UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15737

In the Matter of

THOMAS C. GONNELLA,

Respondent.

POST-HEARING BRIEF OF THE DIVISION OF ENFORCEMENT

DIVISION OF ENFORCEMENT
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PRELIMINARY STATEMENT

Registered representative Thomas Gonnella put his own interests ahead of those of his former employer, Barclays Capital, Inc. ("Barclays"), by engaging in sham trades with over $29 million in esoteric bonds that cost the firm approximately $174,000. The Division's evidence showed that, in order to avoid charges to his trading book (and by extension, his bonus), Gonnella pre-arranged to sell and then quickly repurchase ten bonds at a higher price. Even when he wasn't able to repurchase one of these bonds right away, he made the other party to the trade whole by selling and repurchasing two additional bonds at favorable prices. And, he deceived Barclays by using his cell phone to avoid recorded lines and also by repeatedly lying to his supervisor, compliance personnel, and others at the firm about the trades.

At the hearing, Respondent did not establish any of the "key contradictions" between Ryan King's testimony and other evidence that Respondent alleged in his pre-hearing brief. (*See* Resp. Pre-Hearing Br. at 3.) Instead, it was Gonnella's testimony that was rife with inconsistencies and strained logic. Gonnella's failure to acknowledge his misconduct, coupled with his continued employment as a trader, underscores the need for appropriate relief.

EVIDENCE AT TRIAL

A. Gonnella's Background

Thomas Gonnella was employed as a registered representative with Barclays, a registered broker-dealer and investment adviser, from September 2008 through November 2011. (Answer ¶ 5.) Since February 2012, Gonnella has been a registered representative associated with another broker-dealer. (*Id.*) That broker-dealer placed Gonnella on leave in February 2014. (Gonnella Tr. 732:6-12). Gonnella holds Series 7 and 63 licenses. (Answer ¶ 5.)

B. Market Background

An asset-backed security ("ABS") is a fixed-income or other security collateralized by a discrete pool of self-liquidating financial assets that allows the holder of the security to receive monthly payments that depend primarily on the cashflows from those assets. *See* SEC Regulation AB, 17 C.F.R. § 229.1101(c)(1); (Agrawal Tr. 58:3-10.) An ABS market-maker is one who stands ready to buy and sell such securities for his or her own account to facilitate liquidity. *See In re Auction Houses Antitrust Litig.*, No. 00 Civ. 0648, 2001 WL 170792, at *10 n.49 (S.D.N.Y. Feb. 22, 2001).

Bayview Commercial Asset Trust ("BAYC" or "Bayview") issued, during 2004 and 2007, many of the ABS bonds relevant in this proceeding. (Miller Tr. 954:11-20.) The loans underlying these bonds varied, but consisted generally of real estate-secured small business loans as well as fixed- and adjustable-rate mortgage loans. (Agrawal Tr. 66:22-67:12; Miller Tr. 955:9-12.) Another relevant ABS bond is the CBAC 2005-1A A, which was issued by CBA Trust in 2005 and is comprised of small balance mortgage loans. (Agrawal Tr. 67:13-19; Miller Tr. 955:13-17.) The final two relevant bonds are the LBSBC 2005-2A M3, which was issued by Lehman Brothers in 2005 and is comprised of small balance commercial real estate loans, and the PALS 2001-1A A1, which was issued by the Pegasus Aviation Lease Securitization Trust in 2001 and is comprised of securitized aircraft leases. (Agrawal Tr. 67:20-68:10; Miller Tr. 955:18-956:2.) All the securities traded between Gonnella and King were tranches, *i.e.*, securitized portions with varying risk, and are not listed on an exchange, but traded over the counter. (Agrawal Tr. 68:11-15; Miller Tr. 954:24-955:8.)

All of the securities at issue in this case were esoteric, meaning that they were "among the most illiquid" ABS and that their structure and pricing were known to relatively few market

participants. (Miller Tr. 950:21-953:5 & 956:10-960:22.) The identity of market participants who traded BAYC, CBAC, PALS, or LBSBC bonds was not available publicly, nor was pricing information. (King Tr. 339:12-18; Miller Tr. 1156:5-1158:17.) Due to the illiquid nature of these bonds and the lack of price transparency, the bid-ask spread was not easily definable and was "relatively wide." (Div. Ex. 66 at 4; *see also* Miller Tr. 951:18-953:12 (providing as an example a $30 bid-ask spread on an esoteric bond offered at $65).)

In 2011, only approximately ten market participants traded Bayview bonds. (Gonnella Tr. 746:4-6.) Gonnella estimated that he was among the top three traders of these bonds. (*Id.* at 746:7-10.) When Gonnella began trading Bayview bonds with King in May 2011, he did not believe King was part of the small universe that traded these bonds, and, by October 2011, Gonnella still did not know whether King traded them outside of the roundtrip trades in which they had been engaging. (*Id.* at 763:13-17 & 622:24-623:18.)

In the second half of 2011, events such as the collapsing of the residential subprime market and fiscal problems in Italy and Greece triggered a sell-off that made the esoteric ABS market even more illiquid and caused the prices of esoteric ABS to drop throughout the year. (Miller Tr. 956:10-958:17.)

C. Gonnella's Responsibilities at Barclays

In 2011, Gonnella was the head trader on the esoteric ABS desk at Barclays, which was a market-making desk. (Answer ¶ 7; Gonnella Tr. 679:18-25; Miller Tr. at 933:5-9.) Gonnella was entrusted by Barclays to invest up to $300 million of the firm's capital. (Answer ¶ 7.) Of that $300 million limit, Gonnella's trading portfolio in 2011 had a total market value between $200 million and $250 million. (Answer ¶ 5; Gonnella Tr. 1376:12-13; Miller Tr. 935:7-11 & 988:19-25.) Therefore, in 2011, Gonnella had $50 to $100 million in unused, available capital.

Barclays authorized Gonnella to make trading decisions on its behalf. (Miller Tr. 934:17-20.) Gonnella's delegated authority, however, was not unfettered. Gonnella was only authorized to execute trades that were in the firm's best interests and that complied with its policies and procedures. (Miller Tr. 936:19-937:7; Giglio Tr. 1188:24-1189:24; Gonnella Tr. 488:10-22.)

Gonnella traded approximately 4 times on an average day.[1] Assuming he made each trade separately, that amounts to approximately one trade every 2.5 hours. (Gonnella Tr. 906:25-907:4.)

The bulk of Gonnella's expected compensation for 2011 was a bonus, to be based in part on the profitability of his trading book, feedback from customers, and his ability to manage risk in his trading book. (Answer ¶ 7; Miller Tr. 939:16-942:13.) Gonnella's bonus in 2009 was $365,000, and his bonus in 2010 was $900,000. (Div. Ex. 9 & 10.)

D. Barclays's Aged Inventory Policy and Certain of Its Other Policies

Barclays had a "Securitized Products Aged Inventory Policy" that penalized its market makers if they held their positions for too long. (Div. Ex. 1.) This policy, according to Gonnella's supervisor, Matthew Miller, served as a "risk management tool" to ensure that market makers were not engaging in long-term proprietary trading strategies that were inconsistent with firm objectives and pending regulations, and to ensure that a traders' valuation for a position reflected the prevailing market price at which he actually could buy or sell. (Miller Tr. 962:6-965:12; Gonnella Tr. 795:9-16 (supervisors told market makers such as Gonnella, "[y]ou're not

[1] There are 613 business days from June 1, 2009 to November 7, 2011, which is when Gonnella traded esoteric ABS at Barclays. (Gonnella Tr. 707:3-7 & 770:4-6.) Assuming Gonnella took three weeks of vacation per year, he worked 568 days during that period. Also during that period, he made 2,372 trades. (Div. Ex. 11-A at rows 357-2728).) These 2,372 trades divided by 568 workdays equals 4.2 trades per day. Under Rule of Practice 323, the Court may take official notice of Appendix B, which contains the calculation of business days during this period. *See* Fed. R. Evidence 201(b); *see also Horn v. Duke Homes*, 755 F.2d 599, 607 n.14 (7th Cir. 1985) ("[w]e can take judicial notice that exactly 735 calendar days elapsed").

supposed to hold your bonds for all that long" because "Barclays is in the moving business, not [the] storage business").) As to the latter purpose, the failure to accurately value a position could expose Barclays to a hidden loss and cause it to violate regulations governing valuation. (Miller Tr. 964:3-15.)

Under Barclays's Aged Inventory Policy, traders who held a security past a certain date would incur a charge to the profit and loss of their trading book. (Answer ¶ 8; Div. Ex. 1.) Charges accrued until Gonnella held a position for seven months or more, when they generally became non-refundable. (Answer ¶ 8; Div. Ex. 1.) Every month, Gonnella received a copy of the Aged Inventory Policy and a schedule informing him of the non-refundable charges his trading book would incur at the end of the month, and it was Gonnella's practice to review that schedule. (Answer ¶ 9; Div. Ex. 18, 19, 24, 26, 34 & 44.)

Barclays also had policies concerning prohibited market practices. (Div. Ex. 2-6.) Gonnella had access to these policies on the firm's intranet, and he certified annually that he had complied with them. (Gonnella Tr. 488:10-490:16; Giglio Tr. 1186:4-17 & 1248:5-1251:21.) In 2010, Gonnella certified that he "read, and to the best of [his] belief, [] complied with all of the firm's Compliance policies that are relevant to [his] business activities," (Div. Ex. 8 at BARC00006801), which included the following:

- Parking or Pre-Arranged Trading. Barclays's policies stated, "Participating in or facilitating parking or pre-arranged trades is prohibited." (Div. Ex. 2 at 6; Div. Ex. 4 at 5; Giglio Tr. 1206:22-25.) Barclays also prohibited its traders from representing to a customer that the firm will repurchase securities as an inducement to that customer. (Div. Ex. 2 at 8.) In a compliance training conducted on or about November 8, 2011, traders were instructed, "It is strictly prohibited for an individual to avoid [the Aged Inventory Policy] by selling a security to a client with an agreement to repurchase later." (Div. Ex. 63 at BARC0002656.) Barclays provided similar guidance in prior annual compliance meetings. (Giglio Tr. 1240:15-25.) Gonnella attended both the 2011 annual compliance training and previous ones. (Gonnella Tr. 490:11-16.)

- Sharing Losses. Barclays advised its traders that "[n]o customer shall be guaranteed against loss in any securities transaction" and [a]n employee must receive approval from the Legal and Compliance departments prior to reimbursing any customer for any loss...." (Div. Ex. 4 at 3, Div. Ex. 2 at 5; Giglio Tr. 1206:11-21.)

- Personal Cell Phone Usage. Barclays prohibited traders from using personal cell phones to conduct trades. (Div. Ex. 63 at BARC0002664; Giglio Tr. 1234:2-1235:25.)

