

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10010 / January 31, 2016

SECURITIES EXCHANGE ACT OF 1934
Release No. 77001 / January 31, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17077

<p>In the Matter of</p> <p>Barclays Capital Inc.</p> <p>Respondent.</p>
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**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933 AND SECTIONS
15(b) AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, 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”) and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Barclays Capital Inc. (“Barclays” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) that the Commission has determined to accept. Respondent admits the facts set forth in Section IV. below, acknowledges that its conduct violated the federal securities laws, admits the Commission’s jurisdiction over it and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Exchange Act, 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

1. Off-exchange trading of NMS stocks¹ has increased significantly in recent years. Off-exchange trading can offer many benefits to market participants, but also highlights the necessity of transparency between the entities that operate off-exchange venues and their clients. Barclays is the owner and operator of Barclays LX ("LX"), an alternative trading system ("ATS")² that operates as a "dark pool."³ LX accepts, matches, and executes orders from clients (subscribers that access LX through Barclays' trading algorithms or order router only) and direct subscribers (subscribers that access LX directly, or in combination with Barclays' algorithms and/or order router) (collectively, "LX subscribers" or "subscribers") to buy and sell NMS stocks. As of May 2014, LX was the nation's second largest NMS stock ATS.

2. From December 2011 through June 2014 (the "relevant period"), Barclays violated the federal securities laws and regulations arising from its operation and marketing of LX as set forth in Section V. below. In particular, Barclays made materially misleading statements and omitted to state certain material facts necessary to make statements made not

¹ "In general, the term 'NMS security' refers to exchange-listed equity securities and standardized options, but does not include exchange-listed debt securities, securities futures, or open-end mutual funds, which are not currently reported pursuant to an effective transaction reporting plan." SEC, Responses to Frequently Asked Questions Concerning Large Trader Reporting (Aug. 21, 2014), www.sec.gov/divisions/marketreg/large-trader-faqs.htm; see Rule 600(b)(46) of Regulation NMS, 17 C.F.R. § 242.600(b)(46). The term "NMS stock" means any NMS security other than an option. Rule 600(b)(47) of Regulation NMS, 17 C.F.R. 242.600(b)(47).

² Rule 300(a) of Regulation ATS promulgated under the Exchange Act provides that an ATS is "any organization, association, person, group of persons, or system: (1) [t]hat constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of [Exchange Act Rule 3b-16]; and (2) [t]hat does not: (i) [s]et rules governing the conduct of subscribers other than the conduct of subscribers' trading on such [ATS]; or (ii) [d]iscipline subscribers other than by exclusion from trading." Regulation ATS, Rule 300(a), 17 C.F.R. § 242.300(a). Rule 301(a) of Regulation ATS provides that an ATS must comply with Rule 301(b) of Regulation ATS, unless the ATS is registered as a national securities exchange or qualifies for another enumerated exclusion. During the relevant period, Barclays was not registered as a national securities exchange and did not qualify for an enumerated exclusion. Therefore, it was required to comply with Regulation ATS, including Rule 301(b) thereunder, to benefit from the exemption from the definition of "exchange" provided by Rule 3a1-1(a)(2) under the Exchange Act.

³ Dark pools are a subset of ATSs that, as a general matter, "offer trading services to institutional investors and others that seek to execute large trading interest in a manner that will minimize the movement of prices against the trading interest and thereby reduce trading costs." Exch. Act Rel. No. 61358 (Jan. 21, 2010), 75 FR 3593, 3599 ("Concept Release on Equity Market Structure"). More specifically, dark pools "are ATSs that . . . do not provide their best-priced orders for inclusion in the consolidated quotation data," which is in contrast to another subset of ATSs, electronic communication networks ("ECNs"). *Id.* An ECN's key characteristic is that it "provides its best-priced orders for inclusion in the consolidated quotation data," making its trading services more analogous to those of registered exchanges. Concept Release on Equity Market Structure, 75 FR at 3599.

