors Program.

13. Also in May 2011 and July 2011, Barclays Capital amended both its Accommodation Program brochure and client agreements, respectively, to state that it would

provide some ongoing due diligence and monitoring of Accommodation Program strategies. The amended brochure stated that WIMA would provide only "limited ongoing due diligence and monitoring" of strategies offered through the Accommodation Program. The amended brochure and client agreement continued to state that Barclays Capital did not recommend or assist clients in selecting such strategies. In May 2011, Barclays Capital determined to move certain Manager A strategies to the Accommodation Program platform and sent client agreement addendums to certain clients invested in Manager A strategies. Those client agreement addendums stated that WIMA would provide "…ongoing monitoring of 1) the organizational structure, management and reputation of [Manager A] and 2) the composite performance of the Strategies compared to the relevant benchmark and peer group . . . [and] will offer consultation services with regard to the retention and termination of [the] strategies … . [Y]ou assume sole responsibility for the continuing retention and termination decisions for those … strategies."

14. In March 2013, Barclays Capital revised the Accommodation Program brochure again, stating that "Barclays' services under the Program do not include any monitoring of [Accommodation Program managers or strategies]." In December 2013, Barclays Capital began providing clients opening new accounts with a "terms booklet" supplement containing program-specific disclosures. The Accommodation Program supplement stated that Barclays Capital performed a "limited review" of Accommodation Program managers.

Barclays Capital Failed to Perform Certain Due Diligence It Promised to Its Clients

15. Barclays Capital's Manager Research and Selection group ("MRS") generally was responsible for manager research, due diligence and monitoring.

16. Barclays Capital's Managed Solutions group generally was responsible for maintaining Barclays Capital's third-party manager platform, which included communicating changes in MRS's research status of third-party managers to Barclays Capital's sales force. Managed Solutions also responded to requests by Barclays Capital's IRs for exception to Barclays Capital's policy concerning adding new investments to the Accommodation Program strategies.

17. In September 2010, Barclays Capital permitted several Quant Select strategies that did not fully meet the minimum quantitative criteria for selection to nevertheless be offered through the Select Advisors Program. From 2011 through 2014, Barclays Capital continually understaffed and under-resourced MRS. Although MRS employed five staff members dedicated to due diligence for the wrap fee programs when the programs were launched, beginning shortly thereafter the number of staff members within MRS dedicated to due diligence for the wrap fee programs dropped to only three to four staff members and, at times, operated with only two staff members.

18. Beginning in 2011 and continuing through 2014, the head of MRS repeatedly requested (with limited success) that WIMA senior management provide resources to address staff attrition in his group, including exempting MRS from a hiring freeze. Although the head of MRS communicated the need for resources to WIMA senior management, he initially did not

specifically complain to them that resource issues were creating constraints on his team's ability to perform due diligence, nor did WIMA senior management appreciate that this was the case.

19. During a compliance review in early 2014, the head of MRS expressed concerns to compliance personnel that resource constraints threatened to impact MRS's ability to conduct due diligence. Compliance personnel noted this issue in a report, drafts of which were circulated to WIMA senior management during the first quarter of 2014, and which was finalized in June 2014. But no new resources or staffing were provided to MRS until late 2014, after certain due diligence failures that had already occurred came to the attention of the head of Managed Solutions and WIMA senior management. Thus, before late 2014, Barclays Capital failed to allocate adequate resources to support the due diligence services it promised to its advisory clients.

20. Beginning in 2011, and because of the serious resource constraints it faced, the head of MRS began to prioritize the group's due diligence efforts on third-party managers and strategies that managed the most advisory client assets. These were the Elite strategies, which were steadily growing in AUM over the relevant time period, and which were the most resource-intensive strategies from a due diligence perspective.