When Gonnella traded with King, he knew all of these policies. (Gonnella Tr. 493:4-23; 496:15-25; 588:11-18 & 696:8-14.)

E. Gleacher and Ryan King

Gleacher & Co. Securities, Inc. ("Gleacher") was a small regional broker-dealer. (King Tr. 187:6-188:18.) From February 2009 until his termination in December 2011, Ryan King was an ABS trader at Gleacher specializing in consumer ABS such as auto loan, student loan, and credit card securitizations. (King Tr. 188:2-18.) The only times King traded esoteric ABS such as BAYC, CBAC, PALS, or LBSBC bonds were with Gonnella. (King Tr. 209:12-14 & 243:9-244:22.) He was not familiar with these types of esoteric bonds, and he did not have access to the identity of active market participants or pricing information. (King Tr. 212:11-214:19 & 243:9-245:7.) At a large broker-dealer such as Barclays, this information could be obtained through its substantial sales force or from customers who knew that Barclays was a ready buyer and seller of these bonds given the large amount of capital it allocated to its market makers. (King Tr. 195:7-198:7; Miller Tr. 1156:5-1158:17.) Gleacher, by contrast, had a much smaller workforce and a much smaller amount of available capital. (King Tr. 187:18-24.) To deal with the lack of information available to him at a smaller broker-dealer, King worked to cultivate relationships with traders at larger firms so that they would share information with him and also possibly allow him to "work a bond," which he described as the opportunity to attempt to sell a bond that they held in their inventory. (King Tr. 196:16-198:7 & 225:18-226:19.)

Given his lack of familiarity with the esoteric ABS market, which he perceived as illiquid, King did not at any time have any interest in purchasing BAYC, CBAC, PALS, or LBSBC bonds outright and did not believe he could have sold them in the market. (King Tr. 244:16-245:11 & 248:6-11).

F. Pre-Arranged Trades at May Month-End 2011

At the end of May 2011, Gonnella engaged in pre-arranged trades with King for the "sole purpose" of avoiding non-refundable aged inventory charges on two BAYC bonds. (Div. Ex. 66 at 7 & 70 Part 3.) On May 31, 2011, Gonnella wrote to King in a Bloomberg chat, "[I] have 4 small bonds that i'm looking to turnover today for good ol' month end/aging purposes ... i like these bonds ... and would more than likely have a higher bid for these later this wk when the calendar turns ...." (Answer ¶ 11; Div. Ex. 20.) According to Gonnella, at the time he "liked these bonds" and thought they "will potentially go up in value," but he wanted to avoid the non-refundable charges that he would incur under Barclays's Aged Inventory Policy. (Gonnella Tr. 497:16-498:4; Div. Ex. 66 at 7; Div. Ex. 200 at 15:3-14.) This charge would have been applied to the profit and loss of Gonnella's trading book, which was one of the factors that determined his yearly bonus. (Miller Tr. 940:12-941:8 & 967:21-968:4.) Based on Gonnella's offer, King was "[i]ncredibly sure" that Gonnella would repurchase the bonds he offered, "didn't have a doubt" he would do so within a few days, and was "100 percent certain" that the repurchase price would be higher than the price Gleacher paid for the bonds. (King Tr. 222:16-223:2.)

Both Gonnella and King knew that their firms could monitor their Bloomberg chats and messages and their work phone lines; therefore, King understood the qualifier "more than likely" as necessary "coded language" that Gonnella had used "to avoid the appearance that this was a

predetermined trade or a roundtrip trade when, in fact, it was." (King Tr. 220:14-221:18 & 257:10-19; Gonnella Tr. 502:7-20.)

Although he knew it was illegal, King agreed to the roundtrip trades because, given his role in the market relative to traders at larger firms such as Barclays, "it's not a request that you want to turn down lightly" and also because he understood that Gonnella would "buy it back from [Gleacher] in such a short amount of time to where there's no market risk...." (King Tr. 233:3-235:5; *accord* Miller Tr. 997:20-998:5 ("from Gleacher's point of view, the actual dollar price would not have mattered, because there was no real transfer of risk").)

In May 2011, King did not have authority to trade the esoteric bonds Gonnella offered. (King Tr. 213:3-7.) After consulting with the Gleacher trader who did, King agreed to buy pursuant to that trader's instruction two of the BAYC bonds Gonnella had offered. (Answer ¶ 13; Div. Ex. 23; Div. Ex. 15.) King understood that, based on his arrangement with Gonnella, Gleacher was not free to sell these bonds to a third party. (King Tr. 224:16-25.)

The same day, Gonnella's supervisor, Matthew Miller, sent Gonnella an email instructing him to reduce his book's exposure to small-loan ABS. (Div. Ex. 69; Miller Tr. 971:10-972:22.) Throughout the day, Gonnella updated Miller on his sales of bonds.[2] (Div. Ex. 69 & 11-A.)

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[2] At the hearing, Gonnella claimed that the May month-end roundtrip trades were not pre-arranged because trades he did shortly after the sales of the Bayview bonds motivated him to repurchase them; however, Gonnella did no such trades. (Gonnella Tr. 616:11-617:17 & 1337:22-1340:12.) Gonnella updated Miller on the sale of the PALS 01-1A A3 bond at 11:16 a.m., the GTP 07-A F bond at 11:33 a.m., the SBAC 4.254 04/15 bond at 1:28 p.m, and the two Bayview bonds at 3:02 p.m. (Div. Ex. 69.) Although he did not mention the PALS bond by name, he referenced its market value of $2.55 million. (*Id.*) This market value, or current face amount, is determined by multiplying the original face amount by the "factor" by the price divided by 100. (Div. Ex. 400 at 3; Agrawal Tr. 75:24-79:10; Gonnella Tr. 1342:21-1343:10.) Attached as Appendix C is publicly available Bloomberg market data, including the factor for May 2011, for the PALS bond. Under Rule 323, the Court may take official notice of the May 2011 factor. *See Ganino v. Citizens Utilities Co.*, 228 F.3d 154, 167 n.8 (2d Cir. 2000); *In re Acterna Corp. Sec. Litig.*, 378 F. Supp. 2d 561, 572 (D. Md. 2005) (summarizing cases that have

Then, at 3:02 p.m. – one minute after he sold the bonds to Gleacher – Gonnella emailed Miller to inform him that he "[s]old 2 more bonds (BAYC subs)" as instructed. (Div. Ex. 23 & 69.) Gonnella did not disclose to Miller that the risk he purportedly had reduced went to another firm that was "more than likely" sending it back when the calendar turned that night. (Div. Ex. 69.) Had Miller known about all of the terms of this trade, he would have prohibited Gonnella from executing it. (Miller Tr. 974:10-20.)

The very next day, June 1, 2011, before the BAYC bonds had settled in Gleacher's account, Gonnella, as arranged, repurchased them from King, thereby providing an immediate profit of approximately $23,000 to Gleacher at Barclays's expense and resetting the clock on the holding period for these bonds in Gonnella's trading book. (Answer ¶ 13; Div. Ex. 15 & 401.)

G. Pre-Arranged Trades at August Month-End 2011

Three months after the May roundtrip trades, Gonnella and King agreed to "do what [they] did a few months ago" with eight bonds that were about to incur non-refundable aged inventory charges. (Div. Ex. 27.) In late August 2011, Miller took a two-week vacation. (Miller Tr. 990:15-991:17.) Before he left, he instructed Gonnella to reduce the risk in his trading book by selling the riskier securities in that book, which included the BAYC, CBAC, PALS, and LBSBC bonds in his inventory. (Miller Tr. 991:20-992:13.) Shortly after Miller left, on August 29, 2011, Gonnella wrote to King, "let's talk tmrw. Have some aged bonds that I might offer

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taken judicial notice of "stock prices and broader market data"); *see also U.S. v. Masferrer*, 514 F.3d 1158, 1162 (11th Cir. 2008) ("The Bloomberg market quotes are admissible pursuant to Federal Rule of Evidence 803(17)"). Here, the original face amount of $24,614,170 multiplied by the factor of 0.126911361 multiplied by 0.8175 (*i.e.*, the price of 81.75 divided by 100) equals a market value of $2.55 million, which confirms that Gonnella was discussing the PALS bond.

you, if you're game ... maybe do what we did a few months ago w/ some of those bayc's ...." (Div. Ex. 27.)[3]

The next day, Gonnella offered three bonds – BAYC 07-4A A1, BAYC 06-1A A2, and BAYC 05-4A M5 – to King. (Answer ¶ 16.) King asked, "when would you be looking to purchase something similar? end of the week?" (Div. Ex. 28.) Gonnella replied, "yes. Most likely." (*Id.*) King testified that he understood the phrase, "what we did a few months ago w/ some of those bayc's," to refer to what he and Gonnella did a few months ago with Bayview bonds, *i.e.*, engage in roundtrip trades. (King Tr. 242:8-23.) At the hearing, Gonnella claimed that this phrase referred only to the first part of the roundtrip trades. (Gonnella Tr. 808:24-809:15.) Also at the hearing, Miller and Louis Giglio, who was a Vice President in Barclays's Fixed Income Compliance Group, both understood Gonnella's offer as King did and stated that this phrase was important in evaluating the trading decisions that Gonnella made on Barclays's behalf. (Miller Tr. 993:18-994:10; Giglio 1183:13-1184:16 & 1231:21-1232:8.)

Immediately after Gonnella offered King the three bonds on August 30, 2011, King bought them at the prices Gonnella proposed. (Answer ¶ 17; Div. Ex. 30.) At this time, King was still unfamiliar with these bonds but purchased them because he was a "100 percent" sure that a "gentleman's agreement" existed whereby Gonnella would, as he did before in the trades he referenced, repurchase the bonds at higher prices in a short period of time. (King Tr. 244:16-251:6.) King testified that he wrote the phrase "something similar" to evade detection and

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[3] Transcripts of Bloomberg chats – which have been admitted into evidence as Division Exhibits 27, 28, 31, 32, 41-43, 45-53, and 55 – are time-stamped in Greenwich Mean Time. (*See* Gonnella Tr. 531:8-532:3; King Tr. 240:23-241:13; 340:3-341:25; Div. Ex. 50 at 20:16:59; Div. Ex. 51 at 16:03:37; Div. Ex. 55 (buying a bond at 5:11 p.m.); Div. Ex. 54 at 21:12:50 (confirming the purchase); Div. Ex. 57.) The chats took place in New York during Eastern Daylight Time and therefore occurred four hours earlier than the times noted in the time-stamps.

understood Gonnella's insertion of the phrase "[m]ost likely" as "just covering [him]self." (King Tr. 246:11-24 & 247:9-14.)

Later on August 30, 2011, Gonnella offered King $9.65 million more of the BAYC 07-4A A1 bond. (Div. Ex. 31.) As to the terms of this transaction, Gonnella told King, "Same situation...thx." (*Id.*) Based on Gonnella's reference to the terms of the previous trade, which used the May month-end trades as a template, King was "100 percent" sure that Gonnella would quickly repurchase the bonds and that Gleacher had no market risk. (King Tr. 253:2-254:13.)