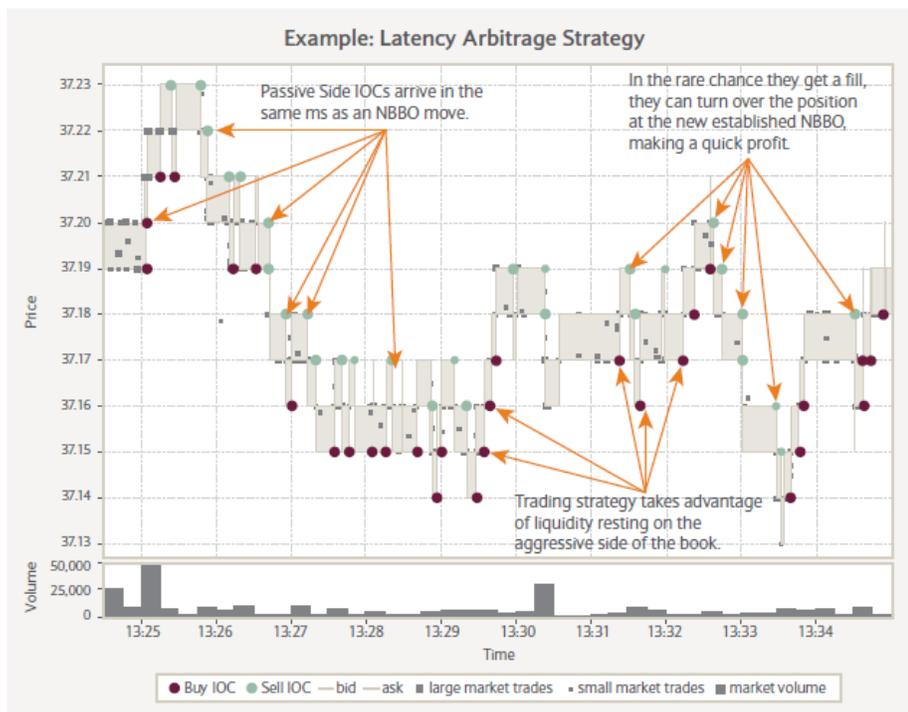
misleading concerning a) the operation of an LX product feature called Liquidity Profiling, which Barclays described as a “powerful tool to proactively monitor LX” and as a “sophisticated surveillance framework that protects clients from predatory trading” and b) the market data feeds that it used in LX. In addition, Barclays violated the federal securities laws and regulations related to its market access and its operation of LX, including by failing to establish adequate safeguards and procedures to protect subscribers’ confidential trading information, and to adopt and implement adequate procedures to ensure that such safeguards and procedures are followed.

3. In December 2011, Barclays developed a product called Liquidity Profiling to differentiate it from other dark pool operators. Barclays designed Liquidity Profiling to categorize LX subscribers and their order flow into various “buckets” numbered 0 through 5 (0 representing the most aggressive order flow, and 5 representing the least aggressive order flow), and then to allow LX subscribers to block trading with other subscribers that were assigned to certain categories. For example, an LX subscriber that did not want to trade with other subscribers that Liquidity Profiling rated as most aggressive could choose not to interact with LX subscribers that were rated as type 0 or 1.

4. In addition to providing LX subscribers with the ability to avoid interaction with subscribers that were assigned to certain categories, Barclays marketed Liquidity Profiling as a “sophisticated surveillance framework that protects clients from predatory trading,” and that “utilizes robust visualization tools [referencing Figure 2 below] that synthesize and graph large amounts of data and allow the Barclays ATS team to continuously police the trading activity in LX.”

Figure 2: Powerful visualization tool

Visualization tools allow the Barclays ATS team to identify predatory behavior.



5. Barclays also claimed that it ran “surveillance reports every week to make sure that there is no toxic flow in [LX’s] book.”

6. In fact, from December 2011 through June 2014, Barclays did not “continuously police” LX for predatory trading through the use of “visualization tools” as depicted above. Nor did Barclays generally run surveillance reports on a weekly basis during the relevant period to ensure that there was no “toxic flow in [LX’s] book.”

7. Barclays also failed to disclose adequately its practice of overriding the Liquidity Profiling tool’s categorization of subscribers (hereinafter, “Overrides”). During the relevant period, the majority of these Overrides moved LX subscribers from less aggressive buckets to more aggressive buckets. However, at times during the relevant period, Barclays overrode the Liquidity Profiling tool’s categorizations of certain LX subscribers (including its own market making desk) by manually moving these subscribers from the most aggressive buckets (*e.g.*, 0 and 1) to the least aggressive buckets (*e.g.*, 4 and 5). Barclays overrode these subscribers’ categorizations to increase the likelihood that these subscribers’ orders would be executed in LX. This likelihood increased because being categorized in buckets 4 and 5 resulted in these subscribers interacting with all flow in LX, even orders placed by subscribers that chose not to interact with subscribers assigned to the most aggressive Liquidity Profiling subscriber categories. As a result, the subscribers that elected to block trading against the aggressive LX subscribers still interacted with aggressive LX subscribers whose categorizations had been overridden even

though they had specifically opted not to trade with subscribers that engaged in this level of aggressive trading.