21. Specifically, from September 2010 to September 2014, the amount of client assets invested in the Select Advisors Program's Elite strategies increased steadily from approximately $3.1 billion in AUM in mid-2011 to approximately $5.2 billion in AUM in the third quarter of 2014. Meanwhile, the amount of client assets invested in other strategies in the wrap fee programs — specifically in the Select, Quant Select, and Accommodation Program strategies—dropped. For example, over the same period, AUM invested in Select strategies fell from approximately $2.5 billion to $1.8 billion (or, approximately 24% of the total AUM in both wrap fee programs). Similarly, AUM invested in Quant Select strategies fell from approximately $148 million to $35 million (0.5% of the total AUM in both wrap fee programs). AUM invested in Accommodation Program strategies also fell from approximately $621 million to $363 million.

22. As MRS dedicated its limited resources to Elite due diligence, the group fell behind in its ongoing monitoring (*i.e.*, on-site visits to managers, quarterly reviews and periodic write-ups) of certain Select managers and of a small number of highly customized strategies classified as Elite. And, in early 2012, MRS stopped performing ongoing due diligence of Quant Select managers due to resource issues. For this reason, as time went on, the gaps in MRS's due diligence widened.

23. Thus, from September 2010 to December 2014, Barclays Capital falsely represented in its client agreements, brochures, and marketing materials that it was performing initial due diligence and ongoing monitoring of all third-party managers and their respective investment strategies in the Select Advisors Program, when, in fact, it was failing to do so with respect to certain strategies designated as Select, Quant Select, and a small number of highly customized Elite strategies.

24. Further, between May 2011 and March 2013, Barclays Capital performed no due diligence or ongoing monitoring on Accommodation Program strategies. In fact, neither MRS nor the Managed Solutions group understood that it had any responsibility for the Accommodation Program due diligence. As a result of a lack of communication between the MRS and Managed Solutions groups, and due to personnel changes, the Accommodation Program due diligence failures went undiscovered and undisclosed until March 2013. Thus, from May 2011 to March 2013, Barclays Capital failed to perform any limited ongoing due diligence and monitoring that it promised in the Accommodation Program brochures and amended client agreements.[2]

25. In March 2013, in connection with the annual filing of its Form ADV, Barclays Capital revised the Accommodation Program brochure to remove the reference to Barclays Capital performing limited ongoing due diligence and monitoring of Accommodation Program strategies. However, Barclays Capital did not investigate whether due diligence failures had occurred with respect to the Accommodation Program between May 2011 and March 2013, and if so, whether advisory clients invested in Accommodation Program strategies were entitled to a reimbursement of fees for services that had not been provided.

26. From 2010 through 2014, Barclays Capital retained approximately $37,063,662 in advisory fees from accounts invested in certain Select and Quant Select strategies, and approximately $149,643 in advisory fees from accounts invested in highly customized Elite strategies for which Barclays Capital failed to perform the due diligence and ongoing monitoring it promised clients. From September 2010 to May 2011, Barclays Capital retained approximately $1,861,665 in advisory fees from clients invested in Manager A strategies migrated to the Accommodation Program that did not receive due diligence or monitoring, contrary to disclosures to advisory clients. Similarly, from May 2011 through March 2013, Barclays Capital retained approximately $8,904,301 in advisory fees from accounts in the Accommodation Program for which Barclays Capital failed to perform the limited ongoing due diligence it had promised clients. In addition, certain of the Select and Quant Select strategies that Barclays Capital was not monitoring underperformed market benchmarks, resulting in underperformance of benchmarks by approximately $3,393,964.

[2] Before launching the Accommodation Program in September 2010, Barclays Capital represented in certain legacy client agreements that it would perform "initial diligence and ongoing monitoring." From September 2010 to May 2011, Barclays Capital also did not monitor those investment strategies and, during that period, retained approximately $1,861,665 in fees from 289 client accounts for monitoring services that it did not perform. In May 2011, accounts invested in these investment strategies were migrated to the Accommodation Program.