The next day, Gonnella repurchased the BAYC 06-1A A2 and BAYC 05-4A M5 bonds at higher prices, thereby providing an immediate profit of approximately $49,000 to Gleacher at Barclays's expense. (Answer ¶ 18; Div. Ex. 15; 33 & 401.) As for the BAYC 07-4A A1 bond, on September 7, 2011, Gonnella repurchased $12 million of the $19.65 million he had sold to King at a higher price, thereby providing an immediate profit of approximately $14,000 to Gleacher at Barclays's expense. (Answer ¶ 18; Div. Ex. 15; 33 & 401.)

Also on August 31, 2011, Gonnella sold King five additional bonds on which he faced aged inventory charges. (Answer ¶ 19; Div. 33.) Two days later, on September 2, Gonnella repurchased these five bonds, each at a higher price. (Div. Ex. 15 & 36.) Gleacher earned a profit on each of the bonds, for a total profit of approximately $84,000, at Barclays's expense. (Div. Ex. 15 & 401.) And, on September 7, 2011, Gonnella repurchased $12 million of the BAYC 07-4A A1 bond he had sold to King on August 30. (Answer ¶ 24; Div. Ex. 15 & 401.)

Miller testified that there was no legitimate reason for the August month-end trades, that they were not in Barclays's best interest, and that "Gleacher made money at Barclays'[s] expense and Barclays was left with the same securities." (Miller Tr. 995:12-998:5.)

After the September 7, 2011 partial repurchase of the BAYC 07-4A A1 bond, King was still left holding $7.65 million of the bond. (Answer ¶ 24.) As discussed below, market movements and scrutiny by Miller complicated – but ultimately did not hinder – Gonnella from repurchasing the bond and insulating Gleacher from losses.

H. "Already Down the Worm Hole Trying to Get Back Right-Sided"[4]

Gonnella went to great lengths to execute his parking agreement with King, including putting together a creative series of trades when one of the bonds he parked with King went down in value and he had to make Gleacher whole. In September 2011, King repeatedly urged Gonnella to repurchase the remaining portion of the BAYC 07-4A A1 bond. (Div. Ex. 40; 43; 45 & 46.) Gonnella never suggested to King that he would not repurchase the bond, (King Tr. 284:11-14); rather, he acknowledged his obligation by (i) assuring King on September 7, "Haven't forgotten about you, bud … I'll be back w/ a bid on the bayc's!", (Div. Ex. 41), (ii) further assuring King on September 22, 2011, "have patience, if you can. Still like them, and eventually want them … but not in September", (Div. Ex. 43), and (iii) again assuring King on October 3, "don't worry. Will get there eventually." (Div. Ex. 45.)

While King held the bond, Gonnella was aware that its market value was declining. (Answer ¶ 26.) On October 11, 2011, King once again asked Gonnella in a Bloomberg chat if he could repurchase the BAYC 07-4A A1 bond by October 13. (Div. Ex. 46.) Gonnella responded, "Check your text in like 3 minutes." (*Id.*)

Gonnella then sent King a text which stated, in substance, that he was going to sell King bonds and then repurchase them along with the BAYC 07-4A A1 at prices that would offset

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[4] The quote comes from Gonnella's supervisor, after he read an October 11, 2011 Bloomberg chat between Gonnella and King. (Miller Tr. 1008:2-18 (discussing Div. Ex. 46 and stating that, had he seen this chat in real time, he likely would have reported it to compliance).)

Gleacher's loss in the BAYC bond. (King Tr. 289:22-290:18.) After King read the text, he confirmed the timing of the repurchase in the Bloomberg chat by advising Gonnella he "would need somethin' somethin' by the end of that week, the 28th." (Div. Ex. 46.) Gonnella responded, "yep." (*Id.*) Gonnella then offered King bonds and told him in the Bloomberg chat, "when you sell these later this month, mark down the 07-4s accordingly." (*Id.*) King agreed to buy the PALS and LBSBC bonds. (Answer ¶ 28; Div. Ex. 46.) Gonnella reiterated, "Those look attractive … so you should be able to mark those up eventually, and use the proceeds to mark down 07-4 accordingly…." (Div. Ex. 46.) King at this point had no interest in another roundtrip trade, but agreed because he believed he did not have another alternative. (King Tr. 322:5-24.) "[W]ill do upon the sale, will do," King responded to Gonnella's instruction. (Div. Ex. 46.) King's unfamiliarity with these bonds and his inability to sell them in the market did not worry him because "it didn't matter to me what the bonds were, just as long as I could buy them and I knew he was buying them back, so I didn't even think about it." (King Tr. 321:7-14.)

Consistent with the agreement to repurchase "by the end of that week, the 28th," Gonnella, on October 26, 2011, repurchased the LBSBC bond from King at a markup of more than 18% over its sale price two weeks earlier. (Div. Ex. 15 & 401.) "[P]ls do what we discussed before on them," Gonnella told King and then assured him, "gonna take a look at the pals and baycs next." (Div Ex. 49.) The LBSBC repurchase resulted in a profit of approximately $216,000 to Gleacher at Barclays's expense. (Div. Ex. 15 & 401.)

The same day, October 26, 2011, Miller noticed the LBSBC repurchase. (Miller Tr. 1031:14-1032:10; Gonnella Tr. 636:22-637:7.) Miller asked Gonnella for an explanation given Miller's previous instruction to reduce risk by selling these bonds. (Miller Tr. 1031:25-1034:16.) Gonnella told Miller that he repurchased it because he thought he could sell it to another

customer at a higher price. (*Id.*) Miller, at the time, credited Gonnella's explanation, but said that he would be monitoring Gonnella's trading to make sure Gonnella sold the LBSBC bond. (*Id.*) That evening, Gonnella and King spoke on their personal cell phones. (King Tr. 335:16-336:10.) Gonnella told King that he was worried because questions were being raised about the trade, and he therefore might not be able to buy back the BAYC 07-4A A1 and PALS bonds. (*Id.*) King was stunned. (*Id.*)

The following morning, Miller told Gonnella not to add risk until he sold the LBSBC bond. (Gonnella Tr. 636:19-21; Miller Tr. 1045:17-1046:9.) Also during that morning, King pulled his supervisor aside and disclosed both the past roundtrip trades and that the counterparty might renege and leave him with two bonds. (King Tr. 336:10-337:10.) King's supervisor instructed King to give Gonnella an ultimatum: repurchase the two bonds or King's supervisor would call Gonnella's supervisor to discuss the trades. (King Tr. 339:19-340:2.) Minutes later, King relayed the message to Gonnella. (Answer ¶ 32; Div. Ex. 51.)

Despite Miller's instruction from that very morning not to add risk, Gonnella later that day repurchased the PALS bond at a markup of almost 9% above the price at which he had sold it to King. (Div. Ex. 15 & 401.) However, whereas prior pre-arranged trades between Gonnella and King had been conducted without intermediaries, Gonnella's repurchase of the PALS bond was routed through an interdealer broker. (Div. Ex. 54-55.) Gonnella's repurchase of the PALS bond resulted in a profit of approximately $227,000 to Gleacher and $5,600 to the interdealer broker. (Div. Ex. 401.)

On November 3, 2011, Gonnella repurchased from King through another interdealer broker the remaining $7.65 million of the BAYC 07-4A A1 bond. (Answer ¶ 34; Div. Ex. 15; 57-61 & 401.) Gleacher sold the BAYC 07-4A A1 back to Barclays at a loss of $444,201;

however, 99.78% of this loss was offset by the profits Gleacher made on the LBSBC and PALS trades. (Div. Ex. 400 at 13; Agrawal Tr. at 115:3116:13.)

Miller testified that making Gleacher whole, as Gonnella did here, violated Barclays's policies and was an illegitimate goal that was not in the firm's best interest. (Miller Tr. 1040:6-1042:25 & 1047:3-18.)

I. Gonnella Used His Personal Phone to Evade Detection

Gonnella testified that he knew when he told King to "[c]heck your text in like 3 minutes" that Barclays prohibited the use of personal cell phones to conduct business. (Div. Ex. 46; Gonnella Tr. 588:9-18.) Gonnella nevertheless intentionally violated Barclays's policy because, according to him, Miller monitored his Bloomberg chats and read "a lot" of them. (Gonnella Tr. 624:6-625:10; *but see* Miller Tr. 932:15-22 & 1171:24-1172:12.) Gonnella testified that he sought to evade detection because he "didn't want to lose what [he had] built" with King (which, at the time, consisted exclusively of roundtrip trades) and therefore offered King attractive prices in a text message. (Gonnella Tr. 625:5-627:12.) Gonnella described Miller as a supervisor who would have insisted on a "macho trader thing to say" when dealing with customers and who would have deemed Gonnella's efforts to preserve a customer relationship "as not cut throat enough." (Gonnella Tr. 900:16-901:13.)

Gonnella's explanation is belied by: (i) Miller, who in addition to testifying that seeing the October 11 chat "hurt[his] feelings," stated that offering attractive prices to customers to cultivate a relationship is precisely what he expected of his traders, (Miller Tr. 1006:25-1007:25; 942:14-943:4); (ii) in the October 11 chat, Gonnella listed the attractive prices for each bond offered and even commented, "[t]hose look attractive," and the purported secret therefore was in plain sight, (Div. Ex. 46); and (iii) Gonnella used his personal cell phone multiple times after

October 11 to discuss aspects of the "package bid" that had nothing to do with the attractive prices. (Div. Ex. 50; 51 & 53.)

J. A "Key Indicator" – No Negotiations

Because the esoteric ABS that Gonnella and King traded did not have a clearly defined market or price transparency, trading of these products "comes down to negotiation" for "almost every single trade." (Miller Tr. 943:5-944:8). Moreover, during periods of enhanced illiquidity, such as the second half of 2011, there tend to be even more negotiations. (Miller Tr. 1158:18-1160:6.)

For 25 of the 26 trades between Gonnella and King, Gonnella chose the prices, there were no negotiations over price or any of the other terms, and King – the less experienced and active trader in such bonds – always received a higher price than the one he paid in a market where prices were falling. (Div. Ex. 15 & 401; King Tr. 260:11-14; Gonnella Tr. 504:2-14; 518:2-12; 529:7-21; 542:25-543:2 & 558:11-14; Miller Tr. 956:10-958:17.) According to Giglio, "if the two prices are set just so that the counterparty makes money on the trade, it shows that it would be parking. That's a key indicator." (Gilgio Tr. 1230:9-16.)