8. In addition, from October 2012 through May 2014, Barclays distributed a PowerPoint presentation (“Pitchbook”) concerning LX that contained a bubble scatter plot chart that purported to represent the “top 100 participants” in LX and to show the size and “aggressiveness” of each subscriber’s order flow. The size of each bubble corresponded to the size of each subscriber’s order flow at a static point in time, and placement of each bubble on the chart corresponded to the aggressiveness of that subscriber’s trading flow. In October 2012, however, Barclays removed from this chart the bubble that corresponded to its largest subscriber with aggressive trading characteristics (“Subscriber 1”), and then continued to use this same chart in its marketing material through May 2014.

9. Although in October 2012 Barclays removed from the chart the bubble corresponding to Subscriber 1, Barclays continued to include a footnote in the Pitchbook stating: “This chart represents the top 100 participants in LX (~86% of total flow). The analysis spans more than 11.3 million trades.” Moreover, in April 2014, Barclays amended the footnote to then state that the source of the data for the chart, which still did not include the bubble that corresponded to Subscriber 1, was Barclays data from 2014.

10. Barclays also at times misrepresented the type and number of market data feeds that it used to calculate the National Best Bid and Offer (“NBBO”) in LX. Barclays used the NBBO to determine the price of pegged orders in the ATS and as a basis for certain compliance decisions.

11. Market data feeds—and trading latencies potentially created by the use of particular market data feeds—have been a major focus in the securities industry over the past few years. Debate has ensued over the possibility that certain high frequency traders gain advantages by using faster, direct feeds from exchanges while some trading venues, including some dark pools, use slower feeds from the Securities Information Processors (“SIPs”) for pricing pegged orders within the venues and as a basis for certain compliance decisions.

12. Barclays misrepresented that it used more direct feeds than it actually did. During the relevant period, Barclays calculated the NBBO in LX using a combination of data from 1) SIPs and 2) direct feeds from only the BATS, ARCA, and NASDAQ exchanges. At no time during the relevant period did LX subscribe to a direct market data feed from the New York Stock Exchange (“NYSE”).

13. However, Barclays responded to a question from an LX subscriber about which data feeds it used to construct its NBBO in LX by saying, “Combination of SIP (for regional venues) and direct feeds (for major exchanges).”

14. Additionally, on April 9, 2014, in response to LX subscriber inquiries generated by the publication of Michael Lewis’s book, *Flash Boys*, Barclays sent a marketing piece by

email to LX subscribers that said that Barclays “utilize[s] direct feeds from exchanges to deter latency arbitrage.” This piece omitted any reference to Barclays’ use of the SIPs.

15. As a result of the materially misleading statements and omissions of fact described above, Barclays violated Section 17(a)(2) of the Securities Act, an antifraud provision of the federal securities laws.

16. Barclays also violated Exchange Act Section 15(c)(3) and Rules 15c3-5(c)(1)(i) and 15c3-5(b) thereunder by failing to have the necessary risk management controls and supervisory procedures in place related to its market access. Specifically, Barclays did not have controls reasonably designed to prevent the entry of orders that exceeded the pre-set credit and capital thresholds Barclays had in place.

17. Barclays also violated provisions of Regulation ATS. Barclays violated Rule 301(b)(2) by failing to file, at least 20 days before it implemented a material change, an amendment on Form ATS⁴ that disclosed Barclays’ Override process. Barclays also violated Rule 301(b)(10), which requires that an ATS “establish adequate safeguards and procedures to protect subscribers’ confidential trading information,” including “[l]imiting access to the confidential trading information of subscribers to those employees of the alternative trading system who are operating the system or responsible for its compliance with these or any other applicable rules.”

18. During the relevant period, certain Barclays personnel who did not operate LX and were not responsible for compliance had the ability to access confidential subscriber trading information if they knew the relevant computer language and had the ability to navigate through Barclays computer systems. As such, Barclays violated Rule 301(b)(10) by not having adequate safeguards and procedures to protect subscribers’ confidential trading information, including by limiting access to confidential trading information of subscribers to those employees of the ATS who were operating the system or responsible for compliance, or by not implementing adequate oversight procedures to ensure that the safeguards and procedures established pursuant to Rule 301(b)(10)(i) were followed.

IV.

Respondent

19. Barclays Capital Inc. is a broker-dealer registered under the Exchange Act and is a Connecticut corporation with its principal office located in New York, New York. Barclays is an indirect wholly owned subsidiary of Barclays Bank Plc. Since 2008, Barclays has operated LX, an ATS that operates pursuant to Regulation ATS. As of May 2014, LX was the second-largest ATS (as measured by daily average trading volume in NMS stocks) in the United States.

⁴ Filed with the Commission pursuant to Rule 301(b)(2) of Regulation ATS, a Form ATS is a confidential document that an ATS uses to notify the Commission of its operations.