BARCLAYS CAPITAL'S FORMS ADV FILED WITH THE COMMISSION CONTAINED MATERIAL MISSTATEMENTS

27. Barclays Capital violated Section 207 of the Advisers Act when it filed its Forms ADV, Part 2A, Appendix 1 wrap fee brochures for the Select Advisors Program, dated September 24, 2010, March 31, 2011, March 30, 2012, March 31, 2013 and March 31, 2014, and for the Accommodation Program, dated May 26, 2011 and March 30, 2012. These brochures contained materially false information with respect to Barclays Capital's due diligence practices. The brochures misrepresented the due diligence and monitoring that Barclays Capital was performing on certain third-party managers in the Select Advisors and the Accommodation Programs. Contrary to the information in these filings, ongoing monitoring had decreased or ceased on certain Select managers during 2011 and on all Quant Select managers by early 2012. Between May 2011 and March 2013, there was no limited ongoing due diligence or monitoring of Accommodation Program managers.

BARCLAYS CAPITAL CHARGED FEES IN EXCESS OF ITS EXPRESS REPRESENTATIONS TO CERTAIN ADVISORY CLIENTS

28. Between January 2011 and March 2015, Barclays Capital charged fees and received revenues that were inconsistent with what it disclosed to its advisory clients. For example, as of December 2013, Barclays Capital stated in the terms booklets, which were incorporated into client investment advisory agreements, that it would use its valuation policies to value assets "in a way we reasonably decide reflects fair market value." Barclays Capital also represented between 2013 and March 2015 that it would calculate its investment advisory fee based upon the average of the three month-end values of each account's assets in the billing quarter. During the period between January 2011 and March 2015, Barclays Capital charged 22,138 advisory accounts amounts in excess of the fees it disclosed that clients would be charged for investment advisory services, resulting in approximately $2,015,451 in excess fees.

29. These overcharges occurred for several reasons. First, Barclays Capital had inadequate controls around valuation of advisory client assets, leading to, in some cases, stale prices for securities, or overpriced securities. As a result, Barclays Capital used inaccurate and, in some cases, inflated market values to calculate its advisory fees for certain client accounts.

30. Second, Barclays Capital used multiple disparate data and account management systems and relied, to a large degree, on manual processes and manual workarounds for specific processes, which led to human error, and incorrect calculations and reconciliations regarding certain advisory client fees and billing. Furthermore, there was a lack of communication across teams involved in distinct parts of the fees and billing cycle. In addition, from January 2011 to September 2014, Barclays Capital did not notify a small number of advisory clients that it had changed its advisory fee calculation methodology for quarterly advisory fees to be based on the actual number of days in the quarter over the actual number of days in the year. This resulted, in some cases, in

overcharges for specific quarters due to billing their accounts in a manner inconsistent with the disclosed fee calculation methodology.

31. Third, Barclays Capital lacked appropriate oversight over its account management and billing operations. In November 2014, Barclays Capital contracted with a new third-party clearing agent. But a lack of integration between Barclays Capital's systems and the clearing agent's systems resulted in overbilling of advisory fees to certain client accounts during the fourth quarter of 2014 and the first quarter of 2015.

BARCLAYS CAPITAL FAILED TO ADOPT AND IMPLEMENT WRITTEN POLICIES AND PROCEDURES FOR ITS ADVISORY BUSINESS THAT WERE REASONABLY DESIGNED TO PREVENT VIOLATIONS OF THE ADVISERS ACT AND ITS RULES

32. Barclays Capital failed to comply with the requirement in Rule 206(4)-7 under the Advisers Act that every Commission-registered investment adviser adopt and implement written policies and procedures reasonably designed to prevent violations, by the adviser and its supervised persons, of the Advisers Act and the rules thereunder. Specifically, from September 2010 to approximately February 2013, Barclays Capital failed to adopt written policies and procedures reasonably designed to ensure that its due diligence disclosures accurately reflected its actual practices. And, from approximately February 2013 to the end of December 2014, Barclays Capital failed to effectively implement the policies and procedures it had established for this purpose.