K. Total Aged Inventory Charges Avoided and Other Benefits

By selling the bonds before the aged inventory charges became non-refundable, Gonnella avoided an estimated $725,824 in charges to his trading book's profit and loss. (Div. Ex. 400 at 14.) He also reset the aged inventory clock, which allowed him to hold these bonds for another seven months without incurring monthly inventory charges of $140,646 per month. (*Id.* (sum of figures in 'Minimum of Two Estimates ($)' column).) In total, these avoided aged inventory charges are approximately $1.7 million (the sum of $725,824 and $140,646 multiplied by 7).

Freed from these monthly charges, Gonnella could then execute long-term trading strategies with these bonds, contrary to his supervisors' instructions, and in doing so attempt to further increase the profitability of his trading book. (Gonnella Tr. 795:9-16 ("supervisors would say try to avoid the aged inventory charge. You're not supposed to hold your bonds for all that long.") & 571:8-9 ("I liked all of these bonds and thought they were attractive bonds.").)

Another benefit is that Gonnella gave the false appearance that he was managing risk, which was a factor Barclays considered when determining his bonus. (Miller Tr. 939:16-942:13.) As stated above, Miller described the Aged Inventory Policy as a "risk management tool" that protected the firm against serious risks, both financial and legal. Gonnella led the firm to believe that he was complying with the Policy but instead exposed the firm to the very risks addressed by the Policy. He also exposed Barclays to significant additional risks by secretly making Barclays responsible for losses on bonds that were on another firm's books.

L. Gonnella Repeatedly Lied to Barclays When Asked to Explain His Trades.

Gonnella's repurchases on September 2 triggered an alert concerning potential "parking" transactions. (Div. Ex. 38-39.) That day, Giglio reviewed the alert and interviewed Gonnella, who falsely explained that he had sold the bonds to King because he had been "hoping to get more individuals involved in the bonds" but subsequently decided to repurchase the bonds because he was "confident that they could package some of them together and make them attractive to investors." (Div. Ex. 39; Gonnella Tr. 739:8-740:13.) Had Gonnella provided Giglio with full information, Giglio would have "escalated it to the head of business and throughout compliance." (Giglio Tr. 1246:6-19.)

Gonnella repeated this false explanation to Miller on October 26, 2011, as described above, and then again to Barclays management during the internal investigation that led to his

termination. (Gonnella Tr. 713:6-714:22.) Barclays concluded that Gonnella "was not forthright during his interview when asked to explain the trades." (Div. Ex. 65 at 2.)

M. Barclays's Inaccurate Books and Records

Barclays's policies required that "[a]ny sale or purchase of bonds that includes an agreement to repurchase or resell the security must be completely documented at the time of the initial transaction." (Div. Ex. 2 at 6.) This is to ensure that Barclays is complying with applicable rules and to ensure that the firm is not exposed to hidden risks. (Giglio Tr. 1194:20-1195:24 & 1246:20-1247:9.) At Barclays, the traders were required to enter the details and terms of their trades into a trade entry system on the same day of the trade, and the trade information "flow[ed] automatically to a data repository." (Giglio Tr. 1207:14-1209:4; Miller Tr. 929:8-22 & 1172:13-1173:10.) In an alert generated from the information Gonnella entered, Giglio saw that Gonnella booked the sales and repurchases as separate, unrelated transactions. (Giglio Tr. 1212:10-1215:10.)

N. Gonnella's Subsequent Contradictory Statements

In response to FINRA's inquiry, Gonnella's counsel submitted a letter, which contained a signed affirmation by Gonnella, stating that "Gonnella engaged in these transactions for the sole purpose of avoiding a relatively small aged inventory charge." (Div. Ex. 66 at 7; *see also* Div. Ex. 200 at 15:3-14 (Q: "Start with the trades in May 2011, did you do those trades with the intention of evading the aged inventory policy?" A: "Yes.").) However, at the hearing, Gonnella testified that he traded with King in order to "comply" with the aged inventory policy. (Gonnella Tr. 474:20-475:2.)

In his submission to FINRA, Gonnella abandoned his pretext for selling the bonds that he gave to Giglio, Miller, and Barclays management – that he was "confident that they could

package some of them together and make them attractive to investors" – and admitted that he "recognizes that his conduct in attempting to evade Barclay's [sic] aged inventory policy was inappropriate and accepts full responsibility for it." (Div. Ex. 66 at 8.) At the hearing, however, Gonnella repudiated this statement and repeatedly insisted the only thing he did that was inappropriate was "use [his] cell phone for business purposes on a few occasions." (Gonnella Tr. 725:19-729:5; 744:25-745:12; 788:17-789:2 & 861:9-14.)

Attached as Appendix A are additional contradictory statements by Gonnella.

LEGAL DISCUSSION

I. Gonnella Violated the Antifraud Provisions of the Securities Act and Exchange Act.

Gonnella is charged with primary violations of Sections 17(a)(1) and (3) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 10b-5(a), (b), and (c) thereunder.

A. Relevant Legal Standards

Section 17(a) of the Securities Act prohibits fraud in the offer or sale of securities, and Section 10(b) of the Exchange Act and Rule 10b-5 prohibit fraud in connection with the purchase or sale of securities. A violation requires that a party has made a materially false statement, omitted material facts, or otherwise participated in a fraudulent scheme in the offer or sale, or in connection with the purchase or sale, of a security. *See U.S. v. Naftalin*, 441 U.S. 768, 772, 778 (1979) (Section 17(a)); *SEC v. First Jersey Secs., Inc.*, 101 F.3d 1450, 1467 (2d Cir. 1996) (Section 10(b) and Rule 10b-5). A fact is material under these provisions if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. *See Basic Inc. v. Levinson*, 485 U.S. 224, 234 (1988). A violation of

Sections 17(a)(1) or 10(b) and Rule 10b-5 requires scienter. *See Aaron v. SEC*, 446 U.S. 680, 702 (1980). A violation of Section 17(a)(3) can be established by proof of negligence. *Id.*

"[P]rimary liability may arise out of the same set of facts under all three subsections [of Rule 10b-5] 'where the plaintiffs allege both that the defendants made misrepresentations in violation of Rule 10b-5(b), as well as that the defendants undertook a deceptive scheme or course of conduct that went well beyond the misrepresentations.'" *SEC v. Brown*, 878 F. Supp. 2d 109, 116-17 (D.D.C. 2012) (noting a difference between a failure to disclose and a scheme to conceal that failure to disclose).

B. Gonnella Violated the Antifraud Provision by Defrauding Barclays.[5]

1. Legal Standard for a Securities Fraud by a Fiduciary

The federal securities laws recognize several kinds of deception that involve a false or misleading statement or material omission. One particular form of securities fraud, as then-District Court Judge Gerard Lynch has succinctly explained, arises from "conduct that is deceptive because it is inconsistent with a fiduciary duty":

> In claims of this kind, the fiduciary duty serves as a sort of standing false representation by the fraudster, who deceives the victim by violating the commitment associated with her fiduciary duty. Acceptance of a fiduciary duty creates an understanding that the fiduciary will behave in certain ways; if the fiduciary allows this understanding to continue while acting inconsistently with her obligations, she has deceived the victim.

In re Refco Capital Mkts., Ltd. Brokerage Customer Sec. Litig., No. 06 Civ. 643, 2007 WL 2694469, at *7 (S.D.N.Y. Sept. 13, 2007).

The deception that transforms a fiduciary abuse into securities fraud consists of undisclosed conduct that is inconsistent with a fiduciary obligation. For example, in *SEC v.*

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[5] At the hearing, Your Honor asked "whether parking is the only way to violate the antifraud provisions in the context." (Hr'g Tr. 1404:11-13.) As shown in this section, even with no finding of a parking arrangement, Gonnella violated the antifraud provisions listed above.

Zandford, the Supreme Court held that a broker defrauded his client by secretly selling the client's securities for his own profit in breach of his fiduciary duty. 535 U.S. 813, 820-21 (2002). Each sale, the Court held, "was deceptive ... because it was neither authorized by, nor disclosed to" the client. *Id.* By not disclosing his self-dealing conduct, the broker in *Zandford* "duped" his clients into believing that transactions he entered on their behalf would be consistent with the stated investment guidelines. *Id.* at 822. In these circumstances, the Supreme Court concluded that the Commission had stated a claim for securities fraud "in which the securities transactions and breaches of fiduciary duty coincide." *Id.* at 825. Similarly, in *U.S. v. O'Hagan*, the Supreme Court held that an attorney committed securities fraud when he traded on the basis of confidential information gleaned from his client in breach of a fiduciary duty. 521 U.S. 642, 653-55 (1997). Such conduct was deceptive because the defendant "pretend[ed] loyalty to the principal while secretly converting the principal's information for personal gain." *Id.*

2. Gonnella Engaged in a Scheme to Defraud his Employer.

The Division has proven that (i) Gonnella breached multiple fiduciary duties he owed to Barclays by engaging in trades that were not authorized under internal policies and were not in the firm's interests, (ii) the breaches coincided with the purchases and sales of securities, (iii) those breaches were aided by multiple instances of deceptive conduct that allowed him to continue breaching his fiduciary duties, and (iv) the breaches harmed Barclays.

Respondent does not contest that he owed Barclays a fiduciary duty arising from his employment relationship. (Answer ¶ 5.) This fiduciary duty required him to act at all times in Barclays's best interest, exercising "the utmost good faith and loyalty in the performance of his duties." *Design Strategies, Inc. v. Davis*, 384 F. Supp. 2d 649, 659-60 (S.D.N.Y. 2005) (citations omitted), *aff'd*, 469 F.3d 284 (2d Cir. 2006).

Gonnella repeatedly violated his fiduciary duty. Barclays entrusted him with investing up to $300 million of its capital, provided that he not offer to repurchase as an inducement, share customer losses, or use his personal cell phones to conduct business. Gonnella knew this, but did all of these things when he traded with King. *See In re W.N. Whelen & Co., Inc.*, Exch. Act Rel. No. 28390, 1990 WL 312067, at *2 (Aug. 28, 1990) (Commission opinion) ("When he effected parking transactions at [his employer's] expense, he not only disregarded just and equitable principles of trade but his fiduciary obligations."). Gonnella then lied about his conduct, which prevented Barclays from timely detecting the scheme that cost it over $174,000. In addition to these unnecessary mark-ups, Gonnella impermissibly used Barclays's capital to make Gleacher whole for losses it suffered by structuring the "package bid."

Gonnella frequently engaged in deceptive conduct. He used his personal cell phone to coordinate the purchases and sales of the bonds for the admitted purpose of evading detection. *Cf. U.S. v. DeMizio*, 741 F.3d 373, 383-84 (2d Cir. 2014) (finding fraud where defendant concealed his kickback scheme from employer by speaking in "code because he didn't want the people seated next to him to hear"). Gonnella then gave Miller a false explanation while he was in the midst of the sales and repurchases that led Miller to incorrectly believe that Gonnella was acting in the firm's best interest. *See Refco*, 2007 WL 2694469, at *7.