FACTS

A. Barclays' Liquidity Profiling

20. In late 2011, Barclays developed and implemented a product feature for LX called Liquidity Profiling. From December 2011 through June 2014, Barclays described Liquidity Profiling as a “powerful tool to proactively monitor LX” and as a “sophisticated surveillance framework that protects clients from predatory trading.” Liquidity Profiling could be used only by LX subscribers permitted by Barclays to trade in LX. These LX subscribers included institutional investors, broker-dealers, electronic liquidity providers (“ELPs”), and Barclays’ internal desks. High frequency trading firms would be included in the ELP classification.

21. Prior to the implementation of Liquidity Profiling, Barclays allowed LX subscribers to block their interactions with certain categories of other subscribers based on static classifications of LX subscribers by type, such as institutional, broker-dealer, ELP, or internal. Subscribers that did not want to trade with a certain type of LX subscriber could ask Barclays to block interactions with those LX subscriber types.

22. Barclays designed Liquidity Profiling to measure trading based on the manner in which LX subscribers traded, rather than by static classifications of LX subscribers by type. Specifically, Barclays designed Liquidity Profiling to analyze LX subscribers’ order flow and segment it into various “categories” numbered 0 through 5 (0 representing the most aggressive flow, and 5 representing the least aggressive flow). Barclays designed Liquidity Profiling to then allow LX subscribers to block trading with other subscribers that were assigned to certain categories, rather than with certain client types. For example, an LX subscriber that did not want to trade with other subscribers that Liquidity Profiling rated as most aggressive could choose not to interact with LX subscribers that were rated as type 0 or 1. Barclays also continued to offer LX subscribers the option to block trading based on traditional LX subscriber types, as well as the option to block trading with specific counterparties.

23. Barclays designed Liquidity Profiling to use various metrics to assess the aggressiveness of LX subscribers’ trading activity in LX. The primary metrics used included: 1-Second Take Alpha (which Barclays defined as the movement of the mid-quote from the time of the trade to one second later, normalized by the size of the spread) and Normalized Order Size (which Barclays defined as the average LX subscriber order size in LX, normalized by the average execution size in the market, for an individual security).

24. Beginning in early 2012 and throughout the relevant period, Barclays distributed marketing material or otherwise communicated to current and prospective LX subscribers that it used Liquidity Profiling to review LX subscriber behavior.

25. In particular, Barclays distributed a two-page marketing piece titled: “LX Liquidity Profiling: Protecting clients in the dark” (hereinafter, “Tear Sheet”). The Tear Sheet stated that “Liquidity Profiling is a sophisticated surveillance framework that protects clients

from predatory trading” and “utilizes robust visualization tools . . . to continuously police the trading activity in LX.” The Tear Sheet also included a graphical depiction [*see supra* Figure 2] of one of the aforementioned visualization tools used by “the Barclays ATS team to identify predatory behavior.” The graphic’s caption stated that it was an example of a visualization tool identifying a “latency arbitrage” strategy.

26. In addition to the Tear Sheet, Barclays also conveyed the following to current and prospective LX subscribers in response to LX subscriber questionnaires or as proactive marketing: “Client behavior is reviewed on a weekly basis, allowing the Barclays ATS team to quickly identify aggressive behavior and take corrective action with clients who exhibit opportunistic behavior,” and “Barclays runs surveillance reports every week to make sure that there is no toxic flow in the book.”

27. Barclays did not use such visualization tools to monitor for latency arbitrage on a regular basis. Barclays also did not run such surveillance reports every week during the relevant period.

B. Barclays’ Liquidity Profiling Overrides

28. As described above, Barclays designed Liquidity Profiling to evaluate the nature of its LX subscribers’ trading. In particular, Barclays designed Liquidity Profiling to analyze LX subscribers’ order flow and segment it into various “buckets” numbered 0 through 5 (0 representing the most aggressive order flow, and 5 representing the least aggressive order flow). Liquidity Profiling would then allow LX subscribers to block trading with other subscribers that were assigned to certain categories.

29. During the relevant period, Barclays assigned certain LX subscribers to more aggressive or less aggressive buckets than they should have been assigned (“Overrides”) based solely on the objective application of the Liquidity Profiling metrics described above. While the majority of these Overrides moved LX subscribers from less aggressive categories to more aggressive categories, Barclays at times also moved LX subscribers from more aggressive categories to less aggressive categories.

30. Because Barclays applied Overrides to move certain subscribers from more aggressive categories to less aggressive categories, certain LX subscribers interacted with other LX subscribers in the most aggressive categories (namely, the 0 and 1 buckets) despite electing not to do so.