33. From September 2010 to approximately June 2013, Barclays Capital had no policies or procedures in place to ensure that its representations to wrap fee clients accurately described its manager research and due diligence function. In June 2013, Barclays Capital established a committee that included members of the legal and compliance groups along with representatives from MRS and Managed Solutions. One of the duties of the committee was to approve or reject the "buy," "sell," "hold," and "watch" ratings recommended by MRS based on its due diligence and ongoing monitoring of third-party managers and strategies. In practice, however, the committee failed to provide an effective control over the due diligence function. The committee did not address Barclays Capital's longstanding due diligence failures in the wrap fee programs until November 2014. None of the committee members who knew about the due diligence problems in August 2014 (and who also were aware of the earlier problems with Accommodation due diligence from March 2013, which pre-dated the committee's existence) presented the due diligence failures to the committee until November 2014.

34. Although Barclays Capital launched the Select Advisors and Accommodation Programs in September 2010, Barclays Capital did not have in place written policies and procedures to ensure the accuracy of due diligence disclosures in its wrap fee brochures until approximately February 2013. At or around that time, Barclays Capital implemented a written policy for the process of preparing and reviewing regulatory filings, and established a working group to determine whether the firm's regulatory filings, including its wrap fee brochures, reflected current business

practices. Notwithstanding the existence of this working group, the description of due diligence practices in Barclays Capital's brochures for the Select Advisors and the Accommodation Programs did not accurately reflect Barclays Capital's actual due diligence practices.

35. Similarly, from approximately June 2011 to December 2014, Barclays Capital's marketing review procedures were inadequate to ensure that marketing materials used with prospective clients accurately reflected due diligence practices.

36. As a result of these compliance failures, at various times from approximately September 2010 to December 2014, Barclays Capital's brochures, client agreements, and marketing materials materially misrepresented its due diligence practices. Barclays Capital also failed to adopt and implement adequate written policies designed to ensure that clients were billed advisory fees that were calculated in compliance with representations in client agreements, resulting in the overbilling of clients.

BARCLAYS CAPITAL FAILED TO DISCLOSE MATERIAL FACTS WHEN RECOMMENDING CLASS A, CLASS C, AND CERTAIN CLASS R MUTUAL FUND SHARES TO ELIGIBLE CUSTOMERS

37. Mutual funds often offer different fund share classes that each represent a common interest in an investment portfolio, but differ in the amount and types of sales charges and fees a fund investor may incur. For funds that have sales charges or sales "loads," the timing and amount of sales loads typically vary between share classes. These sales charges are normally assessed as a percentage of an investor's investment. For example, Class A shares often are subject to an up-front sales charge in addition to ongoing marketing and distribution fees, known as Rule 12b-1 fees. Class C shares often do not have an up-front sales charge, but have higher Rule 12b-1 fees. Class R shares have no up-front sales charges but may have sub-classes with Rule 12b-1 fees greater than, equal to or less than those of Class A shares.

38. Many mutual funds provide sales-load waivers for Class A shares to qualified retirement and charitable accounts. Such waivers are important to investors because they allow investors to buy shares at the fund's current net asset value. Even when not eligible to purchase load-waived Class A shares, qualified retirement customers may be eligible to purchase Class R shares. Eligibility requirements for load-waived Class A shares and Class R shares are disclosed in the prospectus and statement of additional information for each relevant fund.

39. The sales charges and fees associated with different share classes affect mutual fund shareholders' returns. A mutual fund investor eligible for a sales charge waiver in Class A shares will likely obtain a higher return by investing in Class A shares than incurring the ongoing sales-related costs associated with Class C shares in the same fund. However, in the absence of a sales charge waiver, the investor may be better off investing in Class R shares (if eligible) rather than Class A or Class C shares because of the impact of the sales charge in Class A shares on the return and the lower ongoing fees and expenses associated with certain Class R shares.