Gonnella admitted that these trades imposed a cost on Barclays. (Gonnella Tr. 1367:14-1368:21.) Here, these costs served no legitimate purpose, and the planned and actual outcome for them was that "Gleacher made money at Barlcays'[s] expense and Barclays was left with the same security." (Miller Tr. 995:12-18 & 1083:12-15.) Even if the Division were required to

prove harm, which it is not,[6] *see Graham v. SEC*, 222 F.3d 994, 1001 n.15 (D.C. Cir. 2000), courts have long recognized that unnecessary or illegitimate costs are sufficient forms of harm. *See, e.g., Grandon v. Merrill Lynch & Co., Inc.*, 147 F.3d 184, 187 (2d Cir. 1998) (mark-ups); *In re Donald A. Roche*, Exch. Act Rel. No., 1997 WL 328870, at *6 (June 17, 1997) (churning). Indeed, in *In re Mayer A. Amsel*, Exch. Act Rel. No. 37092, 1996 WL 169430, at *5 (Apr. 10, 1996), the Commission found that a trader that sold and repurchased securities at unfavorable prices "improperly disadvantaged the firm."

Gonnella's scheme to defraud his employer is analogous to other schemes that the Commission and courts have confronted. For example, in *In re Orlando Joseph Jett*, Exch. Act Rel. No. 49366, 2004 WL 2809317, at *3 (Mar. 5, 2004) (Commission opinion), a trader "devised a 'trading strategy' to create the appearance of improved performance" in his trading ledger. The Commission found the "trading strategy" – which generated illusory profits and thereby enabled the trader to bolster his compensation at his employer's expense – constituted a scheme to defraud under the same provisions charged here. *Id.* at *11, *14. As in *DeMizio* and *Jett*, Gonnella sought to profit at the expense of his employer through the scheme, which in this case caused Barclays to pay over $174,000 "for the sole purpose" of enabling Gonnella to avoid charges to his trading book. (*See* Div. Ex. 66 at 7.) "[E]ach time respondent 'exercised his power of disposition for his own benefit,' that conduct, 'without more,' was a fraud." *Zandford*, 535 U.S. at 820-21 (quoting *U.S. v. Dunn*, 268 U.S. 121, 131 (1925).

Like the trader in *Jett,* Gonnella gave his employer the false impression that the trades benefited the firm because they appeared to reduce the risks associated with aged inventory. *Cf.*

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[6] At the end of the hearing, Your Honor asked about the level of intent the Division would have to show as to Barclays's loss. (Hr'g Tr. 1404:19-25.) As stated above, the Division does not need to show a loss to a victim. As such, scienter concerning a loss is not an element.

2004 WL 2809317 at *2 ("the strategy concealed the failure of Jett's real trading and the cost of the strategy itself"). When confronted about his trades, Gonnella repeatedly lied to his supervisors or compliance personnel about the true purpose of the trades by providing them with an explanation that he abandoned when placed under oath: that he thought he could package them (which he never did) and sell them to another investor. *Cf. id.* at *6 ("When Jett's colleagues or supervisors at the firm questioned him about his profits, he did not describe the 'trading strategy' outlined above. Instead, Jett gave them a completely different explanation.").

3. Gonnella Made Material Misstatements and Omissions.

Apart from the scheme described above, Gonnella violated Securities Act Sections 17(a)(1) and (3) and Exchange Act Section 10(b) and Rule 10b-5(b) by failing to disclose key aspects of his trades as he was booking them. Barclays required Gonnella to completely document agreements to repurchase. (Div. Ex. 2 at 6.) When Gonnella entered the sales into Barclays's internal systems, he omitted mention of the agreement to repurchase the securities and therefore hid from Barclays the important fact that it was, as the BAYC 07-4A A1 loss demonstrated, exposed to risks on bonds that were no longer on its books. It was important for Barclays to know that these were really sales with planned repurchases, yet Gonnella did not disclose these hidden risks or sharing of losses to his firm. (*See* Miller Tr. at 964:3-10 ("[H]ow can you manage risk if you're not aware that it's there?").)

In addition, as a fiduciary of Barclays, Gonnella had a duty to disclose the terms of a transaction that were inconsistent with Barclays's policies. *See U.S. v. Nouri*, 711 F.3d 129, 137-38 (2d Cir. 2013), *cert. denied*, 134 S. Ct. 309 (2013) (evidence of an employer's policies and FINRA rules "was more than sufficient to demonstrate that [appellant] had a duty to disclose to his employer" conduct inconsistent with those policies and rules). These undisclosed policy

violations were material. *See Rivera v. Clark Melvin Sec. Corp.*, 59 F. Supp. 2d 280, 292 (D. P.R. 1999) (finding that "no omission could be more material than" unauthorized trade) (citing *Village of Arlington Heights v. Poder*, 712 F. Supp. 680, 683 (N.D. Ill. 1989)).

Gonnella intentionally made these misstatements and omissions. As discussed in Section C.2., overwhelming evidence supports the conclusion that Gonnella and King had an agreement or understanding that Gonnella would use Barclays's capital to compensate Gleacher for assisting him with resetting the clock on his aged bonds. The evidence also supports a finding of recklessness. Gonnella knew that Barclays prohibited its traders from representing to a customer that Barclays will repurchase securities as an inducement to that customer. (Div. Ex. 2 at 8; Gonnella Tr. 493:4-23.) Gonnella showed extreme disregard for this policy by telling King he "more than likely would have a higher bid," then referencing that roundtrip trade when proposing many others, and finally by explicitly agreeing to repurchase bonds to make Gleacher whole. *See In re Concourse Capital Asset Mgmt., Inc.*, SEC Rel. No. 7111, 1994 WL 657062, at *8 (Nov. 15, 1994) (settled proceeding) (respondent either "knew that the Fund's investments violated its fundamental investment policies, or he acted in reckless disregard of those policies when he entered into the described transactions on behalf of the Fund").

In addition, at a bare minimum, Gonnella was negligent under Section 17(a)(3) of the Securities Act. Both Giglio and Miller testified extensively on the standard of care of which Gonnella was expected to adhere, both as a matter of policy and practice, when he traded the firm's capital. (*See, e.g.*, Giglio Tr. 1188:24-1189:24 & 1201:22-1205:13; Miller Tr. 936:15-937:10); *see In re Yesner*, SEC Rel. No. 184, 2001 WL 587989, at *28 (May 22, 2001) (standard established through evidence of employer's "corporate culture," "noncompliance with GAAP and company policy," and respondent's experience). Barclays's policies, which Gonnella knew

about, instructed him to consult with his manager or compliance before engaging in trades that "appear to involve questions" concerning pre-determined trades or before he reimbursed a customer for losses. (Div. Ex. 2 at 5-6.) In light of this mandate, Gonnella's offer to "maybe do what we did before" and to share losses was unreasonable. And, even if Gonnella's offers were merely "sales pitches" – which he finally admitted they were not, (Gonnella Tr. 913:15-914:7) – Gonnella failed to "exercise reasonable care and competence," *SEC v. Currency Trading Int'l, Inc.*, No. 02 Civ. 5143, 2004 WL 2753128, at *8 (C.D. Cal., Feb. 02, 2004), because he continued to make similar "sales pitches" after King clearly conveyed to Gonnella that he expected a repurchase based on prior pitches. (Gonnella Tr. 619:6-11 (noting that King seemed "sort of upset" in five Bloomberg chats where he insisted that Gonnella repurchase a bond).)

C. Gonnella Violated the Antifraud Provisions by Parking Securities.

Gonnella also violated Exchange Act Section 10(b) and Rules 10b-5(a) and (c) and Securities Act Sections 17(a)(1) and (3) by engaging in parking transactions.

Parking has been defined as "the sale of securities subject to an agreement or understanding that the securities will be repurchased by the seller at a later time and at a price which leaves the economic risk on the seller." *In re Warren G. Trepp*, SEC Rel. No. 115, 1997 WL 469718, at *18 (Aug. 18, 1997) (Foelak, J.) (quoting *In re Dale E. Barlage*, Exch. Act Rel. No. 38061, 1996 WL 733756, at *1 n.2 (Dec. 19, 1996) (settled proceeding)). In *Yoshikawa v. SEC*, 192 F.3d 1209, 1214 (9th Cir. 1999), the Ninth Circuit stated that "securities 'parking' is, at a minimum, comprised of the following elements: (1) a pre-arrangement to sell and then buy back securities (to conceal true ownership); (2) on the same, or substantially the same, terms (thus keeping the market risk entirely on the seller); (3) for a bad-faith purpose, accomplished through a sham transaction in which nominal title is transferred to the purported buyer while the

economic incidents of ownership are left with the purported seller." As discussed below, the requirements under either articulation are in substance the same as to pre-arrangement and price.

1. Requisite Showing for Pre-Arrangement

There is no uniformly accepted definition of pre-arrangement: *Barlage* referenced "an agreement or understanding," 1997 WL 469718, at *18; the Second and D.C. Circuits have both spoken in terms of an "understanding," *Bilzerian*, 926 F.2d 1285, 1290 (2d Cir. 1991); *SEC v. First City Fin. Corp.*, Ltd., 890 F.2d 1215, 1220-21 (D.C. Cir. 1989); and in other decisions the Commission and courts simply label trades as "shams" or contrivances without speaking of the type of pre-arrangement involved. *See Whelen*, 1990 WL 312067, at *2; *In re Sumner B. Cotzin*, Exch. Act Rel. No. 10850, 1974 WL 161433, at *2 (June 12, 1974). While the labels may differ slightly, in substance the body of caselaw is consistent: the Commission and the courts look for indicia of an understanding, either from direct evidence or from circumstantial evidence from which it can be inferred, that evidences pre-arrangement.

By exclusively citing cases and treatises that have nothing to do with parking, Respondent claims that the Division must establish all the hallmarks of contract formation. (*See* Resp. Pre-Hearing Br. at 12-14.) This ignores the important fact that "[t]he term 'agreement' has a broader meaning than the terms 'contract,' 'bargain,' or 'promise.'" Richard A. Lord, Williston on Contracts § 1.3 (4th ed. 2007); *see also* Restatement (Second) of Contracts § 3 cmt. a (1979) ("Agreement has in some respects a wider meaning than contract, bargain or promise."). An "agreement" requires "a manifestation of mutual assent between two or more persons"; it does not require formality, much less the offer, acceptance, and consideration elements of a binding contract. *See* Lord, Williston on Contracts § 1.3; Restatement (Second) of Contracts § 3 (same). Furthermore, an "understanding" is even broader than an agreement because it is

"esp[ecially] of an implied or tacit nature." Black's Law Dictionary (9th ed. 2009); *see also* 12 C.F.R. § 1024.14(e) (anti-kickback statute stating that "an agreement or understanding ... need not be written or verbalized but may be established by a practice, pattern or course of conduct").