31. The subscribers that Barclays re-assigned to less aggressive categories included a Barclays market making desk. At times in 2012 and 2013, Liquidity Profiling rated this Barclays market making desk as engaging in type 0 or 2 trading, two of the more “aggressive” Liquidity Profiling subscriber categories. Barclays, however, overrode this categorization and instead recategorized that desk as type 4, one of the least aggressive Liquidity Profiling subscriber categories. As a result, at times in 2012 and 2013, the Barclays market making desk was allowed to trade with LX subscribers that specifically opted not to trade against other

subscribers that Liquidity Profiling labeled as type 0 or 2.

32. At times during the relevant period, Barclays also overrode its Liquidity Profiling categorizations with respect to the categorization of the trading activity of two institutional subscribers. Liquidity Profiling rated these subscribers as engaging in type 0 or 1 trading, the most “aggressive” Liquidity Profiling trader categories. Barclays, however, overrode these categorizations and instead recategorized them as type 2 or 4 subscribers. Because of Barclays’ recategorization of these subscribers, they were allowed to trade with LX subscribers that specifically opted not to trade against other subscribers that the Liquidity Profiling tool had labeled as type 0 or 1.

33. At times during the relevant period, Barclays also overrode its Liquidity Profiling subscriber categorizations with respect to numerous institutions that traded through a direct connection to LX if, in addition to the direct connection to LX, they also accessed LX by using Barclays’ algorithms (trading activity from Barclays’ algorithms generally would have been categorized as type 4 or 5 based on an objective application of the Liquidity Profiling metrics). Liquidity Profiling rated these subscribers as engaging in type 0, 1, 2, or 3 trading, the more “aggressive” Liquidity Profiling subscriber categories. Barclays, however, overrode these categorizations and instead recategorized them as type 4 or 5 subscribers, the least aggressive Liquidity Profiling subscriber categories. As a result, these subscribers were allowed to trade with certain other LX subscribers that specifically opted not to trade against subscribers that the Liquidity Profiling tool had labeled as type 0, 1, 2, or 3.

34. During the relevant period, Barclays provided some subscribers with “LX 20-day Client Summary” reports. These reports contained the following footnote disclosure: “Barclays reserves the right as operators of LX to override the profile of any participant.” Neither these reports, nor any other material disseminated to LX subscribers, defined what it meant to “override the profile of [a] participant” or specifically disclosed that Barclays applied Overrides that allowed aggressive subscribers to trade against other LX subscribers that had specifically requested not to interact with LX subscribers that engaged in aggressive trading activity. Neither these reports, nor any other material disseminated to prospective or current subscribers, likewise specifically disclosed that Barclays at times applied an Override to its own internal market making desk.

C. Barclays’ Liquidity Landscape Chart

35. Beginning in December 2011 and throughout the relevant period, LX employees prepared and distributed PowerPoint presentations (“Pitchbooks”) to market LX and Barclays’ electronic trading capabilities to current and prospective LX subscribers.

36. LX employees updated and revised certain pages in the Pitchbooks on a monthly basis. The cover page of the Pitchbooks stated the month and year of the Pitchbook (for example, “July 2013”).

37. The December 2011 Pitchbook contained a slide that stated “New LX®

Liquidity Profiling.” The slide contained a graph titled “Modified Take % vs. 1-Second Alpha (spreads).” The chart (hereinafter, “bubble chart”) depicted subscribers with a bubble, and the size of each bubble corresponded to the size of each subscriber’s order flow at a static point in time. The x-axis of the bubble chart represented modified take percentage, and the y-axis of the graph represented “one second alpha.”

38. The bubble chart in the December 2011 Pitchbook contained data for the flow in LX as of December 2011. The slide contained a footnote that stated: “This chart represents the top 100 participants in LX (~86% of total flow). The analysis spans more than 11.3 million trades.”

39. The largest bubble in the December 2011 bubble chart represented the largest LX subscriber (“Subscriber 1”). Subscriber 1’s location in the top right quadrant of the bubble chart demonstrated that its order flow made it one of the most aggressive subscribers in LX and that it benefitted from post-trade price movements.

40. From December 2011 to September 2012, Barclays updated the month and year on the cover of the Pitchbook on a monthly basis. Nonetheless, during this time, Barclays did not update the bubble chart on a monthly basis in its Pitchbooks. Rather, Barclays used the version of the bubble chart contained in the December 2011 Pitchbook, which had been created based on data from December 2011. During this time, Barclays also never modified the footnote on the slide containing the bubble chart that stated: “This chart represents the top 100 participants in LX (~86% of total flow). The analysis spans more than 11.3 million trades.”