40. Sales charges and fees associated with different share classes also affect a broker-dealer's revenue earned from selling mutual fund shares. Broker-dealers typically retain all or a portion of the sales charges and Rule 12b-1 fees charged to their customers. For example, broker-dealers generally receive higher ongoing fees when their customers hold Class C shares as compared to Class A or Class R shares. Broker-dealers therefore may earn more compensation when recommending a share class to customers if the customer's purchase of that share class will increase a broker-dealer's revenue when compared to another share class in the same fund that the broker-dealer could recommend to the customer.

41. Between January 2010 and December 2015, Barclays Capital did not have adequate systems or processes to ensure that certain mutual fund clients received fee waivers or less expensive share classes for which they were eligible. As a result, Barclays Capital failed to provide available sales charge waivers in at least 144 transactions involving 56 Eligible Customer accounts. These were transactions in which Eligible Customers could have purchased load-waived Class A shares, but Barclays Capital recommended and sold them Class A shares with an up-front sales charge or Class C shares with a back-end contingent deferred sales charge ("CDSC") (a deferred sales charge the purchaser pays if the purchaser sells the shares during a specified time period following the purchase) and higher ongoing fees and expenses than the load-waived Class A shares. In addition, Barclays Capital failed to provide Eligible Customers the opportunity to purchase Class R shares in at least 53 transactions in 19 accounts, resulting in the Eligible Customers instead purchasing Class A shares with an up-front sales charge or Class C shares with a CDSC and higher ongoing fees and expenses. In connection with all of these recommendations, Barclays Capital failed to disclose to the Eligible Customers its conflict of interest in that it would earn more revenue from customer purchases of Class A shares with an up-front sales charge or Class C shares with a CDSC and higher ongoing expenses as compared to load-waived Class A shares and no-load Class R shares for which the customers were eligible. Barclays Capital also failed to disclose to the Eligible Customers that their purchases of the more expensive shares would negatively impact the customers' overall investment returns. In the context of multiple-share-class mutual funds, in which the only reason for the differences in rate of return among classes is the cost structures of investments in the different classes, information about this cost structure would accordingly be important to a reasonable investor. The sale of the more expensive share class resulted in a total of approximately $110,000 in customer harm across 63 brokerage customer accounts.

Violations

42. As a result of the conduct described above, Barclays Capital willfully[3] violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon a client or prospective client.

43. As a result of the conduct described above, Barclays Capital willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require, among other things, that a registered investment adviser adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder by the adviser and its supervised persons.

44. As a result of the conduct described above, Barclays Capital willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

45. As a result of the conduct described above, Barclays Capital willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit any person in the offer or sale of securities from obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make statements made not misleading, and from engaging in any practice or course of business which operates or would operate as a fraud or deceit in the offer or sale of securities, respectively. Barclays Capital failed to disclose to Eligible Customers its conflict of interest in that Barclays Capital would earn greater compensation in recommending Class A shares with an up-front sales charge or Class C shares with a CDSC and higher ongoing fees and expenses, or certain sub-classes of Class R shares, because those share classes would generate additional revenue for Barclays Capital compared to other share classes available to Eligible Customers. Barclays Capital also failed to disclose to the Eligible Customers that the purchase of these more expensive shares would negatively impact the customers' overall investment returns, in light of the different fee structures for the different fund share classes. As a result of these disclosure violations, Eligible Customers incurred up-front sales charges, CDSCs, and higher ongoing fees and expenses, and Barclays Capital received additional revenue.

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[3] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

Barclays Capital's Cooperation

46. In determining to accept the Offer, the Commission considered cooperation afforded the Commission staff.

Undertakings

47. Barclays Capital, within the time frames discussed below, undertakes to make a payment of approximately $3,504,285 (the "Remediation"), which represents (i) underperformance incurred by advisory clients who invested in certain Select and Quant Select strategies that underperformed market benchmarks; and (ii) up-front sales charges in Class A shares that were available to certain Eligible Customers on a load-waived basis and excess Rule 12b-1 fees and CDSCs charged on Class C shares when certain Eligible Customers could have purchased load-waived Class A shares or no-load Class R shares. Barclays Capital will also pay reasonable interest on the Remediation, calculated at the Federal Short-Term rate, from the date the underperformance, mutual fund sales charges or excess Rule 12b-1 fees and/or CDSCs were incurred through the estimated date of payment. Barclays Capital will be responsible for administering the payment of the Remediation to the affected advisory clients and brokerage customers.