Consistent with these broad definitions, courts and the Commission have inferred the existence of agreements or understandings from the nature of the trades or from the understanding of the person who held the parked bonds. In *Whelen*, for example, the Commission did not discuss the issue of pre-arrangement but inferred the existence of parking transactions because there were roundtrip trades done at similar prices in an apparent effort to evade net capital requirements. *See* 1990 WL 312067, at *2-3. And, in *SEC v. First City Fin. Corp., Ltd.*, 688 F. Supp. 705, 711 (D.D.C. 1988), *aff'd*, 890 F.2d 1215 (D.C. Cir. 1989), the court rejected the defendant's claims as to his intent and as to a purported "misunderstanding" and inferred that there was parking based on the understanding of the person who held the parked securities. *See* 890 F.2d at 1223 (affirming the district court because "[i]t is not at all clear to us that the SEC's burden in this case, as appellants claim, is to prove Belzberg's 'subjective intent' on March 4 to enter into an agreement").

Respondent's strained attempt to ratchet up the requisite showing is not only contrary to the plain meaning of the terms 'agreement' or 'understanding' repeatedly used in parking cases, but is also unrealistic. "By its very nature a parking agreement for an illegal purpose is not in the form of a legally enforceable written contract with clearly specified terms." *Trepp*, 1997 WL 469718, at *18. As one would expect, parties to these illicit agreements routinely use "shorthand utterances and circumlocutions to set the terms of the deal." *Id.* (finding an agreement existed based on a representation that "we'll simply have to see where it ends up").

2. Evidence Establishing Pre-Arrangement – "pls do what we discussed before"

In *SEC v. First City Fin. Corp., Ltd.*, 688 F. Supp. at 711, defendant Belzberg of First City called a trader and stated that a certain stock "presented a promising investment opportunity." *Id.* at 712. The trader understood that "as a request to purchase shares for First City's account pending a formal put/call agreement at some future date." *Id.* This put/call agreement was not mentioned, the quantity of shares to be purchased was not discussed, nor was the timing of the transfer to First City, and nothing was said about price. *See id.* at 712-13. Judge Parker had little difficulty concluding that there was a pre-arrangement because "the facts and events support a finding that [the trader] correctly understood Belzberg's instructions to purchase [the] shares on behalf of First City." *Id.* at 717. The D.C. Circuit affirmed, finding that "Belzberg did intend to enter into a put-call agreement" during the parties' informal telephone conversation. 890 F.2d at 1223.

Here, the evidence is much stronger. For the first set of roundtrip trades at May month-end, Gonnella, similar to Belzberg, assured King that he "like[d] these bonds." (Div. Ex. 20.) But, unlike Belzberg, Gonnella discussed the details of the timing ("later this week") and price ("higher") of a "more than likely" repurchase. *Id.*; (Giglio Tr. 1224:6-1225:14 ("It looks like [Gonnella is] attempting to park the bonds and then buy them back higher.").) After they had completed the first roundtrip trade, Gonnella referred back to its terms when he proposed at August month-end to "maybe do what we did a few months ago w/some of the bayc's." (Div. Ex. 27; Miller Tr. 993:18-994:10; Giglio Tr. 1231:21-1232:8 (this language "shows a pattern of activity").) And, for the next offer, Gonnella told King, "Same situation…thx." (Div. Ex. 31.) And, on October 11, 2011, Gonnella used his personal cell phone to plainly state that he would sell King additional bonds at attractive prices and would then repurchase them at prices that

would offset Gleacher's losses in the BAYC 07-4A A1 bond. (King Tr. 289:22-291:13.) "[P]ls do what we discussed before on them," Gonnella told King after he repurchased the LBSBC bond two weeks later at an 18% markup. (Div. Ex. 49.)

Even assuming that these communications leave room for doubt, the Court may infer the existence of an agreement or understanding from King's understanding or from the nature or timing of the trades. In *First City*, the court found pre-arrangement based on the understanding of the person who held the parked securities, who testified that he "just assumed this would have meant we were doing another put and call." 688 F. Supp. at 713. Here, King testified he was "100 percent" sure that Gonnella would quickly repurchase the bonds as a higher price. (King Tr. 222:16-223:2 & 244:16-251:6.) The fact that King did not trade these esoteric bonds, was not familiar with them, and did not have access to the identity of market participants or pricing information is strong corroborating evidence of an agreement. (King Tr. 212:11-214:19 & 243:9-245:7). Gonnella knew the universe of traders for these bonds and knew King was not part of it. (Gonnella Tr. 622:24-623:18.) Without an understanding that Gonnella would purchase these bonds at a mark-up, there would be no rational reason for King to repeatedly purchase risky esoteric bonds that he was not equipped to resell. Furthermore, Gonnella's qualifiers did not inject uncertainty because King viewed them as "coded language" used "to avoid the appearance that this was a predetermined trade or a roundtrip trade when, in fact, it was." (King Tr. 220:14-221:18 & 257:10-19.) Indeed, even Gonnella has put little weight on his own qualifiers. Unlike Belzberg, who claimed that the party holding the parked securities misunderstood him, *First City Fin.*, 688 F. Supp. at 711, Gonnella admitted that, for the May and August roundtrip trades, he "sold a total of seven bonds to a single counterparty over a two-month period pursuant to an understanding that he probably would repurchase the bonds at an

unspecified future date and an unspecified higher price." (Div. Ex. 66 at 7.)

Further reinforcing King's certainty is the course of dealings between the parties. In *Whelen*, the Commission inferred the existence of pre-arrangement from the nature and timing of the trades, which demonstrated that the securities "were in fact parked." 1990 WL 312067, at *2-3. Similarly, in *First City*, the D.C. Circuit found the course of dealings between the two parties to the parking trades supported the existence of an agreement and explained, "[t]hat some of the evidence of Belzberg's intent is circumstantial makes it no less probative or forceful." 890 F.2d at 1223-24. Here, the trades – which were done on terms unilaterally dictated by Gonnella – bear a striking fidelity to a fixed pattern of quick repurchases at slightly higher prices. (Div. Ex. 15.) Gonnella even expressly referred to this pattern when proposing the August roundtrip trades that followed the ones in May. (Div. Ex. 27 & 31); *see In re Joel L. Hurst*, Exch. Act Rel. No. 41165, 1999 WL 129783, at *2 (Mar. 12, 1999) (settled proceeding) ("Hurst dictated the prices on the parking transactions. The other firms acquiesced in these price setting transactions. Therefore, the trades involving the other dealers were fictitious, non-bona fide transactions, and did not indicate or reflect the actual market value of those securities.")

In addition, the "package bid" is still more proof of an understanding. Not even scrutiny from his supervisor and compliance could derail Gonnella from structuring a trade that would allow him to repurchase the BAYC 07-4A A1 bond and use other roundtrips to transfer the substantial losses on that bond from Gleacher's balance sheet onto Barclays's.

3. Requisite Showing for Price

As with pre-arrangement, the Commission and courts have given somewhat different articulations concerning the repurchase price: the Commission in *Whelen* found parking where securities were repurchased at "the same price ... or a lower price" and also at "one cent per

share more," and in that decision the Commission did not discuss the notion of economic or market risk, 1990 WL 312067, at *1; *Yoshikawa* speaks of trades done "on the same, or substantially the same, terms (thus keeping the market risk entirely on the seller)," 192 F.3d at 1214; the Second Circuit has referenced a repurchase price that equals the "the purchase price plus interest and commissions" and found parking where the repurchase price was much lower due to an intervening decline in market value and was offset through other trades. *See Bilzerian*, 926 F.2d at 1290.

Again, the labels differ, but in substance there is consistency: as an indication that there was pre-arrangement, the Commission and the courts assess whether the repurchase price, combined with any other payments, is generally in line with the purchase price. Respondent argues, without support, that parking requires a "divorce between risk (or benefit) and ownership." (Resp. Pre-Hearing Br. at 12.) This claim is not only inconsistent with Commission and Second Circuit decisions, but also with *Yoshikawa*, the persuasive authority Respondent hails as authoritative. There, the Ninth Circuit found that a set of trades "were executed at the going market price," which resulted in a 6% difference between the sale and repurchase price. 192 F.3d at 1215. Even though the account holding the securities experienced some market risk for the brief period it held the bonds, the Ninth Circuit found that a sale and repurchase price that "differed by only 6% may support a finding that these trades took place on substantially the same terms." *Id.*; *accord Whelen*, 1990 WL 312067, at *1 (finding parking where repurchase price was lower). In *Yoshikawa*, as in *Whelen*, the fact that some intervening market risk was felt by the account that temporarily held the securities was not an impediment to holding that the securities were parked.

4. Evidence Concerning Price

The facts as to the non-"package bid" bonds are much stronger than those in *Yoshikawa* or *Whelen*. Gonnella told King he would pay a "higher price," and he did just that. For each of the non-"package bid" bonds, the repurchase price was always 0.97% to 1.90% higher than the sale price. (Div. Ex. 401); *see In re David E. Lynch*, Exch. Act Rel. No. 46439, 2002 WL 1997953, at *2 (Aug. 30, 2002) (Commission opinion) (finding parking where bonds repurchased "at a small profit"). Clearly, these trades were done on substantially the same terms.[7] (Div. Ex. 15; Miller Tr. 984:2-985:3 ("looking at the sheet, they strike as roundtrip trades where the repurchases are consistently higher than the sales"); Agrawal Tr. 173:14-175:7.)

The "package bid" is an even clearer indication of parking. When a decline in the market price for the BAYC 07-4A A1 bond prevented Gonnella from repurchasing it at the same or a higher price, he conclusively demonstrated that Gleacher was not exposed to that market risk by proposing yet additional roundtrip trades that wiped away 99.78% of Gleacher's losses. (Agrawal Tr. 116:7-10.) In *Bilzerian*, the Second Circuit found a similar attempt to make a counterparty whole was sufficient to constitute parking. "Although [defendant] assured Jeffries he would repurchase the stock, the stock price fell substantially in the interim.... As a result, Jeffries incurred a $250,000 loss." 926 F.2d at 1290. The defendant in that case, like Gonnella, subsequently compensated the counterparty for the loss. *See id.*; (Miller Tr. 1038:20-23 ("what does seem very obvious, sitting here, is the dispersion between the buy and the sell prices was set

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[7] While the Division does not have the burden of proof as to the non-element of market risk transfer, it nevertheless proved that "there was no real transfer of risk." (Miller Tr. 997:20-998:5; *see also* King 233:3-16 ("they're going to buy it back from you in such a short amount of time to where there's no market risk, so it's essentially riskless").) In addition, both King and Miller testified that the repurchase prices did not appear to reflect market movements, but appeared to be compensation to Gleacher for briefly holding the parked bonds. (King Tr. 265:19-266:25; 328:22-329:2 & 349:2-8; Miller 984:2-13; 1039:22-1040:5 & 1164:6-22.)

to cover the loss on the 07-4" bond).) Based on these facts, the Second Circuit held that "[i]t was also reasonable for the jury to find that defendant engaged in a fraudulent scheme." *Id.* at 1299. Similarly, in *Trepp*, the Court found a parking arrangement where it was understood that the party holding the parked securities would "come out even, using make-up trades if necessary." 1997 WL 469718, at *18.