41. In or about October 2012, Barclays inserted a new version of the bubble chart into the Pitchbook that did not include the bubble corresponding to Subscriber 1. At this time, Subscriber 1 was the largest subscriber to LX with aggressive trading characteristics based on Liquidity Profiling’s metrics, and Barclays did not revise the bubble chart to reflect that it had removed Subscriber 1. Apart from the absence of the bubble corresponding to Subscriber 1, the bubble chart was identical to the bubble chart that appeared in the December 2011 Pitchbook.

42. Even though Barclays removed the bubble representing Subscriber 1 from the bubble chart, it did not modify the footnote on the slide stating: “This chart represents the top 100 participants in LX (~86% of total flow). The analysis spans more than 11.3 million trades.”

43. From October 2012 through March 2014, Barclays continued to update certain pages in the Pitchbook on a monthly basis, and continued to update the month and year on the cover of the document. During this time, the Pitchbook used the version of the bubble chart that omitted Subscriber 1 and that otherwise was based on data from December 2011.

44. In April 2014, Barclays employees modified the footnote on the slide containing the bubble chart to say: “Note: This chart represents the top 100 clients in LX (~86% of total

flow). The analysis spans more than 12 million trades. Source: Barclays Data, 2014.”

45. The bubble chart in the April 2014 version of the Pitchbook (which also appeared in the Pitchbooks from October 2012 through March 2014) did not represent the flow for the “top 100 clients in LX” as of April 2014 because it omitted a bubble corresponding to Subscriber 1’s order flow. The source for the data in the April 2014 Pitchbook was also not 2014 data but instead data from December 2011.

D. Barclays’ Use of Market Data Feeds

46. The National Best Bid and Offer (“NBBO”) is the highest bid (or purchase) price and the lowest ask (or sale) price for a security in the national market system (“NMS”). Regulation NMS requires trading centers to have and enforce policies and procedures reasonably designed to prevent executions at prices that are inferior to prices that are displayed and available at another market center. *See* Rule 611(a) of Regulation NMS, 17 CFR § 242.611(a). During the relevant period, Barclays calculated the NBBO in LX using a combination of data from 1) Securities Information Processors (“SIPs”) and 2) direct feeds from the BATS, ARCA, and NASDAQ exchanges.

47. At no time during the relevant period did LX subscribe to a direct market data feed from the New York Stock Exchange (“NYSE”).

48. Yet in July 2013, Barclays responded to the following question by a subscriber: “Does the pool utilize the SIP for the NBBO, direct feeds to construct an NBBO or some combination (for Reg NMS compliance purposes)?” by saying, “Combination of SIP (for regional venues) and direct feeds (for major exchanges).”

49. On April 9, 2014, Barclays sent LX subscribers a marketing piece that stated in relevant part: “We protect clients in our dark pool. We utilize direct data feeds from exchanges to deter latency arbitrage.” Barclays did not mention its use of the SIP to calculate the NBBO for LX or its lack of use of the NYSE direct feed in this document.

E. Barclays’ Pre-Set Credit Thresholds

50. Barclays had one primary control in place during the relevant period that it used to monitor client orders and executions. This control was a proprietary developed system called NICON. During the relevant period, Barclays assigned credit thresholds to clients, including LX subscribers. NICON sent email messages to Barclays’ service desk when percentages of the client’s overall credit threshold had been reached (*e.g.*, at 33%, 50%, 66%, and 80% of the client’s overall threshold).

51. NICON, however, did not have the functionality to prevent the entry of orders that would exceed pre-set credit thresholds by rejecting them, and Barclays did not have any other control in place that did so.

52. Barclays also allowed sales traders to enter orders using a placeholder acronym, OMNI, that was not tied to any specific client. This practice resulted in Barclays not crediting certain customer orders against their respective thresholds.

F. Barclays' Pre-Set Capital Thresholds

53. Although Barclays did have a firm-wide capital threshold, Barclays did not have controls in place that would prevent the entry of orders that would exceed the threshold.

54. In addition to not having controls, Barclays did not include all relevant orders in its capital threshold calculation, including orders by its own market making desk and two of its proprietary trading desks.

G. Barclays' Amendments to Form ATS and Protection of Confidential Client Information

55. Barclays instituted Overrides throughout the relevant period without amending its Form ATS to include information about these material changes to LX's operation.

56. Barclays employees assigned to the "Electronic Trading" and "All" user groups had the ability to view orders and executions the day after these orders and executions occurred in LX, if they knew the relevant computer language and had the ability to navigate through Barclays' computer systems. As such, Barclays did not limit the access to confidential trading information of LX subscribers to those employees of the ATS who operated the system or were responsible for its compliance.