48. Barclays Capital undertakes to:

i. Deposit the estimated amount of the Remediation into a segregated account such as a separate bank account (the "Remediation Account") within 10 days of the entry of the Order and provide the Commission staff with evidence of such deposit in a form acceptable to Commission staff;

ii. Submit to the Commission staff for its approval, within 90 days of the date of entry of the Order, a disbursement calculation (the "Remediation Calculation") that identifies: (a) each client or former client who will receive a portion of the Remediation, (b) the exact amount of that payment as to each client or former client, and (c) the methodology used to determine the exact amount of that payment as to each client or former client;

iii. Use best efforts to complete payment to all affected clients or former clients within 120 days of the staff's approval of the Remediation Calculation; and

iv. Within 150 days after Barclays Capital has completed the disbursement of all amounts payable to affected clients and former clients, Barclays Capital will submit to the Commission staff a final accounting and certification of the disposition of the Remediation, which final accounting and certification will be in a format to be provided by the Commission staff. The final accounting and certification will include, but not be limited to: (1) the amount paid to each payee; (2) the date of each payment; (3) the check number or other identifier of money transferred or proof of payment made; (4) the date and amount of any returned payment; (5) a description of any effort to locate a prospective payee whose payment was returned, or to whom payment was not made for any reason; and (6) an affirmation that Barclays Capital has made payments to all affected clients and former clients in accordance with the Remediation Calculation approved by the Commission staff and the terms and conditions set forth above. Any and all supporting documentation for the accounting and certification will be provided to the Commission staff upon request. Barclays Capital will cooperate with any reasonable requests by the Commission staff for information in connection with the accounting and certification.

49. Barclays Capital agrees to be responsible for all of Barclays Capital's tax compliance responsibilities associated with the Remediation and will retain any professional services necessary. The costs and expenses of any such professional services will be borne by Barclays Capital, and the payment of taxes applicable to the Remediation, if any, will not be paid out of Remediation funds.

50. Commission staff may extend any of the Remediation procedural dates set forth above for good cause shown. Deadlines for dates relating to the Remediation shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

51. In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Barclays Capital's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Section 15(b) of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Barclays Capital cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, and Sections 206(2), 206(4) and 207 of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. Respondent Barclays Capital be censured.

C. Respondent Barclays Capital shall pay disgorgement, prejudgment interest, and a civil monetary penalty totaling $93,537,659 as follows:

1. Respondent Barclays Capital shall pay disgorgement of $49,785,417, and prejudgment interest of $13,752,242, consistent with the provisions of this Subsection C.[4]

2. Respondent Barclays Capital shall pay a civil monetary penalty in the amount of $30,000,000, consistent with the provisions of this Subsection C.

3. Within ten (10) days of the entry of this Order, Respondent shall deposit $93,537,659 (the "Distribution Fund") into an escrow account acceptable to the Commission staff and shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely deposit of the Distribution Fund is not made by the required payment date, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] or 31 U.S.C. § 3717.

4. Respondent shall be responsible for administering the Distribution Fund and may hire a professional to assist it in the administration of the distribution. Respondent shall distribute to former advisory clients an amount representing (i) advisory fees paid to Barclays Capital by the advisory clients who were invested in strategies that did not receive due diligence or ongoing monitoring during the relevant time period; (ii) overcharges to advisory clients resulting from fee and billing errors; and (iii) reasonable interest thereon, calculated at the Federal Short-Term rate. Interest shall be calculated from the date the client paid the fees that are represented in the distribution and/or the date of the fee overcharges through the estimated date of the distribution. The distributions shall be made pursuant to a disbursement calculation (the "Distribution Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. Such calculation shall be subject to a *de minimis* threshold, as described in paragraph 5, below.