5. No Uniform Standard Concerning Bad-Faith Purpose

The Commission and the Ninth Circuit disagree as to whether this is a requirement. *Yoshikawa* casts it as one, but the Commission in *Whelen* ruled that a respondent's "motive in parking the securities in question is irrelevant." 1990 WL 312067, at *3.

6. Evidence of Bad-Faith Purpose

While the Division is not required to prove a bad-faith purpose under Commission precedent, it established at trial that, for the "sole purpose" of avoiding charges to his trading profits, Gonnella pre-arranged trades that had no legitimate purpose, were not in Barclays's best interest, violated its policies, and resulted in Barclays paying unnecessary markups to re-acquire the same bonds it had held mere days before. *See Amsel*, 1996 WL 169430, at *1-2 (finding respondent was motivated to park securities because his firm pressured him to sell them and penalized him if he did not); *Yoshikawa*, 192 F.3d at 1219-20 (bad faith can be found where "the trades were not actual, bona fide transactions just like any other in the marketplace").

Gonnella's claim that he sought to benefit Barclays by using the capital freed up from the sales of Gleacher to purchase other bonds, (Gonnella Tr. 866:9-868:8), is belied by the fact that there was no need to free up capital given that Gonnella already had $50 to $100 million in available capital to make these purported purchases. And, Gonnella's claim is contradicted by his blotter, which shows that he often repurchased bonds from Gleacher immediately after they

were sold and did not in the interim use the purportedly freed up capital to purchase other bonds. (*See, e.g.*, Div. Ex. 11-A at rows 2412-2421; 2623-2627 & 2628-2639); *cf. Amsel*, 1996 WL 169430, at *2 (rejecting respondent's argument that "that the 'ultimate objective' of his parking scheme was to some extent altruistic" because it purportedly benefited the firm).

II. Gonnella Violated the Books and Records Provisions of the Exchange Act.

A. Relevant Legal Standards

Section 17(a) of the Exchange Act requires brokerage firms to make and keep such records as the Commission requires by rule. Implicit in the requirement to keep such records is the requirement that information contained in them be accurate. *In re Ko Secs., Inc.*, Exch. Act Rel. No. 48550, 2003 WL 22233255, at *3 (Sept. 26, 2003) (Commission opinion). The Commission has promulgated Rule 17a-3(a)(2) which requires each registered broker-dealer to make and keep current ledgers (or other records) reflecting all assets and liabilities, income, and expense and capital accounts relating to the broker-dealer's business. A primary violation of this rule does not require a showing of scienter. *See SEC v. Drexel Burnham Lambert Inc.*, 837 F. Supp. 587, 610 (S.D.N.Y. 1993).

To establish aiding and abetting liability, the Division must prove that Respondent substantially assisted the primary violation and "knew of, or recklessly disregarded, the wrongdoing and his or her role in furthering it." *In re Bloomfield*, Exch. Act Rel. No. 71632, 2014 WL 768828, at *16 (Feb. 27, 2014). "One who aids and abets a primary violation is necessarily a 'cause' of the violation." *Id.*

B. Primary Violation by Barclays

Barclays violated Section 17(a) of the Exchange Act and Rule 17a-3(a)(2) thereunder because it failed to make and keep current books and records as required by those provisions.

The traders' understanding of these trades – that Gleacher was insulated from the risks of ownership because Barclays would repurchase the bonds – was not reflected in Barclays's books and records, which were, therefore, inaccurate. *See Hurst*, 1999 WL 129783, at *2 ("the firm's books and records did not reflect the liabilities arising from Hurst's commitments to repurchase the securities involved"); *United States v. Regan*, 713 F. Supp. 629, 632 (S.D.N.Y. 1989) (denying a motion to dismiss because firm's "records fail to reveal the alleged agreement to repurchase the securities made at the time of sale").

C. Secondary Violation by Gonnella

Barclays required Gonnella to completely document agreements to repurchase. (Div. Ex. 2 at 6.) Gonnella did nothing to document these agreements and even provided false information to Giglio when he sought to document the circumstances surrounding these repurchases. *See Lynch*, 2002 WL 1997953, at *2 (respondent aided and abetted Rule 17a-3 violation where order tickets "inaccurately depicted each of the parking transactions as two separate trades, preventing detection of [his] scheme.").

REMEDIES

In determining whether the public interest requires sanctions, the following factors are to be considered: the egregiousness of the actions; the isolated or recurrent nature of the infractions; the degree of scienter involved; the sincerity of a respondent's assurances against future violations; a respondent's recognition of the wrongful nature of his or her conduct; and the likelihood that a respondent's occupation will present opportunities for future violations. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979).

A. A Cease-and-Desist Order Should Issue

In applying *Steadman* factors, the Commission has held that "although some risk of future violation is necessary, it need not be very great to warrant issuing a cease-and-desist order

and ... in the ordinary case and absent evidence to the contrary, a finding of past violation raises a sufficient risk of future violation." *In re KPMG Peat Marwick LLP*, Exch. Act Rel. No. 1374, 2001 WL 223378, at *6 (Mar. 8, 2001).

A cease-and-desist order is appropriate in this proceeding. Gonnella's violations were many and committed with a high degree of scienter. There is no assurance against future misconduct, as Gonnella maintains the only inappropriate thing he did was use his cell phone to preserve a customer relationship.

B. First and Third-Tier Penalties Should Be Assessed

Under Section 8A(g) of the Securities Act, Section 21B of the Exchange Act, Section 203(i) of the Investment Advisers Act of 1940 ("Investment Advisers Act"), and Section 9(d) of the Investment Company Act of 1940 ("Investment Company Act"), the Commission may impose a civil money penalty on a respondent who willfully violated (or willfully aided and abetted a violation of) the Securities Act or the Exchange Act, if the penalty is in the public interest. The public interest is assessed with respect to these statutory factors: (1) deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) harm to others; (3) unjust enrichment; (4) prior violations; (5) the need for deterrence; and (6) such other matters as justice may require. 15 U.S.C. § 80b-3(i)(3); *see also In re Hector Gallardo*, Exch. Act Rel. No. 65422, 2011 WL 4495006, at *10 (Sept. 28, 2011). "Not all factors may be relevant in a given case, and the factors need not all carry equal weight." *In re Robert G. Weeks*, SEC Rel. No. 199, 2002 WL 169185, at *58 (Feb. 4, 2002).

A three-tier system establishes the maximum per-violation penalty. 15 U.S.C. § 80b-3(i)(2). Third-tier penalties are imposed in cases involving fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement *and* where the conduct directly or indirectly (i) resulted in substantial losses, *or* (ii) created a significant risk of substantial losses to

other persons, *or* (iii) resulted in substantial pecuniary gain to the violator. *Id.* For the time period at issue, the maximum first and third-tier penalty for each violation for a natural person is $7,500 and $160,000, respectively. *See* 17 C.F.R. § 201.1005.

The conduct underlying the antifraud violations should be subject to third-tier penalties given the high degree of scienter, demonstrated by repeated instances of deceptive conduct, and the significant risk posed to Barclays. As the package bid demonstrates, Barclays was exposed to hidden risks relating to the 12 bonds parked at Gleacher. When one of those bonds declined in value by $444,201, Gonnella insulated Gleacher from virtually all of these losses by structuring a trade that allowed Gleacher to profit, at Barclays's expense, by $443,170. (Div. Ex. 400 at 13.) The prices of these securities were especially volatile, (Gonnella Tr. 636:7-11), and Barclays's hidden risks as to any of them therefore was substantial.

The Court could apply third-tier penalties for each of the 26 trades at issue. *See In re J.W. Barclay*, SEC Rel. No. 239, 2003 WL 22415736, at *40 (Oct. 23, 2003) (each unauthorized trade and each unsuitable transaction constituted a separate act or omission). The Division believes, however, that it is not necessary to go so far. A fair approach would be to assess a maximum third-tier penalty of $160,000 for Respondent's violations of Section 17(a) of the Securities Act, a maximum third-tier penalty of $160,000 for his violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and a maximum first-tier penalty of $7,500 for aiding and abetting and causing violations of Section 17(a) of the Exchange Act and Rule 17a-3(a)(2) thereunder.

C. Collateral and Penny-Stock Bars Are Appropriate

Section 15(b)(6) of the Exchange Act, Section 9(b) of the Investment Company Act, and Section 203(f) of the Investment Advisers Act of 1940, collectively, authorize the Commission to impose an industry-wide or collateral bar as well as a penny-stock bar against Respondent for

willfully violating (or willfully aiding and abetting a violation of) the federal securities laws. The selection of an appropriate sanction includes an assessment of the deterrent effect it may have in upholding and enforcing standards of conduct in the securities business. *See In re Mark S. Parnass*, Exch. Act Rel. No. 65261, 2011 WL 4101087, at *3 (Sept. 2, 2011) ("the function of a bar order is not limited to merely preventing future identical violations, but is more broadly designed to achieve the goals of deterrence, both specific and general, to address the risks of allowing a respondent to remain in the industry").

Permanent bars are appropriate. *See In re James C. Dawson*, Advisers Act Rel. No. 3057, 2010 WL 2886183, at *4 (July 23, 2010) (The Commission "consistently viewed misconduct involving a breach of fiduciary duty or dishonest conduct on the part of a fiduciary ... as egregious."). Respondent engaged in a parking scheme "for his own benefit, not the firm's, and his improper trading ... cost the firm substantial sums of money." *Amsel*, 1996 WL 169430, at *5 (affirming permanent bar for four month parking scheme). Respondent's conduct is "no less serious because the firm was his victim rather than public investors." *Id.*

At the hearing, Respondent repeatedly maintained that the only thing he did wrong was use his personal cell phone to conduct firm business. *See In re Robert Sayegh*, SEC Rel. No. 118, 1997 WL 629669, at *4-10 & n.12 (Oct. 10, 1997) (Murray, C.J.) (participant in fraudulent scheme including stock parking who did not acknowledge wrongful nature of actions received life-time bar, while other participant who expressed regret and cooperated with the Division did not). Respondent "fails to recognize the significance of his wrongful conduct and this gives rise to serious doubts about his future ability to refrain from engaging in such conduct." *SEC v. Sayegh*, 906 F. Supp. 939, 948 (S.D.N.Y. 1995), *aff'd sub nom., SEC v. Militano*, 101 F.3d 685 (2d Cir. 1996). Gonnella even continues to adhere to a troubling reading of policies governing

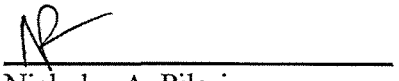
prohibited market practices, and he is still in a position to engage in further misconduct. (Gonnella Tr. 696:8-699:2 (testifying he could never violate policies against loss-sharing because "I don't think any trader has the power to really guarantee that someone will not incur a loss on a trade"); Kahraman Tr. 1299:17-19 ("I would hire him right now or I would invest in him.")); *see Sayegh*, 906 F. Supp. at 948 (defendant's "occupation will present opportunities for future violations of the securities laws."). Gonnella's age underscores the ample time he has available to engage in future misconduct and is not a mitigating factor. *See In re Scott Epstein*, Exch. Act Rel. No. 59328, 2009 WL 223611, at *21 (Jan. 30, 2009) (Commission opinion) (affirming permanent bar because "[y]outh or inexperience does not excuse a registered representative's duty to his clients"), *aff'd sub. nom.*, *Epstein v. SEC*, 416 F. App'x 142 (3d Cir. 2010).