H. Barclays' Remedial Efforts

57. In response to the findings of a December 2013 internal audit, Barclays took steps to limit access to confidential trading information of LX subscribers to only those employees of the ATS who operated the system or were responsible for its compliance.

58. In further response to the findings of the internal audit and regulatory investigations, Barclays updated certain of its processes concerning Liquidity Profiling reviews. Among other changes, Liquidity Profiling reviews of subscribers that route directly to LX are now conducted on a monthly basis. In addition, Overrides no longer move subscribers from more aggressive to more passive categories; they can only move subscribers from more passive to more aggressive categories.

59. As of October 2014, LX began utilizing a third-party vendor for the purposes of determining the current NBBO. This third-party vendor calculates the current NBBO based on direct data feeds from all protected venues under Regulation NMS.

60. Barclays has taken steps to improve its Market Access Rule compliance, including, among other changes, by disabling use of the OMNI acronym.

61. Barclays has filed an amended Form ATS with the Commission, which provides updated and detailed information on the functionality of LX, including, among other information, the Override process.

62. Barclays has engaged an independent third-party consultant (“third-party consultant”) to conduct a comprehensive review of its policies, procedures, practices and compliance related to its operation of LX, its Market Access Rule compliance, and its compliance with certain requirements of Regulation ATS.

V.

VIOLATIONS

63. As a result of the conduct described above, Barclays willfully⁵ violated:
- a. Section 17(a)(2) of the Securities Act, which prohibits, directly or indirectly, in the offer or sale of securities, obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
 - b. Section 15(c)(3) of the Exchange Act and Rules 15c3-5(b) and 15c3-5(c)(i) thereunder, which require the risk management controls and supervisory procedures of a broker or dealer with or providing market access to be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer by rejecting orders if such orders would exceed the applicable credit or capital thresholds;
 - c. Rule 301(b)(2) of Regulation ATS, which requires an ATS to file an initial operation report on Form ATS at least 20 days prior to commencing operation as an alternative trading system and to file an amendment on Form ATS at least 20 days prior to implementing a material change to the operation of the ATS, within 30 days after the end of a quarter when information contained in an initial operation report filed on Form ATS becomes inaccurate, and promptly upon discovering that an initial operation report filed on Form ATS or an amendment on Form ATS was inaccurate when filed; and

⁵ 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).

- d. Rule 301(b)(10) of Regulation ATS, which requires an ATS to establish adequate safeguards and procedures to protect subscribers' confidential trading information and to adopt and implement adequate oversight procedures to ensure that the safeguards and procedures for protecting subscribers' confidential trading information are followed.

REMEDIAL EFFORTS

64. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

UNDERTAKINGS

65. Respondent has undertaken to do the following:
- a) With the assistance of the aforementioned third-party consultant, conduct a review of its policies, procedures, practices and compliance related to the following and have the third-party consultant prepare a written report (the "Report") that includes an evaluation of the following:
 - i. The process by which the Respondent creates, approves, and disseminates (including how, to whom, and the tracking of such) marketing material, including written presentations and other sales materials concerning LX;
 - ii. Respondent's risk management controls and supervisory procedures pertaining to Respondent's financial exposure that could arise as a result of its market access, including, but not limited to, its credit and capital thresholds and the prevention of both the entry of orders that would exceed such thresholds;
 - iii. Respondent's reporting on its Form ATS of material changes to the operation of LX; and
 - iv. Respondent's safeguards and procedures to protect ATS subscribers' confidential trading information, including how the ATS limits access to the confidential trading information of subscribers to those employees of the ATS who are operating the system or responsible for its compliance with applicable rules (and, in particular, how the ATS maintains adequate safeguards and procedures in regards to employees or business units of the Respondent outside of the ATS from accessing ATS subscribers' confidential trading information); and Respondent's oversight procedures for ensuring that the safeguards and procedures for protecting subscribers' confidential trading information are followed.⁶

⁶ To the extent that the third-party consultant engages the services of any other consultant(s) to assist with its work, the third-party consultant shall have complete independence and discretion over the retention and work of any such consultant(s).