5. Within ninety (90) days of the entry of this Order, Respondent shall submit a proposed Distribution Calculation to the staff for review and approval. The proposed calculation will identify, at a minimum: (i) the name of each

[4] Approximately $263,174 of the due diligence-related disgorgement and prejudgment interest is duplicative with the fees and billing-related disgorgement and prejudgment interest. This amount will be deducted from the due diligence disgorgement and interest and paid out to clients through the fees and billing disgorgement and interest.

affected client or customer account; (ii) the exact amount of the payment to be made from the Distribution Fund to each affected client or customer account; and (iii) the amount of any *de minimis* threshold to be applied. At or around the time of submission of the proposed Distribution Calculation to the staff, Respondent, along with any third-parties or professionals retained by Respondent to assist in formulating the methodology for its Distribution Calculation and/or administration of the Distribution, shall make themselves available for a conference call with the Commission staff to explain the methodology used in preparing the proposed Distribution Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondent also shall provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for its review. In the event of one or more objections by the Commission staff to the proposed Distribution Calculation or any of its information or supporting documentation, Respondent shall submit a revised Distribution Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that Respondent is notified of the objection, which revised calculation shall be subject to all of the provisions of this Subsection C.

6. Respondent shall complete the disbursement of all amounts payable to affected client and customer accounts within one hundred and twenty (120) days of the date that the Commission staff approves the Distribution Calculation, unless such time period is extended, as provided in Paragraph 11 of this Subsection C.

7. If Respondent is unable to distribute or return any portion of the Distribution Fund for any reason, including an inability to locate an affected client or customer account or a beneficial owner in an affected account or any factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934 after the final accounting provided for in Paragraph 9 of this Subsection C is submitted to the Commission staff. Payment must be made in one of the following ways:

   (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Barclays Capital as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Valerie A. Szczepanik, Assistant Regional Director, New York Regional Office, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022, or such other person or address as the Commission staff may provide.

8. Respondent shall be responsible for any and all tax compliance responsibilities associated with the Distribution Fund and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Respondent, and shall not be paid out of the Distribution Fund.

9. Within 150 days after Respondent has completed the disbursement of all amounts payable to affected client and customer accounts, Respondent shall submit to the Commission staff a final accounting and certification of the disposition of the Distribution Fund, which final accounting and certification shall be in a format to be provided by the Commission staff. The final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee; (2) the date of each payment; (3) the check number or other identifier of money transferred or proof of payment made; (4) the date and amount of any returned payment; (5) a description of any effort to locate a prospective payee whose payment was returned, or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Distribution Fund to all affected clients, customers, former customers and former clients in accordance with the Distribution Calculation approved by

the Commission staff and the terms and conditions set forth above. Respondent shall submit proof and supporting documentation of such payment (whether in the form of electronic payments or cancelled checks) in a form acceptable to the Commission staff under a cover letter that identifies Barclays Capital Inc. as Respondent and the file number of these proceedings to Valerie A. Szczepanik, Assistant Regional Director, New York Regional Office, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022, or such other person or address as the Commission staff may provide. Barclays Capital shall cooperate with any additional requests by the Commission staff for information in connection with the accounting and certification.

10. After Respondent has submitted the final accounting to the Commission staff, the staff shall submit the final accounting to the Commission for approval and shall request Commission approval to send any undistributed amount to the United States Treasury.

11. The Distribution Fund will be eligible for termination, and any distribution agent eligible for discharge, after all of the following have occurred: (1) the final fund accounting has been submitted to and approved by the Commission; (2) all taxes, fees and expenses have been paid; and (3) all remaining funds have been paid to the Commission for transfer to the United States Treasury.

12. The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Distribution Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest described above for distribution to affected shareholder accounts. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in these proceedings. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in these proceedings.

By the Commission.

Brent J. Fields
Secretary