CONCLUSION

The Court should conclude that Respondent willfully violated Sections 17(a)(1) and (3) of the Securities Act and Section 10(b) of the Exchange Act and Rules 10b-5(a), (b) and (c) thereunder, and that he willfully aided and abetted and caused Barclays's violations of Section 17(a) of the Exchange Act and Rule 17a-3(a)(2) thereunder, and impose the requested remedies and sanctions.

Dated: August 20, 2014
New York, New York

DIVISION OF ENFORCEMENT



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Appendix A

APPENDIX A: THOMAS GONNELLA'S CREDIBILITY

Whether Gonnella traded two stale bonds with Mr. King in May 2011 with the intention of evading Barclays' aged inventory policy:	
OCT. 2012 INVESTIGATIVE TESTIMONY	HEARING TESTIMONY
Q. Start with the trades in May 2011, did you do those trades with the intention of evading the aged inventory policy? A. Yes. (Div. Exhibit 200. 15:3-6)	Q. So, for example, as part of the conduct that led to your termination, you made two trades with the stale bonds in May 2011 with the intention to evade Barclays' aged inventory policy; correct? A. I wanted to comply with Barclays' aged inventory policy. (Tr. 474:20-475:2)

Whether Gonnella's intention for communicating with King via cell phone was to avoid detection	
OCT. 2012 INVESTIGATIVE TESTIMONY	HEARING TESTIMONY
Q. Did you ever communicate with Mr. King via cell phone or text message with the intention that by so doing you might eliminate the possibility that your firm, Barclays, would see such communications or hear as the case may be? A. I don't remember having that motive I guess to do that as a reason why I would use text and/or cell phone conversation. (Div. Exhibit 200. 72:10-16)	Q. Whatever you discussed over text message, you wanted to be offline; correct? A. Yes. (Tr. 593:24 – 594:2) Q. And because you thought he would monitor your chats, you decided to send a text message to Mr. King so that Mr. Miller wouldn't know what you were proposing? A. Wouldn't -- yes, so he wouldn't think I was being too soft. (Tr. 625:5-10)

Whether Gonnella and King had an understanding that Gonnella would repurchase bonds	
FINRA LETTER AFFIRMED BY GONNELLA Mr. Gonnella sold a total of seven bonds to a single counterparty over a two-month period pursuant to an understanding that he probably would repurchase the bonds at an unspecified future date and an unspecified higher price. (Div. Ex. 66 at 7)	HEARING TESTIMONY Q. The question is, the phrase "more than likely" will convey an impression to the person reading it or hearing the statement that there's a good chance that you're going to do what you say you're going to do. THE COURT. So you're asking him whether he thinks it would create that impression? Is that the question? MR. PILGRIM. That's right, your Honor. THE COURT. All right. A. I don't know if I can speak to what someone else's impression may be based upon what I'm saying. (Tr. 498:16-499:6) Q. So what trade were you referring to when you said: "What we did a few months ago with some of those BAYCs"? A. When I said, "maybe do what we did a few months ago with some of those BAYCs," I meant that when I offered him four bonds on May 31st, he went through those four bonds and picked out two bonds that he would like to buy. (Tr. 521:13-20)

Whether Gonnella included the language "more than likely have a higher bid" as part of his sales pitch	
HEARING TESTIMONY Q. You included the language we see here, "more than likely have a higher bid for these bonds" because you wanted to get the point across that you actually liked the bonds; right? A. Yes. Q. In fact, when you included that language, you were making a sales pitch or marketing pitch on the bonds; right? A. Yes. (Tr. 484:20-485:4)	HEARING TESTIMONY Q. And you later say: "I like these bonds and would more than likely have a higher bid." So at some point you decided that the phrase "more than likely" should be included in your sales pitch; correct? A. I don't think I made a conscious effort to include "more than likely." Q. You didn't think that language would help your sales pitch in trying to sell these four aged bonds? A. No. (Tr. 763:18-764:5) Q (THE COURT). When you used the phrase "more than likely," that you would more than likely be repurchasing? I want to make sure I understand your testimony. Are you saying that's a sales pitch basically to Mr. King? A. It's part of what I was saying. That "more than likely" is not necessarily a sales pitch. (Tr. 913:16-24)

Whether Gonnella believed his conduct was inappropriate	
FINRA LETTER AFFIRMED BY GONNELLA Mr. Gonnella recognizes that his conduct in attempting to evade Barclay's aged inventory policy was inappropriate and accepts full responsibility for it. (Div. Exhibit 66 at 8)	HEARING TESTIMONY Q. And what, in your words about your conduct, was inappropriate? A. Well, one thing, going offline to make cell phone calls and texts, I think that was inappropriate. Q. Anything else? A. That's what I think was inappropriate. (Tr. 727:10-16) Q. As you sit here today, what do you believe you did wrong as an employee of Barclays? A. I used my cell phone for business purposes on a few occasions. That has been documented. (Tr. 861:9-14) Q. Mr. Gonnella, have you had an opportunity to review Exhibit 66? A. I did. ... Q. Having reviewed this document, this letter submitted on your behalf, can you tell the Court whether it mentioned your use of cell phones to discuss business matters? A. It does not. (Tr. 744:25-745:12)

Appendix B

timeanddate.com

Business Days Calculator – Count Workdays

Calculate he number of days between two dates, including or excluding weekends and/or public holidays.

From and including: **Monday, June 1, 2009**
To and including: **Monday, November 7, 2011**
Excluding Weekends and public holidays
in United States. Change Country

Result: 613 days

890 calendar days – 277 days skipped:

Excluded 127 Saturdays

Excluded 127 Sundays

Excluded 23 holidays:

- Independence Day (Friday, July 3, 2009, Monday, July 5, 2010, Monday, July 4, 2011)
- Labor Day (Monday, September 7, 2009, Monday, September 6, 2010, Monday, September 5, 2011)
- Columbus Day (Monday, October 12, 2009, Monday, October 11, 2010, Monday, October 10, 2011)
- Veterans Day (Wednesday, November 11, 2009, Thursday, November 11, 2010)
- Thanksgiving Day (Thursday, November 26, 2009, Thursday, November 25, 2010)
- Christmas Day (Friday, December 25, 2009, Friday, December 24, 2010)
- New Year's Day (Friday, January 1, 2010, Friday, December 31, 2010)
- Martin Luther King Day (Monday, January 18, 2010, Monday, January 17, 2011)
- Presidents' Day (Washington's Birthday) (Monday, February 15, 2010, Monday, February 21, 2011)
- Memorial Day (Monday, May 31, 2010, Monday, May 30, 2011)

June 2009
22 days included

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

July 2009
22 days included

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

August 2009–October 2011

August 2009–December 2009: 104 days included
Year 2010: 250 days included
January 2011–October 2011: 210 days included

November 2011
5 days included

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

= Not included in results (Skipped) = First day included (Jun 1, 2009) = Last day included (Nov 7, 2011)

* Note: this service is currently a beta release. Please feel free to Report a bug.

timeanddate.com

Appendix C

PALS 2001-1A A3 Paid Off CUSIP 70557RAC4 Disc Mrgn --/--

As of -- Prepay -- WAL -- Collateral 100.0% PLANE 0% --

PALS 2001-1A A3 Mtge | 11) Export | Class/Deal Pay History

Group ALL collateral

1) Custom (PDI) | 2) Class (CPD) | 3) Deal (DPD)

CUSIP	70557RAC4	Coupon	0.92575	Age		Issue	03/29/01
Tranche	FLT	WAC		WAM		Maturity	03/10/14
Collateral	PLANE	Orig Bal	376,000,000	Day Count	ACT/360	Pay Delay	0 Days

Date	Factor	Coupon	Principal	Losses	Interest	Balance	Prin+Int
08/11	0.054278742	0.88578	809,864.52	0.00	15,308.39	20,408,807.17	825,172.91
07/11	0.056432638	0.86575	19,999,999.86	0.00	30,863.68	21,218,671.73	20,030,863.55
06/11	0.109624127	0.86955	6,500,000.00	0.00	36,318.35	41,218,671.73	6,536,318.35
05/11	0.126911361	0.88385	2,999,999.85	0.00	37,235.99	47,718,671.73	3,037,235.83
04/11	0.134890084	0.91138	4,000,000.05	0.00	45,623.21	50,718,671.73	4,045,623.26
03/11	0.145528382	0.93800	5,000,000.00	0.00	43,846.78	54,718,671.73	5,043,846.78
02/11	0.158826255	0.94400	5,500,000.16	0.00	52,861.09	59,718,671.73	5,552,861.25
01/11	0.173453914	0.94125	4,999,999.87	0.00	56,989.28	65,218,671.73	5,056,989.15
12/10	0.186751787	0.94250	3,500,000.14	0.00	57,343.30	70,218,671.73	3,557,343.43
11/10	0.196060297	0.93344	10,999,999.94	0.00	63,894.94	73,718,671.73	11,063,894.88
10/10	0.225315616	0.93625	3,500,000.14	0.00	73,503.01	84,718,671.73	3,573,503.15
09/10	0.234624127	0.93734	2,499,999.94	0.00	76,044.02	88,218,671.73	2,576,043.96
08/10	0.241273063	0.97344	2,499,999.94	0.00	76,782.41	90,718,671.73	2,576,782.34
07/10	0.247921999	1.02250	1,500,000.23	0.00	86,720.21	93,218,671.73	1,586,720.44
06/10	0.251911362	1.03000	500,000.00	0.00	80,112.92	94,718,671.96	580,112.92
05/10	0.253241148	0.97706	500,000.00	0.00	69,246.18	95,218,671.73	569,246.18

300) Edit Panel 301) Expand Panel

504 RCG 20:09 Questcor Pharmaceuticals Inc Enters Wave A of Elliott Wave Cycle
503 CMN 20:09 ATLCY US: OTC Short Positions on 2014/06/30 3,157 2,240 26.67
BN 20:09 *DAITO PHARMA SHARES FALL 7% AT OPEN IN TOKYO TRADING
502 CMN 20:09 ATLKY US: OTC Short Positions on 2014/06/30 14,591 -6,861 29.07