- b) Require the third-party consultant within ninety (90) days of the issuance of this Order, unless otherwise extended by Commission staff and/or Office of the Attorney General of the State of New York (“NYAG”) for good cause, to provide Respondent, Commission staff, and NYAG with an estimate of the time needed to complete the review, to prepare the Report and to provide a proposed deadline for the Report, subject to the approval of Commission staff and/or NYAG.
- c) Require the third-party consultant to issue the Report by the approved deadline and to provide the Report simultaneously to Commission staff, NYAG and Respondent.
- d) Submit to Commission staff, NYAG and the third-party consultant, within thirty (30) days of the third-party consultant’s issuance of the Report, the date by which Respondent will adopt and implement any recommendations in the Report, subject to Items 65.d.i-iii below and subject to the approval of Commission staff and NYAG.
 - i. As to any recommendation that Respondent considers to be, in whole or in part, unduly burdensome or impractical, Respondent may submit in writing to the third-party consultant, Commission staff and NYAG a proposed alternative reasonably designed to accomplish the same objectives, within sixty (60) days of receiving the Report. Respondent shall then attempt in good faith to reach an agreement with the third-party consultant relating to each disputed recommendation and request that the third-party consultant reasonably evaluate any alternative proposed by Respondent. If, upon evaluating Respondent’s proposal, the third-party consultant determines that the suggested alternative is reasonably designed to accomplish the same objectives as the recommendations in question, then the third-party consultant shall approve the suggested alternative and make the recommendations. If the third-party consultant determines that the suggested alternative is not reasonably designed to accomplish the same objectives, the third-party consultant shall reject or revise Respondent’s proposal. The third-party consultant shall inform Respondent of the third-party consultant’s final determination concerning any recommendation that Respondent considers to be unduly burdensome or impractical within twenty-one (21) days after the conclusion of the discussion and evaluation by Respondent and the third-party consultant.
 - ii. In the event that Respondent and the third-party consultant are unable to agree on an alternative proposal, Respondent shall accept the third-party consultant’s recommendation(s).
 - iii. Within thirty (30) days after final agreement is reached on any disputed recommendation, Respondent shall submit to the third-party consultant, Commission staff and NYAG the date by which Respondent will adopt and implement the agreed-upon recommendation, subject to the approval of Commission staff and NYAG.

- e) Adopt and implement, on the timetable set forth by Respondent in accordance with Item 65.d, the recommendations in the Report. Respondent shall notify the third-party consultant, Commission staff and NYAG when the recommendations have been implemented.
- f) Require the third-party consultant to certify, in writing, to Respondent, Commission staff, and NYAG that Respondent has implemented the agreed-upon recommendations for which the third-party consultant was responsible. The third-party consultant's certification shall be received within sixty (60) days after Respondent has notified the third-party consultant that the recommendations have been implemented.
- g) Within one hundred and eighty (180) days from the date of the applicable certification described in Item 65.f above, require the third-party consultant to have completed a review of Respondent's policies, procedures, and practices described above and submit a final written report ("Final Report") to Respondent, Commission staff, and NYAG. The Final Report shall describe the review made of Respondent's policies, procedures, and practices and describe how Respondent is implementing, enforcing, and auditing the enforcement and implementation of any recommendations by the third-party consultant. The Final Report shall include an opinion of the third-party consultant on whether the revised policies, procedures, and practices and their implementation and enforcement by Respondent and Respondent's auditing of the implementation and enforcement of those policies, procedures, and practices are reasonably designed to ensure compliance with the federal securities laws.
- h) Respondent may apply to Commission staff and/or NYAG for an extension of the deadlines described above before their expiration and, upon a showing of good cause by Respondent, Commission staff and/or NYAG may, in its sole discretion, grant such extensions for whatever time period it deems appropriate.
- i) Respondent shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff and NYAG may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to (i) James A. Scoggins, Assistant Director, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, with a copy to the Office of Chief Counsel of the Enforcement Division, and (ii) John D. Castiglione, Assistant Attorney General, Investor Protection Bureau, Office of the New York State Attorney General, no later than sixty (60) days from the date of the completion of the undertakings.

- j) Respondent shall require the third-party consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the third-party consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the third-party consultant will require that any firm with which he/she is currently affiliated or of which he/she is currently a member shall not, without prior written consent of Commission staff and the NYAG, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.
- k) To ensure the independence of the third-party consultant, Respondent shall not have the authority to terminate the third-party consultant without prior written approval of the NYAG and the Commission staff, and shall compensate the third-party consultant and persons engaged to assist the third-party consultant for services rendered pursuant to the Order at their reasonable and customary rates.

VI.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

- A. Barclays shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act, Section 15(c)(3) of the Exchange Act and Rules 15c3-5(b) and 15c3-5(c)(i), and Rules 301(b)(2) and 301(b)(10) of Regulation ATS.
- B. Barclays is censured.
- C. Barclays shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$35,000,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. 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 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 Joseph G. Sansone, Co-Chief, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281, or to Robert Cohen, Co-Chief, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

D. Respondent Barclays shall comply with the Undertakings enumerated above.

By the Commission.

Brent J. Fields
Secretary